

# The Justice System Journal

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**The Impact of Pretrial Preventive Detention**  
*Patrick G. Jackson*

**Prison by Sentence-Planning: Evaluation of a  
Asbury Park, N.C.**  
*Clarke and W. LeAnn Wallace*

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*John Flanders, Editor*



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# The Impact of Pretrial Preventive Detention\*

Patrick G. Jackson\*\*

*Two recent decisions of the U.S. Supreme Court upheld the constitutionality of pretrial preventive detention for juveniles and adults. The implications of these decisions for policy and practice are unclear. This article predicts the effect of various pretrial preventive detention policies on the amount of time defendants would be required to spend in jail and the amount of crime that would be prevented due to their detention. Eighteen potential pretrial preventive detention policies are examined in seven jurisdictions. The findings call attention to the increases in jail use and small reductions in pretrial crime that would be associated with each policy.*

## Introduction

This article examines the potential impact of one of the most controversial crime control measures in the past two decades — the preventive detention of defendants awaiting trial. The explicit purpose of such detention is to prevent crime by pretrial defendants. Preventive detention departs significantly from past law in at least two ways: by widening the net of defendants who can be denied pretrial release to include those who are charged with noncapital crimes; and by permitting detention on grounds of a prediction that a defendant will commit a crime at a future time.

The balance in pretrial release decisions between individual freedom from constraint and protection of the public from pretrial crime has tipped decidedly toward the latter during the past two decades. This change is evident in two recent cases, *Schall v. Martin* (1984) and *U.S. v. Salerno* (1987), in which the U.S. Supreme Court upheld the use of

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pretrial detention for the purpose of preventing future crime among juveniles (*Schall*) and adults (*Salerno*).

In *Schall* the majority developed much of the reasoning used subsequently in *Salerno*. The Court concluded that there is a compelling and legitimate state interest in the protection of the community from pretrial crime and that preventive detention serves a legitimate regulatory purpose compatible with due process requirements. The majority also argued that "from a legal point of view there is nothing inherently unattainable about prediction of future conduct" but that it is an "experienced prediction based on a host of variables" which could not be "readily codified" (*Schall v. Martin*, 1984).

We cannot know the impact of these recent decisions on future pretrial release policy and practice. It is unclear, for example, how pretrial preventive detention will stand up under challenges to state laws. Moreover, the Supreme Court's validation of pretrial preventive detention still leaves states to decide whether or not to revise existing statutes and rules concerning pretrial release.

In addressing these questions, policymakers should assess the costs and benefits, both individual and societal, of any proposed changes. This article is an attempt to inform that assessment by examining the likely impact of various pretrial preventive detention policies on the time defendants would spend in jail and on the crime that would be prevented due to their detention.

*Background.* Concern with pretrial preventive detention followed enactment of the Bail Reform Act of 1966.<sup>1</sup> With the Act's liberalization of pretrial release policy in the federal system, "[a]lmost immediately, commission of crimes by persons on pretrial release became a major issue" (Thomas, 1976:223). Support for preventive detention grew under the Nixon administration as a law-and-order response to the bail reform movement (Foote, 1983; Walker, 1985). In 1970 the nation's first pretrial preventive detention law was enacted in the District of Columbia. The law was used infrequently during its first ten months due to questions concerning its constitutionality, the existence of a "five-day hold" provision, and availability and use of high money bail (Bases and MacDonald, 1972). From 1970 to the first half of 1977 the number of preventative detention hearings did not exceed 24 per year (Roth and Wice, 1978).

Since passage of the D.C. law, a majority of states and the federal system have enacted laws or developed rules which permit public

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1. Bail Reform Act of 1966, Public Law No. 89-465, 80 Stat. 214 (1966), which was repealed in 1984.

safety, danger to the community, jeopardy to others, or similar general considerations to be used in setting conditions of release or in denying release altogether (Goldkamp, 1985; Gottlieb, 1984). In addition, a number of organizations have expressed support for preventive detention, including the American Bar Association (1981), the Attorney General's Task Force (1981), and the National Association of Pretrial Services Agencies (1973). Until *Schall* and *Salerno*, however, it was unclear whether defendants had an unconditional right to bail or whether pretrial detention could legitimately be used to prevent an anticipated crime not directed toward witnesses or the orderly administration of justice. The Supreme Court's authoritative response to these questions now leaves policymakers with the question of how to best regulate the pretrial process.

Lurking in the background is a nationwide jail crowding problem, which may be worse today than when efforts were begun to relieve jail crowding in the 1920s (see Beeley, 1966). While the number of sentenced inmates has gradually increased in some jails, pretrial inmates continue to account for about half of jail populations (Bureau of Justice Statistics, 1985). Some data indicate that over 80 percent of all inmates in jail are held in less than the recommended amount of jail space (Mullen, 1980; see also Hall *et al.* 1984). Lawsuits directly or indirectly related to jail crowding in numerous states speak to the seriousness of the problem (Corrections Compendium, 1986). These factors highlight the issues posed by preventive detention.

*Prior Research.* Numerous studies have been conducted on pretrial crime (Angel *et al.*, 1971; Clarke *et al.*, 1977; Feeley and McNaughton, 1974; Gottfredson, 1974; Locke *et al.*, 1970; President's Commission on Crime in the District of Columbia, 1966; Roth and Wice, 1978; Tobin, 1981). Three noteworthy findings emerge from these studies: (1) arrests of pretrial releasees for serious crimes are relatively infrequent and convictions for such crimes are even less frequent; (2) the ability to accurately predict pretrial crime, however measured, is very poor; and (3) the level of pretrial crime correlates positively with time on release.

Most studies of this subject are based on rearrest data, which may understate actual criminal activity, overstate probable criminal behavior, or both. Moreover, the measure of pretrial crime used in the studies varies from a rearrest for any offense to conviction on a felony charge. Accordingly, estimates of the seriousness of the pretrial crime problem also vary from study to study. Despite these differences, the studies all indicate that relatively few released defendants are rearrested for a

*serious* crime. Depending on the study and the definition of seriousness used, the pretrial crime rate ranges from five to seven percent of released defendants (Angel *et al.*, 1971; Gottfredson, 1974; Locke *et al.*, 1970; President's Commission on Crime in the District of Columbia, 1966; Toborg, 1981).

