

NORTH CAROLINA

**RACIAL JUSTICE IMPROVEMENT PROJECT:
NORTH CAROLINA**

YEAR 2 EVALUATION FINDINGS

PREPARED FOR:
The American Bar Association, Criminal Justice Section



BY:

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Introduction and Background

Introduction:

The North Carolina Commission on Racial and Ethnic Disparities (NC-CRED) is working with Halifax County court officials to pilot a program on risk assessments and racial disparities at the bond-setting stage. The goal of the pilot program is to determine whether implementation of a standardized risk assessment tool would address disparity in bail setting procedures in Halifax County and whether the implementation of such a tool in Halifax County would increase efficiency and consistency in pretrial procedure.

With this study, the Halifax County Task Force establishes baseline data for further study of Magistrate discretion and implicit bias in bail-setting decisions in Halifax County.

Methods

Quantitative Data

The Halifax County Task Force (TF) selected and slightly modified a version of the Virginia Pretrial Risk Assessment (Appendix A)¹ for use in a thirty-day pilot period (beginning November 1, 2014). The TF collected information on cases in two ways. First, Magistrates filled out an unscored Pretrial Risk Assessment while making bond decisions for the pilot period. When the Pretrial Risk Assessments were completed, NC-CRED staff completed the scoring of the defendants based on the Pretrial Risk Assessment risk factors and weights. The Task Force categorized the range of bonds assigned during the pilot period into groups based on risk levels formulated by the Virginia tool. This was used to make a crude comparison between what bonds were being set and what bonds would be suggested by the Virginia Risk Assessment tool.

The data collected by the Magistrates during the pilot period will show if the Risk Assessment would prescribe similar or dissimilar bail types and amounts as compared to the bail decisions made at the Magistrates discretion and whether race plays a role in pretrial decision making in Halifax County.

Secondly, the Jail Administrator completed a shorter version of the modified Pretrial Risk Assessment for all individuals housed in the Halifax County jail for pretrial detention. This modified Pretrial Risk Assessment did not include questions that would require a defendant interview²; thus, questions on this assessment were answered solely with information from the jail computer databases. This version was

¹ VanNostrand, Marie and Kenneth J. Rose. (2009). "Pretrial Risk Assessment in Virginia: The Virginia Pretrial Risk Assessment Instrument," Richmond, VA: Virginia Department of Criminal Justice Services. See the modified Pretrial Risk Assessment for the jail population, Appendix A. The Virginia Risk Assessment was modified because the Task Force wanted to collect some information that is specific to a rural North Carolina county (Charge Class, distinguishing between FTA as an OFA and a FTA *conviction*, living in the *county* as a residential question) and some information that is thought to impact bond decisions (whether it is a drug case, distinguishing between felony and misdemeanor probation).

² The Pretrial Risk Assessment tool required questions regarding residency, employment history, or drug abuse history, which cannot be answered without a defendant interview.

scored by the Jail Administrator³.

The data collected by the Jail Administrator was intended to show (1) the risk levels of the defendants who are detained in the Halifax County jail pretrial as determined by the modified Virginia Pretrial Risk Assessment (modified to exclude defendant interviews), (2) what bond types and amounts are acting as barriers to gaining pretrial release, and (3) whether race played a role in who was detained pretrial in Halifax County.

Qualitative Data

During the first year of the project, the TF surveyed the Magistrates of Halifax County about the factors that they consider when setting bond; if the *Written Determination of Judicial Official on the Imposition of a Secured Bond*⁴ was used and if so, how; and their impressions, if any, of racial inequities in the pretrial process. Those surveys were analyzed and are included in the *Results* section.

Samples

Magistrate Sample. The individuals in this sample comprised defendants seen in Magistrate Court during the month of November 2014. The sample was composed of 131 defendants seen in Magistrate Court during that time frame. Of the total sample, 76% (99) defendants were Black/African American and 21% (28) were White/Caucasian.⁵

Bond types were also identified. The majority of defendants seen by the Magistrates were given secured bonds (62%; 81). Unsecured bonds (26%; 34) were offered as the second-most occurring bond type and no bond was offered to 5% (7) of the defendants⁶. Further, 22% (28 defendants) were offered cash bonds and 1% (1) was offered a written promise to appear. The vast majority of defendants were not ordered to abide by any special conditions.

