

## Chapter 6 – Courts Service

### 6.1 The Administration of Bail

#### Background

The Gardaí bring persons arrested and charged with an offence before a District Court as soon as possible after arrest. The arresting Garda prepares a charge sheet for presentation to the court outlining the reasons the person is before it. This charge sheet becomes the court record of the progress of the case and as such will contain the record of court attendances, the judge's decisions on bail, individual charges, bench warrant issued for non-attendance and forfeiture and estreatment orders made. Figure 3 gives an overview of the key stages in the grant and subsequent administration of bail.

Where the judge decides, the person charged may be released from custody on bail on receipt of a guarantee that the person charged will appear for trial on a date determined by the Court.

One of the principal objectives of the bail system is to allow accused persons freedom to pursue their normal daily lives pending preparation of the State's case against them while imposing conditions that seek to ensure their subsequent attendance at trial. One of the conditions normally imposed requires the person charged (or one or more sureties) to promise to pay a monetary amount set by the Court should the accused person fail to appear at the date determined.

The Court has discretion as to whether to demand that some portion of the bail fixed be paid into Court before the person charged is released. In the period May 2000 to April 2002, Section 5 of the Bail Act, 1997 obliged the Court to impose a one-third cash payment requirement on persons charged. The provision was amended in May 2002 because it had resulted in a huge increase in the workload of the criminal courts not only for Court officials, but also for judges, An Garda Síochána and to some extent the Prison Service. Judges found themselves being obliged to impose bail amounts of less than €50, €10 or even €5 in 2001 in order to prevent massive numbers of remand prisoners.

Persons who are granted bail, or their sureties, make their promise to pay by entering into a Bail Bond in the District Court office.

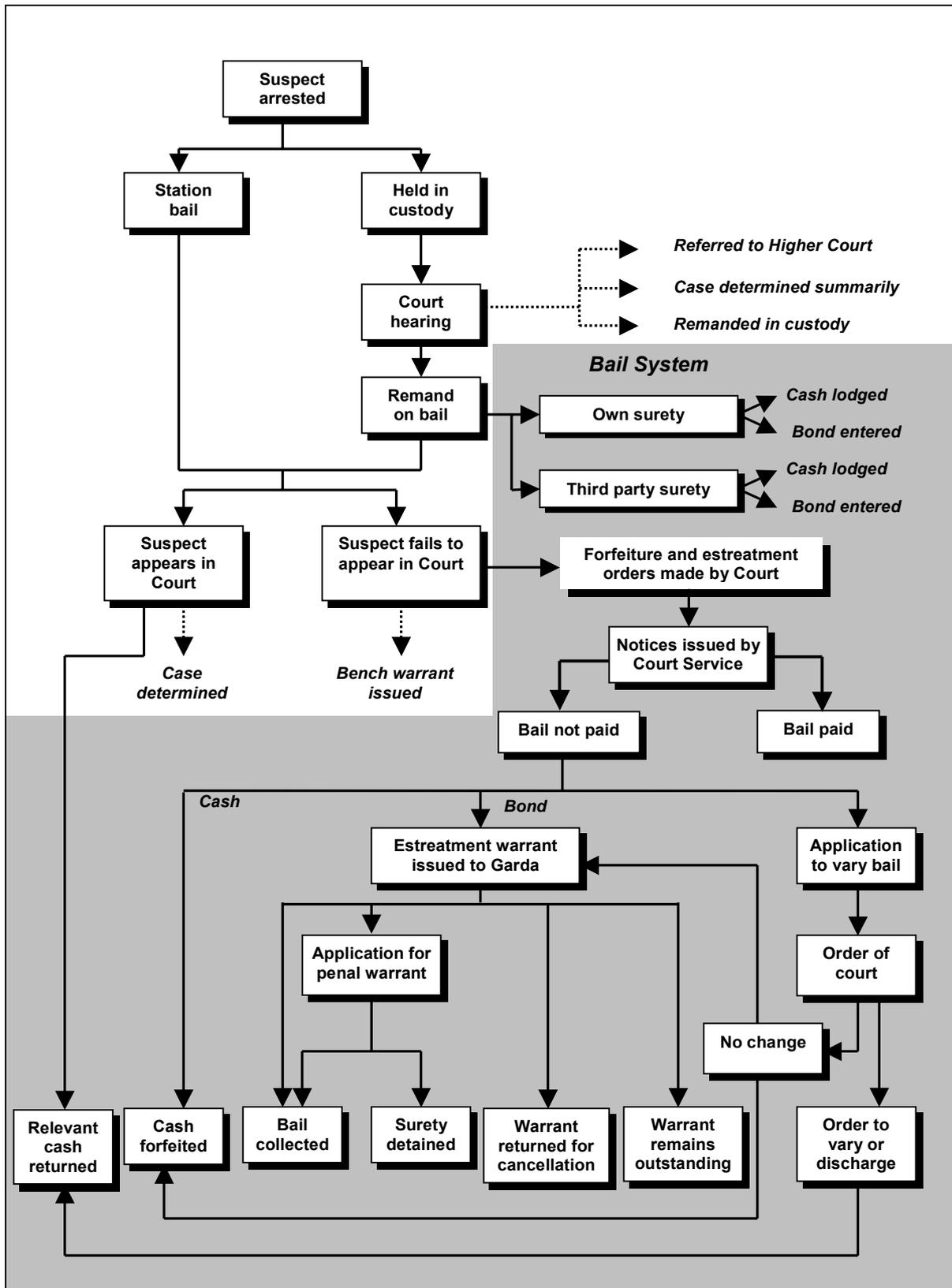
Where the person charged appears in Court in line with the Court's direction, any cash paid when bail was set will be refunded on discharge, held as continuing bail or transferred to another court where the case is moved to a higher jurisdiction.

