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REPORT BY THE U.S.

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# General Accounting Office

## Federal District Courts' Implementation Of The 1982 Pretrial Services Act

The Pretrial Services Act of 1982 requires that federal district court judges and magistrates be provided with verified background information on all criminal defendants charged with felonies or misdemeanors before defendants' bail hearings. GAO was asked to determine to what extent the act is being implemented and whether federal district courts are properly reporting data to the Administrative Office of the United States Courts.

Overall, data reported by the federal district courts for calendar year 1984 shows that 21,158 of 43,851 eligible criminal defendants (48 percent) were contacted by the courts before bail hearings as intended by the act. According to Judiciary officials, all eligible criminal defendants are not being contacted before hearings because (1) most district courts do not have enough staff to fully implement the program, (2) some judicial officers do not support the program and some do not believe all criminal defendants need to be interviewed, and (3) pretrial services offices are not always notified of eligible defendants. The Judiciary has requested funds from the Congress for 307 additional probation positions to implement the pretrial services program in fiscal year 1986 and has undertaken initiatives to more effectively use existing resources for pretrial services.

GAO's review in five district courts generally showed that the information reported to the Administrative Office was accurate; however, the pretrial data has not been subjected to a systemwide reliability test.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
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GENERAL GOVERNMENT  
DIVISION

B-220114

The Honorable William J. Hughes  
Chairman, Subcommittee on Crime  
Committee on the Judiciary  
House of Representatives

Dear Mr. Chairman:

This report responds to your November 8, 1984, letter requesting us to review how the Pretrial Services Act of 1982 (18 U.S.C. §3152 et seq.) is being implemented by the federal district courts. The law requires that federal magistrates and district court judges be provided with verified background information on criminal defendants to assist in setting bail and conditions of release for the defendants. Other pretrial services required by the law include monitoring conditions of release, reporting bail violations to judges and magistrates, and obtaining necessary services for defendants such as treatment for drug and alcohol abuse.

We briefed your office on the preliminary results of our work on April 18, 1985. Subsequently, your office requested that we prepare this report which summarizes the information presented at the briefing. The report discusses (1) how and to what extent federal district courts are providing pretrial services, (2) the reliability of the pretrial services data being reported by the federal district courts to the Administrative Office of the United States Courts, and (3) the initiatives underway by the Administrative Office of the United States Courts to better utilize resources available for performing pretrial services.

We conducted our review from January through August 1985, at the Probation Division within the Administrative Office in Washington, D.C., and, as agreed with your office, at six federal district courts--Maryland, New Jersey, eastern New York, southern Ohio, southern Texas, and eastern Virginia. The Probation Division establishes procedures for the federal district courts to follow in providing pretrial services. The six courts selected have criminal caseloads ranging from small to large in relation to other district courts and cover four different judicial circuits. We interviewed district court judges, Administrative Office and court officials, and the Chairman of the Judicial Conference's Committee on the Administration of the Probation System. The Judicial Conference is the policymaking body of the Judiciary. We also interviewed federal magistrates in these district courts because they

preside at most bail hearings. We reviewed pretrial-related records, statistical data from the automated Pretrial Services Data System, which provides information on federal bail activities, and a limited number of pretrial case files on individual defendants. The results of our review are summarized below and are discussed in detail in the appendixes, as are further details concerning our objectives, scope, and methodology.

As of August 27, 1985, nine federal district courts had established separate offices to administer pretrial services. The other 84 district courts had chosen their existing probation offices to operate the program. However, 10 of these 84 districts had not provided any pretrial services.

Overall, during calendar year 1984, which is the most recent period for which data is available, the Administrative Office reported that 21,158 of 43,851 criminal defendants (48 percent) charged with felonies and misdemeanors, who are required by law to receive pretrial services, were contacted by pretrial services or probation officers before the defendants' bail hearings. Judiciary officials told us that not all eligible defendants are contacted before bail hearings because (1) most district courts do not have enough staff to fully implement the program, (2) some judicial officers do not support the program and some do not believe that all criminal defendants should be interviewed before bail hearings, and (3) responsible law enforcement agents or judicial officers do not always notify probation or pretrial services officers when there are criminal defendants to be interviewed.

Five of the six courts we visited were providing pretrial services and one (eastern Virginia) was not. Four of the five courts which had pretrial services programs were contacting over 75 percent of eligible criminal defendants before bail hearings, and the New Jersey court was contacting less than 20 percent. These statistics are based on our review of data from the Pretrial Services Data System, supplemented by a review of a limited number of pretrial case files when data from the system was incomplete. This occurred because one district, southern Texas, had only been reporting for 9 months of the year, and another, southern Ohio, had a significant number of defendants who were contacted but refused to be interviewed. Our review of the pretrial case files generally showed that the information being reported to the Administrative Office was accurate for all five of the courts; however, three were experiencing difficulties reporting the information in a timely fashion.

The Judiciary is requesting funds for 307 additional probation positions to implement the pretrial services program in its fiscal year 1986 congressional budget submission. In addition, the Judiciary currently has several initiatives

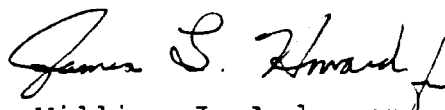
underway to use existing resources for pretrial services more effectively. These efforts include (1) developing abbreviated pretrial interview and report forms for selected defendants, (2) pilot testing the feasibility of using law and criminal justice students to perform selected pretrial functions, and (3) developing guidelines for pretrial services officers and probation officers to recommend pretrial supervision to judicial officers. For example, the Probation Committee has concluded that pretrial services officers and probation officers in some courts are recommending pretrial supervision for defendants in too many instances. We found a wide range of supervision imposed by the courts during calendar year 1984. In the 39 courts interviewing more than 50 percent of the eligible defendants, the median rate of supervision being imposed was 32 percent, with the rates of supervision ranging from 3 to 94 percent of the pretrial cases.

