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National pretrial expert: Reform is coming to the broken cash bail system

By **Joe Killian** - 4/24/2018 - In Top Story

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Cherise Fanno Burdeen

When Cherise Fanno Burdeen talks about the U.S. justice system, she's speaking from more than 20 years of experience.

After getting her Master's degree in Criminal Justice at Indiana University, she worked with the Department of Justice's National Institute of Justice, did post-9/11 work with the Department of Homeland Security and field work with the Safer Foundation in Chicago.

But since 2006, Burdeen has been working on the disparate pieces of what she considers one overarching issue: the broken system that denies those arrested a true presumption of innocence and equal justice under the law.

As CEO of the national Pretrial Justice Institute, Burdeen says she's struggling with many facets of the problem – and most are on display in North Carolina:

- A cash-bail system that **leaves poor defendants incarcerated while those with means return to their homes and lives before trial.**
- An entrenched judicial culture that **public defenders and former judges say** insists on cash bail even when defendants aren't proven dangerous or a flight risk.
- A **politically well-connected and frequently corrupt for-profit bail bond industry** that too often features violence, sexual crimes, fraud and exploitation of the poor.
- A **county-by-county patchwork of pre-trial services programs** that help the poor avoid long-term jail before trial but that are also overworked, underfunded and lacking in adequate state support.

Despite all this, Burdeen said in an interview this week, improvements appear to be happening nationwide and there is a growing understanding of the problem and momentum for change.

"Almost every state in the union has something happening," Burdeen said. "It's a really monumental time to be doing this work."

This month the Institute issued "**Where Pretrial Improvements are Happening,**" a report on progress emanating from the judiciary, legislative branches, the grassroots level, as well as from litigation.

The changes coming from courts themselves are particularly gratifying, Burdeen said.

“For the first time in the history of bail reform, we have a very prominent role being played by judiciaries across the country,” Burdeen said. “That’s everything from individual, municipal court level judges to chief justices in the states and everything in between. They are using their convening power; they are using their ability to convene and run task forces and issue reports and study things. They’re using their power to create court rule changes within existing statutory frameworks. Because for the most part, statutes in the states provide most of the release options we need in the states. It’s just court culture has never exercised those.”

North Carolina has seen just that sort of shift in thinking, though it hasn’t yet filtered down to every individual jurisdiction.

In a 2016 report, the North Carolina Commission on the Administration of Law and Justice **called for pretrial justice reform** – reform that would move the state away from a *de facto* system of requiring all criminal defendants to post cash bail in order to be released from jail prior to their day in court.

The reform recommendation came in response to concerns that the cash bail system was badly flawed. Judicial experts at nearly every level have voiced their concern that profit and politics have compromised the original intent of state statutes dealing with bail and the presumption of innocence.

The report concluded that the state should replace the existing cash bail system with “an empirically derived pretrial risk assessment tool and develop an evidence-based decision matrix to help judicial officials best match pretrial conditions to empirically assessed pretrial risk.”

But while those reforms are slowly happening in counties like Mecklenburg, Durham, Wake and Guilford, most of North Carolina’s 100 counties are failing to make such progress.

Meaningful and lasting reform may have to come from higher courts and changes to state law, Burdeen said.

“My organization is 41 years old,” she said. “For the first 35 years we went county by county. It’s like painting the Golden Gate Bridge — by the time you get to the end, you’ve got to start over.”

“The difficulty of change at the county level – even in a place like Mecklenburg, which wants the change – is that they’re still only able to get as far as the state statutes would allow them to go,” Burdeen said.

“What’s happened over the last 25 years is that most states have modified their statutes,” she said. “Legislatures have said, ‘Okay, everybody gets bail except for capital offenses and treason.’ And then they say ‘Okay, but let’s just add...’ and they add things over the years. Gun charges. Committing a new offense while on probation. There are so many things now that are these additions within statutes.”

Often those statutes will explicitly require a money bond amount, Burdeen said. Or they will only allow pre-trial supervision if it includes a money bond as well.

“The bondsmen have been really good at not only pushing legislation that avoid reform but getting it so that essentially they have a monopoly on everyone who gets arrested,” Burdeen said.

The for-profit bail bond industry has long enjoyed solid connections to the North Carolina legislature. **Rep. Justin Burr (R-Stanly)**, for instance, is one of the most powerful members of the House and a bond agent in private life. Former state Sen. Tom Apodaca, also worked in the bail bond industry during his tenure as chairman of the powerful Senate Rules Committee before resigning in 2017 to represent numerous important clients as a **lobbyist**.

North Carolina lawmakers were also the beneficiaries of more than \$350,000 in political contributions from the industry between 2002 and 2016. During that period, the North Carolina Bail Agents Association took credit for helping to pass 60 laws “helping N.C. bondsmen make and save more money and protect their livelihood.”

“In the early days, I spent most of my time helping places fight bad legislation put up by the American Legislative Exchange Council,” Burdeen said. “They were sponsored by the bondsmen who had a choke-hold on the public safety committee within ALEC. These were model bills that expanded the use of financial conditions, almost eradicated liability for anyone who wrote a bond with the expansion of grace periods for bond forfeitures or really lax licensure or registration requirements, almost no reporting requirements in the insurance industry.”

These days, Burdeen said, her organization is spending more time trying to craft legislative fixes – even if strong reforms have been slow to see passage.

“We worry now about bail reform bills that are like tepid tea – that will cause almost no change but will leave people feeling like they did something,” Burdeen said. “We’ve been monitoring bills in states – from probably 25 or 30 states this session – that are what they probably consider to be really progressive bills. But they need more research and they need to be based on what we know actually works.”

Even when bills don’t pass quickly, Burdeen said, the crafting and discussion of them is changing minds.

“In many places it’s been an incredibly positive process of raising the consciousness of people – state legislators – who had never heard of this issue before,” Burdeen said. “They didn’t even know there were state statutes governing local bail and they’re starting to see for the first time that addressing the issue of pretrial detention is one of the key factors in addressing mass incarceration and racial disparities in who is jailed and for how long.”

Although Burdeen's group isn't directly involved in litigation, she said some major wins in the courts are also changing the conversation around money bail and pretrial services.

The United States Court of Appeals for the Fifth Circuit recently found, in *O'Donnell v. Harris County*, that a Texas county's system of setting bail for indigent misdemeanor defendants was unconstitutional.

"Harris County has now spent seven million taxpayer dollars to defend themselves against this lawsuit," Burdeen said. "This is a county that said they couldn't afford to expand pretrial but somehow found seven million in taxpayer dollars to fight the change."

Jurisdictions around the country see the similarity between the way their systems function and the case in Harris County, Burdeen said. If they're smart, she said, they won't go millions of dollars into debt to fight a change that is working for so many other states and jurisdictions.

"I don't want to see these places spend that kind of money," Burdeen said. "What I want to see is them to be terrified of litigation and for them to come to us for help so we can take them through a process that is inclusive and not just reactive to litigation."

Another huge win that hasn't gotten enough attention, Burdeen said, was a Department of Justice agreement that mandated pretrial justice improvements in Jefferson County, Alabama as part of a federal complaint that the county's system violated the Civil Rights Act.

