

JUDICIAL DISCRETION IN COBB COUNTY MAGISTRATE BOND DECISIONS

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## LIST OF ACRONYMNS

AA.....	Aggravated Assault
CCWD.....	Cobb County Warrant Division
DV.....	Domestic Violence
EWI.....	Electronic Warrant Information
FAH.....	First Appearance Hearing
FT.....	Full-Time
GCIC.....	Georgia Criminal Information Center
MAA.....	Multiple Aggravated Assaults
MF.....	Multiple Felonies
NCSC.....	National Center for State Courts
N-DV.....	Non-Domestic Violence
PCB.....	Probable Cause and Bond Hearing
PT.....	Part-Time
ROR.....	Release on Recognizance
SPSS.....	Statistical Package for Social Sciences
TCPS.....	Trial Court Performance Standards

## ABSTRACT

This project examines whether the exercise of judicial discretion to determine bond in an aggravated assault case is dependent on the legal, extra legal, or combination of factors present during the arrest and First Appearance Hearing (FAH). This research analyzes data from the Cobb County Magistrate Court, a limited jurisdiction court located in Marietta, Georgia. The Court serves a community of 607,000 and is committed to ensuring that the option for pretrial release is available to defendants who are eligible for bond without compromising the safety of the community.<sup>1</sup>

The data collection efforts for this research includes a survey and post survey administered to part-time Magistrates and the collection of warrants issued from January to August 2008. The survey instruments cover the judicial values commonly present in the exercise of judicial discretion. Hypothetical decision scenarios, an assessment of current decision tools, and an examination of special conditions were posed to survey participants. Data information derived from the collection of warrants includes demographics, decision outcomes, and specific characteristics associated with the warrant.

The purpose of this project is to understand the effects of judicial discretion through the establishment of bond. This study contains a review of more than 291 criminal warrants containing at least one aggravated assault. The legal factors include: the severity of offense, probation/parole status, and community ties. The extra legal factors include age, ethnicity, gender, and the Magistrate assigned to the bail hearing. The analysis reveals that 30% of the variation in the amount of bond at FAH was explained by the factors investigated; and the degree by which Magistrates exercise judicial discretion is largely influenced by one legal factor – a probation and/or parole violation at FAH but not at arrest.

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<sup>1</sup> *State and County QuickFacts*, U.S. Census Bureau, Found at [www.census.gov](http://www.census.gov), at page 2

The study concludes with five recommendations for the court's consideration. First, further research should be conducted to identify additional factors which may account for bond variations outside the scope of this project. Second, the decision scenarios should be incorporated into training sessions with Magistrates. Third, the survey instruments should be administered to part-time Magistrates one year after hire to gauge the decision practices against more experienced peers. Fourth, Magistrates should have access to Georgia criminal history information (GCIC) at the time of arrest. Fifth, the court should investigate the feasibility of using a risk assessment instrument.

## INTRODUCTION

The exercise of judicial discretion to determine bond in an aggravated assault case is dependent on the legal, extra legal, or combination of factors present during the arrest and First Appearance Hearing (FAH). The central components of this project are derived from the defendant and survey data: 1) the population of aggravated assault warrants issued from January to August 2008 using the National Center for State Court's (NCSC) Trial Court Performance Measure (TCPS) 3.3.4;<sup>2</sup> 2) a survey of Magistrates contrasting perceptions of judicial discretion to actual bond outcomes; 3) the identification of legal and extra legal factors associated with defendants;<sup>3</sup> and 4) a post survey of Magistrates further analyzing bond considerations in addition to a brief self-assessment of decision-making practices among peers.

### **Georgia Judiciary**

Georgia's court system is organized into 49 judicial circuits and 10 administrative districts encompassing 159 counties. While uniform rules of procedure exist within each class of court, the judicial branch is best described as a quasi-decentralized system of county operated courts. From a regional perspective, the judiciary is divided into three levels: limited, general, and appellate.<sup>4</sup> Each level of court has constitutional jurisdiction over certain types of cases. The limited jurisdiction courts include State, Juvenile, Probate, Magistrate, and Municipal courts. These courts are responsible for traffic, misdemeanor cases and some civil cases.<sup>5</sup> The general jurisdiction courts, the Superior Court has exclusive jurisdiction over divorce cases, felony and

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<sup>2</sup> *Trial Court Performance Standards*, **National Center for State Courts**, page 1

<sup>3</sup> Nagel, Ilene H., *The Legal/Extra-Legal Controversy: Judicial Decisions in Pretrial Release*, **Law & Society Review**, 1983, page 483

<sup>4</sup> *Legislator's Guide to the Judicial Branch*, **Georgia Administrative Office of the Courts**, 2008, page 4

<sup>5</sup> **Loc. Cit.**

offenses. The Court of Appeals reviews the records of cases previously tried in general and limited levels to determine whether procedural errors or errors of law are present.<sup>6</sup> The Supreme Court is the final authority to which cases can be appealed in Georgia.<sup>7</sup>

The Constitution of Georgia unified the trial courts and established the means to create uniform court rules in 1983.<sup>8</sup> As part of this mandate, court rules and standards for the docket were established for the magistrate court. As a court of inquiry, magistrate courts have jurisdiction over civil claims of \$15,000 or less, certain minor criminal offenses, distress warrants, county ordinance violations, dispossessory writs, deposit account fraud, preliminary hearings, summonses, and search warrants.<sup>9</sup>

Currently there are 495 Magistrates in Georgia with a Chief Magistrate presiding in each county.<sup>10</sup> While most Chief Magistrates are elected in county elections to four year terms, some are appointed by local legislation. The Chief Magistrate is responsible for setting policy, assigning cases, setting court sessions, and appointing full-time Magistrates (FT) with the approval of the Superior Court Judges.<sup>11</sup> The number of FT Magistrates in addition to the Chief Magistrate is usually determined by a majority vote of the circuits Superior Court judges.<sup>12</sup> Terms for FT Magistrates run concurrently with the appointment of the Chief Magistrate. The

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<sup>6</sup> **Loc. Cit.**

<sup>7</sup> **Loc. Cit.**

<sup>8</sup> Purdom, Wayne M., **Georgia Magistrate Court Handbook with Forms 2002-2008**, page 2

<sup>9</sup> See Note 7 **supra**, page 4

<sup>10</sup> *Georgia Courts Directory 2007-2008*, **Georgia Administrative Office of the Courts**, page 50

<sup>11</sup> See Note 9 **supra**, page 11

<sup>12</sup> **Loc. Cit.**

minimum qualifications required are residency in the county for at least one year prior to the term of office, be at least 25 years of age, and have a high school diploma or its equivalent.<sup>13</sup>

## **Cobb County Magistrate Court – Criminal Warrant Division**

### **Background**

Cobb County has the third largest population per county in Georgia. Covering more than 340 square miles, it is a suburban county with dense population concentrations in the northwest corner of Metro Atlanta.<sup>14</sup> According to the United States Census Bureau the racial makeup in 2000 was: 72% White, 18% Black, 3% Asian, and 7% Hispanic.<sup>15</sup> Management and professional related occupations are cited as the most common type of employment.<sup>16</sup> In 2006, the median household income was \$61,682 and the average household income was \$80,309.<sup>17</sup> Cobb's arrest rate is similar to other densely populated areas with the third largest arrest rate after Fulton and Clayton counties respectively.<sup>18</sup> The research also reveals that most defendants charged with aggravated assault list Marietta, the largest city in Cobb County, as their primary residence at the time of arrest (See Appendix A).

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<sup>13</sup> See Note 4 *supra*, page 11

<sup>14</sup> See Note 1 *supra*, page 1

<sup>15</sup> **Loc. Cit.**

<sup>16</sup> See Note 14 *supra*, page 2

<sup>17</sup> Boatright, Susan R. and Bachtel, Douglas C., **The Georgia County Guide**, The University of Georgia Cooperative Extension, 2008, page 30

<sup>18</sup> See Note 17 *supra*, page 16-17

## Structure

The Cobb County Magistrate Court is a limited jurisdiction court serving more than 607,000 constituents.<sup>19</sup> The court is a single county circuit within the seventh administrative judicial district. The Court is located in the central city of Marietta along with the Superior, State, and Probate courts. Operationally, the Magistrate Court is divided into three divisions: civil, criminal, and pretrial (See Appendix B). The civil division handles the dispossessory issues and small claims under \$15,000. The criminal warrant division is responsible for processing criminal warrants, civilian applications, and civil ceremonies. The pretrial division investigates the defendant's background so Magistrates can decide whether or not to release the defendant from custody before trial. The bench is comprised of the Chief Magistrate, two FT Magistrates, and 14 part-time Magistrates (PT). The FT Magistrates are responsible for hearing bond hearings, revocation hearings, domestic hearings, application hearings, and non-jury hearings. They are designated to assist Superior Court Judges in issuing temporary protective orders and they have the authority to set bond for defendants whose bond was initially denied by a PT Magistrate on the basis of a defendant's probation and/or parole status. PT Magistrates are assigned to several rotating eight hour shifts each week. They are primarily responsible for the review and issuance of warrant applications, FAH, search warrants, and civilian applications.

The magistrate rotation schedule is maintained by the Judges' Assistant. PT Magistrates rotate every eight hours, seven days a week. The advantage to this schedule is the checks and balances that are built into the review process. Most cases involving a serious felony, such as aggravated assault, are potentially reviewed by at least three Magistrates prior to a Superior Court trial. The opportunity to identify and correct discrepancies associated with the level of

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<sup>19</sup> See Note 1 *supra*, page 6

bond is an indirect benefit. An unintended consequence is that the amount of bond may vary depending on the magistrate assigned at each point in the review process. A Magistrates' judicial philosophy about the case can have some influence on the amount of bond applied during the pretrial process.

A defendant's entry into the magistrate process begins with an arrest warrant issued by a PT Magistrate (See Appendix C). During this stage, the Magistrate is authorized to set a cash bond or to deny bond if probation or parole conditions have been violated. Georgia law stipulates that defendants have the right to an initial hearing within 72 hours of arrest.<sup>20</sup> The FAH is the venue in which a defendant's charges are reviewed, bond is modified or set, and future hearings are scheduled. The right to a FAH is waived if a cash bond is posted prior to the initial hearing. Prior to the trial court appearance, a defendant can request a Probable Cause and Bond Hearing (PCB) to determine the appropriateness of the charges. Procedurally, aggravated assault cases are then scheduled for a Superior Court trial. In some cases, the cash bond is modified, the number of original charge(s) is reduced, or the case is dismissed.

### **Problem Statement and Significance**

The problem statement featured in this research addresses whether the exercise of judicial discretion to determine bond in an aggravated assault case is dependent on the legal, extra legal, or combination of factors present during the arrest and FAH. The legal factors include: the severity of the offense, probation/parole status, and community ties. The extra legal factors include: age, race, gender, and the Magistrate assigned to the bail review. The findings of this research reveal the degree to which Magistrates consider these factors in setting bond. The defendant data provides essential information to identify defendant characteristics while the time

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<sup>20</sup> **Magistrate Court Bench Book**, Council of Magistrate Court Judges, 2007-08, page 477

parameters are limited to aggravated assaults from January to August 2008. Two fundamental questions are addressed: First, what trends are identified in bond decisions, and second, how do the outcomes compare against measures suggested in the TCPS Measure 3.3.4? The survey data illustrates the following questions about judicial discretion: First, how do Magistrates view their decision styles in comparison to peers; and second, what circumstances do Magistrates believe warrant additional considerations? The survey responses were then analyzed to determine whether these perceptions are in accord with actual bond decisions.

### **Research Questions**

The central questions guiding this research are as follows:

- 1) What are the characteristics of the Defendant?
- 2) What are the characteristics of the Magistrate?
- 3) How does bond vary from the initial arrest to the FAH?
- 4) How does bond vary from the point of FAH to 15 calendar days after the initial hearing?
- 5) How does bond vary from the point of FAH to 30 calendar days after the initial hearing?
- 6) What are the common perceptions among Magistrates about judicial discretion?
- 7) What do the research findings reveal about the degree to which judicial discretion is utilized?

## LITERATURE REVIEW

The following analysis of current research literature cover judicial discretion and its influence on bail decision-making as it relates to this study. This section is divided into three parts and is presented structurally by questions related to the project's objectives. The first section provides a brief review of the purpose of bail and examines the manner in which bail-setting impacts the defendant. Within this part, the following four questions are addressed: 1) What is the definition and purpose of bail? 2) What are the bail options? 3) What are the obstacles? 4) What are some of the important bail laws and cases? The second part examines the TCPS Measure 3.3.4. The final part summarizes bail prediction models and considers two questions. First, what are the components of bail prediction models, and second, what are the research findings?

### **Definition and Purpose of Bail**

The first major legislation to reference bail is the United States Judiciary Act of 1789. This Act established the parameters by which bail is permissible and the judicial authority responsible for the review of evidence, nature of the offense, and the usages of law.<sup>21</sup> As a result of growing concern that the federal judiciary would become too powerful, the Eighth Amendment was created to circumvent any potential abuse as a result of the broad discretion permitted in the Judiciary Act. The Amendment further stipulates that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.<sup>22</sup>

Prior to bail reform efforts, there were two primary schools of thought regarding the purpose of bail. The first school of thought considered the appearance of defendants at required

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<sup>21</sup> The Constitution Society, <http://www.constitution.org>, Found at page 1

<sup>22</sup> Ketcham, Ralph, **The Anti-Federalist Papers and the Constitutional Convention Debates**, 1986, page 378

court proceedings as the only legitimate function of bail.<sup>23</sup> Critics argued against the practice of setting money bail at such unaffordable levels as to impact the preventive detention of defendants who were considered dangerous by presiding judges or magistrates.<sup>24</sup> The second school of thought viewed preventive detention through high bail as an abuse of judicial discretion, an abuse that inevitably permitted punishment prior to adjudication.<sup>25</sup> Since the financial resources of defendants played a key role in determining their pretrial liberty, bail decisions were often seen as discriminatory.

