

Bail Reform in North Carolina Judicial District 2: Evaluation Report

Second 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 individuals in custody on misdemeanor charges.

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 for the period July 1, 2020 to December 31, 2020. Key findings include:

Magistrate Decision-Making

- Magistrates adhered to the decision-making tool's recommendations in the vast majority of cases (78.13%).
- Magistrates imposed secured bonds in just over half of cases (57.03%), with secured bonds most likely to be imposed for Class A–E felony charges (82.00%) and decreasing in use for intermediate-level offense charges (55.83%) and Class 3 misdemeanor charges (44.26%). When mandatory bond doubling cases are removed from analysis, the percent of secured bonds imposed in Class 3 misdemeanor charge cases fell substantially to 21.05%. This result better reflects magistrates' discretionary decision-making.
- Median bond amounts imposed by magistrates decreased as the severity of the offense category decreased. Cases involving Class A–E felony charges had the highest median secured bond amounts (\$100,000), followed by intermediate-level offense charges (\$5,000), and then Class 3 misdemeanor charges (\$1,000 for all charges; \$1,250 when bond doubling cases are removed).
- When choosing between written promise, custody release, or unsecured bond, magistrates most frequently chose unsecured bonds (39.23% unsecured bond; 2.63% written promise; 1.75% custody).
- Among the District's five counties, there was variation in the magistrates' use of secured bonds, median secured bond amounts, and deviations from the decision-making tool's recommendations, especially for intermediate-level offense charges (secured bonds ranging from 0% to 100% of intermediate-level offense cases; median secured bond amounts ranging from \$500 to \$10,000; deviations ranging from 0% to 100% of cases).
- Magistrates were executing forms without completeness or fidelity issues in the vast majority of cases (88.18% without completeness issues; 93.09% without fidelity issues), suggesting successful implementation of the new tool.

First Appearance Proceedings

- 38.89% of the misdemeanor detainees who were afforded a new first appearance proceeding were released on a condition other than a secured bond after that proceeding.

Pretrial Failures

- Examining cases served and disposed in the first six months of 2020 as compared to the same period in 2019, all counties experienced a reduction in the percentage of individuals who acquired any new charge during the pretrial period, and that reduction was statistically significant in Martin County.
- All counties in the District experienced either statistically significant decreases in FTA rates or no statistically significant change in FTA rates. Although Beaufort and Washington counties experienced statistically significant increases in called and failed rates for charges occurring in the first quarter of 2020, neither county experienced statistically significant increases in that metric in later quarters of 2020.

Pretrial Detention

- Pretrial bookings were 39.75% lower in the third and fourth quarters of 2020 as compared to the same period in 2019.¹
- Although median length of stay remained constant for highest charge felony cases, it increased from 0 to 1 day for highest charge misdemeanor cases. There was a statistically significant increase in jail stays of 0 days and 1–7 days for highest charge misdemeanor cases; there were no statistically significant changes in other jail length of stay categories.
- The reduction in number of pretrial bookings was almost identical for Black and White individuals (39.76% for Black individuals; 40.00% for White individuals). However, there were differences in the length of stay. White individuals experienced an increase in median length of stay for highest charge misdemeanor and felony cases (0 to 1 day and 2 to 3 days respectively); Black individuals experienced no change in the median length of stay for highest charge misdemeanor cases and a reduction in median length of stay for highest charge felony cases (3 days to 1 day). For White individuals charged with misdemeanors, there was a statistically significant increase in jail stays of 1–7 days and decrease in stays of more than 30 days. There was no statistically significant change in these metrics for Black individuals.
- COVID-19 likely contributed to decreases in bookings and length of stay.

¹ Changes in pretrial bookings were not tested for statistical significance.

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.² 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,³ 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

² 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.

³ See, e.g., Jamie Vaske & Jessica Smith, *Judicial District 30B Pretrial Justice Pilot Project Third Quarter 2019 Report* (2019), <https://cjil.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://cjil.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://cjil.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 lack 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 individuals 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 individuals in custody on misdemeanor charges.

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.⁴ Additionally, stakeholders determined that although the current charge's offense class is relevant to the bail decision, other factors regarding the individual and the circumstances of the offense should be considered in assessing appropriate

⁴ 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.

conditions of pretrial release and that consideration of additional factors is required by state law.⁵ 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.⁶

And finally, stakeholders wanted to develop a tool to help judicial officials quickly identify those individuals who can be released on conditions other than secured bond to reduce the occurrence of wealth-based incarceration of people 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.⁷ 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.”⁸
- 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 individuals 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.

⁵ G.S. 15A-534(c).

⁶ G.S. 15A-534(b).

⁷ For example, when a secured bond is required by law.

⁸ G.S. 15A-534(b).

- Preserving 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 Individuals Detained on Misdemeanor Charges

The second reform provides new first appearance proceedings for individuals detained on misdemeanor charges. State law requires a first appearance for individuals detained on felony charges 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 individuals detained on misdemeanor charges, these individuals may sit in jail for weeks or more until their first court date. This can lead to scenarios where individuals charged with misdemeanors 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 individuals charged with low-level offenses has negative public safety consequences and negative case outcomes for those individuals. These reasons support providing first appearances for individuals detained on misdemeanor charges 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 individuals 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 February, and they were invited to submit feedback to us. Additionally, we met with committee members 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.⁹

Findings

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, 2020 to December 31, 2020.

Magistrates set conditions in 989 forms from July 1, 2020 to December 31, 2020. Seventy-nine forms (7.99%) were removed from analyses because of one or more completeness or fidelity issue deemed critical to the analysis.¹⁰ In the remaining 910 forms, **magistrates adhered to the decision-making tool's recommendations in the vast majority of cases**. Specifically, they followed the tool's recommendations in 711 forms (78.13% of forms), while deviating from the tool's recommendations in 199 forms (21.87% of forms).¹¹

⁹ Also contributing to this report were Professor Troy Payne of the University Alaska Anchorage Justice Center, 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.

¹⁰ Specifically, magistrates failed to record the final bond type (17 forms or 21.51% of forms with issues); recorded multiple conditions (e.g., written promise and secured bond) (5 forms or 6.33%); failed to record whether they were following or deviating from policy recommendations (14 forms or 17.72%); recorded that they were simultaneously following and deviating from policy (16 forms or 20.26%); or recorded multiple and sometimes incorrect offense classes (40 forms or 50.63%). Additionally, some forms were removed for multiple reasons, such as 14 forms (17.72%) for which magistrates failed to record a final condition and whether they were adhering to or deviating from the decision-making tool recommendation.

¹¹ As discussed in Background; Implemented Reforms above, the new tool preserves 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 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.

Of the 199 forms on which magistrates reported deviating from the tool's recommendations, they reported deviating from the recommendation to impose an unsecured bond, written promise, or custody release in 100 forms (50.25% of deviations), opting instead to impose a secured bond. In 99 forms (49.75% 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 category for the 910 forms included in these analyses. **Magistrates imposed secured bonds in 57.03% of all cases, with secured bonds most likely to be imposed when individuals 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. Magistrates imposed secured bonds in 82.00% of cases where individuals were charged with the most serious offenses (Class A–E felonies); in 55.83% of cases where individuals were charged with intermediate-level offenses; and in 44.26% of cases where individuals were charged with Class 3 misdemeanors.** This general pattern tracks expected results from the new tool: that rates of imposition of secured bonds would decrease as offense categories become less serious.

