69602

ALTERNATIVES
A SERIES

"FAILURE-TO-APPEAR:

WHAT DOES IT MEAN?
HOW CAN IT BE MEASURED?"

BY

MICHAEL P. KIRBY

CONSULTANT

PRETRIAL SERVICES RESOURCE CENTER

[redacted]

JUNE 1979

This publication is supported by Grant Number 0734-99-TA-78 awarded by the Law Enforcement Assistance Administration, United States Department of Justice. Points of view or opinions stated in this publication are those of the Pretrial Services Resource Center and do not necessarily represent the official position of the United States Department of Justice.

TABLE OF CONTENTS

INTRODUCTION

Failure-to-appear, often referred to as FTA, missed court appearance, forfeiture and pretrial flight (and conversely the appearance rate), is of critical importance to both the study and operation of the pretrial system. The purpose of this bulletin is to present a consistent framework that can be utilized to examine failure-to-appear rates in research, evaluation, and management information systems (MIS). Unfortunately, the way in which failure-to-appear is currently measured and employed leads to problems in the meaningful and accurate application of the concept. The multitude of ways that exist to define and compute failure-to-appear rates mean that there currently cannot be nationally comparable rates, nor can there be a meaningful contrast of the rates for two different programs. Such a situation is regrettable since programs and evaluators often allude to such comparison though these are speculative at best and misleading at worse.

Although this is not the first study to attempt such a framework, 1/ it is hoped that this essay will provide an impetus to the consistent application of a standard procedure in the utilization of failure-to-appear rates. The study has selected elements from other studies which seem reasonable, logical and applicable to a variety of settings. The framework has also been created for simplicity of understanding and ease of calculation, while still preserving enough flexibility to reflect the diversity of court systems and bail practices around the country. Although applicable to cross-jurisdictional comparison, there must be some recognition that totally precise comparisons are not possible because of this diversity. 2/ However, diversity should not be a problem when applying this framework to either management information systems or to comparison within a jurisdiction.

By definition, failure-to-appear is the missing of a court appearance, while the examination of a group of defendants leads to a system measurement called the failure-to-appear rate. A review of the field makes it obvious that determining and minimizing missed court appearances is a central goal of institutions and programs working with pretrial defendants. Many states require the probability of appearance as a statutory basis for formulating release decisions by the courts and can legally punish missed appearances as a felony or misdemeanor. 3/ FTA also has a dramatic effect on the efficiency of the courts

---

1/ The most complex attempt at such a procedure was by Gedney, Dewayne, National Standards: FTA Statistics for Pretrial Release Programs. Prepared for the Institute for Court Management Executive Development Program, February 1975. Other attempts involving a variety of completeness include: Gayton, Jan, "Management Information for Pretrial Release Programs: A Working Paper", Denver, Colorado: National Center for State Courts, 1975, pp.7-9; Toborg, Mary, A Proposed Phase II Evaluation of Pretrial Release, Washington, D.C.: The Lazar Institute, 1977; Galvin, John, Instead of Jail: Alternatives to Pretrial Detention, Washington, D.C.: Law Enforcement Assistance Administration, 1977.

2/ The concept of a national FTA rate probably is not possible, although this bulletin makes some effort to move the field toward using the same type of terminology. One of the problems of course is that some programs tend to "cream" defendants by selecting low risk individuals who constitute only a relatively small portion of total release population, while other agencies tend to select a higher percentage of the total defendant population, thus creating a higher risk population. Clearly, the FTA rate is not an end in itself, but must be balanced against the release rate. Even though minimizing FTA is an agency goal, clearly it cannot be done at the expense of releasing only a minimal proportion of the total defendant population.

3/ Although missing court appearances is a punishable offense, relatively few jurisdictions actually indict individuals for violation of bail jumping statutes.

since missed court appearances, whether deliberate or through an error in judgement, cause the courts to operate less efficiently. Scheduled court times cannot be utilized, while other court processes, such as bench warrants, consume court time and create additional expenditures for law enforcement officials. Practitioners in the pretrial field also view court appearance as a crucial goal. The National Association of Pretrial Services Agencies (NAPSA) Standards and Goals state, "The primary purpose of bail is to ensure the appearance of the defendant at trial. It is essential that pretrial services agencies orient their operations...toward this goal." 4/ Just as the practitioner considers FTA important, the research community utilizes the concept extensively when evaluating pretrial release agencies. The National Center for State Courts study noted that "...failure-to-appear is probably the most commonly used measure. Virtually every evaluation study or report on...pretrial release programs includes some statistical data on failure-to-appear." 5/

In essence, this bulletin describes current research, evaluation and MIS practices regarding failure-to-appear. An initial section describes the type of research being conducted utilizing failure-to-appear along with an indication of the key research findings. Subsequent sections describe problems in the definition, measurement and gathering of information on failure-to-appear rates. Finally, a section describes a set of procedures which will overcome some of these problems. This bulletin is solely devoted to the question of failure-to-appear although there are related issues (e.g., research design) which are discussed in other publications. 6/

4/ National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release, Washington, D.C.: Law Enforcement Assistance Administration, 1978, Standard VIII, pp. 52.

