

MECKLENBURG COUNTY BAIL PROCESS RE- ENGINEERING



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A Plan to Re-engineer the Bail Process in Mecklenburg
County in Pursuit of Pretrial Justice



Provided by Luminosity, Inc.

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Mecklenburg County Bail Process Re-Engineering

A PLAN TO RE-ENGINEER THE BAIL PROCESS IN MECKLENBURG COUNTY IN PURSUIT OF PRETRIAL JUSTICE

INTRODUCTION

The Mecklenburg County Criminal Justice System, led by the Criminal Justice Advisory Group (CJAG), seeks to re-engineer the local bail process. The purpose of the re-engineering is to ensure the most efficient and effective bail process that is consistent with the concept of pretrial justice.¹

A critical component of the pretrial bail process is the bail decision - to release or detain a defendant pending trial and the setting of terms and conditions of bail. The bail decision is a monumental task which carries enormous consequences not only for the pretrial defendant but also for the safety of the community, the integrity of the judicial process, and the utilization of our often overtaxed criminal justice resources. The bail decision is an integral part of pretrial justice; it is the primary attempt to balance the rights afforded to accused persons awaiting trial with the need to protect the community, maintain the integrity of the judicial process, and assure court appearance.

Pretrial services agencies perform critical functions related to the bail decision thereby contributing to pretrial justice.

They serve as providers of the information necessary for judicial officials to make the most appropriate bail decision. They also provide monitoring and supervision of defendants released with conditions pending trial.

Mecklenburg County partnered with Luminosity, Inc. to assess the local bail process with an emphasis on the initial and first appearances and the role of the pretrial services agency. The purpose of the project was two-fold:

- ◆ identify areas of opportunity to increase the efficiency and effectiveness of the bail process with an emphasis on the bail decision processes at the initial and first appearances and the role of pretrial services and
- ◆ develop a bail process re-engineering plan to ensure the most efficient and effective bail process that is consistent with the concept of pretrial justice.

This report contains background information related to bail, pretrial services, and meaningful first appearance; a description of the assessment process; findings and recommendations related to the opportunities to increase efficiency and effectiveness; and a plan for implementing the proposed re-engineered bail process.

Pretrial Justice

The honoring of the presumption of innocence, the right to bail that is not excessive, and all other legal and constitutional rights afforded to accused persons awaiting trial while balancing these individual rights with the need to protect the community, maintain the integrity of the judicial process, and assure court appearance

¹ VanNostrand, Marie and Gena Keebler. "Our Journey Toward Pretrial Justice" in *The Journal of Federal Probation*, Volume 71, Number 2, (September 2007) pp. 20-25.

BACKGROUND

Bail

The period of time between arrest and case adjudication is known as the pretrial stage. During this stage defendants enjoy certain inalienable rights as found in the law. The most notable pretrial rights are the presumption of innocence, the right to counsel, the right against self-incrimination, the right to due process, the right to equal protection, and the right to bail that is not excessive. The pretrial stage of the criminal justice system and the related system stakeholders, are guided by this set of legal and constitutional rights and they must ensure that these rights and all of the rights provided to a pretrial defendant are respected and honored.

The right to bail that is not excessive is critical when considering re-engineering the local bail process. Bail serves to provide assurance that the defendant will appear for court and not be a danger to the community pending trial. Bail set at an amount higher, or conditions more restrictive than necessary to serve those purposes, is considered excessive. There is a legal presumption of release on the least restrictive terms and conditions, with an emphasis on non-monetary terms, unless a judicial official determines that no conditions or combination of conditions will reasonably assure the appearance of the person in court and the safety of any other person and the community.

The bail decision is made by a judicial official. Judicial officials include any clerk, magistrate, district court judge, or superior court judge. The first time bail is considered is generally at an initial appearance which is usually performed by a magistrate (see §15A-511. Initial Appearance). The next bail consideration, if appropriate, occurs at the first appearance which usually occurs before a district court judge (see §15A-601. First appearance before a district court judge...). Bail can also be reconsidered at other times, most notably, at bail review hearings (commonly referred to as bond hearings).

In Mecklenburg County the procedures related to bail are dictated by North Carolina General Statute Chapter 15A Article 26 – Bail. Of particular interest are the statutes related to the procedures for determining conditions of pretrial release and issuance of policies on pretrial release. Additional guidance regarding bail is provided in the Mecklenburg County Bail Policy for the Twenty-Sixth Judicial District.

§15A-534. Procedure for Determining Conditions of Pretrial Release

This statute provides guidance to judicial officials when determining conditions of pretrial release (bail decision) and is consistent with the legal presumption of release on the least restrictive terms and conditions with an emphasis on non-monetary terms. The statute requires that in most cases, defendants be released without a secured monetary bond unless the judicial 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. Non-monetary release options include release on (1) a written promise to appear, (2) unsecured appearance bond, and (3) placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant. The monetary secured bond option requires 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, or by at least one solvent surety. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

Guidance is also provided to judicial officials regarding the factors that should be considered when determining bail. The statute states the “the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant’s family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.” In addition to the direction provided in this statute, court districts are authorized to issue policies on pretrial release.

§15A-535. Issuance of Policies on Pretrial Release

This statute authorizes district specific policies on pretrial release and provides the legal authority for the pretrial services agency. The senior resident superior court judge for each district, in consultation with the chief district court judge, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial, and may include in such policies, or issue separately, a requirement that each judicial official who imposes a monetary secured bond must record the reasons for doing so in writing.

The statute also states that any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by judicial officials to supervision of such programs.