However, we were surprised to see secured bonds imposed in 44.26% of Class 3 misdemeanor cases, the lowest level criminal offense in North Carolina. In conversations with magistrates early in our evaluation, they indicated that mandatory bond doubling cases may be influencing the high rate of imposition of secured bonds in Class 3 misdemeanor charge cases.¹² 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. In those cases, magistrates were 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 rate of imposition of secured bonds by magistrates in Class A–E felony and intermediate-level charge cases remained constant. However, the percent of secured bonds imposed in cases involving Class 3 misdemeanor charges fell substantially to 21.05%.** These results better reflect magistrates' discretionary decision-making. Additionally, they highlight the impact of the statutory bond doubling rule.

¹² 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 examined in our supplemental analysis.

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. At a February 2021 stakeholder meeting where we presented these results, the Chief District Court Judge indicated that she will discuss this option with the district court bench. We will continue to monitor this issue as the evaluation continues.

At the February stakeholder meeting, magistrates noted an issue that may be impacting the rate at which they impose secured bonds for misdemeanor charges: They have increased their use of the criminal summons. When a summons is used to charge a misdemeanor, no arrest is made and thus no conditions of release are imposed; rather, the individual simply is ordered to appear in court as directed to answer the charges. Magistrates indicated that when an individual commits a second misdemeanor offense while a summons is pending, magistrates are more likely to impose a secured bond for the new offense. The fact that the person's first charge was initiated with a summons is not captured on project forms. As the evaluation continues and if resources allow, we will examine changes in the rate of misdemeanor charging by summons versus warrant for arrest.

We had anticipated that bond amounts would increase as cases increased 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. As shown in Table 1a, this in fact occurred. In forms where magistrates recorded imposing a secured bond, the bond amount decreased as the offense charge category decreased, 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).

As shown in Table 1b, when bond doubling cases are removed from the sample, the median bond amount for Class 3 misdemeanors is \$1,250. That amount is higher than the maximum bond amounts for Class 1 and 2 misdemeanors (\$1,000 and \$500 respectively) per the bond table shown in Appendix A. We discussed this issue with stakeholders at the February meeting, and they requested more detail on the nature of the charges at issue. After the meeting, we examined every charge that was listed as a Class 3 misdemeanor by magistrates and assigned a secured bond. We found that for several offenses with larger bond amounts, magistrates had miscategorized higher level misdemeanors as Class 3 misdemeanors. When those forms are removed from analysis, the median bond amount for Class 3 misdemeanors dropped to \$500, a substantial reduction. We note however that \$500 is the maximum bond amount for more serious Class 2 misdemeanors. We will be attentive to this issue as the evaluation continues.

Table 1a also shows that when choosing between written promise, custody release or unsecured bond, magistrates most frequently chose unsecured bonds (39.23% of cases receiving a condition other than secured bond). Magistrates very rarely recorded ordering custody releases; they ordered custody releases in only 1.79% of intermediate level cases and 3.28% of Class 3 misdemeanor charge cases. They ordered written promises at a slightly higher rate: 2.69% of intermediate-level offense cases and 4.92% of Class 3 misdemeanor charge cases.

Table 1a. Percent conditions of release by highest offense category in magistrate bail forms, July 1, 2020 to December 31, 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	42.96%	18.00%	44.17%	55.74%
Written promise	2.63%	0.00%	2.69%	4.92%
Custody release	1.75%	0.00%	1.79%	3.28%
Unsecured bond	39.23%	18.00%	40.46%	47.54%
Secured bond	57.03%	82.00%	55.83%	44.26%
Median secured bond	\$5,000	\$100,000	\$5,000	\$1,000

Table 1b. Percent conditions of release by highest offense category in magistrate bail forms, July 1, 2020 to December 31, 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	43.72%	18.00%	44.30%	78.95%
Written promise	2.76%	0.00%	2.75%	7.89%
Custody release	1.84%	0.00%	1.83%	5.26%
Unsecured bond	39.81%	18.00%	40.50%	65.79%
Secured bond	56.27%	82.00%	55.70%	21.05%

Median secured bond \$5,000 \$100,000 \$5,000 \$1,250

We also examined whether the general pattern of decision-making varied across counties and across individual magistrates. Table 2a 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; Table 2b shows those results when bond doubling cases are removed. **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 among counties in the use of secured bonds for each of the three case categories.** For instance, when bond doubling cases are removed (Table 2b), Martin County magistrates imposed a secured bond in 33.33% of cases where a Class 3 misdemeanor was the highest charge, but Tyrrell County magistrates imposed a secured bond in none of those cases.¹³ Additionally, Beaufort County magistrates imposed a secured bond at a higher rate for all offense categories than the overall rate for the district.

Table 2a. Percent of secured bonds by highest offense category in magistrate bail forms for JD 2 counties, July 1, 2020 to December 31, 2020

	Class A–E felonies	Intermediate-level offenses	Class 3 misdemeanors
Beaufort	91.43%	60.81%	52.83%
Hyde	75.00%	12.50%	N/A
Martin	84.62%	54.66%	50.00%
Tyrrell	100.00%	25.00%	0.00%
Washington	60.00%	51.43%	14.29%
Entire District	82.00%	55.83%	44.26%

¹³ Martin County magistrates set conditions for 8 Class 3 misdemeanor charges during the third and fourth quarters of 2020. Of the 8 forms, 4 noted that the highest charge was impaired driving (DWI), 2 noted that the highest charge was an OFA after a FTA on a Driving While License Revoked (DWLR) not impaired, 1 form reported DWLR not impaired as the highest charge, and 1 form reported second degree trespassing as the highest charge. Under the new procedure, 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 DWI 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.

Table 2b. Percent of secured bonds by highest offense category in magistrate bail forms for JD 2 counties, July 1, 2020 to December 31, 2020—bond doubling cases removed

