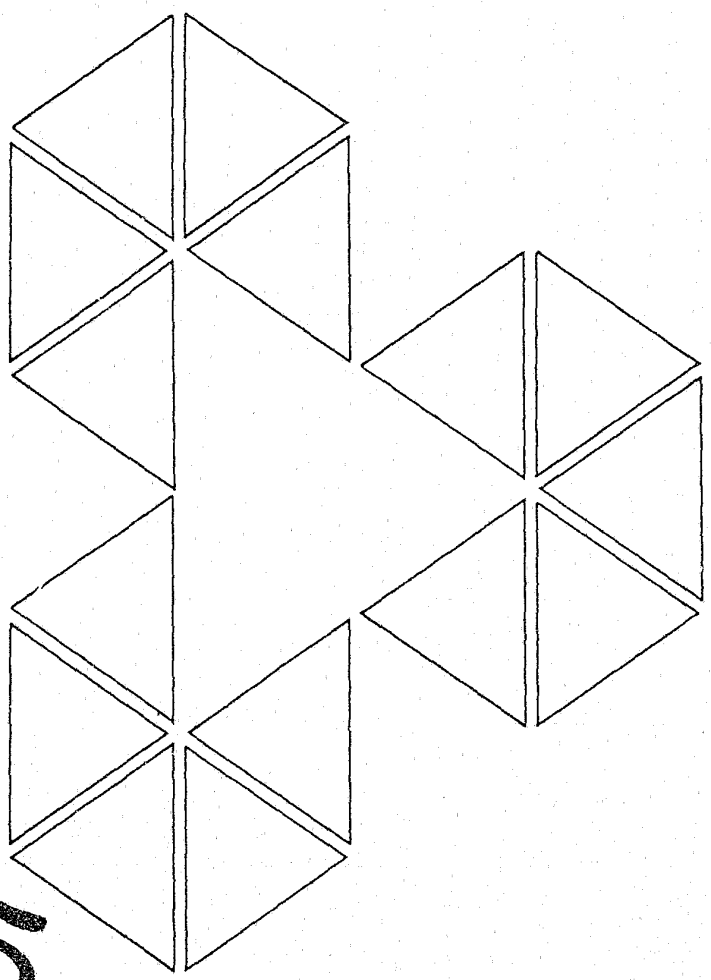
THE EFFECTIVENESS OF BAIL SYSTEMS: AN ANALYSIS OF FAILURE TO APPEAR IN COURT AND REARREST WHILE ON BAIL



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ABSTRACT

A random sample of 756 defendants released on bail in Charlotte, North Carolina, in 1973 was studied to determine the relative importance of various factors in determining the likelihood that a bailed defendant will fail to appear in court and/or be arrested for a new offense while on bail. The most important factors were found to be court disposition time (the amount of time between release on bail and court disposition), criminal record, and form of bail. The defendants' sex, race, income, age, and employment status all were shown to have either no significant effect on nonappearance and rearrest that could be measured in the data, or (in a few instances) a reverse effect from the one expected. The seriousness of the offense charged also had no measurable effect, although it may have had an effect that was counteracted by the standard practice of setting higher bond for more serious offenses. Court disposition time proved to have an important effect; the chance of avoiding nonappearance and rearrest dropped five percentage points for each additional two weeks the defendant remained free on bail. Criminal history, measured by prior arrest record, also had a strong effect.

Comparison of various forms of bail were made, adjusting simultaneously for criminal history and court disposition time. Forms of bail that rely solely on the threat of financial loss to ensure appearance in court proved to be the worst in terms of rates of nonappearance and rearrest. Post-release supervision, provided by the Mecklenburg County Pre-Trial Release program, had a significant and substantial effect in reducing bail risks and the deleterious effect of court delay. A sizable group of defendants--those without a serious criminal record whose cases do not take unusually long to dispose of--probably do not benefit from post-release supervision, as the successful releasing practices of Charlotte magistrates show. Post-release supervision should probably be allocated to defendants who need it most--those with substantial criminal records and those whose cases take unusually long to reach court disposition. Finally, nothing in the study suggests that it would be desirable to remove the financial disincentive of an unsecured appearance bond whose amount depends generally on the seriousness of the offense charged.

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INTRODUCTION

Bail, also called pretrial release, is a legal means of freeing a defendant before court disposition of criminal charges against him. Its purpose is to prevent the defendant from being jailed when still presumed innocent and to assure that he will appear in court when required. The right to bail is not absolute; it is conditional, in the sense that the court may set reasonable conditions intended to insure his appearance at the various stages of his trial. Failure to appear in court when required usually carries some penalty for the bailed defendant. The penalty may take the form of forfeiting a specific sum of money, additional criminal punishment, or loss of pretrial freedom. It reflects the risks that society takes when the defendant is released, including:

1. The risk that the government (and others, including witnesses) will be inconvenienced by a delay in prosecuting the case against the defendant due to his absence;

2. The risk that the policies of judicially resolving issues of criminal liability and of imposing criminal sanctions on those found liable will be frustrated by the defendant's fleeing the jurisdiction and avoiding recapture;

3. The risk that the defendant may commit crimes while on bail before his case can be disposed of.

Although the law in this area is not settled, the view on granting bail that may prevail[1] is that the decision whether to release a defendant constitutionally must be based only on the likelihood of nonappearance and (because he is presumed innocent) not on the likelihood that the defendant will commit crimes while released. However, a concern for public safety will not let us ignore the risk of new crimes. If it is correct that the initial decision to release must be based (legally) only on the risk of nonappearance and not on the risk of committing crime while on bail, it is good policy to use all lawful means after release to reduce the risk of nonappearance and the risk of committing crime.

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1. After careful consideration, the American Bar Association's Advisory Committee on Pretrial Proceedings recommended against permitting "preventive detention" (denying bail based on a prediction that the defendant will commit crime if released), not because that practice would violate the U.S. Constitution but because many state constitutions provide an absolute right to bail and because identifying which defendants would commit crime while released would be very difficult. See American Bar Association, Standards Relating to Pretrial Release, § 5.5, Commentary 65-71 (1968).

The administration of bail necessarily involves an estimation of the likelihood that the defendant will not appear in court or will commit a new crime while released. (The likelihood that one or both of these things will happen is called the "bail risk" in this study.) In the most common form of release, bail bond, the defendant obtains his freedom by promising to pay a stated sum, the "bond amount," if he fails to appear. In most cases the bond amount depends entirely on the nature of the charge or charges for which the defendant is being tried -- the more serious[2] the charge, the greater the bond amount. Relating the bond amount to the seriousness of the charge seems to be based on this reasoning: the more serious the charge, the more reluctant the accused is likely to be to appear in court and face the consequences; the greater the reluctance to appear, the greater the disincentive (threat of financial loss) needed to prevent nonappearance. (Nothing in this study suggests that this reasoning is false.) In some cases the bond amount is intentionally set beyond the defendant's likely ability to raise it or obtain a surety for it; such prohibitive bond-setting may be seen either as a judgment that the defendant cannot be relied on to appear in court under any circumstances or as a decision to impose "preventive detention" to protect the public from the defendant.

Since the Vera Institute of Justice initiated the Manhattan Bail Project in 1960 as an alternative to the conventional bail bond system, reformers have advocated a system of release in which the calculation of the risk of nonappearance depends not only on what the defendant is charged with but also on his characteristics and background. The American Bar Association has recommended that, in determining whether there is a "substantial risk of nonappearance," the following factors should be considered:

(1) The length of the defendant's residence in the community, his employment history and financial condition;

(2) His family ties and relationships;

(3) His reputation, character, and mental condition;

(4) His criminal record;

(5) Whether there are responsible persons who will vouch for his reliability;

(6) The nature of the offense charged and the likelihood of conviction ("insofar as these factors are relevant to the risk of nonappearance"); and

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2. In the system employed in Charlotte, "seriousness" in this context corresponds roughly to the maximum fine or prison term for an offense.

(7) "Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear."

The American Bar Association's position is that unless these factors indicate a "substantial risk" of nonappearance, the defendant should be released simply with an order to appear in court, or on his own promise to appear, without further conditions. If the degree of risk is "substantial," conditions of release may be set, including placing the defendant under care or supervision while released and imposing reasonable restrictions on his activities. In the ABA view, bail bond should be used only as a last resort, when nothing else "will reasonably assure the defendant's appearance in court." The bond amount--i.e., the degree of financial loss to the defendant if he fails to appear--must depend on all the factors listed earlier, not merely the charge against him, and thus "be the result of an individualized decision, taking into account the special circumstances of each defendant."[3]

Recent innovations in bail have usually been consistent with the ABA recommendations and have involved point systems for calculating risk of nonappearance in which length of residence and other "community ties" have positive values and criminal convictions have a negative value. Both conventional bail bond and forms of release consistent with the ABA's recommendations will be considered in the analysis that follows. This paper will report on what a set of data collected recently in Charlotte, North Carolina,[4] tells us about how various factors affect bail risk and which forms of bail are most effective in controlling bail risk. The specific questions addressed include the following:

- Which factors explain most of the variation in bail risk?
- How do these factors rank in importance?
- Do the factors commonly thought to influence bail risk have the expected effect?
- How do the bail bond and ABA-recommended forms of release compare with regard to control of bail risk?
- What improvements in present forms of release do the data suggest?

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3. American Bar Association, Standards Relating to Pretrial Release, §§ 5.1, 5.2, 5.3 (1968). The ABA recommends the prohibition of "compensated sureties" (professional bondsmen); id. at §§ 5.4.

4. For an earlier study of the same data, see S. H. Clarke, "The Bail System in Charlotte, 1971-73" (National Technical Information Service, Document Number PB-239 827/AS, Arlington, Virginia, 1974).

THE DATA

The source of the data is the police and criminal court records of Charlotte, North Carolina, reflecting criminal prosecutions begun by arrest during the first three months of 1973. The unit of data is the arrested defendant, who may have one or more specific charges filed against him. A total of 861 defendants were chosen by random sampling from the chronological police record of arrests from January through March 1973.[5] The fact that these defendants were randomly chosen from a particular defendant population in Charlotte does not make them representative of the statewide or nationwide defendant population, yet conclusions reached from the Charlotte data may apply to other communities, allowing for local differences.[6]

The 861 defendants in the sample amounted to about one-third of the defendants arrested in Charlotte during the first quarter of 1973. This third excludes those charged with public drunkenness, hunting and fishing offenses, and traffic and vehicular violations, but includes those charged with driving under the influence of alcohol. Of the 861, 756

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5. The sample was stratified on race (black or other) and offense type (one of eight categories). The original plan was to stratify the sample on all variables that were related to bail outcomes; among the many variables that at first were thought to have an effect on bail opportunity and bail risk, the only ones available in the police arrest records were race and offense. Later, we decided to use the selected defendants as a total population or "observational sample," even though the sampling fractions varied considerably among the sixteen race and offense subpopulations of defendants. To eliminate any bias introduced into the data in this way, race and offense were treated as independent variables (along with a number of others) in the analysis. The over-all sampling fraction was about a third (861 out of 2,578). The actual sampling fractions based on race and police offense category were as follows (the fraction for blacks is given first): serious crime against persons, 76/161, 59/62; serious crime against property, 40/82, 58/62; serious "vice" (mostly drug distribution), 14/15, 44/44; nonserious crime against persons (simple assault, drunken driving, etc.), 83/422, 84/429; nonserious crime against property, 89/456, 94/489; nonserious "vice" (simple drug possession, prostitution, gambling), 46/47, 65/130; nonserious family (nonsupport), 36/79, 31/62; nonserious "other" (mostly disorderly conduct), 21/22, 21/21.

