Attachment A

Pretrial Reform Proviso Workgroup Report

July 2019

I. Contents

II. Proviso Text

Ordinance 18835, Section 19, PSB Budget[1]

P3 PROVIDED FURTHER THAT:

Of this appropriation, $100,000 shall not be expended or encumbered until the executive transmits a King County pretrial reform report from a workgroup to be established by the executive in accordance with this proviso and a motion that acknowledges receipt of report, and a motion is passed by the council. The motion should reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion.

The workgroup shall be convened by the office of performance, strategy and budget and shall include representatives from the department of public defense, prosecuting attorney's office, the superior and districts courts, the department of adult and juvenile detention, the council, the department of judicial administration and community and nonprofit organizations working to reduce pretrial incarceration. The workgroup shall consult with community stakeholders, including those representing victims of crime. The activities of the workgroup shall include, but not be limited to:

A. Reviewing quantitative and qualitative data to evaluate the number of adults held in King County correction facilities who have not been adjudicated or sentenced ("pretrial") and why;

B. Developing recommendations based on the review conducted in Section A of this proviso to reduce the number of nonviolent pretrial adults held in King County correction facilities; and

C. Developing recommendations to improve collection and integration of King County data related to pretrial detention to allow for meaningful analysis.

The King County pretrial reform report shall include, but not be limited to: (1) a quantitative analysis of the current pretrial jail population and a qualitative review of the current pretrial process to inform an analysis of the factors that are contributing to pretrial detention; (2) documentation of the activities conducted by the workgroup as required by this proviso; (3) the recommendations identified by the workgroup as required by this proviso; and (4) from a noncounty subject matter expert on pretrial detention, recommendations of specific actions King County can take to reduce pretrial detention and issues related thereto.

The executive should file the report and a motion required by this proviso by July 31, 2019, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the law and justice committee, or its successor.

[1] Link to Ordinance 18835

III. Executive Summary

The creation of the Pretrial Reform Workgroup was required in the 2019-2020 King County Adopted Budget. The workgroup was charged with (A) reviewing data, both quantitative and qualitative, about the number of adults being held pretrial in King County correctional facilities; (B) developing recommendations based on the review conducted in section A to reduce the number of nonviolent pretrial adults held in King County correction facilities; and (C) developing recommendations to improve collection and integration of King County data related to pretrial detention to allow for meaningful analysis. Workgroup members are listed in Appendix A on page 40.

This report identifies issues and potential avenues for further focus that have some level of cross-agency agreement. It also illuminates areas where there is not currently agreement. Each recommendation offers next steps in furthering the recommendations.

Throughout this report are recommendations from the workgroup and from stakeholders. Each set of recommendations is categorized into access, services, and data.

- Access means directly related to a court appearance.
- Services are supports to address an individual's behavioral health or economic barriers to release or successful compliance with court conditions.
- Data are de-identified information.

King County is a state and national leader in applying the presumption of innocence to pretrial defendants. On a per capita basis, the County has the lowest incarceration rates for adults. Additionally, among the largest metro areas in the country, King County has one of the lowest Average Daily Population rates of youth detention. Nevertheless, there is room for continuous improvement, particularly in the area of data collection and providing assistance to defendants awaiting trial to help avoid recidivism and failure to appear.

Review of the Data

- Criminal legal system agencies' data systems do not talk to one another; each agency's system has data unique to it. Different systems sometimes use the same terminology but mean different things. Answering simple questions cannot currently be auto-populated or shared between systems.
- To provide some data on who is held pretrial and why, a time-consuming manual process was undertaken to produce a one day snapshot of open and active King County responsible[2] cases at the "pretrial" stage, referred to throughout this report as the Snapshot.
- A data system integration plan is necessary and is, as a result of this work, being developed among the criminal legal system agencies and King County Information Technology (KCIT).
- On March 25, 2019, the day of the one-day snapshot, 46 percent of those facing charges in Superior Court (typically felonies) were held pretrial. Less than 2 percent of those with District Court cases (misdemeanors) were held pretrial on the same date. The snapshot further found that Superior Court Judges release most nonviolent offenders.

[2] King County responsible means cases being prosecuted by the King County Prosecuting Attorney's Office. King County correctional facilities contract with some cities to provide detention services for cases prosecuted by cities, and those cases are not included in the snapshot.

- A review of available historical data showed that King County has dramatically reduced both the filing of criminal cases (a 38 percent decrease in Superior Court and a 52 percent decrease in District Court) and bookings into jail (a 42 percent reduction).
- The Snapshot showed 6,113 open and active cases against 5,533 defendants on that day. Of those defendants, 1300 or about 23 percent, were in custody on that particular day. About 46 percent of defendants with Superior Court cases (1,251 defendants typically charged with felonies) were in custody on that day. Less than 2 percent of those with District Court cases (49 defendants charged with misdemeanors) were in custody on that day. The specific charges each defendant was held on were detailed in the snapshot analysis along with likely reasons for being held. The reasons why a defendant might be in custody on particular day can vary greatly. Additionally, while the "pretrial" stage can last for months, a defendant's custody status can change so that they spend some time in custody and some out. The time a defendant spends in custody on a case "pretrial" can vary from none, to a day, to weeks, or even the entire pretrial period depending on a variety of factors. See the "One Day Snapshot" section starting on page 26 for details.
- This snapshot included more detailed analysis of 286 individuals detained for charges generally considered nonviolent. The analysis found that most of these defendants had other factors in their record that may have played a role in their incarceration, including holds from other jurisdictions, extensive criminal history, extensive warrant history, and Department of Corrections (DOC) probation violations
- Data obtained from King County Superior Court showed that more than 35% of defendants had a least one pretrial bench warrant for their arrest. A precise figure cannot be provided because the current data limitations mean that the defendants who were held in custody for the entirety of their case and had no opportunity to have a warrant could not be excluded.
- Data from the King County Department of Adult and Juvenile Detention (DAJD) showed that 95 percent of "presentence" County-responsible population was held on a felony and that a large majority of defendants booked into jail on misdemeanors (76 percent) are released within zero to three days. However, these numbers do not represent an accurate picture of the "pretrial" population because DAJD does not classify defendants as "pretrial" in the common understanding of the term. DAJD classifies persons as "presentence" and "sentenced". A "presentence" individual includes persons who have pled guilty or been convicted or were booked for a warrant on a violation of a condition of a sentence but who have not yet had their sentencing or violation hearing setting a final sanction.
- The pending re-validation of the Personal Recognizance Interview Needs Screen (PRINS) tool will provide additional data for analysis.

