



# Pretrial Reform in Orange County, North Carolina

**Final Supplemental Report**  
November 2023 (Updated May 2024)

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## Contents

<b>Background &amp; This Report</b> .....	<b>2</b>
<b>Findings</b> .....	<b>3</b>
Magistrate Decision-Making.....	<b>3</b>
Impact of Non-Appearance Bench Card .....	<b>6</b>
Pretrial Detention.....	<b>8</b>

## Background & This Report

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

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

Combined, these initiatives were designed to reduce pretrial incarceration of (1) low-level and low-risk individuals who could be safely released pretrial, and (2) individuals who have a first missed court date on certain low-level charges.

The UNC School of Government [Criminal Justice Innovation Lab](#) (the Lab) helped stakeholders develop and implement these initiatives and executed an evaluation of their impact. For additional background on the project and the initiatives, see the May 2022 report mentioned immediately below.

In May 2022, we issued an [evaluation report](#) that examined data through December 31, 2021. In January 2023, we issued a [supplemental report](#) that examined data through July 1, 2022. This report updates and replaces the January 2023 report and is our final project report.<sup>1</sup> This report also updates all but three findings from the May 2022 report:

- secured bonds by race;
- pretrial failures; and
- changes in the local case mix.

Updating these metrics requires 2022 data from the state court's Automated Criminal/Infraction System (ACIS). In July 2022, the state court system ended access through public records request to ACIS data. Since then, the Lab has developed an alternative way to obtain ACIS data. However, implementing that process has been hampered by limited access to the system. As a result, we cannot yet project when we will have 2022 ACIS data to update these three metrics. Further complicating this situation is that when the first four North Carolina counties moved from ACIS to the new Odyssey recordkeeping system in 2023, their data was removed from ACIS. This creates an issue because analyses for certain metrics, like new pretrial criminal activity, require updated ACIS data from all 100 North Carolina counties. Rather than hold this report for resolution of these issues, we opted to issue it now, providing stakeholders with updated analyses that we could execute with other data.

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

This report includes a [Technical Appendix](#), with details on data collection, analytic methodology, and results. It can be found here.

## Findings

Below, we present findings on magistrate decision-making, the impact of the non-appearance Bench Card, and pretrial detention. Due to various implementation dates and data sources, the time frame for each analysis is slightly different. See the [Technical Appendix](#) for details.

### Magistrate Decision-Making

In this section, we report on magistrate decision-making as recorded on 2,368 Magistrate Bail Explanation Forms completed by magistrates between October 1, 2020, and December 31, 2022.

#### Process Metrics

To assess the quality of implementation at the magistrate level, we examined two process metrics:

1. whether magistrates followed the tool's recommendations; and
2. whether they used the tool correctly.

Examining the quality of implementation is important because it can help explain why an initiative 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 85.14% of cases and declined to do so in 14.86% 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 **85% of cases**

#### *Using the Tool Correctly*

To determine whether magistrates used the tool correctly, we examined a random sample of 1,475 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 (96.68%). Together with the finding that magistrates followed the tool's recommendation in most cases, this suggests the new process was successfully implemented by magistrates.

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

## Outcome Metrics

### *Conditions other than Secured Bonds*

The Magistrate Bail Explanation Form creates a presumption that conditions other than secured bond will be imposed in target cases. Conditions other than secured bond include custody release, release to pretrial services, unsecured bond, and written promise.

Consistent with that presumption, magistrates imposed conditions other than secured bond in 72.81% of target cases. In non-target cases, they imposed conditions other than secured bond in nearly 66.75% of cases.

In projects we have done 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 cases. As shown in Figure 1 (below), magistrates imposed a written promise in 62.12% of all cases, 71.09% of target cases, and 59.92% 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 (below), the median secured bond amount was \$500 for target cases and \$5,000 for more serious non-target cases.

