HALIFAX COUNTY PRETRIAL RELEASE RISK ASSESSMENT PILOT PROJECT

Project Data & Analysis

NC Commission on Racial and Ethnic Disparities (NC-CRED)
In partnership with the
American Bar Association's Racial Justice Improvement Project

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INTRODUCTION

The North Carolina Commission on Racial and Ethnic Disparities in the Criminal Justice System (NC-CRED)[1], under the direction of the ABA's Racial Justice Improvement Project, is conducting statewide research on the fairness and efficiency of pretrial release systems in various jurisdictions throughout the state. After a NC-CRED sponsored training in September of 2014, Halifax County officials expressed interest in determining whether a Risk Assessment would be beneficial to Halifax's pretrial system. NC-CRED worked with Halifax County court officials to design a pilot project to choose and then test a pretrial risk assessment. The Task Force convened to guide the pilot project chose to test Virginia's Pretrial Risk Assessment with only slight modifications. Virginia's Risk Assessment has been validated across the entire state of Virginia (e.g., for use in both urban and rural areas), so the Task Force expected it to translate well to Halifax. [2] The pilot ran for a thirty- day period beginning November 1, 2014.

Pilot Project Goals

The goal of the pilot project is to determine whether Virginia's Pretrial Risk Assessment is applicable in Halifax County, North Carolina in a way that would improve the efficiency and fairness of bail decisions there.

In order to meet that goal, we must first ask whether there is evidence of unfairness or inconsistency in bail outcomes. To that end, we will look at whether there are low risk individuals in the jail, whether there is evidence of racial bias in bail decision making, whether risk and bond amounts correlate, and whether decision makers are making bond decisions in a consistent manner.[3] Finally, we will examine the correlation, if any, between the Risk Level as determined by the Virginia Risk Assessment and the bond decisions made during the pilot period.

Datasets/Methodology

In order to answer our research questions, we created three datasets: qualitative data from an anonymous Magistrate survey and two quantitative datasets—one from a one-day look at the jail population and the other from a thirty-day look at the defendants coming before Halifax Magistrates.[4]

First, we surveyed the Halifax Magistrates about the bail setting experience: what factors they took into consideration and whether they perceived any racial inequities in the process. The Chief Magistrate distributed the survey to all six of her Magistrates. We had a 100% response rate.

Secondly, we had court officials capture data from two places. The Jail Administrator collected demographic, bail, and risk factor information on each defendant in the jail on one day in the pilot period. This second source of data was collected to give us a "snapshot" view of the jail population. Lastly, Magistrates collected data on defendants as they were setting pretrial conditions for the entire month of November 2014.

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[1] NC-CRED is a statewide organization whose mission is to identify, document, and help alleviate racial disparities in the criminal justice system.

[2] VanNostrand, Marie and Kenneth J. Rose. (2009). "Pretrial Risk Assessment in Virginia: The Virginia Pretrial Risk Assessment Instrument," Richmond, VA: Virginia Department of Criminal Justice Services. See the modified Pretrial Risk Assessment, Appendix A. The Virginia Risk Assessment was modified to reflect North Carolina law by distinguishing between the criminal charge of Failure to Appear (FTA) and an order for arrest (OFA) based on a failure to appear for a court date. Also, the risk assessment was modified to ask that even if a defendant had moved residences in the past year, whether s/he had remained in the *county* for that time period; whether there were drug charges under consideration, and if the defendant were on probation at the time of his/her arrest, whether that probation was for a misdemeanor or felony charge.

[3] The questions listed here are general research questions; for our specific research questions, please see pages 3-4 of this report.

[4] Halifax is a city, which sits inside Halifax County. This Pilot Project was run out of the Halifax City Magistrate's office. Jail data was collected from the Halifax County jail, which is in the city of Halifax.

The Jail Administrator and the Magistrates utilized separate versions of a modified Virginia Pretrial Risk Assessment in order to collect data.[5] The Magistrates used the original Virginia Risk Assessment, with the four additional questions. The form's intended purpose was solely data collection, so Magistrates were not given the scoring system and were instructed not to consider the form as guidance in their bond decision making process. Magistrates simply indicated which risk factors applied to each defendant. NC-CRED staff later scored the defendants on the Virginia Risk Assessment scale. That scale ranges from zero to nine points and then categorizes defendants into Risk Levels of low, below average, average, above average and high risk.

We modified the Risk Assessment used on the jail population by removing certain questions. The Jail Administrator could not interview the defendants on certain risk factors included in Virginia's original risk assessment (i.e., residency, employment history, and drug abuse history).[6] Since the tools differ, we will not be able to make comparisons between the Jail and Magistrate Samples. This also limits our ability to assign a Risk Level to the jailed defendant. Each jailed defendant will receive only a partial score on the Virginia Risk Assessment, meaning jailed defendants with risk scores falling in the low range may have been elevated to a higher Risk Level if we had data on their employment, residency, or drug abuse history.

Tables 1 and 2 below explain the range of potential Risk Scores, Levels, and risk factors for both the jailed and Magistrate populations. The "risk" that Virginia's tool is measuring is the risk the defendant will violate the terms of his/her pretrial release by committing a new crime while on bail, failing to return to court, or having his/her bond revoked for violating a bond condition.

Table 1—Risk Levels and Scores for each Sample Population

Risk Level	Risk Score	Jail Population	Mag. Sample
Low	0-1	✓	✓
Below Average	2	✓	✓
Average	3	✓	✓
Above Average	4	✓	✓
High	5-9	Can score only up to 6	✓

Table 2—Risk Factors and their Weight

Scored Risk Factor	Points	Jail Population	Mag. Sample
Current charge a felony	1	✓	✓
Pending charges at time of arrest	1	✓	✓
One or more criminal convictions in history	1	✓	✓
Two or more FTA in history	2	✓	✓
Two or more violent convictions in history	1	✓	✓
Current residence for less than one year?	1	N/A	✓
Not employed continuously for the previous two years?	1	N/A	✓
History of drug abuse	1	N/A	✓

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[5] See Appendices A and B for the Risk Assessments used to for both the Jail and Magistrate Samples.
[6] We did not want to require conversations between the Sheriff and pretrial detainees, many of whom were represented by attorneys at this point, that might pertain to their cases (e.g., drug abuse history might be relevant to the charges). Therefore, we did not collect data on these risk factors for the jail population.

Because of the incomplete nature of the data on the jail population, we will not translate the Risk Score of a jailed defendant into a Risk Level (low, average, high), since there is no scientifically validated correlation without the missing data. However, the Risk Score of the defendants in the jail does still correlate to the universally accepted risk factors of criminal and failure to appear history, which means the score will still be helpful for comparisons within the jail population. With the Risk Score, we will easily be able to compare the treatment of defendants with similar risk factors within the jailed population. No comparisons will be made between the Jail and Magistrate Samples.

Research Questions & Major Conclusions

This report (NC-CRED Report) is a compliment to the Evaluation of the project conducted by Inga James on behalf of the American Bar Association, Criminal Justice Section (ABA Evaluation). The NC-CRED Report is an analysis of the raw data, draws on Dr. James' work, and offers policy recommendations for Halifax County. The ABA analysis determines the statistical significance, if any, of the issues reflected in the raw data.

The questions posed and the major conclusions found during this Pilot Project are as follows:

1. **How does the one-day snapshot of the pretrial detainee jail population break down along age, race, charge severity, Risk Level, and bond amount?**
   - The majority (45%) of the pretrial detainee jailed population is between the ages of 16 and 25; 80% of the jailed population is black. 34% of the jailed population is charged with murder, and 22% with misdemeanors. Other than Class A felonies (murder), Class H felonies are the most common charges found in the jail population (15%). In our partial scoring, a plurality of the defendants received a Risk Score of two (31%). Bond amounts were relatively evenly distributed among the jail population, though 23% had a low bond, i.e., between $1,000.00 and $9,999.00.
2. **Are there individuals in jail with a low number of risk factors?**
   - Yes, according to the partial Risk Scores collected on the jailed population, 15% of the jail population had a low Risk Score (a score of 0 or 1) **and** were charged with lower-level felony or a misdemeanor.[7] The median bond in this population was $2,000. The combination of a low number of risk factors, low bonds, and low level charges indicates that this population likely should not be detained pretrial.
3. **How does the Magistrate Sample, collected over the thirty-day Pilot Period, break down along age, race, charge severity, Risk Level, bond amount, and bond type?**
   - The most common age groups in the Magistrate Sample were 16-25 and 26-35 at 34% each. Black defendants made up 77% of the Magistrate Sample. Class H felonies were again among the most common charges, totaling 19% of all crimes in the sample; misdemeanors made up 66% of the sample. The Risk Level with the most defendants was the "low risk" Risk Level with 31% (n=40) of the Magistrate Sample population. 69% (n=89) defendants in this sample were of an "average" Risk Level or lower. The majority (53%) of bonds awarded during the pilot period fell between $1,000.00 and $9,999.00. Sixty-seven percent of all bonds awarded were secured.
4. **Do the bonds set during the Pilot Period correlate to the Suggested Secured Bond Amounts in Halifax County's current Pretrial Release Policy?**
   - No, for lower level crimes, the bond amounts do not fully correlate to the amounts suggested Pretrial Release Policy. Magistrates are consistently setting bonds above the upper limit suggested by the policy on crimes Class H or lower. For example, for Class 2 misdemeanors, bonds set during the pilot period were at or above the upper limit suggested by the Pretrial Release Policy 100% of the time. Bonds for Class I felonies were set at or above that limit 67% of the time.
5. **Is there a correlation between the bond amounts set and the Risk Level assigned each defendant?**
   - Though statistically there **is** significant correlation between the Risk Level assigned to defendants in the Pilot Project and the bond amount awarded, there are outliers.

