Orange County Bail/Bond Justice Project

An Initiative of Faith-Based Communities

Court Observation Program

Findings and Recommendations

February 2, 2020

Acknowledgements

This report would not have been possible without the hard work and dedication of the Orange County Bail/Bond Justice Court Observation Team. Since March, 2019, this team has completed court observation training, conducted daily court observation during first appearance hearings when the judge sets bail; documented how bail was set; reviewed cases files as needed; established a project database; and since May 1, entered court observation data into our database. Thank you to the current and past members of the Court Observation Team:

Kimberly Brewer Team Lead Robin Beddingfield Valerie Blettner Lewise Busch Velma Ferrell Tom Fewel Tina Hopkins Cary Keithley Carol Land Karen Long	Katie Lord Reid Morrison Ava Nackman Sue Orenstein Dale Osborne Nuvan Rathnayaka Carol Scofield Kay Singer Cathy Vinski Sue Wallace Jim Wilde

Most of these Court Observation Team are from the Project's faith community partners or other partner organizations: Barbee's Chapel Harvest Word Church; Binkley Baptist Church; Church of the Holy Family; Community Church of Chapel Hill Unitarian Universalist; First Baptist Church of Chapel Hill; Hillsborough United Church of Christ; Kehillah Synagogue; Unitarian Universalist Congregation of Hillsborough; United Church of Chapel Hill; NAACP Chapel Hill/Carrboro Branch; NAACP Northern Orange Branch; American Civil Liberties Union of NC; and Carolina Justice Policy Center.

A special thanks goes to Nuvan Rathnayaka who conducted the data analysis. Attorney Cristina Becker of the ACLU assisted in planning the data analysis, and in evaluating findings and developing recommendations for reform. Attorney Becker also assisted in developing the Orange County Bail Observation Guide and conducting court observation training.

Kimberly Brewer assisted in planning the data analysis and wrote the report. Attorney Tye Hunter, Chair, Criminal Justice Committee of the Chapel Hill-Carrboro Branch of the NAACP, and Tom Fewel reviewed and provided critical input on drafts of the report.

This Report was approved and released by the Orange County Bail/Bond Justice Board: Kimberly Brewer; Carlton Chambers; Will Elmore; Clarke French; Jeff Hall; Cary Keithley; and Richard Paddock.

Table of Contents

GLOSSARY **1**

EXECUTIVE SUMMARY **2**

DATA IN-DEPTH **9**

1. Introduction **9**

2. The Context **10**

2.1 People Who Live In Orange County 10

2.2 Our Current Pretrial Release Laws and Policy 12

3. Findings March-December, 2019 ..... **13**

3.1 Methodology 13

3.2 The Faces We See In Court 14

3.3 Pre-Arrest Conditions of Release 17

3.4 Post-Arrest Release and Conditions of Release 17

Magistrates' Decisions 18

Judges' Decisions 22

Orange County Pretrial Release Services Program 26

4. Recommendations for Reform **27**

4.1 Pre-Arrest Conditions of Release 28

4.2 Post-Arrest Release and Conditions of Release 29

4.3 Post-Release 32

5. Conclusion **33**

GLOSSARY

Bail. The money the defendant must pay to be released from jail.

Bond. A loan taken by the defendant from a bondsman to pay the bail. The defendant typically pays 10% of the total bond, an amount that is not refundable. The bondsman then pays the bail. If the defendant does not show to a court date, the bondsman has the authority to detain and arrest the individual. During the defendant's initial appearance before a magistrate and the first appearance before a judge, bail is set for the defendant. However, the term "bond" is used interchangeably with "bail" in the North Carolina General Statutes (NCGS), in Orange County proceedings and related documents.

Criminal Summons. A process based on probable cause that requires a person to appear in court to answer to a charge but does not authorize an arrest or custody. The person is simply served with the summons to court and with a date to appear. No bond is issued.

Defendant. Person accused of and charged with a crime.

Judge. The neutral arbiter of justice. District Court judges who set bail are elected officials.

Magistrate. An independent judicial officer who performs numerous duties, including setting bail at initial appearances. Magistrates are not elected, but are nominated for the office by the Clerk of Superior Court. In the state of North Carolina, magistrates do not have to be attorneys.

No Bond. The magistrate or judge does not set a money amount for the defendant to pay to be released. The person must stay in jail pretrial.

Secured Bond. The magistrate or judge sets a money bail amount that the person must pay to get out of jail. A secured bond requires that the bail or bond be paid in cash, paid with collateral on property, or paid through a non-refundable fee to a for-profit bail bonds company to post the bail. This bail or bond should be individualized to the crimes alleged and to the person's financial circumstances.

Unsecured Bond. The magistrate or judge releases the person without having to pay but sets money bail that the person will have to pay if the release conditions are violated.

Written Promise to Appear. The magistrate or judge releases the person without imposing money bail and the person promises to return to court.

EXECUTIVE SUMMARY

Today's system of bail and pretrial detention unjustly penalizes people who are unable to pay, and especially impacts people of color. Defendants are held in jail on a pretrial status, meaning they have not yet been convicted of a crime. To get out of jail, they must pay bail or post a bond, often costing hundreds or thousands of dollars.

Sitting in jail pretrial, even just one to three days, people can lose their jobs, homes, child custody, and much more, because they are not able to meet these responsibilities in jail. Studies show that people detained pretrial are much more likely to be sentenced to prison. The damage has a domino effect—and lasting impact—on people's lives.

In January, 2019, Orange County Bail/Bond Justice launched as a faith-based initiative, with two main goals: (1) Change unjust bail practices in Orange County; and (2) Provide assistance to people who cannot afford to pay their bail.

The Project acknowledges and appreciates that there are a number people, agencies, and organizations in Orange County that have worked on or are working on bail and pretrial detention reform, including reform-minded judges, law enforcement officials, elected officials, Orange County Pretrial Release Services Program, the NAACP, and others.

However, faith-community Partners believe that a missing, but important voice, is the faith community saying, "This is a moral issue that needs to be addressed." And while progress has been made in Orange County on bail reform, additional, fundamental reform is needed.

The first phase of the Orange County Bail/Bond Justice Project was to establish a court observation program. The purpose of the program is to better understand how bail is set in Orange County, including both good bail practices and practices needing reform, and to educate the community about those practices. Since early March, 2019, at least two trained Court Observation Program team members have been present nearly every court day to document how bail was set by the judge. Beginning in May, 2019, the team began entering this bail data into the Orange County Bail/Bond Justice database. Since magistrates set the initial bail soon after arrest, the team collected magistrate data as well.

This report examines the context for setting bail in Orange County, including people who live in Orange County and our current pretrial release laws and policies, the Court Observation Program's findings, and recommendations. Following is a summary of key findings and high-priority recommendations.

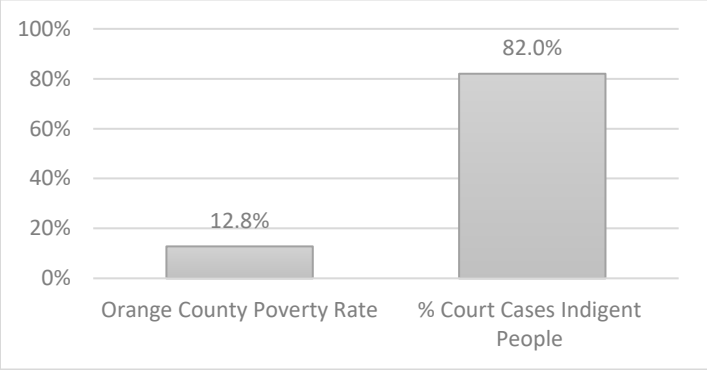
Key Findings

Orange County Pretrial Detention Challenges and Opportunities for Reform

1. According to District Pretrial Release Policy, a criminal summons (a charge that did not lead to an initial arrest) is favored over a criminal warrant, and Written Promise to Appear (release without needing to pay a bond) should be the presumptive or default bond for people with criminal charges. Moreover, NCGS §15A-534(b) stipulates a secured bond be used under limited conditions. However, contrary to this policy and law, a secured bond was required by magistrates in 72.5% of the cases (excluding cases constrained by domestic violence or Failure to Appear charges), and by judges in 45% of the cases. A criminal summons was used in only 7.2% of the cases. Written Promises to Appear were used by magistrates in a mere 17% of their cases and by judges in approximately 38% of their cases, despite it being the default bond.

2. Of all cases the team observed and documented in the First Appearance Hearings, 82% of the cases were people who are poor (could not afford to hire an attorney). This compares to a community poverty rate of approximately 13%. Only 21% of the defendants posted bail before the First Appearance Hearing with the judge. During the hearing, judges explicitly inquired about the person's ability to post bond in only a few cases. There is a two-tiered pretrial detention system in Orange County: one system for those who are poor and another system for those who are not poor.

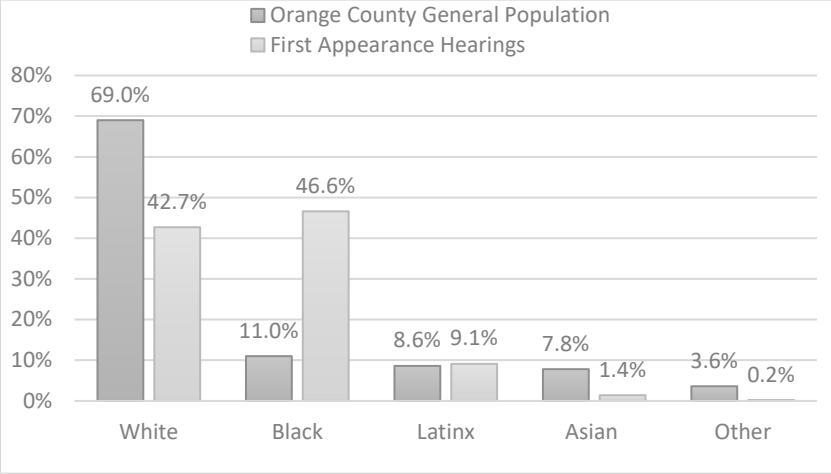
ES Figure 1. Percent Court Cases Indigent People Versus Orange County Poverty Rate



3. In Orange County, everyone who is arrested has a First Appearance Hearing before a judge regarding bail, and most have appeared before a magistrate as well. Based on observations of the population in First Appearance Hearings, there is inequity for Black members of our community compared to residents of other races. While Black residents make up 11% of our community, they make up 46.6% of the First Appearance Hearing cases observed. In contrast, Whites make up 69% of our community, and only

42.7% of the cases, and Asians make up 7.8% of our community and 1.4% of the cases. Population versus First Appearance Hearing cases is proportional for Latinx residents.

