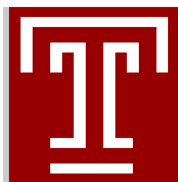

TEMPLE UNIVERSITY
Crime and Justice Research Center

Confinement and the Justice Process in Philadelphia:
Its Features and Implications for Planning

Final Report

Submitted to the City of Philadelphia
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CHAPTER I. OVERVIEW: CONFINEMENT AND ITS CORRELATES IN PHILADELPHIA

In response to the Criminal Justice Coordinating Commission's serious concerns about the growth and size of the inmate population in the Philadelphia Prison System, the Temple research team has worked over the last year (beginning in Fall 2005) to examine the inmate population, its composition, and factors contributing to its growth. The aim of the research was to point to areas affecting the nature and levels of confinement and to permit evidence-based discussions of possible recommendations for policy, programmatic or procedural options that might improve system performance and relieve the pressures associated with the record numbers of inmates in the City's Prisons.

There were several basic and practical aims of the research conducted for and with the City of Philadelphia and its justice agencies. These included:

- Identification of recent trends related to the use of local confinement and, when data permitted, projections of likely future directions;
- Characterization of the nature of the confined population and discussion of the justice processes that have contributed to the record level of confinement; and
- Examination of the use of confinement in the processing of criminal cases at the pretrial and post-adjudication stages—with a special emphasis on the use of pretrial detention and release.

Each of these approaches involved different designs and focused on different types of system-related data available thanks to the cooperation and assistance of all criminal justice agencies. The research was divided into three main components, timed according to the estimated degree of difficulty associated with collection and analysis of the necessary data. (The planned process flexibly interacted with growing concerns and emerging issues identified in conjunction with the Criminal Justice Coordinating Committee (CJCC) and system leaders throughout the year.)

In the first component of the project, the research team examined aggregate system data from various agencies to look for trends associated with the growth of the prison inmate population in Philadelphia. The resulting report to the CJCC, forming Chapter Two of this report (<u>The Population of the Philadelphia Prisons in Context: Justice System Trends and Projections</u>), began the examination of local confinement by placing the inmate population in the broader context of system-wide trends.

In the second component of the research, the Temple team sampled the Philadelphia Prisons inmate population "on-a-given-day" and collected data permitting a reasonably in-depth characterization of Philadelphia inmates at a "typical" moment in time. The purpose of this analysis was mainly descriptive, to answer the question of who was typically being held in the Prison System, to describe their attributes, criminal cases and histories, and to summarize the legal matters holding them in confinement. This second report, forming Chapter Three of this

report (The Population of the Philadelphia Prisons on November 21, 2005: a Single Day Analysis), also contrasted the current inmate population with population profiles from similar studies conducted by the same researchers ten and 15 years ago.

The third and final part of the research involved the tracking of a sample cohort of entering defendants into the Philadelphia court system (March-May 2005) and through court processing over a one-year period. This examination of processing outcomes and the use of pretrial release is discussed in Chapter Four.

The problem at the core of the research was that the annual average daily inmate population of the Philadelphia Prisons roughly doubled from 1960 to 1999. From 1996 to 2006 alone, the inmate population has increased nearly 50 percent, this following a period of considerable efforts at population reduction a decade ago. The population has peaked at record levels over the last year. With some notable historical exceptions when the population dropped significantly—e.g., 1983-84, 1990-94, 2002-03—population levels have responded to strong upward pressure. Analysis of these irregularly occurring reductions in overall population levels suggested that they appeared to be linked to concerted population monitoring and management strategies, including the development of community-based treatment and supervision options, bail reform (guidelines) initiatives and arrest patterns (principally related to drugs)—all rationally and carefully targeted intervention strategies.

This overall effort to examine the dimensions and causes of jail overcrowding resulted from discussions among members of the CJCC recognizing the need for more up-to-date information on key justice system processes related to the use of local confinement. From the early stages of discussion of these findings, the courts and their criminal justice partners have been proactive in addressing aspects of system function falling within their areas of responsibility, for example, reviewing the statuses of persons held on probation or parole detainers and launching an initiative in September 2006 to address case backlog and processing inefficiencies, particularly involving untried cases at various stages.

A caveat in reviewing the information presented: The research is intended as an information resource to support the development and discussion of options in areas identified as possibly having an impact on the nature and level of confinement in Philadelphia. In this process, we have taken three different approaches to gathering and analyzing data relevant to examining local confinement. Within the time and resources available, we selected these complementary approaches as the most likely to provide useful information to the officials seeking options in dealing with the record inmate population. Certainly other approaches could have been added or certain analyses could have been in more depth, time and resources permitting. The three-part study we conducted, however, achieved its main purpose in pointing to areas that appeared to have an impact on the use of confinement in Philadelphia, so that system improvement options could be considered in areas of potential population-reduction impact.

In pointing to these areas of impact (or in identifying themes), however, we are not directly or indirectly providing criticism of particular system functions or justice actors. In the shorthand of the descriptive language we use in reporting the many findings, we do not mean to

suggest that any one agency is responsible for the functioning of the system at any stage of processing or for the level of confinement generated at that stage. (An example of this is when court dispositions are discussed.) It is clear that the Philadelphia justice process represents a complex interaction of a variety of actors at various stages as cases move from initial stages to adjudication, sentencing and beyond. Thus, when we refer to court processing outcomes, we refer to stages of processing at which these interactions of multiple parties may govern how cases proceed and with what results. The nature of this interplay among actors affects pretrial release, preliminary hearing, pleas, continuances, time to disposition, resolution of multiple holds, etc.

Finally, while we refer to the design of each study part briefly in the relevant chapters, see Appendix D for a more detailed summary of the design of the research.

CHAPTER TWO: THE POPULATION OF THE PHILADELPHIA PRISONS IN CONTEXT: JUSTICE SYSTEM TRENDS AND PROJECTIONS

A. Introduction: Placing the Philadelphia Prisons in Context

This chapter discusses findings from the analysis of trends and projections of aggregate justice system data designed to place the inmate population in a larger context. The underlying assumption is that the population of the Philadelphia Prisons is the product of the processes and practices of the police, prosecutor, courts and other official agencies.

These findings are summarized under the following headings: 1) trends in the inmate population, 2) reported crime and arrests, 3) processing of criminal cases; 4) detainers and bench warrants. The purpose is to attempt to identify justice system trends that may help explain or be associated with the nature and level of the population of the Philadelphia Prisons.

A Note of Caution on the Use of Projections in This Chapter

This chapter discusses trends in aggregate data—usually weekly or annual totals over time, depending on the source—and makes projections in selected areas to provide a basis for considering possible future directions. The projections we present are selected from several different types of statistical analyses according to statistical and practical criteria and are based on data analyzed at the time of this first phase of work (at the end of 2005).[1] Several cautions should be kept in mind in considering these (or any) projections:

First, they are produced by statistical procedures that share in common the assumption that this is what the future might look like if the factors and influences operating in the past and present in the data will operate the same way in the future. (This is the "nothing else changes" assumption framing most projections.) This assumption is highly problematic because, of course, many things can change in the near and longer term future and probably will. When modeling trends, we therefore adopted the more conservative choices presented by statistical models in conducting projections.

Second, the purpose of the projections is not really to try to estimate the "actual" or "true" future. Instead, they are best viewed as a planning tool, a means for arguing the nature and implications of possible emerging trends. They could be used, for example, to take the position, "if we don't do anything, this is where things appear to be headed." Such a data-grounded discussion allows officials to make their own assumptions and to develop strategies intended to modify the projected future.

Third, it is possible that various sources of the aggregate data analyzed in this report carry with them certain limitations (like missing data) and inconsistencies. For example, improvements in reporting or verifying data may mean that totals over time are measured somewhat differently—and that changes in recording procedures themselves produce changes in the levels and numbers of what is being measured. Although they are the best available for

[1] We requested data from all relevant agencies through 2005. The analysis proceeded on the basis of the data provided at the close of 2005.

planning purposes, these possible limitations represent another reason for making use of these data with caution.

Finally, aggregate data—totals counting phenomena on a daily, weekly, monthly or annual basis—are in a sense relatively crude or gross measures of changes that may be going on and may mask important changes occurring at more specific levels.

Note that the Figures referred to in this chapter are included in Appendix A.

B. Trends in the Inmate Population over Time

General Trend: The Steady Upward Climb in the Numbers of Inmates Confined in the Philadelphia Prisons

In an initial meeting with the Criminal Justice Coordinating Committee, we displayed a chart (shown in Appendix A as Figure 1) showing that the annual average daily population of the Philadelphia Prisons more than doubled from 1960 through 1999, with a sharp turn upwards in the inmate population beginning in the late 1970s.

Figure 2 in Appendix A overlaps and extends that trend analysis by focusing on the weekly average daily population for the period 1996 through 2005. From a level of 5,479 inmates at the beginning of 1996, the daily population increased by about 45 percent during that ten year period to 7,773 by the end of 2005 (reaching a high of 8,211 in October before the seasonal year-end decline). Projections from these data suggest a level of around 8,770 late in 2008 (Figure 3).[2]

In general, subsequent and future changes notwithstanding, the historical trend shows nearly unrelenting upward pressure to increase the number of inmates held in the Philadelphia Prisons.

Exceptions to the General Trend: Three Significant Reductions in Population Levels

Historically, there have been three major interruptions to this trend. Consideration of these dramatic reductions in population, in contradiction to the overall generally increasing trend in the number of inmates held, may offer some understanding of the dynamics of forces affecting increases and reductions in population levels.

1) 1983-84: Figure 1 in Appendix A shows an 800 inmate drop in the annual average daily inmate population, followed by a resumption of the abruptly increasing population trend.

2) 1990: the annual average daily population declined by about 500 inmates through 1994, after which it returned to a sharp increase.

[2] Since the time of these analyses in early 2005, many pressures have affected the population, including the necessity of new arrangements with locations outside of Philadelphia housing inmates. At the time of this report, the overall population hovered near 8,900 inmates.

3) 2003: Figure 2 shows that, after peaking in 2002 at 7,558 inmates (weekly average daily population), the population then dropped 1,143 in weekly daily average in 2003 to 6,615 inmates.

Understanding the exceptions to the strong historical upward trend in inmate population levels might offer some insight into influences on the population—and suggest strategies for reducing it. The interpretations we offer here amount to conjecture—based on hindsight, our past work and experience. We trust that others can supply more informed explanations for these counter-trend reductions in the inmate population.

Reduction of the Mid-1980s: The cause of this reduction is uncertain (and our knowledge of history may be insufficient). At around this time, we can hypothesize at least two influences on the level of the inmate population. First, after substantial field testing, Municipal Court adopted "bail guidelines," which brought structure to pretrial release decisionmaking at the—then—"Roundhouse". The bail guidelines gave the court the opportunity to create the role of bail commissioners who would replace Municipal Court judges in the first-stage bail and release function. (These were formally adopted by Municipal Court at the end of 1981.) Second, and probably more significantly, crowding reduction actions were taking place under the Jackson v. Hendrik court, including various attempts to release from confinement persons falling in certain categories, and the institution of the Jackson reviews. The population reduction effects of these or other actions, unfortunately, were relatively short-lived. As in other major American population centers, the full effects of the War on Drugs really hit the Philadelphia justice system in the mid- and late-1980s, translating into a resumption of the upward climb in inmate population levels.

Reduction during 1990-1994: A variety of actions may explain the reduction in the inmate population during this period. Certainly, the full effect of the array of emergency procedures resulting from the state and federal crowding litigation (the original state court case, Jackson v. Hendrick, joined by a federal case, Harris v. Reeves) may have been felt and served to reduce the population. Various emergency release procedures may have contributed to the downward direction of the population, including improvements in pretrial practices (pretrial release guidelines, supervision, Treatment Court, the Female Offenders' Comprehensive and Integrated Services Network, the Forensic Intensive Recovery Program) as well as implementation of post-conviction options and special/early release procedures. In the late-1980s, the Court of Common Pleas had embarked on a reform of caseflow management procedures, focusing initially but not exclusively on drug cases. The effect on inventory—as will be shown in later figures—was to dramatically reduce the backlog of felony cases awaiting adjudication in Common Pleas. This may have relieved the inmate population by moving long-standing cases out of detention (either to release in the community or to confinement in the state system). All this said, however, arrest patterns may also have had a major influence on this drop in population level. (Arrest patterns will be discussed in the next section.) Beginning in 1989, we see declining arrests for index offenses overall, and for property and drug offenses, as well as a slight decline in arrests for violent crimes. This period also corresponds to a decline in reported crime in index and property crime categories. We are left with the question: Was it the reduced volume of arrests, backlog reduction, the emergency procedures, or a combination of all three that accounted for the sharp reduction in the population of the Philadelphia Prisons?

Reduction from 2002-2003: Perhaps the most likely explanation for the population reduction in this period is the effect of Operation Safe Streets beginning in mid-2002. According to official pronouncements, the aim of Safe Streets was not to increase arrests—but to discourage crime by police presence. Anecdotal information suggests that the strategy resulted, at least initially, in reduced numbers of arrests in Philadelphia. This reduction in arrests may have translated into a reduced inmate population. If this is accurate, we see the decrease in arrest volume playing a major role in inmate population level.

Other Trends in the Inmate Population: Males, Females and Juveniles

The challenges associated with the upward population trend are not only posed by the total volume of inmates, but also by the types or categories of inmates that may require special housing. Aggregate data were available for male, female and youth inmates (from 1999 only).

Male inmates: Unsurprisingly, Appendix A Figure 4 shows that the overall population trend over the last ten years is driven mainly by the male inmate population.

Female inmates: Though smaller in number, the weekly average daily female population increased sharply from 598 at the beginning of 1999 to 918 in the last quarter of 2003 (Figure 5), an increase of about 54 percent. Since then the number of female inmates has leveled off at this higher level (with seasonal end-of-year drops in number to about 770 inmates) and is projected to increase slightly over the next two years to a maximum of around 960 and a minimum of around 880 female inmates by the end of 2007.

Youthful offenders: Since 1999, the population of youthful offenders at first dropped, with some fluctuation, to a low of 49 in 2003 (Figure 6). Since then, however, the youthful population has been heading steadily upward to about 130 at the end of 2005 —and is projected to continue in this direction for the next couple of years, reaching at least 150 at the end of 2008, according to our most conservative projection. A less conservative projection places the youth population at around 180 inmates.

C. Trends in Reported Crime, Arrests, and Police Force Strength

Reported Crime versus Arrests[3]

Figure 7 contrasts annual reported crimes (total) and arrests (total) from 1990 to 2004. Reported crime increased sharply from 1993 to 1998 and then dropped fairly sharply until 2000. After a short increase in 2001, reported crime appeared to level off and then decrease starting in 2003 until 2004. At the gross level, it appears that trends in arrests have not necessarily paralleled trends in reported crime. During that 15 year period, total arrests peaked in 2001 and started declining through 2004.

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[3] Note: These analyses are based on data through 2004 only. These were the most recent data provided at the time of this work.

Reported Index Offenses: Property and Violent Crimes

Figure 8 in Appendix A places reported crime in a longer term perspective, from 1978 through 2004. In general terms, the trend in total reported index offenses is driven by that of property offenses, which increased from 1978 through about 1988 and then began declining (with fluctuation) through 2004. Since 1998 the trend in the property category has been steadily downward through 2004.

A different trend is evident for reported violent crimes: with some slight fluctuation these reported offenses have headed in a generally upward direction since 1978, peaking in 1991, 1995 and 1999 with a slight decline through 2004. Compared to 1978, reported violent crimes were about 69 percent higher in 2004.

Arrests for Selected Categories of Offenses

Figure 9 in Appendix A portrays annual arrests by selected categories:

- *Property (and total index) offense arrests* showed no major fluctuations between 1978 and 1986, when they started increasing sharply through 1989 and then, with some fluctuation, began a steady decline through 2004 to levels lower than in 1978.

- *Arrests for violent crimes* increased sharply between 1978 and 1982, then declined and leveled downward until about 1997. From 1997 through 2000, violent crime arrests increased sharply and then began declining again through 2003. They experienced a slight increase in 2004.

- *Drug arrests*: The most striking trend overall is the dramatic increase in drug arrests from 1979 through 2004. The pattern of increase is not a simple linear one. First, drug arrests roughly tripled from 1979 through 1988. Next, drug arrests declined sharply, with some fluctuation, by almost half from 1988 (13,468) through 1996 (7,768). Then, from 1996 drug arrests abruptly increased, roughly tripling in number (22,111) by 2001. Drug arrests dropped from 2001 through 2003, before turning back upward in 2004 (20,058). In short, in 2004 drug arrests still numbered about five times the volume experienced in 1979 and almost three times the volume experienced in 1996.

Police Force Strength

Figure 10 in Appendix A depicts the trend in the number of Philadelphia police officers[4] from 1978 to 2005. From 1978 the number of officers declined sharply and continuously through 1989 (from 6,773 to 4,569 officers, a reduction of 33 percent in force strength). This trend did not have parallels in any of the trends in arrest or reported crime. (In fact, index, property and drug offense arrests increased during the same period.) Between 1990 and 1994 the trend continued to be slightly downward (to 4,356 officers in 1994). Then, from 1995 through 1997 the number of officers increased sharply (by almost 700), and, with fluctuation, leveled off

[4] Ranking and command level police personnel are not included in these numbers.

at this level and reached 5,206 officers in 2003, but then declined again in 2004 and 2005 to 4,988 officers.

Although the drop in police numbers did not produce parallel drops in arrests during the period through 1989, the increases (and fluctuations) in police numbers did seem closely related to the trend in drug arrests.[5] Specifically, the observed increases and decreases in officer numbers preceded by one year the corresponding increases and decreases in drug arrests. The lag (from officer numbers to numbers of drug arrests) may be explained by the officer training period that follows hiring and precedes assignment to the street.

These parallel trends, though, suggest a close impact of police officer numbers on drug arrests post-1989. Thus, post-1989 at least, the numbers of officers on the force appeared to be related to drug arrest volume, which in turn was related to court caseload and Prisons population increase.

Geography of Arrests (via Preliminary Arraignment Data) by Police District

Tables 1-3 and Figure 11 in Appendix A illustrate geographic patterns in arrests in Philadelphia from 1994-2005 based on precinct information from cases reaching preliminary arraignment in Municipal Court.[6] These tables and figures show the top five districts contributing criminal cases to the courts for a) all criminal cases, b) drug cases, and c) non-drug cases from 1994 through 2005. Although, of course, arrests were made in districts across Philadelphia, arrests were not generated by all districts equally.

While the relative contributions of the top five police districts to the entering criminal caseload changed somewhat from year to year, each year a disproportionate share of the criminal caseload was contributed from a small number of districts.

- *Five districts (the 25th, 24th, 26th, 35th, and 15th) explained 38 percent of all criminal cases* entering the courts in the 11 year period from 1994 through 2005; the 25th district alone contributed 12 percent of all cases.

- *Five districts (the 25th, 15th, 24th, 35th, and 6th) accounted for 34 percent of all criminal cases not involving drug offenses*; the 25th district contributed about eight percent.

- *Five districts accounted for more than half (56 percent) of all drug cases* entering the courts between 1994 and 2005; the 25th district alone contributed nearly one-fourth (23 percent) of all drug cases.

The geographic patterns of arrests within Philadelphia set the mold for the make-up of the criminal caseload entering the courts and, by extension, the composition of the population of inmates in the Philadelphia Prisons. The same neighborhoods that were the focus of

[5] A similar parallel trend is found for drug case preliminary arraignments.

[6] Although some arrests drop out prior to reaching preliminary arraignment, the numbers and types of cases entering the justice process are governed by patterns in arrests. For the purposes of illustrating the geography of arrests in Philadelphia, preliminary arraignments are used here because the district of arrest information was available.

enforcement initiatives will be found to be dominant in producing defendants in the criminal caseload, the probation caseload, the bench warrant caseload, the drug court caseload and the Prisons population. Logically, then, these geographic patterns have implications for population (and crime) reduction strategies.

D. Criminal Cases Entering the Courts at Preliminary Arraignment

We have made use of several sources of data to examine trends in the processing of criminal cases in the Philadelphia courts. These include:

- *Preliminary arraignment data* (January 1994 through September 2005) gauging the criminal caseload post-arrest and upon entry into the justice process;
- *Municipal Court annual data* from 1978 through 2005; and
- *Court of Common Pleas* annual data from 1978 through 2005.

Cases Entering the Justice Process at Preliminary Arraignment

Figure 12 in Appendix A shows the trend in weekly numbers of criminal cases entering the Philadelphia courts at Municipal Court preliminary arraignment from January 1994 through September 2005. With some fluctuation, the basic picture of the weekly entering criminal caseload is of a more than doubling from 650 cases in 1994 to peaks in 2000 and 2002 above 1,400 cases. This trend was followed by a drop in volume to around 800—with notable fluctuation through 2005. The period from 2003 through 2005 saw a sharp increase, then decrease and then increase to around 1,100 by the end of 2005. By the end of 2005, the number of criminal cases entering the Philadelphia courts weekly at preliminary arraignment had reached almost twice the level seen at the beginning of 1994.

Two projections at the right-hand end of Figure 12 suggest that criminal cases entering the justice process at preliminary arraignment will average between 1,100 and 1,200 cases weekly slightly increasing through 2007. Thus, based on these projections, the courts would not be facing the extremes in volume of 2000 and 2002, but will still receive cases at this new, high volume plateau.

Misdemeanor vs. Felony Cases Entering at Preliminary Arraignment

In addition to the volume, the seriousness (and type) of criminal cases entering the courts has a bearing on the use of confinement—in the sense that more serious charges are, in general, more likely to involve confinement at some stage and felony cases, in general—at least those going to trial—take longer to adjudicate than misdemeanor cases going to trial.

Misdemeanor Case Trend: Figure 13 in Appendix A shows the trend in the weekly number of misdemeanors entering at preliminary arraignment since 1994 and two projections through 2007. The trend for misdemeanors is similar to that shown for all cases in Figure 12: generally the weekly volume increased from 1994 from about 200 per week to a peak in 2002 of about three times that volume (600 cases per week). Then, with some notable fluctuation, misdemeanors generally dropped from 2002 until 2005, but then turned up sharply in 2005.

Misdemeanor Case Projection: The projection sees the weekly number of misdemeanor cases entering Municipal Court increasing slightly but remaining in the 350-450 range through 2007 (just under 400 at the end of 2007). This is less than the peak level of 2002 but still at a high level of volume compared to recent years.

Felony Case Trend: Figure 14 in Appendix A shows a somewhat similar trend and projection for felony cases entering the courts at preliminary arraignment. The peak for felony cases came earlier—in 2000—felony volume, then plateaued or decreased slightly through 2002, and then declined further going into 2003. After 2003, felony cases then began a slow climb upward toward the end of 2005.

Felony Case Projection: The beginning of 2005 showed a drop in the numbers of felony cases entering weekly at preliminary arraignment, but the volume increased in the second half of 2005 to reach near historic high levels (over 700 cases per week). The projection suggests that the volume of felony cases at preliminary arraignment should remain just under 700 over the next two years.

Drug vs. Non-Drug Cases Entering at Preliminary Arraignment

Drug cases have played a major role in arrests and in the criminal caseload in the Philadelphia courts, particularly since the late 1980s. In fact, the volume of drug cases has played a central role in the crowding problem historically. Figures 15 and 16 in Appendix A divide criminal cases simply into those involving drug charges and those not (regardless of felony/misdemeanor classification) and illustrate this significant role. These figures—like the arrest figures—suggest that drug arrests have exerted a pivotal impact on the criminal caseload.

Non-drug cases: When the trend in the volume of non-drug cases entering the courts weekly is examined in Figure 15, the general trend is one of slight increase over the 11 year period of data. Within that generality, there was an abrupt increase from 1994 to 1995, a drop from 1995 to 1996 and then a steady climb in weekly volume to about 2000 (one week in the year 2000 reached 1,000 cases). Sharp drops occurred in 2002 and 2004, but each was followed by sharp increases. The projection is for a steady volume of non-drug cases entering the criminal process at preliminary arraignment from a low 600 to a high of 730 cases per week through 2007.

Drug cases: The trend of weekly drug case volume dropped sharply from 1995 to 1996 and then increased abruptly from about 100 cases per week in 1996 to nearly five times that volume (490) in 2000 (Figure 16). From the 2000 peak, weekly drug cases dropped precipitously in 2000 and then rebounded to a new weekly high of 550 in 2002. After 2002, the number of weekly drug cases dropped somewhat and plateaued (with fluctuation) at around 350 cases. The projection suggests that the number of drug cases will increase slightly to around 400 drug cases entering Municipal Court weekly through 2007.