6. These data are sufficient to allow some tentative conclusions about bail risks and forms of release. For general conclusions, confirmation is needed on the basis of data from other communities and national samples.

received some form of release before court disposition.[7] All information used here was captured by tracing the defendants and their charges through police and criminal court files. All court cases (specific criminal charges) were followed through until disposition--including sentence, if any--in the trial court. The cases of those few misdemeanor defendants convicted by a judge in the district (lower) court who exercised their right to a trial de novo by jury in the superior (higher) court were not considered disposed of until the superior court trial had concluded. For the 41 defendants whose cases were still undisposed at the end of 1973, an exception was made: January 4, 1974, was used as a cutoff date. When a defendant had more than one charge (about 19 per cent of the total did) and when these were disposed of on different dates, the disposition date recorded was that of the "principal case"--i.e., the one that received the most severe court disposition according to a weighting scheme. (Usually the "principal case" took longer to be disposed of by the courts than the defendant's other cases.)

FACTORS CONSIDERED BY THE STUDY

The study examined a number of factors, including the defendant's characteristics, the charge against him and his criminal record, the form of bail he received, and court disposition time--the number of days he was free on bail before his case was disposed of by the court. The percentage distributions of these various factors appear in Table 1. The primary interest of the study was in (1) whether the defendant failed to appear in court, and (2) whether he was rearrested for an alleged new offense after pretrial release and before court disposition. Failure to appear (also called "nonappearance" here) was determined by whether at least one capias (arrest warrant) was issued by a judge because of the defendant's absence at a scheduled court appearance. (Failure to appear resulted almost invariably in issue of a capias, except when the defendant was released on cash bond; this will be discussed later.) Rearrest, which we use here as an indication of whether the released defendant committed crimes while on bail, was determined from the police records of arrests throughout Mecklenburg County, in which Charlotte is located. If these records showed that the defendant had been arrested for a new offense other than public drunkenness, or hunting and fishing, traffic, or vehicular violations (but including driving under the influence) in the county between the dates of release and court disposition, the defendant was counted as having been rearrested. This definition can be criticized because it includes arrests in which the defendant had not in fact committed a crime and because it includes no information about offenses committed outside the county. The

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7. The actual total of released defendants was 762, but six were eliminated because of data collection errors.

criticism is countered by the fact that almost all of the 756 released defendants were present in the county at least often enough for their cases to be disposed of in court; only 19 fled the jurisdiction (i.e., had warrants for nonappearance still outstanding as of January 4, 1974).

Because nonappearance and rearrest are roughly equally important with regard to bail policy, most attention was focused on whether the defendant failed to appear or was rearrested or both. As Table 1 shows, 70 defendants (9.3 per cent) failed to appear, 75 (9.9 per cent) were rearrested while on bail, and 137 (18.1 per cent) either failed or were rearrested. (Eight defendants failed to appear and were also rearrested for new crimes; this explains why the last figure was 137 and not 145.) The probability of nonappearance or rearrest or both is referred to here as "bail risk" or "combined bail risk."

The study relied on information concerning defendants who were actually released. Some defendants (about 12 per cent of the total sample) were not released at all before court disposition of their charges. Exclusion of these defendants probably has not distorted the study's findings, even though there is reason to believe the unreleased defendants would have had higher-than-average nonappearance and rearrest rates if they had been released.

The factors first thought to be causally related to nonappearance and rearrest are listed below, followed by brief definitions and statements of the reasons for choosing them (as will be seen, most of these factors turned out to have either very little measurable effect on bail risk or an effect contrary to what we expected):

- Sex
- Age
- Race
- Income
- Local residence
- Family ties [not used in this study due to lack of data]
- Employment
- Criminal history
- Type of offense charged in current prosecution
- Court disposition time
- Form of pretrial release

The defendant's sex and age were included because of abundant evidence that males are more likely to commit crime than females and those in their teens and early twenties are more likely to commit crime than older people. Therefore, we supposed that bail risk would be greater for male defendants than for female defendants and greater for younger defendants than for those past their early twenties.

Race and income were included because of the possibility that the

Table 1
Description of Released Defendants in Terms of Factors Chosen for Study (756 = 100.0%)

	No.	Percentage
Sex		
Male	598	79.1%
Female	158	20.9%
Age		
14-24	314	41.5%
25-34	236	31.2%
Over 34	206	27.2%
Race		
Black	350	46.3%
Other	406	53.7%
Income		
Low	392	51.9%
High	304	40.2%
Unclassified (residence outside Charlotte)	60	7.9%
Employment		
Employed	466	61.6%
Student	68	9.0%
Unemployed	115	15.2%
Unknown	107	14.2%
Prior Arrests		
None or one	491	64.9%
Two or more	265	35.1%
Offense Seriousness		
Felony	161	21.3%
Misdemeanor	595	78.7%
Offense Category		
Felony-Persons	33	4.4%
Felony-Property	66	8.7%
Felony-Vice	62	8.2%
Misd.-Persons	212	28.0%
Misd.-Property	178	23.5%
Misd.-Vice	83	11.0%
Misd.-Family	77	10.2%
Misd.-Other	45	6.0%
Form of Release		
PTR	217	28.7%
Magistrate	69	9.1%
Cash	72	9.5%
Bondsman	346	45.8%
Other	52	6.9%
Failure to Appear		
Failed	70	9.3%
Did not fail	686	90.7%
Rearrest on New Charge		
Rearrest	75	9.9%
No Rearrest	681	90.1%
Combined Bail Risk		
Failed or rearrested or both	137	18.1%
Neither	619	81.9%
Time at Risk		
1 week or less	29	3.8%
1 to 2 weeks	74	9.8%
2 to 3 weeks	131	17.3%
3 to 4 weeks	74	9.8%
4 to 5 weeks	62	8.2%
5 to 6 weeks	61	8.1%
6 to 7 weeks	80	10.6%
7 to 8 weeks	32	4.2%
8 to 9 weeks	43	5.7%
9 to 10 weeks	30	4.0%
10 to 11 weeks	27	3.6%
11 to 12 weeks	17	2.2%
More than 12 weeks	96	12.7%

social disadvantages experienced by black and low-income defendants might make their bail risk greater than that of whites and higher-income defendants. Race was defined as (1) black or (2) other. Income was defined in terms of the median 1969 income of the census tract of residence. Originally, five income levels were used but seemed to provide no more information than the two that were eventually used: "low," meaning under $7,000, the approximate citywide median; and "high," meaning $7,000 and over. Because census tracts in Charlotte are relatively compact and homogeneous, we considered them an adequate, though indirect, measure of defendants' income.[8] About 9 per cent of the defendants resided outside Charlotte; most of these lived in Mecklenburg County, where rural postal route addresses prevented their assignment to census tracts. Since the median income of suburban Mecklenburg County as a whole exceeds $7,000, we included defendants who were not Charlotte residents in the high-income category.

We initially hypothesized that a defendant who was a local resident would have a lower bail risk than a nonresident and a defendant who was either employed or a full-time student would have a lower bail risk than one who was unemployed. Unfortunately, the present data do not provide an adequate test of the hypothesis that local residence is associated with bail risk, because so few of the defendants were not local residents; 91 per cent had Charlotte addresses[9] and most of the others lived in the nearby suburbs. Employment status (employed, full-time student, or unemployed) at the time of arrest was also included because of its presumed relationship to commitment to conventional values. Family ties--whether the defendant lived with parents, spouse, or other kin and the degree of contact and type of relationship he had with family members--were also thought to be indicators of commitment to conventional values; unfortunately, no data on family ties were available for most defendants.

The defendant's criminal history was thought to be related in general to his future criminal behavior, and thus to rearrest while on bail and perhaps also to nonappearance. Criminal history was measured by prior arrests in Mecklenburg County, which means that the measurement was incomplete for the relatively few defendants who had spent most of

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8. For a defense of a nearly identical method of determining income, see M. E. Wolfgang, R. M. Figlio, and Thorsten Sellin, Delinquency in a Birth Cohort (Chicago: University of Chicago Press, 1972), pp. 47-52.

9. Most defendants counted as Charlotte residents actually had an address in Charlotte at the time of arrest that caused them to be included in this study. However, some were past but not present residents of the city. Our definition of local residence is not an ideal one, because relying on police arrest records does not provide a full picture of an arrested person's residential history.

their adult lives outside the county. Criminal histories were grouped into two categories: (1) zero or one prior arrests, and (2) two or more prior arrests. Originally, zero and one were made separate categories, but since the analysis revealed little difference between the two in their effect on post-release behavior, they were combined. Arrests for public drunkenness, fishing and hunting violations, and traffic and vehicular offenses (except driving under the influence) were excluded.

The offense with which the defendant was charged was expected to be related to bail risk for the same reasons as criminal history, and also because those charged with serious offenses were presumed to be more reluctant than others to appear in court and face possible punishment. The type of offense was defined in two ways on the basis of the specific breach of North Carolina law alleged in the defendant's court record: (1) as a felony (carrying a maximum penalty of more than two years' imprisonment) or misdemeanor (carrying a maximum penalty of two years or less); and (2) as one of eight categories into which felonies and misdemeanors were divided. The eight offense categories are felonies against the person, felonies against property, "vice" felonies (mostly involving distribution of drugs), misdemeanors against the person (more than half of these were simple assaults and nearly all the rest were driving under the influence), misdemeanors against property, "vice" misdemeanors (mostly simple possession of marijuana and other drugs), "family" misdemeanors (such as nonsupport), and "other" misdemeanors (nearly all disorderly conduct). If more than one charge was filed against the defendant, offense information was taken from the principal case as defined on page 6.

Court disposition time (also called "court delay" here) is ordinarily defined as the amount of time between the defendant's arrest and his court disposition. Defining it that way would create a problem in this study. We hypothesized that court disposition time would directly affect the defendant's probability of failing to appear and/or being rearrested, in that the longer he was free before court disposition, the greater opportunity he would have to forget his obligation to appear in court, make plans to flee the jurisdiction, or become involved in illegal activity. In this sense, long court delays can cause failure to appear and rearrest. However, the reverse is also true; failure to appear (and sometimes rearrest while the original case is pending) can cause court delay. When the defendant does not show up in court, a delay of days or weeks occurs while he is found, arrested, and brought back to court. Rearrest on a new charge can also slow the trial of the original charge. In this study, we are interested only in the effect of court delay on failure to appear and rearrest, <u>not</u> the effect of failure to appear and rearrest on court delay. To avoid confusing the two effects in the study, court disposition time has been defined as the number of days from the defendant's first pretrial release date (for most defendants this was within five days after arrest) until (1) his case or cases were disposed of by the court, (2) he failed to appear in court as scheduled, or (3) he was rearrested on a new charge, whichever occurred

first. Thus, when the terms "court delay" and "court disposition time" are used here, they do not include any period of time after failure to appear or rearrest in cases in which the defendant fails to appear or is rearrested.[10]

The procedure by which the defendant obtained his pretrial freedom--here called "form of release"--was thought to be of major importance in determining bail risk. Releasing procedure includes not only the method of selecting those to be released but also the supervision (if any) of the releasee until court disposition. Forms of release available in Charlotte are explained in the next section.

