



# Pretrial Reform in Orange County, North Carolina

## Evaluation Report

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## Executive Summary

Seeking to promote a fair and effective pretrial justice system, Orange County, North Carolina adopted a new structured decision-making tool to guide magistrates' pretrial decision-making and a new judicial process for responding to non-appearances. We are conducting an empirical evaluation of the implementation and impact of these new procedures. Our evaluation will continue through December 31, 2021. This report presents findings for the period ending June 30, 2021. Key findings include:

### Magistrate Decision-Making

- Implementation of the new structured decision-making tool for bail decisions at the magistrate level is strong. Magistrates adhered to the tool's recommendations in the vast majority (86.71%) of forms. Additionally, magistrates are completing the vast majority of forms without completeness or fidelity issues. Specifically, they completed 89.80% of forms without completeness issues, 97.00% without fidelity issues, and 87.20% without any issues.
- Because stakeholders designed the new process to reduce the use of secured bonds in non-impaired driving Class 1-3 misdemeanor cases ("target cases"), we expected to see a relatively high rate of imposition of conditions other than secured bonds for these cases. In fact, the data show high rates of imposition of conditions other than secured bonds both for target cases and for all other charges. Magistrates issued a condition other than a secured bond in 72.31% of all cases. For target cases, that rate was 80.58%; for other charges it was 70.76%.
- Local policy includes a provision favoring a written promise or custody release over any type of financial bond, secured or unsecured. Magistrates imposed conditions consistent with this policy. Specifically, magistrates issued a written promise in 65.72% of all cases; in 78.42% of target cases; and in 63.34% of other cases.
- Consistent with expectations, median secured bond amounts were lower for target cases (\$500) than for non-target cases (\$5,000).
- The new procedures allow magistrates to release individuals to pretrial services. Consistent with expectations, magistrates released individuals to pretrial services more frequently in connection with higher level charges. Specifically, they released 0.72% of defendants in target cases to pretrial services but did so in 6.74% of other cases.
- There was variation across individual magistrates in the use of secured bonds, median bond amounts and percent of deviations from the tool's recommendations. However, the magnitude of variation is smaller than we have observed in other jurisdictions, perhaps suggesting greater uniformity of cases or practice. In later reporting we will seek to determine whether any variation in magistrate decision-making is attributable to case-specific factors.
- Black individuals were more likely to receive a secured bond than White individuals. In later reporting we will explore whether this difference is explained by case-specific factors.

### Judicial Responses to Court Non-Appearances

- A new judicial bench card contains a recommended framework for judicial responses to non-appearances. Implementation of the new bench card appears to be strong. Judges reported that they used the new process for the vast majority of non-appearances (97.23%). Additionally, when judges used the new process, they correctly completed forms without fidelity or completeness issues in the vast majority of cases. Specifically, they completed 80.91% without completeness issues, 94.84% without fidelity issues, and 75.85% without any issues.

- When judges used the new process, they responded to non-appearances by rescheduling 43.78% of cases and issuing an order for arrest (OFA) for 56.22% of cases. When judges issued an OFA, the most common condition was a secured bond (93.38%) and the median secured bond amount was \$500. However, this reform was specifically focused on encouraging judges to respond to first non-appearances in target cases by rescheduling the case instead of issuing an OFA. We found that the reform was working as intended in 100% of these cases. Specifically, in all 128 of the target cases where the non-appearance was not excused and there was no prior missed court date, judges responded to the non-appearance by rescheduling the court date.
- Using data from court calendars allowed us to compare judicial decision-making before and after implementation of reforms. Although this data source allowed us to focus on target cases, it did not allow us to limit our analysis to the subset of target cases that was the focus of this reform: target cases where the charged individual had no prior missed court date. With that caveat, we found that the rate at which judges excused and rescheduled non-appearances for target cases was lower in the post-implementation period than in the pre-implementation period (35.04% and 47.06% respectively), and that difference was statistically significant. We also found that the number of non-appearances was dramatically lower in the post-implementation period as compared to the pre-implementation period (274 non-appearances in the pre-implementation period; 697 in the post-implementation period). Discussions with stakeholders revealed that changes in court procedures during the COVID-19 pandemic were driving both of these results. Specifically, during the COVID-19 pandemic, district court defendants were being excused from court proceedings that did not involve case dispositions. If, having been excused from earlier proceedings a defendant failed to appear for a disposition proceeding, then the judge would not excuse the non-appearance. These changes in court procedures explain the lower number of non-appearances in the post-implementation period and the decreased rate of judicial rescheduling in response to a missed court date.
- When looking just at Driving While License Revoked cases, which were subject to a complementary reform, there was a dramatic increase in the percentage of cases that were excused and rescheduled in response to a non-appearance and a dramatic decrease in the percentage of cases subjected to drivers' license revocation procedures.
- When looking at calendar data at the judge level, one judge accounted for much of the variation in judges' responses to non-appearances.

### **Pretrial Failures**

- There was no statistically significant change in the rate of new pretrial criminal charges before and after implementation of reforms. In the pre-implementation period, 10.14% of individuals incurred a new pretrial charge; in the post-implementation period, that rate was 10.37%. We also examined this issue by race and found no significant changes in new pretrial criminal charges for either Black or White individuals, and that there was no significant difference in the rate of change when comparing across race.
- The rate of court non-appearances decreased after implementation for all cases, open cases, and closed cases. Non-appearance rates significantly decreased for cases involving Black individuals in all types of cases and for White individuals in open and closed cases.

### **Pretrial Detention**

- The number of pretrial bookings decreased by 5.55% after implementation of the new procedures, but this change was not statistically significant. Additionally, there were no

statistically significant changes in the average number of pretrial bookings for either White or Black individuals. Importantly, however, the county experienced a sharp, temporary decrease in jail detentions in the first three months of the COVID-19 pandemic, and inclusion of these months in the pre-implementation period likely is suppressing the impact of reforms on pretrial detentions. For this reason, stakeholders requested that we include an analysis of “pre-COVID” bookings in our next reporting.

- There were no statistically significant changes after implementation in length of stay or median number of days detained for all bookings, bookings of Black individuals, or bookings of White individuals. There were no statistically significant racial differences in changes in detention length.
- For bookings that had a secured bond, there was a statistically significant increase in the prevalence of individuals being booked on secured bonds of \$500 or less after implementation of reforms. This result was observed for all bookings and for bookings of White individuals, but not for Black individuals.

This evaluation continues through December 31, 2021.

## Background

In October 2020 and January 2021, Orange County, North Carolina criminal justice system stakeholders implemented two bail reform initiatives. This report presents interim findings regarding the impact of the new policies.

The county's new initiatives build on earlier efforts. Specifically, stakeholders already had funded a county pretrial services program; adopted an empirical risk assessment tool to inform judges' pretrial decision-making; established a "strike order court" affording relief from court non-appearances in certain cases; instituted pre-arrest diversion with law enforcement support; and established specialized courts to more effectively address the needs of those who enter the criminal justice system because of underlying issues such as poverty, homelessness, substance use and mental health concerns. Additionally, local police departments and the sheriff's office had implemented new policing practices, such as citation in lieu of arrest, to promote the county's pretrial goals. And in 2018, the Orange County Board of Commissioners approved a resolution supporting the 3DaysCount initiative, a national effort to improve community safety through pretrial justice reform. Notwithstanding these efforts and the statutory mandate that conditions other than a secured bond must be imposed unless the judicial official finds certain factors, G.S. 15A-534(b), data showed that secured bonds continued to be the most common condition of pretrial release used in the county, even in misdemeanor cases. Stakeholders also reported concerns that low-risk individuals were being unnecessarily detained pretrial on secured bonds they could not pay.

Against this backdrop, a Pretrial Working Group convened in 2019 to explore what additional steps—if any—Orange County could take to further improve its criminal justice system, including local pretrial policies and practices. The Working Group was composed of diverse stakeholders including:

- Allen Baddour, Senior Resident Superior Court Judge
- Samantha H. Cabe, Chief District Court Judge
- James R. Woodall, District Attorney
- Byron Beasley, Assistant District Attorney
- Susan Seahorn, Former Chief Public Defender
- Phoebe W. Dee, Assistant Public Defender
- Charles S. Blackwood, Orange County Sheriff
- Chris Blue, Chapel Hill Chief of Police
- David Perry, UNC Police Chief
- Mark Kleinschmidt, Clerk of Court
- Renee Price, Chair, Board of County Commissioners
- Tony Oakley, Chief Magistrate
- Caitlin Fenhagen, Orange County Criminal Justice Resource Director
- Ted Dorsi, Orange County Pretrial Services
- Jeff Hall, Orange County Bail Bond Justice Project
- Mike Rakouskas, Probation and Parole Chief
- Hathaway Pendergrass, then Board Representative, Justice Initiatives (now District Court Judge)
- Jennifer Marsh, Self-Help Credit Union
- Madison Burke, Director of Court Advocacy, Compass Center for Women and Families

Orange County and the local bar contracted with Jessica Smith of the UNC School of Government Criminal Justice Innovation Lab (the Lab) to support these efforts. While work was ongoing, the onset of the COVID-19 pandemic in 2020 and equity concerns that garnered national attention after the killing of George Floyd amplified stakeholders' concerns about the need to further improve the county's pretrial system.

The primary focus of the Working Group's efforts was eliminating unnecessary pretrial detention of individuals who do not present significant risk but who are detained pretrial because they are unable to afford secured bonds imposed in their cases. In the end, the Working Group adopted two core reforms:

- a new structured decision-making tool to guide magistrates' bail decisions; and
- a new judicial process for responding to non-appearances in District Court.

## Implemented Reforms

### Magistrate's Structured Decision-Making Tool

In Orange County, pretrial services staff interview in-custody individuals and perform a release assessment using an empirical risk assessment tool. This information is provided to the first appearance judge, public defender, and prosecutor. Local resourcing, however, did not allow for use of that tool at the earlier initial appearance held before the magistrate. Although the existing local bail policy contains strong language favoring conditions other than secured bond, data showed that before the new reforms were implemented, money bonds were imposed in the majority of cases, including highest charge misdemeanor cases. Additionally, there was some concern that the lack of detailed guidance for magistrates resulted in inconsistent pretrial decisions. Other North Carolina jurisdictions have adopted structured decision-making tools for use at the magistrate stage, and our empirical evaluations of those efforts show promising results. The Working Group opted to adapt these existing tools to local needs and circumstances and to streamline existing flowchart tools to a simpler step-by-step process. Key features of the Orange County magistrates' tool include:

- Creating a presumption for conditions other than secured bond for non-impaired driving Class 1-3 misdemeanors ("target cases").
- Screening all other cases using an easily implemented checklist of defendant- and offense-specific factors designed to quickly identify other low-risk individuals who can be released on conditions other than secured bond.
- Expressly incorporating into the magistrate's decision-making process the statutory determination under G.S. 15A-534(b), requiring imposition of a written promise, custody release, or unsecured bond unless the decision-maker finds that such conditions will not reasonably assure appearance, will pose a danger of injury to any person, or are likely to result in the destruction of evidence, subornation of perjury, or intimidation of potential witnesses.
- Allowing for release to pretrial services at the magistrate stage as an alternative to a secured bond, when supervised release sufficiently mitigates pretrial risk.
- Requiring documentation of reasons for imposing a secured bond.
- Preserving the magistrate's discretion to deviate from the tool's recommendations.

The new structured decision-making tool was promulgated by an Administrative Order issued by the Senior Resident Superior Court Judge and implemented effective October 1, 2020. It is included here as

Appendix A. The form used by magistrates when applying the tool is included as Appendix B. Prior to implementation, the Chief Magistrate oversaw testing of the new decision-making process and form. This testing provided important information that resulted in improvements to the process and form. Prior to implementation, Smith conducted training sessions for magistrates, clerk's office staff, law enforcement representatives, and other stakeholders. In the months after implementation, Lab staff reviewed every completed form and provided feedback to the Chief Magistrate. In consultation with the Senior Resident Superior Court Judge as appropriate, Smith developed a Frequently Asked Questions reference material (Appendix C) to support magistrates in their implementation of the new process. At the request of law enforcement, in May 2021, Smith completed an online law enforcement training module on the new procedure to help law enforcement better understand the new procedures and supply the most relevant information to magistrates at the initial appearance.

## New Judicial Process for Responding to Non-Appearances

Stakeholders reported that before reforms, the most common response to a non-appearance was issuance of an Order for Arrest (OFA) and imposition of a secured bond, even for first missed court dates in lower-level misdemeanor cases. Pretrial services reported that a significant number of lower-level misdemeanor defendants were in jail on such conditions. Understanding that non-appearances can occur for a variety of reasons, including lack of notice of court dates, transportation or childcare issues, or an inability to get time off from work, the Working Group wanted to develop a process that encouraged a "second chance" for lower-level defendants who miss a single court date and for all defendants who have good cause for the failure to appear (FTA). They thus created a new decision-making process for responding to non-appearances in district court. The new process was designed to encourage consideration of alternatives to orders for arrest in appropriate cases. Key features include:

- Application in district court only.
- A recommendation that the court date be rescheduled without arrest when the person has good cause for the non-appearance or when the prosecuting witness was subpoenaed but did not appear.
- A recommendation that the court date be rescheduled without arrest when it is the person's first non-appearance on lower-level misdemeanor charges.
- Preservation of the judge's discretion.
- Simple and fast execution.

Stakeholders also modified existing procedures to integrate Driving While License Revoked (DWLR) charges into the new decision-making process for responding to non-appearances in district court.<sup>1</sup> Existing local procedure addressed non-appearances on DWLR charges under the twenty-day failure to appear system. Under that system, if a non-appearance was not resolved within twenty days, the Clerk of Court sent notice of it to the Department of Motor Vehicles (DMV). The DMV then sent notice to the defendant and, if the defendant did not resolve the matter within sixty days, the defendant's driver's license was suspended. Under existing policy, an OFA was not issued for a DWLR charge. Stakeholders determined that integrating DWLR charges into the new decision-making process for responding to non-appearances would create a better mechanism to encourage defendants to appear in court to resolve the matter, which in turn will help to avoid the accumulation of driver's license consequences.<sup>2</sup>

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<sup>1</sup> These procedures apply to both DWLR-Impaired Revocation and DWLR-Not Impaired charges.

<sup>2</sup> Stakeholders did not modify treatment of any other motor vehicle charges.



