

North Carolina Criminal Justice Summit

March 15, 2019

Report of Proceedings

Jessica Smith, W.R. Kenan Jr. Distinguished Professor, UNC School of Government

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On March 15, 2019, Professor Jessica Smith and The University of North Carolina at Chapel Hill School of Government hosted North Carolina's first Criminal Justice Summit. At the Summit, national and state experts with broad-ranging ideological perspectives discussed key issues capturing attention in North Carolina and around the nation and explored how they impact justice, public safety and economic prosperity in North Carolina, and whether there is common ground to address them. A broad range of state leaders and stakeholders attended the Summit. The program was presented with support from the Charles Koch Foundation. This report summarizes the proceedings.

Agenda, Format & Materials

The Summit agenda included panel discussions on four key criminal justice issues, with each session including a brief question and comment period from the audience and anonymous, live polling by audience members on consensus proposals offered by the panelists. The four issues included:

- Bail Reform
- Fines & Fees
- Overcriminalization
- The Criminal Record & Collateral Consequences

Each panel was composed of two national and two state experts, with each pair of experts coming at the issue from different perspectives. Prior to the event, panelists participated in a conference call and other communications, exploring their views on the issue and visions for reform and developing three to four consensus solutions to present to Summit attendees for live polling. Although Smith sought diversity on each panel, because there are so many perspectives on the issues, it was not feasible for every viewpoint to be reflected in a panel presenter. However, the event was structured to capture the viewpoints of the Summit's diverse attendees in three ways: in the question and comment period that followed each panel discussion; through anonymous, live polling on the panelists' proposed consensus proposals; and on evaluation forms, which asked participants to specify ideas or proposals that did not emerge in the day's discussion.

Because a key goal of the Summit was to share ideas and perspectives, attendees were seated at tables that were intentionally diverse.

Summit handouts are available online at <https://www.sog.unc.edu/courses/north-carolina-criminal-justice-summit>.

Participants

The program was publicized through various School channels and registration was open to all. Interest in the program was robust, and the wait list was as high as 187. A breakdown of registered attendees included:

<u>Category</u>	<u>Count</u>	
Legislator, Lead Staff & Senior Counsel	10	
Supreme Court Justice	2	
Court of Appeals Judge	4	
Superior Court Judge	16	
District Court Judge	14	
Elected Clerk of Court	1	
Magistrate	4	
Executive Branch	8	E.g., Governor's Office; Attorney General's Office; NC Dep't of Public Safety
Federal Judge	1	
NC Commissions	15	E.g., NC Sentencing Commission; NC Courts Commission; Governor's Crime Commission
NC Admin. Office of the Courts	3	
Public Defender/Assistants PDs	36	
District Attorney/Assistants DAs	25	
Law Enforcement	13	E.g., Chiefs of Police & Leadership in Law Enforcement Organizations
Advocacy/Stakeholders	69	E.g., Forward Justice; ACLU of NC; Advance Carolina; Conservatives for Criminal Justice Reform; John Locke Foundation; Disability Rights NC; NC Chamber; NC Bar Association; Surety Agents for NC; NC Bail Agents Association; American Bail Coalition; Faith-Based Organizations
Academic & Researchers	17	
Other	2	
<u>TOTAL</u>	<u>240</u>	

Panel: Bail Reform

This panel was moderated by Jessica Smith, W.R. Kenan Jr. Distinguished Professor, UNC School of Government. Panelists included:

- Marc Levin, Vice President, Criminal Justice, Texas Public Policy Foundation and Right on Crime
- Eric Halperin, Chief Executive Officer, Civil Rights Corps
- Kevin Tully, Public Defender, Mecklenburg County NC
- Spencer B. Merriweather, District Attorney, Prosecutorial District 26

The panel started with a discussion of problems with our current bail system. Levin began, noting constitutional issues, including equal protection and due process; the costs associated with the current system; negative consequences of even short periods of unnecessary pretrial detention, including loss of employment and housing; and use of pretrial detention to coerce pleas. Levin also discussed the history of bail in America, noting that its original purpose was to serve as a method of release, not detention as it does now. Halperin noted that the current system unnecessarily detains too many people, and that it has moved away from its core purposes, which he identified as maximizing release, ensuring appearance, and preventing new offenses. He noted research showing that unnecessary pretrial detention has costs not just for defendants; it also leads to greater rates of non-appearance and new criminal activity. Halperin discussed national litigation that has successfully challenged bail systems on equal protection and due process grounds. Finally he discussed the lack of quality research showing the efficacy of secured bonds and research showing that over-supervision of defendants pretrial undermines public safety goals. Tully identified a core problem as being detentions based on wealth as opposed to risk, and emphasized the impact that even a few days in jail can have for defendants, including loss of housing, employment and custody of children. Tully suggested that there is an institutional acceptance of a system that is ineffective and working a great injustice. He discussed the “shared experience of poverty,” explaining that when a community member is required to secure funds to pay a bondsman, the community pools resources, diverting wealth to the for-profit bail industry. Another problem noted by Tully is that prosecutors use pretrial incarceration to coerce pleas. Tully explained that jail overcrowding can force change, as it did in Mecklenburg County. He noted that after that county engaged in bail reform, plans were scrapped for construction of a new jail, an existing jail was closed and crime went down. Merriweather emphasized that putting a price tag on pretrial release does not keep anyone safe, explaining that doing so allows wealthy but dangerous persons to buy their way out of jail. Meanwhile he noted, even relatively low bond amounts keep poor but low-risk individuals in jail. Merriweather explained that this contact with the system puts low-level defendants at risk for re-offending and creates distrust, which undermines the justice system. Finally, he mentioned the lack of a constitutional preventative detention statute in North Carolina, that would allow judges to keep the most dangerous defendants in jail pretrial.