### *Release to Pretrial Services*

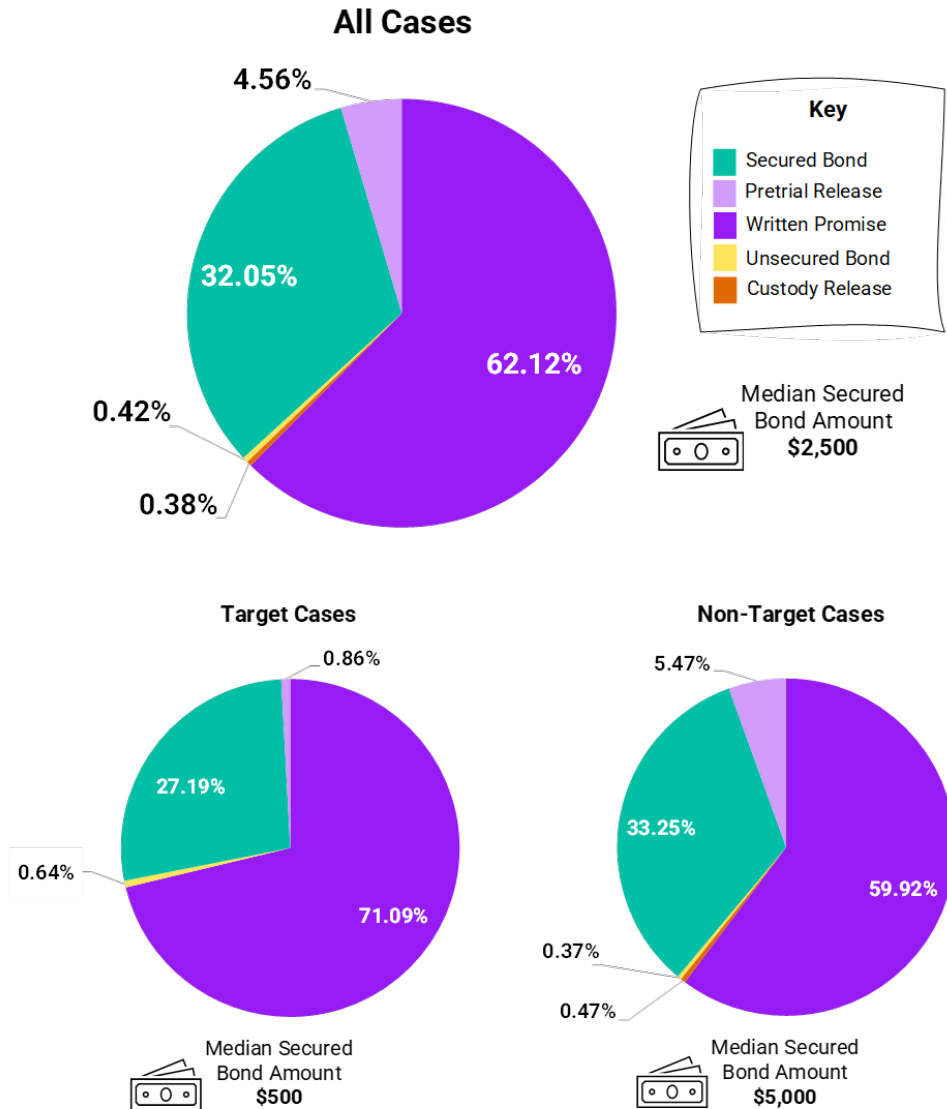
The new procedures gave magistrates, for the first time, the option to release individuals to pretrial services. Because release to pretrial services involves supervised release, we expected to see this option used more frequently in connection with higher-level charges. Consistent with that expectation, magistrates released only 0.86% of people in target cases to pretrial services. For people in non-target cases, the rate was 5.47% (Figure 1).



### WHAT IS A TARGET CASE?

The initiatives are targeted at non-DWI Class 1 – 3 misdemeanor cases. We refer to these as “target cases.” We refer to all other cases—those involving a DWI, Class A1 misdemeanor, or a felony—as “non-target” cases.

**Figure 1. Percent conditions of release for all cases and by case type in Magistrate Bail Explanation Forms, October 1, 2020, to December 31, 2022**



Note. Based on 2,368 Magistrate Bail Explanation Forms.

