

The Citation Project

First Report

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Executive Summary

Executed by the UNC School of Government's Criminal Justice Innovation Lab (the Lab) and the North Carolina Association of Chiefs of Police (NCACP), the Citation Project seeks to improve policing practices through implementation and rigorous evaluation of a model Citation in Lieu of Arrest Policy. The project has three components:

- (1) developing a model citation in lieu of arrest policy ("model policy");
- (2) implementing the model policy in four police department pilot sites; and
- (3) conducting an empirical evaluation to assess the model policy's impact on criminal justice metrics, including safety, equity, and efficiency.

On December 1, 2020, four diverse North Carolina police departments implemented the project's model policy. Those police departments include: Winston-Salem, Wilmington, Apex, and Elizabeth City. This report includes findings from the first four months of implementation. Throughout the report, we use the term "encounter" to refer to misdemeanor incidents that result in citation or warrantless arrest.

Key findings include:

Encounters

- The model policy is not designed to directly impact the number of encounters. However, examining overall encounters, including by race, provides important context for data on encounter outcomes—the focus of the model policy—and for an analysis of "net widening" that we will execute in later reporting.
- Across all four pilot sites, officers documented 7,904 total encounters in the first four months of implementation.
- Although Black people represent 28% of the general population in the pilot sites, 53% of all encounters involved Black people. In Apex, Black people make up 7% of the population and accounted for 28% of encounters; in Wilmington those numbers were 18% and 45%; in Winston-Salem they were 35% and 61%; and in Elizabeth City they were 54% and 51%.

Encounter Outcomes

- Of the total documented encounters, 91% resulted in citations and 9% resulted in warrantless arrests. However, there was variation in these percentages among sites. While warrantless arrests represented approximately 5% of encounters in Apex and 7% of encounters in Winston-Salem, they represented nearly 15% of encounters in Elizabeth City and Wilmington.
- Overall, there was no statistically significant difference in the rate at which Black people and White people were subjected to a warrantless arrest. In each individual site, a higher percentage of White people were subjected to a warrantless arrest than Black people; however, these differences were not statistically significant for any site. This finding suggests that based on early data, officers are applying the model policy similarly across racial groups.

Adherence to the Model Policy's Guidelines, Recommendations & Goals

- Preliminary analysis of available data revealed that officers correctly categorized 80% of reasons for arrest on forms used to document encounters.

- *Law required arrest* was the most common reason provided by officers (48.5% of forms) for making warrantless arrests. However, because state law requires arrest in only a very small number of situations involving new misdemeanor charges, we expect that once we link encounter documentation forms to court data in a later phase of research, we will find that a number of forms listing this reason actually involved service of warrants and thus, are excluded from the scope of this evaluation. Officers listed *possible danger of injury to any person* as a reason for arrest on 39.5% of forms; *other exigent circumstances* on 25.7% of forms; *appearance in court cannot be reasonably assured* on 10.7% of forms; and *possible interference with the proceeding* on 2.4% of forms. Within the category of *danger of injury to any person*, subcategories for *immediate danger to self or others* and *physical injury, deadly weapon or domestic dispute* predominated. Within the category of *other exigent circumstances*, the subcategory *continuing conduct* accounted for the vast majority of responses.
- 35.0% of all arrests received a condition of pretrial release other than secured bond; however, these results varied greatly across sites. For instance, while approximately 40% of warrantless arrests resulted conditions other than secured bond in Wilmington and Winston-Salem, 0% resulted in conditions other than secured bonds in Elizabeth City. Overall, Black people were less likely (30.1%) than White people (39.1%) to receive conditions other than secured bond from the magistrate, and this difference was statistically significant.

Time Out of Service

- Across all sites, citations resulted in substantially less time out of service than arrests. On average, officers were out of service 171 minutes when making an arrest and 28 minutes when issuing a citation—a difference of nearly three hours. The greatest difference between time spent on citations versus arrests—nearly four hours—was in Apex.

This project continues through 2022. We will be releasing reports every six months. As the evaluation continues, we will add key metrics to our reporting.

Background

Executed by the UNC School of Government's Criminal Justice Innovation Lab (the Lab) and the North Carolina Association of Chiefs of Police (NCACP), the Citation Project seeks to improve policing practices through implementation and rigorous evaluation of a model Citation in Lieu of Arrest Policy. The project has three components:

- (1) developing a model citation in lieu of arrest policy ("model policy");
- (2) implementing the model policy in four police department pilot sites; and
- (3) conducting an empirical evaluation to assess the model policy's impact on core criminal justice metrics, including safety, equity, and efficiency.

Need to Evaluate Impact of Citation Policies

Although citation in lieu of arrest policies offer numerous potential benefits, little research has been executed to evaluate their impact. Charged with offering recommendations on how policing practices can promote effective crime reduction while building public trust, the Task Force on 21st Century Policing recommended that law enforcement agencies develop and adopt policies and strategies that reinforce the importance of community engagement in managing public safety.¹ These include "least harm" resolutions such as use of citation in lieu of arrest.² Increased use of citations offers other potential benefits, including increased law enforcement efficiency; a report by the International Association of Chiefs of Police (IACP) found that citations offer a time savings of just over an hour per incident.³ Thus, effective citation in lieu of arrest policies can reduce time out of service for officers and equipment, which can be re-directed to more serious public safety issues. Additionally, increased use of citations may help reduce unnecessary pretrial detentions of low-risk defendants and associated costs, unfairness, and negative public safety outcomes.⁴ An arrest triggers an initial appearance and imposition of conditions of pretrial release.⁵ Because secured bonds are the most common condition imposed in North Carolina,⁶ the decision to make an arrest versus issue a citation often results in imposition of a secured bond and associated wealth-based detentions. The North Carolina Task Force for Racial Equity in Criminal

Citation Versus Arrest—What's the Difference?

In NC, a citation is issued by a law enforcement officer to charge a misdemeanor or infraction. It directs the person charged to appear in court to answer the charges. When a citation is used, the person isn't taken into custody. Alternatively, officers have the option of making a warrantless arrest for criminal conduct. After such an arrest, the person is taken to a judicial official for, among other things, issuance of charges after a determination of probable cause and bail.

¹ FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 3 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

² *Id.* at 43.

³ INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, CITATION IN LIEU OF ARREST: EXAMINING LAW ENFORCEMENT'S USE OF CITATION ACROSS THE UNITED STATES (2016), <https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Citation%20Final%20Report%202016.pdf> [hereinafter IACP].

⁴ Jessica Smith, *Bail in North Carolina*, 55 WAKE FOREST L. REV. 907, 920 (2020).

⁵ *Id.*

⁶ JESSICA SMITH & ROSS HATTON, UNC SCH. OF GOV'T, 2019 NORTH CAROLINA CONDITIONS OF RELEASE REPORT 1 (2020), <https://cjil.sog.unc.edu/files/2020/02/2019-Conditions-of-Release-Report.pdf>.

Justice also has recommended citation in lieu of arrest as a tool to address racial disparities in the criminal justice system,⁷ and it may offer increased officer safety, reduced criminal justice system costs, and diminished burdens on low-level offenders.⁸

Notwithstanding these potential benefits and initial recommendations, little research has been done to evaluate the impact of citation in lieu of arrest policies. Noting this research gap, the IACP has asserted that “[m]ore rigorous study is needed to establish how citation can be used to achieve these advantages, so that evidence-based practices can be standardized into model citation protocols.”⁹ This project is designed to do just that: support evidence-based policing practices by evaluating the impact of a model citation in lieu of arrest policy.

Project Team

A seven-member team is executing this project. Police chiefs hold five seats on the project team, ensuring a law enforcement informed effort. Law enforcement project team members include:

- Chief Eddie Buffaloe, Elizabeth City Police Department and President, NCACP
- Chief Paul Burdette, Beaufort Police Department and Regional Director, NCACP
- Chief Dan House, NC State University Police Department and Past President, NCACP
- Chief Blair Myhand, Hendersonville Police Department and Sgt-at-Arms, NCACP; and
- Chief Damon Williams, NC Central University Police Department and 2nd Vice President, NCACP.

Rounding out the project team is Jessica Smith, Lab Director & W.R. Kenan Distinguished Professor, and Sarah Desmarais, Senior Vice President, Policy Research Associates. Smith, an expert on North Carolina criminal law, brings decades of experience working with judicial system and law enforcement leaders. Desmarais brings expertise in empirical evaluation and implementation of evidence-based criminal justice practices.

⁷ REPORT OF THE NORTH CAROLINA TASK FORCE FOR RACIAL EQUITY IN CRIMINAL JUSTICE 35 (2020) (recommending encouraging the use of citations in lieu of arrest for misdemeanors and requiring the use of citations for the lowest level misdemeanors), https://ncdoj.gov/wp-content/uploads/2020/12/TRECReportFinal_12132020.pdf.

⁸ See IACP *supra* note 3, at 3 (noting these potential benefits).

⁹ *Id.* at 3-4.

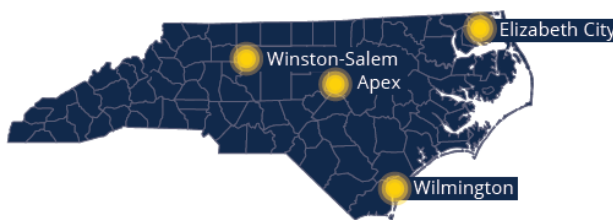
Pilot Sites

The project's four pilot site police departments are: Winston-Salem, Wilmington, Apex, and Elizabeth City. Pilot sites were chosen based on factors such as commitment to implementation, adequacy of local resources, geographic location, community demographics, and department size and caseloads. Specifically, the project team wanted pilot sites that reflected the diversity of North Carolina's police departments.

Timeline & Key Milestones

The project team began work in 2020. Its first task was to develop a model citation in lieu of arrest policy, included here as Appendix A and discussed in more detail below. The project team then developed implementation plans for pilot departments, a form for tracking officers' decision-making, a pilot site training manual,¹⁰ and a research protocol for the project's evaluation phase. In June 2020, police departments were invited to apply to serve as a pilot site. Applications included a Memorandum of Agreement in which applicants expressed an intent to participate in the full multi-year project and to supply specified data from police record management systems. Additionally, completed applications required agreement by the local sheriff to supply jail data; completion of a COVID-19 survey designed to assess changes in policing practices during the pandemic; and submission of sample data reports. After pilot sites were selected in August 2020, Smith held train the trainer events for training staff in each pilot department and comparison sites were recruited. Additionally, pilot sites worked with the team to develop and execute protocols to pull required data. The data requirements of this project are rigorous. We acknowledge the substantial commitment of time and effort by pilot sites to comply with these requirements and thank them for their contribution to this project. Without their time and effort, this evaluation would not be possible.

