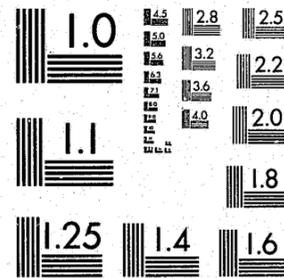


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National Institute of Justice
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INSTEAD OF JAIL

pre-and post-trial alternatives to jail incarceration

VOLUME 1

ISSUES AND PROGRAMS IN BRIEF

42223

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

INSTEAD OF JAIL:
pre-and post-trial alternatives to jail incarceration

VOLUME 1

ISSUES AND PROGRAMS IN BRIEF

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OCTOBER 1977

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
U.S. Department of Justice

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PREFACE TO THE SERIES

These volumes on alternatives to jail were written for local officials seeking help in formulating policies to reduce or contain jail populations through the use of viable alternatives. Reducing the use of jail by expanding pre- and post-trial alternatives can enable a community to postpone or avoid costly new construction or expansion of detention facilities.

The American Justice Institute's Alternatives to Jail Incarceration project was funded by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice. The study sought to identify promising alternatives to pre- and post-trial detention in use in the United States and to develop guidelines for selecting, initiating, operating, and assessing the impact of the various alternatives identified.

The study included extensive literature review, a national census of selected alternative programs, collection of material on scores of programs, and site visits to criminal justice agencies in thirty jurisdictions in sixteen states and the District of Columbia. Limited studies and one comprehensive, in-depth study were made of criminal justice processes and related statistics within a scattering of jurisdictions.

Helpful guidance was provided by a broadly representative advisory resources board, and several consultants supplied critical review or comments in one or more of several draft reports.

The project has culminated in the preparation of a five-volume publication under the general title: *Instead of Jail - Pre- and Post-Trial Alternatives*

to Jail Incarceration. The volume sub-titles were as follows:

1. Issues and Programs in Brief
2. Alternatives to Pretrial Detention
3. Alternatives to Prosecution
4. Sentencing the Misdemeanant
5. Planning, Staffing and Assessing Alternatives

Volume 1 summarizes material treated more broadly and in greater depth in the other four volumes. Volume 2 deals with use of summons and police citations and with a wide range of pretrial release practices for persons booked into jail. Volume 3 gives brief attention to the subject of decriminalization, then turns to diversion programs at each of several points in the criminal justice process. As the title indicates, Volume 4 is concerned with post-trial options. Volume 5 contains a miscellany of material, including some strategies and techniques for jailers concerned with limiting their jail population; comparative costs of jailing and its many alternatives; personnel requirements for alternative programs; and a review of issues and needs related to the viability of alternative programs.

The project director accepts full responsibility for material in these five volumes. Volume 1 was prepared by Nora Harlow, who joined the staff late in the project. Final drafts of the other four volumes were completed by the project director. In the process he made use of various interim and special reports prepared by other staff members. These included especially a report of a study by William Greene-Quijano of costs in a selected local jail (summarized in Appendix D, Volume 5); a paper by Gary Kemp on police citation, substantial portions of which appear in Chapter 2, Volume 2; and a variety of materials prepared by Walter H. Busher, Associate Project Director.

ACKNOWLEDGEMENTS

A primary source of help in planning the study and the resulting publications was the Advisory Resource Board. The Board met three times during the course of the project, and there were additional individual contacts and correspondence with board members. Among them they represented all components and disciplines within the criminal justice system, along with general government at the municipal and county level. Although their advice and criticism were sought on study plans and preliminary drafts of all reports, there was no intention of seeking a consensus of the board or its endorsement of the final product. Preparation of this publication, we believe, reflects responsiveness to suggestions of board members, but it is not presented as reflecting their views. Board members are listed at the conclusion of this section.

Continuing interest, stimulation, helpful criticisms and suggestions were received from the Project Monitor, Marlene Beckman of the Law Enforcement Assistance Administration, and several consultants whom she involved in the project in various degrees from the review of the grant application to critical analysis of preliminary and final drafts of the material. Special thanks are due to Dr. Charles Wellford, then of Florida State University, who reviewed several earlier reports, attended the final advisory board meeting and spent a day with project staff here in Sacramento; Douglas Vinsant, Washington State Bureau of Juvenile Rehabilitation, who attended all advisory board meetings and wrote useful comments on these and on draft reports; and to Sheriff William Lucas of Wayne County, Michigan, who was able to attend two of the advisory board meetings.

We are indebted to a great many court officials and agency people around the country who gave of their time for interviews and correspondence in aid of our study and ungrudgingly supplied descriptive, statistical, fiscal and other materials related to their programs. The same is true of numerous researchers, several of whom shared early drafts, page proofs and advance copies of books and articles. In addition to this kind of assistance, Wayne Thomas, then of the University of California--Davis Law School, consulted with us and supplied a written critique of a preliminary draft of Volume 2. Bruce Beaudin, Director of the Washington, D. C. Bail Agency also provided a useful review of this draft volume. We had a similar opportunity to discuss it with James Droege, Director of the Indianapolis Pretrial Agency, who made available a copy of a pretrial release manual which appears as Appendix B of Volume 2.

Extensive help was received from Billy S. Wayson and his staff of the A.B.A.'s Correctional Economics Center. We worked closely with them throughout our project, they being involved in a parallel study. Extensive use was made of material from their study, especially in Chapter 3, Volume 5.

Finally, we acknowledge the continuing guidance and support during this project of Richard A. McGee, President, and Harland L. Hill, Vice President and Research Director, American Justice Institute.

The list of Advisory Resource Board members follows:

Donald E. Clark, Chairman
Multnomah County Board of Commissioners
Portland, Oregon

Patrick F. Healy, Executive Director
National District Attorneys Association
Chicago, Illinois

Frederick D. Moyer, Director
National Clearing House for
Criminal Justice Planning and
Architecture
Champaign, Illinois

Judge Tim Murphy
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Prevention, LEAA, Washington, D.C.

NOTE: One board member felt constrained to resign when he accepted a position in the Chicago regional office of LEAA. This was Robert C. Gruensfelder, Executive Director, Missouri Law Enforcement Assistance Council. Mr. Gruensfelder made a number of valuable contributions during the early months of the project.

CHAPTER I

BIGGER AND BETTER JAILS: WHO NEEDS THEM?

Booking a person into jail costs about \$24. Keeping him there costs almost \$12 a day. Annual jail operating expenditures are approaching the \$1 billion level nationwide.

The full costs of jailing are much higher. The community in which jail incarceration is used more than minimally faces the prospect of expanding or replacing its chronically overcrowded detention facilities -- at more than \$27,000 per bed. Physical and program improvements needed to comply with jail standards being adopted in many states may be almost as costly as new construction.

In addition to the costs of operating the jail and improving or replacing deteriorating facilities are the expenses incurred if the family of a jailed person must be publicly supported, the lost productivity of his forfeited employment, and, too often, the hidden costs of a wasted human life.

Jailing is costly. Its benefits are few: brief community protection, mostly from "nuisance" behaviors and self-victimizing offenses; expensive and often substandard care and custody for persons who generally would be better off in a non-penal setting; and, questionably, some deterrent value in the enforcement of criminal laws and ordinances. In most instances, what the jail provides could be achieved by alternate means--as well, as cheaply, and much more humanely.

The high costs and limited benefits of jail incarceration have encouraged officials in many American communities to question whether building a new jail

is the answer to overcrowded and inadequate detention facilities. True--a new jail may appear to be needed. But so may any number of other community facilities and services. With rising costs of labor and materials, local revenues--and those available from state and federal sources--must be judiciously distributed among local public services. Officials who hold the pursestrings, with good reason, are demanding that a genuine need be demonstrated before additional funds are allocated for the construction of bigger and better jails.

The approach adopted by cost-conscious decision-makers in some jurisdictions has been to require that jail populations be reduced to a minimum before determining the need for additional jail space. This approach, which has been recommended by a number of prominent national commissions and associations, can enable a community to postpone or avoid entirely the investment of limited resources in costly jail construction.* Restricting the use of jailing to cases in which incarceration is the only reasonable course of action can both reduce the numbers of persons in jail and eliminate the need for future expansion of jail capacity.

Jail populations can be kept down. And, if properly planned and implemented, this can be achieved without undue risk to the community. The tangible and intangible benefits to be gained make reducing the use of jail incarceration an attractive possibility. But the shift to a lower level of jail use will not "just happen." Law enforcement and criminal justice officials are under constant pressures to do something about crime and criminals. Unless viable alternatives to incarceration are readily available and there is

*Minimal use of incarceration has been recommended by the President's Commission on Law Enforcement and Administration of Justice, the National Advisory Commission on Criminal Justice Standards and Goals, the American Bar Association, the National Council on Crime and Delinquency, and the American Correctional Association, among others.

a firm commitment to their maximum use, the tendency is to resort to jailing much more frequently than is necessary or even appropriate.

Effective alternatives to jail do exist. A wide range of programs and practices which reduce the need for jail space have been successfully implemented in communities throughout the United States.