**Conditions of Release: By Magistrate**

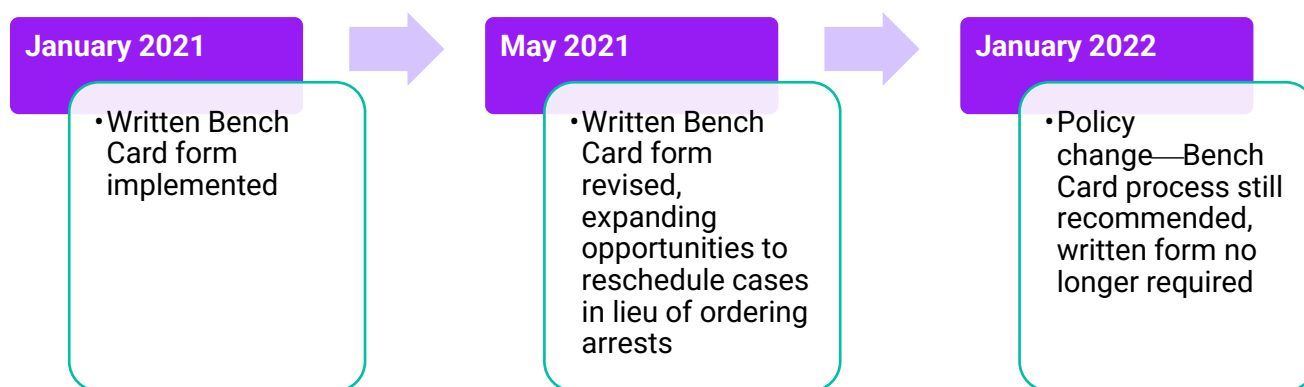
Because the Magistrate Bail Explanation Form does not limit discretion, we expected to see variation across individual magistrates in the use of secured bonds, median bond amounts, and cases where magistrates declined to follow the tool’s recommendations. This expectation was realized. For target cases, the use of secured bonds at the individual magistrate level ranged from 9.09% to 38.03%, and median secured bond amounts ranged from \$370 to \$1,000. 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 9.09% of target cases, while that rate was 40.85% for another magistrate.

Several 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. At the request of stakeholders, we reviewed Magistrate Bail Explanation Forms for the four magistrates who had the highest rates of issuing secured bonds in target cases (101 forms total) and looked at the reasons they documented for issuing a secured bond. In over 90% of cases (92 forms) magistrates listed relevant factors supporting the decision to issue a secured bond.<sup>3</sup>

## Impact of Non-Appearance Bench Card

In January 2021, District Court judges began using the Orange County Bench Card form to make and document their responses to court non-appearances. The Bench Card form was modified in May 2021 allowing judges to excuse any non-appearance and reschedule the court date in lieu of an arrest in a larger number of cases. Due to workload concerns, the policy was changed again in January 2022. While still recommending use of the Bench Card, the January 2022 policy change eliminated the requirement that judges complete the Bench Card form in writing. In this section, we consider the impact of the policy, both when judges were required to fill out the form and after the requirement to complete it in writing was removed.

**Figure 2. Timeline of Bench Card Changes**



## Decision-Making as Recorded on the Bench Card Form

To assess the impact of the Bench Card form as originally implemented, we examined 1,212 forms completed from January 19, 2021, to December 31, 2021. We found that judges followed the form's process in nearly all cases (96.20%) and that the majority of forms were filled out without any completeness or fidelity issues (60.63%).

<sup>3</sup> Factors listed for issuing a secured bond included: history of recent FTAs, offense occurred while on pretrial release or probation, offense involved domestic violence, recent conviction for a violent offense, giving false information to law enforcement, significant impairment, threats of violence against law enforcement or victims, and combinations of these factors (e.g., on pretrial release *and* FTA history).

When we examined 1,089 forms where judges used the Bench Card process and that had no fidelity issues,<sup>4</sup> we found that judges rescheduled 39.67% (432) of cases and issued an Order for Arrest (OFA) for 60.33% (657) of cases. When judges issued an OFA, the most common condition imposed was a secured bond (95.74%), and the median secured bond amount was \$500. Judges rarely ordered a written promise to appear (2.44%), custody release (1.37%), or unsecured bond (0.46%) in response to a non-appearance.