5/ Mahoney, Barry, An Evaluation of Policy Related Research on the Effectiveness of a Pretrial Release Program, Denver, Colorado: National Center for State Courts, 1975, pp. 71.

6/ Research design may be the most important issue in evaluation. It is a procedure by which precision is brought into the measurement of FTA. That is, the FTA rate for a pretrial release agency's clients is compared to the FTA rate for a similar group of individuals, called a control or comparison group, who are not exposed to the program but are of a similar risk level. This precise type of comparison provides a procedure by which the evaluator can determine the exact effect of the agency, irrespective of the procedure of selecting only low risk clients. There are a variety of other works which devote themselves to other evaluational questions. These include: Kirby, Michael, Management 1, "The Role of the Administrator in Evaluation", Washington, D.C.: Pretrial Services Resource Center, 1979; Kirby, Michael, "Design Considerations in Evaluation", Bellringer, March 1978, pp. 10-14; Draft of Program Model for Pretrial Release, Abt Associates in conjunction with the Pretrial Services Resource Center, (Law Enforcement Assistance Administration, 1979); Kirby, Michael, Findings 1, "Recent Research Findings in Pretrial Release", Washington, D.C.: Pretrial Services Resource Center, 1977; Kirby, Michael, Point Scale, "Effectiveness of the Point Scale", Washington, D.C.: Pretrial Services Resource Center, 1977.

KEY FINDINGS

This section discusses the key findings related to failure-to-appear rates including FTA rates of defendants on financial and nonfinancial forms of release, point scales as predictive of FTA, the impact of notification and supervision on FTA, exposure time, and reasons defendants miss their court appearances. Through this review, current knowledge on failure-to-appear rates is summarized; further, various utilizations of information on failure-to-appear are illustrated.

One method of measuring the effect of pretrial release agencies is to scrutinize the effectiveness of their screening devices. A number of studies show that defendants in a pretrial release program have lower FTA rates than defendants on money bond. 7/ This may be due in part to programs selecting lower risk defendants by screening procedures called point scales, recommendation criteria or informal screening mechanisms. 8/ A program can be judged by the adequacy of its criteria for identifying those defendants who are greater/lower risks to miss their court appearance. The extensive literature on failure-to-appear suggests that point scales can identify those defendants as a group who are lower risks. 9/ There is little data which suggests whether formal point scales or informal screening devices (often called subjective procedures) more effectively identify low-risk defendants, although subjective procedures appear to result in fewer defendants being released. 10/ Though a point scale identifies groups of defendants whose scores indicate that they are higher risks, only a percentage of defendants in that group would actually miss their court appearance. Those who would make their court appearance but would not be recommended for release are referred to as the false positives. 11/ Consequently, a recommendation to detain must be carefully made since a large

---

7/ A representative group of studies are the following: Kehkendall, Denning, Pretrial Release in Oakland, California, 1967; Clarke, Stevens, The Bail System in Charlotte, 1971-1973, Chapel Hill, N.C.: Mecklenburg Criminal Justice Pilot Project, University of North Carolina at Chapel Hill, April 1974; Final Report: An Evaluation of Monroe County Pretrial Release, Inc., Stochastic Systems Research Corp., 1972; Moriarty, Francis, "Pretrial Release Succeeds in Santa Clara County", Pretrial Release, Vol. 61, July 1975; Venezia, Peter, Pretrial Release and Supportive Services for High Risk Defendants: A Three Year Evaluation of the Polk County, Iowa, Department of Court Services Community Corrections Project, Davis, California, National Council on Crime and Delinquency, 1973; Report on the Criminal Court of San Francisco, Part II, Bail and OR Release, 1971; and, Kirby, Michael, An Evaluation of Pretrial Release and Bail Bond in Memphis and Shelby County, Memphis, Tennessee: The Policy Research Institute, Southwestern University at Memphis, 1974.

8/ This topic is discussed more extensively in Draft of Program Model for Pretrial Release, Abt Associates in conjunction with the Pretrial Services Resource Center, (Law Enforcement Assistance Administration, 1979). This work defines the types of screening devices in terms of a continuum from the most formal to the least formal. More formal devices include point scales while the least formal include such things as informal mechanisms, clinical techniques and truly subjective techniques.

9/ For discussion of various studies in the field, the reader should consult Kirby, Michael, Point Scale, Supra 6.

10/ For a discussion of this point see Thomas, Wayne, Bail Reform in America, Berkeley, California: University of California Press, 1976, pp.146.