The relative infrequency of serious pretrial crime makes its prediction especially difficult. Studies attempting to grapple with this low "base rate" problem (Monahan, 1981) have found that both rearrest and conviction for a rearrest charge are nearly impossible to predict accurately (e.g., Angel *et al.*, 1971; Gottfredson, 1974; Gottfredson and Gottfredson, 1980; Roth and Wice, 1978).<sup>2</sup>

That the level of pretrial crime varies with time on release has been shown by Clarke *et al.* (1977), Locke *et al.* (1970), Gottfredson (1974), Rhodes (1985) and Toborg (1981). The most obvious explanation for this relationship is that a longer release time period increases the period of risk. However, some have suggested that rearrest and/or defendant characteristics may themselves lead to delay or even affect the disposition of the original charge. While the issue is not yet resolved, there is evidence that disposition time affects the level of pretrial crime, either independently or in combination with other factors.

The Supreme Court's recent legitimization of pretrial preventive detention makes the gaps in our knowledge regarding crime on release especially troubling. It is likely that a number of states and localities will be re-examining pretrial release policies in light of *Salerno*, and that existing research may not be especially helpful in answering the accompanying policy questions. This study is not directed at predicting pretrial crime. Rather, it attempts to estimate the potential impact of various possible pretrial preventive detention policies on pretrial defendants' time in jail and the amount of crime likely to be prevented through such policies. The overall goal is to estimate the effects of a variety of preventive detention policies in a number of jurisdictions with quite varied existing pretrial release policies.

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2. The study by Roth and Wice is especially relevant since it occurred in a system where "the risk of pretrial misconduct, rather than willingness to pay, determines which defendants are released" (1978:A-50). Despite the fact that their research is cited in the legislative history of the new federal bail law as showing that "the presence of certain combinations of offense and offender characteristics ... have been shown in studies to have a strong positive relationship to predicting the probability that a defendant will commit a new offense while on release" (*U.S. Congressional News* 1984:3192), the authors point out that their model is not "a satisfactory predictor of outcomes in individual cases" (Roth and Wice, 1978:III-28-29). In fact, their model was only able to explain about ten percent of the variance in pretrial rearrests (1978:A-45, Exhibit A-9) and only seven percent of the variance in rearrest resulting in conviction (1978:A-47, Exhibit A-10).

## Methodology

This research uses data generated in a major study of pretrial release in eight jurisdictions (Tborg, 1981). The data set includes individual level information on the criminal history, dates of arrests, release and disposition, pretrial crime, and other information for over 3400 defendants<sup>3</sup> (both released and incarcerated prior to trial) in eight cities.<sup>4</sup>

Data on 2890 defendants<sup>5</sup> from seven of the eight sites are utilized in the present study.<sup>6</sup> These data on actual cases are used to estimate the likely impact on detention rates and pretrial crime of 18 potential pretrial preventive detention policies — such as detaining all defendants who are initially arrested for a violent crime, or detaining all defendants initially arrested for a felony offense who are also on bail for a prior felony arrest. Thus, this study compares actual release decisions with the predicted decision under a range of policies defining various “triggers” for preventive detention. It then estimates the changes in pretrial detention time and pretrial crime that would accompany each policy in each jurisdiction.

In order to perform the analysis, we assume that individuals who were actually detained in each jurisdiction — as a result, for example,

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3. Certain individuals were excluded, including juveniles, defendants on hold for other jurisdictions, and traffic violators charged with an offense other than drunk driving.

4. The cities were Baltimore City, Maryland; Baltimore County, Maryland; Washington, D.C.; Miami, Florida; Louisville, Kentucky; Tucson, Arizona; Santa Cruz, California; and San Jose, California. Jurisdictions were chosen to insure geographical diversity, variation in eligibility practices in pretrial release program participation, and because local officials cooperated.

Most defendants were randomly selected from lower court complaint files over a one-year period. An exception was Baltimore City, where pretrial release program interview folders were sampled since “virtually all” arrested defendants were interviewed by the program. In Baltimore County approximately 25 percent of the sample was drawn from program release files and the remainder from lower court case files. Santa Clara’s sample was drawn entirely from jail booking logs and only included a six month sampling period (Tborg, 1978).

5. A total of 260 cases were excluded due to missing data. Comparison of the current offense and pretrial crime levels of excluded cases with the 2890 used in the present analysis shows no large or statistically significant differences. Across all jurisdictions, for example, 23.4 percent of the 3410 original defendants were charged with a violent offense, compared to 23.1 percent of the 2890 defendants with complete information used in this analysis (which excludes Louisville). Similar very small differences exist regarding other definitions of offense seriousness and for levels of pretrial crime.

The present analysis uses the most serious offense a defendant was charged with. A very small number of offenses, however, were included in a residual “other” category, in which it was only possible to isolate felony offenses. There were few such cases.

6. One jurisdiction, Louisville, Kentucky, is excluded because the data set obtained from IUCPSR could not be reconciled with Tborg’s (1981) report. Tborg showed 435 cases whereas the tape contained only 260. There were also discrepancies in Miami (Tborg report n=427; tape n=504) and much smaller ones in Tucson (Tborg report n=409; tape n=434) and San Jose (Tborg report n=370; tape n=365). The remaining counts matched perfectly. All attempts to identify reasons for the discrepancies were unsuccessful.

of being charged with a capital offense or inability to make bail — would be ineligible for pretrial release under any policy examined here. I am unaware of any preventive detention practice which has in fact resulted in more “liberal” release practices for defendants who would otherwise have been detained because of an inability to make bail.<sup>7</sup> Research on the effects of the new federal law indicates that the incidence of pretrial detention increased significantly after the law was passed (U.S. General Accounting Office, 1987; Bureau of Justice statistics, 1988). In any case, it is impossible with these data to determine the impact of a pretrial detention policy that leads to the release of defendants who were in fact detained.

*Varieties of Preventive Detention Policies.* Before estimating the impact of different preventive detention policies it is necessary to define the objective criteria which would make defendants eligible for detention under each.<sup>8</sup> Two recent surveys (Goldkamp, 1985; Gottlieb, 1984) indicate that about half of the jurisdictions in the United States (including the District of Columbia and the federal system) have laws or rules which permit pretrial detention on grounds of public safety or defendant dangerousness. This estimate excludes restrictive provisions that are not a part of pretrial rules and procedures, such as those that apply only to potential spousal abusers, persons thought to be mentally disturbed, the inebriated, parolees and probationers under temporary holds by correctional authorities, or those falling under habitual criminal statutes.

The most frequently mentioned objective criteria defining eligibility for preventive detention<sup>9</sup> include the nature of the current charge, whether a defendant is on parole or on probation, or whether a defen-

7. Goldkamp (1983) has examined the subsequent crime levels of pretrial inmates released from jail as a result of an emergency order emanating from overcrowding litigation.

8. This task was made easier thanks to Gottlieb's (1984) work, which appeared before Goldkamp's (1985) review and analysis.

