



Bail Reform in North Carolina

JESSICA SMITH

W.R. KENAN, JR. DISTINGUISHED PROFESSOR &
DIRECTOR, CRIMINAL JUSTICE INNOVATION LAB

Why bail reform?

What we can & are doing
in NC?

Why



PRETRIAL JUSTICE REFORM FOR NORTH CAROLINA

NCCALJ COMMITTEE ON CRIMINAL INVESTIGATION & ADJUDICATION REPORT

OCTOBER 2016

The Committee unanimously recommends that the Chief Justice appoint a Pretrial Justice Study Team (Study Team) to carry out a Pilot Project to implement and assess legal- and evidence-based pretrial justice practices. As used here, the term legal- and evidence-based pretrial justice practices refers to practices that comport with the law and that are driven by research. Such practices have been endorsed by many justice system stakeholder groups, including the Conference of Chief Justices; the Conference of State Court Administrators; the International Association of Chiefs of Police; the National Sheriffs' Association; the Association of Prosecuting Attorneys; the National Legal Aid and Defenders Association; the National Association of Criminal Defense Lawyers; the National Association of Counties; and the American Bar Association. Their use has been shown to produce excellent results. With one exception, legal and evidence-based pretrial justice practices are not in place in North Carolina. Although one North Carolina jurisdiction—Mecklenburg County—has implemented some of these practices, all such practices are not in place in that jurisdiction and to date rigorous evaluation of their implementation has not been done. The Committee recommends implementing and evaluating the full range of legal- and evidence-based pretrial justice practices identified below in North Carolina through a Pilot Project in five to seven counties.

Background

After identifying pretrial justice reform as a top priority for its work, in February 2016, the Committee received an overview of how pretrial release currently works in North Carolina; heard from John Clark, senior manager, Technical Assistance, Pretrial Justice Institute (PJI) and a team of experts about current research and developments in pretrial risk assessment and risk management; and visited Mecklenburg County's experience with pretrial justice reform; and heard from Mecklenburg County's experience with the same. In the Spring of



Why

- Recommended by NCCALJ

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- Period between arrest & trial

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- Most Defs are entitled to conditions

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1. Written promise
2. Custody release
3. Unsecured bond
4. Secured Bond
5. E-monitoring + bond
6. Release to pretrial services

Why

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- Prevent FTA and rearrest

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- Period between arrest & trial
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- Local policies apply; secured bonds are common

FELONIES

Class	SUGGESTED BAIL AMOUNTS
A	Set by Judge
B1	\$200,000 - \$ 500,000
B2	\$200,000 - \$ 500,000
C	\$ 50,000 - \$ 150,000
D	\$ 50,000 - \$ 150,000
E	\$ 25,000 - \$ 50,000
F	\$ 15,000 - \$ 20,000
G	\$ 10,000 - \$15,000
H	\$ 5,000 - \$10,000
I	\$2,500 – 5,000

MISDEMEANORS/DWI

Class	Suggested Bond
A1	\$1,000 - \$2,500 (Secured Bond)
1	\$500 - \$1,000 (Secured Bond)
2	Written Promise to Appear or up to \$200
3	Written Promise to Appear or up to \$100
DWI (non-felony)	Written Promise to Appear or up to \$ 500 - \$5,000 (see the specific requirements of G. S. 15A-534.2) (See paragraph 29, Detention of Impaired Drivers)

