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PROMIS RESEARCH PROJECT

Publication 16

# Pretrial Release and Misconduct in the District of Columbia

Jeffrey A. Roth • Paul B. Wice

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**April 1980**

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# Foreword

This revealing study on how the bail system operated in the District of Columbia courts in 1974 carries the baggage of history. In 1963, the District of Columbia hosted one of the country's first experiments with pretrial release on recognizance (ROR). In 1964, Robert Kennedy, then Attorney General, convened here the first national Conference on Bail and Criminal Justice to explore the inequities of the money-oriented bail bond system and to launch a national bail reform movement designed to ensure that poverty did not remain the deciding factor as to whether a defendant stayed on the streets or in jail pending trial. In 1970, the District of Columbia courts became the experimental forum for the first preventive detention law in the nation, expressly permitting denial of bail based on the nature of the crime, past record, and predictions of future crime.

The results of those brave and ambitious ventures are inconclusively humbling. The percentage of accused felons and serious misdemeanants released on their own recognizance or to a third-party custodian has risen from virtually 0 percent to 62 percent of accused felons and 80 percent of accused misdemeanants. One-half of bail bondsmen operating in 1966 have gone out of business; less than one-fourth of serious crime defendants are required to post a surety bond nowadays. Preventive detention—used once in the 12-month study period, which covered 11,000 felonies and serious misdemeanors—"has borne out neither the hopes of its advocates nor the fears of its opponents."

We relearn from the study some old facts—seriousness of the charge and prior record are the strongest determinants of whether financial bail will be imposed; 50 percent of accused adult felons are young (18–25) and unemployed; those who are allowed to pay a 10 percent cash deposit on their bond get out of jail easier than those forced to go to a bondsman. The rate of bail-jumping is relatively low—11 percent of felony defendants fail to appear, but only 4 percent willfully fail to appear.

But we also learn some new and troubling facts. Defendants accused of serious crimes have a better chance of being paroled in third-party custody than less serious accuseds because the predominant private custodian organization in the District consciously pursues a policy of handling serious crimes and serious criminals. The likelihood of conviction plays little or no part in setting conditions of release; the current occupancy rate of the D.C. Jail plays a significant role. More experienced judges tend toward more frequent imposition of financial conditions. Failure to appear seems unrelated to the charge or to community residence, but it *is* related to the fact of unemployment and drug use; those under third-party custodianship have a high rate of nonappearance. There is too little correlation

between the factors that indicate future misconduct while on release and those considered in setting money bail.

Thus, in little over a decade we appear to have made substantial strides in changing the predominant mode of pretrial release from financial to nonfinancial conditions, resulting in 72 percent of accused felons and misdemeanants going free at arraignment to await trial. The jump rate is probably tolerable. We are left, however, with a rate of recurring crime committed during pretrial release that is probably intolerable from most citizens' point of view (13 percent of released felony defendants and 7 percent of released misdemeanor defendants). The money bond defendants are twice as likely to be rearrested as the ROR defendants; still, only 50 percent of all pretrial rearrests result in conviction. We have tried preventive detention and it apparently does not work; the authors of the study suggest further research to see whether speedier trials and shorter pretrial periods may reduce the problem.

The value of research like this is that it shows us where we have been and why winning the first battle is not enough. Limiting the role of the once powerful bail bondsman, dramatically increasing the use of release on nonfinancial conditions—these goals have been reached. Civil libertarians appear to have won in the courts and in the prosecutor's office the battle of preventive detention that they lost in Congress. But still, the pretrial release system pictured here leaves much to be desired; it seems vaguely irrational and persistently oblivious to what little we do know about who appears and who does not, who commits crimes on bail and who does not.

It points to a phase two of bail reform: bail-setting guidelines, akin to those suggested in the sentencing field, based on experience but capable of individualized deviations for cause; speedier trials; more emphasis on diversified third-party custodians.

This study of bail in the District of Columbia—some 15 years after serious reform efforts began—shows us critical problems yet unsolved. Good research can provoke us to new action; this does the job uncomfortably well.

Patricia M. Wald
Assistant Attorney General
Legislative Affairs
U.S. Department of Justice
December 1978

# Preface

> The system is judged not by the occasional dramatic case, but by its normal, humdrum operations. In order to ascertain how law functions as a daily instrument of the city's life, a quantitative basis for judgment is essential.
>
> *Criminal Justice in Cleveland,*
> Roscoe Pound and Felix Frankfurter, eds.

Pound and Frankfurter's observation of a half century ago is equally applicable today. Having traced by hand what was happening to some 5,000 felony cases in the Cleveland courts, they found evidence that the real workings of the courts were often quite different from the picture that emerged from media coverage of the "occasional dramatic case." The study revealed, for example, that most felony arrests were being dropped without trial, plea, or plea bargain; that a serious problem of habitual, serious offenders was receiving insufficient attention; and that bail and sentencing practices were badly in need of reform.

This series of reports traces what happened to felony and serious misdemeanor cases in the District of Columbia Superior Court in the 1970s, based on an analysis of computerized data. Although the data base is both larger (over 100,000 cases) and richer (about 170 facts about each case), the analyses reach conclusions strikingly reminiscent of those made by Pound and Frankfurter, and now largely forgotten. We are relearning the lessons of high case mortality, the habitual or career criminal, and bail and sentencing inequities.

The source of the data used in this series of research reports is a computer-based case management information system known as PROMIS (Prosecutor's Management Information System). Because it is an ongoing system, PROMIS provides, on a continuing basis, the kind of quantitative assessment of court operations that heretofore could only be produced on an *ad hoc* research basis.

The area encompassed by the PROMIS data—the area between the police station and the prison—has long been an area of information blackout in the United States. This data void about the prosecution and court arena, which some observers regard as the criminal justice system's nerve center, has meant that courthouse folklore and the atypical, but easy-to-remember, case have formed much of the basis for criminal justice policymaking.

Funded by the Law Enforcement Assistance Administration, the PROMIS Research Project is demonstrating how automated case management information systems serving prosecution and court agencies can be tapped to provide timely information by which criminal justice policymakers can evaluate the impact of

their decisions. The significance of this demonstration is by no means restricted to the District of Columbia. Other jurisdictions can benefit from the types of insights—and the research methodologies employed to obtain them—described in the reports of the PROMIS Research Project.

There are 17 publications in the series, of which this is Number 16. A noteworthy feature of this series is that it is based primarily on data from a prosecution agency. For those accustomed to hearing the criminal justice system described as consisting, like ancient Gaul, of three parts—police, courts, and corrections—the fact that most of the operations of the system can be assessed using data from an agency usually omitted from the system's description may come as a surprise. We are aware of the dangers of drawing certain inferences from such data; we have also come to appreciate their richness for research purposes.

Obviously, research is not a panacea. Much knowledge about crime must await better understanding of social behavior. And research will never provide the final answers to many of the vexing questions about crime. But, as the President's Commission on Law Enforcement and Administration of Justice observed in 1967: ". . . when research cannot, in itself, provide final answers, it can provide data crucial to making informed policy judgements." (*The Challenge of Crime in a Free Society:* 273.) Such is the purpose of the PROMIS Research Project.

William A. Hamilton
President
Institute for Law and
Social Research
Washington, D.C.

# Acknowledgments

So many individuals and agencies have made valuable contributions to this and other reports of the PROMIS Research Project that full acknowledgment of their assistance is not possible here.

Of critical importance to the success of the overall project has been the farsighted, progressive stance of the United States Attorney's Office for the District of Columbia, in terms of both its willingness to permit INSLAW to submit many of its operations to detailed examination and its active assistance regarding the development, analysis, and dissemination of data. The Office is deserving of great admiration and respect.

We are also indebted to the Superior Court of the District of Columbia, which has been extremely generous in making data available for the project's studies and in helping us assess the meaning of our statistics.

Invaluable assistance was also given by the distinguished members of the project's National and Local Advisory Committees in reviewing, questioning, and commenting upon our research plans, methodology, and findings. The National Advisory Committee includes Curtis Brostron, William A. Cahalan, William H. Erickson, Edith Flynn, Paul L. Friedman, Phillip H. Ginsberg, Lester C. Goodchild, Don M. Gottfredson, Willie King, Albert J. Reiss, Jr., Leslie T. Wilkins, Marvin E. Wolfgang, and Hans Zeisel. During the period in which this report was being prepared, Robert A. Shuker, then Chief of the United States Attorney's Office, D.C. Superior Court Division, served as the chairman of the Advisory Committee. The Local Advisory Committee members are Bruce D. Beaudin, William Golightly, Harold H. Greene, J. Patrick Hickey, Burtell Jefferson, Earl J. Silbert, and Irving A. Wallach.

The PROMIS Research Project owes its very existence to the funding of the Law Enforcement Assistance Administration (LEAA) of the Department of Justice. We are especially grateful to Cheryl Martorana, Chief of the Courts Division of LEAA's National Institute of Law Enforcement and Criminal Justice for her conscientious project guidance; to Al Ash, LEAA, for his enthusiastic support of the PROMIS system, out of which the data analyzed in this study emanated; to Gerald Caplan, former Director of the National Institute, for his leadership and encouragement; and to Charles R. Work, former Deputy Administrator of LEAA, both for his vision and his ardent support of INSLAW's research program.

This particular report in the series would not have been possible without the expertise and perseverance of a number of colleagues at INSLAW: Dan Church, who performed the necessary computer programming; Ron Farnan, who made special efforts to accommodate this research on INSLAW's excellent computer system; Kathleen Brosi, who planned the collection of supplementary data from

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Jeffrey A. Roth*
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## Contents

# 1

# Introduction

A decade has passed since Herbert Packer articulated the Crime Control and Due Process Models of American criminal justice. In his words,

> the value system that underlies the Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal [justice] process.

In contrast, the Due Process Model, according to Packer, views

> the combination of stigma and loss of liberty that is embodied in the end result of the criminal [justice] process [as] the heaviest deprivation that government can inflict on an individual.

Under the Due Process Model, the end result—punishment—ought not to occur "as long as there is an allegation of factual error that has not received an adjudicative hearing in a fact-finding context."[1]

The clash between the Crime Control and Due Process Models is perhaps more apparent in the pretrial release decision than at any other point in the criminal justice process. A New York poll, for example, revealed that 92 percent of all New Yorkers "would want a judge to set bail amounts based on how dangerous the judge feels the accused may be, on how likely he or she would be to commit other crimes during the time the accused is released on bail"—in other words, invoke loss of liberty before any adjudicative fact-finding, with the objective of crime control.[2]

By contrast, in a 1975 poll of public officials—judges, county executives, public defenders, district attorneys, police chiefs, and sheriffs—crime control ranked eighth on a list of 16 possible priority goals for pretrial release programs. The three goals deemed most important by this group—ensuring that released defendants appear for trial, lessening economic discrimination, and minimizing the time between arrest and release—are clearly consistent with the Due Process Model.[3]

The tension between crime control and due process has made pretrial release a subject of debate and legislation in the District of Columbia for over a dozen years. Unfortunately, the course of this activity has been directed more by opinions than by facts. Advocates of due process have decried money bail as "discrimination based on economic status," without documenting its extent;[4] this view was formally embodied in the Federal Bail Reform Act of 1966. Crime control advocates have cited celebrated cases involving persons awaiting trial in arguing for pretrial detention of dangerous defendants, without demonstrating an ability to identify dangerous defendants in advance of release;[5] their view was embodied in the Crime Control Act of 1970.

Because pretrial release practices have preoccupied criminal justice reform efforts in the District of Columbia as in few other jurisdictions, the nation's capital is a particularly appropriate setting for an empirical analysis of pretrial release. Moreover, a suitable data base for this study already existed, having been captured during 1974 by PROMIS, a case management information system operating in the U.S. Attorney's Office for the District of Columbia. The remainder of this chapter discusses the evolution of the bail system, the pretrial release options available in the District, and the issues to be addressed in this study. Chapter 2 presents statistics and tabulations describing the operation of the District's pretrial release system. Chapter 3 summarizes a multivariate behavioral analysis, reported in detail in the appendix, of the factors that predict what release conditions are imposed, which defendants actually obtain release, and which released defendants commit pretrial crimes or fail to appear for trial. Chapter 4 reviews the highlights and implications of the study.

## ORIGIN AND EVOLUTION OF BAIL

Bail as a procedure for dealing with the pretrial freedom of defendants has been noted by historians to have existed informally in England during the first thousand years A.D., but it achieved its statutory birth in 1275, as part of the Statute of Westminister I.[6] Throughout its history, bail has been legally defined as a procedure for ensuring that an individual accused of a crime will appear for his trial.

Traditionally, bail involved economic sanctions to discourage individuals from fleeing the jurisdiction rather than face adjudication and possible conviction. The judiciary was given the responsibility for implementing the various bail statutes and for determining the defendant's pretrial status. Judges have usually been aided by statutory guidelines and the arguments of the prosecution and defense, as well as their own inclinations, in arriving at a bail decision. Among the criteria commonly employed are the seriousness of the charge and the defendant's past criminal record, socioeconomic background, and previous pretrial behavior.

Within the United States, the judiciary has had to turn to state statutes for guidance in setting permissible bonds in criminal cases. The only constitutional mention of bail occurs in the Eighth Amendment, which warns simply that "excessive bail shall not be required." This has resulted in two intellectual debates—first, over whether the amendment requires that bail be set in all cases, and second, over what is meant by "excessive." The first debate has been waged in scholarly arenas, such as law review articles, and although the first Judiciary Act[7] required bail for all noncapital federal crimes, and all but seven states eventually followed suit, the question has never been totally resolved at the state level. The second debate has produced a few U.S. Supreme Court decisions, the most famous being the 1951 case of *Stack* v. *Boyle,* in which Chief Justice Vinson described contemporary American bail policy:

> The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty. . . . Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the 8th Amendment.[8]

Several state statutes specify criteria that the judge may consider when determining the amount of bond necessary to guarantee appearance. The model for most of these state statutes is Rule 46(c) of the Federal Rules of Criminal Procedure, which directs the judge to inquire into the "nature and circumstances of the

offense charged, the weight of the evidence against [the defendant], the financial ability of the defendant to give bail and the character of the defendant."[9] Within this general model, two submodels have emerged: one emphasizes the seriousness of the alleged crime as the primary determinant of bail amount, and the other stresses the community ties and character of the defendant.

The latter approach, embodied in the bail reform movement of the 1960s, was a reaction to the economic discrimination implied by the existing bail system. Federal Judge J. Skelly Wright, writing in 1963, described the situation at that time in the following words:

> The effect of [the bail] system is that the professional bondsmen hold the keys to the jail in their pockets. They determine for whom they will act as surety—who in their judgment is a good risk. The bad risks in the bondsmen's judgment, *and the ones who are unable to pay the bondsmen's fees,* remain in jail. The court and the commissioner are relegated to the relatively unimportant chore of fixing the amount of bail.[10] (Emphasis added.)

By emphasizing the defendant's character and community ties, the bail reform movement attempted to eliminate the economic discrimination described by Judge Wright by relying on an alternative basis of inquiry—the strength of character and local ties binding the defendant to the jurisdiction. In 1961, the Vera Institute established the first bail reform project that stressed these attributes.[11] For any defendant who possessed the requisite community ties, the Manhattan Bail Project would recommend to the judge that the defendant be released on his own recognizance. Following the success of this pioneer project in obtaining the release of large numbers of defendants on their own recognizance while reducing the rate of nonappearance, nearly 200 other similar reform programs have commenced operation in cities across the country.

It was in this climate of reform that Congress enacted both the federal and D.C. bail reform acts of 1966.[12] A detailed discussion of the D.C. law is deferred to the next section; in general, the act established release on personal recognizance as the standard procedure for defendants awaiting trial, unless their appearance at trial could not be reasonably assumed. It specifically directed that potential pretrial danger to the community was not to influence the decision whether to impose financial release conditions.

Following passage of the D.C. Bail Agency Act, crime in the District of Columbia increased at an alarming rate. In retrospect, it appears that this increase was part of a national trend, rather than a result of the new law. However, perhaps because the increase in crime was so pervasive, the pendulum swung from the due process concerns that had engendered bail reform to concerns with crime control.[13]

This swing of the pendulum caused the District of Columbia to be the first local jurisdiction in the nation to experiment with a formal preventive detention procedure. As part of the 1970 District of Columbia Court Reform Act,[14] the preventive detention provision statutorily added a new purpose to the administration of pretrial release. Although ensuring appearance at trial remained the only purpose of financial bond, preventive detention was proffered as a means of protection against the defendant who posed a threat to the community. Accompanied by fairly elaborate due process procedures, the preventive detention provision defined a group of potentially "dangerous" offenders who, because of their previous misconduct, would be forced to attend a hearing at which the court would determine if it was in society's interest to detain the defendant for up to 60 days to await trial. Thus, rather than choosing between the goals of crime control and due

process, the D.C. Code allows sufficient latitude for the District to pursue both simultaneously.

## THE D.C. BAIL SYSTEM

The District of Columbia's bail system is distinguished by three features that make it especially interesting as a setting for a study of pretrial release. First, it operates within an extremely complex criminal justice system. Depending on such factors as the location of the offense, the time of day of the arrest, and the nature of the charge, a given defendant may be identified and booked by either the Metropolitan Police Department or the Federal Bureau of Investigation, and held pending arraignment in either local or federal custody. He may be prosecuted by either the D.C. Corporation Counsel or the U.S. Attorney; if the latter, arraignment may take place in either the D.C. Superior Court or the Federal District Court. In such a fragmented environment, it is an onerous task to gather and verify information about a defendant's identity, his custody status, his pending cases both in the D.C. courts and in suburban jurisdictions in Maryland and Virginia, his prior criminal record, and other information legally pertinent to the pretrial release decision.

Second, the D.C. Bail Agency (now the Pretrial Services Agency) plays a critical role in the pretrial operation of the District's criminal court system. The agency has responsibility for monitoring the behavior of the defendants who receive nonfinancial release, as well as those who obtain release by satisfying financial conditions. The D.C. Code instructs judges to release on their own recognizance all defendants who seem likely to appear in court. If the judge has reservations about the defendant's likelihood of appearance, he may resort to any of the following conditions, either separately or in combination:

> (1) Place the person in custody of a designated person or organization agreeing to supervise him.
>
> (2) Place restrictions on travel, association, or place of abode of the person during the period of release.
>
> (3) Require the payment of a bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 percentum of the amount of bond, such deposit to be returned upon the performance of the conditions of release.
>
> (4) Require the execution of a bail bond with sufficient solvent sureties or the deposit of cash instead.
>
> (5) Impose any other condition, including a condition requiring that the person return to custody after specified hours of release for employment or other limited purposes.[15]

The judge's decision is guided not only by the law but by recommendations of the Pretrial Services Agency, which are based on information collected in defendant interviews and verified by agency staff.

The third distinguishing feature is the preventive detention provision of the 1970 D.C. Court Reform Act. Despite the great controversy this provision initially stirred, it has been used infrequently; in fact, following a brief 4-month period in which it was formally used approximately 20 times and caused 10 defendants to be preventively detained,[16] the provision was virtually not invoked for the next 4 years. Chapter 2 includes tabulations showing increased use of preventive detention since 1976, but the rate is still less than 1 percent of all felony defendants.

The reason frequently suggested for the rare use and present dormant status of the preventive detention provision is the range of procedural guarantees, which proved to be a critical addition to an already overworked and understaffed court

system. The increase in manpower, time, and space necessary to administer the pretrial detention hearings has made such hearings impractical in all but a few cases, according to then U.S. Attorney for the District of Columbia, Earl J. Silbert.[17] Public officials interviewed by one of the authors have estimated that if preventive detention hearings were to be requested in all cases permitted under law, a minimum of 2 courtrooms would have to be added and made available 16 hours a day, 1 or 2 additional full-time judicial officers to supervise those hearings and 4 or 5 additional Assistant U.S. Attorneys would be required, and an annex would have to be constructed to the city jail to house the increased numbers of detained defendants. According to estimates by researchers at Georgetown University's Institute of Criminal Law and Procedure who examined the first year of operation of preventive detention in the District, approximately 33 percent of all arrested defendants would qualify for preventive detention.[18]

To complete this description of the operation of the D.C. bail system, the various options available for pretrial release of the defendant are briefly discussed below.[19] The first two do not involve a judicial officer.

**Citation release.** Defendants arrested for a misdemeanor are eligible for citation release at the police station. The arresting police officer obtains a recommendation from the Pretrial Services Agency, based on the results of its interview and verification procedures. In practice, citations are used primarily for less-serious misdemeanors, such as drug possession, larceny, and consensual sex offenses. Approximately 80 percent of eligible defendants, about 4,000 per year, are granted this form of release. These defendants do not appear in court until trial.

**Stationhouse bond.** Following arrest and booking, defendants can be released immediately by posting bond through a willing bondsman. The amount of bond is listed on a fixed schedule, previously set by the court according to the offense. The defendant remains free at least until arraignment the next day, when a judge formally imposes release conditions.

At arraignment, the judge formally imposes one of the following pretrial release conditions.

**Personal recognizance.** Based on an evaluation of the defendant by both the Pretrial Services Agency and the judge, release may be based on only a personal promise to appear, without any monetary conditions. For a large percentage of defendants, personal recognizance is accompanied by an agreement to abide by certain conditions, such as periodic reporting to the Pretrial Services Agency, living at a specified address, or treatment at a drug facility. In 1974, approximately 60 percent of all defendants whose cases were accepted for prosecution in Superior Court, and for whom release conditions are known, were given some form of personal recognizance release.

**Financial bond** (cash or surety). A remnant of the traditional system, financial conditions are imposed on approximately 25 percent of all defendants. Three-quarters of these defendants are required by the arraignment judge to post either a secured bond or cash for the full amount (so-called "surety bond"); most of them use a bondsman. The remaining quarter are required to post only 10 percent of the bail amount; they usually raise the money through friends or personal savings (so-called "cash bond"). In either instance, the amount deposited is returned to the defendant following appearance, except for a nominal charge for administering the program.

**Third-party release.** Third-party release is a form of nonfinancial pretrial freedom that places the defendant under the direct supervision of an organization or designated person. Not only must third-party custodians ensure the defendant's appearance in court, but they must also apprise the Pretrial Services Agency of any violations of conditions set by the court. In recent years, a few Washington

organizations interested in the problems of drug addiction have been active in serving as third-party custodians. The community organizations see their role as obtaining nonfinancial release for poor, high-risk defendants. In 1975, the Office of Criminal Justice Plans and Analysis and the Pretrial Services Agency found that approximately 18 percent of all misdemeanants and felons were granted third-party release. Special tabulations by INSLAW revealed that this rate dropped to 12 percent in 1976.

**Miscellaneous.** Nearly 2 percent of all defendants are referred to the Rehabilitation Center for Alcoholics; committed to St. Elizabeth's Hospital for mental observation; placed on five-day hold in jail while the parole board considers possible revocation of probation or parole; held under the preventive detention statute; voluntarily return to another state; or held without bail if they meet the conditions for preventive detention.

## ISSUES RELATED TO BAIL

This section identifies the major issues related to the administration of bail that will be examined in this report.[20] These issues are of particular significance to the District of Columbia system, although most are of importance to all jurisdictions. The problems discussed within this section result from a conflict between two principles that underlie the operation of the pretrial release system. First, the system treats persons who have merely been accused of crimes, with the possible results of economic discrimination and loss of freedom prior to the determination of guilt or innocence. Second, there is strong community pressure to use the system to control pretrial misconduct. Let us turn now to some specific issues and note their relevance to the District's pretrial system.

### Purposes of Bail

Two possible purposes of a pretrial release system have already been discussed with respect to the District of Columbia: ensuring the defendant's appearance for trial, and incapacitation to protect the community from pretrial crime. A third, *sub rosa* purpose, giving the defendant a "taste of jail," has been cited by several researchers in various cities other than the District of Columbia.[21] The objective is achieved, of course, when bond is set beyond the defendant's financial reach.

As with sentencing, the purpose of the "taste of jail" is difficult to discern and probably varies from case to case. For a hard-core repeat offender under arrest based on inconclusive evidence, some might consider pretrial incarceration to serve the purpose of providing "just deserts" that are not expected to follow from adjudication.[22] In the case of a youthful or first offender, some might argue that the ends of rehabilitation or special deterrence are served if the harshness of jail intimidates him into following more law-abiding paths upon release. In fact, Packer's Crime Control Model argues that judicial leniency in suspending the sentences of first offenders makes pretrial incarceration "not only a useful reminder that crime does not pay but also the only such reminder they are likely to get."[23]

Although purposeful use of bond to give a "taste of jail" is illegal and has not been documented in the District of Columbia, incarceration frequently occurs as a result of bond imposition prior to a legal finding of guilt. Among D.C. cases accepted for prosecution as felonies during 1974, Hausner and Seidel report a 41 percent preindictment–dismissal rate for defendants held on bond, only 5 percent below the rate for all defendants.[24] For these 41 percent, the "taste of jail" clearly preceded adjudication.

In Chapter 3 and the appendix, we attempt to infer the purposes of pretrial release in the District of Columbia. Multivariate analysis is used to learn what

factors influence the setting of pretrial release conditions, the likelihood of pretrial rearrest, and the likelihood of nonappearance for trial. By comparing the factors that determine all three outcomes, we can attempt to infer the arraignment judges' objectives.

**Judicial Disparity in the Release Decision**

As indicated previously, a District of Columbia judge has many pretrial release options available. The range of alternatives parallels a range of perceptions the judge may possess concerning the defendant. At one end of the spectrum is the personal recognizance release, used if the judge feels positively about the stability of the defendant's community ties and intends to reward him with unconditional release. At the other end is surety bond, which the judge can set at an extremely high amount. Although such bonds cannot be "excessive," the vagueness of this statutory prohibition, plus the willingness of appellate courts to curtail only the most serious abuses of the lower court judge's discretionary powers, means that the judge has great freedom in imposing sizable bonds.[25] Those defendants who fall within the middle of this continuum are typically either released into third-party custody, under a small cash or surety bond, or on their own recognizance but with a set of conditions controlling their pretrial freedom (i.e., reporting to the Pretrial Services Agency on a regular basis, returning to school, or avoiding certain parts of the city).

The judge's selection of conditions from the wide range available to him reflects not only his perception of the defendant, but also the subjective weights he places on the competing potential objectives of pretrial release and his expectations about the effectiveness of a particular condition in achieving a particular objective. To make the point more concretely, consider a hypothetical experiment in which two judges are given the same information about defendant X and are asked, independently, what release conditions are appropriate. Their selection of conditions may differ for at least the following reasons:

- Different perceptions of the defendant. The judges may agree on objectives but make different subjective estimates of defendant X's innate propensity to flee (or commit crimes on release).
- Different objectives for the decision. The judges may agree that defendant X is unlikely to flee and likely to commit crimes if released, but disagree as to whether prevention of the crimes is an admissible objective of the conditions.
- Different expected effects of conditions. The judges may agree that defendant X does not merit release, but disagree on the bond amount necessary to prevent his release.

These individual differences introduce what some call "judicial discretion" and others call "arbitrariness" into the pretrial release decision. In Chapter 2, this variation is analyzed by comparing the release decisions of the 10 judges who participated most frequently in D.C. Superior Court pretrial release decisions during 1974. In Chapter 3 and the appendix, multivariate techniques are used to compare the relative importance of judicial discretion and case characteristics in determining release conditions.

**Prediction of Pretrial Misconduct**

We have discussed the setting of release conditions as a goal-oriented decision process and alluded to two commonly perceived goals of the decision: preventing

nonappearance and preventing pretrial crime. We have also discussed how, even with unanimous agreement concerning the proper goal of pretrial release, interpersonal differences in judges' perceptions would cause different judges to impose different conditions in identical circumstances.

Similarly, unobservable differences guarantee that even among a group of seemingly identical defendants, identical release conditions will not produce identical pretrial behavior. Otherwise, judicious setting of conditions could totally eliminate pretrial misconduct without unnecessarily detaining a single defendant before trial. At the other extreme, if defendant behavior were completely random, discussion of "goals" for pretrial release would make no logical sense. Like other students of pretrial release, we assume that reality lies between those extremes, i.e., that the determinants of defendant behavior include both systematic and random (or at least unobservable) components. The success of judges, bail reform agencies, prosecutors, and others in achieving either of the widely accepted goals of pretrial release depends crucially on both the relative importance of the two components in determining behavior and the extent to which decision makers understand the systematic component. This need for understanding is especially apparent with respect to three areas of concern to the bail reform movement: economic discrimination, judicial and community acceptance of bail reform agency recommendations, and the cost-effectiveness of bail reform.

The problem of discrimination involves the question of exactly whom bail reform programs are designed to serve. Are they designed primarily to aid indigent defendants who find it difficult either to satisfy the criteria defining community ties or to pay for their release? Or are they set up to serve the middle-class defendant who more likely meets the criteria but who more probably has sufficient savings to pay a bondsman or the court for his release? Most reform programs have not confronted this difficult question and simply recommend release for whomever meets their requirements. Unless systematic relationships can be demonstrated between the release criteria and the incidence of pretrial misconduct, the criteria may be legitimately attacked as an imposition of bail reformers' values on the defendant population.

A second issue concerns the relationship between the judge and the bail reform agency. In Washington, D.C., as in most other cities utilizing bail reform programs, the judge may either accept or reject the bail agency's recommendation. His treatment of the recommendation seems dependent upon how critically he views the bail agency and, conversely, the extent to which the bail agency concerns itself with the reaction of the judges to its recommendations. A recent report by the Vera Institute of Justice pondered the question whether the objectives of its recommendations should be modified to increase judicial acceptance.[26] However, it did not address the possibility that judicial acceptance might increase in the face of additional statistical verification that its criteria support its objectives.

The third area of concern is the cost-effectiveness of bail reform. Although many believe that the goals of bail reform are justifiable on grounds of equity, the fiscal problems of major cities (where most crime occurs) have made cost-effectiveness a consideration in evaluating any social program. As it happens, studies have generally found bail reform projects to be cost-effective. Lee Friedman has estimated that the average cost per release under the Manhattan Bail Project was about $70, including administrative and start-up costs, compared with a detention cost of about $180 per defendant; the trade-off is cost-effective, even without considering the social benefit that pretrial freedom was actually increased without increasing the rate of pretrial misconduct. The San Francisco Commission on Crime has estimated that that city's bail agency was saving the city a minimum of $330,000 per year in recurring costs and had enabled the city to avoid having to

construct a new jail, a savings of millions.[27] A multijurisdictional evaluation of the pretrial release components of community-based corrections programs estimated that, under certain assumptions, pretrial release of felons through the programs saved as much as $400 in detention costs per defendant, over and above the cost of additional pretrial misconduct. Although this savings was approximately offset by unusually high administrative costs for these programs, the pretrial earnings of released defendants were thought to have made the programs cost-effective.[28]

Even though existing bail reform projects are generally considered cost-effective, and even though saving money is not their primary objective, greater cost-effectiveness would presumably make them less vulnerable to political opposition. Given the high cost of collecting and verifying data about defendants, one means of improving cost-effectiveness is to devote data collection expenditures to collecting the information that best discriminates between high-risk and low-risk defendants. Thus, cost-effectiveness, like the concerns of discrimination and judicial acceptance, is in part a matter of understanding the systematic relationships between defendant characteristics and the incidence of pretrial misconduct.

Before proceeding further, it is important to explain just what is meant by "pretrial misconduct" in this study. The violation of release conditions set by the arraignment judge is probably the most common and least enforced type of pretrial misconduct. The conditions may range from simply staying out of certain parts of the city to maintaining regular employment. The D.C. Pretrial Services Agency is responsible for enforcing these conditions, but it candidly admits that it is a virtually impossible task, especially given the agency's other responsibilities. Unless someone, such as a member of the defendant's family or an employer, notifies the agency that a condition of release has been violated, monitoring of the defendant's adherence to his conditions is almost nonexistent.[29] Since data on the violation of release conditions were not available to us, this type of misconduct is not considered in this study.

The next category of pretrial misconduct is the defendant's failure to appear. These failures may be either "willful," that is, the defendant purposely chooses not to appear, or "nonwillful," that is, the defendant simply forgets about his required appearance or does not receive adequate notification. By not counting a nonappearance until several days have passed, some researchers have implicitly assumed that the involuntary forfeitures would have been subsequently notified and only the willful "skippers" would remain. For example, Wayne Thomas did not consider a defendant to have forfeited until eight days had passed. Using this criterion, he found that in Washington, D.C., 12 percent of cash bail defendants failed to appear, compared with 7 percent of the defendants released on recognizance.[30]

While Thomas's work is useful in pointing out that purposeful behavior causes only a subset of all nonappearances, his estimates are dependent on arbitrary choice of an eight-day period. To avoid this problem, this study makes use of the D.C. Code to construct an alternative definition. Because receipt of a notice to appear is defined to be *prima facie* evidence that an absent defendant violated the Bail Reform Act by willfully failing to appear, we identify willful failure by the issuance of a bench warrant, followed by either rearrest for violation of the act or failure to close the initial case.

The real importance of nonappearance, willful or otherwise, is an issue for policymakers, not researchers, to decide. It is believed by some that in the District, as in most other cities, the effectiveness of bench warrants is questionable and that few of the forfeited bonds are recovered, especially from defendants who leave the jurisdiction. With two states bordering the District, the ease of confounding authorities is obvious. Given the expense of such retrieval efforts, it is

doubtful that the authorities are going to become alarmed over nonappearance until the problem is depicted by the media as reaching crisis proportions. One frustrated individual who attempts to serve warrants for failure to appear offered the following comment (only half in jest), which seems to reflect the resigned nature of many officials on this issue:

> Look, if a defendant skips town only three things can happen and all are good. One, he is successful and flees to another jurisdiction and so he becomes someone else's problem. Two, if he remains in town he may be rearrested so you'll have some additional charges to use against him in the plea bargaining session, and third if he stays in town and doesn't get rearrested you've probably rehabilitated him by intimidation.[31]

This comment minimizes the importance of the third and, to many, most serious type of pretrial misconduct: committing additional crimes. For obvious reasons, no data were available on the incidence of crimes committed by released defendants awaiting trial. Therefore, the analysis of pretrial crime is carried out in duplicate, using two alternative proxies. The first proxy is rearrest for an offense other than a Bail Reform Act violation during the pretrial release period. Since only about 32 percent of all arrests of persons on conditional release lead to conviction,[32] and since one expects that some of the remaining 68 percent are both legally and factually innocent, this proxy may lead to an overstatement of the incidence of pretrial crime.[33] The second proxy is pretrial rearrest followed by conviction for another offense; if some of the legally innocent 68 percent are factually guilty, this measure yields an understatement of the incidence of pretrial crime. Previewing the actual results, we report in Chapter 3 very similar multivariate results for both proxies, although our predictive power is somewhat less with respect to the second. Consequently, although we can present only upper and lower bounds on the actual rate at which pretrial crime occurs, we are confident that we have identified some systematic relationships that determine the rate.