E. Overviews of Case Processing in Municipal Court and Court of Common Pleas

This section begins review of case processing data drawn from the annual reports of both courts. Data for both courts begin, with a few exceptions, with 1978 (age of pending and time to disposition data begin with the early 1990s). For both Municipal Court and the Court of Common Pleas, available data extend through 2005 in all instances.

Municipal Court Overview: Annual Incoming, Disposed and End-of-Year Inventory Cases

Figure 17 in Appendix A presents an overview of case processing trends in Municipal Court from 1978 through 2005, summarizing annual totals of incoming and disposed cases, as well as the number not disposed (in inventory) at the end of a given year.

First, the trends relating to incoming (new) and disposed cases mirror one another fairly closely. This should be expected in a court with relatively short turnaround times (e.g., ideally several weeks for preliminary hearings and two to three months for misdemeanor trials). Trends in both the number of incoming and disposed cases are mainly a function of the volume of entering cases (produced by arrests).

Incoming cases and dispositions peaked in Municipal Court twice since 1978. The first peak was in the early 1980s. After a drop in volume of both measures in 1983 and 1984, they increased slightly and leveled off for roughly the decade from 1986 through 1996. From 1996 through 2001, the workload (incoming cases and dispositions) increased dramatically. From 2001 through 2005, it appeared that both measures declined from extremely high levels to merely very high levels.

Generally, dispositions appeared to keep up with new cases. In 2004, however, it appears that incoming cases (misdemeanor and felony) increased, but dispositions decreased. This divide did not continue into 2005. It is the gap between incoming cases and dispositions that results in the end-of-the-year inventory (undisposed cases). Since about 1996, the data appear to show that the increase in workload translated steadily into an increase in the end-of-the year inventory, with a very steep increase in 2004 and 2005. In fact, compared to 1978 (6,553 cases) or even 1993 (6,194 cases), the Municipal Court inventory at the end of 2005 (26,994 cases) had quadrupled; compared with 2003, the last year when the trend was downward, there is a 40 percent increase in the 2005 inventory.

Although it is difficult to draw specific inferences from these annual aggregate data with certainty, to the extent that Municipal Court defendants involved in either the undisposed misdemeanor or felony cases (for preliminary hearings) were confined during the proceedings, the direction of the Municipal Court inventory may represent an upward pressure on confinement capacity over the last decade. Though Municipal Court cases "stay" in pending status for much briefer periods than felony cases at the Common Pleas level, the large volume of cases in the Municipal Court inventory throughout the last years makes the inventory a potentially significant factor in the use of local confinement.

Court of Common Pleas Overview: Annual Incoming, Disposed and End-of-Year Inventory Cases

Figure 18 in Appendix A summarizes the same trends for the Court of Common Pleas caseload from 1978 through 2005. The first general trend is that the court workload (measured as incoming cases and dispositions) has increased substantially, curving upward since 1978. From 2002 to 2004, however, incoming felony cases and dispositions declined in Common Pleas. However, 2005 showed an increase in both measures.

Pending cases (end-of-year inventory) in Common Pleas grew from 1978 along with incoming cases. However, in two periods (1990-91 and 2001-02) large increases in dispositions resulted in large reductions in the inventory (1990-91 and 2001-03). This reduction in inventory appeared to cease and reverse direction in 2003, increasing from 5,986 to 6,594 in 2005.

Because of their greater seriousness, Common Pleas felony cases in general are more likely to involve confinement of defendants. In addition, because of the difference in procedure, felony cases going to trial generally take longer to adjudicate than misdemeanor cases heading for trial in Municipal Court. For these reasons, the direction of the trend in the number of undisposed cases in Common Pleas at year's end has greater potential significance for local confinement than the Municipal Court year-end inventory—despite the much smaller volume of Common Pleas cases in inventory.

Projections of Incoming Cases in Municipal Court and Common Pleas

Figure 19 displays and contrasts the projected incoming annual caseloads for Municipal Court and Common Pleas. Incoming cases are projected to increase in Municipal Court through 2012 from about 57,200 cases in 2005 to 65,200 cases by 2012 (about a 14 percent increase). The incoming caseload of felony cases is projected to increase more sharply in Common Pleas from about 14,600 in 2005 to about 17,200 in 2012 (about an 18 percent increase).

The implications of these projections are: a) that there will be no lessening of volume in the criminal caseload; and b) that the oncoming increases in entering cases will be proportionately greater in Common Pleas than Municipal Court; but c) because of the much larger volume Municipal Court deals with overall, the fourteen percent increase at the front end of case processing may have the most important implications. Assuming the relative use of confinement in incoming cases remains constant, the increase in the volume of cases alone would add upward pressure on the use of local confinement. Should the nature of the incoming caseload also change (become more serious, higher risk, more confinement prone), then Municipal Court's front-end confinement decisions affecting pretrial release may become even more influential in affecting the population of the Prisons.

Projections of Dispositions in Municipal Court and Common Pleas

Figure 20 in Appendix A contrasts the projection for case dispositions in the two courts. The fact that they appear to mirror the projections in the previous figure for incoming cases suggests that the number of dispositions should roughly match the number of new cases. The

number of projected Common Pleas dispositions should increase more (be larger) than the projected number of incoming cases, giving hope that the inventory would gradually decrease. In Municipal Court, in contrast, it appears that projected incoming cases will outpace case dispositions, an imbalance that will not shrink the inventory.

Projections of End-of-Year Inventory in Municipal Court and Common Pleas

Based on trends from 1978 through 2005, Figure 21 displays projections through 2012 for end-of-year inventory in Municipal and Common Pleas Courts, a product of each court's capacity to produce dispositions at a rate that keeps up with new entering criminal cases. The Municipal Court inventory is projected to increase through the year 2012 to more than 42,000 cases (a 57 percent increase from 2005). The Common Pleas inventory, based on trends through 2005, is projected to increase at a lower rate, producing a maximum increase of 21 percent from the year 2005 (6,594 cases) through the year 2012 (just under 8,000 cases).

F. Municipal Court Dispositions: Trends and Projections

Misdemeanor Dispositions

For the purposes of this analysis (and based on the annual court report data), Municipal Court criminal case dispositions can be divided into misdemeanor trial and felony preliminary hearing dispositions.[7] Figure 22 in Appendix A shows the trends in misdemeanor case dispositions from 1978 through 2005.

Trial Dispositions: Perhaps the most striking trend is the steady increase in dispositions by misdemeanor trial from 1978 (about 4,000) through 2001 (about 20,000 cases). The increase in trial dispositions was particularly abrupt from about 1999 through 2002. Since 2003, however, misdemeanor trial dispositions dropped sharply to the relatively moderate level of about 10,000 cases.

Misdemeanor Dismissals: After a big drop in dismissals following a relatively high level in the late 1970s and early 1980s (from about 13,000 cases to under 5,000 cases annually), dismissals in Municipal Court misdemeanor cases had been increasing sharply from 1986 (4,544 cases) through 1999 (13,839 cases annually). Dismissals started dropping abruptly again from 1999 through 2003 (to 6,465 cases). However, since 2004 the trend has been upward again, reaching 9,176 cases in 2005.

Misdemeanor Guilty Pleas: Disposition by guilty plea showed a steady and gradual decline from the high levels seen in 1980 (over 4,200 cases per year) to a lowest level of 1,166 cases in 1997. Since then the trend turned upward but leveled off at just above 1,500 annually in 2005. This number of pleas is not nearly close to the highest levels of the early 1980s.

Projections of Misdemeanor Trial vs. Plea Dispositions: Figure 23 in Appendix A contrasts projections for disposition by trial and by guilty plea in Municipal Court misdemeanor

[7]Other relevant Municipal Court criminal data, not available for this analysis, would include data for sentencing and resentencing in probation/parole violations.

cases. These projections suggest that both types of dispositions will continue to increase over the next several years, with trials, however, increasing at an almost double rate (100 percent increase vs. 53 percent projected increase for pleas). Because trial dispositions generally take longer than guilty pleas in Municipal Court and result in a higher probability of some confinement, one implication of these projections is that misdemeanor defendants may more often be confined and, when confined, may spend longer in confinement as pleas remain the less common method of case resolution.

Preliminary Hearing Dispositions (Felony Cases)

Figure 24 shows that preliminary hearing dispositions (held for court vs. dismissed) moved upward in parallel, with some fluctuations, from the late 1970s through about 1997. While held for court dispositions climbed through 2002, they dropped sharply in 2003, and continued the downward trend in 2004 and 2005. Preliminary hearing dismissals spiked more than three-fold from 5,381 in 1997 to 18,658 in 2001 according to Municipal Court data, and then dropped back sharply to 8,500 in 2002. In 2003, dismissals at preliminary hearings experienced an abrupt increase to 11,810, followed again by an even sharper decline in 2004. The trend seems to have leveled off in 2005 at just above 7,500.

If dismissals of felony cases will continue to be on the increase as the projections in this figure suggest, the implications for local confinement would be to relieve pressure on the population of the Prisons as fewer felony cases would go forward to Common Pleas, resulting in less post-preliminary hearing confinement in felony cases. (Note: we do not have aggregate data in this analysis differentiating reasons for dismissals, which may change over time as well.)

G. Common Pleas Dispositions: Trends and Projections

Type of Disposition: Trial vs. Plea

Figure 25 in Appendix A compares the trends in type of case disposition in Common Pleas from 1978-2005.

Dismissals: With some fluctuation, dismissals have increased 71 percent, from under 1,763 in 1978 to 3,019 in 2005. (Dismissals had peaked to over 4,000 in 2002.) In 2005, dismissals represented about 21 percent of all dispositions.

Guilty Pleas: Guilty pleas had increased sharply from 2,162 per year at the end of the 1970s to 12,551 per year in 1990. This huge increase of 480 percent is explained mostly by efforts in the Court of Common Pleas to address its backlog through a major initiative. Even removing that spike in guilty pleas, however, the overall trend in guilty plea dispositions was a steady increase through about 2002 to roughly 10,200 cases, still nearly a five-fold increase over the late 1970s. Guilty pleas began dropping after 2002 until 2005, when they appear to begin to increase again to 8,500 annually. In 2005, pleas represented about 58 percent of all dispositions.

Non-Jury Trials: During this same period, the use of non-jury trials fluctuated, with the two highest peaks in 1982 and 1990 (to just over 5,000). But, by 2005 the use of non-jury trials

had returned to a level just below that of 1978 (a 27-year low). The trend since 1990, therefore, was generally downward. In 2005, non-jury trials represented about 16 percent of dispositions.

Jury Trials: Jury trials remained the rarest means of disposition in felony cases in Common Pleas. However, the general trend has been upward: from 1978 to 2005 they almost doubled (increasing from around 357 in 1978 to about 691 in 2005), with the highest peak reached in 2004 (854 jury trials). In 2005, they declined slightly just as non-jury trials increased. In 2005, jury trials represented 4.7 percent of dispositions.

Figure 26 in Appendix A contrasts the trends in Common Pleas dispositions by plea with non-jury trials and jury trials from 1978 with projections through 2012. As compared to the more recent years, the projection for non-jury trials over the next six years is for a continuing slight decline (around 3,000). During the same period, the number of jury trials per year is projected to plateau at current levels over the next six years (around 700). Projection for dispositions by plea suggests about a 24 percent increase over the 2005 level to about 10,500 guilty plea dispositions in 2012.

<u>New Cases by Program</u>

Figure 27 in Appendix A shows that the volume of felony cases entering the Court of Common Pleas had generally been increasing since 1978—with one noticeable exception. The peak volume of about 17,300 new cases was reached in 1991 but the volume dropped in 1993 only to reach the peak again in 2002. After 2002 the volume of new cases started dropping again but turned upward again in 2005. As of 2005, the incoming caseload had reached roughly twice the volume handled by Common Pleas in the late 1970s.

This trend was explained mostly by cases entering the List Program (the highest volume adjudication program), but the Majors/Section Program option showed a gradual but steady two-fold increase from about 1,900 in 1978 to about 4,000 in 2005. The Homicide Program showed an almost two-fold increase from late 1970s through 1990, mostly accounted for by the late 1980s (from 307 homicide cases in 1978 to 570 in 1990), but since then it has declined again to the lower volume of the late 1970s, including the upturn from 237 cases in 2004 to 312 cases in 2005.

We noted earlier that, as a principal, increasing volume in felony cases generally translates into upward pressure on the population of the Philadelphia Prisons because of the greater likelihood of confinement in more serious (felony) cases. The increasing volume of new cases in the Section Program specifically means increases in the kinds of cases requiring more time to disposition. To the extent that defendants in these cases are in pretrial detention, these increases tend to produce longer stays in pretrial detention.

<u>Disposition by Common Pleas Program</u>

Figure 28 in Appendix A shows that dispositions in Common Pleas overall fairly closely mirrored the volume of incoming cases. The drop in dispositions from 2002 through 2004 mirrors a drop in volume of new felony cases shown in Figure 27. As new cases headed back up

in 2005, so did dispositions in Common Pleas overall. The main volume of dispositions has been produced in the List Program, which is also where the main volume of new cases has been directed—all in all, a logical finding.

The same upturn in incoming cases was seen in the Section Program in 2005; however, dispositions did not increase in parallel, suggesting a growing inventory in the Section Program.

End-of-Year Inventory ("Backlog")

Figure 29 shows the end-of-year inventory in Common Pleas from 1978 through 2005. After the dramatic reduction of inventory around 1990-91, the inventory overall began to grow again as the volume of incoming cases began to grow through 2000. With dispositions peaking in 2002, the overall effect was a reduction in the size of the inventory through about 2003. This was followed, however, with an increase in inventory from 2003 to 2005.

- The List Program inventory mirrored the overall trend, which dropped from 9,175 cases in 2000 to about 6,000 cases in 2003, moving up in 2004 and 2005; the List inventory, however decreased in 2005.

- The inventory for the Section Program started growing in about 1999 and moved clearly upwards through 2005.

- The homicide inventory grew slightly but steadily since 1992 from 318 cases to 426 cases in 2003. In 2004 it declined almost 100 cases, but it went up again in 2005 (364 cases).

In 2003, for the first time since 1978, the Section Program inventory was larger than the List inventory. This happened again in 2005. Taken with the slightly increasing Homicide inventory, this suggests that the Common Pleas backlog is increasingly explained by cases going to bench or jury trial.

Age of Cases in Common Pleas Inventory

For the period 1993-2005, Figure 30 in Appendix A uses two measures of the "age" of felony cases in Common Pleas inventory at the end of the year—number of cases older than 120 days (from filing) and number of cases older than 360 days. Since about 2000-01, the numbers of cases in inventory older than either measure had been declining notably—until 2003. From 2003 through 2005, the number of cases in inventory older than 120 days and older than 360 days has been heading upward at about the same rate. The number of cases older than 360 days increased 29 percent from 900 in 2003 to 1,160 cases in 2005. The number of cases older than 120 days in 2003 increased about 30 percent from 2,712 in 2003 to 3,534 cases in 2005.

The implication of this finding is that, to the extent that defendants in Common Pleas cases are confined awaiting adjudication, the "older" inventory suggests longer stays in confinement, just as the greater numbers of cases in inventory shown in the previous figure suggests increasing numbers of defendants in confinement.

Average Time to Disposition

Obviously, the age of a case in inventory is a product of the time the case has taken toward disposition. Figure 31 displays the average time (in days) to disposition in Common Pleas cases disposed in the years 1994 through 2005. For defendants awaiting adjudication in confinement, the shorter the time to case disposition, the shorter the stay in pretrial detention.

Figure 31 in Appendix A shows that:

- The average time to disposition for Common Pleas cases overall is shorter in 2005 (at 160 days) than it was in 1994 (when it averaged 182 days). Time to disposition had begun to lengthen overall in Common Pleas cases starting in 1997 reaching 219 days per case in 2000. Since 2000, however, the average time to disposition in Common Pleas generally decreased again through 2003. In 2004 it began increasing again and plateaued in 2005 at an average of 160 days per disposed case.

- Time to disposition in Homicide Program cases had been dropping sharply from a peak average of 602 days per disposed case in 2002 to 371 days in 2004. The trend reversed in 2005, however, increasing to an average time of 478 days.

- Time to disposition in List Program cases had been steadily declining since 2000 (192 days per case) through 2003 (82 days per case) until showing an increase to 116 days per case in 2004. In 2005, time to disposition for List cases dropped again to 97 days per case.

- In contrast, time to disposition in Section Program cases has been increasing since 2002, from an average time of 220 days in 2002 to 315 days in 2005—a time to disposition well above the lows of around 200 days or less achieved in 1997 and 1998.

These time-to-disposition findings parallel those reported for the age of inventory cases. Despite general trends of shorter average time to disposition in Common Pleas overall and in List Program cases in particular, cases in the Section and Homicide Programs have been taking longer to be disposed. Because the probability of pretrial confinement is higher in these two categories of cases, the longer time to disposition suggests longer periods of pretrial detention for defendants in these cases.

H. The Relevance of the Probation and Parole Caseload

We were not able to examine caseload data from the Adult Probation and Parole Division (APPD) in depth. However, from available annual reports (with some missing years of data), we culled the following trends shown in Appendix A in Figures 32 and 33:

- From 1991 through 2003, the APPD caseload (annual number of active cases) increased 72 percent from about 35,600 cases to about 61,200 cases.

- Although data only extend through 2002, violations of probation and/or parole increased even more sharply, from about 22,500 in 1992 to about 40,900 in 2002, an increase of 82 percent.

- Cases in wanted card status increased sharply as well, about 76 percent from 7,000 in 1992 to about 12,300 in 2003.

- Cases with detainers lodged increased almost as sharply, almost doubling from 1992 through 2002 (from about 5,000 to 9,400). They decreased in 2003 (no data are available for 2004 or 2005).

Even allowing for incomplete data, these figures suggest that a) the caseload volume of APPD has been growing sharply over the last decade or more; and b) the numbers of probationers and parolees having violations (detainers, wanted cards) has also increased dramatically. This last trend has direct implications for the population of the Prisons: increasing numbers of APPD clients have been either detained or been placed at risk of detention because of violations. Along with greatly increased volume—and improvements in information technology—increases in violations, wanted cards and detainers point to a more confinement-prone APPD caseload. This state of affairs amounts to an upward pressure on the population through adding numbers to confinement or adding additional holds to those confined, thus increasing the difficulty of gaining timely release.

I. Bench Warrants in the Philadelphia Courts

The generation of bench warrants is significant in thinking about inmate population level because the presence of bench warrants increases the likelihood that persons who are rearrested will be held in confinement, at least pending review of pretrial release in their bench warrant cases. Figures 34 through 39 in Appendix A display trends and projections relating to the generation of (weekly) bench warrants in the Philadelphia courts. Several findings stand out:

- In the mid-1990s bench warrants dropped sharply (starting at the end of 1995 through 1997) and then reversed course and headed sharply higher to peak in 1998. With fluctuation, bench warrants leveled out through most of 2001 and then began dropping into 2003. Yet the number of bench warrants issued per week increased again and leveled off in 2005. The projections suggest that somewhere between 400 and 500 bench warrants will be generated per week through 2007.
- Since 2000, the weekly number of felony bench warrants generally declined and is projected to level off around 240 per week by 2007.

- The number of misdemeanor bench warrants per week has fluctuated over time, but since 1998 has been roughly stable and is projected to remain stable at about 240 weekly through 2007.

- After a major drop in weekly numbers at the end of 1995, drug case bench warrants increased to a peak of 270 per week in 1998 and then 300 per week in 2000 and 2002. A decline in drug bench warrants was reversed in 2003; they increased (with fluctuation)

through 2005. Drug case bench warrants are projected to remain at around 220 weekly through 2007.

- The trend in non-drug case bench warrants has generally declined since 1998 from a high of 350 weekly to about 230 in 2005. Non-drug cases bench warrants are projected to reach a maximum of around 250 weekly by the end of 2007.

The implications of these findings are that bench warrants have been declining from the past decade and have stabilized at a lower-than-peak, though still high, level. The greatest impact has been in felony case bench warrants and in drug case bench warrants. Put another way, drug case bench warrants and felony bench warrants exert the greatest influence on bench warrant numbers generally.

- Figure 39 in Appendix A suggests that the major drop in bench warrants may not have been explained by changes in arrest volume entirely, but that the pretrial release guidelines and related interventions (supervision, Treatment Court, the FOCIS Network, etc.) associated with the City's crowding reduction strategy of the mid-1990s—at least in part—may have contributed to the major drop in bench warrants.

- This figure also suggests that the initially dramatic impact of the pretrial release guidelines may have been short-lived, as peak levels in weekly bench warrants returned by mid-1998.

CHAPTER THREE: THE POPULATION OF THE PHILADELPHIA PRISONS ON NOVEMBER 21, 2005: A SINGLE DAY ANALYSIS

A. Introduction

Chapter Three summarizes the findings from the second component of a three-part examination of the use of local confinement, reporting analysis of data describing the population of persons held in the Philadelphia Prisons on a given day, Monday, November 21, 2005.

The data presented in this chapter supplement those reported in Chapter Two (setting the context of the inmate population through trends analysis). This chapter also represents the latest in a series of jail studies conducted by the Temple team dating back to 1981. The most recent in-depth "on a given day" examination of the population of the Philadelphia Prisons (prior to this population study) was conducted by the Crime and Justice Research Institute on the population of the Prisons on May 31, 1995.[8] The figures and tables relating to Chapter Three are presented in Appendix B.

A Note on Study Method

In employing the single-day approach, we recognized that the overall size and characteristics of the population of the Prisons may change from day to day and fluctuate over time (during the week, month and year). (For an illustration of this, see Figures 1 and 2 in Appendix A for Chapter Two, which chart the upward trend in the annual average daily population of the Philadelphia Prisons from 1960 through 2005.) This dynamic property of the inmate population is illustrated, for example, by the fact that the date selected for study last November preceded the transfer back to Philadelphia of more than 300 inmates from Delaware County. Seasonal patterns are also well-recognized (e.g., after August vacations, during end-of-the-year holidays, etc.) and affect the possible make-up of the population on a given day.

This limitation aside, however, this single- or typical-day approach can nevertheless provide an informative, cross-sectional ("snap-shot") look at the composition of the Philadelphia Prisons of value in planning for both institutional and community-based correctional capacity. Minor variation in population composition aside, an in-depth examination of one day can reasonably well represent how the population might look on many days and point to features of the processes that contribute to it.

The following findings are based on an in-depth study using both overall population data from the Prisons computer system (n=8,541) and a sample (n = 700) carefully drawn to represent the entire population on November 21, 2005.[9] Where data were available for all inmates, we employed full population data (this was rare). Most of the analyses involved considerable in-

[8] Before that, similar single-day studies were also conducted by Goldkamp in 1981, 1983, and 1991.

[9] The sampling approach involved disproportionately stratifying by institution: random samples of 100 were drawn from seven institutional categories to guarantee inclusion of all inmate categories and to minimize standard error. These were weighted to produce estimates of the full inmate population, plus or minus a margin of error. For a guide to standard error and the confidence intervals associated with different size population estimates, see Appendix D.

depth data collection and source cross-checking; this was done for the sample of inmates. Data were collected relating to legal, case-related, demographic, custody-related and other attributes associated with each of the sample inmates. Except where noted, the percentages reported are weighted sample percentages and, as such, should be interpreted as estimates of the total population of inmates on that day and as having a margin of error of three to four percentage points around the actual population values.[10]

B. Population by Correctional Institution

Appendix B Figure 1 displays the actual allocation of inmates among the eight principal institutional and other locations on the study date, by percentage and by number (based on total population data). Just under three-tenths of the day's Prisons population was housed in the Curran-Fromhold Correctional Facility (CFCF) (29 percent or 2,499 inmates). About another one-third was located in the House of Correction (18 percent or 1,555 inmates) and the Detention Center (16 percent or 1,392 inmates). Fourteen percent were housed in the Philadelphia Industrial Correctional Center (PICC) (14 percent or 1,184 inmates). Eight percent of the total population was made up of females (711 inmates) housed in the Riverside Correctional Facility, with seven percent being housed in Alternative and Special Detention units (599 inmates), six percent (475 inmates) in other jurisdictions, including Delaware County at the time, and two percent (126 inmates) out of custody. On the day of the study, 130 juveniles (being processed as adults) were held in the Prisons: 122 were in the House of Corrections, five were at Riverside, two were in the Detention Center and one was in Curran-Fromhold.

