Pretrial Release in Durham, North Carolina

REPORT ON A STUDY OF CRIMINAL DEFENDANTS CHARGED IN NORTH CAROLINA'S 14TH JUDICIAL DISTRICT FROM FEBRUARY THROUGH MAY, 1985

February 1987

Prepared for:
The Honorable David LaBarre, Chief District Court Judge
The Honorable Thomas H. Lee, Senior Resident Superior Court Judge
Statistical Analysis Center, North Carolina Governor's Crime Commission
The North Carolina Administrative Office of the Courts

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PRETRIAL RELEASE IN DURHAM, NORTH CAROLINA*

SUMMARY

The Institute of Government conducted a study of pretrial release in Durham, North Carolina, as it was administered in 1985-86. The purpose of the study was to examine opportunities for pretrial release; risks of pretrial release, including failure to appear and new crime; and the response to pretrial-release violations, including prosecution and bond forfeiture enforcement. Data from a random sample of 937 criminal defendants indicated that only 8 per cent received no pretrial release and were held in detention. Most obtained release in less than 24 hours. Forty-seven per cent were released on secured bond (38 per cent by engaging a professional bondsman, 5 per cent by engaging a non-professional bondsman, and 4 per cent by cash deposit), 33 per cent were released on unsecured bond, 9 per cent were released on a written promise to appear, and 2 per cent were released in the custody of a person agreeing to supervise them.

Pretrial release conditions other than secured bond virtually guaranteed release; 100 per cent of defendants with such conditions were released. Defendants with secured bond did not do as well; 87 per cent of them managed to secure their bonds and obtain release. When defendants received no release at all and remained in jail, it was usually because of secured bond; 92 per cent of the defendants who were not released had secured bond set. Using regression modeling, we found that that magistrates' setting of the secured bond amount was significantly associated with the type and number of current charges against the defendant, whether the defendant was on probation for a previous offense, and the defendant's residence, age, and race.[1] Bonds were significantly higher for nonresidents of the county than for residents, significantly lower for defendants under 21 than for older defendants, and significantly lower for black defendants than for white defendants. Although blacks had significantly lower secured bonds than whites, they were more likely than whites to have some secured bond set.

Regression analyses were also conducted to determine the factors that were associated with whether the defendant was released and those associated with the length of time the defendant was held in detention. These analyses, controlling for the effect of the secured bond amount, indicated that: (1) defendants who were nonresidents were less likely to be released, and spent longer in detention, than resident defendants; (2) defendants who were charged with violent felonies were less likely to be released, and spent longer in detention, than defendants charged with other crimes; (3) women were more likely to be released and spent less time in detention than men; and (4) blacks were less likely to be released and spent more time in detention than whites, even though blacks' secured bonds were considerably lower than whites' bonds (79 per cent of unreleased defendants were black, although blacks accounted for 60 per cent of the entire sample).

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*The Bureau of Justice Statistics, United States Department of Justice, and the North Carolina Governor's Crime Commission are not responsible for any of the information or statements in this report.

Of the 840 released defendants in the sample, 16 per cent failed to appear. Fourteen per cent of released defendants were charged with committing new crimes while on pretrial release: 3 per cent were charged with felonies and 11 per cent with misdemeanors.

Although 16 per cent of released defendants failed to appear, only 2 per cent of released defendants failed to appear and remained absent so that their cases could not be disposed of. But the 14 per cent who failed to appear and later returned for disposition caused problems for the court. Regression models indicated that their failure to appear increased arrest-to-disposition time by 155 per cent, and also made their conviction less likely. The delay may have weakened prosecution efforts --for example, by discouraging prosecution witnesses from appearing.

Defendants released on secured bond had a higher nonappearance rate (19 per cent) than those released in other ways (14 per cent). They also had a higher new-crime rate (20 per cent) than defendants released in other ways (8 per cent).

Predicting which defendants would fail to appear proved difficult from the available data. One useful predictive factor was time at risk. (For purposes of analyzing failure to appear, time at risk was defined as the time from pretrial release to either court disposition or failure to appear, whichever came first; for purposes of analyzing new crime while on release, time at risk was defined as the time from release to either court disposition or arrest for a new crime, whichever came first.) Time at risk clearly had a strong relationship to both nonappearance and new crime; the longer the defendant was free on pretrial release before court disposition, the more likely he was to fail to appear or to be charged with a new crime (or both). Predicting time at risk (as we were able to do with fair accuracy from the defendant's age, type of charge, number of charges, and previous pretrial-release status) appears to be the best available means of predicting individual defendants' risk of nonappearance and new crime, on the basis of information currently available to magistrates.

A regression analysis of expected failure time was performed. Failure time, in this context, is the time a defendant is expected to be able to remain free before failing to appear. A defendant who could only "survive" (remain free without failure) for a short time before "forgetting" his obligation or deliberately absconding was considered less trustworthy and more risky than a defendant who could "survive" for a long time. Four factors proved to be significantly associated with failure time: age, type of current charge, prior failure to appear, and amount of secured bond. Defendants under 21 had significantly shorter failure times (that is, a higher risk of failure to appear) than did older defendants. Defendants charged with felonies or DWI had significantly longer failure times (lower risk) than did defendants charged with misdemeanors other than DWI. Defendants who had previously failed to appear had shorter failure times (higher risk) than other defendants, but this difference was only marginally significant. The model indicated that failure time increased by about 9 per cent (i.e., the failure risk decreased) for each additional $1,000 of secured bond, but this relationship was also only marginally significant. Thus, the failure-

time model suggests that secured bond was at best a weak deterrent to nonappearance.

The court's response to failure to appear was analyzed. Although willful failure to appear is a crime in North Carolina law, we found no instances of prosecution for this offense. Bond forfeitures were not strictly enforced. Eighty-seven per cent of bonded defendants who failed to appear were not ordered by a court judgment to forfeit any portion of their bonds, primarily because of a court policy of forgiving forfeitures if defendants eventually returned to court for disposition. The low forfeiture rate helps to explain why secured bond had little effect on failure to appear.

Bondsmen were allowed to charge a fee of 15 per cent of the amount of each bond. Nineteen per cent of bondmen's clients failed to appear, yet bondsmen only forfeited 2 per cent of their total bonds. The data suggested that bondsmen were not especially effective in getting non-appearing defendants who failed to appear back to court. Considering defendants who failed to appear and were not "assisted" back to court by police because of an arrest for a new crime, the percentage who never returned to court was higher for professional bondsmen's clients (26 per cent) than for other defendants (less than 20 per cent). The reason for the higher no-return rate for bondsmen's clients may well be that they were inherently riskier defendants. Nevertheless, the bondsmen's function is to control the risks that their clients present and, if they fail to appear, to get them back into court. From this point of view, defendants with bondsmen should do better than defendants without bondsmen, but the reverse was true in the Durham sample.

While pretrial release in Durham seems to be operating fairly well, the study yielded several suggestions for possible improvement:

(1) Adopt guidelines for pretrial release that are more specific and objective than those currently in use, basing them in part on the study's findings concerning prediction of time at risk. Such guidelines may help to reduce racial disparity in pretrial release opportunity.
(2) Reduce court disposition time to lower nonappearance and new-crime rates.
(3) Enforce bond forfeiture more strictly.
(4) Be stricter in continuing pretrial release with unchanged conditions for defendants who have failed to appear.
(5) Consider changing state law to allow release to be secured by depositing a fraction of a secured bond, but preserve judicial officials' option to require security by full deposit, mortgage, or bondsman, as present law provides. The deposit of a fraction of the bond would increase the defendant's incentive to appear in court and would facilitate collecting forfeitures.
(6) Prosecute at least some of the defendants who fail to appear for the crime of willful failure to appear.
(7) Release under supervision a small proportion (perhaps 10 per cent) of defendants. "Supervision," as used here, means maintaining frequent contact with the defendant to remind him of his obligation to appear and of the penalties for failure. The best candidates for

such supervision are probably (a) those who have remained in detention for at least two days and are therefore unlikely to receive another form of pretrial release, and (b) those whose cases are likely to take longest for the court to dispose of.

(8) Make additional information continually available and accessible to magistrates, especially information in existing state data bases concerning defendants' previous convictions, previous failures to appear in court, and current pretrial release status (i.e., whether the defendant is already on pretrial release in connection with earlier charges that are still pending). Magistrates frequently lack these basic data in setting conditions of pretrial release.

I. INTRODUCTION

Newspaper and television reports in 1984 reflected public concern in Durham, North Carolina about pretrial release (also called "bail"). One bail bondsman, who is black, had complained that practices of enforcement of bond forfeitures discriminated against him. His complaints led to concern about possible racial disparity with respect to opportunity for pretrial release in Durham, and to wider concern about the effectiveness of the pretrial-release system itself.

The Senior Resident Superior Court Judge and the Chief District Court Judge of the 14th Judicial District (comprising the City and County of Durham) asked the Institute of Government to conduct a study of the pretrial release system. The Institute asked the Statistical Analysis Center of the Governor's Crime Commission for assistance in obtaining funding for the study. The Center was interested because the study presented an opportunity to use existing criminal justice system data for classification of defendant risks at the pretrial stage. The Institute carried out the study under contract with the Governor's Crime Commission, which paid for the work, in part, with a grant from the Bureau of Justice Statistics, United States Department of Justice.

The Institute also asked the Administrative Office of the Courts (AOC) for help in obtaining data. The AOC expressed interest in the study--as well as in a comparable study now being undertaken by the Trial Court Administrator in the 28th Judicial District (Buncombe County)--in connection with the planned expansion of its computerized case-tracking information system. The expansion is intended to meet the needs of magistrates, especially in pretrial-release decisionmaking. The AOC's Information Services Division wrote a special computer program to copy its master file of the criminal cases that were filed in Durham and Buncombe Counties in 1985.

This report is organized as follows: Section II is an overview of the pretrial-release system in Durham. Our data collection procedures are described in Section III. The study findings on opportunity for pretrial release, pretrial release risk, and bond forfeiture are set out in Sections IV, V, and VI. Section VII presents our conclusions and suggestions for improvements in the administration of pretrial release.

II. PRETRIAL-RELEASE PROCEDURES

A. What Is Pretrial Release?

Pretrial release, also called bail, is the release of defendants arrested and charged with crimes before disposal of their charges by the trial court. Pretrial release has two purposes: (1) to allow those accused of crimes to remain free unless they are convicted; and (2) to provide reasonable safeguards to ensure that defendants return to court for hearings on their cases as required.

In North Carolina, a person charged with a noncapital offense has a statutory right to have a judicial official determine conditions of pretrial release after his arrest without unnecessary delay. This official is usually a magistrate, but may also be a clerk of court or a judge.[2] Of the 937 defendants in our sample, 926 (99 per cent) had their conditions of pretrial release set initially by a magistrate. Of these 926, 10 per cent did not manage to meet the conditions and were not released, and 11 per cent had their conditions modified by some other judicial official--almost always a district court judge--before obtaining release. Of the 844 defendants who were released, 87 per cent obtained their release on conditions set by a magistrate.

Although the noncapital defendant has a right to <u>have conditions of release determined</u>, he has no right to <u>be released</u>. While most noncapital defendants are released, some are unable to meet conditions set for their release, and are thus detained in jail until their cases are disposed of.

The arresting officer must take a defendant before a judicial official without unnecessary delay. If the defendant is grossly intoxicated or otherwise unable to understand his rights at this initial appearance, the official may order him confined but must order his appearance within a reasonable time so that conditions of pretrial release can be set.[3]

Before setting pretrial release conditions, the judicial official, at this post-arrest appearance, must verify that the arrest was lawful; the official must also inform the defendant of the charges against him and of his right to communicate with counsel and friends.[4] For defendants charged with domestic violence and defendants charged with driving under the influence of an impairing substance (known as "DWI"), the statutes authorize some very limited preventive detention in certain circumstances.[5]

The judicial official must impose one of the following conditions of pretrial release:

1. That the defendant sign a written promise to appear in court when required. (We refer to this condition as "promise release.")

2. That the defendant execute an unsecured appearance bond (i.e., a promise to pay a specified sum if he fails to

appear as required, unsecured by any deposit or surety) in an amount set by the judicial official.

3. That the defendant be released in the custody of a specified person or organization who agrees to supervise him. (We call this "custody release.") The "supervisor" of the released defendant could be, for example, a relative of the defendant, a volunteer group,[6] or a professional pretrial-release program like the Mecklenburg County Pretrial Release Program in Charlotte or Project Re-Entry in Raleigh.

4. That the defendant execute an appearance bond (a promise to pay a specified sum if he fails to appear) in an amount set by the judicial official, secured by one of the following:

   (a) a cash deposit of the full bond amount, or

   (b) a mortgage of property pursuant to N.C. Gen. Stat. § 109-25, or

   (c) a solvent surety. (A surety is a person who guarantees that the defendant will appear in court as required and is liable, along with the defendant, for forfeiture of the bond if the defendant fails to appear. A surety may be a professional bail bondsman licensed by the Insurance Commission or may be a nonprofessional "accommodation bondsman."[7]

If the judicial official requires that the defendant be supervised by a person or organization as a condition of pretrial release, the defendant may refuse this condition and choose to have secured bond set. If the official releases the defendant on a written promise, custody release, or unsecured bond, he may also impose restrictions on the defendant's travel, place of residence, associations, and conduct.

The statutes provide that secured bond be used only as a last resort. The judicial official must allow promise release, custody release, or unsecured bond release unless he determines that these forms of release will not ensure the appearance of the defendant in court, will pose a danger of injury to anyone, or that release will probably result in destruction of evidence, subornation of perjury, or intimidation of witnesses. If the official finds that other conditions are insufficient to guarantee the defendant's appearance or to prevent injury, intimidation of witnesses, etc., he must require secured bond as a condition of release.[8]

Besides the statutory provisions governing the choice of pretrial-release conditions, there are local policies issued by the senior resident superior court judge and the chief district court judge.[9] The local policies in Durham make release on a written promise to appear the "recommended form of pretrial release" unless the defendant is charged with a traffic offense; in that case, unsecured bond is the recommended

form of pretrial release. The local policies also recommend that release in the custody of a designated person or organization not be used if the defendant is charged with a traffic offense. When custody release is used, local policies recommend that the defendant and the custodian--in the presence of the magistrate--agree to the custody release.[10]

In determining which conditions of pretrial release to impose, the judicial official must, on the basis of available information, consider the following factors:

--The nature and circumstances of the offense charged;
--The evidence against the defendant;
--The defendant's family ties, employment, financial resources, character, and mental condition;
--Whether the defendant is so intoxicated that he would be endangered by being released without supervision;
--The length of the defendant's residence in the community;
--The defendant's record of convictions;
--The defendant's history of flight to avoid prosecution and failure to appear in court proceedings; and
--Any other relevant evidence.[11]

In imposing conditions of pretrial release, and in modifying or revoking such conditions, a judicial official "must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials."[12] Note that the official is not required to obtain any type of information in setting pretrial release conditions. In practice, judicial officials obtain information by questioning and observing the defendant; they also sometimes receive relevant information from the arresting officer, and, much less often, from the defendant's family, the defendant's attorney, his probation officer (if any), the prosecutor, and others interested in the case. Judicial officials rarely are able either to verify the information they receive from the defendant or to obtain information on their own initiative from other sources.

If the judicial official decides to impose an appearance bond as a condition of pretrial release, he must consider local policy guidelines. The local policies in Durham provide that the "circumstances of each individual case will govern each decision" and set minimum bond amounts depending on the offense charged, "as general guidelines, as mere suggestions not to be blindly followed. . . ." Examples of these suggested minimum amounts are: $50 for a violation of a local ordinance or for a misdemeanor punishable by up to 30 days' imprisonment; $100 for a misdemeanor punishable by up to six months' imprisonment; $200 for a misdemeanor punishable by up to two years' imprisonment; $1,000 for a five-year felony, $2,000 for a ten-year felony, $5,000 for a felony punishable by more than a ten-year term, $10,000 for a felony punishable by imprisonment up to life; and $50,000 for a felony punishable by mandatory life imprisonment.[13]

In addition to the local policies on bond amounts, the Chief District Court Judge of the 14th Judicial District recently issued a new

form entitled "Forms of Pretrial Release"--hereinafter called the "reasons form" (effective February 4, 1985)--to be used by magistrates in setting pretrial release conditions. The purpose of this form is to promote more reliable and consistent pretrial release decisionmaking by requiring magistrates to specify reasons for their decisions. The form sets out the various types of pretrial release authorized by law (explained above). A number of factors for the magistrate to consider in the release process are then listed, with blanks for his findings to be written in. The factors listed on the reasons form are the same as those required by statute (see above) with one omission--the defendant's financial resources. (The defendant's financial resources would presumably be included in the last part of the form, which covers "any other evidence relevant to the issue of pretrial release.")

The judicial official who sets pretrial-release conditions must issue a pretrial-release order stating the conditions imposed, and he must inform the defendant in writing of the penalties for violation of the conditions. The release order is filed with the clerk, and a copy is given to the defendant.

A magistrate or clerk may modify the pretrial-release conditions before the defendant's first appearance in district court. Thereafter, a district court judge may modify the conditions[14] at any time until the case is disposed of by the district court.[15] If the defendant's case enters the superior court's jurisdiction (for example, if he appeals a misdemeanor conviction, or the district court binds him over to superior court for a jury trial on a felony charge), the superior court judge may modify the pretrial-release conditions until the case is disposed of. For good cause shown, any judge may revoke an order of pretrial release and set new conditions of release at any time while the defendant's case is in his jurisdiction.

B. Obligation of Defendant on Pretrial Release and Penalties for Failure to Appear

The defendant who receives pretrial release must appear in court when required to do so until his case is disposed of by the trial court (district or superior court).[16] Willful failure to appear is a crime, although defendants are rarely prosecuted for it. It is a Class J felony if the nonappearing defendant was charged with a felony or was released after conviction in superior court; otherwise it is a misdemeanor punishable by up to six months' imprisonment or a $500 fine.[17] If the defendant has been released on an appearance bond, another penalty for willfully failing to appear is forfeiture of the bond amount, and if the defendant has a bondsman, the bondsman is also liable for the forfeiture. (Forfeiture is subject to a statutory procedure and local rules that are described later in this report.)

If the defendant is charged with a crime he allegedly committed while free on pretrial release, there is no additional penalty for committing the new crime while on pretrial release. When setting conditions of pretrial release in connection with the new charge, the magistrate (or other judicial official), in assessing the risk involved in releasing the defendant, may take into account that the defendant has an

earlier charge still pending. But the magistrate may not necessarily know that the defendant has a pending charge because the list of pending cases available to magistrates may be out-of-date by several weeks. (This problem is addressed in our recommendations in Section VII of this report.)

III. DATA COLLECTION

We interviewed magistrates, judges, and bail bondsmen and also observed the work of magistrates in setting conditions of pretrial release. The information obtained from interviews and observations guided our quantitative analysis and helped in explaining some of the results.