In Chapter 3 and the appendix, we examine the predictability of failure to appear, willful failure to appear, pretrial rearrest, and pretrial rearrest and conviction.

### The Role of the Bondsman

Judge Wright's 1963 comment, quoted earlier, that the District's bondsmen held the keys to the jail in their pockets did not reflect a peculiarity of the nation's capital. Forty years earlier, a major study directed by Roscoe Pound and Felix Frankfurter had stated that "the real evil in the situation . . . is . . . the professional bondsmen who make a business of exploiting the misfortunes of the poor and whose connections with 'runners and shysters' tend to prostitute the administration of justice."[34] Major studies during the 1920s in Missouri and Chicago documented the questionable nature of professional bondsmen's activities, such as use of unowned property as collateral and failure to collect forfeited bonds.[35] These activities, often involving kickback arrangements with defense attorneys and police officers, links with organized crime, and collusive behavior with key criminal justice officials, have been described in several surveys of the field.[36] Nationally, the Wickersham Commission summarized its findings on bail as follows:

> Grave abuses as to bail are reported from almost every part of the land. There is general complaint that . . . there is frequent carelessness as to security, that professional sureties flourish in connection with the criminal courts and are often permitted to assume an aggregate of liability which makes their bonds worthless, that forfeitures are not enforced, and that on the whole there is no effective security for appearance in cases where such security is needed.[37]

Until the past decade or so, the bondsman's reputation for corruption was matched only by his reputation for relentless pursuit of fugitives. Like the loan shark, the bondsman's financial success depends in part on his ability to intimidate would-be defaulters; and Freed and Wald cite impersonation of police officers and use of guns as tools of the bondsman's trade. They quote a Nebraska official as saying:

> Professional bondsmen in our country are a very aggressive group and relentlessly pursue the defendant who skips bail. . . . This hard attitude on the part of some of these sureties has put the fear of God into a lot of these defendants who know what to expect in the event they skip bail; so we do not have any particular problem in this regard.[38]

A contemporary description of a New York "skip tracer" (one who returns fugitive defendants to the custody of their bondsmen for a fee) confirms that bondsmen still protect their investments fairly aggressively:

> Stashed in the attic of [the skip tracer's] home is an elaborate collection of photographic equipment and electronic surveillance gear, and several large-calibre rifles. All that he usually carries to work, though, are hand cuffs, shackles, a restraining belt, a nightstick, a bullet-proof vest and an attack-trained Doberman named Duke. . . . Duke and [the skip tracer] cruise the ghettos in a souped-up Ford LTD, equipped with CB, sirens, flashing red lights and, in the trunk, an anti-riot shotgun.[39]

With this history, it is no wonder that many people still perceive the bondsman as a sinister figure, lurking in the shadows of the criminal courthouse, waiting to prey on some unfortunate client. Yet within the past 15 years, bondsmen in the District of Columbia have become a struggling group. By encouraging a presumption of pretrial release, the 1966 Bail Reform Act has removed the best risks from the pool of potential clients for bondsmen. The rise of community groups acting as third-party custodians has removed many of the second-best risks from the pool. Because of a concomitant rise in violent crime, the bondsman is left to service an increasingly risky segment of an increasingly dangerous population.

As a result of these trends, the bondsman's role in the District of Columbia has declined drastically since the early sixties. Freed and Wald report that prior to inception of the D.C. Bail Project in 1964, virtually no defendants were released on recognizance, so that nearly all defendants were potential clients for bondsmen. During its first few months of operation, the project obtained recognizance release for about 15 percent of all defendants, which left 85 percent to choose between bondsmen and their own savings to obtain release.[40] By 1968, two years after passage of the Bail Reform Act, the proportion of defendants required to post surety bond had dropped to 61 percent in a random sample tabulated by the National Bureau of Standards.[41] By 1974, the proportion had decreased to 29 percent (see Chapter 2); and a special tabulation of PROMIS data for the first half of 1977 reports a decline to 23 percent. In the face of this steady decline, it comes as no surprise that over half the District's bondsmen retired in the decade following passage of the Bail Reform Act.[42]

Those who remain confront the difficult choice of risking their surety on a client already evaluated by the court as a bad risk. They are also frequently given the most serious cases, in which a substantial bond has been set—a decision often thought to reflect both the dangerousness of the defendant and the seriousness of the case. Dealing with such difficult situations has made most of the city's bondsmen apprehensive. The following quote by one who has since retired from the business indicates the constant uneasiness:

> A guy that takes a gun and goes into a store or a bank must have it in the back of his mind that he'll use it if he has to. Now if I bail him and can't produce him in court,

> I've got to go get him. He didn't hesitate to pull a gun when he held you up and I make a good target, big as I am. Besides that the bonds in these cases run high, making the potential losses greater. Taking someone who has gone to the gun just isn't worth the risk. Besides a guy charged with that kind of offense knows he may be going away for a long time and that increases the chances he'll skip.[43]

Chapters 2 and 3 and the appendix of this study examine several questions with respect to the role of bondsmen in the District of Columbia: How extensively are they used? In what types of cases? What criteria do they seem to apply in selecting defendants to bond? Controlling for the high-risk nature of their clients, how successfully do they produce them for court appearances?

### The Role of Preventive Detention

While the 1966 Bail Reform Act did much to eliminate the abuses of financial bond in the District of Columbia, it opened what many saw as a legal gap through which too many dangerous defendants returned to the street, perhaps to commit more crimes while awaiting trial. In response to public expressions of concern, a "preventive detention" provision was added, with little debate, to an omnibus Court Reorganization Act in 1970. Once passed, the provision permitted the U.S. Attorney, who prosecutes serious crimes in Superior Court, to request in a special hearing the detention of certain dangerous defendants without bond for up to 60 days while their cases are processed. This pretrial detention was intended to prevent them from committing more crimes while awaiting trial. Although some hailed preventive detention as an important weapon in the war on crime, others opposed it as a major assault on the presumption of innocence.[44]

Since it was enacted, preventive detention has borne out neither the hopes of its advocates nor the fears of its opponents. It simply has not been used enough to matter, as indicated by the request of only one preventive detention hearing during 1974. Using 1972 data, Bases and McDonald estimated that one-third of all felony defendants were eligible for preventive detention.[45] If that ratio still holds, preventive detention could have been requested about 1,500 times in 1977. Instead, then U.S. Attorney Earl J. Silbert stated that it was requested in only 40 cases, and granted in 34, during the 16 months ending in January 1978.[46]

In November 1977, the nonuse of preventive detention encouraged the House of Representatives to pass H.R. 7747, which broadens the eligibility criteria for preventive detention and extends the allowable detention period from 60 to 90 days.

In summary, then, the remainder of this report is intended to provide an overview of pretrial release in the District of Columbia and to provide some insights into the following issues:

- The purposes and uses of bail
- Judicial disparity in the release decision
- Prediction of pretrial misconduct
- The role of the bondsman
- The role of preventive detention.

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**Notes**

1. Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford, Calif.: Stanford University Press, 1968): 158, 165, 164.
2. "Judges Rapped as Lax on Crime," *New York Post*, January 19. 1978: 5.

3. Robert V. Stover and John A. Martin, *Policymakers' Views Regarding Issues in the Operation and Evaluation of Pretrial Release and Diversion Programs* (Denver, Colo.: National Center for State Courts, 1975).

4. Statement of Lawrence M. Baskir in "Pretrial Release or Detention: Hearings and Markups before the Subcommittee on Judiciary and the Committee on the District of Columbia," House of Representatives, 94th Cong., 2nd sess., June–August 1976: 242.

5. Statement of George Frain, ibid.: 369. The inability to predict dangerousness was documented by John Monahan, "The Prediction of Violent Criminal Behavior: A Methodological Critique and Prospectus," in Alfred Blumstein, Jacqueline Cohen, and Daniel Nagin, eds., *Deterrence and Incapacitation: Estimating the Effect of Criminal Sanctions on Crime Rates* (Washington, D.C.: National Academy of Sciences, 1978).

6. For more detailed discussions of the legal history of bail, see the following: J. F. Stephen, *A History of the Criminal Law of England* (Macmillan, 1883) I: 233–43; Lester B. Orfield, *Criminal Procedures from Arrest to Appeal* (New York: New York University Press, 1947): 101–104; Ronald Goldfarb, *Ransom* (New York: Wiley Interscience, 1967): 23–25; and National Center for State Courts, *An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs* (Denver, Colo., 1975): 5–15.

7. Judiciary Act of 1789, 1 U.S.C. 91 § 33.

8. Stack v. Boyle, 342 U.S. 1 (1951).

9. Fed. R. Crim. P. 46 (c).

10. Pannell v. United States, 320 F.2d 698, 699 (D.C. Cir. 1963) (concurring opinion).

11. Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," *New York University Law Review* 38 (1963).

12. Federal Bail Reform Act of 1966, P.L. No. 89-465, 80 Stat. 214, and District of Columbia Bail Agency Act, P.L. No. 89-519, 80 Stat. 327. The District act implemented the federal act in Washington, D.C., and established the D.C. Bail Agency (now the Pretrial Services Agency) to operate the local pretrial release program.

13. For a view of the legal debate at that time, see John N. Mitchell, "Bail Reform and the Constitutionality of Pretrial Detention," *Virginia Law Review* 55 (1969): 1223; and Laurence H. Tribe, "An Ounce of Detention: Preventive Justice in the World of John Mitchell," *Virginia Law Review* 56 (1970): 371. An overview of the argument is presented in Patricia M. Wald, "The Right to Bail Revisited: A Decade of Promise Without Fulfillment," in Stuart Nagel, ed., *The Rights of the Accused* (Beverly Hills, Calif.: Sage Publications, 1972): 189–95.

14. District of Columbia Court Reform and Criminal Procedures Act of 1970, P.L. No. 91-358, 84 Stat. 473.

15. 23 D.C. Code 1321.

16. Nan C. Bases and William F. McDonald, *Preventive Detention in the District of Columbia: The First Ten Months* (Georgetown Institute of Criminal Law and Procedure and Vera Institute of Justice, 1972): 46.

17. Earl J. Silbert, "Pre-trial Detention: Trying to Find a Common Sense Solution," *The Washington Post,* April 8, 1976: Md. 2.

18. Bases and McDonald, *Preventive Detention in the District of Columbia:* 61.

19. Much of the following summary is based on J. Daniel Welsh and Deborah Viets, *The Pretrial Offender in the District of Columbia* (Washington, D.C.: D.C. Bail Agency and D.C. Office of Criminal Justice Plans and Analysis, 1977): 87–97.

20. At least four important pretrial release issues are beyond the scope of this analysis: (1) the effect of pretrial incarceration status on the likelihood of conviction at trial and conviction by plea; (2) the effect of pretrial incarceration on the sentencing of convicted defendants; (3) the question whether defendants incarcerated before trial are, or should be, given scheduling priority to minimize the pretrial incarceration period; and (4) the relationship of case-processing time to the probability of pretrial misconduct.

The first three issues are not addressed here because they are covered in other PROMIS Research reports, as well as other sources. Methodological and data problems prevented us from adequately studying the fourth issue. An amplified discussion of these issues, however, appears in Chapter 4.

21. See, for example, Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," *University of Pennsylvania Law Review* 102 (1954): 1031–79 and

"The Administration of Bail in New York City," *University of Pennsylvania Law Review* 106 (1958): 693–730; Daniel J. Freed and Patricia M. Wald, *Bail in the United States: 1964* (Washington, D.C.: U.S. Department of Justice and Vera Foundation, Inc., 1964); Paul B. Wice, *Freedom for Sale* (Lexington, Mass: Lexington Books, 1974): 7; and Frederic Suffet, "Bail Setting: A Study of Courtroom Interaction," reprinted in George F. Cole, ed., *Criminal Justice: Law and Politics* (North Scituate, Mass: Duxbury Press, 1972): 309.

22. See Packer, *The Limits of the Criminal Sanction:* 214 for a discussion of this purpose ("a taste of jail") in the context of the Crime Control Model. See Andrew von Hirsch, *Doing Justice* (New York: Hill and Wang, 1976) for a discussion of the concept of "just deserts."

23. Packer, *ibid.*: 212.

24. Jack Hausner and Michael Seidel, *An Analysis of Case-processing Time in the District of Columbia Superior Court,* PROMIS Research Publication no. 15 (INSLAW, 1979): Chapter 2.

25. The judge's freedom in defining "excessive" is implicit in the following guidance: "Bail must not be set in a prohibitory amount, more than the accused can reasonably be expected under the circumstances to give. . . . However, a mere inability to procure bail in a certain amount does not make such amount excessive." 6 *Corpus Juris* (1916): 989.

26. Vera Institute of Justice, *Further Work in Criminal Justice Reform* (New York, 1977): 21–25.

27. Lee S. Friedman, "The Evolution of Bail Reform," *Policy Sciences* 7 (1976): 292 and 310–11. See also, San Francisco Commission on Crime, "A Report on the Criminal Courts of San Francisco: Part II, Bail/ROR Release," February 10, 1971: 24.

28. William M. Rhodes, Thomas Blomberg, and Steven T. Seitz, "The Costs and Benefits of Community Based Corrections," unpublished manuscript, 1977, available from the Institute for Law and Social Research, Washington, D.C.

29. Interview with officer of the D.C. Bail Agency, 1977.

30. Wayne Thomas, *Bail Reform in America* (Berkeley: University of California Press, 1976): 103.

31. Confidential interview, cited in Wice, *Freedom for Sale:* 162.

32. This estimate, based on a tabulation of 1976 PROMIS data, compares with a 28 percent conviction rate overall. The lower overall rate suggests that the plea-bargaining leverage alluded to above may exist, but it is inconsistent with a common allegation that police harass defendants who are on pretrial release.

33. See William M. Rhodes, *Plea Bargaining: Who Gains? Who Loses?* PROMIS Research Publication no. 14 (INSLAW, 1978) for a discussion of legal and factual innocence. See Brian Forst, Judith Lucianovic, and Sarah J. Cox, *What Happens After Arrest? A Court Perspective of Police Operations in the District of Columbia,* PROMIS Research Publication no. 4 (INSLAW, 1977) for a detailed statistical analysis of the many forms of conviction and nonconviction in the District of Columbia. Although the low conviction rate strongly suggests an overstatement, it was pointed out by Michael Kirby that because so many crimes are never cleared, the rate of pretrial rearrests could conceivably understate the extent of pretrial crime.

34. Reginald H. Smith and Herbert B. Ehrman, "The Criminal Courts," in Roscoe Pound and Felix Frankfurter, eds., *Criminal Justice in Cleveland* (1922; reprint ed., Montclair, N.J.: Patterson Smith, 1968): 290–92.

35. Missouri Association for Criminal Justice, *The Missouri Crime Survey* (New York: Macmillan, 1926): 189–218; Arthur L. Beeley, *The Bail System in Chicago* (Chicago: University of Chicago Press, 1927; reprinted in 1966).

36. See, especially, Goldfarb, *Ransom:* 110; National Center for State Courts, *An Evaluation of Policy Related Research:* 16–21; and Freed and Wald, *Bail in the United States:* 22–38.

37. National Commission on Law Observance and Enforcement, *Criminal Procedure,* Report no. 8 (1931; reprint ed., Montclair, N.J.: Patterson Smith, 1968): 22.

38. Freed and Wald, *Bail in the United States:* 30–31.

39. Robert Leder, "Frontier Justice Revisited." in *New Times,* March 6, 1978: 17.

40. Freed and Wald, *Bail in the United States:* 64.

41. Jay Rick et al., *Tabulation and Extended Analysis of Pre-Trial Release Data for Defendants in the District of Columbia,* National Bureau of Standards Report 10259 (Washington, D.C.: U.S. Department of Commerce, 1970).

42. Wice, *Freedom for Sale:* 53.

43. *The Washington Post,* February 2, 1969: B-1.

44. See Bases and McDonald, *Preventive Detention in the District of Columbia:* 4–8 for an overview of the debate at that time. See also, Sam J. Ervin, "Foreword," in "Preventive Detention: An Empirical Analysis," *Harvard Civil Rights–Civil Liberties Law Review* 6, no. 2 (March 1971): 289–396.

45. Bases and McDonald, *Preventive Detention in the District of Columbia:* 61.

46. Statement of Earl J. Silbert before the Subcommittee on Governmental Efficiency and the District of Columbia, U.S. Senate, January 31, 1978.

# 2

# Statistical Profile of Pretrial Release

This chapter offers a statistical profile of the operation of the District's pretrial release system. The profile is based on data concerning felony and misdemeanor cases arraigned in D.C. Superior Court during 1974. Of the nearly 11,000 cases included in this study, approximately 40 percent involve felony charges; the remainder are serious misdemeanors. This chapter focuses on the pretrial release decisions made by judges for the defendants in those cases and characteristics of the defendants receiving particular types of release. (Because the analysis is focused on judicial decisions, release on citation or stationhouse bond is excluded from the remaining discussion.) Another major purpose of the chapter is to describe the extent of pretrial misconduct by released defendants (i.e., nonappearances and rearrests), and the characteristics of defendants involved in those acts. Finally, we discuss the city's use of preventive detention in recent years.

## RELEASE CATEGORIES

For both accused felons and misdemeanants, the most common form of release during 1974 was release on the defendant's personal recognizance (PR). Personal recognizance may be granted with or without a set of accompanying conditions, such as requirements to report periodically to the Pretrial Services Agency, to maintain or secure employment, to stay within the D.C. area, or to submit to urinalysis. Since these conditions are not recorded in PROMIS, we must recognize that throughout this report the single term "personal recognizance" covers a variety of release terms. Despite the accompanying conditions, PR is still the release condition most desired by defendants, because, in contrast with the traditional bail system, it inflicts no financial hardship. Of those for whom release conditions are known, Table 1 indicates, nearly 45 percent of felony defendants and 71 percent of misdemeanor defendants were able to obtain personal recognizance release. As noted in Chapter 1, surveys of pretrial release by Wice and by Thomas found the District's personal recognizance release rate to be the highest in the nation among major cities.[1]

Considering only those cases for which release conditions were recorded, nearly 17 percent of felony defendants were granted third-party releases, as compared with only about 9 percent of the misdemeanants. This disparity probably results from the custodians' stated desire to work with the more serious defendants instead of misdemeanants. The primary custodian, Bonabond, an organization of ex-offenders, served in about 1,000 of the 1,334 known third-party releases during 1974.[2]

**Table 1.**
**Distribution of Pretrial Release Conditions, 1974**
**(D.C. Superior Court)**

| Release Type | Defendants Obtaining Release Type | | | | | |
|---|---|---|---|---|---|---|
| | Felonies | | | Misdemeanors | | |
| | | Percentage | | | Percentage | |
| | Number | Of Total | Of Known | Number | Of Total | Of Known |
| Personal recog. | 2,076 | 36.9% | 44.8% | 4,423 | 56.7% | 70.7% |
| Surety bond | 1,338 | 23.8 | 28.9 | 756 | 9.7 | 12.1 |
| Cash bond | 346 | 6.2 | 7.5 | 415 | 5.3 | 6.6 |
| Third-party custody | 782 | 13.9 | 16.9 | 552 | 7.1 | 8.9 |
| Other[a] | 89 | 1.6 | 1.9 | 102 | 1.3 | 1.6 |
| Unknown | 993 | 17.7 | — | 1,547 | 19.8 | — |
| Total | 5,624 | 100.1%[b] | 100.0% | 7,795 | 99.9% | 99.9% |

Source: PROMIS.
[a]"Other" includes mental observation, narcotics treatment, alcohol treatment, and preventive detention.
[b]Percentages may not total 100.0 due to rounding error.

Money bail, which has traditionally been required of the majority of defendants in other jurisdictions, was required of only 36 percent of felony defendants and 19 percent of misdemeanor defendants in Washington during 1974.

Tables 2 and 3 present the distributions of known cash and surety bonds set in felony and misdemeanor cases in 1974. Examining the felony cases, cash bonds seemed to be clustered at either $1,000 (34 percent), $2,000 (15 percent), or $5,000 (12 percent). The surety bonds were also clustered, although there were fewer $1,000 bonds (18 percent) and more $5,000 bonds (20 percent). The median cash bond was $1,500, and the median surety bond was $2,500. As might be expected, the misdemeanor financial bonds were appreciably less on average, and even more clearly clustered. Twenty-two percent of the surety bonds were set at $500 and 35 percent at $1,000. The cash bonds were similarly distributed—40 percent at $500 and 29 percent at $1,000. Frequently, the original bond requirement is later reduced or eliminated entirely; however, such changes are not systematically recorded in our data base.

A few special categories of release, such as mental observation holds, narcotics and alcohol treatment programs, and preventive detention were grouped as "other" in Table 1. The remaining tables in this chapter exclude both the "other" and "unknown" groups, unless otherwise stated.

## IMPORTANCE OF THE CHARGE

Even though D.C. laws instruct judges to release on personal recognizance any defendant who is likely to appear in court, it nevertheless seems that the seriousness of the charge against the defendant has some impact on the judge's pretrial release decision. Tables 4 and 5 illustrate how the various release categories are distributed by charge.

**Table 2.**
**Frequency Distributions of Cash and Surety Bonds Set in Felony Cases, 1974**
**(D.C. Superior Court)**

| Bond Amount | Surety Bond | | Cash Bond | |
|---|---|---|---|---|
| | Relative Frequency | Cumulative Frequency | Relative Frequency | Cumulative Frequency |
| $ 100 | 0.000% | 0.000% | 0.289% | 0.289% |
| 200 | 0.224 | 0.224 | 0.289 | 0.578 |
| 300 | 0.224 | 0.448 | 0.289 | 0.867 |
| 500 | 2.990 | 3.438 | 8.671 | 9.538 |
| 750 | 0.224 | 3.662 | 0.289 | 9.827 |
| 1,000 | **18.386** | 22.048 | **34.393** | 44.220 |
| 1,200 | 0.000 | 22.048 | 0.289 | 44.509 |
| 1,500 | 7.549 | 29.596 | 7.225 | 51.734 |
| 2,000 | **16.667** | 46.263 | **15.318** | 67.052 |
| 2,500 | 7.250 | 53.513 | 3.468 | 70.520 |
| 3,000 | 11.510 | 65.022 | 9.249 | 79.769 |
| 3,500 | 1.121 | 66.144 | 0.867 | 80.636 |
| 4,000 | 0.673 | 66.816 | 0.289 | 80.925 |
| 5,000 | **20.030** | 86.846 | **12.139** | 93.064 |
| 5,500 | 0.075 | 86.921 | 0.000 | 93.064 |
| 6,000 | 0.075 | 86.996 | 0.000 | 93.064 |
| 7,500 | 1.644 | 88.640 | 0.578 | 93.642 |
| 10,000 | 6.353 | 94.993 | 2.312 | 95.954 |
| 15,000 | 1.495 | 96.487 | 0.289 | 96.243 |
| 20,000 | 0.523 | 97.010 | 0.000 | 96.243 |
| 25,000 | 1.644 | 98.655 | 2.023 | 98.266 |
| 30,000 | 0.299 | 98.954 | 0.289 | 98.555 |
| 40,000 | 0.149 | 99.103 | 0.000 | 98.555 |
| 50,000 | 0.598 | 99.701 | 0.867 | 99.422 |
| 75,000 | 0.075 | 99.776 | 0.000 | 99.422 |
| 100,000 | 0.224 | 100.000 | 0.289 | 99.711 |
| $500,000 | 0.000% | 100.000% | 0.289% | 100.000% |

Source: PROMIS.
Note: N = 1,338 surety bonds, 346 cash bonds.

In viewing the felonies first, with the natural exception of bail-violation defendants, homicide defendants were least likely to obtain personal recognizance release and most likely to receive surety bonds. Specifically, 31 percent of homicide defendants received personal recognizance release compared with 45 percent for larceny, 62 percent for assault, and 66 percent for drug charges. Homicide and bail-violation defendants were also the only groups to have a higher percentage of defendants receive surety bonds than recognizance release. The 43 percent surety bond rate for homicide defendants is appreciably higher than that for all the other categories of crimes. This rate not only expresses the judge's reluctance to release homicide defendants outright, but it also passes responsibility to the bondsman for controlling the defendant's chances for pretrial freedom.[3]

Tables 4 and 5 cannot provide complete information about the relationship between crime seriousness and release conditions. At the extremes, the homicide results above can be contrasted with the 82 percent PR rate for misdemeanor drug

**Table 3.**
**Frequency Distributions of Cash and Surety Bonds Set in Misdemeanor Cases, 1974 (D.C. Superior Court)**

| Bond Amount | Surety Bond | | Cash Bond | |
|---|---|---|---|---|
| | Relative Frequency | Cumulative Frequency | Relative Frequency | Cumulative Frequency |
| $ 50 | 0.132% | 0.132% | 0.482% | 0.482% |
| 100 | 0.661 | 0.793 | 3.373 | 3.855 |
| 150 | 0.132 | 0.925 | 0.241 | 4.096 |
| 200 | 0.264 | 1.189 | 0.723 | 4.819 |
| 250 | 0.396 | 1.585 | 0.723 | 5.542 |
| 300 | 4.888 | 6.473 | 6.506 | 12.048 |
| 400 | 0.000 | 6.473 | 0.241 | 12.289 |
| 500 | **22.325** | 28.798 | **40.723** | 53.012 |
| 750 | 0.264 | 29.062 | 3.373 | 56.386 |
| 1,000 | **35.667** | 64.729 | **29.639** | 86.024 |
| 1,300 | 0.132 | 64.861 | 0.000 | 86.024 |
| 1,500 | 9.247 | 74.108 | 5.783 | 91.807 |
| 1,600 | 0.396 | 74.505 | 0.000 | 91.807 |
| 2,000 | 9.379 | 83.884 | 3.614 | 95.422 |
| 2,300 | 0.132 | 84.016 | 0.000 | 95.422 |
| 2,500 | 5.020 | 89.036 | 1.205 | 96.627 |
| 2,800 | 0.132 | 89.168 | 0.000 | 96.627 |
| 3,000 | 4.491 | 93.659 | 0.964 | 97.590 |
| 3,500 | 0.396 | 94.055 | 0.241 | 97.831 |
| 4,000 | 0.264 | 94.320 | 0.000 | 97.831 |
| 5,000 | 4.756 | 99.075 | 1.446 | 99.277 |
| 10,000 | 0.925 | 100.000 | 0.482 | 99.759 |
| $25,000 | 0.000% | 100.000% | 0.241% | 100.000% |

Source: PROMIS.
Note: N = 757 surety bonds, 415 cash bonds.

offenses, which represent largely marihuana charges. There are inherent difficulties in quantifying finer degrees of crime seriousness, although attempts to do so are described in note 9 of the appendix. But even assuming away those difficulties, another problem is the broad range of specific charges within each column heading. The larceny, sexual assault, and drug categories each contain a broad range of felonies and misdemeanors of diverse seriousness, which makes generalizations about the overall group difficult.

With these caveats in mind, let us move on to a brief look at misdemeanor charges and their pretrial release consequences. Beginning with personal recognizance release, it is at first surprising to see the high proportion of homicide defendants (67 percent) who received this type of release. When one realizes, however, that involuntary manslaughter cases dominate the misdemeanor homicide category, it is not so unexpected. These are often auto fatalities involving first offenders.

**Table 4.**
**Release Type Imposed, by Crime Type Charged, 1974 Felonies**
**(D.C. Superior Court)**

| Release Type | Total | Homicide | Assault | Sexual Assault | Robbery | Burglary | Larceny | Fraud | Other Property | Gun | Other Weapon | Gambling | Cons. Sex | Drugs | Bail Viol. | Kidnap. | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | | | | | | | | | | | | | | | | | |
| % | 100.0% | 4.5% | 13.5% | 4.4% | 28.5% | 19.8% | 11.8% | 5.7% | 0.9% | 3.5% | 0.3% | 1.8% | 0.2% | 1.1% | 2.2% | 0.2% | 1.7% |
| N | 4,631 | 208 | 624 | 204 | 1,318 | 917 | 546 | 266 | 42 | 162.0 | 13 | 82 | 8 | 53.0 | 100 | 8 | 80 |
| Personal recog. | | | | | | | | | | | | | | | | | |
| % | 44.8 | 31.3 | 62.0 | 41.7 | 37.8 | 43.3 | 45.4 | 59.8 | 61.9 | 46.3 | 46.2 | 51.2 | 25.0 | 66.0 | 10.0 | 62.5 | 45.0 |
| N | 2,076 | 65 | 387 | 85 | 498 | 397 | 248 | 159 | 26 | 75 | 6 | 42 | 2 | 35 | 10 | 5 | 36 |
| Surety bond | | | | | | | | | | | | | | | | | |
| % | 28.9 | 42.8 | 18.9 | 22.0 | 32.8 | 28.6 | 26.6 | 21.1 | 16.6 | 28.4 | 30.8 | 37.8 | 37.5 | 11.4 | 67.0 | 37.5 | 30.0 |
| N | 1,338 | 89 | 118 | 45 | 432 | 262 | 145 | 56 | 7 | 46 | 4 | 31 | 3 | 6 | 67 | 3 | 24 |
| Cash bond | | | | | | | | | | | | | | | | | |
| % | 7.4 | 5.8 | 3.4 | 5.9 | 7.7 | 8.3 | 10.4 | 5.6 | 7.1 | 10.5 | 7.7 | 1.2 | 0.0 | 7.6 | 18.0 | 0.0 | 8.8 |
| N | 346 | 12 | 21 | 12 | 102 | 76 | 57 | 15 | 3 | 17 | 1 | 1 | 0 | 4 | 18 | 0 | 7 |
| Third party | | | | | | | | | | | | | | | | | |
| % | 16.9 | 18.3 | 13.6 | 26.5 | 20.3 | 17.4 | 16.8 | 13.5 | 9.5 | 12.3 | 0.0 | 0.0 | 12.5 | 15.1 | 4.0 | 0.0 | 15.0 |
| N | 782 | 38 | 85 | 54 | 268 | 160 | 92 | 36 | 4 | 20 | 0 | 0 | 1 | 8 | 4 | 0 | 12 |
| Other | | | | | | | | | | | | | | | | | |
| % | 1.9% | 1.9% | 2.0% | 3.9% | 1.4% | 2.4% | 0.8% | 0.0% | 4.8% | 2.5% | 15.4% | 9.7% | 25.0% | 0.0% | 1.0% | 0.0% | 1.3% |
| N | 89 | 4 | 13 | 8 | 18 | 22 | 4 | 0 | 2 | 4 | 2 | 8 | 2 | 0 | 1 | 0 | 1 |

Source: PROMIS.

**Table 5.**
**Release Type Imposed, by Crime Type Charged, 1974 Misdemeanors**
**(D.C. Superior Court)**

| Release Type | Other | Homicide | Assault | Sexual Assault | Robbery | Burglary | Larceny | Fraud | Other Property | Gun | Other Weapon | Gambling | Cons. Sex | Drugs | Bail Viol. | Kidnap. | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | | | | | | | | | | | | | | | | | |
| % | 100.0% | 0.1% | 11.5% | 0.1% | 0.6% | 6.2% | 26.9% | 2.6% | 2.4% | 7.7% | 1.5% | 1.4% | 13.7% | 20.7% | 2.8% | 0.0% | 1.7% |
| N | 6,248 | 6.0 | 716 | 9 | 40 | 389 | 1,678 | 163 | 147 | 483 | 91 | 87 | 859 | 1,294 | 177 | 0 | 109 |
| Personal recog. | | | | | | | | | | | | | | | | | |
| % | 70.8 | 66.7 | 70.8 | 77.8 | 62.5 | 58.1 | 69.5 | 71.8 | 65.3 | 78.1 | 68.1 | 77.0 | 69.7 | 82.1 | 17.5 | 0.0 | 69.7 |
| N | 4,423 | 4 | 507 | 7 | 25 | 226 | 1,167 | 117 | 96 | 377 | 62 | 67 | 599 | 1,062 | 31 | 0 | 76 |
| Surety bond | | | | | | | | | | | | | | | | | |
| % | 12.1 | 33.4 | 12.2 | 0.0 | 20.0 | 14.9 | 13.5 | 9.8 | 11.5 | 11.2 | 14.3 | 18.3 | 8.7 | 6.5 | 48.0 | 0.0 | 13.8 |
| N | 756 | 2 | 87 | 0 | 8 | 58 | 226 | 16 | 17 | 54 | 13 | 16 | 75 | 84 | 85 | 0 | 15 |
| Cash bond | | | | | | | | | | | | | | | | | |
| % | 6.6 | 0.0 | 5.1 | 11.1 | 2.5 | 8.5 | 6.7 | 7.4 | 6.1 | 3.7 | 2.2 | 2.3 | 11.9 | 3.4 | 19.2 | 0.0 | 7.4 |
| N | 415 | 0 | 37 | 1 | 1 | 33 | 111 | 12 | 9 | 18 | 2 | 2 | 103 | 33 | 34 | 0 | 8 |
| Third party | | | | | | | | | | | | | | | | | |
| % | 8.8 | 0.0 | 9.1 | 11.1 | 15.0 | 14.1 | 8.5 | 9.2 | 12.9 | 6.0 | 14.3 | 1.1 | 9.5 | 7.1 | 12.4 | 0.0 | 9.2 |
| N | 552 | 0 | 65 | 1 | 6 | 55 | 142 | 15 | 19 | 29 | 13 | 1 | 82 | 92 | 22 | 0 | 10 |
| Other | | | | | | | | | | | | | | | | | |
| % | 1.6% | 0.0% | 2.8% | 0.0% | 0.0% | 4.4% | 2.0% | 1.8% | 4.1% | 1.0% | 1.1% | 1.1% | 0.0% | 1.0% | 2.8% | 0.0% | 0.0% |
| N | 102 | 0 | 20 | 0 | 0 | 17 | 32 | 3 | 6 | 5 | 1 | 1 | 0 | 12 | 5 | 0 | 0 |

Source: PROMIS.

