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Technical Assistance Report

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MEMORANDUM

TO: Special Committee on Jail Facilities, Montgomery County, Maryland Grand Jury

FROM: Adjudication Technical Assistance Project


DATE: May 15, 1990

I. Introduction

This memo is a supplement to ATAP Report No. 2-035 submitted in April 1990 to the Special Committee on Jail Facilities of the Montgomery County Grand Jury and focuses upon a review of the data provided in the Montgomery County Criminal Justice Coordinating Commission (MCCJCC) report, "Operational Factors Affecting the Correctional System" published shortly after submission of the ATAP report. The purpose of this review is to comment on (a) the impact of the criminal justice process, as evidenced by the MCCJCC data, on the Montgomery County Detention Center population; and (b) how pretrial processes and practice in Montgomery County, evidenced by the MCCJCC data, compares with those of other similar jurisdictions.

By way of background, the Special Committee on Jail Facilities of the Montgomery County Grand Jury requested ATAP assistance to provide guidance in the Committee's assessment of jail capacity needs. Special attention focused upon the criminal caseflow process and the various decisions made primarily during the pretrial period which potentially affect the jail population. During December 1989, the Committee, with ATAP assistance, conducted a series of hearings with the County's Chief Judges and directors of the various agencies involved in the pre-trial process.

1 "Assistance to the Montgomery County, Maryland Grand Jury Committee on Jail Facilities in Reviewing the Relationship of Pretrial Processes to Jail Capacity Needs." April 1990.
to discuss the operations of their respective agencies as they might impact on the detention population. A summary of the issues raised in those discussions was provided in the April 1990 ATAP report. During the course of that study, the Committee and the ATAP Study Team requested certain statistical information from the MCCJCC relating to the criminal caseflow process (See ATAP Report Appendix which is attached); the MCCJCC, however, was unable to retrieve the requested data despite several special computer runs designed to obtain it. The compilation and analysis of these data items therefore remained an essential task to be performed in order to meaningfully interpret the relationship between the pretrial process and current detention population issues in Montgomery County and to identify potential areas for improvement in that process which might alleviate current jail capacity problems.

Shortly after the ATAP report was submitted, the MCCJCC report was issued which presented for the first time some -- but not all - of the data items requested. The ATAP Study Team agreed to review the data items provided in the MCCJCC report which are relevant to the ATAP study while still underscoring the need for the more comprehensive and current data base outlined in the ATAP report as a prerequisite for addressing the issues raised during the Committee's hearings and summarized in the ATAP report.

II. Focus of the MCCJCC Report

The MCCJCC report presents a useful tool for County decision-makers to use as a foundation for addressing criminal justice system issues. The addition of the supplemental document, which provides an analysis of the potential impact of certain changes in policies and/or procedures on the correctional population, will also be a useful guide for begin more informed discussions among policy makers. The focus of the MCCJCC Report is, however, limited: arrest practices, District Court Commissioner activity and Montgomery County Detention Center (MCDC) intake and release statistics -- important areas from which to begin assessing pretrial detention population needs but only a segment of the total criminal caseflow process affecting the detention population. More importantly, however, the lack of detailed information even on these operational areas as well as other areas not addressed in these discrete operational areas is a major limitation of the information presented and which should be remedied before any meaningful interpretation of the relationship between pretrial practices and the detention population is possible. This issue is discussed below in greater detail.
III. Data Limitations

Although considerable time was spent reviewing the MCCJCC data, it is difficult to draw any real conclusions for several reasons. First, it lacks sufficient information to permit assessment of the issues addressed. For example, the report does not present any data broken out by felony/misdemeanor classifications. The only breakdown provided relates to arrests for Part I, Part II crimes, etc. Further, it does not present any data on system operations comparing released defendants to detained defendants. This comparison is critical in many areas. For example, the length of time for psi's averages 51 days but if psi's for detained defendants are prepared in 2 - 3 weeks, for example, with psi's for released defendants prepared in 3 months, psi time is not a significant factor which can be improved to reduce the jail population. Similarly, the average time to disposition in Circuit Court is 168 days. The report further states that Montgomery County is the second slowest court in the state. However, before we can comment on the relationship between the pace of case processing and the jail population, case processing data broken down for detained and released defendants is essential.