"Under this administration, they're hoping to settle these without a lot of fanfare," Burdeen said. "Because they're really running cross-wise with having to follow the law and [Attorney General Jeff] Sessions' personal beliefs on these issues and his connections to people in the bail industry."

"I refuse not to make fanfare over this," Burdeen said. "These are changes we need and it's important when progress is made."

To read the Pretrial Justice Institute's most recent state-by-state report card on progress in pre-trial procedures, go [here](#).

In the coming weeks and months, Policy Watch will continue its series of stories exploring the bail industry in North Carolina – its influence, impact and costs to the state and its people. We'll talk with bail bond agents, attorneys and law enforcement officials as well as those who have dealt with the industry at some of the most vulnerable moments in their lives.

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Experts: We already know how to reform the state's flawed cash bail system

By **Joe Killian** - 4/12/2018 - In Top Story

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In a 2016 report, the North Carolina Commission on the Administration of Law and Justice **called for pretrial justice reform** – reform that would move the state away from a *de facto* system of requiring all criminal defendants to post cash bail in order to be released from jail prior to their day in court.

The reform recommendation came in response to concerns that the cash bail system was badly flawed – concerns that experts have echoed and expanded upon in a series of recent Policy Watch reports that detailed **individual and systemic corruption within the bail system, the system's unjust impact on the poor** and **the concerns of veteran jurists** that profit and politics have compromised the original intent of state statutes dealing with bail and the presumption of innocence.

The report concluded that the state should replace the existing cash bail system with “an empirically derived pretrial risk assessment tool and develop an evidence-based decision matrix to help judicial officials best match pretrial conditions to empirically assessed pretrial risk.”

Two years later, however, North Carolina is not appreciably closer to that sort of statewide reform.

Yet in some of the state's largest counties, pretrial services programs of just type recommended are already in place. What's more, where they operate, they are driving down court and jail costs while decreasing the number of people who fail to appear for court dates or are again arrested while awaiting their court dates.



Jessica Ireland is the program manager for pretrial services in Mecklenburg County.

For the programs' clients, the vast majority of whom are poor, being released as part of a pretrial service program is more than a convenience. It can mean keeping a job they would otherwise lose while in jail awaiting a court date or caring for their children when no one else can.

Many working within the patchwork system of county pretrial services programs, however, say they are not holding their breath waiting for statewide reform.

"I don't think you'll ever have a statewide pretrial service system like you see in some other states," said Jessica Ireland, program manager for [pretrial services in Mecklenburg County](#). "I don't think the state would pick up funding pretrial. But I think you can have a risk-based assessment in every jurisdiction."

What makes Mecklenburg County the gold standard in pretrial services programs in the state is its risk assessment tool. Using information on in-custody defendants as variables, the tool assigns a number score to predict the chances of future criminal activity or whether individuals are likely to appear for their court date. The scores are used in recommendations for either pretrial release without bond or in setting reasonable bond requirements.

Those meeting the pretrial program's criteria may be released into the program's custody. They may then, depending on their risk level and circumstances, be required to undergo substance abuse screening, come to weekly office check-ins or have some other sort of supervision.

The program costs the county about \$1.6 million annually, Ireland said, but the money it saves in preventing failure-to-appear charges and overcrowded jails has won it broad support from police, judges, prosecutors and public defenders.

"We have a really good collaborative system put together with all our judicial partners," Ireland said. "We try to use the jail space more wisely so people who can be released with little to no supervision will be. Remember, these people are presumed innocent. A lot of them are only in jail because they don't have the money to get out."

The system is working, Ireland said. In tracking from November to February, 93 percent of those using the pretrial system appeared for their court dates. Eighty-five percent of those using the system had no new charges between their initial arrest and their court date.

Ireland adds that the last number would be even higher if one accounts for things like simple traffic offenses, which are not separated out in their data.

Last year Mecklenburg, Buncombe and Durham counties were all part of the John D. and Catherine T. MacArthur Foundation's [Safety and Justice Challenge](#), a \$100 million initiative to support jurisdictions with funding and technical assistance. Its goal is "safely reducing the number of arrested people who are brought to jail and increasing the use of evidence-based tools, such as pretrial assessment instruments, in pretrial decision-making."

Mecklenburg was awarded a \$2 million grant which it's using to identify and deal with racial and ethnic disparities in its system, provide alerts for trial dates to reduce failure-to-appear rates and safely reduce its jail population by 13 percent.

Durham's pretrial program was [awarded \\$50,000](#) which it has used to create an Automated Notification System (ANS) to remind people of criminal court dates.



(Image: dconc.gov)

Gudrun Parmer, director of Durham's Criminal Justice Resource Center, said it's remarkable how much of a difference a simple call, text or email reminder can make in reducing the number of people who fail to appear for a court date and then end up in jail.

"We wrote a web-based application where you can go online and sign up to see the charges and the dates for any case," Parmer said. "It could really be used in any jurisdiction, so hopefully we'll be able to share it with others."

Next month, the county will have a report on the results of the reminder program, but the numbers for the pretrial program are already good.

Last year, almost 94 percent of the program's clients appeared for their court dates. Nearly 93 percent avoided new charges before their court dates. Almost 92 percent of those admitted to the program completed it without breaking any of the conditions to which they had agreed, which can range from keeping a curfew and regular office check-ins to attending school if they are students.

The caseload of clients can be between 80 and 100 at any given time – a lot to manage for a relatively small department of only five full-time employees.

Ultimately, Parmer said, she would like to see the program expand to 24 hour operation, with a risk assessment model like Mecklenburg and a closer relationship with the courts and magistrates.

"I would like for us to begin working with people before they have to spend the night in jail or longer," Parmer said. "Everyone is presumed innocent. They shouldn't have to be there if we can help."

In the coming weeks and months, Policy Watch will continue its series of stories exploring the bail industry in North Carolina – its influence, impact and costs to the state and its people. We'll talk with bail bonds agents, attorneys and law enforcement officials as well as those who have dealt with the industry at some of the most vulnerable moments in their lives.

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Billy Ball

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North Carolina's bail industry draws severe criticism from criminal justice experts

Posted By *Joe Killian* On 3/1/2018 @ 5:30 am In Top Story | [Comments Disabled](#)



[1]

(Image: Adobe Stock)

Brennan Aberle sees a lot of tough stuff over the course of his workday.

Working on behalf of indigent clients for the Guilford County Public Defender's office, the 31-year old attorney averages around 200 clients at any given time, most facing mid-level felonies. Working with people facing jail time and too poor to pay for their own defense, there are a lot of casual tragedies to be observed.

"One of the most heartbreaking things I deal with, though, is when I have to go to a client and say, 'I think you have a case, but realistically it could take months before the case is heard,'" Aberle said in an interview this week. "Because I know a lot of them will plead guilty just because they can't afford to stay in jail that long – and they can't afford bail."

In the United States, those who are arrested are presumed innocent until proven guilty. In North Carolina, the law leans toward [2] allowing those not deemed a danger to the public or a flight risk to be released without having to post money to assure they will appear to face charges.

But law enforcement officials, bail professionals and attorneys across the state say it has become common for courts and magistrates to set bail for even minor charges regardless of whether the accused is shown to be dangerous or likely to flee.