FORMS OF PRETRIAL RELEASE IN CHARLOTTE

There are six distinct forms of pretrial release in Charlotte. Among them are conventional bail, in which sole reliance is placed on the threat of financial loss (bond forfeiture) to insure appearance of the defendant, the bond amount being determined by the seriousness of the charge against the defendant, and release that generally follows the American Bar Association standards stated earlier, in which the decision to release is based on a variety of factors.

In conventional bail, the bond amount is usually set according to a schedule of minimum amounts prescribed by the chief district court judge. These depend solely on the seriousness of the offense charged and, in 1973, ranged from $15 for minor offenses such as failure to pay cab fare to $5,000 for safecracking. One form of conventional bail is "cash bond," in which the defendant simply deposits the full bond amount in cash with the court, to be refunded if he appears as required and forfeited if he does not.[11] Of the 72 defendants in the study who were released in this fashion, most were charged with misdemeanors such as drunken driving, passing worthless checks, disorderly conduct, and domestic nonsupport. Apparently, if the defendant on cash bond was charged with a minor offense and did not have a substantial criminal

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10. Court disposition time presented a special problem in the analysis because it is not stochastically independent of the dependent variables, failure to reappear and rearrest. The occurrence of nonappearance or rearrest will "stop the clock" and make the disposition time shorter than it would be if the defendant behaved himself until normal court disposition. To solve this problem, disposition time was handled as a co-dependent variable.

11. In some jurisdictions bail can be obtained by posting some fraction of the bond amount, such as 10 per cent. A proposal to allow this in North Carolina was considered by the General Assembly's Criminal Code Commission in 1973, but was ultimately defeated by the professional bondsmen's lobby.

record, he was often permitted to escape further prosecution merely by forfeiting bond--as if he had pled guilty and paid a fine. Because nonappearance in this study was determined by whether the judge issued an arrest warrant for failure to appear, and because judges were probably reluctant to issue such warrants when the defendant was released on cash bond and charged only with a minor offense, the actual nonappearance rate among cash bond releasees is probably much higher than the rate as we measured it. A variant of cash bond is "property bond," in which the defendant or some benefactor pledges property of sufficient value to cover the bond amount. Only thirteen defendants in the study were released on property bond; they are included in the "Other" category in the tables.

The most common form of bail, here called "bondsman release," is obtained by paying a professional bondsman's fee in return for the bondsman's acting as surety for the bond amount. At the time of the study, the nonrefundable fee might range from 15 to 30 per cent of the bond amount and was not subject to any legal maximum.[12] As businessmen, bondsmen must be concerned about the risk of the defendant's nonappearance because they may have to forfeit part or all of the bond amount if he does not appear. Total forfeiture is not automatic, however; a sympathetic judge may entertain motions to delay forfeiture when the bondsman says he is trying to locate the missing defendant, or he may reduce the amount forfeited. Bondsmen probably calculate the relative reliability of their clients and maintain some sort of surveillance of those they consider most risky. So much can be assumed as a matter of good business practice, although we made no detailed investigation of bondsmen's operations. However, the bondsman and the defendant have no regular contact after release in most cases.

Three other forms of pretrial release that are consistent with the American Bar Association standards have resulted in Charlotte from North Carolina's enactment of a new law providing for release "other than on bail" of all defendants except those charged with capital crimes (for whom there is no constitutional or statutory right to bail). This legislation, passed in 1967, authorizes release "if it appears likely that [the defendant] will appear . . . at the proper time." In determining the risk of nonappearance and the conditions of release, the releasing officer (a magistrate or judge) is required to take into account

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12. Legislation passed in 1975 limits the bondsman's fee to 15 per cent of the bond amount (Ch. 619, 1975 Session Laws, N.C. Gen. Stat. Ch. 85A). Despite the expense of the bondsman's fee, the majority of low-income defendants evidently preferred bondsman release to a form of release not involving any cost to them. In 1973, the ratio of bondsman releasees to releasees of the PTR program (described later in the text) was 1.6 to 1 for the low-income group. Perhaps low-income defendants feared the half-hour interview by PTR staff, or perhaps they were willing to pay for the quicker release procedures of bondsmen.

> . . . the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.[13]

The law further provides that release of this type may be either (1) by "unsecured appearance bond," whereby the defendant signs a promise to pay a stated sum if he fails to appear but is not required to secure the bond with any cash deposit, property pledge, or surety; or (2) upon the defendant's "own recognizance," whereby he simply signs a promise to appear with no financial penalty.[14] The statute makes failure to appear in these circumstances a criminal offense subject to up to two years' imprisonment; in contrast, the only penalty for nonappearance in conventional bail bond is forfeiture of the bond amount.[15]

The criminal courts in Mecklenburg County have developed three forms of pretrial release on the authority of the 1967 law: magistrate release, PTR release, and "own recognizance" release. (Magistrates are judicial officials of limited jurisdiction before whom defendants are brought immediately after arrest; their office in Charlotte is staffed around the clock daily.) In December 1970, the chief district judge issued rules permitting magistrates to release on "unsecured appearance bond" defendants who are:

1. Residents of the state;

2. Not charged with drunken driving, driving with a revoked or suspended license, assaulting or resisting a public officer, any drug law violation, racing in an automobile, or speeding over 80 mph;

3. Able to qualify under the point system (described below); and

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13. N.C. Gen. Stat. § 15-103.1(b) (1974 Supp.). Although not repealed, this section is superseded by N.C. Gen. Stat. Ch. 15A, Art. 26, effective September 1, 1975, which has generally similar provisions.

14. N.C. Gen. Stat. § 15-103.1(a) (1974 Supp.).

15. N.C. Gen. Stat. § 15-103.1(c) (1974 Supp.). N.C. Gen. Stat. § 15A-543 (effective September 1, 1975) makes all failure to appear a crime, regardless of type of release, a misdemeanor if the original charge was a misdemeanor and a felony if the original charge was a felony.

4. Not charged with a felony (in practice, this criterion has been relaxed; magistrates are evidently often authorized or requested by higher-ranking judges to release felony defendants, and 26 per cent of their releasees in our 1973 sample were charged with felonies).

An additional restriction was imposed on magistrate release by Mecklenburg County's chief district court judge in July 1972: magistrates were not allowed to release defendants who were eligible for release by the PTR program (described below). This was done because the magistrates were perceived as competing with the PTR program, which was thought to be a better form of release. Despite this restriction, magistrates continued to release defendants. The defendants they released included (1) those charged with misdemeanors but ineligible for PTR release, often because of residence outside the county; (2) those charged with felonies when judges requested release; and (3) (possibly) some defendants who were eligible for PTR but whom magistrates released despite the instruction not to do so.

In the magistrates' point system, points are assigned on the basis of how long the defendant has lived in the county, how long he has worked for the same employer, whether a family member or employer will co-sign the bond, whether he owns real property in the county, whether he is known by the magistrate or arresting officer to be reliable and likely to appear in court, whether he is married and living with his spouse or children, and whether he is represented by an attorney. (Clearly at least two of these criteria--owning property and having a privately paid attorney--discriminate against the low-income defendant.) Magistrates are not formally required to take the defendant's criminal record into account, but it is safe to assume that they often do. An arresting officer may recognize an arrestee who has been arrested or convicted several times before and can check police arrest records without much trouble if he is in doubt. If he believes the defendant had a substantial record, the arresting officer will probably tell the magistrate. That magistrates do consider criminal record is supported by the fact that in our study the proportion of defendants with two or more prior arrests was about the same (approximately one-fourth) among those released by magistrates and among those released by the PTR program (described below). The PTR program is formally required to take prior convictions into account. In any event, a defendant with a sufficient point score who meets the other criteria (including whatever subjective criteria the magistrate chooses to apply) is released without any pledge of property, cash deposit, or surety when he signs a promise to pay the usual bond amount for his alleged offense if he fails to appear. After release by the magistrate, the defendant is on his own; no reminder of court dates or other supervision is provided.

The second form of release based on the 1967 law, here called "PTR release," is similar to magistrate release with regard to releasing procedure,; it differs in using a specialized staff and post-release supervision. The Mecklenburg County Pre-Trial Release ("PTR") Program,

which began operating in July 1971 on federal funds, is authorized to consider for release any defendant who resides in the county and is not charged with certain offenses. In 1973, these excluded offenses were public drunkenness, first-degree murder, rape, first-degree burglary, safecracking, being a habitual felon, assault upon a public officer, kidnapping, malicious use of explosives, and narcotics felonies. (Aside from public drunkenness, which is excluded from this study, all of the excluded offenses were rare except for drug felonies; the latter constituted about one-fourth of all felony charges filed in 1973. After the period of the study, the rule barring those charged with drug felonies began to be relaxed in some instances.) After his appearance before a magistrate, an eligible defendant has an opportunity to be interviewed by a PTR investigator; investigators, like magistrates, are available 24 hours a day. The interview usually takes about half an hour--more time than the typical magistrate or bondsman release requires--and concerns a number of factors thought to be related to the defendant's likelihood of appearing in court, including all of those considered in the magistrates' point system (see preceding paragraph) and these additional factors:

1. Whether the defendant has ever failed to appear in court,
2. Whether he is a drug addict or alcoholic,
3. Whether he has been convicted of crimes in the county, and
4. The recency and seriousness of his convictions, if any.

The PTR staff is prepared to check all the defendant's responses, if this is thought necessary. Prior convictions are routinely checked in court records (because these records are accessible only on weekdays, a defendant arrested at night who admits to, or is suspected of, a serious criminal record may have to wait overnight or over the weekend for the record check to be completed). On the basis of the defendant's point total, the PTR program recommends for or against his release (the recommendations have been about 85 per cent favorable). A favorable recommendation is nearly equivalent to release, although approval by a magistrate is formally necessary for a misdemeanor defendant and by a judge for a felony defendant. This requirement sometimes means an overnight or over-the-weekend delay for felony defendants arrested when the court is closed. Like the magistrate-released defendant, the PTR-released defendant is required to sign an unsecured appearance bond and is subject to a misdemeanor penalty for failing to appear.

The PTR staff's initial interview, besides serving as a means of selection, may have another function. As this study will suggest, the pre-release interview of the defendant by a person in authority (the PTR staffer), who expresses his concern that the defendant appear in court as required and stay out of trouble in the meantime, may serve the same purpose as post-release contact and supervision.

PTR release is the only form of bail in which the defendant is supervised after release and has regular contact with releasing authorities.

All PTR releasees are required to agree in writing to telephone the PTR office at a specified time each week and to report there at 8:15 a.m. on any day of a scheduled court appearance to indicate their readiness to go to court. Before each court date, PTR releasees receive a mailed reminder. In addition, a PTR releasee who seems irresponsible may be warned that his release will be terminated if he does not cooperate (though termination has been rare).

