

CONSIDERATIONS IN SETTING BOND

Jeff Welty · School of Government · March 2014

Why This Matters

- Your decisions are important to the community
 - ▣ Detention is expensive
 - ▣ Community safety is at stake

Why This Matters

- Your decisions are important to defendants
 - ▣ Secured bond costs money
 - ▣ Detention risks job loss and family crisis
 - ▣ Detention affects case outcomes
 - “Defendants who were detained were more likely to be convicted, less likely to have their charges reduced, and more likely to be sentenced to . . . prison,” and for a longer time, than defendants who were released.

■ Mary T. Phillips, *Bail, Detention & Felony Case Outcomes*, New York Criminal Justice Agency, Inc., Research Brief No. 18 (2008).

Why This Matters

- Your decisions “anchor” any future decisions by judges

The Law Favors Release

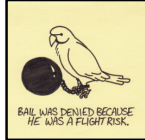
- “This traditional right to freedom before conviction permits unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail is preserved, the presumption of innocence secured only through centuries of struggle, would lose its meaning.”
 - *Stack v. Boyle*, 342 U.S. 1 (1951)

The Law Favors Release

- With few exceptions, “[a] defendant charged with a noncapital offense must have conditions of pretrial release determined.”
 - ▣ G.S. 15A-533(b)
- “Excessive bail shall not be required.”
 - ▣ U.S. Const. Am. VIII

The Law Considers the Community's Interests

- Risk of flight
 - ▣ "The purpose of a bail bond is to secure the appearance of the principal in court as required."
 - *State v. Vikre*, 86 N.C. App. 196, 199 (1987)
- Danger to the community
 - *United States v. Salerno*, 481 U.S. 739 (1987); G.S. 15A-534(b) & official cmt.



Balancing Interests

- Punishment is not a proper purpose of bond
- The defendant should be released under the least restrictive conditions that will reasonably protect the community's interests
- "Money bail should be set only when it is found that no other conditions on release will reasonably assure the defendant's appearance in court. Money bail should not be set to punish the defendant or to placate public opinion."
 - National District Attorneys Association, Standard 45.6 (a and b)

Facts about Release

- In some jurisdictions, less than 30% of defendants are released pending trial. In others, more than 80% are released.
 - Shima Baradaran & Frank L. McIntyre, *Predicting Violence*, Tex. L. Rev. (2012).

In your county, what percentage of felony defendants are released at or shortly after their initial appearance?

1. Less than 20%
2. 20-40%
3. 40-60%
4. 60-80%
5. More than 80%

Facts about Release

- "33% of [felony] defendants were charged with committing one or more types of misconduct [new crime or FTA] after being released but prior to the disposition of their case."
 - Thomas H. Cohen & Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts*, Bureau of Justice Statistics Special Report (Nov. 2007)
- Of all the [felony] defendants released . . . 16% of them are rearrested for any reason, 11% are rearrested for a felony and . . . 1.9% are rearrested for a violent felony."
 - Shima Baradaran & Frank L. McIntyre, *Predicting Violence*

Facts about Release

- "80 percent of [federal] defendants released prior to trial completed their periods of release without violating the conditions of their release. Only 20 percent of defendants released violated the conditions of their release, and only 8 percent of defendants had their release revoked. More recently, [another study] found that the average pretrial failure rate for all released [federal] defendants was only 7 percent."
 - Cynthia A. Mamalian, *State of the Science of Pretrial Risk Assessment*, Pretrial Justice Institute (2011)

Factors You May Consider

- ▣ Nature and circumstances of the offense charged
- ▣ Weight of the evidence
- ▣ Family ties
- ▣ Employment
- ▣ Financial resources
- ▣ Character
- ▣ Mental condition
- ▣ Intoxication (?)
- ▣ Length of residence in the community
- ▣ Prior record
- ▣ History of FTA
- ▣ Any other relevant considerations
 - G.S. 15A-534(c)

Factors that Matter

- ▣ Lots of studies
- ▣ What factors matter to you?

Which Type of Defendant Is Most Likely to Have Problems on Release?

