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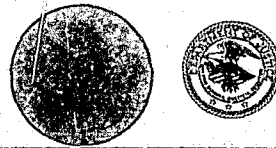
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## Bureau of Justice Statistics Special Report

### *Federal Offenses and Offenders*

# Pretrial Release and Misconduct

The use of bail, the use of pretrial detention, and the extent of misconduct by persons released under bail and other pretrial conditional release programs are among the most sensitive issues for American crime control policy. Pretrial detention deprives defendants of freedom prior to trial, limiting participation in the preparation of a defense and eliminating earning capacity. Pretrial release, on the other hand, poses the risk that a defendant—apprehended by police and charged by prosecutors as a suspect—may commit additional offenses, perhaps for an extended period if his trial is delayed or if he absconds.

In the Federal justice system—the focus of this special report—an examination of pretrial release, detention, and misconduct revealed the following:

- of all defendants charged, less than 18% (17.1%) are detained prior to trial;
- of the nearly 83% released through bail or other pretrial release, about 10% are rearrested for new crimes, violate conditions imposed on their release, or fail to appear for trial; and
- defendants detained before trial get considerably more severe sentences than those in pretrial release status.<sup>1</sup>

State and local pretrial release practices, in contrast, are illuminated by a variety of research and statistical studies. A 1976 study indicates that during the three decades before that study, changes in pretrial release practices had resulted in a reduction in State and local pretrial detention.<sup>2</sup> Although pretrial detention rates vary across the Nation, by the 1980's a major

The process of establishing pretrial release policies that strike a proper balance among the often conflicting interests of the defendant, the justice system, and the community is done best in the light of reliable information about existing practices and outcomes. At the Federal level, such information has recently become available from a data base assembled by the Bureau of Justice Statistics. This special report presents statistics on pretrial release derived from the BJS Federal Justice Statistics data base. The report focuses specifically on the factors that determine Federal bail amounts, the factors that are related to whether the defendant posts bail, the factors that predict whether the defendant will misbehave if released, and the effect that pretrial detention has on the

examination of pretrial release in eight urban jurisdictions concluded that—

- about 15% of all defendants prosecuted in these local courts were detained prior to trial,
- of those 85% released, about 15% were rearrested while on pretrial conditional release, and
- an additional 15% of defendants failed to appear at the time of trial.<sup>3</sup>

(Pretrial misconduct rates at the local

January 1985

defendant's sentence if he is convicted.

Such an analysis is made possible as a result of the cooperation of the Federal Bureau of Investigation and other Federal investigative agencies, the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, the Federal Bureau of Prisons, and the U.S. Parole Commission. The data provided by these separate agencies and integrated by BJS are useful for analyzing a variety of issues that are important to those agencies individually and collectively, to policy makers generally, and to the public. Subsequent BJS special reports will describe these ongoing analyses.

Steven R. Schlesinger  
Director

level may exceed Federal rates because more white collar offenders—who appear to be better pretrial risks—are prosecuted in Federal courts.) Although only 15% of State defendants were detained prior to trial, 42% of the Nation's jail population in 1978 consisted of Federal and State pretrial detainees; an additional 8% had been convicted, but were not yet sentenced.

The reform of Federal bail and

pretrial release procedure was a prominent aspect of the Comprehensive Crime Control Act of 1984.<sup>5</sup> Under that act, Federal defendants may be detained without bail if it is determined in a special hearing that no financial or other conditions will reasonably assure the appearance of the person as required and guarantee the safety of other persons in the community. Federal defendants may also be released without bail or, if it is deemed necessary to assure appearance at trial or the public safety, bail may be imposed provided it is affordable.<sup>6</sup>

#### FEDERAL BAIL RELEASE AND PRETRIAL MISCONDUCT

This special report presents statistical findings that describe Federal bail release and pretrial misconduct. The analysis focuses on the following issues:

- What variables affect the amount of bail a defendant must post in Federal courts?
- Once bail is set, what variables affect whether the defendant will post bail?
- Once a defendant is released, what variables predict pretrial misconduct—i.e., failure to appear for court or arrest while on bail?
- What effect does pretrial detention have on an offender's sentence?

