

Bail Reform in North Carolina Judicial District 2: Evaluation Report

First Quarterly Report
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Executive Summary

Seeking to promote a fair and effective pretrial justice system, North Carolina Judicial District 2 adopted two reforms effective January 1, 2020:

- (1) A new structured decision-making tool to better inform judicial officials' pretrial decisions and ensure compliance with constitutional and statutory requirements.
- (2) New first appearance proceedings for in-custody misdemeanor defendants.

We are executing an empirical evaluation of those reforms. The formal evaluation began on July 1, 2020 and will continue through June 30, 2021. This quarterly report presents findings regarding early implementation. Key findings include:

Magistrate Decision-Making

- Magistrates adhered to the decision-making tool's recommendations in the vast majority of cases (79.23%).
- Magistrates imposed secured bonds in 55.07% of all cases, with secured bonds most likely to be imposed for Class A-E felony charges (88.00%), and decreasing in use for intermediate-level offense charges (53.60%) and Class 3 misdemeanor charges (41.67%). When mandatory bond doubling cases are removed from analysis, the overall rate of imposition of secured bonds by magistrates fell slightly, as did the rate for intermediate-level cases. The rate for cases involving Class A-E felony charges remained the same but the percent of secured bonds imposed in cases involving Class 3 misdemeanor charges fell substantially to 24%. These latter results better reflect magistrates' discretionary decision-making, especially with respect to Class 3 misdemeanor charges.
- Median bond amount imposed by magistrates are proportional to the severity of the offense category, with cases involving Class A-E felony charges having the highest median secured bond amounts (\$100,000), followed by intermediate-level offense charges (\$5,000), and Class 3 misdemeanor charges having the smallest median secured bond amounts (\$1,000).
- Among the District's five counties, there is considerable variation in the magistrates' use of secured bonds for intermediate-level offense charges and Class 3 misdemeanor charges.
- There also is wide variation among individual magistrates in the use of secured bonds, median secured bond amounts, and deviations from the decision-making tool's recommendations.
- Magistrates are executing forms without completeness or fidelity issues in the vast majority of cases (90.67% without completeness issues; 92.00% without fidelity issues), suggesting successful implementation of the new tool.

Pretrial Detention

- Pretrial bookings were lower in the third quarter of 2020 as compared to the same period in 2019. However, length of stay for those charged with misdemeanors increased. This increase may be attributable to a change in the mix of charges seen in 2020 as compared to 2019, specifically an increase in bookings for violent misdemeanor charges.

First Appearance Proceedings

- 45.16% of the non-48-hour defendants who were afforded a new first appearance proceeding were released on a condition other than a secured bond after that proceeding.

Pretrial Failures

- To examine changes in non-appearance rates, we limited our analysis to the first quarter of 2020 because of substantial disruptions in court schedules in the second and third quarters of the year due to COVID-19. When comparing the first quarter of 2020 to the same period in 2019, changes in non-appearance rates for the District's five counties, as measured by Automated Criminal Infraction System (ACIS) data were very small, ranging from -.70 to 1.44 percentage points.
- Examining cases served and disposed in the first six months of 2020 as compared to the same period in 2019, ACIS data shows that all counties experienced a reduction in the percentage of defendants who acquired any new charge during the pretrial period, and that reduction was statistically significant in Martin County.

Background

In 2015, then-Chief Justice Mark Martin convened the North Carolina Commission on the Administration of Law & Justice to make recommendations to strengthen the state's court system. In 2016, that Commission released its report, including a recommendation that North Carolina begin pilot projects supporting evidence-based pretrial justice reform.¹ Judicial District 30B became the state's first such pilot project, with reforms effective January 1, 2019. Promising evidence from early reports on the initiatives implemented in Judicial District 30B,² information distributed through the North Carolina Attorney General's Pretrial Release and Accountability Roundtables, and information about efforts to improve pretrial systems around the nation and in North Carolina interested judicial system leaders in the Second District (JD 2). In 2019, the Senior Resident Superior Court Judge and Chief District Court Judge convened a committee to explore whether reforms were needed in JD 2 and if so, what reforms should be implemented. The committee included:

- Senior Resident Superior Court Judge
- Chief District Court Judge
- Elected District Attorney and office staff
- Public Defender and office staff
- Magistrates
- Clerks of Court and office staff
- Representatives from the Sheriffs' offices
- Representatives from the police departments
- Detention center officers
- Judicial district administrative staff

The project was supported by Jessica Smith, whose participation was made possible through a technical assistance award from the State Justice Institute. The SJI grant, administered by the National Center for State Courts and the Pretrial Justice Institute, funded Smith's time and travel to and from the district.

Process

The committee met several times in 2019. Committee members were focused primarily on the negative consequences of unnecessary pretrial detentions for individuals charged

¹ NCCALJ CRIMINAL INVESTIGATION AND ADJUDICATION COMMITTEE, PRETRIAL JUSTICE REFORM FOR NORTH CAROLINA (2016) (Report of the North Carolina Commission on the Administration of Law & Justice), https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_criminal_investigation_and_adjudication_committee_report_pretrial_justice.pdf.

² See, e.g., Jamie Vaske & Jessica Smith, *Judicial District 30B Pretrial Justice Pilot Project Third Quarter 2019 Report* (2019), <https://cjl.sog.unc.edu/files/2019/11/Third-quarter-implementation-results.pdf>. For the final report on the 30B project, see Jessica Smith, *North Carolina Judicial District 30B Pretrial Justice Pilot Project Final Report Part I: Background, Process & Implemented Reforms* (2020), <https://cjl.sog.unc.edu/files/2020/04/March-2020-Final-Report-30B-Project-Part-1.pdf>, and Jamie Vaske, *North Carolina Judicial District 30B Pretrial Pilot Project, Final Report Part II: Evaluation Report* (2020), <https://cjl.sog.unc.edu/files/2020/04/March-2020-Final-Report-30B-Project-Part-2.pdf>.

with lower-level crimes. Specifically, they focused on those who are detained pretrial not because of risk but because they lacked sufficient financial resources to pay money bonds imposed in their cases. Stakeholders examined research on how pretrial detention of such individuals undermines public safety, and reviewed the cost of pretrial detentions and fairness issues associated with poverty-based pretrial detentions. They also considered the status of state and federal litigation challenging money-based bail systems and governing federal constitutional law and state statutes. Committee members understood the role of local jails to detain those defendants for whom no conditions of release can reasonably assure court appearance and public safety. However, they determined that unnecessary detention of individuals likely to succeed pretrial undermines public safety and the fairness and effectiveness of the local pretrial justice system. The committee adopted two reforms designed to address unnecessary pretrial detention of individuals who do not present any significant pretrial risk but who remain detained pretrial because they are unable to afford money bonds imposed in their cases. The two reforms include:

- (1) A new structured decision-making tool to better inform judicial officials' pretrial decisions and ensure compliance with constitutional and statutory requirements.
- (2) New first appearance proceedings for in-custody misdemeanor defendants.

The entire committee worked on the first initiative; a subcommittee, led by the Chief District Court Judge, did preliminary work and prepared a recommendation to the full committee on the second initiative.

After committee members reached consensus on needed reforms, they approved detailed implementation plans. Those plans specified tasks to be completed, and for each task, person(s) responsible, due dates, and other relevant information. Executing the implementation plans occupied most of the third quarter of 2019, and a training event for judicial branch employees and law enforcement personnel was held in December 2019. Both reforms became effective January 1, 2020.

Implemented Reforms

Structured Decision-Making Tool

The district's old Local Bail Policy included a table suggesting bond amounts based on the punishment class of the charged offense. Best practices recommend against the use of such tables.³ Additionally, stakeholders determined that although the current charge's offense class is relevant to the bail decision, other individualized factors regarding the defendant and the circumstances of the offense should be considered in assessing appropriate conditions of pretrial release and that consideration of additional factors is

³ AMERICAN BAR ASSOCIATION, ABA STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE, Standard 10-5.3(e) (3d ed. 2007) ("Financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge."), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.pdf.

required by state law.⁴ Moreover there was some concern that the use of a bond table may push decision-makers towards a presumption of secured bond in contravention of state law, which requires release on a written promise, custody, or unsecured bond unless the decision-maker finds that those conditions:

1. will not reasonably assure appearance;
2. will pose a danger of injury to any person; or
3. are likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.⁵

And finally, stakeholders wanted to develop a tool to help judicial officials quickly identify those defendants who can be released on conditions other than secured bond to reduce the occurrence of wealth-based incarceration of individuals who pose little risk to public safety or of flight. Although they considered empirical risk assessment tools (sometimes referred to as “algorithms”) for that purpose, they did not opt for such a tool. Instead, they adopted a new structured decision-making tool to better inform judicial officials’ pretrial decisions and conform with constitutional and statutory requirements.