One other form of bail in Charlotte, used infrequently, is release by a judge on "own recognizance"--i.e., on the defendant's unsecured promise to appear in court. According to the 1967 law cited earlier, the judge is required to consider not only the defendant's charge and criminal convictions but also his community ties. Normally no post-release supervision is provided in "own recognizance" release. Failure to appear on "own recognizance" release, as on magistrate and PTR release, is punishable as a misdemeanor, although it involves no forfeiture of money.[16]

Because so few defendants were released on "own recognizance" (39) and property bond (13), the analysis gives little attention to these forms of bail; the 52 defendants released on "own recognizance' and property bond are grouped in the "Other" category in the accompanying tables. (See Table 2 for the relative frequency of the various forms of release among the defendants in the sample.[17])

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16. As Table 3 shows later in the text, defendants released on "own recognizance" were much more likely than others to have been charged with felonies and thus probably had difficulty obtaining other forms of release. Their performance while released is discussed in a later section concerning possible bias in the study as a result of excluding those defendants who obtained no release at all.

17. The analysis in Clarke, op. cit. supra note 4, indicated that when the PTR program's operation went into full swing early in 1972, most of its clients were defendants who would have been released by magistrates on unsecured bond had the PTR program not existed, although some would have become bondsmen's customers and some would not have been released at all. Professional bondsmen steadily lost clients after magistrate and PTR release were introduced, not only to those two forms of release but also to "own recognizance" and cash bond release. The gain in the latter form of release may have been indirectly due to the PTR program, because the PTR staff sometimes made defendants aware of their right to cash bond (even though they might have been ineligible for PTR release). The advent of the PTR program produced only a slight reduction in the proportion of defendants who obtained no release at all.

Table 2
Defendants Released on Various Forms of Bail

Form of Release	Number	Percentage
No Release (Jail)	99	11.6
Bondsman	346	40.5
Cash Bond	72	8.4
Magistrate	69	8.1
PTR	217	25.4
Other (Property Bond and "Own Recognizance")	52	6.1
Total	855	100.0

We can now review briefly some of the main features of the various forms of bail in Charlotte. (1) PTR and magistrate release are consistent with the principles of the ABA in most respects, except that both use the threat of financial loss in all cases by requiring the defendant to sign an appearance bond. All of the four most common forms of release involve an appearance bond whose amount depends on the seriousness of the offense charged. (In cash bond and bondsman release, the bond is secured; in PTR and magistrate release, it is unsecured.) This means that the nonappearing PTR or magistrate releasee in our study had as much reason to fear financial loss as the cash bond or bondsman releasee (in fact, perhaps more; one judge commented that PTR releasees would be dealt with more strictly when the question of enforcing bond forfeiture came up because they had "already had one break"). (2) Only PTR release used post-release contact with and supervision of the defendant. This probably reduces the likelihood that the releasee will forget his court date. It also may make the releasee feel that his actions are visible to the authorities, and therefore may tend to discourage not only making plans to avoid appearing in court but also becoming involved in new crimes. (3) Failure to appear while released by the PTR program or magistrates constitutes a separate criminal offense, but failure to appear while on bail bond was not a crime at the time of the study. We do not think this is an important difference, because prosecution for failing to appear is evidently rare.[18]

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18. Another disincentive to failure to appear is stiffening of conditions of release after the failed defendant is reapprehended. For example the bond amount can be raised or the defendant, if a PTR client, may (rarely) be rejected by PTR. This disincentive affects defendants on all forms of bail more or less equally. Also, if a released defendant merely behaves so as to arouse suspicion that he may fail, it is theoretically possible to revoke his release. The bondsman or the PTR program can be absolved of responsibility and the defendant can be rearrested. This sort of "anticipatory" revocation almost never occurs.

Table 3 shows that defendants released in various ways differed in their characteristics. For example, magistrate and PTR releasees were somewhat less likely than bondman releasees to be of low income. Of the characteristics in which the various releasee groups differed, none had much effect on bail risk that we could measure, except for time at risk and prior arrests. When these factors are adjusted for statistically, some tentative conclusions can be made about the relative effectiveness of various forms of release.

MEASURING THE EFFECT OF COURT DISPOSITION TIME

A full explanation of the statistical method used in the study is beyond the scope of this report, but something needs to be said about the method of measuring the effect of court disposition time in conjunction with other factors.[19] The method involved the use of "survival rates" and "survival curves."[19] Survival curves, represented by the various graphs shown later, represent bailed defendants' dwindling chances of staying out of trouble as time goes by.[20] As one reads the graphs from left to right, the number of weeks that the defendants are free on bail with their cases still not disposed of by the court increases. The height of the graph at any point in time indicates the "survival rate" at that time--the probability that a defendant will "survive" (remain free

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19. The statistical theory for this approach is explained in G. G. Koch, W. D. Johnson, and H. D. Tolley, "A Linear Models Approach to the Analysis of Survival and Extent of Disease in Multidimensional Contingency Tables," Journal of the American Statistical Association, 67 (1972), 783-96.

20. Our statistical method implicitly assumes that each new day of freedom before court disposition, or each new time period, brings with it a new risk of failing to appear in court. This is a simplification of reality, of course. Defendants are not required to appear in court each day. Data collected in Charlotte in 1972, similar in relevant respects to the present data, indicate that among defendants charged with misdemeanors, 62 per cent had to appear only once in court for a final disposition, 22 per cent had to appear twice, 10 per cent had to appear three times, and 6 per cent had to appear four, five, or six times. For those charged with felonies, the corresponding figures were: one appearance, 12 per cent; two appearances, 27 per cent; three appearances, 16 per cent; four appearances, 23 per cent; and more than four appearances, 22 per cent. The average amount of time elapsing between successive appearances was 23 days for those charged with felonies and 25 days for those charged with misdemeanors. The scheduling of these court appearances varied with each defendant. The method used in this paper assumes that the exposure to the risk of nonappearance is uniformly distributed over time.

Table 3
Characteristics of Defendants on Various Forms of Bail
(Figures are Percentages*)

	No Release (Jail)	Bondsman	Cash Bond	Magistrate	PTR	Other[5]	All: Released and Not Released
Sex							
Male	91%	83%	85%	62%	73%	92%	81%
Female	9	17	15	38	27	8	19
Age							
14-24	57	38	35	49	43	58	43
25-34	19	32	32	28	32	23	30
Over 34	24	29	33	23	24	17	26
Race							
Black	53	49	21	27	58	42	47
Other	47	51	79	73	42	58	53
Income							
Low	60	59	39	30	50	60	53
High	25	31	53	62	46	29	39
Unclassified[1]	15	10	8	7	4	12	9
Employment							
Employed	43	62	67	57	66	42	60
Student	4	6	10	12	14	4	8
Unemployed	30	15	15	13	10	23	16
Unknown[2]	22	17	8	19	10	31	16
Prior Arrests							
None or one	44	58	76	70	75	50	63
Two or more	56	42	24	30	25	50	37
Offense Seriousness[3]							
Felony	51	22	12	26	12	60	25
Misdemeanor	49	78	88	74	88	40	75
Offense Category[4]							
Felony-Persons	21	5	0	3	1	20	6
Felony-Property	27	8	3	12	8	22	11
Felony-Vice	8	9	10	12	2	20	8
Misd.-Persons	11	31	32	19	28	17	26
Misd.-Property	11	19	19	26	35	8	22
Misd.-Vice	13	12	14	7	12	2	11
Misd.-Family	0	10	13	17	8	10	9
Misd.-Other	9	6	10	4	6	2	6

*Percentages may not add to 100 because of rounding

1. "Unclassified income" refers to all defendants who resided outside Charlotte at the time of arrest and had no past Charlotte address in police arrest records.

2. No entry as to employment appeared on these defendants' police arrest forms; presumably, the majority were unemployed.

3. Felony carries maximum sentence of more than two years in prison; misdemeanor, two years or less. Two cases with this information missing were included under "misdemeanor."

4. Categories explained in text.

5. Includes 39 defendants released on "own recognizance" and 13 released on property bond.

without either failing to appear in court or being rearrested on a new charge) up to that time. The steeper the slope downward from left to right, the greater is the effect of court disposition time on bail risk.

Survival rates and curves were computed[21] for various groups of defendants, grouped according to whether they had an arrest record and what type of release they received (bondsman, cash bond, PTR, etc.); by sex, age, race, income, local residence, employment status, and type of offense charged; and also by certain combinations of these factors. (The survival curves for prior arrests and type of release are shown here; the others are not.) To determine the effects of these factors on bail risk, the corresponding survival curves were compared. If the survival curve of one group of defendants is significantly lower and slopes downward to the right more steeply than the survival curve of another group, the first group of defendants has generally higher bail risks than the second group, or--to put it another way--the bail risk of the first group is increased more by court delay than the bail risk of the second group.

It should also be pointed out that an apparent difference in survival rates or curves is not always a statistically significant one. When a difference in rates could have been an accidental result of selecting sample data, the difference is said to be "not significant"; when the difference and/or the amount of data are large enough so that the difference is unlikely to be the accidental result of selecting the sample and instead probably reflects a true difference in the populations studied, the difference is said to be "significant." Certain mathematical quantities, called "significance statistics," are computed to determine whether observed differences in rates are significant.

FINDINGS

Table 4 shows the relationship to bail risk of each factor studied. The 756 defendants studied are grouped according to sex, age, etc., and for each group the percentage is indicated of those who failed to appear, those who were rearrested for a new offense, and those who failed or

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21. Our method of computing survival rates was to estimate them, assuming that (1) those whose cases were disposed of in the nth week can be considered equivalent to those who survived past the nth week; and (2) defendants exposed to longer periods of risk behaved generally in the same way as defendants exposed for shorter periods would have if they had been exposed for longer periods. These assumptions are more acceptable if we remember that other factors relevant to bail risk were taken into account in the analysis of survival curves.

were rearrested or both. These percentages can be interpreted as the likelihood (probability) that a defendant in a particular group had of failing to appear or being rearrested.

1. Factors That Had Little or No Effect

The data suggest that sex, age, race, and income had little or no effect on the defendant's probability of failing to appear and being rearrested. This is shown by the various bail risk percentages, which are close in value for defendants of different sex, age, race, and income, and also by the significance statistics ("Pearson Chi-Square") in the rightmost column of Table 4. The bail risk percentages are slightly different for males and females, for blacks and others, for the three age groups, and for the three income groups, but the differences are not significant.

When prior arrests--which turned out to be more important than any other factor except court disposition time in influencing bail risk--are taken into account, sex, income, and race do appear to have an effect. Among defendants with two or more prior arrests, the combined risk rates were nearly twice as high for females as for males (45.5 versus 25.4 per cent); one and a half times as high for high-income defendants as for low-income defendants (35.0 versus 23.5 per cent), and one and a half times as high for whites and others as for blacks (33.1 versus 23.2 per cent). We originally thought that bail risk would be higher for males than for females, higher for low-income defendants than for high-income defendants, and higher for black defendants than for white defendants. Among defendants with two or more prior arrests, statistically significant differences with regard to sex, income, and race were found; however, these differences were all in the opposite direction from what was expected. When court disposition time was taken into account by comparing survival curves of defendants of different sexes, ages, races, and incomes, no significant differences in bail risk were found. We must conclude that our data provide no support for our initial expectations regarding the effects of the defendant's sex, age, race, and income on his likelihood of nonappearance and rearrest.

