Revising Local Bail Policy: Issues to Consider

Jessica Smith, W.R. Kenan Jr. Distinguished Professor, UNC School of Government &
Director, Criminal Justice Innovation Lab
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A number of people have asked for my recommendations regarding issues to be considered when revising local bail policy. After reviewing all of the local bail policies in effect in North Carolina, I offer the following thoughts. As always, I welcome your feedback on how this content can be refined and improved.

1. Put the Policy in Writing.

G.S. 15A-535 provides that the senior resident superior court judge "must devise and issue recommended policies to be followed . . . in determining whether, and upon what conditions, a defendant may be released before trial." If your jurisdiction does not have a written local bail policy, I recommend that you correct that.

2. Liberty is the Norm.

In *United States v. Salerno*,[1] the Supreme Court instructed: "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." To ensure that this core principle does not get lost in local bail practice and culture, you may wish to consider including it in the local bail policy. None of the policies that I reviewed included this core principle.

3. Bail Can't Be Used to Punish.

Constitutionally, bail cannot be used to punish.[2] Although less than 20 of North Carolina's local bail policies include this admonition, I recommend that the local bail policy state it expressly.

4. Purposes of Money Bail.

Not all local policies state the purposes of money bail. Those purposes generally are understood to include reasonably assuring the defendant's appearance in court, public safety, and integrity of the judicial process. Thus, G.S. 15A-534(b) provides that conditions other than money bond must be imposed unless the judicial official determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. It may be helpful to include these purposes as a corollary to the principle that bail may not be used to punish.

5. Statutory Preference for Written Promise, Custody Release or Unsecured Bond.

North Carolina law requires the imposition of a written promise, custody release, or unsecured bond unless the judicial official determines that such release will not reasonably assure the appearance of the defendant; will pose a danger of injury to any person; or is likely to result in the destruction of evidence, subornation of perjury, or intimidation of potential witnesses.[3] This provision incorporates the core

[1] 481 U.S. 739, 755 (1987).
[2] *See Salerno,* 481 U.S. at 746 (federal bail act passed constitutional muster in part because its purpose was held to be regulatory not punitive); *see also* Stack v. Boyle, 342 U.S. 1, 4 (1951) ("This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." (internal citation omitted)).
[3] G.S. 15A-534(b).

principle that liberty is the norm and a notion that defendants should be released on the least restrictive conditions.[4] Most North Carolina local policies include this statutory language; some also include language expressing a preference for least restrictive conditions. At a minimum, including this statutory language is recommended.

6. Require Reasons for Imposing Secured Bonds.

G.S. 15A-534(b) provides that when a secured bond (with or without electronic house arrest) is imposed 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." G.S. 15A-535(a) in turn provides that the senior resident may include in the local bail policy, or separate order, a requirement that a judicial official who imposes a secured bond must record the reasons for doing so in writing. Requiring that reasons be given for imposing a secured bond may help to ensure fidelity to the relevant constitutional and statutory rules.

7. Revisit the Bond Table.

Most local policies include a bond table, and a number of those tables recommend money bond amounts for local ordinance violations and other Class 3 misdemeanors. As such, these tables allow for the imposition of money bonds and create the potential for wealth-based detentions for individuals who could not receive any active time even if convicted of their offenses. Notwithstanding the general prevalence of bond tables, no evidence exists supporting their effectiveness in assessing or managing pretrial risk. The bond table simply looks at one factor—the punishment level of the charged offense—when setting bail. Setting bail in this manner is inconsistent with state law, which requires the judicial official to take into account a broad range of factors when setting bail including the nature and circumstances of the offense charged; the weight of the evidence; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated such that he or she would be endangered by being released without supervision; the length of the defendant's residence in the community; the defendant's record of conviction; the defendant's history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.[5] Additionally, bond tables do not account for ability to pay (discussed immediately below) and national best practices recommend against their use.[6] For these and other reasons policymakers are revisiting the role of bond tables in pretrial release determinations. Alternatives include empirical risk assessment tools and structured decision-making tools. For a primer on pretrial risk assessment tools, see the publication noted in the accompanying footnote;[7] for an

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[4] *See* AMER. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE, Commentary to Standard 10-1.2(a) (3d ed. 2007) ("This Standard's presumption that defendants should be released under the least restrictive conditions necessary to provide reasonable assurance they will not flee or present a danger is tied closely to the presumption favoring release generally."), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.pdf.