11/ A good example of the false positives in the predictive power of scales is presented in a study that was done by Lazarsfeld in New York City, An Evaluation of the Pretrial Services Agency of the Vera Institute of Justice: Final Report, New York, 1974. He found that even with zero points, the highest level of risk, the expected percentage of FTAs would only be 34.5 percent. Lazarsfeld's table follows:

number of false positives (e.g., those detained who would not FTA) exist within any point total or grouping. A number of studies examine the characteristics of defendants who miss court appearances. Most of these studies suggest that criminal justice factors, especially prior record and prior appearance behavior, are more closely related to FTA than are community ties and socioeconomic factors. 12/ The research also suggests that the factors seem to vary based on individual communities, thus making one set of national predictors impossible at this time. 13/

Many agencies do more than select low-risk defendants for their programs. They also utilize procedures which increase the "expected" court appearance rates of defendants on pretrial release. Notification, a formal notice of the date and time of a defendant's court appearance, has been shown to decrease FTA rates. 14/ Notification not only alerts a defendant of an upcoming court date, but it has been hypothesized that there is a beneficial psychological effect because the defendant feels his/her behavior is being observed. 15/ Supervision procedures, which include both more extensive contact with a defendant (e.g., call in every day or come to the agency's office) or actual services (e.g., drug treatment and job placement), may have an effect on the FTA rate of supervised defendants. 16/

NUMBER OF POINTS ON SIX ITEMS
BY PERCENT FAILING TO APPEAR
ONE OR MORE TIMES

Number of Points on Revised Scale	Percent FTAs	Number in Category
0	34.5	(113)
1	32.9	(310)
2	26.8	(623)
3	15.9	(879)
4	13.7	(1116)
5	12.0	(1067)
6	7.7	(607)
—	—	(4715)

Other discussions of the problems of prediction in the context of false positives include: Monahan, John, "Ethical Issues in the Prediction of Criminal Violence", Washington, D.C.: Conference on Solutions to Ethical and Legal Issues in Social Research, 1978; and, Walker, Nigel, "Dangerous People", International Journal of Law Psychiatry, I, January 1978, pp.37-50.

12/ These findings are generally reviewed in Kirby, Michael, Point Scale. One of the best reviews of the literature on the topic is Gayton, Jan, "The Utility of Research in Predicting Flight and Danger", San Diego, California: Special National Workshop on Pretrial Release, 1978. Recent studies with similar findings include: Eskridge, Chris, An Empirical Study of Failure to Appear Rates Among Accused Offenders, Columbus, Ohio: Ohio State University, Dissertation, 1978; Just, Glenn, Project Remand: Estimating Probability of Failure to Appear, South Dakota State University, 1978; Roth, Jeffrey, Pretrial Decision Making in District of Columbia, Washington, D.C.: Institute for Law and Social Research, 1979, forthcoming. However, the preliminary results of the Phase II study of pretrial release appear to be suggesting that community ties may be influential. For example, see Toborg, Mary, et al, "The Outcomes of Pretrial Release: Preliminary Findings of the Phase II National Evaluation", Annual Journal of Pretrial Services, 1979, pp.141-157, Washington, D.C.: Pretrial Services Resource Center.

13/ An examination of the studies and supra 11 will suggest some inconsistency in the predictors in various communities. The argument about the lack of a national set of predictors and the need for verification in each community is made more extensively in Kirby, Michael, Point Scale, Supra 6.

14/ Gewirtz, Marian, Brooklyn PTSA Notification Experiment, New York City: Criminal Justice Agency, 1976.

15/ This argument is made by Wice, Paul, Bail and Its Reform: National Survey, Champaign-Urbana, Illinois: University of Illinois, Dissertation, 1972, pp.431.

16/ There are studies which suggest an impact of supervision on FTA. These studies include: Welsh, Daniel, How Does Pretrial Supervision Affect Pretrial Performance, Washington, D.C.: Pretrial Services Agency, 1978; Miller, Herbert, et al, Second Year Report: An Evaluation of Conditional Release Programs, Philadelphia, PA, Washington, D.C.: Institute for Criminal Law and Procedure, Georgetown University, 1975; Venezia, Peter, supra 7.

To determine if an agency is reducing the FTA rate below what could be expected in the absence of formal release procedures requires that agency defendants must be compared to a second group of defendants, called a comparison or control group, who are of a similar risk level. 17/ The literature suggests that when this research procedure is used, release agencies appear to have an effect, though a definitive test of this hypothesis awaits the results of a national study by the Lazar Institute that is now in progress. 18/ Although the literature suggests than an agency can reduce FTA rates, it is difficult to generalize the findings to all nonfinancial release. A national study by Thomas compared financial and nonfinancial bond in twenty cities and found that in some cities the rates were higher for financial bond, while in others they were higher for nonfinancial bond. 19/ However, a separation must also be made between the defendants in a pretrial release program who are on recognizance and the defendants who are put on recognizance without the recommendation or supervision of a pretrial release agency. There are findings which suggest that defendants released on recognizance but who were not identified and supervised by a release agency do significantly worse than those associated with a pretrial release agency. 20/

One of the more controversial areas is the impact of a 10 percent court deposit system upon the FTA rates of a jurisdiction. Although opponents of such a system claim that FTA rates will escalate dramatically, this does not appear to be the case. In Illinois and Kentucky, states which adopted court deposit, there was no discernable change in FTA though a rigorous study has yet to be executed. 21/ In the most valid study on the topic, Conklin examined two Massachusetts jurisdictions, comparing failure-to-appear rates before and after the enactment of a court deposit system. Defendants under the new deposit system defaulted slightly less frequently than defendants released under the old bail system. The highest default rates under the new system were those few cases taken by bondsmen. The clients of the bondsmen could not afford the deposit, and the bondsmen were willing to take the case on credit. 22/

The findings on exposure time are among the most important in the pretrial release field. "Exposure time" is the number of days a defendant is on pretrial release status. The longer the defendant is on pretrial release status, the

---

17/ This point is discussed more extensively in Kirby, "Design Considerations in Evaluation", supra 6.

