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JAIL POPULATION MANAGEMENT
STUDY FOR WINCHESTER, FREDERICK
AND CLARKE

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EXECUTIVE SUMMARY

In November, 1987 the Department of Criminal Justice Services (DCJS) began its involvement with the communities of Winchester, Frederick, and Clarke in their efforts to construct a regional jail. Over the course of the next several months, DCJS staff attended several meetings held by the Regional Jail Board and contributed to discussions concerning standards for jail construction and operation, the impact of state policies on local jail populations, and a myriad of other issues affecting jail planning and construction. The Regional Jail Board formally requested that the DCJS provide a population project for the new facility and to assist the region in developing a jail population management plan. This report is in response to the latter request.

Efforts toward developing a jail population management plan began in January, 1988 through the formation of the Jail Advisory Group. The Group is comprised of representatives from criminal justice agencies operating in the three jurisdictions. DCJS staff met with the Group and explained the role of an advisory committee and the rationale behind a jail population management plan. During the months of January through April, DCJS staff conducted interviews with key local criminal justice officials, identified data sources, and devised a data collection instrument. Data collection began in May, 1988 and continued through August, 1988. This report contains the conclusions and recommendations arising from this comprehensive examination of

the local criminal justice systems operating in the region.

The report should be looked upon as the next step in the planning process for the new regional jail. It should be viewed as the foundation for the drafting of a jail population management plan and has three primary focuses.

The first is to document how defendants are currently processed by the local criminal justice systems. By documenting processing, criminal justice system officials may be able to identify areas where policies and programs can be implemented that have the potential to reduce admissions to jail or shorten length of stay. The report provides baseline data for estimating the impact such changes may have on the jail population.

Secondly, the report provides baseline data for future monitoring of the criminal justice system as it relates to the jail population. If data collected for this report becomes a routine endeavor, the three communities will have a better gauge for estimating the impact that changes in crime patterns and criminal justice processing have on the functioning of the local criminal justice system as a whole and on the jail in particular.

Thirdly, the report stresses the importance of making the planning process utilized in the report a routine endeavor. The creation and continuation of the Jail Advisory Group should serve to move the three localities to a more proactive rather than reactive approach to jail management. The Jail Advisory Group also provides an opportunity to move the spirit of cooperation, dialogue, and cooperation necessary for formulation of a jail population management plan to a total system approach addressing

all criminal justice issues facing the three communities.

Chapter One provides a detailed discussion regarding the factors affecting the size of jail populations, the pitfalls of predicting jail populations, the concept of jail population management planning, and the purpose and methodology of the report. A key concept discussed in the chapter is the dynamic and systemic nature of jail populations. In addition, the terms "capacity-driven facilities" and "systemic accomodation" were defined and discussed.

Chapter two analyzes trends in historical summary data that help to explain how the jurisdictions reached today's jail population. The focus is on average daily populations as they relate to population growth, crime rates, arrest rates, length of stay, and court statistics on workload and case processing. A key finding of the chapter is that the regional jail population has undergone two periods of significant change between July 1, 1981 and October 31, 1988. The period from 1981 through 1984 was characterized as a period of decline in the regional jail population. The period between 1985 and October, 1988 was a period of rapid growth in the region's jail population. The factors accounting for the growth in the jail population was an increasing average length of stay and to a lesser extent, a rise in the number of admissions to jail.

Chapters Three through Five follow the logical progression of arrest, pretrial release, case processing, and sentencing. The bulk of the data presented in the chapters was collected on-site from records kept by the courts operating in the three

localities. A total of 980 adults comprising 1188 unique arrest events were examined. Chapter Three presents data concerning defendant sociodemographic information, their offenses, and the arrest process. Chapter Four examines the pretrial release process and identifies factors which appear to influence the pretrial release decision and pretrial length of stay. Chapter Five describes how the courts and legal community impact the jail. This chapter focuses on continuances, scheduling practices, processing times, and sentencing practices. Detailed conclusion sections are provided at the end of these three chapters.

Chapter Six presents conclusions and offers recommendations designed to facilitate efficient and effective use of bed space. One of the key recommendations offered is the need for institutionalizing the process of shared, collective decision-making regarding the use of the jail by the local criminal justice systems. It is therefore recommended that the Jail Advisory Group become a permanent and active organization guided by the central concept that jail space is a scarce resource that must be continuously managed to ensure its availability. A number of options are also provided that would serve to reduce the detention rates and/or lengths of stay for both the pretrial and sentenced populations. It is estimated that the net cumulative effect of the conservative recommendations offered in the report have the potential to reduce the average daily population in the jail by twenty to forty inmates.

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CHAPTER ONE

INTRODUCTION TO THE
JAIL POPULATION MANAGEMENT STUDY
FOR WINCHESTER, FREDERICK, AND CLARKE

A. HISTORY OF DCJS PARTICIPATION

The Virginia Department of Criminal Justice Services (DCJS) has had a long history of involvement with the County of Frederick and the City of Winchester regarding jail and correctional issues. Most recently, DCJS has been providing assistance in the planning and design of the regional jail to be constructed by the Counties of Frederick and Clarke and the City of Winchester. The Department began participating in this endeavor in November, 1987 and has continued working with local officials in order to prepare this report on the criminal justice systems operated by the three localities. The Department stands ready to provide further technical assistance and program development concerning the implementation of any adopted recommendations arising from this report.

As stated earlier, DCJS first became involved with the regional jail project in November, 1987. The architectural firm hired to design the new facility (Sherertz, Franklin, Crawford, Shaffner of Roanoke, Virginia) requested that DCJS staff attend a Regional Jail Board meeting held on November 19, 1987. At this meeting, DCJS addressed standards promulgated by the American Correctional Association and the Commonwealth of Virginia, the impact of state policies on local jail populations, and a myriad of other issues affecting jail planning and construction. On December 16, 1987, the Department was officially requested to provide a population projection for the new facility and to develop a jail population management plan.

A preliminary population estimate of 135 general population beds was made for presentation at the November Regional Jail Board meeting. This figure was only a preliminary estimate used for the purposes of discussion. A more thorough assessment was conducted by DCJS and finalized on March 29, 1988. According to our projections, the new facility would require 132

general population beds with an operating capacity of 162 in order to meet the needs of the three jurisdictions through the year 2010. Due to concerns on the part of Regional Jail Board members regarding general population estimates prepared by the University of Virginia, DCJS was asked to revise the estimate utilizing general population projections prepared by the Frederick County Department of Planning and Development in their Background Report: Population and Housing...1986. The modified estimate was completed on April 13, 1988 and recommended a facility with 146 general population beds and an operating capacity of 188 beds. Depending on the length of stay for those defendants released on bond after a short period of detention, the facility could reasonably handle a minimum of 206 offenders committed and/or released on a daily basis.

The second task undertaken by DCJS was the development of a jail population management plan. Efforts toward the project began with the formation of a Jail Advisory Group composed of representatives from criminal justice agencies operating in the three jurisdictions. The first meeting of the Jail Advisory Group was held on January 4, 1988 at which time DCJS personnel explained the role of an advisory group and the rationale behind a jail population management plan. The Advisory Group endorsed the idea and requested that such a plan be devised. During the months of January through April, DCJS staff conducted interviews with key local criminal justice officials, identified data sources, and devised a data collection instrument. Data collection began in May, 1988 and proceeded through August, 1988. This report contains the conclusions and recommendations arising from this very thorough and comprehensive examination of the three local criminal justice systems.

B. FACTORS AFFECTING JAIL SIZE

Before presenting the findings from our data collection effort, we will address in the next several sections of this chapter some of the factors affecting the size of a jurisdiction's jail population, the systemic nature of jail populations, problems inherent in projecting future populations, and the importance of jail population management.

The primary determinants of a jail's population are simply the number of admissions and the length of time defendants remain in jail. It is common sense to expect that as more people are detained there will be a concomitant increase in the jail population. It is also common sense to expect a jail's population to rise as the length of stay increases for detainees. There are also obvious factors which will influence either the number of admissions to jail or length of stay. A primary factor is the growth in a jurisdiction's general population. As the population increases, it is to be expected that more people will commit criminal offenses and, therefore, become candidates for arrest and detention. Increasing crime rates and arrest rates, regardless of population growth, will certainly affect the number of admissions to jail. Increasing demands for judicial action without the appointment of additional judicial personnel will no doubt impact on the length of a defendant's detention time. An increase in types of crime that require extensive investigation and court processing time will also impact on length of stay for defendants detained pretrial.

However, there are also numerous factors that are not so obvious which can have an enormous impact on a jurisdiction's jail population. These influences can exist and play a role in determining detention populations independent from general population growth or rising crime. These additional factors can be broadly defined as system factors and external factors. System

factors are decisions, policies, or procedures made by individuals or agencies within the local criminal justice system that determine who gets detained and the length of their detention. External factors are forces outside the local criminal justice system which can play a role in determining admissions and length of stay. Although not exhaustive, the remaining paragraphs of this section describe system and external factors which have been found to impact detention populations in other jurisdictions.

The decisions of law enforcement officers can have an enormous impact on who is ultimately detained in the local jail. Law enforcement officers often possess wide discretion when making arrest and detention decisions. Officer discretion has been found to impact jail admissions in terms of use or non-use of summonses in lieu of arrest, referrals to outside agencies, or the utilization of informal dispute settlement techniques. Departmental policy decisions may also play a role in determining who is a candidate for arrest and, indirectly, their length of stay. A shift in force deployment from patrol duties to long-range investigations can significantly affect admissions and/or the composition of the jail population. For example, a department which lessens the number of patrol officers on the street may experience a reduction in the number of arrests for traffic or public order offenses. A shift to the investigation of serious crimes such as burglary, robbery, or narcotics may increase the jail's population even though less arrests have been made subsequent to the deployment shift. Although overall arrests may have decreased, the new offenders are more likely to be detained and their length of stay can be substantially longer. Merit and promotion plans based on officer productivity can also impact the jail, particularly if the type or quality of arrest is not controlled.

The magistrate plays a key role in Virginia's criminal justice system in

determining who is detained in the jail. After a defendant has been taken into custody, the magistrate is the official who determines probable cause for arrest and sets the conditions of release. Failure to scrutinize requests for the issuance of arrest warrants may lead to the arrest, detention, and processing of defendants whose charges are eventually dismissed at later stages of court processing due to lack of probable cause. The factors individual magistrates consider when setting the conditions of release are the primary determinants of who is detained at the local jail. Numerous studies have documented wide disparity between release officials in the factors considered and conditions of release set for defendants similar in terms of offense, demographic characteristics, and history of prior criminal behavior. Probable cause determination and bond setting can be problematic for jail populations in jurisdictions experiencing high levels of turnover in the magistrate's office.

The practices of the prosecution and defense bar can also significantly affect jail populations. Prosecuting attorneys, due to the power vested in their office, may often influence or dictate which criminal behaviors will be a priority for investigation, arrest, indictment, and prosecution. The power of the prosecutor can also influence the decisions of officials responsible for setting conditions of release. Length of stay is strongly influenced by how early in the process prosecutorial screening of cases occur. Early screening of cases and possible dropping or reducing of charges may lead to shorter lengths of stay for detained defendants. Early appointment of defense counsel may also lead to shorter case processing times. Finally, the defense bar impacts on the jail population through the pursuit or non-pursuit of bond modifications for detained clients.

The judiciary, in most jurisdictions, plays the greatest role in

determining admissions to jail and length of stay. The judiciary impacts on admissions through the establishment of formal and informal policies governing the pretrial release decisions of magistrates and as a result of their own release decisions. The judiciary can indirectly influence arrests through their dismissal and sentencing practices. These decisions may send signals to both law enforcement and prosecution as to which offenses the judiciary views as warranting arrest and prosecution. The judiciary also influences the length of stay for detained defendants through docketing and scheduling practices and policies on continuances. Finally, judicial sentencing practices influence both admissions to jail and length of stay.

Numerous external factors exist in each community which may substantially impact on a jurisdiction's jail population. One such factor is the availability of resources for operating the jail or developing alternatives to incarceration. Although day-to-day management of the local criminal justice system is the responsibility of its practitioners, funding decisions are the responsibility of local and state officials. These governmental bodies, through their budgetary practices, will largely determine the number of personnel available for arrest and prosecution. These bodies will also determine the existence or availability of alternatives to incarceration. Public opinion and media coverage also serve as strong influences over the decisions made by local criminal justice officials. Community organizations such as victims right groups, Chamber of Commerce, other advocacy groups, and the local bar association have been found to affect local criminal justice policy. Political campaigns, state laws, and court rulings also affect the arrest, detention, and prosecution policies of a local criminal justice system.

The preceding paragraphs illustrate that a jurisdiction's jail

population is not always a function of increasing general population levels and crime rates. Rather, jail populations should be understood as an interplay of these two factors and decisions made by local criminal justice officials responsible for admissions to jail and length of stay. In addition, factors external to the local criminal justice system also play a large role in accounting for a particular jurisdiction's jail population. The determinants which influence the size and composition of jail populations are dynamic and systemic in nature. The factors influencing the size and composition of those detained change over time and are strongly influenced by local criminal justice decision-makers and the community at large.

C. THE PITFALLS OF JAIL POPULATION PROJECTIONS

Yogi Berra, the famous New York Yankee catcher once said, "It's dangerous to make predictions. Especially about the future." Although Yogi was referring to the world of baseball, his words are appropriate when discussing jail populations projections with a jurisdiction seeking to enlarge its detention facility or replace an existing facility. Most jurisdictions, when constructing a new facility, seek to build a jail that is large enough to meet its detention needs for 30 or more years into the future. Despite increasingly sophisticated projection models, many jurisdictions around the country have been faced with an overcrowded jail shortly after opening the new facility. In fact, we are aware of several facilities that opened with population levels exceeding rated capacity on their first day of operation.

One reason many projections are "off" stems from problems inherent in all projection models. The models require data as the driver for projecting detention needs in the future. If the data incorporated into the model is in error, there is no reason to expect the resulting projection to be accurate.

Equally troublesome is the absence of data. The more sophisticated projection models call for an enormous amount of detailed information about a jurisdiction's criminal justice system and, in particular, the detained population. Such data is not often collected by local criminal justice officials, or if available, not collected in a format that can readily be incorporated into the model.

We encountered the above-mentioned problems when providing population estimates to the Regional Jail Board. Our department possesses the computer software and skilled personnel necessary for working with some of the more powerful projection models. However, the data which could be provided by local officials did not meet the requirements of the models. For example, new commitments and their length of stay could not be separated from detained inmates carried over from a prior month or year. We could not separate inmates held pretrial from those detained for sentence nor could we distinguish between defendants held on misdemeanor versus felony charges. This is not to say the data is not collected by local jail officials. Much of the data is available but, since some of the models call for a minimum of several years worth of data, the massive data retrieval efforts that would be required were beyond our resources or time limitations.

Another problem inherent in projection models stems from limitations in the models themselves. The models require the input of data which measures aspects of the criminal justice system as it has operated in the past seven to ten years. In essence, the status quo is used to predict the future. However, it may be unreasonable to assume that today's status quo will translate into the future's business as usual. For example, although arrest rates may have increased an average of two percent a year for the past decade, it cannot necessarily be assumed that the same trend will occur over the next

ten, twenty or thirty years. The same concerns can be raised regarding other determinants of the jail population such as general population growth, crime rates, detention rates, length of stay, and sentencing practices. Finally, projection models utilize determinants that are measured in quantitative terms. A factor such as "changing community values" is difficult to predict in qualitative terms and nearly impossible to translate into quantitative terms for modeling purposes.

Even with projections based on adequate and accurate data, many jails have reached capacity long before the target date of a population projection. This situation has also occurred in jurisdictions that accounted for possible changes in the operation of their criminal justice system and built these assumptions into the projection model. It is our belief that the phenomena of "capacity-driven facilities" and "systemic accommodation" are more powerful explanations for premature overcrowding than data inadequacies or modeling limitations.

Many professionals working in the area of jail construction, planning and management have reached the conclusion that jails are capacity-driven facilities. What this concept means is that the criminal justice system will find a way to fill a jail bed if it is available. This does not mean that criminal justice officials are mean-spirited individuals who necessarily believe that every offender should be locked up. What the concept does mean is that when faced with responsibility for protecting the community and attempting to predict human behavior, the system has a tendency to err on the conservative side and opt for detention if space is available. This is particularly true in the area of pretrial detention when the arresting officer has to choose between release on summons or transportation to the magistrate. The magistrate faces the bigger dilemma of balancing risk of flight or

pretrial criminality versus a defendant's constitutional right to be considered for bail and released on bond. Beyond the issue of admissions, jails as capacity-driven facilities can be a function of increasing lengths of stay. With a less than full jail, the courts are less likely to develop scheduling practices or policies on continuances to alleviate population pressures on the jail.

Somewhat related to the concept of jails as capacity-driven facilities is the concept of systemic accommodation. Since jails are an expensive and unpopular issue, many localities function for several years with its jail at or near capacity and avoid planning for a larger jail. In order to keep the jail within capacity, the local criminal justice system adopts formal or informal strategies to accommodate rising jail populations. Law enforcement agencies may deemphasize concern over certain minor offenses or increase their usage of alternatives to arrest. Magistrates may informally or formally relax their criteria for setting conditions of release in order to lower detention rates. Finally, the courts may adopt various strategies to process cases faster and decrease their use of incarceration as a sentencing tool. These strategies can be problematic for population projections because several years worth of data utilized by the model does not accurately portray the jurisdiction's "true" arrest rate, incarceration rate, average daily population, and length of stay. Once additional jail space becomes available, the system returns to a state of "normalcy" not accounted for in the projection model.

D. JAIL POPULATION MANAGEMENT PLANNING

The preceding sections of this report made the point that a jurisdiction's jail population is not simply a function of general population

levels, crime rates, and arrest rates. A jail's population has to be viewed as the interplay of increasing or decreasing crime and arrest rates coupled with the impact of decisions made by all of the actors in the local criminal justice system in the performance of their duties on a daily basis. The preceding sections were also designed to give the reader insights as to why jail population projections so often prove to be inadequate or inaccurate.

The question now becomes, "What can a jurisdiction do to overcome or compensate for the dynamic, systemic nature of its jail population and yet be able to rationally plan for the future?" Most jurisdictions traditionally have delayed the unglamorous and unpopular issue of jail construction until population levels reach the crisis point. Once the issue can no longer be ignored, a consultant is called in to recommend the size and type facility needed, funds are raised, the jail is built, and all parties walk away happy. However, the track record of jails in recent history demonstrates that such happiness is usually short-lived. The problem with such an approach is that the jurisdiction never understands the true dynamics which define its jail population and never addresses the question, "In this community, what is the purpose of the jail and how is it to be utilized?"

The communities which have been most successful in the planning, construction, and operation of new jails have been those which have adopted the jail population management process. A large portion of the process is the development of a jail population management plan. The plan is defined as a data-based action agenda for the individual and collective use of criminal justice and political officials in controlling the size and composition of their jail population. The plan is most useful when adopted prior to any decision made on the need for a new facility. If adopted at this point, the development of policies or programs may forestall the need for construction.

If construction is necessary, the anticipated impact of such policies or programs may be used to refine future population projections. However, plans adopted once construction is deemed necessary can be used to prevent the jail from becoming capacity-driven or from suffering the aftereffects of systemic accommodation.

Several key concepts provide the rationale and structure of the jail population management process. The first of these is the recognition that jail space is a scarce resource that must be continuously managed to ensure its availability. A study done by the National Institution of Justice concluded that construction is only a short-term solution to rising jail populations. Their major finding was that no matter how many years were included in the studied jurisdiction's population projection, nearly all of their jails were operating at 100% capacity within two years. Within five years of opening, nearly all of the jails were operating at 130% capacity. Cost considerations also serve to make the point that jail space is a scarce resource. Jail construction is now costing between \$30,000-\$50,000 per cell with daily operating costs of \$30.00 per inmate. A rule of thumb used by jail professionals is that the operational costs of a jail with a 30-year life cycle will be approximately ten times the cost of construction. An \$8 million jail, for instance, will eventually cost \$80 million dollars to operate.

The second concept of jail population management planning concerns the process utilized and officials responsible for its development. Since jail populations are not solely a function of crime levels and arrest rates, an organizational mechanism for the development of jail use policies must be developed. The preferred mechanism involves the creation of an advisory board that, at a minimum, is composed of representatives from all agencies operating in the local criminal justice system that help determine the size and composi-

tion of its jail population. In addition, it is advisable that political and community leaders also serve as members of the board. The primary purpose of the board is to determine the purpose of the jail and to adopt policies and programs that help to ensure efficient and effective usage of bed space.

Finally, jail population management planning is dependent upon the collection and development of credible, empirical data describing the persons arrested and how they are processed by the local criminal justice system. Perceptions and normative judgments do have a role to play in the planning process. However, data must be used wherever possible because many system actors do not often know the answers to many of the critical questions that must be addressed. In addition, perceptions may be biased due to the fragmented and political nature of the criminal justice system. Data collected and analyzed via accepted social scientific methods offers the best hope for determining how the jail population is impacted by the operation of the local criminal justice system.

E. PURPOSE OF THE REPORT

We believe the elected officials of Winchester, Frederick, and Clarke have approached the planning of their new jail in a manner which will help ensure that the new facility meets the needs of the three communities from both an architectural and an operational standpoint. A great amount of thought and deliberation have gone into such issues as site selection, size, and schematic design. A key decision has been the hiring of the new jail administrator long before the new facility is ready for occupation. This hiring provides a further check for ensuring that the new facility will be functionally operational. Early hiring of a jail administrator will also provide the communities with a manager to ensure that construction conforms

with the architectural design. Any problems in design and construction can be detected and remedied early before brick and mortar is in place.

This report represents the next step in the planning process. It should be viewed as the foundation for the drafting of a jail population management plan and has three primary focuses. The first is to document how defendants are currently processed by the local criminal justice system. By documenting process, criminal justice system officials may be able to identify areas where policies and programs can be implemented that have the potential to reduce admissions to jail or shorten length of stay. It is also possible, particularly if systemic accommodation has occurred, that changes are necessary which have the potential for increasing admissions or length of stay. This report will provide baseline data for estimating the impact such changes may have on available bed space.

Secondly, the report will provide baseline data for future monitoring of the criminal justice system as it relates to the jail population. If data collected for this report becomes a routine endeavor, the three communities will have a better gauge for estimating the impact that changes in crime patterns and criminal justice processing have on the functioning of the local criminal justice system as a whole and on the jail in particular.

Related to the second purpose, we hope the planning process utilized in this report becomes a routine endeavor long after the new jail is occupied. The creation and continuation of the Jail Advisory Group should serve to move the three localities to a more proactive rather than reactive approach to jail management. By defining how the jail is to be used and monitoring its use, the three communities are in a better position to ensure that the amount of jail space available is determined by policy rather than by chance or default. The Jail Advisory Group also provides an opportunity to move the

spirit of cooperation, dialogue, and compromise necessary for formulation of a jail population management plan to a total system approach addressing all criminal justice issues facing the three communities.

The final section of this chapter reports on the methodology and questions addressed during the course of the research. However, it is appropriate to now state what this report does not represent. Because we stress the need for dialogue and proactive planning, we are not saying that such an approach has not occurred in the area. The Regional Drug Task Force operating in the area is evidence that such dialogue and planning has been instituted. However, this report stresses the need for making the jail a focus for planning with the involvement of all criminal justice officials representing three communities.

This report should not be looked upon as the final step in the planning process. The report only documents the processing of defendants and the impact of processing on the jail population. It is the Jail Advisory Group's responsibility to agree or disagree with the findings, adopt recommendations, and formalize the plan. In addition, we were unable to examine all factors which may play a role in determining the size and composition of the jail population due to resource or data limitations. For example, we were unable to determine how personnel issues such as training, force levels, and turnover affect the local criminal justice system's operation. We were also unable to thoroughly examine the demographic characteristics of offenders due to the unavailability of credible data. We believe such gaps in understanding can be filled with the accumulated knowledge possessed by the individuals appointed to the Jail Advisory Group and their respective staffs.

F. METHODOLOGY

As stated earlier, this report was designed to provide information to the Jail Advisory Group regarding the processing of offenders through the criminal justice systems operating in the communities of Winchester, Frederick, and Clarke. The primary focus of the study is the identification of factors which appear to determine the size and composition of the jail populations in the three localities. In addition, factors are identified which appear to determine the length of stay for the detained population.

Chapter Two of this report analyzes trends in historical summary data that may help to explain how the jurisdictions reached today's jail population. The focus is on average daily populations as they relate to population growth, crime rates, arrest rates, length of stay, and court statistics on workload and processing. Most of the data concerning general population levels, crime rates, and arrest activity were gathered from annual Crime in Virginia reports compiled by the Virginia State Police.

Supplementary data was provided by the State Police and the arresting agencies operating in the three jurisdictions. Data on average daily population and length of stay was provided by staff of the Joint Confinement and Corrections Operations Project. Finally, court statistics were gathered from the annual Virginia State of the Judiciary Report compiled by the Supreme Court of Virginia.

Chapters Three through Five follow the logical progression of arrest, pretrial release, case processing, and sentencing. The bulk of the data reported therein was collected on-site from court records kept by the General District Courts, Juvenile and Domestic Relations Courts, and Circuit Courts operating in the three localities. Where possible, staff of the Joint Confinement Project collected supplementary data from the Frederick and Clarke

County jails along with the remaining jails currently participating in the Joint Confinement Project. Prior criminal history information was provided by the Virginia State Police and prior traffic record information was provided by the Department of Motor Vehicles.

Depending on applicability, a total of approximately 135 data elements was collected for 980 adults arrested and brought before the magistrate. These adults accounted for a total of 1188 cases processed by the three localities during our study period. For our purposes, a case was defined as a unique arrest event comprised of all charges at arrest regardless of the number of unique docket numbers assigned by the Clerk's Office. Varying periods of study were used for each court to ensure that enough cases were examined so that valid generalizations could be made. The period of study for the Juvenile and Domestic Relations court covered the calendar years of 1986 and 1987. Cases processed by the Frederick and Winchester General District Courts during the last six months of 1986 were examined while it was necessary to examine cases processed during the last six months of 1986 and the first six months of 1987 for the Clarke County General District Court. The last six months of 1986 and calendar year 1987 were examined for all three Circuit Courts.

Chapter Three presents data concerning defendant sociodemographic information, their offenses, and the arrest process. The chapter is designed to answer the question, "Who is arrested and why?" Chapter Four examines the pretrial release process and identifies factors which appear to influence the pretrial release decision and pretrial length of stay. The chapter also reports on one measure of pretrial release success, the failure to appear rate. Chapter Five focuses on how the courts and legal community impact the jail. This chapter focuses on continuances, scheduling practices, processing

times, and sentencing practices. Finally, Chapter Six presents conclusions and offers recommendations designed to facilitate effective and efficient use of bed space.

CHAPTER TWO
HISTORICAL ANALYSIS OF THE
WINCHESTER, FREDERICK AND CLARKE
CRIMINAL JUSTICE SYSTEMS

A. INTRODUCTION

The focus of this chapter is on the analysis of historical data which helps to explain how the jail population has evolved during the 1980s. Due to data limitations, we were restricted to examining jail population levels from the last six months of 1981 through October, 1988. Most of the data reported herein were collected from annual Crime in Virginia and Virginia State of the Judiciary reports with supplemental data provided by the agencies responsible for their compilation. Data used to compute average daily population, average length of stay and admissions were provided by staff from the Joint Confinement and Corrections Operation Project. Finally, data on population levels for the Work Release Center were provided by Division of Court Services staff.

Before beginning this chapter, a brief description of focus and definitions are necessary to facilitate the reader's comprehension. Since we are interested in describing the historical evolution of the jail population for the three localities constructing the regional jail, it was necessary to identify and tabulate statistics on those inmates under the jurisdiction of the three localities housed in the various jails participating in the Joint Confinement Project. In other words, population statistics are locality-based and not facility-based. Average daily population figures clearly exceed the housing capabilities of the Frederick and Clarke County jails because they incorporate inmates housed in the other jails participating in the Joint Confinement Project. In order to avoid wordiness, the word "regional" or "regional jail population" refers to inmates under the jurisdiction of Winchester, Frederick, and Clarke courts.

Secondly, "jail population" refers to inmates housed in the traditional jail structures located in the City of Winchester, Clarke County, and the

other participating jails of the Joint Confinement Project. A later section of this chapter examines usage of non-traditional housing facilities such as work release. "Detention system population" will be used to refer to all inmates housed by the three localities in their local facilities or other jails participating in the Joint Confinement Project.

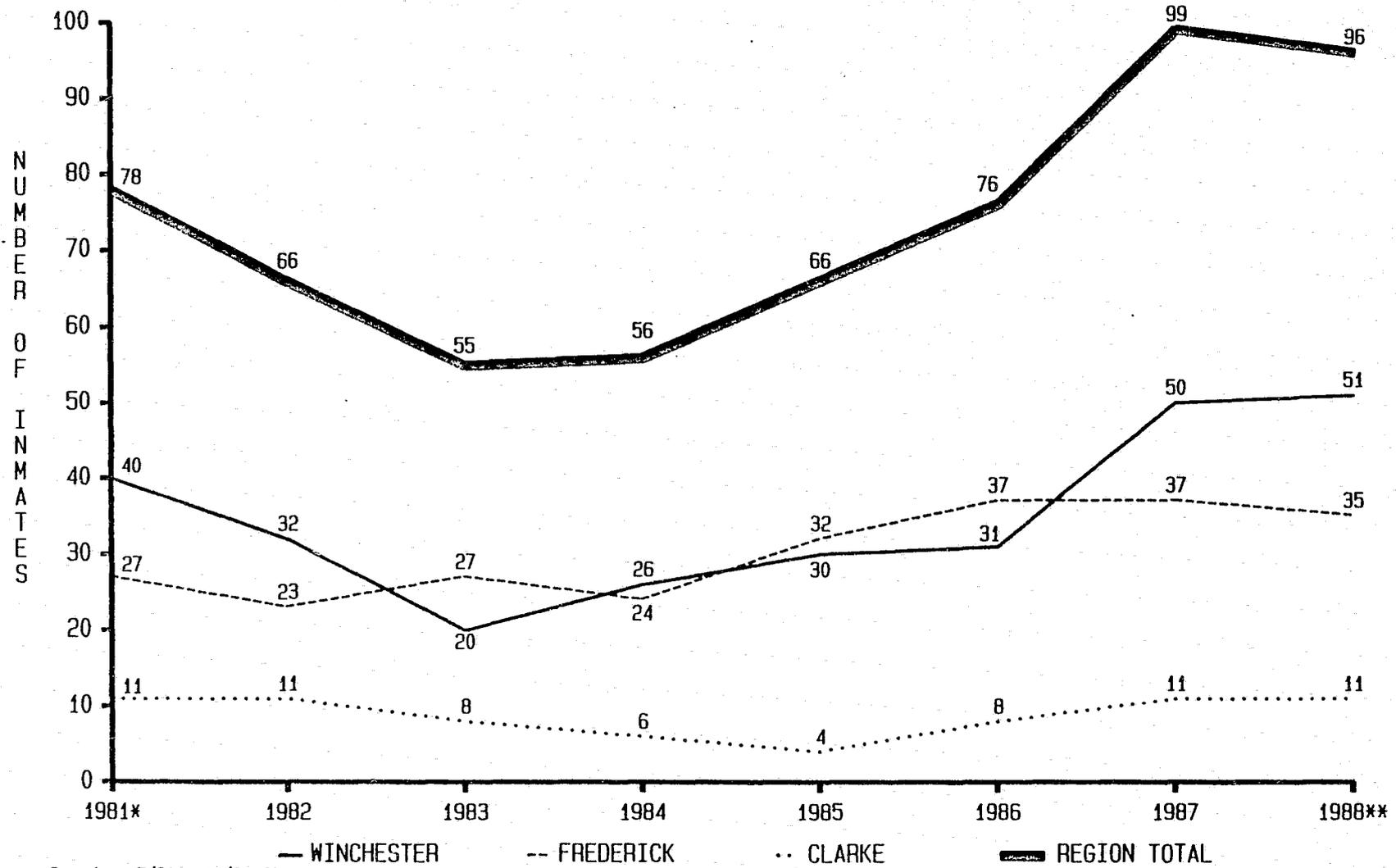
B. GROWTH PATTERNS OF THE JAIL POPULATION

Figure 1 displays the average daily population (ADP) of the three localities as a whole and individually. The population figures presented reflect inmates under the jurisdiction of the three localities regardless of where they were housed within the Joint Confinement Project. The figures also reflect inmates housed in jails and not those inmates housed in the Winchester Work Release Center operated by the Division of Court Services. A later section of this chapter will address the use of alternative housing facilities and will adjust the ADP to reflect all inmates under some form of detention within the region.

The data indicate that the 1981 through 1988 period was marked by two stages of growth in the regional jail population. The period between 1981 and 1984 was a period of decline in the total jail population. In 1981 the ADP for the regional jail population was 78 and dropped to 56 in 1984. This represents a 28.2% decrease. This pattern, however, did not occur uniformly for each of the three localities. Clarke County's pattern of declining ADP extended to 1985. Winchester registered its lowest ADP in 1983 and began its escalation in 1984. Frederick County experienced seesaw growth during the 1981 through 1984 period going from an ADP of 27 in 1981, down to 23 in 1982, back up to 27 in 1983 and down again in 1984.

The second stage encompasses the years 1985 through October, 1988.

Figure 1.
**ANNUAL AVERAGE DAILY POPULATION
 (1981-1988)**



* Based on 7/81 - 12/81 figures.
 ** Based on 1/88 - 10/88 figures.

During this period the ADP of the regional jail population grew from 66 inmates in 1985 to 96 in 1988, a 45.4% increase. The greatest growth occurred between 1986 and 1987 when the regional jail population increased by approximately 30 percent. The jurisdiction with the most dramatic increase during the second stage was the City of Winchester. During the 1985 through 1988 period, Winchester's ADP went from 30 to 51, an increase of 70 percent. Winchester's greatest growth occurred between 1986 and 1987 when the ADP increased approximately 61 percent.

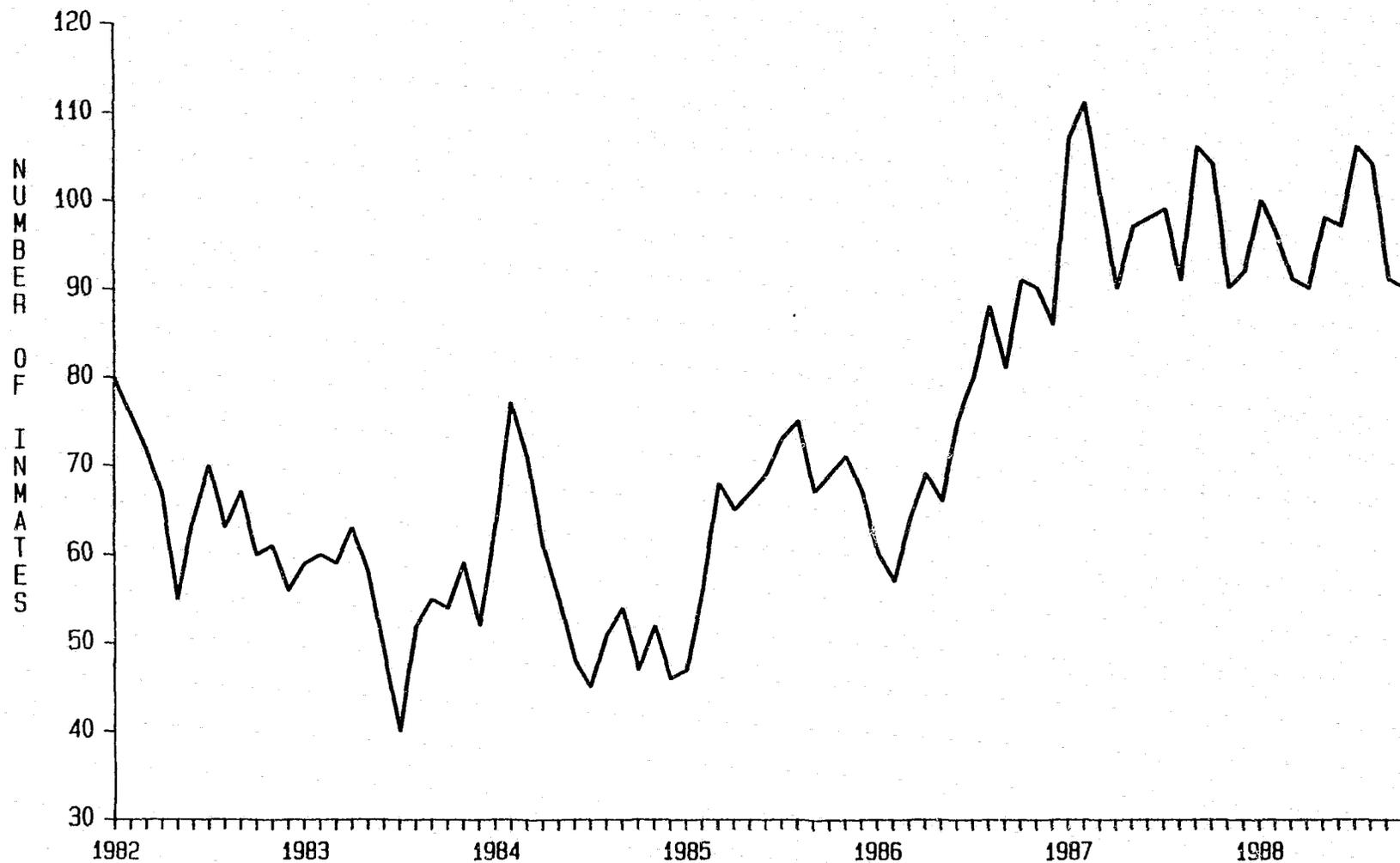
Because Figure 1 displays ADP on a yearly basis, fluctuations in the jail population that occur on a daily or monthly basis are masked. Figure 2 displays the regional jail population when examined by monthly average daily population. For example, 1987 had a yearly ADP of 99 inmates. However, the population exceeded 100 inmates during five months of the year with February registering an ADP of 111 inmates.

C. FACTORS AFFECTING JAIL POPULATION GROWTH

The size of a jurisdiction's jail population is a function of two primary factors: the number of admissions to jail and their length of stay. The jail population will rise if both of these factors increase. If one factor increases while one remains fairly constant, the population will also rise but at a less rapid pace. There may also be a cancelling effect if one factor rises while the other decreases. Such a scenario will result in a jail population that remains fairly constant.

Figure 3 displays the monthly admissions to jail between 1983 and October, 1988 for the region. Similar to ADP, wide fluctuations occur in the number of admissions to jail on a month-to-month basis. Although monthly fluctuations occur, there has been a steady increase in the number of

Figure 2.
REGIONAL AVERAGE DAILY POPULATION
(By Month 1982-1988)



admissions per year since 1983. A total of 1158 admissions occurred in 1983 compared to 1475 admissions in 1987. This represents a 27.4% increase in the number of admissions to jail. This trend of increasing admissions will continue in 1988 as there were 1387 admissions to jail as of October, 1988. Average monthly admissions (AMA) were calculated so that the partial totals for 1988 can be utilized. When measured in this manner, the region went from 96.5 admissions per month in 1983 to 138.7 admissions per month as of October, 1988. This represents a 43.7% increase in the number of admissions per month.

Figure 4 represents the average length of stay (ALOS) for inmates committed to jail by the three localities. There is a pattern to the ALOS for the regional jail population that is similar to that shown for average daily population. Between 1981 and 1984, there was a decline in ALOS from 11.6 days in 1981 to 10.4 days in 1984. This represents a 10.4% decrease in average length of stay. Beginning in 1985, ALOS began to increase but at a slower pace than ADP. Average length of stay increased 2.6% between 1985 and 1988 while ADP increased 45.4% during this time period. Although the percentage differences between ALOS and ADP are significant, small increases in ALOS can substantially impact ADP in a jail experiencing a sharp increase in short-term admissions. The high point for ADP was 1987 when it reached 99 inmates. The high point for ALOS was also 1987 when it reached 12.8 days.

Table 1 summarizes the trends in ADP and its two causal factors: average monthly admissions and average length of stay from 1983 through 1988. We were forced to use 1983 as the starting point because admission statistics were not available for 1981 and 1982. Therefore, we are unable to make comparisons between the causal factors influencing the 1981 through 1984 pattern of decreasing ADP versus the pattern of increasing ADP that occurred between 1985 and 1988. However, the table does serve to illustrate the role

Figure 3.
REGIONAL ADMISSIONS TO JAIL
(By Month 1983-1988)

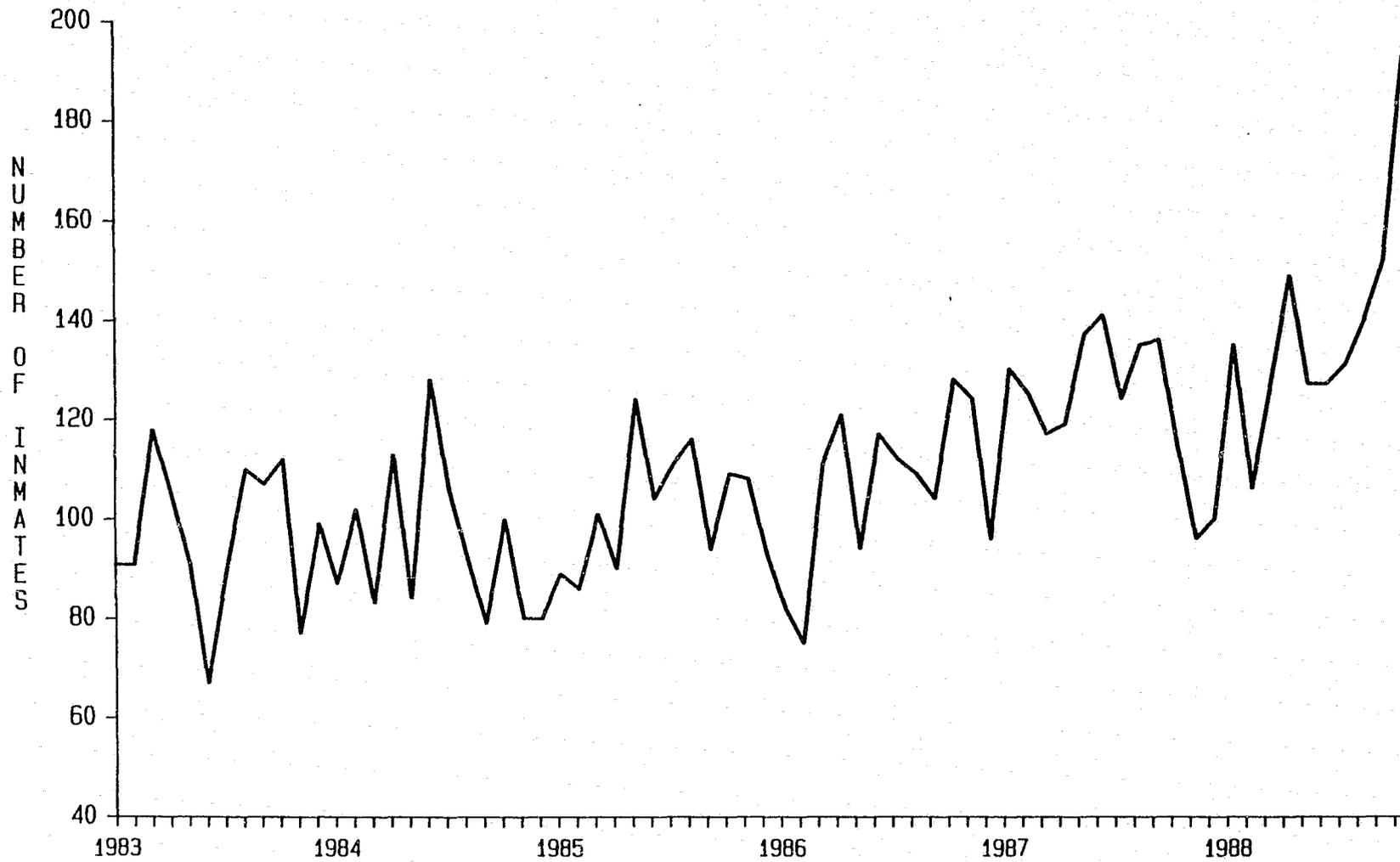
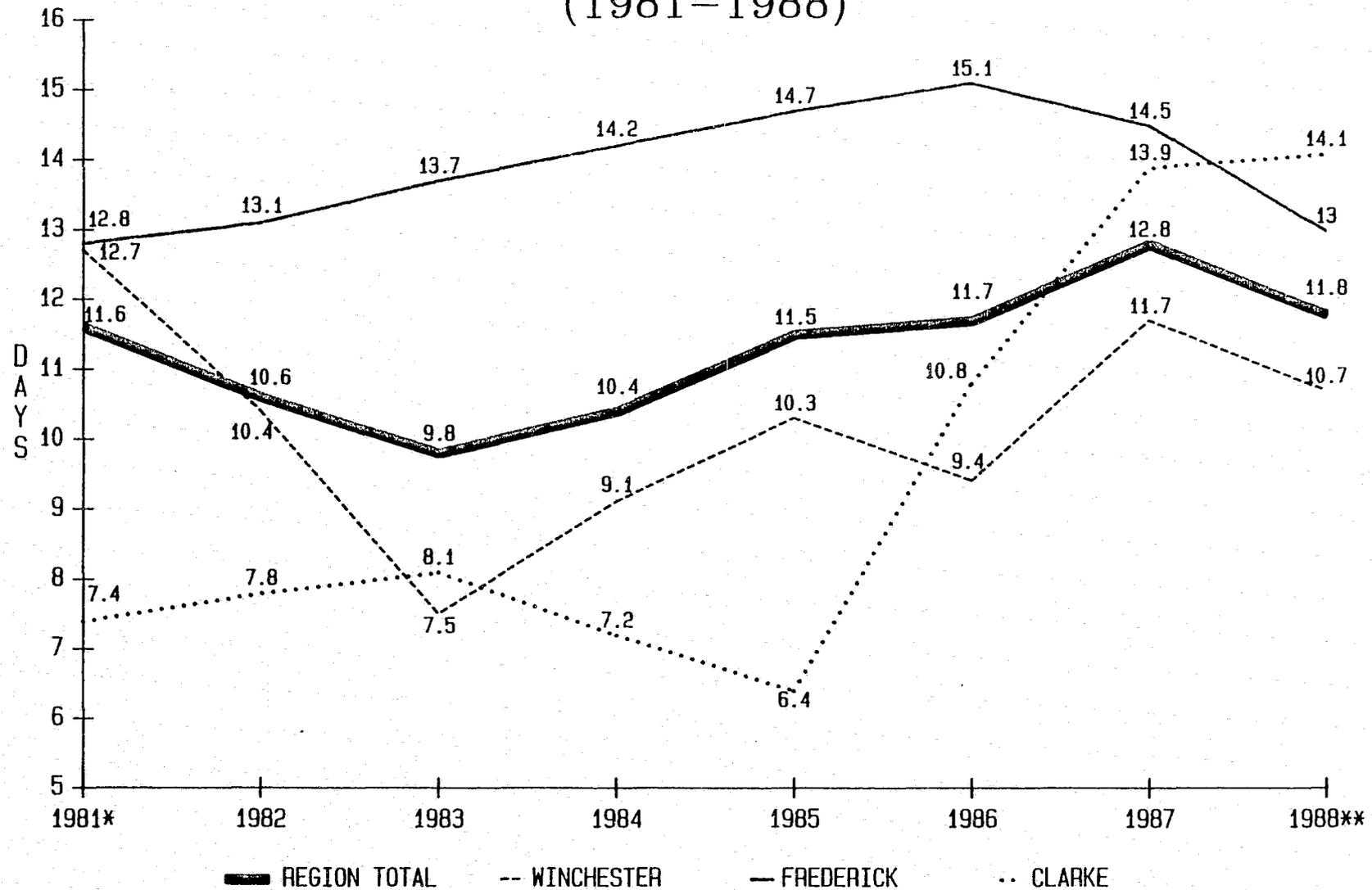


Figure 4.
 ANNUAL AVERAGE LENGTH OF STAY
 (1981-1988)



* Based on 7/81-12/81 figures.
 ** Based on 1/88-10/88 figures.

admissions and length of stay have played in defining ADP over the last six years.

TABLE 1
 AVERAGE ANNUAL GROWTH PATTERNS IN JAIL POPULATION STATISTICS
 1983-1988

| | REGION | WINCHESTER | FREDERICK | CLARKE |
|------|--------|------------|-----------|--------|
| ADP | +14.9% | +31.0% | + 5.9% | + 7.5% |
| AMA | + 8.7% | +11.8% | +12.9% | -10.1% |
| ALOS | + 4.1% | + 8.5% | - 1.0% | +14.8% |

As can be seen in the table, all three factors increased between 1983 and 1988. Average daily population had the largest gain with an average annual increase of approximately 15 percent. Since monthly admissions increased almost twice as much per year as average length of stay, it would appear that admissions played a larger role in defining the size of the regional jail population since 1983. The relative impact of these two factors can be determined by computing the correlation co-efficient (r^2) for ADP and admissions and ADP and length of stay.¹ The value of r^2 for ADP and admissions is .70 while the correlation between ADP and ALOS is .75. Contrary to the percentages displayed in the table, ALOS had a stronger role in defining the

¹The correlation co-efficient (r^2) is a statistic that measures the strength of association between two variables and its result has a numerical value between zero and one. If there is no relationship between the two variables, the value of r^2 is 0.0. If both variables are changing at exactly the same rate, the value of r^2 is 1.0.

region's ADP between 1983 and 1988. Admissions, however, also strongly influenced ADP during this time period. These findings corroborate conclusions contained in reports submitted to the Regional Jail Board in December, 1987 and March, 1988.

When each jurisdiction is examined, a somewhat different picture emerges regarding their individual impact on the regional jail population and the factors defining each jurisdiction's ADP. Since 1983 the City of Winchester has accounted for the largest annual increases in the regional ADP. During the 1983-1988 period, Winchester experienced an average annual increase of 31.0% in its ADP. Similar to the regional totals, both admissions ($r^2=.75$) and length of stay ($r^2=.72$) had a strong role in determining the City of Winchester's ADP. The data also suggest that the region's ADP is more likely to be influenced by forces operating in the City of Winchester's criminal justice system than those operating in the Counties of Frederick or Clarke.

Frederick County has been experiencing an average annual increase in monthly admissions that more than doubles its average annual increase in ADP. At the same time, the ALOS of Frederick County inmates has decreased at a rate of 1.0% per year. Based on the percentage, one would expect admissions to play a much larger role in defining Frederick's jail population than average length of stay. Although admissions had a greater impact on ADP than length of stay ($r^2=.35$ for admissions, $r^2=.30$ for ALOS), the differences between the two factors are not significant. The correlation co-efficients for the two factors also demonstrate that each has a relationship to ADP, however, the strength of their relationship is not as great as that found between the regional ADP and regional admissions or regional ALOS. These statistics suggest that Frederick County has been able to offset changes in admissions with changes in ALOS in order to maintain a relatively stable ADP.

Unlike Winchester and Frederick, Clarke County has been experiencing a decline in admissions (10.1% per year) offset by an increasing average length of stay (14.8% per year). The correlation co-efficients for these two factors in relation to ADP suggest that ADP has been strongly influenced by ALOS ($r^2=.83$). Although admissions have impacted ADP ($r^2=.39$), it is apparent that ALOS is the driver in defining Clarke County's ADP.

D. FACTORS AFFECTING ADMISSIONS TO JAIL

Table 2 displays some of the factors which can affect changes in the number of admissions to jail and the degree of change these factors have undergone since 1983. As a point of reference, total annual admissions for the region increased 27.4% between 1983 and 1987. Frederick County experienced the greatest increase in annual admissions with a growth rate of 44.6% followed by Winchester at 39.1%. Clarke County experienced a 46.6% decrease in annual admissions to jail between 1983 and 1987.

As can be seen in the table, general population growth has played a strong role in accounting for the increase in regional admissions to jail during the 1983-87 period ($r^2=.81$). Regional admissions to jail have also been strongly affected by changes in the total number of arrests that have occurred regionally ($r^2=.69$). Of less significance for explaining admission patterns is the number of index crimes reported to law enforcement agencies ($r^2=.24$).

Similar to average daily population, different patterns emerge when each jurisdiction is examined individually. Winchester City admissions are almost equally influenced by population growth and changes in total arrests ($r^2=.85$ for population, $r^2=.84$ for arrests). The statistics in the table also suggest that factors operating in Winchester's criminal justice system are more likely

to influence regional admissions than those operating in the Counties of Frederick and Clarke. Frederick County admissions are almost totally explained by general population growth ($r^2=.72$) rather than index crimes and arrests ($r^2=.20$ for both factors). Unlike Winchester and Frederick, Clarke County has been experiencing a decline in total admissions. This decline has been strongly influenced by decreasing arrests ($r^2=.80$) and a relatively stable population ($r^2=.72$). Index crimes play virtually no role in determining Clarke County admissions to jail.

Of the factors displayed in Table 2, arrests have increased substantially between 1983 and 1987. During this period regional arrests increased 14 percent. After dropping in 1984 and 1985, arrests sharply increased in 1986 and 1987 resulting in a 27.7% increase over 1985 figures. The bulk of the increased arrests since 1985 occurred in Frederick and Winchester (42.9% and 31.9%, respectively) while Clarke County experienced a 23.6% decrease in arrests since 1985.

The types of arrests have also changed considerably since 1983. Arrests for Part I offenses dropped 3.5% between 1983 and 1987 while arrests for Part II offenses increased 16.4% during this time period.² Of the Part II arrests, several offense categories did experience declining arrests during the five-year period (DWI = 30.7%, liquor law violations = 15.8%, drunk in public = 3.2%). However, several offense categories registered dramatic increases since 1983. The offenses undergoing the most dramatic increases were narcotics violations (231.8%), fraud (177.7%), disorderly conduct (102.5%), non-felonious assaults

²Part I arrests are for those offenses considered by the Federal Bureau of Investigation to be the most serious in nature or the most voluminous in occurrence. Part II arrests comprise the remaining arrests for felony and criminal misdemeanor offenses not covered in Part I.

(60.4%), and vandalism (36.0%).

E. FACTORS AFFECTING LENGTH OF STAY

The average lengths of stay for county jail populations are influenced primarily by two factors. The first of these factors, the disposition rate, is a broad indicator of judicial performance that measures the rate at which the judiciary processes criminal cases to final disposition. A disposition rate of less than 100 percent means that fewer cases are being brought to final disposition than are being filed during a particular year. Obviously, high disposition rates may serve to lower length of stay for pretrial detainees. The second factor is the availability and use of programs designed as alternatives to incarceration. Such programs can affect admissions and length of stay for both pretrial and sentenced populations.

Table 3 displays the annual number of filings, dispositions, and disposition rates for the region and each jurisdiction's General District and Circuit Court during the 1983 through 1987 period. As a point of reference, the region's ALOS increased 30.6% during the same period. One would expect disposition rates to be low given the rising length of stay. However, the data do not support this expectation. Each of the jurisdictions, except for Winchester, experienced an increase in their disposition rate during the period examined. Even though Winchester registered a decline, a disposition rate in excess of 100% was attained for three of the five years examined.

One reason the expectation of increasing ALOS as a function of decreasing disposition rate was not met stems from the imperfect nature of the disposition rate as a measure of judicial activity. The disposition rate is simply a measurement of the number of cases closed at the end of the year

TABLE 3

CRIMINAL CASELOADS OF THE
GENERAL DISTRICT AND CIRCUIT COURTS

| | | 1983 | 1984 | 1985 | 1986 | 1987 | CHANGE | RELATIONSHIP/ ALOS (r^2) |
|------------|---------------------------------------|-----------------------|-----------------------|----------------------|----------------------|-----------------------|--------------------------|---------------------------------|
| REGION | FILINGS DISPOSITIONS DISP. RATE | 4516 4567 101.1 | 4289 4573 106.6 | 3713 3531 95.1 | 5304 4788 90.3 | 6460 6598 102.1 | 43.0% 44.5% 1.0% | $r^2 = .10$ |
| WINCHESTER | FILINGS DISPOSITIONS DISP. RATE | 2573 2783 108.2 | 2414 2787 115.4 | 2002 1936 96.7 | 3204 2810 87.7 | 4035 4157 103.0 | 56.8% 49.4% - 4.8% | $r^2 = .08$ |
| FREDERICK | FILINGS DISPOSITIONS DISP. RATE | 1255 1255 100.0 | 1149 1226 106.7 | 1130 1067 94.4 | 1508 1452 96.3 | 1701 1778 104.5 | 35.5% 41.7% 4.5% | $r^2 = .22$ |
| CLARKE | FILINGS DISPOSITIONS DISP. RATE | 688 529 76.9 | 726 560 77.1 | 581 528 90.9 | 592 526 88.8 | 724 663 91.6 | 5.2% 25.3% 19.1% | $r^2 = .25$ |

relative to the number of cases filed. Cases carried over into a new year and closed will substantially affect the subsequent year's disposition rate. The data presented in Table 3 support this scenario. During October and November, 1986, Operation Crack resulted in a large number of admissions to jail for narcotics violations. Since they were filed near the end of the year, many of these cases were not disposed until 1987. These arrests served to lower the disposition rate for 1986 with the high number of carryovers serving to increase 1987's disposition rate.

The best indicator of the impact of judicial activity of ALOS would be to measure the actual length of stay for both pretrial detainees and sentenced inmates. Such detailed historical data were not accessible from either the jail or the courts in the region. The data we collected from court files and discussed in Chapter Five will be able to measure the impact of judicial activity on length of stay during the recent past. The only historical data source available commenced in 1985 and measures the percentage of cases disposed within various categories of time for Circuit Court criminal cases. On this measure, it appears that case processing times are increasing in Frederick County and the City of Winchester. In 1985, 41.8% of Frederick County Circuit Court criminal cases took longer than 150 days to dispose. This percentage increased to 57.0% in 1986 and 60.1% in 1987. Winchester Circuit Court registered 18.5% of its dispositions in the more than 150-day category, down to 11.2% in 1986, and 25.2% in 1987. Clarke County registered a drop in such cases going from a high of 50.7% in 1985 down to 43.6% in 1987.

The second factor affecting length of stay is the availability and use of programs designed as alternatives to incarceration. These programs may target the pretrial population or the sentenced population. Up until June, 1985, the region had an array of alternative programs available in lieu of the

traditional sentencing options of fines, probation, and incarceration. At one time the region was operating a public inebriate center (Starting Point), a mediation program and several misdemeanor community sentencing programs such as the Community Alternatives Program (CAP), Sentence Alternative Program (SAP), Fine Option Program (FOP), and Alcohol Safety Action Program (ASAP). The Work Release Center was also available to provide less secure and less costly housing for inmates on work release and those placed or awaiting placement in the Community Diversion Incentive (CDI) program. Finally, lines of communication were opened to the General District Court so that weekly review of detainees occurred which helped to facilitate pretrial release or early release from sentencing.

Many of these programs were disbanded after June, 1985. The public inebriate center is still operating as a pre-arrest diversion program. The Circuit Court still has CDI and work release available as alternatives to jail. Except for ASAP and access to work release and CDI, the General District Court has lost its ability to utilize the comprehensive community-based programs that were once available. The primary sentencing options utilized by this court are the imposition of monetary costs or incarceration. We are unable to measure the precise impact the demise of these programs had on the jail population. However, we believe the impact was significant based on the fact that there were 1446 participants in CAP, SAP, and FOP between July, 1981 and June, 1984. Coupled with increasing arrests, admissions and length of stay, we believe the demise of these programs and the weekly review of detainees help explain the dramatic increase in the region's ADP since 1985. What makes this situation somewhat ironic is that in November, 1985, the National Institute of Justice published a document entitled Alleviating Jail Overcrowding: A Systems Perspective that

extensively cited the region for its innovative approaches to managing the jail population.

F. OTHER DETENTION POPULATIONS

Previous sections of this report primarily addressed statistics describing population levels and factors influencing the regional jail population. This section addresses the remaining detention populations not accounted for in the previous sections of this chapter. By incorporating the transient, CDI, and work release populations, a complete picture of the regional detention system population can be seen. Table 4 displays the ADP of these populations along with the corresponding jail ADP for the time period between July, 1981 through October, 1988.

