

THE EFFECT OF RACE AND GENDER ON BAIL OUTCOMES: A TEST OF AN INTERACTIVE MODEL

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ABSTRACT

This paper responds to suggestions that researchers interested in the relationship between defendant race, defendant gender, and criminal justice outcomes broaden their focus to include pretrial decision making. We used data on defendants charged with violent felonies in Detroit Recorder's Court to analyze the effect of race and gender on the amount of bail imposed by the judge and on the defendant's pretrial status. We found that judges take gender, but not race, into account in determining the amount of bail for certain types of cases; more specifically, Black females faced lower bail than Black males in less serious cases. In contrast, we found that both race and gender affected the likelihood of pretrial release. White defendants were more likely than black defendants to be released pending trial and females were more likely than males to be released prior to trial. In fact, white females, white males, and black females all were more likely than black males to be released.

INTRODUCTION

Researchers interested in the relationship between defendant race, defendant gender, and criminal justice outcomes have focused primarily on the sentencing stage of the process. Critics of this approach argue that researchers who restrict their analysis to one of the last stages in the criminal justice process may reach misleading conclusions about the effect of race and gender. These critics point out that race and gender may affect bail, charging, and plea bargaining decisions made early in the process, and that these pretrial decisions may themselves be related to later decisions regarding sentence severity (Miethe & Moore, 1986; Petersilia, 1983; Stryker, Nagel, & Hagan, 1983; Thomson & Zingraff, 1981). They also note that because defendants are diverted from the

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criminal justice system in a nonrandom manner, the pool of defendants at the sentencing stage varies in important ways from the pool of defendants at earlier stages. Consequently, they urge researchers to broaden their studies to include pretrial decision making.

This paper responds to these suggestions. We use data on defendants charged with violent felonies in Detroit Recorder's Court to analyze the effect of race and gender on the amount of bail imposed by the judge and on the defendant's pretrial status. We also test for interactions between defendant race, legal and extralegal predictors of case processing decisions, and bail outcomes. We focus in particular on the possibility of interaction between the race and gender of the defendant.

PREVIOUS RESEARCH

There is a substantial body of research demonstrating that decisions regarding bail significantly affect the defendant's future within the criminal justice system. Prior research indicates that the type and amount of bail imposed upon the defendant and the time spent by the defendant in pretrial detention affect the likelihood of a guilty plea, the likelihood of conviction at trial, and the severity of the sentence (Foote, 1954; Farrell & Swigert, 1978; Wheeler & Wheeler, 1980; Unnever, 1982; Albonetti, 1991; Petersilia, 1983). These findings have raised questions about the proper function of bail and about the criteria that judges use in making bail decisions; they have prompted researchers to take a closer look at this "gatekeeping mechanism that governs the release or detention of defendants before trial" (Goldkamp & Gottfredson, 1979, p. 228).

The Bail Decision Making Process

Goldkamp and Gottfredson (1979) characterize bail setting as a "trifurcated decision process," in which judges make three logically related decisions. The judge first decides whether to grant the defendant pretrial release through his/her own recognizance (p. 237). If the judge feels that this would be inappropriate, he or she then decides if bail will be set or denied. Finally, if the judge feels that release on recognizance (ROR) is not appropriate, but that bail should not be denied, the judge sets bail through either a surety bond or cash bail (Nagel, 1983; Goldkamp & Gottfredson, 1979; Goldkamp, 1985).

Researchers have found that somewhat different factors are associated with each of these three decisions. They have suggested that the recognizance decision is influenced by legal factors such as offense seriousness and prior record, as well as by the defendant's community ties, relationship to the victim, personal appearance, demeanor, and soci-