



Orange County Bail/Bond Justice Project

An Initiative of Faith-Based Communities

Court Observation Program

Findings and Recommendations

Date July 20, 2021



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

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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 a non-refundable fee of 10% of the total bond. 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 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.

Misdemeanor. Less serious charges than felonies, misdemeanors include violations of city code such as loitering, simple assault, shoplifting, larceny, damaging real or personal property, possession of drug paraphernalia, simple possession of marijuana (up to 0.5 oz); and communicating threats.

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, even if they are innocent of the charges. 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 lasting impact on people's lives.

In January 2019, Orange County Bail/Bond Justice (OCBBJ) 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.

OCBBJ appreciates that 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, the Orange County Criminal Justice Resources Department, the NAACP, and others. However, an important voice is also 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 OCBBJ Project established a court observation program 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. In February 2020 OCBBJ released its first Court Observation Program Findings and Recommendations Report based on observations in 2019.

In the 2020 court observation period, three events made the year like none other in recent history: the COVID 19 pandemic, a severe economic downturn, and a heightened awareness of and attention to police practices with the death of George Floyd. We do not fully understand the impacts of this convergence of events on police interactions, pretrial detention, and the setting of bail in 2020; but, based on the data our team collected, they each clearly had an impact.

Last year, we saw big progress on our bail reform recommendations. The work of reform-minded Orange County criminal justice stakeholders and measures taken to address COVID 19 led to a drastic reduction in arrests and detentions, a marked increase in the use of Written Promise to Appear to release individuals, and significant reversal of racial disparity for a number of justice indicators we are tracking. Even with this progress, we continued to see vast overrepresentation in court of poor and Black members of our community. We also continued to see a high use of secured bonds in setting bail. Following is a summary of our key findings for the year 2020, both challenges/inequities and good practices we observed, and our high-priority recommendations for further reform.

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 53% 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 5% of the cases. Written Promises to Appear were used by magistrates in 33% of their cases and by judges in approximately 38% of their cases, despite it being the default bond. While low, this is a significant improvement for magistrates who used Written Promise to Appear in a mere 17% of cases in 2019. The rate is unchanged for judges.

A UNC Criminal Justice Innovation Lab Report for the period October 2020 – February 2021 indicates a significantly lower rate of use of secured bonds and higher use of Written Promise to Appear than cases OCBBJ observed and documented in 2020. In our next Court Observation Program Report, we hope to see the UNC reported trend continued.

2. In 51% of the secured bond cases observed, the judge did not state why the secured bond was needed. As a point of good practices and court accessibility, in First Appearance Hearings, the judges should clearly state the rationale for requiring a secured bond. The judges stated determinants required by state law for secured bonds in only 38% of the secured bond cases.

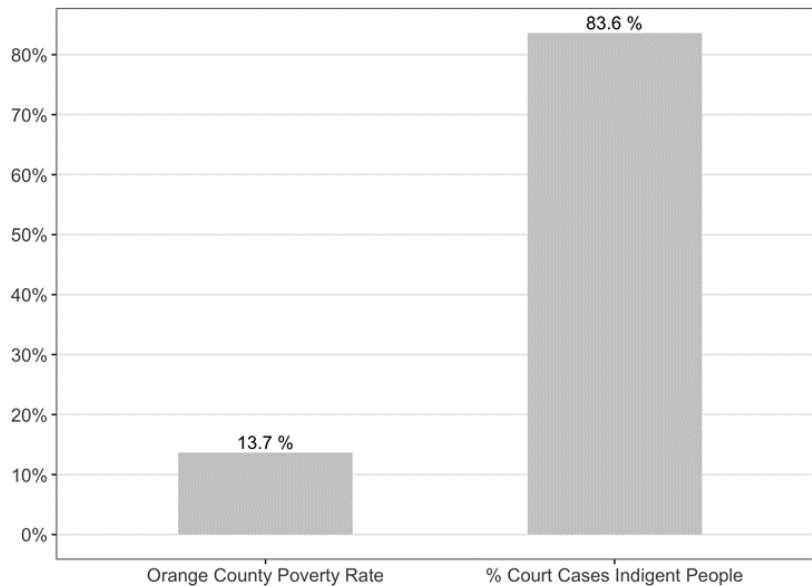
3. Of all cases the team observed and documented in the First Appearance Hearings, 84% of the cases were people who are poor (could not afford to hire an attorney). This compares to a community poverty rate of approximately 14%. This is nearly identical to the disparity observed in 2019 (ES Figure 1).

In our team's 2020 observation period, only 12% of the individuals who received a secured bond posted bail before the First Appearance Hearing with the judge. This compares to 21% in our 2019 observation period. We are unsure why this drop occurred. Judges are required by law to consider ability to pay when setting bail. During the hearing, although judges had income and expense information before them, there was an explicit assessment of a person's ability to post bond in approximately 10% of the cases.

There is a two-tiered pretrial detention system in Orange County (and across the country): one system for those who are poor and another system for those who are not poor.

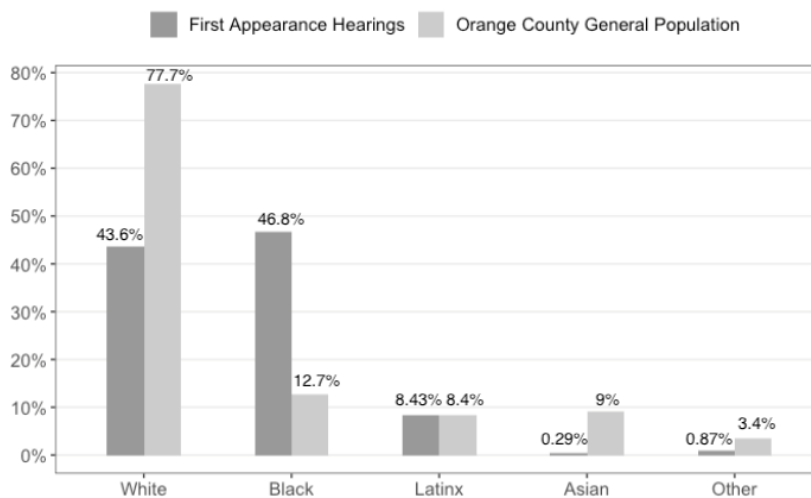
Court Observation Program Findings and Recommendations

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



4. In Orange County, everyone 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 (ES Figure 2). While Black residents make up 12.7% of our community, they make up 47% of the First Appearance Hearing cases observed. In contrast, Whites make up 78% of our community, and only 43.6% of the cases, and Asians make up 9% of our community and 0.29% of the cases. We saw these disparities in 2019 as well. Also, similar to 2019, First Appearance Hearing cases were proportional for Latinx residents. We understand that some people arrested/detained live outside Orange County.

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



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5. Just as in 2019, last year, 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 bail setting stages that follow. The magistrates and judges do not determine who comes before them in setting bail; this is largely predetermined by the arrests.

6. OCBBJ conducted an assessment of our local law enforcement agencies' citations and arrests. The Report found there are aggregate differences for Black residents in the higher total number of citation and arrest cases, and for Latinx and Asians in the higher likelihood that a case will result in arrest.

In evaluating the impacts of COVID 19 on police citations and arrests, it appears the most significant change in practice was the number of police citation and arrest cases in 2019 versus 2020, not the proportion of citations given during the COVID lockdown or COVID post-lockdown period in 2020. OCBBJ has called for a goal of maintaining the decreased jail detentions seen in 2020. The assessment of data in the Citations vs. Arrests Report shows a need to sustain the decreased police citations and arrests in order to achieve this goal. It also shows an opportunity to increase the use of citations over arrests when taking an enforcement action.

7. Just as police have discretion in using citations vs. arrest, judges have discretion in setting bail, and use that discretion differently. There is a wide variation in the use of Written Promise to Appear and for median bail. For two judges, the Written Promise to Appear percentage fell within approximately 28% to 32%. The other judges' percentages fell between 43% to 58%, with an average of 50%. Median bail set by the judges ranged from a low of \$1,000 to a high of \$5,000.

8. Even for cases that only involved misdemeanor charges, the magistrates required a secured bond in approximately 63% of the cases, again excluding cases constrained by domestic violence or Failure to Appear charges, and judges required a secured bond in 40% of the cases. Again, while high, this is a marked improvement for magistrates who, in 2019, required a secured bond in 79% of such cases.

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 degree to which judges followed Pretrial Release Services recommendations is unclear. The Court Observation Team documented that judges detained the individuals in 2.5% of the cases in which the Program recommended release. However, in 31% of the cases, the judge did not state the recommendation of Pretrial Release Services. The Prior Report recommended that judges state clearly the Pretrial

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Release Services recommendation, and if not releasing the individual as recommended, the reasons why detention is needed. Clearly, this recommendation was not met.

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. See next section, Good Practices, for recent action on this issue.

11. In 2019, 20.6% of the cases that we saw in court involved allegations of domestic violence. Reported domestic violence cases increased 21% in 2020 (from approximately 205 cases in 2019 to approximately 250 cases in 2020). Stresses from the COVID 19 lockdown and economic downturn likely generated a large portion of this increased domestic violence.

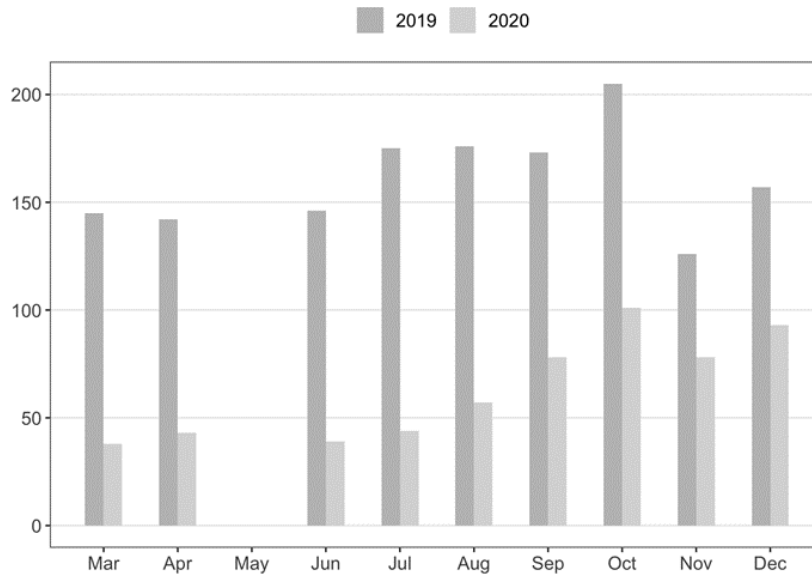
12. Of the cases observed, 18% involved, in part, arrest due to prior Failure to Appear in court (essentially the same as 2019). There are many reasons why a person might not appear in court, particularly if poor. Some people have hourly jobs with inflexible work schedules, transportation problems, childcare 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. And fear of COVID 19 likely caused many people to fail to appear in court in 2020. See next section, Good Practices, for recent action on this issue.