18/ For example see Carroll, Stuart, Pretrial Intervention Mechanism: An Evaluation of the Pretrial Release and Diversion from Prosecution Program in Orleans Parish, New Orleans, Louisiana: Mayors Criminal Justice Coordinating Council, 1978; Toborg, supra 1, describes the national study.

19/ Thomas, supra 10, pp.100.

20/ Kirby, supra 7, found that the FTA rate for unsupervised OR was 24 percent compared to the rate of 7 percent for defendants released through the agency. Similar findings appeared in New York City in a study by the Criminal Justice Agency, Quarterly Report, First Quarter, January-March 1978, pp.28: "Defendants who received no recommendation failed to appear twice as often as those who were qualified on the basis of non-verified community ties and three times as often as those who were recommended."

21/ Thomas, supra 10, pp.193-194, and Kentucky Pretrial Services Agency, Second Annual Report, July 1, 1977-June 30, 1978, pp.15-16.

22/ Conklin, John, "The Percentage Bail System: An Alternative to the Professional Bondsman", Journal of Criminal Justice. I, 1973, pp.299-317.

greater the chance that a defendant may miss a court appearance. 23/ A Memphis study found that 83 percent of the felony FTAs occurred after 60 days following the initial release. 24/ Clarke's study in Charlotte, North Carolina, examined a number of factors assumed to be related to FTA — such as community ties, prior record, and nature of the present charge. Even when these factors were taken into account, exposure time was the most important factor in explaining missed court appearances of pretrial defendants. 25/ On the other hand, in his five-volume review on alternatives to incarceration, Galvin examined four major studies in the release field to find out whether failure-to-appear rates were higher for felonies or misdemeanors. The "conventional wisdom" (and the opinion of many criminal justice personnel) holds that the failure-to-appear rates are considerably higher for serious felonies. The argument is that felons face greater consequences for their actions and, therefore, are more apt to miss court appearances. Galvin adjusted the FTA rates in the studies for the amount of time that the defendants had been on pretrial release. He found the converse, that misdemeanants had either the same or higher FTA rates when exposure time was taken into account. 26/ In contrast, Thomas found that the number of FTAs increased with exposure for felonies but not for misdemeanors. 27/

Other findings discuss reasons why defendants miss their court appearances. It is thought that some defendants miss their court appearances because of involuntary reasons such as confusion, illness, and fear. Discussing failure-to-appear rates among New York City citation cases, Galvin described rates that ranged from 10 percent in Staten Island to 28 percent in Manhattan. He argued that the rates were highest in Manhattan because of the transient population and a high use of citations by the store detectives. Defendants appeared reluctant to lose a day's work because of the requirement that cited defendants must appear in court during the daytime. 28/

The most extensive study on this question was done by the New York City Criminal Justice Agency. The agency interviewed 193 defendants who had warrants against them and were returned to court. Defendants voluntarily returning to court, rearrested on another charge, or apprehended by the warrant squad were included in the interview population. Although the reliability of the study is open to question, 29/ it reached some "suggestive" conclusions that FTAs can be caused by system-related factors, uncontrollable reasons, or the defendant's

---

23/ Schaffer, however, found that FTAs occurred early in a case though rates were similar for felonies and misdemeanors. Schaffer, S. Andrew, Bail and Parole Jumping in Manhattan in 1967, New York, NY: Vera Institute of Justice, 1970.

24/ Kirby, supra 7, Chapter VI, pp.5.

25/ Clarke, Stevens, et al, The Effectiveness of Bail Systems: An Analysis of Failure to Appear in Court and Rearrest While on Bail, Chapel Hill, N.C.: University of North Carolina, Institute of Government, 1976.

26/ Galvin, supra 1, pp.76-78.

27/ Thomas, supra 10, pp.105.

28/ Galvin, supra 1, pp.19.

29/ Since questionnaires were used to solicit information from defendants who had missed their court dates, there obviously was great potential for not giving truthful responses. Therefore, this data can be taken only as being suggestive.

lack of attention to the scheduled court date. According to the information supplied by defendants, 50 percent of the warrants were caused by client ignorance. These included not knowing the correct place (8 percent), the correct date (20 percent), the correct hours (8 percent), did not hear name called in court (6 percent), and thought case was disposed of or forgot about it (17 percent). The remainder of the warrant population in this study did not appear because of "unpreventable" factors, such as family reasons (25 percent), financial reasons (15 percent), employment obligations (6 percent) or detained by hospital or corrections (13 percent). Two other key findings were that 22 percent indicated they did not know they were to return for another appearance, and 21 percent of the defendants actually came to the court building but missed their appearance. 30/

In summary, this section described some key findings dealing with FTA, which lead to the following generalizations:

- Defendants released through a pretrial release agency generally show lower failure-to-appear rates than those released through a bondsman. This is in part due to careful screening procedures.