Community Feedback

Discussions with community organizations underscored that pretrial detention, even for two days, often has cascading and long-lasting consequences to the accused person, their family, and their community. Among the community's feedback:

- It is anticipated that connecting the accused person to community supports upon booking may assure the court that the person will return to court and that community safety will be protected if the person is released on personal recognizance (PR). Such supports should, to the extent possible, fold into existing case management initiatives that accompany individuals to such obligations in the field (i.e., not office-based case management); the most significant are community bail fund supports, LEAD and Vital case management.

- Requiring physical appearance in court for all hearings is an increasing burden, given transportation and employment challenges. This burden could be relieved by making some court hearings accessible via video or audio; however, the client should never be required to appear by video nor should a decision to appear in person as opposed to video ever be held against them.

Initial Workgroup Recommendations

1. Plan for an integrated data system.
   The robust data systems maintained by the various criminal legal system agencies (superior and district courts, judicial administration, jail, prosecutor, and public defense) do not interface with each other and do not include unique keys that would enable linking of data to support analysis. A workgroup has convened to develop a path to integrate these systems.
2. Send text message reminders to all clients.
   DPD is currently launching a text message reminder system that has gradually been phased into operation. Not all individuals charged with crimes are represented by DPD, and the King County District Court (KCDC) will be implementing a reminder system in the new Case Management System (CMS) for all case types, including infractions and small claims.
3. Expand existing navigators/field-based case management approaches to support court appearance and other needs.
   This recommendation would provide peer navigators and/or case management services to help individuals attend court and to access community-based services.
4. Side Door: Pre-booking diversion to behavioral health or other services.
   This diversion focused option would provide law enforcement officers with an alternative to booking in predefined cases. At a location that can also offer temporary shelter and care, officers could bring candidates to a stabilizing site where assessments, service linkages, connections to LEAD, VITAL, Community Passageways, and other deflection and diversion options can occur.
5. Begin jail release planning at intake.
   As part of an evidence-based continuum, this proposal would identify individuals with behavioral health, housing, or other criminogenic needs at the time of intake and develop/coordinate a discharge plan which would include not only a peer-supported “warm hand off” but also focus on housing and other connections to community-based services.

IV. Introduction

The 2019-2020 Final Adopted Budget includes a proviso in the Office of Performance, Strategy and Budget (PSB) budget requiring a report on pretrial reform including qualitative and quantitative analysis, stakeholder consultation, workgroup recommendations, and external expert recommendations (Ord. 18835, Sec. 19, P3). This report fulfills the requirements of the proviso.

Workgroup Activities

PSB convened the Pretrial Reform Proviso Workgroup, which met seven times between February 22 and June 24, 2019, with a final meeting October 7, 2019. A data subgroup met at least every two weeks, and sometimes more often, as necessary to develop a quantitative analysis of the current pretrial population. King County's criminal legal system agency data systems are not integrated and each hold information unique to them. As a result, answering the data questions posed by the proviso required a time-intensive manual compilation and analysis of the data, and the workgroup report thus presents a one-day snapshot of the current pretrial jail population (see page 15). Developing specific recommendations to improve collection and integration of King County data to allow for meaningful analysis will require additional work, which is underway.

The workgroup included representatives from the Department of Public Defense, Prosecuting Attorney's Office (PAO), King County Superior Court, King County District Court, the Department of Adult and Juvenile Detention (DAJD), the King County Council, the Department of Judicial Administration (DJA), the Public Defender Association, and the American Civil Liberties Union of Washington. A list of all workgroup members is included in Appendix A on page 40.

As required by the proviso, the workgroup met and consulted with a non-County subject matter expert on pretrial detention, the Pretrial Justice Institute (PJI). Workgroup members also consulted with organizations representing communities impacted by the criminal legal system, including Community Passageways, the Urban League of Metropolitan Seattle, Seattle King County NAACP, and the Northwest Community Bail Fund. Workgroup members also consulted representatives of the Prosecuting Attorney's Office's Victim's Advocate unit, as well as with representatives of the commercial bail industry.

The context and recommendations from these entities will be discussed later in this report.

V. Background

National Context

Significant attention is being focused nationally and in Washington State on pretrial detention. "Pretrial detention is a main driver of the U.S. high incarceration rates: approximately 75 percent of people in jails nationwide have yet to be convicted of the charges for which they were arrested."[3]

The Vera Institute, one of the most respected authorities in jail and prison reform and de-incarceration, has noted in several studies that large urban centers nationally are reducing their jail populations. King County began its de-incarceration efforts in 2000 with the Adult Justice Operational Master Plan Project and is a leader in this national urban trend of de-incarceration, with the County's adult jail and juvenile detention population being the lowest, per capita, for like-sized counties in the nation. The Vera Institute has created a web-based data set for all county jails in the United States where these incarceration trends can be viewed from 1970-2015.[4]

The destabilizing impact of pretrial detention, for as little as three days, reverberates through a person's life. Those impacts can include loss of job or housing, disruption of medical care, or family instability, and impact on children when their parents are jailed for even a few days is far reaching.[5] Pretrial detention may increase the likelihood of conviction, sentences to incarceration, future failures to appear, and reoffending.[6, 7, 8, 9, 10]

Jurisdictions around the country are seeking to achieve a just and fair pretrial release and detention system that balances the protection of public safety with the presumption of innocence and due process. There is a recognition that the release of any person before trial involves risk[11] but so too does every pretrial detention. The risk upon releasing any individual is generally impossible to predict and is low, though the harms of pretrial detention are well known.[12]

King County Superior Court reports that King County's practice with respect to pretrial detention is unique both statewide and nationally. The presumption of release is followed routinely within this

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[3] Ortiz, Natalie. 2015 County Jails at a Crossroads. Washington, DC: National Association of Counties.
[4] See Vera Institute's Incarceration Rate data
[5] Nell Bernstein, All Alone in the World: Children of the Incarcerated (New York: The New Press, 2007).
[6] Dobbie, Will, Jacob Goldin, and Crystal Yang. 2018. "The Effects of Pretrial Detention on Conviction, Future Crime and Employment: Evidence from Randomly Assigned Judges." American Economic Review 108(2):201-40.
[7] Lowenkamp, Christopher T.2013. " The Hidden Costs of Pretrial Detention. Houston: Laura and John Arnold Foundation.
[8] Oleson, J.C., 2013. "The Effect of Pretrial Detention on Sentencing in Two Federal Districts". Justice Quarterly 33 (6): 1103-22.
[9] Duane, Marina 2017.Criminal Background Checks: Impact on Employment and Recidivism, Washington, DC: Urban Institute.
[10] The Pew Charitable trust, Economic Mobility Project and Public Safety Performance Project. 2010 Collateral Costs: Incarceration Effects on Economic Mobility. Washington, DC: The Pew Charitable trusts.
[11] It's also important to recognize that, statistically, the risk of releasing almost any individual is exceedingly low. Chelsea Barbaras, Karthik Dinakar and Colin Doyle, "The Problem With Risk Assessment Tools" New York Times, July 17, 2019. https://www.nytimes.com/2019/07/17/opinion/pretrial-ai.html
[12] See generally, Vera Institute: Bail and Pretrial

jurisdiction and the County's jail population, considering King County's size, is extraordinarily low when contrasted with other jurisdictions.