The new decision-making tool, included in Appendix A and modeled on the tool adopted in Judicial District 30B, applies in all circumstances except where the statutes or the Local Bail Policy require a different process or result.⁶ Key features of the new tool include:

- Expressly incorporating the statutory requirement that a judicial official “must” impose a written promise, custody release or unsecured bond unless the official “determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.”⁷
- Creating a presumption of conditions other than a secured bond for persons charged with Class 3 misdemeanors.
- Providing an easily implemented checklist to quickly identify additional defendants who can be released on conditions other than a secured bond.
- Providing that for individuals charged with the most serious offenses, no presumption or screening applies; decision-makers proceed to the required statutory determination.
- Requiring documentation of reasons for imposing a secured bond.
- Requiring that ability to pay be considered when setting a secured appearance bond.
- Requiring detention bond hearings when a secured detention bond is imposed.
- Providing a maximum bond table, to be used only if the decision-making process allows for imposition of a bond or if a deviation from that process is required.

⁴ G.S. 15A-534(c).

⁵ G.S. 15A-534(b).

⁶ For example, when a secured bond is required by law.

⁷ G.S. 15A-534(b).

- Preserving necessary discretion by allowing for deviations from all tool recommendations, provided that deviations are documented.

The new tool was incorporated into a new Local Bail Policy issued by the Senior Resident Superior Court Judge. To facilitate adoption of the tool, a new Magistrate Bail Explanation Form was created for use by magistrates (Appendix B).

First Appearances for In-Custody Misdemeanor Defendants

The second reform provides new first appearance proceedings for in-custody misdemeanor defendants. State law requires a first appearance for in-custody felony defendants within 96 hours of being taken into custody or at the first regular session of the district court, whichever occurs first. Because state law does not require first appearances for in-custody misdemeanor defendants, these defendants may sit in jail for weeks or more until their first court date. This can lead to scenarios where misdemeanor defendants are incarcerated pretrial when the charged offense cannot result in a custodial sentence upon conviction or where they are incarcerated pretrial for a longer period than they could receive in a custodial sentence if convicted. Additionally, stakeholders learned of research suggesting that pretrial detention of low-level defendants has negative public safety consequences and negative case outcomes for defendants. These reasons counsel in favor of first appearances for in-custody misdemeanor defendants, to ensure prompt judicial review of the magistrate's bond determination and a determination that detention is warranted because of pretrial risk as opposed to inability to pay financial conditions.

The new first appearances are held weekly in three of the district's counties: Washington, Beaufort, and Martin. For the two counties—Hyde and Tyrrell—where district court is held only every other week, the appearances are held on that schedule. To promote judicial efficiency, the new first appearances are held at 2 pm in district court. The District Attorney's Office makes criminal history records available to the Public Defender's Office prior to the hearings. Assistant public defenders meet with detained individuals prior to the first appearance, review criminal history records and represent defendants at the first appearance proceedings.

Empirical Evaluation and This Report

With the support of the Senior Resident, Smith and the UNC School of Government Criminal Justice Innovation Lab applied for grant funding to execute an empirical evaluation of implemented reforms. Funding for the evaluation was provided by the Charles Koch Foundation. Specifically, the Foundation provided funding for a 12-month evaluation of the district's reforms. The Foundation had no involvement in the committee's work or in the preparation of this report.

Although the evaluation initially was scheduled to begin in the Spring of 2020, the COVID-19 pandemic necessitated delaying that start date until July 1, 2020. The empirical evaluation will continue through June 30, 2021.

A draft of this report was circulated to committee members in late October and they were invited to submit written feedback to us. Additionally, we met with committee members in early November to discuss the report and receive additional feedback from them.

Additional feedback on the draft report was provided by Professor Sarah L. Desmarais of North Carolina State University, who serves as a research consultant on this project.⁸

Findings

We present here findings regarding early implementation of reforms in JD 2. For most analyses, we focus on the first formal quarterly reporting period, July 1, 2020 through September 30, 2020. For some analyses, however, we adjust that time period to account for COVID-19 issues. For example, because jury trials were suspended throughout the second and third quarters of 2020 as a result of the pandemic, our analysis of non-appearance rates focuses on the first quarter of 2020.

Magistrate Decision-Making

Conditions of Release

Since January 1, 2020, magistrates have determined conditions of pretrial release using the new structured decision-making tool and have documented their decision-making on a new Magistrate Bail Explanation Form (Appendix B). We reviewed every bail explanation form completed in the first quarter of 2020, tracking issues regarding completeness and fidelity to the new structured decision-making tool. During this period, we also provided feedback to magistrates to support their efforts to apply the new tool and use the new form. Extracting data from Bail Explanation Forms allows us to report on conditions imposed at the magistrate level. In this report, we present data on the conditions of release imposed by magistrates from July 1 to September 26, 2020.

Magistrates set conditions in 484 forms from July 1 to September 26, 2020. Forty-one forms (8.47%) were removed from analyses because of one or more completeness or fidelity issue deemed critical to the analysis.⁹ In the remaining 443 forms, **magistrates adhered to the decision-making tool's recommendation in the vast majority of cases**. Specifically, they followed the tool's recommendations in 351 forms (79.23% of forms), while deviating from the tool's recommendations in 92 forms (20.77% of forms).¹⁰

⁸ Also contributing to this report were PhD student Christopher Ross Hatton, graduate student Maggie Aron Bailey, UNC School of Government Legal Research Associate Christopher Tyner and Criminal Justice Innovation Lab Project Manager Ethan Rex.

⁹ Specifically, magistrates failed to record the final bond type (6 forms or 14.63% of forms with issues); recorded multiple conditions (e.g., written promise and secured bond) (3 forms or 7.32%); failed to record whether they were following or deviating from policy recommendations (6 forms or 14.63%); recorded that they were simultaneously following and deviating from policy (7 forms or 17.07%); or recorded multiple and sometimes incorrect offense classes (24 forms or 58.54%). Additionally, some forms were removed for multiple reasons, such as 6 forms (14.63%) for which magistrates failed to record a final condition and whether they were adhering to or deviating from the decision-making tool recommendation.

¹⁰ As discussed in Background; Implemented Reforms above, the new tool preserves necessary discretion by allowing for deviations from all tool recommendations, provided that deviations are documented. We treated a magistrate's decision-making as a deviation when (a) the magistrate expressly recorded making a deviation on the form; and (b) when a defendant charged with a Class 3 misdemeanor was issued a secured bond, even if the magistrate did not expressly record making a deviation. We treated the latter situation as a deviation because the decision-making

Of the 92 forms on which magistrates reported deviating from the tool’s recommendations, they reported deviating from the tool’s recommendation to impose an unsecured bond, written promise, or custody release in 44 forms (47.83% of deviations), opting instead to impose a secured bond. In 48 forms (52.17% of deviations), magistrates reported deviating from the recommendation to impose a secured bond within the maximum dollar amount, opting instead to impose a secured bond above the maximum dollar amount or to impose a written promise, custody release, or unsecured bond.

Table 1a shows the percent of conditions of release by offense class for the 443 forms included in these analyses. **Magistrates imposed secured bonds in 55.07% of all cases, with secured bonds most likely to be imposed when defendants were charged with Class A-E felonies and decreasing in use for cases involving “intermediate-level” offense charges (Class A1-2 misdemeanors and Class F-I felonies) and Class 3 misdemeanor charges. As shown below, magistrates imposed secured bonds in 88.00% of cases where defendants were charged with the most serious offenses (Class A-E felonies); in 53.60% of cases where defendants were charged with intermediate-level offenses; and in 41.67% of cases where defendants were charged with Class 3 misdemeanors.** This general pattern tracks expected results from the new tool: that rates of imposition of secured bonds would increase as offense categories become more serious. However, we were surprised to see secured bonds imposed in 41.67% of Class 3 misdemeanor cases, the lowest level of criminal offense in North Carolina. We thus executed a supplemental analysis, removing from the sample cases where the magistrate clearly indicated, either in the offense description or in the deviation explanation, that the mandatory statutory bond doubling rule applied.¹¹ In those cases, magistrates would have been required by law to impose a secured bond, and we wanted to explore if that mandate was impacting results for these low-level offense charges. As shown in Table 1b, **when mandatory bond doubling cases are removed from analysis, the overall rate of imposition of secured bonds by magistrates fell slightly to 53.90% of cases. The percent of secured bonds imposed in cases involving Class A-E felony charges remained at 88.00%, and the percent imposed in cases involving intermediate-level charges fell slightly to 53.01%. However, the percent of secured bonds imposed in cases involving Class 3 misdemeanor charges fell substantially to 24.00%. These results better reflect magistrates’ discretionary decision-making, particularly in cases involving Class 3 misdemeanor charges. Additionally, they highlight the impact of the statutory bond**

tool creates a presumption that Class 3 misdemeanor charges will receive a condition other than secured bond, meaning that a variation from that recommendation is a deviation.