TABLE 4
TOTAL REGIONAL DETAINED
POPULATION

| | 1981* | 1982 | 1983 | 1984 | 1985 | 1986 | 1987 | 1988** |
|--------------|-------|------|------|------|------|------|------|--------|
| JAIL | 78 | 66 | 55 | 56 | 66 | 76 | 99 | 96 |
| WORK RELEASE | - | 17 | 18 | 24 | 19 | 25 | 29 | 34 |
| CDI | - | - | - | - | 6 | 6 | 8 | 3 |
| TRANSIENT | 0.2 | 0.5 | 0.4 | 0.4 | 0.3 | 0.2 | 0.5 | 0.4 |
| TOTAL*** | 81 | 86 | 76 | 83 | 94 | 111 | 139 | 136 |

*Based on 07/81-12/81 figures.

**Based on 01/88-10/88 figures.

***Total figures incorporated an estimated ADP of 3 inmates to overcome the possible undercounting of the transient population.

The transient population is primarily composed of individuals who were apprehended within the region but awaiting transfer to another jurisdiction to face charges brought by the receiving jurisdiction. The actual population,

down to the decimal level, is presented to demonstrate the small number and stability of this population. However, we believe this population is undercounted in that inmates from other states or Virginia jurisdictions not participating in the Joint Confinement Project were counted only if housed in the Clarke or Frederick County Jails. Due to capacity constraints on these two jails, it is possible that individuals with "holds" on them were apprehended by regional arresting agencies but housed in a Joint Confinement Project jail to await transfer. If space were available, such holds would be housed locally and increase the ADP of this segment of the detained population. Based on conversations with local jail officials, we believe a more accurate measure of the transient population would total an ADP of two or three inmates.

The final two categories of the detention system population are those housed in the Work Release Center. The largest group housed in this facility are those participating in the Work Release Program. As can be seen in the table, the judiciary has increasingly relied on work release as an alternative-to-jail sentencing option. The ADP of the work release facility has doubled since 1982, going from 17 inmates to 34 inmates in 1988. According to one circuit judge, he would rely on this sentencing option even more if the Work Release Center had more capacity for handling this population. Expansion of the Work Release Center would reduce the number of beds needed in the new facility.

The second group of defendants housed in the Work Release Center are those participating in the Community Diversion Incentive Program (CDI). CDI participants are routinely incarcerated for 30-90 days before they are released to the program. In addition, violators of the program are also housed in the Work Release Center prior to or subsequent to disposition of the

violation. As can be seen in Table 4, the ADP of CDI inmates housed is small relative to the jail and the work-release population.

G. CONCLUSIONS

This chapter examined historical data concerning the evolution of the region's jail population during the 1980s. Data on the average daily population, average length of stay, and admissions were used to describe the jail population. Data were also presented on those defendants housed in the Work Release Program and the Community Diversion Incentive Program. Finally, factors were identified which help to explain the causes behind the growth of the jail population.

JAIL POPULATION TRENDS

- The jail population has undergone two periods of significant change between July 1, 1981 and October 31, 1988.

- The period from 1981 through 1984 was characterized as a period of decline in the regional jail population. During this period the regional ADP went from 78 jail inmates in 1981 down to 54 inmates in 1984. This represents a 28.2% decrease in the region's ADP.

- The second stage encompassed the years 1985 through October, 1988. This stage was characterized as a period of growth in the region's ADP. During this period the region's ADP increased 45.4% with the greatest growth occurring between 1986 and 1987. The City of Winchester had the greatest impact on the region's ADP during the last four to five years. Since 1985 the ADP of

Winchester inmates increased 70%.

THE TOTAL DETAINED POPULATION

- The ADP of inmates housed in the Work Release Center and those housed as part of the Community Diversion Incentive Program were also examined. The judiciary has demonstrated increasing reliance on Work Release as an alternative to jail. Since 1982 the ADP of Work Release participants has doubled. Our cursory analysis indicates that the CDI Program may be under-utilized as an alternative to jail.
- When defendants housed in alternative programs are included, the region went from a total ADP of 81 inmates in 1981 to 136 in 1988. This represents an overall increase of 67.9% since 1981 or an annual growth rate of 9.7%.

FACTORS AFFECTING THE JAIL POPULATION

- The two primary factors of admissions and average length of stay were examined in order to explain the growth in the region's jail population. Admissions to jail have been steadily increasing since 1983. Admissions per month increased 43.7% between 1983 and October, 1988.
- The average length of stay exhibited a pattern of growth similar to ADP with a period of decline (1981-1984) followed by a period of growth. Between 1981 and 1984 the ALOS decreased 10.4% while ALOS

increased 2.6% since 1985.

- Correlation co-efficients were calculated in order to determine the relative impact of admissions and average length of stay on the region's jail population. The correlation co-efficients suggest that ALOS had a stronger role in explaining the changes in ADP since 1983. However, admissions also played a strong role in defining the region's ADP.
- A somewhat different picture emerged when each jurisdiction was analyzed individually. Similar to the region, Winchester's ADP was strongly influenced by both admissions and average length of stay. Although Frederick County's ADP was also influenced by both admissions and ALOS, the data suggest that Frederick has been able to maintain a relatively stable ADP by offsetting changes in admissions with changes in ALOS. The factor almost totally responsible for Clarke County's ADP has been an increasing ALOS.

FACTORS AFFECTING ADMISSIONS TO JAIL

- The two primary factors affecting the region's growth in admissions has been an increase in the general population and an increase in the number of arrests. Of the two, general population growth had a stronger role in explaining the rise in admissions throughout the region.
- Similar to ADP, different patterns emerged when each jurisdiction was analyzed individually. Winchester City admissions are almost equally

influenced by population growth and changes in total arrests. Frederick County admissions are almost totally explained by general population growth. Clarke County's decline in admissions is explained by decreasing arrests and a relatively stable population.

- Total arrests within the region increased 14% since 1983 with Part II arrests experiencing the greatest increase. The Part II offenses undergoing the most dramatic increases were narcotic violations (231.8%), fraud (177.7%), and disorderly conduct (102.5%).

FACTORS AFFECTING LENGTH OF STAY

- Detailed historical data regarding the length of stay for both pretrial detainees and sentenced inmates were unavailable. However, data limited to the Circuit Court suggest that case processing times have increased in Frederick County and the City of Winchester since 1985. In 1985, 41.8% of Frederick County Circuit Court criminal cases took longer than 150 days to dispose. This percentage increased to 60.1% in 1987. The percentage of Winchester Circuit Court cases in the 150 days plus category went from 18.5% in 1985 to 25.2% in 1987.
- Although detailed impact data were unavailable, we believe that the demise of the alternative programs operated by the General District Court has helped contribute to the rising ADP.

CHAPTER THREE

THE ARREST PROCESS, THE OFFENDERS,
AND THEIR OFFENSES

A. INTRODUCTION

This chapter begins the analysis of data collected by DCJS staff from records maintained by the various courts operating in the region and the jails participating in the Joint Confinement Project. As mentioned in Chapter One, the purpose of the data collection effort is to provide information to the Jail Advisory Group regarding the processing of offenders through the criminal justice systems operating in the region. This chapter focuses on the arrest process, the defendants, and their offenses while Chapters Four and Five describe the pretrial release process and judicial activity.

The study examined 980 adults arrested and brought before the magistrate. These adults comprised a total of 1188 cases processed by the region during the time periods examined. Due to the routine nature of handling, individuals arrested and booked on a single charge of being drunk in public were excluded from the data collection process. Individuals issued a summons in lieu of arrest were also excluded because time and resource limitations did not allow detailed examination of this large population of defendants. However, a limited analysis of these populations is offered in Section B of this chapter. The number of cases examined for each of the jurisdictions within the region are as follows: Clarke = 170 cases (14.3%), Frederick = 370 cases (31.1%), Winchester = 648 cases (54.5%). Broken down by case type, data was collected on 310 traffic cases, 367 misdemeanor cases, and 511 felony cases.

Each of the tables and graphs presented in Chapters Three through Five will have an "N" size listed. The "N" size refers to the total number of cases applicable to that variable. The "N" size will vary from display to display depending on the number of missing observations encountered. If a pie chart is utilized, the "n" size is listed for each portion of the pie. Where

applicable, the mean and median value will be presented for many variables discussed. The mean is simply the average value for that variable (e.g., average age) while the median represents the mid-point value of a frequency distribution. Depending on the range of values for a particular variable, the median is a more meaningful statistic because it is not adversely affected by extreme observations.

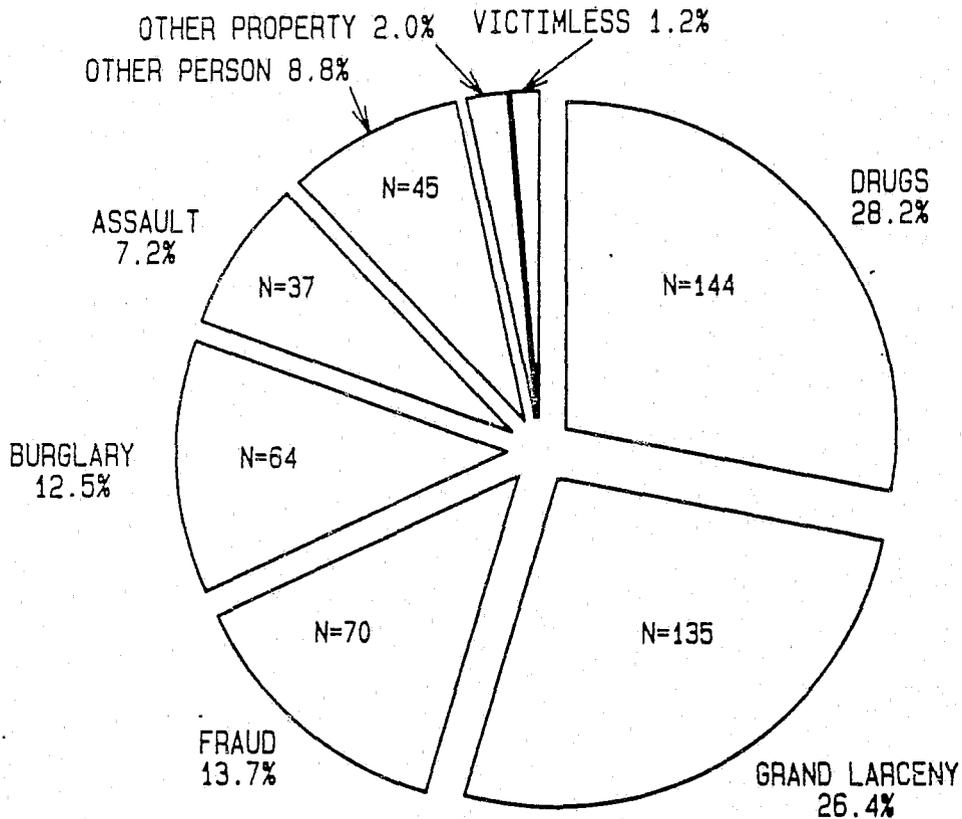
B. THE ARREST PROCESS

1. PRIMARY OFFENSE AT ARREST

Figures 5 through 7 display the primary offenses at arrest for each of the three case types. Primary offense at arrest was defined as the most serious offense according to the penalty structures specified in the Code of Virginia. For example, a Class I felony or misdemeanor is more serious than a Class II felony or misdemeanor. If a defendant was arrested for two or more offenses with a like penalty structure, an offense against a person was considered more serious than a property offense. Property offenses took precedence over drug offenses while drug offenses were considered more serious than victimless/public order offenses.

As can be seen in Figure 5, narcotic violations and grand larceny make up more than 50 percent of the felony arrests processed within the region. Of the 144 drug arrests, 115 were for sales of narcotics versus possession charges. When looked at in another manner, 273 (53.4%) arrests were for property offenses followed by drug arrests at 28.2%. Crimes against a person comprise 17.0% (87 cases) of the arrests while public order/victimless offenses only comprise 1.4% (7 cases) of the felony arrests made within the region.

Figure 5.
PRIMARY FELONY OFFENSE AT ARREST
 (N=511)



OTHER PERSON: Sexual Assault=15, Robbery=11, Murder=9, Kidnapping=6, Fire Missile/Occ. Structure=3, Extortion=1.

OTHER PROPERTY: Vandalism=8, Arson=2.

VICTIMLESS: Failure to Appear=2, Weapons=2, Solicitation to Commit Felony=1, Bigamy=1.

Table 5 breaks down the felony arrests for each jurisdiction and displays the frequency distribution for the various crime categories both intra-jurisdictionally and inter-regionally. One would expect the City of Winchester to be the primary prosecutor of felony arrests due to the fact that it is the major focal point for social and business attractions within the region and Northwest Virginia as a whole. Except for the offenses of burglary and murder, the City of Winchester is responsible for prosecuting the bulk of the felony arrests occurring within the region.

Frederick County is responsible for prosecuting a higher percentage of the burglary arrests in the region and the bulk of the murder arrests. Clarke County is only responsible for prosecuting 15.3% of the felony arrests during the time period examined.

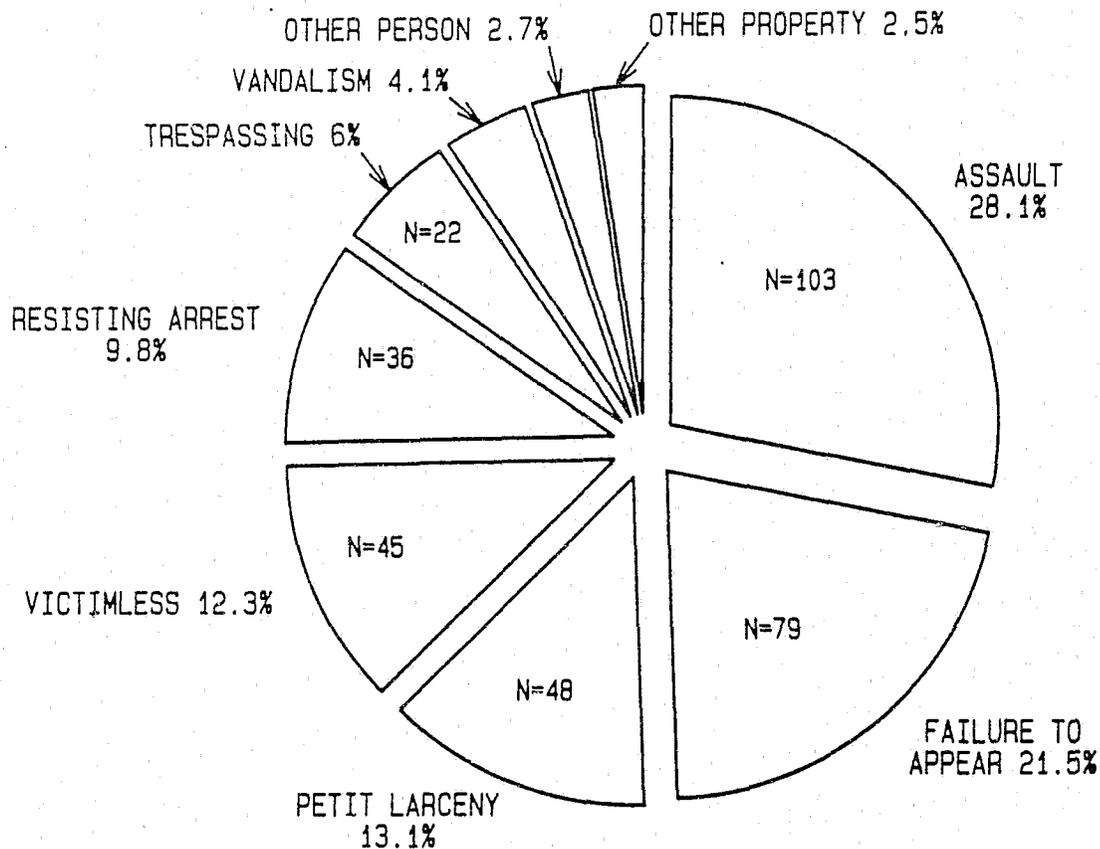
TABLE 5
FELONY ARREST COMPARISONS
BETWEEN JURISDICTIONS

| OFFENSE | WINCHESTER | | | FREDERICK | | | CLARKE | | |
|---------------------|------------|------------|------------|-----------|------------|------------|--------|------------|------------|
| | NO. | INTRA-PCT. | INTER-PCT. | NO. | INTRA-PCT. | INTER-PCT. | NO. | INTRA-PCT. | INTER-PCT. |
| DRUGS (144) | 92 | 34.1 | 63.9 | 38 | 23.3 | 26.4 | 14 | 17.9 | 9.7 |
| GRAND LARCENY (135) | 70 | 25.9 | 51.8 | 45 | 27.6 | 33.3 | 20 | 25.6 | 14.8 |
| FRAUD (70) | 41 | 15.2 | 58.6 | 18 | 11.0 | 25.7 | 11 | 14.1 | 15.7 |
| BURGLARY (64) | 21 | 7.8 | 32.8 | 26 | 16.0 | 40.6 | 17 | 21.8 | 26.6 |
| ASSAULT (37) | 20 | 7.4 | 54.0 | 14 | 8.6 | 37.8 | 3 | 3.8 | 8.1 |
| SEXUAL BATTERY (15) | 10 | 3.7 | 66.7 | 5 | 3.1 | 33.3 | 0 | - | - |
| ROBBERY (11) | 8 | 3.0 | 72.7 | 2 | 1.2 | 18.2 | 1 | 1.3 | 9.1 |
| MURDER (9) | 0 | - | - | 7 | 4.3 | 77.8 | 2 | 2.6 | 22.2 |
| OTHER (26) | 8 | 3.0 | 30.8 | 8 | 4.9 | 30.8 | 10 | 12.8 | 38.5 |
| TOTALS (511) | 270 | 100.1 | 52.8 | 163 | 100.0 | 31.9 | 78 | 99.9 | 15.3 |

Each jurisdiction possesses different felony arrest patterns when examined individually. Drug arrests make up over one-third of the Winchester felony arrests compared to 23.3% of Frederick County's and 17.9% of Clarke County's. Each jurisdiction is comparable as to their arrest patterns for grand larceny and fraud. Arrests for burglary comprise a larger portion of Frederick and Clarke County felony arrests compared to Winchester. Felonious assault arrests make up a smaller portion of Clarke County arrests compared to Frederick County and the City of Winchester.

As can be seen in Figure 6, nearly 50 percent of the misdemeanor

Figure 6.
PRIMARY MISDEMEANOR OFFENSE AT ARREST
 (N=367)



OTHER PERSON: Sexual Assault=6, Contributing to the Delinquency of Minor=2, Profane phone calls=2.
 OTHER PROPERTY: Fraud=7, Fail to Pay Sales Tax=1, Fail to Register Hired Vehicle=1.
 VICTIMLESS: Disorderly Conduct=13, Weapons=11, Profane & Abusive Language=7, Drugs=7, Game Violations=2, Other violations=5.

arrests are comprised of simple assault and failure to appear. Failure to appear for misdemeanor proceedings comprised a much larger portion of the misdemeanor arrests when compared to failure to appear for felony proceedings. Whereas misdemeanor failure to appear comprised 21.6% of the misdemeanor arrests, only 2 of the 511 felony arrests involved failure to appear as the primary offense. Unlike felony arrests, misdemeanor arrests display a much more even distribution when offense type is examined. Offenses against a person comprise 40.6% of the misdemeanor arrests

followed by public order/victimless offenses at 31.9%. Property offenses make up 25.6% of the misdemeanor arrests and only 1.9% are arrests for misdemeanor drug offenses.

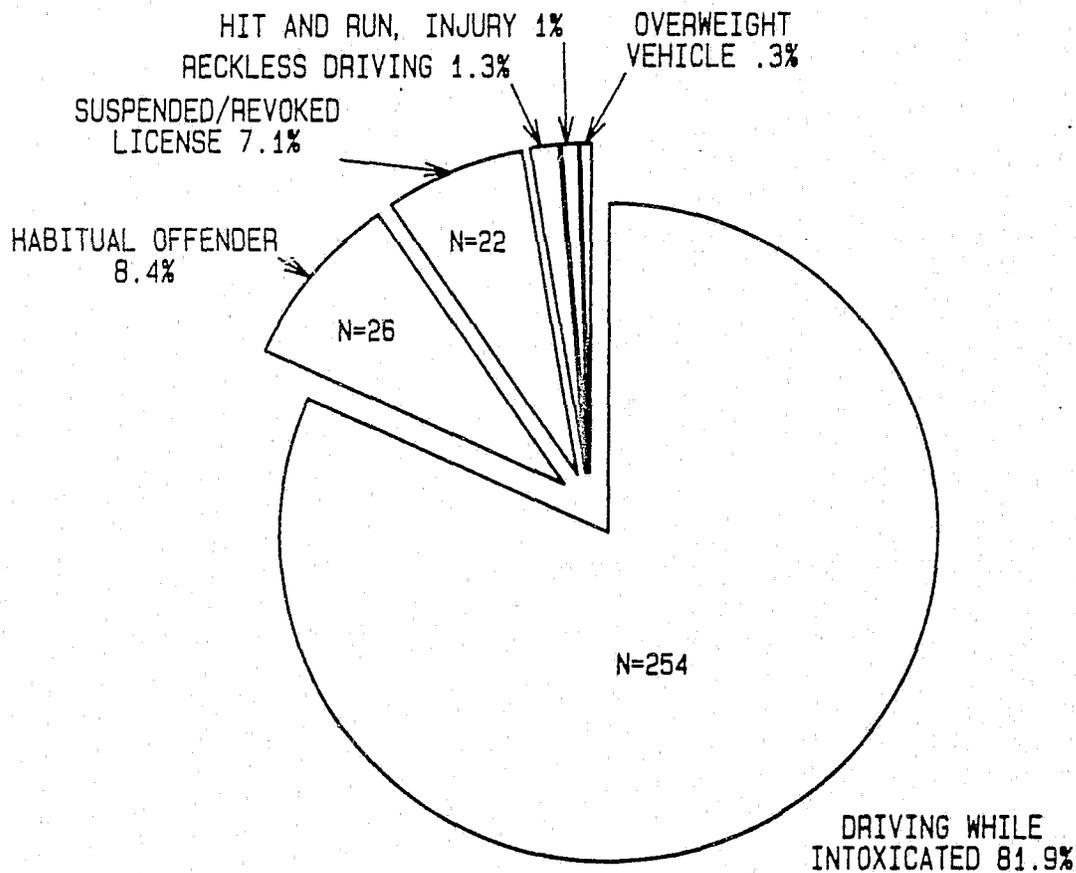
TABLE 6
MISDEMEANOR ARREST COMPARISONS
BETWEEN JURISDICTIONS

| OFFENSE | WINCHESTER | | | FREDERICK | | | CLARKE | | |
|-------------------------|------------|------------|------------|-----------|------------|------------|--------|------------|------------|
| | NO. | INTRA-PCT. | INTER-PCT. | NO. | INTRA-PCT. | INTER-PCT. | NO. | INTRA-PCT. | INTER-PCT. |
| ASSAULT (103) | 56 | 24.0 | 54.4 | 24 | 28.2 | 23.3 | 23 | 46.9 | 22.3 |
| FAILURE TO APPEAR (79) | 51 | 21.9 | 64.6 | 26 | 30.6 | 32.9 | 2 | 4.1 | 2.5 |
| PETIT LARCENY (48) | 40 | 17.2 | 83.3 | 7 | 8.2 | 14.6 | 1 | 2.0 | 2.1 |
| RESISTING ARREST (36) | 25 | 10.7 | 69.4 | 7 | 8.2 | 19.4 | 4 | 8.2 | 11.1 |
| DISORDERLY CONDUCT (13) | 13 | 5.6 | 100.0 | 0 | - | - | 0 | - | - |
| TRESPASS (22) | 13 | 5.6 | 59.1 | 3 | 3.5 | 13.6 | 6 | 12.2 | 27.3 |
| DRUGS (7) | 6 | 2.6 | 85.7 | 0 | - | - | 1 | 2.0 | 14.3 |
| VANDALISM (15) | 6 | 2.6 | 40.0 | 5 | 5.9 | 33.3 | 4 | 8.2 | 26.7 |
| ABUSIVE LANGUAGE (7) | 5 | 2.1 | 71.4 | 2 | 2.4 | 28.6 | 0 | - | - |
| SEXUAL BATTERY (6) | 4 | 1.7 | 66.7 | 1 | 1.2 | 16.7 | 1 | 2.0 | 16.7 |
| WEAPONS (11) | 3 | 1.3 | 27.3 | 5 | 5.9 | 45.4 | 3 | 6.1 | 27.3 |
| OTHER (20) | 11 | 4.7 | 55.0 | 5 | 5.9 | 25.0 | 4 | 8.2 | 20.0 |
| TOTALS (367) | 233 | 100.0 | 63.5 | 85 | 100.0 | 23.2 | 49 | 99.9 | 13.4 |

To a greater degree than felony arrests, the City of Winchester is responsible for prosecuting well over one-half of the misdemeanor arrests made within the region. Except for vandalism and weapon offenses, the City of Winchester handles over 50 percent of the crime categories displayed in Table 6. These two exceptions are more evenly distributed between the three localities within the region. When examined individually, simple assaults and failure to appear comprise more than 50 percent of the arrests handled by Frederick and Clarke County General District Courts. However, simple assaults alone make up 46.9% of the misdemeanor arrests processed in Clarke County.

As can be seen in Figure 7, arrests for DWI make up the majority of traffic arrests within the region. Approximately 10 percent of the traffic arrests involve the felony traffic offenses of driving after being declared an habitual offender and leaving the scene of an accident involving personal injury. Unlike felony and misdemeanor arrests, traffic arrests are more evenly distributed between Winchester City and Frederick County. Although Winchester is the largest contributor at 46.8%, Frederick County is responsible for handling 39.4% of the traffic

Figure 7.
PRIMARY TRAFFIC OFFENSE AT ARREST
(N=310)



arrests. When examined individually, DWI arrests make up approximately 90 percent of Winchester and Clarke's traffic arrests. Although DWI accounts for a large percentage of Frederick County traffic arrests, habitual offender and driving on a revoked/suspended license accounts for approximately 27 percent of Frederick County traffic arrests.

TABLE 7
TRAFFIC ARREST COMPARISONS
BETWEEN JURISDICTIONS

| OFFENSE | WINCHESTER | | | FREDERICK | | | CLARKE | | |
|-------------------------|------------|------------|------------|-----------|------------|------------|--------|------------|------------|
| | NO. | INTRA-PCT. | INTER-PCT. | NO. | INTRA-PCT. | INTER-PCT. | NO. | INTRA-PCT. | INTER-PCT. |
| DWI (254) | 131 | 90.3 | 51.6 | 84 | 68.8 | 33.1 | 39 | 90.7 | 15.4 |
| HABITUAL OFFENDER (26) | 10 | 6.9 | 38.5 | 14 | 11.5 | 53.8 | 2 | 4.6 | 7.7 |
| REV./SUSP. LICENSE (22) | 3 | 2.1 | 13.6 | 19 | 15.6 | 86.4 | 0 | - | - |
| OTHER (8) | 1 | 0.7 | 12.5 | 5 | 4.1 | 62.5 | 2 | 4.6 | 25.0 |
| TOTALS (310) | 145 | 100.0 | 46.8 | 122 | 100.0 | 39.4 | 43 | 99.9 | 13.9 |

2. SECONDARY AND TERTIARY OFFENSES AT ARREST

The majority of defendants were arrested for a single unique offense. However, 308 of the 1188 cases (25.9%) involved defendants who were arrested for a second offense. Misdemeanants and felons were more likely to be arrested for a second offense (30.5% and 28.2%, respectively) while only 16.4% of the traffic offenders had an accompanying offense. If a traffic arrest had a secondary offense, it was most likely to be a DWI arrest with an accompanying charge of refusing to take a breathalyzer test. Twenty-nine of the 51 traffic defendants (56.9%) with a secondary offense had the refusal as the secondary offense.

A total of 113 misdemeanants had a secondary offense at arrest. Misdemeanants with an accompanying offense were most likely to be arrested

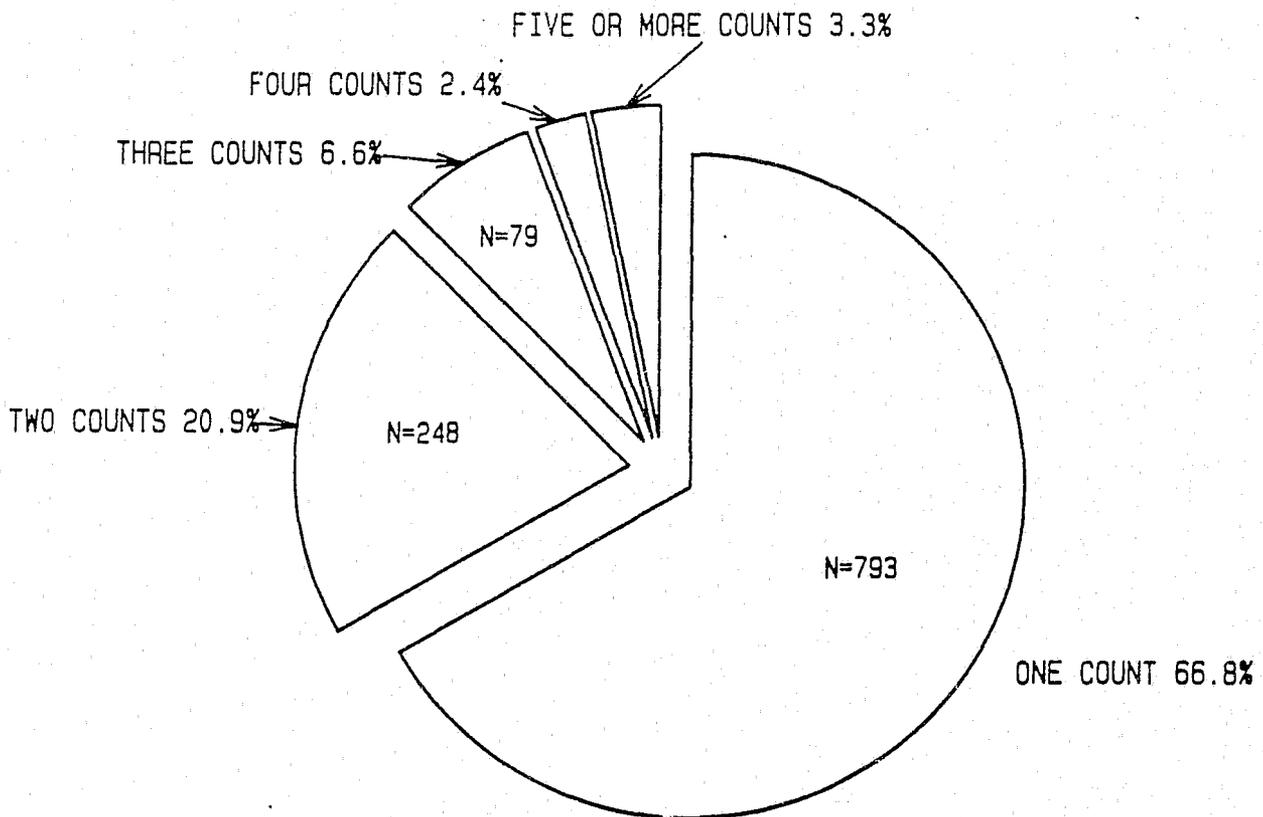
for being drunk in public (41.1%), trespassing (12.5%), or on vandalism charges (9.8%). Of the 144 felons who had a secondary offense, nearly three-quarters (74.3%) were arrested for a second felony offense with 22.2% arrested for an accompanying misdemeanor charge. Felons with an accompanying offense were most likely to be arrested for grand larceny or petit larceny (31.2%), fraud (22.9%) or drug offenses (12.5%).

Very few defendants were arrested for a third unique offense. Only 7.6% of the misdemeanants had a third offense at arrest, 5.9% of the felons, and 2.9% of the traffic offenders. Of the 28 misdemeanants with a third offense at arrest, 19 were also charged with being drunk in public. Of the 30 felons arrested for a third offense, 43.3% were arrested for a third felony offense while 36.7% had a misdemeanor as the third offense.

3. TOTAL NUMBER OF COUNTS

This variable measured the total number of counts for all offenses at arrest. As can be seen in Figure 8, approximately 88 percent of the arrests involved one or two total counts. The highest number of counts encountered during the period examined was twenty-three. The average number of counts was 1.7 per arrest while the median remained at 1.0 count per arrest. When case type is examined, the median remained at 1.0 counts per arrest for all three case types. However, the average number of counts per felony arrest is substantially higher due to the number of cases with more than two counts. Felony cases averaged 2.1 counts per arrest compared to traffic cases with an average of 1.2 counts and misdemeanants with 1.5 counts per arrest.

Figure 8.
TOTAL NUMBER OF COUNTS AT ARREST
(N=1188)

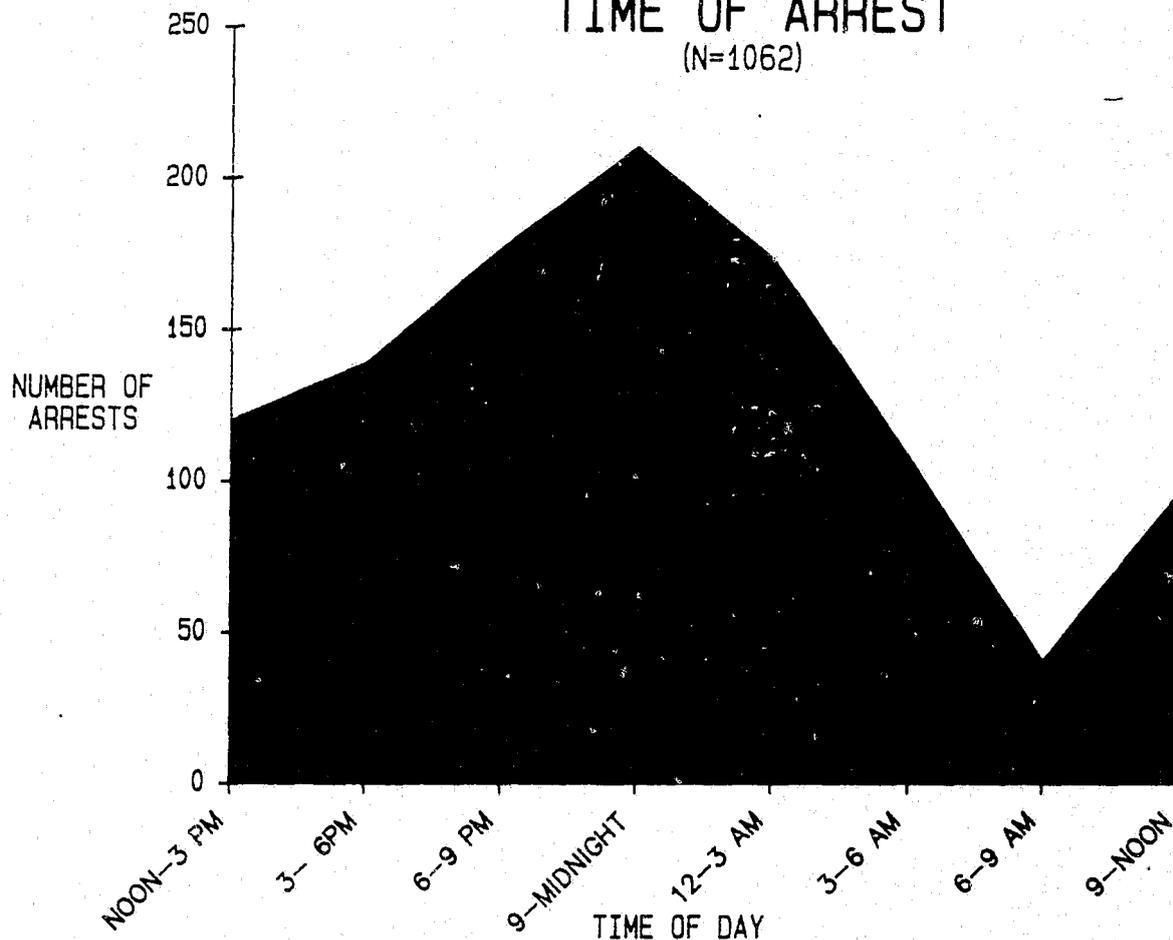


4. TIME OF ARREST

Figure 9 displays the frequency distribution of the time of arrest for cases examined. The most common time of arrest for all offenses was the period between 6:01 p.m. and midnight. The least likely period for arrests to occur was between 6:01 a.m. and noon. As expected, traffic arrests were most likely to occur during the evening and early morning hours. Approximately 63% of the traffic arrests occurred between 6:01 p.m. and 6:00 a.m. Misdemeanor and felony arrests are more likely to occur in the afternoon and evening hours. Approximately 65% of the

misdemeanor arrests occurred between noon and midnight while 77.5% of the felony arrests occurred during this same 12-hour period.

Figure 9.
TIME OF ARREST
(N=1062)

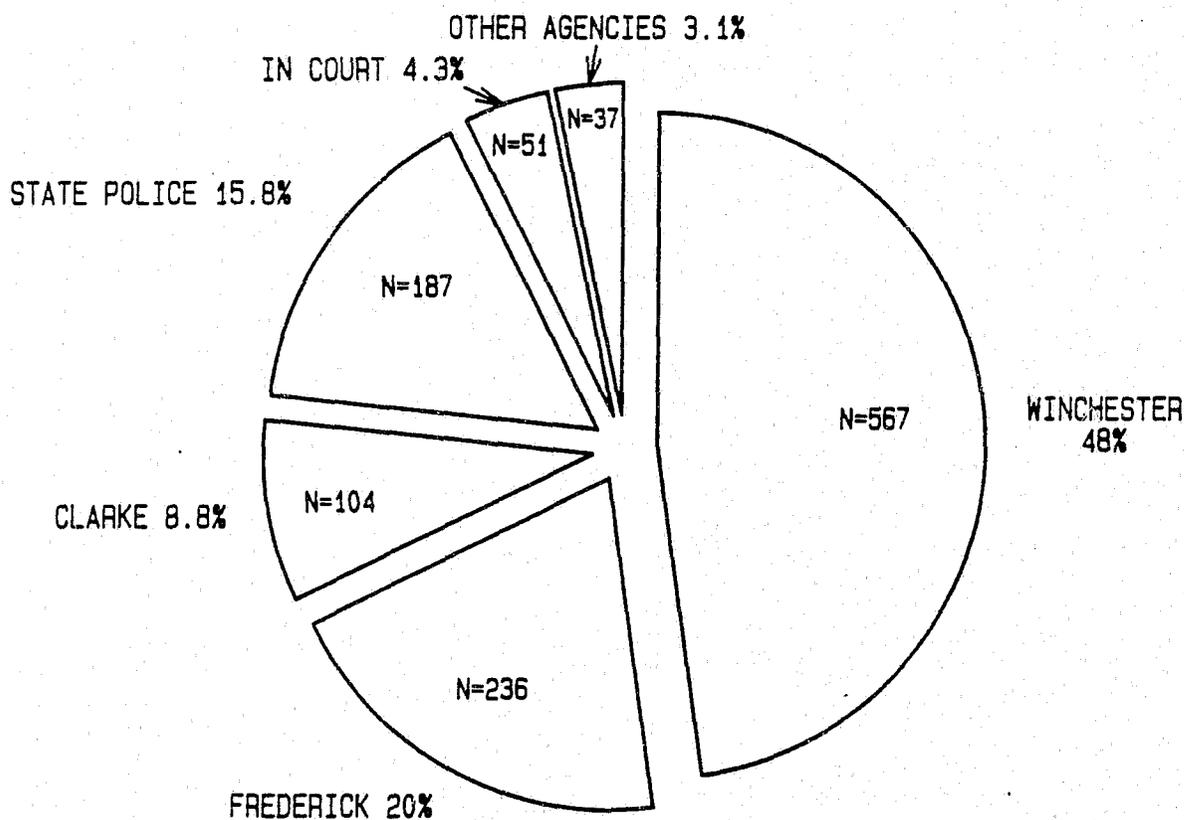


5. ARRESTING AGENCY

As can be seen in Figure 10, the Winchester Police Department is the primary arresting agency within the region. For cases under the jurisdiction of Winchester courts, this agency is responsible for 81.2% of the arrests processed by these courts. The arrest activity of the Winchester Police Department, however, is not restricted to criminal

behavior committed within the city limits. Approximately 8 percent of the arrests processed by Frederick County courts and 8 percent of the Clarke County cases were arrested by the Winchester Police Department.

Figure 10.
ARRESTING AGENCY
(N=1182)



Arresting agencies of Frederick County were responsible for making 20.0% of the regional arrests. The majority of these arrests (230 of 236) were made by the Frederick County Sheriff's Department. In terms of formal arrest, the police departments of Middleton and Stephens City made very few apprehensions during the time period sampled. The Frederick County Sheriff's Department made 4.2% of the arrests processed by

Winchester courts and 5.9% of the arrests processed by Clarke County courts.

The Clarke County Sheriff's Department and the Berryville Police Department were responsible for 8.8% of the regional arrests. Of their 104 arrests, 82 were made by the Sheriff's Department and 22 by the Berryville Police Department. Unlike the Winchester Police Department and Frederick County Sheriff's Department, these arresting agencies do not make many arrests of defendants processed by courts outside of Clarke County. Only 0.5% of the Frederick County court cases and 1.2% of the Winchester City court cases were apprehended by the Clarke County Sheriff's Department or the Berryville Police Department.

The Virginia State Police plays an active role as an arresting agency within the region. The bulk of their arrests, however, fall under the jurisdiction of Frederick and Clarke County courts. Only 8.8% of the arrests processed by Winchester courts were made by the State Police compared to 25.5% of the Frederick cases and 21.2% of the Clarke County cases. Of the 187 arrests made by the State Police, 96 (51.3%) were for traffic offenses while 87 (46.5%) were for felony criminal offenses. The bulk of the traffic arrests were for DWI (67 of 96) while the bulk of the felony criminal arrests were for drug offenses (74 of 87). More specifically, the State Police made 26.4% of the DWI arrests within the region, 51.4% of the drug arrests, and 77.3% of the arrests for driving with a suspended/revoked license.

A small percentage of the regional arrests were made in the courtroom after a direct indictment was returned by the grand jury. These 51 arrests represent 10.0% of the 511 felony cases examined. Of the 51 cases, 16 (31.4%) were for grand larceny and 13 (25.5%) were for drug

offenses. An even smaller percentage (3.1%) of the arrests were made by arresting agencies outside the region. Of these 37 arrests, 22 were made by arresting agencies operating within the boundaries of the Joint Confinement Project.

6. THE SUMMONSED POPULATION

As mentioned in this chapter's introduction, 367 defendants were arrested, brought before the magistrate, and bonded for misdemeanor charges. These defendants were tracked by completing the data collection instrument devised by DCJS. However, an effort was made to identify and count adult misdemeanants processed by the General District and Domestic Relations Courts who were issued a summons in lieu of arrest. During the time periods examined for each court, an additional 1,045 criminal misdemeanants were processed by these divisions of the General District Court. In other words, for every misdemeanant apprehended and brought before the magistrate an additional 2.8 misdemeanants were summonsed in lieu of arrest. Due to their volume, we were unable to conduct a comparable analysis of traffic arrests to traffic summonses.

There are three decision-making scenarios surrounding the issuance of a summons in lieu of arrest. First, the arresting officer may release on summons without transportation to the magistrate if criteria specified in the Code of Virginia and departmental policy are met. If the officer releases on summons, a Virginia Uniform Summons is completed and submitted to the court of jurisdiction. Second, if a complaint is brought before the magistrate prior to arrest, the magistrate will issue an arrest warrant and may allow the arresting officer to release on summons at his/her discretion. If released on summons, the defendant signs the

bottom of the arrest warrant and does not appear before the magistrate for a bond hearing. Third and finally, a defendant may be brought before the magistrate and released on summons. If such is the case, an arrest warrant is issued and the defendant signs the bottom portion of the warrant.

The 2.8 to 1 summons to arrest ratio for the region is comparable to other jurisdictions DCJS has worked with in the past. However, we believe the ratio may be inflated somewhat because it was not always clear whether magistrate-issued summonses were the result of officer discretion or decisions reached at the magistrate hearing after apprehension and transportation. Table 8 displays the number of defendants with Class I and Class II misdemeanor charges who were bonded versus those who were summonsed by either the magistrate or the arresting officer. Defendants arrested for local ordinances or Class III or Class IV misdemeanors were not included because it was clear that the majority of these defendants were issued a summons by the arresting officer. Only 1 of the 48 defendants arrested for local ordinances resulted in an appearance before the magistrate. The remaining 47 were issued a field summons by the arresting officer. The situation was not so clear for Class III and Class IV misdemeanants. Of the 120 lesser misdemeanants identified, 92 (76.7%) were issued field summonses by the arresting officer. Only 10 (8.3%) were brought before the magistrate and bonded. Fourteen of the 18 defendants with magistrate-issued summonses were arrested for profane and abusive language charges. However, we could not determine if these cases were warrants issued prior to arrest or at the magistrate hearing.

Table 8 demonstrates that arresting officers are less likely to issue a field summons for the more serious misdemeanors than they are for

TABLE 8

COMPARISON OF BONDED VERSUS SUMMONSED
CLASS I AND CLASS II MISDEMEANANTS

| OFFENSE | TOTAL | BONDED | PCT. | MAGISTRATE SUMMONS | PCT. | OFFICER SUMMONS | PCT. |
|--------------------|-------|--------|------|-----------------------|------|--------------------|------|
| ASSAULT | 301 | 103 | 34.2 | 198 | 65.8 | 0 | - |
| WORTHLESS CHECK | 215 | 5 | 2.3 | 210 | 97.7 | 0 | - |
| GAME & FISH | 158 | 2 | 1.3 | 7 | 4.4 | 149 | 94.3 |
| TRESPASS | 148 | 22 | 14.9 | 43 | 29.0 | 83 | 56.1 |
| PETIT LARCENY | 107 | 48 | 44.8 | 53 | 49.5 | 6 | 5.6 |
| FAILURE TO APPEAR | 80 | 79 | 98.8 | 1 | 1.2 | 0 | - |
| VANDALISM | 47 | 15 | 31.9 | 32 | 68.1 | 0 | - |
| OBSTRUCTION | 44 | 36 | 81.8 | 5 | 11.4 | 3 | 6.8 |
| WEAPONS | 27 | 10 | 37.0 | 15 | 55.6 | 2 | 7.4 |
| POSSESS MARIJUANA | 24 | 7 | 29.2 | 5 | 20.8 | 12 | 50.0 |
| DISORDERLY CONDUCT | 18 | 13 | 72.2 | 1 | 5.6 | 4 | 22.2 |
| INDECENT EXPOSURE | 14 | 1 | 7.1 | 4 | 28.6 | 9 | 64.3 |
| LITTERING | 13 | 1 | 7.7 | 0 | - | 12 | 92.3 |
| FIREWORKS | 10 | 0 | - | 3 | 30.0 | 7 | 70.0 |
| SEXUAL BATTERY | 10 | 6 | 60.0 | 3 | 30.0 | 1 | 10.0 |
| OTHER | 28 | 8 | 28.6 | 12 | 42.8 | 8 | 28.6 |
| TOTALS | 1244 | 356 | 28.6 | 592 | 47.6 | 296 | 23.8 |

local ordinances or Class III and Class IV misdemeanors. Although lower, nearly one-quarter of the Class I and Class II misdemeanants were released via a field summons. The criminal offenses most likely to result in a field summons were game and fish violations, littering, firework violations, indecent exposure, trespassing, and marijuana possession. The offenses most likely to result in the physical apprehension of the defendant are failure to appear, obstruction of justice, disorderly conduct, and sexual battery. Only 50 of the 888 summonsed defendants (5.5%) failed to appear for any of their subsequent court proceedings.

These conclusions, however, are only tentative because we were unable to ascertain the circumstances surrounding a large number of the defendants released via magistrate-issued summonses. Section 19.2-74 of the Code of Virginia restricts arresting officers to issuing summonses for

those Class I and Class II misdemeanors committed in their presence. We were unable to ascertain the number of offenses that met this criterion and were summonsed rather than physically apprehended. In addition, the information was not readily available to document instances where the arrest warrant authorized release on summons, but the officer chose to apprehend and transport.

Although no firm conclusions can be reached as to officer discretion, the analysis does point to issues that can be addressed by the Jail Advisory Group. The Group, through its collective experiential knowledge, can determine if the summons rate is satisfactory or not. If changes are necessary, the Group is an excellent forum for ensuring that the policy is uniform and meets the needs of the criminal justice system as a whole. The analysis also serves to inform the reader that the 367 misdemeanants chosen for detailed study in terms of case processing and sentencing represent a small portion of the misdemeanants handled by the region. Findings from the analysis of these 367 misdemeanants may or may not be applicable to the summonsed population.

7. THE DRUNK IN PUBLIC POPULATION

The region has been operating a detoxification center for approximately ten years. The center is designed as a mechanism to divert public inebriates from the criminal justice system, particularly the jail. Procedures currently in effect instruct arresting officers to transport all eligible public inebriates to the Detox Center in lieu of arrest. Persons generally excluded from placement are those with accompanying charges, violent, in need of medical attention, walk-aways from Detox, or are refused admission by Detox Center staff due to prior

negative behavior in Detox. According to information provided by Division of Court Services staff, a total of 7,295 admissions were made to the Detox Center between July 1, 1986 and October 31, 1988. This translates into an average daily population of approximately eight residents. The bulk of these placements (92%) were made by the Winchester Police Department followed by the Frederick County Sheriff's Department (6%). The Clarke County Sheriff's Department and the Virginia State Police were each responsible for 1% of the admissions.

These statistics clearly indicate that the Detox Center has been able to divert a large number of individuals from the jail and the court system. Despite the positive impact of the program, a large number of public inebriates still find their way into the jail. According to statistics provided by staff from the Joint Confinement Project, persons arrested for being drunk in public as the sole charge comprised between 16 and 17 percent of the commitments to the Frederick County Jail from calendar year 1986 through October, 1988. No doubt these figures would be even higher if the statistics provided include public inebriates with accompanying charges.

Similar to the methodology utilized for the summonsed population, we attempted to identify and count defendants processed for being drunk in public between July 1, 1986 and December 31, 1986. During this period of time, a total of 120 unique defendants comprised 151 arrests and commitments to jail on the sole charge of being drunk in public. The Winchester Police Department was responsible for 128 of these arrests (84.8%), Frederick County arresting agencies made 15 (9.9%), and Clarke County arresting agencies made eight (5.3%). We expected that a large portion of the arrested public inebriates would be individuals repeatedly

arrested for being drunk in public during the six-month period examined. Surprisingly, only twelve individuals were arrested more than once during the six-month period. Of the twelve, eight were arrested twice and three individuals were arrested three times for being drunk in public. One individual had the distinction of being arrested 18 times during the six-month period.

Unfortunately, time and resource limitations did not allow us to more fully examine this portion of the jail population. The only tentative conclusion that we can reach is that a large number of individuals are arrested and detained for being drunk in public, and it appears that such arrests may be isolated or sporadic events in their criminal histories. Many questions could be raised about this population and we strongly recommend that the Jail Advisory Group address the following issues. Due to the short time period examined, it is possible the detained public inebriate population does indeed have a history of involvement with the criminal justice system and/or the Detox Center. The Group should also attempt to determine how this population differs from the Detox Center population in terms of demographic characteristics, willingness to enter detox, demeanor, and acceptance by Detox Center staff.

We are recommending further analysis of this population because of the severe management problems inebriates often pose for jail staff. If any "misplacement" is occurring, every effort should be made to ensure that only those inebriates who belong in jail are placed in this setting. We also recommend that future detained inebriates be classified to see if they fit the profile of a potentially suicidal inmate. Numerous training aids to identify and manage suicide-prone inmates are available

from such organizations as the National Institute of Corrections and the Commonwealth of Virginia's Department of Mental Health, Mental Retardation, and Substance Abuse Services. We believe such incidents are not problematic in the current jail due to the "drunk tank's" proximity to a duty post and the fact that the authority granted to jail staff to release when sober reduces the public inebriate population's length of stay. If the incarceration of inebriates is necessary, we recommend that the release authority be continued once the new jail is occupied and that every effort be made to ensure that public inebriate housing in the new jail possess the high visibility offered in the current jail.

C. DEFENDANT CHARACTERISTICS

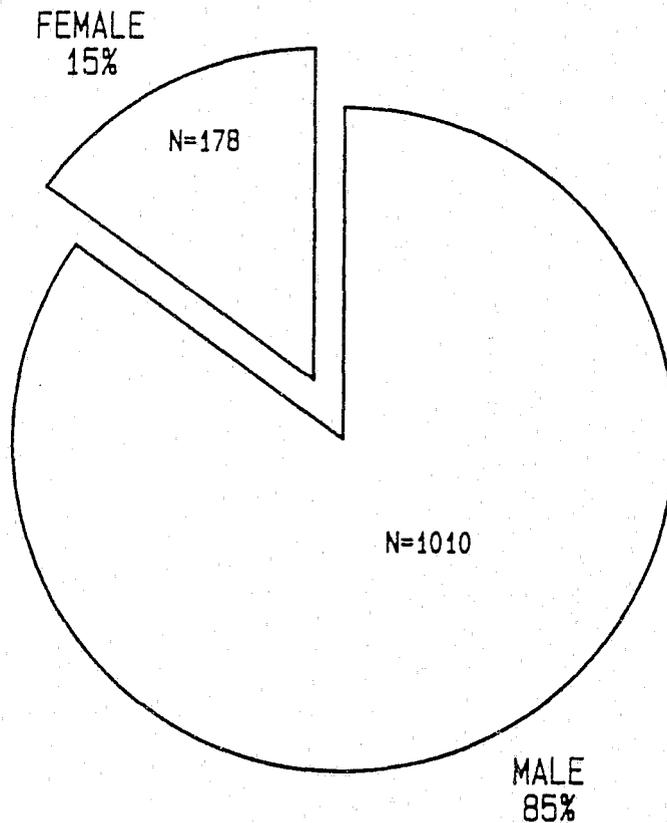
When designing the data collection instrument, an attempt was made to collect extensive demographic information on each defendant and the characteristics of their offenses. The intent was to not only provide information for population planning and program development but to also generate control variables for a more thorough assessment of the factors that may influence magistrate and judicial decision-making. Unfortunately, many of the data elements often routinely collected by jails and criminal justice agencies we have worked with in the past were either not collected by the region or not readily or easily accessible. Excluding prior record information, we are only able to report on 4 of the 22 demographic variables we sought to codify due to the large number of cases with missing information.

1. GENDER

Figure 11 displays the distribution of defendants according to their

gender. The majority of the defendants arrested (85.0%) within the region are male. The gender distribution for male arrestees is close to the statewide distribution for the year 1987 (81.5%).

Figure 11.
SEX OF THOSE ARRESTED
(N=1188)



Since our sampling method oversampled certain types of cases (see Chapter One), we are unable to examine whether a specific gender is more likely to be arrested for felony, misdemeanor, or traffic cases. However, we are able to make comparisons between the genders when each

case type is examined separately. Table 9 presents the primary offense at arrest for male and female defendants within each of the three case types. When case type is isolated, 83.2% of the felons are male, 84.4% of the misdemeanants are male, and 88.7% of the traffic offenders are male.

Significant differences between the genders exist in the rate of arrest for particular felony offenses. Females were not arrested for such serious felony offenses as burglary, sexual battery, and robbery. Males and females are equally likely to be arrested for felonious assault, murder, and kidnapping. Males are somewhat more likely to be arrested for drug offenses while females are somewhat more likely to be arrested for fraudulent behavior.

During our study period, females were not arrested for the misdemeanor offenses of vandalism, weapon offenses, drugs, or sexual battery. The rate of arrest between the genders for trespass, abusive language, and misdemeanor fraud are comparable. Male defendants are more likely to be arrested for resisting arrest and almost three times as likely to be arrested for simple assault. Female defendants are much more likely to be arrested for failure to appear, petit larceny, and disorderly conduct.

Traffic arrests resulting in an appearance before the magistrate are primarily restricted to the offenses of DWI, driving after being declared an habitual offender, and driving with a suspended or revoked license. Almost all of the female defendants were arrested for DWI while males are brought before the magistrate on a wider range of traffic offenses. No female defendants were arrested for the felony traffic offenses of habitual offender or leaving the scene of an accident involving personal injury.

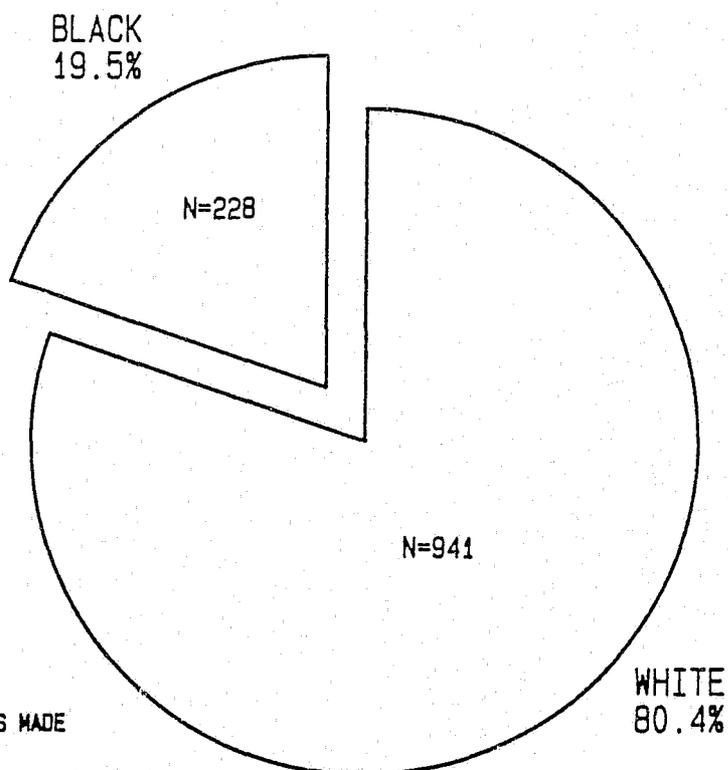
TABLE 9
OFFENSE COMPARISONS BETWEEN GENDERS

| FELONY | | | | | MISDEMEANOR | | | | | TRAFFIC | | | | |
|----------------|------|------|--------|-------|--------------------|------|-------|--------|-------|--------------------|------|------|--------|------|
| OFFENSE | MALE | | FEMALE | | OFFENSE | MALE | | FEMALE | | OFFENSE | MALE | | FEMALE | |
| | NO. | PCT. | NO. | PCT. | | NO. | PCT. | NO. | PCT. | | NO. | PCT. | NO. | PCT. |
| DRUGS | 124 | 29.2 | 20 | 23.2 | ASSAULT | 96 | 31.1 | 7 | 12.3 | DWI | 220 | 80.0 | 34 | 97.1 |
| GRAND LARCENY | 107 | 25.2 | 28 | 32.6 | FAILURE TO APPEAR | 58 | 18.8 | 21 | 36.8 | HABITUAL OFFENDER | 26 | 9.4 | - | - |
| BURGLARY | 64 | 15.0 | - | - | PETIT LARCENY | 34 | 11.0 | 14 | 24.6 | REV./SUSP. LICENSE | 21 | 7.6 | 1 | 2.8 |
| FRAUD | 47 | 11.0 | 23 | 26.7 | RESIST ARREST | 33 | 10.7 | 3 | 5.3 | RECKLESS DRIVING | 4 | 1.4 | - | - |
| ASSAULT | 30 | 7.0 | 7 | 8.1 | TRESPASS | 19 | 6.1 | 3 | 5.3 | HIT & RUN, INJURY | 3 | 1.1 | - | - |
| SEXUAL BATTERY | 15 | 3.5 | - | - | VANDALISM | 15 | 4.8 | - | - | OVERWEIGHT VEHICLE | 1 | 0.4 | - | - |
| ROBBERY | 11 | 2.6 | - | - | WEAPONS | 11 | 3.6 | - | - | TOTALS | 275 | 99.9 | 35 | 99.9 |
| MURDER | 8 | 1.9 | 1 | 1.2 | DISORDERLY CONDUCT | 8 | 2.6 | 5 | 8.8 | | | | | |
| KIDNAPPING | 5 | 1.2 | 1 | 1.2 | DRUGS | 7 | 2.3 | - | - | | | | | |
| OTHER | 14 | 3.3 | 6 | 7.0 | SEXUAL BATTERY | 6 | 1.9 | - | - | | | | | |
| TOTALS | 425 | 99.9 | 86 | 100.0 | ABUSIVE LANGUAGE | 6 | 1.9 | 1 | 1.8 | | | | | |
| | | | | | FRAUD | 5 | 1.6 | 2 | 3.5 | | | | | |
| | | | | | OTHER | 11 | 3.6 | 1 | 1.8 | | | | | |
| | | | | | TOTALS | 309 | 100.0 | 57 | 100.2 | | | | | |

2. RACE

Figure 12 displays the racial composition of the defendants arrested within the region. The majority of defendants arrested are white (80.4%) while 19.5% of the defendants are black. Only 0.1% of the arrests involve Asian defendants. In terms of ethnic origin, 0.9% of the arrests involve defendants of Hispanic origin. The racial composition of arrestees significantly differs from 1987 statewide arrests. White defendants comprised 64.0% of the statewide arrests while black defendants comprised 35.4%. Although low compared to state totals, involvement of black

Figure 12.
RACE OF THOSE ARRESTED
(N=1171)



* TWO ASIAN ARRESTEES MADE UP .1% OF SAMPLE.

defendants in the region's criminal justice system is disproportionate to their numbers in the general population. According to the 1980 Census, blacks only comprise 5.3% of the region's population but make up 19.5% of the regional arrests.