POLICE DEPARTMENT PILOT SITES



ELIZABETH CITY

64
SWORN
OFFICERS

18,000
PEOPLE
SERVED

APEX

96
SWORN
OFFICERS

66,000
PEOPLE
SERVED

WILMINGTON

264
SWORN
OFFICERS

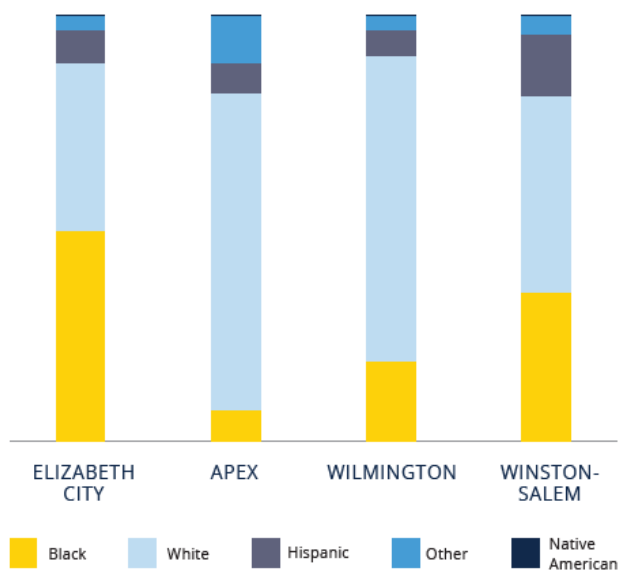
127,000
PEOPLE
SERVED

WINSTON-SALEM

548
SWORN
OFFICERS

250,000
PEOPLE
SERVED

DEMOGRAPHICS



¹⁰ The training manual included among other things, a training agenda, scripts for trainers, videos for use during training, exercises and answer keys.

Pilot sites went live with the model policy on December 1, 2020. Team members worked with pilot sites to address questions from the field, produce supplemental training materials, and solve challenges regarding data extracts. The project continues until the end of 2022, with pilot and comparison sites submitting data monthly. We will be reporting bi-annually on the project and will produce a final report in early 2023. This is our first bi-annual report.

Additional Support

An Expert & Community Review Team provides additional state and national expertise. Specifically, providing feedback on draft reports. The review team includes the following:

- Tarrah Callahan, Executive Director, Conservatives for Criminal Justice Reform
- Elan Hope, Associate Professor, NC State University Department of Psychology
- Marc Levin, Chief Policy Counsel, Council on Criminal Justice
- Jasmine McGhee, Special Deputy Attorney General and Director of the Public Protection Section, North Carolina Department of Justice
- Kristie Puckett Williams, Statewide Campaign for Smart Justice Manager, North Carolina ACLU

Other project participants include Ethan Rex, Lab Project Manager, who supports all aspects of project management and report production and Christopher Tyner, School of Government Legal Research Associate, who assists with data coding and report production. The empirical evaluation is supported by two students at North Carolina State University (NCSU), Eva McKinsey, a PhD student in the Applied Social and Community Psychology program and Isolynn Massey, a recent NCSU graduate. Both students are supervised by Jennifer Burnette, Associate Professor of Psychology, NCSU, and contribute significantly to the empirical evaluation and reporting.

The Citation Project is supported by a grant from the Charles Koch Foundation. The foundation, however, was not involved in development of the model policy, selection of pilot sites, implementation or execution of the project evaluation.

Model Policy

As noted, this project involves development of a model citation in lieu of arrest policy. That model policy is included here as Appendix A. In this section we explain its key components.

The model policy provides that officers have discretion regarding whether to cite, arrest, or decline to charge. It further provides, however, that when an officer decides to charge a person with a criminal offense, a citation is recommended in misdemeanor incidents except when, based on information available at the time:

- (1) the law requires an arrest;
- (2) release on a citation
 - (a) will not reasonably assure the defendant's appearance in court;
 - (b) will pose a danger of injury to any person; or
 - (c) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses; or
- (3) exigent circumstances require an arrest.

The model policy thus recommends use of a citation in misdemeanor cases, subject to three exceptions. The first exception applies when the law requires an arrest. For example, N.C.G.S. 50B-4.1(b) provides that “[a] law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated [certain domestic violence protective orders].” In such a scenario, arrest is required by law and a citation may not be issued.

The second exception aligns citation practice with state bail law. Specifically, exception (2) reflects the requirements of N.C.G.S. 15A-534. That provision states that when setting conditions of pretrial release (“bail”) the judicial official (magistrate, clerk or judge) must impose a written promise, custody release, or unsecured bond “unless he 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.” Because the law *prohibits* imposition of a secured bond unless one or more of the circumstances noted in (2)(a)-(c) above are present, the policy provides that a citation is recommended for defendants charged with misdemeanors who cannot receive a secured bond. The idea behind this structure is that it will promote officer efficiency by avoiding scenarios where a defendant is arrested but then immediately released by the magistrate on conditions other than secured bond because no statutory reason supports detention or imposition of a secured bond.

The model policy explains that circumstance (2)(a) applies when release on a citation will not reasonably assure the defendant's appearance in court. Examples include situations where the officer cannot establish the defendant's identity; the officer will not be able to later locate the defendant for court purposes; or the defendant has a record of prior failures to appear. Under the model policy, the term “a record of prior failures to appear” means two or more failures to appear within the last two years. Additionally, the model policy provides that the mere fact that the defendant is homeless does not satisfy this circumstance if the officer can establish the defendant's identity and knows where the defendant later can be found. Likewise, the mere fact that a defendant resides outside of the county does not satisfy this circumstance.

Under the model policy, circumstance (2)(b) applies when release on a citation will pose a danger of injury to any person. Examples include situations where there is an immediate danger

that the defendant will harm themselves or others; the alleged offense involves physical injury to a person, a deadly weapon, or a domestic dispute; the defendant's criminal record includes a conviction for a violent felony; or the defendant is currently on parole, probation, pretrial release, or post-release supervision for a conviction or charge involving injury to any person. The model policy clarifies that a risk of injury to property does not satisfy this circumstance.

Circumstance (2)(c) applies when release on a citation is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Examples include situations where the defendant has threatened a witness; has a record of witness intimidation; or previously has destroyed evidence to avoid prosecution.

The model policy's final exception applies when exigent circumstances require arrest, such as where release on a citation will not reasonably result in the immediate cessation of the criminal conduct. Examples of when this might occur include those where the defendant is engaged in aggressive panhandling and refuses to cease activity; or is engaged in drunk and disorderly activity that will continue absent removal from the scene. The model instructs that in applying this exception, officers should be aware of their authority under N.C.G.S. 122C-301 through -303 to provide assistance to a person who is intoxicated in public without making an arrest, including: transporting the person to their home, another residence, a shelter, or a medical facility; and transporting the person to jail for detention without arrest until the person becomes sober or up to 24 hours. It further clarifies that this exception applies in situations involving exigency. Thus, it does not apply when the officer believes that the criminal activity may resume at some later, non-immediate future time.

Finally, the model policy requires that officers who make an arrest in misdemeanor cases must document their reasons for doing so. The project team developed an encounter documentation form for this purpose; that form is discussed in more detail below.

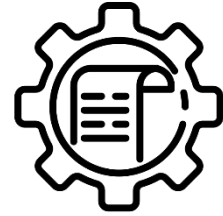
Evaluation Plan

Over the course of this evaluation, which concludes in early 2023, we will investigate eight research questions regarding the implementation and impact of the model policy.

Policy implementation questions include:

Can the model policy:

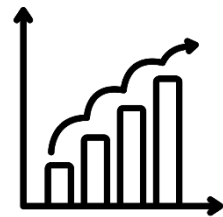
1. Maximize the use of citations while avoiding unnecessary involvement of individuals in the criminal justice system?
2. Result in the administration of citations in an equitable manner?
3. Be administered consistently with its guidelines and recommendations?



Policy impact questions include:

Does the model policy reduce:

1. The amount of time that police and equipment are removed from service during an encounter?
2. The number of individuals being detained in jails?
3. The number of arrests resulting from low-level offenses?



Can the model policy be implemented without significantly increasing:

4. The rate of court non-appearances?
5. The rate of criminal activity during the pretrial period?

We will issue bi-annual reports on these metrics throughout the project and a final report in 2023. Answering a number of the research questions listed above requires linking police and jail data to court system data. Because the relevant court system data will not be released until July, in this report we focus on metrics that do not depend on that linkage. Specifically, we focus on the prevalence of encounters and encounter outcomes (overall and by defendant characteristics), adherence to the model policy's guidelines and recommendations, and time removed from service. As the study continues and more data becomes available, we will report on additional metrics listed above.

Data

Source

The model policy applies to misdemeanor encounters where officers have discretion regarding whether to charge by citation or make a warrantless arrest. It does not apply to arrests pursuant to a Warrant for Arrest or Order for Arrest or to encounters involving a felony charge or probation violation. The project team created an encounter documentation form for officers to record their decision-making for encounters covered by the model policy. Data for this report were drawn from encounter documentation forms and cover the first four months of implementation (December 2020 – March 2021).

A prototype of the encounter documentation form is shown in Figure 1 below. To facilitate implementation, pilot sites incorporated the information fields from the prototype directly into their electronic records systems. As shown in Figure 1, the encounter documentation form captures the following key case information:

- whether the officer issued a citation or made a warrantless arrest (top of the form)
- the reasons for an arrest (section 1)
- the magistrate's bail decision after arrest (section 2)
- the time spent on the encounter (section 3)

The reasons for arrest in section 2 directly track the recommendations of the model policy. Specifically, that a citation is recommended in misdemeanor incidents except when the law requires an arrest; release on a citation will not reasonably assure the defendant's appearance in court, will pose a danger of injury to any person, or is likely to result in the destruction of evidence, subornation of perjury or intimidation of potential witnesses; or other exigent circumstances require arrest.

Figure 1. Encounter documentation form.

THE CITATION PROJECT Encounter Documentation Form

Please complete this form for every misdemeanor encounter resulting in a charge by citation or warrantless arrest.
If an encounter does not result in a charge by citation or warrantless arrest or only involves an infraction, do not fill out this form.

