

UNDERSTANDING PRETRIAL PROGRAMS' SUCCESS AND THEIR EFFECTS ON COUNTY JAILS

By
BRENT D. TROXELL

A paper submitted to the faculty of
The University of North Carolina at Chapel Hill
in partial fulfillment of the requirements for the degree
Master of Public Administration

MARCH 14, 2012

This paper represents work done by a UNC-Chapel Hill Master of Public Administration student. It is not a formal report of the Institute of Government, nor is it the work of School of Government faculty.

Executive Summary

Pretrial release programs give judicial official a supervised, non-bond option for release of defendants. In North Carolina, less than a third of counties currently use these programs as a pretrial option. This study looks at how these programs differ, how appearance rates are affected by those differences, and whether counties are saving money by using the programs. Results show larger programs need to divert a smaller percentage of defendants from jail to save money, while high appearance rates are not closely linked to the studied factors.

An Introduction to Pretrial Service Programs

Pretrial release programs are a release option for judicial officials to use once a person is arrested, booked into a jail, and awaiting trial. The judicial official first seen by someone arrested and taken to jail is a magistrate. The next steps vary by jurisdiction, but most defendants will see a bond judge at some point if they do not post a bond soon after arriving in jail. The bond judge has the ability to raise or lower bond or release the individual if seen fit. To give a sense of what options are available, the North Carolina General Statutes prescribe the following for these decisions.

- (a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:
- (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 the judicial official.
 - (3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.
 - (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.ⁱ

The judicial official must determine the risk when considering the option of releasing a defendant. The object is to have every defendant show up at his or her trial date. Severity of crime, danger to society, criminal background, ties to the community, risk of nonappearance, and risk of committing a new crime are some of the factors considered when deciding the type of release granted. Pretrial programs fall under part (3) of the law as “organization[s] agreeing to supervise [the defendant].”ⁱⁱⁱ Generally, pretrial release programs offer a solution with greater supervision than ‘written promise to appear,’ but without the cost to the defendant that comes with a secured bond. The next section will address more about how pretrial programs are used and their perceived benefits.

History

The concept of pretrial release programs has existed for about 50 years. It was first explored in the final report of the 1967 Presidential Commission on Law Enforcement and Administration of Justice.ⁱⁱⁱ Once programs were established, they fell out of favor in the 1980s, but since the 1990s pretrial release has been on the rise^{iv} and is now used in 36 states.^v The use of pretrial release programs is sometimes contentious. A tradeoff exists between individual liberty and public safety.^{vi} On one side of the picture, “[u]nnecessary pretrial detention means unnecessarily high jail costs for the community as well as deprivation of the defendant’s liberty.”^{vii} However, the defendant’s threat to the community if released must also be measured and accounted for in the decision. Pretrial programs offer increased supervision and are a way to move toward equal justice by giving more people, especially the economically disadvantaged, an opportunity to be released before trial instead of sitting in a jail cell.^{viii}

The two questions that I wanted to answer through further study of the topic are:

1. Are the programs operating in a way cost-effective enough to believe that the cost of the program is less than the cost to the county if defendants were otherwise awaiting trial in jail, and
2. Do factors such as participant population or program set-up lead certain programs to be more successful than others?

Methodology

The North Carolina Governor’s Crime Commission published a report titled “Pretrial Service Programs in North Carolina.” The report, published in October 2007, states that 33 pretrial programs serving 40

counties were operating in North Carolina.^{ix} The annual North Carolina Compendium of Community Corrections published in 2011 only lists 29 programs. The Compendium included much information, but a new survey was conducted to address certain inconsistencies and gather additional information.

ReEntry, Inc., the pretrial organization serving Wake County, provided a listing of 30 programs serving 31 counties in the state. A survey was sent to these 30 programs and a total of ten programs responded to the survey, generating a response rate of 33 percent. The questions broadly cover the following areas: program information and background, make-up of participants, budget, and services offered. All responses were asked to be shown reflecting fiscal year 2011 (July 2010 – June 2011). The full survey is found in Appendix A. Most of the surveys required some follow-up to the program director or county budget office for clarification.

