

# Judicial District 30B Pretrial Justice Pilot Project

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## Executive Summary

In 2015, Chief Justice Mark Martin convened the North Carolina Commission on the Administration of Law & Justice to make recommendations to strengthen the state’s court system. In 2016, that Commission released its reports, including a recommendation that North Carolina embark on pilot projects supporting evidence-based pretrial justice reform.<sup>1</sup> With the support of the Director of the NC Administrative Office of the Courts,<sup>2</sup> Judicial District 30B (JD 30B) became the state’s first such pilot project.

The JD 30B pretrial justice pilot project seeks to improve JD 30B’s pretrial system, promoting public safety, efficient use of taxpayer resources, and fairness of the judicial process. The project has two core components:

Implementing reforms to JD 30B’s pretrial system to address the negative consequences of pretrial detentions.

Empirical evaluation of those reforms, as measured against key metrics, including public safety, appearance rates, incarceration due to indigence, and racial and ethnic disparities.

Regarding the negative consequences of pretrial detentions, NC AOC data shows that secured bonds are the most common condition of pretrial release imposed in JD 30B, even for misdemeanors.<sup>3</sup> Because secured bonds require money up front to obtain release, they can result in wealth-based detentions. As used here, “wealth-based detentions” refers to pretrial detention of individuals not because they present unreasonable public safety and/or flight risk, but because they cannot pay their secured bonds. When wealth-based detentions occur, taxpayers pay unnecessary jail costs. Additionally, stakeholders were presented with research showing that pretrial detention of persons charged with misdemeanors increases their risk of later criminal behavior, even when controlling for other factors. Thus, not only do taxpayers pay jail costs associated with unnecessary wealth-based detentions, but also those detentions can cause negative public safety outcomes, which carry additional taxpayer and community costs. Finally, detaining low-risk defendants merely because of poverty introduces unfairness in the judicial

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<sup>1</sup> NCCALJ COMMITTEE ON CRIMINAL INVESTIGATION & ADJUDICATION, PRETRIAL JUSTICE REFORM FOR NORTH CAROLINA (2016) (Report of the North Carolina Commission on the Administration of Law and Justice), [https://nccalj.org/wp-content/uploads/2017/pdf/nccalj\\_criminal\\_investigation\\_and\\_adjudication\\_committee\\_report\\_pretrial\\_justice.pdf](https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_criminal_investigation_and_adjudication_committee_report_pretrial_justice.pdf).

<sup>2</sup> Letter from Marion R. Warren, Director, NC AOC to Advisory Committee for the Pretrial Justice and the State Courts Initiative (Feb. 2, 2018) (on file with author).

<sup>3</sup> NC AOC data shows that in Haywood County in 2017, conditions were set in 2,017 misdemeanor cases; secured bonds were the most common form of release, imposed in 1,079 cases; unsecured bonds were the next most common, imposed in 526 cases. For Jackson County in 2017, conditions were set in 1,047 misdemeanor cases; secured bonds were the most common form of release, imposed in 630 cases; unsecured bonds were the next most common, imposed in 289 cases. E-mail from Emily E. Mehta, North Carolina Judicial Branch, to Jessica Smith, UNC School of Government (June 7, 2018) (on file with author) (including a spreadsheet tabulating conditions of release imposed in North Carolina counties in 2016 and 2017).

process.<sup>4</sup> Compounding the unfairness of wealth-based detentions, stakeholders were presented with research showing that, controlling for other factors, low-level defendants who are detained pretrial are more likely to experience negative case outcomes (such as conviction, custodial sentence, and longer sentence) than similarly situated defendants who are released pretrial.<sup>5</sup> These and other reasons suggested that better “front end” pretrial processes and decisions will promote fairness, public safety and efficient use of taxpayer funds.

To improve pretrial decision-making JD 30B stakeholders unanimously agreed to six reforms:

- Implement a new decision-making framework for determining conditions of pretrial release.
- Provide a timely first appearance for all in-custody defendants.
- Provide for the early involvement of counsel at pretrial proceedings.
- Promote the increased use of citations in lieu of arrest.
- Promote the increased use of summons in lieu of arrest.
- Provide detention bond hearings for persons intentionally detained on secured bonds.

Reforms take effect January 1, 2019. With regard to the project’s second core component, empirical evaluation will examine the effectiveness of these reforms.

### Why JD 30B?

JD 30B consists of Haywood and Jackson counties. Several characteristics of JD 30B make it an important pilot program site. First, JD 30B serves a distinct minority population, the Eastern Band of Cherokee Indians.<sup>6</sup> Ensuring that pretrial practices operate in a race-neutral manner is an important component of evidence-based pretrial practices.<sup>7</sup> Second, because JD 30B is a rural community, results of the pilot project will add important information to the growing body of research on effective pretrial release practices, which to date has focused largely on urban and suburban communities.<sup>8</sup> Third, JD 30B—like many rural jurisdictions—lacks resources that are often available in urban and suburban jurisdictions; specifically, JD 30B has no county-funded pretrial services and is not served by a public defender office.