<p>DEFENDANT: <input style="width: 100%;" type="text"/></p> <p>OFFICER: <input style="width: 100%;" type="text"/></p> <p>DATE: <input style="width: 100%;" type="text"/></p> <p>OCA#: <input style="width: 100%;" type="text"/></p>	<p>CHECK ONE</p> <p><input type="checkbox"/> CITATION If Citation, skip to question 3.</p> <p><input type="checkbox"/> WARRANTLESS ARREST If Warrantless Arrest, answer all.</p>
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1 Reason for warrantless arrest

☐ Law requires arrest

☐ Appearance in court cannot be reasonably assured

If yes:

<input type="checkbox"/> Cannot establish defendant's identity	<input type="checkbox"/> Verified record of 2 or more failures to appear in last 2 years
<input type="checkbox"/> Not able to locate defendant later	<input type="checkbox"/> Other: <input style="width: 100%;" type="text"/>

☐ Possible danger of injury to any person

If yes:

<input type="checkbox"/> Immediate danger to self/others	<input type="checkbox"/> Currently on probation, parole, or pre- or post-trial release supervision for conviction/charge involving injury to any person
<input type="checkbox"/> Offense involves physical injury to a person, deadly weapon, or domestic dispute	<input type="checkbox"/> Other: <input style="width: 100%;" type="text"/>
<input type="checkbox"/> Record of violent criminal activity	

☐ Possible destruction of evidence, subornation of perjury, or intimidation of potential witness

If yes:

<input type="checkbox"/> Threaten to harm a witness	<input type="checkbox"/> Previous destruction of evidence
<input type="checkbox"/> Record of witness intimidation	<input type="checkbox"/> Other: <input style="width: 100%;" type="text"/>

☐ Other exigent circumstance(s) requiring warrantless arrest

If yes, explain:

2 What was the magistrate's decision?

☐ No probable cause

☐ Unsecured bond

☐ Secured bond


☐ Release not authorized (e.g., 48-hour hold)

☐ Other:


☐ Unknown

3 Please estimate the amount of time you spent on this incident, including reporting:

minutes



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During training, officers in all pilot sites were instructed that once the model policy became effective in their jurisdiction (December 1, 2020 in all pilot sites), they were to fill out an encounter documentation form for every encounter covered by the policy.

As noted above, at this stage in the evaluation, we have not yet received court system data. When we receive that data, we will link it to encounter documentation forms to verify that all forms pertain to incidents that are the subject of this evaluation. Encounters that fall outside of the policy will be dropped from the sample. For example, if we learn from court records that an encounter documentation form was completed for an incident that involved a felony charge, the form will be dropped from analysis as this evaluation focuses on application of the model policy in highest charge misdemeanor encounters. The same would be true of a case where court records show a warrant was served during the encounter. Linking encounter documentation forms also will allow us to assess whether officers are in fact completing forms for all relevant encounters. Because this report includes “raw” data from encounter documentation forms absent that linkage, **we expect some findings reported here may change once we validate the data with court records.** Specifically, we expect that current findings potentially overestimate the number of times an officer made the decision to arrest.

Cleaning Process

Each month, the pilot sites provided us with an Excel extract of information from the encounter documentation forms and the records management system. We reviewed the extracts, assessing for form completeness and incorrect entries. An example of an incomplete form is one with no reasons for arrest indicated. An example of an incorrect entry is a form where the officer indicated that the encounter resulted in both a citation and warrantless arrest for the same incident. We were able to correct some of these errors; for instance, if both encounter types were indicated on the form but the encounter only took 15 minutes, we could assume it involved a citation as opposed to an arrest. In cases where we did not have sufficient information to correct the error, that was done by the site’s administrative lead in collaboration with the officer involved in the encounter.

As shown in Figure 1, some blocks on the encounter documentation form include a space for a text response. For example, if the officer justified the arrest by checking the box for *Other exigent circumstances*, the officer also was asked to explain that choice. We reviewed all text responses to assess them for accurate categorization of arrest reasons and officers’ adherence to both the encounter documentation form and the model policy. We corrected errors and re-categorized reasons for arrest when they were identified (see *Form Completion* and *Policy Fidelity* sections below for details on identified errors).

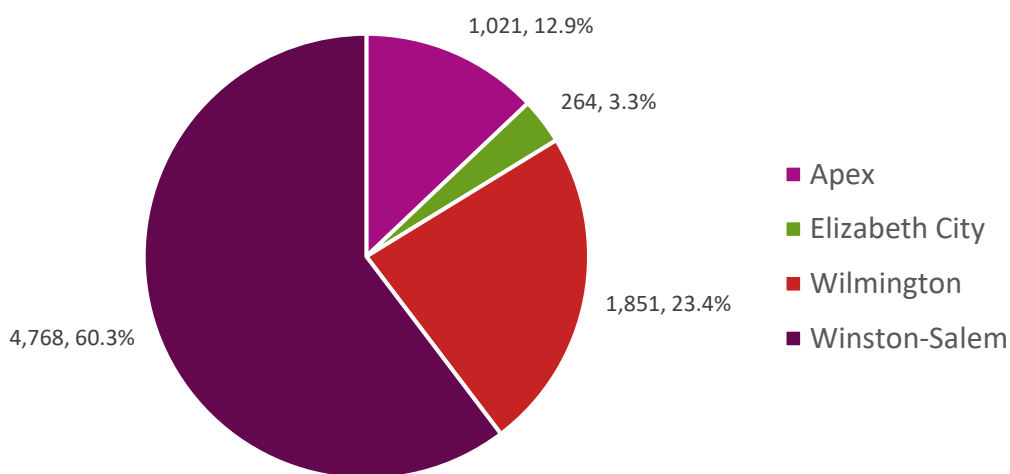
Findings

Given the limited data available at this early stage of our evaluation, we report here only on the overall number of encounters and their outcomes (citation or warrantless arrest), as indicated on the encounter documentation forms; adherence to the guidelines and recommendations of the model policy; and time out of service. Later reports will address other metrics related to our research questions, discussed above.

Prevalence of Encounters

Across all four pilot sites, officers documented 7,904 total encounters on encounter documentation forms in the first four months of implementation. Figure 2 below shows the prevalence of encounters by site. Most documented encounters occurred in Winston-Salem, accounting for 60% of encounters across all sites, followed by Wilmington (23%), Apex (13%), and lastly, Elizabeth City (3%). As such, any overall trends presented in this report are largely driven by trends within the larger sites, particularly Winston-Salem.

Figure 2. Prevalence of encounters by site.



Encounters by Perceived Race & Gender

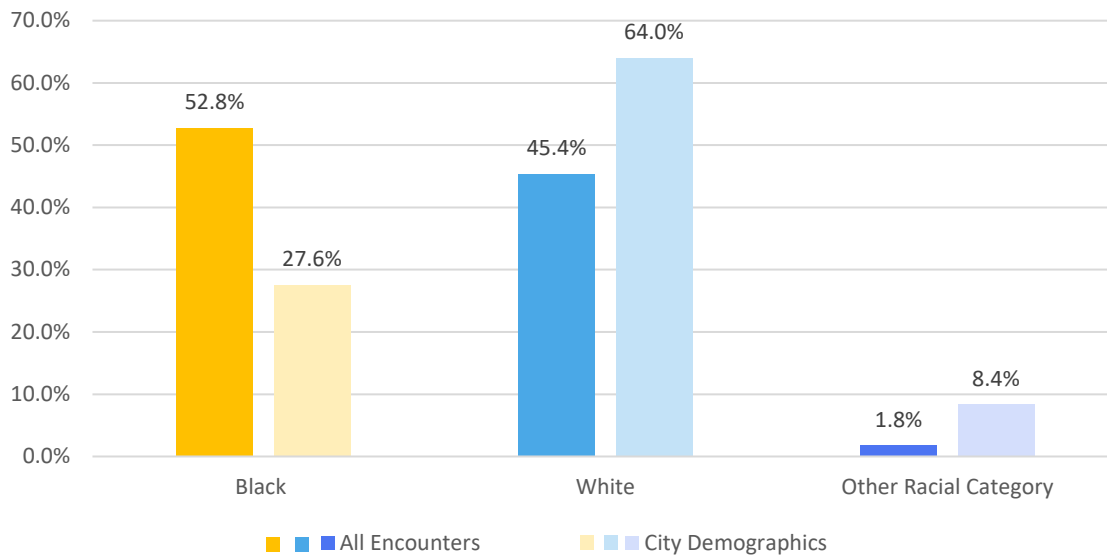
Equitable administration of the model policy requires an examination of encounters across demographic characteristics, including race and gender. In this section we provide preliminary data on that issue. We refer to *perceived* race and gender because these identity categorizations likely were decided by the officer, not the individual involved in the encounter. We will continue to examine these issues as the evaluation continues, providing additional information noted above.

Race

Black people represent 28% of the general population served by the pilot sites. Notwithstanding that, just over half of all charges were issued to Black people. Of the 7,883 documented

encounters (citations and arrests), in which the race of the defendant was known,¹¹ 53% involved a Black person (Figure 3).¹² Analyses showed that Black people were statistically significantly more likely to be issued a charge than would be expected based on population demographics.¹³ Statistical significance means that the difference observed is not likely random, but rather due to real differences in outcomes between the two groups.

Figure 3. All encounters (citations and warrantless arrests) and pilot sites' racial demographics.



Note. Defendant race was missing on 21 encounter documentation form extractions.

As shown in Figure 4 below, 28% of encounters in Apex involved a Black person, despite the community itself being only 7% Black.¹⁴ In Wilmington, Black people were involved in 45% of encounters but are 18% of the population. In Winston-Salem those numbers are 61% of encounters to 35% of the population; in Elizabeth City Black people are 54% of encounters to 51% of the population. Analyses showed that Black people were significantly more likely to be issued a charge than would be expected based on population demographics for all sites except for Elizabeth City, where the proportion of Black to White people

Over ½ of all misdemeanor charges were issued to Black people even though Black people make up only about ¼ of the general population in the pilot sites.

¹¹ Defendant race and gender were missing for 21 and 6 forms, respectively, due to data extraction errors which will be addressed in future reporting.

