



GENERAL STATUTES COMMISSION

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To: General Statutes Commission
From: David Unwin, Revisor of Statutes
Date: November 2, 2021
Re: Summary of Local Pretrial Justice Reform Programs

This memorandum briefly summarizes some information we recently received on local pretrial justice reform programs. Sonya Harper, Director of Mecklenburg County's Criminal Justice Services Department, provided information on bail reform in Judicial District 26 (Mecklenburg County), and Professor Jessica Smith, Director of the UNC School of Government's Criminal Justice Innovation Lab provided information on bail reform in Judicial District 2 (Beaufort, Hyde, Martin, Tyrrell, and Washington Counties), Judicial District 21 (Forsyth County), and Orange County (part of Judicial District 15B). Professor Smith also provided information on the Citation Project, a program being conducted by the police departments of Winston-Salem, Wilmington, Apex, and Elizabeth City. This memorandum discusses each program individually:

A. *Judicial District 26 (Mecklenburg County)*

The Bail Policy For Twenty-Sixth Judicial District ("Policy"), filed January 23, 2019, provides in part that "Mecklenburg County Pretrial Services completes an individualized assessment of risk on defendants and provides this information to judicial officials to aid in making the pretrial release decision" and that "[t]hey also provide supervision and services to defendants when ordered as a condition of pretrial release."¹ Attachment A to the Policy sets out the Mecklenburg County Release Conditions Matrix ("Matrix") that includes the following information:

Mecklenburg County uses a locally validated actuarial tool, the Public Safety Assessment (PSA), which "examines nine factors based on a person's age, current charge, and criminal history to produce two risk scores: one that predicts risk of failure to appear for future court appearances, and a second that predicts risk of committing a new crime if released before trial. The PSA calculates its scores on a scale of one to six, with higher scores indicating a higher level of risk. The risk assessment also indicates an elevated risk of committing a new violent crime." Mecklenburg County criminal justice stakeholders used the results of the local PSA validation study to help them make the recommendations listed in the Release Conditions Matrix (Matrix). When a judicial official grants release, the Matrix serves as a guide to setting release conditions consistent with the statutory presumption of release with non-secured conditions G.S. § 15A-534(b). In considering the presumptive release conditions in this Matrix, the court is encouraged to assess the totality of circumstances to decide appropriate release conditions in each individual case including additional assessments that may be available in some instances, for example in domestic violence cases.²

It is important to note that the Matrix applies only when the judicial official has already decided to grant pretrial release pursuant to G.S. 15A-534(a)(1) (written promise to appear), (a)(2) (unsecured bond), or (a)(3) (custody of a designated person or organization).³ If the judicial official has decided to impose a secured bond

¹ *Bail Policy For Twenty-Sixth Judicial District*, filed January 23, 2019, page 5, available at: https://www.nccourts.gov/assets/documents/local-rules-forms/Bail%20Policy.pdf?l1xz6xa_CGHzzK9zpyEijZao9IRVZURc

² *Id.* at 13 (citing to psapretrial.org, which now redirects to <https://advancingpretrial.org/psa/about/>).

³ *Id.* at 3.

under G.S. 15A-534(a)(4) or house arrest with electronic monitoring under G.S. 15A-534(a)(5), the judicial official instead must record the reasons for doing so on a form.⁴ The Policy also includes a presumption that a person arrested for a Class 3 misdemeanor who has fewer than four prior convictions will be released under G.S. 15A-534(a)(1) (written promise to appear), (a)(2) (unsecured bond), or (a)(3) (custody of a designated person or organization).⁵

The MDRC Center for Criminal Justice Research ("Center") published a report evaluating the program using statistical analysis.⁶ It summarized its evaluation as follows: "Overall, the findings are notable from a public-safety perspective: Mecklenburg County released more defendants and did not see an increase in missed court appointments or new criminal charges while defendants were waiting for their cases to be resolved."⁷ In its supplemental report, the Center found that the program "had no effect on racial disparities in this jurisdiction's system" and that "there appears to be no racial disparity in judicial decision making when the risk level of the defendant is taken into account."⁸

B. Judicial District 2 (Beaufort, Hyde, Martin, Tyrrell, and Washington Counties)

The UNC School of Government Criminal Justice Innovation Lab ("Lab") published a report that describes and evaluates the program in Judicial District 2 using statistical analysis.⁹ The program consists of two reforms: "A new structured decision-making tool to better inform judicial officials' pretrial decisions and ensure compliance with constitutional and statutory requirements" and the establishment of first appearance proceedings for individuals detained on misdemeanor charges.¹⁰

1. Structured Decision-Making Tool

The structured decision-making tool is a flowchart with footnotes and tables.¹¹ It expressly incorporates the requirement under G.S. 15A-534 that a judicial official impose a written promise to appear under subdivision (a)(1) of that section, unsecured bond under subdivision (a)(2) of that section, or custody release under subdivision (a)(3) of that section, unless the judicial official determines under subsection (b) of that section that "such release will not reasonably assure the appearance of the individual as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential

⁴ *Id.*

⁵ *Id.* at 4.