9. Goldkamp's (1985) recent review of pretrial dangerousness laws points out “several patterns of criteria defining eligibility” for “more restricted bail options or for pretrial detention based on some notion of anticipated danger.” Eligibility is tied to: (1) a charged offense (besides murder) alone (7 jurisdictions); (2) a current charge and past record of conviction (9 jurisdictions); (3) a current charge and whether a defendant is on parole, mandatory release, or probation (no more than 4 jurisdictions, taken from Gottlieb [1984]); (4) a current charge and on pretrial release for a prior charge (14 jurisdictions); (5) likely threats or threats a defendant poses to potential jurors or witnesses (3 jurisdictions); and (6) “assessments of risk of the danger posed by a defendant.” He notes that while the criminal charge is the predominant criterion used in defining eligibility for pretrial detention it is only rarely the sole one.

The present study does not explicitly include (5), which while important is an infrequently encountered criteria. Nor does it operationalize a policy which includes prior record and a current offense. While current criminal justice statuses are one indicator of prior record, they do not reflect all relevant priors.

dant is on pretrial release for any outstanding criminal charge. These factors were combined in various ways to yield the eighteen potential preventive detention policies examined in this research. While the policies are intended to capture the important features of many existing laws or rules, those of some jurisdictions defy classification since the criteria utilized in preventive detention decisions are not operationalizable. For example, in some jurisdictions only a finding of "danger" is needed to trigger detention; no specified current or past offense, criminal justice status, or other factor is indicated.

Eighteen potential preventive detention criteria were developed for analysis in this research. Each specifies the elements in a defendant's current case and/or prior criminal history that would trigger a preventive detention decision:

1. Current violent<sup>10</sup> offense
  2. Current felony<sup>11</sup> offense
  3. Current dangerous<sup>12</sup> offense
  4. Current violent offense and on probation or parole
  5. Current violent offense and on pretrial release, probation or parole
  6. Current violent offense and on pretrial release only
  7. Current felony offense and on probation or parole
  8. Current felony offense and on pretrial release, probation or parole
  9. Current felony offense and on pretrial release only
  10. Current dangerous offense and on probation or parole
  11. Current dangerous offense and on pretrial release, probation or parole
  12. Current dangerous offense and on pretrial release only
  13. Current violent charge and a prior violent charge, also on pretrial release
  14. Current felony charge and a prior felony charge, also on pretrial release
  15. Current dangerous charge with a prior dangerous charge, also on pretrial release
- 
10. Violent crimes include murder, forcible rape, statutory rape, abuse of children under the age of 16, mayhem, kidnapping, robbery, burglary, voluntary manslaughter, extortion/blackmail, arson, assault to commit an offense, assault with a deadly weapon, or attempt or conspiracy to commit any of the above. The first three offense definitions were taken from the D.C. law.
  11. Felony offenses include manslaughter, forcible rape, robbery, aggravated assault and assault with a deadly weapon, burglary, larceny/theft, automobile theft, and arson.
  12. Dangerous offenses include robbery, burglary, arson, forcible rape, and narcotics sales and distribution.

16. On probation or parole, any current charge
17. On pretrial release, probation or parole, any current charge
18. On pretrial release only, any current charge

The first three criteria identify a current offense only. These are analogous to rules permitting detention for a specific offense class such as those in Arizona and Alaska, which permit detention on a felony offense, and in the District of Columbia, which permit detention for a crime of violence and a suspicion that the defendant is an addict. Moreover, they also cast the widest net of preventive detention policies examined here, since no prior convictions or other pending criminal cases are required. While a violent, felony, or dangerous offense must be charged to trigger the danger provisions in some states (such as Wisconsin, Washington, California, Florida), such charges do not automatically lead to detention.

Criteria 4, 5, 7, 8, 10 and 11 vary the current offense charged (violent, felony, and dangerous) with various other indicators of criminal justice system involvement (presently on probation or parole, for any offense; and probation or parole, plus on pretrial release). These criteria bear upon rules that identify one or more current criminal justice statuses as a criteria for detention.

Numbers 6, 9, and 12 could lead to detention when a current violent, felony, or dangerous offense is lodged against a defendant with a pending charge for *any* offense. In numbers 13 through 15, the most serious charge associated with the pending charge must be a violent, felony or dangerous crime, respectively. They are intended to capture the somewhat more restrictive "crime on bail" laws or rules found in 16 states. For example, defendants charged with either a felony or violent offense *and* who are on bail for a separate felony or violent charge that occurred prior to the current offense may be detained in Colorado, Michigan, New York, and the federal system.

The final three criteria trigger preventive detention by various prior criminal justice involvements, but without a specified current offense. They utilize other possible detention triggers, such as defendants arrested for a "bailable" offense while on probation or parole. Rhode Island's rule allows for detention of pretrial releasees who violate the condition that they "keep the peace and be of good behavior," while Indiana's law permits detention of defendants who commit *any* crime on bail if lawful behavior is a condition of release.

## Findings

*Baseline Data.* Information about the actual number of defendants, number and percent detained, length of stay in custody, and pretrial

crime are presented for the seven jurisdictions in Table 1. The table indicates that across all jurisdictions, 14.6 percent of the 2890 defendants were detained until their most serious charge was disposed. The individual jurisdictions range from a low of 10.4 percent in Santa Cruz to a high of 27.6 percent in Tucson. The overall average length of pretrial detention was 58.4 days among those who were detained, and there is substantial variation across jurisdictions.

A total of 12.8 percent of the defendants were rearrested one or more times between the time of their release and the disposition of their most serious charge. With the exception of Baltimore County, roughly half of these rearrested defendants in all jurisdictions were subsequently convicted of one or more of the rearrest charges. The last row of the table indicates the *total* number of defendants arrested in each jurisdiction during the year in which the samples were drawn.<sup>13</sup> For purposes of this analysis, the sample data are assumed to be representative of the defendants in the respective populations. Taken together, these data serve as baseline information for predicting the impact of various preventive detention policies.

*Additional Detention.* Table 2 shows the predicted impact of each policy on both the detention of additional defendants and the aggregate number of additional defendant-months of jail time that would be consumed in the jurisdiction as a whole. The first row for each policy shows the predicted number of additional defendants in the sample who would be detained. The second row indicates the incremental percentage increase in detention, while the third row is the absolute increase in the percentage of defendants detained to disposition.<sup>14</sup>

The fourth row of Table 2 is the aggregate number of additional defendant-months of jail time predicted for each policy in each jurisdiction.<sup>15</sup> Since it is impossible to know how long defendants would be preventively detained, a conservative assumption was made: the detention period used in this calculation is fixed at the average number of days in detention actually spent by defendants who were detained to disposition in each jurisdiction.<sup>16</sup> Thus, to determine the number of additional defendant-months in custody generated by each policy, the

13. These figures were taken from Tborg (1981).

14. Here and in the pages that follow, the "incremental percentage increase" refers to the difference between the two percentage figures; the "absolute percentage increase" is based upon the more traditional percentage increase calculation — the numerical increase divided by the original *numerical* figure.