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[7] We are defining a lower level felony as a felony Class E or lower. Felonies Class D and above require an active mandatory minimum sentence see, "Risk Scores in the Jail Population," *supra* for a more detailed discussion on this point.

6. **Are there statistically significant differences in bond amounts by race?**
   - There are no statistically significant differences in bond amounts by race, after controlling for criminal and failure to appear history in either the Jail or Magistrate Sample populations.[8]
7. **Using the qualitative Magistrate survey data, how to the rates of bond types being awarded compare to what Magistrates self-reported?**
   - Magistrates are accurate when self-reporting on the rate at which they set secured as opposed to unsecured bonds. The median self-reported percentage of secured bonds set was 68%, and the percentage of secured bonds set during the pilot period was 69%.
8. **Which factors do Magistrates consider to be most important when setting bail?**
   - The factors that Magistrates self-reported were most important when setting bonds were (1) the nature of the circumstances of the offense charged, (2) prior history of appearing in Court, and (3) the alleged victim's safety.
9. **Do the Magistrates in Halifax County perceive any issues with racial equity in the pretrial process there?**
   - The Magistrates do not see evidence of racial disparities in the pretrial process in Halifax County.

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[8] All statistical analysis and conclusions are the work of Dr. James and can be found in: James, Inga "Racial Justice Improvement Project: North Carolina; Year 2 Evaluation Findings," *American Bar Association Criminal Justice Section* (May 2015).

DEMOGRAPHICS OF THE SAMPLE

As stated above, the survey was given to all seven Magistrates and we had a 100% response rate.

The jail "snapshot" was taken on November 14, 2014, when there were 88 pretrial detainees in the jail. Data was missing on two of the defendants, so when we are analyzing the data, we are looking at a total of 86 individuals. It should be noted that the capacity of the Halifax County jail is 85.

The total Magistrate sample was 131 defendants. Two defendants in this sample had to be excluded as well; the first because his bond was preset, so no risk assessment was completed, and the second because of missing data.

The racial composition of the two sample groups and Halifax as a county are illustrated in the charts below.

Figures 1-3 Race & Ethnicity of the General and Sample Populations
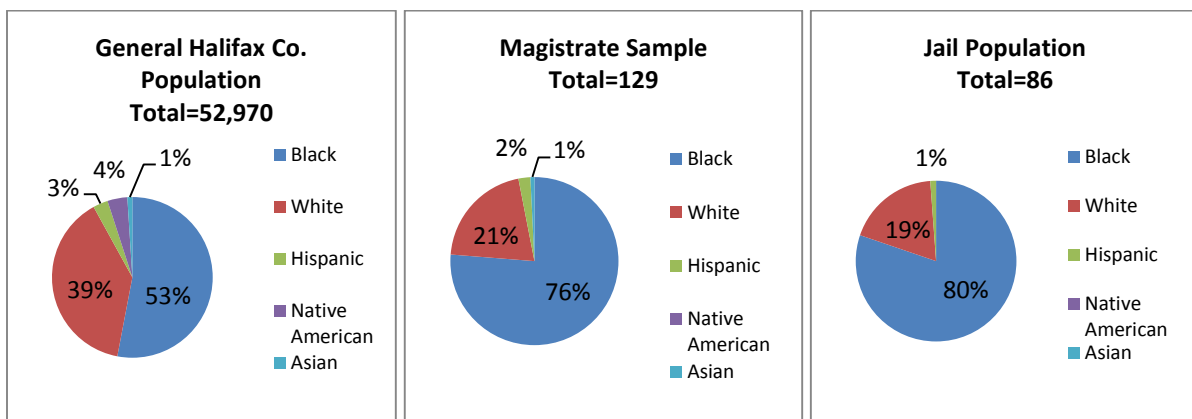
These charts illustrate that the population charged with crimes has a higher proportion of black individuals than the general population. That proportion grows even higher when we look at the group of individuals detained pretrial. Without a statistical multivariate analysis and a larger sample, we cannot draw conclusions about these disproportionalities. Potential explanations are: differential offending rates, higher criminal and failure to appear histories for black defendants, and racial bias in the policing and pretrial decision making processes.

Races, other than black or white, and ethnicities of the general population do not seem to be reflected in the defendants coming before a Magistrate nor into jail, but this is most likely due to the difficulty of data collection on some races and ethnicities in the court or jail setting. It is practice in Halifax County for the Magistrate or Sheriff to determine the ethnicity and/or race of the individual based on his/her perceptions, which is unreliable and often results in the underreporting of some racial and ethnic minority groups.

We are well aware that the sample sizes of these two populations are extremely small. No hard and fast conclusions can be drawn from this data, and we are not suggesting that these data are conclusive. However, we see value in this data analysis in that it can serve as a baseline for future investigations. Many of our data points can also help pinpoint where problem areas might exist in Halifax's pretrial system, helping to guide any future research.
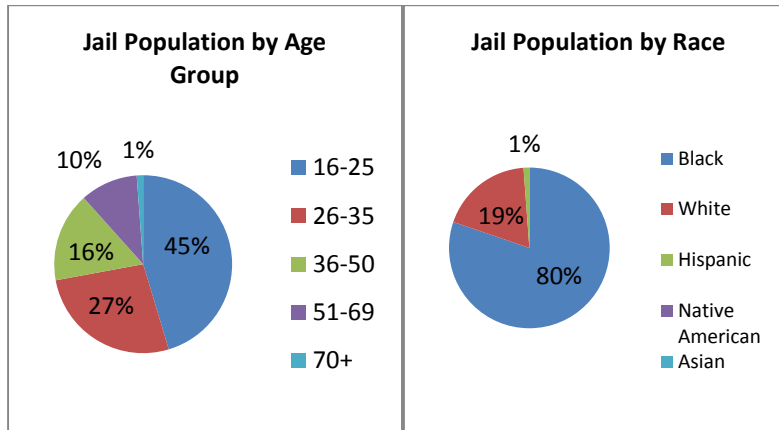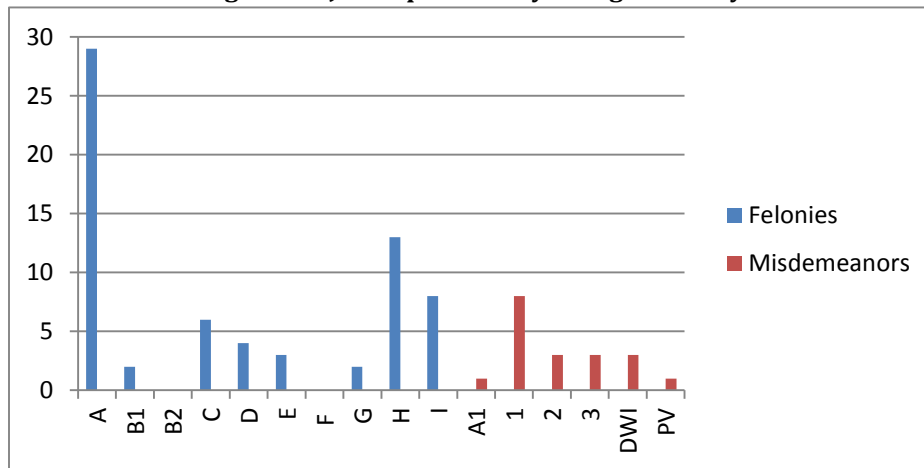
QUANTITATIVE DATA

Jail Sample Demographics

In order to provide a full picture of the jail data demographics, the charts below illustrate how the jail population breaks down along age, race, charge severity, risk level, and bond amount.

Figures 4-5 – Jail Population by Age; Race & Ethnicity

Figure 6—Jail Population by Charge Severity

The jail population is predominately below the age of thirty and charged with felonies. In fact, the majority of those detained pretrial are awaiting trial for murder charges (Class A felonies, 34% of the population). Other than murder, the most common charges are Class H felonies and Class 1 misdemeanors. Overall, 22% of the jail occupants are charged with misdemeanors.

Table 3 describes the possible Risk Scores for the jailed population and the frequency within the Pilot's jail sample.