The data also suggest that whether the defendant was employed or a full-time student had no effect on bail risk, as the figures in Table 4 show. Adjusting for prior arrests did not reveal any effects of employment, nor did comparison of survival curves. This finding is somewhat surprising, because employment status is generally believed to be related to bail risk and is among the criteria approved by the ABA.

2. The Type of Offense Charged

The study also raises some doubt about the relation of the type of

Table 4
Relationships of Factors Studied to Bail Risk
(Percentage bases are totals in each row.)

	Failed to Appear	Rearrested for New Offense	Combined Bail Risk: Failed or Rearrested or Both	Total	Pearson Chi-Square for Combined Bail Risk
Sex					
Male	58 (9.7%)	55 (9.2%)	108 (18.1%)	598	.01
Female	12 (7.6%)	20 (12.7%)	29 (18.4%)	158	(df=1)
Age					
14-24	29 (9.2%)	34 (10.8%)	59 (18.8%)	314	.50
25-34	23 (9.7%)	23 (9.7%)	44 (18.6%)	236	(df=2)
Over 34	18 (8.7%)	18 (8.7%)	34 (16.5%)	206	
Race					
Black	33 (.4%)	33 (9.4%)	64 (18.3%)	350	.01
White and Other	37 (9.1%)	42 (10.3%)	73 (18.0%)	406	(df=1)
Income					
Low	42 (10.7%)	35 (8.9%)	74 (18.9%)	392	1.08
High	22 (7.2%)	36 (11.8%)	55 (18.1%)	304	(df=2)
Unclass. (not local resident)	6 (10.0%)	4 (6.7%)	8 (13.3%)	60	
Employment					
Employed or Student	47 (8.8%)	53 (9.9%)	94 (17.6%)	534	.33 (df=1)
Unemployed or Unknown	23 (10.4%)	22 (9.9%)	43 (19.4%)	222	
Prior Arrests					
None or One	36 (7.3%)	31 (6.3%)	63 (12.8%)	491	26.43
Two or More	34 (12.8%)	44 (16.6%)	74 (27.9%)	265	(df=1)
Offense Seriousness					
Felony	14 (8.7%)	22 (13.7%)	35 (21.7%)	161	1.75
Misdemeanor	56 (9.4%)	53 (8.9%)	102 (17.2%)	595	(df=1)
Offense Category					
Fel-Persons	3 (9.1%)	6 (18.2%)	9 (27.3%)	33	8.13
Fel-Property	7 (10.6%)	10 (15.2%)	16 (24.2%)	66	(df=7)
Fel-Vice	4 (6.5%)	6 (9.7%)	10 (16.1%)	62	
Misd-Persons	19 (9.0%)	18 (8.5%)	33 (15.6%)	212	
Misd-Property	17 (9.7%)	22 (12.5%)	38 (21.6%)	178	
Misd-Vice	10 (12.2%)	4 (4.9%)	14 (17.1%)	83	
Misd-Family	6 (7.8%)	5 (6.5%)	10 (13.0%)	77	
Misd-Other	3 (6.7%)	4 (8.9%)	6 (13.3%)	45	
Form of Release					
PTR	3 (1.4%)	16 (7.4%)	19 (8.8%)	217	28.30
Magistrate	7 (10.1%)	4 (5.8%)	11 (15.9%)	69	(df=4)
Cash	3 (4.2%)	5 (6.9%)	8 (11.1%)	72	
Bondsman	50 (14.5%)	42 (12.1%)	84 (24.3%)	346	
Other	7 (13.5%)	8 (15.4%)	15 (28.8%)	52	

offense charged to bail risk. Among these defendants, the nonappearance, rearrest, and combined risk rates of those charged with misdemeanors differ little from the risk rates of those charged with felonies (see Table 4). The combined bail risks were 17.2 per cent for misdemeanor defendants and 21.7 per cent for felony defendants. The survival curves of these two groups were not significantly different at two, four, six, or eight weeks, and there were no differences when criminal history was taken into account.

A breakdown of the charges into eight offense categories (see Table 4) also showed little difference in bail risk among defendants charged with different types of offenses, and this remained true when criminal history was controlled for. The offense categories with the highest combined bail risk (Table 4) are felonies against persons and felonies against property. Comparing defendants accused of those offenses with all other defendants, the combined bail risk percentages are 25.3 per cent for those charged with felonies against persons and property and 16.9 per cent for all others. Although statistically significant, this difference probably results from the fact that felony defendants are more likely than others to have substantial criminal experience. For defendants with zero or one prior arrests, the risk rates are 16.3 for those charged with felonies against persons and property and 12.4 per cent for others; for those with two or more prior arrests, the respective rates are 34.0 and 26.5 per cent. Neither difference is significant. In other words, when differences in criminal history are taken into account, the apparent bail risk difference disappears.

Our data do not support the common belief that the seriousness of the offense charged is strongly related to bail risk, because the apparent effect of seriousness of offense is attributable to criminal history. (As explained earlier, this belief is fundamental to the conventional bail bond system, in which the bond amount is directly related to the seriousness of the charge.) But neither do the data disprove the belief. The fact that the data do not indicate that offense seriousness had an important influence on bail risk may simply indicate that the bail bond system functioned as it was supposed to. Since bond amounts were generally higher for felony defendants, and since almost all of those released were released after signing a bond (even those released by magistrates and the PTR program, as noted earlier), it may be that the threat of bond forfeiture kept the felony defendants' risk down and compensated for the difference between felony and misdemeanor defendants' bail performance. This possibility is somewhat supported by comparing those released on "own recognizance"--the only releasees in the study who were not subject to bond forfeiture--with those released by bondsmen. Adjusted for prior arrests, the survival rates of the "own recognizance" releasees were sometimes lower than those of bondsman releasees, although the very small size of the former group makes the difference nonsignificant. If these apparent differences are real, they may be attributable to the fact that the "own recognizance" releasees were inherently poor risks, as indicated by the large proportion who were charged with felonies, and

that their relatively greater propensity for getting into trouble while on bail was not counteracted by any financial disincentive to nonappearance. (As Table 3 indicates, the "own recognizance" releasees, comprising most of the column labeled "Other," were usually charged with felonies, and often with felonies against the person.)

Thus, the seriousness of the defendant's offense may have had a substantial effect on bail risk that was obscured by the counter-effect of the bond. This possibility should be kept in mind when considering reform proposals like the ABA's. Even if release like Charlotte's PTR program becomes the standard form of bail, replacing the bondsman system, perhaps it would be wise to retain--as the PTR program did--the threat of financial loss in the form of an unsecured bond, with a higher amount set for those charged with serious crimes.

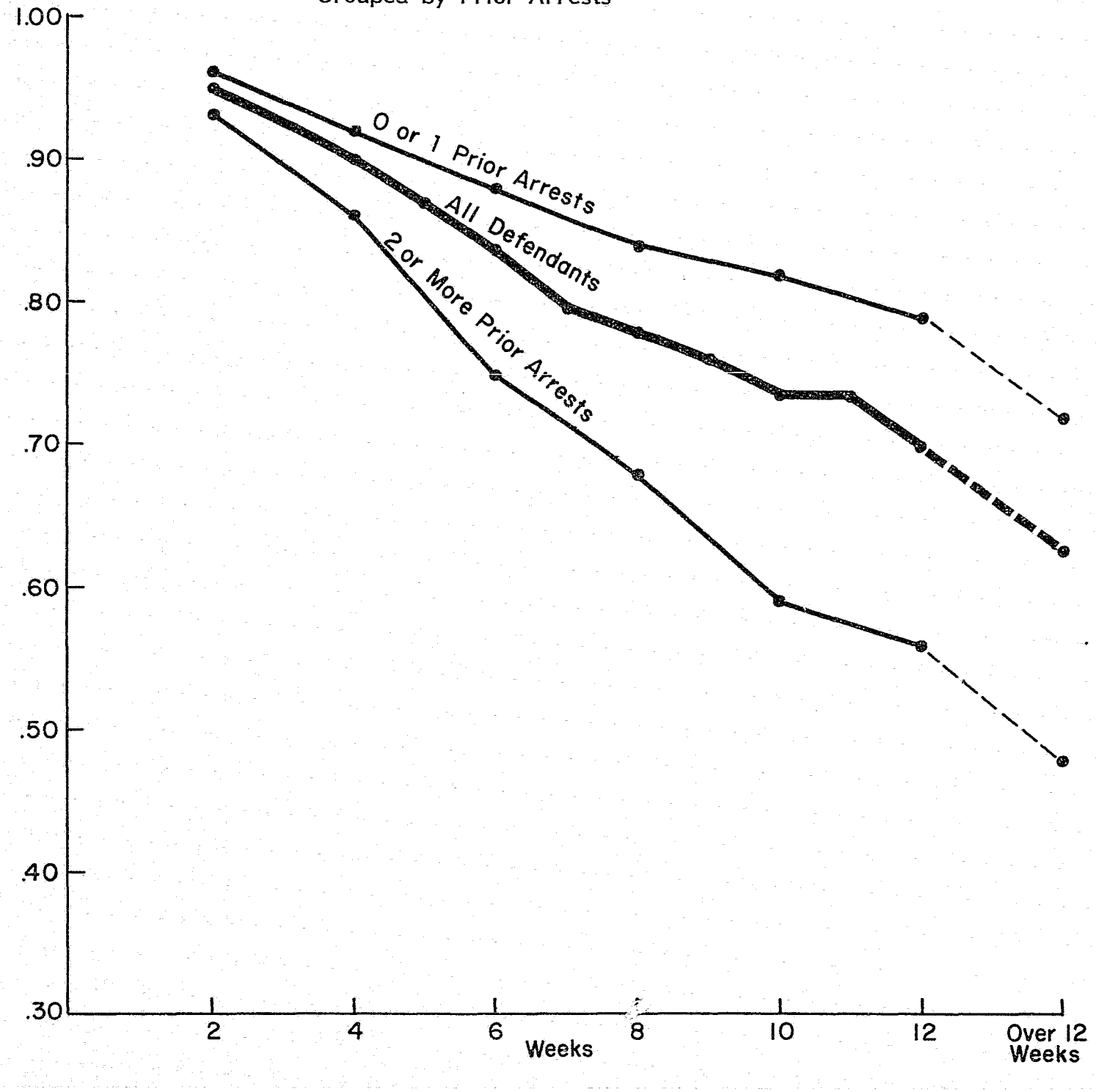
3. Court Disposition Time

The effect of court disposition time on bail risk without adjusting for other factors is shown by the "all defendants" portion of Graph 1, a nearly straight line from a survival rate of .95 at two weeks to .70 at twelve weeks, and .63 for periods over twelve weeks. In other words, during the first twelve weeks after release, the likelihood that defendants would appear and would not be rearrested dropped about five percentage points for each two weeks their cases were open--a clear display of the powerful influence of court delay on bail risk.

