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PRETRIAL RELEASE IN CRIMINAL COURTS:

**A STUDY OF
THREE OREGON COUNTIES**

by

MELVIN EARL DeGRAW

A dissertation submitted in partial fulfillment of the
requirements for the degree of

**DOCTOR OF PHILOSOPHY
in
URBAN STUDIES**

Portland State University
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DISSERTATION APPROVAL

The abstract and dissertation of Melvin Earl DeGraw for the Doctor of Philosophy in Urban Studies were presented March 8, 1995, and accepted by the dissertation committee and the doctoral program.

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ABSTRACT

An abstract of the dissertation of Melvin Earl DeGraw for the Doctor of Philosophy in Urban Studies presented March 8, 1995.

Title: Pretrial Release in Criminal Courts: A Study of Three Oregon Counties

Pretrial release (PTR) is the permanent or temporary freedom from incarceration for criminal defendants awaiting adjudication of their cases in court. From Anglo Saxon times in England, people accused of non-capital crimes were generally permitted to remain free until judicial officials could hear the charges against them. In America, pretrial release has been advocated by the courts since the colonial era. The U. S. Constitution requires that bail not be excessive, but leaves governments free to decide how bail laws are administered.

The study briefly traces the historical developments of PTR up to the present time. The study then centers on the PTR process of three Oregon counties (Multnomah, Washington, and Yamhill) and observes the decisions of judges, release assistance officers, and jailers in relation to the release outcomes for a study group (N=619) who were booked into jails of the three counties in 1993. Background data on defendants in the study include gender, race, the crimes for which they were arrested, criminal history, and the disposition of the current charges.

Seventy-one percent of the defendants received PTR. Significant factors in the release outcome, as shown by logistic and multiple regression analyses, were probation violation status, felony in the current charge, narcotics offenses in the current charge, and charged with multiple offenses. Gender and race were not strong influences on the release outcome. Hispanic defendants (N=108) in the study, however, were detained in jail longer than Whites (N=394). Hispanics were less likely than Whites to be released on the same day of arrest and served generally longer jail terms than Whites under similar sentences. Possible explanations are that Hispanics were more frequently charged with distributing narcotics and charged with multiple offenses. Implications suggest further studies on minorities in judicial and corrections settings.

The study has applications in judicial and corrections policies on the early release of inmates, an important issue as jails become increasingly overcrowded.

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Without the cooperation and assistance of employees in the three counties studied, the research could not have been possible. My gratitude and sincere thanks go to the sheriffs of Multnomah, Washington, and Yamhill Counties for granting me permission to do the inmate studies. Many people in corrections and the courts helped out, and I would particularly like to thank Ms. Kim Hirota, Supervisor of Multnomah County's Pretrial Services; William Barrigan, Lisa Agnar and Charles Straughan with the Washington County Jail; Mr. Scott Upham, District Attorney for Washington County; Scott Steele and Dick York, Pretrial Services for Washington County; Jim Van Arsdel, Pretrial Services for Yamhill County and Ms. Teri Horvath, Court Administrator for Yamhill County.

Finally, I would like to thank my wife, Liz, for her encouragement, patience and assistance throughout the years of my doctoral studies. Without her help, I would still be working on this.

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CHAPTER I

INTRODUCTION

This study is designed to explore how the pretrial release process works. A review of the literature, which begins in Chapter II, indicates that little research has been devoted to aid in the understanding of how pretrial release decisions are made and the relationship of pretrial decisions and release outcomes for people accused of crimes. Reaves (1992) points out that about 65 percent of criminal defendants in American jails are released before their cases are heard in court. What is not understood, however, is what accounts for those who are not released. Carbone (1983) explains that crime severity and criminal history of the defendant are the primary criteria upon which pretrial release decisions are based. For years, however, the media and the public have perceptions of dangerous offenders being released from jails, only to commit new crimes. Rather than detaining dangerous criminals, some studies (Beeley, 1966; Thomas, 1976) have argued that courts traditionally detained poor and minority defendants who lacked the money to post bond. Bail reform movements, described by Goldfarb (1965) and Goldkamp (1979), were successful in urging courts to use nonfinancial conditions of release. With courts relying less on financial bail, research in the 1970's strived to predict pretrial crime and failure to appear in court based on defendants' criminal and social background. Research findings had a mixed review (Eskridge, 1983; Goldkamp, 1989). The literature indicates that the most recent development in pretrial release has

been preventive detention, wherein federal and state legislatures have authorized courts to deny pretrial release to defendants who pose a danger to society (Gottlieb & Rosen, 1985; Toborg, 1986).

Chapter III describes the research design and methods of the study. From a grounded theory approach, it was thought that the best way to investigate the pretrial release process was to explore how the process worked on a sample of jailed defendants. Using three Oregon counties (Multnomah, Washington, and Yamhill) as the research setting, data were collected on 619 inmates who had been booked into the three county jails in July and August, 1993. Background information was collected on the defendants, including age, gender, race, criminal charge and criminal history. Jail and court records were reviewed on each defendant to determine the pretrial release decision, how the defendant was actually released, and the disposition of the case in court. Also reviewed were Oregon laws governing pretrial release, jail policies on the release of inmates, and other documents related to court policies and the release environment.

In Chapter IV, the results of the study are presented. Crosstabulations were prepared to show the percentages of defendants who were released under various release conditions. In all, there were 18 categories of releases, such as recognizance, conditional, released due to jail overcrowding, and other types of release. Seventy-one percent of the defendants were given pretrial release, and the remainder were released after serving time in jail following conviction or were transferred to other jurisdictions. The study also revealed that judges, release assistance officers (who are employed by the courts) and jail staff made release decisions. Analysis also focused on defendant groups

by gender and race to explore the relationship of gender and race on release outcomes. Analysis also included the criminal charge, criminal history, and other defendant variables in relation to release outcomes and the length of stay in jail. Statistical analyses included differences in means, differences in percents, multiple regression, and logistic analysis.

Evaluation and interpretation of the findings are presented in Chapter V. The findings of the research are evaluated in the context of how well the study advanced knowledge of the pretrial release process and areas where questions still remain. Since the issue of fairness in pretrial release has been raised often (Carson, 1992; Eisenstein & Jacob, 1976; Flemming, 1982; Landau, 1992; Skolnick, 1967), the research findings are evaluated to determine if there is evidence that release decisions, outcomes, and convictions on the current charge impact unfairly based on the defendants' race or gender.

The dissertation is concluded in Chapter VI with a discussion on the future prospects of pretrial release as jails become increasingly overcrowded. Practical applications for the study are suggested and areas where future research is needed are also discussed.

DEFINITION OF TERMS

Bail - Used broadly to refer to pretrial release. Carbone (1983) explained that in the past bail referred to financial types of release, such as "posting bail," but today bail is used to describe any form of pretrial release.

Bailable - Eligible for pretrial release. Carbone (1983) observed that the term was

used in England through the 19th Century, but is used less frequently in American jurisprudence.

Booking - According to W. Barrigan (1993), booking is the process of documenting the arrival of an accused at the jail. The booking procedure typically involves photographing and fingerprinting the accused, a search for weapons and contraband, and recording the accused's personal descriptive and background information.

Citation - A summons for court appearance issued by a police officer in the field in lieu of arrest (Ares, Rankin & Sturz, 1963).

Conditional Release - A release from jail wherein the defendant agrees to abide by specified criteria imposed by the releasing official (W. Barrigan, 1993). Frequently used conditions are: to avoid drugs or alcohol while on pretrial release; abstain from contact with certain persons; refrain from driving a motor vehicle or drive only with a valid license; maintain contact with the court; and release to the supervision of a third party, according to W. Barrigan.

Failure to Appear (FTA) - The defendant does not show up in court in violation of instructions given by the releasing official (VanArsdel, 1993; Steele, 1993; Hirota, 1993).

Hold - The term signifies various options in the pretrial release process, according to W. Barrigan (1993). A recommendation of "hold" by a pretrial release officer means that the release officer is deferring the release decision to the judge (Hirota, 1993). A "hold" placed on a defendant in jail may indicate the defendant is wanted in another jurisdiction, according to W. Barrigan (1993). The judge may also, in some cases,

instruct the jail to "hold" a defendant until his or her court appearance, signaling that the defendant should not be released prior to the court appearance.

Jail - City or county incarceration facility (Klofas, 1990).

Matrix - Release from jail to avert overcrowding (Wood, 1993). The term is derived from a matrix system in which jails assign point values to factors such as crime severity and criminal history for inmates in the jail. If releases are necessary to avoid overcrowding, inmates with the most favorable scores on the matrix are released first, according to Wood. An example of the matrix system for Washington County is in Appendix A.

Pretrial Release - The permanent or temporary freedom from incarceration for criminal defendants awaiting adjudication of their cases in court (Toborg, 1981). Shaughnessy (1982, p. 3) defines pretrial release as, ". . . release from custody pending trial on assurance that . . . {the defendant} . . . will subsequently appear for trial when required."

Recognizance - Samaha (1981) said its early use meant "binding over" to appear in court. Carbone (1983) explained that modern use means a personal promise by the defendant to appear in court. A common term observed in court documents is "ROR," meaning, "released on recognizance." (Hirota, 1993).

Release officer (RO) - The *Pretrial Policy and Procedure for Yamhill County* (1987, p. 6), defines Release Officer (also called Release Assistance Officer) as: "Person appointed by the presiding Circuit Court judge, who interviews clients; verifies information; and, makes recommendations for the form of release. And, if delegated

release authority by the presiding Circuit Court judge, makes the release decision."

Security Release - The *Pretrial Policy and Procedure for Yamhill County* (1987), page 6, defines Security Release as: "a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property."

Surety - A guarantee by a third party to produce the defendant at trial or pay his fine upon conviction (Carbone, 1983).

Time Served - Booking logs in the three counties studied indicated "time served" or "time" as the release method for defendants who were released from jail after adjudication and sentencing of their case.

IMPORTANCE OF THE STUDY

As with other components of the American judicial system, pretrial release is grounded in principles of fairness to those accused of a crime but not convicted in a court of law. Accusation of a crime does not fulfill standards of proof beyond a reasonable doubt; confronting one's accuser in court; the ability to formulate a defense of the charges; and having the evidence presented to and assessed by one's peers -- the jury.

Being confined in jail, awaiting trial, is a loss of freedom based only on accusation. Such a loss of freedom can have serious consequences for the accused, affecting health, employment, personal relationships, and future status in the community (Moore, 1988; Skolnick, 1967).

The question of whom to release and under what conditions also has important implications for judicial officials, legislators, and jail administrators. A defendant on

pretrial release who fails to show up for court or commits new crimes angers the public, increases fear of crime, costs more tax money to rearrest the defendant, and often leads to stricter laws affecting all defendants (Flemming, 1982).

To advance truly effective and fair policies governing pretrial release requires an accurate understanding of how the pretrial release process works. Policies that are based on faulty perceptions, emotions generated by sensational news accounts, and inaccurate information fail both the criminal justice system and the public. With many jails constantly at the saturation point, poor release policies may fail the justice system and communities even further by indiscriminate releases that put dangerous offenders back on the streets and detain poor and minority defendants until trial (Goldkamp, 1979).

POTENTIAL CONTRIBUTIONS

This study contributes to the existing body of knowledge of pretrial release in a variety of ways. A central emphasis of the study is in exploring how pretrial release actually works. From the time a defendant accused of a crime is booked into jail and the case is finally adjudicated in court, many events can take place. The time span of these events may range from hours to months or even a year or longer. Many people are making decisions along the way: jailers, judges, release officers, and the defendants. There are several pretrial decision options, such as requiring the defendant to post financial bail to be released, releasing the defendant on his or her personal promise to appear in court (recognizance), or releasing the defendant under some specified condition, such as not to abuse alcohol (Nagel, 1983).

Previous research in pretrial release, based on a review of the literature, has been limited to selected areas, such as pretrial drug testing (Smith, Wish, & Jarjoura, 1989) judicial discretion in the courtroom (Mohr, 1976), and the development of prediction models and guidelines (Klein & Caggiano, 1986; Schmidt & Witte, 1988). While these studies add important information to the field of knowledge in pretrial release, the inner workings of the release process have largely been ignored.

Understanding the total process, from a defendant first being booked into jail until the final disposition of the case is recorded, can potentially lead to more efficient and timely policies benefiting courts, corrections, tax payers and criminal defendants. As jails become overcrowded and penalty sanctions become more severe, pretrial decisions may play increasingly important roles. For example, Mr. Bill Wood, Director of Programs for Multnomah County Corrections, said that in the near future defendants sentenced to serve six months or less in prison will remain in the county jail instead of serving the time in the state prison system (Wood, 1995). This policy will have the effect of increasing the number of inmates in the county jail. With finite jail space, more defendants would have to be released at the pretrial stage to make room for inmates who have been sentenced.

Understanding the overall nature of pretrial release should be a first step if issues such as fairness, community safety and judicial efficiency are to be adequately addressed.

The study endeavors to identify who makes pretrial decisions, the types of decisions, and the ways in which these decisions affect a sample of defendants. The study attempts to determine if certain defendant characteristics are related to release status

and case outcome, which addresses important issues of equality and fairness. The research setting consists of three Oregon counties. Since pretrial release practices are formulated at the county level, based on local needs (Juszkiewicz, 1992), the research would explore similarities and differences in the counties. A benefit in using three counties is to see how factors such as size of jail, number of judges and release officers, and population densities might play a role in release decision-making and release outcomes for defendants. The use of three counties may also enhance the ability to generalize findings of the research to other counties. Some differences in county structure and release practices are explained further in Chapter V.

BACKGROUND OF THE STUDY

In February, 1992, the Oregon Supreme Court and the Oregon Judicial Conference recommended the creation of a Judicial Department Task Force on Racial/Ethnic Issues in the Judicial System (Carson, 1992). The purpose of the task force was to identify problems faced by racial and ethnic minorities who participate in the judicial system and to propose solutions that the judicial department could implement. The task force was formed in the summer of 1992 and consisted of sixteen members including representatives of African-Americans, Native-Americans, Asian-Americans, persons of Middle East extraction, and persons from district attorneys' offices, judges, lawyers, and persons from the general public, according to Carson.

A particular area of interest to the task force was pretrial release and bail practices in Oregon's criminal courts (Landau, 1992). In a meeting with a representative of the

task force, the possibility of focusing on pretrial release as a dissertation topic was discussed. Not much was known about the topic by this researcher or the committee member; only that pretrial release was an area that could impact adversely on racial and ethnic minority defendants in the court systems.

In deciding to study pretrial release for the dissertation, preliminary surveys in several counties indicated that problems would likely be encountered in collecting sufficient data to make the study meaningful. In particular, information that would reflect an inmate's booking into a jail, the pretrial release decision affecting the inmate, demographic data and criminal history of the inmate, and disposition of the inmate's case might all be available but dispersed among different government entities. In Multnomah County, for example, the jail records often contained information on the defendant's court status, the outcome of hearings, and the case disposition. In Washington County, jail records contained less information, requiring a search through the court files to obtain information on how the defendant was released.

This research had no outside financial backing. The research was undertaken not only to satisfy the requirements of a doctoral program, but to attempt to advance understanding in an area of criminal justice that would be beneficial to the public and those who practice in the criminal justice system.

Several release officers said they thought it would be informative to know more about the total picture of pretrial release, as they see only portions of it in their daily work.

STATEMENT OF THE PROBLEM

The central problem which this study addresses is the lack of social science research devoted to increasing knowledge of the pretrial release process. Studies, as noted earlier, have been conducted aimed at improving the fairness of judicial discretion, limiting the use of financial bail and using instead nonfinancial pretrial releases such as recognizance. A body of literature (discussed in Chapter II) describes empirical studies designed to give judges better guidelines in formulating the release decision. Other studies review important court decisions impacting on pretrial release, legislative activities to change release practices, and analysis of data dealing with pretrial crime committed by people who were on release. These studies, however, examine only parts or components of pretrial events and fail to adequately investigate pretrial release as an environment of jails, decision makers, groups of defendants with varying backgrounds and criminal histories, and the potential for pretrial decisions to affect defendants in different ways. To fully understand pretrial release, a study must go beyond an inquiry that focuses only on a specific event within the continuum of the release process. A study of this process would logically begin when the defendant entered the jail. What events take place? Who makes the first decisions related to the defendants's pretrial status? What determines the nature of these decisions? Do defendants themselves somehow contribute to their pretrial fate?

A question often debated in pretrial release is whether the system discriminates against some classes of defendants. This issue should be addressed in a study of the release process, since equality is of primary importance in the American judicial system.

For anyone arrested and placed in jail, the problem of pretrial release becomes a problem shared by the community, the judge in the case, the jail administrators, the police, and many others. Each group may have specific interests in the release outcome. The defendant and his or her family may see no reason why the defendant can't be free until the case is heard in court. The jail administrators might want the defendant incarcerated, but overcrowding prevents it. The prosecutor might feel the defendant is dangerous and should stay in jail, while the defendant's attorney argues the opposite. Legal scholars argue that pretrial confinement might equate to punishment without due process of the law, while citizens in the community are afraid that people released before trial will commit other crimes.

Defendants in jail may face risks of physical and sexual assaults (Goodman, 1994; Dumond, 1992) and risks to health, such as AIDS, tuberculosis, and hepatitis (Moore, 1988). The number of women inmates in American corrections facilities has been growing, according to Applebome (1992). Applebome stated that women inmates, in a survey of corrections facilities (both jails and prisons) in 1989, left 167,000 children behind. Excessive force by guards against jail inmates has also been reported (Zimmerman, 1993).

Flesher (1992) reported that housing America's federal, state and local prisoners costs taxpayers about \$20 billion a year. When a person is locked up in jail, there is also the potential for lost wages if the defendant had been working prior to the arrest. Eskridge (1983) studied lost income for inmates in Dayton, Ohio, concluding that \$75 was lost per average pretrial detainee. For married males, welfare payments to their

wives and children were estimated to be \$575 per average pretrial incarceration period.

An important consideration in exploring the problems of pretrial release versus pretrial confinement is that many defendants are not convicted, and for those who are convicted, many are not given confinement sentences. Friedman (1992) reported that over 19 percent of the defendants arrested on federal charges between 1980 and 1988 were not convicted. Appropriately, three percent were acquitted and the remaining 16 percent had charges against them dismissed. In 75 of the largest U. S. counties in 1988, Friedman (1992) found that 23 percent of defendants arrested were not convicted. Charges against 22 percent were dismissed, while one percent were acquitted. These findings led Friedman (1992, p. 140) to conclude, "Stigmatization without trial, humiliation without proof, and character assassination as punishment are all convenient methods of avoiding the protections normally accorded criminal defendants."

A discussion of the problems of pretrial release and pretrial confinement would not be complete without addressing the issue of overcrowding in America's jails. Bloomstein (1988) proposed that jail overcrowding reflects in part the influences of three trends in the 1970's and 1980's: 1) the maturation of large numbers of 1960's "echo boomers" into the most crime-prone age groups; 2) a "get tough" movement that fueled demands for mandatory arrest, tougher sentencing, and restrictions of the use of probation and parole; and 3) increased intervention by courts to reform cruel and unusual conditions of confinement in jails. Outcomes reflecting these trends include increases in crime, an increased use of incarceration, and population limits on overtaxed jails and prisons.

Jail overcrowding has resulted in court injunctions to limit the populations in many

jails. Welsh (1993) reported that 28 percent of American jails in 1990 were under court order to limit their populations. Civil suits on behalf of inmates have also resulted in court orders to improve sanitary conditions, quality of food, medicinal care, recreation facilities, law books, and other features in various corrections facilities across the nation (Champagne, 1983; F. Hall, 1994). The county jails of Multnomah, Washington and Yamhill in Oregon were each under court-imposed population caps (W. Barrigan, 1993).

As a concluding comment on the problem statement for the dissertation, without having more knowledge of the pretrial release process, attempting to isolate and correct things from the perspective of communities, jails, prosecutors, defendants, and others could result in piecemeal attempts that would ultimately be counter-productive. For example, detaining more inmates as a result of media and citizen pressure would require more expensive jail construction. Additional prosecutors, judges, and corrections personnel would probably follow to handle the increased caseload. Detaining a larger portion of defendants, rather than looking at ways to improve pretrial release, could compound problems.

THEORETICAL FRAMEWORK

This research has been conducted within a grounded theory perspective. As explained by Babbie (1989) and Singleton, Straits, Straits, and McAllister (1988), grounded theory is the creation of theory based on the direct observation of events in progress.

At the inception of this study, little was known about the interactive nature of

defendants, judges, jailers, the release options that become available to inmates over the period of their incarceration, and the different decisions that could be made determining a defendant's release status.

The study began with casual, informal conversations and note-taking in meetings between the researcher and jail personnel, judges, release officers, clerks of courts, prosecuting attorneys and even some former inmates. Jail operations in the three target counties were observed. Several pretrial release hearings were attended.

As a general picture of the pretrial release process began to emerge, a research design was prepared that would enable observation of components of the pretrial environment from the point a defendant was booked into jail to the final adjudication of the case. A more structured interview format was developed to acquire more detailed information on the release process (Appendix B).

The inductive format of the study greatly facilitated the ability to inquire in all phases of the release process, to adjust emphasis on areas needing clarification, and flexibility to gather information that would lead to a fuller understanding of the release process.

RESEARCH QUESTIONS

1. *What are the general historical and legal features that underlie today's pretrial release practices?*

The study explores the historical development and changes over time that help explain current laws, methods and practices in the release of criminal defendants.

Understanding the historical aspects and influences that have resulted in changes, such as court decisions, legislative activity, and society's role is important in comprehending current pretrial practices.

2. *How does the pretrial release process work?*

One way to understand how pretrial release works would be to observe the release process as it applies to a group of criminal defendants in jail. The study explores the release environment of a sample of inmates (N=619) to determine what groups made release decisions, how the decisions were formulated, and how the decisions affected release outcomes. Since the literature (Juszkiewicz, 1992; Toborg, 1981) indicated that county practices of pretrial release vary to meet local needs, the research setting consists of three counties so that different methods in processing releases may be observed. Three counties would, to some extent, enhance the ability to generalize the research findings.

3. *Is the process of pretrial release fair?*

The issue of fairness, according to Carbone (1983), Duker (1977), and Thomas (1976), has been at the center of reform movements in America, primarily aimed at reducing reliance on financial bail because it creates a disadvantage for poor and minority people. The Oregon Judicial Task Force (Carson, 1992; Landau, 1992) was interested in whether minorities and women were treated fairly in pretrial release. This study explores the issue of fairness by observing how release decisions and release outcomes affect women and minority defendants in the sample of defendants of the three target counties.

SCOPE AND DELIMITATIONS

This research is centered on the pretrial release processes in Multnomah, Washington and Yamhill Counties in Oregon. Data collection for the study began in April, 1993, and was concluded in April, 1994. Some follow-up data collection, such as clarifying certain questions and release procedures, extended into February, 1995.

For the 619 defendants in the sample, information was collected to identify the defendants by age, gender, race, criminal history, the charges for which they were booked, how they were released from jail, the decisions that determined their release status, and the disposition of their cases in court.

Sources for this information (described in more detail in Chapter III) included records maintained by the jails, courts, prosecuting attorney's offices, and pretrial services offices in each of the three counties.

The Oregon Revised Statutes and Laws pertaining to pretrial release (Appendix C) were those on the books in 1993. Features of each of the three counties, such as revenue allocations to operate the jails, jail capacities, the number of judges and release officers, were also those features existing during the time of data collection for the study.

The scope of the study was guided by several considerations. Money available for the research was limited, so counties relatively close to the researcher's residence were selected for the research setting. Another factor was access to jail records. The sheriffs in Multnomah, Washington, and Yamhill Counties were very amenable to the research project and gave the researcher permission to examine jail records and collect data needed for the study. Also, the three counties represented to some degree the

elements of urban, suburban, and rural characteristics, as explained in more detail in Chapter III.

The ability to generalize findings in the study to other counties or states is limited. This is because each county jurisdiction devises pretrial services to meet local needs based on a variety of factors, such as size of the jail, budgets, and other resources.

The scope of the research is limited in the use of statistical measures of association and tests of significance. Attempts to quantify the relationship between variables such as types of release and release outcomes and pretrial decisions as they relate to characteristics of defendants must take into account that the study did not address the motives that underlie discretionary release decisions.

CHAPTER II

REVIEW OF THE LITERATURE

INTRODUCTION

Knowledge of past studies on pretrial release facilitates understanding of how and why the release process operates as it does today. From the earliest known practices, dating from the seventh and eighth centuries in England, legislators and courts have shaped and molded how pretrial releases function. The literature review begins with the early developments of pretrial release. It is particularly informative to note the various interests served with pretrial release as crimes in England changed from private disputes to affairs of the state following the Norman Conquest. As punishments for crimes became more severe, the likelihood that the accused would flee to avoid punishment led to more elaborate classifications of which defendants deserved to be released and which defendants should be confined.

Over the centuries, England codified pretrial release procedures into such a confusing array of classifications that the new colonists in America, while at first trying to use England's laws, decided instead to develop their own methods of pretrial release. Of importance, however, several statutes enacted in England, such as the Habeas Corpus Act and the Bill of Rights, would later help form the U. S. Constitution and would have significant influence on the treatment of pretrial release all the way to the present day.