Orange County's Good Practices and Trends

1. There was big progress on our bail reform recommendations in 2020, most notably in a new Magistrates' Tool for setting bail. The work of reform-minded Orange County criminal justice stakeholders and nonprofits (including OCBBJ), and measures taken to address COVID 19, lead to a drastic reduction in arrests and detentions compared to 2019. From March through September, there was 68% to 75% reduction in detention (Figure ES 3).

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ES Figure 3. Number of People Detained 2019 Versus 2020



2. In Carrboro and Hillsborough, White residents had a higher percentage of citation and arrest cases resulting in arrests than Black residents. In Chapel Hill, Black and White residents had an equal likelihood/percentage of police cases resulting in arrests.

3. In setting bail, the magistrates released the individuals to go home to await trial in 39% of the cases (32.9% Written Promise to Appear and 5.9% unsecured bond). This approximately doubles the rate of release observed in cases in 2019. They also significantly reduced the use of secured bonds for cases only involving misdemeanors. White and Black defendants had an equal rate of secured bonds.

4. In magistrates' decisions, Black defendants received a higher rate of Written Promises to Appear than White and Latinx defendants. Comparing who received a Written Promise to Appear in 2020 versus 2019, we see a significant reversal of racial disparity for Black defendants. The median bail set by magistrates was higher for Whites than for Blacks and Latinx. Again, this is a significant reversal in disparity compared to 2019.

5. In judges' decisions, White defendants not only received the highest rate of secured bonds and lowest rate of Written Promise to Appear, they also had the highest median bail, by far, compared to Black and Latinx defendants. This pattern of judges' decisions completely reverses racial disparity trends seen in 2019.

6. Orange County's 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

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disorder specialists, 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. In 2020, the Orange County Criminal Justice Resources Department began a new Street Outreach and Harm Reduction Deflection Program to divert people experiencing homelessness from the criminal justice system. Based on proven best practices from other communities, the services include engaging homeless or people at risk of becoming homeless and connecting them with needed resources (temporary and permanent housing, food, medical care, therapy, disability benefits, job training, etc.). The Orange County Behavioral Health Task Force has also recommended, and the Orange County Commissioners have expressed strong support for, a Behavioral Health Crisis Diversion Facility. This Facility would provide crisis services and criminal justice diversion for people who have a mental health or substance use issue and, because of that, have been caught in the criminal justice system. The Task Force is currently applying for grants to fund the Facility.

8. For low level misdemeanors, Orange County will no longer automatically issue a secured bond and order for arrest for a person based on a Failure to Appear in court. In January 2021, our District adopted a new Non-Appearance Policy that evaluates a person's failure to appear on an individualized, case-by-case basis. The Policy provides a flow chart of factors to consider such as the type of charge, the number of times the individual has previously missed court, and reasons for failure to appear such as lack of notice of court dates, hospitalization, transportation or childcare issues, and inability to get time off from work. We will evaluate the impacts of this new policy in our next Court Observation Program Report.

There are doubtless other reforms adopted in 2020 contributing to a more just bail and pretrial system.

We are pleased to report on these positive trends, but cannot conclude any permanent trend based on two years of data. Especially given the events of 2020, in our next report, we will need to assess if these were mere fluctuations or sustained progress.

High-Priority Recommendations

To get at the most deep and pernicious impacts of our pretrial detention system, we need transformational and bold changes. We recommend action in three key areas: Community Safety/Law Enforcement Agency Reform; Progressive District Attorney Policies; and Ending Wealth-Based Pretrial Detention. There are 16 specific recommendations for reform. While all will help improve the equity, fairness, and

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compassion needed in our bail/bond process in Orange County, we highlight 4 recommendations below for high priority consideration.

- 1. Be Transparent.** Be transparent about policies guiding citations, arrest, pretrial detention, sentencing choices, and diversion programs. Provide annual reports assessing the efforts to ameliorate racial bias and to track disparities.
- 2. Make Diversion the Rule.** The town Police Departments and county Sheriff's Office should deflect most minor charges from the court system. Magistrates, judges, public defenders, and DA's should divert most that arrive at court system to other appropriate services. Encourage diversion whenever possible when mental health or substance abuse are involved, and ensure these diversion/treatment programs and facilities are adequately funded.
- 3. End Wealth-Based Pretrial Detention.** Consider pretrial detention only when the facts are evident and clear, and convincing evidence shows a substantial likelihood that the defendant's release would result in great bodily harm to others or the defendant's flight. Do not request cash bail except for violent misdemeanor or violent felony offenses where there is substantial risk of great bodily harm to an individual or the community. When cash bail is requested under these limited, high-risk circumstances, recommend cash bail amounts aligned with the accused's ability to pay. Require magistrates and judges to document the need for cash bail/secured bond according to statutory determinants, and require a bond hearing within 48 hours.
- 4. Decriminalize Drug Possession and Use.** Treat drug and alcohol use issues primarily as a public health and not criminal law problem. Deprioritize the use of the criminal law to deal with drug use and possession and, whenever possible, refer persons using or possessing drugs for evaluation and treatment. Continue to charge people who sell drugs and who commit other crimes along with drug use.

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.

Eleven 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 (OCBBJ).

The Orange County Bail/Bond Justice Project began by developing a Court Observation Program to better understand how bail is being set in Orange County and which practices need reform. The program conducts court observation training sessions, and currently has 11 regular, trained court observers and database managers. Participants conducted court observations starting in early March 2019 to document how bail was set by the judge. Additionally, the team collects magistrate data. Beginning in May 2019 the team began entering bail data into the OCBBJ database.

In February 2020 OCBBJ released its first Court Observation Program Findings and Recommendations Report (see at https://ocbailbondjustice.org/wp-content/uploads/2020/02/OCBBJ_CourtObservation-FindingsAndRecommendationsReport.pdf). That same month, the team began using a new court observation form designed to track progress in our Report recommendations. However, in the 2020 observation period, three events made the year like none other in recent history. In Mid-March 2020, Orange County instituted a lockdown due to the COVID 19 pandemic. After the lockdown, there was a severe economic downturn, with many people losing jobs. On May 25, 2020, George Floyd, a 46-year-old black man, was murdered in Minneapolis, Minnesota while being arrested on suspicion of using a counterfeit \$20 bill. This murder, along with the many other deaths of unarmed Black people in police custody in the US, caused a heightened awareness of and attention to police practices in Orange County and across the country. At this time, we do not fully understand the impacts of this convergence of events on police

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interactions, pretrial detention, and the setting of bail in 2020, but clearly each had an impact. One known impact: court observations had to be suspended mid-March through June due to the COVID 19 lockdown. We continued our court observations online July to mid-December.

With the updated findings of our Court Observation Program in the following sections, we hope to educate the community about changes in pretrial in detentions during the historic year of 2020, current bail setting practices, progress made on reforms we recommended in February 2020, and policies that need to be changed to have a more just pretrial release system.

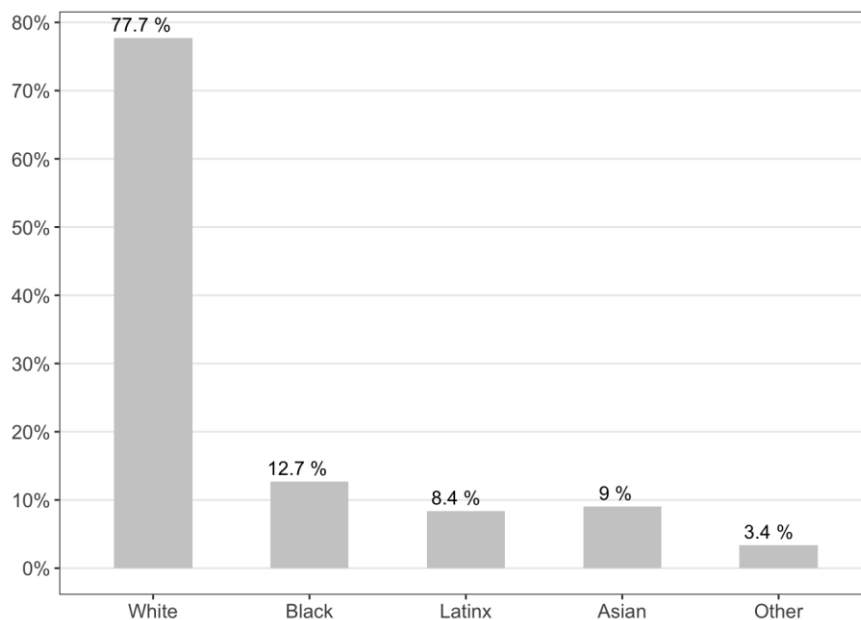
2. The Context

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

Approximately seventy-eight percent of the people who live in Orange County are White. People of color include Black (12.7%), Latinx (8.4%), and Asian (9%) members of our community (Figure 1). 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



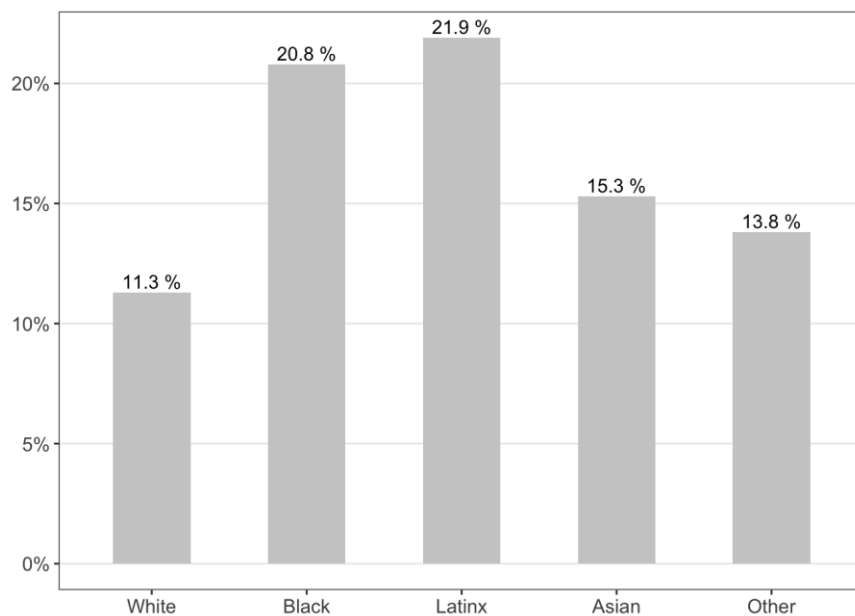
Source: 2019 ACS 5-year estimates

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Orange County is a wealthy community, with a median household income of \$71,723. This is higher than the state median household income of \$54,602, and the national median of \$62,843 (source ACS 5-year estimates 2019). 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 13.7%. Figure 2 shows the individual poverty rate by race/ethnicity, with Latinx and Black residents having the highest rate of poverty (21.9% and 20.8%, 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: 2021 World Population Review

2.2 Our Current Pretrial Release Laws and Policy

On November 27, 2018, the prior Senior Resident Superior Court Judge, Carl Fox (now retired), 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 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).