Table 3—Range of Potential Risk Scores for Jail Population

Risk Score	Frequency in Our Jail Sample
0	1
1	23
2	27
3	25
4	10
5-6	0

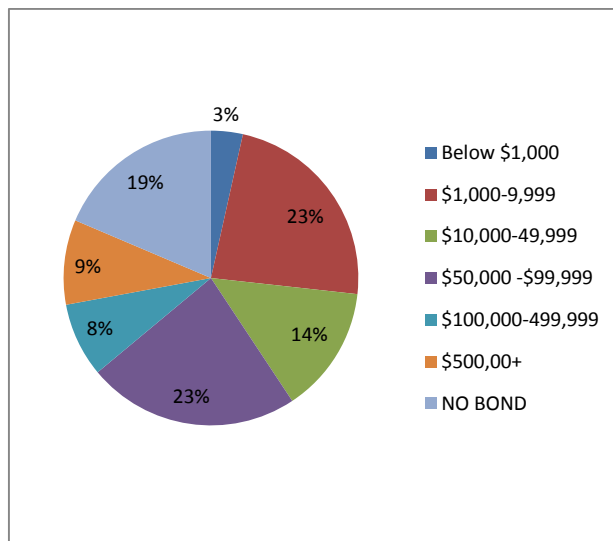**Figure 7—Jail Population by Bond Amounts**

Figure 7 shows that bond amounts are somewhat evenly distributed. However, some consideration should be given to the population whose bonds are set between $0.00 and $9,999.00 to determine if they are only detained pretrial because they are unable to post the bond awarded them, rather than them posing a risk of pretrial failure.

Risk Scores in the Jail Population

The most probing question we wanted to answer with this jail data was to determine if there were lower risk individuals detained pretrial and, if so, what percentage of them were charged with misdemeanor and other low-level crimes. Our inquiry is designed to target a population that may be detained pretrial unnecessarily. Our hope is that use of tool such as Virginia's Risk Assessment would help alleviate overcrowding in the jail by helping Magistrates correctly assess the risk defendants pose of pretrial failure. Looking more closely at the lower risk population in the Halifax County jail will help us to answer that question.

We are only considering those who scored a zero or one on the modified Risk Assessment as lower risk. There was one defendant with no risk factors, and 23 that had only one of the risk factors outlined in the modified Risk Assessment, for a total of 24 lower risk defendants detained pretrial. Eleven of those defendants were

charged with a misdemeanor and 13 with a felony. If we exclude any defendant charged with a crime that carries a mandatory minimum active sentence, which is a Class D felony or higher, then we have a sample totaling 13 defendants, comprised of 11 misdemeanors and 2 felonies.[9] This is 15% of the jail population. Ten out of these thirteen are black defendants. If we consider all defendants that scored a zero, one, or two, we have a total of 51 defendants. Out of those 51, 18 were charged with misdemeanors and 33 with felonies. Excluding all felonies Class D or above from that large sample, we have 28 defendants remaining. This is 33% of the jail population that has up to only two risk factors and is charged with a misdemeanor or lower-level felony. Twenty-one out of these twenty-eight are black defendants.

Figure 8 below illustrates the bond amounts awarded lower risk defendants (total=13) who were also charged with a crime Class E or lower. Each bar in this graph represents one defendant. The chart's y-axis is capped at $12,000.00 even though the defendant with the highest bond was actually awarded at $50,000.00 bond. Charting that bond accurately would have made the rest of the chart too difficult to read.

Figure 8—Jail Population with Lower Level Charges and Risk Scores 0-1 by Bond Amount & Race
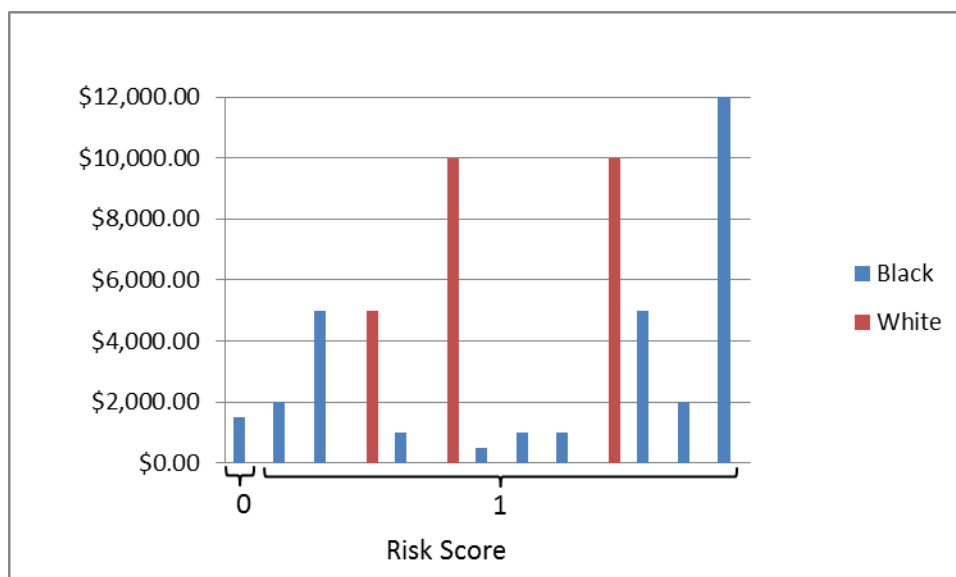

Figure 9 on the following page is similar, except that it combines the lower risk population with the below average jail population (total=28). This chart is also capped artificially—the two bars at the end of the chart represent defendants who received a $248,000.00 and a $75,000.00 bond respectively. Again, these adjustments were made to make the chart more readable.

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[9] We exclude felonies Class D or above because these require an active mandatory minimum sentence, which correlates to higher bonds being set for these offenses. It is generally accepted that the most serious felonies can and do receive extremely high money bonds, or denial of bail conditions outright. The VA Risk Assessment does not distinguish between felony severity when assigning a risk score or level. The research around this issue indicates that a defendant's history of past violent behavior is more indicative of pretrial failure than is a single serious felony charge. See, *Thomas Cohen and Brian Reeves, Pretrial Release of Felony Defendants in State Courts (Bureau of Justice Statistics 2007).* The VA Risk Assessment does consider the defendant's history of violent offenses. If Halifax adopts this Risk Assessment, it could consider differentiating between misdemeanors, felonies, and felonies carrying an active minimum sentence.

Figure 9—Jail Population with Lower Level Charges and Risk Scores 0-2 by Bond Amount & Race
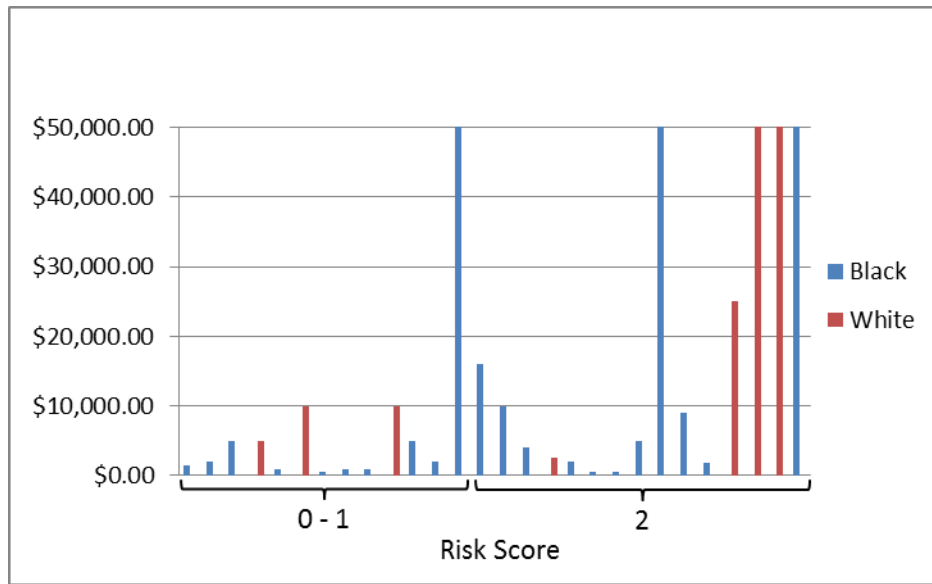
These data raise questions about whether detention is necessary for one or both of these groups. Community supervision, for example, might be more appropriate. This is particularly true for lower risk defendants who also have a bond below $5,000.00; the relatively modest bonds assigned to these defendants indicate that the Magistrate setting the bond considered the defendant to be low risk for pretrial failure. [10] Future research should focus on this lower risk population, whose bonds are set in the relatively low ranges to determine if they are, in fact, a group being unnecessarily detained pretrial. A bond that does not require a money deposit might be more appropriate for this group of defendants.

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[10] This group would be ten defendants with a score of 0-1 and seven more from the group with risk scores of 2, for a total of 17 (20%) of the Jail Population.

Magistrate Sample Demographics

In order to provide a full picture of the Magistrate Sample demographics, the charts below illustrate how the group of defendants that came before a Halifax Magistrate during the pilot period breaks down along age, race, charge severity, Risk Level, and bond amount.