Jail Sample. This sample was made up of 88 defendants incarcerated in the Halifax County Jail in the same time period. Of the total sample, 81% (71) defendants were Black/African American, 18% (16) were White/Caucasian.⁷

The majority of incarcerated defendants were given secured bonds (81%; 71). Defendants who were incarcerated without bond made up the second-most occurring bond type (18%; 16) and one (1%)

³ Although the VA Pretrial Risk Assessment was used, it was modified to eliminate interviews of the defendants.

⁴ This is a checklist where Magistrates record the reason(s) they are setting a certain bond. Most Magistrates in Halifax County do not use it unless they are setting a bond outside of the amount range suggested in the bond schedule.

⁵ Four individuals (3%) were identified as "Other." These cases were not included in the data analysis, due to the low number of participants.

⁶ In North Carolina, Magistrates cannot set bonds for domestic violence cases unless 48 hours pass and a District Court Judge has not yet set a bond. Although seven defendants were originally given a no bond by the Magistrates, six of those were given relatively low secured bonds the next day by a District Court Judge.

⁷ One individual (1%) were identified as "Other." These cases were not included in the data analysis, due to the low number of participants.

defendant was incarcerated with a cash bond. As with the Magistrate sample, the vast majority of defendants were not ordered to abide by any special conditions.

It should be noted that within Halifax County itself, 41% identify as White/Caucasian, 53% identify as Black/African American and 6% identify as “other.”

Table 1. Demographics of the North Carolina sample of defendants

	Magistrate N (%)	Jail N (%)⁸
Race⁹		
Black/African American	99 (76%)	71 (81%)
White/Caucasian	28 (21%)	16 (18%)
Other	4 (3%)	1 (1%)
Bond Type		
Secured	81 (62%)	71 (81%)
Cash	28 (2%)	1 (1%)
Unsecured	34 (26%)	-
Custody	6 (4%)	-
Written promise to appear	1 (1%)	-
No bond	7 (5%)	16 (18%)
Bail Conditions Set		
None	87 (69%)	78 (90%)
No contact with victim	12 (9%)	2 (2%)
No contact with another person	10 (8%)	-
Bar from specific location	4 (3%)	1 (1%)
Electronic monitoring	1 (1%)	6 (7%)
Other	13 (10%)	-

⁸ One jail case of an individual being held on an unsecured bond was eliminated from the analysis due to the uniqueness of the case.

⁹ There were no significant differences in race based on the Magistrate versus jail sample. In other words, the proportion of racial group was statistically the same within both the Magistrate and jail samples.

Results

The purpose of this study was to determine whether a risk assessment would improve the efficiency and fairness of bail decision in Halifax County. We also looked at whether there were differences in bond decisions based on the race of the defendant.

Magistrate Sample

There was a significant correlation between the bond amount and the risk assessment score in the Magistrate sample ($r(120) = .25, p = .007$). What this means is that the defendants who were deemed high risk were assigned a higher bond and those deemed low risk were given lower bonds.

No significant differences were found in the bond amount by race, when controlling for the seriousness of the crime, failure to appear and criminal histories.¹⁰ In other words, when seriousness of the crime, failure to appear history, and criminal history were accounted for, the data show that there were no differences between Whites and Blacks in the amount of bond set.

However, as can be seen in Table 2, median¹¹ risk scores indicate somewhat erratic bond assignment. For example, defendants with a risk score of 5 received a median bond level of \$4,000, while those with a score of 7 received a median bond level of \$3,250, \$750 lower. One would expect that the median bond for a risk score of 7 would be higher than that of a score of 5.

Table 2. Median bond amount by risk score within the jail sample.