Reported findings were based on a subset of the recently established BJS integrated Federal statistics data file. The complete file contains information about case processing from investigation through prosecution, adjudication, sentencing, and corrections for Federal defendants whose felony and serious misdemeanor cases were terminated in district courts during 1979.

The subset is limited to data from 13 districts that supported experimental pretrial service programs and reported bail decisions and release outcomes to the Pretrial Services Branch of the Probation Division of the Administrative Office of the U.S. Courts. These 13 districts accounted for about 25% of all felony and serious misdemeanor cases terminated during 1979. Interviews with pretrial service agency officials supplement the computerized data.

Table 1 displays the variables used in the analysis. These variables correspond generally to the factors that are cited in the new Federal bail reform legislation. Findings from the statistical analysis are summarized in tables 2-5, which provide estimates of the marginal effects that selected variables have on bail amounts, posting bail, misconduct while on bail, and sentence severity, holding constant the other variables described in table 1. As noted, the tables describe trends; that is, the statistics are approximations of relationships between variables

Table 1. Variables used in the analysis of selected issues<sup>a</sup>

Variables	Variables used in analysis of:			
	Amount of bail set	Ability to post bail	Pretrial misconduct	Impact on sentencing
<b>Offense seriousness</b>				
Maximum statutory sentence	X	X	X	X
Felony or misdemeanor	X	X	X	X
Special aggravating circumstances	X	X	X	X
Type of offense (bank robbery, drugs, etc.)	X	X	X	X
<b>Prior criminal record</b>				
Prior probation/parole revocation		X	X	X
Number of prior felony convictions	X	X	X	X
Number of prior misdemeanor convictions	X	X	X	X
Number of times imprisoned		X	X	X
Indication of a juvenile record		X	X	X
<b>Recent criminal history</b>				
On probation/parole at time of Federal offense	X	X		X
Other cases pending	X	X	X	X
<b>Stability factors</b>				
Marital status		X	X	
Months at present address	X	X	X	
Prior instances of failure to appear		X	X	X
Number of dependents supported		X	X	
<b>Economic status</b>				
Education		X	X	
Months in present job		X	X	
Months unemployed		X	X	
Annual income		X	X	
Private or public counsel	X	X	X	X
<b>Drug use</b>				
Abused opiates		X	X	X
Abused non-opiate drugs		X	X	X
Abused alcohol		X	X	X
<b>Other personal variables</b>				
Sex	X	X	X	X
Race	X	X	X	X
Age		X	X	X
Physical illness		X	X	
Psychological illness		X	X	
<b>Process variables</b>				
Conviction: jury, bench, or guilty plea				X
District where prosecuted	X			X
Days on bail			X	
Bail amount		X		
Detained prior to trial				X

<sup>a</sup> An X denotes variables that were retained in the final regression specification; not all retained variables were statistically significant. Additional variables were used

in earlier regression specifications. For elaboration, see *Pretrial Release and Misconduct in the Federal Justice System*, (forthcoming from BJS in 1985).

that in reality are more complex than the statistical representations.

#### TYPE OF BAIL RELEASE

In Federal district courts, a defendant must be given a bail hearing within 24 hours of his arrest. The hearing, which is conducted by a judge or magistrate, determines the conditions under which the defendant may be released pending trial. There are five forms of bail in Federal court:

- release on personal recognizance—the defendant posts no bail bond, but may be prosecuted for failure to appear for a scheduled court date;
- release on unsecured bond—the defendant posts no bail bond but risks forfeiting a prescribed amount for failure to appear;
- deposit bond—the defendant posts a portion of the bail bond, typically 10%, with the court and is responsible for the rest if he fails to appear for court;

- surety bond—the defendant is required to post the full bail amount with the court prior to release; and
- collateral bond—the defendant posts collateral instead of a surety bond.

About half of all Federal defendants released during 1979 were released on unsecured bond, 23% were released on personal recognizance, 14% were released on deposit bond, 9% were released on surety bond, and less than 2% were released on collateral bond.

