

Pretrial Reform in Orange County, North Carolina

Evaluation Report

May 2022

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

Jamie Vaske, Professor, Western Carolina University

C. Ross Hatton, PhD Student, Johns Hopkins University



SCHOOL OF GOVERNMENT
Criminal Justice Innovation Lab

Contents

Executive Summary	1
Background	4
Implemented Reforms	5
Magistrate’s Structured Decision-Making Tool	5
New Judicial Process for Responding to Non-Appearances	6
Empirical Evaluation & This Report	8
Findings.....	9
Magistrate Decision-Making.....	9
Judicial Process for Responding to Non-Appearances.....	17
Pretrial Failures	20
Pretrial Detention.....	25
Criminal Charging	30
Next Steps	32
Appendices.....	33
Appendix A. Magistrate’s Structured Decision-Making Tool.....	33
Appendix B. Magistrate Bail Explanation Form	37
Appendix C. Frequently Asked Questions for Magistrates	39
Appendix D.1. Original Bench Card Form	44
Appendix D.2. Revised Bench Card Form.....	45
Appendix E. Individual Magistrate Decision-Making	46
Appendix F. Secured Bond by Race (Supplemental Analysis).....	47

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, 2022. This report presents findings for the period ending December 31, 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 (84.47%) of forms. Additionally, magistrates completed the vast majority of forms without completeness or fidelity issues. Specifically, they completed 88.61% of forms without completeness issues, 97.21% without fidelity issues, and 86.18% 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 70.84% of all cases. For target cases, that rate was 75.62%; for other charges, it was 69.86%.
- 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 63.25% of all cases; in 73.55% of target cases; and in 61.13% 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 1.24% of defendants in target cases to pretrial services but did so in 7.03% 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, and this difference persisted after controlling for case-specific factors. However, preliminary analysis suggests that these differences existed in the pre-implementation period and have decreased in the post-implementation period.

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 (96.20%). Additionally, when judges used the new process, they correctly completed forms without fidelity or completeness issues in the majority of cases. Specifically, they completed 65.61% without completeness issues, 93.40% without fidelity issues, and 60.63% without any issues.

- When judges used the new process, they responded to non-appearances by rescheduling 39.67% of cases and issuing an Order for Arrest (OFA) for 60.33% of cases. 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 172 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.

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, 14.36% of individuals incurred a new pretrial charge; in the post-implementation period, that rate was 14.55%. 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 the rate of court non-appearance in the post-implementation period for all cases, cases involving Black individuals, or cases involving White individuals.

Pretrial Detention

- Orange County experienced dramatic decreases in the local jail population in the first few months of the COVID-19 pandemic, skewing jail data for our original pre-implementation period. After discussing this issue with stakeholders, we adjusted the pre-implementation period to include a “COVID-free” pre-implementation period of October 2018 through December 2019. We compared that period to post-implementation data from October 2020 through December 2021. Using those comparison periods, average monthly bookings declined 27.8%. The decline in bookings among White individuals was not statistically significantly different from the decline in bookings among Black individuals.
- The percentage of bookings solely due to a FTA fell from 27.4% in the pre-implementation period to 21.0% in the post-implementation period.
- There were no statistically significant changes in length of stay for shorter stays (0-day and 1 – 3-day stays), longer stays (stays of 31 or more days), or median number of days detained. The only statistically significant change in detention lengths was for stays of 4–30 days, which declined by 3.1 percentage points post-implementation.
- The only difference between Black and White individuals was in stays of 4–30 days; stays of this length declined by a statistically significant 5.7 percentage points for Black defendants, compared to a non-significant decline of 0.8 percentage points for White individuals.
- Among individuals who were admitted to the jail on a secured bond, there was no statistically significant change in the percentage of people who had a bond of \$500 or less.

Criminal Charging

- Overall charging decreased between the pre- and post-implementation periods, caused by a decline in misdemeanor charging.
- Felonies made up a larger percent of total charges in the post-implementation period and the number of felony charges increased. However, the percentage of violent and non-violent felony charges remained the same.
- The number of misdemeanor charges decreased, largely due to a 27% decrease in non-violent, non-traffic misdemeanor charges. Traffic, violent, and DWI charges all made up slightly larger shares of total misdemeanor charges in the post-implementation period.

- Collectively, these changes would have resulted in a greater proportion of more serious cases before magistrates in the post-implementation period, potentially depressing the impact of the structured decision-making tool. Additionally, these charging trends likely impacted detention numbers and new pretrial charging rates.

This evaluation continues through December 31, 2022.

Background

In October 2020 and January 2021, criminal justice system stakeholders in Orange County, North Carolina 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 3 Days Count 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 Professor 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.¹

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 initial appearance held before the magistrate. Although the then-applicable local bail policy contained 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.² 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, 2020.³ 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

¹ In 2022, the Senior Resident Superior Court Judge and Chief District Court Judge adopted a new local bail policy. The new policy includes additional changes to local procedures. The new bail policy applies to bail decisions on or after January 24, 2022. This report includes data through December 31, 2021, prior to the effective date of the new policy.

² JESSICA SMITH & C. ROSS HATTON, 2019 NORTH CAROLINA CONDITIONS OF RELEASE REPORT (2020), <https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2020/02/2019-Conditions-of-Release-Report.pdf>.

³ In 2022, it was included as part of the County’s new local bail policy.

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.⁴ 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.⁵ 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.⁶

⁴ These procedures apply to both DWLR-Impaired Revocation and DWLR-Not Impaired charges.

⁵ Stakeholders did not modify treatment of any other motor vehicle charges.

⁶ 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.

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 to document 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:

- 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.⁷

Stakeholders made an additional 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

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 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.

⁷ In 2022, the Bench Card process was included in the County's new local bail policy.

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 an 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 2022 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 April 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:

- Andre Assumpcao, Post-Doctoral Fellow, UNC School of Government Criminal Justice Innovation Lab, for data preparation and analysis.
- Maggie Bailey, Project Manager, UNC School of Government Criminal Justice Innovation Lab, for project management, data collection and cleaning, and report preparation.
- Chloe Donohoe, Master's student, UNC-Chapel Hill, for data collection and cleaning and report preparation.
- Megan Pittman, PhD student, North Carolina State University, for data collection and cleaning.
- Christopher Tyner, Legal Research Associate, UNC School of Government, for legal analysis and support and report preparation.
- Alyson Umberger, Undergraduate student, Western Carolina University, for data collection and cleaning.

Findings

Magistrate Decision-Making

Since October 1, 2020, magistrates have determined conditions of pretrial release using a new structured decision-making tool (Appendix A) and documented their decisions on a new Magistrate Bail Explanation Form (Appendix B). We examined magistrate decision-making for 1,423 forms completed by magistrates between October 1, 2020 and December 31, 2021.⁸

Process Metrics

To assess the quality of implementation at the magistrate level, we examined two process outcomes: adherence to and deviations from recommendations; and form completeness and fidelity issues.

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, magistrates followed the tool's recommendation in 84.47% of forms (1,202 forms); they deviated from the tool's recommendation in only 15.53% of forms (221 forms).



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

When magistrates deviated from the tool's recommendations, almost all deviations (94.11%; 208 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, custody release or unsecured bond. Magistrates deviated to impose a less restrictive condition in only a small number of forms. Specifically, they deviated from the recommendation to impose a secured bond or release to

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.

⁸ A total of 1,451 forms were completed by magistrates for Orange County cases between October 1, 2020 and December 31, 2021. We identified errors in twenty-eight forms (less than 2% of completed forms) and removed them from our sample. Specifically, we removed:

- Eleven 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;
- Four forms where the magistrate did not specify whether the charge was a Non-impaired driving Class 1-3 misdemeanor or not in Step 2;
- Two forms where the magistrate simultaneously indicated that the charge was and was not a Non-impaired driving Class 1-3 misdemeanor;
- Three forms where the magistrate indicated both that the individual was and was not before the magistrate for an OFA after a failure to appear;
- Six forms where the magistrate did not record the final condition of pretrial release; and
- Four forms where the magistrate issued both a secured bond and written promise to appear.

This left 1,423 forms for inclusion in our core analyses.

pretrial services, opting instead to impose a written promise, custody release or unsecured bond in only 5.88% of deviations (13 forms).

Completeness & 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—provides greater confidence that any results are influenced by the enacted policy. Conversely, an implementation that has many completeness or fidelity issues may limit or negate a policy’s effects. In our analyses, a completeness issue refers to failure to complete some portion of the form. A fidelity issue refers to 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.⁹ Specifically, magistrates completed 88.61% of forms without completeness issues, 97.21% without fidelity issues, and 86.18% of forms without any completeness or fidelity issues.¹⁰ The most common completeness and fidelity issues are shown in Table 1.