¹¹ Cases involving an Order for Arrest (OFA) after a Failure to Appear (FTA) with conditions pre-set by a judge already were removed from the data set. The mandatory bond doubling rule is in G.S. 15A-534(d1). That statute provides that if a case is before the magistrate on an OFA after a FTA and conditions have not been specified by a judge, the magistrate must double and secure a prior bond or, if no bond previously was set, impose a \$1,000 minimum secured bond. In our supplemental analysis, we only were able to remove forms that clearly indicated that the bond doubling rule applied; since such an indication is not required by the form, some cases involving bond doubling may have remained in the data set that we examined in our supplemental analysis.

doubling rules. We note that statutory bond doubling only applies when the judge fails to specify conditions in the OFA. If judges wish to avoid mandatory bond doubling in OFAs for certain cases involving Class 3 misdemeanor charges, they could do so by pre-setting conditions in the OFA.

As shown in Table 1a, in forms where magistrates recorded imposing a secured bond, the bond amount is proportional to the offense class, with more serious offense charges (Class A-E felonies) having the highest median secured bond amounts (\$100,000), followed by intermediate-level offense charges (\$5,000), and Class 3 misdemeanor charges having the smallest median secured bond amounts (\$1,000). These results are as expected: that bond amounts would increase as cases increase in severity from Class 3 misdemeanor charges at the low end to intermediate-level offense charges and to Class A-E felony charges at the high-end.

Table 1a also shows that when choosing between written promise, custody release or unsecured bond, magistrates most frequently chose unsecured bonds (41.08% of cases receiving a condition other than secured bond). Magistrates very rarely recorded ordering custody releases (less than 2% of cases receiving a condition other than secured bond). They ordered written promises in only 2.67% of forms completed for intermediate-level offense charges and only 5.56% of forms completed for Class 3 misdemeanor charges.

Table 1a. Percent conditions of release by highest offense class in magistrate bail forms, Quarter 3 of 2020

Type of Condition	All Cases	Class A – E felonies	Class F - I felony & Class 2 – A1 misdemeanors	Class 3 misdemeanors
Written promise, custody release, or unsecured bond	44.92%	12.00%	46.40%	58.33%
Written promise	2.71%	0.00%	2.67%	5.56%
Custody release	1.58%	0.00%	1.33%	5.56%
Unsecured bond	41.08%	14.00%	42.93%	47.22%
Secured bond	55.07%	88.00%	53.60%	41.67%
Median secured bond	\$5,000	\$100,000	\$5,000	\$1,000

Table 1b. Percent conditions of release by highest offense class in magistrate bail forms, Quarter 3 of 2020—bond doubling cases removed

Type of Condition	All Cases	Class A – E felonies	Class F - I felony & Class 2 – A1 misdemeanors	Class 3 misdemeanors
Written promise, custody release, or unsecured bond	46.09%	12.00%	46.99%	76.00%
Written promise	2.83%	0.00%	2.73%	8.00%
Custody release	1.65%	0.00%	1.37%	8.00%
Unsecured bond	42.08%	12.00%	43.44%	60.00%
Secured bond	53.90%	88.00%	53.01%	24.00%
Median secured bond	\$5,000	\$100,000	\$5,000	\$1,000

We also examined whether the general pattern of decision-making varied across counties and across individual magistrates. Table 2 shows that the pattern of decision-making is consistent across counties with the percent of secured bonds decreasing as the seriousness of the highest charged offense decreases. **In all counties, Class A-E felony charges are most likely to receive a secured bond, followed by intermediate-level offense charges, and then Class 3 misdemeanor charges. There is, however, considerable variation in the use of secured bonds for intermediate-level offense charges and Class 3 misdemeanor charges.** For instance, Washington County magistrates issued a secured bond for 20.00% of Class 3 misdemeanor charges, but that rate was 50.00% for Martin County magistrates.¹² Additionally, Beaufort County magistrates imposed a secured bond at a higher rate for all offense categories than the overall rate for the district.

¹² Martin County magistrates set conditions for 6 Class 3 misdemeanor charges during the third quarter of 2020. Of the 6 forms, 4 noted that the highest charge was a DWI and 2 noted that highest charge was an OFA after an FTA on a Driving While License Revoked (DWLR) not impaired. As we discussed with magistrates in a recent training, DWI should be categorized as an intermediate-level offense, not a Class 3 misdemeanor. Concerned that this mis-categorization might have artificially inflated the magistrates' rate of imposition of secured bonds for Class 3 misdemeanor cases, we examined each case in question and found that only one resulted in imposition of a secured bond. Specifically, of the 4 forms citing a DWI as a highest charge, the magistrate set a secured bond in one case (\$3,500); a written promise to appear in one case; and custody release in two cases. Both forms setting a condition after an OFA for a FTA on a DWLR not impaired case set a secured bond.

Table 2. Percent of secured bonds by highest offense class in magistrate bail forms for JD 2 counties, Quarter 3 of 2020

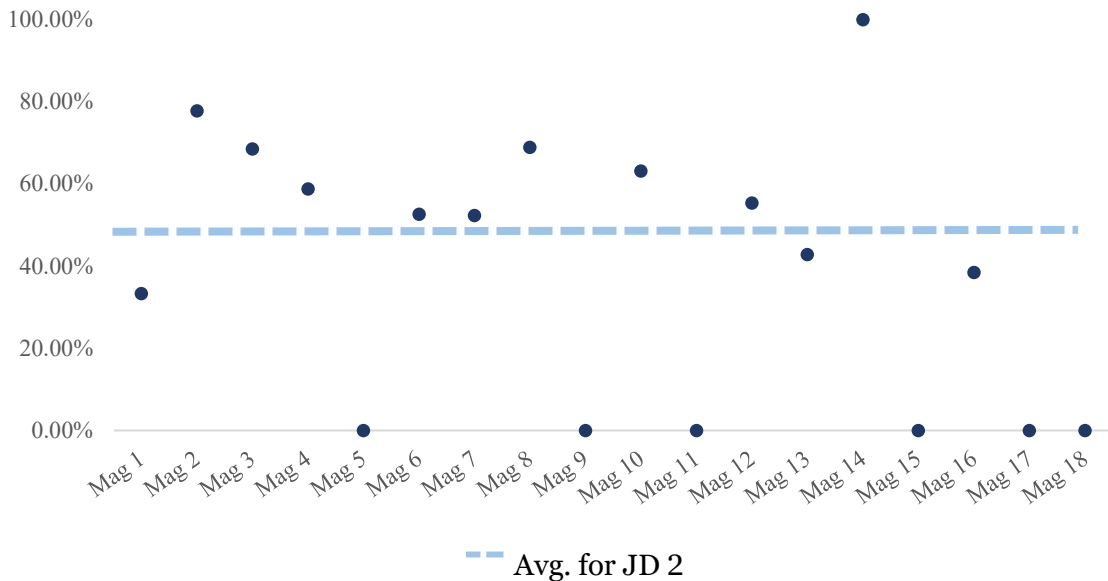
	Class A-E felonies	Intermediate-level offenses	Class 3 misdemeanors
Beaufort	90.00%	55.56%	44.00%
Hyde	100.00%	0.00%	N/A
Martin	83.33%	51.90%	50.00%
Tyrrell	N/A	17.65%	N/A
Washington	80.00%	66.67%	20.00%
JD 2 as a Whole	88.00%	53.60%	41.67%

Analyses showed wide variation among magistrates in the use of secured bonds, median secured bond amounts, and deviations from the decision-making tool’s recommendations, especially for intermediate-level offense charges. Among defendants whose highest charged offense was an intermediate-level offense, magistrates recorded imposing secured bonds in 0% to 100% of forms, with median secured bond amounts ranging from \$1,500 for one magistrate to \$10,000 for another. For defendants whose highest charged offense was a Class 3 misdemeanor, magistrates reported imposing secured bonds in 10% to 100% of forms, with median secured bond amounts ranging from \$750 to \$3,500. Figure 1 displays the variation in percent of forms recording imposition of secured bonds for intermediate-level offense charges across magistrates, relative to the percent of forms recording imposition of secured bonds for intermediate offense charges for the entire group. For example, the Figure shows that Magistrate #2 issued a secured bond for 77.78% of forms where defendants were charged with intermediate-level offense charges, which was higher than the percent for all of JD 2 (53.60%). For detailed information regarding variation among magistrates, see Appendix C.¹³

Although case specific factors may justify differences in outcomes across magistrates, larger deviations from the group rate may point to a need for additional training.