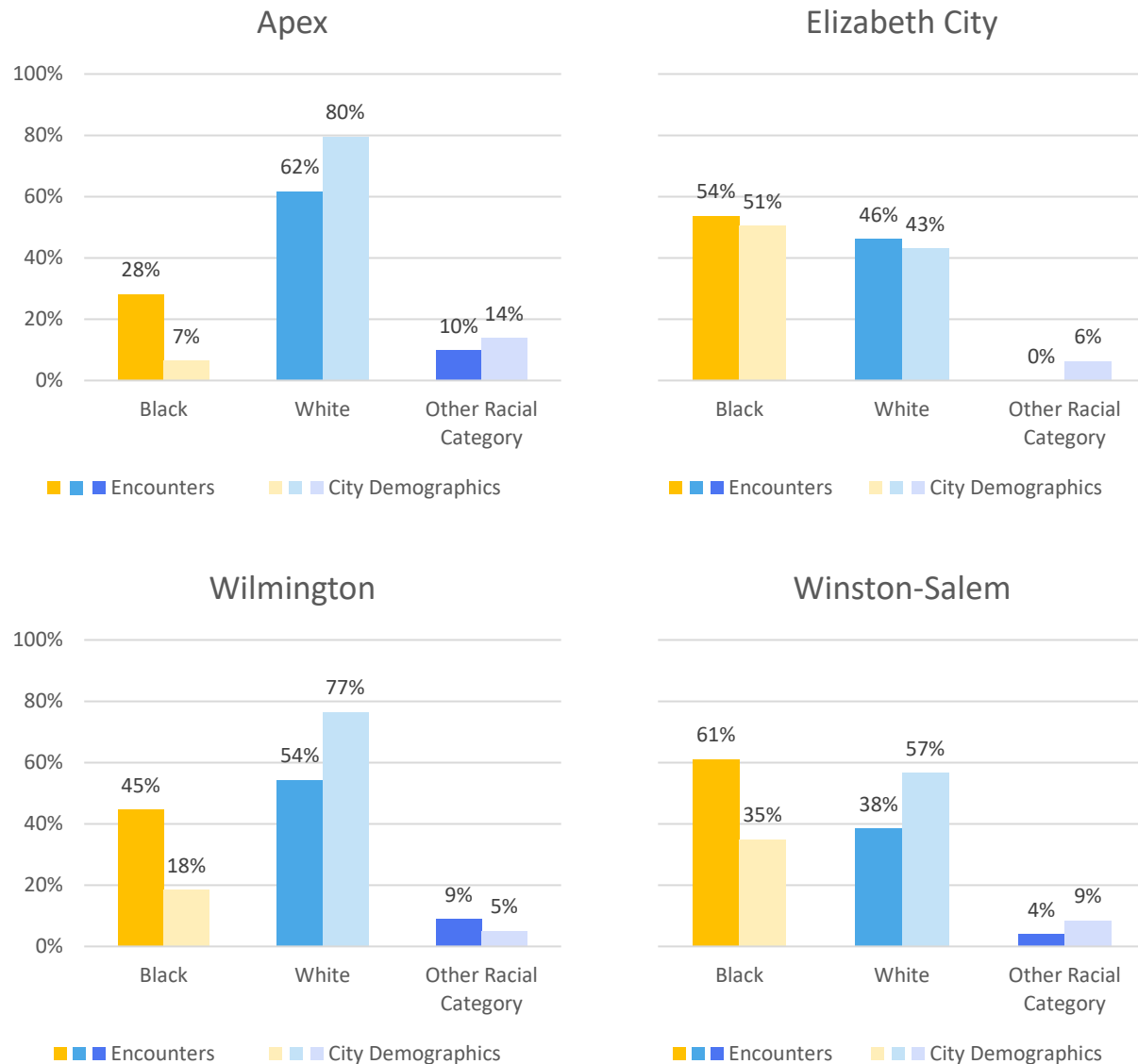
¹² *Other Racial Category* includes Asian, other, and unknown. Because Hispanic/Latinx was not a response option, it can be assumed the officers categorized Hispanic/Latinx people into one of the other racial categories based on appearance and perceptions of the defendant. For statistical analyses, we excluded the *Other Racial Category* due to low numbers and potential for racial variability within that group.

¹³ Specifically, there was a statistically significant difference between the proportion of Black to White people in the general population served by the pilot sites and the proportion of Black to White people who were issued charges.

¹⁴ Community demographics for this section are pulled from the U.S. Census Bureau's 2019 estimates.

being issued charges matched the proportion of Black to White people in the jurisdiction's general population.¹⁵

Figure 4. Percentage of encounters by race compared to each pilot site's racial demographics.



These results align with research demonstrating racial disparities in police contact rates, including the overall likelihood of being cited or arrested.¹⁶ Because encounter documentation forms do not indicate whether officers were responding to calls for service or initiating

¹⁵ $ps < .001$ for Apex, Wilmington, and Winston-Salem; $p = .951$ for Elizabeth City.

¹⁶ Robin Shepard Engel & Jennifer M. Calnon, *Examining the Influence of Drivers' Characteristics During Traffic Stops with Police: Results from a National Survey*, 21 JUSTICE QUARTERLY 49, 49–90 (2004), <https://doi.org/10.1080/07418820400095741>; Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUMAN BEHAVIOUR 736, 736–745 (2020), <https://doi.org/10.1038/s41562-020-0858-1>.

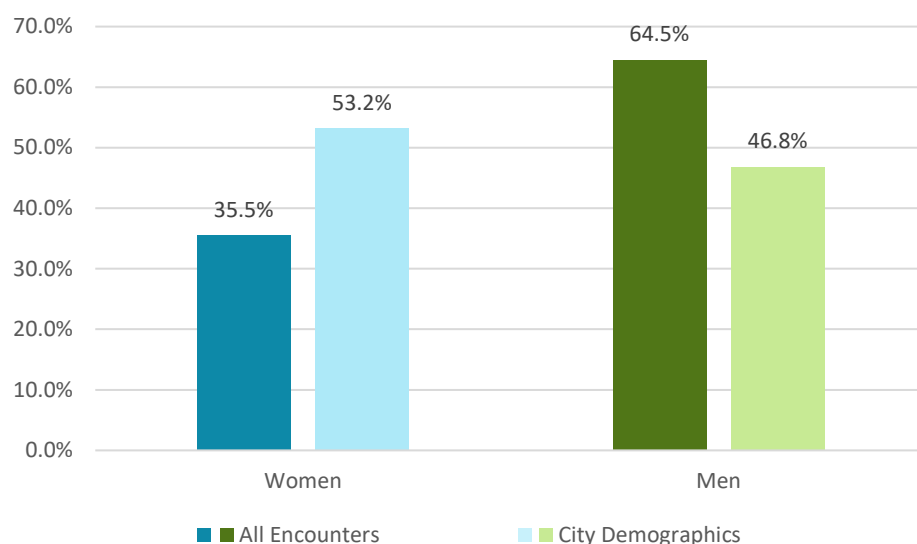
encounters, we cannot report on that metric. However, once we link encounter documentation forms to court records we will be able to report on the types of offenses at issue, such as traffic misdemeanors and non-traffic misdemeanors, and violent and non-violent offenses.

At the stakeholder feedback meeting where we presented a draft of this report, one stakeholder noted that, particularly in traffic cases, charged individuals may not reside in the city where the encounter occurred. It was further suggested that this may explain some disparity between encounters and site demographics. In later reporting we will explore using geolocation data to identify whether or not charged individuals reside within city limits and whether this issue is likely to impact these results.

Gender

Of the 7,898 of documented encounters (citations and arrests) in which the gender of the defendant was known, nearly two-thirds involved men (Figure 5)—significantly more than the percentage of men in the general population served by the pilot sites (47%).¹⁷

Figure 5. All encounters (citations and warrantless arrests) and pilot sites' general population by gender.



Note. Defendant gender was missing on 6 encounter documentation form extractions.

The pattern of findings remained the same across all sites; the percentage of encounters involving men ranged from 63% (Winston-Salem) to 67% (Apex and Wilmington)—all significantly different than the breakdown of gender in each sites' general population.¹⁸ This pattern of results is consistent with research showing higher rates of police encounters among

¹⁷ $p < .001$

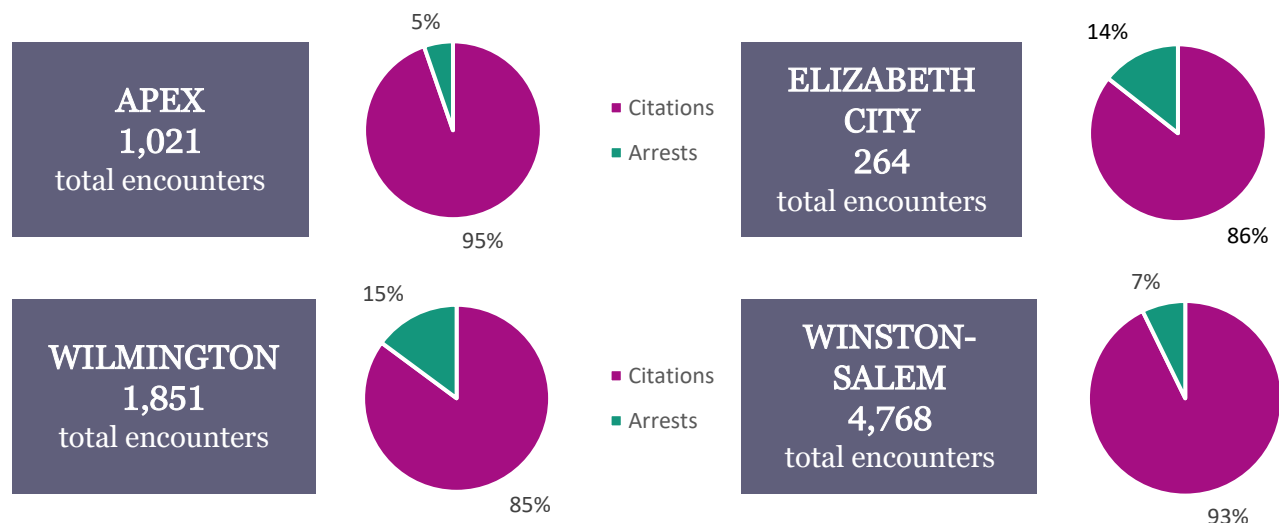
¹⁸ $ps < .001$

men compared to women.¹⁹ However, these differences likely reflect true differences in the crime rates between men and women rather than gender disparities in the police response.²⁰

Prevalence of Encounter Outcomes

Of the 7,904 total number of encounters documented, 7,192 (91%) were citations and 712 (9%) were arrests. Figure 6 below shows the breakdown of encounter outcomes by site. While arrests represented approximately 5% of encounters in Apex and 7% of encounters in Winston-Salem, arrests represented nearly 15% of encounters in Elizabeth City and Wilmington. A higher proportion of arrests in Elizabeth City and Wilmington could be due to a multitude of factors: differences in crimes encountered or circumstances of the incidents; officers completing forms in arrest encounters that do not require a form; or a misapplication of the model policy. Our future reports will include pre- and post-implementation comparisons of this metric and additional detail regarding the nature of the crimes at issue.