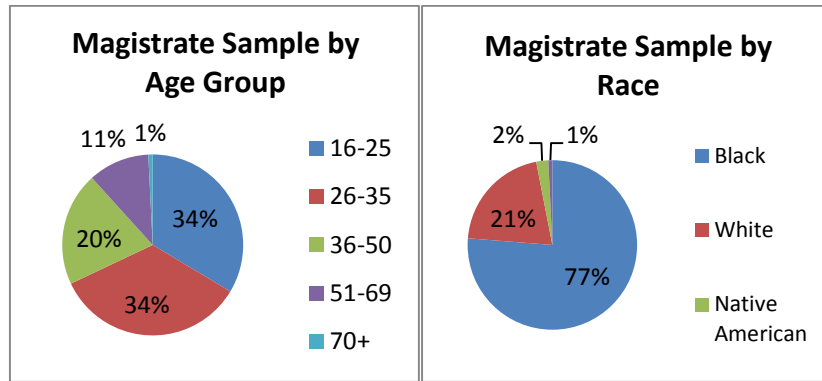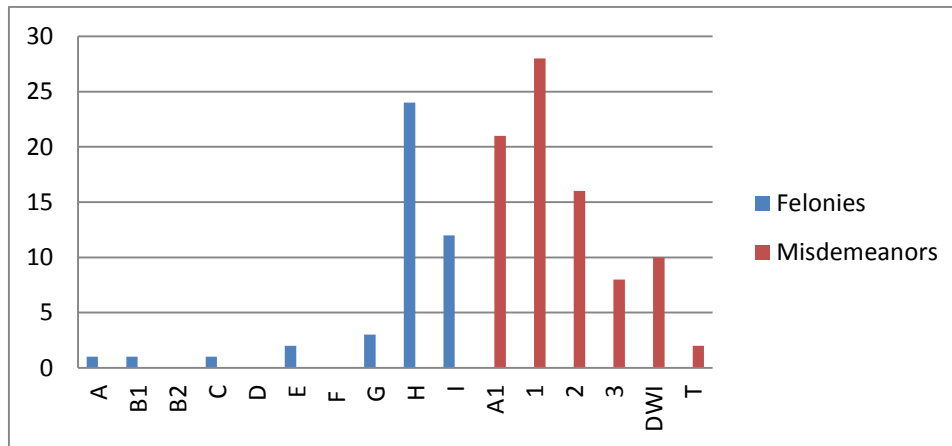**Figures 10-11—Magistrate Sample by Age; Race & Ethnicity**

Figure 12—Magistrate Sample by Charge Severity

The Magistrate sample is more diverse in age than the jail sample, and overall the charges are of lesser severity. This makes sense, as the jail should be housing those most dangerous to the community, a marker of which is the seriousness of the crime with which the defendant is charged.[11] The charge severity chart provides a picture of the most common crimes that come through Halifax on a monthly basis. Sixty-six percent of the charges in the Magistrate Sample were misdemeanors, and 19% of the total were Class H felonies.

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[11] As a counterpoint to this argument, see footnote 8, *supra.*

The Magistrates used the full Virginia Risk Assessment in their data collection, which can be scored between 0 and 9. Table 4 below for the distribution of Risk Levels during our pilot project.

Table 4—Range of Potential Risk Scores & Levels for Magistrate Sample

| Risk Level	Risk Score	Frequency in the Magistrate Sample
Low Risk	0	18
	1	22
Below Average	2	27
Average	3	22
Above Average	4	15
High Risk	5	13
	6	6
	7	6
	8-9	0

Most defendants in this sample were below average in their risk of pretrial failure, with surprisingly few presenting high risk.

Figures 13 and 14 below illustrate the proportion of bond types and money bond amounts awarded defendants. Figure 13 demonstrates that the majority of bond types awarded are secured bonds at 67% of the total. The Bond Amount chart (Figure 14) excludes any bonds that did not require a money deposit, therefore, it includes only secured or cash bonds, which implicates 89 of the 129 cases heard by the Magistrates during the Pilot Period. The most common bond amount is between $1,000.00 and $9,999.00

Figure 13— Magistrate Sample by Bond Type
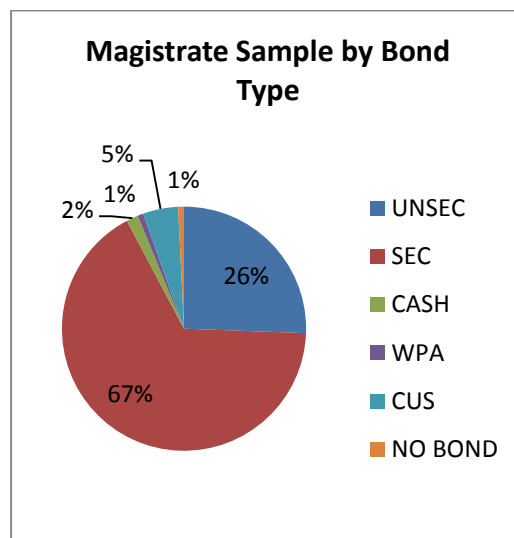
Figure 14— Magistrate Sample by Bond Amount (of Money Bonds)
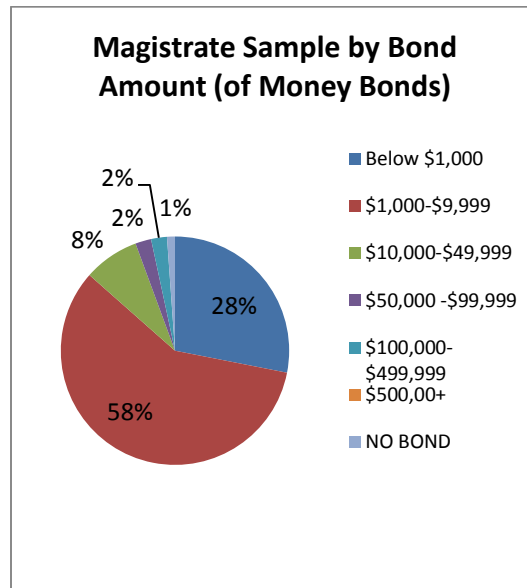
Comparing Halifax County's Suggested Secured Bond Amounts to Amounts Awarded During the Pilot Period

Currently, Halifax County sets bonds with the help of a chart called "Suggested Secured Bonds," which is similar to a bond schedule.[12] We can use the data we collected during this Pilot Period to compare the amounts of bonds awarded to the suggestions outlined by Halifax's Pretrial Release Policy.

Figure 15—Misdemeanor Bond Amounts Compared to Bond Policy Suggested Amounts

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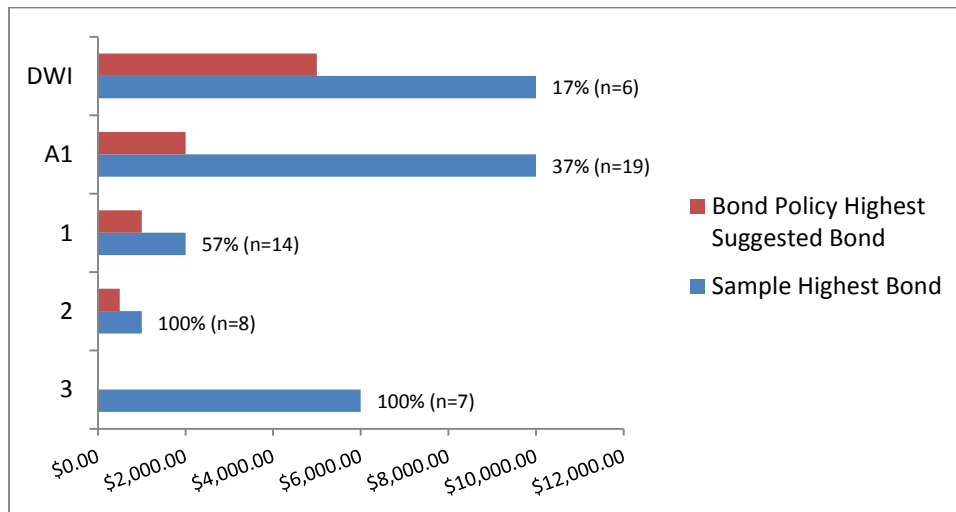
[12] See Appendix C for a copy of the Suggested Secured Bond chart from Halifax County's Bond Policy.