Findings

Because no regulations or uniformity exist among North Carolina’s pretrial programs, consistency in measurement is difficult. This research became as much about understanding what was offered as it did about what the programs meant to counties and creating successful programs. The counties that responded varied in all facets of the program – including size, structure within the county, operations, and supervision of defendants.

Of the ten programs, four had fewer than 100 participants in the program during the year. Three programs had 100-300 participants and the last three had greater than 800, much greater in two cases. Another difference among the programs comes in how they are structured organizationally. These responses spanned a number of organizational options as four operated as a non-profit, three were a department within the county government, two were part of the Sheriff’s Department, and one program responded ‘Other.’

The two major factors in pretrial organizations that are essential to their operation are how participants gain entrance (and whether the organization plays a role) and how participants are supervised once they are in the program. Figure 1¹ shows the methods used in different counties to add participants to the program. The second group in Figure 1 exhibits the most common notion of pretrial release programs, with some variations across counties. While judges have final authority to grant entry in all cases, the second group shown plays a greater role in recommending potential participants.

Figure 1. Description of Pretrial Operations

Counties	Operation of Pretrial Program
Gaston, Randolph	No recommendations made by pretrial program; judicial officials decide to use program
Alexander, Buncombe, Cumberland, Forsyth, Moore, Wake, Yadkin	Defendants are interviewed and/or have background check completed by pretrial program; information used to make recommendations to judicial officials; actuarial risk assessment or “points system” used; officials can put defendants in program without recommendation
Catawba	Acts as an agent for plea and bond review; little supervision

¹ In Catawba County, Repay, Inc. does not typically act as a supervisory program at all unless the judicial official orders it. It helps the defendants with plea and bond reviews as trial processes are expedited. Because of the stark difference in operation in Catawba, they are not included in most of the analysis because it is based on supervision programs.

Pretrial programs use a variety of supervision methods once they become responsible for the participants. In every program, participants are required to make a phone call to the pretrial office as a check-in measure. Some also require participants to check in physically at the office or take a drug test. Some pretrial programs use electronic monitoring within their program in addition to a supervised release. Three of the programs did not use electronic monitoring at all and one used only electronic monitoring. The rest had a range of 20 – 50 percent of participants on electronic monitoring.

Cost-Effectiveness: Do Pretrial Programs Save the Money They Claim?

Pretrial programs, as stated earlier, are used as a diversion technique to keep some defendants out of jail who would not make bond and end up waiting for their trial date in a cell. In the 2007 NC Governor’s Crime Commission’s “Process and Impact Assessment,” the cost savings was calculated assuming all participants in pretrial programs would have otherwise been incarcerated.^x However, it cannot be assumed that all pretrial participants would have ended up in that situation if not for the programs. Some might have been released on money bond without pretrial release available. I examined cost-effectiveness by looking at the survey responses, calculating the cost per participant per day, and subtracting it from the cost per inmate per day to achieve daily savings per person. This figure gave me the ability to determine the participant days needed to break even and I took that as a percent of total participant days. The analysis is based on the assumption the time to disposition is the same whether the defendant is in jail or pretrial, which may not always be true. The final number I am using is the percent of a program’s participants needed to be diverted from jail to achieve cost savings.²