Figure 6. Prevalence of encounters and encounter outcomes by site.



Examining encounter data over time can inform discussion in several ways. While seasonal changes in the number of encounters occur, sharp changes outside of those seasonal differences may show how the model policy is affecting officers' decision making. Specifically, we are examining two outcome patterns. First, we are interested in the proportion of encounters that result in citations. If, over time, a larger proportion of all encounters result in citation, we can feel confident that officers are maximizing the model policy: they are increasingly opting to cite instead of arrest. Second, we are interested in the overall prevalence of encounters over time. An increase in total encounters over time, regardless of the proportion of citations, would imply

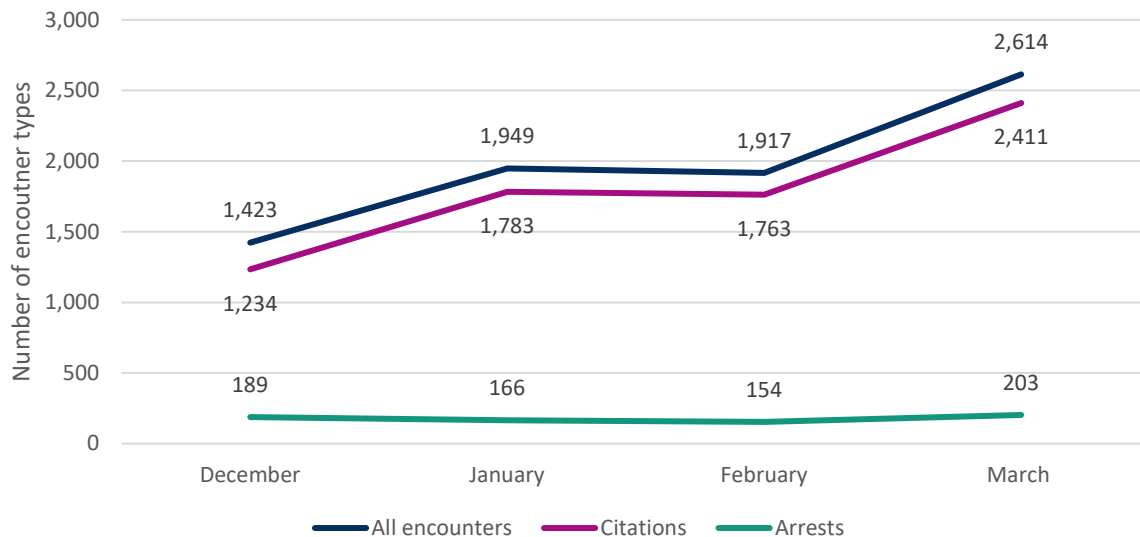
¹⁹ PRISON POLICY INITIATIVE, *POLICING WOMEN: RACE AND GENDER DISPARITIES IN POLICE STOPS, SEARCHES, AND USE OF FORCE* (2019), <https://www.jstor.org/stable/resrep27309>

²⁰ David C. Rowe et al., *Sex Differences in Crime: Do Means and Within-Sex Variation Have Similar Causes?*, 32 JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY 84, 84–100 (1995), <https://doi.org/10.1177/0022427895032001004>. Although women were much less likely than men to be involved in an encounter, we recognize the possibility of racial disparities among women; disparities in the police response to women of color compared to white women are well documented. We will explore the intersection of racial and gender identities on police encounters and outcomes in future reports.

that the policy is having a “net widening” effect; that is, officers may be opting to cite in cases when they previously would have declined to charge, thereby resulting in more people acquiring criminal charges who otherwise would not have an interaction with the criminal justice system. Although it is too early in the implementation to draw any firm conclusions concerning patterns over time, these first four months of data begin to build context for trends over time.

Looking at data across all sites, the trend lines for citations and for all encounters were aligned, meaning the proportion of citation to arrest remained relatively stable. There was an increase in all encounters and citations from December 2020 to January 2021, a slight decrease from January 2021 to February 2021, and a larger increase from February 2021 to March 2021 (see Figure 7); the number of arrests remained relatively stable.²¹ As previously noted, these overall trends were driven by the prevalence of encounters in the larger pilot sites, particularly Winston-Salem.

Figure 7. Prevalence of encounter outcomes over time.



The individual sites, however, differed in the pattern of encounter prevalence and outcomes over time (see Figure 8). Trends for all encounters and for citations were tightly aligned in Apex, Wilmington, and Winston-Salem. In Elizabeth City, the proportion of encounter outcomes changed in February 2021 in that the proportion of total encounters that were arrests increased. While external factors may explain this change, officers choosing to arrest in a greater number of encounters in February 2021 may indicate a deviation from the model policy. With additional months of data, we will be able to determine if this divergence is an isolated event or a part of a broader trend that might signal the need for additional discussion.

Individual site trends also can inform discussion about how the model policy may correlate with more people acquiring criminal charges. As shown in Figure 8, total encounters in Apex and Elizabeth city fluctuate from month to month. In Wilmington and Winston-Salem, however, there is a steady increase in total encounters over the four months. A continued increase over

²¹ The lower December numbers likely, in part, portray the gradual “uptake” of encounter documentation forms by officers in the first few weeks of policy implementation.

time may imply a “net widening” effect; however, it is too early to make such an assessment, as the increase could be attributable to “uptake” of the new encounter documentation form in these sites or correspond to seasonal variations. By gathering additional months of data and comparing pre- and post-implementation data, we will continue to examine this trend in future reporting.

Figure 8. Prevalence of encounter outcomes over time by site.



Encounter Outcomes by Perceived Race, Gender, & Age

Race

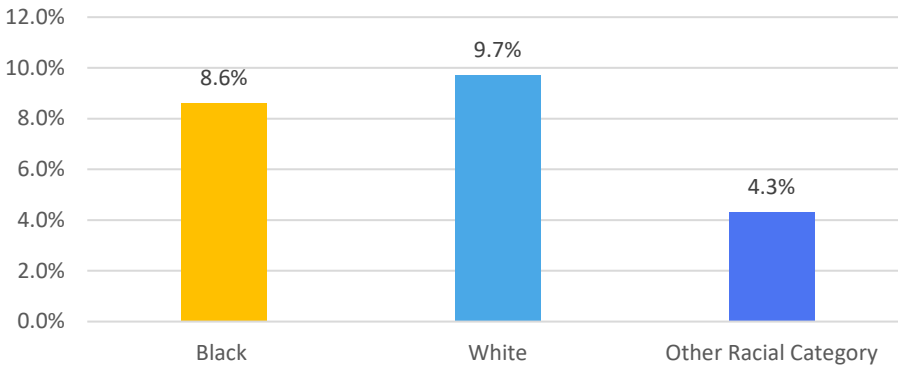
Existing research demonstrates racial disparities in officers’ decisions to arrest, with white people significantly less likely to be arrested compared to members of other racial groups.²² In our evaluation, we examine this equity metric as to encounter outcomes. As shown in Figure 9, just under 10% of encounters involving both Black and White people resulted in a warrantless arrest. Statistical analysis revealed no statistically significant

There was no difference in the rate at which Black and White people experienced a warrantless arrest.

²² Tammy Rinehart Kochel et al., *Effect of Suspect Race on Officers’ Arrest Decisions*, 49 CRIMINOLOGY 473, 473-512 (2011), <https://doi.org/10.1111/j.1745-9125.2011.00230.x>

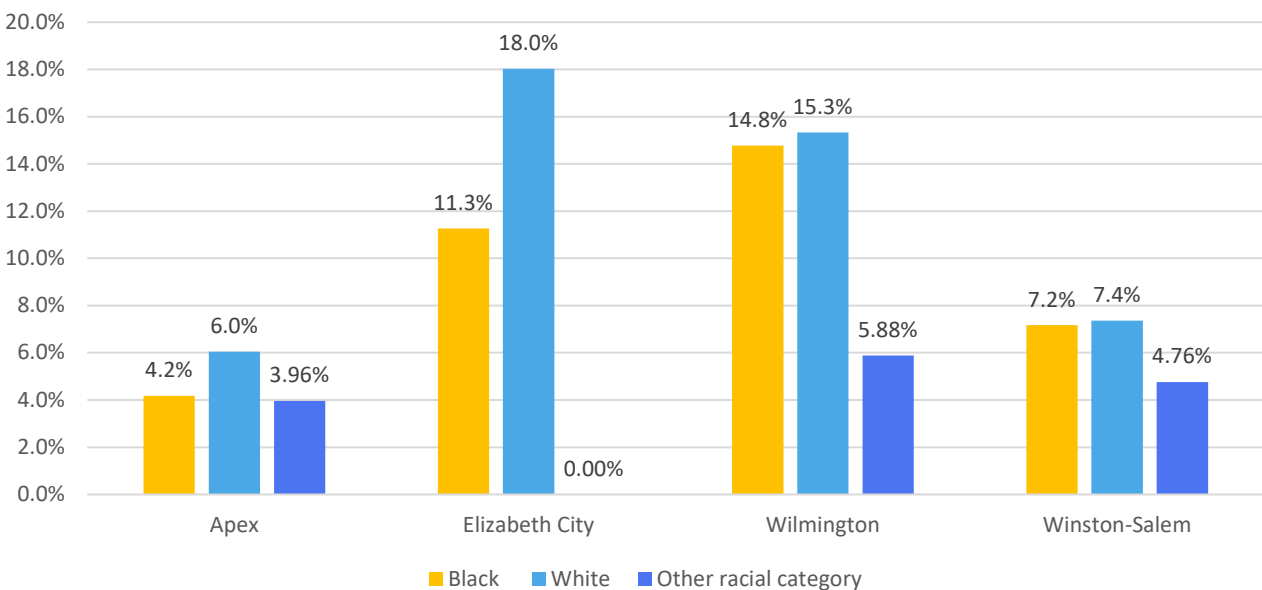
differences in the rates at which Black and White people experienced a warrantless arrest.²³ In other words, the measured difference in arrest percentages could be attributable to chance.

Figure 9. Percentage of encounters that resulted in warrantless arrest by race.



Results showed that in all sites, a higher percentage of encounters involving White people compared to Black people resulted in warrantless arrest (Figure 10); however, statistical analysis showed these differences were not statistically significant for any site.²⁴ This means that even when examined at the site level, any difference in arrest percentages was likely due to chance. *This finding suggests that based on early data, officers are applying the model policy similarly across racial groups.*

Figure 10. Percentage of encounters that resulted in warrantless arrest by race and site.