On July 22, 1985, the Director of the Administrative Office requested a legal decision from the Comptroller General concerning the Pretrial Services Act of 1982. The question is whether or not the act authorizes funding for additional probation office personnel to provide pretrial services in those U.S. district courts where no separate pretrial services offices have been established. The Comptroller General will issue a decision on this matter separately.

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We obtained comments on a draft of this report from the Chairman of the Judicial Conference's Committee on the Administration of the Probation System and responsible officials in the Administrative Office and the courts we visited. These officials told us that they generally agreed with the contents of the report. We trust the information provided will be useful to your continuing oversight efforts. As arranged with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days from the date of this report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

  
William J. Anderson  
Director



BACKGROUND ON THE PRETRIAL  
SERVICES ACT OF 1982

Pretrial services were first established on a demonstration basis in 10 federal district courts under the provisions of Title II of the Speedy Trial Act of 1974 (Public Law 93-619). These courts lacked a mechanism for verifying background information on defendants and providing this information to magistrates and judges in a timely fashion. The major function of pretrial services is to provide such information.

Five district courts in the demonstration project operated the program out of their probation offices. These districts were central California, northern Georgia, northern Illinois, southern New York, and northern Texas. The other five--Maryland, eastern Michigan, western Missouri, eastern New York, and eastern Pennsylvania--established separate pretrial services offices to operate the program. The demonstration projects began operating between October 1975 and April 1976. On September 27, 1982, the Pretrial Services Act of 1982 expanded the program to all federal district courts (except for the District of Columbia<sup>1</sup>).

The act requires the Director of the Administrative Office of the United States Courts, under the supervision of the Judicial Conference of the United States, to provide for the establishment of pretrial services in each judicial district. The Probation Division of the Administrative Office is responsible for the pretrial services program. The Judicial Conference is the policymaking body of the Judiciary, and is composed of the Chief Justice of the United States, the Chief Judge of the Court of Appeals for the Federal Circuit, the chief judges of the other 12 courts of appeals, and 12 district court judges who serve 3-year terms. The Conference's Committee on the Administration of the Probation System is responsible for pretrial services matters. The Director of the Administrative Office is appointed by the United States Supreme Court, and under the supervision and direction of the Judicial Conference, informs district courts of various Judicial Conference policies and procedures.

Under the act, each judicial district is required to provide pretrial services under the supervision of either a

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<sup>1</sup>The District of Columbia was excluded because it had a pretrial program in operation before the Congress passed the Speedy Trial Act of 1974.

chief probation officer or a chief pretrial services officer. Each district court and judicial council<sup>2</sup> had 18 months after passage of the act to jointly decide which option to use.

To accomplish the act's objectives, pretrial services officers or probation officers in the district courts are required to collect, verify, and report to judicial officers (magistrates and judges), before the bail hearings, background information on all persons charged with a misdemeanor or felony, and to recommend appropriate release conditions for such individuals. This information is intended to assist judicial officers in setting bail and release conditions. The principal method for obtaining background information about each defendant is the pretrial interview. Information obtained during the interview includes (1) ties to the community, (2) employment and financial data, (3) substance abuse history, and (4) criminal history and pending criminal charges. Probation officers and pretrial services officers are supposed to verify this information by various means, such as checking for prior criminal records and calling individuals acquainted with the defendant. Other pretrial service functions include supervising defendants, obtaining necessary drug and alcohol rehabilitation services for released persons, and informing the court and the United States attorney of any violations of pretrial release conditions.

The act also requires a system to monitor and evaluate bail activities and to provide information to judicial officers on the results of bail decisions. To achieve this objective, the Administrative Office is using its centrally operated Pretrial Services Data System which was developed during the demonstration project. This system captures information on the defendant's charged offense; personal circumstances (residence, family, employment, and health); drug, alcohol, and criminal history; bail hearings, release conditions, and violations; and case disposition (conviction, dismissal, or acquittal). This information is supplied by the district courts.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

On November 8, 1984, the Chairman of the Subcommittee on Crime, House Committee on the Judiciary, requested that we determine (1) how and to what extent pretrial services are being provided by the federal district courts and (2) whether pretrial

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<sup>2</sup>The judicial council of a circuit consists of the chief judge of the circuit, a fixed number of circuit judges, and at least two district judges from that circuit.



services data are being properly reported to the Administrative Office. As agreed with the Chairman's office, we conducted our review at the Probation Division and at a limited number of federal district courts. The views of directly responsible officials were sought during the course of our work and are incorporated in the report where appropriate. Our review was performed in accordance with generally accepted government auditing standards and was conducted from January to August 1985.

At the Probation Division we interviewed officials concerning (1) the implementation of the act in the district courts and (2) the reliability of statistical data in the Pretrial Services Data System. We also discussed with these officials actions being taken by the Judiciary to use existing resources for pretrial services more effectively. We also interviewed the Chairman of the Judicial Conference's Committee on the Administration of the Probation System to obtain his views.