Turning to reforms being implemented to address these problems, Halperin noted the D.C. system, which eliminated money bonds decades ago. He explained that the D.C. system, which has a preventative detention statute, detains less than 7% of defendants pretrial and has excellent success rates for released defendants. He also noted the success of common sense reforms, such as a form redesign in N.Y. that positively impacted court appearance rates, and the value of court date reminder systems. Halperin also noted a new policy of the Philadelphia district attorney’s office not to ask for cash bonds for certain offenses, and a Minnesota program offering rides to court. He emphasized that many of these solutions can be implemented without a huge pretrial program. Levin noted that although litigation has been an impetus to act, it is better when elected officials implement reform. He is most interested in reforms that pair an affordable bail requirement with an appropriate preventive detention statute. Levin noted recent reforms in N.J. and N.M. He added that bail reform is very popular with the public and that a recent Koch Foundation public opinion survey revealed that the public perceives pretrial outcomes based on ability to pay as grossly unfair. Finally, Levin noted that commercial bail is relatively new; before its introduction a surety would pledge collateral that would be returned if the person appeared in court as required, thus creating an incentive for appearance. He noted that when a person pays a commercial bondman, that fee is not returned, even if the person appears as required, diluting the incentive to appear. Levin added that the money bail system requires people to buy a private product, and that the government should not require citizens to use a commercial service. Tully noted reforms in Mecklenburg County, including adoption of the Arnold PSA-Court risk assessment

instrument, and adoption of a new local bail policy. Noting that the final decider of pretrial release is the judge, not the prosecutor, Merriweather noted that some district attorneys are adopting blanket rules that apply to certain offenses or after a defendant spends a certain amount of time in jail. He prefers to focus on each case individually, being intentional about the central decision: Should this person be released or detained? Merriweather favors reforms that support better decisionmaking as to that core question.

Regarding an ideal bail system and barriers to reform, Levin noted that only the U.S. and the Philippines allow commercial bail. He suggested that policymakers look to N.J. and D.C. reforms. He noted that although Kentucky got rid of commercial bail bonds, that state still imposes unaffordable cash bail and has high pretrial detention rates, and that in Colorado the bail bond industry blocked legislation to require text messaging notifications. Levin stated that he favors a free market approach, which is undermined by the requirement of using commercial bail. In Levin's view, an optimal system incarcerates pretrial because of risk not poverty, uses validated risk assessments, and does not over-supervise. On the issue of risk assessments, Merriweather noted that new risk assessment tools can be very valuable to standardize information. However, he expressed concern about tools that measure poverty and are culturally offensive. He further noted that one failing of the risk assessment tool used in Mecklenburg County is that it does not address domestic violence lethality. Merriweather asserted that a risk assessment instrument is simply a tool, and that the decisionmaker needs to listen to the arguments of counsel on the issue. He noted that in an ideal system, more time would be afforded to the first appearance, which in North Carolina is the trial judge's first opportunity to review conditions of release. Tully expressed mixed feelings about risk assessment, noting the opportunity for such instruments to "bake" racial bias into the decisionmaking process. He further cautioned that a risk assessment score never should be determinative of the pretrial decision. However, he noted that using a risk assessment tool in Mecklenburg County has focused participants on the central question of whether the defendant poses a danger if released. Tully echoed Merriweather's point that more time is needed at the first appearance to make good decisions.

In the question and comment period, one participant noted the importance of looking at release decisions for defendants arrested on probation violations. Panelists agreed with this point. Another participant noted the political issues associated with asking local elected officials to implement bail reform, particularly the political fall-out if a defendant who is released commits a crime. Tully noted that this already happens when dangerous but wealthy people bond out with no supervision under the current money-based system.

After the question and comment period, Summit participants submitted live, anonymous responses using handheld receivers to several questions (all poll results are included as Appendix A). The first question asked them to assess the importance of the issue. Specifically, it asked:

Bail reform is an important issue for North Carolina; we need to work on it.

Poll results were as follows: Agree, 95.15%; Disagree, 3.03%; Undecided, 1.82%. Attendees then were asked to provide live, and anonymous feedback on consensus reform proposals offered by the panelists. Choices for each question included: Support; Support, with caveats; Oppose; Undecided. The questions and results were as follows:

1. Adopt a carefully limited constitutional preventative detention procedure for the most dangerous defendants who cannot safely be released pretrial.
81.67% of participants supported this proposal, with 45% supporting it with caveats; 11.67% opposed this proposal; and 6.67% were undecided.
2. Revise local policies to honor the existing statutory preference for nonfinancial conditions.
94.51% supported this proposal, with 22.53% supporting it with caveats; 2.75% opposed this proposal; and 2.75% were undecided.
3. Eliminate wealth-based detentions by requiring ability to pay determinations before imposition of financial conditions.
88.34% supported this proposal, with 25.56% supporting it with caveats; 5.56% opposed this proposal; and 6.11% were undecided.
4. Reinvest money spent on unnecessary pretrial incarceration in appropriate pretrial supervision and services.
94.03% supported this proposal, with 19.57% supporting it with caveats; 2.72% opposed this proposal, and 3.26% were undecided.

In addition to this feedback, Summit participants were encouraged to include other reform proposals on their written Summit evaluation forms. Reform proposals offered in those comments included:

- Create model local bail policies.¹
- State funding for pretrial programs statewide, with no fees charged to defendants.
- Allow defendants to make a deposit with the court in an amount similar to that currently paid to a commercial bondsman.
- Early involvement of counsel in bail proceedings.
- Funding for defense investigators prior to the first appearance.
- Robust ability to pay determinations.
- Allow defense counsel to calendar bond hearings.
- Increased mental health and substance use programs.
- Eliminate commercial bail bonds and/or financial conditions.
- Take more time at the first appearance to determine appropriate conditions.
- Require judicial officials to record reasons for imposing secured bonds.²

Panel: Fines & Fees

This panel was moderated by James M. Markham, Thomas Willis Lambeth Distinguished Chair in Public Policy, UNC School of Government. Panelists included:

¹ Under North Carolina law, the senior resident superior court judge must devise and issue a local bail policy. G.S. 15A-535(a).

² Under North Carolina law, a judicial official only is required to record reasons for imposing a secured bond if doing so is required by the local bail policy. G.S. 15A-534(b).

