



AS MORE PEOPLE ARE COUNTING THE HUMAN AND THE ECONOMIC COSTS OF INCARCERATION, EFFORTS ARE BEING MADE IN THE PITTSBURGH REGION AND ACROSS THE COUNTRY TO REDUCE JAIL POPULATIONS BY CREATING FAIRER PROCEDURES AND ALTERNATIVES. BY JEFFERY FRASER

NO VACANCY

The turreted Romanesque Revival Allegheny County Jail along Downtown Pittsburgh's Ross Street, with its "bridge of sighs" connecting it to the courthouse and more than a century of criminal lore, was seen as too old and feeble for America in the 1990s, when alarm over crime grew to near panic. Its replacement was conceived as crime rates hit all-time highs.

Crack cocaine was viewed as the scourge of cities. Crime stalked the daily news. The theory that a wave of "super-predator" youth without conscience or impulse control was gaining traction. The new federal Violent Crime Control and Law Enforcement Act pumped \$30 billion into state and local law enforcement, prisons and crime prevention. Arrest rates soared. Lawmakers made criminal sentences harsher.

But crime rates were already dropping in the nation and the county when the new jail opened its doors in 1995 as a series of functional four-to-eight-story brick and glass dwellings built against parkway traffic and the Monongahela River. And the trend continued.

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chief public defender, Allegheny County



Property crime has fallen 46% and violent crime has dropped by 32% during the past 21 years in Allegheny County, the urban core of one of the safest major metropolitan regions in the nation.

The jail population, on the other hand, moved in the opposite direction.

Incarcerating more people has little to do with the sharp drop in crime, studies suggest. Yet, jails are overflowing. During its first year, the Allegheny County Jail held an average of 1,450 inmates, well below the 1,850 it was designed to hold. In September of this year, the jail held an average of 2,321 inmates—60% more than when it opened.

Moreover, 81% of those inmates haven't been convicted of the crime that sent them there, a rate even north of the 75% national average. And eight in 10 of county inmates are waiting for hearings and trials for non-violent offenses.

“The system is broken,” said Frederick Thieman, former U.S. Attorney for the Western District of Pennsylvania and co-chair of the University of Pittsburgh Institute of Politics Criminal Justice Task Force. “At each stage of the system, the players—magistrate judges, police, public defender, judges—have legitimate reasons why they feel restricted in what they can do. And when you're inside the system every day putting out fires, it's difficult to think creatively.”

The stakes are high. Even a temporary stay can cost someone a job, disrupt fragile families and separate children from their parents. The likelihood that low-risk defendants will commit another crime jumps 40% if they spend two to three days in jail, research suggests.

And the consequences are broadly shared. In Allegheny County, criminal justice—the county jail, juvenile detention center, courts, and police department, along with the sheriff, district attorney and public defender offices—consumes 42 cents of every property tax dollar.

“Why are we locking up people for mental health issues, substance use, petty crimes related to those things, if there are opportunities for treatment and potentially diversion?” said Carmen Anderson, director of Equity and Social Justice at The Heinz Endowments, which has pledged \$10 million over three years to support justice system reform, including efforts to reduce the county jail population. “We can't keep doing what we've been doing. It's not working. It's cost prohibitive. It's not deterring crime. And it's unnecessarily impacting people.”

Criminal justice reform is gaining momentum in recent years as the human and financial costs of mass incarceration are revealed, and practices are identified that reduce the jail population without sacrificing public safety. In Allegheny County, such efforts range from providing more defendants with lawyers at hearings where bail is set to redesigning the jail itself as something more than an overcrowded warehouse of people waiting for hearings and trials.

Unlike in state and federal prisons, most of the inmates in county jails have not been convicted of the crime that got them there. Only convicted offenders with a sentence of less than 24 months serve their time in a county jail in Pennsylvania. In Allegheny County, only about two in 10 county jail inmates are serving such sentences. The rest are waiting for hearings and trials that will determine their fate, or to be transferred to another jurisdiction.



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FINDING BAIL ALTERNATIVES

Limiting or eliminating the use of monetary bond is one of the most widely used strategies for reducing jail population. Posting a cash bond allows people charged with a crime to remain free pending trial. Most people charged with nonviolent offenses are candidates. But only those with the financial means to secure bond can buy their freedom.