CONDITIONS OF RELEASE REPORT, HIGHEST CHARGE MISDEMEANOR (Statewide; January 1, 2018 - December 31, 2018), UNC Criminal Justice Innc														
STATEWIDE	146,162	67.6%	145,862	67.4%	300	0.1%	61,381	28.4%	2,819	1.3%	43,540	20.1%	15,022	6.9%
COUNTY	Total Financial Count	Total Financial %	Secured Bond Count	Secured Bond %	EHA with Secured Bond Count	EHA with Secured Bond %	Total Nonfinancial Count	Total Nonfinancial %	Custody Release Count	Custody Release %	Unsecured Bond Count	Unsecured Bond %	Written Promise to Appear Count	Written Promise to Appear %
ALAMANCE	3,027	85.1%	3,027	85.1%	-	0.0%	431	12.1%	17	0.5%	254	7.1%	160	4.5%
ALEXANDER	516	74.4%	516	74.4%	-	0.0%	72	10.4%	8	1.2%	63	9.1%	1	0.1%
ALLEGHANY	155	65.1%	155	65.1%	-	0.0%	83	34.9%	-	0.0%	49	20.6%	34	14.3%
ANSON	530	56.7%	530	56.7%	-	0.0%	243	26.0%	4	0.4%	172	18.4%	67	7.2%
ASHE	525	78.7%	525	78.7%	-	0.0%	131	19.6%	2	0.3%	90	13.5%	39	5.8%
AVERY	205	58.4%	205	58.4%	-	0.0%	130	37.0%	12	3.4%	9	2.6%	109	31.1%
BEAUFORT	533	62.1%	533	62.1%	-	0.0%	191	22.3%	6	0.7%	185	21.6%	-	0.0%
BERTIE	318	82.8%	318	82.8%	-	0.0%	47	12.2%	2	0.5%	39	10.2%	6	1.6%
BLADEN	477	73.2%	477	73.2%	-	0.0%	96	14.7%	-	0.0%	93	14.3%	3	0.5%
BRUNSWICK	1,543	81.1%	1,541	81.0%	2	0.1%	336	17.7%	12	0.6%	312	16.4%	12	0.6%
BUNCOMBE	4,307	55.2%	4,307	55.2%	-	0.0%	3,481	44.6%	30	0.4%	2,072	26.6%	1,379	17.7%
BURKE	2,045	76.4%	2,045	76.4%	-	0.0%	339	12.7%	68	2.5%	35	1.3%	236	8.8%
CABARRUS	2,474	76.5%	2,474	76.5%	-	0.0%	409	12.6%	3	0.1%	72	2.2%	334	10.3%
CALDWELL	1,596	71.6%	1,591	71.3%	5	0.2%	592	26.5%	201	9.0%	160	7.2%	231	10.4%
CAMDEN	38	44.7%	38	44.7%	-	0.0%	46	54.1%	-	0.0%	45	52.9%	1	1.2%
CARTERET	934	70.1%	928	69.7%	6	0.5%	277	20.8%	14	1.1%	44	3.3%	219	16.4%
CASWELL	173	59.9%	173	59.9%	-	0.0%	113	39.1%	2	0.7%	34	11.8%	77	26.6%
CATAWBA	2,785	74.1%	2,785	74.1%	-	0.0%	738	19.6%	17	0.5%	694	18.5%	27	0.7%
CHATHAM	507	62.6%	506	62.5%	1	0.1%	292	36.0%	6	0.7%	85	10.5%	201	24.8%
CHEROKEE	527	51.8%	527	51.8%	-	0.0%	484	47.5%	8	0.8%	433	42.5%	43	4.2%
CHOWAN	206	69.6%	206	69.6%	-	0.0%	86	29.1%	1	0.3%	84	28.4%	1	0.3%
CLAY	101	57.7%	101	57.7%	-	0.0%	74	42.3%	-	0.0%	72	41.1%	2	1.1%
CLEVELAND	1,892	76.1%	1,892	76.1%	-	0.0%	538	21.6%	5	0.2%	518	20.8%	15	0.6%

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 - Over-supervision of low-risk Defs

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 - Study shows: Pretrial detention creates crime

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 - Study shows: Pretrial detention creates crime

Harris County TX Study: Detained misdemeanor Defs have:

- 30% increase in new felony charges and
- 20% increase in new misdemeanor charges

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 718 (2017)

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 - Detention costs



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Low level charges



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 - Detention costs



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- Public Safety
- Costs
 - Detention costs
 - Recidivism costs, law enforcement costs, etc.