- Joanna Weiss, Co-Director, Fines and Fees Justice Center
- Vikrant Reddy, Senior Fellow, Charles Koch Institute
- Cristina Becker, Staff Attorney, ACLU of North Carolina
- James R. Woodall, Jr., District Attorney, Prosecutorial District 18

Asked to make the conservative case for reform, Reddy said that the purposes of the criminal justice system include incapacitation, deterrence, rehabilitation and retribution; he added that raising revenue is not one of them. Reddy opined that when fines and fees are used to raise revenue, people feel oppressed by the system, especially when costs are not refunded upon acquittal. He emphasized that a \$30 cost may seem small to some, but it is significant for a person who works a minimum wage job, noting that it can be half a day's pay. Reddy added that imposition of costs and fees can be a barrier to re-entry, making it difficult for people to get back on their feet and become productive members of society, thereby putting them at risk for recidivism. Reddy added that imposition of costs damages relationships between communities and law enforcement, and he suggested that we should not turn police into tax collectors. Weiss noted that when we impose fines and fees that people cannot afford, they become endlessly entrenched in the system. Additionally, treating people differently on the basis of wealth erodes trust in the police, the courts, and the entire system, as for example when access to diversion programs requires payment of money. Weiss noted that costs essentially are regressive taxes that people cannot plan for, have disproportionate impact on poor communities and communities of color, and are tied to policing practices. Weiss also suggested that imposition of fines and costs has negative public safety impacts, citing research showing the connection between increased fines and fees and crime rates. Weiss opined that the practice of suspending drivers licenses for nonpayment of fees has negative public safety impacts. Becker echoed some of these concerns, also noting that in North Carolina some criminal justice fees go to the state general fund, not the court system. She also noted data suggesting that when State Crime Lab fees were increased, revenue collected decreased. Becker suggested that a new state law requiring reporting on judges' fee waivers interferes with judicial independence and has resulted in a reduction of waivers. She emphasized that the impact of fees is experienced not just by defendants but also by their families and communities. She further asserted that it is unfair to incarcerate people because of inability to pay. Finally, she noted that inability to pay fines and fees can result in extended probation, which makes a person ineligible to vote. Woodall noted the different purposes of fines and fees; that fees reimburse the state for expenses whereas fines constitute punishment. He further noted that he sees victim restitution as an entirely separate matter, necessary to make victims whole. As to fees, he emphasized the need for more careful, individualized determinations of ability to pay and as to willful nonpayment. Woodall stated that the multitude of costs make it hard to apply the law in a fair and reasonable way, and make everyone in the system feel like a tax collector. He also noted the time and resources needed to implement a fair fines and fees system, and questioned whether revenue justifies the resources devoted to enforcement. As a prosecutor, Woodall sees a role for fines, such as with drug traffickers.

Turning to the issue of reforms, Weiss noted that no gold standard has yet been developed but that we can learn from certain efforts. She noted that the American Bar Association unanimously passed guidelines regarding imposition and collection of fines and fees. Those guidelines provide that nothing should limit the court's ability to waive or reduce monetary obligations or prohibit incarceration and suspension of drivers licenses for nonpayment. They also require robust ability to pay determinations with the right to counsel. She added that ALEC passed a resolution stating that drivers licenses should be suspended only if a person is a danger on the road, and that several jurisdictions have eliminated or reduced the ability to suspend licenses for nonpayment of monetary obligations. Weiss explained that legislative efforts are underway in a number of states, including reforming fines and fees imposed on

juveniles and eliminating provisions conditioning access to diversion on monetary payments. She added that some prosecutors are refusing to prosecute driving while license revoked or suspended if the underlying issue is nonpayment of monetary obligations. Reddy noted interest in reform regarding revenue caps on sums that can be obtained from fines and fees and with respect to non-financial alternatives, such as community service.

With respect to North Carolina's practice of suspending drivers licenses in response to nonpayment of monetary obligations, Woodall noted that when the law was adopted no one expected it to have the consequences that have resulted. He explained that policymakers thought that the prospect of license suspension would create a healthy incentive to pay monetary obligations, but that inability to pay those sums has caused unintended consequences. Woodall discussed his district's drivers license restoration project, designed to restore licenses to people who were revoked because of inability to pay. He noted that this practice is spreading in North Carolina. He further noted the need for more education, including creation and use of bench cards.

As to an optimal system, Weiss advocated for the complete elimination of fees and a court system—which benefits everyone—that is adequately funded through the state budget. She further advocated that fines only should be imposed to punish behavior, and that they always should be proportionate. Reddy agreed with Weiss that society as a whole should fund the court system, suggesting that it can be viewed as an “internal defense” system. He continued, noting that we all should pay for the criminal justice system because it keeps all of us safe, similar to how we all pay for the military, our domestic defense system.

Returning to the topic of responses to nonpayment of monetary obligations, Weiss argued that in America we have established procedures for debt collection: reasonable payment plans that allow people to pay their debts and leave the system. She noted that in Texas, when obligations were reduced, collections went up. Additionally, she explained, when Florida started using payment plans, drivers license suspensions were significantly reduced. Weiss also mentioned the option of a civil judgment.

In the question and comment period, one attendee noted that he was assessed a \$50,000 fine, which he is still paying 19 years later. He advocated for including impacted persons in discussions about criminal justice policy. Another attendee emphasized racial disparities and impact on communities of color, noting that the system is inconsistent with respect to fairness, due process, and equal protection. Becker supported this point.

After the question and comment period, Summit attendees submitted live, anonymous responses using handheld receivers to several questions (all poll results are included as Appendix A). The first question asked them to assess the importance of the issue. Specifically, it asked:

The issue of criminal fines and fees is an important issue for North Carolina; we need to work on it.