By the 1970's the purpose of bail was largely understood to be a way to prevent the defendant from being detained when still presumed innocent and to ensure that he or she will appear in court when required.<sup>26</sup> The American Bar Association (ABA) also considers bail to be:

“The amount of money defendants must post to be released from custody until their trial. Bail is not a fine. It is not supposed to be used as punishment. The purpose of bail is simply to ensure that defendants will appear for trial and all pretrial hearings for which they must be present. Bail is returned to defendants when their trial is over, in some states minus a processing fee”.<sup>27</sup>

## **Bail Options**

Eligible defendants can achieve bail in several ways. First, the judge may release a defendant on recognizance (ROR) and without a payment of money, on the condition that he or she will appear for all hearings and for trial. This is usually done if defendants have steady employment, ties to the community, and/or other personal circumstances indicating no risk of

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<sup>23</sup> Goldkamp, John S. and Gottfredson, Michael R., *Bail Decision Making and Pretrial Detention: Surfacing Judicial Policy*, **Law and Human Behavior**, 1979, page 228

<sup>24</sup> **Loc. Cit.**

<sup>25</sup> **Loc. Cit.**

<sup>26</sup> Clarke, Stevens H. and Freeman, Jean L. and Koch, Gary G., *Bail Risk: A Multivariate Analysis*, **The Journal of Legal Studies**, 1976, page 341

<sup>27</sup> [www.abanet.org/publiced/courts/bail.html](http://www.abanet.org/publiced/courts/bail.html), **American Bar Association Division for Public Education**, 2008, Found at page 1

flight.<sup>28</sup> In most states, defendants that do not have the money for bail have the option of release through a bail bondsperson. In return for the defendant's putting up a percentage of the total bond, usually 10 percent, the bondsperson will guarantee the remaining amount to the court should the defendant not be present for any court appearance.<sup>29</sup> The literature commonly refers to this process as the traditional bail system. Under this system, a judge could require a property bond as collateral for returning to court.

In Georgia, defendants eligible for bail may do so using the following:

- Cash
- Property
- Recognizance
- Professional Surety
- Driver's License
- Recognizance bond signed by commanding officer of military personnel (may be substituted for bonds of up to \$400).<sup>30</sup>

Although Georgia courts can restrict the type of security permitted; the sheriff can determine what sureties are acceptable when surety bond is required.<sup>31</sup>

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<sup>28</sup> See Note 25 *supra*, page 228

<sup>29</sup> See Note 25 *supra*, page 228

<sup>30</sup> See Note 20 *supra*, page 477

<sup>31</sup> *Loc. Cit.*

## Challenges to Decision–Making Equity

The literature acknowledges the delicate balance between judicial discretion and the rules of law. Judges are expected to render decisions in the face of several simultaneous considerations: the defendant’s interest in pretrial freedom and the community’s interest in protection.<sup>32</sup> In his 1906 speech to the American Bar Association, Roscoe Pound warned that compromise is inevitable when judicial latitude is integrated with structured guidelines.

“Legal history shows an oscillation between wide judicial discretion on the one hand and strict confinement of the magistrate by minute and detailed rules upon the other hand<sup>33</sup>...The law has always ended in a compromise, in the middle course between wide discretion and over-minute legislation. In reaching this middle ground, some sacrifices of flexibility of application to particular cases is inevitable”.<sup>34</sup>

Before the establishment of national standards, judges considered bail based on the nature of the charges rather than the characteristics of the defendant.<sup>35</sup> One result of this approach is that judges are more likely to impose punishment through the denial of bail particularly for non-capital offenses. The concept of innocent until proven guilty was somehow lost in the subjective practice by which judges applied judicial discretion. Goldkamp and Gottfredson suggest that:

“Such massive of pretrial detention is a matter of considerable controversy...it appears on its face to be so incongruous with the due process precept that criminally charged defendants are innocent until proven guilty...detention of the pretrial accused so closely resembles punishment of the pretrial accused, many find it highly objectionable, if not unconstitutional”.<sup>36</sup>

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<sup>32</sup> Frazier, Charles E., Bock, E. Wilbur, and Henretta, John C., *Pretrial Release and Bail Decisions: The Effects of Legal, Community, and Personal Variables*, **Criminology**, 1980, page 231

<sup>33</sup> Pound, Roscoe A., *The Causes of Popular Dissatisfaction with the Administration of Justice*, **American Bar Association**, 1906, page 397

<sup>34</sup> **Ibid.**, page 398

<sup>35</sup> [www.pretrial.org/html/reform.htm](http://www.pretrial.org/html/reform.htm), **The Pretrial Justice Institute**, 2008, Found at page 2

<sup>36</sup> Goldkamp, John S. and Gottfredson, Michael R., *Bail Decision Making and Pretrial Detention: Surfacing Judicial Policy*, **Law and Human Behavior**, 1979, page 228

Clearly, critics recognize the potential threat to the defendant's right of due process. Ilene Nagel further examines the discretionary motive of the decision-maker.

“General rules of law cannot dictate specific outcomes; discretion must always intervene. Yet the question remains: Does discretion operate in discriminatory ways? If so, is it because decision-makers violate the principles of equality before the law, or is it because applicable rules of law have discriminatory implications?”<sup>37</sup>

A second challenge to equitable decision-making is that the traditional bail system is driven by the defendant's ability to secure bond. In many instances, indigent and minority defendants are more likely to receive pretrial detention due to their lack of financial resources. While the judge may offer an equitable and fair pretrial decision, factors external to this decision can sabotage the original intent. Simply having one group more adversely affected than another group can give the perception that fairness is not available to all. Frazier, Bock, and Henretta contend that, “the largest group of people held in American jails is composed of either persons denied bail because of the seriousness of the charges against them or persons who are too poor to afford bail necessary for release”.<sup>38</sup>

A third obstacle to decision-making equity is the lack of defendant information available to the judges during critical points of the pretrial process. This problem is commonplace particularly at the time a warrant is issued. In Cobb County for example, the defendant's criminal history is not available until the first appearance hearing. Magistrates must rely on the officer's sworn testimony and some criminal history information through the case management system.

Another reality to judicial discretion is society's expectation of bail setting-particularly in high profile media cases. Although judges must weigh the defendant's rights against the allegations, the average citizen does not understand the limitations of the law. The public expects

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<sup>37</sup> See Note 3 *supra*, page 483

<sup>38</sup> See Note 32 *supra*, page 163

the judge to impose a harsh bond as a pretrial punishment. When the bond decision does not meet this expectation, public dissatisfaction with the judicial system is the result. Pound describes the thought process for the individual and the decision-maker:

“The individual looks at cases one-by-one and measures them by his individual sense of right and wrong. ....If his (the judge) hands are tied by law, he must apply the ethics of the past as formulated in common law and legislation...In either event, judicial and individual ethical standards will diverge”.<sup>39</sup>

### **Important Bail Legislation and Cases**

The Bail Reform Act of 1966 established standards for judges to use in making pretrial decisions. President Johnson expressed concern that the failure to appear and danger to the community should not be dependent on financial resources.<sup>40</sup> The Act had two important consequences: it redirected judicial discretion to seven specific areas and it curtailed the system’s reliance on cash options for defendants. The Act specified that federal courts must consider the following factors in release decisions:

- family ties
- employment
- financial resources
- character and mental condition
- length of residence
- criminal records
- appearance record at court proceedings<sup>41</sup>

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<sup>39</sup> See Note 33 *supra*, page 398-399

<sup>40</sup> Woolley, John and Peters, Gerhard, [www.americanpresidency.org](http://www.americanpresidency.org), The American Presidency Project, 2008, Found at page 1

<sup>41</sup> Stinson, Penny, *Development of a Risk Assessment Instrument to be Used in Bail Release Decisions in Maricopa County, Arizona*, **National Center for State Courts**, 2002, page 14

Although the release criteria focus on the defendant characteristics and the probability of returning to court; it includes no provision for danger to the community. Urban areas such as Washington D.C. saw federal defendants with serious charges released simply because they met the criteria in the federal guidelines. The system quickly became a revolving door for criminals.

The Bail Reform Act of 1984 overhauled the bail and forfeiture procedures. This Act incorporates two important elements: 1) consideration for community safety as a release criteria and 2) the option of pretrial detention in cases where the government has established that no conditions of pretrial release will ensure that the defendant will appear for trial.<sup>42</sup>

“A court cannot intentionally detain the defendant by setting bail at an unaffordable level, it may set bail at whatever level it finds reasonably necessary to secure appearance; if the defendant cannot afford that amount, the defendant is detained not because he or she “cannot raise the money, but because without the money the risk of flight is too great”.<sup>43</sup>

The literature also references two Supreme Court rulings central to the discussion of defendant’s right to bail. *Stack v. Boyle* is the case most often cited in support of the right to bail and the right to freedom before conviction. In this case, 12 petitioners appealed to have their bond reduced on the basis that it was excessive under the 8<sup>th</sup> Amendment. The Court ruled that bail was not properly set and the petitioners could file a motion to reduce bail with a right of appeal to the Court of Appeals.<sup>44</sup>

“Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded to the District Court with directions to vacate its order denying petitioners’ applications for writs of habeas corpus and to dismiss the applications without prejudice. Petitioners may move for reduction of bail in the criminal proceeding so that a hearing may be held for the purpose of fixing reasonable bail for each petitioner”.<sup>45</sup>

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<sup>42</sup> Trott, Stephen S., *Implementing Criminal Justice Reform*, **Public Administration Review**, 1985, pages 795-800

<sup>43</sup> *The Bail Reform Act of 1984 Second Edition*, **Federal Judicial Center**, 1993, page 3

<sup>44</sup> **Stack v. Boyle**, 342 U.S. 1 (1951)

<sup>45</sup> **Loc. Cit.**

In the *Carlson v. Landon* case the Court concurred with the lower courts ruling that the refusal of bail was not arbitrary nor did it violate the Due Process Clause of the Fifth Amendment.<sup>46</sup> In this case the petitioner was held without bail pending determination for deportation. The Court ruled that discretion as to bail was broad enough to justify the petitioners' detention without bail as a menace to the public interest.<sup>47</sup>

In Georgia, the *Ayala v. State* case addressed the burden of proof issue for defendants charged with capital crimes. In this case, the defendant sought an interlocutory appeal to consider whether the state must prove that a person charged with murder and aggravated assault who sought a pretrial bond had not met the conditions for release.<sup>48</sup> Initially, Hall County Superior Court denied bond on the basis that the defendant did not carry his burden of proving that he was not a risk to flee the jurisdiction if released on bond. The Supreme Court of Georgia vacated the superior court's denial of the defendant's bail and remanded the case back to superior court for further proceedings.<sup>49</sup>

#### **Trial Court Performance Measure 3.3.4**

The NCSC developed the TCPS as a tool to help courts measure their operation. Under the equality, fairness, and integrity standard, measure 3.3.4 addresses factors relevant to bail, bond, and release on recognizance decisions.<sup>50</sup> This measure is an appropriate resource for courts that seek to evaluate their reliance on bond criteria as permitted by law.

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<sup>46</sup> **Carlson v. Landon**, 342 U.S. 524 (1952)

<sup>47</sup> **Loc. Cit.**

<sup>48</sup> **Ayala v. The State, Supreme Court of Georgia**, No. S92A1154 (1993)

<sup>49</sup> **Loc. Cit.**

<sup>50</sup> See Note 2 *supra*, page 1

In an effort to understand what influences a bail decision, criteria are divided into legally relevant and legally irrelevant categories. Legally relevant criteria include the defendant's criminal and court history, current offense, legal ties, and character.<sup>51</sup> Legally irrelevant factors include: demographic characteristics, legal counsel, and the judge assigned to the bail hearing.<sup>52</sup>

There are three areas to consider when examining bond decisions. First, was the defendant released on recognizance and how frequent is this decision used by the court?<sup>53</sup> Second, what is the amount of the surety bond and what is the range? Third, what changes occur within the defendants' bond decision through the pretrial process?<sup>54</sup>

The data collection guidelines cover the method of selecting cases for analysis. This measure recommends obtaining data from a number of sources including but not limited to closed court case records, pretrial release organizations, and probation departments.<sup>55</sup> Logit and regression analyses are the quantitative models suggested. The Logit model is appropriate if the decision to release or not to release on recognizance is examined. This model measures the positive relationship between each criteria and the bail decision.<sup>56</sup> The regression model is recommended for determining which factors predict the amount of surety bonds. This model is designed to measure the independent effects on interval variables such as the dollar amount of

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<sup>51</sup> See Note 2, **supra**, page 1-2

<sup>52</sup> See Note 2, **supra**, page 2

<sup>53</sup> See Note 2, **supra**, page 2-3

<sup>54</sup> See Note 2, **supra**, page 3

<sup>55</sup> **Loc. Cit.**

<sup>56</sup> See Note 2, **supra**, page 2

bonds. A positive result suggests there is a positive relationship between each factor and the bail amount.<sup>57</sup>

The advantage of using measure 3.3.4 is that it allows the court to precisely measure its compliance to national and state guidelines concerning bond decisions. If the court has deviated from the legal standards in determining bond, there is an opportunity to implement corrective action particularly in areas that adversely impact one population more than another. This measure also allows the court to identify problematic areas that compromise a defendant's right to due process and speedy trial. To obtain data on performance, the court must identify defendants who are eligible for bail and examine their length of pretrial detention. In addition to simply measuring performance, courts must use the results to implement change in process and outcome.

### **Bail Prediction Models**

Gottfredson defines "prediction" as an assessment of some expected future state.<sup>58</sup> The literature on prediction models is classified into two types: 1) variables that influence bond decisions and 2) variables that predict the amount of bond. For the first model, recommendation tools such as the point scale instrument were used in the Manhattan Bail Project. This scale was largely based on variables common in failure to appear cases. Judges used this scale to determine whether to release a defendant on recognizance or to set bail.<sup>59</sup> By the 1970's and 1980's assessment instruments were implemented in Philadelphia, Boston, Miami, and Phoenix.<sup>60</sup>

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<sup>57</sup> See Note 2, *supra*, page 3-4

<sup>58</sup> Gottfredson, Don M., *Prediction and Classification in Criminal Justice Decision Making*, **Crime and Justice: A Review of Research**, 1987, page 2

<sup>59</sup> Phillips, Mary T., *Factors Influencing Release and Bail Decisions in New York City: Part 1: Manhattan*, **New York Criminal Justice Agency**, 2004, page 1

<sup>60</sup> See Note 40, *supra*, page 4

Goldkamp and Gottfredson raise an important point that in the bail decision, judges are guided by a variety of prescriptive decision criteria. The complexity of these criteria, statutes, and recommended court rules reflects not only the uncertainty over the criteria to be considered but the ambiguity about the function of the bail decision itself.<sup>61</sup>

Nagel credits legal characteristics such as the amount of bail required and whether to offer a cash alternative to a surety bond as having the most influence on bond decisions. She also cites extra legal factors such as bench bias and defendant dangerousness as having an even greater impact on pretrial decisions.<sup>62</sup>

Cicourel and Erikson suggest that the personal characteristics of the defendant have an independent effect upon bond outcomes. The age, sex, and minority status of the defendant are also seen as important factors that influence the judges' decision.<sup>63</sup> Stephen Demuth credits offense severity and criminal history as the best predictors of legal decisions.<sup>64</sup>

In the second type of design, variables that predict the amount of bond were addressed by researchers who were concerned that excessive bail amounts were a direct violation of defendant's Eighth Amendment rights. Fleming, Kohfeld, and Uhlman performed a time series research design to observe the movement of bond amounts for defendants with some form of financial bail before and after bail reform.<sup>65</sup> In this design, researchers examined the growth and

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<sup>61</sup> See Note 36, *supra*, page 231

<sup>62</sup> See Note 3, *supra*, page 481

<sup>63</sup> Bynum, Tim S., *Release on Recognizance: Substantive or Superficial Reform?*, 1982, *Criminology*, page 70

<sup>64</sup> Demuth, Stephen, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees*, *Criminology*, 2003, page 886

<sup>65</sup> Flemming, Roy B., Kohfeld, C.W., and Uhlman, Thomas M., *The Limits of Bail Reform: A Quasi-Experimental Analysis*, *Law & Society Review*, 1980, page 959

fluctuation rate of bond amounts before and after bail reform efforts were implemented.<sup>66</sup> Lee Silverstein noted that one must also consider variables such as financial resources of the defendant, availability of bail reduction, length of time between arrest and final disposition, and local bonding and court practices respecting bail.<sup>67</sup>

### **Findings of Bail Research**

The difficulty of summarizing bail research findings is the manner in which a bail decision is conceptualized. Each study addresses a perspective central to the researcher. Some studies examine the recognizance issue separately from the bail amount while other studies combine these two issues and seek to link their cause to independent variables such as behavior or demographics. The commonality in all of these studies is that the research cannot demonstrate the exact cause and effect for most of these decisions. In instances where bond decisions venture outside the range of normality, the researcher usually explains the variance through some external phenomenon.

