

Bail Reform in North Carolina Judicial District 21: Evaluation Report

First Quarterly Report
November, 2020

Jamie Vaske
Associate Professor, Western Carolina University

Jessica Smith
W.R. Kenan Jr. Distinguished Professor, UNC School of Government
Director, Criminal Justice Innovation Lab



SCHOOL OF
GOVERNMENT

**Criminal Justice
Innovation Lab**

Contents

Executive Summary	1
Background.....	3
Process.....	4
Implemented Reforms	4
Empirical Evaluation and This Report	6
Findings	6
Magistrate Decision-Making.....	6
Conditions of Release	7
Completeness and Fidelity Issues	10
Judge Decision-Making	11
Conditions of Release	11
Completeness and Fidelity Issues	14
Pretrial Detention	15
Pretrial Failures.....	17
Court Non-Appearance.....	17
New Criminal Charges During Pretrial Period.....	19
Next Steps	20
Appendix A – New Structured Decision-Making Tool	21
Appendix B – Magistrate Bail Explanation Form	26
Appendix C – Judge Bail Explanation Form	29
Appendix D – Magistrate Bail Form Results by Magistrate.....	32

Executive Summary

Seeking to promote a fair and effective pretrial justice system, North Carolina Judicial District 21 (Forsyth County) adopted—effective January 1, 2020—a new structured decision-making tool to guide decisions regarding pretrial conditions. We are executing an empirical evaluation of implementation and impact of the new tool. The formal evaluation began on July 1, 2020 and will continue through June 30, 2021. This quarterly report presents findings regarding early implementation. Key findings include:

Magistrate Decision-Making

- Magistrates adhered to the decision-making tool’s recommendations in the vast majority of cases (80.59%).
- Magistrates issued a written promise, custody release, or unsecured bond in the majority of cases (57.29%). For cases where the highest charge was a Class 2 or 3 misdemeanor, conditions other than a secured bond were issued in 75.60% of cases. For cases where the highest charge was an intermediate-level offense or a Class A-E felony, that percentage was 53.63% and 9.09% respectively.
- Median bond amounts imposed by magistrates were proportional to the charged offense class, with highest charge Class A-E felony cases having the largest median secured bond amounts (\$50,000), followed by intermediate-level charge cases (\$3,000), and with cases involving Class 2 and 3 misdemeanor charges having the smallest median secured bond amounts (\$500).
- Median secured bond amounts imposed by magistrates for cases where the highest charge was a Class A-E felony or a Class 2 or 3 misdemeanor are double median bond amounts imposed by judges for these categories of charged offenses.
- There is a wide variation among individual magistrates in the use of secured bonds, median secured bond amounts, and deviations from the tool’s recommendations.
- Magistrates are executing forms without completeness or fidelity issues in the vast majority of cases (81.89% without completeness issues; 91.58% without fidelity issues), suggesting that implementation of the new process is successful at the magistrate level.

Judge Decision-Making

- Judges adhered to the decision-making tool’s recommendations in the majority of cases (65.75%).
- Judges imposed a condition other than a secured bond in the minority of cases (37.40%). This result was expected. If the tool is working as anticipated, more cases involving defendants who are likely to succeed pretrial¹ are being screened by magistrates for conditions other than secured bond, leaving a larger percentage of cases involving defendants less likely to succeed pretrial in the pool of those seen by judges at the first appearance and subject to the most restrictive condition of release (secured bond). As with magistrates, the rate at which judges

¹ As used in this report, pretrial success and related terms refer to no missed court dates and no new criminal charges during the pretrial period.

imposed conditions other than secured bond decreased as offense categories became more serious. Judges imposed conditions other than a secured bond in 85.71% of cases involving Class 2 and 3 misdemeanor charges, in 37.56% of cases involving intermediate-level charges, and in 0% of cases involving Class A-E felony charges.

- Median bond amounts imposed by judges were proportional to the charged offense class, with highest charge Class A-E felony cases having the largest median secured bond amounts (\$25,000), followed by cases involving intermediate-level charges (\$2,500), and with cases involving Class 2 or 3 misdemeanor charges having the smallest median secured bond amounts (\$250).
- As noted, median secured bond amounts imposed by magistrates for cases involving Class A-E felony charges and for those involving Class 2 and 3 misdemeanor charges are double the median bond amounts imposed by judges for these charge categories.
- Judges, like magistrates, are executing forms without fidelity issues in the vast majority of cases (81.55%). However, judges executed only about half of forms (52.67%) without completeness issues, suggesting that judges may benefit from additional training and coaching.

Pretrial Detention

- There was a decrease in pretrial bookings in the third quarter of 2020 as compared to the same period in 2019.
- There also was a decrease in longer jail stays in that period.
- COVID-19 was likely a factor that contributed to these findings.

Pretrial Failures

- For this report, we limited our analysis of court non-appearance to the first quarter of 2020 because of substantial disruptions in court schedules in the second and third quarters of the year due to COVID-19. We find that the number and percentage of court non-appearances decreased during the first quarter of 2020 relative to the same period in 2019.
- Although there was a 1.02 percentage point increase in the percent of defendants who were charged with new pretrial crimes during the first six months of 2020 as compared to the same period in 2019, that change was not statistically significant.

Background

In 2015, then-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 report, including a recommendation that North Carolina begin pilot projects supporting evidence-based pretrial justice reform.² Judicial District 30B became the state's first such pilot project, with reforms effective January 1, 2019. Promising evidence from early reports on the initiatives implemented in Judicial District 30B,³ information distributed through the North Carolina Attorney General's Pretrial Release and Accountability Roundtables, and information about efforts to improve pretrial systems around the nation and in North Carolina interested judicial system leaders in Judicial District 21 (JD 21). In 2019, a group of judicial branch employees, law enforcement leaders, and a representative from the county came together to explore whether reforms were needed in the district and if so, what reforms should be implemented. Out of this meeting came a Bail Reform Working Group (Working Group). Participants included:

- Senior Resident Superior Court Judge
- Chief District Court Judge
- Elected District Attorney's designee
- Public Defender
- Magistrates
- The Clerk of Court and office staff
- Representatives from the Sheriffs' offices, including Pretrial Services
- Representatives from the local police departments
- Probation
- Judicial district administrative staff
- A Forsyth County representative

The project was supported by Jessica Smith, whose participation was made possible through a technical assistance award from the State Justice Institute (SJI). The SJI grant, administered by the National Center for State Courts and the Pretrial Justice Institute, funded Smith's time and travel to and from the district.

² NCCALJ CRIMINAL INVESTIGATION AND ADJUDICATION COMMITTEE, PRETRIAL JUSTICE REFORM FOR NORTH CAROLINA (2016) (Report of the North Carolina Commission on the Administration of Law & Justice), https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_criminal_investigation_and_adjudication_committee_report_pretrial_justice.pdf.

³ See, e.g., Jamie Vaske & Jessica Smith, *Judicial District 30B Pretrial Justice Pilot Project Third Quarter 2019 Report* (2019), <https://cjl.sog.unc.edu/files/2019/11/Third-quarter-implementation-results.pdf>. For the final report on the 30B project, see Jessica Smith, *North Carolina Judicial District 30B Pretrial Justice Pilot Project Final Report Part I: Background, Process & Implemented Reforms* (2020), <https://cjl.sog.unc.edu/files/2020/04/March-2020-Final-Report-30B-Project-Part-1.pdf>, and Jamie Vaske, *North Carolina Judicial District 30B Pretrial Pilot Project, Final Report Part II: Evaluation Report* (2020), <https://cjl.sog.unc.edu/files/2020/04/March-2020-Final-Report-30B-Project-Part-2.pdf>.

Process

The Working Group met several times in 2019. Working Group members focused primarily on the negative consequences of unnecessary pretrial detentions for individuals charged with lower-level crimes; specifically, on those who are detained pretrial not because of risk, but because they lacked sufficient financial resources to pay money bonds imposed in their cases. Stakeholders examined research on how pretrial detention of such individuals undermines public safety and reviewed information on the cost of pretrial detention and fairness issues associated with poverty-based pretrial detentions. They also considered the status of state and federal litigation challenging money-based bail systems and governing federal constitutional law and state statutes. Working Group members understood the role of local jails to detain those defendants for whom no conditions of release can reasonably assure court appearance and public safety. However, they determined that unnecessary detention of individuals who are likely to succeed pretrial undermines public safety and the fairness and effectiveness of the local pretrial justice system. Ultimately the Working Group adopted reforms designed to address unnecessary pretrial detention of individuals who do not present any significant pretrial risk but who remain detained pretrial because they are unable to afford money bonds imposed in their cases. Specifically, the district adopted a new structured decision-making tool and related procedures to better inform judicial officials' pretrial decisions and ensure compliance with constitutional and statutory requirements.

