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Examining Custody Assessment Criteria: A Comparative Analysis of U.S. & Kuwaiti Legal Systems

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Abstract

This research paper conducts a thorough comparative analysis of custody assessment criteria employed in the legal systems of the United States and Kuwait. The freedom of the accused during the pre-trial investigation stage is one of the most important issues related to human rights and freedoms. The study adopted the analytical method of legal texts, judicial rulings, and jurisprudential opinions between two systems belonging to different legal families, namely the system in the United States of America and the system in the State of Kuwait. The study showed that the legal system in the United States of America addresses the factors that play a role in determining the decision to detain the accused during the pre-trial investigation stage in a better and more in-depth manner than the treatment adopted by the Kuwaiti legislators. The study also indicated that the American legislative treatment is preferable to a procedural reason related to the American system. Finally, this study recommended the need to reorganize the issue in Kuwaiti law by adopting many humanitarian aspects related to the accused in the issue of the decision to release or detain the accused during the pre-trial investigation stage.

Keywords: Likelihood of appearance, Seriousness of the offense, Nature of the offense, Release, and Custody.

Introduction

Although the accused has a "traditional right to liberty before conviction", this right is not an absolute right based on the idea that society has a long-recognized interest in protecting the integrity of the judicial process, and protecting this integrity requires sufficient assurance that if the suspect is released, he will serve the sentence imposed by the sentence if convicted, and that he will not hinder the actions taken (such as influencing the witnesses and other participants) in his criminal prosecution.

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Society also has an interest in ensuring that persons accused of crimes who are released pending trial do not commit other crimes during their release. Although this interest, like the financial issue, was not until recently a factor that a judge was supposed to consider in the bail process, very few doubt that it played an important role in bail decisions (Al-Eifan et al., 2022).

On the other hand, in many cases, it can be argued that society also has an interest in the release of the arrested person before trial, because keeping the suspect awaiting trial, even in prison, is not without expensive costs to the state. Therefore, releasing suspects pending trial is less costly than detaining these people. This interest may have special consideration, especially in states where pre-trial detention is handled at the local level (county jail), while post-trial punishment is handled at the state level (state prison). The interest of the arrested person is linked to pre-trial release by the presumption of innocence applicable to the states and their trials through the right to fair process provided for in the Constitution. However, this presumption does not officially enter into force (the suspect does not benefit from it) until trial.

The interest of the person arrested in freedom and, therefore, in his release pending trial is of great importance and very clear. It can be argued that pre-trial detention involves not only the permanent loss of liberty, but especially considering the often-poor prison conditions this interest in freedom becomes an inevitable necessity (Aleifan et al., 2023).

Furthermore, pre-trial detention can be aware of the preparation of the defendant or his counsel for the appropriate defense for trial. For example, a defendant may assist his or her lawyer in identifying witnesses and persuading them to testify or search the defendant's home for relevant evidence. Somewhat dated studies indicate that "some defendants who are unable to pay bail, for this reason alone, are more likely to be convicted and, if convicted, more likely to be sentenced. in prison." Moreover, pre-trial detention can affect the accused and their families emotionally and financially. A pre-trial detainee can lose his or her job if he is imprisoned awaiting trial; pretrial detention may also deprive a defendant of an important opportunity to prove that he or she is "a good and decent person in society" (for example, by continuing to retain his or her job or avoid re-arrest or even good deeds). This decision can be useful for him in plea negotiations with the indictment or determine the appropriate punishment upon conviction. (Aleifan, 2016).

Accordingly, it can be argued that there is an inevitable balance between the interest of society and the interest of the accused in releasing or keeping him in custody during the pre-trial period. Thus, this balance can be achieved by adopting

objective and subjective factors that determine whether the interest of society prevails or the interest of the accused.

The major concern in this paper is the issue of when it is appropriate to initiate the criminal process by arrest rather than by some less drastic method, such as a summons or notice to appear. The criteria identified and discussed in the material that follows are based upon observation of current practice at the stages of arrest, release by police, release by the prosecutor, and release by the magistrate. This composite treatment makes it possible to define the need-for-custody criteria more adequately and furnishes a basis for a comparison of the need for custody at these various stages in the criminal justice process.