Table 10 compares white and black defendants according to the primary offense at arrest within each of the three case types. White defendants comprise 71.5% of the defendants arrested for felony offenses, 82.6% of the misdemeanants, and 92.2% of the traffic offenders. For felony offenses, whites were much more likely to be arrested for grand larceny and burglary. No blacks were arrested for murder, vandalism, or weapon violations as the primary offense during our study period. The two racial groups were similar in their rates of arrest for fraud, felonious assault, sexual battery, and kidnapping. Black defendants were somewhat more likely to be arrested for robbery and almost three times as likely to be arrested for felony drug offenses than white defendants.

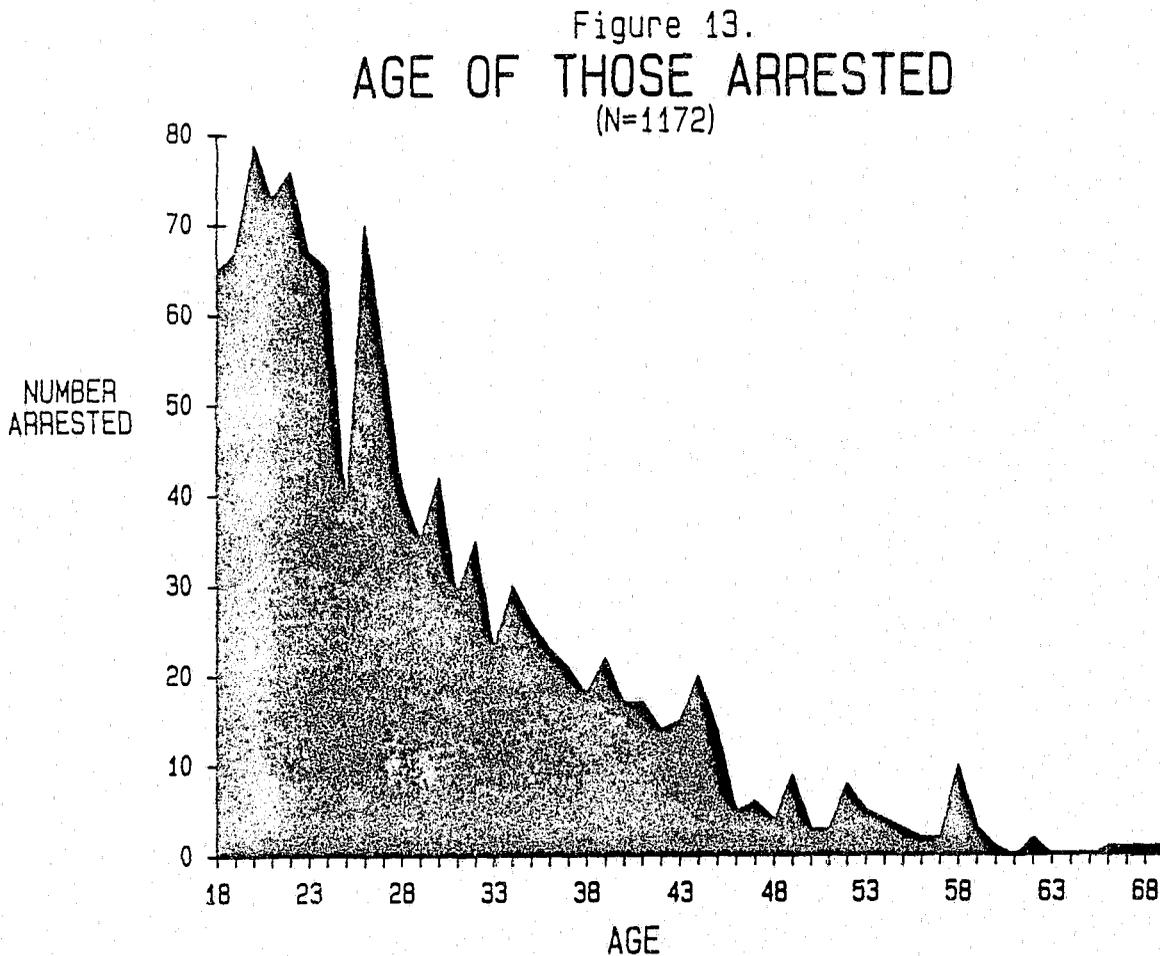
Less variation is found between the two racial groups when misdemeanor arrests are examined. The rates of arrest between the two groups are comparable for each offense category listed in the table except for simple assault. Black defendants are more likely to be arrested for simple assault than white defendants. In terms of traffic offenses, white defendants are more likely to be arrested for DWI while black defendants are more likely to be arrested for driving on a suspended/revoked license. Both groups display comparable arrest rates for driving after being declared an habitual offender.

TABLE 10
OFFENSE COMPARISONS BETWEEN
WHITE AND BLACK DEFENDANTS

| FELONY | | | | | MISDEMEANOR | | | | | TRAFFIC | | | | |
|----------------|-------|------|-------|------|--------------------|-------|------|-------|------|--------------------|-------|------|-------|------|
| OFFENSE | WHITE | | BLACK | | OFFENSE | WHITE | | BLACK | | OFFENSE | WHITE | | BLACK | |
| | NO. | PCT. | NO. | PCT. | | NO. | PCT. | NO. | PCT. | | NO. | PCT. | NO. | PCT. |
| GRAND LARCENY | 107 | 30.1 | 22 | 15.6 | ASSAULT | 79 | 26.3 | 23 | 36.5 | DWI | 237 | 82.9 | 17 | 70.8 |
| DRUGS | 67 | 18.9 | 72 | 51.1 | FAILURE TO APPEAR | 63 | 21.0 | 15 | 23.8 | HABITUAL OFFENDER | 24 | 8.4 | 2 | 8.3 |
| BURGLARY | 54 | 15.2 | 9 | 6.4 | PETIT LARCENY | 41 | 13.7 | 7 | 11.1 | REV./SUSP. LICENSE | 17 | 5.9 | 5 | 20.8 |
| FRAUD | 53 | 14.9 | 16 | 11.3 | RESIST ARREST | 31 | 10.3 | 5 | 7.9 | RECKLESS DRIVING | 4 | 1.4 | - | - |
| ASSAULT | 25 | 7.0 | 10 | 7.1 | TRESPASS | 18 | 6.0 | 4 | 6.3 | HIT & RUN, INJURY | 3 | 1.0 | - | - |
| SEXUAL BATTERY | 11 | 3.1 | 4 | 2.8 | DISORDERLY CONDUCT | 13 | 4.3 | - | - | OVERWEIGHT VEHICLE | 1 | 0.3 | - | - |
| MURDER | 9 | 2.5 | - | - | VANDALISM | 13 | 4.3 | 2 | 3.2 | | | | | |
| VANDALISM | 8 | 2.2 | - | - | WEAPONS | 10 | 3.3 | 1 | 1.6 | TOTALS | 286 | 99.9 | 24 | 99.9 |
| KIDNAPPING | 5 | 1.4 | 1 | 0.7 | ABUSIVE LANGUAGE | 6 | 2.0 | 1 | 1.6 | | | | | |
| ROBBERY | 5 | 1.4 | 6 | 4.2 | FRAUD | 6 | 2.0 | - | - | | | | | |
| WEAPONS | 4 | 1.1 | - | - | SEXUAL BATTERY | 6 | 2.0 | - | - | | | | | |
| OTHER | 7 | 2.0 | 1 | 0.7 | DRUGS | 5 | 1.7 | 1 | 1.6 | | | | | |
| | | | | | OTHER | 9 | 3.0 | 4 | 6.3 | | | | | |
| TOTALS | 355 | 99.8 | 141 | 99.9 | | | | | | | | | | |
| | | | | | TOTALS | 300 | 99.9 | 63 | 99.9 | | | | | |

3. AGE

Figure 13 displays the age distribution of the defendants arrested within the region. Since we were concerned with adult arrests exclusively, the youngest defendant encountered was 18 years old while the oldest defendant was 69 years old. As can be seen in the figure, the largest group of defendants were in the 18-24 year old category. This group comprised 42.0% of the arrests within the region. The average age was 29 years old while the median age was 26 years old.

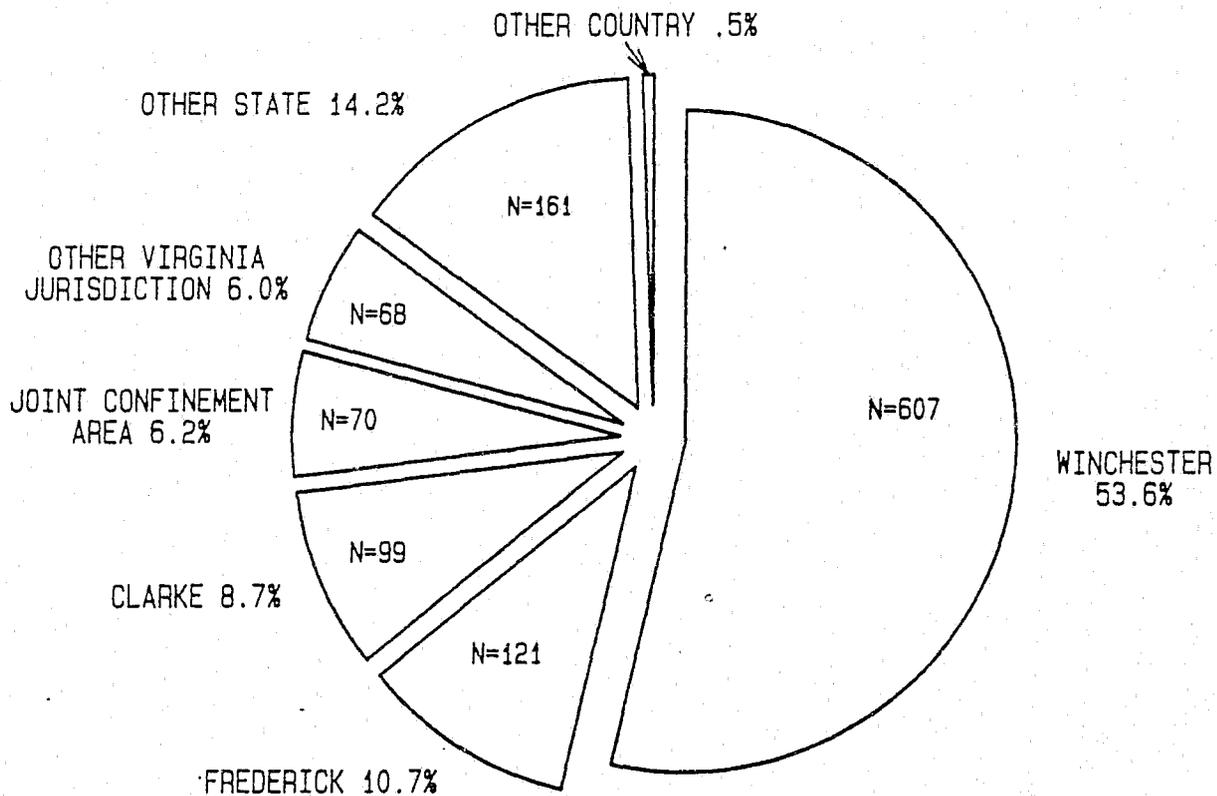


When case type is examined, a lessening in the average and median age is found as the seriousness of the offense increases. Traffic defendants average 32 years old (Median = 29) compared to misdemeanants with an average age of 30 years old (Median = 27) and felons with an average age of 27 years old (Median = 25). This pattern, for the most part, holds when specific crime categories are examined. Defendants arrested for serious Part I offenses have an average age of 27 years old (Median = 24) while defendants arrested for narcotics violations average 26 years old (Median = 26). The average age increases for the less serious crime categories examined. Defendants arrested for fraudulent offenses averaged 28 years old (Median = 25) while 29 was the average age of defendants arrested for petit larceny (Median = 24). Defendants arrested for simple assault averaged 30 years of age (Median = 28) while defendants arrested for misdemeanor public order offenses were the oldest age group found (Mean = 31, Median = 30).

4. RESIDENCE

Figure 14 displays the distribution of the primary residence for defendants arrested within the Winchester, Frederick, and Clarke region. Approximately three-quarters of the defendants reside within the region. Of all the defendants arrested, 53.6% reside in the City of Winchester while 10.7% are Frederick County residents and 8.7% are residents of Clarke County. We believe the number of defendants listed as Winchester residents is inflated because a number of defendants may reside within Frederick County limits but possess Winchester mailing addresses. Forty-four of the 70 defendants from jurisdictions participating in the Joint Confinement Project were from Warren County. Of the 68 defendants from

Figure 14.
RESIDENCE OF THOSE ARRESTED
 (N=1132)



other Virginia jurisdictions, 25 were from Loudoun County. The bulk of the 161 defendants from other states reside in West Virginia (79), Florida (20), and Maryland (17). We also believe the number of residents from other states, particularly Florida, may be deflated. Migrant workers arrested during Operation Crack may have had a regional residence listed in court records but their legal residence is outside of the Winchester, Frederick, and Clarke region.

Table 11 compares local and non-local residents according to the primary offense at arrest for each of the three case types. Local residents comprise 61.9% of the defendants arrested for felony offenses,

TABLE 11
 OFFENSE COMPARISONS BETWEEN
 LOCAL AND NON-LOCAL RESIDENTS

| FELONY | | | | | MISDEMEANOR | | | | | TRAFFIC | | | | |
|----------------|-------|-------|-----------|------|--------------------|-------|------|-----------|------|--------------------|-------|-------|-----------|------|
| OFFENSE | LOCAL | | NON-LOCAL | | OFFENSE | LOCAL | | NON-LOCAL | | OFFENSE | LOCAL | | NON-LOCAL | |
| | NO. | PCT. | NO. | PCT. | | NO. | PCT. | NO. | PCT. | | NO. | PCT. | NO. | PCT. |
| GRAND LARCENY | 81 | 24.7 | 39 | 29.8 | ASSAULT | 91 | 30.6 | 10 | 15.2 | DWI | 174 | 86.1 | 80 | 74.1 |
| DRUGS | 81 | 24.7 | 40 | 30.5 | FAILURE TO APPEAR | 67 | 22.6 | 12 | 18.2 | HABITUAL OFFENDER | 22 | 10.9 | 4 | 3.7 |
| FRAUD | 50 | 15.2 | 16 | 12.2 | PETIT LARCENY | 34 | 11.4 | 12 | 18.2 | HIT & RUN, INJURY | 2 | 1.0 | 1 | 0.9 |
| BURGLARY | 50 | 15.2 | 11 | 8.4 | RESIST ARREST | 25 | 8.4 | 11 | 16.7 | REV./SUSP. LICENSE | 2 | 1.0 | 20 | 18.5 |
| ASSAULT | 30 | 9.1 | 4 | 3.0 | TRESPASS | 18 | 6.1 | 4 | 6.1 | RECKLESS DRIVING | 2 | 1.0 | 2 | 1.8 |
| SEXUAL BATTERY | 9 | 2.7 | 5 | 3.8 | VANDALISM | 13 | 4.4 | 2 | 3.0 | OVERWEIGHT VEHICLE | - | - | 1 | 0.9 |
| VANDALISM | 8 | 2.4 | - | - | DISORDERLY CONDUCT | 12 | 4.0 | 1 | 1.5 | TOTALS | 202 | 100.0 | 108 | 99.9 |
| MURDER | 4 | 1.3 | 4 | 3.0 | WEAPONS | 8 | 2.7 | 3 | 4.5 | | | | | |
| ROBBERY | 4 | 1.3 | 7 | 5.3 | DRUGS | 6 | 2.0 | 1 | 1.5 | | | | | |
| WEAPONS | 4 | 1.3 | - | - | ABUSIVE LANGUAGE | 5 | 1.7 | 2 | 3.0 | | | | | |
| OTHER | 7 | 2.1 | 5 | 3.8 | FRAUD | 4 | 1.3 | 3 | 4.5 | | | | | |
| TOTALS | 328 | 100.0 | 131 | 99.8 | SEXUAL BATTERY | 4 | 1.3 | 2 | 3.0 | | | | | |
| | | | | | OTHER | 10 | 3.4 | 3 | 4.5 | | | | | |
| | | | | | TOTALS | 297 | 99.9 | 66 | 99.9 | | | | | |

54.8% of the misdemeanants, and 81.8% of the traffic offenders. For felony offenses, non-residents were somewhat less likely to be arrested for burglary and felonious assault. The frequency of arrest between the two groups were similar for fraud, sexual battery, and murder.

When misdemeanor offenses are examined, non-residents are more likely to be arrested for petit larceny and resisting arrest and less likely to be arrested for simple assault and failure to appear. No significant differences were found between the two groups for the remaining misdemeanor offense categories displayed in Table 11. Residents are more likely to be arrested for the traffic offenses of DWI and driving after being declared an habitual offender. Non-residents are more likely to be arrested and brought before the magistrate for driving on a suspended/revoked license.

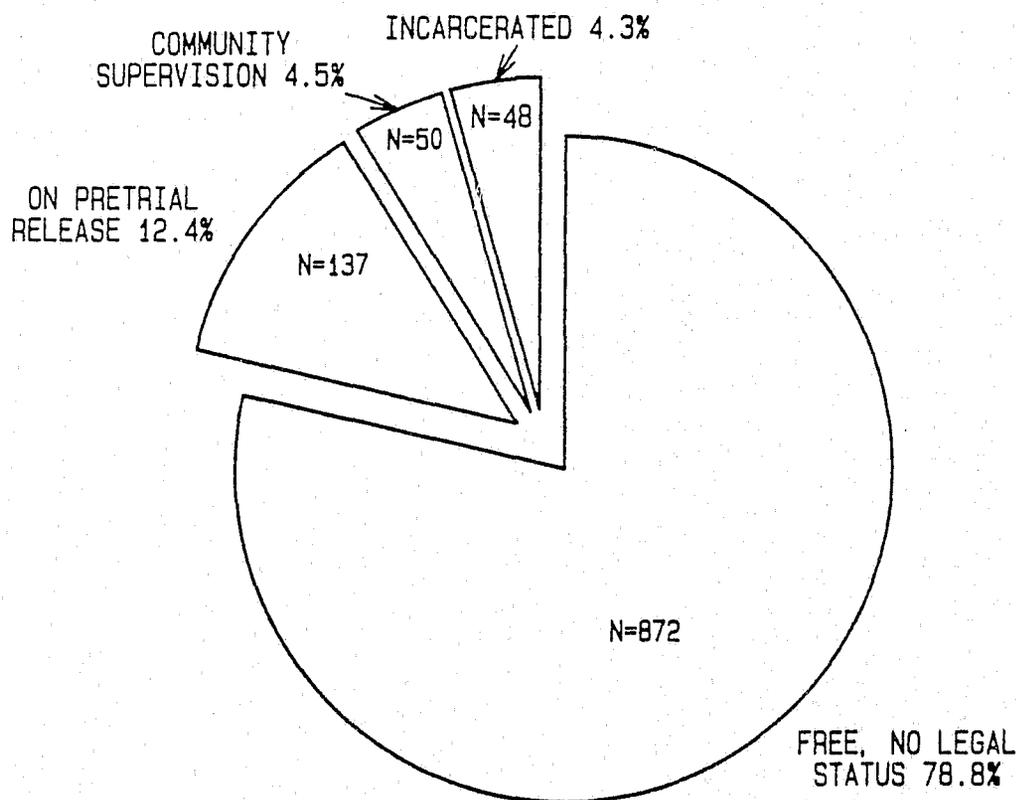
5. LEGAL STATUS AT ARREST

An attempt was made to ascertain the legal status of each defendant at the time of their arrest. Figure 15 displays the frequency distribution of legal status categories for all defendants except those arrested on failure to appear charges. As can be seen in the figure, the majority of the defendants (78.8%) were free with no restrictions on them at the time of their arrest while 12.4% were free but on some form of pretrial release for a pending charge. Fifty defendants (4.5%) were under some form of community supervision when arrested. Of these 50, 36 were on parole, 13 were on probation, and one was participating in a CDI program. A total of 48 defendants were already incarcerated when arrested for the sampled offense.

The majority of the defendants already on pretrial release were

arrested for felony offenses (75 of 137 = 54.7%) while 42 (30.6%) were arrested for misdemeanors. Although the 12.4% rate of arrestees already on pretrial release may appear high, we believe that many of these defendants are simply re-arrests and not individuals who committed new offenses while on pretrial release. A large number of the defendants on pretrial release were arrested for such offenses as burglary, grand larceny, worthless checks, and drug violations that may have been

Figure 15.
LEGAL STATUS AT TIME OF ARREST
(N=1188)



committed prior to the commencement of their pretrial status. The 12.4% figure may be more a measurement of the administrative factors of the criminal justice system rather than a measurement of the number of offenders who are committing new offenses while on bond.

The majority of the defendants under community supervision were arrested for felony offenses (40 of 50 = 80.0%). Of these 40, 17 were arrested for grand larceny and nine were arrested for burglary. Likewise, most of the defendants already incarcerated were arrested for felony offenses (46 of 48 = 95.8%). Over one-half of these defendants were arrested on burglary and drug charges.

Significant differences in legal status are found when the data are broken down by various demographic and offense-type factors. Females were more likely to be under no legal restrictions at arrest than male defendants (87.9% versus 77.3%). White defendants were also more likely to be under no restrictions (80.2%) than black defendants (71.4%). In terms of age, defendants 35 years of age and older were most likely to be under no restrictions (85.7%) while the rates for 18-24 year olds and 25-34 year olds were somewhat comparable (74.4% and 78.4%, respectively). As for case type, traffic offenders were more likely to be under no legal restrictions (91.3%) than misdemeanants (84.0%) and felons (68.2%).

6. PRIOR CRIMINAL HISTORY

Prior criminal history information was collected from "rap sheets" provided by the Virginia State Police for each defendant in the sample. Prior traffic violations were collected from driving records provided by the Department of Motor Vehicles. If a traffic offense appeared on the criminal history rap sheet, this arrest and conviction was recorded as a

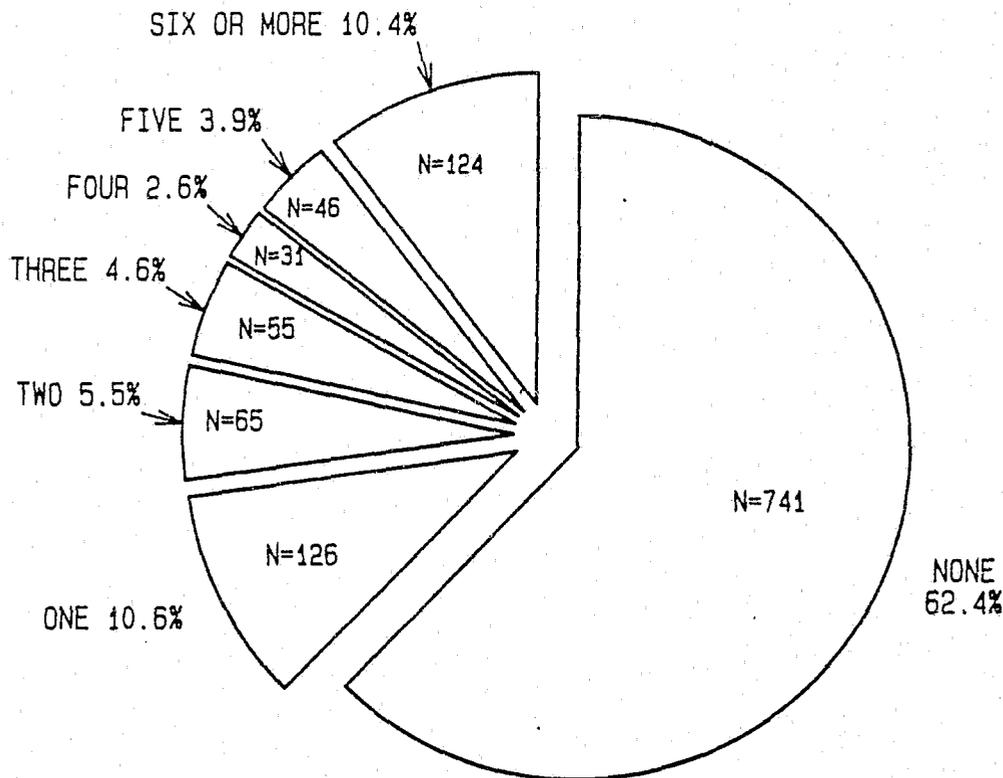
traffic offense and not coded as a prior criminal offense. The number of prior criminal arrests of some defendants may be undercounted due to statutory requirements excluding certain offenses from being reported to the State Police. Law enforcement officials are not required to submit arrest data on individuals arrested for Class III misdemeanors, Class IV misdemeanors, and local ordinances. Law enforcement officials are also not required to submit arrest data on the Class I misdemeanors of disorderly conduct and trespass. We were also restricted to examining the Virginia criminal history of the defendants and did not have access to their records in other states.

As can be seen in Figure 16, 62.4% of the defendants did not have a prior criminal arrest record at the time of their arrest for the sampled offense while 10.6% had one prior arrest. Although the majority of the defendants had little or no prior involvement with the criminal justice system, 14.3% of the defendants had five or more prior arrests. For those defendants with a prior history of arrest, the average number of prior arrests was 5.2 while the median was 3.0 arrests. The highest number of prior arrests encountered was 47 arrests.

The level of prior criminal involvement changes somewhat when prior convictions are examined. On this measure, 70.7% of the defendants were never convicted of a criminal offense prior to their arrest for the sampled offense. Of those convicted, the average number of convictions was 3.8 while the median was 2.0 convictions. The defendant with the 47 prior arrests also had the highest number of convictions encountered. This defendant had 28 prior convictions resulting from the 47 prior arrests.

Table 12 displays a more detailed picture of defendant prior history

Figure 16.
 NUMBER OF PRIOR CRIMINAL ARRESTS
 (N=1188)



when broken down into several demographic characteristics. For each category the table displays the percentage of the defendants with a prior history of arrest followed by the mean and median number of prior arrests for those who had a history. These statistics are displayed for total, felony, misdemeanor, and traffic arrests. The traffic arrests reflect arrests for DWI, criminal and non-criminal traffic offenses.

As can be seen in Table 12, substantial differences exist in the percentage of male and female defendants with prior criminal and traffic arrests. Female defendants are much less likely to have a prior arrest on all four types of arrest examined. What is interesting, however, is that

the mean and median arrests for those who do have an arrest history is similar between the genders. Except for traffic offenses, females with an arrest history are comparable to male defendants in the mean and median number of total, felony, and misdemeanor arrests.

TABLE 12
 PRIOR ARREST HISTORY
 BY DEMOGRAPHIC CHARACTERISTICS

| | | Total Arrests | Felony Arrests | Misd. Arrests | Traffic Arrests |
|--------|--------|---------------|----------------|---------------|-----------------|
| GENDER | MALE | 41.5% | 33.6% | 26.1% | 65.1% |
| | | 5.2 | 3.8 | 3.2 | 4.2 |
| | | 3.0 | 2.0 | 2.0 | 3.0 |
| | FEMALE | 15.7% | 7.3% | 12.4% | 43.4% |
| | | 4.8 | 3.7 | 3.7 | 2.7 |
| | | 2.0 | 3.0 | 2.0 | 2.0 |
| RACE | WHITE | 36.5% | 28.7% | 23.2% | 63.9% |
| | | 5.4 | 4.1 | 3.3 | 4.1 |
| | | 3.0 | 2.0 | 2.0 | 3.0 |
| | BLACK | 45.2% | 35.5% | 29.8% | 57.7% |
| | | 4.7 | 2.9 | 3.3 | 3.5 |
| | | 3.0 | 2.0 | 3.0 | 3.0 |
| AGE | 18-24 | 35.6% | 28.7% | 18.9% | 62.3% |
| | | 4.0 | 3.2 | 2.5 | 4.3 |
| | | 2.0 | 2.0 | 2.0 | 3.0 |
| | 25-34 | 41.2% | 31.2% | 18.6% | 67.3% |
| | | 5.2 | 3.8 | 3.0 | 4.0 |
| | | 3.0 | 3.0 | 2.0 | 3.0 |
| | 35 + | 28.1% | 31.0% | 27.8% | 55.4% |
| | | 7.4 | 4.8 | 4.6 | 3.5 |
| | | 4.0 | 2.0 | 3.0 | 3.0 |

The pattern found between the genders is somewhat similar to the pattern found between white and black defendants. Except for traffic offenses, white defendants are somewhat less likely to have a prior history of arrest for the remaining three types of arrests examined. However, little differences were found between these two racial groups in terms of the mean and median number of arrests for those with a prior

record.

Clear patterns did not emerge when prior record according to age was examined. Although the 25-34 year old age group was somewhat more likely to have an arrest record, the three age groups were similar in terms of the percentage possessing prior felony arrests. The 18-24 year olds were much less likely to have a history of misdemeanor arrests while the other two age groups were comparable to each other. Wide differences were found between the age groups in the percentage of defendants with prior traffic arrests. For those defendants with prior arrests, defendants 35 years of age and older had a higher mean and median number of total arrests than the other age groups. This pattern persisted for felony and misdemeanor arrests. The pattern was reversed for prior traffic arrests. Although the medians were alike, the 18-24 year olds averaged more prior traffic arrests than either of the two older age groups.

Table 13 provides comparisons of defendant prior arrest history according to case type. Of the three case types, traffic offenders were much less likely to have a prior criminal arrest than either misdemeanants or felons. Defendants arrested for felony offenses were more likely to have a prior criminal arrest than misdemeanants. Felons were also more likely to have been arrested for a prior felony offense while the percentage of traffic offenders and misdemeanants with prior felony arrests were comparable. Traffic offenders were much less likely to have a prior misdemeanor arrest while the number of misdemeanants and felons with prior misdemeanor arrests were comparable. While felons were the case type least likely to have prior traffic arrests, more than half of the felons were arrested for at least one traffic violation during their adulthood. An even higher percentage of the misdemeanants and traffic

offenders have a prior traffic arrest in their history.

TABLE 13
PRIOR ARREST HISTORY
BY CASE TYPE

| CURRENT ARREST | PRIOR ARREST | | | |
|-------------------|------------------|-------------------|------------------|--------------------|
| | Total Arrests | Felony Arrests | Misd. Arrests | Traffic Arrests |
| TRAFFIC | 26.0% | 21.2% | 16.7% | 66.3% |
| | 3.4 | 2.5 | 2.0 | 3.8 |
| | 2.0 | 2.0 | 1.0 | 3.0 |
| MISD. | 35.5% | 24.9% | 26.5% | 68.6% |
| | 5.7 | 4.0 | 3.6 | 4.3 |
| | 3.0 | 2.0 | 3.0 | 4.0 |
| FELONY | 46.2% | 38.2% | 26.8% | 54.1% |
| | 5.6 | 4.1 | 3.5 | 3.9 |
| | 4.0 | 3.0 | 3.0 | 3.0 |

For those defendants with a prior arrest record, traffic offenders averaged fewer arrests than misdemeanants and felons in terms of total arrests, felony arrests, and misdemeanor arrests. The mean and median number of prior traffic arrests were comparable for all three case types examined. Although differences exist in the number of felons and misdemeanants with prior arrest records, both groups were comparable when the mean and median number of arrests were computed for those defendants experiencing prior arrests.

Finally, the defendants were analyzed further in an effort to identify those with prior arrests for offenses similar to their sampled offense. For defendants arrested for felony offenses against a person, 35.8% had been arrested for a prior personal offense. Misdemeanants arrested for a personal offense did not exhibit as great a level of prior involvement in similar criminal behavior. Approximately 24% of the misdemeanants arrested for a personal offense had a prior arrest for a

personal offense.

Defendants arrested for a felony property offense was the group whose primary offense at arrest exhibited the greatest degree of repeated criminal behavior. Approximately 42 percent of the felony property offenders had a prior property arrest. Approximately 30% of the misdemeanor property offenders had a prior property offense.

Only 11.9% of the drug offenders had a prior drug arrest. Defendants arrested for DWI exhibited a high degree of prior criminal traffic behavior. Almost 32% (31.6%) of these defendants had at least one prior arrest for DWI and 38.7% had at least one prior arrest for a criminal traffic offense.

D. OFFENSE CHARACTERISTICS

This section of the report describes defendant involvement, demeanor, and the characteristics of the offense(s) at arrest. Information was collected for all offenses at arrest regardless of whether or not the offense was the primary offense at arrest. Similar to demographic information, several data elements could not be analyzed due to the large number of missing observations encountered. For the most part, Circuit Court case files contained much more information about the offense itself than court files maintained by the General District Courts. Time and resource limitations did not allow for location and codification of incident or arrest reports that may exist in arresting agency files.

1. DEFENDANT INVOLVEMENT AND Demeanor

The majority of the defendants (85.6%) acted alone in the commission of their offenses. Approximately 10% of the defendants examined committed

their offenses with a single accomplice. The highest number of accomplices encountered was six. For those defendants who acted in concert with one or more accomplices, 67.8% were involved in the offenses of grand larceny, drugs, or burglary.

As best we could determine from court records, 70.7% of the defendants were not under the influence of alcohol at the time of their arrest. We were able to estimate that 22.4% of the defendants were intoxicated at the time of their arrest. The remaining 6.9% of the defendants had consumed alcohol prior to their arrest but the degree of their intoxication could not be ascertained. Obviously, the bulk of the 348 defendants under some degree of alcohol influence at arrest were arrested for DWI. However, 94 defendants arrested for non-DWI offenses were also under the influence of alcohol at arrest and comprised 18 different types of criminal behavior. Over one-third of these 94 defendants (34.7%) were arrested for resisting arrest or simple assault.

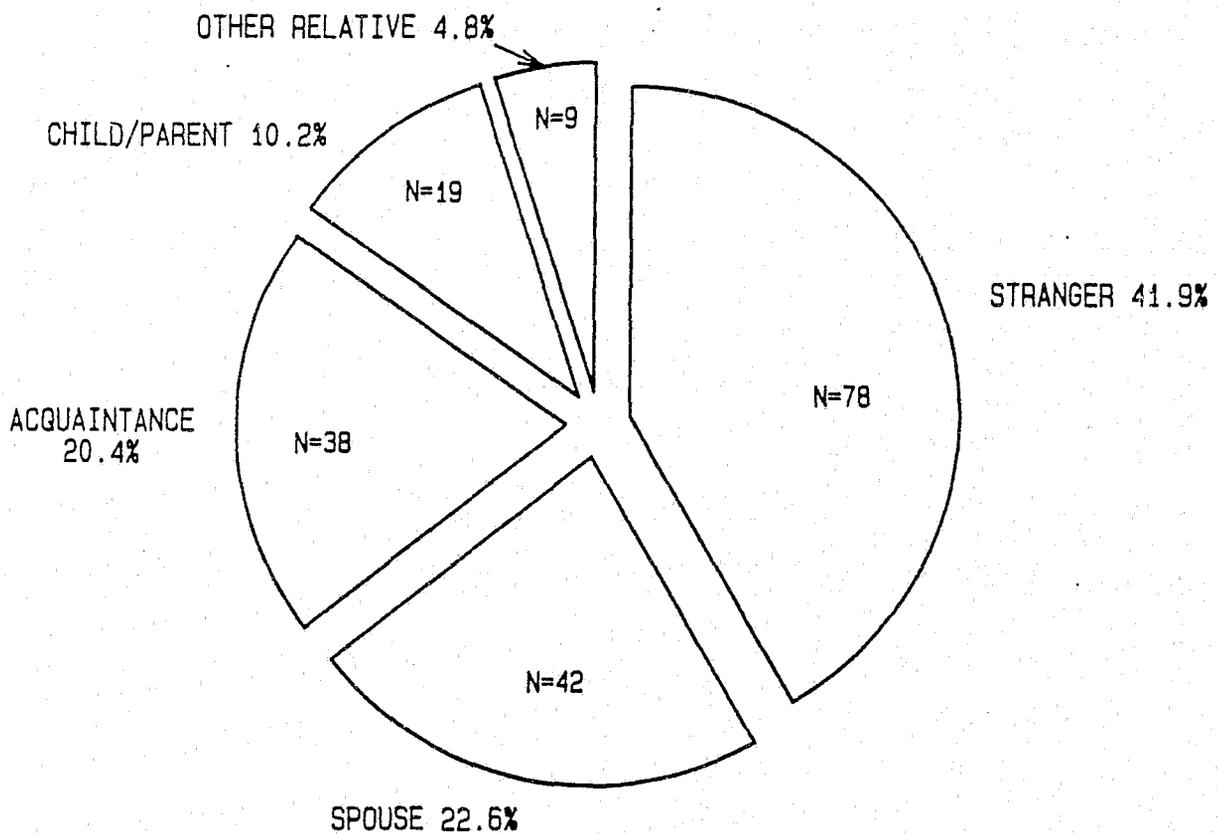
Most defendants, as far as the records indicate, did not physically resist the arresting officer(s). Only 62 of the 1188 arrests examined (5.2%) involved resistance on the part of the defendant. This percentage would no doubt be higher if we were able to codify verbal abuse. Of these 62 defendants, 36 had the resistance charge as the primary offense at arrest while 11 were arrested for assault against a law enforcement officer. Nine of the defendants were not arrested for the resistance. Nineteen of the 62 defendants who resisted arrest were also arrested for being drunk in public.

2. OFFENSES AGAINST THE PERSON

A total of 259 cases involved an offense categorized as a crime

against a person. Misdemeanant cases were more likely to involve such criminal behavior (42.8%) than felony cases (20.0%). Females were more likely to be the victim of a personal offense (56.0%) than males (44.0%). Approximately 91 percent of the cases examined involved criminal behavior against a single victim. Although 40% of the cases had missing data, the majority of the personal offenses resulted in no serious physical harm to the victim. Approximately one-third of these cases (32.3%) were the result of a threat or attempt to commit a personal offense while 48.7% involved contact but no injury. For example, many

Figure 17.
DEFENDANT'S RELATIONSHIP TO THE VICTIM
(N=186)



simple assaults involve the punching or slapping of the victim that results in no serious physical injury to the victim. This information is not to say that the victim did not suffer significant psychological or emotional harm. However, the data which was available only addressed physical harm.

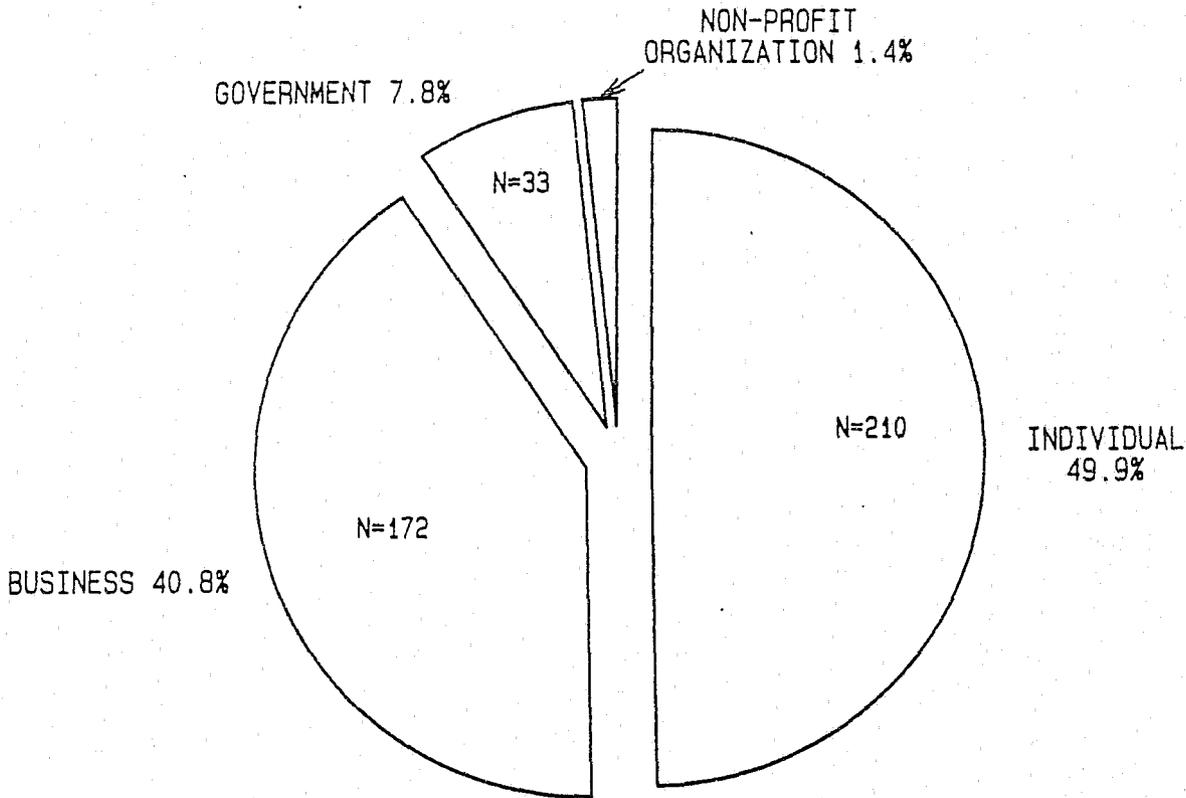
Figure 17 displays the frequency distribution of the defendant's relationship to the victim. When a personal offense occurred, the defendant was most likely to be a stranger to the victim. However, this category is inflated due to the high number of personal offenses that involved resisting arrest charges. If these cases are excluded, only 23 (12.4%) of the personal offenses involved a stranger as the victim. Over one-third (37.6%) of the personal offenses were domestic in nature and most likely to involve the defendant's spouse as the victim.

3. PROPERTY OFFENSES

A total of 426 cases involved the damage or stealing of property. Felony cases were much more likely to involve property offenses (60.5%) than misdemeanor cases (31.9%). As can be seen in Figure 18, 49.9% of the victims were private citizens while 40.8% of the victims were business establishments. Only 9.2% of the victims were governmental entities or non-profit organizations. The majority of the property cases (89.4%) involved one victim. One defendant, however, was arrested for a series of property offenses against 12 victims.

Nearly three-quarters (74.3%) of the property cases involved the theft of property while 10.4% involved the damage of property. A small portion of the cases (3.8%) involved both the theft and destruction of property. The remaining 11.4% of the property cases were offenses such as

Figure 18.
TYPE OF PROPERTY CRIME VICTIM
(N=421)



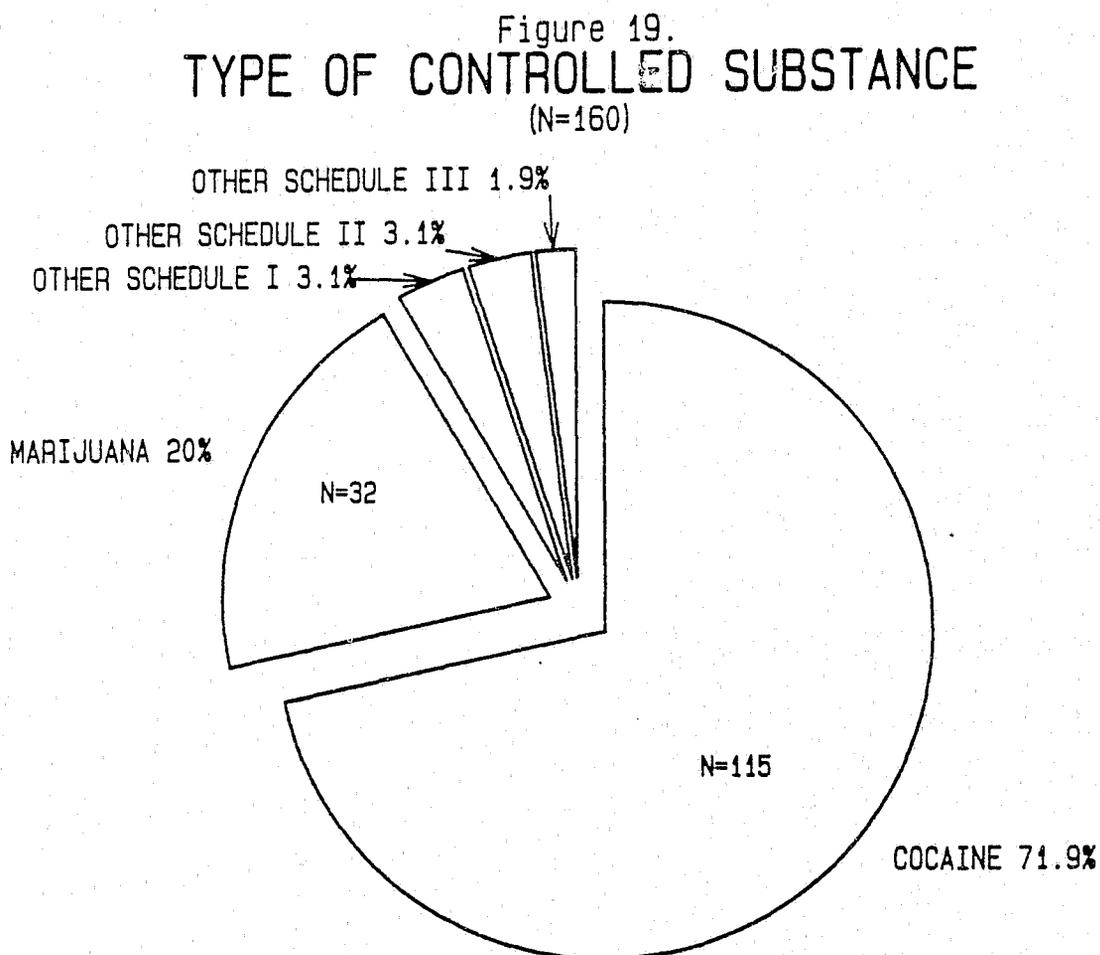
trespassing where no injury to property occurred. Of the cases involving the loss or damage of property, 35.6% involved the theft of money while 45.5% involved the theft or damage of durable goods such as motor vehicles and stereo equipment. The remaining 18.9% involved the theft or damage of non-durable goods such as clothing or food items.

4. DRUG OFFENSES

A total of 161 cases involved an arrest for a drug offense. As can be seen in Figure 19, the majority of the drug arrests made were for sales or possession of cocaine (71.9%) while 20.0% of the arrests involved marijuana. Three of the five drugs in the Other Schedule I category

involved LSD, and two of the five drugs in the Other Schedule II category involved PCP.

Of the 32 marijuana arrests, 18 (56.2%) were felony offenses while 14 (43.8%) were misdemeanor offenses. Eighteen of the 32 arrests were for the sale of marijuana while 14 were for possession. The average amount of marijuana involved in the arrests for drug sales was 12.7 ounces. This figure, however, was heavily skewed by the two co-defendants who were arrested for the sale of 88 ounces. The median amount sold was 1.16 ounces.



Most of the cocaine arrests examined occurred during the last six months of 1986 when Operation Crack was in existence. Of the 115 cases involving cocaine arrests, 73 (63.5%) occurred between July 16, 1986 through December 30, 1986. More specifically, 50.4% of the cocaine arrests examined occurred in October and November, 1986. Operation Crack certainly had an immediate impact on the jail population that may largely explain the dramatic increases in the average daily population discussed in Chapter Two. Drug arrests during 1987 were more evenly distributed with June and July recording the highest number of cocaine arrests with ten such arrests during each of these two months.

The majority of the cocaine arrests (83.5%) were for sales rather than possession. While a large portion of the cases involved a single sale, over a third involved two or more sales (35.6%). Of the 90 sales where the weight of the cocaine was available, 40 cases (44.4%) had a combined total weight of less than a gram of cocaine. Nineteen of the cases (21.1%) had a combined total weight of less than one-half gram. Sales with a combined total weight of more than three grams comprised 26.7% of the cases. The largest sale during the 18-month period examined was for 618 grams. The average weight per case was 12.1 grams while the median weight was 1.2 grams.

The statistics discussed above distort the average sales because they represent the combined weights for those defendants arrested for more than one count of cocaine sales. When statistics are computed for single sales, the average sale drops to 7.0 grams while the median drops to .83 grams. Over half of the sales (55.8%) were for less than one gram, and 24.4% were sales of less than one-half gram. Single sales over three grams comprised 17.3% of the sales.

5. OFFENSES INVOLVING WEAPONS

Only 92 of the 878 felony and misdemeanor cases (10.5%) examined involved offenses where a weapon was used in the commission of the offense or simply possessed by the defendant. Approximately 9 percent (8.7%) of the misdemeanor cases involved a weapon while 11.7% of the felony cases involved a weapon. Of the 91 cases where the type of weapon could be determined, 39 (42.8%) involved a firearm and 21 (23.1%) involved a knife or other sharp instrument. Nineteen (20.9%) involved a blunt instrument and six defendants (6.6%) used an automobile as a weapon. Of the 87 cases where weapon usage could be determined, nearly one-third (32.2%) used the weapon in a threatening manner. The next most common usage was to injure the victim with the weapon (26.4%) while 21.8% used the weapon in an attempt to injure.

6. DWI AND TRAFFIC OFFENSES

A total of 263 defendants were arrested for DWI during the time period examined. Slightly less than a quarter (22.1%) of the DWI arrests were incidental to a traffic accident. A small percentage of the DWI defendants (9.8%) refused to submit to a breathalyzer test. For those who were tested, the average blood/alcohol content was .14 while .18 was the median value. Approximately one-quarter (24.1%) of the defendants had a blood/ alcohol content of .20 or more with .33 the highest value encountered. A very small percentage of the defendants (3.1%) had a blood/alcohol content of less than .10 with three defendants registering a .04 reading. The driving records provided by the Department of Motor Vehicles indicated that 15.6% of the DWI defendants had their driver's license suspended/revoked at the time of the offense. For defendants

arrested for non-DWI traffic offenses, 90.9% were driving on a suspended/revoked license at the time of their offense.

E. CONCLUSIONS

This chapter analyzed 1188 arrest cases processed by the criminal justice systems operating in the region. Along with ancillary data on the summonsed and the drunk in public populations, the chapter's focus was on the arrest process and primarily addresses the issues of who gets arrested in the region and why. Although the chapter was lengthy, the several purposes of the chapter made such a presentation necessary. The chapter was designed to provide decision-makers with an understanding of the arrest process from a regional perspective which emphasizes commonalities between the three localities as well as unique facets of a particular jurisdiction. Secondly, this chapter will form the basis for analyzing the criminal justice systems as they relate to the pretrial release process and judicial processing of the arrests made within the region. Finally, the chapter also serves to demonstrate the types of data and analysis necessary to support the concept of jail population management planning.

THE ARREST PROCESS

PRIMARY OFFENSE AT ARREST

- Data presented in Chapter Two and the analysis of data discussed in this chapter indicate that the region is not experiencing high levels of violent, predatory crime. Felony offenses are more likely to involve the theft of property. If an offense was of a personal nature, it was more likely to be a misdemeanor with little or no

serious physical injury to the victim.

- Property offenses comprise approximately 53% of the felony arrests made within the region followed by felony drug offenses at 28%. Only 17% of the felony arrests involved a crime against a person as the primary offense at arrest. Over 50% of the felony arrests were for the specific offenses of grand larceny and drug offenses.
- Offenses against a person comprise approximately 41% of the misdemeanors, public order/victimless offenses comprise 32%, and property offenses comprise 26%. Over 50% of the misdemeanor arrests were for the specific offenses of simple assault and failure to appear.
- Approximately 82% of the traffic cases were DWI arrests. The median blood/alcohol content of DWI defendants was .18 while approximately 10% of the DWI defendants refused to submit to the test. Approximately 16% of the DWI defendants had no valid driver's license at the time of their arrest.
- Drug arrests, particularly sales of cocaine, had an enormous impact on the criminal justice system in both their volume and in the timing of the arrests. Approximately 64% of the arrests for sale of cocaine occurred during Operation Crack. Approximately 50% of all cocaine arrests occurred during October and November, 1986.
- The majority of the arrests for sale of cocaine involved relatively

small amounts of the drug. When multiple sales were measured, approximately 44% involved total weights of one gram or less. The median weight was 1.2 grams. When individual sales were measured, approximately 56% were for one gram or less. The median weight involved in a single sale was .83 grams.

- The City of Winchester is clearly the driver in terms of the volume of arrests and potential impact on the jail. The City of Winchester was the jurisdiction of prosecution for 53% of the felonies, 64% of the misdemeanors, and 47% of the traffic arrests. Frederick County was the jurisdiction of prosecution for 32% of the felonies, 23% of the misdemeanors, and 39% of the traffic arrests. Clarke County was only responsible for 15% of the felonies, 13% of the misdemeanors, and 14% of the traffic arrests.

OTHER ARREST FINDINGS

- When the number of unique offenses at arrest were examined, approximately three-quarters of the offenders were arrested for a single offense. If a felony had a second or third offense at arrest, it was most likely to be a burglary charge as the primary offense with an accompanying larceny charge or a forgery charge accompanied by an uttering of a forgery charge. If a misdemeanant had a second offense, it was likely to be a resisting arrest charge coupled with a drunk in public charge. Multiple traffic offenses were most likely to be DWI charges coupled with a charge of refusing to submit to a breathalyzer test.

- Approximately 88% of the defendants were arrested for one or two total counts. The median value for all three case types was 1.0 counts. Felons averaged 2.1 counts at arrest, misdemeanants averaged 1.5 counts, and traffic defendants averaged 1.2 counts.
- The most common time of arrest was between 6:01 p.m. through midnight while the least common time of arrest was between 6:01 a.m. through noon. Approximately 63% of the traffic arrests occurred between 6:01 p.m. and 6:00 a.m. The majority of the felony and misdemeanor arrests occurred in the afternoon and evening hours. Approximately 65% of the misdemeanor arrests occurred between noon and midnight while 78% of the felony arrests occurred during this time period.
- Approximately 86% of the defendants acted alone in the commission of their offense. If an accomplice was involved, 68% of the cases were arrests for grand larceny, narcotic violations, or burglary.
- Approximately 29% of the defendants were under some degree of alcohol influence at the time of their arrest. Although the bulk of these defendants were arrested for DWI, 94 of these 348 defendants were arrested for non-DWI offenses encompassing 18 different types of criminal behavior. Over one-third of these 94 defendants had resisting arrest or assault as the primary offense.
- A small percentage (5.2%) of the defendants resisted arrest with the bulk of them being charged with this behavior. Nineteen of the 62 defendants resisting were originally being arrested on drunk in

public charges.

ARRESTING AGENCIES

- The most active arresting agency operating in the area is the Winchester Police Department. This agency was responsible for 48% of the regional arrests made during the time period examined. Arresting agencies in Frederick County accounted for 20% of the regional arrests with almost all of these arrests made by the Frederick County Sheriff's Office. Approximately 9% of the regional arrests were made by Clarke County law enforcement agencies. Of these 104 arrests, 82 were made by the Clarke County Sheriff's Office while 22 were made by the Berryville Police Department.
- The Virginia State Police is an active agency within the region. This agency was responsible for 16% of the arrests made within the region. The bulk of the arrests made by the State Police had the Counties of Frederick and Clarke as the jurisdiction of prosecution. State Police arrest activity extends far beyond their primary responsibility for patrolling the interstate highways. This agency made approximately 51% of the drug arrests within the region, primarily for the sale of cocaine.

SPECIAL POPULATIONS

- Defendants summonsed in lieu of arrest for criminal misdemeanors were also examined. A 2.8 summons to arrest ratio was found that is comparable to other jurisdictions we have worked with in the past. However, we believe the ratio may be inflated to a degree because it

was not always clear whether magistrate-issued summonses were the result of officer discretion when serving the arrest warrant or decisions reached at the magistrate hearing after apprehension and transportation by the arresting officer. We recommend that further study be given this population by the Jail Advisory Group.

- Very few defendants arrested for local ordinances, Class III, or Class IV misdemeanors were physically transported to the magistrate. Approximately 25% of the Class I and Class II misdemeanants were issued a field summons by the arresting officers.
- Only 5.5% of the summonsed misdemeanants failed to appear for their scheduled court appearances.
- Defendants arrested for being drunk in public as the sole charge were also examined. It was found that the Detox Center was able to divert approximately eight individuals from the jail on a daily basis. Despite this impact, a large number of individuals are still being booked into the jail for being drunk in public. Between 1986 and October, 1988, individuals arrested for drunk in public as the sole charge comprised 16-17% of the commitments to jail.
- We were unable to gather extensive data on the drunk in public population. We strongly recommend that the Jail Advisory Group examine this population further in order to determine what distinguishes this population from those diverted to the Detox Center. At a minimum, inebriates committed to jail should be

screened to identify those potentially suicidal. In addition, the release authority granted to jail staff should continue in the new jail and that the "drunk tank" offer the visibility available in the current jail.

DEFENDANT CHARACTERISTICS

- The majority of the defendants were male (85%). Females were rarely arrested for serious offenses. Approximately 82% of the female felons were arrested for grand larceny, fraud, and drug offenses. Approximately 74% of the female misdemeanants were arrested for failure to appear, petit larceny, and assault.
- Approximately 80% of the defendants were white. Although the percentage of the defendants who were black is low when compared to statewide arrest figures, these defendants are arrested at rates that exceed their makeup in the region's general population.
- When specific offenses were examined, it was found that white defendants were more likely to be arrested for the felony offenses of grand larceny and burglary. Black defendants were somewhat more likely to be arrested for robbery and three times more likely to be arrested on drug offenses. Less variation was found between the two racial groups when misdemeanors were examined. White defendants were more likely to be arrested for DWI while black defendants were more

likely to be arrested for driving on a suspended or revoked license.

- When age of the defendant was examined, it was found that the median age increased as the seriousness of the offense decreased. Felons had a median age of 25, misdemeanants had a median age of 27, and traffic defendants had a median age of 29. Serious Part I defendants had the lowest median age (24) while misdemeanor public order/victimless offenders had the highest median age (30).
- Approximately three-quarters of the defendants reside within the region. Approximately 54% of the defendants were residents of Winchester, 11% were from Frederick County, and 9% were from Clarke County. The number of Winchester residents, however, may be inflated because of the possibility that many Frederick County residents may have had Winchester mailing addresses and were coded as city residents. If the defendant was from another jurisdiction participating in the current Joint Confinement Project, he/she was most likely a resident of Warren County. Defendants from out-of-state were most likely residents of West Virginia.
- Approximately 80% of the defendants were under no legal restrictions at the time of their arrest. Approximately 12% of the defendants were on pretrial release for a pending charge when arrested for the offense examined in the study. However, we believe many of these defendants did not commit a new offense while on bond. The data may be more a measurement of the administrative factors of the criminal justice system rather than a measurement of the number of offenders

who committed new offenses while on bond. Defendants under some form of community supervision comprised 4.5% of the sample while 4.3% were already incarcerated when arrested for the sample offense.