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

Table 1. Common fidelity & completeness issues - Magistrate bail forms

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> • Not checking a redundant box (62.76%) • Not noting the underlying offense for a failure to appear, probation violation, or pretrial release violation (6.38%) • Listing a bond amount that exceeded the maximum recommended amount in the bond table, but not providing reasons for doing so (26.59%) • Not including the case number, individual name, or charge description at the top of the form (2.12%) • Not completing Step 1 (2.12%), Step 2 (2.12%), or Step 3 (1.06%) • Not providing an explanation for setting a secured bond in Step 5 (1.06%) • Not recording the final bond type (1.06%) or amount (1.06%) 	<ul style="list-style-type: none"> • Not following the decision-making process (60.86%) • Completing the “Explanation for secured bond in excess of maximum bond table” for a bond that did not exceed the maximum recommended amount (21.74%) • Checking both follow and deviate in Step 2, 3, 4 or 5 (17.39%)

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

⁹ To assess these metrics, we examined a random sample of 825 forms completed between October 1, 2020 and December 31, 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 2,000. The forms were then sorted from smallest to largest number and the first 25 forms were retained for review for completeness and fidelity issues.

¹⁰ Of the 94 forms with completeness issues, 93.62% had only one completeness issue; 6.38% had two issues. Each of the sampled forms (23 forms) that had fidelity issues had only one such issue.

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 70.84% of all cases (written promise, custody release or unsecured bond in 64.79% of cases; release to pretrial services in 6.04% of cases).¹¹ For target cases, 75.62% of cases received a condition other than a secured bond; for other cases that rate was 69.86%.

WHAT IS A "TARGET CASE"?

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

Written Promises & Custody Releases

Magistrates imposed conditions other than secured bonds in 70.84% of all cases & in 75.62% of target cases.

In projects we have executed 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.¹² In Orange County, however, the local bail policy includes a provision favoring written promise or custody release over any type of financial bond, secured or unsecured. We found that conditions were set consistent with this provision. 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 63.25% of all cases; in 73.55% of target cases; and in 61.13% of other cases.

A portion of written promise cases also set 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 15.73% of written promises issued in target cases and 3.74% of written promises issued in other cases.

Median Bond Amounts

As expected, median secured bond amounts increased as the offense levels of charged offenses increased. As shown in Table 2, the median secured bond amount for target cases was \$500; for other offenses it was \$5,000.

¹¹ The total number of forms indicating that the magistrate issued a condition other than a secured bond (1007 forms) is smaller than the sum of the number of cases released to pretrial services (86 forms) and the number of cases issued a written promise to appear, custody release, or unsecured bond (922 forms). 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.

¹² See, e.g., JESSICA SMITH & JAMIE VASKE, BAIL REFORM IN NORTH CAROLINA JUDICIAL DISTRICT 2, page 11 Table 2a (September 2021), <https://cjil.sog.unc.edu/wp-content/uploads/sites/19452/2021/09/JD-2-Final-Report-9.21.2021.pdf>.

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 1.24% of people in target cases to pretrial services but released 7.03% of individuals charged with other offenses to pretrial supervision (Table 2).

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

	All Cases	Target cases	Other cases
Written promise, custody release or unsecured bond	64.79%	74.38%	62.83%
Written promise	63.25%	73.55%	61.13%
Custody release	0.56%	0.00%	0.68%
Unsecured bond	0.28%	0.41%	0.25%
Pretrial services	6.04%	1.24%	7.03%
Secured bond	29.23%	24.38%	30.23%
Median secured bond	\$3,000	\$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.

Variations in Individual Magistrate Decision-Making

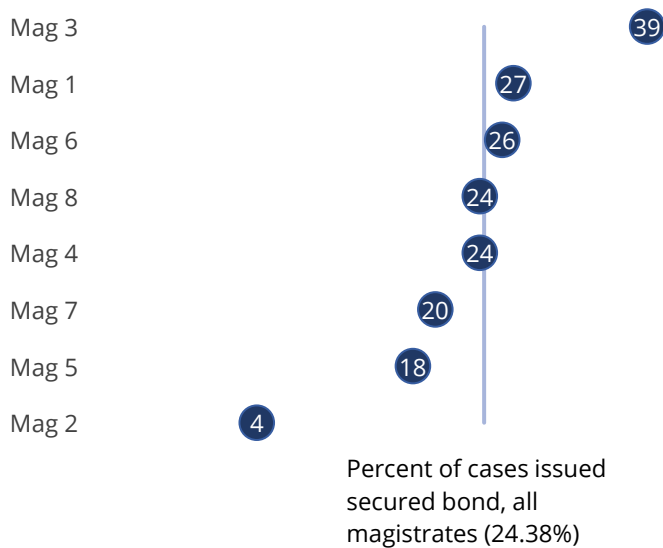
In related projects in other jurisdictions, we have seen variation in decision-making among individual magistrates.¹³ Likewise in this evaluation, we found variation across magistrates in the use of secured bonds, median bond amounts, and percent of forms deviating from the tool's recommendations (Appendix 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 3.70% to 39.02% and median secured bond amounts ranged from \$500 to \$1,500. Magistrates also differed in their prevalence of deviating from the tool's recommendations with Magistrate #2 deviating in 3.70% of forms for target cases and Magistrate #7 deviating in 60.00% of forms for those cases.

Figure 1 shows the rate of imposition of secured bonds in target cases for individual magistrates, relative to that rate for all Orange County magistrates. For example, Figure 1 shows that Magistrate #3 issued a secured bond for 39% of target cases, a rate that is higher than the average for all magistrates (24.38%). More detail about individual magistrate decision-making is presented in Appendix E.

¹³ See, e.g., *id.* at 16-17.

We note that there was a considerable range in the number of forms completed by each magistrate. For example, while Magistrate #7 completed only 5 forms for target cases, Magistrate #1 completed 52 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 variation in magistrate decision-making is attributable to case-specific factors.¹⁴

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



Secured Bonds by Race

We also examined whether there were differences in imposition of secured bonds for all offenses by race.^{15,16,17} Our initial analysis found that Black individuals were more likely to receive a secured bond than White individuals. We then executed supplemental analyses to assess whether these differences persisted after controlling for relevant case-specific factors, as recorded by magistrates on Magistrate Bail Explanation Forms; number of charges; and number

¹⁴ *Id.* at 16 & Appendix D (finding that variation among magistrates in the use of secured bonds was explained by case-specific factors).

¹⁵ Information about individuals' race was retrieved from the North Carolina Automated Criminal/Infractions System (ACIS) and linked to bail forms using the case number on the forms. Of the 1,423 forms included in our analyses, 80.39% (or 1,144 forms) were matched to ACIS records. The remaining 19.61% (279 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.

¹⁶ Black and White were the only racial groups included in the analysis because they collectively made up 86.19% 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 10.40% of the forms where a magistrate set a condition and the form was not removed from the analysis due to a fidelity issue.

¹⁷ 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.

of Step 4 statutory factors. After controlling for those factors, racial differences in the use of secured bonds persisted. However, because Magistrate Bail Explanation Form were not used prior to implementation of reforms, this data only allows us to report on racial differences in the post-implementation period; it does not allow us to examine whether racial differences existed in the pre-implementation period and, if so, whether and how those differences changed in the post-implementation period. Preliminary analysis of that issue suggests that racial differences in the use of secured bonds existed in the pre-implementation period and that those differences decreased after the reforms were implemented. We discuss these findings in more detail below.

Results from our initial analysis are displayed in Table 3.¹⁸ As shown there, Black individuals were more likely to receive a secured bond than White individuals (34.86% and 23.89% respectively), and this difference was statistically significant. Stated differently, the odds of receiving a secured bond were 1.70 times higher for cases involving Black individuals compared to cases involving White individuals. We also found that the median secured bond amount was significantly higher for cases involving Black individuals (\$5,000) than White individuals (\$2,500). Additional analyses showed that racial differences in the use of secured bonds was greater among non-target cases (12.66 percentage points) than target cases (3.85 percentage points). For non-target cases, 37.15% of Black individuals received a secured bond compared to 24.49% of White individuals.

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

	Black individuals	White individuals	Difference
Percent secured bond	34.86%	23.89%	10.97***
Median secured bond amount	\$5,000	\$2,500	\$2,500***

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 0.1% 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.

To assess whether these differences among non-target cases persisted after controlling for relevant case-specific factors, we executed supplemental analyses controlling for the following eleven case-specific sidebar factors, as recorded on Magistrate Bail Explanation Forms:

1. Charged offense includes a Class A-E felony.
2. Defendant has one or more failure to appear within the past 2 years.
3. Defendant has a prior record of at least one violent felony conviction.
4. Defendant has prior record of felony or misdemeanor convictions within the last five years demonstrating a pattern of conduct.
5. Charged offense was committed when defendant was on pretrial release, supervised probation, parole, or post-release supervision.
6. Charged offense involves domestic violence, violence, or injury to a person.
7. Charged offense requires sex offender registration or is a failure to register as a sex offender offense.
8. Charged offense is a drug trafficking offense or involves distribution of drugs.
9. Charged offense is a DWI and defendant has at least 1 DWI conviction within the last seven years.
10. Defendant is impaired such that immediate release is likely to cause harm to self/others/property.