Specifically, they adopted the following procedure for responding to non-appearances on DWLR charges:

1. The defendant has first non-appearance on a DWLR charge.
2. The presumption is that the judge will re-set the court date with notice sent to the defendant and counsel (if represented). Notice shall include Restoration Legal Counsel Information as well as educational information about missed court dates.<sup>3</sup>
3. If the defendant misses the new court date, an OFA is issued with a written promise to appear set as the bail condition. When arrested, the defendant will be taken to a magistrate for imposition of release conditions and to receive a new court date. The magistrate will provide the defendant with Restoration Legal Counsel information.
4. If the defendant has a third non-appearance, then the judge shall issue an OFA and set a bond.

The new procedure does not preclude a DWLR defendant from using strike order court if an OFA is issued for a second or subsequent missed court date.

These new procedures were adopted by Administrative Order of the Senior Resident Superior Court Judge. Effective January 2021, judges began completing a Bench Card, documenting their responses to non-appearances under the new process (Appendix D.1). Before implementation of the new procedure began, Smith offered training for judges on the new process. Once implementation began, the Lab reviewed all Bench Card forms and provided feedback to the Chief District Court Judge as issues were spotted. This process led to modifications to the Bench Card form to accommodate unforeseen circumstances, streamline the process, and broaden the scope of the non-appearance policy. A revised Bench Card form (Appendix D.2) was implemented on May 6, 2021. The revised Bench Card differs from the original in several respects:

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<sup>3</sup> Specifically, notice as follows:

If your license is suspended, it can be difficult to understand why or to know how to have it restored. Below is information to help you understand your license situation and your Driving While License Revoked charge.

**Orange County Restoration Legal Counsel** is a free service that can answer questions about your license and provide assistance to eligible defendants. **Contact Emma Ferriola-Bruckenstein** at [EFerriola-Bruckenstein@OrangeCountyNC.gov](mailto:EFerriola-Bruckenstein@OrangeCountyNC.gov) or (919) 245-2313 for the following:

- Help restoring your license; Questions about the consequences of a Driving While License Revoked Charge; Questions about the consequences of not appearing in court to resolve your Driving While License Revoked charge; Concerns about an inability to pay court costs and/or fines. The program may be able to remit some or all of the money you owe to the court.

If you miss your court date a second time, the clerk will enter a Failure to Appear (FTA) on your record after 20 days if you do not set a new court date. This will add a \$200 fine to the amount you will owe to the court if you are found guilty of or plead guilty to this charge. If you cannot pay that \$200 fine, an additional suspension could be placed on your license.

If the Clerk of Court enters an FTA, the DMV will receive notice and will contact you. 60 days after they contact you, an additional suspension will be added to your license if you do not handle the case in court. Your license will then stay suspended until you handle this case, and it will become more difficult for you to restore your license.

**\*\*If you continue to miss your court dates on this case, you risk being arrested and incarcerated if you cannot pay a cash bond.**

- Modifies the first step in the process, allowing judges to excuse the non-appearance for any reason;
- Modifies the second step, allowing judges to decline to issue an OFA and instead reschedule the court date in cases other than target cases; and
- Modifies the third step, allowing judges to decline to issue an OFA and instead reschedule the court date in target cases where the individual had a prior non-appearance.

In sum, these changes allow judges to excuse any non-appearance and opt to reschedule the court date in lieu of an arrest in a larger number of cases.

Stakeholders made one related change after the first version of the Bench Card was implemented. At an April 2021 stakeholder meeting where we presented early evaluation results, stakeholders expressed concern that the standard North Carolina Administrative Office of the Courts (NC AOC) court date rescheduling letter does not provide individuals with sufficient information about the consequences of a non-appearance. They specifically noted empirical research suggesting that informing individuals of those consequences can reduce failures to appear. After discussion, stakeholders decided to modify their supplemental notice that is sent with the NC AOC rescheduling letter, adding language that informs people of the consequences of a FTA.

## Empirical Evaluation & 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 Lab to seek grant funding to execute such an evaluation. Funding for the evaluation was provided by the Richard J. Reynolds III and Marie M. Reynolds 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 efforts or preparation of this report.

Our evaluation will continue through December 2021 and examines, among other things:

- Decision-making under the new magistrate process.
- Decision-making under the new judicial process.
- Changes in new pretrial criminal charging pre- and post-implementation.
- Changes in non-appearance rates pre- and post-implementation.
- Changes in jail detention.

We circulated a draft of this report to Working Group members in October and they were invited to submit feedback to us. Additionally, we met with Working Group members to discuss the report and receive additional feedback from them. We thank them for their feedback, which we incorporated into this report.

Additional contributors to the evaluation and this report are:

- Maggie Bailey, Project Manager, UNC SOG Criminal Justice Innovation Lab, for project management, data collection and cleaning, and report preparation.
- Meagan Pittman, PhD student, North Carolina State University, for data collection and cleaning.
- Christopher Tyner, Legal Research Associate, UNC SOG, for legal analysis and support and report preparation.

## Findings

### Magistrate Decision-Making

Since October 1, 2020, magistrates have determined conditions of pretrial release using the new structured decision-making tool (Appendix A) and documented their decisions on the new Magistrate Bail Explanation Form (Appendix B). We examined magistrate decision-making for all 895 forms completed by magistrates between October 1, 2020 and June 30, 2021.<sup>4</sup> We identified errors on fourteen forms and removed them from our sample,<sup>5</sup> leaving 881 forms for inclusion in our core analyses.<sup>6</sup>

#### Process Metrics

To assess the quality of implementation at the magistrate level, we examined two process outcomes: adherence to and deviations from recommendations; and completeness and fidelity issues with respect to the Magistrate Bail Explanation Form.

#### Adherence to & Deviations from Recommendations

We began by examining the rate at which magistrates followed or deviated from the decision-making tool's recommendations. If we found that magistrates were deviating from those recommendations in the vast majority of cases, that would suggest that the tool is not providing viable recommendations or that there was resistance to the new policy. In fact, we found the opposite: Magistrates adhered to the tool's recommendations in the vast majority of cases. Specifically, of the 881 forms included in our analysis, magistrates followed the tool's recommendation in 86.71% of forms (764 forms); they deviated

from the tool's recommendation in only 13.28% of forms (117 forms).

Magistrates followed the tool's recommendation in the vast majority of forms.

When magistrates deviated from the tool's recommendations, almost all deviations (96.58% of deviations; 113 forms) were to impose a more restrictive condition of pretrial release, that is, a secured bond or release to pretrial services instead of a written promise,

### WHAT DOES IT MEAN FOR A RESULT TO BE "STATISTICALLY SIGNIFICANT"?

When a result is statistically significant, that means it very likely is not due to chance. Put another way, when a finding is statistically significant, you can feel confident that it is reliable. In this report we present all data. But for this reason, we focus on results that are statistically significant.

<sup>4</sup> We note that magistrates do not complete forms for out-of-county cases because those cases are handled using the other county's bail procedures.

<sup>5</sup> Specifically, we removed:

- Eight forms where the magistrate noted that they were both following and deviating from policy, a result that is inconsistent with the decision-making process;
- One form involving a first-degree murder charge for which the magistrate was not authorized to set conditions;
- One form where the magistrate did not indicate whether the individual was before the magistrate on an OFA after an FTA;
- One form where the magistrate indicated both that the individual was and was not before the magistrate for an OFA after an FTA;
- One form where magistrate did not record the final condition of pretrial release; and
- Two forms where the magistrate issued both a secured bond and written promise to appear.

<sup>6</sup> As discussed below, we used a sample of forms in our analysis of completeness and fidelity issues.

custody release or unsecured bond. Magistrates deviated to impose a less restrictive condition in only a handful of forms. Specifically, they deviated from the recommendation to impose a secured bond or release to pretrial services, opting instead to impose a written promise, custody release or unsecured bond in only 3.42% of deviations (4 forms).

### Completeness and Fidelity Issues

Examining the quality of implementation can help explain why a reform may not have the desired or anticipated effect. For example, a policy with strong implementation – a policy that is regularly completed with fidelity – spurs greater confidence that any results are influenced by the enacted policy. Conversely, an implementation that has many completeness or fidelity issues may mask how a policy impacts change. 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.

Examining a sample of forms, we found that magistrates completed the vast majority of forms without completeness or fidelity issues.<sup>7</sup> Specifically, magistrates completed 89.80% of forms without completeness issues and 97.00% without fidelity issues. Most sampled forms had neither a completeness nor a fidelity issue (436 forms or 87.20%).

Magistrates completed the vast majority of forms without completeness or fidelity issues.

Of the 51 forms with completeness issues, 94.12% had only one completeness issue; 5.88% had two issues. Each of the sampled forms (15 forms) that had fidelity issues had only one such issue. The most common completeness and fidelity issues are shown in Table 1.

**Table 1. Common fidelity & completeness issues—Magistrate bail forms**

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> <li>• Not checking a redundant box (52.94%)</li> <li>• Not noting the underlying offense for a FTA, probation violation or pretrial release violation (11.76%)</li> <li>• Listing a bond amount that exceeded maximum recommended amount in the bond table, but not providing reasons for doing so (31.37%)</li> <li>• Not including the case number, individual name, or charge description at the top of the form (3.92%)</li> <li>• Not completing Step 1 (1.96%)</li> <li>• Not completing Step 2 (1.96%)</li> <li>• Not recording the final bond amount (1.96%)</li> </ul>	<ul style="list-style-type: none"> <li>• Not following the decision-making process (72.72%)</li> <li>• Completing the “Explanation for secured bond in excess of maximum bond table” for a bond that did not exceed the maximum recommended amount (27.27%)</li> <li>• Checking both follow and deviate in Step 2, 3, 4 or 5 (36.36%)</li> </ul>

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

<sup>7</sup> To assess these metrics, we examined a random sample of 500 forms completed between October 1, 2020 and July 3, 2021 for completeness and fidelity issues. The random sample was completed on a bi-weekly basis. All forms submitted for two weeks were randomly assigned a number between 0 and 2000. The forms were then sorted from smallest to largest number and the first 25 forms were retained for review for completeness and fidelity issues.

## Outcome Metrics

### Conditions other than Secured Bonds

Because stakeholders designed the new process to reduce the use of secured bonds in target cases, we expected to see a relatively high rate of imposition of conditions other than secured bonds for these charges. In fact, the data show high rates of imposition of conditions other than secured bonds not only for target cases but also for all other charges. Table 2 shows the percent of conditions of release by offense category. As shown there, magistrates issued a condition other than a secured bond in 72.31% of all cases (written promise, custody release or unsecured bond in 66.52% of cases; release to pretrial services in 5.79% of cases).<sup>8</sup> For target cases, that rate was 80.58%; for other charges it was 70.76%.

Magistrates imposed conditions other than secured bonds in 72.31% of all cases & in 80.58% of target cases.

### Written Promises & Custody Releases

In projects we are executing in other jurisdictions, we have seen that when pivoting to conditions other than secured bonds, decision-makers tend to use unsecured bonds at a significantly higher rate than written promises or custody releases.<sup>9</sup> In Orange County, however, the local bail policy includes a provision favoring written promise or custody release over any type of financial bond, secured or unsecured.

We found that conditions are being set consistent with this provision. Specifically, a written promise was imposed in the majority of all cases and in both case sub-categories. As shown in Table 2, magistrates chose a written promise in 65.72% of all cases; in 78.42% of target cases; and in 63.34% of other cases.

A portion of cases involving a written promise involved issuance of a “disappearing appearance bond.” A disappearing appearance bond refers to when the magistrate sets a temporary secured bond due to a person’s impairment but provides that the person may be released on a written promise to appear after eight hours, or earlier if deemed sober by the magistrate or jail staff. Understanding the frequency of use of disappearing appearance bonds is important because these bonds result in a period of incarceration, although relatively brief. Disappearing appearance bonds constituted 17.43% of written promises issued in target cases and 2.43% of written promises issued in other cases.

### Median Bond Amounts

In other projects, we have seen median secured bond amounts increase as the offense levels of charged offenses increase.<sup>10</sup> We find that trend in Orange County as well. As shown in Table 2, the median secured bond amount for target cases was \$500; for other offenses it was \$5,000.

## WHAT IS A “TARGET CASE”?

Orange County stakeholders identified non-impaired driving Class 1-3 misdemeanors as the target cases for their reforms.

<sup>8</sup> The total number of forms indicating that the magistrate issued a condition other than secured (636) is smaller than the sum of the number of cases released to pretrial services (51) and the number of cases issued a written promise to appear, custody release, or unsecured bond (586). This is because on one form the magistrate imposed a written promise to appear and release to pretrial services. When magistrates imposed multiple conditions (such as on three forms for “other cases” imposing a custody release and a written promise to appear), we counted the forms once in the total number of cases, but each condition is separately recorded in its respective category.

<sup>9</sup> See, e.g., JESSICA SMITH & JAMIE VASKE, BAIL REFORM IN NORTH CAROLINA JUDICIAL DISTRICT 2, page 11 Table 2a (September 2021), <https://cijl.sog.unc.edu/wp-content/uploads/sites/19452/2021/09/JD-2-Final-Report-9.21.2021.pdf>.

<sup>10</sup> *Id.*

### Release to Pretrial Services

The new procedures allowed magistrates, for the first time, to release individuals to pretrial services. Because release to pretrial services involves supervised release, we expected to see this type of release used more frequently in connection with higher level charges. And in fact, this occurred. Magistrates released only one individual in a target case to pretrial services but released 6.74% of individuals charged with other offenses to pretrial supervision (Table 2).

**Table 2: Conditions of release ordered in magistrate bail forms, October 2020 to June 2021**

	All Cases	Target cases	Other cases
<b>Written promise, custody release or unsecured bond</b>	<b>66.52%</b>	<b>79.86%</b>	<b>64.02%</b>
Written promise	65.72%	78.42%	63.34%
Custody release	0.34%	0.00%	0.40%
Unsecured bond	0.34%	0.72%	0.27%
<b>Pretrial services</b>	<b>5.79%</b>	<b>0.72%</b>	<b>6.74%</b>
<b>Secured bond</b>	<b>27.81%</b>	<b>19.42%</b>	<b>29.38%</b>
Median secured bond	\$5,000	\$500	\$5,000

Notes: The percentages shown of cases that received a written promise, custody release, or unsecured bond may total less than the percentages shown in line 1 because Step 5 of the form allows magistrates to set a written promise, custody release, or unsecured bond without specifying the exact condition; thus, the total number of written promises, custody releases, or unsecured bonds in line 1 may exceed the sum of the individual categories.