“People who are already struggling end up in a much worse situation just because they don’t have cash to bail themselves out, even if they ultimately aren’t convicted of a crime,” said Matthew Barron, sustainability program officer at the Endowments.

Several states have banned the use of cash bond altogether. New Jersey is one of the most recent. Outcomes in states like Kentucky, the first to stop using cash bond, suggest that doing so doesn’t trigger unwanted consequences, such as more crime. In fact, studies raise questions about the effectiveness of cash bond.

“Research doesn’t support the idea that if somebody posts a cash bond, regardless of

the amount, they are more likely to appear for court or they are less likely to commit a crime when on bond,” said Matthew Dugan, Allegheny County chief public defender. “And those are the two goals of bond.”

Still, the practice lives on in most states, Pennsylvania included. But even here, use of cash bond is starting to fade. Last year, Philadelphia District Attorney Larry Krasner quit seeking cash bond for low-level offenses as part of a strategy to stem mass incarceration that he rolled out during his first year in office.

Allegheny County began looking at reducing the use of cash bond more than 10 years ago after an evaluation that criticized its pretrial court practices. Pretrial Services was created to manage defendants prior to trial. Part of its role is to offer district magistrates bond recommendations based on an assessment of a defendant’s flight and public safety risks.

More recently, county public defenders began representing clients at arraignment, when the first decisions about whether to impose bond and for how much are made. Outcomes of the pilot program, which was limited to city magistrate court during weekday

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business hours, suggest clients are more likely to avoid a cash bond they can't afford if they have a lawyer advocating for an alternative.

One option is to release them if they simply agree to show up for their hearing. Another is adding non-monetary conditions to their release, such as requiring a drug and alcohol evaluation or forbidding them to have contact with the victim in the case.

The use of cash bail fell by 17%, and jail bookings at preliminary arraignment decreased 8%. The public defender also started staffing arraignment court with social workers to assess clients and give magistrates a plan for those who need treatment and the option of releasing them to care rather than imposing a cash bond they can't pay.

REDUCING FEES AND FINES

Financial means can be the line between jail and freedom in other ways. Fines imposed as part of a sentence and court fees tacked on to cover the costs of processing criminal justice can be a burden that low-income offenders can't afford—one that puts them at risk of ending up in jail if they can't make payment, even when the charge is a misdemeanor or traffic offense.

Viewed separately, court fees can seem minor, ranging from \$2.20 for record management to a \$480 probation/parole administration fee. But the number of fees that judges and magistrates often apply by rote can be staggering.

In Allegheny County, for example, possession of a controlled substance might result in probation rather than a prison sentence, but offenders could be ordered to pay more than two dozen fees, including a booking fee, Child Care Facility fee, county court cost fee, Commonwealth Cost fee, cost of prosecution fee, a fee for the Firearm Education and Training Fund, Domestic Violence Compensation Act fee, Crime Victims Compensation Act fee, Substance Abuse Education Act fee, State Court Costs Act 204 fee, Judicial Computer Project fee and a law library user fee. That's more than \$2,350 in fees alone.

"Those costs turn into a huge debt for some people," said Mary Catherine Roper, deputy legal director for the American Civil

Liberties Union of Pennsylvania. "People can become debtors to the courts, and the courts become collection agencies. Courts are a lot of things, but they're not experts in collection. And one of the tools they have is to threaten to incarcerate people."

Decades of court decisions from the Pennsylvania Supreme Court to the United States Supreme Court have affirmed that the inability to pay is not a reason to put someone in jail.

In Philadelphia, Mr. Krasner eliminated fines and fees in certain cases for defendants who don't have the means to pay as part of his reform platform. And the ACLU has waged a three-year campaign to ease the burden of fees and fines for poor defendants, lobbying for procedural changes, training attorneys and working with judges to convince them to find alternatives to collecting debt. Some jurisdictions have turned the corner, Ms. Roper said. Westmoreland County, for example, found that when their debt is restructured into manageable installments, people tend to pay it down and avoid contempt charges that could land them in jail.

The ACLU, with support from the Endowments, is expanding its work in Western Pennsylvania with a focus on helping district magistrates understand the issue and options that have worked elsewhere.

"We think changing judicial philosophy is a far more effective way of protecting against the kinds of judicial mistakes that send poor people to jail for being poor," said Kimberly Thomas, ACLU of Pennsylvania judicial education manager. "Our hope is that if you know better, you do better."