In the Manhattan point scale system, only 65% of adult defendants who received the highest release recommendation were released on recognizance. Fifty-four percent of adults who were not recommended for release because of weak community ties were also released on recognizance.<sup>68</sup> Although this practice suggests that judges were not consistently relying on recommendations from the point scale system; the larger question is, what are judges using to make informed decisions?

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<sup>66</sup> **Loc. Cit.**

<sup>67</sup> Silverstein, Lee, *Bail in the State Courts-A Field Study and Report*, **Minnesota Law Review**, Volume 50:621, 1965, page 641

<sup>68</sup> Phillips, Mary T., *Factors Influencing Release and Bail Decisions in New York City: Part 1: Manhattan*, **New York Criminal Justice Agency**, 2004, page 2

In later research the Gibson study attempts to answer this question through a comprehensive model about judicial behavior. The study found a low correlation between the judges' attitude and the actual decision. Gibson credits this low correlation to the effect of an intervening variable – role orientation. Orientation refers to the range of legitimate criteria used in decision-making.<sup>69</sup> Gibson also describes this finding to be consistent with the experimental literature.<sup>70</sup>

The judges' reliance on recommendations by the prosecution and the defense are described in the literature with mixed results. The prosecutor's role is cited as the strongest predictor of bond decisions particularly in courts where pretrial services are not available.<sup>71</sup> Barnes et al. found that at least in the federal courts of California, the strongest predictor of bail decisions was the Government's recommendation.<sup>72</sup> The Ebbson and Konecni study noted that when pretrial decisions were examined, bail was almost exclusively based on prosecutor's recommendations, but when judges were presented with hypothetical cases, their decision was strongly influenced by the defendants' ties to the community.<sup>73</sup> The disconnect between actual practice and belief is another example of the researcher's challenge in understanding the cause and effect in pretrial decisions.

Few studies addressed the defense attorney's role in bail decisions. In the Manhattan Bail Project, researchers recorded prosecutors' and defense attorneys' recommendations in New York

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<sup>69</sup> Gibson, James L., *Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model*, **The American Political Science Review**, 1978, page 922

<sup>70</sup> **Loc. Cit.**

<sup>71</sup> See Note 41, **supra**, page 4

<sup>72</sup> **Loc. Cit.**

<sup>73</sup> See Note 41, **supra**, page 5

City and analyzed interactions among judges and attorneys.<sup>74</sup> Researchers concluded that the defense attorney is the least influential member of the bail-setting triad, and when there was a disagreement, the prosecutor usually prevailed.<sup>75</sup>

## **Summary**

This review examined bail issues central to this study. The guidelines for bail have changed significantly but the original intent remains the same – to ensure that a defendant will appear in court. Through a series of laws and procedures, community safety is now an important factor in pretrial release. The challenge for judges is that they must weigh the individual circumstances of the case against the rule of law.

In a time where accountability and performance are the expectation, the court must effectively demonstrate its adherence to these standards. The NCSC has been instrumental in helping courts achieve accountability through tools such as the TCPS.

Bail prediction models are another useful tool for courts. These models provide a wealth of information about the interrelationship between what is known about the defendant and the pretrial decision. The disadvantage is that the research designs tend to be customized to the court being investigated; it is generally difficult to apply such findings to bail in general.

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<sup>74</sup> See Note 41, *supra*, page 4

<sup>75</sup> *Loc. Cit.*

## METHODS

This research is a quantitative analysis focusing on aggravated assault warrants issued in the Magistrate Court of Cobb County. The chapter is divided into two parts. The first part examines the general assumptions, limitations, and exclusions to the research. The second part outlines the framework analysis of the defendant data and survey responses. An examination of these sections is important to understanding the research findings in the following chapter.

### **Assumptions**

There are five assumptions important to this study. First, the content obtained from the case management system and other sources such as the hearing calendar and the original warrant is assumed to be accurate. At the time of arrest, the warrant information is first entered into the Electronic Warrant System (EWI) by the arresting officer. The warrant application is then examined by the clerk and subsequently reviewed and issued by the Magistrate through a video hearing.

Second, each defendant in this study attended a first appearance hearing within 72 hours of arrest as required by O.C.G.A. 17-4-26, 62.<sup>76</sup> Some defendants chose to post bond within the 72 hour timeframe thus waiving the right to a first appearance hearing. The inclusion of the FAH is critical to evaluating changes in the bail status during the pretrial process.

Third, survey responses from magistrates are a summary representation of their opinions about the use of judicial discretion. The ability to assess a relationship between opinion and outcome is largely dependent on the candidness of the participants. The surveys return rate is high and suggests that Magistrates are genuinely interested in expressing their opinions; however, some participants chose not to respond to every question asked.

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<sup>76</sup> See Note 30 *supra*, page 449

Fourth, variables statistically tested represent factors associated with determining bond as identified in the bail measures of the TCPS. The severity of offense, judicial decision practices, and the defendant's probation/parole status are important elements to bail measurement.

Fifth, each Magistrate heard an equal number of cases from January to August 2008. Cases are aggregated per magistrate in order to achieve equity in distribution. Magistrates who participated in this study rendered bond decisions for a minimum of 15 warrants during the data collection period.

### **Limitations**

Data collection was limited to an eight-month period beginning January 1 and ending August 31, 2008. The collection period provides sufficient time to identify judicial styles. Research findings are limited to warrants containing at least one aggravated assault charge. The findings associated with aggravated assault warrants should not be generalized to include other non-assault criminal warrants issued from this court.

Last, defendant criminal histories are not available to magistrates at the time of arrest. The absence of this information can influence the decision-making practices during the pretrial phase. Obtaining legally relevant factors such as financial status, employment, and prior criminal history are not accessible due to regulations prohibiting the acquisition of such information directly from the criminal history packet attached to the first appearance paperwork.

### **Exclusions**

During the data collection period, 376 criminal warrants contained at least one aggravated assault charge. A total of 85 warrants were excluded from the population for three reasons. First, 69 warrants were removed because the defendant posted bond within 72 hours thereby waiving the right to a first appearance hearing. Since the objective of this research is to

examine the status of bail decisions during various pretrial points, defendants without a first appearance hearing miss an important step in the decision process.

Second, 14 warrants were excluded because a magistrate heard less than 15 aggravated assault applications in comparison to other Magistrates. The omission of warrants reviewed by two magistrates serves to equalize the distribution of cases heard per magistrate and establish a standard sample important in analyzing the overall findings.

Third, (1) warrant was excluded because it was issued by a full-time judge. As a general practice, full-time judges preside over preliminary hearings while part-time magistrates are responsible for warrant applications and first appearance hearings.

Another case contained both a *no contact* and a *no violent contact* special condition of bond. This warrant was excluded from the study because it did not fit within the parameters of the research design.

### **Trial Court Performance Measure 3.3.4: Equality and Fairness in Bail Decisions**

The TCPS outlines measures to assess the judge's reliance on legal and extra legal factors. Both terms are suggested in the Equality and Fairness in Bail Decisions Measure 3.3.4.<sup>77</sup> Legal variables cover the defendant's legal status, current offense, and the defendant's residence at the time of arrest. Extra legal variables include gender, ethnicity, age at arrest, and the magistrate designated to review the warrant and preside over the FAH. Analyzing defendant characteristics associated with the warrant and comparing it to the status of bail provide insight into the degree of discretion used by magistrates. A high degree of reliance on extra legal factors would suggest that judges consistently apply more discretion in terms of setting bond. A high degree of reliance on legal factors would suggest that magistrates rely less on their own discretion and more on the legal parameters currently in place.

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<sup>77</sup> See Note 2 *supra*, page 1

The factors used to analyze magistrate decisions include a review of the bond amount and changes at initial arrest, first appearance, and any subsequent actions. A separate analysis is performed on the status of bail for both the 15 and 30 calendar day points calculated after the first appearance hearing.<sup>78</sup> Examining bail status at both points allow for further analysis of the decisions without elevating one marker as more significant than the other marker.<sup>79</sup> For the purposes of this project, a multivariate Ordinary Least Squares regression analysis is used to measure the relationship between the bond decisions, legal factors, and extra legal factors.

## **Defendant Data**

### *Population*

The defendant data is comprised of criminal defendants arrested in the Cobb County jurisdiction and charged with at least one aggravated assault. Data variables include: gender, birth date, ethnicity, resident address, and number/type of victim(s). Variables highlighting critical points of pretrial include: date of arrest, date of first appearance, and the date of the probable cause and bond hearing. Warrant variables include: the number of aggravated assault, associated charges with the level of severity, type of weapon, magistrate on duty, and the bond amount. Data collection began in August and completed by late October 2008. Obtaining data from multiple sources proved to be the most time consuming effort while constructing this database.

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<sup>78</sup> See Note 2 *supra*, page 2

<sup>79</sup> *Loc Cit.*

Table 1: 2008 Sample Population vs. Other Criminal Warrant Population

	n= Aggravated Assaults Warrants	N=All Other Criminal Warrants
January	28	1,256
February	25	1,264
March	37	1,222
April	30	1,288
May	45	1,256
June	35	1,258
July	44	1,193
August	47	1,359
<b>Total</b>	<b>291</b>	<b>10,096</b>

*Note: Sample population does not include aggravated assault warrants previously excluded from this study.*

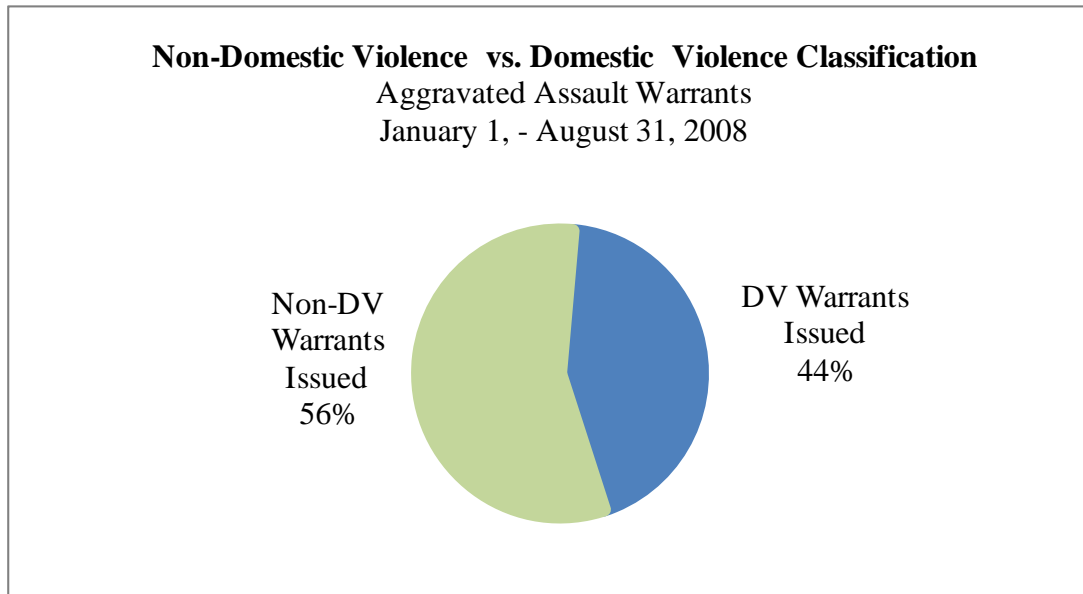
*Domestic versus Non-Domestic Warrants*

An analysis of the sample population reveals that aggravated assault warrants fall into two distinct classifications: Domestic Violence (DV) and Non-Domestic Violence (N-DV). During the application phase, the law enforcement officer selects DV as an option when circumstances meet the legal requirement under the family violence statute.<sup>80</sup> Family violence occurs when it involves “one or more of the following: past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household”.<sup>81</sup> N-DV warrants are defined as the exact opposite – parties that have no familial relationship or minimal to no association prior to the alleged crime. These classifications are statutorily recognized as parameters given the divide between the two categories.

<sup>80</sup> Official Code of Georgia, O.C.G.A. 19-13-1, p.855

<sup>81</sup> **Loc. Cit.**

Figure 1. Aggravated Assault Warrants by Classification



*Analysis of Framework*

Each observation has a unique number assigned by the EWI system. This identification number serves as a primary point of reference in the database. Demographic information is retrieved from this system using the accused, victim, and offense screen modules. After the warrant is issued, the information is electronically transferred to the BANNER system.<sup>82</sup> In this system, the amount of bond and any pending actions were retrieved using both the cross court query and docket screen modules. Supplemental sources such as first appearance calendar were also useful in defining the rationale behind the judges' decision. The data collected from both systems were first entered into an Excel spreadsheet and then imported into the Statistical Package for the Social Sciences Program for Analysis (SPSS). Descriptive statistics were used to depict the average amount of bond and the frequency of occurrences.

<sup>82</sup> BANNER Case Management System, 2008, Palatine Corporation

## **Survey/Post Survey(s)**

### *Instruments*

The first survey instrument was distributed along with a cover letter to 11 magistrates currently employed in the Cobb County Magistrate Court. Participants were given a three-week timeframe to complete the form. The distribution and retrieval of completed questionnaires posed no significant challenge since the participant pool was small and most questionnaires were completed onsite. The survey contained 22 questions which covered areas such as personal characteristics, decisions, and values (See Appendix E). The format includes a variety of methods designed to extract critical details: Likert scaling (four and five degree differential), scenarios, multiple choices, and a general comments section. The objective was to gain an understanding of the perceptions of judicial discretion, the effectiveness of decision-making tools, and the decision-making pattern among the magistrates. In order to ensure a high return rate, participants were not asked to identify themselves on either survey.