[5] G.S. 15A-534(c).

[6] AMER. BAR ASS'N, 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.

[7] SARAH L. DESMARAIS & EVAN M. LOWDER, PRETRIAL RISK ASSESSMENT TOOLS: A PRIMER FOR JUDGES, PROSECUTORS, AND DEFENSE ATTORNEYS (2019), http://www.safetyandjusticechallenge.org/wp-content/uploads/2019/02/Pretrial-Risk-Assessment-Primer-February-2019.pdf.

examples of pretrial structured decision-making tools currently in use in North Carolina, see the reports cited in the accompanying footnote.[8]

8. Ability to Pay Determinations for Appearance Bonds.

When a secured appearance bond is set, it may unintentionally result in detention if the defendant's ability to pay is not considered. For example, while a business executive might easily be able to pay a $2,000 appearance bond; the same may not be true for someone who works part-time at a local fast food restaurant. A bail system's failure to account for ability to pay may open it to a constitutional challenge.[9] Thus, when setting secured bonds, judicial officials are advised to consider whether the defendant has an ability to pay without causing undue hardship in light of the defendant's other financial obligations, such as housing, food, and child support. Various jurisdictions are working on tools to assist in this determination. Judicial officials may find it helpful to review information provided in the Affidavit of Indigency.[10] Also helpful may be information about federal poverty guidelines and IRS standard estimated monthly living expenses, information contained in my colleague's monetary obligations benchcard.[11] Additionally jurisdictions may wish to explore application of presumptions regarding ability to pay, such as a presumption that a person is unable to pay bond if the person is homeless or a juvenile. Finally, it may be helpful to address whether the ability to pay inquiry is made as to the full amount of the bond or a percentage of the bond paid to a bondsman. When the total bond is set in an amount that a person can and does pay, those funds are returned if the person appears in court as required; a fee paid to a bondsman, however, is not returned if the person appears in court as required, the charges are dismissed or the person is acquitted. These considerations may inform policy on this issue.

9. Constitutionally Compliant Procedures for Detention Bonds.

State law allows for pretrial detention for a limited set of defendants.[12] As I discuss in the paper cited in the accompanying footnote,[13] it is unclear whether North Carolina law allows for the use of money bonds to preventatively detain pretrial other classes of defendants. It is however clear that if a money bond detains pretrial, the defendant is entitled to appropriate procedural due process. In the paper

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[8] JESSICA SMITH, NC JUDICIAL DISTRICT 2 BAIL REFORM PROJECT (2019) (structured decision making tool included in this report as Appendix A), https://cjil.sog.unc.edu/files/2020/01/Project-Report-JD2.pdf; JESSICA SMITH, NC JUDICIAL DISTRICT 21 BAIL REFORM PROJECT (2019) (structured decision making tool included in this report as Appendix A), https://cjil.sog.unc.edu/files/2020/01/Project-Report-JD-21.pdf; JESSICA SMITH, JUDICIAL DISTRICT 30B PRETRIAL JUSTICE PILOT PROJECT (2018) (structured decision making tool included in this report as Appendix A), https://cjil.sog.unc.edu/files/2019/02/Judicial-District-30B-Report.pdf.

[9] *See, e.g.,* ODonnell v. Harris County, 892 F.3d 147, 159, 161 (2018) (county's bail procedures violated due process in part because of lack of consideration to ability to pay; county's bail procedures violated equal protection where financial conditions were based on predetermined amounts beyond a person's ability to pay).

