CHAPTER

5

The Pretrial Period and Jails

"The frequent exposure to the jail setting among repeat street criminals makes the jail an important place for the periodic reinforcement of subcultural values as the inmate re-experiences confinement and renews acquaintances with similarly situated people."[1, p. 431]

OBJECTIVES

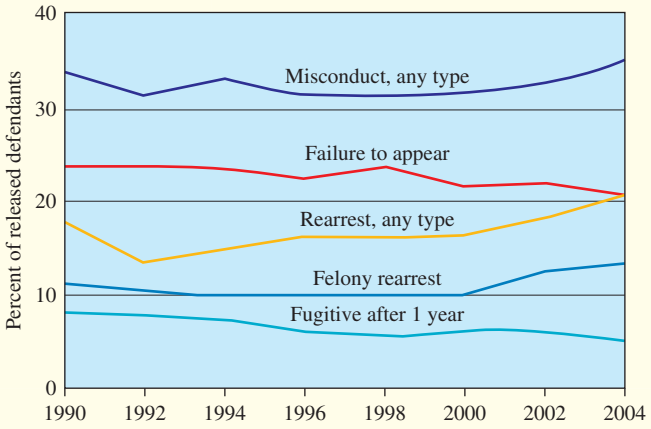
- Understand bail/bond and the ways that it is used to release criminal defendants to the community or keep them in custody.
- Learn the various types of bond and the risk factors used in assigning them.
- Identify the ways that pretrial services operate in the United States and the factors that determine pretrial outcomes.
- Explore the consequences and effects of pretrial detention as part of the correctional process.
- Learn the place of jail in the criminal justice system.
- Recognize the characteristics, social and criminal histories, and special needs of the jail population.
- Learn ways that reforms and programming have modernized the design and function of contemporary jails.

CASE STUDY

As shown in the figure, pretrial misconduct is relatively common among felony defendants released from the 75 largest counties in the United States. About 35 percent of felons have some type of pretrial misconduct and 20 percent fail to appear in court. About 20 percent are rearrested—many for new felonies—and less than 10 percent of felons remain fugitives after 1 year. Based on these estimates of misconduct, it is clear that the pretrial period can be risky for the courts and correctional systems.

1. Which factors do courts use to set bond on felony defendants?
2. How can felony defendants get released from jail pending their appearance in court?

Pretrial misconduct rates for state court felony defendants in the 75 largest counties, 1990–2004



Nationwide, one in five felons fails to appear in court and 35 percent have some type of pretrial misconduct.

Source: Sebol, W. J., & Minton, T. D. (2008). *Jail inmates at midyear 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

"It is at the pretrial stage that one's freedom is so often intertwined with one's money."[2, p. 240]

What happens between a defendant's arrest and his or her first appearance in court is probably the least understood area of the criminal justice system. Criminal defendants and their families often have many questions. Where do arrestees go after they are placed in police cars and driven away? Can they be released? What is bail? What is bond? What are the differences between bail and bond? What does own recognizance mean? Do they have to pay money in order to be released? Who has jurisdiction over arrestees once police officers bring them to municipal holding stations or county jails? How much time transpires before arrestees appear in court? Do arrestees receive due process even without appearing in court?

The answers to these questions occur during the pretrial period. Once the police officer completes the arrest report and terminates discussions (if any) with the defendant, judicial personnel assume responsibility for the case. Most large jurisdictions have judicial officers, variously referred to as pretrial service interviewers, pretrial officers, bond commissioners, and the like. **Pretrial service officers** interview criminal defendants and gather information about the offender's social and criminal history, such as residency, family contacts, employment status, substance abuse and psychiatric history, and criminal history. Importantly, they do not interview defendants about their current charges as a way to influence guilt or innocence. Once the information is gathered, the judicial officer writes a report that summarizes the social and criminal history for the court and makes a bond recommendation. This is the other important purpose of pretrial service personnel—they decide the type of bond that a defendant should receive and serve as the primary way to alleviate jail crowding.

Typically, this activity transpires at a county jail. Jail is a local correctional facility that houses persons who have been convicted of crimes and sentenced to less than 2 years' confinement, as well as those awaiting trial. Operated by the county sheriff's department, jails are a temporary form of incarceration, thus they are much different than prison. Those who are unable to post bond or be released on their own recognizance are detained

until their case reaches a resolution in court, such as dismissal or conviction. This creates a sort of paradox in American due process. The **presumption of innocence** ensures that defendants are considered innocent until proven guilty, yet tens of thousands of criminal defendants each day are detained during the pretrial phase. Think of it this way. Imagine you didn't have a permanent address and you were arrested for drunk driving while traveling through a state. You technically would be transient or passing through town, and would likely be required to post bail before being released. Imagine that you cannot pay the bond amount. Two weeks later, you meet with the district attorney and a public defender and they indicate that charges against you are going to be dismissed. You are free to go. You have not been convicted of a crime, yet you were in custody for 2 weeks.[6]

"The system is lax with those whom it should be stringent, and stringent with those with whom it could safely be less severe."[3, p. 3]

This chapter explores the pretrial period, the misunderstood time during which police, court, and correctional entities meet and the correctional process begins. Three broad areas are examined. First, the historical and contemporary use of bail as a means of pretrial release and detention is explored. Second, the progression of a criminal case during the pretrial period from charging to arraignment to dismissal or conviction is reviewed. The various legal and extralegal factors that are used to determine bond are discussed. Third, the history, function, and characteristics of jails and jail inmates are described. As you will discover, jail is distinct from prison despite their common interchangeable usage.

Bail/Bond

Bail is a form of pretrial release in which a defendant enters a legal agreement or promise that requires his or her appearance in court. The bail amount is statutory, which means that legislatures establish monetary bails based on the legal seriousness of the charge. For example, class A or class I felonies, which are the most serious crimes, such as murder, may be no-bond offenses. Magistrates or judges may increase or decrease the statutory bail amount based on aggravating and mitigating factors of the case. Pretrial service officers do not set bail amounts; they simply follow the statutory schedule of bail amounts. Even though defendants are released from jail custody, they are still under the supervision of the courts. If defendants do not comply with the conditions of their bail, such as abstaining from alcohol use or having no contact with the alleged victim in the case, the court can withdraw the defendant's previously granted release. This is known as **bail revocation**.

Bond is a pledge of money or some other assets offered as bail by an accused person or his or her surety (bail bondsman) to secure temporary release from custody. Bond is forfeited if the conditions of bail are not fulfilled. The best way to understand how the bail/bond process works is with an example. A person is arrested for felony theft and assigned a bail of $1,000. The defendant can pay $1,000 to the court in exchange for release from jail. The $1,000 is essentially collateral to entice the defendant to appear in court. If the defendant misses any court dates, he or she could lose the $1,000. However, if the defendant makes all scheduled court appearances, he or she will receive the money back net any fees or fines that are imposed. If the defendant cannot afford $1,000, he can utilize the services of a bonding agent or bondsperson. A **bondsperson** is a social service professional who is contractually responsible for a criminal defendant once he or she is released from custody. Bondspersons typically charge a 15 percent fee for their services. Thus, the defendant would pay the bondsperson $150 to be released; in turn the bondsperson is potentially liable for the entire $1,000 bond if the defendant misses any court dates or absconds. Bondspersons often have close working relationships with the criminal justice system and utilize many of the same criteria that are used to set bond, such as employment, residency, and criminal history. If defendants indeed abscond while on bond, bondspersons sometimes hire a third party, known as a bail recovery agent or bounty hunter, to find the escapee.

"Jail inmates may be serious repeat offenders, novices in crime, or even naïve traffic violators."[4, p. 69]

Defendants, bondspersons, and bounty agents are bound by financial relationships. Of course, bondspersons and bounty hunters employ law enforcement-like tactics to facilitate their financial arrangements with criminal defendants. However, they are not law enforcement agents per se, thus constitutional safeguards that apply to police officers do not apply to them.

Strictly speaking, the term *bail* usually refers to the monetary value needed for release and the term *bond* refers to the type of release that the defendant was awarded. However, once released defendants are synonymously referred to as "being on bond" or "released on bail." Bail and bond are often used interchangeably even by criminal justice professionals and there is no great distinction made here either. Whichever term is used, bail/bond attempts to ensure an accused person's appearance in court. Depending on the risks that he or she poses and the circumstances of the current charges, a promise, property, money, or some other assets are posted for release. If the defendant misses court appearances, the posted security (or liability in the event of a recognizance release) is forfeited.

Types of Bond

The best type of bond that a defendant can hope for is to be released on his or her own recognizance. A **recognizance bond** is a written promise to appear in court, in which the criminal defendant is released from jail custody without paying or posting cash or property. Variously referred to as personal recognizance (PR), own recognizance (OR), or release on recognizance (ROR), these bonds are reserved for arrestees with minimal or no prior criminal record; strong community ties, such as employment and long-term residency; and relatively nonserious charges. Persons who are released on recognizance bonds are considered to be low risk in terms of reoffending, dangerousness, and failing to appear in court.

Sometimes the defendant does not have the extensive community ties or minimal prior record to justify a recognizance release, but otherwise poses little risk to the community. In these types of cases, defendants are commonly released on **cosigned recognizance bond**, where a family member, close friend, or business associate signs his or her name on the bond to guarantee the defendant's appearance in court. Other jurisdictions employ a third-party custody bond that works the same way. Sometimes, attorneys are granted third-party custody of their clients to ensure their appearance in court.

Other criminal defendants pose greater risks of missing court appearances and recidivating. Still others are too dangerous to release because they might be actively homicidal or suicidal. For riskier defendants, a variety of secured bonds are used. **Secured bonds** require the payment of cash or other assets to the courts in exchange for release from custody. In the event that the defendant misses court dates or **absconds**, which is to escape or otherwise elude legal responsibility, the cash or other assets are forfeited to the court. Various jurisdictions across the country employ various forms of secured bonds. **Cash-only bonds** mean that the defendant must post 100 percent of the bond in cash to be released. **Property bonds** are houses, real estate, or vehicles that may be cosigned to the court as collateral against pretrial flight. Absconding on a property bond could result in losing one's home. Many criminal defendants pay 10–15 percent of their bond to professional bondspersons for release. In these cases, bondspersons act as sureties and are responsible for the total bond if the defendant absconds. Other jurisdictions use a **deposit bail system** where the court acts as bondsperson and the defendant posts a percentage of their total bond. *Court-run deposit bail systems* return the bond money to the defendant, net minor administrative fees, unlike bondspersons. Researchers have found that deposit bail systems produce comparable failure to appear rates as commercial bondspersons.[7]

History and Reform

"Jails may be in the worst possible situation as they typically are the default mechanism for failures in other economic, social, and health systems."[5, p. 258]

The concept of bail has a long and interesting history. Processes resembling modern day bail practices appeared as early as 2500 BCE, and in Roman law as early as 700 BCE. For example, the concept known as **hostageship** involved a person who volunteered to be prosecuted and punished in the place of the actual suspect in the event that the suspect failed to appear for court proceedings.[8] In medieval Germany and England, **wergeld** was the assessed value of a person's life and considered their bail value. Trials by compurgation whereby criminal defendants established their innocence by taking an oath and have various witnesses swear or testify to the veracity of their oath also used wergeld. Both practices apply the concept of real or human assets to use as collateral for court proceedings.