This study presents several questions that are taken into consideration in determining the decision to release the accused during the pre-trial stage, in terms of whether the factor of the possibility of the accused being present in the subsequent stages is relevant. Is the nature of the crime considered? Does the seriousness of the crime play a role in determining the release decision? Are there humanitarian aspects taken into consideration while deciding to release or detain the accused?

Methodology

This study adopted the method of comparison between the legal system in the United States of America and the State of Kuwait regarding the factors that play a role in determining the freedom of the accused during the pre-trial investigation stage, and this study aims to determine the best system in terms of dealing and organizing this subject. We also answer its questions on judicial precedents in the subject, articles, jurisprudence, and legal texts.

1. The likelihood of appearance

In the United States, it is generally agreed that taking and retaining custody of a suspect is justified when this is the only way to ensure that he will appear in court to answer charges against him. There is, however, debate over what circumstances make the risk of nonappearance great enough to justify immediate arrest, the setting of high bail, or the denial of bail entirely. Similarly, The Kuwaiti Code of Criminal Procedure sets out the general rules for the reasons for pre-trial detention by article 69 of the Code. The Kuwaiti legislator defined the concept of the investigation interest through two angles: First, Fear of running away. Secondly, influences the progress of the investigation. The Kuwaiti legislators did not mention other cases of pretrial detention of the accused, but the two previous cases are amenable to accommodate other concepts that fall under their shadow of the application of pretrial detention (Aleifan et al., 2023).

The federal courts and most state courts[1] have held that the risk of nonappearance is the only valid basis for requiring bail or for setting a high bail before trial. This is also an important factor in the laws of other countries.[2] Constitutional provisions prohibiting excessive bail are common[3], and statutes, such as those in Michigan and Kansas often prescribe that bail is to be set at an amount sufficient to secure the defendant's appearance.[4] Less effort has been made by the law to relate the right to arrest with the risk of nonappearance, although a Wisconsin statute does make the risk of nonappearance one of the only two proper bases for arresting a person upon reasonable grounds to believe that he has committed a misdemeanor.[5] Of course, a misdemeanor arrest can be made with a warrant issued on probable cause without regard to the risk of nonappearance.

In practice, whenever a decision is made to use the notice to appear, to release without bail, or to release on minimal bail the risk of nonappearance is considered. Even when the notice to appear is used without express statutory authority, the police are instructed to take this risk into account. For example, state traffic officers in Wisconsin are instructed to arrest "when the arresting officer has reason to believe that the person arrested will flee the jurisdiction of the court." The following are determining factors in the decision as to whether there is a real risk of nonappearance.

a. Seriousness of the offense

For instance, a defendant charged with the sale of narcotics was brought before the magistrate. Without inquiry into the defendant's background, the magistrate set bail at $10,000. This amount is uniformly set for such an offense. The sale of narcotics carries a minimum sentence of 20 years' imprisonment, although many defendants are allowed to plead guilty to the lesser offense of possession of narcotics, thus avoiding the high, mandatory minimum.

The seriousness of the offense is an important consideration, and the possible penalty seems an appropriate indication of seriousness.[6] The offender who, at most, will receive a small fine is generally much more likely to appear than one who anticipates a severe prison sentence. For this reason, the notice to appear is most often used in misdemeanor traffic violations and conservation offenses. The amount of bail required is also influenced by the seriousness of the offense. In Michigan, it is provided by statute that this is a factor that must enter the bail decision.

The question is sometimes raised as to whether too great an emphasis is placed upon this one factor. Defense counsel complains that high bail is set for

persons accused of a serious offense even though other factors make it extremely unlikely that these persons will flee. Bail bondsmen are hesitant to give bonds to a person accused of some serious offenses, such as bank robbery. This is due in part to the high risk of nonappearance and in part to a desire to cooperate with the police, who are likely to want to conduct a prolonged in-custody investigation in such cases.

Under the Kuwaiti Criminal Procedures Law, although the law does not explicitly refer to this reason as a justification for pretrial detention, it is derived from the general rule of Article 69, which refers to the interest of the investigation. The seriousness of the crime may also be mutually reinforcing with the seriousness of the offender, who would pose a danger and a breach of public security if the accused is left at large, as the interest of the investigation requires that the accused be held in pretrial detention until the completion of the investigation, and the seriousness of the crime may be a convincing reason for the escape of the accused and his hiding from sight, without considering the seriousness of the accused alone as a reason for pretrial detention, as the latter is one of the procedures aimed at the safety of the investigation and not to control order. The year that finds its place in the precautionary measures contained in the law.

b. Nature of the offense

A numbers writer was brought before the magistrate for the setting of bail. Without inquiry into any of the specific facts of this case, the magistrate immediately set an extremely low bail. "These people would not leave town if an atomic bomb were dropped on it," he remarked.