Figure 2. Participant Diversion Percentage Necessary to Achieve Cost Savings

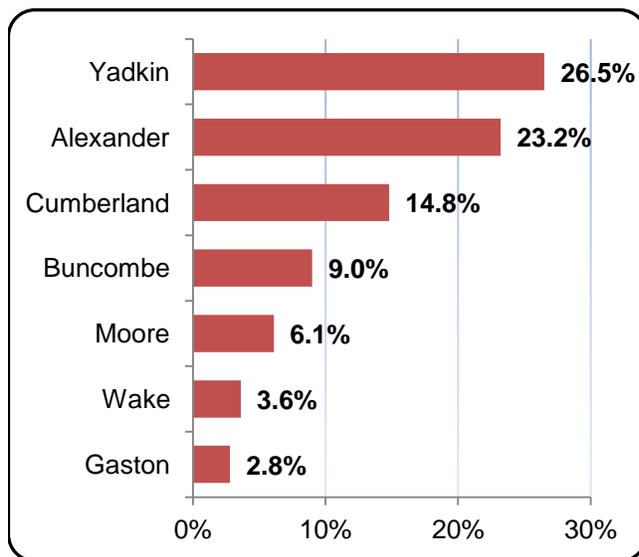


Figure 2 shows the percent of each program’s participants it needs to divert from jail to achieve cost savings. Without difference to the number of annual participants or percent of felony defendants, each program needs to divert 27 percent or less of their total participants to achieve savings for the county. While it is not the purpose of this study to determine if programs reach this breakeven diversion rate, knowing that a quarter or less of participants need to be diverted is important for program directors, commissioners, and other decision makers to know as they determine if this is attainable in their county.

The relationship of the breakeven diversion rate to annual program size and percent of felony defendants adds another dimension as these two areas are potential cost drivers

to the program. Appendix C shows two graphs illustrating how they relate. The breakeven diversion rate and annual program size are inversely related, meaning the larger the program the smaller percentage of participants it needs to divert from jail. From this, we can gather that programs exhibit some type of economies of scale. At a certain level, more participants can be included without adding significantly more staff or services.

² Randolph County did not respond and Forsyth County could only give personnel costs, unable to calculate operating costs, eliminating both of them from the cost-effectiveness analysis.

The percent of felony defendants in a program has the opposite relationship as a higher percent of felony defendants generally pair with a higher breakeven diversion percentage. The explanation for the percent of felony defendants being a cost driver is that having higher levels of supervision require more cost. Because the levels of supervision were not easily quantifiable, it is difficult to say with certainty that is the case across the board. This relationship is positive in one way. Because felony defendants will typically have a higher bond than misdemeanants, it would be expected that more felony defendants would be waiting for court in jail compared to misdemeanants, giving the programs with high breakeven diversion rates an opportunity to meet this based on their participant population. Other factors involved in the study such as the level of decision-making or the services offered did not seem to show a linkage.

Maximizing Appearance Success

The measure of success for pretrial programs and the justice system as a whole is for defendants to show up at trial. The goal is a 100 percent appearance rate. In my evaluation, I will refer to two measures of success. Because no standards have been set, different methods of reporting are used. During the test phase of my survey, I found that some counties use successful cases (program completed and showed up in court), but others also track those who failed to complete the program yet still appeared in court. Because one of the goals is appearance, it is difficult to count those that showed up in court, even if they did not complete all aspects of the program, against the programs completely. However, proponents of the pretrial release would likely argue that there are benefits to the program beyond appearance and successful completion is an important component of the overall process. For the evaluation I will use a restricted measure of success for successful program completion and appearance, but not rule out the broader measure of appearance without completion.

The two major factors that define pretrial release programs, entrance and supervision, do not appear to have an impact on the success of the programs. One might think that more aggressive entrance decisions or a higher level of supervision would cause the appearance rates to be higher, but that did not follow through with the data. Similarly, the percent of felony participants did not show a relationship to the appearance rate.

The Bureau of Justice Statistics reports the appearance rate as 82 percent for felony offenses in the 75 most populous counties in the country,^{3xi} which provides a helpful comparison to an outside group for the broad success measure. However, the 82 percent does not provide an equal comparison to the more restrictive success measure because of the additional requirements imposed on pretrial program participants. The range of appearance rates increases from 49 – 90 percent using the restrictive measure to 63 – 100 (with most above 85) percent when using the broad measure. The majority of the programs reach the standard of 82 percent appearance when applying the related broad success measure of all appearances, whether or not the participants completed the program. But if the restrictive measure is used and additional stipulations are placed on success, only the two largest programs would meet the same threshold.

