A STATISTICAL ANALYSIS OF THE BAIL DECISION

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This project has been supported by Grant No. 76-NI-99-0118 awarded by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

ABSTRACT

The judge's decision to grant a defendant release pending trial is usually made based on two criteria: the likelihood of appearing in court and the likelihood of committing new crimes. Statistical evidence may help the judge make better predictions.

This paper presents descriptive statistics on the types of bail granted, failures to appear, rearrests on bail, and comparative case outcomes for those released on bail versus those not released. It reports the preliminary findings of an analysis of the determinants of the pretrial release decisions, ability to post money bond, and failure to appear.

Under the terms of the D.C. bail law, release on bail is to be based solely on the defendant's likelihood of appearance in court. A separate provision in the bail statute, called "preventive detention," permits denial of pretrial release to certain classes of defendants, based on their dangerousness to the community and strength of evidence in their cases. Designed to protect the community from new crimes rather than to assure court appearances, this provision rarely has been invoked. In requesting high money bond in cases that might otherwise qualify for preventive detention, prosecutors have argued that such defendants are likely to flee rather than face a severe sentence. This paper examines whether judges appear to have been accepting the argument and reports on models being developed to test the validity of that argument.

INTRODUCTION

The increased media reporting in Washington, D.C. of rearrests of defendants previously released pending trial for other offenses has caused a public outcry for reform of the bail system.[1] Of all felony street arrests made in the District of Columbia in 1974, 12 percent involved defendants on pretrial release for prior, unrelated offenses. Under the existing law in the District of Columbia, bail is to be used only to secure the defendant's appearance at court proceedings. In order to protect the community against certain crimes, the District of Columbia has a preventive detention statute[2] which can be invoked in certain circumstances to detain dangerous defendants prior to trial regardless of their risk of flight.

While most defendants in the District of Columbia Superior Court are released on personal recognizance, some are required to post money bond as a guarantee against flight in order to be released. (Money bond is never to be used to prevent danger to the community.[3]) Critics have objected to the use of money bond as unfair to the poor and ineffective to prevent flight.[4]

Pretrial detention of defendants makes it more difficult for them to prepare their cases for trial, strains family relationships, and interferes with their employment. Studies have indicated that even controlling for factors such as prior criminal record, a positive correlation exists between the length of prison sentences and detention prior to trial.[5] In addition to the obvious expense to the defendant, pretrial detention is expensive to the public. In 1962, pretrial detainees in the District of Columbia cost the public $500,000.

The arguments favoring pretrial release are persuasive: cost avoidance, overcrowded jails, fairness, and presumption of innocence. In some cases however, detention is appropriate to prevent flight or harm to the community. The difficult problem is predicting which defendants pose the greatest risks.

Background

In 1963, the Manhattan Bail Project[6] began the development of improved fact gathering for the bail decision and the expansion of release on recognizance. That project devised a set of criteria for release on recognizance. The Manhattan Bail Project led to the National Conference on Bail and Criminal Justice, sponsored by the Department of Justice and the Vera Foundation in 1964. Following this conference, the federal government adopted the Bail Reform Act of 1966.[7]

Under the terms of the Bail Reform Act, the release decision is to be made to insure appearance. Judges are instructed to use the first one of the following conditions which they believe will

secure that appearance: 1) personal recognizance, 2) third party custody, 3) restrictions on travel, association or abode, 4) appearance bond (cash) 5) surety bond, 6) other conditions (e.g., night jail). Money conditions are not to be used to assure the safety of any other person in the community.

According to the Bail Reform Act, to determine the conditions of release, the judge is to consider:

1) the nature and circumstances of this offense
2) the weight of the evidence
3) family ties
4) employment
5) financial resources
6) the defendant's character and mental condition
7) past conduct of the defendant
8) length of residence of defendant in the community
9) the defendant's conviction record
10) the defendant's appearance record.

Pretrial (preventive) detention provisions also are included in the D.C. bail law as a means of protecting the community against new crimes that might be otherwise committed by defendants released on bail. Preventive detention is legally available in cases involving dangerous crimes, crimes of violence, and obstruction of justice.

In the first five years under the law, preventive detention has rarely been invoked by prosecutors. The procedure to be followed for preventive detention has been cited as one of the reasons for its infrequent use in practice. First, a motion for preventive detention is made, generally by the United States Attorney's Office. Next, at a hearing held within three days of arrest, it must be shown by "clear and convincing evidence" that this person is eligible for pretrial detention and that there is a "substantial probability" that he committed the offense. The rules of evidence are relaxed at this hearing (e.g., hearsay is admissable). According to the D.C. Bail Reform Act, if pretrial detention is ordered, the trial must be held within 60 days (with few exceptions).