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<sup>4</sup> The unfairness inherent in North Carolina’s money-based bail system has long been noted. Almost 50 years ago—well before federal and state cases held that money-based bail systems violated equal protection, *see, e.g.*, Jessica Smith, *Fifth Circuit: Bail System Violated Due Process & Equal Protection*, NC CRIMINAL LAW BLOG (Mar. 26, 2018), <https://nccriminallaw.sog.unc.edu/fifth-circuit-bail-system-violates-due-process-equal-protection/>—a law review comment entitled *Bail in North Carolina* asserted:

Since release on bail is usually dependent upon payment of money to a bondsman, the system tends to discriminate against the poor who cannot afford such payment. If a rich man and a poor man are both innocent and both accused of the same crime, only the rich man can generally obtain his release on bail. The poor man, even though later acquitted, must suffer the humiliation of a period in jail and any possible number of attendant consequences, such as the loss of his job or the disruption of his family life.

Richard B. Howington, Comment, *Bail in North Carolina*, 5 WAKE FOREST INTRAMURAL L. REV. 300, 303 (1969). Research now shows that the consequences of pretrial detention are more significant than humiliation, job loss, and disruption of family life. *See infra* note 5 and accompanying text.

<sup>5</sup> *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/>.

<sup>6</sup> Letter from Marion R. Warren, Director, NC AOC *supra* note 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Effective implementation of evidence-based pretrial reform in such a district may provide important lessons for how communities, notwithstanding limited resources, can improve their pretrial systems.

## Participants

This pilot project was initiated and led by Senior Resident Superior Court Judge Bradley B. Letts. Other judicial system participants included District Court Judges; Magistrates; Clerks of Court; the District Attorney and Assistant District Attorneys in that office; defense lawyers; and members of the law enforcement community, broadly defined to include sheriff and police departments, campus police, and jail administrators. In addition to these local stakeholders, this project was supported by:

- Professor Jessica Smith, W.R. Kenan, Jr. Distinguished Professor, School of Government, The University of North Carolina at Chapel Hill. Professor Smith supported the project by helping to secure project funding; leading and facilitating stakeholder meetings and engagement; providing legal advice and analysis; developing and writing Implementation Plans for each of the reforms; coordinating data collection from the NC AOC; and writing reports. Funding from Smith's endowed professorship covered her travel to and from JD 30B, meals for meeting participants, printing of the Cite or Arrest pocket card for officers and the new pretrial release decision-making rubric.
- Professor Jamie Vaske, Associate Professor, Western Carolina University. Professor Vaske leads the project's evaluation component, including designing evaluation plans; securing funding for evaluations; obtaining Institutional Review Board approval; supervising student support; and working with stakeholders to develop systems to collect key data points. In January 2019, Vaske will begin executing project evaluation, and is responsible for all evaluation reports.
- Tom Maher, Executive Director, NC Indigent Defense Services (NC IDS) and NC IDS. Maher played a key role in implementation of the early involvement of counsel reform; NC IDS is supporting the project by paying contract lawyers' fees and administering the early involvement of counsel program.
- NC AOC Research and Planning. Staff in the NC AOC office of Research and Planning provided assistance with respect to collecting and understanding NC AOC data.
- State Justice Institute (SJI). This project was supported by a grant from the SJI, administered by the National Center for State Courts and the Pretrial Justice Institute (PJI). Grant funding supported technical assistance by PJI. Specifically, PJI's Will Cash and John Clark led the project's kick-off meetings. Clark served as a project consultant and led training for stakeholders on new pretrial procedures.

## Process

The project began with two public "kick off" meetings in June 2018—one in Haywood County; one in Jackson County. At those meetings Cash and Clark presented on, among other things, problems with the current pretrial release systems; the negative consequences of pretrial detention—both for defendants and society; legal and evidence-based pretrial practices; pretrial reform efforts underway around the country; the results of such reforms and support for them from a wide variety of groups, including the Conference of Chief Justices, the National Sheriffs Association, the Association of Prosecuting Attorneys, and a broad range of advocacy groups; and growing pressure for reform caused by successful legal challenges to existing bail systems. PJI staff also facilitated a discussion in which stakeholders prioritized reforms they wished to implement in JD 30B.

After the June meeting, Professor Smith prepared draft Implementation Plans for the reforms identified by stakeholders as viable options and priorities. In August 2018, Smith facilitated a public meeting with stakeholders to refine those plans. She then incorporated stakeholder feedback and produced revised Implementation Plans. She facilitated a public meeting in September 2018 for stakeholders to review the revised plans; this included testing the new pretrial decision-making framework through a series of case scenarios. Between all meetings, Smith communicated with stakeholders, getting additional feedback on plan details, addressing areas of concern, and preparing revised Implementation Plans incorporating this feedback. On a parallel track, Professor Vaske attended meetings and designed and developed evaluation plans for all identified reforms, including obtaining approvals and permissions from NC AOC, IRB, and others. A final meeting was held in December 2018, primarily to provide training on all of the adopted reforms, but also for final refinement of the Implementation Plans and tools. After that meeting Smith finalized and arranged for printing and delivery of necessary materials, worked with Clark to develop a training guide on the new Cite or Arrest pocket card for officers, and Judge Letts issued a revised Local Bail Policy and necessary Standing Orders.