The only factor that might explain the percent of appearance success on some level is the number of services offered in-house by a program. The survey included 11 possible services to be offered and the highest response for services provided in-house was nine. Figure 3 shows little relationship of the number of services offered in-house by a program to the restrictive measure of success (completion and appearance). When the success measure is loosened, however, the relationship is positive with more services offered in-house corresponding to higher appearance rates, as represented in Figure 4. This does not necessarily represent causation – that is, more service provision leads to higher success. In fact, the number of services did not show a relationship to completing the program (and its services) and appearing

³ The North Carolina Administrative Office of the Courts did not track appearance rates. The Pretrial Justice Institute recommended this study to me when I contacted them about an appearance rate standard.

in court, but it is interesting to see the relationship to a broader success measure as it was the only one that stood out.

Figure 3. Relationship of In-House Services to Narrow Success Measure

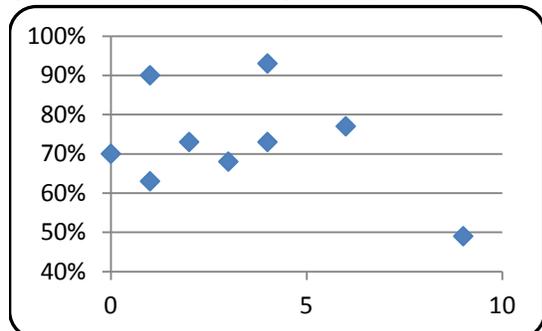
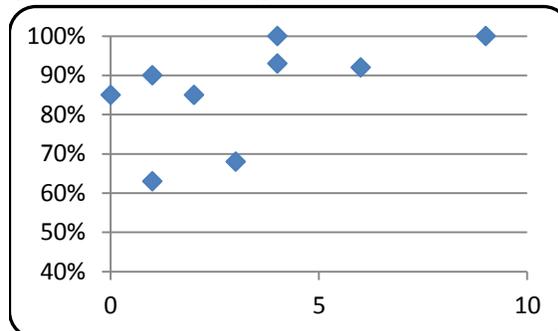


Figure 4. Relationship of In-House Services to Broad Success Measure



Conclusion and Implementation Recommendations

The variation in North Carolina’s pretrial programs is expansive in all facets of operation. The most surprising aspect of the findings is that the two main issues regarding pretrial programs – the decision-making of participant entrance and supervision – were not influential in either cost-effectiveness or appearance success.

One of the measures of diversity seen is geography. The counties that operate these programs are located primarily in the middle third of the state (see Appendix D). These counties tend to have higher populations than counties in western and eastern North Carolina. Of the counties that responded to the survey, only three had populations under 100,000. Compared to the state as a whole, where nearly half of the counties have less than 50,000 people, I hesitate to say the same results could be transferable anywhere.

A county’s characteristics should be carefully considered as many different pieces work together to create a successful program. Decisions include the size of the program, which could depend partially on the size of the county, and if felony or misdemeanor defendants are going to make up the majority of the program. Judges should be consulted to ensure they would use a program if it were implemented. External factors such as the cost of the jail also have an impact. If the county’s jail cost (per inmate per day) is already low, it might be more difficult to achieve cost savings.⁴ The capability of providing services in-house, the level of involvement the program will play in entrance recommendations, how the program will be established organizationally, and the level of supervision that is going to be used are all important decisions involved that will vary by county.

It was noted that no standards are in place to regulate these programs. After seeing the way the programs operate, and what is needed to achieve cost-effectiveness, applying regulations should be carefully considered. If the same restrictions are applied across the board, the programs might not be able to operate in a way that best suits their communities, which would decrease their effectiveness. While it is difficult to say if any programs would benefit from regulation, they have formed in different ways to cater to their communities’ needs.