The Post Survey was distributed along with a cover letter to the same group of participants from the original questionnaire. The format contains four questions in response to areas not covered in the first survey (See Appendix G). The question format included Likert scaling (three degree differential), multiple choices, and a ranking scale. Participants were given one week to complete the form. The post survey covered areas such as the perceived degree of danger and peer analysis. The instructions for the rank scale in Question 1 posed a challenge to some participants who thought a value should be assigned to each weapon rather than a numerical rank based on priority. Rather than classify the answer as invalid, weapons were “sub-ranked” based on the answers originally listed by one magistrate. The information obtained from

the first questionnaire and post survey was entered into the Statistical Package for the Social Sciences Program for Analysis (SPSS).

### *Analysis of Framework*

The findings from both questionnaires are used to compare the perceptions of judicial discretion in bond setting to the actual bond decisions. A descriptive analysis using the mode is first performed to determine how frequently bond amounts are set in accordance with the minimum bond guidelines recommended by the Chief Magistrate. A significant number of bonds set below or above the minimum bond levels suggest there are additional factors that guide a decision more than when bond is set at the minimum amount per injury level. Questions 1-9 cover the background and credentials of the Magistrate. These questions allow for testing to identify whether a relationships exist between bond outcomes and magistrate characteristics such as legal experience, years on the bench, and hours worked per week. Participants were asked to rate decision tools (Questions 10-15) which include both administrative and legal resources using a Likert scale. These tools were selected because of their availability onsite. Magistrates were then asked to score ten hypothetical scenarios using the injury level rating (0=no injury, 1=slight injury, 2=severe injury) in Question 21, Scenarios A-J. The scenario content was derived from past aggravated assault warrants while the injury levels mirrored those from the minimum bond guidelines.

The Post Survey questions address areas such as the perceived degree of danger and a short self-evaluation. In Question 1, Magistrates are asked to prioritize weapons commonly used in aggravated assault cases. The objective is to determine which weapons Magistrates believe are most dangerous or least dangerous during an aggravated assault. Question 2 covers the circumstances most likely to influence a bond decision. In other words, under what conditions

would a magistrate be most likely to deviate from normal decision practices? Identifying these commonalities provide insight into the judicial values of the magistrate. Question 3 and 3b ask Magistrates to compare their decision-making practices to peers. Respondents that believe their decisions differ from peers are asked to quantify this assertion from a list of possible motives.

## FINDINGS

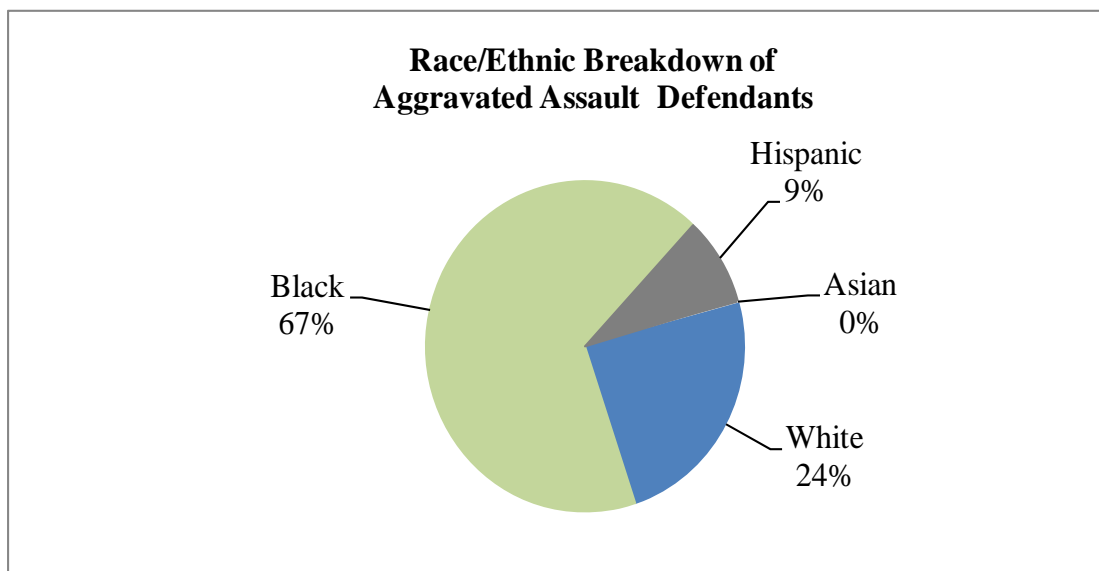
The findings of this study are divided into two main sections: the defendant data and the survey responses. The former highlight the profile of the defendant and Magistrate, the outlay of bond determinations, and the factors Magistrates rely on most to make bond decisions. As recommended by the TCPS Equality and Fairness Bail Measure 3.3.4, a multi-regression analysis was performed using the amount of bond and the legal and extra legal variables identified in the defendant data. Changes in the status of bond are also examined using the 15 and 30 calendar day mark as an additional point of reference. The latter section details Magistrate responses from the survey and post survey. These responses provide further insight into judicial reasoning associated with determining bond.

### Defendant Data

#### *Defendant Profile*

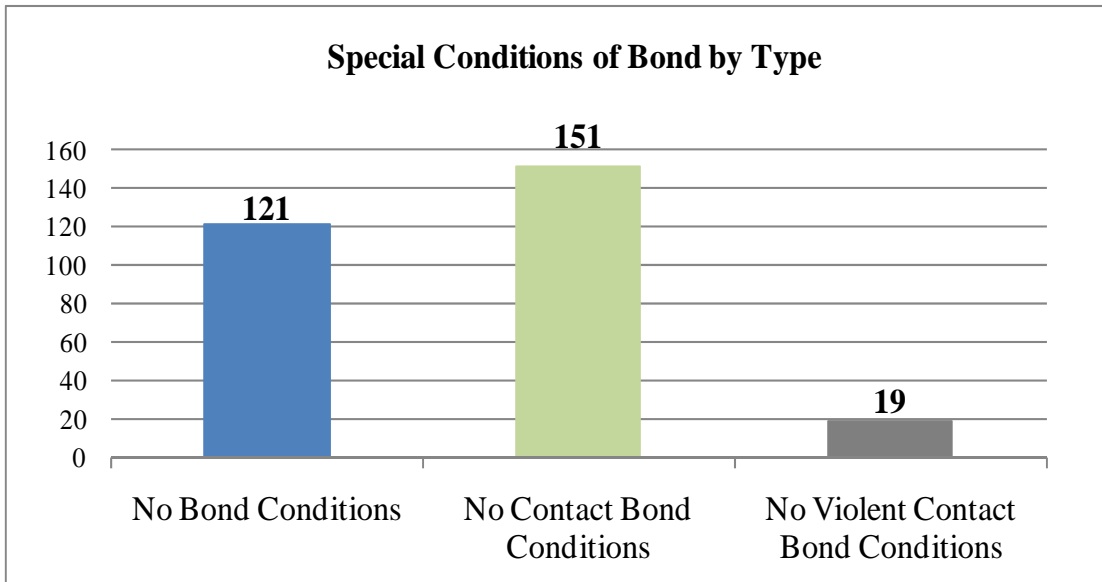
There are 291 criminal warrants examined in this study. Figure 2 highlights the racial/ethnic breakdown of defendants charged with at least one aggravated assault. The data indicates that African-Americans represent 67% of the defendants during this collection period.

Figure 2.



The average age at arrest is 30 while the most frequently common age is 23. Seventy-five percent of aggravated assaults are committed by male defendants. There are nine sub-types under the aggravated assault offense (i.e. regular, weapon, article, rape, robbery, officer article, officer weapon, murder, and party to a crime). More than two-thirds of all aggravated assaults are classified according to the first three sub-types. Sixty-nine percent of defendants are also charged with another type of crime(s) in addition to the aggravated assault charge(s). While 56% of aggravated assaults do not involve domestic violence, 52% of non-domestic violence warrants include a special condition of bond prohibiting future contact with the victims.

Figure 3.



Weapons commonly involved in this type of crime include: knives, vehicles, guns, and an assortment of metal and wood objects. Male defendants are more likely to use a gun while female defendants are more likely to use a knife. The majority of victims involved in DV and N-DV cases are adults.

### *Magistrate Profile*

The characteristics of a Magistrate are obtained from both the defendant data and the survey responses. The majority are male between the ages of 51 and 60. At least four Magistrates have previous or current experience as a judge in another court. On average, Magistrates work 11 to 20 hours each week in the Cobb County Magistrate Court. Seven out of eleven Magistrates have practiced law for more than 16 years. Their legal areas of expertise include but are not limited to: domestic relations, general civil, criminal, corporate, and real estate cases.

Magistrates that issued 15 or more aggravated assault warrants at arrest were assigned an identifying letter. Table 2 highlights the bond decisions of individual Magistrates for DV and N-DV warrants as a combined group and as separate groups. There are minimum bond guidelines for eligible defendants under the following circumstances: No Injury level (\$10,000), Slight Injury level (\$15,000), and a Serious Injury level (\$25,000). While the guidelines serve as a suggestive framework for setting bond based on the severity of the crime; it is not uncommon for bond to be set below, above, or between each injury level.

Overall, six out of eleven Magistrates were more likely to deny bond when DV and N-DV warrants are combined as a group. When a cash bond is set, averages range from \$13,571 to \$31,571 with most bonds set at the No Injury level. When examining only DV bonds warrants, the average bond ranges from \$12,000 to \$32,000. In a similar manner to combined bond decisions, six out of eleven Magistrates were more likely to deny bond in a DV warrant. When a cash bond was set, half of the Magistrates set bond at the No Injury level while the remaining Magistrates set bond at the \$15,000 or Slight Injury level. The average bond for an N-DV warrant ranged from \$13,143 to \$46,250. When a cash bond was determined, eight out of eleven

Magistrates were more likely to deny bond as a practice while the remaining Magistrates set bond at every level of the minimum guidelines.

Table 2. Bond Decisions at Arrest

PT Magistrate	Average \$ Bond	Mode Bond	Average DV Bond	Mode DV Bond	Average N-DV Bond	Mode N-DV Bond
A	\$21,522	\$0	\$17,273	\$0	\$25,417	\$0
B	\$15,143	\$10,000	\$17,143	\$15,000	\$13,143	\$10,000
C	\$13,571	\$0	\$12,500	\$0	\$15,000	\$0
D	\$19,911	\$10,000	\$23,333	\$0/\$10K	\$17,344	\$10,000
E	\$16,875	\$0	\$13,750	\$0	\$20,000	\$0
F	\$19,091	\$0	\$16,429	\$15,000	\$23,750	\$0
G	\$21,050	\$15,000	\$19,000	\$15,000	\$22,417	\$15K/\$30K
H	\$27,083	\$0	\$32,000	\$0	\$23,571	\$0/\$25K
I	\$31,571	\$25,000	\$12,000	\$10,000	\$46,250	\$0/\$25K
J	\$17,500	\$10,000	\$12,667	\$10,000	\$23,077	\$0
K	\$23,750	\$0	\$15,000	\$0	\$28,125	\$0

Table 3 depicts aggravated assault cases reviewed by Magistrates at FAH. At this stage, Magistrates review bond decisions initially set at arrest. Since Magistrates rotate a shift every eight hours, the Magistrate responsible for determining bond at arrest is not always the Magistrate reviewing the same warrant during the FAH. Also, the Magistrates receive a detailed GCIC criminal history during FAH. The implication is that new information can motivate a Magistrate to modify an earlier bond. The FAH decisions for two additional Magistrates are included because they presided over FAH's during the collection period. Both Magistrates were excluded from Table 3 because they issued less than 15 warrants at arrest.

Overall, the average cash bond for DV and N-DV warrants ranged from \$15,000 to \$32,143. Ten out of thirteen Magistrates were more likely to deny bond. When examining only DV warrants, the average bond ranged from \$13,750 to \$32,500. Eleven out of thirteen

Magistrates were more likely to deny bond. The average bond for N-DV warrants ranged from \$10,000 to \$32,000. Nine of thirteen Magistrates were more likely to deny bond. The remaining Magistrates either set or allowed an existing bond to remain at every injury level as outlined in the Minimum Bond Guidelines.

Table 3. Bond Decisions at FAH

PT Magistrate	Average \$ Bond	Mode Bond	Average DV Bond	Mode DV Bond	Average N-DV Bond	Mode N-DV Bond
A	\$17,375	\$15,000	\$16,667	\$15,000	\$17,800	\$25,000
B	\$18,500	\$0	\$20,909	\$0	\$17,105	\$0
C	\$18,029	\$0	\$15,267	\$0/\$10K	\$20,100	\$0
D	\$25,000	\$0	\$25,000	\$0/\$30K	\$0	\$0
E	\$19,167	\$0	\$23,750	\$0,\$10K,\$15K, \$20K,\$50K	\$10,000	\$0
F	\$23,587	\$15,000	\$29,792	\$0	\$16,818	\$10K/\$15K
G	\$20,000	\$0	\$0	\$0	\$25,000	\$15K/\$25K
H	\$15,000	\$10K/\$20K	\$13,750	\$10,000	\$20,000	\$0/\$20K
I	\$32,143	\$0	\$32,500	\$0,\$15K, \$50K	\$32,000	\$0
J	\$21,204	\$0	\$22,083	\$0	\$20,500	\$0/\$10K
K	\$17,737	\$0	\$20,833	\$0	\$16,308	\$15,000
*L	\$17,857	\$0	\$16,667	\$0,\$10K,\$15K, \$25K	\$18,750	\$0/\$20K
*M	\$20,000	\$0	\$20,000	\$0	\$0	\$0

\*Initial arrest warrants reviewed by this PT Magistrate were excluded from the subpopulation since the minimum threshold of 15 warrants was not reached at arrest. This Magistrate did preside over FAH in the same subpopulation.

#### *Outlay of Bond Determinations*

Figures 4, 5, and 6 represent bond status from initial arrest to the FAH, 15 calendar days after the initial hearing, and 30 calendar days after the initial hearing.