[10] North Carolina Administrative Office of the Courts, AOC-CR-226 (2013) (Affidavit of Indigency form produced by NC AOC), https://www.nccourts.gov/assets/documents/forms/cr226-en.pdf?e1Vg5Goi1xRI3OAVkbvPBdXUyDuK.yrV.

[11] JAMES M. MARKHAM, MONETARY OBLIGATIONS IN NORTH CAROLINA CRIMINAL CASES (2018), https://nccriminallaw.sog.unc.edu/wp-content/uploads/2018/08/2018-07-31-20180094-Monetary-Obligations-Card%E2%80%93for-proofing.pdf.

[12] *See, e.g.,* G.S. 15A-534.1 (in the first 48 hours after arrest, only a judge may set conditions of a release for defendants charged with certain domestic violence offenses); G.S. 15A-534.2 (limited pretrial detention for certain defendants charged with impaired driving).

[13] JESSICA SMITH, PRETRIAL PREVENTATIVE DETENTION IN NORTH CAROLINA (2019), https://cjil.sog.unc.edu/files/2019/03/Preventative-Detention-3.21.2019.pdf.

noted above, I outline the key features of a constitutionally compliant detention bond procedure, discussing procedural protections such as the right to counsel and to put on evidence.

10. Prompt Judicial Review of Bail Conditions.

State law requires a first appearance for in-custody felony defendants within 96 hours of being taken into custody or at the first regular session of the district court in the county, whichever occurs first.[14] Because state law does not require first appearances for in-custody misdemeanor defendants, these defendants may sit in jail for weeks or more until their first court date. This can lead to scenarios where misdemeanor defendants 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, some research suggests that pretrial detention of low-level defendants has negative public safety consequences and negative case outcomes for defendants.[15] These reasons counsel in favor of first appearances for in-custody misdemeanor defendants, 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. Some North Carolina jurisdictions already have added new first appearances for misdemeanor defendants as part of their bail reform efforts.[16] Note that whether or not prompt judicial review at a hearing where the defendant is represented by counsel is *constitutionally required* is an issue in national bail litigation, and a consent decree resolving one major federal bail lawsuit requires a hearing within 48 hours at which the defendant is represented by counsel.[17]

11. Release to Pretrial Services Programs.

G.S. 15A-535(b) provides that in any county where there is a pretrial release program, the senior resident superior court judge may, after consulting with the chief district court judge, order that defendants accepted by such a program for supervision shall, with their consent, be released by judicial officials to supervision by that program, and subject to its rules and regulations, in lieu of release on a written promise, custody release or unsecured bond. If the senior resident intends for release to that program to be a pretrial release option, authorizing such a release in the local bail policy makes sense. Where release to a pretrial release program is an option, it may be worthwhile to consider the interplay between supervision by that program and a money bond secured by a bondsman. When a person participates in a pretrial release program, county resources are devoted to supervision and support of that person, with for example, court date reminders, in-person or phone check-ins, criminal records checks, etc. In this scenario, the pretrial release program is providing all—and possibly more—supervision and support services provided by the bondsman. Of course, judicial officials do not have the

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[14] G.S. 15A-601(c).

[15] *See, e.g.*, Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711 (2017), https://www.stanfordlawreview.org/print/article/the-downstream-consequences-of-misdemeanor-pretrial-detention/.

[16] *See, e.g.,* Jessica SMITH, JUDICIAL DISTRICT 30B PRETRIAL JUSTICE PILOT PROJECT 5 (2018) (noting that one reform adopted in the district was first appearance proceedings for all in-custody defendants), https://cjil.sog.unc.edu/files/2019/02/Judicial-District-30B-Report.pdf; JESSICA SMITH, NC JUDICIAL DISTRICT 2 BAIL REFORM PROJECT 3-4 (2019) (adopted reforms include requiring first appearances for in-custody misdemeanor defendants), https://cjil.sog.unc.edu/files/2020/01/Project-Report-JD2.pdf.

