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United States District Court, E.D. Pennsylvania.

Martin HARRIS, et al.
v.
Irene PERNSLEY, et al.

CIV. A. No. 82–1847. | Feb. 27, 1989.

Attorneys and Law Firms

Tyrone Glenn, pro se.

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Opinion

MEMORANDUM AND ORDER

SHAPIRO, District Judge.

***1** Before the court are motions to amend the Consent Order entered December 30, 1986. Plaintiffs move that the exceptions allowing the admission to the prisons of any individual with two or more willful failures to appear or two or more open bench warrants be eliminated; the motion is unopposed by the City defendants. Plaintiffs and City defendants have submitted a joint motion for additional relief to facilitate compliance that addresses the length of time inmates are being detained on county parole and probation detainers because of technical violations and/or new charges. The District Attorney objects to both submissions.

Following implementation of a qualified admissions moratorium in June, 1988, the prison population approached the maximum levels imposed by the court-approved settlement in December, 1986. Under that qualified admissions moratorium, pre-trial detainees on low bail have been released on their own recognizance but at no time have persons arrested for crimes of violence been excluded from admission. Until now, no sentenced offenders have been released, although the Consent Decree permits such action if necessary. It was hoped that a combination of restricted admissions, a qualified release program for persons awaiting trial under supervision (BailCARE), and an electronic monitoring release program would permit compliance with the Consent Order. However, to cope with the serious drug situation in the City of Philadelphia and continued complaints by the District Attorney of administrative problems in prosecuting court cases, certain exceptions to its qualified admissions moratorium were allowed.

With these exceptions, the mechanisms currently in place to reduce the population to an acceptable level are ineffective to cope with the number of prisoners admitted. The population in the prisons has continued to increase and has now reached a dangerous level of overcrowding. The Consent Decree entered into by the parties established maximum populations both for the entire prison system and for individual institutions within that system. The population maximum for the system was set at 3,750. That maximum population figure has been exceeded every day since September 5, 1988. During this time the prison population has continued to increase steadily. The population has not been below 4,000 since November 26, 1988; it has not been under 4,100 since December 24, 1988; and finally, the population has not been below 4,200 since January 6, 1989. In fact, in the month of January, the prison population has been over 4,300 64% of the time, over 4,400 38% of the time and has even gone above 4,500. The population has not been below 4,400 since January 20, 1989.

The City of Philadelphia, by letter dated January 24, 1989, has informed the court of problems facing the Philadelphia prisons because of the current extreme overcrowding:

... inmates in the intake housing areas are sleeping on the floor. The Philadelphia Prisons has obtained an emergency order from the Procurement Department to purchase folding cots. In addition, the Philadelphia Prisons have requested additonal [sic] beds from other correctional facilities within the local area but have met little success.

***2** The Medical Services Director advised the Prisons' administration that sick call is not available to two-thirds of all inmates on a daily basis as a result of the increase in demand.

The court anticipates a request to permit triple-celling, prohibition of which was most important to the plaintiff class in consenting to the settlement of its long-pending litigation. The current violation of the court's Order cannot be allowed to continue.

The court has determined that some of the exceptions to

the decree permitted on a temporary, experimental basis must be eliminated forthwith for short-term relief and the search for long-term solutions must continue. Moreover, effective immediately the BailCARE program may be modified to allow the release of pre-trial detainees qualifying for BailCARE, except for the amount of bail, on "HvP Conditional Bail Reduction Bond." Pre-trial detainees with two or more failures to appear who otherwise qualify for BailCARE may be released into the BailCARE House Arrest/Electronic Monitoring Program on a Conditional Release Bond. In addition, pre-trial detainees with limited open bench warrants for non-violent offenses (charges other than those excepted from the qualified admissions moratorium) may be released on their own recognizance in certain circumstances and on BailCARE House Arrest/Electronic Monitoring Program in others; in all cases pre-trial detainees held on open bench warrants will be eligible for release unless a prompt hearing is held on the open bench warrants. The court also intends to impose limits on the time persons remain in detention awaiting probation and parole hearings after further opportunity for comment by the parties and the District Attorney.