Beginning in the 1920's books and articles began to appear in America focusing attention on how financial bail and disparate judicial decisions were impacting unfairly on poor and minority people who had been accused of crimes. While reforms in the administration of pretrial release led to greater use of nonfinancial methods of release, such as recognizance and conditional release, research in the 1970's through the early 1980's centered on whether or not it was possible to predict which criminal defendants would be the best risks if they were released. The risk of releasing defendants was that they might commit new crimes or fail to show up for trial. It is noteworthy to observe in this portion of the literature review that some studies demonstrated success in predictions, while other studies showed the opposite.

One section in the literature review outlines the most recent development in pretrial release, which is the denial of release for some criminal defendants who pose a danger to themselves or society. The concept of preventive detention, which implies the ability to predict future criminal actions, is interesting when compared to the mixed review emanating from earlier research on predicting pretrial crime and failure to appear. The research, in fact, had shown no success in predicting future crimes.

Overall, the literature review carries the historical features of pretrial release and past studies directly into the current research setting in Oregon. It will be observed how Oregon law gives preference to recognizance over financial release, which is even codified in the state's constitution. Oregon court decisions, mindful of the fact that some states authorize preventive detention, prohibits such practices in Oregon. Other historical developments reviewed in the literature, such as establishment of release officers to assist

the courts, are part of Oregon's pretrial release environment. Differences in release practices within the three counties studied will also reflect how the literature describes pretrial release as being county-based to meet local needs.

HISTORICAL BACKGROUND

It is generally agreed that the Anglo-Saxons invented the bail system as a pretrial complement to a system of money fines designed to compensate private grievances (Carbone, 1983). The root idea of the practice of bail, however, can be traced to tribal customs on the continent of Europe, Carbone says.

In early Scandinavia and Germany, surety was originally a hostage, either physically or symbolically held in custody by the creditor. The surety would insist that the accused surrender himself into the surety's hands until he could restore to the aggrieved person the goods he had pledged (DeHaas, 1966).

Other researchers, notes DeHaas, who are concerned more generally with the period of folk law and the Anglos and Saxons in Britain, subscribe to the theory that the release through bail represents essentially a contract situation, that the origin of bail is found in the law governing debt and that the surety arrangement, guaranteeing the payment of a "wergeld," approximates most nearly the modern bail system. The accused was called upon to make wergeld payments and to enter into a contract for such payments; the surety was to guarantee these payments. The accused in modern law may be produced to go to trial, whereas in the Anglo-Saxon period he was produced to make wergeld payments. Both procedures rest on a contract basis, DeHaas believes.

Extant records from early British courts reveal practices of the early bail system, as noted in the following excerpt (DeHaas, 1966, p. 8):

If the relatives will neither redeem him, nor stand surety for him, he shall swear, as the bishop directs him, that he will desist from every form of crime, and he shall remain in bondage until his wergeld is paid.

The first mention of the practice of wergeld payment in the Anglo-Saxon laws is found in royal records of Aethelberht of Kent in 604, reported by DeHaas (1966, p. 10): "If he slays a smith in the King's service, or a messenger belonging to the King, he shall pay an ordinary wergeld." In medieval England, disease-ridden jails and delayed trials by traveling justices necessitated the creation of a system to free untried prisoners. At first, sheriffs exercised their discretion to release a prisoner on his own promise, or that of an acceptable third party, that he would appear for trial. If the defendant escaped, the third party surety was required to surrender himself; hence he was given custodial powers over the accused. Bail literally meant the bailment or delivery of an accused to jailers of his own choosing. In time, sureties -- who were usually required to be property owners -- were permitted to forfeit promised sums of money instead of themselves in the event the accused failed to appear, according to DeHaas.

Carbone (1983) states that in the course of the development of the Anglo-Saxon justice system, property was gradually substituted for the body. There was also a need to keep the debtor free to acquire the money which would be paid to the aggrieved party. Although physical injury could be inflicted upon a surety who failed to produce the principal, attachment of property was the primary consequence resulting from failure to present the one who had been pledged.

The purpose of the Anglo-Saxon bail system, notes Carbone (1983), was to ensure that the debt owed the victim or victim's family was paid. Money fines, or "bots," were usually the medium of payment, although in some instances the medium could be in land, livestock, or other commodities. The bot can be traced back to at least the seventh century, according to Carbone. To initiate the Anglo-Saxon process, the aggrieved "sued" the accused; the accused was then required to secure a surety, who would provide the pledge, or "borh," and would guarantee both the appearance of the accused at trial and payment of the bot upon conviction, notes Carbone.

If the accused fled, he was presumed guilty and the surety became responsible for payment of the bot. Thus, the amount of the pledge, that is, the amount of bail, was identical to the penalty upon conviction. Carbone (1983) observed that the Anglo-Saxon bail system was perhaps the last entirely rational application of bail. Since the amount of the pledge and the possible penalty were identical, the effect of a successful escape would have been a default judgment for the amount of the bot. To the extent the accused left behind sufficient property to pay the bot, he would have had no incentive for flight. In addition, the accused would be outlawed from the community and subject to summary execution upon capture.

Carbone (1983) observed that during the Anglo-Saxon period in England, few defendants had the mobility to flee, and the consequences of flight were harsh enough to make it an uncommon occurrence. Most defendants were known personally by the sheriff or justice of the peace. Imprisonment was rare, and danger to the community was seldom a concern. Summary execution, not detention, protected the community from

those caught too often in the act of crime. Upon conviction, however, those too poor to pay the bot were given over to the victim for execution or enslavement. Mutilation or corporal punishment were also provided for false accusers, persons of evil repute, and habitual criminals (Carbone, 1983).

Promoting the Anglo-Saxon bail system as an alternative to blood feuds had important ramifications during this period. Brown and Esbensen (1990) write that blood feuds became so disruptive in European society that they posed a threat to the stability of an emerging feudal system in the Middle Ages. Without strong public authority to punish acts of violence, aggrieved persons had a duty to seek vengeance not only against the offender, but the offender's family. These private wars often led to a series of killings. The Anglo-Saxon bail system allowed the aggrieved party to sue the offender rather than pursue vengeance leading to further violence, according to Brown and Esbensen. Feudal lords capitalized on religiously based opinions regarding the causes of crime, with the Holy Inquisition and the practice of "witch hunting" emerging in this context.

In Anglo-Saxon times the amount of the fine or bot was set by statute in accordance with the value of the lives of different classes in the community and the value of the different limbs and bodily functions (Carbone, 1983). The Anglo-Saxon bail laws, however, began to disappear as reliance on corporal punishment grew following the Norman Conquest of 1066. The bot had depended on the ability of defendants to pay the fine. Another reason for the demise of the Anglo-Saxon bail system was a period of economic difficulty that made bot payments more onerous, according to Carbone.

Where the bot previously was to resolve private disputes, in the period following the Norman invasion criminal justice gradually became an affair of the state. Criminal processes could now be initiated by the suspicions of a presentment jury¹ as well as the sworn statements of the aggrieved (Carbone, 1983). Capital and other forms of corporal punishment replaced money fines for all but the least serious offense and the delays between accusation and trial lengthened as itinerant royal justices traveled through the communities to hold court.

Changes in the criminal law brought new problems for both the accused and the judicial administrators. Under the revised criminal sanctions, an accused threatened with loss of life or limb had a greater incentive to flee than the prisoner facing a money fine. Judicial officers possessed no sure formulae for equating the amount of the pledge or the number of sureties with the deterrence of flight (Freed & Wald, 1964).

Growing delays between accusation and trial increased the importance of pretrial release. The determination of whom to release became a far more complicated issue than calculating the amount of the bot.

Under Anglo-Saxon law, as long as all offenses were punished by payment of the bot, all prisoners were bailable. The first prisoners to lose the right to bail were those accused of homicide, the first crime subject to capital punishment (Carbone, 1983).

The second set of restrictions, set forth during the twelfth century in the *Writ de homine replegiando*, removed from the sheriff's authority to bail those arrested by order of the King or his justices or those accused of forest offenses (poaching in the royal

¹The presentment jury, a predecessor of the grand jury, was established by the Assize of Clarendon in 1166. (Carbone, 1983, p. 522).

forests), according to Carbone (1983, p. 527).

The third category of prisoners unbailable by order of the sheriffs developed as a matter of local practice. English custom varied from community to community and the local sheriff, both at common law and under chancery writs such as the *Writ de homine replegiando*, enjoyed enormous discretion in setting bail. The only crimes bailable at common law were minor offenses considered violations of the "sheriff's peace." The sheriff had complete jurisdiction over these offenses, and the penalties were limited to pecuniary ones, according to Carbone (1983, p. 522).

Carbone (1983) said that in 1275, following the exposure of widespread corruption in the administration of bail, Parliament sought to circumscribe the discretion of the sheriffs. The Statute of Westminster therefore codified the common law rules governing the English bail system, which would remain in place for the next five centuries.

Although the Statute of Westminster sought to define bailable and unbailable offenses, the phrase "bailable and unbailable" is misleading, observes Carbone (1983). Those bailable under the statute could be let to bail by the sheriffs; those unbailable could be released only by a higher court.

Modern analysis of the Statute of Westminster emphasizes the right to bail, observed Carbone (1983). In enacting the law, however, Parliament sought not to liberalize bail practice but to codify existing law in order to protect bailable prisoners from the abuses of the sheriffs. The statute also sought to protect the community from the illegal release of the unbailable.

The statute's categories of bailable and unbailable offenses did not truly decide the

issue of bailability, Carbone (1983) observed; rather, the statute definedailable and unailable prisoners by an inconsistent set of criteria of offenses with which they were charged. The statute further divided prisoners by the probability of conviction.

Unailable prisoners were:

Provers (those who confess); such as be taken with the manour, although manour is a stolen article, the category includes anyone caught in the act; such as be accused by provers, so long as the provers be living; if the prisoners be not of good fame; and persons excommunicated and taken at the request of the Bishop (Carbone, 1983, p. 528).

The most far-reaching change from Anglo-Saxon custom came with the end of indiscriminatory reliance on the initial charge. Under the Statute of Westminster, the sheriff had to consider not only the seriousness of the charge but the likelihood of conviction. As interpreted by Carbone (1983), consideration of evidence was central to the statute.

The bail process codified by the Statute of Westminster used the severity of the penalty and the likelihood of conviction, the same issues decided at trial and sentence. The statute continued to define which prisoners wereailable until 1826, notes DeHaas (1966). Parliament did occasionally pass new legislation defining bailability of crimes not mentioned in the Statute of Westminster. During the fourteenth century, bail authority was transferred from sheriffs to justices of the peace. Justices of the peace were court officers of townships who were authorized by the royal justices to settle civil disputes and hold hearings to determine if sufficient evidence existed to charge a person with a crime (DeHaas, 1966).

Of most concern was the determination of "light suspicion" and "ill fame" by the

justice of the peace. In 1486, Parliament required approval of two justices of the peace, rather than one, to release a prisoner (DeHaas, 1966). A half century later, still trying to contend with corrupt practices, Parliament re-enacted the 1486 statute, adding the requirement that bailment be made in open sessions, that both justices of the peace be present, and that the examination of the prisoners, testimony of witnesses and evidence presented be recorded in writing before bailment (Carbone, 1983). This new procedure marked the introduction of the preliminary hearing into English law. It is also noted that during the 12th and 13th centuries, the *Writ de otio et atia* served a similar function (Carbone, 1983, p. 532). In cases initiated by the accusation of the aggrieved party, the accused could challenge the charge as motivated by "hate and spite" (*otio et atia*). The concept is similar to the modern notion of Malicious Prosecution, and the focus of the writ gradually shifted from a test of the accuser's motives to a pretrial test of the sufficiency of evidence (Carbone, 1983).

In another gesture of reform, Parliament enacted the Petition of Right which prohibited a prisoner's detention without formal charges.

The Habeas Corpus Act of 1679 established procedures to prevent long delays before a bail hearing was held. Ten years later, Parliament added the Bill of Rights to prohibit excessive bail (DeHaas, 1966).

These acts were aimed specifically at abuses of bail. In the Habeas Corpus Act, a prisoner, Jenkes, had been arrested for a bailable offense but was held without a bail hearing. The Act explained, in part, "Whereby many of the King's Subjects had been long detained in Prison, in such cases where by Law they were bailable." (Carbone,

1983, p. 529).

Of particular historical interest, the Bill of Rights marked the first expression of concern with detention because of high bail rather than the denial of bail. Carbone (1983) observed that whether in earlier centuries such detention was rare, or merely not viewed as unjust, is not clear.

English criminal law had changed considerably from the Anglo-Saxon's use of the bot. With increasingly severe penalties, pretrial detention was becoming more frequent and Parliament and the courts were paying closer attention to bail practices. This attention was moving in several directions at once: defining who should be let to bail and who should be detained, protecting the community as well as the defendant, and ensuring that the system was not abused (DeHaas, 1966).

English bail law, however, still provided the judiciary with a wide range of discretionary powers and the ability to create exceptions to practically any rule or law. One historian described the system as a "tangled morass and a confusing legislative patchwork quilt" (sic) (Carbone, 1983, p. 531).

Discretion in applying bail also served royal interests in other ways. Samaha (1981) observed that the use of recognizance in 16th century England gave legal officials a means to prevent threats to public order. Capitalizing on the concepts of "light suspicion" and "ill fame," justices could supervise and regulate the lives of persons considered undesirable or dangerous to the community. Character and habits of suspected offenders could be incorporated into the bailability equation. As observed by Samaha (1981, p. 204): "the recognizance was a general, all-pervasive instrument that could be

used to solve every sort of social evil from violence to poor demeanor, from immorality to drunkenness and even poverty and bad reputation."

Tracing England's bail system to America, Carbone (1983) notes that the English colonists carried with them across the Atlantic the Statute of Westminster and at first tried to apply it verbatim. Crime among the colonists was not as serious a problem as in England. The colonies began to liberalize criminal penalties and used pretrial detention less frequently. The colonies also soon shared England's disenchantment with the confusing and conflicting categories of the Statute of Westminster.

The Massachusetts Colony was the first to replace the statute in legislation aimed at reforming bail practices. In 1641 the Body of Liberties came closer to what Parliament had never actually accomplished by creating a "right" to bail for non-capital offenses, observed Carbone (1983). In the Charter of Liberties and Privileges, the legislature rewrote the list of capital crimes, removing burglary, robbery and larceny offenses (that often led to the gallows in England) but adding moral offenses. The new list of capital offenses, from Colonial documents, included:

Idolatrie, withcraft, blasphemie, bestialitie, slaying in Anger or Cruelty of passion, poysoning, wilful murther, sodomie, adulterie, manstealing, falsewitness, insurrection, child over 16 cursing or smiting his parents, son over 16 rebelling against his parents, and rape (Carbone, 1983, p. 532).

Invocation of the death penalty was infrequent and reserved for the most serious crimes. The right to bail in non-capital offenses could be overridden by the legislature (DeHaas, 1966).

The Massachusetts charter did not become a model for other states (Carbone, 1983) and even in Massachusetts the bail provisions never became part of the state

constitution. In 1682, however, Pennsylvania adopted an even more liberal provision in its new constitution, providing that, "all Prisoners shall beailable by sufficient sureties, unless for capital offenses, where proof is evident or the presumption great." (Carbone, 1983, p. 536). Pennsylvania, under influence of the Quakers, was, like Massachusetts, eager to depart from the Statute of Westminster, and the Quakers were among the first to emphasize rehabilitation in administering criminal law, according to Carbone.

North Carolina adopted an identical provision in 1776 and Vermont followed in 1777. While most colonies adopted Pennsylvania's provision, Maryland and Georgia incorporated provisions of the Statute of Westminster into colonial and early state law. Maryland did not pass a statute extending the right to bail to all non-capital offenses until the twentieth century, according to Carbone (1983). Many states retained a lengthy list of capital crimes even as they liberalized bail. Some states, though, did the reverse and retained strict bail provisions even while liberalizing penalties. The different philosophies among the colonies in the application of bail would have some impact on the creation of America's most historical document.

For pretrial release, the American Constitution took a curious turn, according to Carbone (1983). The Bill of Rights, ratified in 1791 (Constitution of the United States), comprises the first ten amendments, one of which, the Eighth Amendment, addresses the issue of bail: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." (Constitution of the United States, Eighth Amendment).

As summarized by Carbone (1983), the Constitution of the United States

guarantees that every person subject to arrest enjoys the right to a statement of charges, a prompt hearing, and a guarantee that the bail set not be excessive. But the Constitution does not define which crimes are bailable, nor which defendants can be detained. Carbone (1983) summarized the writings of historian Caleb Foote who traced the roles of the English provisions of The Petition of Right of 1628,¹ Habeas Corpus Act of 1679, Bill of Rights of 1689, and the Statute of Westminster in the development of American constitutional guarantees, and Foote argued that the American Constitution inexplicably fails to include an underlying right to bail. The framers of the Constitution, argues Carbone (1983), were aware that colonial bail provisions varied and even those colonies that extended a right to bail to all accused of non-capital offenses did not agree in their definition of capital offenses. While the framers found fundamental the right to have bail determined in accordance with law, they did not recognize a right to bail for particular offenses, Carbone says. Legal scholar John Cooke concluded that, "no constitutional right of the accused has received less judicial clarification than the Eighth Amendment prohibition against excessive bail." (Carbone, 1983, p. 533).

The courts, however, became fairly explicit in interpreting the Eighth Amendment. A leading U.S. Supreme Court case (*Carlson v. Landon*, 1952), in upholding the denial of bail pending deportation proceedings against a defendant, commented that the Eighth Amendment has not prevented Congress from defining the classes of cases in which bail should not be allowed in this country. More recently (*Systrunk v. Lyons*, in Carbone, 1983, p. 534), the federal Third Circuit Court of Appeals wrote,

Unlike most guarantees in the Bill of Rights, it is not the naked right to bail with which we deal, rather it is the right to be free from excessive bail . . . States remain free within constitutional bounds to define the range of offenses for which bail is discretionary.

Similarly, the Court of Appeals for the District of Columbia (United States v. Edwards, 1981, p. 16) stated that:

While the history of the development of bail reveals that it is an important right, and bail in non-capital cases has traditionally been a federal statutory right, neither the historical evidence nor contemporary fundamental values implicit in the criminal justice system requires recognition of the right to bail as a "basic human right," . . . which must then be construed to be of constitutional dimensions.

The greatest test for the courts would begin in the mid 1980's when governments sought detention without bail for defendants in non-capital cases.

The English system under the Statute of Westminster used as criteria for bailability several components (Carbone, 1983, p. 536):

The offense - some minor offenses wereailable, but most were considered serious enough to be in categories of "unailable."

The offender - those of "good fame," proper status, and reputations had better chances of bailment than those of "ill fame," or being a threat to social order. The statute explicitly included reference to the defendant's history as an indication of guilt.

Evidence - mainly to reduce corruption by the sheriffs.

Probability of conviction - relied on "provers," witnesses, and closely tied to the nature of the offense, the defendant, and the evidence.

In the development of American bail practices after the drafting of the Constitution, judges determined first whether bail was to be set or denied, and if it was

to be set, in what amount (Carbone, 1983). Since bail was to be considered for all except those accused of capital offenses, the decision to deny bail was based on two determinations: first, on the determination that the offense was "capital," and second, on a finding that the, "proof was evident and the presumption great." (Carbone, 1983, p. 536). Capital punishment was gradually reserved for murder alone, or murder and rape in some states. Except for the few charged with capital offenses, most defendants were therefore bailable.

In capital offenses, a central focus on bailability has been the evidence against the defendant. In England, the law provided that, where the evidence was available, the judge must rule on its sufficiency to hold the prisoner, but that once a grand jury issued an indictment, the defendant was to be presumed guilty for all purposes before trial. Carbone (1983) observed that American courts, whether following the Statute of Westminster or administering a right to bail guaranteed by a state constitution, observed the English rule so long as grand jury minutes remained unavailable. As the rule governing grand jury secrecy began to change in the middle of the nineteenth century, each state adjusted on its own.

The central dilemma, according to Carbone (1983), was how to make a determination of, "proof evident, presumption great," without duplicating or prejudging the trial. In the treason trial of Aaron Burr (U.S. v. Burr, 1807, p. 2), Chief Justice Marshall, in reviewing a bail application before indictment, commented that normally a probable cause determination should occur before loss of liberty, but that the court was "embarrassed" by having to give an opinion as to the strength of the evidence prior to the

grand jury determination.

Over the course of the years, courts began relying on a bail hearing for the purpose of determining bailability (Carbone, 1983). More recently, the courts have begun to permit examination of the evidence and placing the burden of proof on the prosecution to come forward with more evidence than the mere fact of indictment. Evidence that could be considered in the bail hearing might include the nature of the crime, the relationship of the victim and the accused, the past criminal history of the accused, and other factors which the judge could assess in making a decision in the bail hearing (Bearden, 1994).

Twenty-two years after ratification of the Bill of Rights, the Supreme Court made its first reference to bail. Chief Justice John Marshall wrote, "The object of bail is not to enrich the treasury, but to combine the administration of criminal justice with the convenience of a person accused, but not proved to be guilty." (U.S. v. Feely, 1813, p. 3).

Historically in American jurisprudence, the following factors have been considered in determining the conditions of release:

1. The seriousness of the offense. Several studies (Ares et al., 1963; Flemming, 1982; Duker, 1977) observe that the offense is often the most important determinant of the bail amount. Carbone (1983) notes that in spite of the central role of the criminal charge, the theory behind its inclusion in the bail decision has not been carefully examined. The courts have often repeated the conclusion that the more serious the crime, the more severe the penalty, and therefore the greater the incentive for flight.

2. The weight of the evidence. Carbone (1983), in evaluating this component of the bail decision, wrote that some measure of the evidence has almost always been required before bail could be denied. Yet, once the decision is made to grant bail, no uniform rule requires that the evidence be considered at all in determining the amount. No agreement exists on a standard of review. Some states even prohibit any consideration of the evidence in the determination of the amount of bail (Carbone, 1983). Other states permit consideration of the evidence at the judge's discretion without requiring an evidentiary review.

3. The character and criminal record of the accused. In English bail law, the ill fame of the defendant could render him unailable. That emphasis continued somewhat in colonial bail decisions, but otherwise remained rare in American bail law before the twentieth century (Carbone, 1983).

Early bail decisions in America seldom mentioned the defendant's record. In 1929, California added the previous criminal record of the defendant to the factors guiding determination of the amount of bail, and in 1946 the Federal Rules of Criminal Procedure adopted a similar provision, notes Carbone (1983). Virtually every state's bail statute now has such a provision. A summary of the defendant's record is presented at the arraignment and is a part of modern bail decisions (VanArsdel, 1993).

4. The financial ability of the accused. The financial resources of the accused were not a concern in England or the colonies, nor through the early nineteenth century (DeHaas, 1966). In an 1820 U.S. Supreme Court decision, the Chief Justice said that while the result of imposing bail on the poor and friendless was often incarceration, the

court found the practice no more anomalous or unjust than imprisonment for debt -- a practice widespread in the colonies even after independence. The court further remarked,

Such (incarceration) may be the consequence, but it by no means proves the impropriety of the procedure. The rule is adapted to all who can comply with its terms; and it is the misfortune of those who cannot give the necessary security (Carbone, 1983, p. 549).

Fifteen years later, however, in a case that involved an attempt on the life of Andrew Jackson, the trial court judge denied the government's request for high bail, because the judge thought it was excessive (Carbone, 1983).

The state of Texas, in 1833, was among the first to require consideration of the financial circumstances of the accused in setting bail (Carbone, 1983). By the turn of the century, Indiana, Louisiana, and Nebraska did likewise. Virtually all the other states followed their lead, according to Carbone.

An important distinction in court decisions of the early twentieth century is that the courts did not go so far as to say that inability to post bond made the bond excessive per se (Carbone, 1983). By the mid-twentieth century, the criteria governing bail decisions were being codified. Defendants accused of minor crimes and incarcerated because of inability to meet even small amounts of bond led to reforms.

BAIL REFORM MOVEMENTS

Throughout the nineteenth century, financial conditions of release, primarily based on the nature and seriousness of the charged offense, continued to be viewed as the optimal means to obtain a defendant's appearance (Goldfarb, 1965). Gradually, however, it became increasingly difficult for defendants to secure a personal surety who would

pledge money to the court as a guaranty that the defendant would appear. The failure of the personal surety system according to Goldfarb (1965, p. 26) came about for several reasons: 1) the significant expansion of the right to bail in non-capital cases after 1789 increased the demand for (but not the supply of) personal sureties; 2) Americans' pursuit of the rapidly expanding frontier as well as the growth of impersonal urban areas weakened the small community ties and personal relationships supporting the personal surety system; and 3) the unsettled frontier increased the risks of a defendant's flight.

Emerging to replace the personal surety system was the commercial bondsman, who posted a monetary bond with the court to obtain a defendant's release, in exchange for a generally non-refundable fee from the defendant. Bondsmen guaranteed to the court that if the defendant failed to appear, the bondsmen would forfeit the amount of the bond to the court (Tobolowsky & Quinn, 1993).

Although the courts initially welcomed the development of the commercial bondsman to fill the void left by the demise of the personal surety system, by the turn of the century general dissatisfaction began to appear. Independent investigations revealed widespread abuses and corruption in the commercial bondsman system, including the infiltration of criminals and organized crime into the bonding business, bondsman payoffs to police and court officials, and failure to pay off forfeited bonds (Goldfarb, 1965 and Thomas, 1976).