Consistent with this statute, Mecklenburg County has a Bail Policy for the Twenty-Sixth Judicial District which became effective on October 21, 2002 and was amended June 1, 2006. The bail policy has 17 sections that address areas including the authority to determine conditions of release, terms of pretrial release, appearance bonds, orders of release, bail bonds, and surety. More specifically, section 4 of the policy as amended – Mecklenburg County Sheriff’s Office Pretrial Services Release Program – provides direction for the operation of the pretrial services agency. Section 6 – Amount of Appearance Bond – discusses the schedule of minimum bond amounts and refers to the policy attachment which is a schedule of the minimum bond amounts which shall be set to secure appearance bonds for specific offenses.

Mecklenburg Pretrial Services Agency

Following an initial appearance in front of a magistrate, the pretrial services agency conducts interviews and completes pretrial investigation reports for defendants who remain in custody. When a defendant meets eligibility criteria in accordance with the bail policy referenced above and is deemed appropriate for release to pretrial supervision the pretrial supervision agency executes the defendant’s release from custody. Additionally, the agency provides information to judges at first appearance for defendants who may not meet eligibility criteria but may be good candidates for release. The pretrial services agency also provides pretrial supervision and related services. The supervision provided is based on the defendant’s risk of pretrial failure or as ordered by a judicial official and can include office visits, home visits, kiosk reporting, electronic monitoring, drug testing, and treatment and referral services. Defendants are supervised while released pending trial and reminded of their court dates.

Pretrial Services

Pretrial services agencies are guided by Legal and Evidence-Based Practices (LEBP).²

In addition to LEBP, national standards related to pretrial release and pretrial services have been issued by the American Bar Association,³ the National District Attorney's Association,⁴ and the National Association of Pretrial Services Agencies.⁵

Pretrial investigations are the primary mechanism for providing information to judicial officials to assist with the bail decision and pretrial supervision is the primary mechanism for monitoring and supervising pretrial defendants released pending trial. In recent years the National Institute of Justice,⁶ the Bureau of Justice Assistance,⁷ and the National Association of Pretrial Services Agencies⁸ have released comprehensive publications, which provide detailed guidance related to pretrial investigations and pretrial supervision. General overviews of the components of pretrial investigation and supervision are presented below.

Pretrial Services Legal and Evidence Based Practices are interventions and practices that are consistent with the legal and constitutional rights afforded to accused persons awaiting trial and methods research have proven to be effective in reducing unnecessary detention while assuring court appearance and the safety of the community during the pretrial stage

Pretrial Investigation

The pretrial investigation is the mechanism for relaying the necessary information to judicial officials so that they can make the most appropriate pretrial release/detention decision. Components of a pretrial investigation should include an interview with the defendant, verification of specified information, a local, state and national criminal history record, an objective assessment of risk of failure to appear and danger to the community, and a recommendation for terms and conditions of bail. The two primary components of a pretrial investigation that are supported by LEBP are the risk assessment and bail recommendation.

RISK ASSESSMENT

The purpose of a pretrial risk assessment instrument is to identify the likelihood of failure to appear in court and the danger to the community posed by a defendant pending trial. The use of an objective and research-based risk assessment instrument by pretrial services agencies to assist judicial officials in making bail decisions is strongly recommended by both American Bar Association and National Association of Pretrial Services Agencies Standards.

Pretrial risk assessment research conducted over the past 30 years has identified common factors that are predictive of failure to appear in court and/or danger to the community including the following:

² Marie VanNostrand, Ph.D. "Legal and Evidence Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services" (National Institute of Corrections and Crime and Justice Institute, 2007)

³ American Bar Association Standards for Criminal Justice Standards on Pretrial Release, Third Edition (2002)

⁴ National District Attorney's Association National Prosecution Standards, Second Edition (1991) pp: 138-150

⁵ National Association of Pretrial Services Agencies Standards on Pretrial Release, Third Edition (2004)

⁶ National Institute of Justice, Pretrial Services Programs: Responsibilities and Potential (Washington, D.C.: U.S. Department of Justice, U.S. Government Printing Office, 2001)

⁷ Bureau of Justice Assistance, Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs (Washington D.C.: U.S. Department of Justice, U.S. Government Printing Office, 2003)

⁸ Supra Note 5

- ◆ Current Charge(s)
- ◆ Pending Charges at Time of Arrest
- ◆ History of Criminal Arrests and Convictions
- ◆ Active Community Supervision at Time of Arrest (e.g. Pretrial, Probation, Parole)
- ◆ History of Failure to Appear
- ◆ History of Violence
- ◆ Residence Stability
- ◆ Employment Stability
- ◆ Community Ties
- ◆ Substance Abuse

In fact, the largest study on pretrial risk assessment was recently completed for the federal court system. An analysis of over 500,000 cases processed through the federal pretrial services system between fiscal years 2001 and 2007 revealed the best predictors of pretrial failure (failure to appear and/or being a danger to the community pending trial) to be primary charge, pending charges, prior misdemeanor arrests, prior felony arrests, prior failures to appear, employment status, residence status, and substance abuse.⁹

Pretrial services legal and evidence-based practices detail four criteria for pretrial risk assessment instruments.

- ◆ A pretrial risk assessment instrument should be proven through research to predict risk of failure to appear and danger to the community pending trial.
- ◆ The instrument should equitably classify defendants regardless of their race, ethnicity, gender, or financial status.
- ◆ Factors utilized in the instrument should be consistent with applicable state statutes.
- ◆ Factors utilized in the instrument should be limited to those that are related either to risk of failure to appear or danger to the community pending trial.

An objective and research-based risk assessment instrument is intended to identify (1) “low risk” defendants who can be safely released into the community with limited or no conditions pending trial; (2) “moderate” and “higher” risk defendants whose risk can be minimized by utilizing appropriate release conditions, community resources, and/or interventions upon release; and (3) the “highest risk” defendants, those for whom no condition or combination of conditions can reasonably assure the safety of the community or appearance in court, so they can be detained pending trial.