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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.*

On October 1, 2020 current Senior Resident Superior Court Judge, Allen Baddour, modified the Pretrial Release Policy to include additional release conditions. Judge Baddour is now fully revising the District Policy with the help of the Orange County Pretrial Work Group. Release of the new policy is expected in Fall 2021.

Progress on Recommended Reforms to Pretrial Detention and Bail Policies

Our February 2020 Court Observation Program Report listed 14 recommendations for reform. Thanks to the work of reform-minded Orange County criminal justice stakeholders and non-profits (including OCBBJ), and the measures taken to address COVID-19, there has been substantial progress made on the recommendations, leading to a drastic reduction in people detained pretrial in 2020. Given that many of the new reform measures were implemented during the COVID pandemic and heightened attention to police practices, the community needs to ensure that the progress made to date is sustained in the future, and that more reform steps are taken.

Below are key revisions made to pretrial detention and bail policies in 2020.

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Individualize Conditions of Release – Ability to Pay. In the initial stage of setting bail for an individual, Orange County Magistrates are now required to use a new tool that expressly assesses a person’s ability to pay bail. Also, in this initial stage, magistrates can now call Judges 24/7 to discuss individualized conditions where they lack the authority to set a release condition and are authorized to release the person directly to Pretrial Release Services supervision, rather than holding the person in custody awaiting a bail-setting court appearance before the judge. The Orange County Pretrial Work Group developed the Tool, with the assistance of the UNC Criminal Justice Innovation Lab. The Tool became effective October 1, 2020.

There are two new policies related to judges’ consideration of ability to pay in their later stage of bail setting. The Orange/Chatham Racial Justice District Task Force has created a new toolkit for setting court fines and fees that expressly assesses ability to pay. At the State level, the Administrative Office of the Courts has created a new fee waiver form based, in part, on ability to pay. Use of these new forms/policies is still discretionary by the Judges. However, it remains a constitutional requirement that ability to pay be considered in setting bail, fines, and fees. The Towns of Chapel Hill and Carrboro, and OCBBJ, have funded a program to pay court costs and fees for individuals who otherwise would not be able to afford them. OCBBJ has also funded a program to assist individuals in covering transportation costs to court.

Clearer Policy on Use of Written Promise to Appear as the Default Bail Decision. The new Magistrate’s Tool has a decision checklist that requires use of Written Promise to Appear unless it is established that a cash bail is needed. Again, the Tool allows for release of the individual to pretrial services as an alternative to a secured bond. The Tool requires documentation of reasons for imposing a secured bond.

On October 1, a new District bail/bond policy went into effect for use by magistrates and judges. The intent of the new policy was to provide clearer guidance on use of Written Promise to Appear. Importantly, the new policy includes accountability for magistrates implementing the policy and Tool, “The failure of a magistrate to complete this form, absent good cause shown, shall be grounds for disciplinary action by the Chief District Court Judge”.

Adopt Stronger Citation Release Practice and Transparency. OCBBJ recommended that the Orange County Sheriff and the town Police Departments issue an annual report on use of citations, including by race. The police departments in the Towns of Carrboro, Chapel Hill and Hillsborough provided data requested by OCBBJ; the Orange County Sheriff did not. Data compilation and assessment should be standardized among jurisdictions to make this assessment easier to conduct and more transparent.

Improve Communication on Court Date Reminders. At their First Appearance Hearing before judges, individuals are now given a form showing their next court date and information about how to receive

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court reminder texts. In 2020, during the court session, OCBBJ observers heard judges more clearly stating each individual's court date and the repercussions of not appearing on that date. The Orange County Criminal Justice System stakeholders are also developing a form that can be sent with a court reschedule letter that more clearly states the consequences of not appearing in court. Individuals who come before the magistrates and who are interviewed by the Pretrial Release Services staff continue to be signed up for a court date text reminder.

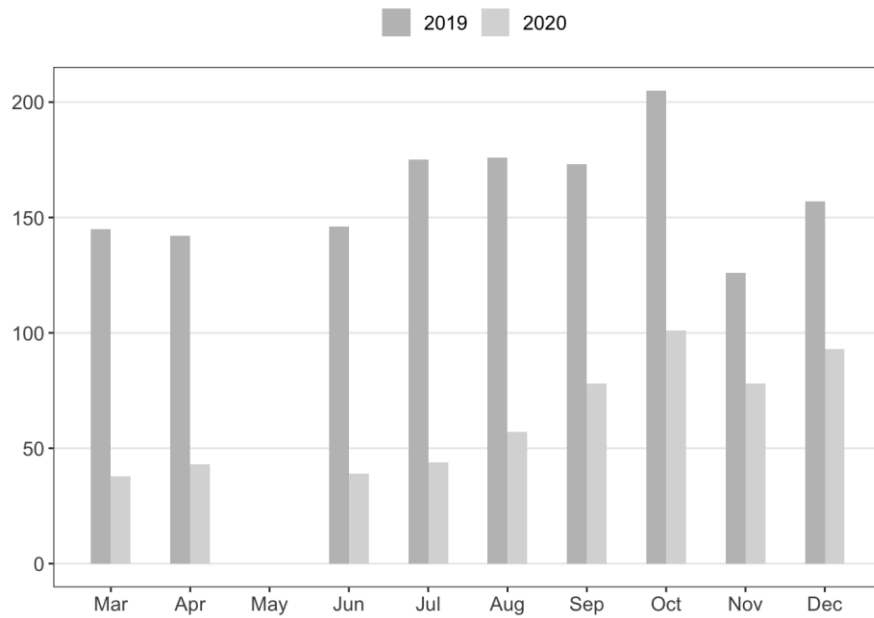
Redefine Failure to Appear. For low level misdemeanors, Orange County will not issue a secured bond and order for arrest for a person based on a Failure to Appear in court. Senior Resident Superior Court Judge Allen Baddour adopted a new Non-Appearance Policy, effective January 2021, that evaluates a person's failure to appear on an individualized, case-by-case basis. The Policy provides a flow chart of factors to consider such as the type of charge, the number of times the individual has previously missed court, and reasons for failure to appear (e.g. lack of notice of court dates, hospitalization, transportation or childcare issues, and inability to get time off from work). This Non-Appearance Policy is a good first step. However, such individualized, case-by-case assessment should also be granted to people with other misdemeanor and lower-level felony charges.

Increase Funding for Pre-Arrest Diversion Programs for Mental Health and Substance Use Community Services. The County began a new Street Outreach and Harm Reduction Deflection Program to aid people experiencing homelessness with mental health and substance use issues and divert them from our criminal justice system. The services include engaging the homeless or people at risk of becoming homeless and connecting them with needed resources (temporary and permanent housing, food, medical care, therapy, disability benefits, job training, etc.). The Orange County Behavioral Health Task Force has also recommended a Behavioral Health Crisis Diversion Facility. This Facility would provide crisis services and criminal justice diversion for people who have a mental health or substance use issues. The Task Force is currently applying for grants to fund the Facility. The Street Outreach Program and proposed Behavioral Health Crisis Diversion Facility are a big part of OCBBJ's vision of a more just pretrial system.

These adopted reforms, together with the COVID 19 pandemic and heightened scrutiny of police practice due to the death of George Floyd, resulted in a marked reduction in the number of people detained pretrial in Orange County (Figure 3). Unfortunately, we also saw a disturbing upward trend in pretrial detentions in September – December (Figure 4), suggesting that these improvements may not be permanent. This pattern of marked decrease followed by increased detentions was a statewide trend. A UNC study comparing North Carolina jail population in 2019 vs. 2020 showed jail populations lower in all months during 2020, except December. However, the monthly statewide jail population began to increase in August after the lockdown ended. See full study at <https://cijil.sog.unc.edu/wp-content/uploads/sites/19452/2021/03/3.22.21-COVID-19-Jail-Populations.pdf>.

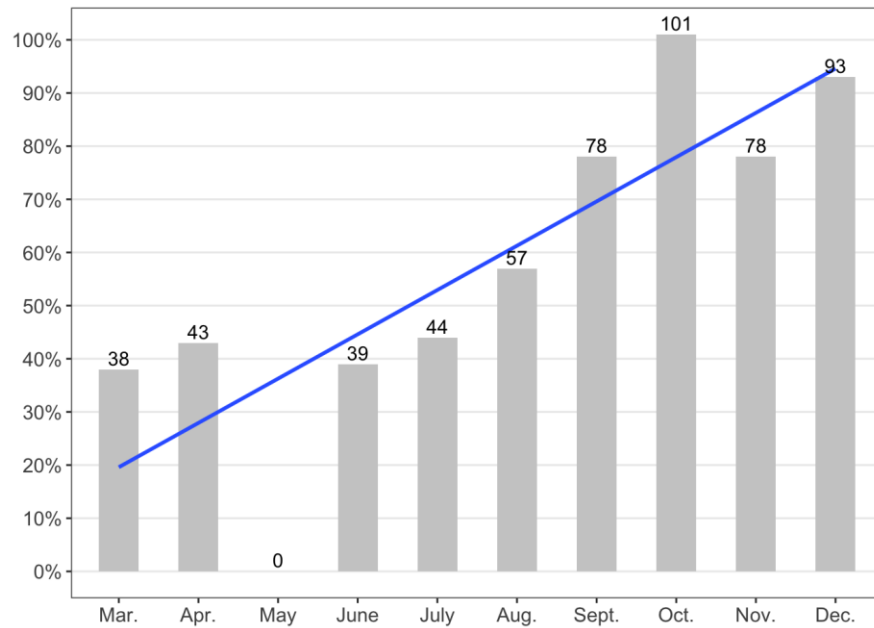
Court Observation Program Findings and Recommendations

Figure 3. Number of Detentions 2019 Versus 2020



Source: Orange County Detention Center. Note: No data were provided for the period of May.

