

Durham People's Alliance Race Equity Team  
Recommendations for Reform of the Justice System  
For the First Hundred Days

Durham People's Alliance Race Equity Team endorses<sup>1</sup> the following principles regarding the criminal justice system and in support of those principles advocates for these changes in the first hundred days of the Deberry and Birkhead administrations:

- 1) We support policies to reduce the numbers of persons held in the Durham County Jail. No one should be detained in jail before trial solely due to an inability to pay or after trial if the only violation of the court judgment is an inability to pay the fine, fees or restitution ordered by the court<sup>2</sup>
  - a. The Durham County District Attorney, the Durham County Public Defender, the Indigent Defense Services Regional Defender for the district and/or the Durham County Criminal Justice Resource Center should provide staff at the jail to appear before magistrates to help inform the magistrates' initial decision about release from custody. This will help insure that more persons will not be held in jail solely due to an inability to pay, and will avoid ICE holds on those persons not booked in jail.
  - b. When a bond is set for an individual, the amount should not be cumulative, representing multiple charges arising out of the same incident.
  - c. Recognizance, third party custody and unsecured bonds should be routinely utilized. In all but the most serious cases, the presumption should be release.
  - d. The Durham County Senior Resident Superior Court Judge, in consultation with the District Attorney and the Public Defender, should revisit secured bond recommendations, and decrease or eliminate recommended secured cash bonds where appropriate.
- 2) Access to the courts is a major challenge for justice-involved people with little or no financial resources. That challenge is heightened by competing job responsibilities, family responsibilities, debt, inability to pay fines and fees, revoked drivers licenses and difficulty accessing transportation to court, mental and intellectual impairments, and language challenges.<sup>3</sup> To increase accessibility in the face of such challenges:

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<sup>1</sup> These principles and policy recommendations are informed by research and recommendations by national and local community groups committed to criminal justice reform.

<sup>2</sup> North Carolina law supports alternatives to secured bond by *requiring* judges to consider and exhaust these options *prior to* ordering secured bond or detention: (1) release the person on written promise to appear, (2) release the person on unsecured appearance bond, and (3) place the person in the custody of a designated person or organization. N.C.G.A. Sec. 15A-534(a) and (b).

<sup>3</sup> See generally, Heather Hunt, Gene Nichol, Court Fines and Fees, Criminalizing Poverty in North Carolina, North Carolina Poverty Research Fund (Winter 2017). Hunt and Nichol tell this story: "Jasmine, a 16-year-old in Durham, was cited for littering when she tossed aside a Mountain Dew bottle. She put the citation in her backpack and

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- a. Durham County should continue and improve the court date reminder system (text, email) and, in addition, provide support for people to appear. The court reminder system should cover traffic court<sup>4</sup> as well as criminal court. Support should include providing transportation or childcare assistance.
  - b. Durham County Judges and District Attorney should expand access to the courts to allow persons who missed court hearings greater opportunities to present reasons for not appearing in court, and to dismiss failure to appear (FTA) penalties when appropriate. For persons represented by counsel, there should be a written policy regarding district attorney availability to timely address these matters with counsel.
  - c. Durham County Judges, prosecutors, defense attorneys and Clerk of Court should expand mechanisms for hearing and resolving motions to restore drivers' licenses,<sup>5</sup> and for expungements of criminal records,<sup>6</sup> and fully support the Durham Expunction and Restoration (DEAR) program. Durham Judges should issue certificates of relief for employment and remove collateral consequences for former felons whenever feasible.
  - d. Durham Judges should issue certificates of relief for employment and remove collateral consequences for former felons whenever feasible.
  - e. Durham County Judges should be flexible in allowing more than one continuance for the accused where personal circumstances warrant it.
  - f. Durham County District Judges and the District Attorney should not have a restrictive policy limiting the time when a case may be called for trial or probable cause hearing on the designated court date.
- 3) Fines and fees imposed on defendants also have a discriminatory impact and are imposed upon that portion of our population that has the least ability to shoulder this financial burden. To address the discriminatory impact of fines and fees:

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forgot about it. Several weeks later, the officer that cited her sat in her driveway until she came home, arrested her for failure to appear, handcuffed her and took her to jail, where she was held on a \$500 bond.”

<sup>4</sup> Persons who fail to appear in traffic court may be subject to fines and the loss of their driver's license. Law enforcement officials should provide information with traffic citations permitting access to the court date reminder system.

<sup>5</sup> 46,000 Durham residents, or one in five adults, have suspended licenses. 80% of those with suspended licenses are people of color. See <https://www.durhamiteam.org/dear/>

<sup>6</sup> The City of Durham Innovation Team estimates that over 87,000 criminal charges were dismissed or resolved not guilty in the past five years in Durham County that may now be eligible for expungement.