To obtain further information on the extent to which pretrial services are being provided, we reviewed Probation Division records including guidance provided to the district courts on pretrial procedures, materials supporting recent budget requests for pretrial services, and pretrial statistical data. The statistical data was extracted from the automated Pretrial Services Data System. Because of the time available to conduct our work and present the results to the Chairman's office, we did not verify the accuracy of the statistical data.

The district courts selected for onsite evaluation were Maryland, New Jersey, eastern New York, southern Ohio, southern Texas, and eastern Virginia. We selected these courts because they have criminal caseloads ranging from small to large in relation to other district courts and because they cover four different judicial circuits. The Chairman's office concurred with the courts selected for review.

At each of these courts we interviewed the U.S. magistrate(s) and either the chief probation officer or the chief pretrial services officer to determine how and to what extent pretrial services were being provided. When possible, we also interviewed district court judges, including the Chief Judge. We also spoke with probation officers or pretrial services officers responsible for providing pretrial services. When available, we reviewed pretrial services procedures and guidelines and other court documents to obtain additional information on the extent of pretrial services being provided.

We reviewed a limited number of pretrial case files at the district courts, excluding eastern Virginia which was not providing pretrial services, to assess the reliability and timeliness of the pretrial services data reported to the Administrative Office. Two hundred and ninety-seven case files--173 closed and 124 active--were selected for review. The closed case files were selected from the first month before January 1985, in which, according to officials from either the courts' probation office or pretrial services office, most or all cases had been reported to the Administrative Office. The selected closed case files consisted of a random sample of at least 30 percent of the cases for those months. The active cases were judgmentally selected from the month of January 1985, and consisted of those cases that could be reviewed before the results of our work were presented to the Chairman's office in April 1985. We did not take a statistically valid sample and our results are not projectable.

For each case file reviewed, we determined whether there was supporting evidence for data reported to the Administrative Office and whether the data had been accurately reported. Examples of the data reviewed include (1) the type of offense(s), (2) the time available to conduct a pretrial interview with the defendant, (3) the nature and length of pretrial supervision, (4) whether a bail recommendation was made at the pretrial release hearing, and (5) whether the defendant was released.

#### HOW AND TO WHAT EXTENT FEDERAL DISTRICT COURTS ARE PROVIDING PRETRIAL SERVICES

As of August 27, 1985, nine federal district courts had elected to implement the Pretrial Services Act by establishing separate offices in the courts. These districts are eastern California, southern Florida, Maryland, eastern Michigan, western Missouri, southern New York, Nevada, eastern Pennsylvania, and Puerto Rico. The remaining 84 districts have chosen their probation offices to operate the program, although Probation Division officials advised us that 10 of the 84 districts did not provide any pretrial services as of August 27, 1985.

Overall, the Administrative Office reported that in calendar year 1984, there were 43,851 criminal defendants eligible for pretrial services. Of this total, 21,158 defendants (48 percent) were contacted for interviews before their bail hearings, 4,192 defendants (10 percent) were contacted after their bail hearings, and 17,668 defendants (40

percent) were not contacted. The remaining 833 defendants (2 percent) include some defendants who refused pretrial interviews, some whose cases were transferred to other districts for trial and may not have received pretrial interviews, and those charged with parole or probation violations who do not receive pretrial interviews.

The extent to which criminal defendants were contacted for interviews before bail hearings in calendar year 1984 varied widely among the 93 district courts, as shown in table I.1. Further details by judicial district are included in appendix II.

Table I.1:

Number and Percent of Defendants Contacted  
Before Bail Hearings During Calendar Year 1984

<u>Rate of contact (percent)</u>	<u>Number of districts</u>	<u>Eligible defendants</u>	<u>Defendants contacted</u>	<u>Average rate of contact (percent)</u>
Greater than 75	21	12,100	10,426	86.2
Between 50 and 75	18	5,959	3,640	61.1
Between 25 and 50	28	15,848	6,491	41.0
Less than 25	<u>26</u>	<u>9,944</u>	<u>601</u>	6.0
	<u>93</u>	<u>43,851</u>	<u>21,158</u>	48.2

The information shown in table I.1 is an estimate of the extent to which pretrial services are being provided. The Administrative Office's Pretrial Services Data System does not contain information on some misdemeanor cases handled by magistrates. Also, Probation Division officials told us that some judicial districts are not submitting pretrial information in a timely manner. As a result of these factors, the Pretrial Services Data System may overstate or understate the number of defendants contacted by individual courts.

Reasons why courts are not conducting interviews with all criminal defendants before bail hearings

Probation Division and district court officials told us that there are three principal reasons why all criminal defendants are not being contacted before bail hearings. The reasons given were

- most judicial districts do not have sufficient staff to fully implement the program;
- some judges and magistrates do not support the program and some do not believe that all categories of criminal defendants should be interviewed; and
- pretrial services officers or probation officers are not always notified by law enforcement agents and/or judicial officers of the defendants who should be contacted for pretrial interviews.

Program staffing

As of July 1, 1985, the nine district courts having separate pretrial services offices and four district courts which were demonstration projects and ran the program from their probation offices had received funds from the Congress to fill 153 positions for pretrial services. As of July 1, 1985, 147 of these positions were filled. The remaining 80 district courts, which selected their probation offices to provide pretrial services, have not been authorized additional positions to perform pretrial services. Probation Division officials advised us that all of these district courts need additional probation positions to implement the act. However, no additional positions have been provided for these 80 courts because of congressional concern over whether the act authorizes additional positions to provide pretrial services in their probation offices.