Figure 4. Detention Center Population in 2020



Source: Orange County Detention Center. Note: No data were provided for the period of May.

3. Findings for 2020

3.1 Methodology

The source of all data in this Report is from the OCBBJ Court Observation Program, except as noted otherwise.

From February 2020 through mid-March and July 2020 to mid-December, a trained Court Observation Program team member was present three to five days a week to document how bail was set by the judge during the 2:00 PM First Appearance Hearings. 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 Failure to Appear in court, if the defendant was held in jail despite the Pretrial 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 published Orange County Daily Custody Report, and the court proceedings. The team was able to observe hearings from 3 to 5 days a week, depending on its access to court and availability of published court dockets. After each First Appearance Hearing, one team member performed a Quality Assurance/Quality Control check on each Court Observation Form before entry into the Project 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 344 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.

If, on a given court day, an individual had multiple case numbers or charges, with multiple types of bail assigned, we entered the highest bail type since it "trumps" a lower bail type in terms of detention/bail requirements. For example, if the person had one or more secured bonds but had a Written Promise to Appear on a lesser charge, we only entered the secured bond(s).

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The court observation data was analyzed using R Code analysis. A 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 Program team members recorded. The data analysis did not evaluate causation.

From the time we began our court observation program 2.5 years ago, OCBBJ was told that all First Appearance Hearings were 2:00 PM each weekday. While writing this Report, we learned that there are also First Appearance Hearings at 9:00 AM on Mondays and Thursdays. The Orange County Magistrate said the policy is to assign First Appearance Hearings to these District Court morning sessions when the defendant only has misdemeanor charges and is not in custody (i.e. was given a criminal summons, a Written Promise to Appear, or a secured bond, or posted bail immediately.) The Magistrate indicated that in 2020 and 2021, due to COVID, almost all of the cases assigned to the morning sessions have been First Appearance Hearings for criminal summons cases. We were unable to determine the percentage of First Appearance Hearings that are held on Monday and Thursday morning. The published court docket for these sessions include many types of cases, and does not distinguish which are First Appearance Hearings. The Magistrate Office was also unable to provide an estimate.

In both 2019 and 2020, 18 percent of the magistrates' decisions we documented in the 2:00 PM First Appearance Hearing cases were misdemeanor only, non-custody cases as described above. Though we do not have a complete dataset from the morning sessions, there is no reason to expect that the defendants in the morning sessions are different than those in the afternoon sessions in terms of race or indigent status, or to expect that magistrates and judges would make different decisions during the morning cases than the afternoon cases. Therefore, we believe we have a good sample to describe how bail is set in these types of misdemeanor only, non-custody cases. Based on what we've learned to-date, it appears that the impact on our analysis of the missing morning session data is an underestimation of magistrates' and judges' criminal summons decisions. In the future, we will work with the court officials to better assess how the Monday and Thursday court sessions affect First Appearance Hearing outcomes.

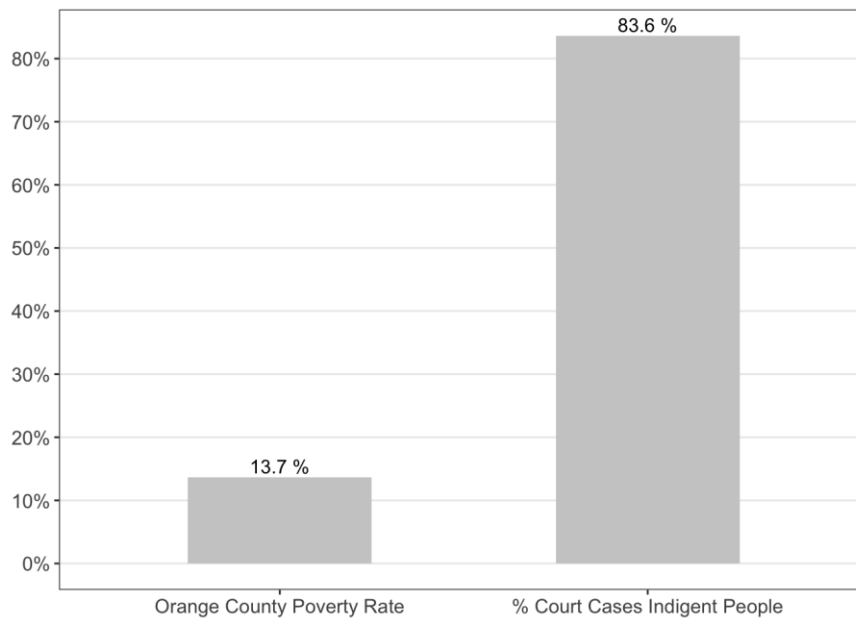
3.2 The Faces We See in Court

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.

Court Observation Program Findings and Recommendations

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, 83.6% of the cases were people who are poor. This compares to a community poverty rate of 13.7% (Figure 5). 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 5. Percent of Court Cases, Indigent People Versus Orange County Poverty Rate



Source Poverty Rate: 2019 ACS 5-year estimates

In our team’s 2020 observation period, only 12.5% of the individuals who received a secured bond posted bail before the First Appearance Hearing with the judge. This compares to 21% in our 2019 observation period. We are unsure why this drop occurred. The new Magistrates’ Tool requires an assessment of an individual’s ability to pay as a condition of setting a secured bond. However, as discussed in later sections of this Report, in 2020 there was a significant drop in detentions, and of those detained, magistrates issued a significantly higher rate of Written Promise to Appear and unsecured bonds compared to 2019. With fewer detentions and higher releases, those detained may have had higher bails for more serious charges (and thus less affordable bails). And some portion represented detention bonds for those considered a danger to the community or high flight risk. During the hearing, judges explicitly inquired about a person’s ability to post bond in approximately 10% of the cases when a secured or unsecured bond was required.

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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. The picture is essentially unchanged from our Prior Report. This two-tiered system exists in counties across North Carolina and throughout the country.

Several recent court cases illustrate the unconstitutionality of such a two-tiered system. 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 2019, 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, NC. 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 sought to reform a cash bail system it stated discriminates against poor people who are presumed innocent, yet held in jail, while those who have money are free to go home. The associated federal court Consent Order requires that judicial officials make an individualized finding that a defendant can afford the amount specified in a required Secured Bond or that pretrial detention is necessary because of clear and convincing evidence of the inadequacy of alternative conditions of release.

In a March 2021 decision, the California Supreme Court required consideration of ability to pay and less restrictive conditions than bail:

In those cases where the arrestee poses little or no risk of flight or harm to others, the court may offer [own recognizance] release with appropriate conditions. Where the record reflects the risk of flight or a risk to public or victim safety, the court should consider whether nonfinancial conditions of release may reasonably protect the public and the victim or reasonably assure the arrestee's presence at trial. If the court concludes that money bail is reasonably necessary, then the court must consider the individual arrestee's ability to pay, along with the seriousness of the charged offense and the arrestee's criminal record, and — unless there is a valid basis for detention — set bail at a level the arrestee can reasonably afford. And if a court concludes that public or victim safety, or the arrestee's appearance in court, cannot be reasonably assured if the arrestee is released, it may detain the arrestee only if it first finds, by clear and convincing evidence, that no nonfinancial condition of release can reasonably protect those interests.

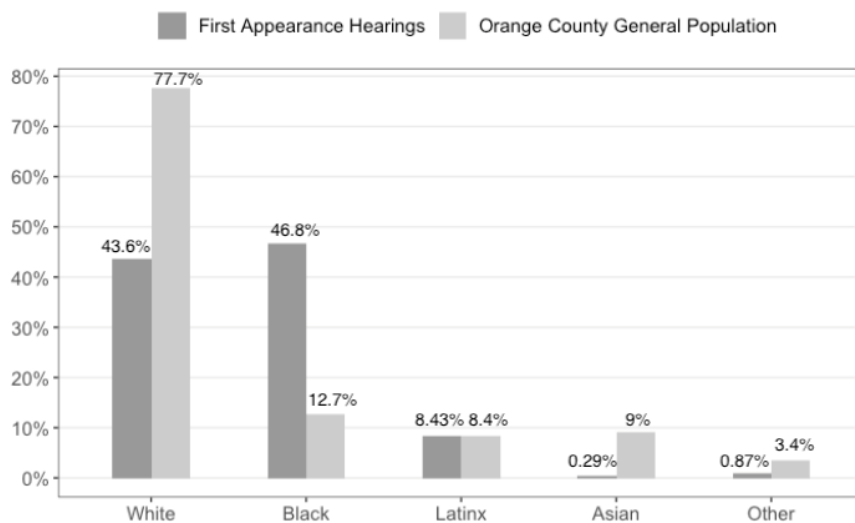
In writing on this recent decision, the UNC Criminal Justice Innovation Lab states, “courts are becoming increasingly skeptical of the constitutionality of bail systems that leave open the possibility of wealth-based detentions when there is no determination that detention is necessary.”

Court Observation Program Findings and Recommendations

To address our court system’s overrepresentation of and impacts on the poor, we also need to address larger community needs that contribute to that inequity. As stated in the Town of Chapel Hill Re-Imagining Community Safety Task Force Report, “Affordable housing, decent jobs for all who are able to work, equitable public education, and access to mental health and drug use treatment are keys to a safer Chapel Hill.” We would add, “and all of Orange County.”

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 12.7% of our community, they make up approximately 47% of the First Appearance Hearing cases observed. In contrast, Whites make up approximately 78% of our community, and only 43.6% of the cases, and Asians make up 9% of our community and only 0.29% of the cases. Population versus First Appearance Hearing cases is proportional for Latinx residents (Figure 6). The racial disparity of people we see in court has increased somewhat since our Prior Report. 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 Black residents exists. The purpose of this Report is to convey the statistics based on our observations, not to explain causation.

Figure 6. Orange County General Population Versus First Appearance Cases, by Race



Source Orange County Population: 2019 ACS 5-year estimates

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,

Court Observation Program Findings and Recommendations

are being misused to respond to social and medical problems. See <https://www.prisonpolicy.org/reports/repeatarrests.html>.