In obtaining the sample on which most of our quantitative results are based, we used the master file of the AOC's case-tracking system as a sampling frame. The sampling unit was the "cluster," defined as a single defendant against whom one or more charges were filed. Thus the study focused on defendants rather than on cases.[18] The sample was limited to defendants who were arrested from February through May 1985. We chose this sampling period for two reasons: (1) We wished to emphasize cases handled recently to provide as close a description as possible to the current operation of the Durham pretrial-release system. (If cases filed any later had been selected, too few of them would have reached disposition by early 1986, when our data collection was scheduled to be completed.) (2) We wanted our data to reflect the system's experience with the new "reasons form" (described in Section II), issued in February 1985, and with the new Bail Forfeiture Policy issued effective April 1, 1985 (see Section VI.B.1 of this report).

Our main sample was stratified[19] with respect to the offense charged. It comprised five subsamples drawn at random from each of the following categories:

(1) Defendants charged with DWI (driving while impaired);
(2) Defendants charged with passing worthless checks;
(3) Defendants charged with violent felonies;
(4) Defendants charged with nonviolent felonies; and
(5) Defendants charged with misdemeanors other than DWI and passing worthless checks.

(Defendants charged with minor traffic and fishing, hunting, and boating violations were excluded; in any case, most of these were not arrested and thus were not candidates for pretrial release.)

Most of the percentages in this report are based on weighted estimates. Because the five offense groups were not represented in equal proportions, in computing percentages over the five groups each defendant was counted not as a single unit but as the inverse of the sampling fraction for his offense group. For example, a violent felony defendant would be counted as one unit, because 100 per cent of his offense group was sampled, but a DWI defendant was counted as 2.35 units (2.35 = 1/.425), because only 42.5 per cent of his offense group was

sampled. However, in Tables 16 and 17, concerning bond forfeiture, actual counts were used (weighted estimates were not used).

After the samples were drawn, detailed information not available on the AOC computer file was collected from the manual case records maintained by the Clerk of Superior Court and from the computerized case-tracking system. Each defendant was followed in the records until all of his related cases were disposed of by the trial court; if he was charged with a misdemeanor, this included trial de novo in superior court, if any. Of a total of 1,106 defendants (i.e., clusters) in the original sample, 169 had to be eliminated because court records could not be found or because of irregularities in the records. The remaining 937 defendants were followed to disposition or to the last action taken by the court before we ceased data collection. There were 59 defendants whose cases did not reach final disposition.

This data collection procedure resulted in our following defendants in the manual case records for varying periods of time because (1) their cases had begun at various times over a four-month period and (2) data collection on all cases was concluded at the same time. To avoid the distortion that the variable follow-up period would have caused, we adjusted our data to appear as if a fixed follow-up period had been used. For example, with respect to pretrial-release opportunity, each defendant was in effect followed from arrest for 258 days, or until trial court disposition if that occurred (it almost always did) before 258 days had passed. The figure of 258 days was the shortest time from arrest to final data collection for any of the defendants whose cases were still undisposed as of our last look at their court files.[20] We also chose a fixed follow-up period of 231 days from release for analysis of failure to appear and new criminal charges while on pretrial release. In other words, in the analysis, failures to appear and new criminal charges were not counted if they occurred after 231 days from release. This limitation on follow-up time did not apply, however, to our analysis of bond forfeiture.

With regard to bond forfeiture, we supplemented our main statistical sample with a special sample of defendants who failed to appear during May 1985 and whose forfeiture proceedings we followed in court records through May 1986. (This sample is explained further in Section VI.B.2 below.)

IV. STUDY RESULTS: OPPORTUNITY FOR PRETRIAL RELEASE

A. Measures of Opportunity for Pretrial Release

In examining the opportunity of different types of defendants for pretrial release, we considered a defendant's probability of receiving pretrial release (rather than remaining in detention), the specific type of pretrial release he received, the amount of time he spent in pretrial detention from his arrest until his first pretrial release, and the amount of secured bond set for him (treated as zero if none was set).

B. Factors Considered in Analyzing Pretrial Release Opportunity

From the available court data, we identified a number of factors, or independent variables that we thought (on the basis of earlier research in North Carolina and elsewhere)[21] might account for variations in defendants' opportunity for pretrial release. These included:

--The defendant's age, race, and sex;
--Whether he was a resident of Durham County;
--The principal charge;[22]
--The number of current charges against him;
--Whether he was under probation supervision at the time of his current arrest;
--Whether he was on pretrial release in connection with an earlier charge at the time of his current arrest;
--The number of times he failed to appear in previous Durham cases; and
--The number of times he had been convicted previously in Durham.

No reliable data were available on several factors that might have helped to predict failure to appear, including the defendant's current employment status, his employment history, and his residence history. In some analyses, we included certain administrative variables such as the amount of the defendant's initially-set secured bond (treated as zero if there was none) and the type of defense counsel he had (none, privately-paid, or court-appointed).

C. Pretrial Release Opportunity and Its Relationship to Type of Principal Charge

Almost all defendants (92 per cent) received some sort of pretrial release (Table 1, rightmost column). Secured bond was the most common type, accounting for 47 per cent of all defendants. Among these defendants, 38 per cent were released by employing a professional bondsman, 5 per cent with the help of an accommodation (nonprofessional) bondsman, 4 per cent by cash deposit (usually posted by the defendant himself), and less than 1 per cent by a mortgage of property. For defendants released on bond (secured or unsecured), the mean bond amount was $2,158 and the median was $400; 75 per cent of the bonds were $1,000 orless.[23]

What about alternatives to secured bond? The most common was unsecured bond; 33 per cent of the defendants received this type of release. Promise release accounted for 9 per cent, and only 2 per cent received custody release.

Table 2 shows the relationship between the conditions of release initially set by the magistrate (or other judicial official) and the type of pretrial release actually received. Any condition of pretrial release other than secured bond virtually guaranteed release: Of those whose initial conditions were a written promise to appear or unsecured bond, 100 per cent were released under those conditions, and 90.5 per cent of those whose initial condition was custody release were released under that condition. (One defendant granted custody release refused it, chose secured bond instead, and employed a bondsman.)

When a condition of pretrial release other than secured bond was set, the defendant always obtained release. But 13 per cent of defendants who had secured bond set did not manage to secure the bond and be released. When the defendant did not receive pretrial release and remained in jail, it was usually because he could not raise the amount of his secured bond; 92 per cent of unreleased defendants had secured bond set.

Of all defendants with secured bond, 13 per cent were not released (presumably because they were unable to raise the money or get a bondsman); 64 per cent engaged a professional bondsman; 8 per cent obtained an accommodation bondsman; 7 per cent deposited cash or had someone else deposit it for them; and 7 per cent got their release conditions changed (usually to unsecured bond) and were released on the new conditions.

A few defendants (a total of 16 in our sample) initially were denied any form of pretrial release.[24] But 36 per cent of those initially denied release eventually obtained it, usually with secured bond and a professional bondsman.

The types of pretrial release received by defendants with various kinds of principal charges are shown in Table 1. Defendants charged with felonies and with DWI were the categories of defendants most likely to be released on secured bond. Felony defendants were much more likely than others to be released with the help of an accommodation (nonprofessional) bondsman, perhaps because such defendants found it difficult to get a professional bondsman. Defendants charged with issuing worthless checks and other misdemeanors were most likely to receive release on unsecured bond or on a written promise to appear.

Pretrial detention time (time between arrest and first pretrial release, or between arrest and trial court disposition if there was no pretrial release) is shown in Table 3. The mean detention time for all defendants was 6.3 days, and the median was zero days; 75 per cent of defendants spent no more than one day in pretrial detention. The mean detention time for released defendants was 2.4 days, and the median was zero days, compared to a mean of 49.5 days and a median of 47.0 days for defendants who were unable to secure any means of pretrial release.

As explained in Section II, judicial officials are authorized to impose special restrictions on the defendant's travel, place of residence, associations, and conduct if the defendant receives promise release, custody release, or unsecured bond. In our sample, such restrictions were rarely imposed; only 5 per cent of defendants released on unsecured bond and 2 per cent of defendants with custody or promise release had special restrictions (Table 4). The restriction most often imposed was that the defendant avoid the victim or prosecuting witness or their families and that he not return to the place of the crime. (Magistrates imposed special restrictions on some defendants who had secured bonds, although this action does not appear to be authorized by the applicable statute.)[25]

D. Statistical Models of Secured Bond Amount, Whether Defendant Was Released, and Pretrial Detention Time

We fitted regression models to the data to describe the relationship between several measures of pretrial release opportunity and various characteristics of the defendant and his charge(s). In these models, each number in the columns represents the degree of association of a certain factor, such as the defendant's age or criminal charge, with a dependent variable, such as the initial secured bond amount. This association was estimated independent of the association of other factors with the dependent variable. The numbers marked with asterisks represent statistically significant associations--those that are very unlikely to be an accident of sampling. Those associations not marked with asterisks are not statistically significant--i.e., sampling error cannot be ruled out in estimating them. In the discussion of the model results, we focus on the statistically significant associations.

1. Models of whether secured bond was set, amount of secured bond, and reduction of secured bond. It was important to model whether or not the defendant had any secured bond set, and also to model the amount of the secured bond, because (as has just been explained) the secured bond essentially controlled whether the defendant obtained pretrial release. The model of whether the defendant had secured bond (Table 5) indicated that for the average defendant (i.e., the defendant with the average probability--58.8 per cent--of having secured bond), being a nonresident of Durham County meant a significantly higher probability of having secured bond (higher by 21.1 percentage points) than being a resident. For the average defendant, being charged with a felony or with DWI meant a significantly greater probability of having secured bond than being charged with a misdemeanor (other than DWI or worthless check), while being charged with issuing a worthless check meant a smaller probability than being charged with some other misdemeanor. The number of current charges, being on probation for a previous offense, and previous failures to appear all were significantly associated with increased probability of secured bond. Finally, for the average defendant, being black was significantly associated with a higher probability of secured bond (higher by 8.8 percentage points) than was being white.

A model of the secured bond amount was also developed. Defendants who had no secured bond were included in this model, with their bond amount given a zero value. The model (Table 6) indicates that defendants who were young (under 21), entirely apart from their other characteristics, usually had a significantly lower secured bond than older defendants. There are several possible reasons for the younger defendants' lower secured bonds: (1) jail may have been perceived as dangerous for younger defendants; (2) younger defendants may have been considered better risks because of parental supervision; (3) younger defendants' incomes may have been lower than older defendants' incomes; and (4) younger defendants may have been considered less dangerous than older defendants.

The model showed that black defendants had significantly lower secured bonds--by about $1,000--than did white defendants. This

occurred despite black defendants being more likely (as explained above) than white defendants to have some secured bond set. In other words, black defendants had a higher percentage of relatively low secured bonds. The lower bonds for black defendants may have resulted from magistrates' taking into account defendants' incomes; census data for the area indicate that incomes were lower, on average, for blacks.[26]

Defendants who were not Durham County residents had significantly higher secured bonds than defendants who were residents. Nonresidents were probably regarded as having less attachment to the local community and therefore were perceived as being more likely to fail to appear.

Defendants charged with felonies had much higher bonds than defendants charged with misdemeanors, and violent felony defendants had much higher bonds than nonviolent felony defendants. DWI defendants, on the other hand, had significantly lower secured bonds than did defendants charged with other misdemeanors. Each additional charge against the defendant[27] was associated with an increase of about $1,400 in his secured bond.

The secured bond was higher if the defendant was already on probation for a previous offense (this association was only marginally significant) and if he was already on pretrial release for an earlier pending charge. The defendant's prior convictions (which, as explained below, may often have been unknown to the magistrate) and the number of times he had failed to appear in court in the past were not significantly associated with secured bond amount.

To summarize: The setting of the secured bond amount appears to have been based on an assessment of the risk involved in releasing the defendant in terms of the type and number of his current charges and his probation status, with a substantial increase of the bond amount for nonresidents and a reduction for young defendants and black defendants.

What about reduction of the initial secured bond amount? There was an average reduction of 12 per cent.[28] In the model of whether or not the secured-bond defendant received any bond reduction (Table 6, rightmost column), we found only two factors to be of significance: (1) the type of charge (felony defendants were more likely than others to get a reduction), and (2) the initial secured bond amount (the higher the initial amount, the more likely it was to be reduced before release).

2. Models of whether defendant was released and amount of time spent in pretrial detention. In analyzing the probability of receiving pretrial release and the amount of time the defendant spent in pretrial detention (between arrest and first release), we fitted three regression models (see Table 7). Model 1 was a "basic factors" model, consisting of the defendant's charge and other measures of criminal activity plus his personal characteristics. Model 2 incorporated these basic factors plus the initially-set bond amount. Model 3 added the type of attorney the defendant had (none, privately-paid, court-appointed). In most of the following discussion, we concentrate on Model 1.

Criminal charges affected release and detention time. The average defendant was 20 percentage points less likely to be released if charged with a violent felony than if charged with a nontraffic misdemeanor other than DWI and passing worthless checks,[29] and defendants charged with felonies (violent or nonviolent) were likely to spend much more time in pretrial detention than other defendants. When secured bond amount is added to the model (Model 2), the differences between felony defendants and other defendants are reduced, but they remain significant. This suggests that part, but not all, of these differences were attributable to differences in secured bond. The number of current charges was also associated with probability of release and detention time, and this association was weaker when secured bond amount was taken into account. Being on probation for a previous offense, and being on pretrial release in connection with an earlier pending charge, while not significantly related to probability of release, were associated with longer detention times.

Black defendants were at a disadvantage both with respect to probability of release and detention time. Other factors being constant, the average defendant was 15 percentage points less likely to be released if black than if white, and black defendants spent 20 per cent longer in detention than white defendants (Model 1). The lower bond amounts for blacks (described earlier in this section) partly obscure the black/white differences in probability of release and detention time. When secured bond amount is taken into account (Model 2), the black/white differences were even more pronounced. Female defendants were somewhat more likely than male defendants to be released, and females spent slightly less time in detention. Nonresidents of Durham County were considerably less likely to be released than county residents, and they spent more time in detention than did residents.

We believe that black defendants' disadvantage in pretrial-release opportunity was primarily because of their lower average income. The individual income of defendants was not included as a variable in our statistical analysis because there were no reliable data on it. Census data for the Raleigh-Durham area indicate large income differences between black and white males in the age range of most of the study defendants.[30] Despite their receiving lower secured bonds, blacks--because of their lower incomes--were probably still at an economic disadvantage, compared to whites, in meeting bond obligations. We found no evidence of racial bias in setting pretrial-release conditions in our interviews and observations. It should be noted that four of the nine Durham magistrates--the officials usually responsible for setting pretrial-release conditions--were black.

The amount of the initially-set secured bond was significantly associated with pretrial-release opportunity, although this association was not very strong. For the average defendant, the probability of release was 0.6 percentage points less for each $1,000 increase in secured bond, and the detention time was about 8 per cent longer.

3. Type of attorney and opportunity for pretrial release. Our results regarding the correlation of type of attorney with pretrial release-opportunity require some explanation. In the entire sample, 27

per cent of the defendants retained and paid for an attorney; 26 per cent were found indigent, and a court-appointed attorney represented them; and 46 per cent had no attorney.[31] Under the United States Constitution, all indigent felony defendants are entitled to appointed counsel. Under the Constitution and North Carolina statutory law, an indigent misdemeanor defendant is entitled to appointed counsel if (1) a fine of $500 or more is likely, or (2) imprisonment is likely. If an indigent defendant does not have counsel and does not validly waive the right to counsel, he cannot be sentenced to jail or prison.[32] The requirements for appointing counsel call for a certain amount of prejudging of the defendant. If a judicial official finds an indigent misdemeanor defendant qualified for appointed counsel, the official must have considered the defendant likely to emerge with a prison sentence, or, under North Carolina law, with at least a fine of $500 or more. The information--whatever it may be--that leads the judicial official to find the misdemeanor defendant eligible for a free lawyer may also make the defendant appear to be a poor risk for pretrial release.

Our statistical results regarding type of counsel were as follows (Model 3, Table 7): The average defendant was significantly less likely to receive pretrial release if he had court-appointed counsel than if he had no counsel or private counsel. He was significantly more likely to receive pretrial release if he had privately-paid counsel than if he had no counsel. Defendants with appointed counsel were likely to spend much more time in pretrial detention than other defendants. There are several possible explanations for the apparent disadvantage of defendants with appointed counsel: (1) Defendants with appointed counsel were less able than other defendants to post bond because of their indigency. (2) Defendants with appointed counsel may have been less able than defendants with private counsel to obtain pretrial release because their lawyers had higher workloads, or were paid less, or were less competent than privately-paid lawyers. (3) Defendants with appointed counsel (or the cases against them) may have had characteristics that made them appear worse risks for pretrial release (and perhaps less desirable clients for bondsmen) than other defendants.[33]

4. Summary of analysis of pretrial-release opportunity. To summarize the analysis: With regard to opportunity for pretrial release, defendants charged with felonies, especially serious felonies, were at a disadvantage in comparison to other defendants, even allowing for their secured bonds being higher than those of other defendants. Defendants who were not residents of Durham County also had reduced opportunity. Female defendants had slightly better opportunities for pretrial release than male defendants. Black defendants were at a disadvantage, despite their lower secured bond, in comparison to white defendants. Raising the secured bond tended to reduce opportunity for release. Defendants who had appointed attorneys had poorer opportunity for pretrial release than other defendants.

5. The "typical" unreleased defendant. Court officials who attended an early briefing session on the results of this study asked us to describe the "typical" defendant who did not receive pretrial release. We have attempted to do this in terms of variables that the regression analysis indicated were significantly related to whether the

defendant was released or not, controlling for the effects of other variables. These release-related variables included sex, race, type of offense, number of current charges, and place of residence. We have limited the description of the "typical" unreleased defendant to males, since most (74 per cent) of such defendants were male. (Of our total sample, 76 per cent were male. Note that the model of released/not released indicated that males were somewhat less likely to be released than females.)

A description of the "typical" male unreleased defendant can be derived from Table 8. The typical male unreleased defendant was black, not charged with a violent felony, and a resident of Durham County. Looking at the percentages in column 1 of the table, the percentage not released of the various cross-classifications of male defendants can be compared. It can be readily seen that for any group of black defendants, the percentage not released is higher than the percentage not released for the corresponding group of white defendants. Also, looking at column 2, and counting the percentages in the rows for black defendants, it can be seen that most--79 per cent--of male unreleased defendants were black. In the violent-felony offense group, 78 per cent of the unreleased defendants were black, and in the other offense category shown in Table 8 (including all offenses except violent felonies), 79 per cent of the unreleased defendants were black. This percentage should be compared with the percentage of the entire sample of male defendants--62 per cent--who were black.

E. Relationship of Pretrial-Release Opportunity to Whether Defendant Was Convicted and to Court Disposition Time

One way of assessing fairness in pretrial release and detention is to ask how often defendants who were not convicted of any offense were held in pretrial detention.[34] Our data show that this rarely happened. Only 3 per cent of the defendants who emerged from court with no conviction failed to receive pretrial release, compared to 12 per cent of those who were convicted. We think this indicates good performance by the pretrial-release system. On the other hand, those few unreleased, unconvicted defendants spent long periods of time in pretrial detention: a mean of 62.1 days and a median of 56.5 days (Table 3). It may be possible to reduce this long detention time by reducing overall court disposition time and by increasing the use of alternatives to secured bond, which we recommend in Section VII of this report.