Figure 4: Bond Status - Initial Arrest to FAH

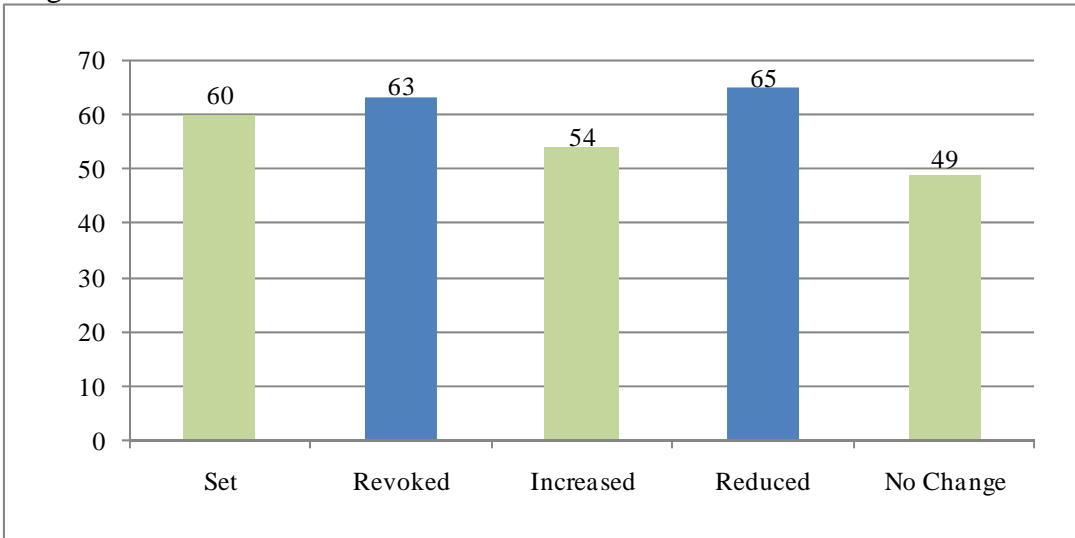


Figure 5: Bond Status - FAH to 15 Calendar Days

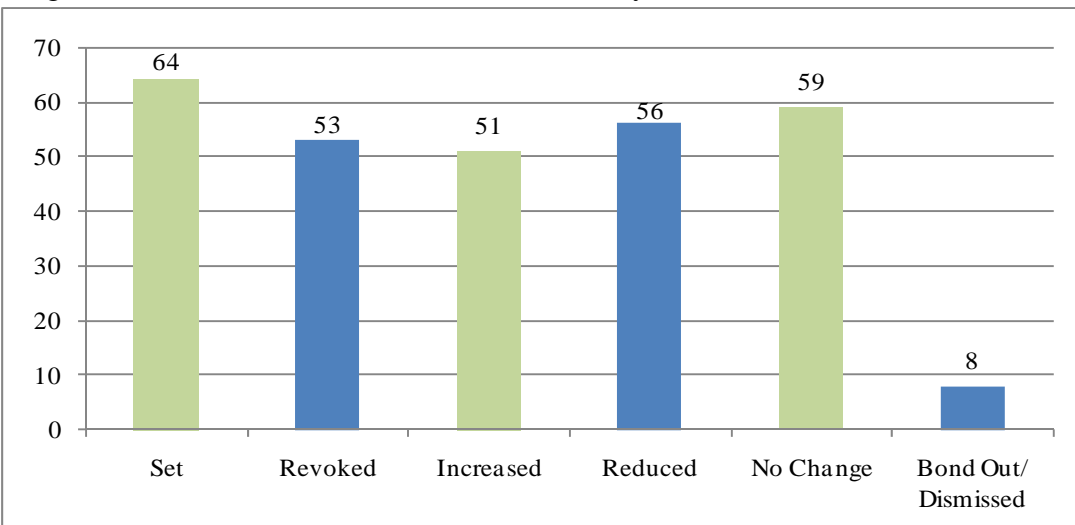
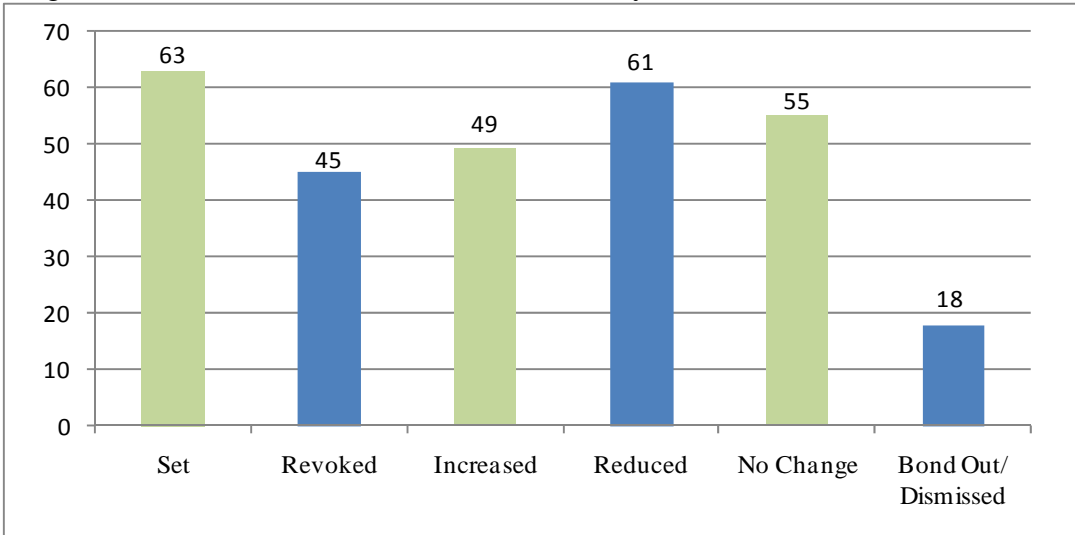


Figure 6: Bond Status - FAH to 30 Calendar Days



### *Multi-Regression Analysis*

A multivariate Ordinary Least Squares regression analysis was conducted controlling for independent variables at the point of arrest, FAH, 15 days after FAH, and 30 days after FAH. The objective was to prove or disprove the assertion that certain legal and extra legal factors impact the bond decision. The results are first reported according to its overall significance to the regression equation and second by the unique contribution of independent variables identified as statistically significant. Both the overall significance and unique contributions provide insight into the predictive qualities associated with determining bond.

The four regression models reveal that only the regression on bond at FAH is explained by a significant amount of variance. The regressions on bond amount at the initial arrest, 15 days after FAH, and 30 days after FAH (See Appendix I) were not statistically significant. While the attrition rate of defendants provides an explanation for why regression models failed for bond set 15 and 30 days after FAH, it also suggests there are unidentified factors that impact bond at the point of arrest.

The regression on FAH bond amount explained 30% of the variation ( $R^2=.299$ ). With regard to the unique contributions of the independent variables, a violation of probation or parole was significant with an  $F$  score of 6.092 and a significance level of .000, below the .05  $p$  value level. The results indicate that on average, probation and parole violators receive a smaller bail by more than \$20,017 in comparison to offenders that are not on probation or parole. This occurrence suggests that when bond decisions for probation and parole violators are compared to non-violators, the violators have smaller cash bonds since a violation automatically disqualifies a defendant for a monetary bond if the new offense committed is a felony. The opposite effect is

that offenders who do not violate parole or probation receive higher cash bonds as an assurance that they will return to court.

### **Survey/Post Survey Responses**

#### *Decision Tools*

Magistrates were asked to rate the effectiveness of decisions tools that are currently available to them. The decision tools include the Minimum Bond Guidelines as suggested by the Chief Magistrate; the Georgia Law Enforcement Handbook; the Magistrate Court Bench Book; and the Official Code of Georgia Annotated. In general, Magistrates considered the Minimum Bond Guidelines and the Official Code of Georgia Annotated as most useful or very useful decision tools; while the Georgia Law Enforcement Handbook received the highest score among Magistrates as not necessary in the decision process.

Table 4. The Value of Decision Tools

Decision Tools	Not Necessary	Not Very Useful	Neutral	Useful	Very Useful
Suggested Minimum Bond Guidelines	0	0	4	6	2
Georgia Law Enforcement Handbook	4	0	5	2	1
Magistrate Bench Book	0	0	6	2	4
Official Code of Georgia Annotated	2	2	0	6	2

Magistrates were then asked several questions concerning the use of a risk assessment instrument to determine the likelihood a defendant will appear in court and the danger to the community. About 83% of Magistrates indicated they would be likely or somewhat likely to use a risk assessment instrument. When probed further, six out of eight Magistrates did not perceive this tool as limiting their judicial discretion. When asked whether there is some inflexibility to its design, seven out of twelve Magistrates did not agree with this assertion. Ten out of twelve

Magistrates cited the absence of general information concerning the instrument; while others were not concerned with legal liability associated with using this type of decision tool.

*Feasibility of a Risk Assessment Instrument*

Table 5.

Survey Question(s) 15B (1-5)	Agree	Disagree	Did Not Answer
-Risk assessment instruments <b>will</b> limit my judicial discretion.	2	6	4
-Risk assessment instruments <b>are</b> inflexible.	1	7	4
-I do <b>not</b> have enough information about a risk assessment instrument.	10	2	0
-The current decision-making tools are <b>adequate</b> .	6	4	2
-I <b>am concerned</b> about the legal liability associated with using a risk assessment instrument.	1	6	5

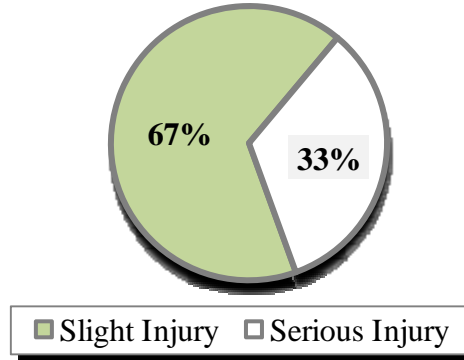
Questions 16-20 address the availability of defendant information at various points during the pretrial process. First, eleven out of twelve Magistrates concur that immediate electronic access to criminal history information would be useful at the submission and issuance of a warrant. Slightly fewer Magistrates believed they needed additional information at the FAH. Opinions were equal concerning whether it would be beneficial for a Magistrate to first receive criminal history information from the arresting officer or pretrial prior to a decision. Clearly a sizeable number of Magistrates were interested in this option but an equally sizable number were either undecided or did not prefer this option.

*Decision Scenarios*

In Survey Questions 21 A-J Magistrates were asked to score the injury level of 10 hypothetical situations commonly seen during the warrant application. They are asked to consider the degree of injury given a minimal amount of information concerning the medical treatment and the circumstances involved in the disputes. The figures presented on each chart represent the percentage of Magistrates scoring at each level.

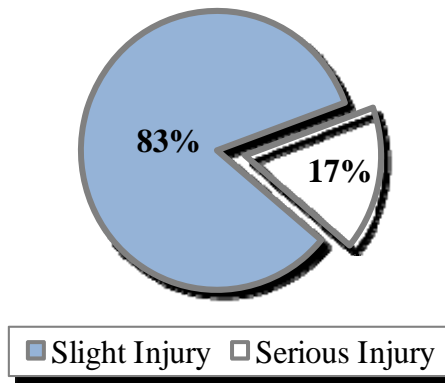
**Figure 7: Survey Question 21-A**

Scenario A: John hit Jane with a metal pipe during a disagreement. Although Jane received some bruises, she refused medical treatment from EMTs on the scene. How would you score this scenario?



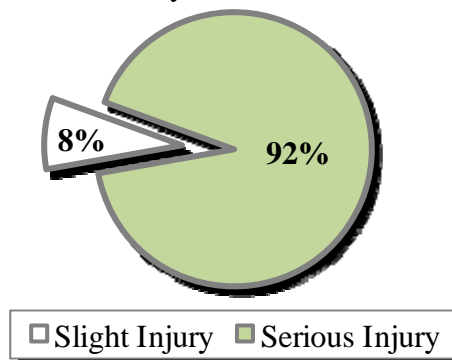
**Figure 8: Survey Question 21-B**

Scenario B: During a physical altercation with Patricia, Eric received a black eye. How would you score this scenario?



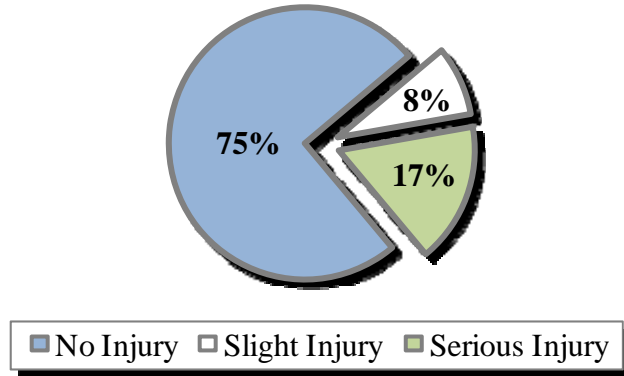
**Figure 9: Survey Question 21-C**

Scenario C: During a heated argument, Gerald pistol whipped James. According to the Officer, James sustained a severe headache and some bleeding from the head. How would you score this scenario?



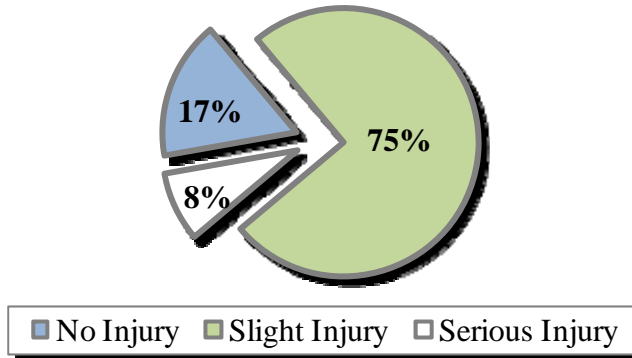
**Figure 10: Question 21-D**

Scenario D: Matthew intentionally aimed and fired a pistol at Clinton. The bullet missed Clinton and he received no injury. How would you score this scenario?



**Figure 11: Question 21-E**

Scenario E: At a local bar, Jack punched Alex in the stomach. As a precaution, Alex was transported by EMTs to the hospital for an x-ray. His medical status was unknown at the time of Jack's arrest. How would you score this scenario?



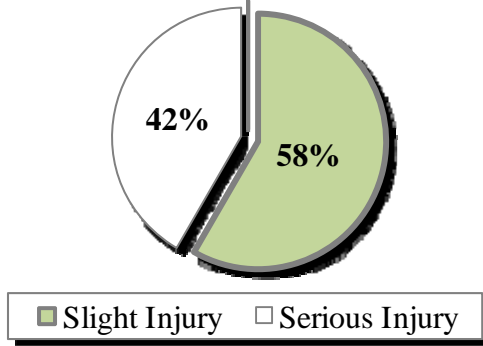
**Figure 12: Question 21-F**

Scenario F: In a dispute over a loan, Susan cut Erica with a box cutter. Erica sustained a deep laceration to the face. How would you rate this scenario?



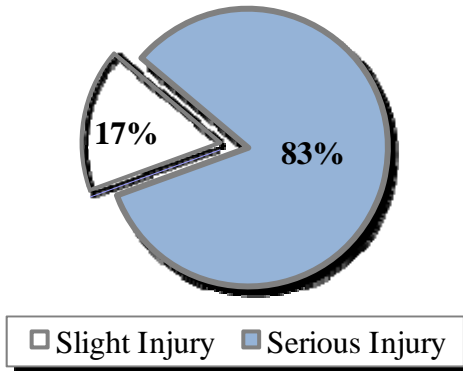
**Figure 13: Question 21-G**

Scenario G: In a disagreement over a referee call, Bert kicked the Referee in the back with a steel toed boot. The force of the kick knocked the Referee to the ground. The Referee sustained no visible injuries but he reported having back pain to the officer. How would you score this scenario?