A pretrial risk assessment serves as the foundation for a recommendation regarding bail. Recommendations regarding bail are guided by North Carolina General Statute Chapter 15A Article 26 – Bail, pretrial services legal and evidence-based practices and national standards related to pretrial release.

BAIL RECOMMENDATION

A recommendation regarding bail is the final component of a pretrial investigation and is founded upon information collected during the investigation process which includes the criminal history record, defendant interview, verification of information, and the risk assessment. Pretrial services agencies

⁹ VanNostrand, Marie and Gena Keebler. “Pretrial Risk Assessment in the Federal Court” (Department of Justice, Office of Federal Detention Trustee, 2009)

are tasked with identifying the least restrictive terms and conditions of bail that will reasonably assure a defendant will appear for court and not present a danger to the community during the pretrial stage. Terms and conditions of bail are intended to mitigate the risk of failure to appear and potential danger to the community posed by the defendant.

In addition to the terms of bail (promise to appear, unsecured appearance bond, third-party custody, monetary secured bond), conditions of bail may be required to further assure court appearance and safety to the community. North Carolina statute states that the judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.¹⁰

The bail recommendation must be guided by the legal and constitutional rights afforded to pretrial defendants with an emphasis on the right to bail that is not excessive and the right to equal protection under the law. Pretrial detention is allowable only in cases when a judicial 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.

Pretrial services legal and evidence-based practices detail four criteria for bail recommendations.

- ◆ Bail recommendations should be based on an explicit, objective, and consistent policy for identifying appropriate release conditions.
- ◆ Conditions of bail should be the least restrictive reasonably calculated to assure court appearance and community safety.
- ◆ Financial terms of bail should only be recommended when no other term will reasonably assure court appearance.
- ◆ Conditions of bail should be restricted to those that are related to the risk of failure to appear or danger to the community posed by the defendant.

Pretrial Supervision

A judicial official has many options when setting conditions of bail. One such option is to require as a condition of bail that the defendant be supervised by a pretrial services agency. A description of pretrial supervision can be found in the NAPSA Standard 3.5 - Monitoring and supervision of released defendants. The standard states that pretrial services agencies should provide the services documented below.

1. Monitor the compliance of released defendants with assigned release conditions.
2. Promptly inform the court of facts concerning compliance or noncompliance that may warrant modification of release conditions and of any arrest of a person released pending trial.
3. Recommend modifications of release conditions, consistent with court policy, when appropriate.
4. Maintain a record of the defendant's compliance with conditions of release.
5. Assist defendants released prior to trial in securing employment and in obtaining any necessary medical services, drug or mental health treatment, legal services, or other social services that would increase the chances of successful compliance with conditions of pretrial release.

¹⁰ North Carolina General Statute §15A-534(a)

6. Notify released defendants of their court dates and when necessary assist them in attending court.
7. Facilitate the return to court of defendants who fail to appear for their scheduled court dates.

Pretrial services supervision for appropriately identified defendants allows for defendants to be safely released and supervised in the community pending trial, primarily in lieu of a monetary secured bond, thereby reducing unnecessary detention while promoting public safety and the integrity of the judicial process.

Meaningful First Appearance

A “meaningful first appearance” is a term that is used to describe the activities, environment, and quality of a first appearance. A meaningful first appearance is best described in the American Bar Association Standard 10-4.3. - Nature of first appearance. A meaningful first appearance is one that meets the criteria detailed below.

The first appearance before a judicial official should take place in such physical surroundings as are appropriate to the administration of justice. Each case should receive individual treatment, and decisions should be based on the particular facts of the case and information relevant to the purposes of the pretrial release decision as established by law and court procedure. The proceedings should be conducted in clear and easily understandable language calculated to advise defendants effectively of their rights and the actions to be taken against them. The first appearance should be conducted in such a way that other interested persons may attend or observe the proceedings.

In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial official prior to or contemporaneous with a defendant's first appearance. The pretrial services investigation should include factors related to assessing the defendant's risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process. Information relating to these factors and the defendant's suitability for release under conditions should be gathered systematically and considered by the judicial official in making the pretrial release decision at first appearance and at subsequent stages when pretrial release is considered.

As it relates to pretrial services, a meaningful first appearance is one that includes pretrial services providing a written report including an assessment of risk and related recommendation for each defendant in custody and providing the information to the Court, District Attorney, and Public Defender or private defense attorney. The pretrial investigation must provide the information necessary for the judicial official to make an informed bail decision that balances the rights of the defendant with the need to assure court appearance and the safety of the community.



ASSESSMENT ACTIVITIES

The assessment of the Mecklenburg County bail process with an emphasis on the initial and first appearances and the role of the pretrial services agency was completed in three phases: (1) preparation, (2) onsite visits, and (3) report writing. The assessment identified numerous strengths of the current bail process, pretrial services agency, and local justice system as well as opportunities to increase the efficiency and effectiveness of the bail process and consistency with the concept of pretrial justice.

Preparation

In preparation for the onsite visits, extensive independent research on the Mecklenburg County criminal justice system was conducted. The research included, but was not limited to, the areas listed below.

1. U.S. Census Data
2. Law Enforcement Agencies
3. Sheriff's Office and Jail Facilities
4. Crime and Arrest Statistics - 1998 to 2007
5. Criminal Justice Advisory Group (CJAG)
6. Justice and Public Safety Task Force
7. Pretrial Services Agency
8. Local Court System (Clerk, Magistrates, District and Superior Courts)
9. North Carolina Bail and Pretrial Services Statutes
10. District Attorney's Office
11. Public Defender's Office
12. Probation (Community Corrections)

In addition, information provided by the County related to the local justice system and the pretrial services agency was reviewed. The documents included numerous prior justice system related studies, pretrial services agency documentation, jail statistics, and the bail policy (see appendix for a more comprehensive list of preparation documents reviewed).