On July 22, 1985, the Director of the Administrative Office requested a legal decision from the Comptroller General concerning the Pretrial Services Act. The question is whether or not the act authorizes funding for additional probation office personnel to provide pretrial services in those U.S. district courts where no separate pretrial services offices have been established. The Comptroller General will issue a decision on this matter separately.

For fiscal year 1984, the Judiciary requested funds from the Congress to fill 313 additional positions for pretrial services. This request was made before each district court decided what organizational form--separate agency or probation office--would be used to provide pretrial services. The Congress approved funds for 200 of the positions. However, the Administrative Office did not fill any of these positions because it became concerned that the Congress might not reauthorize them in fiscal year 1985 for the reason discussed above. For fiscal year 1985, the Judiciary requested funds from the Congress to fill 147 additional probation positions for the 80 districts' probation offices which perform pretrial services. Because of concern over the act's authorizing provisions, the Congress did not fund these positions.

For fiscal year 1986, the Judiciary is requesting an increase of 460 probation positions of which 307 will be allocated to the 80 districts' probation offices for pretrial services. As of August 27, 1985, the Congress had not acted on the fiscal year 1986 budget request.

#### Program commitment

According to Probation Division and court officials, the second reason that all defendants are not being interviewed is that some judicial officers do not support the program and some do not believe all criminal defendants need to be interviewed. Probation Division officials told us that 19 of the district courts have not demonstrated a commitment to the program because some judicial officers believe they can obtain sufficient information for setting bail and release conditions from the defendant, the attorneys involved, and from law enforcement officers. Twelve of these courts have contacted less than 5 percent of their defendants for pretrial services, while the remaining seven have contacted from 5 to 14 percent. In addition, some judicial officers do not believe it is necessary to interview all categories of criminal defendants because defendants in certain types of cases do not pose significant risks of failing to appear for subsequent court proceedings or committing new crimes while on bail. Misdemeanor cases in which defendants are summoned and in which the U.S. attorney's office recommends release on personal recognizance were frequently cited as cases which do not require pretrial interviews.

#### Notification problems

A third reason given for why all defendants are not being interviewed is that pretrial or probation officers are not

always notified or notified in a timely manner by judicial officers or arresting agents. Notification problems are also the principal cause of some defendants being (1) interviewed after, rather than before, their bail hearings or (2) interviewed within a relatively short time before the hearings. In these two situations, judicial officials do not always have the benefit of verified background information to set bail as intended by the act. According to Probation Division officials, interviews are conducted after bail hearings in order to obtain information which might necessitate a change in bail or release conditions.

As previously noted, about 10 percent of the total eligible defendants received postbail interviews. Furthermore, our analysis of interviews conducted before bail hearings in fiscal year 1984 showed that about 17 percent of the 21,087 defendants who received such interviews were contacted within 30 minutes or less of their bail hearings. Probation Division officials told us that some district courts could verify information related to a defendant's criminal history within 30 minutes. However, they acknowledged that, in general, little if any other information could be verified within that time. They also said that the lack of time to verify background information before bail hearings has been a continuing problem.

#### Implementation of pretrial services in the six district courts visited

Of the six district courts visited, we found that four had implemented the act by having their probation offices perform pretrial services, one court had maintained a separate pretrial office to carry out the act, and the other court had not implemented the act as of August 27, 1985. The sections that follow provide brief summaries on the extent that pretrial services were being provided in the courts we visited.

#### Eastern district of New York

The eastern district of New York began pretrial services in April 1976 as 1 of the 10 demonstration districts. At that time, a separate office was established within the court to provide the services. The district's judges voted to place pretrial services under the probation office effective April 2, 1984, thus disbanding the separate pretrial office. According to two district judges, the judges made this change because they believed it was more economical. District representatives were unable to provide us with any studies or analyses to support this decision.

In this district, the main court is located in Brooklyn with satellite locations in Uniondale and Patchogue. At the time of our review, the probation office's pretrial services unit consisted of five probation officers and one clerk, all located in Brooklyn. According to a probation officer, about 99 percent of the bail hearings are conducted in Brooklyn. The Chief Probation Officer told us that the pretrial unit has been staffed at the expense of other probation and parole functions. The Judiciary's fiscal year 1986 budget request, which was submitted to the Congress in January 1985, includes 10 probation positions for eastern New York's pretrial services unit.

The pretrial services unit's policy is to interview and prepare a pretrial report on all eligible defendants. However, a small percentage of defendants are not interviewed, primarily because the pretrial services unit is not notified of their bail hearings. Generally, these are defendants whose hearings are conducted by district judges rather than magistrates. Most defendants' pretrial release hearings are held before magistrates whose secretaries usually notify the pretrial services unit. However, some defendants are initially brought before a district judge for a bail hearing. It is these defendants the unit most frequently misses because it is not notified of the hearings by either the arresting agent or the judge's office.

Data compiled from the Administrative Office's Pretrial Services Data System shows that eastern New York contacted 1,049 of 1,062 (99 percent) of its eligible defendants before their bail hearings during calendar year 1984. We reviewed court records for the month of January 1985 and found that 161 of 170 defendants (95 percent) received pretrial interviews. The pretrial services unit was not notified of the bail hearings for nine defendants. According to the pretrial services unit records, interviews conducted after defendants' bail hearings averaged two each month during fiscal year 1984.

### Maryland

Like eastern New York, the Maryland district court was 1 of the 10 demonstration districts established in 1976. The district's judges elected to continue operating the program through a separate office. The main court in this district is located in Baltimore with a satellite location in Hyattsville. Part-time magistrates are located in Hagerstown, Salisbury, and Upper Marlboro. Pretrial services officers are located in Baltimore and Hyattsville.