Under English common law, sheriffs appointed their acquaintances who were often prominent members of the community called sureties. Sureties promised to pay money or land in the event that released defendants absconded. In this way, a **surety** is a guarantor that defendants will appear in court, and over time sureties became de facto sheriffs because of their power of revocation. It is because of their financial investment that sureties and modern-day bondspersons employ enforcement-like methods to guarantee that defendants appear in court. There is an important distinction. Bondspersons have contractual power, not law enforcement power; thus they are not bound to the same degree by the same constitutional constraints as police officers.

The English common law surety system was difficult to replicate in the burgeoning United States because of its sheer geographic size and the newness of community ties. Instead, pretrial release relied on the use of bondspersons. The concept of bail appears sporadically in colonial America. For example, the Eighth Amendment of the United States Constitution proscribes the requirement of excessive bail. The Judiciary Act of 1789 established bail as an absolute right in detainable criminal charges with the exception of capital offenses, or those potentially punishable by death.[9] The bail business grew with increasing numbers of bondspersons, bail recovery or enforcement agents, and bounty hunters operating at the periphery of American justice.

Due to concern about the constitutionality of pretrial release and supervision and bail enforcement, the courts addressed the issue. In New York State, *Nicolls v. Ingersoll* (1810) established that bounty hunters have same rights of capture as bonding agents when authorized by those bonding agents.[10] The United States Supreme Court weighed in on ***Reese v. United States*** (1869), which established that bounty hunters were proxy pretrial officers who had complete control of returning absconders to the court.[11] Similarly, ***Taylor v. Taintor*** (1873) clarified that bounty hunter behavior must conform to law, but bounty hunters were not bound by Fourth Amendment as are the police.[12]

The for-profit bondsperson business steamed along throughout the 19th and 20th centuries. Criminal defendants who had the monetary resources to post bail were released. Otherwise, criminal defendants waited in jail until their court appearances. However, many criminal cases are dismissed, meaning that many jail detainees are confined for criminal charges for which they are never convicted. Increasingly, the plight of persons detained prior to trial became publicized and a strictly monetary bail system came under attack.

Six decades into the 20th century, criminal defendants who were unable to pay their bail remained in jail custody. For all intents and purposes, ability to pay was the sole criterion for pretrial release from jail. This changed dramatically in 1961 when the Vera Institute of Justice became a driving force in the area of pretrial supervision of criminal defendants. The Vera Institute of Justice initiated the **Manhattan Bail Project** in New York City. For the project, Vera staff interviewed defendants to ascertain their community

Prior to the landmark Manhattan Bail Project, criminal defendants were kept in jail primarily because of their socioeconomic status or inability to pay bail.

ties including their family connections in the city and employment history. After third-party verification of the information, the defendants were assigned a numerical score that represented their likelihood of absconding. Persons with weak community ties were considered high risk and persons with strong community ties were considered low risk. Judges were presented with recommendations based on these risks and released criminal defendants accordingly. The results were compelling. Releasing defendants with attendant strong community ties on promise to appear in court was more effective than requiring money bail to assure court appearances. In fact, the experimental group that was released merely on their promise to appear had twice the appearance rate of those released on bail. The project saved more than $1 million in correctional costs for defendants who otherwise would have languished behind bars.[13]

In 1965, Ronald Goldfarb published *Ransom*, a scathing critique of the due process problems inherent in the American bail system. Goldfarb argued that defendants who remain in custody face a variety of risks for further criminal punishment compared to arrestees who are released on bond. For instance, detained persons are more likely to be indicted, more likely to plead guilty, have greater trial conviction rates, and receive more punitive sentences.[14] Goldfarb's work and the Manhattan Bail Project prompted institutional change in pretrial services across the country and culminated in the **Bail Reform Act of 1966**, which authorized the use of releasing defendants on their own recognizance in noncapital federal cases when appearance in court can be shown to be likely. This effectively ended the de facto discrimination against indigent defendants. The **Bail Reform Act of 1984** reinforced the community ties clause of the 1966 act, but also provided for the preventive detention of defendants deemed dangerous or likely to abscond.

In 1967, the Vera Institute of Justice launched the Manhattan Bowery Project that aimed to remove alcoholic defendants in jail on nuisance offenses, such as public drunkenness, disorderly conduct, and vagrancy, and place them in detoxification centers. Proactive police patrols identified visibly intoxicated individuals and encouraged them to enter treatment facilities. The project resulted in an 80 percent decline in the arrests of transient alcoholics, which saved inordinate monies for jail detention and court costs. Today, the program is called Project Renewal and serves more than 20,000 alcoholic and homeless persons annually.[15]

Another innovative Vera project was its nonprofit bail bond agencies in the Bronx, New York; Nassau County, Long Island; and Essex County (Newark), New Jersey, which were launched in 1987. Vera paid defendants' bail if they agreed to submit to supervision and treatment that included a 24-hour observational period, drug testing, curfews, home visits, and employment monitoring. Defendants entered into agreement with Vera that they could be returned to jail for failing to comply with any conditions of their release. Vera encountered severe problems with its Bronx operations because defendants tended to have overlapping problems such as weak community ties and family support and crippling drug addiction. Many released defendants absconded and Vera closed the operation in 1994. The operations in Nassau County and Essex County were far more successful. Defendants were highly compliant with conditions of their release, and recidivism and absconding rates were low. Both were incorporated into independent nonprofit organization with county contracts at the conclusion of the Vera Project.[16]

Prior to innovations such as the Homeless Release Project, there was little chance that a transient person could receive supervised release from jail.

Inspired by the innovations of the Vera Institute of Justice, municipalities across the country have devised creative ways to supervise defendants during the pretrial period. For instance, officials in San Francisco developed the Homeless Release Project (HRP), which is a pretrial release program that attempts to reduce jail crowding by releasing homeless nuisance offenders and providing them supervision and individualized care. Alissa Riker and Ursula Castellano found that 85 percent of the HRP clients had substance abuse problems and 50 percent had co-occurring mental illness. These clients were inter-

viewed to determine their treatment needs and service history and to establish temporary housing and assign a case manager. Clients are monitored to ensure that treatment and court appointments are kept. Approximately 76 percent of HRP clients complied with the conditions of the program and participants were 50 percent less likely to be rearrested than similar offenders who were not in the program.[17]

The bail reform movement also sparked federal initiatives to modernize American bail practices. In 1978, the United States Department of Justice awarded grants to the National Association of Pretrial Services Agencies (NAPSA) to develop national professional standards and the Pretrial Services Resource Center (PSRC) to assess the status of the pretrial field. The Bureau of Justice Assistance program then conducted national surveys of pretrial services programs in 1979, 1989, and 2001. The results from the most recent survey are discussed later in this chapter.

Bounty hunters have always been a sensationalistic and controversial part of the criminal justice process as exemplified by television personality Duane Chapman, also known as Dog the Bounty Hunter.

Bail Recovery/Enforcement

A sensationalistic part of criminal justice lore has been popularized by the television program *Dog: The Bounty Hunter*. A **bounty hunter** is a person hired by bondspersons to enforce the conditions of bail and recover the investment asset of the bondsperson. In other words, bounty hunters track down bail absconders and return them to jail. Afterward, bail agents will commonly revoke their bonds and pay the bounty hunter a fee for returning the absconder. Bounty hunters serve two important purposes including helping prevent insurance companies from raising premiums that they charge to insure bonds and preserving the bonding agent's reputation, power, and influence as an informal member of the criminal justice system by keeping absconding rates down.

Bounty hunters are often stigmatized because of their direct contact with criminal offenders and the enforcement aspects of their work. To some, bounty hunters are rogues operating on the fringes of due process. Brian Johnson and Greg Warchol studied contemporary bounty hunters and found that these bail recovery/enforcement agents strive to mirror the professionalism, education, and experience of the courtroom work group. Johnson and Warchol found that bounty hunters have uneven working relationships with local police. In terms of their working relationship with bounty hunters, police officers have been characterized as (1) accepting and motivated, (2) cautious but accommodating, and (3) cold and rejecting. The working relationships between law enforcement and bounty hunters is influenced by ideological worldviews of the officers, their level of understanding of bounty hunter function, and acknowledgement of the legitimacy of the bounty hunter's role in the criminal justice system.[18]

Ronald Burns and his colleagues conducted interviews with bounty hunters and examined their backgrounds and demographic characteristics, training and skills, professional motivation, perceptions of the profession, and bail enforcement practices. The average bounty hunter was a 51-year-old, conservative, White male. Nearly 90 percent of the bounty hunters they interviewed were male and more than 80 percent were White. Nearly 30 percent had bachelor's degrees and nearly 10 percent had master's or law degrees. In terms of training and skills, bounty hunters frequently had military, private detection, security, and law enforcement backgrounds. About 92 percent had training in bail law, 63 percent had a formal bail certification, and 75 percent had formal bail training. Money and autonomy were the primary motivations for bounty hunter careers and most reported that bounty hunters were underappreciated and misunderstood by the criminal justice system. Bounty hunters use a variety of resources to locate absconders, including informants, paid information, local police, and the Internet. Most bounty hunters carried an array of sublethal weapons and law enforcement equipment, such as mace and handcuffs. Fewer than 20 percent carried firearms or used weapons to affect an arrest, although the level of risk and physical danger was perceived to be high.[19]

Contemporary Pretrial Services

John Clark and Alan Henry, researchers within the Bureau of Justice Assistance, analyzed data based on the national survey of more than 200 pretrial services programs across the United States. Their report is a comprehensive look at contemporary pretrial services nationwide and includes important findings pertaining to administrative issues, bond interviews and assessments, and special populations and monitoring.

Administrative Issues

Nationwide, Clark and Henry found:

- The average pretrial service unit is staffed by 18 persons, receives funding from county and state sources, and interviews more than 5,000 defendants annually.
- About 40 percent of agencies have from two to five staff members.
- Programs serving large metropolitan areas, about 2 percent of all programs, interview more than 50,000 defendants annually.
- More than half of pretrial service programs operate during normal business hours; however some offer 24-hour, 7-day operations.
- About 21 percent of programs have delegated release authority. Of those units with release authority, officers can release some felonies and most misdemeanor offenses.
- The administrative location of pretrial service units varies greatly. Probation controls 31 percent of pretrial service programs, courts operate 29 percent, sheriff's departments operate 19 percent, and private, nonprofit firms control 8 percent.[20]

Bond Interviews and Assessments

One of the most critical parts of the pretrial process is the interaction between criminal defendants and criminal justice practitioners that assess offender risk and determine bond.