#### AMOUNT OF BAIL

A variety of factors, including most of those listed in table 1, affect the level of bail. Three factors are especially important: the seriousness of the charged offense, the district where bail was imposed, and the offender's criminal record—in that order. The marginal effect of each of these three factors is described in table 2, which presents variations in bail amounts.

For purposes of the analysis, bail amount was considered to be the final amount required to be posted after the defendant had exhausted all review hearings and appeals.<sup>9</sup> Furthermore, bail was considered to equal zero for unsecured bond and personal recognizance, and it was assumed to equal 10% of the total amount for deposit bond.

#### Charge seriousness

In Federal courts, as in State and local courts, high bail is reserved generally for defendants accused of serious crimes. Bank robbery—one of the most serious Federal crimes—results in bail of \$10,000 or more in 61% of all cases. Twenty-five percent of all defendants in drug law violation cases (mostly upper- and middle-level dealing) are required to post bail of \$10,000 or more. In contrast, 85% of all defendants accused of fraud were released on personal recognizance or unsecured bail.

Holding the offense and other variables constant, bail was typically between \$4,500 and \$6,000 for defendants charged with crimes that carry a 5-year maximum penalty (see table 2).<sup>10</sup> Offenses with a 15-year maximum penalty typically resulted in bail between \$8,500 and \$10,500. Offenses with 25-year maximum terms typically resulted in bail between \$13,500 and \$17,000.

#### District

Holding other factors constant, bail amounts varied across the 13 districts; extremes are reported in table 2. The "high bail district" typically set bail between \$13,500 and \$17,500 for defendants accused of crimes carrying a 15-year maximum sentence. For the same type of crime, and for similar defendants, the "average bail district" typically set bail at between \$7,000 and \$10,000. Under similar circumstances, the "low bail district" typically set bail in the range of \$5,500 to \$7,500.

#### Prior record

Although charge seriousness and jurisdiction were the primary factors determining the type and amount of bail, the defendant's criminal record was also important. For example, 71% of all defendants without criminal conviction histories were released on personal recognizance or unsecured bond, compared to 56% of defendants with one prior felony conviction, 45% of defendants with two prior felony convictions, and 37% of defendants with three or more prior felony convictions.

As shown in table 2, a positive correlation exists between bail amount and criminal record when controls are

Table 2. Variation in bail amounts

Selected relevant variables	Average bail amounts <sup>a</sup>
<b>Offense seriousness</b>	
25-year maximum penalty	\$13,500-17,000
15-year maximum penalty	\$8,500-10,500
5-year maximum penalty	\$4,500-6,000
<b>District<sup>b</sup></b>	
High bail district (imposed the highest average bail amounts)	\$13,500-17,500
Average bail district (district composite, average bail across Nation)	\$7,000-10,000
Low bail district (imposed lowest average bail amounts)	\$5,500-7,500
<b>Prior record<sup>b</sup></b>	
Serious record (three prior felony convictions, on probation or parole at time of arrest, and charges pending for a previous offense)	\$16,500-20,500
Less serious record (one prior felony conviction, not on probation or parole, and no charges pending)	\$9,500-12,000
No record (absence of all three conditions)	\$7,500-9,000

Source: Integrated Federal Justice Statistics data base, as elaborated in *Pretrial Release and Misconduct in the Federal Justice System*, forthcoming from BJS in 1985.  
<sup>a</sup> See footnote 10 at end of text for an explanation of ranges. The figures for each

variable were derived from regression analysis, holding other variables constant (see table 1).  
<sup>b</sup> Calculations were based on an assumption that the most serious charge carries a 15-year maximum statutory penalty.

introduced for other variables. For instance, offenders with "serious records" (defined here as three prior felony convictions, on probation or parole, and charges pending for a non-Federal offense) typically were required to post bail in an amount between \$16,500 and \$20,500. Offenders who were accused of similar crimes, but who had "less serious records" (defined as one prior felony conviction, not on probation or parole, and no other charges pending) typically faced a bail amount between \$9,500 and \$12,000. Under similar circumstances, offenders with "no record" typically faced a bail between \$7,500 and \$9,000.