Magistrate bail forms were not included in this analysis if: the individual was before the magistrate on an OFA after FTA with conditions set by judge; the individual was before the magistrate on an OFA after FTA where the bond doubling rule applied; the magistrate set both a financial and nonfinancial condition; there was no bond permitted; or the form had a relevant error/was missing information required for the analysis.

### Variations in Individual Magistrate Decision-Making

In related projects in other jurisdictions, we have seen variation in decision-making among individual magistrates.<sup>11</sup> Here too we found variation across magistrates in the use of secured bonds, median bond amounts, and percent of forms deviating from the tool's recommendations (Appendix E). However, the magnitude of the variation in Orange County is smaller than in other jurisdictions that we have examined, perhaps suggesting greater uniformity of cases presented and/or practice. For target cases, the use of secured bonds at the individual magistrate level ranged from 0% to 42.11% and median secured bond amounts ranged from \$150 to \$1,000. Magistrates also differed in their prevalence of

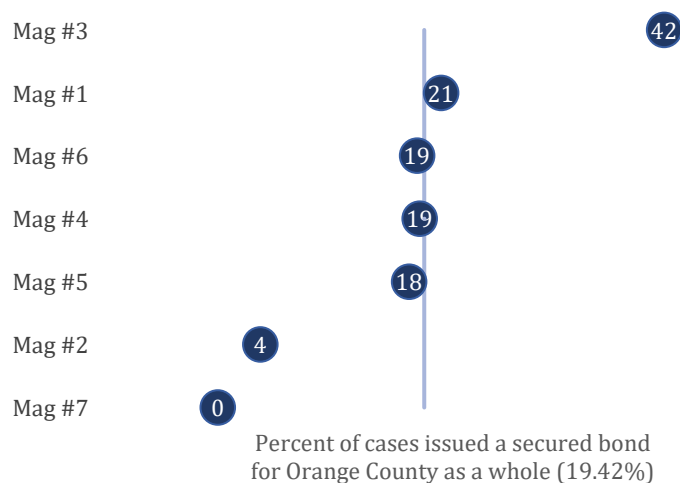
<sup>11</sup> See, e.g., *id.* at pp. 16-17.

deviating from the tool's recommendations with Magistrate #7 deviating in 0% of forms for target cases and Magistrate #3 deviating in 47.37% of forms for those cases.

Figure 1 shows the rate of imposition of secured bonds in target cases for individual magistrates, relative to the rate of imposition of secured bonds in these cases for all Orange County magistrates. For example, Figure 1 shows that Magistrate #3 issued a secured bond for 42% of target cases, a rate that is higher than the average for all magistrates (19.42%). More detail about individual magistrate decision-making is presented in Appendix E.

We note that there was a considerable range in the number of forms completed by each magistrate. For example, while Magistrate #7 completed only 2 forms for target cases, Magistrate #1 completed 28 forms for those cases. Even for magistrates with a similar number of forms completed, we would expect to see some variation due to the unique circumstances of each case. However, as individual magistrates complete more forms and the number of forms per magistrate evens out, the variations in individual magistrate decision-making may moderate from these early results. Additionally, in later reporting we will seek to determine whether any variation in magistrate decision-making is attributable to case-specific factors.<sup>12</sup>

**Figure 1. Percent of target cases issued a secured bond by magistrate**



<sup>12</sup> *Id.* at p. 16 & Appendix D (finding that variation among magistrates in the use of secured bonds was explained by case-specific factors).



### Secured Bonds by Race

We also examined whether there were differences in magistrates' imposition of secured bonds for all offenses by race.<sup>13,14,15</sup> We caution that because of the small sample size at this interim period in our evaluation, these results are preliminary. With that caveat, our initial analysis found that Black individuals were more likely to receive a secured bond than White individuals.

Results from our initial analysis are displayed in Table 3.<sup>16</sup> As shown there, Black individuals were more likely to receive a secured bond than White individuals (35.37% and 23.42% respectively), and this difference was statistically significant. Stated differently, the odds of receiving a secured bond were 1.79 times higher for cases involving Black individuals compared to cases involving White individuals. We also found that the median secured bond amount was higher for cases involving Black individuals (\$5,000) than White individuals (\$4,500), though this difference was not statistically significant.

**Table 3. Percent of secured bonds & median secured bond amounts for all cases by race, October 2020 to June 2021**

	Black individuals	White individuals	Difference
Percent secured bond	35.37%	23.42%	11.95***
Median secured bond amount	\$5,000	\$4,500	\$500

Note. \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

However, these results do not take into account case-specific factors that may vary by race or case-specific factors that may have a stronger relationship to the use of secured bonds than race. In a draft of this report that we presented to stakeholders, we included supplemental analyses that we executed to determine whether there were statistically significant racial differences in the imposition of secured bonds after controlling for various factors that are built into the new decision-making process. However, discussion about these analyses at the October 2021 stakeholder meeting prompted us to explore alternative approaches for examining this issue. These approaches have provided inconsistent findings

<sup>13</sup> Information about individuals' race was retrieved from the North Carolina Automated Criminal/Infractions System (ACIS). We merged in individuals' race using the case number recorded on the magistrate bail form. Of the 881 forms where magistrates set conditions and the form was free of fidelity or completeness issues, 85.02% (or 749 forms) were matched to records in ACIS. The remaining 14.98% (132 forms) could not be matched to ACIS because the form did not include a case number, the case number was entered incorrectly, or the record could not be located in ACIS.

<sup>14</sup> Black and White were the only racial groups included in the analysis because they collectively made up 87.71% of the study population. The population size for other racial groups included in the ACIS data was too small to produce reliable analyses. For instance, cases involving Hispanic individuals made up 9.48% of the forms where a magistrate set a condition and the form was not removed from the analysis due to a fidelity issue.

<sup>15</sup> We also explored whether there were racial differences in the probability of a magistrate deviating from the tool's recommendations. The probability of a magistrate deviating from the tool's recommendations did not significantly differ for cases involving White individuals compared to cases involving Black individuals.

<sup>16</sup> The final report will include an analysis of the likelihood of receiving secured bond and median secured bond amounts by race for target cases. The current sample size is not large enough to produce a reliable analysis of target cases.



and each has its own limitations. We will explore the best methodology to determine whether race remains a statistically significant factor in the decision to impose secured bond after taking into account case-specific factors and will address this issue in our next report.

## Judicial Process for Responding to Non-Appearances

As discussed above, district court judges began implementing the new procedure for responding to court non-appearances on January 19, 2021, by executing a new Bench Card form (Appendix D.1.). And as discussed above, the initial form was revised on May 6, 2021 (Appendix D.2.), reflecting policy changes intended to promote greater flexibility in responding to non-appearances. To evaluate the new judicial process for responding to non-appearances, we examined process metrics to assess the quality of implementation and outcome metrics to examine judicial decision-making using the new Bench Card and how judicial decisions changed after its implementation.

Judges used the new Bench Card process and used it correctly in the vast majority of cases.

### Process Metrics

We began by examining the quality of implementation of the new Bench Card. As with magistrate decision-making, we were interested to explore how frequently judges were using the Bench Card process and, when they used it, whether they did so correctly. To assess these questions, we examined data extracted from Bench Card forms completed between January 19, 2021 and June 30, 2021.

Judges reported that they used the new process in the vast majority of cases. Specifically, for the 758 completed forms,<sup>17</sup> judges reported that they used the new process for 97.23% of non-appearances (737 forms); they reported not using the process in only 2.77% of non-appearances (21 forms).

When judges used the new process, they correctly completed forms in the vast majority of cases. To execute this analysis, we coded each form for completeness and fidelity issues. A completeness issue occurs when the judge fails to complete all form fields. A fidelity issue occurs when the judge purports to use the new process but the form contains some type of substantive error.

Of the 737 forms on which judges indicated that they used the new process, 75.85% did not have any completeness or fidelity errors. 94.84% (699 forms) did not have any fidelity issues. As shown in Table 4, the most common fidelity issue among the thirty-eight forms that had such issues was that the judge declined to adhere to the form's recommended outcome (60.53% of forms with fidelity issues; 23 forms). For example, the original Bench Card recommended that the judge issue an OFA for unexcused missed court dates in non-target cases. We thus coded a form as having a fidelity issue if the judge opted not to issue an OFA and instead rescheduled the court date in a non-target case. Note that this only would have been a fidelity issue with respect to the original Bench Card Form (Appendix D.1). While the original Bench Card only allowed rescheduling for unexcused absences in target cases, the revised Bench Card (Appendix D.2), allows greater flexibility, including rescheduling for unexcused absences in non-target cases.

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<sup>17</sup> Three forms were submitted blank (the defendant information and case number were completed in the top boxes, but none of the form's steps to document the judicial response to the non-appearance were completed) and were removed from further analyses.

Additionally, judges completed most forms without completeness issues (80.91% or 595 forms). Of the 143 forms with completeness issues, 90.91% (130 forms) had only one issue and 9.09% (13 forms) had two issues. Table 4 shows the most common fidelity and completeness issues on Bench Card forms.

**Table 4. Common fidelity and completeness issues—Bench Card forms**

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> <li>• Not checking a redundant box (58.50%)</li> <li>• Not completing Step 1 (25.17%)</li> <li>• Not recording case number(s) or date (18.36%)</li> <li>• Not recording final bond amount (2.72%)</li> <li>• Not recording final bail condition (0.68%)</li> <li>• Not completing Step 2 (0.68%)</li> </ul>	<ul style="list-style-type: none"> <li>• Not adhering to recommended outcome or completing part of the form but then declining to use the process (60.53%)</li> <li>• Issuing an OFA but delegating the conditions of pretrial release to the magistrate’s discretion (18.42%)</li> <li>• Not following the steps of the process (7.89%)</li> <li>• Setting the same condition Steps 2 and 3 (5.26%)</li> <li>• Setting different conditions in Steps 2 and 3 (2.63%)</li> <li>• Recording multiple offense classes in Step 2 (2.63%)</li> <li>• Checking both “yes” and “no” in Step 3 (2.63%)</li> </ul>

Note: Analyses above do not include information for three forms that were submitted blank. For the steps of the decision-making process, see Appendix D.1 and D.2 (Bench Card Form).

## Outcome Metrics

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

To assess the impact of the new judicial process for responding to non-appearances, we examined 699 forms that were not blank, had no fidelity issues, and on which judges indicated that they used the new process. 514 of these forms were the original version (Appendix D.1); 185 were the revised version (Appendix D.2). On these 699 forms, judges rescheduled 43.78% (306) of cases and issued an OFA for 56.22% (393) of cases. When judges issued an OFA, the most common condition was a secured bond (93.38%), and the median secured bond amount was \$500. Judges rarely ordered a written promise to appear (3.82%), custody release (2.04%), or unsecured bond (0.25%) in the OFA in response to a non-appearance.

We also were interested to know whether adoption of the revised Bench Card form resulted in different outcomes. We expected that the additional flexibility that the new form afforded to reschedule a larger group of cases would have resulted in a greater percentage of cases being rescheduled. That did not occur. Of the 185 revised forms, judges rescheduled 43.24% (80) of cases and issued an OFA for 56.76% (105) of cases. These percentages are nearly identical to those for the overall group of forms.<sup>18</sup>

Because this reform was focused on target cases, we were interested to examine outcomes just for those cases. Recall that this reform was focused on encouraging judges to respond to first non-appearances in target cases by rescheduling the case instead of issuing an OFA. We found that the

<sup>18</sup> When judges issued an OFA using the new form, the most common condition was a secured bond (88.57%) with a median secured bond amount of \$500. Judges rarely ordered a written promise to appear (6.67%), custody release (3.81%), or unsecured bond (0%) in the OFA in response to a non-appearance.

reform was working as intended in 100% of these cases. Specifically, nearly one-third of the 390 target cases (32.82%; 128 cases) where the non-appearance was not excused had no prior missed court date. In all of these cases, judges responded to the non-appearance by rescheduling the court date.<sup>19</sup> We note that the structure of the Bench Card appears to be driving this result. On both versions of the Bench Card, when the judge gets to Step 3 (unexcused non-appearance in a target case where the defendant has no prior missed court dates), the only checkbox option is to reschedule the court date. If the judge wishes to avoid this result, the judge must write in an alternative outcome on the form or check the box at the bottom, indicating that they declined to use the process.<sup>20</sup>

The Bench Card is working as intended: When judges used the process, they rescheduled the court date for every unexcused non-appearance in target cases with no prior missed court date.

### Changes in Decision-Making before & after Implementation of Reforms

We were interested to explore how judicial responses to non-appearances may have changed before and after implementation of reforms. In the section above we reported on judicial decision-making as recorded on the Bench Cards. Because those cards were deployed only after reforms were implemented, we needed an alternative data source to compare changes in judicial decision-making pre- and post-implementation of reforms. To ensure that a difference in data sources would not bias results, we wanted to use the same data source for both the pre- and post-implementation period. We thus turned to courtroom clerks' notes, as recorded on district court calendars. Local stakeholders scanned and sent to us calendars from the pre- and post-implementation periods (January 1, 2019 to June 30, 2019 and January 1, 2021 to June 30, 2021, respectively). We extracted data from these documents,<sup>21</sup> limiting data collection to target cases. Before we present the relevant results from this analysis, we note that there is not an exact match of cases between this analysis and the one above

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<sup>19</sup> The remaining 262 cases had a prior non-appearance, and judges issued an OFA in nearly all of these cases. Specifically, judges issued an OFA in 259 cases (98.85%) and rescheduled the court date in only 3 (1.15%). The most prevalent condition of release recorded in the OFA was a secured bond (91.60% or 240 forms), with a median bond amount of \$300.

These results did not change when we examined results for target cases for which the revised form was used. Of the 123 unexcused target cases with a non-appearance, 58 cases (47.15%) had no prior missed court date and all of these were rescheduled. Of the 65 cases that had a prior missed court date, judges opted to reschedule only 3 cases (4.62%). For the remaining cases (62) the judge issued an OFA, with the most common condition being a secured bond (80.00% or 52 of non-appearances). The median bond amount was \$250.