## Implemented Reforms

### *New decision-making framework for determining conditions of pretrial release*

JD 30B's current Local Bail Policy includes a table setting suggested bond amounts based on the punishment class of the charged offense. Best practices recommend against the use of such tables.<sup>9</sup> Additionally, stakeholders determined that although the current charge's offense class is relevant to the bail decision, other individualized factors regarding the defendant and the circumstances of the offense are important in assessing appropriate conditions of pretrial release. Moreover they found that the current Bail Policy and its bond tables tend to push decision-makers towards a secured bond in contravention of state law, which requires release on a written promise, custody release, or unsecured bond unless the decision-maker finds that those conditions will not reasonably assure appearance; will pose a danger of injury to any person; or are likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.<sup>10</sup> And finally, stakeholders wanted to develop an easily implemented tool that would *quickly* identify those defendants who can be released on non-financial conditions,<sup>11</sup> to reduce the occurrence of wealth-based incarceration of individuals who pose little risk to public safety or of flight. Although they considered available empirical risk assessment tools for that purpose, they did not opt for such a tool, in part because they lacked the resources necessary to gather the input information required by these tools. Instead, they opted to create a screening device based on easily determined defendant- and offense-specific factors.

The JD 30B project includes a new decision-making framework for determining conditions of pretrial release, included in Appendix A. The new framework applies in all circumstances except where the statutes require other considerations or outcomes. Key features include:

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<sup>9</sup> 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.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.authcheckdam.pdf).

<sup>10</sup> G.S. 15A-534(b).

<sup>11</sup> Because a written promise, custody release, and unsecured bond require no money up front to secure release, this report refers to those conditions as "non-financial conditions."

- An easily implemented, stakeholder-created tool to quickly identify low-risk defendants who immediately can be released on non-financial conditions.<sup>12</sup>
- A requirement that decision-makers follow the statutory mandate and impose non-financial conditions unless they determine that such release will not reasonably assure appearance; 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 witnesses.<sup>13</sup>
- Detailed notes guiding decision-makers through the decision-making process.<sup>14</sup>
- Recommended maximum bond amounts for secured bonds<sup>15</sup> and the requirement that ability to pay be considered in connection with imposition of that form of release.<sup>16</sup>
- Requiring documentation of reasons for imposing a secured bond<sup>17</sup> and deviating from recommendations in the framework.<sup>18</sup>

*First appearance for all in-custody defendants.*

This reform provides first appearances for in-custody defendants charged with misdemeanors and Class H and I felonies (highest charge) or arrested on a probation violation within 72 hours of arrest or at the first regular session of the district court in the county, whichever occurs first.

Current 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.<sup>19</sup> Because the 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, stakeholders learned of research suggesting that pretrial detention of low-level defendants has negative public safety consequences and negative case outcomes for defendants. 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. Additionally, a separate reform in JD 30B (discussed below) provides for NC IDS contract counsel for in-custody defendants charged with misdemeanors and Class H and I felonies as well as those arrested on probation violations; the new first appearances are necessary to effectuate that reform.

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<sup>12</sup> The screening tool appears as the large box in the middle of page 2 of the new decision-making framework for determining conditions of pretrial release, included in Appendix A.

<sup>13</sup> The requirement that judicial officials apply the statutory mandate is expressly reflected in the new decision-making framework for determining conditions of pretrial release, included in Appendix A. Specifically, see the second box in the middle of page 2.

<sup>14</sup> See page 3 of the new decision-making framework for determining conditions of pretrial release, included in Appendix A.

<sup>15</sup> See n.15 on page 3 and the associated tables on page 4 of the new decision-making framework for determining conditions of pretrial release, included in Appendix A.

<sup>16</sup> See n.15 on page 3 of the new decision-making framework for determining conditions of pretrial release, included in Appendix A.

<sup>17</sup> G.S. 15A-535(a) (local pretrial release policy may include a requirement that each judicial official who imposes a secured bond record the reasons for doing so in writing).

<sup>18</sup> See page 2 of the new decision-making framework for determining conditions of pretrial release, included in Appendix A. Specifically, see the green and red boxes on that page.

<sup>19</sup> G.S. 15A-601(c).

To promote judicial efficiency, the new first appearances will be held at 2 pm in district court. Holding these proceedings in the afternoon affords new contract counsel (see below) time to meet with clients at the jail and to obtain and review defendants' criminal history record.

#### *Early involvement of counsel at pretrial proceedings*

Early involvement of counsel at pretrial proceedings will better inform judges' pretrial decisions and protect defendants' rights in light of the significant consequences associated with pretrial detention.<sup>20</sup> Early involvement of counsel is recommended by national standards<sup>21</sup> and has been specifically recommended for North Carolina.<sup>22</sup>

This reform includes a Standing Order issued by the Senior Resident Superior Court Judge providing for the appointment of NC IDS retained "contract counsel" to represent defendants at the first appearance and the first detention bond hearing (if any; see below). Covered defendants include those whose highest charge is a misdemeanor or Class H or I felony and those arrested for a probation violation. Contract counsel will meet with defendants at the jail and review defendants' criminal history records prior to the first appearance. Contract counsel will be retained and paid pursuant to contracts with NC IDS. Contract counsel will serve only for these purposes; assigned counsel will be appointed to represent defendants after the first appearance and first detention bond hearing (if any).