Among the procedural problems cited for not using it more often is reluctance to have the prosecution witnesses testify at the early hearing (possibly subjecting them to intimidation), and excessive case loads, making it difficult to bring the case to trial within 60 days.

Unfortunately, little recent empirical work has been done to help the judges who set bail. The Bail Reform Act includes a list of factors that a judge may consider in setting bail. It does not provide specific guidelines on how those factors are to be used. Undoubtedly, through experience, judges develop their own schemes for weighing these factors. Since each judge independently develops a method for dealing with the factors, based on the cases he sees, it is likely that different judges set bail differently.

The bail decision results in the incarceration of more defendants than does the sentencing decision. Hence, any disparities that might exist in bail release conditions would have even more negative impact on evenhandedness in the criminal justice system than disparities that might exist in sentencing.

Purpose of Research

The purpose of the research described in this paper is to provide policy and decision makers with empirical information on the functioning of the bail system. Judges tend to be reluctant to use statistics, since each case must be decided ultimately on its individual merits. The thesis of this research is that there is no conflict with that philosophy. The judge at the bail hearing is faced with making a prediction of the defendant's future behavior (failure to appear in court or rearrest while on conditional release). He has to consider the conditions of the individual case before him. But if in addition, he is provided with statistical information to help him make a better prediction, the interests of justice and the community will be better served.

Data Base

The data to be used for the empirical analysis of pretrial release have been collected mainly by PROMIS (the Prosecutor's Management Information System) which records over 170 items of data for each case. PROMIS has been operating in the Superior Court Division of the U.S. Attorney's Office of Washington, D.C., since 1971. In addition to characteristics of the defendant, the criminal incident, and the case, PROMIS records court actions, including the release decision

of the judge made at the initial court hearing after arrest (arraignment), and the issuance of bench warrants for failure of the defendant to appear. Since PROMIS data are maintained on all U.S. Attorney's cases, information is available on subsequent rearrests of persons released while awaiting trial.

This paper presents descriptive statistics on the types of bail granted, failures to appear, and rearrests on bail. It reports the preliminary findings of an analysis of the determinants of the pretrial release decisions, the ability to post money bond, and failure to appear.

STATISTICAL TECHNIQUES

One way to learn about causal relationships is to conduct a controlled experiment. Because of ethical and legal considerations, however, controlled experiments have very limited applicability in the criminal justice system. But one can gain insights into causal relationships by applying multivariate techniques to nonexperimental data (i.e., data that accumulate in the normal course of operations). Nonexperimental data are becoming more abundant in the criminal justice system, particularly due to the growth of automated data processing systems such as PROMIS.

The primary analytical tool used in this research project is regression analysis. Regression analysis is used not only to predict unknown values of certain variables based on the known values of other variables, but also to describe relationships between variables, so that inferences about causality are possible. It is this latter use of regression analysis that makes it particularly well suited for application within the bail study since it is the effect that given changes in policy factors have upon each of several different output or performance measures that is to be examined. For example, when everything else is held constant, what effect does an increase or decrease in the percentage of defendants released on personal recognizance have upon the failure to appear rate? To what extent, in turn, are release rates affected by the type of defense counsel appointed by the court? Multiple regression analysis enables these types of questions to be addressed, even though all other factors may not, in reality, have been held absolutely constant. Assuming that the direction of causality is at least partly from independent to dependent variable, the analysis, when properly applied, measures the observed effect that each independent variable has upon the dependent variable, after taking account of the effects that all of the other independent variables have upon the dependent variable.

When multicollinearity exists, these subrelationships can also be analyzed using multiple regression. In such cases, the full model will consist of more than one regression equation. For example, in estimating the effect of the amount of money bond set on the likelihood of failure to appear, it may be that the causal relationship between these two variables is likely to run in the opposite direction as well. Indeed, the judge is supposed to set money bond in order to assure the defendant's appearance in court.

There are two basic types of complications in isolating effects through regression analysis: circularity and recursivity. Circular relationships, such as that between the amount of money bond and the likelihood of failure to appear both start and end with each factor involved in the circle. Recursive relationships involve a chain of causally related factors, with one affecting the next in a noncircular manner. For example, consider the factor "employment status" of the defendant. Presumably, the employment status affects the type of bail condition set and the latter affects probability of rearrest while released on bail. The set of equations comprising the models for analyzing failure to appear and probability of rearrest while released on bail will be structured to sort out these effects.