Why

- Recommended by NCCALJ
- Public Safety
- Costs
- Fairness

Why

- Recommended by NCCALJ
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- Costs
- Fairness
 - Incarceration based on poverty, not risk

Why

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- Costs
- Fairness
 - Incarceration based on poverty, not risk

Philadelphia: Almost $\frac{1}{2}$ of defendants who only needed to post a \$500 deposit to obtain release failed to do so within 3 days of the bail hearing

Stevenson, Distortion of Justice: How the Inability to Pay Affects Case Outcomes, Journal of Law, Economics & Organization (manuscript at 10-11) (forthcoming)

Why

- Recommended by NCCALJ
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- Costs
- Fairness
 - Incarceration based on poverty, not risk

Harris County TX Study:

Only about 30% of defendants from the wealthiest zip codes are detained pretrial, versus around 60-70% of defendants from the poorest zip codes.

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 737 (2017)

Why

- Recommended by NCCALJ
- Public Safety
- Costs
- Fairness
 - Incarceration based on poverty, not risk

“[a] . . . basic injustice: poor arrestees . . . are incarcerated where similarly situated wealthy arrestees are not, solely because the indigent cannot afford to pay a secured bond.”

O'Donnell v. Harris County, 892 F.3d 147, 162 (5th Cir. 2018)

Why

- Recommended by NCCALJ
- Public Safety
- Costs
- Fairness
 - Incarceration based on poverty, not risk
 - Incarceration increases likelihood of adverse consequences

Why

Harris County TX Study: As compared to those who are released, detained misdemeanor Defs:

- are 25% more likely to be convicted
- are 43% more likely to be sentenced to jail
- get, on average, incarceration sentences are 9 days longer, more than double that of similar releasees

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 717 (2017)

Why

Philadelphia Study: Pretrial detention leads to:

- 13% increase in the likelihood of being convicted
- 42% increase in the length of the incarceration sentence

Stevenson, Distortion of Justice: How the Inability to Pay Affects Case Outcomes, Journal of Law, Economics & Organization (manuscript at 3) (forthcoming)

Why

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- Public Safety
- Costs
- Fairness
 - Incarceration based on poverty, not risk
 - Incarceration increases likelihood of adverse consequences
 - Coerced pleas/wrongful convictions

Why

Harris County TX Study:

“detention increases the likelihood of pleading guilty by 25% for no reason relevant to guilt”

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 771 (2017)

Why

- Recommended by NAC
- Public Safety
- Costs
- Fairness
 - Incarceration based
 - Incarceration increased consequences
 - Coerced pleas/wrongful convictions



Why

- Recommended by NCCALJ
- Public Safety
- Costs
- Fairness
- Racial & ethnic disparities

Why



Supported by the John D. and Catherine T. MacArthur Foundation

Mecklenburg County 2017 Safety and Justice Challenge Facts

We've got a problem to fix:

- Despite reducing the Mecklenburg County jail population by 25 percent in 2016, there is still an over-reliance on pretrial detention.
- Too often, a jail stay depends on an individual's ability to pay bail, and individuals spend more time in jail and pay more in bail and fees than they would serving time in prison.
- Pretrial release and length of stay are main drivers of the jail population. The average pretrial jail population alone was 64 percent of the total average daily population in 2016.
- Despite making up approximately 33 percent of the local population, African Americans and Hispanics make up 76 percent of the jail population.
- In 2016, the County released 36 percent of booked defendants on financial bond. Automating the completion of the Public Safety Assessment (PSA) tool will help ensure that judicial officials can access each defendant's individualized assessment of risk when determining their conditions of release.

Despite making up approximately 33% of the local population, African Americans and Hispanics make up 76% of the jail population.

Why

- Recommended by NCCALJ
- Public Safety
- Costs
- Fairness
- Racial & ethnic disparities
- Litigation risk

Maranda Lynn O'DONNELL, Plaintiff—Appellee

v.

