



CONSIDERATIONS IN SETTING BOND

Jeff Welty · School of Government · Sept. 2014

Rave Reviews!

“Very dry.”

“Not relevant. . . .
Magistrates already
know all this..”

“Stick with your blog.”

“[A]lmost an insult.”

“Mr. Welty . . . has
NO Knowledge on
what really happens .”

Why This Matters

- Your decisions are important to the community
 - Detention is expensive
 - Community safety is at stake
 - Victims care about pretrial release decisions

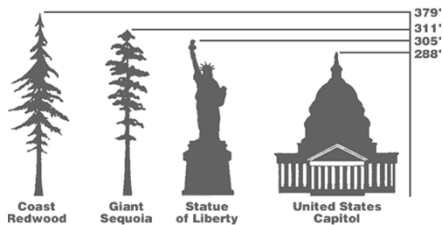


Why This Matters

- Your decisions are important to defendants
 - Secured bond is expensive
 - Detention risks job loss and family crisis
 - Detention affects case outcomes

Why This Matters

- Your decisions “anchor” any future decisions by judges



The Law Favors Release

- “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”
 - United States v. Salerno, 481 U.S. 739 (1987)

Purposes of 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)

Purposes of Conditions of Release

- “[T]he foremost goal of the bond system is the production of the defendant in court.”
 - *State v. Gonzalez-Fernandez*, 170 N.C. App. 45 (2005)
- “There is no doubt that preventing danger to the community is a legitimate regulatory goal” that may be considered in the pretrial release process.
 - *United States v. Salerno*, 481 U.S. 739 (1987)

Statutory Right to Release

- Subject to a few exceptions, “[a] defendant charged with a noncapital offense **must** have conditions of pretrial release determined.”
 - G.S. 15A-533(b)

Exceptions

- Capital cases (release is discretionary, only judge may release, 15A-534(c))
- Certain drug trafficking defendants (rebuttable presumption of no release, 15A-534(d), only judge may release)
- Certain defendants charged with gang offenses (rebuttable presumption of no release, 15A-534(e), only judge may release)
- Certain defendants charged with gun offenses (rebuttable presumption of no release, 15A-534(f), only judge may release)
- Meth users charged with meth offenses, 15A-534.6 (rebuttable presumption of no release)
- DV cases, 15A-534.1 (only judge may determine release for first 48 hours)
- Impaired driving holds, 15A-534.2 (impaired drivers may be denied release for up to 24 hours if release would pose a danger, unless a sober, responsible adult assumes responsibility)

Basic Conditions of Release

- Written promise
- Unsecured
- Custody
- Secured
- House arrest with electronic monitoring (requires secured bond also)

Choosing a Basic Condition

- Prefer written promise, unsecured bond, or custody release. Impose secured bond or house arrest only if lesser conditions are inadequate. G.S. 15A-534(b).
- When secured bond or house arrest is imposed, reasons must be recorded in writing. Id.

Factors to Consider

- Nature of offense charged
- Weight of evidence
- Family ties
- Employment
- Financial resources
- Character
- Mental condition
- Intoxication
- Length of residence
- Prior convictions
- Prior FTA
- "[A]ny other evidence relevant to the issue of pretrial release"

Special Rules (I)

- Defendants rearrested after FTA:
 - Impose the conditions recommended in OFA.
 - If none, impose a secured bond of at least double the previous bond.
 - If no previous bond, impose a secured bond of at least \$1000.
 - G.S. 15A-534(d1).
- Defendants charged with felonies while on probation, or defendants charged with probation violations who have pending felony charges (or are sex offenders) :
 - Determine whether "the defendant poses a danger to the public," and if so, impose a secured bond or house arrest.
 - G.S. 15A-534(d2); G.S. 15A-1345(b1).

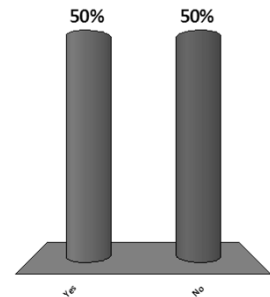
Special Rules (II)

- Defendants arrested for new offense while on pretrial release for another offense:
 - Impose secured bond of at least double previous bond.
 - If none, impose secured bond of at least \$1000.
 - G.S. 15A-534(d3).

Bond Doubling

Do you have a policy in your county or district addressing how to handle cases where the bond doubling provision would result in an unreasonable bond?

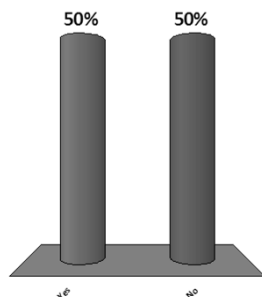
- A. Yes
- B. No



Bond Doubling

In a case that falls under the bond doubling provision, have you ever imposed a bond lower than the provision calls for?

- A. Yes
- B. No



Additional Conditions

- A "judicial official may also place restrictions on the travel, associations, conduct, or place or abode of the defendant as conditions of pretrial release."
 - G.S. 15A-534(a)
- Additional conditions are required when a defendant is charged with a sex crime against a child or a violent crime against a child.
 - G.S. 15A-534.4
- Additional conditions likely must be "reasonably related" to a "legitimate governmental purpose."
 - Bell v. Wolfish, 441 U.S. 520 (1979)

Pretrial Release Policies

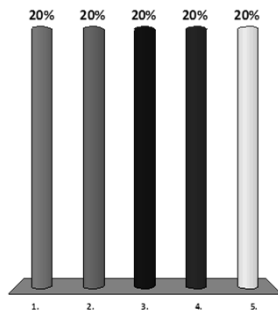
- Senior resident superior court judge must issue
 - G.S. 15A-535
- Vary widely between districts
 - “The following are guidelines only. . . [You are] fully empowered to require a higher or lower appearance bond . . . based solely on [your] judgment.”
 - “Unless very unusual circumstances present themselves, the suggested guidelines shall be followed.”