#### Other variables

The statistical analysis indicated that bail was somewhat lower for defendants who had lived at the same address for several years than for transients, somewhat lower for women than for men, and lower for defendants with college and high-school degrees than for defendants without. Holding other factors constant, there was no correlation between bail amount and any of the following: race, age, drug use, income, employment history, dependents supported by the defendant, and past history of jumping bail.

#### POSTING BAIL

Bail is set by a judge or magistrate within 24 hours of arrest, generally within the presence of a pretrial service agency representative, an Assistant U.S. Attorney, and the defendant's counsel, who may be appointed at this stage if the defendant is indigent. If the defendant cannot post the bail set at the first hearing, he may request a reduction in bail at a subsequent review hearing or appeal. Approximately 90% of all released defendants gain their release at the initial hearing.

Ultimately, 83% of all defendants are released on personal recognizance, on unsecured bond, or after posting bail; 17% are detained. A variety of factors appear to affect the probability that a defendant will post bail. Of these factors, the most important are the level of bail, the defendant's income, his residential stability, evidence that he has failed to appear in court in the past, and his age, sex, and race. Table 3 describes the relationship between the above factors and the probability of posting bail, holding constant the factors listed in table 1.

#### Bail amount

The probability of posting bail decreases, as one would suspect, as the bail amount increases. Assuming that in the case of a deposit bond the defendant is required to post 10% of the bond's face amount, and holding constant other variables listed in table 1, most defendants were able to post bail of \$10,000 or less, fewer than half were able to post bail set at \$50,000, and about one in ten were able to post bail in excess of \$100,000.

#### Financial standing

Table 3 illustrates a second expected relationship: the probability of posting bail increases with the defendant's annual income, his education, and his ability to hire a private attorney. A "wealthy" defendant (one with a college degree, \$50,000 annual legal income, and a private attorney) is almost certain to post bail of \$50,000 or less. Even for amounts over \$100,000, release is more likely than not. In contrast, the probability that a "poor" defendant (no high school degree, \$4,000 annual legal income, and an appointed attorney) will post bail is 84% for a \$15,000 bond, 58% for a \$30,000 bond and 26% for a \$50,000 bond.



**Residential stability and prior failure to appear**

Table 3 indicates that a "stable" defendant (defined as married, same residence for 6 years, and no prior instance of failure to appear) has a 94% probability of posting \$15,000 bail and a 79% probability of posting \$30,000 bail, holding constant other variables, including income. For a "transient" (not married, no fixed abode, and one or more prior instances of failure to appear) the probability of posting bail is much less—86% for bail set at \$15,000 and 58% for bail set at \$30,000. Defendants with stable community ties may have greater access to funds and also may be more willing to pay for release in order to return to their families and friends than defendants with less stable community ties.

**Age, sex, and race**

Holding other variables constant, men are less likely than women to post bail, non-Caucasians are less likely than Caucasians, and younger defendants are less likely than older defendants. As shown in table 3, the probability is only 2% that a 40-year-old, Caucasian female will fail to post \$15,000 bail, while the failure rate is six times greater (12%) for a 30-year-old, non-

Caucasian male; at a \$30,000 bail level, the likelihood that the woman will fail to make bail becomes 17%, the man 38%. (These two demographic categories were used for illustration).

**Other variables**

The probability of posting bail varies little, if at all, with a defendant's criminal record or drug use. Defendants accused of distributing drugs tend to be more likely to post bail, other variables held constant, possibly because the unique profitability of drug dealing provides a cache of available bail money. Other variables did not seem to exert a material effect on the probability that bail is posted.

**PRETRIAL MISCONDUCT**

Pretrial misconduct, as defined here, includes arrest for a new crime while on bail, willful failure to appear for a court date, and violations of the technical conditions of release. A number of factors affect the likelihood of such misconduct. Some of the most important ones, described in table 4 and discussed below, are time on bail, the defendant's criminal record, his abuse of illicit drugs, and economic and social stability.