15. The population figures are used here because the effect of detention on confinement amounts is greatly affected by the size of the universe.

16. See Table 1.

**Table 1.**  
**Basic Information on Jurisdictions**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
Number of defendants	513	384	455	390	402	339	407	2,890
Number detained to disposition	72	40	68	41	111	45	45	422
Percent detained	14.0	10.4	14.9	10.5	27.6	13.3	11.1	14.6
Average days of detention for detained defendants	42.0	33.9	57.0	80.4	15.2	32.7	137.6	58.4
<b>Pretrial Crime</b>								
Number of defendants rearrested	33	31	60	63	64	40	78	369
Percent rearrested	6.4	8.1	13.2	16.2	15.9	11.8	19.2	12.8
Number of defendants convicted	18	13	27	20	35	19	39	171
Percent convicted	3.5	3.4	5.9	5.1	8.7	5.6	9.6	5.9
Population Size	37,391	8,605	9,860	18,528	16,534	19,389	30,000	140,307

number of additional defendants to be detained under a policy was multiplied by the average number of days of pretrial detention for detained defendants. To obtain a figure expressed in months, this product was divided by 30.5.

Since sample sizes differ across jurisdictions it is most meaningful to discuss additional detention in terms of the incremental and absolute percentage increases in the number of defendants who would be detained to disposition. The findings indicate that there is wide variation in the amount of additional detention that would result from the 18 policies. Across all jurisdictions, the range is from a high of a 155 incremental percent increase (or a 22% absolute increase) in Policy 2 (detention for a felony charge) to a low of a 1.7 incremental percent increase (or a 0.2% absolute increase) in Policy 15 (detention for a dangerous charge with a pending dangerous charge). The policies which would lead to the greatest incremental and absolute increases in additional detentions (over 37% and 5% respectively) are based on a current charge of some kind (a felony, violent or dangerous offense), or an active criminal justice status (on probation, parole or pretrial release), or a combination of being charged with a felony and being on probation or parole. The seven lowest incremental increases (from 1.7% to 13.9%) include all policies involving "crime on bail" (Policies 6, 9, 12, 13, 14, and 15), along with Policy 10 (a current danger charge and on probation or parole). Intermediate incremental percent increases (from 13.9% to 27.7%) include Policies 4, 5, 7, and 11, each of which involves a current offense and an active criminal justice status, not including pending charges only.

Changes in the percentage of additional defendants who would be detained under each policy also differs greatly by jurisdiction. For example, in Baltimore County the proportion of defendants detained would be 341 percent points higher under Policy 1 than under existing practices, but under the same policy in Tucson, there would be a substantially smaller 65.8 point increase. This difference is explained in part by the high proportion of defendants who are already detained in Tucson (27.6%) compared to Baltimore County (10.5%), shown in Table 1, which deflates the relative increase in additional defendant-detentions for Tucson across most policies.

*Increases in Defendant Months in Custody.* The sample increases in defendant months in custody vary greatly across jurisdictions since the size of the defendant populations differ (see Table 1). In general, across all jurisdictions, the policies resulting in the largest number of defen-

**Table 2.**  
**Effects on Policies on Additional Detention**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
<b>#1 Violent Charge</b>								
Number of additional defendants detained	107	35	138	82	52	45	78	537
Incremental percent increase	148.6	87.5	202.9	200.0	46.8	100.0	173.3	127.3
Absolute percent increase	20.8 <sup>a</sup>	9.1 <sup>a</sup>	30.3 <sup>a</sup>	21.0 <sup>a</sup>	12.9 <sup>a</sup>	13.3 <sup>a</sup>	19.2 <sup>a</sup>	18.6 <sup>a</sup>
Additional defendant-months in population	10,747	871	5,592	10,271	1,063	2,762	25,942	49,934
<b>#2 Felony Charge</b>								
Number of additional defendants detained	103	55	134	140	13	48	102	655
Incremental percent increase	143.1	137.5	197.1	341.5	65.8	106.7	226.7	155.2
Absolute percent increase	20.1 <sup>a</sup>	14.3 <sup>a</sup>	29.4 <sup>a</sup>	35.9 <sup>a</sup>	18.2 <sup>a</sup>	14.2 <sup>a</sup>	25.1 <sup>a</sup>	22.7 <sup>a</sup>
Additional defendant-months in population	10,345	1,369	5,430	17,536	1,492	2,946	33,925	60,907
<b>#3 Dangerous Charge</b>								
Number of additional defendants detained	25	13	63	38	28	32	40	239
Incremental percent increase	34.7	32.5	92.6	92.7	25.2	71.1	88.9	56.6
Absolute percent increase	4.9 <sup>a</sup>	3.4 <sup>a</sup>	13.8 <sup>a</sup>	9.7 <sup>a</sup>	7.0 <sup>a</sup>	9.4 <sup>a</sup>	9.8 <sup>a</sup>	8.3 <sup>a</sup>
Additional defendant-months in population	2,511	324	2,553	4,760	572	1,964	13,304	22,224

#### #4 Violent Charge and on Probation/Parole

Number of additional defendants detained	12	4	16	20	5	5	12	74
Incremental percent increase	16.7	10.0	23.5	48.8	4.5	11.1	26.7	17.5
Absolute percent increase	2.4	1.0	3.5 <sup>a</sup>	5.1 <sup>a</sup>	1.2	1.5	2.9	2.6 <sup>a</sup>
Additional defendant-months in population	1,205	100	648	2,505	102	307	3,991	6,881

#### #5 Violent Charge and on Pretrial/Probation/Parole

Number of additional defendants detained	12	5	34	29	12	11	14	117
Incremental percent increase	16.7	12.5	50.0	70.7	10.8	24.4	31.1	27.7
Absolute percent increase	2.3	1.3	7.5 <sup>a</sup>	7.4 <sup>a</sup>	3.0	3.2	3.4 <sup>a</sup>	4.0 <sup>a</sup>
Additional defendant-months in population	1,205	124	1,378	3,632	245	675	4,656	10,880

#### #6 Violent Charge and on Pretrial

Number of additional defendants detained	0	1	18	19	1	6	3	44
Incremental percent increase	—	2.5	26.5	21.9	6.3	13.3	6.7	10.4
Absolute percent increase	0.0	0.3	4.0 <sup>a</sup>	2.3	1.7	1.8	0.7	1.5 <sup>a</sup>
Additional defendant-months in population	201	25	729	1,127	143	368	998	4,091