After Working Group members reached a consensus on needed reforms, they approved a detailed implementation plan. That plan specified tasks to be completed, and for each task, person(s) responsible, due dates, and other relevant information. Executing the implementation plan occupied most of the third quarter of 2019, and a training event for judicial branch employees and law enforcement personnel was held in December 2019. The reforms took effect on January 1, 2020.

Implemented Reforms

Data show that the 2019 statewide rate of imposition of secured bonds in cases involving only misdemeanor charges was 67.6%.⁴ In JD 21, that rate was 77.5%.⁵ Working Group members were concerned that existing practices regarding setting conditions of pretrial release may not sufficiently account for individualized factors regarding the defendant and the circumstances of the offense as required by state law.⁶ They hoped that new bail tools would promote adherence to state law requiring release on a written promise, custody, or unsecured bond except when the judicial official finds that those conditions:

1. will not reasonably assure appearance;
2. will pose a danger of injury to any person; or
3. are likely to result in the destruction of evidence, subornation of perjury, or intimidation of witnesses.⁷

⁴ Jessica Smith, *County-Level Bail Conditions in North Carolina* (2019), <https://cjl.sog.unc.edu/files/2019/11/County-Level-Bail-Conditions-in-NC.pdf>.

⁵ *Id.*

⁶ G.S. 15A-534(c).

⁷ G.S. 15A-534(b).

Additionally, Working Group members wanted to develop a tool to help judicial officials quickly identify those defendants who can be released on conditions *other than secured bond* to reduce the occurrence of wealth-based incarceration of individuals who pose little risk to public safety or of flight. Although they considered empirical risk assessment tools (sometimes referred to as “algorithms”) for that purpose, they did not opt for such a tool. Instead, they adopted a new structured decision-making tool to better inform judicial officials’ pretrial decisions and conform to constitutional and statutory requirements.

The new decision-making tool, included in Appendix A and modeled on the tool adopted in Judicial District 30B, applies in all circumstances except where the statutes or the local bail policy require a different process or result.⁸ Key features of the new tool include:

- Expressly incorporating the statutory requirement that a judicial official “must” impose a written promise, custody release or unsecured bond unless the official “determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.”⁹
- Creating a presumption for conditions other than secured bonds for persons charged with Class 2 and 3 misdemeanors.
- Providing an easily implemented checklist of defendant- and offense-specific factors to quickly identify additional defendants who can be released on conditions other than a secured bond.
- Providing that for individuals charged with the most serious offenses, no presumption or screening applies; decision-makers proceed to the required statutory determination.
- Requiring documentation of reasons for imposing a secured bond.
- Requiring that ability to pay be considered when setting a secured appearance bond.
- Requiring detention bond hearings when a secured detention bond is imposed.
- Providing a maximum bond table.
- Preserving necessary discretion by allowing for deviations from all tool recommendations, provided that deviations are documented.

The Working Group also adopted a new ability to pay procedure. Specifically, Pretrial Services will obtain and present to the first appearance judge core financial information listed on the Affidavit of Indigency (AOC-CR-226)¹⁰ to better inform judicial determinations of ability to pay.

To facilitate adoption of the new tool, new Magistrate and Judge Bail Explanation Forms were created for use by magistrates and judges when setting bail (Appendices B & C). These forms were designed to document decision making, including magistrates’ and

⁸ For example, when a secured bond is required by law.

⁹ G.S. 15A-534(b).

¹⁰ Online at: <https://www.nccourts.gov/assets/documents/forms/cr226-en.pdf?e1Vg5Goi1xRI3OAVkbvPBdXUyDuK.yrV>.

judges' reasons for imposing secured bonds, and to provide data to evaluate the impact of the new procedures.

Empirical Evaluation and This Report

The Working Group knew that an empirical evaluation would provide valuable information regarding the effectiveness of implemented reforms. It thus supported the efforts of Smith and the UNC School of Government Criminal Justice Innovation Lab to seek grant funding to execute such an evaluation. Funding for the evaluation was provided by the Charles Koch Foundation. Specifically, the Foundation provided funding for a 12-month evaluation of the district's reforms. The Foundation had no involvement in the Working Group's work or in the preparation of this report.

Although the evaluation initially was scheduled to begin in the Spring of 2020, the COVID-19 pandemic necessitated delaying that start date until July 1, 2020. The empirical evaluation will continue through June 30, 2021.

A draft of this report was circulated to Working Group members in late October and they were invited to submit written feedback to us. Additionally, we met with Working Group members in early November to discuss the report and receive additional feedback from them. We thank them for their feedback and comments, which we have incorporated into this report. Additional feedback was provided by Professor Sarah L. Desmarais of North Carolina State University, who serves as a research consultant on this project.¹¹

Findings

We present here findings regarding early implementation of reforms in the district. For most analyses we focus on the first formal quarterly reporting period, July 1, 2020 through September 30, 2020. For some analyses, however, we adjust the evaluation period. For example, because jury trials were suspended throughout the second and third quarters of 2020 as a result of the pandemic, our analysis of non-appearance rates focuses on the first quarter of 2020. The relevant evaluation period is clearly stated in our presentation of findings below.

Magistrate Decision-Making

In the two sections that follow we report on magistrate decision-making, using data extracted from Magistrate Bail Explanation Forms. **We find that magistrates adhered to the tool's recommendation in the vast majority of cases. They issued conditions other than a secured bond for the majority of all cases, and this result held true for highest charge Class 2 and 3 misdemeanor cases and intermediate-level offense cases (defined by local policy to include Class F-I felonies and Class A1 and 1 misdemeanors). Magistrates imposed secured bonds in the majority of cases for only one charge type: Class A-E felony cases. For forms where magistrates reported issuing a secured bond, the bond amount is proportional to the offense category. There is, however, wide variation among magistrates in the use of secured bonds, median**

¹¹ Also contributing to this report were PhD student Christopher Ross Hatton, graduate student Maggie Aron Bailey, UNC School of Government Legal Research Associate Christopher Tyner and Criminal Justice Innovation Lab Project Manager Ethan Rex.

secured bond amounts, and deviations from the recommendations of the decision-making tool. Finally, magistrates are executing forms without completeness or fidelity issues in the vast majority of cases, suggesting that implementation of the new process is successful the magistrate level.

Conditions of Release

Since January 1, 2020, magistrates have determined conditions of pretrial release using the new structured decision-making tool and have documented their decision-making on a new Magistrate Bail Explanation Form (Appendix B). We reviewed every bail explanation form completed in the first quarter of 2020, tracking issues regarding completeness and fidelity to the new structured decision-making tool. During this period, we also provided feedback to magistrates to support their efforts to apply the new tool and use the new form. Extracting data from Bail Explanation Forms allows us to summarize and report on conditions imposed at the magistrate level. In this report, we present data on the conditions of release imposed by magistrates from July 1 to September 26, 2020.

The data show that magistrates set conditions in 1,162 forms from July 1 to September 26, 2020. A total of 85 forms (7.31%) were removed from analyses because of one or more completeness or fidelity issues deemed critical to our evaluation.¹² In the remaining 1,077 forms, **magistrates adhered to the decision-making tool's recommendation in the vast majority of cases.** Specifically, they followed the tool's recommendations in 868 forms (80.59% of forms), while deviating from the tool's recommendations in 209 forms (19.41% of forms).¹³

Of the 209 forms on which magistrates reported deviating from the tool's recommendations, they reported deviating from the recommendation to impose an unsecured bond, written promise, or custody release in 114 forms (54.55% of deviations), opting instead to impose a secured bond. In 95 forms (45.45% of deviations), magistrates reported deviating from the recommendation to impose a secured bond within the maximum dollar amount, opting instead to impose a secured bond above the maximum dollar amount or to impose a written promise, custody release, or unsecured bond.