Finally, in view of the reported delay in contracting for the Criminal Justice Center, originally scheduled to provide 440 beds by December, 1990, it is clear that plans for additional temporary beds must be made a high priority. While the search for additional space has continued, especially since the moratorium has been in effect, the time has come for action. A half-way house for 25 women has been ordered opened by March 31, 1989. The court at its next hearing will consider why the City should not implement plans for a 100–bed custodial community treatment center for male offenders, particularly drug addicted persons, forthwith. The court is mindful of the City's financial problems, but the prospect of court-imposed fines (*see* Order of February 27, 1989, ¶ 5) for continual failure to comply with the court's Order should make the provision of additional space, whether temporary or permanent, financially feasible.

In 1982, inmates at Holmesburg Prison brought this class action now pending on behalf of the inmates of all the Philadelphia prisons against the City of Philadelphia, the Philadelphia officials responsible for supervising the prisons, the Board of Trustees of the Philadelphia prison system, several Philadelphia prison wardens and other Philadelphia employees (collectively "the City defendants"), and several state officials. This court earlier dismissed this action because of the pendency of *Jackson v. Hendrick,* a class action in the Court of Common Pleas of Philadelphia County, attacking the constitutionality of conditions of confinement and requesting injunctive relief against prison and City officials and the City of Philadelphia.[1]

***3** On April 7, 1982, a three-judge court had held that conditions in the Philadelphia County prisons violated the rights of inmates under, *inter alia,* the United States and Pennsylvania Constitutions; the *decree nisi* appointed a Prison Master to administer the court's corrective decree. On June 7, 1972, the decree became final; it was later affirmed by the Pennsylvania Supreme Court. *Jackson v. Hendrick,* 457 Pa. 405, 321 A.2d 603 (1974). On January 16, 1987, the Pennsylvania Supreme Court assumed extraordinary jurisdiction and vacated a contempt order against the defendants for failing to comply with population limits fixed by the three-judge court. That case was settled on remand and a consent decree, relying in part on the proceedings herein, has been approved by the Court of Common Pleas.

The Third Circuit, reversing the dismissal and remanding stated:

The mere pendency of a state court injunction predicated on federal law, which according to the complaint has not produced an alleviation of ongoing violations of the Constitution, is not such an exceptional circumstance as to relieve the federal courts of 'the virtually unflagging obligation ... to exercise the jurisdiction given them.'

Harris v. Pernsley, 755 F.2d 338, 345 (3d Cir.1985) (quoting *Colorado River Water Conservation District v. United States,* 424 U.S. 800, 817 (1976).

The Third Circuit declined to rehear the matter, 758 F.2d 83 (3d Cir.1985), and the Supreme Court denied defendants' petition for *certiorari.* 474 U.S. 965 (1985).

On remand, the parties submitted a proposed settlement for approval of the court. The City defendants agreed to adopt and implement a series of procedures and policies to reduce the population of the Philadelphia prison system and maintain the population at agreed-upon levels.

The City defendants also agreed that: at no time should more than two inmates be housed in a cell in the Philadelphia prison system; every inmate should be assigned to a housing area within seventy-two (72) hours of arrival in the Philadelphia prison system; housing areas should not include any gymnasium, corridor or bench area, or any area not set up for permanent housing; every inmate should receive a mattress the first night after arrival and a bed and mattress within twenty-four (24) hours of arrival; and until his or her assignment to a housing area, each inmate should remain in designated intake areas and receive proper bedding. (Settlement Agreement, ¶ 3(c), p. 5).

The implementation of these maximum allowable populations was left in the first instance to the City defendants and the Pennsylvania courts. (Settlement Agreement, ¶ 3(f), p. 6). The maximum allowable population for each facility was to be:

Detention Center	750 inmates
Holmesburg Prison	800 inmates
House of Correction	900 inmates
Women's Modular Units	200 inmates
Laurel Hall, Cannery and WMCA	250 inmates
PICC	850 inmates
TOTAL	3,750 inmates

***4** Since June, 1988, this court has attempted to enforce its Order of December 30, 1986 by means of a qualified moratorium on admissions to the Philadelphia prisons applicable only to persons held for inability to post bail while awaiting trial; the limitations on admission have expressly never applied to any persons charged with the following crimes: murder, attempted murder, forcible rape, attempted rape, involuntary deviate sexual intercourse, corrupting the morals of a minor, arson, robbery, kidnapping, aggravated assault, or a crime involving the use of a gun or knife, or certain felony drug charges. The drug amounts have been modified to allow admissions of persons charged with lesser amounts of drugs. Persons accused of domestic violence and abuse or intimidation of witnesses or victims have also been subsequently excepted from the admission limitations.