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, in 2019, 20.6% of the cases that we saw in court involved allegations of domestic violence. Reported domestic violence cases increased 21% in 2020 (from approximately 205 cases in 2019 to approximately 250 cases in 2020, source NC Administrative Office of the Courts). Stresses from the COVID 19 lockdown and economic downturn likely generated a large portion of this increased domestic violence.

3.3 Pre-Arrest Conditions of Release

In our February 2020 Court Observation Program Report, OCBBJ recommended greater transparency regarding law enforcement agencies' citation release practices, and that these agencies track and report statistics on citations versus arrests.

Toward that end, OCBBJ assessed local law enforcement agency data on citations and arrests for the year 2020. A citation is a directive, issued by a law enforcement officer, for a person to appear in court. An arrest is when a law enforcement officer takes a person into custody. OCBBJ specifically assessed:

- When an officer is interacting with an individual, the officer's decision to cite or arrest the individual.
- The impacts of the COVID lockdown (March-June) and post-lockdown period on the number of police interactions and citation/arrest decisions.
- The degree to which these citation versus arrest decisions differ by race.

To better focus on enforcement situations where the officers' arrest choices are more discretionary, we assessed only those arrests not involving a warrant or indictment (called warrantless/onview arrests).

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For citations, we excluded traffic infractions, which include many people living outside of the Towns' jurisdiction; including such infractions would make comparison with Town demographic data more problematic. In this Report, the terms "citation and arrest cases" or "cases" are a shorthand for the cases evaluated: warrantless/onview arrests and citations excluding traffic infractions.

The Carrboro, Chapel Hill, and Hillsborough Police Departments provided these data, as well as summary data for 2019. We greatly appreciate these law enforcement agencies taking the time to compile and report on this critical information. The Orange County Sheriff's Office did not provide these data.

For cases involving only misdemeanor charges, Chapel Hill and Hillsborough issued citations in most cases (55% and 65% respectively). Conversely, Carrboro issued arrests in most of these cases (56%). Below are the key findings of the Report regarding impacts of the COVID pandemic and race.

COVID

- An indicator of how law enforcement practices changed with the COVID pandemic is the number of cases of citations and arrests in 2019 versus 2020. The Town of Chapel Hill had a 46% decline in cases in 2020 compared to 2019. The Town of Carrboro had a 23% decline, while the Town of Hillsborough had a 21% decline.
- In assessing the year 2020 data only, in Chapel Hill and Hillsborough, the number of citations and arrests per month decreased in the post lockdown period compared to the January-February Pre-COVID period. They increased in Carrboro.
- The *percentage* of citations per month (compared to *percentage* of arrests) did not increase in the lockdown or post-lock down period during 2020. In the more robust indicator comparing the percentage of citations in 2019 versus 2020, there was a decline in overall percentage of citations given in 2020.
- It appears the most significant change in practice was the number of police citation and arrest cases in 2019 versus 2020, not the proportion of citations given during the COVID lockdown or COVID post-lockdown period in 2020.
- OCBBJ has called for a goal of maintaining the decreased jail detentions seen in 2020. The assessment of data in the Citations vs. Arrests Report shows a need to sustain the decreased police citations and arrests in order to achieve this goal. It also shows an opportunity to increase the use of citations over arrests when taking an enforcement action.

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Race

- In all three towns, there were a higher percentage of police cases involving citations and arrests with Black residents compared to their portion of the community. In Carrboro, this was also true for Latinx.
- Given this higher rate of cases, it is not surprising that Black residents received a higher percentage of the citations given—as well as arrests made—than their portion of the population.
- In Carrboro and Hillsborough, White residents had a higher percentage of citation and arrest cases resulting in arrests than Black residents (61% vs. 46% and 49% vs. 42%, respectively). In Chapel Hill, Black and White residents had an equal likelihood/percentage of police cases resulting in arrests (approximately 50% each).
- For all three towns, though Latinx and Asian members of the community had far less police cases involving citations and arrests, their percentage/likelihood of arrests per case was much higher (Latinx residents' arrest ranging from 57% to 77% and Asian residents' arrest ranging from 67% to 100%).
- There are aggregate differences for Black residents in the total number of citation and arrest cases, and for Latinx and Asians in the likelihood that a case will result in arrest. This indicates some racial disparity in our criminal justice system. This assessment did not evaluate causation. Additional, more complex study would be needed to show racial bias and racial discrimination in practice. These findings indicate a need for further study by police and the community into policies, practices, and biases that may contribute to inequities in our local criminal justice system.

See the full Citations vs. Arrest Report at <https://ocbailbondjustice.org/wp-content/uploads/2021/04/OCBBJ-Quarterly-Report-Special-Citations-v-Arrests-Report-for-2020.pdf>.

The number of people detained pretrial would have been higher if not for policies and programs in place to help divert people from the criminal justice system. Orange County's Pre-Arrest Diversion Policy and Program provides officers the discretion to issue a citation for first offenders with certain low-level misdemeanors. Also, there is a unit of social workers that help respond to certain 911 calls.

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.pre-trial.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 also helps take potential discrimination by race out of

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the citation equation. As discussed in Section 4, two other important measures can bolster this equation: progressive policies implemented by the District Attorney's Office and ending wealth-based detention.

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. The new Street Outreach Diversion program helps to prevent people with mental health and substance use issues being caught in the criminal justice system. The County is just launching a new Harm Reduction Diversion Program for people with prior records. Importantly, the County is also planning a new Behavioral Health Crisis Diversion Facility.

The local branches of the NAACP and local town advisory committees on police reform have evaluated community safety in the light of law enforcement policies and practices and are making a broad range of recommended reforms. In Section 4, based on recommendations reviewed to-date, we have included the highest priority recommended reforms related to pretrial detention and bail policy.

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 with Pretrial Services Supervision, with a Written Promise to Appear in court or with 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. Under the new Magistrates' Tool, magistrates can now call judges 24/7 to discuss individualized conditions where they lack the authority to set a release condition and are authorized to release the person directly to Pretrial Release Services supervision.

First Appearance Hearings before a District Court Judge are held Monday through Friday following the person's booking. The hearing is always the same day or next day, unless the booking is on a Friday or Saturday. 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 judge can release the defendant, set a secured bail, or deny bail. If detained for less serious charges, the defendant may wait in jail for one to two days, or weeks between the First Appearance Hearing and his or her trial. For high-level felony charges, pretrial detention may last for months or years.

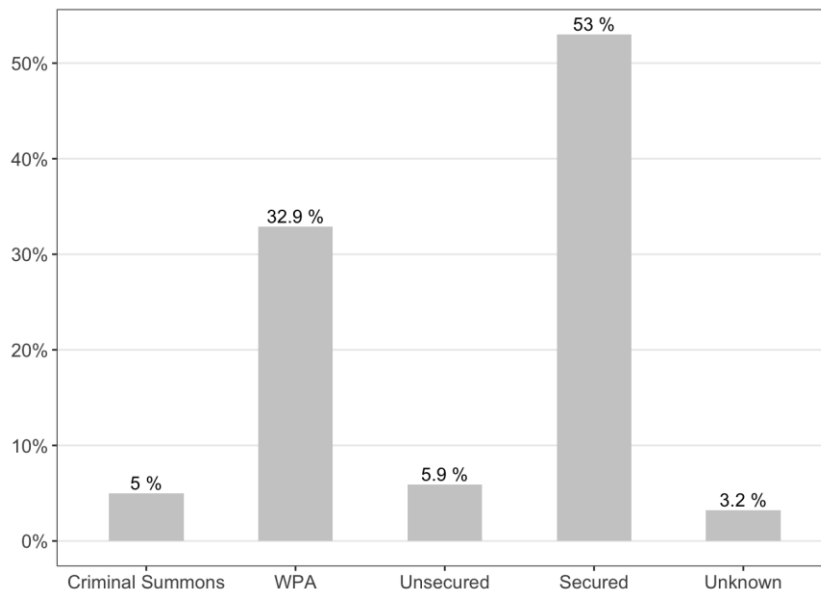
Court Observation Program Findings and Recommendations

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 have the authority to set bail. Under the new Magistrates' Tool, if the magistrate determines that the person can be released without posing a risk, he or she can contact the judge for authorization to release. Otherwise, the person must be detained until the Hearing with the judge. If an individual has an outstanding Failure to Appear charge, according to state law, the individual must be detained, and the magistrate must double the bond. Since magistrates are constrained in domestic violence cases where individuals are at risk and in Failure to Appear decisions, we have subtracted such cases from the magistrate calculations below. 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 "hold" that same bond requirement. With no way to track these cases, they were included in the calculations.

For cases observed in 2020, criminal summons was used in approximately 5% of the cases. In setting bail, the magistrates released the individuals to go home to await trial in 39% of the cases (32.9% Written Promise to Appear and 5.9% unsecured bond). While this approximately doubles the rate of release for observed in cases in 2019, the District Policy says that Written Promise to Appear shall be the presumptive bond. Secured bond was required in 53% of bail decisions (Figure 7). Figure 8 shows magistrates' decisions, by month. There was an increase in Written Promise to Appear and unsecured bonds July-November. However, there was a sharp increase in the percentage of secured bonds in December.

Figure 7. Magistrates' Decisions

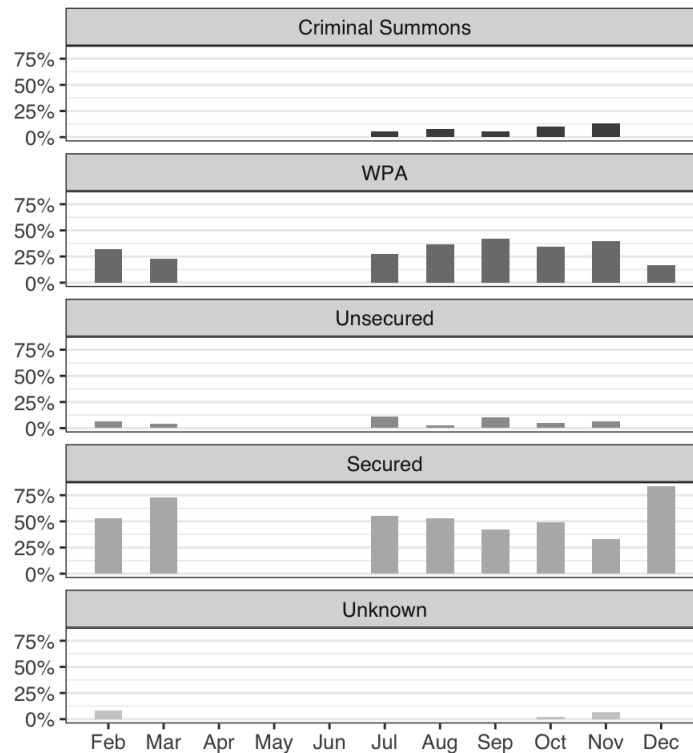


N count: Criminal Summons 11; Secured Bond 116; Unsecured Bond 13; WPA 72; Unknown 7. Note: Criminal Summons indicates

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that the magistrate kept the summons as issued without changing it to a bond requirement. The estimated percentage of criminal summons could be impacted by the lack of Tuesday and Thursday morning First Appearance Hearing Data.