The nature of the offense, regardless of the penalty, may disclose a great deal about the risk of nonappearance. The fact that the offense arises out of an ongoing established business enterprise, legal or illegal, may suggest the continued availability of the defendant. Thus, in Wisconsin, tavern owners who violate liquor laws are ordinarily given a notice to appear rather than being arrested.[7] In Detroit, the Release Bureau grants more releases to persons arrested for possession of numbers slips than for any other offense, and at habeas corpus hearings such persons are released on very low bail. It is known that these people will continue in business and will regard prosecution as one of the costs of doing business.

For example, a woman just arrested for shoplifting was brought to the precinct station. After a records check, it was determined that she had not been apprehended for any offenses in the past. The station lieutenant authorized her release without bond upon her promise to appear in court.

Sometimes the nature of the offense suggests that its commission is attributable to a mental or emotional problem of an otherwise law-abiding citizen. For this reason, shoplifters without criminal records are often released without bond.[8] One Detroit judge commented that he usually sets low bail for sex perverts, as he considers their conduct to be attributable to a mental disturbance and he does not think it likely that they will flee jurisdiction once discovered. Under the Kuwaiti Law, the personal characteristics of the accused may also constitute a compelling reason for pretrial detention, as if the accused suffers from some psychological or mental illness that may lead him to tamper with the evidence of the crime, the integrity of the investigation, or to hide from sight.

c. Residence of the individual

This factor may arise when a traffic officer stops a driver for a violation. The driver contended that he lived in a neighboring community but did not have his driver's license in his possession. When he could not produce any conclusive proof of his local residence, the officer placed him under arrest.

If the person is a resident there may be no need to take or retain custody to ensure his appearance. But if he lives outside the jurisdiction or has no fixed dwelling or known residence, the risk of nonappearance is greater. (Study of the Right of Everyone to Be Free from Arbitrary Arrest, Detention and Exile, Commission on Human Rights, 1961).[9] Thus, a Michigan statute prescribing the use of a notice to appear for misdemeanor traffic violations has an exception for the offense of driving without a license, although it is further provided that the officer can nonetheless release the driver if he determines his identity and is assured that the offender can be readily located for subsequent apprehension in the event of his failure to appear.[10]

The notice to appear is ordinarily used only for persons who reside within the jurisdiction served by the officer. A county traffic officer is likely to arrest a violator who is not a resident of the county, while a state conservation warden will probably use the notice to appear for all state residents. Even in the case of residents, an arrest will be made if it is apparent that the person is about to abscond.[11]

For the most part police release after arrest only in the case of residents.[12] This is also the practice of magistrates in habeas corpus hearings. Thus, a Detroit Judge denied bail altogether in one case, noting that the defendant was not a resident but had been merely passing through the city at the time of the offense. Due to the small size of the State of Kuwait, this factor was not adopted by the Kuwaiti legislator among the factors that determine the decision to arrest or not.

d. Character of the individual

The respected citizen is more likely to appear to answer charges against him than is the habitual offender and therefore the decision as to custody is likely to include consideration of the character of the defendant. In Michigan, the previous criminal record of the defendant is by statute a necessary consideration in setting bail, and it is a consideration in all three Jurisdiction. One of the most frequent reasons given by the Detroit Release Bureau for refusing to release a suspect is his bad record. As is true regarding the seriousness of the offense, however, it is not easy in this case to distinguish the desire to punish the offender from a conclusion that there is a high risk of nonappearance.