⁶ *Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment: Effects in Mecklenburg County, North Carolina, Report 1 of 2*, (C. Redcross et al., MDRC, March 2019), available at:

https://www.mdrc.org/sites/default/files/PSA_Mecklenburg_Brief1.pdf

⁷ *Id.* at 2.

⁸ *Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment: Effects in Mecklenburg County, North Carolina, Report 2 of 2*, (C. Redcross et al., MDRC, March 2019), page 29, available at:

https://www.mdrc.org/sites/default/files/PSA_Mecklenburg_Brief2.pdf

⁹ *Bail Reform in North Carolina Judicial District 2: Evaluation Report*, (J. Smith and J. Vaske, UNC School of Government, September 2021), available at:

<https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2021/09/JD-2-Final-Report-9.21.2021.pdf>

¹⁰ *Id.* at 1.

¹¹ *Id.*, Appendix A at 39-42.

witnesses."¹² If the judicial official makes this determination under G.S. 15A-534(b), the tool recommends that the judicial official impose a secured bond and record the reasons for doing so.¹³

For Class 3 misdemeanors, the tool recommends that the judicial official impose a written promise to appear under G.S. 15A-534(a)(1), unsecured bond under subdivision (a)(2), or custody release under subdivision (a)(3).¹⁴ For Class F through I felonies and Class A1 through Class 2 misdemeanors, the tool sets out a list of items for the judicial official to consider; if any item on the list applies, the judicial official proceeds to the statutory determination under G.S. 15A-534(b); if no item applies, the tool recommends the imposition of a written promise to appear under G.S. 15A-534(a)(1), unsecured bond under subdivision (a)(2), or custody release under subdivision (a)(3).¹⁵ For Class A through E felonies, the tool proceeds directly to the statutory determination under G.S. 15A-534(b).¹⁶

2. *First Appearances for Individuals Detained on Misdemeanor Charges*

Before December 1, 2021, when the amendment to G.S. 15A-601 (on first appearances) by S.L. 2021-138, s. 14(a), becomes effective, State law does not require first appearances for individuals detained on misdemeanor charges.¹⁷ The Judicial District 2 program provides first appearances for these individuals, as well as legal counsel.¹⁸ S.L. 2021-138, s. 14(a), will require first appearances for these individuals across the State beginning December 1, 2021; however, it does not mandate legal counsel but instead provides that the first appearance is not a "critical stage" of the proceeding.

3. *Evaluation Results*

After conducting a statistical analysis, the Lab found, among other findings, that the "average number of pretrial bookings per month significantly decreased 33.90%" during the program and that the decreases in bookings were comparable for White and Black individuals.¹⁹ Additionally, "38.10% of the misdemeanor detainees who were afforded a new first appearance were released on a condition other than secured bond after that proceeding."²⁰ The Lab also found that the "District experienced a relatively small but statistically significant increase (1.92 percentage points) in new pretrial criminal activity" and that there "was no statistically significant change in court non-appearance rates in four of the District's five counties (Beaufort, Martin, Hyde and Tyrrell Counties)" with Washington County experiencing "a statistically significant 2.73 percentage point increase in this metric[.]"²¹ The Lab reported that stakeholders "were pleased with the evaluation results" and "planned to continue with the implemented reforms."²²

¹² *Id.* at 6-7 (citing G.S. 15A-534(b)); *see also* Appendix A at 40.

¹³ *Id.*, Appendix A at 40.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 7; *see also* G.S. 15A-601.

¹⁸ *Id.* at 7-8.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 38.

C. *Judicial District 21 (Forsyth County)*

Judicial District 21 also adopted a new structured decision-making tool.²³ It is very similar to the structured decision-making tool that Judicial District 2 uses with some minor differences. For instance, the tool recommends the imposition of a written promise to appear under G.S. 15A-534(a)(1), unsecured bond under subdivision (a)(2), or custody release under subdivision (a)(3) for both Class 2 and 3 misdemeanors.²⁴ Additionally, "Pretrial Services will obtain and present to the first appearance judge core financial information listed on the Affidavit of Indigency (AOC-CR-226) to better inform judicial determinations of ability to pay."²⁵

The Lab is conducting a statistical evaluation of the implementation and impact of the tool through June 30, 2022 and published an interim report for the period ending June 30, 2021.²⁶ So far, the Lab has found, among other findings, that the "average number of monthly detentions fell 29.40% in the post-implementation period" and that declines were "nearly identical for Black and White individuals."²⁷ Additionally, "the percent of individuals incurring any new pretrial criminal charges decreased (2.63 percentage points) after implementation of reforms" and the "percentage of cases with court non-appearances decreased from 19.91% of cases in the pre-implementation period (7496 cases) to 3.53% of cases after reforms were implemented (759 cases)."²⁸