When first developed, regression analysis was applicable only to systems that were linear, or nearly so; also, it was used only to relate unbounded "scalar" (i.e., measurable) variables; further, it was suitable only when relationships were homoscedastic (i.e., the property that exists when the distribution of the dependent variable on each independent variable has a constant variance for all values of each independent variable). Now, due largely to extensions developed within the discipline of econometrics, regression analysis has been made capable of overcoming each of these earlier limitations. Nonlinearity can be dealt with adequately in many cases by transforming to the linear form those variables that are nonlinear with one another (e.g., by regressing the dependent variable on the logarithm or exponent of a nonlinear independent variable). "Taxonomic" (i.e., qualitative) or other discrete-valued variables, and combinations thereof, can be used as independent variables in a regression equation through the creation of "dummy" (i.e., binary or "zero-one") variables.

A dichotomous dependent variable can be converted to a variable suitable for regression by aggregating individual observations into cells, expressing the dependent variable as a proportion, transforming the proportion to a suitable form (e.g., logit and probit transformations), and regressing this transformed variable on the independent variables. And homoscedasticity can usually be imposed through an "analysis of residuals," followed by the application of an appropriate scheme for weighting the observations.

The refinements of regression analysis noted in the above paragraphs are presented in H. Theil's Principles of Econometrics[8] and A. S. Goldberger's Economic Theory.[9]

STATISTICAL MODELS FOR PREDICTING THE BAIL DECISION AND OUTCOMES

Statistical models using factors suggested in the D.C. bail law and other case and demographic factors are being constructed to predict:

1) failure to appear (bench warrants issued)

2) rearrest

3) whether or not a defendant will be able to post money bond to obtain release

4) conviction or acquittal given the bail information.

The variables to be considered as predictors are:

1) past record of the defendant (arrests, prosecutions, and convictions separately)

2) seriousness of the instant (current) offense (Sellin-Wolfgang score,[10] maximum sentence associated with the most serious charge in the case)

Demographic characteristics of defendant

3) age of the defendant

4) sex of the defendant

5) race of the defendant

6) employment status of the defendant

7) length of residence of defendant in the District of Columbia

Case characteristics

8) number of codefendants

9) pending cases

10) type of victim

Case processing characteristics

11) type of defense counsel (Public Defender Service, Criminal Justice Act, Retained, other - attempt to look at intensity of communication)

12) time from release to bench warrant or new offense

13) elapsed time from arrest to final disposition

Indicators of strength of evidence

14) number of lay witnesses

15) whether tangible evidence recovered

16) delay from offense to arrest

17) victim-defendant relationship (stranger, family, etc.)

The dependant variables are being constructed to reflect outcomes whose probabilities may be affected by the bail decision (such as failure to appear), and the preventive detention decision (such as rearrest). These models are designed to assist in determining 1) the minimum conditions required to assure appearance, and 2) the types of defendants likely to be rearrested (and therefore deserving more careful scrutiny when bail is set).

The models to be developed are:

1. Prediction of failure to appear (the issuance of a bench warrant)

One hypothesis is that the Vera criteria,[11] widely accepted as predicting failure to appear (prior convictions, unemployment, lack of community ties, etc.) for pretrial release, will actually select those candidates most likely not to appear in court as scheduled. A second is that the same conditions that are required for preventive detention (strong evidence, serious crime, serious criminal record) predict failure to appear (FTA). In order to focus on the effects of variables under the judge's control, the study will attempt to isolate the effect on FTA of the pretrial release decision itself, controlling for other variables such as whether the defendant was able to make bond and secure release.

2. Prediction of rearrest of the dangerous defendant on bail

One hypothesis to be tested is that the likelihood of rearrest of dangerous defendants on bail is a function of the defendant's prior arrest record, age, crimes charged, and the likelihood of pretrial release.

3. Prediction of the decision to grant release conditional on money bond

The hypothesis to be tested is that judges are more likely to grant release conditional on money bond to defendants with more serious prior criminal records, who face more serious charges with stronger evidence, independent of the Vera criteria and prior FTA incidents. The implication of such a finding would be that judges may be setting money bond conditions in lieu of invoking preventive detention.

4. Prediction of whether or not the defendant will make money conditions of release

The hypothesis is that defendants with more recidivistic prior criminal records for property crimes are more likely to make money conditions of release, controlling for factors such as the amount of money bond set.

5. Analysis of the effect of pretrial release on case disposition

The hypothesis is that defendants detained prior to trial are more likely to be convicted through a plea or trial, controlling for factors such as prior criminal record and crime seriousness.