⁴ Appendix E shows how jail costs affect the cost differential and, in turn, the diversion rate.

ⁱ North Carolina General Statutes 15A-534

ⁱⁱ North Carolina General Statutes 15A-534(a)(3)

ⁱⁱⁱ Douglas Yearwood et al, NC Governor's Crime Commission, *Pretrial Service Programs in North Carolina: A Process and Impact Assessment*, 1.

^{iv} Douglas Yearwood et al, NC Governor's Crime Commission, *Pretrial Service Programs in North Carolina: A Process and Impact Assessment*, 1.

^v List of Pretrial Programs, Pretrial Justice Institute, last modified 27 February, 2012, <http://www.pretrial.org/Resources/Pages/PretrialPrograms.aspx>.

^{vi} Barry Mahoney et al., *Pretrial Services Programs: Responsibilities and Potential*, 4.

^{vii} Barry Mahoney et al., *Pretrial Services Programs: Responsibilities and Potential*, 4.

^{viii} Barry Mahoney et al., *Pretrial Services Programs: Responsibilities and Potential*, 5.

^{ix} Douglas Yearwood et al, NC Governor's Crime Commission, *Pretrial Service Programs in North Carolina: A Process and Impact Assessment*, 2.

^x Douglas Yearwood et al, NC Governor's Crime Commission, *Pretrial Service Programs in North Carolina: A Process and Impact Assessment*, 8.

^{xi} U.S. Department of Justice, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties*, 9.

Bibliography

U.S. Department of Justice, Bureau of Justice Statistics. "Felony Defendants in Large Urban Counties," *Bureau of Justice Statistics Bulletin*. Washington, DC: U.S. Department of Justice, 2006 (rev. 15 July 2010).

List of Pretrial Programs. Pretrial Justice Institute. Last modified 27 February, 2012.
<http://www.pretrial.org/Resources/Pages/PretrialPrograms.aspx>.

Mahoney, Barry, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, and Richard B. Hoffman. "Pretrial Services Programs: Responsibilities and Potential." *National Institute of Justice Issues and Practices*. Washington, DC: U.S. Department of Justice, 2001.

North Carolina General Statutes 15A-534.

North Carolina Sentencing and Policy Advisory Commission. *Compendium of Community Corrections Programs in North Carolina: Fiscal Year 2009/10*. Raleigh: January 2011.

Yearwood, Douglas, Melinda Tanner, and Dillon Wyatt. *Pretrial Services in North Carolina: A Process and Impact Assessment*. North Carolina Governor's Crime Commission, October 2007.

Appendix A. Survey Sent to North Carolina Pretrial Release Programs

This survey is being conducted to study pretrial release programs, their effects on county detention budget and factors that lead to low failure-to-appear rates among pretrial programs in North Carolina. Your response is crucial to achieving high participation and developing an understanding of the success of pretrial programs.

Please use FY 2011 data as you respond to questions.

If you have any questions or feel that additional documentation would supplement your answers, feel free to contact me at btroxell@live.unc.edu. Thank you for your help.

1. What county or counties do you serve?
2. In what year did your county begin using a pretrial release program?
3. How is your program organized?
 - As a non-profit
 - As part of the Sheriff's Office
 - As a county department or program
 - Other
4. What was the total number of participants in your program for FY 2011? Note: The number you give in response to this question should be the sum of your responses in each of the following 3 questions.
5. How many participants of each gender did you have in your program in FY 2011?
 - Male
 - Female
6. How many of your participants were defendants for felony and misdemeanor crimes in FY 2011?
 - Felony
 - Misdemeanant
7. How many participants completed your program and appeared in court in FY 2011?
 - Successful (Full Compliance/Appeared in court)
 - Non-compliance but appeared in court (if tracked)
 - Unsuccessful due to failure to appear (FTA)
 - Unsuccessful for other reasons
8. Please list the revenue sources and corresponding dollar amounts in your FY 2011 budget.
9. What was the average number of participants per day for your program in FY 2011?
10. What was the cost per day per inmate of the jail in your county in FY 2011?
11. Do you use an actuarial risk assessment or 'points system' when recommending defendants for pretrial release?
 - Yes
 - No
12. Please briefly describe the method your program uses to recommend defendants for pretrial release.
13. For the following list of possible provided services, please indicate if you provide recommendations for outside vendors or offer the service in-house to defendants.