In the 1920's the University of Chicago began studying the use of bail in Chicago's criminal courts. Beeley (1966) concluded that approximately 28 percent of the defendant group studied could have been safely released on other than financial

conditions. He suggested a general reduction in bail amounts, acceptance of cash or collateral of real property as security, and a greater use of unsecured recognizance. He noted in particular that many defendants charged with only minor offenses of thievery were held on financial bail. Many of those who were held had no histories of violence or other backgrounds that would indicate they could not be trusted with early release.

Taking note of the inequities in the American bail system, in 1946 the government revised the bail provisions in the Federal Rules of Criminal Procedure which 1) identified assurance of the defendant's presence as the guiding factor in determining the amount of bail; 2) required greater individualization in the determination of the amount of bail by prescribing consideration of specific circumstances in addition to the charged offense; and 3) authorized a range of alternative release conditions, including an unsecured appearance bond (Thomas, 1976, pp. 16-28).

In 1954 Caleb Foote published "Administration of Bail in Philadelphia" (Tobolowsky & Quinn, 1993). Foote's findings paralleled those of Beeley's, including the discovery that pretrial detention due to inability to post bond had a negative impact on the likelihood of a defendant's conviction and the severity of sentence.

The 1960's was the decade of bail reform, starting in 1961 with the Vera Foundation's "Manhattan Bail Project" (Ares et al., 1963; Tobolowsky & Quinn, 1993; Goldkamp, 1979). The Vera Foundation (later called the Vera Institute) was established with a grant from industrialist Louis Schweitzer after he observed conditions in one of New York's jails. The Foundation initiated the Manhattan Bail Project in cooperation with the New York University School of Law and the Institute of Judicial Administration.

Law students staffed the project. Initial analysis of New York bail practices in 1960 showed little change in bail administration since Foote's research. Financial bail was still being used in many cases where another form of release, such as recognizance, would be applicable. At first the Foundation's staff considered creating a revolving bail fund available to indigent defendants to help them obtain their release, but determined that this approach would only perpetuate the reliance on financial conditions of release, according to Ares et al. (1963). To foster a fundamental change in pretrial release practices, the project decided to promote greater use of New York's authorization of recognizance release without financial conditions.

Working with pretrial defendants, the project's staff made release recommendations to the courts, notified released defendants of their court dates and assisted in locating any released defendants who failed to appear for their court dates. In its first eleven months of operation, of the 250 defendants released on recognizance on the project's recommendations, only three failed to appear and only two were rearrested on new charges (Ares et al., 1963). Pretrial release also had a favorable effect on disposition; a significantly higher percentage of the released experimental group than the detained control group were acquitted or had their charges dismissed and a significantly lower percentage of the convicted releasees than the detained control group were sentenced to prison. The implication of this finding was that those defendants who were detained had fewer opportunities to organize a defense strategy, to assist in the location of witnesses who could testify on the defendant's behalf, and other possible activities that were available to released defendants and not available to those lodged in

jail.

Owing directly to the Manhattan Bail Project's success, other jurisdictions began experimenting with different forms of expanded pretrial release (Tobolowsky & Quinn, 1993). In 1964 the Vera Institute of Justice and the New York City Police Department initiated the Manhattan Summons Project, wherein the police expanded the use of citation, which is a summons for court appearance issued by the police officer in the field in lieu of arrest (Tobolowsky & Quinn, 1993).

Court decisions in the 1960's sought to reaffirm that the function of bail was limited, echoing the earlier U.S. Supreme Court ruling (*Stack v. Boyle*, 1952, p. 20) that, "the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant." Cautioning the courts, Justice Frankfurter went on to say,

Admission to bail always involves a risk that the accused will take flight. That is a calculated risk which the law takes as the price of our system of justice. . . . In allowances of bail, the duty of the judge is to reduce the risk by fixing an amount reasonably calculated to hold the accused available for trial (*Stack v. Boyle*, 1952, p. 26).

Also interested in bail reform was the U.S. Congress, culminating in the Bail Reform Act of 1966 (Bail Reform Act of 1966). The act specified release,

. . . on (the defendant's) personal recognizance or upon the execution of an unsecured appearance bond in an amount determined by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required (Bail Reform Act of 1966, p. 2).

In the act, Congress made changes in the Federal Rules of Criminal Procedure requiring the judicial officer to include in making determinations of pretrial release a

defendant's stability and community ties.

Through the 1970's and 1980's, states expanded the use of nonfinancial or limited financial pretrial release conditions. This era also witnessed four national studies of pretrial release programs: a 1972 study of 88 programs conducted by researchers for the federal Office of Economic Opportunity; a 1975 survey of 110 programs conducted by researchers for the National Center for State Courts; a 1979 survey conducted by the Pretrial Services Resource Center; and a 1989 survey by the National Association of Pretrial Services Agencies (Tobolowsky & Quinn, 1993).

Pretrial programs developed in the early 1960's, notes Eskridge (1983), tended to be privately funded, with a simple organizational structure consisting of two or three paid staff members and a group of volunteers. From the mid 1960's, however, many of the pretrial release programs became incorporated into various state and local agencies. The availability of federal funds through the Law Enforcement Assistance Administration also served to encourage state and local agencies to undertake the development of such programs, observed Eskridge (1983).

In 1974, Congress authorized the establishment of demonstration pretrial services agencies in ten federal judicial districts. These agencies had the responsibility to collect and report on information regarding the pretrial release of each person charged with an offense (Eskridge, 1983). In evaluating the demonstration project and deeming the project a success, Congress authorized the establishment of pretrial services in all federal judicial districts in the Pretrial Services Act of 1982, Eskridge said. During the demonstration projects, of 38,000 defendants, 63 percent were released pretrial, with 46

percent released on nonfinancial conditions. Less than four percent of released defendants failed to appear and less than three percent were charged with a new crime while on release (Tobolowsky & Quinn, 1993). Similar findings were recorded in other assessments in states using nonfinancial conditions of release (Toborg, 1981).

The most frequently authorized nonfinancial release conditions included release to the custody of a third party or organization; restrictions on travel, residence, or movement; and restrictions on contact with specific persons. Deposit bail (requiring a percentage of the bail, usually ten percent, to be deposited with the court) began to replace cash and surety bail (Toborg, 1981). The reason for these changes was the increasing awareness by Congress, brought to light by studies such as those just mentioned, that nonfinancial pretrial release was a viable option for courts to consider. The Pretrial Services Act of 1982 was primarily aimed at collecting information on criminal defendants, through an interviewing process by the pretrial services personnel, that could be used by the judge in making release decisions (Eskridge, 1983). With more information on the defendant, such as previous criminal history, community ties, employment stability and other information, the judge would be in a better position to assess the defendant's likelihood of appearing later for trial. Accurate information on the defendant's background, verified by the pretrial services personnel after they had interviewed a defendant, would give the judge more confidence in the release decision.

Many states adopted the federal model concerning pretrial release. By the late 1970's, with input and guidelines suggested by such agencies as the American Bar Association, the National District Attorneys Association and the Pretrial Services

Resource Center, national standards governing pretrial release were adopted by the states (Eskridge, 1983). Most of these standards included a presumption favoring nonfinancial release under the least restrictive conditions, abolition of surety bonds, and establishment of pretrial agencies or offices to provide information to the court relevant to pretrial release decisions and to monitor defendants' compliance with release conditions (Standards Relating to Pre-Trial Release, 1971).

PREDICTING FAILURE TO APPEAR AND PRETRIAL CRIME

As reforms in the American bail system moved steadily through the decades of the 1960's and 1970's, research began to focus on the problem of defendants failing to appear for court and pretrial crimes committed by those released. While several national surveys (Toborg, 1981; Flemming, 1982; Tobolowsky & Quinn, 1993) revealed that failure to appear (FTA) rates remained relatively low, averaging about ten percent of released defendants in studies through the late 1970's, public concern about crime was increasing. Growing numbers of legislatures in the 1970's and 1980's codified assurance of community safety as an additional and equal criterion for determining pretrial release conditions (Tobolowsky & Quinn, 1993). Public apprehension and legislative activity threatened to offset the progress made in bail reforms. Except for the anomaly of an 1889 California Supreme Court ruling authorizing "community interest" as a gauge for bail release, the courts remained fairly consistent in their belief that the sole purpose of bail, or other forms of release, was to deter flight.

As in the initial movement toward bail reform, the first predictive models applied

to FTA and pretrial crime were patterned after the Vera Foundation's Manhattan Bail Project. The Manhattan Bail Project's staff had at first attempted subjective release recommendations to the courts. This practice was soon replaced by a quantitative scale which assigned different point values to aspects of the defendant's prior record, family ties, employment or school status, residential stability, and a limited miscellaneous factor category. To qualify for a release recommendation, a defendant had to be a New York area resident and achieve a minimum of five out of eleven possible points on the scale (Ares et al., 1963).

Although prediction devices in criminal justice have been recognized for many years, Eskridge (1983) observed that the devices seem to be seldom used. Reasons for the reluctance to use predictive instruments, according to Eskridge, include: 1) prediction models present a hazard of losing sight of the individual as a living personality; 2) predictions apply to groups and not to individuals, and they cannot tell what will happen to specific persons; 3) heredity and environmental processes always result in a unique outcome in the development of individual human conduct; 4) statistical prediction tends to deal with the external rather than the subjective aspects of behavior; and 5) the legal, social, and political environments of the community limit the use of prediction instruments. On this latter issue, Eskridge (1983) noted that an individual accused of rape may be found to be a good pretrial release risk, but such a finding would not be readily accepted by most communities, especially if a number of highly-publicized violent rapes had recently occurred. One statement was made that David Berkowitz, the "Son of Sam" murderer in New York City, would have been eligible for pretrial release based

on residence stability and community ties. When prediction devices are used, agency administrators must not only consider the objective prediction scale score, but they must also carefully weigh their subjective assessment of the current community feelings relevant to the decision under consideration.

A common problem with the development of predictive scales in pretrial release has been generalizability, which suggests the need for uniform data collection and common operational definitions of the variables involved across jurisdictions. What, for example, is meant by a failure-to-appear rate? Should every missed court appearance be counted, or only willful non-appearance? The lack of agreement on these questions is reflected in the results of the 1973 Office of Economic Opportunity survey which found that 51 pretrial release projects used 37 different methods of calculating FTA rates (Eskridge, 1983). Collecting data, in some areas, such as community ties, employment, financial resources and criminal history is often difficult due to confidentiality policies, leaving weaknesses in creating meaningful prediction scales (Eskridge, 1983). In an Oregon study leading toward creating a pretrial release point scale (Toborg Associates, Inc., 1989), only a portion of the data originally sought was collectable.

The Vera Point Scale was not without critics. Eskridge (1983), citing research conducted following the point scale's appearance, said questions developed over the internal and external validity of the scale. Few attempts have been made to verify the Vera scale's generalizability, Eskridge said. Nevertheless, beginning in the 1970's and continuing into the 1980's, local pretrial release programs across the country implemented the Vera scale, according to Eskridge. Some programs adopted the scale in its entirety,

notes Eskridge (1983), while others modified the scale to meet local conditions and needs. Commenting on the Vera scale's popularity, Eskridge (1983, p. 142) wrote,

When the program was initiated, it had the air of freshness and innovativeness . . . the (Vera) staff consisted of bureaucratic zealots sold on the recognizance philosophy and determined to show the world the value of the program. Those days appear to be over; recognizance release is now more or less accepted as a viable alternative to pretrial detention or bail

Research into and development of prediction models in pretrial release tended to focus on variables associated with successful/unsuccessful releases and pretrial crime. The original Vera Point Scale concentrated on the defendant's prior record, family ties, length of residence in the city, and employment or school status (Ares et al., 1963). Other research (Goldkamp & Gottfredson, 1985, pp. 72-73) would encompass a wider variety of variables, including the following:

Current offense; Past appearance record; Having a telephone; Credit rating; Self-esteem; Home ownership; Drug and alcohol use; Acceptance of pretrial services in the community; Follow-up by pretrial release officials to assure the accused individual's appearance in court; Sanctions against failure to appear; Apathy on the part of judicial officers and release personnel; Court operations and practices (including noise in the court room or language barriers that cause confusion as to future court action); Clerical errors made by court clerks relative to the defendant's name, address, and court appearance; Time-lag between release and future court appearance; Intensity of pretrial supervision; Defendants with private attorneys and those assigned public defenders; and Socioeconomic status.

Additional sub-variables often focused on formal and informal relationships between the defendant and community ties and categories of criminal history divided into property crimes and interpersonal offenses, according to Goldkamp and Gottfredson (1985).

In follow-up studies through the mid 1980's, there was a general consensus among

researchers that no correlation could be found between community ties and socioeconomic variables and an individual's FTA tendencies (Eskridge, 1983). With other variables, some studies showed direct relationships with FTA tendencies while other studies suggested an inverse link (Eskridge, 1983). Shaughnessy (1982), in a multi-variate analysis of over 800 cases in New York, concluded that no consistent direct correlation existed among any of the social factors, suggesting that predictions based on factors such as community ties and self-esteem were not useful in determining whether or not a defendant would appear in court if given pretrial release.

Taking into consideration a number of studies, Goldkamp and Gottfredson (1985) felt there was a relatively close agreement that some type of notification and follow-up procedure by release authorities can reduce FTA rates. Factors most closely related to the likelihood of FTA were prior arrest record, history of behavior while on pretrial release, and age (Goldkamp, Gottfredson & Jones, 1988).

While the ability to predict FTA had a mixed review through the 1980's, very little success was achieved in predicting dangerousness and pretrial crime (Eskridge, 1983). Although legislators encouraged the use of factors indicating potential dangerousness in formulating release decisions, the practical limitations in predicting such an event were problematic. Goldkamp concluded that predicting a defendant's propensity to commit crime while on pretrial release is at present nearly impossible (Goldkamp, Gottfredson & Jones, 1988).

While research on predictive models was primarily aimed at improving FTA rates and lowering pretrial crime, the focus was centered on judicial discretion in the release

decision. This focus was actually not new, as early bail critics from the 1920's through the 1950's described judges as transacting bail in line with punitive, political, or idiosyncratic aims (Beeley, 1966; Goldkamp, Gottfredson & Jones, 1988). Studies in the late 1970's found substantial variation in release decision-making that could not be explained by the nature of the charge or the characteristics of the offender (Goldkamp, Gottfredson & Jones, 1988). Flemming (1982) conjectured that the critical aspect of judicial discretion was that the content of choices involving defendants accused of roughly similar crimes differed from one court to another.

Analyzing the criminal court environment, Eisenstein and Jacob (1976) hypothesized that the procedures used by courtroom workgroups in the disposition of cases become more routinized with the specialization of the workload and conversely, cases are less routinely handled when they are diverse. The size of the court docket or volume of cases handled during a single session of court or a given time period also affect routinization (Mohr, 1976). As caseloads become heavier, the procedures used by officials will be more streamlined in order to minimize inefficiency. Mohr also concluded that the quantity and quality of information officials have about defendants facilitates the pretrial release decision. Reliable information enables an expeditious handling of cases and the release decision can be made quickly with a feeling of confidence that there is less need to probe defendants with questions. When information is sparse and not dependable, officials must fall back to their ability to decipher the character of defendants from the way they behave before the bench.

Several studies on judicial discretion (Nagel & Neef, 1979; Nagel, 1983;

Goldkamp, Gottfredson & Jones, 1988) called for a need to channel pretrial release decisions that would result in more equitable outcomes for defendants. Much of the research on developing judicial guidelines focused on selected cities, using control and experimental groups to evaluate the viability of guideline implementation (Goldkamp, Gottfredson & Jones, 1988). By the mid 1980's, most states had codified pretrial release processes within the states' criminal procedure laws. The state of Oregon incorporates pretrial release guidelines and criteria in a statutory format which the criminal courts use in formulating release decisions (see Appendix C).

The use of pretrial drug testing also emerged in the early 1980's. Pretrial drug testing is a form of conditional release imposed by the court and usually requires the defendant to submit to random urine-testing pending trial outcome. The premise of pretrial drug testing was vested in the hypothesis that because large proportions of arrestees test positively for drugs of abuse as they enter the criminal process, evidence of drug use should be considered a significant predictor of crime during the pretrial release period (Goldkamp, Gottfredson & Weiland, 1988). As with earlier prediction methodologies, the viability of pretrial drug testing as a correlate to FTA and pretrial crime showed mixed results in follow-up studies (Toborg, Bellassai, Yezer & Trost, 1989; Goldkamp, 1989). In a critique of pretrial drug testing and other forms of conditional release, Goldkamp and Gottfredson (1985) observed that judges may be creating a new area of state supervision amounting to pretrial probation.

Minimizing the risk of FTA and pretrial crime continued as the focus of research up to the mid 1980's. While FTA and pretrial crime rates varied from jurisdiction to

jurisdiction (and methodologies used in their computation), pretrial release in non-capital cases was fairly well established in America's criminal courts. Reaves (1992), in a survey of the Nation's 75 most populous counties, estimated that 65 percent of defendants were released prior to the disposition of their case. Among the 35 percent of defendants who were not released, five out of six could not post the required bail amount, and one in six were held without bail.

While the bail reform movements continued to move forward, primarily aimed at improving disparate judicial decisions in pretrial release settings, criminal activities in the United States were capturing the mood of Congress and the American public. Some of these criminal activities included an assassination attempt on President Reagan, with the person accused of the crime later determined by a jury to be not responsible for the crime because of insanity. "Serial killer" was becoming a frequently-mentioned term in the news. John Wayne Gasey was convicted of murdering over twenty-five youths. A "get tough on crime" momentum was swinging toward a heavier use of incarceration and harsher sanctions. Mandatory sentencing and sentencing guidelines were usurping judicial discretion and career-criminal prosecution units became established in many cities. Frequent polls revealed fear of crime hovered near the top of American's concerns and people seeking public office were learning that a tough stance on crime gave them better assurance of a political future (Gordon, 1991; Walker, 1994; Forer, 1994). Violent crime rates, as reflected in the FBI's Uniform Crime Reports, increased throughout the 1970's but declined from about 1980 to 1985 (Ekland-Olson, Kelly & Eisenberg, 1992). In the decade of the 1980's, the United States incarceration rate increased 96 percent.

By the end of the decade we were adding the equivalent of two 500-bed state facilities every six days (Ekland-Olson et al., 1992). The impact of these events would lead to stricter policies on pretrial release, explained in the next section. For better or worse, things were changing.

PREVENTIVE DETENTION

The movement toward preventive detention, which allows courts to withhold pretrial release for defendants who pose a danger to themselves or to communities, or who have been charged with certain crimes, such as drug offenses, began on the state level. Texas, for example, notes Tobolowsky & Quinn (1993), enacted a constitutional amendment providing that a defendant charged with a non-capital felony who had two prior felony convictions, may be denied bail pending trial. Arizona and Utah constitutions authorized exceptions to the right to bail for those accused of new crimes while already on pretrial release, according to Carbone (1983). Carbone also observed that in the early 1970's, Vermont passed a law allowing consideration of dangerousness in denying bail, although Vermont's Supreme Court invalidated the statute in 1975. Carbone said that Maine, New Hampshire, and Virginia, from the mid 1970's, provided for the denial of bail of defendants whose release would jeopardize the defendants' or the public's safety.

On the national level, the Nixon Administration in the late 1960's proposed a revision of the criminal code that would modify federal law to require the courts to set conditions of release to assure community safety as well as the defendant's appearance for trial (Carbone, 1983). The U.S. Congress enacted the 1966 Bail Reform Act which

set forth conditions that were available to a federal judicial officer in formulating a release decision, Carbone said. However, the conditions consisted of recognizance, conditional release and security bail, and did not include a provision for the detention of defendants for community safety purposes.

The first federal legislation authorizing preventive detention was the 1970 District of Columbia Court Reform and Criminal Procedures Act, which actually applied only to Washington, D.C., where all offenses are federal (Carbone, 1983). Scott (1989) noted that even though the Act was restricted to Washington, D.C., it was significant from the perspective that for the first time Congress permitted judicial officers to consider danger to the community, as well as the risk of flight, in establishing conditions of pretrial release in non-capital cases. Scott believed that the Act was a test balloon in anticipation of subsequent legislative reform. The constitutionality of the Act was upheld by the District of Columbia Court of Appeals in 1981. The court not only rejected constitutional challenges, but provided guidelines for future enactments of a similar nature, Scott said.

In 1981, the Attorney General's Task Force on Violent Crime, relying heavily upon the wide support expressed by influential groups and leaders, recommended federal legislation to permit courts to deny bail to persons who posed danger to the community (Scott, 1989).

The general public, legislators, judicial officials, national leaders and the news media carried strong opinions that the community was at risk from criminal defendants being released before trial, according to Scott (1989). President Ronald Reagan, in a speech to the International Association of Chiefs of Police in September, 1981, advocated

that dangerous offenders be held without bail, Scott said. In a speech to the American Bar Association meeting in Houston, Texas in February, 1981, Chief Justice Warren Burger said :

[i]t is clear that there is a startling amount of crime committed by persons on release awaiting trial, on parole, and on probation release. It is not uncommon for an accused finally to be brought to trial with two, three, or more charges pending . . . Bail release [should include] the crucial element of future dangerousness based on a combination of the particular crime and past record to deter crime while on bail. (Toborg, 1986, p. 13)

According to Toborg (1986) public opinion polls reflected the national sentiment on the issue. A 1981 survey of California residents found that 84 percent of those polled believed that too many crimes were being committed by defendants released on bail; 83 percent of the respondents were in favor of allowing danger-related criteria to affect release standards. Similar findings were revealed in polls taken in the early 1980's in Tennessee, Arizona, Colorado, Florida, Georgia, Indiana, and Wisconsin (Toborg, 1986). The impact of public opinion is illustrated in Wisconsin, where a young woman was raped and murdered by a defendant released pending trial on two pending rape charges. The murder victim's parents undertook a campaign to change the state's pretrial release laws, a campaign which evolved into a drive to amend the State Constitution. The family's efforts received national media coverage and was widely credited as the determining factor in putting pretrial detention on the ballot and securing its passage (Toborg 1986). In Arizona and Indiana, danger legislation was drafted in direct response to specific instances of pretrial crimes involving brutal murders committed as the culmination of rape or robbery and all were widely publicized in the news media, leading to an outpouring of public protest that impacted on the passage of danger legislation,

Toborg said.

Increased attention was also being focused on the victims of crime. The Victims of Crime Act of 1984 established a fund making grants available to states for victim compensation, victim assistance programs, and child abuse prevention and treatment. Funds for these grants came from fines in federal criminal cases, penalty assessments, forfeitures of federal bail bonds, as well as a federal "Son of Sam" law, whereby funds from literary or other exploitation of the criminal's activities must be escrowed for the benefit of the victim (Carrington & Nicholson, 1989).

In 1984 the U.S. Supreme Court upheld the constitutionality of a New York juvenile detention statute, offering another green light for future pretrial detention statutes (Scott, 1989). Interestingly, in the New York juvenile case, then Associate Justice Rehnquist, speaking for the majority and rejecting the contention that it was impossible for a judge to make a prediction of future dangerousness, said, "[F]rom a legal point of view there is nothing inherently unattainable about a prediction of future criminal conduct." (Scott, 1989, p. 5).

Scott (1989) observed that pretrial detention was the congressional response to public outcry over crimes committed by persons released pending criminal trial. As the Senate Report noted, ". . . the federal bail law must address the alarming problem of crimes committed by persons on release and must give the court adequate authority to make decisions that give appropriate recognition to the danger a person may pose to others if released." (Scott, 1989, p. 6).

On October 12, 1984, the U. S. Congress enacted the Bail Reform Act of 1984

as part of the comprehensive Crime Control Act. This 1984 Act authorizes pretrial detention for certain defendants where no condition or combination of conditions will guarantee community safety. Federal criminal defendants subject to detention as "dangerous" include: 1) those charged with crimes of violence or those charged with offenses punishable by life imprisonment or death; 2) defendants charged with drug trafficking offenses punishable by 10 years imprisonment or more; 3) defendants charged with any felony offense if the defendant has two or more prior convictions for the offenses mentioned above; and 4) defendants charged with any federal offense, if convicted within the last five years of a crime while on bail (Toborg, 1986, p. 11).

In addition to authorizing detention, other key provisions of the Act include:

1. Federal courts may impose a "10-day hold" if the defendant was on pretrial release, probation or parole in order to determine whether such earlier release status should be revoked.
2. The standard of proof necessary for a finding of dangerousness (and detention) is "clear and convincing evidence."
3. There is a rebuttable presumption that defendants facing felony charges, including drug sale, are "dangerous;" these defendants must overcome that presumption to avoid detention.
4. Rules of evidence do not apply at detention hearings, so hearsay evidence may be considered on the issue of the defendant's dangerousness (Toborg, 1986, pp. 11-12).

A key provision of the 1984 Act makes it illegal for a bail-setting judicial officer to impose a financial condition that results in the detention of the defendant. This prohibition outlaws the practice of setting high money bonds ostensibly to permit release

but in fact detaining the defendant. Even opponents of the 1984 Act approved of its abolition of such reliance on money to detain, which permitted both the judge and the prosecutor to avoid stating on the record the reasons for perceiving the defendant as dangerous (Toborg, 1986). In 1987 (*U.S. v. Salerno*, 1987), the U. S. Supreme Court upheld the constitutionality of the Bail Reform Act of 1984.