**Time at risk**

As shown in table 4, the longer a defendant is at risk the greater the probability of misconduct, holding constant the other variables listed in table 1. The probability of misconduct is 10% for defendants who were on bail for 90 days, 14% for defendants on bail for 180 days, and 17% for defendants who were free for 270 days.<sup>11</sup> Within the category of pretrial misconduct, time at risk was statistically correlated with arrest for a new crime, but not with failing to appear for a scheduled court event.

**Prior criminal record**

Criminal record is positively correlated with pretrial misconduct. Holding constant the other variables listed in table 1, about 35% of all defendants with "serious records" (defined here as three prior felony convictions, one case pending, and one or more prior instance of failure to appear) were arrested for a new crime or failed to appear for a court date during a 120-day bail period. About 20% of all defendants with "less serious records" (one prior felony conviction, no pending cases, no prior instances of failure to appear) were rearrested or failed to appear. Only 8% of all defendants with "no records" were rearrested or failed to appear.

Table 4. Factors affecting the likelihood of misconduct while on bail	
Selected relevant variables	Probability of misconduct <sup>a</sup>
<b>Time on bail</b>	
90 days	10%
180 days	14
270 days	17
<b>Criminal record<sup>b</sup></b>	
Serious record <sup>c</sup>	35
Less serious record <sup>c</sup>	20
No record	8
<b>Drug use<sup>b</sup></b>	
Abuses opiates and non-opiates	20
No drug use	10
<b>Economic and social stability<sup>b</sup></b>	
Unstable <sup>d</sup>	20
Stable <sup>d</sup>	2

Source: See table 2.  
<sup>a</sup> These figures were derived from regression analysis, holding other variables constant (table 1).  
<sup>b</sup> Evaluated at 120-day bail period.  
<sup>c</sup> "Serious record"—Three prior felony convictions, one case pending, and one or more prior instances of failure to appear. "Less serious record"—One prior felony conviction, no pending cases, no prior instances of failure to appear.  
<sup>d</sup> "Unstable"—Unemployed three years, no high school degree, no fixed abode, appointed counsel. "Stable"—Employed, college degree, 6 years at same residence, retained counsel.

**Drug use**

Drug use increased the likelihood of misconduct, other factors being held constant.<sup>12</sup> As reported in table 4, the probability of misconduct within 120 days was 20% for defendants who were known to abuse opiate and non-opiate drugs in combination (estimates are slightly lower for defendants who abused opiates alone). The probability fell to less than 10% for defendants who abused neither opiates nor non-opiates.

**Economic and social stability**

Defendants who are economically and socially "unstable" (defined here as being unemployed 3 years, indigent with an appointed counsel, no high school degree, and no fixed abode) are more likely to be rearrested or fail to appear for court than are defendants who are economically and socially "stable" (employed, 6 years at the same residence, with a college degree, and retained counsel). Holding other variables constant and assuming a bail period of 120 days, 20% of the "unstable" group were rearrested or failed to appear, compared to 2% of the "stable" group.

**Age, sex, and race**

The probability of misconduct was higher for males, non-Caucasians, and younger defendants.

Table 3. Variation in the probability of posting bail	
Selected relevant variables	Probability of posting bail <sup>a</sup>
<b>Bail amount</b>	
\$10,000	98%
\$50,000	42
\$100,000	13
<b>Defendant's income<sup>b</sup></b>	
\$15,000 bail	
Wealthy	99
Poor	84
\$30,000 bail	
Wealthy	98
Poor	58
<b>Stability<sup>c</sup></b>	
\$15,000 bail	
Stable	94
Transient	86
\$30,000 bail	
Stable	79
Transient	58
<b>Race, sex, and age</b>	
Caucasian, female, age 40	
Bail \$15,000	98
Bail \$30,000	83
Non-Caucasian, male, age 30	
Bail \$15,000	88
Bail \$30,000	62

Source: See table 2.  
<sup>a</sup> These figures were derived from regression analysis, holding other variables constant (table 1).  
<sup>b</sup> "Wealthy"—college degree, \$50,000 annual legal income, and retained counsel. "Poor"—no high school degree, \$4,000 legal annual income, and appointed counsel.  
<sup>c</sup> "Stable"—married, same residence for 6 years, no prior failures to appear. "Transient"—not married, no fixed abode; one or more prior failures to appear.