- About 75 percent of agencies interview arrestees prior to their first appearance in court.
- Agencies gather an array of information from the defendant on the social and criminal history.
- Self-reported criminal history is validated using a variety of data sources such as local police records, local judicial records, jail records, and the National Crime Information Center computer, which can access a database with over 25 million criminal histories.
- Bond recommendations are based on objective risk scales, more than half of which have been validated, subjective or expert judgments of pretrial service staff, or a combination of objective and subjective approaches.
- About 42 percent of pretrial service units employ both, 35 percent use subjective criteria only, and 23 percent rely exclusively on a risk assessment instrument.[20]

Special Populations and Monitoring

Because of the high prevalence of substance abuse and mental health disorders among the criminal population, early detection of psychiatric problems is an important part of the pretrial process.

- Nearly 75 percent of pretrial service programs ask questions about mental health and psychiatric history, and many of these refer clients with mental health needs to appropriate agencies.

- About 25 percent have developed specialized protocols for dealing with clients arrested for domestic violence. Other special programs have been devised to assist homeless arrestees.
- Nearly 70 percent of agencies administer drug testing while defendants are on bond and 50 percent conduct alcohol testing. Substance abuse monitoring is done in conjunction with general counseling services.
- Approximately 54 percent of pretrial service units are servicing jails that operate at greater than 100 percent capacity. Given the problem of jail crowding, pretrial service units are viewed as both a valuable service for the courts and correctional systems, but also an important release valve for the jail population.[21]

Pretrial Release of Felony Defendants

The National Pretrial Reporting Program is a national initiative sponsored by the Bureau of Justice Statistics, which collects detailed information about the criminal history, pretrial processing, adjudication, and sentencing of felony defendants in state courts in the 75 largest counties in the United States. A sample of 13,206 cases was representative of the more than 55,000 felony cases filed in these jurisdictions per month. The 75 largest counties in the country accounted for 50 percent of the total crime occurring in the United States. Based on these data, Bureau of Justice statisticians Brian Reaves and Jacob Perez produced a number of important findings about felony defendants during the pretrial period of the criminal justice system, such as:

- 63 percent of felony defendants are released from jail prior to the resolution of their case. This includes:
  - 24 percent of murder defendants
  - 48 percent of rape defendants
  - 50 percent of robbery defendants
  - 68 percent of assault defendants
- The most common form of release was personal recognizance, which 38 percent of all felony defendants received.
- About 25 percent of persons released on felony bond fail to appear in court and have warrants issued for their arrest.
- Overall, 33 percent of felons released on bond are either rearrested for a new offense, fail to appear in court, or commit some other violation that results in revocation of their bond.
- Among defendants already on pretrial release when arrested for their current felony, 56 percent were released again.
- Of those released again, 32 percent were released while on parole and 44 percent were on probation.
- Bail amount varied by type of release. The type of release bond with average bail amount was:
  - Surety $ 7,100
  - Deposit $15,200
  - Full cash $ 3,300
  - Property $10,900
  - Unsecured $10,100
- Approximately 52 percent of all felony releases occurred the day of arrest.

- Of persons released from jail on felony charges, 55 percent had no prior convictions; 45 percent did have prior convictions.
- About 53 percent of felony releases had prior arrests, 27 percent had prior felony convictions, and 9 percent had a prior violent felony conviction.
- Among those who were released and rearrested, about 8 percent were arrested within 1 week, 37 percent within 1 month, 71 percent within 3 months, and 91 percent within 6 months.[22–23]

Federal Pretrial Release and Detention

Pretrial services are not just a state function, but also occur in the federal criminal justice system. Recall that the landmark Bail Reform Act of 1966 was the federal initiative that de-emphasized monetary bail and required the courts to release any defendant charged with noncapital crimes on his or her recognizance or an unsecured appearance bond unless the court determined that the defendant posed significant risks to the community. Pretrial release facilitated due process in three important ways. First, it furthered the presumption of innocence by avoiding undue jail detention. Second, it enabled criminal defendants to better participate in their defense. Third, it reduced the possibility that defendants would be detained longer than otherwise appropriate for the offense committed. In other words, they would not serve weeks or months for trivial charges, such as shoplifting.

The **Federal Pretrial Services Act of 1982** established pretrial services for defendants in the United States district courts. Forty-two federal districts are served by a federal pretrial service agency. United States Probation serves the remaining 52 districts. Federal pretrial services officers conduct investigations and supervise clients released into their custody. Like state pretrial service staff, federal officers conduct extensive criminal history checks and assess community ties. Together this information is used to assess risks of flight, recidivism, and danger.[24]

Like criminal defendants facing state charges, the preponderance of federal defendants are released from custody on some type of bond. John Scalia of the Bureau of Justice Statistics found that about 53 percent of the 56,982 defendants charged with a felony offense were released from custody. Nearly 60 percent of these were released on their own recognizance on an unsecured bond. More than 34 percent of federal defendants were detained pending adjudication of their charges, including roughly half of persons charged with violent crimes, immigration violations, and drug trafficking. Noncitizen and homeless defendants were also significantly less likely to be released due to their weaker ties to the community.[25]

Compared to state pretrial service units, federal authorities are more stringent in detaining defendants. In accordance with the Bail Reform Act of 1984, federal authorities conduct a detention hearing within 3 to 5 days of the defendant's arrest. At the detention hearing, federal authorities must present clear and convincing evidence that detention is the sole way to ensure not only the defendant's appearance in court, but also to reduce the risks of danger and recidivism that he or she posed. Certain conditions, such as if the defendant's current charges involve firearms, they are already on a criminal justice status, or are a violent recidivist automatically mandate pretrial detention.

Determinants of Pretrial/Release Detention

Whether a criminal defendant is released from custody constitutes two sides of the same discretionary coin. Essentially, pretrial service personnel assess three basic types of risk when deciding whether to release a defendant from custody and how they should release

the defendant, such as via recognizance or a more restrictive secured bond. The three risks for consideration are (1) danger risk, (2) recidivism risk, and (3) flight or failure to appear (FTA) risk.

Danger risk is the level of danger that the defendant poses toward himself or herself, the specific victim in the current case, or society at large. Danger risk is comprised of several factors, such as the level of injury that the current victim sustained; the seriousness of the current charges; whether the victim is actively homicidal, suicidal, or expresses homicidal or suicidal ideation; and the extent of the defendant's criminal history. Defendants that meet a variety of criteria related to the seriousness of their current charges or the magnitude of their criminal record can be statutorily prohibited from recognizance release. In the event that defendants are charged with capital crimes, criminal suspects can be denied bail altogether.

Recidivism risk refers to the likelihood, assessed by diagnostic instrument, pretrial officer expertise, or both, that the criminal defendant, if released, would immediately engage in criminal behavior. Obviously, pretrial staff cannot see the future and predict future behavior. However, one's criminal history is a relatively reliable predictor of one's future conduct. Thus, defendants with lengthy prior records containing numerous arrests, convictions, and previous involvements with the criminal justice system are viewed as high risk for reoffending. Conversely, persons with no prior record or great intervals of time between arrests—for example, a defendant who was arrested once, 20 years ago—are viewed as low risks for recidivism. Another important indicator of recidivism is current legal status. Many criminal defendants are already on parole, probation, bond, or summons for other charges in other or the same jurisdictions. Since these defendants are already in legal trouble, the current charges, even if minor, are seen as illustrative that the defendant is a recidivist.

Flight risk is assessed primarily by three factors. First, prior history of missing court appearances, bond revocations, and failing to comply with conditions of probation are viewed as indicators that the defendant would likely miss immediate court dates. Since criminal records contain arrests for failing to appear in court (FTA), a defendant's flight risk is a function of his criminal record. Second, in addition to their current charges, some criminal defendants are also found to have active warrants for their arrest because of previous incidents of failing to appear in court. Thus, defendants with one or more current FTA warrants are considered high risk for future missed court appearances. Third, flight risk is related to the community ties of a criminal defendant. Persons with long-term residency in the area, homeowners, currently employed, and persons with extensive family and friendship networks are low risks to miss court dates, flee the jurisdiction, or flee. Conversely, persons who are transient, have little to no financial investment in the community, are unemployed, and have little to no social support have little binding them to the community; as such, there is little incentive to remain in town and handle legal responsibilities. Those with weak community ties are viewed as high risks to leave the area, or at a minimum, miss court.

Protective and Risk Factors

In determining the risks of recidivism, danger, and flight, pretrial service personnel weigh an assortment of characteristics of the defendant. Some of these factors present the defendant in a positive light and indicate that he or she poses little risk to the community. These are known as *protective factors*. Conversely, *risk factors* are damaging or aggravating circumstances that indicate that the defendant will pose some risk if released from custody. Protective and risk factors for pretrial release or detention are specified in the United States Code Title 18. Protective factors include benign current charges, strong employment record, homeowner, entrenched community ties, strong family and friendship networks, and no or minimal criminal history. Risk factors include already on bond, probation, or parole,

awaiting sentencing in another criminal matter, homeless or transient, unemployed, substance abuse problem, serious or violent charges, and lengthy criminal history.[26]

Criminologists have studied the protective and risk factors that influence the assignment of bail and the types of release accorded to criminal defendants.[27] The balance of research on pretrial decision making and bail outcomes indicates that legal factors that influence flight, recidivism, and dangerousness risks are the strongest determinants of pretrial release and detention. By and large, pretrial detention and financially punitive bails are applied to defendants with lengthy criminal records, the most serious current charges, and poor community ties. On the other hand, pretrial release, recognizance bonds, and unsecured bonds are the norm for arrestees with little prior record and strong community ties.[28–32] A large-scale study of more than 21,000 inmates in the Los Angeles County jail illustrates differences in criminality between those who are freed on bond and those who remain in custody. Joan Petersilia and her colleagues found that Los Angeles jails were comprised almost entirely of persons charged with or convicted of serious felonies and/or persons with extensive criminal records. In fact, between the seriousness of their current charges and the length of their criminal records, few inmates residing in large urban jails were deemed appropriate for pretrial release or intermediate sanctions. Instead, confinement appeared to be the most appropriate placement.[33]

Discretionary Outcomes

Conceptually, protective and risk factors should inversely predict release on recognizance and mandatory detention. However, this is not always the case. For example, Sheila Royo Maxwell examined the congruence between predictors of release on recognizance (ROR) and failure to appear (FTA) violations. Expectedly, Maxwell found that defendants with lengthier records, prior crimes of violence, and current serious charges were both less likely to receive an ROR release and more likely to fail to appear. But, certain demographic characteristics also influenced the decision making of pretrial officers. Women, persons with prior misdemeanor convictions, and property offenders were more likely to be released on recognizance although they had higher rates of missing court. White defendants were more likely than African Americans to be denied ROR even though race was not a significant predictor of absconding.[34]

At the federal level, researchers have found that nonlegal considerations also influence pretrial release and bail outcomes. Based on data from 5,660 defendants in 10 federal courts, Celesta Albonetti and her colleagues found that those with lengthy prior records, current or past crimes of violence, and weak community ties were less likely to be released before trial. They also found that offense seriousness and dangerousness risks negatively affected White, not minority, defendants.[35]