Onsite Visits

The first onsite visit was conducted March 17 – 19, 2009. The Luminosity consultant project team participating in the onsite visit included Dr. Marie VanNostrand, Project Manager; Ken Rose, Sr. Justice Consultant; and Robert Mitchell, Justice Analyst. The visit began with a presentation to the Criminal Justice Advisory Group (CJAG). The presentation and related discussion included the purpose of bail, role of pretrial services, pretrial risk assessment, and bail setting/pretrial release practices. The presentation was followed by individual and group interviews with representatives of the following:

- | | |
|--|--------------------------------------|
| ◆ District Attorney's Office | ◆ Sheriff's Office |
| ◆ Public Defender's Office | ◆ Pretrial Services Agency |
| ◆ Magistrate's Office | ◆ County Administration |
| ◆ District Court - Chief Judge | ◆ Trial Court Administrator's Office |
| ◆ Superior Court - Senior Resident Judge | ◆ Law Enforcement Agencies |
| ◆ Probation Department | ◆ Charlotte City Manager's Office |

In addition to the individual and group interviews, members of the consultant team observed initial and first appearances.

The second onsite visit was conducted May 4 – 7, 2009 and included the same consultant project team members. One primary focus of the site visit was to assess the pretrial services agency. Project consultants observed the pretrial screening, interview, and investigation process following the initial appearance with the Magistrate during all shifts. Staff observed several first appearances and bond hearings at both the District and Superior Courts. The majority of pretrial services staff were interviewed, supervision activities observed, and case files reviewed.

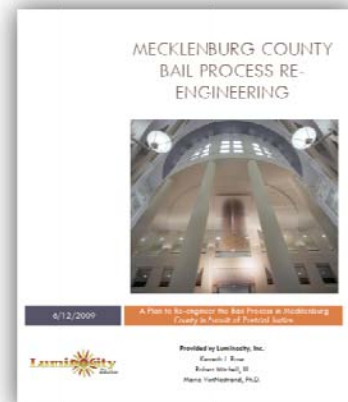
A second focus of the onsite visit was to work with local stakeholders to discuss the preliminary findings and recommendations from the first site visit and to form a subcommittee of the CJAG to lead the bail process re-engineering project. A meeting was held with representatives from the District Attorney's Office, Public Defender's Office, District Court, Pretrial Services Agency, County Administration, Trial Court Administrator's Office, and Charlotte-Mecklenburg Police Department. As a result, the stakeholders recommended to the County that the system stakeholders proceed with the findings and recommendations discussed and that a 10 member CJAG subcommittee be formed and include the following representatives:

1. Chief Judge of the District Court, Judge Lisa Bell
2. Chief Magistrate, Karen Johnson
3. Charlotte-Mecklenburg Police, Chief Rodney Monroe
4. County Administration, Billy Wilson
5. District Attorney, Peter Gilchrist
6. Pretrial Services Agency, Tom Eberly
7. Private Defense Bar, Representative TBD
8. Public Defender, Kevin Tulley
9. Sheriff's Office, Representative TBD
10. Trial Court Administrator, Todd Nuccio

A third component of the onsite visit was an informal planning session held with representatives from pretrial services and the County Manager's Office to review the status of the project and discuss preliminary planning strategies for implementation. Finally, a debriefing meeting was held between the project consultant team and representatives from the County Manager's Office.

Report Writing

The final stage of this project was report writing. The current report contains background information related to bail, pretrial services, and meaningful first appearance; a description of the assessment process; findings and recommendations related to the opportunities to increase efficiency and effectiveness; and a plan for implementing the proposed re-engineered bail process.



FINDINGS AND RECOMMENDATIONS

(1) Finding – Defendants Decline Pretrial Interview

Sheriff's Deputies inquire as to whether or not the defendant would like to be interviewed by pretrial services. If the defendant agrees they are taken to the interview stall to be interviewed, otherwise, pretrial services staff are notified that the defendant declined the interview. Standard practice does not include pretrial services speaking directly with defendants who have declined to be interviewed in order to ensure that they understand the role of pretrial services and the purpose of the interview.

Recommendations

- A. Training should be provided to Sheriff's Deputies regarding the general purpose of pretrial services as well as the specific information to provide to defendants when inquiring as to whether or not the defendants would like to be interviewed by the agency.
- B. When notified of a declined interview, pretrial staff should attempt to speak directly with the defendant. The role of pretrial services and the purpose of the interview should be explained and the defendant provided another opportunity to be interviewed. If the defendant continues to decline the interview, consistent with the ABA standards, a defendant's release should not be denied because they decline the pretrial interview and there should be no consequences as a result of the decision not to participate.

(2) Finding – Pretrial Interview Verification

As part of gathering relevant information to inform the pretrial release/detention decision, pretrial services staff seek to verify essential information provided by the defendant with people in the community that have a personal relationship with the defendant, such as, a family member.¹¹ In Mecklenburg County, pretrial services staff initiate telephone calls to references provided by the defendant immediately following the interview in the presence of the defendant. Although there are benefits to this approach, one disadvantage is that it provides an opportunity for the defendant to interfere with the verification process by attempting to contribute to the discussion between pretrial services staff and the reference. The interference provided by the defendant may impact the quality and accuracy of the information received from references.

Recommendation

Verifying interview information with references immediately upon the completion of the interview is an excellent practice and should continue. There are two options to reduce the potential for interference: (1) verification can be done without the defendant present or (2) appropriate steps can be taken to ensure the defendant is not able to interfere or impact the quality of information received from references. This may be done by informing the defendant that they are not to speak while the verification is being completed or staff may distance themselves from the defendant to prevent interference.