<sup>20</sup> We note that when the judge checks the box indicating that they declined to use the process, we do not know whether the case was a target case. Thus, it is possible that one or more of the 2.5% of forms on which judges indicated that they were not using the process involved a target case. However, given that judges declined to use the process in such a small percentage of cases, to the extent this issue impacts the reported outcome, that impact likely is small.

<sup>21</sup> We limited our analyses to court non-appearances with a 19CR case number (for 2019 calendars) or a 21CR case number (for 2021 calendars) on the criminal district, probation violation/felony, Tuesday criminal/traffic, domestic violence, and first appearance calendars. We did not include non-appearances on the Wednesday traffic-only calendars or recovery court calendars because of special processes that apply to cases on those calendars.

In consultation with local stakeholders, we used 2019 as a pre-implementation period for two reasons. First, the COVID-19 pandemic dramatically impacted court practices and procedures, making 2020 a poor pre-implementation comparison period. Second, stakeholders informed us that even before the new procedure was formally implemented in January 2021, judges began changing practices in anticipation of its adoption.

regarding data pulled from the Bench Cards. This is so primarily for two reasons. First, when using calendar data, we could not account for whether the person charged had a prior missed court date. Additionally, we limited this analysis to cases that were initiated in the pre- and post-implementation periods (e.g., 19CR- and 21CR- case numbers).<sup>22</sup> We did that to ensure that cases included in the post-implementation period benefited from the new procedure. By contrast, the Bench Card data discussed in the previous section includes all cases, regardless of date of initiation date.<sup>23</sup> For these reasons, case totals for the post-implementation period discussed here do not match those discussed above. Nevertheless, using calendar data allowed us to explore whether overall judicial responses to non-appearances changed in the pre- and post-implementation periods (without a specific focus on target cases that had no prior missed court date). Given stakeholders' desire to promote rescheduled court dates in lower-level cases, we expected to find that a larger percentage of target cases were being rescheduled without issuance of an OFA in the post-implementation period. We found the opposite, but as discussed below, this likely is attributable to changes in court procedures during the COVID-19 pandemic as opposed to the new procedure.

As shown in Table 5, in the post-implementation period, there were 274 non-appearances in target cases, of which 35.04% (96 non-appearances) were excused and rescheduled for a later court date (Table 5). In the pre-implementation period, there were substantially more non-appearances (697), and a greater percentage of them (47.06%) were excused and rescheduled. These differences were statistically significant, meaning that target cases were less likely to be excused and rescheduled in the post-implementation period than the pre-implementation period. When we met with stakeholders in October 2021 to present a draft of this report, they suggested that these results were not surprising in light of changes to court procedures implemented during the COVID-19 pandemic. Recall that for this analysis the pre-implementation period included calendar data from January 1, 2019 to June 30, 2019, before the COVID-19 pandemic. The post-implementation period included calendar data from January 1, 2021 to June 30, 2021, a period fully impacted by the pandemic. Stakeholders reported that in response to pandemic issues during the post-implementation period, defendants were excused from most court dates and required to attend *only* when the case was set for disposition. This explains the dramatically lower number of non-appearances in the post-implementation period as compared to the pre-implementation period (274 non-appearances post-implementation, 697 pre-implementation). Additionally, stakeholders reported that if, after having been excused from earlier proceedings, a defendant failed to appear when the case was set for disposition then the defendant's absence was not excused. At stakeholders' recommendation, we confirmed this suggestion in interviews with assistant public defenders who represent defendants at these proceedings.

Stakeholders also reported that early in 2021, the Chief District Court Judge requested that minor traffic cases requiring continuances should no longer be put on the Monday, Tuesday, Thursday District Court calendars. These cases would have appeared on the 2019 calendars. This further contributed to the lower volume of cases—and thus fewer opportunities for non-appearances—on the 2021 calendars.

We also used data from District Court calendars to examine whether judges' use of OFAs with secured bonds in response to non-appearances in target cases changed before and after implementation of reforms. Consistent with stakeholders' explanation above, the percentage of non-appearances receiving

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<sup>22</sup> 19CR cases were initiated in 2019; 21CR cases were initiated in 2021.

<sup>23</sup> Because a Bench Card was completed for all of these cases, we knew that they benefited from the new procedure.

an OFA and a secured bond was 3.90 percentage points higher in the post-implementation period (22.26%) as compared to the pre-implementation period (18.36%). However, this 3.90 percentage point difference was not statistically significant.<sup>24</sup>

Table 5 also shows outcomes for the subgroup of DWLR cases. As shown there, and consistent with expectations given stakeholders changes to DWLR procedures, there was a dramatic increase (33.29 percentage points) in the percentage of non-appearances in DWLR cases that were excused and rescheduled and a dramatic decrease (45.35 percentage points) in DWLR cases that were processed under twenty-day procedures. Both of these changes were statistically significant.

**Table 5. Percent and number of court non-appearances in all target and DWLR cases rescheduled, issued an OFA, or recorded as 20-day or called & failed in the pre- and post-implementation periods.**

	Target Cases			DWLR		
	Pre-implementation period	Post-implementation period	Percentage point difference	Pre-implementation period	Post-implementation period	Percentage point difference
Excused & rescheduled	47.06% (328)	35.04% (96)	-12.02***	32.46% (37)	65.75% (48)	33.29***
OFA plus secured bond set	18.36% (128)	22.26% (61)	3.90	4.39% (5)	9.59% (7)	5.20
OFA plus condition other than secured bond set	0.29% (2)	2.92% (8)	2.63***	0.00% (0)	5.48%* (4)	5.48*
OFA plus magistrate discretion set	0.00% (0)	1.09% (3)	1.09**	0.00% (0)	1.37% (1)	1.37
20-day or called & failed noted	34.29% (239)	38.69% (106)	4.40	63.16% (72)	17.81% (13)	-45.98***
Total	697	274		114	73	

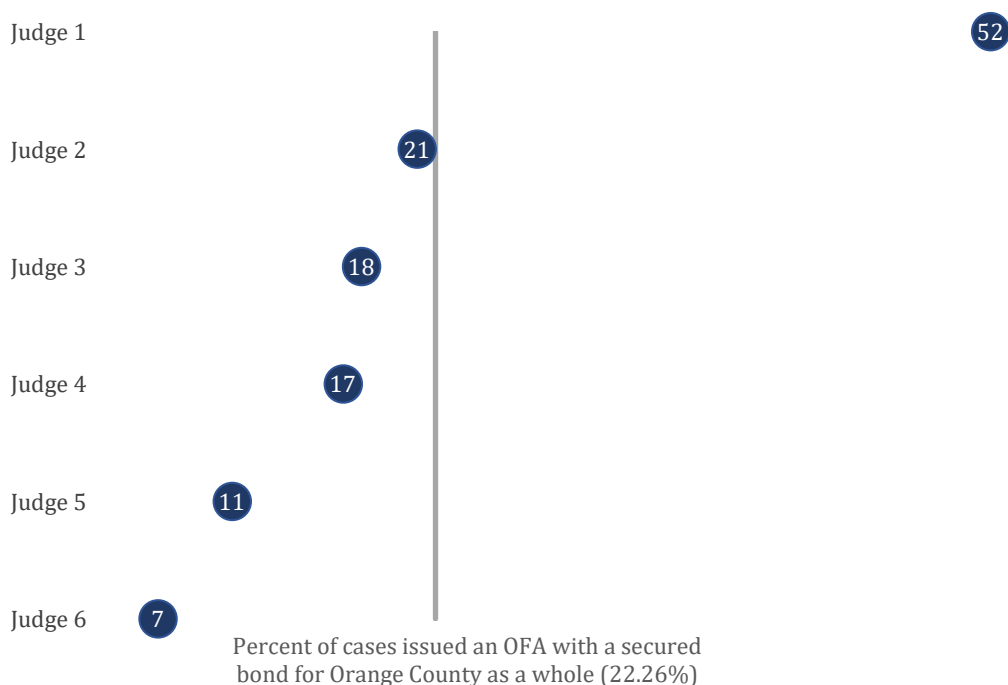
Note. \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone

<sup>24</sup> Supplemental analyses showed that the statistical test was severely underpowered (23% statistical power vs. 80% standard benchmark) and so we caution readers in any interpretation that there was no significant change.

### Variations in Individual Judge Decision-Making

Finally, using the same calendar data described above, we investigated whether there was variation in how judges responded to non-appearances for target cases during the post-implementation period.<sup>25,26</sup> Figure 2 shows the rate of issuing an OFA with a secured bond for non-appearances in target cases by individual judge, relative to the rate for all judges (22.26%).<sup>27</sup> As shown there, decisions by one judge accounted for the bulk of variation in judicial responses to non-appearances for these cases. Specifically, Judge 1 issued an OFA with a secured bond for 52% of non-appearances. All of the other judges did so at substantially lower rates. We note that case-specific factors may explain this variation in judicial responses.

**Figure 2. Percent of target cases issued an order for arrest with a secured bond by judge, January to June 2021**



<sup>25</sup> We used calendar data for this analysis because judges were not required to identify themselves on the Bench Card forms.

<sup>26</sup> Recall that using calendar data does not allow us to determine if the non-appearance is an individual's first non-appearance in the case. Therefore, Figure 2 reflects judicial responses to any non-appearance for target cases.

<sup>27</sup> We restricted these analyses to district court judges that responded to 10 or more non-appearances.

## Pretrial Failures

In the past, some had expressed concern that pretrial reforms may result in dramatically increased new pretrial criminal charges or court non-appearances. Consistent with results in our related evaluation projects,<sup>28</sup> initial results suggest that these outcomes are not occurring in Orange County.

### *New Pretrial Criminal Charges*

We used data from the statewide North Carolina Automated Criminal/Infractions System (ACIS) to examine whether individuals had a higher rate of new pretrial criminal charges after implementation of reforms. To do so we compared pretrial activity rates for cases that were served and closed between October 1, 2020 and June 30, 2021 (post-implementation) to those served and closed between October 1, 2019 and June 30, 2020 (pre-implementation).<sup>29</sup> We recorded a case as having a new pretrial charge if the individual acquired a new charge anywhere in North Carolina before the first case was disposed.<sup>30</sup> We categorized new criminal charges as felonies, non-traffic misdemeanors, or traffic misdemeanors for individuals who incurred a new pretrial charge.

We also compared the percent of individuals in Orange County who acquired new pretrial charges to the percentage of individuals who did the same in “peer” North Carolina counties. To identify peer counties, we used the National Center for Health Statistics (NCHS) Urban – Rural classification scheme. That classification scheme organizes counties into six different groups, from large metropolitan (most populous) to noncore (least populous). Under the NCHS scheme, Orange County is identified as a medium metro county. Twenty-five North Carolina counties are designated as medium metro.<sup>31</sup> In addition to Orange County, these counties include: Alexander, Brunswick, Buncombe, Burke, Caldwell, Catawba, Chatham, Cumberland, Davidson, Davie, Durham, Forsyth, Guilford, Haywood, Henderson, Hoke, Madison, New Hanover, Pender, Person, Randolph, Rockingham, Stokes, and Yadkin. We note that within this group, there is considerable variation with respect to demographics, politics, and court practices.

Table 6 shows the prevalence of new criminal pretrial charges for all individuals during the pre- and post-implementation periods for Orange County and for all twenty-five North Carolina medium metro counties. As shown there, Orange County experienced no statistically significant change in the percent of individuals who incurred a new pretrial criminal charge after reforms were implemented. During the pre-implementation period, 10.14% of individuals received a new pretrial charge, compared to 10.37%

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<sup>28</sup> See JESSICA SMITH & JAMIE VASKE, BAIL REFORM IN NORTH CAROLINA JUDICIAL DISTRICT 2 (September 2021), <https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2021/09/JD-2-Final-Report-9.21.2021.pdf>; JESSICA SMITH, JAMIE VASKE & C. ROSS HATTON, BAIL REFORM IN NORTH CAROLINA JUDICIAL DISTRICT 21 (September 2021), <https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2021/09/JD-21-September-2021-Report-FINAL-9.20.2021.pdf>.

<sup>29</sup> We restricted our analyses to cases where all charges had been disposed of by June 30, 2019 or 2020. We limited analyses to disposed cases to ensure that we were capturing the entire pretrial period for cases in the sample. If a multi-charge case had a mixture of disposed and pending charges, we excluded it from our analyses.

<sup>30</sup> We used the latest disposition date for cases involving multiple charges served on the same date but disposed of on different dates. We excluded the following charges from the ACIS data and our calculation of new criminal charges since they are not substantive crimes: civil revocation of driver’s license; contempt by probationer; criminal contempt; extradition/fugitive; felony or misdemeanor probation violation; probation revocation appeal; governor’s warrant; habitual felon; motions; and show cause.

<sup>31</sup> 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](https://www.cdc.gov/nchs/data/series/sr_02/sr02_166.pdf).

of individuals in the post-implementation period. This difference of 0.23 percentage points was not statistically significant. Among those with a new offense during the pretrial period, there was no significant change in the prevalence of new felonies, non-traffic misdemeanors, or traffic misdemeanors.<sup>32</sup> We also examined this issue by race and found no significant changes in new pretrial criminal charges for either Black or White individuals and that there was no significant difference in the rate of change when comparing across race.

There was no statistically significant change in pretrial criminal activity after implementation of reforms.

Table 6 also shows pretrial criminal charging data for North Carolina medium metro counties. As shown there, medium metro counties experienced a small (2.02 percentage points) but statistically significant decrease in new pretrial criminal activity. It is important to note that there was wide variation in changes of new pretrial charges across medium metro counties, with some counties (such as Randolph County) experiencing a significant decrease in new pretrial charges and other counties (such as Chatham and Brunswick Counties) exhibiting no significant change in new pretrial charges. At the October 2021 stakeholder meeting where we presented a draft version of this report, we requested feedback from stakeholders regarding the most appropriate peer county or counties to use in this analysis.

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<sup>32</sup> While none of the new criminal charges results for Orange County were statistically significant, it is important to note these statistical tests were severely underpowered to detect significant differences (5-35% of statistical power vs. standard benchmark of 80% statistical power) and that effect sizes are small in nature (phi ranged from <.001 to .10).