Detained defendants' cases were disposed of much sooner than released defendants' cases. For example, the median arrest-to-disposition time was 67 days for released defendants and 47 days for detained defendants (Table 9). In our view, the speedier disposition of detained defendants is another indication of good performance in the system of pretrial release and detention. It reflects the District Attorney's policy of giving priority in scheduling to cases of defendants who are in jail.[35]

V. STUDY RESULTS: RISK INVOLVED IN PRETRIAL RELEASE

A. Measures of Risk: Failure to Appear and New Crime

We defined pretrial-release risk in terms of failure to appear in court for a scheduled hearing and in terms of being charged with a new crime that allegedly occurred while the defendant was free on pretrial release. Failure to appear was defined as follows. A defendant who failed to appear was "called and failed"--i.e., the court clerk made a record that he did not show up for a scheduled hearing.

Being charged with a new crime was defined to include being charged with any new offense, misdemeanor or felony, that the defendant allegedly committed in Durham County while he was on pretrial release and for which he was arrested. The new-crime variable was limited to Durham County because the most reliable information was available for that county, and also because crime committed within Durham County by persons on pretrial release is arguably of greater concern to Durham court officials than new crime committed outside the county.

We found that 16 per cent of the entire sample of defendants (Table 10, row 10) failed to appear. Fourteen per cent of the entire sample were charged with new crimes that allegedly occurred while they were free on pretrial release--3 per cent were charged with felonies and 11 per cent with misdemeanors.

Committing a new crime and failing to appear were related. Of defendants who allegedly committed new crimes while on pretrial release, 36 per cent failed to appear, while the comparable figure for those who were not charged with new crimes was 12 per cent. (Conversely, for defendants who failed to appear, the new-crime rate was 33 per cent, and for defendants who did not fail to appear, the new-crime rate was 11 per cent.) One probable explanation for the higher failure-to-appear rate among defendants who (allegedly) committed new crimes is that such defendants may have become fugitives from the law, at least for a time, after the new crime.

Although 16 per cent of the defendants failed to appear, only 2.4 per cent failed to appear and remained absent so that their cases could not be disposed of. When the defendant failed to appear, his case(s) usually reached disposition. The dispositions of the 105 defendants who failed to appear, excluding those who presented excuses and had strike or recall orders issued by the court, are shown in Table 11. Only 14.9 per cent of these had not returned for disposition of their cases when we last checked their records; a later follow-up, if we had been able to do it, might have shown a smaller percentage not returning. Most defendants (45.4 per cent) were convicted; 26.7 per cent had their cases dismissed by the prosecutor; a few were acquitted at trial or had their cases dismissed by the judge; and the cases of the rest (7.1 per cent) remained open for some reason other than the defendant's absence.

Considering the defendants who failed to appear (Table 11), of the 14.9 per cent whose cases remained open because they were missing, 19.2 per cent (2.9 per cent of the total who failed to appear) received a

dismissal of their charges with leave to re-open prosecution. In addition, 10.3 per cent received dismissals with leave even though they were not missing according to our information. When dismissal with leave was used in Durham, our data indicate that 78 per cent of the time it was used incorrectly. The statute authorizing dismissal with leave (N.C. Gen. Stat. §§ 15A-931, 15A-932) is not intended to authorize the prosecutor to use this form of dismissal unless the defendant fails to appear and cannot be found. Using this form of dismissal makes AOC criminal court statistics inaccurate, and will make it more difficult for magistrates to use the computerized Court Information System in making pretrial-release decisions, which we recommend (see Section VII.E of this report).

Although defendants who failed to appear usually returned for court disposition eventually, their failure to appear delayed the disposition of their cases substantially. A regression model of arrest-to-disposition time for released defendants indicates that arrest-to-disposition time was 155 per cent longer (i.e., about two-and-one-half times as long) for defendants who failed to appear than for defendants who did not fail to appear, holding other factors constant.[36] We have not attempted to calculate the costs to the court system of this delay. The delay attributable to failure to appear may have weakened prosecution--for example, by discouraging witnesses from coming to court. A regression model of the probability of being convicted indicates that (controlling for other factors such as type of offense, number of charges, criminal record, and demographic characteristics) defendants who failed to appear were 11 percentage points less likely to be convicted than defendants who did not fail to appear.[37]

Why did defendants fail to appear? We did not attempt to ask nonappearing defendants their reasons for failing to appear. Since most of them eventually returned to court, it is a reasonable inference that failure to appear usually did not involve deliberate flight to avoid prosecution. Rather, we think that defendants usually failed to appear because they "forgot" their appearance date or were careless or irresponsible about appearing. In some cases defense attorneys may have contributed to failure to appear by not informing their clients clearly about their obligation to appear. The court routinely informs defendants of their obligation to appear, but there may be clearer and more effective ways of doing this. In some cases, mailed reminders may be necessary.

B. Time at Risk and Number of Court Appearances

Common sense suggests that the longer a defendant has to get into trouble, the more likely he is to do so. Our analysis involving time at risk supports this notion. Time at risk is defined as follows. When we are concerned with failure to appear, time at risk is defined as the time from the defendant's release until either his case is disposed of or he fails to appear, whichever occurs first. (When we are concerned with new crime committed while on release, time at risk is defined as the time from release until either court disposition or the defendant is arrested for a new crime, whichever occurs first.) Time at risk can affect the probability of failing to appear in two ways. (1) The pass-

ing of time may weaken the defendant's commitment to appear, or allow him to "forget" his obligation, or give him opportunity to make plans to be absent or to "skip town." This may occur even though he has only one or two required appearances, if they are far apart in time. (2) As time elapses from release and the defendant's case remains open, he tends to have more required court appearances. (Scheduled appearances occur at irregular intervals; in our sample, the total number of required appearances ranged from one to 16, and the median number was three.) With each successive appearance, the defendant may be less willing to appear because he is more conscious of the possible unpleasant consequences of conviction and sentence. (The total number of appearances is positively correlated with likelihood of conviction and severity of sentence, the extreme example being a case involving the death penalty.) Also, the defendant may simply become confused about his obligation to appear if he is required to do so often enough. Time at risk also affects the probability of committing a new crime, in that the more time the defendant remains free, the more time he has to commit a new crime (and get arrested), if he is so inclined.

We found that the defendant's chance of failing to appear and his chance of (allegedly) committing a new crime increased as his time at risk increased. Using newly available computer procedures,[38] we analyzed the defendant's probability of "survival"--i.e., the probability that the defendant would be able to "survive" (remain free) for some period of time without failing to appear or without committing a new crime. We plotted the defendant's probability of survival without failing to appear over time (Graph 1) and his probability of survival without committing a new crime over time (Graph 2). The graphs show that survival probability declined steadily as time passed.[39] Because of the strong relationship between time at risk and both failure to appear and new crime, we made special efforts to take time at risk into account in the analysis.

C. Independent Variables Other Than Time at Risk

The independent variables in the analysis of released defendants' failure to appear and new crime include all the basic factors used in the models of pretrial release opportunity (see Section II.D above). The amount of the defendant's bond (secured, unsecured, zero if none) was included because bond amount is intended as a deterrent to nonappearance. We also included the specific type of pretrial release to see whether some types were more effective than others in controlling failure to appear.

D. First-Order Relationship of Pretrial Release Risk to Type of Charge and Type of Pretrial Release

The failure-to-appear rates and new-crime rates for defendants charged with five types of offenses are shown in Table 12. The failure-to-appear rate was high for those charged with nonviolent felonies, but not for those charged with violent felonies. The rate was also high for defendants charged with misdemeanors other than DWI and worthless checks. Rates of new crime were quite high for those charged with felonies (violent and nonviolent), and quite low for those charged with

issuing worthless checks and other misdemeanors. We expected risks to be higher for felony defendants because their cases usually remain open longer than those of other defendants and because their serious charges suggest that they are more "crime-prone" than other defendants.

The comparison of risks of defendants on various types of pretrial release may be surprising. Looking at defendants released on all types of secured bond (Table 10, row 9), we see that both failure-to-appear rates and new-crime rates were higher for defendants on secured bond than for other defendants. For example, 18.5 per cent of defendants with secured bond failed to appear compared to 15.8 per cent of all defendants (Table 10, row 10), and 19.7 per cent allegedly committed new crimes, compared to 14.2 per cent of all defendants. Unsecured bond, which was the most common form of pretrial release other than secured bond, compared favorably with secured bond, and specifically with secured bond involving a professional bondsman. All four risk measures were substantially lower for unsecured-bond defendants than for defendants on secured bond and defendants with professional bondsmen (compare row 3 with rows 8 and 9).

Some Durham court officials, in our interviews and discussions with them, expressed their belief that defendants with unsecured bond very frequently failed to appear. But in fact these defendants' rates of failure to appear and new crime have been lower than those of defendants with secured bond. Failure-to-appear rates were also lower for defendants released in someone's custody or on a promise to appear (Table 10, rows 1 and 2), although defendants on custody release (a total of 20) had a high new-crime rate. Failure-to-appear rates were high for defendants with bond secured by cash deposited by someone other than themselves (row 5), but the rates were average for those who made the deposit themselves (row 4). Perhaps cash-bond defendants were more willing to risk other people's money than their own.

Defendants with secured bond who employed professional bondsmen had a considerably higher failure-to-appear rate (19 per cent) than did defendants released without secured bond (14 per cent). Why should this be true? Is not bail bond supposed to deter nonappearance? Are not bail bondsmen supposed to be financially motivated to control nonappearance of their clients?

There are at least two reasons that we can suggest for the higher failure-to-appear rate of secured-bond defendants. One is that secured-bond defendants were inherently riskier than were defendants released on other conditions. Secured-bond defendants may well have been riskier than other defendants both in ways we could measure and in ways we could not measure. First, consider some factors that we could measure: having serious charges, having multiple charges, and being on pretrial release for a previous pending charge. All of these factors were associated with a greater probability of having a secured bond set[40] and with higher secured bond (see Table 5). They were also associated with longer court disposition times[41] and therefore with increased probability of failure to appear. Second, consider factors that we could not measure. Secured-bond defendants may have had characteristics--characteristics that could not be measured because they were not captured in

our data--that increased their likelihood of failing to appear and may also have made them seem worse candidates for alternatives to secured bond. Defendants with secured bond had higher rates of new crime and new felony charges than did defendants released on unsecured bond or on a promise to appear (Table 10). These new-crime rates are consistent with the notion that secured-bond defendants were inherently riskier than defendants with other forms of pretrial release.

Another explanation of why defendants with secured bond had high rates of failure to appear may be that the deterrent effect of forfeiture was weakened because most bonded defendants who failed to appear were not ordered to forfeit their bonds. We will return to this subject in Section VI.B.2.

E. Predicting Failure to Appear and New Crime

1. Direct modeling using least-squares and logistic regression. Using several standard statistical methods, we attempted to develop models of whether defendants failed to appear and whether they allegedly committed a new crime while on pretrial release.[42] These models were poor, in the sense that they statistically explained very little failure to appear and new crime. One reason for this poor result is that the modeling methods were not designed to account for time at risk, which was probably the most important factor influencing pretrial release risk.

2. Predicting arrest-to-disposition time. Since time at risk was clearly related to failure to appear and new crime (see subsection B above), we investigated another prediction strategy: predicting failure to appear (or new crime) by predicting time at risk. This strategy also had limitations. A defendant's chance of failing to appear (or committing a new crime) steadily increased with the time he remained free, and his case remained open; nevertheless, a large proportion of defendants who failed to appear or commited a new crime did so within a short period of time following release. Within 30 days of pretrial release, 36 per cent of those in our sample who were going to fail to appear had done so, and 48 per cent of those who were going to (allegedly) commit a new crime had done so (Table 13). Thus, there is a high degree of error[43] in predicting what proportion of defendants will fail to appear within a certain period of time after release.

Despite its inaccuracy as a method of predicting failure to appear, predicting arrest-to-disposition time is, in our opinion, a valuable tool in the administration of pretrial release. Arrest-to-disposition time can be predicted with fair accuracy, as explained below, and the prediction helps to identify defendants who reasonably can be considered high-risk. The best approach we can suggest for identifying high-risk defendants is to select those with the longest predicted arrest-to-disposition time.

Our efforts to predict arrest-to-disposition time were fairly successful. We fitted regression models of arrest-to-disposition time for released defendants who did not fail to appear.[44] These models (Table 14) provide statistical explanation for 35 per cent of the

variance in disposition time. The reduced model (Table 14, Model 2), which fits the data just as well as the complete model (Model 1), includes just four factors: the defendant's age; the principal charge against him; the total number of charges against him; and whether he is (at the time of his current arrest) on pretrial release in connection with an earlier pending charge in Durham. Magistrates either have information on all of these factors or could fairly readily obtain it. (Our recommendations in the last section of the report concerning information for magistrates also address this point.)

3. Analysis of expected failure time. We also analyzed expected failure time--the time the defendant is expected to be able to remain free before failing to appear. This is an important aspect of pretrial-release risk. A defendant who can only "survive" (remain free without failure) for a short time before forgetting his obligation or deliberately absconding is less trustworthy and more risky than a defendant who can "survive" for a long time. Using a technique called accelerated failure-time modeling,[45] we developed a statistical model to identify factors that were significantly associated with expected failure time. Of the various factors tested, four had a significant association with failure time: age, type of current charge, prior failure to appear, and amount of secured bond (Table 15, Models 1, 2, and 3). Defendants under 21 had shorter failure times (that is, a higher risk of failure to appear) than did older defendants. Defendants charged with felonies or DWI had longer failure times (lower risk) than did defendants charged with misdemeanors other than DWI. Defendants who had previously failed to appear had shorter failure times (higher risk) than other defendants, but the difference was only marginally significant.[46] The model (Table 15, Model 3) indicated that failure time increased by about 9 per cent (i.e., the failure risk decreased) for each additional $1,000 of secured bond, but this relationship was only marginally significant. This result suggests that secured bond was at best a weak deterrent to nonappearance.

The model of failure time with regard to new crime (i.e., the time from release until commission of a new crime), shown in Table 15, rightmost column, indicates that very few variables had an important influence. The only variables that were significantly related to time before a new crime were prior convictions and being on pretrial release for a previous pending charge (both were associated with increased risk).

4. Relationship of bond amount to failure to appear. The failure time models indicate only a weak relationship between bond amount and failure to appear. Why is this such a weak relationship? (1) Perhaps the effectiveness of bond is partially concealed by the matching of bond amounts to risk. Magistrates consider the defendant's risk of failure in setting conditions of pretrial release, using their own judgment as well as information that is not fully reflected in our data. If magistrates were very successful in matching bond amounts to risk, and if bond deterred failure to appear in proportion to bond amount, then there would be no observable relationship, or only a weak relationship, between bond amount and time to failure. In our view, this explanation is not much help in explaining the weakness of the observed relationship between bond amount and time to failure. Magis-

trates have good common sense and experience, but we doubt that their assessment of risks is so accurate that bond amounts are consistently proportional to them. (2) Perhaps the threat of bond forfeiture is not an effective deterrent to failure to appear. We find this difficult to accept because people's behavior is usually influenced at least to some degree by the threat of financial loss. (3) Perhaps the effectiveness of bond is undermined by court policies on forfeiture. We find this explanation the most plausible of the three, for reasons discussed further in Section VI.B.

F. Post-Release Supervision of Defendants to Control Failure to Appear; the Defense Attorney's Role

For reasons explained in Section V.A of this report, we think that failure to appear usually did not result from deliberate evasion of justice. Rather, we believe that the most frequent causes of failure to appear are the defendant's carelessness or irresponsibility, and court officials' and defense attorneys' failure to communicate effectively to the defendant his court appearance dates and his obligation to appear. We think a productive strategy to reduce failure to appear would be to more effectively inform the defendant of his obligation to appear in court and reappear for each scheduled appearance, and to continue to remind the defendant systematically of his obligation. This kind of effort has been shown effective in reducing failure to appear among higher-risk defendants in a previous evaluation of the Mecklenburg County Pretrial Release Project by the Institute of Government.[47] Our suggestions regarding the selective use of post-release supervision are given in Section VII.D.7.

We think that in a systematic program to reduce failure to appear, defense attorneys have a role to play. Attorneys could probably help in reducing failure to appear by making sure that their clients understand their obligation to appear in court, and by being more careful to give clear information on court appearances to their clients. Court officials who attended an early briefing on this study commented that attorneys often contribute to failure to appear by giving confusing information to their clients. For example, an attorney may intend to settle the case with the prosecutor (by a plea bargain). Anticipating settlement, the attorney may tell the defendant not to attend a scheduled appearance. But the attorney may then have a conflicting obligation, fail to settle the case, and forget to inform the defendant to appear in court. The defendant thus fails to appear because he gets incorrect information from his attorney.

VI. STUDY RESULTS: THE COURT'S RESPONSE TO FAILURE TO APPEAR AND THE ROLE OF BAIL BONDSMEN

A. Prosecution of the Crime of Failing to Appear

No defendant in our study was prosecuted for the crime of willfully failing to appear in court. We believe that failure to appear could be reduced by prosecuting at least some of the defendants who fail to appear. Our recommendations on this subject are discussed in Section VII of this report.

B. Bond Forfeiture

The issue that sparked the concern about the bail system in Durham and eventually led to our being asked to undertake this study was whether black bail bondsmen were being discriminated against with respect to forfeiture. We were unable to address this issue because of lack of data. The data in our main sample (including defendants arrested from February through May 1985) indicated five bonding companies doing business in Durham. Two companies handled 74 per cent of the defendants who obtained their pretrial release through professional bondsmen. One of these companies was white-owned and one was black-owned. With only two companies represented in sufficient numbers for comparison, it would be impossible to say whether any apparent "discrimination" was based on race or whether it was simply a result of other differences between these two companies. In any event, we found no clear differences in the processing of these two companies' forfeiture cases; both were treated with about the same degree of leniency.

1. Statutory and local procedures for bond forfeiture. The basic rules regarding forfeiture of appearance bond are set by N.C. Gen. Stat. § 15A-544. If the defendant fails to appear, the court must issue an order declaring the "bail" (here meaning the amount of the bond) to be forfeited. A copy of this order of forfeiture, plus a notice that judgment will be entered on the order after 30 days, must be served by the sheriff on the defendant and the bondsman (if any). If the sheriff cannot find the defendant, he must file a return indicating this fact with the clerk; the clerk must then mail a copy of the order of forfeiture and notice to the defendant at his address of record, and service is deemed completed within three days after the mailing. (However, in Durham we found a few cases of failure to serve the defendant in which this procedure was apparently not followed--i.e., either no return was filed with the clerk, or the clerk got the return but did not mail the notice.) If the defendant does not appear in court within 30 days of the date of service, or on the first day when the court is in session after the 30 days has elapsed, and satisfy the court that "his appearance on the date set was impossible or that his failure to appear was without his fault," the court must enter a judgment (a "judgment absolute") for the state against the defendant and the bondsman (if any) for the amount of the bond and costs of the proceedings (this action is known as "absoluting" the bond). In Durham, this entry of the forfeiture judgment is done in open court, in a "forfeiture hearing." Throughout this report, we refer to this hearing, and any subsequent court hearing on the forfeiture (whether or not the defendant or the bondsman is present), as a "forfeiture hearing."