#### #7 Felony Charge and on Probation/Parole

Number of additional defendants detained	20	5	16	30	8	8	18	105
Incremental percent increase	27.8	12.5	23.5	73.2	7.2	17.8	40.0	24.9
Absolute percent increase	3.9 <sup>a</sup>	1.3	3.5 <sup>a</sup>	7.7 <sup>a</sup>	2.0	2.4	4.4 <sup>a</sup>	3.6 <sup>a</sup>
Additional defendant-months in population	2,009	124	648	3,758	163	491	5,987	9,764

**Table 2. (Continued)**  
**Effects on Policies on Additional Detention**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
<b>#8 Felony Charge and on Pretrial/Probation/Parole</b>								
Number of additional defendants detained	21	7	37	45	17	14	19	160
Incremental percent increase	29.2	17.5	54.4	109.8	15.3	31.1	42.2	37.9
Absolute percent increase	4.1 <sup>a</sup>	1.8	8.1 <sup>a</sup>	11.5 <sup>a</sup>	4.2	4.1 <sup>a</sup>	4.7 <sup>a</sup>	5.5 <sup>a</sup>
Additional defendant-months in population	2,109	174	1,499	5,637	347	859	6,319	14,878
<b>#9 Felony Charge and on Pretrial</b>								
Number of additional defendants detained	1	2	21	17	9	6	3	59
Incremental percent increase	1.4	5.0	30.9	41.5	8.1	13.3	6.7	13.9
Absolute percent increase	0.2	0.5	4.6 <sup>a</sup>	4.4 <sup>a</sup>	2.2	1.8	0.7	2.0 <sup>a</sup>
Additional defendant-months in population	100	50	851	2,129	184	368	998	5,486
<b>#10 Danger Charge and on Probation/Parole</b>								
Number of additional defendants detained	2	1	9	10	3	4	4	33
Incremental percent increase	2.8	2.5	13.2	24.4	2.7	8.9	8.9	7.8
Absolute percent increase	0.4	0.3	2.0	2.6	0.7	1.2	1.0	1.1
Additional defendant-months in population	201	25	365	1,253	61	246	1,330	3,069

#11 Danger Charge and on  
Pretrial/Probation/Parole

Number of additional defendants detained	2	2	19	14	9	8	5	59
Incremental percent increase	2.8	5.0	27.9	34.1	8.1	17.8	11.1	13.9
Absolute percent increase	0.4	0.5	4.2 <sup>a</sup>	3.6 <sup>a</sup>	2.2	2.4	1.2	2.0 <sup>a</sup>
Additional defendant-months in population	201	50	770	1,754	184	491	1,663	5,486

#12 Danger Charge and on  
Pretrial

Number of additional defendants detained	0	1	10	4	6	4	2	27
Incremental percent increase	—	2.5	14.7	9.8	5.4	8.9	4.4	6.4
Absolute percent increase	0.0	0.3	2.2	1.0	1.5	1.2	0.5	0.9
Additional defendant-months in population	—	25	405	501	123	246	665	2,511

#13 Violent Charge and  
Pending Violent Charge

Number of additional defendants detained	0	1	3	4	3	3	1	15
Incremental percent increase	—	2.5	4.4	9.8	2.7	6.7	2.2	3.6
Absolute percent increase	0.0	0.3	0.7	1.0	0.7	0.9	0.2	0.5
Additional defendant-months in population	—	25	122	501	61	184	333	1,395

#14 Felony Charge with  
Pending Felony Charge

Number of additional defendants detained	1	2	7	6	5	4	2	27
Incremental percent increase	1.4	5.0	10.3	14.6	4.5	8.9	4.4	6.4
Absolute percent increase	1.0	0.5	1.5	1.5	1.2	1.2	0.5	0.9
Additional defendant months in population	100	50	284	752	102	246	665	2,511

**Table 2. (Continued)**  
**Effects on Policies on Additional Detention**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
<b>#15 Danger Charge with Pending Danger Charge</b>								
Number of additional defendants detained	0	1	1	0	3	2	0	7
Incremental percent increase	—	2.5	1.5	—	2.7	4.4	—	1.7
Absolute percent increase	0.0	0.3	0.2	0.0	0.7	0.6	0.0	0.2
Additional defendant-months in population	—	25	41	—	61	123	—	651
<b>#16 Probation/Parole</b>								
Number of additional defendants detained	67	26	41	55	32	41	41	303
Incremental percent increase	93.1	65.0	60.3	134.1	28.8	91.1	91.1	71.8
Absolute percent increase	13.1 <sup>a</sup>	6.8 <sup>a</sup>	9.0 <sup>a</sup>	14.1 <sup>a</sup>	8.0 <sup>a</sup>	12.1 <sup>a</sup>	10.1 <sup>a</sup>	10.5 <sup>a</sup>
Additional defendant-months in population	6,729	647	1,661	6,889	654	2,517	13,636	28,175

**#17 On Pretrial/  
Probation/Parole**

Number of additional defendants detained	73	39	80	86	58	80	54	470
Incremental percent increase	101.4	97.5	117.6	209.8	52.3	177.8	120.0	111.4
Absolute percent increase	14.2 <sup>a</sup>	10.2 <sup>a</sup>	17.6 <sup>a</sup>	22.1 <sup>a</sup>	14.4 <sup>a</sup>	23.6 <sup>a</sup>	13.3 <sup>a</sup>	16.3 <sup>a</sup>
Additional defendant-months in population	7,331	971	3,242	10,772	1,185	4,911	17,960	43,704

**#18 Pretrial Only**

Number of additional defendants detained	6	13	39	37	26	41	17	179
Incremental percent increase	8.3	32.5	57.4	90.2	23.4	91.1	37.8	42.4
Absolute percent increase	1.2	3.4 <sup>a</sup>	8.6 <sup>a</sup>	9.5 <sup>a</sup>	6.5 <sup>a</sup>	12.1 <sup>a</sup>	4.2 <sup>a</sup>	6.2 <sup>a</sup>
Additional defendant-months in population	603	324	1,580	3,883	531	2,517	5,654	16,645

<sup>a</sup>The increase in percentage of defendants detained to disposition is statistically significant at the .05 level or below.

dant months in custody are the same ones which produced the largest increases in additional defendants.

Under Policy 2 (a current felony offense), Baltimore City would experience a relatively large increase in demand on pretrial detention facilities. A jail with a capacity of 896 inmates (or equivalent bed space) would be necessary to house the additional 7,507 defendants who would be detained during a one-year period. Under the same policy the impact would be smaller in Santa Cruz, where it would generate an additional 1369 defendant-months, or a jail with a capacity to hold 114 inmates for one year. At the other extreme, there would be no increase in jail population whatsoever in three jurisdictions under Policy 15.