93.3% agreed with this statement; 2.79% disagreed with it; and 3.91% were undecided. Additionally, attendees submitted live, anonymous responses with respect to four consensus proposals for North Carolina from the panelists. The proposals and responses were as follows:

1. Require “right-sizing” of all obligations through up-front ability to pay determinations.
90.91% supported this proposal, with 38.07% supporting it with caveats; 5.11% opposed this proposal; and 3.98% were undecided.
2. Allow for alternatives for those who cannot pay e.g., community service.
88.76% supported this proposal, with 35.39% supporting it with caveats; 5.62% opposed this proposal; and 5.62% were undecided.
3. Limit use of arrest as a response to nonpayment.
89.67% supported this proposal, with 23.91% supporting with caveats; 5.43% opposed this proposal; and 4.89% were undecided.
4. Eliminate revocation of drivers licenses for nonpayment.
87.63% supported this proposal, with 19.89% supporting it with caveats; 9.68% opposed this proposal; and 2.69% were undecided.

In addition to this feedback, Summit participants were encouraged to include other proposals for reform on their written Summit evaluation forms. Reform proposals offered in those comments included:

- Model procedures for failure to comply hearings.
- Prohibit private corporations from charging defendants for services, such as continuous alcohol monitoring.
- Education for defense counsel on this issue.
- Eliminate court costs completely.
- Allow judges to reduce costs and fines in appropriate circumstances.
- Relax tracking requirements of judges who waive costs.
- Automatic cutoffs for fines that are not paid after a certain amount of time.

Panel: Overcriminalization

This panel was moderated by Jessica Smith, W.R. Kenan Jr. Distinguished Professor, UNC School of Government. Panelists included:

- Vikrant Reddy, Senior Fellow, Charles Koch Institute
- Nathan Pysno, Director of Economic Crime and Procedural Justice, National Association of Criminal Defense Lawyers
- Tarrah Callahan, Executive Director, Conservatives for Criminal Justice Reform
- Mary Pollard, Executive Director, North Carolina Prisoner Legal Services and President, North Carolina Advocates for Justice

Asked to explain the problems associated with overcriminalization, Reddy noted that with the explosion of crimes on the books, the transparency in our criminal statutes is gone and people cannot reasonably be on notice of all that has been made criminal. He noted that crimes are created under federal and state law and, in places like North Carolina, through local ordinances. Reddy explained that when you have so many crimes, law enforcement officers cannot enforce all of them. Thus, they exercise discretion in deciding when to charge, creating an issue of fairness in enforcement. People, Reddy asserted, care deeply about fairness and want laws to be enforced equally. He also suggested that this reality vests excessive discretion in the executive branch. Reddy stated that his focus is on the

misdemeanor system which, with its costs and fines, can be oppressive. Pysno noted the problem of overlapping crimes and the criminalization of innocuous conduct, such as public consumption and loitering. Like Reddy, he noted the potential that having a myriad of offenses creates for subjective and arbitrary enforcement; he also raised the issue of racial ethnic disparities in enforcement. Pysno noted that by making ordinance violations Class 3 misdemeanors, North Carolina has a particular problem with respect to ensuring that citizens are on notice of what has been made criminal. He added that because these crimes are created by local officials, they do not reflect popular will. Callahan noted that overcriminalization is the portal to other problems addressed at the Summit, including bail reform, fines and fees, and criminal records. She noted that overcriminalization carries costs, such as the cost of funding the state's indigent defense system. Pollard noted the significant collateral consequences that even minor crimes can have on employment, housing and families. Agreeing with problems at the misdemeanor level, Pollard also noted problems at the felony level with excessive redundancy leading to overcharging and the possibility of coerced pleas. Pollard further noted that some low-level North Carolina offenses criminalize poverty and homelessness, offering an example of a homeless man who was charged with littering for leaving his bed roll under a park bench. To this list of problems, Reddy added that overcriminalization maximizes interactions between the police and citizens. He offered the Eric Garner case as an example where officers approached the defendant for the crime of selling loose cigarettes, an interaction that ended in Garner's death.

With respect to models for reform, Reddy mentioned that Minnesota held an "Unsession" of the legislature to repeal unnecessary laws. He noted that any state can do the same. He said that other jurisdictions are looking at mens rea reform, creating a default mens rea in the criminal code to ensure that every offense includes this element. He offered Ohio as an example, a state that set its default mens rea at recklessness. Pysno stated that he also supports default mens rea provisions. Pysno further noted recodification commissions that have been created in other states to clean up criminal codes, noting work in Kansas, Indiana and Kentucky. Callahan emphasized the importance of a state recodification commission. She noted that in North Carolina criminal offenses are peppered throughout the General Statutes and that a cleanup effort is warranted to, among other things, remove duplication and unnecessary laws. Pollard echoed support for a recodification effort in North Carolina. She also mentioned the Safety Valve Act in Maryland, which allows judges to depart from minimum sentences under certain circumstances, as a back-end solution to overcriminalization.

Asked how he would define an optimal system, Reddy stated that an optimal one would penalize only blameworthy conduct that impacts specific victims. He noted that dealing with drug offenses would be challenging under this framework, but suggested that it is more appropriate to treat drug use as a health issue in the health care system than as a crime. Asked about "quality-of-life" offenses such as littering, Reddy noted that the question relates to "broken windows" policing practices. He stated that a Vera study found that when New York City employed broken windows policing practice, incarceration rates went down. However, he said that he has been second-guessing the wisdom of these practices, noting that the misdemeanor system keeps people involved in the system through endless fines and has limited people financially. He further noted that while NYC's crime rate went down during the period of broken windows policing, other jurisdictions that did not adopt that practice also saw decreases in crime rates, creating some question as to causation. Pysno stated that conduct such as littering should be treated like speeding, with a ticket. With respect to white-collar offenses, he suggested that more appropriate options are administrative or regulatory fines, possibly with professional licensing consequences. He added that some things could be legalized, such as drug possession. Pysno noted that there is a tendency to use the criminal law as a sledgehammer to address social issues, and that civil infractions are better suited to address nuisance-type conduct. He noted, however, that legalization may be a

better option in some circumstances, because of the financial issues associated with non-criminal infractions.