That defendant demographic factors influence pretrial decision making is a troubling threat to due process. Prior to the Manhattan Bail Project, bail was explicitly detrimental to lower income persons. Unfortunately, criminologists continue to unearth different pretrial treatment for different types of people.[36–38] Because of real or perceived weaker community ties, Hispanic arrestees are especially likely to receive more punitive bonds and remain in custody. Importantly, there is a silver lining. Even in studies that found significant differences in the types of bond afforded to various racial and ethnic groups, the size of these effects was negligible compared to the influence of legal factors. For example, Stephen Demuth and Darrell Steffensmeier analyzed the pretrial release process of nearly 40,000 felony defendants from the 75 largest counties in the United States and found that African American and Hispanic defendants were more likely to be detained and held on bail net the effect of legal factors. Yet, offense seriousness, for crimes like murder, rape, and robbery, ranged from *200 percent to 2,000 percent* more powerful of a predictor than race/ethnicity. Several criminal history indicators, such as multiple

charges, FTA history, active criminal justice status, prior felony convictions, prior jail detention, and prior imprisonment were as important or usually far more significant predictors than demographics.[39–40]

Conditional release on bond does not necessarily ensure that criminal defendants will either appear in court or desist from criminal offending. John Goldkamp and Peter Jones evaluated pretrial drug testing projects in Wisconsin and Maryland in 1983 and 1989 and tested the assumption that intensive monitoring of drug use during pretrial release would reduce FTA and recidivism rates. The results were counterintuitive. Although fewer than 10 percent of defendants produced positive drug tests, between 50 and 70 percent of clients recorded more than five violations of the drug program. Moreover, substance abuse monitoring did not improve the rates by which defendants appeared in court or reoffended. In short, they found substantial noncompliance and continued criminal behavior among drug-using defendants released on bond.[41–42] Subsequent replications of this approach in Florida and Arizona yielded similarly dismal results of continued noncompliance and criminal offending while on bond.[43–44]

To summarize, a defendant's risks of flight, recidivism, and danger are the primary determinants of whether he or she is released on bond and how punitive or lenient the bail process is. Strong community ties entail long-term residency, stable employment, and strong familial networks. Weak community ties entail transience, unemployment, and little social and personal connection to the local community. Although researchers still find that demographic characteristics, such as gender and race, significantly affect pretrial outcomes, the effects are negligible compared to legal considerations like offense seriousness and criminal record.

The Effects of Pretrial Detention

Administrative Issues

Despite the advances in the bail process in American justice, there remain unresolved issues about the ultimate due process of pretrial detention. John Goldkamp, Michael Gottfredson, Peter Jones, and Doris Weiland conducted a national assessment of the pretrial process. Their observations were based on analyses of three very different approaches to pretrial service. In Dade County, Florida, the department of corrections supervised the pretrial staff; however an individual judge made the preponderance of bond decisions. In Boston, rotating judges determined bail without the assistance of a pretrial staff. In Arizona, a modern pretrial service unit handled the pretrial release duties as officers of the court. Goldkamp and his colleagues offered this somewhat grim five-point conclusion:

1. There is a continued reliance on financial bail as a major emphasis on release decisions. Of course, protective and risk factors influence the assignment of bail; however, cold hard cash or other fiscal resources are still needed for release. Similarly, the presence of profiteering bondspersons remains a visible and dubious part of the pretrial process.
2. The judiciary must assume a leadership role in bringing consistency to the organization, administration, and release policies of bail.
3. It is incumbent that pretrial services move to the adoption of guidelines-based decision making.
4. The judiciary must appropriately staff pretrial service units to meet the pressing problems of jail crowding and unfair or unjust pretrial detention.
5. Pretrial supervision agencies must serve as the gatekeepers of information for the criminal process as well as for pretrial release and detention.[45]

Malcolm Feeley's landmark book *The Process Is the Punishment* conveyed the hassles and uncertainty that defendants face during the pretrial period.

Procedural Justice Issues

The masterwork exploring the procedural justice issues occurring at the pretrial period is legal scholar Malcolm Feeley's aptly titled *The Process Is the Punishment: Handling Cases in a Lower Criminal Court*. Based on his observations of the pretrial court processes in New Haven, Connecticut, Feeley argued that the real punishment for many people is the pretrial process itself, which is burdensome, uncomfortable, bewildering, and seemingly based on the subjective judgments of various criminal justice practitioners. For example, upon arrest, defendants must interact with police officers, sheriff's officers, booking deputies, detention officers at the police station, pretrial service officers, bonding agents, defense counsel, private counsel, and the like. These interactions must be accomplished while the defendant is detained and without many of the resources that he or she would need. Court appearances are set in accordance with the court schedule, not the defendant's personal calendar. In this way, the contingencies of being arrested and being released on bond can and often do interfere with work and family obligations. By and large, these officials or supportive figures have conflicting responsibilities and duties and their lack of coordination creates logistical problems for defendants.

Upon intake to the criminal justice system, these supportive figures define issues and label defendants for all those who subsequently handle them. Although they may possess limited discretion, their decision making can have significant consequences at later stages of the process. Because the process is so informal and depends so heavily on oral communications, decisions made by the courtroom workgroup are based heavily on the impressions, information, and recommendations passed on by these supportive figures. The sanctions imposed on defendants are heavily influenced by these people's initial impressions.

According to Feeley, due process concerns are subordinated to the profound short-term impressions of arrest and pretrial behavior and demeanor, arrest record (regardless of conviction record), and professional assessments of whether an individual is worthy of prosecution or dismissal, intervention, or a break, entered into the system, or thrown back. Crime control is also not achieved because the courts are structured to offer rapid, informal justice that invites carelessness and error. Because the pretrial period is such a disorganized mess, the majority of criminal defendants prefer to accept plea bargains simply to end their involvement in the process. Since the punishment is in the process, defendants invoke few adversarial options available to them. The defendant's goal is to end the case as quickly as possible. In return, the state produces perfunctory convictions for reduced criminal charges and justifies the troubling practices of the pretrial period.[46]

Substantive Justice Issues

Enduring the pretrial punishment process carries several legal implications. By and large, two classes of criminal defendants emerge at the pretrial period—those who are released from custody and those who remain in custody. The latter group are purported to suffer deleterious legal outcomes as a function of their remaining in jail prior to court. These negative outcomes can include a greater likelihood of imprisonment, longer sentences, and more punitive sentencing recommendations from the prosecution.[47] Unfortunately, some early research did not adequately control for legally relevant factors that explained pretrial detention. As such, the effects of pretrial detention on subsequent legal outcomes were somewhat cloudy.

Marian Williams conducted a methodologically more sophisticated examination of the effects of pretrial detention on legal outcomes. Using data from 412 Florida cases, Williams explored the effects of detention on likelihood of incarceration and length of sentence while controlling for a host of important variables, such as offense seriousness, number of felony charges, prior felony convictions, whether the defendant had a

private attorney, length of disposition, age, race, and gender. She found that defendants who were held in jail prior to court were *six times* more likely than released arrestees to be sentenced to incarceration and for lengthier terms. Importantly, Williams noted that pretrial detention can be viewed as either a legal variable or proxy for criminal history, or as an extralegal variable that relates to social class and therefore ability to pay bond.[48] Irrespective of how it is framed, pretrial detention had meaningfully negative impacts on subsequent criminal justice system outcomes.

Jails

Being detained in jail is the flip side to being released on bond. **Jail** is a local correctional or confinement facility that is typically administered by a county-level sheriff's department or a municipal-level law enforcement agency. Jails are utilized to control two general populations of offenders, defendants awaiting trial and persons who have already been convicted and sentenced for their crimes. In addition, jails house a multitude of individuals and are frequently used as a waiting station until persons can be transported to a more appropriate venue or social service provider. At any moment, a jail population might contain:

- Persons who have absconded from military service.
- Persons wanted by probation or parole officers.
- Persons awaiting placement in a psychiatric facility.
- Persons awaiting transport to the hospital or some other medical facility.
- Juveniles who are being held (in isolation from adult inmates) until their age is ascertained for appropriate placement.
- Jails are also used by law enforcement as a last resort to detain transients, noncitizens or illegal aliens, people who are highly intoxicated on drugs or alcohol, and anyone else who poses risks to their own and public safety.

Jail Population

As shown in FIGURE 5–1, nationally, more than 3,365 American jails supervise 766,010 persons, which is a jail incarceration rate of 256 inmates per 100,000 residents.[49] The jail incarceration rate varies greatly by race and ethnicity. For Whites, the jail

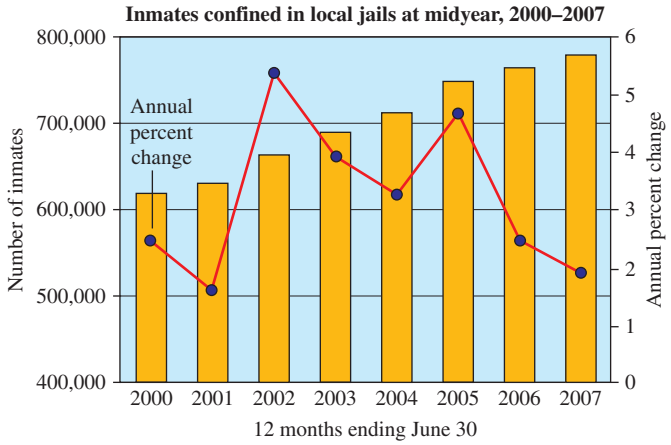


FIGURE 5–1 Jail Population. *Source*: Sabol, W. J., & Minton, T. D. (2008). *Jail inmates at midyear 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

TABLE 5–1 Jail Inmate Demographics

Characteristic	Percent of Jail Inmates			
	2000	2005	2006	2007
Gender				
Male	88.6	87.3	87.1	87.1
Female	11.4	12.7	12.9	12.9
Age				
Adult	98.8	99.1	99.2	99.1
Male	87.4	86.5	86.3	86.3
Female	11.3	12.6	12.9	12.8
Juvenile	1.2	0.9	0.8	0.9
Held as adults	1.0	0.8	0.6	0.7
Held as juveniles	0.2	0.1	0.2	0.2
Race/Hispanic Origin				
White	41.9	44.3	43.9	43.3
Black/African American	41.3	38.9	38.6	38.7
Hispanic/Latino	15.2	15.0	15.6	16.1
Other	1.6	1.7	1.8	1.8
Two or more races	—	0.1	0.1	0.1

Source: Sabol, W.J., & Minton, T.D. (2008). *Jail inmates at midyear 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

incarceration rate is 170 per 100,000 residents. The comparable rates for African Americans and Hispanics are 815 and 283 per 100,000 residents, respectively. Overall, the jail population constitutes about one third of the nation's correctional population.

The majority of the jail population is male, with men comprising 87 percent and women 13 percent of all inmates. About 44 percent of jail inmates are White, nearly 39 percent are African American, nearly 16 percent are Hispanic, and the remaining inmates are other or multiethnic. About 38 percent of jail inmates have been convicted of crimes for which they are serving a sentence in jail. The remaining 62 percent are unconvicted and awaiting disposition in court (see TABLE 5–1).