Table 1 shows the percent of conditions of release by highest charge offense class for the 1,077 forms included in these analyses. As shown there, **magistrates issued a written promise, custody release, or unsecured bond for the majority of cases.** Specifically, they issued conditions other than a secured bond for 57.29% of all offenses; secured bonds were issued in 42.71% of all cases. This pattern of results was similar for highest charge Class 2 and 3 misdemeanor cases and highest charge

¹² Specifically, magistrates failed to record the final bond type (38 forms or 44.70% of forms with issues); failed to record whether they were following or deviating from policy recommendations (20 forms or 23.53%); recorded that they were simultaneously following and deviating from policy (35 forms or 41.18%); or did not record offense class or recorded multiple (and sometimes incorrect) offense classes (16 forms or 18.83%).

¹³ As discussed in Background; Implemented Reforms above, the new tool preserves necessary discretion by allowing for deviations from all tool recommendations, provided that deviations are documented.

“intermediate-level offense” cases (defined by local policy to include Class F-I felonies and Class A1 and 1 misdemeanors). For cases where the highest charge was a Class 2 or 3 misdemeanor, magistrates issued a written promise, custody release, or unsecured bond in 75.60% of cases; they issued a secured bond in 24.40% of these cases. For cases where the highest charged offense was an intermediate-level offense, magistrates issued a written promise, custody release, or unsecured bond in 53.63% of cases; they issued a secured bond in 46.37% of these cases. Magistrates imposed secured bonds in the majority of cases for only one charge type: Class A-E felony cases. Specifically, magistrates issued a secured bond in 90.91% of cases involving Class A-E felony charges. These results are consistent with expectations: That a smaller percent of lower-level offenses and a larger percent of higher-level offenses would receive the most restrictive condition (secured bond).

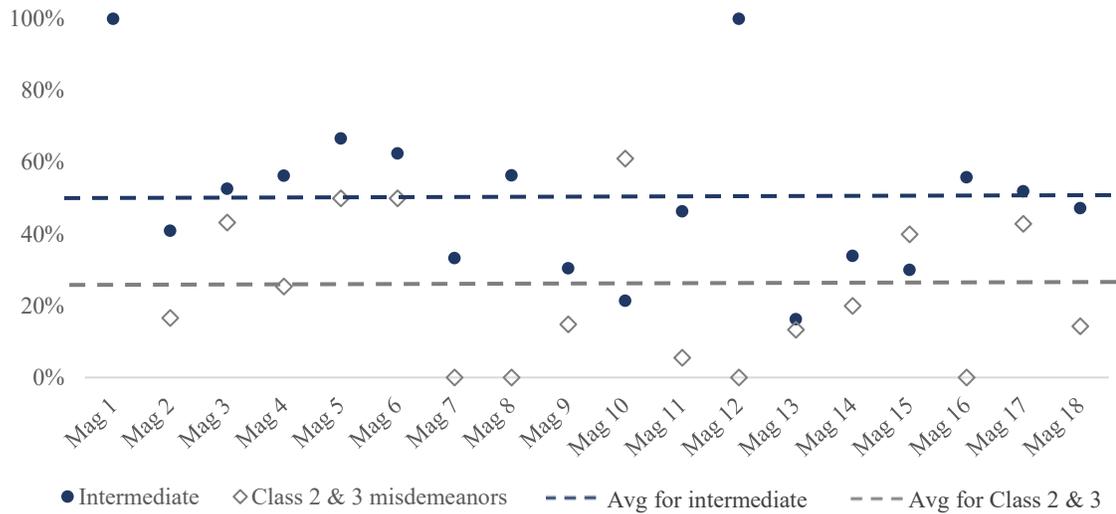
For forms where magistrates reported issuing a secured bond, the bond amount is proportional to the offense category, with more serious charges (Class A-E felonies) having the highest median secured bond amounts (\$50,000), followed by intermediate-level charges (\$3,000), and Class 2 and 3 misdemeanor charges having the smallest median secured bond amounts (\$500). Again, these results are as expected: that bond amounts would increase as cases increase in severity from Class 2 and 3 misdemeanor charges at the low end to intermediate-level offense charges and to Class A-E felony charges at the high end. However, as noted below, median secured bond amounts imposed by judges for highest charge Class A-E felony cases and highest Class 2 and 3 misdemeanors cases are half the median secured bond amounts imposed by magistrates for these offense classes (\$25,000 for judges versus \$50,000 for magistrates for Class A-E felony charges; \$250 for judges versus \$500 for magistrates for Class 2 and 3 misdemeanor charges); although judges imposed smaller median bond amounts than magistrates for intermediate-level charges (\$2,500 for judges versus \$3,000 for magistrates), the differential was not as large as the other charge categories. At the November stakeholder meeting where we presented these results, they prompted conversations among stakeholders about the role of and possible modifications to the maximum bond tables in the decision-making tool. We will follow up with stakeholders about this issue and note any procedural changes that are adopted in subsequent reports. Additionally, it was suggested at that meeting that the lower median bond amounts imposed by judges for Class A-E felonies may result from the fact that bonds for those charges are addressed at bond reduction hearings where more information about the case and the defendant is available to the judge than to the magistrate at the initial appearance held immediately after arrest.

Table 1: Percent conditions of release by highest offense class in magistrate bail forms, Quarter 3 of 2020

Type of Condition	All Cases	Class A – E felonies	Class F - I felony & Class 1 – A1 misdemeanors	Class 2 & 3 misdemeanors
Written promise, custody release, or unsecured bond	57.29%	9.09%	53.63%	75.60%
Written promise	19.03%	0.00%	14.91%	32.99%
Custody release	1.76%	0.00%	2.46%	0.34%
Unsecured bond	37.23%	9.09%	37.35%	42.27%
Secured bond	42.71%	90.91%	46.37%	24.40%
Median secured bond	\$2,500	\$50,000	\$3,000	\$500

We also examined whether the general pattern of decision-making across individual magistrates differed from the averages shown in Table 1. Analyses showed that **there is wide variation among individual magistrates in the use of secured bonds, median secured bond amounts, and deviations from the recommendations of the decision-making tool**, especially for intermediate-level offense charges and Class 2 and 3 misdemeanor charges (Appendix D). The percentage rate for imposition of secured bonds in cases involving intermediate-level charges ranged from 16.28% for one magistrate to 100% for another, and median secured bond amounts for these offenses ranged from \$500 for one magistrate to \$10,000 for another. The percentage rate for imposition of secured bonds in cases involving Class 2 or 3 misdemeanor charges ranged from 0% for one magistrate to 61.11% for another, and median secured bond amounts for these charges ranged from \$225 for one magistrate to \$2,500 for another. Figure 1 displays the variation in percent cases issued a secured bond for intermediate-level offense charges and Class 2 or 3 misdemeanor charges across magistrates, relative to the percent of cases issued a secured bond for intermediate-level offense charges (46.37%) and Class 2 or 3 misdemeanor charges (24.40%) for the entire group. For example, the Figure shows that Magistrate #3 issued a secured bond for 43.27% of Class 2 or 3 misdemeanor charge cases, a rate substantially higher than the group rate for this charge category (24.40%). Although case specific factors may justify these differences in outcomes across magistrates, larger deviations from the group rate may point to a need for targeted coaching.

Figure 1. Percent of intermediate-level and Class 2 or 3 misdemeanor charges issued a secured bond by magistrate



Note: No marker indicates that the magistrate did not set conditions for this charge category.

Completeness and Fidelity Issues

We examined a random sample of 475 forms completed in weeks 10 through 39 (March 1 to September 26) for completeness and fidelity issues. Examining the quality of implementation can help explain why a reform may not have the desired or anticipated effect. In our analyses, a completeness issue refers to failure to complete some portion of the form. A fidelity issue refers to a failure to follow the process set out in the decision-making tool. Of the 475 forms examined, 18.11% (86 forms) had one or more completeness issues, and 8.42% (40 forms) had one or more fidelity issues. Thus, **magistrates are executing forms without completeness or fidelity issues in the vast majority of cases (81.89% without completeness issues; 91.58% without fidelity issues), suggesting that implementation of the new process is successful the magistrate level.**

Table 2 shows the most common completeness and fidelity issues in the random sample.

Table 2. Common fidelity and completeness issues—Magistrate bail forms

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> • Not including the case number, defendant name, or charge description at the top of the form (2.32%) • Not noting the underlying offense for a failure to appear or probation violation (1.16%) • Not checking a redundant box (43.02%) • Not reporting the offense class (8.14%) • Not reporting the final bail condition and/or amount (15.11%) • Not completing Step 1 (41.86%) • Not completing other steps, such as Step 2 (2.32%), Step 3.5 (1.16%), Step 5 (9.30%), Step 6 (2.32%), or Step 7 (3.48%) 	<ul style="list-style-type: none"> • Not following the decision-making process (30.00%) • Checking multiple inconsistent boxes, such as selecting multiple offense classes (2.50%) • Both adhering to and deviating from policy in Steps 3.5 and 5 (35.00%) • Not reporting a deviation (such as setting a bond amount above the maximum amount) (5.00%) • Not explaining a deviation (32.50%) • Checking the deviation box for a condition that was not a deviation (12.50%)

Note: For an explanation of the steps on the decision-making process, see Appendix B (Magistrate Bail Form).