Assuming that North Carolina engaged in a recodification effort and cleaned up the code, panelists were asked how the state could keep the code clean. Reddy suggested a regular “Unsession,” as well as providing more information to legislators when they are considering new crimes, including estimates on enforcement and incarceration costs. Additionally, legislators should be provided information about whether the conduct already is covered by existing law. He added that as a general rule, any law with someone’s name in it is probably a bad idea. On the issue of keeping the code clean, Pysno suggested that any proposed new crime should go through the judiciary committee or other committee that deals with criminal law, regardless of the bill’s origins. He agreed with Reddy’s rule of thumb regarding a law named after a person. Callahan emphasized the importance of giving legislators information regarding the appropriate sentencing level of any proposed new crime. She noted the pressure that often accompanies a bill bearing someone’s name, suggesting that we do not necessarily need a statewide law based on one bad act. Pollard agreed that we should not “legislate by anecdote.” She also suggested that the North Carolina Sentencing Policy and Advisory Committee’s recommendations to the General Assembly regarding offense grading (punishment level) should have some teeth.

Asked about provisions in North Carolina law that allow local governments and administrative boards and bodies to create crimes, Reddy opined that creating a crime is a legislative function and should be done by state lawmakers. All of the panelists agreed.

Honing in on the idea of a recodification commission for North Carolina, Reddy noted that it could be set up as an ad hoc commission and should include all relevant players in the system, such as prosecutors, defenders, academics, and members of the business community.

Asked how he would respond to the suggestion that recodification is soft on crime, Reddy noted that crime rates have been dropping for decades and we may be at a good time to recognize that not all societal problems are criminal justice problems. Pollard added that after recodification, we would still have convictions and sentences, we would just be focusing on morally blameworthy conduct. She further suggested that the criminal justice system simply cannot address the underlying causes of certain conduct that has been made criminal. Referencing the earlier example of a homeless man charged with littering for leaving his bedroll under a park bench, Pollard asked rhetorically: Once that man went through the criminal justice system, what changed for him? Callahan added that with cuts to mental health services in North Carolina, the criminal justice system has become the de facto response for mental health issues.

During the question and comment period, one attendee suggested focusing on a restorative justice model, not just as a diversion program but to change the way we think about accountability. Reddy agreed, noting a case from Texas where a woman was jailed and subject to fines and fees for passing a bad \$400 check at a convenience store. He noted that when a lawmaker spoke to the store owner, all the victim wanted was to be restored the \$400, but the defendant emerged from the criminal justice system unable to do that. Another participant asked about the propriety of North Carolina habitual felon sentencing and the use of consecutive sentences. Reddy suggested that when recidivism enhancements operate automatically, it precludes consideration of important factors, such as the offender’s age and the nature of the prior offenses. Another participant asked about the multiple overlapping offenses that can be charged for the same conduct. Reddy suggested that it would be interesting for a proposed new crime to be accompanied by an analysis as to what existing offenses cover that conduct and an

explanation as to why an additional charge is needed. A participant noted that much can be done on this issue without legislation, suggesting that police and prosecutors can act now by modifying their discretionary decisions. An attendee noted that the panel had not discussed codifying common law offenses. Smith noted that doing so was included in the recodification framework included as a Summit handout. All panelists agreed that codifying common law crimes should be a part of a recodification effort. Another participant noted that the criminal justice system often is used as a debt collection agency, for things like failure to return rental property and worthless checks. She noted that in the current system, victims either get a criminal prosecution or nothing, and that it would be helpful to have something in between that offered accountability for wrongdoing. Finally, a participant noted the problem of citizen-initiated warrants, which are issued without police investigation. She suggested that mediation should be used to resolve these disputes.

After the question and comment period, Summit attendees submitted live, anonymous responses using handheld receivers to several questions (all poll results are included as Appendix A). The first question asked them to assess the importance of the issue. Specifically, it asked:

Overcriminalization is an important issue for North Carolina; we need to work on it.

89.29% agreed with this statement; 8.57% disagreed with it; and 5.14% were undecided. Attendees then were asked to provide live, and anonymous feedback on consensus reform proposals from the panelists. Choices for each question included: Support; Support, with caveats; Oppose; Undecided. The questions and results were as follows:

1. Commission-supported legislative purging effort.
93.33% supported this proposal, with 29.44% supporting it with caveats; 3.89% opposed this proposal; and 2.78% were undecided.
2. Repeal code provision allowing local governments and administrative boards and bodies to create crimes.
75.72% supported this proposal, with 26.59% supporting it with caveats; 19.65% opposed this proposal; and 4.62% were undecided.
3. For bills proposing new crimes, more information to legislators earlier about (1) need for the law; (2) overlap with existing crimes; and (3) enforcement costs.
94.08% supported this proposal, with 6.51% supporting it with caveats; 4.14% opposed this proposal; and 1.78% were undecided.

In addition to this feedback, Summit participants were encouraged to include other comments and proposals for reform on their written Summit evaluation forms. Reform proposals offered in those comments included:

- Work with local governments to regulate criminalization by ordinance.
- Reduce overcharging by prosecutors and law enforcement through education and policy.
- Statutory restrictions on consecutive sentencing.
- Eliminate habitual felon status.
- Include language in criminal statutes barring punishment for multiple offenses for the same conduct.

- Fund restorative justice programs.
- Implement pre-arrest diversion.
- Eliminate citizen-initiated warrants.
- Eliminate criminalization of civil matters and allow cheaper, quicker civil remedies.