Figure 16-- Felony Bond Amounts Compared to Bond Policy Suggested Amounts
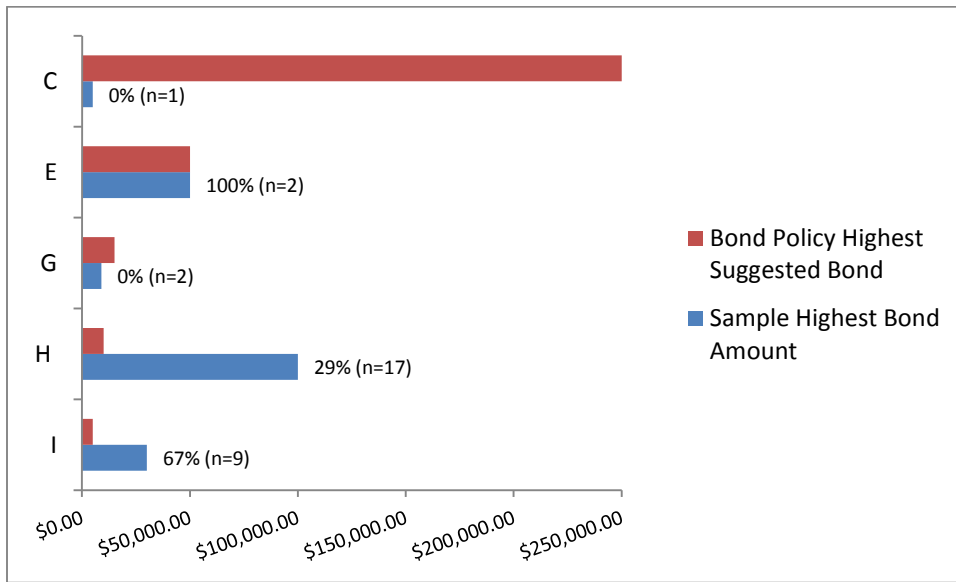
When comparing the bond policy's Suggested Secured Bonds to the bond amounts actually set during the pilot period the most striking finding is that for lower level misdemeanor crimes, Magistrates are consistently setting bonds above the upper limit suggested by the bond policy. The chart above shows how far above the suggested upper limit bonds went during the data collection period, but it also shows the frequency with which bonds were set at or above the upper suggested limit. The percentages shown outside of the blue bar indicate proportionately how many of the defendants charged with that class of crimes were awarded a bond *at* or ***above*** the suggested upper limit. The number of the total sample for each Class is in parenthesis. For example, there were 7 defendants charged with a Class 3 misdemeanor and all of them, 100%, had a bond set at or above the suggested upper limit. Because the suggested upper limit for a Class 3 misdemeanor is a written promise to appear, any amount of money bail would exceed this suggestion. All eight Class 2 misdemeanants were also given a bond at or above the suggested upper limit (four were at the $500.00 upper limit and four exceeded it). Once the charge reaches the severity of Class G, the amounts awarded and the suggested amounts begin to even out, and for the most serious felonies, the bonds awarded are usually far below the upper limit of the suggested range.[13] This comparison suggests that Halifax Magistrates are setting money bond amounts too high for the low-level crimes. It is difficult to know if it is merely the small sample size that is creating this apparent trend, but future research should look at this phenomenon.

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[13] See Appendix D for a chart of all the bond amount data compared to the suggested amounts in Halifax's Bond Policy, including the medians and averages of the range in the sample population and the suggested range. For the felony chart above, one must keep in mind that there were very few samples for the most serious felonies; the single B1 and A felonies were excluded because their bonds were so high that the chart would be extremely difficult to read.
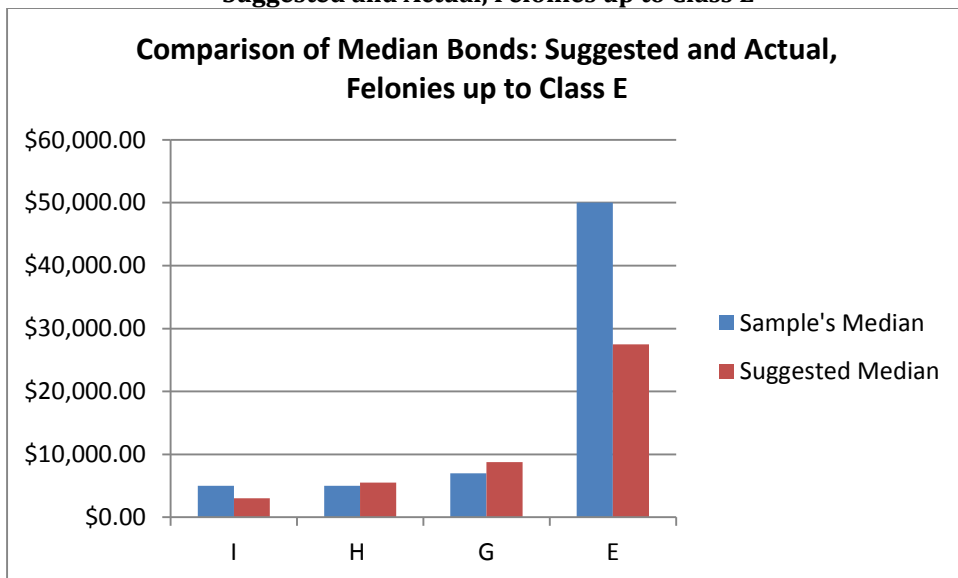
Another way of comparing the suggested bond amounts and the actual bond amounts is to look at the median bonds of both the bond policy and those awarded during the pilot period.

Figure 17—Comparison of Median Bonds: Suggested and Actual, Misdemeanors
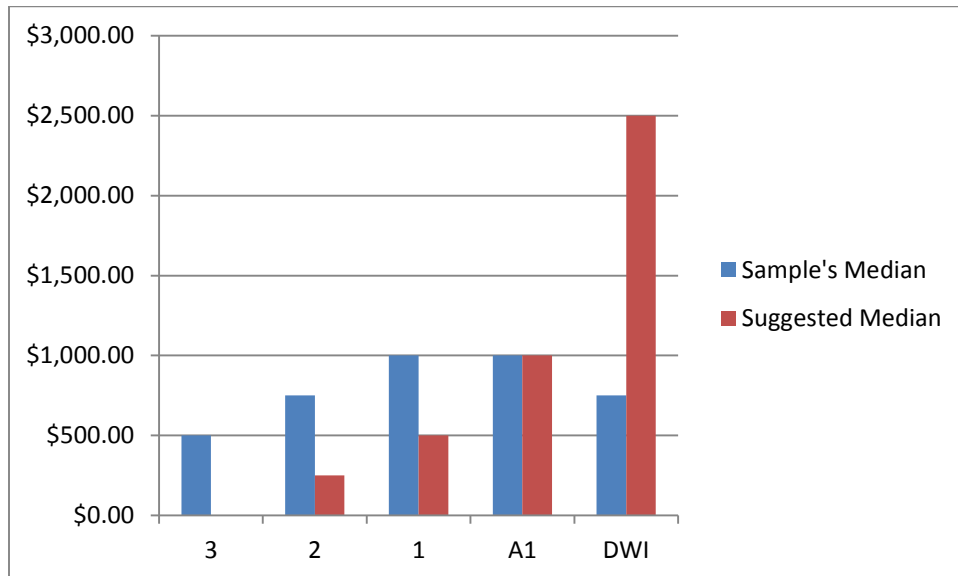
Figure 18—Comparison of Median Bonds:
Suggested and Actual, Felonies up to Class E

Comparison of the median bonds in the pretrial policy and during the pilot period suggest that only for the lowest misdemeanors (Class 3-1) and felonies (Class I) are Magistrates setting bonds above the suggested range. Class A1, DWI, and H felonies no longer appear to be outside of the suggested range when comparing median bond amounts, though certain defendants had their bond set far outside the suggested range. Furthermore, Class E felonies suddenly appear to be set far outside the suggested range; this is because there were only 2 Class E alleged felons in the pilot project, and both of their bonds were set at the upper suggested limit.

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Comparison between Magistrates

Given our small data set, looking for consistency across Magistrates is extremely difficult. We compared the median bonds set by each Magistrate for each class of crime and found relative consistency, with a few extreme outliers. This finding is due more to the sample size than it is reflective of a larger pattern. Future research could track individual Magistrate decisions to determine if similar bonds are being set for similar crimes and defendants. A risk assessment instrument, such as Virginia's, is designed to add this kind of consistency to the pretrial process.

Comparing Risk Levels to the Bonds Amounts Awarded During Pilot Period

This Pilot Project's main objective was to determine if the use of a Risk Assessment was warranted in Halifax and, if so, how well the Virginia Pretrial Risk Assessment would complement and add to the pretrial process already in place in Halifax County.

In order to answer the first part of the above question, we did two things. First, we collected data on who was in the Halifax County jail. Secondly, we compared the bonds being set to the guidance available in the current bond policy. As stated in the previous portion of this report, we did find a sizable portion of the jail population to be what we considered lower risk, based on the shortened version of the risk assessment we used on the jail population. This target population of lower risk defendants should be examined to determine whether, for them, pretrial release is more appropriate than pretrial detention. Furthermore, we found that for lower level crimes, defendants' bonds were consistently being set above the suggested range as stated in Halifax County's bond policy. This data suggests that implementation of a Risk Assessment in Halifax County would benefit the entire pretrial system by identifying the defendants with low-level charges and lower risk who could be released pretrial without decreasing the community's safety.

Now, in order to address the second part of our main objective, we will need to compare the Risk Levels of the defendants in the Magistrate Sample to the bond amounts they were actually awarded. Here, we are trying to determine whether the Virginia Risk Assessment would suggest similar or dissimilar bond amounts for the defendants than the Magistrates actually awarded during the pilot period. We are looking for an increase in bond amounts as the Risk Levels of the Sample rises. Figures 21 and 22 illustrate the relationship between the Risk Levels assigned the defendants and the bond amounts awarded.