The results on how judges responded to first-time non-appearances for target cases showed that the policy worked as intended:

every time a judge used the written form for first-time non-appearances in target cases (33.66% of target cases; 172 cases) they rescheduled the case and did not issue an OFA.



When completing the Bench Card form, judges rescheduled **all** first-time non-appearances in target cases

The structure of the Bench Card appeared to be driving this finding. On both versions of the Bench Card, when the judge gets to Step 3 (unexcused non-appearance in a target case where the defendant has no prior missed court dates), the only checkbox option is to reschedule the court date. If the judge wishes to avoid this result, the judge must write an alternative outcome on the form or check a box indicating that they declined to use the process.<sup>5</sup>

## Decision-Making After Bench Card Policy Change

We examined whether there was any change in judicial responses to non-appearances after the policy was updated, removing the requirement that judges fill out the form in writing. 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 in 2022 (when completion of the form was not required).

We found that after the policy change, there was no statistically significant change in the issuance of an OFA plus a secured bond for first-time non-appearances in target cases.

Stakeholders may recall that our January 2023 supplemental report—using data for only six months following the policy change—found a statistically significant increase in judges' use



### 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 it is reliable. For that reason, we focus on statistically significant results in this report.

<sup>4</sup> 514 of these forms were the original version; 575 were the revised version.

<sup>5</sup> When the judge checks the box indicating that they declined to use the process, we do not know whether the case was a target case. Thus, it is possible that one or more of the 3.8% of forms on which judges indicated that they were not using the process involved a target case. However, given that judges declined to use the process in such a small percentage of cases, any impact this issue has on the reported outcome is likely minimal.



of an OFA plus a secured bond for first-time non-appearances in target cases after the requirement of completing a written form was removed. This report, however, includes a full twelve months of data and, again, shows no statistically significant change in this metric. These results indicate that the policy change regarding use of the Bench Card form did not impact outcomes.

See the [Technical Appendix](#) for a monthly breakdown of the number of target cases that were issued an OFA plus a secured bond.

## Pretrial Detention<sup>6</sup>

We anticipated that the Magistrate Bail Explanation Form and the Bench Card would impact different aspects of pretrial detention. We expected implementation of the Magistrate Bail Explanation Form to reduce overall bookings on new charges and bookings on new charges for lower-level offenses. We expected implementation of the Bench Card to reduce lower-level bookings solely because of a failure to appear. Because the initiatives were implemented at different times, we used different pre- and post-implementation periods to assess the impact of each initiative.

For analyses related to bookings for failure to appear, we used the implementation date of the original Bench Card (January 2021) to create the pre- and post-periods. For all other analyses, we used the implementation date of the Magistrate Bail Explanation Form (October 2020) to create our pre- and post- periods. Table 1 below shows the pre- and post- dates for each analysis and the number of included bookings.

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<sup>6</sup> We updated this section in May 2024 to reflect results after correcting how we coded the highest charge for some bookings. In bookings with charges that could have been either a misdemeanor or a felony, our previous code sometimes identified a charge as a felony, whereas the jail data identified it as a misdemeanor. We corrected the issue by deferring to the jail's misdemeanor or felony designation. Compared to the prior version of this report, the correction led to an increase in the number and share of highest charge misdemeanor bookings. Although the estimates based on highest charge measures are therefore different from the prior version of this report, the correction did not affect study conclusions.

