

# Michigan Joint Task Force on Jail and Pretrial Incarceration

Report and Recommendations

January 10, 2020

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## Members of the Michigan Joint Task Force on Jail and Pretrial Incarceration

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## Executive Summary of Findings

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In a relatively short period of time, county jail populations nearly tripled in Michigan. Elevating jails as a shared bipartisan priority, state and local leaders created the Michigan Joint Task Force on Jail and Pretrial Incarceration, directing the body to analyze jail populations across the state and develop legislative recommendations for consideration in 2020.

**Jails as a tool for public safety.** County jails are high traffic institutions, impacting hundreds of thousands more Michiganders each year than state prisons. Incarceration in a jail can prevent an immediately dangerous situation from escalating, enable a court to evaluate conditions of release or responses to probation violations, and allow a person who has been victimized to plan for their safety. At the same time, research shows that even short periods of jail incarceration can increase future criminal behavior, suggesting that, while jail may be appropriate for those who pose a significant threat to an individual or the public, policymakers should expand and incentivize jail alternatives for those who do not.

**Constitutional protections.** The use of jail as a tool is limited by the Constitution's guarantees of liberty, due process, and equal protection. As former Chief Justice Rehnquist wrote in *United States v. Salerno* (1987), "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." In just the last five years, courts across the country have upheld challenges to common pretrial practices, finding that those detained in jails were not getting meaningful due process hearings and that poor people were being denied equal protection of the laws when access to money was the deciding factor between those released and those detained. A similar lawsuit is currently pending in Michigan.

**Increased jail use over time.** Michigan's jail growth was driven equally by incarceration of pretrial defendants and those serving a sentence post-conviction. Local estimates suggest that roughly a quarter of people entering jails have serious mental illnesses. Both the jail population growth and the prevalence of mental illness in jails were more pronounced in rural Michigan counties where treatment and other resources are less available. While taxpayers spend nearly half a billion dollars annually on jails, alternatives to jail and services for crime victims are relatively underfunded and in high demand across the state.

**Little guidance on the use of jail alternatives.** Law enforcement, pretrial, and sentencing practices vary widely, and in many key policy areas, ranging from arrest and bail to sentencing and probation violations, Michigan law provides little to no guidance on when alternatives to jail should be the preferred or presumed intervention.

**Who is coming to jail?** Traffic offenses accounted for half of all criminal court cases in 2018 and driving without a valid license was the third most common reason people went to jail in Michigan. Other common reasons ranged from theft, drug possession, and probation violations to more serious charges like domestic violence, drunk driving, and drug sales.

**How long are people staying in jail?** Between 2016 and 2018, average jail stays were 45 days for felony offenses and 11 days for misdemeanor offenses. These averages comprised a wide range, however, with nearly half spending a day or less in jail, 65 percent staying less than a week, and 17 percent remaining for longer than a month (a relatively small group, but one that accounted for 82 percent of the jail space used). This broad range was also seen in pretrial detention lengths, with a large portion of people able to post bond and be released within a day, a substantial number being detained for one or two weeks and then sentenced to "time served," and some stays lasting months or years without going to trial.

Policymakers in Michigan aiming to address jail incarceration must therefore address both the large number of people whose lives are disrupted by short jail stays, who consume significant amounts of public safety resources, and the relatively small group of people whose long stays drive up county jail populations.

## Overview of Task Force Recommendations

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### Traffic violations

Stop suspending and revoking licenses for actions unrelated to safe driving. Reclassify most traffic offenses and some other minor misdemeanors as civil rather than criminal infractions.

### Arrest

Expand officer discretion to use appearance tickets as an alternative to arrest and jail. Reduce the use of arrest warrants to enforce court appearance and payments and establish a statewide initiative to resolve new warrants and recall very old ones.

### Behavioral health diversion

Provide crisis response training for law enforcement and incentivize programs and partnerships between law enforcement and treatment providers to divert people with behavioral health needs from the justice system pre- and post-arrest.

### The first 24 hours after arrest

Release people jailed on certain charges pre-arraignment and guarantee appearance before a judicial officer within 24-48 hours for anyone still detained.

### Pretrial release and detention

Strengthen the presumption of release on personal recognizance and set higher thresholds for imposing non-financial and financial conditions. Provide a detention hearing for all defendants still detained 48 hours after arraignment.

### Speedy trial

Require defendants to be tried within 18 months of arrest and preserve speedy trial rights unless waived by the defendant.

### Alternatives to jail sentences

Presumptively impose sentences other than jail for non-serious misdemeanors and for felonies marked for “intermediate sanctions” under the sentencing guidelines.

### Probation and parole

Shorten maximum probation terms for most felonies, establish new caps on jail time for technical violations, and streamline the process for those in compliance to earn early discharge.

### Financial barriers to compliance

Reduce fine amounts for civil infractions. Require criminal courts to determine ability to pay fines and fees at sentencing and to modify unaffordable obligations. Repeal the law authorizing sheriffs to bill people for their own incarceration.

### Victim services

Invest significant resources in victim services and strengthen protection order practices.

### Data collection

Standardize criminal justice data collection and reporting across the state.

# Michigan Joint Task Force on Jail and Pretrial Incarceration

Anyone can identify a problem. But it takes real leaders to present solutions.

— Speaker of the House Lee Chatfield

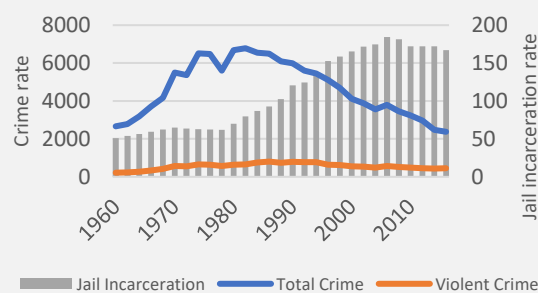
First Meeting of the Michigan Joint Task Force on Jail and Pretrial Incarceration, July 24, 2019

State and county leaders in Michigan launched an inter-branch, bipartisan project aimed at increasing justice system efficiency and effectiveness. Created in the spring of 2019, the Michigan Joint Task Force on Jail and Pretrial Incarceration was charged with examining how state laws, policies, and budgetary decisions affect who goes to jail and how long they stay, and with crafting policy recommendations for the legislature's consideration in 2020.

In less than 40 years, the number of people held in Michigan's county jails nearly tripled.<sup>1</sup> This growth was not driven by increasing crime. Crime rates have dropped to 50-year lows, and the reasons for Michigan's surge in local incarceration have not been entirely clear.<sup>2</sup> In fact, the tripling of Michigan's jail population went largely unnoticed by state lawmakers because no dataset existed to answer the questions: Who is in Michigan's county jails? For how long? And why?

**The last time crime was this low, far fewer Michiganders were in jail.**

Michigan crime and jail incarceration rates, 1960-2016.



Source: U.S. Department of Justice, Bureau of Justice Statistics, Census of Jails and Annual Survey of Jails; U.S. Census Bureau, Population Division; Federal Bureau of Investigation, Uniform Crime Reporting Program.  
Note: Total Crime is the sum of Property Crime and Violent Crime.

In February of 2019, state and county leaders elevated jail incarceration as a bipartisan priority. Governor Gretchen Whitmer, Senate Majority Leader Mike Shirkey, Speaker Lee Chatfield, Chief Justice Bridget McCormack, Executive Director of the Michigan Sheriffs' Association Blaine Koops, and Executive Director of the Michigan Association of Counties Stephan Currie signed a letter outlining the scope of work for what would become the Michigan Joint Task Force on Jail and Pretrial Incarceration (Task Force) and invited technical assistance from The Pew Charitable Trusts and State Court Administrative Office. The body was created by Executive Order 2019-10 and tasked with developing recommendations to:

- Expand jail alternatives for those who can be managed in the community,
- Safely reduce jail admissions, length of stay, and associated costs,
- Support consistent, objective, and evidence-based pretrial decision-making,
- Provide services and support to crime victims,
- Improve the efficiency and effectiveness of the state's and counties' justice and public safety systems, and
- Better align practices with research and constitutional mandates.<sup>3</sup>

<sup>1</sup> U.S. Department of Justice, Bureau of Justice Statistics, Census of Jails and Annual Survey of Jails. See 'Jail Data' in *Data Sources and Methods*.

<sup>2</sup> FBI, Uniform Crime Reporting Program. See 'Crime Data' in *Data Sources and Methods*.

<sup>3</sup> Michigan Executive Order 2019-10 (2019).



Chaired by Chief Justice Bridget McCormack and Lieutenant Governor Garlin Gilchrist, the Task Force held six public meetings, several rounds of subgroup meetings, and more than a dozen stakeholder roundtables, and received testimony from roughly 150 practitioners and members of the public. Video archives of the Task Force’s public testimony can be found at the links below:

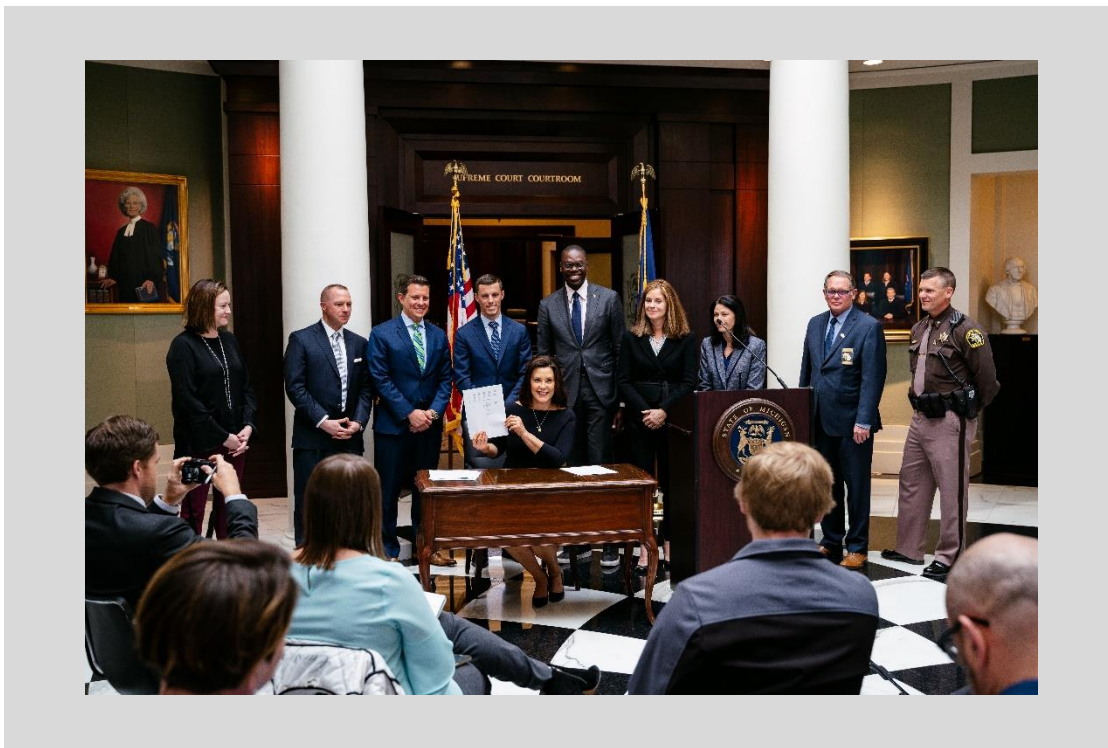
- [August 23, 2019](#)
- [September 20, 2019](#)
- [October 18, 2019](#)
- [November 19, 2019](#)

The Task Force examined 10 years of arrest data gathered from more than 600 law enforcement agencies across the state, 10 years of court data collected from nearly 200 district and circuit courts, and three years of individual-level admission data from a diverse sample of 20 county jails.<sup>4</sup> Drawing on this data, their collective expertise, relevant research and constitutional jurisprudence, statutory analysis, surveys, hundreds of interviews conducted by Task Force staff, guidance from roundtable participants, and public testimony, the Task Force now issues this report with key findings and 18 recommendations for state lawmakers.

## EXPERT ROUNDTABLES

Between July and November 2019, the Task Force hosted roundtable discussions with:

- Judges,
- Prosecutors,
- Defense attorneys,
- Crime victims, survivors, and victim-services professionals,
- Law enforcement patrol officers,
- Jail administrators and corrections officers,
- District court probation officers,
- Felony probation and parole staff,
- Pretrial services and community corrections agencies,
- County commissioners,
- Bail agents and underwriters,
- Rural practitioners,
- Currently incarcerated individuals, and
- Faith leaders.



<sup>4</sup> Datasets utilized in this report are described in the *Data Sources and Methods* section.

# Key Findings

To understand who is going to jail and how long they stay, the Task Force examined nationally collected data on Michigan's jails, 10 years of arrest data gathered from more than 600 law enforcement agencies across the state, 10 years of court data collected from nearly 200 district and circuit courts, and three years of individual-level admission data from a diverse sample of 20 county jails. The Task Force also reviewed the latest research on the impacts of jail incarceration and the growing body of legal jurisprudence about the constitutional limitations on detention prior to trial.

More information on the data utilized in this report is available in the *Data Sources and Methods* section.

## Who is going to jail?

Jails hold a varied population, including a mix of people facing misdemeanor and felony charges, both pretrial and convicted, as well as those detained for authorities other than the county, such as the federal government. The number of people in Michigan's jails nearly tripled from an average daily population of 5,700 in 1975 to an average of 16,600 in 2016. The state's jail growth did not track with crime trends, increasing both when crime was going up and when it was going down. In the last decade, index crime rates have fallen to the lowest levels experienced in Michigan in more than 50 years, yet jail populations remain high. The state's jail growth was driven equally by incarceration of pretrial defendants and those serving a sentence post-conviction. Over the

past few decades Michigan's jail population has maintained a roughly even split between pretrial and convicted detainees.<sup>5</sup>

### JAILS vs. PRISONS

Jails are often called the “front door” of the criminal justice system. They hold people who are awaiting trial or serving a short period of incarceration as a sentence for a minor crime. Prisons, on the other hand, hold people convicted and sentenced for more serious crimes, including those who serve very long periods behind bars.

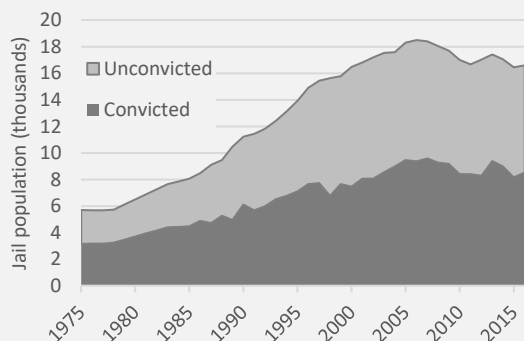
In 2017, there were nearly 11 million admissions to county jails across the United States—a figure 17 times the number sent to state and federal prisons.