Figure 21—Misdemeanor Defendants by Bond Amount & Risk Score
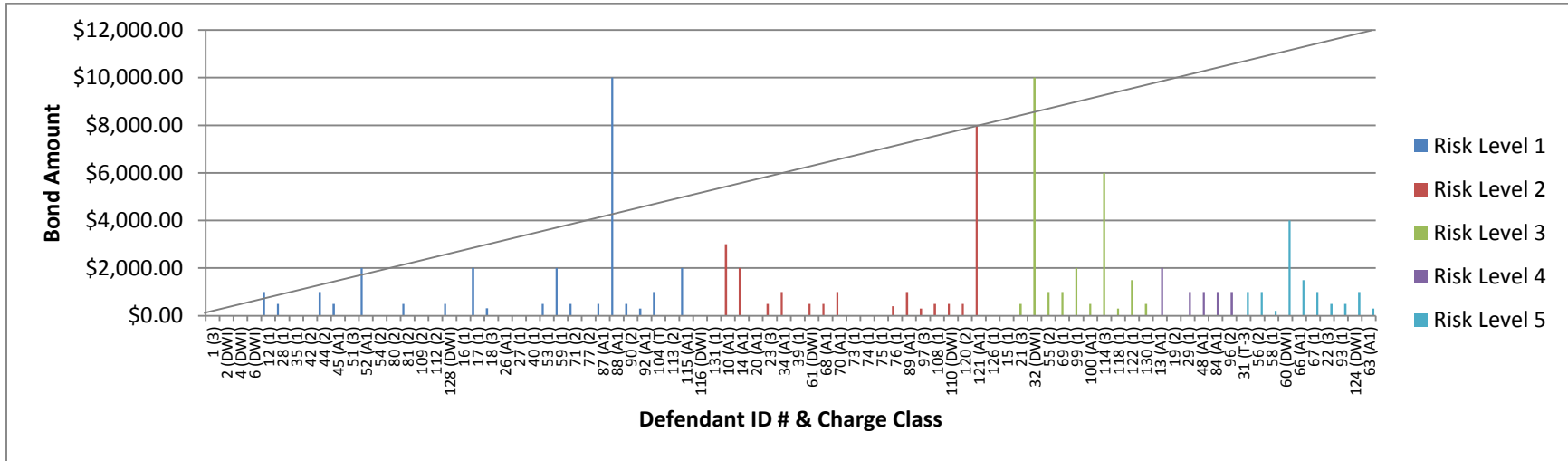
Figure 22—Felony Defendants by Bond Amount & Risk Score

17
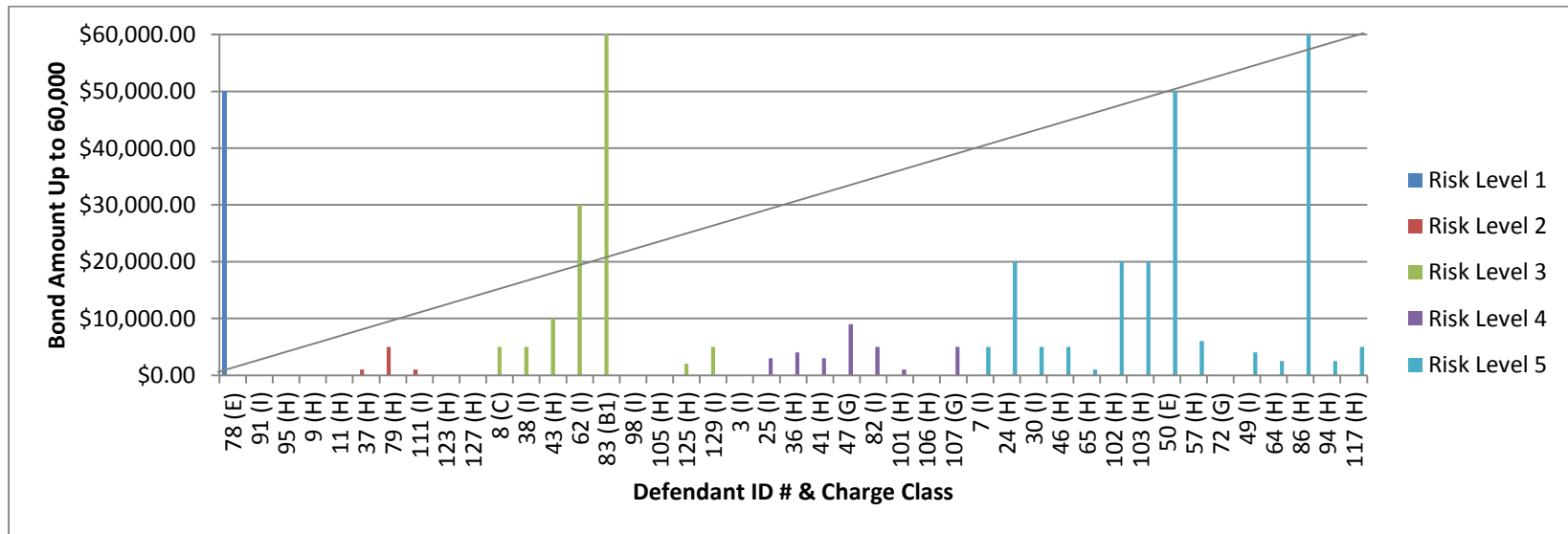
For felony cases, the single murder charge was excluded.[14] Furthermore, the high bond amount on the felony chart was capped at $60,000, though defendants numbered 83 and 86 both had bonds of $100,000.00. Those higher amounts were removed from the chart so that the lower bonds could be seen more easily. Defendants given an unsecured bond were recorded as being given a bond of $0, since they can simply sign themselves out of jail.

Figures 21 and 22 show the risk levels in progressive increments along the x-axis (grouped by color) with bond amounts in increasing amounts along the y-axis. Ideally, we would see simultaneous and proportionate increases in bond amount as a defendant's Risk Level increased. The grey diagonal line on the chart represents the trajectory of that ideal situation, where bond amount is dictated by Risk Level in a 1:1 ratio. Once illustrated in this manner, it is easy to locate the bonds that deviate from the expected distribution of bond assignments. Analysis of bond data in this manner on a routine basis would be a valuable tool in evaluating the pretrial system in any jurisdiction.

One drawback of the risk assessment tool is that the severity of the crime indicator is simply whether or not the charge is a misdemeanor or felony. In Halifax, bonds are set according to the class of the crime charged (there are four misdemeanor classes and nine felony classes) using a bond schedule, rather than simply distinguishing between felonies and misdemeanors. The charts above do include the class information. We can see, for example, that the one defendant with a Risk Level of one that has a high secured bond was charged with a Class E felony, which might explain why a low risk defendant would be given such a high bond. Similarly, the risk assessment tool piloted in this project doesn't distinguish between an extensive criminal history and a defendant with only one previous conviction in his/her history. That information is not available in this chart, nor in the data we collected for this pilot, but must be kept in mind as a potential explanation for outliers.

In fact, The ABA RJIP Evaluation of the Halifax County Risk Assessment Pilot Project concluded that Halifax County Magistrate bond decisions did correlate to the risk levels of the defendants as scored by the modified Virginia Risk Assessment tool. This means that defendants who are considered high risk (as determined by the Virginia tool) were given higher bonds, and those deemed low risk were given lower bonds. The deviations from that correlation (as illustrated in Figure 21 and 22) were deemed to be statistically insignificant, or likely due to chance. The ABA evaluation also found that there were no significant differences in bond amounts by race after controlling for seriousness of crime as well as criminal and failure to appear history.

It appears that Magistrates are making decisions in line with what the Virginia Risk Assessment Tool would suggest if it were to be used in Halifax County and that those decisions are already free of bias.

Notwithstanding these positive results, Figures 21 and 22 show that the correlation between risk and bond amounts still is **not** in an ideal relationship. It is important to remember that our sample size was small and we cannot discount the possibility that a larger sample size would find statistically significant deviations and/or evidence of bias due to the race of the defendants. A risk assessment could minimize the risk of high bonds for low risk individuals and any potential future bias.

Furthermore, charts like Figures 21 and 22 could also aid in the management and improvement of Magistrate functioning in Halifax County. While the current data indicates that Risk Levels and bond amounts are sufficiently correlated, the analysis above allows Magistrates to quickly determine which, if any, bonds are set outside the normal range. Those that are set outside the normal range could be reviewed to determine the

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[14] That individual was defendant number 119 in the data, was denied bond outright, and was a Risk Level of 3. Inclusion of this individual would skew the data.

reason for deviation. This data tool could provide the Chief Magistrate with a powerful management tool that would ensure that bonds are being set in a consistent manner that correlates to the risk of pretrial failure rather than to arbitrary factors.

The ABA's Evaluation of the Pilot Project also shows us that the Risk Assessment is consistent with bond practices already in place in Halifax County. Since the bond amounts assigned during the Pilot Period correlated to the Risk Levels defendants received, implementing the Risk Assessment would not drastically alter Halifax's pretrial system. The Risk Assessment would, however, provide Halifax officials with assurance that they are making bond decisions based on the factors that have been scientifically validated to indicate a risk of pretrial failure.