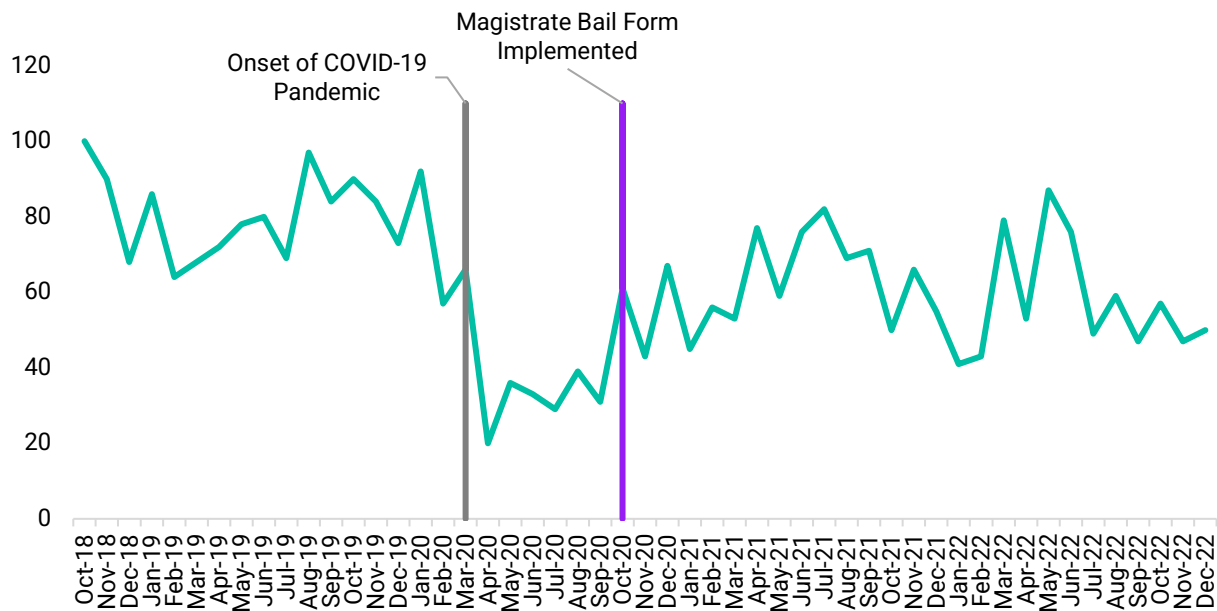
**Table 1. Pre- and post- periods for pretrial detention analyses**

Policy Change	Relevant Analyses	Pre-Implementation Period & Number of Bookings Included	Post-Implementation Period & Number of Bookings Included
<b>Implementation of Magistrate Bail Explanation Form</b>	Bookings Overall Bookings by  Bookings by Race Secured Bonds of \$500 or less Length of Stay	October 1, 2018 – September 30, 2020 (2,211 bookings)	October 1, 2020 – December 31, 2022 (2,089 bookings)
<b>Implementation of Non-Appearance Bench Card</b>	Bookings for Failure to Appear	October 1, 2018 – December 31, 2020 (2,492 bookings)	January 1, 2021 – December 31, 2022 (1,808 bookings)

*Bookings Overall*

Figure 3 below shows the total number of pretrial bookings throughout the evaluation period by month. In the pre-implementation period, before the Magistrate Bail Explanation Form went into effect, there was a substantial decrease in monthly bookings immediately following the onset of the COVID-19 pandemic due to pandemic-related changes in jail and court processes. While monthly bookings increased as COVID-19 precautions were lifted, they did not return to pre-implementation rates. On average, monthly bookings decreased 37.7%, from 113.4 in the pre-implementation period to 77.4 in the post-implementation period. This decrease was statistically significant.

**Figure 3. Total number of pretrial bookings by month, October 2018 to December 2022**



### By Highest Charge

Average monthly bookings fell after the Magistrate Bail Explanation Form was implemented for both highest charge misdemeanor bookings (38.2%, from 80.4 to 49.7) and for highest charge felony bookings (15.1%, from 32.5 to 27.6), though the decrease for highest charge misdemeanor bookings was—as expected—larger. Both decreases were statistically significant.<sup>7</sup>

### By Race

As shown in Table 2 below, average monthly bookings decreased for both Black and White individuals after the Magistrate Bail Explanation Form was implemented. Although the decrease was slightly larger for White individuals, there was no statistically significant difference in the decline for White individuals as compared to Black individuals. Put another way, the larger decrease for White individuals was likely due to chance.

**Table 2. Average number of monthly pretrial bookings by race**

	Average Monthly Bookings Pre-implementation	Average Monthly Bookings Post-implementation	Pre/Post Change
Black Individuals	52.2	36.9	-15.3
White Individuals	58.9	38.7	-20.2

### Secured Bonds Under \$500

We examined any changes in bookings where the condition of release was a secured bond under \$500. Secured bonds under \$500 typically are intended as appearance bonds. If they are resulting in detention, stakeholders may wish to explore this issue.