- Pretrial release agencies can have an additional impact on defendants by lowering the expected FTA rates through the use of notification and supervision procedures.

- Nonfinancial release without agency intervention can produce higher FTA rates than for those released through (and sometimes supervised by) a release agency.

- Defendants charged with felonies have FTA rates that are no higher than those charged with misdemeanors.

- FTA rates appear to increase proportionally to time on release status.

- Criminal justice indicators, such as prior record and prior FTA behavior, appear to be more predictive of FTA rates than community ties and socioeconomic factors.

30/ Boyton, Stan, Warrant Study, New York, NY: Criminal Justice Agency, 1977.

PROBLEMS IN DEFINITION AND MEASUREMENT

Problems in the definition and measurement of FTA have been long recognized in the pretrial field. 31/ The Office of Economic Opportunity (OEO) survey of pretrial agencies found that for the 51 programs responding, there were 37 different measurements of FTA. 32/ There are clearly problems created by the uncritical proliferation of language, which makes it difficult to characterize accurately the meaning of FTA rates emanating from a particular program or jurisdiction. This section will attempt to identify some of the problems in language and to suggest a single set of terms, essentially based on the consolidation of the definitions used in the field.

One of the pleasant surprises emanating from a review of the field is that researchers and administrators have identified three clearly distinct types of FTA - aggregate, technical, and deliberate. 33/

- The aggregate rate refers to all defendants who fail to make any of their court appearances. The aggregate rate is the easiest to measure because no differentiation in type of FTA needs to be made. Every missed court appearance, for whatever reason, is counted as an FTA. This category is also the sum total of individuals in the technical and deliberate categories (i.e., aggregate = technical + deliberate).

- Technical FTA refers to those cases where the defendant missed a court appearance because of accidental reasons; such as not knowing the court date, going to the wrong court room, or being ill. This group, which constitutes the largest FTA group, misses court dates in part because of system-related reasons. Determining the approximate size of this group will provide the court planner and release administrator with an understanding of the actual percentage of FTAs that might be most easily reduced with notification and supervision.

- Deliberate FTA refers to those defendants who consciously miss their court date. 34/ Fugitivity is referred to as a separate category in a number of reports; however, it is not listed as such here because it is, by definition, a subset of deliberate FTA. The attempted or actual flight from the jurisdiction separates those defendants considered fugitives from the broader category of deliberate FTA. Fugitivity may also be defined by the defendant's absence from court for a specified length of time (e.g., three months).

31/ For example, see Mahoney, supra 5, pp.71-72.

32/ Office of Planning, Research and Evaluation, Pretrial Release Programs: Working Papers, Washington, D.C.: Office of Economic Opportunity, 1973, p. 22.

33/ Although a variety of terms have been used in various reports and studies in management information systems, the authors generally seem to be discussing these three types of failure to appear.

34/ A number of studies have reported the deliberate FTA rate, yet there is little systematic analysis attempting to determine what percentage of the FTA rate is deliberate. Welsh, supra 16, shows that approximately 51 percent of the FTAs were deliberate; Kirby, supra 7, shows 64 percent of the FTAs as deliberate.

The reduction of types of FTA to aggregate, technical, and deliberate provides a structure by which administrators and researchers can begin to effectively compare their FTA rates. 35/ When discussing FTA rates, the type of FTA should preface any actual discussion of statistics. An enormous number of studies, annual reports and management information systems in the pretrial release field were examined both to show the multiplicity of terms and demonstrate that all FTAs could be categorized, defined, and measured using the three terms. 36/ Chart I demonstrates that there are a multitude of terms and definitions for each FTA type. 37/ For example, technical FTA is sometimes defined as those missed court appearances which include the most obvious accidental situations (those defendants who show up the same day). Some studies define it as the first calling of a case, while others define it as a missed appearance where a bench warrant was issued. Still others define it as missed appearance where the bench warrant was still outstanding the following day, while others may define it as a case where the defendant has not returned within the week. Specific definitional suggestions will be offered below.

35/ Some programs will reverse these statistics to provide an aggregate appearance rate for public relations purposes to illustrate that most defendants do return for their court dates.

36/ The studies in the Pretrial Services Resource Center library, which present evaluations, published materials and results of management information systems, were scrutinized for these definitions and measurements. This library probably constitutes the best holdings on the topic in the country.

37/ Although fugitivity is alluded to, it is not employed as one of the major types of FTA because it is a subset of deliberate FTA. Generally it refers to those cases where defendants abscond and is used for those specialized purposes where the practices of a pretrial release agency and bondsman are to be contrasted. Some believe that the measurement of fugitivity is useful since it is probably the measure of FTA that relates closest to community danger. Although this bulletin does not discourage the utilization of fugitivity, it is a little more difficult to employ and may not have the same type of comparability as the three components listed above.