- Approximately 62% of the defendants had no history of prior criminal arrests. For those with a prior history, the median number of prior arrests was 3.0 while the average was 5.2 prior arrests. Females were less likely to possess a prior history of arrest. However, the mean and median number of prior arrests for females with a prior record was comparable to male defendants. The same conclusions were also drawn when white and black defendants were compared.
- When offense types were compared, it was found that traffic defendants were much less likely to possess a prior criminal arrest history than misdemeanants or felons. Felons were more likely to possess a prior history of arrest than misdemeanants.

CHAPTER FOUR

THE PRETRIAL RELEASE PROCESS

A. INTRODUCTION

This chapter examines the pretrial release process for defendants arrested and brought before the magistrate for a bond hearing. The first section of the chapter presents an overview of the pretrial release process for traffic, misdemeanor, and felony defendants. The remaining sections of the chapter provide comparisons between defendants detained versus those not detained, defendants released on secured versus unsecured bond, and the level of pretrial custody. The chapter also examines success measures for those defendants released pretrial. As was the case in Chapter Three, the "N" size of defendants examined will vary from display-to-display depending on the number of missing data observations encountered.

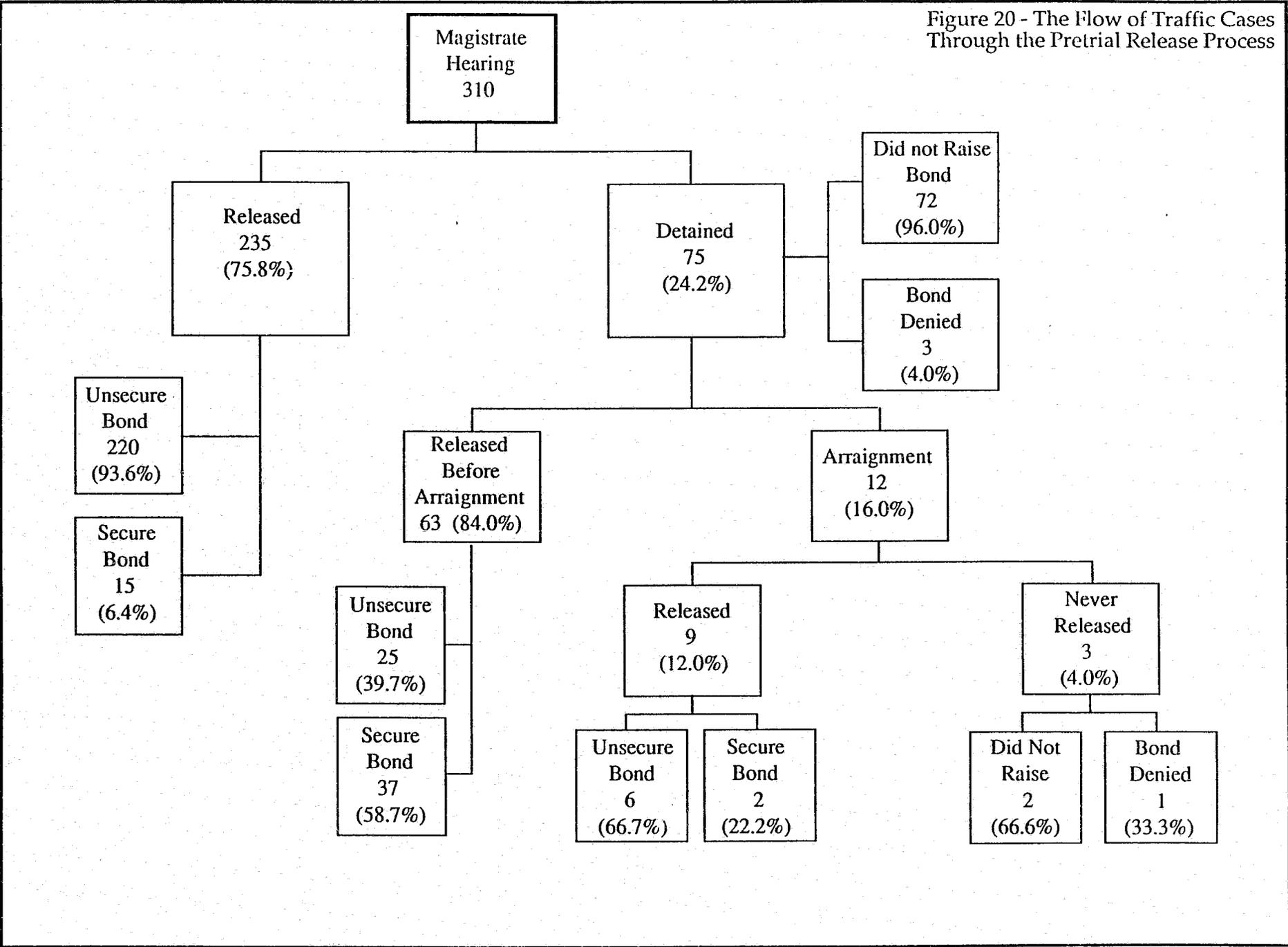
B. OVERVIEW OF THE PRETRIAL RELEASE PROCESS

1. TRAFFIC DEFENDANTS

Figure 20 displays a flowchart of the pretrial release process for traffic offenders. Approximately three-quarters (75.8%) of the traffic offenders were released at the magistrate hearing and never detained. Of the 235 defendants released by the magistrate, 220 (93.6%) were released on unsecure bond while 15 (6.4%) were released on either a surety or cash bond. The average secure bond was \$346 while the median bond was \$270.

Seventy-five of the defendants (24.2%) were unable to post bond and were detained. The majority of these defendants (96.0%) were detained because they were unable to raise the bond amount while only three defendants were denied bond. Two of the defendants had their bond denied by the magistrate and one defendant was denied bond by a Circuit Court judge at a bond hearing conducted subsequent to

Figure 20 - The Flow of Traffic Cases Through the Pretrial Release Process



direct indictment by the grand jury on a charge of driving after being declared an habitual offender. The defendants unable to raise the necessary funds had a median bond amount that was slightly higher than defendants who posted bond at the magistrate hearing (\$320 versus \$270).

Although a quarter of the traffic defendants were detained, 63 of the 75 traffic detainees (84.0%) were released before their scheduled arraignment date. The average length of stay for these 63 defendants was 1.5 days with a median length of stay of 1.0 days. Although short-term commitments are reported as a day for reimbursement purposes, the actual length of stay for these defendants is much shorter when measured in hours. Approximately 13 percent of the defendants with a two-day or less length of stay were released within four hours of detention, 47.5% were released within four-to-ten hours, and 39.3% were released within ten-to-twenty-four hours of commitment. The average length of stay for these short-term commitments was 9.6 hours.

None of the 63 defendants released before arraignment appeared before a judge prior to their release. Therefore, the 25 defendants released on an unsecure bond after detention reflect a second bond decision by the magistrate subsequent to commitment.

Since a large portion of the 75 detainees were DWI defendants (64.0%), it is possible that the defendant was intoxicated to such a degree that he/she could not coherently participate in a bail hearing or too intoxicated to be released without a friend or relative present to assume custody. Data collected on the blood/alcohol content of DWI defendants suggest that this conclusion has merit.

Defendants not detained on DWI charges had a median blood/alcohol content of .16 compared to the .19 median blood/alcohol content of detained DWI defendants. The remaining 37 detainees released before arraignment were able to secure their release by posting a surety or cash bond. One defendant was released before arraignment but we were unable to ascertain the type of release.

An additional nine of the 75 detainees were able to secure pretrial release before their cases were disposed. Five of these defendants were able to secure release at arraignment and all were released on an unsecure bond by a General District Court judge. Although detained, these defendants were brought to court for arraignment rather quickly. Two defendants went to court on the same day of arrest while two defendants went to court four days after their arrest and detention. The median length of stay for these defendants was 2.0 days while the average length of stay was 2.8 days. The remaining four defendants were able to secure release after arraignment but before case disposition. The median length of stay for these defendants was 42.0 days while the average was 41.0 days.

Only three of the 75 traffic detainees (4.0%) remained in jail throughout the entire pretrial process. These defendants comprised 1.0% of the total traffic arrests examined. Two were unable to raise their \$1,000 and \$1,270 bonds while one was denied bond. One defendant had a pretrial length of stay of 24 days while each of the remaining two defendants were detained pretrial for 87 days.

Although based on small "N" sizes, considerable changes were made by the judiciary in the initial conditions of release set by the

magistrate. Of the eight defendants released at or after arraignment whose type of release was known, only one was released on the original bond set by the magistrate. Three were released on a simple promise to appear while three were released on a personal recognizance bond. Two of these defendants initially were denied bond by the magistrate. One defendant had his bond increased from \$270 to \$500 by the judiciary. The bond was not altered for the three defendants who never secured pretrial release.

Figure 21.
TRAFFIC PRETRIAL RELEASE TYPES
(N=305)

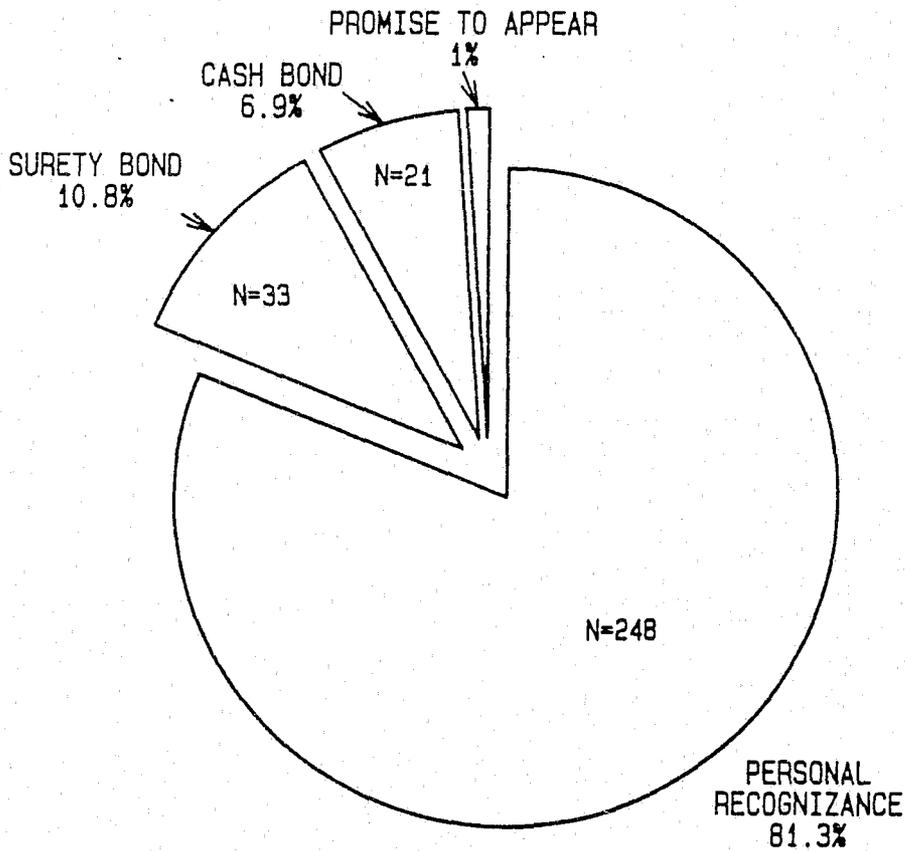
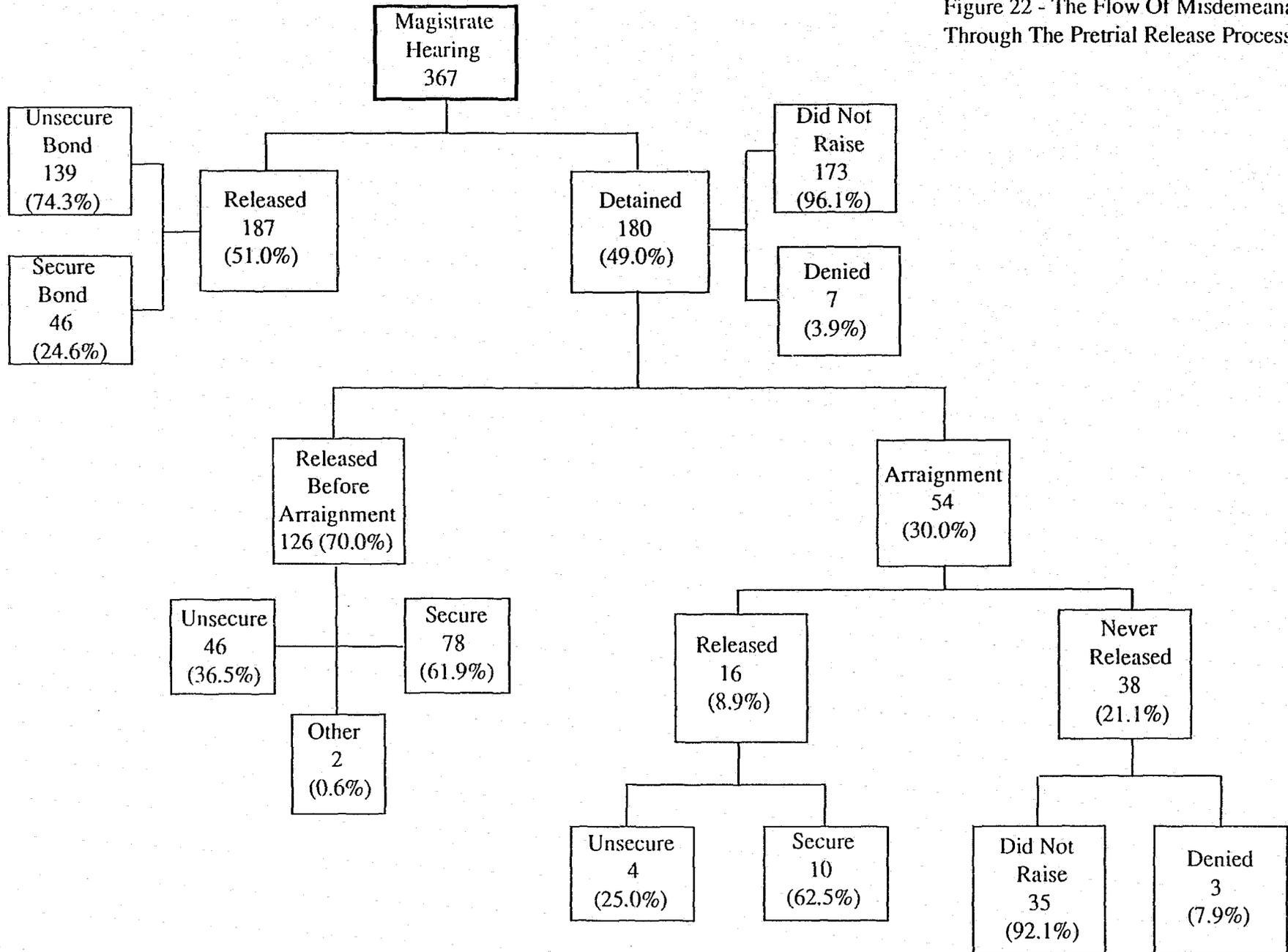


Figure 21 summarizes the types of pretrial release obtained by traffic defendants. Figure 21 graphically demonstrates that the most common type of pretrial release utilized for traffic defendants was a personal recognizance bond. For those defendants released on a surety or cash bond, the bond amounts ranged from \$50 to \$6,000. The median bond imposed was \$320 while the average bond was \$741. The 75 defendants who were detained consumed a total of 468 pretrial jail days. Over 86 percent of these defendants had a length of stay of two days or less. Twenty-nine additional pretrial jail days were consumed by seven traffic defendants who had their bonds revoked during the pretrial period. When these additional pretrial detentions are included, the median length of stay for all detained traffic defendants was 1.0 days while the average length of stay was 6.3 days.

2. MISDEMEANOR DEFENDANTS

Figure 22 displays a flowchart of the pretrial release process for defendants arrested on misdemeanor offenses. Slightly over half (51.0%) of the misdemeanants are released at the magistrate hearing and never detained. Approximately three-quarters of the misdemeanants released at the magistrate hearing were released on an unsecure bond. The majority of the unsecure bonds issued by the magistrate (89.9%) were personal recognizance bonds as opposed to promises to appear (10.1%). Approximately one-quarter of the misdemeanants were released via the posting of a secure bond. The average secure bond posted at the magistrate hearing was \$639 while the median amount was \$500. One defendant was arrested on a failure

Figure 22 - The Flow Of Misdemeanants Through The Pretrial Release Process



to appear charge and released at the magistrate hearing after the charge was dropped. The type of release could not be ascertained for one defendant.

Almost half (49.0%) of the misdemeanants arrested were unable to secure pretrial release at the magistrate hearing. The majority of these detainees were unable to post the bond set by the magistrate while only seven defendants did not have a bond set by the magistrate. The bonds set for detainees did not significantly differ from those defendants able to post a secure bond at the magistrate hearing. Although detainees had an average bond that was higher than non-detainees (\$686 versus \$639), both groups of defendants had identical median bonds of \$500.

Seventy percent of the defendants detained at the magistrate hearing were able to secure release before their arraignment. The average length of stay for these 126 defendants was 1.6 days while the median length of stay was 1.0 days. Measuring these defendants in calendar day units overcounts their actual length of stay in jail. When measured in hours, 13.8% of the defendants with a length of stay of two days or less were released within four hours of commitment while an equal percentage (43.1%) of these defendants were released from four-to-ten hours and ten-to-twenty-four hours of commitment. The average length of stay for these short-term commitments was 10.5 hours.

Similar to traffic defendants, 46 misdemeanants were released on an unsecure bond after detention but before appearance in General District Court. These releases also reflect a second bond decision by the magistrate after detention. Like DWI detainees, these

defendants could have been intoxicated to such a degree that full participation in a bond hearing was not possible or the magistrate was reluctant to release in an intoxicated state. These defendants may be released on an unsecure bond upon sobriety or the arrival of a third party to assume custody. Another explanation for these short-term detentions was offered by the Chief Magistrate. According to the Chief Magistrate, it is not uncommon for detention to occur while the magistrate awaits further information about the defendant such as outstanding warrants or community ties. Release on an unsecure bond may occur once the magistrate's concerns are answered satisfactorily. Approximately 62 percent of the defendants released before arraignment were able to raise the necessary funds to post the surety bond. Two defendants had outstanding warrants in other jurisdictions and were transferred to their custody shortly after detention by the magistrate.

Sixteen of the 180 misdemeanor detainees (8.9%) were able to secure pretrial release before their cases were disposed. Eight of these defendants were able to secure release at arraignment with six released on an unsecure bond, one on a surety bond, and one defendant whose method of release could not be ascertained. As was the case with traffic detainees, these defendants were brought to arraignment and released rather quickly. The median length of stay for misdemeanants released at arraignment was 2.5 days while the average length of stay was 3.0 days. The remaining eight defendants secured their release after arraignment but before their cases were disposed. Four were released on an unsecure bond, three posted a surety bond, and one defendant's method of release could not be

ascertained. The median length of stay for these defendants was 9.0 days while the average length of stay was 11.9 days.

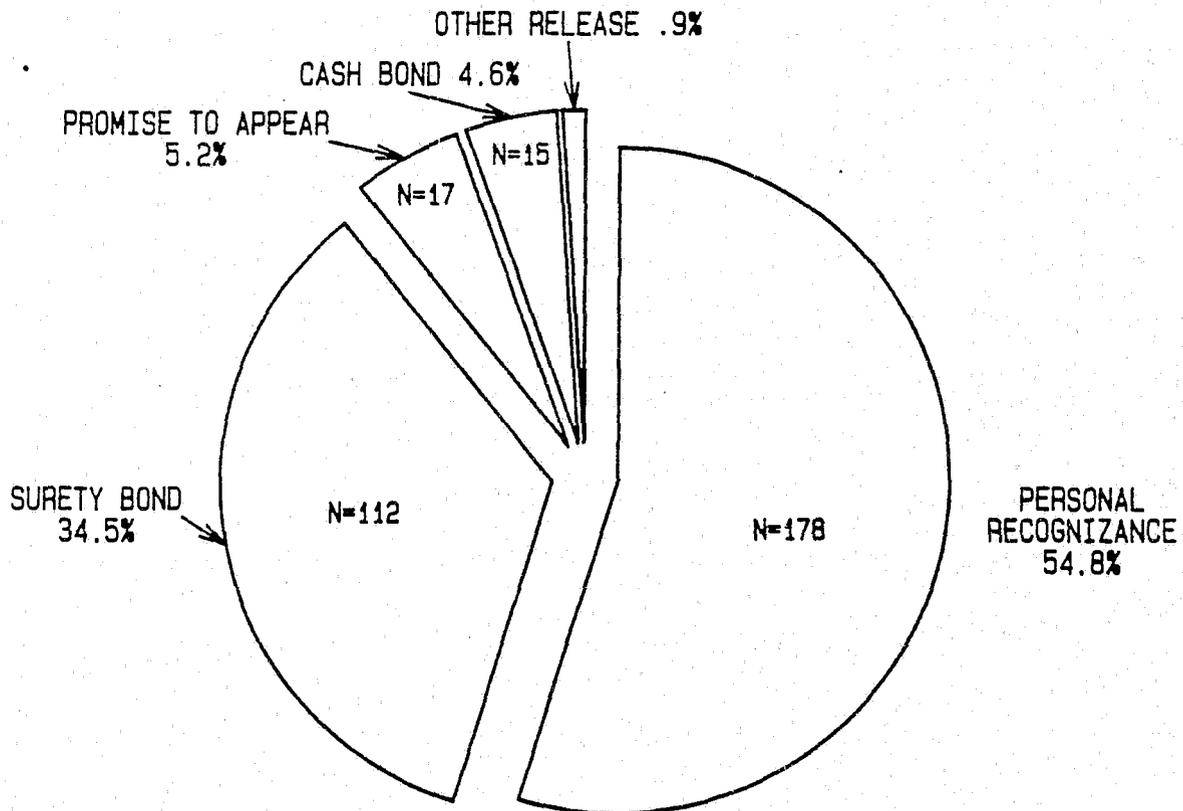
A larger percentage of the misdemeanants were detained until case disposition than was the case with traffic detainees (21.1% versus 4.0%). Misdemeanants never released pretrial comprised 10.4% of the total misdemeanor arrests examined. Approximately 92 percent of the misdemeanants never released pretrial had a bond set but were unable to raise the necessary funds while three defendants had their bonds denied throughout the entire pretrial release process. Although never able to secure pretrial release, 48.6% of these defendants had their cases disposed within five days or less of arrest and detention. The median length of stay for these defendants was 6.0 days while the average length of stay was 10.3 days. The longest length of stay for misdemeanants never released pretrial was 40 days.

Defendants never released pretrial did not differ significantly from defendants released at the bond hearing on a secure bond. Both groups had a median bond of \$500. Defendants never released pretrial actually had an average bond that was slightly lower than those defendants who were able to post a secure bond at the magistrate hearing. Defendants never released pretrial had an average bond of \$624 compared to \$639 for those able to post a secure bond at the magistrate hearing.

General District Court judges generally did not alter the bonds set by the magistrate. If changes in the initial bond were made, they most likely occurred for those defendants released at or after arraignment. Of the 14 defendants released at or after arraignment

whose type of release was known, 10 essentially had their initial bond reduced by a General District Court judge through the granting of an unsecure release. One of these defendants was originally denied bond by the magistrate. Two defendants posted a surety bond after the amount was reduced by a General District Court judge with one of these defendants also originally denied bond by the magistrate. The remaining two defendants posted a surety bond for the original amount set by the magistrate. Only one of the 38 defendants never released pretrial had a reduction in the bond set at

Figure 23.
MISDEMEANOR PRETRIAL RELEASE TYPES
(N=325)



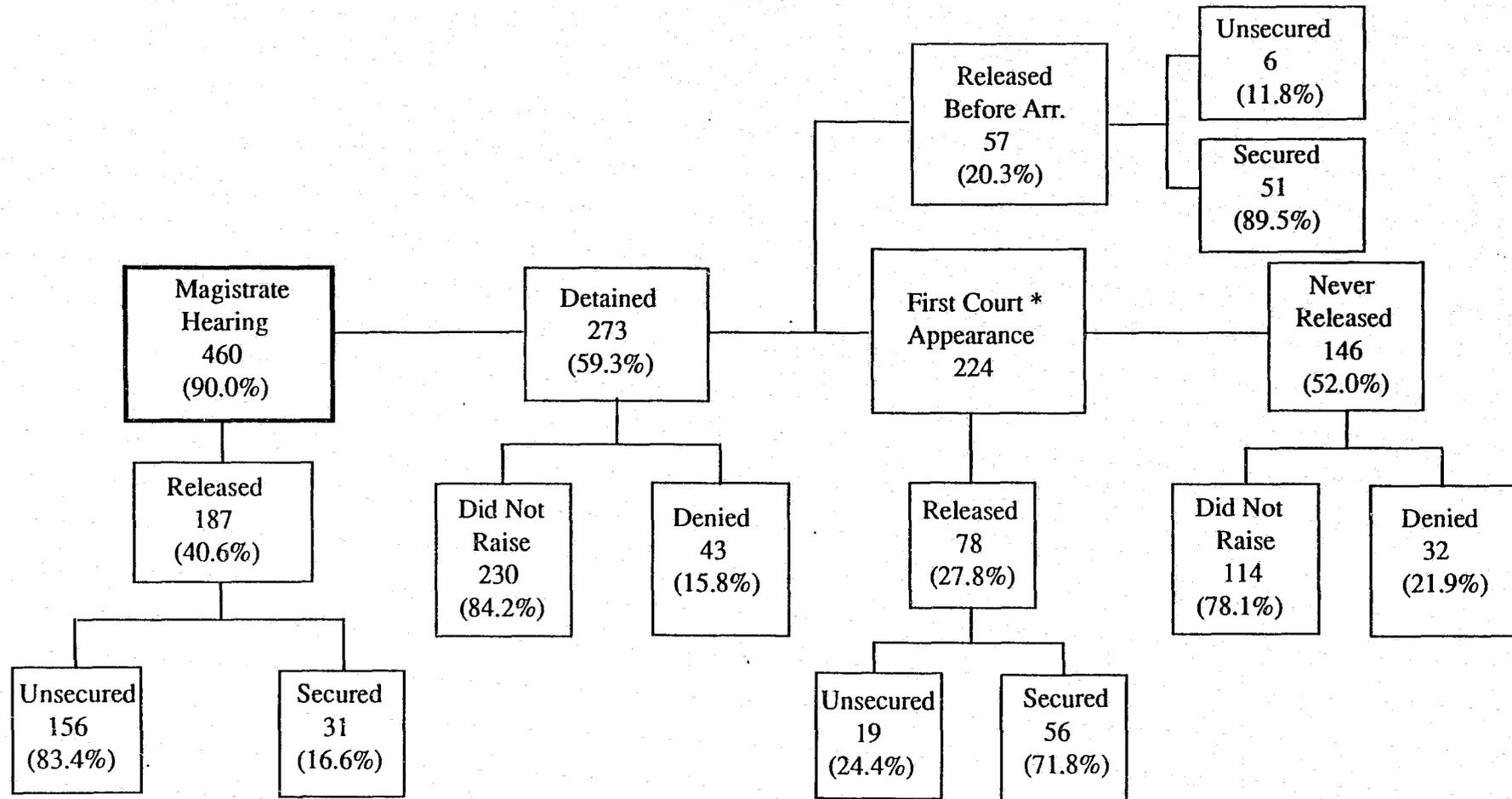
the magistrate hearing. This defendant was originally denied bond but was unable to raise the \$750 set by the General District Court.

Figure 23 summarizes the types of pretrial release obtained by misdemeanants. Although personal recognizance is also the primary type of pretrial release, it is utilized to a lesser degree for misdemeanants when compared to traffic defendants. A secure bond was required for approximately 39 percent of the misdemeanants released pretrial. The "Other Release" category is comprised of one defendant who pledged personal property as surety and two defendants who were released to the custody of another jurisdiction. The median bond was \$500 for defendants who posted a secure bond or were detained in lieu of such posting. The average bond for these defendants was \$757. The 179 misdemeanants whose length of stay could be calculated consumed a total of 696 pretrial jail days. Over 72 percent of the detained misdemeanants had a length of stay of two days or less. Twenty additional pretrial jail days were consumed by five misdemeanants who had their bonds revoked during the pretrial period. When these additional pretrial detentions are included, the median length of stay for all detained misdemeanants was 2.0 days while the average length of stay was 3.9 days.

3. FELONY DEFENDANTS

Figure 24 displays a flowchart of the pretrial release process for felony defendants arrested and brought before the magistrate. Not included in the flow chart are the minority of the felons who have their initial bond hearing conducted in the courtroom subsequent to direct indictment by the grand jury. These 51 felons (10.0%) were

Figure 24 - The Flow of Felons Through the Pretrial Release Process



* This box includes the 216 felons not released by the magistrate plus the 8 felons not released at the court hearing subsequent to the direct indictment.

present when the true bill was returned by the grand jury, were arrested, and underwent a bond hearing before a Circuit Court judge. Approximately 84 percent of these felons were granted pretrial release by the Circuit Court judge with 90.2% of them released on an unsecure bond. Circuit Court judges detained eight of the 51 felons (15.7%) with four of them denied bond. These eight felons never obtained pretrial release. The four defendants whose bond was initially denied remained in this status throughout the pretrial period.

The majority of the felons (90.0%) processed in the region were arrested and brought before the magistrate for a bond hearing. Approximately 41 percent of these felons were able to secure pretrial release at the magistrate hearing. Of these 187 felony releases, 156 (83.4%) were released on an unsecure bond with all but two released on a personal recognizance bond. Thirty-one of the 187 magistrate releases (16.6%) were obtained via the posting of a secure bond. The average secure bond posted at the magistrate hearing was \$3,241 while the median bond amount was \$1,250.

Approximately 59 percent of the felons appearing before the magistrate were unable to secure release and were detained. Approximately 84 percent of the detained felons were unable to post the bond amount set while 15.8% had their bond denied by the magistrate. The bonds set for detained felons were significantly higher than the bonds for those felons who were able to post a secure bond at the magistrate hearing. Detained felons had an average bond of \$27,022 while the median bond was \$5,000. The highest bond set for a non-detained felon was \$40,000 while 20.4% of the detained

felons had a bond amount exceeding \$40,000. One detained defendant had a \$500,000 bond set by the magistrate.

Approximately 20 percent of the 281 defendants detained by a magistrate or a Circuit Court judge were able to secure pretrial release before their first appearance in court. The average length of stay for these felons was 2.7 days while the median length of stay was 1.0 days. Similar to traffic and misdemeanor detainees, these felons did not often remain in jail for a full twenty-four hour period. Felons detained and released within four hours and felons released between four and ten hours each comprised 35.6% of the felons with a length of stay of two days or less. Felons released between ten and twenty-four hours of detention comprised 28.9% of the felons with a length of stay of two days or less. The average length of stay for these short-term commitments was 8.0 hours.

Unlike traffic and misdemeanor detainees, very few changes were made in the conditions of release by a magistrate before the defendant's first appearance in court. Only six of the 57 felons (11.8%) able to obtain release before their first appearance in court were released on an unsecure bond. The remaining 51 felons detained and released before their first appearance in court were released via the posting of a secure bond in the amount originally set at the magistrate hearing.

Approximately 28 percent of the detained felons were able to secure pretrial release before their cases were disposed. Fifteen of the 78 defendants (19.2%) were able to secure pretrial release at their initial court appearance. Seven of these defendants were released on an unsecure bond while eight were released on a secure

bond. The median length of stay for defendants released at their first court appearance was 4.0 days while the average length of stay was 8.7 days. The remaining 63 defendants (80.8%) were able to secure pretrial release after their initial court appearance. Twelve of these 63 defendants (19.0%) were released on an unsecure bond while 48 (76.2%) were released on a secure bond. Two defendants were transferred to other jurisdictions and one defendant's type of release could not be ascertained. The median length of stay for felons released after their first court appearance was 12.0 days while the average length of stay was 21.9 days.

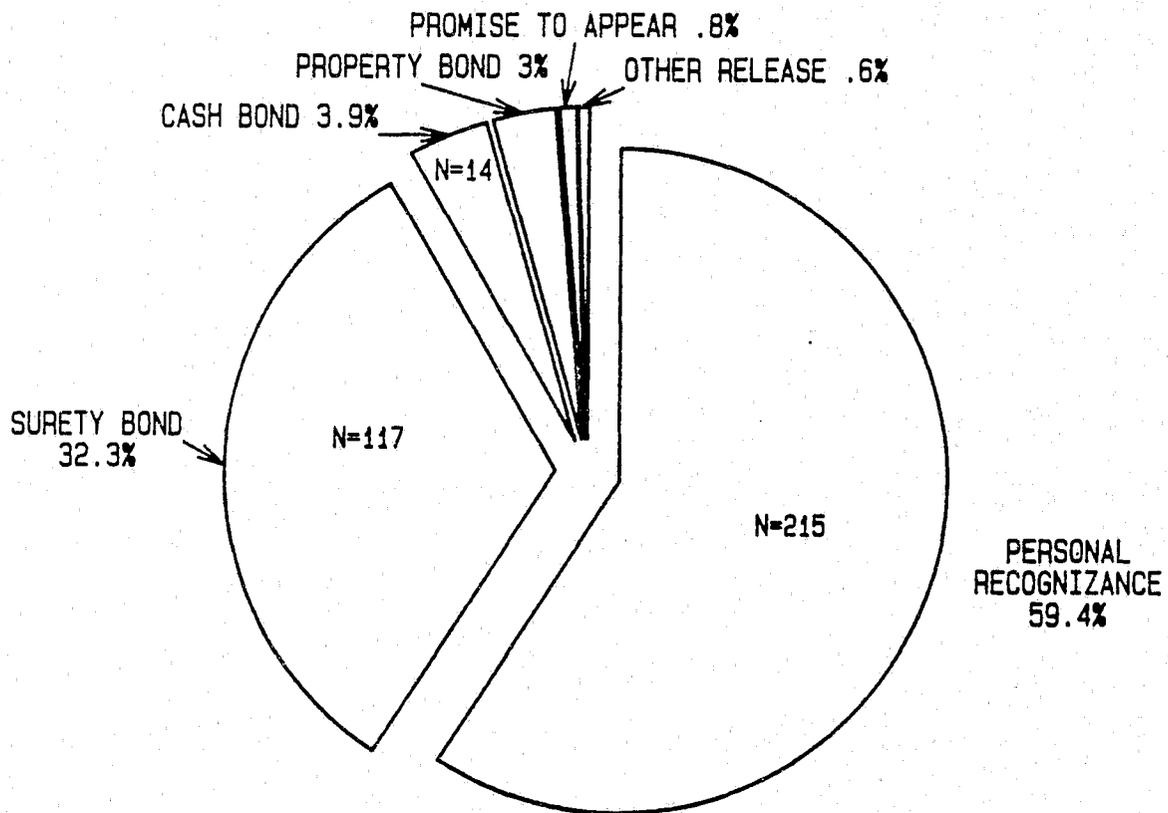
Over half of the detained felons (52.0%) were detained until case disposition. These felons comprise 28.6% of the total felony arrests examined. Approximately 78 percent of these defendants were unable to raise the bond amount set while 21.9% of the felons never released pretrial had their bonds denied throughout the entire pretrial release process. Unlike traffic and misdemeanor detainees, felons never released pretrial are detained for lengthy periods of time. The median length of stay for felons never released pretrial was 101.0 days while the average length of stay was 110.2 days. Approximately 58 percent (57.9%) of the felons never released pretrial were detained over 90 days before case disposition. Approximately 10 percent (9.6%) of these felons had pretrial lengths of stay over 180 days. One defendant was detained 441 days before his case was disposed.

Substantial changes were made to the initial bond set by the magistrate for those defendants released at or after their initial court appearance. Of the 78 defendants released at or after their

first court appearance, 60 (76.9%) had their bonds altered by the judiciary. Nineteen were released on an unsecure bond with five of these felons originally denied bond by the magistrate. Thirty-nine felons were able to secure release due to the lowering of their bond amounts. Six of these felons were originally denied bond by the magistrate. Two defendants had their bonds increased by the judiciary.

Only 22 of the 146 felons never released pretrial (15.1%) had their bonds altered by the judiciary. Nineteen of these felons had their bonds reduced by the judiciary with four of these felons

Figure 25.
FELONY PRETRIAL RELEASE TYPES
 (N=362)



originally denied bond by the magistrate. Three felons had their bonds increased by the judiciary.

Figure 25 summarizes the types of pretrial release obtained by felons. Like traffic and misdemeanor defendants, the most common form of pretrial release was a personal recognizance bond. Approximately 39 percent of the felons were required to post a secure bond with a surety bond being the most common bond posted. The median bond set for felons was \$5,000 while the average bond set was \$16,901. The average bond is substantially higher than the median due to the number of felons with bonds of \$50,000 or more. The highest final bond amount levied was \$325,000.

The 280 detained felons whose pretrial length of stay could be calculated served a total of 17,766 jail days. The median length of stay for these defendants was 36.5 days while the average length of stay was 63.4 days. A little over one-third (34.6%) of the felons released pretrial were detained for ten days or less. Twenty-five defendants were detained an additional 1,239 pretrial days after their initial release on bond. Fifteen of these defendants were detained to await sentencing, eight had their bonds revoked, and the remaining two defendants were transferred between the region and other jurisdictions to face pending charges. When these additional pretrial detentions are included, the median length of stay pretrial was 51 days while the average length of stay was 66.2 days.

C. FACTORS INFLUENCING THE MAGISTRATE'S DETENTION DECISION

This section of the chapter attempts to identify the factors which appear to influence the magistrate's decision to detain. The 51 felons

who had their bond hearing before a circuit court judge subsequent to direct indictment were excluded from the analysis. Since 43 of these felons were not detained, it is obvious that the voluntary appearance of the defendant on grand jury day worked in the defendant's favor as a factor in the circuit court judge's detention decision. The analysis of magistrate decision-making only addresses the types of information often provided to magistrates when making pretrial release decisions. According to the Chief Magistrate, the information most likely to be provided during the bond hearing are the charges at arrest, nature of the offense, and defendant demographics. Information regarding the defendant's legal status and prior record is often self-reported or based upon the magistrate's or the arresting officer's past experience with the defendant. Very rarely is such information gathered or verified from existing local records or criminal arrest histories maintained in the Virginia Criminal Information Network.

1. PRIMARY OFFENSE AT ARREST

Tables 14 through 16 provide a comparison of the non-detention versus the detention rates for the most frequently encountered primary offenses contained within the traffic, misdemeanor, and felony case type categories. Table 14 shows that nearly three-quarters of the traffic defendants were released at the initial bond hearing, while one-quarter were detained by the magistrate. The rates of detention, however, varied between the three larger groups of DWI, habitual offender, and driving with a revoked/suspended license. As expected, the more serious offense of driving after being declared an habitual offender (a felony) had the highest detention rate

when compared to the lesser offenses, in terms of statutory seriousness, of DWI and driving with a revoked/suspended license.

TABLE 14
NON-DETENTION AND DETENTION RATES
FOR TRAFFIC OFFENSES

| OFFENSE | NOT DETAINED | PCT. | DETAINED | PCT. |
|-------------------|--------------|------|----------|------|
| DWI | 206 | 81.1 | 48 | 18.9 |
| Rev./Sus. License | 14 | 63.6 | 8 | 36.4 |
| Habitual Offender | 9 | 34.6 | 17 | 65.4 |
| Other | 6 | 75.0 | 2 | 25.0 |
| TOTALS | 235 | 75.8 | 75 | 24.2 |

As depicted in Table 15, the overall detention rate for misdemeanants was 49 percent. However, the detention rates vary

TABLE 15
NON-DETENTION AND DETENTION
RATES FOR MISDEMEANANTS

| OFFENSE | NOT DETAINED | PCT. | DETAINED | PCT. |
|------------------|--------------|------|----------|------|
| Assault | 55 | 53.4 | 48 | 46.6 |
| FTA | 55 | 69.6 | 24 | 30.4 |
| Petit Larceny | 26 | 54.2 | 22 | 45.8 |
| Resist Arrest | 5 | 13.9 | 31 | 86.1 |
| Trespass | 10 | 45.4 | 12 | 54.5 |
| Vandalism | 7 | 46.7 | 8 | 53.3 |
| Other Personal | 5 | 50.0 | 5 | 50.0 |
| Other Property | 4 | 44.4 | 5 | 55.6 |
| Other Victimless | 20 | 44.4 | 25 | 55.6 |
| TOTALS | 187 | 51.0 | 180 | 49.0 |

widely when specific types of misdemeanors are examined. Defendants arrested for resisting arrest or obstructing justice as the primary offense are much more likely to be detained than any of the other

misdemeanants displayed. Over 50 percent of the defendants arrested for trespassing and vandalism are detained at arrest by the magistrate. Slightly less than one-half of the misdemeanants arrested for assault and petit larceny are detained. Surprisingly, only 30.4% of the defendants arrested for failure to appear are detained by the magistrate.

Table 16 displays the detention rates for defendants arrested for various felony offenses whose initial bond hearing was conducted by a magistrate. Including the "Serious Personal" category (primarily composed of murder, robbery, and sexual assault arrests), it would appear that magistrates detained the majority of the defendants facing serious felony offense charges. Approximately 70 percent of the felons facing drug, burglary, assault, and other serious personal offense charges are detained by the magistrate. Although high percentages are detained, defendants arrested on grand larceny and fraud charges are the least likely group of felons detained by the magistrate.

TABLE 16
NON-DETENTION AND DETENTION
RATES FOR FELONS

| OFFENSE | NOT DETAINED | PCT. | DETAINED | PCT. |
|------------------|--------------|------|----------|------|
| Drugs | 37 | 28.2 | 94 | 71.8 |
| Grand Larceny | 66 | 55.5 | 53 | 44.5 |
| Burglary | 18 | 31.0 | 40 | 69.0 |
| Fraud | 35 | 54.7 | 29 | 45.3 |
| Assault | 11 | 32.4 | 23 | 67.6 |
| Serious Personal | 10 | 25.6 | 29 | 74.4 |
| Other Property | 9 | 90.0 | 1 | 10.0 |
| Other Victimless | 1 | 20.0 | 4 | 80.0 |
| TOTALS | 187 | 40.6 | 273 | 59.3 |

2. DEMOGRAPHIC CHARACTERISTICS OF DETAINEES

Table 17 displays the detention rates broken down by case type and by defendant gender, race, and residence. Not displayed in the table are the ages of detained defendants. On this measure, the age of detainees followed a pattern somewhat similar to that discussed in Chapter Three. Like arrest patterns, the age of detainees decreased as the seriousness of the offense increased. The median age of traffic and misdemeanor detainees was 27 years old (Mean = 30) while the median age of the felons was 24 years old (Mean = 26).

Table 17 demonstrates that female defendants were much less likely to be detained than male defendants across all three case

TABLE 17
DETENTION RATES BY
DEMOGRAPHIC CHARACTERISTICS

| | TRAFFIC | | | MISDEMEANOR | | | FELONY | | |
|-----------|-------------|--------------|------|-------------|--------------|------|-------------|--------------|------|
| | TOTAL CASES | NO. DETAINED | PCT. | TOTAL CASES | NO. DETAINED | PCT. | TOTAL CASES | NO. DETAINED | PCT. |
| MALE | 275 | 72 | 26.2 | 310 | 171 | 55.2 | 387 | 245 | 63.3 |
| FEMALE | 35 | 3 | 8.6 | 57 | 9 | 15.8 | 73 | 28 | 38.4 |
| WHITE | 286 | 69 | 24.1 | 300 | 147 | 49.0 | 320 | 169 | 52.8 |
| BLACK | 18 | 6 | 25.0 | 33 | 30 | 47.6 | 129 | 99 | 76.7 |
| LOCAL | 202 | 40 | 19.8 | 297 | 137 | 46.1 | 308 | 167 | 54.2 |
| NON-LOCAL | 108 | 35 | 32.4 | 66 | 41 | 62.1 | 119 | 87 | 73.1 |

types. One reason for the differences in the detention rates is that females were rarely arrested for the types of offenses that exhibited high detention rates. For example, no females were arrested for driving after being declared an habitual offender, an offense with a 65.4% detention rate. If a female was detained, she was most likely detained for a felony, particularly felony drug offenses.

A second explanation for the difference in the detention rates revolves around space limitations and transportation logistics. The Clarke County Jail, the housing site for women, has been operating at or over capacity for several years. Population levels and capacity limits of the Clarke County Jail may act as a constraint on magistrates when making detention decisions on female defendants. This jail is also located approximately nine miles from the City of Winchester where the majority of the women are arrested and brought before the magistrate. Since most defendants bond out shortly after detention, the length of time necessary to transport and detain a female defendant may also act as a constraint given the fact that the detention is likely to be short-term.

The differential treatment accorded female defendants is also evident when the genders are compared according to certain offense characteristics and legal status at arrest. Although a slightly higher percentage of the male defendants resisted arrest (5.8% vs. 3.6%), male defendants who resisted arrest were much more likely to be detained than the female defendants who offered resistance (82.1% vs. 50.0%). Female defendants arrested for traffic offenses were more likely to be driving on a suspended or revoked driver's license (82.8% vs. 71.4%). However, only 6.9% of the females with license

restrictions were detained compared to 19.0% of the male defendants. Both genders had comparable rates of refusing a breathalyzer test, but only 20.0% of the women who refused were detained while 56.7% of the males were detained. Both genders also had comparable percentages who were under some form of legal restriction at arrest.¹ However, only 23.3% of the females under a legal restriction were detained while 58.5% of the males were detained.

On the other hand, female defendants were detained at comparable rates in certain situations. Females who used a weapon in the commission of their offense were detained 66.7% of the time while 60.2% of the males who used a weapon were detained. The genders also had comparable detention rates when those possessing a prior criminal arrest history were compared. Approximately 69 percent of the females with a prior record were detained, while 59% of the males with a prior history were detained. Both groups averaged approximately 6.5 prior arrests.

White and black defendants possessed comparable detention rates for traffic and misdemeanor offenses. White defendants, however, were less likely to be detained for felony offenses than black defendants (52.8% vs. 76.7%). When examined further, black defendants were detained at a higher rate than white defendants for personal offenses, property offenses, drug offenses, and offenses

¹ Defendants under a legal restriction at arrest are defined as those defendants currently on pretrial release for a pending charge or those currently under probation, parole, or CDI supervision. Excluded from this type of analysis were those defendants already incarcerated at the time of arrest for the sampled offense.

involving a weapon. These percentage differences, however, were not found to be statistically significant. In other words, the percentage differences are more a function of the number of black and white defendants in each of the categories from which the percentages are calculated.

However, black defendants under no legal restrictions at arrest were significantly more likely to be detained than white defendants under no legal restrictions (74.1% vs. 46.0%). Black defendants with no prior arrest history were also more likely to be detained than white defendants lacking a prior record (81.0% vs. 46.3%). This situation is more likely explained by the type of offense at arrest and limitations of the data than any racial biases. As discussed in Chapter Three, approximately 51 percent of the black defendants were arrested on drug charges compared to 19 percent of the white defendants. Defendants arrested on drug charges, particularly offenses involving cocaine, had high detention rates regardless of their legal status or prior arrest history. The disproportionate arrest rate of black defendants on drug charges is most likely the primary explanation for the detention rate differences between the two racial groups.

Secondly, a large number of the drug arrests occurred during Operation Crack and were primarily focused on the migrant labor community. Type of offense coupled with residence may explain the higher detention rates of black defendants. The number of black defendants under no legal restrictions or lacking a prior arrest history may be inflated due to the large number of defendants from out-of-state arrested during Operation Crack. Our lack of access to

other state criminal histories may have led to significant undercounting of the level of prior criminal involvement for this segment of the arrested population.

Table 17 also demonstrates that non-local residents were much more likely to be detained for all three case types. Non-residents continued to exhibit higher detention rates when legal status and prior record were examined. Local residents under no legal restrictions were detained 37.0% of the time compared to 52.4% of the non-residents. Local residents under a legal restriction at arrest had a detention rate of 51.6% compared to 62.8% of the non-residents. For defendants lacking a prior history of arrest, 34.4% of the local residents were detained while 51.7% of the non-residents were detained. Local residents with a prior arrest history were detained 55.3% of the time while 63.4% of the non-residents were detained.

A total of 292 non-local residents were brought before the magistrate for a bond hearing. The magistrates detained 163 of these non-residents. Of these 163 non-local residents, 92 (56.4%) were from other states, 31 (19.0%) were from a jurisdiction participating in the current Joint Confinement Project, and 36 (22.1%) were from other Virginia jurisdictions. Only four (2.4%) were citizens of another country. Thirty-four of the 92 defendants from another state (37.0%) were residents of West Virginia.

3. OFFENSE CHARACTERISTICS OF DETAINEES

The majority of the defendants under some degree of alcohol influence at arrest were detained by the magistrate. Excluding DWI arrestees, 94 defendants had consumed alcohol prior to their

arrest. Of these 94 defendants, only 7 (7.4%) were released at the magistrate hearing. The 94 defendants were arrested for 18 different types of misdemeanor and felony offenses. However, 42 (44.7%) of these defendants had resisting arrest or simple assault as the primary offense at arrest. As discussed earlier in this chapter, blood/alcohol level appears to play a role in the detention decision of DWI arrestees. Non-detained DWI defendants had a median blood/alcohol level of .16 compared to .19 for those detained.

Defendants who resisted arrest also possessed high detention rates. A total of 62 arrestees resisted arrest in some form. Of these 62, 49 (79.0%) were detained by the magistrate. Thirty-six of the 62 arrestees had the resistance charge as the primary offense with the remaining 26 defendants arrested for ten different types of misdemeanor and felony offenses as the primary charge. Because arrest narratives were often lacking, codification of this fact was essentially restricted to situations where the defendant was charged with resistance. If verbal abuse toward the officer or magistrate could have been accounted for, it is possible that defendant demeanor may have played a larger role in the detention process than we were able to document.

Significant differences exist in the detention rates for misdemeanants arrested for a personal offense versus felons arrested for personal offense. Misdemeanants with a personal offense had a 56.0% detention rate while felons with a personal offense had a 63.0% detention rate. Although the detention rates for these types of misdemeanants and felons are somewhat comparable, the misdemeanant detention rate is inflated due to the large number of defendants who

resisted arrest. Excluding all misdemeanor and felons who resisted arrest results in a misdemeanor detention rate of 42.0% while felons had a 60.9% detention rate. Some of the reasons for the higher felony detention rate, other than statutory seriousness, is that a higher percentage of the felons injured or killed their victims than misdemeanants (32.3% vs. 11.0%), used a weapon in the commission of the offense (57.6% vs. 10.1%), and possessed a prior arrest history (54.0% vs. 35.7%).

Misdemeanants and felons arrested for property offenses had almost identical detention rates (53.4% vs. 53.0%). However, a larger percentage of the misdemeanants were under the influence of alcohol at arrest (18.1% vs. 2.5%) or resisted arrest (9.9% vs. 1.1%). These two factors, already demonstrated to be key factors leading to detention, may have contributed to the comparable detention rates between misdemeanor and felony property offenders. Absent these factors, the detention rates for felony property offenders is likely to be higher than the misdemeanants.

Defendants arrested for drug offenses not involving cocaine had a 47.4% detention rate while defendants arrested for cocaine-related offenses had an 81.9% detention rate. The detention rate for sale of cocaine was somewhat higher than the rate for possession of cocaine (83.7% vs. 70.6%). Unlike the other offense characteristics discussed, alcohol use and resisting played no role in explaining the detention of defendants arrested for offenses involving cocaine. Only one defendant arrested for a cocaine-related offense was under the influence of alcohol and one resisted arrest. Legal status at arrest and prior record played no role in clarifying the detention

rates. In fact, defendants under no legal restrictions at arrest had higher detention rates than those defendants under a legal restriction (81.6% vs. 75.0%). Defendants with no prior history of arrest also had higher detention rates than those with a prior record (84.4% vs. 78.0%). The only factor which helps to explain the high detention rates, other than the seriousness of the offense itself, is the defendant's residence. Non-local residents arrested for cocaine offenses had a 90.0% detention rate compared to 75.0% for local residents.

Defendants who possessed or used a weapon in the commission of their offense had a 58.0% detention rate. For misdemeanants, the detention rate was 43.8%, while felons with a weapon had a 66.1% detention rate. Defendants who used a weapon to injure or attempt to injure had a lower detention rate (50.0%) than those who used the weapon to threaten (55.0%) or those who possessed the weapon but did not use it (83.3%).

4. LEGAL STATUS AND PRIOR ARREST HISTORY

Table 18 demonstrates that legal status at arrest does appear to play a role in explaining magistrate detention decisions. Except for misdemeanants, defendants under some form of legal restriction possess higher detention rates than defendants not under a legal restriction. Similar to patterns discussed earlier, a sizable portion of the misdemeanants not under a legal restriction and detained were under the influence of alcohol at arrest (28.1%) or resisted arrest (19.0%). Absent these factors, misdemeanants not under a legal restriction would likely possess detention rates

similar to traffic defendants and felons.

Table 18 also demonstrates that defendants with a prior arrest history are more likely to be detained than defendants with no history of arrest. For traffic defendants, the defendant's prior

TABLE 18
DETENTION RATES BY LEGAL STATUS
AND PRIOR ARREST HISTORY

| | TRAFFIC | | | MISDEMEANOR | | | FELONY | | |
|---------------------|-------------|--------------|------|-------------|--------------|------|-------------|--------------|------|
| | TOTAL CASES | NO. DETAINED | PCT. | TOTAL CASES | NO. DETAINED | PCT. | TOTAL CASES | NO. DETAINED | PCT. |
| FREE | 283 | 59 | 20.8 | 242 | 126 | 52.1 | 319 | 170 | 53.3 |
| RESTRIC- TIONS | 26 | 15 | 57.7 | 124 | 53 | 42.7 | 103 | 66 | 64.1 |
| NO PRIOR | 229 | 49 | 21.4 | 237 | 99 | 41.8 | 250 | 137 | 54.3 |
| PRIOR RECORD | 81 | 26 | 32.1 | 130 | 81 | 62.3 | 208 | 136 | 65.4 |
| NO TRAFFIC | 140 | 22 | 15.7 | | | | | | |
| CRIMINAL TRAFFIC | 168 | 52 | 31.0 | | | | | | |

history of criminal traffic arrests also appears to play a role in the detention decision. For those defendants with a prior record, differences were also found in the median number of prior arrests for defendants released at the magistrate hearing versus those detained by the magistrate. Non-detained traffic defendants with a criminal arrest record had a median of 2.0 prior arrests compared to 3.0 prior arrests for those detained. The same results were found when the

number of prior criminal traffic arrests were calculated.

Misdemeanants with a prior criminal arrest record who were not detained had 2.0 prior arrests as the median value compared to 4.0 prior arrests for those detained. For felons, the findings were 3.0 prior arrests for those not detained versus 4.0 for those detained.

It appears that a defendant's legal status at arrest and prior record does play a role in the detention decision. However, Table 18 also demonstrates that a substantial percentage of the misdemeanants and felons detained are under no legal restrictions at arrest and do not possess a prior arrest history. As documented in this section, a large number of defendants are detained on the basis of the offense at arrest and its characteristics, demographic factors, and demeanor.

D. FACTORS INFLUENCING THE CONDITIONS OF RELEASE DECISION

This section analyzes the conditions of release decision made for those defendants released by the magistrate. For traffic defendants, this analysis covers nearly all such defendants because only twelve defendants were still detained at or after their first court appearance. This analysis of magisterial decision-making only covers a subset of the misdemeanants and felons processed within the region because a larger percentage of these defendants were still detained when jurisdiction of the case passed to the judiciary. Approximately 15% of the misdemeanants were detained when jurisdiction over pretrial release decisions passed to the judiciary while 47% of the felons processed by the magistrate were still detained at this point.

1. PRIMARY OFFENSE AT ARREST

Table 19 displays the rate at which defendants arrested for specific traffic offenses are released on an unsecure bond by the magistrate. As can be seen in the table, approximately 82% of the traffic defendants are released on an unsecure bond. Similar to the detention decision discussed in the previous section, the usage of unsecure bond as the mechanism of release varied according to the primary offense at arrest. DWI defendants were not only the most likely traffic offenders to be released at the magistrate hearing but also the most likely to be released on an unsecure bond. Defendants arrested for driving after being declared an habitual offender (a felony) were least likely to be released on an unsecure bond. Although 64% of the defendants arrested for driving on a suspended/revoked license were not detained, only 31.8% of these defendants were released on an unsecure bond.

TABLE 19
CONDITIONS OF RELEASE FOR TRAFFIC
DEFENDANTS BY PRIMARY OFFENSE

| OFFENSE | UNSECURED | PCT. | SECURED | PCT. |
|--------------------|-----------|------|---------|------|
| DWI | 228 | 92.3 | 19 | 7.7 |
| REV./SUSP. LICENSE | 7 | 31.8 | 15 | 68.2 |
| HABITUAL OFFENDER | 6 | 30.0 | 14 | 70.0 |
| OTHER | 4 | 50.0 | 4 | 50.0 |
| TOTALS | 245 | 82.5 | 52 | 17.5 |

As Table 20 demonstrates, defendants arrested for misdemeanor

offenses were less likely to be released on an unsecure bond than traffic defendants. However, unsecure bond is still the most frequent form of pretrial release used by the magistrate. The misdemeanants most frequently released on an unsecure bond were those arrested for petit larceny (76.9%) followed by those arrested

TABLE 20
CONDITIONS OF RELEASE FOR
MISDEMEANANTS BY PRIMARY OFFENSE

| OFFENSE | UNSECURED | PCT. | SECURED | PCT. |
|------------------|-----------|------|---------|------|
| ASSAULT | 56 | 62.2 | 34 | 37.8 |
| FTA | 29 | 43.9 | 37 | 56.1 |
| PETIT LARCENY | 30 | 76.9 | 9 | 23.1 |
| RESIST ARREST | 17 | 54.8 | 14 | 45.2 |
| TRESPASS | 12 | 66.7 | 6 | 33.3 |
| VANDALISM | 8 | 72.7 | 3 | 27.3 |
| OTHER PERSONAL | 6 | 66.7 | 3 | 33.3 |
| OTHER PROPERTY | 4 | 66.7 | 2 | 33.3 |
| OTHER VICTIMLESS | 23 | 59.0 | 16 | 41.0 |
| TOTALS | 185 | 59.9 | 124 | 40.1 |

for vandalism (72.7%). Defendants arrested on failure to appear charges were the offense group least likely to be released on an unsecure bond. However, 43.9% of these misdemeanants were not required to post a secure bond.

Table 21 demonstrates that felons released by the magistrate were more likely to be released on an unsecure bond than misdemeanants (66.4% vs. 59.9%). This finding is somewhat misleading in that a much higher percentage of the felons were released after their

first court appearance or never released pretrial than was the case with misdemeanants. What the comparison does reveal is that "good" candidates for pretrial release and, in particular, release on an unsecure bond are identified by the magistrate regardless of the statutory seriousness of the offense. In addition, the fact that misdemeanants have a lower unsecure bond rate may also be explained by the lower bond amounts generally set for these defendants. Misdemeanants are more likely to possess the cash necessary to secure release. In essence, the magistrate is not required to make this

TABLE 21
 CONDITIONS OF RELEASE FOR FELONS
 BY PRIMARY OFFENSE

| OFFENSE | UNSECURED | PCT. | SECURED | PCT. |
|------------------|-----------|-------|---------|------|
| DRUGS | 32 | 65.3 | 17 | 34.7 |
| GRAND LARCENY | 60 | 75.0 | 20 | 25.0 |
| BURGLARY | 16 | 61.5 | 10 | 38.5 |
| FRAUD | 28 | 62.2 | 17 | 37.8 |
| ASSAULT | 9 | 50.0 | 9 | 50.0 |
| OTHER PERSONAL | 7 | 53.8 | 6 | 46.2 |
| OTHER PROPERTY | 9 | 100.0 | 0 | - |
| OTHER VICTIMLESS | 1 | 25.0 | 3 | 75.0 |
| TOTALS | 162 | 66.4 | 82 | 33.6 |

decision because misdemeanants are more likely to be carrying the funds necessary to post a secure bond at the magistrate hearing.