**Table 6. Percent and number of individuals who acquired new pretrial criminal charges for Orange County and peer counties during the pre- and post-implementation periods**

<b>Orange County</b>	<b>Pre- implementation period</b>	<b>Post- implementation period</b>	<b>Percentage point difference</b>
<b>New criminal charges</b>	<b>10.14% (373)</b>	<b>10.37% (330)</b>	<b>0.23</b>
New felony charges	14.21% (53)	14.24% (47)	0.03
New non-traffic misdemeanor charges	36.73% (137)	35.15% (116)	-1.58
New traffic misdemeanor charges	74.80% (279)	73.03% (241)	-1.77
<b>Total number of defendants</b>	<b>3677</b>	<b>3182</b>	
<b>Medium Metro Counties</b>			
<b>New criminal charges</b>	<b>14.36% (12882)</b>	<b>12.34% (10196)</b>	<b>-2.02***</b>
New felony charges	21.05% (2712)	19.24% (1962)	-1.81***
New non-traffic misdemeanor charges	41.87% (5394)	41.19% (4200)	-0.68
New traffic misdemeanor charges	69.73% (8982)	68.32% (6966)	-1.41*
<b>Total number of defendants</b>	<b>89737</b>	<b>82597</b>	

Note: Pre period includes data from October 1, 2019 to June 30, 2020. Post period includes data from October 1, 2020 to June 30, 2021. \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

### *Court Non-Appearance*

We used ACIS data to examine whether the rate of court non-appearances changed before and after implementation of reforms. Additionally, we executed supplemental analyses examining this issue as to subgroups of open and closed cases. For these analyses, the pre-implementation period includes cases served between October 1, 2019 and June 30, 2020; the post-implementation period includes cases served between October 1, 2020 and June 30, 2021. We considered a case to be open if one or more charges had not been disposed by June 30<sup>th</sup> of the relevant year; we considered a case to be closed if all charges were disposed by that date. We used two measures of court non-appearance in ACIS: (1) called and failed, and (2) motor vehicle or 20-day FTA. We recorded a case as having a non-appearance if either indicator was noted in ACIS. Additionally, we noted that a case had a non-appearance even if ACIS indicated later FTA compliance.<sup>33</sup>

Table 7 shows that for all cases and for both subgroups, court non-appearance rates decreased after implementation of reforms. The percent of all cases having a court non-appearance during the pre-implementation period was 13.84%, and this decreased 2.06 percentage points to 11.78% during the post-implementation period. This decrease was statistically significant. Additionally, statistically significant decreases occurred for the subgroups of open and closed cases. We note that this result was observed even though the pre-implementation period included the early period of the COVID-19 pandemic. From March 16, 2020 to May 31, 2020 (months within the pre-implementation period), Orange County courts were closed, except for first appearance hearings for individuals held in pretrial detention (which would have had no non-appearances because of custody status). With the exception of a one-week COVID-related court shutdown in November 2020, Orange County district courts were operating on a regular schedule during the post-implementation period.

Court non-appearances declined after implementation of reforms.

As also shown in Table 7, non-appearance rates decreased for all cases and for both subgroups of cases involving both Black and White individuals. All decreases were statistically significant except for the decrease in the non-appearance rate for White individuals for all cases.

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<sup>33</sup> We note this is a conservative approach that may overstate non-appearance rates.

**Table 7. Percent and number of court non-appearances for cases served during pre- and post-implementation periods, by case status and race**

	Pre-implementation period	Post-implementation period	Percentage point difference
<b>All cases (open &amp; disposed)</b>	<b>13.84% (1296)</b>	<b>11.78% (856)</b>	<b>-2.06***</b>
Black individuals	19.02% (748)	15.62% (524)	-3.40***
White individuals	9.42% (350)	8.11% (213)	-1.31
<b>Open cases</b>	<b>28.69% (101)</b>	<b>20.02% (790)</b>	<b>-8.67***</b>
Black individuals	34.90% (52)	24.65% (489)	-10.25**
White individuals	21.57% (33)	14.43% (194)	-7.14*
<b>Disposed cases</b>	<b>4.98% (192)</b>	<b>1.99% (66)</b>	<b>-2.99***</b>
Black individuals	7.63% (107)	2.55% (35)	-5.08***
White individuals	3.53% (60)	1.48% (19)	-2.05***

Note: Pre-implementation period includes data from October 1, 2019 to June 30, 2020. Post-implementation period includes data from October 1, 2020 to June 30, 2021. \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

Table 8 shows the percent and number of closed cases with a court non-appearance for Orange County and all North Carolina medium metro counties. Medium metro counties as a group experienced a statistically significant decrease in the prevalence of court non-appearances in closes cases (-1.24 percentage points), but that decrease was smaller than that observed in Orange County (-2.99 percentage points). For medium metro counties, the rate of court non-appearance in closed cases was

21% lower during the post-implementation period; for Orange County it was 60% lower. These are preliminary results, and we will continue to monitor these trends as the evaluation continues.

**Table 8. Percent and number of cases with a court non-appearance for all cases pre- and post-implementation for Orange County and medium metro counties**

	Pre-implementation period	Post-implementation period	Percentage point difference
Orange County	4.98% (192)	1.99% (66)	-2.99***
Medium metro counties	5.88% (5952)	4.64% (4304)	-1.24***

Note. \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

## Pretrial Detention

As discussed above, magistrates imposed a condition other than a secured bond in the majority of all cases in the post-implementation period. We expected that increased use of conditions other than a secured bond would result in decreased jail bookings. We also were interested to examine length of jail stay and the number of people booked into the jail on low bonds (\$500 or less). We anticipated that if there was a greater use of low bonds, that would result in shorter jail stays. To examine these issues, we analyzed data from the Orange County Detention Center, comparing the period October 2020 through June 2021 (post-implementation period) to October 2019 through June 2020 (pre-implementation period).<sup>34</sup> We found

Although there was no change in jail bookings or length of detention after implementation of reforms, this outcome was likely impacted by the sharp, temporary decline in detention during the first three months of the COVID-19 pandemic, which coincided with the comparison period used in this analysis.

<sup>34</sup> To construct our analytical data set, we began by isolating bookings for which the detention center labeled one or more of a defendant's charges as "Pretrial" and the bond type field in the jail records included secured, no bond, 48-hour hold, or written promise to appear or release when sober. We then removed cases where the defendant was released to another county or to federal agents and not returned to the detention center. We did so because these individuals were not Orange County pretrial detainees, and thus may have been handled under the other jurisdiction's pretrial procedures. We also removed individuals who were serving a sentence for one or more charges. Finally, we removed 54 bookings where the listed release date was before the booking date. These entries occur because the detention center uses the same booking ID each time an individual is booked into the jail on the same case number(s). When a repeat booking occurs, the record system overwrites any older booking dates with new booking dates but does not overwrite older release dates. This creates scenarios where listed release dates are earlier than booking dates, such as where: (1) the defendant was transferred to another jurisdiction and returned to the detention center and (2) the defendant was released for a mental health evaluation and returned to the detention center. Thirteen bookings were removed for two or more reasons, such as being transferred to and from multiple jurisdictions and eventually being released to another jurisdiction and not returned to the

that there was no significant change in the average number of bookings and in the length of pretrial detention during the post-implementation period.<sup>35</sup> We note however that the pre-implementation period includes the first three months of the COVID-19 pandemic, when Orange County experienced a temporary and dramatic decline in jail detention (see Figure 3 below). Thus, COVID-19 could be suppressing the impact of reforms on pretrial detention.

#### *Pretrial Bookings: Overall*

For the post-implementation period of October 2020 through June 2021, there were 697 pretrial bookings of 597 unique defendants, compared to 738 pretrial bookings of 627 defendants for the pre-implementation period. During the pre-implementation period, the average number of bookings per month was 82 bookings, and this declined 5.55% to an average of 77.44 bookings during the post-implementation period. This decrease of 4.55 fewer bookings per month was not statistically significant. Figure 3 shows monthly pretrial bookings for the pre- and post-implementation periods.

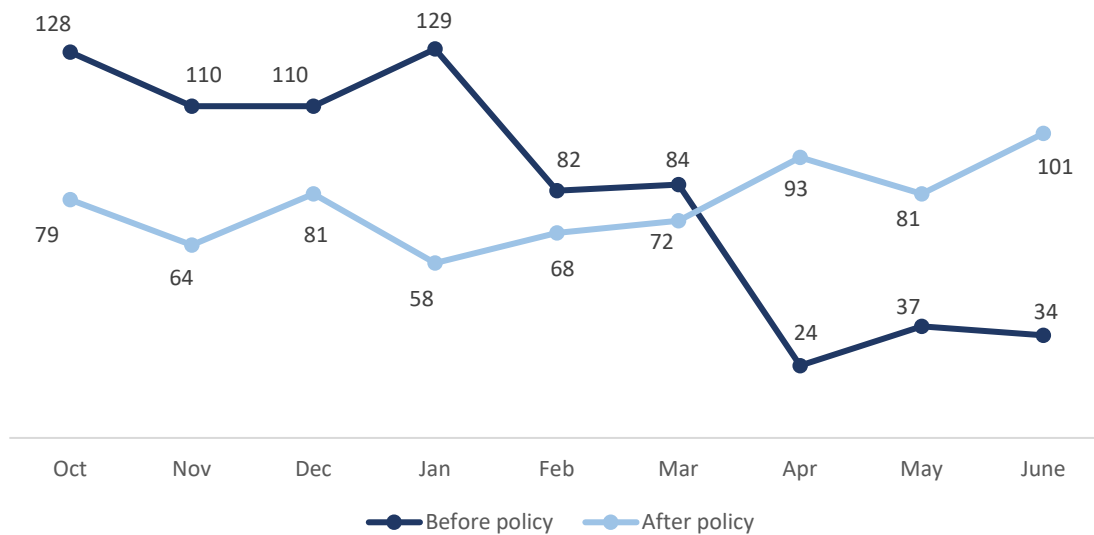
Importantly, and as seen in Figure 3 below, Orange County experienced a sharp, temporary decrease in jail detentions in the first three months of the COVID-19 pandemic. Inclusion of these three months in the pre-implementation period undoubtedly is suppressing the impact of the County's reforms on pretrial detentions. At an October 2021 stakeholder meeting where we presented a draft of this report, we asked stakeholders about their interest in having us expand our analyses to include a "pre-COVID" comparison period. They endorsed this approach, and we will include the additional data in our next reporting.

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detention center. Four bookings were removed because the defendants were booked into the detention center and immediately released to the Department of Corrections on the same day.

<sup>35</sup> Results in Figure 3 and Table 9 include bookings with listed release conditions of: secured bond; 48-hour hold; no bond; and written promise or release when sober. In this context, the term "no bond" refers to a case where no conditions of release are allowed; defendants who receive a release condition of no bond are subject to pretrial detention. 48-hour hold refers to a short-term statutorily required hold that applies in certain domestic violence and threat cases. We separately analyzed the number of bookings and length of stay for: (1) bookings with no bond or a 48-hour hold and (2) bookings with secured bond(s) that were not also subject to a no bond condition. Results in Appendix F show that there was a decrease in the number of bookings for both of these subcategories (-3.72% and -.60% respectively). Similar to results from the full sample, neither subcategory experienced any statistically significant change in length of stay.

**Figure 3. Number of pretrial bookings by month into the Orange County Detention Center**



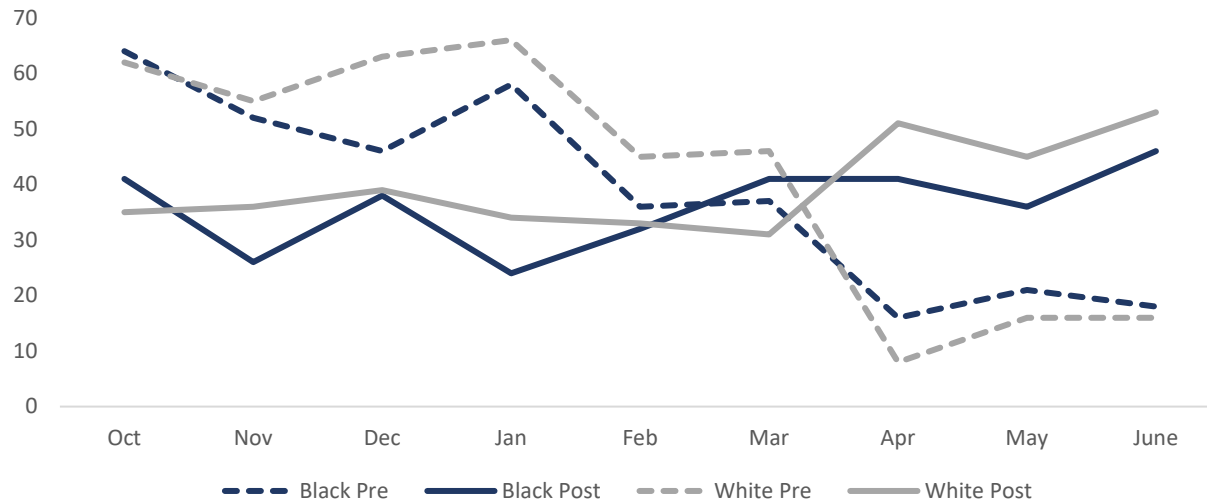
Note: Pre period includes data from October 1, 2019 to June 30, 2020. Post period includes data from October 1, 2020 to June 30, 2021.

#### *Pretrial Bookings: By Race*

We also examined whether changes in the number of pretrial bookings were similar across race. Figure 4 shows the number of pretrial bookings by month for White and Black individuals. Results showed that there were no statistically significant changes in the average number of pretrial bookings for either White or Black individuals. During the pre-implementation period there were 348 pretrial bookings of 288 Black individuals, and this decreased 6.60% to 325 bookings of 280 individuals during the post-implementation period. There were 2.55 fewer pretrial bookings of Black individuals per month during the post-implementation period, but this difference was not statistically significant, suggesting that this difference could occur by chance alone.

Similar results were found for bookings of White individuals. During the pre-implementation period, there were 377 pretrial bookings of 327 White individuals, and this decreased 5.30% to 357 pretrial bookings of 302 individuals in post-implementation. On average, there were 2.22 fewer pretrial bookings per month during the post-implementation period relative to the pre-implementation period, but this difference was not statistically significant.

**Figure 4. Number of pretrial bookings by race into the Orange County Detention Center**



Note: Pre period includes data from October 1, 2019 to June 30, 2020. Post period includes data from October 1, 2020 to June 30, 2021.

