



# Pretrial Reform in Orange County, North Carolina

## Supplemental Report

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# Background & This Report

In October 2020 and January 2021, criminal justice system stakeholders in Orange County, North Carolina implemented two bail reform initiatives:

- a structured decision-making tool for magistrates, and
- a judicial process for responding to non-appearances.

The Criminal Justice Innovation Lab has been executing an evaluation of the impact of these initiatives. We issued our last report in May 2022. This supplemental report presents updated and additional findings.<sup>1</sup>

For additional background on the project and descriptions of the reform initiatives, please see our May 2022 evaluation report [here](#). This report has a separate Methodological Appendix, with detail on data collection, analytic methodology, and results. That appendix is posted [here](#).

We presented a draft of this report to stakeholders at a December 2022 meeting. This report includes their feedback. Some data in this report reflect small changes from that draft because of technical corrections to our data analysis.


## Findings

### Magistrate Decision-Making – New Process

In this section, we report on magistrate decision-making as recorded on 1,873 Magistrate Bail Explanation Forms. Our last report analyzed this metric for forms completed between October 1, 2020, and December 31, 2021. This report includes forms completed through July 1, 2022.

#### Process Metrics

To assess the quality of implementation at the magistrate level, we examined two process metrics: whether magistrates followed the tool’s recommendations; and whether they used the tool correctly. Examining the quality of implementation is important because it can help explain why



**WHAT IS STATISTICAL SIGNIFICANCE?**

When a finding is statistically significant it means it very likely is not due to chance. Put another way, when a finding is statistically significant, you can feel confident that it is reliable. For this reason, we focus on results that are statistically significant in this report.

<sup>1</sup> Additional contributors to this evaluation include Lab Research Director Alexander J. Cowell; Lab Graduate Research Assistants Chloe Donohoe and Meagan Pittman; Lab Research Specialist C. Ross Hatton; Lab Project Manager Hannah Turner; and Western Carolina University Research Assistant Alyson Umberger.

a reform may not have the anticipated effect. We found strong implementation at the magistrate level.

### *Following the Tool's Recommendations*

Magistrates followed the tool's recommendations in most cases. Specifically, they followed the tool's recommendations in 84.36% of cases while declining to do so only in 15.64% of cases.<sup>2</sup> These results suggest that magistrates accept the tool and find that it provides useful guidance in most cases.

**Magistrates followed the tool's recommendations in 84% of cases**



### *Using the Tool Correctly*

To assess whether magistrates used the tool correctly, we examined a random sample of 1,150 forms and assessed whether magistrates followed the tool's step-by-step decision-making process. We found that magistrates used the tool correctly in nearly every form in the sample (96.78%). Together with the finding that magistrates followed the tool's recommendation in most cases, this finding suggests the new process was successfully implemented by magistrates.

## **Outcome Metrics**

### *Conditions other than Secured Bonds*

The tool creates a presumption that conditions other than a secured bond will be imposed in target cases (non-DWI Class 1-3 misdemeanors). Conditions other than a secured bond include custody release, release to pretrial services, unsecured bond, and written promise.

Consistent with that presumption, magistrates imposed conditions other than a secured bond in nearly 73% percent of target cases (72.78%). They also imposed conditions other than secured bond in nearly seventy percent (68.37%) of non-target cases. Non-target cases include those with DWI, Class A1 misdemeanors, or felony charges.



**Magistrates issued conditions other than secured bond in over 70% of target cases**

In projects we have executed in other jurisdictions, we have seen that when pivoting to conditions other than secured bonds, decision-makers tend to use unsecured bonds at a significantly higher rate than written promises or custody releases. In Orange County, however, the local bail policy includes a provision favoring written promise or custody release over any type of financial bond, secured or unsecured. We found that conditions were set consistent with this provision. A written promise was imposed in the majority of all cases and in both target and

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<sup>2</sup> The tool preserves discretion by allowing magistrates to decline to follow recommendations, provided that reasons for doing so are documented.

non-target cases. As shown in Figure 1, magistrates chose a written promise in 62.47% of all cases, in 70.77% of target cases, and 60.56% of non-target cases.