¹⁸ We aim to include an analysis of the likelihood of receiving secured bond and median secured bond amounts by race for target cases in the final report. The current sample size is not large enough to produce a reliable analysis of target cases.

11. Charged offense involves the use of a firearm or deadly weapon.¹⁹

Table 4 shows the factors that have the strongest impact on imposition of a secured bond. As shown there, eight case-specific factors have a stronger effect on the use of secured bond than race. The strongest predictors of issuing a secured bond were whether the charged offense is a Class A-E felony and whether the person had more than one failure to appear within the past two years. These factors increase the likelihood of receiving a secured bond by 42% and 38%, respectively. By comparison, being Black increases the likelihood of receiving a secured bond by 6%.

Table 4. Impact of factors predicting use of secured bonds from strongest to weakest

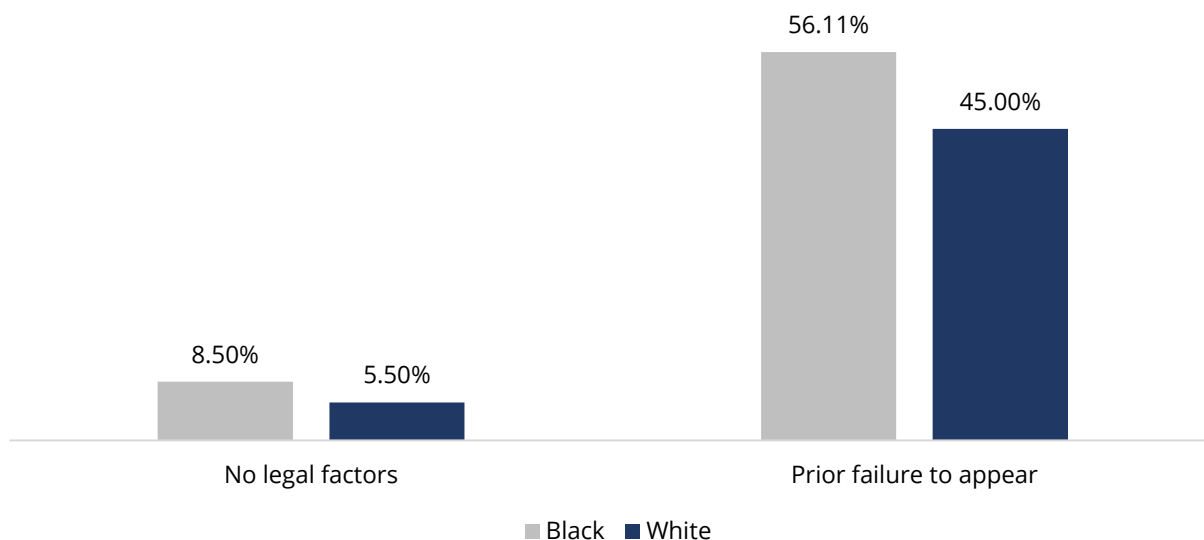
	Percent increase or decrease in probability of receiving a secured bond
Class A-E felony	42% increase
FTA in the past 2 years	38% increase
Involves domestic violence, violence, or injury to a person	32% increase
Committed when defendant was on pretrial release, supervised probation, parole, or post-release supervision	30% increase
Offense involves a drug trafficking or distribution	17% increase
Prior conviction demonstrating pattern of conduct	14% increase
Prior violent felony conviction	13% increase
Involves a firearm or deadly weapon	12% increase
Individual is Black	6% increase
Statistically non-significant factors	
Defendant is impaired	
Involves a sex offense	
Charged offense is a DWI and defendant has prior DWI conviction	

Racial differences in *secured bond amounts* became statistically non-significant after controlling for case-specific factors. However, a statistically significant racial difference in the *odds of being issued a secured bond* persisted even after taking into account these factors. The odds of receiving a secured bond were 1.57 times higher for Black individuals compared to White individuals. Figure 2 shows that the likelihood of being issued a secured bond is 3.00 percentage points higher for Black individuals who have zero case-specific factors compared to similarly situated White individuals. Racial differences widen for individuals who have one or more case-specific factors. For example, Figure 2 shows that 56.11% of Black individuals who had a prior

¹⁹ Recognizing that these analyses include information only in non-target cases, we replicated our analyses using all cases and these same case-specific factors, as recorded in ACIS. This analysis also found that racial differences in the use of secured bonds persisted after controlling for case-specific factors. Additionally, the magnitude of the racial difference was comparable (e.g., odds of receiving a secured bond were 1.48 times higher for Black individuals) regardless of whether we examined all cases or non-target cases only, and whether case-specific factors were retrieved from ACIS or from the Magistrate Bail Explanation Forms.

failure to appear were issued a secured bond compared to 45.00% of White individuals who had a prior failure to appear.

Figure 2. Percent of secured bonds issued for Black and White individuals based on the absence or presence of case-specific factors



At an April 2022 meeting where we presented these results to stakeholders, they asked whether racial differences could be explained by the number of charges issued against a person. To address this issue, we conducted supplemental analyses, controlling for the number of charges during the same incident. Racial differences in the use of secured bonds remained after including this factor along with the other eleven case specific factors.

Stakeholders also asked whether the number of statutory factors present (Step 4 in the structured decision-making tool) might explain these differences. We conducted supplemental analyses controlling for this issue (one factor vs. those with more than one factor checked) and found that racial differences in the likelihood of receiving a secured bond persisted.²⁰

Importantly, because Magistrate Bail Explanation Forms were not in place during the pre-implementation period, form data does not allow us to examine whether racial differences existed in the pre-implementation period and if so, whether they increased, decreased, or remained the same in the post-implementation period. To examine that issue, we have begun pulling bail information for first court dates from district court calendars. Although that analysis is not yet complete, preliminary data suggest that racial differences in the use of secured bonds existed in the pre-implementation period and that those differences decreased after reforms were implemented.²¹ We will continue this analysis and report further in future reports.

²⁰ Appendix F shows the technical results from our supplemental analyses.

²¹ Specifically, we are collecting information on bail conditions from district court calendars in 2019 and 2021. Analyses are limited to: (1) 19CR or 19CRS cases on the 2019 calendars and 21CR or 21CRS cases on the 2021 calendars, and (2) the first occurrence of a case on the calendar. Preliminary analysis showed that most bond conditions first reported on the calendars correspond to the bond conditions listed on the AOC-CR-200 form from the initial appearance. When we compared the bond conditions reported on a sample of calendars to those on the corresponding AOC-CR-200 forms, we found an 88.8% concordance rate between the bond conditions. With this information and racial data from ACIS, we examined the percent of cases receiving a secured bond by race for the first quarter of 2019 and 2021. During the first quarter of 2019, there was a 7.85 percentage point difference in the use of secured bonds for Black individuals (51.08%) and White individuals (43.23%). After implementation of reforms, this difference


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.

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 December 31, 2021.

Judges reported that they used the new process in the vast majority of cases. Specifically, for the 1,212 forms included in this analysis,²² judges reported that they used the new process for 96.20% of non-appearances (1,166 forms); they reported not using the process in only 3.80% of non-appearances (46 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.



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

Of the 1,166 forms on which judges indicated that they used the new process, 60.63% did not have any completeness or fidelity issues. 93.40% (1,089 forms) did not have any fidelity issues. As shown in Table 5, the most common fidelity issue was that the judge declined to adhere to the form's recommended outcome (49.35% of forms with fidelity issues; 38 forms). For example, the original Bench Card recommended that the judge issue an Order for Arrest (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.

Additionally, judges completed most forms without completeness issues (65.61% or 765 forms).²³ Table 5 shows the most common fidelity and completeness issues on Bench Card forms.

shrank to a 6.34 percentage point difference, with 38.71% of Black individuals receiving a secured bond compared to 32.37% of White individuals.

²² Five forms were submitted blank (only the defendant information and case number were completed; the rest of the form was blank) and were removed from further analyses.

²³ Of the 401 forms with completeness issues, 82.29% (330 forms) had only one issue, 16.45% (66 forms) had two issues, and 1.24% (5 forms) had three issues.