Panel: The Criminal Record & Collateral Consequences

This panel was moderated by John Rubin, Albert Coates Professor, UNC School of Government. Panelists included:

- Rebecca Vallas, Vice President, Poverty, Center for American Progress
- Marc Levin, Vice President, Criminal Justice, Texas Public Policy Foundation and Right on Crime
- C. Daniel Bowes, Senior Attorney, North Carolina Justice Center
- Lorrin Freeman, District Attorney, Prosecutorial District 10

Asked about the problems associated with criminal records and collateral consequences, Levin noted that one in five adults have a criminal record and those records create barriers to re-entry including barriers to employment, housing and access to student loans. He stated that excessive collateral consequences undermine public safety, asserting that employment is the key to reducing recidivism. He also pointed to the collateral consequence of loss of occupational licenses, explaining that one in three occupations require licenses and that licensing boards have a vested interest in keeping people out of the profession. Levin noted studies showing that after seven years of being free of crime, those with a criminal record are no more likely to commit a crime than people without a record. He suggested that there is no rational justification for a lifelong scarlet letter associated with a criminal conviction. Levin conceded that some barriers make sense, such as prohibiting a child sex offender from working in a day care center. But, he suggested, we have gone too far with respect to the number of collateral consequences that attach to crimes. Noting that barriers to re-entry can be significant in the first several years after a conviction, Levin asserted that we are giving too many people criminal records and should make greater use of practices such as police diversion (LEAD programs) and opportunities for people who are not diverted to avoid a criminal record if they successfully complete probation. He added that another consideration is protecting employers and landlords from lawsuits for hiring or renting to someone with a criminal record. Vallas asserted that a criminal record is both a cause and a consequence of poverty. It is a cause of poverty, she explained, because it creates obstacles to employment, education, and building credit. She noted a study finding that the poverty rate would have dropped by 20% between 1980 and 2004 but for mass incarceration. Vallas explained that a criminal record is a consequence of poverty because of the growing criminalization of poverty and homelessness. She noted research suggesting that homeless people are eleven times more likely to experience incarceration than the general public. Vallas asserted that having a criminal record can be a life sentence to poverty no matter how old or how minor the offense. She noted that nine out of ten employers conduct a criminal background check on prospective employees, that 60% of formerly incarcerated persons remain unemployed for one year after release, and that a history of incarceration is associated with 40% less pay per year. Freeman noted that if we want to prevent cycling people back into the criminal justice system, they need to be able to find employment and housing. She suggested that criminal records and collateral consequences are significant problems, and that when thinking about advocacy related to pleas and sentences, we tend to focus on the individual case and do not think enough about the larger collateral consequences. Bowes recounted his personal experience of having criminal justice involved parents who lost custody of him and his sister. He noted that his parents encountered multiple barriers re-entering society, and that his father was unable to obtain an

occupational license. Bowes noted that checkboxes on employment forms asking about criminal justice involvement do not make an individualized assessment about, for example, the age or nature of the offense, and that often a criminal record is an automatic exclusion from employment opportunities. Bowes asserted that when we isolate people from opportunity, we create a revolving door to the criminal justice system, with consequences not just on defendants but also on public safety and families. He further asserted that many defendants do not know how or have the resources to clear their records after the fact. He further noted the disproportionate impact on people of color. Picking up on the issue of impact on families, Vallas noted that almost half of the children in the United States have at least one parent with a criminal record.

Turning to potential solutions, Vallas advocated for a Clean Slate initiative providing for automatic record clearance—without a petition—after an individual remains crime free for a certain period of time. She noted that Pennsylvania and Utah recently adopted Clean Slate legislation and dozens of states are considering similar legislation. She added that reforms should take into account the substantial number of incarcerated persons who have disabilities, and face double discrimination when they leave prison. Vallas also advocated for an end to criminalization of poverty and homelessness and for involvement by impacted people in crafting solutions. Bowes reiterated the need for impacted persons to be involved in the discussion. Bowes said that he is interested in reforms to occupational licensing, removing automatic exclusions and establishing certain criteria that licensing boards must consider. He noted that we have made strides with respect to expunction reform, and can build on that success. Bowes noted that other areas for reform include expansion of Certificates of Relief and shielding employers from liability if they hire individuals with criminal records. Bowes supports the efforts of local re-entry councils that work with defendants, helping with employment and housing. Finally, Bowes advocated for investment of resources in community-based services. With respect to the importance of automatic record clearance that is a part of the Clean Slate initiative, Levin noted a study finding that only 5% of eligible people take advantage of traditional expunction procedures. He further noted that people need to understand the full collateral consequences that attach to a conviction, explaining that sometimes people choose jail time instead of a deferred prosecution, not realizing that the deferred prosecution would not have resulted in a criminal record. Levin noted the problem of inaccurate criminal records and the option of providing a civil cause of action against private agencies that use inaccurate records. He also noted the use of pardons and commutations as a means of granting relief in appropriate cases. Levin suggested that consequences with respect to occupational licenses need to be directly related to the criminal conduct at issue. Freeman supports consideration of a Clean Slate initiative. She stated that defendants need to be better informed about collateral consequences and that having robust deferral programs is important. With respect to those programs, however, she noted that many counties lack funds for needed mental health and substance use services.

On the question of opposition to reform, Freeman noted that prosecutors and law enforcement leaders favor approaches that seal records but make them available to prosecutors and law enforcement officers. Levin agreed that prosecutors tend to prefer sealing versus expunction. He further noted that the media has been one of the main groups opposing reform. Vallas noted that there was widespread support for Clean Slate in Pennsylvania from, for example, unions, the Chamber of Commerce, impacted people, law enforcement, and conservative and progressive think tanks. Bowes suggested that there is similar bipartisan support in North Carolina.

During the question and comment period a participant stated that this issue harms primarily people of color and impacts undocumented persons. Bowes noted that the United States Supreme Court *Padilla* decision requires certain advisements with respect to immigration consequences but acknowledged

issues, including the fact that a deferred prosecution can require an admission to criminal conduct which itself can be enough for deportation, complicating the expunction process. Another participant asked about information available on the Internet and practices by private websites requiring individuals to pay money to remove that information, including mug shot pictures. Levin suggested that these practices constitute blackmail. He noted that Texas enacted a statute prohibiting payment in exchange for removing this information from the web but it is very difficult to enforce these laws against Internet companies which may not be based in the United States. Vallas agreed that we need to crack down on these practices but asserted that they do not undercut the value of a Clean Slate initiative, explaining that most background checks by employers and landlords search criminal records, as opposed to the Internet more generally. In response to a follow-up question about enforcing laws against companies that are not operating within the state, Levin suggested that this may be an issue for federal law. Another attendee asked how we could increase use of Certificates of Relief. Levin noted that individuals could automatically be issued a Certificate of Relief upon being discharged from probation. Bowes suggested that one problem with Certificates of Relief is that employers do not fully understand them. A final attendee suggested a focus on racial equity training.