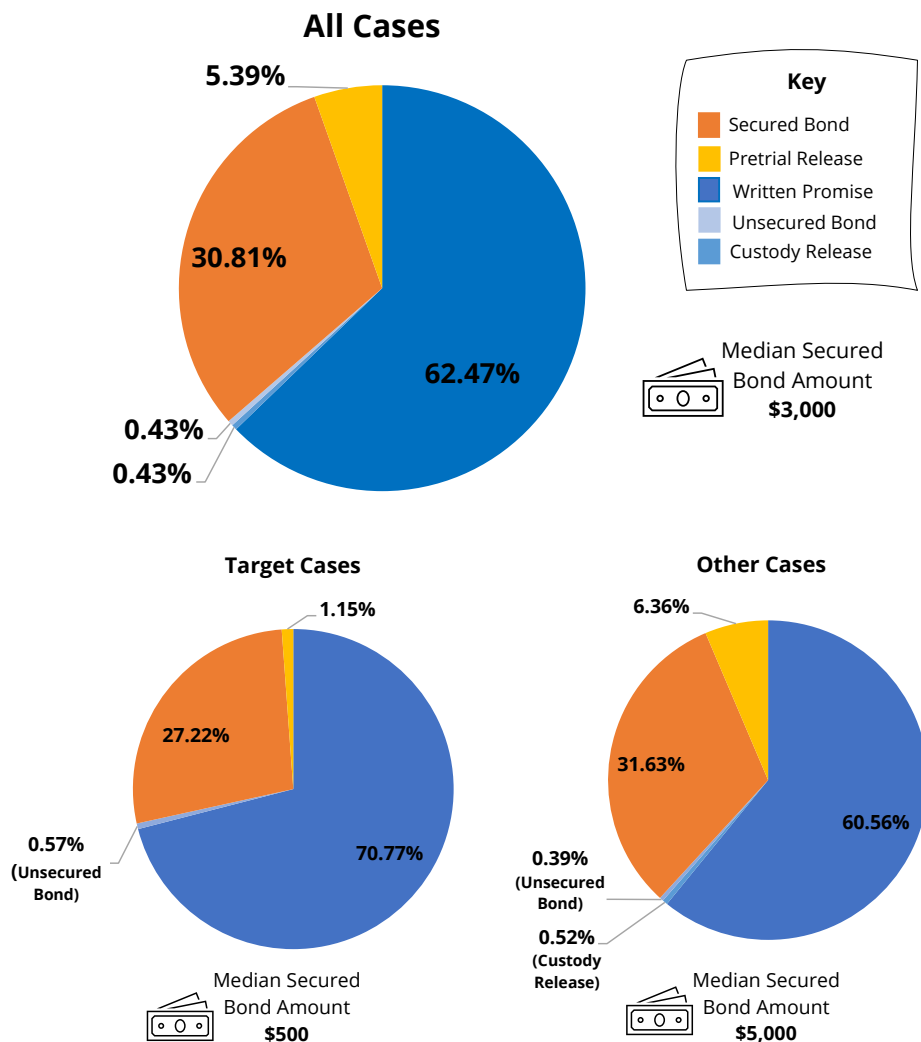
**Median Bond Amounts**

As expected, median secured bond amounts increased as the level of charged offenses increased. As shown in Figure 1, the median secured bond amount was \$500 for target cases and \$5,000 for more serious non-target cases.

**Release to Pretrial Services**

The new procedures allowed magistrates, for the first time, to release individuals to pretrial services. Because release to pretrial services involves supervised release, we expected to see this type of release used more frequently in connection with higher-level charges. Indeed, the results showed that magistrates released only 1.15% of people in target cases to pretrial services. For people in non-target cases, that rate was 6.36% (Figure 1).

**Figure 1. Percent conditions of release by highest offense class in Magistrate Bail Explanation Forms, October 1, 2021, to July 1, 2022**



### *Conditions of Release: By Magistrate*

Because the tool does not limit discretion, we expected to see variation across individual magistrates in the use of secured bonds, median bond amounts, and cases where magistrates declined to follow the tool’s recommendations. This expectation was realized. For target cases, the use of secured bonds at the individual magistrate level ranged from 7.32% to 37.50%, and median secured bond amounts ranged from \$370 to \$1,500. Magistrates also differed in how often they declined to follow the tool’s recommendations in target cases. For example, one magistrate declined to do so in 7.32% of target cases, whereas that rate was 39.66% for another magistrate.

Magistrate-specific and case-specific factors may explain these differences in outcomes across magistrates. For instance, magistrates who encounter more cases with failures to appear or a prior record may be more likely to issue a secured bond than magistrates who encounter fewer cases with relevant legal risk factors.

### *Conditions of Release: By Race*

We also examined whether there were differences in magistrates’ imposition of secured bonds by race. We focused our analyses on non-target cases because our prior report showed that racial differences in the use of secured bonds was greater for non-target cases than target cases. Figure 2 shows that non-target cases involving Black individuals (42.67%) were more likely to receive a secured bond than cases involving White individuals (30.99%). This 11.68 percentage point difference was statistically significant.