Those with the money to pay their own bail can return to their lives, families and jobs as they await their day in court. Or they can turn to the for-profit bail bond industry, which will allow them to pay a fraction (no more than 15 percent) of the total bail, which is guaranteed by the bond company. Facing a \$1,000 bail, a defendant could go home for no more than \$150 to a bondsman.

But for many of the poorest North Carolinians, who can afford neither bail or a bondsman, a jail stay can lead to the loss of their jobs, their homes or even their children.

Ironically, those facing lesser charges and smaller bails may benefit the least from the bail bond industry.

"I've seen defendants ask to have their bail increased," said Chuck Johnson, head of Wake County's pretrial program, which is run by the nonprofit, ReEntry Incorporated. "Because if their bail is \$500, they can't get a bondsman to come down to the jail for fifteen percent of that. It's not worth it to them for less than \$150."

Over his 28 years working with Wake County defendants, Johnson said he's come to see a deep and disturbing irony in the way the for-profit bail bond system operates.

"People who are successful criminals and gang members tend to have access to money to pay their bail or to pay a bail bondsmen and get out," Johnson said.

For larger bails, on which bondsmen stand to make more money, they'll often lower their percentage or offer no-money-down deals in order to compete with other bondsmen for the high-dollar customer. The result: higher costs for those accused of lesser crimes or who are deemed to be less risky.

"If someone is arrested for stealing food, they're a lot less likely to have access to that money," Johnson said. "They also can't afford to wait 30 days. So they get into these deals with bondsmen that can mean they go into debt and have payment plans."

Just 22 of the state's 100 counties have pre-trial release services like Johnson's – programs that work with the courts to allow the release of first time defendants, those facing less serious charges and those deemed less likely to be violent or to flee without a money bond. The programs are mostly run by nonprofits with funding from the individual counties.

It's worth noting, Johnson said, that the state's largest counties – including Mecklenburg, Wake, Guilford and Durham – are among those willing to invest in pre-trial programs because they offer a huge savings over housing poor defendants in often over-crowded county jails until trial. Law enforcement officials in those counties have praised the programs and opposed efforts by the bail bond industry [4] to pass laws that would limit or eliminate them.

North Carolina's bail bond industry has faced a number of recent high-profile embarrassments.

Among them:



[3]

Attorney Brennan Aberle

An ongoing case in which former Wake County clerks were convicted of defrauding the county of approximately \$1.5 million. Kelvin Ballentine testified he was paid by three bondsmen to falsify records in more than 300 cases in court computers from 2008 to 2012. He made it appear the bond companies had paid bonds for defendants who did not appear in court when they had not. The money, from forfeited bonds, would ultimately have gone to the Wake County Public School System. Bond surety companies are now in court trying to avoid paying the forfeited bonds.

Another case of bail agent fraud in Guilford County last year that cost the county more than \$200,000. One instance, involving two bail agents, cost the county more than \$107,000 by itself.

More than 80 people associated with the bail industry in North Carolina who are known to have been convicted of, or who are currently under indictment for, serious crimes. Charges range from bail forfeiture, unlicensed bail bonding work, sex with customers and manslaughter. In one case in Guilford County, a bail agent faces charges for allegedly filing a fraudulent death certificate for a man who skipped bail while facing drug dealing charges.

Critics of the industry – including its customers, their lawyers and top law enforcement officials throughout the state – say that it is both horribly broken and so deeply entrenched in North Carolina politics that improvements are unlikely.

Prominent current state lawmakers are themselves bail bond professionals. Influential former state lawmakers lobby their friends in the legislature on the industry's behalf. Those who are not directly involved in the industry are the beneficiaries of more than \$300,000 in political contributions to state lawmakers between 2002 and 2016. During that period, the North Carolina Bail Agents Association took credit for helping to pass 60 laws "helping N.C. bondsmen make and save more money and protect their livelihood."

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Arrests, convictions, predatory behavior plague North Carolina's bail bond industry

Posted By *Joe Killian* On 3/22/2018 @ 2:40 pm In Top Story | [Comments Disabled](#)



[1]

Image: Adobe Stock

By the time Phillip Armachain was arrested last year, the 50-year old man from Cherokee had for years built a reputation for being “creepy” and “a pervert” who made women in the town uncomfortable and afraid.

As Cherokee's only bail bond agent, most of those women were the community's most vulnerable – many Native American women living in poverty who say he bailed them out of jail for sex, got them into loan payment schemes to extort sex from them, loaned them money at a 100 percent interest rate, and even a young woman under the age of 16 he is charged with sexually abusing.

Armachain is just one of more than 80 licensed North Carolina bail agents charged in the last few years with using their positions to commit sexual, financial and drug crimes, often by exploiting poor people trying to navigate the criminal justice system.

Between 2009 and 2016, criminal investigators with the North Carolina Department of Insurance have made more than 1,500 arrests related to insurance and bail bonding fraud alone. There have been more than 750 criminal convictions with more than 250 cases currently pending in court.

While a department spokesperson could not say precisely what percentage of those cases involved bail bonding, he confirmed that many do. Moreover, fraud is often just one element of cases that involve violence, kidnapping, sexual abuse, gun and drug offenses.

This year Anthony Newkirk, a bail bond agent in the Wilmington area, is set to go before a court for his 2016 arrest on charges of rape and felony sexual activity with a woman in his custody as a bond agent.

Also arrested in 2016 was Kevin Daniel Woodard, Jr. of Tarboro. He faced three counts of trafficking heroin, possession with intent to sell and deliver and maintaining a vehicle to sell heroin. The

charges stemmed from he and a friend being caught with 11 grams of raw, unpackaged heroin – enough for about 10 “bricks” with a street value of about \$4,000.

Woodard faced a \$350,000 bail. His bond was provided by First Community Surety Services, a company for which he worked in addition to maintaining his own independent bail bond business.

Just last year, Miguel Angel Nieto, a Charlotte bail bond agent, was arrested for trafficking more than 100 pounds of marijuana with a street value of about \$300,000. After setting a \$100,000 bond, a judge allowed Nieto to continue working as a bond agent in three North Carolina counties despite his needing to wear an ankle monitor while doing so.

“Not everyone who gets into this business does it for the right reasons,” said Tony Williams, a bail bond agent with Piedmont Bonding Services ^[2] in Mocksville. “Just like every police officer doesn’t do it to serve his community, some of them want authority and they want that identity. Some people are attracted to a badge and a position of authority. They take their self worth from the position and they do some bad things with it.”

It’s important to wait until all the facts come out in individual cases, Williams said in an interview this week. But he’s known for years that a “bad element” within his industry has given the business a bad reputation.

That’s why he founded the nonprofit Surety Agents for North Carolina earlier this year. The group, which Williams says has about 120 members, promotes ethical bail bonding, proper training and oversight in the industry and reform of the problems that have come to define the industry in the public mind.

Williams said he’s encouraged by the Department of Insurance’s moves to provide more training – both to those seeking to become bail bond agents and those already licensed.

“Some people don’t like the idea of expanded training,” Williams said. “But we support it and think it’s essential so that people aren’t out there making bad judgment calls. Judgment without instruction, without a basis to know what’s right, leads to flawed decisions.”