In Michigan, prison data is centralized with the Michigan Department of Corrections. Data on jail admissions and length of stay is kept locally in each county. Before the Task Force was created, there was no single reliable dataset in Michigan that could answer the questions: Who is in jail across the state? For how long? And why?

Source: Bureau of Justice Statistics, *Prisoners in 2017* (2019). Bureau of Justice Statistics, *Jail Inmates in 2017* (2019).

### Michigan's jail growth is equally driven by pretrial and convicted populations.

Convicted and unconvicted jail population, 1975- 2016.



Source: Bureau of Justice Statistics, Census of Jails and Annual Survey of Jails, See 'Jail Data' in *Data Sources and Methods*.

<sup>5</sup> U.S. Department of Justice, Bureau of Justice Statistics, Census of Jails and Annual Survey of Jails. FBI, Uniform Crime Reporting Program. See 'Jail Data' and 'Crime Data' in *Data Sources and Methods*.



The Task Force analyzed three years of data on admissions and releases from a diverse sample of 20 county jails representing nearly half of the state’s jail population. The 10 most common offenses at admission, shown in the figure below, ranged from operating under the influence to delivery of controlled substances. Over 60 percent of jail admissions were for misdemeanor charges.

## Jail admissions were comprised of a wide range of offenses.

### Top 10 Offenses, Most Serious Charge at Jail Admission

1. Operating Under the Influence (OUI)
2. Assault
3. Driving Without Valid License
4. Theft
5. Probation/Parole Violation
6. Possession or Use of Controlled Substance
7. Obstruction of Justice
8. Other Person Offense
9. Domestic Violence
10. Delivery or Manufacture of Controlled Substance

Source: Sample of jails, 2016-2018. See ‘Jail Data’ in *Data Sources and Methods*.

Most individuals who were booked into jail were admitted only once over the three-year period, but those who were admitted multiple times accounted for nearly two-thirds of the admissions in the sample.

## Demographics

Black men made up six percent of the resident population of the counties included in the Task Force’s sample of jails but accounted for 29 percent of all jail admissions. There were also significant differences in the most common reasons black people and white people went to jail. Driving without a valid license was a more common reason for jail admission among black people compared to white people, and the opposite was true for operating under the influence—it was a more common reason for jail admission among white people than black

people. Differences were also seen by age. Jail admissions were highest for people in their 20s and dropped off significantly for those who were past their mid-30s.<sup>6</sup>

Recently, men outnumbered women nearly six to one in Michigan jails across the state, but over time the female jail population has grown at a much faster rate.<sup>7</sup>

## Black men made up 29% of jail admissions and 6% of the resident population.

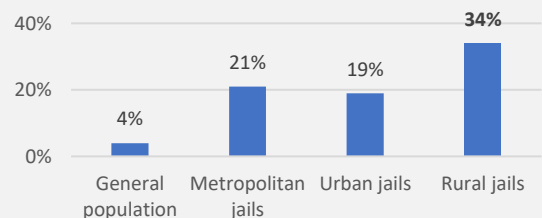
Source: Sample of jails, 2016-2018. See ‘Jail Data’ in *Data Sources and Methods*.

## Mental health

Members of the Task Force and the public were particularly concerned with the number of people admitted to jail with mental health disorders. Figures on the prevalence of mental illness in jails are scarce. One national survey estimated that one in four men and one in three women in county jails met the threshold for serious psychological distress.<sup>8</sup> Screenings of jail admission samples in several Michigan counties estimated that 23 percent of those entering jails had a serious mental illness, with higher percentages in rural counties, where community-based services are scarce. This population also tended to stay in jail longer than people facing similar charges who did not have a serious mental illness.<sup>9</sup>

## People admitted to jail had higher rates of serious mental illness, especially in rural jails.

### Prevalence of serious mental illness in Michigan, 2017



Source: Wayne State University’s Center for Behavioral Health and Justice; Substance Abuse and Mental Health Services Administration. See ‘Mental Health’ in *Data Sources and Methods*.

<sup>6</sup> Sample of jails 2016-2018. See ‘Jail Data’ in *Data Sources and Methods*.

<sup>7</sup> Bureau of Justice Statistics, *Census of Jails and Annual Survey of Jails*. Jail population in 2016.

<sup>8</sup> Bureau of Justice Statistics, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-2012* (2017).

<sup>9</sup> Wayne State University’s Center for Behavioral Health and Justice. See ‘Mental Health’ in *Data Sources and Methods*.

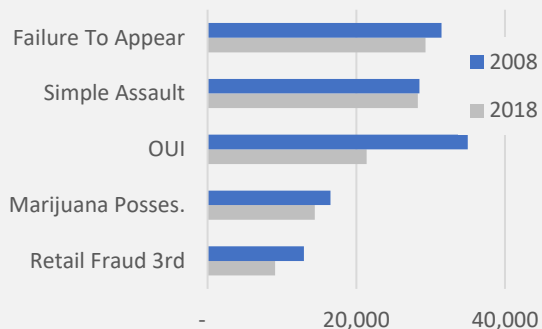
## Change in arrests

A critical factor in the number of people entering jail each year is how many people are arrested. The Michigan State Police track hundreds of thousands of arrests and criminal citations<sup>10</sup> each year from all law enforcement agencies statewide. This data includes some traffic-related offenses, like operating under the influence, but excludes most traffic offenses.

Although arrests have been dropping in Michigan, the jail population has not declined proportionally. Between 2008 and 2018, arrest events dropped 22 percent, driven largely by a reduction in arrests for people age 25 and younger. Of the most common arrests, operating under the influence (OUI) and third-degree retail fraud (lowest-level shoplifting) fell by over thirty percent, while arrests for failure to appear and simple assault declined modestly.

### Failure to appear was the most common reason for arrest, after recent declines in OUI.

Top 5 Most Common Arrest Events in Michigan, 2008-2018



Source: Michigan State Police. See 'Arrest data' in *Data Sources and Methods*.

In contrast to this overall trend were notable increases in arrests for probation violations and possession of methamphetamine, heroin, and narcotic equipment. While arrest numbers fell for men and white women, arrests for black women did not. The decline in arrests of black women for third-degree retail fraud and disorderly conduct was offset by increased arrests for failure to appear and simple assault.

## Appearance tickets

Michigan law gives officers discretion to issue criminal citations in lieu of arrest for some low-level misdemeanors (those that are eligible for sentences of up to 93 days in jail). The law offers no guidance on when to cite versus arrest and no guidance on the use of alternatives like pre-arrest deflection and post-arrest diversion.<sup>11</sup> Data from the Michigan State Police, which excludes most traffic offenses, shows criminal citations were utilized in 10 percent of arrest events in 2018. The other 90 percent were on-view arrests or arrests made pursuant to a warrant. (If traffic misdemeanors were included in the arrest data, this 10 percent figure would be higher.) For some common misdemeanors eligible for criminal citation (such as disorderly conduct and third-degree shoplifting), officers issued citations 20 to 25 percent of the time, and otherwise made custodial arrests.

### Among common low-level misdemeanors, citations were used about 1/4 of the time.

Source: Michigan State Police. See 'Arrest data' in *Data Sources and Methods*.  
Note: Data does not include most traffic offenses.

Importantly, the law does not authorize criminal citations for all misdemeanors or for any felony charges, so officers could not issue citations under current law for many of the arrest events in the data.

At roundtables of patrol officers and corrections deputies, the Task Force heard that arresting and booking someone into jail is a time-consuming process, often taking several hours. Issuing an appearance ticket, on the other hand, was described as significantly faster, with the additional benefit of allowing the officer to remain in the community instead of traveling to the jail. Considering the varying public safety priorities officers manage, the ability and discretion to issue citations was considered a valuable tool for law enforcement to manage their time and resources.

<sup>10</sup> Also called appearance tickets.

<sup>11</sup> Deflection and diversion generally refer to practices that connect individuals to services outside the criminal justice system. If this re-routing occurs before arrest, it is often called deflection, and if it occurs after arrest it is called diversion.

## Traffic offenses

Some of Michigan's traffic violations (such as careless driving and speeding) are civil infractions, meaning they are against the law and punishable with fines, but do not themselves directly lead to arrest or jail.<sup>12</sup> Other traffic violations are criminal offenses eligible for arrest and jail, including common charges like driving without insurance or driving with a suspended license. Even excluding operating under the influence, these criminal traffic offenses account for six of the top ten most common charges handled by courts.<sup>13</sup> Driving without a valid license was the third most common reason for jail admission in the Task Force's 20-county sample.

In Michigan, a person can have their driver's license suspended for a wide variety of reasons, many unrelated to driving safety, such as failing to appear in court or conviction for controlled substance offenses. In 2018, nearly 358,000 licenses were suspended for failure to appear and failure to pay fines and fees.<sup>14</sup>

### Traffic violations made up 1/2 of all criminal cases.

Source: Criminal cases disposed in court, 2018. See 'Court Data' in *Data Sources and Methods*.



<sup>12</sup> Civil infractions can indirectly lead to arrest or jail if an individual does not appear in court, fully pay fines or fees, or meet any other court conditions.

<sup>13</sup> Criminal cases disposed in court, 2018. See 'Court Data' in *Data Sources and Methods*.

<sup>14</sup> Fines and Fees Justice Center, *Free to Drive*. Retrieved from <https://www.freetodrive.org/maps/#page-content>.

## How long are people staying in jail?

County jails are high traffic institutions and impact many more individuals than state prisons.<sup>15</sup> A short period of jail incarceration can prevent an immediately dangerous situation from escalating, enable the court to evaluate conditions of release, and allow a person who has been victimized to plan for their safety. The value of that temporary incapacitation must also be balanced against an individual's constitutional liberty interest and empirical research (described and cited further in the next section of this report) showing that even short periods of incarceration can increase the likelihood of future criminal behavior. Short periods of detention can also have far-reaching impacts on a person's employment, housing, and dependent children.

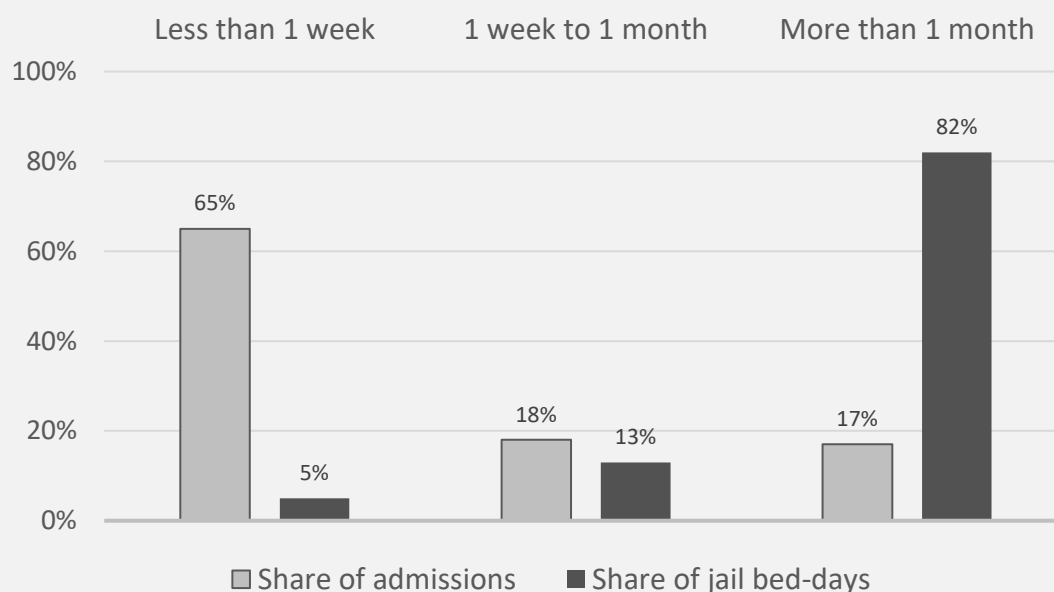
Among the Task Force's diverse sample of 20 jails, two-thirds of those admitted to jail stayed less than a week.

Because their stays were short, they accounted for a small portion of the total jail beds filled between 2016 and 2018 (jail bed days). As a group, they represent a large number of people who experienced jail incarceration, but didn't account for very much of the total jail space used—only five percent. At the same time, a relatively small portion of jail admissions—17 percent—stayed longer than a month (including some who stayed a year or longer), and this group accounted for 82 percent of the jail bed days. (See the figure below.)

Policymakers in Michigan aiming to address jail incarceration, therefore, have two separate cohorts to address: (1) the large number of people whose lives are disrupted by short jail stays, and (2) the relatively small group whose long stays drive up jail populations.

### Most people stayed in jail less than a week, but the 1 in 5 who stayed longer than a month took up nearly all the jail space.

Share of admissions and share of jail bed days by length of stay



Source: Sample of jails, 2016-2018. See 'Jail Data' in *Data Sources and Methods*.

<sup>15</sup> In 2017, there were 10.6 million admissions to jail in the U.S. compared to 606,500 admissions to state and federal prisons. Bureau of Justice Statistics, *Prisoners in 2017* (2019); Bureau of Justice Statistics, *Jail Inmates in 2017* (2019).

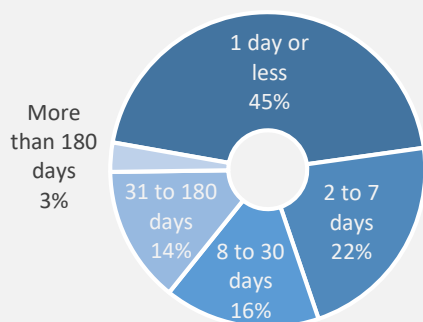


## Wide range in length of jail stays

Among the Task Force's sample of 20 diverse jails, those in jail for a felony on December 1, 2018 had been there for an average of 115 days, and those in jail for a misdemeanor had been there for an average of 72 days. Because of the longer lengths of stay for those charged with, or sentenced for felonies, nearly three-quarters of the jail population on December 1, 2018 was in jail for a felony offense. By contrast, when looking at length of stay for all those who came in and out of jail between 2016 and 2018—including the large portion who cycled through quickly—the average lengths of stay were 45 days for felony offenses and 11 days for misdemeanor offenses, again including both the pretrial and sentenced population. These averages, however, comprised a wide range. For example, three percent of those released from jail between 2016-2018 had spent more than six months detained and 14 percent had spent one to six months, while at the other end of the spectrum, 45 percent were admitted and released within one day. (See the figure below.)