¹¹ National Association of Pretrial Services Agencies *Standards on Pretrial Release, Third Edition (2004)*, Standard 3.3 (d), p. 57

(3) Finding – Initial Appearance

Magistrates conduct the initial appearance and set bail in accordance with §15A-534 - Procedure for Determining Conditions of Pretrial Release, §15A-535 - Issuance of Policies on Pretrial Release and the Bail Policy. The Magistrate does not have the benefit of a pretrial investigation report at that time. Following an initial appearance in front of a magistrate, pretrial services conducts interviews and completes pretrial investigation reports for defendants who remain in custody and agreed to be interviewed. When a defendant meets eligibility criteria in accordance with the bail policy referenced previously and is deemed appropriate for release to pretrial supervision, the pretrial supervision agency modifies the release order and executes the defendant's release from custody to pretrial supervision. According to North Carolina statute §15A-532 - Persons authorized to determine conditions for release, only a judicial official can set and modify the conditions of release.

Recommendation

Pretrial services does not appear to have the legal authority to modify the release order established by the Magistrate at initial appearance, therefore, the modification of the order and execution of release should cease. In lieu of this procedure, pretrial services should provide the pretrial investigation report with a request to consider the defendant for release to the Magistrate when the defendant meets eligibility criteria in accordance with the bail policy and is deemed appropriate for release to pretrial supervision. Also consistent with statute, this should occur after initial appearance and prior to first appearance before a judge. If the Magistrate agrees with the recommendation s/he will modify the release order (AOC-CR-200AS) and indicate release with a condition of pretrial services and any other condition deemed appropriate by the judicial official.

An alternate recommendation for consideration is for pretrial services to conduct the interview and investigation prior to the initial appearance and present the information to the Magistrate for consideration during the initial appearance. This option was previously proposed by some Mecklenburg County stakeholders. Discussion regarding the benefits and challenges to this approach, such as ensuring this does not result in a delay of the first appearance or violation of any defendant rights, is encouraged.

(4) Finding – Pretrial Investigation Report

Consistent with NAPSA standards, pretrial services agencies should prepare a written report that summarizes the defendant's background and include an assessment of pretrial risk and a recommendation regarding bail.¹² In Mecklenburg County, pretrial services staff provide reports when feasible at first appearance as well as district and superior court bond review hearings. The reports provide the court with a summary of information related to the defendant's demographic, residence, employment, criminal history, and health status. A formal assessment of risk is not provided. Pretrial services indicates whether or not the defendant is eligible for pretrial supervision.

¹² National Association of Pretrial Services Agencies *Standards on Pretrial Release, Third Edition* (2004) Standard 2.2, p. 26

Recommendations

- A. Pretrial services should ensure the current risk assessment is a valid predictor of pretrial outcome or adopt an instrument that meets the criteria established by pretrial services legal and evidence-based practices.
- B. The CJAG subcommittee formed to lead the bail process re-engineering project should be tasked with the development of bail recommendation guidelines. The guidelines should be based on the risk assessment results and provide guidance for bail release recommendations including the use of a full range of bail terms and related conditions. The guidelines should be consistent with the legal and constitutional rights afforded to pretrial defendants, North Carolina related statutes, and pretrial services legal and evidence-based practices.
- C. Pretrial services should provide a written report for all defendants including an assessment of risk and related recommendation to the judicial official and other system participants (District Attorney and Public Defender/private defense attorney) at first appearance. For those defendants who declined to be interviewed or when a pretrial investigation cannot be completed, a modified report summarizing the defendant's record of criminal convictions and history of flight to avoid prosecution or failure to appear at court proceedings should be provided. Pretrial staff should be present in court to respond to any questions about the report.
- D. A written report should also be provided at bond review hearing at the District Court level. Efforts should be made to update, if applicable, the pretrial investigation completed prior to the first appearance. Pretrial services staff should be present in court to respond to any questions about the report.
- E. It is further recommended that updated pretrial investigation reports be provided at bond reviews at the Superior Court level when requested by the Court, District Attorney, or Public Defender/private defense attorney.

(5) Finding – Meaningful First Appearance

As discussed in the background section of this report, a “meaningful first appearance” is a term that is used to describe the activities, environment, and quality of a first appearance. As it relates to pretrial services, a meaningful first appearance is one that includes pretrial services providing a written report including an assessment of risk and related recommendation for each defendant in custody and providing the information to the Court, District Attorney, and Public Defender or private defense attorney. The information in the report is intended to be used during the discussion and consideration of bail. Currently there is not a defense attorney regularly in court at first appearance to represent the defendant and to discuss the issue of bail on the defendant's behalf.

Recommendation

There are two primary opportunities to further the concept of a meaningful first appearance in Mecklenburg County. The first is discussed in the recommendations related to finding four – the Pretrial Investigation Report. The second involves defense representation at first appearance to allow for a more meaningful and comprehensive discussion of bail. It is recommended that the Public Defender's Office attend first appearances, and when

appropriate, represent the defendant for the purposes of this single hearing. It should be noted that the implementation of this recommendation is already in process.

(6) Finding – Violation of Pretrial Supervision Condition of Release

Currently, the policy and practice related to the handling of violations of pretrial supervision are under review in Mecklenburg County. In some instances when a defendant violates the condition of electronic monitoring while under pretrial supervision and the agency determines that the release order should be revoked, pretrial services staff requests the Sheriff's Department to arrest the defendant and return him to custody. The process of arresting the defendant occurs without judicial official review and approval and does not involve an Order For Arrest (OFA). The legal authority for this practice has not been established.

Recommendation

Legal research should be completed to determine what is legally allowable (see §15A-534 [f] [g] which may indicate that the authority to revoke an order of pretrial release rests solely with a judicial official) and a policy developed which provides guidance for the arrest of a defendant for violation of a electronic monitoring conditions of release and the subsequent bail revocation hearing.