C. Legal Statuses of Philadelphia Inmates

The variety and combinations of reasons holding Philadelphia inmates on November 21, 2005, are summarized in population estimates presented in Appendix B in Figures 2, 3 and 4 and in Table 1.

Single vs. Multiple Holds

Figure 2 in Appendix B shows that slightly over half (57 percent) of inmates were confined in the Philadelphia institutions on the study date for only one reason (i.e., had only one hold). Nearly half (43 percent), however, were held for two or more reasons.

Reasons for Custody for Single Hold Inmates

Table 1 summarizes the single and multiple hold categories associated with the inmate population on the study date in November 2005.

- *Bail held*: more than half of the 2005 inmate population (an estimated 56 percent or 4,727 inmates) was awaiting trial; an estimated 28 percent of the total population was awaiting trial only while nearly as many were awaiting trial and held for another reason (27

[10]Note that we excluded the "out of custody" inmates from sampling as less relevant to studying the content of the population of inmates confined in the Philadelphia Prison System institutions. Thus, the total population from which the stratified sample was drawn was n=8,415.

percent). The largest dual hold bail-held category (an estimated 11 percent of the total population of inmates) included persons awaiting trial on a new charge and also held on a probation or parole detainer.

- *Sentenced inmates*: About one-third of all inmates (an estimated 33 percent or 2,755 inmates) were serving sentences in the Philadelphia Prisons in the November 2005 study, although only half of these (17 percent of the total population) were only serving sentences and held for no other reason. The largest sentence combination category, representing about one-fourth of all sentenced inmates and about eight percent of all inmates, consisted of persons serving a sentence and pending a DNA test.
- *Probation/parole detainers*: Roughly one-fourth of all inmates (an estimated 23 percent or 1,969 inmates) were being held on probationer or parole detainers, though only a small number (six percent) were only held on detainers.
- *Miscellaneous holds (warrants or detainers from other jurisdictions)*: An estimated 22 percent (1,892 inmates) were held on miscellaneous other warrants or detainers for other jurisdictions, but only one percent was held only for that reason.
- *Bench warrants/bench warrant bail*: An estimated ten percent (912 inmates) were held on bench warrants or on bench warrant bail; three percent were held only for these reasons.
- *Awaiting sentence*: An estimated three percent (269 inmates) were held pending sentencing ("sentence deferred"), but only one percent was held only for that reason.

<u>Largest Single-hold Categories</u>

Figure 2 in Appendix B highlights the largest single-hold custody categories of Philadelphia inmates:

- *Pretrial/bail*: An estimated 28 percent of the total population, or about 2,345 inmates, were held because they were awaiting trial and had not posted bail and for no other reason.
- *Serving sentences*: An estimated 17 percent of inmates, or about 1,896 inmates, were serving sentences (new sentences, "resentences" or backtime sentences) and had no other holds.
- Other "pure" or single-hold categories were much smaller: an estimated six percent or 532 inmates were held only because of probation or parole detainers, awaiting the conclusion of the violation process. An estimated three percent or 265 inmates were held only because of a bench warrant or only on bench warrant bail. An estimated two percent were held on miscellaneous holds, such as warrants from other jurisdictions etc.; and one percent was held only awaiting sentence.

D. Comparing the 2005 Confinement Statuses of Philadelphia Inmates to Earlier Studies

Table 1 and Figure 3 in Appendix B contrast the holds/legal statuses of Philadelphia inmates held on November 21, 2005, with inmates held on May 31, 1995, ten years earlier.

Figure 4 provides even more historical background, showing the same breakdowns of the inmate population from three earlier studies (1991, 1983, and 1981).[11]

Volume and Relative Legal Entanglement over Time

The most notable difference between the two study periods (1995 vs. 2005) is the approximately 70 percent increase in population volume: the 1995 study date population was 5,026 compared to the November 21, 2005, population of 8,541. Although the increases were substantial in almost all hold categories, the 2005 population differed in composition from the 1995 jail population in several important ways.

- *The most significant practical difference was the more than doubling of the estimated proportion of Philadelphia inmates held for more than one legal reason, from only 17 percent of the population in the 1995 study to 43 percent of the November 2005 daily inmate population. Even the 1991 jail study estimated only 14 percent of the inmate population to have multiple holds.*

The implication for consideration of jail reduction strategies is that the current inmate population is more complicated and more entangled in the legal process than previously—to a considerable degree.

Other Ten-Year Differences

- *The bail-held portion of the Philadelphia Prisons population increased substantially, not only proportionately (from an estimated 40 to 56 percent of the total population) but also numerically, more than doubling from 1,997 in 1995 to 4,727 in 2005.* Although the proportion of the population accounted for by bail-held only inmates changed very little (forming an estimated 31 percent of the 1995 population and 28 percent of the 2005 population) the numbers of detainees with only one hold increased numerically from 1,536 in 1995 to 2,345 inmates in 2005.
- *Although the estimated proportion of the sentenced inmate population shrank slightly, from 38 percent in 1995 to an estimated 33 percent in 2005, the overall numbers of persons serving sentences increased about 45 percent in volume.* Surprisingly, persons only serving sentences declined proportionately (from an estimated 33 percent in 1995 to 17 percent in 2005) and numerically (from 1,645 in the May 1995 study to 1,416 in the November 2005 study).
- Although the estimated proportion of inmates held on bench warrants or bench warrant bail changed only slightly from 1995 (eight percent) to 2005 (ten percent), the estimated number in this confinement status more than doubled from 420 to 912 inmates.

[11] The point of these comparisons is not to test statistical significance in differences among various studies, but to illustrate the differences in findings over time in different studies of the inmate population in Philadelphia and to take advantage of the prior studies to provide some historical context. The percentages in the prior studies were also derived from samples drawn from the overall populations and, as population estimates, are surrounded by margins of error.

- The estimated proportion of the overall inmate population accounted for by persons awaiting sentencing did not change (about three percent in each study), but the estimated numbers of inmates in that status increased from 168 in 1995 to 269 in 2005.

Themes in the Composition of the Prison Population over Time

Figure 5 in Appendix B contrasts the November 21, 2005, inmate population with past studies in another way by looking at "any" persons held on bail, any persons serving sentences, any held on bench warrants, etc. This graph shows:

- *a resurgence of the pretrial or bail-held population as a major component of the 2005 inmate population in comparison with the 1991 and 1995 studies*;
- *a drop in the sentenced only populations continuing over the last three studies; and*
- *an increase in the detainer and miscellaneous holds population components compared to 1995 and 1991.*

The Legal Statuses ("Holds") of Persons Held in the Principal Institutions

Figure 6 in Appendix B shows how persons in different legal statuses were apportioned to the principal institutions of the Philadelphia Prisons. No major facility was strictly specialized in the sense that it held only one type of inmate—with the exception of Riverside (the female institution). CFCF and the Detention Center show inmates with confinement statuses similar to the overall population profile (that is, they are mixed institutions). CFCF, the Detention Center and the House of Correction each had the largest populations of bail-held detainees. CFCF, the Detention Center and PICC held the largest sentenced populations.

Security Classification in the Philadelphia Prisons

Because questions have been raised about the type of housing that will be needed for the inmates of the Philadelphia Prisons, we obtained information from Prisons on the security classification of inmates on the study date. Figure 7 in Appendix B shows that an estimated one-fourth of the population of Philadelphia inmates were held in close custody (the highest security classification) and another quarter were held in medium security. Nearly half (46 percent) of all inmates were held in minimum security facility locations on the November 21, 2005, study date, and an estimated seven percent were in a community security setting.

The institutions varied notably by the security custody levels associated with their inmates. For example, more than half of CFCF inmates were in close supervision, and nearly another 40 percent were in medium custody. The security classifications of the PICC inmates closely resembled those of CFCF. Most of the Detention Center (84 percent) and House of Correction inmates (96 percent), however, were in minimum security settings. The women's facility, Riverside, was nearly half minimum security but also included similarly large portions of inmates in medium and close supervision settings. Most (80 percent) of the inmates in other settings were in minimum or community settings.

Figure 8 also shows how security classification varied by type of hold. For example, the largest (modal) security category for persons held on bail only and for persons only awaiting sentence was "minimum" custody, although twice as many detainees awaiting trial were held in close custody (35 percent) as sentenced persons (14 percent). Bench warrant only detainees and VOP only inmates were in predominantly minimum security settings. Close custody was the dominant setting for those awaiting sentence only.

E. Demographic and other Attributes of Inmates of the Philadelphia Prisons

Age: On November 21, 2005, the estimated median age of inmates in the Philadelphia Prisons was 30 years: an estimated 12 percent were 20 years old or younger; 23 percent were between 21 and 25 years old; 17 percent were between 26 and 30; 25 percent were between 31 and 40; and 23 percent were over 40. The age profile of the population was quite similar to that of the 1995 study.

Race/ethnicity: The racial composition of the inmate population changed little from the 1995 study. On November, 21, 2005, an estimated 73 percent of inmates were African-American, 14 percent were white, 12 percent were Latino/Latina, and less than one percent was Asian-American or other ethnicities.

Gender: An estimated ten percent of inmates were female; 90 percent were male.

Local Residence: An estimated 96 percent of the Philadelphia inmates were local residents.

Education Level: About 60 percent of inmates had not completed high school; 35 percent had completed high school, but had gone no farther. An estimated five percent reported that they had completed some college.

Health Attributes

Mental Health History: An estimated 25 percent of inmates had histories of psychiatric treatment or hospitalization as per classification records and were recommended for mental health services after admission. (See Figure 28 in Appendix B.)

Institutionalization: An estimated 38 percent reported prior histories of institutionalization for mental health problems.

Self-Reported Substance Abuse: An estimated 42 percent of inmates reported abusing drugs, including methadone, prior to admission to the Prisons; 32 percent reported abusing alcohol.

F. Persons Held on (or Without) Bail Awaiting Adjudication

Bail Amounts Holding Detainees

Figure 9 in Appendix B shows the bail amounts on the study date associated with the holding of defendants confined in the Philadelphia Prisons awaiting trial. (For those held on bail only, release could have been secured by posting ten percent of the amounts shown.) The estimated median bail amount holding defendants in detention on November 21, 2005, was $10,000. Less than an estimated one percent of inmates awaiting trial in confinement were held on bail less than $500. Another one percent of inmates were held on bails between $501 and $1,499; 11 percent were held on $5,000 bail; about four percent were held on bails between $5,001 and $7,500; four percent were held on bails between $7,501 and $9,999; seven percent were held on $10,000. Not counting those held without bail, it is estimated that about half of bail-held inmates were held on bail amounts above $10,000; 21 percent were held on bails between $10,001 and $49,999; seven percent were held on $50,000 bail; and 21 percent were held on amounts over $50,000, including about two percent at amounts of $500,000 or more. Eleven percent of all pretrial detainees were held without bail (bail had been denied).

Overall, these bails were slightly lower than those found in the May 1995 study, with a roughly comparable proportion held without bail (11 percent compared with 15 percent in 1995).

Length of Time in Detention from Arrest to Study Date

- *On November 21, 2005, the estimated median time that defendants had been awaiting adjudication in detention was 89 days, a slightly longer period of time than the median 81 days in the 1995 study and a notably longer period of time than the 50 days associated with the confinement of detainees in the 1991 study. (Note: this includes persons just held on bail and held on bail and other holds.)*

Very few defendants (estimated at less than one percent) had been confined for only up to one day; four percent had been confined from two to seven days; and 16 percent were confined from eight days to one month; 18 percent were held between 31 and 60 days on the study date; and 11 percent had been held from 61 to 90 days. As many as an estimated 50 percent of those awaiting trial had been held more than 90 days; 41 percent were in confinement more than 120 days; and 24 percent had been held more than six months (180 days). Figure 10 indicates that the biggest difference in the time spent in confinement to date by 2005 defendants compared to earlier studies is in the over-120-days category. This has increased from an estimated 24 percent of detainees in 1991 to 37 percent of detainees in 1995 and 41 percent of detainees in 2005.

To eliminate the time in detention that may be caused by other holds, Figure 11 in Appendix B presents the same time-in-confinement-to-date information for detainees held only because of bail (with no other holds). The estimated median time awaiting trial in confinement on the study date—70 days—was, understandably, somewhat shorter for detainees with no other holds. However, otherwise, the time already spent in confinement does not change much when the defendants with other holds are removed: an estimated 38 percent of those only awaiting trial were held longer than 120 days and 20 percent had been confined longer than 180 days. Thus, a

larger proportion of detainees in the 2005 study were in the longest confinement periods (over 120 days and over 180) than was seen in earlier studies.

- *These data suggest that the lengthy periods already spent in confinement by detainees on a given day are not explained by the complications of other holds and are instead the direct product of the adjudication process in the courts. This may also be tied to a larger number of serious cases going to trial during this period or, as we saw in Chapter Two, increased backlog and longer times to disposition in some programs.*

Figure 11a in Appendix B breaks down the overall median of 89 days spent in confinement by those awaiting trial on November 21, 2005 by felony, misdemeanor and homicide cases. Detainees held in misdemeanor cases had been detained a median of 57 days, detainees charged in felonies (exclusive of homicide cases) had been detained a median of 91 days, with homicide detainees held a median of 182 days. (These estimates do not exclude defendants held on bail and other holds.)

Criminal Charges Associated with Pretrial Detainees

As before, detainees were held on serious charges in the November 21, 2005, study: Figure 12 in Appendix B shows that only an estimated nine percent of detainees were held on misdemeanor charges[12] and 91 percent were held on felonies at that time (approximately the same proportions as found in both the 1995 and 1991 studies). An estimated 48 percent of the detainee population was held on first degree felonies; 34 percent were ungraded felonies (the majority of these were drug offenses); five percent were felony 2 and 13 percent were felony 3 offenses.[13]

Figure 13 reveals the specific most serious charges holding Philadelphia detainees in the November 21, 2005, study date.

- *For an estimated one-fourth of all detainees, the most serious offense involved a drug charge: two percent were held for drug possession and 21 percent for manufacture/delivery or possession with intent to deliver (PWID) of a controlled substance. In real numbers, this represented an estimated 1,167 detainees on the study date.*

An estimated 11 percent were held on murder charges, three percent were held on rape charges. Six percent were held on burglary charges and 14 percent were held on robbery as their most serious charged offense. Other offense categories accounted for smaller groups of detainees: an estimated seven percent were held on theft charges, two percent on contempt charges and 25 percent on a mixed variety of miscellaneous types of offenses.

When compared with the 1995 study population, perhaps the most significant difference in the detainees' most serious charges was found in the drug category.

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[12] About 61 percent of misdemeanor detainees did not have misdemeanor grade specified.
[13] The grade was missing in four percent of cases.

- *Proportionately, the 2005 drug-charged detainee category represented a four-fold increase over what was found in the 1995 study (at that time about six percent had drug charges as the lead offenses).*

A slightly smaller proportion of detainees were charged with murder than in the past (an estimated 11 percent compared to 17 percent in 1995). A much smaller proportion of 2005 detainees (eight percent) were charged with aggravated assault as the lead charge than in 1995 (26 percent). Robbery defendants were slightly less common in 2005 (an estimated 15 percent) than in the 1995 (21 percent) and 1991 (24 percent) studies.

Including secondary charges associated with the detainees, the charges of the detainees included an estimated 41 percent with serious crimes against the person, 21 percent with alleged injury to a victim, 37 percent with property offenses, and 33 percent, or an estimated 1,559 detainees, with weapons charges (21 percent with VUFA offenses). Although greater in number than in previous studies (given the overall greater volume of detainees), the 2005 detainee population included proportionately fewer defendants with weapons charges (about half of detainees had weapons charges in the 1995 and 1991 studies). More than one-third of all defendants had charges involving drug possession, and 28 percent had charges involving manufacture/delivery/PWID offenses.

Prior Criminal Justice System Involvement

On Probation or Parole: An estimated 29 percent of detainees in the 2005 study were on probation or parole at the time of their arrest on the current charges. This represents a notable increase over the 17 percent of detained defendants in 1995—but returns to a level (30 percent) seen in 1991. About one-third of the detained defendants also had probation or parole detainers lodged at the time of their admission and in effect on the study date in 2005. Nearly half (48 percent) of detainees had prior violations of probation; about 43 percent had more than one.

Prior FTAs: Nearly two-thirds (an estimated 62 percent) of detainees had records of prior FTAs (bench warrants) in the 2005 study, 15 percent had one, ten percent had two and 27 percent had three or more prior bench warrants. About 50 percent appeared to have records of prior “willful” failure-to-appear, with 27 percent having willful FTAs within the last three years. These are slightly higher rates than found among detainees in the 1995 study of the jail population.

Outstanding Warrants: About one-third of detainees had outstanding warrants or detainers at the time of their admission on current charges.

Other Open Cases at Arrest: An estimated 24 percent of detainees had other open cases for which they were on pretrial release at the time of their arrest on the current charges; 16 percent of the open cases involved felonies, six percent involved misdemeanors. About 38 percent of the open cases involved drug manufacture/delivery/PWID offenses and 18 percent involved drug possession as the most serious (lead) charges; four percent involved homicide; three percent involved conspiracy, three percent involved contempt; and a wide variety of other types of pending charges were associated with detainees in very small numbers.

Prior Arrests: Most detainees (an estimated 86 percent) had records of arrests prior to the current cases; 64 percent had three or more prior arrests and 45 percent had five or more. Two-thirds of detainees (67 percent) had prior arrests within the last three years. More than half (54 percent) had prior arrests for serious crimes against the person, 63 percent had prior drug arrests, 44 percent had prior weapons arrests, 75 percent had prior arrests for felonies, and 68 percent had prior arrests for misdemeanors.

Prior Convictions: More than two-thirds (68 percent) of detainees had prior convictions, compared with 48 percent of the 1995 detainees and 56 percent of the 1991 detainees; 51 percent had three or more convictions. About 60 percent had prior felony convictions, much higher than the 39 percent of the 1995 detainees and 46 percent of the 1991 detainees.

Prior incarcerations: Only 19 percent of the pretrial detainees had never been incarcerated before—at least in Philadelphia. Fourteen percent had been incarcerated once; 14 percent had been incarcerated twice; 56 percent had been incarcerated three or more times previously.

Classification of Detainees According to Risk of Flight (FTA) or Rearrest and Within the Pretrial Release Guidelines

The pretrial release guidelines that were (re-) adopted by the First Judicial District in 1995 classify defendants at preliminary arraignment according to the seriousness of their charges ("level") and their probable risk of flight or crime (rearrest) during the pretrial period ("risk"). The guidelines serve as a framework for considering pretrial release in the context of this and other information that might make a defendant's situation more or less unusual in determining pretrial release.

Figure 15 in Appendix B arrays defendants detained on November 21, 2005 according to the risk rankings of the pretrial release guidelines.[14] The logic of the pretrial risk classification is that defendants with attributes placing them in Risk Group 1 represent the lowest probability of FTA or rearrest for crime during pretrial release; those with attributes placing them in Risk Group 4 represent the highest probability of pretrial misconduct, with Groups 2 and 3 representing defendants with low-medium and medium probabilities of flight and/or crime.

The importance of the risk classification is that population reduction strategies would logically look to the lowest risk defendants (for example, those falling in Risk Groups 1 and 2) to find the "most releasable" defendants, assuming any other holds could be resolved and other special circumstances were not present. Using the risk classification from the pretrial release guidelines for the 2005 defendants, the following is found:

- *An estimated 17 percent of detainees (more than 700 defendants) fell into the lowest risk group (Risk Group 1).*

- *An estimated 31 percent of detainees (nearly 1300 defendants) were classified as next-lowest risk (Risk Group 2).*

[14] Risk information was not found for 435 detainees out of the estimated population of 4,727 awaiting trial.

Risk certainly is not an exclusive concern in determining pretrial release and is not considered in isolation of other relevant information. The nature of the offense, or potential reoffense, among other factors, has also figured as a central concern in the release decision. In the discussion above, we established that a large portion of detained defendants were being held generally on very serious charges. Figure 16 in Appendix B ranks the most serious charges of the detained defendants according to the ten-part pretrial release guidelines seriousness ranking.[15]

- *Setting aside those charged with homicide (not classifiable under the pretrial release guidelines), the majority of detainees—an estimated 64 percent—were charged with offenses ranked in the most serious charge category of the guidelines (Seriousness Level 10).*
- *However, about one-fifth (an estimated 21 percent or about 900 defendants) were ranked with charges falling within Seriousness Levels 5 or lower.*[16]

Excluding homicide defendants, the pretrial release guidelines place defendants into one of four presumptive decision classifications based on risk and charge seriousness level: those lowest risk and least seriously charged would fall into the presumed release on recognizance (ROR) "zone"; those posing medium risk and with charges of medium seriousness would fall into special release categories I or II (depending on risk) for monitoring and supervision (or drug court); defendants posing medium to high risk and charged with the more serious offenses would fall into the cash bail zone, where various amounts of financial (ten percent) bail would be the presumptive decision. Relying on available information, the defendants detained in the Prisons on November 21, 2005, were classified according to the risk and charge seriousness rankings of the pretrial release guidelines as shown in Figure 17 in Appendix B.

Of the classifiable detainees, based on risk and charge seriousness, an estimated ten percent would have been suggested for release on ROR/Standard Conditions at preliminary arraignment, 23 percent would have been suggested for non-financial special release (I or II), and from 65 percent would have been classified as presumptive cash bail decisions.

- *Using this classification, at least 1,300 detainees would be suggested as releasable under some form of non-financial release (ROR, special release type I, special release type II).*
- *If only detainees with no other holds are considered under the pretrial release guidelines, the estimates of those falling in the nonfinancial release categories of the guidelines drops to a more conservative 27 percent of defendants awaiting adjudication with no other holds—yet this still includes an estimated 571 inmates on the study date.*

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[15] Information was missing in nine percent of the cases.

[16] The "special release" policies put in place to identify releasable categories of defendants as part of the City's Alternatives to Incarceration Plan in 1995 would not consider detainees with charges ranking above Seriousness Level 7 for special release. See Goldkamp and Harris, Proposed Policies for Special Release: Population Management Strategies For When the Population of the Philadelphia Prisons Exceeds Capacity, Crime and Justice Research Institute, November 1995 and Goldkamp and Harris, The Use and Impact of Special Release in Philadelphia During Its Initial Phases of Implementation, Crime and Justice Research Institute, October, 1996.

- *Of these, about 189 inmates would fall into the ROR presumptive decision zone; 214 inmates would be classified as Type I special nonfinancial releases; and 168 would fall into the Type II nonfinancial release zone.*

This classification produces a result very similar to the one conducted for the study of the 1995 inmate population, with the exception that, then, a slightly greater percentage of detainees fell into the ROR release category.

We should note in this discussion that one could argue that these defendants (held on bail but appearing to fall within recommended nonfinancial release categories) in many cases represent "exceptions" or appropriate deviations from the guidelines for any of a variety of reasons. For example, while "risk" already considers prior history in several ways, these cases may have more extensive prior histories than it was believed the guidelines had taken into account. From this jail sample, we are not able to reconstruct retrospectively the extent to which such factors may have convinced commissioners to make exceptions when the defendants had appeared at preliminary arraignment.