- Bail
 - Plea/Disposition
 - Drug Screening
 - Substance Abuse Assessment
 - Substance Abuse Treatment
 - Education
 - Employment
 - Mental Health Services
 - Sex Offender Services
 - Foreign Language Services
 - GED Program
 - Job Skills
 - Cognitive-Behavioral Intervention (CBI)
 - Electronic Monitoring/House Arrest
14. Please briefly describe the method your program uses to recommend defendants for pretrial release.
15. If you offer any referral or full services not included in the previous question, please list them below. If all your services were included, please enter 'None.'
16. What methods do you use for supervision of your participants?
- Phone Contact
 - Home Visits
 - Office Visits
 - Other
17. Please briefly explain your method of supervision.
18. The last three questions are only find out how many counties collect the referenced data. If enough counties have data, I may follow up to gather that information.
- Do you keep the records of the offenses for which your participants were charged?
- Yes
 - No
19. Do you keep records of the release condition or bond amount of defendants set prior to pretrial release by judge (in cases where applicable)?
- Yes
 - No
20. Do you keep records on the number of defendants recommended for pretrial release to a judicial official that were denied?
- Yes
 - No
21. Please include the contact information for the survey respondent in case any questions arise or follow-up is needed. Again, thank you for your participation and help in my research.
- Name
 - Title
 - Phone Number
 - Email Address

Appendix B. Matrix of Decision-Making and Supervision Variations

		Decision-Making	
		Passive	Active
Supervision	High	Gaston Randolph Moore Alexander	Cumberland Yadkin
	Low	Catawba	Forsyth Wake Buncombe

The matrix above graphically shows how different counties use supervision and decision-making as a part of their pretrial program. While the dividing lines between high and low supervision and passive and active decision-making are arbitrary, they still show a range of categorical groupings. Any program that had prevalent electronic monitoring use was put in high supervision. Programs that only used call-ins or office visits were labeled as low supervision. Programs that initiated some kind of contact with defendants or provided a recommendation to a judge are seen in the active decision-making column. Some programs are involved in the initial fact-finding process, but not as heavily as others. They were included in the passive decision-making column with programs that had no say in who was admitted.

Appendix C. Diversion Rate Relationship to Program Size and Percent Felony Defendants