HARRIS COUNTY, Texas; Eric Stewart Hagstette; Joseph Licata, III; Ronald Nicholas; Blanca Estela Villagomez; Jill Wallace; Paula Goodhart; Bill Harmon; Natalie C. Flemng; John Clinton; Margaret Harris; Larry Standley; Pam Derbyshire; Jay Karahan; Judge Analia Wilkerson; Dan Spjut; Judge Diane Bull; Judge Robin Brown; Donald Smyth; Jean Hughes, Defendants—Appellants

Loetha Shanta Mcgruder; Robert Ryan Ford, Plaintiffs—Appellees

v.

Harris County, Texas; Jill Wallace; Eric Stewart Hagstette; Joseph Licata, III; Ronald Nicholas; Blanca Estela Villagomez, Defendants—Appellants

No. 17-20333
June 1, 2018

Synopsis

Background: Arrestees brought § 1983 action, on behalf of themselves and others similarly situated, against county, county sheriff, county judges, and other county officials, alleging that county's system for setting bail for indigent misdemeanor arrestees, which resulted in detention of indigent arrestees solely due to their inability to pay bail, violated Equal Protection and Due Process Clauses. The United States District Court for the Southern District of Texas, [Lee H. Rosenthal](#), Chief Judge, [251 F.Supp.3d 1052](#), granted plaintiffs' motion for preliminary injunction and denied county's motion for summary judgment. County appealed.

Holdings: On rehearing, the Court of Appeals, [Edith Brown Clement](#), Circuit Judge, held that:

- 1 under Texas law, county judges were appropriate defendants in § 1983 action;
- 2 under Texas law, county sheriff was not appropriate defendant in § 1983 action;
- 3 abstention under Younger doctrine was not warranted;
- 4 provision of Texas Constitution requiring that prisoners be bailable upon sufficient sureties created right to bail that appropriately weighed detainees' interest in pretrial release and court's interest in securing detainees' attendance;
- 5 county's bail-setting procedures were inadequate to protect detainees' Due Process rights; and
- 6 county's bail-setting procedures violated indigent arrestees' rights to equal protection.

Maranda Lynn O'DONNELL, Plaintiff—Appellee

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HARRIS COUNTY, Texas; Eric Stewart Hagstette; Joseph Licata, III; Ronald Nicholas; Blanca Estela Villagomez; Jill Wallace; Paula Goodhart; Bill Harmon; Natalie C. Flemng; John Clinton; Margaret Harris; Larry Standley; Pam Derbyshire; Jay Karahan; Judge Analia Wilkerson; Dan Spjut; Judge Diane Bull; Judge Robin Brown; Donald Smyth; Jean Hughes, Defendants—Appellants

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Synopsis

Background: Arrestees brought § 1983 actions against county judges, and other county officials, alleging that the detention of indigent arrestees solely due to their inability to pay bail violated their rights to equal protection. The United States District Court for the Southern District of Texas granted a preliminary injunction and denied county's motion for summary judgment.

Holdings: On rehearing, the Court of Appeals affirmed the district court's judgment. 1 under Texas law, county judges were appointed by the county sheriff; 2 under Texas law, county sheriff was not a judicial officer; 3 abstention under Younger doctrine was not warranted; 4 provision of Texas Constitution requiring that bail be set in accordance with an appropriately weighed detainees' interest in pretrial release and court's interest in securing detainees' attendance; 5 county's bail setting procedures were inadequate to protect detainees' Due Process rights; and 6 county's bail-setting procedures violated indigent arrestees' rights to equal protection.

Harris County, TX bail system violated indigent arrestees rights to equal protection

county sheriff, county judges, which resulted in violations of their rights. The United States District Court for the Southern District of Texas granted a preliminary injunction and denied county's motion for summary judgment.

appropriately weighed

Take two misdemeanor arrestees who are identical in every way except that one is wealthy and one is indigent. One is able to post bond; the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, meanwhile, must bear the brunt of all of these, simply because he has less money. This violates the equal protection clause.