[17] Consent Decree, ODonnell v. Harris County, 16-cv-01414 at 18-19 (Nov. 21, 2019) (Bail Policy Rule 9.8 requires that misdemeanor defendants who are not released on a personal bond after arrest must be afforded a bail hearing no later than 48 hours after arrest; Bail Policy Rule 9.11 provides that at the bail hearing, various procedural protections are required including that arrestees are entitled to be represented by the public defender or other court-appointed counsel).

authority to create a pretrial services program in the county. Revisions to the bail policy, however, may present opportunities for discussion with other local leaders of whether or not the jurisdiction could benefit from such a program.

12. Regular Review of Jail Roll.

In jurisdictions that are served by a Public Defender's office, that office already may be regularly monitoring the jail population to ensure that all defendants receive timely appointment of counsel and judicial review of conditions. If that is not occurring, encouraging that practice is advised. In jurisdictions that are not served by a Public Defender's office, it may be helpful to assign this type of review to an appropriate official. In some jurisdictions, a local judge regularly receives and reviews the jail roll. In others this is done by a "jail navigator," who brings cases requiring review to the attention of the local judge or other official. Formalizing this process, including specifying the regularity of the review and the procedure to be followed to ensure that individuals are timely put on court calendars, may be helpful. Related to this issue, note that G.S. 7A-453 requires certain reporting by local jails. Specifically, in counties designated by the Office of Indigent Defense Services (IDS), the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody must inform IDS's designee of that person's status; in counties that have not been so designated by IDS, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody must so inform the clerk of superior court.[18] This required reporting procedure may be helpful in identifying individuals who should be calendared for a court appearance.

13. Early Involvement of Counsel.

Early involvement of counsel at pretrial proceedings will better inform pretrial decisions and protect defendants' rights in light of the significant consequences associated with pretrial detention.[19] Early involvement of counsel is recommended by national standards[20] and has been specifically recommended for North Carolina.[21] Implementation of early involvement of counsel will be easier in jurisdictions that are served by a Public Defender's office than those that have no Public Defender. But even in Public Defender jurisdictions, workload and logistical issues will need to be considered. Jurisdictions that are not served by a Public Defender may consider reaching out to North Carolina Indigent Defense Services, which has expressed a willingness to provide resources for contract first appearance counsel. For details on how that partnership may be implemented, see the report noted in the footnote, discussing how such a partnership was implemented in North Carolina's Judicial District 30B.[22]

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[18] G.S. 7A-453(a), (b).

[19] *See, e.g.,* Heaton et al., *supra* note 15.

[20] AMER. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION AND DEFENSE FUNCTION, Defense Function Standard 4-2.3 (4th ed. 2017) ("A defense counsel should be made available in person to a criminally-accused person for consultation at or before any appearance before a judicial officer, including the first appearance."), https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/.

[21] NORTH CAROLINA COMMISSION ON THE ADMINISTRATION OF LAW & JUSTICE, FINAL REPORT MARCH 2017: RECOMMENDATIONS FOR STRENGTHENING THE UNIFIED COURT SYSTEM OF NORTH CAROLINA, APPENDIX D: IMPROVING INDIGENT DEFENSE SERVICES, at 30 (2017), *available at* https://www.nccourts.gov/commissions/north-carolina-commission-on-the-administration-of-law-and-justice.

[22] Jessica SMITH, JUDICIAL DISTRICT 30B PRETRIAL JUSTICE PILOT PROJECT 6 (2018), https://cjil.sog.unc.edu/files/2019/02/Judicial-District-30B-Report.pdf.