If the person charged fails to appear as scheduled, the Court instructs the Gardaí<sup>2</sup> to arrest the person and bring him or her before the court at the earliest opportunity. At the same time, the Bail Act, 1997 requires the Court to order that any cash lodged under the terms of the bail is to be forfeit to the State and to estreat, i.e. collect, the remainder of the bail. Where the Court makes such an order, the Courts Service institutes proceedings to collect any balance of the bail not already paid over in cash.

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<sup>2</sup> By means of a bench warrant issued on the order of the Judge.

Figure 3 - Overview of the Bail System



All bail cases arise in the first instance in the District Courts. Serious cases are subsequently transferred to the local Circuit Court or to the Central Criminal Court. When this occurs, the cash bail lodgments associated with these cases are also forwarded to the relevant Court office.

## **Audit Objectives and Scope**

The principal objectives of the examination were to

- Examine the contribution of the bail system in enforcing attendance in court by persons charged in the Dublin Metropolitan District Courts (DMD) and the Dublin Circuit and Central Criminal Courts.
- Determine the extent to which the authorities enforce the monetary penalties arising from failure to attend court by persons charged.

Courts Service database records were sampled and analysed in cases where bench warrants had been issued and estreatment proceedings had been taken.

Due to limitations on the availability of data stored electronically, the examination confined itself generally to the two-year period 2000 to 2001, with some references outside this period where data was available. Records, statistics and information generally relating to prior years are not easily recoverable due to the manual nature of the process and because of the impracticality of retrieving information from earlier computer systems.

The examination included a review of material provided by the Garda Síochána at the Bridewell Dublin and the Garda Computer Centre, Templemore.

## **Audit Findings**

### ***The District Court***

#### *Bail Bonds*

When a judge sets bail, the person charged, if he or she does not remain in custody, enters into a Bail Bond which in effect is a promise to pay the amount of bail set if he or she fails to attend court as directed by the judge. In addition to setting bail for the person charged, the judge may also require an independent surety or sureties to be provided. The value of bail entered into can be established by means of the Court Service's Criminal Case Tracking System which is in operation in most of the DMD. The Courts Service has determined that in 2001 18,121 Bail Bonds were entered into with a bail value of €4,433,880. Of these, 836 Bail Bonds (5% of the total) involved a surety with a value of €1,121,098 (25% of the total Bail Bond amount).<sup>3</sup>

Before accepting independent sureties as guarantors, the court requires them to provide evidence of ability to pay should that become necessary. It does not normally apply the same requirement to persons charged who are released on their own bail.