Part of that expanded training should be on dealing with conflict in a dangerous business and the proper use of firearms, Williams said.

Licensed bail agents do enjoy some police-like powers in North Carolina. They can use reasonable force to apprehend a person for whom they have provided bail, even if they have not yet forfeited their bond. They can use force to “overcome resistance of a third party who impedes their efforts to apprehend a person on bond.” A U.S. Supreme Court case from 1866 even allows them to break and enter a home to recover a suspect without a warrant.

But bail agents aren’t granted any special powers with regard to carrying or using guns. Bail agents who choose to do so must be licensed in the same manner as any typical civilian. They can, and

often are, charged with discharging their weapons in public, even when they do so in commission of their duties.

In February, Dawn Holden-Daniels, a bail agent working for DNA Bail Bonds of Smithfield, faced criminal charges after breaking into a Johnson County home looking for a former tenant who had not lived there in seven months. Teresa Horne, the Johnson County woman who lived in the home at the time, said Holden-Daniels kicked in her back door while the house was empty, shattering the glass of the door and ransacking the house. Two 9mm shell casings were found on the porch, where Holden-Daniels is accused of firing two shots into the air to scare the absent Horne family's dog.

Before that most recent incident, 12 other complaints had been filed against Holden-Daniels and Niki DeShawn Daniels in connection with their bail work, according to the the Department of Insurance, which regulates the industry.

"Every situation is different and you shouldn't judge anyone without having all the facts," Williams said. "But I do think that we do sometimes have a responsibility to pull out, to back away from a bad situation that can be made worse. Often times police don't have that luxury; they can't back away from some situations. But we do."

Money can be a motivator for agents who decide to press beyond their legal authority or make potentially dangerous situations worse, Williams said. But honest bail bond agents aren't simply motivated by their financial interest, he said.

"There is also a principle involved – our obligation to the court," Williams said. "If you talk to people who have been in the industry a long time and are doing it the right way, they will tell you that motivates them and also make sure that they don't do some of these things, as well."

"Unfortunately, I do think we have some people who are inspired by what they see on TV – bounty hunter shows, things that give you the wrong idea about what we do and how we do it," Williams said. "Part of the reform has got to be that training, and also making sure the right people are doing it for the right reasons."

[In the coming weeks and months, Policy Watch will continue its series of stories exploring the bail industry in North Carolina – its influence, impact and costs to the state and its people. We'll talk with bail bond agents, attorneys and law enforcement officials as well as those who have dealt with the industry at some of the most vulnerable moments in their lives.

If you would like to share your experiences with the bail bond industry with Policy Watch as these stories unfold, please contact investigative reporter Joe Killian at joe@ncpolicywatch.com ^[3].

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[1] Image: [http://www.ncpolicywatch.com/wp-](http://www.ncpolicywatch.com/wp-content/uploads/2018/03/AdobeStock_bail-bonds.jpg)

[content/uploads/2018/03/AdobeStock_bail-bonds.jpg](http://www.ncpolicywatch.com/wp-content/uploads/2018/03/AdobeStock_bail-bonds.jpg)

[2] Piedmont Bonding Services: <http://www.piedmontbonding.com/>

[3] joe@ncpolicywatch.com: <mailto:joe@ncpolicywatch.com>

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Is NC's cash bail system just? Advocates, reforms in other states raise serious doubts

Posted By *Joe Killian* On 3/29/2018 @ 1:35 pm In Policy Watch Investigates, Top Story | [Comments Disabled](#)



[1]

David Clark works in the Guilford County Public Defender's Office, representing clients charged with high level felonies. All of them are presumed innocent until proven guilty, but that doesn't mean they receive equal treatment.

"I compare two clients that we have in this office," Clark said in an interview this week. "One of our clients was charged basically with

being drunk at a gas station, knocking over a display case. He gets arrested and has a \$500 bail. He's in jail because he doesn't have \$500."

"Another of our clients was charged with discharging a firearm into an occupied property, a convenience store, conspiracy to commit murder and attempted murder – basically, a drive-by. His bail was set at \$5,000. He paid and was released immediately."

Clark says this is a too-common example of something he has observed for years.

Defendants with money can pay their bail or a percentage to a bail bondsman. They get to await their day in court at home, their lives relatively undisturbed. If they're charged with violent crimes or there's an argument they are a danger to the public, their bail may be higher. But if they have the money or access to it that doesn't end up mattering.

Poor defendants, even facing much less serious charges, often end up in jail because they can't afford even a few hundred dollars for bail and because bail agents don't stand to make enough money off of their small bails to bother with them.

There are other costs, as well. The poor defendant who ends up in the county jail will cost taxpayers \$82 a night until his court date – sometimes a month or more away. That's often more time than they would get if convicted of minor crimes. Over that month in jail they may lose their job, their home, even their children because they are unable to care for them.

"It's hard to see how a system like that really protects the public or the rights of the defendants," Clark said. "And it doesn't have to be that way."

Before becoming a public defender in 1991, Clark was a JAG officer in the United States Air Force – a circuit defense counsel representing military members in the Western United States and Hawaii. He continued that work in the Air Force reserve for 18 years.

"The military system doesn't have bail," Clark said. "You're either locked up or let go."

If that system can determine whether defendants – all of them with military training – are likely to be dangerous or a flight risk, Clark said it shouldn't be impossible for civilian courts to come up with a system that doesn't reward some defendants for their wealth while punishing others for being poor.



[2]

David Clark

In fact, a number of states are moving toward the elimination of a cash bail system altogether. A national movement for evidence and data based systems for determining the risk of pretrial release has led to major changes in states like New Jersey, Arizona, Indiana and Maryland.

Still, state and federal data show that two-thirds of the U.S. jail population has yet to see trial. Many of those face relatively low-level charges, but are unable to afford bail set by the court as a condition of their pretrial release. Of those, a disproportionate number are ethnic and racial minorities.

Last year the Pretrial Justice Institute ^[3], a national group advocating for bail reform, issued a state-by-state report card ^[4] that graded states according to their pre-trial procedures.

North Carolina's grade: D.

Only one state, New Jersey, which essentially eliminated cash bail last year, received an "A" rating in the report. There were nine B's, ten Cs, 12 D's, and 17 F's. Delaware was the only state to receive an "Incomplete" because one of the three indicators used—rate of pretrial detention—was unavailable.

The Institute found great strides are being made toward evidence-based rather than financially-based pretrial release. But it also determined that only 25 percent of Americans live in a jurisdiction that uses "a validated evidence-based pretrial assessment meant to guide discretion and reduce bias."

Only 10.4 percent of North Carolinians live in such a district, according to the report.

That's a problem, said Clark, the assistant public defender in Guilford County.

The North Carolina Commission on the Administration of Law and Justice has called for pretrial justice reform [5], saying the state should develop “an empirically derived pretrial risk assessment tool and develop an evidence-based decision matrix to help judicial officials best match pretrial conditions to empirically assessed pretrial risk.”

“Such tools hold the potential for a safer and more just North Carolina,” the commission concluded in a report on the subject.

So why has reform been so slow? Why, in many respects, does state legislation seem to be going in the opposite direction?