CHANGING THE SYSTEM

Allegheny County's plan for criminal justice system reform calls for reducing the jail population by 20% in the next two years. Shortening the time from when charges are filed to when the case is resolved will be critical, a process analysis determined.

"All we have to do to achieve the goal is to put our time to case disposition—the length of time people are in jail waiting—back to where it was two years ago," said Erin Dalton,

deputy director of the Department of Human Services in charge of the Office of Analytics, Technology and Planning. "It's not outside the realm of recent history."

Improving case flow is where a significant share of a \$2 million grant from the John D. and Catherine T. MacArthur Foundation is being invested. The county last year was one of 13 jurisdictions in the United States selected for the grants to continue its work to reduce jail population, reform the local criminal justice system and narrow the racial disparities within it.

It has allowed District Attorney Stephen Zappala Jr. to add two attorneys to pre-trial screening, which is expected to help trim the time from preliminary hearing to arraignment by nearly 40%. Four new court positions to help improve case processing are also being added.

Reducing the time people on "detainers" must wait in jail for hearings is another area of focus. These individuals, who are on probation and have been charged with a new crime or misdemeanor, usually face two hearings to determine whether probation was violated, and they sit in jail until a decision is made, which could take months. Such inmates account for more than one-third of the jail population.

More public defenders are also being added to expand the effort to represent defendants at preliminary arraignments to include night hours and weekends. Early stages of the initiative suggest that it disproportionately benefits defendants of color and could help ease racial disparities in the criminal justice system. Some 60% of county jail inmates are African American, yet African Americans account for only 13.4% of the county population.

Even the design and role of the county jail itself is being reimagined. Pitt's Institute of Politics, with support from the Endowments, convened national experts in jail redesign this winter to share ideas, practices and experiences related to the growing national moment. Jail redesign considers ideas for making jails more than warehouses for the accused, including expanding out-of-jail services for certain defendants, such as drug treatment, in the space created by reducing the inmate population.

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Mark Nordenberg

Chancellor Emeritus of the University of Pittsburgh,
Chairman of Pitt’s Institute of Politics

With treatment in short supply, for example, where to send defendants struggling with addiction or mental illness can be a dilemma for district magistrates.

“It’s an initiative designed to expand the options to them, so the choice isn’t just, ‘Do I put this person in the jail or do I let him or her go with a feeling that they’ll be back in front of me again in two days?’ ” said Mark Nordenberg, former Pitt chancellor and Institute of Politics chairman.

As such system reforms are finding a greater audience, other smaller pieces of

the puzzle are falling into place. The Jail Collaborative, an alliance of government agencies, nonprofits and other community stakeholders, has reported success in preventing jail inmates from getting rearrested after their release. Its reentry program offers soon-to-be-released inmates and men and women recently released from the jail services ranging from case management to family support services to help them navigate their transition to life on the outside.

And a North Side nonprofit’s program to steer vulnerable youth from trouble that can lead to jail is being replicated with support from the Endowments in the city’s Hill District after it was shown to benefit more than 90% of the young men and women it reached during the past two years. The Foundation of HOPE’s diversion program works with youth ages 12 to 26 years old who are referred by community partners, such as police, probation officers and schools.

These young people are assigned a case manager and wrapped in services tailored to their needs, which range from trauma counseling to instruction on hygiene and help finding a job. They’re even taught cardio pulmonary resuscitation.

“Our children, for the most part, grow up where there’s a lot of gun violence,” said Jody Raeford, the nonprofit’s executive director. “Just the idea we can give a youth the power to save a life is important to their self-worth and self-esteem.”

When it was suggested by a probation officer that Edlisha Howard, 17, and her sister, Heaven Porch, 15, spend a year with the program rather than face juvenile charges from a fight at school, both agreed. Edlisha favored the group discussions and events that gave her a chance to share her experiences with other teenagers in similar situations.

“I’m a better person,” she said. “I learned to let things go; talk it out, or just ignore it and walk away.”

Their mother, Willisha Porch, said their grades and behavior improved. And when they’d completed the one year they agreed to, both sisters chose to remain in the program that tries to divert the future generation from the doorsteps of the county jail, one person at a time. **h**