A policy for consideration is provided here. If, as a result of a violation of the conditions of pretrial release including a condition of electronic monitoring, a defendant under supervision is believed to be a heightened risk to public safety or failure to appear, pretrial services staff should initiate a request for revocation of the original release order by providing a request to a judicial official to issue an OFA. A judicial official, upon review of the facts presented by pretrial services staff, may issue an OFA. Once apprehended, the defendant should be brought before the judge that has current jurisdiction of the case to address the alleged violation and to reconsider new conditions of pretrial release.

(7) Finding – Bail Policy

The Bail Policy for the Twenty-Sixth Judicial District became effective on October 21, 2002 and was amended June 1, 2006. Changes in bail policy and practice since the development of the bail policy, excluding the 2006 amendment related to pretrial services, have not been incorporated into the current bail policy. The bail policy does not include a requirement that each judicial official who imposes condition (4) in G.S. §15A-534(a) record the reasons for doing so in writing. This requirement is authorized (not mandated) in §15A-535 - Issuance of policies on pretrial release. In addition, a review of the bail policy with criminal justice stakeholders identified areas of varying interpretations as well as opportunities to clarify the intent of some sections of the policy.

Recommendations

- A. The bail process re-engineering CJAG subcommittee should work together to draft revisions to the bail policy for presentation and consideration by the Senior Resident Superior Court Judge. It is recommended that the bail policy revisions be completed in two stages.

- B. The first stage of the revisions should include revisions to all current areas that can benefit from updating and/or clarification. The areas of revision should include, but are not limited to, the following:
- i. clarify and enforce the requirement that conditions of release and release orders can only be executed by a judicial official and documenting the newly proposed policy for release of defendants to pretrial services following the initial appearance (see the recommendation for finding 3 – Initial Appearance);
 - ii. clarify section 6 – Amount of Appearance Bond – to ensure the true intent is reflected, specifically, that the schedule of recommended bond amounts are only applicable when a judicial official has determined 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” (see §15A-534[b]);
 - iii. include a requirement that each judicial official who imposes a monetary secured bond consistent with condition (4) in G.S. §15A-534(a) record the reasons for doing so in writing;
 - iv. after conducting legal research to determine what is legally allowable (see §15A-534 [f] [g] which may indicate that the authority to revoke an order of pretrial release rests solely with a judicial official) develop policy which provides guidance for the arrest of a defendant for a violation of conditions of release and the subsequent bail revocation hearing; and
 - v. include any changes in bail policy and practice as deemed appropriate which have been implemented since the bail policy became effective.
- C. The second stage of the revisions should include revisions to reflect the changes in bail policy and practice that occurred as a result of implementing the recommendations contained in this report as a part of the bail process re-engineering. The areas of revision should include, but are not limited to, the following:
- i. the new policy related to pretrial services providing written reports for defendants including an assessment of risk and related recommendation to the judicial official and other system participants (District Attorney and Public Defender/private defense attorney) at first appearance;
 - ii. the new policy relating to pretrial services providing written reports (updated when applicable) at bond reviews at the District Court level;
 - iii. the new policy relating to pretrial services providing written reports (updated when applicable) at bond reviews at the Superior Court level upon request of the Court, District Attorney or Public Defender/private defense attorney;
 - iv. incorporate the policy related to the current or new risk assessment in accordance with recommendation A related to finding 4 - Pretrial Investigation Report;
 - v. incorporate the newly developed bail recommendation guidelines in accordance with recommendation B related to finding 4 - Pretrial Investigation Report; and

- vi. omit, or at a minimum, review and revise the schedule of the minimum bond amounts while considering §15A-534 and the legal and constitutional rights afforded to pretrial defendants.

(8) Finding – Pretrial Supervision

The majority of cases under pretrial supervision fall into the standard level of supervision. This level of supervision is designed to administratively monitor low risk defendants and utilizes mainly call-in and kiosk reporting. Two staff in addition to the electronic monitoring staff are devoted to supervising higher risk defendants. The implementation of the recommendations listed previously, including the revision to the bail policy which includes a pretrial risk assessment and bail recommendation guidelines, will likely result in the appropriate identification of defendants in need of a higher level of supervision.

Recommendation

It is recommended that pretrial services expand the capacity to supervise more defendants that are higher risk and to reduce the number of low risk defendants placed on supervision. Many low risk defendants do not require additional conditions of release that include pretrial supervision. Research has shown that imposing conditions on low risk defendants can increase pretrial failure.¹³ Similarly, conditions of supervision have been shown to be effective in reducing pretrial failure for defendants who are a higher risk of failure.

(9) Finding – Tracking Fugitives

NAPSA standards call for programs to facilitate the return to court of defendants who fail to appear for their scheduled court dates.¹⁴ Pretrial services in Mecklenburg County actively track defendants that fail to appear in court who are fugitives. Defendants who are fugitives are considered to be on active supervision and included in active pretrial supervision caseload reports.

Recommendation

Defendants who have failed to appear and have a warrant for their arrest (fugitive) should be removed from active supervision, closed unsuccessfully for the reason of FTA, and not counted in active pretrial supervision caseload reports. Consideration should be given to restructuring staff resources to allow one staff person to administratively track these defendants.

(10) Finding – Non-traditional Pretrial Functions

Significant staff resources are devoted to functions that are not traditionally part of a pretrial services agency or considered core pretrial functions. Examples of non-traditional pretrial functions include structured sentencing, county criminal record checks, jail classification, parental notification for juvenile arrests, and sending letters to school principals for juvenile arrests.

¹³ See “*Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry*” (The Pew Center on the States, 2008) for information on the ‘risk principle’ and “Pretrial Risk Assessment in the Federal Court” (Department of Justice, Office of Federal Detention Trustee, 2009) for the application to pretrial defendants.