Toborg (1986) reports that 32 states and the District of Columbia have altered their bail laws to consider community safety in the pretrial release decision. A problem confronting many states adopting preventive detention was the definition of "dangerousness." No clear-cut consensus existed in the definition, according to Toborg (1986). The three major factors relied upon by jurisdictions with danger statutes to determine who is dangerous are:

1. Prior criminal record. Twenty-one states and the District of Columbia define dangerousness at least in part on consideration of prior criminal acts. Rearrest on bail is a key element in defining dangerousness.
2. Seriousness of present offense charged. Twenty states and the District of Columbia consider this element.
3. Judicial discretion. Twenty states and the District of Columbia allow for some degree of judicial discretion in the court's decision about who is dangerous--usually after prior record and present charge--have also been weighed. Judicial discretion in the definition of dangerousness is subjective-based (Toborg, 1986, pp. 5-7).

Even after identifying a defendant as dangerous, the court is still left with the option of explicitly detaining the defendant until trial or imposing some type of conditional release (Toborg, 1986).

An interesting finding by Toborg (1986), in studies of four cities in states with

preventive detention, is that danger laws are infrequently used. In the cities of Memphis, Tennessee; Milwaukee, Wisconsin; Phoenix, Arizona; and Tucson, Arizona, defendants were detained until trial in approximately one-half of all the cases studied. By far the most common reason for detention in each city was that defendants did not post bond.

Gottlieb and Rosen (1985) point out that special procedures are required to invoke the dangerousness provisions. At the time of the release decision, the court must have at its disposal sufficient information on the current charge, the defendant's background and criminal history, and other information that would allow for a finding that the defendant posed a danger to himself or others. Depending on the case, there may be considerable adversarial challenges by the defendant on the issue of dangerousness and flight risk, narrowing the judicial decision to a more subjective level (Gottlieb & Rosen, 1985).

This section has presented an overview of preventive detention under provisions of the federal Bail Reform Act of 1984 and states which have included preventive detention in their pretrial release criteria. In recent years many innovative approaches and new technologies have emerged offering release alternatives, including: intensive supervision; electronically monitored "house arrest;" urinalysis testing right in the court house providing results within an hour for use by the judge; and specialized release plans incorporating employment counseling, halfway houses, and other alternatives (Toborg 1986; Tobolowsky & Quinn, 1993). Intensive pretrial supervision and pretrial drug testing are part of the pretrial services in many cities. Budgets and other restrictions often limit participation in intensive supervision programs. Electronic monitoring is

increasingly being used at the post-conviction stage and its use as a pretrial release condition will likely receive more attention in the future.

CHAPTER III

RESEARCH DESIGN

The research design is based on a grounded theory approach. Methodology of the study uses a triangulation of surveys, field research and the use of available data. Field research methods, as described by Singleton et al. (1988) and Babbie (1989) are often desirable in a natural setting where situations are complex and involve interrelated phenomena. In such cases, the researcher must be open to all possibilities. Natural settings are activities that occur without the contrivance of the investigator and do not permit a rigid research design. The researcher avoids preset hypotheses and instead allows observations in the field to guide the formulation of hypotheses, the asking of questions, and sampling. With the setting not under the researcher's control, its activities typically are not known in advance before entering the field. The precise research design is therefore emergent rather than predetermined.

Pretrial release is a natural setting of complex interrelated activities wherein the researcher would not be able to develop a preconceived research strategy. Design elements are worked out during the course of the study. This flexibility ensures a more thorough and in-depth approach as opposed to a rigid design structure which may neglect important practical components in a complex setting.

SELECTING THE RESEARCH SETTING

The progression of events typically encountered by persons charged with a crime offer a variety of settings within which pretrial release may be studied. These events range from arrest or the issuance of a citation, booking into jail, arraignment in court, trial, sentencing, and punishment such as incarceration or a form of custodial supervision such as probation. Booking into jail offers the most ideal point for the study of pretrial release. Arrested individuals are taken to jail by police to be booked. When a citation is issued, in almost all instances the court requires the person to present himself or herself to the booking facility, even though the person may not be lodged in jail. Arraignment would miss those who were arrested or cited and then failed to appear for their first court appearance. Since a number of cases are dismissed, the trial, sentencing or post-conviction phase would miss others.

The booking procedure at most jails comprises of being fingerprinted, photographed, and descriptive information taken including the name, date and place of birth of the defendant, address, offense for which arrested or cited, and other data. If the person is to be incarcerated, as noted briefly in Chapter I, he or she is also searched, given jail clothing, and other procedures dealing with security of the inmate and jail staff.

Being able to make comparisons of counties is an important component in understanding the pretrial release process. As noted earlier, pretrial release is county-based in the United States and the different ways in which pretrial practices are handled can vary greatly from one county to the next (Juszkiewicz, 1992). The selection of counties for the study was guided by the following criteria:

1. Cost. As observed by Singleton et al. (1988) an overriding concern in any research project is cost. The counties selected would need to be within reasonable driving times and not incur overnight accommodations or heavy expenses.

2. Cooperation. Inmate data are, and should be, protected from unreasonable disclosure. On-site research at jails incur work, inconvenience and expenses, to some degree, for sheriffs' departments and jail personnel. For the successful completion of the research, the sheriff and jail staff would have to be amenable to the research project.

3. Diversity, to some degree, in the economies, population mix, and spatial characteristics between the counties selected for the study. Ideally, in Oregon, this would best be achieved in selecting counties from the coast, Willamette Valley and eastern and southern parts of the state, which would, unfortunately, violate the first criteria, cost.

Surveys with sheriffs and jail personnel and observations led to the selection of Multnomah, Washington and Yamhill Counties. Each of these counties met the above criteria. In particular, the sheriffs and jail personnel were most accommodating and offered working space in the jail and assistance in the research.

Tables III.1 and III.2 reflect ethnic diversity of Oregon and the United States and the counties of Multnomah, Washington, and Yamhill (Center for Population Research Census, Portland State University, 1992).

The Portland-Vancouver, Oregon-Washington Metropolitan Statistical Area (MSA) includes Clackamas, Columbia, Multnomah, and Yamhill Counties of Oregon, and Clark County, Washington. The total population of the MSA in 1990 was 1,640,863.

Multnomah and Washington counties are the first and second largest counties, respectively, in population of the state. Yamhill County is the eleventh largest in population. Combined, the three counties comprise 33.81 percent of the state's population.

TABLE III.1

COMPARISON OF U.S. AND OREGON ETHNIC DIVERSITY, 1970 AND 1990

	OREGON		UNITED STATES	
	1970	1990	1970	1990
WHITE	96.0%	90.7%	83.3%	75.3%
AFRICAN AMERICAN	1.3%	1.6%	10.9%	11.9%
HISPANIC	1.1%	4.0%	4.5%	9.0%
OTHER	1.6%	3.7%	1.3%	3.8%

TABLE III.2

ETHNIC DIVERSITY FOR COUNTIES OF MULTNOMAH, WASHINGTON, AND YAMHILL

POPULATION		WHITE	BLACK	NATIVE	ASIAN	OTHER	HISPANIC
MULTNOMAH	583887	507890 87%	35133 6%	6734 1.2%	27326 4.7%	6804 1.2%	18390 3.1%
WASHINGTON	311554	286459 92%	2058 .9%	1779 .6%	13424 4.3%	7824 2.5%	14401 4.6%
YAMHILL	65551	62135 95%	391 .6%	823 1.3%	783 1.2%	1440 2.2%	4129 6.3%
OREGON TOTAL	2842321	2636787 92.8%	46178 1.6%	38495 1.4%	69269 2.4%	51591 1.8%	112707 4.0%

DATA COLLECTION

Interviews with pretrial services personnel and jail administrators in Multnomah, Washington and Yamhill Counties provided an overview of the ways in which inmates are booked into jail and the progression of events through the judicial process. These surveys resulted in an opportunity to formulate the study into a cross-sectional sampling of the defendants booked into the jails during July and August, 1993. Since the jail populations can differ from the beginning of the month to the end of the month, a sample covering two months would capture more diversity. The sampling for those booked in July would take place in August, 1993, and for those booked in August, the sampling would be conducted in September, 1993.

For Washington and Yamhill Counties, permission was obtained from the sheriffs and jail management for this researcher to conduct on-site research at the respective jails. For Multnomah County, the researcher did not have access to jail records; however, Ms. Kim Hirota with the Pretrial Services Unit agreed to assist in the data collection. She was trained by the researcher to select every tenth booking into the jail during July and August, 1993.

The population of interest would be all defendants booked into the three county jails in July and August, 1993. Defendants would all be adults, eighteen years of age and over, as no juveniles were processed at the county jails in the study.

The selection of cases for observation was guided from the perspective that the sample would be representative of the target population.

The booking logs contained a chronology of each defendant booked into the jail.

These logs consisted of typed sheets prepared each day and filed by the month, with the first sheets dated the first day of the month and the last sheets dated the last day of the month. The logs contained the inmate's name, date of birth, date of booking, criminal offense for which booked, and other data used by the jails. The booking logs were preferred over the computer as the computer entries contained less information and the computers were being used frequently by jail personnel in their daily duties.

The sample consisted of 619 inmates booked into jails of the three counties in July and August, 1993. The total inmates who were booked into the jails during July and August are shown in Table III.3.

TABLE III.3

**BOOKINGS FOR MULTNOMAH, WASHINGTON, AND YAMHILL COUNTY
JAILS IN JULY AND AUGUST, 1993**

	Multnomah	Washington	Yamhill
July	2,839	866	237
August	2,752	876	303
TOTALS	5,591	1,742	540

With the booking logs as the original source for drawing the sample, a systematic sampling technique was used. As described by Singleton et al. (1988), systematic sampling consists of selecting every Kth case from a complete list of the population, starting with a randomly chosen case from the first K cases on the list. Systematic sampling has two requirements: 1) a sampling interval, which is the ratio of the number of cases in the population to the desired sample size; and 2) a random start.

Singleton et al. (1988) noted that a danger in systematic sampling is that the available population listing may have a periodic or cyclical pattern that corresponds to the sampling interval, which can create sample biases. Fortunately, the danger of periodicity in a systematic sample is actually quite small (Singleton et al., 1988).

A thorough review of the booking logs prior to sampling did not betray a periodic or cyclical pattern. Since the booking logs' entries were made from one booking to the next, without any attempt to arrange the entries alphabetically by name or similar design, the pattern of bookings was itself quite random. There was also no scheme to separate entries by offense; thus one entry may be for a traffic offense while the next entry was for a serious felony.

To meet the requirements of systematic sampling, the sampling was initiated by generating a random number on a hand-held calculator. This number defined a random starting point in the booking log for June, 1993. Using a skip factor of ten, beginning from the random starting point, every tenth booking in July and August was selected.

For all three counties, as each case was selected, the data were entered on a coding sheet (Appendix D). For Yamhill County, in addition to the systematic sampling format described above, all females booked in July and August were included in the sample to enable a more in-depth analysis of the issue of gender in pretrial release. This over-sampling procedure was not used in Multnomah and Washington Counties, since the number of female arrestees seemed sufficient in volume to be representationally captured in the every-tenth selection process.

Table III.4 reflects the resulting sample, consisting of 619 defendants booked into

the three jails.

TABLE III.4

DISTRIBUTION BY COUNTY OF INMATE SAMPLE, N = 619

	Multnomah	Washington	Yamhill
July	165	102	40
August	167	91	54
TOTALS	332	193	94

Males constituted 75.1 percent of the sample (465 individuals) and females comprised 24.9 percent (154 individuals). As noted previously, Yamhill County was over-sampled to include all females booked into the jail in July and August.

Table III.5 portrays the ethnic distribution of the sample.

TABLE III.5

ETHNIC DISTRIBUTION OF SAMPLE

	Frequency	Percent
White	394	63.7%
African American	95	15.3%
Native American	10	1.6%
Hispanic	108	17.4%
Southeast Asian	8	1.3%
Middle Eastern	2	.3%
Chinese/Japanese	2	.3%
TOTALS	619	100%

OTHER SOURCES OF DATA

While the booking logs provided the sampling frame from which the sample was obtained, the booking logs themselves contained only a portion of the information needed for the research project.

The booking logs provided the inmate's name, date of birth, booking number, charge, and date booked. In some cases, especially if the defendant was released immediately after booking, the date of release and release modality, e.g. security, recognizance, conditional, was included. To accurately identify defendants as "Hispanic," since they were listed in Washington and Yamhill Counties' booking logs as "White," all defendants with Spanish surnames were checked for place of birth in the actual booking sheets.

Sources for additional data included the following:

1. Pretrial Services Office of each county. Records indicated whether or not the defendant was interviewed by a pretrial services official, the recommendation of the official, and background of the defendant. In some cases these records contained the criminal history of the defendant.

2. Court records. The Oregon Judicial Information Network (OJIN), a state-wide computer link-up containing court information on criminal and civil defendants, was next to useless for this research project. Review of the actual court file was necessary to obtain such information as final disposition of the criminal charge, the pretrial release decision and recommendation of the judge, criminal history of the defendant, problems

with the defendant such as drug or alcohol use, relationship of victim to the defendant, and other data.

3. District Attorney Records. For Washington County, permission was obtained to review the District Attorney records on adjudicated and unadjudicated cases for the defendant sample. These records were more complete than court files for disposition, criminal history, and other data.

4. The laws, policies and regulations governing pretrial release in Oregon were obtained through the pretrial services offices of each of the three counties, the Oregon Attorney General's Office, the Oregon Constitution, and Oregon Laws and Oregon Revised Statutes.

OBSTACLES, LIMITATIONS AND BIAS IN DATA COLLECTION

Court files on criminal cases contain surprisingly little information on what takes place in the court room. One possible explanation for this is that court proceedings are often informal and do not generate documents that eventually get filed in the court case. Another explanation is that the court files go through many hands and are publicly accessible. The chances of documents falling out, getting misfiled and becoming lost are probably great.

Summer months, in which the data collection took place, would more likely reflect a larger proportion of Hispanic arrestees than if the sample had been taken during the winter. Especially for Washington and Yamhill Counties, the number of Hispanic farm and field workers is greater during the planting and harvesting seasons.

Many crimes are seasonal. The Uniform Crime Reports (1993) indicate that

nearly all index crimes of murder, rape, robbery, aggravated assault, burglary, larceny-theft and motor vehicle theft have the highest incident reports during the summer months of July and August. An inmate sample collected in months other than July and August would therefore likely show relatively fewer of these offenses.

As observed in Chapter I, jail populations are subject to various influences. Periodic drug sweeps in the Old Town section of Portland, Oregon, for example, may increase Multnomah County's jail population and a corresponding increase in the number of drug law violators. Immigration policies shift from time to time, as do enforcement priorities aimed at suspected illegal aliens. Such fluctuations would make it difficult to accurately portray as representative any particular jail based on a sample of inmates during a two-month period. Jail population limitations also change for other reasons. For example, after the data collection was completed in Washington County, the jail began some construction work which reduced the jail's capacity.

CHAPTER IV

RESULTS OF STUDY

INTRODUCTION

This chapter will present the findings of the study in relation to each of the three research questions, which were stated in Chapter I. Chapter V will then evaluate and interpret the findings.

RESEARCH QUESTION 1

What are the general historical and legal features that underlie today's pretrial release practices?

Chapter II, Review of the Literature, briefly summarizes historical and legal events that help in understanding pretrial release. To address the research question without being repetitive of information in Chapter II, this section will relate the more significant national changes in pretrial release to Oregon's current pretrial practices.

Carbone (1983) explained that in America the U.S. Constitution left to the states how bail was to be administered, requiring only that bail not be excessive. The role of bail in American jurisprudence was defined in U.S. Supreme Court decisions, as in *Carlson v. Landon* (1952) and *U.S. v. Edwards* (1981), wherein the court said that there was no basic right to bail and the purpose of bail should be the least restrictive to assure the defendant's appearance at trial. An Oregon Supreme Court decision (*Sexson v.*

Merten, 1981, p. 6) emphasized that, "the objective in determining what type of release to grant is that which is reasonably likely to assure the defendant's later appearance."

It was observed in the literature review that studies as early as the 1920's (Beeley, 1966) reported that poor and minority defendants were at a disadvantage when financial bail was imposed on them because of their lack of money. Thomas (1976) reported that as a result of Beeley's studies and other reviews of bail practices in the United States, courts began relying less on financial bail and began using instead recognizance and conditional releases. Thomas noted that as state legislators became more aware of the disparate impact of financial bail on poor and minority defendants, pretrial release laws were changed to emphasize greater use of nonfinancial bail. The Oregon legislature, in January, 1974, established statutory rules on pretrial release, including the provision (ORS 135.245(3)), "A person in custody . . . shall be released upon the personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted . . . [wherein] the magistrate shall impose either conditional release or security release." (see Appendix C).

A significant change in the practice of pretrial release came with the Federal Bail Reform Act of 1966, which required, unless judicial discretion determined otherwise, that all federal defendants not charged with capital crimes be released on recognizance (Tobolowsky & Quinn, 1993). To assist the courts with accurate background information on a defendant to be used in the release decision, Congress established pretrial services agencies as part of the federal courts. Employees of the pretrial services agencies would interview defendants, verify information about their backgrounds, and furnish the

information to the court prior to the release decision, according to Eskridge (1983). Multnomah County, Oregon, began using pretrial services personnel in 1968 (*Pretrial Services Policies and Procedures Manual*, 1991). Juskiewicz (1992) said that most counties in the United States have pretrial services agencies or personnel to assist the courts in pretrial release matters. Hilfiker (1990), in a survey of Oregon counties, found that pretrial services personnel perform a variety of duties, such as interviewing defendants for court appointed attorneys, verifying information furnished by defendants to determine eligibility for pretrial release, and assisting judges in court on other matters. Oregon Law (Appendix C) authorizes the Circuit Courts to employ release officers, and release officers have authority to release defendants on recognizance, conditional, and security bail. (Release officers were found to have significant roles in the three target counties for this study, as will be explained later in this chapter).

It was observed in the literature review that the Vera Foundation Manhattan Bail Project in the 1960's was influential in drawing national attention to the problems of financial bail (Ares et al., 1963). An interesting finding in this dissertation research was that Oregon's pretrial laws, codified in 1974 as mentioned above, were based on Illinois pretrial release law, which was derived from the American Bar Association pretrial release standards, which in turn were based on the studies of the Vera Foundation Manhattan Bail Project (*Pretrial Policy and Procedure for Yamhill County*, 1987). As described by Juskiewicz (1992), many states adopted pretrial release laws and policies based on the Manhattan Bail Project studies.

A final observation in addressing this research question is in preventive detention,

which was discussed in the literature review, pages 52 to 59. The Oregon Legislature has not authorized preventive detention (Landau, 1992). The Oregon Supreme Court, in *Lowrey v. Merryman* (1984) and *Collins v. Foster* (1985) has ruled that the sole criterion to be considered in establishing bail is the reasonable assurance of appearance by the defendant for trial, and that preventive detention is not authorized by statute. The significance of this feature in Oregon pretrial release law is that the release decision is not supposed to include the potential dangerousness of the offender or his or her likelihood of committing new crimes once released (Danks, 1994). As set forth in the Oregon statute on pretrial release (Appendix C), nine release criteria are mentioned. Potential danger to the community is not listed among the criteria; however, *Pretrial Policy and Procedure for Yamhill County* (1987, p. 3) states, ". . . releasing or recommending release of adult offenders whose stable roots in the community indicate that they will appear in court when so directed, and who will pose no threat to public safety if released." Multnomah County's *Pretrial Services Policies and Procedures Manual* (1991, p. 13.0) also states, "Policy dictates that the primary consideration which would exclude release on recognizance is whether the defendant is a danger to himself or a danger to the community." As interpreted by Harley Lieber (1992), a former supervisor for Multnomah County's Pretrial Services Unit, the danger to community factor is only a consideration in whether to grant recognizance release as opposed to security release. It is not clear, however, how the community would be protected from a dangerous defendant who was able to post security bail. This issue will be discussed in Chapter V.

RESEARCH QUESTION 2

How does the pretrial release process work?

This section will begin with an overview of the release environment observed in the three counties studied. General differences in how the counties manage the release process will be briefly outlined. Pretrial decisions for the defendant sample will be presented, as well as the release outcomes.

Overview of the Release Process

The initial booking process in each of the three county jails was similar. After turning over personal property, for which a receipt was given, the defendant was fingerprinted and photographed, unless a photo and fingerprints were already on file (W. Barrigan, 1993). The defendant furnished descriptive information, such as name, date and place of birth, and other background information to the jail intake personnel. If the charge involved drugs, or if the intake supervisor suspected the defendant might be concealing weapons or contraband, a strip search would be conducted, according to Mary Barrigan (1995), supervisor, Multnomah County Corrections. Strip searches, conducted by jail staff of the same sex as the defendant, requires observation of body cavities, head hair, or any portion of the body. Mary Barrigan said it is not unusual to discover drugs secreted in body cavities. Inmates occasionally swallow containers of narcotics prior to being arrested, which are later passed through the bowels and consumed during the incarceration period or sold to other inmates.

The intake process would be different if the defendant was booked and released,

as in cases where the defendant had been issued a citation by the police officer in lieu of arrest and the defendant had appeared directly in court. If the judge had given the defendant probation or continued the case, the judge would have instructed the defendant to report to the jail for processing, after which the defendant would remain free from incarceration, according to W. Barrigan (1993). Defendants who were booked and released would not have to surrender personal property or be subject to search.

For defendants who were to be lodged in jail following arrest, the prospects of pretrial release began, and here slight differences among the three counties were revealed. Criminal defendants in Oregon, charged with an offense other than murder or treason, are eligible to post financial bail at any time during the pretrial incarceration period, in accordance with Oregon Law (Appendix C). A uniform bail schedule specifies the amount of bail for each offense.² The first difference among the counties studied was in the form of payment acceptable by the jail when a defendant wished to post financial bail. W. Barrigan (1993) explained that the Washington County Jail accepted Visa and Master Card, charging the defendant an extra two and a half percent, which was what the credit card companies would charge the jail. Neither Multnomah County (Wood, 1993) nor Yamhill County (Hostetler, 1993) would accept credit cards for financial bail. All three jails accepted, and preferred, cash; all three jails accepted cashiers' checks, and none of the three jails accepted personal checks. W. Barrigan (1993) felt that the use of

²The uniform bail schedule was adopted by the Oregon Legislature in 1989 (Oregon Laws, 1989). In 1973, the Oregon Legislative Assembly enacted a new security release system requiring defendants to post ten percent of the bail; ninety percent of the amount will be returned to the defendant upon completion of the case (Snauffer, 1974).

credit cards added some convenience for defendants in posting bail, but had little impact on the overall ability of defendants to gain pretrial release on financial bail. Policies among the three counties on the acceptable form of payment for bail were established on the basis of Circuit Court review and experiences of the jails, according to W. Barrigan (1993), Wood (1993), and Hostetler (1993).

Stocks, bonds, and real property can also be used to post bail, according to Oregon Law (Appendix C). These commodities must be reviewed by the court before accepted as bail, according to Wood (1993).

The three counties differed in how much money was necessary to post financial bail if the defendant had been charged with more than one offense. Multnomah County and Yamhill County required bail to be posted on each offense, according to Wood (1993) and Hostetler (1993). Washington County allowed bail to be posted on the most serious offense, if all offenses were related to the same incident (W. Barrigan, 1993). In cases where the defendant had been arrested on a warrant, in contrast to a probable cause arrest without a warrant, the bail amount would be specified on the warrant, according to W. Barrigan.

Warrants or holds from other jurisdictions required approval from that jurisdiction for the defendant to be released on financial bail, according to W. Barrigan (1993), Wood (1993) and Hostetler (1993). During the booking procedure, the jails checked the defendant's name through the National Crime Information Center (NCIC) and the Oregon Law Enforcement Data System (LEDS) for outstanding warrants. In cases where warrants or holds involved other jurisdictions, the pretrial release disposition was

therefore shared by the county holding the defendant and the other agency issuing the warrant or hold.

If the defendant was unable to post financial bail, he or she might be released by the jail on recognizance or conditional release, or on matrix release to alleviate overcrowding, according to W. Barrigan (1993), Wood (1993) and Hostetler (1993). To release inmates on recognizance or conditional terms, jails acquire authority for such releases through Oregon Law (see Appendix C, section 135.235), which provides that the presiding judge of the Circuit Court may appoint release assistance deputies who, in turn, are responsible to the release assistance officer. This means that the senior release officer in the county trains and supervises jail personnel on the procedures for recognizance and conditional releases, according to Hirota (1993), Steele (1993), and VanArsdel (1993), release officers with Multnomah, Washington and Yamhill Counties, respectively. When the jails release inmates on recognizance or conditional terms, the jails use the criteria as outlined in Oregon Law (Appendix C). (The decision-making process will be described later in this section).