Judge Decision-Making

In the two sections that follow we report on judge decision-making, using data extracted from Judge Bail Explanation Forms. **We find that judges followed the tool’s recommendation in about two-thirds of cases. Unlike magistrates, judges imposed a secured bond in the majority of cases.** *We did, however, expect that judges would be imposing secured bonds at a higher rate than magistrates. If the tool is working as anticipated, more cases involving defendants who are likely to succeed pretrial would be screened by magistrates for conditions other than secured bond, leaving a larger percentage of cases involving defendants who are less likely to succeed pretrial in the pool of those seen by judges at first appearance and subject to the most restrictive condition of release.* **Judges were more likely to impose a secured bond and issue higher secured bond amounts for Class A-E felony charges and intermediate offense charges than for Class 2 and 3 misdemeanor charges. Median secured bond amounts imposed by judges for Class A-E felony charges and Class 2 and 3 misdemeanor charges are half the median amounts imposed by magistrates for these offense categories. Judges followed the tool’s decision-making process without fidelity issues in the vast majority of cases. However, judges executed only about half of forms without completeness issues, possibly pointing to a need for additional training.**

Conditions of Release

Since January 1, 2020, judges have determined conditions of pretrial release using the structured decision-making tool and have documented their decision-making on a new

Judge Bail Explanation Form (Appendix C). We reviewed every form completed in the first quarter of 2020, tracking issues regarding completeness and fidelity to the new structured decision-making approach. During this period, we also provided feedback to judges to support their efforts to apply the new tool and use the new form. Extracting data from the forms allows us to report on conditions imposed at the judge level. In this report, we present data on the conditions of release imposed by judges from July 1 to September 26, 2020.

Judges completed 285 forms between July 1 and September 26, 2020. Thirty-one forms (10.87%) were removed from the analyses because of completeness and/or fidelity issues deemed critical to this evaluation.¹⁴ Of the remaining 254 forms, **judges followed the tool's recommendation in about two-thirds of cases** (65.75%; 167 forms). Judges deviated from the decision-making tool's recommendation in about one-third of cases (34.25%; 87 forms), a rate that was higher than that for magistrates (19.41%).

For cases where judges deviated from the tool's recommendation, 80.45% of deviations were to impose a secured bond above the maximum dollar amount or to impose a written promise, custody release, or unsecured bond instead of a secured bond. In 19.54% of deviations, the judge deviated from the recommendation to impose a written promise, custody release, or unsecured bond, opting instead to impose a secured bond.

Table 3 shows the percent of conditions of release by offense class for the 254 forms included in these analyses. **Judges imposed a secured bond in the majority of cases.** Specifically, they imposed a secured bond in 62.60% of all offenses, and issued a written promise, custody release, or unsecured bond for 37.40% of cases. Judges did not issue a custody release or written promise for any cases. As noted above, magistrates issued conditions other than a secured bond in the majority of cases. *We expected to see secured bonds imposed in a greater percentage of cases at the judge level than at the magistrate level; if the tool is working as expected, more cases involving defendants who are likely to succeed pretrial would be screened by magistrates for conditions other than secured bond, leaving a larger percentage of cases involving defendants who are less likely to succeed pretrial in the pool of cases seen by judges at first appearance and subject to the most restrictive condition of release.*

Judges were more likely to impose a secured bond and issue higher secured bond amounts for Class A-E felony charges and intermediate-level offense charges than for Class 2 and 3 misdemeanor charges. Judges issued a secured bond in 100% of Class A-E felony charge cases, and the median bond amount was \$25,000. They issued a secured bond in 62.44% of intermediate-level offense charge cases, and the median secured bond amount was \$2,500. In cases where defendants were charged with Class 2 and 3 misdemeanors, judges issued a secured bond in 14.29% of cases, and the median secured bond amount was \$250. **Median secured bond**

¹⁴ Ten forms (or 32.26% of forms with fidelity and/or completeness issues) were removed because the judge did not note the final bond condition; 10 forms (32.26%) were removed because the judge indicated simultaneously following and deviating from the policy; 4 forms (12.90%) were removed because the judge did not note whether the official was following or deviating from policy; 5 forms (16.13%) were removed because the judge did not report the offense class; and 7 forms (22.58%) were removed because the judge reported multiple offense classes for one charge.

amounts imposed by judges for Class A-E felonies and Class 2 and 3 misdemeanors are half the median amounts imposed by magistrates for these offense classes (\$25,000 (judges) versus \$50,000 (magistrates) for Class A-E felonies; \$250 (judges) versus \$500 (magistrates) for Class 2 and 3 misdemeanors).

This pattern of findings for type of condition imposed by judges mirrors that found for magistrates, shown in Table 1 above. However, though rates of imposition of unsecured bonds for intermediate-level charges were similar for both magistrates and judges overall (37.35% for magistrates; 37.56% for judges), for Class 2 and 3 misdemeanor charges, judges imposed unsecured bonds at a significantly higher rate than magistrates (42.27% for magistrates; 85.71% for judges). Upon further review of the types of intermediate-level and Class 2 and 3 misdemeanor charges presented to judges, we found that the majority of the charges that received an unsecured bond by a judge involve a domestic violence offense or one that includes an element of violence. Specifically, the majority of those charges were for assault on a female, simple assault, assault with a deadly weapon, assault and battery, assault on a government official, or a domestic violence protection order violation (81.97% for intermediate-level charges and 75.00% for Class 2 and 3 misdemeanor charges). Two factors may explain this case mix. First, as noted above, if the tool is working as intended, nonviolent defendants who are more likely to succeed pretrial are being screened at the magistrate level for conditions other than secured bond and thus are not appearing before judges at first appearances for conditions. Second, for some of these offenses, judges were making bail decisions in the first instance, due to the 48-hour domestic violence rule. This may explain the higher rate at which judges impose unsecured bonds for Class 2 and 3 misdemeanors, though we note that the rate at which judges impose unsecured bonds for intermediate-level offense charges tracks the rate that condition is imposed for those charges at the magistrate level.

Table 3: Percent conditions of release by highest offense class in judge bail forms, Quarter 3 of 2020

Type of Condition	All Cases	Class A – E felonies	Class F - I felony & Class 1 – A1 misdemeanors	Class 2 & 3 misdemeanors
Written promise, custody release, or unsecured bond	37.40%	0.00%	37.56%	85.71%
Written promise	0.00%	0.00%	0.00%	0.00%
Custody release	0.00%	0.00%	0.00%	0.00%
Unsecured bond	37.40%	0.00%	37.56%	85.71%
Secured bond	62.60%	100.00%	62.44%	14.29%
Median secured bond	\$2,500	\$25,000	\$2,500	\$250

Completeness and Fidelity Issues

We reviewed a random sample of 374 forms completed by judges for completeness and fidelity issues. Similar to our review of the magistrate bail forms, we sampled forms from March 1 to September 26 (weeks 10 through 39). Results showed that 47.33% of sampled forms had one or more completeness issue, while 18.45% of forms had one or more fidelity issues. Thus, **judges followed the tool’s decision-making process without fidelity issues in 81.55% cases. However, only about half of forms (52.67%) were executed without completeness issues, possibly pointing to a need for additional training.** At the November stakeholder meeting where we presented the draft report, we noted that a common completeness issue was failure to complete Step 1 on the Judge Bail Explanation Form (see Appendix C). Stakeholders indicated that there is some confusion about how to complete that step, depending on the procedural posture of the case. We will follow up with the Chief District Court Judge on this, with a goal of providing additional form completion guidance.

Table 4 shows the most common completeness and fidelity issues in the random sample.

