

Bail Reform in North Carolina—Pilot Project: First Appearances for All Defendants

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In a series of posts I've been discussing bail reform, including highlighting pilot programs underway in North Carolina. In 2018, I worked with stakeholders in North Carolina's Judicial District 30B (Haywood and Jackson counties) to help them identify and implement a basket of pretrial reforms. One of the implemented reforms involves providing first appearances for in-custody defendants charged with misdemeanors and Class H and I felonies (highest charge) or arrested on a probation violation within 72 hours of arrest or at the first regular session of the district court in the county, whichever occurs first. The new procedure went into effect on January 1, 2019.

What Are the Reasons behind the Reform?

Current law requires a first appearance for in-custody *felony* defendants within 96 hours of being taken into custody or at the first regular session of district court in the county, whichever occurs first. G.S. 15A-601(c). Because the law does not require first appearances for in-custody misdemeanor defendants, these defendants may sit in jail for weeks or more until their first court date. This can lead to scenarios where misdemeanor defendants are incarcerated pretrial when the charged offense cannot result in a custodial sentence upon conviction or where they are incarcerated pretrial for a longer period than they could receive in a custodial sentence if convicted. Additionally, stakeholders learned of research suggesting that pretrial detention of low-level defendants has negative public safety consequences and negative case outcomes for defendants. *See, e.g.,* Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711 (2017). They determined that these reasons counsel in favor of first appearances for in-custody misdemeanor defendants, to ensure prompt judicial review of the magistrate's bond determination and a determination that detention is warranted because of pretrial risk as opposed to inability to pay financial conditions. Additionally, a separate reform in the District provides for NC IDS contract counsel for in-custody defendants charged with misdemeanors and Class H and I felonies as well as those arrested on probation violations; the new first appearances were necessary to effectuate that reform. The new first appearances are held at 2 pm in district court. Holding the proceedings in the afternoon affords new contract counsel time to meet with clients at the jail and to obtain and review defendants' criminal history records.

Logistically, How Was It Implemented?

After District stakeholders identified this reform as a priority, I drafted an Implementation Plan that I vetted with stakeholders. There were a number of issues to iron out, including how frequently the new first appearances should and could occur; working with the Clerk's office to create a calendar for the new "72-hour" proceedings; getting agreement regarding timing of the proceedings that worked with everyone's schedules and fit with the existing court calendar; ensuring communication with the jail so that defendants would be present in court; and development of a Standing Order setting the proceedings.

Did Any Glitches Occur?

Yes. Initially stakeholders wanted to hold the new hearings within 48 hours. Due to staffing issues and court dockets, this proved to be unworkable, and they settled on 72 hours. Also, while court is held every day in Haywood County, it is

not held daily in Jackson County. Additionally, Jackson County does not have an AOC-approved audio-visual system in place that would have allowed for remote first appearances with judges on the bench in Haywood. Thus, while the program is being implemented robustly in Haywood County, Jackson County has not been able to fully implement.

How Will the Pilot Be Evaluated?

The Judicial District 30B reform project includes an evaluation component. In partnership with Professor Jamie Vaske of Western Carolina University, evaluation of this and other reforms is underway. Professor Vaske will be looking at the impact of this change against a set of core pretrial metrics. The evaluation period runs through the end of the calendar year, and Professor Vaske will produce a report to stakeholders after that date. I'll post an update when we have information from that evaluation.