The first reason for pretrial detention by the Kuwaiti legislator was the defendant's fear of escaping, which is entrusted to the discretion of the investigator and the court, depending on the location of the criminal case. The investigator may resort to this procedure if, for example, the accused is a foreigner, as the likelihood of his escape is much higher than that of the accused citizen, but this does not prevent the possibility of the accused citizen from escaping in light of the wide geographical area of the state or attempting to hide from the investigation authority and prosecution agencies.

e. Likelihood of conviction

To clarify this factor if we assume that a Negro defendant was brought before the magistrate charged with felonious assault. The magistrate examined the case report and noted that the assault was on another Negro and that there were no other witnesses. He released the defendant on his recognizance instead of requiring bail, "There'll probably be no conviction here," he noted "In these cases the victim usually 'forgets' what happened,"

Although the weight of the available evidence is a factor frequently mentioned in state constitutional provisions on bail in capital cases,[13] the sufficiency of the evidence is in practice generally not a consideration in decision on arrest,[14]release, or bail setting. However, the actual likelihood of conviction, often indicated by circumstances other than the adequacy of the evidence, is sometimes considered. The illustration above is an example of a case in which conviction is unlikely chiefly because of low enforcement priority.

Conviction may appear unlikely, notwithstanding the evidence in hand, because discretion will probably be exercised at the charging or adjudication level like that already noted concerning arrest. If the suspected offender knows he probably will not be convicted, he has less incentive to flee, and consequently, there is a greater likelihood of his appearance. In any event, the mere fact that

conviction is unlikely makes ensuring appearance seem less important to those making decisions on arrest, release, and bail.

Since the custody of the accused before trial does not fall within the concept of punishment, the Kuwaiti legislator did not allow the investigator or judge to consider the element of the possibility of conviction as a factor in determining the extent of the need for custody of the accused. In general, the justifications for pretrial detention in the Code of Criminal Procedure revolve more on the accused himself than on the crime, provided that the limits of those justifications are drawn in the event of escape or affecting the conduct of the investigation.

Therefore, pre-trial detention in Kuwaiti law does not justify deterring the offender or the preponderance of a conviction or achieving general deterrence as powers entrusted to the trial authority and not to the investigating body.

2. The interest of the individual.

a. Hardship to an individual or his family

To illustrate this factor, we suppose that a man was arrested for conspiracy to violate gambling laws and was held in jail pending his appearance before a magistrate. The police received a call from the Release Bureau saying that, although the bureau did not ordinarily act in felony cases, there were some unusual circumstances in this case. There was a young baby at home, the person's wife was sick, and his home telephone had been confiscated at the time of the raid which resulted in his arrest. The police agreed to an immediate release.

The facts of an individual case may indicate that taking or retaining a person in custody will cause an inordinate amount of harm to him or his family. Thus, the Detroit police are instructed to consider the number of dependents of the person in deciding whether to grant a release (Detroit Police Dept., Revised Police Manual, 1955). Sickness in the family is often recognized as a basis for release because the family need is greater and flight is less likely under such circumstances.[15] Also, a person may be released if he has responsibilities in his daily work that cannot be performed by others.[16] Even the desire to keep a close relative from knowing about an offense may sometimes prompt release.[17]

Some foreign jurisdictions have expressly made hardship, or particular kinds of hardship, a basis for not arresting or for releasing a person already arrested (Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention, and Exile, Commission on Human Rights, 1961) since the special circumstances are not usually known until after arrest, this factor is of more importance in the consideration of release than in the initial arrest.

b. Inability of the individual to care for himself

This factor can be understood according to the following hypothesis: A police officer was arrested for public intoxication. The defendant was taken to the station, and, notwithstanding his demand for release and his ability to post bond, he was kept in custody until sober.

When the defendant is under the influence of alcohol, the police in all three states view this as an adequate reason for arresting him rather than giving him notice to appear and also for refusing to release him until he is sober. The Michigan statute prescribing the use of the notice to appear in traffic cases makes an exception in cases of drunken driving. In Wisconsin, where the notice to appear is used in practice even though there is no relevant statute, a state traffic patrol bulletin states that an arrest should be made only when the violator is unable to care for his safety or the safety of others, as in cases of operating an automobile while intoxicated. Only in unusual cases, where it is clear that there is no further danger, will a ticket be given to the intoxicated driver.[18] Similarly, persons arrested for public drunkenness or disorderly conduct are not released until they are sober even if they have adequate funds to post bail.[19] In some cases, however, a drunk will be released to the custody of some sober, responsible party, such as his wife, close friend, or attorney.

