

Pretrial Release Advocacy

Elana R. Fogel
Director, Criminal Defense Clinic
Assoc. Clinical Prof. of Law

Misdemeanor Defender Training
Nov. 2025



**“In our society, liberty is the norm,
and detention prior to trial or without
trial is the carefully limited
exception.”**

- *U.S. v. Salerno*, 482 U.S. 739, 755 (1987)

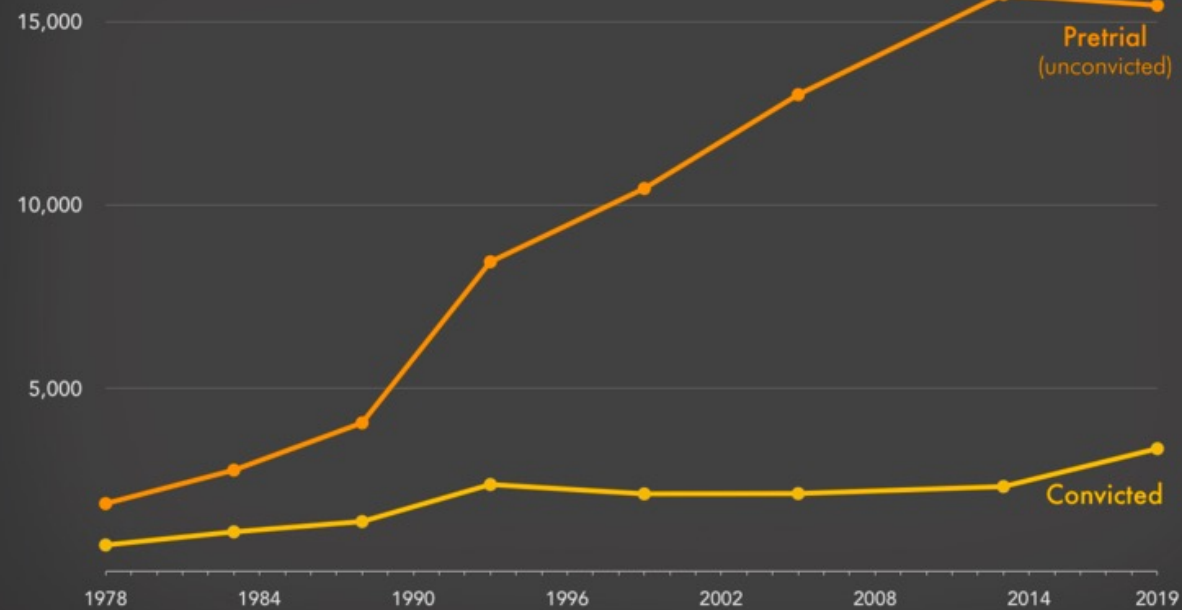


Pretrial Release: Why's it so important?



Pretrial policies have driven recent jail growth in North Carolina

Number of people incarcerated in local jails by conviction status, 1978-2019

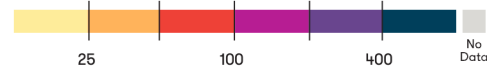


Jail populations were adjusted to remove people being held for federal and state authorities.
For full sourcing see: https://www.prisonpolicy.org/blog/2024/04/15/jails_update

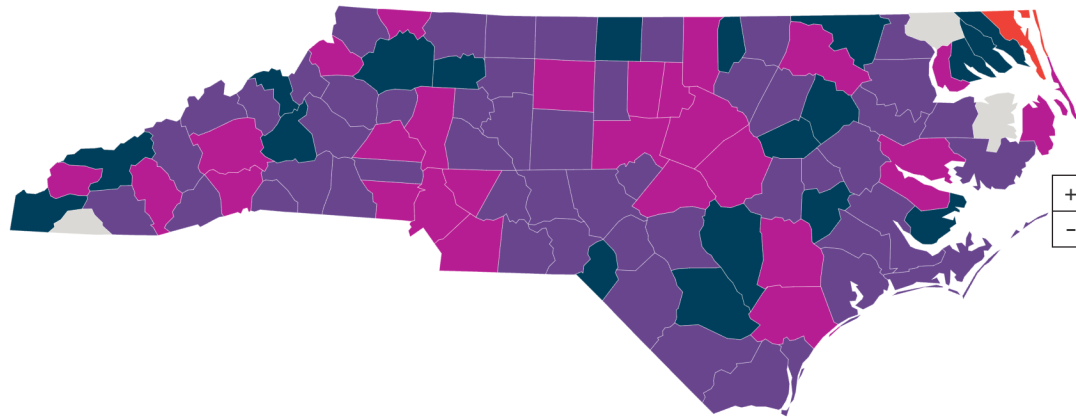
PRISON
POLICY INITIATIVE

Search for a county

Pretrial jail incarceration rate per 100,000 residents age 15-64



2020



+524%

Change in the total number of people behind bars since 1970.

