

## **THE LOWDOWN**

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In January, I reviewed the criminal processes used to compel defendants to appear in court. Last month, I discussed the initial appearance hearing during which a magistrate sets conditions of pretrial release. In this final installment of the three-part series, I review current reform efforts aimed at making the Orange County bail policy fair and equitable.

Our criminal justice system holds a defendant is innocent until proven guilty; therefore, punishment is not supposed to begin until conviction. The purpose of bail is solely to ensure the accused's appearance in court; no one should be held in jail simply because they are unable to afford bail. Such a practice would unfairly advantage wealthy defendants and essentially criminalize poverty. Unless the accused poses a threat to public safety, is likely to destroy evidence or intimidate witnesses, or seems likely to flee, he or she is entitled to freedom until convicted by the court system.

Of the criminal processes used to compel someone to court, citations and criminal summonses do not require arrest, thereby automatically removing pre-trial incarceration from the equation. We encourage deputies to use a citation in lieu of arrest when possible, effectively placing the matter into the court system without depriving the accused of his or her liberty. Likewise, when magistrates hear testimony about an alleged crime, they are encouraged to use the least restrictive method to compel the defendant to answer to the charges. A criminal summons accomplishes this objective without requiring the defendant's arrest, and is therefore preferable to a warrant.

In cases where a person is arrested and brought before a magistrate, Orange County implemented the use of a Magistrate's Structured Decision Making Tool in October 2020, making it the ninth county in North Carolina to adopt such a reform. Stakeholders designed the tool to prevent low-risk individuals from being incarcerated simply because they receive a bail amount beyond their financial means. Judicial District 30B (Haywood and Jackson counties) was the first to use such a tool; there, the percentage of cases receiving a pre-trial condition other than a secured bond increased 43.79%. Concurrently, the number of defendants incurring a new criminal charge during the pre-trial period increased by only 1.1% and the number of defendants failing to appear in court increased by only 1-2 percentage points over the levels seen before stakeholders introduced the tool.

Additionally, the tool increases decision-making consistency across magistrates, provides necessary documentation for the next level of judicial review, and preserves magistrate discretion.

Another cornerstone of bail reform is the county-funded Pretrial Services program, established in 2016. A case manager from Pretrial Services meets with each newly detained individual in the Detention Center to compile and verify information for judicial officials to use at the initial appearance hearing as they review bail and other pre-trial release conditions set by the magistrate. The case manager uses the Virginia Pretrial Risk Assessment – Revised. This assessment helps determine if a person can be released until the court date without supervision, or which of the four supervision levels will allow for safe management in the community. In many ways, pre-trial supervision resembles probation. Although supervision reduces a person’s individual liberty, it is far less restrictive than confinement in jail, and it seeks to balance the individual’s liberty interests against the community’s right to protection.

Orange County is also investing in a more nuanced approach to responding to defendants charged with misdemeanors who fail to appear in court. Rather than the imposition of a mandatory secured bond and the resulting incarceration if a defendant cannot pay, as of January 19 of this year, the system attempts to provide a “second chance” to those missing a court date for the first time. A decision-making flowchart considers whether the failure to appear occurred because of work obligations, lack of transportation, childcare responsibilities, or lack of notice from the court.

I am the vice chair of the Governor’s Crime Commission, and I serve on a subcommittee tasked with studying best practices for bail reform. We are dedicated to reviewing and improving the entire process rather than mindlessly continuing decades’ old practices. As a bonus, data show that many of these reforms are cost effective for tax payers – it is more expensive to keep people in custody than to monitor them in the community. We have a moral imperative to create fair, safe, and equitable processes that refuse to perpetuate a legacy of disparate treatment based on race or income level.