DESCRIPTIVE STATISTICS ON BAIL PRACTICES

The first stage of the research was designed to develop descriptive statistics of pretrial release practices in order to obtain preliminary insights regarding the nature of the data. These statistics are based on a total of 17,534 arrests brought to the Superior Court Division of the U.S. Attorney's Office for the District of Columbia. This Division operates as the local (as distinguished from Federal) prosecutor of serious misdemeanors and all felonies charged in the District of Columbia.

Types of Pretrial Release Granted at Initial Court Hearing

In 1974 in the D.C. Superior Court, 58 percent of all defendants were released on their own recognizance at the initial hearing. Another 12 percent were released for supervision by third party custody programs. Financial conditions of release were set in 27 percent of the cases. Of these, 20 percent were released on surety bond (a bail bondsman must guarantee the bond) and 7 percent were released on cash bond (the defendant guarantees the bond). In a sample of robbery and burglary cases, 29 percent of the defendants who had financial conditions set were able to secure release by posting bond.

Another source[12] has reported that of all defendants (misdemeanors and felonies) who had financial conditions imposed, 75 percent eventually made bond. This figure may be consistent with the 29 percent rate for robbers and burglars, since it includes many misdemeanor defendants who tend to have lower bond amounts set and consequently are more likely to obtain release. Also, robbers and burglars tend to have more extensive criminal histories than other types of felons, which would indicate higher amounts of bond set.

Persons accused of misdemeanors were given less stringent conditions of release than were persons accused of felonies. Table 1 presents the various types of release granted at the initial court hearing in 1974. Nearly 80 percent of the misdemeanor defendants were released without financial conditions at the initial hearing, while 61 percent of the felony defendants were so released.

The type of bail granted at the initial hearing also varied by crime type. Table 2 presents release type granted for murder, rape, assault, robbery and burglary cases. Surety bond is the most common condition of release set in murder cases. Personal recognizance is granted in an additional 16 percent. That means that about half the murder defendants are released from custody at their initial hearing. The other half are detained on financial conditions.

Sixty-nine percent of the rape defendants, 75 percent of the aggravated assault defendants, 60 percent of the robbery defendants, and 64 percent of the burglary defendants were released without posting money bond at their initial hearings. The remainder were detained on financial conditions, primarily surety bond.

DETERMINANTS OF THE JUDGES' BAIL DECISIONS

The pretrial release decision is made by the judge in a very hectic atmosphere. One judge sitting in arraignment court on a typical day makes all the release decisions in about fifty cases.

TABLE 1

TYPE OF BAIL GRANTED AT
INITIAL HEARING IN 1974
(percentages)

	MISDEMEANORS (N=6,485)	FELONIES (N=5,061)
PERSONAL RECOGNIZANCE	70	44
THIRD PARTY CUSTODY	9	17
CASH BOND	7	8
SURETY BOND	13	29
OTHER (includes mental observation, rehabilitation for alcoholics, and special conditions)	1	2

NOTE: Percentages are based only on cases for which release type was recorded. The data presented here excludes 18 percent of the misdemeanors and 17 percent of the felonies because the type of release was not recorded for them.

TABLE 2

RELEASE TYPE GRANTED AT PRESENTMENT
BY CRIME CATEGORY
(percentages)

	MURDER (N=129)	RAPE (N=145)	AGGRAVATED ASSAULT (N=865)	ROBBERY (N=1,244)	BURGLARY (N=924)
PERSONAL RECOGNIZANCE	33	39	64	39	46
THIRD PARTY CUSTODY	16	30	11	21	18
CASH BOND	5	2	4	7	8
SURETY BOND	44	23	18	32	25
OTHER (includes mental observation, alcoholic treatment, and special cases)	2	6	3	1	3

NOTE: Percentages are based on cases in which release type granted was known. The data presented here do not include approximately 17 percent of the cases in which the release type granted was not recorded.

He has available to him information provided by the D.C. Bail Agency on the age of the defendant, his residence, his family and employment status, the number of times he has failed to appear at court proceedings, and the number of times he has been convicted. The Bail Agency recommends the type of bail to be granted to the defendant. The judge also hears recommendations from the prosecutor and defense attorney.

A preliminary analysis explored possible determinants of the judges choice between "hard" bond (i.e., cash or surety) and "soft" bond (i.e., personal recognizance or third party custody). This preliminary analysis investigated the relationship between the judge's decision and the following variables:

- sex of the defendant
- age of the defendant
- residence of the defendant (local area or not),
- type of defense counsel (Public Defender Service, other),

Case and case processing characteristics

- seriousness of the offense (as measured by the Sellin-Wolfgang index of crime seriousness),[13]
- prior record of the defendant (as measured by the Base Expectancy Scale, Gottfredson Score of defendant seriousness),[14]
- number of codefendants in the case,
- number of witnesses,
- type of victim (i.e., person or institution),
- whether or not the defendant had another pending case at the time of this arrest.