¹³ Figure 1 does not display magistrate decision-making for Class 3 misdemeanor charges because a number of magistrates did not set conditions for that charge category.

Figure 1. Percent of intermediate-level offenses issued a secured bond by magistrate



Completeness and Fidelity Issues

We examined a random sample of 375 forms completed in weeks 10 through 39 (March 1 to September 26) for completeness and fidelity issues. Examining the quality of implementation can help explain why a reform may not have the desired or anticipated effect. In our analyses, a completeness issue refers to failure to complete some portion of the form. A fidelity issue refers to a failure to follow the process set out in the decision-making tool. Of the 375 forms examined, 9.33% (35 forms) had one or more completeness issues, and 8.00% (30 forms) had fidelity issues. **Overall, magistrates are executing forms without completeness or fidelity issues in the vast majority of cases (90.67% without completeness issues; 92.00% without fidelity issues), suggesting that implementation of the new process is good at the magistrate level.** However, as shown in Appendix C, one third of the magistrates had 10% or more of their forms removed for fidelity or completeness issues, perhaps suggesting the need for additional training.

Table 3 shows the most common completeness and fidelity issues in the random sample.

Table 3. Common fidelity and completeness issues—Magistrate bail forms

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> • Not including the case number, defendant name, or charge description at the top of the form (2.85%) • Not noting the underlying offense for a failure to appear or probation violation (11.42%) • Not checking a redundant box (37.14%) • Not reporting the offense class (5.71%) • Not reporting the final bail condition and/or bond amount (14.28%) • Not completing Step 1 (20.00%) • Not completing other steps: Step 2 (14.28%), Step 5 (11.42%), Step 6 (8.57%), or Step 7 (5.71%) 	<ul style="list-style-type: none"> • Not following the decision-making process (36.67%) • Checking multiple inconsistent boxes, such as setting both a secured and unsecured bond or checking both “Yes” and “No” in Step 1 (3.33%) or selecting multiple offense classes (3.33%) • Both adhering to and deviating from policy in Steps 3.5 and 5 (13.33%) • Not reporting a deviation (such as setting a bond amount above the maximum amount) (20.00%) • Not explaining a deviation (10.00%) • Checking the deviation box for a condition that was not a deviation (10.00%) • Reusing a form and mixing information for two defendants on the same form (3.33%)

Note: For an explanation of the steps on the decision-making process, see Appendix B (Magistrate Bail Form).

Pretrial Detention

In an earlier check-in report to stakeholders, we presented data showing that the use of secured bonds decreased during the first two quarters of 2020 relative to the same period in 2019.¹⁴ Based on the decrease in secured bonds and the district’s new policy providing first appearances for all misdemeanor defendants, we expected to see reductions in pretrial bookings and length of stays. We further expected that COVID-19 would have put additional downward pressure on these metrics. However, data for the third quarters of 2019 and 2020 show that **although pretrial bookings are lower in 2020, length of stay for defendants charged with misdemeanors has increased. As we note below, the increase in length of stay may be explained by a changing mix of charged cases in 2020 as compared to 2019.**

Our analyses of bookings and length of stay used data supplied by the Beaufort County Detention Center¹⁵ for all pretrial defendants admitted to the facility between July 1 to September 30, for 2019 and 2020. These data include all defendants who were given a secured bond for a criminal charge and booked into the facility. For each booking, we determined the number of days the defendant was held in pretrial detention by calculating the difference between their admission and release dates. Bookings that did

¹⁴ We were not able to report on that metric in this report because the North Carolina Administrative Office of the Courts (NC AOC) declined to provide an updated Conditions of Release Report for use in this evaluation.

¹⁵ Beaufort County was the only JD 2 county that supplied jail data for use in this analysis.

not have a release date (either due to missing data or because the defendant is still awaiting trial) were given a missing value on the variables measuring length of pretrial detention (5.55% of bookings missing data in 2019, 7.31% of bookings missing data in 2020).

Figure 2 shows pretrial bookings for July, August, and September of 2019 and 2020. The number of pretrial bookings was 51.70% lower for the third quarter of 2020 relative to the same period in 2019. There was a total of 468 pretrial bookings for the third quarter of 2019 compared to 226 bookings during that same time frame in 2020. Table 4 includes information on length of stay and total pretrial bookings that had a release date. (Note that a length of stay of “0” indicates that a person was booked into and released by the jail on the same day.) Although Figure 2 shows a reduction in pretrial bookings from 2019 to 2020, Table 4 shows that the length of stay has increased, especially for defendants charged with misdemeanors. For instance, 45.10% of bookings for misdemeanor charges resulted in a pretrial detention of 1 – 7 days in 2020, compared to 27.31% of bookings for misdemeanors in 2019. The median length of pretrial detention was also higher in 2020 (1 day detained) than in 2019 (0 days detained) for all charged offenses and for cases where the highest charge was a misdemeanor.

It is likely that the types of cases being booked into the detention center changed in 2020 relative to 2019 due to the COVID-19 pandemic, impacting these results. For example, we found that for the third quarter of 2019, highest charge misdemeanor cases accounted for 62.44% of pretrial bookings, but only 27.36% of bookings for the same period in 2020. Thus, while length of stay is generally longer in 2020, this may be occurring because defendants with more serious charges are being detained in 2020 compared to 2019. Indeed, supplemental analyses (Table 5) showed substantial increases in the percent of bookings charged with a violent felony (+3.47 percentage points) or a violent misdemeanor (+4.48 percentage points) during the third quarter of 2020 relative to 2019. There was little change in the percent of bookings for nonviolent felonies (+0.24) and decreases in the percent of bookings for individuals charged with nonviolent, non-traffic misdemeanors (-1.51) and nonviolent, non-impaired driving (DWI) traffic offenses (-3.17).

Figure 2. Number of pretrial bookings into the Beaufort County Detention Center, Quarter 3 of 2019 and 2020

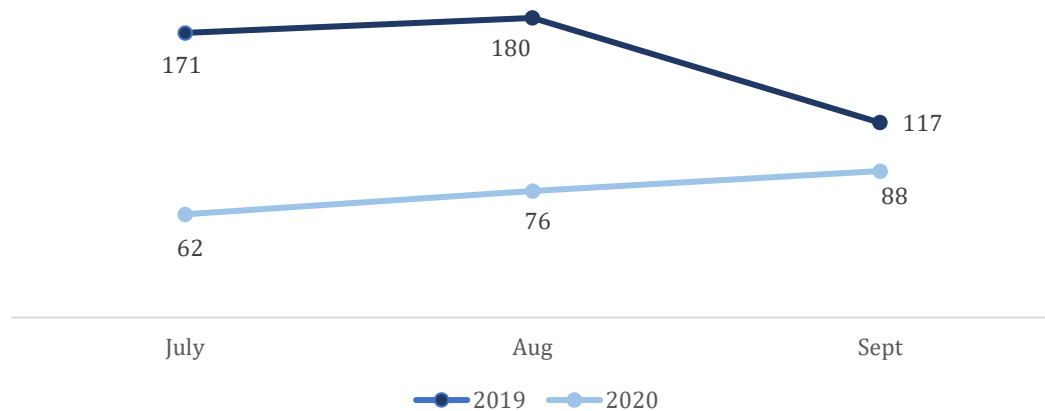


Table 4. Percent of bookings by length of stay in Beaufort County Detention Center for all offenses, highest charge misdemeanor, and highest charge felony offenses, Quarter 3 of 2019 and 2020