ES Figure 2. Orange County Residents Versus First Appearance Cases, by Race



4. The proportion of secured bonds required, by race, including both magistrates' and judges' decisions, followed almost the same demographic pattern as the race observed in First Appearance Hearings, seen in ES Figure 2 above. This underscores that the race disparity at the arrest/detention stage is "baked into" the following bail setting stages. The magistrates and judges do not determine who comes before them in setting bail; this is largely predetermined by the arrests.

5. The decisions by magistrates and judges (as a group) also showed racial disparities. In magistrates' decisions, White defendants received a higher rate of Written Promises to Appear than Black and Latinx defendants (20.3% compared to 14% and 16.7%, respectively), and median bail was markedly different between Whites ($2,000) and Blacks ($3,000). In judges' decisions, Whites received a secured bond at a much lower rate than Latinx (40.7% versus 59.6%) and a somewhat lower rate than Blacks (40.7% versus 45%). Whites received a Written Promise to Appear at a much higher rate than Latinx and Blacks (45% versus 23.1% and 35.9%, respectively).

6. Judges have discretion in setting bail, and use that discretion differently. There is a wide variation in the requirement for secured bonds, Written Promise to Appear, and median bail. For secured bonds, at the low end, one judge had a 31.7% rate while, at the high end, two judges had rates over 51%. For three judges, the Written Promise to Appear percentage fell within approximately 42% to 46%, with an average rate of 44.8%. One judge used Written Promises to Appear at approximately half of that rate (20.6% versus 44.8%). Another judge issued Written Promises to Appear at a higher rate (51.4% versus 44.8%). Median bail set by the judges ranged from a low of $2,500 for one judge to a high of $7,750 for another judge.

7. Even for cases that only involved misdemeanor charges, the magistrates required a secured bond in approximately 79% of the cases, again excluding cases constrained by domestic violence or a Failure to Appear charges, and judges required a secured bond in 38% of the cases. This is consistent with a UNC School of Government report looking at year 2018 data for 90 North Carolina counties. Based on that report, in 2018 Orange County ranked twenty third in the state in requiring a secured bond for cases involving misdemeanors only.

8. Although the Court Observation Program did not observe officers stopping individuals or pre-arrest conditions of release, a UNC School of Government study in 2019 of year 2018 data shows that Orange County ranks ninth in North Carolina in the issuance of citations versus arrests without warrants for cases only involving misdemeanors.

9. The Orange County Pretrial Release Services Program conducts a risk and needs assessment for everyone who is arrested and detained. The Program makes a recommendation to the judge about whether the individual should be released, and what, if any, supervision is needed (according to the risk assessment tool). The judges detained the individuals in 13.2% of these cases despite the Program's recommendation for release. These decisions varied by judges: one judge detained at one eighth of the rate of the group of judges (or 1.67%); one detained at less than one fifth the rate of the group (or 2.56 %); and one judge detained individuals at approximately twice the rate of the group (or 26%).

10. Overrepresentation in our pretrial system is not limited to people of color and the poor. A significant number of the people arrested, released, and rearrested have mental illnesses and substance use problems. Our courts and jails, along with others across the country, are being misused to respond to these medical and social problems. The lack of adequate resources for county pre-arrest and post-arrest diversion programs for people with mental health and substance use problems means these individuals are arrested and trapped in the criminal justice system.

11. Approximately 21% of the cases that we saw in court involved allegations of domestic violence. These cases are very complex, with a wide range of violence and threat reported, and sometimes cross-accusations. These cases are highly variable. Responses should be based on individual circumstances, weighing fairness in the pretrial system with safety to domestic violence victims.

12. Of the cases observed, approximately 19% involved, in part, arrests due to prior Failure to Appear in court. There are many reasons why a person might not appear in court, particularly if poor. Some people have hourly jobs with inflexible work schedules, transportation problems, childcare scarcity, family emergencies, and other issues, that when poor and living on the margin, can make getting to court very difficult. The Court Observation Team members also saw defendants' confusion about court dates. According to the ACLU, "It's of utmost importance to redefine what it means to fail to appear".

Orange County's Good Practices and Trends

1. There are a number people, agencies, and organizations in Orange County that have worked on or are working on bail and pretrial detention reform. Progress has been made and there are many progressive pretrial programs and practices in Orange County.

2. On November 27, 2018, the Senior Resident Superior Court Judge, Carl Fox, issued a new Pretrial Release Policy for Chatham and Orange Counties, substantially revising the policies for magistrates and judges in setting bail or bond (subsequently amended on March 6, 2019). This District Policy stipulates that the least restrictive alternatives for the seriousness of the offense charged is to be used at all times and (a) the Law favors criminal summons over a criminal warrant, and (b) Written Promise to Appear shall be the presumptive bond for all persons charged with a criminal offense. Based on our observations, however, these new polices are not always being followed.

3. Orange County has a strong Pre-Arrest Diversion Policy and Program, and a new Pre-Arrest Diversion Pilot Program. The Pilot Program, which began in February, 2019, provides officers the discretion to issue a citation for first offenders with certain low-level misdemeanors. More types of misdemeanor charges that can receive citations are being added to the Policy and Program. There is a diversion program for youths aged 16 and 17 with no criminal record. Also, there is a unit of social workers that help respond to certain 911 calls.

4. Based on a UNC School of Government citation study, even before the Pilot Program started, Orange County lead the top eight urban counties in North Carolina in the issuance of citations versus arrests without warrants for cases only involving misdemeanors.

5. Orange County has a First Appearance Hearing for all people who are arrested within twenty-four hours of arrest, unless the arrest occurs on the weekend. The scope of people covered and timing of the Hearing go beyond the state requirements and the practice of many jurisdictions in North Carolina.

6. Orange County Pretrial Release Services Program is one of the strongest in the state and nationally recognized. The Program has a full-time case manager, supported by mental health and substance use disorder specialist positions, and a close collaboration with other service providers. The program interviews everyone arrested and detained, then conducts a risk and needs assessment. The Case Manager makes a recommendation to the judge regarding detention versus release, and supervision. If a judge grants release to Pretrial Services, the case manager supervises compliance and provides case management support as needed. The Pretrial Release Services Program and Public Defender's Office work to get the defendant out of jail as quickly as possible.

7. A public defender is present at all First Appearance Hearings to assist the defendants. Not all jurisdictions provide such assistance from the Public Defender's Office. Although the public defender has not had a chance to interview the defendant before the hearing, he or she does receive a copy of the Pretrial Release Services Program's risk assessment and recommendations.

8. Orange County has post-arrest diversion programs, including the Orange County Outreach Court and Drug Treatment Courts (both the Family Treatment Court and Recovery Court) that help reduce Failure to Appear charges and repeat arrests and detention for people who are homeless, have substance use or mental health issues.

9. This report has 14 recommendations for needed reform. For 5 of the recommendations, the County has begun implementation or is in the planning phase, and several more are under consideration. Five of the recommendations require zero to minimal additional resources to implement.

There are doubtless other programs in Orange County contributing to a more just bail and pretrial system.

High-Priority Recommendations

This report provides 14 recommendations for reform. While all will help improve the equity and fairness of the bail/bond process in Orange County, we highlight 5 recommendations for high priority consideration. These are actions that can be taken now, with little to no additional resources, that would substantially improve the system.

For each recommendation, we have noted if additional resources are needed to implement the reform, by two categories: None (no to very minimal additional resources needed) or $ (moderate additional resources needed, such as an additional staff person). We have also indicated the current status of reform by the criminal justice system in Orange County, given our understanding to date.

1. **Individualize Conditions of Release – Ability to Pay**. According to the law, conditions of release must be individualized, including the person's financial resources. There needs to be an explicit assessment of the defendant's financial resources/ability to pay along with other individual factors when setting bail. Additional Resources Required: None. Current Status of Reform: Unknown.

2. **Clearer Policy on Use of Written Promise to Appear as the Default.** Clearer and more consistent policy and procedures need to be adopted regarding required use of Written Promise to Appear and Criminal Summons in misdemeanor, felony charges, and traffic charges. This would also include adoption of a policy**,** similar to the policy adopted by the District Attorney in Durham in 2019, that the District Attorney's Office would no longer recommend a secured bond for misdemeanors or low level felonies, with

the exception of cases involving violence. Additional Resources Required: None. Current Status of Reform: Begun efforts to implement.

3. **Adopt Stronger Citation Release Practice and Transparency**. Officers should be provided a card to carry with them detailing when citations should be used, and have training on implementation of the District's citation policy. We need to track and report statistics on citation versus arrests not requiring a warrant. Additional Resources Required: None. Current Status of Reform: Begun efforts to implement.

4. **Improve Communication on Court Date Reminders.** In 19% of the cases we observed, the arrest was due, in part, to a Failure to Appear in Court. Currently, each person arrested is signed up for a system that texts court date reminders. However, defendants are often confused about court dates, especially when there are mental health or substance use issues, when court dates are changed, or when it is unclear if the person needs to be in court for a proceeding. Additional Resources Required: $. Current Status of Reform: Under consideration.

5. **Additional Pretrial Release Services Program Case Management Support.** When a judge grants release with Pretrial Release Services Program supervision, the Program monitors compliance with the conditions of release. The Program needs additional case management support in this period after the defendant has been released, particularly for cases involving mental health and substance use issues and domestic violence charges. Additional Resources Required: $. Current Status of Reform: Under consideration.