To implement this reform, NC IDS has agreed to:

- Hire, contract, and supervise contract counsel.
- Set payment rates for contract counsel and approve all payments to contract counsel.
- Establish procedures for handling defendants who are arrested on an Order for Arrest for a Failure to Appear and already have assigned counsel.
- Develop contracts specifying performance expectations, including: meeting with the client at the jail before the first appearance; reviewing the client's criminal history; preparing an intake form for each defendant; and advocating for the client at the first appearance and the first detention bond hearing (if any).
- Establish a plan to train contract counsel on pretrial advocacy, as feasible.
- Establish procedures for dealing with conflicts.
- Develop forms and other job tools for contract counsel, such as an intake form to be used during the client interview.

Local jail supervisors have agreed to provide timely jail lists to contract counsel and to set aside a private meeting place for counsel to meet with jailed defendants prior to the first appearance.

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<sup>20</sup> See, e.g., Paul Heaton et al., *supra* note 5.

<sup>21</sup> ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION AND DEFENSE FUNCTION, Defense Function Standard 4-2.3 (4th ed. 2015) ("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/](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/).

<sup>22</sup> 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), [https://nccalj.org/wp-content/uploads/2017/pdf/nccalj\\_final\\_report.pdf](https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_final_report.pdf).

In order to meaningfully represent a defendant at first appearances and to ensure procedural fairness, contract counsel needs the defendant's criminal history record, which is used by the ADA and judge at that proceeding. The District Attorney's Office has agreed to run these records for each defendant on the 72-Hour Jail Calendar before the noon lunch hour; contract counsel will go to the District Attorney's Office to review the records in advance of the new first appearances, which—as noted above—will be held at 2 pm to afford sufficient time for these tasks.

Interpreter services will be provided, as needed, to contract counsel through the NC AOC telephonic interpreter services. Jail administrators have agreed to allow telephones in client meeting spaces for this purpose.

### *Increased use of citations in lieu of arrest*

This reform includes implementation of a law enforcement driven and approved tool for patrol officers to encourage the increased use of citations in lieu of arrest for certain misdemeanors, in the officer's discretion. Specifically, a Cite or Arrest Pocket Card, shown in Figure 1 below. Although the overall project was a collaborative, multi-stakeholder endeavor, only the law enforcement community participated in the creation of the Pocket Card.

### **Figure 1: Cite or Arrest Pocket Card**

#### **Cite or Arrest?**

Best practices call for "least harm" resolutions, including using citations instead of arrests, when appropriate. *Whether to cite or arrest is always in your discretion.* However, you are encouraged to issue citations for misdemeanors unless one of the following circumstances exists:

- Defendant poses a danger of continuing criminal activity if not arrested
- Defendant poses an immediate danger to himself and assistance without arrest is not an option
- Defendant poses a danger to others
- Pretrial restrictions are required (e.g., stay away from victim)
- Offense involved physical harm to a person (as opposed to property)
- Offense involved deadly weapon
- Domestic dispute
- Defendant has more than 2 prior FTAs within the past 2 years
- Defendant has prior violent crime convictions
- Defendant committed offense while on probation/pretrial release
- Cannot confirm Defendant's identity or physical address
- Defendant has no local address or connections and thus is a FTA risk
- Defendant also arrested for a felony
- Statute requires arrest

Promoting the increased use of citation in lieu of arrest is recommended by law enforcement and other groups.<sup>23</sup> Use of citations is widely embraced as a law enforcement tool,<sup>24</sup> and promoting the greater use of citations has been adopted as a criminal justice strategy elsewhere.<sup>25</sup> 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 offer a time savings of just over an hour per incident.<sup>26</sup> 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 JD 30B, 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, it is asserted that better decisions regarding whether to issue a citation versus making an arrest will promote officer efficiency, public safety, and efficient use of taxpayer funds.<sup>27</sup>

Local law enforcement agencies will distribute the pocket card to officers and provide training on use of the card at Roll Call. To facilitate training, a training guide, provided in Appendix B, was distributed to local agencies.

#### *Increased use of summons in lieu of arrest*

Related to the new decision-making framework for pretrial release decisions, this reform seeks to promote the increased use of summons in lieu of arrest for cases where a defendant would be released on non-financial conditions and does not require pretrial restrictions.

This change is designed to implement best practices,<sup>28</sup> give effect to the statutory direction that a warrant for arrest should issue when a person needs to be taken into custody,<sup>29</sup> statutory rules regarding citizen's warrants,<sup>30</sup> and to reduce wealth-based pretrial detentions of low-risk defendants. An arrest triggers an initial appearance and imposition of conditions of pretrial release. Because secured

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<sup>23</sup> See, e.g., FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 43 (2015), <http://elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf>; 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.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.authcheckdam.pdf).