#### *Bench Warrants*

If the person charged fails to attend the court at the appointed time a bench warrant for the arrest of the person is issued on the direction of the presiding judge. Since October 1999, the Courts Service's Criminal

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<sup>3</sup> Bail Bonds entered into in areas of the DMD which are not yet covered by this computer system are not readily available from the Courts Service and are not included in these figures.

## Courts Service

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Case Tracking system maintains on computer a record of bench warrants issued for most of the DMD and Limerick regions. The issue of bench warrants for all other areas of the country is recorded manually and thus not readily available for statistical analysis.

In 2001 the Courts Service computer system recorded a total of 6,132 bench warrants issued. When account is taken of areas of the DMD not included in the computer system, this figure rises to 10,121. In the same year, 5,787 bench warrants were executed i.e. the person in respect of whom the bench warrant was issued was served with the warrant and brought before the relevant court by the Gardaí.

Bench warrants identified as executed by the Courts Service in 2001 do not necessarily all relate to warrants issued in that year. However, the Gardaí have, since August 1998, centralised the management of bench warrants received from the Courts Service and maintain an independent computer record of these (as an interim solution pending the introduction of a facility on the Garda PULSE system that will eventually interface with the Courts and Prison Services' computers). Therefore, in order to establish the trend in the ratio of bench warrants executed to those issued, it is useful to examine Garda statistics in this area.

**Table 19 - Garda Statistics of Bench Warrants Issued, Executed and Returned for Cancellation**

Year	Received	Executed	Returned for Cancellation	Cumulative Balance Unexecuted
1998 (from August to December)	2,106	1,747	17	342
1999	9,314	7,665	179	1,812
2000	8,476	6,046	124	4,188
2001	9,300	6,996	172	6,250

There are minor differences between the records of the Gardaí and the Courts Service both for bench warrants issued and executed but these can be reconciled.

While the figures shown in Table 19 only provide a snapshot of activity in each year they do give an insight into the capacity of the Gardaí to keep up with warrants issued. Over the three and a half years shown there has been an upward trend in the number of warrants remaining unexecuted. These figures take no account of warrants issued before the commencement of the Garda computerised monitoring system in August 1998 and may mask an inevitable carry forward of unexecuted warrants prior to that time.

The Garda Síochána point out that some 1750 outstanding warrants have since been executed or cancelled so far in 2002 demonstrating that eventually most warrants are dealt with. In practice, an execution rate of 100% is regarded as unattainable in the foreseeable future. This is due to the fact that a significant number of bench warrants are issued for individuals, including foreign nationals, who are believed to have left the jurisdiction. These are retained on the system and are not cancelled on that basis alone.

### *Pre 1999 cases outstanding*

Very limited statistical information is available from either the Courts Service or the Gardaí in respect of the execution of bench warrants prior to 1999. A recent exercise carried out by the Garda Síochána has identified as outstanding over 5,500 cases which arose between 1988 and 1998. The Courts have not disposed of these cases because in the majority of cases the original bench warrants cannot be traced and the Gardaí cannot therefore bring the charged person before the court. The Gardaí have identified 17 of 1200 cases outstanding for 1998 as relating to serious crime.

The Courts Service has provided the original court records for these 5,500 cases to the Gardaí. The amount of bail originally set for these cases has not been quantified, nor has the amount, if any, of cash bail forfeited been identified. It has also not been determined if the non-cash element of the bail involved has been estreated and pursued by the Gardaí for collection.

The Gardaí point out they have sought and received the directions of the Director of Public Prosecutions on how to proceed in respect of the 1998 outstanding cases.

*Type of Offences*

The Courts Service computer system also records most of the offences involved where a bench warrant issues. While about 10% of the entries are not specific in relation to an offence, and cannot be analysed, the remaining records for 2000 and 2001 show, in Table 20, that certain types of offences were predominant.

**Table 20 - Most Common Offences where Persons Charged failed to attend Court (2000 and 2001)**

Offence	% of Total Offences
Larcenies	38
Assaults	23
Road and Road Traffic	9
Criminal Damage	7
Burglaries	7
Drug Related	3
Begging	3
Soliciting/ Loitering	3
Other Offences	7
<b>Total</b>	<b>100</b>

*Forfeiture and Estreatment of Bail*

The Bail Act, 1997 provides that, where persons who have been admitted to bail, with or without sureties, and the court has issued a bench warrant for their arrest, the court shall order estreatment of the value of the Bail Bond and the forfeiture of any amount already paid into court by the person and their sureties on foot of this Bond.