Next Processing Stage Scheduled

Figure 18 in Appendix B depicts the next stage of processing for detainees held on the date of the study. In contrast with findings from the 1995 and 1991 studies:

- An estimated 11 percent of persons awaiting trial were awaiting misdemeanor trial in Municipal Court. (This is a larger proportion than in the 1995 study but is roughly similar to the 1991 study.)
- A very large portion, an estimated 52 percent of detainees, was awaiting preliminary hearing in Municipal Court on the day of the study in November 2005. This proportion seems notably out of line with past findings (eight percent in 1995 and 12 percent in 1991). (After many efforts to check and recheck this finding, we are left to conclude that either these data are reasonably accurate and point to a bottle-neck at the preliminary hearing stage or court data difficulties must account for the size of the group of defendants next scheduled for preliminary hearing.)
- An estimated five percent had been held for court after a preliminary hearing and were next due to appear at Common Pleas arraignment. This is a much smaller percentage than in 1995 (32 percent of detainees) or in 1991 (18 percent of detainees).
- Overall, an estimated 32 percent were awaiting adjudication in Common Pleas at some post-arraignment stage (next scheduled for pretrial motions or trial). This is notably less than the proportion found both in 1995 (51 percent of detainees were at this stage) and in 1991 (53 percent of detainees).
- *If the findings regarding preliminary hearing as the next stage for about half of defendants are not explained by some court data anomaly, these findings are compatible with those showing a longer average time in detention for defendants in 2005 and appear to reflect a "bulge" of felony cases at the Municipal Court preliminary hearing stage such as might occur as a cohort effect "downriver" from a large increase in felony arrests. Note that in 1995, the "bulge" of felony cases was located at the stage after*

preliminary arraignment: 32 percent were waiting for CP arraignment as their next court stage.[17]

Continuances

Another possible explanation for the not entirely intuitive findings regarding the next awaited stage of processing among detainees may have to do with continuances. About 73 percent of defendants detained in the Philadelphia Prisons on November 21, 2005 had at least one continuance to date; 22 percent had only one, 16 percent had two, more than one-third (34 percent) had three or more. (Ten percent had five or more continuances.) This shows an increase over the estimated 62 percent of detainees with continuances in the May 31, 1995 study: 45 percent had received one, 17 percent had received two, and two percent had received more than two. The 1995 study had already showed an increase in numbers of continuances associated with the cases of detainees over the 1991 study, when "only" 49 percent of detainees had one or more continuances.[18]

In seeking to explain the finding above concerning the next stage of proceedings faced by detainees in the Philadelphia Prisons on the study date, we examined the number of continuances that might be involved by detainees at each stage. Figure 18a in Appendix B shows that only 16 percent of detainees awaiting preliminary hearing on the study date had had no continuances at that stage of processing—84 percent had continuances. Thirty-three percent had one, 23 percent had two, 13 percent had three, nine percent had four, and six percent had five or more continuances in advance of preliminary hearing. The greatest number of continuances had been granted to detainees next facing some stage of pretrial hearing or trial in Common Pleas, 34 percent had five or more by the study date. (See reasons for continuances in Chapter Four.)

G. Persons Held on Bench Warrants or on Bench Warrant Bail

About three percent or 265 inmates in the Prisons on the study date were held on bench warrants only; four percent or 365 inmates were held only after bench warrant bail had been set. Sixty-seven percent of these were held on only one bench warrant, but 19 percent were held on two, and 12 percent were held on three. Of those with bench warrant bail set in this category, bails were set comparatively high, with a median of $5,000. About 25 percent had bails set between $500 and $2,500; nearly one-third (31 percent) had bails from $2,501 through $5,000; 16 percent had bench warrant bails from $5,001 through $10,000; 21 percent had bails over $10,000, in addition to seven percent who were held without bail.

Bench warrant defendants appeared to be charged with less serious offenses than defendant detainees overall.

- *For example, Figure 19 in Appendix B shows that 31 percent were being held on Manufacture/delivery/'PWID' of controlled substances and 15 percent were charged*

[17] This finding received further confirmation in the tracking of cases through the court process presented in Chapter Four.
[18] Chapter Four also indicates that continuances were a feature in criminal processing.

with drug possession—amounting to nearly half of all bench warrant defendants (or more than an estimated 400 inmates on the study date).

None were charged with murder, rape or aggravated assault, though small proportions were being held on theft (seven percent), robbery (three percent) and burglary (six percent).

On the study date, defendants held on bench warrants or bench warrant bail had been held an average of nearly three months (median, 81 days—up from 50 days in the 1995 study). Only five percent of these defendants were held for 48 hours of less, the time by which detainees are required to have bench warrants disposed. About 18 percent were held from three to 30 days; 19 percent were held from 31 days to 60 days; and 58 percent were held longer than two months on bench warrant bail.

As a group, they showed an extensive history of prior criminal justice involvement as measured before the current case: an estimated 93 percent had prior arrests; 42 percent had three or more. Seventy-six percent had arrests within the last three years; 74 percent had prior arrests for felonies; 43 had prior arrests for serious person crimes; 52 percent had arrests for property offenses; 73 percent had prior drug arrests; 41 percent had prior arrests for weapons offenses; 86 percent had prior arrests, with 48 percent having three or more. Fifty-five percent had prior convictions, 45 percent for felony crimes, 17 percent for serious crimes against the person, 26 percent for drug offenses, and 13 percent for weapons offenses. Twenty-seven percent had one or more detainers holding them in addition on the study date. All but six percent had been incarcerated before: 17 percent once, 26 percent twice, 13 percent three times, and 38 percent more than three times.

H. Persons Awaiting Sentencing in the Philadelphia Prisons (Sentence Deferred)

Type of Conviction Offense

About three percent or an estimated 269 inmates of the 8,541 confined in the Prisons on November 21, 2005, were awaiting sentencing. About half of these (106) were held only for this reason, while the remainder also had other holds. *Seventy-five percent were awaiting sentencing in Common Pleas Court, and 25 percent were awaiting sentencing in Municipal Court.* Sixty-six percent were awaiting sentencing for more than one conviction. Persons awaiting sentencing had been convicted of fairly serious offenses: 13 percent for drug manufacture/delivery/PWID, 16 percent for robbery, four percent for corrupting minors, eight percent for aggravated assault, 24 percent for rape, ten percent for burglary, nine percent for weapons offenses, six percent for being fugitives from justice and five percent for sexual abuse.

Time Awaiting Sentencing since Conviction and to Next Sentencing Date

For those for whom the information was available, Figure 20 in Appendix B shows that the estimated median time already awaiting sentence in confinement on the study date was 60 days, the same median number of days associated with inmates awaiting sentencing in the 1995 jail study. Four percent had been in sentence deferred status one week or less; 16 percent had been awaiting sentencing between 8 and 30 days; 37 percent had been awaiting sentencing

between one and three months. Twenty-one percent had been awaiting sentencing between 91 and 180 days, with 22 percent waiting longer than six months for their sentencing.

For an estimated 76 percent of the sentence deferred population, the length of time from the study date to the next scheduled sentencing hearing was 30 days or less, with 24 percent scheduled in from three to six months.

Prior Arrests and Convictions

An estimated 35 percent of those awaiting sentencing on the study date had one or more detainers also holding them; 18 percent had records of prior violations of probation or parole. Ninety percent of persons awaiting sentencing had prior records of arrests; 63 percent had two or more. Half (55 percent) had prior arrests for serious crimes against the person and nearly half (47 percent) had prior weapons arrests, while 60 percent had prior arrests for drug offenses. Seventy-two percent of persons awaiting sentencing had prior convictions; 23 percent had three or more. Sixty percent of persons awaiting sentencing had prior felony convictions; 18 percent had three or more. Fifty percent had prior drug convictions; 23 percent had prior weapons convictions. Seventy-nine percent had been incarcerated previously.

I. Persons Held Pending Probation or Parole Violation Hearings

An estimated 23 percent or roughly 1,969 of the 8,541 inmates in the Philadelphia Prisons were being held pending VOP proceedings: 1,205 were held on probation detainers, 468 were held on parole detainers, and 164 were held on both (34 were unspecified). Only 27 percent of these, an estimated 532 inmates, were held only because of a probation or a parole detainer. Nearly half (47 percent) of the inmates in this category—about 932 persons—were held on probation/parole detainers and were awaiting trial held on bail. The data show only an estimated 373, or 19 percent of these, being held on direct violations—although these data do not appear complete. We were unable to obtain reliable data that would indicate whether VOP confinees were awaiting adjudication for direct or technical violations. About 73 percent were held in Common Pleas cases and 27 percent were held in Municipal Court cases.

Figure 21 in Appendix B summarizes the types of offenses for which persons held awaiting violation proceedings originally had been convicted. The largest category of convictions consisted of felony drug offenses (manufacture/delivery/PWID) (30 percent), with an additional eight percent having drug possession convictions.

- *This means that an estimated 748 persons held on VOP detainers on the study date had underlying in drug convictions.*

Further, an estimated 16 percent had been convicted of theft offenses; three percent had been convicted of aggravated assault and six percent for simple assault; seven percent had underlying weapons convictions; five percent had underlying robbery convictions; three percent had been convicted of prostitution; and three percent had been convicted of rape or statutory rape.

It would been useful for this analysis of the post-conviction components of the population of the Philadelphia Prisons to be able to characterize offenders using sentencing guidelines information, including offense gravity (OGS) and prior record score. This information was difficult to retrieve and was not available for this study to describe the VOP population in the Philadelphia Prisons.

J. Persons Serving Sentences in the Philadelphia Prisons on the Study Date

Type of Sentence

Thirty-three percent or an estimated 2,755 persons held in the Philadelphia Prisons on November 21, 2005, were serving sentences. About 15 percent of the total population (about 1,256 inmates) were serving "regular" new sentences; four percent (about 345 inmates) were serving backtime sentences; and 15 percent of the inmate population (about 1,286 inmates consisted of persons serving "resentences" after adjudication of probation violations.

Within this estimated 2,755 person sentenced population, just over half (an estimated 55 percent) were confined because they were serving sentences and for no other reason. The other half (45 percent) were serving sentences as well as having other holds (bail, six percent; probation/parole detainers, three percent; as well as other holds, such as DNA; serving a resentence in addition to a new sentence, having old detainers).

Figure 22 in Appendix B shows that sentenced persons in the 2005 study fell into the following sentence categories:

- A*bout 21 percent or an estimated 574 persons were serving local ("new") county sentences on the November 21, study date.*
- *About 25 percent of the sentenced population was made up of offenders serving probation "resentences."*
- *Only five percent of the 2005 sentenced inmates were serving parole backtime, compared to 12 percent in 1995.*
- *Four percent were serving more than one type of sentence on the date of the study.*

A far greater number of sentenced persons were serving sentences—of whatever type—and had other holds (an estimated 45 percent in 2005 compared to 14 percent in 1995).

Most Serious Offenses for Which Sentenced

The large majority of sentenced persons were serving sentences for felonies (an estimated 74 percent of persons serving new sentences, 70 percent of persons serving VOP resentences or backtime) with the remainder serving misdemeanor sentences (26 percent of new sentence and 30 percent of resentence/backtime sentenced inmates).

- *Thus, more than an estimated 700 persons were serving sentences for misdemeanors on the 2005 study date;*

- *An estimated 2,000 of the sentenced persons were serving local sentences forsome type of felony offenses.*

More specifically, the types of offenses for which sentenced inmates were serving sentences are exhibited in Figure 23 in Appendix B. For persons serving new sentences, 32 percent were serving sentences for drug manufacture/delivery/PWID with another five percent serving sentences for drug possession. Ten percent were serving sentences for weapons offenses, nine percent for aggravated assault and two percent for simple assault. About ten percent were serving sentences for theft related offenses. A variety of other offense categories included in much smaller numbers.

Persons serving sentences resulting from resentencing after probation violations or were serving backtime sentences showed similar offense distributions: 26 percent involved drug manufacture/delivery/PWID and seven percent possession; 19 percent involved theft related offenses, six percent involved aggravated assault with two percent simple assault; six percent involved burglary, and four percent involved prostitution, as well as numerous other offense categories with small numbers of inmates represented.

- *In short, on the study date, more than an estimated 900 inmates were serving sentences involving drug offenses as the lead (most serious) conviction offenses. Based on the lead offense, drug offenders represent the single largest category of sentenced inmates by far.*
- *In general, the sentenced population was serving sentences for offenses of lesser seriousness than the kinds of offenses associated with the pretrial population and were less frequently than in the past serving "new" or county sentences.*

Prior Criminal Justice Involvement

Figure 24 in Appendix B highlights prior arrest and conviction histories of inmates serving sentences. The vast majority (95 percent) had prior arrests.

- *Seventy-seven percent of sentenced persons had three or more prior arrests. In fact, 84 percent of the sentenced inmates had prior felony arrests. Nearly half (48 percent) had three or more prior felony arrests.*
- *Eighty-three percent of inmates serving sentences had prior conviction; 55 percent had three or more; more than two-thirds (68 percent) had previous convictions for felonies; 34 percent had three or more felony convictions.*

Fifty-five percent of persons serving sentences had prior arrests for serious crimes against the person; 72 percent had prior drug arrests; and 39 percent had prior weapons arrests. Twenty-one percent of inmates serving sentences had prior convictions for serious crimes against the person, 55 percent had prior drug convictions, and 16 percent had prior weapons convictions.

Length of Sentences

Appendix B Figure 25 summarizes the minimum and maximum sentences being served by inmates in the Philadelphia Prisons on the study date. The median minimum sentence for

inmates overall was 11.5 months. In general, few sentenced inmates were serving short sentences: eight percent had minimums of three months or less, four percent had minimums of four to five months and 21 percent had minimums of six months in confinement. Overall, about one-third of sentenced inmates—or more than an estimated six hundred persons—were serving sentences with minimum terms of six months or less. About another one-third (an estimated 35 percent) had minimum sentences longer than six months but less than 12 months. An estimated 14 percent had sentence minimums of 12 months. Another 12 percent had minimums greater than 12 months but less than 24, and, six percent appeared to have sentence minimums longer than 23.5 months.

The median maximum sentence length was 23 months for sentenced inmates overall. Only 31 percent had maximum terms less than 23.5 months. However, five percent of sentenced inmates—or about 150 persons—had maximums of six months or less. About 46 percent had maximum terms from 23 to 23.5 months. Nearly one-fourth (an estimated 23 percent) had maximum terms of 24 months or longer.

Sentencing Guidelines Classification

As we noted in the discussion of VOP detainees and in our earlier studies, sentencing guidelines information has not been accessible and was not available to allow us to characterize the November 21, 2005, sentenced inmates according to OGS, prior record score and presumptive sentence ranges.

Time from Sentence to Study Date (Time Already Served)

Figure 26 in Appendix B summarizes the time sentenced prisoners had already spent serving their sentences (from the date of sentencing) on the study date. The median time already spent serving time by Philadelphia inmates was 130 days, a little over four months. The fact that relatively small proportions had served short periods (20 percent had served one month or less) suggests a slow turn around in the sentenced population. Twenty-one percent had already served between six months and one year; 14 percent had served over one year since the date of sentencing.

Time until Minimum Expiration of Sentence

Figure 27 in Appendix B shows the time left until the expiration of minimum sentences for Philadelphia's sentenced inmates. First, Philadelphia sentenced inmates had a median time of 159 days remaining to the end of the minimum terms, without taking into consideration earned time/good time. Nearly one-third (29 percent) of persons serving county sentences had one month or less to serve until completing the minimum sentence. Sixty-three percent had ninety days or more until expiration of the minimum. Thirty-five percent had between six months and one year to serve; nine percent would complete their minimum terms in over a year or more. More than one-fifth of sentenced inmates had already passed their sentence minimums.[19]

[19] Of those serving "new" sentences" in the category having exceeded their minimum terms, 42 percent had self-reported substance abuse, 21 percent had histories of mental health treatment or hospitalization, and five percent had recommended mental health determinations in their file data. Among those serving backtime or VOP resentences,

The average time to completion of the minimum term varied by type of sentence. As shown in Figure 27, persons serving resentences or backtime on average had a shorter time to expiration of minimum sentence (113 days) than persons serving country sentences (159 days).

K. Summary: Key Descriptive Findings from the Single Day Inmate Population Study

Of the many descriptive findings reported above, ten stand out as characterizing the make-up of the population of the Philadelphia Prisons—and differentiating the November 21, 2005 study from similar earlier studies:

1. *Increased Volume:* The overall roughly 70 percent increase in volume of the inmate population over the last ten years (since the 1995 study at least) overshadows most other findings of change in the make up of the population.
2. *The Predominance of the Pretrial Population:* The pretrial (bail-held) population still is the dominant feature of the Philadelphia inmate population, both in relative share of the population and in volume—accounting for more than half of all inmates or an estimated 4,727 defendants on the study date. Because of its volume, if not for other attributes, this subpopulation may rank as the most productive area for review and development of population reduction strategies.
3. *Sentenced Inmates:* The sentenced population, smaller in relative share (about one-third of inmates) but still involving an estimated 2,755 inmates on the study date, is the second most prominent population component. In an apparent notable shift, persons serving (re)sentences after VOP adjudications almost account for an equal share of the sentenced population when compared with those serving new county sentences.
4. *VOPs:* At nearly one-fourth of the population (an estimated nearly 2,000 inmates on the study date), persons held on probation or parole violations pending the violation adjudication process represent a major portion of the use of local confinement.
5. *Multiple Holds:* A very large share of the total population—43 percent or more than an estimated 3,600 inmates—was made up of inmates with more than one hold, making the legal statuses of the inmates in 2005 more complex than in earlier studies of the jail population.
6. *Smaller "Pure" Categories:* The implication is that single category population review strategies can focus on a smaller part of the overall population than previously. Yet persons in single statuses—bail-held only (28 percent), sentenced only (17 percent), probation and parole held only (six percent), for example—still involve large numbers of inmates and make up an estimated 57 percent of the overall population.
7. <u>The Continuing Drug Offense Theme:</u> In the three major population components, the bail-held, the sentenced and the VOP held, persons held on drug charges by far accounts for the largest within group categories of offenders. Including both

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61 percent had records of self-reported substance abuse, 24 percent had histories of mental health treatment or hospitalization, and 11 percent had recommended mental health determinations in their data.

possession (a smaller category) and manufacture/delivery/PWID, these offenses account for one-fourth of all detainees (an estimated 1,100 inmates), nearly half of bench warrant/bench warrant bail held inmates (400 persons), 13 percent of those awaiting sentence, 38 percent of those held on probation/parole violations, and 37 percent of those serving sentences (about 900 inmates). This theme across the population again raises questions about whether further strategies or capacity for dealing with the substance abusing offender in Philadelphia should be considered, such as expanding or adapting drug court, or establishing a reentry drug court from either the pretrial or post-conviction population.

8. Pretrial Release Guidelines and the Pretrial Population: The review of the pretrial population through pretrial release guidelines suggests that some significant numbers of detainees would appear to have fallen within nonfinancial release categories of the pretrial release guidelines, absent reasons for deviations from guidelines not available in these data, despite that fact that the large majority of cases are seriously charged and medium risk. The finding raises the possibility that review of the pretrial release/guidelines process might be productive if safe additional or improved release mechanisms could be employed.

9. Length of Stay: The length of stay in the pretrial population has increased over time. This finding may relate to findings from our earlier report showing trends in the courts toward increasing backlog and slower time to disposition. Increased volume of cases and cases going to trial may figure into longer processing times in the courts.

10. Cohort Effect and Stage of Processing: The finding concerning the next scheduled event in processing among detained defendants raises questions about processing, particularly around the preliminary hearing stage and about the number of continuances seen at that and other stages. With their limitations noted, the data suggest not only that more serious cases may be in detention longer, but that there may be a cohort effect on the early stages of processing associated with increased arrest volume. (Hence the apparently large numbers at the preliminary hearing stage in Municipal Court.) This finding echoed a theme from the trends analyses in Chapter Two.

CHAPTER FOUR: PROCESSING OF CRIMINAL CASES, PRETRIAL RELEASE AND DETENTION: TRACKING DEFENDANTS FOR ONE YEAR

A. Introduction

The third and final component of the study of confinement in Philadelphia looked at confinement as a by-product of criminal processing. This approach followed a large cohort sample of defendants (n=800) entering the criminal process at preliminary arraignment during the months of March, April and May 2005[20] and tracked case processing outcomes, pretrial release and detention and, for those convicted and sentenced, sentences to confinement over a 12-month period for an estimated 12,222 defendants.

Defendants versus Cases: Because one of the reasons for the study involved questions about pretrial release and detention, the sampling focus in this part was on *defendants* and their cases—not *cases*. *Caution*: This approach results in some difference in counting: the number of defendants entering the court process during one year will not be the same as the number of cases entering the courts (seven percent of defendants, for example, enter the system with more than one case). (For example, the trends analysis concerning criminal court caseloads involved cases and dispositions in the aggregate, resulting in different totals.) Because pretrial release or detention involves individuals (whether they gained release or not, how they performed if released), the sampling focused on defendants and the progress of their cases through the court process for a 12-month period.

In addition, please note that this study component excluded homicide cases for two main reasons: a) homicide defendants are routinely held without bail (at least at initial stages) and therefore do not realistically represent a major question to be dealt with in re-evaluating pretrial release procedures with potential impact on the jail population; b) the trends in homicide case volume and disposition in the courts were addressed in the first report.[21]

Finally, while the two earlier study components dealt with a) the context of crowding (trends and projections) and b) the nature and composition of the inmate population itself (as depicted on a single day), this final component examines the generation of confinement among criminal cases from a dynamic perspective as cases move through the justice process at pretrial and post-conviction stages toward final resolution.

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[20] The sample drawn to represent all entering defendants (N=12,333) during the March-May 2005 study period employed a disproportionate stratified random sampling design, randomly sampling equal numbers of cases (n=200) from each of the four "zones" of the pretrial release guidelines classification (200 each from ROR, Special Conditions I, Special Conditions II, and cash bail categories) at the point of entry (pre-decision). For a more detailed discussion of the sample design and the margin of error (standard error and confidence intervals surrounding population estimates), see Appendix D.

[21] Clearly, homicide cases have an impact on incarceration in Philadelphia (our analysis of the inmate population found that about 11 percent of detainees were charged with murder). In fact, compared to other categories, homicide defendants generate among the longest lengths of stay in jail and longest processing time in the courts. This is a fact already well-known to the First Judicial District and efforts to adjudicate homicide cases in a timely fashion have been underway independently of this focus on inmate population.

B. Characterizing Philadelphia's Incoming Criminal Defendants (March-May 2005)

By sampling a large number of entering criminal defendants (a cohort) from the three month study period in the spring, we reasoned that we were tapping defendants that were fairly representative of defendants entering the court process during 2005. Although other three-month samples might differ somewhat from this March-May cohort, we sought to avoid vacation and holiday months, which would provide samples of defendants less "typical." Although we believe the findings would not differ considerably from a sample selected from the entire year, such a sample was not feasible for a number of reasons: (1) to obtain the same sampling fraction of one year's entering defendants would have required a substantially larger sample and resulted in a data collection effort far beyond the time and resources available; (2) a one-year sample recent enough to provide up-to-date information would not have permitted a one-year follow-up, let alone time for analysis and reporting; (3) availability of data and the amount of manual data collection required, as well as the assistance of various justice system agencies, made even collection of data for a three-month sample an enormous task. Except where indicated, the estimates discussed reflect the population (N=12,333) of defendants entering the justice process at preliminary arraignment between March 1 and May 31, 2005. See Appendix C for the tables and figures relating to the findings described in this chapter.

C. Criminal Charges in Cases of Entering Defendants (at Preliminary Arraignment Stage)

Number of Cases and Criminal Charges at Preliminary Arraignment

- Most (an estimated 93 percent) of the 12,333 defendants entering the court process during the three-month study period faced one criminal case, although seven percent faced charges in two or more criminal cases at their preliminary arraignments.
- Considering all charges faced at that first stage, only 24 percent had just one charge, another 24 percent had two charges, and an estimated 52 percent of defendants had three or more charges involved in their cases.

Misdemeanor vs. Felony (lead) Charges at Preliminary Arraignment

- Figure 1 in Appendix C shows that a majority (an estimated 56 percent) of entering defendants' cases involved felony charges, with 44 percent involving only misdemeanor charges. This shows a predominantly serious entering caseload. Although 56 percent of defendants faced felony charges at the point of entry into the court process, 22 percent (an estimated 2,754 of the 12,333 March-May 2005 defendants) were adjudicated (or were in the process of adjudication) in the Court of Common Pleas at the 12-month mark.
- The major part of the volume of the entering criminal caseload (an estimated 78 percent of entering defendants or about 9,579 defendants in this three month sample) was adjudicated or being processed by Municipal Court.

Types of Charges (Selected Principal Lead Offense Categories) for Incoming Defendants

- The "most serious"[22] or lead offenses in the cases of entering defendants involved the following (in order of prevalence): 20 percent drug possession (misdemeanor), 18 percent drug manufacture/delivery/PWID, 15 percent aggravated assault, nine percent driving under the influence (DUI), eight percent felony theft, about three percent each for robbery, burglary, and prostitution, two percent violations of the Uniform Firearms Act (VUFA) (not other weapons offenses),[23] two percent rape/sexual assault, and 18 percent other types. Other types involved a range of offense categories with smaller numbers than those listed.[24] (See Figure 2 in Appendix C.)

This classification of lead charges shows several different kinds of cases entering the court caseload. Simply grouped, they involve: drug cases (the largest category by far), cases involving serious crimes against the person, and property and public order offenses.