<https://www.durhamiteam.org/research-1/>

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- a. Durham judges should identify and apply uniform factors when determining whether a defendant can afford fines and fees and restitution, per NCGS 15A-1340.36 and 15A-1362. Judges must also consider that ordering fees and fines as a "civil judgment" does not relieve them from considering the defendant's ability to pay.
- b. In sentencing hearings, and in hearings scheduled when a person fails to pay a fine or fee, the court should automatically inquire if the defendant has the ability to pay and determine whether statutorily-imposed fines and fees should be waived, remitted, or reduced.
- c. Durham Judges should adopt and in every case consult resources designed to remove bias and assist in clarifying which fines and fees are waivable or can be reduced. The ability to pay information should be considered when setting the fines and fees. Such resources include the bench card formulated by the Harvard Law School's Criminal Justice Debt Initiative and adopted by Mecklenburg County District Court Judges<sup>7</sup> and the Criminal Monetary Obligation chart developed by the UNC SOG.<sup>8</sup>

4) Durham law enforcement officials should avoid arresting persons for low-level non-violent misdemeanors where citations or referrals is a viable alternative to arrest. Durham should expand eligibility for misdemeanor diversion programs to persons of all ages and all misdemeanor levels, and adopt a law enforcement assisted deferral (LEAD) program to permit law enforcement officials to avoid unnecessary arrests.

5) The Durham District Attorney should expand referrals to the Restorative Justice program to accused of all ages, and for both misdemeanor and felony cases. The determining factor should be the willingness of the defendant and the victim to participate in the process.

6) The Sheriff should not detain individuals on ICE holds nor provide ICE officials with advance notice prior to releasing detainees.

7) The Sheriff should establish a civilian review board with authority to review all activities of the Sheriff's Office including the jail.

8) To address community concerns about the prosecutors' discriminatory use of challenges during jury selection, Durham prosecutors should collect data on peremptory strikes by race and gender of venirepersons for all criminal trials in Durham County.<sup>9</sup>

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<sup>7</sup> See, Maura Ewing, Judicial Pact to Cut Court Costs for the Poor, THE ATLANTIC, <https://www.theatlantic.com/politics/archive/2017/12/court-fines-north-carolina/548960/> (Dec. 25, 2017)

<sup>8</sup><https://www.sog.unc.edu/blogs/nc-criminal-law/criminal-monetary-obligations-bench-card-available>

<sup>9</sup>A recent Wake Forest University School of Law study found that prosecutors in Durham disproportionately remove African-American jurors at a removal ratio 2.6 times greater than white jurors, and exclude black jurors at 6.10.18

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- 9) The Sheriff should follow the lead of the City of Durham to:
- a. Require mandatory written permission to conduct car searches. Searches have dropped by two thirds from 1,296 in 2013 to 416 in 2017. Traffic stops in recent years have dropped from 32,227 to 11,578.
  - b. Give a low priority to arrests for possession of small amounts of marijuana. Charges for drug violations in Durham are down from 1,223 in 2015 to 673 last year.
  - c. Uniformly refer person up to age 22 who are apprehended for the first time to the Misdemeanor Diversion Program.
  - d. Determine the number of persons who have an outstanding charge of Driver's licenses revoked from failure to pay fees and fines or failure to appear. The City has worked with the District Attorney and the judiciary to establish a process for disposition of these cases. The City and County should develop a fund to permit the restoration of licenses for poor people without payment of fees.
  - e. Require racial bias training of all law enforcement and court personnel.

10) The Durham County Sheriff should cancel and/or renegotiate contracts with vendors that have resulted in exorbitant prices at the commissary and for phone calls that must be borne by persons incarcerated in the Durham jail or their families. The Sheriff's Office should not receive money for those services. There should be transparency and clear reporting on where those funds are used.

11) The Durham County Sheriff should adopt a policy not to disclose mug shots publicly unless such disclosure is required to investigate a particular case.<sup>10</sup> Public disclosure of mugshots hurt arrestees and have been abused by commercial interests.

12) The Durham District Attorney should establish a policy that presumes prosecutors will not seek maximum sentences unless it is required by law or the District Attorney expressly approves such action.

13) Because incarceration is often ineffective in reducing crime, the Durham District Attorney should establish a policy requiring prosecutors when recommending incarceration in individual cases to publicly state the perceived benefits and approximate cost of incarceration in each case.

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a higher rate than most other large cities in the state. Ronald F. Wright, Kami Chavis and Gregory S. Parks, "The Jury Sunshine Project: Jury Selection Data as a Political Issue." University of Illinois Law Review, Vol. 2018, No. 4.

<sup>10</sup> Mugshots are criminal investigation records and therefore need not be disclosed publicly under the N.C. public records law. <https://nccriminallaw.sog.unc.edu/are-mug-shots-public-records>.

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14) The Durham District Attorney should establish a conviction integrity unit (CIU) to prevent, identify and correct false convictions.

To the extent that an item requires funding - and we know that will sometimes be the case - we request that the responsible officials develop a proposed budget and time line for enacting the recommendation. The budget can then be presented to the appropriate funding entity (state, county, city, other) for the 2019-2020 budget cycle. For items that cannot be accomplished in 100 days, we request that the responsible officials develop a timeline for their enactment.