If the defendant who initially fails to appear eventually does appear, the court may set aside the bond forfeiture judgment or reduce it, depending on whether the defendant establishes that the nonappearance was not his fault, or the court may enter judgment for forfeiture of the full amount and the costs. Thereafter, within 90 days after the bond is "absoluted," the court may still order that the bond forfeiture judgment be reduced "in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of

part or all of the judgment." Unless the bond forfeiture judgment has been set aside or reduced to nothing, the clerk must issue an execution on the judgment within 30 days. The "clear proceeds" (i.e., the amount less court costs) paid on the judgment must be transferred by the clerk to the county for use in maintaining free public schools. "For extraordinary cause shown," the court may later order partial or full refund of the payment, but the county school board attorney must be notified and given an opportunity to be heard and argue against the refund.

In addition to these statutory rules, the Senior Resident Superior Court Judge and the Chief District Court Judge in Durham issued a Bail Forfeiture Policy, exercising their authority under N.C. Gen. Stat. § 15A-544, effective April 1, 1985. Following is its statement of purpose:

> The policies are intended to standardize procedures and practices relating to forfeitures for all sureties and bondsmen who engage in the business of bail bonding in the 14th Judicial District. It is the spirit and intent of these procedures to establish and maintain fairness, consistency, and equity.

The Durham Bail Forfeiture Policy generally conforms to the provisions of N.C. Gen. Stat. § 15A-544. It provides a sort of grace period for the defendant and bondsman by contemplating (and implicitly allowing) a delay of 48 hours between when the order of forfeiture is issued and when it is delivered to the Sheriff for service.[48] During this 48 hours, the defendant or his attorney may move that the court strike the order of forfeiture and order for arrest. The court may strike it, thus ending the forfeiture proceeding, if the judge "is satisfied that the failure to appear was inadvertent or through some neglect of the attorney."

Regarding the court's reduction of bail, the Forfeiture Policy provides:

> Settlement [i.e., disposition] of the case by way of trial, plea, or dismissal, will not automatically provide relief on the bondsman's liability, however it will be considered along with other factors in the Court's determination as to whether the judgment [will be] remitted in whole or in part.

According to our observations in court and the data we collected, if the defendant's case has been disposed of, the forfeiture judgment is almost always remitted in full.

The local school board is an interested party in bond forfeiture hearings because forfeitures go to the local school system. The Forfeiture Policy requires the participation of the school board attorney--in fact, it requires that the entire schedule of forfeiture hearings be read out each day by the school board attorney to determine the presence of all parties.

The Forfeiture Policy emphasizes consistency in forfeiture hearings and is intended to discourage "judge-shopping." It requires that forfeiture hearings in district court be held by a single judge:

> In an effort to promote consistency in judicial decisions, the Chief District Court Judge shall make assignments of a particular judge to hold all [bond forfeiture] hearings and consider all petitions for an indefinite period of time, usually 6 months to 1 year.

The single-judge rule was not applied to superior court because rotation of superior court judges--required by state law--would make application of the rule impractical.

2. Bonded defendants who failed to appear: follow-up of forfeiture. We investigated forfeiture of bond using two partially-overlapping samples: (1) defendants who were in our main sample (i.e., arrested from February through May 1985) and were released on bond (secured or unsecured) and failed to appear at least once by the time we ceased data collection (March 15, 1986); and (2) defendants who had been released on bond and were shown in court records as having failed to appear (i.e., been recorded as "called and failed") during May 1985 and were followed in court records through April 1986. The results, based on a hand-tally, are shown in Table 16. (The percentages shown in Tables 16 and 17 are not weighted estimates.)

Of defendants who failed to appear, very few (13 per cent in Sample 1[49] and 10 per cent in Sample 2) ultimately received judgments ordering them to pay all or part of their bail. The rest were not ordered to pay anything. About 31 per cent (29 per cent in Sample 1, 33 per cent in Sample 2) had their called-and-failed status stricken by the court or their order for arrest or order of forfeiture recalled. Orders to strike the defendant's called-and-failed status and orders to recall the order of forfeiture or order of arrest were issued when the defendant presented an acceptable excuse for his nonappearance to the court. (Such excuses were usually presented within a few days after the defendant failed to appear. Examples of excuses were that the court made an error, or that the defendant was ill or otherwise not to blame for failing to appear.)

About 5 per cent of the bonded defendants who failed to appear had no forfeiture hearing. The court records provided few specific reasons why no forfeiture hearings were held; difficulty in serving the order of forfeiture may have have partly responsible. From 13 to 17 per cent of these defendants' cases were disposed of, which probably explained why they had no forfeiture hearings. As was explained above in this subsection, there is a policy--clearly established in practice although not in the court's written Forfeiture Policy--of forgiving bonded defendants who fail to appear if they eventually return to court for disposition. In some instances, these defendants' forfeiture proceedings were terminated because their original cases were disposed of by the court; in other instances, no forfeiture proceeding was begun.

Of the defendants who actually had forfeiture hearings, only one-fifth to one-fourth (25 per cent in Sample 1, and 21 per cent in Sample 2) were ordered to pay part or all of their bail. Most of the 18 defendants in Sample 1[50] who were ordered to pay had not returned for disposition when we ended data collection: the cases of 14 defendants remained open because of their disappearance; the cases of three defendants were open, but not because of their absence; and one defendant returned and plead guilty. (That last defendant is the one exception we found to the practice of remitting all of the bond forfeiture judgment for defendants who return to court for disposition.)

When we looked at actual dollars forfeited, the results were similar (see Table 17). None of the defendants who met their bond obligation by mortgaging property or by obtaining an accommodation (nonprofessional) bondsman were ordered in a judgment to forfeit bond. Of a total of $1,004,925 in bond for all defendants who had unsecured bond, posted cash bond (or had it posted for them), or engaged professional bondsmen, only $17,555 (1.7 per cent) was ordered to be paid in a bond forfeiture judgment. The proportion of the total bonds ordered paid by judgments was 2.4 per cent for defendants with unsecured bond, 1.3 per cent for defendants with professional bondsmen, and 1.6 per cent for defendants who deposited cash. Considering only bonded defendants who failed to appear, the proportion of total bonds ordered by judgment to be forfeited was 35.1 per cent for defendants with unsecured bond, 40.9 per cent for defendants who deposited cash, and 11.2 per cent for defendants with professional bondsmen. These figures suggest that professional bondsmen were more effective in getting forfeitures reduced than were defendants with unsecured bond or cash bond.

Why did most bonded defendants who failed to appear not forfeit any of their bond? One reason already mentioned is that the defendant eventually returned to court for disposition. Is this a sufficient reason? As was explained in Section V.A, although most defendants who fail to appear eventually return to court for disposition, they cause enormous delay in processing their cases and in some instances probably weaken prosecution by discouraging the state's witnesses.

Another reason for the low rate of judgment-ordered forfeiture may be that defendants or bondsmen often managed to convince the court that their nonappearance was not willful--i.e., that the defendant had a good excuse. We cannot evaluate these excuses because we have no data on them.

Although some nonappearing defendants might have had valid excuses, the overall implications of these data is that Durham courts are lenient with bonded defendants who fail to appear. As a result, the deterrent effect of the threat of forfeiture--theoretically, the mainstay of the appearance bond system--is probably weaker than it should be. Failure to appear could probably be reduced substantially by insisting on 100 per cent forfeiture of bail when bonded defendants fail to appear. But even without insisting on 100 per cent forfeiture--a drastic crackdown compared to present practices--a policy of requiring forfeiture of <u>at least part</u> of the bail in <u>all</u> cases of willful failure to appear would also probably reduce nonappearance appreciably.

Another approach to increasing the deterrent effect of secured bond--one that would be more of a departure from present practices--would be to make greater use of cash bond. Using cash bond would provide more incentive for the defendant to appear in court at the right time, and would make it easier for the court to collect forfeitures, thereby strengthening the deterrent effect of bond. There are two problems with this approach. (1) The defendant would often not be able to deposit the full bond amount in cash. (2) North Carolina's law has no option for the defendant to deposit a fraction of the total secured bond. Instead, the defendant pays a fraction of the bond (up to 15 per cent) to the bondsman, which the bondsman keeps, and the defendant and the bondsman are both liable for the forfeiture of the entire amount if the defendant fails to appear. The forfeiture, however, usually does not occur. The use of a fractional-deposit system is discussed in Section VII.D.5 below.[51]

3. Getting the nonappearing defendant back to court. The court officials who attended an early briefing on our study results asked an interesting question. They understood from our data that professional bondsmen's clients had a higher rate of failure to appear than defendants with other forms of pretrial release (probably because their clients were inherently a higher-risk group). But, they asked, do not bondsmen perform a useful function in getting their clients who fail to appear back to court, spurred by the threat of forfeiture? Our data suggest that bondsmen have not been especially effective in this respect.

We responded to this question by examining the "no-return rate," the proportion of nonappearing released defendants whose cases still remained open because of their absence at the time we stopped data collection. We took into account whether the nonappearing defendant had in the meantime been arrested (in Durham) for a new crime, because such defendants were much more likely to be arrested (by the police, not by a bondsman) and brought back to court for disposition of their earlier cases than were other nonappearing defendants.

Our results are shown in Table 18. Among defendants with all types of pretrial release who failed to appear (row 9), the no-return rate was about 20 per cent for those who were not arrested for a new crime and 6 per cent for those who were. Comparing defendants with different forms of release, we see that the no-return rate among defendants who were not arrested for new crimes (Table 18, leftmost column) was much higher (26 per cent) for defendants with professional bondsmen than for defendants with other forms of pretrial release (14 per cent).[52] For nonappearing defendants who <u>were</u> arrested for new crimes, the no-return rate for defendants with professional bondsmen (6 per cent) was virtually the same as the no-return rate for defendants with other forms of release.

To summarize: (1) Defendants with bondsmen, when they failed to appear and were rearrested for a new crime, returned to court about as often as nonappearing defendants released in other ways. In this situation, law enforcement officers were "assisting" the defendants to return to court by arresting them for a new crime. (2) Where there was no arrest for a new crime, the percentage who never returned to court after

failing to appear was considerably higher for defendants with bondsmen (26 per cent) than for other defendants (14 per cent). The reason for the higher no-return rate for bondsmen's clients may well be that they were inherently riskier defendants. But the bondsmen's function is to control the risks that their clients present, and, if they fail to appear, to get them back into court. Arguably, their clients should be doing better than defendants who do not have bondsmen, but the reverse was true in our sample.

C. Bondsmen's Practices and Incentives

We interviewed representatives of three Durham bail bond companies, including the two companies that served most of the bonded defendants in our sample. Since the most common form of pretrial release was release on bond secured by a professional bondsmen, we sought to learn about bondsmen's business practices and also their views concerning pretrial release.

1. Obtaining, screening, and accepting clients. The bondsmen said that most of their business comes from previous clients or referrals by previous clients. In screening a defendant--i.e., in deciding whether to sign a defendant's bond--the bondsmen differed as to some of the factors they considered. But all considered three factors important: the defendant's current employment status, his employment history, and the stability of his residence in Durham. All agreed that the amount of the bond was important in their decision to sign a bond, in the sense that they were reluctant to sign a bond if the amount was not commensurate with the seriousness of the defendant's charge. For example, if a small bond (say $100) were set for a defendant with a serious charge that could take up to a year to reach disposition, it would not be worth the bondsman's time and risk to sign this bond. All said that they regularly gave clients credit toward payment of the bondsman's premium, which is limited by law to 15 per cent.[53]

2. Bondsmen's supervision of clients. Bondsmen differ with regard to whether, and how, they supervise defendants after release. One bonding company representative said that he makes sure, before signing the bond, that the defendant understands when he is to be in court, but the bondsman does not remind the defendant later. Another sends a letter reminding clients of appearances in superior court but does not remind them of appearances in district court. A third representative said that he telephones all his clients on the day before each scheduled court appearance to remind them of their hearing; moreover, he requires those he considers to be his riskiest clients to call him every few days, and if they fail to call, he tries to locate them.

3. Bondsmen's responses to clients' failure to appear. All three representatives said that they try to attend every "docket call" (the rollcall by the courtroom clerk of the cases scheduled for court each day). Two representatives said that if a client is absent from court, they telephone him, and if he does not have a legitimate excuse or cannot be reached, they make efforts to find him and bring him into custody. One bondsman keeps the names and telephone numbers of his clients' relatives and calls them if the client fails to appear because

the relatives usually know where the client is and will help to find him. Two representatives said that when other means of finding a nonappearing client fail, they offer cash rewards for information leading to recapture of the client.

4. Bondsmen's views about the pretrial release system. The bondsmen's representatives whom we interviewed believe that professional bondsmen provide an essential service to the court by keeping the jail population down, especially by releasing indigent defendants on credit. Also, they believe that the involvement of a bondsman deters failure to appear because bondsmen have the legal authority (plus a financial incentive) to arrest a defendant and return him to jail if necessary.

Two of the three representatives dislike the new (February 1985) "reasons form" (see Section II.B, above) because they think it encourages too much use of unsecured bond. They believe that the rate of failure to appear has risen as a result of the increased use of unsecured bond (this is inconsistent with our findings--see Section V.D), and that defendants on unsecured bond never pay when bond is forfeited.[54] These two representatives also dislike the court's forfeiture policy (described in subsection B above), which was issued in February 1985.[55] One bondsmen's representative objected to the participation of the school board attorney. He said that the attorney seeks to have all bonds forfeited in full, regardless of the circumstances. All three representatives complained about the absence of criminal prosecution for failure to appear, which takes away any sanction for nonappearance by defendants released without bond. (We think this complaint has merit; see Section VII.D.6 below.)

5. Bondsmen's incentives. Professional bondsmen are businessmen who seek to make money by performing a useful function for the court. What do we know about their profit and loss?

Bondsmen are allowed to charge a premium of 15 per cent on each bond.[56] Our data indicate that about 19 per cent of their clients fail to appear in court (Table 10). Of those who fail to appear, we can estimate that under current practices no more than 15 per cent ever are actually ordered, by court judgments, to forfeit bail (see Table 16). In terms of dollars, we can estimate (see Table 17) that only 1 to 2 per cent of the bonds signed by professional bondsmen are actually ordered by judgment to be forfeited, and of the bonds of their clients who fail to appear, only 10 to 15 per cent are ordered by judgment to be forfeited. Thus, bondsmen receive premiums of 15 per cent, or up to 15 per cent, while expecting losses of perhaps 2 per cent (taking our higher estimate). This means a gross return of up to 13 per cent on the bonds they sign, assuming that they charge the maximum premium.

Bondsmen's actual profit is less than 13 per cent for several reasons. (1) They may sometimes charge less than 15 per cent. (2) They sometimes allow credit toward payment of the premium, but in some instances may not be able to collect all of it. (3) They have such other expenses as salaries for their runners and other employees, maintenance of an office, and the costs of pursuing defendants who fail to

appear. Thus, the actual profit on each bond is somewhat less than 13 per cent. But the yearly return on the bondsmen's capital is probably about four times as large as the profit on a single bond, because the average arrest-to-disposition time for released defendants is 90 days, allowing bondsmen's security to be re-used several times each year.[57]

This discussion of bondsmen's premiums and expected losses suggests that bondsmen would be able to stay in business even if, as part of a program of measures taken to curb nonappearance, forfeiture-judgment rates were increased somewhat and bondsmen were required to supervise some of their clients more systematically.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Overall Effectiveness of Pretrial Release in Durham

Durham is releasing most of its arrested defendants and, for the most part, releasing them effectively. Professor John Goldkamp of the Temple University Department of Criminal Justice has devised a measure of overall effectiveness of a pretrial release system: the percentage of arrested defendants who are successfully released--i.e., who receive pretrial release and do not fail.[58] (Failure can be thought of either as nonappearance or new crime, but here we are concerned with failure to appear.) Goldkamp's measurement of effectiveness reflects the view that a pretrial release system should release as many defendants as possible, with as low a risk of failure as possible.

In Figure 3, the effectiveness measure of Durham's pretrial release system during the period of our study is compared with that of Charlotte, North Carolina, in 1973, Alexandria, Virginia, in 1985-86, and three other American jurisdictions studied by Professor Goldkamp. (The three other jurisdictions are actual, not hypothetical, but are identified by Goldkamp only as "X," "Y," and "Z.") The graphs in Figure 3 take into account not only the failure-to-appear rate but also the percentage of defendants who are not released. Durham's effectiveness was 77 per cent--in other words, since 92 per cent of Durham defendants were released and 84 per cent did not fail to appear, 77 per cent (92 per cent x 84 per cent) were successfully released. In comparison, Charlotte's effectiveness (1973) was 83 per cent, and Alexandria's (1985-86) was 63 per cent. The jurisdictions studied by Goldkamp had somewhat lower effectiveness percentages than Durham.

B. Opportunity for Pretrial Release

In Durham, opportunity for pretrial release generally was good during our study period. Our data indicate that most defendants arrested from February through May 1985 (92 per cent) received some form of pretrial release. They also spent little time in pretrial detention. The median detention time before first release for both released and unreleased defendants was less than one day; the mean was 6.3 days for all defendants and 2.4 days for released defendants, and 75 per cent of all defendants spent no more than one day in detention before their first release. Of defendants whose charges resulted in no conviction,

only 3 per cent were not released. Furthermore, as shown in our analyses of pretrial release risk, the magistrates in Durham evidently are doing a good job of selecting low-risk defendants for alternatives to secured bond--unsecured bond, promise release, and custody release.

There was one problem with pretrial-release opportunity in Durham: racial disparity. Black defendants were much less likely to be released than white defendants and spent substantially longer in pretrial detention. This difference in opportunity was found after taking into account other factors, such as type of charge and criminal record. We doubt that this disparity was the result of conscious racial prejudice, because we observed no sign of prejudice in our study and also because four of the nine Durham magistrates were black. We believe that the racial difference was primarily a result of the relatively lower incomes of blacks, which put them at a disadvantage despite their lower bonds. Black defendants generally had lower secured bonds than white defendants (this may well be due to magistrates' taking into account blacks' lower incomes). On the other hand, black defendants were more likely than white defendants to have some secured bond set as a condition of release.

Whatever the cause of the black/white disparity, what can be done to remedy it? One remedy may be the adoption of specific objective guidelines for the use of alternatives to secured bond. The existing pretrial release guidelines (see Section II.B above) are unobjectionable, but they need to be extended and made more specific. (We do not recommend any specific extended guidelines in this report, but we offer our services to the Chief District Court Judge, the Senior Resident Superior Court Judge, and the Durham magistrates in extending the existing guidelines.) Another way of reducing racial disparity in pretrial release opportunity may be to release under supervision selected defendants who have been detained for more than two days. This approach is explained in subsection D below.