#### *Length of Stay: Overall & By Race*

To examine changes in length of stay, we calculated median length of stay for the pre- and post-implementation periods. We also categorized jail stays into four categories: 0-day stays; 1 – 3-day stays; 4 – 30-day stays; and stays of 31 or more days. A 0-day stay occurs when a person is booked into and released from the detention center on the same day.

As shown in Table 9, there were no statistically significant changes in length of stay for shorter stays (0-day and 1 – 3-day stays), for intermediate stays (4 – 30-day stays), longer stays (stays of 31 or more days), or median number of days detained for all bookings, bookings of Black individuals, or bookings of White individuals.<sup>36</sup> Additionally, there were no statistically significant racial differences in changes of detention length, suggesting that policy changes did not differentially impact one race over the other in terms of length of stay.<sup>37</sup> For instance, the median length of stay was 1 day for both White and Black individuals during the pre- and post-implementation periods.

<sup>36</sup> Eighteen defendants with a booking date within the time period of our analysis were not released by August 25, 2021 (the latest release date in the data) and thus did not have a reported release date. All eighteen defendants were detained for at least 31+ days as of August 25, 2021 and were recorded in the 31+ days category. Median number of days was calculated using only defendants who had been released as of August 25, 2021 (735 bookings before implementation and 682 bookings after implementation).

<sup>37</sup> We estimated a negative binomial regression where days detained (for those released by August 25, 2021) was regressed on pre/post implementation, Black, and an interaction of Black \* pre/post. The interaction term was not statistically significant ( $b = -.432$ ,  $p = .234$ ).

**Table 9. Percent of bookings by length of stay for all bookings and by race**

All Bookings	Pre-implementation period	Post-implementation period
0 days	42.55%	40.46%
1 – 3 days	36.99%	38.74%
4 – 30 days	14.09%	13.92%
31 + days	6.37%	6.89%
Median number of days	1	1
Total number of bookings	738	697
<b>Black individuals</b>		
0 days	40.80%	40.00%
1 – 3 days	37.93%	38.77%
4 – 30 days	13.51%	14.15%
31 + days	7.76%	7.08%
Median number of days	1	1
Total number of bookings	348	325
<b>White individuals</b>		
0 days	43.50%	40.90%
1 – 3 days	36.60%	38.38%
4 – 30 days	14.85%	13.73%
31 + days	5.04%	7.00%
Median number of days	1	1
Total number of bookings	377	357

Note: \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

#### *Secured Bond of \$500 or Less: Overall & By Race*

Data provided from the county jail includes only people who are not immediately released by the magistrate on conditions other than secured bonds or who cannot immediately pay their secured bonds. We were interested to explore whether there was a change in secured bonds of \$500 or less after implementation of reforms for two reasons. First, because the new Magistrates' Structured Decision-Making Tool (Appendix A) contemplates written promises for Class 2 and 3 misdemeanors and dramatically lower recommended maximum bonds amounts for Class 1 and A1 misdemeanors, we were interested to see whether there was an increase in bonds of \$500 or less among those individuals who cannot pay their bonds. Additionally, we have found that, in other jurisdictions, bonds of \$500 or less



typically are intended as appearance bonds. Thus, when we have seen jail detentions for bonds of \$500 or less, this has prompted conversations about improving guidance to magistrates regarding ability to pay.

We found that for bookings that had a secured bond, there was a statistically significant increase in the prevalence of individuals being booked on secured bonds of \$500 or less after implementation of reforms. This result was observed for all bookings and for bookings of White individuals, but not for Black individuals. As shown in Table 10, 23.64% of White individuals booked during the post-implementation period had a secured bond of \$500 or less, compared to 16.46% during the pre-implementation period. The odds of having a secured bond of \$500 or less were 1.57 times higher for White individuals during the post-implementation period compared to the pre-implementation period. There was no significant change in the likelihood of receiving a secured bond of \$500 or less for bookings of Black individuals. 22.93% of Black individuals received a bond of \$500 or less during the pre-implementation period; that rate was 26.40% during the post-implementation period.

**Table 10. Percent of secured bonds \$500 or less for all bookings and by race**

Bookings	Pre-implementation period	Post-implementation period
All	19.50%	25.05%*
White individuals	16.46%	23.64%*
Black individuals	22.93%	26.40%

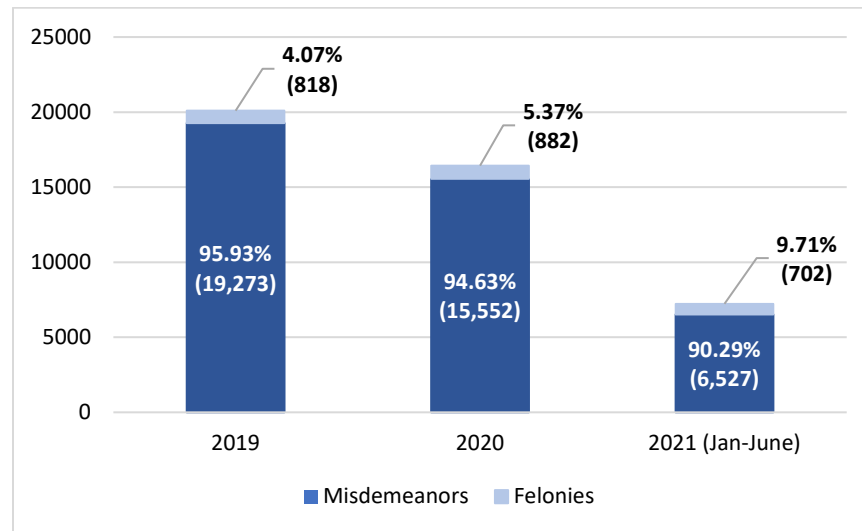
Note: \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

## General Context—Criminal Charging

After we produced and circulated to stakeholders a draft of this report, they asked about the overall context of local conditions, specifically whether criminal charging changed before and after implementation of reforms. This is an important issue, as changes in criminal charging may, among other things, impact the types of cases coming to magistrates for conditions of release. For example, if the post-implementation period saw a dramatic increase in violent misdemeanor charging, this might result in an increase in more restrictive conditions of release being imposed at the magistrate level notwithstanding the new procedures. As discussed below, the most significant changes in charging occurred as to felony charges, which were not the focus of the county's reforms.

Figure 5 below shows the percent and number of misdemeanor and felony charges in Orange County for 2019, 2020, and for the first six months of 2021. As shown there, overall charging is down, but that decrease is being driven by misdemeanor charging. The number of felony charges increased from 2019 to 2020 and the number of felony charges in the first six months of 2021 is 89% of that for all of 2020. The percent of felony charges also increased from 2019 to 2020 and appears to be on track to do the same in 2021.

**Figure 5. Percent and number of total charges by type of charge, 2019, 2020, and for the first six months of 2021**



Note: Figure includes all twelve months of 2019 and 2020 and the first six months of 2021.

As shown in Table 11, not only did felony charging increase from 2019 to 2020 but there was also an increase in the percent of felony charges for violent offenses. For the first half of 2021, the rate of violent felony charging dropped, but as noted previously, the number of overall felony charges in 2021 is relatively high.

**Table 11. Percent and number of felonies, 2019, 2020, and for the first six months of 2021**

	2019	2020	2021 (Jan-June)
<b>Total number of felonies</b>	<b>818</b>	<b>882</b>	<b>702</b>
Non-violent	89.61% (733)	87.41% (771)	89.89% (631)
Violent	10.39% (85)	12.59% (111)	10.11% (71)

Note: Table includes all twelve months of 2019 and 2020 and the first six months of 2021.

As shown in Table 12, misdemeanor charging overall dropped from 2019 to 2020 and appears to be on track to decrease further in 2021. Impaired driving (DWI) charges ticked up—from 2.95% of all misdemeanor charges in 2019 to 3.80% for 2020 and to 4.03% for the first six months of 2021. Violent misdemeanor charging, however, saw small decreases: 4.48% in 2019; 4.27% in 2020; and 3.89% for the first months of 2021.

**Table 12. Percent and number of misdemeanors, 2019, 2020, and for the first six months of 2021**

	2019	2020	2021 (Jan-June)
<b>Total number of misdemeanors</b>	<b>19,273</b>	<b>15,552</b>	<b>6,527</b>
Traffic (Non-DWI)	79.49% (15,320)	81.81% (12,732)	81.84% (5,342)
All other	13.08% (2,520)	10.12% (1,574)	10.23% (668)
Violent	4.48% (864)	4.27% (664)	3.89% (254)
DWI	2.95% (569)	3.80% (591)	4.03% (263)

Notes: "All other" includes ordinance, drug, and other non-violent misdemeanors.

Table includes all twelve months of 2019 and 2020 and the first six months of 2021.

We will examine charging issues as reporting continues, and we will add further analyses regarding officers' use of citations in lieu of arrest, as that decision-making also impacts the pool of individuals brought to magistrates for conditions of release.

## Next Steps

This evaluation continues through December 31, 2021. We will produce a final evaluation report in early 2022.

## Appendices

### Appendix A. Magistrate's Structured Decision-Making Tool

#### ORANGE COUNTY MAGISTRATE BAIL EXPLANATION FORM

##### INSTRUCTIONS:

1. This process supplements and provides structure for the magistrate's application of G.S. 15A-534. Specifically, it requires compliance with G.S. 15A-534(b), requiring a written promise, custody release or unsecured bond unless certain factors are found, creates presumptions for certain release conditions and emphasizes certain factors in the decision-making process. G.S. 15A-534(c) specifies factors that must be considered when setting pretrial conditions. A number of those factors are incorporated into this decision-making process. In deciding whether to follow recommended release conditions or to deviate, magistrates should consider other factors specified in G.S. 15A-534(c) including the weight of the evidence against the defendant; the person's family ties, employment, character, mental condition, and length of residence in the community; and any other relevant evidence.
2. This form must be used in all cases except where a statute or local policy prescribes a different process/result.
3. When a defendant is charged with multiple offenses arising out of a continuous transaction, only one form should be completed for all offenses.
4. For defendants arrested for probation violations, do not use this process; instead proceed directly to table below entitled, Maximum Secured Appearance Bond Amounts Probation Violations.

Date	
Magistrate's Name (first initial, last—no commas)	
Defendant's Name (first, middle, last—no commas)	
Case #s (no commas)	
Highest Charged Offense	

##### Step 1: Is the defendant before you on an OFA after a FTA or after arrest in a 48-hour case with judge setting conditions by phone?

- ☐ No [GO TO STEP 2]
- ☐ Yes [IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]
  - ☐ Set conditions as ordered by judge in OFA or by phone:
    - ☐ written promise
    - ☐ custody release
    - ☐ pretrial services
    - ☐ unsecured bond \$ \_\_\_\_\_
    - ☐ secured bond \$ \_\_\_\_\_ [FORM COMPLETE]
  - ☐ Bond doubling rule in G.S. 15A-534(d1) applies; secured bond \$ \_\_\_\_\_ [FORM COMPLETE]

##### STEP 2: Is the highest charged offense a non-DWI Class 1-3 misdemeanor?

- ☐ No [GO TO STEP 3]
- ☐ Yes [IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]
  - ☐ Follow policy recommendation: Impose a
    - ☐ written promise
    - ☐ custody release or
    - ☐ unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)[FORM COMPLETE]
  - ☐ Follow alternative recommendation: Where defendant's impairment presents a risk of injury to a person, impose a "disappearing" secured bond for up to 8 hours or until sober, to convert to a written promise after that time.  
[FORM COMPLETE]
  - ☐ Deviate from recommendations and consider release to pretrial services or secured bond. [GO TO STEP 3]

**STEP 3: Do any sidebar factors apply?**

- ☐ Yes **[GO TO STEP 4]**
- ☐ No
  - ☐ Follow policy recommendation: Impose a
    - ☐ written promise
    - ☐ custody release or
    - ☐ unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)**[FORM COMPLETE]**
  - ☐ Deviate from recommendations and consider release to pretrial services or secured bond. **[GO TO STEP 4]**

**Sidebar Factors** (check any that apply)

- ☐ Charged offense is Class A-E felony **[IF CHECKED, CHECK YES IN STEP 3 & PROCEED IMMEDIATELY TO STEP 4]**
- ☐ Defendant has recent history of FTAs<sup>1</sup>
- ☐ Defendant has prior record of at least one violent felony conviction
- ☐ Defendant has prior record of felony or misdemeanor convictions within the last five years demonstrating a pattern of conduct<sup>2</sup>
- ☐ Charged offense committed when defendant was on pretrial release, supervised probation, parole or post-release supervision
- ☐ Charged offense involves domestic violence<sup>3</sup>
- ☐ Charged offense involves violence<sup>4</sup> or injury to a person<sup>5</sup>
- ☐ Charged offense requires sex offender registration<sup>6</sup> or is a failure to register as a sex offender offense<sup>7</sup>
- ☐ Charged offense is a drug trafficking offense<sup>8</sup> or involves distribution of drugs<sup>9</sup>
- ☐ Charged offense is DWI and defendant has at least 1 DWI conviction within the last seven years
- ☐ Defendant is impaired such that immediate release is likely to cause harm to self/others/property<sup>10</sup>
- ☐ Charged offense involved defendant's use of a firearm or deadly weapon<sup>11</sup>

**STEP 4: Assess the statutory risk factors.**<sup>12</sup> Release on written promise, custody release, or unsecured bond (check any that apply)

- ☐ will not reasonably assure defendant's appearance as required  
*Explain:*
- ☐ poses a danger of injury to any person  
*Explain:*
- ☐ is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses  
*Explain:*
- ☐ No boxes checked
  - ☐ Follow policy recommendation: Impose a
    - ☐ written promise
    - ☐ custody release or
    - ☐ unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)**[FORM COMPLETE]**
  - ☐ Deviate from recommendation and consider release to pretrial services or secured bond. **[GO TO STEP 5]**
- ☐ Any boxes checked
  - ☐ If release on a written promise, custody release or unsecured bond poses a danger of injury to any person and that risk is created only by the defendant's impairment, impose a "disappearing" secured bond for up to 8 hours or until sober, to convert to a written promise after that time **[FORM COMPLETE]**; otherwise
  - ☐ **[GO TO STEP 5].**

**STEP 5: Can Step 4 risk factor/reason for deviation be addressed by custody release/release to pretrial supervision services?**

- ☐ Yes. Impose a
- ☐ custody release or
  - ☐ release to pretrial services. **[FORM COMPLETE]**
- ☐ No
- ☐ Follow policy: Impose secured bond<sup>13</sup> in the amount of: \$\_\_\_\_\_
- Explanation for imposing a secured bond:*

[If amount within maximum bond table, **FORM COMPLETE**; if in excess of that table **COMPLETE NEXT LINE**]  
*Explanation for secured bond in excess of maximum bond table:*

**[FORM COMPLETE]**

- ☐ Deviate from policy & impose a written promise, custody release or unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)
- Explanation:*

**[FORM COMPLETE]**

**Maximum Secured Appearance Bond Amounts – Felonies and Misdemeanors (Other than DWI)**

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

These suggested maximum bond amounts are not mandatory and do not replace the use of the Magistrate's Tool and judicial discretion.