Where a judge has ordered the issue of a bench warrant and the forfeiture and estreatment of bail under the 1997 Act, it is the responsibility of the Courts Service to issue a Notice of Forfeiture and Estreatment to the person charged and/or their sureties, giving 21 days for an application to the Court seeking discharge or variation of the order. A person charged or their surety may make payment during this time.

There were 5,044 forfeiture and estreatment notices issued in 2001, 4,398 of which are recorded on the Courts Service computer system with the balance issued manually. The Courts Service does not collate statistics on applications to judges against Court orders in relation to bail forfeiture and estreatment, and therefore it is not possible to state what effect such applications had on the amounts finally due in respect of these notices. However, in respect of the 4,398 notices recorded on the computer system with an estreatment value of €638,125 just under €20,000 was paid.

Where an application fails, or none is made, and the Court makes an order for estreatment, the Courts Service prepares and dispatches an estreatment warrant for recovery of the amount, or goods to the value of the

amount, not already subject to forfeiture in Court. The Courts Service issues the estreatment warrant to the Gardaí for enforcement.

Of 10,121 bench warrants issued in 2001, some 1,810 are estimated not to have involved a cash bail amount. However, in 3,267 of the remaining 8,311 cases there was a failure to pursue estreatment. The Courts Service states that the reason estreatment was not pursued in a proportion of these cases is that orders for forfeiture and estreatment had not always been made by the Courts when bench warrants were issued. For example, some 650 bench warrants were issued in the Children's Court in 2001 where no estreatment orders were made by the Court although cash amounts had been lodged. The Courts Service is unable to establish the precise number of cases in which estreatment orders had not been made by the Courts.

Computerised records of bail forfeited and estreated bail collected are available from the Courts Service since October 2000. They show that €116,285 bail was forfeited in 2001.

The low monetary value of forfeitures is largely due to the low levels of bail set as a result of the operation of mandatory cash bail following implementation, in May 2000, of the 1997 Act. In addition to the bail forfeited, 4,214 estreatment warrants to a value of €640,277 were issued to the Gardaí in 2001 while only €55,040 was collected.

### *Analysis of cases where estreatment should have occurred*

There is a considerable amount of bail which the Court and the Courts Service is failing to estreat. Moreover, where estreatment has been ordered enforcement success rates by the Gardaí are poor.

A sample audit test was carried out on 87 cases where bench warrants had been issued and where bail had been set in each case. The results showed that

- bail money had been collected on estreatment in 5 cases
- in one case where bail consisted of cash only there was no requirement to estreat
- no money was collected in 30 cases (although the Court Services has stated that estreatment warrants had been issued to the Gardaí in these cases)
- in 2 cases the Gardaí had returned the warrants stating that there were no amounts to be collected
- in the remaining 49 cases the Courts Service was unable to definitively match these cases with records on its estreatment warrant computer system and consequently was unable to state whether or not the amounts had been collected or goods to the value of these amounts seized.

The Courts Service acknowledges that there may have been a small amount of "slippage" insofar as the Court Service was concerned in the processing of estreatment orders. The main reason for this is where a case is re-entered in court very shortly after the issue of the bench warrant, for example, if the accused is arrested within a very short space of time. This would mean that the charge sheet was required back in Court before the Notice of Forfeiture and Estreatment had been issued. Also there was some confusion originally about whether Station Bail cases<sup>4</sup> were covered by the forfeit and estreatment provisions of the Bail Act but it has since been clarified that they are.

The Courts Service points out that the commencement of the Bail Act imposed considerable extra work on court offices and on the District Court office in Dublin in particular in that large numbers of cash amounts

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<sup>4</sup> Granted in some cases by the Gardaí prior to attendance in Court.

had to be receipted, processed and accounted for. The estreatment procedures introduced by the Act also imposed considerable extra work on court offices in that a Judge would now order estreatment when issuing a bench warrant whereas previously estreatment could only take place after an application on notice to the Court. This extra work had to be undertaken within the existing staff complement.

*Estreatment Warrants returned for Cancellation*

The Gardaí return estreatment warrants for cancellation to the Fines Office for a variety of reasons. Under a long-standing practice, approved by a former President of the District Court, the Fines Office of the Courts Service cancels these estreatment warrants on their return.