Furthermore, it does not address a number of other areas which policy makers in the County need to consider relating to the underlying practices and policies of the various agencies involved in the entire pre-trial criminal case process (see the Appendix to the ATAP report attached) -- most likely because data on these issues appears to be difficult, if not impossible, to retrieve on a current as well as regular basis. No data, for example, is provided on the processing of cases (felony/misdemeanor; District Court/Circuit Court, etc.) through the system except for summary information relating to arrests and Commissioner actions.2

The lack of data appears to stem from the limitations of the Montgomery County Criminal Justice Information System (CJIS). The MCCJCC has done an admirable job of trying to piece together data to prepare its report but the CJIS system appears to be inadequate to provide the data necessary to assess specific components of the system as well as the total criminal caseflow process. This situation is all the more unfortunate in view of the County's obviously able and interested staff who are left with the task of trying to draw conclusions from a mish-mash of data sources and samples which don't coherently tie together. It is hoped that the County will make a commitment to enhance the CJIS, include the

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2 Shortly after submission of the ATAP report, Robert Coyne, Executive Director of the Montgomery County Criminal Justice Coordinating Commission provided the ATAP study team with certain data items on April 18 but, because of ambiguities this data presented in both definition and interpretation, the study team was unable to proceed with its analysis.
Circuit Court operations in the data base, and provide criminal justice system policy makers with the information tools necessary for effective management and for assessing the interrelationship of decisions made in one segment upon others. Such information should be readily available to criminal justice agency managers on a regular and current basis.

The MCCJCC Report recognizes this problem and points to the need to address it. Jurisdictions in which the major criminal justice agencies have cooperated in establishing a comprehensive, defendant-based information system (e.g., Pinellas County, Florida or Montgomery County, Pennsylvania), have found the benefits extremely rewarding; not only from the obvious system planning enhancements but also from better access to information, leading to more informed decision making.

IV. Comment on Data Presented in the MCCJCC Report

In light of the data limitations noted above, the following comments are offered on those data items presented in the MCCJCC report relevant to the ATAP study. An additional limitation to this data, however, is that it primarily relates to 1988 activity, when the jail was operating in a less crowded atmosphere (137% of operation capacity vs. 167% in 1989). The report must therefore be updated as soon as 1989 and 1990 data are available.

A. General Information and Trends (pp. 2-3)

1. Report Finding:

Only 23.3% of all bonds set initially by the District Court Commissioners fell into the bond status of "released on recognizance" (ROR);

Comment:

The significance of this statistic depends on the nature of the arrestees involved. What offenses are they charged with? What percentage of the arrestees are charged with felonies? misdemeanors? What other characteristics do they possess? (i.e., local residents? prior FTA histories? etc.)

2. Report Finding:

In 1989, the MCDC operated at 137% of its operational capacity of 450 beds. This increased to 167% in 1989.
Comment:

Clearly, the Montgomery County Adult Detention Center is extremely overcrowded. The MCCJCC Report notes an average daily population (ADP) of 750 in 1989 putting the facility at 167 percent of capacity (450). For 1988, the national average jail population was 101 percent of capacity and jails with an ADP of 500 to 999 averaged 116 percent of capacity.\(^3\) However, Montgomery County has about 105 inmates per 100,000 population (1989 population was 716,400). This is lower than the national average of 144 inmates per 100,000 population found in the 1988 Census of Local Jails and also lower than the average figure for the 35 Maryland jails (162).\(^4\) Whether the inmate/population ration in Montgomery County is appropriate, however, depends upon a more intensive analysis of the detention population, including the charge/offense characteristics, length of stay, adjudication status, and other factors relating to the defendant population and from which one might determine whether any alternatives to incarceration are appropriate.

3. Report Finding:

In 1988, the number of intakes was higher than the number of releases -- approximately 19 intakes to 17 releases, per day;

Comment:

As arrests increase, some increase in intake might be expected. However, the significance of this statistic depends upon the characteristics of the population entering the detention center (see Comment above) and the characteristics and reasons for the releases.

4. Report Finding:

In 1988, the sentenced population consumed 45.9% of the total operational capacity at the MCDC. When combined with the Pre-Release Center (PRC), the sentenced population consumed 57.4% of the total capacity of the correctional system.

Comment:

See Comment Nos. 2 and 3. What are the convicted offenses represented by the sentenced population? What is the nature of the pretrial population? What percentage are detained


\(^4\) Ibid.
because of prior FTA history? Of these, how many intentionally fta'ed vs. would likely appear with regular monitoring? The MCCJCC Report posits that perhaps as many as 50 percent or more of all the intakes into MCDC are a result of failures to appear although it notes that other factors might be relevant -- perhaps defendants being rearrested for new offenses. These fta figures seem extremely high and one would assume that supervision and notification provided by a pretrial services program would reduce this problem and thus its effect on the population of MCDC.

In addition to assessing the reasons for pretrial detention, it is important to also determine how long the pretrial population stays. One cannot just look at defendants released on bail and get an accurate picture of pretrial detention practices. Generally, most defendants who get released are released early in the process. Proportionally, they also don't take up a great deal of the bed space. Who is left? Are any misdemeanants on low bonds unable to secure release? How long do they have to wait in detention before disposition of their cases? etc. In analyzing the sentenced population, in addition to the factors noted above, it is also important to determine whether any of the sentenced population is awaiting transfer to state or other facilities.