<sup>24</sup> 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-iacp%20Citation%20Final%20Report%202016.pdf>.

<sup>25</sup> 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>.

<sup>26</sup> INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, *supra* note 24, at 3.

<sup>27</sup> National Conference of State Legislatures, *Citation in Lieu of Arrest* (Nov. 1, 2017) ("States may use citations to reduce jail populations and provide local cost savings. Citations divert lower risk offenders from detention, reserving limited space and resources for more dangerous offenders. 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>.

<sup>28</sup> 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.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.authcheckdam.pdf).

<sup>29</sup> G.S. 15A-304(b)(1).

<sup>30</sup> G.S. 15A-304(b)(3).



bonds are the most common condition imposed in JD 30B, the decision to issue a warrant for arrest over a summons often results in imposition of a secured bond. As noted above, imposition of secured bonds can lead to unnecessary detentions and associated costs, both to taxpayers, the community in terms of negative public safety results, and for the defendants.

This reform will be effectuated by incorporating into the Local Bail Policy a new decision-making framework for magistrates when deciding whether to issue a summons versus a warrant. The new decision-making framework is provided in Appendix C.

*Detention bond hearings for defendants intentionally detained on secured bonds*

For those defendants intentionally detained on unattainably high secured bonds because of concerns about public safety, flight risk, and risk of subornation of perjury, destruction of evidence, and intimidation of witnesses, the JD 30B Local Bail Policy will be revised to provide for a detention bond hearing. At that hearing, defendants will be provided with the procedural protections understood to be part of a constitutionally compliant preventative detention scheme, including among other things the right to counsel; the right to present evidence; and proof by the State, by clear and convincing evidence, that no condition of release can reasonably assure safety, appearance, and protection of the judicial process.