“What gets in the way of change?” Clark said. “I think it’s a lot of things. I think the bail industry is relatively strong with the legislature – their lobbying arm is fairly strong. So any lessening of their ability to provide bonds is fought tooth and nail by the industry.”

Prominent current state lawmakers are themselves bail bond professionals. Influential former state lawmakers lobby their friends in the legislature on the industry’s behalf. Those who are not directly involved in the industry were the beneficiaries of more than \$350,000 in political contributions to state lawmakers between 2002 and 2016. During that period, the North Carolina Bail Agents Association took credit for helping to pass 60 laws “helping N.C. bondsmen make and save more money and protect their livelihood.”

But the political problem goes deeper.

“I think elected judges are just scared to death to let someone out who might harm someone,” Clark said. “And part of what goes on is there’s a prediction element here. I go into court and say, ‘My client has no record, he has a family, he has a home. Here’s a letter from his employer.’ But the judge says, ‘How do I know he’s not going to go and harm a witness?’”

Without a proper, verifiable system in place for making that sort of decisions, they are made very unevenly across jurisdictions.

At least three North Carolina counties – Mecklenburg, Durham and Buncombe – have moved toward such a system.

Those counties were part of the John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge [6], a \$75 million initiative to support jurisdictions with funding and technical assistance. Its goal is “safely reducing the number of arrested people who are brought to jail and increasing the use of evidence-based tools, such as pretrial assessment instruments, in pretrial decision-making.”

Mecklenburg, which has an assessment tool in place assigning a point value to defendants to determine the appropriateness of their release, was an “implementation site” in the program. Durham and Buncombe were “innovation” sites, getting short-term support to design and test new approaches.

"I really like the Charlotte-Mecklenburg model," Clark said. "I think you can learn a lot from the way they're doing things."

If moving toward an evidence-based system that doesn't disproportionately harm minorities and the poor isn't enough incentive for change, another may be emerging: the threat of litigation and pressure from the courts.

The United States Court of Appeals for the Fifth Circuit recently found, in *O'Donnell v. Harris County*, that a Texas county's system of setting bail for indigent misdemeanor defendants was unconstitutional.

In a [blog post on the case this week](#) ^[7], the UNC School of Government's Jessica Smith examined the case and its potential impact:

In Texas—as elsewhere—secured bail requires a defendant to post a bond, either out of pocket or from a surety, often a bail bondsman, who requires a non-refundable fee. Unsecured bail allows the defendant to be released without money down up front, but imposes liability on the back end if the defendant fails to appear or comply with conditions.

In Harris County, when a misdemeanor defendant is arrested, the prosecutor asks for a secured bond amount according to a bond schedule established by local judges. Hearing Officers set bail, at a probable cause hearing to be held within 24 hours of arrest. A judge reviews that determination at a "Next Business Day" hearing.

When making bail determinations, state law requires an individualized review of things like ability to pay, the charge, and community safety. The bond schedule is not supposed to be mandatory and Pretrial Services sometimes offer bail recommendations.

The federal trial court found, however, individualized assessments do not actually occur. The probable cause hearing frequently is not held within 24 hours of arrest; it often lasts seconds; and defendants are told not to speak and are not given an opportunity to offer evidence. Secured bail is set in about 90% of cases and often is changed only to conform to the bail schedule. Pretrial Services' release recommendations are rejected 66% of the time, and because fewer than 10% of misdemeanor defendants are given an unsecured bond, some amount of upfront money is required for release in most cases."

That's a system that sounds eerily familiar to many public defenders across the state – and to those advocating for bail reform elsewhere. Some are hoping the ruling will pressure other jurisdictions to make long-overdue reforms before they end up in court themselves.

Among those groups is the ACLU of North Carolina. The group will launch a public information campaign at [its annual membership meeting in May](#) ^[9], where it will hold a panel on cash bail and its [Campaign for Smart Justice](#) ^[10].



"We're working to end cash bail and the practice of using cash bail entirely," said Sneha Shah, staff attorney with the ACLU of North Carolina.

Shah, who worked as a public defender in New York before joining the ACLU, said the current system of bail in North Carolina is "a mutation" of its original purpose.

"The vast majority of people in jail in North Carolina are there because they can't afford to pay bail," Shah said. "That flies in the face of being presumed innocent. Right now we have a two tiered system that treats people differently depending on if they're rich or poor. If you have enough money, you can buy your freedom."

[8]

Sneha Shah

That presents serious questions about the constitutional right to equal protection under the law, Shah said.

"This is a serious consequence of having a for-profit bail system," Shah said. "It not only affects their liberty interest it affects their privacy and so many other rights which it shouldn't because they're presumed innocent."

Just going through an evidence-based process to determine if someone is a threat to public safety would vastly reduce the number of people who are in jail simply because they can't pay bail, Shah said. Other states have found that something as simple as a more effective and efficient system for communicating with defendants about their court dates drastically reduces the number of people who fail to appear for them.

Prevailing public ideas about defendants being *de facto* dangerous or a risk to flee are often based in classicism and a failure to understand the lives of poor people and how they interact with the criminal justice system, Clark said.

"There's this idea that people who don't appear in court are skipping town, that they're headed to Mexico," Clark said. "But if I'm fleeing town and hiding out, I wouldn't be hiding out in my bedroom, which is where I'm usually found by the police, if I'm in that situation."

"The vast, vast majority of my clients who miss a court date aren't hiding from anything," Clark said. "They just spent two weeks in jail, they lost their apartment, they're living in a shelter, they don't have any way of getting information about their court date."

"You know," Clark said. "They didn't get a reminder on their Apple Watches."

In the coming weeks and months, Policy Watch will continue its series of stories exploring the bail industry in North Carolina – its influence, impact and costs to the state and its people. We'll talk with bail bondsmen, attorneys and law enforcement officials as well as those who have dealt with the industry at some of the most vulnerable moments in their lives.

If you would like to share your experiences with the bail bond industry with Policy Watch as these stories unfold, please contact investigative reporter Joe Killian at joe@ncpolicywatch.com ^[11].

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[1] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2018/03/b-bondsignBlue.jpg>

[2] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2018/03/David-Clark.jpg>

[3] Pretrial Justice Institute : <http://www.pretrial.org/about/>

[4] state-by-state report card:

<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8931c782-fe9d-c87f-cf55-67f0714de860&forceDialog=0>

[5] called for pretrial justice reform: https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_criminal_investigation_and_adjudication_committee_report_pretrial_justice.pdf

[6] Safety and Justice Challenge: <http://www.safetyandjusticechallenge.org/>

[7] a blog post on the case this week: <https://nccriminallaw.sog.unc.edu/fifth-circuit-bail-system-violates-due-process-equal-protection/>

[8] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2018/03/Sneha-Shah.jpg>

[9] its annual membership meeting in May:

<https://www.acluofnorthcarolina.org/en/annualmeeting>

[10] Campaign for Smart Justice: <https://www.aclu.org/issues/mass-incarceration/smart-justice/campaign-smart-justice>