In Wisconsin drunkenness is an offense only when the person is in public and unable to care for his safety.[20] The draftsmen's comments state that "the police, as a matter of policy, should be permitted to take him [the helpless drunk] into custody, if for no other reason than that he needs protection" (5 Wis. Legis. Council, Judiciary Committee Report on the Criminal Code, 1953). However, continuation of custody on this basis is inconsistent with the notion that there is a right to prompt release on bail set only to ensure appearance (Champaign-Urbana News-Gazette, 1963).[21] In *Schoette v. Drake,*[22] an officer arrested an intoxicated and boisterous offender at 5:00 P.M. but did not bring him before a magistrate until the following morning. The Wisconsin court held that the lower court erred in deciding as a matter of law that there had been no unreasonable delay, as the local court had been open immediately after arrest "for disposition of [the] case or release on bail." There are cases to the contrary,[23] holding that the right to bail does not require the release of a person who cannot care for himself and who would commit another offense by being in public while still intoxicated.

c. Possibility of harm to individual by others

The best way to realize this factor is through the following incident: a tavern owner, arrested by an officer for selling beer to a minor, was kept in

custody over a weekend until he could be brought into court. In response to the district attorney's criticism that such offenders are not ordinarily arrested, the police noted that the youth to whom the liquor was sold had nearly died and that as a result there was considerable public antagonism manifested toward the tavern owner.

In cases of crimes that cause a very emotional response by the victim, his friends or family, or the public, the police may deem it necessary to take and retain the suspect in custody for his protection. Thus, it is the policy of the Detroit Release Bureau to deny release in a sex case involving an adult who has abused a child, on the basis that feelings are very intense in these cases and the family of the victim is likely to be aggressive toward the defendant.

The safety of the accused is a factor that can be considered under the law of some foreign countries, (UN Commission on Human Rights, 1961). it is contrary to the common assumption in the United States that the likelihood of appearance is the sole criterion for setting bail. Certainly, the safety of the accused is not a satisfactory basis for requiring a high bail since the amount of bail required does not affect the danger to the accused. If properly considered, it would constitute a basis for denying release entirely. This issue has rarely been considered by appellate courts, although one court while declaring that a higher bail could not be set because of a fear of mob violence, did intimate that at some time there might be a "danger so great" that the prisoner's "guaranty against excessive bail . . . should be withheld."[24]

This situation differs from the previous one in which the drunk is taken into custody because he has rendered himself unable to care for his safety. The tavern keeper is taken into custody because of the threat of harm by others. To say that the suspect is responsible for this situation assumes his guilt. When there is readily available some means of preventing possible harm, perhaps by police protection, then the custody case is not easy to support. The most difficult situation is that in which the police doubt their ability to keep order if the suspect is not taken and held in custody.

Neither Kuwait's Code of Criminal Procedure nor judicial rulings recognize the role of pretrial detention in protecting the accused. However, it can be said that the interest of the accused may be mutually reinforcing with the interest of the investigation itself, as the accused may constitute the most important evidence of the crime to the investigating authority and that his release would constitute prejudice to his safety and ability to proceed with the investigation. As if the victim wanted to assault him or feared that the accused would commit suicide, and therefore the release of the accused constitutes a clear harm to the course of the investigation, which requires the investigator to deter

him in pretrial detention not for his safety, but for the integrity of the investigation procedures and the search for evidence.

d. Possibility of attempted suicide

If an officer arrested a man for homosexual conduct. At the station, it was determined that he was a resident, unlikely to flee. The officer in charge said that under no circumstance were the police to grant a release to this man. He explained that a few years ago after such a release had been made, the defendant, a schoolteacher, had committed suicide.

So, it can be said that a person who has been arrested may be retained in custody pending his appearance in court if police feel that he will be a suicidal risk if released. This situation might occur, for example, when a prominent and respected person is arrested for homosexual activity. This criterion is also utilized in practice in England but is not formally recognized as proper in either England or the United States (Devlin, 1958; Daniel, 1960).

The risk of suicide is created by the arrest and pending public disclosure of the allegations of improper conduct.[25] The assumption is that the person is more depressed immediately following arrest than he is after the passage of sometime and his appearance in court. In practice, both the police and the magistrate attempt to minimize the risk of suicide by impressing upon the homosexual that others are similarly afflicted and that he can be helped by psychiatric treatment.

Unfortunately, the Kuwaiti legislator did not adopt this factor in regulating the detention procedure for the accused during the pre-trial investigation stage. Accordingly, it would be appropriate and better if the Kuwaiti legislator added this factor to the factors that play a role in determining the fate of the accused's freedom during this stage of the criminal procedure.