	Offense Class	Maximum Bond
Felony	A	By Judge
	B	\$200,000
	C	\$100,000
	D	\$75,000
	E	\$25,000
	F	\$15,000
	G	\$10,000
	H	\$5,000
	I	Written Promise
Misdemeanor	A1	\$2,500
	1	\$500
	2	Written Promise
	3	Written Promise

**Maximum Secured Appearance Bond Amounts –DWI**

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

These suggested bond amounts are not mandatory and do not replace the use of the Magistrate's Tool and judicial discretion.

No prior DWI convictions	Written Promise
1 prior DWI conviction within 7 years	\$500
2 prior DWI convictions within 7 years	\$2,500
3 or more prior DWI convictions within 7 years	\$15,000

**Maximum Secured Appearance Bond Amounts Probation Violations**

Bail conditions and bond amounts must be set for probation violations based on the nature of the violation, not the offense class of the underlying offense, using the table immediately below. If a bail condition or bond is set in excess of these recommendations, reasons for doing so must be documented.

Type of Violation	Maximum Bond
Technical violation	Written Promise
Violation is a new crime – Class 2 or 3 misdemeanor	Written Promise
Violation is a new crime – Class 1 or A1 misdemeanor or Class H or I felony	\$5,000
Violation is absconding* or a new crime – Class G felony and above	Double the maximum bond allowed for the new offense in the tables on this page
* As defined by G.S. 15A-1343(b)(3a) and interpreting cases.	

**Other Bond Amount Guidelines**

Fugitive Warrant	Set amount appropriate for underlying offense
Governor's Warrant	No bond
Parole Warrant	No bond
Drug Trafficking	Suggested maximum bond: An amount that is double that listed in table above for other offenses of the same class

## Endnotes

1. 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. Notwithstanding the word "recent" in this sidebar factor, magistrates may deviate from recommendations based on an older FTA history, for example, when a person has an older FTA history but was only recently released from incarceration for that offense.
  2. 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.
  3. An offense involves domestic violence when the relationship between the parties is one of the following:
    - Current or former spouses
    - Currently or formerly lived together as if married
    - Currently or formerly in a dating relationship
    - Have a child in common
    - Parent (or one in parental role)/child
    - Grandparent/grandchild
    - Current or former members of the same household

Note: this list is drawn from G.S. 15A-534.1, the 48-hour domestic violence hold statute.
  4. For example, robbery, assault, assault by pointing a gun, and assault by strangulation.
  5. 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.).
  6. For a list of offenses requiring sex offender registration, see JAMIE MARKHAM AND SHEA DENNING, NORTH CAROLINA SENTENCING HANDBOOK 2018 (UNC School of Government, 2018).
  7. 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).
  8. G.S. 90-95(h); SMITH, NORTH CAROLINA CRIMES, *supra* note 7, at 721–739 (discussing trafficking offenses).
  9. For example, sale and delivery of a controlled substance and possession with intent to manufacture, sell, or deliver.
  10. 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.
  11. As a general rule, for this factor to apply the defendant must have actively used the firearm or deadly weapon during the charged offense, for example, pointing a gun during a robbery. Carrying concealed is an exception to this general rule. Although a single carrying concealed violation does not satisfy this factor, multiple such violations may satisfy it.
  12. 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).
  13. 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. Ability to pay should be assessed as to the total bond amount, not 10% that would be paid for a commercial bail bond.
- 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.



## Appendix B. Magistrate Bail Explanation Form

### ORANGE COUNTY MAGISTRATE BAIL EXPLANATION FORM

<b>Date</b>	
<b>Magistrate's Name</b> (first initial, last—no commas)	
<b>Defendant's Name</b> (first, middle, last—no commas)	
<b>Case #s</b> (no commas)	
<b>Highest Charged Offense</b>	

#### Step 1: Is the defendant before you on an OFA after a FTA or after arrest in a 48-hour case with judge setting conditions by phone?

- ☐ No [GO TO STEP 2]
- ☐ Yes [IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]
- ☐ Set conditions as ordered by judge in OFA or by phone:
    - ☐ written promise
    - ☐ custody release
    - ☐ pretrial services
    - ☐ unsecured bond \$\_\_\_\_\_ Note: Per local policy, written promise & custody release are preferred over unsecured bond)
    - ☐ secured bond \$\_\_\_\_\_ [FORM COMPLETE]
  - ☐ Bond doubling rule in G.S. 15A-534(d1) applies; secured bond \$\_\_\_\_\_ [FORM COMPLETE]

#### STEP 2: Is the highest charged offense a non-DWI Class 1-3 misdemeanor?

- ☐ No [GO TO STEP 3]
- ☐ Yes [IF CHECKED ALSO CHECK ONE OF THE OPTIONS IMMEDIATELY BELOW]
- ☐ Follow policy recommendation: Impose a
    - ☐ written promise
    - ☐ custody release or
    - ☐ unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)
 [FORM COMPLETE]
  - ☐ Follow alternative recommendation: Where defendant's impairment presents a risk of injury to a person, impose a "disappearing" secured bond for up to 8 hours or until sober, to convert to a written promise after that time. [FORM COMPLETE]
  - ☐ Deviate from recommendations and consider release to pretrial services or secured bond. [GO TO STEP 3]

#### STEP 3: Do any sidebar factors apply?

- ☐ Yes [GO TO STEP 4]
- ☐ No
- ☐ Follow policy recommendation: Impose a
    - ☐ written promise
    - ☐ custody release or
    - ☐ unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)
 [FORM COMPLETE]
  - ☐ Deviate from recommendations and consider release to pretrial services or secured bond. [GO TO STEP 4]

#### Sidebar Factors (check any that apply)

- ☐ Charged offense is Class A-E felony [IF CHECKED, CHECK YES IN STEP 3 & PROCEED IMMEDIATELY TO STEP 4]
- ☐ Defendant has recent history of FTAs
- ☐ Defendant has prior record of at least one violent felony conviction
- ☐ Defendant has prior record of felony or misdemeanor convictions within the last five years demonstrating a pattern of conduct
- ☐ Charged offense committed when defendant was on pretrial release, supervised probation, parole or post-release supervision
- ☐ 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 or involves distribution of drugs
- ☐ Charged offense is DWI and defendant has at least 1 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



**STEP 4: Assess the statutory risk factors.** Release on written promise, custody release, or unsecured bond  
(check any that apply)

- ☐ will not reasonably assure defendant's appearance as required

Explain:

- ☐ poses a danger of injury to any person

Explain:

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

Explain:

- ☐ No boxes checked

- ☐ Follow policy recommendation: Impose a

☐ written promise

☐ custody release or

☐ unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)

[FORM COMPLETE]

- ☐ Deviate from recommendation and consider release to pretrial services or secured bond. [GO TO STEP 5]

- ☐ Any boxes checked

- ☐ If release on a written promise, custody release or unsecured bond poses a danger of injury to any person and that risk is created only by the defendant's impairment, impose a "disappearing" secured bond for up to 8 hours or until sober, to convert to a written promise after that time [FORM COMPLETE]; otherwise

- ☐ [GO TO STEP 5].

**STEP 5: Can Step 4 risk factor/reason for deviation be addressed by custody release/release to pretrial supervision services?**

- ☐ Yes. Impose a

☐ custody release or

☐ release to pretrial services. [FORM COMPLETE]

- ☐ No

- ☐ Follow policy: Impose secured bond in the amount of: \$

Explanation for imposing a secured bond:

[If amount within maximum bond table, FORM COMPLETE; if in excess of that table COMPLETE NEXT LINE]

Explanation for secured bond in excess of maximum bond table:

[FORM COMPLETE]

- ☐ Deviate from policy & impose a written promise, custody release or unsecured bond. (Note: Per local policy, written promise & custody release are preferred over unsecured bond)

Explanation:

[FORM COMPLETE]

## Appendix C. Frequently Asked Questions for Magistrates

# New Bail Procedures—FAQs for Magistrates

August 27, 2021

## When Form Required/How Many Forms?

**If the defendant has multiple charges, how many bail explanation forms do I complete?** Complete one form for all charges that relate to the same continuous event.

*Example 1:* Defendant is arrested and brought to you on 3 charges: drug trafficking, felony possession of marijuana, and possession of drug paraphernalia, all arising from the same event. Complete one form, using the highest charge (trafficking) to guide your decision-making.

*Example 2:* After arresting the defendant for disorderly conduct, the arresting officer realizes that the defendant has an outstanding warrant for a felony assault that occurred six months ago. The officer serves the warrant on the defendant and brings the defendant before you on both charges. Since these charges do not arise out of the same event, do one form for each charge.

**If it's a 48-hour case and I am not setting conditions at this time, do I fill out the form?** No, if the 48-hour rule applies and you are not setting conditions, do not fill out the bail explanation form. However, if the defendant returns to you because a judge was not available in 48 hours, you must complete the form when you set conditions then.

**If I'm setting bail a second (or third!) time in a case, do I have to complete another bail explanation form?** Yes, you should complete a bail explanation form *every time* you set bail in a case.

**What about a murder case where only the judge can set conditions—do I fill out the form?** Since you're not setting conditions, you don't complete the form.

**Do I fill out the form for out-of-county charges?** No. Since bail is set for out-of-county charges under the bail policy of the other county, do not complete the form for out-of-county charges.

**Do I fill out the form in extradition cases?** A defendant arrested on a fugitive process for an offense punishable by death or life in prison is not entitled to conditions of release. In this scenario since conditions are not being set, the form would not be used.

A defendant arrested on fugitive process for an offense not subject to death or life in prison is entitled to conditions, and the condition must be a secured bond. In this instance, magistrate would complete the form and give as an explanation for the secured bond: "required by law; extradition" or something similar.

**If I set a disappearing appearance bond on the magistrate's bail form, do I have to do a new explanation form when I convert the secured bond to a written promise in NC AWARE?** No, once you indicate on the form that you are setting a disappearing appearance bond, you don't need to complete another form later.

## Relation to AOC Forms

**Since I am completing the new magistrate bail explanation form, do I still have to complete the AOC forms?** Yes, the new form is *in addition* to the AOC forms that you normally complete.

## Completing the Magistrate Bail Explanation Form

### Top of the Form

**What does “Highest Charged Offense” mean?** When a defendant is charged with multiple offenses, it means the offense that carries the most serious punishment level.

*Example:* The defendant is charged with drug trafficking and simple assault. Drug trafficking is the Highest Charged Offense.

**If two offenses are charged and they are the same offense level, which do I list under “Highest Charged Offense”?** You can list either or both, it’s your choice.

**The defendant is before me on an OFA after a FTA—what do I list under “Highest Charged Offense”?**

List the highest charged underlying offense; *don’t* just list “OFA FTA.” For example, an OFA was issued after the defendant failed to appear on a felony larceny charge. On the form you would list “felony larceny” as the highest charged offense.

**What if it’s an extradition case—what should I list for “Highest Charged Offense”?** List the offense name and let us know it’s an extradition case e.g., “rape/extradition.”

**What about habitual felon cases—what should I list for “Highest Charged Offense”?** When setting bail in a case involving a habitual *status* charge (e.g., habitual felon, violent habitual felon, armed habitual felon) list that status and the “habitualized” underlying offense at the top of the form (e.g., “Felony Larceny (Habitual Felon)”). Be careful though—don’t mix up *habitual status charges* like habitual felon and *habitual offenses that are substantive offenses*, like habitual misdemeanor assault. For habitual offenses that are substantive offenses, treat them like any substantive offense, listing the offense at the top of the form and proceeding accordingly.

### OFA

**If the judge set conditions in an OFA after a FTA, do I need to do anything other than fill out the top of the form and Step 1?** Nope, that’s it!

**The defendant is before me on an OFA, the judge has set conditions in the OFA but the OFA isn’t because of a FTA—how do I handle that?**

Great question—we didn’t think of this scenario when developing the form. Handle this scenario just like an OFA after a FTA: Complete the top portion of the form and Step 1 and you’re done.

### Sidebar Factors

**If the defendant is charged with possession of a controlled substance with intent to sell and deliver, does the Sidebar Factor “Charged offense is a drug trafficking offense or involves distribution of drugs” apply?** Yes, when there is an intent to sell and deliver, the offense involves distribution. The same thing would apply to any sale or delivery of a control substance offense.

**If the defendant committed the new offense while another offense is pending, does the Sidebar Factor “Charged offense committed when defendant was on pretrial release, supervised probation, parole or post-release supervision” apply?** Yes. If the new offense occurred while the defendant was released pretrial in connection with another pending charge, this sidebar factor applies.

### Secured Bonds & Other Conditions

**How do I know if the secured bond I’m setting is in excess of the maximum bond table?** For the maximum bond tables, consult the Magistrate’s Desk Guide, page 3. If you’re setting a bond greater than the amounts shown there, you need to explain why on page 2 of the Magistrate Bail Explanation Form.

**If I’m setting multiple conditions in a case, such as secured bond plus release to pretrial services, which condition should I enter on the magistrate bail explanation form?** If you’re setting multiple conditions, enter all of them on the form.

### IVCs

**If the defendant presents a danger but will be held via an IVC and I want to deviate from the recommendation to impose a secured bond and instead impose a written promise, how do I explain my decision?** To avoid any potential issues regarding confidentiality of court records regarding IVC proceedings, do not reference an IVC proceeding on the form. Instead, include a generic explanation, such as “held via other proceedings,” in the form field for explaining your decision. This generic notation can and should be used in any scenario where no bail is needed in the present case because the defendant is in custody or under supervision in another pending matter. Because the generic notation can apply to multiple situations, we have been advised that any possible conflict with the IVC confidentiality rule is avoided.