All Offenses	2019	2020
0 days	50.79%	35.58%*
1 – 7 days	27.44%	39.42%*
8 – 14 days	5.90%	9.13%
15 – 21 days	3.85%	3.85%
22 – 29 days	2.95%	3.85%
30+ days	9.07%	8.17%
Median number of days	0	1
Total number of bookings with release date	441	208
Highest charge misdemeanor	2019	2020
0 days	57.20%	33.33%*
1 – 7 days	27.31%	45.10%*
8 – 14 days	5.54%	5.88%
15 – 21 days	2.21%	1.96%
22 – 29 days	2.21%	3.92%
30+ days	5.54%	9.80%
Median number of days	0	1
Total number of bookings with release date	271	51
Highest charge felony	2019	2020
0 days	41.25%	33.33%
1 – 7 days	26.25%	38.41%*
8 – 14 days	6.88%	11.59%
15 – 21 days	6.88%	4.35%
22 – 29 days	4.38%	4.35%
30+ days	14.38%	7.97%
Median number of days	1	2
Total number of bookings with release date	160	138

Asterisks (*) indicate that a finding is statistically significant ($p \leq .05$). Findings that are statistically different or statistically significant indicate that differences between the two percentages are not due to chance alone or statistical noise. Note that difference scores without any asterisk (*) means the difference is not statistically significant.

Table 5. Percent and number of bookings by offense type for Beaufort County Detention Center

	2019	2020	% pt. difference
Violent felony	4.05% 19	7.52% 17	3.47
Nonviolent felony	24.09% 113	24.33% 55	0.24
Felony probation violation	3.84% 18	7.96% 18	4.12
Misdemeanor probation violation	13.64% 64	15.04% 34	1.40
Order for Arrest after Failure to Appear	22.17% 104	21.23% 48	-0.94
Violent misdemeanor	18.97% 89	23.45% 53	4.48
Nonviolent ordinance misdemeanor	0.21% 1	0.00% 0	-0.21
Nonviolent, non-traffic misdemeanor, other	30.27% 142	28.76% 65	-1.51
DWI	7.03% 33	9.73% 22	2.70
Nonviolent, non-DWI traffic misdemeanor	4.05% 19	0.88% 2	-3.17

First Appearance Proceedings

To assess the impact of the new first appearance proceedings on conditions of pretrial release, we examined first appearance minutes, tracking the percent of defendants who had their bonds modified at those proceedings. The minutes recorded the following:

- type of case being heard (e.g., 48-hour);
- the original bond type and amount;
- the final bond type and amount;
- whether the defendant pled to any charges or if any charges were dismissed; and
- information about the case such as file number, offense class, and offense description.

Cases that involved a mix of felonies and misdemeanors or that were probation violations were removed from the analyses since the policy focused on providing first appearance proceedings for defendants whose highest charge was a misdemeanor and did not involve a probation violation.

We find that **the new first appearance proceedings are affording defendants a new opportunity for early release from pretrial detention.** Between January 1 and September 30, 2020, 81 defendants were on the new misdemeanor first appearance calendar. Under the new procedures, defendants are afforded a first appearance after each arrest. Thus, a defendant is afforded a first appearance both after the initial arrest and after any subsequent arrest in the case (e.g., on an Order for Arrest after a failure to

appear or for new criminal charges). Our analysis examined judges' pretrial decisions only in connection with the first appearance held after the initial arrest.

Of the 81 defendants on the new misdemeanor first appearance calendar, 75 appeared after the initial arrest. Of those 75 defendants, 10.67% (8 defendants) pled guilty to one or more charges, leaving 67 defendants whose pretrial conditions were considered by the judge. Thirty-one defendants appeared before the court for reasons other than a 48-hour domestic violence hold,¹⁶ while 36 defendants had a first appearance in connection with a 48-hour domestic violence hold. Processing of 48-hour defendants was not impacted by the district's reforms.

Among the 31 non-48-hour defendants, 45.16% were released on an unsecured bond, while 54.84% still had a secured bond at the end of the first appearance hearing (Table 6). For the 17 defendants who still had a secured bond at the conclusion of that proceeding, the median secured bond amount was \$1,500. Only two defendants (11.76%) had their secured bond amounts reduced at the first appearance. For one defendant bond was reduced \$250; for the other the reduction was \$1,000. Although not the focus of the new first appearance reform, we included, for informational purposes, data on first appearance outcomes for 48-hour defendants in Table 6 below.

Table 6. Pretrial outcomes at first appearance proceedings

	Non-48-Hour Defendants 31 defendants	48-Hour Defendants 36 defendants
% defendants released on an unsecured bond	45.16% 14	50.00% 18
% defendants with a secured bond	54.84% 17	50.00% 18
Median secured bond amount	\$1,500	\$1,250
% defendants who had secured bond amount reduced	11.76% 2	N/A
Median reduction in secured bond amount	\$625	N/A

¹⁶ Under state law, only a judge can determine conditions of release for defendants charged with certain domestic violence offenses within the first 48 hours after arrest. These defendants are held without bail by the magistrate, to be seen by a judge within 48 hours or, if no judge is available, returned to the magistrate for conditions of release. We refer to these defendants as "48-hour defendants."

Pretrial Failures

In an earlier check-in report to stakeholders, we presented data showing that the use of secured bonds decreased in 2020 relative to 2019,¹⁷ and the prior section showed a substantial decrease in pretrial bookings during the third quarter of 2020 relative to the same period in 2019. Some have expressed concern that a reduction in the use of secured bonds and pretrial detention may result in substantially higher rates of court non-appearances and pretrial criminal activity. In this section, we examine these issues. We find that **changes in non-appearance rates for the district's five counties, as measured by Automated Criminal Infraction System data, were very small, ranging from -.70 to +1.44 percentage points. We also find that all counties experienced a reduction in the percentage of defendants who acquired a new charge during the pretrial period, and that reduction was statistically significant in Martin County.** We discuss these findings in more detail below.

Court Non-Appearance

To assess changes in non-appearance rates, we examined data from two sources: (1) the North Carolina Automated Criminal/Infractions System (ACIS), and (2) the Criminal Court Information System – Public Defender (CCIS–PD). We used two data sources to be as comprehensive as possible with respect to capturing missed court appearances.

ACIS includes data on all charged state crimes and infractions and is used by judicial officials in setting pretrial conditions. Our analyses focus on missed court appearances in criminal cases served during the first quarters of 2019 and 2020. Data from the second and third quarters of those years are not reported here. We chose not to include that data because COVID-19 resulted in a dramatic decrease in court proceedings and the suspension of jury trials in the second and third quarters of 2020. Additionally, for each of the district's five counties, data included either no or very low instances of court non-appearances during that time frame.

We used two ACIS data points to document instances of a non-appearance: ACIS case entries for (1) called and failed; and (2) motor vehicle failure to appear (FTA). If a defendant had an entry in either field, we considered the defendant as having a court non-appearance. *We note that our approach of including cases in which a defendant was called and failed for a court appearance is an aggressive measure of non-appearance* because not all called and faileds result in entry of a FTA. We explored alternative indicators of court non-appearance, such as order of bond forfeiture and whether an order for arrest was issued in response to a FTA. However, the level of missing data in these fields indicated that these variables are not consistently reported in ACIS, and thus we did not use them.¹⁸

Our second data source is CCIS–PD. This data includes FTA and called and failed information for cases where the defendant, at any point, received services from the

¹⁷ We were not able to report on that metric in this report because the NC AOC declined to provide an updated Conditions of Release Report for use in this evaluation.

¹⁸ For instance, less than 0.03% of cases served in 2019 reported that an order for bond forfeiture was filed or that an order for arrest was issued in response to an FTA any time from January 1, 2019 to June 30, 2020.

public defender or appointed counsel. Although this data does not include all cases, it is an alternate source of non-appearance data, and thus we included it in our analyses.

Table 7 shows the prevalence of court non-appearance for the first quarter of 2019 and 2020 for the five counties in JD 2. As shown there, **changes in non-appearance rates for the district's five counties were small, ranging from -0.70 percentage points to +1.47 percentage points.** Specifically, there was a small increase in the prevalence of court non-appearance for Martin and Tyrrell counties for the first quarter of 2020. For instance, the prevalence of called and failed cases for Martin County increased 0.65 percentage points in 2020 (0.82% in 2019, 1.47% in 2020), and the prevalence of called and failed cases for Tyrrell County increased 1.44 percentage points in 2020 (.20% in 2019, 1.64% in 2020). Similar results are seen for Martin and Tyrrell counties when examining the percent of cases issued a FTA during the first quarter of each year. Among the other JD 2 counties, the level of court non-appearance either did not change (Hyde County), decreased (Beaufort County), or increased in percent called and failed but decreased in FTAs (Washington County).