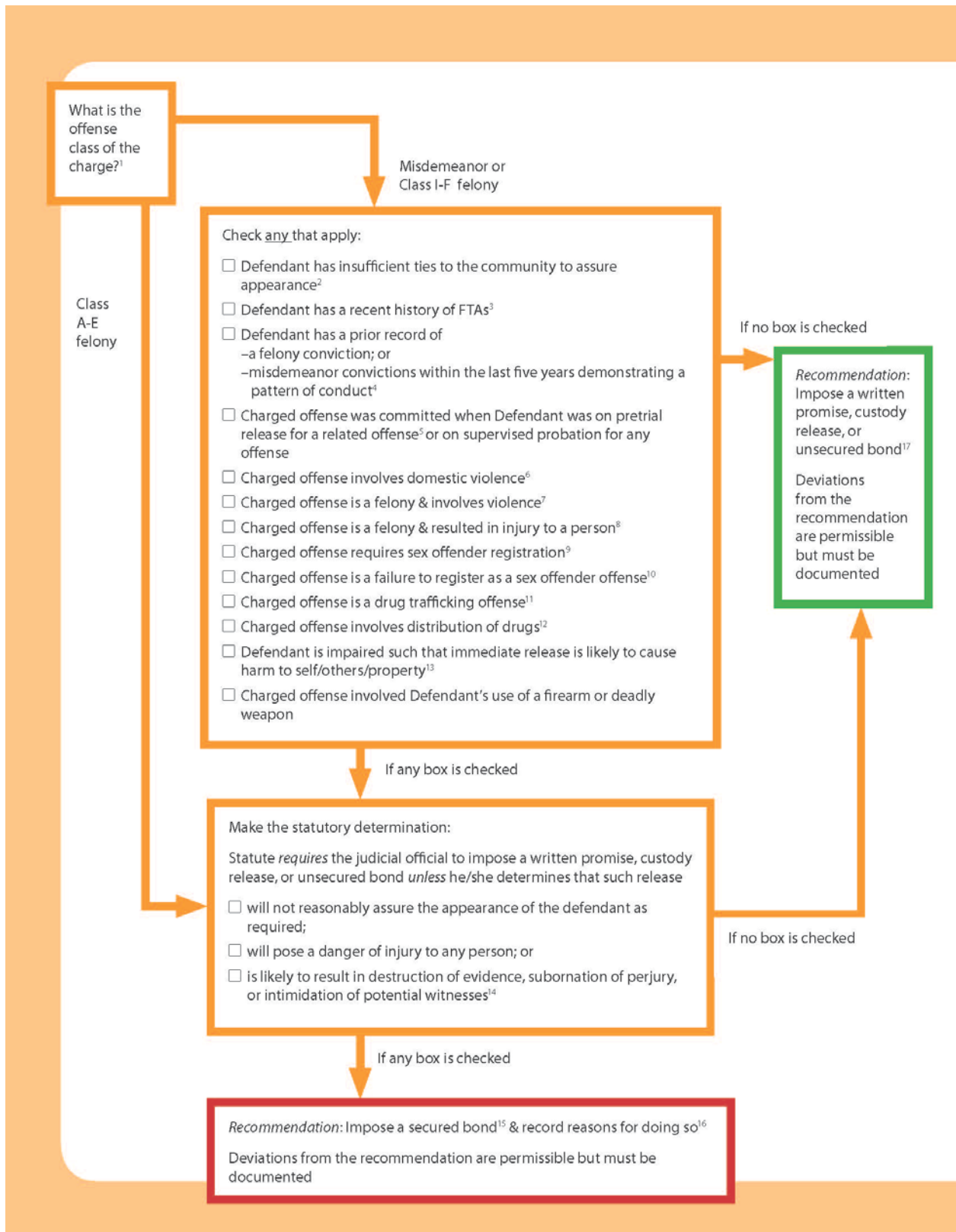
**Evaluation**

As noted, this project includes an empirical evaluation of all implemented reforms. Professor Vaske, will lead that evaluation effort and will provide stakeholders with an interim six-month report and a final report after the project has been in effect for 12 months.

The evaluation will consist of process and outcome evaluations to assess the fidelity of implementation, as well as the effects of the reforms on appearance rates, public safety, pretrial release, and jail costs. The outcome evaluation will use a quasi-experimental design with a historical control group and propensity score matching to assess differences in outcomes before and after implementation.

## **JUDICIAL DISTRICT 30B: DETERMINING CONDITIONS OF PRETRIAL RELEASE**

Pursuant to Judicial District 30B's Local Pretrial Release Policy, judicial officials must use the flowchart contained here, with accompanying footnotes and tables, when determining conditions of release in all cases except where the North Carolina General Statutes prescribe a different outcome or result.



1. If the matter is before a judge on the State's motion to increase conditions after the return of a habitual felon indictment, the judge should treat the offense at its "habitualized" offense Class level.
2. The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.
3. FTAs within the last 2 years are most relevant.
4. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has 3 priors within the last 5 years for misdemeanor drug or drug paraphernalia possession.
5. This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while on pretrial release for communicating threats to the property owner).
6. An offense involves domestic violence when the relationship between the parties is one of the following:
  - o Current or former spouses
  - o Currently or formerly lived together as if married
  - o Currently or formerly in a dating relationship
  - o Have a child in common
  - o Parent (or one in parental role)/child
  - o Grandparent/grandchild
  - o Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
7. For example, robbery.
8. This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).
9. For a list of offenses requiring sex offender registration, see JAMIE MARKHAM & SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2017-18 (UNC School of Government, forthcoming 2018).
10. See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7th Ed. 2012) (discussing this offense).
11. See G.S. 90-95(h); NORTH CAROLINA CRIMES *supra* note 10, at 721-739 (discussing trafficking offenses).
12. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
13. For defendants in impaired driving cases, follow impaired driving procedures. In all other cases if a secured bond is imposed only because of this factor and the defendant remains detained, conditions must be revised without consideration of this factor when the defendant's impairment no longer presents a danger of physical injury to himself or herself or others or of damage to property, but in any event, no later than 24 hours after secured bond was set.
14. G.S. 15A-534(b). When making this inquiry, judicial officials should consider whether pretrial restrictions (e.g., restrictions on travel, associations, conduct or place of abode, as well as abstention from alcohol consumption, as verified by the use of an approved continuous alcohol monitoring system), which can be imposed with a written promise, custody release or unsecured bond, can sufficiently mitigate pretrial risk. See G.S. 15A-534(a).
15. If a secured appearance bond is imposed: (1) the judicial official must consider—among other relevant factors—the defendant's ability to pay; and (2) the amount of the secured appearance bond should not exceed the amounts listed in the tables shown below; if a secured bond is set in excess of these recommended maximums, reasons for doing so must be documented.
 

If a secured bond is used to detain ("detention bond"), a detention bond hearing that affords the defendant appropriate procedural protections must be held before a judge on motion by the defense.
16. See G.S. 15A-534(b) (when judicial official imposes secured bond instead of written promise, custody release or unsecured bond, 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").
17. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) & note 14 above.

**Maximum Secured Appearance Bond Amounts—Drug Trafficking\***

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Drug	Amount	Class	Maximum Secured Bond
Marijuana	>10 lbs – 49 lbs.	H	\$5,000
	50-1,999	G	\$25,000
	2,000-9,999	F	\$50,000
	10,000 or more	D	\$200,000
Methaqualone	1,000 – 4,999 dosage units	G	\$25,000
	5,000 – 9,999	F	\$50,000
	10,000 or more	D	\$200,000
Cocaine	28-199 grams	G	\$50,000
	200-399	F	\$100,000
	400 or more	D	\$250,000
Methamphetamine	28-199 grams	F	\$50,000
	200-399 grams	E	\$100,000
	400 or more	C	\$250,000
Amphetamine	28-199 grams	H	\$5,000
	200-399	G	\$25,000
	400 or more	E	\$100,000
Opium/Opiate/ Opioid/Heroin	4-13 grams	F	\$50,000
	14-27	E	\$100,000
	28 or more	C	\$500,000
LSD	100-499 dosage units	G	\$25,000
	500-999	F	\$50,000
	1,000 or more	D	\$200,000
MDA/MDMA	100-499 units/28-199 grams	G	\$25,000
	500-999 units/200-399 grams	F	\$50,000
	1,000 units/400 grams or more	D	\$250,000
Substituted Cathinones	28-199 grams	F	\$50,000
	200-399	E	\$100,000
	400 or more	C	\$250,000
Synthetic Cannabinoids	In excess of 50-249 dosage units**	H	\$5,000
	250-1,249	G	\$25,000
	1,250-3,749	F	\$50,000
	3,750 or more	D	\$200,000

\* The maximum secured bonds included in this table are taken from the minimum fines required for the respective offenses.