Communities in which alternatives to jail are successfully underway have been able to control or reduce the numbers of persons who must be detained before trial or while serving sentence. Costs of law enforcement and criminal justice operations have been significantly cut down in some jurisdictions. Avoidance of incarceration has permitted many accused or convicted persons to maintain or quickly resume a normal productive life. The need for larger detention facilities has lost its urgency and, in some cases, construction of a new jail has been indefinitely postponed.

The story, of course, is not always one of unqualified success. In one community an isolated instance of a serious offense committed by a pretrial releasee results in the withdrawal of public support. The alternative program is abruptly curtailed and threatened with shut-down. In another jurisdiction a relatively expensive program is used primarily for people who in the past would have received small fines or suspended sentences--or would not have been prosecuted at all. The resulting increase in overall costs leads local officials to be skeptical of further change. In a third, inadequate attention to local conditions in the planning stage leads to the failure of a program too hastily introduced on the strength of its reported success in a different community. In yet another, because support for the program was not obtained in advance from local judges, police, or prosecutor's office, the alternative is rarely used and its impact is slight.

If incarceration is to be reduced to the point where jail capacity requirements are minimized, alternatives to jail not only must be available, but they must be optimally used. Experience has shown that the optimal use of alternatives to jail requires:

- Thorough planning and study of local conditions, current practices, and community attitudes and tolerance levels.
- Cooperation and support from criminal justice and social service agencies.
- Strong and persistent advocacy for the development and use of alternatives.
- Implementation of a broad range of options to accommodate the widest variety of suspects and offenders.
- Use of the least interventionary (and generally least costly) alternative which will insure achievement of the objective in the individual case.
- Ongoing evaluation and study to determine overall program effectiveness and to forestall judgments of a program on the basis of a single atypical occurrence.

Minimizing jail capacity requirements may not eliminate the need for a new jail. In a few communities a full range of alternatives to jail may be introduced. As a direct result of conscientious planning and prior study, as well as the enthusiastic support and collaboration of officials and community residents, alternative programs and practices may be used to the maximum feasible extent. Yet the existing jail may be simply too old and run down to meet even minimal standards or too small to serve the needs of a growing community. A new, and perhaps larger, facility must be built. But its projected

capacity--and thus also its cost--has been cut to a minimum and construction or expansion can proceed with the assurance that it is genuinely needed.

Bigger and better jails --who needs them? The question is more than rhetorical. In the 1970's few communities can afford to be wasteful of limited public resources. None can deny the waste represented by the overuse of jail. The need for jail construction can be determined by taking a hard look at current practices and the ways in which these might be modified to achieve a lower level of jail use.

As a logical first step, local officials can become aware of the kinds of pre- and post-trial options which have proved effective in other jurisdictions. The programs and practices mentioned here and described more fully in succeeding volumes in this series are in use in at least some American communities and some of them are widely prevalent. All of them can help reduce jail populations. Not every one will be right for every community. Selection of appropriate programs for implementation must be guided by considerations of what is desirable and feasible, given local circumstances.

CHAPTER II
ALTERNATIVES TO JAIL: PRETRIAL

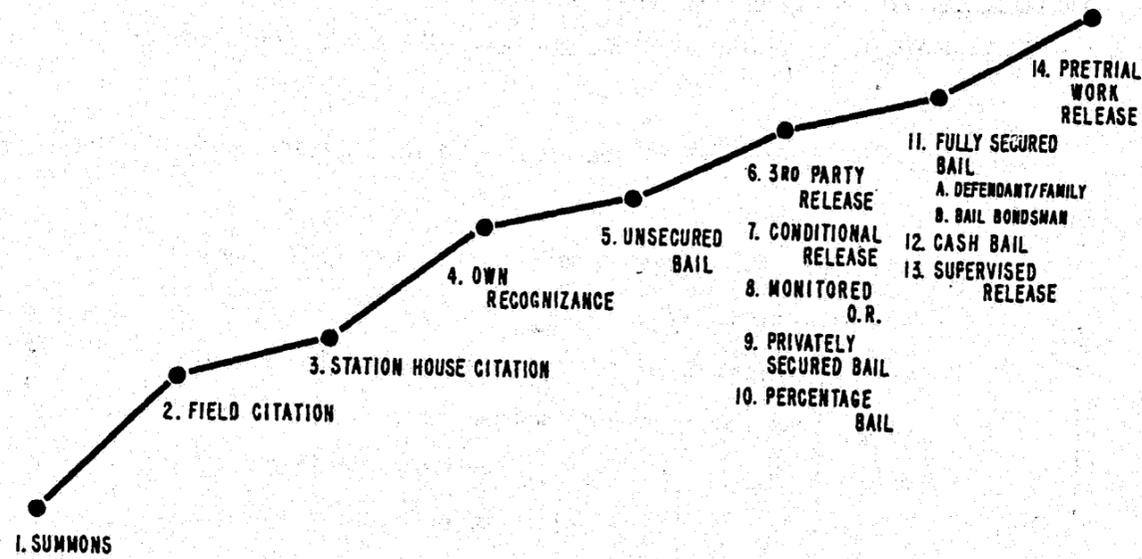
Incarceration is one of the most severe punishments meted out by the American criminal justice system. Yet over one-half of all persons in local jails are awaiting trial. In effect, we are using our most severe sanction against many individuals who have been convicted of no crime. If detention were necessary--if there were no reasonable alternative to the jailing of suspects--this would be understandable. But experience with the use of alternatives to jail has indicated that many people now incarcerated could be released safely and economically pending disposition of the charges against them. Most of them will appear in court as required without being held in jail.

Some tentative conclusions can be drawn from the experience of existing programs:

- Pretrial alternatives generally cost much less than jail incarceration.
- Persons released before trial seem to fare better in court than those who are incarcerated.
- Pretrial release alternatives appear to be as effective as jail in preventing recidivism and certain of them reduce the size of criminal justice agency workloads.
- Alternative programs can reduce jail populations and eliminate the need for expansion or new construction.

Pretrial alternatives to detention run along a continuum of increasing controls or sanctions (Figure 1). Any community wishing to maximize the use of alternatives will offer a series of options which provide varying levels of supervision and services. This will permit the release of more persons with less waste of expensive resources. The least interventionary and least costly options are used for low-risk cases. More expensive options and those which involve greater interference in the life of the individual are reserved for cases in which these are the only alternative to the even more costly option of jail incarceration.

Figure 1: Pretrial Alternatives to Detention



Pretrial alternatives can be offered at points increasingly "deeper" into the criminal justice system. Generally, the point at which the decision to opt for an alternative is made --the locus of authority-- determines how long an arrested person will remain in custody (Figure 2). Options made available early in the justice process (e.g., at point of police contact) thus are cheaper and have a greater impact on jail populations than those offered at later stages. There are trade-offs, of course. While early decisions to release or divert may save more in terms of time and money, they may be less protective of either the rights of the suspects or the safety of the community.

Figure 2: Locus of Authority to Release and Detention Time

RELEASING AUTHORITY	RELEASE MODE	AVERAGE HOURS DETAINED				
		0	1	3	8	X+4
ARRESTING OFFICER	FIELD CITATION	●				
DESK SERGEANT	STATIONHOUSE RELEASE		●			
COURT REPRESENTATIVE OR JAILER	OWN RECOGNIZANCE SCHEDULED BAIL (CASH, PERCENTAGE, BONDSMAN, ETC.)			●		
	OWN RECOGNIZANCE UNSECURED BAIL THIRD PARTY CONDITIONAL SUPERVISED SECURED BAIL				●	
SAME OR SUPERIOR COURT	ANY OF ABOVE					●

Terms used in the two figures are defined in a glossary presented in Appendix A. Several of these alternative practices and arrangements are illustrated in the section which follows, as are various pretrial diversion programs. Fuller treatment of alternatives to pretrial detention is provided in Volume 2 of this series--and of alternatives to prosecution in Volume 3. It should be emphasized that the examples cited below represent only a handful of the alternative programs operating today in American communities. These few were selected simply to demonstrate the range of practices and to indicate some of the variations in administrative arrangements.

Alternative: Police Citation

***In New York City, under the desk appearance ticket system, the suspect is brought to a precinct stationhouse where he goes through a booking procedure which varies with the charge--that is, he may or may not be fingerprinted or photographed. Where the charge is a misdemeanor he may be released by the desk sergeant on his promise to appear in court. The expensive alternative requires the arresting officer to deliver him to a court detention cell. He then confers with a deputy prosecutor and, if a charge is to be pressed, with a court calendar clerk. The officer and the defendant wait their turn to appear for arraignment (courts are in session daily until after midnight) where the arrest report is presented orally to the judge. The entire procedure consumes an average of eight hours of police officer time.

Desk appearance tickets are issued in a majority of misdemeanor cases. Although rates of failure to appear have approached unacceptable levels in one or two of the city's boroughs, very substantial savings in law enforcement expenditures have accrued by reducing police manpower tied up in arrest procedures.

***California law allows the release of misdemeanants by police in the field at any point prior to arraignment (pre- or post-booking). In each case, release takes effect upon written promise by the suspect to appear for an initial hearing at a time and place specified on the citation form. If release is not effected in the field, the officer may transport the suspect to the stationhouse or other facility for verification of information prior to issuing a pre-booking citation. Post-booking citation release, which occurs at the detention facility, is made by the officer in charge of booking or his superior. In some counties, selection of persons for release is assisted by release-on-recognizance staff.