Matrix releases were used when the jail's inmate population approached the maximum limit. Each of the jails in the target counties had population limits established by courts as a result of lawsuits filed against the jails. To more fully understand the relationship of the lawsuits and the release of inmates, the lawsuits for each of the three counties will be briefly outlined:

Multnomah County. Wood (1993) explained that the civil action of Gary Jordan et al., plaintiffs, v. Multnomah County et al., defendants, in U.S. District Court,

Portland, resulted in a final order issued by U.S. District Court Judge James Redden in 1987. In addition to the court ordering improvements in exercise equipment, educational opportunities leading to a General Education Diploma, and improving air quality in Multnomah County's jails, the court ordered maximum population limits for certain sections of the jail system and maximum confinement periods for inmates placed in these sections.³ The court order also established a jail release matrix wherein criminal offenses were classified by categories ranging from ordinance violations, misdemeanors, and felonies and authorizing the release of inmates when the population reached 90 percent of capacity. If the jails were required to release inmates to enforce the population limits, the priority of releases was to follow the matrix design, releasing first those inmates charged with ordinance violations and on through the categories of offenses, Wood said. For the inmate sample in the dissertation study (N=619), 332 of the defendants in the sample were drawn from the Multnomah County Jail. Of the 332 defendants, 28 were released by the jail because of overcrowding (matrix releases). Wood (1993) said the federally court-ordered population cap limited the number of inmates to 1,317. The cap forced the county to release 4,157 inmates early in 1988; 4,089 inmates in 1989 and 3,529 in 1990. The number of inmates released because of overcrowding in 1993 was 2,563, Wood said.

Washington County. W. Barrigan (1993) explained that a civil action of Aaron Jungwirth et al., plaintiffs, v. Washington County Administration resulted in a consent

³The population limitation dealt primarily with the Courthouse Jail, with 71 beds. Multnomah County's other jails were the Justice Center Jail, 476 beds; Inverness Jail, 514 beds; Correctional Facility, 190 beds; and the Restitution Center, 120 beds (Wood, 1993).

decree, issued in 1984 in U.S. District Court, Portland, by Judge Redden. The decree established in the jail a law library, religious diets, facilities for inmate/attorney interviews, and postage and photocopying materials. The decree also held that the number of inmates would not exceed the number of bed spaces available in the jail, except under extraordinary circumstances, such as situations of mass arrest where reasonable efforts would not allow for the booking and release of prisoners in a manner capable of avoiding overcrowding. W. Barrigan (1993) explained that the jail's capacity in 1993 was 181 inmates. If this capacity was exceeded at the time of the inmate count in the evening, inmates would be released under a matrix system, which was designed by the Washington County Jail and the Circuit Court. (The matrix system for Washington County is explained further in Appendix A). Of the defendant sample in the dissertation study from the Washington County jail (N=193), eight defendants were released because of overcrowding.

Yamhill County. Hostetler (1993) reported that a consent decree was filed in U.S. District Court, Portland, by Judge Redden in 1983 in a civil action of Inmates v. the Administrator of Yamhill County Jail. The decree called for the jail to have a law library, telephones, medical care, improvements in diet and food preparation, natural light and ventilation, porcelain commodes and metal plumbing. On the issue of overcrowding, the decree held that the jail would not allow more prisoners to be held overnight than the amount of bed spaces available, except under extraordinary circumstances. In 1993, the maximum capacity of the Yamhill County jail was 150 inmates. Hostetler observed that if inmate releases were necessary to prevent overcrowding, the supervisor on duty at the

jail would conduct a review of inmates based on charge severity, criminal history, and other background data to determine a release priority. For the dissertation defendant sample from Yamhill County (N=94), none of the defendants were released because of overcrowding.

Another component in the overall release process was the role of release officer. Oregon Law (Appendix C) authorizes the Circuit Court in a judicial district to appoint release assistance officers, whose duties were explained earlier. The law also gave the Circuit Court authorization to delegate release decision-making to the release officer. Release officers in the three counties of the study had authority to make pretrial releases, according to Hirota (1993), Steele (1993) and VanArsdel (1993).

Multnomah County, with 19 release officers, interviewed all criminal defendants booked into jail (Hirota, 1993). By comparison, Washington County had two release officers (Steele, 1993), and Yamhill County had one and a half release officers.⁴ In the overall release process, release officers played significant roles in releasing 92 of the defendants in the sample, or about 15 percent of the 619 defendants in the sample, and made recommendations on pretrial release to judges in about 70 percent of the cases. Release officers used Oregon Law 135.250 (Appendix C) in making pretrial release determinations, according to Release Officers Hirota (1993), Steele (1993) and VanArsdel (1993). For release officers in Washington and Yamhill Counties, the factors which determined which defendants to interview included: 1) the severity of the charge for which the defendant was currently incarcerated; 2) whether there was an existing pretrial

⁴One release officer in the Yamhill County Pretrial Services Office divided her time between Yamhill and Polk Counties (VanArsdel, 1993).

release file on the defendant, meaning that the release officer had previously interviewed the defendant; and 3) if the court requested an interview of the defendant, according to Steele (1993) and VanArsdel (1993). While Multnomah County interviewed all 332 of the sample defendants from that county, Washington County release officers interviewed 29 percent of the sample defendants (N=193), and Yamhill County interviewed 52 percent (N=94), based on analysis of information from release office records, court files and booking records. Samples of the interview forms used by release officers in each of the three counties are illustrated in Appendices E, F, and G. The forms were made available to this researcher by Hirota, Steele and VanArsdel.

A relevant component in the release process, as revealed in the research findings, was the relationship between court operations and days held in jail for the defendant sample. Oregon Law (Appendix C) requires that a release decision must be made within 48 hours after the defendant is arraigned. Courts in each of the target counties were in session during weekdays, meaning that if a defendant was arrested on a Friday night, he or she would be arraigned at the time the case was scheduled after court resumed on Monday, according to Hirota (1993), Steele (1993) and VanArsdel (1993). A not-surprising corollary in the research findings was that defendants who were booked into jail on Fridays had longer mean days held in jail (15 days) than defendants who were booked into jail on other days of the week, meaning that defendants entering jail after courts were closed on Friday had to wait at least over the weekend for arraignment.⁵

⁵Analysis of data for the defendant sample (N=619) showed that the mean days held in jail for defendants who were booked into jail on Mondays was 9 days; for Tuesdays, 8 days; Wednesdays, 12 days; Thursdays, 9 days; Fridays, 15 days; Saturdays, 9 days; and Sundays, 7 days.

Within the context of the release process, defendants appearing in court for arraignment often had two considerations impacting on their pretrial release status, as revealed in the data analysis. The first consideration was whether to plead guilty to the charge. If the defendant pled guilty, the judge could sentence the defendant, in which case a pretrial release determination would not be necessary. The second consideration was if the defendant pled not guilty to the charge, in which case the judge would make a pretrial release decision, using as criteria the provisions in Oregon Law 135.230 (Appendix C), according to Bearden (1994). If financial bail was imposed on the defendant, the judge could set bail at ten percent of the bail schedule, require the full bail set forth in the bail schedule, or establish bail at any amount deemed appropriate to ensure the appearance of the defendant later in court, according to Bearden and as authorized under Chapter 467 of Oregon Laws (Oregon Laws, 1989). If detained in custody, the defendant could request a bail hearing, at which time he or she could present arguments or witnesses in support of a reduction in the pretrial release restrictions, observed Bearden.

Summary of Decision-making

Research findings showed that the groups directly involved in pretrial decisions were defendants, release officers, jail personnel and judges. To some extent, decisions of one group were interdependent on the decisions of another group. For instance, a defendant released by the jail on recognizance obviates the need for a release officer interview or judicial determination of the release status. If a defendant is held by the judge on financial bail, the jail may be forced to release the defendant to avert

overcrowding.

During the incarceration period of a defendant, the decision process is dynamic, meaning that potential pretrial decisions and release outcomes can change over time. To illustrate, Appendix H is a "Wiring Schematic" of the Decision Process, developed by this researcher based on the findings of this study. The model takes as its theme the wiring diagrams commonly used in the electrical wiring of houses. Current flows along the lines where switches shunt the flow of current from one point to another. The "switches" in this diagram, the solid dots, represent decisions of defendants, release officers, jailers, and judges. The model is based on the hypothesis that defendant releases from jail are partly discretionary for each group and at the same time dependent on events taking place in the release environment. As noted at the bottom of the diagram, the first discretionary event might rest with the police officer, whether to arrest the suspect or issue a citation. If arrested, the defendant's first pretrial release option is during the booking procedure, where he or she might post bail or might be released on recognizance or condition by the jail. If lodged in custody, the defendant continues to experience release options by posting bail or being released by the jail on matrix, recognizance, or condition. Moving toward the top of the diagram, the defendant may be released by a release officer or the judge.

For any type of pretrial release, the defendant is expected to appear in court as instructed. As noted in the diagram, the defendant may also choose not to appear; thus, failure to appear (FTA) is a viable option to the defendant at any point of release. Defendants who are sent to prison, transferred to other jurisdictions or released after

serving time following adjudication of the charges are not releases within the context of "pretrial." Defendants charged with murder or treason may be explicitly held, pursuant to Oregon Law (Appendix C).

To the right of the diagram, factors which might influence the pretrial release decision include activities of the district attorney, defense attorney, law enforcement personnel, publicity, social status of the defendant, and the jail population. Nagel (1983) and Mohr (1976) explained that, due to the discretionary and often informal nature of American criminal courts, influences both within and outside the courtroom are always part of the decision process.

Observation by this researcher of arraignments in the three counties studied, from merely a spectator's perspective, revealed that the procedures were informal with little adversarial content between prosecutor, defense attorney, judge, or defendant. Defense attorneys often argued for recognizance release for their clients, citing work or home necessities that would be interrupted by incarceration. Prosecutors, just as often, cited the defendant's crime or past criminal record to support a recommendation for detaining the defendant on financial bail. The judge often solicited comments from the defendants relative to employment, school, probationary status, and other activities. The judge would then present his or her reasoning behind the particular pretrial release decision being imposed, and the proceedings would move on to the next case. While these cases involved both misdemeanor offenses in District Courts and felony cases in Circuit Courts, the offenses did not appear to have a high profile or draw unusual media attention, which could conceivably create more influence in the determination of the pretrial release status.

In one case involving a defendant charged with Driving Under the Influence of Intoxicants (DUI), two women spectators seated in the courtroom introduced themselves to another spectator as members of Mothers Against Drunk Drivers (MADD). However, they did not speak up in court and whether, or to what extent, the judge was aware of their presence was not apparent. The defendant was released on the condition that he not drive a vehicle and that he enroll in an alcohol treatment program.

Release Decisions and Outcomes

Tables IV.1 and IV.2 offer a summary of the relationship between pretrial decisions and release outcomes. A first observation, in Table IV.1, is that judges rendered release decisions for only about 62 percent of the defendant sample. The other defendants did not make it to arraignment, meaning that they were released by other means, which will be explained more fully later. The decisions for judges ranged from hold, recognizance, conditional, program, ten-percent security and full security.

The category of "hold," as revealed in the data analysis, indicated that the court initially detained these 103 defendants. The courts had several methods to impose a hold, such as notifying the jail to not release the defendant until he or she appeared in court, or holding the defendant after the initial court appearance pending further examination

TABLE IV.1
PRETRIAL RELEASE DECISIONS BY JUDGES

	All N=619		Multnomah N=332		Washington N=193		Yamhill N=94	
JUDGE DECISION	FR	%	FR	%	FR	%	FR	%
N/A	236	38.1	129	38.9	87	45.1	20	21.3
Hold	103	16.6	78	23.5	17	8.8	8	8.5
Recognizance	64	10.3	30	9.0	26	13.5	8	8.5
Conditional	104	16.8	35	10.5	38	19.7	31	33.0
Program	12	1.9	11	3.3	--	--	1	1.1
Security 10%	95	15.3	48	14.5	22	11.4	25	26.6
Security Full	5	.8	1	.3	3	1.6	1	1.1
TOTALS	619	100.0	332	100.0	193	100.0	94	100.0

of the charges or background of the defendant. Release outcomes for the 103 defendants in this category indicated that 16 of them were sent from jail to prison, indicating that they were possibly on parole; seven were transferred to other jurisdictions; 30 were on probation and were released from jail after serving sentences imposed by the judge; 36 pled guilty to the current charge, and 14 of the cases were dismissed. An implication of holding a defendant is that Oregon Law (see Appendix C) requires that all defendants, other than those charged with murder or treason, be eligible for pretrial release; an explicit hold for the defendants in the sample, none of whom were charged with murder

TABLE IV.2

TYPES OF RELEASE FOR THE STUDY SAMPLE
HOW THE DEFENDANTS GOT OUT OF JAIL

	All N=619		Multnomah N=332		Washington N=193		Yamhill N=94	
	FR	%	FR	%	FR	%	FR	%
Release Officer - Recognizance	52	8.4	52	15.7	--	--	--	--
Release Officer - Conditional	29	4.7	26	7.8	2	1.0	1	1.1
Release Officer - Program	4	.6	4	1.2	--	--	--	--
Release Officer- Security 10%	7	1.1	7	2.1	--	--	--	--
Judge - Recognizance	63	10.2	29	8.7	27	14.0	7	7.4
Judge - Conditional	106	17.1	36	10.8	34	17.6	36	38.3
Judge - Program	10	1.6	10	3.0	--	--	--	--
Judge - Security 10%	16	2.6	2	.6	6	3.1	8	8.5
Jail - Recognizance	19	3.1	--	--	18	9.3	1	1.1
Jail - Conditional	16	2.6	1	.3	14	7.3	1	1.1
Jail - Security 10%	30	4.8	8	2.4	17	8.8	5	5.3
Jail - Matrix	36	5.3	28	8.4	8	4.1	--	--
Time Served	126	20.4	61	18.4	45	23.3	20	21.3
Transferred to Other Jurisdiction	30	4.8	9	2.7	9	4.7	12	12.8

TABLE IV.2

TYPES OF RELEASE FOR THE STUDY SAMPLE
HOW THE DEFENDANTS GOT OUT OF JAIL
(continued)

	All N=619		Multnomah N=332		Washington N=193		Yamhill N=94	
	FR	%	FR	%	FR	%	FR	%
Held in Error	1	.2	1	.3	--	--	--	--
Parole Board Order	3	.5	--	--	3	1.6	--	--
Dismissed	48	7.8	41	12.3	4	2.1	3	3.2
To Prison	23	3.7	17	5.1	6	3.1	--	--
TOTALS	619	100.0	332	100.0	193	100.0	94	100.0

or treason, would therefore be illegal. Defendants with backgrounds of prior convictions, probation violations, and those wanted in other jurisdictions explain why many of these defendants were initially held. The relationship of the initial judicial decision of "hold" and the 36 defendants who pled guilty is not well explained in the research findings.

Twelve defendants who appeared before a judge were recommended by the judge to participate in a pretrial program, as noted in Table IV.1, and 14 defendants were actually released to programs: ten by judges and four by release officers, as reflected in Table IV.2. Multnomah County Pretrial Services supervised three programs: "Close Street Supervision, Pretrial Release Supervision Program, and Burnside Supervision Program," according to Hirota (1993). These programs were designed to closely monitor pretrial defendants and each program had certain criteria for inclusion, generally a positive prospect for out-of-custody supervision and no prior history of failing to comply

with the court. The "Burnside Supervision Program" offered drug and alcohol counseling, Hirota explained. Each of the programs also had limited space, Hirota said, meaning that before a judge could place a defendant in a program, there had to be space available. Program releases were all confined to Multnomah County; however, Steele (1993) and VanArsdel (1993) explained that Washington and Yamhill Counties had programs, such as drug and alcohol counseling, which were primarily available for treatment of defendants following conviction.

Slightly under half of the defendants in the sample were released on recognizance or conditionally, as noted in Table IV.2. Since gaining release by posting security bail requires the defendant to have access to money, recognizance and conditional releases were more prevalent than releases on security bail. As observed in Table IV.1, judges imposed security bail for 100 defendants, five of whom were detained on full security. Analysis of release outcomes for the 100 defendants who were initially detained on security bail revealed that 19 were released by posting the money necessary to gain release. The release terms for six of the defendants were later changed by the judge to conditional; eight were released on matrix by the jails; six were transferred to other jurisdictions; six were sent to prison; charges were dismissed for 14 of the defendants; and the remaining 41 were released after pleading guilty to the current charges. It was not clear from the research findings whether being confined in lieu of security bail contributed to the defendants' pleading guilty. Goldfarb (1965), Goldkamp (1979) and Thomas (1976) concluded that defendants in pretrial confinement received *harsher punishments* than defendants on pretrial release, but the literature does not address

whether confinement also induces guilty pleas.

The comparison of initial pretrial decisions with release outcomes indicate that changes often occur within the release setting, such as judges reducing the restrictiveness of security bail to conditional release, or being released by the jail because of overcrowding. As noted in the "Wiring Schematic" of the Decision Process (Appendix H), the pretrial release process begins with the defendant, in his or her ability to post security bail. If unsuccessful in posting security bail, the defendant is incarcerated, setting into motion the decisions of jailers, release officers, and judges. If eventually the defendant receives pretrial release, the decision for the defendant is whether or not to show up in court as instructed. Follow-up data collection, through April 30, 1994, primarily to obtain dispositions on the criminal charges of the study group, revealed that 10.2 percent of the defendants had one or more FTA incidents after receiving pretrial release. In a few cases, most prevalent in Multnomah County, defendants who had been given pretrial release were subsequently rearrested four, five and six times later only to be given pretrial release again. The highest number of rearrest and FTA incidents was seven, applied to three defendants in Multnomah County. In several cases, the defendant was released on ten-percent security bail, only to fail to appear in court again. Multnomah County Circuit Court Judge Frank Bearden (Bearden, 1994) remarked on these situations by saying that defendants who are arrested, booked, released, and rearrested, if they stayed long enough to have their cases heard, might likely receive probation or have their cases dismissed; but, without a final disposition, the case remains active and they continually enter and leave the criminal justice system.

RESEARCH QUESTION 3

Is the process of pretrial release fair?

Introduction

To increase awareness of the pretrial release process, this section of the dissertation explores whether race and gender are associated with receiving pretrial release and the length of stay in jail. Incarceration, as noted earlier in Chapter 1, can have a detrimental effect on a defendant's health, safety, employment, relationships among friends and family, and social standing in the community. Receiving pretrial release after a lengthy stay in jail could therefore reflect on the overall fairness of the release process.

Equality in the administration of bail is grounded in the due process clause of the 14th Amendment of the U.S. Constitution, and in state and federal civil rights acts according to Shaughnessy (1982), Goldkamp and Gottfredson (1985), and Eskridge (1983). Shaughnessy notes that law enforcement and adjudication practices that are based on race, sex, and national origin have been construed by the Supreme Court as denial of equal protection under the 14th Amendment.

Saulters-Tubbs (1993) observed that within the last two decades an issue of primary concern in the field of criminal justice has been the disparate treatment of women offenders. In reviewing past research, Saulters-Tubbs concluded that disparate treatment is primarily due to the fact that women offenders not only violate the law, but also violate socially prescribed gender roles. Men who fail to conform to societal dictates are viewed as deviant. Women who fail to conform are considered even more deviant. Unlike men

who fall into a deviant category, women are deemed more immoral because deviance supposedly goes against their very nature. Women offenders are therefore guilty of double deviance. Previous research, according to Saulters-Tubbs, suggested that when female offenders were charged with committing non-typical or masculine crimes, they were more likely to be refused bail than men charged with similar offenses. The greatest disparity, however, occurred in the prosecutors' sentencing recommendations, where female offenders received harsher sentence recommendations than male offenders for both gender-neutral and typically masculine crimes.

Saulters-Tubbs (1993), in a study of 175 females and 1,482 males charged with narcotics offenses, found that gender of the offender appeared to have little influence on the charging decisions of prosecutors. While her study did not include pretrial release decisions and outcomes, she concluded that, "both prosecutors and judges may resort to assembly line justice in order to deal efficiently and quickly with the burgeoning caseloads. In so doing, the gender of the offender may play only a minor role in both prosecutorial and judicial decisions." (Saulters-Tubbs, 1993, p. 41).

Goldkamp and Gottfredson (1985) said women were released more on recognizance based on judges' decisions, but studies did not show that women were substantially better risks. In a study of the Nation's 75 most populous counties during May 1990, Reaves (1992) reported that males and females had about the same failure to appear rate. Reaves said that women were released more frequently on conditional releases, by posting bail through commercial bondsmen, and recognizance release. Men were released more frequently by posting full cash bond, released by the jail to avoid

overcrowding, and "unsecured bond," meaning that the defendant pays no money to the court but is liable for the full amount of bail should he fail to appear in court (Reaves, 1992, p. 7). Reaves did not indicate whether there were differences between males and females in receiving pretrial release.

On the issue of race and pretrial release, the literature revealed few empirical studies designed to observe how minority defendants compared with non-minorities in the release process. Eskridge (1983) surmised that while a sound empirical evaluation may identify race as a differentiating factor, to actually use race as a factor to determine release eligibility would be in direct violation of federal and state civil rights acts. Tobolowsky and Quinn (1993) compared released and detained defendants for a study group (N=210), wherein the authors reported that the proportion of White and African Americans who were detained was relatively equal to their representation in the study group. Hispanics, however, who comprised 12 percent of the study group, comprised 20 percent of the defendants who were detained. Most of the defendants who were detained, the authors said, were unable to post security bail; however, the authors did not offer further suggestions or explanations as to why Hispanics were disproportionately represented among defendants who were detained.

Freed and Wald (1964, p. 8), studying federal and state bail practices in the early 1960's, found that high bail was most frequently imposed in four types of cases: 1) organized crime; 2) internal security, i.e. espionage; 3) civil rights demonstrations; and 4) crimes of violence. While the authors did not examine race in relation to bail practices, other studies (Skolnick, 1967; Thomas, 1976) reported that African Americans

were often the target of arrest and detention during civil rights demonstrations in the 1950's and 1960's. Freed and Wald's findings that high bail was frequently imposed in civil rights cases could therefore be interpreted as impacting especially on African Americans.

In a study of 878 cases in the criminal courts of New York City, Shaughnessy (1982) found that only 39 percent were able to secure any form of pretrial release. Eighty percent of the cases studied were members of minority groups, including African American, Hispanic, and non-English speaking immigrants from Southern Europe. Shaughnessy found that all those released were employed, while employment among the minority groups was often marginal or seasonal. Shaughnessy concluded that employment counted heavily in the defendant's pretrial release, which left minority defendants at a particular disadvantage because minorities had a less favorable employment history than did non-minorities.

In several references in the literature (Lawrence, 1987; Johnson, 1983; Reiman, 1990), minorities are mentioned as receiving harsher treatment in bail procedures, although no empirical data are presented. Bates (1995), for example, reported that judges are less likely to release minorities on bail because of biases in the deliberation process, which assessment was based on anecdotes gathered in hearings. There is little doubt, however, that most of the views on American bail practices are that minorities are denied pretrial release more often than non-minorities (Eisenstein & Jacob, 1976; Goldfarb, 1965; Reiman, 1990).

Results of the dissertation research in relation to the issue of fairness will be

presented next. Evaluations and interpretations of the findings will then be discussed in the following chapter.

Receiving Pretrial Release

In the dissertation study group (N=619), 71 percent received some form of pretrial release. These releases were recognizance, conditional, releases under supervised pretrial programs, security release by posting ten percent of the bail schedule, and being released by the jail on matrix to avoid overcrowding. Also included in pretrial releases were defendants who were released by order of the parole board, defendants where cases were dismissed, and one defendant who was released because she had mistakenly been arrested because her name and general description matched a person for whom a warrant was outstanding. Table IV.2 (pp. 89-90) shows the frequency of releases by category for the study group.

The categories of non-pretrial release for the remaining 29 percent of the sample were time served, meaning that their cases were adjudicated in court prior to their release; transferred to other jurisdictions; and transferred from jail to prison. In all, 18 categories accounted for the releases from jail for the sample group.

Seventy-five percent of the study group is male and 25 percent is female. Of males, 71 percent received pretrial release compared to 73 percent of the females. The difference is not statistically significant (.30, the one-tail P-Value for the difference in percents). There would be some expectation, however, that if the release decisions were based on crime severity and criminal history, which are among the criteria prescribed in Oregon Law (Appendix C), males would have received pretrial release much less

frequently than did females. The evidence for this is that 56 percent of males were charged with a felony offense when booked into jail, compared to 48 percent of females. The difference in percents is statistically significant at .04. Also, 68 percent of males had a previous criminal conviction, compared to 58 percent of females, which is statistically significant at .01. When considering a previous conviction for a violent crime, 26 percent of males were in this category, compared to 11 percent of females, a significance of $< .01$ indicated by the one-tail P-Value for the difference in percents.

By race and ethnic background, 64 percent of the study group is White; 15 percent African American; 17 percent Hispanic, and four percent other ethnic backgrounds.⁶ Seventy percent of Whites received pretrial release, compared to 76 percent of African Americans and 69 percent of Hispanics. The one-tail P-value for the difference in percents revealed a significance level of .14 between White and African American, and a significance level of .36 between White and Hispanic.