14. Bond Modification Hearings

Timely detention bond hearings for defendants detailed pretrial[23] may obviate the need for many defense-requested bond modification hearings. However, changed circumstances after such a hearing may warrant review of bond. If there are issues regarding the timely calendaring of defense requests for bond modification hearings, it may be helpful to seek stakeholder input on this issue and address it in the local policy.

15. Summons in Lieu of Arrest.

In highest charge misdemeanor cases, judicial officials opt for a summons (over a warrant for arrest) in only 32.9% of cases statewide.[24] Although there is considerable variability across all 100 counties, only eight counties opt for a summons in lieu of a warrant in the majority of misdemeanor cases.[25] Because the majority of misdemeanor defendants arrested in North Carolina receive a secured bond,[26] an appropriate summons in lieu of arrest policy is one strategy that can be used to avoid unnecessary wealth-based detentions of individuals charged with low-level offenses. Specifically, jurisdictions may wish to consider policies to promote the increased use of summons in lieu of arrest for cases where a defendant would be released on non-financial conditions (written promise, custody release, unsecured bond) and does not require pretrial restrictions (e.g., no contact with the victim). Additionally, such policies are recommended by national standards[27] and give effect to the statutory direction that a warrant for arrest should issue when a person needs to be taken into custody[28] and statutory rules regarding citizen's warrants.[29]

16. Citation in Lieu of Arrest.

Promoting the increased use of citation in lieu of arrest is recommended by law enforcement and other groups.[30] Use of citations is widely embraced as a law enforcement tool nationally[31] and promoting the greater use of citations has been adopted as a criminal justice strategy elsewhere.[32] Greater use of citations offers potential benefits, including increased efficiency for law enforcement. One report found that citations require 24.2 minutes to process versus arrests, which require 85.8 minutes; citations thus

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[23] *See* Constitutionally Compliant Procedures for Detention Bonds, *supra*.

[24] JESSICA SMITH & ROSS HATTON, USE OF SUMMONS V. ARREST IN NORTH CAROLINA MISDEMEANOR CASES: A COUNTY-LEVEL ANALYSIS 1 (2019), https://cjil.sog.unc.edu/files/2019/09/Summons-v.-Arrest-for-North-Carolina-Misd.-Cases-9.13.2019.pdf.

[25] *Id.* at 2.

[26] JESSICA SMITH, COUNTY-LEVEL BAIL CONDITIONS IN NORTH CAROLINA (2019), https://cjil.sog.unc.edu/files/2019/11/County-Level-Bail-Conditions-in-NC.pdf.

[27] AMER. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE, Standard 10-1.3 (3d ed. 2007), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.pdf.

[28] G.S. 15A-304(b)(1).

[29] G.S. 15A-304(b)(3).

[30] *See, e.g.*, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 43 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf; AMER. BAR ASS'N, ABA STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE, Standard 10-1.3 (3d ed. 2007), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.pdf.

[31] INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, CITATION IN LIEU OF ARREST: EXAMINING LAW ENFORCEMENT'S USE OF CITATION ACROSS THE UNITED STATES (2016), https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Citation%20Final%20Report%202016.pdf.

[32] *See, e.g.*, CHARLESTON COUNTY CRIMINAL JUSTICE COORDINATING COUNCIL (South Carolina), ANNUAL REPORT 2017 (discussing increased use of "cite and release" practices in that jurisdiction), https://cjcc.charlestoncounty.org/files/2017annualreport.pdf.

offer a time savings of just over an hour per incident.[33] Promoting the increased use of citations in lieu of arrests also can help reduce unnecessary pretrial detentions of low-risk defendants and associated costs, unfairness, and negative public safety outcomes. An arrest triggers an initial appearance and imposition of conditions of pretrial release. Because secured bonds are the most common condition imposed in most North Carolina jurisdictions,[34] the decision to make an arrest versus issue a citation often results in imposition of a secured bond and associated wealth-based detentions described above. Thus, better decisions regarding whether to issue a citation versus making an arrest may promote officer efficiency, public safety, and efficient use of taxpayer funds.[35]

North Carolina's law enforcement officers already use citations in the vast majority of highest charge misdemeanor cases statewide.[36] And at the county level, citations are used in every county for the majority of misdemeanors cases.[37] However, because of the vast number of misdemeanor cases charged annually in the state,[38] even a small increase in the use of citations may have significant impacts. Of course, judicial officials do not have the authority to create policy for law enforcement units operating within their districts. Revisions to the bail policy, however, may present opportunities for discussion of this issue and the local policy can encourage the use of citation in lieu of arrest in appropriate cases.