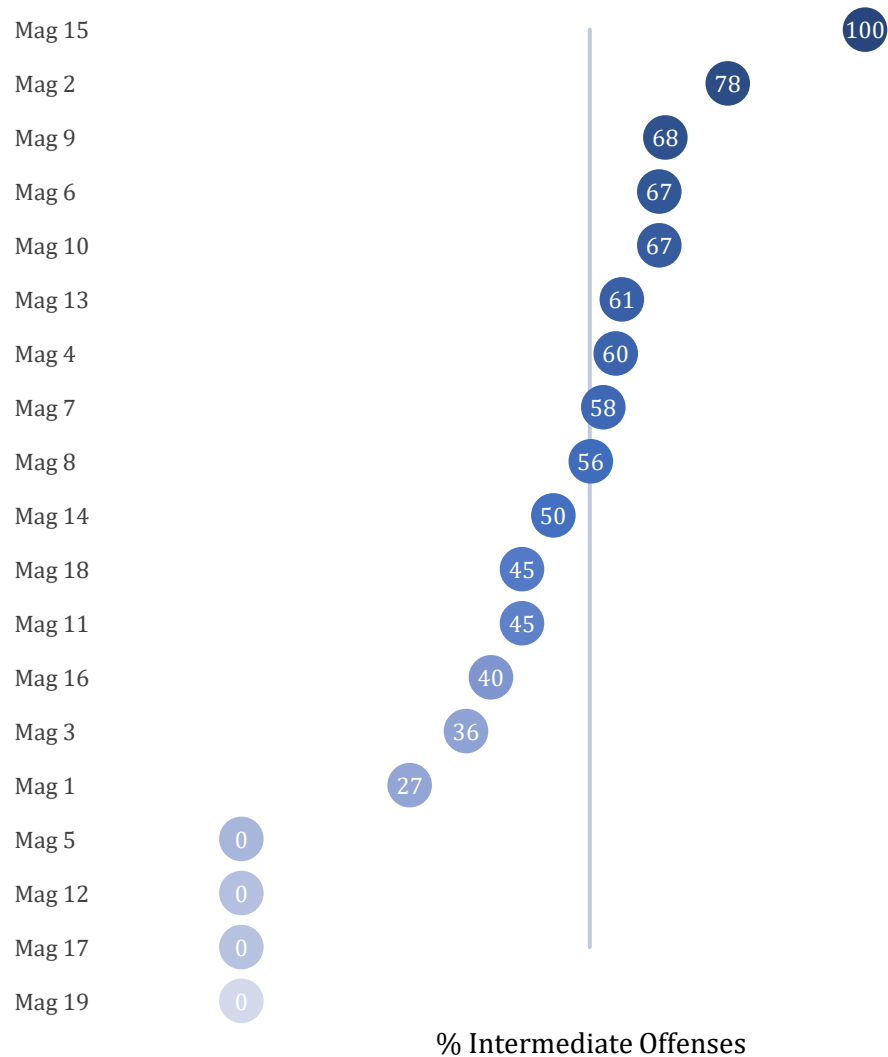
	Class A–E felonies	Intermediate-level offenses	Class 3 misdemeanors
Beaufort	91.43%	61.01%	22.73%
Hyde	75.00%	12.50%	N/A
Martin	84.62%	53.50%	33.33%
Tyrrell	100.00%	25.00%	0.00%
Washington	60.00%	51.92%	16.67%
Entire District	82.00%	55.70%	21.05%

Analyses showed 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 individuals 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 \$500 for one magistrate to \$10,000 for two other magistrates. For individuals whose highest charged offense was a Class 3 misdemeanor, magistrates reported imposing secured bonds in 0% to 100% of forms, with median secured bond amounts ranging from \$1,000 to \$2,250.¹⁴ 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-level offense charges for the entire group. For example, the Figure shows that Magistrate #9 issued a secured bond in 68.33% of forms where individuals were charged with intermediate-level offense charges, which was higher than the percent for the whole District (55.83%). For detailed information regarding variation among magistrates, see Appendix C.¹⁵ 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. At the February 2021 meeting, stakeholders asked whether the nature of the intermediate offenses—which include a wide range of charges—could be contributing to this variability. We agreed to examine that issue as the evaluation continues.

¹⁴ We note that there was a wide range in the number of forms completed by magistrates. For Class A-E felonies, the range was 0 to 16; for intermediate-level offenses it was 1 to 125; for Class 3 misdemeanor charges it was 0 to 18. If a magistrate completed only two forms for an offense category and one required a secured bond, the magistrate’s rate of imposing secured bonds would be 50%, and perhaps not representative of what that magistrate’s rate would be across a larger number of cases.

¹⁵ We do not include a figure that displays 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 550 forms completed during the period March 1, 2020 to January 2, 2021 for completeness and fidelity issues. The random sample was completed on a bi-weekly basis where all forms submitted for two weeks were randomly assigned a number between 0 and 2000. The forms were sorted by assigned number, from smallest to largest and the first 25 forms were reviewed 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 550 forms examined, 11.82% (65 forms) had one or more completeness issues, and 6.73% (37 forms) had fidelity issues.

Among the 65 forms that had completeness issues, the vast majority had only one completeness issue (84.62%), with only few having two (10.77%) or three issues (4.62%). Similarly, 94.59% of forms that had fidelity issues only had one issue, while 5.41% had two issues. **Overall, magistrates are executing forms without completeness or fidelity issues in the vast majority of cases (88.18% without completeness issues; 93.27% without fidelity issues), suggesting that implementation of the new process is good at the magistrate level.** However, as shown in Appendix C, eight of the district’s 18 magistrates had 10% or more of their forms removed for fidelity or completeness issues, with one of those magistrates having 71.88% of their forms removed. These results may suggest the need for targeted coaching. Table 3 shows the most common completeness and fidelity issues in the random sample.

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

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> • Not including the case number, individual name, or charge description at the top of the form (12.30%) • Not noting the underlying offense for a FTA or probation violation (7.69%) • Not checking a redundant box (41.53%) • Not reporting the offense class (4.61%) • Not reporting the final bail condition and/or bond amount (10.76%) • Not completing Step 1 (15.38%) • Not completing other steps: Step 2 (7.69%), Step 5 (4.61%), Step 6 (7.69%), or Step 7 (3.07%) 	<ul style="list-style-type: none"> • Not following the decision-making process (35.13%) • Checking multiple inconsistent boxes, such as setting both a secured and unsecured bond (5.40%) or checking both “Yes” and “No” in Step 1 (2.70%) or selecting multiple offense classes (2.70%) • Both adhering to and deviating from policy in Steps 3.5 and 5 (16.21%) • Not reporting a deviation (such as setting a bond amount above the maximum amount) (24.32%) • Not explaining a deviation (8.10%) • Checking the deviation box for a condition that was not a deviation (8.10%) • Reusing a form and mixing information for two individuals on the same form (2.70%)

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

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 individuals 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 individual 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 involved probation violations were removed from the analyses since the policy focused on providing first appearance proceedings for individuals whose highest charge was a misdemeanor and did not involve a probation violation.

Under the new procedures, individuals are afforded a first appearance after each arrest. Thus, an individual 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 (FTA) or for new criminal charges). Our analysis examined judges' pretrial decisions only in connection with the first appearance held after the initial arrest. The data show that **the new first appearance proceedings are affording individuals a new opportunity for early release from pretrial detention.**

Between January 1, 2020 and December 31, 2020, 101 individuals were on the new misdemeanor first appearance calendar. Of the 101 individuals on the new misdemeanor first appearance calendar, 94 appeared after the initial arrest. Of those 94 individuals, 10.64% (10 individuals) pled guilty to one or more charges, and one individual had their charges dismissed at first appearance. This left 83 individuals whose pretrial conditions were considered by the judge. Thirty-six individuals appeared before the court for reasons other than a 48-hour domestic violence hold,¹⁶ while 47 individuals had a first appearance in connection with a 48-hour domestic violence hold. Processing of 48-hour cases was not impacted by the district's reforms.

Among the 36 non-48-hour detainees, 38.89% were released on an unsecured bond, while 61.11% still had a secured bond at the end of the first appearance hearing (Table 4). For the 22 individuals who still had a secured bond at the conclusion of that proceeding, the median secured bond amount was \$1,500. Five individuals (22.73%) had their secured bond amounts reduced at the first appearance, with a median reduction of \$2,500.

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 detainees."