While there was no statistical significance in comparing pretrial releases among the groups of White, African American and Hispanic, there were some variations when observing the actual types of release. Appendix I shows that White, African American and Hispanic defendants received recognizance, conditional, and supervised program releases in almost equal percentages. Whites, however, were released by posting ten-percent security bail almost twice as often as African Americans and Hispanics. African American defendants, on the other hand, were almost three times

⁶The other ethnic backgrounds in the study group include 10 Native Americans; 8 who were Southeast Asian; 2 Middle Eastern; and 2 Chinese/Japanese. Ethnic backgrounds were determined by the country of birth or ethnic classification as reflected in the jails' booking records.

more likely to be released on matrix by the jail compared to White defendants. Hispanics were released on matrix more often than Whites, but not as frequently as African Americans. Cases were dismissed for African Americans and Hispanics more than twice the frequency than for Whites. (While this section presents the research findings, the following chapter will discuss in more detail evaluations and interpretations of the findings).

For the defendants of other racial and ethnic backgrounds, eight of the ten Native Americans received pretrial release, as did seven of the eight Southeast Asians. Of the two Middle Eastern defendants, one received pretrial release, as did one of the two Chinese/Japanese. Due to the small number of defendants in the "other" category, tests of statistical significance in receiving pretrial release were not conducted with this group.

Logistic analysis, using "pretrial release" as the dependent variable, examined the relationship of gender, race, crime severity and criminal history to the release outcome. As observed in Table IV.3, gender was not an influential factor in receiving pretrial release, nor was race as represented by White, African American and Hispanic. Variables that had the most direct influence included being a probation violator, arrest on a felony charge, being charged with a narcotics violation, and being charged with multiple offenses. Defendants in these categories received pretrial release less frequently than those who were not probation violators, were arrested on misdemeanor charges, were not charged with narcotics violations, and were charged with one offense or a relatively low number of offenses. FTA status, previous conviction record, and even being charged with a crime of violence were not statistically significant in the pretrial

release outcome.

TABLE IV.3
LOGISTIC REGRESSION ANALYSIS
FACTORS ASSOCIATED WITH PRETRIAL RELEASE

Dependent Variable = Pretrial Release ----- INDEPENDENT VARIABLES	B	SIGNIFICANCE LEVEL
Failure to Appear	.19	.46
Hispanic	.40	.51
Prior Criminal Conviction	-.23	.07
Felony on Current Charge	.61	.01
Probation Violator	1.38	< .01
Gender	.00	.99
Violence in Current Charge	-.17	.56
African American	-.08	.90
Number of Offenses When Booked	.23	< .01
Convicted on Current Charge	1.47	< .01
Narcotics Offense in Current Charge	-.57	.04
White	.36	.52
Constant	-2.68	< .01
N = 597		

Days Held in Jail

All 619 defendants in the study group were released from the three county jails in which they were booked in July and August, 1993, with the last one leaving on January 5, 1994. The range of days held was 0 to 126; the mean days held was 10.0.

By counties, Multnomah's proportion of the study group (N=332) averaged the longest, with 11.8 days; Washington (N=193) 8.5 days, and Yamhill (N=94), 6.5 days. Thirty-two percent of the defendants were released on the same day they were booked. By the end of five days, 67 percent had been released, and at the end of 31 days, 91 percent had been released.

Differences in mean days held in jail before release were found between male/female, White/African American and White/Hispanic. As correlates to the length of jail stay, notable differences were also found between felony and non-felony charges, being convicted in the current case and not convicted, and having a prior criminal conviction as opposed to no prior conviction. Table IV.4 is a summary of the mean days held for the categories just mentioned. As observed, the mean length of jail stay for men was about three days longer than for women, which was statistically significant. Whites were released faster than were African Americans and Hispanics, the difference of which was statistically significant between White and Hispanic defendants. As noted, being charged with a felony increased the length of stay almost four times longer than those defendants charged with misdemeanors. Having a prior conviction also meant a longer stay in jail.

Multiple regression analysis was used to examine the relationship of gender, race, current charge and criminal history with the length of jail stay. Table IV.5 indicates that the variables having the most direct influence on the length of stay include the number of charges filed against the defendant when booked into jail. The research findings showed that defendants who were booked on only one charge had a mean days held in

jail of six; as the number of charges increased, the mean days held generally increased proportionally, up to 21 charges with a mean days held of 110.

TABLE IV.4
RELATION OF DEFENDANT CHARACTERISTICS
TO DAYS HELD IN JAIL BEFORE RELEASE

	MEAN DAYS HELD IN JAIL	T-STATISTIC	SIGNIFICANCE LEVEL *
MALE FEMALE	11.0 7.7	2.1	.02
WHITE HISPANIC	8.1 14.8	- 2.7	< .01
WHITE AFRICAN-AMERICAN	8.1 11.9	- 1.5	.07
FELONY NON-FELONY	15.4 3.6	8.0	< .01
CONVICTED NOT-CONVICTED	13.3 4.2	6.5	< .01
PRIOR CONVICTION NO PRIOR CONVICTION	11.6 7.0	2.8	< .01
* The level shown is the one-tail P-Value for the T-Statistic for difference in means.			

Being convicted on the current charge resulted in a longer jail stay than those who were not convicted, also statistically significant. Being arrested on a narcotics charge also had a direct influence on the length of jail stay, and being charged in a crime involving violence led to a longer stay in comparison to crimes not involving violence.⁷

⁷Crimes of violence included robbery, assault, rape, or other offenses wherein court records indicated violence was present in the offense for which the defendant was booked into jail.

Defendants who were in a probation violation status also increased their stay in jail compared to those who were not probation violators. For the study group, 23 percent were in a probation violation status when booked into jail. An interesting contrast is that FTA was not statistically significant (.32) in influencing the length of jail stay, although 20 percent of the study group were in that category.

TABLE IV.5
MULTIPLE REGRESSION ANALYSIS
FACTORS ASSOCIATED WITH LENGTH OF JAIL STAY

Dependent Variable=Days held before release ----- INDEPENDENT VARIABLES	T-STATISTIC	SIGNIFICANCE LEVEL
Failure to Appear	-.99	.32
Hispanic	.38	.70
Prior Criminal Conviction	-1.21	.23
Felony on Current Charge	-1.92	.06
Probation Violator	2.58	.01
Gender	.84	.40
Violence in Current Charge	2.37	.02
African American	-.04	.97
Number of Offenses When Booked	6.31	<.01
Convicted on Current Charge	3.70	<.01
Narcotics Offense in Current Charge	-2.74	.01
White	-.76	.45
Constant	1.20	.23
R ² .19		
N = 597		

Analysis of the research findings was focused on explaining why Hispanics averaged longer jail stays than Whites and African Americans. As recalled earlier, Whites averaged 8.1 days in jail, compared with 11.9 days for African Americans and 14.8 days for Hispanics. Significance levels for the one-tail P-Value for the T-Statistic for difference in means identified three variables as directly influencing the length of jail stay. These variables were: being charged with a felony (in the current charge), being convicted of the current offense, and having a prior criminal conviction (see Table IV.4, p.102). In addition, multiple regression analysis identified five variables as having the most direct influence on days held in jail:

	Significance Level
Probation violator	(.01)
Violence in the current charge	(.02)
Number of offenses when booked	(< .01)
Convicted on the current charge	(< .01)
Narcotics offense in current charge	(.01)

Each of these variables will be examined in relation to White, African American, and Hispanic defendants in the study group to observe whether the variables may account for differences in days held.

Felony offense in the current charge. Analysis of charge severity revealed that 52 percent of Whites were charged with a felony as the most serious crime, compared with 64 percent of African Americans and 56 percent of Hispanics. African Americans had the highest frequency of being charged with a felony, although their average days held in jail was about three days less than Hispanics. Since the degree to which charge severity might influence the length of jail stay could depend on a number of considerations, such as the nature of the crime, relationship between victim and the

accused, input from the prosecuting attorney, and other factors, it is difficult to assess this variable's influence on days held.

Prior criminal conviction. Analysis revealed that 69 percent of Whites had a prior criminal conviction, compared with 79 percent of African Americans and 44 percent of Hispanics. For previous conviction for a violent crime, such as interpersonal crimes of rape, robbery and assault, 21 percent of Whites had a prior conviction for a violent crime, compared with 39 percent of African Americans and 13 percent of Hispanics. The research findings on the variable of prior criminal conviction would suggest that Hispanic days held in jail would average fewer days than Whites and African Americans, not more days.

Probation violation. Research findings indicated that 23 percent of Whites were in a probation violation status when booked into jail, compared with 32 percent of African Americans and 20 percent of Hispanics. As with the variable of prior criminal conviction, Hispanics had a lower incidence of probation violation than Whites and African Americans, suggesting that probation violation does not account for Hispanics having a longer stay in jail.

Violence in the current charge. Violence was a component in the current charge for 20 percent of Whites, 22 percent of African Americans and 13 percent of Hispanics, which factor would also not be expected to account for Hispanics being in jail longer.

Number of offenses when booked. On the number of charges at the time of booking into jail, about half of Whites and African Americans were charged with only one offense, wherein only 42 percent of Hispanics were charged with a single offense.

Between two and four offenses were lodged against half of the Whites and half of the African Americans, while this applied to slightly over half of Hispanics. For five percent of Hispanics, more than four charges were filed against them at the time of booking, which also applied to three percent of Whites and none of the African Americans. As recalled in the overview of the release process, to gain release prior to arraignment by posting security bail would require posting bail on each separate charge if the arrest took place in Multnomah or Yamhill County. (Washington County allowed posting bail on the most serious offense if all charges stemmed from the same incident). Since Hispanics had a slightly higher frequency of being charged with multiple offenses, this factor could conceivably account for some increase in jail stay for Hispanics in comparison to Whites and African Americans. According to W. Barrigan (1993), the influence of multiple charges to how long a defendant would remain in jail would depend on the discretion of the judge and prosecutor, as in whether the prosecutor will drop certain charges in exchange for a guilty plea to a reduced number of charges. The implications of this finding in the research (number of charges) will be evaluated in more detail in the following chapter).

Convicted on the current charge. For Whites, 48 percent were convicted on the current charge; 46 percent of African Americans were convicted; and 48 percent of Hispanics were convicted. Almost all of the convictions were the result of guilty pleas to the most serious charge. The frequency of conviction was exactly equal for Whites and Hispanics, while the frequency of conviction was slightly lower for African Americans. A comparison was made of sentences that were imposed on those convicted,

showing that 31 percent of Whites were given incarceration time, as were 28 percent of African Americans and 31 percent of Hispanics. The length of the incarceration terms is shown below:

	White (N=394)	African American (N=95)	Hispanic (N=108)
1 - 30 days	18%	13%	16%
31 - 60 days	4%	2%	2%
61 - 90 days	3%	1%	3%
91 days - 1 year	4%	7%	6%
1 - 5 years	3%	4%	3%
6 - 10 years	1%	1%	--
Over 10 years	1%	--	--

In assessing the variable of conviction on the current charge in relation to the length of jail stay for Whites, African Americans and Hispanics, it was observed in the data collection for the study that most inmates seldom serve the total number of days in their sentence. W. Barrigan (1993) explained that the courts usually give credit for time in jail served prior to adjudication of the case and the time is occasionally further reduced by the judge depending on special circumstances, such as employment obligations of defendants, family needs and other circumstances that are presented to the judge by the defendant or his or her attorney. Matrix releases may also be granted to defendants following conviction and sentencing. The implication of this finding is that it would be difficult to assess, from merely observing the sentence given a particular defendant, how long the defendant actually spent in jail. Analysis was therefore conducted, using crosstabulation tables on race by jail sentence while controlling for days held in jail. The analysis revealed that for Whites who were sentenced to one to 30 days in jail, their average jail stay was 7.5 days. For African Americans sentenced to one to 30 days, their

average jail stay was 12.1 days, and for Hispanics, their average jail stay was 19.8 days. In the category of 31 to 60 days for the jail sentence, Whites averaged 10.4 days, African Americans averaged 4.5 days, and Hispanics averaged 34.3 days in jail before release. For defendants who were sentenced to 61 to 90 days, Whites averaged 27.9 days before release, compared with 28.0 days for African Americans and 54.3 days for Hispanics. The final category that was examined in the crosstabulations was the sentence of 91 days to one year. Under this sentence, Whites averaged 31.3 days before release, compared with 27.4 days for African Americans and 49.1 days for Hispanics. The implication of this finding is that, when given similar jail terms, Hispanics in the study group served longer times in jail than Whites and African Americans. This suggests that one explanation for Hispanics averaging longer stays in jail is that they were detained for longer periods of time following conviction than were Whites and African Americans. This finding will be further evaluated in the following chapter.

Narcotics offense in current charge. For White defendants in the study group, 17 percent were charged with narcotics offenses, as were 23 percent of African Americans and 42 percent of Hispanics. Analysis further disclosed that almost three-fourths of the narcotics offenses for Whites and African Americans were for possession of narcotics, compared with only one-fourth of Hispanics being charged with possession. Conversely, one-fourth of the narcotics cases involving Whites and African Americans were for delivery of narcotics, compared to three-fourths for Hispanics. Could this difference, Whites and African Americans being charged mostly with possession of narcotics, while Hispanics were charged mostly with delivery (selling) narcotics, be a factor contributing

to Hispanics remaining in jail longer? This will be evaluated further in the next chapter.

On the issue of fairness in the release process, it was recalled that 71 percent of the study group received pretrial release. For recognizance releases, which is probably the most "trusting" of the release categories, meaning that the defendant is promising to return to court and the releasing authority has reason to believe him or her, 23 percent of Whites were released on recognizance, compared to 20 percent of African Americans and 18 percent of Hispanics. Whether this implies that African Americans and Hispanics are less trusting than Whites in the likelihood that they will appear for court is difficult to assess, but is an area where further empirical research might be productive (suggestions for further research are presented in the final chapter). For defendants released on conditions, 24 percent of Whites, 24 percent of African Americans, and 24 percent of Hispanics were thus released, suggesting a surprising uniformity among release officers, jailers, and judges in their deliberations that conditional terms of release would likely ensure the appearance of the defendant in court. Further analysis, however, showed that the pretrial release outcome, meaning the actual departure from jail as a result of the release decision, was different for the racial and ethnic groups in the study. For example, 33 percent of Whites were released from jail on the same day they were booked. By comparison, 26 percent of African Americans were released on the same day they were booked, and 23 percent of Hispanics left on the same day they were booked. By the end of one week (7 days), 59 percent of Whites in the study group had been released. Of African Americans, 57 percent were released by the end of one week, and for Hispanics, 50 percent. By the end of two weeks, 63 percent of Whites were out of

jail, compared with 65 percent of African Americans and 58 percent of Hispanics. These findings suggest that while there were no statistically significant differences among Whites, African Americans and Hispanics in *receiving* pretrial release, Whites were released, on average, faster than African Americans and Hispanics. Implications of this finding will also be evaluated in the next chapter.

SUMMARY OF RESULTS

This chapter has presented the research findings in relation to the research questions. The first question addressed the historical and legal features of pretrial release. The literature review in Chapter II outlined the origins of pretrial release, the bail reform movements in America, and previous research which sought to develop prediction capabilities that would be useful to the courts in making release decisions. The literature review also included legislative and judicial activities that resulted in a number of changes in pretrial release, such as preventive detention at both the national and state level and the creation of statutory laws governing release procedures in most states. The dissertation research findings indicate that Oregon's laws on pretrial release were influenced by the Vera Foundation studies of the 1960's (Ares et al., 1963). The findings also indicate that Oregon does not authorize preventive detention, meaning that the release decision is limited to the least restrictive to ensure the appearance of the defendant in court (Appendix C, Oregon Laws, 1989)

The second research question asks how the pretrial release process works. The grounded theory approach for the study enabled the research to begin by conducting

inquiries of jail administrators, judges, and release officers, and by reviewing Oregon laws, court decisions, and policy manuals dealing with matrix release procedures and operations of pretrial release offices in the three target counties. As information was gathered on the release process, new questions would arise, which led to investigations in other areas. For instance, the different forms of payment accepted by the three county jails for posting security bail was not discovered until results of the research were being reviewed. The question then came up -- how do inmates post bail?

Understanding the release process was then enhanced by observing how the process actually works in relation to a group of defendants who had been in jail. The 619 defendants in the study were tracked through the booking stage, jail custody, and adjudication to determine how pretrial release decisions affected their release outcomes. The study found that the release environment is highly interactive as defendants move in and out of the booking stage, jail custody, arraignment, and case adjudication. To illustrate, at the booking stage defendants may post financial bail, bypassing the custody stage and going straight to arraignment or case adjudication. If unable to post bail, the defendants are incarcerated, requiring a pretrial release decision to be made by the jail, release officer or judge. If released by the jail, as on recognizance, conditional or matrix release, a pretrial decision would be unnecessary for release officers or judges. Pretrial decisions are therefore interdependent on events, such as jail overcrowding, defendants pleading guilty at arraignment, and the backgrounds of defendants, such as crime severity, number of charges, and criminal history. As illustrated in the "Wiring Schematic" of the Decision Process (Appendix H), the pretrial release options for any

individual defendant can change during the defendant's incarceration period. Release outcomes may be the result of discretionary decisions by jailers, release officers, judges, the financial resources of the defendant, the jail's capacity and population, and influences from prosecutors, defense attorneys, and other sources. If the release process could be summarized in a statement, results of the research found the process to be dynamic, interactive throughout the defendant's incarceration period based on decisions made by the defendant, jailers, release officers, and judges, and subject to other influences in the release environment and the jail's population.

The third research question asked if the pretrial release process was fair. The issue of fairness was raised often in the literature (Beeley, 1966; Eisenstein & Jacob, 1967; Flemming, 1982; Goldfarb, 1965; Goldkamp, 1979; Saulters-Tubbs, 1993), and was of interest to the Oregon Supreme Court Task Force on Racial Equality (Carson, 1992; Landau, 1992). The study group for the dissertation consisted of 394 White defendants, 95 African Americans, and 108 Hispanics. The overall study group (N=619) was comprised of 465 men and 154 women. To assess fairness, the groups of White, African American, Hispanic, and men and women were observed in relation to receiving pretrial release and length of stay in jail.

The study found that 71 percent of the defendants received pretrial release. While women received pretrial release somewhat more frequently than men, the difference was not statistically significant. Differences in receiving pretrial release between White and African American and White and Hispanic were also not statistically significant. Variables that were directly related to receiving pretrial release were being a probation

violator, arrested on a felony charge, being charged with a narcotics offense, and being charged with multiple offenses.

On the length of jail stay, the study found that Whites were released, on average, faster than African Americans and Hispanics, with the difference between White and Hispanic being statistically significant. Multiple regression analysis, using days held as the dependent variable, indicated that the most significant variables associated with length of jail stay included being charged with multiple offenses, being convicted for the current offense, being charged with a narcotics offense, being charged with a crime involving violence, and being a probation violator. Analysis of each of these variables in relation to the length of jail stay for White, African American and Hispanic defendants in the study group explored why Hispanics had longer average jail stays than the average jail stays of Whites and African Americans. Variables relating to the number of charges against the defendant at the time of booking and narcotics offenses suggest that these two variables might contribute to Hispanics remaining in jail longer, which will be evaluated in more detail in the next chapter. Analysis also showed that Hispanics remained in jail longer than Whites and African Americans after receiving similar jail sanctions. Another finding of the research was that while Whites, African Americans and Hispanics were given pretrial release in relatively equal frequencies, Whites were released on the same day as booked into jail more frequently than were African Americans and Hispanics. At the end of one week, a larger percentage of the White defendants had been released from jail than the percentages of African Americans and Hispanics in the study group.

CHAPTER V

EVALUATION AND INTERPRETATION OF RESULTS

This chapter will evaluate the research findings and offer interpretations and clarifications in some areas of the findings. The evaluation will look at each of the three research questions, focusing on areas where the research was the most meaningful in adding knowledge and understanding of the pretrial release process and environment. Areas where the research findings raised additional questions will be explored, with implications for further research.

The first evaluation will be a perspective that combines Research Question Number 1, which deals with the origins and legal features of pretrial release, and Research Question Number 2, which asks how the pretrial release process works. The discussion will be centered around the issue of community protection and the concept of "dangerousness," meaning: from what has been learned from this research, should citizens be concerned about their safety because of the way the pretrial release system operates? (This was not initially included in the research questions because this researcher's concern about community safety materialized only after analysis of the research findings).

It may be recalled, in the literature review in Chapter II, that America went through a period, beginning in the 1920's and continuing through the 1970's, where courts were encouraged to use nonfinancial conditions of bail. As observed by Eskridge

(1983), considerable progress was made, with courts resorting more to the use of recognizance and conditional releases and relying less on security bail. Then, however, in the mid 1980's, the federal government enacted legislation to allow courts to detain defendants in non-capital cases wherein the defendant posed a danger to communities. Many states also authorized detention based on community safety. As observed by Toborg (1986), in four cities of states with preventive detention, she found that the dangerousness clause was seldom used, primarily because of the difficulty of prosecutors proving to courts that the defendant posed a danger to others. Another problem, which did not inhibit Congress when enacting the legislation authorizing preventive detention or the U.S. Supreme Court when upholding the constitutionality of the practice (the literature on preventive detention is reviewed on pages 52 to 59), is that predicting pretrial crime has not been possible (Eskridge, 1983).

It must be assumed that there are occasionally cases that come before the courts where the defendant is viewed by the judge, prosecutor, and law enforcement as posing a risk to the safety of others. Such cases may involve assaults, rape, robbery, domestic violence, or other crimes where the defendant has displayed a repeated pattern of arrest, release, and reoffending. Studies reported by the Bureau of Justice Statistics (1992), for the 75 largest urban counties in 1988, indicated that about 19 percent of felony defendants who were released pretrial were rearrested during the pretrial period. Most rearrested defendants, the study found, are rearrested for the same type of felony as the charge already pending against them. Rhodes (1985) concluded that studies of pretrial release in the adult courts indicate that approximately ten to 15 percent of the offenders

considered safe enough to go home actually commit new crimes while awaiting their court hearings. Reaves (1992) reported that about 16 percent of released defendants were rearrested while on pretrial release. Released defendants with at least one prior conviction were about twice as likely to be rearrested as those with no prior convictions.

Turning to the dissertation research, of the proportion of the study group that received pretrial release on recognizance, condition and by posting security bail, 38 percent of those released had been charged with a felony when booked into jail. Over half of those released with a felony charge were accused of a Class C felony, which is the least severe felony category under Oregon's criminal code. Another 17 percent of those charged with a felony and released were booked on Class B felonies, and 21 percent of the felony releases had been booked into jail on Class A felonies, which is the most severe crime category in Oregon's criminal code. From another perspective, of the whole study group (N=619), of which about 54 percent were booked on felony charges, almost half of those booked on felonies were released on recognizance, conditionally, or by posting security bail. In addition, of the 149 defendants whose cases were dismissed, almost one-fifth of those defendants had been charged with a felony. If matrix releases are also considered, 78 percent of those releases involved people charged with felonies. In all, 220 inmates, over one-third of the study group, had been booked into jail on felony charges and released.

The central question raised is, if the issue of dangerousness was of genuine concern for the prosecutor, judge, victim, police, and others, what could the courts do? Oregon law does not authorize the consideration of dangerousness in the pretrial release

determination, as stated in the statute governing pretrial release (Appendix C) and as emphasized in the decisions of *Collins v. Foster* (1985) and *Gillmore v. Pearce* (1987), where the courts specifically said that preventive detention is not authorized in the state of Oregon. Would the only alternative, therefore, be for the courts to set bail high enough to be unattainable by the defendant to assure his or her detention and the safety of others? Toborg (1986) observed that the practice of high money bond, while illegal because it is contrary to state law, ". . . is commonly used and widely endorsed as a way to secure detention." (Toborg, 1986, p.39). Toborg also concluded, however,

The overwhelming reliance on money bail as the mechanism for determining the release or detention of a potentially dangerous defendant . . . will not assure detention for those defendants where it is warranted, nor will the possibility of financial loss necessarily be an adequate condition to protect community safety from harm by defendants released on bail (Toborg, 1986, p. 40).

The issue of public safety was not thought of when designing the dissertation research. It was not anticipated that such a surprising number of inmates in the study group who had been charged with felonies would be released. The matrix format, as described in Chapter IV, gives some assurance that jails weigh the factors of danger and risk to communities in making release decisions. In November, 1994, a special grand jury looked into all Oregon state and county corrections, concluding that, "The grand jury was troubled by the discovery of just how vulnerable the community has become to the release of dangerous criminals from jail." (Monzano, 1994, p.B7). Cockle (1994) reported on community outrage when a pretrial released defendant attacked and killed a police officer in eastern Oregon. Danks (1994) also reported on the frustration of prosecutors who are unable to use potential danger to the community when arguing for

strict release conditions in cases before the court. While the issue of public danger resulting from the pretrial release of inmates is not resolved, the research findings that felony defendants are often released implies that more studies are needed to assess the risk to communities in the release process.

The second evaluation is centered on the issue of fairness in the pretrial release process. Fairness is evaluated from the perspective that men, women, and different races should have equal ability to be released before trial and the length of jail stay should not depend on gender or race. The research findings indicate that Hispanics in the study group had more difficulty getting out of jail even with pretrial release, and served longer jail terms than Whites and African Americans who had been given a similar sentence. A concern brought to light in the findings is whether a difference of one percent, which is the difference between Whites and Hispanics receiving pretrial release, would reasonably equate to a difference of Hispanics averaging almost one week longer in jail than Whites. As recalled, 70 percent of Whites were released, compared to 69 percent of Hispanics; Whites averaged 8.1 days in jail; Hispanics averaged 14.8 days in jail. Analysis of the research findings indicate that Hispanics and African Americans were less likely than Whites to be released on the same day of booking into jail, and by the end of one week, Hispanics and African Americans were still less likely than Whites to be released. Analysis also focused on the indicators observed in multiple regression as directly influencing days held in jail. It was observed that Hispanics were more often than Whites and African Americans to be charged with multiple offenses. It was also observed that Hispanics were charged with narcotics offenses more frequently than were

Whites and African Americans, and perhaps more relevant to the issue of the release process, the types of narcotics offenses, which for Hispanics more often involved delivery (selling), while for Whites and African Americans, the charge was most often possession.