Felons arrested for offenses in the "Other Property" category was the group most likely to be released on an unsecure bond. Seven of these nine defendants were arrested for felony vandalism charges while the remaining two defendants were arrested for making a bomb threat and unarmed robbery. Three-quarters of the defendants

arrested for grand larceny and released by the magistrate were granted unsecure releases. For the 49 felony drug defendants released by the magistrate, 32 (65.3%) were released on an unsecure bond. The three defendants in the "Other Victimless" category required to post a secure bond were arrested for firing a missile into a building.

2. DEMOGRAPHIC CHARACTERISTICS

Female defendants were more likely to be released on an unsecure bond than male defendants. Females continued to possess higher

TABLE 22
UNSECURE BOND RATES BY
DEMOGRAPHIC CHARACTERISTICS

| | TRAFFIC | | | MISDEMEANOR | | | FELONY | | |
|-----------|-------------|------------|------|-------------|------------|------|-------------|------------|------|
| | TOTAL CASES | NO. UNSEC. | PCT. | TOTAL CASES | NO. UNSEC. | PCT. | TOTAL CASES | NO. UNSEC. | PCT. |
| MALE | 262 | 211 | 80.5 | 257 | 149 | 58.0 | 194 | 122 | 62.9 |
| FEMALE | 35 | 34 | 97.1 | 52 | 36 | 69.2 | 50 | 40 | 80.0 |
| WHITE | 273 | 227 | 83.2 | 256 | 149 | 58.2 | 193 | 128 | 66.3 |
| BLACK | 24 | 18 | 75.0 | 51 | 34 | 66.7 | 44 | 29 | 65.9 |
| LOCAL | 193 | 172 | 89.1 | 255 | 153 | 60.0 | 180 | 124 | 68.9 |
| NON-LOCAL | 104 | 73 | 70.2 | 51 | 30 | 58.9 | 49 | 26 | 53.1 |

unsecure bond rates than males when compared according to various offense characteristics such as alcohol use at arrest and offense type. The only exception was legal status at arrest. Male and female defendants had similar unsecure bond rates for those under some form of legal restriction at arrest (Males = 52.5%, Females = 54.8%).

White and black defendants had similar unsecure bond rates when arrested for felony offenses. Black defendants were less likely to be released on an unsecure bond than white defendants when the primary charge at arrest was a traffic offense. For misdemeanor offenses, white defendants were less likely to be released on an unsecure bond than black defendants. However, the differences between the two racial groups were not found to be statistically significant.

Local residents were much more likely to be released on an unsecure bond than non-local residents if the charge at arrest was a traffic or felony offense. Local and non-local residents had similar unsecure bond rates for misdemeanor offenses. These patterns continued when local and non-local residents were compared according to various offense characteristics such as alcohol use at arrest and offense type.

3. OFFENSE CHARACTERISTICS

Characteristics of the offense played a somewhat different role in the magisterial decision regarding release conditions compared to the role they played in the detention decision. Similar to the detention decision, resistance at arrest appears to be a key factor

in explaining the type of release granted by the magistrate. Defendants who resisted arrest were much less likely to be released on an unsecure bond than defendants who did not offer resistance (50.0% vs. 72.8%). Unlike the detention decision, defendants under the influence of alcohol at arrest for non-DWI offenses had unsecure bond rates similar to those defendants who were not under the influence (58.2% vs. 63.4%).

Defendant cooperation and demeanor also appear to play a role in the setting of release conditions for DWI defendants. DWI defendants were much more likely to be released on an unsecure bond if they agreed to submit to a breathalyzer test. These defendants had an unsecure bond rate of 95.4% compared to 67.7% for those who refused to submit to the test. Similar to the detention decision, DWI defendants released on an unsecure bond had a lower median blood/alcohol content than those who posted a secure bond (.16 vs. .19). Surprisingly, traffic defendants who had a revoked or suspended driver's license at the time of their arrest were much more likely to be released on an unsecure bond than those without such a restriction (92.6% vs. 58.1%).

Unlike the detention decision, misdemeanants and felons had comparable unsecure bond rates when examined by certain broad offense characteristics. Excluding resisting arrest cases, misdemeanant and felons arrested for a personal offense possessed somewhat comparable unsecure bond rates (65.6% vs. 56.2%). For property offenses, 67.8% of the misdemeanants were released on an unsecure bond while felons had a 68.9% unsecure bond rate. In addition, misdemeanants and felons who used or possessed a weapon had comparable unsecure bond

rates (55.6% vs. 54.8%).

4. LEGAL STATUS AND PRIOR ARREST HISTORY

Similar to the detention decision, legal status at arrest and prior arrest history appears to play a role in the magistrate's decision on the conditions of release. As can be seen in Table 23, defendants arrested for traffic and misdemeanor offenses had different unsecure bond rates depending on their legal status. Defendants arrested for these two case types were much less likely to be released on an unsecure bond if they were under some form of legal restriction at arrest. Legal status apparently had no bearing on the conditions of release decision for felony defendants.

Defendants with a prior arrest history were less likely to be

TABLE 23
UNSECURE BOND RATES BY LEGAL
STATUS AND PRIOR ARREST HISTORY

| | TRAFFIC | | | MISDEMEANOR | | | FELONY | | |
|------------------|-------------|------------|------|-------------|------------|------|-------------|------------|------|
| | TOTAL CASES | NO. UNSEC. | PCT. | TOTAL CASES | NO. UNSEC. | PCT. | TOTAL CASES | NO. UNSEC. | PCT. |
| FREE | 284 | 233 | 85.0 | 212 | 140 | 66.0 | 191 | 127 | 66.5 |
| RESTRICTIONS | 23 | 12 | 52.2 | 97 | 45 | 46.4 | 52 | 34 | 65.4 |
| NO PRIOR | 222 | 186 | 83.8 | 206 | 133 | 64.6 | 147 | 101 | 68.7 |
| PRIOR RECORD | 75 | 59 | 78.7 | 103 | 52 | 50.5 | 97 | 61 | 62.9 |
| NO TRAFFIC | 138 | 120 | 87.0 | | | | | | |
| CRIMINAL TRAFFIC | 157 | 123 | 78.3 | | | | | | |

released on an unsecure bond than defendants lacking an arrest history. However, the percentage differences between the two groups of defendants were very small for traffic defendants and felons. Misdemeanants were the only type of offender where the existence of a prior arrest history appears to play a significant role in the conditions of release decision.

For those defendants with a prior arrest history, the extent of their prior involvement also appears to play a role in the conditions of release decision. Traffic defendants with a prior arrest history and released on an unsecure bond had a median of 2.0 prior criminal arrests while traffic defendants with a record who posted a secure bond had 3.5 prior arrests. In terms of those with prior criminal traffic arrests, defendants released on an unsecure bond had a median of 2.0 prior criminal arrests compared to 3.0 for those released on a secured bond. Misdemeanants released on an unsecure bond had a median of 2.5 prior arrests while those released on a secure bond had 3.0 median arrests. For felons, the median was 2.0 prior arrests for those released on an unsecure bond compared to 4.0 for those required to post a secure bond.

E. FACTORS INFLUENCING THE LEVEL OF PRETRIAL CUSTODY

This section of the report discusses the factors which appear to influence how far into the pretrial process a defendant's custody status extends. Three broad groups are compared: defendants not detained or detained but released before their first court appearance, defendants released after jurisdiction passed to the court, and those defendants never released pretrial. Analysis was restricted to examining

misdemeanants and felons due to the small number of traffic defendants whose pretrial detention extended beyond the magistrate hearing.

1. PRIMARY OFFENSE AT ARREST

Tables 24 and 25 provide a comparison of the release points for the most common misdemeanor and felony primary offenses at arrest. Of the 367 misdemeanants examined, the vast majority of these defendants (85.3%) were either never detained or secured their release shortly after detention. Only 10.4% of the misdemeanants were detained throughout the pretrial process. In terms of absolute numbers, 34 of the 54 misdemeanants detained beyond the magistrate's jurisdiction were arrested for failure to appear, assault, and petit larceny. However, only 4.8% of the defendants arrested for assault were never able to obtain pretrial release. Approximately 15 percent of the defendants arrested for failure to appear and petit larceny were never released pretrial. Although based on small 'N' sizes,

TABLE 24
MISDEMEANOR PRETRIAL RELEASE POINTS
BY PRIMARY OFFENSE

| OFFENSE | MAGISTRATE RELEASED | PCT. | COURT RELEASE | PCT. | NEVER RELEASED | PCT. |
|--------------------|------------------------|------|------------------|------|-------------------|------|
| Assault | 91 | 88.3 | 7 | 6.8 | 5 | 4.8 |
| FTA | 66 | 83.5 | 1 | 1.3 | 12 | 15.2 |
| Petit Larceny | 39 | 81.2 | 2 | 4.2 | 7 | 14.6 |
| Resist Arrest | 31 | 86.1 | 2 | 5.6 | 3 | 8.3 |
| Trespass | 19 | 86.4 | 0 | - | 3 | 13.6 |
| Disorderly Conduct | 11 | 84.6 | 0 | - | 2 | 15.4 |
| Vandalism | 11 | 73.3 | 1 | 6.7 | 3 | 20.0 |
| Other Personal | 6 | 75.0 | 2 | 25.0 | 0 | - |
| Other Property | 7 | 77.8 | 0 | - | 2 | 22.2 |
| Other Victimless | 32 | 94.1 | 1 | 2.9 | 1 | 2.9 |
| TOTALS | 313 | 85.3 | 16 | 4.4 | 38 | 10.4 |

defendants arrested for other property offenses, primarily fraud, as well as vandalism, disorderly conduct, and trespass had never released rates that exceed the 10.4% rate found for all misdemeanants.

Table 25 demonstrates that the 460 felons whose initial bond hearing was held by the magistrate had release point patterns that significantly differed from those found for misdemeanants. Felons were much less likely to obtain release at the magistrate hearing (53.0% vs. 85.3%) and much more likely to be detained through disposition (30.0% vs. 10.4%). However, felons were much more likely to obtain release once jurisdiction passed to the judiciary (17.0% vs. 4.4%).

TABLE 25
FELONY PRETRIAL RELEASE POINTS
BY PRIMARY OFFENSE

| OFFENSE | MAGISTRATE RELEASED | PCT. | COURT RELEASE | PCT. | NEVER RELEASED | PCT. |
|------------------|------------------------|------|------------------|------|-------------------|------|
| Grand Larceny | 80 | 67.2 | 10 | 8.4 | 29 | 24.4 |
| Drugs | 49 | 37.4 | 36 | 27.5 | 46 | 35.1 |
| Fraud | 45 | 70.3 | 10 | 15.6 | 9 | 14.1 |
| Burglary | 26 | 44.8 | 7 | 12.1 | 25 | 43.1 |
| Assault | 18 | 52.9 | 7 | 20.6 | 9 | 26.5 |
| Sexual Battery | 7 | 50.0 | 3 | 21.4 | 4 | 28.6 |
| Murder | 0 | - | 3 | 37.5 | 5 | 62.5 |
| Robbery | 3 | 33.3 | 0 | - | 6 | 66.7 |
| Other Property | 9 | 90.0 | 0 | - | 1 | 10.0 |
| Other Personal | 3 | 60.0 | 1 | 20.0 | 1 | 20.0 |
| Other Victimless | 4 | 50.0 | 1 | 12.5 | 3 | 37.5 |
| TOTAL | 244 | 53.0 | 78 | 17.0 | 138 | 30.0 |

Except for murder and robbery, defendants arrested on felony drug charges were the least likely group of felons released by the magistrate. They were, however, the group most likely to be released

once jurisdiction passed to the judiciary. Defendants arrested for fraud and grand larceny had the highest magistrate release rates. For burglary cases, the numbers released by the magistrate versus the number never able to obtain release was almost equal. Although based on small 'n' sizes, defendants arrested on robbery or murder charges were most likely to never secure pretrial release.

2. DEMOGRAPHIC CHARACTERISTICS

Table 26 displays the pretrial release points for misdemeanants and felons according to the defendant's sex, race, and residence. Similar to the detention decision for misdemeanants, differences exist between the genders in terms of where in the process pretrial release is obtained. Male misdemeanants were more likely to be detained beyond the magistrate hearing than female misdemeanants (16.2% vs. 7.0%). These differences between the genders, however, were not as great as those found in the initial decision to detain. In other words, male defendants are more likely to be detained by the magistrate (55.2% vs. 15.8%). However, the majority of male and female misdemeanants are released before their first court appearance (83.9% vs. 93.0%).

A somewhat similar pattern was found when male and female felons were examined. Male felons had a 63.3% detention rate compared to 38.4% for female felons. The gap closes somewhat when examined according to when release occurred. Approximately 50 percent of the male felons were able to secure release before court appearance compared to 68.5% of the females. Male felons, however, were much more likely to never secure pretrial release (33.6% vs. 11.0%).

TABLE 26
MISDEMEANOR AND FELONY PRETRIAL RELEASE POINTS
BY DEMOGRAPHIC CHARACTERISTICS

| | | MAGISTRATE RELEASE | PCT. | COURT RELEASE | PCT. | NEVER RELEASED | PCT. |
|-------------|-----------|-----------------------|------|------------------|------|-------------------|------|
| MISDEMEANOR | MALE | 260 | 83.9 | 16 | 5.2 | 34 | 11.0 |
| | FEMALE | 53 | 93.0 | 0 | - | 4 | 7.0 |
| | WHITE | 260 | 86.7 | 11 | 3.7 | 29 | 9.7 |
| | BLACK | 51 | 81.0 | 5 | 7.9 | 7 | 11.1 |
| | LOCAL | 257 | 86.5 | 13 | 4.4 | 27 | 9.1 |
| | NON-LOCAL | 53 | 80.3 | 2 | 3.0 | 11 | 16.7 |
| FELONY | MALE | 194 | 50.1 | 63 | 16.3 | 130 | 33.6 |
| | FEMALE | 50 | 68.5 | 15 | 20.5 | 8 | 11.0 |
| | WHITE | 193 | 60.3 | 49 | 15.3 | 78 | 24.4 |
| | BLACK | 44 | 34.1 | 28 | 21.7 | 57 | 44.2 |
| | LOCAL | 180 | 58.4 | 53 | 17.2 | 75 | 24.4 |
| | NON-LOCAL | 49 | 41.2 | 21 | 17.6 | 49 | 41.2 |

White and black misdemeanants had comparable release point patterns. However, black felons were much less likely to be released before court appearance and much more likely to be detained through disposition. As discussed earlier, we believe these decisions seem to be a function of offense type and residence. Black defendants were much more likely to be arrested on drug charges and in particular, members of the migrant labor community arrested during Operation Crack.

Although non-local misdemeanants were much more likely to be detained than local residents (62.1% vs. 46.1%), Table 26 demonstrates that the two groups possess somewhat comparable magistrate-initiated releases. Approximately 80 percent of the non-local residents were able to secure release at the magistrate hearing or shortly thereafter compared to 86.5% of the local residents. Both groups were also somewhat comparable in the percentage never able to secure pretrial release (Local = 9.1%, Non-Local = 16.7%).

Unlike misdemeanants, non-local residents arrested for felony offenses were more likely to be detained and more likely to still be detained when jurisdiction passed to the judiciary. Local residents arrested for felony offenses had a 54.2% detention rate compared to 73.1% for non-local residents. Approximately 58% of the local residents were able to secure pretrial release at the magistrate hearing or shortly thereafter compared to 41.2% of the non-local residents. Non-local residents were also more likely to be detained through disposition (41.2% vs. 24.4%).

3. LEGAL STATUS AND PRIOR ARREST HISTORY

Although misdemeanants under no legal restriction at arrest were detained at higher rates than misdemeanants with a legal restriction (52.1% vs. 42.7%), Table 27 demonstrates that the opposite occurs when release points are examined. Approximately 89 percent of the misdemeanants under no legal restriction at arrest were able to secure release at the magistrate hearing or shortly thereafter, while 79.0% of the misdemeanants under a legal restriction were able to secure release by the magistrate. Misdemeanants under a legal restriction at arrest were more likely to be detained through final disposition than misdemeanants not under a legal restriction (16.9% vs. 6.6%).

Unlike misdemeanants, felons under a legal restriction at arrest were more likely to be detained and less likely to secure pretrial release at the magistrate hearing than felons under no legal restrictions. Felons under a legal restriction at arrest were also more likely to be detained through final disposition than felons under no

legal restrictions (30.1% vs. 22.9%). Approximately 8 percent of the felons appearing before the magistrate were already incarcerated at the time of their arrest. The majority of these defendants (89.5%) were never able to secure pretrial release from the magistrate or the judiciary.

TABLE 27
MISDEMEANOR AND FELONY PRETRIAL RELEASE
POINTS BY LEGAL STATUS AND PRIOR
ARREST HISTORY

| | | MAGISTRATE RELEASE | PCT. | COURT RELEASE | PCT. | NEVER RELEASED | PCT. |
|--------|--------------|-----------------------|------|------------------|------|-------------------|-------|
| MISD. | FREE | 215 | 88.9 | 11 | 4.5 | 16 | 6.6 |
| | RESTRICTIONS | 98 | 79.0 | 5 | 4.0 | 21 | 16.9 |
| | INCARCERATED | 0 | - | 0 | - | 1 | 100.0 |
| | NO PRIOR | 209 | 88.2 | 11 | 4.6 | 17 | 7.2 |
| | PRIOR RECORD | 104 | 80.0 | 5 | 3.8 | 21 | 16.2 |
| FELONY | FREE | 191 | 59.9 | 55 | 17.2 | 73 | 22.9 |
| | RESTRICTIONS | 52 | 50.5 | 20 | 19.4 | 31 | 30.1 |
| | INCARCERATED | 1 | 2.6 | 3 | 7.9 | 34 | 89.5 |
| | NO PRIOR | 147 | 58.8 | 46 | 18.4 | 57 | 22.8 |
| | PRIOR RECORD | 97 | 46.2 | 32 | 15.2 | 81 | 38.6 |

Misdemeanants with a prior record were much more likely to be detained than misdemeanants lacking a prior history of arrest (62.3% vs. 41.8%). However, both groups were somewhat comparable in the number of defendants who were able to secure release before their first court appearance (No Priors = 88.2%, Priors = 80.0%). Misdemeanants with a prior record were somewhat more likely to be detained though disposition than misdemeanants lacking a prior record (16.2% vs. 7.2%).

The existence of a prior arrest history also appears to play a role in the release point patterns of felons. Felons lacking a prior

arrest history had a detention rate of 54.3% while felons with a prior arrest history had a 65.4% detention rate. Approximately 59 percent of the felons without a prior arrest history were able to secure pretrial release at the magistrate hearing or shortly thereafter while 46.2% of the felons with a prior arrest history obtained release before their first court appearance. Felons with a prior record were also more likely to be detained through final disposition than felons lacking a prior arrest history (38.6% vs. 22.8%).

When defendants with a prior record were further examined, it was found that the extent of a defendant's prior arrest history also played a role in the release point patterns. Misdemeanants released before their first court appearance had a median of 3.0 prior arrests while misdemeanants released by the judiciary and those never released had a median of 6.0 prior arrests. Although possessing identical median values, misdemeanants released by the judiciary averaged 5.6 prior arrests while those never released averaged 11.2 prior arrests.

Less significant differences were found for the felons possessing prior records. Felons released by the magistrate versus those released by the judiciary were similar in terms of their median and mean number of prior arrests. Felons released by the magistrate had a median of 3.0 prior arrests (Avg. = 5.0) while felons released by the judiciary had a median of 2.5 prior arrests (Avg. = 5.6). Although felons never released pretrial had a much higher median (5.0), the average number of prior arrests (6.4) was not much higher than the other two groups of felons.

F. PRETRIAL LENGTH OF STAY MEASURES

Chapter Three of this report discussed the offenses at arrest and the types of individuals arrested while earlier sections of this chapter identified factors which appear to influence the detention decision, conditions of release, and the level of pretrial custody. This section takes these findings further and provides a focused assessment of the impact defendant processing has on the utilization of the jail for pre-trial detention. Specifically, the section reports on the number of pretrial jail days consumed for each of the major offense groups and the three localities within the region.

1. PRIMARY OFFENSE AT ARREST

As stated in Section A of this chapter, traffic defendants consumed 468 pretrial jail days for the 75 defendants detained. Table 28 displays the distribution for commitments and jail days consumed for each of the three major groups of traffic defendants. Although defendants arrested for driving after being declared an habitual

TABLE 28
PRETRIAL JAIL DAY CONSUMPTION
FOR TRAFFIC OFFENSES

| OFFENSE | COMMITMENTS | | JAIL DAYS | | LOS | |
|----------|-------------|-------|-----------|-------|--------|------|
| | NO. | PCT. | NO. | PCT. | MEDIAN | MEAN |
| DWI | 48 | 64.0 | 162 | 34.6 | 1.0 | 3.4 |
| HABITUAL | 17 | 22.7 | 292 | 62.4 | 2.0 | 17.2 |
| OTHER | 10 | 13.3 | 14 | 3.0 | 1.0 | 1.4 |
| TOTALS | 75 | 100.0 | 468 | 100.0 | | |

offender only accounted for 22.7% of the traffic commitments, this group consumed 62.4% of the pretrial jail days utilized by traffic

defendants. The median length of stay for these defendants was 2.0 days while the average length of stay was 17.2 days. DWI defendants comprised 64.0% of the commitments to jail and only accounted for 34.6% of the pretrial jail days consumed. These defendants had an median length of stay of 1.0 days and a mean of 3.4 days. Defendants detained for driving on a revoked/suspended license and reckless driving consumed very few jail days relative to habitual offenders and DWI defendants.

As indicated in Table 29, defendants arrested for simple assault and petit larceny consumed 43.6% of the pretrial days utilized by misdemeanants. The large number of pretrial days served by assault

TABLE 29
PRETRIAL JAIL DAY CONSUMPTION
FOR MISDEMEANOR OFFENSES

| OFFENSE | COMMITMENTS | | JAIL DAYS | | LOS | |
|------------------|-------------|-------|-----------|------|--------|------|
| | NO. | PCT. | NO. | PCT. | MEDIAN | MEAN |
| ASSAULT | 48 | 26.9 | 152 | 21.8 | 2.0 | 3.2 |
| RESIST ARREST | 31 | 17.3 | 70 | 10.1 | 2.0 | 2.2 |
| FAIL TO APPEAR | 24 | 13.4 | 74 | 10.6 | 2.0 | 3.1 |
| PETIT LARCENY | 22 | 12.3 | 152 | 21.8 | 2.5 | 6.9 |
| TRESPASS | 12 | 6.7 | 65 | 9.3 | 2.0 | 5.4 |
| OTHER VICTIMLESS | 24 | 13.4 | 80 | 11.5 | 2.0 | 3.3 |
| OTHER PROPERTY | 13 | 7.3 | 96 | 13.8 | 2.0 | 7.4 |
| OTHER PERSONAL | 5 | 2.8 | 7 | 1.0 | 1.0 | 1.4 |
| TOTALS | 179 | 100.1 | 696 | 99.9 | | |

cases was primarily due to the frequency of their commitment. These defendants were responsible for 26.9% of the misdemeanor detentions while their average length of stay was relatively low (3.2 days). However, petit larceny cases only account for 12.3% of the total misdemeanor commitments. The number of jail days consumed by this

group is more a function of their length of stay (Median = 2.5 days, Mean = 6.9 days). All of the remaining misdemeanor offense groups displayed in Table 29 possess relatively similar median lengths of stay.

Unlike misdemeanants, felony detainees displayed much more fluctuation in both their median lengths of stay and average lengths of stay between the different offense groups. Defendants arrested for serious violent offenses such as murder, rape, and robbery had the highest lengths of stay (Median = 106.0 days, Mean = 120.7 days). Defendants arrested for burglary possessed the second highest lengths of stay (Median = 77.0 days, Mean = 80.6 days). Drug defendants accounted for over one-third of the felony commitments and nearly one-third of the felony pretrial jail days.

TABLE 30
PRETRIAL JAIL DAY CONSUMPTION
FOR FELONY OFFENSES

| OFFENSE | COMMITMENTS | | JAIL DAYS | | LOS | |
|-----------------|-------------|------|-----------|-------|--------|-------|
| | NO. | PCT. | NO. | PCT. | MEDIAN | MEAN |
| DRUGS | 96 | 34.3 | 5661 | 31.9 | 39.0 | 59.0 |
| GRAND LARCENY | 53 | 18.9 | 2896 | 16.3 | 37.0 | 54.6 |
| BURGLARY | 44 | 15.7 | 3547 | 20.0 | 77.0 | 80.6 |
| FRAUD | 28 | 10.0 | 877 | 4.9 | 8.5 | 31.3 |
| SERIOUS VIOLENT | 27 | 9.6 | 3258 | 18.3 | 106.0 | 120.7 |
| ASSAULT | 23 | 8.2 | 956 | 5.4 | 16.0 | 41.6 |
| OTHER | 9 | 3.2 | 571 | 3.2 | 20.0 | 63.4 |
| TOTALS | 280 | 99.9 | 17,766 | 100.0 | | |

The median and mean lengths of stay for serious violent offenses and burglary were relatively similar compared to the median and mean values of the remaining offense groups displayed in the table. These two offenses did not demonstrate as wide a distribution as that found

for the other offense groups. The mean lengths of stay for the remaining offense groups varied significantly from their median because of the large number of cases with lengthy pretrial detention periods. For example, assault cases had a median length of stay of 16.0 days and a mean of 41.6 days. Approximately 26 percent of the detentions for assault were incarcerated from 67 days to 170 days. Likewise, 21.4% of the defendants detained for fraud were incarcerated from 57 days to 190 days.

2. PRETRIAL DETENTION BY LOCALITY

Table 31 provides a comparison of the lengths of stay for each of the offense groups by locality. As can be seen in the table, detainees in each of the three localities had somewhat similar pre-trial lengths of stay for traffic offenses. Of the three localities, Winchester traffic detainees had the longest length of stay (Median = 2.0 days, Mean = 7.5 days). Both Frederick and Clarke Counties had 1.0 days as the median length of stay for traffic detainees. However, the average length of stay for Frederick detainees was 6.1 days while Clarke detainees had an average length of stay of 4.4 days.

All three localities had identical median lengths of stay for misdemeanants under their jurisdiction. However, misdemeanants detained pretrial by Clarke County had an average length of stay that was significantly higher than Frederick and Winchester misdemeanants. Clarke County had an average length of stay of 8.4 days compared to 2.9 days for Frederick and 3.6 days for misdemeanants detained by Winchester. A possible explanation for the large disparity in the

average lengths of stay is that Clarke County's General District Court judge only sits in the county on a periodic basis while Winchester City and Frederick County enjoy the benefit of a resident judge whose jurisdiction does not extend to other localities within the circuit.

TABLE 31
PRETRIAL LENGTHS OF STAY
BY LOCALITY

| | CLARKE | | FREDERICK | | WINCHESTER | |
|-------------|--------|------|-----------|------|------------|------|
| | MEDIAN | MEAN | MEDIAN | MEAN | MEDIAN | MEAN |
| TRAFFIC | 1.0 | 4.4 | 1.0 | 6.1 | 2.0 | 7.5 |
| MISDEMEANOR | 2.0 | 8.4 | 2.0 | 2.9 | 2.0 | 3.6 |
| FELONY | 70.0 | 80.9 | 36.5 | 73.4 | 35.0 | 52.7 |

Likewise, Clarke County felony detainees also had median and mean lengths of stay which significantly differ from those found in Winchester and Frederick. Clarke County felons had a median length of stay approximately twice as long as those found in the other two localities. As for average length of stay, Clarke and Frederick possessed similar detention lengths while Winchester's 52.7 days was significantly lower. The reliance on a circuit-riding judge may also be the reason for Clarke County's higher lengths of stay and the dramatic increases through the past several years documented in Chapter Two. As arrests decreased in Clarke County, the general district and circuit court judges may have decreased their presence in the county due to the reduced calendar.

Although Frederick and Winchester possess similar median lengths of stay (36.5 days vs. 35.0 days), Frederick County felons had a

significantly longer average length of stay (73.4 days vs. 52.7 days). One possible explanation for this disparity is that Frederick County's judge also serves as Chief Judge for the 26th Circuit. The additional duties of a chief judge may reduce the possibility to process cases as quickly as other judges, particularly since this judge also must divide his schedule with Clarke County.

Another reason Clarke and Frederick Counties possess higher average lengths of stay than Winchester stems from the types of arrests made within each locality. A higher percentage of the arrests made in Frederick and Clarke Counties were for those felony offenses which had the longest pretrial detention times. Approximately one-quarter of the arrests made in Frederick and Clarke Counties were for the serious violent offenses and burglary compared to 14.5% for Winchester. It appears that Frederick and Clarke Counties have a higher length of stay because of the frequency of judicial availability and the proportion of cases which exhibit high detention rates and whose case processing times may be inherently more time-consuming.

An attempt was made to analyze the annual usage of the jail for pretrial detention by each locality and case type. Since various time periods were examined for specific localities or case types (see Chapter One), it was necessary to weigh detentions and pretrial jail days to approximate annual statistics. Therefore, the reader must be cautioned that the data presented in Tables 32 and 33 are only estimates. However, staff from the Joint Confinement Project believe the estimates are a reasonable approximation of annual pretrial detention statistics.

As can be seen in Table 32, Clarke County is responsible for a minority of the pretrial detentions across all three case types. When total commitments are examined, Clarke County only accounts for 9.0% of the regional pretrial commitments. Winchester, on the other hand, is responsible for the majority of the commitments for misdemeanor and felony offenses. Although Frederick County is responsible for 51.8% of the commitments for traffic offenses, this locality is

TABLE 32
DISTRIBUTION OF ANNUAL PRETRIAL
DETENTIONS BY LOCALITY AND CASE TYPE

| | TRAFFIC | | MISDEMEANOR | | FELONY | | TOTAL | |
|------------|------------|------|-------------|------|------------|------|------------|------|
| | NO DET. | PCT. | NO DET. | PCT. | NO DET. | PCT. | NO DET. | PCT. |
| CLARKE | 15 | 11.1 | 15 | 4.4 | 30 | 16.0 | 60 | 9.0 |
| FREDERICK | 70 | 51.8 | 74 | 21.6 | 56 | 29.9 | 200 | 30.1 |
| WINCHESTER | 50 | 37.0 | 254 | 74.0 | 101 | 54.0 | 405 | 60.9 |
| TOTALS | 135 | 20.3 | 343 | 51.6 | 187 | 28.1 | 665 | - |

responsible for less than one-third of the total pretrial commitments. The City of Winchester made 60.9% of the commitments. As for case type, 51.6% of the annual commitments were for misdemeanors, 28.1% were for felonies, and 20.3% were for traffic offenses.

As can be seen in Table 33, Clarke County also consumes the smallest number of pretrial jail days within the region. However, Clarke County's proportion of jail days exceeds their proportion of commitments for misdemeanor and felony offenses. Clarke County is responsible for 4.4% of the misdemeanor commitments but consume 10.0% of the pretrial jail days served by misdemeanants. In terms of total

usage, Clarke County only makes 9.0% of the pretrial commitments to jail but consumes 18.7% of the pretrial jail days served within the region.

As was the case with commitments, the City of Winchester consumes the largest number of pretrial days served by misdemeanor and felony detainees. Frederick County is the largest consumer of pretrial days served by traffic detainees. Frederick County's proportion of pretrial day consumption is fairly close to its proportion of commitments. In terms of total figures, Frederick County is responsible for 30.1% of the pretrial commitments and 34.0% of the pretrial days served. The City of Winchester, on the other hand, makes 60.9% of the commitments but only consumes 47.3% of the total pretrial days served. Winchester's lower length of stay shows up particularly in the felony category. Winchester is responsible for 54.0% of the felony pretrial commitments but only consumes 44.8% of the felony pretrial jail days.

Table 33 also demonstrates that felony detainees consume the vast majority of the pretrial days served within the region. Felony

TABLE 33
DISTRIBUTION OF ANNUAL PRETRIAL
JAIL DAYS BY LOCALITY AND CASE TYPE

| | TRAFFIC | | MISDEMEANOR | | FELONY | | TOTAL | |
|------------|--------------|------|--------------|------|--------------|------|--------------|------|
| | JAIL DAYS | PCT. | JAIL DAYS | PCT. | JAIL DAYS | PCT. | JAIL DAYS | PCT. |
| CLARKE | 66 | 7.6 | 126 | 10.0 | 2,427 | 20.5 | 2,619 | 18.7 |
| FREDERICK | 430 | 49.4 | 216 | 17.1 | 4,108 | 34.7 | 4,754 | 34.0 |
| WINCHESTER | 374 | 43.0 | 924 | 73.0 | 5,309 | 44.8 | 6,607 | 47.3 |
| TOTALS | 870 | 6.2 | 1,266 | 9.0 | 11,844 | 84.7 | 13,980 | - |

detainees only comprise 28.1% of the regional commitments but consume 84.7% of the jail days served. On the other hand, misdemeanants comprised 51.6% of the commitments but only account for 9.0% of the jail days served. Defendants detained on traffic offenses comprise 20.3% of the total regional commitments and only consume 6.2% of the pretrial jail days served.

G. SUCCESS MEASURES OF RELEASE DECISIONS

1. FAILURE TO APPEAR RATES

As discussed in Chapter Three, the summonsed criminal misdemeanor population we were able to track had a 5.5% failure to appear rate. This rate is low compared to other jurisdictions we have worked with and figures frequently cited in the literature. In many jurisdictions the highest failure to appear rates occur in the summonsed population or defendants released on other forms of unsecure release. It is possible that the region's failure to appear rate for summonsed defendants would be higher if we were able to track the total summonsed population. We were unable to track summonsed traffic offenders, the group that comprise the largest portion of this population.

A second success measure of pretrial release decisions is the number of defendants in our sample who were arrested on a failure to appear charge. Of the 367 misdemeanants examined, 84 (22.9%) had a misdemeanor failure to appear charge as one of the offenses at arrest. Since 79 of these 84 had the FTA as the sole charge, a rather substantial amount of law enforcement manpower is devoted to the apprehension of pretrial release failures. Only two of the 511

felons examined (0.4%) had failure to appear as one of the charges at arrest.

The majority of these 84 failure to appear arrests (63.1%) were under the jurisdiction of the Winchester General District Court. Of the remaining defendants, 34.5% were under the jurisdiction of Frederick County and only 2.4% were under Clarke County's jurisdiction. The original charges for these defendants was almost evenly divided between misdemeanor and traffic offenses (Misdemeanor = 51.8%, Traffic = 48.2%). Although these defendants failed to appear for court hearings on twelve separate offenses, the vast majority failed to appear on the original charges of driving on a suspended/revoked license (48.0%) and passing worthless checks (25.3%).

Our final measure of failure to appear rates involved tracking each of the 1188 defendants examined and recording whether he/she failed to appear for any subsequent court hearing. Of the 1001 defendants able to secure pretrial release, 96 (9.6%) failed to appear for subsequent court proceedings. The overall rate, however, masks the extent of failure to appear for particular case types. When isolated by type of offense, only 12 of the 365 felons released pretrial (3.3%) failed to appear. The failure to appear rates were substantially higher for traffic offenses and misdemeanants. Traffic offenders had a failure to appear rate of 15.6% while misdemeanants had a 10.9% failure to appear rate. These figures only reflect defendants whose court cases were closed by the judiciary. The failure to appear rates would no doubt be higher if we were able to incorporate the number of absconders

whose cases were still pending at the time of our data collection.

The two unique offense types which had the largest number of failures to appear were DWI and driving with a suspended/revoked license. Thirty-three of the 220 (13.0%) DWI defendants released pretrial subsequently failed to appear for a court hearing. Of the 22 defendants released pretrial on driving with a suspended/revoked license charge, 13 (59.1%) failed to appear for a court proceeding. When coupled with the analysis of the original charges of sampled defendants arrested for failure to appear, it is obvious that these defendants are the most problematic in terms of pretrial misconduct. Also interesting is the fact that 13.4% of the defendants arrested for failure to appear also failed to appear for court proceedings arising out of these charges. Although defendants who failed to appear were originally arrested for 22 distinct offenses, defendants arrested for DWI, FTA, and driving on a suspended/revoked license accounted for 57.3% of the 96 defendants who failed to appear.

Although the courts may issue a *capias* or warrant in response to a failure to appear, our analysis indicates that very few of these defendants are detained after failing to appear. Of the 96 failures to appear, only 18 (18.8%) defendants were detained until disposition or to await the posting of a secure bond. Twenty-four defendants (25.0%) remained free and eventually appeared for subsequent court proceedings. The remaining 54 defendants were traffic offenders and misdemeanants who were eventually tried in absentia. Of these 54 defendants, 40 (74.1%) were tried in absentia on the day of their initial failure to appear. The

remaining fourteen were tried in absentia after failing to appear three to five times.

2. PRETRIAL RE-ARREST RATES

Re-arrest statistics were generated by examining the criminal history records for each defendant able to obtain pretrial release. New arrests made between the date of pretrial release and final case disposition and/or sentencing were identified and recorded. The statistics reported below possibly undercount the re-arrest rate due to the large number of criminal offenses not reported to the Virginia State Police for entry on defendant rap sheets. For defendants with multiple cases in the sample, we were able to identify pretrial re-arrests for non-reportable offenses if their pretrial period fell within our examination period. Such a search could not be done for defendants whose pretrial period extended beyond the examination period. In addition, we were unable to identify pretrial re-arrests made in other states.

Of the 1001 defendants released pretrial, a total of 193 defendants (19.3%) were re-arrested before case disposition for a new criminal offense, criminal traffic offense, or traffic infraction. Excluding traffic infraction arrests reduces the re-arrest rate to 16.0% while the elimination of these offenses and criminal traffic arrests reduces the rate to 10.1%. This latter rate is similar to the 10-16 percent rate commonly reported for jurisdictions throughout the country.

The majority of the defendants arrested for a new criminal offense were on bond for a felony offense. Of the 101 defendants

arrested for a new criminal offense, 69 (68.3%) were on bond for a pending felony charge while 26 misdemeanants (25.7%) were re-arrested. Only 6 of the traffic defendants (2.0%) were arrested for a new criminal offense during their pretrial period. Of the 101 re-arrests, 73 (72.3%) were for new felony offenses while 28 (27.7%) were for new misdemeanor offenses. Although defendants were re-arrested for 20 unique offenses, 66 of the 101 re-arrests (65.3%) were for the felony offenses of grand larceny, burglary, drug violations, and fraud.

As stated in Chapter Three regarding legal status at arrest, we believe a large number of these re-arrests do not involve the actual commission of a new offense during the pretrial release period. The rate may be more a measure of the administrative factors of the criminal justice system. For example, 9 of the 14 defendants on bond for grand larceny were re-arrested on grand larceny or burglary charges. It is probable that the re-arrests are the result of old warrants being served or the result of information gained from the original arrest and not the actual commission of new offenses. Likewise, 13 of the 21 defendants on bond for felony drug charges were again arrested for similar charges during the pretrial period. Because of these compounding factors, we are unable to accurately calculate the actual rate of pretrial criminality.

H. CONCLUSIONS

This chapter analyzed the pretrial release decisions made for the 1188 arrests processed by the region. The chapter provided an overview of the

release process for traffic offenders, misdemeanants, and felons. An attempt was made to identify factors which appear to play a role in the detention decision, release conditions, and the level of pretrial custody. The chapter also provided an analysis of length of stay, commitments, and pretrial days consumed by type of offense and locality. Finally, failure to appear rates and re-arrest rates were examined for defendants released pretrial.

OVERVIEW OF THE PRETRIAL RELEASE PROCESS

TRAFFIC DEFENDANTS

- Approximately three-quarters of the traffic offenders were released at the magistrate hearing and never detained. Of the detained defendants, the majority were released prior to their first appearance in court. The median length of stay for these defendants was reported as 1.0 days. When measured according to actual time in detention, the average length of stay was only 9.6 hours.
- A small number of defendants were still detained at their first court appearance. The median length of stay for those defendants who were able to obtain pretrial release at arraignment was 2.0 days. The median length of stay for those who obtained pretrial release after arraignment was 42.0 days.
- Only three of the detained traffic defendants (4%) were never able to secure pretrial release. Two of these defendants were detained 87 days each with the third defendant detained 24 days.

- Approximately 86 percent of all detained traffic defendants had a pretrial length of stay of two days or less. The median length of stay was 1.0 days while the average length of stay was 6.3 days.
- For those defendants released pretrial, 82.3% were released on an unsecure bond while 17.7% posted a secure bond. The median bond posted was \$320 while the average bond posted was \$741.

MISDEMEANANTS

- Fifty-one percent of the misdemeanants were never detained by the magistrate. Of the detained misdemeanants, 70% did obtain pretrial release before their first court appearance. The median length of stay for these defendants was 1.0 days. However, the actual time of detention for defendants released within two days of detention was 10.5 hours.
- Like traffic defendants, a small number of misdemeanants were still detained at their first court appearance. The median length of stay for those defendants who were able to obtain pretrial release at arraignment was 2.5 days. The median length of stay for those who obtained pretrial release after arraignment was 9.0 days.
- Approximately 21 percent of the detained misdemeanants were never able to obtain pretrial release. These defendants had a median length of stay of 6.0 days.
- Approximately 72 percent of all detained misdemeanants had a

pretrial length of stay of two days or less. The median length of stay was 2.0 days while the average length of stay was 3.9 days.

- The most common method of release for misdemeanants was an unsecure bond (60.0%). A secure bond was posted in 39.1% of the cases. The median bond posted was \$500 while the average bond was \$757.

FELONS

- Ten percent of the felons processed within the region were in the courtroom when a true bill was returned by the grand jury. Approximately 85% of these felons were granted pretrial release by the presiding circuit court judge. Apparently the voluntary appearance of the defendant on grand jury day worked in the defendant's favor as a factor in the circuit court judge's detention decision.
- Of the remaining felons, approximately 41% were detained by the magistrate. Unlike traffic offenders and misdemeanants, only 20% of the detained felons were able to secure release prior to their first court appearance. The median length of stay for these defendants was 1.0 days. When measured according to clock time, the actual average length of stay was 8.0 hours.
- Approximately 28 percent of the detained felons were able to secure pretrial release at or after arraignment. The median length of stay for those defendants able to obtain release at arraignment was 4.0 days. The median length of stay for those who obtained pretrial release after arraignment was 12.0 days.

- Approximately 52 percent of the detained felons were never able to obtain pretrial release. These defendants had a median length of stay of 101.0 days.
- The median length of stay for all detained felons was 36.5 days while the average length of stay was 63.4 days. Unlike traffic offenders and misdemeanants, a substantial portion of the released felons (34.6%) were re-detained for various reasons. When these additional pretrial jail days are included, the median length of stay increases to 51.0 days while the average length of stay increases to 66.2 days.
- For those felons released pretrial, 60.2% were released on an unsecure bond while 39.2% were released on a secure bond. The median bond posted was \$5,000 while the average bond posted was \$16,901.

SUBSEQUENT REVIEW OF BOND DECISIONS

- Approximately 40 percent of the traffic detainees and 36 percent of the misdemeanor detainees were released on an unsecure bond before their first appearance. These cases constituted a second bond hearing by the magistrate. The possible reasons cited for this second review were the sobriety of the defendant, the arrival of a third party to assume custody, or the gathering of additional information about the defendant.
- Depending on the type of offense, the judiciary also reviewed and altered the original detention decision made by the magistrate.
 - Of the twelve traffic defendants still detained at arraign-

ment, six were released by the judiciary on an unsecure bond while one defendant had his bond increased. Four defendants did not have their bonds altered by the judiciary.

- If the judiciary altered the bonds of detained misdemeanants, it most likely occurred for those released at or after arraignment. Ten of the defendants were released on an unsecure bond by the judiciary, two had the bond amounts reduced, and two were released on the original bond set by the magistrate. Only one of the 38 misdemeanants never released pretrial had the bond amount altered by the judiciary.

- Of the 78 felons released at or after arraignment, 60 (76.9%) had their bonds altered by the judiciary. Nineteen were released on an unsecure bond, 39 had their bonds lowered, and two felons had their bonds increased by the judiciary. Only 22 of the 146 felons never released pretrial (15.1%) had their bonds altered by the judiciary. Nineteen had their bond amounts lowered while three had their bond amounts increased.

FACTORS INFLUENCING THE MAGISTRATE'S DETENTION DECISION

PRIMARY OFFENSE

- Traffic defendants arrested for driving after being declared an habitual offender had the highest detention rates (65.4%) while defendants arrested for DWI had the lowest (18.9%).

- Misdemeanants arrested for resisting arrest had the highest detention rates (86.1%) while misdemeanants arrested for failure to appear had the lowest (30.4%).
- The felons with the highest detention rates were those arrested for "Serious Personal" offenses (74.4%) and felony drug offenses (71.8%). This offense category primarily consisted of murder, robbery, and sexual battery arrests. The felons with the lowest detention rates were those arrested for fraud (45.3%) and grand larceny (44.5%).

DEMOGRAPHIC CHARACTERISTICS

- Females were much less likely to be detained than males across all three case types. One of the reasons cited for the differences was that females were less likely to be arrested for the types of offenses that possessed high detention rates. In addition, the space limitations of the Clarke County Jail and the transportation logistics may act as a constraint on the detention of females.
- White and black defendants possessed comparable detention rates for traffic and misdemeanor offenses. Black defendants were more likely to be detained for felony offenses than white defendants when both groups were under no legal restriction at arrest or did not have a prior history of arrest. These differences, however, seem to be a function of type of offense (drugs in particular) and place of legal residence rather than of race.

- Non-local residents were more likely to be detained than local residents across all three case types.

OFFENSE CHARACTERISTICS

- Non-DWI defendants were more likely to be detained if they were under some degree of alcohol influence at arrest.
- Defendants who resisted arrest were more likely to be detained than defendants who did not offer resistance.
- Defendants arrested for cocaine-related offenses had a much higher detention rate than defendants arrested for drug offenses not involving cocaine.

LEGAL STATUS AND PRIOR ARREST HISTORY

- Defendants under some form of legal restriction had higher detention rates than defendants not under a legal restriction. The differences in the detention rates, however, were not as great for misdemeanants. The primary reason was that a large number of the misdemeanants not under a legal restriction and detained were under the influence of alcohol at arrest or resisted arrest. Absent these factors, misdemeanants not under a legal restriction would likely possess detention rates similar to traffic and felony defendants.
- Defendants with a prior record of arrests had higher detention rates than defendants with no prior record. For defendants with a prior record, detained defendants had a higher number of prior arrests than

defendants not detained.

FACTORS INFLUENCING THE MAGISTRATE'S CONDITIONS OF RELEASE DECISION

PRIMARY OFFENSE

- Traffic defendants arrested for DWI had the highest unsecure bond rates (92.3%) while defendants arrested as habitual offenders or driving with a suspended/revoked license had the lowest (31.0%).
- The misdemeanants with the highest unsecure bond rates were those arrested for petit larceny (76.9%) and vandalism (72.7%). The misdemeanants with the lowest unsecure bond rates were those arrested for failure to appear (43.9%) and resisting arrest (54.8%).
- The felons with the highest unsecure bond rates were those arrested for grand larceny (75.0%) and drug offenses (65.3%). The felons with the lowest unsecure bond rates were those arrested for assault (50.0%) and "Serious Personal" offenses such as murder, robbery, and sexual battery (53.8%).
- Felons were more likely to be released by the magistrate on an unsecure bond than misdemeanants (66.4% vs. 59.9%). One possible explanation for this finding is that misdemeanants, due to their lower bond amounts, are much more likely to possess the cash necessary to secure release. In essence, the magistrate is not required to make this decision because misdemeanants may be more likely to be carrying the requisite funds. A second possible explanation is that

magistrates are aware that misdemeanants as a group exhibit higher failure to appear rates and therefore are more likely to be released on secure bond.

DEMOGRAPHIC CHARACTERISTICS

- Females were much more likely to be released on an unsecure bond than male defendants. The only exception was for those defendants under some form of legal restriction. Both groups had comparable rates if they were under a legal restriction at arrest.
- Local residents had higher unsecure bond rates than non-local residents for traffic and felony offenses. Both groups had comparable unsecure bond rates for misdemeanor offenses.

OFFENSE CHARACTERISTICS

- Defendants who resisted arrest were less likely to be released on an unsecure bond than defendants who did not offer resistance.
- Unlike the detention decision, defendants under the influence of alcohol at arrest had comparable unsecure bond rates to those not under the influence.
- Defendants arrested for DWI were more likely to be released on an unsecure bond if they submitted to a breathalyzer test than those who refused to be tested.
- Surprisingly, traffic defendants with a suspended/revoked license were

more likely to be released on an unsecure bond than those defendants without such a restriction. However, we had the benefit of access to Department of Motor Vehicle records while such detailed information is rarely readily accessible to the magistrates.

LEGAL STATUS AND PRIOR ARREST HISTORY

- For traffic and misdemeanor arrests, the defendants under a legal restriction at arrest were much less likely to be released on an unsecure bond than defendants not under a legal restriction. Legal status at arrest had no bearing on the conditions of release decision for felony offenses.
- Misdemeanants were the only type of offender from whom the existence of a prior arrest record appeared to play a significant role in the conditions of release decision. However, the extent of a defendant's prior record did appear to play a role across all three case types. Defendants with a prior record and released on an unsecure bond had a higher number of pretrial arrests.

FACTORS INFLUENCING THE LEVEL OF PRETRIAL CUSTODY

PRIMARY OFFENSE

- Misdemeanants arrested for vandalism (26.7%) and petit larceny (18.8%) were most likely to still be detained once jurisdiction passed to the judiciary. Defendants arrested for resisting arrest (13.9%) and assault (11.6%) were least likely to still be detained.

- Misdemeanants arrested for vandalism (20.0%) and disorderly conduct (15.4%) were most likely to never obtain pretrial release. Defendants arrested for resisting arrest (8.3%) and assault (4.8%) were least likely to be detained throughout the pretrial period.
- Except for murder and robbery, the felons most likely to still be detained once jurisdiction passed to the judiciary were those arrested for drugs (62.6%) and sexual battery (50.0%). Defendants arrested for grand larceny (32.8%) and fraud (29.7%) were least likely to still be detained.
- Felons arrested for robbery (66.7%) and murder (62.5%) were most likely to never obtain pretrial release. Defendants arrested for grand larceny (24.4%) and fraud (14.1%) were least likely to be detained throughout the pretrial period.

DEMOGRAPHIC CHARACTERISTICS

- Males arrested for misdemeanor offenses were more likely to still be detained when jurisdiction passed to the judiciary. However, the vast majority of both genders were released pretrial prior to final case disposition.
- Males arrested for felony offenses were more likely to still be detained when jurisdiction passed to the judiciary. Male felons were also more likely to be detained throughout the pretrial period than female felons.

- Black defendants arrested for felony offenses were more likely to be detained throughout the pretrial period than white felons. As stated earlier, such detention seems to be a function of type of offense, particularly drugs, and residence than a factor of race.
- Local and non-local residents arrested for misdemeanor offenses had comparable release rates for each of the three release points analyzed. Non-local felons were more likely to still be detained when jurisdiction passed to the judiciary than local residents arrested for felony offenses. Non-local felons were also more likely to be detained throughout the pretrial period.

LEGAL STATUS AND PRIOR ARREST HISTORY

- Misdemeanants and felons under a legal restriction at arrest were more likely to still be detained when jurisdiction passed to the judiciary than defendants not under a legal restriction. Misdemeanants and felons under a legal restriction at arrest were also more likely to be detained throughout the pretrial period.
- Misdemeanants with a prior arrest record and those without a record had comparable magistrate release rates. However, misdemeanants with a prior record were somewhat more likely to never obtain pretrial release.
- Felons with a prior arrest record were less likely to obtain pretrial release from the magistrate than felons without a prior record. Felons with a prior arrest record were also more likely to be detained

throughout the pretrial period.

- Misdemeanants with a prior arrest record who were released by the judiciary or never released pretrial had a higher number of prior arrests than misdemeanants with a prior record who were released by the magistrate.
- The extent of a defendant's prior arrest record did not play as great a role in determining the level of pretrial custody for felons. Felons released by the magistrate versus those released by the judiciary had similar median and mean numbers of prior arrests. Felons never released pretrial had a mean number of prior arrests comparable to the other two groups and a median number of prior arrests that was twice as large.

PRETRIAL JAIL UTILIZATION

PRIMARY OFFENSE

- The two major offenses which comprise the bulk of the traffic offenses examined were habitual offender and DWI arrests. Detentions for habitual offender arrests only account for 22.7% of the traffic pretrial commitments but consume 62.4% of the traffic pretrial days utilized. These defendants had a median LOS of 2.0 days and an average of 17.2 days. Detentions for DWI account for 64.0% of the traffic pretrial commitments and consume 34.6% of the traffic pretrial days. DWI defendants had a median LOS of 1.0 days and an average of 3.4 days.

- Misdemeanants arrested for assault, petit larceny, resisting arrest, and failure to appear were the offenses with the largest number of misdemeanor pretrial commitments. Defendants arrested for assault comprised 26.9% of the commitments and 21.8% of the pretrial jail days (Median = 2.0 days, Mean = 3.2 days). Defendants arrested for petit larceny only comprised 12.3% of the commitments but consumed 21.8% of the pretrial jail days (Median = 2.5 days, Mean = 6.9 days). Defendants detained for resisting arrest comprised 17.3% of the commitments but only 10.1% of the pretrial jail days (Median = 2.0 days, Mean = 2.2 days). Detentions for failure to appear comprised 13.4% of the commitments and 10.6% of the jail days (Median = 2.0 days, Mean = 3.1 days).
- Unlike misdemeanants, felony detainees displayed much more fluctuation in both their median and average lengths of stay between the different offense groups. Defendants arrested for serious violent offenses only accounted for 9.6% of the felony pretrial commitments but consumed 18.3% of the felony pretrial jail days. These detainees had the highest lengths of stay (Median = 106.0 days, Mean = 120.7 days). Defendants detained for burglary had the second highest lengths of stay (Median = 77.0 days, Mean = 80.6 days). Drug defendants comprised over one-third of the commitments (34.3%) and nearly one-third (31.9%) of the jail days (Median = 39.0 days, Mean = 59.0 days).
- Several felony offenses, particularly fraud and assault, possessed mean lengths of stay that varied significantly from their median values. The variance was caused by the large number of cases within

each offense group that had lengthy pretrial detention periods. Although detentions for fraud had a median length of stay of 8.5 days, the average length of stay was 31.3 days. The average length of stay was significantly affected by the 21.4% of the defendants detained between 57 and 190 days. Likewise, the average length of stay for assault detentions was significantly affected by the 26.0% of the cases detained between 67 and 170 days (Median = 16.0 days, Mean = 41.6 days).

LOCALITY

- Traffic detainees processed by Clarke and Frederick Counties had a median length of stay of 1.0 days while Winchester detainees had a median length of stay of 2.0 days. In terms of the average length of stay, Winchester detainees had the longest length of stay (7.5 days). Clarke County had a slightly shorter length of stay (6.1 days) while Frederick County had the lowest length of stay (4.4 days).
- All three localities had identical median lengths of stay (2.0 days) for misdemeanants processed by their courts. However, Clarke County's average length of stay (8.4 days) was significantly longer than Winchester or Frederick detainees (3.6 days and 2.9 days, respectively). One possible reason for this finding is that Clarke County does not have a resident General District Court judge.
- For felony detentions, Clarke County had a median length of stay (70.0 days) that was twice as long as felons processed by Frederick and Winchester (36.5 days and 35.0 days respectively). On the other hand,

the average length of stay for Clarke (80.9 days) and Frederick (73.4 days) detainees was significantly longer than Winchester felony detainees (52.7 days). The following are the possible reasons for these findings:

- Both Clarke and Frederick Counties share a circuit court judge who not only has to sit in both localities, but also has administrative duties as Chief Judge for the Twenty-Sixth Circuit.

 - As the number of arrests have decreased in Clarke County, both the General District Court and Circuit Court judges may have decreased their presence in the county due to the reduced calendar.

 - A higher percentage of the arrests in Clarke and Frederick Counties were for felony offenses which experience high detention rates and whose case processing times may be inherently more time-consuming.
-
- Clarke County was only responsible for 9.0% of the total pretrial commitments but consumed 18.7% of the pretrial jail days.

 - Frederick County was responsible for 51.8% of the traffic commitments but only 30.1% of the total pretrial commitments. Frederick County also consumed the largest percentage of the traffic pretrial days (49.4%) but only 34.0% of the total pretrial days served.

- The City of Winchester is responsible for 60.9% of the total pretrial commitments but only consumed 47.3% of the pretrial jail days.

CASE TYPE

- Misdemeanants comprised 51.6% of the pretrial commitments but only consumed 9.0% of the pretrial jail days served. Traffic detainees made up 20.3% of the pretrial commitments but only 6.2% of the pretrial days served. Although felony detentions made up the second largest percentage (28.1%), they consumed the vast majority of the pretrial days served within the region (84.7%).

SUCCESS MEASURES OF PRETRIAL RELEASES

FAILURE TO APPEAR RATES

- One of the failure to appear rates calculated was for the summonsed population discussed in Chapter Three. The 5.5% rate found for this population was low compared to other jurisdictions we have worked with and rates often cited in the literature. However, we believe this rate would be higher if we were able to track the summonsed traffic population.
- A second measure of failure to appear was derived by examining the defendants in our sample who were arrested for failure to appear. Approximately 23 percent of the misdemeanants sampled were arrested for failure to appear while only 0.4% of the felons were arrested for this offense. Since 79 of the 84 misdemeanants had the FTA as the sole charge, it would appear that a substantial portion of law

enforcement manpower is devoted to re-apprehension of these offenders. The majority of these 84 defendants were originally arrested for driving on a suspended license (48.0%) and worthless checks (25.3%).

- The final measure of failure to appear was calculated by tracking the 1001 defendants who were able to obtain pretrial release and recording whether the defendant failed to appear for any subsequent court proceedings. The following are the major findings from this analysis.

- The overall failure to appear rate was 9.6%. However, traffic defendants had a 15.6% FTA rate, misdemeanants had a 10.9% rate, while felons only had a 3.3% FTA rate.
- Approximately 59 percent of the defendants arrested for driving on a revoked/suspended license failed to appear. Approximately 13 percent of the defendants arrested for failure to appear also failed to appear for court proceedings arising out of these charges.
- Only 18.8% of the defendants who failed to appear were arrested for the non-appearance while 25.0% subsequently appeared without a new arrest occurring. Approximately 56 percent of the failures to appear resulted in the court proceeding with trial in absentia. Approximately 74 percent of the trials in absentia occurred subsequent to the initial FTA with the remaining trials in absentia occurring after three to five failures to appear.

- The analysis pointed out that the FTA rate may be too conservative since only closed cases were examined. The rate could be higher if we were able to incorporate the absconders whose cases were still pending at the time of our data collection.

RE-ARREST RATES

- Approximately 19 percent of the 1001 defendants released pretrial were arrested during their pretrial freedom for either a criminal offense, criminal traffic offense, or traffic infraction. The re-arrest rate drops to 16.0% if traffic infractions are excluded and 10.1% if all traffic arrests are excluded. This latter rate compares favorably with the 10-16 percent rate commonly cited in the literature.
- It is our belief that a large number of the re-arrests may be more a measure of the administrative factors of the criminal justice system rather than a true measure of the number of defendants committing new offenses while on pretrial release.

CHAPTER FIVE

JUDICIAL PROCESSING

A. INTRODUCTION

This chapter focuses on the judicial processing of offenders by each of the courts operating within the region. Except for cases handled by the Juvenile and Domestic Relations Court, a separate overview of judicial processing for each jurisdiction is presented so that factors unique to a particular locality or court can be identified and understood. In order to provide enough cases for meaningful analysis, arrests processed by the Juvenile and Domestic Relations Court are analyzed in total rather than by individual locality.