DATA IN-DEPTH

1. Introduction

Today's system of bail and pretrial detention unjustly penalizes people who are unable to pay, and especially impacts people of color. Defendants are held in jail on a pretrial status, meaning they have not yet been convicted of a crime. To get out of jail, they must pay bail or post a bond, often costing hundreds or thousands of dollars.

In response to these bail practices, Binkley Church launched a faith-based initiative in January, 2019, the Orange County Bail/Bond Justice Project, with two main goals:

1. Change unjust bail practices in Orange County; and

2. Provide assistance to people who cannot afford to pay their bail.

Eight other faith communities in Orange County have signed on as Project Partners to date, as well as a number of justice organizations. For a full list of Partners, see https://ocbailbondjustice.org/project-partners/. The Partners have formed a certified non-profit, Orange County Bail/Bond Justice.

The Orange County Bail/Bond Justice Project began in two phases. The first phase was to develop a Court Observation Program to better understand how bail is being set in Orange County and which practices need reform. The program conducted two court observation training sessions, and currently has 16 regular, trained court observers and database managers. Participants conducted daily court observations starting in early March. At least two trained Court Observation Program team members have been present almost each court day to document how bail was set by the judge. Additionally, the team collected magistrate data. Beginning in May, 2019 the team began entering bail data into the Orange County Bail/Bond Justice database.

With the findings of our Court Observation Program, we hope to educate the community about how bail is being set and practices that need to be changed to have a more just pretrial release system. The following sections provide the important community and legal context for better understanding the court observation data, our Court Observation Program findings March through Mid-December 2019, and recommendations for reform.

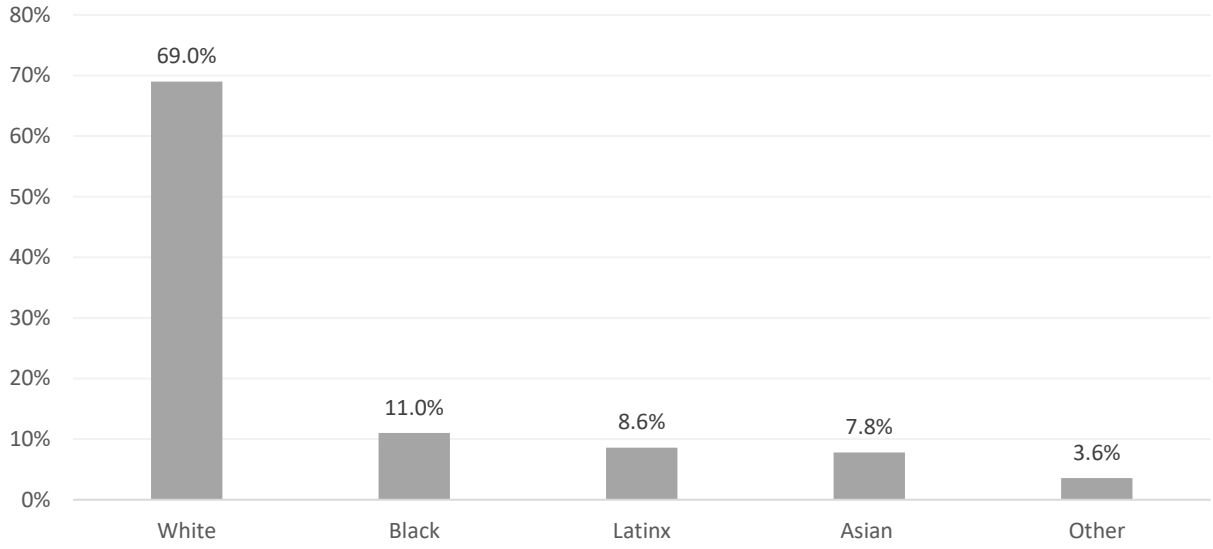
2. The Context

As you review the findings of our Court Observation Program, it is important to know the larger context: key characteristics of people who live in Orange County, and current law and policy regarding pretrial release.

2.1 People Who Live In Orange County

Sixty-nine percent of the people who live in Orange County are White. People of color include Black (11%), Latinx (8.6%), and Asian (7.8%) members of our community (Figure 1). This race/ethnicity pattern also holds true for the share of population age 18 and over (Table 1). This adult population pattern is particularly important to bear in mind in the context of who appears in court. Note that "Hispanic" is the Census designation; however, in this report we use the designation "Latinx".

Figure 1. Share of Total Population by Race/Ethnicity



Source: 2018 ACS 1-year estimates

Table 1. Share of Total Population by Race/Ethnicity 18 and Over

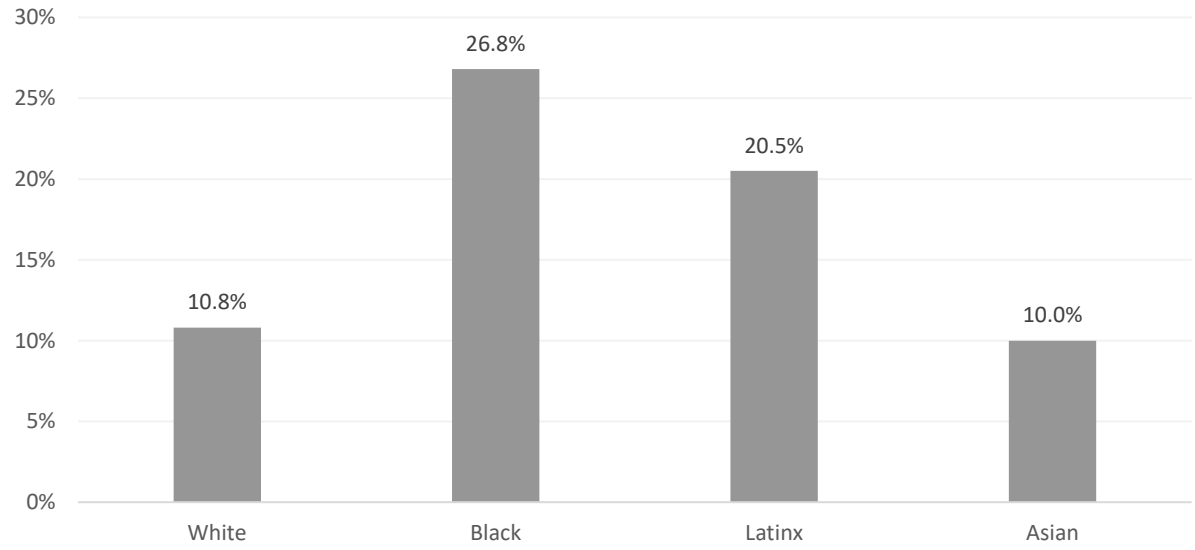
Race/ethnicity	Share of population 18 and over
White	71.8%
Black	11.7%
Latinx	6.7%
Asian	7.7%
Other	2.1%

Source: 2018 ACS 1-year estimates

Orange County is a wealthy community, with a median household income of $72,563. This is higher than the state median household income of $53,855, and the national median of $61,937. In reality, this is a low estimate of income in Orange County as it includes off-campus student households, which tend to have lower incomes.

The estimated overall poverty rate for individuals in our community is 12.8%. Figure 2 shows the individual poverty rate by race/ethnicity, with Black and Latinx residents having the highest rate of poverty (26.8% and 20.5%, respectively). Similar to estimates of income, the presence of a large number of students in Orange County skews the poverty data, moving the individual poverty rate upward.

Figure 2. Poverty Rate by Race/Ethnicity



Source: 2018 ACS 1-year estimates (except Hispanic from 2017 ACS 5-year estimates)

2.2 Our Current Pretrial Release Laws and Policy

On November 27, 2018, the Senior Resident Superior Court Judge, Carl Fox, issued a new Pretrial Release Policy for Chatham and Orange Counties, substantially revising the policies for magistrates and judges in setting bail or bond. The new Pretrial Release Policy was subsequently amended on March 6, 2019, particularly clarifying the procedure for use of property as bond collateral.

The new Pretrial Release Policy and Amended Policy (hereafter called the District Policy), stipulates that "bonds required for the appearance of persons charged with criminal offenses shall be either a) written promise to appear, b) secured bond, c) cash bond, d) no bond, or e) unsecured bond" (see the glossary for definitions of these bond types).

N.C. Gen. Stat. §15A-534(b) stipulates that a judicial official can only require a secured bond if the court has reason to believe that the defendant will use his or her freedom to flee, intimidate a witness, hurt someone, suborn perjury, or destroy evidence.

N.C. Gen. Stat. §15A-304(c) lists the factors that the judicial official must consider in determining which conditions of release to impose. These factors include the charges and weight of evidence, record or convictions and prior failures to appear in court, family and community ties, mental condition, employment, and the person's financial resources (or ability to pay).

The District Policy includes the following stipulations:

Pursuant to 15A-304(b) 2017, the least restrictive alternatives for the seriousness of the offense charged is to be used at all times.

a. *The Law favors criminal summons over a criminal warrant*
b. *Written Promise to Appear shall be the presumptive bond for all persons charged with a criminal offense.*

There should always be a correlation readily understandable to a reasonable person between

a. the bond, and
b. the offenses charged; and
c. the defendant's prior criminal history; and
d. assuring the appearance (in court) of the accused; and
e. the safety of, or danger to, the community.

3. Findings March-December, 2019

3.1 Methodology

From early March, 2019 through mid-December, 2019 at least two trained Court Observation Program team members were present almost every court day to document how bail was set by the judge. For each individual listed on the published daily court docket for first (bail) appearance before a judge, team members completed a Bail Court Observation Form. The form has a number of data points, including but not limited to defendant's perceived race, original bail set by magistrate, bail decision by the judge, the name of the presiding judge, whether a public defender was assigned, if arrest was due in part to a domestic violence charge or Failure to Appear in court, if the defendant was held in jail despite the Pre-trial Release Services Program's recommendation for release, and bail determinants, if expressly stated by the judge.

To complete the form, team members drew information from the published court docket, the court proceedings, and the case files, as needed. Additionally, the team collected data regarding misdemeanor charges from the published court docket. On days there was no published daily court docket, team members observed, however did not complete an observation form due to missing needed data. After each First Appearance Hearing, the observers met to compare data entries and identify questions or data gaps that needed to be resolved by obtaining information from public records. One team member performed a Quality Assurance/Quality Control check on each Court Observation Form before entry into the Project database.