17. Guidance on Issuing OFAs after an FTA.

Under state law, when conditions of pretrial release are being imposed on a defendant who has failed to appear (FTA), the judicial official must, at a minimum, impose the conditions of pretrial release that are recommended in the judge's order for the arrest.[39] If no conditions are recommended in the order for arrest (OFA), the judicial official must impose a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least $1,000.[40] Given these requirements for conditions after an arrest following a FTA, some jurisdictions are rethinking local policy about issuance of OFAs after FTAs including: providing that an OFA may not be issued when a defendant only is minutes late for court; affording defendants an opportunity to "cure" a FTA before an OFA is issued; and encouraging judges to specify conditions of release in the OFA when imposition of a mandatory secured bond is not desired. "Curing" a FTA refers to procedures implemented in some jurisdictions providing one-time relief from a FTA if the individual appears within a specified period or at a specified proceeding to reschedule the case. One scenario where a mandatory bond may be not be desired is the non-appearance by an individual who is homeless on a Class 3 misdemeanor begging charge for which he or she previously was released on a written promise; in this scenario, the judge may wish to pre-set conditions to avoid having the person detained pretrial on a mandatory $1,000 secured bond for a charge that cannot result in incarceration upon conviction.

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[33] INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, *supra* note 31, at 3.

[34] SMITH, *supra* note 26.

[35] National Conference of State Legislatures, *Citation in Lieu of Arrest* (Mar. 18, 2019) ("States can use citations to reduce jail populations and provide local cost savings. Citations divert lower risk people from detention, reserving limited space and resources for more dangerous people. By providing an alternative to pretrial detention and release processes for certain defendants, citation in lieu of arrest can be considered a component of state pretrial policies"), http://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx.

[36] JESSICA SMITH & ROSS HATTON, CITATION VERSUS ARREST BY NORTH CAROLINA LAW ENFORCEMENT OFFICERS: A COUNTY-LEVEL ANALYSIS (2019), https://cjil.sog.unc.edu/files/2019/09/Prevalence-of-Citation-Use-in-North-Carolina-2.pdf.

[37] *Id.*

[38] *Id.* at Spreadsheet, Tab 2 (showing that in 2018, 945,663 citation were issued statewide).

[39] G.S. 15A-534(d1).

[40] *Id.*

18. Encouraging Use of NC AOC Court Date Reminder System.

In 2018 the North Carolina Administrative Office of the Courts launched a new court date notification system.[41] The service allows individuals to subscribe to criminal court date notifications and reminders via email or SMS/text messages. Additionally, any judicial branch employee can initiate the sign-up process for a defendant. Like reminders from dentists, hair salons, and doctors, court date reminder systems have been shown to reduce FTAs. Notwithstanding the availability of this service, many judicial branch employees are not aware of it and relatively few defendants have signed up for it. Thus, it may be helpful for local policy to encourage that judicial branch employees offer to initiate the sign up process for defendants at every contact, beginning with the initial appearance before the magistrate. It also may be helpful to engage law enforcement leaders in a discussion about a policy promoting distribution of NC AOC court date reminder system information cards when citations are issued.