Section B of the chapter focuses on the processing of criminal traffic and misdemeanor arrests through the General District Courts. Section C focuses on the processing of felony arrests through the court systems of each locality. Unlike Chapters Three and Four, the felony traffic offenses of driving after being declared an habitual offender and leaving the scene of an accident with personal injuries are included in the analysis of felony case processing. Sections B and C present an overview of case processing in terms of the types of offenses processed, methods of disposition, and case processing times. In order to avoid redundancy, all case processing times will use the median value as the unit of measurement. The first two sections will also analyze "delays" in court processing and the extent to which delays affect the cases of detained defendants. A comparison is also made between the processing of detained defendants versus those released pretrial. Finally, Section D examines the sentencing practices of the courts operating within the region.

As stated earlier in this report, our main focus is to understand the major factors and dynamics affecting the composition and size of the region's jail population. Therefore only adult defendants arrested and brought before

the magistrate were included in our sample of 1188 defendants. This is not to say that summonsed defendants, particularly those sentenced to jail, and civil cases may not have a role in defining jail population levels. In addition, growth in civil caseload or changes in their processing may also impact the court's ability to process criminal cases. Resources did not allow for thorough examination of these court cases and any affect they may have on the judiciary's ability to process criminal arrests is best assessed by the Jail Advisory Group with its collective experiential knowledge.

B. GENERAL DISTRICT COURT CASE PROCESSING

1. JUVENILE AND DOMESTIC RELATIONS COURT

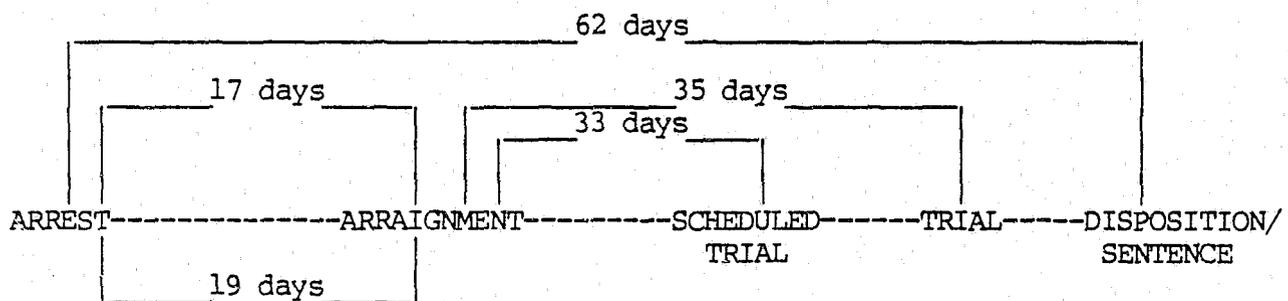
This court had jurisdiction over 82 of the 367 misdemeanants examined in our sample. This figure, however, inflates the Juvenile and Domestic Relations Court's annual activity in the processing of adult criminal arrests. In order to ensure that enough cases were included in the sample, it was necessary to examine two years worth of filings in this court as opposed to six months in Frederick and Winchester General District Court and one year for Clarke General District Court. On an annual basis, the Juvenile and Domestic Relations Court only processes approximately 41 (7.0%) of the adult misdemeanor arrests made within the region.

Approximately one-half (47.6%) of the 82 adult arrests handled by the Juvenile and Domestic Relations Court originated within the City of Winchester. Frederick County accounted for 28.0% while Clarke County accounted for 24.4% of this court's caseload of adult criminal misdemeanor arrests. The most common offense handled by this court was arrests for simple assault (62 of 82 = 75.6%) while an additional

11.0% was made up of arrests for trespassing and vandalism.

Figure 26 displays a flowchart of the major hearings likely to occur during the processing of adult misdemeanor cases handled by the Juvenile and Domestic Relations Court. The time period listed at the bottom of the flowchart reflects the median length of time required to process defendants whose cases were disposed at arraignment. The time periods listed at the top of the flowchart reflect the median lengths of time required to process cases that extended beyond arraignment.

FIGURE 26
 JUVENILE AND DOMESTIC RELATIONS COURT
 MEDIAN CASE PROCESSING TIMES FOR
 MISDEMEANOR CASES



Thirty-two of the 82 misdemeanants (39.0%) handled by the Juvenile and Domestic Relations (J & DR) Court had their cases disposed of at arraignment. Four of these defendants (12.5%) went to trial on the day of arraignment, eight (25.0%) pled guilty to the original primary offense, and twenty (62.5%) had the charges dropped. The median length of time between arrest and arraignment/disposition was 19 days. The shortest period found was six days while the longest period encountered was 56 days. Five cases (15.6%) took longer than 30 days for arraignment to occur.

Fifty of the 82 misdemeanants (61.0%) handled by the J & DR

Court pled not guilty at arraignment and required further processing beyond arraignment. These defendants were brought to arraignment within seventeen days. However, 26.0% of these defendants were brought to arraignment within seven days while only 14.0% required longer than 30 days. A trial date was scheduled 33 days from arraignment (Low = 2 days, High = 70 days). Although 50 trial dates were set, only 21 defendants (42.0%) actually went to trial. These defendants were brought to trial within 35 days of arraignment (Low = 7 days, High = 98 days). Due to continuances and failures to appear, the median length of time required to process these 50 defendants was 62 days (Low = 9 days, High = 133 days). Of these 50 defendants, 19 (38.0%) were acquitted or had the charges dropped, 16 (32.0%) pled guilty to the original primary offense, and 15 (30.0%) were found guilty at trial.

The median length of time required to process all 82 cases was 40.5 days. Over one-half (52.4%) of the cases handled by the Juvenile and Domestic Relations Court resulted in a conviction. Of the 62 arrests for assault, only 31 of these cases resulted in a plea of guilt or a finding of guilt at trial. Of the 43 convictions obtained by this court, 24 (55.8%) were disposed through a guilty plea on the original primary offense at arrest while the remaining 19 cases were disposed via a judge trial. A total of 21 trials were held (25.6%) with four of them conducted in absentia.

2. CLARKE COUNTY GENERAL DISTRICT COURT

The Clarke County General District Court had jurisdiction over 29 of the 367 misdemeanants and 41 of the non-felony traffic offenders

examined in our sample. These figures distort this court's annual activity in the processing of adult arrests within the region due to the various periods of study utilized for different courts. When annual adjustments are made, it is estimated that the Clarke County General District Court processes 7.9% of the non-felony traffic arrests and 5.0% of the misdemeanor arrests made within the region.

Over one-half (55.7%) of the arrests processed by the Clarke County General District Court are for the offense of driving while intoxicated. These arrests comprised 39 of the 41 non-felony traffic arrests handled by this court. The remaining two traffic cases were arrests for reckless driving. The next largest offense group processed was arrests for simple assault (14.3%). Ten of the 29 misdemeanor arrests were for this offense while the remaining 19 misdemeanor arrests were almost equally divided between resisting arrest, fraud, trespassing, vandalism, and weapons offenses.

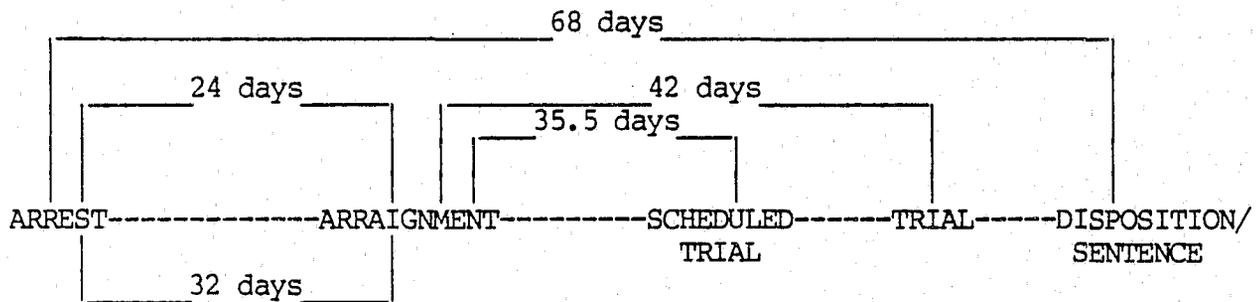
Thirty-nine of the 70 cases (55.7%) handled by the Clarke County General District Court were disposed on the day of arraignment. Approximately 54 percent of the traffic offenses were disposed at arraignment while 59 percent of the misdemeanors were also disposed of at this hearing. Thirteen of the 39 cases (33.3%) disposed of at arraignment were the result of the charges being dropped. Of the 26 convictions obtained at arraignment, 24 were the result of a guilty plea to the original primary offense at arrest. The remaining two cases were disposed via a guilty plea to a lesser offense or a finding of guilt at trial.

The median length of time required to bring these defendants to arraignment and disposition was 32 days. However, the time periods

varied significantly between misdemeanor and traffic cases.

Misdemeanants had a median processing time of 24 days compared to 38.5 days for traffic defendants. Almost three-quarters (68.2%) of the traffic cases were brought to arraignment 30 days or more after arrest. The longest time interval found was 98 days. Only 35.3% of the misdemeanants took longer than 30 days to bring to arraignment. The longest time interval found for this group was 67 days.

FIGURE 27
CLARKE COUNTY GENERAL DISTRICT COURT
MEDIAN CASE PROCESSING TIMES FOR
TRAFFIC AND MISDEMEANOR CASES



Thirty-one of the 70 cases (44.3%) handled by the Clarke County General District Court required further processing beyond arraignment. These defendants were brought to arraignment somewhat faster than those defendants who had their cases disposed of at arraignment (24 days vs. 32 days). Traffic cases, however, were brought to arraignment much later than misdemeanants (41 days vs. 13.5 days). Although 31 trials were scheduled, only seven defendants actually went to trial. The median length of time between arraignment and trial for these defendants was 42 days (Low = 15 days, High = 106 days).

The median length of time required to process the 31 cases whose proceedings extended beyond arraignment was 68 days. Traffic cases had a median value of 75 days (Low = 24 days, High = 258 days). Misdemeanant cases had a median value of 61 days (Low = 33 days, High = 270 days). Approximately 20 percent (19.3%) of these 31 cases were disposed more than 180 days after arrest. Of the 31 defendants, six (19.3%) were acquitted or had the charges dropped, 14 (45.2%) pled to the original primary offense, four (12.9%) pled to lesser offenses, and seven (22.6%) were found guilty at trial.

The median length of time required to process all 70 cases was 42.5 days (Traffic = 46 days, Misdemeanor = 36 days). Fifty-one of the cases (72.8%) processed by this court resulted in a conviction (Traffic = 92.7%, Misdemeanor = 44.8%). Of the 51 convictions, 38 (74.5%) were obtained through a guilty plea to the original primary offense at arrest. Five (9.8%) involved a plea to a lesser offense and eight (15.7%) were disposed via a judge trial. A total of eight trials were held (11.4%) with one of them conducted in absentia.

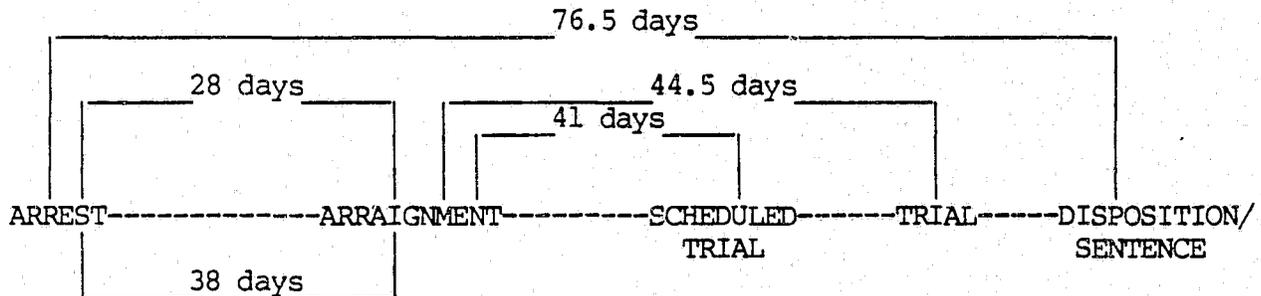
3. FREDERICK COUNTY GENERAL DISTRICT COURT

The Frederick County General District Court was responsible for prosecuting 106 of the non-felony traffic cases examined in the sample and 62 of the misdemeanor cases. On an annualized basis, this court handles 40.7% of the non-felony traffic arrests and 21.3% of the misdemeanor arrests made within the region. Eighty-four of the 106 traffic arrests (79.2%) processed by this court were for DWI while 19 arrests (17.9%) were for driving on a suspended/revoked license. Twenty-six of the 62 misdemeanants processed by this court were

arrested for failure to appear. Resisting arrest and petit larceny were the second most common offenses processed by this court (11.3% per offense). Assaults comprised 9.7% of this court's misdemeanor caseload.

Approximately three-quarters (72.6%) of the traffic offenses handled by this court were disposed of at arraignment. Five of these cases (6.5%) had the charges dropped at arraignment. Only one case was disposed of at arraignment by way of a guilty plea to a lesser offense. The bulk of the traffic cases disposed of at arraignment were the result of guilty pleas to the original primary offense at arrest (48 of 77 = 62.3%). Twenty-three cases (29.9%) went to trial on the day of arraignment.

FIGURE 28
 FREDERICK COUNTY GENERAL DISTRICT COURT
 MEDIAN CASE PROCESSING TIMES FOR
 TRAFFIC CASES



Traffic cases disposed of at arraignment had this hearing conducted within 38 days of arrest. This statistic, however, does not accurately reflect the wide range of time intervals found in the data. The shortest time interval found between arrest and arraignment/disposition was eight days while the highest was 399

days. Almost three-quarters of these cases (67.5%) had their arraignment 30 days or more after arrest. Approximately 17 percent had arraignment dates 60 days or more from arrest.

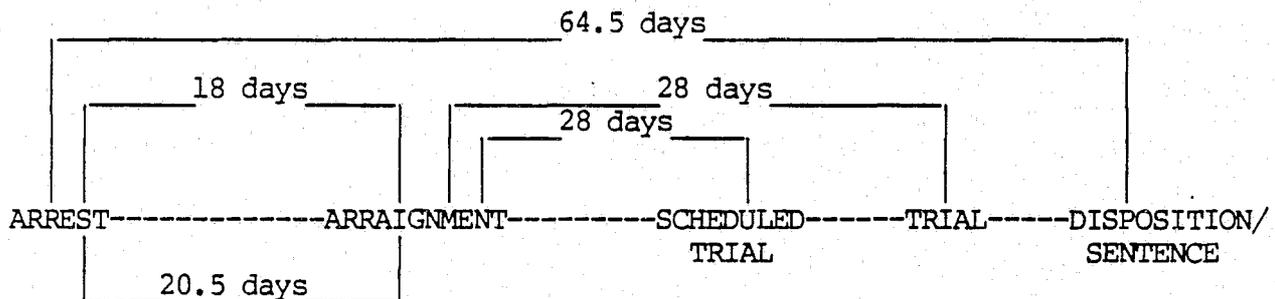
Twenty-nine of the 106 traffic arrests (27.4%) required hearings beyond arraignment. These defendants were brought to arraignment within a median of 28 days (Low = 1 day, High = 121 days). A trial was scheduled to occur 41 days after arraignment (Low = 9 days, High = 143 days). However, only five of the 29 defendants actually went to trial. The median length of time from arraignment to trial for these five defendants was 44.5 days. Defendants whose cases proceeded beyond arraignment had a median of 76.5 days between arrest and disposition (Low = 23 days, High = 365 days). Approximately 75 percent of these defendants (74.8%) took more than 60 days for the case to be disposed. Of the 29 cases, five (17.5%) had the charges dropped while 14 (48.6%) pled guilty to the original primary offense at arrest. The remaining ten cases were equally divided between those disposed by way of a plea to a lesser offense and those found guilty at trial.

The median length of time required to process the 106 traffic arrests handled by the Frederick County General District Court was 40 days. Ninety-six of these cases (90.6%) resulted in a conviction. Of the 96 convictions, 62 (64.6%) were obtained by a guilty plea to the original primary offense at arrest. Six (6.2%) involved a plea to a lesser offense and 28 (29.2%) were disposed via a judge trial. A total of 28 judge trials were held (26.4%) with 20 of them held in absentia.

Figure 29 displays a flow chart of case processing times for the

62 misdemeanor cases processed by the Frederick County General District Court. A smaller percentage of the misdemeanants, compared to traffic defendants, have their cases disposed of at arraignment (38 of 62 = 61.3%). The length of time required to bring these defendants to arraignment was 20.5 days. Two of the defendants had their arraignment and disposition on the same day of their arrest while the longest time interval found was 94 days. Only four cases (10.5%) had their arraignment occur more than 30 days after arrest. Eighteen of these cases (47.4%) had the charges dropped at arraignment while 18 pled guilty to the original primary offense at arrest. One defendant pled to a lesser offense and one defendant went to trial on the arraignment date.

FIGURE 29
 FREDERICK COUNTY GENERAL DISTRICT COURT
 MEDIAN CASE PROCESSING TIMES FOR
 MISDEMEANOR CASES



Twenty-four misdemeanants (38.7%) pled not guilty at arraignment and required further court hearings. These defendants were brought to arraignment within 18 days of their arrest. Two defendants were brought to arraignment on the same day of their arrest while one defendant required 45 days. A trial was scheduled to occur 28 days

after the arraignment (Low = 21 days, High = 63 days). The median length of time from arraignment to trial for the ten defendants who actually went to trial was also 28 days. Defendants whose cases proceeded beyond arraignment had a median of 64.5 days from arrest to disposition (Low = 21 days, High = 121 days). A little over one-half (54.2%) of these cases took longer than 60 days to dispose. Of the 24 cases, nine (37.5%) had the charges dropped while five (20.8%) pled guilty to the original primary offense at arrest. Ten of these cases (41.7%) were disposed via a judge trial.

The median length of time required to process the 62 misdemeanor arrests handled by the Frederick County General District Court was 27.5 days. Thirty-five of the cases (56.4%) resulted in a conviction. Of the 35 convictions, 23 (65.7%) were disposed by a guilty plea to the original offense at arrest while one conviction was obtained by a plea to a lesser offense. Eleven convictions (31.4%) resulted from a judge trial. A total of eleven trials were held (17.7%) with two of them held in absentia.

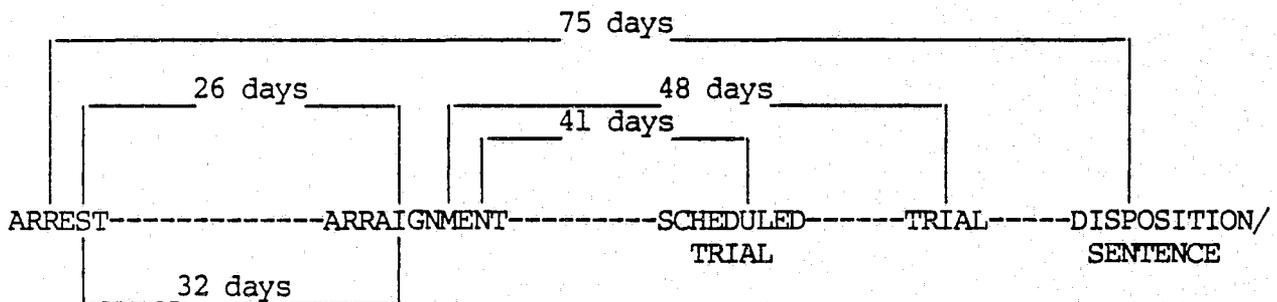
4. WINCHESTER CITY GENERAL DISTRICT COURT

The Winchester City General District Court was responsible for prosecuting 134 of the non-felony traffic cases and 194 of the misdemeanor cases contained in the sample. On an annual basis this court handles 51.4% of the traffic arrests and 66.7% of the misdemeanor arrests made within the region. Almost all of the traffic cases handled by this court were arrests for DWI (131 of 134). The remaining three cases were arrests for driving on a suspended/revoked license. Approximately three-quarters of the misdemeanor cases

handled by this court were arrests for failure to appear (25.8%), petit larceny (20.6%), assault (12.9%), and resisting arrest (12.9%).

Approximately 60 percent (59.7%) of the traffic offenses handled by this court were disposed of at arraignment. In only one of the 80 cases were the charges dropped at arraignment. The majority of these dispositions (66 of 80 = 82.5%) were the result of a guilty plea to the original primary offense at arrest. Three defendants (3.8%) pled to a lesser offense while ten cases (12.5%) went to trial on the day of arraignment. The median length of time required to bring these defendants to arraignment/disposition was 32 days. The shortest time interval found was ten days while the longest was 362 days. Ten percent of these defendants had arraignments 60 days or more from their arrest.

FIGURE 30
WINCHESTER CITY GENERAL DISTRICT COURT
MEDIAN CASE PROCESSING TIMES FOR
TRAFFIC CASES



Fifty-four of the 134 traffic arrests (40.3%) handled by the Winchester City General District Court required hearings beyond arraignment. These defendants were brought to arraignment within 26 days. Two of the 54 defendants were brought to arraignment on the

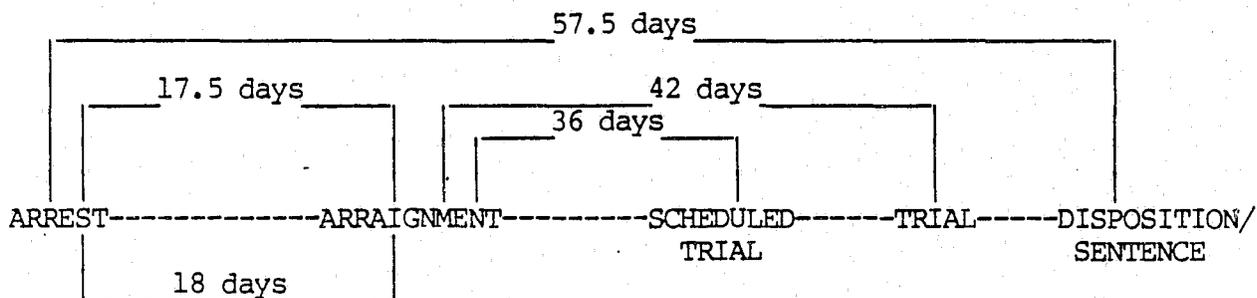
same day of arrest while the longest time interval found was 149 days. Upon a plea of not guilty, a trial was scheduled to occur 41 days later (Low = 6 days, High = 63 days). Only twelve of the 54 defendants actually went to trial. The median length of time required to process these 54 cases was 75 days (Low = 44 days, High = 234 days). Over 80 percent (83.0%) of these cases required more than 60 days to dispose of. Of the 54 cases, seven (13.0%) had the charges dropped while 27 (50.0%) pled guilty to the original primary offense at arrest. Eight defendants (14.8%) pled to lesser offenses and 12 (22.2%) were found guilty at trial.

The median length of time required to process the 134 traffic cases handled by the Winchester City General District Court was 44.5 days. Only eight of these cases (6.0%) did not result in a conviction. Of the 126 convictions, 93 (73.8%) were the result of a guilty plea to the original primary offense at arrest. Eleven convictions (8.7%) were obtained by a guilty plea to a lesser offense and 22 (17.5%) were the result of a judge trial. A total of 22 trials were held (16.4%) with twelve of them held in absentia.

Almost three-quarters (68.0%) of the misdemeanor cases handled by the Winchester City General District Court were disposed of at the arraignment hearing. The median length of time required to bring these defendants to arraignment was 18 days. Four defendants had their arraignment on the day of arrest while the longest time interval encountered was 437 days. One-quarter (25.0%) of these defendants were brought to arraignment 30 days or more after their arrest. Fifty of these defendants (37.9%) had the charges dropped at arraignment. Sixty-three (47.7%) pled to the original primary offense, three (2.3%)

pled to a lesser offense, and 16 (12.1%) were convicted via a judge trial.

FIGURE 31
WINCHESTER CITY GENERAL DISTRICT COURT
MEDIAN CASE PROCESSING TIMES FOR
MISDEMEANOR CASES



Sixty-two of the 194 misdemeanants (32.0%) processed by this court pled not guilty at arraignment and required further hearings. These defendants were brought to arraignment within 17.5 days (Low = 1 day, High = 316 days). A trial was set to occur 36 days from the arraignment date (Low = 7 days, High = 56 days). The median length of time from arraignment to trial for the 19 defendants who actually went to trial was 42 days. The 62 defendants whose cases proceeded beyond arraignment had a median of 57.5 days from arrest to disposition (Low = 18 days, High = 351 days). Less than one-half (45.2%) of these defendants required more than 60 days to dispose of their cases. Of the 62 cases, 26 (41.9%) had the charges dropped while 15 (24.2%) pled to the original primary offense at arrest. Only two defendants (3.2%) pled to a lesser offense and 19 (30.6%) were convicted via a judge trial.

The median length of time required to process the 194

misdemeanant arrests handled by the Winchester City General District Court was 26.5 days. The conviction rate for this court was the highest found within the region (118 of 194 = 60.8%). Of the 118 convictions, 78 (66.1%) were the result of a guilty plea to the original primary offense at arrest. Five defendants (4.2%) pled to a lesser offense and 35 (29.7%) were convicted at trial. A total of 35 trials were held (18.0%) with 16 of them conducted in absentia.

5. SCHEDULING AND DELAY FACTORS IN CASE PROCESSING

Once the decision has been made to detain an individual, the judiciary, prosecution, and defense have a major role in determining how long defendants will remain in the jail. Other than the sentencing decision, length of stay will largely be determined by the scheduling practices of the court, how early counsel enters case processing, and the delay rate in the processing of cases. The previous discussion in this section addressed scheduling in the broad sense through the analysis of case processing times by type of offense and jurisdiction. This section focuses the analysis on the length of time defendants remain in jail before they are brought before a judge for their first court appearance and/or bond review. Related to scheduling is the delay rate in case processing. The delay rate was measured by counting the number of cases whose hearings had to be rescheduled due to a continuance and/or a failure to appear.

The most difficult measure of court processing concerns the determination of where in the process counsel begins to get actively involved in the case. The jail population management literature often cites this decision point as a major factor in case processing

times. Early involvement of both prosecution and defense counsel in the screening of cases can go a long way toward reducing continuances and overall case processing times. Unfortunately, the only empirical measure we were able to calculate was the length of time between arrest and the appointment of counsel for those defendants unable to hire their own. We did not have the data that would determine when defense and prosecution became actively involved in the case. Because of this, the Jail Advisory Group through its individual and collective experiential knowledge may wish to examine this area of potential impact.

Since many defendants had their cases disposed of at arraignment, significant savings in jail days could be effected if detained defendants were brought before the judiciary on the next day or the day following a weekend or a holiday. At a minimum, early appearance may result in bond reviews by the judiciary that serve to shorten pretrial detention periods for those defendants who do not have their cases disposed at the initial hearing. Two sets of detained defendants were examined in order to measure the length of time between detention and first appearance. The first set of defendants were those detained by the magistrate and able to secure pretrial release before their first court appearance. The second set of defendants were those still detained at the time of their first appearance.

The defendants able to secure pretrial release before their first court appearance were, for the most part, only detained for short periods of time before securing pretrial release. Of the 179 defendants released before their first court appearance, 95 (53.1%)

were released on the same day of their detention. Seventy-two defendants (40.2%) were released on the day after their detention. As discussed in Chapter Four, a large percentage of these defendants were actually detained for less than a 24-hour period. The remaining 12 defendants (6.7%) had lengths of stay of three to nine days before they secured pretrial release without an appearance before the judiciary. The median length of stay for the 179 total detainees was 1.0 days while the average length of stay was 1.6 days.

Defendants still detained at their first court appearance had significantly longer periods of incarceration before being brought to court. Of these 59 defendants, only 19 (32.2%) were brought before a judge within a day of detention. Eleven (18.6%) were brought before the court on the third day of detention. The remaining 29 defendants (49.2%) were detained from four to twenty-seven days before appearing in court. Nearly one-quarter (22.1%) of these defendants were detained a week or more before they were brought to court. The median length of stay for the 59 detainees was 3.0 days while the average length of stay was 5.1 days.

Delay rates were calculated in order to help explain the case processing times discussed earlier. A case was considered delayed if a scheduled hearing was continued to a later date or the defendant failed to appear for a court hearing. However, a non-appearance resulting in a trial in absentia was not counted as a delay in case processing. The General District Courts operating in the region had a delay rate of 22.7%. In other words, 147 of the 648 cases handled by the four courts experienced the rescheduling of at least one court hearing resulting from a continuance or a failure to appear. Each of

the four courts had comparable delay rates. The highest delay rate was found in the Clarke County General District Court (27.1%) while the lowest was found in the Juvenile and Domestic Relations Court (20.7%). Frederick County had a delay rate of 23.8% while Winchester had a delay rate of 21.6%. As for type of offense, traffic cases had a delay rate of 26.0% compared to 20.2% for misdemeanor cases.

Of the 147 delayed cases, 102 (69.4%) had a continuance as the primary form of delay with the remaining 45 cases (30.6%) primarily delayed by a failure to appear. Sixty-seven of the delayed cases (45.6%) had more than one re-scheduling of hearings. Eighty of the delays (54.4%) affected arraignment while 59 delays (40.1%) affected a scheduled trial. Eight cases (5.4%) had both hearings affected by a delay.

Only 47 of the 648 cases (7.3%) processed by these four courts involved the appointment of counsel. Counsel was appointed rather quickly for defendants in need of legal assistance. The median length of time between arrest and counsel appointment was 13 days. Of the 44 cases where the date of appointment could be ascertained, 42 cases (95.4%) had counsel appointed at the arraignment hearing. Six of these forty-two appointments (14.3%) had the arraignment re-scheduled at the request of the newly-appointed counsel. Two cases had counsel appointed between arraignment and trial.

6. CASE PROCESSING OF DEFENDANTS NEVER RELEASED PRETRIAL

The previous discussion in Section B examined case processing of all traffic and misdemeanor arrests within the region. One of the purposes of this broader focus is to provide a base line of

information that may be used to monitor the future population of the jail and how court processing plays a role in its size and composition. Depending on the reader's role or function in the local criminal justice system, the case processing times and delay rates, in particular, may or may not be problematic to a particular decision-maker or agency. Since our concern is on the jail population, the focus of this discussion is the manner in which court processing affects those defendants unable to secure pretrial release.

When examined in this manner, it was found that case processing was expedited significantly for the detained population. Defendants released pretrial took a median of 39 days from arrest to disposition compared to five days for those defendants unable to secure release. Only two of the 39 defendants unable to secure pretrial release had an arrest-to-disposition period longer than 30 days (High = 39 days). In contrast, 66.8% of the defendants released pretrial took longer than 30 days to dispose (High = 437 days).

One of the factors contributing to the shorter case processing times is that a larger percentage of the detained defendants had their cases disposed of at arraignment. Thirty of the 39 detained defendants (76.9%) had their cases disposed at this initial hearing compared to 59.6% of the released defendants. Detained defendants were also brought to arraignment much sooner than released defendants (3.0 days versus 24 days).

A second factor was the lack of delay experienced in the case processing of detained defendants. Only one detained defendant (2.6%) had a continuance of a court hearing compared to the 18.4% continuance rate found for those defendants released pretrial. The single

continuance only amounted to a one day delay in the holding of an arraignment.

Finally, detention status appeared to play a role in the disposition of the cases. On the one hand, the judiciary appeared more inclined to drop the charges for detained defendants than released defendants (30.7% versus 27.4%). On the other hand, detention status may serve to inhibit defendants from challenging the charges more aggressively. Approximately 67 percent (66.7%) of the detained defendants pled to the original primary offense at arrest compared to 47.9% of the released defendants. None of the detained defendants pled to a lesser offense. In addition, only 2.6% of the detained defendants actually went to trial compared to 20.0% of the released defendants.

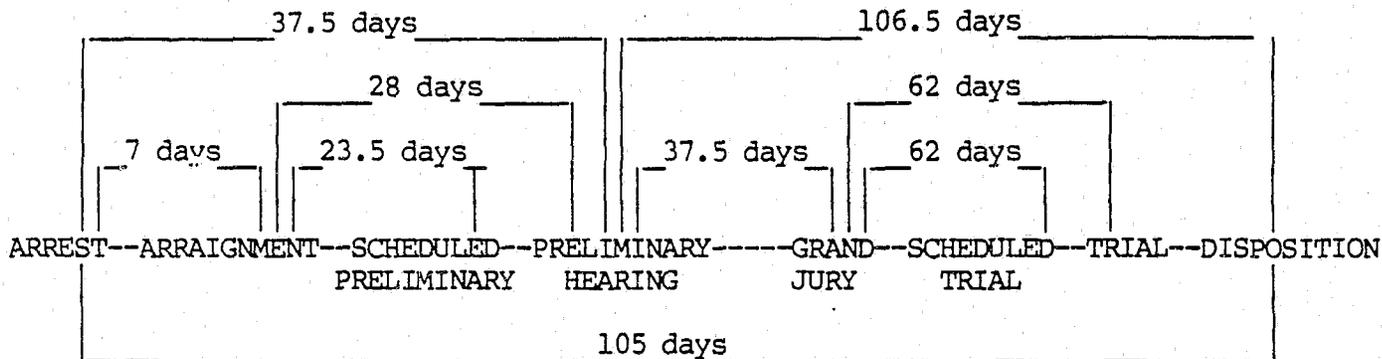
C. CIRCUIT COURT CASE PROCESSING

1. CLARKE COUNTY CIRCUIT COURT

Eighty of the 540 felony arrests (14.8%) made within the region came under the jurisdiction of Clarke County courts. Of these 80 arrests, 57 (71.2%) were tried or certified by the General District Court while the remaining 23 arrests (28.8%) were direct indictments to the Circuit Court. Over three-quarters of the felony arrests handled by Clarke County courts were for the offenses of grand larceny (25.0%), burglary (21.2%), drugs (17.5%), and fraud (13.8%). These offenses also comprised the bulk of the direct indictment cases (86.7%) and those tried or certified by the General District Court (73.9%).

Figure 32 displays the median lengths of time required to

FIGURE 32
 MEDIAN CASE PROCESSING TIMES FOR
 CLARKE COUNTY NON-DIRECT INDICTMENT
 FELONY CASES



process the 57 cases whose hearings were initiated in the General District Court. The median length of time required to bring these cases to arraignment was seven days (Low = 0 days, High = 56 days). Upon a plea of not guilty, a preliminary hearing was scheduled to occur 23.5 days after arraignment (Low = 7 days, High = 83 days). This hearing, however, was actually held a median of 28 days after arrest. The length of time required to process these cases from arrest to the preliminary hearing was 37.5 days (Low = 8 days, High = 99 days). Approximately 16 percent (15.8%) of these cases required more than 60 days to be tried or certified by the General District Court to the Circuit Court.

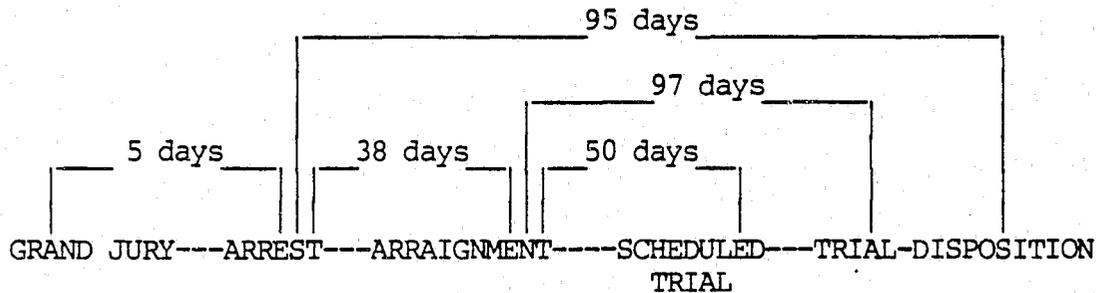
For those cases certified to the Circuit Court, the median length of time between the preliminary hearing and the return of a true bill by the grand jury was 37.5 days (Low = 0 days, High = 97 days). A trial was scheduled to occur 62 days after the grand jury indictment (Low = 21 days, High = 118 days) while 62 days was also the

median length of time required for the trial to actually occur. However, only four cases actually went to trial. The median length of time required by the Circuit Court to process certified cases from the preliminary hearing to disposition was 106.5 days (Low = 48 days, High = 391 days.) Of these cases, only 14.7% required more than 150 days to dispose after certification to the grand jury.

As can be seen in Figure 32, the median length of time required to process these 57 cases from arrest to disposition was 105 days. The statistic for the processing of felony arrests is skewed due to the inclusion of felons disposed by the General District Court. Of these 57 felony cases, 23 (40.4%) were disposed by the General District Court. Five were disposed at arraignment while 18 were disposed at the preliminary hearing. The median length of time required to process these cases to disposition was 43 days (Low = 7 days, High = 83 days). The 34 cases certified to the Circuit Court required much longer periods of time to process. The median length of time required for certification was 34 days (Low = 8 days, High = 99 days). An additional 106.5 days were required to process through the Circuit Court. The length of time between arrest and disposition for these 34 cases was 143 days (Low = 62 days, High = 444 days). Approximately 21 percent (20.6%) of these cases required six months or more to dispose.

As can be seen in Figure 33, direct indictment cases are disposed of much more quickly than those cases that proceed through the General District and the Circuit Court (95 days vs. 143 days). However, direct indictment cases experience a longer interval between arrest and arraignment. Direct indictment cases had their arraignment

FIGURE 33
 MEDIAN CASE PROCESSING TIMES FOR
 CLARKE COUNTY DIRECT INDICTMENT
 FELONY CASES



38 days (Low = 4 days, High = 104 days) after arrest compared to seven days for those defendants who had their arraignment in General District Court. Six of the 23 direct indictment cases (26.1%) were disposed at the arraignment hearing. The remaining 17 cases had their trials scheduled to occur 50 days after arraignment (Low = 21 days, High = 105 days). The two trials that actually occurred were conducted 97 days after arraignment. The median length of time required to process the 23 direct indictment cases was 95 days (Low = 21 days, High = 245 days). Only two of these cases (8.7%) required more than six months to dispose.

More than three-quarters (77.5%) of the 80 felonies processed by Clarke County courts resulted in a conviction. Only eleven of the 23 cases (47.8%) disposed of in the General District Court resulted in a conviction. Six pled to lesser offenses while five were found guilty at trial. Approximately 90 percent (89.5%) of the 57 felony cases disposed by the Circuit Court resulted in a conviction. Of the 51 convictions, 40 (78.4%) were the result of a plea of guilty to the original primary offense at arrest while six defendants (11.8%) pled

to lesser offenses. Six of the 57 cases (10.5%) disposed by the Circuit Court went to trial. One defendant was acquitted at a judge trial while five were found guilty by a jury.

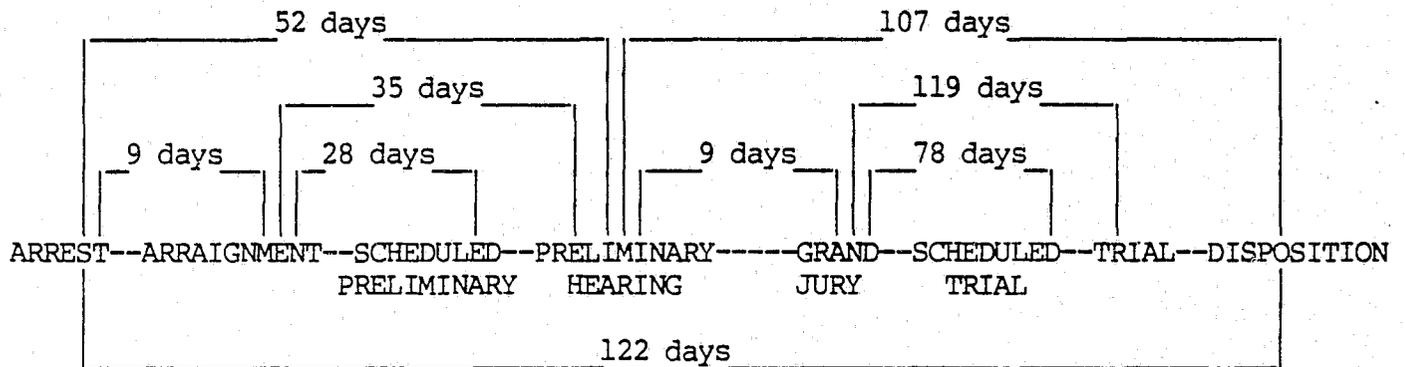
2. FREDERICK COUNTY CIRCUIT COURT

Frederick County had jurisdiction over 179 of the 540 felony arrests (33.1%) made within the region. Of these 179 arrests, 84 (46.9%) were tried or certified by the General District Court while 95 (53.1%) were direct indictments to the Circuit Court. Nearly three-quarters of the felony arrests processed by Frederick County Courts were for the offenses of grand larceny (25.1%), drugs (21.2%), burglary (14.5%), and fraud (10.1%). This is similar to the profile of Clarke County. An additional 15.8% of the felonies processed in Frederick County were for the offenses of assault and driving after being declared an habitual offender. Over three-quarters (78.6%) of the cases initiated in the General District Court were for the offenses of grand larceny, habitual offender, drugs, burglary, and assault. Arrests for drugs, grand larceny, burglary, and fraud comprised over three-quarters (79.3%) of the direct indictment cases.

As can be seen in Figure 34, the 84 felony cases that had their initial hearings in the General District Court were brought to arraignment within nine days (Low = 0 days, High = 53 days). A preliminary hearing was scheduled to occur 28 days after arraignment for those defendants who pled not guilty (Low = 9 days, High = 91 days). The median length of time, however, from arraignment to when the preliminary hearing actually occurred was 35 days. These cases took a median of 52 days for certification to the Circuit Court to

occur (Low = 11 days, High = 276 days). Over one-third (36.8%) of these cases required more than 60 days to be tried or certified by the General District Court.

FIGURE 34
 MEDIAN CASE PROCESSING TIMES FOR
 FREDERICK COUNTY NON-DIRECT
 INDICTMENT FELONY CASES



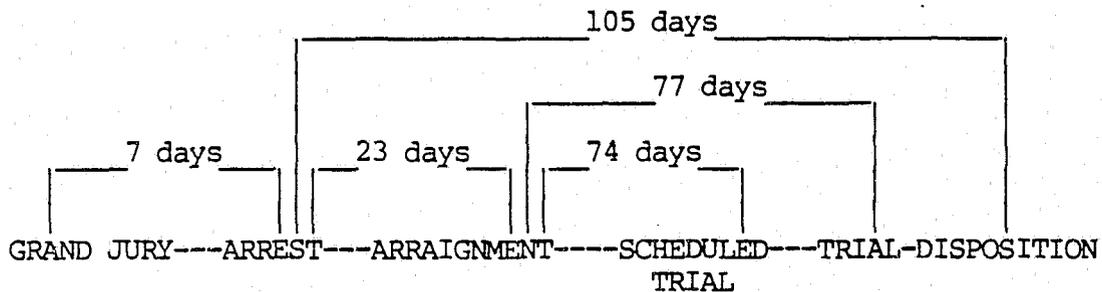
Cases certified to the Circuit Court had a true bill returned by the grand jury only nine days after the preliminary hearing (Low = 0 days, High = 79 days). A trial was scheduled to occur 78 days after the issuance of the true bill (Low = 13 days, High = 148 days). For those cases who actually went to trial, the median length of time between the grand jury indictment and trial commencement was 119 days (Low = 64 days, High = 217 days). The median length of time required to process certified cases from the preliminary hearing to disposition was 107 days (Low = 15 days, High = 293 days). Twenty percent of these cases required more than 150 days to dispose after certification to the grand jury.

The median length of time required to process the 84 cases

initiated in the General District Court was 122 days. The inclusion of cases disposed in the General District Court obscures the case processing times required to dispose of cases handled by both the General District Court and the Circuit Court. A total of 28 cases (33.3%) were disposed of by the General District Court. Seven were disposed of at arraignment while 21 were disposed of at the preliminary hearing. The median length of time required to process these cases to disposition was 39.5 days (Low = 4 days, High = 95 days). The median length of time required for certifying the remaining 56 cases was 49 days (Low = 11 days, High 276 days). Once certified, the Circuit Court required an additional 107 days in order to reach disposition. The length of time between arrest and disposition for these 56 cases was 163 days (Low = 42 days, High = 411 days). A little under one-half (42.8%) of these cases required more than six months to reach disposition.

As was the case with Clarke County, direct indictment cases are disposed of much more quickly than those cases requiring processing by both the General District Court and the Circuit Court (105 days vs. 163 days). Cases on direct indictment were brought to arraignment in the Frederick County Circuit Court within 23 days of arrest (Low = 0 days, High = 151 days). Four of these 95 cases (4.2%) were disposed of at the arraignment hearing. For those defendants who pled not guilty, a trial was scheduled to occur 74 days from the arraignment date (Low = 36 days, High = 394 days). The median length of time required to process the 95 direct indictment cases to disposition was 105 days (Low = 27 days, High = 330 days). Only 10.6% of these cases required more than six months to dispose.

FIGURE 35
 MEDIAN CASE PROCESSING TIMES FOR
 FREDERICK COUNTY DIRECT INDICTMENT
 FELONY CASES



Well over three-quarters (86.5%) of the 179 felonies processed by Frederick County Courts resulted in a conviction. Sixteen of the 28 cases (56.1%) disposed in the General District Court resulted in a conviction. Fifteen pled guilty while one defendant was found guilty at trial. Ninety-two percent of the 151 felony cases disposed by the Circuit Court resulted in a conviction. Of the 138 convictions, 113 (81.9%) were the result of a guilty plea to the original primary offense at arrest while 19 (13.8%) defendants pled guilty to a lesser offense. Nine of the 179 cases (5.0%) disposed by the Circuit Court went to trial. Six defendants were found guilty by a jury, one was acquitted by a jury, and two defendants were acquitted at a judge trial.

3. WINCHESTER CITY CIRCUIT COURT

Over one-half (52.0%) of the felony arrests made within the region were processed by Winchester City courts. Of the 281 felony arrests processed in Winchester, 164 (58.4%) were tried or certified by the General District Court while the remaining 117 arrests (41.6%)

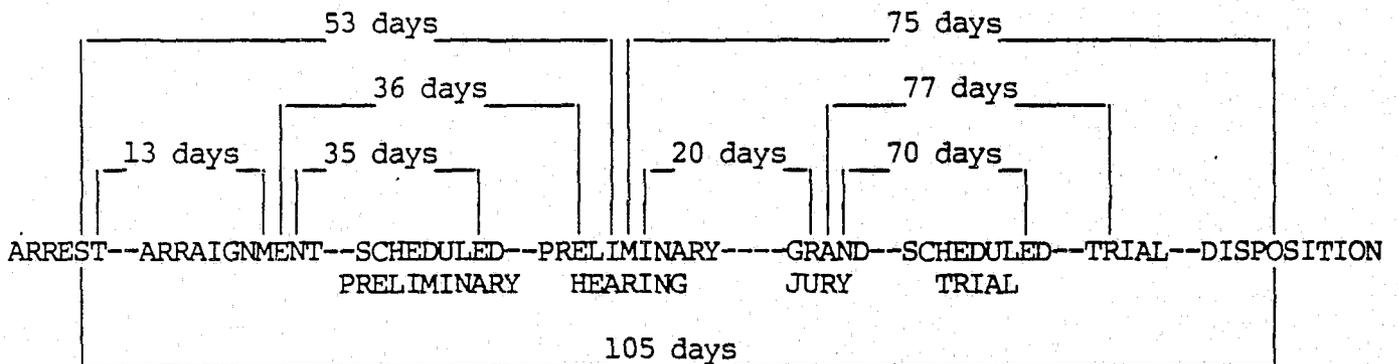
were direct indictments to the Circuit Courts. Unlike Clarke and Frederick Counties, a smaller number of offenses comprise the bulk of the cases processed by Winchester City courts. Approximately 72% of the total felony cases processed in Winchester were for drug offenses (32.4%), grand larceny (24.9%), and fraud (14.6%). These same three offenses also comprised 72.0% of the felony cases initiated in the General District Court. Almost three-quarters (73.6%) of the direct indictment cases were comprised of drug offenses and grand larceny. Drug offenses alone accounted for 55.6% of the direct indictment cases processed by the Winchester Circuit Court.

Figure 36 displays the median lengths of time required to process the 164 cases whose initial hearings originated in the General District Court. These cases were brought to arraignment within 13 days (Low = 0 days, High = 159 days). Upon a plea of not guilty, a preliminary hearing was scheduled to occur 35 days after arraignment (Low = 6 days, High = 86 days). The median length of time between arraignment and the date the preliminary hearing actually occurred was 36 days. The length of time required to process these cases from arrest to the preliminary hearing was 52 days (Low = 18 days, High = 316 days). Approximately 38 percent of these cases took longer than 60 days to certify to the Circuit Court.

For those cases certified to the Circuit Court, the median length of time between the preliminary hearing and the return of a true bill by the grand jury was 20 days (Low = 0 days, High = 95 days). A trial was scheduled to occur 70 days after the grand jury indictment (Low = 6 days, High = 236 days) while the length of time between the grand jury indictment and the actual commencement of trial

was 77 days. The median length of time required by the Circuit Court to process certified cases from the preliminary hearing to disposition was substantially shorter than that found for the Clarke and Frederick County Circuit Courts. The Winchester Circuit Court took a median of 75 days to process non-direct indictments compared to 106.5 days in the Clarke County Circuit Court and 107 days in Frederick County. The shortest period of time required to process these cases in Winchester Circuit Court was six days while the longest period of time was 266 days. Only 8.2% of these cases took longer than 150 days to proceed from preliminary hearing to disposition.

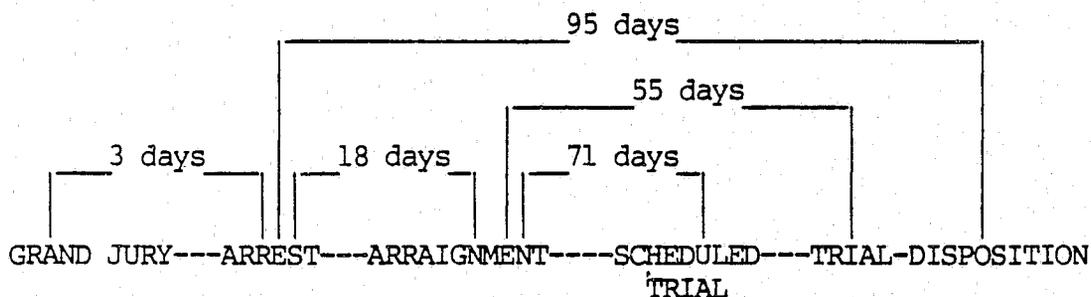
FIGURE 36
 MEDIAN CASE PROCESSING TIMES FOR
 WINCHESTER CITY NON-DIRECT INDICTMENT
 FELONY CASES



As can be seen in Figure 36, the median length of time required to process these 164 cases from arrest to disposition was 105 days. However, the 63 cases disposed in the General District Court distort the actual length of total processing times required to dispose of the non-direct indictment cases. The 63 cases disposed by the General District Court (38.4%) took a median of 57 days to dispose (Low = 5

days, High = 316 days). Of these 63 cases, eight were disposed at arraignment while 55 were disposed at the preliminary hearing. The cases certified to the Circuit Court were under the jurisdiction of the General District Court for a median of 47 days (Low = 18 days, High = 183 days). An additional 75 days were required to process through the Circuit Court. The length of time between arrest and disposition for these cases was 131 days (Low = 33 days, High = 292 days). Less than 20 percent (18.8%) of these cases required six months or more to reach disposition.

FIGURE 37
 MEDIAN CASE PROCESSING TIMES FOR
 WINCHESTER CITY DIRECT INDICTMENT
 FELONY CASES



As can be seen in Figure 37, direct indictment cases are disposed of much more quickly than those cases that proceed through the General District Court and the Circuit Court (95 days vs. 131 days). Cases on direct indictment were brought to arraignment within 18 days (Low = 0 days, High = 312 days). Nine of the 117 direct indictment cases (7.7%) were disposed of at the arraignment hearing. The remaining 108 cases had their trials scheduled to occur 71 days after arraignment (Low = 14 days, High = 287 days). However, the

trial commenced within a median of 55 days for those cases that actually went to trial. The median length of time required to process the 117 direct indictment cases was 95 days (Low = 1 day, High = 424 days). Only nine of these cases (7.7%) required more than six months to dispose.

More than three-quarters (77.6%) of the 281 felons processed by Winchester City courts resulted in a conviction. Only 25 of the 63 cases (39.7%) disposed in the General District Court resulted in a conviction. All 25 of these defendants pled guilty to lesser offenses. Approximately 90 percent (88.5%) of the 218 felony cases disposed in the Circuit Court resulted in a conviction. Of the 193 convictions, 155 (80.3%) were the result of a plea to the original primary offenses at arrest while 25 (13.0%) pled to lesser offenses. Thirty of the 218 cases (13.8%) disposed by the Circuit Court went to trial. Six defendants were acquitted by a jury while one defendant was acquitted at a judge trial. Eleven defendants were convicted by a jury while two defendants were convicted at a judge trial.

4. SCHEDULING AND DELAY FACTORS IN CASE PROCESSING

In a manner similar to misdemeanor detainees, felons detained by the magistrate and able to secure pretrial release before their first court appearance were only detained for short periods of time. Of the 67 felons released before their first court appearance, 43 (64.2%) were able to secure pretrial release on the same day they were detained. Seventeen felons (25.4%) were released on the day after their detention. As discussed in Chapter Four, a large number of these defendants were actually detained for less than a 24-hour

period. The remaining seven defendants (10.4%) were able to secure pretrial release within three to 30 days after detention without benefit of a court appearance. The median length of stay for the 67 felony detainees was 1.0 days while the average length of stay was 2.0 days.

Felons still detained at their first court appearance, similar to misdemeanor detainees, had significantly longer periods of incarceration before being brought to court. Of the 223 felony detainees, only 47 (21.1%) were brought before a judge within a day of detention. Twenty-one (9.4%) were brought before the court on their third day of detention. The remaining 155 felons (69.5%) were detained for periods of four to 90 days before their first appearance in court. Nearly one-third (31.4%) of these felons were detained a week or more before they were brought to court. The median length of stay for the 223 detainees was 5.0 days while the average length of stay was 7.7 days. The median length of time between detention and first court appearance for Clarke County felons was seven days. The median for Frederick County was five days while Winchester City had a median of four days.

Felony cases had delay rates that were significantly higher than the rates found for misdemeanor and non-felony traffic cases. Of the 540 felony cases examined, 324 (60.0%) experienced some form of delay in case processing. The majority of the delays were the result of continuances rather than a failure to appear on the part of the defendant. Only twelve of the 324 delayed cases (3.7%) had a hearing re-scheduled due to a failure to appear. Frederick County had the highest delay rate (66.5%) while Winchester City had the lowest

(55.9%). Clarke County experienced a 60.0% delay rate. Almost one-half (49.7%) of the cases delayed had a hearing re-scheduled more than once.

Of the 235 direct indictment cases, 176 (74.9%) experienced at least one delay in case processing. When adjustments were made for cases with two or more different hearings delayed it was found that 146 of the 235 direct indictment cases (62.1%) involved the re-scheduling of arraignment. Sixty-one of the 235 direct indictment cases (26.0%) had their trials re-scheduled while 21 cases (8.9%) had their sentencing moved to a later date. Of the 146 cases experiencing a continuance of arraignment, 80 (54.7%) were delayed due to counsel being appointed on the original return date and unable to proceed with arraignment at that time.

Of the 305 felony cases initiated in the General District Court, 148 (48.5%) experienced at least one delay in case processing. The hearing most frequently re-scheduled was the preliminary hearing (79 of 305 = 25.9%) while sentencing was the hearing least likely to be re-scheduled (21 of 305 = 6.9%). Thirty-five cases (11.5%) had the arraignment held in the Circuit Court after grand jury indictment re-scheduled. Twenty-nine cases (9.5%) involved a change in the scheduled trial date. Finally, 23 (7.5%) of the arraignments held in the General District Court were re-scheduled. Of these 23 cases, seven (30.0%) were re-scheduled at the request of the newly-appointed counsel.

Unlike misdemeanants and non-felony traffic cases, a high percentage of the felons were unable to hire legal representation and required the services of appointed counsel. Of the 540 felons

examined, 281 (52.7%) had a private attorney appointed while 47 (8.8%) were represented by the Public Defender. The remaining 205 felons (38.5%) were represented by retained counsel. The extent of the Public Defender's involvement is undercounted due to this office only being in existence during the last six months of our examination period. A sample taken during a later time period would likely reveal that the Public Defender's Office is responsible for handling a larger percentage of cases processed in the region. Felony cases processed in Winchester had the highest percentage of cases requiring the appointment of counsel (62.6%) while cases processed in Frederick had the lowest (57.5%). Approximately 61 percent (61.2%) of the felons processed in Clarke required appointment of counsel.

Defendants unable to hire counsel had the appointment made shortly after their arrest. The median length of time between arrest and appointment of counsel was six days (Frederick and Clarke = 7 days, Winchester = 5 days). A little over one-quarter (26.5%) of the arraignments scheduled for these cases were continued to a later date by the newly-appointed counsel. This continuance rate, however, varied greatly between the three jurisdictions. Almost one-third (31.1%) of the arraignments in Frederick County appointed counsel cases required the re-scheduling of arraignment while only 18.4% of such cases in Clarke County required re-scheduling. A little over one-quarter (26.7%) of the arraignments in the Winchester City appointed counsel cases required the re-scheduling of arraignment.

The final area of counsel impact on case processing which was examined was the length of time required to process cases for each of the two types of legal representation. Contrary to our experience in

other jurisdictions, no appreciable differences were found between the time required to process cases from arrest to disposition when defendants who retained counsel were compared to those requiring appointed legal assistance. The median length of time required to process cases with retained counsel was 106 days compared to 103 days for those defendants represented by private appointed counsel or the Public Defender. In addition, no significant differences existed between the percentage of cases requiring longer than six months to dispose (Retained = 16.2%, Appointed = 12.8%). Finally, both types of legal representation had comparable continuance rates (Retained = 58.5%, Appointed = 64.5%).

5. PROCESSING OF FELONS NEVER RELEASED PRETRIAL

This portion of Section C will concentrate on the case processing of those felons able to obtain pretrial release versus those detained throughout the pretrial process. In order to analyze the impact of General District Court processing, felony cases initiated in the lower courts are presented separately from those felony cases under a direct indictment.

Table 34 presents a comparison of the median time intervals between the major hearings conducted in both the General District and Circuit Courts during the processing of a non-direct felony indictment case. As can be seen at the bottom of Table 34, the overall case processing times from arrest to disposition are shorter for detained felons processed in Frederick and Winchester than the times found for felons released pretrial in these localities. The most expeditious processing was found in Winchester. Detained felons under this

TABLE 34
COMPARISON OF MEDIAN CASE PROCESSING
TIMES FOR NON-DIRECT INDICIMENTS
BY LOCALITY AND DETENTION STATUS

| | | CLARKE | | FREDERICK | | WINCHESTER | |
|------------------------|-------------------------|--------|----------|-----------|----------|------------|----------|
| TIME INTERVAL | | REL. | NOT REL. | REL. | NOT REL. | REL. | NOT REL. |
| GENERAL DISTRICT COURT | ARREST-ARRAIGNMENT | 8 | 7 | 13.5 | 4.5 | 17 | 5 |
| | ARREST-COUNSEL | 5 | 7.5 | 17 | 5 | 14 | 5 |
| | ARRAIGN.-SCH. PRELIM. | 28 | 21 | 28 | 21 | 35 | 28 |
| | ARREST-PRELIMINARY | 43 | 29 | 56.5 | 27.5 | 60 | 35 |
| CIRCUIT COURT | PRELIMINARY-GRAND JURY | 26 | 41 | 7 | 23 | 20 | 14 |
| | GRAND JURY-SCH. TRIAL | 69 | 52.5 | 95 | 64 | 76 | 41.5 |
| | PRELIMINARY-DISPOSITION | 109 | 104 | 109.5 | 90 | 83 | 51.5 |
| ARREST-DISPOSITION | | 75 | 131 | 135.5 | 121 | 112.5 | 84.5 |

locality's jurisdiction had the shortest arrest to disposition times found within the region (84.5 days). Winchester also had the largest difference between the overall case processing of detained felons versus those released pretrial (28 days).