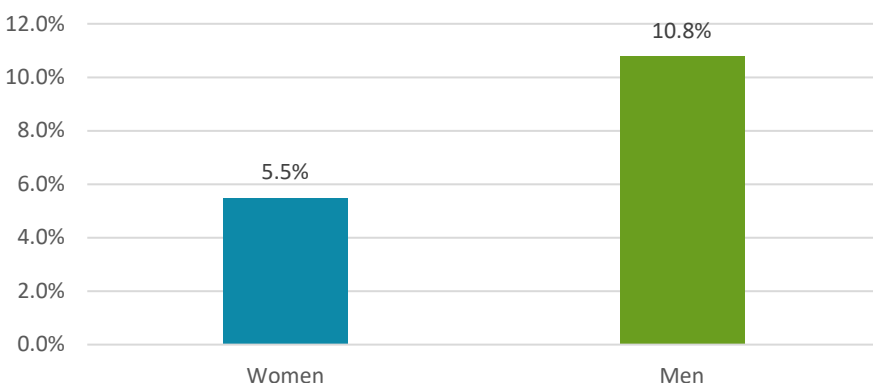
²³ $p = .096$

²⁴ $ps \geq .159$

Gender

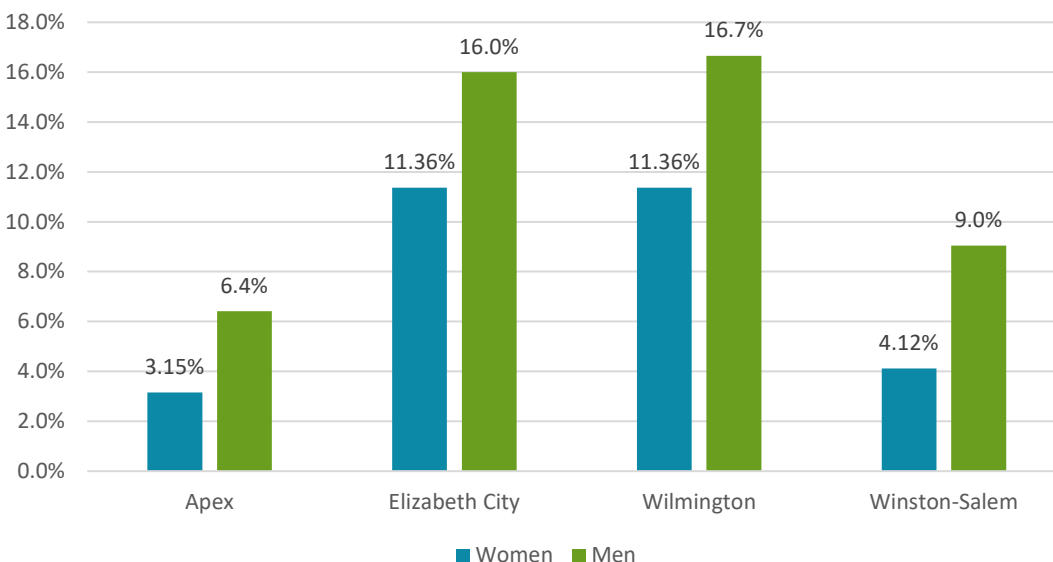
Among all encounters involving women, around 5.5% resulted in a warrantless arrest – nearly half the rate for men (Figure 11). This difference was statistically significant, meaning women were less likely to be arrested and more likely to be cited, than men.²⁵

Figure 11. Percentage of encounters that resulted in warrantless arrest by gender.



This statistically significant difference between genders was present in Apex, Wilmington, and Winston-Salem, meaning the differences in these sites were due to real differences between the groups.²⁶ In Elizabeth City, however, statistical analysis showed that any difference in percentage of encounters resulting in arrest may have been due to chance.²⁷

Figure 12. Percentage of encounters that resulted in warrantless arrest by gender and site.



²⁵ $p < .001$

²⁶ $ps \leq .038$

²⁷ $p = .357$

Age

The average age of defendants for all encounters was 34.61 years old. The average age of defendants who were arrested was 34.69 years old, and for those who were cited was 34.61 years old. In no sites were there significant differences between the average ages of those who were arrested versus cited.²⁸

Adherence to Guidelines & Recommendations of the Model Policy

Examining the quality of a policy's implementation can help us understand the extent to which a policy is operating as intended, thereby providing context for findings. For instance, if desired or anticipated effects of a policy are not found, an implementation evaluation can signal whether it is due to policy or implementation shortcomings. Because we are not yet able to merge these data with court data, we cannot definitively report on the quality of policy implementation and officer adherence to the model policy's guidelines and recommendations. However, we were able to assess this metric by examining the reasons for arrest provided by officers on the encounter documentation forms. This preliminary assessment revealed that officers correctly categorized 80% of reasons for arrest and that 90% of completed forms properly reported on encounters within the scope of the policy.

As shown in Figure 1 and discussed above, some reasons for arrest require checking a box on the form while others require a text response. For reasons that require a text response, we coded responses into broad categories. For example, many of the text responses written under *Other exigent circumstances* indicated that an arrest was required because the conduct would otherwise continue or because the individual had resisted, obstructed or delayed the officer. We created coding categories to capture "continuing conduct" and "resist, obstruct and delay" so that we could highlight the more frequent text response reasons provided. We also reviewed every text response to assess the quality of form completion and adherence to the model policy. Finally, we examined information provided by officers regarding magistrate decision making, to assess the extent to which officers' decisions were aligning with bail conditions imposed by magistrates at the initial appearance.

Because we are not yet able to merge these data with court data to identify exactly which cases are of interest in the project, the extent to which we could assess adherence was limited to reviewing the officers' text responses on the forms. As such, the findings described below likely represent only a portion of the adherence errors present in the first four months of the project. Our later reporting will address this issue in greater detail.

Form Completion

Assessing form completion can help us understand the extent to which officers are adhering to the policy, as well as the quality of data that we are collecting for the evaluation. We assessed encounter documentation form text responses for two types of errors: (1) miscategorized reasons for arrest; and (2) improperly completed forms. A miscategorized reason for arrest occurred where the officer provided a proper text reason for arrest under the model policy, but miscategorized that reason on the form. For example, writing "domestic incident" in the text response section under *Other exigent circumstances*. This response was miscategorized because "domestic dispute" is a checkbox reason under *Possible danger of injury to any person*. We considered a form to be improperly completed when the officer's text response indicated that the encounter fell outside of the project's scope. For example, a text response, "Charged with

²⁸ $ps \geq .16$

felony as well as citation,” indicates that the incident involved a felony charge and thus is excluded from the project.

Overall, officers entered the majority of text responses on the encounter documentation forms without error. Specifically, out of the 300 text responses provided on the encounter documentation forms, we identified 60 miscategorized reasons for arrest (20%)²⁹ and 30 improperly completed forms (10%).³⁰ As discussed below, once we link encounter documentation forms to court records, we expect to find that a larger percentage of forms were completed for cases falling outside the scope of the evaluation.

Policy Fidelity

The vast majority of text responses provided by officers on the encounter documentation forms as a reason for arrest constituted valid reasons under the model policy. We identified only seven text responses (2%) that did not indicate a legitimate reason for arrest. For example, on two forms the officer listed “homeless” as the reason for the warrantless arrest; under the model policy, however, homelessness alone is not a valid reason for a warrantless arrest. On three forms the officer listed “Officer discretion” as the reason for arrest. Under the model policy, officers have discretion to make a warrantless arrest but must give a reason for exercising that discretion; this response was thus deemed invalid under the policy.

Reasons for Arrest

Following the review and cleaning process of the encounter documentation forms, we examined the prevalence of each arrest reason to understand why officers were deciding to arrest instead of issue a citation. As shown in Figure 13 below, of the five main reasons for arrest, officers most commonly indicated that the *Law requires arrest* (48.5% of forms). Because state law requires arrest in only a very small number of highest charge new misdemeanor cases, we expect that once we link encounter documentation forms to court data that we will find that a number of forms listing this reason actually involved service of warrants and thus are excluded from the scope of this evaluation. Again, this evaluation is examining officers’ use of discretion in incidents involving new misdemeanor charges; when an officer makes an arrest because of an outstanding warrant, the officer is executing a directive from a judicial official to take the person into custody and is not exercising officer discretion. *Possible danger of injury to any person* was listed as a reason for the warrantless arrest on 39.5% of forms and *Other exigent circumstances* was listed on 25.7% of forms. *Appearance in court cannot be reasonably assured* was listed as a

²⁹ We properly recategorized these responses before analysis. Examples included:

- “DWI” written under the *Appearance in court cannot be assured, Other*. Because this reason does not relate to risk of non-appearance but does relate to other valid reasons for arrest, we coded this as *Impaired driving* under *Immediate danger to self or others* AND *Continuing conduct* under *Other exigent circumstances*.
- “Fled on foot” written in the *Other exigent circumstances* text field. Concluding that this reason was evidence of flight risk, we coded this as *Flight* and recategorized it under *Appearance in court cannot be assured, Other*.
- “Domestic violence arrest” written in the *Other exigent circumstance* text field. Because this explanation indicated that a domestic matter was at issue, we recategorized this response as *Offense involves physical injury, deadly weapon, or domestic dispute*.

³⁰ We removed these forms from the sample before analysis. Examples included:

- “Was being transported for OFA.” The text response indicates that this was not a warrantless arrest so we removed the form from sample.
- “Charged with felony as well as citation.” The text responses indicates that this was not a highest charge misdemeanor case so we removed the form from the sample.

reason for the warrantless arrest on only 10.7% of forms and *Possible destruction of evidence, subornation of perjury, or intimidation of potential witnesses* was listed on only 2.4% of forms.

Figure 13. Prevalence of reasons for warrantless arrest.