Local Context

Washington State Pretrial Reform Task Force[13]

Washington State leaders have also recently addressed pretrial detention issues. In 2017, the Washington State Minority and Justice Commission, the Superior Court Judges' Association, and the District and Municipal Court Judges' Association convened a statewide Pretrial Reform Task Force, co-chaired by Justice Mary Yu, King County Superior Court Judge Sean P. O'Donnell, and Spokane Municipal Court Judge Mary Logan. The task force was established with the goals of examining current pretrial practices in Washington and developing consensus-driven recommendations for local jurisdictions to consider when improving their pretrial systems.

The Washington State Pretrial Reform Task Force met over an 18-month period. The Task Force reported that it worked diligently to learn more about Washington's pretrial systems, local pretrial improvements and national pretrial reform efforts. They partnered with the Pretrial Justice Institute (PJI) a national organization striving to make pretrial practices safer, fairer, and more effective.

The task force was divided into three subcommittees: (1) Pretrial Services, (2) Risk Assessments, and (3) Data Collection and were tasked with developing recommendations for each of the issues. In February 2019, the final report was issued which outlined the work, data and recommendations on the best pretrial practices as follows:

1. **Pretrial Services**: Additional supports are needed to assist accused persons in attending court, including reminders of court dates, transportation vouchers, and coordinated referrals to community services such as drug and mental health services. Services should be provided on a voluntary basis and at no cost to the client. Research finds that pretrial services and conditions are effective in ensuring accused persons return to court for their hearings and meetings. Local stakeholders should be involved in recommending policy and practice reforms and should include peer-supports.

2. **Risk Assessments**: The statewide task force did not take a position on whether local jurisdictions should implement pretrial risk assessment tools but did recommend a list of criteria to consider prior to adopting a tool.

3. **Data Collection**: Jurisdictions should collect and record complete information at all points of the pretrial system, including defendant demographics; booking and first appearance; release/detention decisions and bail; and release, new criminal charges and failure to appear, and should provide data analysis to stakeholders and/or the public on a regular basis.

[13] Pages 1-6 of the final report are included as Appendix B and the full 38-page report can be found online here.

Washington State Auditor's Report, Reforming Bail Practices in Washington
In February 2019, the Washington State Auditor also released its report, Reforming Bail Practices in Washington. The Auditor's report focused on pretrial services as an alternative to money bail as a financial incentive for a detained person to return to court after release.

The Auditor's Office assessed the financial impacts and performance outcomes of pretrial programs already in place in Washington. The audit found that pretrial services offer a cost-effective alternative to money bail, with the potential to produce similar outcomes. The report notes that pretrial release and the conditions imposed on persons being released are ultimately a judicial matter and the Auditor's Office does not make any specific recommendations to judges regarding how they should use pretrial services. They do, however, refer readers to the Pretrial Reform Task Force's recommendations noted above. [14]