Risk Level	Median Bond Amount	N ¹²
0	\$500	16
1	\$750	22
2	\$1,000	25
3	\$2,000	23
4	\$2,000	15
5	\$4,000	13
6	\$3,500	6
7	\$3,250	6
8	-	-
9	-	-

¹⁰ Using logistic regression: $X^2(76, N = 127) = 88.52, p = .154$

¹¹ The median was used in this analysis, so as not to allow extreme bond amounts to pull the scores up or down.

¹² Number of defendants with that risk score

It should be noted that, although a defendant could achieve a risk score as high as 9, none received scores above 7.

Jail Sample

There was not a significant correlation between the bond amount and the risk assessment score in the jail sample¹³. What this means is that the defendants who were deemed high risk were not necessarily assigned a higher bond than those with lower risk scores. Further, an analysis of variance test indicated that bond level did not relate to risk score ($F[4, 60] = .42, p = .80$).

While not statistically significant¹⁴, Blacks, in general, were given higher bail amounts than were Whites¹⁵.

Within the incarcerated population, there were no significant differences in the bond amount by race, controlling for the seriousness of the crime, failure to appear history, and criminal history.¹⁶ In other words, when seriousness of the crime, failure to appear history, and criminal history were accounted for, the data show that there were no significant differences in the amount of bond set between White and Black defendants.

There was an interesting finding, however, pertaining to the amount of bond related to risk score within the jail population. While not statistically significant, the bond amounts did not increase with the risk score at the pace expected. As can be seen in Table 3, the bond amounts do not rise commensurate with the risk level. In fact, the bond amount for a risk score of 3, \$60,000, is higher than that of a risk score of 4, \$55,000.¹⁷ This may indicate that individuals with lower risk levels have inordinately high bond levels, precluding them from bonding out of jail. Please see Table 3 for additional detail.

¹³ $r(72) = .05, p = .68$

¹⁴ $F[1, 70] = 1.13, p = .29$

¹⁵ Bail amounts given to Black defendants were an average of \$136,531 and the bail amounts of White defendants averaged \$63,547. Taking murder out of the equation, the bond amounts were nearly identical between racial groups (\$68,048 for Black defendants and \$63,546 for Whites).

¹⁶ Using logistic regression: $X^2(29, N = 68) = 27.97, p = .519$

¹⁷ It should be noted that even when seriousness of the crime is taken into account, this does not result in a statistically significant result.

Table 3. Median bond amount by risk score within the jail sample.

Risk Level	Median Bond Amount	N ¹⁸
0	\$1,500	1
1	\$7,500	20
2	\$12,500	22
3	\$60,000	21
4	\$55,000	8
5	-	-

Qualitative Data

In addition to the data collected via the risk assessment form, the TF also surveyed the Magistrates to assess their perceptions of their bond amount decision-making. Initially, Magistrates were asked what factors are at their disposal when making bail decisions. Table 4 provides detail about the factors that Magistrates have available during arraignment.

Table 4. Defendant characteristics available to Magistrates in bail-setting.

Factors available to Magistrates during bail setting	Yes	No
Nature of the circumstances of the offense charged	7	0
Weight of the evidence	6	1
Family ties	6	1
Employment	5	2
Financial resources	4	3
Character and mental conditions	6	1
Length of residence in the community	7	0
Criminal convictions	7	0
Prior history of appearing in court	7	0
Prior flight to avoid prosecution	7	0
The victim's safety	6	1
Any other person's safety	6	1
The community's safety	6	1

¹⁸ Number of jail inmates with that risk score

Magistrates spent an average of 14 minutes with each defendant, with a minimum of 10 minutes and a maximum of 30 minutes. Additionally, Magistrates were asked what percent of the time they ordered secured and unsecured bonds, as well as Written Promises to Appear. The data indicate wide variations in responses, with Magistrates ordering secured bonds between 45% and 95% of the time. Please see Table 5 for additional detail.

Table 5. Percent of the time Magistrates imposed secured and unsecured bonds as well as Written Promises to Appear.

	Minimum %	Maximum %	Mean %
How often do you impose secured bonds?	45	95	68
How often do you impose unsecured bonds?	3	45	25
How often do you impose Written Promises to Appear?	1	10	4

In Table 6, we have illustrated the mean comparison of Magistrate self-report use of secured, unsecured bonds and Written Promises to Appear to their actual usage of the three bond outcomes. As can be seen, the self-report and actual usages are relatively similar, particularly in the use of secured bonds.