Although there was nothing extraordinary about most of the misdemeanor statistics in Table 5, at least two patterns stand out:

(1) Third-party release was used most frequently in weapon, robbery, and burglary cases. This is consistent with an objective of the custodians to obtain release for only the more serious misdemeanants.

(2) Robbery defendants appeared to receive the most stringent release conditions, except for alleged bail violators.

## JUDGE VARIABILITY

The issue of judicial disparity in setting pretrial release conditions was discussed in Chapter 1. One view of this disparity is presented in Table 6, which reports, for felony and misdemeanor cases, the distributions of release decisions for the ten Superior Court judges who were most active in making pretrial release decisions. Because arraignment judges are shifted on a periodic basis, it is reasonable to assume that all ten faced a similar mix of cases. Therefore, great inconsistencies among these judges would raise the question of arbitrary or uninformed use of their discretionary powers.

Examining Table 6, it appears at first glance that significant variation exists in judicial pretrial release decision making.[4] The range in felony personal recognizance rates extends from 19 percent to 62 percent: a 43-point spread. However, closer examination of the table reveals that much of the apparent variation merely reflects a difference in which type of nonfinancial release the judge prefers—personal recognizance or third-party release. Combining both types of nonfinancial release, the range across judges shrinks to only a 15-point spread—from 65 to 50 percent. Table 7 illustrates that grouping affects apparent judge variability in misdemeanor cases as well, reducing a 32-point range in PR release rates to a 14-point range in nonfinancial release rates. Thus, it seems that much of the apparent judge disparity reflects disagreement about the substitutability of the third-party and personal-recognizance forms of nonfinancial release, rather than whether particular defendants merit nonfinancial release in any form.

We found little disparity with respect to financial conditions also, although a few interesting patterns should be noted. In Table 6, the release type exhibiting *least* variability in felony cases was surety bond, whereas the cash bond rate varied from 0 to 20 percent. Since these cash bonds actually represent percentage deposits, usually 10 percent, the variation may reflect different opinions as to whether such a small potential loss is an effective inducement to appear in court. Of course, given the small number of cash bond releases for most judges, a few cases involving high-risk defendants may distort the results and make a judge appear to be much more punitive than the rest of the bench.

In the misdemeanor section of Table 6, the figures show little variation. The evaluation is made even more difficult by the small number of financial bond cases. Nevertheless, it is evident that two of the judges require surety bonds at a rate nearly double the ten-judge average.

It is interesting to note that the judges' relative preferences for release alternatives were fairly consistent for felonies and misdemeanors. This observation was confirmed by ranking judges from 1 through 10 in order of use of a given alternative, separately for felonies and misdemeanors, then computing Spearman's rank correlation coefficient for the two crime groups. The correlation coefficient was 0.915 between misdemeanor and felony ranks in use of personal recognizance, 0.903 for use of third-party custody, 0.806 for use of both nonfinancial release types combined, 0.621 for use of surety bond, and 0.676 for use of cash bond.[5]

**Table 6.**
**Release Type Imposed, by Arraignment Judge, 1974**
**(D.C. Superior Court)**

| Release Type | Total | Judges 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | Others |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Felony Arraignments** | | | | | | | | | | | | |
| Total | | | | | | | | | | | | |
| % | 100.0% | 8.3% | 5.3% | 6.3% | 4.7% | 11.8% | 7.8% | 6.1% | 5.4% | 7.6% | 4.9% | 31.7% |
| N | 4,631 | 385 | 246 | 293 | 219 | 546 | 361 | 284 | 250 | 352 | 226 | 1,467 |
| Personal recog. | | | | | | | | | | | | |
| % | 44.8 | 61.8 | 60.6 | 36.5 | 22.4 | 46.9 | 46.8 | 32.7 | 56.8 | 40.9 | 19.0 | 46.7 |
| N | 2,076 | 238 | 149 | 107 | 49.0 | 256 | 169 | 93 | 142 | 144 | 43 | 685 |
| Surety bond | | | | | | | | | | | | |
| % | 28.9 | 35.9 | 27.7 | 32.7 | 28.8 | 24.5 | 25.5 | 23.2 | 27.2 | 37.8 | 34.1 | 27.4 |
| N | 1,338 | 138 | 68 | 96 | 63 | 134 | 92 | 66 | 68 | 133 | 77 | 402 |
| Cash bond | | | | | | | | | | | | |
| % | 7.4 | 0.3 | 6.5 | 3.4 | 13.7 | 7.4 | 20.5 | 1.8 | 7.6 | 2.3 | 13.7 | 7.6 |
| N | 346 | 1 | 16 | 10 | 30 | 40 | 74 | 5 | 19 | 8 | 31 | 111 |
| Third party | | | | | | | | | | | | |
| % | 16.9 | 1.8 | 4.1 | 23.5 | 32.9 | 18.5 | 6.4 | 36.6 | 8.4 | 17.9 | 32.3 | 16.3 |
| N | 782 | 7 | 10 | 59 | 72 | 101 | 23 | 104 | 21 | 63 | 73 | 239 |
| Other | | | | | | | | | | | | |
| % | 1.9 | 0.3 | 1.2 | 3.7 | 2.4 | 2.8 | 0.9 | 5.7 | 0.0 | 1.2 | 0.8 | 1.9 |
| N | 89 | 1 | 3 | 11 | 5 | 15 | 3 | 16 | 0 | 4 | 2 | 29 |
| **Misdemeanor Arraignments** | | | | | | | | | | | | |
| Total | | | | | | | | | | | | |
| % | 100.0 | 7.8 | 5.9 | 5.6 | 4.7 | 10.7 | 10.9 | 7.8 | 6.1 | 8.1 | 5.2 | 27.1 |
| N | 6,249 | 489 | 371 | 349 | 291 | 671 | 679 | 488 | 384 | 506 | 328 | 1,692 |
| Personal recog. | | | | | | | | | | | | |
| % | 70.8 | 78.5 | 82.2 | 63.0 | 60.5 | 75.0 | 68.8 | 68.2 | 87.8 | 66.6 | 44.4 | 69.6 |
| N | 4,423 | 384 | 305 | 220 | 176 | 503 | 467 | 333 | 337 | 337 | 182 | 1,178.0 |
| Surety bond | | | | | | | | | | | | |
| % | 12.2 | 19.6 | 11.6 | 20.1 | 11.0 | 6.7 | 12.8 | 9.3 | 6.2 | 12.4 | 12.8 | 12.4 |
| N | 757 | 96 | 43 | 70 | 32 | 45 | 87 | 45 | 24 | 63 | 42 | 210 |
| Cash bond | | | | | | | | | | | | |
| % | 6.6 | 0.8 | 3.8 | 3.5 | 7.5 | 7.3 | 11.9 | 6.3 | 3.9 | 7.8 | 11.3 | 6.6 |
| N | 415 | 4 | 14 | 12 | 22 | 49 | 81 | 31 | 15 | 39 | 37 | 111 |
| Third party | | | | | | | | | | | | |
| % | 8.8 | 0.6 | 1.3 | 9.7 | 17.5 | 8.0 | 5.7 | 14.1 | 1.8 | 10.9 | 19.8 | 10.0 |
| N | 552 | 3 | 5 | 34 | 51 | 54 | 39 | 69 | 7 | 55 | 65 | 170 |
| Other | | | | | | | | | | | | |
| % | 1.6% | 0.4% | 1.0% | 3.7% | 3.4% | 3.0% | 0.7% | 2.0% | 0.3% | 2.4% | 0.6% | 1.4% |
| N | 102 | 2 | 4 | 13 | 10 | 20 | 5 | 10 | 1 | 12 | 2 | 23 |

Source: PROMIS.

## DEFENDANT'S BACKGROUND

This section presents a statistical description of judicial release decisions, tabulated by defendant characteristics generally considered pertinent to the setting of conditions. While such a picture of what kinds of defendants receive various conditions is useful in provoking questions about bail system operation, it cannot describe how judges weigh the characteristics in setting conditions. The latter problem is considered with the aid of multivariate statistical techniques in Chapter 3.

**Table 7.**
**Range of Release Rates for Personal Recognizance and Third-party Custody, 1974 Misdemeanors**

| Judges | Personal Recognizance | Third Party | Combined |
|---|---|---|---|
| Overall average | 70.8% | 8.8% | 81.6% |
| Two lowest judges | 60.5 | 17.5 | 77.5 |
| | 55.5 | 19.8 | 75.3 |
| Two highest judges | 82.2 | 1.3 | 82.5 |
| | 87.8% | 1.8% | 89.6% |

Source: PROMIS.

### Prior Arrests

The criminal record of the defendant is considered by some to be the most important release criterion, following the seriousness of the charge. Tables 8 through 11 describe how an adult arrest record affects the release decision for both felons and misdemeanants.[6] Although the public may believe that most defendants have a criminal record, the tables show that a significant share of defendants in each category did *not* have a prior adult arrest. More specifically, 39 percent of the felony defendants and 54 percent of the misdemeanor defendants had no known prior arrests (Table 8). The tables do show, however, that a small group of defendants had extensive arrest histories. Ten percent of the accused felons had five or more prior arrests for crimes against persons (Table 9); the same proportion had eight or more prior arrests for other crimes (Table 10). As might be expected, somewhat lower rates were observed among accused misdemeanants.

These tables suggest that prior arrests exert a systematic influence on the judge's decision. Looking at personal recognizance as an example, the felony defendants with prior arrests received PR less frequently than those with no arrest history, according to Table 8. Moreover, Tables 9 and 10 display a fairly consistent trend: the greater the number of prior arrests, the lower the rate of PR release.

From the crime control perspective, one would expect that as the number of prior arrests increased, there would be increased use of cash and surety bonds. Considering both release types combined, these tables suggest that such a policy is in operation. However, within the general category "financial release," the surety-to-cash ratio remains about 4-to-1 for felony defendants, regardless of the number of prior arrests for either type of crime.

The use of third-party release for felony defendants was so erratic that few conclusions can be drawn. From an overall third-party release rate of 17 percent for felony defendants (Table 9), there was no indication that the rate changed monotonically in either direction as the number of prior arrests increased. A possible explanation for the absence of a trend is that, as previously noted, the major organization willing to serve as a third-party supervisor has expressed an interest in handling disadvantaged defendants, often those with several prior arrests. Since this policy is so controversial, some judges will agree more willingly than others, causing a rather erratic use of third-party custodians with respect to the number of prior arrests.

Tables 9 and 11 show that misdemeanants are also less likely to receive release on recognizance as their number of prior arrests increases. Thus, over three-quarters of the alleged misdemeanants with no prior arrests received PR release,

**Table 8.**
**Release Type Imposed, by Prior Record Type, 1974**
**(D.C. Superior Court)**

| Release Type | Prior Record Type | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Felonies | | | | Misdemeanors | | | |
| | All | Prior Arrests | No Prior Arrests | Priors Unknown | All | Prior Arrests | No Prior Arrests | Priors Unknown |
| Total | | | | | | | | |
| % | 100.0% | 61.3% | 38.7% | 0.0% | 100.0% | 45.7% | 54.3% | 0.0% |
| N | 4,631 | 2,837 | 1,793 | 1 | 6,249 | 2,853 | 3,393 | 3 |
| Personal recog. | | | | | | | | |
| % | 44.8 | 38.0 | 55.6 | 0.0 | 70.8 | 59.2 | 80.5 | 100.0 |
| N | 2,076 | 1,079 | 997 | 0 | 4,423 | 1,690 | 2,730 | 3 |
| Surety bond | | | | | | | | |
| % | 28.9 | 34.9 | 19.2 | 100.0 | 12.2 | 18.4 | 6.9 | 0.0 |
| N | 1,338 | 992 | 345 | 1 | 757 | 525 | 232 | 0 |
| Cash bond | | | | | | | | |
| % | 7.4 | 8.8 | 5.4 | 0.0 | 6.6 | 8.8 | 4.8 | 0.0 |
| N | 346 | 249 | 97 | 0 | 415 | 252 | 163 | 0 |
| Third party | | | | | | | | |
| % | 16.9 | 16.2 | 18.0 | 0.0 | 8.8 | 11.2 | 6.9 | 0.0 |
| N | 782 | 459 | 0 | 0 | 552 | 319 | 233 | 0 |
| Other | | | | | | | | |
| % | 1.9% | 2.0% | 1.8% | 0.0% | 1.6% | 2.4% | 1.1% | 0.0% |
| N | 89 | 58 | 31 | 0 | 102 | 67 | 35 | 0 |

Source: PROMIS.

**Table 9.**
**Release Type Imposed, by Number of Prior Arrests for Crimes Against Persons, 1974 (D.C. Superior Court)**

| Release Type | Number of Prior Arrests for Crimes Against Persons | | | | | | |
|---|---|---|---|---|---|---|---|
| | Total | 0 | 1 | 2 | 3 | 4 | 5+ |
| | | | | Felonies | | | |
| Total | | | | | | | |
| % | 100.0% | 63.4% | 9.9% | 7.3% | 5.1% | 3.8% | 10.5% |
| N | 4,631 | 2,937 | 458 | 336 | 235 | 177 | 488 |
| Personal recog. | | | | | | | |
| % | 44.8 | 50.8 | 41.0 | 39.0 | 35.7 | 33.3 | 24.8 |
| N | 2,076 | 1,493 | 188 | 131 | 84 | 59 | 121 |
| Surety bond | | | | | | | |
| % | 28.9 | 23.7 | 28.2 | 31.8 | 40.8 | 41.8 | 48.1 |
| N | 1,338 | 697 | 129 | 107 | 96 | 74 | 235 |
| Cash bond | | | | | | | |
| % | 7.4 | 6.2 | 7.8 | 8.6 | 9.3 | 13.0 | 10.8 |
| N | 346 | 183 | 36 | 29 | 22 | 23 | 53 |
| Third party | | | | | | | |
| % | 16.9 | 17.5 | 21.0 | 17.6 | 11.5 | 9.0 | 14.3 |
| N | 782 | 514 | 96 | 59 | 27 | 16 | 70 |
| Other | | | | | | | |
| % | 1.9 | 1.6 | 1.9 | 3.0 | 2.6 | 2.9 | 1.8 |
| N | 89 | 50 | 9 | 10 | 6 | 5 | 9 |
| | | | | Misdemeanors | | | |
| Total | | | | | | | |
| % | 100.0 | 76.8 | 8.3 | 4.8 | 3.1 | 1.7 | 5.4 |
| N | 6,249 | 4,798 | 516 | 298 | 193 | 104 | 340 |
| Personal recog. | | | | | | | |
| % | 70.8 | 74.9 | 64.1 | 59.1 | 54.9 | 53.8 | 47.4 |
| N | 4,423 | 3,593 | 331 | 176 | 106 | 56 | 161 |
| Surety bond | | | | | | | |
| % | 13.2 | 9.7 | 16.7 | 18.5 | 18.1 | 22.1 | 26.8 |
| N | 757 | 467 | 86 | 55 | 35 | 23 | 91 |
| Cash bond | | | | | | | |
| % | 6.6 | 6.2 | 6.4 | 7.1 | 8.8 | 11.6 | 10.6 |
| N | 415 | 296 | 33 | 21 | 17 | 12 | 36 |
| Third party | | | | | | | |
| % | 8.8 | 7.9 | 11.0 | 12.1 | 13.0 | 11.5 | 12.4 |
| N | 552 | 380 | 57 | 36 | 25 | 12 | 42 |
| Other | | | | | | | |
| % | 1.6% | 1.3% | 1.8% | 3.4% | 5.2% | 1.0% | 3.0% |
| N | 102 | 62 | 9 | 10 | 10 | 1 | 10 |

Source: PROMIS.

**Table 10.**
**Release Type Imposed, by Number of Prior Arrests for Nonpersonal Crimes, 1974 Felonies (D.C. Superior Court)**

| Release Type | Number of Arrests for Nonpersonal Crimes | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8+ | Unknown |
| Total | | | | | | | | | | | |
| % | 100.0% | 54.7% | 8.7% | 7.5% | 4.8% | 4.2% | 4.0% | 2.6% | 1.8% | 10.0% | 1.7% |
| N | 4,631 | 2,535 | 401 | 347 | 221 | 196 | 183 | 120 | 83 | 465 | 80 |
| Personal recog. | | | | | | | | | | | |
| % | 44.8 | 51.2 | 44.4 | 43.8 | 40.3 | 30.6 | 35.0 | 30.8 | 36.1 | 29.0 | 42.5 |
| N | 2,076 | 1,297 | 178 | 152 | 89 | 60 | 64 | 37 | 30 | 135 | 34 |
| Surety bond | | | | | | | | | | | |
| % | 28.9 | 23.6 | 24.5 | 28.5 | 35.7 | 44.4 | 39.3 | 40.9 | 39.7 | 42.6 | 28.8 |
| N | 1,338 | 600 | 48 | 99 | 79 | 87 | 72 | 49 | 33 | 198 | 23 |
| Cash bond | | | | | | | | | | | |
| % | 7.4 | 6.3 | 8.2 | 9.8 | 6.8 | 9.2 | 7.6 | 4.1 | 13.2 | 10.5 | 8.8 |
| N | 346 | 160 | 33 | 34 | 15 | 18 | 14 | 5 | 11 | 49 | 7 |
| Third party | | | | | | | | | | | |
| % | 16.9 | 17.0 | 20.9 | 16.7 | 14.9 | 14.3 | 15.3 | 22.5 | 10.8 | 14.8 | 18.8 |
| N | 782 | 431 | 84 | 58 | 33 | 28 | 28 | 27 | 9 | 69 | 15 |
| Other | | | | | | | | | | | |
| % | 1.9% | 1.8% | 2.0% | 1.2% | 2.3% | 1.5% | 2.7% | 1.6% | 0.0% | 3.0% | 1.3% |
| N | 89 | 47 | 8 | 4 | 5 | 3 | 5 | 2 | 0 | 14 | 1 |

Source: PROMIS.

**Table 11.**
**Release Type Imposed, by Number of Prior Arrests for Nonpersonal Crimes, 1974 Misdemeanors (D.C. Superior Court)**

| | Number of Prior Arrests for Nonpersonal Crimes | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Release Type | Total | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8+ | Unknown |
| Total | | | | | | | | | | | |
| % | 100.0% | 63.1% | 8.8% | 5.1% | 4.0% | 3.1% | 2.6% | 1.7% | 1.4% | 8.7% | 1.5% |
| N | 6,249 | 3,944 | 553 | 319 | 247 | 193 | 160 | 107 | 89 | 546 | 91 |
| Personal recog. | | | | | | | | | | | |
| % | 70.8 | 78.0 | 73.2 | 67.1 | 58.7 | 59.1 | 52.5 | 51.4 | 46.1 | 41.8 | 64.8 |
| N | 4,423 | 3,078 | 405 | 214 | 145 | 114 | 84 | 55 | 41 | 228 | 59 |
| Surety bond | | | | | | | | | | | |
| % | 12.2 | 8.2 | 6.9 | 8.8 | 21.4 | 13.5 | 21.9 | 19.6 | 20.2 | 30.4 | 15.4 |
| N | 747 | 315 | 60 | 39 | 53 | 26 | 35 | 21 | 18 | 166 | 14 |
| Cash bond | | | | | | | | | | | |
| % | 6.6 | 5.1 | 6.8 | 9.4 | 6.8 | 9.3 | 9.4 | 11.2 | 15.7 | 11.7 | 3.3 |
| N | 415 | 204 | 38 | 30 | 17 | 18 | 15 | 12 | 14 | 64 | 3 |
| Third party | | | | | | | | | | | |
| % | 8.8 | 7.3 | 8.7 | 9.4 | 9.7 | 14.5 | 14.4 | 16.8 | 12.4 | 13.0 | 12.1 |
| N | 552 | 288 | 48 | 30 | 24 | 28 | 23 | 18 | 11 | 71 | 11 |
| Other | | | | | | | | | | | |
| % | 1.6% | 1.3% | 0.4% | 1.8% | 3.2% | 3.6% | 1.9% | 0.9% | 5.6% | 3.0% | 4.4% |
| N | 102 | 49 | 2 | 6 | 8 | 7 | 3 | 1 | 5 | 17 | 4 |

Source: PROMIS.

and fewer than half of those with five or more prior arrests were so fortunate. In contrast, a misdemeanor defendant's chances for third-party release seemed to rise with the number of his prior arrests, a probable reflection of the policies of those organizations serving as sponsors for these defendants.

It is useful to examine how a criminal record interacts with the crime type of the current case in determining release conditions. Tables 12 and 13 show the distributions of release conditions by crime type, separately for defendants without and with prior records. The same is done for alleged misdemeanants in Tables 14 and 15.

These tables offer further support to the claim that, consistent with the crime control objective, judges do seem to consider the defendant's previous criminal record in making their pretrial release decisions. For every crime type except gambling, defendants with prior records received PR conditions less often, and surety bond more often, than defendants without prior records. Because of small cell sizes, we hesitate to make too much of the gambling exception. However, it may reflect judges' perceptions that chronic gamblers present less of a threat to the community than chronic offenders of other types, such as rapists, robbers, and burglars. The latter types, plus homicide defendants with prior arrests, were among the groups most likely to be released to third-party custodians—another indication that the custodians focus their efforts on defendants who are unlikely to qualify for the other forms of release.

### Cases Pending

Closely related to the defendant's prior criminal record is whether he has a case pending at the time of the bail decision. A pending case demonstrates the defendant's possible criminal proclivities, which are aggravated by the fact that his alleged illegal activities occurred within a short time span. This may give the judge the impression that the defendant cannot control his antisocial behavior. Table 16 reports how a pending case affected release conditions.

The table indicates that relative to other defendants, those with pending cases were more than twice as likely to be denied personal recognizance release in favor of a financial bond. A pending case seemed to reduce the chance of third-party release for felony defendants, but increased the chance for misdemeanor defendants. This apparent inconsistency is explored further in a multivariate context in Chapter 3.

### Age

Consistent with national crime figures, the Washington adult criminal courts are dominated by younger defendants. Table 17 shows that over half of all accused felons are between 18 and 25 years of age, and that only 16 percent are over 35. With the defendants bunched so tightly at the lower end of the age spectrum, it is difficult to detect a meaningful relationship between defendant age and the pretrial release decision. The table indicates that little variation exists with respect to age. This lack of variation is not completely surprising, since it would be difficult to offer rational explanations of why age should be a major factor in the judge's pretrial release decision.

Felony defendants over 35 were slightly more likely to be released on their own recognizance than the defendant population as a whole (52 percent versus 45 percent), possibly a reflection of closer community ties or a perception of less potential dangerousness among older defendants. Rates for the other categories

**Table 12.**
**Release Type Imposed, by Crime Type—Felony Defendants Without Prior Arrests, 1974**
**(D.C. Superior Court)**

| Release Type | Total | Homicide | Assault | Sexual Assault | Robbery | Burglary | Larceny | Fraud | Other Property | Gun | Other Weapon | Gambling | Cons. Sex | Drugs | Bail Viol. | Kidnap. | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | | | | | | | | | | | | | | | | | |
| % | 100.0% | 5.0% | 15.6% | 4.8% | 26.9% | 17.6% | 12.8% | 7.3% | 1.2% | 1.9% | 0.2% | 2.8% | 0.3% | 0.6% | 1.2% | 0.2% | 1.7% |
| N | 1,793 | 89 | 280 | 86 | 482 | 316 | 230 | 131 | 21 | 34 | 4.0 | 50.0 | 5 | 10 | 21 | 3 | 31 |
| Personal recog. | | | | | | | | | | | | | | | | | |
| % | 55.6 | 39.3 | 69.6 | 45.3 | 47.5 | 55.1 | 57.4 | 72.5 | 66.7 | 55.9 | 75.0 | 50.0 | 40.0 | 70.0 | 28.6 | 100.0 | 61.3 |
| N | 997 | 35 | 195 | 39 | 229 | 174 | 132 | 95 | 14 | 19 | 3 | 25 | 2 | 7 | 6 | 3 | 19 |
| Surety bond | | | | | | | | | | | | | | | | | |
| % | 19.2 | 25.8 | 14.3 | 13.9 | 22.1 | 17.1 | 18.3 | 13.8 | 19.0 | 11.8 | 25.0 | 44.0 | 20.0 | 10.0 | 42.8 | 0.0 | 22.6 |
| N | 345 | 23 | 40 | 12 | 107 | 54 | 42 | 18 | 4 | 4 | 1 | 22 | 1 | 1 | 9 | 0 | 7 |
| Cash bond | | | | | | | | | | | | | | | | | |
| % | 5.4 | 9.0 | 2.9 | 10.5 | 4.6 | 5.4 | 7.3 | 2.3 | 4.8 | 11.8 | 0.0 | 0.0 | 0.0 | 20.0 | 23.8 | 0.0 | 3.2 |
| N | 97 | 8 | 8 | 9 | 22 | 17 | 17 | 3 | 1 | 4 | 0 | 0 | 0 | 2 | 5 | 0 | 1 |
| Third party | | | | | | | | | | | | | | | | | |
| % | 18.0 | 22.5 | 11.8 | 29.1 | 23.9 | 20.6 | 16.1 | 11.5 | 4.8 | 20.6 | 0.0 | 0.0 | 0.0 | 0.0 | 4.8 | 0.0 | 12.9 |
| N | 323 | 20 | 33 | 25 | 115 | 65 | 37 | 15 | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 4 |
| Other | | | | | | | | | | | | | | | | | |
| % | 1.8% | 3.4% | 1.4% | 1.2% | 1.8% | 1.9% | 0.8% | 0.0% | 4.8% | 0.0% | 0.0% | 6.0% | 40.0% | 0.0% | 0.0% | 0.0% | 0.0% |
| N | 16 | 0 | 2 | 0 | 5 | 5 | 9 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 |

Source: PROMIS.

**Table 13.**
**Release Type Imposed, by Crime Type—Felony Defendants with Prior Arrests, 1974**
**(D.C. Superior Court)**

| Release Type | Total | Homicide | Assault | Sexual Assault | Robbery | Burglary | Larceny | Fraud | Other Property | Gun | Other Weapon | Gambling | Cons. Sex | Drugs | Bail Viol. | Kidnap | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | | | | | | | | | | | | | | | | | |
| % | 100.0% | 4.2% | 12.1% | 4.2% | 29.5% | 21.2% | 11.1% | 4.8% | 0.7% | 4.5% | 0.3% | 1.1% | 0.1% | 1.5% | 2.8% | 0.2% | 1.7% |
| N | 2,837 | 119 | 343 | 118 | 836 | 601 | 316 | 135 | 21 | 128 | 9 | 32 | 3 | 43.0 | 79 | 5 | 49 |
| Personal recog. | | | | | | | | | | | | | | | | | |
| % | 38.0 | 25.2 | 56.0 | 39.0 | 32.2 | 37.1 | 36.7 | 47.4 | 47.1 | 43.8 | 33.3 | 53.1 | 0.0 | 65.1 | 5.1 | 40.0 | 34.7 |
| N | 1,079 | 30 | 192 | 46 | 269 | 223 | 116 | 64 | 21 | 56 | 3 | 17 | 0 | 28 | 4 | 2 | 17 |
| Surety bond | | | | | | | | | | | | | | | | | |
| % | 34.9 | 55.5 | 22.5 | 28.0 | 38.9 | 34.7 | 32.6 | 28.1 | 14.3 | 32.9 | 33.3 | 28.1 | 66.7 | 11.7 | 73.4 | 60.0 | 34.7 |
| N | 992 | 66 | 77 | 33 | 325 | 208 | 103 | 38 | 3 | 42 | 3 | 9 | 2 | 5 | 58 | 3 | 17 |
| Cash bond | | | | | | | | | | | | | | | | | |
| % | 8.8 | 3.4 | 3.8 | 2.5 | 9.5 | 9.8 | 12.7 | 8.9 | 9.5 | 10.1 | 11.1 | 3.1 | 0.0 | 4.6 | 16.4 | 0.0 | 12.2 |
| N | 249 | 4 | 13 | 3 | 80 | 59 | 40 | 12 | 2 | 13 | 1 | 1 | 0 | 2 | 13 | 0 | 6 |
| Third party | | | | | | | | | | | | | | | | | |
| % | 16.2 | 15.1 | 15.2 | 24.6 | 18.3 | 15.8 | 17.4 | 15.6 | 14.3 | 10.2 | 0.0 | 0.0 | 33.3 | 18.6 | 3.8 | 0.0 | 16.3 |
| N | 459 | 18 | 52 | 29 | 153 | 95 | 55 | 21 | 3 | 13 | 0 | 0 | 1 | 8 | 3 | 0 | 8 |
| Other | | | | | | | | | | | | | | | | | |
| % | 2.0% | 0.8% | 2.7% | 5.9% | 1.0% | 2.6% | 0.6% | 0.0% | 4.8% | 3.1% | 22.2% | 15.6% | 0.0% | 0.0% | 1.3% | 0.0% | 2.0% |
| N | 58 | 1 | 9 | 7 | 9 | 16 | 2 | 0 | 1 | 4 | 2 | 5 | 0 | 0 | 1 | 0 | 1 |

Source: PROMIS.

**Table 14.**
**Release Type Imposed, by Crime Type—Misdemeanor Defendants Without Prior Arrests, 1974**
**(D.C. Superior Court)**

| Release Type | Total | Homicide | Assault | Sexual Assault | Robbery | Burglary | Larceny | Fraud | Other Property | Gun | Other Weapon | Gambling | Cons. Sex | Drugs | Bail Viol. | Kidnap. | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | | | | | | | | | | | | | | | | | |
| % | 100.0% | 0.1% | 10.5% | 0.1% | 0.7% | 5.0% | 24.5% | 3.1% | 2.0% | 8.8% | 1.1% | 1.6% | 16.7% | 23.2% | 1.0% | 0.0% | 1.6% |
| N | 3,392 | 4 | 357 | 4 | 24 | 168 | 830 | 105 | 69 | 297 | 39 | 53 | 568 | 787 | 34 | 0 | 53 |
| Personal recog. | | | | | | | | | | | | | | | | | |
| % | 80.5 | 75.0 | 75.6 | 50.0 | 70.8 | 70.8 | 81.9 | 81.9 | 71.0 | 83.8 | 79.5 | 77.4 | 75.4 | 88.9 | 32.4 | 0.0 | 83.0 |
| N | 2,730 | 3 | 270 | 2 | 17 | 119 | 680 | 86 | 49 | 249 | 31 | 41 | 428 | 700 | 11 | 0 | 44 |
| Surety bond | | | | | | | | | | | | | | | | | |
| % | 6.8 | 25.0 | 9.2 | 0.0 | 12.5 | 8.9 | 7.1 | 6.7 | 8.7 | 6.8 | 5.1 | 20.8 | 6.4 | 3.1 | 32.4 | 0.0 | 5.7 |
| N | 231 | 1 | 33 | 0 | 3 | 15 | 59 | 7 | 6 | 20 | 2 | 11 | 36 | 24 | 11 | 0 | 3 |
| Cash bond | | | | | | | | | | | | | | | | | |
| % | 4.8 | 0.0 | 5.3 | 25.0 | 4.2 | 5.4 | 3.2 | 4.8 | 2.8 | 3.3 | 0.0 | 0.0 | 10.3 | 2.6 | 26.5 | 0.0 | 3.8 |
| N | 163 | 0 | 19 | 1 | 1 | 9 | 27 | 5 | 2 | 10 | 0 | 0 | 58 | 20 | 9 | 0 | 2 |
| Third party | | | | | | | | | | | | | | | | | |
| % | 6.9 | 0.0 | 7.8 | 25.0 | 12.5 | 11.3 | 6.9 | 6.7 | 14.5 | 5.1 | 12.8 | 0.0 | 8.1 | 4.6 | 5.9 | 0.0 | 7.5 |
| N | 233 | 0 | 28 | 1 | 3 | 19 | 57 | 7 | 10 | 15 | 5 | 0 | 46 | 36 | 2 | 0 | 4 |
| Other | | | | | | | | | | | | | | | | | |
| % | 1.1% | 0.0% | 1.9% | 0.0% | 0.0% | 3.6% | 0.8% | 0.0% | 2.8% | 1.0% | 2.6% | 1.9% | 0.0% | 0.9% | 2.9% | 0.0% | 0.0% |
| N | 35 | 0 | 7 | 0 | 0 | 6 | 7 | 0 | 2 | 3 | 1 | 1 | 0 | 7 | 1 | 0 | 0 |

Source: PROMIS.