Figure C.1. Relationship of Diversion Rate to Program Size

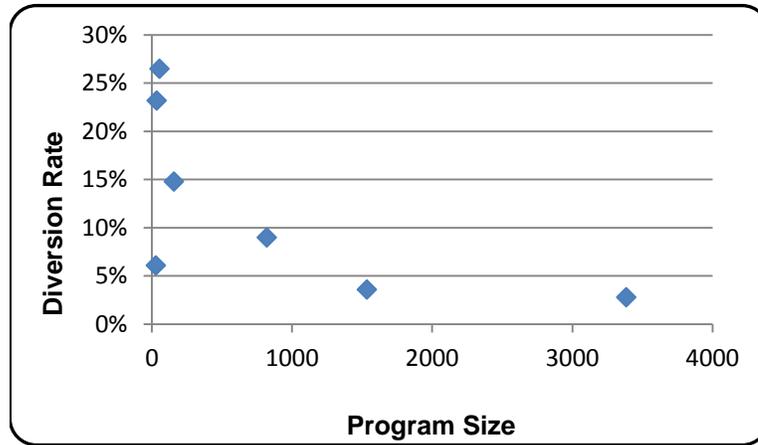
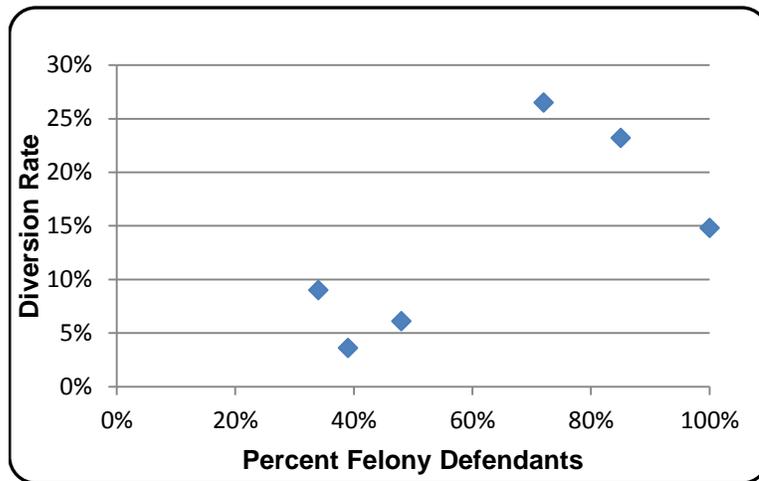
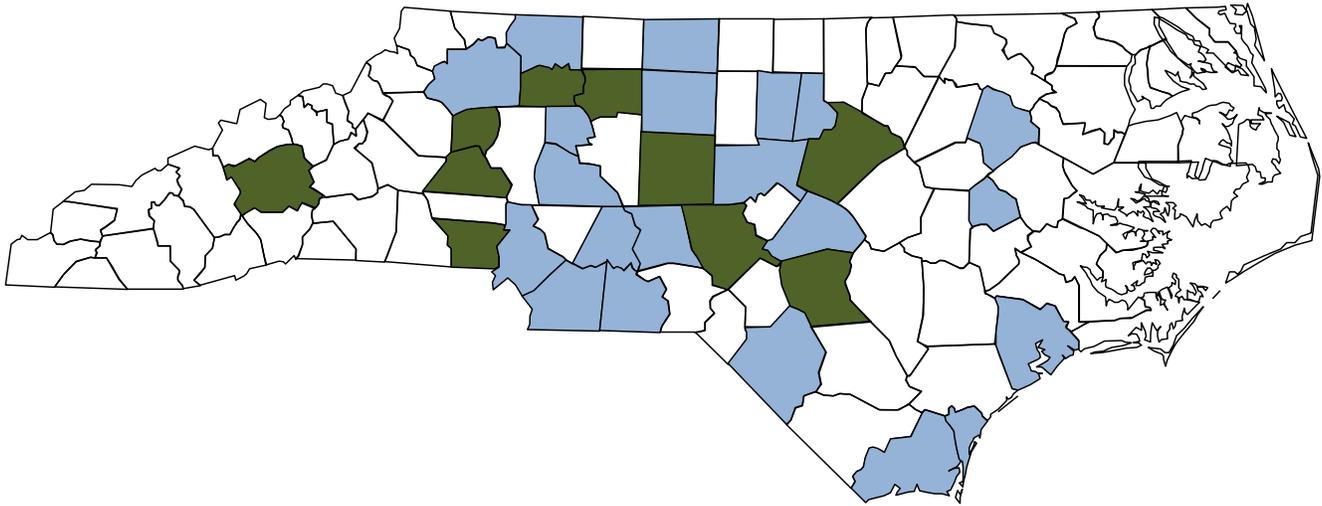