### Nearly half of admissions stayed 1 day, but some stayed longer than 6 months.

Share of jail admissions by length of stay



Source: Sample of jails 2016-2018. See 'Jail Data' in *Data Sources and Methods*.

Among some of the most common offenses:<sup>16</sup>

- 58 percent of those jailed for drug possession or use stayed in jail for two days or more and 16 percent stayed longer than a month.
- 40 percent of those jailed for operating under the influence stayed in jail for two days or more and 10 percent stayed longer than a month.
- 36 percent of those jailed for driving without a valid license stayed in jail for two days or more and five percent stayed longer than a month.

## WAYNE COUNTY SPOTLIGHT

On October 17, 2019, Task Force members were invited to a presentation on preliminary findings from the Wayne County Jail Population Advisory Committee. The Committee received support from the Hudson-Weber Foundation and technical assistance from the Vera Institute of Justice. The Committee analyzed Wayne County jail data and found that:

- The most common charges at admission were misdemeanor driving offenses, felony assault, and child support violations.
- More than 10 percent of jail admissions were for probation violations with no new criminal charge filed.
- Felonies accounted for about half of the admissions and more than three-quarters of the jail population on any given day.
- Black people represented 39 percent of the county resident population but 70 percent of those detained in the jail on any given day.

Pretrial findings included:

- One in three people admitted to jail pretrial was released with a monetary bond. About one in five were released on an electronic monitoring device. And only one in twenty-five were released on personal recognizance.
- More than 40 percent of those with bail set between \$2,500 and \$10,000, and 38 percent of those with bail set at or below \$2,500, remained in jail until the resolution of their cases.

Source: Presentation from the Vera Institute of Justice on October 17, 2019 at Wayne State University Law School. Note: Data includes bookings into Wayne County jail between June 30, 2018 and July 1, 2019.

<sup>16</sup> Sample of jails 2016-2018. See 'Jail Data' in *Data Sources and Methods*.

## Pretrial detention in jail

Of those in the Task Force's 20-jail sample who were released from jail because they posted bond, most did so within 24 hours. A third spent at least two days in jail prior to release.<sup>17</sup>

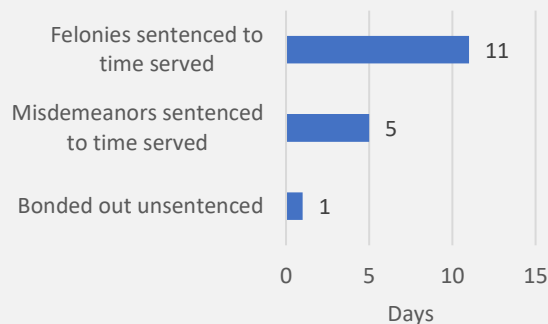
However, the group of those *released* from jail were not the only ones who experienced pretrial detention. Those unable to post bond or ordered detained pretrial remained in jail until they were sentenced or their case was dismissed.

Roughly a quarter of people sentenced to jail statewide were sentenced to 'time served', meaning they were not required to spend any additional time in jail but were credited for the time they already served and then released. The length of pretrial detention for this group averaged five days for misdemeanors and 11 days for felonies.<sup>18</sup>

Some pretrial stays in Michigan are very long. On a site visit to the Genesee County jail, for example, Task Force members met with three people who had each been held in jail for two to four years pretrial.<sup>19</sup>

### Length of pretrial detention depended on whether the defendants posted bond.

Median length of pretrial detention (days) by sentence type



Source: Sample of jails 2016-2018; OMNI and Judicial Data Warehouse, 2018. See 'Court Data' in *Data Sources and Methods*.

Note: Days of jail credit was used as proxy for length of pretrial detention of misdemeanors and felonies sentenced to time served in 2018.

The length of time someone spends in jail pretrial is determined by state and federal constitutional provisions, state laws and court rules, and local orders and cultural norms. The Task Force found wide variation in practices related to pretrial release conditions. Interim bond amounts for use of a controlled substance, for example, ranged from \$0 (personal recognizance release) to \$20,000. Some courts required all pretrial defendants to submit to drug testing or electronic monitoring while others used these types of conditions more sparingly.<sup>20</sup>

## RURAL JAIL GROWTH

Jail populations have grown faster in rural counties than in urban or suburban areas. In 1978, rural counties in Michigan held 15 percent of the state's jail population, but by 2013 that share had increased to 24 percent. This trend is not unique to Michigan. Nationally, pretrial incarceration rates in rural counties grew 436 percent between 1970 and 2013, and rural counties now have the highest pretrial incarceration rates in the country.

This growth in rural jails is partly driven by the increased share of the jail population that is held for other authorities, such as the state department of corrections, the federal government, or other counties. In Midwestern states, recent data shows that one in four people in rural jails are held for other authorities, compared to just one in nine in the 1970s. Research also suggests that jail growth in rural counties is partly driven by a lack of resources that could provide alternatives to jail.

Source: Vera Institute of Justice, "Out of Sight: The Growth of Jails in Rural America" (2017). Bureau of Justice Statistics, Annual Survey of Jails and Census of Jails. See 'Jail Data' in *Data Sources and Methods*.

Note: The most recent year of the Census of Jails is 2013.

<sup>17</sup> Sample of jails 2016-2018. 'Posting bond' includes those released on personal recognizance. See 'Jail Data' in *Data Sources and Methods*.

<sup>18</sup> Days of jail credit were used as a proxy for length of pretrial detention. Convictions sentenced in 2018 from OMNI data and the Judicial Data Warehouse. See 'Court Data' in *Data Sources and Methods*.

<sup>19</sup> For more information see <https://www.detroitnews.com/story/opinion/columnists/nolan-finley/2019/12/11/finley-genesee-county-jail-contains-with-complex-overcrowding-delays/4385554002/>.

<sup>20</sup> State Court Administrative Office survey of district courts in July of 2019 regarding pretrial practices. Interim bond analysis relied on 23 district courts which provided their standing interim bond orders as part of the survey.



## Jail sentence length

In 2018, more than 100,000 people in Michigan were convicted and sentenced to a jail term. About 40 percent of misdemeanor sentences and nearly 60 percent of felony sentences involved a sentence of jail or jail followed by probation.<sup>21</sup> Average jail sentences were longer for felonies (six months for jail and four months for jail followed by probation) than for misdemeanors (just over one month for jail and almost two months for jail followed by probation).<sup>22</sup>

Current Michigan law provides no guidance on when probation or another jail alternative should be the preferred or presumed sentence. Michigan's felony sentencing guidelines, for example, designate categories of cases in which "intermediate sanctions" are appropriate, but defines that term broadly to mean jail, probation, or a combination of the two. All misdemeanors are defined in law by the maximum allowable jail sentence, without reference to whether the sentence should generally or usually be jail or an alternative like probation, a fine, or community service.<sup>23</sup>

## Probation and parole violations

Nearly 10 percent of people in Michigan's jails were detained for probation or parole violations. Probationers

and parolees can be drawn into jail in response to technical violations (defined as most behavior short of a new crime) or new criminal behavior, although the data available did not distinguish the type of violation or level of seriousness. Overall, more than half of people who came to jail on probation or parole violations stayed longer than a week, and a quarter stayed more than a month.<sup>24</sup>

Michigan has the sixth highest rate in the country of people under community supervision (probation or parole) and the seventh highest rate of people under any correctional control (people either under community supervision or incarcerated).<sup>25</sup> The maximum length of probation in Michigan is five years—a common limit for some states but notably longer than others. Washington, for example, caps probation for felonies at two years.<sup>26</sup>

**Michigan has the 6th highest rate in the country of people on community supervision.**

Source: U.S. Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 2015* (2016). Note: The most recent year including Michigan data is 2015. The rate is calculated based on residents age 18 or older.

<sup>21</sup> Felony dispositions are from Michigan Department of Corrections, *Statistical Report 2018*. Misdemeanor dispositions are from the Judicial Data Warehouse. See 'Court Data' in *Data Sources and Methods*.

<sup>22</sup> Felony dispositions are from OMNI data and do not include statutorily sealed convictions. Misdemeanor dispositions are from the Judicial Data Warehouse. See 'Court Data' in *Data Sources and Methods*.

<sup>23</sup> Michigan Judicial Institute, *State of Michigan Sentencing Guidelines Manual* (May 2019).

<sup>24</sup> Sample of Michigan jails, 2016-2018. See 'Jail Data' in *Data Sources and Methods*.

<sup>25</sup> Kaeble, D. and L. Glaze, *Correctional Populations in the United States, 2015*, (2016). Bureau of Justice Statistics, U.S. Department of Justice

<sup>26</sup> Robina Institute of Criminal Law & Criminal Justice (2014). *Profiles in Probation Revocation: Examining the Legal Framework in 21 States* (Kelly Lyn Mitchell and Kevin R. Reitz, eds.). <https://robinainstitute.umn.edu/publications/profiles-probation-revocationexamining-legal-framework-21-states>.

## Is jail an effective intervention?

On August 23, 2019, the Task Force heard a presentation from Dr. Jennifer Copp, Director of the Jail Research and Policy Institute at Florida State University, that summarized relevant research on the effectiveness of pretrial detention, money bail, and jail sentences. Studies cited in this section are listed as endnotes in *Research References*.

### Pretrial detention

While temporary incapacitation can prevent escalation of dangerous situations and offer respite and peace of mind for victims in immediate danger, research suggests that jail detention has a number of negative impacts that can destabilize individuals and increase future offending.

Detained defendants face potential consequences as a result of their pretrial incarceration that impact their employment, residential stability, and family. A study evaluating individuals on pretrial supervision found that those detained for three days or longer were more likely to experience residential difficulties and to report negative impacts of detention on their dependent children relative to those detained pretrial for less than three days.<sup>i</sup> Jail incarceration generally, whether pretrial or sentenced, has been found to worsen individual labor market outcomes and increase reliance on government assistance.<sup>ii</sup> Pretrial detention also affects families and acquaintances of those detained, especially when those individuals are paying for a defendant to be released pretrial. A study conducted in New Orleans found that low-income families and other individuals (e.g., friends and acquaintances) are often forced to make difficult financial choices (e.g., paying for rent or utilities versus paying for bail) when trying to pay for a loved one's money bail or other criminal justice costs.<sup>iii</sup>

### Studies find the temporary benefits of incapacitation are offset by increased future offending.

In addition to collateral consequences, a growing body of research has examined the impact of pretrial detention on future criminal justice outcomes. A study in New York City showed that while pretrial detention temporarily reduced offending through incapacitation, it increased arrests after the person was sentenced.<sup>iv</sup> This suggests the short-term benefits of detention may be offset by long-term public safety consequences.

Research has shown that being detained pretrial (controlling for a number of important case and defendant characteristics) increases the likelihood of pleading guilty,<sup>v</sup> receiving a jail or prison sentence,<sup>vi</sup> and receiving a longer sentence.<sup>vii</sup> One study found that low-risk defendants detained pretrial were approximately five times more likely to be convicted and sentenced to jail when compared to similarly situated released defendants.<sup>viii</sup>

### VICTIM/SURVIVOR NEEDS AND PRIORITIES

In October, the Task Force hosted roundtable discussions with more than 50 victim advocates, survivors, and service providers across the state. Some of the key messages communicated were:

- The experiences and testimony of crime victims and survivors in Michigan are essential to understanding and reforming the criminal justice system. Data cannot always reflect the nuances and circumstances of criminal cases.
- Crime victims need comprehensive trauma-informed services and support from initial law enforcement interaction through prosecution and beyond. Shelters, transitional housing, counseling, and needs-assessments require additional funding.
- Bond conditions issued by a criminal court should be communicated to any civil court issuing a personal protection order involving the same person and vice versa. Bond orders and conditions should also be entered into the Law Enforcement Information Network (LEIN).
- Prosecutors should determine the appropriate parameters of no contact or stay away orders necessary to protect victims during the pretrial period and should address protection order violations when they occur.
- Efforts are needed to improve restitution management to help victims recover losses.

In addition to defendants, law enforcement and corrections officers are impacted by the use of pretrial detention. The decision to arrest and book someone into jail is often made by law enforcement, but their actions are dependent on the availability of alternatives to jail and the discretion the law affords them to use those alternatives. While alternatives to custodial arrests need further study, some evidence has shown promising benefits (e.g., reducing police costs and time) for deflection and diversion programs,<sup>ix</sup> civil citations in lieu of criminal system involvement, and criminal citations in lieu of arrest.<sup>x</sup>

## Money bail

When evaluating pretrial failure for those released, measurable outcomes include whether an individual fails to appear in court or is rearrested during the pretrial period. Of particular interest to many researchers is whether financial conditions of release are more or less effective than non-financial conditions in motivating individuals to comply pretrial.

Several studies have found that money bail is not more effective than release on recognizance for certain types of defendants (e.g., low-risk defendants). For defendants in New York City categorized as low-risk, money bail did not significantly improve court appearance rates.<sup>xi</sup> A study evaluating a newly implemented policy in Philadelphia that stopped district attorneys from requesting money bail for certain low-level felonies and misdemeanors found that increasing the number of defendants released pretrial without monetary conditions resulted in no significant increase in failures to appear or rearrests.<sup>xii</sup> Two Colorado-based studies found that *secured* bonds (bonds requiring upfront payment for release) were no more effective than *unsecured* bonds (bonds requiring no upfront payment) at ensuring court appearance or public safety (measured as a new crime, court filing, or re-arrest during pretrial release).<sup>xiii</sup>

While a few studies have focused specific attention on commercial surety bonds, finding commercial bonds to be more effective than other release mechanisms,<sup>xiv</sup> these studies rely on data that the Bureau of Justice Assistance has cautioned against using when making comparisons across pretrial release types.<sup>xv</sup>

Finally, money bail has been found to negatively impact the outcome of an individual's case. A study in Philadelphia found that the assignment of money bail alone led to an increase in guilty pleas, convictions, and recidivism.<sup>xvi</sup>

## Jail sentences

Overall, the available research consistently suggests that sentences to incarceration (both jail and prison) are ineffective at reducing future offending, with some studies indicating they may in fact increase criminal behavior.<sup>xvii</sup> Of the limited research available on alternatives to incarceration, evidence suggests that probation may be more effective than jail sentences at reducing recidivism.<sup>xviii</sup> The evidence on other jail alternatives like community courts, community service, day reporting, and day fines remains mixed and/or insufficient to draw meaningful conclusions about their effectiveness relative to sentences of incarceration.<sup>xix</sup>

Studies comparing the effectiveness of custodial and non-custodial sentences for violations or revocations of probation and parole remain limited. However, research suggests that jail is no more effective, and may be less effective, than community sanctions at reducing subsequent violations and reoffending for those on intensive supervision, both for substance use violations<sup>xx</sup> and any violation type.<sup>xxi</sup> A Washington State study showed that confinement of up to 60 days, when used as a sanction for technical violations, does not decrease felony recidivism as compared to non-jail sanctions.<sup>xxii</sup>

# What limits does the Constitution place on pretrial incarceration?

A recent wave of litigation across the country has produced court rulings ordering thousands of people released from jail, because pretrial practices in those jurisdictions had evolved in ways that violated the constitutional guarantees of due process and equal protection. One such lawsuit was filed and remains pending in Michigan. In August, the Task Force heard expert testimony explaining that the primary problems courts have been finding are that 1) people are not getting meaningful hearings about whether they should be released or detained pretrial, and 2) when access to money is the deciding factor between those who get released and those who get detained, poor people are denied equal protection of the laws.

