

## New Orange County, North Carolina Bail Reform Initiatives

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In late 2020 and early 2021, stakeholders in Orange County, North Carolina implemented new bail reform initiatives. The new initiatives build on earlier efforts. Specifically, stakeholders already had funded a county pretrial services program; adopted an empirical risk assessment tool to inform judges' pretrial decision-making; established a "strike order court," affording relief from court non-appearances in appropriate cases; instituted pre-arrest diversion with law enforcement support; and established specialized courts to more effectively address the needs of those who enter the criminal justice system because of underlying issues such as poverty, homelessness, substance use, and mental health concerns. Additionally, local police departments and the sheriff's office had implemented new policing practices, such as citation in lieu of arrest, to promote the county's pretrial goals. And in 2018, the Orange County Board of County Commissioners approved a resolution supporting the 3DaysCount initiative, a national effort to improve community safety by applying common sense solutions to pretrial justice issues. Notwithstanding these efforts and actions and the statutory mandate that conditions other than secured bond must be imposed unless the judicial official finds certain factors, G.S. 15A-534(b), data showed that secured bonds continued to be the most common condition of pretrial release used in the county, even in misdemeanor cases. Stakeholders also reported concerns that low-risk individuals were being unnecessarily detained pretrial on money bonds they could not pay.

Against this backdrop, a Pretrial Working Group convened in 2019 to explore what additional steps—if any—the county could take to further improve its criminal justice system, including local pretrial policies and practices. The Working Group was composed of diverse stakeholders including judges, the chief magistrate, a county commissioner, the elected district attorney, a representative from the public defender's office, police chiefs, the Sheriff, the Clerk of Superior Court, the county criminal justice resource director, the probation and parole chief, pretrial services staff, community members, and others. The county and the local bar contracted with me to support these efforts. While work was ongoing, the onset of the COVID-19 pandemic in 2020 and equity concerns that garnered national attention after the killing of George Floyd amplified stakeholders' concerns about the need to further improve the county's pretrial system.

The primary focus of the Working Group's discussion was eliminating unnecessary pretrial detentions of individuals who do not present significant risk but who are detained pretrial because they are unable to afford money bonds imposed in their cases. In the end, the Working Group adopted two core reforms:

- a new structured decision-making tool to guide magistrates' bail decisions; and
- a new decision-making process for responding to non-appearances in District Court.

### **New structured decision-making tool for magistrates**

In Orange County, pretrial services interviews in-custody individuals and performs a release assessment using an empirical risk assessment tool. This information is provided to the first appearance judge, the public defender, and prosecutor. Local resourcing,

however, does not allow for use of that tool at the earlier initial appearance held before the magistrate. Although the existing local bail policy contains strong language favoring conditions other than secured bond, money bonds were being imposed in the majority of cases, including highest charge misdemeanor cases. Additionally, there was some concern that the lack of detailed guidance for magistrates allows for inconsistent pretrial decisions. Other North Carolina jurisdictions have adopted structured decision-making tools for use at the magistrate stage, and our empirical evaluations of those efforts are showing promising results. The Working Group opted to adapt these existing tools to local needs and circumstances and streamlined them from a flowchart process to a simpler step-by-step process. Key features of the Orange County magistrates' tool include:

- Creating a presumption for conditions other than secured bond for non-impaired driving Class 1-3 misdemeanors.
- Screening all other offenses using an easily implemented checklist of defendant- and offense-specific factors designed to quickly identify other low-risk defendants who can be released on conditions other than secured bond.
- Expressly incorporating into the magistrate's decision-making process the statutory determination under G.S. 15A-534(b), requiring imposition of a written promise, custody release, or unsecured bond unless the decision-maker finds that such conditions will not reasonably assure appearance, will pose a danger of injury to any person, or are likely to result in the destruction of evidence, subornation of perjury, or intimidation of potential witnesses.
- Allowing for release to pretrial services at the magistrate stage as an alternative to a secured bond, when supervised release sufficiently mitigates pretrial risk.
- Requiring documentation of reasons for imposing a secured bond.
- Preserving the magistrate's discretion to deviate from the tool's recommendations.

Orange County's new structured decision-making tool became effective in October 2020. It is available [here](#). The form used by magistrates when applying the tool can be found [here](#).

### **New decision-making process for responding to non-appearances in District Court**

Stakeholders reported that the most common response to a non-appearance was issuance of an Order for Arrest and imposition of a secured bond, even for first missed court dates in lower-level misdemeanor cases. Pretrial services reported that a significant number of lower-level misdemeanor defendants were in jail on such conditions. Understanding that non-appearances can occur for a variety of reasons, including lack of notice of court dates, transportation or childcare issues, or an inability to get time off from work, the Working Group wanted to develop a process that encouraged a "second chance" for lower-level defendants who miss a single court date and for all defendants who have good cause for their failure to appear. They thus created a new decision-making process for responding to non-appearances in district court. The new process is designed to encourage consideration of alternatives to orders for arrest in appropriate cases. Key features include:

- Application in district court only.
- A recommendation that the court date be rescheduled without arrest when the person has good cause for the non-appearance or when the prosecuting witness was subpoenaed but did not appear.

- A recommendation that the court date be rescheduled without arrest when it is the person's first non-appearance on lower-level misdemeanor charges.
- Preservation of the judge's discretion.
- Simple and fast execution.

Stakeholders discussed whether driving while license revoked (DWLR) charges should be treated as an exception to the new decision-making process for responding to non-appearances. Although they decided that the new process *should* apply to those offenses, they developed special procedures for DWLR charges to integrate them with the new decision-making process. The new procedure became effective in January 2021. The Bench Card used by judges to implement the procedure is available [here](#).

## **What's Next?**

With support of local stakeholders, the UNC School of Government's [Criminal Justice Innovation Lab](#) applied for and received grant funding to execute an evaluation of the impact of these changes. The evaluation will examine the impact of these collaborative, consensus initiatives on conditions imposed, jail bookings, non-appearance rates, new pretrial criminal activity, and other core criminal justice metrics. Funding also is supporting a validation of the county's risk assess instrument and assistance to stakeholders in updating the county's local bail policy. Our first evaluation report is tentatively scheduled to be released in May 2021.

The following local stakeholders played leading roles in developing and implementing these reform initiatives and contributed to this blog post:

- Senior Resident Superior Court Judge Allen Baddour
- Chief District Court Judge Samantha H. Cabe
- District Attorney James R. Woodall
- Assistant Public Defender Phoebe W. Dee\*
- Sheriff Charles S. Blackwood
- Clerk of Court Mark Kleinschmidt
- Chair, Board of County Commissioners Renee Price
- Chief Magistrate Tony Oakley
- Orange County Criminal Justice Resource Director Caitlin Fenhagen
- Ted Dorsi, Orange County Pretrial Services
- \*Chief Public Defender Susan Seahorn also contributed to the reform initiatives but had retired when this post was written