CHART 1
FTA REFERENCES IN LITERATURE

TYPE OF FTA	TERMS	DEFINITIONS
Aggregate FTA	FTA Forfeiture All No show Simple	Any missed court appearances whether accidental or not Missed first calling of case
Technical FTA	Technical Initial Accidental Non-willful Fault	Missed appearance where bench warrant was issued at missed appearance Missed appearance where bench warrant was still outstanding the next day Missed appearances that included non-deliberate reasons such as death; hospitalization; confusion; fear; error of court, attorney, bondsmen, or release agency; etc.
Deliberate FTA	Deliberate Willful Forfeiture Default Warrant not returned Intentional Intentional, return	Time-one month after appearance Time-bench warrant (capais) still outstanding next day Charges filed for bail jumping Judicial action (client outstanding warrant not overturned) Subsequent court appearances postponed Motivation of client Inferred from court records Warrant not cancelled by next day
Fugitivity (subset of deliberate FTA)	Fugitive Flight from prosecution No return Intentional, no return	Bench warrant served Charges filed for bail jumping Convicted of bail jumping Capture by arrest or serving bench warrant Court proceedings started to recover bond, prosecute on bail jumping, etc. Final judgement Time period-3 months after FTA

PROBLEM OF CALCULATION

Another unresolved issue is the procedure to be used in actually calculating the FTA rate for a group of defendants using the above definitions. Three methods, described in this section, were identified in the variety of studies using FTA: defendant-based, appearance-based, and exposure time. There will also be an extensive discussion of the advantages and disadvantages of various procedures so that the researcher and administrator can make a more informed choice on the procedures most applicable to his/her set of problems and questions.

The defendant-based method, used most often in calculating FTA, employs only the first FTA in calculation. As an example, a study involving 200 defendants may have found that 20 of these defendants had missed court appearances on one occasion. This produces an FTA rate of 10 percent. Although some of these 20 defendants missed court appearances on more than one occasion, this measure will not reflect the multiple missed appearances. Defendant-based measures have the following advantages:

- Almost all studies measuring FTA use the defendant-based measure.
- Defendant-based measures are intuitively more understandable than other measures.
- Defendant-based measures are the easiest to compute.

Among the disadvantages of defendant-based measures are the following:

- They do not take into account the fact that some defendants have more court appearances and are on pretrial release status for a longer period of time (i.e., exposure time).
- Indiscriminating researchers may count cases where defendants did not have a possibility of an FTA (e.g., detained and disposed at arraignment).

An appearance-based measure uses a ratio made up of the total number of missed court appearances divided by the total number of scheduled court appearances. Using the same example, the 200 defendants had 500 court appearances and 30 total FTAs. These 30 FTAs included a number of defendants who missed their court appearances on more than one occasion, giving an FTA rate of 6 percent (30 divided by 500) compared with the 10 percent for the defendant-based measure. 38/ The appearance-based measure has the following advantages:

- It builds the risk factor into the analysis, which is greater with each additional court appearance.

38/ The preliminary findings of the Phase II National Evaluation study by the Lazar Institute shows that the defendant-based FTA rate for the three sites examined is 14 percent, while appearance-based FTA is 7 percent. The D.C. Pretrial Services Agency (formerly D.C. Bail Agency) study found the average defendant-based FTA rate to be 10 percent, while the average appearance rate was 3.4 percent.

- If a defendant missed one court appearance and had 10 total appearances, a program would not be statistically penalized using this measure.
- It provides a variable that is standardized. 39/
- It provides a more accurate description of the agency's effect on court processing.

On the other hand, the appearance-based measures have some clear disadvantages:

- They are not generally used in most studies or management information systems. 40/
- Because they have not been used, there is no current definition of what constitutes a high or low rate.
- Data gathering is more extensive for appearance-based measures.
- It makes agencies working in inefficient court systems (e.g., high number of defendant appearances) seem to be more effective because a single missed appearance appears to be a "drop in the bucket".

Another calculation base involves exposure time or the number of days in pretrial release status. Many studies using a measure of exposure time compute the number of FTAs per 100 days of pretrial release. In the example, there were 30 total FTAs, while the defendants were on pretrial release a total of 24,000 days. This produces a rate of one FTA per 800 days. There are also other variations on exposure which have appeared in a few studies. 41/

One of the most valuable variations is the block method, which produces the number of FTAs per block of days that defendants are on pretrial release. The blocks are usually calculated using 1,000 defendant days on pretrial release. Twenty defendants on pretrial release status for 50 days each would constitute "one" 1,000-day block. In the example there would be 24 blocks and 30 FTAs producing a ratio of 1.25 FTAs per block. 42/ There are a number of advantages to using exposure time (and especially the block method):

39/ An example of a standardized variable is provided by a study which examines city expenditures throughout the United States. In order to look at this in a meaningful way, the expenditure figure for each city must be divided by the number of city residents or else the findings will simply reflect the fact that larger cities have larger expenditures.

40/ Most studies apparently choose to employ the defendant-based measures, expecially since they are more easily computed and involve less record keeping.

41/ For an example of a different approach based on "survival curves", see Clarke, et al, supra 25.

42/ This procedure was first developed by Gedney, supra 1, and was described in full by Galvin, supra 1.

- The block method takes into account the powerful impact of time as risk factor.