Given the small number of observations in each county and the fact that this report only encompasses three months of case pending time, we cannot yet make any definitive statements regarding the impact of the policies on non-appearance rates. We will, of course, continue to examine non-appearance rates as the evaluation continues.

Finally, we note that the data show very low rates of non-appearances, whether measured as a called and failed or FTA. We expect that as this evaluation continues, observed non-appearance rates may increase significantly. We emphasize that the very low rates reported here likely are attributable to the fact that the reporting period encompasses only the first three months of pending time for cases initiated in 2019 and 2020. As cases proceed to completion throughout the evaluation period, we expect that non-appearance rates will rise. Notwithstanding this, we find it informative to examine the percentage point difference between non-appearance rates, even in this limited time.

Table 7. Percent and number of court non-appearances for Q1 2019 and 2020– ACIS data

Called and Failed	2019	2020	% pt. difference
Beaufort	0.67% 11	0.25% 4	-0.42
Hyde	0.00% 0	0.00% 0	0.00
Martin	0.82% 7	1.47% 9	0.65
Tyrrell	0.20% 1	1.64% 4	1.44
Washington	1.51% 9	1.82% 9	0.31
Motor Vehicle FTA	2019	2020	% pt. difference
Beaufort	0.36% 6	0.25% 4	-0.11
Hyde	0.00% 0	0.00% 0	0.00
Martin	0.47% 4	1.14% 7	0.67
Tyrrell	0.99% 5	2.46% 6	1.47
Washington	2.52% 15	1.82% 6	-0.70

Table 8 below displays the prevalence of court non-appearance rates for JD 2 counties as recorded in the CCIS–PD data. The results mirror those found in Table 7. In Beaufort County, the percent of cases that were called and failed decreased 2.06 percentage points during the first quarter of 2020 relative to the same period in 2019. For the remaining counties, the percent either did not change (Hyde) or increased anywhere from 0.20 to 5.26 percentage points. *While the increase of 5.26 percentage points for Tyrrell County appears relatively high, it resulted from just one additional called and failed in 2020 (no 2019 cases were reported as having a called and failed in the first quarter of that year).* Again, CCIS-PD contains only cases where representation was provided through the indigent defense system, a subset of all cases; lower observations thus are expected in CCIS-PD. In future work we will explore merging these data sets.

Table 8. Percent and number of court non-appearances for Q1 2019 and 2020– CCIS–PD data

Called and Failed	2019	2020	% pt. difference
Beaufort	3.28% 19	1.22% 6	-2.06
Hyde	0.00% 0	0.00% 0	0.00
Martin	0.43% 1	0.63% 1	0.20
Tyrrell	0.00% 0	5.26% 1	5.26 ¹
Washington	0.96% 1	3.49% 3	2.53
Motor Vehicle FTA	2019	2020	% pt. difference
Beaufort	0.86% 5	0.00% 0	-0.86
Hyde	0.00% 0	0.00% 0	0.00
Martin	0.00% 0	0.00% 0	0.00
Tyrrell	0.00% 0	5.26% 1	5.26 ¹
Washington	0.00% 0	0.00% 0	0.00

¹ This change for Tyrrell County results from only one additional reported called and failed case.

New Criminal Charges During Pretrial Period

We used ACIS data to examine whether or not defendants whose criminal cases were both served and closed in the first six months of 2020 had higher rates of new criminal charges during the pretrial period than defendants whose cases were both served and closed in the first six months of 2019. A case was categorized as having a new criminal charge during the pretrial period if the defendant was served with a new charge before the first one was disposed. Among defendants who had a new charge during the pretrial period, new criminal charges were categorized as either a felony or a traffic or non-traffic misdemeanor.

Table 9 displays the percent of defendants who had a new criminal charge during the pretrial period for the first two quarters of 2019 and 2020. **Not only did we fail to find increases in new pretrial charges, but in fact, we found that rates of new pretrial charges decreased across all five counties. In Martin County that decrease was statistically significant.**

We also compared the percent of JD 2 defendants who acquired new charges during the pretrial period to the percentages of defendants who did the same in “peer” North Carolina counties. To identify peer counties, we used the National Center for Health Statistics (NCHS) Urban – Rural classification scheme. That classification scheme

organizes counties into six different groups, from large metropolitan (most populous) to noncore (least populous). Under the NCHS scheme, all five of the District's counties are categorized as non-metropolitan. The non-metropolitan category includes two subcategories: micropolitan and noncore, with noncore being the most rural areas in the scheme. Beaufort and Tyrrell are designated micropolitan while Hyde, Martin, and Washington are classified as noncore.¹⁹ Twenty-eight North Carolina counties are designated as micropolitan; 27 are categorized as noncore.

For micropolitan counties, there was a 2.03 percentage point decrease in the prevalence of any new criminal charges during the pretrial period for the first six months of 2020 as compared to that period in 2019. For noncore counties, the decrease was 1.85 percentage points. Both decreases were statistically significant.²⁰ Additional information regarding prevalence of new charges during the pretrial period in micropolitan and noncore counties is presented in Table 10 below. We will continue to examine how the JD 2 counties are performing vis-à-vis their peer counties with respect to this metric.

As noted, this analysis examines cases served and disposed in the first six months of 2019 and 2020. We will continue to examine new pretrial activity as the evaluation continues. It is possible that as the evaluation encompasses cases that remain pending for longer time periods, new pretrial criminal activity rates will change.

¹⁹ More information about the classification scheme is available in the DHHS publication here: https://www.cdc.gov/nchs/data/series/sr_02/sr02_166.pdf.

²⁰ We note that lack of statistical significance with respect to the JD 2 counties may result from the relatively low number of total cases as compared the much larger case numbers for the groupings of micropolitan and noncore counties.

Table 9. Percent (and number) of defendants who acquired new criminal charges during the pretrial period for JD 2 counties and peer counties in Q1–Q2, 2019 and 2020

	2019	2020	% pt. difference
<i>Beaufort (Micropolitan)</i>			
New criminal charges	10.41% (107)	7.34% (34)	-3.07
New felony charges	10.28% (11)	20.59% (7)	10.31
New non-traffic misdemeanor charges	37.38% (40)	41.18% (14)	3.80
New traffic misdemeanor charges	71.96% (77)	70.59% (24)	-1.37
<i>Hyde (Noncore)</i>			
New criminal charges	5.62% (5)	0.00% (0)	-5.62
New felony charges	0.00% (0)	0.00% (0)	0.00
New non-traffic misdemeanor charges	0.00% (0)	0.00% (0)	0.00
New traffic misdemeanor charges	100.00% (5)	0.00% (0)	-100.00
<i>Martin (Noncore)</i>			
New criminal charges	9.67% (52)	5.38% (12)	-4.29*
New felony charges	21.15% (11)	16.67% (2)	-4.48
New non-traffic misdemeanor charges	30.77% (16)	33.33% (4)	2.56
New traffic misdemeanor charges	63.46% (33)	58.33% (7)	-5.13
<i>Tyrrell (Micropolitan)</i>			
New criminal charges	5.48% (25)	3.95% (7)	-1.53
New felony charges	8.00% (2)	14.29% (1)	6.29
New non-traffic misdemeanor charges	32.00% (8)	28.57% (2)	-3.43
New traffic misdemeanor charges	68.00% (17)	85.71% (6)	17.71
<i>Washington (Noncore)</i>			
New criminal charges	9.89% (45)	5.56% (8)	-4.33
New felony charges	13.33% (6)	0.00% (0)	-13.33
New non-traffic misdemeanor charges	26.67% (12)	50.00% (4)	23.33
New traffic misdemeanor charges	77.78% (35)	50.00% (4)	-27.78

Asterisks (*) indicate that a finding is statistically significant. Findings that are statistically different or statistically significant indicate that differences between the two percentages are not due to chance alone or statistical noise. * $p \leq .05$, ** $p \leq .01$, *** $p \leq .001$. Findings with more asterisks suggest greater confidence that observed differences are not due to chance alone. Note that difference scores without any asterisk (*) means the difference is not statistically significant.