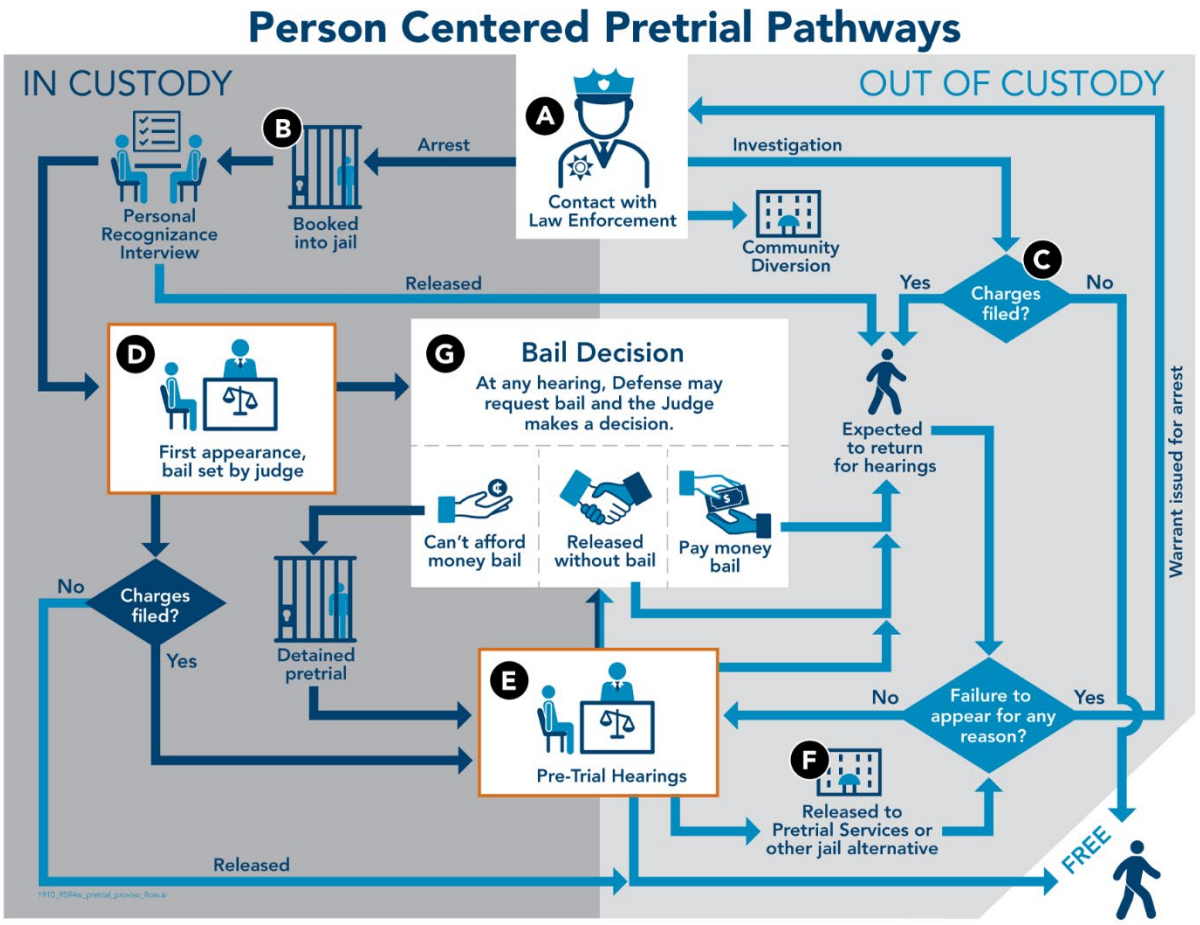
Legal Framework

Washington State Criminal Rule 3.2
Pretrial release in Washington State is governed by law and court rules (CrR 3.2 and CrRLJ 3.2). With rare exception, Criminal Rule 3.2 presumes a defendant will be unconditionally released pre-trial. The presumption of unconditional release can be overcome if the court determines that unconditional release will not reasonably assure the person's appearance when required or the court finds a likely danger that the person will commit a violent crime or will seek to intimidate witnesses or otherwise unlawfully interfere with the administration of justice. Criminal Rule 3.2 provides that, for the purpose of the rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030. King County Pretrial Practices. Relevant factors under CrR 3.2(e) and CrRLJ 3.2(e) for assessing substantial risk of violent re-offense or interference with administration of justice include (among other considerations) the nature of charge; past or present threats or interference with witnesses; past or present use or threatened use of deadly weapon; and record of committing offenses while on pretrial release. If the court finds that a person is not appropriate for unconditional release after applying the CrR 3.2 criteria, the court must consider all less restrictive alternatives before it can impose bail.[15]

Pretrial Process in King County
To formulate recommendations, a review of the current pretrial practices is necessary. The graphic below illustrates the current pretrial process in King County.

[14] The Executive Summary and Conclusions are included as Appendix C and the full 28-page report can be found here.
[15] The complete text of CrR 3.2 is included as Appendix D and a summary bench card is included as Appendix E.

Exhibit 1



A. At the point of initial contact, law enforcement determines whether an individual has a warrant for their arrest or if there is evidence of a crime that requires the officer to decide what action to take. Officers can and do "investigate and release" (I&R). For I & R suspects who have been arrested, there is no requirement that they be booked unless the charge is a DUI or DV. Officers also have diversion options including the Crisis Solution Center for stabilization and assessment and a LEAD referral for several frequently charged offenses. If referred to LEAD, the individual does not get booked. Increased capacity for diversion options is needed.

B. If the police officer decides to arrest the individual, and if the officer doesn't utilize a pre-booking diversion alternative, they transport the individual to the jail for booking. Not all individuals who are arrested are booked into jail.[16]
   - At booking, the King County Personal Recognizance Interview Needs Screen (PRINS) is completed and creates a standardized pretrial Personal Recognizance report provided to the court at first appearance. Those receiving the King County Personal Recognizance interview

[16] DAJD verifies all charging documentation before the arrestee can be booked into a department facility and rejects any warrant booking if the arrested person has sufficient cash on their person to post the required bail wishes to post bail in lieu of being booked into the facility.

are County-responsible persons only, not booked on a capital case, not under DOC supervision, not subject to out of county transfer, and are able to be interviewed.

- There are two optional sub reports that are part of the PRINS:

    1. An assessment of six criminal legal domains and the probability for further criminal activity in any of the six domains if released pretrial. These domains include failure to appear, recidivism as defined in King County, drug crime, property crime, violence, and domestic violence. (This information is only used for data analysis by DAJD and is not shared externally.)
    2. An assessment of criminogenic need areas is completed for some persons in an effort to match individuals with the most appropriate type (needs) and level (risk) of services. The needs assessment is administered to individuals who are admitted to DAJD confinement and community-based programming as well as for some specialty courts.

C. Instead of arresting a suspect, or after arrest but before booking, law enforcement may instead open an investigation that may result in charges being filed by the Prosecuting Attorney's Office while the individual remains out-of-custody. Officers also may utilize a pre-booking diversion alternative for those they have arrested for qualifying offenses (LEAD or the Crisis Diversion Facility).

D. Those who are booked into jail following arrest on new alleged criminal conduct must have a judge determine probable cause within 48 hours of their arrest. This determination can be made at a hearing before a judge or with a judge reviewing sworn written testimony. In King County most of these cases are heard before a King County District Court judge including on Saturday and holidays in the King County jail courtroom. If the probable cause determination is made upon sworn written affidavit, then a hearing will be held the following court business day to address release (defendants booked on misdemeanors other than domestic violence or repeat DUI may post the standard bail schedule for the named crime without the need for a hearing). If the court makes a finding of probable cause at a court hearing, the judge will determine release conditions, held with bail, or, for certain crimes, held without bail. If the PAO does not file criminal charges resulting from the arrest within 72 hours of arrest, the defendant must be unconditionally released.

E. Regardless of whether the defendant is held in custody or not, if the PAO does file charges against a defendant and seeks bail, the judge's decision to hold the individual in custody with bail may be revisited. As a matter of court policy, the court will not reconsider bail – or even set a hearing to reconsider it – absent a showing of changed circumstances.

F. Any pretrial release hearing may also result in a defendant being ordered to pretrial services or another alternative to secure detention. The authority of Judges to order pretrial services is constrained by court rules, including CrR 3.2, and case law.

G. Washington State law presumes that all defendants, except those accused of potentially capital offenses, are eligible for release on bail. However, at times some accused persons are unable to post the full bail amount with the court or the 10 percent typically required by bail bond companies and remain in-custody despite being eligible for release on bail. An individual in this

circumstance may subsequently request a new bail hearing, typically at the pretrial conference one to two weeks after arraignment.

H. Finally, if an out-of-custody defendant fails to appear for court hearings, the judge may issue a warrant for their arrest. If a law enforcement officer discovers during an encounter that an individual has a judicial warrant for their arrest, the officer generally will arrest the defendant and transport them to the jail for booking. A hearing in the KCDC court in this situation can be set at any time within the court rules for timeliness of the hearings previously missed; however, as a matter of practice the first hearing to address the reason for the warrant is generally conducted within 72 hours of arrest on the bench warrant. At times, an individual may have warrants from more than one jurisdiction or more than one court case, greatly complicating the release issue.