- When translated into volume: an estimated 38 percent of entering defendants during the study period were charged with drug offenses as their lead charges (an estimated 2,449 defendants had lead drug possession offenses, an estimated 2,257 had lead "PWID" drug charges) during the three month period. Assuming there were no significant differences in the entering caseload during other three-month periods (recognizing that there are some seasonal differences due to vacation months and holidays), this would translate into about 18,824 defendants over a 12 month period.
- Drug crime (as the lead offense category) outnumbers a collective serious person crime category (including aggravated assault, rape/sexual assault, robbery)[25] that accounts for about 20 percent of entering defendants (an estimated 2,477 during the three month study period or, extrapolating, an estimated 9,908 over 12 months).
- DUI (nine percent) and prostitution (three percent) form a noticeable and not insignificant portion of cases involving public order problems. When one considers that this sample only represents three months, these smaller categories of defendants could amount to significant numbers in a 12-month period.
- Only about eight percent of defendants had felony theft charges as lead offenses.

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[22] For the purposes of characterizing a defendant's case as it entered the justice process at preliminary arraignment, "most serious" or lead charges were selected in the following manner: felonies were more serious than misdemeanors, charges involving crimes against person (harm or threatened harm) were more serious than charges not involving crimes against persons, and within the same type of offense, grade 1 offenses were more serious than grade 2 offenses which were more serious than grade 3 offenses.

[23] Less than one percent of the lead charges of these defendants involved non-VUFA weapons charges.

[24] This category of "other" lead charges involved 12 percent each simple assault, contempt/violation of a court order, and forgery/trademark counterfeiting/copying devices; ten percent, possession of instruments of crime; seven percent each, unlawful restraint, misdemeanor retail theft, and misdemeanor unlawful taking/receiving stolen property; four percent, terroristic threats/intimidation; three percent each scattering rubbish, criminal trespass, escape, and criminal mischief. Seventeen percent (of the original 18 percent "other") involved 20 different lead offenses with one percent or less each.

[25] We do not include burglary in this category. Some may differ with this categorization because some burglaries could be of occupied dwellings and involved potential harm to persons.

Criminal Charges Whether or Not Lead Offenses

When all charges are considered, whether or not they are the "most serious" or lead charge in the case at the preliminary arraignment stage, the following was found:

- an estimated 21 percent of defendants had cases involving serious crimes against the person;
- 14 percent of defendants were charged with serious property crimes;
- 41 percent had drug charges (of any type);
- 20 percent had felony drug charges;
- 41 percent had misdemeanor drug charges;
- eight percent were charged with some type of weapons offense;
- less than an estimated one percent was charged with non-VUFA weapons offenses.

D. Prior Defendant Contact with the Criminal Justice System

Prior Arrest History

- *Prior arrests:* More than two-thirds (an estimated 68 percent) of entering defendants had records of prior arrests; 15 percent had one, 53 percent had two or more prior arrests; 32 percent had four or more. (See Figure 3, Appendix C.)
- *Prior arrests in last three years:* an estimated 45 percent had arrests within the last three years (prior to preliminary arraignment): 21 percent had one; 14 percent had two, ten percent had three or more.
- *Prior arrests as open cases at time of preliminary arraignment:* an estimated 24 percent of entering defendants had at least one arrest still in process at the time of the current arrest.
- *Prior felony arrests:* an estimated 59 percent had prior felony arrests; 45 percent had prior misdemeanor arrests. (See Figure 4 in Appendix C.)
- *Prior serious person arrests:* About one-third (35 percent) had prior arrests for serious crimes against the person.
- *Prior serious property arrests:* an estimated 38 percent had prior arrests for serious property offenses.
- *Prior drug arrests:* an estimated 44 percent had prior arrests for drug offenses: 28 percent had prior misdemeanor drug offenses; and 28 percent had prior felony drug offense arrests.
- *Prior weapons arrests:* an estimated 25 percent had prior weapons arrests.

The percentage of prior arrests (of any type) among entering defendants varied little by lead charge category, with some exceptions. For example, 86 percent of prostitution defendants had prior arrests (the highest category) and 56 percent of rape/sexual assault defendants and 53 percent of DUI defendants had prior arrests (lowest categories).

Prior Convictions

- *Any prior convictions:* an estimated 45 percent of entering defendants had prior convictions; 28 percent had three or more.
- *Prior convictions within the last three years:* an estimated 19 percent of defendants had prior convictions within the last three years; 11 percent had three or more.
- *Felony convictions:* 35 percent of entering defendants had prior felony convictions.
- *Serious person convictions:* 12 percent had prior convictions for serious crimes against the person.
- *Prior drug convictions*: 24 percent of defendants had prior drug convictions.
- *Prior weapons convictions:* eight percent had prior convictions for weapons offenses.

Prior Jail Incarcerations

An estimated 45 percent of entering defendants had experienced previous incarceration in the local Philadelphia institutions. The rate of prior incarceration varied by type of current charge, including:

- 75 percent of prostitution defendants (the highest prior incarceration category);
- 55 percent of felony theft defendants;
- 54 percent of defendants currently charged with lead PWID (felony drug) offenses;
- 54 percent of burglary defendants;
- 50 percent of robbery defendants;
- 42 percent of drug possession defendants;
- 40 percent of aggravated assault defendants;
- 38 percent of VUFA defendants;
- 33 percent of DUI defendants;
- 22 percent of rape/sexual assault defendants (the lowest prior incarceration category).

Prior Violations of Probation

- More than one-fifth of entering defendants had prior violations of probation at the time of entering the process: six percent had two, eight percent had three or more. (See Figure 5 Appendix C.)

Prior Failures-to-Appear (FTAs)

- *Any bench warrants*: an estimated 43 percent of defendants in the March-May cohort had prior recorded failures-to-appear in court (as measured by bench warrants issued); 23 percent had three or more.
- *Prior willful FTAs*: 38 percent had prior willful FTAs, with 19 percent having three or more. (See Figure 5.)
- *Prior willful FTAs in the last three years:* 18 percent of defendants had prior willful FTAs in the last three years; nine percent had two or more.

Prior Failures to Appear by Type of Current Charges

The percentage of entering defendants with any prior FTAs varied by type of lead criminal charge in the current case:

- 39 percent of misdemeanor defendants versus 46 percent of felony defendants had prior FTAs.
- Prior FTAs ranged from lows of 22 percent of DUI defendants, 33 percent of rape/sexual assault defendants and 36 percent of VUFA defendants to highs of 64 percent of burglary defendants and 76 percent of prostitution defendants.

Other Justice Statuses at the Time of Preliminary Arraignment

- *Other charges pending (cases open) at time of preliminary arraignment:* An estimated 25 percent of defendants had open cases at the time of preliminary arraignment and were on pretrial release in these cases at the time of their processing on the current case (See Figure 6 in Appendix C); seven percent had two or more pending cases. Of those with other open cases, about two-thirds involved felony charges, one third involved misdemeanors. More than half involved drug charges.
- *Outstanding bench warrants:* About eight percent of defendants had outstanding bench warrants at the time of preliminary arraignment.
- *On probation or parole:* an estimated 12 percent of defendants were on probation or parole at the time of preliminary arraignment for the current offense.

Defendant Attributes (from Pretrial Services Records)

- *Age*: The median age of entering defendants was 30 years of age: 16 percent were 20 or younger; 12 percent were from 21 to 24 years of age; 15 percent were from 25 to 29 years of age; 24 percent were from 30 to 39 years of age, and 26 percent were 40 or older. (Note: this shows a slightly older "average" defendant than in earlier studies.)
- *Gender*: 83 percent of defendants were male; 17 percent were female.
- *Race*: Approximately two-thirds (65 percent) of defendants were recorded as African-American, one-third Caucasian (33 percent), with about one percent Asian or unknown.

- *Hispanic*: Approximately 12 percent of entering defendants were of Latino background (11 percent were white Hispanic and one percent was African-American Hispanic). About 30 percent of white defendants were Latino; two percent of African-American defendants were Latino. (This variable was unreliable and suffered from a lot of missing cases.)
- *Employment*: About half of defendants reported to Pretrial Service Division interviewers having some income (whether from full-, part-time employment or other sources).
- *Homeless*: About three percent of defendants reported being homeless at the time of their processing at preliminary arraignment. (This extrapolates to about 1,381 defendants entering the court system per year.)
- *PARS verified housing*: only 43 percent had verified housing according to PARS. (Note: we are not certain whether this reflects the actual extent of verified residences at the time of preliminary arraignment or just what it was possible for Pretrial Services to verify within the time constraints prior to preliminary arraignment.)

E. Adjudication of Criminal Cases in Municipal and Common Pleas Courts

Criminal cases of the March-May 2005 defendants were followed up for a period of 12 months from preliminary arraignment to examine the type and timing of adjudication. (Recall that homicide cases have been excluded from the sample.)

<u>Adjudication within One Year</u>

- Of all (non-homicide) defendants, 73 percent (about 9,000) had reached adjudication within one year: 27 percent had not.
- More specifically, about one third (34 percent) of defendants had had all charges dismissed, eight percent had been diverted, three percent had been acquitted, 28 percent had been convicted (through plea or trial), and less than one percent had other outcomes (transferred to juvenile court, abated). (See Figure 7 in Appendix C.) In short, dismissal was the largest (modal) adjudication outcome category.
- Seventeen percent of defendants had not yet had their cases adjudicated (were still pending) and ten percent had not had their cases adjudicated because they were fugitives.
- Of all defendants whose charges were completely adjudicated within one year, 47 percent had all charges dismissed, ten percent were diverted, four percent were acquitted, and 39 percent were convicted.
- Surprisingly, the percentage not adjudicated varied little depending on whether initial charges involved felonies (28 percent) or misdemeanors (26 percent).
- The <u>adjudication outcomes</u> did vary depending on whether initial charges were felonies or misdemeanors (see Figure 7):
  - 40 percent of felonies versus 27 percent of misdemeanors were dismissed;
  - one percent of felonies versus 15 percent of misdemeanors were diverted;
  - about three percent of each type were acquitted;

- 28 percent of felonies were convicted, compared to 29 percent of misdemeanors.
- 20 percent of felonies versus 13 percent of misdemeanors were still pending at one year (not fugitive);
- 12 percent of misdemeanors and seven percent of felonies were still pending but in fugitive status.

- The percentage of defendants' cases completing adjudication within one year varied by lead charge type (see **Figure 8**):
  - 92 percent of VUFA cases;
  - 90 percent of robbery cases;
  - 82 percent of burglary cases;
  - 79 percent of aggravated assault cases;
  - 77 percent of drug possession cases;
  - 77 percent of felony theft cases;
  - 69 percent of DUI cases;
  - 62 percent of manufacture/delivery with intent cases;
  - 61 percent of prostitution cases;
  - only 41 percent of rape/sexual assault cases;

- The estimated percentage of defendants who had all charges dismissed within one year varied by lead charge type (see Figure 9 in Appendix C):
  - 65 percent with lead VUFA charges;
  - 60 percent with lead robbery charges;
  - 48 percent with lead charges of aggravated assault;
  - 48 percent with lead burglary charges;
  - 44 percent with lead felony theft charges;
  - 32 percent with lead charges of drug manufacture/delivery/PWID;
  - 30 percent with lead drug possession charges;
  - 15 percent with lead DUI charges;
  - ten percent with lead charges of rape or sexual assault; and
  - zero percent with lead prostitution charges had their cases dismissed.

Figure 9A shows the types of dismissals or reasons for dismissals among entering defendants overall, regardless of stage of case processing:

- The largest category, "prosecution withdrawn by DA," accounted for 45 percent of all dismissals.
- Discharge for lack of prosecution (LOP) accounted for 36 percent of dismissals.
- Eight percent were nolle prossed.
- Six percent were discharged for lack of evidence (LOE).
- In five percent of dismissals, prosecution was withdrawn without prejudice.

- Other reasons (quashed by judge and dismissal by rule 1013) accounted for less than one percent of dismissals.

Figure 9b shows the relative frequency of different reasons for dismissals by type of dismissed case (Municipal Court misdemeanor; Municipal Court felony preliminary hearing stage; and Common Pleas):

- 41 percent of Municipal Court misdemeanor dismissals and 37 percent of Municipal Court preliminary hearing dismissals, but no Common Pleas dismissals were indicated as discharged for lack of prosecution (LOP)".
- No Municipal Court misdemeanor dismissals or preliminary hearing dismissals were nolle prossed, but 97 percent of Common Pleas dismissals were nolle prossed.
- Nine percent of the dismissed Municipal Court misdemeanor defendants had prosecution withdrawn without prejudice, compared to four percent of preliminary hearing defendants and no Common Pleas defendants.
- 48 percent of the dismissed Municipal Court misdemeanor defendants had prosecution withdrawn, compared to 49 percent of Municipal Court preliminary hearing defendants and none of the Common Pleas dismissed defendants.
- One percent of Municipal Court misdemeanor dismissals were due to discharge for lack of evidence (LOE), compared with ten percent of Municipal Court preliminary hearing dismissals, and no Common Pleas dismissals.
- Only in very rare instances were charges quashed or dismissed by a judge in any type of case or were cases dismissed under Rule 1013.

- The percentage of defendants <u>in fugitive status</u> at the end of one year also varied by lead charge type (see Figure 10 in Figure C):
  - 28 percent of defendants with prostitution charges;
  - 12 percent of defendants with drug possession charges;
  - ten percent of defendants with manufacture/delivery/PWID charges;
  - ten percent of defendants facing burglary charges;
  - seven percent of defendants with DUI and felony theft charges;
  - five percent of defendants with lead charges of robbery;
  - four percent with lead aggravated assault charges;
  - no defendants with lead charges of rape/sexual assault or VUFA offenses.

- Ten percent of defendants entering Municipal Court with initial felony charges had their cases resolved there, but not at preliminary hearing; these included Treatment Court cases (by design), Community Court cases and cases reduced to misdemeanors and remanded for Municipal Court trial.
- Fifty percent of all defendants with felony charges at system entry did not progress farther than the preliminary hearing stage in Municipal Court. Of these:
  - An estimated 69 percent had all charges dismissed;
  - 17 percent had not had (completed) a preliminary hearing by one year;

- 13 percent had not had a preliminary hearing because they were fugitives.

- An estimated 40 percent of defendants with felony charges (or 22 percent of all entering defendants during the March-May period) progressed to the Common Pleas stage to be processed as felony cases during the observed year.

Municipal Court Adjudication

An estimated 78 percent of all entering defendants during the sampled period had cases adjudicated within Municipal Court:

- Of defendants in Municipal Court (see Figure 11 in Appendix C):
  - an estimated 41 percent had charges dismissed (about 61 percent of those were felonies at preliminary hearing);
  - nine percent were diverted;
  - two percent were acquitted;
  - 21 percent were convicted;
  - 14 percent were not yet adjudicated at one year;
  - 12 percent were not adjudicated and in fugitive status;
  - one percent was abated.

Common Pleas Adjudication

An estimated 22 percent of all entering defendants had cases reaching Common Pleas (see Figure 11 in Appendix C):

- Of felony defendants entering Common Pleas:
  - 12 percent had all charges dismissed;
  - two percent were assigned diversion;
  - four percent were acquitted of charges;
  - 54 percent were found or pled guilty;
  - 27 percent were not yet adjudicated at the end of one year;
  - about one percent was in fugitive status;
  - about one percent had other dispositions (transferred to Juvenile Court or abated).

F. Continuances

Among Entering Defendants Overall

Of the estimated 12,333 defendants with cases entering the court process during the March-May study period:

- two percent had no continuances;
- 14 percent had one;
- 23 percent had two;
- 15 percent had three;

- 16 percent had four;
- 30 percent had five or more continuances. (See Figure 12 in Appendix C.)

(The median number of overall continuances was three.)

In Municipal Court (Misdemeanor)

Approximately 44 percent or about 5,721 of the estimated 12,333 defendants entering the justice process during March-May 2005 had misdemeanor cases to be adjudicated in Municipal Court:

- two percent of these had no continuances;
- 20 percent had one continuance;
- 21 percent had two continuances;
- 18 percent had three continuances;
- 17 percent had four;
- 22 percent had five or more continuances—with three percent having seven or more.

(The median number of misdemeanor defendant continuances was three.)

At Preliminary Hearing

About 50 percent of entering defendants with felony charges were scheduled to reach the preliminary hearing stage in Municipal Court:

- 11 percent of these cases had no continuance;
- 16 percent had one continuance;
- 30 percent had two continuances at preliminary hearing;
- 11 percent had three continuances;
- 14 percent had four continuances;
- 18 percent had five or more continuances at preliminary hearing.

In Common Pleas (Felony)

Once felony cases (having been held for court at preliminary hearing) were scheduled for adjudication in Common Pleas:

- 21 percent had no continuances;
- 14 percent had one continuance;
- 16 percent had two continuances;
- nine percent had three;
- 12 percent had four;
- 27 percent had five or more continuances in Common Pleas.

(The median was two continuances for defendants processed in Common Pleas.)

Reasons for Continuances

Table 1 Reasons for Continuances, by Defendant Processing Stage
[Percentage of defendants with one or more]

Reason	MC Misdemeanor	MC Preliminary Hearing	Common Pleas
Defense requested/caused	56%	44%	51%
Defendant FTA	33%	24%	10%
Defense need to prepare	6%	6%	7%
Pros. requested/caused	27%	49%	20%
Pros. witness FTA	16%	31%	12%
Pros. need to prepare	11%	19%	3%
Defendant not transported	3%	5%	7%

Table 1 summarizes the reasons associated with continuances based on the processing path taken by the sampled defendants' cases.

Defendants processed on misdemeanors in Municipal Court experienced one or more continuances caused or at the request of the defense, overall, in 56 percent of the cases. More specifically, in an estimated 33 percent of the cases one or more continuances were because of the defendant failing to appear or appearing late in court, and continuances to allow the defense to prepare occurred one or more times in six percent of cases. One or more continuances at the prosecutor's request, overall, occurred in 27 percent of the cases: 16 percent of the time because the prosecution's witness failed to appear, and 11 percent of the time because of the prosecution's need to prepare. In three percent of the cases of defendants processed in Municipal Court as misdemeanants, continuances occurred because the defendant had not been transported.

Defendants processed at Municipal Court preliminary hearing stage experienced one or more continuances caused by or at the request of the defense 44 percent of the time: in an estimated 24 percent of the cases because of the defendant failing to appear or appearing late in court; in an estimated six percent of the cases so that the defense could prepare. One or more continuances at the prosecutor's request, overall, occurred in 49 percent of the cases. More specifically, continuances due to the prosecution's witness failing to appear occurred 31 percent of the time, and because the prosecution needed to prepare, in three percent of defendants' cases. In five percent of the cases of defendants processed in Municipal Court for preliminary hearing, continuances occurred because the defendant had not been transported.

Defendants processed in Common Pleas experienced one or more continuances caused by or at the request of the defense, overall, in 51 percent of the cases. More specifically, in an estimated ten percent of the cases associated with defendants entering the Common Pleas during the study period, one or more continuances were because of the defendant failing to appear or appearing late in court. Continuances to allow the defense to prepare occurred one or more times in seven percent of cases. One or more continuances at the prosecutor's request, overall, occurred in 20 percent of the cases: because the prosecution's witness failed to appear 12 percent of the time, and because of the prosecution's need to prepare in three percent of defendants'

cases reaching Common Pleas. In seven percent of the cases of defendants processed in Common Pleas, continuances occurred because the defendant had not been transported.

Continuances by Lead Charge Type

The number of continuances varied notably by type of lead charges in defendants' cases. Five or more continuances were recorded for the following:

- an estimated 60 percent of rape/sexual assault defendants;
- 55 percent of manufacture/delivery/PWID defendants;
- 32 percent of felony theft defendants;
- 22-24 percent of aggravated assault, DUI and burglary defendants;
- an estimated 21 percent of drug possession defendants.

G. Time to Adjudication

Approximately 23 percent of all entering defendants had not had their cases adjudicated at the one-year mark. Of those who had their cases adjudicated (whatever the outcome), the following times for adjudication were found, as measured from preliminary arraignment (the first judicial stage):

Overall

- The overall median time to adjudication in both courts together was estimated to be over five months (168 days) (see Figure 13 in Appendix C);
- 18 percent of defendants had all charges adjudicated within 90 days;
- 12 percent had all charges adjudicated between 91 and 120 days;
- 15 percent were adjudicated between 121 and 180 days; and
- 45 percent had cases adjudicated in more than 180 days.

Misdemeanor Cases

Of the misdemeanor cases reaching adjudication, the median time to adjudication was 172 days (see Figures 13 and 14).

- 18 percent were adjudicated within 90 days;
- 14 percent were adjudicated between 91 and 120 days;
- 22 percent were adjudicated between 121 and 180 days;
- 46 percent were adjudicated in more than 180 days.

The median time from preliminary arraignment to first listing was 42 days; from first listing to adjudication averaged (median) 139 days.

Felony Cases (Cases Begun as Felony Cases)

Of those defendants' with initial felony charges whose cases reached adjudication within one year, the median time from preliminary arraignment to adjudication (of whatever form) was 162 days (see Figure 13 in Appendix C). (This includes a substantial number having cases dismissed at preliminary hearing and some other cases adjudicated as misdemeanors.)

- 19 percent of felony cases were adjudicated within 90 days;
- 18 percent were adjudicated between 91 and 120 days;
- 18 percent were adjudicated between 121 and 180 days;
- 45 percent were adjudicated in more than 180 days.

H. Felony Cases Reaching Common Pleas

Of defendants entering Common Pleas with felony cases that were adjudicated by one year from preliminary arraignment, the median time to adjudication was an estimated 199 days (see Figures 13 and 15 in Appendix C).

- 11 percent of these defendants had their cases were adjudicated within 90 days;
- 17 percent were adjudicated between 91 and 120 days;
- 17 percent were adjudicated between 121 and 180 days;
- 55 percent were adjudicated in more than 180 days.

By Type of Lead Charge in Defendants' Cases

The median times to adjudication as measured from preliminary arraignment varied by lead charge type:

- manufacture/delivery/PWID cases: 220 days;
- drug possession cases: 179 days;
- aggravated assault cases: 119 days;
- rape/sexual assault cases: 206 days;
- robbery cases: 104 days;
- burglary cases: 146 days;
- felony theft cases: 143 days;
- VUFA cases: 197 days;
- DUI cases: 180 days;
- prostitution cases; 157 days;
- assorted other types of cases: 167.

I. Time from Preliminary Arraignment to First Listing in Municipal Court and to Adjudication

Time to First Listing in MC

- The median time from preliminary arraignment to first listing in the Municipal Court was 42 days (see Figure 14).

Time from First Listing to Adjudication in Municipal Court

- The median time from first MC listing to adjudication was 139 days.

J. Time in Processing of Felony Cases

Time from Preliminary Arraignment to Preliminary Hearing

- The median time for felony cases moving from preliminary arraignment to preliminary hearing was 101 days (see Figure 15 in Appendix C).

Time from Preliminary Hearing to Filing of Information

- The median time to the filing of the information in cases held for court from the preliminary hearing was 14 days.

Time from Information to CP Arraignment

- For defendants whose cases reached Common Pleas, the median time was 96 days from preliminary arraignment to CP arraignment.
- CP arraignment followed the information in these cases in a median of eight days, or a median of 88 days from preliminary arraignment.
- From CP arraignment, the first case listing occurred in a median of 40 days, averaging 135 days from preliminary arraignment.
- From CP first listing to adjudication (for those cases reaching adjudication during the one year observation period) was a median of 51 days; however, this represents a median of 199 days from preliminary arraignment through adjudication (among cases that were adjudicated).

Time to Adjudication by Lead Charge in Case

Using the ten most common lead offense categories, the following variability in median adjudication times was found:

- Manufacture/delivery/PWID: 220 days;
- VUFA: 197 days;
- drug possession: 179 day;

- aggravated assault: 119 days;
- rape/sexual assault: 206 days;
- DUI: 180;
- other offenses: 167;
- prostitution: 157 days;
- burglary: 146 days;
- robbery: 104 days;
- felony theft: 143 days.

K. Time to Adjudication in Common Pleas List and Section Programs (Homicide Excluded)

Of the estimated 2,745 defendants with felony cases (excluding homicides) reaching Common Pleas for adjudication, 60 percent were scheduled to be adjudicated in the List Program (judge trial) and 40 percent were to be handled in the Section Program (jury trial) courtrooms. One would expect jury trials to take longer than judge trials, and this is generally, but not always, reflected in the data

List Program

- About 16 percent of defendants entering the List Program did not have their cases adjudicated within one year of preliminary arraignment (see Figure 16 in Appendix C).
- For those whose cases were adjudicated, the median time from preliminary arraignment to adjudication was 162 days.