The statistical analysis of our data did not show a strong relationship between bond amount (whether secured or unsecured) and the defendant's likelihood of failing to appear. Among the defendants in our sample, those released without secured bond had lower nonappearance rates than those released on secured bond (the most common form of release). Because of these findings, we suggest that pretrial release guidelines be extended not only with the objective of reducing racial disparity (as suggested above), but also with the objective of increasing the use of forms of pretrial release other than secured bond. If this procedure should cause an increase in the nonappearance rate, the counter-measures we recommend against nonappearance (see the following subsection) would probably offset the increase. If the use of forms of release other than secured bond is increased, the nonappearance rate should be measured periodically to see whether further changes should be made.

C. Pretrial Release Risk and Measures to Control It

Sixteen per cent of the released defendants in the Durham study failed to appear in court at least once for a required hearing.

Although most of those who failed to appear did return to court eventually, failure to appear greatly delayed case processing, causing waste of court resources, and apparently also weakened prosecution. Fourteen per cent of released defendants in Durham allegedly committed new crimes in Durham County while on pretrial release, and 3 per cent were charged with new felonies.

Are the levels of pretrial-release risk in Durham too high? We know of no comparable national data on pretrial-release risk. The Durham failure-to-appear and new-crime rates are somewhat higher than those observed in a 1973 study of Charlotte, North Carolina, and in a 1985-86 study of Alexandria, Virginia.[59] The Charlotte and Alexandria courts are not necessarily typical of American criminal courts.

One way of reducing failure to appear would be to detain (jail) more defendants by setting higher bonds. We do not recommend this because it would be unfair to the defendants--in any event, it would be very difficult to decide which ones to detain--and would be quite expensive for Durham County. We prefer to emphasize measures to control failure to appear by those defendants who are currently being released. These measures are listed in the following subsection.

D. Recommendations

Our specific recommendations for improving pretrial release in Durham follow. They are intended for judicial officials, prosecutors, defense attorneys, legislators, and citizens who may be interested in proposing legislative changes, which some of our recommendations would require.

1. Adopt guidelines for pretrial release that are more specific and objective than those currently in use. Durham's current pretrial release policies, which as far as we know are not greatly different from those in most judicial districts, essentially recapitulate the pretrial-release criteria of N.C. Gen. Stat. § 15A-534(c) (summarized in Section II of this report) and suggest minimum bond amounts for each type of offense when the judicial official decides that bond must be imposed. Also, the Chief District Court Judge in Durham requires magistrates to prepare a written statement of factors they consider in setting each defendant's pretrial-release conditions on a form that lists most of the statutory criteria. These policies and procedures are reasonable, in our view, but if they were extended and made more objective and specific, they might help to reduce racial disparity in opportunity for pretrial release. The extended policies could be based, in part, on what the study indicates about the prediction of time from arrest to disposition.

2. Reduce court disposition time. Both prosecution and defense need time to prepare a criminal case so that a fair and just disposition will result. But we believe it is possible to reduce the time from arrest to disposition. Reducing arrest-to-disposition time would tend to reduce both the nonappearance rate and the new crime rate, because the longer a released defendant's charges are pending, the more

time he has to fail to appear in court or commit a new crime, or both, and the more likely he is to do so. (See Section V.B.)

Reducing court disposition time would be largely up to the District Attorney who, under North Carolina law,[60] is responsible for scheduling criminal cases. We offer our assistance in this effort. The data collected for the pretrial release study include dates of various steps in court processing and types of disposition; analysis of these data may be helpful in finding ways to cut disposition time.

3. Enforce bond forfeiture more strictly. We do not recommend the abolition of professional bondsmen, as some reform groups have done.[61] But we do recommend stricter enforcement of the obligations of defendants released on bond and their sureties. During the period of our study in Durham, only a small percentage of bonded defendants who failed to appear were actually ordered, by court judgment, to forfeit any portion of their bonds. This small percentage resulted primarily from the practice of forgiving forfeitures if the nonappearing defendant eventually returns to court for disposition, as most in the study did. But the defendant's obligation is to appear as the court directs, not when it happens to be convenient for him. Legally, he is liable for forfeiture of his bond--as is his bondsman--if he fails to discharge this obligation.[62] As has been explained, failure to appear slows court proceedings enormously, wasting the valuable time of law enforcement officers, attorneys, court officials, and witnesses, and probably weakens prosecution. We suggest that the court enter judgment for at least partial forfeiture of bond for each defendant who fails to appear, unless the defendant or bondsman can show that the defendant had a legitimate excuse (such as serious illness), with no exception for the defendant who returns to court after initially failing to appear. Even requiring a 15 per cent forfeiture in all such cases (i.e., granting an 85 per cent remission) would provide a much stronger incentive to appear than the present practice provides.

4. Be stricter in continuing pretrial release with unchanged conditions for defendants who have failed to appear. Although our court record data do not indicate how often this occurs, court officials who attended one of our early briefings on the results of this study noted that it is not uncommon for defendants who fail to appear, when they eventually return to court, to be re-released subject to their original conditions. We think this practice should be re-examined, and suggest that a rule regarding re-release be added to local policies.

5. Consider changing state law to allow release to be secured by depositing a fraction of the bond, but preserve judicial officials' option to require security by full deposit, mortgage, or bondsman as present law provides. Release by deposit of a fraction of the bond would increase the defendant's incentive to appear in court and would facilitate collecting forfeitures. The bonded defendant could be allowed to deposit with the court 15 per cent of the bond amount--the amount he would otherwise pay a bondsman--to be refunded if he attended all required court hearings. This refundable amount, unlike the nonrefundable bondsman's fee, would provide an incentive to him to appear. It would also provide a more effective deterrent to failure to appear

than bond secured by a bondsmen, very little of which, as we have seen, is forfeited for failure to appear. The court could easily collect the 15 per cent deposit as a partial forfeiture since the money would already be in the court's control. The court could still seek forfeiture of the balance of the bond, perhaps offering a "discount" (a partial remission) if the defendant returned within a specified period of time.

We also suggest that, in drafting the suggested statutory change, language be considered that would allow the magistrate or other judicial official the option of release on deposit of a fraction of the bond, while preserving the judicial official's discretion to require that the bond be secured--as it may be under present N.C. Gen. Stat. § 15A-534--by full cash deposit, mortgage, or bondsman. In some cases the magistrate may justifiably feel that more than a 15 per cent deposit is needed to ensure the defendant's appearance, and that only full cash, a mortgage, or a bondsman will suffice.

6. Prosecute some defendants who willfully fail to appear. Willful failure to appear in court for a required hearing is a crime under North Carolina law.[63] Evidently, defendants in Durham are very rarely prosecuted for willful failure to appear; we found no instance of such prosecution in our sample. Without prosecution, there is no effective sanction for failure to appear by defendants who are given promise release or custody release. For bonded defendants, in addition to the sanction of forfeiture--which we believe needs to be strengthened (see subsection C.2 above)--the threat of criminal prosecution would be an added deterrent to failure to appear.

Proving beyond a reasonable doubt that failure to appear is willful, as the district attorney must to obtain a conviction, may be difficult. We found no North Carolina court decisions construing "willful" within the meaning of N.C. Gen. Stat. § 543, which makes willful failure to appear a crime. A federal statute (18 U.S.C. § 3146) makes it a crime to knowingly fail to appear in federal court, and federal courts of appeal have held that this failure--like failure under North Carolina law--must be willful.[64] One United States Court of Appeals has held that a deliberate decision to disobey one's obligation to appear in court cannot be found beyond a reasonable doubt merely from the facts that the defendant had notice of his obligation to appear and failed to appear.[65] Circumstantial evidence may, however, be considered in determining willfulness,[66] such as the defendant's failure to appear for his preliminary hearing, the defendant's changing his residence without notifying the court, or defendant's counsel being unable to contact him before trial despite diligent efforts.[67] Also, past violations of pretrial release conditions are admissible and relevant in federal courts to prove willfulness of failure to appear.[68]

These federal decisions are not binding on North Carolina appellate courts in construing North Carolina's pretrial release statutes, but they illustrate how North Carolina courts might reason. In interpreting the willfulness requirement of North Carolina's law regarding criminal failure to appear, North Carolina appellate courts could be expected to hold, as federal courts of appeal have held, that to establish guilt of the crime of failure to appear, more is required than simply proof of

notice of obligation to appear and failure to appear. Also, it seems unlikely that a jury would convict a defendant of willful failure to appear if the prosecutor could prove only that the defendant had notice of his obligation and did not appear.

Although prosecution of defendants who fail to appear would probably help to reduce the failure-to-appear rate, it would also have its costs, especially the prosecutor's time. We think prosecution should be done selectively--not in every case or even in a majority of failure-to-appear cases, but in cases where the state would have the best chance of obtaining convictions and in cases whose successful prosecution is most important. We suggest that prosecutors focus on failure-to-appear cases in which there is evidence from which willfulness can be inferred, such as the defendant's having a prior history of failing to appear or the defendant's disappearance before his scheduled hearing. Evidence concerning the defendant's whereabouts would more often be available, at least for some high-risk defendants, if our suggestions regarding post-release supervision of defendants (see subsection 7 below) were followed. We also suggest that prosecution efforts be focused on the defendants whose current charges and criminal history indicate that they may be a danger to the community because these are the defendants whose nonappearance may have the greatest "cost" to prosecutors.

7. Release under supervision a select group (no more than 10 per cent) of defendants. By "supervision" in this context, we mean maintaining frequent contact with the defendant, by telephone, mail, or face-to-face meetings, to remind him of his obligation to appear, of the penalties for not appearing, and that he is under surveillance by the court. We suggest that one or both of two categories of defendants, which we will call "Category 1" and "Category 2," be considered eligible for this kind of supervised release. Category 1 defendants are those few who have remained in pretrial detention (jail) for at least two days and are therefore unlikely to receive one of the usual forms of pretrial release. Category 2 defendants are defendants whose cases are likely to take longest for the court to dispose of; tentatively, we suggest that this category be limited to defendants whose cases are in the longest 10 per cent of disposition times predicted using a four-factor risk score.[69] (There may be considerable overlap between these two categories.)

Who would do this supervision? Regarding Category 2 defendants who have obtained release on a secured bond by engaging professional bondsmen, we suggest that bondsmen be asked to supervise these defendants more systematically, using procedures recommended by the court, perhaps with oversight by the court. Bondsmen would have more incentive to supervise such defendants if our suggestions regarding stricter enforcement of forfeiture were adopted. Regarding Category 1 defendants, as well as Category 2 defendants who are not released on secured bond, we suggest that consideration be given to hiring one or more court personnel to supervise them. Hiring such staff would of course have a cost, but it could eliminate the cost of jailing Category 1 defendants, who would otherwise have jail stays, which we estimate on the basis of the Durham data would average about 50 days.

The system used by the Re-Entry Project in Raleigh could be followed as a model. Re-Entry Project staff screen defendants who are unlikely to obtain other forms of pretrial release. The screening criteria are similar to those in present N.C. Gen. Stat. § 15A-534(c). Based on these criteria, the Re-Entry staff decide whether the defendant is eligible for release under supervision of the project. A district court judge then decides whether to release the defendant under supervision of the project. Failure-to-appear rates for defendants released in this way have been about 10 per cent in Raleigh, which compares favorably to the overall 16 per cent failure rate in Durham.[70] A system like Project Re-Entry's was evaluated in a recent study involving defendants in Miami, Florida; Milwaukee, Wisconsin; and Portland, Oregon. These defendants had failure-to-appear rates averaging 14 per cent.[71]

8. Make additional information continually available and accessible to magistrates, especially information in existing state data bases concerning defendants' previous convictions, previous failures to appear, and current pretrial release status. In our study, we were frequently reminded of the lack of consistent and reliable information available for magistrates to use in making important decisions about pretrial-release conditions. Better information is needed for two purposes: (1) to implement extended guidelines concerning the use of alternatives to secured bond, which we believe will help to reduce disparity in pretrial-release opportunity; and (2) to identify higher-risk defendants who would receive post-release supervision, which we expect to help reduce failure to appear.

At the very least, we think that magistrates should have reliable and consistent information concerning: (1) the defendant's criminal history (especially prior convictions in the local county); (2) the defendant's previous failures to appear; and (3) whether the defendant is already on pretrial release in connection with a previous, still-pending charge. We think that this information is essential to magistrates making pretrial release decisions for several reasons. Our statistical analysis of the Durham data indicate that being on pretrial release in connection with an earlier charge at the time of the current arrest is associated with a longer case disposition time. It is also associated with an increased risk of committing a new crime during the current pretrial release period. Prior convictions are associated with increased risk of committing a new crime. Previous failure to appear is associated (at a marginal level of statistical significance) with increased risk of failure to appear. Two of these three items of information (previous failures to appear and previous convictions) are among the factors N.C. Gen. Stat. § 15A-534(c) requires to be considered in making the pretrial release decision, and the third (current pretrial release status) is clearly relevant to that decision. In addition, in view of the importance to public safety of the pretrial release decision, we think it essential that magistrates know, when setting pretrial release conditions, whether defendants have (or do not have) records of criminal conviction and failure to appear in court.

How can additional information be provided to magistrates? This is discussed in the following subsection.

E. Improved Information for Magistrates

We recommend that two existing information systems--the state's computerized criminal history system and the court system's case-tracking system--be made accessible to magistrates and that they be trained in retrieving information from these systems. In Durham, this recommendation is already being implemented in part. The criminal history system is maintained by the Division of Criminal Information (DCI) of the State Bureau of Investigation, formerly known as "PIN." The Chief District Court Judge in Durham recently asked the DCI Director for assistance in getting access to the DCI criminal history system. The DCI Director responded by arranging for DCI personnel to train Durham magistrates in the use of the DCI terminal and by agreeing to provide a computer terminal (for which Durham County has agreed to pay) to access the DCI system.

The case-tracking system, formally known as the Court Information System (CIS), is maintained by the State Administrative Office of the Courts (AOC) and clerks' offices, with the latter adding information daily. We think that access to the AOC case-tracking system may be even more valuable to the magistrates than access to the DCI system, although both are desirable. The AOC system can provide information on all cases in Durham filed since August 1982, when the system began, including pending cases and past convictions. In contrast, the DCI criminal history system, although statewide, is limited to arrests and court dispositions concerning charges for which the defendant was fingerprinted (fingerprinting is not required for some charges)[72] and does not include up-to-date information on pending cases.

There are some difficulties in arranging for magistrates to use the AOC's Court Information System. This system uses a single mainframe computer located in Raleigh, now accessible by terminals in clerks' and district attorneys' offices in 27 North Carolina counties. The system is designed to be used from 8 a.m. to 5 p.m., Monday through Friday, but it would be most needed by magistrates at night, especially on Friday and Saturday nights, when most arrests occur.

The AOC's Administrator of Information Services and the Clerk of Superior Court in Durham have suggested a plan that we recommend be considered. Each day, the Durham portion of the AOC master file could be copied, or "downloaded," from the AOC's mainframe in Raleigh to a microcomputer in Durham. The downloaded data set would include pending cases, with up-to-date information as of that day, as well as cases disposed of since the AOC system began operating in Durham. The Durham magistrates could then retrieve the information they need--including the defendant's prior convictions (if any) and his other pending cases (if any) in Durham--from the Durham microcomputer, using a menu-based system like the one used by court clerks for retrieval from the AOC system. This approach would involve two expenses: the cost of the microcomputer and the cost of programming it to download the Durham data from the AOC mainframe and to retrieve information on specific defendants. A rough estimate of the one-time cost for the microcomputer and programming is $15,000. The expense might well be worthwhile, since the microcomputer

system, if successful, could become a prototype for magistrates' use statewide.

Because of the cost in magistrates' time for retrieving information on prior convictions, prior failures to appear, and current pretrial release status from the state information systems, we do not recommend retrieving information for all defendants, or even for the majority of defendants. Tentatively, we suggest that the retrieval be limited to felony defendants.

We also suggest a change in prosecutorial practice that will improve the accuracy of CIS data on pending cases. The disposition of "dismissal with leave," under N.C. Gen. Stat. §§ 15A-931 and -932, is supposed to be used by the prosecutor only as a way of temporarily disposing of cases in which the defendant has failed to appear. Such cases are not actually dismissed but are still pending. Nevertheless, our data indicate that when "dismissal with leave" was used, in 78 per cent of the instances the prosecutor actually meant to enter a voluntary dismissal in the case, meaning that prosecution has ceased and the case has been disposed of. (Prosecution can be reopened in cases disposed of by voluntary dismissal, if jeopardy has not attached, but such reopening is rare.) The practice of using dismissal with leave where voluntary dismissal should be used results in confusing information being entered into the CIS. Magistrates may see a case that has been treated as dismissed with leave and conclude that it is a still-pending case, when actually it has been treated as disposed of by the prosecutor. If the use of dismissal with leave is corrected, magistrates will have more reliable information on pending cases to work with.

Notes

1. Regression analysis is a statistical technique that simultaneously estimates the association of each one of a number of factors--such as characteristics of a defendant and his case--with an outcome or decision, such as the setting of the bond amount, holding constant the effects of all other factors. The results of regression analysis, called the "model," are a mathematical description of the relationship between all the factors and the outcome or decision being analyzed. In discussing regression models we generally report only those relationships that are "statistically significant." We follow the common research practice of considering relationships statistically significant when the probability that they could have occurred by accident of sampling is less than .05. When this probability is .05 or more, but less than .10, we refer to the results as "marginally significant."

2. N.C. Gen. Stat. §§ 15A-511, 15A-532, 15A-533. Section 15A-533 provides that a defendant charged with a capital crime may be given pretrial release, but only by a judge--not by a magistrate. In deciding whether to grant pretrial release to a defendant charged with a capital offense, the judge must follow the rules that apply to other defendants.

3. N.C. Gen. Stat. § 15A-511.

4. Id.

5. There are special preventive detention provisions for defendants charged with domestic violence (when the judicial official believes that releasing the defendant will endanger anyone or intimidate the alleged victim) and for defendants charged with DWI. Twenty-six per cent of the DWI defendants in our sample were detained under the provisions of N.C. Gen. Stat. § 15A-534.2, which authorizes detention for up to 24 hours when the judicial official finds that the defendant's impairment presents a danger of physical injury or property damage if he is released. An estimated 10 per cent or fewer of the defendants charged with domestic violence were detained under § 15A-534.1. (This estimate is inexact because we could not be sure precisely which defendants were charged with domestic violence. The court records did not always indicate who the alleged victim was, and not every assault constitutes domestic violence. The § 15A-534.1 preventive detention provisions were used on only five of the defendants in our sample, which we estimate to be no more than 10 per cent of those charged with domestic violence-type offenses.) Only 1.5 per cent of the defendants were held under the § 15A-511(a)(3) provisions allowing detention of intoxicated or disruptive defendants.