**Table 15.**
**Release Type Imposed, by Crime Type—Misdemeanor Defendants with Prior Arrests, 1974**
**(D.C. Superior Court)**

| Release Type | Total | Homicide | Assault | Sexual Assault | Robbery | Burglary | Larceny | Fraud | Other Property | Gun | Other Weapon | Gambling | Cons. Sex | Drugs | Bail Viol. | Kidnap. | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | | | | | | | | | | | | | | | | | |
| % | 100.0% | 0.1% | 12.5% | 0.2% | 0.6% | 7.7% | 29.7% | 2.0% | 2.7% | 186.0% | 1.8% | 1.2% | 10.2% | 17.8% | 5.0% | 0.0% | 1.9% |
| N | 2,853 | 2 | 358 | 5 | 16 | 221 | 848 | 58 | 77 | 65 | 52 | 34 | 291 | 507 | 143 | 0 | 55 |
| Personal recog. | | | | | | | | | | | | | | | | | |
| % | 59.2 | 50.0 | 65.9 | 100.0 | 50.0 | 48.4 | 57.4 | 53.4 | 59.7 | 68.8 | 59.6 | 76.5 | 58.8 | 71.4 | 14.0 | 0.0 | 56.4 |
| N | 1,690 | 1 | 236 | 5 | 8 | 107 | 487 | 31 | 46 | 128 | 31 | 26 | 171 | 362 | 20 | 0.0 | 31 |
| Surety bond | | | | | | | | | | | | | | | | | |
| % | 18.4 | 50.0 | 15.0 | 0.0 | 31.3 | 19.5 | 19.7 | 15.5 | 14.3 | 18.3 | 21.1 | 14.7 | 13.4 | 11.8 | 51.8 | 0.0 | 21.8 |
| N | 525 | 1 | 54 | 0 | 5 | 43 | 167 | 9 | 11 | 34 | 11 | 5 | 39 | 60 | 74 | 0 | 12 |
| Cash bond | | | | | | | | | | | | | | | | | |
| % | 8.8 | 0.0 | 5.1 | 0.0 | 0.0 | 10.8 | 9.9 | 12.1 | 9.1 | 4.3 | 3.8 | 5.9 | 15.5 | 4.8 | 17.5 | 0.0 | 10.9 |
| N | 252 | 0 | 18 | 0 | 0 | 24 | 84 | 7 | 7 | 8 | 2 | 2 | 45 | 24 | 25 | 0 | 6 |
| Third party | | | | | | | | | | | | | | | | | |
| % | 11.2 | 0.0 | 10.3 | 0.0 | 18.8 | 16.3 | 10.0 | 13.8 | 11.7 | 7.5 | 15.4 | 2.9 | 12.4 | 11.0 | 14.0 | 0.0 | 10.9 |
| N | 319 | 0 | 37 | 0 | 3 | 36 | 85 | 8 | 9 | 14 | 8 | 1 | 36 | 56 | 20 | 0 | 6 |
| Other | | | | | | | | | | | | | | | | | |
| % | 2.4% | 0.0% | 3.7% | 0.0% | 0.0% | 5.0% | 3.0% | 5.2% | 5.2% | 1.1% | 0.0% | 0.0% | 0.0% | 1.0% | 2.8% | 0.0% | 0.0% |
| N | 67 | 0 | 13 | 0 | 0 | 11 | 25 | 3 | 4 | 2 | 0 | 0 | 0.0 | 5 | 4 | 0 | 0 |

Source: PROMIS.

**Table 16.**
**Release Type Imposed, by Pending Case Status, 1974**
**(D.C. Superior Court)**

| Release Type | Pending Case Status | | | | | |
|---|---|---|---|---|---|---|
| | Felonies | | | Misdemeanors | | |
| | Total | None Pending | At Least One Pending | Total | None Pending | At Least One Pending |
| Total | | | | | | |
| % | 100.0% | 82.7% | 17.3% | 100.0% | 88.3% | 11.7% |
| N | 4,631 | 3,832 | 799 | 6,249 | 5,517 | 732 |
| Personal recog. | | | | | | |
| % | 44.8 | 49.7 | 21.7 | 70.8 | 75.4 | 35.9 |
| N | 2,076 | 1,903 | 173 | 4,423 | 4,160 | 263 |
| Surety bond | | | | | | |
| % | 28.9 | 24.4 | 50.4 | 12.2 | 9.2 | 34.3 |
| N | 1,338 | 935 | 403 | 757 | 506 | 251 |
| Cash bond | | | | | | |
| % | 7.4 | 6.2 | 13.6 | 6.6 | 5.7 | 13.9 |
| N | 346 | 237 | 109 | 415 | 313 | 102 |
| Third party | | | | | | |
| % | 16.9 | 17.8 | 12.6 | 8.8 | 8.2 | 13.7 |
| N | 782 | 681 | 101 | 552 | 452 | 100 |
| Other | | | | | | |
| % | 1.9% | 2.1% | 1.6% | 1.6% | 1.5% | 2.1% |
| N | 89 | 76 | 13 | 102 | 86 | 16 |

Source: PROMIS.

showed negligible variation. If the rates had been controlled for charge simultaneously with age, we expect that even these slight differences would decrease sharply. For example, if younger defendants are committing more serious crimes, the nature of the charge rather than the defendant's age may be the factor influencing pretrial release conditions.

### Race

Inferences concerning the effect of race should be made cautiously, due to the lack of statistical control for variables that may be related to both race and release conditions. Nevertheless, Table 18 indicates that, in felony cases, whites and nonwhites are about equally likely to receive nonfinancial release. However, the table indicates that among the nonfinancial releases, third-party custody is more common for nonwhites than for whites, perhaps as a result of Bonabond policies. In misdemeanor cases, in contrast, white defendants are more likely than nonwhites to receive nonfinancial release in general, according to Table 18. Controlling for type of charge and employment status would clearly be useful in understanding the racial factor more fully; such controls are employed in the multivariate analysis reported in the appendix.

**Table 17.**
**Release Type Imposed, by Defendant's Age, 1974**
**(D.C. Superior Court)**

| Release Type | Total | 18–21 | 22–25 | 26–30 | 31–35 | 36–73 | Unknown |
|---|---|---|---|---|---|---|---|
| | | | | Felonies | | | |
| Total | | | | | | | |
| % | 100.0% | 30.4% | 24.0% | 17.2% | 8.2% | 15.9% | 4.3% |
| N | 4,631 | 1,409 | 1,111 | 796 | 378 | 738 | 199 |
| Personal recog. | | | | | | | |
| % | 44.8 | 45.8 | 43.2 | 40.7 | 46.6 | 51.9 | 33.7 |
| N | 2,076 | 646 | 480 | 324 | 176 | 383 | 67 |
| Surety bond | | | | | | | |
| % | 28.9 | 25.4 | 33.9 | 32.3 | 29.6 | 26.4 | 20.1 |
| N | 1,338 | 358 | 376 | 257 | 112 | 195 | 40 |
| Cash bond | | | | | | | |
| % | 7.4 | 7.0 | 8.8 | 9.8 | 6.9 | 5.2 | 3.5 |
| N | 346 | 99 | 98 | 78 | 26 | 38 | 7 |
| Third party | | | | | | | |
| % | 16.9 | 20.4 | 12.7 | 15.5 | 13.8 | 13.1 | 40.7 |
| N | 782 | 288 | 141 | 123 | 52 | 97 | 81 |
| Other | | | | | | | |
| % | 1.9 | 1.3 | 1.5 | 1.8 | 3.2 | 3.3 | 2.0 |
| N | 89 | 89 | 16 | 14 | 12 | 25 | 4 |
| | | | | Misdemeanors | | | |
| Total | | | | | | | |
| % | 100.0 | 29.8 | 23.2 | 17.7 | 9.4 | 18.7 | 1.3 |
| N | 6,249 | 1,860 | 1,452 | 1,103 | 586 | 1,169 | 79.0 |
| Personal recog. | | | | | | | |
| % | 70.8 | 74.1 | 68.5 | 69.7 | 69.3 | 70.7 | 60.8 |
| N | 4,423 | 1,379 | 994 | 769 | 406 | 827 | 48 |
| Surety bond | | | | | | | |
| % | 12.2 | 9.1 | 12.7 | 14.4 | 13.6 | 13.0 | 16.4 |
| N | 257 | 169 | 184 | 159 | 80 | 152 | 13 |
| Cash bond | | | | | | | |
| % | 6.6 | 6.3 | 8.1 | 6.4 | 5.5 | 6.0 | 11.4 |
| N | 415 | 117 | 117 | 70 | 32 | 70 | 9 |
| Third party | | | | | | | |
| % | 8.8 | 9.5 | 9.9 | 8.5 | 8.4 | 6.8 | 11.4 |
| N | 552 | 177 | 144 | 94 | 49 | 79 | 9 |
| Other | | | | | | | |
| % | 1.6% | 1.1% | 0.9% | 1.0% | 3.3% | 3.5% | 0.0% |
| N | 102 | 18 | 13 | 11 | 19 | 41 | 0 |

Source: PROMIS.

**Table 18.**
**Release Type Imposed, by Defendant's Race, 1974**
**(D.C. Superior Court)**

| | Felonies | | | Misdemeanors | | |
|---|---|---|---|---|---|---|
| Release Type | Total | Nonwhite | White | Total | Nonwhite | White |
| Total | | | | | | |
| % | 100.0% | 94.8% | 5.2% | 100.0% | 85.1% | 14.9% |
| N | 4,583 | 4,345 | 238 | 6,103 | 5,196 | 907 |
| Personal recog. | | | | | | |
| % | 44.8 | 44.5 | 50.0 | 70.6 | 69.6 | 76.0 |
| N | 2,051 | 1,932 | 119 | 4,308 | 3,619 | 689 |
| Surety bond | | | | | | |
| % | 28.9 | 29.0 | 26.9 | 12.2 | 12.9 | 8.1 |
| N | 1,327 | 1,263 | 64 | 747 | 674 | 73 |
| Cash bond | | | | | | |
| % | 7.5 | 7.4 | 8.4 | 6.7 | 6.3 | 8.6 |
| N | 344 | 324 | 20 | 408 | 330 | 78 |
| Third party | | | | | | |
| % | 16.8 | 17.1 | 12.2 | 8.8 | 9.2 | 6.4 |
| N | 772 | 743 | 29 | 538 | 480 | 58 |
| Other | | | | | | |
| % | 2.0% | 2.0% | 2.6% | 1.6% | 1.8% | 1.0% |
| N | 89 | 83 | 6 | 102 | 93 | 9 |

Source: PROMIS.

### Sex

Because only 10 percent of the defendants in this analysis are female, small cell sizes make it difficult to infer the effect of defendant sex on the distribution of pretrial release conditions. Nevertheless, Table 19 offers some interesting findings. Women charged with felonies were more likely than men to receive nonfinancial release, either on personal recognizance or to a third-party custodian. Yet, when one examines misdemeanor cases, both sexes received PR release at the same rate: 71 percent. Why do female felony defendants receive apparently preferential treatment in felony cases? Why not in misdemeanors? Does the difference reflect judicial chivalry or the effect of different crime types? An investigation of such questions is deferred to the multivariate analysis in Chapter 3.

### Employment Status

Perhaps the most striking feature of Table 20 is that among all defendants for whom employment status was recorded, more than half were unemployed. With respect to pretrial release decisions, however, the table raises doubt as to how strongly judges consider employment stability in their release decisions. If this factor were being considered systematically, we would expect a much higher PR rate for employed defendants than for their jobless counterparts. Yet the advantage enjoyed by employed defendants is less than 10 percentage points over the entire defendant population, for both alleged felons and misdemeanants. It is

**Table 19.**
**Release Type Imposed, by Defendant's Sex, 1974**
**(D.C. Superior Court)**

| | Felonies | | | Misdemeanors | | |
|---|---|---|---|---|---|---|
| Release Type | Total | Male | Female | Total | Male | Female |
| Total | | | | | | |
| % | 100.0% | 90.9% | 9.1% | 100.0% | 81.4% | 18.6% |
| N | 4,631 | 4,210 | 421 | 6,249 | 5,084 | 1,165 |
| Personal recog. | | | | | | |
| % | 44.8 | 43.6 | 57.2 | 70.8 | 70.9 | 70.1 |
| N | 2,076 | 1,835 | 241 | 4,423 | 3,606 | 817 |
| Surety bond | | | | | | |
| % | 28.9 | 29.8 | 19.7 | 12.2 | 12.7 | 9.3 |
| N | 1,338 | 1,255 | 83 | 757 | 649 | 108 |
| Cash bond | | | | | | |
| % | 7.4 | 7.6 | 6.2 | 6.6 | 5.8 | 10.2 |
| N | 346 | 320 | 26 | 415 | 296 | 119 |
| Third party | | | | | | |
| % | 16.9 | 12.0 | 15.4 | 8.8 | 8.6 | 9.7 |
| N | 782 | 717 | 65 | 552 | 439 | 113 |
| Other | | | | | | |
| % | 1.9% | 1.9% | 1.4% | 1.6% | 1.9% | 0.7% |
| N | 89 | 83 | 6 | 102 | 94 | 8 |

Source: PROMIS.

worth noting that nearly one-third of the unemployed defendants were required to post surety bonds. Since unemployment usually indicates a depleted financial condition, it is likely that those defendants stand little chance of obtaining release.

## OBTAINING RELEASE

For defendants assigned financial conditions, an important issue is their ability to satisfy those conditions and obtain release. Unfortunately, this outcome is not routinely communicated to the U.S. Attorney's Office; hence, it is not recorded in PROMIS. However, for this study the release outcome was hand-collected from court records for a random sample of defendants assigned financial release conditions. Although an attempt was made to collect data for a 25-percent sample, missing and ambiguous court records reduced the actual sample size to 22 percent. Based on this sample, Table 21 reports, separately for felonies and misdemeanors, the release outcomes for defendants assigned cash or surety bond. Bond amounts have been categorized as being above or below the respective median amounts for cash and surety bond.

The table confirms two findings that might have been expected. First, defendants succeed in posting cash bond far more often than they succeed in posting surety bond. Among felony cases, the 73 percent overall release rate among cash-bond defendants exceeds by 28 percentage points the rate for surety-bond defendants. In misdemeanor cases cash-bond defendants had a 24-point advantage. The differentials reflect the relative ease of raising the 10 percent deposit

**Table 20.**
**Release Type Imposed, by Defendant's Employment Status, 1974**
**(D.C. Superior Court)**

| Release Type | Felonies | | | | Misdemeanors | | | |
|---|---|---|---|---|---|---|---|---|
| | Total | Employed | Un-employed | Unknown | Total | Employed | Un-employed | Unknown |
| Total | | | | | | | | |
| % | 100.0% | 38.6% | 48.9% | 12.5% | 100.0% | 47.2% | 41.2% | 11.6% |
| N | 4,631 | 1,786 | 2,265 | 580 | 6,249 | 2,950 | 2,574 | 725 |
| Personal recog. | | | | | | | | |
| % | 44.8 | 52.6 | 40.4 | 38.1 | 70.8 | 80.7 | 61.1 | 64.8 |
| N | 2,076 | 940 | 915 | 221 | 4,423 | 2,381 | 1,572 | 470 |
| Surety bond | | | | | | | | |
| % | 28.9 | 23.7 | 31.3 | 35.5 | 12.2 | 8.4 | 15.8 | 14.2 |
| N | 1,338 | 413 | 709 | 206 | 757 | 246 | 408 | 103 |
| Cash bond | | | | | | | | |
| % | 7.4 | 7.1 | 7.6 | 7.9 | 6.6 | 4.4 | 8.9 | 7.9 |
| N | 346 | 127 | 173 | 46 | 415 | 129 | 229 | 57 |
| Third party | | | | | | | | |
| % | 16.9 | 15.0 | 18.5 | 16.6 | 8.8 | 5.6 | 12.0 | 10.9 |
| N | 782 | 268 | 418 | 96 | 552 | 164 | 309 | 79 |
| Other | | | | | | | | |
| % | 1.9% | 1.6% | 2.3% | 2.0% | 1.6% | 1.0% | 2.1% | 2.2% |
| N | 89 | 28 | 50 | 11 | 102 | 30 | 56 | 16 |

Source: PROMIS.

**Table 21.**
**Release Outcome, by Type of Financial Release, 1974**
**(D.C. Superior Court)**

| Release Outcome | Surety Bond | | | Cash Bond | | |
|---|---|---|---|---|---|---|
| | All Amounts | Below Median ($2,500) | Above Median ($2,500) | All Amounts | Below Median ($1,500) | Above Median ($1,500) |
| | | | Felonies | | | |
| Release obtained | | | | | | |
| % | 45.2% | 55.4% | 40.8% | 73.1% | 100.0% | 71.6% |
| N | 137 | 51 | 86 | 57 | 4 | 53 |
| Release not obtained | | | | | | |
| % | 54.8 | 44.6 | 59.2 | 26.9 | 0.0 | 28.4 |
| N | 166 | 41 | 125 | 21 | 0 | 21 |
| Total | | | | | | |
| % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| N | 303 | 92 | 211 | 78 | 4 | 74 |
| | | | Misdemeanors | | | |
| Release obtained | | | | | | |
| % | 56.1 | 59.3 | 47.8 | 80.2 | 86.8 | 69.7 |
| N | 92 | 70 | 22 | 69 | 46 | 23 |
| Release not obtained | | | | | | |
| % | 43.9 | 40.7 | 52.2 | 19.8 | 13.2 | 30.3 |
| N | 72 | 48 | 24 | 17 | 7 | 10 |
| Total | | | | | | |
| % | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| N | 164 | 118 | 46 | 86 | 53 | 33 |

Source: D.C. Superior Court Records.

required for cash bond, compared with raising the full amount from one's own sources or from a bondsman.

## PRETRIAL MISCONDUCT

As noted in Chapter 1, a major concern of both D.C. residents and criminal justice officials has been the problem of defendants committing crimes while awaiting trial. Table 22 reports the rates at which accused felons and misdemeanants were rearrested, controlling for the type of release they obtained. For obvious reasons, defendants who were unable to obtain financial release are not included in any of the tables that describe pretrial misconduct rates. Rearrests for bail violations are not included in Tables 22 or 23.

**Table 22.**
**Pretrial Rearrest Frequency, by Type of Release Obtained, 1974**
**(D.C. Superior Court)**

| Pretrial Conduct | Personal Recognizance | Surety Bond | Cash Bond | Third Party | Other | Aggregate[a] |
|---|---|---|---|---|---|---|
| | | | Felonies | | | |
| Not rearrested | | | | | | |
| % | 89.3% | 81.8% | 75.4% | 86.2% | 95.5% | 86.6% |
| N | 1,853 | 112 | 43 | 674 | 85 | 3,313 |
| Rearrested[b] | | | | | | |
| % | 10.7 | 18.2 | 24.6 | 13.8 | 4.5 | 13.4 |
| N | 223 | 25 | 14 | 108 | 4 | 511 |
| Total | | | | | | |
| % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| N | 2,076 | 137 | 57 | 782 | 89 | 3,825 |
| | | | Misdemeanors | | | |
| Not rearrested | | | | | | |
| % | 94.3 | 93.5 | 91.3 | 95.1 | 92.2 | 93.2 |
| N | 4,173 | 86 | 63 | 478 | 94 | 5,419 |
| Rearrested[b] | | | | | | |
| % | 5.7 | 6.5 | 8.7 | 14.9 | 7.8 | 6.8 |
| N | 250 | 6 | 6 | 82 | 8 | 394 |
| Total | | | | | | |
| % | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| N | 4,423 | 92 | 69 | 552 | 102, | 5,814 |

Source: PROMIS and D.C. Superior Court records.
[a] In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.
[b] Arrests for bail violations not included.

Among felony defendants on pretrial release during 1974, an estimated 13 percent were rearrested before disposition of their cases; among alleged misdemeanants, the estimated rate was 7 percent.[7] The difference may reflect less proclivity toward crime among misdemeanants, or the fact that misdemeanor cases are disposed of more quickly, or both. The felony defendants released on cash bond were by far the least dependable—25 percent were rearrested—about twice the rate for defendants receiving nonfinancial release. Given the high-risk nature of the defendants selected by the major third-party custodians, it is not surprising that, particularly in misdemeanor cases, their rearrest rate was relatively high.

Many would argue that this table overstates the dimensions of the pretrial crime problem, and that a more accurate picture would be obtained by counting only pretrial rearrests that lead to conviction. This is done for a subset of cases—each defendant's first 1974 case—in Table 23. The estimated aggregate rates reflect the fact that fewer than half of all pretrial rearrests lead to conviction. Unfortunately, the small cell sizes that result preclude meaningful comparisons of rates across release types.

**Table 23.**
**Pretrial Rearrest and Conviction Frequency, by Type of Release Obtained, 1974 (D.C. Superior Court)**

| Pretrial Conduct | Personal Recognizance | Surety Bond | Cash Bond | Third Party | Other | Aggregate[a] |
|---|---|---|---|---|---|---|
| | | | Felonies | | | |
| Not rearrested and convicted | | | | | | |
| % | 95.5% | 92.5% | 97.0% | 94.4% | 98.5% | 94.9% |
| N | 1,651 | 99 | 32 | 603 | 65 | 2,912 |
| Rearrested[b] and convicted | | | | | | |
| % | 4.5 | 7.5 | 3.0 | 5.6 | 1.5 | 5.1 |
| N | 77 | 8 | 1 | 36 | 1 | 155 |
| Total | | | | | | |
| % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| N | 1,728 | 107 | 33 | 639 | 66 | 3,067 |
| | | | Misdemeanors | | | |
| Not rearrested and convicted | | | | | | |
| % | 97.5 | 96.3 | 92.2 | 95.0 | 97.4 | 97.0 |
| N | 3,783 | 52 | 47 | 400 | 74 | 4,705 |
| Rearrested[b] and convicted | | | | | | |
| % | 2.5 | 3.7 | 7.8 | 5.0 | 2.6 | 3.0 |
| N | 97 | 2 | 4 | 21 | 2 | 147 |
| Total | | | | | | |
| % | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| N | 3,880 | 54 | 51 | 421 | 76 | 4,852 |

Source: PROMIS and D.C. Superior Court records.
Note: For a defendant having more than one 1974 case, only his conduct during the first case is counted in this table.
[a] In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.
[b] Arrests for bail violations not included.

The extent to which released defendants fail to appear for trial is examined in Table 24. This table reports overall nonappearance rates of about 11 percent in both felony and misdemeanor cases. It is somewhat surprising that the misdemeanor rate is as high as the felony rate, for two reasons. First, it is sometimes argued that since felony cases present more severe potential sentences, felony defendants have a greater incentive to flee. Second, it is argued that felony cases, which take longer to dispose of, present greater opportunities to flee. Our results, which are consistent with results obtained by others, do not support either of these contentions.[8]

Among felony defendants, the alternative forms of release do not generate widely divergent nonappearance rates; however, defendants released on cash

**Table 24.**
**Frequency of Failure to Appear, by Type of Release Obtained, 1974**
**(D.C. Superior Court)**

| Pretrial Conduct | Personal Recognizance | Surety Bond | Cash Bond | Third Party | Other | Aggregate[a] |
|---|---|---|---|---|---|---|
| | | | Felonies | | | |
| Did not fail to appear | | | | | | |
| % | 89.6% | 89.8% | 87.7% | 88.4% | 94.4% | 89.4% |
| N | 1,860 | 123 | 50 | 691 | 84 | 3,418 |
| Failed to appear | | | | | | |
| % | 10.4 | 10.2 | 12.3 | 11.6 | 5.6 | 10.6 |
| N | 216 | 14 | 7 | 91 | 5 | 407 |
| Total | | | | | | |
| % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| N | 2,076 | 137 | 57 | 782 | 89 | 3,825 |
| | | | Misdemeanors | | | |
| Did not fail to appear | | | | | | |
| % | 90.9 | 89.1 | 76.8 | 81.9 | 85.3 | 89.0 |
| N | 4,020 | 82 | 53 | 452 | 87 | 5,170 |
| Failed to appear | | | | | | |
| % | 9.1 | 10.9 | 23.2 | 18.1 | 14.7 | 11.0 |
| N | 403 | 10 | 16 | 100 | 15 | 636 |
| Total | | | | | | |
| % | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| N | 4,423 | 92 | 69 | 552 | 102 | 5,806 |

Source: PROMIS and D.C. Superior Court records.
[a]In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

bond do exhibit a somewhat higher failure rate. Among misdemeanor defendants, however, a much wider range is observed—cash bond and third-party defendants miss appearances twice as frequently as those released on personal recognizance. This may reflect the fact that among misdemeanor defendants, cash bond and third-party custody are imposed on only exceptionally high-risk defendants (e.g., career felons who happen to be arrested for a misdemeanor this time).

Additional insight into the problem of failure to appear can be gained by considering only "willful" failures to appear, that is, those followed by arrest for a Bail Reform Act violation or those that prevented disposition of the case as of August 1975.[9] Table 25 reports 1974 rates of willful failures to appear for felons and misdemeanants. Under this definition, over half of the nonappearances are apparently not intentional. Many of the nonwillful failures may be the result of communication breakdowns between the courts and the defendant. As with arrest leading to conviction, small cell sizes make comparisons across release conditions very tentative. However, those released on personal recognizance were least likely to miss an appearance deliberately—only 35 percent of their failures could

**Table 25.**
**Frequency of Willful Failure to Appear, by Type of Release Obtained, 1974**
**(D.C. Superior Court)**

| Pretrial Conduct | Personal Recognizance | Surety Bond | Cash Bond | Third Party | Other | Aggregate[a] |
|---|---|---|---|---|---|---|
| | | | Felonies | | | |
| Did not willfully fail to appear | | | | | | |
| % | 96.5% | 95.3% | 93.9% | 95.0% | 95.5% | 95.9% |
| N | 1,668 | 102 | 31 | 607 | 63 | 2,940 |
| Willfully failed to appear | | | | | | |
| % | 3.5 | 4.7 | 6.1 | 5.0 | 4.5 | 4.1 |
| N | 60 | 5 | 2 | 32 | 3 | 127 |
| Total | | | | | | |
| % | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| N | 1,728 | 107 | 33 | 639 | 66 | 3,067 |
| | | | Misdemeanors | | | |
| Did not willfully fail to appear | | | | | | |
| % | 97.5 | 96.3 | 92.2 | 95.0 | 97.4 | 97.0 |
| N | 3,783 | 52 | 47 | 400 | 74 | 4,705 |
| Willfully failed to appear | | | | | | |
| % | 2.5 | 3.7 | 7.8 | 5.0 | 2.6 | 3.0 |
| N | 97 | 2 | 4 | 21 | 2 | 147 |
| Total | | | | | | |
| % | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| N | 3,880 | 54 | 51 | 421 | 76 | 4,852 |

Source: PROMIS and D.C. Superior Court records.
[a]In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

be categorized as willful. This is a reassuring finding, since it is hoped that those defendants receiving personal recognizance are the ones most likely to appear. Only 3.5 percent of all PR felony defendants willfully avoided their required court appearance. Misdemeanants showed an even sharper distinction between willful and involuntary failures. Of the 9 percent overall nonappearance rate for PR misdemeanants, only 2.5 percent were willful. Cash-bond defendants also showed a drastic reduction, from a 23 percent total rate to an 8 percent willful rate.

## PREVENTIVE DETENTION

Chapter 1 discussed the puzzling lack of use of the preventive detention provision of the 1970 D.C. Court Reform Act. No tables are presented on the use of this provision in 1974, because it was requested only once during the year. Moreover,

Table 26 demonstrates clearly that this provision, intended to protect the community from certain classes of defendants thought to be dangerous, has been used seldom during the past five years. The data do reflect a slight upward trend in its use during the last two years. However, despite the contention cited in Chapter 1 that a third of all defendants are eligible for detention, the rate at which it is requested has yet to reach 1 percent.

Former U.S. Attorney Earl J. Silbert, who headed the office responsible for requesting preventive detention, has stated that since the 60-day permissible detention period is too short to process most felony cases, he was reluctant to request it in all but a few cases. He suggested lengthening the period, enlarging the eligible group to include drug addicts charged with crimes, and rephrasing the law to specify first-degree murder as making the defendant eligible for detention.[10] Professor William McDonald attributes the dormancy of preventive detention to the prosecutor's assumption that judges will use high financial bond to detain dangerous defendants unofficially, saving both court and prosecutor the burden of a preventive detention hearing.[11]

Recent legislation, passed by the U.S. House of Representatives in 1977 and still under consideration by the U.S. Senate at the time of this writing, includes amendments to existing law that would lengthen the permissible detention period and broaden eligibility criteria, as suggested by former U.S. Attorney Silbert. Some of the results reported in the next chapter of this report are pertinent to the legislation and provide a test of McDonald's hypothesis.

**Table 26.**
**Requests for Preventive Detention, 1974–1977**
**(D.C. Superior Court)**

| Year | No. of Previous Detention Hearings Requested | Percentage of Total Felony Cases |
|---|---|---|
| 1973 | 22 | .4% |
| 1974 | 1 | .0 |
| 1975 | 4 | .1 |
| 1976 | 24 | .4 |
| 1977[a] | 15 | .6% |

Source: PROMIS.
[a] First 6 months.

**Notes**

1. See Paul B. Wice, *Freedom for Sale* (Lexington, Mass.: Lexington Books, 1974); and Wayne Thomas, *Bail Reform in America* (Berkeley: University of California Press, 1976).

2. *Evaluation of Third Party Custody Programs,* submitted to the D.C. Office of Criminal Justice Plans and Analysis (Washington, D.C.: Lewin & Associates, 1975): 2.

3. The use of bail to diffuse release responsibility in cases involving serious crimes has been noted by Frederic Suffet in "Bail Setting: A Study of Courtroom Interaction," reprinted in George F. Cole, ed., *Criminal Justice: Law and Politics* (North Scituate, Mass.: Duxbury Press, 1972): 309–10.

4. In fact, tests for independence of release conditions across judges produce chi-square statistics of 602.6 for felony cases and 382.0 for misdemeanor cases (Table 6). At the 0.001 significance level, these statistics indicate that judge identity strongly affects release conditions.

5. With the exception of surety bond, results were statistically significant at the 0.05 level.

6. Throughout this discussion, "arrest" refers to an adult arrest for a felony or serious misdemeanor, for which the defendant was fingerprinted by a police agency reporting to the FBI.

7. It is likely that felony defendants are more likely to be rearrested for felonies and misdemeanor defendants, for misdemeanors; however, specialization is far from complete. Kristen M. Williams, *The Scope and Prediction of Recidivism,* PROMIS Research Publication no. 10 (INSLAW, 1979): 37, in describing general (not necessarily pretrial) rearrest patterns over several years, reports: "Of the felony panel defendants, 29 percent had a later arrest for a felony and 22 percent had a later arrest for a misdemeanor. Twenty-two percent of the persons arrested in their panel case for a misdemeanor had a later arrest for a felony, and 28 percent had a later arrest for a misdemeanor."

8. Equal rates for felony and misdemeanor cases, and higher rates for the less serious "violation" category, were found by S. Andrew Schaffer, *Bail and Parole Jumping in Manhattan in 1967* (New York: Vera Institute of Justice, 1970): 25–28.

9. Receipt of the notice to appear by a defendant who then fails to appear is considered *prima facie* evidence of willful failure to appear. If the officer who serves the bench warrant finds evidence of receipt of the notice to appear, he is expected to rearrest the defendant for a Bail Reform Act violation.

10. Earl J. Silbert, "Pre-trial Detention: Trying to Find a Common Sense Solution," *The Washington Post,* April 8, 1976: Md. 2.

11. William F. McDonald, "Testimony to U.S. Senate Subcommittee on the District of Columbia regarding H.R. 7747," February 6, 1978: 5–6.

# 3

# Multivariate Analysis of Pretrial Release and Misconduct

Chapter 2 presented a quantitative description of pretrial release practices in the District of Columbia. It also indicated the size of the pretrial misconduct problem, as measured by the rates at which defendants fail to appear or become rearrested and convicted. Nevertheless, statistics such as those in Chapter 2 often raise as many questions as they answer; by themselves, they can even encourage erroneous conclusions.

For example, Table 19 reported that a female felony defendant was nearly one-third more likely than a male felony defendant to be released on personal recognizance. Does this demonstrate chivalry (or sexism) by District of Columbia judges, or does it indicate that, for some other reason, female defendants are considered better pretrial risks than males?

As another example, Tables 22 and 24 indicate that felony defendants released on cash bond are more likely than those on personal recognizance to be rearrested or to fail to appear for trial. Based on those results, should we advocate increased use of release on recognizance as a way to reduce pretrial flight, or should we conclude that the judges underestimated the misconduct potential of the cash-bond defendants and should have required even higher amounts?

Both examples illustrate the difficulty of reaching conclusions when causal variables—sex and charge in one case, and defendant characteristics and bond amount in the other—may interact to determine a result, such as pretrial behavior. We could study the first question by tabulating release type by crime type, as in Tables 4 and 5, separately for males and females. Sex would then be "held constant," but four tables would be needed to present the results instead of two. The required number of tables explodes if we simultaneously try to hold constant such variables as prior arrests, prior failures to appear, local and nonlocal residence, employment status, and all the other variables that are often thought to work together in explaining pretrial behavior.

The statistical techniques for learning how the values of several explanatory variables determine the value of a dependent variable are often grouped together under the title "multivariate analysis." Perhaps the most popular of these techniques is multiple regression analysis, which is usually appropriate when the dependent variable can take on any of a wide range of values. Another technique, called probit analysis, is often used when the dependent variable can take on only a few values; an example is a variable that equals one if a released defendant fails to appear, and zero otherwise. Both techniques were used, as appropriate, in this study.

To supplement the descriptive data in Chapter 2, we performed several multivariate analyses of 1974 PROMIS data; the results are reported in detail in the appendix and summarized in this chapter. These analyses were designed to study the following concerns regarding pretrial release in the District of Columbia:

**Pretrial Release Conditions**

- How does crime type affect pretrial release decisions?
- How does the defendant's history of arrests and failures to appear affect pretrial release decisions?
- What defendant socioeconomic characteristics affect pretrial release decisions?
- How uniformly do arraignment judges set pretrial release conditions?
- Does the likelihood of conviction or the possible sentence affect pretrial release conditions?
- Are pretrial release conditions affected by capacity constraints in the detention facility?

**Obtaining Release Under Financial Conditions**

- Does a high bond amount prevent a defendant from obtaining release?
- Is the release probability increased if the defendant may post only 10 percent of the bond, rather than a surety bond for the entire amount?
- What characteristics of the defendant and crime determine whether a required bond is actually posted?

**Pretrial Misconduct**

- Do high bonds and special supervision (by a bondsman or third-party custodian) discourage failure to appear for trial and pretrial rearrests?
- Do defendant and case characteristics used in setting release conditions actually predict failure to appear or future crimes?
- Does a high likelihood of conviction or a high possible sentence encourage failure to appear?