The Constitution places many limits on pretrial incarceration. The country's founding fathers emphasized individual liberties and freedom by prohibiting the deprivation of life, liberty, or property without due process of law. Among these, the freedom from bodily restraint is "the core of the liberty protected... from arbitrary government action."<sup>27</sup>

**"In our society, liberty is the norm, and detention prior to trial... is the carefully limited exception."**

Source: *United States v. Salerno*, 481 U.S. 739 (1987).

Every individual facing criminal prosecution is afforded the presumption of innocence and the right to freedom before conviction.<sup>28</sup> The Supreme Court has ruled that, in our society, "liberty is the norm and detention prior to trial or without trial is the carefully limited exception."<sup>29</sup> Unless the right to pretrial release is preserved, "the

presumption of innocence, secured only after centuries of struggle, would lose its meaning."<sup>30</sup>

## Due process and excessive bail

**Individualized decisions.** To be constitutional, bail must not be predetermined based on offense categories, but individually tailored for the purpose of assuring the defendant's presence at trial.<sup>31</sup> Non-financial conditions of release should also be used flexibly and vary with the needs and circumstances of the individual defendant.<sup>32</sup>

**Least restrictive measures.** Fundamental liberty interests must not be infringed unless narrowly tailored to serve a compelling state interest.<sup>33</sup> The Constitution prohibits conditions of release or detention that are excessive in light of the perceived evil.<sup>34</sup>

**Process requirements.** Fundamental fairness requires liberty only be deprived after notice and the opportunity to be heard before a neutral party.<sup>35</sup> In the context of bail, defendants are entitled to a hearing within 48 hours of their detention.<sup>36</sup> The court may only continue detention if it finds no other reasonable way to assure pretrial compliance.<sup>37</sup>

## Equal protection

The Constitution's guarantee of equal protection of the laws prohibits governmental actions that discriminate between certain classes of individuals, including those with and without access to money, and imposes varying levels of scrutiny upon appellate review. In the context of incarceration, federal courts have found that "imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible."<sup>38</sup>

<sup>27</sup> *Foucha v. Louisiana*, 504 U.S. 71 (1992).

<sup>28</sup> *Stack v. Boyle*, 342 U.S. 1 (1951).

<sup>29</sup> *United States v. Salerno*, 481 U.S. 739 (1987).

<sup>30</sup> *Stack v. Boyle* (1951).

<sup>31</sup> *Id.*

<sup>32</sup> *Cohen v. United States*, 82 U.S. 526 (1962).

<sup>33</sup> *Reno v. Flores*, 507 U.S. 292 (1993).

<sup>34</sup> *United States v. Salerno*.

<sup>35</sup> *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1985); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

<sup>36</sup> See *O'Donnell v. Harris County*, 892 F.3d 147 (5<sup>th</sup> Cir. 2018).

<sup>37</sup> *Id.* Many federal courts have required this finding to be made using the standard of clear and convincing evidence. See *Caliste v. Cantrell*, 329 F.Supp.3d 296 (E.D. La. 2018); *Shultz v. State*, 330 F.Supp.3d 1344 (N.S. Ala. 2018).

<sup>38</sup> *Pugh v. Rainwater*, 572 F.2d 1053 (5<sup>th</sup> Cir. 1978).

## What is jail costing taxpayers?

In 2017, Michigan taxpayers spent at least \$478 million on county jail and corrections costs.<sup>39</sup> This includes operating costs such as staffing and medical care but not capital projects, like construction of new facilities. At least a few counties each year also take on tens or hundreds of millions more in debt for new jail construction or facility improvements. Construction is currently underway in Wayne County for a new jail and criminal justice complex estimated to cost over \$500 million, while Alpena County approved just more than \$10 million for a new jail.<sup>40</sup>

Jails account for roughly a quarter of county-level spending on public safety and justice systems (including law enforcement, courts, and other judicial or public safety spending), which together are the third largest expenditure at the county level, behind health care and public works.

Trial courts cost nearly one and a half billion dollars to operate each year and over \$630 million is funded through local sources.<sup>41</sup>

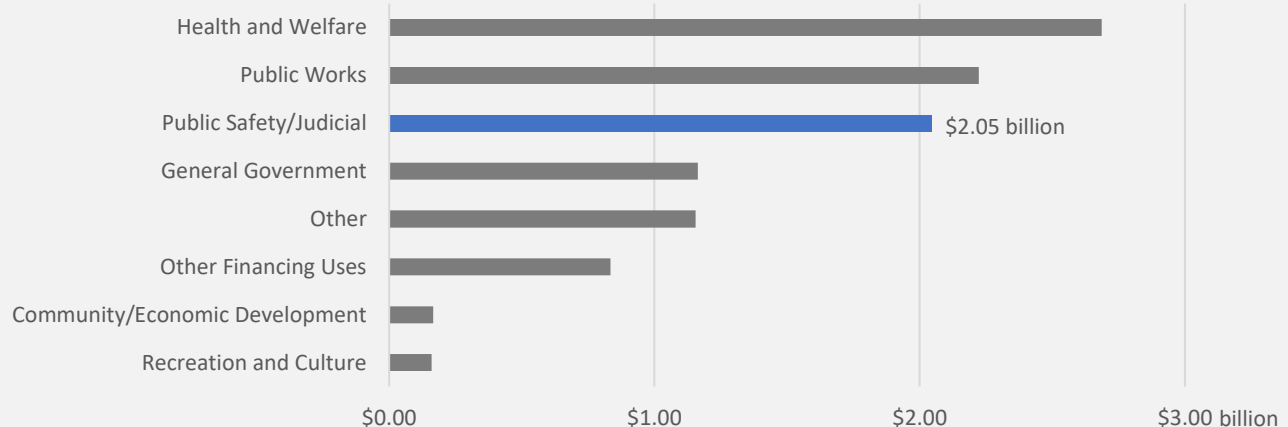
**Taxpayers spent at least \$478 million on county jail and corrections costs in 2017.**

Source: Michigan Department of Treasury, Community Financial Dashboard. See 'County budget data' in *Data Sources and Methods*.

Criminal defendants also pay to support operations of jails and courts. In addition to victim restitution and fines, criminal sentences in Michigan often come with fees and costs related to court processes, jail stays, community supervision, and conditions or programming ordered as part of supervision. Criminal defendants pay over \$418 million annually in fines, fees, court costs, and restitution.<sup>42</sup>

### The justice system is the third largest county expenditure.

Michigan County Budget Spending by Subcategory, 2017



Source: Michigan Department of Treasury, Community Financial Dashboard. See 'County Budget Data' in *Data Sources and Methods*.

<sup>39</sup> Michigan Department of Treasury, Community Financial Dashboard. See 'County Budget Data' in *Data Sources and Methods*.

<sup>40</sup> In 2017, Alpena County approved construction of a new jail budgeted at \$11 million (See <https://www.thealpenanews.com/news/local-news/2019/10/why-the-county-is-building-a-different-jail-than-voters-bought/>); In 2019, Macomb County officials considered funding construction of a new jail at \$371 million (See <https://www.freep.com/story/news/local/michigan/macomb/2019/12/04/macomb-county-elected-officials-give-vision-2020/2612374001/>); In Wayne County, construction is currently underway for a \$533 million jail and criminal justice complex (See <https://www.detroitnews.com/story/news/local/detroit-city/2019/06/25/wayne-county-takes-second-swing-building-new-jail/1271683001/>).

<sup>41</sup> Michigan Trial Court Funding Commission, *Trial Court Funding Commission Final Report* (2019).

<sup>42</sup> Ibid. Court assessments are defined as all monies authorized by statute to be paid to the court and include restitution, fees, fines, and court costs.

# Recommendations: Policy Goals & Solutions

Based on the review of data, research, and input from key stakeholders, the Task Force divided into subgroups for further analysis and discussion of three key areas of focus: arrest and arrest alternatives; pretrial release and detention; and sentencing, probation, and parole. Each subgroup met a minimum of four times and invited experts within their area of focus to provide additional information and support. Task Force members have been appointed for terms ending on September 30, 2020 and will continue work and outreach with stakeholders in the intervening time to prepare for implementation and performance monitoring of the recommended reforms. All recommendations that come with an implementation cost should comply with the Headlee Amendment in Michigan's constitution.

Unless otherwise noted, the data, research, and testimony referenced within the recommendation is described in earlier sections of the report.

## *Traffic violations*

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### **Recommendation 1: Reduce the number of driver's license suspensions.**

State law allows a driver's license to be suspended for a wide range of non-criminal behaviors. In 2018, nearly 358,000 licenses were suspended in Michigan for failure to appear and failure to pay fines and fees. The Task Force heard testimony across the state about the domino effect a suspended license can have, and from the law enforcement professionals who see these individuals using up limited public safety resources. To reduce jail admissions for driving with a suspended license and remove barriers to workforce reentry, licenses should only be suspended or revoked when the holder has been convicted of an offense directly related to driving safety.

#### The Task Force recommends:

- a. Eliminating suspension and revocation of driver's licenses as a possible sanction except for conviction of specific moving offenses directly related to driving safety, such as reckless driving, operating while intoxicated, and fleeing and eluding an officer.
  - License suspension or revocation should never be allowed for failure to comply with a court judgment, including failure to appear and failure to pay fines and fees.
  - Confiscation of driver's licenses as a condition of pretrial release should be prohibited except in cases where license suspension would be an allowable sanction upon conviction.
  - Reinstatement fees should be waived and a straightforward process created for immediate reinstatement of licenses suspended for reasons that are no longer eligible.

### **Recommendation 2: Reclassify some misdemeanors as civil infractions.**

Most arrests across the state are for non-person offenses, the majority of which are misdemeanors. Members of law enforcement expressed significant concerns about the time it takes to conduct an arrest and booking even for a minor crime, often removing an officer from the street for several hours.



The Legislature's intent when creating civil infractions was to serve as a practical resolution to the costs and time involved in processing certain misdemeanors through criminal courts. To reduce jail admissions for infractions that are the lowest threats to public safety and that are already routinely addressed with fines, certain low-level misdemeanors should be reclassified as civil infractions, which are not eligible for arrest. Removing common low-level violations from arrest eligibility would preserve law enforcement time and resources, limit the costly use of jail for minor infractions, and reduce the number of people with criminal records.

The Task Force recommends:

Reclassifying some misdemeanors as civil infractions, including: non-moving traffic misdemeanors; most snowmobile, off-road vehicle, and marine safety misdemeanors that are not related to operating while intoxicated; most Department of Natural Resources misdemeanors; and most animal-related misdemeanors, except those related to animal cruelty or animals causing injury. Local jurisdictions should be required to align their own ordinances with these statutory changes.

## Arrest

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### Recommendation 3: Expand officer discretion to use appearance tickets as an alternative to arrest.

Officers have discretion under the law to issue criminal citations, also known as appearance tickets, for misdemeanors punishable by 93 days of incarceration or less,<sup>43</sup> yet the law does not currently extend officers the same discretion for other misdemeanors.

Law enforcement leaders and patrol officers expressed their desire to Task Force members and staff for broader discretion to use appearance tickets in lieu of arrest, because expanding eligibility for criminal citations provides them with additional tools to manage their time, resources, and public safety priorities. Enacting a presumption that citations be used for the least serious misdemeanors further signals to officers that the state encourages arrest alternatives in those instances, while preserving their authority to make an arrest when public safety demands it.

The Task Force recommends:

- a. Expanding officer discretion to issue criminal citations for all misdemeanors, excluding offenses involving domestic violence.<sup>44</sup>
- b. Enacting a statutory presumption of citation in lieu of arrest for 90- and 93-day misdemeanors (except assaultive, domestic violence, and stalking misdemeanors); low-level property misdemeanors (where the value of the loss or damage is \$200-\$999); 90-day disorderly person misdemeanors; and controlled substance use misdemeanors. (Note that controlled substance *use* is a less serious offense under current law than *possession* of a controlled substance.)
  - To depart from the presumption and make an arrest, the officer would have to identify the reason on the arrest record.
  - The Uniform Law Citation form should be modified to include permitted reasons for departing from the presumption. It should also be modified to include an entry for the defendant's cell phone number, to enable court clerks to issue text message court reminders when a citation was used in lieu of an arrest.
  - The police report should be provided to the prosecuting agency within 48 hours of issuing a citation on weekdays, and within 72 hours of issuing a citation on weekends and holidays.
  - This presumption will shift the main entry point into the criminal justice system from jails to courthouses. Due consideration must be given to the facility, technology, and human resources needs of the courts as a result.
- c. Requiring the Michigan State Police to collect and report data on the use of citation and arrest for all cases, including all traffic cases.

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<sup>43</sup> Except domestic violence misdemeanors and violations of personal protection orders.

<sup>44</sup> As that term is defined in MCL 400.1501(d).

- d. Requiring the Michigan Commission on Law Enforcement Standards, the Michigan Sheriffs' Association, and the Michigan Association of Chiefs of Police to collaborate on a plan to inform and educate arresting officers about the change to citation laws, and to report the plan to the legislature within 6 months of the statutory change.

#### Recommendation 4: Reduce arrests for failure to appear and failure to pay by changing how and when arrest warrants are used.