ODonnell v. Harris County, 892 F.3d 147, 163 (5th Cir. 2018)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LEA ALLISON, ANTONIO HARRELL,
and KATHERINE GULL, on behalf of
themselves and those similarly situated,

Plaintiffs,

v.

BRADLEY R. ALLEN, SR., in his official
capacity as Chief District Court Judge,

BRENDA BROWN,
KELLY COUNCILMAN,
DAVID CRABBE, RHONDA CRISP,
BERTRAM HEATHCOTE,
WENDY HUNTER, AMELIA KNAUFF,
BOBBIE NANCE, HELENA RODGERS,
KIMESHA THORPE, JOHN WATTERSON,
SUSAN WORTINGER, in their official
capacity as magistrates of the
Alamance County District Court,

D. THOMAS LAMBETH, JR., in his
official capacity as Senior Resident
Superior Court Judge,

and

TERRY S. JOHNSON, in his official
capacity as Alamance County Sheriff,

Defendants.

Case No.

(Class Action)

CLASS ACTION COMPLAINT

Why

- Recommended by NCCALJ
- Public Safety
- Costs
- Fairness
- Racial & ethnic disparities
- Litigation risk

- 
- Conference of Chief Justices
 - American Judges Association
 - International Association of Chiefs of Police
 - National Sheriffs Association
 - Association of Prosecuting Attorneys
 - American Council of Chief Defenders
 - National Association of Criminal Defense Lawyers
 - National Association of Counties

State Commission Reports

- Alaska
- Arizona
- Connecticut
- Georgia
- Illinois
- Indiana
- Maine
- Maryland
- Nevada
- North Carolina
- Ohio
- Texas
- Utah
- Washington

Legislation Passed

- Alaska
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Illinois
- Kentucky
- New Hampshire
- New Jersey

What we can & are doing
in NC?



ARREST**INITIAL APPEARANCE****FIRST APPEARANCE****SUBSEQUENT COURT PROCEEDINGS**

Citation in lieu of arrest policies

Adhere to statutory preference for nonfinancial conditions

Adhere to statutory preference for nonfinancial conditions

Enhanced court date reminder systems

Summons in lieu of arrest policies

Implement better risk assessment tools and provide a structure for pretrial conditions decision

Implement better risk assessment tools and provide a structure for pretrial conditions decision

Offer appropriate pretrial services (e.g., mental health, transportation) and supervision (e.g., check-ins) with no up-front costs to defendants

Pre-charge diversion (e.g., mental health, substance use, youth, etc.)

Require reasons for secured bond

Require reasons for secured bond

Align procedures for OFAs after FTAs with goals (e.g., check on detention before issuing OFA; judge sets conditions in OFA to avoid mandatory bond doubling when appropriate)

Data collection & reporting

Require ability to pay determinations before financial conditions are imposed on appearance bonds

Require ability to pay determinations before financial conditions are imposed on appearance bonds

Regular review of jail rolls by jail administrator or judicial official, with court hearings scheduled as needed

Set first court date prior to officer's next court date

Timely first appearances for all defendants, including those charged with misdemeanors

Require counsel (or waiver after opportunity to consult with counsel) for time served pleas

Data collection & reporting

Early involvement of public defender or appointed counsel in release determination, including counsel's access to defendant in jail & to prior history record

Expedited trials for detained defendants

Require counsel (or waiver after opportunity to consult with counsel) for time served pleas

Data collection & reporting

Hold detention bond hearings for those detained on detention bonds

Data collection & reporting





ARREST

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INITIAL APPEARANCE

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Judicial District 30B Pretrial Justice Pilot Project