The Lab added that the number of monthly pretrial detentions was also declining before implementation of the program and that "[s]ignificant decreases in non-traffic misdemeanor charging and increased use of citations in lieu of arrest due to implementation of the Citation Project may have resulted in a larger proportion of more serious offenses appearing before magistrates[.]" which "may have artificially deflated the impact of reforms."²⁹ (Winston-Salem, the largest city in this district, is one of the cities participating in the Citation Project, which is discussed below.)

D. *Orange County*

Orange County also adopted a new structured decision-making tool.³⁰ It is similar to the structured decision-making tools being used by Judicial Districts 2 and 21, with some variations.³¹ For instance, the tool recommends the imposition of a written promise to appear under G.S. 15A-534(a)(1), unsecured bond under subdivision (a)(2) of that section, or custody release under subdivision (a)(3) of that section for non-DWI Class 1 through 3 misdemeanors.³² Orange County also "created a new decision-making process for responding to

²³ *Bail Reform in North Carolina Judicial District 21: Evaluation Report*, (J. Smith et al., UNC School of Government, September 2021), page 1 and Appendix A, pages 47-50, available at:

<https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2021/09/JD-21-September-2021-Report-FINAL-9.20.2021.pdf>

²⁴ *Id.* at 48.

²⁵ *Id.* at 8.

²⁶ *Id.* at 1.

²⁷ *Id.* at 2.

²⁸ *Id.*

²⁹ *Id.* at 2-3.

³⁰ *Pretrial Reform in Orange County North Carolina: Evaluation Report*, (J. Smith and J. Vaske, UNC School of Government, May 2021), page 3 and Appendix A, pages 17-20, available at:

<https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2021/05/Q1-2021-Eval-Report-FINAL.pdf>

³¹ *Id.*, Appendix A at 17-20.

³² *Id.*

non-appearances in district court" through the use of a "Bench Card" form.³³ The Bench Card is a flowchart like the structured decision-making tool and asks questions regarding the circumstances of the non-appearance.³⁴ The Bench Card "was designed to encourage consideration of alternatives to orders for arrest in appropriate cases."³⁵

The Lab is conducting a statistical evaluation of the implementation and impact of the program through December 31, 2021, and published an interim report for the period ending February 28, 2021.³⁶ The Lab found, among other findings, that the "number of pretrial bookings decreased by 37.03% after implementation" of the program and there were "no statistically significant changes in length of jail stays or median number of days detained."³⁷ Professor Smith indicated that there would be another report available soon.

E. Citation Project (Winston-Salem, Wilmington, Apex, and Elizabeth City)

The police departments of Winston-Salem, Wilmington, Apex, and Elizabeth City are currently conducting the Citation Project.³⁸ The Citation Project implements a Model Policy ("Policy") that while preserving officer discretion recommends that a law enforcement officer issue a citation in lieu of arrest in misdemeanor incidents, unless (1) the law requires an arrest; (2) a citation will not reasonably assure the defendant's appearance in court, will pose a danger of injury to any person, or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses; or (3) exigent circumstances require an arrest.³⁹ The Policy is reflected in an "encounter documentation form" that law enforcement officers use to record their decision-making.⁴⁰

Exception (2), as described above, mirrors the statutory determination for imposing a secured bond set out by G.S. 15A-534(b).⁴¹ In its First Report on the Citation Project, the Lab explains the rationale for this mirroring: "The idea behind this structure is that it will promote officer efficiency by avoiding scenarios where a defendant is arrested but then immediately released by the magistrate on conditions other than secured bond because no statutory reason supports detention or imposition of a secured bond."⁴²

The Lab published its First Report in July 2021. Although this report does include some helpful metrics, many of the empirical questions that the Lab seeks to study require first linking "police and jail data to court system data[,] which at the time of the report, had not yet been released."⁴³ The Lab states that there will be future biannual reports and a final report in 2023.⁴⁴

³³ *Id.* at 7; *see also* Appendices D.1 and D.2 at 26-27.

³⁴ *Id.*, Appendices D.1 and D.2 at 26-27.

³⁵ *Id.* at 7.

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ *The Citation Project: First Report*, (J. Smith et al., UNC School of Government, July 2021), page 1, available at: <https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2021/07/Citation-Project-Report-1-Final.pdf>

³⁹ *Id.* at 7; *see also* Appendix A at 30-32.

⁴⁰ *Id.* at 10-11.

⁴¹ *Id.* at 7.

⁴² *Id.*

⁴³ *Id.* at 9.

⁴⁴ *Id.*