Contrary to our last report, however, the current data show there was no significant difference in the median secured bond amounts between Black (\$5,000) and White (\$5,000) individuals. Also, the 11.68 percentage point difference in secured bond rates is lower than in the last report (12.66 percentage points). Because this report includes more recent data, its results suggest that the racial difference may be slowly shrinking.

**Figure 2. Percent of non-target cases with a secured bond by race, October 2020 to June 2022**



Figure Note: The difference between Black and White individuals in proportion with a secured bond was statistically significant at the conventional, 5% level.

We also assessed whether racial differences in the use of secured bonds for non-target cases persisted after controlling for relevant case-specific factors. We executed supplemental analyses controlling for the eleven case-specific factors as recorded on the Magistrate Bail Explanation Forms (e.g., a prior failure to appear; see Table S – 5 in the [Methodological Appendix](#) for full results).

Results showed that racial differences in the use of secured bonds for non-target cases persisted after considering the eleven case-specific factors. Table 1 shows the factors that have the strongest impact on imposition of a secured bond. As shown there, eight case-specific factors have a stronger effect on the use of secured bonds than race. The strongest predictors of issuing a secured bond were whether the charged offense is a Class A-E felony and whether the person had more than one failure to appear within the past two years. These factors increase the likelihood of receiving a secured bond by 48% and 38%, respectively. By comparison, being Black increased the likelihood of receiving a secured bond by 4% (see Table S – 6 in the [Methodological Appendix](#) for full results).

**Table 1. Impact of factors predicting use of secured bonds from strongest to weakest**

	Percent increase or decrease in probability of receiving a secured bond
Class A-E felony	48% increase
FTA in the past 2 years	38% increase
Involves domestic violence, violence, or injury to a person	32% increase
Committed when defendant was on pretrial release, supervised probation, parole, or post-release control	24% increase
Involves a sex offense	21% increase
Involves a drug trafficking offense	17% increase
Prior conviction demonstrating pattern of conduct	16% increase
Prior violent felony conviction	15% increase
<b>Individual is Black</b>	<b>4% increase</b>

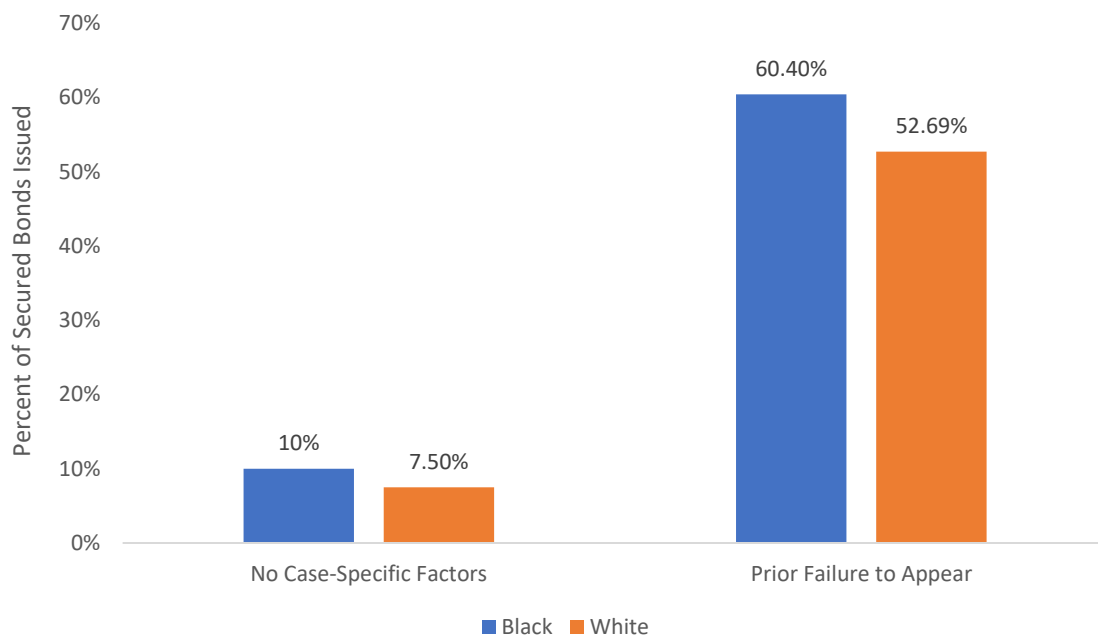
Figure Note: This table shows only those factors with a statistically significant (therefore probably non-zero) relationship with receiving a secured bond. We also assessed three other factors, but they did not have a statistically significant relationship with receiving a secured bond: Involves a firearm or deadly weapon; defendant is impaired; and charged with a DWI and has prior DWI conviction. Full results are in the [Methodological Appendix](#).