Table 4. Common fidelity and completeness issues—Judge bail forms

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> • Not completing Step 1 (58.75%) • Not reporting final bond amount (31.63%) or final bond condition (1.12%) • Not checking a redundant box (31.63%) • Deviating but not explaining the type of deviation (25.42%) • Deviating but not explaining the reason for the deviation (14.12%) • Not recording offense class (10.73%) • Not including the case number, defendant name, or charge description at the top of the form (1.69%) • Not noting the underlying offense for a failure to appear or probation violation (1.69%) • Not completing other steps, such as Step 2 (1.12%) or Step 4 (1.69%) 	<ul style="list-style-type: none"> • Deviating but not explaining the reason for the deviation (36.23%)¹⁵ • Checking the deviation box for a condition that was not a deviation (20.28%) • Not following the decision-making process (30.43%) • Both adhering to and deviating from policy in Steps 3.5 and 5 (20.28%) • Setting bond in both Step 3.5 and 5 (7.24%) • Checking the wrong deviation type (4.34%) or selecting both deviation types in Step 6 (2.89%) • Failing to complete Step 4 when required (4.34%) • Not reporting a deviation (such as setting a bond amount above the maximum amount) (5.00%)

Note: For an explanation of the steps on the decision-making process, see Appendix C (Judge Bail Form)

¹⁵ This issue can be both a completeness and fidelity issue and thus is recorded here as both.

Pretrial Detention

In an earlier check-in report to stakeholders, we presented data showing that the use of secured bonds decreased during the first and second quarter of 2020 relative to the same time periods in 2019.¹⁶ One expected result of a decrease in the use of secured bonds is reduced pretrial detention. In this section we assess whether there have been changes in the number of pretrial bookings and the length of jail stays. To address this question, we examined booking data from the Forsyth County Detention Center for all defendants admitted to the facility between July 1 to September 30 for 2019 and 2020, restricting our analyses to pretrial defendants who were issued a secured bond.¹⁷ **We find a decrease in both pretrial bookings and longer jail stays for pretrial defendants in the third quarter of 2020, as compared to the same period in 2019. We note that COVID-19 undoubtedly was a factor with respect to both of these findings, as pandemic-related public health concerns created pressure to reduce jail populations.**

Figure 2 shows the number of bookings in July, August, and September of 2019 and 2020. The number of pretrial bookings was, on average, 37.85% lower during the third quarter of 2020 compared to the same period in 2019. For instance, there were 161 bookings into the detention center in August 2020 as compared to 291 bookings in August 2019 (a 44.67% decrease).

Table 5 shows that although the median length of stay was 1 day in both time periods, there was a statistically significant reduction in longer pretrial jail detentions. Specifically, there was a significant decrease in the number of bookings resulting in pretrial detentions for 8 – 14 days, 22 – 29 days, and 30+ days in the third quarter of 2020 relative to the same period in 2019. For instance, 2.88% of bookings resulted in detentions for 8 – 14 days in 2020 compared to 5.17% of bookings in 2019. Similar results were seen for bookings resulting in detentions for 22 – 29 days. Most significantly, the percentage of bookings that resulted in detentions longer than 30 days was 78.05% lower during the third quarter of 2020, as compared to the same period in 2019. In 2020, only 1.44% of bookings resulted in detention of 30 days or longer as compared to 6.56% in 2019.

The data, however, show a 9.69 percentage point increase in the number of bookings resulting in detentions of 1 – 7 days during the third quarter 2020 as compared to 2019. In 2020, 57.61% of people booked pretrial were detained 1 – 7 days as compared to 47.92% in 2019. Supplemental analyses¹⁸ indicate that this difference between 2020 and 2019 may be driven by a larger percent of bookings resulting in detentions for 1 day in 2020 (30.66% of bookings) relative to 2019 (21.56% of bookings). At the November stakeholder meeting where we presented the draft report, it was suggested that a 2020 increase in impaired driving cases receiving a “disappearing appearance bond” may

¹⁶ We were not able to report on that metric in this report because the North Carolina Administrative Office of the Courts (NC AOC) declined to provide an updated Conditions of Release Report for use in this evaluation.

¹⁷ We excluded defendants who were held on a writ; serving a sentence; held on a child support case; and released to another local law enforcement agency, probation, or a federal law enforcement agency such as the U.S. Marshals. We also excluded defendants who were issued a condition of release other than a secured bond at the initial appearance.

¹⁸ Results available upon request.

explain this result. A disappearing appearance bond is when the magistrate imposes a secured bond that converts to a written promise when the defendant becomes sober; it is imposed in impaired driving cases to ensure that the defendant does not resume driving while still impaired. We will explore whether we can identify these cases in the jail records and, if so, will account for them in subsequent reporting.

Figure 2. Number of pretrial bookings into the Forsyth County Detention Center, Quarter 3 of 2019 and 2020

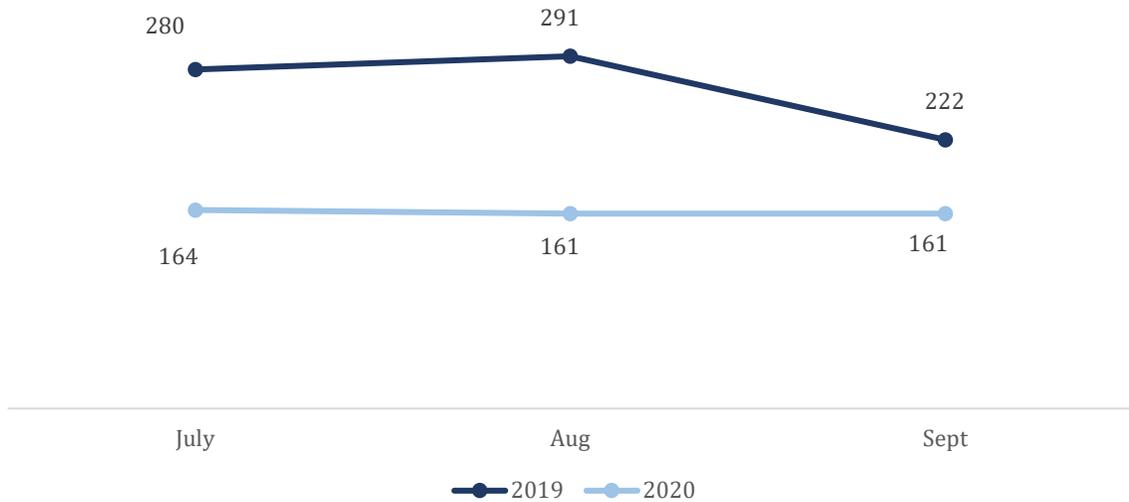


Table 5. Percent of bookings by length of stay in Forsyth County Detention Center for Quarter 3 of 2019 and 2020

All Offenses	2019	2020
0 days	34.68%	33.95%
1 - 7 days	47.92%	57.61%*
8 - 14 days	5.17%	2.88%*
15 - 21 days	2.77%	3.09%
22 - 29 days	2.90%	1.03%*
30+ days	6.56%	1.44%*
Median number of days	1.00	1.00
Total number of bookings	793	486

Asterisks (*) indicate that a finding is statistically significant ($p \leq .05$). Findings that are statistically different or statistically significant indicate that differences between the two percentages are not due to chance alone or statistical noise. Note that difference scores without any asterisk (*) means the difference is not statistically significant.

Pretrial Failures

In an earlier check-in report to stakeholders, we presented data showing that the use of secured bonds decreased in 2020 relative to 2019.¹⁹ Similarly, the prior section showed that there has been a substantial decrease in the number of pretrial bookings during the third quarter of 2020 relative to the same period in 2019. Some have expressed concern that a reduction in the use of secured bonds and in pretrial detention may result in substantially higher rates of court non-appearances and pretrial criminal activity. The following sections examine whether or not: (1) the prevalence of court non-appearance changed in 2020 relative to 2019; and (2) the prevalence of incurring new criminal charges during the pretrial period changed in 2020 relative to 2019. **We find (1) that rates of court non-appearances in the first quarter of 2020 were lower than rates for the same period in 2019; and (2) no statistically significant change in new pretrial criminal charges for the first six months of 2020 as compared to the same period in 2019.** We discuss these findings in more detail below.

Court Non-Appearance

To assess changes in non-appearance rates, we examined and report on data from two sources: (1) the North Carolina Automated Criminal/Infractions System (ACIS), and (2) the Criminal Court Information System – Public Defender (CCIS–PD). We used two data sources to be as comprehensive as possible with respect to capturing missed court appearances. **As discussed below, the number and percent of court non-appearances decreased during the first quarter of 2020 relative to the same period in 2019, for both data sources.**

ACIS includes data on all charged state crimes and infractions and is used by court officials when making pretrial decisions. Our analyses focus on missed court appearances in criminal cases served during the first quarters of 2019 and 2020. Data from the second and third quarters of those years are not included here. We chose not to include data from the second and third quarters of 2020 because in that period COVID-19 resulted in a dramatic decrease in court proceedings and the suspension of jury trials. Additionally, the data included no instances of court non-appearance during that time frame.