Table 5. Common fidelity and completeness issues—Bench Card forms

Completeness issues	Fidelity issues
<ul style="list-style-type: none"> • Not checking a redundant box (77.55%) • Not completing Step 1 (21.19%) • Not recording case number(s) or date (15.21%) • Not completing Step 2 (2.99%) • Not recording final bond amount (1.74%) • Not recording final bail condition (0.24%) 	<ul style="list-style-type: none"> • Not adhering to recommended outcome or completing part of the form but then declining to use the process (49.35%) • Issuing an OFA but delegating the conditions of pretrial release to the magistrate’s discretion (27.27%) • Not following the steps of the process (15.58%) • Setting the same condition Steps 2 and 3 (6.49%) • Recording multiple offense classes in Step 2 (1.29%)

Note: For the steps of the decision-making process, see Appendix D.1 and D.2 (Bench Card Form).

Outcome Metrics

In the section below, we report on decision-making as recorded on the Bench Card and our finding that the card is working as intended. Specifically, when judges used the Bench Card process, they rescheduled the court date for every unexcused non-appearance in a target case where there was no prior missed court date.

In executing our analyses, we also explored whether we could report on how judicial responses to non-appearances may have changed before and after implementation of reforms. In an earlier report, we presented data comparing judicial responses to non-appearances as recorded on district court non-traffic criminal court calendars in 2019 (pre-implementation) and 2021 (post-implementation). However, at a November 2021 meeting where we presented those results, stakeholders reported significant pandemic-related changes in district court case processing. Specifically, they reported that during the post-implementation period, defendants were excused from most court dates and were required to attend only when the case was set for disposition. This change would have significantly reduced opportunities for non-appearances and, per stakeholders, resulted in more severe sanctions if a defendant failed to appear when the case was set for disposition. Additionally, traffic cases that needed a new court date or a continuance were no longer placed on the criminal court calendars included in these analyses. Because traffic offenses constitute over 70% of all misdemeanor charges in Orange County²⁴ and account for a large share of non-appearances,²⁵ fewer traffic cases on the included calendars would lead to fewer non-appearances in the post-implementation period. This also would have changed the overall “mix” of cases on the calendars, as traffic charges tend to be lower-level offenses. Because of these significant case processing changes, we determined that a pre/post analysis of calendar data was not appropriate. However, we will continue to analyze data from district court calendars to understand if responses to non-appearances changed once judges no longer were required to complete a written Bench Card form.

²⁴ Measuring Justice Dashboard (UNC School of Government Criminal Justice Innovation Lab 2022), <https://cjl.shinyapps.io/MeasuringJustice/>.

²⁵ North Carolina Court Appearance Project, Findings and Policy Solutions from New Hanover, Orange, and Robeson Counties (March 31, 2022) (forthcoming).

Decision-Making as Recorded on the Bench Card

To assess the impact of the new judicial process for responding to non-appearances, we examined 1,089 forms.²⁶ Judges rescheduled 39.67% (432) of cases and issued an OFA for 60.33% (657). When judges issued an OFA, the most common condition was a secured bond (95.74%), and the median secured bond amount was \$500. Judges rarely ordered a written promise to appear (2.44%), custody release (1.37%), or unsecured bond (0.46%) in response to a non-appearance.

We also examined 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. Using the revised form, judges rescheduled 36.00% of cases and issued an OFA for 64.00% of cases. These percentages are similar to those for the overall group of forms.²⁷

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 reform was working as intended in 100% of these cases. Specifically, in all of the target cases where the non-appearance was not excused and there was no prior missed court date (33.66% of target cases; 172 cases), judges responded to the non-appearance by rescheduling the court date.²⁸ 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.²⁹

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

²⁶ Forms included in our analysis had no fidelity issues and recorded that the judge used the new process. 514 of these forms were the original version (Appendix D.1); 575 were the revised version (Appendix D.2).

²⁷ When judges issued an OFA using the new form, the most common condition imposed was a secured bond (95.92%) with a median secured bond amount of \$500. When using the new form, judges rarely ordered a written promise to appear (2.17%), custody release (1.36%), or unsecured bond (0.54%) in response to a non-appearance.

²⁸ Judges issued an OFA in nearly all of the remaining 339 cases where the person had a prior non-appearance (331 cases; 97.64%). The most prevalent condition of release recorded in the OFA was a secured bond (93.66% or 310 forms), with a median bond amount of \$325. These results did not substantially change when we examined results for target cases for which the revised form was used.

²⁹ 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 3.8% of forms on which judges indicated that they were not using the process involved a target case. However, given that judges declined to use the process in such a small percentage of cases, to the extent this issue impacts the reported outcome, that impact likely is small.

Pretrial Failures

In the past, some have expressed concern that pretrial reforms may result in dramatically increased new pretrial criminal charges or court non-appearances. We find no evidence of these outcomes in Orange County. We begin with a discussion of changes in disposition times, as pending case times can impact pretrial failures.

Time to Disposition

We examine disposition time because it can impact pretrial failure rates. The longer a case is pending, the more time an individual has to experience pretrial failure. The COVID-19 pandemic has impacted time to disposition in other jurisdictions, and we wanted to examine how this issue has impacted Orange County cases. Although pending caseloads decreased in the post-implementation period, there was a small increase in median time to disposition.

For this analysis we examined: (1) the percentage of cases initiated during the pre-implementation and post-implementation periods that were still pending by the end of the year;³⁰ and (2) the median time to disposition for cases that were disposed of by the end of 2020 or 2021.³¹ As shown in Table 6 the pre-implementation period had a larger pending case load (30.50% versus 21.53%). We note that the pre-implementation period includes the first six months of the COVID-19 pandemic when normal court operations were significantly disrupted. Normal court operations resumed over the course of the post-implementation period (October 2020 – September 2021). This fact likely explains the larger pending case load at the end of 2020 as compared to 2021. We also found that the median days to disposition was longer in the post-implementation period (119 days versus 123 days). However, we would not expect this small increase in median days to disposition to have a large impact of pretrial failure rates.

Table 6. Percent of pending cases and days to disposition among disposed cases for Orange County

	Pre-implementation period & pending on Dec. 31, 2020	Post-implementation period & pending on Dec. 31, 2021	Percentage point difference
Pending cases	30.50% 3,703 cases	21.53% 2,198 cases	-8.97***
Median days to disposition among disposed cases	119 days	123 days	4.00*

Note. Pre-implementation period includes data from October 1, 2019 to September 30, 2020. Post-implementation period includes data from October 1, 2020 to September 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 0.1% 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.

³⁰ Cases were considered pending if they met one or more of these criteria:

- One or more charges in a multi-charge case were not disposed;
- A case initiated during the pre-period (Oct 2019 to Sept 2020) had a disposition date that was later than December 31, 2020 (ex: disposed March 1, 2021).

In multi-charges cases that had different charge disposition dates, we used the last charge's disposition date as the case disposition date when examining median days to disposition.

³¹ For these analyses, the pre-implementation period includes cases served between October 1, 2019 and September 30, 2020 that were pending or disposed of by December 31, 2020; the post-implementation period includes cases served between October 1, 2020 and September 30, 2021 that were pending or disposed by December 31, 2021.

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.³² 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.³³ We categorized new criminal charges as felonies, non-traffic misdemeanors, or traffic misdemeanors.³⁴ We further categorized new felony and non-traffic misdemeanors as violent or nonviolent. Second, we examined whether changes in new pretrial crime significantly differed for White and Black individuals. Finally, we compared the percent of individuals in Orange County who acquired new pretrial charges to pretrial criminal activity rates in Brunswick and Randolph Counties. According to stakeholders, the North Carolina Association of County Commissioners considers Brunswick and Randolph Counties to be peer counties to Orange.

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

Table 7 shows the prevalence of new criminal pretrial charges during the pre- and post-implementation periods in Orange County and its peer counties. As shown there, there was no statistically significant change in pretrial criminal activity rates in Orange County after reforms were implemented. During the pre-implementation period, 14.36% of individuals received a new pretrial charge, compared to 14.55% of individuals in the post-implementation period. This difference of 0.19 percentage points was not statistically significant. Additionally, there were no statistically significant changes in the prevalence of new felony or misdemeanor charges.

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.

Table 7 also shows pretrial criminal charging data for Brunswick County and Randolph County. Similar to Orange County, there was no statistically significant change in new pretrial criminal charges in Brunswick County. Brunswick County did experience a small (1.11 percentage points) but statistically significant decrease in the subcategory of pretrial misdemeanors that was primarily driven by a reduction in non-violent misdemeanors. Randolph County experienced statistically significant decreases in new pretrial criminal charges overall (2.28 percentage points), which was driven by significant decreases in non-traffic misdemeanors (1.60 percentage points) and traffic misdemeanors (1.16 percentage points).

³² To do so we compared pretrial activity rates for cases in the post-implementation period (served between October 1, 2020 - September 30, 2021 and disposed of by December 31, 2021) to cases in the pre-implementation period (served between October 1, 2019 - September 30, 2020 and disposed of by December 31, 2020).