Probit analysis was used to study the following variables: the financial–nonfinancial decision, the choice between cash and surety bond, the choice between personal recognizance and third-party forms of nonfinancial release, pretrial rearrest, and failure to appear. Ordinary least-squares regression analysis was applied to the determination of bond amount, a continuous dependent variable. Before summarizing the results of these analyses, it is useful to discuss some results of previous research on these questions.

## EMPIRICAL RESEARCH ON THE PRETRIAL RELEASE DECISION

Besides the institutional studies of pretrial release cited in Chapter 1, empirical studies of various pretrial release issues have been conducted since the 1930s. The reader is referred to a 1975 evaluation by the National Center for State Courts for a comprehensive review of this literature,[1] and to Chapter 4 for a discussion of the results of other studies of pretrial release issues that are beyond the immediate scope of this report. However, to put our analysis in perspective, it is helpful to discuss a few studies that are especially closely related to ours in terms of questions addressed, methodology employed, or jurisdiction studied.

In 1932, as part of a comprehensive review of criminal justice administration in Portland, Oregon, Morse and Beattie tabulated data on nearly 1,800 felony cases to examine relationships between case characteristics and pretrial release status.[2]

Generally, their tables show that high bail was set in cases involving serious charges, such as robbery and sex crimes. In addition, cases in which high bail was set were carried further through the criminal justice process and ended in conviction more frequently than did other cases. They hypothesized, but could not test, relationships between a common set of characteristics—weight of evidence, community ties, prior record, and aggravating characteristics of the crime—and both imposition of high bail and eventual conviction.

During the 1950s, study teams directed by Caleb Foote interviewed court officials and tabulated data from court records in Philadelphia and New York to learn what factors determine release conditions and what effect those conditions have on eventual case outcome.[3] In both studies, the crime charged and the prosecutor's recommendation were found to be the primary determinants of release conditions; data on defendants' community ties were seldom even collected. As one would expect, the study teams found that the proportion of defendants able to post bond decreased as the bond amount increased. They did not examine whether the defendants for whom the highest bonds were set did in fact present the greatest risk of misconduct if they managed to obtain release. Moreover, although they found that defendants who could not obtain release were convicted at a higher rate and sentenced more harshly than other defendants, they could not conclude whether those findings arose from a direct cause-and-effect relationship or were the result of both adverse defendant and case characteristics.

Literally scores of additional empirical studies, of varying degrees of soundness and sophistication, have been incorporated in evaluations of bail reform projects.[4] The first of these, and the only major one based on a controlled experiment, was a 1963 evaluation of the Manhattan Bail Project.[5] This study reported that defendants in the experimental group, who were recommended for personal recognizance release based on verified information on their community ties, were in fact released at a 60-percent rate. This rate was four times as high as the rate in a control group that contained defendants equally well qualified, according to the project criteria, but not recommended. The study reported an impressively low nonappearance rate, just over 1 percent, among the first 250 defendants released following a recommendation. These results demonstrated clearly that judges respond to release recommendations based on community-ties criteria. However, since the control group did not include defendants who did not satisfy the Project's criteria, the experiment permits no inference about whether the criteria effectively discriminate between good risks and poor risks. It seems reasonable to infer that the Project's supervision of released defendants in the experimental group contributed tothe group's impressive rate of appearance.

Manhattan data were also used in a later study by Schaffer,[6] who attempted to relate nonappearance to crime type, release conditions, community-ties indicators, and disposition time for the case. He found that persons released on personal recognizance following a positive recommendation had a nonappearance rate of 9.4 percent, less than half the rate for those released despite an adverse recommendation. This reflects a positive correlation between the recommendation criteria and the risk a defendant presents, but it does not identify criteria in use that lack predictive power, or potentially useful additional criteria. Schaffer speculated, however, that one negative attribute, suspected drug addiction, should be added to the list. It is of interest that Schaffer's tables indicated no positive influence of seriousness of the charged offense on likelihood of nonappearance.

Three other studies that make extensive use of cross-tabulations are of special interest because they pertain to the District of Columbia pretrial release system.

The first of these, a 1963 study published by the Junior Bar Section of the D.C. Bar Association,[7] included an analysis of questionnaires concerning the bail-setting process. The questionnaires revealed that bond recommendations of the prosecuting Assistant U.S. Attorneys were given great weight in the actual setting of conditions. These recommendations, in turn, were said to be based on the defendant's prior convictions, the nature of the alleged offense, the weight of the evidence, and the degree of injury to the victim. Community-ties indicators, such as length of time as a local resident, length and nature of employment, and prior probation record, were claimed to be important but were usually unavailable. While one hesitates to draw conclusions about behavior from questionnaire responses, the list of variables influencing the recommendation is surprising in light of the historical legal purpose of bail, to assure the defendant's appearance for trial. These findings no doubt helped stimulate enactment of bail reform laws for the District three years later.

The second study analyzed the records of 714 defendants processed by the D.C. criminal justice system during four weeks in 1968.[8] The study found substantial uniformity in pretrial release rates, irrespective of crime type or seriousness. Moreover, it found no defendant characteristics other than employment status to be strongly associated with the probability of pretrial rearrest. The fact that only 47 defendants in the data base were rearrested may help explain the inability to find such relationships. However, even among the small sample, the rearrest probability was found to increase with the length of the pretrial release period.

The third study, performed in 1971 under the auspices of the *Harvard Civil Rights–Civil Liberties Law Review*,[9] was intended to test the power of D.C.'s preventive detention criteria to predict pretrial crime by 427 Boston defendants. The study's principal conclusion, that pretrial crime can be predicted by length of the pretrial release period but not by the D.C. criteria, would have been more convincing if the selection of the sample had been unbiased. All 427 defendants in the sample would have been statutorily detainable as dangerous defendants if they had been arrested in the District of Columbia. Thus, like a study of the effect of age on death rate using a sample containing only elderly persons, the Harvard study may have missed effects that would have been apparent in a sample drawn from the general population of defendants.

More recent studies have applied multivariate statistical techniques in attempts to validate the predictive power of variables used as criteria for release on recognizance. One study, by Michael Gottfredson,[10] incorporated data on 56 personal and case characteristics, including those used in the Vera Institute's Manhattan Bail Project, for 201 low-risk and 328 high-risk released defendants. Among those defendants, Gottfredson reported correlations of only about 0.15 between a score computed according to the Vera rules and various indicators of pretrial misconduct. Within half the sample, randomly selected, an alternative score based on multiple regression weights displayed better correlations (approximately 0.4) with the misconduct indicators. However, when applied to the other half of the sample, the regression-based score performed no better than the Vera score. This study makes clear both the difficulty of predicting pretrial misconduct and the importance of validating results across samples. However, its results are subject to both the usual caveats associated with regression analysis of a dichotomous dependent variable and the possibility that excluding from the sample defendants charged with violent crimes may have unintentionally masked predictive power of some variables that predominate among those defendants. Nevertheless, charged crime type, a drug history, prior convictions, and employment status emerged as significant predictors of nonappearance and pretrial rearrest.

A recent study by Ballard[11] applied discriminant analysis to a sample of 519 Cobb County, Georgia, defendants in an attempt to learn which of 59 variables

showed power to discriminate between defendants who appear for trial and those who do not. Prior drug use, length of residence, presence of a criminal record, and number of children headed Ballard's list of significant predictors. Unfortunately, discriminant analysis relies heavily on an assumption that the independent variables are distributed as multivariate normal. Since virtually all variables included are categorical, the assumption is untenable; moreover, the fact that some of the categorical variables are not coded as the usual 0 to 1 makes interpretation difficult.

A 1977 study by Reynolds[12] found nonlocal residence, the number of prior arrests, and the existence of theft or weapons charges to be significant predictors of nonappearance, using multiple regression analysis. However, these results should be treated cautiously, since bond amount, which is not included in the nonappearance equation, is shown elsewhere in the paper to be correlated with both nonappearance and several of the included variables. This omission biases the other coefficient estimates.

The first economic investigation of pretrial release and misconduct, and the research to which our multivariate analysis owes its greatest intellectual debt, was reported in a pair of articles by Landes.[13] The first article specified a theoretical model of judicial behavior in setting pretrial release conditions. Within the framework of this model, Landes stated testable hypotheses concerning the behavior of judges and released defendants, under certain assumptions about their objectives. In the second article, by testing these hypotheses using data on a random sample of 858 indigent Manhattan defendants, he inferred that bond is set more consistently with the objective of crime control than with the objective of assuring the defendant's appearance for trial.

More specifically, Landes's empirical study found the average statutory sentence for the alleged offense type, the felony–misdemeanor distinction, parole or probation status at time of arrest, forcible arrest resistance, and employment status to be significant determinants of bond amount. Among these variables, all but employment status (and arrest resistance, which could not be tested) were also found to be predictors of either the occurrence or severity of pretrial crime, as measured by rearrest; but only the resistance indicator was found also to explain nonappearance. The other significant predictors of nonappearance—defendant's age and existence of an outstanding detainer—were not found pertinent to the bond decision.

These findings led Landes to state that

> it would not be unreasonable to conclude that the principal social function of the existing bail system (as it operates [in 1971] in New York City) is to prevent defendants from committing additional crimes, rather than from disappearing.[14]

He went on to note the sharp conflict between this finding and the statements by numerous scholars and criminal justice practitioners that such a policy is, if not unconstitutional, at least socially undesirable because of the uncertainty surrounding prediction of future crimes.

In a 1977 study of bail reform projects in three cities, Bynum also made use of the logit model used by Landes and partially confirmed several of Landes's findings in other settings.[15] Like Landes, Bynum found that the defendant's prior record and his financial status had more influence on his ability to obtain personal recognizance release than did his residential and family ties to the community. However, since he also found prior record but not community ties to predict nonappearance, the release decisions in those cities were partially consistent with the objective of reducing nonappearance.

As noted in the appendix, an analysis in the Landes framework but using District of Columbia data is of interest for several reasons. First, since D.C. law

provides for the preventive detention of dangerous defendants, confirmation of his conclusion concerning the goals of financial bond would demonstrate systematic utilization of an extralegal means of detaining them when a legal means exists. Second, our data base permits analysis of females and nonindigents, both of whom were absent from Landes's data base. Third, we have been able to construct a proxy variable that differentiates between willful and nonwillful failure to appear. Fourth, we are able to test for effects of detention facility capacity constraints on pretrial release decisions.

## RESULTS OF MULTIVARIATE ANALYSIS

To study the questions raised earlier in this chapter, we constructed 60 variables, defined in Table A.1 in the appendix, that were considered potentially important. From all variables available in the PROMIS data base, these particular ones were chosen as operational measures of concepts that are theoretically or commonly considered pertinent to the pretrial release decision, the defendant's ability to make bond, or the probability of pretrial misconduct. The concepts and operational measures, as defined in the appendix, are summarized here:

- Current crime seriousness—charge, weapons use, victim injury, victim intimidation, maximum allowable sentence, and whether a felony or misdemeanor.
- Case convictability—victim a business or institution, reluctant prosecution, codefendants, victim–defendant relationship, tangible evidence recovered, number of witnesses, screening prosecutor's assessment of conviction.
- Criminal history—counts of prior arrests for all serious crimes, prior arrests for violent crimes, pending cases, closed cases during 12 months preceding arrest, indicator that defendant is a parolee or probationer.
- Nonappearance history—number of bench warrants against defendant in preceding 12 months, number of bench warrants in pending cases.
- Community ties—income proxy, local residence indicator, current employment status, employment history, drug use, alcohol abuse history.
- Extralegal demographic characteristics—race, sex, age.
- Procedural variables—judge identity, judge experience, detention facility population, Saturday arraignment indicator.[16]

The analysis confirmed the expected effects of some of the above, found others to have important but unexpected effects, and failed to confirm the importance of still others. The three subsections below summarize those findings with respect to release conditions, obtaining release under financial conditions, and pretrial misconduct. Unless stated otherwise, the effects of individual explanatory variables on a dependent variable, as described in the rest of this chapter, should be thought of as if all other pertinent variables in our data base were held constant. The reader is urged to consult the appendix for discussions of goodness of fit, significance levels, and other measures that affect the degree of confidence one may place in the results.

### Release Conditions

Except for the few defendants preventively detained or assigned to narcotics or alcohol programs, the setting of pretrial release conditions in the District

may be thought of as a sequence of three stages of judicial decision making:

Stage 1: Decide whether to set financial or nonfinancial release conditions.

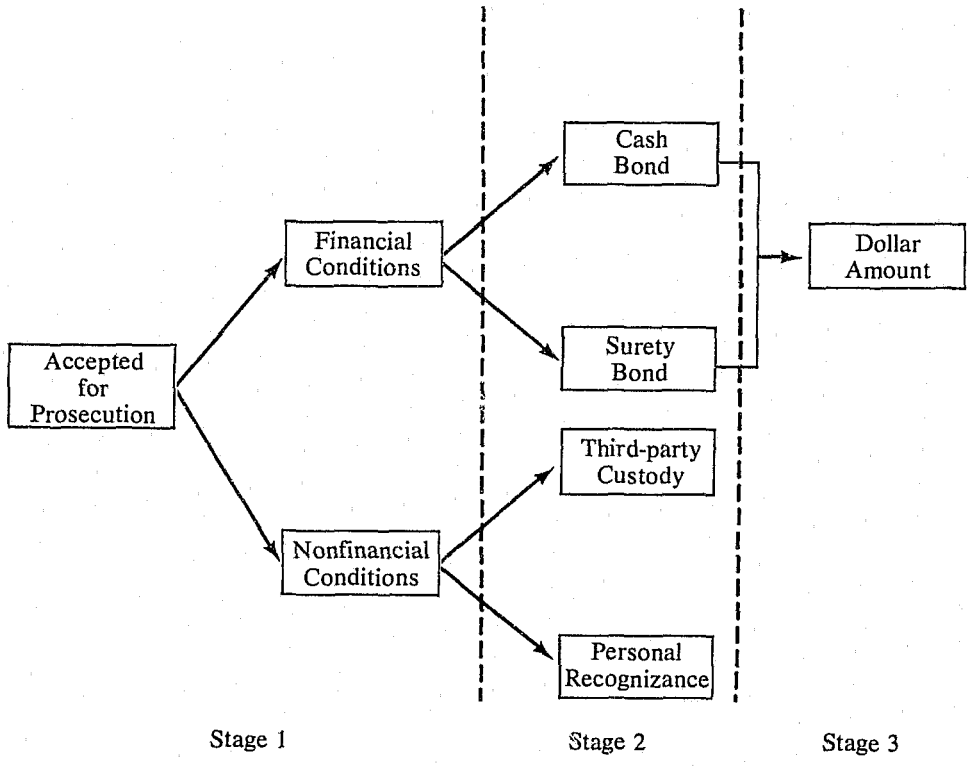
Stage 2: Choose between alternatives within the financial and nonfinancial categories: cash vs. surety financial release; or own-recognizance vs. third-party custodial nonfinancial release.

Stage 3: For defendants assigned financial conditions, set the amount of bond.

The three stages are pictured in Figure 1.

The Stage 1 results, reported in Table A.2 in the appendix, are generally consistent with our expectations. Among felony defendants, those accused of homicide or Bail Reform Act (BRA) violations and those who were armed during the alleged offense appear more likely to receive financial conditions; those accused of assault and drug crimes tend to receive nonfinancial conditions. Misdemeanor defendants accused of BRA violations were also more likely to receive financial conditions, and those accused of drug crimes tended to receive nonfinancial conditions. The results do not suggest that any other crime type affected the decision systematically.

**Figure 1.**
**Stages in the Setting of Pretrial Release Conditions**



The defendant's prior record, as measured by such variables as number of prior arrests (particularly recent arrests), number of pending cases, and status as a parolee or probationer, showed a powerful effect: defendants with extensive histories are less likely to be released on nonfinancial conditions. Most personal defendant characteristics also showed expected effects: local, employed, and low-income defendants received financial conditions at a lower rate than others. White defendants and misdemeanor defendants with a drug history received financial conditions at a higher rate than others.

As anticipated, individual judges were found not to make the financial–nonfinancial decision identically. However, this result was due to deviations of a few judges (two in felony cases, four in misdemeanors) from the norm, rather than general inconsistency over the entire panel of judges. The results suggest that as judges gain experience on the D.C. bench, they use financial conditions more frequently. No evidence was found to support the expectations of some observers that the judges who substitute in Saturday arraignment court make this basic decision differently from the regular weekday judges.

Two variables related to conviction likelihood showed conflicting effects among felony cases. Since it is often argued that a defendant facing an ironclad case against him has more reason to flee, one would expect such defendants to receive more stringent release conditions. This expectation was confirmed with respect to one indicator: when the screening assistant prosecutor indicated reluctance to prosecute because of exculpatory evidence, victim provocation, or victim participation, financial conditions were less likely to be imposed. However, the higher the screening assistant's subjective assessment of conviction likelihood, the less likely was the imposition of financial conditions. These contradictory results may reflect lack of attention to the convictability assessments of inexperienced screening assistants; such inattention may be efficient, since Rhodes found the assessments to be uncorrelated with the probability of conviction at trial.[17] Several variables previously found by others to be statistically associated with conviction probability at trial did not appear to influence the setting of pretrial release conditions.[18]

Another interesting finding our statistical results reveal is that the financial–nonfinancial decision is responsive to capacity problems in the detention facility: the greater the D.C. Jail population during the month preceding arraignment, the less the probability of financial conditions.

As depicted in Figure 1, Stage 2 in setting release conditions involves choosing between the personal recognizance and third-party custody forms of nonfinancial release, or the cash and surety forms of financial release. The results pertaining to the third-party custody decision appear in Table A.3 in the appendix.

We noted in Chapter 2 that the dominant agencies serving as third-party custodians are controversial. Their proponents emphasize their success in reducing economic discrimination against defendants whose prior records and current charges preclude personal recognizance release but who cannot afford to post cash bond or pay a bondsman. Opponents claim that the custodians are lax in providing supervision and unsuccessful in preventing either failure to appear or pretrial rearrest.

Comment on the opponents' claim is deferred to Chapter 4. However, our results on defendants released on nonfinancial conditions strongly confirm both the proponents' claim and disagreement among judges on the value of third-party custodians. Felony defendants charged with the violent offenses of homicide, robbery, or sexual assault, and misdemeanor defendants charged with burglary or bail violation were more likely than other defendants to be released to a third-party custodian. Defendants with "bad" criminal records, as measured by the

existence of pending cases, a number of arrests during the preceding 12 months, and status as a parolee or probationer, were also more likely than other defendants to be released to a third-party custodian.

Among accused felons, older defendants and female defendants were found more likely to receive release on recognizance. However, even controlling for all these factors, judge identity played a more powerful role in this choice than in any other stage of the release decision. Variables related to conviction probability seemed to play no role; as one would expect, jail capacity effects were nil with respect to the choice between alternative forms of nonfinancial release.

One surprising result was that misdemeanor defendants arraigned on a Saturday were significantly more likely to be released to a third-party custodian than were defendants arraigned on a weekday. This result seems to counter conventional wisdom that representatives of the custodians are less likely to be available on Saturdays.

Results of the multivariate analysis of the choice between cash and surety bond, reported in Table A.4, indicate that judge identity is the primary determinant of this decision. This suggests strong differences of opinion as to the appropriate role of bondsmen in the pretrial release process. Felony defendants charged with larceny, weapons-possession offenses, or drug offenses and defendants arraigned on Saturday were somewhat less likely than others to face surety bond conditions. Parolees and probationers received surety conditions at a higher rate. Among misdemeanor defendants, whites and females were found to be significantly less likely to receive surety bond conditions. The probability of surety bond for misdemeanor defendants is decreased if the detention facility is filled close to capacity during the month preceding arraignment. If the surety requirement is an additional barrier to release, this result is consistent with the similar effect observed for the financial–nonfinancial decision.

For financial release defendants, the setting of conditions is completed by determining the exact dollar amount of bond (Stage 3). For cases in our sample in which financial bond was required, the average amount was $1,264 in misdemeanor cases and $4,361 in felony cases. Surety bonds averaged $257 more than cash bonds in felony cases, a statistically insignificant finding. The differential in misdemeanor cases, $368, was statistically significant. The multiple regression results for bond amount are reported in Table A.5.

For felony defendants, the results indicate that, holding other factors constant, a homicide charge adds just over $10,000, and a sexual assault charge adds nearly $8,500 to the average bond required for other charges. Each pending case adds just over $1,500 to the required bond, and status as a parolee or probationer adds just over $1,900. Bond for employed defendants averaged about $1,400 less than that for unemployed defendants, an indication that ability to pay is not the primary determinant of bond amount. Table A.5 also shows that arraignment judge identity was significantly associated with bond amount for both felonies and misdemeanors; however, this association appears due to the decisions of a single judge, who sets much higher bond amounts than his colleagues.

For misdemeanor defendants, the only crime type that was found to affect significantly the setting of bond amount was bail violation, which adds $649, on average. A history of drug use adds about $500 to bond amount; while a history of alcohol abuse subtracts over $700. No other characteristics of the defendant or his criminal history were found to affect the setting of bond amount. Neither variables associated with conviction likelihood nor those associated with jail capacity constraints appeared to affect bond amount for either felonies or misdemeanors.

Considering the pretrial release decision as a whole, we are left with the following answers to the questions posed at the beginning of this chapter:

- Crime types that are commonly thought to suggest a potential for pretrial misconduct, such as homicide, assault, or bail violation, do result in more severe release conditions. Defendants in these categories were more likely to face financial conditions, were more likely to be placed under the supervision of a bondsman, and were required to pledge higher bonds than were other defendants.
- Negative attributes of the defendant's criminal record, such as parole or probation status, pending cases, and recent arrests, were generally associated with financial conditions, requirement for a surety bond or third-party custodian, and higher bond amounts. These effects were generally stronger in misdemeanor cases than in felony cases.
- Of all defendant characteristics recorded, being employed had the most consistent effect, reducing the severity of release conditions at each stage when other pertinent factors were statistically controlled. Local residence appeared to affect the initial choice between financial and nonfinancial conditions, but not the subsequent finer breakdowns. Other characteristics, such as race, sex, or a history of drug use, seemed to influence single stages in the setting of release conditions, but the overall effect was unclear.
- Arraignment judge identity appeared as a powerful determinant at each stage in the setting of release conditions. However, both the number and identity of judges deviating from the consensus differed at the three stages.
- Neither likelihood of conviction nor potential sentence was found to affect any stage in the setting of conditions.
- A high jail population during the month preceding arraignment was associated with a higher probability of nonfinancial release. This result is consistent with a jail capacity constraint, but no similar effect was found at subsequent stages in the setting of pretrial release conditions.

**Obtaining Release**

Defendants for whom financial conditions are set may or may not satisfy those conditions and obtain release. This eventual outcome is not recorded in PROMIS. However, as discussed in Chapter 2, a random sample of financial condition defendants was identified, and the release outcomes for the sample cases were ascertained from manual court records. Of the 415 defendants in the sample, 245 obtained release. An analysis of these 415 cases was performed to learn what variables seem to determine which defendants obtain release. The estimation results appear in Table A.6.

The results indicate that, as expected, a higher bond decreases the probability of obtaining release. However, we found no evidence that low-income defendants were less likely than other defendants to post bond of a given amount. The results indicate that defendants are more likely to obtain release if they are required to post a cash bond than a surety bond for the same amount. This result is not surprising, since it may indicate merely that defendants are more willing to post a refundable 10 percent bond with the court than to pay a nonrefundable 10 percent to a bondsman. Such a preference is understandable not only for financial reasons, but also because surety releasees face potential sanctions imposed by bondsmen, as noted in Chapter 1, in addition to potential court sanctions faced by all defendants on pretrial release.

While no defendant characteristics were found to be systematically associated with the ability to post cash bond, employed defendants appeared more likely to

obtain surety bond if they had been employed at least six months. This may indicate a preference on the part of bondsmen, since no such effect is apparent with respect to cash bond. However, it may also indicate that employed defendants have greater incentive than others to obtain release (in order to preserve their jobs), or better access to funds with which to pay the bondsman. In any event, employment status seems to perform the same screening function for defendants facing surety bond requirements as it does with respect to the judge's choice between financial and nonfinancial conditions.

**Failure to Appear**

In the District of Columbia, the presiding judge may issue a bench warrant for the arrest of any defendant who fails to appear for a scheduled court proceeding. As reported in Table 24 in Chapter 2, at least one bench warrant was issued in about 11 percent of the cases in our sample. However, as explained in Chapter 1, issuance of a bench warrant does not necessarily indicate intentional flight by the defendant. Therefore, separate analyses were performed of all failures to appear, using rearrest for Bail Reform Act violations as an indicator of willfulness. The results are reported in Table A.7.[19] They indicate clearly the difficulty of predicting the occurrence of a rare event, nonappearance, by means of a statistically derived equation. The low values of $R^2$ (.03 for willful nonappearance, .05 for all nonappearances) indicate that many of the defendants the model would call bad risks do in fact appear in court when required. In fact, the percentage of outcomes predicted correctly, 90.3 for all nonappearances, is approximately what one would achieve by predicting that every defendant would appear. While those overall "goodness-of-fit" statistics indicate the enormity of the gulf between existing knowledge and the knowledge one would need to justify "computerized pretrial release decisions," the significance of the individual coefficients demonstrates that certain subgroups of defendants present nonappearance risks that are substantially different, on average, from the risk among released defendants as a whole.

Considering all failures to appear, the failure rate was lower for defendants charged with assault, sexual assault, or weapons offenses than for other defendants. Only the assault effect was apparent with respect to willful failure. Employed defendants were found more likely to appear, under both definitions. Known drug users had a relatively high failure rate, though no effect was apparent for willful failure. No other characteristics of the defendant or his criminal history were found to be associated with pretrial flight. No case-related variables associated with high conviction probability or a severe potential sentence were found to encourage pretrial flight.

Our results provide no evidence that higher bond amounts reduce the probability that a released defendant will fail to appear, willfully or otherwise. However, this result must be interpreted cautiously for two reasons. First, bond amounts are frequently reduced after arraignment at the request of the defense attorney. Our data show only the initial amount, which may not be in effect at the time a defendant makes the decision not to appear. This form of measurement error makes any existing deterrence effect harder to identify. Second, a high bond may prevent the worst risks from being released in the first place. Had they obtained release, the high bond might have successfully deterred them from flight.

The analysis indicates that defendants released to third-party custodians are less likely than those on other forms of release to appear for trial, under either definition. However, it is not clear whether this results from some attribute of the third-party custody process or whether some unrecorded defendant characteristic

increases the probabilities of both third-party release and failure to appear. Failure to appear in general was more frequent for defendants released on cash bond than for those released on surety bond or personal recognizance. However, no such effect was apparent with respect to willful failure to appear.

**Pretrial Rearrest**

Once a defendant has obtained financial or nonfinancial release, he may commit crimes before the initial case comes to trial. As noted in Chapter 2, we cannot directly observe pretrial crime. Therefore, separate probit analyses were performed using two observable proxies: pretrial rearrest and pretrial rearrest leading to conviction. The results of both analyses are reported in Table A.8. Although the overall goodness-of-fit statistics indicate that pretrial rearrest can be predicted somewhat more successfully than failure to appear, they are still far too low to suggest that this statistical model is a satisfactory predictor of outcomes in individual cases. Nevertheless, certain relationships emerge that are unlikely to have arisen by chance.

Defendants charged with felonies—especially robbery, burglary, larceny, property destruction, or arson—were more likely than other defendants to be rearrested before the first case was closed. The rearrest probability was higher still for defendants not accused of using a weapon in the first alleged crime. When crime was measured by rearrest leading to conviction, only the effects of felony burglary and larceny charges were still statistically significant.

In contrast with pretrial flight, pretrial rearrest was associated with several characteristics of the defendant and his prior criminal history. Recent arrests, arrests for crimes against persons at any time, and a history of drug use were strong positive indicators of pretrial rearrest. In contrast, employed defendants, white defendants, and older defendants were less likely than others to be rearrested. When only rearrests leading to conviction were counted, the effects of arrests for crimes against persons, drug use, and defendant race became statistically insignificant. One might be tempted to claim that this result demonstrates that police systematically rearrest drug users and nonwhites on pretrial release, who are later acquitted due to insufficient evidence. However, the two equations differ through generally larger standard errors in the second equation, rather than through dramatic differences in the magnitudes of the coefficients. Thus, the three variables seem to lose significance because case outcome is in part an unexplained event, rather than because police systematically "over-arrest" defendants on pretrial release, who are later not convicted.

The results indicate that high bond does not discourage pretrial crime, by either measure. This finding is not surprising when one realizes that bond is not forfeited upon rearrest. Defendants released to third-party custodians were found more likely to be rearrested (but not rearrested and convicted); however, the interpretation of that result is subject to the reservations noted above with respect to failure to appear.

It is interesting to compare the variables predicting rearrest during pretrial release with those predicting rearrest in general. In a recent study that followed a panel of District of Columbia arrestees over a five-year period, Kristen Williams found that arrestees charged in 1972 with burglary, robbery, or larceny, or having extensive and recent criminal histories, were generally rearrested more frequently and for more serious crimes than other defendants.[20] She also found unemployment and a history of drug use to be strong positive predictors of rearrest, reprosecution, and, to a lesser extent, reconviction. Finally, she found that white defendants and older defendants were less likely than others to recidivate. Thus, we

find a uniformity between variables that predict pretrial rearrest and variables that predict rearrest in general. This uniformity seems especially striking in view of the different defendant samples and different time periods of the two studies. The only major discrepancy was a positive relationship between a felony charge and rearrest before trial, but not rearrest in general. This difference is perhaps explained by the fact that during 1974, felony cases remained in the D.C. Superior Court 41 days longer than misdemeanor cases, on average, thereby extending the exposure period during which a released felony defendant could be rearrested.

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**Notes**

1. National Center for State Courts, *An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs* (Denver, Colo., 1975).

2. Wayne L. Morse and Ronald H. Beattie, "Survey of the Administration of Criminal Justice in Oregon, Report no. 1: Final Report on 1,771 Felony Cases in Multnomah County," *Oregon Law Review* 11, no. 4 (Supplement) (June 1932): 86–117, 148–50.

3. See Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," *University of Pennsylvania Law Review* 103 (1954): 1031–79 and "The Administration of Bail in New York City," *University of Pennsylvania Law Review* 106 (1958): 693–730.

4. See National Center for State Courts, *An Evaluation of Policy Related Research:* 36–41 and 117–128 for references to these studies.

5. Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," *New York University Law Review* 38 (1963): 67–95.

6. S. Andrew Schaffer, *Bail and Parole Jumping in Manhattan in 1967* (New York: Vera Institute of Justice, 1970).

7. *The Bail System of the District of Columbia: Report of the Committee on the Administration of Bail of the Junior Bar Section of the Bar Association of the District of Columbia* (Washington, D.C., 1963).

8. See J. W. Locke, et al., *Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study*, National Bureau of Standards Technical Note 535 (Washington, D.C.: U.S. Department of Commerce, 1970). See also J. Rick, et al., *Tabulation and Extended Analysis of the Pre-Trial Release Data for Defendants in the District of Columbia,* National Bureau of Standards Report 10259 (Washington, D.C.: U.S. Department of Commerce, 1970).

9. Arthur R. Angel, et al., "Preventive Detention: An Empirical Analysis," *Harvard Civil Rights—Civil Liberties Law Review* 6, no. 2 (March 1971): 300–96.

10. Michael R. Gottfredson, "An Empirical Analysis of the Pretrial Release Decisions," *Journal of Criminal Justice* 2 (1974): 287–304.

11. Allan J. Ballard, "Components of the Vera Hypothesis: An Empirical Analysis," *Criminal Justice Review* (Spring 1977): 55–71.

12. Helen Reynolds, "Measuring the Effectiveness of the Bail Bond System as an Assurance of Trial Appearance," presented at the National Conference on Criminal Justice Evaluation, sponsored by the National Institute of Law Enforcement and Criminal Justice, February 1977.

13. William M. Landes, "The Bail System: An Economic Approach," *Journal of Legal Studies* 2 (February 1973): 79–105 and "Legality and Reality: Some Evidence on Criminal Procedure," *Journal of Legal Studies* 3 (June 1974): 287–337.

14. Landes, "Legality and Reality": 327.

15. Timothy Bynum, "An Empirical Exploration of the Factors Influencing Release on Recognizance," Ph.D. dissertation, Florida State University, December 1977.

16. A D.C. Superior Court judge had suggested to us that Saturday arraignment court sessions are not usually under the jurisdiction of the judge officially assigned to arraignment

court and that Bail Agency verification of community-ties information may be more difficult and less complete for Saturday arraignments. We wished to test whether either condition systematically affected pretrial release decisions.

17. William M. Rhodes, *Plea Bargaining: Who Gains? Who Loses?* PROMIS Research Publication no. 14 (INSLAW, 1978): 44.

18. See Brian Forst and Kathleen B. Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," *Journal of Legal Studies* 6 (January 1977): 177–92; and Rhodes, *Plea Bargaining: Who Gains? Who Loses?:* 78–79.

19. We had no theoretical reason to assume that the behavioral relationships determining pretrial misconduct risk were affected by the felony–misdemeanor distinction according to the D.C. Code; therefore, the equations reported in Tables A.7 and A.8 were estimated using the combined group of released defendants. A misdemeanor–felony dummy variable was not found significant in either equation.

20. Kristen M. Williams, *The Scope and Prediction of Recidivism,* PROMIS Research Publication no. 10 (INSLAW, 1979): 18 and 47–48.

# 4

# Implications and Limitations

In the first section of this chapter, we draw upon our empirical results to address the issues raised at the end of Chapter 1. In the second section, we discuss the limitations of our analysis and suggest some fruitful areas for further research.

## IMPLICATIONS OF ANALYSIS

As explained in Chapter 1, the arraignment judge, assisted by the D.C. Pretrial Services Agency, chooses from a bewildering variety of pretrial release conditions. His choice in a given case may be thought of as his answer to the question, "Should society be compensated for the risk of releasing this defendant before trial?" An affirmative answer leads to a financial bond, raised by a bondsman or by the defendant himself; a negative answer leads to nonfinancial release,[1] perhaps to the custody of a third party. Our behavioral analysis has identified a set of variables statistically associated with the judge's financial–nonfinancial decision, another set associated with defendant failure to appear, and a third set associated with pretrial crime by the defendant, as measured by rearrest.