Table 4. Pretrial outcomes at first appearance proceedings

	Non-48-Hour Detainees 36 individuals
% individuals released on an unsecured bond	38.89% 14
% individuals with a secured bond	61.11% 22
Median secured bond amount	\$1,500
% individuals who had secured bond amount reduced	22.73% 5
Median reduction in secured bond amount	\$2,500

At the February stakeholder meeting, stakeholders indicated that workload associated with the new proceedings was very manageable. The Public Defender representative reported that issues related to the COVID-19 pandemic have impacted Public Defenders' ability to meet with clients prior to the new proceedings, though that office continues to receive individuals' criminal history information. She further reported that discussions are underway to explore whether attorney-client meetings can occur via WebEx prior to the new first appearance proceedings.

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 as discussed below there was a substantial decrease in pretrial bookings during the third and fourth quarters 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. **All counties experienced a reduction in the percentage of individuals who acquired any new charge during the pretrial period, and that reduction was statistically significant in Martin County. In 2020, all counties in the District saw either statistically significant decreases or no statistically significant change in FTA rates. Although two counties experienced statistically significant increases in called and failed rates for charges occurring in the first quarter of 2020, neither county experienced statistically significant increases in that metric for charges in later quarters of 2020.** We discuss these findings in more detail in this section.

New Pretrial Criminal Charges

We used data from the North Carolina Automated Criminal/Infractions System (ACIS) to examine whether or not individuals whose criminal cases were served in the first six months of 2020 and closed by December 31, 2020 had higher rates of new criminal charges during the pretrial period than individuals whose cases were served in and closed by corresponding periods in 2019. We categorized a case as having a new criminal charge during the pretrial period if the defendant was served with a new charge having an offense date before the first case was disposed. Among individuals who had a new charge during the pretrial period, new criminal charges were categorized as either a felony, traffic misdemeanor, or non-traffic misdemeanor.¹⁸

Table 5 displays the percent of individuals who had a new criminal charge during the pretrial period in 2019 and 2020. **Not only did we fail to find increases in new pretrial charges, but in fact, we found that overall rates of new pretrial charges decreased across all five counties. In Martin County that decrease was statistically significant.** As shown in Table 5, all counties experienced a decrease in the overall rate of pretrial criminal activity; percentage point decreases were as follows: Beaufort, 1.16; Hyde, 5.01; Martin, 3.66; Tyrrell, 1.17; and Washington, 4.22. As noted, only the decrease in Martin was statistically significant. When examining new pretrial activity by new offense type, only Beaufort and Washington experienced increase in new felony offenses (0.10 and 6.47 percentage points respectively), but neither of those increases were statistically significant. With respect to new non-traffic misdemeanors, only Washinton experienced an increase (18.21 percentage points) and that increase was statistically significant. With respect to new traffic misdemeanors, only Hyde and Tyrrell saw increases (6.82 and 13.57 percentage points respectively), and the increase in Tyrrell was statistically significant. All other counties saw a decrease in new

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

¹⁸ In future reports examining new pretrial charges, we will seek to account for whether individuals were incarcerated during the pretrial period.

traffic misdemeanors and the decrease in Washinton (15.47 percentage points) was statistically significant.

We also compared the percent of JD 2 individuals who acquired new charges during the pretrial period to the percentages of individuals 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 2.29 percentage point decrease in the prevalence of any new criminal charges during the pretrial period for 2020 as compared to 2019. For noncore counties, the decrease was 1.84 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 6. 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 in the first six months of 2019 and 2020, and disposed by the end of 2019 and 2020, respectively. 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 5. Percent (and number) of individuals who acquired new criminal charges during the pretrial period for JD 2 counties in 2019 and 2020

	2019	2020	% pt. difference
<i>Beaufort (Micropolitan)</i>			
New criminal charges	19.94% (484)	18.78% (296)	-1.16
New felony charges	19.83% (96)	19.93% (59)	0.10
New non-traffic misdemeanor charges	44.83% (217)	40.20% (119)	-4.63
New traffic misdemeanor charges	73.76% (357)	72.30% (214)	-1.46
<i>Hyde (Noncore)</i>			
New criminal charges	13.04% (24)	8.03% (11)	-5.01
New felony charges	16.67% (4)	9.09% (1)	-7.58
New non-traffic misdemeanor charges	37.50% (9)	27.27% (3)	-10.23
New traffic misdemeanor charges	75.00% (18)	81.82% (9)	6.82
<i>Martin (Noncore)</i>			
New criminal charges	16.20% (227)	12.54% (112)	-3.66*
New felony charges	17.62% (40)	16.96% (19)	-0.66
New non-traffic misdemeanor charges	40.09% (91)	35.71% (40)	-4.38
New traffic misdemeanor charges	71.81% (163)	70.54% (79)	-1.27
<i>Tyrrell (Micropolitan)</i>			
New criminal charges	9.65% (105)	8.48% (48)	-1.17
New felony charges	11.43% (12)	10.42% (5)	-1.01
New non-traffic misdemeanor charges	32.38% (34)	27.08% (13)	-5.30
New traffic misdemeanor charges	78.10% (82)	91.67% (44)	13.57*
<i>Washington (Noncore)</i>			
New criminal charges	17.96% (155)	13.74% (61)	-4.22
New felony charges	14.84% (23)	21.31% (13)	6.47
New non-traffic misdemeanor charges	30.97% (48)	49.18% (30)	18.21*
New traffic misdemeanor charges	76.13% (118)	60.66% (37)	-15.47*

Asterisks (*) indicate that a finding is statistically significant. Note that difference scores without any asterisk (*) means the difference is not statistically significant.

Table 6. Percent (and number) of individuals who acquired new criminal charges during the pretrial period for peer counties in 2019 and 2020

	2019	2020	% pt. difference
<i>Micropolitan peer counties</i>			
New criminal charges	19.63% (14256)	17.34% (8612)	-2.29*
New felony charges	20.77% (2961)	22.57% (1994)	1.80*
New non-traffic misdemeanor charges	44.04% (6278)	44.61% (3842)	0.57
New traffic misdemeanor charges	71.85% (10243)	67.65% (5826)	-4.20*
<i>Noncore peer counties</i>			
New criminal charges	17.42% (5678)	15.58% (3370)	-1.84*
New felony charges	20.25% (1150)	23.89% (805)	3.64*
New non-traffic misdemeanor charges	40.05% (2274)	42.91% (1446)	2.86*
New traffic misdemeanor charges	72.67% (4126)	68.31% (2302)	-4.36*

Asterisks (*) indicate that a finding is statistically significant. Note that difference scores without any asterisk (*) means the difference is not statistically significant.

Court Non-Appearance

To assess changes in non-appearance rates, we examined data from two sources: (1) 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. **In 2020, all five counties experienced either statistically significant decreases in FTA rates or no statistically significant change in FTA rates. Although Beaufort and Washington counties experienced statistically significant increases in our alternate measure of non-appearance—called and failed rates—for charges occurring in the first quarter of 2020, those counties did not experience increases in that metric in later quarters of 2020.**

Our analyses focus on missed court appearances in criminal cases recorded in the ACIS or the CCIS-PD systems with an offense date in 2019 or 2020. We examined the prevalence of non-appearance for charges that occurred on the same date for each defendant. ACIS includes data on all charged state crimes and is used by court officials when making pretrial decisions. The CCIS-PD data include court non-appearances for cases where the individual, at any point in the case, received services from the public defender or appointed counsel. Although these data do not include all cases, they are an alternate source of non-appearance data, and thus we included it in our analyses.

