

## WHY?

Why has Pretrial Justice Reform become a topic of discussion in North Carolina?<sup>1</sup>

- The North Carolina Commission on the Administration of Law and Justice (NCCALJ) has recommended that North Carolina undertake pretrial justice reform.
- Currently, those with resources avoid pretrial detention while those without resources are detained.
- Indigent defendants remain incarcerated for the same offenses for which wealthy defendants walk free. Inherent unfairness is built into our current system.
- Jail populations are made up of predominantly low income people of color.
- Pretrial detention costs continue to rise.

<sup>1</sup>Jesse Smith, Pretrial Justice Reform in North Carolina, YouTube, Oct 3, 2018, 33:33

## WHY US?

Pretrial Reform and Our Christian Call

As Christians, we are compelled to heed Jesus' Sermon on the Mount (Mt. 5-7), and as Episcopalians, we are bound by our Baptismal Covenant (BCP p. 304-5) – both of which require our concern for the care and equitable treatment of others.

Therefore, we are unable to dismiss this issue as either unimportant or inapplicable. As followers of Jesus who seek and serve Christ in others – all others – we have a responsibility to learn and discern how we are called to respond.

# A CALL FOR PRETRIAL JUSTICE REFORM

## MYTH VS. FACT

- **Myth:** When a person is arrested for a criminal offense, money bail is always required for release.
- **Fact:** In North Carolina, there are five possible options that can be imposed:
  - (1) Release the defendant on his written promise to appear.
  - (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by a judicial official.
  - (3) Place the defendant in the custody of a designated person or organization which agrees to supervise him/her.
  - (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
  - (5) House arrest with electronic monitoring.

## MYTH VS. FACT (continued)

- **Myth:** Requiring a cash bond is a legally acceptable means of punishment for being charged with a crime.
- **Fact:** The purpose of setting pretrial release procedures is to assure the defendant appears in court on his/her assigned court date and to try to prevent the defendant from reoffending in the future. Bond is forbidden from being used as punishment.
  - **Myth:** Secured bond is the statutorily preferred method of setting pretrial release.
  - **Fact:** The NC Statutes 15A-533 and 534 express a preference for release without secured bond.
- **Myth:** Secured Bonds in North Carolina are set commensurate with a defendant's ability to pay the bond.
- **Fact:** Secured Bond is set through the use of a predetermined bond table that suggests bond amounts within a monetary range. This range corresponds to a specific criminal offense.
  - **Myth:** Using a system of secured bond ensures a defendant's appearance in court and deters the likelihood of the defendant reoffending. This keeps society safer.
  - **Fact:** A secured bond system of pretrial release does nothing to protect society from dangerous criminals who are financially affluent. As long as they are able to post the bond, they are released from custody.
- **Myth:** Incarcerating low-risk defendants prior to trial lessen the likelihood that they will reoffend.
- **Fact:** Some research indicates that incarcerating low-risk defendants even for a short period of time increases the likelihood that they will reoffend.
  - **Myth:** The majority of defendants being incarcerated pretrial are the most dangerous criminals.
  - **Fact:** Research has shown that nearly half of all misdemeanor defendants have been detained pretrial.
- **Myth:** Defendants incarcerated pretrial and those who are able to post bond and remain free until trial typically receive the same types of sentences.
- **Fact:** Research indicates that pretrial detention increases the likelihood of conviction as well as receiving an active prison sentence and increases the length of sentence received. Additionally, pretrial detention increases the likelihood that the defendant will plead guilty.

## MOVING FORWARD

### Changes in pre- or post-arrest protocol that may affect the current system in a positive manner.

- Increase the use of citations or court summonses instead of arrest for low-risk defendants that don't pose a danger to the community.
- Involve defense council in both misdemeanor and felony cases before the pretrial conditions are decided by the magistrate. Currently, parties representing the prosecution and defense are not present when conditions of pretrial release are determined.
- Both felony and misdemeanor defendants should have their pretrial release procedures reviewed by a judge within a reasonable time after they are set. Currently, only felony defendants are entitled to a first appearance before a district court judge within 96 hours. There is no statutorily-mandated review process for misdemeanor defendants. Consequently, some misdemeanor defendants may spend more time incarcerated pretrial than they would receive if convicted.
- Implement a court date reminder system. There are many reasons a defendant may not appear in court. These could include child care issues, medical issues, transportation issues, or confusion about the required hearing date, particularly if the case has been continued several times. Reminder systems utilizing text messaging or automated telephone calls have shown to be effective in assuring a defendant's appearance in court.

## DEFINITIONS

- 1) **Defendant:** A person who has been charged with a crime.
- 2) **Felony:** A crime, typically involving violence, regarded as more serious than a misdemeanor and usually punishable by imprisonment for more than one year or by death.
- 3) **Misdemeanor:** A lesser criminal act.
- 4) **Pretrial Release:** Requirements set by a judicial official governing the period of time between a defendant's arrest and trial date.
- 5) **Secured Bond:** Cash or property secured prior to the release of the defendant from custody.
- 6) **Unsecured Bond:** A bond that allows a person to return home upon a promise to pay a predetermined amount if he/she fails to return for court.