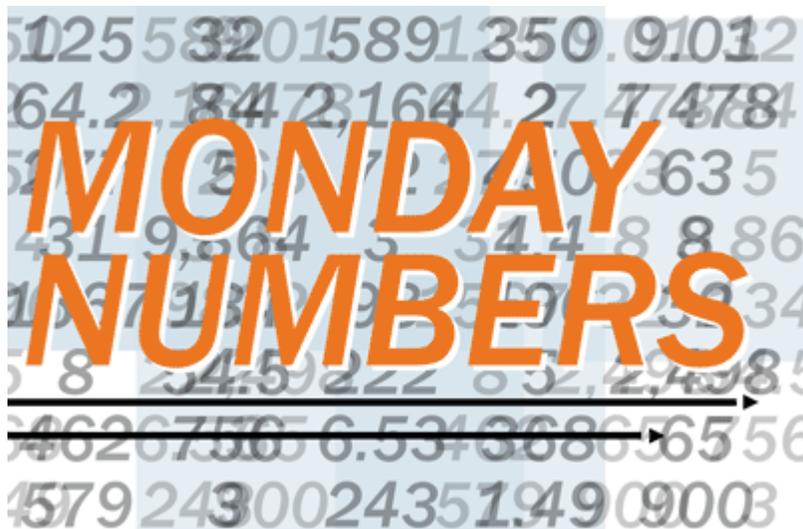
[11] joe@ncpolicywatch.com: <mailto:joe@ncpolicywatch.com>

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Monday numbers – A closer look at pretrial release

Posted By *Joe Killian* On 3/5/2018 @ 5:00 am In Top Story | [Comments Disabled](#)



[1]

As Policy Watch [continues to examine North Carolina's for-profit bail industry](#) [2], it's worth looking at an alternative already in place in many of the state's largest counties – pretrial release programs that help those not deemed a threat or flight risk get out of jail without cash bail.

22 – The number designated pretrial services programs in place at a county level, mostly administered by nonprofits and financed by the individual counties. Those programs service (either fully or in part) up to 40 of the state's 100 counties (*Source: N.C. pretrial service directory*)

97 – The number of localities in Virginia (out of 133) in which the the Virginia Department of Criminal Justice Services provides funding for pretrial services. (*Source: Comprehensive Community Corrections Act and Pretrial Services Act Annual Report, Virginia Department of Criminal Justice Services*)

1 – Number of N.C. counties using an empirically-derived pretrial risk assessment tool (like the Arnold Foundation PSA–Court tool) to decide pretrial release conditions. (*Source: Upgrading N.C.'s Bail System, report from the Pretrial Justice Institute, 2016*)

93 percent – The public safety rate for those released through Mecklenburg County's current pretrial release system, when it was first implemented in 2015. The number represents the rate of defendants who were not arrested on new charges after release. (*Source: Mecklenburg pretrial services*)

98 percent – The court appearance rate for those released through Mecklenburg's program in 2015. (*Source: Mecklenburg pretrial services*)

9 – Number of states, including North Carolina, currently operating without a constitutional right to bail. While the relevant North Carolina statute speaks of a right to release, the statute both generally and specifically points only to a “right to have one’s conditions set,” not actual release. (Source: *Upgrading N.C.’s Bail System, report from the Pretrial Justice Institute, 2016*)

31 – Number of years since the U.S. Supreme Court case *United States v. Salerno*, in which Chief Justice William Rehnquist wrote, “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” The court upheld preventative pretrial detention, but set very specific provisions: “[I]f the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, he shall order the detention of the person prior to trial.” (Source: [United States v. Salerno](#) ^[3])

460,000 – Approximate number of people being held in jails throughout the United States awaiting disposition of their charges. (Source: *Bureau of Justice Statistics*)

65 – Percentage of people held in U.S. jails in 2016 because they were awaiting court action on a current charge. (Source: *Bureau of Justice Statistics*)

89 – Percentage of detained U.S. felony defendants who remain in custody throughout the pretrial period on secured bonds that are never posted. (Source: *Bureau of Justice Statistics, 2015 national survey*)

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[1] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2017/07/MondayNum-animaVS.gif>

[2] [continues to examine North Carolina’s for-profit bail industry:](http://www.ncpolicywatch.com/2018/03/01/north-carolinas-bail-industry-draws-severe-criticism-criminal-justice-experts/)
<http://www.ncpolicywatch.com/2018/03/01/north-carolinas-bail-industry-draws-severe-criticism-criminal-justice-experts/>

[3] [United States v. Salerno](https://www.law.cornell.edu/supremecourt/text/481/739): <https://www.law.cornell.edu/supremecourt/text/481/739>

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Orange County: Part of the changing-face of pretrial justice

Posted By *Joe Killian* On 5/2/2018 @ 2:19 pm In Top Story | [Comments Disabled](#)



[1]The inequities of the cash bail system are something Orange County officials have long understood.

The county is one of dozens across the state that support pretrial services — a jail alternative system that identifies poor people who are low risks for violence and likely to show up for their court dates and allows them to be released on very low or no bail.

But for more than a decade, the county wasn't fully committed.

"For fifteen years we had a system that wasn't part of the county, it was through an outside agency," said Caitlin Fenhagen, Criminal Justice Resource Director. "It was difficult getting the funding every year."

The county saw the problem: A county jail filled to capacity, housing people at a cost to taxpayers of \$110 a day. The prospect of needing to build a new jail to hold even more people at greater cost.

But it wasn't really committing the resources necessary to treat the disease rather than the symptoms.

"They didn't want to build a new jail," Fenhagen said. "They knew that if you build it larger, you fill it."

So instead Orange County got serious about reforming its system.

In 2015 it created the Criminal Justice Resource Department. It began as a division of the county manager's office and last year became its own department.



[2]

Caitlin Fenhagen

"We had the great fortune of getting county funding and being given the mandate that we want to see Orange County incarcerating fewer people and doing that the right way," Fenhagen said.

Bringing together a pretrial release case manager, drug treatment coordinator and criminal case assessment specialist, the department works closely with law enforcement, the district attorney and judges. Its goal: to reduce overall rates of pretrial detention, reduce the numbers of individuals with mental illness in custody, reduce recidivism and address racial and economic disparities in pretrial detention.

Fenhagen has worked as a public defender in Orange County and a defense attorney with the Capital Defender's office in Durham. She appreciates how crucial pretrial buy-in is from every part of the criminal justice system.

"Our commissioners support this work and our judicial stakeholders who support this work, our law enforcement — we work very closely with the Sheriff's office, with every stakeholder at every step along the way," Fenhagen said. "It's a great place to do this work for that reason."



[3]

Commissioner Renee Price

[campaign](#) [4]. [5]

The campaign, organized by the national [Pretrial Justice Institute](#) [6], is raising awareness of the shortcomings of the cash bail system. It highlights the terrible impact even short term incarceration can have on those who remain jailed before their day in court because they cannot afford bail.

Price first encountered the campaign at a meeting of the National Organization of Black County Officials, which is helping give energy to a national movement on pretrial justice.

Orange County's experience is the sort of evolution that can happen in all 100 of North Carolina's counties, said Orange County Commissioner Renee Price.

Realizing that the existing system is expensive and works poorly is a good first step, she said. But realizing just how unjust it is to the most vulnerable and doing something about that should be the ultimate goal.