There are also federal jails. The Federal Bureau of Prisons spends nearly $170 million to operate seven federal jails that house fewer than than 6,000 inmates. Federal jails combined have a rate capacity of 3,810, thus federal jails operate at 155 percent of their rated capacity. In this way, they are more crowded facilities than local jails. Interestingly, most jail inmates who are under federal jurisdiction do not reside in federal jails. Instead, more than 12,000 persons wanted by federal authorities are held in local jails to await transfer to a federal facility.[50]

Jail Trends

In terms of the demographic profile of jail inmates, there has not been much change since 1990. Slightly more than 6,000 juveniles were housed in jails in 2006, which represents little change from 1990. There were nearly seven times as many men than women incarcerated in American jails—and the gender gap among jail inmate status widened between 1990 and 2006 (see FIGURE 5–2).

CORRECTIONS RESEARCH

How Effective Are Supermax Prisons?

According to the National Institute of Corrections, a supermax prison is a stand-alone unit specifically designed to accommodate violent and disruptive inmates and 44 states have fully functional supermax facilities.

Inmates housed in supermax facilities are locked away in their individual cells for up to 23 hours each day. Contact with staff and/or other inmates is minimal. These facilities have been designed to achieve specific goals, which include increased safety for staff and other prisoners, order among inmates, control throughout the prison system, and the incapacitation of violent and disruptive inmates. These are the manifest functions of a supermax system, but there are unintended effects—both positive and negative. An increase in mental health disorders is one easily identified negative outcome of the supermax prison system. On the other hand, a positive effect is the improvement of living conditions for other inmates in the general population after the violent and disruptive inmate is removed and reassigned to a supermax facility.

The actual impact of supermax prisons on prisoners varies. Some supermax prisoners report a positive change in their behavior. Supermax inmates also report a greater sense of safety and calm and reduced levels of stress and fear. Upon reassignment from a supermax facility, former supermax prisoners exhibit greater compliance with rules and less violent and disruptive behavior when returned to the general prison population. Another unintended, but very positive effect of the supermax prison is the high-quality health care, both medical and psychiatric, available to supermax prisoners.

There are unintended negative effects as well. Some supermax prisoners are more frequently involved in disciplinary infractions. There is an increased level of tension between inmates and correctional staff, and in some prisoners there is a tendency toward an increase in violent behavior. There have also been reports by supermax prisoners of alleged human rights violations.

Unfortunately, very little data exists to adequately address the question of whether former supermax prisoners are more likely to recidivate once they are released from prison. The information that is available indicates former supermax inmates have increased rates of recidivism once they are released from prison and return to society.

Ninety-five percent of wardens polled agree that supermax prisons serve to increase safety, order, and control. Eighty percent felt supermax prisons worked to improve inmate behavior while in the system. Nearly 50 percent believed supermax prisons were used to punish prisoners and reduce recidivism. Only one third of wardens surveyed agreed that supermax prisons serve a rehabilitative function. Less than 25 percent felt supermax prisons reduced crime in society.

Source: Mears, D. P. (2008). An assessment of supermax prisons using an evaluation research framework. *Prison Journal, 88,* 43–68.

According to the most recent data, approximately 350,000 jail inmates were African American, 300,000 were White, and more than 100,000 were Hispanic (see FIGURE 5–3). In terms of raw numbers, there were more Whites than African Americans in jail; however, once racial data and their proportion of the total population are considered, a different picture emerged (FIGURE 5–4). The jail incarceration rate varies significantly by race and ethnicity. At all points from 1990 to 2006, African Americans had the highest jail incarceration rate, more than twice the rate of Hispanics. In turn, the Hispanic jail

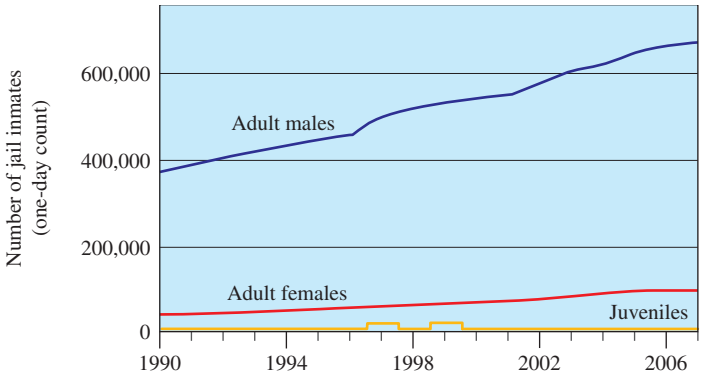


FIGURE 5–2 Jail Populations by Age and Gender, 1990–2007. *Source*: Bureau of Justice Statistics. (n.d.) *Almost nine out of every ten jail inmates were adult males.* Retrieved June 6, 2008, from http://www.ojp.usdoj.gov/bjs/glance/jailag.htm.

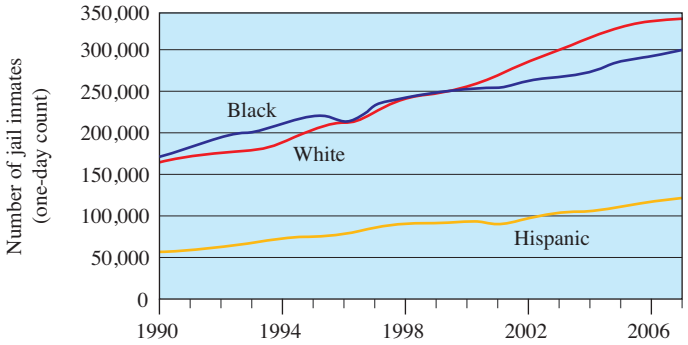


FIGURE 5–3 Jail Populations by Race and Ethnicity, 1990–2007. *Source*: Bureau of Justice Statistics. (n.d.) *Between 1990 and 2007, the number of white and Hispanic jail inmates increased at the same average annual rate. The number of black inmates increased at a slower pace.* Retrieved June 6, 2008, from http://www.ojp.usdoj.gov/bjs/glance/jailag.htm.

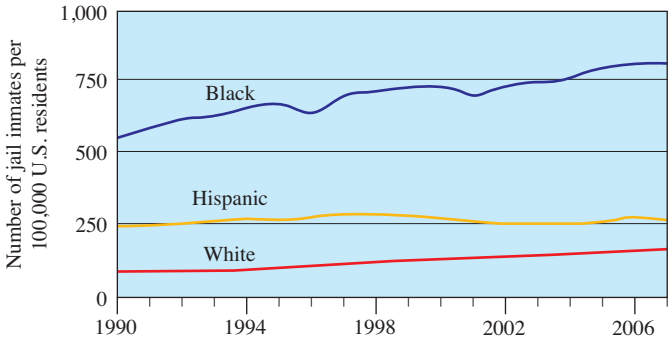


FIGURE 5–4 Jail Incarceration Rates by Race and Ethnicity, 1990–2007. *Source*: Bureau of Justice Statistics. (n.d.) *Blacks were almost three times more likely than Hispanics and five times more likely than whites to be in jail.* Retrieved June 6, 2008, from http://www.ojp.usdoj.gov/bjs/glance/jailag.htm.

incarceration rate is nearly double the rate for Whites. The respective jail incarceration rates were 815 for African Americans, 283 for Hispanics, and 170 for Whites.[51]

An indicated earlier, 62 percent of the nation's jail inmates were awaiting court action on their current charge. In other words, more than half of the American jail population

had not yet been convicted for what they were currently charged. The remaining 38 percent were postadjudication defendants serving time for various convictions, probation violations, and parole violations pending transfer to a state department of corrections.

Time Served and Capacity

Jail confinement is usually a temporary experience. When considering pre- and postadjudication inmates, the average length of stay is a mere 3 days. Many defendants are detained for less than 24 hours, remaining in custody until they are able to mobilize resources for release.[52] Based on the most recent data, 33 percent of jail inmates who have been convicted of crimes serve less than 30 days in jail. For unconvicted offenders, more than 44 percent serve less than 30 days in jail. Almost 25 percent of inmates serve less than 2 weeks in jail.[53]

The total rated capacity of jails is 810,863 beds. **Rated capacity** is the maximum number of beds of inmates allocated by rating officials to each jail facility. Nationwide, jails operated at an average of 94 percent of rated capacity. Jail facilities vary tremendously in their size and capacity. As shown in FIGURE 5–5, smaller jails are less occupied than larger facilities. In jails with fewer than 50 inmates, the average percent occupied is about 65 percent. However, smaller jails are also more susceptible to local criminal justice and political factors that can unpredictably increase or decrease the jail population.[54] On the other hand, jails with 500 or more inmates are 100 percent occupied.

As shown in FIGURE 5–6, local jail officials added jail capacity at a rate about equal to the growth in the jail inmate population in recent years. Between 1995 and 2006, the jail population and rated capacity both increased steadily, although during some periods the rates of increase in population and capacity varied. For instance, between 1998 and 2001, capacity expanded more quickly than the jail population and the average percentage of rated capacity declined from 97 percent to 90 percent. After 2002, jail populations increased at a slightly faster rate than rated capacity and the percentage of rated capacity increased to its current level of 94 percent.[55] Overall, researchers found that available jail capacity results in increases in jail population regardless of the local crime rate. In other words, if space becomes available in jail, it will be quickly filled.[56]

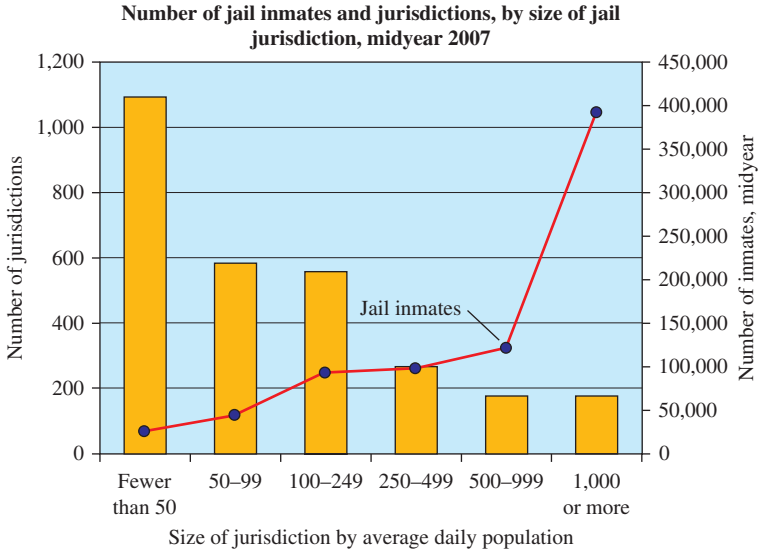


FIGURE 5–5 Percent of Capacity Occupied by Jail Size. *Source*: Sabol, W. J., & Minton, T. D. (2008). *Jail inmates at midyear 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