In an attempt to reduce the prison population to the court-ordered levels, persons awaiting trial on charges other than the above-excepted offenses who were held on the lowest amount of bail for the longest period of time were released on their own recognizance until the time of trial. However, inmates charged with crimes excluded from the moratorium or with detainers outstanding against them were excluded from release. This court has not yet reduced the population by releasing sentenced inmates on parole even at or shortly before an inmate's parole date.

On September 9, and November 9, 1988, Paragraph 3.D. of the qualified admissions moratorium was further modified to allow three additional categories of exceptions:

1. Persons for whom bail has been set, but who have been released after signing their own bonds ("SOB–HvP") twice previously on separate charges that are still open or pending at the time when the bail determination is made; or

2. Persons who have twice willfully failed to appear at scheduled proceedings on criminal charges other than summary offenses within one year prior to the time when the bail determination is made; or

3. Persons who have two outstanding or open bench warrants on criminal charges other than summary offenses.

PROVIDED that persons admitted to the prison solely pursuant to paragraph 3.D(3) shall be released by the City on their own signature ("SOB–HvP") at the bench warrant hearing unless it is determined at that bench warrant hearing that the person twice willfully failed to appear at scheduled proceedings on a matter or matters that are still

open or pending.

The repeated offender exceptions were instituted on a trial basis to see if their policy objective—expanding the moratorium exceptions to permit incarceration for reasons other than public safety—could be achieved without significantly increasing prison population. The compensatory release mechanism, embodied in paragraph 3 of the Order of September 9, 1988 and in paragraphs 4 and 6 of the Order of November 9, 1988, was also instituted on a trial basis to counterbalance population increases resulting from the expanded exceptions. Experience has now shown that the repeated offender exceptions have brought about the incarceration of a large number of arrestees who are not a threat to public safety, but that the compensatory release mechanism fails to generate anything approaching a comparable number of persons eligible for release from custody. The court must act to stop the flood of exceptional admissions which have undermined the moratorium and threaten the integrity of this court's Order.

***5** The policy rationale behind these new exceptions was not protection of the public from persons charged with crimes of violence. The first exception was designed to eliminate a *de facto* immunity from pre-trial incarceration for persons repeatedly arrested for non-enumerated offenses.[2] The second exception was sought to permit incarceration of persons who may represent a greater risk of failing to appear at scheduled court proceedings based on past conduct. These proposed changes were adopted by Order of September 9, 1988 and modified by Order of November 9, 1988 to provide for additional exceptions regarding persons arrested on open bench warrants and arrestees with prior willful failures to appear on closed cases.

These exceptions have led to a precipitous increase of the prison population in November, December and January that requires the present action. The current prison population crisis requires that immediate steps be taken to reduce the population. The court is mindful of the need to decrease the population in a manner consistent with the safety of the public. At this point in the enforcement of the decree, there are no longer easy choices. The court is faced with a pressing need to reduce the population in the prisons after years of neglect of the problem by almost everyone involved in the Pennsylvania criminal justice system. The court must review difficult options and select the means of decreasing the population most consistent with the Consent Decree, the capacity of the prison system, the rights of the prisoners and the public under our Constitution.

The parties to the Consent Decree suggest that the court reduce the prison population by several different means.

Bail in Excess of $5,000

The joint motion of the parties proposes that The People's Bail Fund be authorized to seek the release of those who have had bail set in excess of $5,000 but otherwise meet BailCARE requirements. Those qualified, whose bail is in excess of $5,000, would have bail reduced to $5,000 so that they can be released on an HvP/Conditional Release Bond with House Arrest/Electronic Monitoring a term and condition of release in some cases. The inmate's surety will be responsible for the his or her appearance in court and liable for the entire amount of the original bail bond if the released inmate fails to appear for his or her trial date. The District Attorney and Pre–Trial Services will receive 48–hour notice of proposed releases and will have the opportunity to screen and object. The District Attorney, although agreeing in principle to the establishment of a HvP/Conditional Release Bond for persons who may be safely released but are unable to raise bail, objects to an order of this court affecting state-court imposed bail orders. The District Attorney does not object to, and has petitioned for, some releases on electronic monitoring by the Pre–Trial Services rather than the Prison Management Unit.