We restricted our analyses to cases where all charges had been disposed of by December 31, 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.

³³ 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.

³⁴ We used the dtalink record linking program in Stata software to identify individuals based upon their name, phonetic spelling of their name, date of birth, race, and gender. A portion (0.60%) of charges were excluded from the record linking analysis because date of birth was missing or was in an invalid format (e.g., 19000000).

Table 7. Percent and number of individuals who acquired new pretrial criminal charges for Orange County and peer counties during the pre- and post-implementation periods

Orange County	Pre-implementation period	Post-implementation period	Percentage point difference
New criminal charges	14.36% (1,134)	14.55% (1,091)	0.19
New felony charges	2.37% (187)	2.83% (212)	0.46
New violent felony charges	0.62% (49)	0.83% (62)	0.21
New non-violent felony charges	2.04% (161)	2.32% (174)	0.28
New non-traffic misdemeanor charges	5.36% (423)	5.12% (384)	-0.24
New violent non-traffic misdemeanor charges	1.89% (149)	1.99% (149)	0.10
New non-violent non-traffic misdemeanor charges	4.46% (352)	3.97% (298)	-0.49
New traffic misdemeanor charges	11.25% (888)	11.01% (826)	-0.24
Brunswick County	Pre-implementation period	Post-implementation period	Percentage point difference
New criminal charges	16.33% (1,032)	15.78% (1,083)	-0.55
New felony charges	4.00% (253)	4.11% (282)	0.11
New violent felony charges	0.90% (57)	0.73% (50)	-0.17
New non-violent felony charges	3.55% (224)	3.58% (246)	0.03
New non-traffic misdemeanor charges	8.09% (511)	6.98% (479)	-1.11*
New violent non-traffic misdemeanor charges	2.58% (163)	2.24% (154)	-0.34
New non-violent non-traffic misdemeanor charges	6.73% (425)	5.86% (402)	-0.87*
New traffic misdemeanor charges	10.92% (690)	10.94% (751)	0.02

Table 7, Continued

Randolph County	Pre-implementation period	Post-implementation period	Percentage point difference
New criminal charges	17.84% (1,539)	15.56% (1,317)	-2.28***
New felony charges	3.94% (340)	3.72% (315)	-0.22
New violent felony charges	0.83% (72)	0.66% (56)	-0.17
New non-violent felony charges	3.57% (308)	3.40% (288)	-0.17
New non-traffic misdemeanor charges	7.96% (687)	6.36% (538)	-1.60***
New violent non-traffic misdemeanor charges	2.89% (249)	1.71% (145)	-1.18***
New non-violent non-traffic misdemeanor charges	6.52% (563)	5.63% (476)	-0.89*
New traffic misdemeanor charges	12.91% (1,114)	11.75% (994)	-1.16*

Note: Pre-implementation period includes data from October 1, 2019 to September 30, 2020. Post-implementation period includes data from October 1, 2020 to September 30, 2021. In the pre-period, there were 7,896 individuals with charges initiated in Orange County and 1,134 individuals incurred a new pretrial charge. There were 7,500 individuals with charges initiated in Orange County during the post-period. Brunswick County had an increase in defendants from pre (6,318) to post-implementation period (6,864), while Randolph County had a decrease in the number of defendants from pre (8,629) to post (8,462). *: 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 0.1% 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.³⁵ 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 regardless of later FTA compliance.³⁶

Table 8 shows that there was no statistically significant change in court non-appearance rates in the post-implementation period for all cases or for those involving Black or White individuals. Although the percent of all cases having a court non-

There was no statistically significant change in court non-appearance rates after implementation of reforms.

³⁵ For these analyses, the pre-implementation period includes cases served between October 1, 2019 and September 30, 2020; the post-implementation period includes cases served between October 1, 2020 and September 30, 2021. We included all cases initiated during the pre- and post-implementation period, regardless of whether it was pending or disposed.

³⁶ We note this is a conservative approach that may overstate non-appearance rates.

appearance increased 0.18 percentage points, this increase was not statistically significant. Similarly, court non-appearance rates decreased 1.13 percentage points for cases involving Black individuals and increased 1.20 percentage points for cases involving White individuals. Neither change was statistically significant.

We note that these results were observed *even though* the pre-implementation period included the early period of the COVID-19 pandemic. Specifically, for the pre-implementation period time period of March 16, 2020 to May 31, 2020, Orange County courts were closed, except for first appearances for detained individuals (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.

Table 8. Percent and number of court non-appearances for cases served during pre- and post-implementation periods, for all cases and by race

	Pre-implementation period	Post-implementation period	Percentage point difference
All cases	14.05% (1,706)	14.23% (1,453)	0.18
Black individuals	19.17% (988)	18.04% (844)	-1.13
White individuals	9.61% (454)	10.81% (397)	1.20

Note: Pre-implementation period includes data from October 1, 2019 to September 30, 2020. Post-implementation period includes data from October 1, 2020 to September 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 0.1% 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 9 shows the percent and number of cases with a court non-appearance for Orange County, along with its peer counties, Brunswick County and Randolph County. Court non-appearance rates significantly decreased in both Brunswick (-1.40 percentage points) and Randolph (-3.70 percentage points) Counties.

Table 9. Percent and number of cases with a court non-appearance for all cases pre- and post-implementation for Orange County and peer counties

	Pre- implementation period	Post- implementation period	Percentage point difference
Orange County	14.05% (1706)	14.23% (1453)	0.18
Brunswick County	11.14% (1180)	10.10% (1005)	-1.04*
Randolph County	19.77% (2963)	16.07% (2121)	-3.70***

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 0.1% 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, changes in FTA-only bookings, and the number of people booked on low bonds (\$500 or less), overall and by race. We found the number of detentions per month fell significantly in the post-implementation period, as did the number of FTA-only bookings. However, we found little evidence of statistically significant changes in length of stay and no statistically significant change in the use of secured bonds of \$500 or less. These findings were generally consistent for Black and White individuals.

As shown in Figure 3 below, Orange County experienced dramatic decreases in the local jail population in the first few months of the COVID-19 pandemic. Because this time period skewed jail data for our original pre-implementation time period, after discussion with stakeholders we adjusted the pre-implementation period to include a “COVID-free” pre-implementation period of October 2018 through December 2019. We compared that period to post-implementation data from October 2020 through December 2021.

Pretrial Bookings

Overall

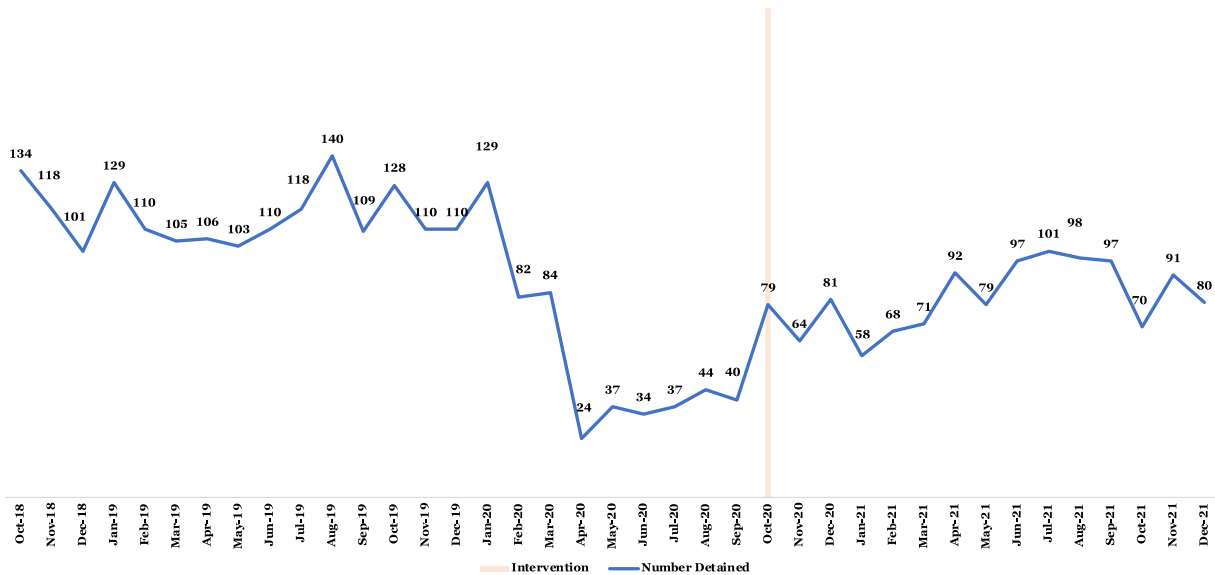
Pretrial bookings fell in the post-implementation period. During the post-implementation period, there were 1,226 pretrial bookings of 983 unique individuals, compared to 1,699 pretrial bookings of 1,339 unique individuals in the pre-implementation period.³⁷ The average number of

Average monthly pretrial bookings fell 27.8%.