6. We know of no private volunteer groups in North Carolina that do this.

7. See N.C. Gen. Stat. ch. 85C.

8. N.C. Gen. Stat. § 15A-534. It is unclear how setting a secured bond is supposed to keep the defendant from intimidating witnesses if he is able to post the bond and be released. Implicitly, this section

seems to condone a practice of setting a high enough bond that a defendant who is deemed dangerous to prosecution witnesses will have to stay in jail.

9. N.C. Gen. Stat. §§ 15A-531 through 15A-547 require that the senior resident superior court judge of each judicial district, in consultation with the chief district court judge, issue "recommended policies" for pretrial release decisions in the district.

10. "Policies Relating to Bail and Pretrial Release," N.C. General Court of Justice, 14th Judicial District, Durham, N.C., April 1, 1981.

11. N.C. Gen. Stat. § 15A-534.

12. Id., § 15A-534(g).

13. "Policies Relating to Bail and Pretrial Release," supra note 10, at 6.

14. But if the prosecutor seeks and obtains a modification of pretrial release conditions from a superior court judge under N.C. Gen. Stat. § 15A-539, a district court judge thereafter cannot modify the conditions. N.C. Gen. Stat. § 15A-534(e).

15. The district court judge's authority to modify conditions of pretrial release ends when the defendant gives notice of appeal (i.e., seeks a trial de novo in superior court) concerning a misdemeanor conviction or, in a felony case, when the defendant is bound over to superior court after a district court probable-cause hearing or waives the hearing. N.C. Gen. Stat. § 15A-534(e).

16. Discretionary release pending an appeal from a superior court conviction is also authorized under N.C. Gen. Stat. § 15A-536.

17. N.C. Gen. Stat. § 15A-543.

18. A "case," in North Carolina court parlance, is usually a single charge against a single defendant, but sometimes it may involve two or more closely related charges filed against a single defendant, such as breaking or entering plus larceny. A defendant may have more than one case, of course. Our precise definition of a "cluster" encompasses all charges with the same arrest date against a single defendant identified by a specific spelling of the defendant's name. (No reliable information on date of birth was available.) By inspection of the court papers and Court Information System computer displays, we were usually able to combine related cases involving a single defendant where slightly different spellings of his name were used.

19. Crime groups were defined as follows. If the defendant was charged with DWI, regardless of his other charges, he was classified in the DWI group. Otherwise, he was assigned to a crime group according to whether he had one of the following types of charges, and in this order of priority: violent felony, nonviolent felony, other nontraffic misdemeanor (other than DWI or worthless check), and worthless check. The

random sample from each crime group was of sufficient size that the proportion of a specific characteristic observed in each sample would be within at most five percentage points of the true proportion for the entire group 95 per cent of the time. These were the actual sampling fractions: DWI--230/541; violent felony--129/129; nonviolent felony--221/494; worthless check--247/646; and other misdemeanors--302/1225.

20. Allowing a longer follow-up than 258 days would have meant that if release occurred after that time, it might have been recorded for some defendants but not for others.

21. S. Clarke, J. Freeman, and G. Koch, Bail Risk: A Multivariate Analysis, 5 Journal of Legal Studies 341 (1976) (study of pretrial release in Charlotte, N.C.); John S. Goldkamp, Two Classes of Accused (Cambridge, Mass.: Ballinger Publishing Co., 1979); S. Clarke, "What Do We Know About Bail?" (Institute of Government, Univ. of N.C. at Chapel Hill, unpublished paper, 1983).

22. The principal charge in a multiple-charge cluster (see definition of "cluster" in note 18, supra) was the charge with the lowest "seriousness rank." Seriousness ranks were: 1-DWI, 2-violent felony, 3-nonviolent felony, 4-nontraffic misdemeanor other than DWI or worthless check, and 5-worthless check. If this selection resulted in a tie among the charges in the cluster and if the lowest-ranking charges were nontraffic misdemeanors, then a violent misdemeanor would be selected over a nonviolent misdemeanor, if possible. Otherwise, to break the tie, the charge was selected that was in the case (see definition of "case" in note 18, supra) whose record folder contained the defendant's pretrial release papers.

23. The mean of a set of numeric values is the average value. The median is the 50th percentile--the value such that 50 per cent of the values are greater than or equal to it and 50 per cent are less than or equal to it.

24. Eleven of these were charged with first-degree (capital) murder, so that the magistrate was not authorized to grant pretrial release; five were preventively detained under the domestic violence provisions (see note 5, supra).

25. N.C. Gen. Stat. § 15A-534(a).

26. We had no data on the individual incomes of the black and white defendants in our sample. Most (58 per cent) of our sample were boys and men under the age of 30. Census data for 1979 for the Raleigh-Durham, N.C., Standard Metropolitan Statistical Area indicate the following about individual incomes:

	Percentage with No Income	Median Annual Income of Those with Some Income
Males age 15-19		
Black	48.9%	$1,369
White	27.1	1,769

Males age 20-24		
Black	15.9	4,509
White	4.5	4,776
Males age 25-29		
Black	8.9	8,760
White	2.1	11,888

United States Census Bureau, Detailed Population Characteristics of North Carolina, Publication Number PC 80-1-D35, p. 35-701, Table 234 (Washington, D.C.: 1980). These figures show that black males in these age groups are less likely than white males to report any income, and that if black males report an income, it is generally less than that of white males.

27. Fifty-eight per cent of the defendants had one charge; 26 per cent had two charges; and 16 per cent had three or more charges.

28. For the 507 defendants who had secured bond set, the mean secured bond reduction was 12 per cent, the median zero per cent, and the 75th percentile 40 per cent. These figures include four defendants whose secured bond actually increased. Excluding those four, the mean reduction was 18 per cent, the median zero per cent, and the 75th percentile 41 per cent.

29. This effect is calculated in terms of the "average defendant," the hypothetical defendant who has approximately the average probability (here taken as 90 per cent) of being released. For example, this hypothetical average defendant would have a release probability of 90 per cent if charged with a nontraffic misdemeanor other than DWI or issuing a worthless check, but an estimated release probability of 70 per cent (20 percentage points less) if charged with a violent felony. Because the modeling technique (logistic regression) estimates effects on the log of the odds of release rather than on the probability of release, the size of the estimated effect of a variable depends on the release probability of the defendant "to begin with"--in other words, when that variable is at a zero level.

30. See note 26, supra.

31. Why did so many defendants have no attorney? The answer seems to be that many did not need one because (1) they knew that their case would receive a favorable disposition, or (2) their case was disposed of so quickly (and painlessly) that they did not have time to consider retaining an attorney. Most of the defendants without attorneys had minor charges: 91 per cent were charged with worthless checks or other nontraffic misdemeanors (excluding DWI), as compared to 41 per cent of defendants with appointed attorneys and 31 per cent of defendants with privately-retained attorneys. (Only 4 per cent were charged with felonies.) This meant that these defendants were unlikely to be sentenced to jail or prison and therefore would not have been entitled to appointed counsel even if indigent. The majority of the defendants without attorneys were not convicted--54 per cent, compared to 34 per cent of those with appointed counsel and 38 of those with privately-retained counsel. (Forty-seven per cent of the no-counsel group

received dismissals, "prayer for judgment continued," or deferred prosecution, compared to 27 per cent of the appointed-counsel group and 25 per cent of the private-counsel group.) Active prison or jail sentences, including special probation ("split" sentences), were also rare for the no-counsel group: only 4 per cent received active sentences, compared to 25 per cent of the appointed-counsel group and 16 per cent of the private-counsel group. The cases of the no-counsel defendants were disposed of very quickly. The median arrest-to-disposition time was 23 days for them, compared to 100 days for appointed-counsel defendants and 115 days for private-counsel defendants.

32. N.C. Gen. Stat. § 7A-451(a)(1) requires appointment of counsel when the defendant is indigent and "imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged." Constitutionally, under Gideon v. Wainwright, 372 U.S. 335 (1963), and Argersinger v. Hamlin, 407 U.S. 25 (1972), indigent defendants are entitled to appointed counsel if charged with a felony or if charged with a misdemeanor and sentenced to jail or prison.

33. This last possible explanation is supported by our models of detention time, where the coefficient (estimated degree of association) of being charged with a violent felony was much lower when type of counsel was in the model than when it was not in the model (compare Model 3 with Models 1 and 2 in Table 7).

34. In this study, we have not investigated the question of whether pretrial release influences conviction and sentence. This question has been considered in other North Carolina research. See S. Clarke and S. Kurtz, The Importance of Interim Decisions to Felony Trial Court Dispositions, 74 J. Criminal Law and Criminology 476, 502-505 (1983) (study of plea bargaining and sentencing in N.C.).

35. Conversation with Assistant District Attorney Wes Covington, August 22, 1986. But there may be additional reasons for the quicker disposion of jailed defendants' cases. For example, detained defendants tend to have more serious charges, to which prosecutors may give more (and faster) attention. Also, defendants in jail may plead guilty sooner than would those given pretrial release.

36. Arrest-to-disposition times were as follows: released defendants who did not fail to appear--mean 76 days, median 56 days; released defendants who failed to appear--mean 166 days, median 177 days.

37. For the regression model of the probability of conviction, the adjusted R^2 was .17, with a sample size of 840. The coefficient of the called-and-failed variable was significantly different from zero at the .01 level. Of these 840 defendants, 56 per cent were convicted. A logistic regression model, using the log of the odds of conviction as the dependent variable with the same data and independent variables, indicated that for a defendant with the average probability of conviction (.562), being called and failed was associated with a reduction of -.138 in this probability (the effect was significant at .01).

38. See SAS User's Guide: Statistics, Version 5 Edition, 507-559 (Cary, N.C.: The SAS Institute, 1985) (the LIFEREG and LIFETEST procedures); J. Kalbfleisch and R. Prentice, The Statistical Analysis of Failure Time Data (New York: Wiley, 1980).

39. We also graphed these outcomes against number of court appearances, and that graph was quite similar to graphs 1 and 2. The number of court appearances and the arrest-to-disposition time were highly correlated--the correlation coefficient was +.77.

40. This was shown in crosstabulations not printed in this report.

41. See subsection E.2 below and Table 14.

42. We used regression, both ordinary-least-squares (OLS) and logistic, as well as discriminant function analysis, to model failure to appear and new crime. With regard to failure to appear, our "base rate" for predictions was 85 per cent, in this sense: since 85 per cent of the defendants did not fail to appear, if we simply predicted that none would fail to appear, we would be correct 85 per cent of the time. Thus, if a model does not make correct predictions more than 85 per cent of the time, it is no better than "chance." Our discriminant function model correctly predicted failure/nonfailure for only 80 per cent of the defendants, which is actually worse than "chance." The OLS model had an R^2 of only .02. The logistic model had a "pseudo R^2" (defined as the model chi-square divided by the model chi-square plus the sample size) of .03; its predictions were correct for 85 per cent of the defendants, and thus no better than "chance." For a discussion of our logistic regression procedure, see F. E. Harrell, "The LOGIST Procedure," in SUGI Supplemental Library User's Guide, S. Joyner, ed., (Cary, N.C.: The SAS Institute, 1983), p. 181.

43. If we predicted court disposition time with the model explained in Section V.E.2 of the report, and set the prediction threshhold so that defendants were predicted to fail to appear if their predicted disposition time were 60 days, the result would be as follows: 85 per cent would be falsely predicted to fail; 15 per cent would be falsely predicted not to fail, 51 per cent of those who actually did fail would be correctly predicted to do so, and the total correctly predicted would be 49 per cent. Setting the threshhold at 90 days would have yielded this result: 85 per cent false positive, 16 per cent false negative, 21 per cent sensitivity, and 69 per cent correctly predicted. Obviously, both threshholds would yield predictions that were much worse than "chance" (see note 42, supra).

44. Defendants who failed to appear were excluded from this model because failure to appear slows court disposition substantially (see Section V.A) and because we wanted to develop a model for court delay apart from the process (whatever it is) that leads defendants to fail to appear.

45. In accelerated failure-time modeling, each defendant is thought to have a range of failure times, subject to a probability distribution such as the Weibull distribution. See J. Kalbfleisch and R. Prentice, supra note 38.

46. See note 1, supra.

47. See S. Clarke, J. Freeman, and G. Koch, "Bail Risk: A Multivariate Analysis," 5 Journal of Legal Studies 341 (1976); S. Clarke, The Bail System in Charlotte, 1971-73 (Chapel Hill, N.C.: Institute of Government, Univ. of N.C., 1974).

48. The Bond Forfeiture Policy provides: "At any time before the order [of forfeiture] and notice [that judgment will be entered on the order] is [sic] served by the Clerk and delivered to the Sheriff, which will not occur prior to 48 hours after the original order declaring the bond to be forfeited as entered by the Judge, the defendant through counsel may make an oral motion or a written motion . . . . to strike the order for arrest and order for forfeiture [emphasis added]."

49. This 13 per cent (18 defendants) includes two defendants who received bond forfeiture judgments but for whom the 90-day period allowed for remission of the judgment had not elapsed by the time we stopped collecting data. Thus, 13 per cent may be a slightly exaggerated measurement of the proportion actually ordered to forfeit bail.

50. Comparable figures were not available for Sample 2.

51. In 1973, North Carolina's Criminal Code Commission recommended a 10 per cent deposit option to the General Assembly, but the recommendation was defeated. See L. P. Watts, The Pretrial Criminal Procedure Act: The Subchapter on Custody, 10 Wake Forest L. Rev. 417, 448 (1974).

52. The no-return rate was high (25 per cent) for nonappearing defendants who had posted cash bond (none of whom were rearrested for new crimes). Why? This rate may be misleading because it was based on a very small sample. (A total of only 41 defendants in our sample were released on cash bond, and only six of these failed to appear.) But there may be another reason for the high no-return rate in this group. All but three of the cash-bond defendants were charged with misdemeanors (see Table 1). Their bonds were relatively low (median $250, compared to median $500 for defendants released by professional bondsmen). We think that where the cash-bond defendant had a minor charge, the forfeiture of the cash bond may have often been treated as a final disposition--a sort of "fine paid in advance."

53. N.C. Gen. Stat. § 85C-20.

54. There is support for this criticism. Although 35 per cent of unsecured-bond defendants who failed to appear were ordered by court judgments to forfeit bond (more than three times the comparable percentage for professional-bondsman defendants), we found no record in the main sample data that any of the nine unsecured-bond defendants actually paid what they were ordered by judgment to pay, whereas six of the seven professional-bondsman defendants paid what they were ordered to pay, and both of the cash-bond defendants paid what they were ordered to pay. In the case of cash-bond defendants, of course, there is no

problem in collecting the bond that is due because it is already in the court's possession.

55. This new policy essentially tracks N.C. Gen. Stat. § 15A-544. If anything, it seems to be more lenient than that statute allows. The policy requires a 48-hour grace period between failure to appear and sending the order of forfeiture to the sheriff for service, which is not mentioned in the statute. The bondsmen's objection to the court's present forfeiture policy suggests that forfeiture enforcement was even more lenient before the current policy was issued.

56. They are also allowed to demand collateral security from their clients, in addition to their fee, to be returned when their liability on the bond terminates. N.C. Gen. Stat. § 85C-20.

57. The average arrest-to-disposition time is about 90 days for released defendants. Thus, bondsmen's security can be used an average of about four times per year, bringing the yearly gross return to 52 per cent, which does not count compounding. This probably covers bondsmen's business expenses and still leaves them a good profit. Looking at the figures another way: In our main sample, 362 defendants were released by bondsmen with a total bond of $606,800, on which the maximum premium (15 per cent) would have been $91,020; $8,165 of this was eventually ordered forfeited by court judgments, leaving $82,855 or about $230 per defendant for the 362 defendants that the bondsmen released. If each defendant ties up the bondsmen's security deposit for 90 days, four defendants per year could be handled, resulting in a gross return of $920 (4 x $230) per defendant-year. More on the subject of the bondsman's security deposit: N.C. Gen. Stat. § 85C-30 requires that professional bondsmen keep on deposit with the Insurance Commissioner a deposit "of a fair market value of at least one eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month." (Emphasis supplied.) If only one-eighth of the bondsman's total liability were encumbered, his actual profit would be much greater. But many bondsmen keep more than one-eighth on deposit, and as a matter of good business practice, most bondsmen probably encumber the total amount in some way even if they do not deposit it with the Insurance Commissioner. (Conversation with Fred Mohn, Chief of Special Services, N.C. Department of Insurance, January 7, 1987.)

58. John Goldkamp, "The Effectiveness of Pretrial Release Practices" (presented at Annual Meeting of American Society of Criminology, Atlanta, Ga., October 30, 1986; copies available from author at Dept. of Criminal Justice, Temple University, Philadelphia, Pa.).

59. The 1973 Charlotte study showed a failure-to-appear rate of 9 per cent, compared to 16 per cent in the present Durham study, and a new-crime rate of 10 per cent, compared to 14 per cent in the Durham study. See S. Clarke, J. Freeman, and G. Koch, supra note 21. A 1985-86 study in Alexandria, Virginia, showed a failure-to-appear rate of 10 per cent, which is best compared with the 13 per cent of Durham defendants who were called and failed without court "forgiveness" (see text

accompanying this footnote). The Alexandria study indicated a new-crime rate of 5 per cent, compared to 14 per cent in the Durham study. Publications on the Alexandria study will be available in fall 1986 from Dr. Richard P. Kern, Virginia Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219. A pretrial release study is now being carried out in Asheville, N.C., using the same data collection forms and techniques, under the supervision of the Trial Court Administrator in the 28th Judicial District. The Asheville results should also help to put the Durham results in perspective.

60. N.C. Gen. Stat. § 7A-61.

61. E.g., American Bar Association, Standards Relating to the Administration of Criminal Justice, (2d ed., approved 1979), Standard 10-5.5 and commentary. This standard recommends that compensated sureties be abolished. The commentary, noting instances of abuse of bondsmen's powers, says that ". . . recent studies have shown that in practice bondsmen do little or nothing to return their charges [when they fail to appear]." The source cited for this statement is P. Wice, Freedom for Sale 50 (1974).

62. N.C. Gen. Stat. §§ 15A-531(1), 15A-534(h), 15A-543(a).

63. Id. § 15A-543.

64. United States v. McGill, 604 F.2d 1252 (9th Cir. 1979), cert. denied, 444 U.S. 1035.

65. United States v. Wilson, 631 F.2d 118 (9th Cir. 1980).

66. United States v. Smith, 548 F.2d 545 (5th Cir. 1977), cert. denied, 431 U.S. 959.

67. United States v. Phillips, 625 F.2d 543 (5th Cir. 1980); Gant v. U.S., 506 F.2d 518 (8th Cir. 1974), cert. denied, 420 U.S. 1005.