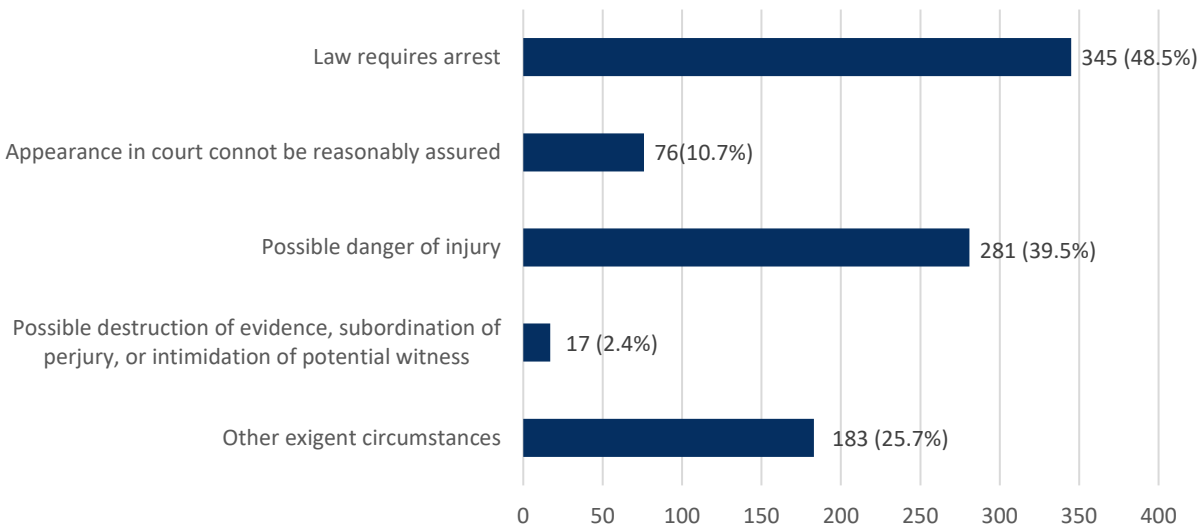


Table 1 below presents additional detail regarding the reasons for arrest, as reported by officers on the encounter documentation forms. As shown in Figure 13 and on the prototype encounter documentation form above, officers have the option of choosing one or more of five reasons for the warrantless arrest. Three of these reasons for arrest—*Appearance cannot be reasonably assured*; *Possible danger of injury to any person*; and *Possible destruction of evidence, subornation of perjury, or intimidation of potential witnesses*—include subcategory reasons shown in Table 1 below and on the prototype form. The reason *Other exigent circumstances* does not include any subcategory reasons but does require a text response. The final reason—*Law requires arrest*—includes no subcategory reasons and does not require a text response. The prevalence of the various subcategory reasons is shown in Table 1 below. Additionally, we report in Table 1 our coding of officers' text responses.

As shown in Table 1, within the category *Possible danger of injury to any person*, subcategory reasons for *Immediate danger to self or others* and *Offense involves physical injury, deadly weapon, or domestic dispute* predominated. Within the category of *Other exigent circumstances*, the coded subcategory *Continuing conduct* accounted for the vast majority of responses. Within the categories *Appearance in court cannot be reasonably assured* and *Possible destruction of evidence, subordination of perjury, or intimidation of potential witness*, responses were split relatively evenly within subcategories.

Table 1. Prevalence of all reasons for arrest.

Reasons for Arrest (N = 712)		n	%
Law requires arrest		345	48.5
Appearance in court cannot be reasonably assured		76	10.7
	Cannot establish defendant identity	15	2.1
	Not able to locate defendant later	16	2.2
	Record of 2 or more FTAs in last 2 years	23	3.2
	Other	16	2.2
	Flight*	7	0.9
	Miscellaneous* ³¹	8	1.1
Possible danger of injury to any person		281	39.5
	Immediate danger to self or others	199	27.9
	Offense involves physical injury, deadly weapon, or domestic dispute	111	15.6
	Record of violent criminal activity	22	3.1
	On probation, parole, or supervision for conviction/charge involving injury to any person	14	2.0
	Other	27	3.8
	Aggressive or assaultive conduct*	18	2.5
	Miscellaneous* ³²	8	1.1
Possible destruction of evidence, subordination of perjury, or intimidation of potential witness		17	2.4
	Threat to harm witness	4	0.4
	Previous destruction of evidence	3	0.4
	Record of witness intimidation	0	0.0
	Other ³³	9	1.3
Other exigent circumstances		183	25.7
	Continuing conduct*	145	20.4
	Resist, Obstruct, Delay*	21	2.9
	Miscellaneous* ³⁴	19	2.7

Notes.

Because officers are able to select more than one reason for arrest, percentages do not add up to 100%.

* indicates the sub-reasons we added upon review and coding of officers' text response.

At least 81 (40%) of the 199 *Immediate danger to self or others* explanations are attributable to impaired driving cases. We were able to identify these cases because they involved miscategorized text responses recategorized to this arrest reason. As such, this count may understate the total number of incidents attributable to this subcategory due to impaired driving.

³¹ Category includes *evaded apprehension* (2), *resist, delay or obstruct officer (RDO)* (2), *limited NC connections* (1), and *no text or text could not be categorized* (3).

³² Category includes *guns and drugs/concealed weapon* (2), *gang member/offense* (1), *breaking or entering* (1), *communication of threats* (1), and *no text or text could not be categorized* (3).

³³ Category includes *destruction of evidence* (2), *attempted to leave with stolen property* (1), and *no text or text could not be categorized* (6).

³⁴ Category includes *officer safety* (2), *strip search required* (2), *lied about gun possession* (1), and *no text or text could not be categorized* (14).

Magistrate Decisions

No Probable Cause

Out of the 712 encounter documentation forms included in our analysis, only one form documented a finding of no probable cause by the magistrate at the initial appearance, for an incident from Wilmington. A finding of no probable cause means that the magistrate concluded that no probable cause justified the warrantless arrest; in these cases, the arrested person is entitled to immediate release and no offense is charged. A high rate of no probable cause determinations would raise questions about officer training and practices.

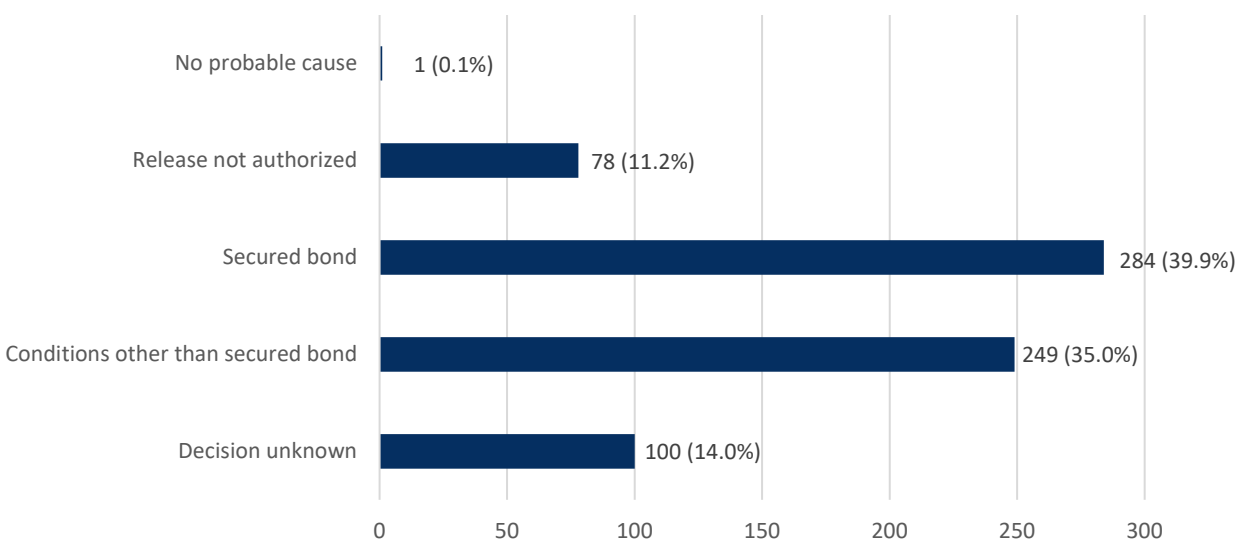
Conditions of Release

We examined magistrate bail decisions for encounters that resulted in warrantless arrests to assess alignment between officers' decisions to arrest and conditions of pretrial release imposed by magistrates at the initial appearance. As noted above, one objective of the model policy is to better align officers' cite versus arrest decisions with state bail law. Put another way, one goal of the policy was to minimize the number of instances where an officer makes a warrantless arrest, but the person is immediately released pretrial on conditions other than secured bond. In this report, we use the term "conditions other than secured bond" as a shorthand to refer to release on a written promise, custody release, or release on an unsecured bond.

35% of all warrantless arrests resulted in bail conditions other than secured bond; however, these results varied greatly across sites.

Figure 14 below presents the breakdown of magistrate decisions for the 712 arrests documented by the encounter documentation forms. Only 35% of all arrests resulted in conditions other than secured bond.

Figure 14. Prevalence of magistrate decisions.



These results varied greatly across sites, as shown in Table 2. For instance, while approximately 40% of warrantless arrests resulted conditions other than secured bond in Wilmington and Winston-Salem, that percentage was 24% in Apex and 0% in Elizabeth City. We note, however,

that *Written Promise* and *Custody Release* were not included as a response option in the encounter documentation form (see Figure 1). Given the frequency with which officers wrote in these two magistrate decisions in the *Other* text field, we added them as subcategories for reporting. As such, it is difficult to determine whether Elizabeth City and Apex officers did not report these decisions because they were not on the form (in which case they may have not indicated any reason) or whether these percentages indeed accurately reflect magistrate decisions in those jurisdictions. We are considering adding these two options to the encounter documentation form to clarify results in the future.

Table 2. Prevalence of magistrate decisions overall and by site.

Magistrate Decisions	Overall (<i>N</i> = 712)		Apex (<i>N</i> = 54)		Elizabeth City (<i>N</i> = 38)		Wilmington (<i>N</i> = 275)		Winston- Salem (<i>N</i> = 345)	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
No probable cause	1	0.1	0	0.0	0	0.0	1	0.3	0	0.0
Release not authorized	78	11.2	7	13.0	5	13.2	36	13.1	30	8.7
Secured bond	284	39.9	22	40.7	24	63.2	108	39.3	130	37.7
Conditions other than secured bond	249	35.0	13	24.1	0	0.0	109	40.0	127	36.8
Unsecured bond	188	26.4	6	11.1	0	0.0	109	39.6	73	21.2
Written promise	43	6.0	7	13.0	0	0.0	0	0.0	36	10.4
Custody release	27	3.8	0	0.0	0	0.0	0	0.0	27	7.8
Decision Unknown	100	14.0	12	22.2	9	24.7	21	7.6	58	16.8
Unknown to officer	4	0.6	4	7.4	0	0.0	0	0.0	0	0.0
Could not categorize decision based on officer's response	25	3.5	0	0.0	1	2.6	3	1.1	21	6.1
Not listed	71	10.0	8	14.8	8	21.1	18	6.5	37	10.7

Notes.