Unlike Winchester and Frederick, detained felons processed in Clarke County had a substantially longer median arrest to disposition time interval than felons released pretrial (131 days vs. 75 days). One major reason for this finding is that over one-half (51.3%) of the felons released pretrial in Clarke County had their cases disposed of by the General District Court compared to only 16.7% of the felons detained pretrial. This greater lower court disposition rate of released felons would serve to significantly lower their arrest to disposition times relative to felons detained throughout the pretrial process.

A better way to understand differential case processing times would be to focus on the General District Courts separately from the

Circuit Courts. As can be seen in Table 34, all three General District Courts process detained felons more quickly than those released pretrial. The Frederick General District Court had the shortest arrest to preliminary hearing processing time found within the region (27.5 days) while the Winchester General District Court had the longest (35 days). One reason for Winchester's longer arrest to preliminary hearing processing time is that this court schedules the preliminary hearing further into the future than the Frederick or Clarke County General District Courts. Frederick County also had the greatest difference between the processing of detained versus released felons (29 days) while Clarke County had the least (14 days).

A substantially different picture emerges when the Circuit Courts are examined. Although all three courts expedite detention cases, the Winchester Circuit Court disposes of detention cases much more quickly than either of the other circuit courts within the region. Winchester's median preliminary hearing to disposition processing time was 51.5 days compared to 90 days in Frederick and 104 days in Clarke. The Winchester Circuit Court also had the greatest difference between the days required to process detained felons versus released felons (31.5 days). The differences between the days required to process detained versus released felons was 19 days in Frederick and only five days in Clarke.

There appear to be several reasons to account for the rather rapid Circuit Court case processing times in Winchester relative to the other two jurisdictions. The Winchester Circuit Court was able to obtain a true bill more quickly after a case has been certified by the General District Court than either of the other two jurisdictions.

The median preliminary hearing to grand jury hearing time interval was 14 days in Winchester compared to 23 days in Frederick and 41 days in Clarke. Secondly, the Winchester Circuit Court was able to schedule trials sooner than either Clarke or Frederick County. The median grand jury hearing to scheduled trial time interval was 41.5 days in Winchester compared to 52.5 days in Clarke and 64 days in Frederick. Thirdly, detention cases processed in Clarke County had substantially higher continuance rates than those processed in the other two jurisdictions. Detention cases in Clarke had a 55.6% continuance rate compared to 31.8% in Winchester and 31.2% in Frederick. Of the continuances in Clarke County detention cases, 92.8% occurred in the Clarke County Circuit Court (Frederick = 40.0%, Winchester = 42.1%). Finally, detention cases were most likely to go to trial in Clarke County and Frederick County (Clarke = 16.7%, Frederick = 12.5%, Winchester = 6.8%).

As can be seen in Table 35, all three courts appear to expedite non-direct indictment detention cases. However, the Winchester Circuit Court disposed of these cases much more quickly than either of the the other two jurisdictions. Winchester's median arrest to disposition case processing time for detention cases was 68 days compared to 88 days in Frederick and 94.5 days in Clarke. The Winchester Circuit Court also had the greatest difference between the days required to process detained felons under direct indictment versus those released pretrial (41 days). The differences between the days required to process detained versus released felons was 20 days in Frederick and only 9.5 days in Clarke.

Unlike non-direct indictment cases, the continuance rate does

TABLE 35
 COMPARISON OF MEDIAN CASE PROCESSING
 TIMES FOR DIRECT INDICTMENTS
 BY LOCALITY AND DETENTION STATUS

| TIME INTERVAL | CLARKE | | FREDERICK | | WINCHESTER | |
|------------------------|--------|----------|-----------|----------|------------|----------|
| | REL. | NOT REL. | REL. | NOT REL. | REL. | NOT REL. |
| ARREST-ARRAIGNMENT | 41 | 36.5 | 23 | 25 | 18 | 15 |
| ARREST-COUNSEL | 20 | 18 | 10 | 6.5 | 5 | 5 |
| ARRAIGNMENT-SCH. TRIAL | 70 | 42 | 79 | 57 | 83.5 | 63.5 |
| ARREST-DISPOSITION | 104 | 94.5 | 108 | 88 | 109 | 68 |

not appear to offer an explanation for the different case processing times required by the three jurisdictions. Clarke County detention cases took longer to dispose of but also had the lowest continuance rate found within the region (50.0%). The continuance rate of detention cases was 69.2% in Frederick and 72.2% in Winchester. A more likely explanation for the differences in the overall case processing times between the jurisdictions involves the arraignment hearing. The Winchester Circuit Court was able to conduct the arraignment hearing within a median of 15 days from arrest compared to 25 days in Frederick and 36.5 days in Clarke. In addition, 12.5% of the detained felons under direct indictment in Clarke went to trial compared to 2.8% in Winchester. None of these felons went to trial in Frederick.

D. SENTENCING PRACTICES

1. CONVICTION RATES

Defendants arrested for traffic offenses other than habitual offender and hit and run with a personal injury had the highest

conviction rates within the region. Of the 281 misdemeanor traffic arrests examined, 260 (92.5%) resulted in the conviction of the defendant. The most common traffic arrest made in the region was driving while intoxicated. Of the 254 DWI arrests examined, 235 (92.5%) resulted in a conviction. However, 22 of these convictions (9.4%) resulted in the defendant being convicted of charges other than the original primary offense at arrest. Twenty-one of these cases involved the reduction of the original DWI charge to reckless driving.

Defendants arrested on misdemeanor charges had the lowest conviction rates found within the region. Of the 367 misdemeanor arrests examined, 209 (56.9%) resulted in a conviction. Only 13 of the convictions (3.5%) involved a conviction for a lesser or different offense from the primary offense at arrest. Of the more common arrest offenses, the highest conviction rates were found for disorderly conduct (92.3%) and weapon offenses (90.9%). The lowest conviction rates were found for failure to appear (15.2%) and assault cases (50.4%). Of the remaining major offense categories, defendants arrested for resisting arrest had the third highest conviction rate (88.9%). However, 11.1% of these convictions were for lesser offenses. Defendants arrested for petit larceny had a 77.1% conviction rate while defendants arrested for vandalism had a 66.7% conviction rate. Defendants arrested for trespassing had a 63.6% conviction rate.

The conviction rate of defendants arrested for felony offenses was much higher than the rate of misdemeanants. Of the 540 felony offenses examined, 434 (80.3%) resulted in a conviction. However, unlike misdemeanants, a much higher percentage of the felons pled to

lesser offenses (20.7%) Eighty-five of the 540 felony cases (15.7%) consisted of the defendant pleading to or being found guilty of a misdemeanor offense.

Of the more commonly occurring felony offense categories, the highest conviction rate was found in burglary cases (89.3%). Approximately eleven percent (10.8%) of the burglary cases resulted in a conviction for a lesser offense. The next highest conviction rate was found for drug offenses (88.2%). The most serious drug offense, sale of cocaine or other Schedule II drug, had a 91.8% conviction rate. The lowest conviction rate was found in felonious assault cases (68.6%). In addition to this, only 28.6% of the assault cases resulted in a conviction for the primary offense at arrest. The bulk of these convictions were for the lesser misdemeanor offense of simple assault. The remaining commonly occurring felony offense categories had conviction rates of approximately 75 percent (Grand Larceny = 74.8%, Sexual Battery = 73.3%, Fraud = 73.2%, Habitual Offender = 73.0%). Grand larceny cases experienced a high percentage of convictions for lesser offenses. Approximately 28 percent (28.1%) of these cases resulted in a conviction for the lesser misdemeanor offense of petit larceny.

2. TYPES OF SENTENCES

A total of 263 defendants were convicted and sentenced for non-felony traffic offenses. The most common primary punishment given to these defendants was a monetary sanction (fine and/or court cost). Of the 263 cases, 212 (80.6%) had a monetary sanction as the primary form of punishment. However, each of the 263 defendants convicted of a

traffic offense had some form of monetary sanction levied against them. The median amount of fines and/or court costs imposed was \$55 while the average was \$175. The lowest amount levied was \$20 while the highest amount was \$2,000. The most common sentence given to DWI defendants, particularly first-time offenders, was the imposition of a jail sentence coupled with a fine and court costs. In most cases the jail sentence and the fine were suspended with the defendant required to participate in the Alcohol Safety Action Program.

The remaining primary sentence imposed on traffic offenders was an incarcerative sentence in the local jail. Of the 263 traffic convictions, 51 (19.4%) involved the imposition of a jail sentence. The median effective jail sentence (minus suspended portions) was four days while the average sentence was 39 days. The shortest jail sentence imposed was one day while the lengthiest sentence was 365 days. Forty-nine of the 51 jail sentences were given to defendants convicted of DWI. Two of these defendants were also given a probationary period to begin upon their release from jail.

Table 36 presents a summary of the primary sentences imposed on the 209 defendants arrested for and convicted of misdemeanors plus the 85 felons who pled to or were found guilty of misdemeanors. As can be seen in the table, the most commonly imposed punishment in misdemeanor cases is a monetary sanction (73.5%). Although the remaining misdemeanants received other types of primary sanctions, fines and court costs were also imposed as part of their sentences. The median monetary sanction imposed on the 294 misdemeanor convictions was \$121 while the average amount was \$180. Monetary sanctions ranged from a low of \$15 to a high of \$2090. Although not included in the amount of

the monetary sanctions imposed, 38 (12.9%) of the 294 convicted misdemeanants were also required to make restitution to their victim(s). Only two of the 294 convicted misdemeanants were required to perform community services work as a part of their sentences.

Probation was very rarely used as a primary sanction. Only ten (3.4%) of the 294 misdemeanor convictions had probation as the primary sanction. However, an additional sixteen misdemeanants sentenced to jail (8.8%) were also given a probationary term to commence upon their release from jail (split sentence). The median term given to the 26 total probationers was twelve months while the average probationary period was 36 months. All but three of the 26 defendants given probation terms were originally arrested on felony charges.

TABLE 36
PRIMARY SANCTIONS IMPOSED ON
DEFENDANTS CONVICTED OF MISDEMEANORS

| MOST FREQUENT OFFENSES | NO. OF CONVICTIONS | PRIMARY SANCTIONS | | |
|---------------------------|-----------------------|-------------------|-----------|------------|
| | | MONETARY | PROBATION | JAIL |
| PETIT LARCENY | 70 | 42 (60.0%) | 4 (5.7%) | 24 (34.3%) |
| ASSAULT | 65 | 45 (69.2%) | 2 (3.1%) | 18 (27.7%) |
| RESIST ARREST | 28 | 28 (100%) | - | - |
| TRESPASS | 23 | 18 (78.3%) | 1 (4.3%) | 4 (17.4%) |
| VANDALISM | 23 | 16 (69.6%) | 1 (4.3%) | 6 (26.1%) |
| DISORDERLY CONDUCT | 14 | 14 (100%) | - | - |
| FAILURE TO APPEAR | 12 | 11 (91.7%) | - | 1 (8.3%) |
| TOTAL MISDEMEANORS | 294 | 216 (73.5%) | 10 (3.4%) | 68 (23.1%) |

A little less than one-quarter (23.1%) of the convicted misdemeanants had a jail term imposed as their primary sentence. However, significant differences were found between the percentage of

jail sentences imposed for misdemeanants originally arrested for misdemeanor offenses versus those originally arrested for felony offenses. Twenty-eight of the 209 defendants (13.4%) arrested and convicted of misdemeanors had a jail term as their primary sentence. In comparison, 40 of the 85 defendants (43.0%) arrested on felony offenses but convicted of misdemeanors had a jail term as their primary sentence. The median sentence length for the 68 total jail sentences imposed was 33.5 days while the average jail term was 75.7 days. Jail sentences imposed ranged from a low of one day to a high of 365 days. Four of the 68 jail sentences were equal to the amount of time served awaiting trial while one was a sentence to be served on weekends.

Table 36 also displays primary sentence data for several of the largest offense categories at conviction. As can be seen in this table, the frequency of incarceration varied significantly from offense to offense. All of the defendants convicted of resisting arrest and disorderly conduct were given a monetary sanction as the primary sentence. Defendants convicted of petit larceny were the group of misdemeanants most likely to be sentenced to jail (34.3%). Approximately 28 percent (27.7%) of the defendants convicted of assault were given a jail sentence as were 26.1% of the defendants convicted of vandalism charges.

Several interesting patterns emerged when misdemeanants were examined according to whether they were convicted of a personal, property, or victimless offense. Defendants convicted of personal and property offenses had similar median and mean monetary sanctions imposed. Defendants convicted of personal offenses had a median of

\$130 while property offenses had a median monetary sanction of \$128. The average monetary sanction levied against defendants convicted of personal offenses was \$194 compared to the average \$215 levied against property offenders. Defendants convicted of victimless/public order offenses had the lowest monetary sanctions imposed. These defendants had a median of \$85 and an average monetary sanction of \$159.

Defendants convicted of victimless/public order offenses were most likely to have a probationary term imposed as a result of a conviction (12.8%) while defendants convicted of personal offenses were least likely to receive probation (5.9%). Property offenders had probation imposed in 8.9% of their convictions. All three offender groups received a median probationary term of twelve months. Slight differences were found in the average probationary terms imposed. Property offenses had an average probationary term of 20 months, victimless/public order offenders received 18.1 months, and defendants convicted of personal offenses received 16 months.

Property offenders were most likely to receive jail terms (27.6%) while victimless/public order offenders were least likely to be incarcerated (17.2%). Approximately 22 percent (21.8%) of the defendants convicted of personal offenses received a jail sentence. Although least likely to be incarcerated, defendants incarcerated for victimless/public order offenses had the longest jail sentences imposed (Median = 75 days, Mean = 83.8 days). Defendants incarcerated for personal and property offenses had identical median jail sentences (30 days) and similar average jail terms (Personal = 73.4 days, Property = 74.4 days).

Table 37 presents a summary of the primary sanctions imposed on

the 347 defendants arrested for and convicted of felony offenses. Unlike misdemeanants, the primary sentence utilized for felons was some form of incarceration. Of the 347 felony convictions, 280 (80.7%) were sentenced to jail or prison. The percentage increased to 88.8% when defendants incarcerated to await placement in the Community Diversion Incentive Program are included. A little over one-third (34.0%) of the 347 convicted felons were sentenced to jail. The median jail sentence was 150 days while the average sentence was 216.6

TABLE 37
PRIMARY SANCTIONS IMPOSED ON
DEFENDANTS CONVICTED OF FELONIES

| MOST FREQUENT OFFENSE | NO. OF CONVICTIONS | PRIMARY SANCTION | | | | |
|--------------------------|-----------------------|------------------|-----------|----------|------------|------------|
| | | MONETARY | PROBATION | CDI | JAIL | PRISON |
| DRUGS | 116 | 3(2.6%) | 9(7.8%) | 11(9.5%) | 24(20.7%) | 69(59.5%) |
| GRAND LARCENY | 72 | 1(1.4%) | 8(11.1%) | 5(6.9%) | 36(50.0%) | 22(30.6%) |
| BURGLARY | 51 | - | 2(3.9%) | 7(13.7%) | 15(29.4%) | 27(52.9%) |
| FRAUD | 42 | - | 8(19.0%) | 5(11.9%) | 20(47.6%) | 9(21.4%) |
| SERIOUS VIOLENT | 23 | 1(4.3%) | 1(4.3%) | - | 2(8.7%) | 19(82.6%) |
| HABITUAL OFFENDER | 18 | - | - | - | 11(61.1%) | 7(38.9%) |
| ASSAULT | 12 | 1(8.3%) | 1(8.3%) | - | 6(50.0%) | 4(33.3%) |
| TOTAL FELONIES | 347 | 7(2.0%) | 32(9.2%) | 28(8.1%) | 118(34.0%) | 162(46.7%) |

days. Jail sentences ranged from one day to 730 days. Two of the jail sentences imposed were to be served on weekends and one resulted in credit for time served pretrial. A little less than one-half of the convicted felons (46.7%) were sentenced to prison. The median prison sentence was for 48 months while the average prison sentence was for 69.7 months. Not included in these statistics were the two felons given life sentences. Excluding the life terms, prison

sentences imposed range from five months to 720 months (60 years).

The next most common primary sanction utilized for felons was some form of community supervision. Of the 347 convictions, 60 (17.3%) had probation or CDI imposed as the primary sanction. Approximately nine percent (9.1%) of the convictions resulted in a probation sentence while 8.1% were placed in the CDI program. However, a total of 272 (78.4%) probation or CDI sentences were imposed. The median probation/CDI term was 36 months while the average term was 44.1 months. Probation/CDI terms range from six months to 144 months (12 years).

Monetary sanctions, as the primary sentence, are rarely utilized in felony convictions. Only seven felons (2.0%) had a monetary sanction as the primary sentence. However, all convicted felons had some form of monetary sanction imposed as part of their sentences. The median monetary sanction imposed was \$475 while the average monetary sanction was \$868. Monetary sanctions ranged from \$51 to \$22,414. Although not tabulated in the amount of monetary sanction imposed, 116 (33.4%) of the convicted felons were required to make restitution to their victim(s). Only ten of the 347 convicted felons (2.9%) were required to perform community service work as part of their sentences.

Table 37 also displays primary sentence data for several of the largest felony offense categories at conviction. All of the defendants convicted of driving after being declared an habitual offender, due to the minimum mandatory statute, were given an incarcerative sentence. Defendants convicted of serious violent offenses (murder, sexual battery, and robbery) had the highest

percentage of incarceration (91.3%). Defendants convicted of fraud were least likely to receive an incarcerative sentence (69.0%). The remaining offense categories in the table displayed similar incarceration rates. Defendants convicted of being habitual offenders were most likely to be given a jail sentence (61.1%) while defendants convicted of serious violent offenses were least likely to be given a jail sentence (8.7%). On the other hand, defendants convicted of serious violent offenses were most likely to be given a prison sentence (82.6%). Defendants convicted of fraud were least likely to be given a prison sentence (21.4%).

Significant differences were found when felons were examined according to whether they were convicted of personal, property, or drug offenses. Felons convicted of personal offenses had the highest percentage of incarcerative sentences (86.4%). A little over one-quarter (27.3%) of these defendants were sentenced to jail while 59.1% were sentenced to prison. Approximately 80 percent (80.2%) of the felons convicted of drug offenses were given an incarcerative sentence (Jail = 20.7%, Prison = 59.5%). Felons convicted of property offenses had the lowest percentage of incarcerative sentences (77.6%). Approximately 41 percent (41.2%) of these defendants received a jail sentence while 35.2% received a prison sentence.

Significant differences were also found in the length of the incarcerative sentences given to each of these three types of offense categories. Defendants convicted of personal offenses and sentenced to prison received the longest sentences (Median = 72 months, Mean = 128 months) while those convicted of felony property offenses received the shortest prison sentences (Median = 36 months, Mean = 37 months).

Defendants convicted of drug offenses and sentenced to prison received a median sentence length of 60 months with an average sentence of 68.4 months. Defendants convicted of drug offenses and sentenced to jail, on the other hand, received the longest jail sentences (Median = 240 days, Mean = 227.7 days). As was the case with prison sentences, property offenders also received the shortest jail sentences (Median = 180 days, Mean = 191.6 days). Felons convicted of personal offenses and sentenced to jail received a median jail sentence of 225 days with an average sentence of 206.8 days.

The percentage of defendants receiving probationary/CDI terms were comparable for drug and property offenders (Drug = 87.1%, Property = 84.2%). Defendants convicted of personal offenses received probationary terms in 65.9% of the convictions. All three groups varied significantly in terms of the length of the probationary periods imposed. Although less likely to receive a probation sentence, defendants convicted of personal offenses received the longest probationary terms (Median = 60 months, Mean = 68.3 months). Defendants convicted of drug offenses received the second longest terms of probation (Median = 48 months, Mean = 47.5 months). Property offenders received the shortest probation periods (Median = 30 months, Mean = 36.1 months).

Although all convicted felons received a monetary sanction, significant differences were found in the amounts levied against the three offense types. Defendants convicted of drug offenses had the highest amounts imposed (Median = \$804, Mean = \$1,217). Defendants convicted of personal offenses had the lowest median amounts imposed (\$229.50) but also had the highest average monetary amounts imposed

(\$1,478). Property offenders were assessed a median of \$417 with an average amount of \$504 assessed.

3. TIME SERVED POST-SENTENCE

This section of the chapter reports on the actual time served in the local jail system for those defendants sentenced to jail, prison, or incarcerated prior to placement in the CDI program. The data reported in this section measures the length of time from sentence commitment to sentence release. We were unable to differentiate between time served in a jail setting versus time served in the Work Release Center. Therefore, the time served data presented herein reflect total post-sentence detention regardless of the particular facility for housing. In addition, jail sentences of "credit for time served pretrial" are excluded from the analysis. The data only reflect instances where the defendant was incarcerated beyond the date of sentencing.

As stated in a previous section, defendants convicted of a traffic offense and sentenced to jail were given a median jail term of four days with an average sentence of 39 days. The actual time served post-sentence, however, was much shorter when reductions are made due to credit for pretrial detention periods and good time earned. The median length of time served post-sentence was three days while the average time served was 19.5 days. Actual time served post-sentence ranged from one day to 225 days.

Misdemeanants also served jail terms that were substantially shorter than the original sentence length. The median sentence given to defendants convicted of misdemeanors was 33.5 days while the

average was 75.7 days. In contrast, the median length of time served was 18 days while the average post-sentence time served was 42.1 days. Two defendants were released from jail on the day of sentencing while the longest post-sentence incarceration period was 226 days. Two defendants (3.2%) were released to other jurisdictions while three defendants (4.7%) were transferred to the state prison system to serve sentence for other charges. The vast majority (92.2%) of the incarcerated misdemeanants were released to the community due to the expiration of their sentences.

Defendants convicted of felonies and detained post-sentence had a median length of stay of 82 days while the average length of stay was 90.4 days. These statistics, however, distort the post-sentence confinement period because several different types of felons were incarcerated post-sentence. One group of felons were those given jail sentences. These felons had a median post-sentence length of stay of 84 days while the average was 101.2 days. These felons were originally given a median jail sentence of 150 days with an average sentence of 216.6 days. Length of stay ranged from release on the day of sentencing up to 299 days. As was the case with misdemeanants, the vast majority (88.9%) were released to the community upon sentence expiration. Seven felons (6.0%) were transferred to the state prison system to serve sentences for other charges. Six felons (5.1%) were released to other jurisdictions.

The second group of convicted felons were those sentenced to the CDI program. Twenty-seven of the 28 felons sentenced to CDI were housed in the jail or the Work Release Center to await placement in the CDI program. The median length of stay for these felons was 80.5

days while the average length of stay was 74.7 days. Felons awaiting CDI placement had lengths of stay ranging from six days to 175 days.

The final group of felons were those sentenced to prison. However, not all of the felons sentenced to prison were released to the custody of the state prison system. Of the 162 felons sentenced to prison, 25 (15.4%) actually served their sentences in the local jail system. An additional nine felons (5.5%) were released to other jurisdictions or deported. Felons who served their prison sentences in the local jail system had a median length of stay of 133 days while the average length of stay was 140.2 days. These felons had lengths of stay that ranged from 86 days to 207 days. The remaining 128 felons (79.0%) were transferred to the state prison system. The median length of post-sentence stay for these felons was 65.5 days while the average length of stay was 78.5 days. These felons had a length of stay that ranged from one day to 277 days.

Convicted felons consumed a total of 23,773 post-sentence jail days. This total, however, undercounts their actual post-sentence impact due to the rather high number of felons whose release date could not be ascertained. Of the 306 sentence commitments, we were unable to calculate the release date for 43 sentenced felons (14.0%). According to the information available, felons sentenced and transferred to prison consumed 9,582 (40.3%) post-sentence jail days. The second largest consumer of felony post-sentence jail days were those sentenced to jail. These felons consumed 8,805 jail days (37.0%). Felons sentenced to prison who served their sentences locally consumed 2,805 (11.8%) post-sentence jail days. Felons awaiting CDI placement consumed 1,942 jail days (8.2%).

4. POST-SENTENCE DETENTIONS AND JAIL DAYS CONSUMED

This section provides an assessment of the annual commitments and jail days consumed by each of the three localities. The section also incorporates data presented in Chapter Four concerning each locality's annual pretrial commitments and their jail days consumed. As was the case in Chapter Four, post-sentence detentions and jail days consumed were weighted to compensate for the various time periods of examination for specific localities or offense types. Therefore, the reader must be cautioned that the data presented herein are only estimates. In addition, post-sentence jail days are undercounted due to the fact that we were unable to ascertain release dates for 14.0% of the post-sentence commitments (Frederick = 17.3%, Clarke = 13.3%, Winchester = 11.9%).

TABLE 38
DISTRIBUTION OF ANNUAL PRETRIAL AND
POST-SENTENCE COMMITMENTS BY LOCALITY

| | PRETRIAL | | POST-SENTENCE | | TOTALS | |
|------------|-----------------|---------|-----------------|---------|-----------------|---------|
| | NO. DETAINED | PERCENT | NO. DETAINED | PERCENT | NO. DETAINED | PERCENT |
| CLARKE | 60 | 9.0% | 44 | 11.9% | 104 | 10.0% |
| FREDERICK | 200 | 30.1% | 127 | 34.2% | 327 | 31.6% |
| WINCHESTER | 405 | 60.9% | 200 | 53.9% | 605 | 58.4% |
| TOTALS | 665 | 64.2% | 371 | 35.8% | 1036 | - |

Table 38 presents the annual pretrial and post-sentence commitments for each of the three localities. As can be seen in the

table, the City of Winchester is responsible for over one-half (53.9%) of the post-sentence commitments within the region while Frederick County is responsible for a little over one-third (34.2%). Clarke County is only responsible for 11.9% of the post-sentence commitments. When total commitments are considered, the City of Winchester is responsible for almost 60 percent of the jail commitments. Frederick County accounts for a little less than one-third of the total commitments to jail (31.6%) while Clarke County accounts for 10.0%.

Post-sentence commitments, as a percentage of total commitments, varied between the localities. Clarke County had the highest percentage of post-sentence commitments relative to its total commitments. Forty-four of the 104 jail commitments (42.3%) made by Clarke County were for incarcerative sentences. Post-sentence commitments comprised 38.8% of Frederick County's total commitments while one-third of Winchester's total commitments were for incarcerative sentences. On a regional basis, incarcerative sentences comprised 35.8% of the total commitments to jail.

Table 39 presents the total annual pretrial and post-sentence jail days consumed for each of the three localities. Similar to post-sentence commitment data, the City of Winchester utilized over one-half (52.2%) of the post-sentence jail days utilized within the region. Frederick County utilized 37.0% and Clarke County utilized 10.8% of the post-sentence jail days consumed. When total jail days consumed are considered, the City of Winchester is responsible for utilizing 50.2% of the jail days consumed within the region. Frederick County consumes a little over one-third (35.8%) while Clarke

TABLE 39
DISTRIBUTION OF ANNUAL PRETRIAL AND
POST-SENTENCE JAIL DAYS CONSUMED BY LOCALITY

| | PRETRIAL | | POST-SENTENCE | | TOTALS | |
|------------|--------------|---------|---------------|---------|--------------|---------|
| | JAIL DAYS | PERCENT | JAIL DAYS | PERCENT | JAIL DAYS | PERCENT |
| CLARKE | 2,619 | 18.7% | 2,200 | 10.8% | 4,819 | 14.0% |
| FREDERICK | 4,754 | 34.0% | 7,559 | 37.0% | 12,313 | 35.8% |
| WINCHESTER | 6,607 | 47.3% | 10,669 | 52.2% | 17,276 | 50.2% |
| TOTALS | 13,980 | 40.6% | 20,428 | 59.4% | 34,408 | - |

County accounts for 14.0%.

Unlike post-sentence commitments, Frederick County and the City of Winchester had almost identical percentages of post-sentence jail days consumed relative to their total jail days consumed.

Approximately 62 percent of the jail days consumed by each of these localities were for defendants detained for incarcerative sentences (Winchester = 61.8%, Frederick = 61.4%). Post-sentence jail days consumed by Clarke County defendants was substantially lower.

Approximately 46 percent (45.6%) of the total jail days consumed by Clarke County inmates were consumed by those serving sentences. On a regional basis, 59.4% of the jail days consumed were utilized for detaining sentenced offenders.

E. CONCLUSIONS

This chapter focused on the judicial processing of offenders by each of the courts operating within the region. The chapter provided an overview for each of the courts that discussed the types of offenses processed, methods of disposition, and case processing times. A separate section briefly

discussed scheduling practices and "delays" in case processing. A comparison was also provided between the case processing of defendants released pretrial versus those unable to secure pretrial release. Finally, sentencing practices were examined and included an analysis of the impact incarcerative sentences had on the jail.

GENERAL DISTRICT COURTS

CASELOAD DISTRIBUTION

- The Winchester City General District Court was responsible for processing the majority of non-felony traffic arrests and misdemeanor arrests made within the region. On an annualized basis, the Winchester City General District Court processed 66.7% of the misdemeanor arrests and 51.4% of the non-felony traffic arrests made within the region.
- The Frederick County General District Court was responsible for handling 21.3% of the misdemeanor arrests and 40.7% of the non-felony traffic arrests made within the region.
- The Clarke County General District Court only processed 5.0% of the misdemeanor arrests and 7.9% of the non-felony traffic arrests made within the region.
- The Juvenile and Domestic Relations Court only processed 7.0% of the adult misdemeanor arrests made within the region. Almost one-half (47.6%) of the misdemeanor arrests handled by the J&DR court were made

in the City of Winchester. Frederick County accounted for 28.0% while Clarke County accounted for 24.4% of this court's caseload of adult misdemeanor arrests.

TYPES OF OFFENSES PROCESSED

- Almost all of the non-felony traffic arrests handled by the General District Courts were for the offense of driving while intoxicated. DWI arrests accounted for over 90 percent of the non-felony traffic arrests processed by the Winchester (97.8%) and Clarke General District Courts (95.1%). DWI arrests comprised 79.2% of the non-felony traffic arrests processed by the Frederick General District Court. Arrests for driving on a suspended/revoked license comprised 17.9% of the traffic arrests processed by this court.
- The General District Courts demonstrated much more diversity in terms of the types of misdemeanor arrests which comprised the bulk of their caseloads. Failure to appear was the most common offense processed by Frederick (41.9%) and Winchester General District Courts (25.8%). For Frederick County, over one-half of the arrests processed were for the offenses of failure to appear and resisting arrest. Over one-half of the misdemeanor arrests processed by Winchester were for the offenses of failure to appear, petit larceny, and simple assault. The most common misdemeanor arrests processed by the Clarke County General District Court were for the offense of simple assault. Three-quarters of the arrests processed by the Juvenile and Domestic Relations Court were for the offense of simple assault.

CASE PROCESSING TIME FOR NON-FELONY TRAFFIC ARRESTS

- Each of the three jurisdictions exhibited similar arrest to disposition processing times for non-felony traffic arrests. The longest case processing times were found in Clarke County. The median arrest to disposition interval for this court was 46 days. The shortest interval was found in Frederick County (40 days). The median length of time required to dispose of non-felony traffic arrests in Winchester was 44.5 days.
- Non-felony traffic cases processed by Frederick County were more likely to be disposed of at arraignment. Almost three-quarters (72.6%) of this court's non-felony cases terminated at arraignment compared to 59.7% in Winchester and 54.0% in Clarke County.
- For those cases disposed of at arraignment, Frederick County required a median of 38 days for this hearing to occur. The median length of time between arrest and arraignment/disposition in Winchester was 32 days while the median in Clarke County was 24 days.
- For those cases requiring processing beyond arraignment, Clarke Court required 41 days to conduct the arraignment hearing while Frederick County required 28 days and Winchester required 26 days. Clarke County scheduled the trial a median of 35 days after arraignment while both Frederick and Winchester scheduled the trial for 41 days after arraignment. Despite these differences, the three courts had similar arrest to disposition times for those cases processed beyond arraignment (Frederick=76.5 days, Clarke & Winchester=75 days).

CASE PROCESSING TIME FOR MISDEMEANOR ARRESTS

- Unlike non-felony traffic cases, greater variations were found in the arrest to disposition times required by each of the courts to process misdemeanor arrests. The longest processing times were found in the Juvenile and Domestic Relations Court (40.5 days) and the Clarke County General District Court (36 days). The Frederick County General District Court took 27.5 days while the Winchester General District Court took 26.5 days to process misdemeanor arrests.
- The Winchester General District Court had the highest percentage of cases disposed of at arraignment (68.0%). Frederick County disposed 61.3% of the misdemeanor arrests at arraignment while Clarke County disposed of 59.0%. The Juvenile and Domestic Relations Court only disposed 39.0% of the misdemeanor arrests at arraignment. Well over one-half (62.5%) of the J&DR cases disposed of at arraignment had the charge dropped.
- For those cases disposed of at arraignment, Clarke County required a median of 38.5 days to bring the defendant to arraignment and disposition. The other three courts disposed of these cases much sooner (Winchester=18 days, J&DR Court=19 days, Frederick=20.5 days).
- On the other hand, Clarke County defendants who pled not guilty at arraignment had this hearing conducted within a median of 13.5 days. The other three courts required slightly longer time periods to hold the arraignment hearing (J&DR Court=17 days, Winchester & Frederick=18 days).

- The Frederick County General District Court was able to schedule trials a median of 28 days after arraignment. The J&DR Court scheduled trials to occur 33 days after arraignment while the Clarke & Winchester General District Courts required 36 days.
- Despite these differences, the four courts had relatively similar arrest to disposition processing times for those misdemeanants who pled not guilty at arraignment. The shortest arrest to disposition time was found in Winchester (57.5 days) while the longest was found in Frederick County (64.5 days). The J&DR Court took 62 days to dispose of misdemeanants who pled not guilty at arraignment while Clarke County took 61 days.

OTHER CASE PROCESSING FINDINGS

- Approximately 90 percent of the non-felony traffic arrests resulted in a conviction. The highest conviction rate was found in Winchester (94.0%) while the lowest was found in Frederick County (90.6%). Clarke County had a 92.7% conviction rate for non-felony traffic arrests.
- Misdemeanor cases were much less likely to result in a conviction. The highest conviction rate for misdemeanor cases was found in Winchester (60.8%) while the lowest was found in Clarke County (44.8%). The Frederick County General District Court had a 56.4% conviction rate while the J&DR Court had a 52.4% conviction rate. It appears that simple assault cases, particularly those domestic in nature, are the least likely cases to result in a conviction.

- The most common method of disposition was a guilty plea by the defendant. The holding of a formal trial was an infrequent phenomenon in the processing of non-felony traffic and misdemeanor cases. Approximately 20 percent (19.3%) of the traffic and misdemeanor cases processed within the region went to trial. The percentage of cases actually going to trial drops to 10.8% when cases tried in absentia are excluded. The Juvenile and Domestic Relations Court had the highest percentage of cases going to trial (20.7%) while Winchester had the lowest (8.8%). The Frederick and Clarke County General District Courts both had 10 percent of their cases go to trial.
- Only 7.3% of the non-felony traffic and misdemeanor defendants had counsel appointed. The median arrest to appointment of counsel interval was 13 days. Approximately 95 percent (95.4%) of the appointments were made at the arraignment hearing. Approximately 14 percent (14.3%) of these appointments had the arraignment re-scheduled at the request of the newly-appointed counsel.
- Almost one-quarter (22.7%) of the non-felony traffic and misdemeanor cases experienced at least one delay in case processing. Traffic cases had a 26.0% delay rate while misdemeanor cases had a 20.2% delay rate. Clarke County had the highest delay rate found (27.1%) while the Juvenile and Domestic Relations Court had the lowest (20.7%). Frederick County had a 23.8% delay rate and Winchester had a 21.6% delay rate.
- Of those cases delayed, 69.4% were primarily delayed due to a

continuance while 30.6% were delayed because of a failure to appear. Almost one-half (45.6%) of the delayed cases had more than one re-scheduling of a hearing occur. A little over one-half (54.4%) of the delayed cases had the arraignment re-scheduled while 40.1% had the trial re-scheduled. Approximately five percent (5.4%) of the delayed cases had both hearings re-scheduled.

- Detained defendants, for the most part, did not spend very long periods in confinement without the benefit of judicial review. For those detainees released prior to judicial review, 93.3% were able to obtain release on the day of or day after their detention. The remaining detainees had lengths of stay ranging from three to nine days before they were able to secure release without benefit of judicial review. The second group of detainees examined were those still detained at the time of their first court appearance. The median length of stay, prior to judicial review, for these detainees were three days. However, approximately one-half (49.2%) of these detainees were in confinement four to twenty-seven days before obtaining judicial review. Nearly one-quarter (22.1%) of these defendants were detained a week or more before obtaining judicial review.

CASE PROCESSING OF DEFENDANTS NEVER RELEASED PRETRIAL

- It appears that the General District Courts operating within the region were able to expedite the case processing of detained defendants. Detained defendants were brought to arraignment within a median of three days compared to twenty-four days for those released

pretrial. In addition, the median arrest to disposition time of detained traffic and misdemeanor offenders was 5 days compared to 39 days for those defendants able to secure pretrial release. Nearly three-quarters (66.8%) of the released defendants had case processing times longer than 30 days compared to only 5.1% of the detained defendants.

- Defendants released pretrial had a delay rate of 18.4% while only one of the thirty-nine detained defendants (2.6%) had a delay in case processing.
- Detained defendants were more likely to have their cases disposed of at arraignment (Detained=76.9%, Released=59.6%).
- The data suggests that detention status may serve to inhibit defendants from challenging the charges more aggressively than those able to obtain pretrial release. Approximately 67 percent (66.7%) of the detained defendants pled guilty to the original primary offense at arrest compared to 47.9% of the released defendants. Only 2.6% of the detained defendants went to trial compared to 20.0% of the released defendants.

CIRCUIT COURTS

CASELOAD DISTRIBUTION

- The Winchester Circuit Court was responsible for processing over one-half (52.0%) of the felony arrests made within the region. The

Frederick Circuit Court was responsible for processing a third (33.1%) while the Clarke Circuit Court only processed 14.8%.

- Nearly three-quarters (71.2%) of the felony arrests processed in Clarke County were certified by the General District Court to the Circuit Court. Approximately 58 percent (58.4%) of the felony arrests in Winchester were processed through both court levels while the percentage was 46.9% in Frederick County.
- Stated in another manner, over one-half (53.1%) of the felony arrests in Frederick County were direct indictments to the Circuit Court. Approximately 40 percent (41.6%) of the felony arrests processed in Winchester were direct indictments while 28.8% of Clarke County's felony arrests were direct indictments.

TYPES OF OFFENSES PROCESSED

- Over three-quarters (77.5%) of the felony arrests processed in Clarke County were for the offenses of grand larceny (25.0%), burglary (21.2%), drugs (17.5%), and fraud (13.8%).
- Although displaying different distribution patterns, the four offenses discussed for Clarke County also comprised approximately three-quarters (70.9%) of the felony arrests processed in Frederick County (Grand Larceny=25.1%, Drugs=21.2%, Burglary=14.5%, Fraud=10.1%).
- Approximately three-quarters (71.9%) of the felony arrests processed in the City of Winchester were for drug offenses (32.4%), grand

larceny (24.9%), and fraud (14.6%).

CASE PROCESSING TIMES FOR NON-DIRECT INDICTMENTS

- The Clark County General District Court, for the most part, processed felony arrests faster than the Winchester City and Frederick County General District Courts. The Clarke County General District Court was able to hold the arraignment hearing within a median of seven days after arrest compared to nine days in Frederick County and thirteen days in Winchester. The Clarke County General District Court was also able to schedule the preliminary hearing within a median of 23.5 days from arraignment compared to 35 days in Frederick and 36 days in Winchester. The Clarke County General District Court had an arrest to preliminary hearing time interval of 37.5 days compared to the 52 days found in both Frederick and Winchester.
- Different results were found when the cases processing times of the various Circuit Courts were examined. The Frederick County Circuit Court was able to obtain a true bill from the grand jury nine days after the preliminary hearing compared to 20 days in Winchester and 37.5 days in Clarke County. The Clarke County Circuit Court, on the other hand, was able to schedule a trial date 62 days after the indictment compared to 70 days in Winchester and 78 days in Frederick County. Finally, the Winchester Circuit Court had the shortest processing times when measured from the preliminary hearing to disposition. Case processing in the Winchester Circuit Court took a median of 75 days compared to 106.5 days in Clarke County and 107 days in Frederick County.

- The City of Winchester and Clarke County had identical arrest to final disposition time intervals (105 days) compared to the 122 days found in Frederick County.
- However, the arrest to final disposition times listed above are distorted due to the rather large percentage of felony arrests that were disposed of by the General District Courts (Clarke=40.4%, Winchester=38.4%, Frederick=33.3%). For those cases disposed of by the General District Courts, final disposition was reached within a median of 39.5 days in Frederick, 43 days in Clarke, and 57 days in Winchester. For those cases certified to the Circuit Court, the shortest arrest to preliminary hearing time interval was found in Clarke County (34 days). The Winchester General District Court had a 47 day arrest-to-certification time interval while Frederick had a 49 day time interval.
- Over three quarters (82.4%) of the felony arrests disposed of by the General District Courts attained final disposition at the preliminary hearing.
- The arrest to disposition time intervals for the cases initiated in the General District Courts and disposed of by the Circuit Courts varied significantly by locality. Winchester was able to process these cases within a median of 131 days compared to 143 days in Clarke County and 163 days in Frederick County.

CASE PROCESSING TIMES FOR DIRECT INDICTMENTS

- Cases under direct indictment had arrest to final disposition time frames that were substantially shorter than cases that required processing by both court levels. The Clarke and Winchester Circuit Courts both took a median 95 days to process direct indictment cases to final disposition compared to 105 days in the Frederick County Circuit Court.
- Although direct indictment cases had shorter overall case processing times, arraignments held in the Circuit Court were substantially later than those held in the General District Court. The arrest to arraignment time interval was 18 days in Winchester, 23 days in Frederick, and 38 days in Clarke County.
- On the other hand, Clarke County was able to schedule trials of direct indictment cases within a median of 50 days after arraignment compared to 71 days in Winchester and 74 days in Frederick.

OTHER CASE PROCESSING FINDINGS

- Each of the three jurisdictions obtained convictions in over three-quarters of the felony cases processed. The highest conviction rate was found in Frederick County (86.5%) while Clarke County and the City of Winchester had similar rates (Clarke=77.5%, Winchester=77.6%).
- The convictions rates change rather dramatically when examined according to the court which disposed of the case. The Frederick County Circuit Court had a 92.0% conviction rate for the cases it

disposed of, the Clarke Circuit Court had an 89.5% conviction rate, and the Winchester Circuit Court had an 88.5% rate. On the other hand, the General District Courts had substantially lower conviction rates for the cases disposed at this court level (Frederick=56.1%, Clarke=47.8%, Winchester=39.7%).

- The most common method of disposition was a plea of guilty. Approximately 80 percent (80.6%) of the convictions were the result of a plea to the original primary offense at arrest while 13.1% were the result of a plea to a lesser offense.
- Only 9.9% of the felony arrests processed within the region actually went to the trial (Winchester=13.8%, Clarke=10.5%, Frederick=5.0%).
- Approximately 60 percent (61.5%) of the felony defendants processed within the region were unable to hire their own legal counsel. Over one-half (52.7%) of the felony defendants were represented by private counsel appointed by the courts as opposed to the Public Defender. The extent of the Public Defender's involvement in the processing of felony arrests was undercounted by our sample due to this office only being in existence during the last six months of our examination period.
- The defendants in need of appointed counsel obtained their services relatively soon after their arrest. The median arrest to appointment of counsel interval was six days (Winchester=5 days, Frederick and Clarke=7 days).

- A little over one-quarter (26.5%) of the arraignments in court-appointed counsel cases were re-scheduled due to counsel being appointed on the original return date and unable to proceed with arraignment at that time. This phenomenon was most prevalent in Frederick County (31.1%) and least prevalent in Clarke County (18.4%). The arraignments in these cases in Winchester had a 26.7% re-scheduling rate.
- Contrary to our experience in other jurisdictions, no appreciable differences were found between the time required to process cases from arrest to disposition when defendants who retained counsel were compared to those requiring appointed legal assistance (Retained=106 days, Appointed=103 days). In addition, no appreciable differences were found in the continuance rates (Retained=58.5%, Appointed=64.5%).
- Felony cases experienced significantly higher delay rates than non-felony traffic and misdemeanor cases (Felony=60.0%, Traffic and Misdemeanor=22.7%). Only 3.7% of the felony cases were delayed due to a failure to appear. Frederick County had the highest delay rate (66.5%) while Winchester had the lowest (55.9%). Sixty percent of the felony cases processed in Clarke County experienced some form of delay. Almost one-half (49.7%) of the felony cases processed within the region experienced more than one delay.
- Almost three-quarters (74.9%) of the direct indictment cases processed within the region experienced some form of delay. Over one-half (62.1%) of these cases involved the re-scheduling of arraignment while

26.0% had the trial re-scheduled to a later date.

- Felony cases initiated in the General District Courts had a 48.5% delay rate. The hearing most likely to be delayed was the preliminary hearing (25.9%) followed by the arraignment held in the Circuit Court subsequent to grand jury indictment (11.5%).
- Felony defendants, for the most part, spent longer periods in confinement without the benefit of judicial review than traffic or misdemeanor detainees. For those felony detainees released prior to judicial review, 89.6% were able to obtain release on the day of or day after this detention. The remaining detainees had lengths of stay ranging from three to 30 days before they were able to secure release without benefit of judicial review. Felony defendants still detained at their first court appearance were confined for longer periods of time before they obtained judicial review. The median length of stay, prior to judicial review, for these detainees was five days. Approximately 70 percent (69.5%) of these defendants were in confinement four to 90 days before obtaining judicial review. Nearly a third (31.4%) of these defendants were detained a week or more before obtaining judicial review.

CASE PROCESSING OF FELONS NEVER RELEASED PRETRIAL

- For non-direct indictment cases, it appeared that all three General District Courts expedited the processing of detention cases. The Frederick County General District Court had both the shortest processing time of detained felons (27.5 days) and the greatest

difference between their processing time versus the time required to process felons released pretrial (29 days). Clarke County processed detained felons within a median of 29 days compared to 43 days for those released pretrial. The Winchester General District Court processed detained felons within 35 days. One reason for this court's longer case processing time was due to its scheduling of preliminary hearing further into the future than the other two localities. Winchester preliminary hearings were scheduled to occur 28 days after arraignment compared to 21 days in the other two localities.

- The Circuit Courts also appeared to expedite the processing of non-direct indictment detention cases. However, unlike the General District Courts, significant differences were found between the localities in terms of their preliminary hearing to disposition time intervals. The Winchester Circuit Court processed detention cases in only 51.5 days compared to 104 days in Clarke (Frederick=90 days). The Winchester Circuit Court also exhibited the greatest difference between the median days required to process detained versus released felons (31.5 days). The difference was 19 days in Frederick and only five days in Clarke. The following are several explanations that may account for these differential case processing times.

- The Winchester Circuit Court was able to obtain a true bill from the grand jury shortly after the case was certified by the General District Court (Winchester=14 days, Frederick=23 days, Clarke=41 days).

- The Winchester Circuit Court was also able to schedule trials sooner than either of the other localities (Winchester=41.5 days, Frederick=64 days, Clarke=52.5 days).
 - Clarke County detained felons had a substantially higher continuance rate (Clarke=55.6%, Winchester=31.8%, Frederick=31.2%). Of the detention cases with continuances, 92.8% of Clarke County's occurred in the Circuit Court compared to 42.1% in Winchester and 40.0% in Frederick.
 - A higher percentage of the detention cases in Clarke and Frederick Counties went to trial (Clarke=16.7%, Frederick=12.5%, Winchester=6.8%).
- For direct indictment cases, it also appeared that all three Circuit Courts expedited the processing of detention cases. Similar to non-direct indictments, significant differences were found between the localities in terms of the time required to process detention cases. The Winchester Circuit Court processed direct indictment detention cases in 68 days compared to 94.5 days in Clarke County (Frederick=88 days). The Winchester Circuit Court also exhibited the greatest difference between the median days required to process detained versus released felons (41 days). The difference was 20 days in Frederick and only 9.5 days in Clarke.
 - The key explanation for the differences between the localities involves the arraignment hearing. The Winchester Circuit Court held this hearing a median 15 days after

arrest compared to 25 days in Frederick and 36.5 days in Clarke.

SENTENCING PRACTICES

CONVICTION RATES

- Defendants arrested for non-felony traffic offenses had a 92.5% conviction rate. Defendants arrested for DWI had an identical conviction rate with 8.9% of them convicted of the lesser offense of reckless driving.
- Defendants arrested for misdemeanor charges had the lowest conviction rates found within the region (56.9%). The highest conviction rate was found in disorderly conduct (92.3%) weapons (90.9%), and resisting arrest cases (88.9%).
- Defendants arrested for felony offenses had an 80.3% conviction rate. Approximately 16 percent (15.7%) of the convictions were pleas to misdemeanor offenses. The highest conviction rates were found in burglary (89.3%) and drug offense cases (88.2%). The lowest conviction rate was found in felonious assault cases (68.6%). Only 28.6% of the felonious assault cases resulted in a conviction for the primary offense at arrest. The bulk of these convictions were for the lesser misdemeanor of simple assault. Over one-quarter (28.1%) of the grand larceny cases resulted in convictions for petit larceny, a misdemeanor offense.

SANCTIONS FOR TRAFFIC CONVICTIONS

- Over three-quarters (80.6%) of the non-felony traffic convictions resulted in the imposition of fines and/or court costs as the primary sanction. However, the remaining traffic offenders had a monetary sanction imposed as part of their sentences. The median monetary sanction imposed was \$55 while the average monetary sanction was \$175.
- Approximately 20 percent (19.4%) of the non-felony traffic convictions resulted in the imposition of a jail sentence. The median effective jail sentence (minus suspended portions) was four days while the average sentence was 39 days.
- The most common sanction given to DWI defendants, particularly first-time offenders, was the imposition of a jail sentence coupled with a fine and court costs. In most cases the jail sentence and the fine were suspended with the defendant required to participate in the Alcohol Safety Action Program.

SANCTIONS FOR MISDEMEANOR CONVICTIONS

- Similar to traffic cases, the primary sanction given to defendants convicted of misdemeanors was a fine and/or court cost (73.5%). The median monetary sanction imposed was \$121 while the average amount was \$180. Restitution was further ordered in 12.9% of the misdemeanor convictions.
- Only 3.4% of the convicted misdemeanants were given probation as the primary sanction. However, 8.8% of the misdemeanor convictions had

probationary terms imposed in conjunction with a jail sentence (split sentence). The median probationary term imposed was twelve months while the average term was 36 months.

- The second most frequent primary sanction imposed in misdemeanor convictions was a jail sentence (23.1%). However, significant differences were found between the percentage of jail sentences imposed for misdemeanants originally arrested for misdemeanor offenses versus those originally arrested for felony offenses. Only 13.4% of the defendants originally arrested for misdemeanors were given a jail sentence compared to 43.0% of the defendants originally arrested for felony offenses. The median jail term imposed was 33.5 days while the average term was 75.7 days.
- Defendants convicted of misdemeanor property offenses were most likely to receive a jail sentence (27.6%) while defendants convicted of victimless/public order offenses were least likely to receive a jail sentence (17.2%). Approximately 22 percent (21.8%) of the defendants convicted of personal offenses were given a jail sentence.
- On the other hand, defendants convicted of victimless/public order offenses and given a jail sentence received the longest incarcerative terms. These defendants received a median jail sentence of 75 days while the average sentence was 83.8 days. Defendants convicted of personal and property offenses were given identical median jail sentences (30 days) and similar average sentences (Personal=74.4 days, Property=73.4 days).

SANCTIONS FOR FELONY CONVICTIONS

- Only 2.0% of the defendants convicted of felony offenses had fines or court costs imposed as the primary sanction. The median monetary sanction imposed was \$457 while the average amount was \$868. Restitution was ordered in 33.4% of the felony convictions.
- Approximately 17 percent of the defendants convicted of felony offenses were given some form of community supervision (Probation=9.1%, CDI=8.1%). When defendants given split sentences are included, 78.4% of all defendants convicted of felonies had community supervision imposed. The median term imposed was 36 months while the average term imposed was 44.1 months.
- An incarcerative sentence was the primary sanction utilized in felony convictions. If defendants eventually released to the CDI program are included, 88.8% of the defendants convicted of felony offenses were incarcerated subsequent to sentencing. If CDI placements are excluded, 80.7% of the convicted felons were given a jail or prison sentence. During 1987, when the bulk of the sampled defendants were sentenced, 71.1% of the defendants convicted of felony offenses throughout the Commonwealth were given a jail or prison sentence.
- A little less than one-half (46.7%) of the convicted felons were given a prison sentence. The median sentence was 48 months while the average sentence was 69.7 months.
- A little over one-third (34.0%) of the convicted felons were given a

jail sentence. The median jail sentence was 150 days while the average sentence was 216.6 days.

- Felons convicted of personal offenses were more likely to receive an incarcerative sentence (86.4%). Approximately 60 percent (59.1%) were given a prison sentence while 27.3% were given a jail sentence. The median prison sentence imposed was 72 months (Average=128 months) while the median jail sentence was 225 days (Average=206.8 days.).
- Approximately 80 percent (80.2%) of the felons convicted of drug offenses were given an incarcerative sentence. Over one-half (59.5%) of these felons were given a prison sentence while 20.7% were given a jail sentence. The median prison sentence imposed was 60 months (Average=68.4 months) while the median jail sentence was 240 days (Average=227.7 days).
- Felons convicted of property offenses were the least likely to receive an incarcerative sentence (77.6%). These defendants were more likely to be given a jail sentence (41.2%) than a prison sentence (35.2%). The median jail sentence was 180 days (Average=191.6 days) while the median prison sentence was 36 months (Average=37 months).

TIME SERVED POST-SENTENCE

- The actual median time served post-sentence by defendants convicted of non-felony traffic offenses was three days. The average post-sentence length of stay was 19.5 days.

- The median post-sentence length of stay for sentenced misdemeanants was 18 days while the average length of stay was 42.1 days.

- The median post-sentence length of stay for all sentenced felons was 82 days while the average length of stay was 90.4 days. These statistics, however, distort the post-sentence confinement period because several different types of felons were incarcerated post-sentence. A more detailed breakdown reveals the following lengths of stay.
 - Felons given a jail sentence had a median post-sentence length of stay of 84 days while the average length of stay was 101.2 days.

 - Felons released to CDI had a median length of stay of 80.5 days while the average length of stay was 74.7 days.

 - Approximately 15 percent (15.4%) of the felons sentenced to prison actually served their sentences in the local jail. The median length of stay for these felons was 133 days while the average length of stay was 140.2 days. These findings are most likely dated due to changes in transfer practices instituted by the Virginia Department of Corrections during 1988. The current transfer policies place priority on felons given prison sentences of six years or more. Statewide data indicates that approximately 60 percent of the convicted felons with less than six year sentences will actually serve their time in the local jails.

- The median length of stay for felons transferred to the state prison system was 65.5 days while the average length of stay was 78.5 days. Due to the recent overcrowding in the state prison system, jail personnel indicate that the current average length of stay is approximately 90 days.

JAIL UTILIZATION BY LOCALITY

The final section of this chapter examined pretrial and post-sentence commitments to jail and days served. Data collected for this report was weighted in order to provide estimates regarding each jurisdiction's annual utilization of the jail. In addition, our data collection efforts excluded categories of cases that may have a role in influencing commitments and/or days served (e.g., summonsed offenders sentenced to jail, pending cases at the time of data collection, holds for other jurisdictions, etc.). Finally, we were unable to ascertain the release dates for 14.0% of the defendants given an incarcerative sentence. Therefore, the data presented below are only for discussion purposes and should not be used for determining a particular jurisdiction's financial obligations toward jail construction and operation.

- The City of Winchester made over one-half (58.4%) of the jail commitments while Frederick County made 31.6%. Clarke County was responsible for only 10.0% of the jail commitments.
- The City of Winchester consumed approximately 50 percent (50.2%) of the jail days consumed within the region. Frederick County consumed 35.8% of the jail days utilized while Clarke County only consumed 14.0% of the jail days served within the region.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

This report utilized historical data from several secondary sources and data collected from individual defendant case files in order to identify the factors which appear to determine the size and composition of the regional jail population. A major portion of the report documented the manner in which criminal defendants, particularly those detained, are processed by the local criminal justice systems operating in the region. The report provides a detailed baseline of data for estimating the impact of immediate or future changes in the types of offenders detained in the local jail or the manner in which they are processed by the local criminal justice systems.

Each of the chapters contained in the report provides detailed information regarding the dynamics of arrestees and the jail population, historical trends in arrests and jail population levels for the region, and the manner in which arrestees are processed by the local criminal justice systems. This chapter, however, will only present selected findings that allow for broad generalizations about the operation of the local criminal justice systems. In particular, the chapter will be restricted to presenting conclusions about the impact the broader criminal justice systems have on the local jail population. Where possible, recommendations are offered that serve to identify alternatives to detention or ways that length of stay can be reduced. Estimates are provided in order to understand the potential impact that processing changes may have on the jail population.

Most of the impact estimates contained within the report are based on the data collected from the sample arrestees. In other words, the estimates reflect the impact changes in defendant processing would have if applied to the sample population. Due to the manner in which arrest information is reported in Crime in Virginia we are unable to estimate the impact the

recommendations would have when applied to 1988 arrest statistics. However, by annualizing the average daily population of selected offenders within the sample, the reader can gain an appreciation of the number of daily beds a particular recommendation would affect.

The impact estimates should not be considered cumulatively. Defendants affected by one policy change may also be included in other policy changes discussed elsewhere within the chapter. The reader is also cautioned that there is no one policy change that will significantly reduce the level of overcrowding within the local jail system. In our direct experience and experiences cited in other jurisdictions, it is very rare that a single criminal justice policy or group of offenders can be identified whose handling can be changed in such a manner as to solve all problems. There are many factors which contribute to overcrowding and therefore, a multifocus approach must be employed when seeking solutions to the problem. The cumulative effects of a "nickel and dime" approach is often the most fruitful avenue for relief to overcrowding.

Although the report presents a very thorough analysis of the regional criminal justice systems, it was impossible to examine all the factors which may affect the local jail population. Conspicuously absent was an analysis of the impact that workload measures such as staffing levels and turnover have on the individual and collective functioning of local criminal justice agencies. In addition, lack of data or resources precluded us from fully exploring certain issues identified in the report. Therefore, the report should not be looked upon as definitive regarding the operation of the local jail. Like all research efforts, more questions may be raised than can possibly be answered. However, the report in conjunction with the knowledge possessed by the Jail Advisory Group provides a useful mechanism for a better understanding of the dynamics of

the local jail population and the avenues available for controlling and managing its growth.

B. THE NEED FOR SYSTEMIC JAIL POPULATION PLANNING

The focus of Chapter One was to establish the rationale for and mechanism required to achieve systemic jail population planning and management. A primary reason cited for such an approach is the systemic and dynamic nature of jail population determinants. Jail populations are not always a function of increasing general population levels and crime rates. Based on our direct experience and that frequently cited by other jurisdictions, jail populations are more often a function of the individual and collective decisions made by various officials within the local criminal justices system and the community at large. In addition, factors influencing jail populations and/or the decision-makers themselves change over time.

Another reason for a systemic approach to jail population management was introduced by way of a discussion regarding the projection of jail population levels in the future. We believe the reason that jails often reach population levels long before a projection model had predicted is because jails are "capacity-driven facilities" and because "systemic accommodation" is a phenomenon present in most communities. The concept of jails as "capacity-driven" facilities recognizes that the criminal justice system will find a way to fill a jail bed if it is available. "Systemic accommodation" recognizes that local criminal justice systems adopt formal and/or informal strategies to accommodate rising jail populations and delay the difficult political process of expanding or constructing detention facilities. These accommodations are not always recognized when projecting future detention needs. Once additional space becomes available, the criminal justice system returns to a state of

"normalcy", not accounted for in the projection model, often leading to higher detention rates and/or length of stay.