The decision to release or detain is guided by statutory provisions and departmental policies. A recent amendment to the California code requires the arresting officer to state his reasons for not using citation release in the field or before or after booking. In some counties, arrest reports also are reviewed by superior officers and conferences are scheduled with officers who appear to avoid reasonable use of citation release. Both of these arrangements tend to encourage more liberal use of the citation alternative.

***In Washington, D.C., a unique arrangement for release decision-making exists: In cases eligible for citation release, the police desk sergeant calls the D.C. Bail Agency, supplies the available facts, and then puts the arrestee on the telephone for an interview. Following the verification process, the interviewer calls back with his recommendation regarding release which generally is accepted and acted upon by the desk sergeant.

Alternative: Pretrial Release

***The Brooklyn Pretrial Services Agency is one of four such programs in New York City boroughs operated by the Vera Institute of Justice. All arrestees

are brought to a central booking center in a building which houses the criminal court. Those not "cited out" (most misdemeanants are) are interviewed by an agency staff member. Round-the-clock coverage is provided and release decisions are recommended in a series of "waves". Release on recognizance is recommended whenever the individual meets selection criteria, as determined by interview and verification process. Those not released at first appearance may be recommended for ROR the following day as verifications are completed or new information becomes available. When release is still denied by the court after full investigation, the agency seeks to arrange for release to the custody of a person known to the defendant or a selected volunteer. If third-party release is denied, the agency may recommend release to its own direct supervision.

ROR releasees are monitored. Reminders of court appearance dates are sent, appearances are verified, and efforts are made to locate any absentees and encourage them to report immediately to court. These procedures, as well as the agency's screening function and its third-party and supervised release programs, have been found cost-effective in terms of detention costs saved and low failure rates.

***In Indianapolis, Ind., the Pretrial Services Agency of the Marion County Municipal Court employs law students on a part-time basis to provide round-the-clock coverage of the jail at lower cost than would be possible with full-time salaried employees. Experienced interviewers in their senior year of law school are appointed bail commissioners. They have the authority to release misdemeanants on recognizance without referral to court --greatly reducing the time required for release decision-making. Bail commissioners may recommend ROR, supervised release, or reduced bail (that is, less than that provided for in the bail schedule). In addition, they investigate eligibility

for indigent defense services, handle diversion of public inebriates, and perform initial screening for drug-dependency services. From its inception the agency has been dynamic and innovative, adding new features and options and expanding its capacity to meet the needs of the community.

***In Washington, D.C., the D.C. Bail Agency monitors and supervises not only recognizance and conditional release cases, but persons released on percentage bail. Private social service agencies and self-help groups are used extensively in third-party release cases. Recently, the agency has experimented with a mobile field unit, which can be contacted by radio. The functions of this unit are diverse--from helping to verify facts in the case of a person just arrested, to contacting absentees from court, or making supervisory or service contacts with persons on conditional release.

***In Albuquerque, N.M., three detention facilities once operated by the city police department and the sheriff are now under the administration of a city-county corrections director. The former county jail is the primary pretrial detention center. The jail has a staff of five counselors who perform a variety of social service tasks, including emergency services, referral to diversion agencies, release planning, and administration of a work-release program. One of their functions is to interview unsentenced prisoners on admission and recommend ROR, where appropriate, to the judges. They give this function top priority, interviewing all unsentenced prisoners booked into the jail and supplying reports to the magistrate on all who do not "bail out" before first court appearance.

***The tri-county Regional Probation Department in El Paso, Texas, offers an integrated court services program covering not only pretrial release, but diversion screening, presentence investigation, and probation supervision. In the pretrial area, the agency screens arrestees and recommends release on

"personal bond" -- a form of non-monetary supervised release. Supervision requirements vary from infrequent contacts by telephone to frequent reporting in person, depending on the assessed risk level and need for services. Supportive counseling and referral services are provided where indicated. All releasees are reminded of court appearance dates and appearances are verified. In the event of failure to appear, the agency makes investigations, obtains warrants if necessary, and may make arrests. The program is partially supported by service fees assessed against releasees who can afford to pay them.

***The Berkeley pretrial services program offers a model for small or medium-sized cities in which universities or colleges are situated. Most of the jail interviewing and community contact with pretrial releasees is handled by unpaid college student volunteers who are recruited, trained, and supervised by a four-person paid staff. Agency interviewers are present in the jail early each weekday morning. Reports of their interviews and verification efforts are supplied to judges. Releasees are reminded by telephone the night before each scheduled court appearance. Court dockets are checked daily. If a defendant fails to appear, persistent efforts are made to locate him and persuade him to appear voluntarily before a warrant is issued. The agency also arranges acceptance of drug-dependent arrestees by residential drug treatment centers as a condition of pretrial release.

Alternative: Pretrial Diversion

Pretrial release allows the individual his freedom pending appearance in court. It is an alternative to jail pending trial. Pretrial diversion is an alternative to prosecution. It takes many forms and may occur at any point following receipt of a criminal complaint. The range of possibilities is reflected in Figure 3. Examples of different modes and methods follow.

Figure 3

Levels and Kinds of Intervention in Relation to Criminal Justice Stage where Diversion May Occur

EXAMPLES OF INTERVENTION LEVELS	STAGE AND AGENCY WHERE DIVERSION OCCURS			
	POLICE	PROSECUTOR	PROS. OR COURT	COURT
	PRE-ARREST	PRE-ARRAIGNMENT	PRETRIAL	PRE-JUDGEMENT
1. WARNING/REPRIMAND	X			
2. REFERRAL TO APPROPRIATE RESOURCE	X	X		
3. PROBLEM SOLVING SERVICE - COUNSELING, MEDIATION, ARBITRATION, ETC.	X	X		
4. (REFERRAL FOR) CIVIL COMMITMENT	X	X	X	X
5. CONDITIONAL SUSPENSION OF PROSECUTION OR FINAL JUDGEMENT OF GUILT, WITH OR WITHOUT SUPERVISION AND HELPING SERVICES		X	X	X

***The Night Prosecutor Program in Columbus, Ohio, handles interpersonal criminal charges (such as assault, threats, telephone harassment, criminal mischief, and larceny) arising from family or neighborhood disputes by attempting to resolve the complaint without resort to criminal processing. Referrals may come from complainants directly or from police, city prosecutor, or legal aid office. Project staff also select prospective cases by reviewing the court's summons docket each day. Cases diverted at an initial screening interview may be referred on to the detective bureau, scheduled for a mediation hearing, or referred to a community social service agency. Mediation hearings are designed to help the parties arrive at a resolution of their differences and achieve some

basis for reconciliation. In cases where long-standing conflicts lie behind the complaint, family counseling services also are provided. Law students are employed part-time as interviewers and hearing officers and seminary students with special training conduct family counseling sessions. Very few cases must be referred on for prosecution.

***In Charlotte, N.C., public inebriates booked into the jail may be released without prosecution when they become sober enough or when a third party agrees to assume responsibility for them --usually in a matter of a few hours. An informal agreement with the prosecutor and the court provides the basis for release. In California, police have the statutory authority to release intoxicated persons if prosecution is deemed unnecessary or inappropriate. Once the arrestee is booked into the jail, county jailers make such release decisions through agreements with arresting agencies. Typically, arrestees who have not received such releases more than twice during the year are processed in this way.

***In Phoenix, Ariz., persons arrested for drunk driving may be diverted, at the prosecutor's discretion, to a program dealing with the problem underlying the offense (e.g., community college courses on driving and alcoholism or therapeutic treatment for problem drinking). The defendant signs an agreement to plead guilty in a specific courtroom on a named date to a lesser vehicle code charge. The prosecutor also signs and agrees to recommend a specified fine. If the defendant is not re-arrested within a set time period, usually 60 days, and participates in the prescribed program, the bargain is carried out in open court, with the judge ordinarily accepting the prosecutor's recommendation as to the penalty. Failure of the defendant to meet his obligations can result either in reinstatement of the original charge or a recommendation of a heavier penalty by the prosecutor if the defendant is allowed to plead to the lesser offense.

***A diversion program called TASC (Treatment Alternatives to Street Crime) offers an unusually effective approach to case selection, service referral, and monitoring in a score of jurisdictions across the country. TASC works to identify arrestees who are addicted to drugs and to engage them immediately following arrest in services which might help them overcome their dependency on drugs. Although its original goal was to select and monitor cases for pretrial diversion, the program also attempts to gain conditional pretrial release for persons not selected for diversion and probation conditioned on participation in drug treatment for convicted offenders.

With a few exceptions, TASC does not provide drug treatment services, but arranges for treatment by existing community agencies. TASC then monitors client performance and keeps the court, prosecutor's office, or probation department advised of the individual's progress in the program. Considerable attention is devoted to generating, mobilizing, and evaluating community resources for the rehabilitation of drug-dependent offenders. An information or tracking system assists in both individual case monitoring and in program evaluation.