Figure 8. Types of Magistrates' Decisions, by Month

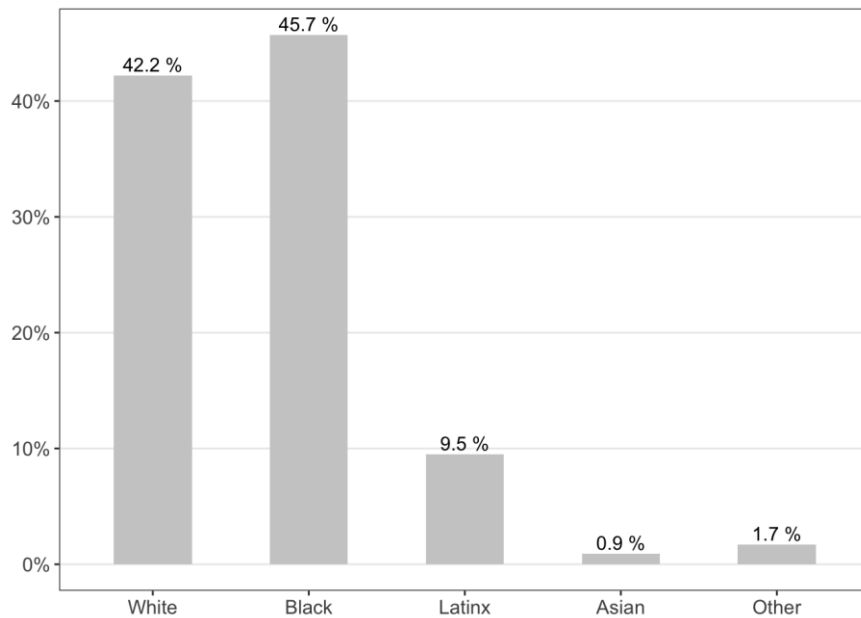


Note: The estimated percentage of criminal summons could be impacted by the lack of Tuesday and Thursday morning First Appearance Hearing Data.

As in 2019, the proportion of secured bonds in 2020, by race, followed almost the same race pattern as that for the race observed in all First Appearance Hearings. (Figure 9). This underscores that 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. Also, the proportion of secured bond required by race in 2020 is almost identical to what we observed in 2019.

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 1 provides the answer to this question, with a breakdown, by race, of the magistrates’ decisions. The number of cases is noted by “N”.

Figure 9. Pretrial Detention/Secured Bond, by Race



N count: Asian 1, Black 53, Latinx 11, Other 2, White 49. Note: Excluding cases constrained by FTA and domestic violence.

Table 1. Breakdown of Magistrates’ Decisions, by Race

Decision	Asian		Black		Latinx		Other		White		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Summons	0.0%	0	4.7%	5	0.0%	0	0.0%	0	6.4%	6	5%	11
Secured	100%	1	50.0%	53	73.3%	11	66.7%	2	52.1%	49	53%	116
Unsecured	0.0%	0	2.8%	3	6.7%	1	33.3%	1	8.5%	8	5.9%	13
WPA	0.0%	0	39.6%	42	20.0%	3	0.0%	0	28.7%	27	32.9%	72
Unknown	0.0%	0	2.8%	3	0.0%	0	0.0%	0	4.3%	4	3.2%	7
Total	100%	1	100%	106	100%	15	100%	3	100%	94	100%	219

Note: The estimated percentage of criminal summons could be impacted by the lack of Tuesday and Thursday morning First Appearance Hearing Data.

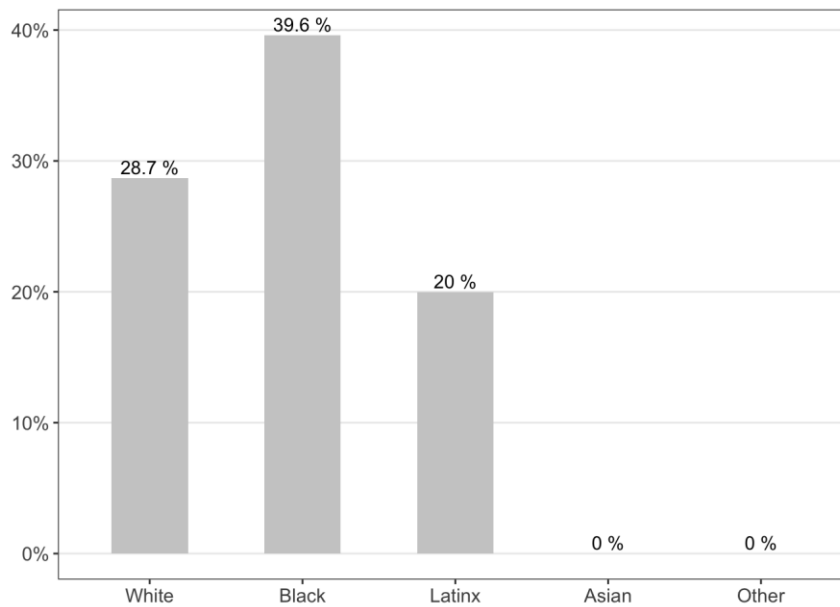
As indicated in Table 1, for magistrates, White and Black defendants had an almost equal rate of secured bonds (approximately 50%). Although there were far fewer cases for Latinx defendants, magistrates required secured bonds in these cases at a much higher rate (73.3%). (The small number of Asian defendants skewed the percentage for that race.) Black defendants received a higher rate of Written Promises

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to Appear than White and Latinx defendants (40% compared to 28.7% and 20%, respectively). See Figure 7. Comparing who received a Written Promise to Appear in 2020 vs. 2019, we see is a significant reversal of racial disparity for Black defendants. In 2019, White defendants received a higher rate of Written Promise to Appear than Black and Latinx defendants (20.3% compared to 14% and 16.7%).

The overall median bail set by magistrates was \$2,500. The 25th percentile to 75th percentile around the median bail was \$1,000 to \$7,500. The median bail set by magistrates was higher for Whites (\$3,000) than for Blacks (\$2,500) and Latinx (\$1,750). This is significant reversal in disparity of bail amount required compared to 2019. There was only 1 case where the magistrate set bail for Asians, resulting in a relatively high median of \$5,000 (Table 2).

Figure 10. What Percentage of Defendants Received a WPA, by Race



N count: Asian 0, Black42, Latinx 3, Other 0, White 27.

Table 2. Magistrate Median Bail, by Race

Race/ethnicity	Median Bail
White	\$3,000
Black	\$2,500
Latinx	\$1,750
Asian	\$5,000
Other	\$1,500

N count: Asian 1; Black 106; Latinx 15; Other 3; White 94.

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For cases involving misdemeanor charges only, the magistrates required a secured bail/bond in approximately 63.3% of the cases, again excluding cases constrained by domestic violence or Failure to Appear charges. This is a decrease compared to 2019 observations where, overall, 79% of misdemeanor only cases required a secured bond. In 2020, for 83% of these cases, just one or two misdemeanor charges drew a secured bond requirement (44.4% for a one misdemeanor charge and 38.9% 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, 18% involved, in part, arrest due to prior Failure to Appear in court (essentially unchanged from 2019). 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. In 2020, fear of COVID 19 also likely contributed to Failure to Appear.

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 reform 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>. As discussed in Section 2.2, in January 2021, a new District Policy became effective regarding Failure to Appear. We will assess the impacts of the policy in next year's Court Observation Program Report.

The UNC School of Government Criminal Justice Innovation Lab is conducting an empirical evaluation of the use of the new Magistrates' Tool, and in May 2021 released its findings for the period Oct. 1, 2020 (when the Tool became effective) through February 28, 2021. This study used a different dataset than

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the Court Observation Program, different methods, and a different evaluation period. Therefore, we cannot draw a comparison in our data. However, the study does help underscore progress in the magistrates' use of secured bonds and Written Promise to Appear. Drawn from the Report, key findings of the study include:

- Magistrates issued a condition other than a secured bond in 72.5% of all cases. For non-DWI Class 1-3 misdemeanors, the rate was 79.5%; for other charges it was 71.1%
- Magistrates issued a Written Promise to Appear in 65.8% of all cases; in 78.2% of non-DWI Class 1-3 misdemeanor cases; and 63.3% of other cases.
- The median secured bond amount for non-DWI Class 1-3 misdemeanors was \$500. For other offenses it was \$5,000.
- Magistrates released individuals to pretrial services supervision more frequently with higher level charges. They released no defendants to pretrial services supervision charged with non-DWI Class 1-3 misdemeanors but did so in 7.3% of cases involving other charges.
- Magistrates adhered to the structured decision-making tool's recommendation in the vast majority of cases (87.4%), when deviating, most deviations were to impose a secured bond or release to pretrial services instead of a Written Promise to Appear, custody release, or unsecured bond.
- The number of pretrial detention bookings decreased by 37% after implementation of the new Tool.
- There was no significant change in the length of jail stays or median number of days detained.

The full Report can be found at <https://cjil.sog.unc.edu/wp-content/uploads/sites/19452/2021/05/Q1-2021-Eval-Report-FINAL.pdf>.

The UNC Report for the period October 2020 – February 2021 indicates a significantly lower rate of use of secured bonds and higher use of Written Promise to Appear than cases OCBBJ observed and documented in 2020. In our next Court Observation Program Report, we hope to see the UNC reported trends continued.

The Orange County Criminal Justice Resource Department compared 2020 data to 2019 data, for the same monthly time periods. While the data showed decreased detentions in the 4th quarter of 2020 compared to 2019, it showed a much higher rate of decrease in the months of March through September. For example, in the months of March through September, the data showed a 68% to 75% reduction in 2020 detention compared to 2019. The period of mid-November 2020 to mid-January 2021 shows only 38% and 41% reductions compared to prior year data. One explanation given by Orange County Criminal Justice System stakeholders was that the individuals were being released in March-September 2020 using practices inconsistent with the new policies and Tool that became effective October 1. If the

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practices being implemented during COVID posed no added risk to the community, the Magistrate's Tool should be amended to include those practices.