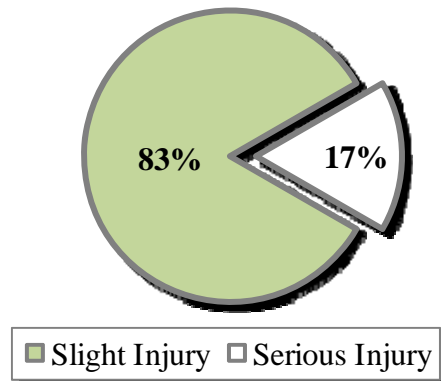
**Figure 14: Question 21-H**

Scenario H: During a family reunion, Erica got into a physical fight with her first cousin Patsy. As a result, Erica sustained a busted lip and lost three teeth. EMTs treated her injuries at the scene. How would you score this scenario?

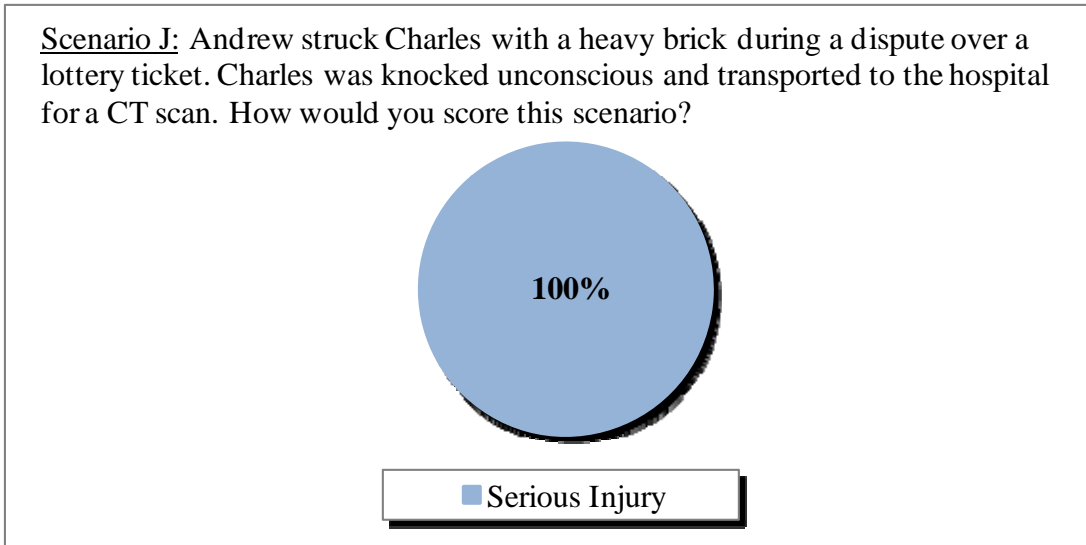


**Figure 15: Question 21-I**

Scenario I: In a domestic dispute, Blake cut Sandra with a small pocket knife. The pocket knife nicked Sandra's arm causing light bleeding. How would you score this scenario?



**Figure 16: Question 21-J**



*Perception of Danger and Circumstance*

The Post Survey contained questions about the degree of danger associated with certain types of weaponry (See Appendix G). Magistrates were asked to rank weapons commonly associated with aggravated assaults. These weapons include a hammer, handgun (discharged or present), fist(s), lead pipe, vehicle, knife, glass bottle, frying pan, brick, and a BB gun. The findings show that Magistrates rank the following items as most dangerous in order of severity: vehicle, lead pipe, brick, handgun-discharged, handgun-present. Magistrates also ranked the following weapons as least dangerous: BB gun, handgun-present, lead pipe, frying pan, and brick.

In Post Survey Question 2, Magistrates agree that the top four circumstances most likely to influence their bond decision are: (*in no respective order*) Officer, Elderly Person, Child, and Pregnant Person. The objective in this line of questioning is to gain further insight into the circumstances Magistrates consider most critical in their review of aggravated assault applications.

### *Peer Assessment*

In Question 3 and 3b, Magistrates were asked if they considered their decisions consistent with those of their peers. While seventy-five percent of Magistrates believed their decisions were in line with peers; others cited differences such as judicial philosophy, years on the bench, legal experience, and employment background as relevant reasons for why their bond decisions were inconsistent with the peer group.

## CONCLUSIONS AND RECOMMENDATIONS

The conclusions and recommendations outlined in this section are based on the findings as presented in the previous section. The results of this research were shared with court management and the Magistrates. The information below is first reported as a conclusion and then followed with a recommendation.

**CONCLUSION #1: REGRESSIONS REVEAL THAT ONLY THE BOND AMOUNT AT FAH IS EXPLAINED BY FACTORS KNOWN TO INFLUENCE THE AMOUNT OF BOND; BOND AMOUNTS AT ARREST, FAH 15+, AND FAH 30+ ARE NOT EXPLAINED BY THESE FACTORS.**

Despite the identification of several legal and extra legal factors typically considered in bond decisions, the findings reveal that only one legal factor – the probation and parole status is statistically significant for the bond amount at FAH. Regressions also showed that only the amount of bond set at FAH was explainable by factors known (by previous research) to influence bond and not bond amounts at arrest, FAH+15, and FAH+30.

**RECOMMENDATION #1: THE COURT SHOULD IDENTIFY NEW LEGAL AND EXTRA LEGAL FACTORS RELEVANT TO DETERMINING BOND.**

This research should be applied biannually to measure the equity in the court's bond decisions. The court can accomplish this recommendation by identifying additional legal and extra legal factors relevant to determining bond. While the regression analysis confirms that 30% of the bond variation can be explained only during FAH, it is equally as important to identify factors that influence bond decisions at arrest. Understanding both ends of the pretrial process is an important measure of the court's reliance on the law.

The ability to access this data presents the greatest challenge in terms of time. Retrieving data from multiple sources (i.e. case management systems, court documents) and data entry pose time considerations that the researcher must be prepared to accommodate. The inclusion of factors such as income, failure to appear charges, victim characteristics, and previous criminal history can likely provide a different outcome in a future study.

**CONCLUSION #2: SURVEYS CONFIRM THAT BOND DECISIONS RENDERED BY MAGISTRATES ARE CONSISTENT AS A GROUP.**

The survey and post survey show that on average bond decisions rendered by Magistrates are fairly consistent as a group. Seventy-five percent of Magistrates considered their decisions to be consistent with peers. In the 10 decision scenarios, the majority of Magistrates voted similarly in every situation presented. This suggests that Magistrates are similar in terms of judicial value and consistent in actual practice. These results were also confirmed by the regressions which failed to identify significant differences between judges for bond amount at FAH.

**RECOMMENDATION #2: IMPLEMENT DECISION SCENARIOS AS PART OF THE TRAINING PROCESS FOR MAGISTRATES.**

Survey components such as the decision scenarios should be used as a training tool for Magistrates twice a year. Decision scenarios should include examples from actual warrants issued six months prior to the training session. Survey Questions 21 A-J help to identify circumstances where there is range of opinions on the appropriate level of bond. The scenarios also provide the trainer with the opportunity to address specific areas of concern with respect to outlier responses. The key to retrieving honest responses is to ensure the participants' anonymity.

With respect to the content, one Magistrate suggested including a scenario involving a vehicle as a weapon. This is an important oversight since vehicles were used as weapons in

several warrants during 2008. The Magistrates' judicial value concerning the dangerousness of a vehicle when physical injury is the result as opposed to its presence for the purpose of intimidation can provide valuable insight into the decision matrix Magistrates use to determine bond.

**CONCLUSION #3: THE CURRENT LITERATURE ON BAIL EMPHASIZES THE CHARACTERISTICS OF THE DEFENDANT RATHER THAN THE JUDGE.**

There is very little research on the judicial values and perceptions of judges in determining bond. Much of the current literature focuses on characteristics of the defendant rather than the judicial values of those who render its decisions.

**RECOMMENDATION #3: ADMINISTER BOTH SURVEYS TO NEW MAGISTRATES ONE YEAR AFTER HIRE.**

The court should administer the survey and post surveys to new Magistrates one year after hire to fully ascertain the values and beliefs of Magistrates. By this time, Magistrates have had the opportunity to become familiar with the circumstances associated with a variety of offenses. This will also assist the court in understanding the judicial values and perceptions of Magistrates while ensuring that judicial values do not adversely impact defendants eligible for bond. The challenge to obtaining honest responses can occur if the number of new hires is small.

**CONCLUSION #4: THERE ARE LEGAL AND EXTRA LEGAL FACTORS UNKNOWN AT ARREST BUT PRESENT AT FAH.**

Magistrates should have access to GCIC criminal histories at the review and issuance of a warrant application. The regression models used in this research confirm that none of the legal and extra legal factors identified at arrest contribute to the variation in bond at arrest. The model suggests there are unknown factors that impact bond decisions. One of the obvious differences in

this process is that criminal histories are not available until FAH. This difference suggests that are some legal or extra legal factors unknown at arrest but present during FAH.

**RECOMMENDATION #4: MAGISTRATES MUST HAVE ACCESS TO GCIC CRIMINAL HISTORY INFORMATION AT THE ISSUANCE AND REVIEW OF A WARRANT.**

Since the status of probation/parole is significant at FAH, access to detailed defendant information is critical. The court should have electronic access to criminal histories at the time of arrest. The challenge to this recommendation are the cost issues related to accessing data from GCIC 24 hours a day, 7 days a week.

**CONCLUSION #5: MOST MAGISTRATES ARE RECEPTIVE TO THE IDEA OF USING A RISK ASSESSMENT INSTRUMENT.**

Most Magistrates are receptive to the idea of using a risk assessment instrument to determine whether a defendant will appear for future court hearings and the danger to the community.

**RECOMMENDATION #5: THE COURT SHOULD EXPLORE THE FEASIBILITY OF USING A RISK ASSESSMENT INSTRUMENT.**

The survey responses confirm that most Magistrates want to know more about pretrial risk assessment instruments. The court should investigate the feasibility of using a risk assessment instrument and consider its role in long term technology goals. Since Magistrates currently conduct videoconference hearings the technological impact of transitioning to an electronic risk assessment instrument would meet less user resistance than in courts where technology is introduced for the first time. Additional research into its design and capabilities is

important since several Magistrates indicated in the survey that they did not have enough information about the instrument to make an informed decision as to its usefulness.

## **FINAL CONCLUSION**

Overall, Magistrates must consider a multitude of factors when exercising judicial discretion. In many instances, detailed information about defendants is not available until the defendant has attended a first appearance hearing. As evidenced by this research, the court has shown a willingness to examine its own operations. This practice makes for a progressive system equipped to serve its clients. The multitude of information available makes it possible for the court to measure and evaluate factors associated with bond decisions.

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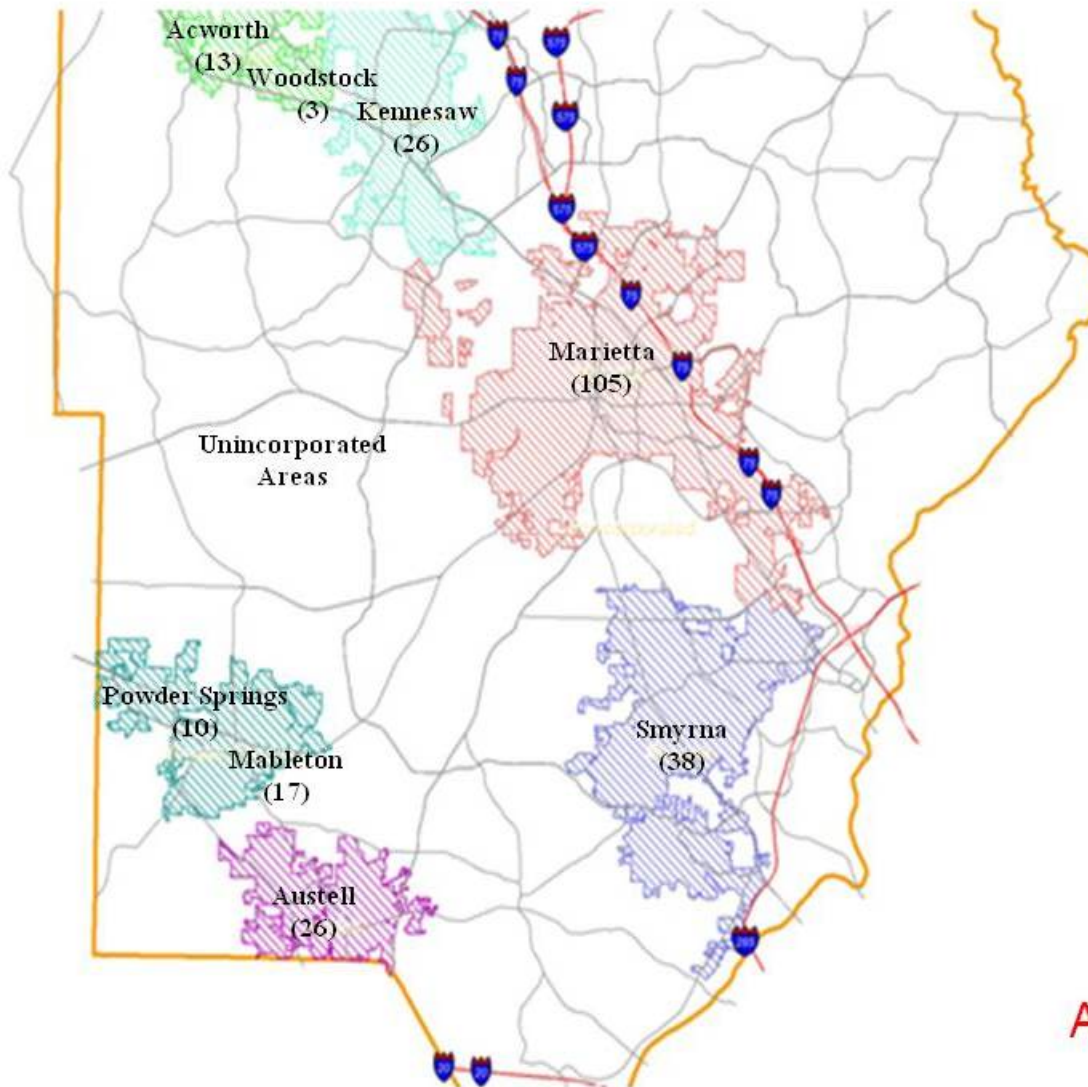
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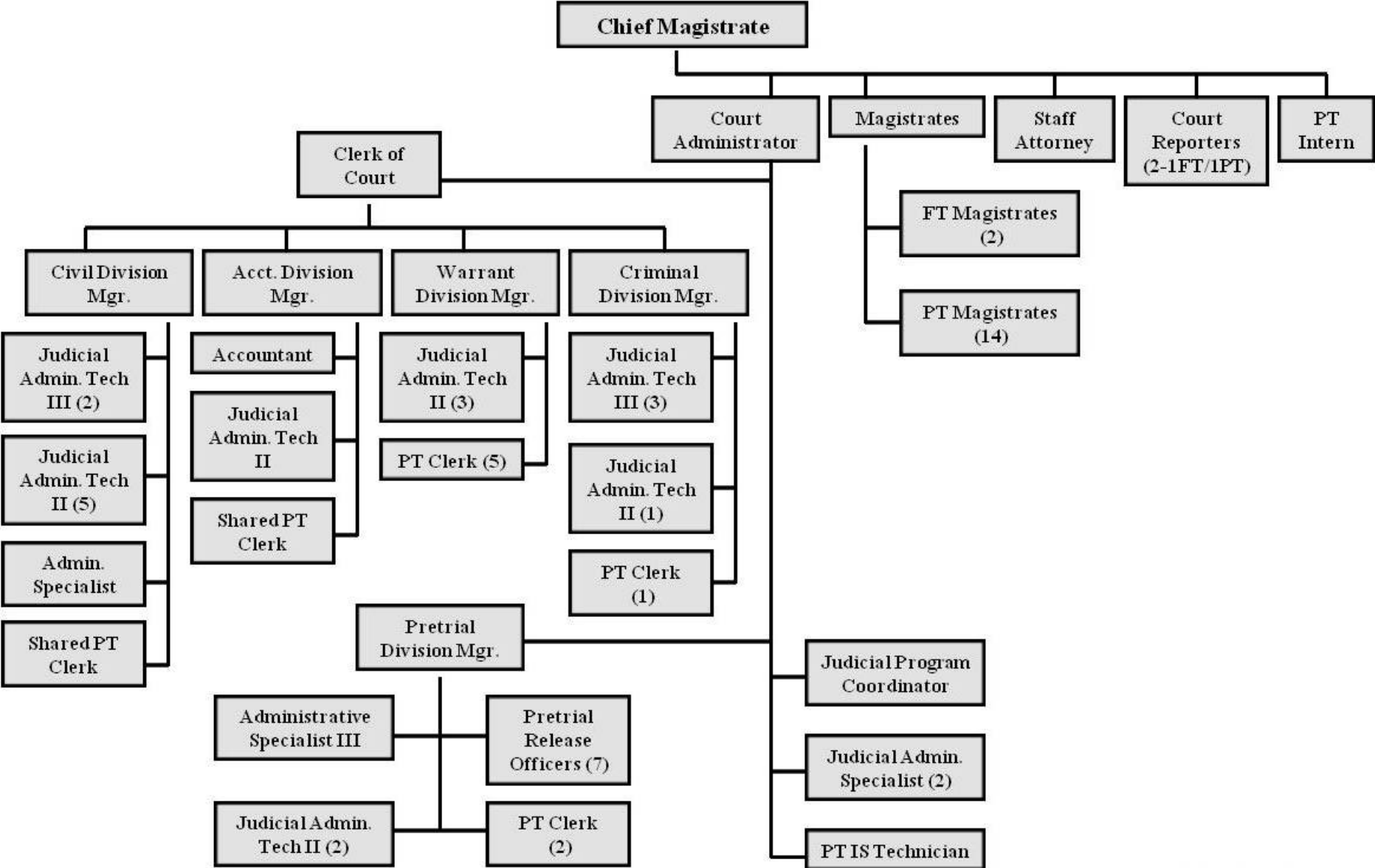
**Stack v. Boyle**, 342 U.S. 1 (1951)