***The Citizens Probation Authority in Flint, Mich., one of the oldest formal diversion programs in the country, selects "situational law-breakers" for participation in an alternative program. The program requires that the defendant "accept moral responsibility" for the crime, pay a service fee of \$100 (unless waived for indigence), pay restitution (if appropriate), accept probation supervision for up to one year, and become involved in a contractual agreement with the agency to participate in recommended rehabilitative programs or undertake other steps to improve daily functioning. In return, along with any benefits derived from services, the defendant has a 90 per cent chance of avoiding prosecution and the assurance that efforts will be made to expunge his arrest record.

***Vocationally disadvantaged defendants are diverted to Project Intercept, a program operated by a private non-profit corporation in San Jose, Calif. The criteria for selection favor young property offenders who appear to have difficulty in finding or maintaining employment. A project staff member attends court daily and screens persons scheduled for arraignment on misdemeanor charges. In cases where a defendant who meets the criteria expresses an interest in the program, the court is requested to grant a ten-day continuance. During this period, project staff assess the needs and motivation of the defendant and acquaint him with the program in detail. Where participation in the program seems warranted, diversion to the agency is recommended to the judge, the prosecutor, and the defense attorney. With concurrence of these officials, the defendant enters a plea of nolo contendere and the case is set down for three to six months. Assistance to accepted clients includes placement in a job or job training, individual tutoring for high-school equivalency exams, family or personal counseling, child care and transportation. Successful program participants tend to incur less serious charges than do those who fail in or are ineligible for the program.

***In California, Section 1000 of the penal code provides for diversion of persons charged with any of several drug possession offenses and a few other specified offenses indicative of drug use. Eligibility screening to determine whether the individual meets statutory requirements is the responsibility of the District Attorney. Qualified defendants are offered the opportunity to waive their right to speedy trial and apply for diversion. Those who apply are referred to the county probation department for a determination of suitability for the program. Results are reported to the court, which, in the process of making final selection, assures itself of the voluntary and informed agreement of the defendant. For those approved, further criminal proceedings

are suspended for six months to two years, with progress reports to the court required at six-month intervals. Participation in a drug education or treatment program is a standard condition of diversion. Satisfactory completion of the program --in the absence of conviction for a new felony or serious misdemeanor during the diversion period--results in dismissal of charges.

This massive state-wide diversion program, which is administered at the county level, has been well tracked statistically and subjected to numerous evaluative studies. The program has been successful, as judged by dismissal of charges --86% of program terminations during 1973-74.

CHAPTER III
ALTERNATIVES TO JAIL: POST-TRIAL

Traditionally, sentencing options for the convicted misdemeanant were limited to a term in jail, a lump sum fine, or a suspended sentence. In some jurisdictions this is still the case. But in many others, a judge today may have a wide array of choices in making his disposition. The relative freedom to tailor sentences to individual situations is limited only by the availability of options and necessary community resources and by the judge's own imagination and ingenuity.

Alternative dispositions lend themselves to the purposes of individualized justice. They permit matching the sentence with the circumstances of the crime and the characteristics and needs of the offender. They tend to be more conducive to rehabilitation than a jail sentence. Alternatives generally are less stigmatizing and less disruptive of the individual's life. They can permit the sentenced offender to pay for his crime while remaining in the community, with his family, at his job. And they can be considerably less expensive than traditional confinement.

The arguments for the use of alternatives to the jail sentence are economic, ethical, and humanitarian. Jailing is easy. Sometimes it is necessary. The safety of the public or retribution for a particularly notorious crime may demand that an individual serve his sentence in jail. But in many--perhaps most--cases, the ends of community safety and the requirements of justice can be met by alternative means which are less costly in both monetary and non-monetary terms.

Sentencing alternatives may be classified into two types: modified confinement (alternatives to traditional jail which involve some confinement) and sanctions which involve no incarceration. Modified confinement may consist of partial confinement, confinement in alternative facilities, or early release. Non-custodial dispositions include unconditional discharge, suspended judgment or sentence, fine, restitution or community service, and probation.* With the exception of unconditional discharge, noncustodial alternatives require the offender to do something in return--either to adhere to specific conditions or to pay some form of reparation.

Alternative: Conditional Dispositions

The requirements of justice often may be satisfied without danger to the community through a suspended sentence, deferred judgment, or probation conditioned on the offender's participation in rehabilitative, educational, or other programs. Such programs are directed at alleviation of problems which appear to have encouraged criminal behavior in the past. In addition to conditions such as refraining from further criminal activity, avoiding certain persons or places, or remaining in a defined geographical area, the offender may be required to attend a designated number of sessions of, for example, traffic school (if the offense occurred because of dangerous driving habits), a drug abuse education program (for minor drug offenders), or vocational training (if chronic unemployment is viewed as a major impetus toward crime).

***In Albuquerque, N.M., the probation department operates its own school for traffic offenders. This is a self-supported program financed by the tuition fees of

* These terms, and others used in this chapter, are defined in Appendix A. Their uses are described in detail in Volume 4, Sentencing the Misdemeanant.

enrollees. Attendance often is a special condition of probation or suspended sentence for drunk drivers and other traffic offenders. Program content deals with issues of traffic control, excessive alcohol use, and hazards of drunk driving or other dangerous driving habits. Defendants with serious drinking problems may also be referred to the county drug and alcohol treatment agency.

In other jurisdictions the traffic school is operated by a local educational institution, such as a community college or the adult division of a high school. Ordinarily these programs are supported by tuition or fee charges, but assistance may be available for indigent offenders in need of such services.

Similar programs exist for minor drug offenders. In some jurisdictions such programs are supported by a combination of local, state and federal funds appropriated for drug education and treatment. In others, tuition or fees are sufficient to meet program costs. Drug education programs generally are designed to explore the social, physical, and emotional implications of drug use and the legal and social aspects of illicit drug traffic and its control. As with programs for drinking drivers, the programs ordinarily tie up an evening a week for a month or more and may involve some financial outlay; thus they have a punitive effect, but one that is more constructive than a fine or a few weekends in jail.

Educational or rehabilitative programs need not be offered in the form of classroom instruction for groups of offenders. In Washington, D.C., the Superior Court uses a disposition known as "First Offender Treatment" for some less serious cases. The offender is assigned a task which requires him to expend some

time and effort and, hopefully, serves to increase his understanding of and respect for the law and law enforcement (e.g., a period of observation in criminal court, a specially conducted FBI tour, preparation of an assigned paper on a justice-related topic). Assignment of such "learning experience" tasks lends itself to individualization of sentences and can involve only minimal costs.

***A full-time vocational training and education program is offered in El Paso, Texas. Clients are young unemployed probationers who lack job skills, usually are not highly motivated, and probably would quit or be expelled from similar programs serving the general public. Prospective trainees are selected by probation staff for referral to a private, non-profit employment counseling and placement agency which specializes in placing people with limited education and work experience. The agency undertakes vocational assessment and guidance, provides training in job search techniques, makes job referrals and placements, and, where needed, provides supportive counseling for young workers getting established in their first job. Some probationer referrals are placed in jobs, but most go to the training program.

The probation department took the initiative in getting the program started and continues to serve as the coordinating force. Cooperation of several state and local agencies was gained in establishing and maintaining the program. The Texas Education Agency provides supplies and equipment. The El Paso school district assigns the instructors (from its adult educa-

tion program). The Texas Rehabilitation Commission pays the program costs of those trainees who are found eligible for vocational rehabilitation services (a substantial proportion) and this takes care of the rent for the building which houses the program. Probation officers supply day-to-day supportive counseling to trainees in relation to behavior problems, special needs, and personal difficulties which may hamper participation. Vocational rehabilitation counselors provide maintenance support funds in some cases, purchase tools needed to take certain jobs, and arrange for medical or psychological services if needed.

***Now in its fifth year, the Wildcat project provides work experience and a chance to earn a living for hundreds of convicted offenders in New York City. Under the sponsorship of the Vera Institute of Justice, this successful "supported work" project is managed by a private non-profit corporation. Its objective is to provide employment (6 months to about two years) in public service activities useful to the community which will prepare participants for non-subsidized jobs in industry and government.

The program deals with a difficult group. Most participants have a history of addiction to hard drugs, frequent arrests and convictions, limited education and poor or no work experience. The project provides work, some on-the-job training, the support of a peer group with similar problems and a crew supervisor who graduated from the ranks, and limited services or assistance with emergency personal problems.

Most Wildcat work is performed for city agencies or for private non-profit agencies offering community services. Efforts are made to avoid competition with city employees, unions, and private contractors. The nature of the work performed and the relatively low pay scales are designed to encourage participants to move out to regular employment as soon as they are ready. The program is costly (about \$9000 per participant), but a cost-benefit study indicated that the returns to the community (value of work performed, reduced welfare costs, taxes paid, and crime reductions) are somewhat higher than the outlay for the program. Longer-range benefits, including the nonsubsidized employment of 40 per cent of participants within two years, make this program a good investment for the city.

***In Baton Rouge, La., a private non-profit agency, the Community Correction and Rehabilitation Center, offers "day treatment" for drug dependent persons. Attendance may be individually scheduled to allow for full- or part-time work on the part of employed clients. The agency, which operates several corrections programs, has a psychologist/diagnostician, an educational coordinator, a vocational rehabilitation counselor, job placement counselors, and other staff who can be drawn on for particular services--to lead discussion groups or supervise work performed by full-time (unemployed) clients. Volunteers also are used in various capacities.