After the question and comment period, Summit participants submitted live, anonymous responses using handheld receivers to questions. The first question asked them to assess the importance of the issue. Specifically, it asked:

The issue of criminal records and collateral consequences is important for North Carolina; we need to work on it.

96.99% agreed with this statement; 1.5% disagreed with it; and 1.5% were undecided. Attendees then were asked to provide live, and anonymous feedback on consensus reform proposals from the panelists. Choices for each question included: Support; Support, with caveats; Oppose; Undecided. The questions and results were as follows:

1. Automatic expunction/sealing of records in cases that are dismissed/result in acquittal.
95.07% supported this proposal, with 30.28% supporting it with caveats; 4.93% opposed this proposal; and 0% were undecided.
2. Automatic expunction/sealing of conviction records after an appropriate waiting period.
89.55% supported this proposal, with 52.24% supporting it with caveats; 8.96% opposed this proposal; and 1.49% were undecided.
3. Simplified, uniform criteria and procedures for expunction/sealing.
98.53% supported this proposal, with 9.56% supporting it with caveats; 0.74% opposed this proposal; and 0.74% were undecided

In addition to this feedback, Summit participants were encouraged to include other comments and proposals for reform on their written Summit evaluation forms. Reform proposals offered in those comments included:

- Address the issue through front-end solutions, such as addressing overcriminalization.
- Provide greater opportunities supporting re-entry during probation.
- Address the sex offender registry and satellite-based monitoring.
- Provide relief for individuals who will not benefit from North Carolina's Raise the Age legislation.

Appendix A: Polling Results

Session Name: NC Criminal Justice 3.15

Date Created: 3/15/2019 8:02:46 AM

Active Participants: 226 of 226

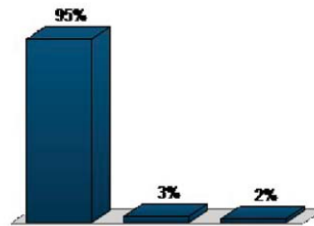
Average Score: 0.00%

Questions: 18

Results by Question

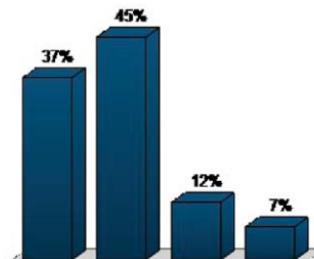
1. Bail reform is an important issue for NC; we need to work on it. (Multiple Choice)

	Responses	
	Percent	Count
Agree	95.15%	157
Disagree	3.03%	5
Undecided	1.82%	3
Totals	100%	165



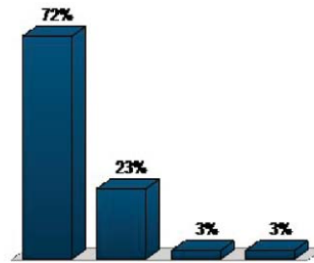
2. Adopt a carefully limited constitutional preventative detention procedure for the most dangerous defendants who cannot safely be released pretrial. (Multiple Choice)

	Responses	
	Percent	Count
Support	36.67%	66
Support, with caveats	45%	81
Oppose	11.67%	21
Undecided	6.67%	12
Totals	100%	180



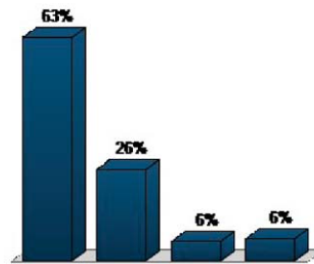
3. Revise local policies to honor the existing statutory preference for nonfinancial conditions. (Multiple Choice)

	Responses	
	Percent	Count
Support	71.98%	131
Support, with caveats	22.53%	41
Oppose	2.75%	5
Undecided	2.75%	5
Totals	100%	182



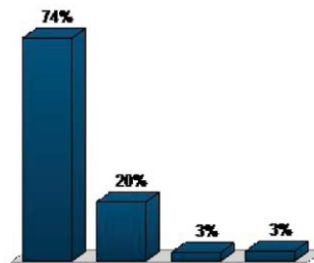
4. Eliminate wealth-based detentions by requiring ability to pay determinations before imposition of financial conditions. (Multiple Choice)

	Responses	
	Percent	Count
Support	62.78%	113
Support, with caveats	25.56%	46
Oppose	5.56%	10
Undecided	6.11%	11
Totals	100%	180



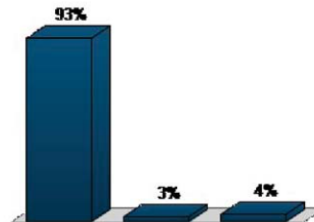
5. Reinvest money spent on unnecessary pretrial incarcerations in appropriate pretrial supervision and services. (Multiple Choice)

	Responses	
	Percent	Count
Support	74.46%	137
Support, with caveats	19.57%	36
Oppose	2.72%	5
Undecided	3.26%	6
Totals	100%	184



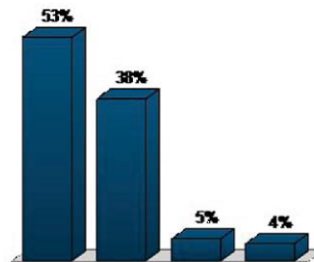
6. The issue of criminal fines & fees is an important issue for NC; we need to work on it. (Multiple Choice)

	Responses	
	Percent	Count
Agree	93.3%	167
Disagree	2.79%	5
Undecided	3.91%	7
Totals	100%	179



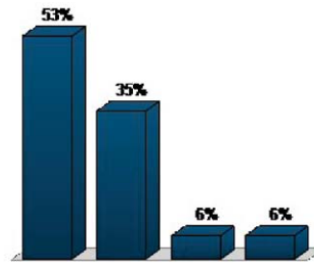
7. Require “right-sizing” of all obligations through up-front ability to pay determinations. (Multiple Choice)