³⁷ Initially, there were 3,503 bookings during the pre- and post-implementation periods. However, this number includes bookings where the original booking date could not be determined and bookings where the individual was released to another jurisdiction. 578 bookings fell into either or both of these

bookings per month declined 27.8%, from 113.3 in the pre-implementation period to 81.7 during the post-implementation period. This decrease of 31.5 bookings per month was statistically significant. For detained individuals whose highest charge was a misdemeanor, average monthly bookings decreased 20.7% (59.9 pre-implementation to 47.5 post-implementation); for individuals whose highest charge was a felony, the reduction was 23.8% (22.4 pre-implementation to 17.1 post-implementation).³⁸ Both declines were statistically significant.

Figure 3. Number of pretrial bookings by month, October 2018 to December 2021



Note. The pink Intervention Line in October 2020 highlights when reforms were implemented.

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 Black and White individuals. During the pre-implementation period there were 781 pretrial bookings of 605 Black individuals, and this decreased to 576 bookings of 466 individuals during the post-implementation period. There were 13.7 fewer pretrial bookings of Black individuals per month during the post-implementation period. This difference was statistically significant.

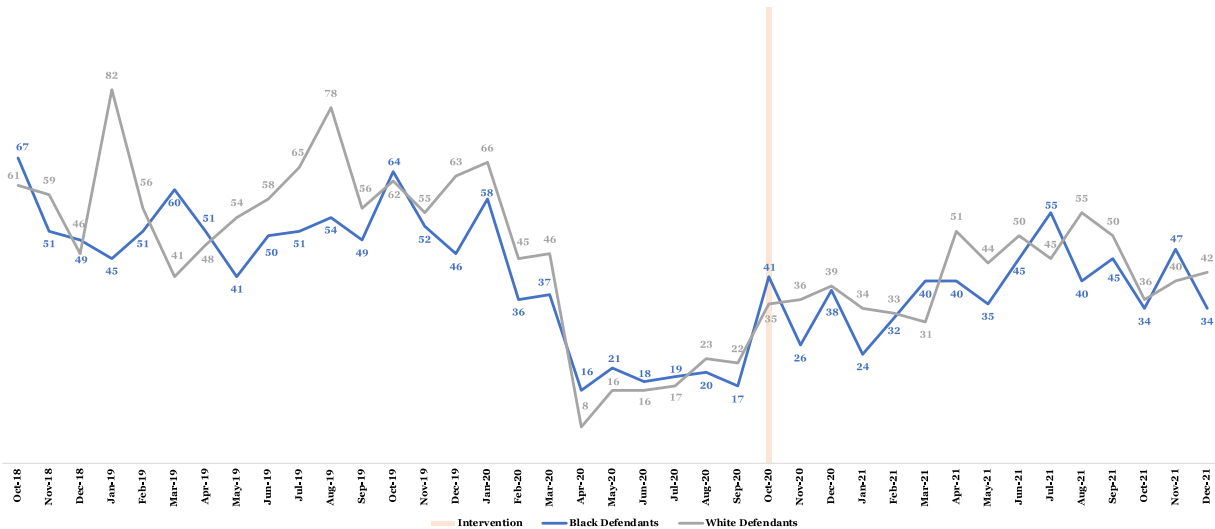
categories. We limited our analyses to bookings where we could determine the original booking date and for individuals not released to other counties. Removing these bookings resulted in a total of 2,925 bookings in the pre- and post-implementation periods.

³⁸ Prior to analyzing booking events by highest charge, we coded individual charges as either a misdemeanor or felony based upon the N.C. General Statute recorded in the jail data. We used our coding for these analyses because we identified instances where the misdemeanor/felony coding in jail data did not align with the statute or charge description. However, we also conducted sensitivity analyses of each our analyses by using the coding provided by the county. Where applicable, we report when this sensitivity analysis produced significantly different findings.

Pretrial detention analyses of misdemeanors and felonies exclude individuals who were detained solely because of an Order for Arrest after a FTA. We exclude these individuals from the misdemeanor/felony analyses because: (1) there were instances where we could not identify whether the underlying offense was a misdemeanor or a felony from the jail data, and (2) individuals held because of an OFA for an FTA may be substantively different than individuals who are detained on an initial charge. Specifically, those detained because of an OFA for a FTA are detained because of a missed court date as opposed to e.g., an assessment that they pose an unacceptable level of danger to the community. Individuals who were detained because of a FTA are discussed in the section below.

Similar results were found for bookings of White individuals. During the pre-implementation period, there were 884 pretrial bookings of 702 White individuals, and this decreased to 621 pretrial bookings of 491 individuals in the post-implementation period. On average, there were 17.5 fewer pretrial bookings per month during the post-implementation period relative to the pre-implementation period, and this difference was statistically significant. The decline in bookings among White individuals was not statistically significantly different from the decline in bookings among Black individuals.

Figure 4. Number of pretrial detentions by month for Black and White individuals



Note. The pink Intervention Line in October 2020 indicates when reforms were implemented.

As discussed in the section above regarding magistrate decision-making, Black individuals were more likely to receive secured bonds than White individuals. But as noted immediately above, the decline in bookings among White individuals was not statistically significantly different from the decline among Black individuals. When we presented these results to stakeholders, they noted that they would have expected racial differences in secured bonds to have translated into racial differences in pretrial detention metrics. To explore this issue, we executed supplemental analyses to determine whether the population of individuals removed from the jail data could explain this result. Specifically, and as explained in a footnote above, we removed from the jail data individuals for whom we could not determine original booking dates and who were released to other counties and thus may not have had Orange County charges. If Black individuals were overrepresented in this group of removed cases, it could explain results. However, we found that the racial makeup of the removed individuals did not explain the issue. We will continue to explore this issue in future reporting.

Detentions Due to Failure to Appear

The proportion of bookings resulting solely from a failure to appear (FTA) decreased during the post-implementation period. As seen in Table 10, in the pre-implementation period, 27.4% of bookings occurred solely because of a FTA. This number fell significantly to 21.0% in the post-implementation period.

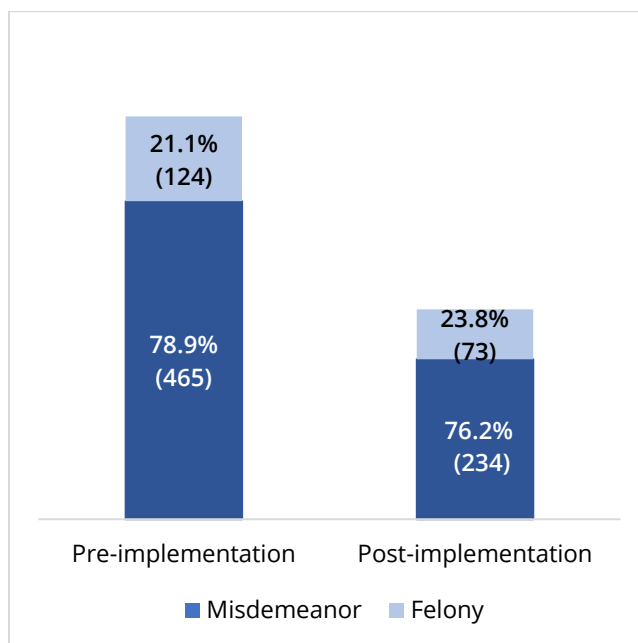
Table 10: Proportion of pretrial detentions because of FTA, pre- and post-implementation period

Offenses at booking	Pre-implementation period	Post-implementation period
FTA Only	27.4%	21.0%***

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 in the average number of detentions that have *** listed have less than a 0.1% 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, the felony versus misdemeanor composition of FTA-only bookings did not change significantly. Figure 5 shows the share of FTA bookings where the highest underlying charge was a misdemeanor or felony.³⁹ Pre-implementation, 78.9% of FTA-only bookings were for misdemeanors, and 21.1% were for felonies. Post-implementation, 76.2% of FTA-only bookings were for misdemeanors, while 23.8% were for felonies. These differences were not statistically significant.

Figure 5. Charge types for FTA-only detentions, pre- and post-implementation



Length of Stay

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.

³⁹ We used ACIS data to identify whether the highest underlying charges in FTA bookings were felony or misdemeanor charges. The share of FTA bookings that could not be matched to ACIS data was 21% in the pre-implementation period and 24% post-implementation. We removed these unmatched bookings when calculating the share of FTA-only bookings that were for felonies or misdemeanors.