Section Program

- About 44 percent of defendants entering the Section Program did not have their cases adjudicated within one year (see Figure 16 in Appendix C).
- For those whose cases were adjudicated, the median time to adjudication was 234 days. (See Figure 17 in Appendix C.)

Figure 17 contrasts the timing of adjudication in the two Common Pleas programs, including defendants with cases not adjudicated in one year. Within 90 days, 12 percent of defendants with List cases, but two percent of those with Section cases had been adjudicated. Between 91 and 120 days, 17 percent of List and six percent of Section defendants were adjudicated; between 121 and 180, 16 percent of List defendants were adjudicated compared to five percent of Section defendants; between six months and one year, 38 percent of List and 42 percent of Section program defendants had their cases disposed; 16 percent of those in the List Program had cases still pending at the end of the year compared to about 44 percent of the Section defendants. Both programs had less than one percent of their defendants in fugitive status at the end of the one year follow-up.

L. Status of Unadjudicated Cases at End of One Year

An estimated 29 percent of the defendants whose cases entered the justice process during the March-May study period did not have all charges adjudicated by one year from their preliminary arraignment date. Their statuses are displayed in Figure 18 in Appendix C. Of defendants awaiting trial in Municipal Court at year's end, an estimated 52 percent had their cases still open/pending and 48 percent were fugitive. Of the defendants who were awaiting preliminary hearing in felony cases at year's end, 57 percent had their cases pending/still open and 43 percent were in fugitive status. Of the 23 percent of felonies who were awaiting adjudication in Common Pleas at the one year mark, 97 percent had their cases still open/pending and three percent were fugitive.

M. Pretrial Release Decision for Defendants Entering Philadelphia Courts

The pretrial release decisions received during the March-May 2005 study by Philadelphia defendants are presented in Figure 19 in Appendix C. The use of cash bail (ten percent) in a majority of decisions adds to the chances that a defendant will be detained, particularly because increasing bail amounts easily move bail to unaffordable levels. That figure also shows the proportion of defendants within each decision category detained before adjudication. (Note that detention is defined as actual transport and admission to the Prisons and does not take into account time held awaiting preliminary arraignment.)

- Detention does not increase directly in step with increasing amounts of bail; rather it is the use of bail that promotes detention. However, higher levels of bail generally increase the likelihood of detention.
- The fourth highest rate of detention, 67 percent, was among defendants whose bail was set at $500 or less, which under the ten percent payment plan would amount to $50 or less.
- Of those with cash bail in the $501 to $1,000 range, 43 percent were held, as were 44 percent of those with bail between $1,000 and $4,999.
- At $5,000, or $500 under the ten percent payment requirement, slightly over half of defendants were held—but in amounts higher than $5,000, the likelihood of being held increased with the large amounts of cash required.
- 70 percent of defendants with $5,000-$10,000 were held.
- 87 percent of defendants with $10,001 through $50,000 were held.
- Of those with bail over 50,000, almost all were held (95 percent).

Figure 20 in Appendix C shows that an estimated 36 percent of defendants entering the Philadelphia courts were detained after preliminary arraignment (this means they were transported to the Prisons); 14 percent were held throughout adjudication of their cases (or were still being held at the one year mark, if unadjudicated), and 23 percent were detained for some period but then gained pretrial release. The estimated total time in detention for all defendants in

the March-May cohort was 684,214 days, representing an average of 55.5 days in detention per entering defendant, or an estimated 5,548 jail days per 100 entering defendants.

Figure 21 in Appendix C shows that of those gaining release—immediately at preliminary arraignment or subsequently during the pretrial period—45 percent gained release under cash bail; 34 percent, under ROR/SOB; and seven percent, under either category of supervised special nonfinancial release. The remaining releases were accounted for by conditional release (less than one percent); special release review (two percent); by bench warrants heard and cleared (one percent) or detainers lifted (one percent); and by other means (two percent).

- *Comment*: Compared to an earlier study of pretrial release under the bail guidelines, the current rate of detention (36 percent of defendants detained for some period) is higher than was recorded when the guidelines were initially implemented (25 percent) a decade ago.[26] The percentage detained throughout their adjudicatory periods (13 percent) is only slightly higher than previously.
- *Comment*: The means of release shows a relatively high use of cash bail and a very low use of release on special conditions types I and II, which involve supervision, Treatment Court or other monitoring. In addition, very few defendants gained release via the conditional release mechanism, and relatively few gained release through the special release review (two percent).

Time in Detention

Overall, defendants who were detained spent a median of 31 days in detention. (The mean or arithmetic average for all defendants in detention is 152 days. This is explained by the 13 percent not gaining release at all.) The length of detention among Philadelphia defendants is shown differently in Figure 22. Of persons not released immediately at preliminary arraignment, some (11 percent of all defendants) gained release within seven days and a few (four percent of all defendants) gained release in the second week. After one month in detention, very few defendants gained later release.

The decision to use confinement is influenced by a number of factors, such as current charges and prior history, factors already taken into consideration in the pretrial release guidelines.

- 50 percent of felony defendants were detained, compared to 20 percent of misdemeanor defendants.
- Figure 23 in Appendix C shows detention based on lead charge type, with the highest rates of detention among rape/sexual assault defendants and robbery defendants (70

[26] See Goldkamp, J. S., Harris, M. K., White, M. D., & Collins, M. Pretrial Release and Detention during the First Year of Pretrial Release Guidelines in Philadelphia: Review and Recommendations, Implementing Philadelphia's Alternatives to Incarceration Plan. Philadelphia: Crime and Justice Research Institute, (1997). Comparisons between findings in the current study and this earlier report are limited by the fact that the two studies, due to differences in design and other factors, are not strictly comparable.

percent) and the lowest rates among drug possession (19 percent), prostitution (14 percent) and DUI (six percent) defendants.

N. Location of Defendant at Preliminary Arraignment

For video preliminary arraignments, nearly half (45 percent) of defendants were being held at the Police Administration Building, 12 percent at the Southwest Division (18th District), 12 percent at the East Division (24th District), with ten percent or less from each of the remaining divisions: Northeast (ten percent), North (eight percent), Central (seven percent) and South (six percent).

O. Pre-Adjudication Rearrest among Released Defendants during One Year Follow-up

Figure 24 in Appendix C shows a relatively "low" rate of rearrest among Philadelphia defendants released during their pretrial periods (followed up to one year or until adjudication): 23 percent were arrested for any type of offense. Six percent were rearrested for serious crimes against the person; 18 percent were rearrested for felony offenses; four percent were rearrested for weapons offenses; and 12 percent were rearrested for drug offenses.

- The rate of rearrest varied little by whether initial charges were misdemeanors or felonies but did vary by type of lead offense.
- Figure 25 in Appendix C shows that the highest rates of rearrest were found among defendants charged with prostitution (43 percent), felony theft (41 percent) and firearms violations (VUFA) (33 percent).
- Lowest rates were found among defendants charged with DUI (ten percent), aggravated assault (eight percent), rape/sexual assault (zero percent) and robbery (zero percent).
- *Comment:* The rate of rearrest is not simply related to the seriousness of the lead offense, as conventional wisdom might suggest. Instead, highest rates of rearrest are found in the less serious categories and the lowest rates in the more serious categories of charges.

<u>Time to Rearrest during Pretrial Release</u>

The median time to rearrest among Philadelphia defendants rearrested during the pretrial period was 92 days. The percentage of defendants getting rearrested during pretrial release increased slowly and steadily over the course of the 365 days of follow-up. This suggests that shortening the average pretrial period (time to adjudicate a case) will reduce the opportunity for rearrest.

P. Failure to Appear during Pretrial Release

More than one third (36 percent) of Philadelphia defendants failed to make a required court appearance and were issued a bench warrant during the pretrial release period (within up to one year). Ten percent were fugitives at the end of the one year follow-up.

The rate of FTA was not related to whether initial charges were felony or misdemeanor (both types recorded an estimated 36 percent FTA), but was related to the type of initial lead charge (see Figure 26 in Appendix C).

- The highest rates of FTA were found among defendants charged with prostitution (71 percent), felony theft (46 percent), drug manufacture/delivery/PWID (46 percent) and burglary (42 percent) offenses.
- The lowest rates of FTA were found among aggravated assault (18 percent), DUI (ten percent) and rape/sexual assault (zero percent) defendants.
- *Comment:* The rate of FTA among released defendants is not explained by seriousness of initial charges; in fact, the relationship between charge seriousness and failure to appear is almost inverse: the less serious charges generate the highest rates of FTA, whereas the more serious charges generate the lowest rates of FTA.

Time to Failure to Appear

For those with FTAs, the median time to first failure to attend court was 52 days among the March-May 2005 defendants followed over one year. The timing of failures to appear, of course, is tied to the scheduling of court events. Thus, for example, a felony defendant who has no intention of attending court will only record a bench warrant when he/she does not attend preliminary hearing.

Time to First FTA: For released defendants with FTAs, 13 percent occurred within the first week; nine percent occurred in the second and third weeks after preliminary arraignment; 23 percent occurred within 31 to 60 days; 11 percent occurred between 61 and 90 days; 12 percent occurred from 91 to 120 days, and 30 percent occurred between 121 and 365 days.

FTA and Time to Adjudication: Figure 27 in Appendix C shows that as the time to adjudication of a case increases, so does the probability of a failure to appear in court. Very few defendants (eight percent) with adjudication occurring within 90 days fail to appear, compared to 12 percent with adjudication between 91 and 120 days, 21 percent between 121 and 180 days, 32 percent between 181 and 365 days, and 46 percent of cases not adjudicated by one year.

- *Comment*: FTAs occur earlier than rearrests during release and tend to cluster (in the aggregate) in felony cases at the time when preliminary hearings are likely to occur. To the extent that preliminary hearing FTAs account for a large share of FTAs overall, these findings suggest a focus on more intensive monitoring or supervision of felony cases heading toward that court event.

Q. Pretrial Misconduct (Either FTA or Rearrest)

The constitutional aims of the pretrial release decision are concerned with both court attendance and the possibility of crime (and threat to victims or witnesses) during the pretrial release period. Looking at both possibilities together—defendants who either failed to appear or were rearrested, or both—we found that 45 percent of Philadelphia defendants engaged in at least one incident of pretrial "misconduct." The same variation by lead offense type is found for

this overall measure of misconduct as was seen for rearrest and FTA separately (as well as a similar overall inverse relationship with charge seriousness), so figures are not repeated here.

Pretrial Release Decision and Pretrial Misconduct among Released Defendants

Figure 28 in Appendix C shows the relationship between pretrial release decisions and the rate of misconduct (FTA, rearrest or both) associated with each release form. ROR releasees showed the lowest rate of misconduct (32 percent), Type I and Type II releasees showed moderately higher rates of misconduct—as did those with amounts of cash bail up to $1,000 (64 and 67 percent misconduct, respectively). With higher bails, misconduct rates began to decline—but not to the level of ROR. (Note that the ROR, Type I and Type II categories are the only categories producing all release; cash categories were detaining considerable numbers of defendants who could not raise the bail. Of course, interpretation of the data is not straightforward because, if most defendants were detained in some cash categories, few would be at risk of engaging in misconduct.)

R. Effectiveness of Pretrial Release

It is difficult to make meaningful sense of how well the pretrial release and detention process is working by looking at detention, release, FTA, and rearrest each separately. Figure 29 displays a crude means for making sense of the overall effectiveness of pretrial release and detention in a relative sense. "Effective release" is a translation of the constitutional aims of the bail process into the following assumption: The idea of pretrial release is to promote the maximum amount of pretrial release that does not result in failure to appear or danger to any persons (which we measure as rearrest for crime). Thus, the maximum effective release result would be that 100 percent of defendants gain release and none engage in either form of pretrial misconduct. As the figure shows, effectiveness is less than the ideal because we subtract the number of defendants confined and the number released who engage in misconduct. What remains is effective pretrial release.

- Overall, when either form of misconduct (FTA or rearrest) is of interest, pretrial release decisions in Philadelphia produce 48 percent effective pretrial release.
- When just FTA is the concern, pretrial release is 55 percent effective.
- When rearrest is the concern, pretrial release is 67 percent effective.
- *Comment*: This relative yardstick can be applied to categories of offenses or defendants, such as found in the guidelines, for comparative purposes. Effectiveness can be improved by increasing safe release (reducing detention) and decreasing misconduct among released persons. This suggests an emphasis on developing effective means for managing (supervising, monitoring) released defendants. In fact, if the use of confinement is to be lessened, release is the only available avenue to do that. The question is how to generate safe or "effective" (misconduct-free) release to accomplish this.

S. Pretrial Release Guidelines

Pretrial release guidelines were piloted the first time (in the nation) at the end of the 1970s and early 1980s in Philadelphia as a way to encourage more equitable, effective and accountable pretrial release decisions. Their introduction, for example, resulted in the development of the position of bail commissioner in Municipal Court, freeing judges for other court duties, though leaving them in a supervising and refereeing role. (A copy of the guidelines is appended to this report.) The crowding litigation of the 1980s and 1990s soon preempted their use, as various emergency release rules were adopted limiting the use of confinement at the preliminary arraignment stage and mandating certain categories for release.

In the mid-1990s, as a central part of the City's response to the crowding litigation, a mayoral task force led by the judiciary drew on the guidelines concept as a way to examine the use of pretrial detention and as a framework for introducing methods of safely supervising medium-risk defendants on pretrial release who would otherwise be detained (e.g., pretrial orientation, supervision, and Treatment Court).

Whatever the various views on the guidelines may be, they do offer an objective framework for the classification of all the types of defendants who enter the Philadelphia courts. By choice, the task force incorporated two main dimensions: a four-level risk assessment and a ten-level charge seriousness dimension. The resulting 40 categories allowed for study of every type of defendant coming into the Philadelphia courts (at least at that time). A secondary dimension was the provision for an "unusual circumstances" indicator that would alert the commissioner and subsequent release decision makers to factors important to the release decision but otherwise not necessarily taken into consideration. (Risk would already take into consideration prior arrest history, prior FTAs, types of offenses and other defendant background.)

The guidelines, adopted as First Judicial District policy, provided suggested decision choices reflecting the aims of pretrial release and of providing maximum safe release (to release as many defendants as possible while avoiding failure to appear and crime or threat of danger during pretrial release). Those choices were set for each of the 40 possible defendant categories in the guidelines, but are more simply understood as falling within four "zones": one consists of categories ("cells") with the presumption of release on recognizance (ROR), two of categories with the presumption of nonfinancial release and two levels of supervision (special conditions Type I and Type II), and a fourth consisting of categories of defendants with various ranges of cash bail suggested. (Homicide cases were presumed to be held without bail at the preliminary arraignment stage, so guidelines were unnecessary to address them.)

Another feature of the guidelines was that, because they were based on the study of hundreds of Philadelphia defendants and their track records of FTA and rearrest, the bail commissioners should feel comfortable following the guidelines a strong majority of the time, posited at between 70 and 75 percent in original policy documents.[27]

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[27] In establishing the pretrial release guidelines, the original manuals explaining the pretrial release guidelines described the expectation that "...if they are serving their purpose well, we would expect the commissioners'

When circumstances required different decisions (less or more restrictive conditions of release), the commissioners were required to note the reasons. These reasons would be used over time to adjust the guidelines—or encourage greater compliance among commissioners—as data were generated based on experience with their use. The initial study of the impact of the implementation of the guidelines in 1996-97 showed a) that commissioners followed the guidelines about 70 percent of the time; b) that pretrial crime and flight were reduced or at least not increased; and c) that less pretrial confinement was employed—thus, in addition to the other benefits, the guidelines relieved some strain on the Philadelphia Prisons inmate population.

We have seen in an earlier presentation that the use of the guidelines ("agreement") among commissioners has slipped over ten years to around 50 percent. (See Figure 30 in Appendix C.) This rate of agreement represents almost a non-use of the court's guidelines and raises questions about their relevance to today's population of defendants and/or about commissioners' practices. We can report that in a session with the commissioners, some commissioners took the position that the guidelines are "out of date" and need reconnection with the current Philadelphia defendant.

T. Guidelines as a Way of Describing Incoming Defendants

Figures 31 and 32 in Appendix C classify the estimated 12,333 defendants entering the courts in the March-May period in 2005 according to the charge seriousness[28] and risk dimensions[29] of the pretrial release guidelines now in place. (Homicide was considered as more serious than the otherwise most serious criminal offenses.)

The Seriousness of Charges at Preliminary Arraignment

Defendants' charges did not fall evenly among all ten charge categories—nor was this expected (see Figure 31 in Appendix C).

- The majority (60 percent of cases) fall within seriousness level five or lower. Virtually all of the defendants in these categories, regardless of risk ranking, would fall within zones of the guidelines that suggest nonfinancial release options (ROR, or release under special conditions Type I or Type II).

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decisions to agree with the guidelines in a substantial majority of cases (say, upwards of 75 percent of the time)" (in Goldkamp and Harris, Charge Seriousness, Risk Classification and Resource Implication": Three Outstanding Issues in Implementing Pretrial Release Guidelines, Pretrial Release Guidelines Volume II, August 1994, at p. 23. See also, Goldkamp, J. S., Harris, M. K., White, M. D., Weiland, D., & Collins, M. Pretrial Release and Detention during the First Year of Pretrial Release Guidelines in Philadelphia: Review and Recommendations Implementing Philadelphia's Alternatives to Incarceration Plan, Philadelphia: Crime and Justice Research Institute, (1997) at p. 5. "They were also designed to permit and encourage exceptions from the presumed decisions when appropriate, as long as the commissioners documented the reasons for the alternative decisions made in unusual cases. The original design posited an overall expected working level of 70 to 75 percent agreement with the guidelines by commissioners."

[28] Pretrial Services has an updated classification of lead charges into the ten seriousness levels. The ten levels were reviewed and agreed upon in the 1995 task force.

[29] Earlier documents summarize the empirical prediction of flight and rearrest that resulted in the development of the risk grouping in the pretrial release guidelines. The risk factors were validated statistically on several occasions.

- The largest single category of defendants based on lead charges is found in seriousness level ten, the most serious (short of homicide), which includes 31 percent of all defendants.
- The second and third largest charge seriousness categories are level four (with 27 percent of defendants) and level five (with 19 percent of defendants).

Comment: Charge seriousness is certainly not the only consideration in deciding pretrial release; a variety of prior history factors (included in the risk dimension) are also important. However, the data do not in this dimension alone suggest a notably more serious population than in past studies.

Risk Attributes of Entering Defendants

The risk dimension ranks defendants according to their relative probability (risk) of flight or crime during the pre-adjudication period. (The simple ranking was produced through in-depth statistical analysis and validation of several large samples of Philadelphia defendants over time. The extent to which this risk classification still works well for current Philadelphia defendants clearly needs to be examined.[30]) Risk level one suggests that defendants with the attributes placing them in this category will have the lowest probability of engaging in pretrial misconduct. Those falling in the fourth group represent the highest risk. Groups two and three represent low-medium and medium levels of risk of rearrest or FTA.

- Figure 32 shows that very few defendants (five percent) fell within the highest risk category;
- 18 percent fell within the lowest risk category;
- 43 percent fell within the low-medium risk category;
- 34 percent fell within the medium risk category.

In short, more than 60 percent of entering defendants fell within the two categories posing the lowest risk of FTA or rearrest.

Putting Seriousness and Risk Together: Defendants within the Pretrial Release Guidelines

What "type" of defendant is now entering the Philadelphia court system? Figure 33 places the estimated 12,333 entering defendants during the March-May 2005 study period within the 40 category pretrial release guidelines grid formed by the four-group risk ranking and the ten-level charge seriousness classification.

[30] For example, among Risk Group 1 defendants gaining release, ten percent were rearrested and 18 percent recorded FTAs; 19 percent of Risk Group 2 defendants were rearrested and 34 percent had FTAs; 37 percent of Risk Group 3 defendants were rearrested and 53 percent had FTAs; and ten percent of Risk Group 4 defendants were rearrested and 58 percent had FTAs. When "misconduct" (either rearrest and/or FTA) is the criterion, the Risk Group works somewhat better, with 22 percent misconduct among Group 1 releasees, 40 percent among Group 2 releasees, 62 percent among Group 3 releasees, and 54 percent among Group 4 releasees. One problem is that the highest risk group should a priori produce the highest rates of misconduct, except for the effect of release interventions, which are designed to lower the risk of higher risk defendants through supervision, etc.

- Using "zone" as a general framework, 35 percent of defendants fell within the presumptive ROR zone, 18 percent fell within the nonfinancial Type I zone, 15 percent fell within the nonfinancial Type II zone, and 32 percent fell within the cash bail zone.
- Compared to the last study of the guidelines, which profiled defendants within the guidelines before (1995-96) and after (1996), the implementation of the revised pretrial release guidelines, the classification of Philadelphia defendants has not changed dramatically.
    - In March-May 2005, 35 percent of defendants fell within the ROR zone, compared to 32 percent in 1995 and 39 percent in 1996.
    - In March-May 2005, 32 percent of defendants fell within the cash bail zone, compared with 38 percent in 1995 and 38 percent in 1996.
    - In March-May 2005, about 33 percent fell within the two special nonfinancial conditions zones, compared with 30 percent in 1995 and 23 percent in 1996.

Taking the seriousness and charge information together and looking at individual categories ("cells" in the matrix), the ten largest individual categories are:

- Cell 15 (Type I nonfinancial, 13 percent);
- Cell 37 (Cash bail, 12 percent);
- Cell 14 (ROR, 11 percent);
- Cell 38 (Cash bail, 11 percent);
- Cell 18 (ROR, nine percent);
- Cell 19 (Type I nonfinancial, 8 percent);
- Cell 39 (Cash bail, seven percent);
- Cell 2 (ROR, five percent);
- Cell 27 (Type II nonfinancial, four percent);
- Cell 10 (ROR, three percent.

Comment: Using zones as a rough classification of types of defendants, the main difference between this and previous study samples is that a slightly larger proportion of 1996 defendants fell into the Type I and Type II nonfinancial zones. In the March-May 2005 study, seven of the ten most populous categories were categories that would have suggested nonfinancial release. Referring to individual cells, seven of the largest ten defendant categories also were in the "top ten" in the earlier studies. The difference is in the new prominence of Cells 38 and 39, both falling under seriousness level ten.

U. Guidelines as a Tool for Recommending Pretrial Release

Twelve types of release decision recommendations, according to data from Municipal Court's information system (PARS), covered the 22 cells of the guidelines that were populated by entering defendants in this study. These include:

- ROR/Standard Conditions
- Release on Special Conditions Type I
- Release on Special Conditions Type I with Treatment Court

- Release on Special Conditions Type II
- Release on Special Conditions Type II with Treatment Court
- Cash bail of $1,000 to $3,000
- Cash bail of $2,000 to $8,000
- Cash bail of $2,500 to $4,500
- Cash bail of $2,500 to $4,500 with Treatment Court
- Cash bail of $2,500 to $8,000
- Cash bail of $4,500 to $15,000
- Cash bail of $6,000 to $50,000

These were the suggested decisions or ranges for the specific matrix cells established a decade ago, except for the mix of Treatment Court with a cash bail amount. (We are uncertain if this reflects a new Treatment Court policy that combines cash with Treatment court).

V. Agreement with the Guidelines by Commissioners

We noted above that the idea behind the guidelines as a decision/informational guide for the commissioners at first appearance meant that a level of agreement was expected between the commissioners' decisions and the guidelines recommendations. In fact, it was expected that, generally, the rate of agreement would be between 70 and 75 percent, with written reasons for departures when deviations were appropriate.

Figure 30 in Appendix C displays the level of agreement of commissioners' decisions with the guidelines recommendations over the past decade, beginning at above 70 percent near their inception in 1996 and then dropping dramatically to around 50 percent more recently. (These are not sample data but reflect full population preliminary arraignment data over roughly the last decade.)

Figure 34 in Appendix C shows the rate of agreement by commissioners (anonymously portrayed) with the guidelines for those who presided during the current study period of March-May 2005.

- Out of 13 commissioners presiding during that period, the decisions of only three agreed with the guidelines within the expected range (at or above 75 percent of the time).
- Six commissioners agreed with the suggested guidelines roughly 50 percent of the time.
- Commissioners 6, 12 and 13 agreed with the guidelines less than half the time.
- Commissioner 21 agreed with the guidelines suggestions in about one in five cases.