Conclusion

There is no doubt that the subject of the study is characterized as a subject related to human rights and law enforcement, and it is a subject that is subject to continuous development. It is also certain that the subject of the study is a vital subject that develops with the development of the daily behavior of the policeman, the investigator, and the judge considering the unexpected circumstances that are encountered. There is also no doubt that the degree of development of this issue varies from one legal system to another, and the best evidence of this is the development that occurred in the United States of America compared to the development that occurred in the State of Kuwait, and this is of course due to the multiplicity of internal legal systems in the United States and the number of

incidents presented to police, investigation and judicial authorities on a daily basis.

Through this study, it becomes clear that Kuwaiti law - and many Arab and Islamic laws that belong to the same legal family - lacks consideration of some humanitarian aspects regarding the decision to determine the custody of the accused during the pre-trial stage. This study, of course, presents an invitation to the Kuwaiti legislator to adopt some factors that concern the humanitarian aspect within the texts of the Kuwaiti Code of Criminal Procedure and Trials, which we will provide in the recommendations section.

Recommendations

Considering the analysis and comparison concluded by the study, it can be said that the Kuwaiti legislators should benefit from the experience of the American legislator in the subject of the study through the following:

- Since the Kuwaiti legislator encourages the application of the law and the arrest of the perpetrators, there must be comprehensive legislative treatments for the procedures of that encouragement. If the Kuwaiti legislator stipulates in Article 156 of the Code of Criminal Procedure and Trials to grant the offender who assists the authorities in arresting the other perpetrators, this must include in his policy releasing procedures for the cooperating accused.
- To add importance to the factors determining the release of the accused, the Kuwaiti legislator must transfer the jurisdiction in making this decision to an independent and impartial judicial body.
- The Kuwaiti legislator must make many legislative amendments to the provisions of the Code of Criminal Procedure and Trials by adopting factors to release the accused, including considering some humanitarian aspects, including taking into account the psychological state of the accused, taking into account the special needs of the accused's family and other needs.

Notes

[1] The estimated cost of maintaining defendants in jail is at least $6.00 per day per man. Comment, *Constitutional Limitations on the Conditions of Pretrial Detention*, 79 YALE L.J. 941, 943 (1970

[2] See Study of the Right of Everyone to Be Free from Arbitrary Arrest, Detention and Exile, Commission on Human Rights, U.N. Doc. E/CN.4/813, pars. 89-91, 155,164 (1961).

[3] In Kansas there is a right to bail except for capital offences; the Michigan constitution gives a right to bail except for murder and treason when the proof is evident or the presumption great; and in Wisconsin a right to bail is granted except for capital offenses when the proof is evident or the presumption great. In all three states there are constitutional provision that bail not be excessive. Kan. Const., Bill of Rights § 9; Mich. Const. art. II, §§ 14, 15; Wis. Const. art. I, §§ 6, 8.

[4] The Michigan statute provides: "The amount of the recognizance shall be fixed with the consideration of the seriousness of the offense charged, the previous criminal record of the defendant and the probability or improbability of his appearing at the trial of the cause." Mich .Stat. Ann. § 28.893 (1954). While the statue appears to state three separate criteria, it would appear that the first two are merely factors which affect the third, the likelihood of appearance.

A host of Kansas statues dealing with bail in a variety of situations all speak of bail which will secure the appearance of the person charged. Kan. Gen. Stat.§§13-608, 13-611, 14-808, 14-815, 15-507, 15-515, 62-611, 62-619 (1949).

[5] Wis.Stat. § 954.03(1) (1955).

[6] Dicta in People v. McDonald, 233 Mich. 98, 206 N.W. 516 (1925), stated emphatically that as the penalty for a second offender was higher, bail could be set higher for a second offender.

[7] In Michigan, the Supreme Court has taken note of the desirability of using a notice to appear in a similar situation. See Odinetz v. Budds, 315 Mich. 512, 24 N.W.2d 193 (1946).

[8] In fact, it is the rule in Detroit that a shoplifter without a criminal record is under no circumstances to be detained overnight. In a year and a half under this rule, no released person has failed to appear.

[9] This is made a determinative factor by law in some foreign jurisdictions concerning the use of alternatives to arrest and release without bail.

[10] Mich. Stat. Ann. §§ 9.2427 to 9.2429 (1952).