Rates of 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?

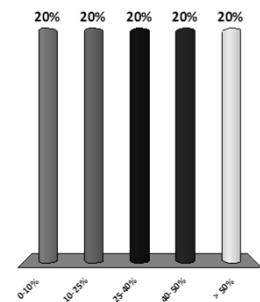
1. Less than 20%
2. 20-40%
3. 40-60%
4. 60-80%
5. More than 80%



Misconduct on Release

In your county, what percentage of felony defendants FTA or are rearrested while on pretrial release?

- A. 0-10%
- B. 10-25%
- C. 25-40%
- D. 40-50%
- E. > 50%

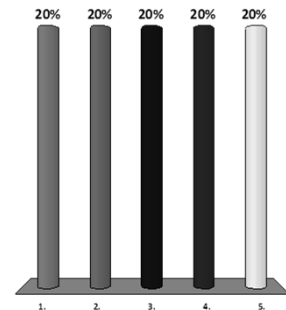


Misconduct on Release

- Results of national studies
 1. 33% of felony defendants in state court FTA or rearrested
 2. 16% of all felony defendants rearrested
 3. 20% of federal felony defendants violated conditions of release (including technical violations)

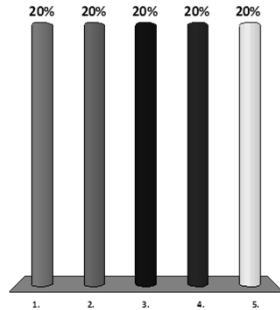
Which Type of Defendant Is Most Likely to Have Problems on Release?

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

- Property
- Drug
- Murder = Rape
- Fraud

Study 2

- Drug
- Property
- 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

- "[S]tudies . . . have repeatedly demonstrated that the use of actuarial risk assessments results in a higher predictive validity than . . . professional judgment alone."

■ Kristin Bechtel et al., *Identifying the Predictors of Pretrial Failure: A Meta-Analysis* (2011)

- Mecklenburg County is piloting PSA-Court
- What tools do you use to assess risk?

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)

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."

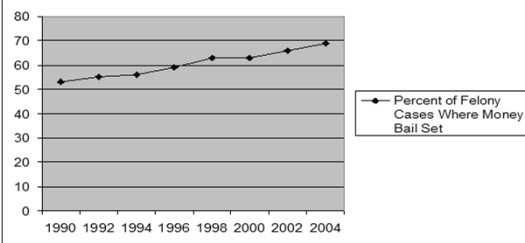
■ David Levin, *Examining the Efficacy of Pretrial Release Conditions, Sanctions and Screening with the State Court Processing Statistics Databases*, Pretrial Justice Institute

- Studies from Miami, Milwaukee, and Portland found reduced FTA and rearrest rates.

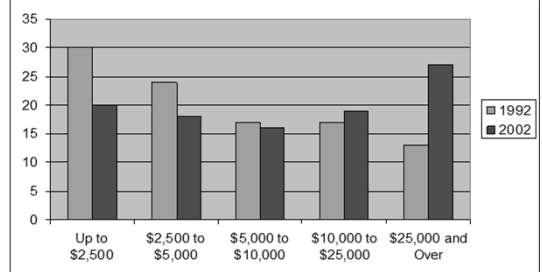
- GPS monitoring may improve the efficacy of supervision.

Greensboro P.D. Reduces Repeat Offender Recidivism
Greensboro uses Casiblink electronic monitoring to keep their recidivism rate at 3% in their target population, compared to the 6% national recidivism average.

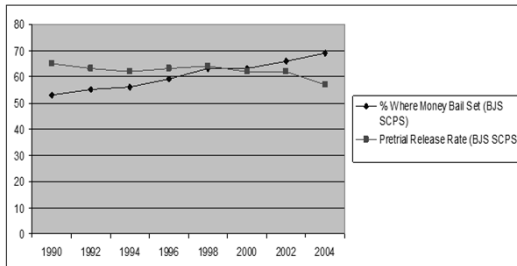
Rise in Use of Financial Bail



Average Bail Amounts Rising



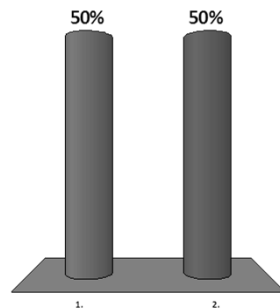
Relationship Between Setting Money Bail and Pretrial Release Rates



Public Pressure

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

- Yes
- No



Bond Schedules

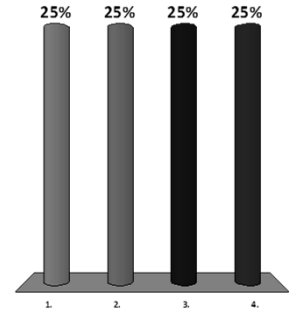


Bond Schedules

- "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."

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

	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	300-400	0-1000	1500-5K
I	1	300	1000	2	100-400	0-1000	100-500	0-1000	0-1000	300-400	0-1000	0-1000

Other Considerations

- Pressure from officers?
- Pressure from the jail?



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

Problems for Discussion



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