Failure to appear is the most common reason for arrest in Michigan. Across the state, bench warrants are issued as a matter of course when individuals fail to appear for court hearings or fail to pay fines and fees. To preserve law enforcement resources for more significant threats to public safety, and to reduce jail admissions for failures to appear and failures to pay financial obligations, summonses in lieu of warrants should be the norm rather than the exception.

##### The Task Force recommends:

- a. Reducing the use of bench warrants for failures to appear and failures to pay court fines, fees, and child support.
  - Failure to appear should be removed as an independent offense from the criminal code or reclassified as a civil infraction.
  - The law should prohibit arrest warrants for first-time failure to appear for a *civil* citation or traffic case, or for first-time failure to appear for a show cause hearing following failure to pay court fines, fees, or child support.
  - A presumption should be established that a summons be used in lieu of an arrest warrant for first-time failure to appear on a *criminal* citation and on non-assaultive/non-person charges.
- b. Creating a 48-hour grace period before a bench warrant may be issued to allow a person to voluntarily return to court following a first-time failure to appear, unless the defendant is charged with a new crime, there is evidence that the person has absconded to avoid prosecution, or the failure to appear is on a trial date.
- c. Authorizing people with open warrants to appear during regular court hours within a year of the warrant being issued to reschedule their appearance without fear of arrest, except in cases where the warrant is for an assaultive offense or serious felony. Courts should offer alternatives to physically appearing in court for certain cases, such as through Polycom, which is available in every court in the state.
- d. Requiring an individual who is detained on an out-county Michigan warrant to be released if the originating county does not make pick-up arrangements within 24 hours and provide pick-up within 48 hours, excluding assaultive and stalking offenses.
  - The legislature must establish minimum standards for communication between Michigan jurisdictions to enable these timelines to be met.
- e. Establishing a statewide warrant initiative, directing or incentivizing district courts to:
  - Develop processes for defendants to resolve low-level cases by phone or online without appearing in court,
  - Allow individuals seeking information about their case, with some exceptions, to call without fear of being arrested, and
  - Recall open warrants that are older than five years for failures to appear (on civil and criminal citations and certain felonies and misdemeanors as determined by the legislature) and failures to pay fines, fees, and child support.

## Behavioral health diversion

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#### Recommendation 5: Divert people with behavioral health needs away from the justice system.

The Task Force heard testimony from a wide array of stakeholders regarding the need for funding and statutory changes to keep individuals with mental health and substance use needs from entering ("deflection") or staying in ("diversion") the justice system. Deflection and diversion resources are not available in all areas of the state, particularly rural communities, and statute offers no guidance on their use as arrest and jail alternatives.

Sheriffs expressed concern about long jail stays for those awaiting evaluation or restoration of competency to stand trial. Local experts have suggested that the number of competency evaluations for those in jail facing misdemeanor charges has significantly increased in the last decade, and average wait times for treatment far exceed the maximum allowable sentence for most misdemeanors. Although recent initiatives have shown some progress, given the Center for Forensic Psychiatry's limited staff resources and the strict statutory timetable for restoring competency, applying this process in misdemeanor cases is impractical. Many states are eliminating competency evaluation and restoration services in misdemeanor cases, because often these cases do not go to trial, and they strain county jail resources, delay restoration in felony cases, and often lead to further mental health deterioration while in jail.

The Task Force recommends:

- a. Providing statutory authorization for and guidance on the use of deflection and diversion.
  - Law enforcement agencies should be authorized and incentivized to partner with treatment and community organizations on programs that: 1) *Deflect* individuals with behavioral health needs away from the justice system before arrest and into treatment or supportive services, and 2) *Divert* such individuals out of the justice system after arrest and into treatment or supportive services.
  - The law should presume pre-arrest deflection and post-arrest diversion for individuals identified as, or observed to be, experiencing a mental health or substance use disorder, with exceptions based on public safety and resource availability.
  - The relevant Michigan Department of Corrections Administrative Rules for Jails and Lockups should reflect any statutory changes.
  - The Michigan Sheriffs' Association should support its members with the implementation of a standardized mental health screening tool at intake. Jail management systems should identify past and current Community Mental Health clients and individuals with diagnoses of mental health disorders.
  - Individuals identified as appropriate candidates for diversion, with consideration for public safety, should be diverted from jail stays altogether or connected with in-house mental health services, where available. If urgent release is necessary, jail staff should work closely with Community Mental Health to facilitate appropriate discharge for persons with serious mental health issues. In the case of individuals with legal guardians or advocates, every attempt shall be made by law enforcement and the jail to contact/reunite them immediately to assist in connecting them with treatment providers and supportive housing.
  - The Governor and Michigan Department of Corrections should develop rules for enforcing compliance with implementation.
  - Community Mental Health and law enforcement agencies should set local standards to determine how best to dispatch law enforcement and clinicians to calls involving an apparent behavioral health need.
- b. Dedicating significant funding to support local law enforcement agencies, service providers, and community organizations to establish and expand inter-agency deflection and diversion programs. The funding may be varied in its use through different state-county partnerships but should be standardized in its distribution across the state.
  - Funding should also support jail population monitors within sheriff's offices. This role would involve the regular review of jail rosters to identify candidates who could be safely diverted, including those with behavioral health needs.
- c. Charging an existing or newly established body with collecting relevant data and offering further recommendations on deflection, diversion, telehealth, and services such as triage/drop-off centers, co-responder dispatch, and mobile crisis teams.
- d. Changing the law to divert misdemeanor defendants rather than referring them for competency evaluation. (Several counties have already adopted Memoranda of Understanding to accomplish this locally.)
- e. Providing state funding to support efforts aimed at reducing the wait time of individuals ordered to receive competency restoration, including funding and any needed legislation to support community-based restoration where appropriate, and to further study the competency restoration backlog.

### Recommendation 6: Make the Jail Overcrowding Act proactive rather than reactive.

The County Jail Overcrowding State of Emergency Act, or “Jail Overcrowding Act,” directs sheriffs to manage their jail population by identifying individuals in jail who may be suitable for release without endangering public safety. These procedures are implemented when jail populations are at or near the facility’s capacity but should be implemented proactively to prevent dangerous overcrowding and preserve limited jail resources.

#### The Task Force recommends:

- a. Clarifying the Jail Overcrowding Act to be proactive, authorizing sheriffs to work with courts to divert and release certain individuals at any point, not only when facing an overcrowding emergency.
  - This recommendation is premised on the availability of appropriate therapeutic placements in the community.
- b. Authorizing and encouraging sheriffs to deny booking individuals with behavioral health disorders and others charged with misdemeanors or non-assaultive felonies who can safely be released with an appearance ticket or personal recognizance (PR) bond, regardless of overcrowding risk.
- c. Retain the Act’s requirement that the Michigan Department of Corrections and Michigan Sheriffs’ Association submit an annual report to the legislature on the effect of the enumerated procedures.

### Recommendation 7: Provide behavioral health crisis response training for law enforcement, dispatch, and jail officers.

Local law enforcement and corrections professionals across Michigan identified mental health as a primary challenge. While many agencies provide some level of relevant training, there is no statewide standard that officers receive de-escalation and crisis response training for encounters with individuals who have mental health and substance abuse needs. There is significant evidence to suggest that such training increases safety for both the individual involved and the responding officer, and broad consensus among stakeholders that individuals requiring behavioral health services are not well-served in a jail setting.

#### The Task Force recommends:

- a. Establishing a directive that the Michigan Commission on Law Enforcement Standards (MCOLES) collaborate with behavioral health experts, and/or the Mental Health Diversion Council, to develop behavioral health and crisis response training standards for new and incumbent law enforcement officers that align with national best practices and research.
  - The Michigan State Police’s State 911 Committee and the Michigan Sheriffs’ Coordinating and Training Council (MSCTC) should collaborate with MCOLES to develop similar training standards for dispatch and jail officers, respectively, and a plan for statewide rollout that supports compliance for all law enforcement agencies. More than one training curriculum should be offered to agencies, with varied program lengths and modes of delivery, to enable agencies with limited resources to meet compliance. Consideration should be given but not limited to the training models endorsed by the Mental Health Diversion Council.
  - MCOLES should be authorized to provide proper incentive to both law enforcement agencies and officers to meet the requirements set forth in the MCOLES standards.
- b. Providing sufficient startup and annual funding to MCOLES to develop, implement, and deliver such training, including issuing stipends to law enforcement agencies to support training, as needed.

## *The first 24 hours after arrest*

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### **Recommendation 8: Shorten the time people spend in jail between arrest and arraignment.**

Federal and state court rulings are increasingly requiring a strict ceiling of 48 hours between arrest and the person's first appearance in court, leading many states (e.g., Texas, New Jersey) to codify this or a similar time limit in statute. Currently in Michigan, not all arrestees are seen by a judicial officer within 48 hours. Establishing a statutory time limit would bring Michigan in line with developing constitutional jurisprudence.

Interim bond schedules, initially created to enable speedy pretrial release for people charged with certain offenses, in many counties have had the opposite effect. Standing interim bond amounts are regularly continued for the duration of the case, even after it is clear that the person cannot raise the funds, extending detention for many people accused of low-level crimes. To address this, the legislature should establish a uniform process for pre-arraignment release for people facing certain charges.

#### The Task Force recommends:

- a. Requiring that a person be arraigned by a judicial officer within 24 hours of arrest, a period which may be extended to 48 hours for good cause.
- b. Establishing automatic pre-arraignment release on personal recognizance for most misdemeanors and some non-assaultive felonies, excluding offenses involving domestic violence.<sup>45</sup> Under this policy, a person could be detained until their blood alcohol level is below the legal limit, or until they are otherwise sober enough to be safely released.

## *Pretrial release and detention*

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### **Recommendation 9: Establish higher thresholds for financial and non-financial pretrial release conditions.**

Currently, the release and detention decision in Michigan is largely governed by court rule. Money bail may be imposed for any criminal offense, and courts receive little statutory guidance on which pretrial conditions to impose. This has led to release and detention procedures that vary widely among the counties. People who may pose no danger to the community can be detained before trial on bond they are unable to post, even for relatively low amounts. Conversely, defendants charged with more serious or violent crimes, or who otherwise may pose a significant risk to the public pending trial, can be released if they can post the bond set by the court.

Across the country, courts are increasingly holding that defendants are not receiving individualized release conditions or meaningful pretrial detention hearings, in violation of the Constitution's guarantee of due process. These courts are further concluding that when money is the deciding factor between those released and those detained, defendants without access to resources are deprived of equal protection of the laws. To align Michigan with the growing consensus in the federal courts, the state's bail laws should be revised.

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<sup>45</sup> As that term is defined in MCL 400.1501(d).

The Task Force recommends:

- a. Establishing a tiered statutory framework for pretrial release, as follows:

Pretrial Release & Detention Framework	
Presumption of release on personal recognizance	<ul style="list-style-type: none"> <li>All defendants shall be released on personal recognizance or unsecured bond, with standard conditions, unless the court makes an individualized determination that the person poses a significant articulable risk of nonappearance, absconding, or causing bodily harm to another reasonably identifiable person or themselves.<sup>46</sup></li> </ul>
Threshold for additional non-financial release conditions	<ul style="list-style-type: none"> <li>If the person poses a significant, articulable risk of nonappearance, absconding, or causing bodily harm, the Court may impose the least restrictive non-monetary condition or conditions that reasonably address the risk.</li> <li>In cases where a person only poses a risk of nonappearance, and not absconding or causing bodily harm, the court may not impose conditions that result in the defendant's detention.</li> </ul>
Threshold for secured financial release conditions (money bail)	<ul style="list-style-type: none"> <li>The court may impose secured financial release (money bail) if the person poses a significant, articulable risk of absconding or causing bodily harm <u>and</u> is charged with: <ul style="list-style-type: none"> <li>a violent offense</li> <li>a sex offense, or</li> <li>another enumerated serious nonviolent or non-sex offense, including, e.g., witness intimidation and tampering, high level drug felonies, conspiracy to murder, terrorism offenses, and select "nonviolent" offenses against children,</li> </ul> </li> <li><u>and</u> the court finds that no nonmonetary conditions will reasonably address the risk.</li> </ul>
Threshold for detaining a person without bond	<ul style="list-style-type: none"> <li>The court may order a person detained without bond if they are charged with: <ul style="list-style-type: none"> <li>Murder, treason, first-degree criminal sexual conduct, armed robbery, kidnapping with the intent to extort, or</li> <li>A violent felony committed when on community supervision related to a prior violent felony; or with 2 or more prior violent felony convictions in the preceding 15 years,<sup>47</sup></li> <li>Where the proof is evident or the presumption great,</li> </ul> </li> <li><u>and</u> the person poses a significant, articulable risk of absconding, or causing bodily harm, and no other conditions of release adequately address the risk.</li> </ul>

- b. Establishing the following statutory definitions, for the purposes of bail:
- "Abscond" means fail to appear with the intent to avoid or delay adjudication.
  - "Nonappearance" means failure to appear without the intent to avoid or delay adjudication.
- c. Repealing laws requiring money bail for Friend of the Court charges and laws requiring money bail for other offenses.<sup>48</sup>
- d. Requiring that the court conduct an inquiry into the defendant's ability to pay money bail, before imposing it. This inquiry shall allow the prosecutor, defense counsel, and the defendant the opportunity to provide the court with information pertinent to the defendant's ability to pay money bail.
- e. Following implementation of the policy changes outlined above, ultimately transitioning to a pure detention-and-release system, similar to policy frameworks in New Jersey, New Mexico, the District of Columbia and the federal system, in which money bail may not be used to detain a person pretrial. This transition to a pure detention-and-release system will likely require a state constitutional amendment.

<sup>46</sup> The Task Force further recommends establishing additional limitations on detention for the risk of self-harm, including a requirement that people detained as a danger to themselves must be transferred, within 12 hours after jail booking following their initial appearance, to the most appropriate therapeutic environment outside of the criminal justice system.

<sup>47</sup> This standard mirrors language currently in Michigan's Constitution.

<sup>48</sup> MCL 552.631(3) and MCL 765a.



## Recommendation 10: Provide a due process hearing for defendants who are still detained 48 hours after arraignment.

Federal courts have repeatedly held that pretrial detention, or conditions of release that result in detention (for example unaffordable money bail), may only be imposed following an individualized determination, based on clear and convincing evidence, that no less restrictive conditions will suffice.<sup>49</sup> A growing number of federal lawsuits across the country have determined that jurisdictions are not meeting this standard. Despite the best efforts of court personnel in many courts in Michigan, defendants are often detained without this constitutionally required due process.