Overall, there were no statistically significant changes in stays of 0 days, 1-3 days, and 31+ days. Also, the median detention length was unchanged at 1 day. The only statistically significant change in detention lengths was for stays of 4-30 days, which declined by 3.1 percentage points post-implementation. When looking separately at misdemeanor and felony bookings, we observed no statistically significant differences in detention length pre- and post-implementation. Table 11 shows these results.

Table 11. Percent of bookings by length of stay, overall and by highest charge

All bookings	Pre-implementation period	Post-implementation period	Percentage point difference
0 Days	38.7%	40.6%	1.9
1 - 3 Days	39.2%	39.9%	0.7
4 - 30 Days	17.5%	14.4%	-3.1*
31+ Days	4.9%	5.3%	0.4
Median Days Detained	1	1	0
Highest charge misdemeanor	Pre-implementation period	Post-implementation period	Percentage point difference
0 Days	44.0%	43.7%	-0.3
1 - 3 Days	47.0%	48.1%	1.1
4 - 30 Days	7.5%	7.4%	-0.1
31+ Days	1.6%	1.0%	-0.6
Median Days Detained	1	1	0
Highest charge felony	Pre-implementation period	Post-implementation period	Percentage point difference
0 Days	33.6%	35.2%	1.6
1 - 3 Days	31.8%	35.4%	3.6
4 - 30 Days	25.7%	21.2%	-4.5
31+ Days	9.5%	8.5%	-1
Median Days Detained	1	1	0

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 in the average number of detentions that have *** listed have less than a 0.1% 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.

As shown in Table 12, there were no statistically significant changes in length of stay for shorter stays (0-day and 1–3-day stays), longer stays (stays of 31 or more days), or median number of days detained for bookings of Black individuals or bookings of White individuals. The only difference between Black and White individuals was in stays of 4–30 days. Stays of this length declined by a statistically significant 5.7 percentage points for Black defendants; they declined 0.8 percentage points for White defendants, but this change was not statistically significant.

Overall, however, there were no statistically significant racial differences in changes in average detention length.⁴⁰

Table 12. Percent of bookings by length of stay overall and by race

Black individuals	Pre-implementation period	Post-implementation period	Percentage point difference
0 Days	37.4%	40.5%	3.1
1 - 3 Days	37.5%	39.4%	1.9
4 - 30 Days	20.5%	14.8%	-5.7**
31+ Days	4.9%	5.6%	0.7
Median Days Detained	1	1	0
White individuals	Pre-implementation period	Post-implementation period	Percentage point difference
0 Days	39.5%	40.6%	1.1
1 - 3 Days	40.8%	40.4%	-0.4
4 - 30 Days	14.8%	14.0%	-0.8
31+ Days	5.0%	5.3%	0.3
Median Days Detained	1	1	0

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 in the average number of detentions that have *** listed have less than a 0.1% 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 Bonds of \$500 or Less

We anticipated that a greater use of low bonds would result in shorter jail stays. We found no change in this metric. Among individuals who were admitted to the jail on a secured bond, there was no statistically significant change in the percentage of people who had a bond of \$500 or less. This finding was consistent across bookings for misdemeanors and felonies and for both Black and White defendants.

Criminal Charging

To put findings in context, it is important to understand the mix of cases presented to magistrates for conditions of release in the pre- and post-implementation periods. For instance, if Orange County experienced an increase in violent misdemeanors during the post-implementation period, we would expect to see an increase in more restrictive bail conditions despite the implementation of the new procedures. Thus, criminal charging rates provide important context about local conditions. As shown in Figure 6 below, overall charging decreased post-implementation caused by a decline in misdemeanor charging. Felonies made up a larger percent of total charges in the post-implementation period (rising from 7.39% of

⁴⁰ We estimated a negative binomial regression where detention length was regressed on the intervention, race, and an interaction of the intervention and race. The interaction term, which provides evidence of whether there were significant racial differences in the change in detention lengths, was not statistically significant, indicating that changes in detention length post-implementation were not significantly different between Black and White individuals.

charges to 9.17%) and the number of felony charges increased (from 1,292 pre-implementation to 1,480 post-implementation). Table 13 shows the breakdown of felonies by violent and non-violent charges. While the overall number of felony charges increased, the shares of violent and non-violent charges remained the same.

Finally, as shown in Table 14, the number of misdemeanor charges decreased. Although the share of non-DWI traffic charges increased, those charges typically are initiated by citation and thus do not appear before the magistrate for an initial appearance and the setting of conditions. Looking at the other misdemeanor categories, the share of DWI and violent misdemeanors rose slightly and the share of all other misdemeanors (non-traffic, non-violent, non-DWI) decreased by a larger amount.

Collectively, these changes would have resulted in a greater proportion of more serious cases before magistrates in the post-implementation period, potentially depressing the impact of the structured decision-making tool. Additionally, these charging trends likely impacted detention numbers and new pretrial charging rates.

Figure 6. Percent and number of total charges by type of charge, pre- and post-implementation

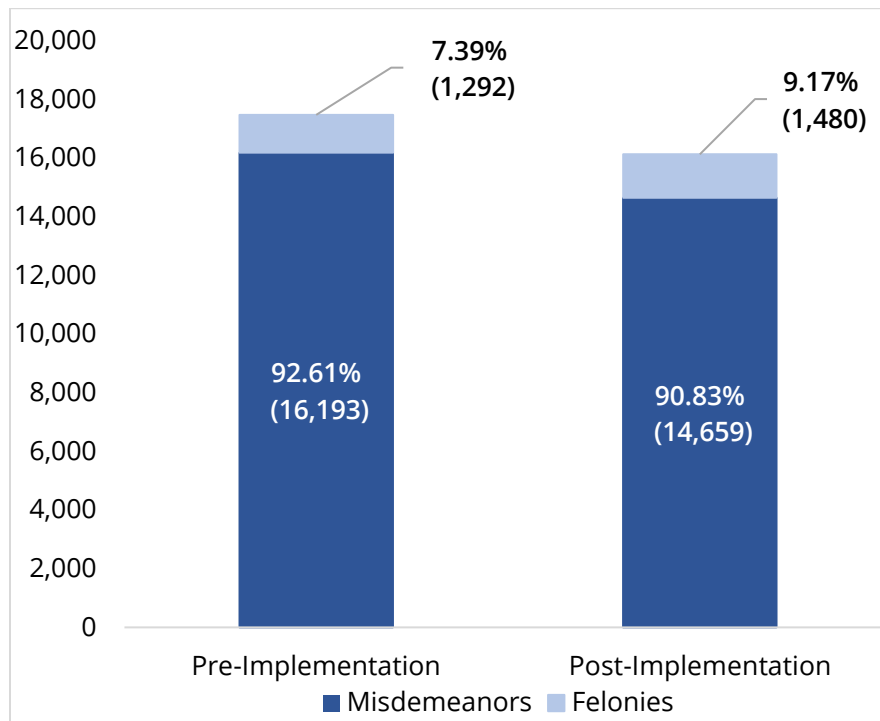


Table 13. Percent and number of felonies, pre- and post-implementation

	Pre-Implementation period	Post-Implementation period
Total number of felonies	1,292	1,480
Non-Violent	87.23% (1,127)	87.23% (1,291)
Violent	12.77% (165)	12.77% (189)

Table 14. Percent and number of misdemeanors, pre- and post-implementation

	Pre-implementation period	Post-implementation period
Total number of misdemeanors	16,193	14,659
Traffic (non-DWI)	80.04% (12,961)	82.19% (12,048)
All other	11.99% (1,941)	9.66% (1,416)
Violent	4.24% (687)	4.26% (625)
DWI	3.73% (604)	3.89% (570)

Note. "All Other" includes ordinance, drug, and other nonviolent misdemeanors.

Next Steps

This evaluation continues through December 31, 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 FTAs¹
- 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 conduct²
- Charged offense committed when defendant was on pretrial release, supervised probation, parole or post-release supervision
- Charged offense involves domestic violence³
- Charged offense involves violence⁴ or injury to a person⁵
- Charged offense requires sex offender registration⁶ or is a failure to register as a sex offender offense⁷
- Charged offense is a drug trafficking offense⁸ or involves distribution of drugs⁹
- 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/property¹⁰
- Charged offense involved defendant's use of a firearm or deadly weapon¹¹

STEP 4: Assess the statutory risk factors.¹² 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 bond¹³ 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 householdNote: 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

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 \$ _____ 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:

[Redacted]

- poses a danger of injury to any person

Explain:

[Redacted]

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

Explain:

[Redacted]

- 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: \$ [Redacted]

Explanation for imposing a secured bond:

[Redacted]

[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:

[Redacted]

[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:

[Redacted]

[FORM COMPLETE]

Appendix C. Frequently Asked Questions for Magistrates

New Bail Procedures—FAQs for Magistrates

October 21, 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’s

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.

Ability to Pay—Generally

When imposing a secured bond, I’m supposed to consider ability to pay. How do I do that? The last page of this FAQ contains a three-step process for determining ability to pay.