For highest charge misdemeanor bookings, we found a statistically significant 7.2 percentage point increase in the number of bookings with a secured bond of \$500 or less post-implementation. For highest charge felony bookings, there was a 2.5 percentage point increase, but this change was not statistically significant.

For Black individuals whose highest charge was a misdemeanor, the use of secured bonds of \$500 or less increased a statistically significant 13.8 percentage points; for White individuals there was a 2.9 percentage point increase, but that result was not statistically significant.

When we spoke to stakeholders about these results, they correctly noted that notwithstanding the statistically significant increases, the total number of impacted bookings is small. There were 64 highest charge misdemeanor bookings with a secured bond under \$500 in the pre-period, and 56 in the post-period.

Still, stakeholders were curious about what could be driving these findings. At their request, we conducted an additional analysis to determine whether the increase in secured bonds under

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<sup>7</sup> Analyses by highest charge exclude 975 bookings solely because of an Order for Arrest (OFA) after a Failure to Appear (FTA). Please see the [Technical Appendix](#) for details.

\$500 could be attributed to people arrested after an FTA or for an impaired driving (DWI) charge. We found that these circumstances did not explain the results. At a November 2023 follow-up meeting with a small stakeholder group, we discussed, and stakeholders agreed, that the overall increase might be related to changes in maximum bond amounts that went into effect in Orange County on October 1, 2020.<sup>8</sup> Under these changes, the maximum secured bond amount for Class 1 misdemeanors and DWI charges where the individual has one prior DWI conviction, was set at \$500. Previously, the maximum for these offenses was much higher—\$5,000 for Class 1 misdemeanors and there was no specific maximum for repeat DWI offenses.

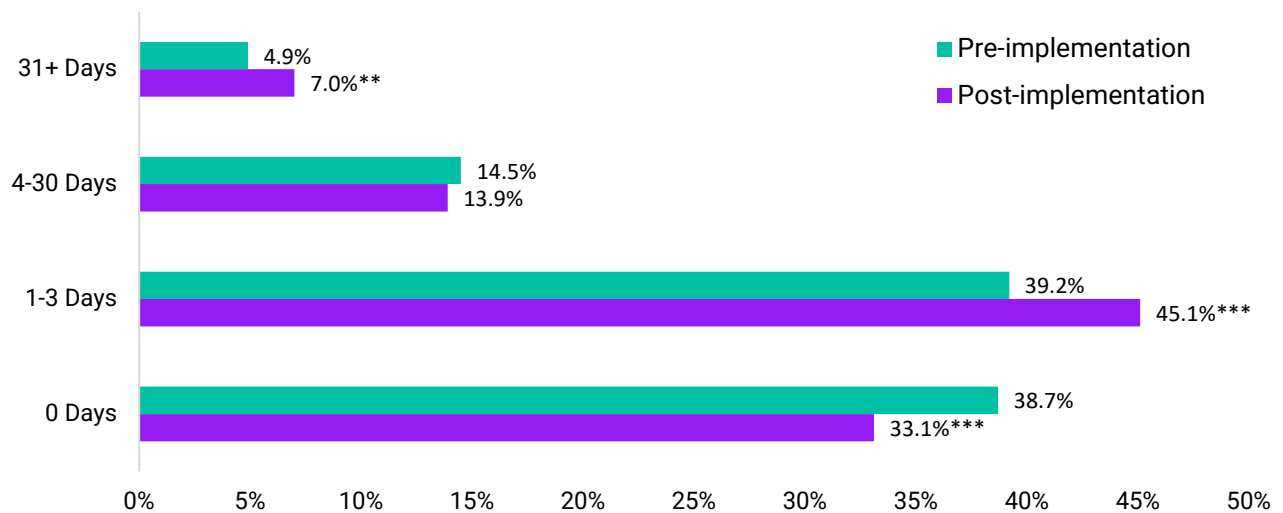
### Length of Stay

We had no settled expectations on whether and how the initiatives might impact length of stay and include these analyses for context.

We examined changes in jail bookings by length of stay using four categories: 0-day stays; 1 to 3-day stays; 4 to 30-day stays; and stays of 31 or more days. A 0-day stay means that a person was booked and released on the same day.