5. Report Finding

The average time to disposition of criminal cases in the Circuit Court is 168 days.

Comment:

See Section III above. An average time to disposition (adjudication?) of 168 days is long by any measure. However, in terms of the impact of this delay on the detention population, one must have a breakdown of case processing time for detained and released defendants and the range of case processing times involved. It is also important to know what procedures and policies are in place to assure that the cases of detained defendants are processed expeditiously through the system (i.e., scheduling policies, continuance policies, etc.) in order to determine the impact of court practice on the jail population.

6. Report Finding

In 1988, the average time between the conclusion of a trial and the sentence date was 84 days. . . . In 1989, the average time between the conclusion of a trial and the sentence date was 77 days, with a median of 64 days.
Comment:

Again, this period is long. However, in terms of its impact on the jail population, it is essential to break down the period between trial and sentencing for detained and released defendants. It is also important to analyze the characteristics of the cases in the sample and to identify any cases which may have been intentionally set for deferred sentencing for various reasons.

7. Report Finding:

Over the past two years, the average time from the date a presentence investigation is ordered in the Circuit Court until it is received by the Court is 1 month, 21 days (approximately 51 days).

Comment:

See Section III above.

B. Other Issues

1. Section II: (2) General Review of Commissioner Activity: (pp. 11 ff)

A review of Commissioner activity in 1988 (and partial 1989) indicates that Commissioners set financial conditions of release on approximately three out of five cases they review, and a low percentage (3.2%) of cases are held without bond. This means that approximately 40 percent of the arrested population is released at the Commissioner stage through nonfinancial conditions. Of the sixty percent of the arrestees who have financial conditions imposed, approximately one-third post bail and secure release prior to being admitted to the MCDC. Thus, about sixty percent of the arrestees are released at the Commissioner stage and the rest (forty percent) are detained either to be released at a later date to await disposition or remain detained until their disposition.

Unfortunately, the report does not provide any information on the types of defendants who make up the Commissioner sample. Does it include persons arrested for traffic offenses? municipal ordinance violations? dwi offenses? If so, the nonfinancial release rate would be considered low. If not, and the sample represents only persons arrested on misdemeanor and felony charges, it might be more in line with practices in other jurisdictions, depending, of course, on the characteristics of the arrestees involved.

The MCCJCC Report points out the "low" (23%) rate of release on recognizance (ROR) and notes that "National Standards" are generally higher. Unfortunately, there are no "National Standards" concerning pretrial release. The most
comprehensive national data comes from the recently released National Pretrial Reporting Program which indicates that, for felony defendants only, two thirds were released before the disposition of their case, 47 percent on financial conditions and 53 percent on nonfinancial conditions, predominately release on recognizance. However, the MCCJCC report also mentions two other categories which appear to involve nonfinancial conditions: "no bond required" which accounted for 12 percent, and "unsecured personal bond", which accounted for 5 percent of bonds set by the Commissioners in 1988. Taken together, these categories demonstrate a rate of release on nonfinancial conditions of 40 percent in 1988 at the Commissioner stage. However, without knowing more about the types of defendants involved in this sample, comment on the significance of these percentages is fruitless.

The defendants who are released on nonfinancial conditions at the Commissioner stage, along with defendants who are able to post the specified bail set by the Commissioner prior to incarceration, total 62 percent of all cases reviewed by the Commissioners in 1988 according to the MCCJCC Report. Thus 38 percent of the arrestees are incarcerated for some amount of time and composed the pretrial segment of the MCDC. The appropriateness of their incarceration depends upon an analysis of the factors already discussed above.

Data are not provided in the MCCJCC Report to track the sample of 1988 cases to find out how many of the 38 percent who were incarcerated were eventually released before disposition. However, the report does provide data on both cases and defendants released on bond in 1988. (It is important to note that these are not the same populations, though there is a significant overlap.) According to the MCCJCC Report, 78 percent of these defendants were released from MCDC within 5 days and 93 percent were released within 30 days. According to the MCCJCC report, the defendants who secured release within 5 days accounted for 5,249 bed days which, at a rate of $50.00 per day, cost the county $262,450.00 and accounted for 14 beds every day (5,249/365 = 14) in the facility. The report further states that defendants released between 5 and 30 days accounted for 7,857 bed days which, at the $50.00 per day rate, cost the county $392,850.00 and accounted for 21 beds (7,857/365 = 21) in the facility. As the MCCJCC Report notes, it is significant that 82 percent of released defendants had bond amounts set at $2,500.00 or less and 28 percent were $100.00 or less.

The cost saving resulting from avoiding the pretrial incarceration of persons who were released within 30 days would amount to $655,300, or more than half of what has been budgeted for the operations of a pretrial services program.

