

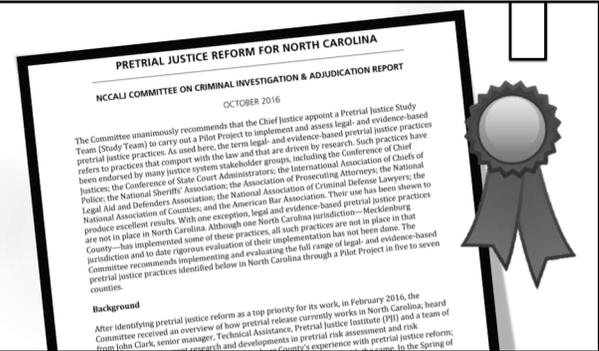
# Pretrial Justice Reform for NC

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## Why pretrial justice reform?

## What is pretrial justice reform?

## Why



## Why

- Recommended by NCCALJ

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- Public Safety

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  - Study shows: Pretrial detention creates crime

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  - Study shows: Pretrial detention creates crime

Harris County TX Study: Detained misdemeanor Defs have:

- 30% increase in new felony charges and
- 20% increase in new misdemeanor charges

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 718 (2017)

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  - Detention costs
  - Recidivism costs, law enforcement costs, etc.

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Philadelphia: Almost 1/2 of defendants who only needed to post a \$500 deposit to obtain release failed to do so within 3 days of the bail hearing  
Stevenson, Distortion of Justice: How the Inability to Pay Affects Case Outcomes, Journal of Law, Economics & Organization (manuscript at 10-11) (forthcoming)

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Harris County TX Study:  
 Only about 30% of defendants from the wealthiest zip codes are detained pretrial, versus around 60-70% of defendants from the poorest zip codes.

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 737 (2017).

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"[a] . . . basic injustice: poor arrestees . . . are incarcerated where similarly situated wealthy arrestees are not, solely because the indigent cannot afford to pay a secured bond."

O'Donnell v. Harris County, 892 F.3d 147, 162 (5th Cir. 2018)

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  - Incarceration increases likelihood of adverse consequences

### Why

Harris County TX Study: As compared to those who are released, detained misdemeanor Defs:

- are 25% more likely to be convicted
- are 43% more likely to be sentenced to jail
- get, on average, incarceration sentences are 9 days longer, more than double that of similar releasees

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 717 (2017)

## Why

Philadelphia Study: Pretrial detention leads to:

- 13% increase in the likelihood of being convicted
- 42% increase in the length of the incarceration sentence

Stevenson, Distortion of Justice: How the Inability to Pay Affects Case Outcomes, Journal of Law, Economics & Organization (manuscript at 3) [forthcoming]

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- Public Safety
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  - Incarceration based on poverty, not risk
  - Incarceration increases likelihood of adverse consequences
- Coerced pleas/wrongful convictions

## Why

Harris County TX Study:

"detention increases the likelihood of pleading guilty by 25% for no reason relevant to guilt"

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 771 (2017)

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  - Racial & ethnic disparities

# Why

**SAFETY + JUSTICE CHALLENGE**  
Supported by the John D. and Catherine T. MacArthur Foundation

**Mecklenburg County 2017 Safety and Justice Challenge Facts**

We've got a problem to fix:

- Despite reducing the Mecklenburg years, there is still an over-reliance on cash bail.
- Too often, a person's ability to pay bail depends on an individual's income and length of stay in jail and fees that they would be paying.
- Pretrial release and length of stay: African Americans and Hispanics make up 64 percent of the total average daily population in 2016.
- Despite making up approximately 33 percent of the local population, African Americans and Hispanics make up 76 percent of the jail population.
- In 2016, the County released 36 percent of booked defendants on financial bond. Automating the completion of the Public Safety Assessment (PSA) tool will help ensure that judicial officials can access each defendant's individualized assessment of risk when determining their conditions of release.

Despite making up approximately 33% of the local population, African Americans and Hispanics make up 76% of the jail population.

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- Costs
- Fairness
- Racial & ethnic disparities
- Litigation risk

899 F.3d 547  
United States Court of Appeals, Fifth Circuit.

Maranda Lynn O'DONNELL, Plaintiff--Appellee  
v.  
HARRIS COUNTY, Texas; Eric Stewart Hagstette; Joseph Licata, III; Ronald Nicholas; Blanca Estela Villagomez; Jill Wallace; Paula Goodhart; Bill Harmon; Natalie C. Fleming; John Clinton; Margaret Harris; Larry Standley; Pam Derbyshire; Jay Karahan; Judge Analia Wilkerson; Dan Spjut; Judge Diane Bull; Judge Robin Brown; Donald Smyth; Jean Hughes, Defendants--Appellants  
Loetha Shanta McGruder; Robert Ryan Ford, Plaintiffs--Appellees  
v.  
Harris County, Texas; Jill Wallace; Eric Stewart Hagstette; Joseph Licata, III; Ronald Nicholas; Blanca Estela Villagomez, Defendants--Appellants

No. 17-80333  
June 1, 2018

**Synopsis**  
Background: Arrestees brought § 1983 action, on behalf of themselves and others similarly situated, against county, county sheriff, county judges, and other county officials, alleging that county's system for setting bail for indigent misdemeanor arrestees, which resulted in detention of indigent arrestees solely due to their inability to pay bail, violated Equal Protection and Due Process Clauses. The United States District Court for the Southern District of Texas, Lee H. Rosenthal, Chief Judge, 251 F.Supp.3d 1552, granted plaintiffs' motion for preliminary injunction and denied county's motion for summary judgment. County appealed.

**Holdings:** On rehearing, the Court of Appeals, Edith Brown Clement, Circuit Judge, held that:  
1 under Texas law, county judges were appropriate defendants in § 1983 action;  
2 under Texas law, county sheriff was not appropriate defendant in § 1983 action;  
3 abstention under Younger doctrine was not warranted;  
4 provision of Texas Constitution requiring that prisoners be bailable upon sufficient sureties created right to bail that appropriately weighed detainees' interest in pretrial release and court's interest in securing detainees' attendance;  
5 county's bail-setting procedures were inadequate to protect detainees' Due Process rights; and  
6 county's bail-setting procedures violated indigent arrestees' rights to equal protection.

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Harris County, TX bail system violated indigent arrestees rights to equal protection

[T]ake two misdemeanor arrestees who are identical in every way—same charge, same criminal backgrounds, same circumstances, etc.—except that one is wealthy and one is indigent. Applying the County's current custom and practice, with their lack of individualized assessment and mechanical application of the secured bail schedule, both . . . would almost certainly receive identical secured bail amounts. One . . . is able to post bond, and the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, by contrast, must bear the brunt of all of these, simply because he has less money than his wealthy counterpart. The district court held that this state of affairs violates the equal protection clause, and we agree."

ODonnell v. Harris County, 892 F.3d 147, 163 (5<sup>th</sup> Cir. 2018)

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  - Early participation by defense counsel & prosecutor
  - Prompt review of magistrate's pretrial decision
  - Create a feedback loop
  - Implement court date reminder system

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  - Screening tools

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- Statutory changes
  - Require first appearance for all defendants
  - Constitutional preventative detention procedure



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- "Right-sizing" risk management strategies
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- Statutory changes
  - Constitutional preventative detention procedure
  - Repeal provisions that allow Def/others to opt out of conditions

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