4. Criminal History

Criminal history, measured here by prior arrests, has a very important relationship to bail risk. To assess the relative importance of the various factors in influencing bail risk (see Table 4), we can use the value of the significance statistic ("Pearson Chi-Square") divided by its degrees of freedom ("df"). For prior arrests, this value is 26.43, a much higher value than that of any other factor. The next highest is form of release, with a value of 7.08 (28.30/4). Table 4 does not take court disposition time into account, of course, but Graph 1 shows that criminal history has an important effect when court disposition time is considered. The survival rate of defendants with two or more prior arrests is significantly lower than that of defendants with one or zero prior arrests at two, four, six, eight, ten, and twelve weeks. Court disposition time has a much worse effect on defendants with two or more prior arrests than on those with zero or one prior arrests. At twelve weeks, only 56 per cent of the former avoid nonappearance and rearrest, compared with 79 per cent of the latter.

Graph 1. "Survival Rates" for All Defendants and Defendants Grouped by Prior Arrests



5. Form of Pretrial Release

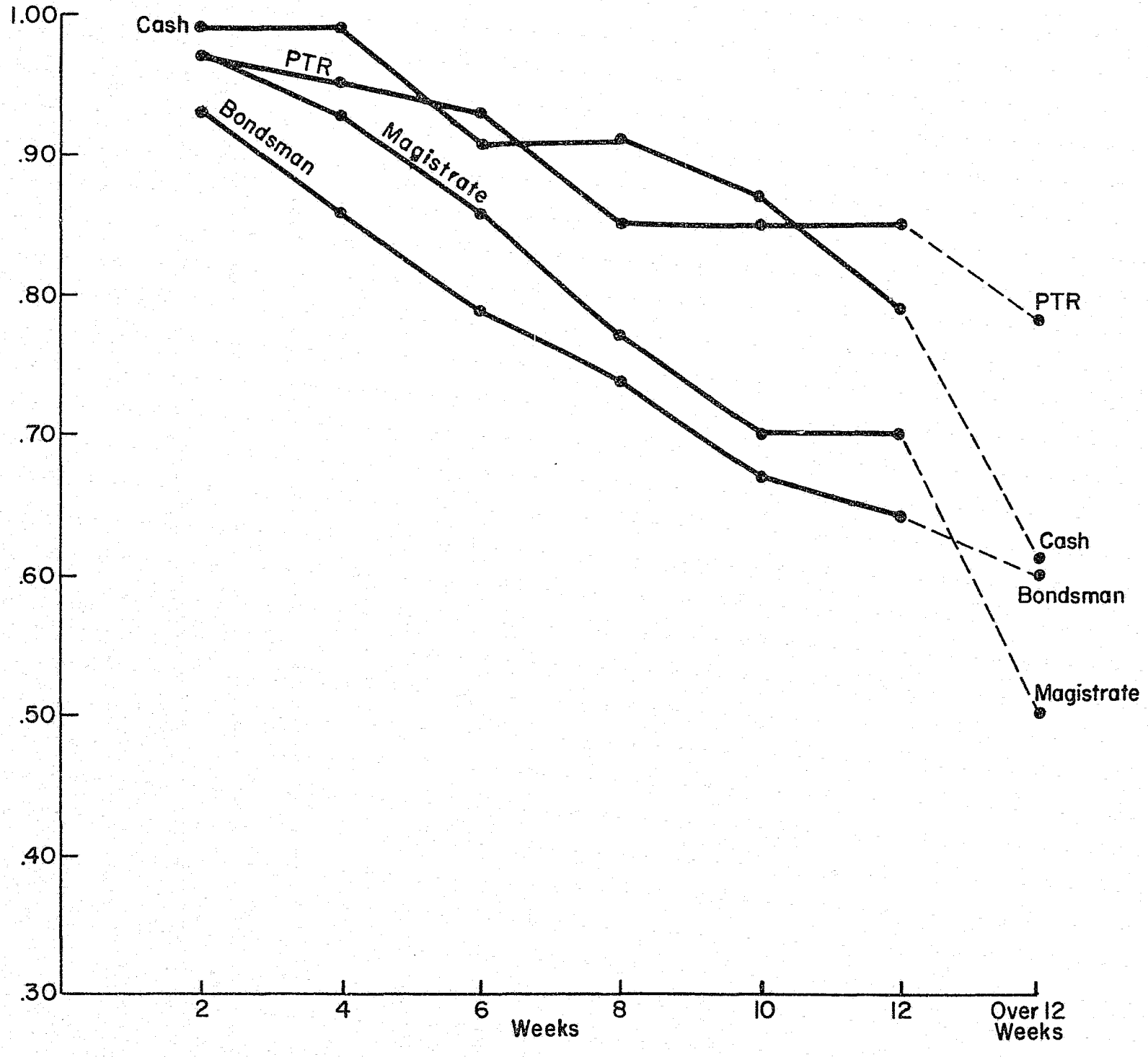
Graph 2 compares the survival rates of defendants on the four most common forms of bail. These rates are fairly close at two weeks, ranging from 93 to 99 per cent. Thereafter, some fairly clear relationships emerge. The survival rates of PTR and cashbond releases are consistently similar and relatively high. Sharp, significant differences in survival rate are consistently evident between PTR and cash bond releasees, on the one hand, and bondsman releasees, whose survival rate is relatively low and is evidently affected more adversely by the passing of time. Magistrate and bondsman releasees differ in survival rate at two and four weeks, but show no significant differences from the sixth week onward. PTR and magistrate releasees' survival rates are not significantly different in any time period but a diverging trend is evident, with the PTR rates staying higher. Magistrate and cash bond releasees' survival rates are not significantly different at any point.

Court disposition time is somewhat different for defendants on different forms of pretrial release. In general, as Table 5 shows, PTR and magistrate releasees were exposed to risk for a somewhat shorter time than cash bond, bondsman, and other releasees, because the cases of PTR and magistrate releasees--for some reason--required more time to be disposed of by the court. This fact makes it important to adjust for the effects of time, as well as criminal history, in comparing forms of release.

Table 5
Distribution of Court Disposition Time for Defendants on Various Forms of Release

	Form of Release					
	PTR	Magistrate	Cash	Bondsman	Other	Total
Distribution of Court Disposition Time						
4 weeks or less	46.6%	47.7%	38.9%	37.3%	32.7%	40.7%
4 to 8 weeks	32.6	33.3	25.0	30.0	36.5	31.1
8 to 12 weeks	10.2	8.6	23.6	18.2	17.2	15.5
More than 12 weeks	10.6	10.1	12.5	14.5	13.5	12.7
Defendants who failed to appear or were re-arrested or both	19	11	8	84	15	137
Proportion of failed and/or rearrested defendants whose failure or rearrest occurred within 12 weeks of release	89.5% (17/19)	81.8% (9/11)	75.0% (6/8)	96.4% (81/84)	93.3% (14/15)	92.7% (127/137)

Graph 2. "Survival Rates" for Defendants on Various Forms of Release



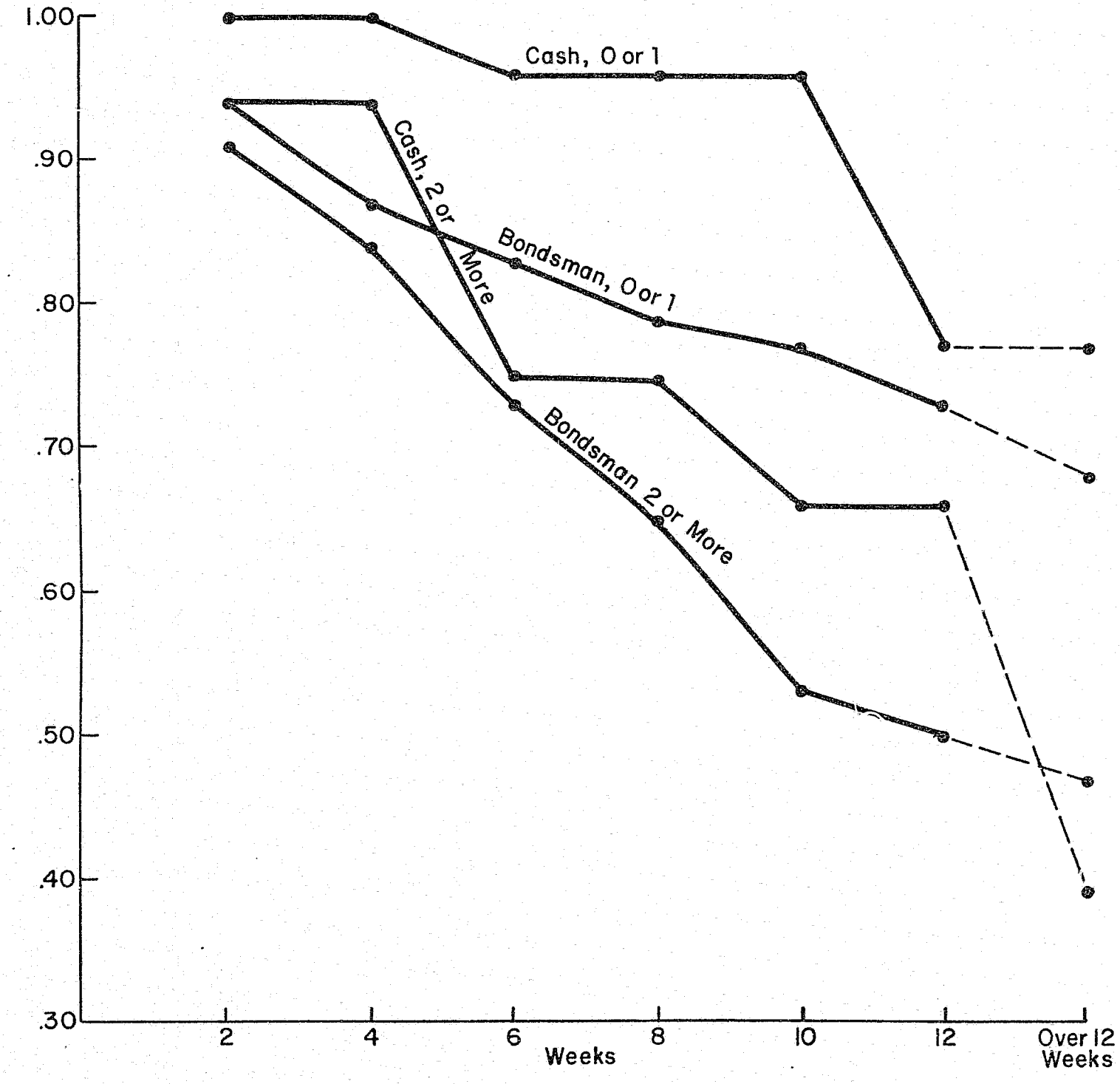
6. Form of Release, Criminal History, and Court Delay

The analysis so far indicates that, except for court delay, the factors with the strongest relationship to bail risk are the defendant's criminal history and the form of pretrial release he receives. We will now consider the effects of form of release, adjusting for the effects of prior arrests and court delay.