RECOMMENDATION ONE

In order to foster collective criminal justice decision-making, we strongly recommend that the Jail Advisory Group become a permanent and active organization within the Winchester, Frederick, and Clarke region. The central concept guiding the Jail Advisory Group should be the recognition that jail space is a scarce resource that must be continuously managed to ensure its availability. The immediate task of the Group should be to develop and implement a jail use policy utilizing conclusions and recommendations contained in this report or arising from the Group's collective knowledge. Because of its broad-based membership, the Group is the body of decision-makers best equipped to monitor jail usage and coordinate the performance of the overall criminal justice system in relation to its impact on the size and composition of the jail population.

IMPACT

At this point in time we cannot predict whether future decisions of the Jail Advisory Group will result in a decrease or an increase in the jail population. However, proper functioning of the Group should serve to move the three localities to a more proactive rather than reactive approach to jail management. By defining the role of the jail and monitoring its use, the three communities are in a better position to ensure that the amount of bed space available is determined by policy rather than by chance or default. Finally, collective policy or program development based on empirical data should help to generate the political,

public, and budgetary support necessary for its implementation.

C. REGIONAL DATA NEEDS

In order to facilitate future efforts toward jail population management, the availability and accessibility of data on the offender population and their processing through the criminal justice system is of the utmost importance. Although substantial data is maintained in court files, many important pieces of information are either not collected or not easily accessible to research staff or individual decision-makers within the local criminal justice system. Although a thorough analysis of data sources was not within the purview of this study, the following are areas of data inadequacy that were identified during the course of this research.

1. We were unable to utilize some of the more sophisticated population projection models due to the manner in which commitments to jail are maintained on the Department of Corrections Form J-7. Although adequate for reimbursement purposes, the format of the J-7 does not readily lend itself to provide detailed profiles of the jail population nor for routine projection of future detention needs. For example, we were unable to separate new commitments and their length of stay from detained inmates carried over from a prior month or calendar year. We also could not easily separate inmates held pretrial from those serving sentences nor could we distinguish between defendants held on misdemeanor versus felony charges.
2. There currently exists an almost complete lack of information regarding the offenders themselves and the characteristics of their

offenses. Although basic demographic information was maintained in court files, many of the factors considered by magistrates when making pretrial release decisions are not documented nor recorded. For example, information such as employment, length of residence in the community, income levels, and marital status are not routinely collected when the magistrate conducts a bond hearing. If such information is being considered when making detention and conditions-of-release decisions, it is important that they be recorded in order to evaluate which factors influence pretrial success and how magistrate decision-making and the criminal population changes over time.

3. Similarly, it was rare that we were able to collect information regarding the characteristics of a defendant's offense beyond the specific charge. Information describing the victim; loss, damage or injury sustained; and weapon use was often lacking from court files. If such information is considered in detention and conditions-of-release decisions, it is important that it be documented and retained in a central location for evaluation and monitoring purposes.
4. Magistrates do not routinely have the benefit of accessing a defendant's prior criminal history when making pretrial release decisions. Although a defendant wanted in other jurisdictions can be readily identified, the magistrate is not always able to identify defendants who are already on bond for a pending offense or under some form of community supervision. Even if available, it is our experience that the criminal history information maintained in the

Virginia Criminal Information Network severely undercounts a defendant's past history of failure to appear for court proceedings. This piece of information, according to most of the literature on pretrial success, is one of the biggest predictors of a defendant's likelihood of appearing for court hearings. The criminal histories are also unable to identify defendants currently on bond for pending charges or under some form of community supervision.

5. Data maintained by the Clerks of Court regarding case processing and sentencing information were found to be accurate and complete. However, the data is not always maintained in a format conducive to computer-generated studies of case processing similar to that presented in this report. Some of the courts do not possess computers and all case processing information is maintained in paper files. For those courts with computers, production of the necessary reports may require the services of a computer programmer and may be lacking due to the non-codification of vital data elements.

RECOMMENDATION TWO

The region should enhance its data collection and processing abilities. Enhancements should be geared toward supporting individual decision-making of criminal justice system actors and the Jail Advisory Group as a collective entity. The data should also be maintained in such a manner so that computer-generated reports can be provided on a routine basis to both sets of decision-makers. The reports should provide information regarding inmate tracking and profiles, arrest practices, pretrial release practices, and adjudication practices.

IMPACT

It is impossible to quantitatively measure the impact that data improvements will have on the functioning of the local criminal justice systems. However, the following are qualitative impacts that may result from an enhanced and centralized data processing system.

1. Refinement of the J-7 data reporting system will allow for routine tracking of inmate population profiles and projection of future population levels.
2. A more complete information system on defendant profiles and their offenses will allow for better monitoring and evaluation of the impact magisterial decision-making has on the jail and pretrial success rates.
3. A data system capable of providing magistrates with defendant criminal histories and legal status at arrest may lead to more sound decision-making based on documented information. A data system containing local criminal records can overcome some of the limitations inherent in the Virginia Criminal Information Network. Such a data system could provide more accurate information concerning a defendant's prior history of failure to appear, legal status at arrest, and arrests for offenses not maintained by the Virginia Criminal Information Network.
4. Information collected on detained defendants can be verified by staff and provided to the Court for purposes of bond review. It

is possible that a larger number of defendants can be released pretrial if complete and verified information is provided to the Court at first appearance.

5. Enhanced reporting capabilities of the automated data systems currently maintained by courts within the region can offer a powerful tool for identifying detained defendants whose cases could be expedited. In addition, such enhancements would allow the Jail Advisory Group to routinely monitor the impact of case processing on the Jail.
6. The expansion of data collection and its verification at the front end of the arrest and adjudication process can significantly reduce the amount of time required for the preparation of pre-sentence investigation reports and reports prior to CDI placements.
7. Since the new jail will provide a greater variety of specialized housing units, enhanced defendant information becomes crucial for classification of detainees.

D. TRENDS IN THE JAIL POPULATION

The regional jail population has undergone two periods of growth during this decade. The 1981 through 1984 period was characterized as a period of declining average daily population. Excluding Work Release Center inmates, the average daily population went from 78 inmates in 1981 down to 54 in 1984. This represents a 28.2% decrease in the region's average daily

population. The second stage encompassed the years 1985 through October, 1988 and was characterized as a period of growth in the jail population. The region's average daily population went from 66 in 1985 to 96 in 1988, a 45.4% increase. It was found that the City of Winchester had the greatest impact on the region's average daily population during the last four to five years.

Our analysis also indicates that the population housed in the Work Release Center has also increased dramatically during this decade. The average daily population of Work Release participants has gone from 17 in 1982 to 34 as of October, 1988. In the recent past, population levels in this facility have surpassed 50 inmates. However, our historical analysis indicated that few of the inmates housed in the Work Release Center were participants in the CDI program and a tentative conclusion reached in Chapter Two was that this program may be under-utilized as an alternative to jail. Our analysis of arrests during 1986 and 1987 bolstered this conclusion. Only eight percent of the convicted felons examined during our study period were placed in the CDI program while none of the convicted misdemeanants were placed in the program.

Our analysis indicated that changes in the jail population since 1983 have been almost equally influenced by changes in the average length of stay and the volume of admissions to jail. The degree of impact of these causal factors, however, differed by jurisdiction. Using statistical techniques used to measure the significance of a relationship indicates that admissions and length of stay had a strong relationship in defining the City of Winchester's average daily population. Both of these factors were almost equally responsible in defining Frederick County's average daily population. However, the relationship of these factors in Frederick County was not as strong as that found for the City of Winchester. It was found that average length of

stay is the driving factor in defining Clark County's average daily population.

An attempt was made to examine some of the causes behind the growth in admissions to jail and average length of stay. Regional admissions to jail were strongly influenced by general population growth and, to a lesser extent, the number of arrests. As was the case with average daily population, causal factors differed by jurisdiction. Growth in admissions by the City of Winchester were almost equally influenced by general population growth and the number of arrests. Frederick County's growth in admissions was almost totally explained by growth in the general population. Unlike Frederick and Winchester, Clarke County experienced a decline in admissions. The decline in admissions by Clarke County has been most strongly influenced by decreasing arrests.

We were unable to obtain detailed historical data in order to examine factors behind the changes in average length of stay. Although we were unable to measure impact, we believe the demise of some of the alternative programs operating prior to June, 1985 helps to explain the rising average daily populations experienced in the recent years. The loss of the Community Alternatives Program, Sentence Alternative Program, and the Fine Option Program has si n

Clarke County Jail is designed to hold ten inmates but housed 28 females on the above date. The regional jail population stood at 153 on June 29 when the 25 inmates housed in other jails, primarily Shenandoah County, are included in the totals. The population stood at 163 inmates when the ten females housed in the Clarke County Jail from other jurisdictions within the Joint Confinement Project area are included in the totals.

Average daily population figures, both historical and recent, indicate that the region has been experiencing persistent overcrowding. If the trends present since 1985 continue, the region will continue to experience severe overcrowding until the new jail is open. In the interim, locating available jail beds to house detainees will become increasingly difficult. Many other jurisdictions throughout the Commonwealth are experiencing bedspace shortages and are unable to house inmates from the Winchester, Frederick, and Clarke region. There have also been instances where bedspace has been available in other jurisdictions but they were unable to accept the region's inmates due to shortages in staff. The closing of portions of the Shenandoah County Jail for renovation will require that approximately twenty regional inmates housed in this facility be removed and placed elsewhere.

The region is not only experiencing an immediate housing shortage but the beginning of a future problem as well. The region is now experiencing population levels approaching the number of general purpose beds that will be available in the new jail. The new jail is currently designed to hold 192 inmates in general purpose housing while the population as of June 29, 1989 reached 163 inmates. Although the new jail will have the flexibility of handling approximately 225 inmates through utilization of special purpose beds, current trends indicate that planning for construction of the third 96-bed housing pod may need to begin shortly after occupation. However, changes

in the processing of offenders and the establishment and utilization of alternative programs have the potential for reducing today's jail population and slowing future growth.

RECOMMENDATION THREE

Recent population levels indicate that the region must seek immediate solutions to its overcrowding problem. The population levels of the Winchester/Frederick and Clarke County Jails vastly exceed their rated capacities (Winchester/Frederick = 144% over capacity, Clarke = 180%). Although other facilities throughout the Commonwealth, particularly the larger jails, are experiencing similar or higher levels of overcrowding, the situation may be more severe in the region's jails due to their lack of recreation or program space and staffing shortages. The purchase of temporary housing may offer a viable short-term solution. However, the policy changes and alternative programs that will be proposed throughout the remainder of this chapter also offer ways to alleviate today's jail population and control future growth.

E. ADULT ARREST TRENDS SINCE 1983

The region has experienced an 18 percent increase in arrests from 1983 through 1988. This growth rate is comparable to the 21 percent statewide growth in arrests posted during the same time span. While statewide arrests have increased at a stable rate from year to year, wide fluctuations are found when regional arrests since 1983 are examined. The 1983 through 1985 period was a time of decreasing arrests. Arrest totals in 1985 were 7.6% lower than 1983 totals while arrests in 1985 were 3.3% lower than 1984 totals. Substantial growth occurred during the next two years. Arrest totals in 1986

were eleven percent higher than 1985 totals while arrest totals in 1987 were fifteen percent higher than 1986 totals. Arrests somewhat leveled off in 1988 when a growth rate of only 3.6% occurred.

An examination of arrest data since 1985 indicates that arrests for drug offenses are the primary reason for both the pattern of increasing arrests and the dramatic rise in the jail population. Regional arrests for drug offenses went from 88 in 1985 to 216 in 1988, a 145 percent increase. This increase is substantially higher than the 34 percent increase in drug arrests experienced statewide during the same time span. The region's increase in drug arrests was also substantially higher than the growth rate found for those jurisdictions comprising Planning District Eight. Planning District Eight, which consists of jurisdictions adjacent to Washington, DC, experienced a 61 percent increase in drug arrests between 1985 and 1988. Although comprising a relatively small portion of the region's total arrests, the percentage of drug arrests to total arrests went from 2.7% in 1985 to 5.0% in 1988.

The increase in drug arrests did not affect each jurisdiction equally. The City of Winchester has experienced the most dramatic increase in drug arrests since 1985. Drug arrests in Winchester went from 68 in 1985 to 173 in 1988, a 154 percent increase. Frederick County doubled the number of its annual drug arrests between 1985 and 1988 (1985 = 16 arrests, 1988 = 32 arrests). Although Clarke County experienced a 175 percent increase, the absolute number of drug arrests was relatively small (1985 = 4 arrests, 1988 = 11 arrests).

Despite the fact that drug arrests comprise a relatively small portion of total arrests, these arrests have had, and continue to have, an enormous impact on the local jail population. According to the data we collected from

arrests made in 1986 and 1987, approximately 67 percent of the defendants arrested for all drug offenses are detained pretrial while approximately 71 percent are given an incarcerative sentence. The average pretrial length of stay is approximately 55 days while the post-sentence average length of stay is 83 days. Assuming these parameters are somewhat valid for the years other than 1986 and 1987, the 88 arrests made in 1985 would have resulted in an average daily population of 23 inmates (Pretrial = 9, Post-Sentence = 14). In other words, on any given day in 1985 approximately 35 percent of the inmates detained by the region would be held for drug charges. The same calculations made for 1988 drug arrests demonstrate the impact increasing drug arrests have had on the detained population. The 216 regional drug arrests made in 1988 would have resulted in an average daily population of 57 inmates (Pretrial = 22, Post-Sentence = 35). These inmates would have comprised approximately 59 percent of the average daily population posted by the region in 1988.

As discussed in Chapter One, the arrest trend pattern for drug offenses makes it very difficult to project future jail population levels. There is no accurate way to predict whether these arrests will continue to rise, how long the trend will last, or to what degree they will increase. In addition, it is also difficult to predict how and to what degree decision-makers within the criminal justice system will alter their behavior in response to the drug problem.

RECOMMENDATION FOUR

We are not in a position to make specific recommendations about alternative methods for handling drug arrests. As outsiders, we can never fully comprehend community sentiment surrounding this issue. In addition, data limitations prevent us from clearly understanding the dynamics of the

region's drug problem and the types of offenders involved in this form of criminal behavior. However, we can state that this population, due to its size, offers the greatest potential for immediate reduction in overcrowding if changes in processing are implemented. The following scenarios estimate the impact that a reduction in the detention rate and length of stay could potentially offer when applied to 1988 drug arrests. The Jail Advisory Group would be the best forum for devising and implementing policies to carry out any of the scenarios discussed below.

1. REDUCTIONS IN DETENTIONS

A lowering of the pretrial detention rate from 67 percent to 60 percent would have resulted in fourteen fewer pretrial detentions for drug offenses during 1988. These fourteen fewer detentions would have had the effect of lowering the average daily population by two inmates. If the post-sentence detention was reduced to 65 percent, this would have resulted in thirteen fewer incarcerative sentences during 1988. This change in sentencing practices would have lowered the average daily population by three beds. If both practices were in effect together, the total bed savings would be five.

The average daily population would be significantly lower if further reductions in detention rates were in effect. A 50 percent pretrial detention rate would have resulted in 36 fewer detentions. These 36 fewer detentions would have lowered the average daily population by six inmates. An additional five beds could be saved if the post-sentence detention rate was reduced to 60 percent.

2. REDUCTIONS IN AVERAGE LENGTH OF STAY

Another option for lowering the average daily population would be to shorten the average length of stay. As mentioned earlier, the average pretrial length of stay for drug detainees in our sample was 55 days. Reducing these detentions to an average of 50 days would lower the average daily population by two beds. Reducing the average post-sentence length of stay from 83 days to 75 days would have saved an additional four beds.

A total of ten beds could have been saved if the average length of stay for both of these groups is reduced further. Four beds could be saved if the pretrial length of stay was 45 days. A 70 day post-sentence length of stay would have saved six beds.

3. REDUCTIONS OF DETENTION RATES AND LENGTHS OF STAY

The average daily population of defendants detained for drug offenses could be significantly lowered if both parameters are adjusted. A total of ten beds could have been saved in 1988 if minor changes in the detention rates and lengths of stay were in effect. The average daily population of pretrial detainees could have been reduced by four inmates if a 60% detention rate and 50 day length of stay was in effect during 1988. Six beds would have been saved if a 65% post-sentence detention rate and a 75 day average length of stay was attained during 1988.

As to be expected, significant reductions in the average daily population would occur if the major reductions discussed in each of the two proceeding subsections were in effect during 1988. Nine beds would have been saved if the pretrial detention rate was lowered to 50

percent and the average length of stay was 45 days. Ten beds would have been saved if the post-sentence detention rate was 60 percent coupled with a 70 day average length of stay.

F. THE DRUNK IN PUBLIC POPULATION

Data provided by the Division of Court Services indicates that an average of approximately eight public inebriates are diverted to the Public Inebriate Center on a daily basis. Despite these diversions, the jail still detains a fairly large number of individuals committed solely on a charge of being drunk in public. According to statistics provided by staff from the Joint Confinement Project, persons arrested for being drunk in public as the sole charge comprised between sixteen and seventeen percent of the commitments to the Frederick County Jail during calendar years 1986 through October, 1988.

During our data collection, defendants arrested solely for being drunk in public and detained in jail were identified and counted. Between July 1, 1986 and December 31, 1986 a total of 120 unique individuals comprising 151 arrest events were detained in the Frederick County Jail for the sole charge of being drunk in public. These figures translate into an average daily population of one inmate. The reader, however, must be cautioned that this figure represents an average over a calendar year. The actual population on a given day would likely exhibit wide fluctuations.

Time and resource limitations did not allow us to more fully examine this portion of the jail population. The only tentative conclusion reached is that a fairly large number of individuals are arrested and detained for being drunk in public and it appears that such arrests may be isolated or sporadic events in their criminal histories. We were unable to fully determine how this population differs from those diverted from the criminal justice system

through the Public Inebriate Center.

RECOMMENDATION FIVE

Although these defendants only account for approximately one bed of the region's average daily population, we strongly recommend that every effort be made to reduce the number of public inebriates detained in the jail. In the best of times public inebriates are often difficult to manage because of their intoxicated condition. Research also indicates that intoxicated detainees should be treated as potentially suicidal. The problems this population presents is compounded when housed in an overcrowded facility with restricted housing flexibility and staff whose supervisory attention may be diverted elsewhere.

G. PRETRIAL RELEASE DECISION-MAKING

1. OVERVIEW OF THE PRETRIAL RELEASE PROCESS

Chapter Four of this report provided a detailed assessment of the pretrial release process for defendants arrested on traffic, misdemeanor, and felony offenses. Data contained in court files indicate that approximately 24 percent of the traffic defendants are detained by the magistrate while 49 percent of the misdemeanants are unable to obtain release at the bond hearing. The data also indicates that a large percentage of these detainees are able to obtain pretrial release before their first court appearance (Traffic = 84 percent, Misdemeanor = 70 percent). The average length of stay for these defendants were approximately 1.5 days. However, the actual length of detention for these defendants were approximately ten hours. Only one percent of the traffic defendants were never released pretrial while ten percent of the misdemeanants were detained until final case disposition. The

average pretrial length of stay for all traffic detainees was 6.2 days while detained misdemeanants had an average length of stay of 3.9 days.

Felons, on the other hand, were more likely to be detained by the magistrate and more likely to be detained throughout case processing. Fifty-nine percent of the felons were detained by the magistrate. Unlike traffic and misdemeanor detainees, only twenty percent of the detained felons were able to secure pretrial release prior to their first court appearance. Approximately 44 percent of the felons were still detained at their first court appearance. Of these detainees, 35 percent were able to obtain pretrial release at or after their first court appearance. A total of 146 felons were never able to obtain pretrial release. These detainees comprise 29 percent of the felony arrests examined in our sample. The average pretrial length of stay for all felony detainees were 63.4 days.

The number of defendants released on unsecure bonds and the number of defendants whose bonds were adjusted upon further review indicates that magistrates and judges are able to prevent a large number of defendants from being detained upon arrest or if detained, efforts are made to reduce their length of stay. For example, 69 percent of all defendants released by the magistrate, at the bond hearing or shortly after detention, were released on an unsecure bond (Traffic = 89 percent, Misdemeanor = 59 percent, Felony = 66 percent). Secondly, the data also indicates that 84 percent of the felons whose initial bond hearing was held by a Circuit Court judge on the day of direct indictment by the grand jury were released pretrial. Of these releases, 90 percent of the felons were released on an unsecure bond.

A second measure of accelerated release practices was the rate at which detained defendants had their initial bonds adjusted by either the magistrate or the judiciary. Over one-third (38 percent) of the detained

misdemeanants and traffic offenders able to obtain pretrial release before their first court appearance were released on an unsecure bond. In other words, a fairly large portion of the misdemeanor and traffic offenders were initially committed to jail by the magistrate with a subsequent bond review performed shortly after the defendant's detention. According to the Chief Magistrate, it is not uncommon for defendants to be detained to await for sobriety, further information, or arrival of a third party. Release on an unsecure bond may occur once the magistrate's concerns are answered satisfactorily. Such subsequent bond reviews by the magistrate did not occur as often for detained felons. Only 12 percent of the felons able to secure pretrial release before their initial court appearance were released on an unsecure bond by the magistrate.

The judiciary altered the bond for approximately 36 percent of the defendants who were unable to obtain pretrial release before their first court appearance. The alteration rate was 31 percent for traffic and misdemeanor detainees and 38 percent for felony detainees. Of the detainees whose bonds were altered by the judiciary, 60 percent had the monetary amounts reduced while six percent had the amounts increased. A little over one third (34 percent) were released on an unsecure bond by the presiding judge.

An attempt was made to identify factors which appear to influence the detention, conditions of release, and the level of custody decisions made during the course of the pretrial release process. The data available to us indicate that factors such as type of offense, sex of the defendant, residence, demeanor, legal status at arrest, and prior arrest history appear to play a role in pretrial decision-making. However, data limitations precluded us from using sophisticated statistical techniques such as multivariate analysis in order to identify the primary factors and the degree

of their importance in predicting the outcome of pretrial release decisions. In addition, data such as employment history and stability in the community are considered by magistrates when making pretrial release decisions but were largely unavailable to us for codification and analysis. Therefore the recommendations offered below are necessarily broad due to our inability to pinpoint specific groups of defendants suitable for safe release to the community. If a reduction in detention rates are chosen as the method for reducing the jail population, the Jail Advisory Group is the body of decision-makers best equipped for devising the criteria which determines who should be detained and for how long.

TABLE 40
SUMMARY STATISTICS OF THE
PRETRIAL RELEASE PROCESS

| | TOTAL CASES | PCT. DETAINED | JAIL DAYS SERVED ¹ | ALOS | ADP ² |
|-------------|----------------|--------------------|----------------------------------|------|------------------|
| TRAFFIC | 310 | 24.2% | 468 | 6.2 | 3 |
| MISDEMEANOR | 367 | 49.0% | 696 | 3.9 | 4 |
| FELONY | 511 | 55.0% ³ | 17,766 | 63.4 | 32 |

¹
Totals do not include jail days served by those defendants re-detained during case processing.

²
Adjusted to reflect annual average daily population.

³
Percentage based on felons detained by the magistrate plus those detained by the presiding judge subsequent to direct indictment by the grand jury.

Due to the manner in which arrest information is reported in Crime in Virginia we are unable to establish the impact the following recommendations

would have when applied to 1988 arrest statistics. Therefore the impact statements below will be based on the detention rates, pretrial jail days consumed, and average length of stay found for the defendants contained in our sample. The impact assessments reflect the number of beds that would be saved if the particular recommendation was operating at the time the sample defendants were being processed through the criminal justice system. In order to assist the reader in understanding the logic behind the impact assessments, Table 40 displays the parameters used in computing the impact that various recommendations would have on the jail population.

RECOMMENDATION SIX

Although we were unable to analyze the "quality" of the pretrial release decisions, we believe a significant reduction in the jail population can be made if minor changes in the number of defendants detained upon arrest and/or their length of pretrial stay are accomplished.

a. FELONS

This group has the greatest potential for diversion due to their high rate of detention and their high average length of stay.

1. Lowering the detention rate to 50 percent would have resulted in 25 fewer felony detentions. Assuming the same average length of stay, this policy change would result in the savings of two beds on a daily basis. A 45 percent detention rate would have resulted in 51 fewer detentions. The bed savings of this policy change would be five beds on a daily basis.

2. Significant savings can also be realized if length of stay is reduced. An average length of stay of 55 days would result in a savings of four beds on a daily basis. An average length of stay of 50 days would result in a savings of six beds.
3. Policy changes that result in a 50 percent detention rate and an average length of stay of 55 days would save six beds on a daily basis. A 45 percent detention rate in conjunction with an average length of stay of 50 days would result in a savings of eleven beds.

b. MISDEMEANANTS

Unlike felons, changes in the pretrial release process of misdemeanants will not result in significant reductions of the jail population. However, as stated in the introduction of this chapter, the "nickel and dime" approach can be useful when the cumulative effects of change are realized. Since misdemeanants have a rather short average length of stay, the most fruitful parameter to alter would be their rate of detention. A lowering of the detention rate to 40 percent would result in a savings of approximately one jail bed. Lowering the detention rate further to 25 percent would result in a savings of two jail beds. Reducing the average length of stay to an even three days would result in a savings of approximately 1.5 beds in conjunction with a 40 percent detention rate. A three day average length of stay in conjunction with a 25 percent detention rate would save 2.5 beds.

c. TRAFFIC ARRESTS

Similar to misdemeanants, changes in the pretrial release processing of traffic defendants would only slightly reduce the jail population. Since these defendants have a rather low detention rate, the most fruitful parameter to target would be the average length of stay. A reduction in the average length of stay to five days would result in a savings of approximately one bed. An average length of stay of four days would result in a savings of approximately 1.5 beds.

2. OPTIONS FOR REDUCING THE DETENTION RATE

There are a number of options available to pretrial release decision-makers that could reduce the number of defendants detained subsequent to arrest. One option would be to increase the rate in which defendants are released on an unsecure bond. Such policies in place at the magistrate level would guarantee that fewer arrestees are detained in the first place. A greater reliance on this form of release by the judiciary could serve to shorten pretrial lengths of stay if increasing numbers of detained defendants are released on an unsecure bond at the first court appearance. The drawback to this option is that the accelerated release policy may lead to higher failure to appear rates or rates of pretrial misconduct.

A second option would be to lower the bond amounts assessed by the magistrate at the probable cause/bond hearing. The lowering of bond amounts may lead to greater numbers of offenders who would be able to afford the services of a bail bondsman, post the bonds themselves, or possess property of sufficient value to post as collateral. One drawback to this approach is that the higher release rates may lead to higher failure to appear or pretrial misconduct rates. Secondly, some jurisdictions who have adopted this approach

have negatively impacted their jail populations because the lower bonds decrease the incentive of professional bail bondsmen to underwrite these releases. One way around these drawbacks would be for the courts or the jail to implement its own 10 percent bond program. Under such a program, the defendant would post 10 percent of the bond with the administering agency. The funds would be transferred to the court in the event of the defendant's non-appearance or applied toward the fine/court costs in the event of conviction. The money would be refunded in the event of acquittal or nolle prosequi.

Two other innovative options have been adopted by jurisdictions facing jail overcrowding. Some jurisdictions have the capability of granting pretrial release through the acceptance of credit card payments. Although this option may affect few detainees who would not otherwise be released, its adoption has the potential to reduce the number of hearings required for processing misdemeanor and traffic cases. The posting of a bond through credit card transaction in an amount equal to the anticipated fine/costs may reduce the need to schedule arraignments for those defendants who express a desire to plead guilty at arraignment. This reduction in the calendar may allow the courts to concentrate more time on the expeditious handling of detained defendants. Secondly, some jurisdictions have increased detainees access to telephones in order to deal with their overcrowding problems. These jurisdictions have found that frequent access to telephones enhance an inmate's ability to identify individuals willing to assist them in raising the funds necessary to secure pretrial release.

The option most likely to significantly affect the pretrial population would be the implementation of the supervised pretrial release program. Jurisdictions which have instituted such programs have often been able to

increase the number of pretrial releases without significantly increasing the failure to appear or pretrial misconduct rates. Existing programs throughout the United States vary extensively in their administrative structures and services offered. Despite these differences, the common purpose of these programs is to decrease the detention rate and/or length of stay by releasing defendants considered to be acceptable risks to the custody and supervision of the program. Depending on the individual defendant, releasees are required to report to the program at specified intervals. Such contact may be by telephone or personal appearance. The programs also provide notification services to remind clients of their upcoming court appearances as they are scheduled. These programs have been found to be successful because the majority of the individuals who fail to appear do so by "accident" rather than because of a deliberate attempt to avoid prosecution.

Finally, another option for immediate relief to today's jail population would be the diversion of all detainees under the influence of alcohol at the time of their arrest. As stated earlier, it is not uncommon for an intoxicated individual to be detained by the magistrate to await for sobriety or the arrival of a third party to assume custody. These individuals may be housed safely in the Public Inebriate Center rather than in today's overcrowded jail. Although we are unable to project the impact of such a policy, we believe the impact would be very beneficial from an inmate management standpoint despite the small number of inmates potentially diverted.

3. SUCCESS MEASURES OF PRETRIAL RELEASE DECISIONS

Three measures of failure to appear were calculated. The first measure was the rate at which misdemeanants summonsed in lieu of arrest failed

to appear for subsequent court appearances. This group has a 5.5% failure to appear rate. This rate is low compared to other jurisdictions we have worked with and figures frequently cited in the literature. However, this figure may be higher if we were able to examine the total summonsed population, particularly traffic offenders.

The second measure of failure to appear was based on the number of defendants who were arrested on a failure to appear charge. Approximately 23 percent of the misdemeanants examined had a failure to appear as one of the charges at arrest. These defendants were originally summonsed rather than physically arrested. The original charges against these defendants were almost evenly divided between misdemeanor and traffic offenses (Misdemeanor = 52 percent, Traffic = 48 percent). Although these defendants failed to appear for court hearings on twelve separate offenses, the vast majority failed to appear on the original charges of driving on a suspended/revoked license (48 percent) and passing worthless checks (25 percent).

The final measure of failure to appear involved tracking each of the sample defendants able to obtain pretrial release. Felons only had a three percent failure to appear rate compared to the eleven percent rate found for misdemeanants and the sixteen percent rate found for traffic defendants. Although defendants who failed to appear were originally arrested for 22 distinct offenses, defendants arrested for driving on a suspended/revoked license, failure to appear, and DWI accounted for 57 percent of the failures to appear. Although only based on 22 cases, 59 percent of the defendants arrested for driving on a suspended/revoked license failed to appear for a court hearing.

Three measures of pretrial re-arrest rates were calculated. The first measure was the rate at which pretrial releasees were re-arrested for a new

criminal offense, criminal traffic offense, or traffic infraction. This broad measure yielded a nineteen percent re-arrest rate. The re-arrest rate drops to sixteen percent when traffic infraction arrests are excluded from the computation. The rate further drops to ten percent when only new criminal offenses are included. This latter rate is similar to the 10-16 percent rate commonly reported for jurisdictions throughout the country.

Although the ten percent re-arrest rate may be disturbing to some readers, we believe a large number of the re-arrests do not involve the actual commission of a new offense during the pretrial release period. The rate may be more a measure of the administrative factors of the criminal justice system. It is probable that the arrest rates are the result of old warrants being served for offenses committed before the pretrial release period commenced or new warrants based on information obtained during the initial arrest.

RECOMMENDATION SEVEN

A couple of options are available that could potentially reduce the failure to appear rates without adversely impacting the already overcrowded jail.

Defendants demonstrating high rates of failure to appear would be suitable clients for placement in a supervised pretrial release program in lieu of detention or insistence on a secure bond. The defendants would be subject to supervision by program staff providing frequent reminders of scheduled court appearances.

For those defendants not subject to program supervision, a system should be implemented that provides written notification of scheduled court appearances. It has come to our attention that the Courts

themselves may play a role in contributing to the high failure to appear rates, particularly those found for misdemeanor and traffic defendants. The only written notification the defendant currently receives is issued at the summons execution or pretrial release stage. Once the defendant appears in court, no written notification is provided to the defendant listing the time and date of future required appearances. Based on experiences elsewhere, we believe the issuance of written notifications will help reduce the failure to appear rate. Written notifications should also be issued whenever a hearing has been re-scheduled. Finally, defendants whose scheduled hearings are set to occur several weeks or months in the future should be issued periodic reminder cards or notices.

H. THE IMPACT OF JUDICIAL PROCESSING ON THE JAIL POPULATION

1. OVERVIEW OF CASE PROCESSING PATTERNS

Chapter Five of the report provided a detailed analysis of the case processing patterns found for each jurisdiction and courts within the region as they prosecute traffic, misdemeanor, and felony cases. Included in this broader focus were separate discussions on the case processing patterns for those defendants never able to secure pretrial release. The discussion and recommendations presented below will largely focus on these latter cases. For an understanding of case processing regardless of detention status, the conclusions contained at the end of Chapter Five offer a thorough discussion of the overall processing patterns.

The General District Courts operating within the region were able to expedite the case processing of non-felony traffic and misdemeanant cases. Detained defendants were brought to arraignment within a median of three days compared to twenty-four days for those released pretrial. The

median arrest to final disposition time interval of detained traffic and misdemeanor offenders was five days compared to 39 days for those defendants able to secure pretrial release. Approximately 67 percent of the released defendants had case processing times longer than thirty days compared to five percent of the detained defendants.

One of the reasons non-felony traffic and misdemeanor detainees had shorter cases processing times was that very few of these cases experienced a continuance. Detained defendants only had a 2.6% continuance rate compared to 18.4% for those defendants able to secure pretrial release. Secondly, detained defendants were more likely to have their cases disposed of at arraignment (Detained = 77 percent, Released = 60 percent). Finally, the data suggested that detention status may serve to inhibit defendants from challenging the charges more aggressively than those able to secure pretrial release. Approximately 67 percent of the detained defendants pled to the original primary offense at arrest compared to 48 percent of the released defendants. Only three percent of the detained defendants went to trial compared to twenty percent of the released defendants.

It appeared that all three General District Courts expedited the processing of non-direct indictment felony detention cases. The Frederick County General District Court had both the shortest processing time of detained felons (27.5 days) and the greatest difference between their processing time versus the time required to process felons released pretrial (29 days). Clarke County processed detained felons within a median of 29 days compared to 43 days for those released pretrial. The Winchester General District Court processed detained felons within 35 days. One reason for this court's longer case processing time was due to its scheduling of preliminary hearings further into the future than the other two localities. Winchester

preliminary hearings were scheduled to occur 28 days after arraignment compared to 21 days in the other two localities.

The Circuit Court also appeared to expedite the processing of non-direct indictment felony detention cases. However, unlike the General District Courts, significant differences were found between the localities in terms of their preliminary hearing to final disposition time intervals. The Winchester Circuit Court processed detention cases in only 51.5 days compared to 104 days in Clarke (Frederick = 90 days). The Winchester Circuit Court also exhibited the greatest difference between the median days required to process detained versus released felons (31.5 days). The difference was nineteen days in Frederick and only five days in Clarke.

There appear to be several explanations for the differential case processing times found between the Circuit Courts in the processing of non-direct indictment felony detention cases. The first explanation is that the Winchester Circuit Court was able to obtain a true bill from the grand jury shortly after the case was certified by the General District Court (Winchester = 14 days, Frederick = 23 days, Clarke = 41 days). Contrary to the majority of the case processing patterns, defendants released pretrial in Frederick and Clarke Counties had their true bills returned sooner than those unable to obtain pretrial release (Frederick = 7 days, Clarke = 26 days). Secondly, the Winchester Circuit Court was also able to schedule trials sooner after grand jury indictment than either of the other localities (Winchester = 41.5 days, Frederick = 64 days, Clarke = 52.5 days). Thirdly, Clarke County detained felons had a substantially higher continuance rate (Clarke = 55.6%, Winchester = 31.8%, Frederick = 31.2%). Of the detention cases with continuances, 93 percent of Clarke County's occurred in the Circuit Court compared to 42 percent in Winchester and 40 percent in Frederick. Finally, a higher

percentage of the detention cases in Clarke and Frederick Counties went to trial (Clarke = 16.7%, Frederick = 12.5%, Winchester = 6.8%).

All three Circuit Courts also appear to expedite the processing of direct indictment felony detention cases. Similar to non-direct indictments, significant differences were found between localities in terms of the time required to process detention cases. The Winchester Circuit Court processed direct indictment detention cases in 68 days compared to 94.5 days in Clarke County and 88 days in Frederick. The Winchester Circuit Court also exhibited the greatest difference between the median days required to process detained felons versus released felons (41 days). The difference was 20 days in Frederick and only 9.5 days in Clarke. The key explanation for the differences between the localities involves the arraignment hearing. The Winchester Circuit Court held this hearing within a median 15 days after arrest compared to 25 days in Frederick and 36.5 days in Clarke.

Despite the efforts to expedite the case processing of defendants never released pretrial, these offenders are responsible for consuming the bulk of the pretrial days served within the region. Defendants never able to obtain pretrial release comprised only six percent of the non-felony traffic and misdemeanor arrests but consumed 46 percent of the pretrial days served by this group of offenders. Defendants never released pretrial comprised 27 percent of the felony traffic and felony criminal arrests. These detainees, however, consumed 89 percent of the pretrial days served by this group of offenders.

RECOMMENDATION EIGHT

Recommendations discussed earlier in this chapter demonstrated the potential impact reductions in the detention rate and the average length

of stay would have on the average daily population. These recommendations and their impact were focused on all defendants detained subsequent to arrest and primarily addressed the impact of more liberal pretrial release policies. Although we believe a greater number of defendants can be safely released to the community, particularly if a supervised pretrial release program is implemented, we must also recognize that certain defendants cannot be safely released and must be detained in order to guarantee their appearance in court or to protect the community. Absent more liberal pretrial release policies, significant reductions in the average daily population can be accomplished if the cases of defendants never released pretrial, particularly felons, are further expedited.

a. DIRECT INDICTMENT FELONS

As stated earlier, the Winchester Circuit Court had the shortest median arrest to disposition time interval for direct indictment felons never released pretrial (68 days). A total of 1.3 beds would be saved if the Frederick and Clarke County Circuit Court were able to reduce their median case processing times to 68 days. A total of five beds would be saved if all three Circuit Courts were able to reduce the arrest to disposition time interval to 40 days.

b. NON-DIRECT INDICTMENT FELONS

The Winchester Circuit Court also had the shortest arrest to disposition time interval for non-direct indictment felons never released pretrial (84.5 days). A total of 2.6 beds would be saved if the Frederick and Clarke County Courts were able to reduce their median case processing times to 84.5 days. A total of approximately

5.5 beds would be saved if all three jurisdictions were able to reduce the arrest to disposition time interval to 65 days.

c. NON-FELONY TRAFFIC AND MISDEMEANORS

Unlike felony detainees, non-felony traffic and misdemeanor detainees unable to secure pretrial release are detained for very short periods of time. These detainees had their cases disposed within a median of five days. A reduction in the median to three days would only result in a savings of approximately one-half bed.

2. OPTIONS FOR REDUCING PRETRIAL LENGTHS OF STAY

A number of options are available to the judiciary, prosecution, and defense counsel for reducing the pretrial lengths of stay of detainees, particularly those never able to obtain pretrial release. None of the options in isolation will result in significant savings in jail beds. Rather, efforts to expedite the case processing of detainees must recognize the cumulative effects a series of policy changes would have on case processing times.

a. EXPEDITED FIRST APPEARANCE HEARINGS

Data collected from case files indicate that traffic and misdemeanor detainees had their first court appearance within a median of three days while felons were brought before the judiciary within a median of five days. One reason for these time intervals is that most of the courts operating within the region have fairly rigid schedules as to when first appearances/arraignments will occur for particular types of offenses or jurisdictions. For example, an individual detained on Friday evening will not necessarily appear before a judge

on Monday. First appearance will occur on the day the type of offense or cases from the jurisdiction of arrest are scheduled to be heard by the particular court.

Given the high population levels of the jail, the courts may wish to incorporate more flexibility in their calendars so that detained defendants are brought before a judge the day after their detention. In an effort to estimate the impact of such a policy, all detainees not brought before the judiciary within seven days of arrest were identified. Defendants detained longer than seven days without an appearance in court were excluded on the assumption that they were arrested in another jurisdiction and housed elsewhere or already serving an incarcerative sentence for other charges. Based on this analysis, the average daily population could be reduced by one bed if detained defendants are brought to first appearance on the next working day after their detention.

Such a policy change could have ramifications beyond the mere savings of one jail bed. Early review of the initial detention decision, coupled with the establishment of a supervised pretrial release program, could lead to a higher number of releases and their attendant effect on shortening the average length of stay. For those defendants who require further detention, these first court appearances may result in an earlier appointment of counsel. In some cases, the first court appearance for purposes of bond review may also serve as the arraignment. Early arraignments would therefore serve to reduce the length of time required for the scheduling of a preliminary hearing and/or trial date. Finally, early first appearances could have a substantial impact on clearing the dockets of the General

District Court in particular. Since a large number of the detained misdemeanants and traffic offenders plead at arraignment, earlier dispositions would free up more time for the General District Court processing of detained felons.

A couple of options exist for implementing a subsequent day first appearance policy. The first would be to have all the judges within the region conduct first court appearances each morning. A problem with this approach is that the Clarke County General District Court judge and the Juvenile and Domestic Relations Court judge are not sitting within the region on a daily basis. A more viable approach would be to assign, on a rotating basis, a General District judge to conduct first appearance hearings for all new detainees within the region under the jurisdiction of the General District Court. Rotating assignments among the Circuit Court judges would need to be made to handle new detainees under the jurisdiction of the Circuit Courts.

b. EARLY NOTIFICATION OF SANCTIONS

The Courts, particular the General District Courts, may wish to adopt an innovative approach used in other jurisdictions attempting to reduce their jail population levels. The first appearance judges in these jurisdictions do not conduct bond reviews for many of the detainees arrested on minor charges. Instead, these offenders are informed of the penalty that will be imposed in the event of a guilty plea. The defendant is then given the opportunity to confer with a Public Defender before accepting or rejecting the sentence. Such an approach could be beneficial since 59 percent of the non-felony traffic and misdemeanor detainees never released pretrial received a

monetary sanction as the primary penalty. If these offenders plead at the first appearance, the average daily population could be reduced by approximately one bed. Surprisingly, many of the defendants when told that they will receive an incarcerative sentence still choose to plead guilty at first court appearance. Guilty pleas offered by these defendants would serve to reduce the average daily pretrial population even further.

c. EARLY SCREENING BY PROSECUTION AND DEFENSE

Early involvement by both the prosecution and the defense bar can be a crucial strategy in reducing jail population levels. In an effort to foster earlier defense bar active involvement in the criminal cases, we suggest that financial information needed for ascertaining whether a detained defendant will require appointment of counsel be collected by the magistrate and forwarded to the presiding judge. Since the majority of these decisions are rather routine administrative decisions, appointments may be made in judicial chambers with appointed counsel notified of client names and arraignment dates over the telephone.

Such appointments have the potential to expedite the case processing of detained defendants in three ways. First, early appointment prior to arraignment may reduce the number of arraignments requiring re-scheduling. Under current procedures the majority of counsel appointments are made on the initial arraignment date set after the defendant's arrest. A fairly large number of cases require a re-scheduling of the arraignment date due to the newly-appointed counsel's inability to proceed further without prior consultation with

the client. Earlier appointments would allow counsel to confer with the client in order to be prepared to offer a plea at arraignment. Secondly, earlier contact with the client may lead to an increase in the number of arraignment waivers if a not guilty will be entered or an increase in the number of cases disposed of at arraignment if a guilty plea will be entered. Finally, such appointments may lead to earlier filing of motions prior to trial or earlier negotiations with the prosecution regarding charge or sentence agreements.

Early prosecutorial screening can be another crucial strategy in reducing jail population levels. A major reason early prosecutorial screening is advocated is the fact that, in many jurisdictions, detained defendants are either not convicted or convicted of less serious charges than those at arrest. Early screening provides an opportunity for the prosecution to review the evidence so that the "proper" charges for prosecution are identified early in the adjudication process. Although we could not empirically measure the point at which the prosecution actively gets involved in the cases of detainees never released pretrial, the data suggests that a small degree of "overcharging" may be occurring within the region. Approximately seventeen percent of the non-direct indictment felons never released pretrial had their cases disposed of in the General District Court. The median arrest to disposition time interval for these cases was 34 days. Savings in jail days served could be realized if these cases can be identified earlier in the process and dismissed or reduced to misdemeanors before the arraignment hearing occurs. Approximately 28 percent of the non-felony traffic and misdemeanants defendants never released pretrial had their charges

dismissed. However, their cases were disposed of within a median of four days.

d. SENTENCING GUIDELINES AS A TOOL IN POPULATION MANAGEMENT

The Supreme Court with the assistance of the Department of Criminal Justice Services is currently piloting the implementation of sentencing guidelines in six circuits throughout the Commonwealth. The Twenty-Sixth Judicial Court has recently begun to implement these guidelines voluntarily. Although Virginia's guidelines are designed solely as a tool for reducing sentencing disparity in felony cases, jurisdictions in other states have found sentencing guidelines to be a valuable tool in managing their pretrial populations. These other-state jurisdictions "score" all felony detainees in order to identify the sentence a particular defendant is likely to receive if found guilty. This procedure has led to fewer defendants requiring detention throughout case processing and has also helped reduce pretrial lengths of stay. For those defendants not likely to receive an incarcerative sentence, the guidelines have helped identify detainees that are "good" candidates for pretrial release. In addition, these other-state jurisdictions have found that defendants are less likely to proceed to trial if the likely sentence is known beforehand. The guidelines have acted to increase the number of guilty pleas and shorten the length of time required to reach final disposition.

The data indicates that similar usage of the guidelines within the region can potentially impact on the pretrial population. Only twelve percent of the felons never released pretrial actually went to trial.

In addition, 90 percent of the felons processed within the region plead or are found guilty of the original primary offense at arrest. According to the data and experiences gained elsewhere, a large portion of the cases proceeding toward trial are more a function of the plea bargaining process than a legal determination of guilt or innocence. Guidelines have the potential to reduce the need for such sentencing agreements between the defense and prosecution. Early scoring of the guidelines sentence may result in earlier pleas for the vast majority of those defendants who eventually plead guilty at or near the trial date. Only those cases requiring trial would proceed further.

e. DETAINED CASES REVIEW COMMITTEE

The formation of detained cases review committees can also offer a mechanism for expediting the case processing of defendants detained pretrial. These committees are often termed "pity committees" in jurisdictions where they are operating. Although their memberships vary, the primary purpose of these committees is to review the case processing status of detained defendants on a periodic basis by the key actors involved in the case. Key actors commonly involved in such committees would be the presiding judge, prosecuting attorney, public defender, and jail administrator. The committees would review the case status of each detained defendant and share any further information gained that may qualify the defendant for pretrial release. The meetings also offer the opportunity for the judiciary to identify strategies to ensure that the legal processing of the case can proceed as quickly as justice allows.

f. INCREASED USE OF DIRECT INDICTMENTS

The data collected from case files indicate that direct indictment felons have their cases disposed of much sooner than felons requiring processing through the General District Court. An increased usage of direct indictments would therefore result in a reduction in the length of stay for those felons never released pretrial. The drawback to this approach, however, is the possibility that an unknown number of offenders who may be potential dangers to the community would remain free until the grand jury indictment can be obtained. If this option is chosen, the Jail Advisory Group is the body of decision-makers capable of policy development that reflects practical, public safety, and political considerations.

g. CONTINUANCE REDUCTION

Case processing data indicates that felons never released pretrial had a lower continuance rate than felons released pretrial. Despite the various courts' efforts at expediting the cases of felony detainees, approximately 52 percent of the felons never released pretrial had at least one hearing re-scheduled during case processing. Further analysis of these cases indicates that approximately 18 percent of the pretrial and pre-sentence jail days served by felons were "extra" days served due to a particular hearing being re-scheduled to a later date. The complete elimination of continuances in the cases of detained felons would result in a savings of approximately six beds. Although we recognize that continuances cannot be completely curtailed, we wish to point out that their impact on the jail population is substantial and we recommend that efforts be

made to reduce their occurrence as much as possible.

h. PREPARATION OF PSI REPORTS

A small portion of the felons are detained to await the preparation of pre-sentence investigation reports. To be specific, 30 felons never released pretrial had such reports ordered while sixteen felons originally released pretrial were re-detained to await the report's preparation. The median final disposition to sentencing time interval for these felons was 52 days. According to staff in the Probation Office, the rather lengthy time between these two court events is due to the large number of non-local residents comprising the population of defendants with PSI reports ordered. The biggest delay in these cases is awaiting submission or verification of criminal history information from other jurisdictions. Although substantial reductions in the length of time required to prepare PSI reports may not be possible, approximately one bed savings would be attained if the median can be lowered to 45 days. One way to achieve this reduction would be to move the sentencing hearing up in cases where PSI reports are completed before their original due date.

I. THE IMPACT OF SENTENCING PRACTICES ON THE JAIL POPULATION

1. OVERVIEW OF THE SENTENCING PROCESS

Defendants arrested for non-felony traffic offenses had a conviction rate of 92 percent. Approximately 81 percent of the non-felony traffic convictions result in the imposition of fines and/or court costs as the primary sanction. Nineteen percent of the non-felony traffic convictions resulted in the imposition of a jail sentence. The average jail sentence

imposed was 39 days. However, the average actual post-sentence length of stay was 19.5 days.

Defendants arrested for misdemeanor charges had the lowest conviction rates found within the region (57 percent). Approximately 74 percent of the misdemeanor conviction's resulted in the imposition of fines and/or court costs as the primary sanction. Three percent of the convicted misdemeanants received a probationary term as the primary sanction. Approximately 23 percent of the misdemeanor convictions resulted in the imposition of a jail sentence. As for type of offense at arrest, thirteen percent of the defendants originally arrested for misdemeanors were given a jail sentence compared to 43 percent of the defendants originally arrested for felony offenses. The average jail term imposed was 76 days. However, the average actual post-sentence length of stay was approximately 42 days.

Defendants arrested for felony offenses had an 80 percent conviction rate. Approximately 16 percent of the convictions were pleas to misdemeanor offenses. Of the defendants convicted of felony offenses, only two percent had fines or court costs imposed as the primary sanction. Approximately seventeen percent of the defendants convicted of felony offenses were given some form of community supervision as the primary sanction (Probation = 9 percent, CDI = 8 percent). When defendants given split sentences are included, 78 percent of all defendants convicted of felonies had community supervision imposed.

An incarcerative sentence was the primary sanction utilized in felony convictions. If defendants eventually released to the CDI program are included, approximately 89 percent of the defendants convicted of felony offenses were incarcerated subsequent to sentencing. If CDI placements are excluded, approximately 81 percent of the convicted felons were given a jail

or prison sentence. Approximately 47 percent of the convicted felons were given a prison sentence. The average prison sentence imposed was approximately 70 months. Thirty-four percent of the convicted felons were given a jail sentence. The average jail sentence imposed was approximately 217 days.

The average post-sentence length of stay for all sentenced felons was 90 days. These statistics, however, distort the post-sentence confinement period because several different types of felons were incarcerated. Felons given a jail sentence had an average length of stay of 101 days. Felons released to CDI had an average length of 75 days. Approximately 15 percent of the felons sentenced to prison actually served their sentences in the local jail. The average length of stay for these felons was 140 days. These findings, however, are most likely dated due to changes in transfer practices instituted by the Virginia Department of Corrections during 1988. The current transfer policies place priority on felons given prison sentences of six years or more. Statewide data indicates that, if present practices continue, approximately 60 percent of the convicted felons with less than six year sentences will actually serve their time in local jails. Finally, the average length of stay for felons transferred to the state prison system was 78 days. Due to the recent overcrowding in the state prison system, jail personnel indicate that the current average length of stay before transfer is approximately 90 days.

The post-sentence jail days served translated into a post-sentence average daily population of 64 inmates when computed on an annual basis. As pointed out in Chapter Five, our computed average daily population may be slightly lower than the actual ADP that may have been registered during the study period due to the exclusion of certain classes of inmates during data

collection and the fact that we were unable to calculate the post-sentence time served for fourteen percent of the defendants given an incarcerative sentence. Of the 64 inmates serving sentence on an average day, 51 were serving a felony sentence, eight were serving a misdemeanor sentence, and five were serving sentence for a non-felony traffic conviction.

RECOMMENDATION NINE

Significant immediate reductions in the average daily population can be attained through relatively minor reductions in the incarceration rate and/or average length of stay. Due to their high incarceration rate and lengthy periods of confinement, defendants convicted of felonies are the group that offer the greatest potential for providing relief to today's overcrowded jail. Similar to the analysis of the pretrial population, we are unable, nor is it our role, to identify defendants who should be diverted from jail. Therefore, the following recommendations are necessarily broad due to our inability to pinpoint specific groups of defendants suitable for safe release to the community. The Jail Advisory Group is the body of decision-makers best equipped to develop criteria for implementation if diversionary sentencing practices are to be pursued as a strategy for population management.

a. FELONS

The most effective way to reduce today's felony sentence population is through a greater reliance on non-incarcerative sentences. Efforts to reduce length of stay are rather limited since 47 percent of the convicted felons are sentenced to the state prison system. Their exits from the local jail are determined by Department of Corrections

transfer policies and decisions made by the Parole Board. Efforts by local criminal justice decision-makers to reduce the average length of stay would be restricted to those felons receiving a jail sentence or awaiting placement in the CDI program.

Despite limited opportunities to reduce the average length of stay, significant reductions in the average daily population can be attained if the incarceration rate alone is reduced. As stated earlier, approximately 89 percent of the convicted felons were incarcerated subsequent to sentencing. A reduction in the incarceration rate to 80 percent would have resulted in 30 fewer incarcerative sentences. At the current average length of stay, this policy change would result in a savings of five beds on a daily basis. An incarceration rate of 75 percent would divert 48 defendants from the jail. The bed savings of this lower incarceration rate would be approximately eight beds on a daily basis.

Felons given a jail sentence is a group for which both the incarceration rate and the average length of stay are under the control of local criminal justice decision-makers. A reduction in their detention rate from 34 percent to 30 percent would result in a savings of approximately 2.5 beds. This lower incarceration rate in conjunction with a reduction in the average post-sentence length of stay from 101 days to 94 days would result in a savings of four beds.

Felons awaiting placement in the CDI program currently have an average post-sentence length of stay of approximately 75 days. Lowering this length of stay to 60 days would result in a savings of a little less than one bed on a daily basis. Greater use of the CDI program, even with the current 75 day wait for placement, would result

in a net savings when compared to the jail days served by felons receiving jail or prison terms.

b. MISDEMEANANTS

A reduction in the incarceration rate for defendants convicted of misdemeanors from 23 to 20 percent would result in nine fewer jail sentences issued. This policy change would reduce the average jail population by one inmate. This lower incarceration rate in conjunction with a reduction in the average post-sentence length of stay from 42 days to 35 days would result in a savings of approximately two beds. A 15 percent incarceration rate would save approximately three beds. A 15 percent incarceration rate in conjunction with a 35 day average post-sentence length of stay would save approximately four beds.

c. TRAFFIC CONVICTIONS

A reduction in the incarceration rate for defendants convicted of non-felony traffic arrests from 19 percent to 15 percent would result in twelve fewer detentions. This policy change would save approximately 1.5 beds on a daily basis. This incarceration rate in conjunction with a fifteen day average post-sentence length of stay would yield a savings of a little over two beds. Reducing the incarceration rate to ten percent would save a little under three beds. A ten percent incarceration rate in conjunction with a fifteen day average post-sentence length of stay would save approximately 3.5 beds.

2. OPTIONS FOR REDUCING THE SENTENCED POPULATION

a. RE-IMPLEMENTATION OF ALTERNATIVE PROGRAMS

The region may wish to re-implement the various alternative programs that were in existence prior to June, 1985. The Community Alternatives Program, Sentence Alternative Program, and Fine Option Program not only resulted in diversions from jail but also provided benefits to the larger community through community service work and/or a higher collection rate of fines and court costs levied. If such programs are re-implemented, the region may wish to expand its focus from primarily a General District Court program to also encompass select felons convicted in the Circuit Court.

b. GREATER UTILIZATION OF PROBATION AND CDI

As stated earlier, only nine percent of the convicted felons receive a probationary term as the primary sanction while only eight percent are placed in the CDI program. Significant reductions in the sentenced felon population can be attained if these community supervision alternatives are utilized more often as a primary sanction. If established, a supervised pretrial release program can aid the judiciary in the selection of felons who may benefit from community supervision. Successful compliance with the conditions imposed by the release program can often be used as a guide in determining whether a defendant is likely to successfully complete a probation or CDI term. If more CDI placements are utilized, the judiciary must avoid placing defendants into the program whose length of post-sentence stay would normally be shorter than the length of time required for the placement request to be processed.

c. EXPEDITIOUS PLACEMENT OF CDI CLIENTS

Significant net savings in jail days served will not be attained unless the amount of time required to process CDI placement requests is shortened. The implementation of a supervised pretrial release program would reduce the information gathering requirements of CDI program personnel for those candidates interviewed by the release program. Secondly, CDI processing times can be shortened if the Community Corrections Resources Board meets bi-weekly rather than once a month.

d. GREATER UTILIZATION OF WORK RELEASE

Statements made by various criminal justice officials indicate that work release would be utilized to a greater extent if the Work Release Center had a higher housing capability. An interim solution may be to allow work release participation for those defendants detained in the Frederick County Jail. Although the jail's average daily population will not be affected, such releases at least provide some relief to the staff and inmates in the overcrowded facility for a significant portion of the day.

e. HOUSE ARREST

The Twenty-Sixth Judicial Circuit was recently awarded grant funds by the Department of Criminal Justice Services for the purpose of implementing a home arrest electronic monitoring program. The program will allow select defendants to serve their sentences in their home through the use of electronic bracelets as monitoring devices. The program as designed will have the immediate capability of handling

twenty participants. However, the impact on the region's jail population will be small due to the fact that the technology will be shared by other jurisdictions within the Twenty-Sixth Judicial Circuit. The region may wish to expend local monies in order to increase the program's current capacities. This would not be a continuing expense but rather a one time capital expenditure with program operation and maintenance costs supported by a user-fee system.

f. EARLY RELEASES

If the detained cases review committee option discussed earlier is adopted, the same members could perform a quasi-parole function by identifying sentenced inmates who can be safely released to the community before their slated sentence expiration date. With judicial approval, sentences could be modified for outright release or defendants could be released under some form of community supervision.

J. FINAL COMMENTS

We hope that this report demonstrates that crime and arrest rates do not function in a vacuum in determining the size and composition of the local jail population. Rather, determinants of the jail population also include the impact of decisions made by local criminal justice officials responsible for admissions to jail and their length of stay. Implicit in this recognition is the understanding that solutions to jail overcrowding cannot simply rely on a bricks and mortar approach. Based on experiences throughout the United States, the region's new jail will reach capacity rather shortly after opening regardless of whether it is built to house 200, 250, or 300 inmates. The

successful management of jail populations can only be accomplished when criminal justice agencies, individually and collectively, critically examine the impact that their policies and practices have on the detained population. Given the fact that jail space is a scarce, finite, and expensive resource, the criminal justice system must continually evaluate its performance to ensure that the jail is used appropriately and efficiently.

Our involvement with criminal justice officials in the region leads us to believe that sincere efforts have been made to lessen the overcrowding problem in the local jail system. Despite these efforts, the empirical assessment contained in this report identifies a number of areas where further savings in jail days served can be attained with minimal efforts or resources. We believe the net cumulative effect of the conservative recommendations offered in this report have the potential to reduce the average daily population in the jail by 20 to 40 inmates. However, given today's high population levels, a reduction of 40 inmates would still leave the current jails with populations exceeding their capacity. Although this report does not have all the answers to today's problems, the recommendations offered herein should help to ensure that the new jail will meet the detention needs of the region well into the future.