### The Task Force recommends:

Establishing a statutory right to a due process hearing for all defendants detained pretrial, including the following elements:

- **Timing:** For all defendants who remain detained following arraignment, the court must conduct a detention hearing not later than 48 hours after arraignment. On its own motion or on motion of the prosecutor, the court may continue a detention hearing for not more than 72 hours for good cause. On motion of the defendant, the court must continue a detention hearing. With the consent of the parties, the court may conduct the detention hearing at first appearance, assuming the rights and standards below can be met.
- **Rights:** At a detention hearing, the defendant has a right to be represented by counsel, testify, present and cross-examine witnesses, review evidence introduced by the prosecutor, present evidence, and proffer information. The normal rules of evidence do not apply. Any statements by the defendant may be used at a future proceeding for the purposes of impeachment but not to prove guilt.
- **Standard at the Detention Hearing:** The court may not issue an order of pretrial detention or continue a condition of release that results in detention of an individual unless the court finds by clear and convincing evidence that the person poses a significant articulable risk of absconding or causing bodily injury, and no less restrictive conditions can reasonably address the risk.
- **Appellate review:** Establish a new subsection in Chapter 7 of the Michigan Court Rules (MCR) concerning pretrial release and detention appeals. The subsection should include an expedited timeline, requiring review within 14 business days of filing of the appeal. It should also include a requirement that the trial court generate a written statement of the court's findings and reasoning for every bond decision that results in detention.

## Recommendation 11: Limit the use of restrictive pretrial release conditions.

Many jurisdictions in Michigan routinely impose requirements such as in-person check-ins, drug testing, electronic monitoring, and participation in programs and counseling, as standard conditions of pretrial release. Some courts even require all pretrial defendants to submit to drug testing or electronic monitoring. In many of those places, people are required to pay for their conditions of release and can end up incarcerated when unable to pay. While restrictive release conditions are appropriate for some defendants, practical and supportive conditions like court reminders and referrals to services have also been found to increase rates of pretrial success but are underused throughout the state.

### The Task Force recommends:

- a. Establishing a statutory requirement of court reminders, which have been found to significantly increase the likelihood of court appearance, and redesigning notification and summons documents to maximize clarity and legibility.
- b. Defining pretrial release conditions that require drug testing, electronic monitoring, or in-person reporting as "significant restraints on liberty," and limiting when such restraints may be imposed.
  - Requiring that a court first consider whether practical assistance or voluntary supportive services can sufficiently address any pretrial risks in the individual case.
  - Establishing a 60-day limit on the amount of time that a significant restraint on liberty (e.g., electronic monitoring or drug testing) may initially be authorized as a condition of pretrial release, and requiring an in-court reassessment of the condition after 60 days, with a rebuttable presumption that it be lifted if the defendant has demonstrated compliance.

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<sup>49</sup> See, e.g., *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir., 2018).

- Limiting GPS monitoring to felony cases; misdemeanor assaultive, domestic violence, or sex offense cases; and misdemeanor cases where the defendant was convicted of an assaultive felony in the past five years or was previously convicted as a habitual offender pursuant to MCL 769.10. (Note: this recommendation applies only to GPS monitoring, and not to other forms of monitoring like an alcohol tether.)
- c. Requiring that the government bear the costs of non-financial conditions of release ordered for indigent defendants and prohibiting detention due to a defendant's inability to pay for release conditions.
  - Establishing a uniform indigency standard for conditions of release to be used in every criminal trial court.
  - A defendant shall be considered to be indigent if he or she is unable, without substantial financial hardship to himself or herself or to his or her dependents, pay the costs of ordered conditions of release. Substantial financial hardship shall be rebuttably presumed if the defendant is eligible for appointment of counsel; receives or is eligible to receive public assistance based on financial hardship; has dependents who are eligible for such assistance; resides in public housing; earns an income less than 200% of the federal poverty guideline; has been homeless in the past six months; or is currently serving a sentence in a correctional institution or is receiving residential treatment in a mental health or substance abuse facility.

## *Speedy trial*

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### **Recommendation 12: Strengthen speedy trial laws.**

Both the U.S. and Michigan Constitutions guarantee criminal defendants the right to a speedy trial, yet Task Force members met individuals who had been incarcerated for 3-4 years awaiting trial. Michigan's current case law sets a difficult standard for a defendant to successfully assert their constitutional right to a speedy trial. The state should require firm statutory trial deadlines and eliminate the requirement that incarcerated defendants actively assert their speedy trial rights.

#### The Task Force recommends:

- a. Requiring that defendants be tried within 18 months of arrest, absent waiver, acquiescence, or agreement by the defendant.
  - Specifying that delays attributable to the defendant may not be held against the government for speedy trial purposes.
  - Creating meaningful consequences (e.g., dismissal with prejudice) for failure to try a defendant within the statutory time limits.
  - Revising court rules to accord with the new statutory speedy trial provisions.
  - Providing additional funding, as needed, to services supporting the criminal justice system and enabling it to meet these timelines (e.g., Michigan State Police Crime Lab and the Michigan Department of Health and Human Services' Center for Forensic Psychiatry).
- b. Removing the requirement that defendants actively assert their speedy trial rights in order to preserve them. The law should instead require that speedy trial rights be preserved unless defendants or their counsel waive them explicitly on the record or implicitly by their conduct.

## *Alternatives to jail sentences*

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### **Recommendation 13: Reduce the number of people sentenced with jail time for misdemeanors.**

Most jail admissions are for misdemeanor offenses, and while they tend to have relatively short stays in jail, the process of booking individuals takes up significant time and resources for law enforcement and can have detrimental consequences for the detained individual. The Task Force explored ways to reserve jail sentences for more serious criminal behavior and cases involving significant threats to individuals or the public. Because sentences to probation can also result in jail bed usage through sanctions for violations, the law should presume non-jail *and* non-probation sentences for less serious misdemeanors and eliminate mandatory jail sentences for all misdemeanors.

#### The Task Force Recommends:

- a. Adopting a rebuttable presumption that people convicted of misdemeanors (except those defined as serious misdemeanors in MCL 780.811 or nonserious misdemeanors with a recent assaultive felony conviction) be sentenced with a fine, community service, or other non-jail, non-probation sanction.
  - The legislature should specify the findings a court must make on the record in order to depart from the presumption of a non-jail and non-probation sentence, noting that probation is appropriate as a sentence for non-serious misdemeanors only in cases with a specific rehabilitation goal and/or an articulable risk of harm to a victim (in which case jail could also be appropriate).
- b. Eliminating existing mandatory minimum jail sentences for misdemeanor offenses and prohibiting the creation of new ones, including those established by local ordinances that are substantially similar to state misdemeanors.

#### **Recommendation 14: Reduce the number of people sentenced with jail time for certain felonies.**

Because people with felony charges stay longer in Michigan jails than those with misdemeanors, the majority of jail beds at any one time are occupied by people charged with or convicted of felonies. Felony sentences in Michigan are guided by advisory sentencing guidelines. For people who, by reason of their offense type, offense characteristics, and criminal history are recommended for an intermediate non-prison sanction, the sentencing grid offers no guidance for when a sentence to jail, probation, or a combination of the two is appropriate, and practice varies widely across the state. To better distinguish sentences of incarceration from community supervision and to increase consistency in sentencing practices across the state, the presumptive intermediate sanction should be probation. Other felony sentencing changes are also needed to better align penalties with the seriousness of the offense and the potential danger to the community.

#### The Task Force recommends:

- a. Establishing a rebuttable presumption that people recommended for an “intermediate sanction” by the sentencing guidelines receive a probation sentence with no jail term included.
  - Intermediate sanctions for individuals determined to be in a “straddle cell” would remain eligible for a sentence of probation, jail, or a combination of the two.
  - The legislature should specify the findings a court must make on the record in order to depart from the presumption of a non-jail sentence.
- b. Reclassifying or adjusting punishments for common lower-level felonies in the following ways:
  - Adjusting the thresholds for the monetary value of property theft, damage, or loss associated with different penalties as follows (preserving existing rules about penalty enhancements for repeat offenses) and adding the monetary thresholds to offenses that currently do not have them, including no-account checks and larceny in a building.

Level of Offense	Monetary Threshold
<b>93-Day Misdemeanor</b>	<b>&lt; \$750</b>
<b>1-Year Misdemeanor</b>	<b>\$750 - \$2,000</b>
<b>5-Year Felony</b>	<b>\$2,000 - \$20,000</b>
<b>10-Year Felony</b>	<b>&gt; \$20,000</b>

- Reclassifying unlawful use of a vehicle and 4th degree fleeing & eluding as 1-year misdemeanors.
- Reclassifying 1st degree retail fraud and possession of less than 25 grams of cocaine or narcotics as Class H felonies with maximum incarceration of 2 years.
- Creating a new 90-day misdemeanor for resisting, obstructing, or opposing a law enforcement officer or other official performing their duty, when no physical force is used. If the individual assaults, batters, or otherwise uses physical force to resist or obstruct, the offense would remain a 2-year felony.
- Reducing the maximum sentence for uttering & publishing a forgery to 5 years, in line with other Class E felonies.
- Expanding judicial discretion by eliminating mandatory incarceration as a sentence for a 3<sup>rd</sup> or subsequent offense of operating a vehicle while intoxicated or impaired or with the presence of a controlled substance.

- Aligning threshold weights and punishments for possession of methamphetamine with other schedule 1 and 2 drugs.
- Expanding the age of eligibility for the Holmes Youthful Trainee Act (HYTA) to include young people aged 24 and 25 to align with established research about adolescent brain development. The age at which prosecutors must approve the use of HYTA should be raised to 24.
  - Directing a new or existing body to study and recommend policy changes to reduce the number of people held in jail for failure to pay child support.

## Probation and parole

### Recommendation 15: Limit exposure to jail for those on probation and parole supervision.

Michigan has one of the highest rates of community supervision in the country, and probation and parole violations are among the top 10 offenses admitted to jail. Current statute in Michigan allows for probation terms of up to five years for most felonies and up to two years for most misdemeanors, but evidence indicates that focusing resources on the first weeks and months of a person's supervision term provides the greatest public safety return on investment.<sup>50</sup> Research also indicates that sanctions for probation violations are most effective when they are swift, certain, and proportional, and that community-based sanctions are as effective as incarceration at reducing future violations.<sup>51</sup>

The state should focus resources on the highest risk periods of supervision, incentivize compliance to improve success rates on community supervision, and reduce inconsistencies across courts related to early discharge from probation.

#### The Task Force recommends:

- Tailoring statutory maximum probation terms to the period of time when violations are most likely to occur and when probation supervision has the strongest impact on behavior change, by limiting probation terms according to the table below.

Type of Offense	Recommended Maximum Probation Term
<b>Felony Sex Offenses*</b>	5 years
<b>Other Felonies*</b>	3 years, with one 12-month extension possible
<b>Misdemeanors</b>	2 years

\*Excluding offenses ineligible for probation.

<sup>50</sup> Sims, B. & Jones, M. (2016). Predicting success or failure on probation: Factors associated with felony probation outcomes. *Crime & Delinquency* 43(3).; Olson, D.E. & Stalans, L.J. (2016). Violent Offenders on Probation. *Violence Against Women* 7(10).

<sup>51</sup> Lattimore, P. K., MacKenzie, D. L., Zajac, G., Dawes, D., Arsenault, E. & Tueller, S. (2016). Outcome findings from the HOPE demonstration field experiment. *Criminology & Public Policy*, 15, 1103-1141.; Wodahl, E. J., Boman, J. H., & Garland, B. E. (2015). Responding to probation and parole violations: Are jail sanctions more effective than community-based graduated sanctions? *Journal of Criminal Justice*, 43, 242-250.

- b. Eliminating the court's authority to revoke probation for non-violating behavior and to revoke probation for technical violations, unless the person on probation has already received three or more sanctions for technical violations.<sup>52</sup> Limits on the use of jail as a sanction for technical probation violations should be adopted according to the table below.

Sanction	Felony Probation	Misdemeanor Probation
<b>1<sup>st</sup> sanction</b>	Up to 15 days	Up to 5 days
<b>2<sup>nd</sup> sanction</b>	Up to 30 days	Up to 10 days
<b>3<sup>rd</sup> sanction</b>	Up to 45 days	Up to 15 days
<b>4<sup>th</sup> and subsequent sanction</b>	Up to remainder of sentence	Up to remainder of sentence

- A first or second sanction may be extended up to 45 days only if the person is awaiting placement in a treatment facility and does not have a safe alternative location to await treatment.
  - A jail sanction or revocation should never be imposed solely for failing to seek and maintain employment; failing to pay required fines, fees, or treatment/programming costs; or failing to report a change in residence.
  - A summons or order to show cause should be issued in lieu of a bench warrant for a technical probation violation, except if that violation is walking away from an inpatient treatment facility. If a probationer fails to appear on the summons or order to show cause, then a judge would retain discretion to issue a bench warrant.
  - A probationer who is arrested for committing a technical violation and detained after arraignment must have a probation violation hearing held as soon as possible. If the hearing is not held before the jail sanction cap is reached, the probationer should be released from jail and returned to community supervision.
- c. Standardizing and automating the process for earned early discharge for eligible probationers who are in compliance with the conditions of their probation.
- A person should be eligible for earned early discharge from misdemeanor or felony probation after serving half of the original term of supervision, or at any time thereafter, if the person has completed required programming and has no violations in the previous three months. A person should not be deemed ineligible for earned early discharge due to inability to pay for conditions of probation or for outstanding debt in the form of fines, costs, or restitution, as long as good faith efforts to make payments have been made. Discharge from probation would not relieve the probationer from outstanding restitution obligations.
  - The probation officer should notify the judge and prosecutor 30 days before the probationer will become eligible for earned early discharge.
  - A hearing should be required only in felony cases involving an individual victim and in assaultive misdemeanor cases. In those cases, the prosecutor must give the victim notice and an opportunity to be heard. In all other cases, the hearing should be at the discretion of the judge.
  - The eligible person should be discharged from probation unless denied by the court with an appropriate justification on the record.
- d. Mandating that any conditions of probation or parole be individualized and reasonably related to the assessed risks and needs of the person being supervised. Conditions ordered by the court or parole board, or otherwise imposed by a probation or parole agency, should not be unduly burdensome and should be adjusted when appropriate.