The program is broad and flexible, combining a mix of individual and group activities. Content and methods vary

with the changing composition of the participant group and the special needs and interests of individual clients. The objectives are to keep clients constructively occupied (study, work projects, recreation, counseling, discussion groups), to deal with their specific needs (education, tutoring, occupational counseling, job placement), and to help them examine, understand, and cope with their propensity for dependence on drugs.

Alternative: Reparations

Most misdemeanors involve relatively minor loss of property by the victim or some affront to the peace or mores of the community. It would seem logical, therefore, that reparation by the offender to the victim or the community--in the form of monetary restitution, a fine, or public services--would be common dispositions in the lower courts. In fact, although fines are quite common, restitution and community service are under-utilized.

Where a crime involves a personal or corporate victim, restitution for losses incurred or damages suffered would be a likely choice. For so-called "victimless" crimes, reparation might be related to the trouble caused the community (e.g., the costs of law enforcement). Reparation might consist of a fine, payment of court costs, or community services. The sentence may be aimed at recovering both victim losses and costs to the community.

***Payment of a fine upon conviction for a criminal offense is a very old and widespread practice. It is an obvious act of reparation and it does offset some of the costs of the crime to the community. Where a fine is payable in installments, its terms can be met by less affluent offenders for whom a sizeable lump sum fine would

not be feasible. Payment of a fine affords the community no ongoing protection beyond the extent that it serves to discourage further crime. Also, unless there are effective arrangements for fine collection, this disposition can be a weak one for higher-risk offenders.

***Restitution by the offender to the victim generally is used as a condition of probation, but it may be used in some jurisdictions as a disposition in its own right. A number of problems are associated with the use of restitution as a sentencing option, including the assessment of the loss incurred, the equitable determination of the offender's ability to pay, and monitoring the collection of installment payments. More and more persons, however, are coming to the view that it is worth the effort to deal with these problems and establish an effective restitution program.

***Community service may be imposed as a condition of suspended or partially suspended sentence or as a condition of probation. It is also used as a substitute for, or in partial satisfaction of, a fine by courts in a growing number of jurisdictions. This disposition is used most often for indigent offenders who cannot afford to make monetary payments of any significant amount or for whom a jail sentence would be excessive or otherwise inappropriate (e.g., a mother with young children, a naive first offender, etc.).

Community service programs vary extensively in scope and size, staffing arrangements, and frequency of use by judges in different jurisdictions. An estimated 30% of misdemeanor sentences take this form in Portland, Oregon. Typically, the offender volunteers his services to some community agency for a certain number of hours a week over a specified period of time. The total number of hours, generally assessed at the legal minimum wage, equals the amount of the fine that would have been imposed or that portion of it which is suspended. The agency served may be a private nonprofit organization or a government unit performing services to the community. The nature of work will depend on the skills of the offender and the needs of the agency.

A model community service program has been developed by the San Francisco Bay Area Social Planning Council, based on arrangements in Alameda County (Oakland) where a private Volunteer Bureau administers the program under contract with the county and at the behest of the Municipal Court. This model is carried as an appendix in Volume 4.

Alternative: Modified Confinement

An alternative to jail for those misdemeanants for whom non-custodial sanctions are considered insufficient or ineffective is commitment to a facility with minimal physical constraints and a rehabilitative orientation. This type of institution includes farms, forestry camps, halfway houses, and specialized treatment facilities. Confinement in such facilities frequently

is only partial. Residents generally spend some of their time in the community--at a job, in school, or on furloughs. Arrangements also may be made to obtain early release from the facility if an individual appears to have made substantial progress in the rehabilitative program. Partial or intermittent confinement and early release also may characterize a jail sentence, but such options contribute relatively little to reductions in jail costs or capacity requirements.

***In Dade County, Fla., the state probation and parole division operates halfway houses in several more populous communities. One of these, the Multiphasic Diagnostic and Treatment Center in Miami, serves young adult (18 to 25) offenders who would otherwise be sentenced to jail or state prison. Typically, residents have been charged with violations while on probation and transferred to the institutional program.

The program is treatment-oriented. Residents are expected to cooperate in identifying the problems associated with their law-breaking activity and to agree to undertake efforts to deal with them. All are expected to attend school or work full-time or to engage in some combination of work and study. Nightly group counseling sessions as well as individual counseling are directed toward resolution of personal difficulties and achievement of personal goals. Community agencies and educational institutions are used extensively. Employed residents pay \$4 per day to help defray program costs. Residents also perform tasks associated with

maintenance of the center. Rewards and sanctions--e.g., granting or withholding of furloughs, early release to probation, greater privacy in sleeping quarters, extra housekeeping chores, etc.--are used to reinforce counseling efforts and behavior limits. The ultimate sanction, which is used only rarely, is referral back to court as a program failure.

***A similar program in Baton Rouge, La., is available for youthful offenders as a condition of probation. The alternative would be a jail or state prison term. Residents generally stay three or four months, with the release decision made by the judge on the basis of progress reports submitted periodically by the probation department. Residents participate in policy planning, disciplinary decisions, grievance settlement, and orientation of new residents through service on elected committees. Extensive use is made of volunteers and student interns.

With some exceptions, the new resident is confined to the center for the first three or four weeks. He works thirty hours a week in center maintenance, earning \$30 a week and contributing \$21 of this amount toward the costs of his room and board. After evaluation and guidance, he opts for full-time employment in the community, full-time school, or a mixed schedule. All residents are required to pay room and board and perform some chores during their leisure hours. The program is oriented toward behavior modification, with residents earning points for good performance and losing them for infractions.

Points are paid off in earlier or more liberal furloughs or earlier release from the program.

***In San Diego, Calif., the county probation department operates a system of eight institutions for sentenced local prisoners, including camps, a work release center, and a facility for women. Many of the residents have been sentenced to probation on the condition that they serve the first several months in jail or in one of the department's facilities. The probation officer initiates services while the individual is confined and assists him in making release plans.

The women's facility consists of two houses and a small office building on adjacent lots in a middle-class residential neighborhood. There is no physical security, but 24-hour supervision is provided. Residents who escape or become unmanageable can be returned to the jail. The program is treatment-oriented with an emphasis on voluntary participation. Counseling, tutoring, educational, vocational, and employment opportunities, and other services are offered, but the resident can select her own activities and services (subject to staff approval where work release is involved). About one-third of the residents are in work or study release status; another third perform groundskeeping or other duties in county facilities or parks under the supervision of a correctional officer; the remainder are undergoing orientation, engaged in individual study within the facility, or enrolled in the food services training program sponsored

by a community college. Stays can vary from a minimum of ten days to one year. Average detention time is about three months.

If the sentencing task is approached with creativity -- and if the necessary community resources and support can be mobilized for the successful implementation of sentence options -- the range of alternatives to a jail sentence can be effectively expanded in any jurisdiction. Use of appropriate alternatives to jail -- conditional dispositions, reparations, and modified or partial confinement in specialized facilities -- can reduce overall costs of correction while increasing opportunities for just and equitable sentencing in the individual case.

If courts are to make optimal use of a wide range of alternatives in sentencing misdemeanants they will need the assistance of a probation staff. Probation's role is multiple: mobilizing community resources; preparing pre-sentence reports; arranging for appropriate services in individual cases; supervising or monitoring the defendant's performance.

Probation agency services frequently are supplemented by various other arrangements for assistance to the court in determining and implementing sentences. These include direct service by community treatment agencies, without involvement of the probation department. One example would be the community service program in Oakland, Calif., carried on by the Alameda County Volunteer Bureau. In a number of places judges are assisted in selected cases by volunteers, under the judge's supervision, or, as in the District Court in Albuquerque, N.M., under a volunteer coordinator.

Under an alternate arrangement, exemplified most notably in Portland, Ore., and Washington, D.C., the public defender staff includes social service workers who assist indigent clients in developing plans for presentation to the court.

by defense counsel along with a recommendation for a rehabilitation-oriented disposition. The National Advisory Commission on Criminal Justice Standards and Goals has urged inclusion of such services in public defender programs.

CHAPTER 4

COMPARATIVE COSTS OF CRIMINAL JUSTICE PROGRAMS*

Choosing among options at any point in the criminal justice process can be viewed as a cost-benefit decision. On a primitive level, cost-benefit analysis is simply a matter of asking what is to be gained by a particular practice in general or in specific situations. Who will benefit? What will it cost? Who will pay (or suffer a loss)? Do the expected costs outweigh potential benefits? How do the costs and benefits of one practice compare with those of an alternate approach? Will substituting one practice for another result in an overall savings? Under what conditions will such a savings be more likely to occur?