December 2018

Jessica Smith, UNC School of Government

Executive Summary

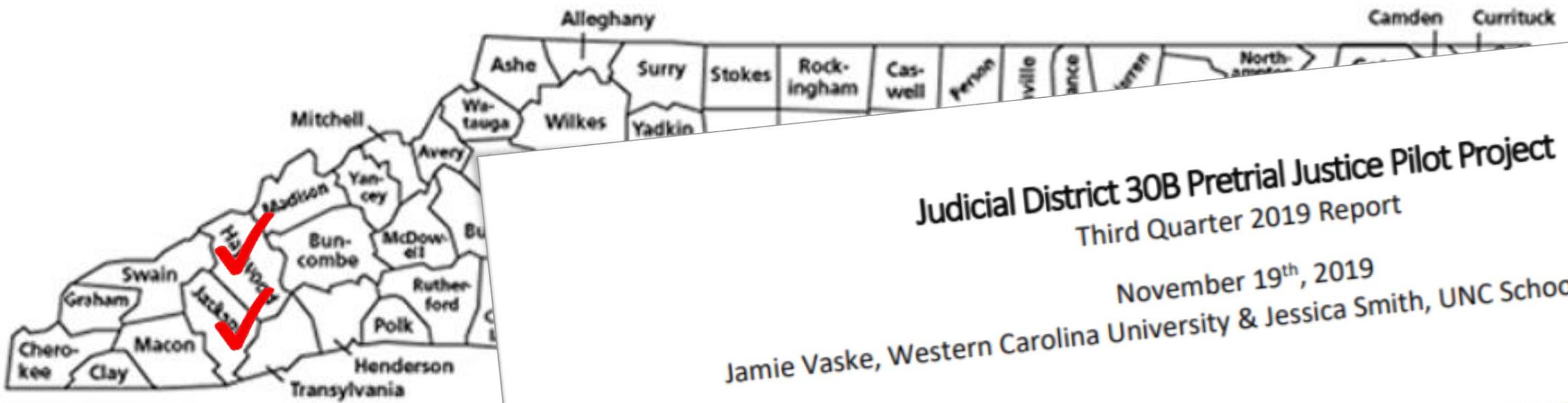
In 2015, Chief Justice Mark Martin convened the North Carolina Commission on the Administration of Law & Justice to make recommendations to strengthen the state's court system. In 2016, that Commission released its reports, including a recommendation that North Carolina embark on pilot projects supporting evidence-based pretrial justice reform.¹ With the support of the Director of the NC Administrative Office of the Courts,² Judicial District 30B (JD 30B) became the state's first such pilot project.

The JD 30B pretrial justice pilot project seeks to improve JD 30B's pretrial system, promoting public safety, efficient use of taxpayer resources, and fairness of the judicial process. The project has two core components:

- Implementing reforms to JD 30B's pretrial system to address the negative consequences of pretrial detentions.

- Empirical evaluation of those reforms, as measured against key metrics, including public safety, appearance rates, incarceration due to indigence, and racial and ethnic disparities.

Regarding the negative consequences of pretrial detentions, NC AOC data shows that secured bonds are the most common condition of pretrial release imposed in JD 30B, even for misdemeanors.³ Because secured bonds require money up front to obtain release, they can result in wealth-based detentions. As used here, "wealth-based detentions" refers to pretrial detention of individuals not because they present unreasonable public safety and/or flight risk, but because they cannot pay their secured bonds. When wealth-based detentions occur, taxpayers pay unnecessary jail costs. Additionally, stakeholders



Judicial District 30B Pretrial Justice Pilot Project

Third Quarter 2019 Report

November 19th, 2019

Jamie Vaske, Western Carolina University & Jessica Smith, UNC School of Government