Table 10. Percent (and number) of defendants who acquired new criminal charges during the pretrial period for peer counties in Q1–Q2, 2019 and 2020

	2019	2020	% pt. difference
<i>Micropolitan peer counties</i>			
New criminal charges	10.58% (3172)	8.55% (1564)	-2.03***
New felony charges	18.76% (595)	19.18% (300)	0.42
New non-traffic misdemeanor charges	42.47% (1347)	36.89% (577)	-5.58***
New traffic misdemeanor charges	64.94% (2060)	65.15% (1019)	0.21
<i>Noncore peer counties</i>			
New criminal charges	9.69% (1376)	7.84% (589)	-1.85***
New felony charges	18.68% (257)	20.88% (123)	2.20
New non-traffic misdemeanor charges	37.14% (511)	31.58% (186)	-5.56*
New traffic misdemeanor charges	67.15% (924)	66.89% (394)	-0.26

Asterisks (*) indicate that a finding is statistically significant. Findings that are statistically different or statistically significant indicate that differences between the two percentages are not due to chance alone or statistical noise. * $p \leq .05$, ** $p \leq .01$, *** $p \leq .001$. Findings with more asterisks suggest greater confidence that observed differences are not due to chance alone. Note that difference scores without any asterisk (*) means the difference is not statistically significant.

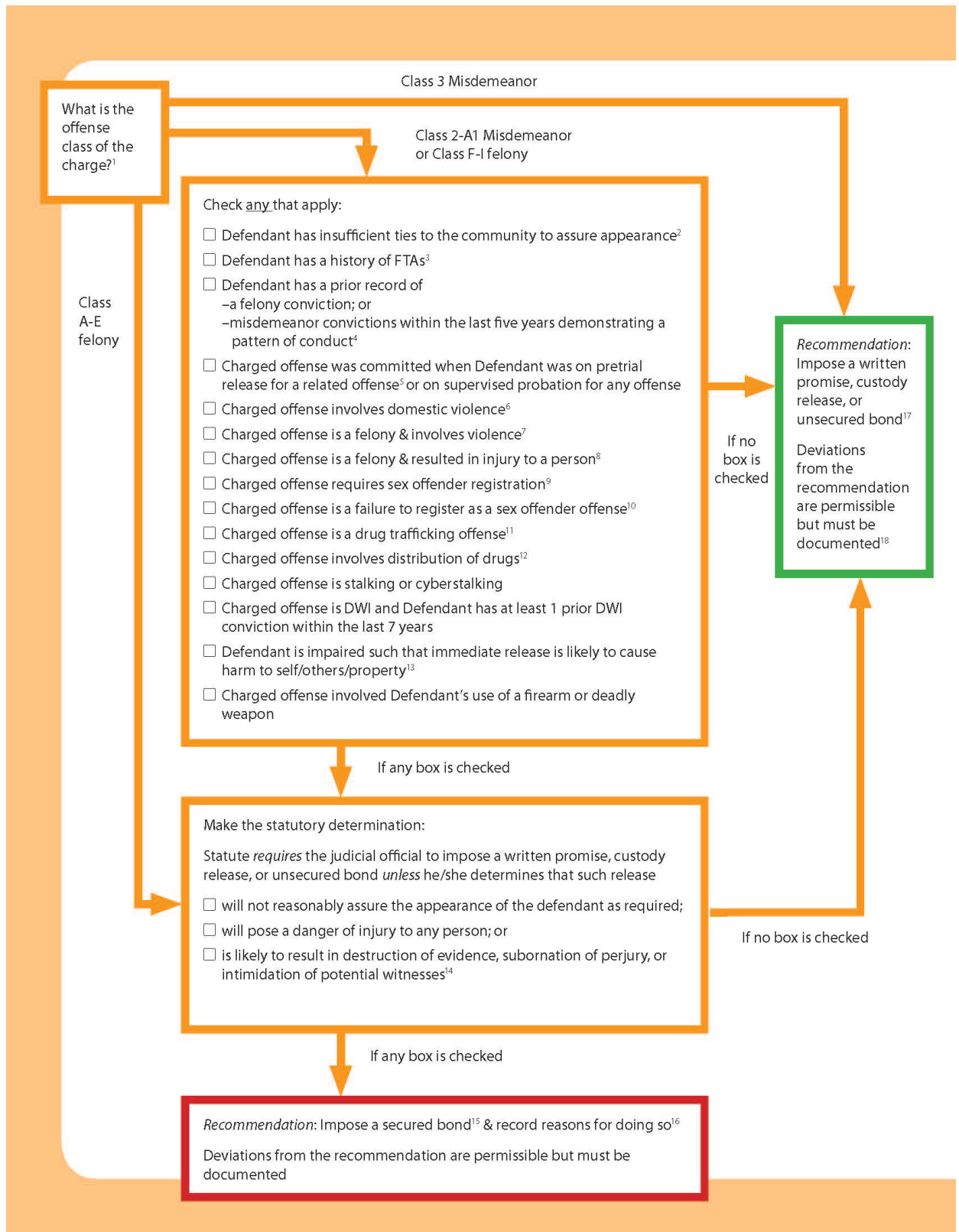
Next Steps

Our next quarterly evaluation report will be presented to stakeholders in February 2021. That report will encompass data through December 2020.

Appendix A – New Structured Decision-Making Tool

JUDICIAL DISTRICT 2: DETERMINING CONDITIONS OF PRETRIAL RELEASE

Pursuant to Judicial District 2's Local Pretrial Release Policy, judicial officials must use the flowchart contained here, with accompanying footnotes and tables, when determining conditions of release in all cases except where the North Carolina General Statutes or Local Policy prescribe a different process or result.



What is the offense class of the charge?¹

Class 3 Misdemeanor

Class 2-A1 Misdemeanor
or Class F-I felony

Class
A-E
felony

Check any that apply:

- Defendant has insufficient ties to the community to assure appearance²
- Defendant has a history of FTAs³
- Defendant has a prior record of
 - a felony conviction; or
 - misdemeanor convictions within the last five years demonstrating a pattern of conduct⁴
- Charged offense was committed when Defendant was on pretrial release for a related offense⁵ or on supervised probation for any offense
- Charged offense involves domestic violence⁶
- Charged offense is a felony & involves violence⁷
- Charged offense is a felony & resulted in injury to a person⁸
- Charged offense requires sex offender registration⁹
- Charged offense is a failure to register as a sex offender offense¹⁰
- Charged offense is a drug trafficking offense¹¹
- Charged offense involves distribution of drugs¹²
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and Defendant has at least 1 prior DWI conviction within the last 7 years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property¹³
- Charged offense involved Defendant's use of a firearm or deadly weapon

If no
box is
checked

Recommendation:
Impose a written
promise, custody
release, or
unsecured bond¹⁷

Deviations
from the
recommendation
are permissible
but must be
documented¹⁸

If any box is checked

Make the statutory determination:

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release

- will not reasonably assure the appearance of the defendant as required;
- will pose a danger of injury to any person; or
- is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses¹⁴

If no box is checked

If any box is checked

Recommendation: Impose a secured bond¹⁵ & record reasons for doing so¹⁶

Deviations from the recommendation are permissible but must be documented

1. If the matter is before a judge on the State's motion to increase conditions after the return of a habitual felon indictment, the judge should treat the offense at its "habitualized" offense Class level.
2. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.
3. FTAs within the last 2 years are most relevant.
4. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has 3 priors within the last 5 years for misdemeanor drug or drug paraphernalia possession.
5. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while on pretrial release for communicating threats to the property owner).
6. An offense involves domestic violence when the relationship between the parties is one of the following:
 - o Current or former spouses
 - o Currently or formerly lived together as if married
 - o Currently or formerly in a dating relationship
 - o Have a child in common
 - o Parent (or one in parental role)/child
 - o Grandparent/grandchild
 - o Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
7. For example, robbery.
8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).
9. For a list of offenses requiring sex offender registration, see JAMIE MARKHAM & SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2017-18 (UNC School of Government, forthcoming 2018).
10. See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7th Ed. 2012) (discussing this offense).
11. See G.S. 90-95(h); NORTH CAROLINA CRIMES *supra* note 10, at 721-739 (discussing trafficking offenses).
12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant's impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
14. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions on travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
15. If a secured appearance bond is imposed: (1) the judicial official must consider—among other relevant factors—the defendant's ability to pay; and (2) the amount of the secured appearance bond should not exceed the amounts listed the tables shown below; if a secured bond is set in excess of these recommended maximums, reasons for doing so must be documented.