Results were mixed. As shown in Figure 4 below, the percent of 0-day stays and 4 to 30-day stays decreased, but only the 0-day decrease was statistically significant. The percent of 1 to 3-day stays and stays of 31 or more days increased, and both increases were statistically significant.

**Figure 4. Percent of bookings by length of stay, all bookings**



Note. \*\*: Significant at  $p < .01$ , meaning the difference has less than a 1% chance of being observed due to chance.  
 \*\*\*: Significant at  $p < .001$ , meaning the difference has less than a 0.1% chance of being observed due to chance.  
 Results that do not have an asterisk are not statistically significant and may be due to chance alone.

When we looked at length of stay by highest charge, changes for highest charge misdemeanor bookings were statistically significant only for 0-day and 1 to 3-day stays and tracked the

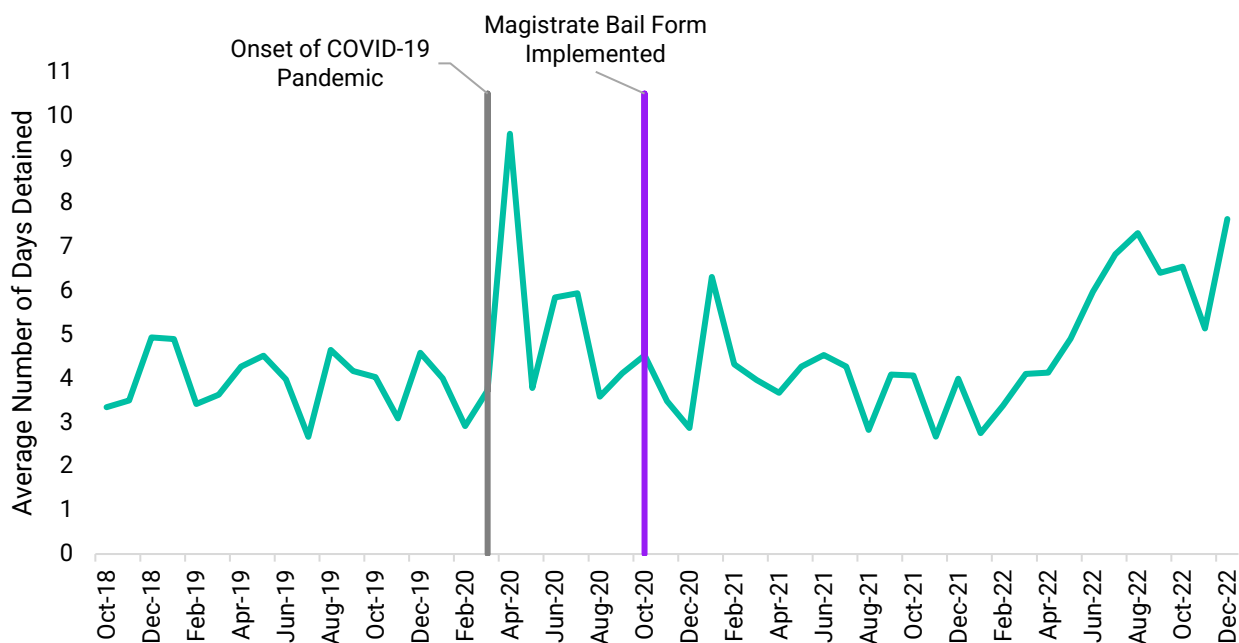
<sup>8</sup> The current maximum bond amounts for Orange County can be found [here](#), in the local Bail Policy.

direction of change for overall bookings. Zero-day days decreased and stays of 1 to 3-days increased. For highest charge felony bookings, changes were statistically significant for 1 to 3-day stays, which increased.<sup>9</sup>

We also looked at length of stay by race and found similar patterns. For both Black and White individuals, there were statistically significant decreases in 0-day stays and increases in 1 to 3-day stays. Full results for length of stay by highest charge and by race can be found in the [Technical Appendix](#).