Both the ACIS and CCIS-PD data include two indicators of court non-appearance: (1) called and failed, and (2) FTA. We recorded a case as having a called and failed if such an entry was noted in ACIS and/or CCIS-PD for any time in 2019 or 2020. We recorded a case as having an FTA if an FTA was noted in the CCIS-PD system and/or if a Motor Vehicle FTA was recorded in ACIS at any time in 2019 or 2020. We note that not all called and failed result in entry of a FTA, and not all motor vehicle FTAs have a called and failed recorded.²¹

Table 7 shows the prevalence of FTA rates. As shown there, **the only statistically significant changes in FTA rates for charges occurring in any quarter of 2020 were decreased FTA rates.**²²

Table 8 shows the prevalence of called and failed entries for offenses that occurred during 2019 and 2020 for the five counties in JD 2. As shown there, **except for two counties in one quarter, all other results show no change or decreases in called and failed rates.** Tyrrell and Hyde counties showed no statistically significant change in called and failed rates in 2020. Martin had no statistically significant change in called and failed rates for charges initiated in the first three quarters of 2020 but showed a statistically significant decrease in the called and failed rate for charges initiated in the fourth quarter. Only Beaufort and Washington experienced any statistically significant increases in called and failed rates. Beaufort experienced a statistically significant increase with respect to charges initiated in the first quarter of 2020, but then had no statistically significant change as to second quarter charges and statistically significant decreases in called and failed rates for charges initiated in the last two quarters. Washington also had a statistically significant increase in the called and failed rate for charges initiated in the first quarter of 2020. In later quarters, Washington experienced increased and decreased rates of called and faileds, but none were statistically significant.

²¹ 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. For instance, less than .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 a FTA during the period January 1, 2019 to June 30, 2020.

²² Historical data show that court non-appearances are most likely to occur in the quarter immediately subsequent to the offense date; thus, for offenses that occurred during Q4 2020, we would expect the probability of not appearing in court to be highest during Q1 2021. Note that the current data only includes non-appearance data through December 31, 2020. Thus, we caution from making definitive statements about court non-appearances in the fourth quarter (such as the decrease in Martin County).

Table 7. Percent and number of cases with an FTA for offenses in Q1-Q4 2019 and 2020

Beaufort	2019	2020	% pt. difference
Quarter 1	10.19% 178	10.33% 173	0.14
Quarter 2	10.18% 173	6.70% 75	-3.48*
Quarter 3	9.98% 199	4.06% 50	-5.92*
Quarter 4	10.16% 179	0.31% 4	-9.85*
Hyde	2019	2020	% pt. difference
Quarter 1	6.25% 5	6.59% 6	0.34
Quarter 2	10.40% 13	9.86% 7	-0.54
Quarter 3	7.14% 8	3.74% 4	-3.40
Quarter 4	4.50% 5	2.11% 2	-2.39
Martin	2019	2020	% pt. difference
Quarter 1	10.66% 95	10.63% 74	-0.03
Quarter 2	9.24% 86	9.28% 66	0.04
Quarter 3	12.13% 106	7.00% 51	-5.13*
Quarter 4	11.33% 94	0.18% 1	-11.15*
Tyrrell	2019	2020	% pt. difference
Quarter 1	7.56% 39	7.00% 25	-0.56
Quarter 2	8.71% 62	8.19% 29	-0.52
Quarter 3	7.55% 54	7.50% 38	-0.05
Quarter 4	5.57% 17	1.51% 5	-4.06*
Washington	2019	2020	% pt. difference
Quarter 1	8.81% 54	12.30% 45	3.49
Quarter 2	6.60% 31	6.10% 21	-0.50
Quarter 3	7.40% 31	4.29% 13	-3.11
Quarter 4	8.61% 34	0.00% 0	-8.61*

Table 8. Percent and number of cases with a called and failed for offenses in Q1-Q4 2019 and 2020

Beaufort	2019	2020	% pt. difference
Quarter 1	5.84% 102	8.90% 149	3.06*
Quarter 2	6.65% 113	6.26% 70	-0.39
Quarter 3	6.22% 7	4.14% 9	-2.08*
Quarter 4	6.53% 115	0.46% 6	-6.07*
Hyde	2019	2020	% pt. difference
Quarter 1	2.50% 2	5.49% 5	2.99
Quarter 2	6.40% 8	5.63% 4	-0.77
Quarter 3	6.25% 7	1.87% 2	-4.38
Quarter 4	4.50% 5	2.11% 2	-2.39
Martin	2019	2020	% pt. difference
Quarter 1	7.74% 69	9.48% 66	1.74
Quarter 2	7.30% 68	7.59% 54	0.29
Quarter 3	7.32% 64	6.58% 48	0.74
Quarter 4	7.35% 61	0.18% 1	-7.12*
Tyrrell	2019	2020	% pt. difference
Quarter 1	3.49% 18	3.36% 12	-0.13
Quarter 2	4.07% 29	6.50% 23	2.43
Quarter 3	4.06% 29	6.51% 33	2.45
Quarter 4	2.62% 8	1.51% 5	-1.11
Washington	2019	2020	% pt. difference
Quarter 1	6.04% 37	14.75% 54	8.71*
Quarter 2	5.96% 28	8.43% 29	2.47
Quarter 3	5.25% 22	8.58% 26	3.33
Quarter 4	5.32% 21	3.56% 10	-1.76

The data show relatively low non-appearance rates for 2019 and 2020 as compared those we have found in other North Carolina jurisdictions. At the February 2021 stakeholder meeting, we asked whether the non-appearance rates we reported for pre-COVID periods are in line with stakeholders' experiences. They indicated that a "baseline" pre-COVID non-appearance rate of 10-15% seemed right for the District. We also asked for their feedback on the range of modified court procedures that might be impacting 2020 rates. We already knew that the suspension of court proceedings at various times during the pandemic would impact these numbers. Stakeholders indicated that while regular court sessions have largely resumed, the number of individuals on calendars is substantially reduced in 2020 as compared to 2019. One attendee noted that if a 2019 calendar had 150 people, a 2020 calendar might have half that number. These changes have obvious impact on non-appearance rates. Additionally, the Public Defender representative indicated that individuals now are getting more information than ever before about court dates. In addition to more written notices, the Public Defender's office is signing up more individuals to receive court date notifications via the NC AOC court date reminder system. Studies have shown that court date reminder systems can be effective and these efforts may be contributing to lower court non-appearances.²³

Finally, we note that 2020 non-appearance rates as reported here may be suppressed as compared to 2019 rates for another reason: we are capturing non-appearances during two years (2019 and 2020) for 2019 cases but only for one year (2020) for 2020 cases. As this evaluation continues, we will capture additional case processing time for 2020 cases and in our final project reporting will limit results to comparable reporting periods.

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 2019.²⁴ Based on the decrease in secured bonds and the district's new policy providing first appearances for all individuals charged with misdemeanor offenses, 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. To analyze pretrial detention, we examined bookings for all charges, misdemeanor charges, and felony charges. Because the jail data provided to us included racial information, we were able to analyze these metrics by race.