An analysis of a sample of returned estreatment warrants shows that the overwhelming reason for the lack of success in enforcing them is that the persons charged have no goods or assets which may be levied, as shown in Table 21.

**Table 21 - Estreatment Warrants returned by Gardaí to the Courts Service for Cancellation (A two-week period in May 2002)<sup>5</sup>**

Reasons	Number
There are no goods or assets which can be levied	149
The Gardaí are unable to locate the person charged	39
The estreated amount has already been paid	8
The person charged is currently serving a custodial sentence	6
The person charged has no assets and is homeless	4
The person charged is deceased	4
The Gardaí suggest conversion of the estreatment warrant to a penal warrant	4
The Gardaí state that there is no such address as stated in the warrant	3
The person charged is residing outside the jurisdiction	3
The case is under appeal	1
<b>Total number of estreatment warrants returned in the period</b>	<b>221</b>

It can be seen from Table 21 that in 4 of the 221 estreatment warrants returned for cancellation, the Gardaí suggested conversion to a penal warrant. In the case of a penal warrant, the Gardaí are required to lodge the person named in it in prison in default of payment of the bail amount stipulated in the warrant. A judge may convert estreatment warrants into penal warrants on application by a Garda Superintendent, whereupon the estreatment warrant is cancelled. However, while the Gardaí have a right to ask for such conversions, there is no evidence that they are doing so to any significant extent.

***The Dublin Circuit and Central Criminal Courts***

In the period 1997 to 2001 inclusive, the District Court transmitted a total of €2,645,000 bail lodgments to the Dublin Circuit and Central Criminal Courts in respect of cases transferred.

During the same period, bench warrants were issued by the Dublin Circuit Criminal Court to the Gardaí for action for non-compliance with bail conditions as shown in Table 22.

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<sup>5</sup> Source: Courts Service.

**Table 22 – Bench Warrants issued for non-compliance with bail conditions.**

<b>Year</b>	<b>Number of Warrants</b>
1997	196
1998	262
1999	264
2000	357
2001	242
<b>Total</b>	<b>1,321</b>

The Courts Service does not collate information on the numbers of these warrants executed and outstanding nor does it maintain a centralised log of bail set or lodged for cases referred to it. Therefore, it is unable to state how much bail money was involved in those cases where bench warrants issued.

In the Central Criminal Court very few bench warrants are required and there are at present 3 outstanding cases where bench warrants were issued. Forfeiture and estreatment orders were made in these cases, which are still under review by that Court.

The Dublin Circuit Criminal Court made no orders for forfeiture or estreatment for non-compliance with bail conditions during the period 1997 to 2001.

The Courts Service points out that the making of forfeiture and estreatment orders is a judicial matter and that it has no function other than to implement the decisions of the judges.

## **Conclusions**

- There is a dearth of management information on the effectiveness of the bail system.
- While a revised system for the distribution and control of bench warrants issued by the District Court, introduced in August 1998 by the Gardaí, has led to an improvement in the overall long term execution rate, statistics for the years 2000 and 2001 show that unexecuted bench warrants are still increasing at an annual rate of about a quarter of the number issued.
- The existence of 5,500 pre-1999 undischarged cases in the system reflects historical lapses in co-ordination between the two services.
- Courts Service procedures for putting the estreatment process in train need to be improved.
- Estreatment warrant enforcement is poor - where estreatment warrants have been issued less than 10% of the amount collectable is recovered.
- There is a need to try to establish a charged person's means before the amount of bail is set. Failure to do so inevitably results in wasted Garda Síochána time in trying to enforce estreatment warrants where there is little or nothing to estreat.
- The enforcement of estreatment warrants should be prioritised by reference to monetary value and collectability. There may be a case for dispensing with estreatment altogether where the amount involved is not material.
- In the Dublin Circuit and Central Criminal Courts no order for forfeiture or estreatment of bail moneys has been made in the five year period 1997 – 2001 although 1,321 bench warrants have been issued during the same period for non-appearance in those Courts.