Other control variables (i.e., employment, prior failure to appear, conviction record) are required and will be included in a more complete analysis to be conducted in the next phase of this study.

An ordering of the variables that were found to explain the decision to impose financial conditions was made.[15] The highest ranking variable of those tested in explaining the imposition of financial conditions was the Gottfredson score (a measure of the defendant's prior criminal record); the more serious the defendant's score, the more likely it was that he would have either cash or surety bond set at his initial hearing. The age of the defendant was the second highest ranking of the variables tested; the older the defendant, the more likely it was that he would have hard bond imposed. Third in rank was the existence of a pending case. If the defendant had another open case (and, therefore, was already on some form of pretrial release) at the time of his arrest in this case, he was more likely to have financial conditions imposed. The seriousness of the offense (as measured by the Sellin-Wolfgang index) was next in order of impact. The more serious the case, the more likely that hard bond would be set. A measure of strength of evidence against the defendant--the number of witnesses identified by the police officer--was also significant. Imposition of financial conditions became more likely as the number of witnesses increased.

Based on this preliminary analysis, it appears that the judge, in deciding between personal recognizance and money bond, is most influenced by the prior criminal record of the defendant, but he is also concerned about the seriousness of the instant offense (the current case under consideration) and the strength of evidence against the defendant. The amount of the money bond set appears to be most influenced by the seriousness of the offense. The more serious the offense (as measured by the Sellin-Wolfgang index) the higher the amount of money bond. The criminal history of the defendant is also an important determinant of the amount of the bond. The amount of money bond set increases with the seriousness of the defendant as measured by the Gottfredson score. Apparently judges who set money bond consider first the seriousness of the current offense, and next the prior record of the defendant. This may indicate that judges are accepting the rationale that a defendant with a more serious prior criminal record, facing a serious charge with strong evidence, is more likely to flee. On the other hand, it may indicate that high money bond, in lieu of invoking preventive detention, is being used to protect the community from dangerous releasees.

SAMPLE STUDY OF RELEASE ON FINANCIAL CONDITIONS

1. Time From Imposition of Financial Conditions to Release

Financial conditions of release are set at the initial hearing in 27 percent of all cases. PROMIS does not collect changes in release conditions that occur after the initial decision; if one were to rely exclusively on PROMIS data, it

would not be possible to determine whether defendants held on cash or surety bond were subsequently able to post bond and be released, thus having the opportunity to recidivate or flee.

As part of an analysis of robbery and burglary cases, a 50 percent random sample of those defendants who had financial conditions of release set at the initial hearing was drawn. A manual search of court records for those 464 cases was conducted to collect data on subsequent changes in financial conditions and defendant release status and merge it with PROMIS data on those cases. (Currently, data on a random sample of all cases--including crimes other than robbery and burglary--are being collected to investigate these issues.) The robbery and burglary sample study disclosed that about 29 percent initially detained on financial conditions were eventually released. The median elapsed time from the initial court hearing to release was four days for defendants who were eventually released. Table 3 shows the distribution of elapsed time from the imposition of financial conditions to release for those defendants who are released prior to trial.

2. Which Defendants on Financial Conditions are Released

What factors explain why the 29 percent were able to make bond and the other 71 percent were not? Such an explanation requires a multivariate analysis.

A preliminary analysis of the effect of the following variables on the release from financial conditions was conducted:

- number of prior arrests of the defendant
- residence of the defendant
- type of victim
- number of witnesses identified by police
- seriousness of the defendant criminal record (as measured by the Gottfredson score)
- whether cash or surety bond was set
- number of bond changes
- age of the defendant
- type of defense counsel (PDS, other)
- seriousness of the offense (as measured by the Sellin-Wolfgang index)
- number of codefendants
- whether property or other tangible evidence was recovered
- final bond amount.

If the final condition was a cash bond (rather than a surety bond) the defendant was substantially more likely to be released. This may be because a 10 percent refundable deposit of the bond money with the court is often sufficient for release on cash bond. As expected, the greater the number of times that the bond conditions were changed and the

TABLE 3

TIME FROM IMPOSITION OF FINANCIAL CONDITIONS TO PRETRIAL RELEASE

NO. OF DAYS DETAINED	NO. OF DEFENDANTS RELEASED	PERCENTAGES
0	30	25
1-4	33	27.5
5-8	14	11.7
9-12	9	7.5
Over 12	34	28.3
TOTAL	120	100

lower the dollar amount of the bond, the greater the likelihood that the defendant would be released. And the more serious the defendant's prior criminal history, the less likely he would be able to post bond and be released.