Figure 35 displays the variation in detention rates and release outcomes associated with decisions by individual bail commissioners. Detention rates among defendants for whom they made decisions varied from zero to 74 percent. Rates of misconduct among defendants released through their decisions varied from lows of zero and 22 percent to a high of 64 percent.

Comment: Variation in Release and Defendant Performance among Commissioners: With three exceptions, the Municipal Court commissioners were deviating from the guidelines are rates higher (and much higher) than was the practice intended under the judicial policy that established them. In fact, their notable variability in approach illustrates the problem of disparity in pretrial release (decisions, confinement and defendant performance) that was one of the problems the guidelines were created to address. Deviations from the suggested decisions were four times more likely to be more restrictive than less restrictive and the results (in terms of detention, release and defendant performance) were highly variable.

Deviation and Detention

Deviation of actual decisions from the guidelines-recommended decisions was strongly related to the use of pretrial detention:

- Among decisions agreeing with the guidelines, the subsequent rate of detention was 22 percent of defendants.
- When the deviation from guidelines was toward less restrictive options, 19 percent of defendants were confined.
- When the deviation from guidelines was in a more restrictive direction, 60 percent were confined.

Deviation and FTA

Agreement with guidelines was also related to failure to appear among released defendants:

- For decisions made within the guidelines, the subsequent FTA rate among defendants was an estimated 32 percent (a touch below the base rate).
- For decisions that deviated in the direction of less restrictive conditions than indicated by the guidelines, the FTA rate was higher (42 percent).
- For decisions that deviated in the direction of more restrictive conditions, the FTA rate was also higher (40 percent).

Deviation and Rearrest

Agreement was directly related to rearrest among released defendants:

- Among defendants whose decisions agreed with the guidelines, an estimated 16 percent were subsequently rearrested.
- Among those released under decisions less restrictive than the guidelines, 24 percent were rearrested.
- Among those released under deviations upward from the guidelines, 34 percent were rearrested.

Comment: From the point of view of defendant performance during release, these findings suggest that the defendant misconduct rates were lowest among decisions made within the options suggested by the guidelines.

Overall Agreement with the Types of Recommended Options

The pretrial release guidelines classification of the March-May defendants entering the courts recommended that an estimated 35 percent receive ROR; in fact, commissioners released 31 percent on recognizance. The guidelines recommended that an estimated 18 percent be released on Type I special conditions and 15 percent on Type II; in fact, commissioners released seven percent on Type I conditions and six percent on Type II. The guidelines recommended releasing 32 percent on cash bail under various specified ranges; in fact, 56 percent were assigned cash bail (though not all within the suggested ranges).

The low rate overall of agreement with guidelines was strongly associated with the use of confinement at the pretrial stage when specific categories are examined. Seven of the nine populated guidelines categories with recommended ROR had pretrial detention rates ranging from seven percent to as high as 29 percent. Similarly, the seven Type I/TypeII cells populated by the March-May sample, with recommendations for no detention, generated between 15 and 56 percent detention per cell. Assuming at least one day of detention per defendant detained, the deviations in the 14 cells would have generated an estimated minimum of 1,529 jail days in that cohort of defendants. In fact, over the one-year follow-up period (and including defendants who were still confined and awaiting adjudication at that point), these cells generated an estimated total of nearly 303,000 jail days. That is an average of 38 days in confinement per defendant, or 3,798 jail days per every 100 defendants classified by the guidelines in those nonfinancial release categories.

The reasons provided by the commissioners for departing from the pretrial release guidelines reflect their concerns that the guidelines do not adequately address the circumstances of specific cases before them. Some of the reasons noted, however, reflect factors that were already taken into account in the creation of the guidelines (or perhaps concern that these factors are not given sufficient weight in risk or seriousness). Commissioners frequently cited:

- the seriousness of open case(s) (seven percent);
- SOB (signed own bail) (one percent);
- the special (but often unspecified) nature of the circumstances (28 percent);
- open parole or probation cases (two percent), or detainers (two percent);
- alleged domestic violence (six percent);
- stay away ordered (13 percent)
- FTA history (six percent);
- incorrect guidelines (an assertion that, in this instance, the guidelines are simply wrong)(four percent);
- number of open cases (six percent);
- prior history (11 percent);
- the defendant is a scofflaw (one percent);
- treatment court eligibility (one percent);

- prior related offenses (12 percent);
- violation of a stay away order;
- the value of narcotics involved (two percent).

Many of the reasons given for deviations appropriately address unusual circumstances (e.g., particularly heinous aspects of a crime that are not reflected by the charge description). The largest category (an estimated 28 percent of all defendants) was noted as involving special—but unspecified—circumstances. Another common category involved prior history (11 percent) or prior related offenses (12 percent of all defendants). Six percent of all defendants' decisions noted alleged domestic violence (six percent) and 13 percent indicated that a stay away order was issued. Factors like prior criminal history and prior FTAs form part of the guidelines in the risk dimension—although these deviations may have indicated an extreme prior history or record of FTAs. The reasons for departures need to be reviewed so that they can be used as legitimate information relating to more effective pretrial release. For example, as far as one can infer from looking at the reasons for departures, domestic violence related offenses pose a special problem not addressed in the original guidelines.

W. Category Specific Analysis of Decisions and Outcomes through the Guidelines

The guidelines framework permits category-specific analysis of decisions, reasons for deviations and outcomes—only illustrated here—to identify problem areas and needs for improved release options, or to suggest policy changes. The guidelines figures presented in Appendix C pack a great deal of information into the cells of the matrix to show how information can be helpful in this process. Using these data it is possible to look at each category to consider how well release options have addressed the risks and threats posed by different defendant types. Figure 36 in Appendix C shows the guidelines matrix with the decisions made, use of detention and release, as well as rates of case dismissal in each specific defendant category.

Release

One would assume that detention would be lowest among lowest risk/lowest seriousness categories and highest among highest risk/highest seriousness categories. Focusing on the rate of detention in each cell, it is possible to identify categories maximizing pretrial release. They include:

- Cells 1, 2, 3, 9, 13, 14, 16, 18, and 20 (including, for example, categories of defendants in which fewer than 20 percent were detained).

Or, we can focus on categories with the highest rates of pretrial confinement:

- Cells 11, 19, 27, 28, 29, 37, 38, 39, and 40 all showed detention rates of 50 percent or above.

High Dismissal Rates

Another source of information involves dismissal rates. The guidelines can also look for categories with high rates of dismissal (e.g., over 40 percent).

- Cell 13 (43 percent), 18 (49 percent), 37 (42 percent), and 39 (48 percent) defendants fall in that high dismissal category.

Defendant Misconduct during Release:

Finally, we would look at the performance of released defendants in each defendant category. (See Figure 37 in Appendix C.) The lowest rates of pretrial misconduct (either rearrest or FTA) were found in the following categories:

- Cells 9 (13 percent), Cells 2 and 13 (17 percent) (Cell 29 also has zero percent but only 20 defendants).

The highest rates of misconduct were found in the following categories:

- Cells 11 (80 percent), Cell 15 (70 percent), Cells 20 and 27 (67 percent), Cell 19 (66 percent) and Cell 26 (60 percent).

The type of misconduct is also noted in each case—whether it involves FTAs, rearrests generally, or serious person crime rearrests.

Commissioner Deviation from Guidelines on a Category-Specific Basis

In re-examining the guidelines, the above data as well as the commissioners' departures from the recommended guidelines would provide important data for considering the overall effectiveness of the guidelines. To address this question, Figure 38 shows guidelines agreement rates per guidelines category for all commissioners. For the following cells, agreement rates were below the 70 to 75 percent that the guidelines approach would expect:

- 3 (ROR, 43 percent), 9 (ROR, 50 percent), 10 (ROR, 47 percent), 11 (Type I, nine percent), 13 (ROR, 57 percent), 14 (ROR, 67 percent), 15 (Type I, 43 percent), 16 (Type II, 46 percent), 17 (ROR, 43 percent) 18 (ROR, 49 percent), 19 (Type II, 23 percent), 20 (Type II, 39 percent), 26 (Type I, 35 percent), 27 (Type II, 18 percent), 29 (Cash, zero percent), 38 (Cash, 46 percent), 39 (Cash, 65 percent),40 (Cash, 57 percent).

Although it is not possible to crowd more information into these particular figures, consideration of the reasons for deviations would be critical to analysis of guidelines utility, detention and defendant performance in each specific category. The main feature is to bring the discussion of release or detention problems away from a general level so that specific categories can be the focus of review.

The overall low rate of agreement with the guidelines is a phenomenon reflected across cell categories. However, particularly thematic is the reluctance of commissioners to make use of the nonfinancial categories of decisions. Deviations in these nonfinancial categories—and the reasons for these deviations—by definition have an important implication for the use of pretrial detention. It would be important to address the sources of this discomfort, including reviewing the availability of credible and safe release options—as understood by the decisionmakers themselves. The more often nonfinancial categories are assigned financial terms, the more detention will result without improving chances of appearance or reducing crime. Moreover, a good number of those initially held on bail subsequently gain release without supervision or monitoring options. It is in these categories that the guidelines need to be revisited, because the lack of agreement seen there suggests a greatly reduced emphasis on supervision and related interventions from what was in effect a decade ago.

X. Sentencing of Criminal Cases

Of the 12,333 defendants entering the justice process in the months of March through May, 2005, an estimated 26 percent or about 3,176, had been both convicted and sentenced by the end of one year.

- Of those sentenced, an estimated 42 percent—or about 11 percent of the entire defendant cohort—received sentences involving confinement beyond time-served credit for those who had been detained (see Figure 39 in Appendix C).
- 16 percent received sentences only to incarceration.
- 26 percent were sentenced to confinement and probation.

Logically, the use of incarcerative sentences varied by seriousness and type of initial charges (see figures 39 and 40):

- 57 percent of felony defendants were sentenced to incarceration, compared to 23 percent of misdemeanor defendants;
- more than half (an estimated 55 percent) of the defendants with lead drug manufacture/delivery/PWID charges sentenced within the one year period received incarcerative sentences;
- about one-third of aggravated assault defendants were sentenced to incarceration;
- 16 percent of drug possession defendants received confinement sentences;
- 15 percent of DUI defendants received some incarceration;
- ten percent or less of robbery, burglary, and VUFA defendants received some incarceration.

Figure 41 displays the minimum and maximum sentences for the 11 percent of all defendants who were convicted and sentenced to incarceration within one year of preliminary arraignment.

- 20 percent had minimum sentences of three months or less;
- 53 percent had minimum sentences of six months or less;

- 91 percent had minimum terms of 12 months or less;
- only a handful (three percent) had minimum sentences between 13 and 23 months; and
- six percent had minimum sentences of 24 months or over.
- 42 percent had maximum sentences of 12 months or less;
- 47 percent had maximum sentences of 23 months;
- 12 percent had maximum sentences of 24 months of longer.

From the point of view of understanding the implications of the sentencing stage for local confinement, the main finding is that only a small portion of all original cases (about 11 percent) were convicted and sentenced to incarceration within the one year period. Many defendants had other outcomes: 34 percent were dismissed, 11 percent were not convicted (acquitted or diverted), ten percent were fugitive at year's end, and 17 percent had not reached adjudication by year's end. The unadjudicated—thus unsentenced cases—mostly involved more serious offenses and, taking longer to adjudicate, would also be likely to produce more and longer incarcerative sentences than those captured within the one-year study window.

CHAPTER FIVE: SUMMARY OF FINDINGS AND IMPLICATIONS FOR CONFINEMENT IN PHILADELPHIA

A. Synthesis of the Trends and Inmate Population Studies

Over the last year's examination of the nature, growth and "causes" of the inmate population of the Philadelphia Prisons, a number of themes emerge.[31] From the different sources of data considered in the first two components of the examination of confinement, findings pointed to the influence of arrest trends in shaping the entering criminal caseload, its nature and volume and, ultimately, the inmate population. Particularly influential were trends in drug arrests. In general, the trend data showed a steep upward direction in the population of the Philadelphia Prisons from the late 1970s through the current period. (We referred to this in Chapter Two as nearly "unrelenting" upward pressure, though several exceptional, brief periods of population reduction were noted.) Cases entering the Philadelphia courts increased in volume noticeably over the 1990s and, despite a reduction in incoming volume in the early 2000s, they again experienced an upturn beginning in 2003, so that at the end of 2005 the caseload volume—though less than record peak—was still double that experienced in the mid-1990s.

The effects on the courts—including year end inventory and increased age of backlog in both courts—were pointed out in Chapter Two and amount to cumulative side effects on the justice system derived from processing a high volume, serious criminal caseload. A significant parallel trend has been the sharp increase in the caseload of the Adult Probation and Parole Division (APPD). As the local probation and parole population has increased over the last decade or more, so have associated probation/parole violations and the issuing of detainers. Even assuming that the rate of violation in this population remains constant, this increased volume of probationers and parolees brings with it increased numbers of persons also on probation or parole at the time of arrest, with detainers or wanted cards, who thus may end up in the inmate population awaiting violation proceedings and multiple holds. In addition to the effects on the use of confinement, another aspect of the increased system volume is that at any moment in time increasing numbers of defendants are on release in the community pending adjudication (whether through cash bail or other means).

From the single day study of the inmate population, some of the basic findings seemed (after the fact) obvious. The inmate population had grown 70 percent over the last decade since the last crowding crisis. The bail-held (pretrial) population accounted for at least half of the persons in the institutions (though many had more than one hold). The proportion of inmates with more than one hold increased to an estimated 43 percent of inmates more than doubling since the last jail study about ten years ago. The violation of probation (VOP) population included nearly one-fourth of all inmates. Sentenced inmates formed about one-third of the inmate population. In addition, the average length of stay of persons in jail (particularly in pretrial status) had increased over the past decade (jibing with the picture drawn from the earlier analysis of court trends in case processing and the findings from the tracking of criminal cases in Chapter Four).

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[31] Some of these have been anticipated by justice system actors and some of the findings have already been taken into consideration in recent system improvement initiatives that may have an ameliorating effect on the extreme population levels in the City's institutions.

The role of drug cases, found as an influential factor in the study of long term trends, was shown to be a significant part of the inmate population across all statuses (pretrial, VOP, sentenced, bench warrant). Moreover, the population snapshot found that at least one-third of all inmates in the Prisons had been identified as having serious mental health issues.

As identified in the analyses presented in the first two studies and related presentations by the research team, the cumulative side effects of arrest (and caseload) volume increases appeared to affect many aspects of system functioning, including (but not limited to) that:

- Processing of cases in both Municipal Court and Common Pleas has been negatively affected.
- In Municipal Court, housing the front end of the criminal process in Philadelphia, the growth in volume in new cases associated with arrests has created a "bulge" at the early stages of processing (preliminary arraignment, preliminary hearing) and at misdemeanor trial.
- In addition, increased trials in Municipal Court and jury trials in Common Pleas, and lower numbers of plea cases (and non-jury trials in CP) have fed increased year-end inventories ("backlogs" of undisposed cases) in both courts. To the extent that defendants are detained pretrial, backlog in adjudication translates to backlog in detention. (Adjudication will be examined in this report.)
- The age of cases in inventory has increased along with the time to disposition in the courts (translating into longer lengths of stay in confinement, particularly among serious cases).
- As the use of probation and parole have climbed dramatically over the last decade, they have generated sharp concomitant increases in wanted cards and detainers, adding pressures on confinement capacity and recycling offenders back into confinement with additional holds. Part of this is tied to the deployment and resources of the APPD.
- The pretrial release guidelines, adopted by the First Judicial District for pretrial release determinations a decade ago, have fallen into disuse or near-irrelevance.
- Although the *rate* of bench warrants is now lower than in the extreme days of the Federal crowding litigation during the 1990s (where special release failures-to-appear broached 85 percent), the greater numbers of persons on pretrial release exceed supervisory and monitoring resources and translate into increased numbers of bench warrants (particularly in drug cases), which add to court delay and to multiple holds for inmates in the Prisons once fugitives are re-apprehended.
- At the same time, the resulting inmate population includes dramatically high numbers of inmates with substance abuse problems (first and foremost) and/or mental illness, adding an especially problematic dimension to management of the inmate population.

B. Themes from the Study of Case Processing and Pretrial Release over One Year

The last and most ambitious component of our examination of confinement looked at the effects of court case processing on the inmate population in a more dynamic and specific way, by tracking a large sample cohort (representing an estimated 12,333 defendants) entering the courts during the period from March through May, 2005, over one year. This approach had two related emphases: the effect of the way cases moved through various stages of processing in the courts and, more directly, the effect of pretrial release/detention decisionmaking at the initial processing stages. The pretrial release decision made at preliminary arraignment in Municipal Court controls who among defendants will await adjudication in jail (for some or all of the time); the other court processing developments govern how long detained defendants may be waiting in jail as their cases move to adjudication. We began these analyses in the last chapter by noting that case outcomes at all stages are the product of an interaction between justice system actors. None of the findings we have identified are explained by the actions of justice one actor, but are, in sometimes complex ways, the product of actions of several actors.

As the gatekeeping mechanism governing about half of the inmate population, pretrial release decisionmaking is critically important. Basically, the question is: are defendants released who should not be and are defendants confined who should be released? (And how does one gauge this for the purposes of planning?)

The findings of this third phase of the study also begin with the obvious: The Philadelphia courts represent a high volume urban court system, having a volume of over 4,000 defendants per month, judging from the 12,333 defendants entering during the three month study period in 2005. The greatest part (78 percent) of the "load" for disposing of defendants' cases falls on the Municipal Court (at least as measured through the one-year mark); "only" an estimated 22 percent of entering criminal defendants reach the Court of Common Pleas for felony adjudication. The front-end importance of Municipal Court is self-evident; however, the business of both courts influences the inmate population in different ways.

<u>Municipal Court's Influence on Local Confinement</u>

Municipal Court has the front-line or main gatekeeping influence on the use of confinement in several ways:

a) *Volume*: To the extent that some portion of Municipal Court defendants are in jail during processing, just the volume of its workload—and the fact that it has jurisdiction over felony cases through preliminary hearing—has an impact on levels of confinement in the local institutions. Despite some fluctuations in volume, our analysis of incoming cases showed a long-term, overall increase in the number of incoming cases (compared to a decade ago, for example). To the extent that resources do not accompany increases in caseload, or court procedures do not keep up with the new numbers, volume alone plays an exacerbating role that extends to those confined during processing.

b) *Timeliness of processing*: In general, as the large caseload takes longer to dispose, as all actors are affected, the Municipal Court defendant caseload contributes to length of stay

at the Prisons. In this study component, we found relatively long time periods between preliminary arraignment and misdemeanor adjudication, and between preliminary arraignment and preliminary hearing in felony cases, both of these findings were already foreshadowed in the analysis of case processing trends in Municipal Court reported in Chapter Two.

c) *Pretrial detention*: Municipal Court makes pretrial release and detention decisions for defendants in the pretrial period, which we have seen can be long (an estimated 14 percent of entering defendants are detained throughout the pretrial period or at least were not released within 12 months of preliminary arraignment). This court decision function may have the greatest (though hardly exclusive) impact on the size and shape of the population of the Philadelphia Prisons. While defendants may be detained as a result of Municipal Court pretrial release decisions involving many factors, how long defendants remain in confinement depends on other factors. This study found that defendants entering the criminal justice process between March and May 2005 generated an estimated total time in detention of 684,214 days, representing an average of 55.5 days in detention per defendant and an estimated 5,548 jail days per every 100 defendants. Defendants in recommended ROR and TypeI/TypeII nonfinancial release categories accounted for nearly half of those jail days: an estimated 302,738 total days in confinement. This was an average of 38 days per defendant or an estimated 3,798 days per 100 defendants.

d) *Adjudication of misdemeanors*: Municipal Court resolves misdemeanor cases, increasingly, through trial. To the extent that some of these individuals are detained pending adjudication of their cases, this function and its timeliness have an impact on the inmate population.

e) *Preliminary hearing*: Because a majority of defendants entering the courts are charged with felonies, Municipal Court shoulders the responsibility for determining which felony cases proceed to Common Pleas for trial (are held for court) through preliminary hearing. There has been a noticeable "bulge effect" associated with this critical screening function shown in each of the study components—perhaps not surprisingly. Of the estimated 6,906 defendants starting out at preliminary arraignment with felony charges in the three-month cohort studied over one year, an estimated 4,153 or 60 percent did not proceed farther than Municipal Court: they either had all charges dismissed entirely, or had charges reduced to misdemeanors and disposed in Municipal Court. If the volume involved in this function alone were not enough to create a related "bulge" of cases at this processing stage in the pretrial jail population, the occurrence of continuances (of all types) associated with preliminary hearings underscores the now critical impact of this processing stage on the detained population.

f) *Sentencing and resentencing*: In addition, in some cases Municipal Court sentences convicted defendants to jail terms, either as part of the original sentence or through revocation of probation.

Common Pleas Court's Influence on Local Confinement

Common Pleas case processing affects confinement also in several key ways:

a) *Volume*: The volume of incoming felony cases reaching Common Pleas increased notably during the 1990s and, after a brief downward turn, has recently headed in an upward direction again. The result has been increasing challenges for Common Pleas to keep up with its increasing caseload. Because of the seriousness of the criminal cases disposed in Common Pleas, defendants in those cases have a greater likelihood of having been detained pretrial and of receiving incarcerative sanctions if convicted. To the extent that these cases are resolved through trial (rather than plea, for example), the length of time for adjudication increases.

b) *Timeliness of processing*: Common Pleas by definition adjudicates the most serious cases, including homicide, and has one of the highest trial rates in the nation (see Judge Fitzgerald's comments). Jury trials doubled from 1978 to 2005. The 2005 jury trial rate was about five percent of cases. The increase in serious cases and the longer processing time (particularly in the Section Program, which has responsibility for jury trials) result in backlog, and this in turn greatly affects the length of stay in the pretrial population (most of which consists of detained felony defendants). This is perhaps the greatest impact Common Pleas Court has had on the population. (This is an area that is currently the subject of a major court initiative to reduce the undisposed inventory and to increase the timeliness of adjudication in felony cases.)

c) *Homicide*: Homicide cases generally involve the greatest use of resources for all relevant actors and the most extended proceedings in court, and they almost always involve a detained defendant. The number of homicide cases in the court's caseload is low compared to other types of felony cases, but high compared to the number in the recent past, as the number of homicides in the City remains high. (There is also a lag in time between the occurrences of homicides and when defendants may be apprehended and their cases reach the courts and are processed. This means that even when the number of homicides goes down in the City, the court cases may not go down for some period thereafter.) Though not a focus of the case processing study component (it was examined in Chapter Two as part of trends analyses), the homicide backlog had been growing and, beginning last year, the time to disposition in homicide cases was slowing.

d) *Sentencing and resentencing*: Because of their more serious nature, more Common Pleas cases result in some incarcerative sentences (or resentences in cases of probation or parole violations). Although some Common Pleas sentences involve state prison terms, some do not and therefore have an important impact in shaping the sentenced population of the Philadelphia Prisons. Many Common Pleas sentences involve probation, either accompanying or separate from confinement. With the number of violations heading upward, the timeliness of processing of probation and parole violations has a major impact on the inmate population (about one fourth of whom are held for this reason and most of whom have Common Pleas cases).

Confinement Themes Shared by Both Courts

Some problems are not specific to either court, but are shared by both:

a) *Processing of probation violations*: As the Probation/Parole caseload has increased dramatically over the last decade or so, so have the numbers of violations. Persons awaiting violation proceedings make up nearly one-fourth of the inmate population.

b) *Bench warrants*: Although relatively few defendants are just held on bench warrants, a substantial number (about 25 percent) enter the system already on pretrial release in other cases. Thus, bench warrants pose significant obstacles as they represent additional holds facing incoming cases. Earlier processing of bench warrants would have a beneficial effect on the population by reducing the short-term (72 hour) population or at least eliminating one hold prior to imprisonment for detained defendants.

c) *Multiple holds*: Strategies for handling this problem are under consideration. A particular challenge involves the connection between new charges and probation violation proceedings.

d) *Continuances*: Both courts have some problems with continuances, which occur for a number of reasons upon request by defense and prosecution. Because of the volume of its cases, Municipal Court contributes the greatest number, particularly around the preliminary hearing stage proceedings. Nevertheless, the case processing study showed that about 40 percent of Common Pleas defendants had four or more continuances in their cases through the one year observation period.

e) *Dismissals*: Without falling into the argument about the "cause" of dismissals (there are several kinds and reasons described in the text) and simply assuming for the purposes of this project that dismissals are cases in which the evidence was insufficient to lead to conviction, it is worth pointing out the rate of dismissals (34 percent within the one year period of processing studied) makes it the modal (most common) one-year outcome in a Philadelphia court case. Not surprisingly, given the volume of cases and the division of labor between the two courts, more dismissals occur in Municipal Court: 25 percent of misdemeanor cases ended in dismissal and 69 percent of preliminary hearings resulted in dismissal. Of cases going on to Common Pleas for adjudication, 12 percent ended in dismissal.