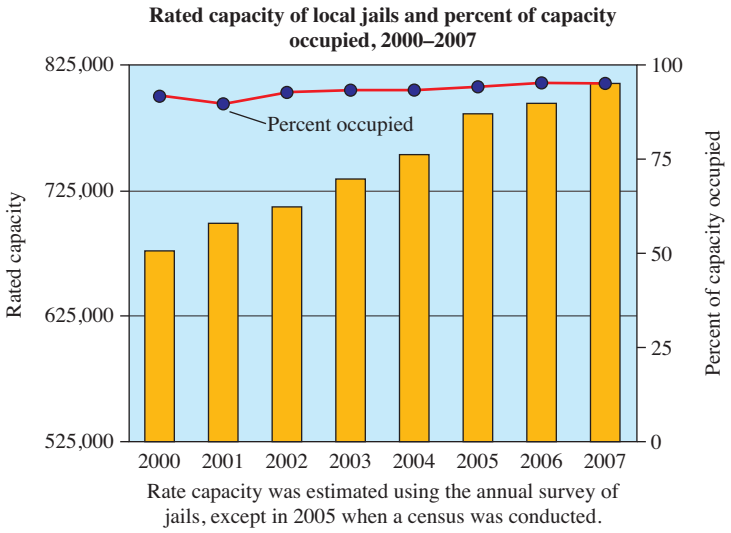


FIGURE 5–6 Rated Capacity and Jail Population. *Source*: Sabol, W. J., & Minton, T. D. (2008). *Jail inmates at midyear 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Law enforcement and jail administrators have devised innovative ways to control local jail populations. One approach is to summons and release offenders for misdemeanor and low-level felony offenses. The way that a **summons and release** (also known as a book and release) works is that defendants are taken to jail, interviewed by police, booked and processed by sheriff's deputies, and issued a summons or ticket with a court date. No bond is used; defendants are simply given a ticket and released. This approach can be effective. Terry Baumer and Kenneth Adams found that by issuing summonses for defendants accused of possession of marijuana, possession of drug paraphernalia, driving with a suspended license or without having received a license, prostitution, patronizing a prostitute, and shoplifting, the number of inmates booked into jail declined by 30 percent.[57]

The 50 largest jails in the United States account for less than 2 percent of all jurisdictions but house 30 percent of all jail detainees nationwide. Jail complexes such as the Riker's Island facility in New York City and Twin Towers Correctional Facility in Los Angeles alone house nearly 33,000 inmates—more than 4 percent of the American jail population.

(a) Rikers Island Jail Complex in New York City and **(b)** the Twin Towers Correctional Facility in Los Angeles are among the largest correctional settings in the world.

Social and Criminal Histories of Jail Inmates

Jail and prison are often used interchangeably in the mainstream media; however there are vital differences between these facilities. Jails are local, administered usually by the sheriff's department, and entail brief lengths of stay. More than half of the jail population has not yet been convicted. Prisons are remote, state-administered correctional facilities used to confine convicted felons. Many people who are in jail will never be in prison, such as persons arrested for traffic violations and misdemeanors; however, almost all prisoners have at some point been detained in jail.

Because jails detain both those who will not be convicted and those who already have been convicted, the population is diverse in terms of the social and criminal history of the inmates. A national study of 134 jails in 39 states indicated that nearly 15 percent of jail inmates nationally are actively involved in street gangs.[58] Many jail inmates have chronic criminal careers characterized by an early onset of antisocial behavior, generalized involvement in diverse forms of crime, and recurrent cycling in and out of the correctional system.[59–61] Using data from the national Survey of Inmates in Local Jails, Doris James discovered extensive criminality among some jail detainees. About 46 percent of all jail inmates were already on probation or parole at the time of their most recent arrest. Nearly 40 percent had served three or more separate commitments to state or federal prison. Seventy percent of jail inmates had some sort of prior criminal record and 41 percent of jail inmates had a current or past arrest for violent crimes, such as murder, rape, robbery, or aggravated assault. As shown in TABLE 5–2 and TABLE 5–3, it is common for jail inmates to not only have an active criminal justice involvement, such as bond, probation, or parole, but also to have prior sentences to probation, incarceration, or both.[62]

Nearly 60 percent of jail inmates were raised in single-parent households and one in nine was raised in a foster home or institution. Forty-six percent of jail inmates had an immediate family member who had been incarcerated. More than 50 percent of female and 10 percent of male jail inmates reported that they had suffered from past sexual or physical abuse.[63]

In addition to criminal behavior, jail inmates also have often serious histories of substance abuse. Nearly 70 percent of jail inmates report symptoms in the year before their admission to jail that met substance dependence or abuse criteria. Forty percent of jail inmates are dependent or addicted to alcohol or drugs and another 25 percent of

TABLE 5–2 Criminal Justice Status of Jail Inmates

Criminal Status	Percentage
None	46.8
Any Status	53.2
On probation	33.6
On parole	12.6
On bail/bond	6.9
On other pretrial release	2.3
On alcohol/drug diversion counseling	2.0
On other release	2.3
On escape	0.6

Source: James, D.J. (2004). *Profile of jail inmates, 2002*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

TABLE 5-3 Prior Sentences of Jail Inmates

Probation	
0	38.9%
1	32.6
2	14.8
3–5	11.2
6–10	2.0
11 or more	0.6
Incarceration	
0	42.1%
1	23.7
2	10.3
3–5	14.3
6–10	6.8
11 or more	2.8
Incarceration or Probation	
0	26.9%
1	17.5
2	16.8
3–5	21.9
6–10	11.0
11 or more	5.9

Source: James, D.J. (2004). *Profile of jail inmates, 2002*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

inmates abused alcohol and drugs but did not meet diagnostic criteria for dependence. Among inmates who met substance dependence or abuse criteria, 63 percent had participated in substance abuse treatment. These are staggeringly high prevalence estimates of substance abuse. As a point of reference, only 9 percent of Americans in the resident population were found to be dependent on alcohol or drugs.[64]

Jail inmates who are addicted to drugs and alcohol fare significantly worse than nonaddicted jail inmates on nearly every measure of social and behavioral measure. Compared to nonaddicted inmates, jail inmates who are dependent on drugs and alcohol are:

- More likely to have been homeless.
- Less likely to have been employed.
- More likely to have been physically abused.
- More likely to have been sexually abused.
- More likely to have ever received public assistance.
- More likely to have lived in foster care.
- More likely to have depended on parents for supported living.
- More likely to have parents who abused alcohol, drugs, or both.
- More likely to have had their mother, father, brother, sister, or spouse incarcerated in the past.

Chemically dependent jail inmates have more extensive criminal histories than nonaddicted inmates. About 16 percent of jail inmates committed their recent crimes to get money for drugs and nearly 30 percent were on drugs at the time of their current offense.

CORRECTIONS IN THE NEWS

Prisons and the Spread of HIV

Prisoners are at added risk for the contraction of HIV while in prison. Few prisoners remain in prison the remainder of their lives. The incarceration rate for the United States is the highest of any developed country. Figures indicate that the rate of incarceration was 724 per 100,000 persons in 2004. Currently there are more than 2 million inmates in local, state, and federal facilities who have committed crimes ranging from misdemeanor acts of prostitution to felony possession, distribution, and manufacture of controlled substances to murder. The criminal justice system is not entirely to blame—after all, it is made up of people who are just doing their jobs. Politicians have unknowingly placed the general population at risk as well. Get tough on crime policies sell well to the voter but by their nature are superficial remedies. The consequence—by using this tactic to control drug use, more and more first-time offenders arrested on drug charges are incarcerated and subsequently are exposed to HIV. With the AIDS prevalence three times higher in prison populations than in the general population, the chances of incurring a significant exposure to this disease is reasonably great.

Female inmates account for anywhere from 5 to 10 percent of the prison population in any given year. Female prisoners also have a higher rate of HIV infection than do male prisoners. Since many women with substance use problems also find themselves, willingly and unwillingly, involved in the sex for hire industry, this should not come as a surprise. As a result, women are exposed to HIV/AIDs at higher rates than are males. In fact, two states, New York and Maryland, have female prison populations in which 10 percent of the inmates are HIV positive. In only one state, New York, is the rate of infection for HIV greater than 5 percent of the male inmates.

Traditionally, efforts to prevent the spread of the virus have involved isolating the prisoners with HIV from the general prison population. As of 2005, Alabama was the only state that placed all HIV positive inmates in separate housing units. Other correctional facilities elect to segregate infected prisoners on a case-by-case basis. Several other relevant options exist. First, the department of corrections could increase staff-to-prisoner ratios. A second option might be that of evaluating, classifying, and scheduling inmates for reexaminations on a regular time interval and prior to release. The answer also might be to decrease crowding, prison violence, and sexual assault.

Sources: Maruschak, L. M. (2004). *HIV in prisons and jails, 2002*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Medical Problems, Suicide, and Homicide in Jails

According to the most recent data from the national Survey of Inmates in Local Jails, nearly 230,000 jail inmates or 37 percent reported having a current medical problem other than a cold or common flu virus. Some of the most common medical ailments are arthritis, hypertension, asthma, and heart problems. Fewer than 5 percent of inmates reported more serious medical problems, such as cancer, paralysis, stroke, diabetes, liver failure, hepatitis, tuberculosis, or HIV. Between 40 and 60 jail inmates die from AIDS-related causes annually. Nearly 25 percent of jail inmates reported having a learning impairment, such as dyslexia or attention deficit disorder. One in eight inmates reported being injured since admission to jail and injuries are equally likely to stem from an assault by another inmate or due to an accident.[65]

After the passage of the Death in Custody Reporting Act of 2000, the Bureau of Justice Statistics began collecting inmate death records from all local jails and state prisons. According to the most recent data, 978 inmates died in American jails in the most recent reporting year. The most common causes of death were medical illness (48 percent) and suicide (32 percent). Slightly more than 2 percent of jail inmate deaths representing 20 deaths were homicides. The national suicide rate in American jails is 47 per 100,000 inmates, which is more than three times the suicide rate in state prisons (14 per 100,000 inmates). Interestingly, jail suicide rates are twice as low in the 50 largest jail systems than

in other jails. Violent offenders have significantly higher suicide rates (92 per 100,000 inmates) and homicide rates (5 per 100,000) in jails than nonviolent offenders (31 per 100,000 and 2 per 100,000, respectively).

Nearly 50 percent of jail suicides occurred within the first week of custody, and 14 percent of jail suicides occurred within 24 hours of admission to jail. The median time served in jail prior to committing suicide was 9 days. More than 80 percent of jail suicides occurred in the inmate's cell. Homicide followed a similar temporal pattern. Nearly 30 percent of jail homicides occurred during the first week of jail confinement and 54 percent occurred after 2 weeks.[66]

Trend data indicate that American jails are significantly safer than in prior decades particularly in terms of suicide (see FIGURE 5–7). For instance, the suicide rate was approximately 130 per 100,000 in 1985, which is nearly three times the jail suicide rate in 2000. The homicide rate in American jails has remained relatively stable at about 5 per 100,000 (FIGURE 5–8).