## Observations of the Courts Service

The system of bail reflects the principle that persons should not be deprived of their liberty except when justice requires it. The best way to ensure that the system operates satisfactorily is to make sure that defendants realise that if they do not appear in court a warrant for their arrest will be promptly issued and executed. In that regard very significant improvements have been made in the time taken to issue bench warrants and also in the execution rate of bench warrants in the last number of years. This progress has only been possible because of the close cooperation between the Courts Service and the Garda Síochána. The time for this process has been reduced from 16 weeks in late 1999 to 2 weeks in 2002.

Computerisation in court offices when the new Service was established 2½ years ago was almost non-existent. Offices such as the Dublin District and Circuit Courts had to cope with very large volumes of data and case processing manually. Considerable progress has been and continues to be made in computerising court offices.

The following actions have been taken in relation to the administration of bail:

- *Management Information.* While the Criminal Case Tracking System does not deal with the estreatment process, it deals with the issue of bench warrants and whether they have been executed or not. The Criminal Case Tracking System will be implemented in all District Court offices and it is hoped to have this programme completed in 2003. In addition an Interim Case Tracking system is being introduced in the Dublin Circuit Criminal Court this year. This system will be extended to all Provincial Circuit Court Offices later this year and during early 2003. Enhancement of the Criminal Case Tracking System, requested by staff of the Dublin Metropolitan District Court, is under consideration. However, the future of the remaining sections of the Bail Act needs to be ascertained before incurring significant system re-development costs.
- *Estreatment Warrants.* The introduction of the Bail Act caused some difficulties. However steps are being taken to ensure as far as is possible that where an estreatment order is made, that the required notice and warrant will issue, if necessary. Also unexecuted estreatment warrants are being increasingly returned to the Garda Síochána, referring to the option of applying for a penal warrant. It is a matter for the Gardaí to decide if they will apply to the judge for an order allowing imprisonment for default in estreatment cases.
- There is a difficulty in establishing the means of charged persons in the context of the volume of cases dealt with in any one day in the Dublin District Courts or indeed in provincial District Courts. On a typical day the Dublin District Courts deal with more than 1,000 cases, of which 750-800 are criminal cases. Judges do seek to establish as best they can the means of sureties and in doing so rely heavily on evidence from the Gardaí.

## Observations of the Garda Síochána

The Garda Síochána made the following points in relation to their role in the administration of the bail system.

### *Bench Warrants*

The Gardaí draw attention to the difficulties experienced by members when executing bench warrants against persons whose identity cannot be established at the time. The inclusion of photographs/fingerprints or other particulars on the warrants would be a very helpful tool in this area and would help prevent delays. The attempts to execute bench warrants are manually recorded on the rear of a duplicate only and not reflected in

statistical terms on the system. This work is not inconsiderable in terms of effort.

### *Forfeiture and Estreatment of Bail*

The main difficulty in respect of the enforcement of estreatment warrants is that frequently there are no goods or assets that can be levied. In many cases it is evident that the individual is of little or no means at the time of the arrest. The Gardaí agree that this matter should be taken into account in advance of the initial court hearing. The cost to An Garda Síochána of estreating warrants does not appear to represent value for money given that many warrants are issued for negligible sums of money. The engaging of debt collection agencies may be an alternative to the Gardaí.

There is no clear procedure set out for the conversion of estreatment warrants to penal warrants, although such an avenue is subject to the decision of a judge. The initiation of any charges would be by nature discriminatory. The Gardaí consider that perhaps estreatment warrants should incorporate a custodial sentence as a penalty and therefore operate as a penal warrant.

It is likely that the true percentage of unexecuted bench warrants in the long term is in the region of 10%. This does not indicate that attempts were not made to execute such warrants. The job of enforcing warrants is not made any easier by the lack of accessibility to information on computer systems of other State Bodies *e.g.* Department of Social and Family Affairs, Health Boards *etc.* and current lack of an interface with the Courts and Prison Service Systems.

The problem relating to the pre-1999 cases outstanding is being addressed and is more indicative of how both services lacked in the past as opposed to the present. The Courts Service has been informed of the procedures being adopted in dealing with these matters.

In many of these cases the original bench warrant may have been executed as both the Gardaí and the Court Administration may not have brought many of the outstanding charge sheets before a Court due to ineffective practices and procedures, *i.e.* lack of system alerts, time delay in issuing and transmission of warrants *etc.*