Beginning in May, 2019 the team began entering bail data into the Orange County Bail/Bond Justice database. Before beginning the data analysis, the Project database was corrected removing known errors, and removing duplicate records that were perfectly matched across all variables. Where the defendant's name and case number exactly matched, but First Appearance Hearings were on different days, we kept the last entry. This data correction yielded a dataset with 983 unique Court Observation data records that we used for the data analysis. Depending on the court observation questions being assessed, for some questions it was more accurate to use all cases/records, and for other questions it was more accurate to use a subset of the cases as the universe of records being analyzed. For example, the original bail set by the magistrate is constrained by arrests due to a Failure to Appear and domestic violence; therefore, such cases were excluded from the calculations of the magistrates' decisions. The Report's summary of the data analysis states the types of cases excluded, by section.

The court observation data was analyzed using R Code analysis and Excel Pivot Table analysis, as cross checks. A sensitivity analysis was performed (1) using all records and (2) excluding all people who appeared in court more than once. Based on the sensitivity analysis, the data correction did not bias the

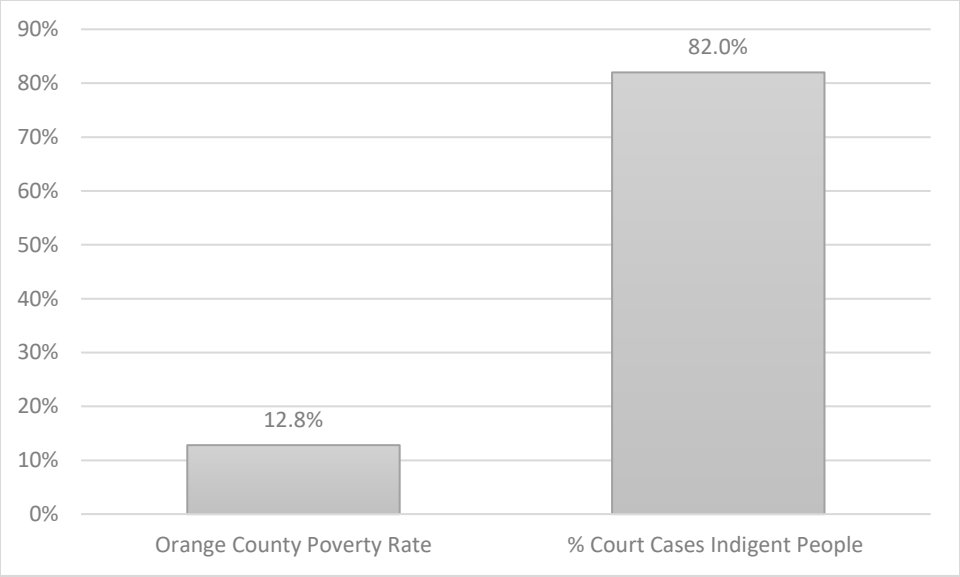
results. Finally, an independent peer review was conducted of the data analysis. The purpose of this observational data analysis was to provide summary statistics regarding how bail is set in Orange County, based on what the volunteer Court Observation Team members recorded. The data analysis did not evaluate causation.

3.2 The Faces We See In Court

Everyone arrested in Orange County has a First Appearance Hearing to address bail before a judge, and most have had an Initial (Bail) Appearance before a magistrate. As such, there are two general parts to engaging with our bail system. The first is arrest and detention. The second is the bail decisions made by the magistrates and judges for people arrested and detained. The faces we see in court reflect the people who have been arrested and detained in Orange County, essentially the people caught in our criminal justice system.

The vast majority of people we see in court are poor. Defendants who show through their income and assets that they cannot afford to hire an attorney are classified in court as "indigent", and thus poor. Of all cases the team observed and documented in the First Appearance Hearings, 82% of the cases were people who are poor. This compares to a community poverty rate of approximately 13% (Figure 3). There are some people above the poverty rate who may be declared indigent by the court, depending on a number of variables. While the formulae are not exactly the same, we use the indigency rate and individual poverty rate as indicators of the poor in Orange County.

Figure 3. Percent Court Cases Indigent People Versus Orange County Poverty Rate



Source Poverty Rate: 2018 ACS 1-year estimates

In our team's observation period from May to Mid-December 2019, only 21% posted bail before the First Appearance Hearing with the judge. During the hearing, judges explicitly inquired about a person's ability to post bond in only a few cases. If the defendant filed a request to be appointed a public defender, a judge would have the benefit of that data regarding income and assets. However, it is unclear how judges use that data to consider the defendant's ability to pay bail or post a bond.

There is a two-tiered pretrial detention system in Orange County: one system for those who are poor and one system for those who are not poor. This two-tiered system exists in counties across North Carolina and throughout the country.

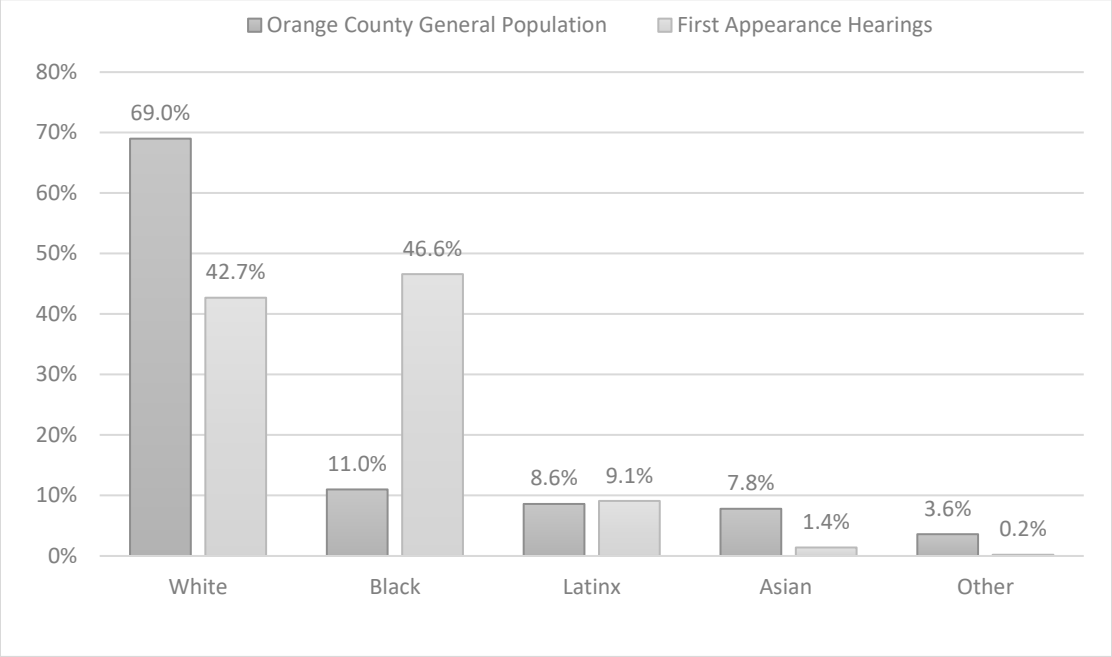
In a bail lawsuit filed in 2016 in Houston, Harris County, Texas , lawyers for indigent misdemeanor defendants sued over a two-tiered system that jailed people prior to trial if they could not pay cash bail up front, but allowed people with similar backgrounds and charges - but the ability to post bail - to resume their lives by awaiting trial at home. A federal judge found the system unconstitutional. In July, the Harris County, TX Commissioners Court approved a historic settlement to fix their bail system.

On November 12, 2019 the ACLU filed a bail lawsuit in neighboring Alamance County. The federal class-action lawsuit accuses the county's Chief District and Senior Resident Superior Court judges, magistrates and sheriff of violating three defendants' constitutional rights. The lawsuit seeks to reform a cash bail system it states discriminates against poor people who are presumed innocent, yet held in jail, while those who have money are free to go home. If the defendants' lawsuit prevails, the judgment would not initially have legal bearing on Orange County. However, if the federal judge rules the Alamance bail system unconstitutional, then other counties in North Carolina may be required to change their bail systems as well.

When looking at the people who are arrested and detained in Orange County, i.e. the people caught in our criminal justice system, there is inequity not just for the poor, but also for Black members of our community compared to residents of other races. While Black residents make up 11% of our community (11.7% for those at least age 18), they make up 46.6% of the First Appearance Hearing cases observed. In contrast, Whites make up 69% of our community, and only 42.7% of the cases, and Asians make up 7.8% of our community and 1.4% of the cases. Population versus First Appearance Hearing cases is proportional for Latinx residents (Figure 4). This excludes the cases where observers categorized race as "Unsure". The arrest and detention statistics for the First Appearance Hearings are for crimes committed in Orange County. We understand that some of the people arrested/detained do live outside the County. We also understand that there are many potential reasons why this disparity in arrest and detention for Blacks exists. The purpose of this Report is to convey the statistics based on our observations, not explain causation.

Overrepresentation is not limited to people of color and the poor. A significant number of the people arrested, released, and rearrested have mental illnesses and substance use problems. As discussed in the report, "Arrest, Release, Repeat", August 2019, our courts and jails, and others across the country, are being misused to respond to social and medical problems. See https://www.prisonpolicy.org/reports/repeatarrests.html.

Figure 4. Orange County Residents Versus First Appearance Cases, by Race



Source:Orange County Population 2018 ACS 1-year estimates

The study looked at the percentage of people arrested and booked nationally in the last year, and found that for those with only one arrest, 22% had serious to moderate mental illness, 27% had serious psychological distress, and 36% had a substance use disorder. For those arrested two or more times last year, over half (52%) reported a substance use disorder (compared to 7% of the population not arrested), and were three times more likely to have a serious mental illness (25% versus 9% for people not arrested).

The police, courts, and jails are used to respond to these problems, although the people with multiple arrests and serious mental health issues had low rates of violence. Even a few days in jail can greatly impact people with mental health and medical needs, as they are cut off from medication, have added mental distress, and can have substance use withdrawal.