\*\*A "dosage unit" is 3 grams of synthetic cannabinoid or any mixture containing such substance

**Maximum Secured Appearance Bond Amounts—Felonies (Other Than Drug Trafficking)**

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Punishment Class	Maximum Secured Bond
A	Set by Judge
B1	\$200,000
B2	\$200,000
C	\$50,000
D	\$50,000
E	\$25,000
F	\$15,000
G	\$10,000
H	\$5,000
I	\$2,500

**Maximum Secured Appearance Bond Amounts—Misdemeanors**

If a bond is set in excess of these recommendations, reasons for doing so must be documented.

Punishment Class	Maximum Secured Bond
A1	\$1,000
1	\$500
2	Use written promise, custody release or unsecured bond
3	Use written promise, custody release or unsecured bond
DWI (non-felony)	\$500

## Appendix B: Cite or Arrest Training Guide

### Training Guide--Citation Pocket Card

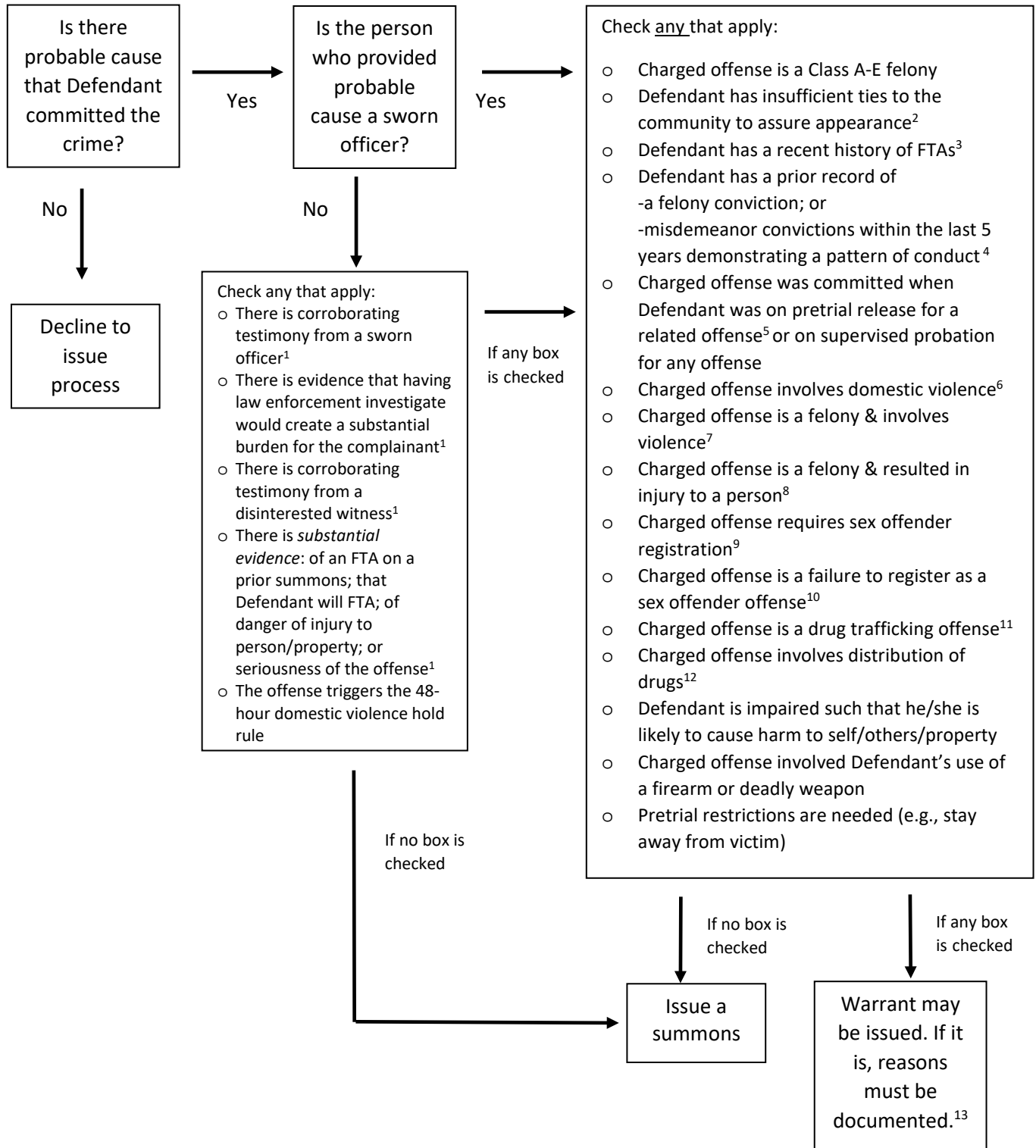
#### Key Points:

1. While law enforcement officers always have discretion when deciding whether to issue a citation in lieu of making an arrest, issuance of a citation for a misdemeanor is recommended when none of the conditions listed on the Pocket Card are present.
2. If one or more of following conditions are present, a citation may be issued or an arrest may be made, in the officer's discretion.