So-called "crime on bail" policies (6, 9 and 12) would have relatively small custody impacts. While Policy 9 (a current felony charge and on pretrial release) has the greatest overall increase of the three, the highest jurisdiction-specific increase (1,127 defendant-months) is found under Policy 6 (current violent offense and on pretrial release) in Baltimore County.

*Pretrial Crime Reduction.* Data relating to the question of whether the pretrial preventive detention schemes result in reduced crime are shown in Table 3. The table displays the incremental and absolute reductions in the percentage of defendants rearrested or convicted under each preventive detention policy (after subtracting the rearrests or convictions of defendants who would be preventively detained from the respective percentages of pretrial crime appearing in Table 1).<sup>17</sup>

Four findings emerge from the analysis. First, only three defendants in the entire sample were actually convicted of a felony committed while on pretrial release. These defendants are included in the conviction statistics presented in Table 3, but these numbers are not presented separately. This result is important in itself since it points to the relatively infrequent occurrence of serious pretrial crime defined in stringent terms (compare to Angel *et al.*, 1971). The remaining findings should be interpreted in light of this extremely low rate of felony convictions, as well as the limitations of rearrest data noted earlier — namely, that not all offending results in rearrest, and that rearrest is not necessarily evidence of guilt.<sup>18</sup>

The second finding from this analysis is that the predicted reductions in pretrial crime that accompany the various detention policies

17. For example, Policy 1 for the entire sample led to an incremental 3.1 percent reduction in the rearrest rate: 12.8 percent (from Table 1) minus  $(369-89)/2890$ .

18. In addition, a small number of felony pretrial rearrest charges may also be dropped during plea bargaining surrounding the initial charge. It is impossible to say how frequently this has occurred.

(indicated in rearrest and even more in conviction statistics) are so small that in most instances they can be attributed to sampling fluctuation or "noise". With one exception, there is no statistically significant decline in pretrial crime for any jurisdiction in Policies 3 through 15 and 18. The only exception is found in Policy 8, which shows a 4.7 percent reduction in rearrests (but not convictions on the rearrest charges) in Baltimore County. None of the "crime on bail" policies resulted in significant reductions in pretrial crime.

Third, there are declines in pretrial crime which are statistically significant.<sup>19</sup> These reductions are concentrated in policies where detention would be based on a current violent or felony charge, or being on either pretrial release, parole or probation (Policies 1, 2 and 17, respectively), but none of the latter three statuses standing alone.

Two related points can be made concerning these reductions in pretrial crime. One is that rearrest reductions are not necessarily accompanied by reductions in convictions. In none of the five cities with statistically significant reductions in rearrests under Policy 1, or the single reduction under Policy 8, were there accompanying reductions in convictions. However, four of six reductions in rearrests under Policy 2, and four of five in Policy 17, were accompanied by statistically significant reductions in convictions. The second point is that in those policies with statistically significant reductions, the overwhelming majority of pretrial crime is not prevented. For example, among the five jurisdictions which show statistically significant reductions in Policy 17 — a policy which led to the highest proportion of prevented rearrests during the pretrial period — fully 61 percent of the total amount of pretrial crime would still have occurred. In these same jurisdictions we can predict an average 135.5 incremental percentage increase in additional defendant detentions to disposition if the policies were implemented.

The fourth finding is that those policies which led to statistically significant reductions in rearrests or convictions (the latter only occurred with the former) also produce the largest increases in additional detentions and substantial increases in defendant-months in custody. Given the existing level of crowding in jail facilities in many of the jurisdictions examined, it is difficult to imagine how authorities in many jurisdictions could find space and care for these increases.<sup>20</sup>

19. Which are not, as noted below, necessarily substantively significant.

20. As Hall et al. (1984:1) note, summarizing national cost data: "During the year ending June 16, 1983, local jail expenditures totaled more than \$2.7 billion, with average operating costs of \$18,000 per bed, and per bed construction costs averaging \$43,000 per bed (\$51,000 for an "advanced practices" jail)" (citations deleted).

**Table 3.**  
**Reductions in Defendant Rearrest and Conviction during the Pretrial Release Period**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
<b>#1 Violent Charge</b>								
Number prevented rearrests	12	2	17	15	18	6	19	89
Incremental percent reduction in rearrests	33.30	6.40	28.30	23.80	28.10	15.00	24.40	24.10
Absolute percent reduction in rearrests	2.34 <sup>a</sup>	0.52	3.74 <sup>a</sup>	3.85 <sup>a</sup>	4.48 <sup>a</sup>	1.77	4.67 <sup>a</sup>	3.10
Number prevented convictions	6	1	9	5	10	2	9	42
Incremental percent reduction in convictions	33.30	7.70	33.30	25.00	28.60	10.50	23.10	24.60
Absolute percent reduction in convictions	1.17	0.26	1.98	1.28	2.49	0.59	2.21	1.45
<b>#2 Felony Charge</b>								
Number prevented rearrests	15	7	17	31	23	9	27	129
Incremental percent reduction in rearrests	45.40	22.60	28.30	49.20	35.90	22.50	34.60	35.00
Absolute percent reduction in rearrests	2.92 <sup>a</sup>	1.82	3.74 <sup>a</sup>	7.95 <sup>a</sup>	5.72 <sup>a</sup>	2.65 <sup>a</sup>	6.63 <sup>a</sup>	4.50
Number prevented convictions	10	2	9	10	13	4	15	63
Incremental percent reduction in convictions	55.60	15.40	33.30	50.00	37.10	21.10	38.50	36.80
Absolute percent reduction in convictions	1.95 <sup>a</sup>	0.52	1.98	2.56 <sup>a</sup>	3.23 <sup>a</sup>	1.18	3.69 <sup>a</sup>	2.18

#3 Dangerous Charge

Number prevented rearrests	5	0	12	3	14	6	10	50
Incremental percent reduction in rearrests	15.20	0.00	20.00	4.80	21.90	15.00	12.80	13.60
Absolute percent reduction in rearrests	0.97	0.00	2.64	0.77	3.48	1.77	2.46	1.76
Number prevented convictions	3	0	7	1	9	2	5	27
Incremental percent reduction in convictions	16.70	0.00	25.90	5.00	25.70	10.50	12.80	15.80
Absolute percent reduction in convictions	0.58	0.00	1.54	0.26	2.23	0.59	1.25	0.93