77%

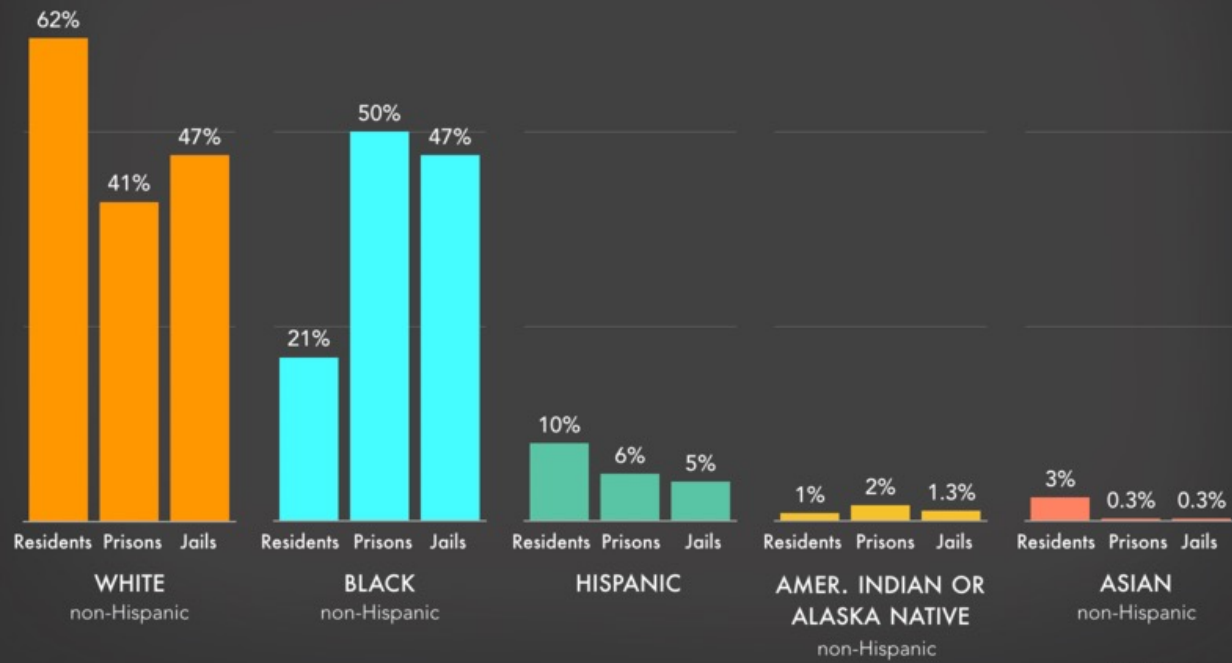
Percent of the jail population held pretrial.

380,854

Number of times people are sent to local jails annually.

Comparing North Carolina's resident and incarcerated populations

Percentage of state residents, by race or ethnicity, compared to the percentage of people in the state's prisons in 2021 and in local jails in 2019, by race or ethnicity. Compared to the total state population, Black people are overrepresented in the incarcerated population, while white and Hispanic people are underrepresented.



Source: Bureau of Justice Statistics and U.S. Census Bureau data. For sourcing details and dataset, including race definitions and categories not displayed above, see: www.prisonpolicy.org/data/race_bystate_2021.xlsx.

PRISON
POLICY INITIATIVE

≡ THE BAIL PR0JECT

**Freedom
should be
free.**



Pretrial Release: How to Get It

§ 15A-534. Procedure for determining conditions of pretrial release.

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- ~~(1) Release the defendant on his written promise to appear.~~
- (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
- (5) House arrest with electronic monitoring.

Pretrial Release: How to Get It

Pretrial Integrity Act

- went into effect on Oct. 1, 2023
- expanded the list of charges for which only a judge, rather than a magistrate, can set conditions of release to enumerated non-capital charges
 - whether to set conditions is also in the judge's discretion
 - extends 48-hour DV hold

HB307 “Iryna’s Law”



Adds:

- IVC conditions
- Rebuttable presumption of detention
- Enumerated “violent offenses”
- Officer report of behaviors indicative of danger to self or others



Removes:

- Release on written promise
- Non-financial condition

Pretrial Release: How to Get It



Nature &
Circumstances

Weight of
Evidence

Family Ties

Employment

Financial
Resources

Character

Mental
Condition

Intoxication

Time living in
community

Criminal Record

History of flight

Currently on
Probation or PT
Release?

Prior court FTAs

Any other
relevant
evidence

Local policies set by
senior resident
superior court judge

Previous bond &
conditions

Pretrial Release: How to Get It



Pretrial Release: How to Get It



Adjacent Advocacy

Immigration holds & ICE Cooperation

- HB 318 (took effect Oct. 1)
- 48-hour holds pursuant to ICE detainer + administrative warrant + NC judicial order
- Judicial officer finding of residency status
- NOT a barrier to bond-setting

Waiver of Fines & Fees





Stay in Touch!

Email: fogel@law.duke.edu

Instagram: [@dukecrimdefense](https://www.instagram.com/dukecrimdefense)



CRIMINAL DEFENSE CLINIC

DUKE UNIVERSITY SCHOOL OF LAW