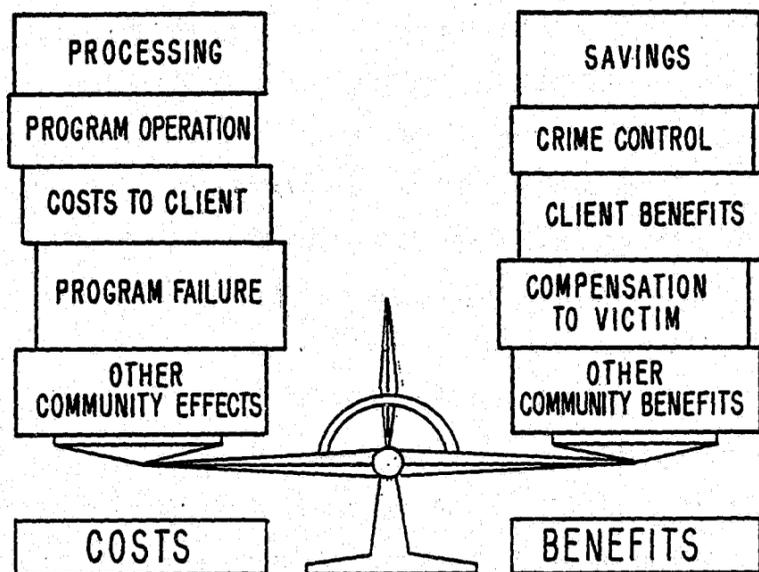
Criminal justice dispositions entail several kinds of costs and benefits. The most obvious of these are suggested in Figure 4. Processing costs include costs of identifying and selecting individuals for a given option--whether jail or an alternative--and of admitting and releasing them from the facility or program. Program costs include expenditures for services, supervision, or treatment within or outside the criminal justice system, including costs of referral and monitoring service delivery and client performance.

Costs to the client may be monetary (where the individual pays a fine or restitution, loses his job, or pays for program services) or non-monetary, including time away from family, loss of freedom, or the stigma attached to

* The material presented here has been condensed from Volume 5. Issues in assessing comparative costs are treated in greater detail in Chapter 3 of that volume.

FIGURE 4

WEIGHING COSTS AND BENEFITS OF CRIMINAL JUSTICE DISPOSITIONS



participation in a program for offenders. Program failure costs include costs of re-processing those who are unsuccessful in the program to which they are initially assigned as well as costs associated with any new offense committed while under program supervision (costs to victim or the community and costs of re-arrest and subsequent processing).

Benefits may include monetary savings resulting from the use of a less costly option or non-monetary benefits such as more effective control of crime or recidivism; compensation to the victim or the community; improved social functioning of persons successfully treated or served (e.g., upgraded skills and better job performance of clients who receive job training); or the intangible benefits to the offender and his family resulting from a less restrictive or less punitive disposition.

Assessing comparative costs and benefits of jail and its alternatives is a very complex undertaking. There are intangible costs and benefits which--although they must be considered--are non-quantifiable. Estimates of quantifiable costs and benefits also will differ according to the methods used in deriving or presenting them. There are several ways to compute jail costs, as there are for developing cost estimates for alternative measures.

One frequently used method for estimating savings likely to accrue from increased use of alternatives to jail is to determine the daily cost of jailing one prisoner and to multiply this by the numerical reduction in jail population expected from the use of the alternative. For example:

$$\begin{aligned}
 & \$5,570,741 \text{ (budget)} \div 365 = \$15,262.30 \div \\
 & 1,023 \text{ (prisoners)} = \$14.92 \text{ (daily cost of jailing one} \\
 & \text{prisoner)}
 \end{aligned}$$

If the alternative will reduce average daily jail population by 100 (assuming this can be demonstrated), the estimated annual savings to

local government may seem to be sufficient to finance the alternative program. For example:

$$\$14.92 \times 100 = \$1,492 \times 365 = \$544,580 \text{ (estimated savings).}$$

A savings of this magnitude should permit transfer of funds to finance the new program. Unfortunately, it is likely that no such savings in jail operating expenditures actually will show up. A ten per cent reduction in jail population may reduce expenditures for food, clothing, laundry services, and medical or other supply items. It also may eliminate some staff overtime costs and fees for professional services. However, costs of improving or replacing the jail may not be affected. And overhead and personnel costs--the costs of maintaining the facility and paying its full-time staff--are likely to remain the same or be only marginally reduced. The real savings probably will be far less than \$14.92 a day.

AJI Project Approach

Local planners must choose among the various methods of estimating savings which may be generated by alternative programs--and, of course, they must use their own local figures for operations expenditures and construction costs. The Alternatives to Jail Incarceration project of the American Justice Institute adopted an approach which emphasizes the effects of different jail use policies, while conservatively assessing daily costs of custody and care. The cost basis used by the AJI project includes: (1) the full amount of the average cost of processing persons into and out of jail; (2) an allowance of \$1.73 per prisoner per day for consumable supplies, primarily food; and (3) \$2.14 per prisoner per day as a long-range cost (eventual replacement of the facility or major expansion, repair, etc.). The total daily per capita

allowance thus is \$3.87--which can be rounded to \$4.00 without distortion since the data are imprecise in any event.

Processing costs represent substantial personnel hours in a jail (admitting, booking, checking records, liaison, releasing, maintaining files and records, physical exams, tests, and interviews, classification, prerelease assistance, etc.). These functions are much more "labor intensive" than daily care and custody costs. Allowances for processing unsentenced prisoners were \$12.38 (if released after booking) or \$21.22 (if detained and released later). For sentenced prisoners, whose processing requires a number of additional steps, the allowance was \$35.00.

Estimated jail costs per case used by the AJI project are presented in Table 1. Cost estimates for alternatives to pretrial detention also were developed for purposes of comparison with jail costs (Tables 2 and 3).

Table 1: Jail Costs Per Case

All Prisoners: daily per capita cost	\$ 4.00
Unsentenced Prisoners:	
Admission/prompt release after booking	12.38
Admission into jail/release next day	25.22
Admission/detention 30 days/release	141.22
Admission/detention 90 days/release	381.22
Sentenced Prisoners:	
Admission/classification, etc./release	35.00
Admission/detention 120 days/release	515.00
Admission/detention 180 days/release	755.00

While the figures in each case may vary considerably from one jurisdiction to another, they illustrate the fact that costs will escalate--sometimes dramatically--as the decision and intervention levels go up. Detaining a misdemeanor may cost more than eight times the cost of giving him a field citation. Booking him into jail and detaining him until the court authorizes release on recognizance may cost more than four times as much. Station-house release may cost the police department about 70 per cent more than citation release in the field.

Table 2: Costs of Alternatives -- Citation and ROR

	Basic Cost	Plus Failure Assessment
Field Citation	\$2.40*	\$15.86*
Stationhouse Release	4.00*	17.86*
ROR from Jail	25.72	39.18**

* If defendant is booked an additional \$5.00 would be added.

**If court is involved in the decision to release, an additional \$20.00 would be added.

It should be kept in mind that the basic cost of an alternative will be increased by costs attaching to program failures--for example the costs of re-arrest and detention where a person who is cited fails to appear in court when scheduled. The second column in Figure 2 makes a generous allowance for this program failure factor. It is based on the assumption that 10% of all those cited will be re-arrested for failure to appear and held, on the average, 20 days in jail.

Obviously, the cost figures presented here are not sufficient indicators of the appropriate action in an individual case. There are proper uses for each disposition and in some instances the most costly option, in monetary terms, will represent the only reasonable course of action. The cost-conscious jurisdiction will derive estimates for jail and its alternatives, as they operate locally; adopt policies based on considerations of cost-effectiveness; and develop a system for monitoring practices to assure compliance with policies as long as they continue to appear reasonable and effective.

Table 3: Costs of Alternatives -- Diversion and Sentencing Options

Police Crisis Intervention	0
Prosecutor Dispute Settlement	\$ 27.00
Public Inebriate Diversion	
Police	12.00
Jail/Pretrial Agency	18.68
Minor Drug Offense Diversion (6 mos.)	140.00
Non-specialized Diversion (6 mos.)	312.00
Drug-dependency Diversion (6 mos.)	741.00
Employment Diversion (3 mos.)	975.00
Probation (16 mos.)	375.00
Probation (2 yrs., 1st 6 mos. intensive)	1,932.00
Restitution/Community Service	30.48
Fine	0
Suspended Sentence (no conditions)	0
Halfway House (98 days)	1,541.00
{Jail (98 days)}	1,890.00}

* The costs are only those of the agency administering the program and are limited to services performed by the agencies. Service purchases are excluded, as are costs or savings of court processing.

Jail populations can be contained and construction of larger facilities can be avoided or postponed through the optimal use of pre- and post-trial alternatives to detention.

The problem is where to start in the effort to expand the use of alternatives to jail. Communities vary widely in the kinds of options currently available and in the level of their use. The reasons for these differences are not always clear. In any community, both inhibiting and change-oriented forces are at work. Important sources of resistance to the introduction or expansion of alternatives to jail incarceration are found both within the justice system and in the broader community--as are the elements providing the impetus for change.

Several factors can be identified as contributing to a community's successful shift from the traditional level of jail use to a new emphasis on alternatives to jail. First is an awareness of the range of possible alternatives and of the legal, humanitarian, and economic rationales for their maximum use. In addition, there often will be a compelling reason for considering measures to control jail population. Change is forced by a crisis situation: an epidemic of escapes or disturbances in the jail; court-ordered closures, population limits, or major policy reversals; legislative mandates to meet new standards or initiate additional services; or vigorous pressures exerted on local government by community groups concerned about conditions in deteriorating jails. Overcrowded and substandard detention facilities appear to be a primary factor motivating the effort to institute or expand alternative measures in many communities.