ANALYSIS OF FAILURE TO APPEAR

Several preliminary multivariate analyses are being conducted in an attempt to identify characteristics of defendants, cases, and offenses which are related to the issuance of bench warrants as a measure of failure to appear in court. (A simultaneous equations model is being constructed to sort out the effects of the determinants of the pretrial release decisions on failure to appear.)

One of the challenges in analyzing failure to appear is to develop logical comparison groups that have equal opportunity for failures. Felonies and misdemeanors have different numbers of scheduled court appearances, and the bail decision itself affects the defendant's opportunities. In conducting these preliminary analyses, the cases were initially separated into felonies and misdemeanors; then broken out into cases of those defendants released on personal recognizance; those released on third party custody; and those actually released after meeting financial conditions. The following variables were then tested as determinants of the issuance of bench warrants:

- Whether or not the defendant had a pending case at the time of this arrest
- Whether or not the defendant was on probation or parole at the time of screening of this case
- The number of lay witnesses identified at the time of screening of this case
- The length of time (in days) between the offense and the arrest
- The number of codefendants in the case
- Whether or not property or other tangible evidence was recovered
- Whether or not the victim of the offense was a business or institution
- The Sellin-Wolfgang case seriousness index
- The number of prior arrests of the defendant
- The Gottfredson defendant seriousness score
- Age category of defendant
- Whether or not the defendant was a resident of the local area
- Whether or not the defendant was known to be a drug user
- Whether or not the defendant and the victim were strangers

In analyzing 3072 felony cases involving defendants released on all forms of personal recognizance, with and without conditions, an additional independent variable "whether or not the defendant was released on third party custody" was included. If the victim of the offense was an institution rather than an individual, the case was more likely to result in a failure to appear. Cases involving institutional victims have a higher likelihood of conviction, suggesting that the stronger the evidence, the more likely the defendant will fail to appear.

The more serious the offense, the less likely the defendant was to fail to appear. This might suggest that those defendants facing less serious charges anticipate that the police will not come looking for them to execute the bench warrant. Those cases in which the defendant and victim were strangers were more likely to result in issuance of a bench warrant.

An analysis of a sample of 350 cases involving defendants released on financial conditions after posting bond revealed three variables to have a significant effect on failure to appear among all those tested. The final amount of money bond set had the strongest effect, but it went in the opposite direction to its intended purpose. Among those defendants who succeeded in obtaining release, the higher the bond the defendant had to post, the more likely he was to fail to appear and forfeit it. This puts into question the premise of setting high money bond, unless the intent is to detain the defendant by keeping bond so high that he can't post it. Cases involving male defendants were less likely to result in issuance of a bench warrant, while cases in which the defendant and victim were strangers were more likely to result in issuance of a bench warrant.

It was desirable to test the hypothesis that delay increases the likelihood of failure to appear. As mentioned above, cases vary in the number of court appearances that are scheduled. The large proportion of cases that are ter-

minated before trial due to plea bargaining and dismissals makes it difficult to construct study groups of cases with comparable opportunities for FTA. Also, there is likely to be a circular relationship between failure to appear and delay. The variable "elapsed number of days between arrest and postindictment arraignment" was constructed for the group of indicted felonies. Cases where there was a preindictment failure to appear were excluded from this preliminary analysis to make sure the delay preceded the failure to appear. Based on 1539 indicted felony cases in which defendants were released on all forms of personal recognizance, the variable showing the most significant effect on failure to appear was the delay between arrest and postindictment arraignment. This suggests that court delay does indeed increase the chances of failure to appear in court. Those cases involving male defendants and recovered property or evidence were more likely to result in a failure to appear. Cases with less serious charges were more likely to result in issuance of a bench warrant.

In analyzing indicted felony cases of defendants released on financial conditions after posting bond, the strongest determinant of failure to appear was court delay. The higher the final bond amount the more likely there would be a failure to appear. Cases involving victims and defendants who were strangers were more likely to result in issuance of a bench warrant. Cases involving male defendants and cases involving codefendants were less likely to result in issuance of a bench warrant.