Does assessing ability to pay mean that people with similar charges could get different bond amounts? Yes. If you’ve determined that the person should be released and needs a secured appearance bond, you must assess ability to pay. A person who owns a business, for example, might easily be able to pay a \$1,000 appearance bond. But a person who works part time at the grocery store might not be able to pay that same bond. If you don’t consider ability to pay, the grocery store employee might end up detained pretrial on a \$1,000 bond, not because you determined that they’re too risky to be released, but rather because they don’t have the money to pay their bond. Assessing ability to pay avoids that result. Also, to the extent that a money bond actually creates an incentive for people to appear, people with more resources (e.g., the business owner) arguably need a larger bond to create that incentive than people with fewer resources (e.g., the grocery store employee).

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: Ability to Pay Determination

1. Only consider ability to pay after you've been through the decision-making process and found that release on other conditions won't reasonably assure appearance, poses a danger of injury to any person, or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses.
2. If the secured bond is required by statute, e.g., bond doubling, set the bond as required. Otherwise, go to Step 3.
3. If you intend for the person to be held pretrial for a first appearance, set a bond, consulting the maximum recommended bond table.

If you intend to set an appearance bond (e.g., that the person will be released), consider ability to pay so that the person doesn't end up inadvertently detained. Here's how to do that:

Begin by advising them that anything they say might be used later in evidence against them and that they shouldn't discuss the events that led to their arrest.

Then ask them: How much money do you have available that isn't needed to pay your basic necessities like housing, food, and transportation?

Based on the answer, set an appearance bond that the defendant can pay. If they can't pay anything, consider other conditions.

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.

20200389

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.

20200389

Appendix E. Individual Magistrate Decision-Making

	Total # of forms magistrates completed	Median # of forms by magistrate
Charges other than non-DWI Class 1-3 misdemeanors	1181	144.5
Non-DWI Class 1-3 misdemeanors	242	28.5

	Mag 1	Mag 2	Mag 3	Mag 4	Mag 5	Mag 6	Mag 7	Mag 8
% of forms per offense category	79.03%	84.48%	77.60%	88.21%	82.61%	84.31%	87.80%	82.29%
	20.97%	15.52%	22.40%	11.79%	17.39%	15.69%	12.20%	17.71%
% issued secured bonds	32.14%	23.13%	32.39%	27.19%	27.07%	33.77%	44.44%	31.65%
	26.92%	3.70%	39.02%	24.14%	17.86%	25.58%	20.00%	23.53%
Median secured bond amounts	\$5,000	\$2,000	\$5,000	\$5,000	\$5,000	\$5,000	\$10,000	\$2,500
	\$500	\$500	\$1,500	\$500	\$500	\$500	\$500	\$500
% of forms w/deviations	19.90%	4.76%	31.69%	10.60%	6.02%	7.79%	13.89%	16.46%
	26.92%	3.70%	41.46%	24.14%	17.86%	27.91%	60.00%	23.53%

Appendix F. Secured Bond by Race (Supplemental Analysis)

We conducted two sets of analyses to examine whether racial differences in the use of secured bonds were explained by case-specific factors. First, as reported in the main text of the report, we extracted information about case-specific elements from the sidebar factor section of the Magistrate Bail Explanation Forms. For these analyses, we restricted our examination to 799 non-target cases that had information on the sidebar factors. We estimated a logistic regression with clustered robust standard errors that corrected for the nesting of cases within magistrates. Clustered robust standard errors take into account that defendants appearing before the same magistrate are likely to have more similar outcomes than if they appeared before a different magistrate. As shown in Table F – 1 below, the odds of receiving a secured bond were 1.57 times higher for Black individuals than White individuals, even after accounting for case-specific sidebar factors.

Table F – 1. Logistic regression of secured bonds on race and case-specific factors for non-target cases

	Model 1: Only race	Model 2: Include case specific factors
	Odds ratio	Odds ratio
Individual is Black	1.82**	1.57*
Class A-E felony		26.99***
FTA in past 2 years		13.75***
Prior violent felony conviction		3.58**
Prior conviction		2.88***
Defendant was on pretrial release, supervised probation, parole, or post-release supervision		7.75***
Involves domestic violence, a violent charge, or injury to a person		11.00***
Involves a firearm or deadly weapon		3.53*
Involves a sex offense		4.07
Involves a drug trafficking or distribution offense		4.04**
Charged with a DWI and has prior DWI conviction		1.74
Defendant is impaired		0.53

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 0.1% 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.

We also conducted a supplemental analysis including the number of charges initiated for an individual on the same service date. We re-estimated the model above and found that the association between an individual being Black and likelihood of receiving a secured bond remained statistically significant (Odds Ratio = 1.61*) and continued to increase the likelihood of receiving a secured bond by 6%. Additionally, the number of charges was statistically related to the use of secured bonds. Each additional charge increased the likelihood of receiving a secured bond by 4.6%.

The analyses in Table F – 1 are informative because they utilize information from the Magistrate Bail Explanation Forms where magistrates directly explain the specific case-specific factors that are driving their consideration of a secured bond. There are, however, several limitations to these analyses. First, the large effect sizes for several case-specific factors (such as the odds ratio of 26.99 for Class A-E felony) suggests that there is near perfect prediction of secured bond use from that factor and thus there is some instability in the statistical model. Statistical models are most “stable” when there is adequate variation in the variables and factors do not perfectly predict outcomes. Second, the sidebar factor is predominantly available only for non-target cases given the structure of the form. Given the skip logic of the form (as shown in Appendix B) the majority of target cases would not have information on the sidebar factors in Step 3, even when such case-specific factors were present (but not recorded). Third, the sidebar information is only available when the magistrate indicates the factor is present and is otherwise treated as not present. For instance, the highest charge (e.g., assault with a deadly weapon with intent to kill) may be recorded as a Class A-E felony in ACIS, but “Charged offense is a Class A-E felony” is not checked as a sidebar factor on the form. This factor, while not checked on the form, may still be part of the decision-making process.

Because of these reasons, we examined whether racial differences in the use of secured bonds for all cases (target and non-target) remained after controlling for eleven case-specific factors from ACIS. The eleven case-specific factors included:

1. Charged offense includes a Class A-E felony
2. Defendant has one or more failure to appears within the past 2 years
3. Defendant has a prior record of at least one violent felony conviction since January 1, 2015
4. Defendant has at least one conviction for a felony, non-traffic misdemeanor, or traffic misdemeanor since January 1, 2015
5. Charged offense was committed when defendant had one or more pending cases
6. Charged offense involves domestic violence or charged offense is a violent offense
7. Charged offense involves the use of a firearm or deadly weapon
8. Charged offense requires sex offender registration or is a failure to register as a sex offender offense
9. Charged offense is a drug trafficking offense or involves distribution of drugs
10. Charged offense is a DWI and defendant has at least 1 DWI conviction since January 1, 2015
11. Number of charges initiated on the same service date

The logistic regression models were estimated in Stata 16.1 using data from 519 White individuals and 436 Black individuals. We estimated clustered robust standard errors to account for the nesting of cases or forms within magistrates. Table F – 2 shows results from two logistic regression models. The first model is the bivariate model that examines the racial difference in the use of secured bonds *prior* to inclusion of any case specific factors. The second model shows racial differences in the use of secured bonds after inclusion of the ten case-specific factors. As shown in the first model, the odds of being issued a secured bond were 1.70 times higher for Black individuals than White individuals. These higher odds, however, may be due to racial differences in case-specific factors. The second model shows that the odds of receiving a secured bond were still 48% higher for Black individuals than Whites after taking into account the eleven case-specific factors. It is important to note that the model does not include all factors (such as impairment and whether the individual was on supervised probation or post-release supervision) that may be relevant to the decision to issue a secured bond.

Despite differences in data sources and methods, we still find that Black individuals are more likely to receive a secured bond than similarly situated White individuals. Additionally, the magnitude of this difference is similar in both sets of analyses, further providing confidence in our conclusions.

Table F – 2. Logistic regression of secured bonds on race and case-specific factors for all cases

	Model 1: Only race	Model 2: Include case specific factors
	Odds ratio	Odds ratio
Black	1.70**	1.48*
Class A-E felony		1.89
FTA in past 2 years		1.38*
Prior violent felony conviction		4.63***
Prior conviction		1.38**
Pending cases		1.86***
Involves domestic violence or a violent charge		2.61**
Involves a firearm or deadly weapon		1.51*
Involves a sex offense		2.50
Involves a drug trafficking or distribution offense		2.33*
Charged with a DWI and has prior DWI conviction		0.84
Number of charges initiated on same service date		1.42***

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 0.1% 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.

© 2022

School of Government

The University of North Carolina at Chapel Hill

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