Knowledge of alternatives and valid reasons for their use, however, are not enough. The optimal use of alternatives to jail will be effectively achieved in any community only by sheer accident unless several other factors are present: advocacy, coordination, planning, and ongoing monitoring or evaluation.

Advocacy

Advocacy may come from any of a number of sources, including one of the components of the criminal justice system, an organized community group or professional association, informed editorial opinion, or one or more public-spirited individuals. But unless some person or group takes and maintains the initiative, the effort to establish alternatives is likely to falter and may not even get off the ground.

The advocate may begin by presenting the case for developing alternatives to persons who are in a position to do something about it: to judges, members of local and state legislative bodies, prosecutors or defense counsel, police chiefs, and jail administrators. Each of these is in a position to assist or obstruct changes in detention policies and practices. Each must be convinced of the need for change and of the benefits likely to be gained for himself and his staff in performing their jobs.

While there is a potential for the introduction of alternatives in any community, fostering such change requires sensitivity to and ability to work with social forces in the community. This includes an understanding of the viewpoints, concerns, resources, and plans of key criminal justice officials, community leaders, and political or other groups who may be potential allies or adversaries in the effort to promote change. In a particular community at a given time, one agency or individual may be more

ready to move than others. It may be fruitless to push for one type of change, but circumstances may favor some other development. Generally, how change gets underway is less important than that a start is made. Since there are often a variety of ways to accomplish similar purposes, the change agent or advocate will need to be flexible, innovative, and persistent in approach, as well as adequately prepared with documented facts and figures.

Coordination

One of the major objectives of the change agent will be to stimulate coordinated effort among the various agencies of criminal justice and social service. Alternative programs can function only if decision-makers in law enforcement, prosecution, the judiciary, and corrections are willing and able to collaborate, if commitments are forthcoming from local sources of funding, and if active support is provided by agencies and individuals responsible for the development and use of community resources.

Criminal justice and social agencies all tend to go their separate ways. Their roles and functions differ and with them their ideologies and biases and their sources of community support. Within agencies also, there may be significant differences among those individuals who make decisions and implement or influence policy. Despite different roles and viewpoints, there are common concerns, overlapping functions, and an essential interdependence among agencies and their staffs. Unless this commonality is made explicit, deliberate or inadvertent obstructionism or simple inaction may stall or defeat the change effort.

While coordination will never induce single-mindedness among either agencies or individuals, it can help to bring about an awareness of common purposes, a measure of assent on selected policies, and some enforceable

agreement on matters of procedure. It can also help to assure that joint planning, information sharing, and evaluation can be effectively accomplished in relation to issues of common concern. Where reduction in the use of jail is a generally accepted objective, the coordination of criminal justice operations will contribute importantly to achieving that goal.

Planning and Evaluation

Planning and evaluation will include study of current practices and decision-making criteria and an assessment of the policies which govern them; identification of goals and standards appropriate to the local situation; development and implementation of policies and programs for achieving goals and maintaining standards; and ongoing monitoring with introduction of corrections or further changes as indicated by evaluation.

The study of current practices and policies will lay the foundation for considering possible policy changes. Assessment of practices will require the collection of baseline statistics. These should cover the current level of use of jail and alternatives, salient characteristics of persons detained until final disposition or sentenced to a term in jail, time required for pretrial release decisions and to process defendants from arrest until sentence and, ideally, data on success or failure rates of various programs.

At a minimum, the following questions should be addressed: What are existing policies with respect to the use of jail? How do these policies square with recommended standards on the use of incarceration? How faithfully are these policies carried out in practice? What alternatives to jail already exist? Could their use be expanded safely and economically?

Assessment of policies may begin with an examination of state constitutional provisions or the intent section of relevant statutes, controlling court

decisions or orders, or the state's standards and goals for criminal justice. This should be followed by a determination of whether local policies are sufficiently complete and explicit, how they compare with the standards referred to for guidance, and the extent of agreement or disagreement on policies among different agencies of criminal justice. Once agreed on, policies must be translated into well formulated procedures and decision-making criteria.

Decision-making criteria can serve to uphold or to distort policies. They may be fragmentary or vague, leaving too much to the discretion of decision-makers; or they may be overly specific and rigid, allowing too little room for appropriate application of policy in unique situations. They may lack consistency; or they may have been "borrowed" from another jurisdiction without careful consideration of local policy commitments.

The study of policies, practices, and decision-making criteria may be as informal as a meeting among representatives of local criminal justice agencies in which these issues are examined and discussed. Or it may take the form of a questionnaire survey or a series of structured interviews, along with a review of written regulations, guidelines, and interagency agreements. An in-depth review of recently closed cases might be undertaken to supplement the study of current policies and practices. Answers to two questions, as these relate to existing policies, would be sought: Have people been detained too frequently or, on the average, longer than policies specify? Have people been detained who should have been granted some alternate form of control or sanction?

The planning of major changes in detention policies and practices should be done in a thoughtful and systematic fashion. Goals must be generated out of local experience. Productive goal-setting will require a broad consensus on policy issues, objectives, and procedures for achieving objectives which will

satisfy the concerns of the agencies involved in implementation. Before adding new services, especially if they will require a substantial investment of time and money, it should be determined not only whether less costly and equally effective alternatives could be initiated, but whether the desired results might be achieved through the modification of already existing services. In addition to identification of programs and practices which will best assure that policies will be carried out, planning should establish the measurable objectives necessary to evaluation.

Planning of policy or programmatic change should be accompanied by the design of record-keeping systems to monitor the extent and nature of the activities undertaken, the results achieved, and the impact on pre-existing practices or programs. Records should be kept in a manner which will facilitate periodic tabulation of statistics for review and assessment of the extent to which stated objectives are being achieved. If record-keeping is coordinated among the various agencies of criminal justice, or provisions are made for centralized monitoring of criminal justice practices in the jurisdiction, statistics for a particular program can be analyzed in the context of system-wide statistics and more meaningful comparisons of alternate programs can be made.

Experimental adoption of a particular program or practice should include a research component or provisions should be made for outside evaluation which will include the capacity for data processing, analysis and follow-up. Monitoring and periodic assessment of alternative program outcomes or failure rates will permit decision-makers to review and evaluate the effectiveness of particular programs and to identify needed changes in policy or practice. Without periodic evaluation, the occasional introduction of new procedures, and some

experimentation designed to "test the limits" of various approaches a program may stagnate or, at best, operate without knowledgeable control. Also, unless indepth studies are conducted, preliminary statistical data may be misleading. Ideally, there should be provision for qualified researchers to assist in designing records, analyzing data, and planning the use of experimental methods to test new program ideas or evaluate established methods.

Summary

The optimal use of alternatives to jail will be achieved only through the initiative, or at least cooperation, of all components of the criminal justice system, community resource agencies, and local government officials. Success is more likely where criminal justice policy planning is well coordinated and where policy implementation is monitored through a statistical information system which permits both periodic tabulation of statistics and some degree of evaluative research. Coordination may consist simply of informal joint policy planning or it may be accomplished through the formal creation of a department of criminal justice services.

Regardless of how it is structured, coordination should bring about honest agreement on goals and standards. It should provide a mechanism for insuring conformity of practices covered by the agreements. And it must contain an element of strong and persistent advocacy to insure that significant deviations from stated policies are not simply ignored and that the overall effort to implement productive change in the use of detention remains on target. Productive change rarely just happens--to be effective, it must be well planned, purposefully implemented, and continuously monitored and assessed.

Complaint of Crime

On-view arrest	Crisis intervention
or	Dispute settlement
Arrest warrant	Use of Summons
Arrest	Use of police citation
and	
detention	Non-monetary pretrial release
Prosecution	Diversion
Flat	Restitution
jail	Fine
	Community services
	Probation
Sentence	Work release
	Parole

CHAPTER 6

ALTERNATIVES TO JAIL -- A MODEL

The overall impact of alternatives on jail costs and capacity requirements in any jurisdiction will be maximized only if a range of options is made available at both the pretrial and the post-trial stages of criminal justice processing. A single program or alternative practice is unlikely to affect jail use to any significant extent, since relatively few persons may meet the criteria for selection. While a community wishing to reduce its use of jail may begin with the introduction of any one alternative--e.g., diversion of public inebriates or expanded use of citation release for non-serious misdemeanants--in the long run it will be desirable to develop and initiate a wider variety of options to permit the alternate handling of as many persons as possible.

A model containing the elements of a diverse program of alternatives to jail is offered here as a general guide for assessing pre- and post-trial practices and services in local communities. Not every option will be equally appropriate for every jurisdiction. Local decision-makers must assess the utility of each for their own community and select a range of programs which will permit the optimal use of jail and its alternatives as determined by local needs and conditions.

In the model envisioned here:

1. Public intoxication and minor drug possession offenses have been decriminalized.

2. Diversion programs are practiced at each step in the criminal justice process, especially in the form of police crisis intervention and prosecutor citizen dispute settlement programs.

3. Summons is commonly used in lieu of arrest in cases where citizen complaints are registered with magistrates or the prosecutor's office.

4. Field citation is commonly used by police for most categories of misdemeanor offenses and designated lesser felonies.

5. Stationhouse citation is often used in misdemeanor and some felony cases where citation release has not been effected in the field.

6. The jailer regularly releases those defendants who meet stated criteria by issuing citations or accepting a percentage deposit in accordance with a published bail schedule.