"When you look at who goes to court and who is sitting in jail, it's disproportionately people of color," said Price. "When you look at the demographics in any city and you look at who is in prison and the income level — we know that if you lack the financial resources, you're getting different treatment. You're going to jail. You can't afford to get out."

Last month, price brought a resolution to her fellow commissioners unanimously supported the [3DaysCount](#)



“There are plenty of people of color who have money,” Price said. “But more of our families don’t have that generational wealth and so more people of color lack the funds when it comes to bail, even when the amount might seem small to some people.”

Getting caught up in a poorly functioning justice system can be devastating, Price said — even if someone is ultimately cleared of charges.

“In many places, even if you are innocent — and we’re all supposed to be presumed innocent — if you’re picked up and put in detention on a Friday and you can’t post bail, you sit there for days,” Price said. “You can’t earn money; it affects your family life, your children, your job. It has a very adverse rippling effect on the whole structure of the family and the society.”

If Charles Dickens were alive and writing today, Price said, this would be his subject.

“What we’re doing is re-creating debtor’s prisons,” Price said.

Orange County is very lucky to have a degree of reform buy-in from every part of its criminal justice machinery, Price said. But as the state and the nation begin to rethink various aspects of the criminal justice system — from how veterans ^[7] and those experiencing addiction ^[8] are treated to raising the age ^[9] for charging defendants as adults, it’s increasingly clear that the current default system of cash bail is due for a change.

“I think there’s a breakdown happening now of assumptions about things — race, politics, how we should do things,” Price said. “Things begin to change when someone can say, ‘I have a mental illness in my family’ or ‘I know someone who has suffered because of a drug overdose.’ When people realize that everyone is feeling this pain, they realize it has nothing to do with whether you are a Democrat or a Republican and we have to work together to make these changes.”

In the same way, Price said, more people across the political spectrum are beginning to realize people in their own lives have been harmed by a criminal justice system that privileges wealth and access while creating greater racial disparities.

Public opinion is already heavily in favor ^[10] of reforming the system along the lines of Orange County’s evolution, Price points out.

“It may not happen all at once, but we’re taking the steps to really realize there’s one race,” Price said. “That’s the human race. We all need to be treated equally.”

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- [3] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2018/05/Commissioner-Renee-Price.jpg>
- [4] 3DaysCount campaign: <http://projects.pretrial.org/3dayscount/>
- [5] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2018/05/3dayscount.jpg>
- [6] Pretrial Justice Institute: <http://www.pretrial.org/>
- [7] veterans: <http://wunc.org/post/veterans-courts-grow-quickly-inconsistently-nc-us#stream/0>
- [8] those experiencing addiction: <http://www.nccourts.org/Citizens/CPrograms/DTC/>
- [9] raising the age: <http://www.charlotteobserver.com/latest-news/article157219234.html>
- [10] already heavily in favor: <http://www.ncpolicywatch.com/2018/04/30/monday-numbers-371/>

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Veteran NC judges: State's bail system is a "scam," "immoral," and in need of "massive change"

Posted By *Joe Killian* On 4/4/2018 @ 2:08 pm In Top Story | [Comments Disabled](#)



[1]Gregory Weeks had a distinguished career as as judge for Fourth Division of the Superior Court of North Carolina and Senior Resident Superior Court Judge for the 12th Judicial District.

He presided over the trials of the two men accused of murdering Michael Jordan's father in Roberson County. He oversaw some of North Carolina's first hearings on whether racism played a part in death sentences.

But these days, as he reads stories about [the bail bond system in North Carolina](#) [2] and [around the country](#) [3], Weeks finds himself thinking about a case much earlier in his career.

"I don't think I was out of law school for more than a year," Weeks said in an interview this week. "I was working in the public defender's office in Cumberland County and we had a 16 or 17 year old kid charged with a group of other kids with breaking and entering, larceny. I went to the first appearance to talk to the alleged victim and to the arresting officer to find out what their position was, hopefully get some information about the strength of the case."

What Weeks found was none of the evidence tied the young man to the actual crime. The most that could be shown was that he was with a group of friends who were also accused of the crime. He may have been present at the scene, but there wasn't even strong evidence of that.

Unable to afford the bail that had been set, the young man was in the county jail awaiting a court date. Weeks went to the Assistant District Attorney's office to share the information he'd found and to see if they could at least negotiate to get the young man, who was not violent or a flight risk, out of jail.

"The response I got — which was not uncommon, I

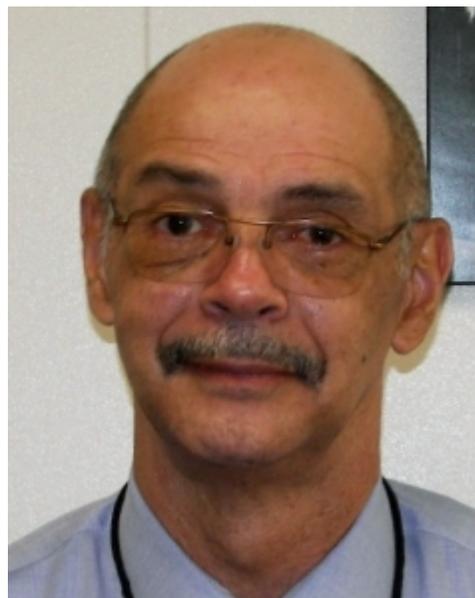
got it on multiple occasions — was for them to come back to me and say, 'Your guy can walk today if he pleads to a misdemeanor.' They were not explicitly saying it, but the message they were conveying was that the fact he was in jail and couldn't get out made him more likely to plea to

something. That was their strength. So the bail bond because a mechanism for them to get pleas."

"That's not what bail is supposed to be," Weeks said. "That's not what it's for. Bond exists to protect the public and to ensure a defendant's appearance in court. Using it that way does not meet that standard."

Today, Weeks is chairman of the [Committee on Racial and Ethnic Disparities in the Criminal Justice System](#) ^[5] (NC-CRED). He's also on the board of directors of [The Sentencing Project](#) ^[6] and the North Carolina Justice Center, the parent organization of Policy Watch.

In those roles he's been thinking a lot about how the bail system works in North Carolina – which Weeks said is a far cry from [how state statute says it should work](#) ^[7].



[4]

Gregory Weeks

Presuming those accused to be innocent until proven guilty, the letter of North Carolina's law leans toward allowing those not deemed a danger to the public or a flight risk to be released without having to post money to assure they will appear to face charges.

But Weeks, like many law enforcement officials, bail professionals and attorneys across the state, said that in reality it's common for bail (or a secured bond) to be required for even minor charges. Those bails are regularly set regardless of whether the accused is shown to be dangerous or likely to flee, Weeks said.

"My sense of it is, whether it is conscious or not, it is an attitude of 'this is the way it is, the way it's been and we don't expect there will be any significant change,'" Weeks said.

Weeks said he is now a bit ashamed to have contributed to that culture taking hold.

"From the perspective of the bench, being as candid as I possibly can be, there was a reluctance on the part of judges to release someone without bond or to reduce the bond," Weeks said. "They knew they would run the risk that this individual would be the one who would come back to haunt them. Absent a strong showing, I think like many other judges I was reluctant to release someone or reduce the bond."