## Defendant Resident at Arrest Cobb County, Georgia

Note: Figures represent residence of defendants charged with an aggravated assault



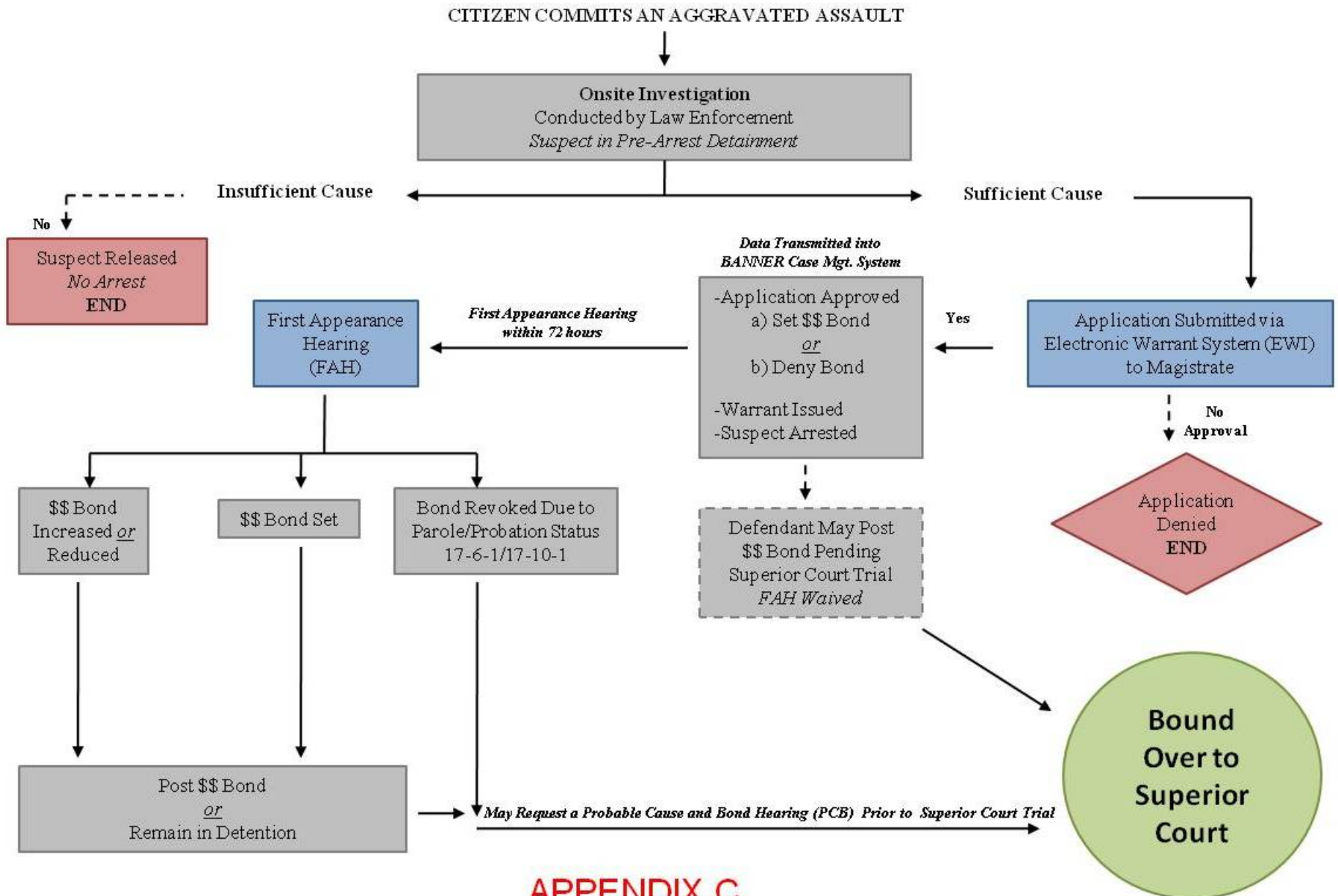
# COBB COUNTY MAGISTRATE COURT ORGANIZATION CHART



19

Source: 2008 Cobb County Policy and Procedures Manual, page 2.

# CRIMINAL WARRANT PROCESS FOR AGGRAVATED ASSAULT OFFENSES



APPENDIX C

August 15, 2008

Survey Participant  
Cobb County Magistrate Court  
32 Waddell Street  
Marietta, Georgia 30090

Dear Survey Participant,

I am writing to request your participation in a study about judicial discretion and bond outcomes in the Cobb County Magistrate Court. My research will focus on aggravated assault warrants initiated in 2008 from several pretrial points: initial arrest, first appearance, and probable cause and bond hearing.

The purpose of this survey is to gain a general understanding of the decision-making styles and the perception of judicial discretion. Your identity will remain anonymous; and the survey responses will be summarized as part of a larger data collection effort. I will also run descriptive statistics on the defendants associated with aggravated assaults. I would like to share these findings with you in a follow-up survey at a later date.

Enclosed you will find a blank envelope to use when you have completed this survey. Please feel free to include any additional comments you deem necessary or relevant to this research. Your participation, expertise, and time are greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Tiffany D. Pete".

Tiffany Pete  
Institute of Court Management Candidate  
Class of 2009

The following questions concern the perception of judicial discretion and its influence on pretrial decision-making. The findings of this survey will be summarized as part of a larger research project. **Your responses will remain anonymous** and no attempt will be made to identify you as a participant in this survey.

DEMOGRAPHICS - SECTION I

D1. Please indicate your age:

- 30 to 40 years old
- 41 to 50 years old
- 51 to 60 years old
- Over 61

D2. Please indicate your gender:       Male     Female

D3. Are you currently practicing law?    Yes     No

D3b. If Yes, on average how many **hours** do you practice law per week? \_\_\_\_\_

D4. How many **years** have you practiced law?

- 0 to 4 years
- 5 to 10 years
- 11 to 15 years
- 16 or more years

D5. How would you generally describe your practice of law (past or current)? (Check all that apply)

- Government
- Criminal
- General Civil
- Domestic Relations
- Administration
- Other, please specify \_\_\_\_\_

D6. On average, how many **hours per week** do you serve as a Magistrate?

- 8 hours or less
- 9 to 10 hours
- 11 to 20 hours
- 21 hours or more

D7. How many **years** have you served as a Magistrate in Cobb County Magistrate Court?

- 0 to 4 years
- 5 to 10 years
- 11 to 15 years
- 16 or more years

D8. Are you currently serving as a judge in another court?  Yes  No

D8b. If Yes, what level of court? (Please check all that apply)

General Jurisdiction

Limited Jurisdiction

D9. Have you previously served as a judge in another court?  Yes  No

D9b. If Yes, what level of court? (Please check all that apply)

General Jurisdiction

Limited Jurisdiction

**DECISION STYLE – SECTION II**

S10. How would you rate the **Minimum Bond Guidelines** as a resource in your decision-making process?

(Please circle one)

1	2	3	4	5
Not Necessary	Not Very Useful	Neutral	Useful	Very Useful

S11. How would you rate the **Georgia Law Enforcement Handbook Quick Reference Guide** as a resource in your decision-making process? (Please circle one)

1	2	3	4	5
Not Necessary	Not Very Useful	Neutral	Useful	Very Useful

S12. How would you rate the **Magistrate Court Directives** as a resource in your decision-making process?

(Please circle one)

1	2	3	4	5
Not Necessary	Not Very Useful	Neutral	Useful	Very Useful

S13. How would you rate the **Magistrate Court Bench Book** as a resource in your decision-making process?

(Please circle one)

1	2	3	4	5
Not Necessary	Not Very Useful	Neutral	Useful	Very Useful

S14. How would you rate the **Official Code of Georgia Annotated** as a resource in your decision-making process? (Please circle one)

1	2	3	4	5
Not Necessary	Not Very Useful	Neutral	Useful	Very Useful

S15. Many states use a risk assessment instrument to calculate the probability a defendant will appear in court and the risk to the community. If this instrument were made available to you at the time of arrest and during the first appearance hearing, would you use it?

(Please circle one below)

1	2	3	4
Not Likely to Use	Undecided	Somewhat Likely to Use	Likely to Use

S15b. In response to S15, please rate the following:

**Agree**      **Disagree**

- Risk assessment instruments **will** limit my judicial discretion.
- Risk assessment instruments **are** inflexible.
- I do **not** have enough information about a risk assessment instrument.
- The current decision-making tools are **adequate**.
- I **am concerned** about the legal liability associated with using a risk assessment instrument.

S16. In your review of a warrant application at issuance and submission, would you like to have more information about the defendants?     Yes     No

S17. In your review of a warrant at First Appearance, would you like to have more information about the defendants?     Yes     No

S18. At the officer interview and warrant issuance stage, how useful would it be to have immediate access to criminal history reports via the computer?    (Please circle one)

1	2	3	4	5
Not Very Useful	Not Useful	Neutral	Useful	Very Useful

S19. At the First Appearance Hearing, how useful would it be for officers to review the criminal history and report the findings to you?    (Please circle one)

1	2	3	4	5
Not Very Useful	Not Useful	Neutral	Useful	Very Useful

S20. At the First Appearance Hearing, how useful would it be for pretrial services to review the criminal history and report the findings to you?    (Please circle one)

1	2	3	4	5
Not Very Useful	Not Useful	Neutral	Useful	Very Useful

**DECISION VALUE – SECTION III**

V21. Assuming the warrant scenarios below have met the legal threshold of an **O.C.G.A. 16-5-21 aggravated assault at the time of issuance and submission**, how would you score them when assessing the level of injury?

**Scenario A:** John hit Jane with a metal pipe during a disagreement. Although Jane received some bruises, she refused medical treatment from EMTs on the scene. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario B:** During a physical altercation with Patricia, Eric received a black eye. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario C:** During a heated argument, Gerald pistol whipped James. According to the Officer, James sustained a severe headache and some bleeding from the head. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario D:** Matthew intentionally aimed and fired a pistol at Clinton. The bullet missed Clinton and he received no injury. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario E:** At a local bar, Jack punched Alex in the stomach. As a precaution, Alex was transported by EMTs to the hospital for an x-ray. His medical status was unknown at the time of Jack's arrest. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario F:** In a dispute over a loan, Susan cut Erica with a box cutter. Erica sustained a deep laceration to the face. How would you rate this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario G:** In a disagreement over a referee call, Bert kicked the Referee in the back with a steel toed boot. The force of the kick knocked the Referee to the ground. The Referee sustained no visible injuries but he reported having back pain to the officer. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario H:** During a family reunion, Erica got into a physical fight with her first cousin Patsy. As a result, Erica sustained a busted lip and lost three teeth. EMTs treated her injuries at the scene. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario I:** In a domestic dispute, Blake cut Sandra with a small pocket knife. The pocket knife nicked Sandra's arm causing light bleeding. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**Scenario J:** Andrew struck Charles with a heavy brick during a dispute over a lottery ticket. Charles was knocked unconscious and transported to the hospital for a CT scan. How would you score this scenario?

Please select one:  No Injury  Slight Injury  Serious Injury

**COMMENTS – SECTION IV**

C22. General comments, suggestions, and/or observations?

October 8, 2008

Survey Participant  
Cobb County Magistrate Court  
32 Waddell Street  
Marietta, Georgia 30090

Dear Survey Participant,

Enclosed you will find the final survey regarding aggravated assault offenses in the Cobb County Magistrate Court. The purpose of this survey is to follow-up on areas not initially covered in the first survey.

After completing this survey, place it in its original envelope and seal it. Please return the envelope to the same location as the first survey (Tiffany's red folder). The findings will be compiled as a group and a summary of the responses will be placed in your inbox by October 20<sup>th</sup>. Again, I appreciate your participation in this project.