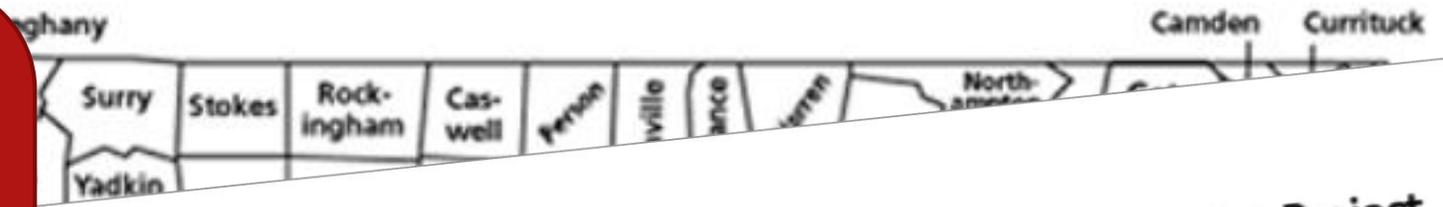
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Implemented Reforms

Evaluation Results.....

- Non-financial conditions increased:
- 34.74% in Haywood
 - 63.88% in Jackson



Judicial District 30B Pretrial Justice Pilot Project Third Quarter 2019 Report

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Use of summons increased 84%

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Camden Currituck

Justice Pilot Project
2019 Report

November 19th, 2019

Jamie Vaske, Western Carolina University & Jessica Smith, UNC School of Government

Non-financial conditions increased:

- 34.74% in Haywood
- 63.88% in Jackson

Use of summons increased 84%

- 80%+ of Defs attended court in both counties in 2018 & 2019
- FTAs increased 1.41% in Haywood, 2.57% in Jackson
- Non-appearance rate is highest in traffic cases