<sup>52</sup> For the purposes of this policy change, technical violation should be defined as any violation of the terms of a probation order that is not: 1) A violation of a law of this state, a political subdivision of this state, another state, or the United States or of tribal law, whether charged as a new offense or not; this does not include use of a controlled substance for which the only evidence is the result of a drug test, and it does not include criminal contempt of court; 2) A violation of an order of the court requiring that the probationer have no contact with a named individual (i.e., violation of a personal protective order); or 3) Absconding, defined as the intentional failure of an individual on supervision to report to the supervising agent and to advise the supervising agent of their whereabouts for a continuous period of at least 60 days. (Note: this chapter-specific definition necessarily will differ from the definition of absconding in the pretrial context.)

## Financial barriers to compliance

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### Recommendation 16: Address financial barriers to compliance.

Inability to pay for criminal justice fines and fees can lead to incarceration and other negative outcomes. Michigan has some protections in place to prevent the incarceration of people solely because of inability to pay legal financial obligations, but there are several ways protections could be strengthened. For example, courts do not currently determine ability to pay at sentencing, but rather only upon failure to make required payments.

Michigan statute also authorizes sheriffs to charge people held in jail for each day of their incarceration through “The Prisoner Reimbursement to the County Act,” including days spent in jail while unconvicted and presumed innocent. Though this amount is rarely collected, the debt itself can cause barriers to people’s reentry to their communities and the workforce after a jail term.

#### The Task Force recommends:

- a. Reducing fine amounts for civil infractions and requiring that individuals who are unable to afford a civil fine be offered an alternative such as community service.
- b. Requiring courts to determine a person’s ability to pay any fines and fees at the time of sentencing and at any hearing addressing the person’s failure to pay. When payment of fines and fees would cause undue hardship to the person and their dependents, courts should waive or modify the financial obligation and consider an alternative non-monetary sanction, such as community service.
- c. Encouraging courts utilizing payment plans to include debt forgiveness incentives to reward those who make consistent payments on legal financial obligations over a period of 12 months.
- d. Repealing “The Prisoner Reimbursement to the County Act,” which authorizes sheriffs to charge incarcerated individuals for each day of their incarceration. Or, alternatively, waiving fees upon determination of indigency, eliminate fees for the pretrial period of a person’s incarceration, and reduce the maximum daily charge that is authorized under the Act.

## Victim services

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### Recommendation 17: Invest in services and supports for crime victims.

The experiences and perspectives of crime survivors and victim-serving professionals are essential to shaping effective policy change. The Task Force heard extensive testimony about the safety needs and the dearth of resources for crime victims during and after the formal criminal justice process, and hosted two roundtable discussions with victims, survivors, and their advocates. To improve public safety, the state must prioritize the *individual* safety of crime victims and invest in supportive services, law enforcement training, and protection order service and enforcement.

#### The Task Force recommends:

- a. Allocating significant funding to:
  - Help defray the costs of law enforcement serving personal protection orders when it is not safe for another person such as a friend or relative of the victim to serve it,
  - Expand training for law enforcement agencies in Forensic Experiential Trauma Interview (FETI) and other best practices for responding to calls related to domestic violence, and
  - Expand supportive services for crime victims and survivors separate from the criminal investigation and prosecution process, including counseling, shelter and transitional housing, and other survivor-centered services.
- b. Requiring that conditions of personal protection orders be entered into the Law Enforcement Information Network (LEIN), so officers have more information when encountering a person who is the subject of an active order.



- c. Directing a new or existing body to research and recommend policy changes that ensure the restitution process is transparent, efficient, and easy to navigate for victims and convicted people; and that restitution is further prioritized over the payment of other criminal justice fines and fees.

## Data collection

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### Recommendation 18: Standardize criminal justice data collection and reporting.

Criminal justice data across the country, and in Michigan, often lack the level of detail and integration capabilities necessary to provide a comprehensive assessment of the system's performance and outcomes. This is especially true for criminal justice systems operating at the local-level, like courts and jails, which do not have uniform standards for capturing data and do not consistently report detailed information to a centralized body. To bring greater transparency to Michigan's criminal justice system and guide future decision-making and policy development, the state should improve the collection and reporting of criminal justice data across systems.

#### The Task Force recommends:

- Directing local and state criminal justice agencies to collect, record, and report data from arrest to disposition of a case, and through completion of any applicable sentence. The data collected should be accurate, comparable, and useful for monitoring the outcomes of statewide policy changes and should be made publicly available to the greatest extent possible while protecting the privacy of justice-involved individuals. To accomplish the necessary data improvements, a new or existing body should be directed to identify standards for collecting data and design a detailed plan for improving data collection and reporting.

### Notes on recommendations

*Task Force member Senator Runestad proposes that the following policies be given particular attention by the Legislature, regarding application to those with repeated criminal behavior: Recommendations 1(a), 2, 8(b), 9(a), 11(b), 15(a), and 16(a). The Senator also notes his objections to citations being issued in lieu of arrest for assaultive misdemeanors under Recommendation 3(a), to the threshold for non-financial conditions in Recommendation 9(a), and to Recommendation 14(c). Task Force member Representative Mueller notes his objections to automatic pre-arraignment release under Recommendation 8(b) and to parts of Recommendations 9 and 10. The Representative would also include a possible extension of the speedy trial timeline under Recommendation 12(a) for certain serious offenses.*

# Acknowledgements

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Sheriff Steven Kieliszewski  
Sgt. Bryan Knock  
Sheriff Blaine Koops  
Chief Deputy David Kok  
Sheriff Michelle LaJoye-Young  
Undersheriff Mike Larsen  
C.O. Brian Levitt  
Sheriff Allan MacGregor  
Sgt. Kevin Mack  
Sheriff Craig Mast  
Undersheriff Chris Mausolf  
Joe McBratnie  
Sheriff Brian McLean  
Exec. Lt. Melissa McClellan  
C.O. Tim McDonald  
Sgt. Mario Mori  
Sheriff Michael Morris  
Sgt. Brian Newcomb  
Sgt. Jon Oliver  
Sgt. Tom Pennington  
Sheriff Robert Pickell

Sgt. Steve Pirochta  
Sheriff John Pollack  
Sheriff Michael Poulin  
Sheriff Todd Purcell  
Sheriff Steve Rand  
Sheriff Dale Rantala  
Sgt. Todd Rawling  
Sheriff Matthew Saxton  
Sheriff Ted Schendel  
Lt. Steve Schneider  
Sheriff Glen Skrent  
Lt. Dan Smith  
Sgt. Darin Southworth  
Lt. Brian Steede  
Lt. Brent Steinbrecher  
Undersheriff Chris Swanson  
Lt. Lori Stanley  
Capt. Troy Stewart  
Capt. Klint Thorne  
Jason Tucker  
Sheriff Mark Valesano  
Capt. Bob Vogt  
Undersheriff Valerie Weiss  
Sheriff Anthony Wickersham  
Capt. Kevin Wood  
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Sheriff Wilbur Yancer  
Sheriff Greg Zyburt

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### Michigan Association of Chiefs of Police:

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ACLU of Michigan	Michigan Council on Crime and Delinquency
Advancement Project	Michigan Fraternal Order of Police
American Conservative Union	Michigan Judicial Institute
Americans for Prosperity	Michigan Liberation
American Friends Service Committee	Michigan Mental Health Diversion Council
The Bail Project	Michigan Professional Bail Agents Association
Before During and After Incarceration	Michigan Protection & Advocacy Services
Black Family Development Inc.	Michigan Public Health Institute
Center for Employment Opportunities	NAACP
Children's Advocacy Center of Kent County	Nation Outside
Christian Coalition	Northwest Initiative
Citizens for Prison Reform	Project Unity for Life
Civil Rights Corps	Pure Heart Foundation
Criminal Justice Policy Commission	R Street
Detroit Justice Center	Right on Crime
Equality Michigan	Ruth Ellis Center
Faith in Action	Safe Harbor Child Advocacy Center
FORCE Detroit	Safe & Just Michigan
Forgotten Man Ministries	SafeHouse Center
Goodwill Street Outreach	Sheriffs for Trusting Communities
Harm Reduction Michigan	Sixth Amendment Center
Governor's Foundation Liaison	Smith Bonds & Surety
Grand Rapids Chamber of Commerce	Southwest Detroit Community Justice Center
Healing Communities of West Michigan	State Planning Body
HOPE Network	Street Democracy
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# Data Sources and Methods

Criminal justice data across the country, and in Michigan, often lacks the level of detail and integration capabilities necessary to provide a comprehensive assessment of the system's performance and outcomes. This is especially true for courts and jails, which are most often operated at the local level, generally do not have uniform standards for capturing data, and report little or no data to a centralized body.

Despite these challenges, Michigan has made efforts to collect criminal justice information, and many sources of data exist that can provide important insights into how jails are being used and how their use has changed over time. This report relies on data from jails, courts, and law enforcement, captured at the national, state, and local levels. Most of these data sources were analyzed as stand-alone snapshots, but when possible, individuals were connected between datasets to capture a fuller picture of the criminal justice system as a whole.

## Jail Data

### Jails in Michigan

Like most other states, Michigan does not have a reliable source for centralized data on jail populations across the state,<sup>53</sup> so this report utilized jail data collected by the U.S. Department of Justice Bureau of Justice Statistics through the Census of Jails and Annual Survey of Jails when assessing the statewide jail population.

Beginning in 1970, the Census of Jails has asked each jail in the country for high-level information about its population every five to eight years; the most recent census was conducted in 2013. In non-census years, the Annual Survey of Jails asks a sample of jails across the country for similar information. The Bureau of Justice Statistics data was obtained via the Vera Institute of Justice's Incarceration Trends database and the National Archive of Criminal Justice Data at the Inter-university Consortium for Political and Social Research.<sup>54</sup> Information on the jail population before 1970 was obtained from the Bureau of Justice Statistics' *Historical Corrections Statistics in the United States, 1850 – 1984*.<sup>55</sup>

The jail population reported is the average daily population for that year. The data also distinguishes 'unconvicted' and 'convicted' detainees. The 'convicted'

group includes probation or parole violators with no new sentence.

In years in which jails did not report data, or were not surveyed, data was interpolated based on the nearest reporting years. In three cases, extreme yearly population changes, likely reporting errors, were excluded and the nearest reporting years were used instead.

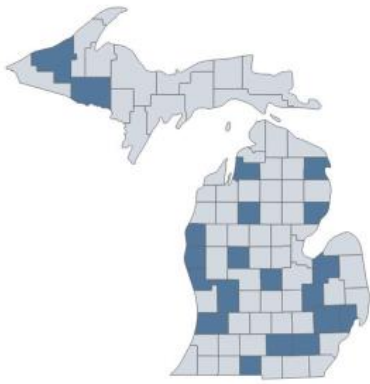
### Sample of Jails in Michigan

To obtain information beyond that captured in the Census of Jails and Annual Survey of Jails, data was collected individually from a sample of jails across the state. The final sample included twenty jails and three years of jail data, amounting to just over 325,000 admissions. The twenty jails in the sample ranged in population size, were located in different regions across the state, and used different electronic software ('jail management systems') to track data. The data was reviewed with jail or IT staff to ensure accurate interpretation and Task Force staff focused on core components of the data that could be compared across facilities. The sample included Allegan, Alpena, Antrim, Branch, Genesee, Gratiot, Mason, Mecosta, Missaukee, Iosco, Iron, Jackson, Kent, Macomb, Muskegon, Oakland, Oceana, Ontonagon, Tuscola, and Washtenaw Counties.

<sup>53</sup> Over a decade ago the Michigan Department of Corrections led the development of a statewide database on jail information across the state through the Jail Population Information System. However, in recent year the data has not been relied upon for accurate representations across the state, in part due to inconsistent participation and unreliable definitions of data elements.

<sup>54</sup> Incarceration Trends data is accessible at [https://github.com/vera-institute/incarceration\\_trends](https://github.com/vera-institute/incarceration_trends) and the National Archive of Criminal Justice Data is accessible at <https://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/37135>.

<sup>55</sup> The report is available at <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=1318>.



### Demographics

Basic demographic information was included in most of the data, specifically race and ethnicity, sex, and age (sometime calculated using date of birth). Certain categories of race and ethnicity were not analyzed because they were not captured across all facilities (e.g., Native American) or because staff were not confident they were being utilized appropriately at booking (e.g., Hispanic).

Age was available for 99 percent of admissions. Race and sex information was available for 91 percent of admissions, all but two counties. Those counties were therefore excluded when comparing race and sex in the jail data with the resident population of counties in the sample.

### Offenses

Two types of coding systems were used by jails in the sample to identify charges associated with an admission to the jail: Michigan Incident Crime Reporting (MICR) codes, utilized by the Michigan State Police in tracking arrests and crime throughout the state, and Prosecuting Attorneys Coordinating Council (PACC) charge codes which correspond to Michigan Combined Law (MCL) statutes. Because these codes did not match up one-to-one, and because together they made up more than one thousand unique charges, the charges were grouped into broader offense categories for analysis. The following offense groups were used:

- *Assault* – Simple and aggravated assault, excluding any offenses referring domestic violence.
- *Breaking and Entering* – Burglary and breaking and entering offenses, with or without forced entry, in residences or non-residences.

- *Controlled Substance Violation, Delivery or Manufacture* – Delivering or manufacturing any controlled substance, possessing with intent to manufacture or deliver any controlled substance, or operating or maintaining a house or laboratory manufacturing any controlled substance.
- *Controlled Substance Violation, Possession or Use* – Possession or use of any amount of controlled substance (e.g., marijuana, cocaine, heroin).
- *Domestic Violence* – Assault or battery in which the victim has an intimate relationship, defined in MCL 750.81.<sup>56</sup>
- *Driving Without Valid License* – Operating a vehicle without a license, with a suspended or revoked license, or without a license on person.
- *Friend of the Court* – Failure to pay child support or disorderly person charges related to non-support.
- *Habitual* – Charges related to repeat offenses under the habitual offender statute without the specific underlying charge noted.
- *Miscellaneous Arrest* – Category utilized in MICR codes for criminal charges not otherwise specified within the available codes. No other charges were categorized as miscellaneous.
- *Motor Vehicle Violation, Driving* – Motor vehicle violations that directly relate to the driving behavior, such as reckless driving and failing to stop after a collision.
- *Motor Vehicle Violation, Paperwork* – Motor vehicle violations that are not driving-related (excluding Driving Without Valid License), such as operating a vehicle without insurance or valid license plates and permit violations.
- *Nuisance* – Trespassing, disorderly person, vagrancy, prostitution, and solicitation offenses.
- *Obstruction of Justice* – Offenses including contempt of court and failure to appear, but excluding Obstruction of Police, described below.
- *Obstruction of Police* – Resisting and obstructing, disarming, or fleeing from any law enforcement of public officer.