Condition	Interpretation
Pocket Card conditions that are clearly objective (i.e., either the condition exists or it does not, with little to no room for interpretation)	
Offense involved physical harm to a person	Example: Defendant hit a person. Taking or injuring property is not "physical harm" to a person.
Offense involved a deadly weapon	Example: Threat made while holding a knife.
Domestic dispute	Example: Threat by one spouse to another or by one person to another with who he/she lives as if married.
Defendant is also charged with a felony	Example: Defendant arrested for felony speeding to elude is found to be in possession of a misdemeanor amount of marijuana. Because defendant will be arrested on the felony, both charges can be addressed in the Magistrate's Order.
Statute requires arrest	If arrest is required by statute, a citation cannot issue.
Defendant on probation or pretrial release	Example: Defendant commits a larceny while on unsecured bond for possession of stolen property.
Defendant has prior violent convictions	Example: Prior armed robbery or felony assault conviction.
Defendant has more than 2 prior FTAs within the past two years	Note: Recent FTAs may be evidence that the person will FTA on this charge if no conditions of pretrial release are imposed.
Defendant has no local address and is thus an FTA risk	Notes: The term "local" may be construed to include neighboring counties; a homeless person can have a local address.
Conditions that require subjective judgment (i.e. the officer must use his or her judgment to determine if the condition has been met)	
Defendant poses a danger of continuing criminal activity if not arrested	Unless the officer has reason to believe that the criminal activity will continue if the person is not removed from the scene, then this condition is not met. An example of where the officer may conclude that the condition is met is if the person is intoxicated and acting in a disorderly manner.
Defendant poses an immediate danger to himself and assistance without arrest is not an option	Unless the officer has reason to believe that the person's safety and well being may be endangered if not removed from the scene by an arrest, then this condition is not met. An example of where the officer may conclude that the condition is met is if the person is impaired and may be at risk to walk into traffic.

Defendant poses a danger to others	Unless the officer has reason to believe that the person may pose a danger to any other person, then this condition is not met. An example of where the officer may conclude that the condition is met is if the person is in a highly agitated state or has been acting in a threatening manner.
Cannot confirm the defendant's identity or physical address	Unless the officer cannot confirm the person's identity or address, then this condition is not met. An example of where this condition is met is when the defendant refuses to identify him- or herself.
Pretrial restrictions are required (e.g., stay away from victim)	Unless the officer determines that pretrial restrictions are required, then this condition is not met. An example of where the officer might conclude that this condition is met is if the person is being charged with threatening Victim X and the officer believes it is necessary that a pretrial "no contact" restriction be imposed.

## Appendix C: Decision-Making Framework for Magistrates: Summons Versus Warrant





<sup>1</sup> G.S. 15A-304(b)(3) (effective October 1, 2018, as enacted by S.L. 2018-40).

<sup>2</sup> The mere fact that the Defendant is homeless and does not have a home address does not warrant checking this box; inquiry should be focused on the Defendant's connections to the community.

<sup>3</sup> FTAs within the last 2 years are most relevant.

<sup>4</sup> The pattern of conduct must relate to the present offense. For example: The current charge involves drug possession and the Defendant has 3 priors within the last 5 years for misdemeanor drug or drug paraphernalia possession.

<sup>5</sup> This factor covers situations where the Defendant continues to engage in the same type of conduct (e.g., repeat larceny) or an escalating course of conduct (e.g., the defendant is charged with injury to real property while the defendant was on pretrial release for communicating threats to the property owner).

<sup>6</sup> An offense involves domestic violence when the relationship between the parties is one of the following:

- Current or former spouses
- Currently or formerly lived together as if married
- Currently or formerly in a dating relationship
- Have a child in common
- Parent (or one in parental role)/child
- Grandparent/grandchild
- Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.

<sup>7</sup> For example, robbery.

<sup>8</sup> This factor applies when the offense involved harm to a person (e.g., assaultive conduct). It does not apply to offenses in which property is taken or harmed (e.g., larceny, embezzlement, obtaining property by false pretenses, etc.).

<sup>9</sup> For a list of offenses requiring sex offender registration, see JAMIE MARKHAM & SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2017-18 (UNC School of Government, forthcoming 2018).

<sup>10</sup> See G.S. 14-208.11(a); JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 268 (7<sup>th</sup> Ed. 2012) (discussing this offense).

<sup>11</sup> See G.S. 90-95(h); NORTH CAROLINA CRIMES *supra* note 10, at 721-739 (discussing trafficking offenses).

<sup>12</sup> For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell or deliver.

<sup>13</sup> If the charged offense is a Class A-E felony, the default is to issue a warrant.