Analysis of Existing Data

Quantitative analysis of King County's incarcerated pretrial population is complicated by the fact that the data systems maintained by the various criminal legal system agencies do not interface with each other and do not include unique identifiers that would enable linking of the data from different systems for analysis. Any picture of the pretrial population derived from a single agency's database is incomplete in that it cannot provide a full picture of the circumstances of incarceration. For example, DAJD data provides detailed information on bookings, length-of-stay, and daily population, but cannot answer questions that require data from the court, such as whether warrants were issued, bail was ordered, or whether defendants held briefly in custody and then released are more likely to return to court than those who were never incarcerated. Other factors complicating data analysis include matching persons among the various systems, considering the multi-case related reasons behind any particular incarceration event, and the differing data categories and data definitions in each system. Recognizing these limitations, analysis of individual agency data does provide some insights into the incarcerated pretrial population.

This section begins with an overview of the trend in filings and jail bookings over the past 20 years and then explores recent data from DAJD's data system; the personal recognizance interview needs screen (PRINS), an assessment conducted at the time of booking; Superior Court data managed by the Department of Judicial Administration (DJA); and a single-day snapshot that manually combines data from PAO, Superior Court, and DAJD to show a more complete picture of a very limited subset of pretrial individuals in custody.

Historical Trends

Over the past 20 years, there has been a significant reduction in the number of criminal cases filed in both Superior Court (Exhibit 2) and District Court (Exhibit 3), and a corresponding reduction in the number of bookings and average daily population (ADP) at DAJD's adult custodial facilities (Exhibit 4). The decline shown in the charts below is even greater when considering that the population of King County has grown by approximately 30 percent over the same 20-year period, from 1,686,300 in 1998 to 2,190,200 in 2018.

Exhibit 2: Superior Court Criminal Filings, 1998-2018

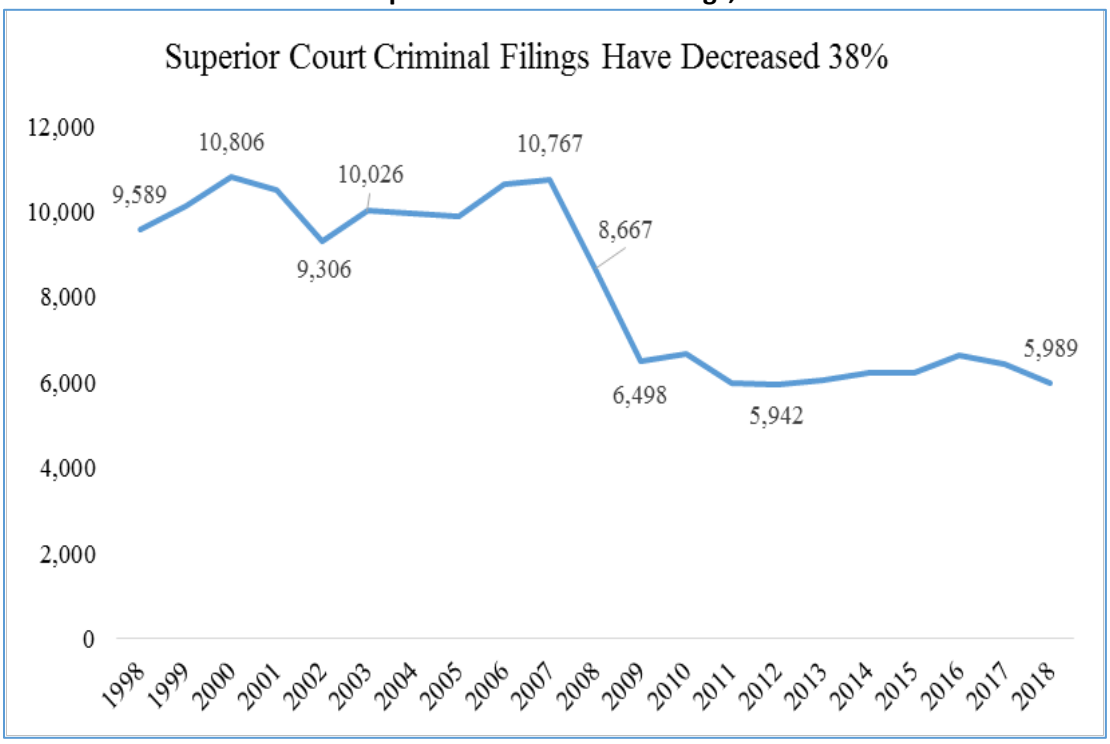


Exhibit 3: District Court County-Responsible Misdemeanor Filings, 1998-2018

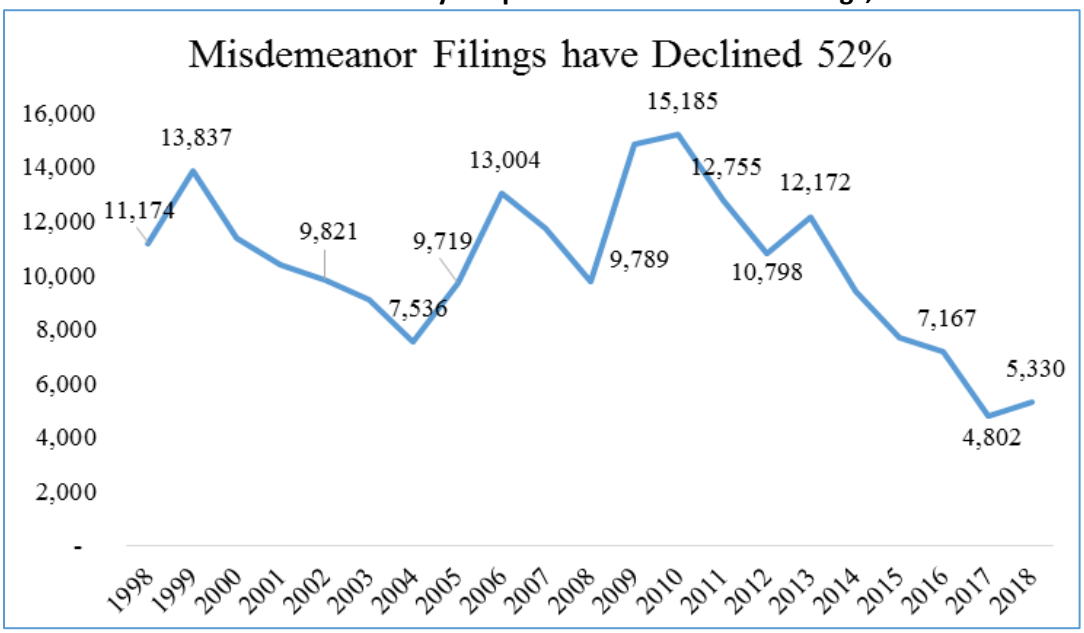
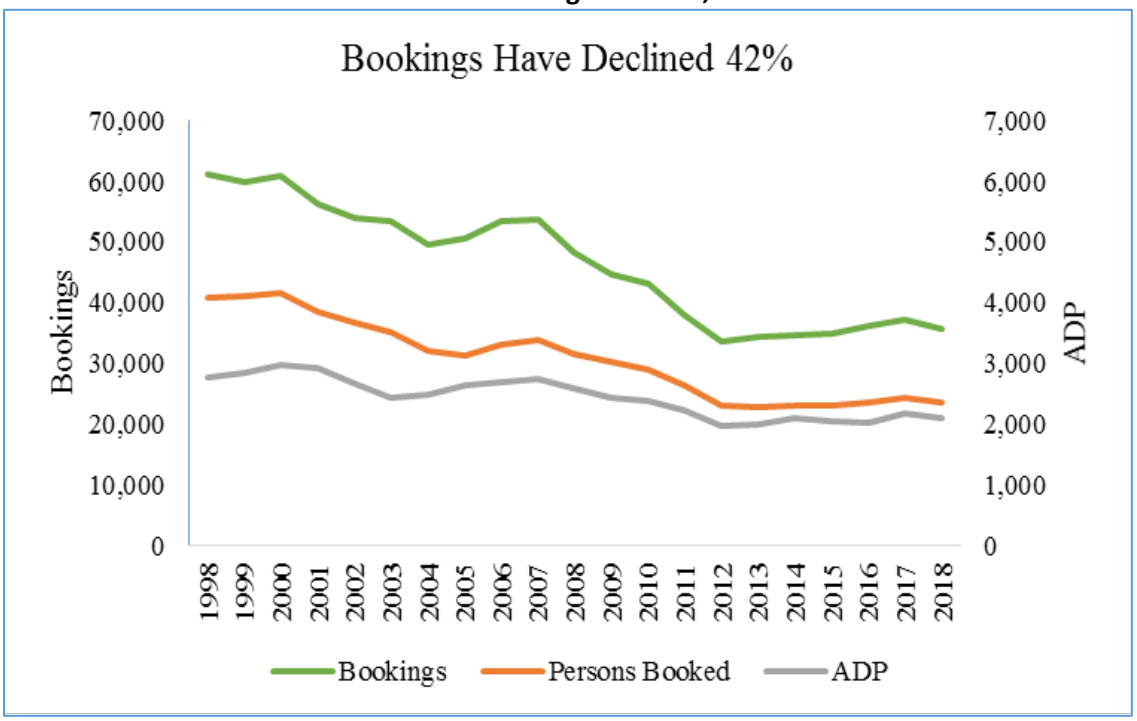