<sup>56</sup> Offenses were only categorized as domestic violence if specified by the PACC or MICR code. It's likely that some domestic violence cases were captured as assault cases at booking. While there are specific codes for aggravated assaults of family members (1301, 1302, 1303), there are not specific codes for simple assault of a family member or intimate partner.

- *Other Person Offense* – Person offenses not otherwise specified among the offense groups, including armed robbery, stalking, child abuse, and criminal sexual conduct.
- *Other Property Offense* – Property offenses not otherwise specified among the offense groups, including malicious destruction of property, falsely possessing credit cards, and embezzlement.
- *Other Public Order Offense* – Public order offenses not otherwise specified among the offense groups, including falsely reporting crimes and interfering with electronic communication.
- *Operating Under the Influence* – Operating a vehicle (motor vehicle, boat, etc.) while under the influence of alcohol or drugs, including any illegal amount of blood alcohol content, and including first-time or repeat offenses. Also includes transporting open container violations.
- *Probation/Parole Violation* – Violations and revocations of probation or parole supervision, when another specific offense was not listed.
- *Release Violation* – Violating conditions of pretrial release, including protective orders or electronic monitoring devices, and fugitive charges.
- *Sex Offender Technical Violation* – Failing to register or comply with conditions of sex offender convictions.
- *Theft* – Retail fraud, larceny, motor vehicle theft, and stolen property offenses of all monetary values; includes first-time and repeat offenses.
- *Weapons Offense* – Illegally carrying, possessing, selling, using, or tampering with a firearm or other weapon.

Offense information was available for 89 percent of admissions. If multiple charges were associated with a single admission, the most serious offense was identified using the information available in the jail data.

To determine the most serious offense, felonies were ranked first, followed by misdemeanors and then civil infractions. This ranking categorized the majority of admissions, but if charges were still tied for seriousness, Person Offenses were ranked first (Domestic Violence, Assault, Other Person Offense), followed by Controlled Substance Violations (Delivery or Manufacture, Possession or Use), Property Offenses (Breaking & Entering, Theft, Other Property Offense), Public Safety

Offenses (Weapons, Operating Under the Influence, Driving Without a Valid License, Motor Vehicle Violations – Driving, Motor Vehicle Violations – Paperwork), Public Order Offenses (Obstruction of Police, Obstruction of Justice, Friend of the Court, Nuisance, Other Public Order Offenses), and Technical Offenses (Sex Offender Technical Violation, Probation/Parole Violation, Release Violation, Habitual Offense).

Crime class, indicating whether the offense was a misdemeanor, felony, or civil infraction, was available as a distinct data element. Because crime class was not always identifiable by the offense code (e.g., some Possession of Controlled Substance offense codes did not specify a substance amount), this analysis used the crime class element available in the data rather than inferring crime class from the MICR and PACC codes. Crime class was available for most admissions from all but six counties. In total, crime class was available for 74 percent of admissions in the sample.

#### Length of Stay

Length of stay was calculated as the difference between the date of admission and the date of release for a single booking into jail. Some individuals may have been admitted to jail multiple times for a single case, but length of stay as calculated captured the time of a single stay in jail. Individuals who were admitted and released to jail on the same day were considered to have stayed in jail “1 day or less.” Individuals identified in the data as serving their jail sentence across multiple weekends were counted were counted as a single admission and excluded from the length of stay analysis. This group accounted for approximately one percent of all admissions in the sample. Admissions that did not have a release date were excluded from the length of stay analysis. This group accounted for less than one percent of all admissions.

#### Jail Bed Days

The size of the jail population is a function of the number of people admitted to jail and their length of stay. One individual who stays in jail two day takes up two bed days. Two individuals who each stay in jail 30 days take up 60 bed days total. Jail bed days were calculated by multiplying the number of people admitted to jail by the number of days they stayed. Individuals who were admitted and released on the same day were considered to take up 1 bed day in the analysis.

#### Release Reason

A reason for release was available for 92 percent of the admissions in the sample (primarily unavailable for

Muskegon and Ontonagon Counties). Because jails in Michigan do not have uniform standards for tracking data, the release reasons that were provided differed in level of specificity and had to be grouped into broader categories for analysis of the full sample.

The categories created included Bonded Out, Sentence Served, and Released to Other Agency. Releases that Bonded Out included those released on cash or surety bonds or those released on personal recognizance. Sentence Served included those released from jail because they had completed serving their sentence or had been sentenced to time served. Released to Other Agency included those released to another jail, to a federal agency, or to the Michigan Department of Corrections. If there were multiple reasons listed for release (e.g., sentenced served for one offense, bonded out on another charge) the release reason that most likely drove the length of time in jail was recorded, using the following hierarchy: Released to Other Agency, Sentenced Served, Bonded Out. For example, if an individual served a sentence for one offense and bonded out on another, the release reason was recorded as Sentence Served because that sentence most likely determined the length of time the individual was in jail.

Approximately 22 percent of admissions could not be categorized because the reason provided was unclear or it did not fall into one of the specified categories (e.g., overcrowding release, dropped charges). These more specific reasons were not consistently tracked across jails and could not be analyzed for the full sample.

### Frequent Utilizers

Inmate identification numbers were used to identify the number of times an individual was admitted to the jail during the sample period. This count only includes repeat admissions into the same facility, it does not capture cases where an individual may have been admitted to a different jail. Individuals serving their sentence over multiple weekends were only counted as a single admission.

### Linking to Court Data

Most of the jail data did not have complete information from the court about the status of criminal charges. As a result, it was not possible to tell what portion of jail time was spent pretrial versus sentenced for people who were released after serving a sentence. To help identify that

distinction, the jail data was linked to court data using the personally identifiable information available in both data sets. Cases were considered a match if they had the same first and last name and date of birth, were sentenced within the same county that they were jailed and the sentence date lined up with their jail stay. In all, about 35,000 admissions that were released from jail after completing their sentence were linked to the court data.

### Urbanicity

Counties were classified using categorizations created by the Vera Institute of Justice for research on jail populations across the United States.<sup>57</sup> The classification categories were modified from the National Center for Health Statistics' *Urban-Rural Classification Scheme* and are based on U.S. Census Bureau population data.<sup>58</sup>

- *Urban* – One of the core counties of a metropolitan area with one million or more people: Kent, Wayne (2)
- *Suburban* – Counties within the surrounding Urban area: Barry, Lapeer, Livingston, Macomb, Montcalm, Oakland, Ottawa, St. Clair (8)
- *Small/mid* – Counties with medium and small metro areas: Bay, Berrien, Calhoun, Cass, Clinton, Eaton, Genesee, Ingham, Jackson, Kalamazoo, Midland, Monroe, Muskegon, Saginaw, Van Buren, Washtenaw (16)
- *Rural* – Counties of less than 50,000 (micropolitan) and non-core areas: Alcona, Alger, Allegan, Alpena, Antrim, Arenac, Baraga, Benzie, Branch, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Lenawee, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford (57)

### Mental Health

The Wayne State University Center for Behavior Health and Justice (the Center) has studied the prevalence of mental illness and substance misuse in Michigan's jail population. On behalf of the Michigan Mental Health

<sup>57</sup> See Vera Institute of Justice, *Out of Sight: The Growth of Jails in Rural America* (2017).

<sup>58</sup> See U.S. Department of Health and Human Services, Vital Health Statistics 2, no.166. *2013 NCHS Urban–Rural Classification Scheme for Counties* (2014).

Diversion Council, the Center piloted systematic screenings for Serious Mental Illness (SMI) in ten jails across the state using the Kessler 6 (K6) between 2015 and 2019. In 2019, almost 4,000 admissions to jail were screened using the K6 and analyzed to determine the prevalence of SMI in Michigan's jails (a cut-off score of 9 was used to define SMI). Overall, 23 percent of people admitted met the threshold for SMI, but the share varied depending on the population size of the county – jails in metropolitan counties had a prevalence of 21 percent, urban counties 19 percent, and rural counties 34 percent. Analysis of over 1,000 screened admissions in 2017 found that individuals that met the threshold for SMI spent 14 more days in jail than those who did not meet the SMI threshold, even when controlling for offense type. The prevalence of serious mental illness for Michigan's general population was assessed by the Substance Abuse and Mental Health Services Administration and reported in *Behavioral Health Barometer, Michigan, Volume 5*. The prevalence is the annual average during 2013-2017 for adults 18 and older.<sup>59</sup>

## Arrest Data

The Michigan State Police compiles statewide data on arrests from approximately 600 police and sheriffs' departments. Since 2008, the state has used incident-based crime reporting, which tracks a greater number of individual offenses and information than the FBI's Uniform Crime Reporting (UCR) Program.

The arrest data track "arrest events" which include people arrested on warrants (Warrant Arrests), people arrested when law enforcement observe a violation of the law (On-View Arrests), and people who are issued a citation or a summons to court in lieu of an arrest (Citations). Like the UCR Program, the data captures one arrest event for each separate instance a person is arrested, cited, or summoned. An arrest event could involve multiple criminal charges for the person being taken into custody. Like the UCR Program, if there are multiple offenses associated with an arrest, Michigan's data captures the most serious charge.

A citation, also called an appearance ticket, involves directing a person to appear in court on a specific date. In Michigan, officers can use citations instead of making an arrest only for misdemeanors that are punishable by 93 days or less, with some exclusions. This data does not include most traffic violations, such as driving with a

suspended license, which are citable offenses in Michigan. The Task Force heard from law enforcement that traffic violations are frequently cited, so if they were included in the data the share of citations issued would be higher.

Between 2008 and 2018, new charges were added to the list of arrest codes specifying additional types of Operating Under the Influence. These new charges were collapsed into a broader group to ensure consistent comparison across years. As referred to in this report, Operating Under the Influence includes Driving with BAC > 0.08 and "Super Drunk Driving" (BAC > 0.17).

## Court Data

### Judicial Data Warehouse

The Michigan Supreme Court, through the State Court Administrative Office (SCAO), established the statewide Michigan Judicial Data Warehouse (JDW). The JDW is the state's central electronic repository for court records in civil and criminal cases, with nearly all courts across the state reporting to the database. In 2018, the JDW contained 97 percent of criminal cases reported by local courts.

The JDW was used to analyze misdemeanor sentence length, disposition, and days credited to an individual's sentence, or "jail credit." According to statute, a judge will credit to an individual's sentence any days served in jail prior to sentencing. In the analysis of jail credit, cases were considered "Sentenced to Time Served" if the days of jail credit were equal to the number of days sentenced to jail. Sentence information for cases filed in 2018 was available for 90 percent of expected cases (i.e. cases disposed as guilty).

The JDW holds charges identified through Prosecuting Attorneys Coordinating Council (PACC) codes, Secretary of State (SOS) codes, and local ordinances. These codes and associated descriptions amounted to thousands of unique charges, 88 percent of which were identified for analysis.

Traffic violations were identified as all criminal offenses falling under the Motor Vehicle Code (Chapter 257 of the Michigan Compiled Laws) and driving violations under the Insurance Code (specifically, MCL 500.3101). This category included offenses such as Driving with a Suspended License and Driving Without Insurance; it did not include Operating Under the Influence offenses. To

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<sup>59</sup> Substance Abuse and Mental Health Services Administration, *Behavioral Health Barometer, Michigan, Volume 5* (2019). Available at <https://store.samhsa.gov/product/Behavioral-Health-Barometer-Volume-5/sma19-Baro-17-US>.



identify traffic violations when there were multiple charges associated with a case (occurring in approximately 20 percent of cases) the most serious offense was identified before conducting analyses. The most serious offense was determined by first ranking felony charges before misdemeanors, and then ranking by seriousness of the charge, according to the hierarchy Person Offenses, Controlled Substance Offenses, Property Offenses, Weapons Offenses, Operating Under the Influence, and Traffic Violations.

### OMNI Data (Felony sentencing data)

The Michigan Department of Corrections (MDOC) compiles data on felony case dispositions and sentences across the state in the Offender Management Network Information system (OMNI). This includes the results of presentence investigations, conducted for every felony conviction by MDOC staff to aid judges at sentencing.

Analyses were conducted at the level of sentencing events, or all offenses that an individual was sentenced for on a single day. When sentencing events included multiple offenses or dispositions, the most serious disposition was used. The most serious disposition was determined using the sequencing outlined in MDOC's 2018 Statistical Report: Prison, Jail and Probation, Jail, Probation, Other. If the disposition types were the same, the disposition with the longest minimum term was reported, and if the dispositions were still equal, then the disposition with the longest maximum term was reported.

The available data accounted for 89 percent of all felony convictions in the state, and excluded convictions statutorily sealed from public records (e.g., HYTA sentences). Felony sentencing data was used to analyze sentence length and jail credit but was not used to report the number of felonies sentenced to jail. Total felonies

sentenced to jail was reported in MDOC's 2018 Statistical Report and included all felony convictions.<sup>60</sup>

### County Budget Data

Counties in Michigan report budget information to the state using the F-65 form, Annual Financial Report. The Michigan Department of Treasury makes some county budget data available through the Michigan Community Financial Dashboard, and this publicly available data was analyzed.<sup>61</sup> Counties report expenses by fund, subcategory, and general expense description, but the reported information may not include the level of detail counties use on their individual charts of accounts.

### Resident Population Data

The U.S. Census Bureau releases annual resident population estimates at the state and county level by race, ethnicity, age, and sex. The population estimates are for July 1<sup>st</sup> of each year and are based on the Census 2000 and Census 2010 counts. In collaboration with the National Center for Health Statistics, an online database of population estimates is publicly available and was used in this report.<sup>62</sup>

### Crime Data

The Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program tracks reported property and violent crimes from law enforcement agencies across the country and is made publicly available.<sup>63</sup>

The crime rate is calculated as the number of crimes per 100,000 residents. In the UCR data, violent crime includes murder, nonnegligent manslaughter, rape, robbery, and aggravated assault, and property crime includes burglary, larceny-theft, motor vehicle theft, and arson. Non-violent and non-property crimes (such as controlled substance offenses) are not reported.

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<sup>60</sup> Michigan Department of Corrections, *2018 Statistical Report* (2019) <https://www.michigan.gov/corrections/0,4551,7-119-1441---,00.html>.

<sup>61</sup> The data is accessible at <https://micommunityfinancials.michigan.gov#!/dashboard/COUNTY/?lat=44.731431779455505&lng=-83.018211069625&zoom=5>.

<sup>62</sup> The data is accessible at <https://wonder.cdc.gov/>.

<sup>63</sup> The data is accessible at <https://ucr.fbi.gov/crime-in-the-u.s.>

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