Figure C.2. Relationship of Diversion Rate to Percent Felony Defendants

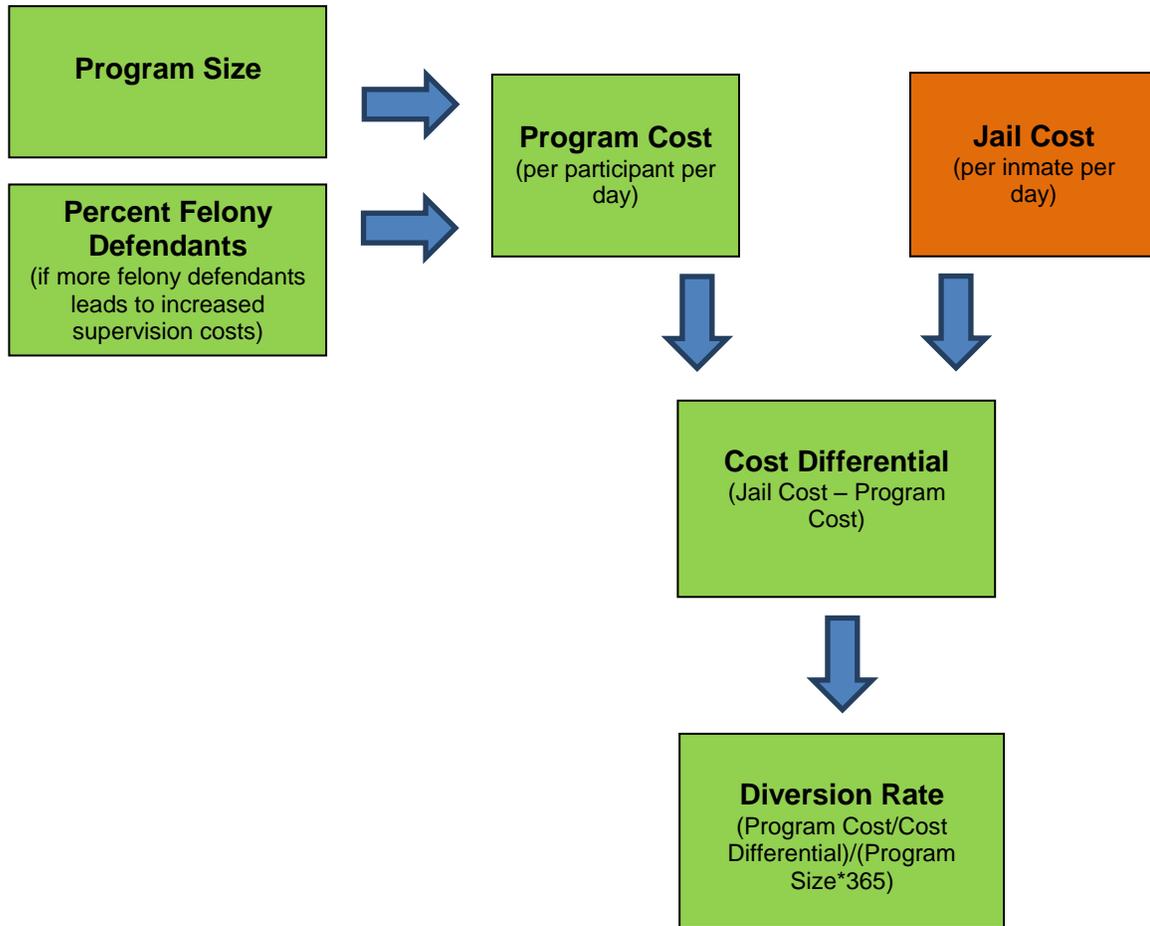


Appendix D. Map of North Carolina Counties with Pretrial Programs



-  County with pretrial program, did not respond to survey
-  County with pretrial program, survey respondent

Appendix E. Cost Drivers of Diversion Rate



Acknowledgements

Dale Roenigk, Ph.D. – Committee Chair
Lecturer and Director of the North Carolina Benchmarking Project
UNC School of Government

Jeff Welty, J.D. – Committee Member
Assistant Professor of Public Law and Government
UNC School of Government

Amy Bason, J.D. – Committee Member
Legislative Counsel
North Carolina Association of County Commissioners

Chuck Johnson
Program Director
ReEntry, Inc.