68. United States v. Wetzel, 514 F.2d 175 (8th Cir. 1975), cert. denied, 423 U.S. 844.

69. Using prediction of disposition time to identify defendants with a high risk of failure to appear has another advantage; it will tend to identify defendants who present more of a threat to public safety than other defendants. Basing the selection on predicted disposition time will tend to select defendants who have multiple charges as well as defendants who are arrested while on pretrial release for an earlier pending charge, and who therefore may be more actively engaged in crime than other defendants. Using predicted disposition time to select defendants with a high risk of failing to appear will also tend to select felony and DWI defendants because felony and DWI cases have long disposition times. The median arrest-to-disposition time was 111 days for violent felony defendants, 107 days for nonviolent felony defendants, and 90 days for DWI defendants. These median times are much longer than the median times for worthless check defendants (17 days) and other misdemeanor defendants (32 days). (The reason for the

long DWI disposition times is probably that defendants contest DWI charges vigorously because of the severe mandatory punishments.) Felony and DWI defendants also have much longer predicted failure times (times from pretrial release to failure to appear) than other defendants (see Table 15). In other words, while felony and DWI defendants are at risk for fairly long times, apparently they also are able to "survive" longer without failing to appear. But it may be a good policy to select felony and DWI defendants for post-release supervision because of the substantial risk they may pose to public safety. Regarding felony and DWI defendants, there is probably greater public concern about their failing to appear (with consequent delay of their prosecution) than there is about failure to appear of defendants charged with misdemeanors other than DWI.

70. Conversation with Ms. Louise Davis, Director of Project Re-Entry, December 17, 1986.

71. See J. Austin, B. Krisberg, and P. Litsky, "The Effectiveness of Supervised Pretrial Release," Crime and Delinquency, 31, No. 4, pp. 519-537 (October 1985).

72. A person arrested and charged with a felony must be fingerprinted and the fingerprints must be forwarded to the State Bureau of Investigation, where they eventually become the basis for the DCI criminal history system, which requires fingerprints for all entries. Persons charged with misdemeanors may be fingerprinted, but this is not required. N.C. Gen. Stat. Z 15A-502; also see §§ 15A-1381 through 15A-1383.

Table 1. Forms of Pretrial Release Received, by Type of Charge[1]

Form of Pretrial Release	Type of Charge											
	DWI		Violent Felony		Nonviolent Felony		Worthless Check		Other Misdemeanor		All Charges	
1. Not released	9	(4.4%)	31	(27.2%)	27	(14.9%)	6	(3.9%)	20	(7.2%)	(8.3%)[2]	
2. Written promise to appear	2	(1.0%)	0	(0.0%)	0	(0.0%)	29	(18.7%)	38	(13.7%)	(9.3%)[2]	
3. Release in someone's custody	7	(3.4%)	2	(1.8%)	6	(3.3%)	2	(1.3%)	3	(1.1%)	(1.9%)[2]	
4. Unsecured bond	46	(22.4%)	13	(11.4%)	40	(22.1%)	77	(49.7%)	107	(38.5%)	(33.4%)[2]	
5. Secured bond: cash deposit by defendant	17	(8.3%)	0	(0.0%)	0	(0.0%)	5	(3.2%)	4	(1.4%)	(2.7%)[2]	
6. Secured bond: cash deposit by person other than defendant	6	(2.9%)	3	(2.6%)	0	(0.0%)	1	(0.7%)	5	(1.8%)	(1.6%)[2]	
7. Secured bond: mortgage of property	0	(0.0%)	0	(0.0%)	2	(1.1%)	0	(0.0%)	0	(0.0%)	(0.2%)[2]	
8. Secured bond: accommodation bondsman	12	(5.9%)	23	(20.2%)	23	(12.7%)	0	(0.0%)	5	(1.8%)	(4.9%)[2]	
9. Secured bond: professional bondsman	106	(51.7%)	42	(36.8%)	83	(45.9%)	35	(22.6%)	96	(34.5%)	(37.8%)[2]	
10. Secured bond: all types	141	(68.8%)	68	(59.6%)	108	(59.7%)	36	(23.2%)	106	(38.1%)	(47.2%)[2]	
11. Total	205	(100.0%)	114	(100.0%)	181	(100.0%)	155	(100.0%)	278	(100.0%)	(100.0%)[2]	

[1]Excludes four defendants who received release of an unknown type.

[2]Weighted estimate from stratified sample.

Table 2.
Modification of Pretrial Release Conditions: Type of Release Actually Received,[1] by Type of Conditions Initially Set

Type of Release Actually Received	Conditions Initially Set: Written Promise	Someone's Custody	Unsecured Bond	Secured Bond	Release Denied Initially[3]
1. NOT RELEASED	0.0%	0.0%	0.0%	13.0%	64.0%
2. Written promise to appear	100.0%	0.0%	0.0%	0.3%	0.0%
3. Release in someone's custody	0.0%	90.5%	0.0%	0.7%	0.0%
4. Unsecured bond	0.0%	0.0%	100.0%	6.1%	4.0%
5. Secured bond: cash deposit by def.	0.0%	0.0%	0.0%	4.7%	0.0%
6. Secured bond: cash deposit by person other than def.	0.0%	0.0%	0.0%	2.7%	0.0%
7. Secured bond: mortgage of property	0.0%	0.0%	0.0%	0.3%	0.0%
8. Secured bond: accomodation bondsman	0.0%	0.0%	0.0%	8.2%	4.0%
9. Secured bond: professional bondsman	0.0%	9.5%	0.0%	63.5%	28.0%
10. Released but type unknown	0.0%	0.0%	0.0%	0.5%	0.0%

[1]Percentages estimated from stratified sample. Percentages add downward.

[2]Of all defendants who were not released, 92.3% had secured bond set.

[3]Includes defendants charged with a capital offense (first-degree murder).

Table 3. Pretrial Detention Time, Pretrial Release, and Conviction

	Pretrial Detention Time (Arrest to First Release in Days)			
	Mean[1]	Median	75th Percentile	(N)
1. Released defendants	2.4	0.0	1.0	(844)
a. Convicted	2.5	0.0	1.0	(474)
b. Not convicted	2.2	0.0	0.0	(370)
2. Unreleased defendants	49.5	47.0	102.5	(93)
a. Convicted	47.0	47.0	98.0	(76)
b. Not convicted	62.1	56.5	106.8	(17)
3. All defendants[2]	6.3	0.0	1.0	(937)

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[1]Estimated from stratified sample.
[2]Excludes those for whom date of release or disposition unknown.

Table 4. Use of Special Written Conditions of Pretrial Release (All Defendants[2])

Type of Special Condition[1]	Type of Pretrial Release[3]									
	All Defendants	Not Released	Written Promise	Someone's Custody	Unsecured Bond	Sec. Bond: Cash by Def.	Sec. Bond: Cash by Other	Sec. Bond: Mortgage	Sec. Bond: Accom. Bondsman	Sec. Bond: Professional Bondsman
Any type of special condition	3.6%	1.0%	2.2%	2.0%	5.1%	0.0%	2.5%	0.0%	7.5%	3.0%
Type 1: Def. must avoid victim or prosecuting witness or their families and not return to place of crime[4]	3.1%	1.0%	0.4%	2.0%	4.6%	0.0%	2.5%	0.0%	6.7%	2.7%
Type 2: Def. must enter hospital or treatment facility or take all prescribed medicines or treatments	0.3%	0.0%	0.0%	0.0%	0.7%	0.0%	0.0%	0.0%	0.8%	0.1%
Type 3: Def. must attend school or remain employed	0.1%	0.0%	0.0%	2.0%	0.0%	0.0%	2.5%	0.0%	0.0%	0.0%
Type 4: Def. must remain under parents' supervision or be home or with parents at night	0.2%	0.0%	1.7%	2.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Type 5: Other special condition	0.4%	0.0%	0.0%	2.0%	0.5%	0.0%	2.5%	0.0%	0.8%	0.2%

[1] More than one special condition could be imposed on a single defendant.

[2] Excludes four for whom type of release was unknown.

[3] Figures estimated from stratified sample. Percentage base is number who received each type of pretrial release.

[4] For example, in a trespass case.

Table 5.
Model of Whether Defendant Had Any Secured Bond Set

Independent Variables	Dependent Variable: Whether Secured Bond Was Set[4]
Age under 21[1]	-.062
Age 21-25[1]	.033
Age 26-30[1]	-.013
Black	.088**
Female	-.005
Not Durham County resident[2]	.211**
Violent felony charge[3]	.272**
Nonviolent felony charge[3]	.215**
DWI charge[3]	.222**
Worthless check charge[3]	-.175**
Each current charge	.062**
On probation for previous offense	.118**
On pretrial release for previous charge	.123**
Each prior conviction	.001
Each prior failure to appear	.074**
Modeling method	Logistic
(N)	(937)
(Pseudo-R^2)	(.13)
Percentage of defendants correctly classified by model	70.4%
Base rate (overall percentage who had secured bond)	58.8%

*Significant at .10.
**Significant at .05.

[1]Compared to over 30.
[2]Compared to Durham County resident.
[3]Compared to other misdemeanor charge.
[4]Estimated effect of independent variable on probability of having secured bond is for defendant who would otherwise have probability of .588 of having secured bond.

Table 6
Models of Initially-Set Secured Bond Amount (All Defendants) and Whether Defendant with Secured Bond Received Bond Reduction

Independent Variables	Dependent Variables: Initial Secured Bond Amount (in Dollars)[4]	Dependent Variables: Defendant Received Bond Reduction[5]
BASIC FACTORS		
(Intercept)	(-806.2)	
Age under 21[1]	-1082.6**	.010
Age 21-25[1]	-523.6	.075
Age 26-30[1]	353.7	-.054
Black	-1014.0**	.039
Female	-43.5	.016
Not Durham County resident[2]	1338.0**	.034
Violent felony charge[3]	8247.9**	.400**
Nonviolent felony charge[3]	4751.7**	.328**
DWI charge[3]	-1147.9**	.026
Worthless check charge[3]	-693.8	-.200
Each current charge	1427.9**	.008
On probation for previous offense	938.8*	-.006
On pretrial release for previous charge	1402.8**	.032
Each prior conviction	-139.8	-.003
Each prior failure to appear	-524.9	-.022
PROCESS VARIABLES		
Secured bond amount initially set (each $1000)		.012**
Modeling method	OLS Regr.	Logistic
(N)	(937)	(544)
(Adjusted R^2 or pseudo-R^2)	(.35)	(.19)

*Significant at .10.

**Significant at .05.

[1]Compared to over 30.

[2]Compared to Durham County resident.

[3]Compared to other misdemeanor charge.

[4]In modeling bond amount was truncated at 95th percentile ($25,500).

[5]Estimated effect of independent variable on probability of reduction in secured bond for defendant who would otherwise have probability of .200 of reduction.

Table 7. Models[1] of Opportunity for Pretrial Release (Released and Unreleased Defendants)

Independent Variables	Probability of Release			Detention Time (Log)		
	Model 1[1]	Model 2[1]	Model 3[1]	Model 1[2]	Model 2[2]	Model 3[2]
BASIC FACTORS						
(Intercept)				(.843)	(.897)	(.936)
Age under 21[3]	-.021	-.037	-.006	+5.0%	+13.8%)	+2.1%
Age 21-25[3]	+.024	+.017	+.030	-5.7%	-1.9%	-5.5%
Age 26-30[3]	-.005	-.900	+.010	+6.0%	+2.6%	-0.4%
Black	-.151**	-.190**	-.140**	+20.1%**	+29.7%**	+13.3%**
Female	+.052**	+.052**	+.050*	-20.2%**	-19.8%**	-18.5%**
Not Durham county resident[4]	-.161**	-.146**	-.164**	+59.8%**	+44.6%**	+45.0%**
Violent felony charge[5]	-.201**	-.091**	-.044	+412.2%**	+172.7%**	+101.0%**
Nonviolent felony charge[5]	-.048	-.005	+.016	+112.8%**	+48.2%**	+18.3%
DWI charge[5]	+.044	+.034	+.015	+0.5%	+9.5%	+14.3%
Worthless check charge[5]	+.039	+.032	+.028	-15.3%	-11.1%	-1.9%
Each current charge	-.025**	-.012	-.012	+21.6%**	+9.1%**	+ 7.6%**
On probation for previous offense	-.036	-.022	-.011	+39.4%**	+29.5%**	+18.5%*
On pretrial release for previous charge	-.008	+.006	+.014	+32.1%**	+18.7%*	+9.9%
Each prior conviction	-.006	-.007	-.006	+1.4%	+2.5%	+1.7%
Each prior failure to appeal	-.020	-.025	-.029*	+3.7%	+8.1%	+7.9%
PROCESS VARIABLES						
Secured bond amount initially set-each $1000	--	-.006**	-.007**	--	+7.9%**	+7.6%**
Private attorney[6]	--	--	+.074**	--	--	-11.8%
Appointed attorney[6]	--	--	-.093**	--	--	+118.0%**
Modeling method	Logistic	Logistic	Logistic	OLS regr.	OLS regr.	OLS regr.
(N)	(937)	(937)	(937)	(933)	(933)	(933)
(Adjusted R^2 or pseudo-R^2	(.11)	(.13)	(.18)	(.30)	(.38)	(.44)

*Significant at .10.

**Significant at .05.

[1]Coefficients indicate additive effect of each factor on probability of release for defendant who otherwise would have probability of .900 of being released.

[2]Detention time in days. Coefficients indicate estimated percentage increase (+) or decrease (-) in detention time associated with unit increase of variable.

[3]Compared to over 30.

[4]Compared to Durham County Resident.

[5]Compared to other misdemeanor charge.

[6]Compared to no attorney.

Table 8.
Percentage Unreleased for Various Groups of Defendants and Contribution of Each Group to Total of Unreleased

Crime Group	Number of charges	Race	Residence	1. Percentage* of Row Total Who Were Not Released (Row Percentage)	2. Percentage* of Total Unreleased Defendants (Column Percentage)
All offenses except volent felony	One	White	Durham	4.2%	4.8%
			Not Durham	7.4	2.4
		Black	Durham	8.3	19.1
			Not Durham	25.0	2.4
	More than one	White	Durham	5.1	6.0
			Not Durham	4.0	1.2
		Black	Durham	14.1	26.2
			Not Durham	44.4	4.8
Violent felony	One	White	Durham	16.7	2.4
			Not Durham	--	--
		Black	Durham	24.0	14.3
			Not Durham	--	--
	More than one	White	Durham	20.0	3.6
			Not Durham	14.3	1.2
		Black	Durham	52.9	10.7
			Not Durham	100.0	1.2

*Percentages based on weighted sums from stratified sample.

Table 9. Distribution of Time (Days) from Arrest to Disposition[1]

	Arrest-to-Disposition Time (Days)			
	Mean[2]	Median[3]	75th Percentile[3]	(N)
1. Unreleased defendants				
a. Did not fail to appear	49	47	100	(87)
b. Failed to appear	53	47	89	(6)
c. Total unreleased defendants	50	47	103	(93)
2. Released defendants				
a. Did not fail to appear	76	56	124	(713)
b. Failed to appear	166	177	268	(131)
c. Total released defendants	90	67	149	(844)
3. All defendants	87	65	141	(937)

[1]Includes 59 defendants whose cases were still open on date of last reading of court records; that date was used as the disposition date and was at least 258 days after the arrest date.

[2]Weighted estimate from stratified sample.

[3]pth percentile is computed as weighted average at X_{np}, where n = number of defendants and values are ordered X_1, X_2, X_3, ...

Table 10. Pretrial Release Risk Measures* for Each Type of Pretrial Release (Released Defendants Only)[1]

Type of Release	Def. Failed to Appear	Def. Charged With New Crime	Def. Charged With New Felony
1. Written promise to appear	5.1%	1.7%	0.0%
2. Release in someone's custody	13.6%	17.3%	9.1%
3. Unsecured bond	15.0%	9.7%	2.5%
4. Secured bond: cash deposit by defendant	16.0%	3.4%	0.0%
5. Secured bond: cash deposit by person other than defendant	20.3%	2.5%	0.0%
6. Secured bond: mortgage of property	0.0%	0.0%	0.0%
7. Secured bond: accommodation bondsman	13.5%	24.0%	6.3%
8. Secured bond: professional bondsman	19.3%	21.2%	4.4%
9. Secured bond: all types	18.5%	19.7%	4.1%
10. Total (all types of release)	15.8%	14.2%	3.2%

*32.8% of defendants who failed to appear were charged with a new crime, and 36.3% of defendants charged with a new crime also failed to appear.

[1]All figures estimated from stratified sample. Percentage base is total of defendants receiving each type of pretrial release. Excludes four released defendants whose type of release was unknown.

Table 11. Dispositions[1] of Defendants Who Failed to Appear Without a Subsequent Order to Strike or Recall[2]

Type of Disposition	Proportion[3] of Defendants Who Failed to Appear (Without Strike or Recall Order)
1. Case open because defendant failed to appear and was still missing	19.4%
2. Case open for other reason	5.7%
3. Dismissed with leave by prosecutor but defendant not missing[4]	9.7%
4. Voluntary dismissal by prosecutor	14.7%
5. Deferred prosecution	0.0%
6. Dismissal by judge	2.7%
7. P.J.C. by judge	0.8%
8. "No true bill" by grand jury	0.0%
9. Acquittal at trial	2.7%
10. Guilty plea	41.3%
11. Conviction at trial	3.0%

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[1]If defendant had more than one case (charge), "worst" disposition (from defendant's point of view) was recorded.

[2]I.e., without a later court order to strike the called-and-failed record or an order to recall the order for arrest for failure to appear.

[3]Percentages estimated from stratified sample.

[4]Although dismissal with leave is supposed to be used by the prosecutor only for nonappearing defendants (see N.C. Gen. Stat. §§ 15A-931, -932), in Durham it was usually used where a voluntary dismissal should have been used.

Table 12. Pretrial Release Risk Measures*, by Type of Charge (Released Defendants Only)

Type of Charge	Def. Failed to Appear[1]	Def. Failed to Appear and OFA Not Stricken[2]	Def. Charged With New Crime[3]	Def. Charged With New Felony[3]	Total Defs.
1. DWI (13.3%)	26 (12.2%)	24 (16.8%)	33 (2.6%)	5 (100.0%)	196
2. Violent felony (10.8%)	9 (9.6%)	8 (27.7%)	23 (10.8%)	9 (100.0%)	83
3. Nonviolent felony (20.1%)	31 (14.3%)	22 (22.7%)	35 (10.4%)	16 (100.0%)	154
4. Worthless check 13.4%)	20 (10.7%)	16 (6.7%)	10 (0.7%)	1 (100.0%)	149
5. Other misdemeanor (16.7%)	43 (13.6%)	35 (12.0%)	31 (1.6%)	4 (100.0%)	258
6. Total (all charges)	129 (15.4%)	105 (12.5%)	132 (15.7%)	35 (4.2%)	840 (100.0%)
7. All charges: risk percentages estimated from stratified sample	(15.8%)	(12.8%)	(14.2%)	(3.2%)	

*32.8% of defendants who failed to appear were charged with a new crime, and 36.3% of defendants charged with a new crime also failed to appear.

[1]Includes all defendants who were "called and failed", including those for whom orders for arrest for nonappearance were later "stricken" (cancelled) by the court.