### Misconduct Prediction and the Use of Bail

For policy purposes, it is interesting to ask whether the variables that we find to predict defendant misconduct also influence the judge's choice of conditions. If we find, for example, that the variables predicting nonappearance do not appear to influence the pretrial release decision, the implication is that judges are not acting consistently with the intent of the Bail Reform Act. A finding that variables predicting pretrial rearrest do not affect the pretrial release decision would cast doubt on claims that, despite the law, financial conditions are used as an informal means of detaining defendants thought to be dangerous, without the procedural safeguards of a formal hearing. Finally, a finding that the variables explaining the use of bond had nothing in common with the variables explaining either type of misconduct would raise questions whether the pretrial release system was satisfying either the legal mandate or the crime control objective.[2]

Table 27 lists 24 explanatory attributes of alleged felony crimes and felony defendants that are reported in the appendix to be significantly associated with either the financial–nonfinancial decision, failure to appear, or rearrest. Each column contains a +, −, or 0, indicating whether each attribute was found positively related, negatively related, or statistically unrelated to the probability of the event described by the column heading.[3]

**Table 27.**
**Comparison of Attributes Explaining Use of Financial Bond, Failure to Appear, and Pretrial Rearrest**

| Explanatory Attribute | Behavior Being Explained: Use of Financial Bond — Misdemeanors | Use of Financial Bond — Felonies | Failure to Appear (All Crimes) | Pretrial Rearrest (All Crimes) |
|---|---|---|---|---|
| Current charge | | | | |
| Homicide | 0 | + | 0 | 0 |
| Assault | 0 | − | − | 0 |
| Drug violation | − | − | 0 | 0 |
| Bail violation | + | + | 0 | 0 |
| Sexual assault | 0 | 0 | − | 0 |
| Weapon violation | 0 | 0 | − | 0 |
| Robbery | 0 | 0 | 0 | + |
| Burglary | 0 | 0 | 0 | + |
| Larceny | 0 | 0 | 0 | + |
| Arson–Property destruction | 0 | 0 | 0 | + |
| Crime severity | | | | |
| No weapon used | 0 | − | 0 | + |
| Defendant history | | | | |
| Nonappearance in pending case | 0 | + | 0 | 0 |
| Parole/probation when arrested | + | + | 0 | 0 |
| No. of pending cases | + | + | 0 | + |
| No. of prior arrests—all crimes | + | + | 0 | 0 |
| No. of prior arrests—crimes against persons | 0 | 0 | 0 | + |
| Arrested last 5 years | 0 | + | 0 | 0 |
| No. of arrests in preceding 12 months | + | 0 | 0 | + |
| Defendant descriptors | | | | |
| Local residence | − | − | 0 | 0 |
| Employed | − | − | − | − |
| Low income | 0 | − | 0 | 0 |
| Drug user | + | 0 | + | + |
| Caucasian | + | + | 0 | − |
| Older | 0 | 0 | 0 | − |

Source: Estimated coefficients are reported in appendix Tables A.2, A.7, and A.8.
Note: Attributes are identified as being positively related (+), negatively related (−), or statistically unrelated (0) to the probability of the behavior described in the column heading.

The table suggests that the financial–nonfinancial decision is made fairly similarly in felony and misdemeanor cases. Moreover, it suggests that some factors do not affect the decision in a manner consistent with their observed relationship to pretrial behavior. For one example, holding other variables constant, a history of drug use is associated with greater risks of both nonappearance and rearrest; yet only in misdemeanor cases were drug users found more likely than others to receive financial conditions. Accused drug violators were actually less likely than

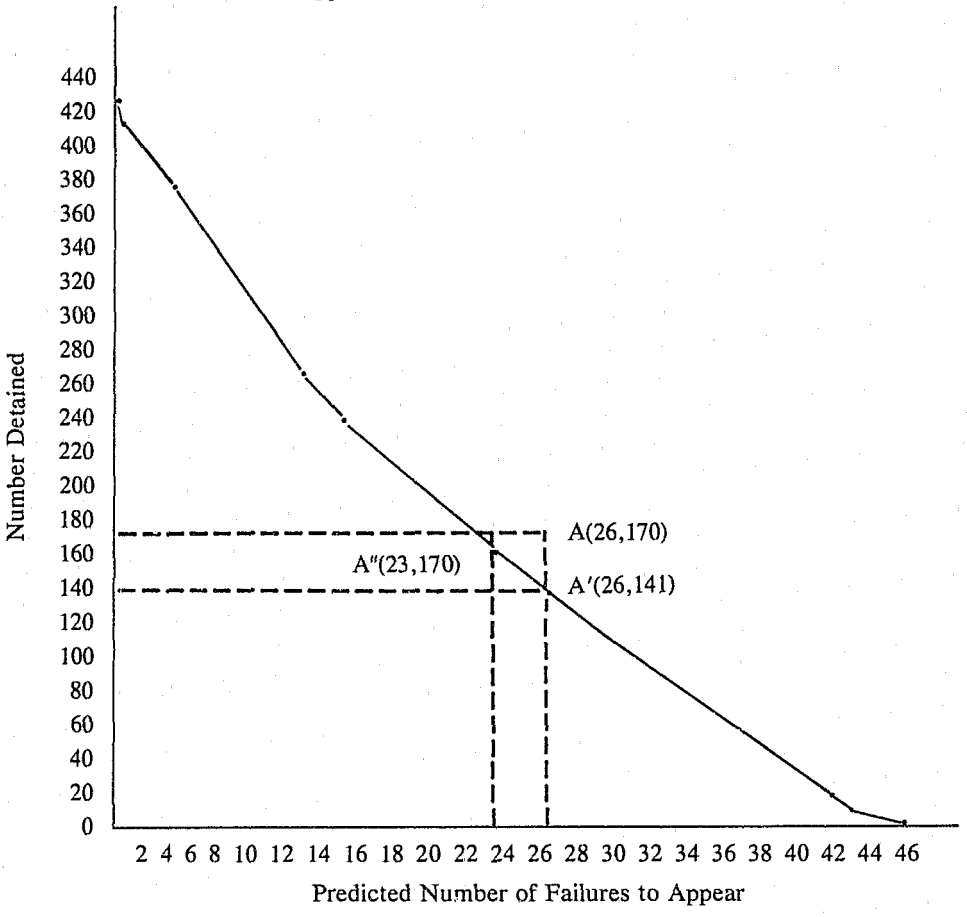
other defendants to receive such conditions. For another, felony defendants not accused of using a weapon in the alleged offense were less likely to receive financial conditions; yet defendants not accused of weapon use were more likely to be rearrested while on release. In contrast, controlling for other variables, defendants recorded as having a local residence faced financial requirements less often than others, yet a local residence was not found to affect the likelihood of either failure to appear or rearrest. (Problems that affect a substantial proportion of cases have been discovered in the coding of the local-residence variable. Therefore, this finding should be considered extremely tentative.) Finally, none of the four crime types—robbery, burglary, larceny, and arson–property destruction—that seem to predict rearrest influences the financial–nonfinancial decision. Of the three crime types—assault, sexual assault, and weapons violations—associated with nonappearance, only the first seems to affect the release decision.

Three exceptions to this inconsistency should be noted. As expected, employed defendants, who present less risk of nonappearance and rearrest, are less likely to receive financial conditions. Assault defendants, who present less nonappearance risk, receive financial conditions less often. And defendants with more pending cases, who present a greater rearrest risk, are more likely to receive financial conditions. But the other 21 variables present a number of inconsistencies.

To put this discussion in perspective, a few words are in order about the statistical significance of these relationships and the descriptive and predictive power of the model. First, conventional tests reported in the appendix indicate statistical significance at better than the 0.05 level for all relationships shown in Table 27 and at better than the 0.01 level for most. Thus, like an actuary estimating death rates for a subset of the population, we are confident of the existence of the relationships reported, on average. However, the reader is cautioned that the power of our model to predict the outcomes of individual cases is extremely limited. Low values of $R^2$ (0.23 in the bond decision equation, 0.05 in the nonappearance equation, and 0.10 in the rearrest equation) indicate a high degree of randomness in individual outcomes. Therefore, like an actuary asked to predict whether a certain 62-year-old defendant will die before his case is disposed of, we cannot predict individual misconduct with accuracy. Based on an analysis of our sample, the model was "wrong" in predicting misconduct only about half as often as random guesses made with appropriate frequencies; however, it was "wrong" about as often as a guess that every defendant would appear when required and that no released defendant would be arrested before disposition of his original case. The low power to predict individual case outcomes testifies to the heavy burden placed on the arraignment judge by the D.C. bail laws: to determine whether release on recognizance will reasonably assure the defendant's appearance and, if not, to determine the minimal condition sufficient to provide this assurance.

The difficulty with using financial conditions to detain high-risk defendants is depicted graphically in Figures 2 and 3. To construct these charts, we used our model to estimate the probabilities of rearrest and nonappearance for each of 424 randomly selected defendants who were required to post cash or surety bond. Assuming that the defendant rated most likely to appear was released first, the next most likely second, and so forth, the curve in Figure 2 plots the minimum number that must be detained according to our model to reduce expected nonappearance to any desired rate. Obviously, if all 424 were detained, none would fail to appear; if all were released, the model predicts that 42 would fail to appear. Point A indicates that, in reality, 170 were detained, causing a predicted 26 nonappearances by those released; point A′ indicates that, through selection with the level of accuracy shown by our model with respect to this defendant sample, the expected number detained could have been reduced to 141 without increasing the

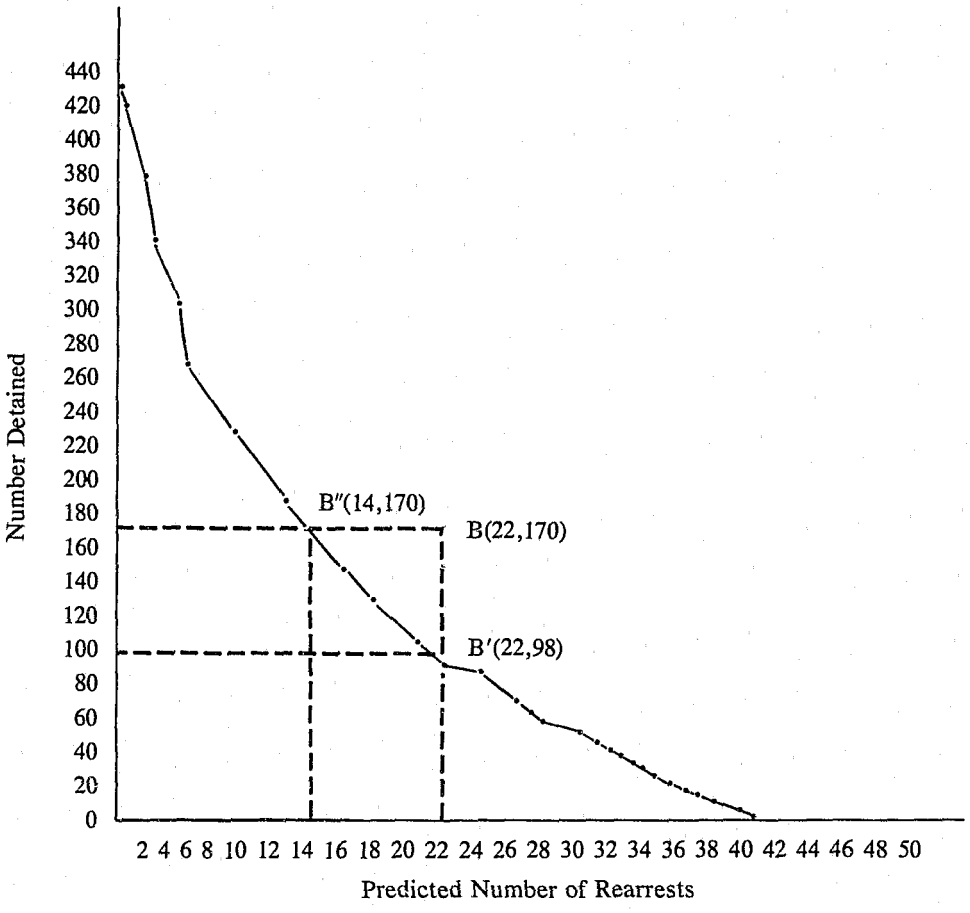
**Figure 2.**
**Detention--Nonappearance Efficiency Frontier (424 Defendants)**




expected number of nonappearances. Point A″ indicates that the number of nonappearances could have been cut slightly if the 170 most flight-prine defendants had been detained instead of the 170 who could not make bond.[4] Figure 3, constructed analogously, indicates that selection with the objective of pretrial crime control could have reduced the number detained from 170 to 98 (B′) with no increase in pretrial rearrests; alternatively, the rate of pretrial rearrest could be cut by about one-third (B″) without increasing the number detained.[5]

We make no value judgment here as to whether the legal objective of financial bond should be prevention of nonappearance or prevention of pretrial crime. Both may be laudable goals, but given our limited existing knowledge, both require the selective imposition of sanctions prior to adjudication based on error-prone predictions of future defendant behavior. We have attempted to show merely that statistical analysis of previous cases can assist D.C. judges in achieving a more efficient trade-off between risk of either form of misconduct and unnecessary pretrial incarceration. It is reasonable to suppose that a statistical analysis incorporating D.C. Pretrial Services Agency data describing defendants more completely than our data would be of even greater assistance. However, since we were unable to obtain those data, such an analysis must await future research.

**Figure 3.**
**Detention–Rearrest Efficiency Frontier (424 Defendants)**




**Judicial Discretion in Pretrial Release Decisions**

The role of judicial discretion in setting pretrial release conditions was examined in the contexts of both descriptive statistics and a multivariate analysis.

Table 6 reported the frequency distributions of release conditions set by the ten judges who made the majority of decisions during 1974. Since the position of arraignment judge is rotated monthly, it is reasonable to assume that all ten faced similar mixes of cases. Superficially, the table shows sizable differences in the rates at which judges assign personal recognizance, third-party custody, surety bond, and cash bond. However, more careful study reveals that the variation apparently arose from differences of judicial opinion regarding the appropriate roles of third-party custodians and professional bondsmen, rather than the larger question of when financial conditions should be imposed.

For felony cases, within the nonfinancial category, the ratio of personal recognizance to third-party releases ranged across judges from about 34-to-1 down to about 0.6-to-1. Within the financial category, the ratio of surety bond to cash bond ranged from about 120-to-1 to about 1.25-to-1. Yet across all ten judges, the overall ratio of nonfinancial to financial releases deviated very little from the average of 1.7-to-1.

This impression was strengthened by the results of the multivariate analysis of pretrial release decisions. Although judge identity was statistically significant in explaining all phases of the pretrial release decision, the number and identity of judges accounting for the significance varied across all stages. Thus, controlling for the effects of felony defendant and case characteristics, only two of the ten judges seemed to make the basic financial–nonfinancial release decision in a fundamentally different way from all other judges as a group. This could be interpreted as a kind of consensus among the other eight judges as to how that basic decision should be made in felony cases. The size of the consensus group decreases to four in choosing between the personal recognizance and third-party forms of nonfinancial release. The consensus group grows to six in choosing between the surety and cash forms of financial bond, and to nine in setting the amount of bond.

Two other system-related characteristics seemed to affect various stages of the decision process. First, more experienced judges, as measured by years on the D.C. bench, were more likely to impose financial conditions in a given case. For defendants released on nonfinancial conditions, the more experienced judges opted for third-party custodians more frequently than other judges. Second, holding judge identity and case characteristics constant, pretrial release decisions seemed to respond in part to capacity problems in the D.C. Jail, where detained defendants are held. The more nearly full the jail during the month preceding arraignment, the less likely was the imposition of financial conditions. Although this finding was expected, and is consistent with others' findings that judges respond to jail capacity constraints,[6] it is not clear how judges systematically receive information about available jail space.

In sum, it seems fair to say that while there was less than perfect consensus among the ten judges who carried most of the pretrial release decision-making burden during 1974, there was no statistical evidence of unwarranted judicial disparity in the decision-making process. The results did, however, reflect the controversy surrounding the appropriate role of professional bondsmen and third-party custodians in the pretrial release process.

An interesting future research problem would be an analysis of the success rates, by judge, of defendants placed on different forms of pretrial release. Supplemented by judge interviews, such research might help identify defendant and case characteristics that are currently not recorded but that help judges identify the defendants most likely to complete successfully the period of pretrial release.

**Professional Bondsmen and Third-party Custodians**

Chapter 1 contains a discussion of the controversial and declining role of professional bondsmen in the District of Columbia and elsewhere. Almost as controversial are the District's third-party custodians, of which the most active is an organization of ex-offenders called Bonabond. A detailed discussion of the controversy is beyond the scope of this report.[7] However, proponents point to the custodians' role of reducing economic discrimination by obtaining the release of high-risk, low-income defendants without posting bond with the court or paying a bondsman's fee. Opponents claim that supervision by the custodians is lax and that, as a result, defendants released into their custody are prone to pretrial crime and failure to appear. As noted above, the controversies surrounding both bondsmen and custodians are reflected in sizable variations across judges in the rate at which these forms of release are used.

Our descriptive statistics indicate that bondsmen potentially become involved in more cases than third-party custodians: 29 percent to 17 percent of all felony cases, and 12 percent to 9 percent of all misdemeanor cases. Surety bond is

imposed more frequently in bail violation cases than in any other case type. Third-party custodians are prominent in burglary and violent-crime cases, such as homicide, sexual assault, and robbery, particularly cases involving defendants with prior arrest records. The multivariate analysis revealed judge identity to be the most important factor in choosing between third-party and personal recognizance release, and between cash and surety bond. Other results, which indicate that a pending case, status as a parolee or probationer, and lack of a job all increase one's chances of obtaining third-party release, support the custodians' claim that they intentionally seek high-risk, disadvantaged defendants as clients.

No similarly clear-cut picture emerged of defendants required to post surety bond. However, the analysis of whether a defendant held on bail eventually obtained release suggested that defendants employed for more than six months, if required to post surety bond, were significantly more likely than other defendants to obtain release. The employment effect disappeared entirely for both cash bond defendants and for those employed for six months or less.

We have previously discussed the alleged laxity of third-party custodians in producing their clients in court when required. In Table 28, the 1974 pretrial misconduct rates reported in Chapter 2 are compared for felony defendants on all forms of release. Small sample sizes preclude definitive comparisons. However, the appearance record of defendants released to third-party custodians seems slightly worse than the record of all defendants combined, yet better than defendants released on cash-deposit bond. The table also indicates that bondsmen successfully produce defendants for trial.

Relative to personal recognizance, which is purportedly reserved for low-risk defendants, no form of release copes very capably with pretrial crime, as measured by rearrest. Unfortunately, the small sample sizes make a comparison based on rearrest leading to conviction impossible.

A different picture emerges when all explanatory variables other than form of release are statistically controlled in the multivariate analysis. Third-party custody emerges as a significantly positive predictor of general failure to appear, willful failure to appear, and pretrial rearrest. In the multivariate analysis, no other form of release showed a statistically significant relationship with any type of misconduct.

Thus, our analysis supports portions of both sides of the controversy concerning third-party custodians. As the custodians claim, they appear to work with a

**Table 28.**
**Type of Pretrial Misconduct by Form of Release, 1974 Felony Defendants**

| Type of Pretrial Misconduct | Form of Release | | | | |
|---|---|---|---|---|---|
| | Personal Recognizance | Surety Bond | Cash Bond | Third Party | Aggregate[a] |
| Nonappearance | 10.4% | 10.2% | 12.3% | 11.6% | 10.6% |
| Willful nonappearance | 3.5 | 4.7 | 6.1 | 5.0 | 4.1 |
| Rearrest | 10.7 | 18.2 | 24.6 | 13.8 | 13.4 |
| Rearrest and conviction | 4.5% | 7.5% | 3.0% | 5.6% | 5.1% |
| Sample size | 2,076 | 137 | 57 | 782 | 3,825 |

[a]In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

very high-risk group of defendants. Yet even taking into account the defendant characteristics available to us, their clients have an unexpectedly high nonappearance rate. Bondsmen, in contrast, deal with a slightly lower-risk clientele, who have a better record of court appearance but a worse record of pretrial rearrest. A more refined analysis would be required to learn the relative importance of screening as opposed to supervision in explaining the bondsmen's greater success.

## LIMITATIONS OF ANALYSIS

In this study, we have analyzed data on the natural experiments performed each time a District of Columbia Superior Court judge set pretrial release conditions during 1974. The primary data source for the analysis was PROMIS, augmented by hand-collected data from court files. Two limitations of our approach should be recognized.

First, the D.C. Pretrial Services Agency routinely collects and verifies far more extensive data on each defendant's socioeconomic status and family and community ties than does the U.S. Attorney's Office. These additional data are collected precisely because they are believed to be correlated with the defendant's behavior while on pretrial release. Because these additional data were not available to us, we were unable either to analyze their effects on the setting of pretrial release conditions or to control completely for their effects in analyzing the explanatory variables for which we did have data. Therefore, analysis of the Pretrial Services Agency data, using the methods of the present study, should be a high research priority.

Second, like all researchers who have studied pretrial release, we have observed natural experiments, rather than randomized experiments in which the experimenter attempts to control for all pertinent explanatory variables. Therefore, the released defendants whose pretrial behavior we observed were not randomly drawn from the entire population of 1974 defendants.

Some would argue that this limitation destroys our ability to make statistical inferences concerning the population. However, the descriptive statistics presented in Chapter 2 demonstrate that defendants released on nonfinancial conditions are not totally dissimilar to those held for cash and surety bond, in terms of alleged crime, prior history, and socioeconomic characteristics that we could observe. The fact that our sample of released defendants includes numerous persons charged with violent crimes, nonlocal residents, unemployed persons, and defendants with pending cases and extensive prior records—all considered adverse characteristics—increases the likelihood that our conclusions do not differ markedly from those that would be reached in a controlled experiment.

## PRETRIAL RELEASE ISSUES NOT ADDRESSED IN THIS STUDY: AN OVERVIEW

In addition to limitations of method and data, at least four important pretrial release issues are beyond the scope of this report. This chapter concludes with an overview of research on those issues.

### Pretrial Incarceration and Conviction Probability

It is often argued that pretrial incarceration increases the probability of conviction, because the defendant is prevented from aiding in his own defense and because the unpleasantness of jail encourages defendants to plead guilty in exchange for possible sentence reductions. This contention was not supported in a 1927 study by Beeley,[8] but has since been supported by Morse and Beattie; Foote; Ares, Rankin, and Sturz; and Rankin.[9] A recent five-city evaluation of pretrial

release programs found no change in the distribution of dispositions as the rate of personal recognizance releases increased,[10] a finding that seems to contradict the assertion.

The question was not addressed in this report because a related question—whether release on recognizance decreases conviction probability or discourages guilty pleas—is examined by Rhodes in another PROMIS Research report.[11] He found that, controlling for other variables, release on recognizance significantly reduced the probability of conviction in 1974 District of Columbia robbery and burglary cases, had a less significant effect in assault cases, and had no effect in larceny cases. Among those four crime groups, he also found that in assault cases only, recognizance release increases the probability of going to trial. In another PROMIS Research report, Hausner and Seidel report that among cases in which a plea was entered, the plea occurred 17 days earlier in cases in which bond was required than in nonfinancial release cases.[12] These findings are generally consistent with the notion that pretrial incarceration increases the probability of conviction, although they could not be said to lend strong support.

**Pretrial Incarceration and Sentence Severity**

It is also often argued that pretrial incarceration increases the expected severity of sentences given to convicted defendants. This contention was supported in the Foote, Rankin, and Ares–Rankin–Sturz studies cited above. Landes found a positive and significant effect of the defendant's bond amount on his length of sentence; within his theoretical framework, that relationship indicates that judges set high bond to minimize the possibility of disappearance for defendants facing a long sentence.[13] Controlling for other defendant characteristics, he also found a positive and significant relationship between number of days of pretrial detention and sentence length, lending support to the argument.

Results reported by Dungworth in another PROMIS Research report also lend partial support to the contention.[14] In that study, convicted defendants who had not been released on recognizance were found more likely to receive jail terms, and to receive longer jail terms, than were those released on their own recognizance. It is not clear whether this represents a direct effect of pretrial release status on sentence, or the joint effect of some case or defendant characteristic on both pretrial release status and sentence.

**Pretrial Incarceration and Time in System**

Due process advocates frequently argue that defendants who are incarcerated before trial should receive priority in court scheduling to minimize the period of detention preceding adjudication. This priority is accorded in misdemeanor cases but not felony cases, according to findings of the Hausner and Seidel study cited above. Among misdemeanor defendants, they found that those of whom bond was required were tried 24 days faster and were dismissed 5 days earlier than other defendants receiving those respective dispositions. No similar effect was found for felony defendants.

**Pretrial Delay and Pretrial Misconduct**

Finally, it is argued that the incidence of pretrial misconduct could be reduced by shortening the time from arrest to case disposition. A 1970 study published by the National Bureau of Standards found the rearrest probability to increase with the length of the pretrial period.[15] However, since defendant characteristics were not statistically controlled, one cannot infer from their findings whether delay

leads to rearrest, or alternatively, whether more time-consuming prosecutive efforts are applied against crime-prone defendants, who are more likely than others to be rearrested on any given day.

A recent study by Clarke et al. reported that controlling, one at a time, for sex, age, race, income, employment, prior arrest, offense type and seriousness, and form of release, the rate at which cases survive without failure to appear or rearrest decreases over time.[16] They point out that a lack of degrees of freedom prevented them from controlling for these variables simultaneously.

We believe that release conditions, misconduct incidence, and time to disposition are all jointly determined: indeed, it is plausible to assume that a defendant, pondering whether to flee, weighs the approach of a threatening event, such as trial, more heavily than the time since arrest. Under this assumption, speedier trials would merely encourage earlier failures to appear. Findings reported by Schaffer,[17] and in Chapter 2 of this study, that accused misdemeanants fail to appear at the same rate as accused felons, despite far shorter case-processing times on average, are consistent with this hypothesis.

Those findings, together with the lack of adequate statistical controls in previous studies, make us wary of claims that speedier trials are a panacea for pretrial crime and failure to appear. Yet we are uncomfortable arguing that a longer pretrial exposure period does not increase the probability of misconduct, holding other factors constant.[18] Moreover, the same degrees-of-freedom problem faced by Clarke et al. prevented us from constructing and testing an appropriate model of the relationship between time to disposition and the probability of misconduct. This issue is an important and unsettled question and should be addressed in future research.

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**Notes**

1. We are ignoring here the one defendant preventively detained during 1974, as well as other defendants released to alcohol or drug treatment programs. These defendants were involved in less than 2 percent of all cases arraigned in D.C. Superior Court during 1974.

2. William M. Landes, "The Bail System: An Economic Approach," *Journal of Legal Studies* 2 (February 1973): 79–105.

3. Both absolute and standardized coefficient estimates, as well as measures of goodness of fit and predictive power, are reported in Table A.2, for the financial–nonfinancial decision, in Table A.7, for nonappearance, and in Table A.8, for rearrest.

4. The reader is reminded that, as shown in Tables A.7 and A.8, the type of release itself is a partial determinant of behavior on pretrial release. By incorporating that variable into the estimated equation used to locate points A′ and A″, we are assuming that that relationship would be unaffected by a change in selection criteria. The reader is also reminded that the equation has not been cross-validated on an independent sample. Therefore, it is not appropriate to assume that this particular equation would perform as successfully for other groups of defendants.

5. Some reviewers have objected to this argument on grounds of "selection bias." That is, they assume that defendants who did not in fact obtain release (and therefore could not appear in the sample used to estimate our models of pretrial misconduct) differ from the defendants in our sample in terms of at least one variable that: (a) was not an explanatory variable in our models and (b) made the detained defendants higher risks than the released defendants.

For such an omitted relevant variable to invalidate our predictions about detained defendants, it would (c) have to be uncorrelated with all included explanatory variables. Otherwise, as is well known (see, for example, J. Kmenta, *Elements of Econometrics*, New York: Macmillan, 1971: 392–95), its omission would have caused us to attribute its effect erroneously to the correlated included variable, but not to ignore its effect completely. Since we know of no variable that satisfies conditions (a), (b), and (c), we continue to

believe that the ability to satisfy financial conditions is a less accurate predictor of nonappearance or pretrial rearrest than the set of variables included in our model.

For a more complete discussion of this issue, see William M. Rhodes, *Plea Bargaining: Who Gains? Who Loses?* PROMIS Research Publication no. 14 (INSLAW, 1978): 22–26.

6. In William M. Rhodes, "Jail as a Capacity Constraint," presented at the Eastern Economic Association Annual Heetings, 1976, the empirical results suggest that as jail space is increased through more intensive use of pretrial release, judges are more likely to give sentences involving incarceration. When combined with our results, the implication is that pretrial and post-sentence incarceration substitute as alternative uses of limited jail space.

7. For representative examples of the debate, see *Evaluation of Third Party Custody Programs,* submitted to the D.C. Office of Criminal Justice Plans and Analysis (Washington, D.C.: Lewin & Associates, 1975) and *Community Benefits: 1974* (Washington, D.C.: Bonabond, Inc., 1974).

8. Arthur L. Beeley, *The Bail System in Chicago* (Chicago: University of Chicago Press, 1927; reprinted in 1966).

9. Wayne L. Morse and Ronald H. Beattie, "Survey of the Administration of Criminal Justice in Oregon, Report No. 1: Final Report on 1,771 Felony Cases in Multnomah County, *Oregon Law Review* 11, no. 4 (Supplement) (June 1932): 86–117, 148–50; Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," *University of Pennsylvania Law Review* 103 (1954): 1031–79 and "The Administration of Bail in New York City," *University of Pennsylvania Law Review* 106 (1958): 693–730; Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," *New York University Law Review* 38 (1963): 67–95; and Anne Rankin, "The Effect of Pretrial Detention," *New York University Law Review* 39 (1964): 641–55.

10. William M. Rhodes, Thomas Blomberg, and Steven T. Seitz, "An Evaluation of the LEAA Replications of the Des Moines Community-Based Corrections Program," unpublished manuscript, 1977, available from the Institute for Law and Social Research.

11. Rhodes, *Plea Bargaining: Who Gains? Who Loses?:* Technical Appendix.

12. Jack Hausner and Michael Seidel, *An Analysis of Case-processing Time in the District of Columbia Superior Court,* PROMIS Research Publication no. 15 (INSLAW, 1979): Appendix Table B.13.

13. William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," *Journal of Legal Studies* 3 (June 1974): 331–2, 335.

14. Terence Dungworth, *An Empirical Assessment of Sentencing Practices in the Superior Court of the District of Columbia,* PROMIS Research Publication no. 17 (INSLAW 1979): Chapter 7.

15. J.W. Locke et al., *Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study,* National Bureau of Standards Technical Note 535 (Washington, D.C.: U.S. Department of Commerce, 1970).

16. S. H. Clarke, J. L. Freeman, and G. G. Koch, "Bail Risk: A Multivariate Analysis," *Journal of Legal Studies* 6, no. 2 (June 1977): 341–85.

17. S. Andrew Schaffer, *Bail and Parole Jumping in Manhattan in 1967* (New York: Vera Institute of Justice, 1970).

18. Indeed, we report in this chapter that holding other factors constant, felony defendants were found more likely than misdemeanor defendants to be rearrested while on pretrial release. Since Williams (Kristen M. Williams, *The Scope and Prediction of Recidivism,* PROMIS Research Report no. 10, INSLAW, 1979: 18–20, 47, 48) did not find the felony–misdemeanor distinction correlated with either the frequency or seriousness of rearrest over a five-year period, our results could be an artifact of a longer average pretrial release period for accused felons than for accused misdemeanants.

# Appendix

# A Structural Model of Pretrial Release and Misconduct

## INTRODUCTION

In a pathbreaking article, Landes[1] developed a microeconomic model of the bail system and of pretrial misconduct by defendants, including both additional criminality and failure to appear for trial. Within the framework of this model, he defined costs and benefits of the bail system to the defendant and the community, examined the incentive and welfare effects of an alternative bail system in which the defendant is paid to remain in prison instead of paying for his pretrial freedom, and developed hypotheses about the behavior of both defendants and judges who set bond. In a later article,[2] he tested several of these hypotheses using data on a sample of 858 indigent New York City defendants. A major conclusion of that paper is that the New York City bail system operates as if its objective were to prevent pretrial crime by defendants, rather than to ensure the defendant's appearance for trial.

The analysis reported in this appendix adopts, with only minor modifications, Landes's theory of the bail system and tests similar hypotheses using 1974 data on defendants in the District of Columbia. Such a replication is of interest for at least four reasons.

First, as explained in Chapter 1, the D.C. judicial system is governed by the 1966 Bail Reform Act, which prohibits consideration of the defendant's possible threat to the community when financial release conditions are being set, and the 1970 D.C. Court Reform Act, which provides for the preventive detention, without bond, of potentially dangerous defendants under certain circumstances. In this legal setting, confirmation of Landes's conclusion that financial bond is being used to prevent future criminality would demonstrate systematic under-utilization of a legal means of detaining dangerous defendants in favor of an extralegal means of doing so.

Second, data limitations prevented Landes from studying female defendants and nonindigent defendants. There is reason to believe the bail system treats both groups differently from indigent males. Table 19 in Chapter 2 indicates that female felony defendants are more likely to be released on nonfinancial conditions than are male felony defendants. The Eighth Amendment prohibition against excessive bond suggests that bond may be set with an eye toward the defendant's ability to pay, a proposition that is difficult to test using a sample of indigents. Since the PROMIS data base contains information on all D.C. Superior Court defendants,

including females (about 15 percent), we are better able to study the effect of defendant sex on release conditions, controlling for the effects of crime type and other relevant variables.