The BailCARE screening process is comprehensive. All inmates released through the program have to satisfy requirements relating to lack of serious criminal record, references, verified residence and surety. If the bailee does not comply with the terms of release, such as drug, alcohol or employment counselling, bail is revoked and the inmate is returned to prison pending trial. The BailCARE program has been working extremely well. As of January 31, 1989, 22,059 cases had been reviewed and 1,321 inmates had been released by BailCARE. The program has placed 1,288 inmates in treatment, training and education programs. The rate of appearance in court of those released through the program through December 31, 1988 was 88%. Upon appearance in court, only 39% of BailCARE cases have resulted in conviction.

***6** Given the success of the BailCARE program and the pressing need to relieve the overcrowding in the prisons, the court is satisfied that augmenting the categories of pretrial detainees eligible for release on BailCARE is advisable. Eligibility for the BailCARE program will include pre-trial detainees who are unable to post bail in excess of $5,000, but otherwise meet the requirements for BailCARE; if otherwise eligible for BailCARE, bail may be reduced to $5,000 for release on an HvP/Conditional Release Bond. Any inmate released on an HvP/Conditional Release Bond who fails to appear in court upon adequate notice will be admissible to the prisons if bail is revoked even if otherwise excludable by reason of the admissions moratorium.

Failures to Appear and Outstanding Bench Warrants

Plaintiffs move to amend the Consent Order by striking subparagraphs 3.D.(2) and (3) to eliminate the moratorium exceptions presently allowing admission of persons arrested on new non-enumerated charges who have twice willfully failed to appear at any court proceedings or who have two open bench warrants. Although the City defendants do not oppose this proposal, it is strenuously opposed by the District Attorney who claims that eliminating those exceptions "will cause undue harm to the state court criminal prosecutions and rehabilitative programs."

1. *Failures to Appear*

The court acknowledges that failures of persons to appear for trial are a serious problem in the administration of the criminal justice system; this is true whether the defendants have posted cash bail or been released HvP/SOB, on their own recognizance, or on surety of family or friends. Defendants' willful failures to appear shows lack of respect for court process and impedes prompt disposition of criminal charges. Nonetheless, unconstitutional overcrowding requires the court to decide whether to release or exclude from prison pretrial detainees charged with dangerous offenses (some involving acts of violence) or allow the release or exclusion of those pre-trial detainees charged with relatively minor offenses who have in the past failed to appear. In making this decision, the court must bear in mind that no more than half these persons charged with non-violent crime will be convicted if and when they do appear. The court is convinced that it is in the public interest to confine those charged with more serious crimes. There are at present not enough prison beds for those charged with only relatively minor offenses even if they have failed to appear in the past. The Consent Order will be modified so that prior failures to appear alone will not allow an exception to the admissions moratorium order for those charged with all but certain enumerated offenses. Those with failures to appear who have already been admitted into the prisons may be released on BailCARE if eligible under approved procedures which may include House Arrest/Electronic Monitoring, but if not eligible for BailCARE may be released into the House Arrest/Electronic Monitoring program on an HvP/Conditional Release Bond. This modification to the Consent Decree will relieve the present prison overcrowding with the least sacrifice to public safety and security.

***7** We must also continue to bear in mind that the court's decree effects change only with regard to those financially unable to post bail; persons accused of the same offenses but financially better situated are already released, albeit on bail. The District Attorney's proper concern for public safety can best be met by urging an efficient system of criminal justice with speedy trials and effective sanctions for unnecessary continuances. The request of the District Attorney to submit specific proposals, recommendations or positions relating to the issue of additional state court resources to aid in speedier trials of pre-trial detentioners is granted. Such proposals, recommendations or positions shall be submitted within ten (10) days of the District Attorney's receipt of the EMT Group Study of the Administration of the Local Criminal Justice System.

2. *Bench Warrants*

The parties have also asked that the Consent Decree be modified to remove the exception to the moratorium for pre-trial detainees against whom there are two or more bench warrants outstanding. Again, the District Attorney objects to this proposal on the grounds that it would significantly harm the state criminal justice system.