We used two ACIS data points to document instances of a non-appearance: ACIS case entries for (1) called and failed; and (2) motor vehicle failure to appear (FTA). If a defendant had an entry in either field, we considered the defendant as having a court non-appearance. *We note that our approach of including cases in which a defendant was called and failed for a court appearance is an aggressive measure of non-appearance* because not all called and failed result in entry of a FTA. We explored alternative indicators of court non-appearance, such as order of bond forfeiture and whether an order for arrest was issued in response to a FTA. However, the level of

¹⁹ We were not able to report on that metric in this report because the NC AOC declined to provide an updated Conditions of Release Report for use in this evaluation.

missing data in these fields indicated that these variables are not consistently reported in ACIS, and thus we did not use them.²⁰

Our second data source is CCIS–PD. This data includes FTA and called and failed data for cases where the defendant, at any point in the case, received services from the public defender or appointed counsel. Although this data does not include all cases, it is an alternate source of non-appearance data, and thus we included it in our analyses.

Table 6 displays the prevalence and number of court non-appearances for the ACIS and CCIS-PD data. As shown there, the number and percent of court non-appearances decreased during the first quarter of 2020 relative to the same period in 2019. Decreases in the prevalence of failures to appear (FTA) and called and failed cases were found in both the ACIS and CCIS-PD data. For instance, the ACIS data shows that the percent of called and failed cases decreased .31 percentage points during the first quarter of 2020 compared to 2019. The CCIS-PD data indicates that the percent of cases called and failed decreased 2.00 percentage points in 2020. Similarly, the percent of cases receiving a FTA was 3.18% in 2019 compared to .49% in 2020 per the ACIS data, while the CCIS-PD data showed that the percent of cases with a FTA was 1.22% in 2019 and .16% in 2020.

Together these results suggest that court non-appearance did not increase in the first quarter of 2020 as compared to the same period in 2019. *The data show very low rates of non-appearances, whether measured as a called and failed or a FTA. We expect that as this evaluation continues, observed nonappearance rates may increase significantly. We emphasize that the very low rates reported here likely are attributable to the fact that the reporting period encompasses only the first three months of pending time for cases initiated in 2019 and 2020. As cases proceed to completion throughout the evaluation period, we expect that nonappearance rates will rise.*

Table 6. Percent and number of court non-appearances for Q1 2019 and 2020

	2019	2020	% pt. difference
Called and failed – ACIS	4.26% 540	3.95% 435	-0.31
Failure to appear – ACIS	3.18% 403	0.49% 54	-2.69
Called and failed – CCIS–PD	6.21% 213	4.21% 105	-2.00
Failure to appear – CCIS–PD	1.22% 42	0.16% 4	-1.06

²⁰ For instance, less than .03% of cases served in 2019 reported that an order for bond forfeiture was filed or that an order for arrest was issued in response to a FTA during the period January 1, 2019 to June 30, 2020.

New Criminal Charges During Pretrial Period

We used ACIS data to examine whether or not defendants whose criminal cases were both served and closed in the first six months of 2020 had higher rates of new criminal charges during the pretrial period than defendants whose cases were both served and closed in the first six months of 2019. A case was categorized as having a new criminal charge during the pretrial period if the defendant was served with a new charge before the first one was disposed. Among defendants who had a new charge during the pretrial period, new criminal charges were categorized as either a felony, traffic misdemeanor or non-traffic misdemeanor. We calculated the percent of defendants who had a new charge during the pretrial period, both for Forsyth county defendants and for defendants from Forsyth's "peer" counties. To identify peer counties, we used the National Center for Health Statistics (NCHS) Urban – Rural classification system. That classification scheme organizes counties into six different groups, from large metropolitan (most populous) to noncore (least populous). Under the NCHS scheme, Forsyth is designated as medium metro.²¹

Table 7 displays the percent of defendants who had a new criminal charge during the pretrial period during the first six months of 2019 and 2020. As shown in the table, **although there was a 1.02 percentage point increase in the percent of Forsyth County defendants who acquired a new criminal charge during the pretrial period in the first six months of 2020 as compared to the same period in 2019, that change was not statistically significant.** In 2019, 12.84% of defendants incurred a new criminal charge before their case was disposed, compared to 13.86% of defendants in 2020. This increase of 1.02 percentage points was not statistically significant, suggesting that there has not been a change in the level of pretrial charges above and beyond what we would expect by chance alone. Among defendants who acquired a new pretrial charge, the percent of defendants who received a new felony charge decreased 2.07 percentage points; the percent of defendants incurring a new non-traffic misdemeanor charge decreased 4.11 percentage points; and the percent of defendants incurring a new non-traffic misdemeanor charge increased 3.42 percentage points. However, none of these changes were statistically significant.

We also compared the prevalence of new pretrial charges by Forsyth County defendants to the prevalence of new pretrial charges by defendants in other North Carolina Medium Metro counties per the NCHS Urban – Rural classification system. As shown in Table 7, for all Medium Metro counties there was a statistically significant 0.85 percentage point decrease in the percent of defendants incurring a new pretrial charge in the first six months of 2020 relative to the same period in 2019. Additionally, among defendants who incurred a new charge, the percent of individuals receiving a new charge for a felony or a traffic or non-traffic misdemeanor decreased in 2020 compared to 2019, though these changes were statistically significant only as to felony and non-traffic misdemeanor charges. We will continue to examine how Forsyth is performing vis-à-vis its peer counties with respect to this metric.

²¹ Under the NCHS scheme, a medium metro county is one in metropolitan statistical areas of 250,000 to 999,999 population. More information about the classification scheme is available in the DHHS publication here: https://www.cdc.gov/nchs/data/series/sr_02/sr02_166.pdf.

As noted, this analysis examines cases served and disposed in the first six months of 2019 and 2020. We will continue to examine new pretrial criminal activity as the evaluation continues. It is possible that as the evaluation encompasses cases that remain pending for longer time periods, new pretrial criminal activity rates will change. At the November stakeholder meeting where we presented the draft report, stakeholders requested that in future reporting their metrics be compared to a smaller group of medium metro counties that they identified as peer counties. We will make this adjustment in future reports.

Table 7. Percent (and number) of defendants who acquired new criminal charges during the pretrial period for Forsyth county and peer counties in Q1–Q2, 2019 and 2020

	2019	2020	% pt. difference
<i>Forsyth county</i>			
New criminal charges	12.84% (872)	13.86% (709)	1.02
New felony charges	10.67% (93)	8.60% (61)	-2.07
New non-traffic misdemeanor charges	41.63% (363)	37.52% (266)	-4.11
New traffic misdemeanor charges	69.50% (606)	72.92% (517)	3.42
<i>Medium Metro counties</i>			
New criminal charges	11.52% (6762)	10.67% (3955)	-0.85***
New felony charges	19.89% (1345)	18.28% (723)	-1.61*
New non-traffic misdemeanor charges	42.07% (2845)	40.13% (1587)	-1.94*
New traffic misdemeanor charges	65.41% (4423)	64.30% (2543)	-1.11

Asterisks (*) indicate that a finding is statistically significant. Findings that are statistically different or statistically significant indicate that differences between the two percentages are not due to chance alone or statistical noise. * $p \leq .05$, ** $p \leq .01$, *** $p \leq .001$. Findings with more asterisks suggest greater confidence that observed differences are not due to chance alone. Note that difference scores without any asterisk (*) means the difference is not statistically significant.