¹⁴ ¹⁴ National Association of Pretrial Services Agencies *Standards on Pretrial Release, Third Edition* (2004), Standard 3.5 (a) (vii), p.65

Recommendation

If the pretrial services agency is restructured and re-engineered as proposed in this report, consideration should be given to whether or not there are adequate resources for pretrial services to provide these not-traditional pretrial functions.

It should be noted that since this recommendation was made while onsite, the Sheriff's Office dispatchers have been given the responsibility for running criminal history record checks for the County.

(11) Finding – Standard Operating Procedures

The standard operating procedures for pretrial services are in the process of being revised to reflect the current practices of the agency.

Recommendation

It is recommended that the policies and procedures be revised in two stages. First, the policies should be drafted to reflect the current practices. It is critical that members from all levels of the organization be involved in this process. Once the procedures are drafted they should go through an internal review, an external review, and testing. Following the testing phase the SOPs must be provided to all staff with corresponding training.

Following any restructuring of the agency and related services, the second stage for SOP revision should include the modification of procedures and inclusion of new procedures implemented during the bail process re-engineering project.

Long term, SOP review and revision should be done at a minimum on an annual basis. The date of the last policy review should be documented in writing for each existing policy and procedure. The completed SOP should have executive level approval and sign off.

(12) Finding – Pretrial Services Staffing Plan

The re-engineering of the bail process and restructuring of pretrial services will require an increase in staffing resources and substantial revisions to the staffing plan. There are approximately eight new positions proposed for the pretrial services agency. These positions are critical to the implementation of many of the recommendations made in this report. If the positions are not received, decisions will need to be made regarding the recommendations that cannot be implemented due to a lack of resources.

Recommendation

The staffing plan will need to be revised due to the restructuring of pretrial services. Considerations for this process include the following:

- A. Additional staffing resources will need to be dedicated to investigation duties to ensure defendants eligible for release by the magistrate are identified following initial appearance, that pretrial investigation reports are available at first appearance for all defendants who remain in custody, and pretrial investigation reports are updated for bail hearings in District Court and upon request in Superior Court; and

- B. Additional staffing resources will be needed for the expected expansion of supervision duties and increased higher level supervision caseloads.

(13) Finding – Job Descriptions and Performance Appraisals

The restructuring of pretrial services will undoubtedly result in the modification of job duties.

Recommendations

Job descriptions should be reviewed and updated to reflect all changes to job duties and performance appraisals should be modified to reflect the new job descriptions.

(14) Finding – Pretrial Services and Criminal Justice Stakeholder Training

The implementation of the above recommendations and the re-engineering of the bail process in Mecklenburg County will generate a need for training. In addition, training needs for pretrial services agency staff were identified and in some cases requested by the agency.

Recommendations

The trainings listed below should be considered as a part of the bail process re-engineering process.

- A. **Pretrial Services Interview and Investigation Techniques** including effective communication
- B. **Motivational Interviewing (MI) Techniques** for pretrial services staff with an emphasis on case managers
- C. **Pretrial Risk Assessment** including any new instrument adopted
- D. **Recommendation Guidelines**, specifically, the guidelines developed by the bail process re-engineering CJAG subcommittee and incorporated into the revised bail policy
- E. **SOP Training and Implementation**, specifically, the revised SOPs referenced in finding 11 – Standard Operating Procedures
- F. **Bail and Pretrial Services** training and education to system stakeholders with an emphasis on judicial officials

IMPLEMENTATION STRATEGY AND PLAN

Project Strategy

The approach to this project must be one of partnership between the CJAG, County, and all criminal justice system stakeholders. The recommendations can be divided into two primary components; recognizing that the components substantially overlap, including bail re-engineering and pretrial services agency restructuring.

The bail re-engineering component should be led by the CJAG bail process re-engineering subcommittee and include the following representatives:

1. Chief Judge of the District Court, Judge Lisa Bell
2. Chief Magistrate, Karen Johnson
3. Charlotte-Mecklenburg Police, Chief Rodney Monroe
4. County Administration, Billy Wilson
5. District Attorney, Peter Gilchrist
6. Pretrial Services Agency, Tom Eberly
7. Private Defense Bar, Representative TBD
8. Public Defender, Kevin Tulley
9. Sheriff's Office, Representative TBD
10. Trial Court Administrator, Todd Nuccio

The pretrial services agency restructuring should be led by the County, who will soon be administering the pretrial services agency in lieu of the Sheriff's Office, in partnership with the pretrial services agency. The pretrial services agency restructuring effort should seek approval from the District Court regarding key decision points during the restructuring process.

The two components must be closely coordinated. Outside resources may be needed to provide subject matter expertise, consulting, and training related services. It should be anticipated that outside resources will be needed to implement some of the training recommendations made earlier in this report (see Finding 14). The following list of expanded training recommendations identifies the areas of need for outside training resources.

- A. **Pretrial Services Interview and Investigation Techniques:** This training should be provided by an outside training resource with subject matter expertise and the ability to customize a training that is consistent with ABA and NAPSA Standards and that utilizes communication skills for criminal justice practitioners.
- B. **Motivational Interviewing (MI) Techniques:** This training should be provided by an outside training resource that is certified and a member of the Motivational Interviewing Network of Trainers (MINT).
- C. **Pretrial Risk Assessment and Recommendation Guidelines:** These trainings should be integrated and provided by a single outside training provider to ensure continuity of training. The training resource should have a subject matter expertise with developing, implementing, and training pretrial staff in risk assessment and recommendation guidelines.
- D. **Bail and Pretrial Services:** This training should be provided by an outside resource with the subject matter expertise and knowledge of the Mecklenburg County Bail Policy, North Carolina General Statutes related to bail, pretrial services legal and evidence-based

practices, and the ability to customize a training session to the system stakeholders of Mecklenburg County.