The seriousness of the overcrowding problem in the prisons requires that this court take some action with respect to limiting the number of persons held in prison under this exception to the moratorium. Nonetheless, the court is not willing to unqualifiedly exclude such persons from pre-trial detention. Bench warrants are court orders issued to require the presence of individuals for whom the warrants are issued. This court is presently unwilling to deprive the state of its ability effectively to require such individuals to honor court orders. However, the time that such individuals remain in the prison awaiting hearing on a bench warrant must be limited. Pre-trial detainees with only one outstanding bench warrant on non-enumerated charges have been subject to release on an HvP/SOB bond at the bench warrant hearing by the Trial Commissioner. Bench warrant hearings for detainees held on bench warrants only must occur within 48 hours of incarceration. If bench warrant hearings are not held within 48 hours of incarceration, pre-trial detainees will be eligible for immediate release by the Trial Commissioner under an HvP/SOB bond.

Finally, pre-trial detainees with more than two (2) open bench warrants on non-enumerated charges will continue to be exceptions to the moratorium, admissible to the prisons pending the disposition of the bench warrants, and eligible for release to the House Arrest/Electronic Monitoring Program following the bench warrant hearings. However, pre-trial detainees with two or more bench warrants on non-enumerated charges who voluntarily surrender to court authorities should not be admitted under the bench warrant exception to the moratorium. Such defendants shall be released on an HvP/SOB bond by the court at the bench warrant hearing unless they are held on the enumerated charges to which the moratorium does not apply.

***8** Admitting persons with two or more outstanding bench warrants to the prisons for at least the 48 hours to hold bench warrant hearings will allow the system to clear those outstanding warrants and prevent those individuals

from being picked up over and over again on the same outstanding bench warrants. The 48–hour limit for those with outstanding bench warrants and on non-enumerated offenses will prevent these non-dangerous individuals from remaining indefinitely in the prisons, but require them to respect court orders to the extent consistent with the emergency created by present overcrowding. The 48–hour rule may be 72 hours if there is an intervening holiday when the courts are closed.

County Parole and Probation Detainers

The plaintiffs and the defendants join in a request that the City defendants identify for release: 1) all inmates detained for more than twenty-four (24) days solely on county parole and probation detainers where the underlying charges have been dismissed; and 2) all inmates detained for more than thirty (30) calendar days solely on county parole and probation detainers where there have not been final hearings on the alleged technical violations. The District Attorney agrees that those held on county detainers only for direct violations should be released immediately upon the dismissal of the new criminal charges if they have no active detainers for technical violations.[3] The District Attorney agrees that those held on technical violations should be listed for hearings within thirty (30) days of incarceration, but objects to a prophylactic rule which would permit the release of all those whose for whom violation hearings are not timely held. The District Attorney asserts that such violators are incarcerated only if he or she has "systematically abused the privileges of a non-custodial sentence, and also represents a very poor risk of appearance at a VOP hearing if he is released from custody." (Memorandum in Support of Response of Ronald D. Castille to Plaintiffs' and City Defendant's Joint Motion for Additional Relief to Facilitate Compliance, p. 5).

Persons who have been released from the prisons on either probation or parole have been identified as non-dangerous to the community or they would not have been released on probation or parole. If those persons violate the conditions of their parole or probation, there should be a hearing to determine what the consequences of that violation will be. Parole and probation are privileges which can and should be revoked if they are abused. Nonetheless, the court is faced with a dangerous and overwhelming population crisis. The prisons simply cannot hold the number of inmates currently institutionalized and systemic changes are required. The court is forced to make a difficult judgment which requires further consideration with the opportunity for comment by probation and parole officials. There may be helpful guidance from the long-expected EMT Group study of the Administration of the Local Criminal Justice System under the grant from the National Institute of Corrections and the Bureau of Justice Assistance. Therefore, the court will hold an evidentiary hearing to the extent required at the April status hearing and implement changes as necessary thereafter. An appropriate Order follows.

ORDER

***9** AND NOW, this 27th day of February, 1989, it is ORDERED that:

1. Paragraph 2 of the qualified admissions moratorium order shall be modified to read as follows:

2. The population of the Philadelphia Prison System shall not exceed 3,750 inmates based on the population of the individual institutions as follows:

Detention Center (excluding hospital inmates)	750 inmates
Holmesburg	800 inmates
House of Correction	900 inmates
Women's Modular Units	200 inmates
Laurel Hall	185 inmates [1]

Cannery	65 inmates
Philadelphia Industrial Correction Center	850 inmates
TOTAL	3,750 inmates

In recognition of the additional persons arrested during the weekend, or those arrested when the state courts are closed (due to a holiday or otherwise) during the week, the maximum allowable populations stated above may be exceeded by up to 100 inmates three days per week (to include Saturday and Sunday) and on a weekday if the state courts are closed. The maximum allowable populations for the House of Correction, Holmesburg, the Detention Center (excluding hospital inmates), Women's Modular Units and the Philadelphia Industrial Correction Center, however, shall not be exceeded to accommodate inmates on work-release or serving weekend sentences; said inmates if not on electronic monitoring shall be confined only at Laurel Hall or the Cannery (or other court-approved alternative facilities) whenever the qualified moratorium on admissions is in effect.