19. Getting the Terminology Right.

I recommend that the local policy be called a "bail" policy as opposed to a "bond" policy. In North Carolina, a bond—secured or unsecured—is only one of several permissible conditions of release. I worry that calling the policy a bond policy may inadvertently overemphasize the appropriate role of bonds in the pretrial release process.[42]

I also think it is helpful for the local bail policy to expressly distinguish between appearance bonds and detention bonds. Setting aside the issue of whether or not a secured bond is effective at incentivizing appearance in court,[43] if a secured bond is imposed for this purpose, it is an appearance bond and ability to pay should be considered.[44] And setting aside the issue of whether or not secured detention bonds are permissible in North Carolina, if a secured bond results in detention, the defendant should be afforded the appropriate procedural protections noted above.[45] Using the local bail policy to emphasize these two different purposes of a secured bond thus is recommended.

20. Listing of State Statutes.

Of course, the state and federal constitutions are binding on the administration of the local bail system. So are state statutes. The North Carolina General Statutes contain a number of mandatory and special procedures, such as the 48-hour domestic violence rule[46] and impaired driving holds.[47] The policy should include a list of those specific statutes. I recommend against reproducing them in their entirety, mainly to avoid having the policy become outdated as soon as one of those provisions is amended. Resources to consult regarding special statutory rules are included in the footnote.[48]

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[41] North Carolina Administrative Office of the Courts, Press Release, Court Date Notifications and Reminders for Criminal Cases Now Available via Text and Email (Oct. 19, 2018), https://www.nccourts.gov/news/tag/press-release/court-date-notifications-and-reminders-for-criminal-cases-now-available-via-text-and-email.

[42] *See* Statutory Preference for Written Promise, Custody Release or Unsecured Bond, *supra.*

[43] *See generally,* ODonnell v. Harris County, 892 F.3d 147, 154 (5th Cir. 2018) (noting that the district court reviewed "reams of empirical data" suggesting that "release on secured financial conditions does not assure better rates of appearance or of law-abiding conduct before trial compared to release on unsecured bonds or nonfinancial conditions of supervision").

[44] *See* Ability to Pay Determinations for Appearance Bonds, *supra*.

[45] *See* Constitutionally Compliant Procedures for Detention Bonds, *supra*.

[46] G.S. 15A-534.1.

[47] G.S. 15A-534.2.

[48] For a discussion of state pretrial release law, see JESSICA SMITH, CRIMINAL PROCEEDINGS BEFORE NORTH CAROLINA MAGISTRATES (2014); Jessica Smith, *Pretrial Release*, *in* NORTH CAROLINA SUPERIOR COURT JUDGES' BENCHBOOK (2015), https://benchbook.sog.unc.edu/criminal/pretrial-release. For summaries of recent legislation that may have

21. Data Collection & Reporting.

Leaders in many jurisdictions do not have core information about the functioning of their criminal justice systems. Through my Criminal Justice Innovation Lab, I am seeking to collect and report on some of those metrics, such as county-level rates of imposition of secured bonds and use of citations and summons in lieu of arrest. There may be other metrics—such as non-appearance rates—that are important to your criminal justice stakeholders. Identifying those metrics and putting in place procedures to capture and report on the relevant data can be part of your local bail policy.

22. Training for Local Officials.

Whenever new procedures are adopted in the local bail policy, it may be helpful to require training and implement procedures for quality control and coaching, as needed, to ensure successful implementation.

23. Schedule & Procedure for Review of Policy.

Some local bail policies are decades old, and some of those older policies do not reflect current law. For these and other reasons, I recommend that the local policy include a regular schedule for its review. State law requires that the senior resident adopt the policy in consultation with the chief district court judge.[49] The senior resident, however, may find it helpful to consult with a broader range of stakeholders about the policy. Whatever is decided, it may be helpful to include the details of that consultation and review procedure in the policy itself.

impacted these rules, see UNC School of Government, Criminal Law in North Carolina, *NC Legislative Summaries*, https://www.sog.unc.edu/resource-series/nc-legislative-summaries (last visited Jan. 3, 2020).

[49] G.S. 15A-535(a).