Defense attorneys and public defenders are also unlikely to argue their clients should go free with no bail or reduced bail, Weeks said. Some of that is likely due to a heavy case loads (hundreds of clients at a time, in the case of some public defenders) and limited resources. Some of it, Weeks said, is just a "bail culture" that has taken hold.

"In my experience as a public defender and as a criminal defense lawyer, there was a disconnect between what we say we do and what we do," Weeks said. "We were selective in following the law."

We may know that what the statute says about bail, but we would rarely challenge bail with an argument predicated on the statute and an evidentiary showing.”

The result?

Those with the money to pay their own bail can return to their lives, families and jobs as they await their day in court. Or they can turn to the for-profit bail bond industry, which will allow them to pay a portion (no more than 15 percent) of the total bail, which is guaranteed by the bond company. Facing a \$1,000 bail, a defendant could go home for no more than \$150 to a bond agent.

But for many of the poorest North Carolinians, who can afford neither bail or a bond agent, a jail stay can lead to the loss of their jobs, their homes or even their children.

Donald W. Stephens agrees with Weeks on the bail system being broken.

Stephens had more than three decades on the bench before his retirement as a Wake County Superior Court Judge last year. In that time, he was instrumental in opening the Wake County Justice Center [8]. Since his retirement he’s spoken frequently about the inequities of the criminal justice system to which he devoted so much of his life, and the way politics can interfere in that system.



[9]

Donald W. Stephens

“I personally think that bail bondsmen are leeches on the criminal justice system in terms of taking advantage of poor, disadvantaged people who find themselves in some situation with the law,” Stephens said in an interview this week. “It’s almost to the point of being immoral, frankly – especially as it deals with relatively minor, non-violent offenses.”

While many bail agents acknowledge the problems within their industry and have begun a movement to reform it [10], Weeks and Stephens agree that the problem is a political one as much as one involving the corruption of individual agents.

The system was never designed to operate this way, both judges said, but the bail bond industry has such influence with the North Carolina General Assembly that it has allowed a corrupt system to develop that is dangerous to both those who find themselves accused and the justice system itself [11].

“The industry have managed to get lobbyists that have managed to get the North Carolina legislature to enact laws to protect them,” Stephens said. “So now they know that once they get their premium, many of them don’t have to worry about what happens afterward. We’ve put the burden of actually making sure someone shows up for court on the court appointed lawyers. And if a client does actually flee, they can petition for a remission. They often end up not having to pay anyway.”

Stephens points to state Rep. Justin Burr (R-Stanly), a bond agent, and former state Sen. Tom Apodaca, a lobbyist ^[12] former bail bond agent, as examples of the industry's influence.

Even those lawmakers not directly involved in the industry were the beneficiaries of more than \$350,000 in political contributions to state lawmakers between 2002 and 2016. During that period, the North Carolina Bail Agents Association took credit for helping to pass 60 laws "helping N.C. bondsmen make and save more money and protect their livelihood."

Even if lawmakers were not swayed by well-connected lobbyists and high-dollar donations, Stephens said, they have very little incentive to fix the system.

"The legislature doesn't really care," Stephens said. "If they made it more difficult for the bondsmen and we collected more bonds, that money wouldn't go to the General Fund; it goes to the individual county school boards. So they have little incentive to make sure this money is collected. Instead, they make it easier and easier for the bondsmen to hold on to their premiums."

Two of the state's largest counties are now struggling with just that problem.

In one ongoing case, former Wake County clerks were convicted of defrauding the county of approximately \$1.5 million.

Kelvin Ballentine testified he was paid by three bond agents to falsify records in more than 300 cases in court computers from 2008 to 2012. He made it appear the bond companies had paid bonds for defendants who did not appear in court when they had not.

Bond surety companies are now in court trying to avoid paying the forfeited bonds – the proceeds of which would go to the Wake County Public School System if they could be collected.

Cases of bail agent fraud in Guilford County last year cost the county more than \$200,000. One instance, involving two bail agents, cost the county more than \$107,000 by itself.

"It's almost a scam at this point," Stephens said. "A commercial scam in which, in my opinion, they can do little or nothing for their premiums. The statutes create a manner in which there are all sorts of ways in which they can avoid paying almost automatically."

Despite their dire assessments, Weeks and Stephens hold out hope for reform. While ultimately a large, politically dicey problem, both judges said progress is being made – even if it's not happening at the state level.

"The legislature may not have any interest in fixing it," Stephens said. "But the local counties are coming up with some solutions."

Most of them involve strengthening pre-trial release programs at the county level, Stephens said, which allow defendants to be released with no or dramatically reduced bail if it can be demonstrated that they are not violent or flight risks.

"The counties are better at dealing with these things because their jails are overcrowded and they see the costs," Stephens said. "So they see the value of these kinds of programs."

Those sorts of pre-trial programs, using funding from the counties and from non-profits, are already in place to varying degrees in counties like Wake, Mecklenburg and Durham. Marrying them with a good system to assure the defendants make it to their court dates could make a huge difference, Stephens said.

Weeks also praises pre-trial service programs that are already showing there are alternatives to the for-profit bail bond industry. He also points to a recent decision in ^[13] *O'Donnell v. Harris County* ^[13], in which the United States Court of Appeals for the Fifth Circuit ruled that a Texas county's system of setting bail for indigent misdemeanor defendants was unconstitutional.

"If you read it, you'll see that the system in place there is the system that is really in place in North Carolina and all around the country," Weeks said. "So that case may be the first shot. It may lead to real change."

A disproportionate number of the people harmed by the current system are ethnic and racial minorities said Weeks.

"We need a massive change on this," Weeks said. "If for no other reason than there are entire communities that have little to no faith in our legal system. And when our system says one thing and does another, there are good reasons for that."

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URLs in this post:

[1] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2012/06/wb-bail.jpg>

[2] the bail bond system in North Carolina: <http://www.ncpolicywatch.com/2018/03/29/is-ncs-cash-bail-system-just-advocates-reforms-in-other-states-raise-serious-doubts/>

[3] around the country: <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html>

[4] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2018/04/Greg-Weeks.jpg>

[5] Committee on Racial and Ethnic Disparities in the Criminal Justice System: <http://ncracialjustice.org/about/>

[6] The Sentencing Project: <http://www.sentencingproject.org/about-us/>

[7] how state statute says it should work:

https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_15a/gs_15a-534.html

[8] Wake County Justice Center:

<http://www.wakegov.com/locations/justicecenter/Pages/default.aspx>

[9] Image: <http://www.ncpolicywatch.com/wp-content/uploads/2018/04/JudgeStephens2.jpg>

[10] many bail agents acknowledge the problems within their industry and have begun a movement to reform it: <http://www.ncpolicywatch.com/2018/03/07/owners-bail-bond-outfits-admit-industry-abuses-shortcomings-call-reforms/>

[11] dangerous to both those who find themselves accused and the justice system itself: <http://www.ncpolicywatch.com/2018/03/22/arrests-convictions-predatory-behavior-plague-north-carolinas-bail-bond-industry/>

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[13] a recent decision in: <https://nccriminallaw.sog.unc.edu/fifth-circuit-bail-system-violates-due-process-equal-protection/>

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