[11] The felony detail of the Prosecutor's, Bureau In the detective division. Detroit Police Department specializes in dealing with complaints of fraud arising out of business transactions. When a complaint is received, a "please come" letter is ordinarily sent to the suspect. See page 196. However, in one case the bureau received several complaints from women who asserted that a sewing

machine salesman had promised them § 20 each for every new customer obtained, but that no payments had been made. When investigators learned that this salesman had recently moved all of the furniture from his office, they feared he was planning to leave town, so an arrest was made.

[12] However, even residents certain to appear may not be released without bail if the police doubt their authority for doing so. Thus in many Wisconsin communities, local drunken drivers were released when sober only by posting a bond.

[13] Ibid 1.

[14] Of course, the probability of guilty may be an important factor in the determination of whether an arrest can be lawfully made. But once an officer determines that there is sufficient evidence available for arrest, he does not ordinarily then ask himself whether the strength of the evidence affects the need-for-custody issue.

[15] A supervisory officer in one Michigan department said that in the last three years, he had released only two persons without bail, and in both cases, there was sickness in the family.

[16] Wisconsin conservation agents arrested a man for a serious game violation and put him in jail. However, when it was learned that he had the responsibility of operating a farm, he was allowed to leave the jail to attend to his work.

[17] Though they ordinarily do not attempt to obtain the release of prostitutes, the Detroit Prosecutor's Bureau inquired into the possibility of the release of a girl whose mother was about to arrive in town for a visit.

[18] Wisconsin country traffic officers were summoned when a car was found in a ditch. They checked the ownership of the car and went immediately to the home of the owner, found him in an intoxicated condition, and learned from him that he had just returned after driving the car into the ditch. He was left a ticket for a court appearance.

[19] Statistics of the Detroit Release Bureau record many instances in which release was denied because of the intoxication of the arrestee. However, the bureau did grant release once the person was sober. In many Kansas communities, the police require drunks to remain in custody for a minimum of four hours as a matter of policy.

[20] The statutory definition of a drunken person is: "A person who is so intoxicated that he is unable to care for his safety and is found in a public place in such

condition." Wis. Stat. §947.03 (1955). This is not significantly different from the provision before recodification, Wis. Stat. §351.59 (1953).

[21] Thus, in Markey v. Griffin, 109 I11. App. 212 (1903), the Court declared that an arrestee has an absolute right to bail regardless of his state of intoxication. Although the reported practice in Chicago is to deny bail to intoxicated persons except when release to a responsible relative or friend is possible, Note, 38 Chi.-Kent L. Rev. 22, 43 (1961), Markey is followed in some other parts of the state. In one incident occurring in downstate Illinois, an intoxicated driver was arrested when found driving on the wrong side of a four-lane divided highway. He was able to obtain his release when a professional bondsman posted a bond for him four hours later, but he subsequently killed himself and the occupants of another car when he again drove on the wrong side of the same highway. Although the police explained that they thought the man was sober at the time of his release, a local pathologist noted: "An individual who has 20 grams per cent blood-alcohol content has 10 to 12 ounces of alcohol in him. Alcohol is excreted at a rate of ⅔ ounce per hour. If the individual is detained for five hours, he would get rid of ⅔ ounce times five, or about three to four ounces, when he would be released after five hours and would still have seven to eight ounces in him. A couple of beers would get him drunk again." Local law enforcement officials demanded legislation authorizing detention of intoxicated drivers for a minimum of six hours.

[22] 139 Wis. 18, 120 N.W. 393 (1909).

[23] Annot., Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment, 79 A.L.R. 13, 20-21 (1932).

[24] State v. Richardson, 176 La. 750, 753, 146 So. 737 (1933). Thus the court rejected outright the proposal of the district judge to raise bond from $500 to $5000, saying that it "would not lessen the danger of mob violence," but to the suggestion to deny bail outright merely said that there was not sufficient indication of danger.

[25] Because possible public disclosure in the case of some offenses is thought to impose an undue burden upon certain defendants, the police sometimes decide against invoking the process, at all. Even when in arrest is made in these cases the police often assure the defendant that all the possible steps will be taken to avoid any publicity and that he probably will not be convicted if he agrees to seek private psychiatric help, which is usually the outcome. For comparison of the sympathetic attitude at the police toward a respectable

person who becomes involved in homosexual conduct with their attitude toward the troublesome transvestite.

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