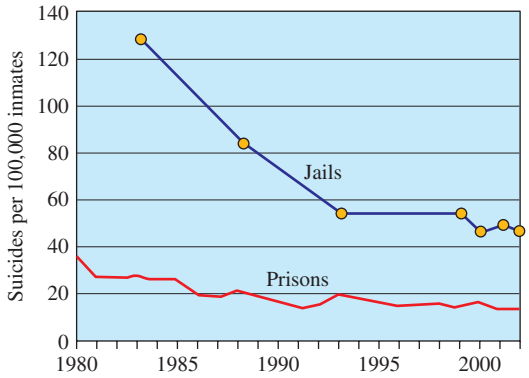


FIGURE 5–7 Suicide Rate in American Jails, 1980–2000. *Source*: Mumola, C. J. (2005). *Suicide and homicide in state prisons and local jails*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

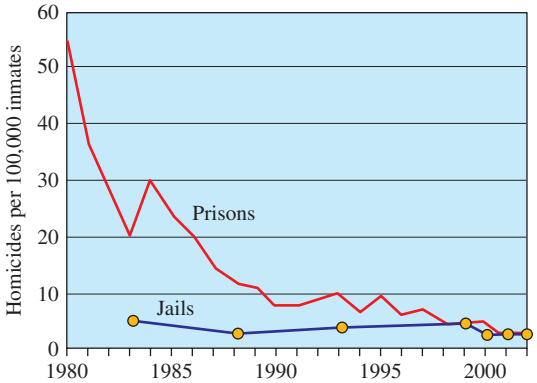


FIGURE 5–8 Homicide Rate in American Jails, 1980–2000. *Source*: Mumola, C. J. (2005). *Suicide and homicide in state prisons and local jails*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

History and Reform

American criminal justice owes an enormous debt to English common law and the jail tradition is no exception. Unfortunately, jail history in the United States is overwhelmingly negative and these facilities have been referred to as the "sewers" and "ghettos" of the criminal justice system. In the colonial era, jails served no correctional function but instead were used to detain persons who were wanted in the interests of justice and debtors who could not meet their financial obligations. In lieu of jail confinement, those convicted of crimes were banished, branded, pilloried, maimed, or executed. Jails were then used as last-resort holding bins for groups of people considered outside the mainstream society, namely the mentally ill, alcoholics, and the poor.

As the United States expanded and became more modernized, jails also increased in number so that nearly every county and/or municipality had one. However, for most of its history, jails were not appreciably different in their fundamental form and function from those of the 18th century—that is, as catchall asylums for the poor and disaffected.[67–71] For example, Rick Ruddell and Larry Mays surveyed 213 jail administrators from small jails and found that jails were often viewed as the facility that cannot turn away people in need. Because of this, jails in small towns and rural areas disproportionately house inmates with special needs and, unfortunately, do not have the resources to provide services to address these needs. The breakdown of the special needs population included:

- Nearly 9 percent of inmates with mental illnesses.
- Approximately 32 percent of inmates who are chronic offenders.
- Less than 4 percent of inmates who are gang members.
- Nearly 2 percent of inmates who are elderly.
- More than 4 percent of inmates who are seriously ill.
- Nearly 14 percent of inmates who are considered long term and serving a sentence of 1–2 years.[72]

Recently however, there has been progress. As this chapter has detailed, federal legislation and state and federal criminal justice initiatives have tremendously improved the pretrial phase of the criminal justice system and made pretrial corrections more impartial and fair. Professional and efficient pretrial service units utilize community ties and criminal history, not just financial resources, as the determinants of pretrial release.

Jail facilities themselves have been redesigned in terms of their physical environment and approach to inmate supervision. **New generation jails** were introduced in 1974 and featured podular design and **direct supervision** whereby inmates were housed in single-occupancy cells that adjoined a larger communal area. Inmates interacted in the self-contained living unit or pod for most of the day. Unlike the traditional jail structure that employed **linear supervision** or simply a corridor of separate cells, direct supervision facilities allowed correctional staff to constantly observe all aspects of the inmate's living space. The living space itself contained modern amenities, such as carpeting and basic features that one might find in a dormitory. The differences between traditional and new generation jails are important. According to Linda Zupan:

> Traditional facilities are those where there is no continuous supervision of inmates by staff. Inmates are not directly viewed by staff for extended periods and the underlying basis for supervision is a reliance on bars and security to prevent inmate escapes and assaults on one another and staff. The physical design tends to be linear in that cells are extended off an officer patrol corridor. On the other hand podular/direct jails are designed to reduce inmate opportunities for aberrant behavior. Correctional officers are placed in the inmate areas and are

expected to freely interact with inmates. Officers are expected to directly and continuously supervise the inmates. The physical design of podular/direct jails is more open with cells positioned at the perimeter of the cell block where inmates and staff can interact in the center day room area.[73]

New generation jails are designed around the following seven correctional principles:

1. Effective control and supervision, including easily surveillable areas, population divided into controllable groups, and having an officer in control of the unit.
2. Competent and professional staff.
3. Facility safety for staff and inmates.
4. Manageable and cost-effective operations.
5. Effective staff–inmate communication.
6. Inmate classification, screening, and orientation, including maximum supervision during the inmate's initial hour of confinement and knowing with whom they are dealing.
7. Just and fair treatment of inmates.[74]

New generation jails are theorized to serve two important interrelated purposes. First, they are more humane facilities compared to the traditional jail in which inmates live in small cells for most of their detention. Since a jail stint is itself very brief, it makes sense to create a correctional atmosphere that promotes rehabilitation and facilitates the offender's reintegration into the community. Second, the increased amenities offer jail inmates an incentive to obey jail regulations. Noncompliant inmates lose their status in podular modules and go back to traditional cells. In this way, serving inmate needs and ensuring inmate and staff safety are symbiotic.

The theory of new generation jails is promising, but what do they look like in practice? Christine Tartaro conducted a national survey of jails and found that the implementation of the new generation jail philosophy has not yet been achieved. Many jail facilities identified themselves as new with direct supervision modules; however, only 40 percent of jail facilities actually implemented these new designs. Moreover, few jails were providing inmate services in the new modules. Another interesting finding was that jail administrators were hesitant to shift inmates from cells to modules because of concern that inmates would destroy the normative amenities and living supplies of those units.[75] Despite the partial implementation, Tartaro found that inmates in new generation designs behaved as if they had something to lose by failing to follow institutional rules. Consequently, new generation jails experienced lower rates of assaults, suicides, and vandalism compared to traditional jails with linear supervision.[76]

Other evaluations of new generation jails have also been favorable. Jeffrey Senese compared inmate infractions among offenders in new generation versus traditional jails and found that there is a reduction in every type of inmate rule violations in new generation jails with the exception of threats, property theft, and inmate order problems. For these offenses, correctional staff responded more severely, were less likely to give warnings, and were more likely to issue misconduct tickets to inmates. For misconduct, such as contraband, assault, destruction of property, insolence, suicide, and escape, the new generation jail experienced 33 percent fewer incidents.[77] James Williams and his colleagues compared inmate behavior in a new generation jail to those serving time in a traditional jail and an indirect supervision barracks. They found that inmates and staff were more satisfied with the physical environment and facilities of the new generation jail and perceived it as more secure. Violence and disciplinary problems were lower in the new generation jail.[78] The benefits of new generation jails can also be seen after inmates are released. Brandon Applegate and his colleagues studied the recidivism patterns of former jail inmates and

CORRECTIONS BRIEF

Confinement Facilities in Indian Country

The governing authority on Indian land is vested in tribal government. According to the Bureau of Justice Statistics, Indian land is defined as all lands within an Indian reservation, dependent Indian communities, and Indian trust allotments. The Native American system of corrections includes jails, confinement facilities, detention centers, and community supervision programs that are operated under the authority of tribal law. These facilities are responsible for confining roughly 2,200 prisoners each year.

Just over a third of Indian prisoners are arrested and convicted for having committed violent criminal offenses—primarily acts of violence against family members. Approximately 11 percent of prisoners in Indian country jails are serving sentences as a result of convictions for operating a motor vehicle while under the influence of drugs or alcohol. Tribal law enforcement is responsible for responding to all misdemeanors and felony crimes that fall within specific boundaries, but it is not uncommon for state and federal jurisdictions to overlap tribal jurisdiction. Federal and state agencies are also charged with providing law enforcement for felony crimes committed by American Indians.

The jurisdiction over crimes on Indian lands depends on several factors. First, jurisdiction depends on the identity of the victim and the offender. It also depends on severity of the crime as well as the location of the offense. Tribal jurisdiction extends only to crimes in which the defendant can receive a sentence of no more than 1 year in prison and/or a fine of $5,000; crimes whose legislated sanctions are greater fall outside the scope of the tribe's jurisdiction and are tried in either state or federal courts.

Just over 53,000 American Indian prisoners are housed in state, federal, and local facilities. Most of these prisoners have been placed on community supervision programs by the courts. The vast majority of remaining Indian prisoners have been remanded to state correctional facilities for their crimes. There are nearly 3 million Native Americans in the United States. American Indians comprise less than 1 percent of the U.S. population, and they account for less than 1 percent of the prison population as well—but their rate of incarceration is 24 percent higher than the overall population rate. However, 93 percent of American Indians under indictment by the courts are being held on misdemeanor charges.

Source: Minton, T. D. (2008). *Jails in Indian Country, 2007*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

found that offenders who served time in new generation settings were not more likely to recidivate and actually had reduced postrelease offending rates in some cases.[79]

Despite advances in the design and philosophy of American jails, some criminologists continue to assert that jails are a glaring example of injustice and impediment to due process. For example, John Irwin argues that the function and purpose of jails is to confine disreputable persons not because they have committed crimes but because they are offensive and disreputable. Irwin's thesis is that **rabble**, defined as various marginalized groups such as transients, drug abusers, alcoholics, and the like, must be controlled by the criminal justice system to justify and perpetuate the stratification system of American society.[80] Irwin's thesis is radical and sparked subsequent research that largely disconfirmed his hypothesis. For instance, John Backstrand and his colleagues found no evidence that persons are arrested for their offensiveness or degree of disrepute; instead their actual criminal behavior and the seriousness of their charges influenced their status as jail inmates.[81]

CORRECTIONS FOCUS

Female Offenders Exiting an Offending Trajectory

Most of the research on crime desistance and recidivism has focused on gender-specific issues that apply almost exclusively to men. Traditionally, men have been influenced to desist from criminal activity with the help of several types of formal and informal social control, family/marital relationships, the military, and/or a good job. But caution should be taken before applying what we know about crime desistance by male offenders when attempting to explain desistance by female offenders.

It is widely felt that crime trajectories are dependent upon an offender's interest in persistent and intermittent responses to criminal opportunities and the lack of social controls in his or her life. Some research suggests that desistance is dependent upon the acceptance of adult realities, the quality of an intimate partnership, and the willing acceptance of the responsibilities associated with an adult relationship that produce strong ties to conventional others and accepted forms of social control. Others have found that a marital relationship, regardless of the quality, does not contribute to desistance. There is also evidence that suggests female offenders who marry experience an assortative mating effect and as a result are more likely to continue their criminal trajectory in conjunction with a criminally deviant partner.