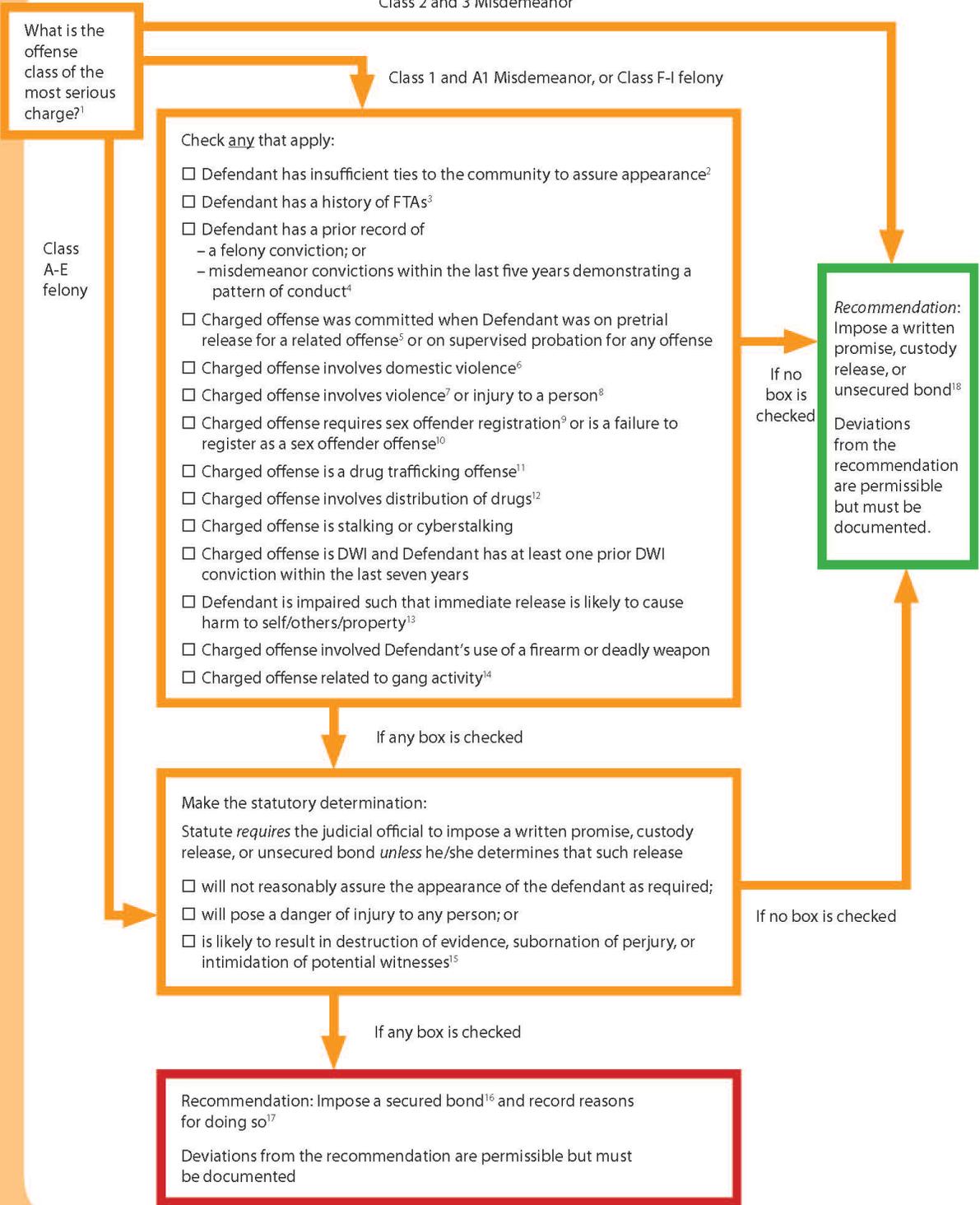
Next Steps

Our next quarterly evaluation report will be presented to stakeholders in February 2021. That report will encompass data through December 2020.

Appendix A – New Structured Decision-Making Tool

JUDICIAL DISTRICT 21: DETERMINING CONDITIONS OF PRETRIAL RELEASE

Pursuant to Judicial District 21'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 or local policy prescribe a different process 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. There must be more than one prior FTA for this factor to apply. FTAs within the last two years are most relevant, as are OFAs for FTAs in cases other than minor traffic. Impaired driving is not a minor traffic case.
4. The pattern of conduct must relate to the present offense. For example: the current charge involves drug possession and the Defendant has three priors within the last five 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, assault, assault by pointing a gun, and assault by strangulation.
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 and 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. Specific evidence of relation to gang activity must be presented (e.g., admission of defendant or social media material). The mere statement that a defendant is a "validated" gang member is insufficient by itself to establish this factor.
15. 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).
16. 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 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.
17. 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").
18. Pretrial restrictions can accompany any pretrial condition. See G.S. 15A-534(a) and note 14 above.

Maximum secured appearance bond amounts—offenses other than drug trafficking

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

Type of Offense	Maximum Secured Bond
Misdemeanor, Class 2-3	\$250 ¹⁹
Misdemeanor, Class 1	\$500
Misdemeanor, Class A1	\$1,000
Driving While Impaired non felony	\$500
Felony Class I	\$2,500
Felony Class H	\$5,000
Felony Class G	\$10,000
Felony Class F	\$15,000
Felony Class E	\$25,000
Felony Class D	\$50,000
Felony Class C	\$50,000
Felony Class B2	\$200,000
Felony Class B1	\$200,000
Felony Class A	Set by a Judge

19. Or 15% if \$250 will result in a detention bond.

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
Methaqualone	10,000 or more	D	\$200,000
	1,000 – 4,999 dosage units	G	\$25,000
	5,000 – 9,999	F	\$50,000
Cocaine	10,000 or more	D	\$200,000
	28-199 grams	G	\$50,000
	200-399	F	\$100,000
Methamphetamine	400 or more	D	\$250,000
	28-199 grams	F	\$50,000
	200-399 grams	E	\$100,000
Amphetamine	400 or more	C	\$250,000
	28-199 grams	H	\$5,000
	200-399	G	\$25,000
Opium/Opiate/ Opioid/Heroin	400 or more	E	\$100,000
	4-13 grams	F	\$50,000
	14-27	E	\$100,000
LSD	28 or more	C	\$500,000
	100-499 dosage units	G	\$25,000
	500-999	F	\$50,000
MDA/MDMA	1,000 or more	D	\$200,000
	100-499 units/28-199 grams	G	\$25,000
	500-999 units/200-399 grams	F	\$50,000
Substituted Cathinones	1,000 units/400 grams or more	D	\$250,000
	28-199 grams	F	\$50,000
	200-399	E	\$100,000
Synthetic Cannabinoids	400 or more	C	\$250,000
	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

Appendix B – Magistrate Bail Explanation Form

FORSYTH COUNTY MAGISTRATE BAIL EXPLANATION FORM

DIRECTIONS: This form applies when setting bail.

Magistrate's Name	Date		
Defendant's Name			
Case #s			
Highest charge	Class A-E Felony	Class 1-A1 Misdemeanor or F-I Felony	Class 2 or 3 Misdemeanor

STEP 1: OFA after FTA with conditions set by judge

- Yes
 - Written Promise
 - Custody Release
 - Unsecured Bond \$ _____
 - Secured Bond \$ _____
- (FORM COMPLETE)**
- No (Go to **STEP 2**)

STEP 3: (check all that apply)

- Defendant has insufficient ties to the community to assure appearance
- Defendant has a history of FTAs
- Defendant has a prior record of
 - a felony conviction; or
 - misdemeanor convictions within the last five years demonstrating a pattern of conduct
- Charged offense was committed when Defendant was on pretrial release for a related offense or on supervised probation for any offense
- Charged offense involves domestic violence
- Charged offense involves violence or injury to a person
- Charged offense requires sex offender registration or is a failure to register as a sex offender offense
- Charged offense is a drug trafficking offense
- Charged offense involves distribution of drugs
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and defendant has at least 1 prior DWI conviction within the last seven years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property
- Charged offense involved Defendant's use of a firearm or deadly weapon
- Charged offense related to gang activity

STEP 2: Highest Charge

- Class 2 or 3 Misdemeanor (Go to **STEP 3.5**)
- Class 1-A1 Misdemeanor or Class I-F Felony (Go to **STEP 3**)
- Class A-E Felony (Go to **STEP 4**)

If no box is checked, in **STEP 3**, go to **STEP 3.5**

If any box is checked in **STEP 3**, go to **STEP 4**

STEP 3.5:

- Follow bond policy recommendation and impose a
 - Written promise,
 - Custody release, or
 - Unsecured bond \$ _____ (form complete)
- Deviate from bond policy recommendation to impose a nonfinancial condition;
 - Secured bond \$ _____ if Deviate is checked, complete **STEP 7** below)

From **STEP 2** or **Step 3**

STEP 4: Make the statutory determination

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release (Check any that apply and provide explanation for any checked box)

will not reasonably assure the appearance of the defendant as required

Explanation: [Redacted]

will pose a danger of injury to any person

Explanation: [Redacted]

is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses

Explanation: [Redacted]

If no box is checked in Step 4, go to step 3.5 above. If any box is checked in Step 4, go to **Step 5**.