The Judiciary's fiscal year 1986 budget request includes 11 positions for Maryland, 3 fewer than authorized for fiscal year 1985. A Probation Division official told us that the decrease was caused by a projected decline in the number of defendants eligible for pretrial services in fiscal year 1986. According to the Chief Pretrial Services Officer, the Maryland court has experienced an increase in the criminal caseload over the last several years, and he anticipates a slight increase in the number of defendants eligible for pretrial services in fiscal year 1986.

The Pretrial Services Data System shows that Maryland contacted 863 of 896 (96 percent) of its eligible defendants before bail hearings during calendar year 1984. The Chief Pretrial Officer told us that at least 95 percent of the district's criminal defendants receive a pretrial interview. However, he said that about 10 percent of the interviews are conducted after the defendants' bail hearings and attributed this situation largely to pretrial officers not being notified in time to conduct interviews before bail hearings. At the Hagerstown, Upper Marlboro, and Salisbury locations, very few criminal defendants are processed. Any defendants charged with serious offenses from these three locations are provided pretrial services in Baltimore. Also, a small number of defendants (5 percent or less) are not interviewed at the Hyattsville location. The Chief Pretrial Services Officer stated that the few defendants who are not interviewed, regardless of the location, are charged with less serious misdemeanors such as traffic violations or possession of small amounts of marijuana. In such instances, he told us that the defendants are not interviewed because the pretrial services officers are not notified by the magistrate's office.

#### Southern district of Ohio

The Probation Office implemented pretrial services in the southern district of Ohio on February 1, 1983. According to the district's Chief Judge, the pretrial responsibility was assigned to the Probation Office because probation officers have the experience and knowledge to do the work, and he did not want to create another office just to do pretrial work. Court is held in three locations in the district--Cincinnati, Columbus, and Dayton.

The Probation Office has not received additional staff to do pretrial work. The Chief Probation Officer estimates that districtwide, the equivalent of 5 staff years are used for pretrial services. These positions would return to probation-related duties if additional positions are provided.



He believes that the lack of additional staff has not hindered the pretrial effort, but is taking its toll on the probation officers. He estimates that they are working overtime (up to 30 percent) in order to keep up with their regular probation duties plus the pretrial work. The Chief Probation Officer believes this is creating stress for the officers. Additionally, probation officers told us they have been spending less time supervising probationers and parolees so that the pretrial services work can be completed. The Judiciary's fiscal year 1986 budget request includes four probation positions for pretrial services for this district.

The Pretrial Services Data System reported that southern Ohio contacted 211 of 415 (51 percent) of its eligible criminal defendants before bail hearings and 28 (7 percent) after bail hearings during calendar year 1984. Court officials told us that approximately 99 additional defendants (24 percent) were contacted but refused to be interviewed. Our review of court records for 2 months at each of the three court locations in the district showed that 88 defendants appeared before the magistrates or district judges for bail hearings and were eligible for pretrial services. The probation office contacted 81 of the 88 defendants (92 percent). Six defendants were not interviewed because the probation office was not notified by the arresting agents that the defendants were in custody. The probation office could not determine why the remaining defendant did not receive pretrial services. We reviewed the case files on 62 of the 81 defendants who were contacted by the probation office. Of the 62 defendants, 38 were contacted before the bail hearings, 12 were contacted after the bail hearings, and 12 refused to be interviewed.

Court officials advised us that they do not provide pretrial services for defendants who commit misdemeanor offenses on Wright-Patterson Air Force Base. These defendants' crimes include traffic infractions, minor assaults, shoplifting, and possession of marijuana cigarettes. The Chief Probation Officer estimated that this group of defendants from Wright-Patterson accounts for 2 percent or less of the district's total criminal defendants. Also, the Chief Probation Officer told us that these defendants would be interviewed when the district receives sufficient positions to perform all pretrial services activities.

#### Southern district of Texas

On March 21, 1984, the Chief Judge for the district ordered that pretrial services be established within the Probation

Office under the supervision and direction of the Chief Probation Officer. According to court officials, the Probation Office was given this responsibility in order to avoid creating another organization in the court.

The Probation Office in the district is headquartered in Houston and has five divisional offices located in Brownsville, McAllen, Corpus Christi, Laredo, and Galveston. Pretrial services are routinely provided by the Probation Office for all six locations. In five of the locations the full range of services are provided. In the sixth location (Galveston), only post-release supervision is provided. Generally, pretrial interviews for this location are conducted in Houston because there is no magistrate in Galveston. Subsequent to the completion of our field work, a part-time magistrate was selected for Galveston and will assume his duties in September 1985.

The Chief Probation Officer estimates that the equivalent of 12 positions is currently devoted to providing pretrial services. For fiscal year 1986, the Judiciary's budget includes 24 probation positions to provide pretrial services in this district.

The Pretrial Services Data System shows that southern Texas contacted 1,158 of 2,334 (50 percent) of its eligible defendants for pretrial services during 1984. The 50 percent interview rate is understated because the computation is based on the number of eligible defendants for the entire year, while the district operated its pretrial program for only 9 months during 1984. Our review of court records for 2 months at each of the five court locations showed that 339 defendants appeared for bail hearings. The Probation Office contacted 330 of these defendants (97 percent). Three were not contacted because the probation office was not notified of their arrests. Two were not contacted because the magistrate did not request pretrial information. We were unable to determine why the remaining four were not contacted. We reviewed the case files for 161 of the 330 defendants that were contacted by the probation office. Of the 161 defendants, 148 were contacted before bail hearings, 12 were contacted after bail hearings, and 1 defendant refused the interview.