1. Drug crimes
2. Property crimes
3. Murder
4. Rape
5. Fraud

Which Type of Defendant Is Least Likely to Have Problems on Release?

1. Drug crimes
2. Property crimes
3. Murder
4. Rape
5. Fraud

What the Studies Say

Study 1	Study 2
▣ Property	▣ Drug
▣ Drug	▣ Property
▣ Murder = Rape	▣ Fraud
▣ Fraud	▣ Rape
	▣ Murder

What the Studies Say

- ▣ Studies are mixed on some factors, like race and age
- ▣ “The six factors that studies have most consistently found to increase a defendant’s risk of pretrial misconduct if released are: prior failures to appear, prior convictions, having a pending case other than the arrest offense, being charged with a felony, being unemployed, and having a history of drug abuse.”
 - Cynthia A. Mamalian, *State of the Science of Pretrial Risk Assessment*, Pretrial Justice Institute (2011)

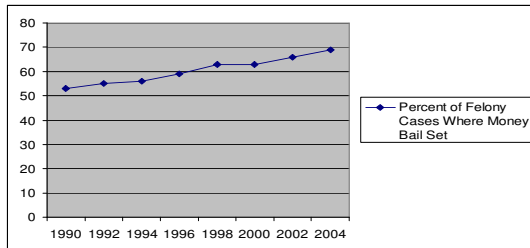
Risk Assessments

- “[F]indings from multiple studies . . . have repeatedly demonstrated that the use of actuarial risk assessments results in a higher predictive validity than clinical or professional judgment alone.”
 - Kristin Bechtel et al., *Identifying the Predictors of Pretrial Failure: A Meta-Analysis* (2011)
- What tools do you use to assess risk? Checklists? Questionnaires?

Which Conditions Work?

- “[D]efendants on financial release were more likely to make all scheduled court appearances [than defendants released on a promise to appear]. Defendants released on an unsecured bond . . . were most likely to have a bench warrant issued because they failed to appear in court.”
 - Cohen & Reaves, *Pretrial Release of Felony Defendants in State Courts*, Bureau of Justice Statistics Special Report (Nov. 2007)
- Unsecured bonds “achieve the same public safety and court appearance rates [as secured bonds] while using far fewer jail beds.”
 - Jones, *Unsecured Bonds* (Pretrial Justice Institute 2013)

Rise in Use of Financial Bail



Which Conditions Work?

- “Several studies have concluded that pretrial supervision is not effective at discouraging pretrial misconduct, but there is not enough research yet to settle the question.”
 - David Levin, *Examining the Efficacy of Pretrial Release Conditions, Sanctions and Screening with the State Court Processing Statistics Databases*, Pretrial Justice Institute
- Studies from Miami, Milwaukee, and Portland found supervision reduced FTA and rearrest rates.
- GPS monitoring may improve the efficacy of supervision.

Greensboro P.D. Reduces Repeat Offender Recidivism
Greensboro uses Omnilink electronic monitoring to keep their recidivism rate at 3% in their target population, as compared to the 67% national recidivism average.

Discrimination

- “After controlling for relevant legal and extralegal factors, this study found that African American defendants charged with a Class 2 misdemeanor paid at least 16 percent higher bail than white defendants charged with the same level of offense.”
 - Johanna Foster, *Striving for Equity in Criminal Justice: An Analysis of Variability of Bail Bonds in the Tenth Judicial District of North Carolina*, SOG MPA Capstone
- Differences in bondsmen’s practices

Bond Schedules



Do You Have a Bond Schedule in Your District?

1. Yes
2. No
3. Officially no, but unofficially, yes
4. If I told you, I'd have to kill you

Bond Schedules

- "The following are guidelines only. . . [You are] fully empowered to require a higher or lower appearance bond . . . based solely on [your] judgment."
- "Unless very unusual circumstances present themselves, the suggested guidelines shall be followed."