STEP 5:

Follow bond policy recommendation and impose a secured bond consistent with maximum bond tables (*if this box is checked, make sure that reason is stated in STEP 4 and once that is done, form is complete* \$ [Redacted])

Deviate from bond policy recommendation to impose a secured bond within maximum bond table amount and impose:

- Written promise
- Custody release
- Unsecured bond \$ [Redacted]
- Secured bond \$ [Redacted]

(if Deviate is checked, proceed to **STEP 6**)

STEP 6: Type of Deviation (check one)

- From recommendation to impose secured bond
- From maximum bond table

STEP 7: Reasons for deviating from local bond policy recommendation (check any that apply):

- NC General Statute 15A-534(d3) - Bond is doubled because an offender already is released on bond for a related crime.
- NC General Statute 15a-534(d2) - Probationer is charged with a new felony and is deemed to pose a danger to the public.
- NC General Statute 15A-534.6 - Offender is charged with manufacturing methamphetamine or has a pattern or regular use of methamphetamine
- Other:

[Redacted]

(Form is complete)

Appendix C – Judge Bail Explanation Form

FORSYTH COUNTY JUDGE BAIL EXPLANATION FORM

DIRECTIONS: This form applies when setting bail.

Judge's Name	Date		
Defendant's Name			
Case #s			
Highest charge	Class A-E Felony	Class 1-A1 Misdemeanor or F-I Felony	Class 2 or 3 Misdemeanor
	No	No	No

STEP 1: OFA after FTA with conditions set by judge

- Yes
 - Written Promise
 - Custody Release
 - Unsecured Bond \$ _____
 - Secured Bond \$ _____
- (FORM COMPLETE)**
- No (Go to **STEP 2**)

STEP 3: (check all that apply)

- Defendant has insufficient ties to the community to assure appearance
- Defendant has a history of FTAs
- Defendant has a prior record of
 - a felony conviction; or
 - misdemeanor convictions within the last five years demonstrating a pattern of conduct
- Charged offense was committed when Defendant was on pretrial release for a related offense or on supervised probation for any offense
- Charged offense involves domestic violence
- Charged offense involves violence or injury to a person
- Charged offense requires sex offender registration or is a failure to register as a sex offender offense
- Charged offense is a drug trafficking offense
- Charged offense involves distribution of drugs
- Charged offense is stalking or cyberstalking
- Charged offense is DWI and defendant has at least 1 prior DWI conviction within the last seven years
- Defendant is impaired such that immediate release is likely to cause harm to self/others/property
- Charged offense involved Defendant's use of a firearm or deadly weapon
- Charged offense related to gang activity

STEP 2: Highest Charge

- Class 2 or 3 Misdemeanor (Go to **STEP 3.5**)
- Class 1-A1 Misdemeanor or Class I-F Felony (Go to **STEP 3**)
- Class A-E Felony (Go to **STEP 4**)

If no box is checked, in **STEP 3**, go to **STEP 3.5**

If any box is checked in **STEP 3**, go to **STEP 4**

STEP 3.5:

- Follow bond policy recommendation and impose a
 - Written promise,
 - Custody release, or
 - Unsecured bond \$ _____ (form complete)
- Deviate from bond policy recommendation to impose a nonfinancial condition;
 - Secured bond \$ _____ if Deviate is checked, complete **STEP 7** below)

From **STEP 2** or **Step 3**

STEP 4: Make the statutory determination

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release (Check any that apply and provide explanation for any checked box)

will not reasonably assure the appearance of the defendant as required

Explanation: [Redacted]

will pose a danger of injury to any person

Explanation: [Redacted]

is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses

Explanation: [Redacted]

If no box is checked in Step 4, go to step 3.5 above. If any box is checked in Step 4, go to **Step 5**.

STEP 5:

Follow bond policy recommendation and impose a secured bond consistent with maximum bond tables (*if this box is checked, make sure that reason is stated in STEP 4 and once that is done, form is complete* \$ [Redacted])

Deviate from bond policy recommendation to impose a secured bond within maximum bond table amount and impose:

- Written promise
- Custody release
- Unsecured bond \$ [Redacted]
- Secured bond \$ [Redacted]

(if Deviate is checked, proceed to **STEP 6**)

STEP 6: Type of Deviation (check one)

- From recommendation to impose secured bond
- From maximum bond table

STEP 7: Reasons for deviating from local bond policy recommendation (check any that apply):

- NC General Statute 15A-534(d3) - Bond is doubled because an offender already is released on bond for a related crime.
- NC General Statute 15a-534(d2) - Probationer is charged with a new felony and is deemed to pose a danger to the public.
- NC General Statute 15A-534.6 - Offender is charged with manufacturing methamphetamine or has a pattern or regular use of methamphetamine
- Other:

[Redacted]

(Form is complete)

Appendix D – Magistrate Bail Form Results by Magistrate

	Total # of forms magistrates completed	Median # of forms by magistrate
Class A-E felonies	55	3
Class F – I felonies & Class A1 – 1 misdemeanors	731	39.5
Class 2 – 3 misdemeanors	291	14.5

	Magistrate #1	Magistrate #2	Magistrate #3	Magistrate #4	Magistrate #5	Magistrate #6
% issued secured bonds	100.00%	100.00%	100.00%	100.00%	N/A	N/A
	100.00%	40.91%	52.63%	56.25%	66.67%	62.50%
	N/A	16.67%	43.27%	25.42%	50.00%	50.00%
Median secured bond amounts	\$100,000	\$37,500	\$62,500	\$75,000	N/A	N/A
	\$5,000	\$5,000	\$5,000	\$5,000	\$1,500	\$4,000
	N/A	\$250	\$250	\$500	\$250	\$2,500
% of forms w/deviations	0.00%	25.00%	37.50%	71.43%	N/A	N/A
	5.56%	31.82%	5.26%	22.50%	66.67%	62.50%
	N/A	16.67%	43.24%	25.42%	50.00%	50.00%
% of forms removed from analysis due to error	20.00%	12.00%	3.20%	3.31%	16.67%	0.00%

	Magistrate #7	Magistrate #8	Magistrate #9	Magistrate #10	Magistrate #11	Magistrate #12
% issued secured bonds	N/A	100.00%	100.00%	100.00%	66.67%	N/A
	33.33%	56.36%	30.43%	21.43%	46.34%	100.00%
	0.00%	0.00%	14.81%	61.11%	5.56%	0.00%
Median secured bond amounts	N/A	\$50,000	\$50,000	\$140,000	\$37,500	N/A
	\$7,500	\$10,000	\$5,000	\$2,000	\$2,500	\$500
	N/A	N/A	\$225	\$500	\$250	N/A
% of forms w/deviations	N/A	33.33%	25.00%	0.00%	66.67%	N/A
	33.33%	34.55%	7.25%	21.43%	8.54%	0.00%
	0.00%	0.00%	14.81%	61.11%	5.56%	0.00%
# and % of forms removed from analysis due to error	25.00%	8.54%	2.91%	23.81%	11.97%	33.33%

	Magistrate #13	Magistrate #14	Magistrate #15	Magistrate #16	Magistrate #17	Magistrate #18
Secured bonds	100.00%	100.00%	83.33%	57.14%	100.00%	100.00%
	16.28%	33.96%	30.00%	55.84%	51.92%	47.22%
	13.33%	20.00%	40.00%	0.00%	42.86%	14.29%
Median secured bond amounts	\$25,000	\$50,000	\$75,000	\$92,500	\$50,000	\$50,000
	\$10,000	\$2,500	\$10,000	\$1,000	\$2,500	\$5,000
	\$250	\$500	\$750	N/A	\$250	\$250
% of forms w/deviations	100.00%	25.00%	50.00%	14.29%	0.00%	0.00%
	13.95%	3.77%	10.00%	6.49%	30.77%	25.00%
	13.33%	20.00%	40.00%	0.00%	42.86%	14.29%
# and % of forms removed from analysis due to error	6.35%	0.00%	12.50%	4.95%	6.76%	0.00%

© 2020

School of Government

The University of North Carolina at Chapel Hill

Use of this publication for commercial purposes or without acknowledgment of its source is prohibited. Reproducing, distributing, or otherwise making available to a non-purchaser the entire publication, or a substantial portion of it, without express permission, is prohibited. For permissions questions or requests, email the School of Government at copyright_permissions@sog.unc.edu. Other School reports can be accessed on the Publications page of our website: sog.unc.edu/publications.