Sincerely,

A handwritten signature in cursive script that reads "Tiffany D. Pete".

Tiffany Pete  
Institute of Court Management Candidate  
Class of 2009

**POST COURT SURVEY - COBB COUNTY MAGISTRATES**

The following questions concern the perception of danger and the circumstances most likely to influence your decision when considering a bond for an aggravated assault offense. **Individual responses will remain anonymous**; however, the findings of this survey will be summarized as part of a larger research project.

Q1. Assuming the weapons below meet the legal threshold under O.C.G.A. 16-5-21, rank **each** weapon based on the degree of danger using a scale from 1 to 11.

**Ranking Scale: (1) most dangerous - (11) least dangerous**

- \_\_\_\_\_ Hammer
- \_\_\_\_\_ Handgun (Discharged but missed the victim)
- \_\_\_\_\_ Fist(s)
- \_\_\_\_\_ Lead Pipe
- \_\_\_\_\_ Vehicle
- \_\_\_\_\_ Knife
- \_\_\_\_\_ Glass Bottle
- \_\_\_\_\_ Frying Pan
- \_\_\_\_\_ Handgun (Present but not discharged)
- \_\_\_\_\_ Brick
- \_\_\_\_\_ BB Gun

Q2. Please select the **(4) most important** circumstances likely to influence your decision when considering a bond.

- \_\_\_\_\_ Aggravated Assault committed on **School Property**
- \_\_\_\_\_ Aggravated Assault committed against an **Elderly Person**
- \_\_\_\_\_ Aggravated Assault committed against an **Officer**
- \_\_\_\_\_ Aggravated Assault committed against a **Child**
- \_\_\_\_\_ Aggravated Assault committed in the **Presence of a Child(ren)**
- \_\_\_\_\_ Aggravated Assault committed against a **Pregnant Person**
- \_\_\_\_\_ Aggravated Assault committed against a **Person with a Disability**
- \_\_\_\_\_ Aggravated Assault committed against **Multiple Victims**
- \_\_\_\_\_ Other: \_\_\_\_\_

Q3. In general, do you believe your bond decisions are consistent with your peer magistrates?

\_\_\_\_\_

1	2	3
No	Maybe	Yes

Q3b. If you chose answer “**No (1)**” or “**Maybe (2)**” in Question 3, to what do you attribute these differences?

*Please select all that apply.*

\_\_\_\_\_ Personal Philosophy

\_\_\_\_\_ Decision Style

\_\_\_\_\_ Employment Background

\_\_\_\_\_ Legal Experience

\_\_\_\_\_ Years on the Bench

\_\_\_\_\_ Legal Education

\_\_\_\_\_ Other: \_\_\_\_\_

## Survey #1: Demographics, Decision Style, and Judicial Values

Q1: Age range of Magistrate(s):

**42%** of Magistrates are between the ages of 30 – 50  
**58%** of Magistrates are 51 or older

Q2: Gender of Magistrate(s):

**83%** of Magistrates are male  
**17%** of Magistrates are female

Q3: Are you currently practicing law?

**92%** Yes

Q3b: If Yes, how many **hours** do you practice law per week?

**3** Magistrates - Did not answer  
**3** Magistrates practice law 20 to 35 hours per week  
**6** Magistrates practice law 40 to 50 hours per week

Q4: How many **years** did you practice law?

**0%** of Magistrates practice law between 0-4 years  
**16%** of Magistrates practice law between 5-10 years  
**17%** of Magistrates practice law between 11-15 years  
**67%** of Magistrates practice law between 16+ years

Q5: How would you generally describe your practice of law (past or current)?

*Note: Several Magistrates chose more than one option.*

Government	<b>2</b> Magistrates
Criminal	<b>3</b> Magistrates
General Civil	<b>9</b> Magistrates
Domestic Relations	<b>6</b> Magistrates
Administration	<b>0</b> Magistrates
Other	<b>3</b> Magistrates

Q6: On average, how many **hours per week** do you serve as a Magistrate?

**33%** serve as Magistrates 8-10 hours per week  
**67%** serve as Magistrates 11+ hours per week

Q7: How many **years** have you served as a Magistrate in Cobb County Magistrate Court?

**58%** served between 0-10 years as a Magistrate  
**42%** served 11 or more years as a Magistrate

Q8: Are you currently serving as a judge in another court? **1** Yes

Q9: Have you previously served as a judge in another court?

3 Yes

Q10: How would you rate the **Minimum Bond Guidelines** as a resource in your decision-making process?

- 0 Not Necessary
- 0 Not Very Useful
- 4 Neutral
- 6 Useful
- 2 Very Useful

Q11: How would you rate the **Georgia Law Enforcement Handbook Quick Reference Guide** as a resource in your decision-making process?

- 4 Not Necessary
- 0 Not Very Useful
- 5 Neutral
- 2 Useful
- 1 Very Useful

Q12: How would you rate the **Magistrate Court Directives** as a resource in your decision-making process?

- 0 Not Necessary
- 0 Not Very Useful
- 6 Neutral
- 2 Useful
- 4 Very Useful

Q13: How would you rate the **Magistrate Court Bench Book** as a resource in your decision-making process?

- 2 Not Necessary
- 2 Not Very Useful
- 0 Neutral
- 6 Useful
- 2 Very Useful

Q14: How would you rate the **Official Code of Georgia Annotated** as a resource in your decision-making process?

- 0 Not Necessary
- 0 Not Very Useful
- 0 Neutral
- 2 Useful
- 10 Very Useful

Q15: Many states use a risk assessment instrument to calculate the probability a defendant will appear in court and the risk to the community. If this instrument were made available to you at the time of arrest and during the first appearance hearing, would you use it?

- 0** Not Likely to Use
- 2** Undecided
- 7** Somewhat Likely to Use
- 3** Likely to Use

Q15b: In response to Q15, please rate the following statements:

- Risk assessment instruments **will** limit my judicial discretion.  
**2** Agree, **6** Disagree, **4** Did not answer
- Risk assessment instruments **are** inflexible.  
**1** Agree, **7** Disagree, **4** Did not answer
- I do **not** have enough information about a risk assessment instrument.  
**10** Agree, **2** Disagree, **0** Did not answer
- The current decision-making tools are **adequate**.  
**6** Agree, **4** Disagree, **2** Did not answer
- I **am concerned** about the legal liability associated with using a risk assessment instrument.  
**1** Agree, **6** Disagree, **5** Did not answer

Q16: In your review of a warrant application **at issuance and submission**, would you like to have more information about the defendants?

**92%** Yes

Q17: In your review of a warrant **at First Appearance**, would you like to have more information about the defendants?

**67%** Yes

Q18: At the officer interview and warrant issuance stage, how useful would it be to have **immediate access to criminal history reports** via the computer?

- 0** Not Necessary
- 1** Not Very Useful
- 0** Neutral
- 6** Useful
- 5** Very Useful

Q19: At the First Appearance Hearing, how useful would it be for **officers to review the criminal history** and report the findings to you?

- 2 Not Necessary
- 2 Not Very Useful
- 3 Neutral
- 5 Useful
- 3 Very Useful

Q20. At the First Appearance Hearing, how useful would it be for **pretrial services to review the criminal history** and report the findings to you?

- 0 Not Necessary
- 1 Not Very Useful
- 2 Neutral
- 5 Useful
- 4 Very Useful

Q21a: John hit Jane with a metal pipe during a disagreement. Although Jane received some bruises, she refused medical treatment from EMTs on the scene. How would you score this scenario?

- 0% No Injury
- 67% Slight Injury
- 33% Serious Injury

Q21b. During a physical altercation with Patricia, Eric received a black eye. How would you score this scenario?

- 0% No Injury
- 83% Slight Injury
- 17% Serious Injury

Q21c: During a heated argument, Gerald pistol whipped James. According to the Officer, James sustained a severe headache and some bleeding from the head. How would you score this scenario?

- 0% No Injury
- 8% Slight Injury
- 92% Serious Injury

Q21d: Matthew intentionally aimed and fired a pistol at Clinton. The bullet missed Clinton and he received no injury. How would you score this scenario?

- 75% No Injury
- 8% Slight Injury
- 17% Serious Injury

Q21e: At a local bar, Jack punched Alex in the stomach. As a precaution, Alex was transported by EMTs to the hospital for an x-ray. His medical status was unknown at the time of Jack's arrest. How would you score this scenario?

- 17%** No Injury
- 75%** Slight Injury
- 8%** Serious Injury

Q21f: In a dispute over a loan, Susan cut Erica with a box cutter. Erica sustained a deep laceration to the face. How would you rate this scenario?

- 0%** No Injury
- 0%** Slight Injury
- 100%** Serious Injury

Q21g: In a disagreement over a referee call, Bert kicked the Referee in the back with a steel toed boot. The force of the kick knocked the Referee to the ground. The Referee sustained no visible injuries but he reported having back pain to the officer. How would you score this scenario?

- 0%** No Injury
- 58%** Slight Injury
- 42%** Serious Injury

Q21h: During a family reunion, Erica got into a physical fight with her first cousin Patsy. As a result, Erica sustained a busted lip and lost three teeth. EMTs treated her injuries at the scene. How would you score this scenario?

- 0%** No Injury
- 17%** Slight Injury
- 83%** Serious Injury

Q21i: In a domestic dispute, Blake cut Sandra with a small pocket knife. The pocket knife nicked Sandra's arm causing light bleeding. How would you score this scenario?

- 0%** No Injury
- 83%** Slight Injury
- 17%** Serious Injury

Q21j: Andrew struck Charles with a heavy brick during a dispute over a lottery ticket. Charles was knocked unconscious and transported to the hospital for a CT scan. How would you score this scenario?

- 0%** No Injury
- 0%** Slight Injury
- 100%** Serious Injury

Q22: General comments from survey participants: (some editing for clarity)

*“In re: risk assessment, it would have been helpful to know what rules were imposed on use of instrument. Is it a guide or are there mandatory requirements?”*

*“These were answered to show which category I’d choose for [?] bond (of the 3 on the minimum bond guidelines), not necessarily how I’d classify the injury itself.”*

*“Question about #12-I don’t believe we’ve gotten memos specifically about getting bond in aggravated assault cases....keep in mind that when the officer calls in the injury is sometimes not fully determined, i.e. a CT Scan of the head that is positive could change the seriousness etc.....Also, keep in mind that if an accused is on probation or parole we cannot set a bond when the accused is charged with an aggravated assault-superior court has to have a hearing.”*

*“It would be good to have more information at First Appearance. Often I just suggest the inmates talk with pretrial. Also, I think it is possible for an inmate to be on probation and it won’t show on criminal histories. A class on how to read criminal histories would be useful.”*

*“In re: criminal histories, they help with only part of judges’ bond decision. Also need to assess risk to a particular victim.”*

## Survey #2: Perception of Danger, Decisions, and Circumstances

Q1. Assuming the weapons below meet the legal threshold under O.C.G.A. 16-5-21, rank **each** weapon based on the degree of danger using a scale from 1 to 11.

### Most Dangerous Weapon (1)

- 4 Magistrates consider a **vehicle** to be the most dangerous weapon
- 3 Magistrates consider a **lead pipe** as the most dangerous weapon
- 2 Magistrates consider a **brick** as the most dangerous weapon
- 2 Magistrates consider a **handgun-discharged** as the most dangerous weapon
- 1 Magistrate considers a **handgun-present** as the most dangerous weapon

### Least Dangerous Weapon (11)

- 6 Magistrates consider a **BB gun** to be the least dangerous weapon
- 3 Magistrates consider a **handgun-present** as the least dangerous weapon
- 1 Magistrate considers a **lead pipe** to be the least dangerous weapon
- 1 Magistrate considers a **frying pan** to be the least dangerous weapon
- 1 Magistrate considers a **brick** to be the least dangerous weapon

Q2. Please select the **(4) most important** circumstances likely to influence your decision when considering a bond.

Top (4) circumstances selected: **Officer, Elderly Person, Child, and Pregnant Person**

Q3. In general, do you believe your bond decisions are consistent with your peer magistrates?

**58%** Yes  
**17%** Maybe  
**25%** No

Q3b. If you chose answer “**No (1)**” or “**Maybe (2)**” in Question 3, to what do you attribute these differences? *5 Magistrates responded to multiple options*

4 Magistrates cited Personal Philosophy  
4 Magistrates cited Decision Style  
2 Magistrates cited Employment Background  
2 Magistrates cited Legal Experience  
1 Magistrate cited Years on the Bench  
0 Magistrates cited Legal Education  
1 Magistrate cited Other: Consider style to be more liberal than peers

Coefficients<sup>a</sup>

	Unstandardized Coefficients		Standardized Coefficients	t	Sig.	Correlations			Collinearity Statistics	
	B	Std. Error	Beta			Zero-order	Partial	Part	Tolerance	VIF
(Constant)	14816.121	4757.551		3.114	.002					
Def_Black	2367.333	2276.169	.062	1.040	.299	.057	.063	.053	.721	1.386
Def_Hispanic	-2612.261	3686.973	-.041	-.709	.479	-.023	-.043	-.036	.774	1.292
Defendant Age at Arrest	47.640	87.265	.029	.546	.586	.016	.033	.028	.886	1.129
Judge B	1162.922	3713.989	.024	.313	.754	-.023	.019	.016	.450	2.222
Judge C	1446.132	3596.742	.032	.402	.688	-.054	.024	.020	.406	2.466
Judge D	4476.413	6295.420	.041	.711	.478	-.034	.043	.036	.780	1.282
Judge E	943.225	5757.629	.010	.164	.870	-.016	.010	.008	.751	1.331
Judge F	4951.207	4092.678	.083	1.210	.227	.106	.073	.062	.550	1.819
Judge G	2604.258	8378.543	.017	.311	.756	-.020	.019	.016	.868	1.152
Judge H	-1104.658	6995.195	-.009	-.158	.875	-.004	-.010	-.008	.836	1.196
Judge I	9694.013	5397.485	.108	1.796	.074	.066	.108	.091	.717	1.394
Judge J	2763.130	3769.439	.055	.733	.464	.000	.044	.037	.453	2.207
Judge K	787.318	4184.178	.013	.188	.851	-.018	.011	.010	.543	1.843
Judge L	385.798	5520.938	.004	.070	.944	-.018	.004	.004	.745	1.342
Judge M	874.001	6602.254	.007	.132	.895	-.014	.008	.007	.807	1.238
Defendant Gender	-2726.126	2195.141	-.066	-1.242	.215	-.041	-.075	-.063	.904	1.106
Defendant Resident	1415.567	2418.800	.031	.585	.559	.039	.036	.030	.935	1.070
Probation/Parole Violation	-20017.471	1969.129	-.531	-10.166	.000	-.523	-.525	-.517	.949	1.053
AA Only	-1080.224	2052.911	-.028	-.526	.599	-.055	-.032	-.027	.935	1.069

a. Dependent Variable: FAH Bond