#4 Violent Charge and on  
Probation/Parole

Number prevented rearrests	5	1	3	8	3	1	4	25
Incremental percent reduction in rearrests	15.20	3.20	5.00	12.70	4.70	2.50	5.10	6.80
Absolute percent reduction in rearrests	0.97	0.26	0.66	2.05	0.75	0.29	0.98	0.87
Number prevented convictions	2	1	3	4	1	1	1	13
Incremental percent reduction in convictions	11.10	0.90	11.10	20.00	2.90	5.30	2.60	7.60
Absolute percent reduction in convictions	0.39	0.26	0.66	1.03	0.25	0.29	0.25	0.45

#5 Violent Charge and on  
Pretrial/Probation/Parole

Number prevented rearrests	5	1	7	9	7	1	5	35
Incremental percent reduction in rearrests	15.20	3.20	11.70	14.30	10.90	2.50	6.40	9.50
Absolute percent reduction in rearrests	0.97	0.26	1.54	2.31	1.74	0.29	1.23	1.21
Number prevented convictions	2	1	5	4	3	1	1	17
Incremental percent reduction in convictions	11.10	7.70	18.50	20.00	8.60	5.30	2.60	9.90
Absolute percent reduction in convictions	0.39	0.26	1.10	1.03	0.75	0.29	0.25	0.59

**Table 3. (Continued)**  
**Reductions in Defendant Rearrest and Conviction during the Pretrial Release Period**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
<b>#6 Violent Charge and on Pretrial</b>								
Number prevented rearrests	0	0	4	1	4	0	1	10
Incremental percent reduction in rearrests	0.00	0.00	6.70	1.60	6.30	0.00	1.30	2.70
Absolute percent reduction in rearrests	—	—	0.88	0.26	1.00	—	0.25	0.35
Number prevented convictions	0	0	2	0	2	0	0	4
Incremental percent reduction in convictions	0.00	0.00	7.40	0.00	5.70	0.00	0.00	2.30
Absolute percent reduction in convictions	—	—	0.44	—	0.50	0	0	0.14
<b>#7 Felony Charge and on Probation/Parole</b>								
Number prevented rearrests	6	2	2	11	3	3	7	34
Incremental percent reduction in rearrests	18.20	6.50	3.30	17.50	4.70	7.50	9.00	9.20
Absolute percent reduction in rearrests	1.17	0.52	0.44	2.82	0.75	0.88	1.72	1.18
Number prevented convictions	4	1	2	4	1	3	2	17
Incremental percent reduction in convictions	22.20	7.70	7.40	20.00	2.90	15.80	5.10	9.90
Absolute percent reduction in convictions	0.78	0.26	0.44	1.03	0.25	0.88	0.49	0.59

#8 Felony Charge and on  
Pretrial/Probation/Parole

Number prevented rearrests	6	3	6	18	7	3	7	50
Incremental percent reduction in rearrests	18.20	9.70	10.00	28.60	10.90	7.50	9.00	13.60
Absolute percent reduction in rearrests	1.17	0.78	1.32	4.62 <sup>a</sup>	1.74	0.88	1.72	1.73
Number prevented convictions	4	1	3	6	3	3	2	22
Incremental percent reduction in convictions	22.20	7.70	11.10	30.00	8.60	15.80	5.10	12.90
Absolute percent reduction in convictions	0.78	0.26	0.66	1.54	0.75	0.88	0.49	0.76

#9 Felony Charge and  
on Pretrial

Number prevented rearrests	0	1	4	8	4	0	1	18
Incremental percent reduction in rearrests	0.00	3.20	6.70	12.70	6.30	0.00	1.30	4.90
Absolute percent reduction in rearrests	—	0.26	0.88	2.05	1.00	—	0.25	0.62
Number prevented convictions	0	0	1	2	2	0	0	5
Incremental percent reduction in convictions	0.00	0.00	3.70	10.00	5.70	0.00	0.00	2.90
Absolute percent reduction in convictions	—	—	0.22	0.51	0.50	—	—	0.17

#10 Danger Charge and  
on Probation/Parole

Number prevented rearrests	2	0	3	2	2	1	1	11
Incremental percent reduction in rearrests	6.10	0.00	5.00	3.20	3.10	2.50	1.30	3.00
Absolute percent reduction in rearrests	0.39	—	0.66	0.51	0.50	0.29	0.25	0.38
Number prevented convictions	1	0	3	0	1	1	0	6
Incremental percent reduction in convictions	5.60	0.00	11.10	0.00	2.90	5.30	0.00	3.50
Absolute percent reduction in convictions	0.19	—	0.66	—	0.25	0.29	—	0.21

**Table 3. (Continued)**  
**Reductions in Defendant Rearrest and Conviction during the Pretrial Release Period**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
<b>#11 Danger Charge and on Pretrial/Probation/Parole</b>								
Number prevented rearrests	2	0	5	2	5	1	1	16
Incremental percent reduction in rearrests	6.10	0.00	8.30	3.20	7.80	2.50	1.30	4.30
Absolute percent reduction in rearrests	0.39	—	1.10	0.51	1.24	0.29	0.25	0.55
Number prevented convictions	1	0	4	0	3	1	0	9
Incremental percent reduction in convictions	5.60	0.00	14.80	0.00	8.60	5.30	0.00	5.30
Absolute percent reduction in convictions	0.19	—	0.88	—	0.75	0.29	—	0.31
<b>#12 Danger Charge and on Pretrial</b>								
Number prevented rearrests	0	0	2	0	3	0	0	5
Incremental percent reduction in rearrests	0.00	0.00	3.30	0.00	4.70	0.00	0.00	1.40
Absolute percent reduction in rearrests	—	—	0.44	—	0.75	—	—	0.17
Number prevented convictions	0	0	1	0	2	0	0	3
Incremental percent reduction in convictions	0.00	0.00	3.70	0.00	5.70	0.00	0.00	1.80
Absolute percent reduction in convictions	—	—	0.22	—	0.50	—	—	0.10

#13 Violent Charge and  
Pending Violent Charge

Number prevented rearrests	0	0	1	1	1	0	0	3
Incremental percent reduction in rearrests	0.00	0.00	1.70	1.60	1.60	0.00	0.00	0.80
Absolute percent reduction in rearrests	—	—	0.22	0.26	0.25	—	—	0.10
Number prevented convictions	0	0	1	0	1	0	0	2
Incremental percent reduction in convictions	0.00	0.00	3.70	0.00	2.90	0.00	0.00	1.20
Absolute percent reduction in convictions	—	—	0.22	—	0.25	—	—	0.07

#14 Felony Charge with  
Pending Felony Charge

Number prevented rearrests	0	1	2	3	1	0	0	7
Incremental percent reduction in rearrests	0.00	3.20	3.30	4.80	1.60	0.00	0.00	1.90
Absolute percent reduction in rearrests	—	0.26	0.44	0.77	0.25	—	—	0.24
Number prevented convictions	—	—	1	1	1	0	0	3
Incremental percent reduction in convictions	0.00	0.00	3.70	5.00	2.90	0.00	0.00	1.80
Absolute percent reduction in convictions	—	—	0.22	0.26	0.25	0	0	0.10