	Responses	
	Percent	Count
Support	52.84%	93
Support, with caveats	38.07%	67
Oppose	5.11%	9
Undecided	3.98%	7
Totals	100%	176



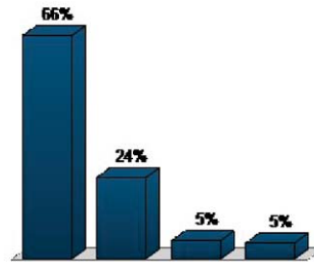
8. Allow for alternatives for those who cannot pay e.g., community service (Multiple Choice)

	Responses	
	Percent	Count
Support	53.37%	95
Support, with caveats	35.39%	63
Oppose	5.62%	10
Undecided	5.62%	10
Totals	100%	178



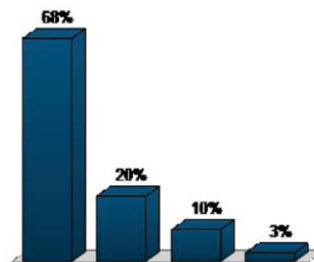
9. Limit use of arrest as a response to nonpayment. (Multiple Choice)

	Responses	
	Percent	Count
Support	65.76%	121
Support, with caveats	23.91%	44
Oppose	5.43%	10
Undecided	4.89%	9
Totals	100%	184



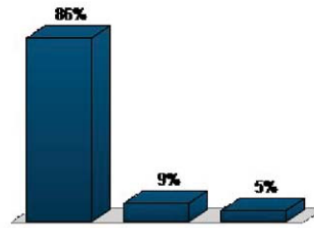
10. Eliminate revocation of driver's license for non-payment. (Multiple Choice)

	Responses	
	Percent	Count
Support	67.74%	126
Support, with caveats	19.89%	37
Oppose	9.68%	18
Undecided	2.69%	5
Totals	100%	186



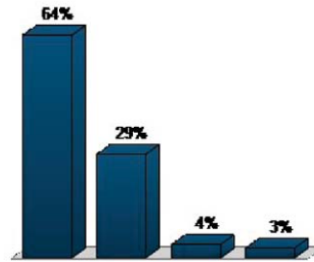
11. Overcriminalization is an important issue for NC; we need to work on it. (Multiple Choice)

	Responses	
	Percent	Count
Agree	86.29%	151
Disagree	8.57%	15
Undecided	5.14%	9
Totals	100%	175



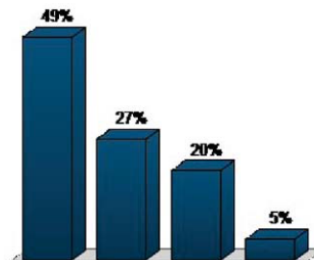
12. Commission-supported legislative purging effort. (Multiple Choice)

	Responses	
	Percent	Count
Support	63.89%	115
Support, with caveats	29.44%	53
Oppose	3.89%	7
Undecided	2.78%	5
Totals	100%	180



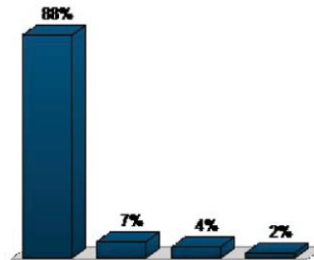
13. Repeal code provision allowing local governments & administrative boards & bodies to create crimes. (Multiple Choice)

	Responses	
	Percent	Count
Support	49.13%	85
Support, with caveats	26.59%	46
Oppose	19.65%	34
Undecided	4.62%	8
Totals	100%	173



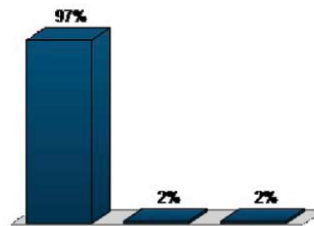
14. For bills proposing new crimes, more information to legislators earlier about (1) need for the law; (2) overlap with existing crimes; and (3) enforcement costs. (Multiple Choice)

	Responses	
	Percent	Count
Support	87.57%	148
Support, with caveats	6.51%	11
Oppose	4.14%	7
Undecided	1.78%	3
Totals	100%	169



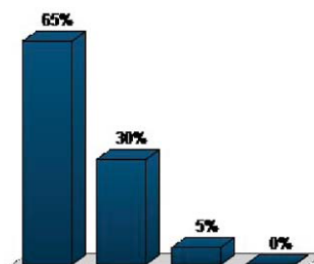
15. The issue of criminal records & collateral consequences is important for NC; we need to work on it. (Multiple Choice)

	Responses	
	Percent	Count
Agree	96.99%	129
Disagree	1.5%	2
Undecided	1.5%	2
Totals	100%	133



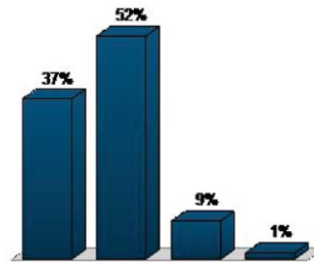
16. Automatic expunction/sealing of records in cases that are dismissed/result in acquittal. (Multiple Choice)

	Responses	
	Percent	Count
Support	64.79%	92
Support, with caveats	30.28%	43
Oppose	4.93%	7
Undecided	0%	0
Totals	100%	142



17. Automatic expunction/sealing of conviction records after an appropriate waiting period. (Multiple Choice)

	Responses	
	Percent	Count
Support	37.31%	50
Support, with caveats	52.24%	70
Oppose	8.96%	12
Undecided	1.49%	2
Totals	100%	134



18. Simplified, uniform criteria and procedures for expunction/sealing. (Multiple Choice)

	Responses	
	Percent	Count
Support	88.97%	121
Support, with caveats	9.56%	13
Oppose	0.74%	1
Undecided	0.74%	1
Totals	100%	136