### Domestic Violence Cases

**Are there any special considerations when a 48-hour domestic case returns to me for pretrial conditions?** If a judge isn’t available within 48 hours and the case returns to you, follow the magistrate bail process as you would for all cases. When considering whether sidebar factors are present and whether to deviate from policy recommendations, be sure to consider the totality of the circumstances including any factors that may indicate a likelihood of escalating violence and/or danger to the victim.

### Probation Violation Cases

**If a clerk set a bond in an OFA for a probation violation case and the bond that was set doesn’t align with the new procedures, should I modify the bond?** Yes, you should modify the bond to align it with the new procedures. Remember that in probation violation cases, you do not go through the step-by-step process in the bail explanation form; rather you go directly to the bond table entitled Maximum Secured Appearance Bond Amounts Probation Violations and follow the instructions there.

**When the probation violation itself is a serious felony, the probation bond table says to double the maximum bond in the regular table. But when the probation violation is a Class A felony, the regular table says “By Judge.” Since there’s no bond amount to double what do I do?** This issue came up after the magistrate’s tool was created! Per Judge Baddour, when the probation violation is a Class A felony, your guidance is as follows: set bond greater than \$400,000, in the magistrate’s discretion.

## Local Bail Policy Rules

**Does the old rule, favoring written promise or custody release over an unsecured bond still apply?**

Yes, and the magistrate's guide and form have been updated to reflect this.

## Additional Guidance

**What if I have a question about how to complete the form in a particular case?** Questions will arise!

Please contact your chief magistrate for guidance.

## Appendix D.1. Original Bench Card Form

### ORANGE COUNTY BENCH CARD

#### Responses to Non-Appearances in Criminal District Court

Date	
Judge's Name	
Defendant's Name	
Case Number(s)	

#### Step 1: Do either of the following circumstances warrant re-setting the court date without issuance of an OFA?

- ☐ There is good cause for the nonappearance (e.g., defendant is in custody elsewhere, is in the hospital, or did not receive adequate notice of the proceeding)
- ☐ The prosecuting witness was subpoenaed and did not appear
- ☐ Yes: re-set court date with notice to defendant and counsel, if represented  
[FORM COMPLETE]
- ☐ No [GO TO STEP 2]

#### Step 2: Is the highest charged offense a Class 1, 2, or 3 misdemeanor?

- ☐ Yes [GO TO STEP 3]
  - ☐ No: issue an OFA setting conditions, which can include money bond, in your discretion
    - ☐ Written promise
    - ☐ Custody/pretrial services
    - ☐ Unsecured bond \$ \_\_\_\_\_
    - ☐ Secured bond \$ \_\_\_\_\_
- [FORM COMPLETE]

#### Step 3: Is there a prior non-appearance in this case or do you know of a prior non-appearance in another pending case?

- ☐ Yes: issue an OFA setting conditions, which can include money bond, in your discretion
  - ☐ Written promise
  - ☐ Custody/pretrial services
  - ☐ Unsecured bond \$ \_\_\_\_\_
  - ☐ Secured bond \$ \_\_\_\_\_
- ☐ No: re-set court date with notice to defendant and counsel, if represented  
[FORM COMPLETE]

- ☐ Judge did not use process. Check this box when judge exercises discretion and declines to follow the recommended decision-making process.

**Note:** All Chapter 20 cases except Impaired Driving and Driving While License Revoked (DWLR) will go to the "20-day failure box." DWLR cases are subject to additional DWLR procedures adopted by the Senior Resident by Administrative Order Oct. 2020.

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## Appendix D.2. Revised Bench Card Form

### ORANGE COUNTY BENCH CARD

#### Responses to Non-Appearances in Criminal District Court

Date	
Judge's Name	
Defendant's Name	
Case Number(s)	

#### Step 1: Should the non-appearance be excused?

- ☐ Yes. **EXCUSED.** Re-set court date with notice to defendant and counsel, if represented  
[FORM COMPLETE]
- ☐ No. **UNEXCUSED** [GO TO STEP 2]

#### Step 2: Is the matter before you for a charge or probation violation that is a non-DWI Class 1-3 misdemeanor OR technical probation violation?

- ☐ Yes [GO TO STEP 3]
- ☐ No.
- ☐ Issue an OFA setting conditions, which can include money bond, in your discretion
    - ☐ Written promise
    - ☐ Custody release/pretrial services
    - ☐ Unsecured bond \$ \_\_\_\_\_
    - ☐ Secured bond \$ \_\_\_\_\_
  - ☐ Exercise discretion, decline to issue OFA & reschedule court date for other reasons:  
\_\_\_\_\_

[FORM COMPLETE]

#### Step 3: Is there a prior unexcused non-appearance in this case or do you know of a prior unexcused non-appearance in another pending case?

- ☐ Yes.
- ☐ Issue an OFA setting conditions, which can include money bond, in your discretion
    - ☐ Written promise
    - ☐ Custody release/pretrial services
    - ☐ Unsecured bond \$ \_\_\_\_\_
    - ☐ Secured bond \$ \_\_\_\_\_
  - ☐ Exercise discretion, decline to issue OFA & reschedule court date for other reasons:  
\_\_\_\_\_

[FORM COMPLETE]

- ☐ No: re-set court date with notice to defendant and counsel, if represented

[FORM COMPLETE]

- ☐ Judge did not use process. Check this box when judge exercises discretion and declines to follow the recommended decision-making process.

**Note:** All Chapter 20 cases except Impaired Driving and Driving While License Revoked (DWLR) will go to the "20-day failure box." DWLR cases are subject to additional DWLR procedures adopted by the Senior Resident by Administrative Order Oct. 2020.

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## Appendix E. Individual Magistrate Decision-Making

	<b>Total # of forms magistrates completed</b>	<b>Median # of forms by magistrate</b>
Charges other than non-DWI Class 1-3 misdemeanors	742	122
Non-DWI Class 1-3 misdemeanors	139	21

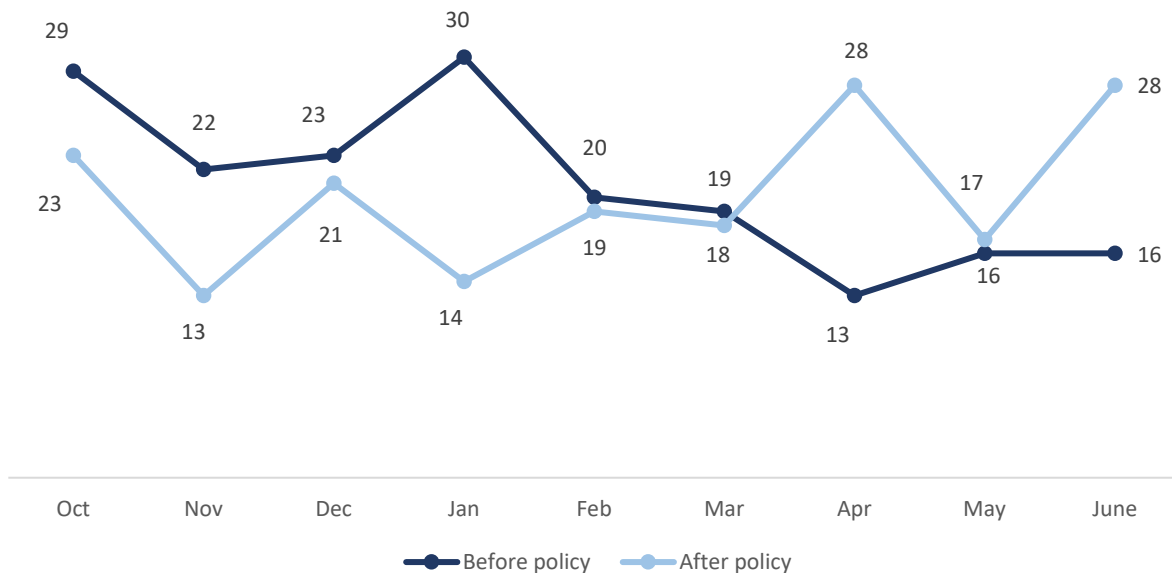
	<b>Mag #1</b>	<b>Mag #2</b>	<b>Mag #3</b>	<b>Mag #4</b>	<b>Mag #5</b>	<b>Mag #6</b>	<b>Mag #7</b>
<b>% of forms per offense category</b>	81.33%	82.64%	81.00%	89.54%	82.61%	85.62%	92.59%
	18.67%	17.36%	19.00%	10.46%	17.39%	14.38%	7.41%
<b>% issued secured bonds</b>	33.61%	21.01%	38.27%	24.82%	27.07%	33.60%	36.00%
	21.43%	4.00%	42.11%	18.75%	17.86%	19.05%	0.00%
<b>Median secured bond amounts</b>	\$3,000	\$2,250	\$5,000	\$5,000	\$5,000	\$5,000	\$10,000
	\$500	\$500	\$1,000	\$150	\$500	\$1,000	N/A
<b>% of forms w/deviations</b>	18.85%	5.88%	35.80%	9.49%	6.02%	4.00%	12.00%
	21.43%	4.00%	47.37%	18.75%	17.86%	23.81%	0.00%



## Appendix F. Pretrial Detention (Supplemental Analysis)

From October 2020 to June 2021, there was a 3.72% decrease in the number of bookings with no bond or 48-hour holds. Specifically, there were 188 bookings with no bond or a 48-hour hold for one or more cases, compared to 181 bookings during the pre-implementation period (Figure F – 1). Results showed that the average number of bookings of no bond cases did not significantly change during post-implementation (average 20.88 bookings per month) compared to pre-implementation (average 20.11 bookings per month). Additionally, Table F – 2 shows that there was no significant change in the length of stay for no bond or 48-hour hold cases booked into the detention center.

**Figure F – 1. Number of pretrial bookings into the Orange County Detention Center for bookings with no bond or 48-hour holds**



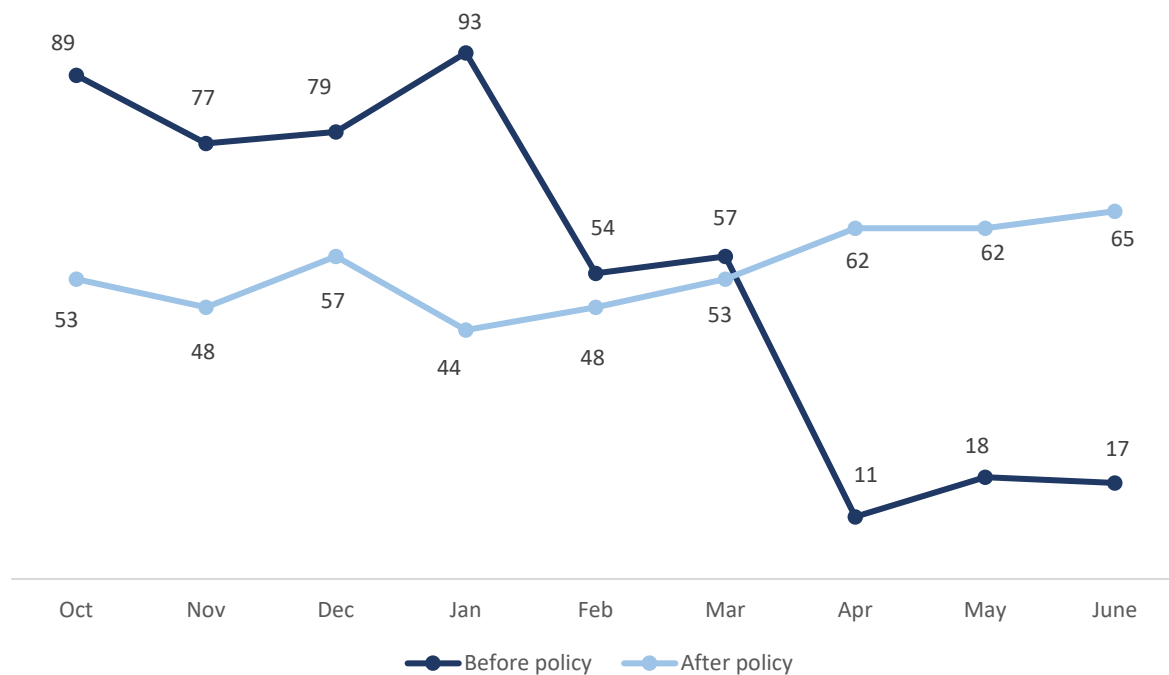
**Table F – 1. Percent of bookings by length of stay in Orange County Detention Center for bookings with no bond or 48-hour holds**

All Offenses	Pre	Post
0 days	29.26%	27.62%
1 – 3 days	45.74%	51.93%
4 – 30 days	18.62%	13.81%
31 + days	6.83%	6.63%
Median number of days	1	1
Total number of bookings	188	181

Note: Pre period includes data from October 1, 2019 to June 30, 2020. Post period includes data from October 1, 2020 to June 30, 2021. \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

Similar results were found for bookings that had a secured bond for one or more charges without any no bond condition. There was a .60% decrease in the number of bookings between the pre-implementation period (495 bookings) compared to the post-implementation period (492 bookings, Figure F – 2), but this change was not statistically significant. There was no statistically significant change in length of stay for cases that only had a secured bond (Table F – 2).

**Figure F – 2. Number of pretrial bookings into the Orange County Detention Center for bookings with secured bond only**



**Table F – 2. Percent of bookings by length of stay in Orange County Detention Center for bookings with a secured bond only**

All Offenses	Before	After
0 days	43.88%	40.24%
1 – 3 days	35.71%	36.25%
4 – 30 days	13.78%	17.13%
31 + days	6.63%	6.37%
Median number of days	1	1
Total number of bookings	495	492

Note: Pre period includes data from October 1, 2019 to June 30, 2020. Post period includes data from October 1, 2020 to June 30, 2021. \*: Significant at  $p < .05$ . \*\*: Significant at  $p < .01$ . \*\*\*: Significant at  $p < .001$ . P-values represent the probability that the observed differences are the result of chance. For example, differences that have \*\*\* listed have less than a .1% chance of being observed due to chance. Results that do not have an asterisk are not statistically significant and any raw numerical differences may be due to chance alone.

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