Bond Schedules

	A	B	C	D	E	F	G	H	I	J	K	L
C	500K	75K	100K	50K	40K-100K	15K-250K	100K-200K	25K-75K	15K-50K	20K-30K	10K-50K	15K-50K
H	25	10K	15K	5K	5K-25K	0-10K	2500-5K	1K-5K	0-2500	300-500	1500-5K	1500-5K
T	1	300	1000	200	100-400	0-1000	100-500	0-1000	0-1000	300-400	0-1000	0-1000

When Your Hands Are Tied

- First-degree murder
- Domestic violence offenses
- "Double bond" for defendants charged while on pretrial release

Has the "revolving door" accusation been raised in your county?

1. Yes
2. No


Public Pressure

The screenshot shows a news website with the following content:

- Header: newsobserver.com Durham County
- Navigation: Home News Sports Business Politics Life Entertainment Opinion Clubs Feed & Save Classified
- Local News: NEWS + LOCAL/STATE: Wake | Durham | Orange | Johnston | Chatham | Annet galleries | Bu's Eye Blog
- Local News Links: More local news: Durham News | Chapel Hill News
- Article 1: "Trying to stop jails revolving door" (Charlene Nevins)
- Article 2: "Closing the revolving door of justice" (By BETH SHAWLER / NewsObserver.com)
- Article 3: "Fayetteville Police don't like revolving door justice either (**Video*)" (Posted on April 17, 2011 by S&B U. Journalism | Comments Off)
- Article 4: "'Revolving door' open again? Bond availability for drug suspects irks some" (Stanford Law School | Stanford Criminal Justice Center)
- Article 5: "Realigning the Revolving Door"

Other Considerations

- Jail crowding?
- Pressure from officers?



Current Practice

Offense	Class	Written Promise	Unsecured Bond	Secured Bond
Simple Assault	2	28%	29%	43%
PDP	1	13%	13%	74%
OPFP	H (or C)	8%	21%	71%
Felon in Possession of Firearm	G	4%	9%	87%
Armed Robbery	D	1%	2%	97%

Current Practice: Simple Assault

- Average bond, selected counties with >10 charges
 - ▣ Northampton: \$418
 - ▣ New Hanover: \$830
 - ▣ Hertford: \$1,811
 - ▣ Moore: \$1,895

Current Practice: PDP

- Average bond, selected counties with >10 charges
 - ▣ Guilford: \$213
 - ▣ Pitt: \$757
 - ▣ Forsyth: \$5,364

Current Practice: OPFP

- Average bond, selected counties with >10 charges
 - ▣ Carteret: \$1,045
 - ▣ Wayne: \$3,882
 - ▣ Edgecombe: \$119,800

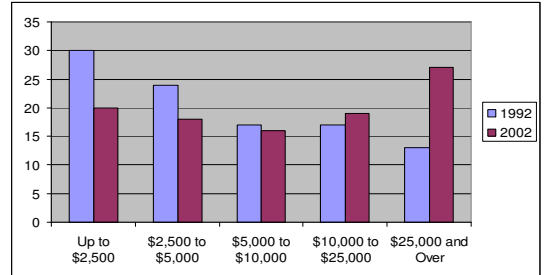
Current Practice: Felon in Possession

- Average bond, selected counties with >10 charges
 - ▣ Nash: \$7,063
 - ▣ Lenoir: \$21,607
 - ▣ Guilford: \$48,152
 - ▣ [Martin: \$316,667, only 6 charges]

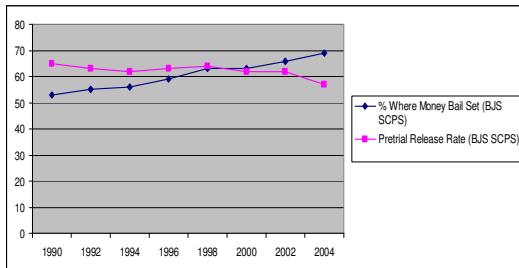
Current Practice: Armed Robbery

- Average bond, selected counties with >10 charges
 - Cumberland: \$20,846
 - Forsyth: \$60,381
 - Durham: \$277,391

Average Bail Amounts Rising



Relationship Between Setting Money Bail and Pretrial Release Rates



Problems for Discussion



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