Jailing Law Use Declines

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Alternative To Detention Rule Employed

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Attempts to jail criminal suspects under the District's preventive detention law have just about been abandoned in favor of a lesser-known provision of the D.C. crime act.

The U.S. attorney's office has sought to impose the controversial preventive dentention provision about 15 times since it became law Feb. 1, but only once in the last six weeks.

Instead, it has recently employed on at least 25 occasions a law that permits judges to hold for five days without bond suspects already on probation or parole.

Court sources note that in the vast majority of cases, suspects who might be candidates for preventive detention—under which they can be held after court hearings for 60 days without chance for release—already are on probation or parole, and therefore eligible for detention under the other law.

The net effect under either law is likely to be the same. Suspects considered dangerous and likely to commit another crime if permitted to be released on bond are not released before they go to trial, either on the new charge or on a hearing on revocation of their probation or parole.

U.S. Attorney Thomas A. Flannery could not be reached for his comments, and his top aides will not acknowledge a conscious decision to abandon preventive detention.

Six Cases

Superior Court judges have approved preventive detention on only six occasions, and three of those decisions were later reversed on appeals.

Of the three suspects ordered held for 60 days, one escaped shortly after being jailed.

Court sources points to a D.C. Court of Appeals as accelerating use of the lesser-known parole violation law. Its order involved the case of a man whom Superior Court Judge George H. Revercomb had ordered detained after a secret hearing. The Appeals Court noted that the man was an alleged parole violator and should have been held under the five-day provision.

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Prosecutors Employ Second Detention Law

DETAIN, From D1

That order was not made public when it was issued about May 11, but Alexander Stevas, chief clerk of the Court of Appeals, said Friday that of Appeals, said Friday that the Court had never intended to keep the decision secret.

The order calls for the prosecutor's office to exhaust all remedies of the lesser-known section before resorting to preventive detention.

Chief Judge Harold H. Greene, at a conference of Superior Court judges last week at Airlie House in Warrenton, Va., remarked that prosecutors may now "avoid" preventive detention and the criticism that it provokes and still accomplish its purpose by using the alternative law.

The companion provision, which was relatively ignored during debate over preventive detention, reads:

"The judicial officer may detain (up to five days) a person who comes before him for a bail determination charged with any offense, if it appears that such person is presently on probation, parole or mandatory release . . . and that such person may flee or pose a danger to any other person or the community if released."

Five-Day Holds

The sources said prosecutors have been requesting five-day holds only on defendants rearrested on narcotics-related charges or charges involving violence, such as assaults or robberies.

In an estimated half of the 25 cases in which five-day holds have been sought, the sources said, judges have granted prosecution requests and jailed the suspects. In most of these cases their probation or paroles subsequently were revoked without their intervening release.

In at least some of the cases in which judges declined to hold defendants without bond for five days, the judges set high money bonds. Since the defendants could not post them, they were detained for all practical purposes.

Even before the passage of the crime act, prosecutors could seek revocation of parole or probation, but the law did not provide a means of keeping those suspects in custody until the revocation hearing could be held.

The five-day period provided in the crime act had not been used extensively until the Court of Appeals ruling because of procedural problems, court sources said. But spurred on by that decision, probation and parole authorities worked out the problems so that revocation hearings are set up before expiration of the five-day period.

By changing the emphasis from preventive detention to probation or parole revocation, the U.S. attorney's office has avoided criticism from opponents of preventive detention, the sources speculated.

In March, for example, U.S. District Court Judge Gerhard A. Gesell said he was "amazed" to learn preventive detention hearings had been conducted in secret. He urged the U.S. attorney's office to change its procedures, warning that the practice of holding secret hearings could "grow and spread like a cancer."

By contrast, moves to hold defendants for five days pending bond revocation are made in open court.

In addition, by abandoning preventive detention, the U.S. attoreny's office may have avoided numerous court battles testing the constitutionality of the law, since most attorneys for defendants held under it could be expected to appeal their cases, sources said.

According to defense attorneys, moves for five-day holds on defendants are "virtually unreviewable in the appellate courts" since by the time an appeal could be filed, the five-day period would be up.

The entire concept of preventive detention, however, is being challenged in a U.S. District Court suit fild by the American Civil Liberties Union, which charges it is "an experiment with the liberties of the American people." A three-judge panel has it under advisement.

Preventive detention still may be used in the future, the sources said. But they indicated the U.S. attorney's office may not press a case until it feels it has a model situation, that would be upheld upon appeal by the defense.