The Chief Probation Officer told us that not all defendants are interviewed because the probation office is not always notified about the bail hearings. Also, certain defendants are excluded from pretrial services as a matter of policy. At one location--Corpus Christi--defendants charged with misdemeanors are not, in accordance with the magistrate's wishes,

interviewed. The Supervising Probation Officer at this location stated that this exclusion involved very few defendants. At the Brownsville location, defendants are excluded when bail is not an issue. This occurs when the defendant has agreed to plead guilty, generally to a misdemeanor, at the bail hearing and is sentenced immediately. Many of these cases are referrals from the U.S. Border Patrol and involve the illegal entry or transportation of aliens. In such cases, the Border Patrol agent must inform the probation office that the defendant intends to plead guilty at the hearing. When this happens, the defendant is not interviewed.

#### New Jersey

The pretrial services program in this district was implemented on April 11, 1983, on a limited basis in the Probation Office. The district's statistical data showed that about 84 percent of bail hearings in the district occurred in the Newark court. Therefore, the district's plan was to attempt to provide pretrial services for defendants appearing before the three Newark magistrates. No formal pretrial services were provided for any other court location in the district--Camden, Trenton, Fort Monmouth, Fort Dix-McGuire Air Force Base, or Atlantic City. The fiscal year 1986 budget request includes eight probation positions for this court to perform pretrial services.

The Pretrial Services Data System shows that the district contacted 146 of 785 (19 percent) of its eligible defendants for pretrial services during calendar year 1984. During the 12-month period ending June 30, 1984, the Probation Office contacted approximately 31 percent of the district's eligible defendants. Since April 1984, pretrial interviews have been conducted only when requested by a judicial officer. This change, which was approved by the Chief Judge, was made because the existing probation staff could not provide pretrial services and at the same time adequately perform existing probation duties.

#### Eastern Virginia

This district has not provided pretrial services. Three judicial officers and one court official told us that pretrial services are unnecessary because judicial officers can obtain all the information needed to set bail and release conditions from the defendant, the defendant's attorney, or the U.S. attorney's office. The Chief Probation Officer told us that if the court implemented the pretrial services program, it would need additional probation officers to handle the pretrial

workload. For fiscal year 1986, the Judiciary's budget request includes 12 probation positions to perform pretrial services in this district. Probation Division officials told us that if funds for the 12 positions were authorized by the Congress, the positions would not be given to the district until it makes a commitment to establish the program.

RELIABILITY OF THE PRETRIAL  
SERVICES DATA SYSTEM

Our review of a limited number of pretrial case files in five district courts did not reveal significant problems with the accuracy of the data reported to the Pretrial Services Data System. However, in three district courts, 645 closed cases had not been reported. Probation Division officials told us that backlogs of unreported pretrial data have been a problem in other district courts. As a result, the system does not have complete and current information on all defendants receiving pretrial services.

The Pretrial Services Act of 1982 requires a system to monitor, evaluate, and report on bail activities, and to provide feedback to judicial officers on the bail process. During the pretrial services demonstration period, the Administrative Office established a pretrial data system to provide the required information. This data base was used to evaluate the federal bail process in the 10 demonstration districts and was closely monitored by the Administrative Office to ensure the accuracy of reported data. However, since the act passed, the Probation Division has not maintained the same level of effort to ensure that quality data is being reported. Probation Division officials told us that the first priority has been to get the program established in all judicial districts.

According to Probation Division procedures, a pretrial services case file should be activated by a court once a defendant is assigned to a pretrial or probation officer. After bail is granted or denied at the bail hearing, a Pretrial Services Agency (PSA) form 4 is forwarded to the Administrative Office. This form establishes the case in the Pretrial Services Data System and contains data on the charged offense, pretrial interview, and whether the defendant was released. A pretrial case file is closed once the defendant is sentenced, acquitted, or his/her case dismissed. PSA form 5 is used to report the final disposition of the case. The form contains data on the defendant's (1) personal circumstances (residence, family, employment, and health); (2) drug, alcohol, and criminal history; (3) bail hearings, recommendations, and violations; (4) pretrial detention; and (5) case disposition. Probation

Division procedures state that form 5 should be ready for entry into the Pretrial Services Data System by the fifteenth day after the final disposition of the case.

We reviewed a total of 5,993 data elements that had been reported on the 297 defendants whose case files we examined. We found that 4,673, or 78 percent, of these data elements were correctly reported. We were unable to verify 1,183, or 19.7 percent, of the reported data elements because the case files did not contain sufficient information. We also found that 137 data elements, or 2.3 percent, were reported erroneously when compared to data contained in the case files. The rate at which data elements were erroneously reported ranged from 0.1 percent in eastern New York to 3.1 percent in southern Texas. We did not attempt to determine why errors occurred, but court officials told us that administrative oversight caused some errors, and unclear and conflicting reporting instructions issued by the Administrative Office caused others.

We noted during our case file reviews that Maryland, eastern New York, and the Columbus court in southern Ohio had backlogs of cases that had been closed for more than 15 days but had not been reported to the Administrative Office. For example, in the district of Maryland, approximately 200 closed cases had not been reported--some of which had been closed as long as 8 months. In Columbus, 145 cases closed through May 31, 1985, had not been reported. In eastern New York, we were told that there were at least 300 unreported cases. Probation Division officials told us that this problem was not limited to these three locations.