CRIME WHILE RELEASED ON BAIL

In 1974, 12 percent of all felony arrests involved defendants who were on pretrial release from prior separate and distinct criminal arrests at the time of their arrests. Another 14 percent of the felony arrests involved defendants who were on other forms of conditional release (i.e., probation and parole). Nearly one-third of the robberies and burglaries in 1974 involved conditionally released defendants. Table 4 shows the percentage of arrests involving conditionally released defendants for burglary, murder, rape, robbery, and assault. Nearly one-third of the robberies and burglaries in 1974 involved conditionally released defendants.

Another question relates to the seriousness of crimes committed while the defendant is on bail. The largest category of pending cases for defendants arrested for robbery while on bail was robbery. In burglary cases as well, the largest category of pending crime was burglary. But many other categories of crime were included in the pending cases for these robbery and burglary defendants. An analysis of the shift in crime type and crime seriousness for defendants released on bail who are rearrested will be conducted in the next phase of this project.

RELATIONSHIP OF BAIL STATUS TO CASE DISPOSITION

Critics of the bail system maintain that pretrial incarceration forces guilty pleas from defendants who would not otherwise plead guilty, and increases the likelihood of conviction and incarceration. A resolution of that issue must wait for a more sophisticated analysis than this descriptive profile. Bivariate statistics show similar plea rates for those detained versus those not, and a higher conviction rate for detained defendants (see Table 5). These statistics are not conclusive, because it is necessary to control for other factors, such as seriousness of the crime, strength of evidence and prior criminal record. (It may be that judges are setting release conditions based on the strength of evidence against the defendant so that defendants who are more likely to be convicted have more severe conditions of release set initially.)

TABLE 4

CONDITIONAL RELEASE AT TIME OF ARREST (1974)