The MCCJCC Report also breaks out a distinct category of releases defined as "released at court." The bulk of these cases (93.4% in 1988) were released because of cases completed or sentences imposed. Less than 7 percent were released due to a bond review. This statistic is consistent with comments by the individuals interviewed, i.e., that there is little judicial review of commissioner bail-setting activity. This is very low compared to the experience of other jurisdictions both within and outside of Maryland.

Again, it has been noted previously that the establishment of an effective pretrial services agency could reduce the demand for bed space at MCDC. The data and analyses from the MCCJCC Report serve to support this. Not only would a pretrial services agency provide more information so that better decisions could be made, but it could provide an alternative to incarceration particularly for the type of medium risk defendants who have been identified in this analysis.

V. Summary

In sum, the MCCJCC report represents an enormous effort by MCCJCC staff. However, the data in the report is too limited to permit any meaningful conclusions regarding its specific implications on the jail population. While the MCCJCC report suggests various avenues which might reduce pretrial detention population pressures, it also corroborates the need for a comprehensive statistical review of all segments of the pretrial case process as delineated in the ATAP report. Such data is essential to meaningfully assess the implications of the various pre-trial decisions made during the course of the criminal case process on the detention population.

It should be noted that a number of findings are presented in the MCCJCC report which both point up potential improvements that merit consideration while, at the same time, raise numerous other questions which need to be resolved. If requisite data, such as that listed in the ATAP report cannot be retrieved from existing systems, consideration should be given to conducting a manual sample to provide a series of "snapshots" from which a more comprehensive picture of the entire pretrial criminal case process can be developed. County criminal justice officials are fortunate to have available the expertise and resources of the MCCJCC which can play a central role in analyzing information on the criminal case process on a regular basis. Establishment of an adequate data base for this analysis, however, is essential.
APPENDIX

Essential Data Needed to Be Collected and Analyzed to Assess the Impact of Current Criminal Case Processing Practices on the Pretrial Detention Population

At a minimum, the following data should be collected through sampling of recent cases and analyzed:

- **Arrest Practices (By Felony and Misdemeanor Charges):**
  - number of warrant arrests
  - number of on-site arrests
  - number of field citations issues

- **Bail Setting**
  **Bail Commissioner Actions (By Felony and Misdemeanor Charges and comparatively among commissioners):**
  - number reviewed
  - number dispositions:
    - number ROR
      - average time from arrest to release
  - number Cash Or Surety Bail Settings
    - average amount
    - number released before initial District Court review
    - average time from arrest to release
  - number with no bail set

- **District Court Bail Review (by Felony and Misdemeanor Charges):**
  - number of bail reviews conducted
  - Bail Review Results:
    - amount decreased/defendants released
    - amount increased/defendants released
    - same amount continued/defendants released
    - bail set for "no bail" defendants/defendants released
District Court Trials

Number of Trials (broken down by Detained/Released Defendants and by District Court Location)
- average time to disposition
- number of trials de novo
- number of District Court appeals
- average number of continuances
- three most often requested reasons for continuances
- average time between court hearings

Circuit Court Actions

-Initial Bail reviews (723 hearings) results:
  - amount decreased/defendants released
  - amount increased/defendants released
  - same amount continued/defendants released

-Case Processing (Broken Down By Detained and Released Defendants)
  - average time from indictment to disposition (time broken out according to ABA percentage standards)
  - average number of continuances three most often requested reasons for continuances
  - average time between court hearings
  - percentage of Circuit Court filings that are District Court jury demands or appeals

State's Attorney's Office Actions (Broken Out by Detained and Released Defendants)

- time from arrest to initial review (broken down by Felony and Misdemeanor Charges)
- Felony Charging Actions felony charge reduced to misdemeanor (est. 5-15%) initial charge kept (estimated 80%) nolle prossed (estimated 5-10%)

Detention Center Population (By Felony and Misdemeanor Charges)

- number of defendants unsentenced
- average length of stay
- number released pretrial and method of release
- number of pretrial detainee with a prior instance failure to appear

\(^2\) estimates provided during the study team’s interviews.
-number of defendants released with time served and aver. length of time served (broken down by charge at conviction)
-number of sentenced defendants
-average length of stay
-other detainee by type (i.e., detainers, etc.)
  -average length of stay

Summary of Event Intervals (Broken Down By Detained and Released Defendants)

-arrest to first trial date in District Court
-arrest to Indictment (estimated 30 days)\(^3\)
-indictment to Circuit Court initial appearance (estimated 2 weeks)
-indictment to disposition
-disposition to sentencing (estimated 6 weeks for felons)

Pretrial Release Outcomes

-failure to appear rate (broken down for District and Circuit Courts) by release method
  -by who set release conditions (Commissioners, District Court Judges, Circuit Court Judges, etc.)
  -time from pretrial release to first failure to appear

-Pretrial rearrest rate by release method
  -time from pretrial release to first pretrial rearrest

\(^3\) See Note 2