Exhibit 4: DAJD Bookings and ADP, 1998-2018



This decline can be explained at least in part by several actions taken by King County designed to reduce the number of people entering the criminal legal system. In 2002, the King County Council adopted the Adult Justice Operational Master Plan (AJOMP) and legislation creating the Community Corrections Division within DAJD. These initiatives were developed through collaboration between the King County courts, Prosecuting Attorney, public defense agencies, Executive, and Council. AJOMP increased opportunities for supervised pretrial release, among other measures, and began the King County's efforts at de-incarceration.

During 2008 and 2009, the PAO worked with the budget office in a concerted effort to reduce the number of criminal filings. This led to filing policies that, principally, made changes to the prosecution of drug offenses and driving while license suspended in the third degree (DWLS 3) cases. The steep decline seen during this time period in Exhibit 2 is largely explained by these changes. Additional changes in filing standards were implemented in the following years to further reduce drug and DWLS 3 prosecutions. Most recently, the PAO worked with the courts to stop filing criminal charges for possession of any drug in an amount of one gram or less.[17]

Other initiatives designed to reduce involvement in the criminal legal system include the Law Enforcement Assisted Diversion (LEAD) program created by Prosecutor's Office, Seattle Police and public defenders to offer law enforcement a credible alternative to booking people into jail for criminal activity that stems from unmet behavioral health needs or poverty. Since its initial implementation, LEAD has expanded with collaboration from the King County Executive, Council, and Sheriff and has been replicated in other jurisdictions nationwide. In addition, Superior Court has expanded Drug Court to

[17] See "No charges for personal drug possession: Seattle's bold gamble to bring 'peace' after the war on drugs." *The Washington Post*, June 12, 2019.

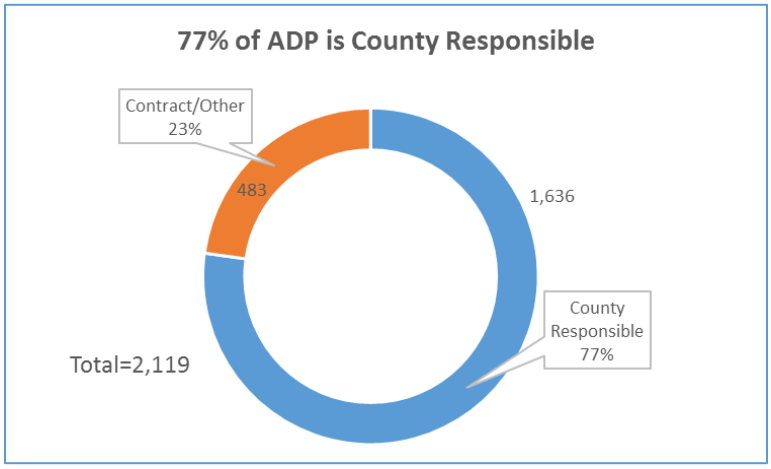
many more classes of crimes; District Court founded Mental Health Court; and District Court has started Community Courts.

Finally, these efforts to reduce criminal filings and incarceration by King County coincided with a nationwide drop in the crime rate beginning in the 1990s.[18] This trend certainly contributed to the drop in filings and incarceration seen in King County, although it is impossible to determine how much of the decline can be attributed national trends and how much to the County's actions.

Analysis of DAJD Data[19]

One of the issues complicating analysis of pretrial detention is the fact that DAJD holds inmates for other jurisdictions on contract in addition to the County-responsible population. As shown in Exhibit 5, King County was responsible for 77 percent of the average daily population (ADP) in secure detention in King County jails during this period. In addition to those accused or convicted of felonies in King County, the County-responsible population includes accused and sentenced misdemeanants from unincorporated King County, state agency arrests from anywhere in the County, and individuals held for investigation prior to charges being filed.

Exhibit 5: ADP by Responsible Jurisdiction



As shown in Exhibit 6, 87 percent of the County-responsible incarcerated population was pretrial defendants during the analysis period.[20] This is due in part to the fact that individuals sentenced to prison terms longer than one year are held in the Washington State Department of Corrections system, inherently limiting the sentenced population in King County's jails.