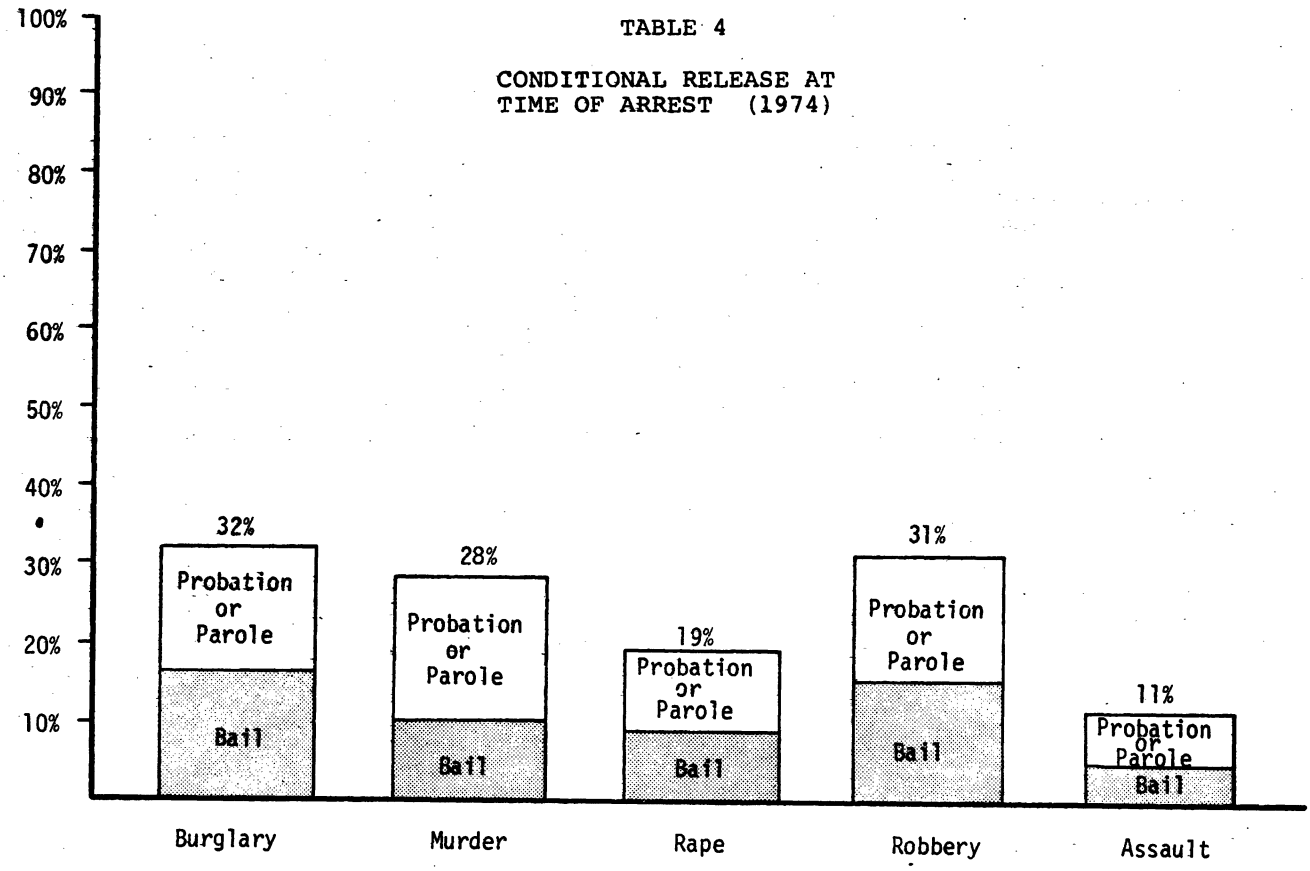

TABLE 5

FINAL DISPOSITION BY WHETHER OR NOT DEFENDANT MADE BOND

	PLED	CONVICTED	ACQUITTED	NOLLED OR DISMISSED	OTHER	OPEN	
DEFENDANT MADE BOND (was released)	34% (45)	7% (10)	6% (8)	40% (54)	2% (3)	10% (14)	N=134
DEFENDANT DID NOT MAKE BOND (was detained)	35% (117)	12% (41)	3% (10)	40% (132)	2% (6)	7% (24)	N=330

CONCLUSIONS

Based on the preliminary analysis of the determinants of the decision to set financial conditions of release rather than release on personal recognizance, it appears that the judge is most influenced by the prior criminal record of the defendant, and to a somewhat lesser extent, by the seriousness of the instant offense and the strength of the evidence. Older defendants and those with other cases pending against them were also more likely to have financial conditions of bail set. When money conditions were set, the amount is influenced most by the seriousness of the offense and next by the criminal history of the defendant. Therefore, there is some indication that judges have been accepting the prosecutor's rationale that defendants who have more serious offenses with strong evidence are more likely to flee. On the other hand, it may indicate that high money bond is being used in lieu of preventive detention to protect the community from dangerous releasees.

Preliminary findings of an analysis of the determinants of failure to appear suggest that cases involving more delay, stronger evidence, and a stranger-to-stranger relationship between the defendant and the victim were more likely to result in the issuance of a bench warrant. No support was found for the hypothesis that defendants with more serious prior criminal records and charged with more serious crimes are more likely to fail to appear.

A sample analysis was made of the likelihood of securing release by posting money bond. Defendants released on cash bond rather than surety, those who had their bond conditions changed most often (suggesting the importance of a good defense counsel), those with lower amounts of bond (not surprisingly), and those with less serious criminal records were more likely to be released.

Although the results reported in this paper are preliminary, they suggest that statistical information can be provided to judges to help them make more informed bail decisions.

Footnotes

[1]Maurice J. Cullinane, "Stopping Career Criminals," Washington Post, April 15, 1976. Timothy S. Robinson, "Repeaters Cause Big Share of Crime," Washington Post, April 10, 19[illegible].

[2]23 D.C. Code, § 1322.

[3]Jones v. U.S., D.C. App. No. 9961, November 5, 1975.

[4]Foote, The Administration of Bail in New York City, 106 U.Pa.L.Rev. 693 (1958).

[5]Rankin, The Effect of Pretrial Detention, 39 NYU.L.Rev. 641 (1964).

[6]Ares, Rankin and Sturz, The Manhattan Bail Project, 38 N.Y.U.L.Rev 67 (1963)

[7]23 D.C. Code, § 1321 et. seq. (1970).

[8]Theil, Principles of Econometrics (New York: John Wiley & Sons, 1971).

[9]Goldberger, Econometric Theory (New York: John Wiley & Sons, 1964).

[10]See PROMIS Briefing Paper No. 3, Uniform Case Evaluation and Rating, Institute for Law and Social Research, Washington, D.C., July 1975.

[11]Ares, Rankin and Sturz, The Manhattan Bail Project, 38 N.Y.U.L.Rev 67 (1963).

[12]Lewin and Associates, An Evaluation of Third Party Custody Programs, Washington, D.C., October 1975.

[13]See PROMIS Briefing Paper, op. cit.

[14]Ibid.

[15]This ordering is based on ranking the significant (from t-tests) variables on their elasticities. The elasticity of one variable, say y, with respect to another, x, is a number indicating the percentage increase (a negative number indicates a decrease) in y that results from a 1 percent increase in x. In other words, elasticity is a measure of the impact or effect of change in one variable on another variable.