AN EVALUATION STUDY OF
PERSONAL RECOGNIZANCE BOND
IN EL PASO COUNTY, TEXAS

APPROVED:

Joseph B. Graves

Ryan Barilleaux

Sue Graham

Dean of the Graduate School

AN EVALUATION STUDY OF PERSONAL RECOGNIZANCE BOND IN EL PASO COUNTY, TEXAS

by

SUERIANNE' MARIA DAVIS, B.A.

REPORT

Presented to the Faculty of the Graduate School of

The University of Texas at El Paso

in Partial Fulfillment

of the Requirements

for the Degree of

MASTER IN PUBLIC ADMINISTRATION

THE UNIVERSITY OF TEXAS AT EL PASO

May 1987

NOTICE

SOME PAGES IN THIS THESIS WERE
BOUND OUT OF NUMERICAL SEQUENCE.
THEY HAVE BEEN MICROFILMED IN
THE SAME SEQUENCE AS BOUND

SOUTHWEST MICROPUBLISHING, INC.

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

LIST OF TABLES

INTRODUCTION

The American criminal justice system has long been scrutinized and criticized for its involvement and support of the bailbond industry. Although its beginning in colonial America was based on necessity and reasonable compensation, jail release turned into a commercial enterprise eventually becoming more oriented to profit making than the assistance of detained defendants. Consequently, those with no money and no assets could not gain release.

With the evolution of the bail reform movement in the 1960s, personal bond programs came into focus, and indigency was no longer a barrier to pretrial release from jail. Many jurisdictions implemented a personal bond program as soon as the concept was credited as successful in early 1963. Many other jurisdictions were slower to adopt the program.

The County of El Paso, Texas, implemented a pretrial release/personal bond program in 1971, and in 1972 it became a part of the El Paso County Adult Probation Department. Beginning with minimal funding and minimal results, the program has emerged as an integral part of the local criminal justice system.

Recently, much attention has been focused on and around the Pretrial Release Section and the Personal Recognizance Bond Program as concerned citizens and county officials have

mounted a campaign to alleviate jail overcrowding. A series of investigations and studies have been initiated by local committees and offices, namely the 327th District Court of El Paso County -- the Early Lawyer Entry Project, 1986; the Criminal Law Committee of the El Paso Bar Association -- Public Defender System Study and Earlier Appointment of Counsel, 1986; and the Commission on Criminal Justice of El Paso County -- Report - Managing Inmate Population in the El Paso County Detention Facility, 1985. These studies have resulted in proposals and suggestions for improvements in policy and administration by some county offices. During this process, there has been contemplation as to whether or not the Personal Recognizance Bond Program could improve its performance level and simultaneously contribute to the solution of jail overcrowding. These speculative comments have repeatedly been voiced without answers that have satisfied the skeptics.

Considering the importance of pretrial release, and in consideration of the seriousness of overpopulation in detention facilities, I undertook the task of researching the policies, procedures, and results of the Personal Recognizance Bond Program to determine the answers to the following questions:

(a) Does the Personal Recognizance Bond Program follow the generally accepted guidelines and criteria for evaluating candidates as established by the Hall Study and promulgated by the NIJ publication entitled Pretrial Release Program Options? (page 25)

(b) Is the Program administered by an objective (point) system, a subjective (discretion) system, or a combination of both?

(c) How many people actually received personal recognizance bond in fiscal year 1986?

(d) What types of crimes have arrestees who most often receive personal recognizance bond been charged with?

(e) Is the current staff of the Program sufficient?

(f) Does the revocation rate indicate an effective or ineffective program?

(g) Would a change in policy to more lenient guidelines positively affect jail overcrowding?

The methodology used to obtain the research data for this Masters Report involved two basic steps: interviews of Personal Recognizance Bond Program personnel, and the study and recording of office worksheet data from which the year-end statisics are derived. From the original worksheets, a listing was compiled of the names and charges of all fiscal year 1986 personal recognizance bond recipients. This data gave me a total number of recipients and provided the statistics on which charges were most commonly awarded personal recognizance bond. From the original daily worksheets which list all candidates to be screened for personal recognizance bond, a statistical breakdown of the reasons for denial of bond and an evaluation of the criteria used in making the decisions was made. Further, a determination was made not only of the percentage on a monthly basis of how many offenders are approved and how many are denied, but also the percentages of cases/offenders listed that involve work on the part of the bond officer but are not part of the year-end statistics.

There are a total of six chapters in this report. Chapter I details the history of bail from its origin to bail reform to the newest concept - cash alternative bail. Chapter II discusses two of the more important books written on bail and bail reform -- Freedom for Sale by Paul B. Wice, and Bail Reform in America by Wayne H. Thomas, Jr., -- and also details the most important studies on nonfinancial pre-trial release issued by the National Institute of Justice and researched and authored by Mary A. Toborg and Andy Hall, among others. Chapter III reviews the beginning of the Pre-trial Release Program/Personal Recognizance Bond Program in El Paso County, Texas, and its procedures and policies. Chapter IV explains the methodology of the research that resulted in the data, Chapter V discusses and analyzes the findings of the research, and Chapter VI is the Conclusion, summarily discussing this project and what the findings of the research indicate.