Finally, 20.6% of the cases that we saw in court involved allegations of domestic violence. These cases are very complex, with a wide range of violence and threat reported, and sometimes cross accusations.

These cases are highly variable. Responses should be based on individual circumstances, weighing fairness in the pretrial system with safety to domestic violence victims.

3.3 Pre-Arrest Conditions of Release

Although the Court Observation Program did not observe officers stopping individuals or pre-arrest conditions of release, team members did see the results in their court observations: a high number of people who are arrested are also detained pretrial.

The number of people detained pretrial would have been higher if not for good policies and programs in place to help divert people from the criminal justice system. Orange County has a strong Pre-Arrest Diversion Policy and Program, and a new Pre-Arrest Diversion Pilot Program. The Pilot Program, which began in February, 2019, provides officers the discretion to issue a citation for first offenders with certain low-level misdemeanors. More types of misdemeanor charges that can receive citations are being added to the Policy and Program. There is a diversion program for youths aged 16 and 17 with no criminal record. Also, there is a unit of social workers that help respond to certain 911 calls. According to a UNC School of Government citation study, even before the Pilot Program started, Orange County lead the top eight urban counties in North Carolina in the issuance of citations versus arrests without warrants for cases only involving misdemeanors. Overall, Orange County's citation rate, 92.4%, ranked ninth in the state. See https://cjil.sog.unc.edu/files/2019/09/Prevalence-of-Citation-Use-in-North-Carolina.pdf. How different races benefit in Orange County from the current issuance of citations is unknown.

In some counties, officers carry cards listing charges that should receive a citation, helping to implement local policy. In some places like New Jersey, people charged with only misdemeanors are issued citations rather than arrested and requiring bail. Those with citations still appear as required in court. See https://www.pretrial.org/what-the-new-jersey-report-shows-us. This type of program not only reduces the number of people caught up in the criminal justice system, it helps take potential discrimination by race out of the citation equation.

The lack of adequate resources for the County pre-arrest diversion program for people with mental health and substance use problems means these individuals are arrested and caught in the criminal justice system instead of addressing the health issues which landed them there.

3.4 Post-Arrest Release and Conditions of Release

After an individual is arrested, booked, and charged, the defendant has an "Initial Appearance" before the magistrate, typically within several hours of arrest. These are not open, public proceedings. The only people present are the arresting officer, the arrested individual, and the magistrate. The magistrate can (1) release the defendant without bail on a Written Promise to Appear in court or an unsecured bond;

(2) set secured bail, which the defendant must pay or go to jail; or (3) deny bail so the defendant must go to jail.

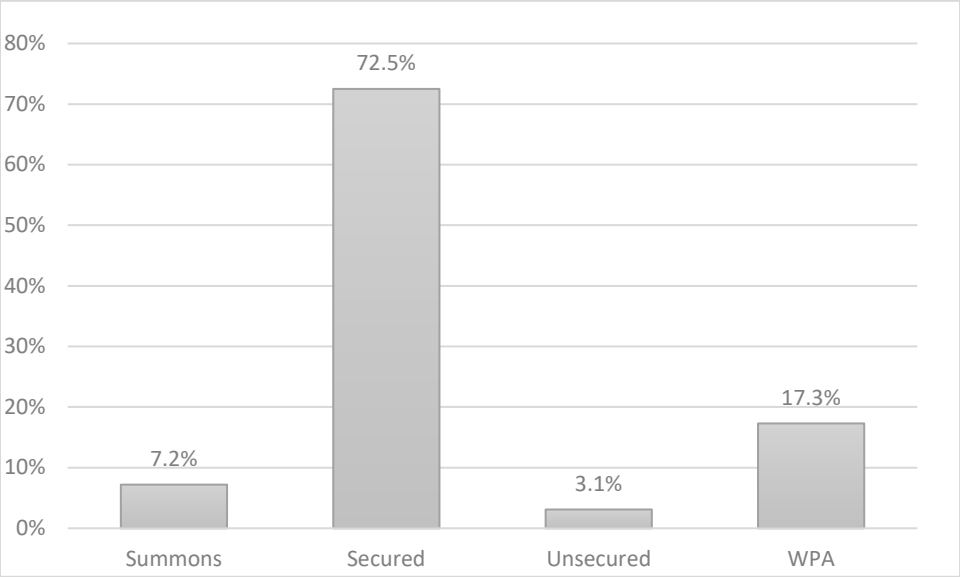
Typically within twenty-four hours, and always within several days of being seen by the magistrate, the defendant has a "First Appearance Hearing" before a District Court judge. The judge reviews the recommended bail/bond set by the magistrate as well as recommendations from the Orange County Pretrial Release Services Program (see more about this Program below). Again, the defendant can afford bail, not afford bail, or is denied bail. If detained, the defendant may wait in jail for one to two days, months, or years between the First Appearance and his or her trial.

Magistrates' Decisions

There are certain types of cases where magistrates are constrained in their decision to release or detain an individual, and the specific amount of bail/bond to require. In cases of domestic violence, if an individual is arrested, and it is less than forty-eight hours until the next available First Appearance Hearing, the magistrate does not set bail. The person must be detained without the possibility of bail until the Hearing with the judge. If an individual is stopped and has an outstanding Failure to Appear in court charge, according to state law, the individual must be detained and the magistrate must double the bond. Since magistrates are constrained in these types of domestic violence and Failure to Appear decisions, we have subtracted such cases from the magistrate calculations below. In addition, in some cases an individual arrested in Orange County had a bond from a different county on another charge, and the magistrate was required to place that same bond requirement on the individual. The Team had no way to account for these latter cases; therefore, they were included in the calculations. Finally, where we report by race, we have excluded those cases where the Court Observer categorized the perceived race as "Unsure."

From May through Mid-December, Criminal Summons was used in approximately 7% of the cases. In setting bail, the magistrates released the individuals to go home to await trial in 20% of the cases (17.3% Written Promise to Appear and 3.1% unsecured bond). The District Policy says that Written Promise to Appear shall be the presumptive bond. Secured bond was required in 72.5% of the bail decisions (Figure 5). No meaningful or discernable pattern could be seen in looking at monthly data from May to December.

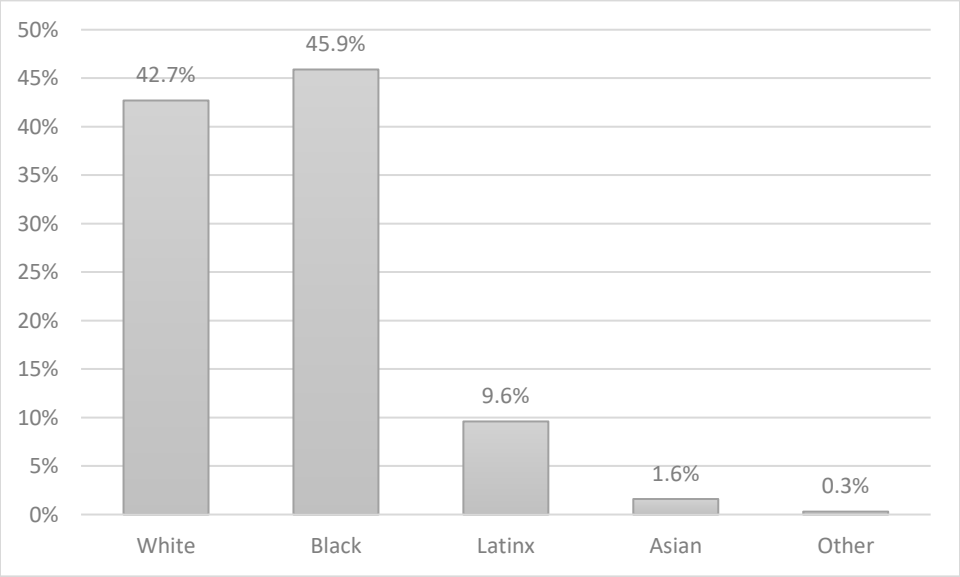
Figure 5. Magistrates' Decisions



N count: Criminal Summons 42; Secured Bond 424; Unsecured Bond 18; WPA 101.

The proportion of secured bonds required, by race, followed almost the same race pattern as that for the race observed in all First Appearance Hearings. (Figure 6). This underscores that the race disparity at the arrest/detention stage is "baked into" the following bail setting stages. The magistrates and judges do not determine who comes before them in setting bail; this is largely predetermined by the arrests.

Figure 6. Pretrial Detention/Secured Bond, by Race, Excluding Arrest for Domestic Violence and Failure to Appear



N count: Asian 6, Black 177, Latinx 37, Other 1, White 165.

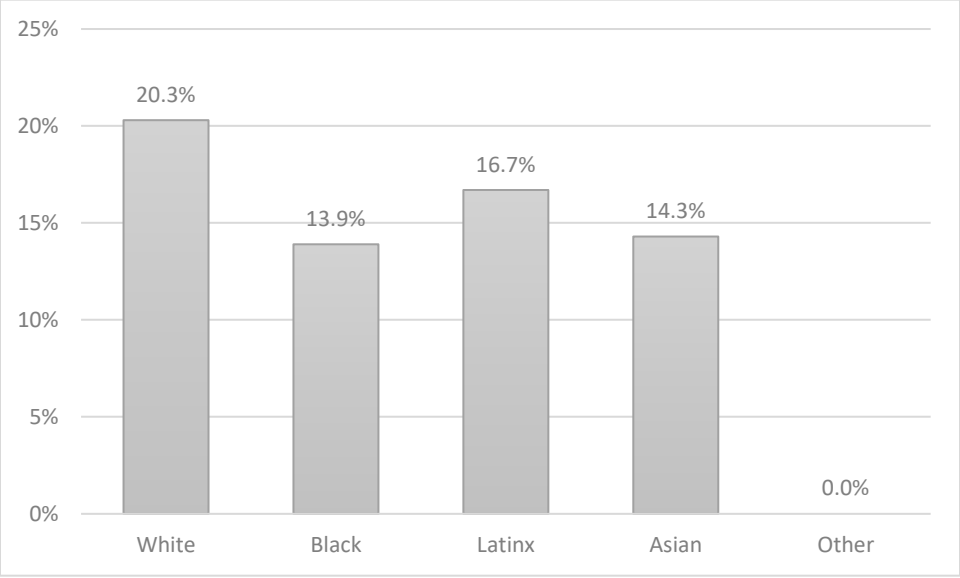
Another way to ask this question about bail decisions and race is, "Of those defendants who were Black (or White), what percent received a secured bond versus a Written Promise to Appear? Table 2 provides the answer to this question, with a breakdown, by race, of the magistrates' decisions. The number of cases is noted by "N".