A central question is whether the differences in length of jail stay between minorities and non-minorities of the study group are attributed to the factors of multiple offenses and narcotics offenses, or if the differences are based on race. To evaluate this question, two hypotheses are considered. The first hypothesis assumes that the combination of multiple offenses and being charged with delivery of narcotics tended to increase the length of jail stay for Hispanics. Multiple offenses, as observed in the research findings in the discussion of the release process, would have generally made it more difficult to post security bail, if the defendants were required to post bail on each charge, as required in two of the three counties in the research setting. Multiple offenses may also have increased the seriousness and priority of the crimes in the perception of the release officers, jailers, and judges, whereby releases on recognizance and condition would be more unlikely. With multiple offenses tied in with delivery of narcotics, the priority of the cases may have been further heightened. The emphasis nationwide on the investigation, prosecution, and punishment of narcotics offenders is well documented (Bureau of Justice Statistics, 1992; Goldkamp, 1989; Flesher, 1992; Forer, 1994; Walker, 1994). The perceptions by the judges in the Hispanic narcotics cases, that delivery of narcotics deserves strong sanctions, could equate to the longer jail terms served by Hispanics, longer terms than Whites and African Americans who were less often charged with delivery of narcotics. To test this hypothesis, however, would require

a case-by-case review with the prosecutor and judge to elicit their rationale and motivation behind the prosecution and sentencing of the defendants, which was not done in the dissertation study.

A second hypothesis places race in a more prominent role in accounting for the differences in length of jail stay for minorities and non-minorities in the study group. As noted earlier, Whites were more likely than African Americans and Hispanics to be released on the same day of being booked into jail. For Whites (N=394), 33 percent were released on the day of booking; for African Americans (N=95), 26 percent were released on the day of booking, and for Hispanics (N=108), 23 percent were released on the day of booking. By the end of one week, 59 percent of Whites in the study group had been released, compared with 57 percent of the African Americans and 50 percent of the Hispanics. It was also observed that while 47 percent of Whites received recognizance and conditional releases, these two types of releases were granted to 44 percent of the African Americans and 42 percent of the Hispanics. In what ways could race influence these differences in length of jail stay? In the decision-making process, release officers, jailers and judges may have perceived minorities as posing a greater risk of flight than non-minorities. For Hispanics, these perceptions may have included a lack of community ties, employment instability, and other factors related to an assessment of flight risk. Furthermore, Hispanics may have communication problems and have less comprehension of the judicial process than do non-minorities. Even with assistance of interpreters, Hispanics may distrust the judicial and corrections systems, which could further reduce communication between the defendant and those in decision-making

capacities. In the informal context of courtrooms, Hispanics may lack the ability to plead for shorter sentences or present exigencies of employment, family needs, or other reasons that could lead to judges reducing the terms of their jail sentences.

In several respects, the issue of race and ethnicity in the dissertation study is also reflected in national trends in criminal justice. Walker (1994), for example, observed that African Americans comprise less than 14 percent of the U.S. population, but represent over half of the populations in prisons and jails. In Oregon, African Americans comprise less than two percent of the state's population (Center for Population Research Census, 1992), but account for over 15 percent of the dissertation study group. Hispanics, comprising approximately four percent of Oregon's population (Center for Population Research Census, 1992), comprise 17 percent of the study group. Skolnick (1967) and Walker (1994) suggest that minorities are often and easily targeted by law enforcement for arrest on suspicion, where actual evidence of criminal wrongdoing is not always present. The dissertation study found that African Americans in the study were more than three times as likely to be released on matrix than Whites, and Hispanics were released on matrix more frequently than Whites. Cases were also dismissed more frequently for African Americans and Hispanics than for Whites. The higher frequency of case dismissals for minorities in the study could indicate that evidence in the cases was lacking, or the procedures for gathering the evidence would not conform to legal standards. Nagel (1983) said most case dismissals are the result of reluctance of witnesses to testify, withdrawal of complaints by victims, inability of police to locate reliable witnesses, and prosecution priorities that eliminate many cases from prosecutive

potential. In narcotics cases, Forer (1994, p.151) observed,

An American Bar Association study found . . . a pattern of racial discrimination. Minority adults arrested for drug crimes rose by 57 percent between 1986 and 1991, while non-minority arrests rose by 6 percent. Whereas one third of all persons arrested were minorities, they made up half the prison population. Cocaine, the preferred drug by minority users, is penalized more heavily than heroin, which is more widely used by the White community.

While it is not possible to test the two hypotheses presented above within the parameters of the dissertation research, meaning that data were not collected on the reasoning and motivation underlying release decisions in the cases, the research did not reveal racism was behind pretrial release decisions or procedures in the three counties studied. To the contrary, in all instances of personal contacts between the researcher and jail administrators, corrections personnel, release officers, judges, and others, these public servants were open, cooperative, and highly professional. Personnel in the jails and release offices made available the records and raw-data files for scrutiny and review without hesitation. If anything, there was the sense that they would like nothing better than to reduce the jail populations as swiftly and efficiently as possible, where the gender, race or ethnicity of an inmate was important only to the extent that another inmate would add to the incremental stress and strain in a jail already crowded beyond human tolerance.

In the overall evaluation of fairness in the release process, the study found that men, women, and different races have equal ability to be released before trial. On the length of jail stay, however, the research findings showed that White defendants in the study group tended to be released sooner than African Americans and Hispanics, and the differences could not be adequately explained by the factors which were shown to directly

influence the days held in jail. The implication of this finding is that additional research is needed which addresses the interaction of minority defendants in the release process, which will be discussed further in the concluding chapter.

CHAPTER VI

CONCLUSIONS

This final chapter will consider the contributions of the study to the body of knowledge on the pretrial release process. Practical applications of the study will be suggested, and implications for further studies will conclude the chapter.

The primary objective of this study has been to advance our understanding and knowledge of the pretrial release process. The release environment in the three counties studied turned out to be more complex than envisioned when the research project began. There were many challenges in designing the study, and the data collection phase was not without occasional bewilderment. An illustration of one of the difficulties was in determining how some of the defendants in the study group got out of jail -- meaning who decided on their release status? It seemed that they just walked out without a trace of paper. Security measures of the jails, of course, indicated that inmates really do not just walk away unless someone in authority gives them permission to do so. In many situations, a "triangulation" of sources was useful in tracing release outcomes to specific decisions, meaning sources of jail records, court files and prosecuting attorney files. If a person is booked into jail on probable cause, the prosecutor may decide quickly that the case lacks merits of prosecution. The case is dismissed, the defendant released from jail, and there would be no record of the case in court files. In some cases, the defendant first was arraigned in District Court on misdemeanor charges, where the judge rendered a

pretrial release decision. The misdemeanor charges were then dismissed and the case was transferred to Circuit Court to handle the felony charges against the defendant. In Circuit Court, the judge often changed the pretrial release status of the defendant. In one case, the District Court judge rendered a release decision of security bail for the defendant. The Circuit Court judge changed the release terms to conditional. The defendant was released, however, by the jail on matrix because of overcrowding. All charges were dismissed by the prosecuting attorney. How should, therefore, the release be coded? There were two judicial pretrial release decisions, one jail decision, and the case dismissed. (The case was coded in data collection as a matrix release, since that was the way the defendant was released from jail). While the research results show only one type of release per defendant, the release process was somewhat more diffuse and less clearly defined as perhaps the study implies.

In determining the best way to investigate the release process, the three research questions -- question one dealing with the history of pretrial release; question two describing how the release process works; and question three exploring the fairness of the release process -- seemed an effective way to explore the essential components of the release environment. From another perspective, the research questions directed the study into the past, into the present, and into the matter of fairness, which has been at the root of much of the research, discussion, and debate of pretrial release in America through the years. Presenting the findings in context with the research questions also seemed a good way to maintain the focus of the study. The findings were presented in the same order of the research questions.

It is felt, overall, that the study has generally advanced our present understanding of the pretrial release process. The major contributions of the study are primarily in the following two areas:

1. The release process was described from the point of incarceration to final adjudication of the case for a study group of 619 criminal defendants. The study showed the various methods of release from jail, such as recognizance, matrix, and case dismissals, and identified the principal decision-makers in the release environment, who were the defendants, jailers, release officers and judges. The releases were analyzed to show how defendant characteristics, such as crime severity and criminal history, affected the release outcomes. This contributes to the body of knowledge in one respect because the literature showed that the release process had not been studied. Also, no one has documented the interaction of defendant releases and decisions. This information could be useful for future policy changes, by showing the interaction of release decision and outcomes.

2. On the matter of fairness in the release process, the research findings showed that factors such as a felony charge, multiple offenses, probation violation, past conviction record, conviction on the current charge, and narcotics offenses influenced the pretrial release outcome and the length of jail stay. While gender and race did not influence receiving pretrial release, the length of jail stay was generally longer for minorities than for non-minorities. This finding in the research was evaluated from two perspectives: one, that the criminal charges influenced the longer stay in jail for minorities, and two, that race or ethnicity influenced the jail stay. Although both

perspectives were explored, the discretionary nature of decision-making in the release environment suggests that either perspective could be valid. A contribution of the research findings on fairness is in bringing attention to potential problems of minorities in pretrial release and incarceration situations. Suggestions for further studies on this issue will be discussed later in this chapter.

PRACTICAL APPLICATIONS OF THE STUDY

1. The information gathered for this research might benefit the release assistance offices in the three counties studied. During the many contacts of release officers by this researcher, the release officers expressed interest in learning about the research findings. Results of the study could be shared with the release officers orally during future meetings, or a brief presentation by the researcher could be made at one of the conferences held periodically by release officers in the Northwest region.

2. The Oregon Supreme Court Task Force on Racial Equality in the Judicial System expressed interest in the pretrial release process. Findings of this research will be shared with members of the Task Force during one of several meetings planned in the future by Task Force leaders.

3. The research findings may encourage criminal courts in the three counties studied to review the interaction of minority defendants in the judicial process. The observation that minorities tend to remain in jail longer than non-minorities implies that some defendants could lack communication skills or comprehension of the judicial system.

SUGGESTIONS FOR FUTURE STUDIES

1. Additional research is needed to explore the issue of fairness in the pretrial release process. In particular, research designed to assess how Hispanic defendants interact with judicial decisions, sentencing, defense attorneys, interpreters, and others might shed light on a finding in the dissertation research that Hispanics averaged longer jail stays than Whites.

2. Additional research on the arraignment process in criminal courts might be productive in showing whether detained defendants feel more compulsion to plead guilty than do defendants who have been released prior to trial. An observation in the research was that detained defendants more often plead guilty than those not detained. The question that arises is whether the detained inmates figure they may as well plead guilty since they are already locked up.

3. Additional research on the pretrial release process in other counties would enable a comparison of release practices. It would be particularly informative to observe the release process in the counties of Eastern Oregon, with less population density, possibly less jail crowding, and fewer resources than in the counties studied for the dissertation. The possibility that jail crowding influences release outcomes could best be tested in counties with less jail crowding.

4. The observation that a large number of inmates who had been charged with felonies and were released on recognizance, conditionally and on matrix suggests that further studies might be warranted to assess the danger to communities resulting from

these release procedures. The study would no doubt be welcomed by the community, which views pretrial crime as high.

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APPENDIX A
MATRIX RELEASE PROCEDURES
WASHINGTON COUNTY

APPENDIX A

*Washington County
Sheriff's Office*

Sheriff Jim Spinden

JAIL PROCEDURE

MATRIX RELEASES - JAIL CROWDING

POLICY : 4-10-0193
EFFECTIVE : 1-01-93

POLICY

To comply with Federal Court Order # 83-634 (a Consent Decree) and by authority granted in O.R.S. 137.520 (3), shift commanders at the Washington County Jail may release inmates to ease jail overcrowding, using the below listed procedures.

PROCEDURE**1.0 Matrix Computation**

- 1.1 Upon the decision to lodge an inmate in a living area of the Washington County Jail, a matrix score will be assigned to the inmate.
- 1.2 Matrix scores will be assigned by following the formula listed on the matrix computation form, SOCD # 54. The final score will be transferred to the inmate 5x8 card, listed in the lower center of the card under "classification".
- 1.3 Matrix scores will be recomputed by the officer assigned from the graveyard shift whenever any of the following occurs.
 - Charges are added or released.
 - The inmate becomes assaultive, disruptive, unstable, unpredictable or an escape risk.
 - The inmate is returned from the restitution center or removed from trusty status.
 - The inmate develops psychological problems.
 - The inmate is reclassified to 7 Close or 8 MAX custody.
 - Staff become aware of any information (CCH, alias names, etc) which were unknown when the original matrix score was assigned.
- 1.4 Any staff member discovering changes described in section 1.2 of this procedure is responsible for listing the inmate's name and status change on SOCD form number 58.

2.0 Matrix Ineligibles

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- 2.1 Inmates who may be a danger to any person or themselves will not be included when considering matrix releases. Any staff member discovering any reason to believe an inmate to be a danger to another person is required to place that inmate's name on SOCD form number 56. Reasons for inclusion on this list include, but are not limited to the following:
 - Arresting officer concern for the safety of any person.
 - Statements made by the inmate indicating some danger to themselves or another.
 - Intoxicated inmates unable to locate a responsible person.
 - Statements made by any person in person or by telephone that the inmate is a threat to another person.
 - The inmate is charged with any person to person violent crime in which the victim is not aware of the release beforehand, and specifically agrees to the release.
 - 2.2 Inmates that are pending a disciplinary hearing or adjudication will be placed on the matrix ineligible list by the officer initiating the disciplinary report. They will remain on the list until the hearing or adjudication has taken place.
 - 2.3 Inmates sanctioned to disciplinary segregation will be placed on the matrix ineligible list for the duration of the disciplinary segregation.
 - 2.4 Inmates charged with or serving a sentence for direct contempt of court will be placed on the matrix ineligible list.
 - 2.5 Inmates listed on the ineligible list will not be released from custody for overcrowding reasons.
 - 2.6 The matrix ineligible list will be reviewed daily by the programs manager for accuracy and continuance. Should an inmate no longer be deemed a threat to themselves or another, they may be removed from the ineligible list. In such cases the programs manager will document the date, time and reason for removing the inmate from the list on SOCD form number 54.
- 3.0 Release Procedures
- 3.1 Matrix releases will be considered only after other release options have been eliminated. These options include normal recognizance releases as outlined in Circuit and District General Court Order number 61; releases after security or bail has been posted; releases arranged by the court release officers; and releases arranged for by the programs manager.
 - 3.2 Matrix scores will be examined on a daily basis and a list of potential releases will be prepared for the shift supervisor. This is a responsibility of the programs manager during his or her work week, and of the post five officer during the absence of the programs manager.
 - 3.3 The listing of potential releases will be documented on SOCD form number 55, which will be maintained at the sergeant's work station. Any person assigned a matrix score following completion of the potential release list, will be added to the list if their score is lower than any number currently listed.
 - 3.4 Shift supervisors, on an as needed basis will choose the lowest scoring inmate, not listed on the ineligible list, for release. Pre-sentence inmates released using the matrix system will be released using a standard recognizance form. At the bottom of the form, the release should be clearly noted as a matrix crowding release. The matrix score and authorizing supervisor should also be listed at the bottom of the recognizance form.

APPENDIX A

- 3.5 Sentenced inmates will be considered for normal matrix release if at least two thirds of their sentence has been served, and, they have been approved for an early release by the court.
- 3.6 Shift supervisors will choose inmates for matrix release based on their assigned matrix scores. The lowest scoring inmates, not on the ineligible list, will be released as required to maintain control of jail overcrowding.
- 3.7 Upon releasing any inmate using the matrix system, the releasing officer is responsible for listing the date and time of release as well as the authorizing supervisor on SOCD form number 55.

Michael T. Conley, Captain

Jim Spinden, Sheriff

Replaces Policy 4-10-0192
Editing Officer -
Next Scheduled Review 1-01-94

Policy 4-10-0193
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APPENDIX A

Dress-In & Strip Search Record

Property: Blue Bag
Locker# _____

Inmate: _____ Booking# _____

Officer: _____ BPST# _____

Strip Search Conducted: Yes No Date: _____

If "Yes", the reason for the search was (mark all that apply):

- ☐ Charged with a *Drug Offense* or a *Felony Crime that is regarded as violent*.
- ☐ CCH includes a drug use *history* or a *Felony Crime* that is regarded as violent.
- ☐ *Demeanor* of the inmate (specifically list what caused the search; include dress, actions, Under the influence of narcotics, furtive movements, etc. in the comments section).
- ☐ The inmate was *transported* to the Washington County Jail from another facility or was reporting to the jail to begin a sentence.

Comments:

Body & Skin Condition
(document the area)

Crabs
Lice
Rash
Cuts
Tattoos
Scars
Bruises
Tracks
Bleeding
Prosthesis
Cast

APPENDIX B

SURVEY FORM ON PRETRIAL RELEASE PRACTICES

APPENDIX B

QUESTIONS

1. How many citations were issued
2. What were the crimes for which citations were issued
3. What is the policy, regulation, legislation governing citation
4. How many felony arrests were made in the county
5. What are the offense categories of these arrests
6. How many misdemeanor arrests were made
7. What are the offense categories of these arrests
8. What are the progression of events and options when an individual is booked into jail following arrest
9. What were the initial (within 24 hours) dispositions of felony and misdemeanor defendants following arrest
10. What was the total number of interviews by release officers (RO)
11. What is the breakdown by offense category for these interviews
12. What was the pretrial disposition of the defendants interviewed by an RO
13. What is the decision format or process used by the RO
14. How was this format developed
15. What changes over time have been made to this process
16. For pretrial decisions made by judges, what criteria is used in the decision
17. What were the pretrial dispositions of defendants where the decision was rendered by a judge
18. Does the county use a security bail schedule
19. How was this schedule developed
20. What is the ethnic, racial, gender, and age breakdown of citation and arrested defendants
21. What particular problems ensue with defendants of various ethnic, gender, and age classes in pretrial decisions
22. What factors influence the number of ethnic populations in the county
23. What is the jail capacity

APPENDIX B

24. What determines this capacity
25. If there is a court ruling governing limitations on jail populations, what is the history of this ruling
26. Are jail staffs authorized to release inmates
27. What is the policy relating to the release of inmates by jail staff
28. What is the total number of inmates released by jail staff
29. Have there been instances of inmate releases by jail staff post trial
30. What is the breakdown of those released by jail staff by offense category, gender, ethnic class and age
31. What was the overall failure to appear (FTA) rate . . . and the FTA rate broken down by offense category, ethnic, gender, and age classes
32. How is FTA calculated
33. What are court policies governing release hearings
34. What is the history and development of pretrial practices in the county
35. How are pretrial matters supervised
36. How many release personnel are employed and what changes have occurred over time
37. What training is received by release personnel
38. What are the duties of release personnel
39. How are release personnel recruited
40. How are release services funded and have there been changes over time
41. What are the rules, legislation, and policies affecting pretrial decisions
42. What influences have determined these policies
43. In what ways are felonies handled differently from misdemeanors
44. For defendants eligible for security release, how long were they incarcerated prior to actual release
45. What were the security amounts for each defendant
46. What are the principal economies of the county
47. What resources are available to assist release personnel and the courts (i.e. language interpreters, treatment programs, special release programs)

APPENDIX B

48. What options are available in pretrial release decisions (i.e. recog, security, conditional)
49. Are there special or seasonal influences that govern police priorities leading to diverse inmate populations or jail capacities
50. What was the incarceration rate per 1,000 population in the county
51. For the inmate population what was the history of incarceration injuries, medical problems, suicide
52. What resources are available for inmate medical problems
53. Of all defendants arrested how many were already FTA
54. What are the similarities and differences of pretrial practices within each of the 3 counties of Multnomah, Washington, and Yamhill

APPENDIX C

OREGON LAWS ON PRETRIAL RELEASE

APPENDIX C

ARRAIGNMENT AND PRETRIAL PROVISIONS

135.240

RELEASE OF DEFENDANT

135.230 Release of defendants; definitions. As used in ORS 135.230 to 135.290, unless the context requires otherwise:

(1) "Conditional release" means a nonsecurity release which imposes regulations on the activities and associations of the defendant.

(2) "Magistrate" has the meaning provided for this term in ORS 133.030.

(3) "Personal recognizance" means the release of a defendant upon the promise of the defendant to appear in court at all appropriate times.

(4) "Release" means temporary or partial freedom of a defendant from lawful custody before judgment of conviction or after judgment of conviction if defendant has appealed.

(5) "Release agreement" means a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security.

(6) "Release criteria" includes the following:

(a) The defendant's employment status and history and financial condition;

(b) The nature and extent of the family relationships of the defendant;

(c) The past and present residences of the defendant;

(d) Names of persons who agree to assist the defendant in attending court at the proper time;

(e) The nature of the current charge;

(f) The defendant's prior criminal record, if any, and, if the defendant previously has been released pending trial, whether the defendant appeared as required;

(g) Any facts indicating the possibility of violations of law if the defendant is released without regulations;

(h) Any facts tending to indicate that the defendant has strong ties to the community; and

(i) Any other facts tending to indicate the defendant is likely to appear.

(7) "Release decision" means a determination by a magistrate, using release criteria, which establishes the form of the release most likely to assure defendant's court appearance.

(8) "Security release" means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property.

(9) "Surety" is one who executes a security release and binds oneself to pay the security amount if the defendant fails to comply with the release agreement. [1973 c.836 §146]

135.235 Release assistance officer. (1) If directed by the presiding judge of the circuit court in a judicial district, a release assistance officer, and release assistance deputies who shall be responsible to the release assistance officer, shall be appointed under a personnel plan established by the Chief Justice of the Supreme Court.

(2) The release assistance officer shall, except when impracticable, interview every person detained pursuant to law and charged with an offense.

(3) The release assistance officer shall verify release criteria information and may either:

(a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release; or

(b) If delegated release authority by the presiding judge of the circuit court in the judicial district, make the release decision. [1973 c.836 §147; 1981 s.s. c.3 §37]

135.240 Releasable offenses. (1) Except as provided in subsection (2) of this section, a defendant shall be released in accordance with ORS 135.230 to 135.290.

(2) When the defendant is charged with murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

(3) The magistrate may conduct such hearing as the magistrate considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty. [1973 c.836 §148]

APPENDIX C

135.245

PROCEDURE IN CRIMINAL MATTERS GENERALLY

135.245 Release decision. (1) Except as provided in ORS 135.240 (2), a person in custody shall have the immediate right to security release or shall be taken before a magistrate without undue delay. If the person is not released under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person of the right of the person to a security release as provided in ORS 135.265.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) The magistrate shall impose the least onerous condition reasonably likely to assure the person's later appearance. A person in custody, otherwise having a right to release, shall be released upon the personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted.

(4) Upon a finding that release of the person on personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release.

(5) Before the release decision is made, the district attorney shall have a right to be heard in relation thereto.

(6) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant. (1973 c336 §149)

135.250 General conditions of release agreement. (1) If a defendant is released before judgment, the conditions of the release agreement shall be that the defendant will:

(a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until the defendant is discharged or the judgment is entered;

(b) Submit to the orders and process of the court;

(c) Not depart this state without leave of the court; and

(d) Comply with such other conditions as the court may impose.

(2) If the defendant is released after judgment of conviction, the conditions of the release agreement shall be that the defendant will:

(a) Duly prosecute the appeal of the defendant as required by ORS 138.005 to 138.500;

(b) Appear at such time and place as the court may direct;

(c) Not depart this state without leave of the court;

(d) Comply with such other conditions as the court may impose; and

(e) If the judgment is affirmed or the judgment is reversed and the cause remanded for a new trial, immediately appear as required by the trial court. (1973 c336 §150; 1991 c111 §10)

135.255 Release agreement. (1) The defendant shall not be released from custody unless the defendant files with the clerk of the court in which the magistrate is presiding a release agreement duly executed by the defendant containing the conditions ordered by the releasing magistrate or deposits security in the amount specified by the magistrate in accordance with ORS 135.230 to 135.290.

(2) A failure to appear as required by the release agreement shall be punishable as provided in ORS 162.195 or 162.205.

(3) "Custody" for purposes of a release agreement does not include temporary custody under the citation procedures of ORS 133.045 to 133.080. (1973 c336 §151)

135.260 Conditional release. Conditional release may include one or more of the following conditions:

(1) Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall not be required to be financially responsible for the defendant, nor to forfeit money in the event the defendant fails to appear in court. The supervisor, however, shall notify the court immediately in the event that the defendant breaches the conditional release.

(2) Reasonable regulations on the activities, movements, associations and residences of the defendant, including, if the court finds it appropriate, restriction of the defendant to the defendant's own residence or to the premises thereof.

(3) Release of the defendant from custody during working hours.