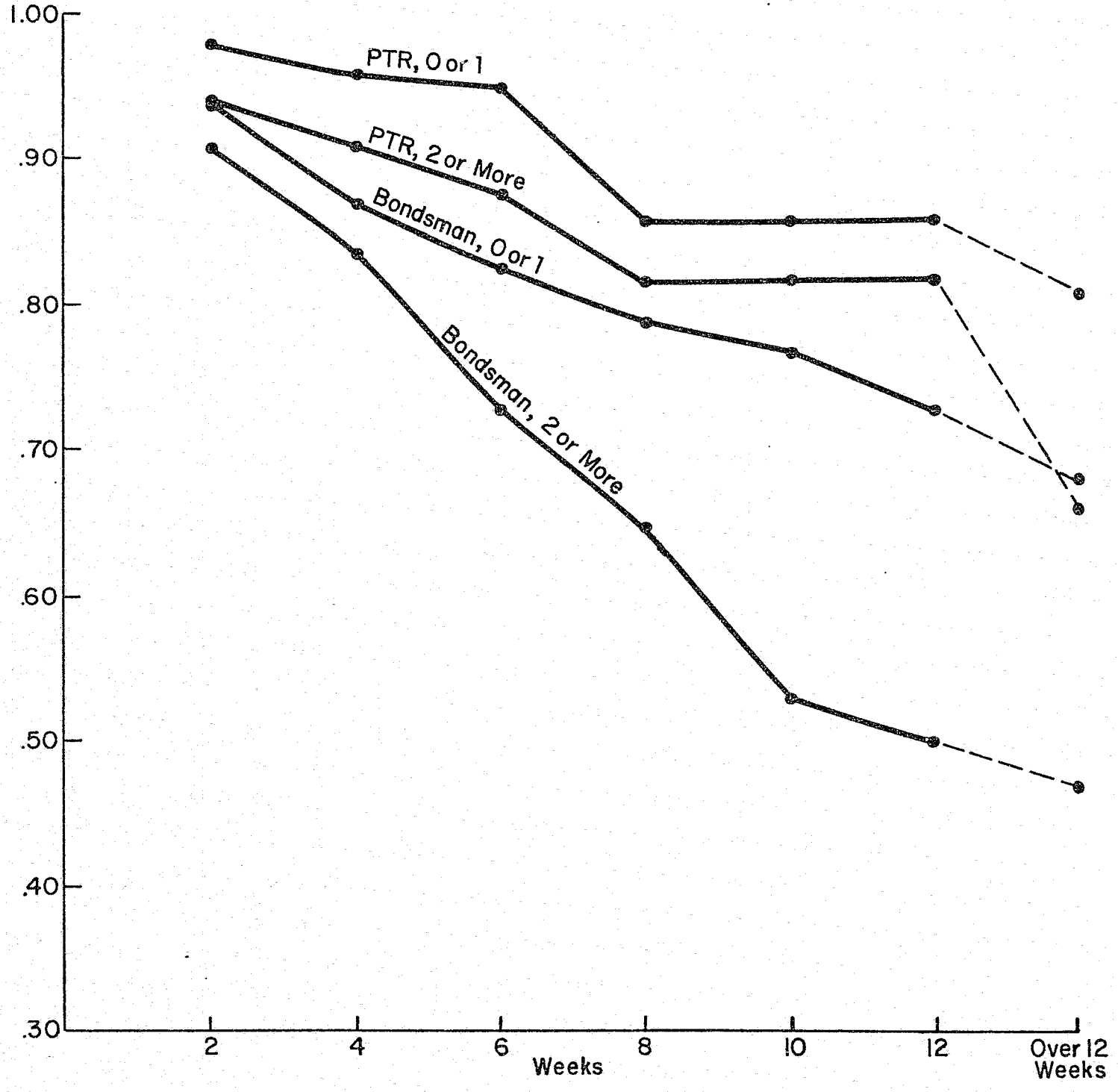
Let us first compare the two conventional forms of bail, cash bond and bondsman release. Cash bond releasees with zero or one prior arrests had significantly higher survival rates for the first eight weeks of release than bondsman releasees with zero or one prior arrests (see Graph 3). For defendants with zero or one prior arrests released by cash bond and bondsmen, the over-all risk rates, respectively, were: failure to appear, 0.0 and 13.6 per cent; rearrest, 3.6 and 8.0 per cent; combined bail risk, 3.6 and 19.6 per cent. Apparently, cash bond releasees with zero or one prior arrests never failed to appear; this is explained by the fact that (as noted earlier) nonappearance of cash-bond releasees tended to be overlooked by judges and prosecutors, with bond forfeiture serving as a sort of "fine paid in advance," and thus did not show up in the court records (the actual cash bond nonappearance rate was probably higher than our data indicate). The relatively few (17) cash bond releasees who had records of two or more prior arrests did not differ significantly in bail risk from bondsman releasees with comparable arrest records, as Graph 3 shows. Judges and prosecutors were probably less willing to overlook nonappearance when cash bond defendants had a substantial criminal history. The cash bond releasees' survival rate decreased rapidly with the passage of time, just as bondsman releasees' survival rate did. Our conclusion is that there is probably little difference in failure to appear and rearrest between cash bond and bondsman releasees if prior arrests and court disposition time are taken into account.

The comparison of PTR and bondsman releasees (Graph 4) indicates that the PTR releasees were much less likely to fail to appear in court or be rearrested, controlling for criminal history and court disposition time, than the bondsman releasees. Although the differences in survival rate were not significant at all times, the consistent level and slope of the survival curves, plus the significance of some of the survival rate comparisons, support this conclusion. In what ways did PTR release and bondsman release differ? Not with regard to the threat of financial loss if the defendant failed to appear. As noted earlier, all the major forms of release required the signing of a bond. The principal differences were in (1) selection of releasees, and (2) post-release contact and supervision. The PTR program selected its clients from among those who chose to be interviewed by it, applying criteria described earlier, while bail bondsmen presumably accepted anyone who could pay the fee unless he was not a county resident or had unusually serious charges or a notorious criminal history. Our comparison has adjusted for what may be the most important criterion used by PTR, criminal history, but the

Graph 3. Cash-Bond and Bondsman Releasees: "Survival Rates" by Prior Arrests



Graph 4. Bondsman and PTR Releasees: "Survival Rates" by Prior Arrests



PTR staff considered other criteria, such as family ties and the length of local residence and current employment, that could not be adjusted for in the present study because the necessary data were not available for most defendants. The study did investigate local residence and current employment status (although not their length), and neither seemed to have a substantial effect on bail risk even when criminal history and court disposition time were controlled for. Nevertheless, it is possible that other objective criteria employed by PTR, and also the PTR program staff's subjective assessments, may have resulted in the selection of clients whose bail risk was inherently low.

PTR's selection criteria also excluded defendants charged with certain very serious offenses. As explained earlier, all of these were rare except for drug felonies--principally illegal distribution of drugs and possession for the purpose of distribution. Those charged with drug felonies were not a group with high bail risk; in Table 4 in the section labeled "Offense Category," we see that defendants charged with "Felony-Vice" offenses (mostly drug felonies) have only average rates of nonappearance and rearrest.

Our tentative conclusion is that selection may explain some but not all of the difference in nonappearance and rearrest between PTR and bondsman releasees. Post-release supervision was probably a more important factor in keeping the PTR releasees' survival rate high. The PTR staff maintained regular telephone contact with the releasee, and the PTR releasee was required to report to the program office before each court appearance. It is reasonable to suppose that this had the effect of keeping the releasee aware that someone in authority, acting in his interest, was concerned about his showing up in court as required and staying out of trouble in the meantime. The awareness, in turn, could be expected to increase the likelihood that the releasee would appear in court as required, and perhaps also--to a lesser extent--that he would not commit a new offense for which he could be rearrested. (PTR and bondsman releasees differed less in rearrest rates than in nonappearance rates; see Table 4.) The regular reminders also probably helped to overcome the deleterious effect of court delay on the survival rate, since releasees were not allowed to forget their court dates. In contrast, bondsmen maintained no regular contacts, meetings, or reminders. If they had, their clients might have done considerably better.[22]

Comparisons of PTR and magistrate releasees (Graph 5) give further

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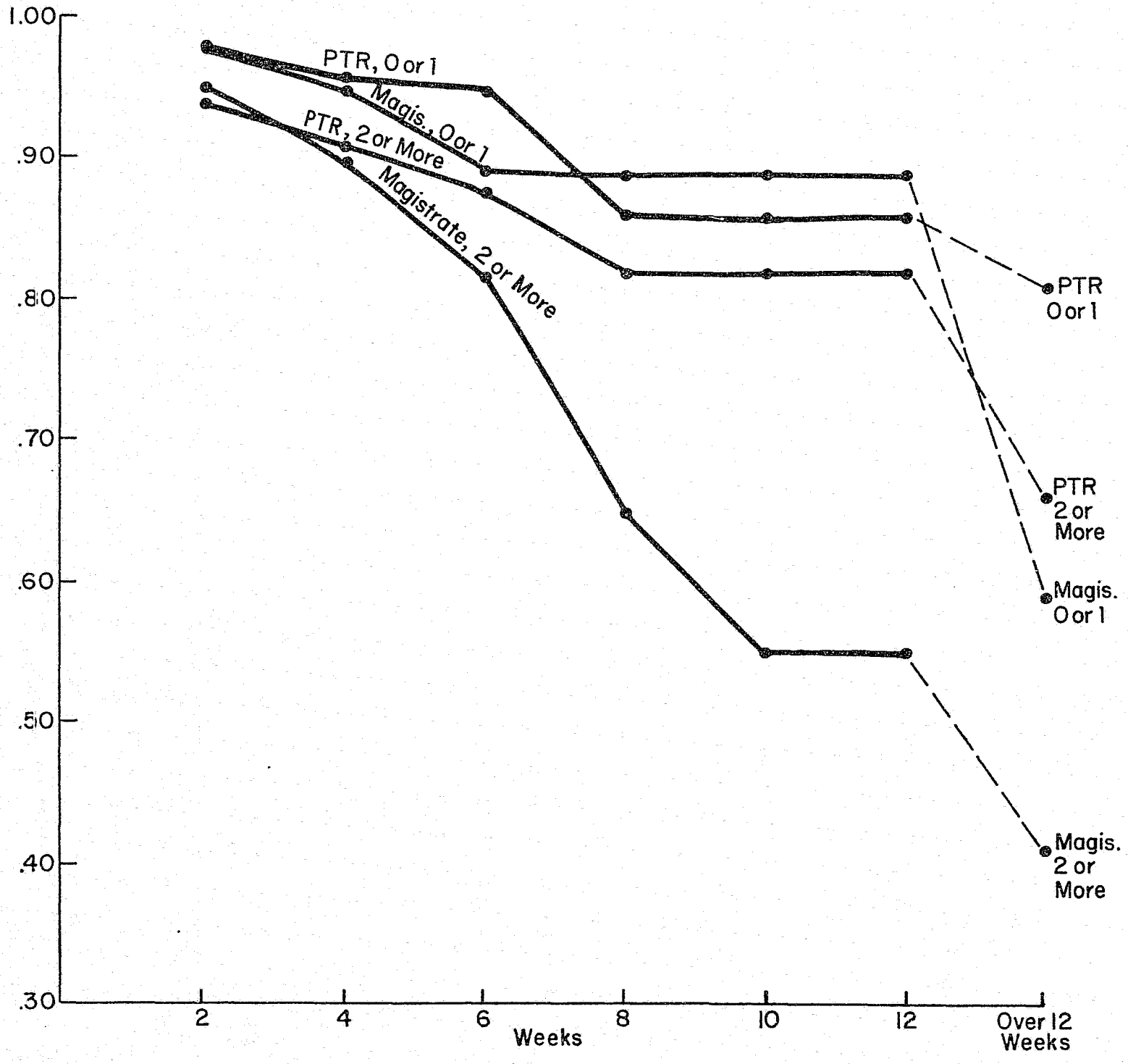
22. When a community is concerned about the poor performance of its bail system but cannot introduce reforms of the ABA-approved type because of lack of funds or political resistance, it may be worthwhile to induce bondsmen to maintain regular post-release supervision, or to provide a minimal staff of court employees to supervise bondsman-released defendants. The conclusion to this report suggests how those most in need of such supervision can be identified.