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 and the judge did not set bail. There were a number of cases where the defendant posted bail, failed to appear in court, and the judge set bail with an arrest order. These cases were included in the analysis.

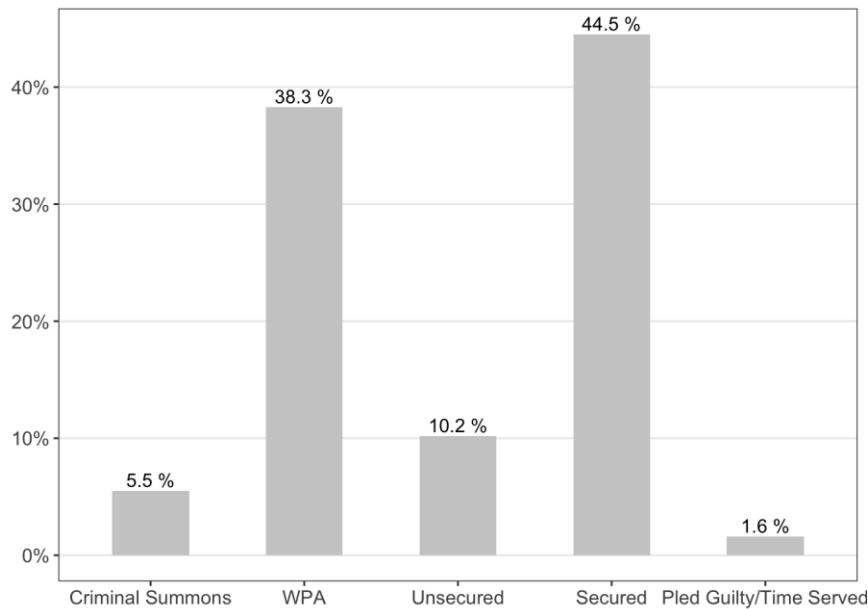
Of the cases observed in 2020 where the magistrate set a secured bond, only 11% posted bail before the First Appearance Hearing with the judge. Judges are required by law to consider ability to pay when setting bail. During the hearing, in only about 10% of the cases requiring a secured or unsecured bond did the judge inquire about the person's ability to post bail or bond. Although the judges had income and expense data before them, it is unclear whether or how they used these data from the application for a public defender to weigh the defendant's ability to pay bail or post a bond. There was no explicit ability to pay assessment.

In bail decisions, judges released the individuals to go home to await trial in 48.5% of cases (38.3% Written Promises to Appear and 10.2% 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 44.5% of the judges' decisions (Figure 11.). The rates of release and secured bond are identical to the rates observed in 2019. No meaningful or discernable pattern could be seen in looking at monthly data, except an increase in rate of criminal summons July-November.

North Carolina law stipulates that a secured bond can be required only if there is reason to believe that the defendant will use his or her freedom to flee, intimidate a witness, hurt someone, suborn perjury, or destroy evidence. When a secured bond was set by the judge, the Court Observation Team noted any bail determinants or rationale stated. In 51% of the secured bond cases, the judge did not state why the secured bond was needed. As a point of good practices and court accessibility, in First Appearance Hearings, the judges should clearly state the rationale for requiring a secured bond.

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Figure 11. Judges' Decisions



N Count: Criminal Summons 14; Secured Bond 114; Unsecured Bond 26; WPA 98; Time Served 4. Note: Criminal Summons indicates that the judge kept the summons as issued without changing it to a bond requirement. The estimated percentage of criminal summons could be impacted by the lack of Tuesday and Thursday morning First Appearance Hearing Data.

The judges stated statutory determinants for secured bonds in only 38% of the secured bond cases: 29% for violence/posing a threat to an individual or the community and 9% for a prior Failure to Appear, an indicator for flight risk. The most common determinants stated were past conduct (53% of the secured bond cases); nature of the crime (39% of cases); Failure to Appear today in court (29% of cases); and bond hold (16% of cases). Other reasons were also stated, such as outstanding warrants, need to find substance use treatment, need for mental evaluation or treatment, and lack of ability to change the bond due to Superior Court jurisdiction. Judges discussed multiple determinants for some cases.

Again, the proportion of secured bonds required, by race, followed a similar race proportion/pattern as that for all First Appearance observations, except for Latinx defendants. Latinx make up 4.4% of the community, however had 12% of the secured bonds issued.

Table 3 shows the breakdown by race 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?"

Court Observation Program Findings and Recommendations

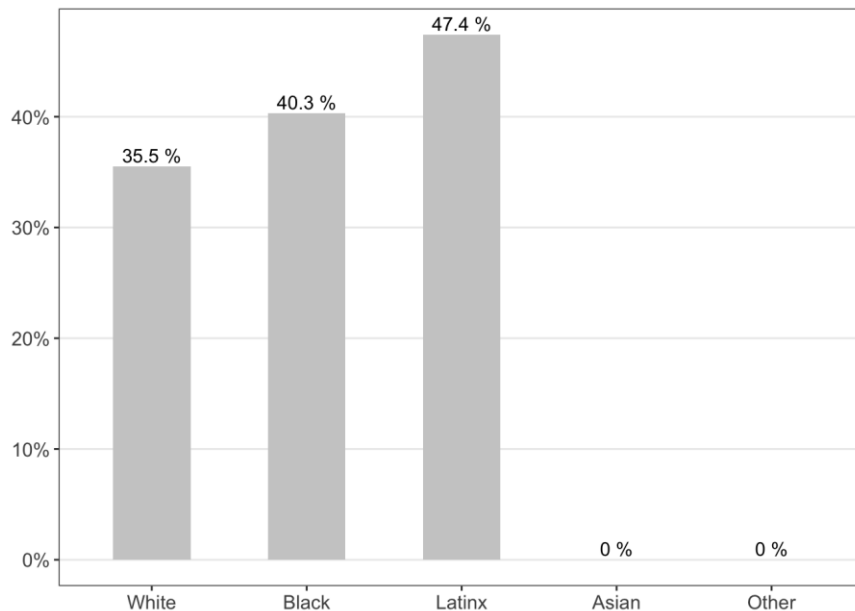
Table 3. Breakdown of Judges’ Decisions, by Race

	Asian		Black		Latinx		Other		White		Total	
Decision	%	N	%	N	%	N	%	N	%	N	%	N
Summons	0.0%	0	4.8%	6	0.0%	0	0.0%	0	7.3%	8	5.5%	14
Secured	0.0%	0	44.4%	55	26.3%	5	100%	3	46.4%	51	44.5%	114
Unsecured	0.0%	0	9.7%	12	26.3%	5	0.0%	0	8.2%	9	10.2%	26
WPA	0.0%	0	40.3	50	47.4	9	0.0%	0	35.5%	39	38.3%	98
Time Served			0.8%	1	0.0%	0			2.7%	3	1.6%	4
Total	100%	0	100%	124	100%	19	100%	3	100%	110	100%	256

Note: The estimated percentage of criminal summons could be impacted by the lack of Tuesday and Thursday morning First Appearance Hearing Data.

Latinx defendants received a secured bond at a much lower rate than Blacks and Whites (26.3% versus 44.4% and 46.4, respectively). Latinx received a Written Promise to Appear at a much higher rate than Blacks and Whites (47.4% versus 40.3% and 35.5%, respectively, Figure 12). White defendants not only received a highest rate of secured bonds and lowest rate of Written Promise to Appear, they also had the highest median bail, by far, compared to Black and Latinx defendants. This pattern of judges’ decisions completely reverses racial disparity trends seen in 2019.

Figure 12. What Percentage of Defendants Received a Written Promise to Appear, by Race



N Count: Asian 0; Black 50; Latinx 9; Other 0; White 39.

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Judges have discretion in setting bail and use that discretion differently. Table 4 shows the percentages of criminal summons, unsecured bond, Written Promise to Appear, and secured bond, by the different District Court Judges. The requirement for secured bonds varied little among judges (from 42% to 50%), except for Judge Roper who only used secured bonds in approximately 17% of his cases. For two judges, the Written Promise to Appear percentage fell within approximately 28% to 32% (Judges Scarlett and Pendergrass). For the other judges, the percentages fell between 43% (Judge Cabe) to 58% (Judge Buckner), with an average of 50%. Judge Scarlett used Written Promises to Appear at approximately half of that rate (28% versus 50%), instead using a much higher percentage of unsecured bonds (20.3%); however, the District Policy says that “unsecured bonds are strongly discouraged”. Median bail set by the judges also differed markedly, from a low of \$1,000 (Judge Roper) to a high of \$5,000 (Judges Murrell, Long, and Cabe). See Table 5 for the bail median and 1st quartile analysis for each judge. The overall median bail set by judges for cases observed was \$3,000.

Table 4. Decisions, by Judge

Decision	Summons		WPA		Unsecured		Secured		Time Served		Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Buckner	0.0%	0	58.3%	7	0.0%	0	41.7%	5	0.0%	0	100%	12
Cabe	8.2%	5	42.6%	26	4.9%	3	42.6%	26	1.6%	1	100%	61
Long	0.0%	0	46.4%	13	7.1%	2	46.4%	13	0.0%	0	100%	28
Murrell	0.0%	0	52.6%	10	5.3%	1	42.1%	8	0.0%	0	100%	19
Pendergrass	10.0%	5	32.0%	16	8.0%	4	50.0%	25	0.0%	0	100%	50
Roper	16.7%	2	50.0%	6	8.3%	1	16.7%	2	8.3%	1	100%	12
Scarlett	2.9%	2	27.5%	19	20.3%	14	46.4%	32	2.9%	2	100%	69
Total	5.6%	14	38.6%	97	10.0%	25	44.2%	111	1.6%	4	100%	251

For cases involving misdemeanor charges only, the judges required a secured bail/bond in 40% of the cases. In 73% of these cases, just one or two misdemeanor charges drew a secured bond requirement (43.3% of the cases for a one misdemeanor charge and 30% of the cases for two misdemeanor charges). This is a similar pattern for cases observed in 2019: 38% use of secured Bond for misdemeanor only charges and 70% of the cases involving only one to two misdemeanors). As noted above, the magistrates required a secured bail/bond in a higher percentage of misdemeanor only cases than judges, approximately 63% of the cases.

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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.