QUALITATIVE DATA

Comparing Bond Types Awarded During Pilot Period to Self-Reported Outcomes

Figure 23—Bond Type Distribution: Actual Compared to Self-Reported Estimates
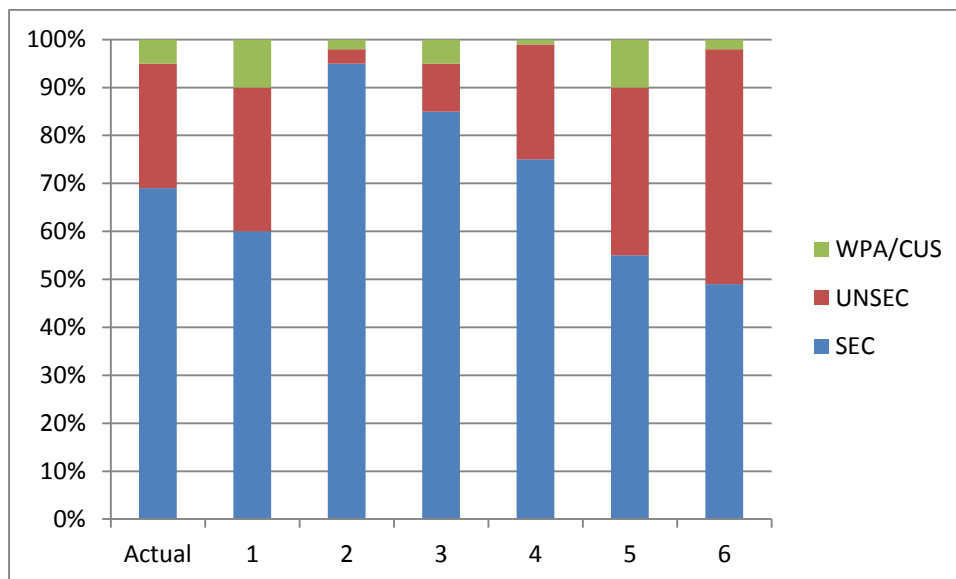
It appears that the Halifax Magistrates are relatively accurate in their assessment of the number of secured bonds they are setting. The x-axis here indicates one bar for each Magistrate and the "actual" bar that indicates the percentages from the pilot period data. The variations in each bar of the chart could reflect an individual Magistrate's discretion in the types of bonds s/he chooses to award. The larger question is about the ideal proportion of secured to unsecured bond types—does Halifax want to be requiring secured bonds in 70% of its cases when jail overcrowding is an issue? Could a Pretrial Risk Assessment help target the low-risk population that could be released on non-money bail without endangering the community and bring the proportion of secured bonds down?

Bail Factors Most Important to Magistrates

In order to determine which defendant traits were swaying Magistrates to set particular bonds, we used an anonymous survey to ask all seven Halifax Magistrates about the factors they consider when setting pretrial release conditions. First we asked which of the statutory factors they considered when setting bail conditions, and secondly, which three were most important in their analysis. N.C.G.S. § 15A-534(c) lists the statutory factors that are to be considered in setting pretrial release conditions. Those factors are: the nature of the circumstances of the offense charged, the weight of the evidence, family ties, employment, financial resources, defendant's character and mental conditions, length of residence in the community, criminal convictions, prior history of appearing in court, prior flight to avoid prosecution, the victim's safety, any other person's safety, and the community's safety. Three Magistrates responded that they took all statutory factors into consideration. Three other Magistrates reported that they took all factors but the defendant's financial resources into consideration. The final Magistrate reported that s/he only considered the nature of the circumstances of the offense charged, the weight of the evidence, criminal convictions, prior history of appearing in court, and the victim's safety.

The factors that Magistrates self-reported were most important when setting bonds were (1) the nature of the circumstances of the offense charged, (2) prior history of appearing in Court, and (3) the victim's safety. Table 5 outlines the entire tally for the most important factors.[15]

Table 5—Statutory Factors Most Important to Halifax County Magistrates

Factors	Tally
Nature of Circumstances of the Offense Charged	5
Prior History of Appearing in Court	5
Victim's Safety	3
Community's Safety	2
Character and Mental Conditions	1
Criminal Convictions	1
Any Other Person's Safety	1
Weight of Evidence	0
Family Ties	0
Employment	0
Financial Resources	0
Length of Residence in the Community	0
Prior Flight to Avoid Prosecution	0

It is interesting that some of the scientifically validated risk factors, as determined by Virginia's research, are not in the list of the most important factors to Halifax's Magistrates. The majority of Magistrates, for example, are considering the nature of the circumstances of the offense charged as one of the most important factors when determining pretrial release conditions, but this is not one of the factors determined by Virginia's research to accurately predict pretrial failure. Some factors that are considered less important to Halifax Magistrates, such as employment and length of residence in the community *are* considered to be strong predictors of pretrial failure.

Using Virginia's Risk Assessment would not keep Halifax's Magistrates from considering all of the required statutory factors, but it would help concentrate their attention on those factors that have been shown to accurately determine whether a defendant needs to be detained pretrial.

Perception of Racial Disparities as an Outcome of the Pretrial Process in Halifax County

At the end of our anonymous survey, we asked Magistrates if they perceived any racial disparities in Halifax's pretrial process. Four Magistrates reported that they did not perceive there to be any racial disparities in the pretrial process. A single Magistrate indicated that deviation from the bond policy could, potentially, cause racial disparities to occur, though s/he did not indicate there was current evidence of this in Halifax. Another Magistrate noted that s/he thought that the relevant disparity was a result of class—the number of people in Halifax living at or below the poverty level is high. Presumably this Magistrate was pointing to the fact that those with little means are less likely to be able to bond out of jail and are less likely to have the community resources and support to make pretrial release successful.

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[15] One Magistrate responded that one of the most important factors s/he considered was "flight risk," which we counted as the "prior history of appearing in court," but it could reasonably be meant to include that factor along with "family ties," "employment," "length of residence in the community," and "prior flight to avoid prosecution."

CONCLUSION

The goal of this pilot project was to determine if Virginia's Pretrial Risk Assessment is applicable in Halifax County. We determined that there is reason for Halifax to institute a risk assessment, and that Virginia's Risk Assessment would be an appropriate choice.

Indications that Halifax could manage risk more effectively:

1. Thirteen of the 88 pretrial detainees (15%) in jail during the pilot period were lower risk, as measured by our modified risk assessment. All but two of these defendants were charged with misdemeanors. This is some evidence that a portion of the jail population is being unnecessarily detained pretrial, contributing to overcrowding. Furthermore, ten of these 13 were black defendants.
2. Sixty-seven percent of all bonds awarded during the pilot period were secured bonds. Some consideration should be given to whether this is an acceptable percentage.
3. Bonds for low-level offenses often exceed the recommended amounts per the Bond Policy. Lower level crimes are more likely to be committed by those with lower risk of pretrial failure, so it would be beneficial to use a risk assessment to objectively determine the risk of a defendant so that the appropriate bond could be chosen.
4. Although the lack of correlation between risk level and bond amount in the Magistrate sample was found to be statistically insignificant, the correlation could be much stronger.
5. Although there is no statistically significant evidence of racial bias, use of an evidence-based risk assessment can serve as a prophylactic measure for future Magistrates.

Studies and evaluations of national best practices show that evidence-based, pretrial risk assessments can serve as an invaluable tool for judicial officials to efficiently assess the risk level of individual defendants.[16] The Virginia Risk Assessment would suggest bonds in line with the decisions that are already being made, and might provide a way to locate those that are low-risk and could safely be released pretrial. The Risk Assessment's guidance would be no more of a limit on the Magistrate's discretion than is the Suggested Secured Bond chart that is currently part of Halifax's Pretrial Release Policy. Assessing risk based on a number of factors rather than simply the severity of the crime would certainly be a more accurate assessment of the appropriate pretrial release policies.

Following the suggestions of the Pretrial Justice Institute, the American Bar Association, and the Conference of State Court Administrators[17], NC-CRED recommends that Halifax County implement an evidence-based risk assessment. Based on the results of this pilot study, the Virginia Risk Assessment would be an appropriate tool.

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[16] Mamalian, Cynthia (2011). "State of the Science of Pretrial Risk Assessment." Last retrieved from Pretrial Justice Institute on June 1, 2015 at:
http://www.pretrial.org/download/riskassessment/PJI%20State%20of%20the%20Science%20Pretrial%20Risk%20Assessment%20%282011%29.pdf
[17] Pepin, Arthur W., "2012-2013 Policy Paper: Evidence Based Pretrial Release," Conference of State Court Administrators.

APPENDIX A

Halifax County Modified Pretrial Release Risk Assessment—Magistrates
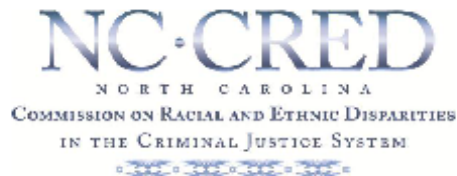
Purpose

This document is being used only for data collection, it is not intended to change or guide your decisions. We are collecting data as part of a project to determine if a risk assessment would benefit Magistrates in Halifax County. Please fill out the form as accurately as possible.