2. Paragraph 3D of the qualified admissions moratorium order shall be modified to read as follows:

D. Other Offenders:

1. Persons for whom bail has been set, but who have been released after signing their own bonds ("HvP–SOB") twice previously on separate charges that are still open or pending at the time when the bail determination is made; such persons may be conditionally released on electronic monitoring but only in accordance with the approved procedures of the Prison Population Management Unit.

2. Persons who have two outstanding or open bench warrants on criminal charges other than summary offenses.

PROVIDED that a bench warrant hearing shall be held within 48 hours.

AND FURTHER PROVIDED that persons admitted to the prison solely pursuant to paragraph 3.D(2) shall be released by the City on their own signature ("HvP–SOB") at the bench warrant hearing unless it is determined at that bench warrant hearing that the person did not voluntarily surrender and twice willfully failed to appear at scheduled proceedings on a matter or matters that are still open or pending; persons not released by the City on their own signature (HvP–SOB) may be conditionally released on electronic monitoring but only in accordance with the approved procedures of the Prison Population Management Unit.

***10** 3. The People's Bail Fund shall be authorized to seek the release of inmates pursuant to the criteria attached and incorporated as Exhibit D to the parties' Joint Motion for Additional Relief to Facilitate Compliance. Such program and criteria shall remain in effect until there is no longer a need for such services and shall replace the compensatory release process contained in this court's prior orders.

4. Electronic monitoring of pre-trial inmates under BailCARE or otherwise may be in accordance with the procedures and statements of conditions (January 16, 1989) submitted by Jeanne Bonney, Esquire, on behalf of the Prison Population Management Unit.

5. The City defendants being in continued non-compliance with the court's Order of December 30, 1986, as modified, notwithstanding the qualified admissions moratorium, financial sanctions shall be imposed as recommended by the plaintiff class in the amount of $2 per day per inmate in excess of the allowable population at each institution, said fines to be used to fund alternative detention facilities. Said fines shall be imposed prospectively to begin April 1, 1989 to allow for completion of renovations to Laurel Hall and the opening of the Womens Community Corrections Center on or before March 31, 1989.

6. The City defendants shall immediately identify to the District Attorney and the Philadelphia County Probation Department for release consideration in the Philadelphia Courts:

a. All inmates detained for more than twenty-four (24) hours solely on county parole and probation detainers where the underlying charge has been dismissed; and

b. All inmates detained for more than thirty (30) calendar days solely on county parole and probation detainers where there has not been a final hearing on the alleged technical violations.

This Order constitutes a Rule to Show Cause why the court's qualified admissions moratorium shall not be modified to provide that the City defendants shall not detain such persons for more than two (2) working days/thirty (30) calendar days, respectively, with a contemplated effective date in May, 1989. The court will hold an evidentiary hearing in connection with the April status hearing.

PHILADELPHIA PEOPLE'S BAIL FUND

Exhibit D

It is apparent that there are inmates housed in Philadelphia's Prisons who, but for the lack of funds for bail, may be safely and effectively released to the community and who will appear in court as required.

During the past three months, the People's Bail Fund has interviewed and identified over 100 inmates who qualify for release by BailCARE. These inmates qualify for release due to their minor criminal record, family references, verified release address and the willingness of a family member or friend to sign the bail bond and be legally obligated to ensure the defendant's appearance in court. However, the inmate's bail amount was in excess of our property limit of $5,000 per bailee. As of today, there are 56 inmates in such status.

***11** In the last month, PBF has also interviewed inmates eligible for release to the Prisons House Arrest/Electronic Monitoring program. These inmates are charged with minor crimes but have a record of failure to appear in court and, in majority, require intensive drug and alcohol counseling. As a result, even though they may have references, a release address and a surety willing to sign the bail bond our agreement with church property donors does not permit obligation for persons with a history of failure to appear in court.