Figure 3 shows that the probability of receiving a secured bond is 2.50 percentage points higher for Black individuals who have zero case-specific factors compared to White individuals with zero case-specific factors. Racial differences widen for individuals who have one or more case-specific factors. For instance, 60.40% of Black individuals who had a prior failure to appear were issued a secured bond compared to 52.69% of White individuals who had a prior failure to appear (a difference of 7.71 percentage points).

In the section below, we find that racial differences were larger before the implementation of reforms.

As discussed at the December 2022 stakeholder meeting, differences in decision-making at the individual magistrate level did not explain the differences reported here. Per a request from stakeholders, in future reporting we will seek to examine whether differences in the mix of cases and charges for each racial group informs these analyses.

**Figure 3. Percent of secured bonds issued for Black and White individuals based on absence or presence of case-specific factors**



## Changes in Magistrate Decision-Making

In this section, we report on changes in magistrate bail decision-making before and after implementation of reforms. Doing so requires a consistent data source for both periods.

In the previous section, we reported on magistrate decision-making as recorded on Magistrate Bail Explanation Forms. Because the forms were used only after implementation of reforms, we needed an alternative data source to evaluate magistrates' bail decisions before reforms were



implemented. To do this, we pulled data from District Court calendars for the first six months of 2019 (before reforms were implemented). Because we wanted to compare apples to apples, we did the same for the post-implementation period, pulling calendar data for the first six months of 2021 (after reforms were implemented). Additional information on our data collection methods is in the [Methodological Appendix](#).

### *Overall*

Because the new magistrate decision-making process creates a presumption of conditions other than secured bonds for target cases, we expected that the use of secured bonds would decrease for these cases. Not only was that expectation realized, but also the use of secured bonds decreased for non-target cases. Specifically, after reforms were implemented, the use of secured bonds decreased by 13.05 percentage points in target cases and by 5.93 percentage points in non-target cases.

### *By Race*

In analyses above using data from Magistrate Bail Explanation Forms, we found racial differences in the imposition of secured bonds after implementation of reforms. Because Magistrate Bail Explanation Forms only came into existence with the reforms, these analyses were confined to the post-implementation period; put another way, we could not use these forms to assess whether these differences decreased, stayed the same, or increased after reforms were implemented.

To assess that issue, we turned to District Court calendar data. We limited the analysis to non-target cases so that the results would be comparable to those above. We found that racial differences decreased after reforms were implemented. Before reforms were implemented, the percentage of non-target cases involving Black individuals where a secured bond was imposed was 12.63 percentage points higher than cases involving White individuals. After reforms were implemented, that gap decreased to 7.56 percentage points.

## **Impact of Non-Appearance Bench Card Policy Change**

From January to December 2021, District Court judges used the Orange County Bench Card form to make and document their responses to court non-appearances. Due to workload concerns, that policy was changed starting in January 2022. The new policy continues to recommend use of the Bench Card when deciding how to respond to non-appearances, but no longer requires judges to complete the Bench Card form in writing.

We examined whether there was any change in judicial responses to non-appearances after this policy was updated. To investigate this question, we extracted data from the courtroom clerks' notes on District Court calendars in 2021 (when completion of the Bench Card form was required) and 2022 (when completion of the form was not required).

Because the Bench Card was designed to create a presumption that a case would be rescheduled without issuance of an order for arrest (OFA) when it was the individual's *first* non-appearance

in the current case or any other pending cases, we restricted our sample to target cases involving a person’s first non-appearance.

Figure 4 shows findings for the two responses to non-appearances in target cases that should be most impacted by the use of the Bench Card and completion of the form: excused and rescheduled and OFA plus secured bond.