Graph 5. PTR and Magistrate Releasees: "Survival Rates" by Prior Arrests



support to the hypothesis that post-release supervision reduces the likelihood of nonappearance and rearrest. As explained earlier, the PTR program and the magistrates used, in some respects, the same criteria in selecting releasees. The releasees they selected (see Table 3) were similar with regard to criminal history, sex, age, and employment, although not with respect to race, income, and type of offense. If subjective assessments entered into the selection of releasees, the assessments made by magistrates were probably more like those made by PTR staff, and vice versa, than like those of bail bondsmen. Since PTR and magistrate selection procedures were more like each other than like the bondsman's procedure, the selection process probably had less to do with bail risk differences between PTR and magistrate releasees than with bail risk differences between PTR and bondsman releasees. Perhaps because of the similarity in selection procedures, survival curves of PTR and magistrate releasees who had zero or one prior arrests were similar (Graph 5). However, among defendants with two or more prior arrests, a diverging trend seems to have begun after the fourth week of release; by the tenth week, the PTR releasees' survival rate was .82 compared with .55 for magistrate releasees. The differences between the rates were not significant for these two groups, perhaps because the groups were so small (54 and 21, respectively).

These results suggest that post-release supervision of the type provided by PTR counteracted the deleterious effect of court delay on the survival rates of defendants with two or more prior arrests, and that the longer the defendants were exposed to risk, the greater the effect of supervision became (in other words, supervision had a cumulative effect over time). For defendants with zero or one prior arrests, the results are somewhat less clear. Bondsman releasees with zero or one prior arrests had significantly lower survival rates at four and twelve weeks than PTR releasees did. However, magistrate releasees with zero or one prior arrests seem to have done fairly well without post-release supervision, maintaining a survival rate not significantly different from that of PTR releasees. We conclude that defendants with very little or no criminal record probably do not benefit from post-release supervision as much as those with longer records. This suggests that in planning pretrial release programs, supervision manhours should be allocated first to defendants with longer criminal records and then, if resources permit, to others.

We have noted that survival rates dropped rapidly as time before court disposition increased, especially for defendants with two or more prior arrests--except for the PTR group, which received post-release supervision. This indicates that reducing court delay, when this is possible consistent with the defendant's procedural rights and other purposes of the criminal court, is an important task for those concerned with improving bail systems. It also suggests that, where post-release supervision is used, more intensive supervision may be desirable if it appears that the court will take a long time to dispose of the defendant's case.

SUMMARY AND CONCLUSIONS

The principal subjects that have been addressed in the study are: (1) the relative importance of various factors in influencing bail risk, defined as the likelihood of failure to appear in court while on bail and/or rearrest on a new charge; (2) the relative effectiveness of various forms of bail in controlling bail risk; and (3) improvements in bail systems suggested by the data. Interpretation of the findings must be cautious because the study was not a scientifically controlled experiment. The following general conclusions seem warranted.

Most important factors. Court disposition time, defined here as the amount of time elapsing from the defendant's release until the disposition of his case by the court (or until he fails to appear or is rearrested, if either of those events occurs before disposition) must be considered the variable of greatest importance. Among the defendants studied, the likelihood of "survival"--avoidance of nonappearance and rearrest--dropped an average of five percentage points for each two weeks their cases remained open. This suggests that reducing court delay should be high on the agenda of those who would reform the bail system, and also that court disposition time should be taken into account in supervising released defendants (see suggestions below).

Criminal history, here measured in terms of prior arrests, was also of major importance. Without adjusting for court disposition time, the rate of nonappearance and/or rearrest for defendants with two or more prior arrests was twice as great (27.9 per cent) as for those with one or none (12.8 per cent). Criminal history continued to show an important effect when court disposition time and form of release were taken into account.

The particular form of release by which defendants obtained their pretrial freedom was also of great importance in determining their bail risk. The effect of form of release persisted when both criminal history and court disposition time were adjusted for. (More is said below about the relative merits of various forms of release.)

Factors of little or no importance. We had hypothesized that the likelihood of failing to appear or being rearrested would be higher for male defendants than for female defendants, higher for defendants under 25 than for older defendants, higher for low-income defendants than for high-income defendants, and higher for blacks than for whites. We were wrong. The data showed the relationships of these variables to nonappearance and rearrest to be nonsignificant, even after adjusting for court disposition time. There were significant relationships of sex, income, and race (but not age) to bail risk among defendants with two or more prior arrests, without adjusting for court disposition time, but these relationships were the reverse of those originally expected--female, high-income defendants, and white defendants with two or more prior arrests had higher risk rates than males, low-income defendants, and black defendants, respectively.

The defendant's employment status, a factor included among the American Bar Association's recommended criteria, was not shown by these data to have had any relationship to bail risk among the defendants studied. Because of lack of data, no conclusions were reached about the effects of some related factors also on the ABA's list: the length of local residence, employment history, and family ties.[23]

Type of offense charged. These data showed no significant relationship between the type of offense charged and bail risk, and none emerged when criminal history and court disposition time was controlled for. (Two definitions of type of offense were used: one was simply felony or misdemeanor; the other subdivided felonies and misdemeanors into eight offense categories.) However, a relationship of the seriousness of the offense charged to bail risk may have been concealed by another factor. All defendants released on the four major forms of bail were subject to forfeiture of an amount of money if they failed to appear. In most cases, this bond amount was based on the seriousness of the offense charged, by reference to a standard schedule used for all forms of bail. This financial disincentive may well have counteracted an effect of the seriousness of the offense charged on bail risk. The relationship between offense and bail risk is also indicated by our data concerning the thirty-nine defendants who were released by judges on "own recognizance," with no financial disincentive or post-release supervision. The concentration of felony charges was much higher in this group than in other releasee groups, and the proportion of those who failed to appear and/or were rearrested was the highest of any releasee group.

Relative effectiveness of forms of release. The study centered on the four most common forms of release in Charlotte at the time of the study: bondsman release, cash bond release, PTR release, and magistrate release, described in detail earlier in this paper. The first two forms provided release upon a promise to pay the bond amount upon failure to appear in court, with the promise secured by a professional bondsman (bondsman release) or by a deposit of the bond amount in cash (cash bond release). These forms of release were generally available to those who could raise the necessary bondsman's fee or cash amount. PTR and magistrate release involved generally similar selection procedures using criteria of the ABA-approved type, such as local residence, employment history, family ties, and criminal record. The PTR staff supervised their releasees after release; the magistrates did not. Both PTR and magistrate release required forfeiture of the standard bond amount for the defendant's offense if he failed to appear, although the bond was not secured.

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23. It is possible, of course, that a larger sample might have permitted substantial relationships to be found between bail risk and any of the factors tentatively treated here as having little or no importance--sex, income, age, race, employment, and local residence. We can only say that the present data indicate no such relationships.

We concluded that cash bond releasees probably differed little from bondsman releasees with regard to nonappearance and rearrest; the apparently lower rate of nonappearance and/or rearrest for cash bond releasees with zero or one prior arrests was probably due to the criminal court's overlooking nonappearance and allowing the case to be disposed of by bond forfeiture. PTR and magistrate releasees had generally lower bail risks, adjusting for prior arrests and court disposition time, than cash bond and bondsman releasees, although the observed differences were not always significant. PTR and magistrate releasees performed similarly, although the data suggested that magistrate releasees with two or more arrests might have somewhat higher risks than PTR releasees with two or more arrests.

The different selection procedures used in conventional bond release and in PTR and magistrate release meant, of course, that the groups of defendants released in these ways differed in a number of characteristics that were measured in the study. Some of these characteristics, such as employment status and local residence, had little or no effect on bail risk that could be measured by our data. Criminal history, an important criterion in the PTR screening system, was an important determinant of bail risk; however, even adjusting for court disposition time, defendants with two or more prior arrests released by PTR had lower risk rates (but not significantly lower) than those with equally extensive criminal histories released by bondsmen. If our measurement of the difference in risk rates between PTR and bondsman releasees is reliable, the difference may be explained, in part, by selection criteria employed by the PTR program staff that were subjective in nature or otherwise could not be measured by the study. However, if defendants released by bondsmen had instead been released by the PTR program, using all of the usual PTR procedures except selection, their likelihood of not appearing or of being rearrested would probably have been much lower because of the contact and supervision that the PTR program maintained with its clients.

Forms of release can also be compared with regard to the kinds of controls that operate to reduce bail risk after release. All four major forms of release use the threat of financial loss (bond forfeiture) for failure to appear; the bond amount is usually set according to the seriousness of the offense the defendant is charged with, based on the standard schedule. This practice conflicts with the ABA recommendation that the threat of financial loss be used only as a last resort. However, the Charlotte practice of requiring a bond to be signed in all cases may account for the fact that the chance of nonappearance was not significantly different for defendants charged with different types of offenses, if criminal history is taken into account. Our tentative conclusion is that it may be unwise to do away with the requirement that all defendants sign a bond whose amount depends on the offense charged. This does not seem a great hardship for defendants; if the bond is an unsecured one, no bondsman's fee need be paid.

The post-release supervision of its clients maintained by the PTR

program substantially reduced the likelihood of nonappearance and (to a somewhat lesser extent) the likelihood of rearrest. Post-release supervision was probably responsible to a large extent for the fact that the nonappearance and rearrest rates of PTR releasees were generally lower than those of defendants released in other ways, adjusting for court disposition time and criminal history. Post-release supervision was evidently more effective with defendants who had a record of two or more prior arrests and therefore presented higher bail risks than others. This finding suggests that in any bail program, priority in supervision should be given to releasees with longer criminal records.

The study indicated that defendants with little or no criminal record who were selected for release by magistrates, using the simple screening procedure described in detail earlier, probably would not have benefited from post-release supervision if they had received it. We think it likely that a great many defendants have an acceptably low probability of nonappearance and rearrest without any post-release supervision whatever. In general, these low-risk defendants are those with little or no criminal record whose cases are not likely to take unusually long to reach court disposition. The releasing procedure used by Charlotte magistrates, which was quite successful in selecting such low-risk defendants, could probably be adapted for use in similar cities at a rather low cost.

The "survival curves" developed in the study suggested that post-release supervision tended to counter the bad effects of court delay on nonappearance and rearrest. This suggests that it is desirable to provide more intensive post-release supervision to defendants whose cases are likely to require an unusually long time to dispose of.