PROPOSAL

Until such time as there is no longer a need for such services, an HvP/Conditional Release bond shall be established for two classes of persons: those persons who would otherwise qualify for release under BailCARE but for a bail amount in excess of $5,000; and those persons whose charges and bail amount are minor but whose failures to appear in court preclude the obligation of People's Bail Fund church property.

Persons qualified whose bail is in excess of $5,000 shall be released on an HvP/Conditional Release bond which would reduce the bail to $5,000. The inmate's surety will be responsible for the defendant's appearance in court and shall be liable for the original amount of the bail bond in the event of the defendant's failure to appear.

Persons qualified whose bail is less than $5,000 but whose prior failures to appear in court do not permit obligation of PBF church property shall be released on an HvP/Conditional Release bond which would reduce the bail to a nominal sum but require an inmate's surety to obligate for the full amount of the bond in the event that the inmate did not show for court.

All BailCARE requirements, such as criminal history (other than failures to appear), references, verified residence, and a surety ready, willing and able to obligate for the full amount of the bond shall be required. If the bailee shall not comply with the conditions of release, such as assigned drug, alcohol or employment counseling, the bail shall be revoked and the inmate returned to prison forthwith.

HOUSE ARREST/ELECTRONIC MONITORING OF PRETRIAL INMATES

Summary

Pretrial inmates are eligible for BailCARE house arrest/electronic monitoring (EM) if their admission to the Prisons is based upon recent failures to appear in court. Each inmate will be further screened for the following:
* discliplinary infractions

* mental health treatment

* nature of the current charge, including victim impact

* criminal history

* verified residence and mailing address

* references with verifiable residence, telephone and/or mailing address

* surety to sign a bail bond & be responsible for inmate's

court appearance

* where the inmate does not have a surety, two additional verified references.

Candidates identified by the Prisons Population Management Unit will be screened by the District Attorney's office using the same process as that for HvP compensatory releases, as described below. BailCARE will interview the inmate, contact his references, arrange for release and monitor the inmate's attendance at counseling programs. The electronic monitoring device and its signal will be maintained by the Prisons.

***12** Inmates will be released on a conditional bail bond while in house arrest status. Failure to comply with the conditions of house arrest will result in reincarceration. Where the defendant does not appear in court as scheduled, or does not return home within 3 hours of his assigned time of return, the bail shall be revoked by BailCARE and notice to arrest and detain presented to the police district of the inmate's residence. Defendants who fail to appear in court will also be charged with failure to appear and a bench warrant shall issue, which automatically notifies the Warrants Unit of Pretrial Services. In addition, BailCARE shall provide immediate written notice to the Warrants Unit.

Inmates will be assessed a fee on a sliding scale up to $45 per week, but participation will not be denied based on an inmate's inability to pay.

Procedures

1. The Prisons Population Management Unit will accept referrals and screen all eligible inmates for serious discliplinary infractions and mental health problems. Exceptions may be petitioned to the HvP Prison Master and District Attorney.

2. Except for prior failures to appear in court, the inmate must qualify for the BailCARE program based on criminal history, residence, references, a surety to sign the conditional release bond, and, where necessary, a commitment to self-help counseling for drug, alcohol or employment. Where the inmate does not have a surety, at least two additional verified references will be required.

3. As with the compensatory release process, inmates will be screened by the District Attorney within 48 hours of notice. PMU will forward the list of eligible inmates to Pretrial Services every Sunday evening; within 24 hours Pretrial Services will screen the list for outstanding bench warrants, prior failures to appear and prior HvP/SOB bonds and forward this information to the District Attorney and PMU. Within another 24 hours the District Attorney will provide the list of inmates to which there are no DA objections. DA objections will be forwarded to the Prison Master for review.

4. Eligible inmates will be interviewed and agree to program conditions with BailCARE, and BailCARE will contact the inmate's references and obtain a surety within a maximum 4 days. Those eligible will be transferred to the Pre–Release Division at Laurel Hall for 48 hour observation, urinalysis and pre-placement screening, as well as home inspection visits with Prisons monitoring officers.

5. An order of the local court shall be prepared by PMU authorizing the conditional release, and such order shall be signed by a designated state court official. The inmate's surety shall sign the conditional release bond and, in the event of the inmate's failure to appear in court, shall be held legally responsible for the inmate's original bail amount. The order for conditional release shall be entered into the defendant's court file. A particular bond code shall be assigned to inmates released on conditional release into house arrest/EM.