(4) Any other reasonable restriction designed to assure the defendant's appearance. (1973 c336 §152; 1985 c318 §1)

135.265 Security release. (1) If the defendant is not released on personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

APPENDIX C

ARRAIGNMENT AND PRETRIAL PROVISIONS

135.280

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security 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 security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has been deposited and shall retain as security release costs 15 percent, but not less than \$5 nor more than \$200, of the amount deposited. The interest that has accrued on the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of a circuit or district court shall be paid over as directed by the State Court Administrator for deposit in the Criminal Fine and Assessment Account created under ORS 137.300. The amount retained by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal corporation treasury. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the defendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary. [1973 c.836 §153; 1979 c.878 §1; 1981 c.837 §1; 1981 s.s. c.3 §112; 1983 c.763 §44; 1987 c.905 §14]

Note: The amendments to 135.265 by section 14, chapter 905, Oregon Laws 1987, take effect July 1, 1992. See section 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991.

The text (1989 Edition) is set forth for the user's convenience.

135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security 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 security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has been deposited and shall retain as security release costs 15 percent, but not less than \$5 nor more than \$200, of the amount deposited. The interest that has accrued on the full amount deposited shall also be retained by the clerk and be applied toward the costs of the security release program. The amount retained by the clerk of a circuit or district court shall be deposited in the General Fund. The amount retained by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal corporation treasury. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the defendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary.

135.270 Taking of security. When a security amount has been set by a magistrate for a particular offense or for a defendant's release, any person designated by the magistrate may take the security and release the defendant to appear in accordance with the conditions of the release agreement. The person designated by the magistrate shall give a receipt to the defendant for the security so taken and within a reasonable time deposit the security with the clerk of the court having jurisdiction of the offense. [1973 c.836 §154]

135.280 Forfeiture and apprehension. (1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action

APPENDIX C

135.280

PROCEDURE IN CRIMINAL MATTERS GENERALLY

provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal officer as defined in ORS 133.030 (6) may be executed by any peace officer authorized to execute arrest warrants.

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of the sureties, the order of forfeiture. If, within 30 days after the court declares the forfeiture, the defendant does not appear or satisfy the court having jurisdiction that appearance and surrender by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter judgment for the state, or appropriate political subdivision thereof, against the defendant and, if applicable, the sureties, for the amount of security and costs of the proceedings. At any time before or after judgment for the amount of security declared forfeited, the defendant or the sureties may apply to the court for a remission of the forfeiture. The court, upon good cause shown, may remit the forfeiture or any part thereof, as the court considers reasonable under the circumstances of the case.

(4) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the judgment may be enforced as a judgment in a civil action. If entered in circuit court, the judgment shall be docketed, and if entered in district court may be docketed, as a civil judgment under ORS chapter 18. The district attorney, county counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265. The proceeds of any execution shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or paid over as directed by the State Court Administrator for deposit in the Criminal Fine and Assessment Account created under ORS 137.300, if the offense was defined by a statute of this state

and the judgment was entered by a circuit or district court. The provisions of this section shall not apply to:

(a) Money deposited pursuant to ORS 153.540 for a traffic offense.

(b) Money deposited pursuant to ORS 153.355 for a boating offense.

(c) Money deposited pursuant to ORS 153.745 for a wildlife or commercial fishing offense.

(5) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is, by virtue of the judgment alone and without requiring further execution, forfeited to and may be kept by the state or its appropriate political subdivision. The clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the judgment and shall cause the amount on deposit to be transferred to the revenue account of the state or political subdivision thereof entitled to receive the proceeds of execution under this section.

(6) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or deposited in the General Fund available for general governmental expenses if the offense was defined by a statute of this state and the judgment was entered by a circuit or district court. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions. (1973 c.836 §155; 1981 s.s. c.3 §113; 1983 c.763 §45; 1987 c.710 §1; 1987 c.906 §15)

Note: The amendments to 135.280 by section 15, chapter 905, Oregon Laws 1987, take effect July 1, 1992. See section 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991. The text (1989 Edition) is set forth for the user's convenience.

135.280. (1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal officer as defined in ORS 133.030 (6) may be executed by any peace officer authorized to execute arrest warrants.

APPENDIX C

ARRAIGNMENT AND PRETRIAL PROVISIONS

135.305

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of the sureties, the order of forfeiture. If, within 30 days after the court declares the forfeiture, the defendant does not appear or satisfy the court having jurisdiction that appearance and surrender by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter judgment for the state, or appropriate political subdivision thereof, against the defendant and, if applicable, the sureties, for the amount of security and costs of the proceedings. At any time before or after judgment for the amount of security declared forfeited, the defendant or the sureties may apply to the court for a remission of the forfeiture. The court, upon good cause shown, may remit the forfeiture or any part thereof, as the court considers reasonable under the circumstances of the case.

(4) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the judgment may be enforced as a judgment in a civil action. If entered in circuit court, the judgment shall be docketed, and if entered in district court may be docketed, as a civil judgment under ORS chapter 18. The district attorney, county counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265. The proceeds of any execution shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or deposited in the General Fund available for general governmental expenses if the offense was defined by a statute of this state and the judgment was entered by a circuit or district court. The provisions of this section shall not apply to:

(a) Money deposited pursuant to ORS 153.540 for a traffic offense.

(b) Money deposited pursuant to ORS 153.355 for a boating offense.

(c) Money deposited pursuant to ORS 153.745 for a wildlife or commercial fishing offense.

(5) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is, by virtue of the judgment alone and without requiring further execution, forfeited to and may be kept by the state or its appropriate political subdivision. The clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the judgment and shall cause the amount on deposit to be transferred to the revenue account of the state or political subdivision thereof entitled to receive the proceeds of execution under this section.

(6) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or deposited in the General Fund available for general governmental expenses if the offense was defined by a statute of this state and the judgment was entered by

a circuit or district court. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.

135.285 Release decision review and release upon appeal. (1) If circumstances concerning the defendant's release change, the court, on its own motion or upon request by the district attorney or defendant, may modify the release agreement or the security release.

(2) After judgment of conviction in municipal, justice or district court, the court shall order the original release agreement, and if applicable, the security, to stand pending appeal, or deny, increase or reduce the release agreement and the security. If a defendant appeals after judgment of conviction in circuit court for any crime other than murder or treason, release shall be discretionary. (1973 c.836 §156)

135.290 Punishment by contempt of court. (1) A supervisor of a defendant on conditional release who knowingly aids the defendant in breach of the conditional release or who knowingly fails to report the defendant's breach is punishable by contempt.

(2) A defendant who knowingly breaches any of the regulations in the release agreement imposed pursuant to ORS 135.260 is punishable by contempt. (1973 c.836 §157)

135.295 Application of ORS 135.230 to 135.290 to certain traffic offenses. Provision for release contained in ORS 135.230 to 135.290 shall not apply to any traffic offenses as defined for the Oregon Vehicle Code except the following:

(1) Reckless driving under ORS 811.140.

(2) Driving while under the influence of intoxicants under ORS 813.010.

(3) Failure to perform the duties of a driver under ORS 811.700 or 811.705.

(4) Criminal driving while suspended or revoked under ORS 811.182.

(5) Fleeing or attempting to elude a police officer under ORS 811.540. (1974 s.s. c.35 §1; 1981 c.818 §3; 1983 c.338 §888; 1987 c.730 §5; 1991 c.208 §3)

APPENDIX D
CODING SHEET FOR DATA ENTRY

APPENDIX D

PRETRIAL SURVEY FROM JULY 1, 1993 TO AUGUST 31, 1993
AND TRACKING OF PRETRIAL DISPOSITION

1. County number _____ 1=Multnomah 2=Washington 3=Yamhill
2. Case ID _____
3. Defendant DOB (MM/DD/YY) _____
4. Ethnicity: ___(1)White ___(2)Black ___(3)Native American ___(4)Hispanic
___(5)Southeast Asian ___(6)Chinese or Japanese
___(7)Oriental, don't know type ___(8)Other
5. Gender: ___(1)Male ___(2)Female
6. Date defendant booked _____
7. Day of week: ___(1)Mon ___(2)Tues ___(3)Wed ___(4)Thurs ___(5)Fri ___(6)Sat
___(7)Sun
8. Most serious charge: ___(1) A Felony ___(2) B Felony ___(3) C Felony
___(4) A Misd ___(5) B Misd ___(6) C Misd
___(7) Violation ___(8) Infraction
9. ORS _____
10. Interviewed by Release Officer? ___(1)Yes ___(2)No
11. Date of interview: _____
12. Recommendation of Release Officer: ___(1)Hold ___(2)Recog
___(3)Security bail ___(4)Conditional ___(5)NA
13. Amount of security bail: _____
14. If conditional release, type of condition: ___(1)3rd Party
___(2)treatment program ___(3)other program or condition (please specify)
15. Was defendant eligible for conditional release to a special program but
program was full or unavailable? ___(1)Yes ___(2)No
16. Pretrial disposition: (please check only one)
Decision was by: Release Officer Judge Jail
released on recog ___(1) ___(5) ___(9)
released on
security bail ___(2) ___(6) ___(10)
conditional release ___(3) ___(7) ___(11) Matrix release
denied release ___(4) ___(8)
17. If released by jail staff, was release to avert overcrowding?
___(1)Yes ___(2)No
18. Actual date defendant was released: _____
19. Number of days defendant was confined before release: _____
20. Defendant still in custody as of 11/15/93 ___(1)Yes ___(2)No
21. Was defendant in an FTA status when booked? ___(1)Yes ___(2)No
___(3)Unknown
22. Was defendant in a probation violator status when booked?
___(1)Yes ___(2)No ___(3)Unknown
23. Was defendant ineligible for release due to excepted status, i.e. hold for
USM, INS, out of state warrant, etc.? ___(1)Yes ___(2)No
24. Was defendant booked as a result of a citation issued? ___(1)Yes ___(2)No
25. Was community danger a factor in release decision? ___(1)Yes ___(2)No
26. Was violence a factor in the crime for which defendant is currently
charged? ___(1)Yes ___(2)No ___(3)Unknown
27. Criminal history of defendant:
___(1)prior conviction on violent crime
___(2)prior conviction on non-violent crime
___(3)prior history not known

APPENDIX D

28. At the time of booking on the current charge, did defendant have a problem with: ___(1)English language ___(2)Mental capacity ___(3)uncooperative ___(4)Drugs or alcohol ___(5)Other problems ___(5)No known problems
29. Assigned ID# of Release Officer ___
30. Assigned ID# of Judge ___
31. Population of the jail on date defendant was booked: ___
32. Final outcome of defendant's case:
___(1)Conviction on original charge
___(2)Conviction on lesser charge
___(3)Acquittal
___(4)Dismissed
___(5)Pending
33. Sentenced to:
___(1)Probation "
___(2)Time already served
___(3) 1 - 30 days in jail
___(4) 30 - 60 days
___(5) 60 - 90 days
___(6) 90 days - 1 year
___(7) 1 - 5 years
___(8) 5 - 10 years
___(9) over 10 years
___(10) fined
___(11) community service or other

APPENDIX E

**PRETRIAL RELEASE INTERVIEW FORM
MULTNOMAH COUNTY**

APPENDIX E

IN THE CIRCUIT/DISTRICT COURT OF THE STATE OF OREGON FOR MULTNOMAH COUNTY
MOTION FOR RELEASE OR SECURITY AMOUNT CHANGE

State of Oregon vs.	Charge	Case Number	Security Amount
Defendant			
[] AKA [] ITN			
Address			
City, State Zip			
Phone			
DOB AGE			
Co-Defendant			
Sex: M[] F[] Race: W[] B[] A[] NA[] Other[] POB _____			
Soc. Sec. # _____ (Giving this number is optional. It is requested for purposes of making a release decision under 135.235; it will be used for identification.)			
How long at current address _____ Currently living with: Parents[] Relative[] Spouse[]			
Friends [] Name _____			
How long a resident of Metro _____ State _____			
Prior address (1) _____			
With _____ How long _____			
Last 12 mo. (2) _____			
With _____ How long _____			
Name Relationship Address Phone			
Reference _____			
Reference _____			
Comments _____			

Pods removed

Primary Language _____ Understands English: Yes[☒] No[]
 Alcohol/Drug: Yes[☒] No[] Mental Health: Yes[☒] No[] *Schizophrenic*
 Employed: FT[] PT[] UE/Comp [] UE/NO Comp [] Welfare[]
 Current/last employer *SSI 3 years*
 Address _____
 Dates of Employment _____
 Education Level: Reads: Yes[☒] No[] Highest grade completed *13 yrs* Trade School Yes[] No[☒]
 Comments _____

Probation/Parole Officer *none* County _____
 Probation/Parole Offenses _____
 EPR Hit: Yes[] No[] Hold: Yes[] No[] Type _____
 Probation/Parole Comments _____

Probation Judge _____

Was there a victim of alleged crime? _____

Was there violence involved? _____

Interviewer's Comments: *Writer recommend release to*

prop because A stated he has lived a current

Address 3 years 4 in metro area 10 years

A admits to drug use & mental health

issues A has 3 prior convictions

MOTION FOR RELEASE

CC 23 PAGE 1 Original: Court Yellow: Pretrial Release Pink: DA Goldenrod: Defendant

APPENDIX E

CPMS _____ DEFENDANT _____

List all previous convictions: Th 2 86
Th 2 84
att Th 83

0 3 0 0 0 0
 Felonies Misdemeanors Major Traffic FTA Traffic FTA Criminal #PV

Pending Case Number Charge Next Court Date Attorney

(1) none
 (2) _____
 (3) _____
 (4) _____
 (5) Jim unavail
 (6) _____
 (7) _____
 (8) _____

"I, the undersigned, being duly sworn, say the information on the Motion for Release or Security Amount Change is true. I understand that the information will be used to decide if I should be released or have my security amount reduced. I understand that if I don't tell the truth, I can be charged with perjury or false swearing, and if convicted, I can be imprisoned. I further understand that community contracts will be made to verify this information. I authorize the Court to make these contacts and verify this information."

Date: _____ 19 93

Defendant's Signature _____

SUBSCRIBED AND SWORN before me this _____ day of _____ 19 93

Release Assistance Officer's Decision:

- ☐ Release on Recognizance
☐ Release to Third Party as follows: _____
☐ Release to PRSP
☐ Release Denied

☒ Release decision deferred to Judge at next court appearance with following recommendation:

☐ Security changed from \$ _____ to \$ _____

Date: _____ 19 93

Release Assistance Officer _____

Reviewed: _____

Release Assistance Officer _____

Judicial Decision On Defendant's Release:

- ☐ Release on Recognizance Granted or Continued
☐ Release to PRSP Granted or Continued
☐ PRSP Interview with Report back to Judge on Acceptance Before Release.
☐ Release to Third Party as follows: _____
☐ Close Street Interview with Report back to Judge on Acceptance Before Release.
☐ _____
☐ Release Denied At This Time, Defense May Set The Matter for a Contested Hearing.

Date: _____ 19 _____

Judge _____

MOTION FOR RELEASE

CC 23 PAGE 2

Original: Court Yellow: Pretrial Release Pink: DA Goldenrod: Defendant

APPENDIX F

**PRETRIAL RELEASE INTERVIEW FORM
WASHINGTON COUNTY**

APPENDIX F

CAAT _____ PRE-TRIAL RELEASE _____ Time _____
P.U. _____ WASHINGTON COUNTY DISTRICT/CIRCUIT COURTS _____ Date _____

CHARGE _____ # _____ Bail _____
CHARGE _____ # _____ Bail _____
CHARGE _____ # _____ Bail _____

NAME _____
Birth Date _____, Birth Place _____, Ore. Driver's Lic. # _____
_____, Name and phone # of your Attorney _____

CURRENT ADDRESS _____ APT. # _____ CITY _____ STATE _____, HOW LONG _____
Your Home telephone number _____, Message telephone number _____
Previous Address _____, HOW LONG _____
Previous Address _____, HOW LONG _____
Previous Address _____, HOW LONG _____

Are you currently buying _____, or renting _____ your home? Amount paid per month _____
Married _____, Single _____, Separated _____, Divorced _____, How long? _____
You currently live with: Alone _____, Spouse _____, Parents _____, Relatives _____, Friends _____
Do you have any children? Yes _____, No _____. Do you have custody of them? Yes _____, No _____
Do you feel that drug or alcohol use was related to your arrest? Yes _____, No _____. If yes which _____
Do you feel that you have a problem dealing with Alcohol? Drugs? Yes _____, No _____. If yes which _____

Name of your Spouse: _____ Home Phone _____
Address: _____ Work Phone _____
Name of your Parents: _____ Home Phone _____
Address: _____ Work Phone _____

OTHER COMMUNITY CONTACTS (Persons other than your parents or spouse who can verify your status and assure the Court that if you were released pending trial on recognizance from jail that you would appear at the proper times for all Court matters):
Name _____ Home Phone _____ Work Phone _____
Name _____ Home Phone _____ Work Phone _____
Name _____ Home Phone _____ Work Phone _____

Are you currently: Employed _____ Unemployed _____? If Unemployed, How Long? _____
Your normal Occupation _____, Your current Occupation _____
Your current employer _____, How Long _____, Your Supervisor _____
Your employers address _____, Phone # _____, May we contact _____
Your salary _____, Your Previous Employer _____, How Long _____
List any other source of income you may have _____ \$ per month _____
How many years have you gone to school _____, Currently enrolled at: _____

What amount of cash do you have in jail _____, at home: _____, Your bank and branch _____
Amount of money in checking account _____, amount in savings account _____
Your car(s): Make _____ Year _____ Monthly payments _____ To _____

Are you a Veteran: Yes _____ No _____, Type of Discharge: _____
List here any other names you have ever used or been known by: _____

Are you currently on TEMP. LEAVE _____ PAROLE _____ PROBATION _____, WHERE/COUNTY _____
Parole/Probation Officer _____ Phone # _____ Original ch# _____

Do You currently have Any OTHER CHARGES PENDING IN COURT AGAINST YOU ANYWHERE? ANY STATE, IF SO LIST:
OTHER CHARGE _____ WHAT COURT _____ HOW RELEASED _____
OTHER CHARGE _____ WHAT COURT _____ HOW RELEASED _____

List below any prior convictions ANYWHERE (including major traffic offenses):
NAME OF CRIME _____ Date _____ Location _____ Sentence _____
NAME OF CRIME _____ Date _____ Location _____ Sentence _____
NAME OF CRIME _____ Date _____ Location _____ Sentence _____
NAME OF CRIME _____ Date _____ Location _____ Sentence _____
Have you ever failed to appear for a criminal proceeding? _____ Where _____ When _____
Have you ever escaped from custody or been charged with escape? _____ Where _____ When _____
Have you ever been released from custody on recognizance (RECOG)? _____ Where _____ When _____

I, the defendant in this case, on oath say that the information herein provided is true and complete to the best of my knowledge. I hereby authorize the release of this information for purposes of verifying my present status in order to aid the Court in considering my request for release from custody. I understand that to knowingly provide false information herein would constitute a crime and could also subject me to contempt of court and punishment therefor.
DATE: _____, SIGNATURE OF DEFENDANT: _____
Subscribed and sworn to before me this _____ day of _____ 19 _____

DEPUTY CLERK OF THE DISTRICT/CIRCUIT COURT

APPENDIX F

*****DO NOT WRITE ON THIS SIDE*****

VERIFICATION (See ORS 135.230 (6) (a-1):

A. EMPLOYMENT AND FINANCIAL CONDITION: _____

B. FAMILY RELATIONSHIPS: _____

C. PAST AND PRESENT RESIDENCES: _____

D. PERSONS WHO WILL ASSIST DEFENDANT: _____

E. NATURE OF THE CHARGE: _____

F. PRIOR CRIMINAL RECORD: _____

G. POSSIBLE VIOLATION OF LAW IF DEFENDANT IS RELEASED: _____

H. COMMUNITY CONTACTS: _____

I. OTHER FACTS: _____

RECOMMENDATION: RECOGNIZANCE____, SECURITY RELEASE____, CONDITIONAL
RELEASE____, SECURITY REDUCTION____, BAIL HEARING____.

RESPONSIBLE PERSON: _____

SPECIAL CONDITIONS: _____

REASON FOR THIS DECISION: _____

DATE: _____

RELEASE ASSISTANCE NEEDED

APPENDIX G

**PRETRIAL RELEASE INTERVIEW FORM
YAMHILL COUNTY**

APPENDIX G

IN THE _____ COURT, COUNTY OF YAMHILL, STATE OF OREGON

THE STATE OF OREGON Ct. No. _____ File No. _____

vs. Ct. No. _____

_____ Defendant

RELEASE AGREEMENT

Recognizance _____ Full Bail _____

Conditional _____ Bail Bond _____

Security _____

You are being released by the Court/Release Assistance Officer or Deputy in lieu of remaining in custody on the charge or charges against you of:

1. _____ Full Bail _____ 10% _____ Recog. _____

2. _____ Full Bail _____ 10% _____ Recog. _____

3. _____ Full Bail _____ 10% _____ Recog. _____

☐ No illegal drug use.

☐ No use of alcoholic beverages

☐ Participate in an alcohol/drug/mental health rehabilitation program as ordered by the Release Officer.

YOU ARE TO REPORT: ☐ Weekly ☐ In person ☐ By telephone ☐ Other

TO: ☐ Pretrial Release Officer, TELEPHONE 434-7513 ☐ Your attorney

YOU ARE TO APPEAR: ☐ District Court ☐ Circuit Court

I will appear and answer this charge(s) in the designated court at _____ M., _____ 19 _____

month/date

OTHER CONDITIONS: _____

GENERAL CONDITIONS: I do hereby agree that I shall appear at all the times and places as ordered by the court and as ordered by any court where this charge may be prosecuted. Further I shall appear for the trial; and, if convicted, appear for judgment and execution of judgment. I will obey all Orders of the Court and comply with any conditions the court may impose, including but not limited to, those listed above. I further agree that it is my duty to keep my attorney and the Court advised of my whereabouts at all times, and I shall not leave the state of Oregon without Court permission. If I am found outside this state, I hereby waive extradition.

NO CONTACT WITH VICTIM: I understand that unless specifically authorized by the Court, I am to have no contact with the victim(s) of my crime(s), directly or through others.

NEW CRIMES: I will obey all laws. If I am charged with a new crime, this release agreement may be revoked by the Court and I may be subject to re-arrest and detention awaiting trial on the charge(s) presently pending against me.

FAILURE TO APPEAR: I understand that if I fail to appear at any time ordered by the Court, a warrant may be issued for my arrest, my bail may be forfeited, I may be subject to prosecution, and if found guilty, sentenced to a term of imprisonment and/or fine.

VIOLATION OF CONDITIONS: I understand that a warrant for my arrest will be issued immediately upon any violation of a condition of this release. Any violation of these conditions shall subject me to a revocation of this release, and order of detention and prosecution for contempt of court (a fine of not more than \$300.00 or imprisonment for not more than six (6) months, or both). I may forfeit any security posted.

SECURITY: The Court regards the security deposit as defendant's and available to satisfy defendant's obligations (fines, attorney fees, victim restitution, etc.) under judgment. When obligations of release agreement sentence are satisfied, the Clerk shall return to the depositor, eighty-five (85) percent of the sum deposited, and retain as security release costs, fifteen (15) percent, but not less than five (5) dollars nor more than two hundred (200) dollars of the amount deposited. If I violate this agreement, the full security amount (being ten times the amount deposited) may be forfeited and a judgment entered against me for the full security amount. Property may be levied upon to satisfy such judgment. **NOTICE:** If a person other than the defendant is posting this security, he or she hereby acknowledges that such security may be taken by the court to satisfy the defendant's obligations.

Security posted by: _____ Signature _____ Please Print

Defendant's Signature _____

Residing Address _____

Residing Address _____

Subscribed and sworn to before me this _____ day of _____ 19 _____ Time _____

Release Assistance Officer/Deputy _____

Original - Court Green - Sheriff's Office Canary - Release Officer Pink - DA Goldenrod - Defendant

Revised 7/89

APPENDIX H

"WIRING SCHEMATIC" OF THE DECISION PROCESS

APPENDIX H

"WIRING SCHEMATIC" OF THE DECISION PROCESS

APPENDIX I

**RELEASE TYPES FOR AFRICAN AMERICAN,
WHITE AND HISPANIC DEFENDANTS**

APPENDIX I

RELEASE TYPES FOR AFRICAN AMERICAN, WHITE
AND HISPANIC DEFENDANTS

	African American N=95	White N=394	Hispanic N=108
Release Officer - Recognizance	% 13.7	% 7.1	% 9.3
Release Officer - Conditional	7.4	4.3	1.9
Release Officer - Program	1.1	.5	.9
Release Officer - Security 10%	1.1	1.5	--
Judge - Recognizance	6.3	12.9	4.6
Judge - Conditional	16.8	16.2	21.3
Judge - Program	1.1	1.8	1.9
Judge - Security 10%	2.1	2.8	2.8
Jail - Recognizance	--	3.3	3.7
Jail - Conditional	--	3.6	.9
Jail - Security 10%	1.1	6.1	2.8
Jail - Matrix	11.6	4.3	6.5
Time Served	15.8	20.3	24.1
Transferred to Other Jurisdiction	1.1	6.1	4.6
Held in Error	--	.3	--
Parole Board Order	--	.8	--
Dismissed	13.7	4.8	12.0
To Prison	7.4	3.3	2.8