If a secured bond is used to detain ("detention bond"), a detention bond hearing that affords the defendant appropriate procedural protections must be held before a judge on motion by the defense.
16. See G.S. 15A-534(b) (when judicial official imposes secured bond instead of written promise, custody release or unsecured bond, the judicial official "must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge").
17. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) & note 14 above.
18. A deviation is permissible if there is a risk of continuing felony-level criminal activity.

**Maximum Secured Appearance Bond Amounts—
Offenses Other Than Drug Trafficking**

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Type of Offense	Maximum Secured Bond
Misdemeanor, Class 2	\$500
Misdemeanor, Class 1	\$1,000
Misdemeanor, Class A1	\$3,000
Driving While Impaired	\$5,000
Felony Class I	\$10,000
Felony Class H	
Felony Class G	\$25,000
Felony Class F	
Felony Class E	\$50,000
Felony Class D	\$70,000
Felony Class C	\$100,000
Felony Class B2	\$250,000
Felony Class B1	\$300,000
Felony Class A	No Bond Unless Set by a Judge
Fugitive Warrant	For Maximum bond amount, see maximum for the underlying offense
Governor's Warrant	No Bond
Parole Warrant	No Bond

Maximum Secured Appearance Bond Amounts—Drug Trafficking

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Punishment Class	Maximum Secured Bond
H	\$75,000
G	
F	
E	
D	\$150,000
C	\$250,000

Appendix B – Magistrate Bail Explanation Form

JUDICIAL DISTRICT 2 MAGISTRATE BAIL EXPLANATION FORM

DIRECTIONS: This form applies when setting bail for initial offenses, OFAs, fugitive warrants, other warrants (i.e., governor's warrants, interstate compact), and probation violations.

Magistrate's Name		County	
Defendant's Name		Date	
Case #s			
Charge	Class A-E Felony (Yes/No)	Class 2-A1 Misdemeanor or F-I Felony	Class 3 Misdemeanor (Yes/No)
	No <input type="checkbox"/>	No <input type="checkbox"/>	No <input type="checkbox"/>

STEP 1: OFA after FTA with conditions set by judge

- Yes
- Written Promise
 - Custody Release
 - Unsecured Bond \$ _____
 - Secured Bond \$ _____
- (FORM COMPLETE)**
- No (Go to **STEP 2**)

STEP 3: (check all that apply)

- Defendant has insufficient ties to the community to assure appearance
- Defendant has a history of FTAs
- Defendant has a prior record of
 - a felony conviction; or
 - misdemeanor convictions within the last five years demonstrating a pattern of conduct
- Charged offense was committed when Defendant was on pretrial release for a related offense or on supervised probation for any offense
- Charged offense involves domestic violence
- Charged offense is a felony & involves violence
- Charged offense is a felony & resulted in injury to a person
- Charged offense requires sex offender registration
- Charged offense is a failure to register as a sex offender offense
- Charged offense is a drug trafficking offense
- Charged offense involves distribution of drugs
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and defendant has at least 1 prior DWI conviction within the last seven years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property
- Charged offense involved Defendant's use of a firearm or deadly weapon

STEP 2: Highest Charge

- Class 3 Misdemeanor (Go to **STEP 3.5**)
- Class 2-A1 Misdemeanor or Class I-F Felony (Go to **STEP 3**)
- Class A-E Felony (Go to **STEP 4**)

If no box is checked, in **STEP 3**, go to **STEP 3.5**

If any box is checked in **STEP 3**, go to **STEP 4**

STEP 3.5:

- Follow bond policy recommendation and impose a
 - Written promise,
 - Custody release, or
 - Unsecured bond \$ _____ (form complete)
- Deviate from bond policy recommendation to impose a nonfinancial condition;
 - Secured bond \$ _____ if Deviate is checked, complete **STEP 7** below)

From STEP 2

STEP 4: Make the statutory determination

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release (Check any that apply and provide explanation for any checked box)

will not reasonably assure the appearance of the defendant as required

Explanation:

will pose a danger of injury to any person

Explanation:

is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses

Explanation:

If no box is checked in Step 4, go to step 3.5 above. If any box is checked in Step 4, go to Step 5.

STEP 5:

Follow bond policy recommendation and impose a secured bond consistent with maximum bond tables (if this box is checked, make sure that reason is stated in STEP 4 § (Form is complete)

Deviate from bond policy recommendation to impose a secured bond within maximum bond table amount and impose:

Written Promise

Custody Release

Unsecured Bond \$

Secured Bond \$ (if this box is checked, proceed to STEP 6)

STEP 6: Type of Deviation (check one)

From recommendation to impose secured bond

From maximum bond table

STEP 7: Reasons for deviating from local bond policy recommendation (check any that apply):

NC General Statute 15A-534(d3) - Bond is doubled because an offender already is released on bond for a related crime.

NC General Statute 15a-534(d2) - Probationer is charged with a new felony and is deemed to pose a danger to the public.

NC General Statute 15A-534.6 - Offender is charged with manufacturing methamphetamine or has a pattern or regular use of methamphetamine

Other:

(Form is complete)

20190633

Appendix C – Magistrate Bail Explanation Form Results by Magistrate

JD 2 Results by Magistrate

	Total # of forms magistrates completed	Median # of forms by magistrate
Class A-E felonies	32	0
Class F – I felonies & Class A1 – 2 misdemeanors	374	14
Class 3 misdemeanors	36	0

	Magistrate #1	Magistrate #2	Magistrate #3	Magistrate #4	Magistrate #5	Magistrate #6
% issued secured bonds	N/A	N/A	N/A	100.00%	N/A	N/A
	33.33%	77.78%	68.57%	58.82%	0.00%	52.63%
	N/A	N/A	N/A	72.73%	N/A	N/A
Median secured bond amounts	N/A	N/A	N/A	\$200,000.00	N/A	N/A
	\$3,000.00	\$1,500.00	\$5,000.00	\$5,000.00	N/A	\$7,500.00
	N/A	N/A	N/A	\$750.00	N/A	N/A
% of forms w/deviations	N/A	N/A	N/A	20.00%	N/A	N/A
	11.11%	22.22%	0.00%	23.53%	0.00%	47.37%
	N/A	N/A	N/A	72.73%	N/A	N/A
% of forms removed from analysis due to error	0.00%	64.00%	12.50%	0.00%	33.33%	13.64%

	Magistrate #7	Magistrate #8	Magistrate #9	Magistrate #10	Magistrate #11	Magistrate #12
% issued secured bonds	66.67%	100.00%	N/A	80.00%	N/A	100.00%
	52.38%	68.97%	0.00%	63.16%	0.00%	55.36%
	100.00%	N/A	N/A	20.00%	N/A	10.00%
Median secured bond amounts	\$75,000.00	\$87,500.00	N/A	\$100,000.00	N/A	\$10,000.00
	\$10,000.00	\$5,000.00	N/A	\$8,250.00	N/A	\$2,500.00
	\$1,000.00	N/A	N/A	\$1,500.00	N/A	\$1,500.00
% of forms w/deviations	0.00%	50.00%	N/A	0.00%	N/A	0.00%
	38.10%	25.86%	0.00%	10.53%	0.00%	23.21%
	100.00%	N/A	N/A	20.00%	N/A	10.00%
# and % of forms removed from analysis due to error	0.00%	3.13%	0.00%	3.33%	0.00%	2.74%

	Magistrate #13	Magistrate #14	Magistrate #15	Magistrate #16	Magistrate #17	Magistrate #18
% issued secured bonds	100.00%	N/A	100.00%	66.67%	N/A	N/A
	42.86%	100.00%	0.00%	38.46%	0.00%	0.00%
	25.00%	N/A	N/A	50.00%	N/A	N/A
Median secured bond amounts	\$500,000.00	N/A	\$25,000.00	\$250,000.00	N/A	N/A
	\$1,750.00	\$10,000.00	N/A	\$8,750.00	N/A	N/A
	\$3,500.00	N/A	N/A	\$1,000.00	N/A	N/A
% of forms w/deviations	66.67%	N/A	0.00%	33.33%	N/A	N/A
	7.14%	100.00%	0.00%	9.62%	0.00%	0.00%
	25.00%	N/A	N/A	50.00%	N/A	N/A
# and % of forms removed from analysis due to error	2.78%	0.00%	20.00%	6.06%	0.00%	50.00%

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