Third, data limitations prevented Landes from distinguishing between "willful" failure to appear (i.e., a defendant's decision not to appear) and "procedural" failure to appear (i.e., failure to appear because of inadequate notice or other administrative problems). In fact, he noted that his sample included 38 failures to appear by defendants recorded as being in the custody of the Corrections Department: an extreme example of procedural failure to appear. Our data base permits us to record whether a failure to appear (measured by the issuance of a bench warrant) was followed by an arrest for Bail Reform Act violation, the D.C. charge for willful flight. Thus, we are able to construct a proxy for "willfulness": a Bail Reform Act arrest for reapprehended defendants, or an open disposition eight months after the end of the sample period for others. Using this proxy, we can test hypotheses with respect to both willful and procedural failure to appear.

Fourth, we were able to collect data on detention facility population. This enabled us to test hypotheses on the relationship between the pretrial release decision and the size of the existing detained population.

The remainder of this appendix is organized as follows. The next section specifies a model of the setting of pretrial release conditions, the process of obtaining release, the occurrence of additional pretrial crimes, and failure of the defendant to appear for trial. When relationships in the model differ from those of Landes, the reasons for the deviations are explained. Following that, we present the hypotheses to be tested in this appendix. Legal or theoretical motivation for each hypothesis is presented; where appropriate, the Landes hypotheses are adapted to idiosyncrasies of the D.C. criminal justice system. The final section presents the results of model estimation and hypothesis tests. The implications of the empirical results are presented in Chapter 4.

## STRUCTURAL MODEL

As analyzed in this appendix, the pretrial release process occurs in three stages: the setting of release conditions by a judge, the obtaining of release by a defendant, and potential pretrial misconduct by a defendant, meaning either criminality or failure to appear, or both. This section presents a theory of the process, which leads to later specification of a system of equations to be estimated. Because the theory presented here differs only slightly from that presented by Landes,[3] the theoretical discussion is relatively brief, emphasizing only the highlights of the Landes model and our deviations from it. For a fuller treatment, the reader is referred to the Landes article.

With Landes, we assume that N defendants have been arrested on a given day. For defendant i, information has been presented to a judge on $u_{1i}$, a vector of socioeconomic characteristics thought to influence the defendant's gain from being released to await trial, and $u_{2i}$, a vector describing the defendant and his alleged crime in terms of variables thought to predict harm he will inflict on the community if he is released to await trial. A "residual" term, $v_i$, representing the composite effect of all relevant unrecorded factors, is also assumed to affect the $i^{th}$ defendant's gain from pretrial release.

On the basis of $u_1$ and $u_2$, the N defendants are divided into K mutually exclusive and exhaustive subgroups containing $n_1, \ldots, n_K$ defendants each. Within the $k^{th}$ subgroup, all defendants are identical in terms of $u_1$ and $u_2$ and therefore receive identical pretrial release conditions.

Under any set of conditions, $b_k$ of the $n_k$ defendants will actually obtain release. For the subgroup, the gains from release may be written:

$$G_k = G(b_k, s_k, u_{1k}, v_1, v_2, \ldots, v_{b_k}), \tag{1a}$$

where $s_k$, pretrial supervision status, which does not appear in the Landes model, is a discrete variable denoting pretrial release options available in the District of Columbia. Before defining s in detail, we delete the unobserved residuals and the subscript k, since the remaining analysis is carried out within a single subgroup. The resulting defendant gain function may be written:

$$G = G(b, s, u_1), \tag{1b}$$

and s may be defined in more detail.[4]

As explained in Chapter 1, District of Columbia defendants are generally released on one of the following conditions: personal recognizance ($s = 0$), which entails no financial obligation and negligible supervision for the defendant; third-party custody ($s = 1$), which carries no financial burden but does require supervision by a responsible custodian; cash bond ($s = 2$), which generally means that the defendant posts 10 percent of the amount with the court, receives 9 percent back if he appears for trial, and is unsupervised while on release; and surety bond ($s = 3$), whereby the defendant pays a private bondsman 10 percent (nonrefundable) of the amount and is subject to whatever supervision the bondsman deems necessary.

Because third-party custody imposes the burden of supervision, it is assumed that $G(b, 0, u_1) > G(b, 1, u_1)$ for any b and $u_1$. Because surety bond, relative to cash bond, imposes a greater financial loss and probable supervision burden on the defendant, it is assumed that $G(b, 2, u_1) > G(b, 3, u_1)$ for any b and $u_1$. It is also assumed that the 1 percent loss under cash bond exceeds the monetary and psychic cost of supervision by a third party, which implies $G(b, 1, u_1) > G(b, 2, u_1)$. Thus, G is a decreasing step function of the variable s. With Landes, we assume that defendants are released in decreasing order of gains, so that $G_b > 0$, $G_{bb} < 0$ (where $G_b = \partial G/\partial b$ and $G_{bb} = \partial^2 G/\partial b^2$). Since the defendant's gain is adversely affected by more severe supervision, we assume $G_{bs} < 0$; otherwise, interactions are assumed to be negligible. Discussion of $u_1$ is deferred to the next section.

The second gain, which accrues to the community, from releasing defendants is a reduction in the cost of guarding, feeding, and housing detained defendants in jail. These savings may be specified as:

$$D = D(b, c^*), \tag{2}$$

where D, the value of detention savings, is equivalent to Landes's J, and $c^*$ is the number of defendants already being detained due to decisions in previous periods.[5] With Landes, we assume increasing marginal cost of detention, so that $D_b > 0$, $D_{bc^*} > 0$, $D_{bb} < 0$ (i.e., the marginal savings fall as the detention facility becomes less crowded). For calendar year 1977, the average variable cost of detention was estimated at $28.29, based on data supplied by the Department of Corrections.

With Landes, we recognize that releasees may impose two categories of cost on society—by committing additional crimes, and by failing to appear for trial.[6] Judicial expectations about the first type of cost are formed according to the function:

$$H_I^* = H_I^*(b, u_2, j), \tag{3}$$

where $H_I^*$ is the expected cost of pretrial crime by the defendant subgroup, $u_2$ is a

vector of characteristics thought to predict future crime or failure to appear by the defendants, and j denotes the identity of the judge setting pretrial release conditions. It is assumed that $H^*_{1b} > 0$; since the defendants within the subgroup are perceived as identical in terms of $u_2$, $H^*_{1bb} = 0$ (see note 4).

The second way a releasee may impose costs on society is by failing to appear for trial. His failure to appear imposes direct costs of attempted reapprehension, a waste of judicial resources when his case is continued, and a waste of time by witnesses who appear in court to no avail. In addition, if defendant disappearance prevents justice from being carried out, the loss of future deterrent and incapacitative effects from punishment may be an additional cost. These costs are subsumed in $H_2$, about which judicial expectations are formed according to:

$$H^*_2 = H^*_2 (b, u_2, m, s, j, i^*), \tag{4}$$

where m is the dollar value of bond set by the judge for defendants in the subgroup and forfeited by the defendant or bondsman (depending on s) if the defendant does not appear for trial. Assuming the loss of bond acts as a deterrent to flight implies $H^*_{2m} < 0$; no assumption is made about $H^*_{2mm}$. An incentive to flight is provided by large $i^*$, the expected sentence for defendants in this subgroup. It may be thought of as the product of sentence for those convicted of the crime charged and the probability of conviction. Since a high expected sentence is seen as an inducement to flight, $H^*_{2i^*} > 0$ and $H^*_{2bi^*} > 0$; no assumption is made about the sign of $H^*_{2i^*i^*}$. The counterincentives to flight—bond and expected sentence—are assumed to be independent (i.e., $H^*_{2mi^*} = 0$). If the cost of reapprehension is the same for each defendant in the subgroup who disappears, then within a subgroup $H^*_{2b} > 0$, $H^*_{2bb} = 0$.

The role of s in forming expectations about failure to appear is complex. As explained in Chapter 1, the law governing the setting of release conditions requires the judge to consider s = 0, 1, 2, 3 in that order and to impose the first one that, in his opinion, will guarantee the defendant's appearance. This requirement suggests that framers of the law believed that, holding other arguments constant, higher values of s generate smaller values of $H_2$. However, as discussed at length in Chapter 1, the third-party custodians in the District of Columbia are controversial; many judges are known to believe they perform no useful function. Therefore, we assume that, for b, $u_2$, m, j, and $i^*$ constant,

$$H^*_2 (b, u_2, 0, 0, j, i^*) \geq H^*_2 (b, u_2, 0, 1, j, i^*)$$
$$> H^*_2 (b, u_2, m, 2, j, i^*) > H^*_2 (b, u_2, m, 3, j, i^*).$$

With Landes, we define an expected net benefit function for pretrial release, equal to the difference between gains from release and expected costs of release:

$$\Pi = G (b, s, u_1) + D (b, c^*) - H^*_1 (b, u_2, j) - H^*_2 (b, u_2, m, s, j, i^*). \tag{5}$$

Optimality requires that the judge select values of s and b for the subgroup that maximize expected community benefit. However, for s > 1, the judge does not control b directly. Instead, we assume with Landes that the defendants in the subgroup have a demand function for release that may be written as:

$$b = b (m, s, u_1). \tag{6}$$

Since an individual defendant will pay bond in amount m only if the residual term $v_1$ causes him to place a value exceeding m on pretrial freedom, it is plausible to assume $b_m < 0$. Since greater values of s are assumed to reduce defendant gains from release, it is also plausible to assume $b(0, 0, u_1) > b(0, 1, u_1) > b(m, 2, u_1) > b(m, 3, u_1)$ for given values of m and $u_1$. Ignoring problems of discontinuity, this may be stated as $b_{ms} < 0$.

Concluding our modified version of Landes's model, equation (5) may be maximized with respect to m and s after substitution of equation (6). For any value of s, this yields the condition that:

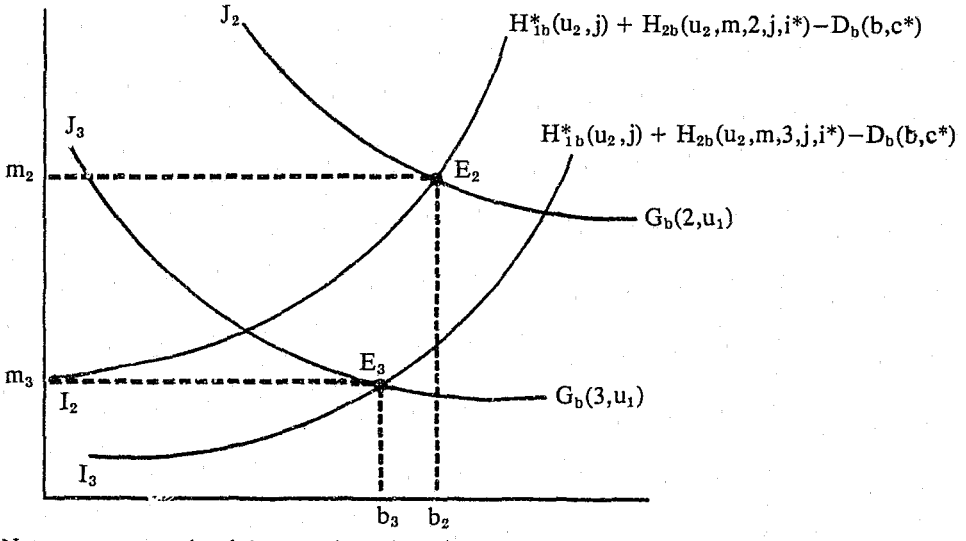
$$\frac{\partial \Pi}{\partial m} = b_m (G_b + D_b - H^*_{1b} - H^*_{2b}) - H^*_{2m} = 0. \tag{7}$$

This condition may be interpreted to require that the marginal defendant gains and detention savings obtained at the optimal value $\hat{m}$ must equal the marginal harm incurred by doing so. The terms $H^*_{1b}$ and $H^*_{2b}$ indicate that reducing m to $\hat{m}$ releases additional defendants who may misbehave; $H^*_{2m}$ indicates the lessened incentive to appear for defendants who were willing to obtain release at higher bond amounts.

Because our model considers the simultaneous setting of s and m, a possibility of nonunique solutions arises, which was not a problem in the Landes model. Consider Figure A.1, which illustrates two optimal combinations of m and b for a defendant subgroup; the two equilibria differ in the selection of s.

Line $I_2$ illustrates the marginal expected cost function for releasing defendants in a given subgroup under cash bond, that is, the right-hand side of equation (7), for s = 2. Line $J_2$ illustrates the marginal gain to defendants from release on cash bond, that is, the left-hand side of equation (7), for s = 2. The equilibrium point defined by equation (7) appears at point $E_2$. Similarly, lines $I_3$ and $J_3$ define an equilibrium point at $E_3$ for s = 3. The directions of the shifts, explained above, guarantee that $m_3 < m_2$, that is, that the bond amount paid by defendants will be less if surety bond is required than if cash bond is required.[7] In the figure, moreover, fewer defendants are released under surety bond than under cash bond; in general, the relative number released depends on whether the choice between

**Figure A.1.**
**Nonunique Equilibria for Cash and Surety Bond**




Note: m = money bond; b = number released.

cash and surety shifts the defendants' marginal gain function more or less than the judge's expected cost function; therefore, it cannot be predicted in general.[8]

The problem of nonunique equilibria is especially significant in the choice between release on personal recognizance and release to a third-party custodian. Not only would the equilibria corresponding to $E_2$ and $E_3$ be approaching a corner solution at $m = 0$ and $b = n$; but, in the eyes of many judges, appointing a custodian has little effect on either the defendant's gain function or the community's loss function.

The second-order condition for maximization of equation (5) is useful in deriving testable hypotheses concerning the pretrial release system. Differentiating equation (7), one obtains the condition:

$$\frac{\partial^2 \Pi}{\partial m^2} = b_{mm}\,(G_b + D_b - H^*_{1b} - H^*_{2b}) - H^*_{2bm} - H^*_{2mm} < 0, \tag{8}$$

which implies that as money bond m is reduced to the optimal value $\hat{m}$, marginal harm must be increasing more rapidly than marginal benefit. This is a less strict condition than illustrated in Figure A.1, where marginal gain is actually decreasing.

Equation (7) expresses a relationship between the judge's behavior in setting bond and the variables s, $u_1$, c*, $u_2$, j, and i*. The properties of this relationship, which are used in the next section to generate hypotheses about the setting of pretrial release conditions, become more readily apparent if the total differential of equation (7) is set to 0. Abstracting from discontinuities, this may be written:

$$d\left[\frac{\partial \Pi}{\partial m}\right] \equiv \Phi_{\hat{m}} d\hat{m} + \Phi_s ds + \Phi_{u_1} du_1 + \Phi_{c^*} dc^* + \Phi_{u_2} du_2 + \Phi_j dj + \Phi_j dj + \Phi_{i^*} di^* = 0, \tag{9}$$

where:

$\Phi_{\hat{m}} = \dfrac{\partial^2 \Pi}{\partial m^2} < 0$ by the second-order condition;

$\Phi_s = [b_{ms}\,(G_b + D_b - H^*_{1b} - H^*_{2b} - H^*_{2m}) + b_m\,(G_{bs} - D_{bs} - H^*_{1bs} - H^*_{2bs} - H^*_{2ms})]$, of indeterminate sign, depending on the relative magnitudes of the expected impact of pretrial supervision on flight and the negative impact of supervision on defendant utility;

$\Phi_{u_1} = [b_{mu_1}\,(G_b + D_b - H^*_{1b} - H^*_{2b} - H_{2m}) + b_m\,(G_{bu_1} + D_{bu_1} - H^*_{1bu_1} - H^*_{2bu_1} - H^*_{2mu_1})]$, which, if $b_{mu_1} = D_{bu_1} = H^*_{1bu_1} = H^*_{2bu_1} = H^*_{2mu_1} = 0$, will be opposite in sign to $G_{bu_1}$ (i.e., negative if increases in $u_1$ increase the defendant's gain from pretrial release);

$\Phi^*_c = b_m D_{bc^*} < 0$, since $b_m < 0$, $D_{bc^*} > 0$;

$\Phi_{u_2} = [b_m\,(-H^*_{1bu_2} - H^*_{2bu_2}) - H^*_{2mu_2}] > 0$ if $u_2$ is a "negative" characteristic, such as incidence of prior failures to appear, which is thought to increase the risk of pretrial harm and thought not to intensify the disincentive effect of money bond on flight (i.e., $H^*_{1bu_2}, H^*_{2bu_2} > 0$, $H^*_{2mu_2} \geq 0$);

$\Phi_j = [b_m\,(-H^*_{1bj} - H^*_{2bj}) - H^*_{2mj}] > 0$ if judge j tends to estimate the risk of pretrial harm relatively highly (i.e., if $H^*_{1bj}, H^*_{2bj} > 0$, $H^*_{2mj} \geq 0$);

$\Phi_{i^*} = b_m\,(-H^*_{2bi^*}) - H^*_{2mi^*} > 0$, since $b_m < 0$, $H^*_{2bi^*} > 0$, $H^*_{2mi^*} = 0$ by assumption.

Equation (9) is a theoretical equation modeling the judge's behavior in setting pretrial release conditions; equation (6) is a theoretical equation modeling the

defendant's behavior in obtaining pretrial release under financial conditions. To complete the system, we may write equations modeling the cost of harm caused by released defendants. These are analogous to equations (3) and (4); however, they describe actual behavior rather than the judge's expectations about behavior. The cost of harm from future crime by released defendants in the subgroup is given by:

$$H_1 = H_1 (b, u_2). \tag{10}$$

The cost of failure to appear is given by:

$$H_2 = H_2 (b, u_2, m, s, i^*), \tag{11}$$

where derivative signs are the same as those of equation (4).

Equations (6), (9), (10) and (11), then, model the complete system to be studied empirically in the section below on estimation results. However, before proceeding to estimation, several testable hypotheses concerning pretrial release are first developed.

## HYPOTHESES

In this section, the system containing equations (6), (9), (10), and (11) is used to develop several hypotheses concerning the setting of pretrial release conditions by judges, the satisfaction of financial conditions by defendants, and pretrial crime and failure to appear by released defendants. The hypotheses are tested in the section below on estimation results.

### Pretrial Release Conditions

In this subsection we develop hypotheses involving the effect of $c^*$, $u_2$, j, and $i^*$ on optimal money bond, $\hat{m}$. Since, as was argued above, increases in s, like increases in $\hat{m}$, reduce the number of defendants released and reduce marginal expected cost of pretrial harm, these hypotheses will be tested below with respect to both $\hat{m}$ and s.

H1: A larger jail population at the time of arraignment is associated with lower bond, *ceteris paribus*.

By setting all differentials except $dc^*$ and $d\hat{m}$ to zero, then solving equation (9), one may write:

$$\frac{d\hat{m}}{dc^*} = -\frac{\Phi_{c^*}}{\Phi_{\hat{m}}} < 0. \tag{12}$$

Relation (12) expresses the proposition that a larger existing detained population decreases optimal bond. The reasoning is that if the marginal cost of detention is increasing, the savings from releasing an additional defendant increase with the size of the detained population. In our model, the judge captures these savings by setting lower bond amounts, *ceteris paribus*. This hypothesis will be tested by examining the power of jail population during the month preceding arraignment to "explain" pretrial release conditions.

H2: Higher bonds are associated with more serious charges and with charges indicating a propensity toward flight from prosecution, *ceteris paribus*.

Setting all differentials except $du_2$ and $d\hat{m}$ to zero and solving equation (9), one may write:

$$\frac{d\hat{m}}{du_2} = \frac{-\Phi_{u_2}}{\Phi_{\hat{m}}}. \tag{13}$$

As explained following equation (9), a "bad" characteristic, thought to increase the risk of pretrial misbehavior, will cause a positive value of $\Phi_{u_2}$, hence a positive value of $\frac{d\hat{m}}{du_2}$, that is, a higher optimal money bond. The seriousness of the alleged crime is also often assumed to be positively correlated with the seriousness of future crimes a defendant may commit.[9] Although we do not use an index of seriousness, components of one such index (e.g., extent of injuries to victims) do appear, as do dummy variables representing charge categories.

H3: Higher bonds are associated with more extensive criminal histories and with histories indicating a propensity toward flight from prosecution, *ceteris paribus*.

By the argument following equation (13), "bad" characteristics in the defendant's criminal record, also a part of $u_2$, should be associated with more severe pretrial release conditions.

H4: Higher bonds are associated with defendant characteristics indicating lack of stability or lack of ties to the community, *ceteris paribus*.

Defendant characteristics, such as a nonlocal residence or lack of employment, are often thought to predict failure to appear. Equation (13) predicts that such variables are associated with higher bonds; in fact, as explained in Chapter 1, the D.C. Code encourages judges to take many of them into account. The effects of such extralegal variables as age, race, and sex of defendant will also be examined.

H5: Controlling for other factors, pretrial release conditions are partially explained by the judge setting them.

Setting all differentials except $d\hat{m}$ and dj to zero and solving equation (9), one may write:

$$\frac{d\hat{m}}{dj} = \frac{-\Phi_j}{\Phi_{\hat{m}}}. \tag{14}$$

Although we do not presume to anticipate the sign of $\frac{d\hat{m}}{dj}$ for a particular value of j, the equation indicates that, in general, the release conditions for a given defendant are not independent of the judge setting them. The importance of arraignment judge identity in explaining pretrial release conditions will be tested by means of dummy variables and a measure of the judge's experience on the D.C. bench.

H6: A higher probability of conviction and a higher maximum statutory sentence for the crime of which the defendant is accused are associated with a higher bond, *ceteris paribus*.

Setting all differentials except $d\hat{m}$ and di* to zero, and solving equation (9), one may write:

$$\frac{d\hat{m}}{di^*} = \frac{\Phi_{i^*}}{\Phi_{\hat{m}}} > 0. \tag{15}$$

Relation (15) suggests that a judge, anticipating that a larger expected sentence gives the defendant a greater incentive to fail to appear, will set a higher bond as a counterincentive. The expected sentence, in turn, can be decomposed into the probability of conviction and an index of potential sentence if convicted. The

hypothesis will be tested using maximum statutory sentence for the crime charged and two proxies for the probability of conviction: the subjective estimate of the assistant prosecutor who screened the case and a vector of exogenous variables found by Forst and Brosi[10] to predict the probability of conviction.

H7: Low-income defendants receive lower money bond, *ceteris paribus*.

Setting all differentials except $d\hat{m}$ and $du_1$ to zero and solving equation (9), one obtains:

$$\frac{d\hat{m}}{du_1} = -\frac{\Phi_{u1}}{\Phi_{\hat{m}}}. \tag{16}$$

As explained following equation (9), $\Phi_{u1}$, therefore $\frac{d\hat{m}}{du_1}$, is negative if $u_1$ is defined so that increases in $u_1$ increase the defendant's gain from pretrial release. Heuristically, *ceteris paribus*, net benefit is greater for defendants with greater $u_1$; this encourages the judge to release such defendants in greater numbers by setting lower bond.

We lack data on many defendant characteristics that might appear in $u_1$: availability of paid vacation if employed, marital status, and savings, for example. Using the defendant's zip code, however, we were able to determine whether a defendant who is a local resident lives in a low-income area; this variable was used as a proxy for whether the defendant had a low income.

Landes argued that foregone earnings tend to rise with wealth,[11] which suggests that, *ceteris paribus*, high-income defendants have a greater marginal benefit from pretrial release. We argue, on the contrary, that low-income defendants are less likely to have either paid vacation time or sufficient savings to see their families through a period of pretrial incarceration and are more likely to suffer decreased future earnings following pretrial incarceration.[12] Therefore, treating "low income" as a variable that increases the defendant's gain from pretrial release, we will test the hypothesis, using our proxy.

**Obtaining Release**

In specifying equation (6), several assumptions were stated about the behavior of defendants for whom financial release conditions are set. Based on those assumptions, we state three testable hypotheses about defendants' demand for pretrial release, for those who are not released immediately on personal recognizance or to a third party.

H8: The higher the amount of money bond, the lower the probability that a defendant will obtain release.

Following equation (6), we adopted Landes's argument that bond in amount $\hat{m}$ would likely be paid by only those defendants who placed a value exceeding $\hat{m}$ on pretrial freedom. It follows that, *ceteris paribus*, a lower bond amount will result in the release of more defendants, an assumption we expressed as $b_m < 0$.

H9: For any bond amount, a higher proportion of defendants will be willing to obtain release by posting cash bond than by obtaining surety bond.

Following equation (6), it was argued that stricter supervision, denoted by larger values of s, reduces defendants' gain from release; hence, it reduces the proportion of defendants willing to pay bond of any given amount m. We will test this hypothesis by evaluating the significance of an interaction term between type

of release condition (surety or cash) and amount of bond as a predictor of whether release was obtained.

H10: Low-income defendants are less likely to obtain release at any given bond amount than are other defendants.

In the discussion of hypothesis H7, we argued that, *ceteris paribus,* a low-income defendant gains more from pretrial release than does a high-income defendant, so that optimizing behavior will lead the judge to set lower money bond for low-income defendants than for other defendants. However, if wealth (out of which bond may be posted) is positively correlated with income,[13] and if a high- and low-income defendant have an identical utility function for wealth that implies decreasing marginal utility for wealth, then posting bond of amount m causes the low-income defendant greater disutility than the high-income defendant. If a defendant's low-income status increases his disutility of paying bond in amount $\hat{m}$ by more (less) than it increases his marginal utility from obtaining release, then low-income defendants will post bond in amount $\hat{m}$ at a lower (higher) rate than will other defendants. Using residence in a low-income area as a proxy for low-income status, we will examine the effect of income on release rate.

**Pretrial Misconduct**

Equation (10) models the rate at which released defendants commit additional crimes before trial, and equation (11) models the rate at which released defendants fail to appear for trial. Using these equations, we state three hypotheses, to be tested below, about pretrial crime and failure to appear.

Development of two of these hypotheses is more straightforward in terms of the total differentials of equations (10) and (11). These are given, respectively, by:

$$dH_1 = H_{1b}db + H_{1u_2}du_2, \tag{17}$$

and by

$$dH_2 = H_{2b}db + H_{2u_2}du_2 + H_{2m}d\hat{m} + H_{2s}ds + H_{2i*}di^*. \tag{18}$$

The three hypotheses are stated below.

H11: Money bond and supervision deter failure to appear but not pretrial crime.

Money bond and supervision status appear in equation (18) as deterrents to flight, but they do not appear in equation (17) as deterrents to pretrial crime. This is to be expected, since cash or surety bond is forfeited only upon failure of the defendant to appear, not upon rearrest of the defendant. We will test this hypothesis, expecting that bond amount and supervision status help explain failure to appear but not additional crime.

H12: Characteristics of the defendant (criminal history, flight history, and socioeconomic characteristics) used by judges to set release conditions do affect the probabilities of failure to appear and pretrial crime.

With respect to pretrial crime, this hypothesis is a straightforward interpretation of equation (17). The situation is somewhat more complex with respect to failure to appear. Setting all differentials of equations (9) and (18) to zero except $d\hat{m}$ and $du_2$, and substituting, one obtains:

$$dH_2 = H_{2u_2}du_2 + H_{2m}d\hat{m} = du_2\left[H_{2u_2} - \frac{\Phi_{u_2}H_{2m}}{\Phi_{\hat{m}}}\right]. \tag{19}$$

If $u_2$ is defined as a "bad" characteristic, say a history of previous failures to appear, $H_{2u_2} > 0$ represents the "pure" effect of the characteristic on flight possibility. The second term, $-(\Phi_{u_2} H_{2m}/\Phi_{\hat{m}}) < 0$, arises from the following chain of events: the judge sets a higher bond $\hat{m}$ because of $u_2$; even if the defendant obtains release, the higher value of $\hat{m}$ still acts as an enhanced flight deterrent. Thus, the total effect of $u_2$ on flight probability is the net of a "pure" effect and an "indirect" effect involving the judge's efforts at compensation for the pure effect.[14] The total effect will be positive, negative, or zero depending on whether the judge under-, over-, or exactly compensates for the presence of $u_2$ in setting bond. To isolate the pure effect, one must control for $\hat{m}$ in testing the significance of the relationship between $u_2$ and failure to appear.[15]

H13: A higher probability of conviction and a higher maximum statutory sentence for the crime charged are associated with a higher rate of failure to appear, *ceteris paribus*.

Reasons for assuming $H_{2l^*} > 0$ were outlined in the discussion of H6. Substitution of equation (9) into equation (18) may be employed as above to distinguish between the "pure" and "total" effects of higher expected sentence on the probability of failure to appear.

In the next section, we present estimation results for the stochastic specifications of equations (6), (9), (10), and (11) and results of tests of hypotheses H1 through H13.

## ESTIMATION RESULTS

To test the hypotheses stated above, empirical counterparts to equations (6), (9), (10), and (11) were specified and estimated using data on cases processed during 1974 in the Superior Court of the District of Columbia.[16] Estimation results are presented in three sections: analysis of release conditions, analysis of whether financial conditions are satisfied, and analysis of pretrial misconduct by released defendants. All three analyses made use of a common set of predetermined variables. Table A.1 defines these variables for all three analyses. Having defined the set of exogenous variables to be used, we proceed to report the results of estimation.

### Setting Release Conditions

To make estimation more tractable, we have viewed the setting of release conditions as a sequence of three decisions by the arraignment judge:

(1) To set financial or nonfinancial release conditions.
(2) To choose between supervision alternatives within the financial and nonfinancial categories: cash vs. surety financial release; and personal recognizance vs. third-party custodial nonfinancial release.
(3) For defendants assigned financial conditions, to set the amount of bond.

By estimating a separate equation for each of these decisions, we may test hypotheses H1 through H7 with respect to each stage in the process.

Thus, we define an endogenous variable corresponding to each stage of the decision:

$$\begin{aligned} FIN_i &= 1 \text{ if the defendant in case i is assigned financial conditions,} \\ &= 0 \text{ if the defendant in case i is given nonfinancial conditions,} \end{aligned} \qquad (20)$$

defined for all cases in the sample;

$TPC_i$ = 1 if the defendant in case i is released to a third-party custodian (21a)
= 0 if the defendant in case i is released on his own recognizance,

defined for all cases in which the defendant is assigned nonfinancial release conditions;

$SUR_i$ = 1 if the defendant in case i is required to post surety bond (21b)
= 0 if the defendant in case i is required to post cash bond,

defined for all cases in which the defendant is assigned financial release conditions; and

$AMT_i$ = amount of bond required, defined for all cases in which the defendant is assigned financial release conditions. (22)

Corresponding to each endogenous variable, we may write an equation to be estimated:

$$\Pr(FIN_i=1) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}B_k}{\sigma}\right], \tag{23}$$

where $X_k$, k=0, . . ., 7 denote a constant and the seven sets of predetermined variables ($X_H$, $X_C$, $Y_H$, $Y_F$, $Z_S$, $Z_E$, and $Z_P$), defined in Table A.1, and $\sigma = 1$ by assumption. The $B_k$ are corresponding vectors of coefficients to be estimated; $\phi$ [•] represents the cumulative standardized normal distribution function; and $\Pr[FIN_i=1]$ is the probability that FIN = 1 for case i.[17]

$$\Pr(TPC_i) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}B_k}{\sigma}\right]. \tag{24a}$$

$$\Pr(SUR_i) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}B_k}{\sigma}\right]. \tag{24b}$$

$$AMT_i = \sum_{k=0}^{7} X_{ki}B_k + \epsilon_i, \tag{25}$$

where $\epsilon_i \sim N(0, \sigma_1^2)$ and $\sigma_1^2$ is unknown.

Equation (23) was estimated separately for felonies and misdemeanors. Estimation results are presented in Table A.2, after deleting all variables whose coefficients were insignificant at conventional $\alpha$-levels. The high likelihood-ratio statistics indicate a good fit, and significant coefficients generally carry the signs predicted by our theoretical model. For both misdemeanors and felonies, current-charge, socioeconomic, criminal-history, and flight-history variables, commonly thought to indicate a high likelihood of future serious crimes or of failure to appear, are associated with nonfinancial release conditions. These findings support hypotheses H2, H3, and H4.

Hypothesis H1 is supported for felonies by a strong negative relationship between previous-period jail population and the probability that financial conditions are involved.[18] The effect of arraignment judge identity is significant, using a likelihood ratio test, as predicted by hypothesis H5; however, only a few judges (two in felonies and four in misdemeanors) stand apart from the others. As predicted by hypothesis H7, and as one would expect under a "relative" interpretation of the constitutional prohibition against excessive bond, a low income is,

*ceteris paribus,* associated with nonfinancial release of felony defendants.[19] The only hypothesis not supported at all by the results was H6: that judges, anticipating more failure to appear among defendants facing exceptionally long or certain sentences, would set financial conditions more frequently for such defendants. An explanation for that unexpected finding must await the investigation below of whether such defendants do in fact fail to appear more frequently than other defendants.