## SENTENCING

Table 5 shows the average sentences for four representative offense categories, according to whether the offender had been released or detained pending trial. Defendants who are released pending trial receive shorter prison sentences than defendants who are detained. This finding was derived from regression analysis.<sup>13</sup>

## SUMMARY

The highest bail amounts tend to be imposed on defendants accused of the most serious crimes who have extensive criminal records and weak social and economic ties. Males typically receive higher bail amounts than females. Holding other variables constant, bail amounts vary systematically across Federal district courts.

When bail is set high, defendants post bail less frequently than when it is set low. Defendants with social ties and economic stability are more likely than other defendants to post bail, holding the amount constant. The seriousness of the offense and the defendant's criminal record and use of drugs were not correlated with the probability of posting bail.

The probability of pretrial misconduct increases with the length of time a defendant is on bail; it also increases with the defendant's criminal record and use of drugs. Males, non-Caucasians, and defendants considered to be less stable socially and economically are more likely than other defendants to commit some form of pretrial misconduct.

Sentence severity is greatest for defendants who were detained prior to trial.

## The data

Data in this special report were derived mainly from the Bureau of Justice Statistics integrated Federal Justice Statistics data base. Data from 1979, the most recent year for which sufficiently complete data were available, were assembled from computerized files maintained separately by several Federal criminal justice agencies. The Executive Office for U.S. Attorneys provided a computerized file on all cases handled by U.S. Attorneys in 94 Federal districts. The Administrative Office of the U.S. Courts furnished three data sets: the master file of all criminal cases terminated in Federal district courts, the computerized pretrial release interview data maintained by the pretrial services branch for interviews conducted in 13 Federal district courts, and the computerized file containing data on all probationers and parolees under the supervision of Federal probation officers. The Bureau of Prisons provided data on incarcerated Federal offenders. The Federal Bureau of Investigation supplied criminal arrest records.

The process of integrating disparate data files is called "matching and merging"; as the name implies, pairs of files are matched and then merged into a third file. Records matched at rates that were generally higher than expected; these rates were all suitable for statistical analysis. Federal law prohibits use of the integrated file for any purposes other than research. A more complete analysis of Federal pretrial release practices is described in the

Table 5. Impact of pretrial detention on sentence length

Defendants	Sentence length for conviction on:			
	Bank robbery	Fraud	Forgery	Drug offenses
Pretrial status				
Released	91.2 months	7.6 months	9.5 months	29.8 months
Detained	125.8	19.7	24.3	55.3
Average for all defendants <sup>a</sup>	115.1	8.0	11.3	34.1
Source: See table 2. Findings based on regression analysis. <sup>a</sup> Tabulations were limited to convicted defendants who were interviewed in the 13		districts with pretrial service agencies. Thus, averages differ slightly from those reported in BJS Special Reports based on the full Federal integrated data base.		

Bureau of Justice Statistics report, "Pretrial Release and Misconduct in the Federal Justice System," forthcoming in 1985.

## REFERENCES

<sup>1</sup>These findings are based on data provided by the Pretrial Services Branch of the Probation Division of the Administrative Office of the U.S. Courts for 13 Federal districts processing about 25% of all Federal felonies and misdemeanors terminated during 1979. These statistics relate to defendants in these 13 Districts who were interviewed by Pretrial Service agents, totaling roughly 65% of all defendants. The number of cases overall was 6,403 broken down by Federal district as follows:  
Arkansas Eastern, 113 Missouri Western, 284  
California Central, 1,077 New York Eastern, 785  
Georgia Northern, 183 New York Southern, 916  
Illinois Northern, 783 Ohio Northern, 86  
Kentucky Western, 258 Pennsylvania Eastern, 280  
Maryland, 571 Texas Northern, 367  
Michigan Eastern, 700

<sup>2</sup>Wayne Thomas, *Bail Reform in America* (Berkeley: University of California Press, 1976) and Lee S. Freeman, "The Evolution of Bail Reform," *Policy Sciences* 7 (1976).