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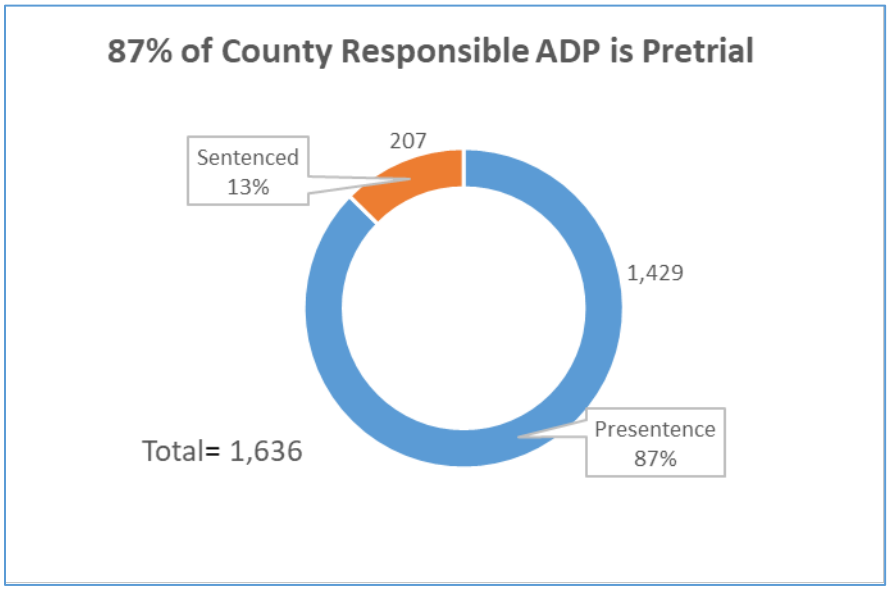
[18] See for example, Blumstein and Wallman, *The Crime Drop in America*. (Cambridge Press, 2006).

[19] Source for the data analyzed in this section: Department of Adult and Juvenile Detention releases between 10/1/2017 and 9/30/2018.

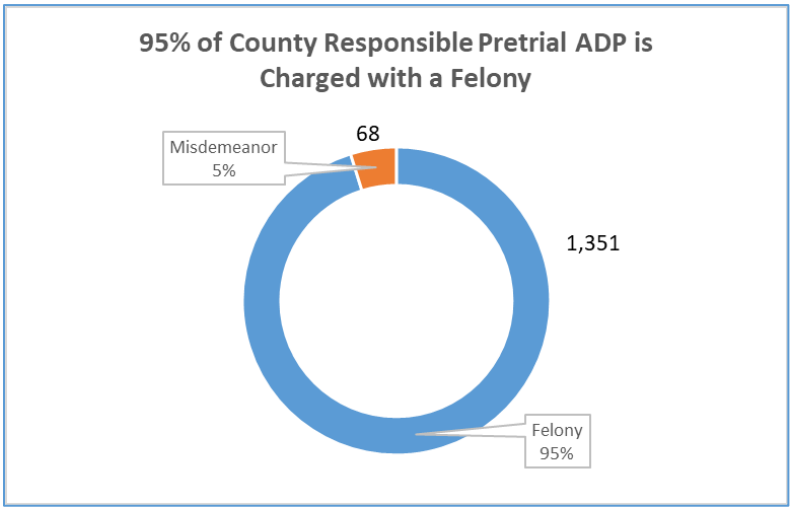
[20] DAJD classifies inmates as presentence, post-sentence, or not sentenced. The data in Exhibit 6, Exhibit 7, and Exhibit 8 combines the presentence and not sentenced categories as "pretrial." However, it is important to note that the presentence category includes individuals who would not commonly be considered pretrial. For example, DAJD does not change the status from presentence to post-sentence until after a judgement has been entered, which is typically after the point of adjudication. Additionally, persons awaiting a court hearing on a post-sentence violation are counted in the presentence group to enable DAJD's system to track the need to get them to a hearing.

Exhibit 6: ADP Pretrial vs Sentenced



Finally, as shown in Exhibit 7, 95 percent of the County-responsible pretrial ADP during the analysis period was held on felony matters. Collectively, these three charts show that individuals accused of felonies and held in custody pretrial constitute a majority of DAJD's secure ADP (1,351 of the total ADP of 2,119 during this period, or 64 percent). However, many individuals are booked and held for investigation a short period prior to the filing of charges or on misdemeanors.

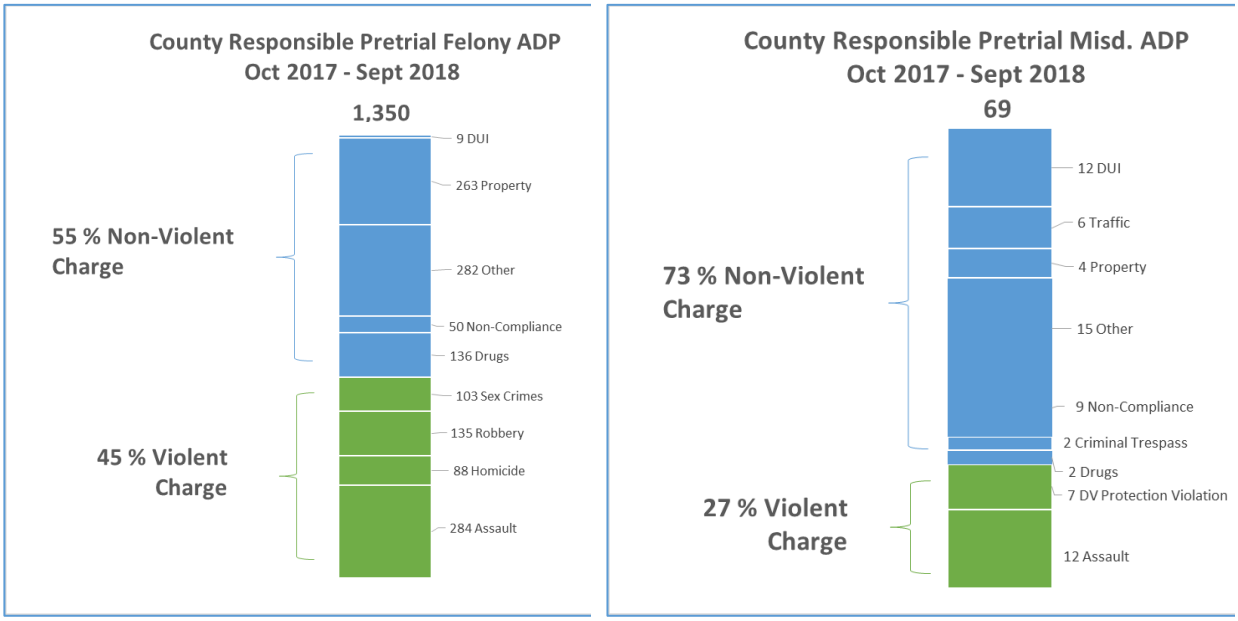
Exhibit 7: ADP by Felony or Misdemeanor Charge