Table 6. Comparison of Magistrate self-report of the use of secured and unsecured bonds and Written Promises to Appear to actual usage.

	Actual %	Self-Report %
Secured	69	68
Unsecured	16	25
Written promise to appear	1	4

The Magistrates were also asked which of the aforementioned factors they take into consideration when setting bail. All Magistrates use a variety of factors in making their bail decisions. Table 7 provides detail about their responses.

Table 7. Factors taken into consideration in bail-setting.

Factors taken into consideration by Magistrates in setting bail	Yes	No
Nature of the circumstances of the offense charged	7	0
Weight of the evidence	7	0
Family ties	5	2
Employment	6	1
Financial resources	3	4
Character and mental conditions	6	1

Factors taken into consideration by Magistrates in setting bail	Yes	No
Length of residence in the community	6	1
Criminal convictions	7	0
Prior history of appearing in court	7	0
Prior flight to avoid prosecution	6	1
The victim's safety	7	0
Any other person's safety	6	1
The community's safety	6	1

When asked which factor is most important in their bail decisions, four out of the seven Magistrate rates indicated that the nature of the circumstances of the offense charge was the most important consideration.

When asked what additional information the Magistrates would like to have available when setting bail, four of the seven stated that they would like to have out-of-state records when possible.

Further, three out of the seven Magistrates indicated that they use the checklist, *Written Determination of Judicial Official on the Imposition of a Secured Bond*, when imposing secured bonds. Four stated that they did not always use the checklist. All Magistrates stated that they used the checklist at least some of the time.

Five of the seven Magistrates indicated that they had not received any training on bail setting and three of the seven stated that they would like training on bail setting, as well as other topics. Six of seven Magistrates stated that they would provide time in their schedules for training.

Summary

Two findings stand out in this evaluation: 1) there was a significant correlation between the Risk Assessment scores and the bond amounts ordered within the Magistrate sample, but 2) there was no significant correlation between risk score and bond amount within the jail sample. There may be several explanations for these findings.

First, within the jail sample, there were 28 Class A cases (the most severe classification of offense), while in the Magistrate sample, there was only one. Thus, it appears that the jail sample was comprised of much more serious cases than the Magistrate sample.

In fact, the jail sample was comprised of a greater number of high level cases, compared to the Magistrate sample. Because the modified Virginia Risk Assessment tool does not take severity of crime

into account, this alone could account for the higher bail settings for that group, as well as the lack of correlation between the bond amount and the risk score.

Second, while the Magistrates did not use the Risk Assessment to inform their decision-making in setting bonds, they did have the Assessment available to them at the time of arraignment. This, in itself, could have primed the Magistrates in their decision-making. In other words, the Risk Assessment, while not explicitly utilized in making bond decisions, could have had an impact on the decisions all the same. If this is the case, it would suggest that continuing to use the Risk Assessment would ensure equitable bond level decision making

Please see Table 8 for additional detail.

Table 8. Severity of case by sample origin.

	Magistrate N (%)	Jail N (%)
Severity of Case, by Class¹⁹		
3	8 (9%)	3 (4%)
2	15 (16%)	3 (4%)
1	26 (28%)	8 (10%)
I	12 (13%)	8 (10%)
H	24 (26%)	13 (16%)
G	3 (3%)	2 (3%)
F	0	0
E	2 (2%)	3 (4%)
D	0	4 (5%)
C	1 (1%)	6 (7%)
B1	1 (1%)	2 (2%)
A	1 (1%)	28 (35%)

This study provides a baseline of data for investigating whether there is implicit bias in bail-setting decisions. Caution should be taken in the interpretation of these results as the sample size and subsample sizes are relatively small. As can be seen, the results are mixed, and further research is needed to untangle the relative severity of the present case from overall risk level.

¹⁹ There were no significant differences in race based on the Magistrate versus jail sample. In other words, the proportion of racial group was statistically the same within both the Magistrate and jail samples.