<sup>3</sup>Mary A. Toborg, *Pretrial Release: A National Evaluation of Practices and Outcomes* (Washington, D.C.: National Institute of Justice, 1982), Phase II Report, Series 3, Number 2: pp. 6, 16, and 20. The jurisdictions covered by this study were: Baltimore City, MD; Baltimore County, MD; Washington, DC; Dade County (Miami), FL; Jefferson County (Louisville), KY; Pima County (Tucson), AZ; Santa Cruz County, CA; and Santa Clara County (San Jose), CA. An important compilation of pretrial release findings is contained in Donald E. Pryor and Walter F. Smith, *Pretrial Issues: Significant Research Findings Concerning Pretrial Release*, Pretrial Services Resource Center, Vol. 4, No. 1, February 1982, which generally supports the National Institute's findings.

<sup>4</sup>U.S. Department of Justice, Bureau of Justice Statistics, *Profile of Jail Inmates: Sociodemographic Findings from the 1978 Survey of Local Jails* (Washington, D.C.: Government Printing Office, 1980).

<sup>5</sup>H.J. Res 648, Pub. L. 98-473, 98 Stat 1837 (Oct 12, 1984), Title II, Chapter I (Bail Reform Act of 1984).

<sup>6</sup>The preventive detention feature of the new legislation was first used on October 18, 1984, in the Southern District of New York.

<sup>7</sup>A structural model, using sequential probit techniques, was used. Details of the methodology and findings are reported in William Rhodes and Shelley Matsuba, "Pretrial Release in Federal Courts," *Evaluation Review* 8, No. 5 (October 1984): 692-704, and *Pretrial Release and Misconduct in the Federal Justice System*, forthcoming from BJS in 1985. Because nonlinear regression methods were used, marginal effects vary with the level at which other variables are held constant. Unless otherwise noted, control variables are held constant at their mean values.

<sup>8</sup>Judges may also place special conditions on the defendant's release (e.g., the defendant may be required to seek treatment for drug abuse, avoid association with criminal peers, submit to third

party supervision, and so on). Those special conditions are not examined here.

<sup>9</sup>In Federal courts, the defendant may have two reviews of his bail status. In addition, he may appeal the decisions made in the review hearings. About 10% of all defendants use the review and appeal process.

<sup>10</sup>A range rather than a single average resulted from the way that the variable "penalty" was coded. The penalty reflected both the maximum prison term and the maximum fine that could be imposed following conviction for the most serious crime (indicated by the possible sentence) among the convicting charges. Because there is a range of possible fines associated with a specific maximum prison term, the estimated bail amount itself was also reported as a range.

<sup>11</sup>Questions of causality arise when interpreting the correlation between time at risk and the probability of misconduct. The inference drawn above is that longer periods at risk increase the likelihood of misconduct, but other interpretations might be advanced because misconduct could cause a delay in court processing, especially if the defendant absconds. A standard statistical technique, the use of an "instrument variable" was employed to reduce the confounding influence of this latter reverse correlation, leading to the conclusion that time at risk may have an independent, causal effect on misconduct.

<sup>12</sup>Drug use was inferred from pretrial release interviews that rely on self reports, but the offender's response is verified routinely with family, friends, and drug abuse clinics.

<sup>13</sup>Questions of causation arise when interpreting the correlation between sentence length and pretrial status. The interpretation made here is that pretrial detainees receive harsher sentences because of their pretrial detention, holding other variables constant. Another explanation is that judges tend to detain defendants who are expected to receive long prison terms if convicted. Instrument variable techniques were used to reduce the confounding influence of this latter reverse correlation.

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## Bureau of Justice Statistics reports

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