Pretrial bookings for all offenses were 39.75% lower in the third and fourth quarters of 2020 as compared to the same period in 2019. We observed similar decreases for bookings where the highest charge was a misdemeanor (-43.79%) and where it was a felony (-40.51%).²⁵ For misdemeanors, the median length of stay increased from 0 to 1 day and

²³ Results from Fishbane, Ouss, & Shah's (2020) study titled "Behavioral nudges reduce failure to appear in court" in *Science* shows the impact of text message reminders for reducing failure to appear.

²⁴ 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.

²⁵ Throughout the report, percent decrease is calculated as: $[(2020 \text{ number} - 2019 \text{ number}) / 2019 \text{ number}] * 100$.

there was a statistically significant decrease in 0-day jail stays and an increase in stays of 1–7 days. For felonies, there was neither a change in median length of stay nor any statistically significant changes in jail length of stay categories.

The reduction in number of pretrial bookings was comparable for Black and White individuals (39.76% and 40% respectively). White individuals experienced an increase in median number of days detained (0 to 1 day for misdemeanor detentions; 2 to 3 days for felony detentions). Black individuals experienced no change in this metric as to misdemeanor detentions but a reduction in it for felony detentions (from 3 days to 1 day). For White individuals charged with misdemeanors, there was a statistically significant increase in jail stays of 1–7 days and decrease in stays of 30+ days. However, there was no statistically significant change in these metrics for Black individuals. We note that COVID-19 undoubtedly was a factor with respect to jail detention findings, as pandemic-related public health concerns created pressure to reduce jail populations in 2020.

Our analyses of bookings and length of stay used data supplied by the Beaufort County Detention Center²⁶ for all pretrial detainees admitted to the facility between July 1 to December 31, for 2019 and 2020. These data include all individuals 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 individual was held in pretrial detention by calculating the difference between their admission and release dates. Bookings that did not have a release date (either due to missing data or because the individual is still awaiting trial) were given a missing value on the variable measuring length of pretrial detention (0.90% of bookings missing data in 2019, 6.54% of bookings missing data in 2020) and removed from analysis.

Figure 2 shows pretrial bookings for the third and fourth quarters of 2019 and 2020. The number of pretrial bookings was 39.75% lower for the third and fourth quarters of 2020 relative to the same period in 2019. There was a total of 888 pretrial bookings for 737 individuals during the third and fourth quarters of 2019 compared to 535 bookings for 466 individuals during that same period in 2020. Table 9 includes information on length of stay and total pretrial bookings that had a release date. A length of stay of “0” indicates that a person was booked into and released by the jail on the same day. Table 9 shows the median number of days detained changed only for highest charge misdemeanor detentions, increasing from 0 to 1 day. Table 9 also shows that there was a statistically significant decrease in 0-day jail stays and an increase in stays of 1 – 7 days for misdemeanor bookings. Supplemental analyses show that the increase in misdemeanor stays of 1 – 7 days is being driven by a higher number of 1-day detentions in 2020 (20.78%) than in 2019 (13.14%). An informal review of these bookings suggests that the most common charges for these 1-day bookings may be domestic violence charges (such as assault on a female) and DWI.

²⁶ Beaufort County was the only JD 2 county that supplied jail data for use in this analysis.

Figure 2. Number of pretrial bookings into the Beaufort County Detention Center, Quarters 3 & 4 of 2019 and 2020

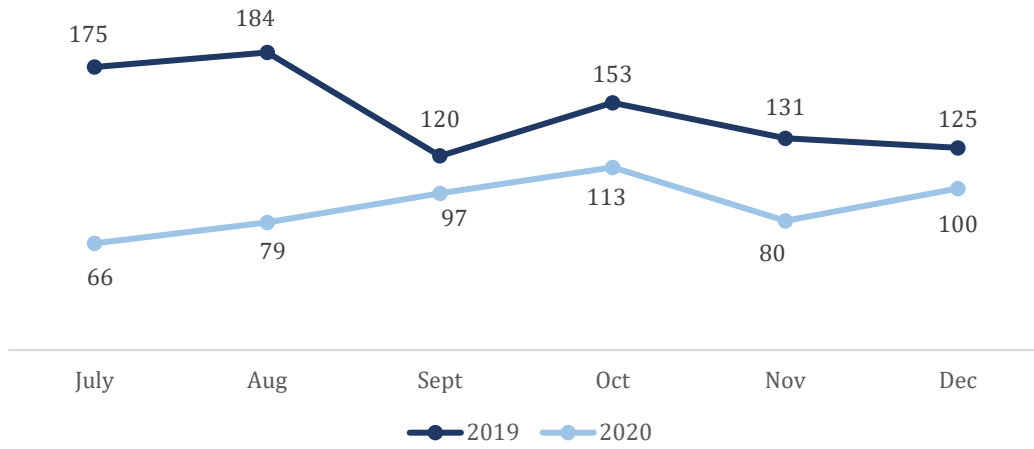


Table 9. Percent of bookings by length of stay in Beaufort County Detention Center for all offenses, highest charge misdemeanor, and highest charge felony offenses, Quarters 3 & 4 of 2019 and 2020

All Offenses	2019	2020
0 days	48.64%	45.20%
1 – 7 days	29.66%	34.40%
8 – 14 days	5.80%	7.40%
15 – 21 days	3.64%	3.20%
22 – 29 days	2.84%	2.60%
30+ days	9.43%	7.20%
Median number of days	1	1
Total number of bookings with release date	880	500
Highest charge misdemeanor	2019	2020
0 days	55.84%	48.70%*
1 – 7 days	29.01%	37.99%*
8 – 14 days	4.74%	4.87%
15 – 21 days	2.55%	1.62%
22 – 29 days	2.84%	2.60%
30+ days	9.43%	7.20%
Median number of days	0	1
Total number of bookings with release date	548	308
Highest charge felony	2019	2020
0 days	36.66%	38.92%
1 – 7 days	29.26%	29.19%
8 – 14 days	8.04%	10.81%
15 – 21 days	5.47%	5.95%
22 – 29 days	4.18%	3.78%
30+ days	16.40%	11.35%
Median number of days	2	2
Total number of bookings with release date	311	185

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.

We also analyzed whether there were any differences in pretrial detention by race.²⁷ As shown in Figure 3, **the reduction in the number of pretrial bookings from 2019 to 2020 was comparable for Black and White individuals** (39.76% lower for Black individuals; 40.00% for White individuals). Figure 4 shows the percent change in the number of pretrial bookings each month for Black and White individuals.

As shown in Table 10, when looking at length of stay by race, **White individuals experienced an increase in median length of stay for both misdemeanor and felony detentions (0 to 1 day for misdemeanor detentions; 2 to 3 days for felony detentions). In contrast, for Black individuals median length of stay decreased for felony detentions (from 3 to 1 day) and did not change for misdemeanor detentions.** We noted above that for all individuals, there was a statistically significant increase in detentions of 0 days and 1–7 days for those booked on misdemeanor charges. When we broke down the data by race, we found no statistically significant change in this metric for Black individuals. However, for White individuals, there was a statistically significant increase in jail stays of 1–7 days (44.83% in 2020 compared to 31.37% in 2019) and a statistically significant decrease in stays of 30 days or more (1.72% in 2020 compared to 5.88% in 2019).²⁸ Future evaluations will continue to monitor these trends.