Table 2. By Race, Breakdown of Magistrates'' Decisions

	Asian		Black		Latinx		Other		White		Total	
Decision	%	N	%	N	%	N	%	N	%	N	%	N
Summons	0.0%	0	10.7%	26	2.0%	1	0.0%	0	4.8%	11	7.2%	38
Secured	85.7%	6	72.5%	177	77.1%	37	100%	1	72.7%	165	73.2%	386
Unsecured	0.0%	0	2.9%	7	4.2%	2	0.0%	0	2.2%	5	2.7%	14
WPA	14.3%	1	13.9%	34	16.7%	8	0.0%	0	20.3%	46	16.9%	89
Total	100%	7	100%	244	100%	48	100%	1	100%	227	100%	527

As indicated in Table 2, for magistrates, there is no evidence of racial disparity in the requirement of secured bonds. (The small number of Asian defendants skewed the percentage for that race.) However, White defendants received a higher rate of Written Promises to Appear than Black and Latinx defendants (20.3% compared to 14% and 16.7%, respectively). See Figure 7.

Figure 7. By Race, What Percentage of Defendants Received a WPA



N count: Asian 7, Black 244, Latinx 48, Other 1, White 227.

The median bail set by magistrates also differed significantly between Whites ($2,000) and Blacks ($3,000). The median bail set by magistrates was $2,500. There were only seven cases where the magistrate set bail for Asians, resulting in a very high median of $15,000 (Table 3).

Table 3. Magistrate Median Bail, by Race

Race/ethnicity	Median Bail
White	$2,000
Black	$3,000
Latinx	$2,500
Asian	$15,000
Other	$2,000

N count: Asian 7; Black 244; Latinx 48; Other 1; White 227.

For cases involving misdemeanors charges only, the magistrates required a secured bail/bond in approximately 79% of the cases, again excluding cases constrained by domestic violence or Failure to Appear charges. In 75.8% of these cases, just one or two misdemeanor charges drew a secured bond requirement (47% for a one misdemeanor charge and 28.7% for two misdemeanor charges).

Although we subtracted cases involving arrest and detention due to a prior Failure to Appear from the above percentage, these cases are important to address because of the role they play in the unfairness of arrests and detention pretrial. Based on the reading of charges by the District Attorney's Office during court observation, of the cases observed and documented, 19% involved, in part, arrest due to prior Failure to Appear in court. This despite the fact that defendants are signed up by the magistrate and Pretrial Release Services Program for a court date text reminder service. There are many reasons why a person might not appear in court, particularly if poor. Some people have hourly jobs with inflexible work schedules, transportation problems, childcare problems, getting children to school, family emergencies, and other issues, that when poor and living on the margin, can make getting to court very difficult. The Court Observation Team members also saw defendants' confusion about court dates, especially when there were mental health or substance use issues, when court dates were changed or an erroneous court date was sent, or it was unclear if the person needed to be in court for a proceeding. Additionally, for those enduring financial and other daily crises, it is understandable why they would simply forget court dates.

Once a Failure to Appear charge is issued, if, or when, the person is arrested, either for the prior charge or a new charge, the magistrate is required by law to detain the individual and double the amount of the bond associated with the Failure to Appear. If the person can afford to post this bail or bond, he or she

can go home to await trial. As discussed in the ACLU blog, Rethinking the Concept of Bail, 2017, the Failure to Appear system, "leads to a disproportionate and unjust number of low-income people receiving more stringent conditions to bail and higher money bonds". It concludes, "As bail reforms continues and the criminal justice system is forced to reflect critically on how it operates and the injustice it creates, it's of utmost importance to redefine what it means to fail to appear". See https://www.acluohio.org/archives/blog-posts/rethinking-the-concept-of-failure-to-appear.

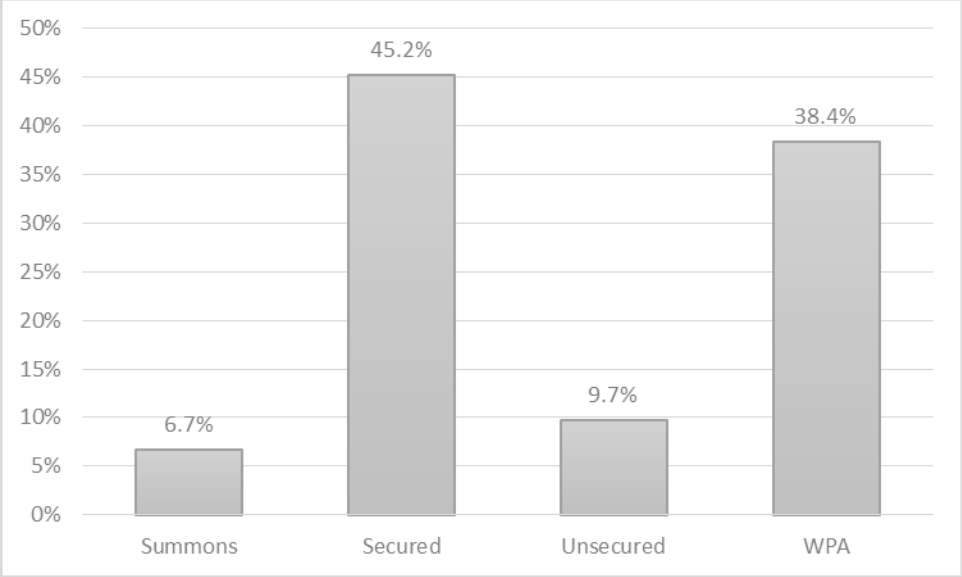
Judges' Decisions

Note that for a number of cases listed on the published First Appearance Hearing court docket, the judge was not able to make a decision regarding bail because the individual was in custody in another jurisdiction, in the hospital, or some similar reason. We subtracted these cases from our calculations regarding judges' decisions so as to not skew the data. We also subtracted the cases where defendants had posted bail before the First Appearance Hearing. Where we report by race, we have excluded those cases where the court observer categorized the perceived race as "Unsure."

For the cases May-December, 2019, only 21% posted bail before the First Appearance Hearing with the judge. During the hearing, in only a few cases did the judge inquire about the person's ability to post bail or bond. Again, it is unclear how judges used the data from the application for a public defender to weigh the defendant's ability to pay bail or post a bond. There is no explicit ability to pay assessment.

In bail decisions, judges released the individuals to go home to await trial in 48.1% of cases (38.4% Written Promises to Appear and 9.7% unsecured bond). The District Policy states that Written Promises to Appear shall be the presumptive bond, and "unsecured bonds are strongly discouraged". A secured bond was required in approximately 45% of the judges decisions (Figure 8.). As with the magistrates, no meaningful or discernable pattern could be seen in looking at monthly data from May to December. In the court observation period March-April, anecdotally, the Court Observation Team discussed seeing fewer Written Promises to Appear issued than during the Program's May-December data entry period.

Figure 8. Judges Decisions



N Count: Criminal Summons 40; Secured Bond 270; Unsecured Bond 58; WPA 229.

Again, the proportion of secured bonds required, by race, followed almost the same race proportion/pattern as that for all First Appearance observations. Table 4 shows the by race breakdown of the judges' decisions, answering the question, "Of those who are a certain race, what percent received a secured bond versus a Written Promise to Appear or other bail decision?"

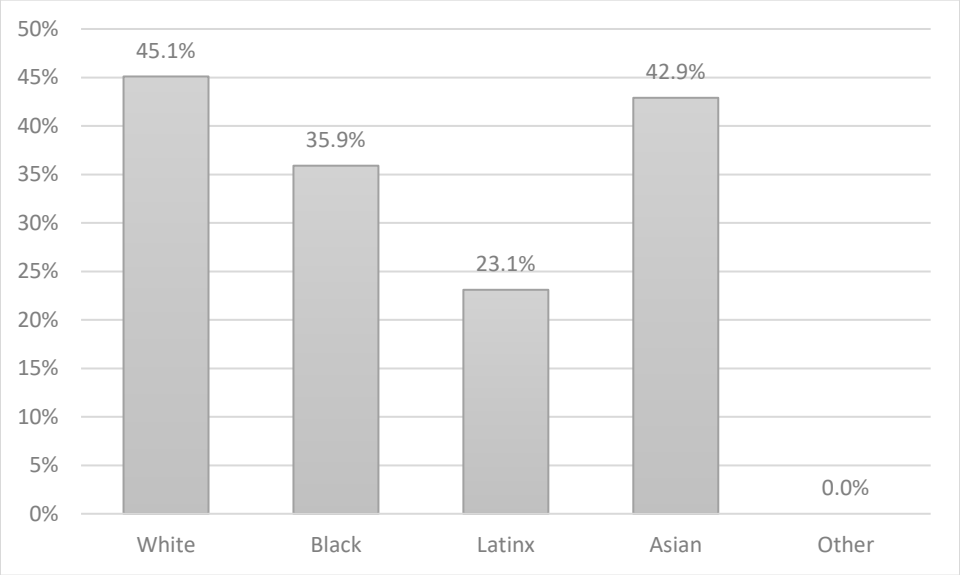
Table 4. By Race Breakdown of Judges' Decisions

	Asian		Black		Latinx		Other		White		Total	
Decision	%	N	%	N	%	N	%	N	%	N	%	N
Summons	0.0%	0	10.3%	27	1.9%	1	0.0%	0	4.4%	11	6.8%	39
Secured	42.8%	3	45.0%	118	59.6%	31	100%	2	40.7%	103	44.6%	257
Unsecured	14.3%	1	8.8%	23	15.4%	8	0.0%	0	9.9%	25	9.9%	57
WPA	42.9%	3	35.9%	94	23.1%	12	0.0%	0	45.0%	114	38.7%	223
Total	100%	7	100%	262	100%	52	100%	2	100%	253	100%	576

Whites received a secured bond at a much lower rate than Latinx (40.7% versus 59.6%) and a somewhat lower rate than Blacks (40.7% versus 45%). Whites received a Written Promise to Appear at a much

higher rate than Latinx and Blacks (45% versus 23.1% and 35.9%, respectively, Figure 9). Conversely, Latinx received a significantly lower median bail compared to other races ($3,000 versus $5,000).