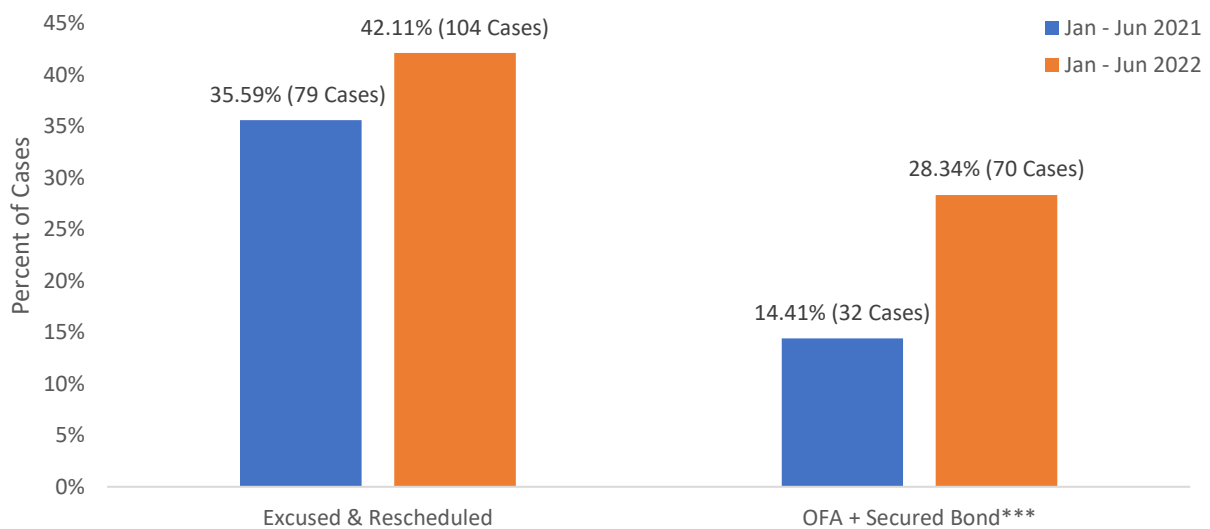
Because there are three other types of response,<sup>3</sup> the percentages in Figure 4 do not total 100%; the [Methodological Appendix](#) includes the results for all responses.



Use of OFAs with secured bonds for first-time non-appearances **increased by 13.93 percentage points** after the requirement to complete forms was removed.

As shown in Figure 4, after the policy was revised, there was a statistically significant increase in judges’ use of OFAs plus secured bonds in response to first-time non-appearances in target cases. Specifically, there was a 13.93 percentage point increase in judges’ imposition of an OFA plus a secured bond. This change was statistically significant, suggesting that it was not due to chance. Excused and rescheduled responses to non-appearance also increased after the policy was revised, but that increase was not statistically significant, meaning it was likely due to chance.

**Figure 4. Percent and number of court non-appearances rescheduled versus issued an OFA plus secured bond in January to June 2021 and 2022 for first-time non-appearances in target cases**



\*\*\* Note: The 2021 to 2022 change for OFA plus secured bond was statically significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. So, this result has less than a .1% chance of being observed due to chance. The change over time for excused & rescheduled cases is not statistically significant, and the raw numerical difference is more likely to be due to chance alone.

<sup>3</sup> The five types of responses are: Excused & rescheduled; OFA plus secured bond; OFA plus condition other than secured bond; OFA plus magistrate discretion; and 20-day or called & failed noted.

At the December 2022 meeting, stakeholders correctly noted that notwithstanding the statistically significant change in the rate of issuance of an OFA and secured bond, the number of cases impacted was small compared to total non-appearance numbers. Table 2 illustrates this point. As seen below, the total number of non-appearances was 393 for the relevant period in 2021 and 564 for that period in 2022. When those totals are winnowed down to the relevant sample, first by limiting them to target cases, then to first-time non-appearances, and finally to first-time non-appearances in target cases that received an OFA plus secured bond, they drop to 32 cases in 2021 and 70 in 2022, or 8% and 12% of total non-appearances in the relevant periods.

**Table 2. Court non-appearances in January to June 2021 and 2022**

	2021	2022
All non-appearances	393	564
Non-appearances in target cases	305	381
First-time non-appearances in target cases	222	247
First-time non-appearances in target cases issued an OFA + secured bond	32	70

Stakeholders also asked whether visiting judges, who may be less familiar with the new procedure, could have impacted the numbers. We conducted a supplemental analysis, removing visiting judges and only considering responses by judges permanently assigned to Orange County. For permanently assigned judges, imposition of an OFA plus secured bond increased a statistically significant 15.49 percentage points in the 2022 period, a number that is slightly higher but comparable to that for judges overall (13.93 percentage points). This analysis indicates that decision-making by visiting judges is not driving the increase in OFAs plus secured bonds. See the [Methodological Appendix](#) for additional details.

During the December meeting, stakeholders reaffirmed their commitment to using the Bench Card and brainstormed strategies to promote its use. The Chief District Court Judge proposed that she would review the policy with all district court judges quarterly. Additionally, stakeholders discussed establishing a set daily time to address non-appearances. Doing so will allow the Public Defender’s Office to assign a staff member to that docket and advocate for adherence to Bench Card recommendations. Finally, at stakeholders’ suggestion, the Lab will provide decision-making data to individual judges upon request.

## Next Steps

This evaluation continues through December 31, 2022, and we will produce a comprehensive, final report in 2023.

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