²⁷ Race is identified based on the racial designations recorded by detention center staff. The categories in the detention center data include Asian or Pacific Islander, Black, Unknown, and White.

²⁸ We estimated separate zero-inflated negative binomial regression models for bookings of Black and White defendants. Results showed that there was not a difference in the number of days detained for bookings of Black defendants for all offenses ($b = -.099, p = .555$), where the highest charge was a misdemeanor ($b = .246, p = .341$), and where the highest charge was a felony ($b = -.348, p = .112$). Similarly, there was not a change in the number of days detained for bookings of White defendants for all offenses ($b = -.270, p = .085$) and where the highest charge was a felony ($b = -.155, p = .437$). There was, however, a significant decrease in the number of days detained for bookings of White defendants where the highest charge is a misdemeanor ($b = -.540, p = .016$).

Figure 3. Number of pretrial bookings into the Beaufort County Detention Center by race, Quarters 3 & 4 of 2019 and 2020

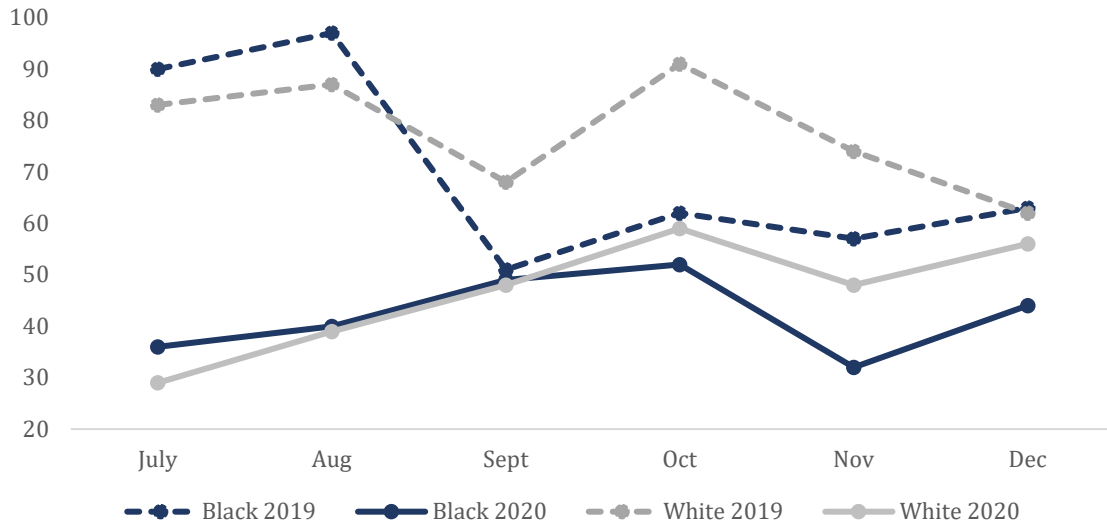


Figure 4. Percent change in the number of pretrial bookings by race, Quarters 3 & 4 of 2019 and 2020

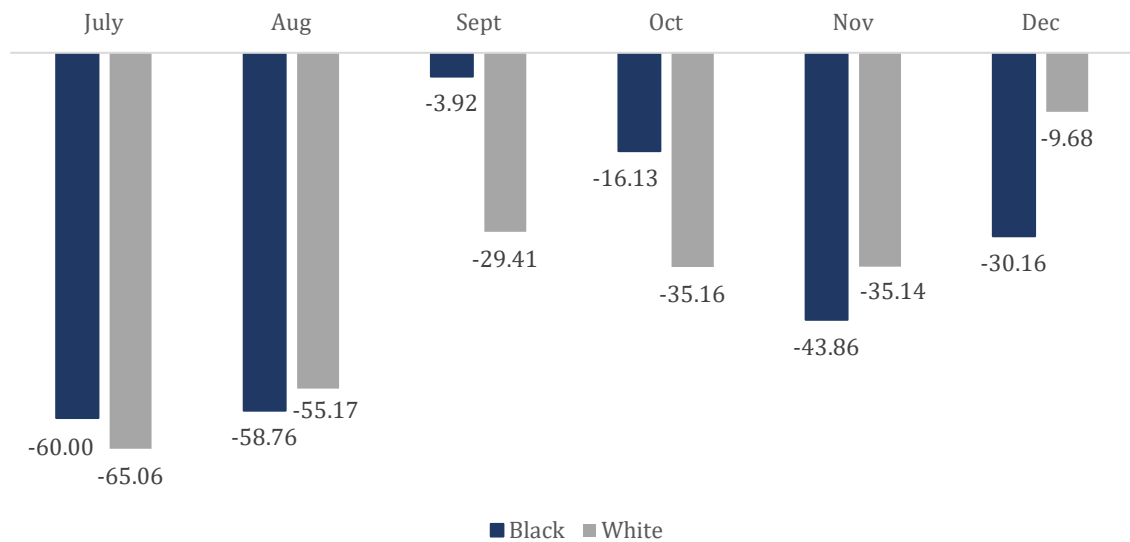


Table 10. Percent of bookings by length of stay in Beaufort County Detention Center for all offenses, misdemeanors, felonies by race, Quarters 3 & 4 of 2019 and 2020

All Offenses	Black 2019	Black 2020	White 2019	White 2020
0 days	49.64%	49.36%	47.40%	41.22%
1 – 7 days	27.23%	27.23%	32.03%	40.84%*
8 – 14 days	7.71%	8.94%	4.11%	6.11%
15 – 21 days	2.89%	3.40%	4.33%	3.05%
22 – 29 days	3.37%	2.55%	2.38%	2.67%
30+ days	9.16%	8.51%	9.74%	6.11%
Median number of days	1	1	1	1
Total number of bookings with release date	415	235	462	262
Highest charge misdemeanor	Black 2019	Black 2020	White 2019	White 2020
0 days	58.58%	52.27%	53.27%	45.40%
1 – 7 days	26.36%	29.55%	31.37%	44.83%*
8 – 14 days	5.02%	5.30%	4.58%	4.60%
15 – 21 days	2.09%	2.27%	2.94%	1.15%
22 – 29 days	2.51%	1.52%	1.96%	2.30%
30+ days	5.44%	9.09%	5.88%	1.72%*
Median number of days	0	0	0	1
Total number of bookings with release date	239	132	306	174
Highest charge felony	Black 2019	Black 2020	White 2019	White 2020
0 days	36.69%	43.88%	36.62%	33.72%
1 – 7 days	28.40%	25.51%	30.28%	32.56%
8 – 14 days	11.83%	13.27%	3.52%	8.14%
15 – 21 days	4.14%	5.10%	7.04%	6.98%
22 – 29 days	4.73%	4.08%	3.52%	3.49%
30+ days	14.20%	8.16%	19.01%	15.12%
Median number of days	3	1	2	3
Total number of bookings with release date	169	98	142	86

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.