***13** 6. Upon confirmation of the technical arrangements, the statement of conditions shall again be read to the inmate and signed (attached), and the inmate shall also sign subpoenas for all outstanding cases. The inmate will then be harnessed with an ankle monitoring bracelet.

7. BailCARE will maintain weekly contact with the inmate and the inmate's placement counselors, if any. BailCARE will also monitor for rearrest and/or failure to appear.

8. Upon disposition of the case, or defendant's payment of bail, BailCARE will notify the Pre-Release Division for immediate removal of the electronic monitoring gear.

STATEMENT TO BE READ TO AND SIGNED BY INMATE ON REVERSE SIDE[1]

INMATE NAME:

INTAKE #: PP #:

RESIDENCE OF CONFINEMENT:

PHONE #:

POLICE DISTRICT:

DATE:

INTERVIEWER:

CASE(S):

HOURS OF CURFEW:

NEXT COURT DATE(S):

SUBPOENA(S) SIGNED:

WHILE ON HOUSE ARREST I WILL REMAIN IN MY HOME I MAY LEAVE ONLY TO ATTEND COURT OR AN ASSIGNED PROGRAM

1. I understand that I must be in my house at all times unless I am working or attending a program approved by People's Bail Fund. I must be in the house from 7 p.m. until 7 a.m. every night, without exceptions.

2. If I do not go to court as scheduled, or if I return home late from an appointment, my bail will be revoked and I will be arrested and returned to prison. My surety may be liable for the full amount of my original bail.

3. If I do not comply with the conditions of house arrest listed below I may be arrested and returned to prison.
4. I may be assessed a fee up to $45/week for participation in this program.[2]

5. I will be monitored by an ankle bracelet, which I will wear at all times. The bracelet may not be removed. The bracelet sends signals to my telephone line.

6. I understand that the monitoring equipment will alert the Prison and People's Bail Fund if I violate my curfew. An interrupted signal or a signal which indicates that I am tampering with the monitoring device may be used against me in a court of law.

7. My compliance may also be monitored by phone calls and visits to my home.

VIOLATION OF CONDITIONS MAY RESULT IN MY REINCARCERATION

8. I will remain drug and alcohol free. I must comply with a weekly urine test at the Prisons at the demand of the Prisons or People's Bail Fund.

9. I will not have any firearms or deadly weapons in my possession or in my home.

10. I will contact the People's Bail Fund at the number above every week.

11. I will attend drug, alcohol or employment counseling if it is assigned.

PRISONS WILL HOOK UP AND REMOVE THE GEAR FROM MY HOUSE

12. The ankle bracelet and monitoring device belong to American Monitoring Systems of Media, Pennsylvania. Destruction, damage or loss of the ankle bracelet may result in my prosecution by the Commonwealth of Pennsylvania.

13. Prisons personnel will be permitted to come to my home to hook up the system and to remove it. Upon disposition of my case, or if I pay the full amount of my original bail, the Prisons will come to my home and remove the system.

***14** INMATE

DATE

PBF DIRECTOR

DATE

PRE–RELEASE DIRECTOR

DATE

Footnotes

1 The Agreement of Partial Settlement and Release entered by the parties in the *Jackson* case states,
> This Court is aware of the terms of existing population orders issued by the United States District Court for the Eastern District of Pennsylvania in the matter of *Harris v. Pernsley,* C.A. No. 82–1847. In the interests of comity between the federal and state courts, this Court shall withheld [sic] any orders regarding population maximums at the Philadelphia Prison System. However, this matter shall not be deemed finally settled until the integral issue of overcrowding is resolved.
> Agreement, ¶ 2, p. 2.
> A motion for contempt has been filed in the *Jackson* litigation. A hearing is scheduled for March 7, 1989.

2 This category, covered by Paragraph 3.D.(1), is not addressed by the motion of the parties; the numbers who have been admitted pursuant to it are comparatively small.

3 The District Attorney agrees to this in theory but contends that there is no one being held in prison on a detainer where the new

criminal charges have been dismissed and there are no outstanding technical violations.

1 100 inmates until completion of renovations on March 31, 1989.

1 Accommodations will be made to read this statement to non-english speakers in their native language.

2 The fee will be waived for defendants unable to pay.