- It may produce statistics which are more comparable between courts which differ in amount of time it takes to dispose of a case.

- Defendants do not have to be tracked to disposition for valid statistics. Rather, the rates of defendants currently in pretrial release can be examined. 43/

- "It is more economical and much more practical for quick assessment than the 'ideal' way of measuring failure rates - which is to follow a particular cohort from entry on pretrial release until all, or practically all, have reached the final disposition point." 44/

On the other hand, exposure time measurements have major difficulties:

- They are complex and difficult to compute.

- Since they are not generally used, practitioners have difficulty interpreting them.

- There is no experience to determine what constitutes high and low FTA rates.

- This method should not be used by itself but must be used in conjunction with a defendant-based measure.

43/ Calculation of the block method involves all defendants with an agency during a period of time, even if their case has not yet been disposed of.

44/ Galvin, supra 1, pp.73.

DATA GATHERING PROBLEMS

Although definitional and measurement problems can be overcome, the administrator should also be aware of potential data gathering difficulties. Most of these are easily overcome as problems affecting the reliability of a study. This section will describe some potential problems, including: quality of records, changes in court records, and differences in the jurisdictions.

A major problem in studying FTAs is the poor quality of many court records. A good illustration of this problem is pointed out by the research problems Wayne Thomas encountered in gathering data for his national study of bail. Thomas found "...in some courts the records were quite complete, and in others the minutes were very sketchy. While in some courts you could be quite confident that every time the defendant was not in court this fact would be noted, in other courts this was not the case." 45/ Thomas found that failure-to-appear rates had increased from 1962 to 1971. This may have been the result of changes in record keeping rather than changes in defendant behavior. 46/

A related difficulty is that researchers may use different records for each segment of a study. For example, to compare the FTA rates of the pretrial release agency and bail bond clients, a researcher may choose to obtain the information on deliberate FTA from the agency's records. The agency's records may exclude those defendants who either return for their court case or offer an acceptable excuse to the pretrial release agency (even if a bench warrant was issued). On the other hand, the figures for the bail bondsmen might be obtained from court records where an FTA would be defined as any case in which a bench warrant was issued by the court. Such a procedure would artificially produce higher technical or deliberate FTA rates for the money bond defendant and lower FTA rates for the pretrial release defendants. To be comparable, these rates would have to be gathered from the same records (in this case court records) in exactly the same way for both groups.

Another possible problem involves the nature of the recording devices used in courts and jails. In some jurisdictions FTAs are handwritten in dockets with little concern for noting every single FTA or court appearance. On the other hand, there are many jurisdictions which use more efficient computer-based recording systems. 47/ Not only can such a system produce reliable figures on failure-to-appear, but many computer-based systems attempt to record all types of pretrial behavior. Because of concern for more efficient data gathering and more extensive training of clerks, computer systems may record more actual FTAs. This poses a difficulty when a researcher examines two different time periods within the same jurisdiction. It may be that during one time period recording was done by hand, while in the other it involved computer recording. Because of data gathering differences, the two time periods may not be comparable.

45/ Thomas, supra 10, pp.88.

46/ Ibid.

47/ The judgement of this author is that computer-based systems tend to be more efficient recording systems than handwritten dockets. However, some in the field claim that there is greater accuracy with the handwritten docket systems.

In addition to the technical problems discussed above, there are differences in jurisdictions which make it difficult to compare failure-to-appear rates among jurisdictions. It is very difficult to compare two jurisdictions when each gathers pretrial release information in different ways. In one court deliberate FTA may be defined as a bench warrant being issued, while another court may define it as 30 days after the original missed court appearance. Practices such as the point at which bench warrants are issued, prosecutorial approaches to bail, bondsman influence on judges in not recording failure-to-appear, notification procedures and existence of pretrial release agencies make every jurisdiction somewhat unique in terms of failure-to-appear rates. 48/ Such factors mean that comparisons among jurisdictions will yield little precision. A standard of national FTA rates is probably not attainable unless greater care is taken in defining the source of the rates. Gross estimates may be possible if the type of FTA (e.g., technical), definition, calculation base, and type of defendant (e.g., all misdemeanors) are stated clearly and accurately. Comparison within the jurisdiction is, on the other hand, not only possible but clearly preferable. Comparing local FTA rates to gross national rates should be done with care and preferably as a supplement to making internal comparisons.

48/ Some claim that there are even differences within a jurisdiction which make each court unique, with some judges declaring FTAs at every opportunity and others seldom declaring FTAs.

SUGGESTED PROCEDURES

The suggestions for definitions and calculation are self-evident from the earlier discussion and are easily summarized. A discussion of measurement will be far more difficult and is not based on the same high level of consensus.

If the terms suggested in Chart I are employed consistently by everyone in the field, the FTA concept will become more useful for both description and research. The typology is based on identifying the FTA rate with the appropriate adjective (e.g., Technical FTA). The key elements of this typology include:

- Aggregate FTA: Includes any missed court appearance, whatever the reasons. As a total FTA rate, the aggregate rate is made up of the technical FTA and deliberate FTA rates (i.e., Aggregate = Technical + Deliberate).