[2]Excludes defendants whose orders for arrest were stricken.

[3]New offense that allegedly occurred in Durham County while defendant was free on pretrial release before disposition of original charge.

Table 13. Pretrial Release Risk: Relationship to Time Defendant's Case Remained Open

Time[1] Defendant's Case(s) Remained Open	Defendants Who Failed to Appear[2]			Defendants Charged with New Crime[3]		
	Number	(Percentage)	(Cumulative Percentage)	Number	(Percentage)	(Cumulative Percentage)
0 to 30 days	46	(35.7%)	(35.7%)	62	(47.7%)	(47.7%)
31 to 60 days	26	(20.2%)	(55.8%)	27	(20.8%)	(68.5%)
61 to 90 days	21	(16.3%)	(72.1%)	17	(13.1%)	(81.5%)
91 to 120 days	16	(12.4%)	(84.5%)	11	(8.5%)	(90.0%)
121 to 150 days	10	(7.8%)	(92.2%)	5	(3.8%)	(93.8%)
151 to 180 days	6	(4.7%)	(96.9%)	4	(3.1%)	(96.9%)
181 to 210 days	3	(2.3%)	(99.2%)	3	(2.3%)	(99.2%)
211 days or more	1	(0.8%)	(100.0%)	1	(0.8%)	(100.0%)
Total	129	(100.0%)	(100.0%)	130	(100.0%)	(100.0%)

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[1]Time in days from defendant's pretrial release to trial court disposition or first failure to appear, whichever comes first.

[2]Defined as "called and failed."

[3]New crime allegedly committed while defendant on pretrial release.

Table 14.
Models of Arrest-to-Disposition Time for Defendants Who Were Released and Did Not Fail to Appear

Independent Variables BASIC FACTORS	Model 1[5]	Model 2[5]
(Intercept)	(30.2 days)	(30.4 days)
Age under 21[1]	-22.4%**	-18.1%**
Age 21-25[1]	-15.8%**	
Age 26-30[1]	-11.5%	
Black	+11.7%	
Female	-1.1%	
Not Durham County resident[2]	+2.2%	
Violent felony charge[3]	+235.2%**	+238.0%**
Nonviolent felony charge[3]	+52.3%**	+146.8%**
DWI charge[3]	+161.7%**	+154.7%**
Worthless check charge[3]	-39.3%	-40.2%**
Each current charge	+7.2%**	+7.4%**
On probation for previous offense	+3.3%	
On pretrial release for previous charge	+27.5%**	+33.9%**
Each prior conviction	+1.9%	
Each prior failure to appear	-1.7%	
Modeling method	OLS regr. of log.	OLS regr. of log.
(N)	(713)	(713)
(Adjusted R^2)	(.35)	(.35)

*Significant at .10.

**Significant at .05.

[1]Compared to over 30.

[2]Compared to Durham County resident.

[3]Compared to other misdemeanor charge.

[4]Compared to secured bond.

[5]Coefficients are estimated percentage increase (+) or decrease (-) in arrest-to-disposition time associated with each variable.

Table 15
Failure Time Models of Failure to Appear and New Crime Allegedly Committed While on Pretrial Release

Independent Variables	Dependent Variables			
	Time to Failure to Appear			Time to New Crime[6]
BASIC FACTORS	Model 1[6]	Model 2[6]	Model 3[6]	
Age under 21[1]	-40.3%**	-36.2%**	-42.3%**	-29.6%
Age 21-25[1]	-19.1%	-18.6%	-20.0%	-13.6%
Age 26-30[1]	-0.4%	-2.3%	-0.0%	+4.8%
Black	+14.7%	+19.2%	+15.8%	+5.4%
Female	-6.8%	-6.5%	-4.8%	+3.0%
Not Durham County resident[2]	+31.0%	+24.6%	+36.2%	
Violent felony charge[3]	+288.3%**	+185.5%**	+314.3**	-47.0%
Nonviolent felony charge[3]	+86.2%**	+60.9%**	+92.9%**	-3.3%
DWI charge[3]	+120.4%**	+130.6%**	+129.9%**	-23.2%
Worthless check charge[3]	-27.5%	-24.2%	-29.9%	+95.9%
Each current charge	+6.1%	+1.2%	+6.7%	-5.4%
On probation for previous offense	-29.7%*	-28.2%	-28.3%	-5.3%
On pretrial release for previous charge	-16.7%	-19.4%	-14.8%	-80.5%**
Each prior conviction	+2.9%	+3.6%	+3.1%	-13.0%**
Each prior failure to appear	-20.9%*	-21.0%*	-20.2%*	+3.9%
PROCESS VARIABLES				
Bond amt. (sec. or unsec.) at actual release (each $1,000)		+9.2%*		
Type of PTR: unsec. bond[4]			+9.7%	
Type of PTR: promise or custody[4]			+57.2%	
Modeling method	Accelerated failure time	Accelerated failure time	Accelerated failure time	Accelerated failure time
(N)	(840)	(840)	(840)	(840)

*Significant at .10.

**Significant at .05.

[1]Compared to over 30.

[2]Compared to Durham County resident.

[3]Compared to other misdemeanor charge.

[4]Compared to secured bond.

[5]Compared to no attorney.

[6]Values shown are estimated percentage increase (+) or decrease (-) in expected time from release to either failure to appear or new crime associated with each variable.

Table 16. Bond Forfeiture Dispositions for Bonded Defendants Who Failed to Appear

Note: All defendants in table were released on secured or unsecured bond and failed to appear at least once.

	Sample 1: Defendants Arrested Feb-May 1985 (Followed Up Until March 15, 1986)		Sample 2: Defendants Who Failed to Appear in May 1985 (Followed Up Until May 1986)	
	Number	(Per Cent)	Number	(Per Cent)
1. Called-and-failed status stricken or order for arrest recalled	39	(28.7%)	31	(33.0%)
2. Forfeiture hearing* could not be held or scheduled until after data collection stopped	3	(2.2%)	0	(0.0%)
3. No forfeiture hearing* held: defendant's case disposed of	17	(12.5%)	16	(17.0%)
4. No forfeiture hearing* held: other reasons (such as unserved order of forfeiture)	6	(4.4%)	5	(5.3%)
5. Forfeiture hearing* held: forfeiture judgment issued, but 90 days had not elapsed before data collection ended	2	(1.5%)	0	(0.0%)
6. Forfeiture hearing* held: no judgment issued, or all forfeiture remitted	53	(39.0%)	33	(35.1%)
7. Forfeiture hearing* held: partial or full forfeiture judgment issued, and 90 days had elapsed	16	(11.8%)	9	(9.6%)
8. Total bonded defendants who failed to appear	136	(100.0%)	94	(100.0%)
9. Percentage of defendants who had judgment ordering partial or full forfeiture (sum of rows 5 and 7)	13.3%		9.6%	

*A forfeiture hearing is a court session in which a judgment ordering forfeiture is issued or reviewed, whether or not the defendant or bondsman appears.

Table 17. Bond Amounts and Amounts Actually Ordered Forfeited in Court Judgment, by Type of Pretrial Release*

	Unsecured Bond		Professional Bondsman		Cash Bond	
	Amount	(N)	Amount	(N)	Amount	(N)
1. Total bond at release	$371,300	(283)	$606,800	(362)	$26,825	(41)
2. Total bond for defendants who failed to appear	$ 25,500	(41)	$ 73,100	(67)	$ 1,075	(6)
3. Total bond ordered forfeited by court judgment	$ 8,950	(9)	$ 8,165	(7)	$ 440	(2)
4. Bond ordered forfeited by court judgment as percentage of total bond (row 1)	2.4%		1.3%		1.6%	
5. Bond ordered forfeited by court judgment as percentage of bond for defendants who failed to appear (row 2)	35.1%		11.2%		40.9%	

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*No bonds were ordered forfeited by court judgment for defendants who had accommodation bondsmen or mortgaged property.

Table 18. "No-Return Rates" for Released Defendants Who Failed to Appear[1]: Proportion[2] Whose Cases Remained Open Because of Defendant's Absence, by Type of Release and Whether Defendant was Arrested for New Crime

Type of Pretrial Release	Defendants Who Failed to Appear And Were Not Arrested For New Crime	Defendants Who Failed to Appear And Were Arrested For New Crime[3]
1. Written promise to appear	0.0%	--
2. Release in someone's custody	0.0%	0.0%
3. Unsecured bond	15.9%	7.8%
4. Secured bond: cash deposit	24.5%	--
5. Secured bond: mortgage of property	--	--
6. Secured bond: accommodation bondsman	0.0%	0.0%
7. All forms of release except secured bond with professional bondsman	14.3%	5.8%
8. Secured bond: professional bondsman	26.3%	6.4%
9. Total (all types of release)	19.5%	6.2%

[1]Defendants who were called and failed at least once.

[2]Percentages estimated from stratified sample.

[3]Defendants who were arrested and charged with new crime that allegedly occurred while they were free on pretrial release.

Figure 1. Survival Curve: Probability of Not Failing to Appear, as a Function of Time from Pretrial Release

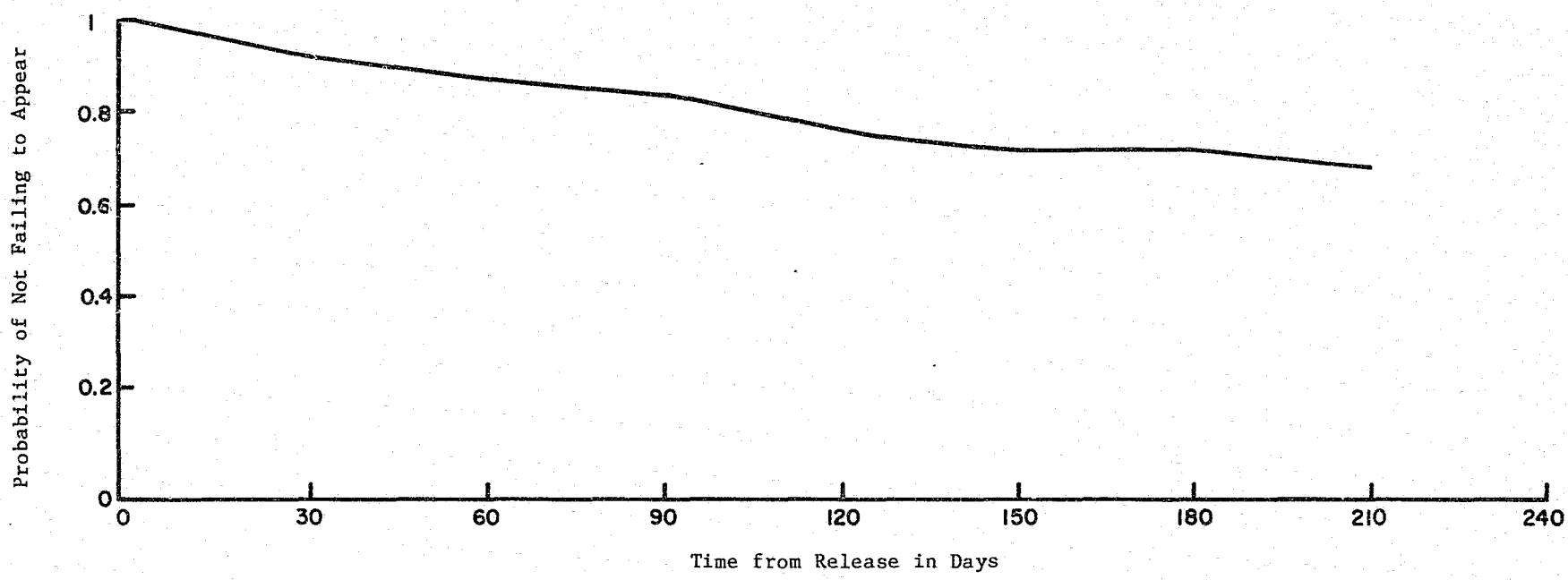


Figure 2. Survival Curve: Probiability of Not Being Charged with New Crime, as a Function of Time from Pretrial Release

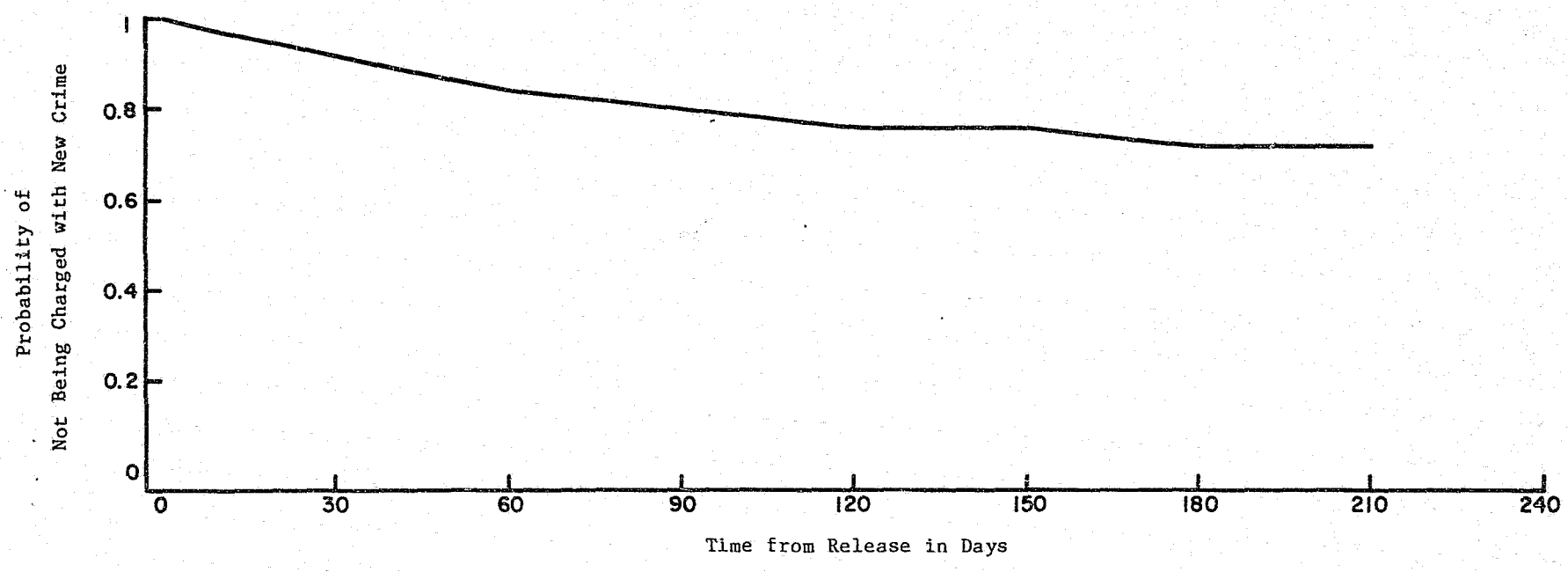
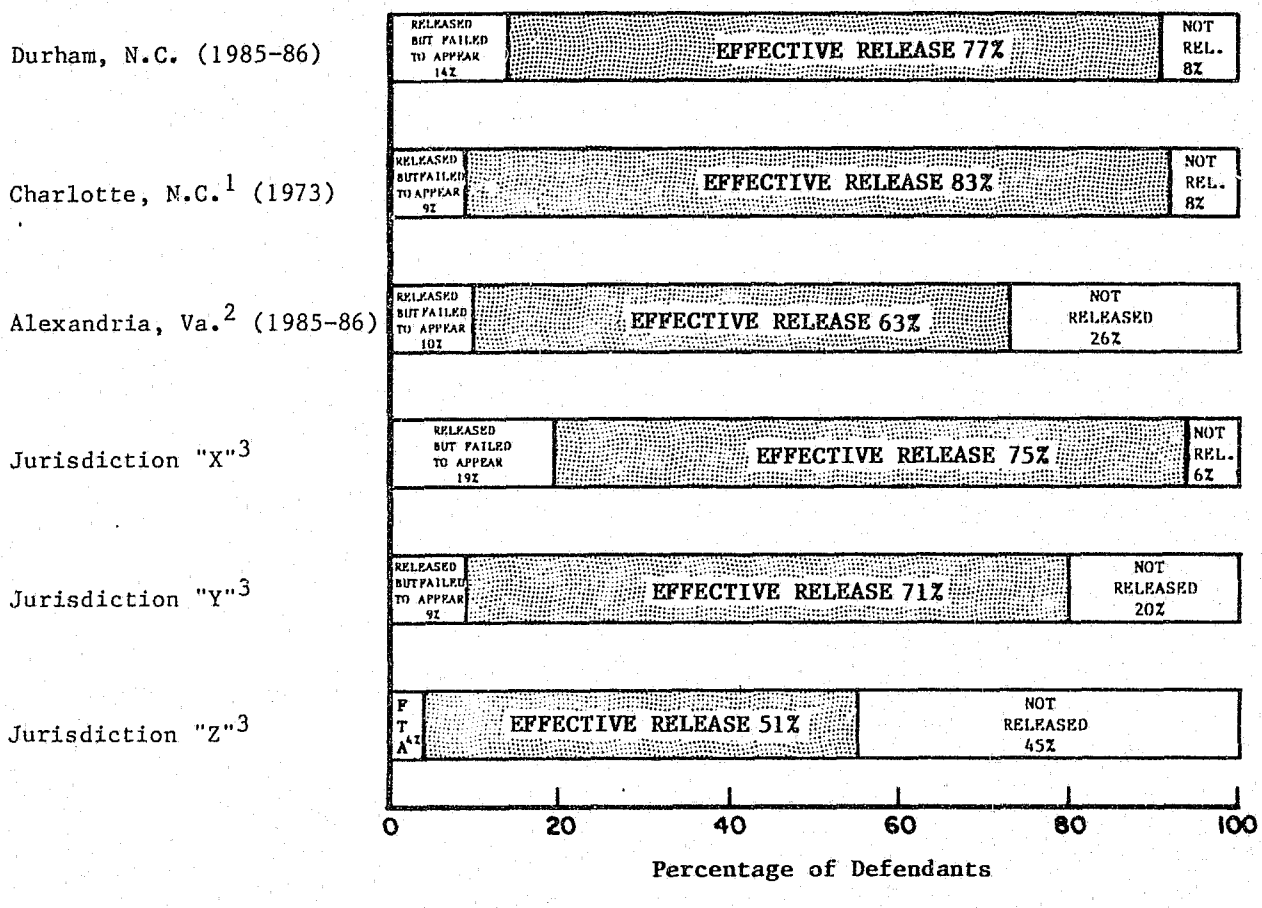


Figure 3. Effectiveness of Pretrial Release in Durham, N.C., Compared to that of Other Cities, in Terms of Failure to Appear



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[1]From Stevens H. Clarke, The Bail System in Charlotte, 1971-73 (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1974).

[2]From Richard P. Kern, Virginia Department of Criminal Justice Services, Richmond, Va. (unpublished report, 1986).

[3]From John Goldkamp, "The Effectiveness of Pretrial Release Practices" (presented at Annual Meeting of American Society of Criminology, Atlanta, Ga., October 1986).

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