From a "wouldn't it be nice" perspective, defendants who are detained and then have all charges dismissed theoretically would have been good candidates for avoiding pretrial confinement. (This is a hindsight argument, but there has always been an indicator in the pretrial release guidelines of categories of defendants with expected high rates of dismissal.) In fact, 40 percent of those detained before trial had their cases end up in dismissal.

C. The State of Pretrial Release

Originally, one of the reasons this study was requested was because there was a need to examine pretrial release, detention, pretrial release guidelines and release options. The single day jail study (November 21, 2005) presented in Chapter Three showed the attributes of defendants confined in the Philadelphia Prisons, their cases, other holds and length of stay. The study described in Chapter Four, tracking defendants entering the court system at preliminary arraignment and then following the progress of their cases and outcomes over the next year, showed how detention was generated in processing incoming cases. That analysis examined the use of pretrial release and detention and the effects of each in some detail, including a review of the guidelines (first established and last examined in 1995).

A somewhat larger proportion of the March-May defendants (an estimated 36 percent) were detained after preliminary arraignment in this study than were detained in defendant samples a decade ago: the proportionate use of detention has increased over time at the first judicial stage. The effect of this proportionate increase is multiplied by the increase in the volume of the entering criminal caseload. The rate of rearrest (23 percent) among defendants who did gain release was "average," (though lower than in the past). However, rearrest varied notably by type of offense (and "average" is a relative concept). The rate of failure to appear (36 percent) was higher; it also varied considerably by the nature of the offense charged. Under half (45 percent) of released defendants "failed" on release by engaging in either or both forms of misconduct during the pretrial period. The higher rates of pretrial misconduct were found among the less serious types of offenses, and the lower rates were found more often among the more seriously charged defendants.

The Chapter Two study of trends associated with the use of the pretrial release guidelines showed a sharp drop in agreement by commissioners with the guidelines (meaning in the making of decisions according to guidelines suggestions) from the originally posited level of 70 to 75 percent[32] a decade ago to less than an 50 percent just prior to this study. In this study, commissioners' decisions coincided with the pretrial release guidelines suggestions about half of the time (considerably below the 70-75 percent level intended).

With half (or in the cases of some commissioners more than half) of decisions made outside of the guidelines framework, commissioners produced widely varied results in their uses of detention (via cash bail) and in the rates of misconduct that resulted among released defendants. About half of the defendants initially detained after preliminary arraignment gained release sometime before adjudication of their cases. Notably less than expected release was produced through use of nonfinancial special conditions of release (Type I or II), and comparatively little was generated through conditional release or special release mechanisms.

In the last chapter, we discussed the kinds of data that should be considered in understanding commissioner deviation from the guidelines, particularly the reasons given for deviations. The level of deviation from the pretrial release guidelines itself raises a serious question about the utility of the guidelines and their impact on release and confinement. Quite possibly, problems or crime types not addressed well in the guidelines a decade ago—such as

identifying domestic violence cases or extreme prior histories of FTA—lie behind the deviations from the guidelines. To the extent that factors associated with incoming defendants and their cases need to be incorporated into the guidelines or point the need for new uses of release options, these findings suggest that the guidelines should be reviewed. Certainly, the 50 percent level of agreement suggest that they are not being viewed as a relevant information resource or system improvement tool by those for whom they were designed to assist in promoting fair and effective release decisions.

This question—which is about the quality and appropriateness of pretrial release decisionmaking—turns out to be critical, given the large impact Municipal Court pretrial release decisions have on the level and nature of confinement in the Philadelphia Prisons. A higher proportionate use of pretrial detention and a low level of agreement with the pretrial release guidelines do not of themselves mean that pretrial release decisions are inappropriate. Notable changes in the population (more serious charges, greater risks) could explain both. The third study component reported in Chapter Four set out to address these questions in two ways: a) through discussion with the Municipal Court commissioners and others associated with pretrial release decisionmaking; and b) mostly empirically through the examination of an estimated 12,333 preliminary arraignment decisions and tracking of outcomes over one year for those defendants.

Our conclusions in considering these questions, which have important implications for the current and future use of pretrial confinement in Philadelphia's justice system, have four parts:

a) *We agree* with the commissioners and others who argue that the pretrial release guidelines are in need of updating and/or reexamination. This is mainly because the guidelines are supposed to be a useful informational decision resource that promotes maximum safe release and equitable decisions relating to detention and release. If, for some reason, they are not being used as intended, their instrumental value has been greatly diminished. The reasons for the low level of compliance should be addressed with the assistance of empirical evidence and a process involving relevant decisionmakers.

b) The empirical evidence in this study of pretrial release does not appear to support the anecdotal explanation for the large deviation rate that today's criminal caseload is so different, so much more serious and recidivist than that of a decade ago. Certainly, however, these data may not capture features more evident to decisionmakers, such as attitudes or uncooperative behaviors that may be noticed by those involved in this process.

c) The use of detention has appeared to have increased proportionately as an outcome of the preliminary arraignment stage, while the "riskiness" of the entering caseload has, at least empirically, not appeared to have worsened. (It was indeed quite "risky" a decade ago.) There are examples now of extreme cases worthy of deviations, just as there were in earlier studies, when the guidelines were developed.

d) The increased use of detention at preliminary arraignment appears to stem from less reliance on the nonfinancial conditions of release (e.g., supervision). Because of the implications of this trend, the reasons for this recent reluctance to use Type I and Type II nonfinancial release need to be investigated and addressed. (For example, are there insufficient resources for supervision? Do commissioners lack faith in supervision options? Do strengthened release options need to be deployed?) Results-based evidence (from which the guidelines were constructed in the first place) may help inform discussion of effective use of nonfinancial release. Indeed, the guidelines may help identify which types of defendants/cases may need special or strengthened release options.

The Need to Enhance the Capacity to Manage Released Defendants Effectively

The challenge for judicial decisionmakers has been what to do about defendants who fall in the middle (cases of moderate seriousness involving defendants posing medium risks). This is the challenge for managing confinement capacity in Philadelphia: there is a need for greater use and more effective management of the released population—the large numbers of defendants who fall between the obvious choices of confinement or outright release (ROR). The clear implication is that the initial decisionmakers do not have a great deal of comfort, regarding these types of defendants, with existing supervisory, monitoring and treatment options, at least not in sufficient numbers and effectiveness to promote safe pretrial release.

Yet, note that, although 36 percent of all entering defendants are detained as a result of a preliminary arraignment decision, 23 of this 36 percent are detained and then are sometime later released—mainly through posting of cash. Few of these defendants, who represent almost two-thirds of those initially detained, have any constraint placed on them when they gain release other than the cash they would owe in the event they fail to appear in court. The empirical literature offers little support for the idea that, once release is gained, cash serves as much of a constraint if a defendant is intending to be absent from court. The literature shows no relation between cash bail and prevention of crime during pretrial release. The result is that many of the defendants for whom supervised release is recommended gain release through cash bail despite the intentions of the initial decisionmakers. The point is that all released defendants need to be managed (albeit in different ways) for public safety and court attendance purposes.

A decade ago, Philadelphia implemented a variety of options—Treatment Court, the Female Offenders Comprehensive and Integrated Services Network, the Forensic Intensive Recovery (FIR) program, pretrial supervision—to address the middle categories of defendants. These categories were targeted within the guidelines category-specific framework under Special Release Conditions Type I (RORSCI) and Type II (RORSCII). The greatest difference in incarceration when the current study is compared to data from a decade ago (when pretrial release was also studied in depth) is that commissioners have appeared reluctant in their decisions to implement special conditions release. The Philadelphia Treatment Court, a very special pretrial option, has a great national, regional and local reputation. It alone cannot handle the nearly 40 percent of entering cases that involve drug offenses as lead charges (not to mention the other cases where drugs are the problem but are not the lead offense).

This state of affairs suggests that the pretrial release guidelines should be re-examined and re-invigorated, focusing on developing or improving the capacity to supervise medium risk defendants safely in the community. In its parallel universe, the Adult Probation and Parole Division faces the same challenges in dealing with the convicted population as Pretrial Services does in managing pretrial release safely and effectively when the "good risks' are obvious and easy, but the medium to high risks are increasingly part of the assignment to the street.

Credible release options need to be enhanced, expanded, or improved, or even invented if need be, under the responsibility of the courts' two supervisory organizations (PTSD and ADDP). Their effectiveness has a direct effect on the size and nature of the inmate population in the Philadelphia Prisons.

The Role of Special Release and Conditional Release

The mechanisms that re-review the population of detained after the fact of detention do not produce large numbers of releases. The lessons relating to the lack of agreement with the guidelines by commissioners, particularly in categories in which defendants were being recommended for release under nonfinancial conditions, make the "clean up" population review function that much more critically important. Yet the existing review mechanisms, because of whatever constraints, make little additional contribution to release. One might conclude that this shows most pretrial release decisions are appropriate. However, the fact that cases change as charges are modified or other holds are resolved, just as defendant circumstances relating to release may change during the life of a case, suggests that subsequent reviews are necessary. It may be useful to re-evaluate and/or redesign these functions to better realize their original goals to promote safe pretrial release.

D. Implications of the Three-Study Data for the City's Improvement Strategy ("24 Point Plan—Population Reduction Strategy")

This examination of the use of confinement and the nature of the inmate population in Philadelphia, drawing on diverse sources of data, has been guided by the need to develop policy-relevant findings that may provide an informational base to assist in the development of population relief strategies. The data identify a variety of factors affecting the use of confinement broadly—e.g., crime problems (drugs, violence), law enforcement activity, volume, court processing, pretrial release, and sentencing, among other factors, and point to areas in which system improvement initiatives might improve the criminal process and help to lighten the burden on local confinement resources.

As the City has convened the Criminal Justice Coordinating Commission over this last year to address the growing inmate population challenge for the Philadelphia Prison System, data from these analyses have complemented and, at various stages, contributed to the City's effort to develop an overall population reduction strategy. As this research has highlighted factors influencing the size and nature of the population, the City's effort has been to develop a practical plan for alleviating the strain on institutional capacity through a cooperative effort involving the relevant justice system actors. Although the purpose of this report is not to assess the 24-point plan developed by that effort, we conclude by examining the strategy's points and asking how

the data assembled during the year-long examination of the use of confinement could provide estimates their likely impact. (Note the data are not relevant to all points and some points are interrelated and are discussed together.)

#2 Facilitate Early Release

The jail study reported in Chapter Three found that an estimated one-fifth of sentenced inmates had exceeded their minimum sentences on the study date. This included 23 percent of "newly" sentenced inmates (about 289 inmates) and 21 percent of inmates serving "backtime" or resentenced (about 342 inmates). Even allowing for the fact that some portion of these may have other "holds" causing them to remain in confinement after expiration of the minimum sentence,[33] this is a productive area for intervention, as the Defender Association has already argued and is in the process of acting on with the cooperation of the Prisons.

#3 Reduce Pretrial Population: Release Defendants Held on $10,000 or Less

The jail study showed that about 28 percent of the inmate population (an estimated 2,345 inmates) were detained on the study date with no other holds. Forty percent of all bail-held (an estimated 1,890 inmates) have additional holds but were also held on $10,000 bail or less. An estimated 417 of these had only one hold: bail of $10,000 or less. (Note: about one-third of these had either serious crimes against the person as current charges or as part of their prior arrest histories.)

Although this approach to reducing the pretrial population might—on particular days—produce a pool of a couple of hundred defendants who might be eligible for expedited or supervised release, bail amount is not necessarily a useful (certainly not a reliable) way of selecting candidates. Bail amounts do not tie directly to the level or risk of flight or crime threat posed by defendants. Secondly, based on past experience with application of similar emergency release approaches in Philadelphia, this method quickly becomes self-defeating as commissioners deciding bail at the front end find themselves adjusting by increasing bail to higher than "emergency rule" levels when their intention is to detain. Although commissioners may not be certain of precisely what levels of financial bail cause detention, under such an "emergency" release approach, they will quickly know which levels of bail (less than $10,000) will certainly not cause detention of the accused.

A more reasonable approach is to make use of the guidelines framework (in its current or an improved form), which takes into consideration risk of flight and crime as well as charges and other special circumstances, to identify categories of the most "releasable" of the unreleased defendants.

 # 4 Reduce Pretrial Population: Re-Strengthen Use of Nonfinancial Release Conditions

The jail study showed that the following would have fallen under nonfinancial release categories according to the pretrial release guidelines:

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[33] A small portion of these may have been serving consecutive sentences, for example, though this was not always clear from the court records.

- *Bail held (with or without other holds)*: 33 percent (an estimated 1,300 detainees on a given day); ten percent would have fallen under ROR and 23 percent under special nonfinancial conditions I and II).
- *Bail held (only)*: 27 percent of these (an estimated 571 detainees, including 189 ROR, 214 Type I and 168 Type II).

A prominent finding in the study of case processing tracking an estimated 12,333 defendants into and through court processing over a one-year period was that nonfinancial categories of release (ROR, Type I and II) were notably less used than in a similar study a decade ago and showed high rates of commissioner deviation. In short, the commissioners were not comfortable with this type of release at the level the guidelines would have expected and compared to their use in the past.

This group of defendants—recommended in nonfinancial categories but not released—generated an estimated 303,000 jail days during the 12-month follow-up. In short, this is a potentially significant area of impact for population reduction. However, as discussed above, it carries with it the necessity to strengthen or expand nonfinancial options and to address the concerns the front end pretrial release decisionmakers may have with the current options.

#5 Reduce Pretrial Population: Bench Warrants

The jail study showed only a small number (three percent or an estimated 265 inmates) of the overall inmate population on-a-given day held only on bench warrants. Yet their impact as a short-term population is significant. This population is perhaps more notable because of its contribution as a "second hold." About 25 percent of entering defendants are already on pretrial release of some sort in an open case. Eight percent (this may be an underestimate for a number of reasons) had open bench warrants at the preliminary arraignment stage. It is a sensible idea to resolve bench warrants after pretrial release is decided but before defendants are transported to the Prisons. This approach should relieve the short-term population that awaits the bench warrant hearing at the prisons and/or at least simplify the prospective detainees' situations by eliminating one hold in advance of confinement. This approach may not always result in release, but will eliminate the processing involved at the bench warrant hearing stage. (This fits the theme of developing an approach to consolidating holds as soon as possible, so that possibility of ultimate release from confinement is less complex.

#6 Accelerate Common Pleas Dispositions

Our data from all three study components (trends, jail study, court processing) suggest what Common Pleas leadership has already targeted: time to disposition and end of the year inventory ("backlog") has recently increased. This is reflected in the longer stays in confinement of defendants in Common Pleas cases. It is difficult to translate reductions in average time to case disposition to reduction in average length of stay in confinement in Common Pleas cases to produce a useful numerical estimate (e.g., jail days saved). There is no doubt, however, that such an improvement in case processing will reduce jail days significantly.

There were parallel trends in Municipal Court times to disposition and end-of-the-year inventory that also have already been targeted by that court's leadership. Reductions in time to trial and preliminary hearing would also translate into reduced length of stay to the extent that Municipal Court cases are held pending disposition. Although easy to say, action in this area is particularly challenging because it must deal with the interactions of the relevant actors that affect case processing time in a variety of areas.

#7 Consolidate Multiple Hold Cases

The jail study showed that the proportion of inmates having multiple holds increased two and a half times since the last jail study (about ten years ago) from 17 percent of the population then to 43 percent of the population in this study. While there are many categories of multiple-hold inmates (see Chapter Three and its appendix), one of the most common categories involved inmates with new arrests and probation or parole holds. About 11 percent or an estimated 932 inmates had new arrests and were held on probation or parole violations. (Most new arrests and most Violations of Probation/Parole do not involve serious crimes against the person; large portions of both categories do involve drug offenses.) "Consolidation" of this dual category would have a significant impact on the population of the Prisons.

#s 8 and 11 Alternative Sentencing Options

About 88 percent of inmates serving sentences only (an estimated 1,345 inmates) were serving sentences for nonviolent offenses, most of these including drug offenses. While only about 11 percent of all cases entering the criminal process are convicted and sentenced to confinement within one year of entry, sentenced inmates accumulate to form a sizeable portion of the overall population because of the (obvious) lengths of stay associated with their sentences. When the role of drug offenders and nonviolent offenders is so pronounced, there is at least a sizeable pool of offenders who could potentially be candidates for alternative sentencing options not now employed. Development of such options is an involved process which includes a great deal of agreement among system actors as well as sufficient resources to implement alternative forms of sentencing. In a population emergency, however, and in connection with #2 above, electronic monitoring might be employed to place sentenced inmates in non-confinement settings pending completion of their sentences.

#s 9, 2 and 10 Alternative Options for Probation/Parole Re-sentences and Reentry

The jail study showed that nearly one-fourth of the population (an estimated 1,969 inmates) consists of persons awaiting violation hearings and possible resentencing. Six percent of the jail population (about 532 inmates) was held only awaiting violation/resentencing proceedings. Given the increases in the APPD caseload over the last decade or so, the commensurate increase in violations, and the improvement of information available at the preliminary arraignment stage relating to probation/parole status, it makes sense to consider safe alternatives for non-violent offenders in particular that could a) avoid awaiting processing of alleged violations in confinement (particularly when there is no accompanying new arrest); and b) to serve as appropriate programmatic options at resentencing that do not involve confinement, or that seek an early transition out of confinement. The fact that drug offenses make up a large

share of this population suggests that treatment options might be targeted for these offenders. At least some confinement could be reduced or avoided by employing electronic monitoring pending the outcome of the violation process and/or a suitable placement is arranged.

#13 Reduce Pretrial Processing Delay

This strategy is related to #6 above. The trends study and the court processing study show longer times to processing at a number of stages (some in Common Pleas) than previously. Overall, 27 percent of entering cases are not adjudicated within one year (although about half of those are not adjudicated because they are in fugitive status). At the Municipal Court level, there was evidence of a front-end "bulge" effect in the jail study (pretrial population), the trends analysis and the court processing study, which showed, for example, a median of 101 days from preliminary arraignment to preliminary hearing, as well as longer times to Municipal Court trial. The court leadership has already identified preliminary hearing as an area in which improvements can be made through a cooperative effort of system actors.

#15 Plead More Intermediate Punishment Candidates in the Track Program

Our data cannot provide a precise estimate of defendants in this category, except to note that a large share of entering defendants (nearly 31 percent) involve felony drug cases entering Common Pleas. To the extent that these cases include non-mandatory charges and defendants who might prove acceptable candidates for Intermediate Punishment options (drug treatment), it makes sense to move them to those options as early in processing as possible. This strategy relates to the previous strategies focusing on reducing time to disposition as well as resentencing and greater use of non-confinement sentencing alternatives. To the extent that cases that may have missed the opportunity to be considered for Treatment Court earlier in processing, or are identified as eligible later in processing, perhaps the drug court approach could expand its scope to deal with these Intermediate Punishment-type cases.

#16 Increasing Time in Police Holding Before Transporting to the Prisons

This option seems mainly to be considered as a front-end delay strategy in situations when the population at the Prisons exceeds acceptable levels. As a strategy, it gambles that the Police holding volume will not become unmanageable because of the added bottle-neck in holding, while waiting for capacity to open up at the Prisons. The hope is that this will allow some additional persons to gain release before transport, given the extra time to arrange and post bail, while not exacerbating problems associated with Police holding.

#18 Aggregation of Sentences

This strategy suggests that persons serving consecutive sentences in the Prisons who minimums exceed 23.5 months ought to be identified and moved to state facilities. Apparently the District Attorney's Office has determined that potentially 160 prisoners could be transferred based on their aggregate sentences.

#19 Major Case Plea Negotiation Program; More Rigorous Screening of Cases at Preliminary Hearings

There is no doubt from our data that more and earlier Major Case plea negotiations would reduce time to disposition, although the result may be just to move a defendant more quickly from pretrial to sentenced status in confinement. We are uncertain what is meant by more rigorous screening at preliminary hearing—which in our study seems to find quite selective and to play an important winnowing "out" or "down" of large numbers of cases initially charged as felonies. Preliminary hearings do have a large number of continuances contributing to their delay occurring at the request of both parties. Delay at this stage translates into a big part of the delay in the disposition process as case move forward into Common Pleas.

 # 20 Federalize Gun Crimes

In the jail study we found few cases being held in any category with lead charges involving VUFA offenses (even less for other weapons offenses). Yet, VUFA charges were more common as accompanying or secondary (not lead) charges: evident in an estimated 33 percent of pretrial detainees. Our case processing study showed that 92 percent of the VUFA charges were adjudicated within one year; 65 percent were dismissed within a year.

#21 Alternative Sentencing Options for Substance Abuse

Unfortunately, this strategy might best be recast to consider the treatment needs and substance abuse challenges associated with the Philadelphia inmate population systematically and not just under the heading of Alternative Sentencing Options. An estimated 23 percent of the detained, 36 percent of the bench warrant held, 38 percent of the VOP population, as well as about one-third of those serving sentences on the jail study date and nearly 40 percent of all defendants entering the criminal process have lead drug charges. (Many more have drug charges as secondary offenses and/or were involved in crime because of their substance abuse.)

In short, there is simply a large underlying need to deal with the substance abuse problems of the inmate population across the board. Release to treatment programs, particularly through a Treatment Court-like apparatus, which offers strong structure and supervision, could be a major area for exploration of population reduction impact. Expanding treatment options and interventions to address these populations requires justice system cooperation, planning and additional treatment resources.

#23 Redeploy/Hire Additional Probation/Parole Officers

From 1991 through 2003 (the years for which data were available in our trend analysis—see Chapter Two), the active APPD caseload increased 72 percent. The lodging of detainers, the generation of wanted cards and the numbers of probationers and parolees with violations all also increased in parallel with the dramatic growth of the overall active caseload. These trends have at least two important implications for the inmate population (and the justice system overall): a) the growth in the "side-effects" of the probation/parole population translates into an important portion of the inmate population (about one-fourth on the date studied); b) APPD represents one

of the two agencies (Pretrial Services is the other) whose supervisory responsibilities for offenders in the community will undoubtedly have to increase if the current confinement population remains at these high levels or is reduced through special release mechanisms.

Under the current high volume of criminal cases entering the Philadelphia courts and a limited confinement capacity (or even reduced use of confinement), the implication is that greater numbers of defendants and convicted offenders will need to be supervised in the community. This means that the capacity of the Adult Probation and Parole Division and the Pretrial Services Division will have to keep up with the demand. Moreover, APPD strategies that can somehow reduce the rate of violation, lodging of detainers and wanted cards through more successful supervision will be critical in managing the level of confinement in the Prisons. Adding more numbers to the active caseload (increasing the numbers in the community under supervision) without reexamining how existing resources are deployed, their effective use and what additional resources might be needed will prove self-defeating from the point of view of the inmate population and of public safety. It is unlikely that the effectiveness of probation and parole supervision can be improved without bringing new resources to bear. (There are parallel implications for the increased burden placed on the Pretrial Services Division in handling increased numbers of defendants in the community.)

#24 Revision of Pretrial Release Guidelines

The re-examination and possible revision of the pretrial release guidelines makes sense for the reasons outlined in this chapter and earlier. An important potential for relieving the prison population exists in the more frequent use, expansion or strengthening of the categories within the guidelines that target "medium" risk and seriousness defendants—this may include a selective use of electronic monitoring. We noted that in the three-month cohort sample, 303,000 jail days were generated among defendants recommended for nonfinancial release but receiving cash bail and detention instead. The reasons for the drop in use of the guidelines recommendations needs to be looked at closely to determine which can be addressed through existing, new or improved release options or strategies.

Clearly, commissioners do not feel comfortable releasing defendants under these conditions. If they could feel more confident, if release options provided the kind of accountability necessary for safe release, then revised guidelines decisionmaking could have a significant impact on the inmate population. The need to strengthen safe release options is underscored by the fact that many (about two-thirds) of those not gaining release at preliminary arraignment because of financial bail gain release later (most within a month) by paying bail. Although listed last as a possible strategy, presumably because of the time and work involved in reexamining the guidelines, improvement of pretrial release decisionmaking should be viewed as one of the areas with greatest potential impact on the use of local confinement and public safety.