#15 Danger Charge with  
Pending Danger Charge

Number prevented rearrests	0	0	1	0	1	0	0	2
Incremental percent reduction in rearrests	0.00	0.00	1.70	0.00	1.60	0.00	0.00	0.50
Absolute percent reduction in rearrests	—	—	0.22	—	0.25	—	—	0.07
Number prevented convictions	0	0	1	0	1	0	0	2
Incremental percent reduction in convictions	0.00	0.00	3.70	0.00	2.90	0.00	0.00	1.20
Absolute percent reduction in convictions	—	—	0.22	—	0.25	—	—	0.07

**Table 3. (Continued)**  
**Reductions in Defendant Rearrest and Conviction during the Pretrial Release Period**

Policy	Jurisdiction							Total
	Baltimore City	Santa Cruz	Miami	Baltimore County	Tucson	San Jose	District of Columbia	
<b>#16 Probation/Parole</b>								
Number prevented rearrests	10	5	11	21	11	13	18	89
Incremental percent reduction in rearrests	30.30	16.10	18.30	33.30	17.20	32.50	23.10	24.10
Absolute percent reduction in rearrests	1.95	1.30	2.42	5.38 <sup>a</sup>	2.74	3.83 <sup>a</sup>	4.42 <sup>a</sup>	3.08
Number prevented convictions	6	2	7	8	5	10	7	45
Incremental percent reduction in convictions	33.30	15.40	25.90	40.00	14.30	52.60	17.90	26.30
Absolute percent reduction in convictions	1.17	0.52	1.54	2.05	1.24	2.95 <sup>a</sup>	1.72	1.56
<b>#17 Pretrial/Probation/Parole</b>								
Number prevented rearrests	11	9	23	28	21	21	21	134
Incremental percent reduction in rearrests	33.30	29.00	38.30	44.40	32.80	52.50	26.90	26.30
Absolute percent reduction in rearrests	2.14	2.34	5.05 <sup>a</sup>	7.18 <sup>a</sup>	5.22 <sup>a</sup>	6.19 <sup>a</sup>	5.16 <sup>a</sup>	4.64
Number prevented convictions	6	3	11	10	12	15	9	66
Incremental percent reduction in convictions	33.30	23.10	40.70	50.00	5.70	78.90	23.10	38.60
Absolute percent reduction in convictions	1.17	0.78	2.42 <sup>a</sup>	2.56 <sup>a</sup>	2.99 <sup>a</sup>	4.42 <sup>a</sup>	2.21	2.28

#18 Pretrial Only

Number prevented rearrests	1	4	12	10	10	9	5	51
Incremental percent reduction in rearrests	3.00	12.90	20.00	15.90	15.60	22.50	6.40	13.80
Absolute percent reduction in rearrests	0.19	1.04	2.64	2.56	2.49	2.65	1.23	1.76
Number prevented convictions	0	1	4	2	7	5	2	21
Incremental percent reduction in convictions	0.00	7.70	14.80	10.00	20.00	26.30	5.10	12.30
Absolute percent reduction in convictions	—	0.26	0.88	0.51	1.74	1.47	0.49	0.73

<sup>a</sup>The reduction in rearrests or convictions is statistically significant at the .05 level or below.

Consider the example of Miami under Policy 17, which is in many ways typical of jurisdictions that are predicted to evidence a reduction in pretrial crime through utilization of a preventive detention policy. Here an incremental reduction in rearrests of 4.6 percentage points would be achieved through the detention of an additional 1,734 defendants. This translates into an additional 3,242 defendant-months of custody (or 270 beds occupied for one year), at a conservatively estimated annual cost of nearly five million dollars in operating expenses alone.<sup>21</sup> While Miami may represent the average, Washington, D.C. represents the upper limits. The operating costs generated by the additional 33,925 defendant-months (or 2,827 beds for one year) that would be needed in Washington, D.C. under Policy 2 (assuming no capital costs), would be well over 50 million dollars a year. However, it should be recognized that the very rough dollar amounts being listed here may not be equally applicable across jurisdictions given differences in local budgets, operating costs, and the like.

### Summary and Discussion

This article examines the implications of recent laws and rules which permit the detention of pretrial defendants for the purpose of preventing future crime. The purpose is to provide information that will be useful in deciding upon the appropriate balance of individual and societal interests involved in the regulation of pretrial procedures in light of recent Supreme Court rulings permitting pretrial preventive detention.

The analysis predicts the impact of 18 pretrial preventive detention policies on the number of defendants who would be detained awaiting trial on their original charges, the amount of jail space that would be required to house them, and the reduction in pretrial crime that would occur as a result of additional detention under each policy. It is not intended to deal with the many important and complex ethical issues facing jurisdictions considering these or related policies (see, e.g., von Hirsch, 1972; and Morris and Miller, 1985).

A major finding of the study is that most of the policies examined can be predicted to have at best minimal effects on pretrial crime. This result is caused by a variety of factors, among them that serious pretrial crime is relatively infrequent: only three of the entire sample of 2,890 defendants were convicted of a felony offense that resulted from rearrest during the pretrial period. Moreover, the objective criteria that would be used to preventively detain defendants under the

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21. See note 19, above, for the cost assumptions underlying this estimate.

policies examined are shown to be poor predictors of pretrial crime. At least two consequences directly flow from this conclusion. First, even the policies which cast the smallest net of preventive detention would lead to the detention of numerous defendants who would not commit a pretrial crime if released. Second, under policies where a wide net of preventive detention is cast, where the increases in the number of detained defendants are highest, and the reductions in pretrial crime are also greatest, the majority of the pretrial crime would still not be prevented. These results — which relate to the predictive capacity of models of pretrial crime — are consistent with the low level of prediction found in past studies, even when they have utilized detailed defendant information not included above, such as residential or community ties, defendant social characteristics, prior record, and the like (e.g., Angel *et al.*, 1971; Roth and Wice, 1978).

A second finding is that those few instances with detectable reductions in pretrial crime are accompanied by substantial increases in amount of jail space needed to house the defendants. These increases are predicted even though very conservative assumptions were used in determining how long defendants would be preventively detained. The dollar amount of operating costs that the imposition of a preventive detention policy could generate for communities may be among the most important considerations that will shape pretrial release decisions in the years ahead.

#### CASES

*Schall v. Martin*, 104 S. Ct. 2403 (1984).  
*U.S. v. Salerno* 794 F2d 64 2nd Cir. (1986).

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