Figure 9. By Race, What Percentage of Defendants Received a Written Promise to Appear



N Count: Asian 7; Black 262; Latinx 52; Other 2; White 253.

Judges have discretion in setting bail, and use that discretion differently. Table 5 shows the percentages of Criminal Summons, unsecured bond, Written Promise to Appear, and secured bond, by the different District Court Judges. There is a wide variation in the requirement for secured bonds. From a low of 31.7% (Judge Cabe) to two judges with a high of over 51% (Judge Murrell and Judge Scarlett). For three judges, the Written Promise to Appear percentage fell within approximately 42% to 46% (Judges Bucker, Cabe, and Murrell), with an average rate of 44.8%. Judge Scarlett used Written Promises to Appear at approximately half of that rate (20.6% versus 44.8%). Judge Long issued Written Promises to Appear at a much higher rate (51.4%). Judge Scarlett and Judge Cabe used a higher percentage of unsecured bonds (21.7% and 10.8%, respectively); however, the District Policy says that, “unsecured bonds are strongly discouraged”. Median bail set by the judges also differed markedly, from a low of $2,500 (Judge Cabe) to a high of $7,750 (Judge Murrell). See Table 6.

Table 5. Decisions, By Judge

	Buckner		Cabe		Long		Murrell		Scarlett		Total	
Decision	%	N	%	N	%	N	%	N	%	N	%	N
Summons	6.6%	7	11.7%	14	2.9%	2	5.5%	7	5.9%	10	6.8%	40
Secured	44.3%	47	31.7%	38	41.4%	29	51.2%	65	51.8%	88	45.0%	267
Unsecured	2.8%	3	10.8%	13	4.3%	3	0.8%	1	21.7%	37	9.6%	57
WPA	46.3%	49	45.8%	55	51.4%	36	42.5%	54	20.6%	35	38.6%	229
Total	100%	106	100%	120	100%	70	100%	127	100%	170	100%	593

Table 6. Median Bail, by Judge

Judge	Median Bail
Buckner	$5,500
Cabe	$2,500
Long	$4,500
Murrell	$7,750
Scarlett	$5,000

N count: Judge Buckner 122; Judge Cabe 130 ; Judge Long 81; Judge Murrell 146; and Judge Scarlett 180.

For cases involving misdemeanors charges only, the judges required a secured bail/bond in 38% of the cases. In 70% of these cases, just one or two misdemeanor charges drew a secured bond requirement (42.2% of the cases for a one misdemeanor charge and 27.5% of the cases for two misdemeanor charges). As noted above, the magistrates required a secured bail/bond in approximately 79% of the cases involving only misdemeanors.

According to a UNC School of Government Report titled "How Big a Role Does Money play in North Carolina Bail System" (July, 2019), in 2018 Orange County required a secured bond for 64% of cases involving misdemeanors only. This ranks twenty third compared to other North Carolina counties. By comparison, Mecklenburg County, where the City of Charlotte is located, required a secured bond for 41.8% of misdemeanor only cases. See https://nccriminallaw.sog.unc.edu/how-big-a-role-does-money-play-in-north-carolinas-bail-system/.

This study used a different dataset than the Court Observation Program, different methods, and did not distinguish between the actions of magistrates versus judges in setting bail. Therefore, we cannot draw

a comparison in our data. The study does help underscore that Orange County's use of secured bonds for charges only involving misdemeanors is a pretrial practice that needs to be addressed.

Sometimes a judge will ask the presiding attorney from the District Attorney's Office if they have a comment or recommendation regarding the bond needed. In most cases when making a recommendation, the District Attorney's office has recommended a secured bond/bail. In 2019, the Durham County District Attorney issued a new policy that its office would not request a secured bond for misdemeanor and low-level felony charges, except in cases of domestic violence. Orange County does not have such a policy.

Orange County Pretrial Release Services Program

Orange County has a strong Pretrial Release Services Program. Fully funded by Orange County and operational as a county program in the Criminal Justice Resource Department since 2015, the Program has a full-time case manager, supported by mental health and substance use disorder specialist positions, and a close collaboration with other service providers. The duties of the case manager include meeting with each newly detained individual prior to the First Appearance Hearing; compiling/verifying personalized information about the individual such as employment, ties to community, housing, mental health, etc.; contacting family or friends to be present at First Appearance, if possible; and completing a risk/needs assessment with a validated risk assessment tool.

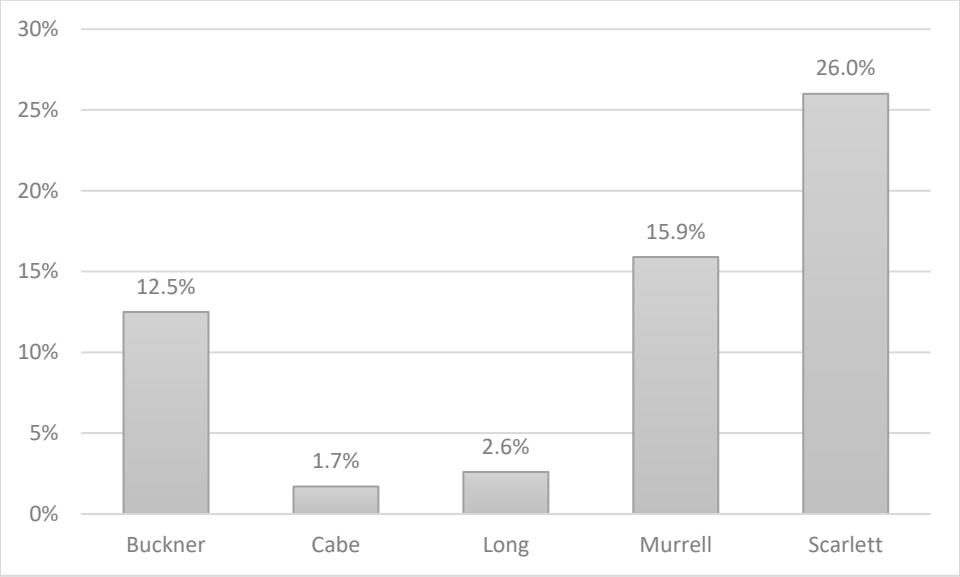
Based on the risk and needs assessment, the case manager makes a recommendation to the judge as to whether the individual should be released, and what, if any, type of supervision is suggested by the tool. Additionally, the case manager shares information in advance with the First Appearance judge, public defender, and district attorney. If a judge grants release to Pretrial Services, the case manager supervises compliance and provides case management support as needed. A public defender and district attorney are present at all First Appearance Hearings, which are held at 2:00 pm each day of the week for all new detainees, regardless of the type of charge. All jurisdictions do not provide such assistance from the Public Defender's Office. This scope of services makes the Orange County Pretrial Release Services Program one of the strongest in the state, and a national leader.

The Orange County Pretrial Release Services Risk Assessment tool is the Virginia Pretrial Risk Assessment Instrument Revised (VPRAI-R). It is a nationally validated tool and incorporates eight risk factors that estimate, to the extent this is possible, the likelihood that an individual will return to court or pose a risk to the community. This tool is used in conjunction with a needs assessment and all additional information that supports an individual's release. Ability to pay is not addressed in the Risk Assessment tool.

The judges detained the individuals in 13.2% of these cases despite the Program's recommendation for release. These decisions by judges varied: Judge Cabe detained at one eighth of the rate of the group (or

1.67%); Judge Long detained at one fifth the rate of the group (or 2.56 %); and Judge Scarlett detained individuals at approximately twice the rate of the group (or 26%). See Figure 10. In the judges' decisions, there were a number of instances where the Program did not file a recommendation due to lack of jurisdiction or other reason. In order to not skew the data, in our calculations above we only included cases where team members heard the recommendation in the First Appearance Hearing, or were able to identify a Pretrial Release Services Program recommendation in the case file.

Figure 10. Detention Despite Pretrial Release Recommendation for Release, by Judge



N count: Buckner 48; Cabe 60; Long 39; Murrell 69; Scarlett 77.

Pretrial release is not only a more just outcome for the defendant, a number of studies have shown that pretrial release does not increase the incidence of failure to appear in court or criminal activity, including Mecklenburg County. See https://nccriminallaw.sog.unc.edu/study-mecklenburg-countys-bail-reforms-lead-to-increased-release-rates-but-no-significant-increase-in-ftas-or-new-criminal-activity/.

4. Recommendations for Reform

Following are recommendations for reform for the pre-arrest conditions of release; post-arrest release and conditions of release, and the period following release of the defendant. Based on the findings of pretrial detention issues in Orange County that were identified in this Report, recommendations were developed drawing from best practices in the Pretrial Justice Institute Scan of Pretrial Practices, 2019; from the NAACP Forum "Criminal Justice Reform in Orange County: Where Do We Go From Here", held

December 14, 2019; and from practices in other counties in North Carolina. Two Project partner attorneys experienced in criminal justice reform commented on and helped refine the recommendations. For each recommendation, we have noted the responsible party for the recommended reform.

For each recommendation, we highlight current reform work underway, given our understanding to-date. An Orange County Pretrial Stakeholder Work Group is currently considering a range of potential future pretrial reforms, and actively working on some of those reforms. This short-term work group was formed to look at recommendations developed following a Pretrial Justice Institute Conference in summer 2019 and to address funding needs. The Pretrial Work Group reviewed draft preliminary recommendations for this report to note the status of each recommended reform, to the best of their knowledge. The Work Group stressed that the remaining pretrial issues in Orange County are difficult and complex, that many agencies and groups are currently working on the issues, and that these groups need to be involved in assessing and developing recommendations.