Project Plan and Timeline

Fourteen findings and 25 related recommendations are provided in this report. The recommendations have been summarized as primary tasks and assigned a primary component - bail re-engineering (bail) and pretrial services agency restructuring (PSA). The estimated length of time to complete the project is 6 months. To assist with project planning, a preliminary project management plan including the component, primary task, and estimated date of month and completion are provided below (see pages 20 and 21). Tasks related to recommendations not accepted will need to be deleted and additional locally developed bail process re-engineering related initiatives should be added. Additionally, it must be acknowledged that the assigned timelines are estimates which can be expanded or contracted as deemed appropriate by the County or CJAG subcommittee.

Component	Task	July 2009	August 2009	Sept. 2009	Oct. 2009	Nov. 2009	Dec. 2009
Bail	Complete first stage of bail policy revisions	X	X				
Bail	Have Public Defender available to represent in-custody defendants at first appearance when appropriate	X					
Bail	Revise policy related to violation of pretrial supervision condition of release	X					
Bail	Development bail recommendation guidelines			X			
Bail	Complete second stage of bail policy revisions			X	X		
Bail	Provide Bail And Pretrial Services training and education to criminal justice stakeholders with an emphasis on judicial officials				X	X	
PSA	Provide training and revise procedure related to defendants who decline pretrial interview	X					
PSA	Revise procedure for pretrial interview verification related to defendant interference	X					
PSA	Revise pretrial services supervision release to require a judicial official to modify the conditions of release and release order	X					
PSA	Review and revise if needed current pretrial risk assessment		X	X			
PSA	Restructure staff resources to allow fugitives to be tracked administratively		X				
PSA	Provide written investigation reports for all in-custody defendants at first appearance				X		
PSA	Provide updated investigation reports at bond hearings in District Court				X		

Component	Task	July 2009	August 2009	Sept. 2009	Oct. 2009	Nov. 2009	Dec. 2009
PSA	Provide updated investigation reports at bond hearings in Superior Court upon request				X		
PSA	Reconsider non-traditional pretrial functions and make modifications deemed appropriate			X			
PSA	Expand pretrial services capacity to supervise more defendants that are higher risk				X		
PSA	Revise pretrial services standard operating procedures	X	X	X	X	X	X
PSA	Revise pretrial services staffing plan			X	X		
PSA	Revise pretrial services job descriptions and performance appraisals					X	
PSA	Provide Interview and Investigation Techniques training to pretrial services			X			
PSA	Provide Motivational Interviewing (MI) Techniques training to pretrial services				X		
PSA	Provide Pretrial Risk Assessment training to pretrial services					X	
PSA	Provide Recommendation Guidelines training to pretrial staff					X	
PSA	Provide SOP Training and Implementation training to staff						X

APPENDIX – PREPARATION DOCUMENTS

1. Studies
 - a. BJA Criminal Courts Technical Assistance Assignment No. 4-050 Memorandum American University (February 2008)
 - b. Mecklenburg County, N.C. Detention-Corrections Master Plan. Kimme & Associates Inc. (July 2008)
 - c. Justice and Public Safety Task Force Final Report. Mecklenburg County (2008)
 - d. Three Decades of Studies – A Summary of Findings and Recommendations Mecklenburg County (2008)
 - e. Mecklenburg County Jail Pretrial Study. The University of North Carolina at Charlotte Department of Criminal Justice Executive Summary (April 2005)
2. Pretrial Services Agency Related Procedures, Reports, and Documentation
 - a. Validation Study of the Risk Assessment Instrument for Pretrial Defendants (May 2008)
 - b. Pretrial Services Supervision Agreement
 - c. Pretrial Services New Policies & Procedures (Dept.'s S.O.P's)
 - d. Pretrial Services Caseload Assignments after Intake Assessment (Process documentation)
 - e. Mecklenburg County Sheriffs' Office Pretrial Services Organization Chart
 - f. Pretrial Services Positions Descriptions
 - g. Mecklenburg County Sheriffs' Office Pretrial Services Order for Arrest document
 - h. Mecklenburg County Sheriff's Office memo regarding Interview of Arrestees
 - i. Mecklenburg County Sheriff's Office memo regarding business rules for pretrial services
 - j. Mecklenburg County Sheriff's Office Pretrial Services Bail Report Example
 - k. FY 2009 Pretrial Services Agency statistics
 - i. Pretrial Release Interview/Release Statistics from Jul-Dec 08
 - ii. Risk Assessment/Case Management Interview/Release Statistics for FY 2008
3. Mecklenburg County Trial Court Administrator's Office 2006 – 2007 Community Report
4. Jail Statistics
 - a. Mecklenburg County Sheriff's Office Pretrial Felons 04/30/09 (This report lists all active inmates that have at least one active felony case. Inmates listed may have additional misdemeanor charges that are not displayed.)
 - b. Mecklenburg County Sheriff's Office Pretrial Misdemeanants 04/30/2009
5. Arrest Processing Time Tracking Analysis Report

6. Mecklenburg County Sheriff's Office Annual Report FY 2008
7. Statutes
 - a. Article 24 Initial Appearance. §15A-511. Initial Appearance
 - b. Article 29. First Appearance Before District Court Judge. §15A-601. First appearance before a district court judge; ...
 - c. Article 26. Bail.
 - i. §15A-531 Definitions;
 - ii. §15A-532. Persons authorized to determine conditions for release...;
 - iii. §5A-533. Right to pretrial release in capital and noncapital cases;
 - iv. §15A-534. Procedure for determining conditions of pretrial release;
 - v. §15A-535. Issuance of policies on pretrial release; and
 - vi. §15A-537. Persons authorized to effect release.
8. North Carolina State Constitution Article I Section 27 Bail, fines, and punishment
9. Bail Policy for Twenty-Sixth Judicial District State of North Carolina County of Mecklenburg Effective October 21, 2002, as amended June 1, 2006