As shown in Figure 5 below, average length of stay was relatively stable before the Magistrate Bail Explanation Form was implemented, except for an increase in length of stay in the months immediately after the onset of the COVID-19 pandemic when court processes were interrupted. After the Magistrate Bail Explanation Form was implemented, average detention length remained relatively stable in 2021, but then increased throughout 2022. When we discussed this finding with the Director of the Criminal Justice Resource Department, she suggested several possible reasons for the 2022 trend, including case backlogs, fewer individuals being detained on the lowest-level charges, and a rising number of individuals waiting in jail for competency evaluations.

**Figure 5. Average length of stay, October 2018 to December 2022**



<sup>9</sup> In the prior version of this report, before we corrected the data, we found that the estimate for 4 to 30-day stays was statistically significant; this is no longer the case.

### For Failure to Appear

To explore the impact of the non-appearance Bench Card on pretrial detention, we analyzed bookings solely for an FTA. As expected, the percent of these bookings decreased after the Bench Card process was implemented in January 2021, from 27.3% in the pre-implementation period to 19.4% in the post-implementation period.<sup>10</sup> This decrease was statistically significant.

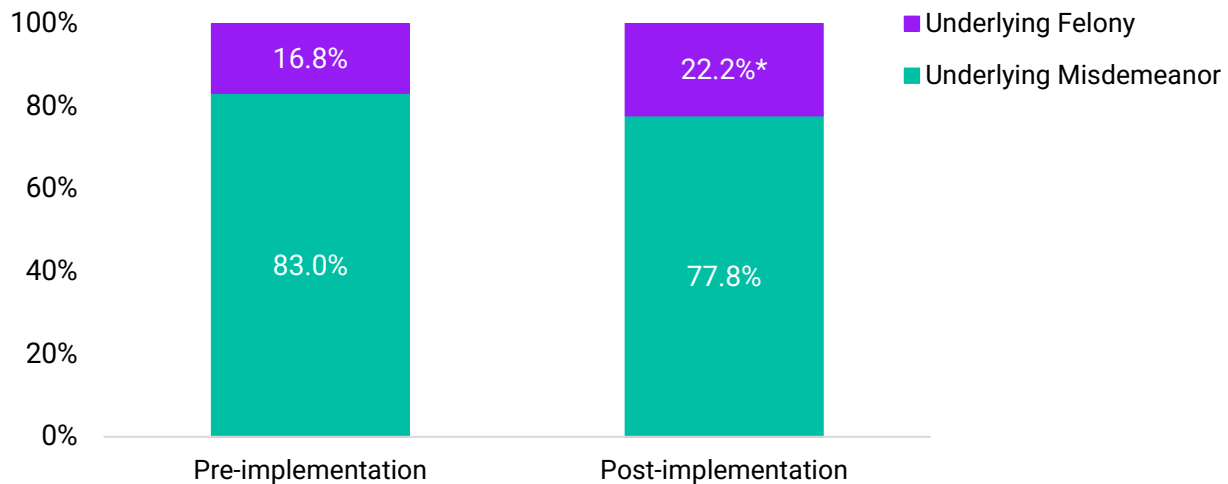
**Table 3. Percent of pretrial bookings solely because of an FTA**

	Percent of FTA Bookings Pre-implementation	Percent of FTA Bookings Post-implementation	Difference
FTA-Only	27.3%	19.4%	-7.9***

Note. \*\*\*: Significant at  $p < .001$ , meaning the difference has less than a 0.1% chance of being observed due to chance.

The underlying charges for FTA-only bookings also changed. As shown in Figure 6 below—and as expected—the percent of FTA-only bookings for underlying misdemeanor charges decreased, from 83% to 77.8%. The percent for underlying felony charges increased, from 16.8% to 22.2%. The change in underlying felonies was statistically significant; the change in underlying misdemeanors was not.<sup>11</sup>

**Figure 6. Highest underlying charge type for FTA-only bookings, pre- and post-implementation of Bench Card**



Note. \*: Significant at  $p < .05$ , meaning the difference has less than a 5% chance of being observed due to chance.

<sup>10</sup> During the post-implementation period, Orange County stakeholders also were engaged in a project with the Lab designed to promote court appearance and improve responses to non-appearance. Read more about those efforts [here](#).

<sup>11</sup> In the prior version of this report, we found that both changes were statistically significant.

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