**Table A.1.**
**List of Predetermined Variables**

| Category | Variable Name | Definition |
|---|---|---|
| $X_H$ = current crime seriousness | CHG(1)-CHG(11) | CHG(K) = 1 if maximum charge falls in group K<br>0 otherwise<br>For felonies, groups are homicide, assault, sexual assault, robbery, burglary, larceny, fraud, arson/property destruction, gun offenses, other weapon offenses, drug offenses, and bail violations. For misdemeanors, gambling replaced fraud; and consensual sex replaced arson/property destruction. |
| | NOWEAP | = 1 if weapon not used in offense<br>0 otherwise |
| | INJURY | = 1 if victim injured<br>0 otherwise |
| | THREAT | = 1 if victim intimidated<br>0 otherwise |
| | MAXSEN | = maximum statutory sentence, in years |
| | FELMIS | = 1 if maximum charge is a felony<br>0 if maximum charge is a misdemeanor |
| $X_C$ = current crime convictability | COMVIC | = 1 if victim a business or institution<br>0 otherwise |
| | RELUCT | = 1 if reluctant prosecution (exculpatory evidence, victim a poor witness, etc.)<br>0 otherwise |
| | CODEF | = 1 if one or more codefendants<br>0 otherwise |
| | RELVIC | = 1 if defendant related to victim<br>0 otherwise |
| | TANEV | = 1 if police recovered tangible evidence<br>0 otherwise |
| | 1WIT | = 1 if exactly one lay witness<br>0 otherwise |
| | 2WIT | = 1 if two or more lay witnesses<br>0 otherwise |

**Table A.1.**
**List of Predetermined Variables**
**(Continued)**

| Category | Variable Name | Definition |
|---|---|---|
| $X_C$ = current crime convictability (cont'd.) | SUBWIN | = screening assistant prosecutor's subjective probability estimate of winning case. Possible responses were: "poor" (under 50%); "fair" (50%–75%); "good" (75%–90%); and "excellent" (90%–100%). Category mean was used as the explanatory variable. |
| $Y_H$ = criminal history | PRIOR | = 1 if defendant previously arrested<br>0 otherwise |
| | 5YEARS | = 1 if defendant arrested within past 5 years<br>0 otherwise |
| | PRIALL | = number of prior arrests (all serious crimes) |
| | PRIPRS | = number of prior arrests (crimes against persons) |
| | PNDCAS | = number of pending cases at time of prosecutor screening |
| | ARST73 | = number of closed cases against same defendant since 1/1/73 |
| | PARPRB | = 1 if defendant on parole or probation at time of arrest<br>0 otherwise |
| $Y_F$ = flight history | FLITES | = number of bench warrants issued against this defendant since 1/1/73 |
| | FLTPND | = number of bench warrants issued against this defendant in pending cases |
| $Z_S$ = admissible socioeconomic characteristics | LOW Y | = 1 if defendant's zip code is a low-income area*<br>0 otherwise |
| | HIGH Y | = 1 if defendant's zip code is a high-income area*<br>0 otherwise |
| | LOCAL | = 1 if defendant recorded as local resident<br>0 otherwise |
| | EMPLOYD | = 1 if defendant recorded as employed<br>0 otherwise |
| | DRUGS | = 1 if defendant recorded as drug user<br>0 otherwise |
| | ALCOHOL | = 1 if defendant recorded as alcoholic<br>0 otherwise |

**Table A.1.**
**List of Predetermined Variables**
**(Continued)**

| Category | Variable Name | | Definition |
|---|---|---|---|
| $Z_S$ = admissible socioeconomic characteristics (cont'd.) | 6MMORE | | = 1 if defendant held current or last job more than 6 months<br>0 otherwise |
| | 6MLESS | | = 1 if defendant held current or last job less than 6 months<br>0 otherwise |
| | NEVER | | = 1 if defendant has never been employed<br>0 otherwise |
| $Z_E$ = extralegal socioeconomic characteristics | RACE | | = 1 if defendant white<br>0 otherwise |
| | SEX | | = 1 if defendant female<br>0 otherwise |
| | AGE | | = defendant's age in years |
| $Z_P$ = procedural variables | J(1)-J(11) | K | = 1 through 10 is an index for the 10 judges who each handled more than 4% of all arraignments during 1974. For K = 1 through 10: |
| | | J(K) | = 1 if judge K set release conditions in this case<br>0 otherwise |
| | | J(11) | = 1 if one of the other 35 Superior Court judges set conditions<br>K should *not* be confused with PROMIS judge codes used in D.C. |
| | EXPER | | = years of experience for the judge on the D.C. bench |
| | CAPY | | = ratio of average D.C. jail population during month of arraignment to the maximum population during the year |
| | CAPY1 | | = ratio of average D.C. jail population during month preceding arraignment to maximum population during the year |
| | DSAT | | = 1 if arraignment occurred on a Saturday<br>0 otherwise |

*Low-income area zip codes were 20018, 20019, 20020, 20032, and 20001. High-income area zip codes were 20034, 20014, 20015, 20016, 20008, and 20007. Given the large size of zip code areas and the fact that high- and middle-income defendants may live in poor neighborhoods, these proxies are no doubt subject to substantial measurement error. About 35 percent of the defendants were classified as low income, about 2 percent as high income.

**Table A.2.**
**Estimation Results for $FIN_i$, the Financial–Nonfinancial Decision**

| Variables | Results: Coefficient Estimate and (Asymptotic Z) | |
|---|---|---|
| | Felonies | Misdemeanors |
| CHG(1)-(11): $\chi^2$ (d.f.) | 75.7** (4 d.f.) | 78.6** (2 d.f.) |
| HOMICIDE | 0.399 (3.660)** | — |
| ASSAULT | −0.316 (−4.296)** | — |
| DRUGS | −0.546 (−2.538)* | −0.487 (−7.599)** |
| BAILVIOL | 1.535 (4.354)** | 0.700 (3.833)** |
| JUDGE(1)-(11): $\chi^2$ (d.f.) | 32.3** (2 d.f.) | 38.0** (4 d.f.) |
| Procedural: $\chi^2$ (d.f.) | 22.5** (2 d.f.) | — |
| EXPER | 0.034 (3.112)** | — |
| CAPY1 | −1.280 (−2.940)** | — |
| Flight History: $\chi^2$ (d.f.) | 83.9** (2 d.f.) | 84.2** (1 d.f.) |
| FLTPND | 0.710 (2.173)* | — |
| PARPRB | 0.602 (8.088)** | 0.696 (9.508)** |
| Criminal History: $\chi^2$ (d.f.) | 73.5** (3 d.f.) | 70.5** (3 d.f.) |
| PNDCAS | 0.424 (3.917)** | 0.545 (4.616)** |
| PRIALL | 0.022 (4.842)** | 0.017 (5.097)** |
| 5YEARS | 0.160 (2.920)** | — |
| ARST73 | — | 0.107 (2.967)** |
| Var. Convictability: $\chi^2$ (d.f.) | 11.7** (2 d.f.) | — |
| RELUCT | −0.213 (−2.203)* | |
| SUBWIN | −0.003 (−2.825)** | |
| Crime Seriousness: $\chi^2$ (d.f.) | 11.7** (1 d.f.) | — |
| NOWEAP | −0.183 (−3.497)** | |
| Statutory Characteristics: $\chi^2$ (d.f.) | 30.1** (3 d.f.) | 53.6** (3 d.f.) |
| LOCAL | −0.162 (−3.324)** | −0.100 (−2.160)* |
| EMPLOYD | −0.165 (−3.411)** | −0.300 (−6.406)** |
| LOW Y | −0.125 (−2.546)* | — |
| DRUGS | — | 0.299 (2.810)** |
| Extralegal Characteristics: $\chi^2$ (d.f.) | 4.1* (1 d.f.) | 10.5** (1 d.f.) |
| RACE | 0.207 (2.079)* | 0.210 (3.351)** |
| Constant | 0.719 (1.823) | −1.041 (−22.444)** |
| −2LLR | 451.5 ($\chi^2_{20}$)** | 458.4 ($\chi^2_{14}$) |
| $R^2$ | 0.23 | 0.18 |
| No. of Cases | 3,439 | 5,027 |
| % Predicted Correctly | | |
| By Model*** | 73.0% | 86.0% |
| By Random Choice | 57.1% | 75.4% |

—Not significant at conventional $\alpha$-levels. *Significant at $\alpha = .05$. **Significant at $\alpha = .01$.
***The dependent-variable value to which the estimated model assigns the highest probability for the $i^{th}$ observation is called the $i^{th}$ "prediction." If that value equals the actual value of the dependent variable, the "prediction" is counted as correct by the computer program used here. Since the data being "predicted" are also used in estimation, we are not predicting in the usual sense; in general, the reported statistic overstates the predictive accuracy one would expect on a different data set, for example, the 1975 PROMIS data. Nevertheless, the reported "% predicted correctly by model" seems a reasonable criterion for choosing among alternative models estimated with the same data. Furthermore, the improvement over "% predicted correctly by random choice" is a heuristic measure of the extent to which the model has identified systematic relationships. From the bivariate case encountered here, the latter statistic is computed as 1-2f (1-f), where f is the observed proportion of the sample having the defendant variable equal to one.

For defendants to be released on nonfinancial conditions, the arraignment judge must decide whether to appoint a third-party custodian. To learn what factors affect this decision, equation (24a) was estimated for defendants released nonfinancially, separately for felonies and misdemeanors. The results are presented in Table A.3. Again, they are generally consistent with hypotheses H1 through H7; however, a smaller set of defendant socioeconomic characteristics appears to enter into the decision. As predicted, third-party custody is assigned to higher risk defendants, particularly with respect to criminal history variables thought to predict future crimes. This is consistent not only with theory, but with the stated purpose of a major third-party custodian: "to secure pretrial release of those persons accused of a crime but who might not qualify for other forms of release, i.e., personal recognizance or monetary bond."[20] Given the problem of nonunique

**Table A.3.**
**Estimation Results for $TPC_1$, the Third-party Custody–Personal Recognizance Decision**

| | Results: Coefficient Estimate and (Asymptotic Z) | |
|---|---|---|
| Variables | Felonies | Misdemeanors |
| Charges: $\chi^2$ (d.f.) | 57.8** (3 d.f.) | 23.7** (2 d.f.) |
| ROBBERY | 0.396 (5.688)** | — |
| SEX ASLT | 0.577 (4.399)** | — |
| HOMICIDE | 0.756 (4.892)** | — |
| BAIL VIOL | — | 1.132 (3.936)** |
| BURGLARY | — | 0.349 (3.159)** |
| Judges: $\chi^2$ (d.f.) | 302.1** (6 d.f.) | 142.8** (6 d.f.) |
| Procedural: $\chi^2$ (d.f.) | 16.6** (1 d.f.) | 35.4** (1 d.f.) |
| EXPER | 0.063 (4.505)** | — |
| DSAT | — | 0.535 (6.248)** |
| Criminal History: $\chi^2$ (d.f.) | 27.4** (1 d.f.) | 20.3** (2 d.f.) |
| PNDCAS | 0.841 (4.647)** | 0.380 (2.115)* |
| ARST73 | — | 0.186 (3.947)** |
| Flight History: $\chi^2$ (d.f.) | 15.5** (1 d.f.) | 26.5** (1 d.f.) |
| PARPRB | 0.380 (4.048)** | 0.533 (5.407)** |
| Statutory Characteristics: $\chi^2$ (d.f.) | 29.5** (1 d.f.) | 72.9** (1 d.f.) |
| EMPLOYD | −0.345 (−5.564)** | −0.499 (−8.618)** |
| Extralegal Characteristics: $\chi^2$ (d.f.) | 20.4** (2 d.f.) | — |
| AGE | −0.010 (−3.568)** | — |
| SEX | −0.267 (−2.655)** | — |
| Constant | −0.718 (−6.215)** | −1.242 (−26.473)** |
| −2LLR | 462.8 ($\chi^2_{15}$)** | 395.3 ($\chi^2_{13}$)** |
| $R^2$ | 0.33 | 0.27 |
| No. of Cases | 2,369 | 4,307 |
| % Predicted Correctly | | |
| By Model | 76.4% | 90.2% |
| By Random Choice | 60.6% | 82.3% |

—Not significant at conventional $\alpha$-levels.
*Significant at $\alpha = .05$.
**Significant at $\alpha = .01$.

equilibria, discussed above, and the controversial nature of the third-party custodians, the extremely high likelihood-ratio statistics for the judge group are not surprising.

For defendants assigned financial release conditions, the next decision is between requiring a cash bond[21] by the defendant himself and requiring posting of a surety bond. To learn what factors influence that decision, equation (24b) was estimated for defendants released financially, separately for felonies and misdemeanors. The estimation results are reported in Table A.4. As one would expect given the problem of nonunique equilibria, the group of judge identity variables had a higher likelihood-ratio statistic than any other variable group in this equation. Felony defendants arraigned on Saturday were less likely to be assigned surety bond; this result could reflect a presumption by the judge that a bondsman may be more difficult to find on a Saturday. Among misdemeanor defendants, the extralegal defendant characteristics of race and sex were significant: whites and females were significantly less likely to be released on surety bond. Except for parole–probation status, the results did not indicate that the cash–surety decision

**Table A.4.**
**Estimation Results for $SUR_i$, the Surety–Cash Bond Decision**

| | Results: Coefficient Estimate and (Asymptotic Z) | |
|---|---|---|
| Variables | Felonies | Misdemeanors |
| Charges: $\chi^2$ (d.f.) | 10.4* (3 d.f.) | — |
| LARCENY | −0.292 (−1.974)* | — |
| WEAPON | −0.491 (−2.106)* | — |
| DRUGS | −0.946 (−2.133)* | — |
| Judges: $\chi^2$ (d.f.) | 72.4** (4 d.f.) | 70.6** (5 d.f.) |
| Procedural: $\chi^2$ (d.f.) | 12.5** (1 d.f.) | 5.7** (1 d.f.) |
| DSAT | −0.562 (−3.737)** | — |
| CAPY1 | — | −2.428 (−2.445)* |
| Flight History: $\chi^2$ (d.f.) | 6.1* (1 d.f.) | — |
| PARPRB | 0.307 (2.432)* | — |
| Convictability: $\chi^2$ (d.f.) | — | 5.1* (1 d.f.) |
| COMVIC | — | 0.344 (2.269)* |
| Extralegal Characteristics: $\chi^2$ (d.f.) | — | 40.1** (2 d.f.) |
| RACE | — | −0.573 (−4.087)** |
| SEX | — | −0.662 (−4.972)** |
| Constant | 1.394 (14.812)** | 2.807 (5.283)** |
| −2LLR | 87.6** ($\chi^2_9$) | 114.0** ($\chi^2_9$) |
| $R^2$ | 0.17 | 0.31 |
| No. of Observations | 1,070 | 720 |
| % Predicted Correctly | | |
| By Model | 81.9% | 69.7% |
| By Random Choice | 69.3% | 46.4% |

—Not significant at conventional $\alpha$-levels.
*Significant at $\alpha = .05$.
**Significant at $\alpha = .01$.

is related to defendant characteristics commonly associated with pretrial flight and recidivism.

The final step in setting financial conditions is to determine the amount of bond. To learn what factors influence that decision, equation (25) was estimated for all defendants receiving financial conditions, separately for felonies and misdemeanors. The estimation results appear in Table A.5. Treating the dependent variable in equation (25) as continuous, multiple regression analysis is an appropriate estimation technique. Test statistics computed are the conventional F for each group of explanatory variables and Student's t for individual explanatory variables.[22]

Although the estimated equations explained little of the variance in bond amount, the signs of significant coefficients were generally those predicted by theory. Among felony defendants, the charge categories of homicide and sexual assault were associated with high bonds, as were pending cases and parole or probation status at the time of arrest. Among misdemeanor defendants, accused Bail Reform Act violators received high bond. The high F-statistic for the judge group was not surprising; more startling was the fact that a single judge accounted for the significance. Considering defendant characteristics, employed felony defendants were found to receive lower bonds. Misdemeanor defendants were found to receive lower bonds than felony defendants, *ceteris paribus*. Misdemeanor

**Table A.5.**
**Estimation Results for $AMT_i$, Bond Amount ($000)**

| | Results: Coefficient Estimate and (Student's t) | |
|---|---|---|
| Variables | Felonies | Misdemeanors |
| Cash/Surety: F ($v_1$, $v_2$) | 0.18 (1,1062) | 10.03** (1,714) |
| SUR | 0.257 (0.422) | 0.368 (3.130)** |
| Charges: F ($v_1$, $v_2$) | 80.63** (2,1062) | 6.96** (1,714) |
| HOMICIDE | 10.044 (10.858)** | — |
| SEX ASLT | 8.469 (7.141)** | — |
| BAIL VIOL | — | 0.649 (2.595)** |
| Judges: F ($v_1$, $v_2$) | 25.66** (1,1062) | 28.59** (1,714) |
| Crime History: F ($v_1$, $v_2$) | 6.45* (1,1062) | — |
| PNDCAS | 1.549 (2.484)* | — |
| Statutory Characteristics: F ($v_1$, $v_2$) | 7.64** (1,1062) | 4.62 (2,714) |
| EMPLOYD | −1.399 (−2.809)** | — |
| DRUGS | — | 0.506 (2.314)* |
| ALCOHOL | — | −0.731 (−2.008)* |
| Constant | 2.802 | 0.911 |
| F | 31.02** (7,1062) | 11.19* (5,714) |
| $R^2$ | 0.17 | 0.07 |
| Standard Error of Estimate | 7.758 | 1.516 |
| N | 1,069 | 719 |

—Not significant at conventional $\alpha$-levels.
*Significant at $\alpha = .05$.
**Significant at $\alpha = .01$.

defendants with a drug history received higher bond, but those with a history of alcohol abuse received lower bond. This may reflect a judicial presumption of future crime by drug users because of either an extensive criminal history or a need to support a drug habit.

**Obtaining Release**

For those defendants for whom financial release conditions are set, the next event is their release or nonrelease, depending on whether they satisfy their conditions. To learn what factors predict whether a defendant obtains release, the variable $OUT_i$ was defined, where:

$$\begin{aligned} OUT_i &= 1 \text{ if defendant i obtains release,} \\ &= 0 \text{ otherwise,} \end{aligned} \tag{26}$$

and the following equation was estimated using the probit technique described in note 17:

$$\Pr(OUT_i=1) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}\beta_k}{\sigma}\right]. \tag{27}$$

The results of estimation appear in Table A.6.[23] As expected, the estimation results indicate that a higher bond discourages release. The significantly negative

**Table A.6.**
**Estimation Results for Obtaining Release on Financial Bond**

| Variables | Results: Coefficient Estimates and (Asymptotic Z) for $OUT_i$ |
|---|---|
| Release Conditions (d.f.) | 102.6** (2 d.f.) |
| SURETY | −0.691 (−3.806)** |
| AMT ($000) | −0.011 (−3.943)** |
| Charges (d.f.) | |
| BAIL | −1.041 (−2.388)* |
| ROBBERY | −0.340 (1.980)** |
| Interactions (d.f.) | 28.7** (2 d.f.) |
| SURETY × EMPLOYD | 0.500 (3.114)** |
| SURETY × 6MLESS | −0.522 (−2.797)** |
| Constant | 1.136 (7.174)** |
| −2LLR | 147.5** ($\chi^2_6$) |
| No. of Observations | 415 |
| $R^2$ | 0.49 |
| % Predicted Correctly | |
| By Model | 68.0% |
| By Random Choice | 51.6% |

*Significant at $\alpha = .05$.
**Significant at $\alpha = .01$.

coefficient on SURETY indicates that defendants are more willing to post a refundable 10 percent cash bond with the court than to pay a nonrefundable 10 percent bondsman's fee.

Of interest, no defendant characteristics were significant in themselves. This suggests that even though Tables A.2 through A.4 indicate that release *decisions* are based on certain characteristics, the *effect* of those decisions is nondiscriminatory. In general, each defendant was equally likely to post the cash bond required of him, even though the amounts differed across defendants. However, the significance of interaction terms between employment characteristics and the surety indicator suggests that bondsmen screen potential clients on employment, much as judges do in making their financial–nonfinancial release decisions.

**Failure to Appear**

For defendants who are either released immediately on nonfinancial conditions or who later obtain release by satisfying financial conditions, the factors predicting failure to appear are of interest. Specifically, we want to know whether, as predicted by hypothesis H12, the characteristics that appear to influence release conditions actually predict failure to appear. In addition, we want to know whether, as predicted by hypotheses H11 and H13, released defendants respond to the flight incentive posed by a severe expected sentence and the counterincentive presented by a high financial bond.

To examine these questions, a defendant variable $FTA1_i$ was defined, where:

$FTA1_i$ = 1 if a bench warrant was issued for defendant i during the life of his case, = 0 otherwise. (28a)

Issuance of a bench warrant at a scheduled judicial hearing indicates merely that the defendant failed to appear in court without giving prior notice. This may occur deliberately, or it may occur through absentmindedness, confusion, inadequate notification,[24] or a number of other reasons. If the missing defendant is reapprehended and the arresting officer finds evidence that notice was received, he is required to charge the defendant with violation of the D.C. Bail Reform Act (BRA). To analyze the subset of failures to appear arising from willful actions by the defendant, an alternative dependent variable, $FTA2_i$, was defined, where:

$FTA2_i$ = 1 if a bench warrant was issued for defendant i and one of the following occurred in addition: (a) the defendant was arrested for BRA violation before disposition of his sample case or (b) the case was still open when the data base was constructed in August 1975. (28b)

An equation of the following form was estimated for each version of the dependent variable, using the probit technique described in note 17:

$$\Pr(FTA_i=1) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}\beta_k}{\sigma}\right]. \tag{29}$$

The estimation results appear in Table A.7. Regardless of how failure to appear is defined, defendants in the custody of third parties are more likely to fail; employed defendants and those charged with assault are less likely to fail. Several

**Table A.7.**
**Estimation Results for $FTA_i$, Failure to Appear (Felonies and Misdemeanors)**

| Variables | Results: Coefficient Estimates and (Asymptotic Z) | |
|---|---|---|
| | All Failures | Willful Failures |
| Release Conditions (d.f.) | 16.1** (3 d.f.) | 12.7** (3 d.f.) |
| AMT | 0.008 (0.202) | −0.022 (−0.357) |
| CASH | 0.375 (2.205)* | 0.150 (0.661) |
| TPC | 0.197 (3.631)** | 0.237 (3.660)** |
| Charges (d.f.) | 27.7** (3 d.f.) | 12.5** (3 d.f.) |
| ASLT | −0.248 (−3.743)** | −0.227 (−2.707)** |
| SEXASLT | −0.640 (−2.990)** | −0.409 (−1.716) |
| WEAPONS | −0.218 (−2.575)** | −0.192 (−1.801) |
| Statutory Characteristics (d.f.) | 41.9** (2 d.f.) | 13.0** (2 d.f.) |
| EMPLOYD | −0.253 (−5.964)** | −0.193 (−3.659)** |
| DRUGS | 0.231 (2.548)* | 0.021 (0.174) |
| Constant | −1.168 (−36.582)** | −1.569 (−39.632)** |
| −2LLR | 104.1** ($\chi^2_8$) | 45.4** ($\chi^2_8$) |
| $R^2$ | 0.05 | 0.03 |
| No. of Observations | 6,913 | 6,913 |
| % Predicted Correctly | | |
| By Model | 90.3% | 95.2% |
| By Random Choice | 82.5% | 90.9% |

*Significant at $\alpha = .05$.
**Significant at $\alpha = .01$.

other variables describing the defendant, the charge, and the release conditions seem to explain failure to appear in general, but not our proxy for willful failure. No deterrent effect of bond, or encouragement effect of high expected sentence, was apparent under either definition. These results seem to imply that laws requiring judges to assess flight probability and set conditions to prevent flight may be assuming a predictability and rationality of failure to appear that we are unable to verify.

**Pretrial Rearrest**

The other form of pretrial misconduct is the commission of additional crimes while released and awaiting trial. We cannot observe pretrial criminality accurately, but we can observe pretrial rearrests and the dispositions of those arrests. To investigate what factors appear to predict pretrial criminality, two alternative indicators were defined:

$$\text{AREST1}_i = \begin{cases} 1 \text{ if the defendant was rearrested before disposition of the sample case i,} \\ 0 \text{ otherwise.} \end{cases} \quad (30a)$$

Statistically significant relationships between explanatory variables and AREST1 may describe systematic defendant behavior, or alternatively, police behavior in selecting released defendants as prime suspects. To attempt to separate the two relationships, the second indicator was defined by:

$AREST2_i$ = 1 if the defendant was rearrested before disposition of current case i and convicted in the second case, = 0 otherwise. (30b)

For each of these variables, we use an equation of the form:

$$\Pr(AREST_i=1) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}\beta_k}{\sigma}\right]. \quad (31)$$

The estimation results under both definitions are presented in Table A.8. These results indicate that felony defendants, particularly those charged with burglary

**Table A.8.**
**Estimation Results for AREST1, Pretrial Rearrest, and for AREST2, Pretrial Rearrest Followed by Conviction**

| | Results: Coefficient Estimates and (Asymptotic Z) | |
|---|---|---|
| Variables | Rearrest Only | Rearrest and Conviction |
| Release Conditions: $\chi^2$ (d.f.) | 8.7* (2 d.f.) | 0.5 (1 d.f.) |
| AMT | 0.067 (1.821) | 0.035 (0.737) |
| TPC | 0.160 (2.662)** | — |
| Charges: $\chi^2$ (d.f.) | 16.2** (4 d.f.) | 15.2** (2 d.f.) |
| ROBBERY | 0.207 (2.573)* | — |
| BURGLARY | 0.256 (3.260)** | 0.260 (3.034)** |
| LARCENY | 0.153 (2.350)* | 0.226 (3.224)** |
| ARSON/PROPDEST | 0.221 (2.386)* | — |
| Current Crime: $\chi^2$ (d.f.) | 21.5** (2 d.f.) | 11.9** (1 d.f.) |
| NOWEAP | 0.144 (2.306)* | — |
| FELMIS | 0.256 (4.501)** | 0.216 (3.555)** |
| Criminal History: $\chi^2$ (d.f.) | 48.5** (3 d.f.) | 39.1** (2 d.f.) |
| PRIPRS | 0.010 (3.510)** | — |
| PNDCAS | 0.296 (2.672)** | 0.277 (2.157)* |
| ARST73 | 0.186 (5.191)** | 0.235 (5.973)** |
| Statutory Characteristics: (d.f.) | 23.7** (2 d.f.) | 16.4** (1 d.f.) |
| EMPLOYD | −0.177 (−3.641)** | −0.247 (−4.114)** |
| DRUGS | 0.317 (3.340)** | — |
| Extralegal Characteristics: $\chi^2$ (d.f.) | 11.7** (2 d.f.) | 6.4* (1 d.f.) |
| RACE | −0.199 (−2.290)* | — |
| AGE | −0.005 (−2.460)* | −0.007 (−2.512)* |
| Constant | −1.669 (−17.689)** | −1.747 (−19.079)** |
| −2LLR | 220.2** ($\chi^2_{15}$) | 113.2** ($\chi^2_8$) |
| No. of Observations | 6,913 | 6,913 |
| $R^2$ | 0.10 | 0.07 |
| % Predicted Correctly | | |
| By Model | 93.0% | 96.4% |
| By Random Choice | 87.2% | 93.1% |

—Not significant at conventional $\alpha$-levels.
*Significant at $\alpha = .05$.
**Significant at $\alpha = .01$.

and larceny, are more likely than others to commit additional crimes while on release, using either measure of criminality. Prior criminal history, particularly recent arrests, also seems to predict future criminality; in contrast, employed defendants and older defendants are less likely to commit additional crimes while on release. Third-party release, a history of drug use, and a defendant who is nonwhite all seem to increase the probability of rearrest, though the effect on conviction following rearrest is insignificant. In general, coefficients in the two equations are of the same sign, though of somewhat less significance in the second equation. This comparison seems to reflect randomness in the adjudication outcome; if police were systematically making unwarranted arrests of defendants on pretrial release, one would expect greater inconsistencies between the two equations.

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**Notes**

1. William M. Landes, "The Bail System: An Economic Approach," *Journal of Legal Studies* 2 (1973): 79–105.

2. William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," *Journal of Legal Studies* 3 (1974): 287–337.

3. See note 1.

4. The Landes model includes two additional arguments in several functions: t, the time between arrest and trial; and p, the probability of reapprehension for a defendant who fails to appear. Because the processes that determine them are beyond the scope of this paper, we do not intend to test hypotheses involving them. Thus, they have been dropped from the model for convenience. An analysis of t appears in Jack Hausner and Michael Seidel, *An Analysis of Case-processing Time in the District of Columbia Superior Court,* PROMIS Research Publication no. 15 (INSLAW, 1979).

5. Although c* did not appear in the Landes model, severe and highly publicized overcrowding in the D.C. Jail made it pertinent to our analysis. In fact, shortly after our 1974 sample period, the D.C. Jail population was limited by court order, which caused detainees to be housed in facilities some 30 miles away until the population was reduced.

6. Our discussion of cost differs from that of Landes in several respects. First, because of the controversy over proper uses of bail, we have disaggregated his harm function H into $H_1$ (harm from future crimes) and $H_2$ (harm from failure to appear). Second, since according to note 4, we do not include p and t in the model, Landes's C (cost of reapprehension and shortening pretrial delay) is excluded from the net benefit, and reapprehension cost is subsumed in our $H_2$. Third, we take explicit note of the fact that at the time conditions are set, $H_1$ and $H_2$ are unknown to the judge. Since the judge must form expectations about them based on prior experience with similar defendants, the judge's identity itself becomes an argument of $H^*_1$ and $H^*_2$. Fourth, in constructing the function $H^*_2$, we assume that the judge expects a financial bond to act as a deterrent to flight. Since bond is not forfeited upon rearrest, bond does not appear directly in the function $H^*_1$. Similarly, since the obligation of bondsmen and third-party custodians is to make sure that the defendant appears for trial, s appears in the function $H^*_1$, but not $H^*_2$.

7. Note that m denotes payment by the defendant. In our surety bond case, m corresponds to fM in Landes's appendix on the bondsman, namely the fee to the bondsman, which is generally 10 percent of the amount for which the bondsman is liable.

8. An exception is a judge who is concerned only with preventing future crime, in effect discounting $H_{2b}$ to zero. In this instance, only the defendant's gain function would shift, and fewer defendants would be released under surety bond.

9. Economists may be troubled by the discussion of "crime seriousness" as a continuous variable. However, based on work in the psycho-physical scaling of stimuli, criminologists have developed indices of crime seriousness (see Thorsten Sellin and Marvin E. Wolfgang, *The Measurement of Delinquency,* New York: Wiley & Sons, 1964), which have been used to set priorities in prosecutors' offices (see Jeffrey A. Roth, "Prosecutor Perceptions of Crime Seriousness," *Journal of Criminal Law and Criminology,* May 1978). The troubled reader may substitute "disutility" for "seriousness" without affecting the argument.

10. Brian Forst and Kathleen B. Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," *Journal of Legal Studies* 6 (1977): 189.

11. Landes, "The Bail System": 88.

12. Although we know of no rigorous empirical studies of the question, the convicted Watergate defendants-turned-authors seem to prove that for high-income defendants, incarceration (pretrial or otherwise) does not always lead to decreased future earnings.

13. Such an assumption seems plausible for defendants in the age bracket 18–30, who form the bulk of our sample.

14. We are omitting here a similar compensation effect through the setting of s, and a prior compensation effect in which fewer defendants possessing "bad" characteristic $u_2$ obtained release because of the higher $\hat{m}$. These omissions do not invalidate the argument that the effect of $u_2$ cannot be evaluated without controlling for $\hat{m}$.

15. Thus, equations (11.1) and (11.3) in Landes ("Legality and Reality": 323) are tests of the "pure" effect of the serious characteristics on failure to appear; equation (11.2), which does not include bond amount, is a test of the total effect. The fact that introducing bond amount did not substantially affect the estimated coefficients of the characteristics is additional evidence in support of Landes's conclusion that in New York City bond is set to deter pretrial crime rather than pretrial flight.

16. Most of the data used were captured by PROMIS (the Prosecutor's Management Information System), which operates in the U.S. Attorney's Office. The offenses charged are roughly equivalent to felonies and major misdemeanors, as defined by state statutes elsewhere. In 1974, 17,534 arrests were presented for prosecution and recorded in PROMIS. From the 17,534 records available, the following categories of records were excluded from this analysis: records of cases rejected (no-papered) by the prosecutor at initial screening; records of each defendant's second and subsequent cases during 1974, to avoid counting problems caused by the disappearance of a defendant with two or more cases pending; records of cases for which the case number changed before final disposition, thereby eliminating from the record failures to appear occurring after the number changed; and records for which consistency checks indicated errors in recording initial release conditions. After these exclusions, 3,439 felony records and 5,027 misdemeanor records remained.

17. This formulation assumes that the true probability that $FIN_i = 1$ is a continuous, normally distributed random variable $\Phi(I_i)$, where $I_i = \sum_{k=0}^{7} X_{ki}\beta_k + u_i$, and $u_i \sim N(0, \sigma^2)$, but that we can observe $FIN_i$ only at the values 0 (nonfinancial conditions set) or 1 (financial conditions set). This model is a special version of one formulated by R. D. McKelvey and W. Zavoina, "A Statistical Model for the Analysis of Ordinal Level Dependent Variables," *Journal of Mathematical Sociology* 4 (1975): 103–120; a maximum-likelihood estimation technique developed by those authors was employed here. In large samples, under the null hypothesis that $B_k = 0$, the quotient of each estimated coefficient divided by its standard error is distributed as standard normal; hence a z-test analogous to the usual t-test in regression analysis is available. Explanatory power of a set of variables $Z_1, \ldots, Z_K$ may be tested with a likelihood ratio (LR) test, using the large-sample property that $-2 \ln (LR)$ is distributed as $\chi^2$ with K degrees of freedom.

18. In the misdemeanor equation, the CAPY1 coefficient was negative, as predicted, but insignificant. Judges may consider jail capacity constraints less important in misdemeanor cases because the latter are disposed of more quickly.

19. In a version of the misdemeanor model, which excluded employment status, the low-income proxy coefficient was significantly negative. Perhaps high intercorrelation is making the independent effect of income on pretrial release conditions.

20. Bonabond, Inc., "Community Benefits: 1974" (Washington, D.C., 1974): 3.

21. The judge may require posting of the entire cash bond or only a percentage of it. Unfortunately, the percentage required is not recorded in PROMIS. However, of 132 defendants in our sample released on financial conditions, only 14 had conditions other than the 10 percent deposit.

22. See, for example, J. Kmenta, *Elements of Econometrics* (New York: The Macmillan Co., 1971): 366–70.

23. PROMIS does not record whether defendants required to post cash or surety bond actually obtain release. To obtain this information, a 25 percent random sample of defendants on financial release was selected; their court records were examined to learn whether they obtained release. Equation (27) was estimated using the 415 records of defendants who were in the random sample and the group defined in note 16.

24. Previous INSLAW research (F. J. Cannavale and W. D. Falcon, ed., *Witness Cooperation,* Lexington, Mass: Lexington Books, 1976: 87–100) has documented a number of reasons why cases are dropped because of "uncooperative witnesses." A major reason was that erroneous address records prevented the witness from receiving his subpoena. It is not unreasonable to suspect that similar communication problems may exist with respect to defendents.

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