CHAPTER I

THE HISTORY OF BAIL AND BAIL REFORM IN AMERICA

The Evolution of the Bail System

BAIL. A word defined in Webster's Dictionary as "security given to guarantee a prisoner's appearance when legally required;" a word defined by a critic as representing an arrested person's right to "purchase" his release pending trial. However it is defined, bail in the American criminal justice system historically has been a mechanism for those who could afford a price to get out of jail and for those who could not to remain in jail.

Practices that originated in medieval England are the foundation on which the American system of bail rests. Magistrates in those times traveled from county to county and were often present in a particular locality for only a few months each year. Consequently, a person who had been arrested was likely to spend a very long time in jail depending on when he or she was arrested and when the magistrate would be available. In order to prevent prolonged detention in the primitive jails, defendants were released by the sheriff into the custody of a friend or neighbor who was responsible for assuring that the accused would return at the appropriate time. If the defendant ran away, then the third party custo-

dian was required to surrender himself in the defendant's place. However, the system eventually progressed to where the custodian was allowed to forfeit a promised sum of money if the defendant failed to appear.[1]

Although, as stated earlier, the American bail system is based on the English system, almost from its inception, the American system contained a major difference. Whereas defendants in England were released into the custody of friends and neighbors, the absence of friends and neighbors in frontier America made it very difficult for the court to find an acceptable personal custodian for many defendants.[2] Thus, it was necessary to modify the English practice of a personal system of pretrial release to a commercial system in America. Two other very important factors also contributed to the adoption in America of a commercial bail system. One, the Judiciary Act of 1789 and the constitutions of most established states provided for an absolute right to have bail set except in capital cases. Second, the vast, unsettled American frontier provided a ready sanctuary for any defendant who wanted to escape. Therefore, the use of commercial bail and bondsmen gave almost every arrested person not charged with a capital crime an alternative to remaining in jail before disposition, and also provided a self-serving incentive for bondsmen to supervise and retrieve runaway defendants without using the limited number of law enforcement personnel.

The logic of posting bail rests on the assumption and belief that the defendant will be motivated to appear in court as required in order not to forfeit the money that was posted for his release. Conjunctive reasoning on the part of judges that the likelihood of a defendant failing to appear increases with the severity of the charge and the consequent sentence that may be imposed upon conviction, supports the general practice on their part of increasing the amount of bail in relation to the seriousness of the alleged charge(s). Essentially, the single most important factor in the general practice of setting bail is the alleged present offense. These theories are at the heart of the arguments perpetuated by critics of the American bail system.

Critics and opponents of the bail system declare that the flaw in the logic of bail is a failure to consider the fact that in most instances the bond that is posted to ensure the defendant's appearance is not posted by the defendant, but by a commercial bondsman. The fee that a defendant pays to a bondsman to post the bond in his case is never returned to the defendant regardless of whether he appears or not or whether he is convicted or acquitted. The risk of bond forfeiture, therefore, is on the bondsman and not the defendant. Only if the bondsman requires collateral (and with so many defendants being indigent, there is little or no property to be offered as such) is there a pecuniary risk to the defendant. Therefore, aside from a possible incentive to honor

his part of the agreement, the defendant is not really compelled to uphold his responsibilities. Thus, it is argued, bail in high amounts does nothing to give more assurance of court appearance; and it amounts more or less to a discriminatory practice against those who cannot raise their percentage of bond as a fee to the commercial bondsman.

Concerns for what was termed the irrationality and inequities of the American bail system were addressed by Arthur L. Beeley in his 1927 landmark study entitled The Bail System in Chicago. Based on his study of the records of the Municipal and Criminal Courts of Cook County, Illinois, Beeley found that bail amounts were based solely on the alleged offense and that approximately twenty percent of the defendants were unable to post bail. He also noted that the role of professional bondsmen gave them too much influence in the administration of the criminal justice system, and he reported a number of abuses by bondsmen, including their failure to pay off on forfeited bonds.[3] Beeley concluded that "in too many instances, the present system...neither guarantees security to society nor safeguards the rights of the accused."[4] He included in his recommendations a greater use of summons to avoid unnecessary arrests and bail determinations more tailored to the individual.

The Beeley study did not perpetuate any notable changes or subsequent studies, but did serve as a reference for later investigations. In 1954, an investigation of the administra-

tion of bail in the city of Philadelphia was undertaken by Professor Caleb Foote and law students from the University of Pennsylvania. This study revealed, among other things, that seventy-five percent of the defendants charged with serious crimes were never released prior to trial and that as a result, the city's jail system was seriously overcrowded with pretrial detainees. Most notably, though, was the credit this study received as the first to document a "tremendous discrepancy in disposition and sentencing of bailed versus jailed defendants." Foote found that only eighteen percent of the jailed sample were not convicted, compared with forty-eight percent of the bailed sample, and that jailed defendants who were convicted received prison terms over two and one-half times as often as those who had been free.[5]

A subsequent study in 1957 by Professor Foote and another group of students investigated bail administration in the City of New York. The results indicated (1) that the nature of the alleged offense, more than any other factor, determined the amount of bail that was set; (2) as the amount of bail increased, the ability of the defendants to post bail decreased; and (3), that even low bail amounts were beyond the reach of many defendants, but that no inquiry was made at the time bail was set to determine how much bail the defendant could afford.[6]

The studies of bail administration in Chicago, Philadelphia, and New York provided the foundation for the bail re-