Under North Carolina law, pretrial release is not authorized for certain defendants at the initial appearance before the magistrate. For example, defendants subject to an impaired driving hold and defendants subject to a limited hold for conditions in certain domestic violence cases.

Although often confused with a custody release, a release to a sober, responsible adult is not a condition of pretrial release under North Carolina law. Rather, it is a release from an impaired driving hold, which by law must be accompanied by a valid condition of pretrial release (written promise, unsecured bond, custody release, or secured bond, with or without electronic house arrest). As a result, we treat a magistrate decision “release to a sober, responsible adult” as *Decision Unknown*, *Could not categorize decision based on officer's response*. This explanation made up the great bulk of responses assigned to this category (20 of 25 responses overall; 1 of 1 responses in Elizabeth City; 2 of 3 responses in Wilmington; and 17 of 21 response in Winston-Salem).

Because multiple conditions of release may be imposed (e.g., written promise and custody release), percentages do not add up to 100%.

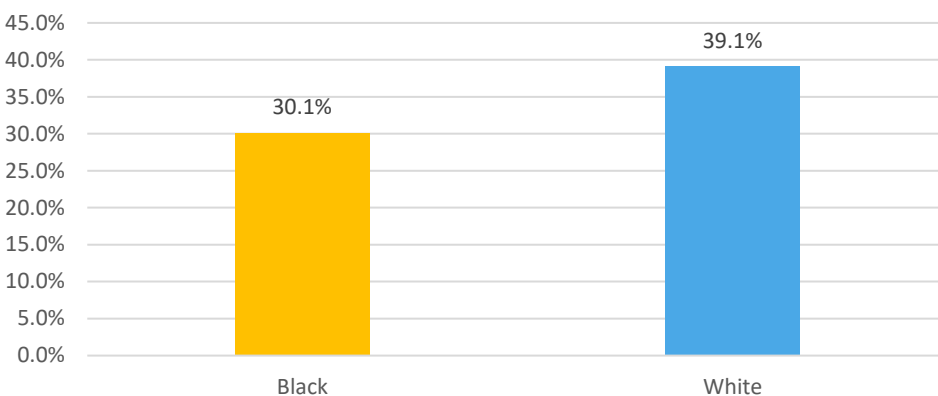
Race

As indicated, our evaluation includes metrics regarding equitable administration of the model policy. When an officer issues a citation, the person charged is not subject to conditions of pretrial release; the citation charges the person with a crime and instructs them to appear in court to answer the charges. A warrantless arrest, however, requires the officer to bring the arrested person to the magistrate for a determination of probable cause and if probable cause is found, the setting of pretrial conditions of release. Examining pretrial decision making in

warrantless arrest cases by race may shed light on the “downstream” consequences of officers’ decisions to cite versus arrest. *Bail decisions are, of course, within the sole discretion of the magistrate as the judicial official presiding over the initial appearance.*

In the 612 warrantless arrest cases where officers reported the magistrates’ bail decision on the encounter documentation form, Black people were less likely (30.1%) than White people (39.1%) to receive conditions other than secured bond from the magistrate (see Figure 15), and this result was statistically significant.³⁵ The discrepancy was driven by Winston-Salem, the only site where there was a statistically significant difference in reported conditions of release.³⁶ While statistical significance means that difference was not likely attributable to chance, it is important to note that there may be other factors driving the differences, such as the circumstances of the case. There were no differences between races in regard to Release not authorized and Secured bond.

Figure 15. Percentage of arrests resulting in conditions other than secured bond by race.



Time Out of Service

As noted above, one potential benefit of increased use of citations is greater law enforcement efficiency. Officers are required to record time spent handling encounters on the encounter documentation form. Analysis of this information allows us to report on time out of service for the issuance of a citation and the execution of a warrantless arrest.

Across all sites, citations resulted in substantially less time out of service than arrests. On average, officers were out of service 171.32 minutes to conduct a warrantless arrest and 27.58 minutes to issue a citation—a *difference of over two hours*. Table 3 below shows these results by site. The greatest difference between time spent on citations versus arrests—nearly four hours—was in Apex. Apex also exhibited the greatest standard deviation (*SD*) in regard to arrest time, closely followed by Wilmington. Standard deviation is the average distance



³⁵ $p = .020$

³⁶ $p = .043$

of scores from the average. Based on the standard deviations reported below, there was considerable variability in the time it took to arrest individuals in both Apex and Wilmington.

Table 3. Time out of service for citations and arrests by site (in minutes).

Site	Citation <i>M (SD)</i>	Arrest <i>M (SD)</i>	Difference
Apex	20.22 (28.51)	265.94 (168.79)	245.72
Elizabeth City	23.56 (31.77)	158.81 (92.47)	135.25
Wilmington	33.13 (39.36)	185.03 (163.44)	151.90
Winston-Salem	27.41 (35.75)	144.99 (87.37)	117.58

Next Steps

As the project progresses, we will continue to use data from encounter documentation forms and police department record management systems to assess implementation and impact of the model policy. We also will use court system records and jail management system information to evaluate key metrics. By linking data from all four sources, we will be able to examine, among other things, whether the implementation sites perform differently than the comparison sites; whether the criminal justice outcomes differ by pilot site and before and after implementation of the model policy; and whether community, criminal justice, and/or individual characteristics affect the impact of the pilot programs on criminal justice outcomes, such as non-appearance and new pretrial criminal activity rates.

Appendix A: Model Policy



CITATION IN LIEU OF ARREST

Model Policy
July 2020

I. PURPOSE

This policy is designed to promote public safety and efficient use of taxpayer funds, reduce unnecessary pretrial detentions, and promote least harm resolutions. The Presidential Task Force on 21st Century Policing recommended that law enforcement agencies adopt preferences for “least harm” resolutions, such as the use of citation in lieu of arrest for low-level offenses. Increased use of citations also promotes efficiency. An International Association of Chiefs of Police report found that citations offer a time savings of just over an hour per incident. Increased use of citations can help reduce unnecessary pretrial detentions of low-risk defendants and associated taxpayer 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 North Carolina, the decision to make an arrest often results in imposition of a secured bond. Imposition of a bond in turn can cause unnecessary wealth-based detentions of low-level defendants, driving up jail costs. Additionally, such detentions have been shown to negatively impact public safety; research shows that misdemeanor defendants detained pretrial are more likely to be charged with new crimes after release than similar defendants who were not detained pretrial. This policy achieves its purposes by aligning citation practices with state law regarding arrest and bail while preserving officer discretion.

II. POLICY

Whether to cite, arrest, or decline to charge is always in the officer’s discretion. However, when an officer decides to charge a person with a criminal offense, a citation is recommended in misdemeanor incidents except when, based on information available at the time:

- (1) the law requires an arrest;
- (2) release on a citation
 - (a) will not reasonably assure the defendant’s appearance in court;
 - (b) will pose a danger of injury to any person; or
 - (c) is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses; or
- (3) exigent circumstances require an arrest.

Officers who make an arrest in misdemeanor cases shall document their reasons for doing so.

III. EXPLANATORY NOTES

Officer Discretion. The policy preserves officer discretion. Specifically, it states that “[w]hether to cite or arrest is always in the officer’s discretion” and recommends (but does not mandate) use of citations unless an exception applies.

Exceptions. The policy recommends use of a citation in misdemeanor cases, subject to three exceptions.

One exception applies when the law requires an arrest. For example, N.C.G.S. 50B-4.1(b) provides that “[a] law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated [certain domestic violence protective orders].” In such a scenario, arrest is required by law and a citation may not be issued.

The second exception aligns citation practice with state bail law. Specifically, exception (2) reflects the requirements of N.C.G.S. 15A-534. That provision states that when setting conditions of pretrial release (“bail”) the judicial official (magistrate, clerk or judge) must impose a written promise, custody release, or unsecured bond “unless he 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.” The law *prohibits* imposition of a secured bond unless one or more of the circumstances noted in (2)(a)-(c) above are present. The policy thus provides that a citation is recommended for defendants charged with misdemeanors who cannot receive a secured bond. This will promote officer efficiency as it will avoid scenarios where a defendant is arrested but then immediately released by the magistrate without a secured bond on grounds that no statutory reason supporting imposition of such a bond is present.

Circumstance (2)(a) applies when release on a citation will not reasonably assure the defendant’s appearance in court. Examples:

- The officer cannot establish the defendant’s identity
- The officer will not be able to later locate the defendant for court purposes, such as serving an order for arrest after a failure to appear
- The defendant has a record of prior failures to appear

As used here, “a record of prior failures to appear” means two or more failures to appear within the last two years.

The mere fact that the defendant is homeless does not satisfy this circumstance, if the officer can establish the defendant’s identity and knows where the defendant later can be found. Likewise, the mere fact that a defendant resides outside of the county does not satisfy this circumstance.

Circumstance (2)(b) applies when release on a citation will pose a danger of injury to any person. Examples:

- There is an immediate danger that the defendant will harm themselves or others
- The alleged offense involves physical injury to a person, a deadly weapon, or a domestic dispute

- The defendant's criminal record includes a conviction for a violent felony
- The defendant is currently on parole, probation, pretrial release, or post-release supervision for a conviction or charge involving injury to any person

A risk of injury to property does not satisfy the bail statute or this circumstance.

Circumstance (2)(c) applies when release on a citation is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Subornation of perjury means procuring or inducing another person to commit perjury. Examples:

- The defendant has threatened a witness
- The defendant has a record of witness intimidation
- The defendant previously has destroyed evidence to avoid prosecution

The final exception applies when exigent circumstances require arrest. An example of when this exception might apply is when release on a citation will not reasonably result in the immediate cessation of the criminal conduct. Examples:

- The defendant is engaged in aggressive panhandling and refuses to cease activity
- The defendant is engaged in drunk and disorderly activity that will continue absent removal from the scene

In applying this exception, officers should be aware of their authority under G.S. 122C-301 through -303 to provide assistance to a person who is intoxicated in public without making an arrest, including: transporting the person to their home, another residence, a shelter, or a medical facility; and transporting the person to jail for detention without arrest until the person becomes sober or up to 24 hours.

Note that this exception applies in situations involving exigency. Thus, it does not apply when the officer believes that the criminal activity may resume at some later, non-immediate future time. However, depending on the nature of the activity in question, a belief that it may eventually resume may satisfy one of the other exceptions discussed above.

Documentation Required. The policy provides that when an officer makes an arrest in a misdemeanor case, reasons for doing so must be documented.

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