7. A pretrial release agency or court services staff assists the magistrate in making release decisions with regard to arrestees not released at the above stages. Pretrial release options include, at a minimum, recognizance release, supervised release and percentage bail. The pretrial release agency maintains varying levels of contact with persons released under these options. Minimal contact includes reminders and verification of court appearances and referral service for releasees with

problems which may affect their ability to meet release obligations. Pretrial release staff assist the court in priority scheduling of high-risk cases to minimize their time in pretrial release status. An investigative unit may locate persons who fail to appear and attempt to persuade them to come into court voluntarily. Records are maintained in a manner which facilitates periodic review and assessment of pretrial release policies and practices in the jurisdiction.

8. Persons still detained after initial or subsequent court appearances are accorded periodic (at least weekly) screening by pretrial services staff to determine whether new information or other developments might qualify the detainee for release, to determine any need for additional services, or to bring to the attention of the court any unnecessary delay in processing.

9. The sentencing judge has the authority and the resources available to apply individualized sentences with the assurance that they will be fully implemented. Court services are available both to assist in making appropriate decisions and to assure that they are carried out. Since custom tailoring a disposition in each individual case is unlikely to be cost-efficient, established procedures and more or less standardized programs are available for selected categories of offenders. Optional features of different programs are adapted to the unique characteristics and needs of particular offenders.

Programs for sentenced misdemeanants include:

- a. Reparations program--a system for assuring that monetary payments (installment fines, court costs, or restitution) are made or that community services or other assigned tasks are performed;
- b. Alcoholism program--a network of facilities and services to assist persons with serious drinking problems, including arrangements for diagnostic services to assure referral to the appropriate resource;
- c. Drug-dependency program--similar arrangements for persons dependent on drugs;
- d. Drunk driver program--educational program designed to modify attitudes and habits associated with driving while intoxicated, including, where appropriate, referral for alcoholism treatment;
- e. Family-related program--programs designed to deal with family conflict, child abuse, non-support, welfare fraud, family financial management, etc.;
- f. Employment/vocational program--programs to deal with various kinds of employment problems.

In addition to a range of non-institutional programs, a variety of facilities for the partial or modified confinement of misdemeanants--including halfway houses, shelter homes, and specialized treatment facilities--are available as options to the traditional jail sentence.

APPENDIX A: GLOSSARY

Summons

The summons is a request or instruction to appear in court to face an accusation. As an alternative to the arrest warrant, it is used in cases where complaints are registered with the magistrate or prosecutor's office.

Field Citation

Citation and release in the field is used by police as an alternative to booking and pretrial detention. This practice reduces law enforcement as well as jail costs.

Stationhouse Citation

Under the alternative of stationhouse citation, the arrestee is escorted to the precinct police station or headquarters rather than the pretrial detention facility. Release, which may occur before or after booking, is contingent upon the written promise of the defendant to appear in court as specified on the release form.

Release on Recognizance (ROR)

ROR refers to release without monetary bail or other special conditions and without supervision or services. The arrestee is placed on his honor to appear in court when scheduled.

Conditional Release

The defendant who is conditionally released agrees to specified conditions in addition to appearing in court. Such conditions may include remaining in a defined geographical area, maintaining steady employment, avoiding contact with the victim or with associates in the alleged crime, avoiding certain activities or places, participating in treatment, or accepting services. Conditional release is often used in conjunction with third-party or supervised release.

Third-party Release

Third-party release extends to another person the responsibility for insuring the defendant's appearance in court. This may be a person known to the defendant or a designated volunteer. Third-party release may be a condition of unsecured bail, with the third party as a co-signer.

Monitored Release

Monitored release is recognizance release with the addition of minimal supervision or service, i.e., the defendant may be required to keep a pretrial services agency informed of his whereabouts while the agency reminds the defendant of court dates and verifies his appearance.

Supervised Release

Supervised release involves more frequent contact than monitored release. Typically, various conditions are imposed and supervision is aimed at enforcement of these conditions and provision of services as needed. Some form of monetary bail also may be attached as a condition of supervised release, especially in higher-risk cases.

Unsecured Bail

This form of release differs from ROR only in that the defendant is subject to paying the amount of bail if he defaults. Unsecured bail permits release without a deposit or purchasing a bondsman's services.

Cash Bail

Cash bail generally is used where the charge is not serious and the scheduled bail is low. The defendant obtains release by paying in cash the full amount, which is recoverable after required court appearances are made.

Bondsman-secured Bail

Under this traditional bail arrangement the defendant purchases security service from a bail bondsman. The fee for this service ranges upward from 10 per cent and is not refundable. The bail bondsman system, which permits a private entrepreneur to share with the court the decision on pretrial release, has been criticized for many years and is becoming obsolete in more progressive jurisdictions.

Privately-secured Bail

This arrangement is similar to the bail bondsman system except that bail is provided without cost to the defendant. A private organization provides bail for indigent arrestees who meet its eligibility requirements.

Personally-secured Bail

If bail is personally secured, the defendant or his family puts up the security. This arrangement is generally out of reach of the less affluent defendant.

Percentage Bail

A publicly managed bail service arrangement, percentage bail requires the defendant to deposit a percentage (typically 10 per cent) of the amount of bail with the court clerk. The deposit is returned to the defendant after scheduled court appearances are made, although a charge (usually 1 per cent) may be deducted to help defray program costs.

Unconditional Diversion

Unconditional diversion involves the cessation of criminal processing at any point short of adjudication with no continuing threat of prosecution. This type of diversion may involve the voluntary referral to a social service agency or program dealing with a problem underlying the offense.

Conditional Diversion

Conditional diversion at the pretrial stage refers to suspension of prosecution while specific conditions are met. If conditions are not satisfied during a specified time period, the case is referred for continued prosecution.

Citizen Dispute Settlement

Charges arising from interpersonal disputes are mediated by a third party in an attempt to avoid prosecution. If an agreement between the parties cannot be reached and the complainant wishes to proceed with criminal processing, the case may be referred to court for settlement.

Partial Confinement

An alternative to the traditional jail sentence, partial confinement may consist of "weekend" sentences which permit the offender to spend the work week in the community, with his family, and at his job; furloughs, which enable the offender to leave the jail for a period of a few hours to a few days for specified purposes--e.g., to seek employment, take care of personal matters or family obligations, or engage in community service; or work/study release, under which the offender holds a job or attends school during the day and returns to the detention facility at night and on weekends.

Alternative Facilities

A sentence to confinement in alternative facilities may be an option for certain kinds of offenders. Such facilities may include treatment settings for drug-dependent offenders, minimum-security facilities in the community which provide treatment and services as needed, work/study release centers, and halfway houses or shelter-type facilities. All of these are less secure than the traditional jail, but offer a more stimulating environment for the individual.

Early Release

Early release to supervision means less jail time and, with more rapid turnover, lower jail populations and capacity requirements. Early release may come about through parole, time off for good behavior or work performed, or modification of the sentence by the court. The last procedure is usually associated with sentences to jail with a period of probation to follow. Although there are some objections to its use, "probation with jail" is a very common disposition in some jurisdictions. More often than not these sentences are in lieu of a state prison term.

Unconditional Discharge

Discharge without conditions as a post-trial disposition is essentially the same as unconditional diversion. No savings are obtained in criminal justice processing costs, but jail populations may be reduced; conditions of release are imposed for an offense in which the defendant's involvement has been established.

Suspended Sentence

This is essentially a threat to take more drastic action if the offender again commits a crime during some specified time period. Where no special conditions are attached, it is assumed that the ends of justice have been satisfied by conviction and no further action is required as long as the offender refrains from involvement in new offenses. Suspended sentences may be conditioned on various limitations as to mobility, associates, or activities or on requirements to make reparations or participate in some rehabilitation program.

Fine

The fine is a cash payment of a dollar amount assessed by the judge in an individual case or determined by reference to a published schedule of penalties. Fines may be paid in installments in many jurisdictions.

Restitution

Restitution generally is a cash payment by the offender to the victim of an amount considered to offset the loss incurred by the victim or the community. The amount of the payment may be scaled down to the earning capacity of the offender and/or payments may be made in installments. Sometimes services directly or indirectly benefitting the victim may be substituted for cash payment.

Community Service

Community service often is used as a substitute for, or in partial satisfaction of, a fine. Generally this disposition is a condition of a suspended or partially suspended sentence or of probation. The offender volunteers his services to a community agency for a certain number of hours per week over a specified period of time. The total number of hours, often assessed at the legal minimum wage, is determined by the amount of the fine which would have been imposed or that portion of the fine which is suspended.

Probation

A requirement to report to a designated person or agency over some specified period of time. May involve special conditions as discussed in the definition of suspended sentence. Probation often involves a suspended sentence--but may be used in association with suspension of final judgment or deferral of sentencing.

APPENDIX B: SELECTED READING LIST

Numerous books, articles, monographs, descriptive and evaluative reports were drawn on in the course of the studies which led to the development of this publication. References are provided in chapter notes and, in some instances, in appendices of Volumes 2 through 5. Reproduced here is a limited selection of books, monographs, and those major reports which are especially basic and thought to have some lasting significance for criminal justice planners and policy makers.

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