Recent research also has found that social controls closely linked with various forms of social capital have stronger effects on female than male desistance. Other findings suggest that women who desist from crime do so because they have invested in a personal commitment that will change their lifestyle. These cognitive beliefs are sometimes referred to as personal agency or the ability to direct one's actions to achieve intended goals and desired outcomes. Combining personal agency with a willingness to commit to conventional social norms and a female offender's chances at ending her crime trajectory are very good. But there's more. Female offenders who report having children also report opting out of crime. This decision also tends to have a lasting effect on the decision to desist from crime. But evidence strongly suggests parenthood is a gender-specific variable that does not have the same impact on the crime trajectory of male offenders.

Source: Broidy, L. M., & Cauffman, E. E. (2006). *Understanding the female offender*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

Unquestionably, jail confinement is laden with implicit and explicit types of punishment that affect the social and legal standing of jail inmates.[82] Pure jail confinement is reserved primarily for the most serious criminal offenders with the most extensive criminal records. For the remaining majority of criminal defendants, the contemporary jail offers a variety of programs, treatments, and nonincarceration penalties that aim to serve the interests of community safety, defendants' rights, and a more human pretrial period. Chapter 6 contains an exhaustive overview of diversion and treatment programs that are used to divert criminal offenders from the correctional process while providing needed treatments to reduce their criminal behavior. A glimpse at some programming efforts currently under way in American jails is explored next to show that more than ever, the pretrial period is invested in providing treatment and appropriate supervision to criminal offenders.

Due to the prevalence of substance abuse, mental illness, and the co-occurrence of these problems among the jail population, some jurisdictions have devised programs to divert drug-using, mentally ill offenders from jails to more appropriate treatment facilities. Some jurisdictions divert clients prior to booking; others place defendants with appropriate agencies after they have been booked into a county jail. A variety of positive outcomes have emerged. For example, persons who participate in mental health or substance abuse diversion programs tend to gain independent living skills, reduce substance use, and have lower recidivism rates than persons who do not participate in such programs and are simply jailed. Moreover, this saves significant jail space and provides appropriate, problem-specific treatment.[83–85]

To illustrate, Henry Steadman and Michelle Naples evaluated jail diversion programs (both prebooking and postbooking) in Memphis, Tennessee; Montgomery County, Pennsylvania; Multnomah County, Oregon; Phoenix/Tucson, Arizona; Hartford, New Haven, and Bridgeport, Connecticut; and Lane County, Oregon. Defendants who participated in the diversion programs were primarily female offenders with mental health problems, such as schizophrenia or mood disorders with psychotic traits. Across these sites, diverted offenders experienced lower recidivism, 2 months more time spent in the community (and thus not in jail), greater participation in mental health treatment and counseling, and taking prescribed medication. Diverted individuals did incur higher treatment costs, but these were offset by cost savings in criminal justice, such as jail. Overall, Steadman and Naples concluded that jail diversion programs that reached out to offenders with mental health needs produced positive outcomes for individuals, criminal justice systems, and communities.[86]

Treatment is not exclusively reserved for diverted offenders as jail facilities are increasingly providing substance abuse and psychiatric services to jail inmates. Treatment is important because it not only serves the often substantial psychiatric and social problems of jail inmates, but also significantly reduces inmate involvement in misconduct.[87] In fact, it has been suggested that as jail inmate populations increase, correctional administrators feel the need to furnish more treatment opportunities as a way to compensate for crowding. Ironically, research suggests that increasing the density of the jail population actually reduces jail violence—perhaps because the crowding is offset by other amenities.[88–89]

A nationwide survey conducted by Faye Taxman and her colleagues reported that:

- Sixty-one percent of jails nationally provide some type of substance abuse treatment for inmates.
- These programs serve more than 47,000 jail inmates.
- Nearly 60 percent of jails provide up to 4 hours of substance abuse group counseling each week.
- Twenty-six percent have therapeutic communities.
- Fifty-one percent have relapse prevention groups.
- Twenty-three percent have case managers of substance abuse treatment.[90]

Another programming option is to outsource the jail function to community corrections or intermediate sanctions (see Chapter 7). For example, **home incarceration programs**, also known as house arrest, home detention, or home detention with electronic monitoring, allow criminal defendants to remain in the community so that they can continue working, fulfilling family responsibilities, and participating in treatment. However, court officials limit the movements and freedom of criminal defendants so that defendants can leave their house only for work, treatment, or other court-approved reasons. All other freedoms are restricted. Offenders are monitored by electronic devices (e.g., ankle bracelets), daily reporting to jail authorities, and other methods. Home incarceration programs are used during both pretrial and postconviction periods and have met with modest success.[91–95] For instance, Robert Stanz and Richard Tewksbury examined the programs' compliance and subsequent recidivism of nearly 2,500 defendants who participated in a house arrest program. They found that 85 percent of clients successfully completed the program, and that older defendants from good neighborhoods who were charged with DUI-related charges were the most likely to successfully complete the program. Home incarceration costs were *13 times* less expensive than jail costs. On the other hand, Stanz and Tewksbury also found that recidivism rates were high with nearly 70 percent of clients rearrested within 5 years. More than half of the study group was rearrested within 1 year, and the most common crime was another DUI.[96] Still, the dramatically reduced costs mean that jail programs that include nondetention components will continue to define the modern jail.

WRAP UP

CASE STUDY CONCLUSION

Pretrial service personnel utilize a range of characteristics when determining which type of bond a defendant receives and what the bail amount will be. Primarily, pretrial release is a function of the arrest charge and the defendant's prior criminal history. Unless a defendant is facing capital charges or has a no bond warrant in which he or she must serve a jail sentence (known as a mittimus), all defendants are assigned bail. In fact, 62 percent of felons are released on bond during the pretrial period.

Chapter Summary

- Recognizance, secured, and other types of bond are used to release offenders from jail custody and into the community during the pretrial period.
- The Vera Institute of Justice's Manhattan Bail Project showed that using community ties and not relying on ability to pay was useful to guarantee a defendant's appearance in court.
- Danger risk, recidivism risk, and flight risk are the primary determinants of pretrial release and detention.
- Pretrial detention has negative effects on legal outcomes net the effects of other legally relevant variables.
- Jails are local correctional facilities that house persons accused of crimes and convicted offenders serving brief periods of confinement.
- Jails hold a diverse mix of offenders including juveniles, criminal aliens, persons wanted by other governmental agencies, fugitives, and persons awaiting placement in psychiatric facilities.
- Although jail inmates have varying criminal backgrounds, a significant number are chronic offenders with extensive arrest and prison histories.
- Suicide is a leading cause of death of jail inmates.
- New generation jails have podular designs where inmates and staff coexist.
- Innovations and reforms in jail design and function have resulted in lower recidivism rates of jail offenders and reduced misconduct while detained.

Key Terms

abscond To violate the conditions of a sentence of escaping or failing to report.

bail A form of pretrial release in which a defendant enters a legal agreement or promise that requires his or her appearance in court.

Bail Reform Act of 1966 Legislation that authorized the use of releasing defendants on their own recognizance in noncapital federal cases when appearance in court can be shown to be likely.

Bail Reform Act of 1984 Legislation that reinforced the community ties clause of the Bail Reform Act of 1966 but also provided for the preventive detention of defendants deemed dangerous or likely to abscond.

bail revocation If a defendant does not comply with the conditions of bail, the court can withdraw the defendant's previously granted release.

bond A pledge of money or some other assets offered as bail by an accused person or his or her surety (bail bondsman) to secure temporary release from custody.

bondsperson A social service professional who is contractually responsible for a criminal defendant once the defendant is released from custody.

bounty hunter A person hired by bondspersons to enforce the conditions of bail and recover the investment asset of the bondsperson.

cash-only bonds Bond in which the defendant must post 100 percent of the bond in cash to be released.

cosigned recognizance bond A bond on which a family member, close friend, or business associate signs his or her name to guarantee the defendant's appearance in court.

danger risk The level of danger that the defendant poses toward himself or herself, the specific victim in the current case, or society at large.

deposit bail system System in which the court acts as bondsperson and the defendant posts a percentage of the total bond.

direct supervision Supervision design where inmates mix in a central common room and are continuously supervised by staff.

Federal Pretrial Services Act of 1982 Legislation that established pretrial services for defendants in the United States district courts.

flight risk Likelihood that a released offender will abscond or miss a court appearance.

home incarceration programs Programs that allow criminal defendants to remain in the community so that they can continue working, fulfilling family responsibilities, and participating in treatment.

hostageship Situation in which a person volunteers to be prosecuted and punished in the place of the actual suspect in the event that the suspect fails to appear for court proceedings.

jail A local correctional facility usually operated by a county sheriff's department and used for the short-term cofinement of petty offenders, misdemeanants, persons convicted of low-level felonies, and persons awaiting transport to some other criminal justice or social service agency.

linear supervision Traditional jail design with long rows of individual cells.

Manhattan Bail Project Project that used community ties rather than ability to pay to determine pretrial release.

National Pretrial Reporting Program A national initiative sponsored by the Bureau of Justice Statistics, which collects detailed information about the criminal history, pretrial processing, adjudication, and sentencing of felony defendants in state courts in the 75 largest counties in the United States.

new generation jails Jails with podular design and direct supervision whereby inmates were housed in single-occupancy cells that adjoined a larger communal area.

presumption of innocence Guideline that ensures that defendants are considered innocent until proven guilty.

pretrial service officers Staff who interview criminal defendants and gather information about the offenders' social and criminal histories.

property bonds Houses, real estate, or vehicles that may be cosigned to the court as collateral against pretrial flight.

rabble Term used to describe marginalized groups found in American jails.

rated capacity The number of beds or inmates assigned by rating officials to institutions within a jurisdiction.

recidivism risk Likelihood that a released offender will continue to commit crime.

recognizance bond A written promise to appear in court in which the criminal defendant is released from jail custody without paying or posting cash or property.

Reese v. United States Supreme Court case that established that bounty hunters were proxy pretrial officers who had complete control of returning absconders to the court.

secured bonds Bonds that require the payment of cash or other assets to the courts in exchange for release from custody.

summons and release System also known as book and release in which defendants are taken to jail, interviewed by police, booked and processed by sheriff's deputies, and issued a summons or ticket with a court date.

surety A guarantor who assures criminal justice officials that defendants will appear in court.

Taylor v. Taintor Supreme Court case that clarified that bounty hunter behavior must conform to law, but was not bound by Fourth Amendment as is police behavior.

wergeld The assessed value of a person's life and considered their bail value in medieval England and Germany.

Critical Thinking Questions

1. During the pretrial period, are criminal defendants taken advantage of by the correctional system? What is apparently unfair about pretrial detention? Why is there not more uproar about this?
2. Are jails used too much or too little as a one stop shop for the social services in a city? How has this changed over time?
3. Why is suicide a greater problem in jails than prisons despite the great differences in time served in these two types of facilities? What does this suggest about the criminality of jail versus prison inmates?
4. How do organizations such as the Vera Institute of Justice improve the correctional process via their research? Should researchers have a greater role in attempting to improve correctional policy?

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