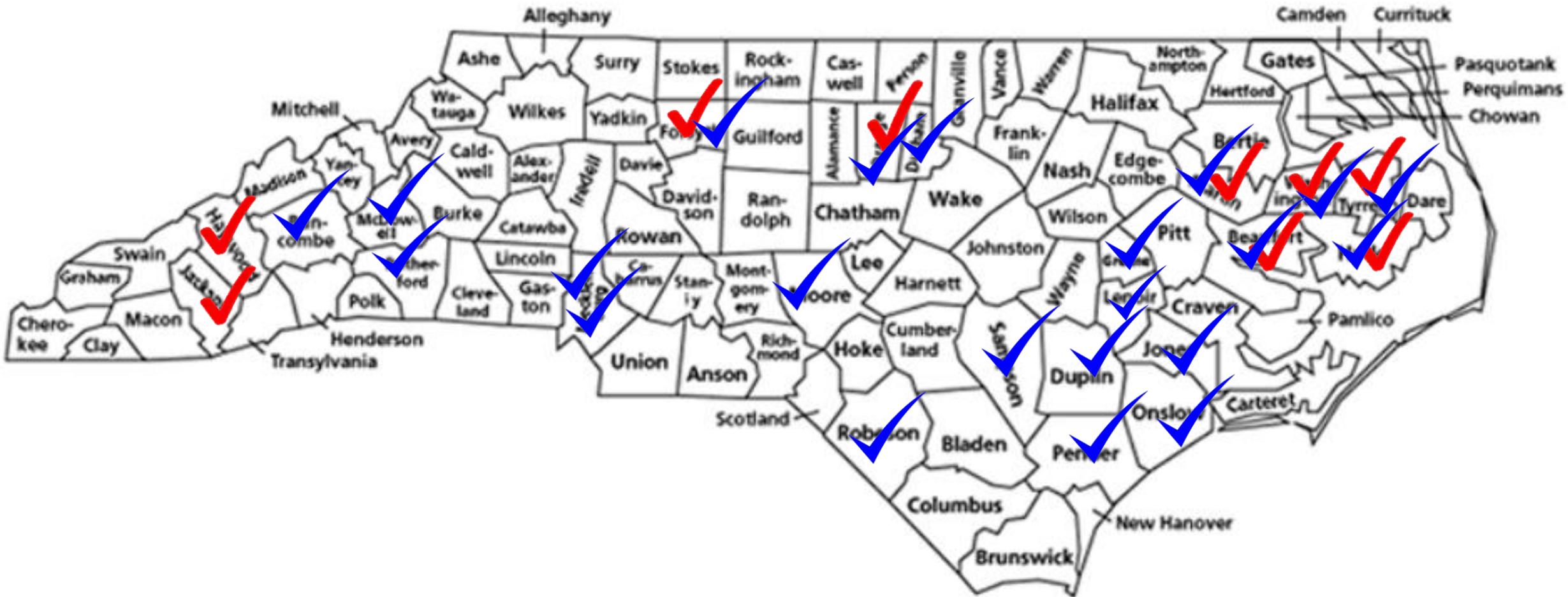
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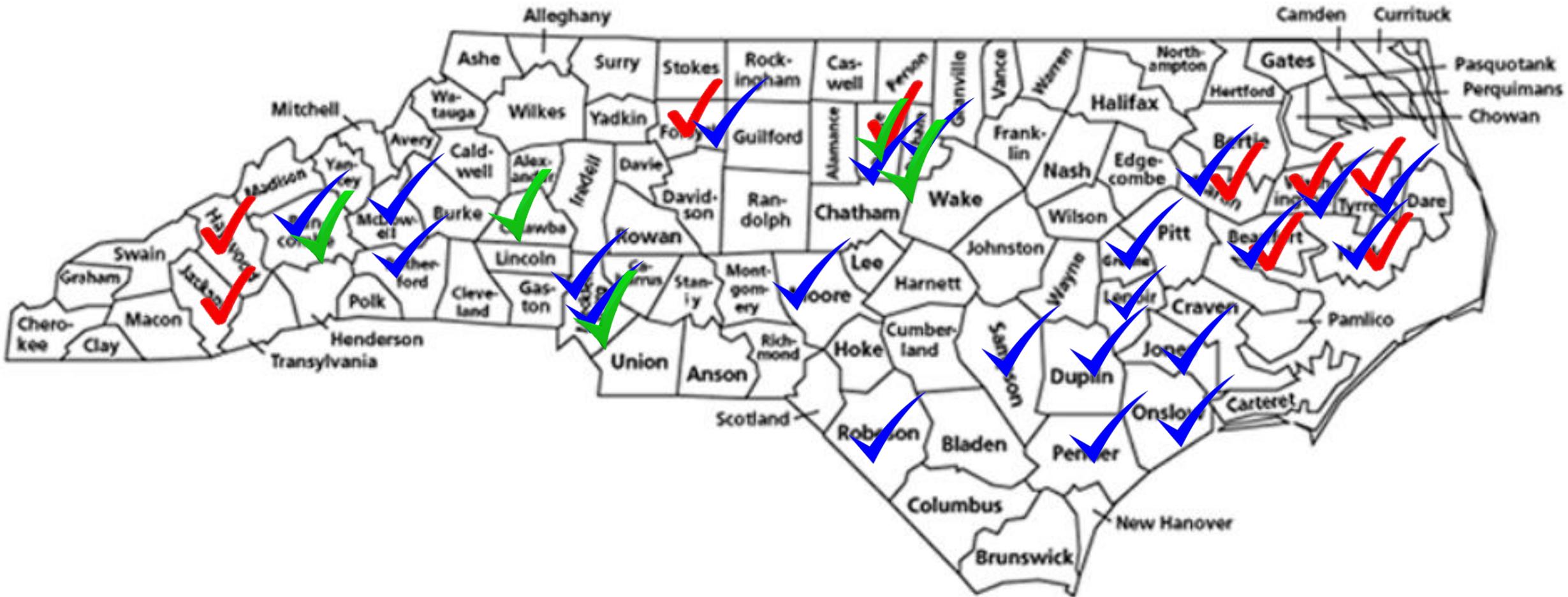
Jamie Vaske, V

Camden Currituck

Justice Pilot Project
2019 Report







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smithj@sog.unc.edu

For more information on NC bail reform, visit my website here:

<http://cjil.sog.unc.edu/>