- Technical FTA: Includes only those cases where the defendant misses a court appearance because of personal or accidental reasons. It can also be defined as those cases where the defendant voluntarily returns to court soon after his/her missed appearance or if a satisfactory reason is offered to the court. Any FTA which is not deliberate must be, by definition, technical.

- Deliberate FTA: Refers to those cases where defendants miss their court appearances purposely. It occurs where the defendant does not return to court after a missed court appearance or if a satisfactory reason is not given to the court. 49/

Calculation base, the method of computing the actual FTA rate, is also easily specified. Every study should employ the defendant-based method because it is most often used and easily interpreted. The other methods, although useful, should be employed as secondary or supplementary methods only. The block method especially seems to hold promise. With additional utilization and experience, the block method could prove to be useful for factoring out the effect of exposure time.

49/ It was suggested earlier that fugitivity, as a subset of deliberate FTA, includes those cases where defendants abscond. Fugitivity refers to those individuals who have bail jumping charges filed against them or who have not returned to the court within an exceptionally long period of time. Cases defined by fugitivity are clearly the most extreme. Although fugitivity is especially useful when comparisons are made with defendants on money bond, it probably will not be employed as often as the three other components of FTA. Both a contextual and time definition could conceivably be employed for calculating fugitivity. A three month period seems to be the most appropriate for time measurement. Measurement could include the case coming to final judgement, the application of bail jumping statutes and/or the rearrest of the defendant after a deliberate violation had been noted.

The major difficulty of specifying "suggested procedures" is defining the way in which FTA will be measured. Unfortunately, there are no clear guidelines available because of the multiplicity of practices with jurisdictions. However, there are two general ways of measuring any type of FTA: a time method and a contextual method. According to the time method, an FTA has taken place if the defendant does not appear in court within a stated period of time. This may be several hours, several days, or weeks, depending upon the particular type of FTA used. On the other hand, a contextual definition is less standardized and more easily identified. Context refers to jurisdictional differences; such as the issuance of a bench warrant and the refusal to reinstate a bond. A time and context measurement will be provided below for each type of FTA.

Aggregate FTA was defined as any missed court appearance, whatever the reasons, and is a combination of the technical and deliberate rate. To be most useful and have some comparative value across jurisdictions, it must include any defendant who misses a court appearance even though it may have been accidental and even if the defendant returns to court within a short period of time. Although this seems harsh, the distinction between technical and deliberate violations will allow the agency to make other, finer distinctions. Further, an agency is not required to use the aggregate rate, only to identify it properly when it is employed. The aggregate rate is important since the time and contextual definitions will be exactly the same. Because less interpretation is called for, there is a greater possibility of accurate cross-jurisdictional comparison. Further, the missing of a court appearance, whatever the reasons, has a profound effect on the decorum and efficiency of the courts. The agency that reduces even the most trivial of FTAs contributes substantially to improving the functioning of the courts.

Deliberate FTA, on the other hand, is much more difficult to specify. A number of studies define FTA where the defendant does not make his original court appearance within twenty-four hours after a bench warrant has been issued. When a longer time period is chosen, it can range anywhere from one week to several months, with many studies using a one-month period. The suggested procedure is the one-month period as a definition of deliberate. On the other hand, a contextual measurement can include such things as entry in the court records, determining if the bond was reinstated with same conditions, determining if the bond was reinstated but defendant was assessed cost, etc. Clearly, such definitions are acceptable, but do not lead to the same kind of standardization as if the one-month criterion is adopted.

Technical FTA, one of the components of the aggregate rate, refers to accidental FTA. For ease of analysis it will be referred to as those cases that are not deliberate.

CONCLUSION

The purpose of bail, as reflected in state and federal bail statutes, is to ensure the appearance of the defendant at trial. Failure-to-appear is, therefore, one of the key indicators of the performance of jurisdictions and pretrial release agencies in that area. Research related to FTA rates can be helpful in evaluating, managing and -- when necessary -- changing the procedures and systems in those jurisdictions and agencies.

Yet, as reviewed in this bulletin, procedural and definitional problems too often circumvent the potential usefulness and reliability of this research. Consistency is urged as a means to overcoming these problems.

This bulletin suggests standard definitions and research procedures. The terms proposed here are not new. In fact, they were chosen specifically because they represent the most commonly-employed terminology and approaches. But it is only as all agencies utilize a common vocabulary, such as the one outlined here, that failure-to-appear rates can be intelligently and meaningfully discussed. In summary:

- The three types of FTA -- aggregate, technical, and deliberate -- should be clearly differentiated, with aggregate rates providing the highest degree of comparability and standardization.

- FTA measurement, though necessarily complex, is least problematic when aggregate rates are used.

- A time measurement of one month is recommended for deliberate FTA.

- Procedures for calculation should be consistent, and it is suggested that defendant-based measurement is the most useful. It is also suggested that the block method -- though more complex -- is more precise in factoring out the effects of exposure time.

Further, it is urged that any research or agency report preface its discussion with the particular definition, measurement and calculation used to arrive at the reported FTA rate.

Without consistency and careful definition, the numbers reported for FTA rates will continue to have limited meaning and value.

END