Probation Division officials told us that they believe the data being reported by the original 10 demonstration districts are reliable but expressed concern over the reliability of data being reported by the remaining 83 courts based on ad hoc checks of pretrial records in some of these courts. According to these officials, the pretrial data have not been subjected to a systemwide reliability test. They also stated that the data-reporting problems we found were caused, in large part, by staff shortages in the courts and that the problems should diminish as more staff are made available and the function becomes better established. Court officials told us that in the absence of adequate staff to perform the primary pretrial functions--interviewing, verifying, and supervising--reporting pretrial data becomes a lower priority which is not always accomplished in a timely manner.

At the completion of our audit work, the Probation Division was revising the reporting format for the pretrial services

data. This effort involves eliminating the present reporting forms (PSA forms 4 and 5) and modifying the pretrial services interview worksheet (PSA form 2) so that data can be entered into the Pretrial Services Data System directly from the interview worksheet. The revised reporting format will include additional data related to the Bail Reform Act of 1984 (18 U.S.C. §3142 et seq.). A Probation Division official working on the revision told us that the revised reporting format should simplify the process and improve the data reliability. The Administrative Office plans to introduce the new reporting format by October 1, 1985.

ACTIONS BEING TAKEN BY THE JUDICIARY TO  
USE RESOURCES AVAILABLE FOR PRETRIAL  
SERVICES MORE EFFECTIVELY

The Judicial Conference's Committee on the Administration of the Probation System (Probation Committee) directed the Administrative Office in November 1984 to undertake three initiatives which could result in more effective use of existing resources available for pretrial services. These efforts include (1) developing abbreviated pretrial interview and report forms for selected defendants, (2) developing guidelines for pretrial services officers and probation officers to recommend pretrial supervision to judicial officers, and (3) pilot testing the feasibility of using law and criminal justice students to perform selected pretrial functions. The Administrative Office has also advised the district courts that contracting for the primary pretrial functions is a possible alternative.

The need for an abbreviated pretrial interview is based on the Probation Committee's belief that extensive background information is unnecessary for defendants who pose little risk of failure to appear for court proceedings, or who are unlikely to commit crimes while on bail. Generally, a pretrial interview ranges from 15 to 45 minutes, with additional time needed to verify the information obtained during the interview. The abbreviated interview form, once developed, should reduce the amount of information obtained, and the time needed to conduct the interviews and verify information.

The Probation Committee believes that pretrial services officers and probation officers in some courts are recommending pretrial supervision for defendants in too many instances. During calendar year 1984, the Administrative Office's Pretrial Services Data System showed a wide range of supervision imposed by the courts. For example, in the 39 courts interviewing more than 50 percent of the eligible defendants, the median rate of supervision being imposed was 32 percent with the rates of

supervision ranging from 3 to 94 percent of the pretrial cases. The Probation Committee hopes that the supervision guidelines being developed for pretrial services and probation officers will result in better use of resources because there will be more consistent recommendations throughout federal district courts for pretrial supervision.

A 1-year pilot project to test the effectiveness of using law and criminal justice students is being planned for implementation in six to eight district courts. Under the pilot project, students will be used to perform pretrial services for academic credit or modest remuneration. According to the Probation Committee, state and local pretrial agencies have successfully used students in this manner.

Our discussions with officials in the Probation Division and the courts we visited indicate there is widespread reluctance to use students for pretrial services. Court officials believe that the benefits of using students would be outweighed by the disadvantages, particularly because students would be transient and would need a great deal of training and supervision. A Probation Division official told us that 10 courts had formally agreed to participate in the project as of August 27, 1985.

The Pretrial Services Act of 1982 allows the use of contracts to carry out any of the pretrial service functions. Probation Division officials told us that the district courts have used this authority to contract for ancillary-type services, such as drug testing, but have been reluctant to use it to provide the primary pretrial services functions of interviewing, verifying data, and supervising defendants.

In April 1984, the Administrative Office formally advised the chief judges in the district courts that (1) contracting was a possible alternative, (2) private organizations may be available to provide the primary pretrial services, and (3) the Administrative Office would seek funds for this purpose. In this regard, we were told that some state courts have successfully used private contractors and that, if approved by the Congress, a portion of the fiscal year 1986 \$1.25 million request for contract services could be made available for this purpose.

A Probation Division official told us that only one court had formally requested to contract for the primary services, but that this request was later withdrawn. In the courts we visited, court officials were opposed to contracting for the service because they believed that a private contractor could

(1) be viewed as an advocate for the defendant and therefore might not be accepted by the court, (2) be more concerned with financial aspects of the pretrial operations and not sufficiently concerned with the rights of defendants, and (3) result in higher pretrial services costs because of administrative requirements and the need to closely monitor the contractor's performance.