Instructions

1. **Fill out the basic identifying information for yourself and the defendant.** Please note that we will NOT include the identity of the Magistrates in our final dataset; decisions will remain anonymous.
   a. Race Abbreviations— □W= White, non-Hispanic   □B= Black   □H= Hispanic   □NA= Native American   □A= Asian-Pacific Islander   □U=Unknown
2. **Check the box next to each factor that is applicable to the particular defendant:**
   a. Charge Type—The lead charge is the most serious charge; don't forget to record the class of the lead charge in the designated box. A drug related charge would be any sale or possession of a controlled dangerous substance.
   b. Pending Charges(s)—This refers to defendants who have been charged with a new crime while out on bond for a different charge, and whether s/he is on some type of supervision for an earlier conviction.
   c. Criminal History—These are in-county, or those convictions you can find with an ACIS search.
   d. Failure to Appear—The first question refers to OFAs and the second to FTA convictions.
   e. Violent Convictions—Any Class A- E felony in the defendant's history.
   f. Current Residence—Ask the defendant, "How long have you lived at the place you were living at the time of your arrest?" "How long have you lived in Halifax County?"
   g. Employment/Child Caregiver—Ask the defendant, "Are you employed?" If yes, continue: "Have you been unemployed for a month or more in the last two years?" If the defendant was not employed at the time of arrest, ask "Are you currently the primary caregiver for a child?"
   h. History of Drug Abuse—Ask the defendant, "Do you believe that you currently have or have ever had a problem with your use of alcohol?"
3. **Record the final bond assigned this particular defendant.**

Who We Are

The Halifax County Racial Justice Improvement Project Task Force adopted this pilot risk assessment from Virginia's validated, state-wide assessment. The Task Force includes:

Brenda Branch, Chief District Court Judge	**Melissa Pelfrey**, District Attorney, Halifax County
J.L. Burch, Major, Halifax Sheriff's Office, Jail Administrator	**Cynthia Pitchford**, Chief Magistrate, Halifax County
Teresa R. Freeman, District Court Judge	**Tonza Ruffin**, Defense Attorney
Alma Hinton, Senior Resident Superior Court Judge	**Rebecca Spragins**, Clerk of Court

The North Carolina Commission on Racial and Ethnic Disparities in the Criminal Justice System is doing a larger study on pretrial release and formed the Halifax County Task Force as part of an ongoing effort to bring best practices to pretrial systems across the state. For more information about NC-CRED, please visit www.ncaj.com/racialjustice. This work is supported by the American Bar Association's Racial Justice Improvement Project. www.racialjusticeproject.weebly.com.

HALIFAX COUNTY PRETRIAL RISK ASSESSMENT
PILOT PROJECT—Magistrates

Today's Date:	Defendant Name:
Oct/Nov _____ , 2014	
Case #:	Race: □W □B □H □NA □A □U
Magistrate: □ Mason □ Sanford □ Smith □ Silver □ Johnson □ Rogers □ Pitchford	

RISK FACTOR	CRITERIA	YES? ✓
Charge Type	Is the lead charge for the current offense a felony? Lead Charge Class: _____	
	Are any of the charges drug related?	
Pending Charge(s)	Did the defendant have one or more charges pending in court at the time of his/her arrest?	
	Is the defendant currently on felony supervision (probation, parole or post-release)?	
	Is the defendant currently on misdemeanor probation?	
Criminal History	Does the defendant have one or more misdemeanor convictions?	
	Does the defendant have one or more felony convictions?	
Failure to Appear	Does the defendant have two or more failure to appears?	
	Does the defendant have any failure to appear convictions?	
Violent Convictions	Does the defendant have two or more violent convictions?	
Current Residence	Has the defendant lived at his/her current residence for less than one year prior to the arrest?	
	Has the defendant lived in the county for less than one year prior to the arrest?	
Employed/Child Caregiver	Check the box if the defendant has NOT been employed continuously for the previous two years (unemployed for only one month or less) AND the defendant was NOT the primary caregiver for the child at the time of arrest.	
History of Drug Abuse	Does the defendant report that he or she has a history of drug abuse?	

Bond Amount:	Bond Type: □ UNSEC □ SEC □WPA
	□ CASH □ CUS □No Bond
Conditions set? □No contact with victim □ Cannot return to a specific location □No alcohol/drugs or testing □ Other _____	

A project of NC-CRED and the ABA Racial Justice Improvement Project. Contact: chloe@ncaj.com.

APPENDIX B

Halifax County Modified Pretrial Risk Assessment—Jail

HALIFAX COUNTY PRETRIAL RISK ASSESSMENT
PILOT PROJECT--Jail

Today's Date: Oct/Nov _____, 2014	Defendant Name:
Case #:	Race: □W □B □H □NA □A □U
Magistrate: □ Mason □ Sanford □ Smith	□ Silver □ Johnson □ Rogers □ Pitchford

RISK FACTOR	CRITERIA	YES? ✓	POINTS
Charge Type	Is the lead charge for the current offense a felony? Lead Charge Class: _____		1
	Are any of the charges drug related?		Not yet scored
Pending Charge(s)	Did the defendant have one or more charges pending in court at the time of his/her arrest?		1
	Is the defendant currently on felony supervision (probation, parole or post-release)?		Not yet scored
	Is the defendant currently on misdemeanor probation?		
Criminal History	Does the defendant have one or more misdemeanor convictions?		1
	Does the defendant have one or more felony convictions?		
Failure to Appear	Does the defendant have two or more failure to appears?		2
	Does the defendant have any failure to appear convictions?		Not yet scored
Violent Convictions	Does the defendant have two or more violent convictions?		1
TOTAL SCORE			

Bond Amount:	Bond Type: □ UNSEC □ SEC □WPA □ CASH □ CUS □No Bond
Conditions set? □No contact with victim □ Cannot return to a specific location □No alcohol/drugs or testing □ Other _____	

A project of NC-CRED and the ABA Racial Justice Improvement Project. Contact chloe@ncaj.com.

APPENDIX C

Halifax County Pretrial Release Policy

SUGGESTED SECURED BONDS

TYPE OF OFFENSE	MAXIMUM PUNISHMENT	SUGGESTED SECURED BONDS
Local Ordinance	$50 Fine or 30 Days	Written Promise
Class 3 Misdemeanor	20 Days	Written Promise
Class 2 Misdemeanor	60 Days	$0 to $500
Class 1 Misdemeanor	120 Days	$0 to $1,000
Class A1 Misdemeanor	150 Days	$0 to $2,000
Driving While Impaired	24 Months	$0 to $5,000
Class I Felony	15 Months	$1,000 to $5,000
Class H Felony	30 Months	$1,000 to $10,000
Class G Felony	44 Months	$2,500 to $15,000
Class F Felony	59 Months	$2,500 to $25,000
Class E Felony	98 Months	$5,000 to $50,000
Class D Felony*	229 Months	$10,000 to $150,000
Class C Felony*	261 Months	$15,000 to $250,000
Class B2 Felony*	480 Months	$25,000 to $500,000
Class B1 Felony*	Life Without Parole	$50,000 to $1,000,000
Class A Felony*	Death, Life Without Parole	No Bond (unless set by Judge)
Habitual DWI*	59 Months	$5,000 to $50,000
NC Probation Violation		Set amount appropriate for underlying offense with consideration for the nature of any violations and any new charges
Fugitive Warrant		
Governor's Warrant		No Bond
Interstate Compact		
Parole Warrant		

* Each of these offenses carries a mandatory minimum active sentence

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Appendix D

Comparison of Suggested Bond Amounts and Bond Amounts in the Magistrate Sample

Class	Freq.	Bond Range per Schedule		Bond Range per Sample		Schedule's Median	Sample's Median	Schedule's Average	Sample's Average
3	7	WPA	WPA	WPA	$6,000.00	WPA	$500.00	WPA	$1,158.57
2	8	$0.00	$500.00	$500.00	$1,000.00	$250.00	$750.00	$250.00	$750.00
1	14	$0.00	$1,000.00	$200.00	$2,000.00	$500.00	$1,000.00	$500.00	$1,030.77
A1	19	$0.00	$2,000.00	$300.00	$10,000.00	$1,000.00	$1,000.00	$1,000.00	$2,005.26
DWI	6	$0.00	$5,000.00	$500.00	$10,000.00	$2,500.00	$750.00	$2,500.00	$2,750.00
I	9	$1,000.00	$5,000.00	$1,000.00	$30,000.00	$3,000.00	$5,000.00	$3,000.00	$7,000.00
H	17	$1,000.00	$10,000.00	$1,000.00	$100,000.00	$5,500.00	$5,000.00	$5,500.00	$12,235.29
G	2	$2,500.00	$15,000.00	$5,000.00	$9,000.00	$8,750.00	$7,000.00	$8,750.00	$7,000.00
F	0	$2,500.00	$25,000.00	–	–	$13,750.00	–	–	–
E	2	$5,000.00	$50,000.00	$50,000.00	$50,000.00	$27,500.00	$50,000.00	$27,500.00	$50,000.00
D	0	$10,000.00	$150,000.00	–	–	$80,000.00	–	–	–
C	1	$15,000.00	$250,000.00	$5,000.00	$5,000.00	$132,500.00	$5,000.00	$132,500.00	$5,000.00
B2	0	$25,000.00	$500,000.00	–	–	$262,500.00	–	$262,500.00	–
B1	1	$50,000.00	$1,000,000.00	$100,000.00	$100,000.00	$525,000.00	$100,000.00	$525,000.00	$100,000.00
A	1	No Bond	No Bond	NO BOND	NO BOND	NO BOND	–	NO BOND	NO BOND