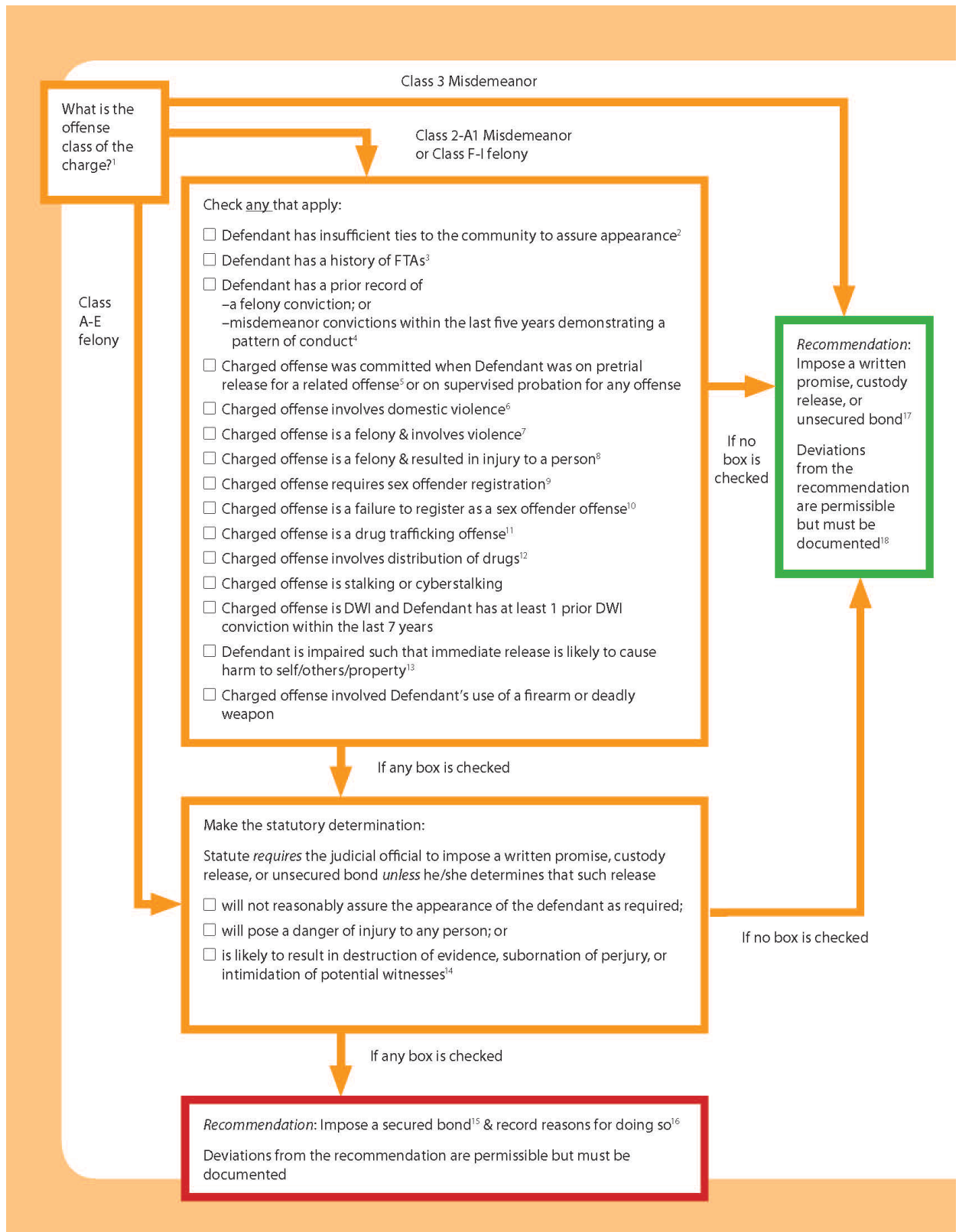
Next Steps

Our next quarterly evaluation report will encompass data through March 2021. In future reporting we plan to analyze pretrial failure metrics by race, using racial data in ACIS.

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	\$150,000
D	
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	No	No

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	68	1
Class F – I felonies & Class A1 – 2 misdemeanors	779	15
Class 3 misdemeanors	61	1

	Magistrate #1	Magistrate #2	Magistrate #3	Magistrate #4	Magistrate #5	Magistrate #6
% issued secured bonds	N/A	N/A	N/A	N/A	N/A	100.00%
	26.67%	77.78%	35.71%	60.32%	0.00%	67.20%
	0.00%	N/A	N/A	0.00%	N/A	77.78%
Median secured bond amounts	N/A	N/A	N/A	N/A	N/A	\$62,500.00
	\$3,000.00	\$1,500.00	\$2,000.00	\$5,000.00	N/A	\$5,000.00
	N/A	N/A	N/A	N/A	N/A	\$1,000.00
% of forms w/deviations	N/A	N/A	N/A	20.00%	N/A	16.67%
	6.67%	22.22%	35.71%	1.89%	0.00%	26.40%
	0.00%	N/A	N/A	0.00%	N/A	77.78%
% of forms removed from analysis due to error	0.00%	71.88%	17.65%	14.06%	25.00%	0.64%

	Magistrate #7	Magistrate #8	Magistrate #9	Magistrate #10	Magistrate #11	Magistrate #12
% issued secured bonds	N/A	75.00%	100.00%	N/A	62.50%	100.00%
	58.06%	55.56%	68.33%	66.67%	44.74%	0.00%
	N/A	100.00%	0.00%	N/A	20.00%	N/A
Median secured bond amounts	N/A	\$175,000.00	\$87,500.00	N/A	\$155,500.00	\$37,500.00
	\$4,000.00	\$5,000.00	\$5,000.00	\$6,500.00	\$7,500.00	N/A
	N/A	\$1,000.00	N/A	N/A	\$1,500.00	N/A
% of forms w/deviations	N/A	37.50%	50.00%	N/A	6.25%	0.00%
	38.71%	29.63%	20.83%	33.33%	10.53%	0.00%
	N/A	100.00%	0.00%	N/A	20.00%	N/A
% of forms removed from analysis due to error	11.43%	1.54%	4.51%	0.00%	1.67%	20.00%

	Magistrate #13	Magistrate #14	Magistrate #15	Magistrate #16	Magistrate #17	Magistrate #18
% issued secured bonds	100.00%	100.00%	N/A	N/A	50.00%	72.73%
	60.87%	50.00%	100.00%	40.00%	0.00%	44.86%
	14.29%	33.33%	N/A	N/A	N/A	66.67%
Median secured bond amounts	\$15,000.00	\$500,000.00	N/A	N/A	\$25,000.00	\$175,000.00
	\$3,000.00	\$6,250.00	\$10,000.00	\$500.00	N/A	\$10,000.00
	\$1,500.00	\$2,250.00	N/A	N/A	N/A	\$1,250.00
% of forms w/deviations	0.00%	75.00%	N/A	N/A	0.00%	18.18%
	21.74%	17.19%	100.00%	10.00%	0.00%	18.69%
	14.29%	33.33%	N/A	N/A	N/A	66.67%
% of forms removed from analysis due to error	5.59%	5.13%	0.00%	0.00%	28.57%	4.51%

	Magistrate #19
% issued secured bonds	100.00%
	0.00%
	0.00%
Median secured bond amounts	\$400,000.00
	N/A
	N/A
% of forms w/deviations	0.00%
	0.00%
	0.00%
# and % of forms removed from analysis due to error	38.89%

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