TABLE II.1:  
NUMBER OF DEFENDANTS CONTACTED  
BEFORE BAIL HEARINGS IN  
CALENDAR YEAR 1984<sup>a</sup>

<u>District courts</u>	<u>Status<sup>b</sup></u>	<u>Total eligible defendants<sup>c</sup></u>	<u>Number of contacts</u>	<u>Percent contacted</u>
<u>Greater than 75 percent</u>				
E. New York	P	1,062	1,049	98.8
Maryland	S	896	863	96.3
E. Michigan	S	909	862	94.8
N. Indiana	P	175	159	90.9
Arizona	P	919	831	90.4
N. Oklahoma	P	206	186	90.3
S. West Virginia	P	182	164	90.1
W. Missouri	S	397	350	88.2
E. Louisiana	P	560	485	86.6
S. New York	S	1,828	1,558	85.2
Idaho	P	175	149	85.1
M. North Carolina	P	311	259	83.3
Minnesota	P	370	307	83.0
New Hampshire	P	46	38	82.6
W. Michigan	P	229	189	82.5
C. California	P	1,857	1,464	78.8
Vermont	P	83	65	78.3
Virgin Islands	P	330	254	77.0
N. Texas	P	749	575	76.8
S. Indiana	P	253	192	75.9
Colorado	P	563	427	75.8
		<u>12,100</u>	<u>10,426</u>	86.2
<u>Between 50 and 75 percent</u>				
E. Oklahoma	P	130	97	74.6
N. Ohio	P	464	344	74.1
Massachusetts	P	671	482	71.8
North Dakota	P	136	96	70.6
S. Iowa	P	139	98	70.5
Delaware	P	88	61	69.3
N. Iowa	P	85	58	68.2
E. Wisconsin	P	217	145	66.8
Alaska	P	140	88	62.9
New Mexico	P	343	208	60.6
W. Texas	P	1,283	760	59.2

<u>District courts</u>	<u>Status<sup>b</sup></u>	<u>Total eligible defendants<sup>c</sup></u>	<u>Number of contacts</u>	<u>Percent contacted</u>
W. Virginia <sup>d</sup>	P	179	103	57.5
S. Illinois	P	256	143	55.9
M. Louisiana	P	111	62	55.9
N. Florida	P	255	140	54.9
N. Alabama	P	377	205	54.4
S. Ohio <sup>e</sup>	P	415	211	50.8
N. Georgia	P	670	339	50.6
		<u>5,959</u>	<u>3,640</u>	61.1
<u>Between 25 and 50 percent</u>				
S. Texas <sup>d</sup>	P	2,334	1,158	49.6
W. Washington	P	473	234	49.5
S. Florida	S	2,733	1,316	48.2
M. Florida	P	913	440	48.2
E. Missouri	P	395	188	47.6
M. Georgia	P	249	115	46.2
South Dakota	P	255	116	45.5
W. Louisiana	P	313	134	42.8
E. Kentucky	P	206	88	42.7
E. Pennsylvania	S	955	382	40.0
E. Texas	P	199	79	39.7
N. Illinois	P	1,122	443	39.5
S. Mississippi	P	224	86	38.4
W. Oklahoma	P	338	126	37.3
S. Alabama	P	218	78	35.8
E. California	S	641	210	32.8
N. Mississippi	P	77	25	32.5
S. California	P	1,588	512	32.2
W. Pennsylvania	P	344	109	31.7
W. Kentucky	P	497	154	31.0
Nebraska	P	125	38	30.4
M. Alabama	P	269	79	29.4
W. North Carolina <sup>d</sup>	P	459	132	28.8
E. Arkansas	P	236	66	28.0
Kansas	P	350	95	27.1
M. Pennsylvania	P	219	59	26.9
Guam & Northern Mariana Islands	P	116	29	25.0
		<u>15,848</u>	<u>6,491</u>	41.0
<u>Less than 25 percent</u>				
M. Tennessee	P	357	88	24.6
W. Arkansas	P	136	29	21.3
Maine	P	225	48	21.3

<u>District courts</u>	<u>Status<sup>b</sup></u>	<u>Total eligible defendants<sup>c</sup></u>	<u>Number of contacts</u>	<u>Percent contacted</u>
New Jersey	P	785	146	18.6
Oregon	P	259	47	18.1
S. Georgia	P	220	30	13.6
Rhode Island	P	120	15	12.5
Connecticut	P	369	46	12.5
Montana	P	278	27	9.7
N. New York	P	261	24	9.2
Wyoming	P	140	8	5.7
South Carolina	P	386	21	5.4
N. California	P	1,090	46	4.2
E. Washington	P	256	10	3.9
E. Tennessee	P	255	4	1.6
W. Wisconsin	P	98	1	1.0
E. North Carolina	P	608	6	1.0
Hawaii	P	401	3	0.7
W. Tennessee	P	412	2	0.5
W. New York	P	323	0	0.0
E. Virginia	P	1,002	0	0.0
N. West Virginia	P	216	0	0.0
C. Illinois	P	256	0	0.0
Utah	P	236	0	0.0
Puerto Rico <sup>f</sup>	S	576	0	0.0
Nevada <sup>f</sup>	S	679	0	0.0
		<u>9,944</u>	<u>601</u>	6.0
		<u>43,851</u>	<u>21,158</u>	48.2

<sup>a</sup>Information extracted from Administrative Office's Pretrial Services Data System as of March 26, 1985.

<sup>b</sup>P=Probation Office and S=Separate Agencies

<sup>c</sup>Total eligible defendants includes some defendants who are fugitives and cannot be interviewed and some state and federal prisoners who are in prison for other offenses and would not be released on bail. Probation Division officials told us that the numbers of defendants in these categories are not significant.

<sup>d</sup>According to a Probation Division official, western Virginia, southern Texas, and western North Carolina operated pretrial services programs for only part of 1984. Their contact rates are understated because the computation is based on the number of eligible defendants for the entire year.

<sup>e</sup>According to officials in the southern district of Ohio, the number of contacts (211) does not include approximately 99 defendants who refused pretrial interviews.

<sup>f</sup>Although Puerto Rico and Nevada reported no defendants contacted, a Probation Division official told us that these two districts had just started providing pretrial services and had not reported any pretrial services data.



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