Table 5. Median Bail and 1st Quartile, by Judge

Judge	Median Bail	25 th Percentile	75 th Percentile
Buckner	\$2,500	\$2,000	\$2,500
Cabe	\$5,000	\$1,875	\$13,125
Long	\$5,000	\$2,000	\$17,502
Murrell	\$5,000	\$2,500	\$10,000
Pendergrass	\$4,000	\$1,000	\$15,000
Roper	\$1,000	\$750	\$3,000
Scarlett	\$2,250	\$1,000	\$5,000

N count: Judge Buckner 12; Judge Cabe 61; Judge Long 28; Judge Murrell 19; Judge Pendergrass 50; Judge Roper 12, and Judge Scarlett 69.

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 specialists, 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 custody 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.

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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.

The degree to which judges followed Pretrial Release Services recommendations is unclear. The Court Observation Team documented that judges detained the individuals in 2.5% of the cases in which the Program recommended release (3 case decisions by Judge Scarlett). However, in 31% of the cases, the judge did not state the recommendation of Pretrial Release Services. The Prior Report recommended that judges state clearly the Pretrial Release Services recommendation, and if not releasing the individual as recommended, the reasons why detention is needed. Clearly, this recommendation was not met. 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.

Pretrial release is not only a more just outcome for the defendant, it is less costly. In Orange County, it cost \$120 per day to detain an individual and less than \$5 per day for release of that individual to pretrial supervision. Importantly, a number of studies have shown that pretrial release does not increase the incidence of failure to appear in court or criminal activity, including a study in 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

Despite all the progress made in the last decade in pretrial detention practices, there are deep and persistent impacts. In 2020, 84% of the people we saw in court were poor, a large portion of the cases require a secured bond/cash bail, and only 10% of those individuals were able to post bail before their First Appearance (bail) Hearing with a judge. There was significant disparity in the number of Black residents cited and arrested and seen in court. A large portion of the people we saw had mental health or substance use issues, arrested due to their sickness rather than providing needed assistance to these individuals.

To get at these most deep and pernicious impacts, we need transformational and bold changes. We recommend action in three key areas: Community Safety/Law Enforcement Agency Reform; Progressive District Attorney Policies; and Ending Wealth-Based Pretrial Detention. The actions will complement and bolster efforts from different criminal justice system agencies. Our detailed recommendations for reform are listed below.

4.1 Community Safety & Law Enforcement Agency Reform

Responsible Party: Police Chiefs, Sheriff, Town Councils, County Commissioners

Use Evidence-Based Law Enforcement. Prioritize the use of evidence-based law enforcement, which is the concept of using the best available evidence to inform actions and decisions. Develop and implement standard analysis regarding citizen interaction with law enforcement and monitor progress. Establish a civilian board in each law enforcement agency.

Redesign Emergency Response. Either retrain 9-1-1 operators to triage calls or have a separate non-police crisis number for people to call who are experiencing mental health, alcohol, drug, family or other crises not requiring an armed police response. Create a 24-hour Mental Health Crisis Intervention Center that could be used as a diversion or deflection resource by law enforcement and members of the community. We recommend that a non-police crisis intervention team be established to provide an alternative crisis response option when indicated.

Maximize Diversion and Deflection. Divert or deflect minor, non-traffic violations of the law from the criminal justice system. If a warning is appropriate, then the violation should be resolved with a warning. If the violation suggests the need for counselling or other assistance, then the person should be referred to appropriate agencies. Citations should only be issued if a warning is not appropriate and the violator is not amenable to diversion or deflection. Persons should not be arrested for minor violations of the law unless absolutely necessary.

Decriminalize Drug Possession and Use. Treat drug and alcohol use issues primarily as a public health and not criminal law problem. Deprioritize the use of the criminal law to deal with drug use and possession and, whenever possible, refer persons using or possessing drugs for evaluation and treatment. Continue to charge people who sell drugs and who commit other crimes along with drug use.

Redirect Armed, Uniform Resources to Community Health and Other Services. With the active advice of the citizens, “downsize” the armed, uniformed portion of the police force and determine how to provide services that do not require armed police to be provided by other government employees or private agency employees. These functions could include responding to family crises that do not involve the threat of immediate violence, responding to substance use or mental health crises that do not involve the threat of immediate violence, responding to people who are homeless and other functions.

Expand Mental Health and Substance Use Services. Expand the Street Outreach, Harm Reduction and Deflection Program (SOHRAD). Use peer support and clinical staff in a relationship-based model to provide ongoing engagement and case management for people living unsheltered. Prioritize funding for the Behavioral Health Crisis Diversion Facility. Provide affordable inpatient and outpatient treatment for any residents in need of treatment.

4.2 Progressive District Attorney Policies

Responsible Party: Orange County District Attorney

Increasingly, OCBBJ is learning that the District Attorney (DA) is the most powerful person in the criminal justice system. The DA solely decides who to prosecute and who not to prosecute. If not prosecuted, the charges go away. The DA decides if a defendant is offered diversion or not; and decides what kind of charges to bring against the individual. The DA negotiates plea deals and can overcharge to get plea deals. The DA has the power to influence bail and sentencing. The DA can decide categories or types of charges that his or her office will not prosecute. And more.

In recent years, a number of DA Offices across the country have adopted and implemented progressive policies. The article, A Public Defender Definition of Progressive Prosecution, defines progressive prosecution as “the model of prosecution committed to truth-telling about systemic racism, shrinking mass criminalization, addressing root causes of crime, and bringing the criminal legal system in line with basic notions of justice and humanity.”

OCBBJ researched the specific policies implemented by progressive DA Offices across the country, including the neighboring City of Durham, NC. We also asked a number of people, with different perspectives, their high priority recommendations for Orange County DA policy reform. We received advice from 3 local justice impacted individuals, 3 Orange County public defenders, 5 Court Observation Team members, and representatives from different social justice organizations in our community.

We all urge the Orange County DA Office to implement policies that reduce incarceration and increase fairness, compassion, and transparency. With the upcoming retirement of our current DA and spring 2022 elections, we will be asking candidates for Orange County DA to pledge to use a slate of progressive policy reforms, if elected. We will work with justice impacted individuals and our partners to finalize the slate in the coming months. Based on our research and discussion to-date, we recommend that the following 9 policies be considered for the slate of reforms recommended.

Be Transparent. Be transparent about policies guiding sentencing choices and diversion programs. Provide annual reports assessing the office’s efforts to ameliorate racial bias in sentencing. Work with the UNC School of Law’s Prosecutors and Politics Project or the Duke Wilson Center for Science and Justice to form a publicly available policy on transparency and to track disparities.

Make Diversion the Rule. Encourage Police Departments and the Sheriff’s Office to deflect most minor charges from the court system and divert most that arrive at court system to other appropriate services. Encourage diversion whenever possible when mental health or substance use are involved, and help ensure these diversion programs are adequately funded. When diversion is not an option, create a First Offender Deferred Prosecution Agreement.

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End Wealth-Based Pretrial Detention. Consider pretrial detention only when the facts are evident and clear, and convincing evidence shows a substantial likelihood that the defendant's release would result in great bodily harm to others or the defendant's flight. Do not request cash bail except for violent misdemeanor or violent felony offenses where there is substantial risk of great bodily harm to an individual or the community. When cash bail is requested under these limited, high-risk circumstances, recommend cash bail amounts aligned with the accused's ability to pay.

Increase Use of Restorative Justice Practices. Expand restorative justice practices for misdemeanor and felony offenses, working toward accountability, repair, and rehabilitation.

Decline to Prosecute Drug Charges. Do not prosecute drug charges for personal use amounts of any kind of drugs. Do not prosecute drug paraphernalia charges.

Consider Consequences on Immigrant Status. Consider the collateral consequences of conviction on immigration status.

Create a Fair Firearm Policy. Do not automatically prosecute possession of a firearm by a felon. Look at the circumstances surrounding charging including proximal violent conduct and the individual's last felony conviction (if no violence is alleged or the underlying felony conviction is over 10 years old, use a lesser charge).

Create Fair, Predictable Charging and Plea Bargaining Practices. Seek indictments based on what is the appropriate resolution of the case and not the highest possible charge. There should always be a benefit for pleading guilty and accepting responsibility; however, the reward should be modest so that the guilty pleas are not coerced. Avoid all situations where there is disparity between the charged offense and the plea offer so that justice is served for both the victim and the defendant. Put in writing and make public all policies regarding indictment and plea offers.

Actively Recruit DA's of Color. Increase the diversity of the Assistant DA's so that they reflect the population they represent.

4.3 Ending Wealth-Based Pretrial Detention

Responsible Party: Senior Resident Superior Court Judge

End Wealth-Based Pretrial Detention. Revise the District Pretrial Release Policy to allow magistrates and judges to consider pretrial detention only when the facts are evident and clear, and convincing evidence shows a substantial likelihood that the defendant's release would result in great bodily harm to others or the defendant's flight. Do not request a secured bond/cash bail except for violent misdemeanor or violent felony offenses where there is substantial risk of great bodily harm to an individual or

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the community. When cash bail is requested under these limited, high-risk circumstances, recommend cash bail amounts aligned with the accused's ability to pay. Require magistrates and judges to document the need for cash bail/secured bond according to statutory determinants, and require a bond hearing within 48 hours.

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 Criminal Justice Resources Department, the NAACP, and others. Progress has been made over the last decade and there are many progressive programs and practices in Orange County.

In 2020, we saw significant progress on OCBBJ's bail reform recommendations. The work of reform-minded Orange County criminal justice stakeholders and nonprofits, and measures taken to address COVID 19, led to a drastic reduction in arrests and detentions, a marked increase in the use of Written Promise to Appear to release individuals, and significant reversal of racial disparity for a number of justice indicators we are tracking. We are pleased to report these positive trends, but cannot conclude any permanent progress based on two years of data, especially given the events of 2020.

Even with this progress in 2020, Orange County still has a two-tiered pretrial system: one for poor people and one for people who are not poor. We continue to see a high use of cash bail requirements, even for charges that only involve misdemeanors. Our law enforcement and pretrial systems still disproportionately impacts Black members of our community. And still, a large portion of the people we saw had mental health or substance use issues, arrested due to their sickness rather than providing needed assistance to these individuals. We know this pattern of disparity is seen statewide and nationwide; however, we think we can and should strive for a more fair, just, and compassionate pretrial system in Orange County.

To get at the deep and pernicious pretrial detention impacts in our community, we recommend 3 transformational, high priority areas of reform: Community Safety/Law Enforcement Agency Reform; Progressive District Attorney Policies; and Ending Wealth-Based Pretrial Detention. The OCBBJ Court Observation Program will continue in 2021 and beyond. We will continue to track and report on the progress in reforms recommended.