For each recommendation, we have also noted if additional resources are needed to implement the reform, by four categories: None (no to very minimal additional resources needed); $ (moderate additional resources needed, such as an additional staff person); $$ (multiple staff people); and $$$ (higher additional resources needed such as facilities, or significant additional time for staff and judges).

4.1 Pre-Arrest Conditions of Release

1. **Continue Bias and Anti-Racism Reporting and Training.** We need to continue bias and anti-racism training for court officials and law enforcement officers.

   Responsible Party: Senior Resident Superior Court Judge, Police Chiefs and Sheriff

   Current Status of Reform: Currently being implemented. The Racial Equity Institute training, or similar training, is attended by the Criminal Justice Resources Department staff and many other court and law enforcement stakeholders. We recommend even higher participation in the training.

   Additional Resources Required: $

2. **Adopt Stronger Citation Release Practice and Transparency**. Officers should be provided a card to carry with them detailing when citations should be used, and have training on implementation of the District's citation policy. We need to track and report statistics on citation versus arrests not requiring a warrant. This should also include review and revision of our local ordinance laws to address charges and arrests that particularly impact poor people, such as begging. Although we lead urban counties in use of citations in misdemeanor only charges, we rank ninth overall in the state.

Responsible Party: Police Chiefs and Sheriff

Current Status of Reform: Begun implementation. The Orange County Pretrial Stakeholder Work Group indicated that Jessica Smith, of the UNC School of Government, ranks the Pretrial Release Policies for Citations District 18 (Orange and Chatham Counties) the strongest in the state in terms of requiring citations in lieu of arrest. Agencies need to train officers and provide them with cards that help them implement the policy. The Sheriff and Police Departments collect citation data by race. The Chapel Hill Police Department issues an annual report. Other jurisdictions should issue an annual report as well.

Additional Resources Required: None.

3. **Increase Funding and Reinstate State Funding for Pre-Arrest Diversion Programs for Mental Health and Substance Use Community Services**. We need more capacity to assess and treat people who have mental illness or substance use issues, diverting them from the criminal justice system before arrest. This could include a street level social worker(s) for some downtown streets, additional social work professional(s) for pre-arrest needs assessment, intense case management, and helping people bridge homelessness to housing, a sobering facility, and mental health treatment facilities. Resources for such services were significantly cut when the state cut its funding.

   Responsible Party: LME (local behavioral health provider), Orange County Commissioners, Town Councils/Board, State General Assembly.

   Current Status of Reform: Planning for increased funding. There are many agencies and organizations working on this issue. An Orange County Pre-Arrest Diversion Program and a Behavioral Health Task Force are in place. The Diversion Program is seeking to expand to include justice-involved individuals with low level charges (such as open container violation), and people who have mental illness and substance use issues. The DA, Police Chiefs, and Sheriff all support pre-arrest diversion for the people who have mental illness.

   Additional Resources Required: $$$

4.2 Post-Arrest Release and Conditions of Release

1. **Individualize Conditions of Release – Ability to Pay**. According to the law, conditions of release must be individualized. Have an explicit assessment of the defendant's financial resources/ability to pay along with other individual factors when setting bail. In our court observations, judges rarely asked about ability to pay bail/bond, although if the defendant filed a request to be appointed a public defender, a judge would have the benefit of that data. It is unclear the degree to which magistrates consider ability to pay. However, only 21% of the defendants posted bail before the First Appearance Hearing for bail with the judge.

   Responsible Party: Senior Resident Superior Court Judge, Magistrates, Judges

   Current Status of Reform: Unknown

Additional Resources Required: None.

2. **Adopt District Attorney Policy: No Requirement for Secured Bond for Misdemeanors and Low Level Felonies, unless there are extraordinary circumstances or risks.** Similar to the policy adopted by the DA in Durham in 2019, the District Attorney's Office would no longer recommend a secured bond for misdemeanors or low level felonies, with the exception of cases involving violence.

   Responsible Party: Orange County District Attorney

   Current Status of Reform: Begun implementation. The Pretrial Stakeholder Work Group reported that the DA for Orange County has joined in the effort to formalize the District's Pretrial Policy. The efforts include new practices and training for magistrates and judges. We recommend that the DA also adopt a policy regarding the District Attorney's Office recommendations in court regarding use of secured bonds.

   Additional Resources Required: None.

3. **Clearer Policy on Use of Written Promise to Appear as the Default.** Criminal Summonses and Written Promises to Appear are not being used as directed by District Policy. Clearer and more consistent policy and procedures need to be adopted regarding required use of Written Promise to Appear and Criminal Summons in misdemeanor, felony charges, and traffic charges.

   Responsible Party: Senior Resident Superior Court Judge

   Current Status of Reform: Begun implementation. See current status of reform for #2 above.

   Additional Resources Required: None.

4. **Have a Public Defender at the Initial Appearance before the Magistrate.** The Initial Appearance is not an open, public proceeding. Currently, the only people present are the arresting officer, the arrested individual, and the magistrate. A public defender can help ensure that the person arrested receives due process.

   Responsible Party: Orange County District Attorney

   Current Status of Reform: Not under consideration.

   Additional Resources Required: $$.

5. **Add Pretrial Service Support in Magistrate's Initial Appearance.** Add an additional Pretrial Release Case Manager position who would work with magistrates, and with domestic violence case intakes and supervision.

Responsible Party: Orange County Commissioners

Current Status of Reform: Under consideration.

Additional Resources Required: $.

6. **Discuss/Vet Pretrial Release Services Program Recommendations.** The Program's risk and needs assessment and recommendation for release consider the factors required by state law and District policy. As a point of good practices and court accessibility, in First Appearance Hearings, the judges should clearly state the Pretrial Release Program recommendation, and if not releasing the individual as recommended, the reason(s) why detention is needed. Mecklenburg County was able to significantly reduce detention in part due to its Pretrial Release Program risk assessment.

   Responsible Party: Senior Resident Superior Court Judge

   Current Status of Reform: Not under consideration.

   Additional Resources Required: None.

7. **Increase Funding for Post-Arrest Diversion Programs for Mental Health and Substance Use Community Services.** We need a higher capacity to assess and treat people who have mental illness or substance use issues after they have been arrested. This is similar to issues and needs highlighted in 4.1.3 above. Rearrest due to parole and probation violations can also be triggered by mental health and substance use issues, and lack of money to meet parole/probation requirements.

   Responsible Party: LME (local behavioral health provider), Orange County Commissioners, Town Councils/Board, State General Assembly

   Current Status of Reform: There are a number of agencies and organizations working on this issue. The Orange County Outreach Court and Drug Treatment Courts (both the Family Treatment Court and Recovery Court) currently help reduce Failure to Appear charges and recycling into the criminal justice system for people who are homeless, have substance use or mental health issues.

   Additional Resources Required: $$$

4.3 Post-Release

1. **Additional Pretrial Release Services Program Case Management Support.** When a judge grants release with Pretrial Release Services Program supervision, the Program monitors compliance with the conditions of release. The Program needs additional case management support in this period after the defendant has been released, particularly for cases involving mental health and substance use issues and domestic violence charges.

   Responsible Party: Orange County Commissioners

   Current Status of Reform: Under consideration.

   Additional Resources Required: $.

2. **Improve Communication on Court Date Reminders.** In 19% of the cases we observed, the arrest was due to a Failure to Appear in Court. Currently, the magistrate signs up each person arrested with a system that texts court date reminders, and the Pretrial Release Services Program signs up each defendant that it interviews in jail. However, defendants are often confused about court dates, especially when there are mental health or substance use issues, when court dates are changed, or when it is unclear if the person needs to be in court for a proceeding.

   Responsible Party: Orange County Criminal Justice Resource Department

   Current Status of Reform: Under consideration. Attempting to research this issue.

   Additional Resources Required: $.

3. **Provide Transportation Assistance to Court.** Another reason that people fail to appear in court is lack of transportation, including not having a car, not having access to public transportation, or having car trouble.

   Responsible Party: Orange County Commissioners, Town Councils/Board, Nonprofits

   Current Status of Reform: Not under consideration

   Additional Resources Required: $.

4. **Redefine "Failure to Appear".** The Failure to Appear system leads to a disproportionate and unjust number of low-income people receiving more stringent conditions to bail and higher money bonds. We need to redefine what it means to "fail to appear".

Responsible Party: State General Assembly, District Attorney, Senior Resident Superior Court Judge

Current Status of Reform: Not under formal consideration. This will require state-wide action. However, smaller changes can be made locally. The Outreach Court and Drug Court supports reduction in the impacts of the Failure to Appear system.

Additional Resources Required: To Be Determined.

5. Conclusion

There are a number of people, agencies, and organizations in Orange County that have worked on or are working on bail and pretrial detention reform, including reform-minded judges, law enforcement officials, elected officials, Orange County Pretrial Release Services Program, the NAACP, and others. Progress has been made and there are many progressive pretrial programs and practices in Orange County.

Despite these past reforms, Orange County still has a two-tiered pretrial system: one for poor people and one for people who are not poor. This two-tiered system appears to exist largely because of inconsistent application of existing state and district guidance regarding bail and bond. Our pretrial system also disproportionately impacts Black members of our community. The inconsistent application of guidance regarding bail and bond can have significant and meaningful impacts for poor people and Black people interacting with the justice system in Orange County. Significant and fundamental reform is still needed to achieve a more just bail and pretrial system. And much of the work yet to be done is complex and difficult.

This report has 14 recommendations for needed reform. For 5 of the recommendations, the County has begun implementation or is in the planning phase, and several more are under consideration. Five of the recommendations require zero to minimal additional resources to implement. While all 14 recommendations will help improve the equity and fairness of the bail/bond process in Orange County, we highlight 5 recommendations for high priority consideration. These are actions that can be taken now, with little to no additional resources, that would substantially improve the system.

The Orange County Bail/Bond Justice Court Observation Program will continue in 2020 and beyond. We will track and report on the progress in reforms recommended.