The two charts in Exhibit 8, below, show the most serious charge faced by the County-responsible pretrial average daily population accused of felonies and misdemeanors, respectively. It is important to note that the charge information shown below is based on DAJD categories and does not necessarily align perfectly with data from the Court because charge information is entered into DAJD's data systems manually rather than through an interface with Court databases. Additionally, the grouping of charges

into violent and non-violent categories is based on DAJD's judgment and does not necessarily match statutory definitions of violent crimes.[21] Finally, crimes classified as "other" have been assumed here to be non-violent, but this category contains a wide variety of crimes about which little is known. It is possible that some of these "other" crimes would be considered violent by a reasonable observer.

Exhibit 8: ADP by Charge Type

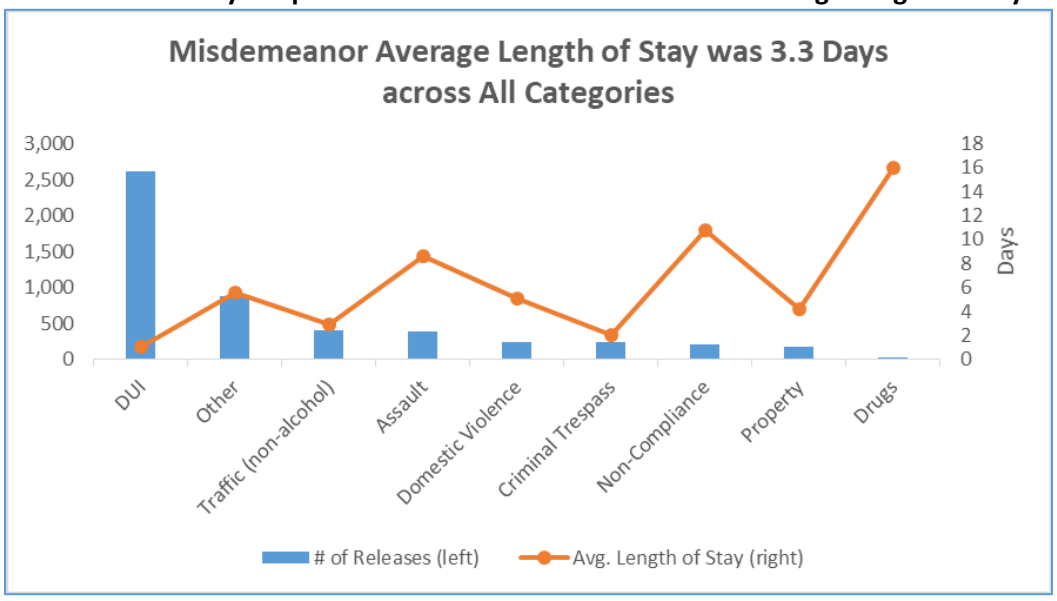


The next set of charts using DAJD data help to illustrate the pretrial length of stay by crime type and race.[22] Exhibit 9 shows that those detained pretrial for DUI offenses represented about half of all County-responsible misdemeanor defendants held pretrial released with a status of not sentenced during the analysis period (2,622 of 5,203 misdemeanor releases in this analysis). This chart also shows that accused DUI misdemeanants in the analysis had a very short length of stay (1.1 days), and that those accused of drug, other, and assault crimes had the longest lengths of stay among accused misdemeanants.

[21] The definition of violent crime in statute also differs from the way that CrR 3.2, the court rule on pre-trial release, allows judges to consider crimes for which violence may have been present. For example, a residential burglary, while not statutorily defined as a crime of violence, may have included the use or threatened use of violence.

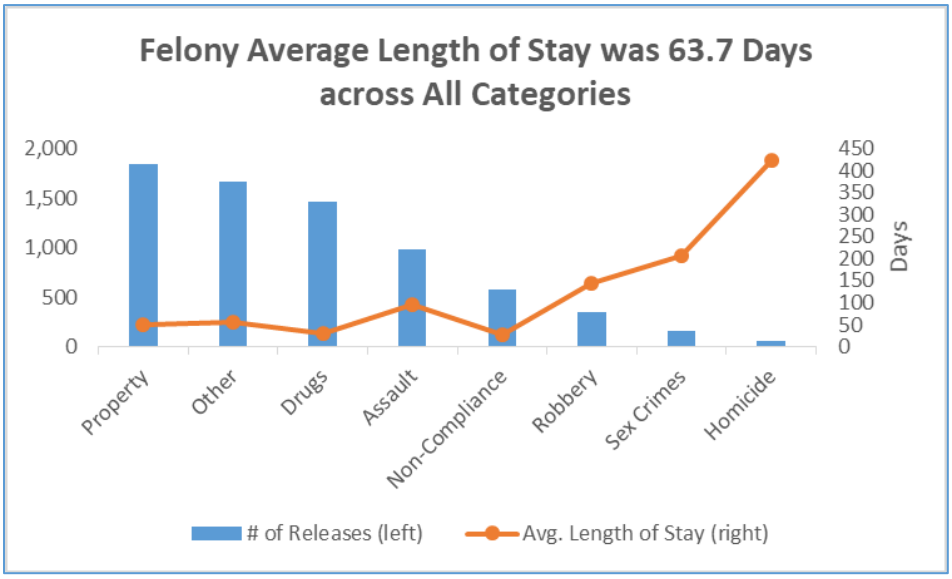
[22] The length of stay data displayed in Exhibit 10 and Exhibit 11 is restricted to County-responsible inmates with a DAJD status category of Not Sentenced. This includes individuals sentenced to time served and released as well as those released before their case has been adjudicated. Because the data is based on individual bookings and a person may be booked and released multiple times on the same court case, this data is not comparable with court case resolution data.

Exhibit 9: County-Responsible Misdemeanor Releases and Average Length of Stay



As expected, the length of stay tends to be significantly longer for those held pretrial on felony matters before being released with a status of not sentenced. Exhibit 10 shows an interesting pattern where the crime categories with the highest caseloads (e.g., property, other and drugs) tended to have the lowest average lengths of stay and categories with the lowest caseloads (e.g., robbery, sex crimes, homicide) tended to have the highest average lengths of stay. It is also unsurprising to see that violent crime categories (assault, robbery, sex crimes, and homicide) also have the highest average lengths of stay.

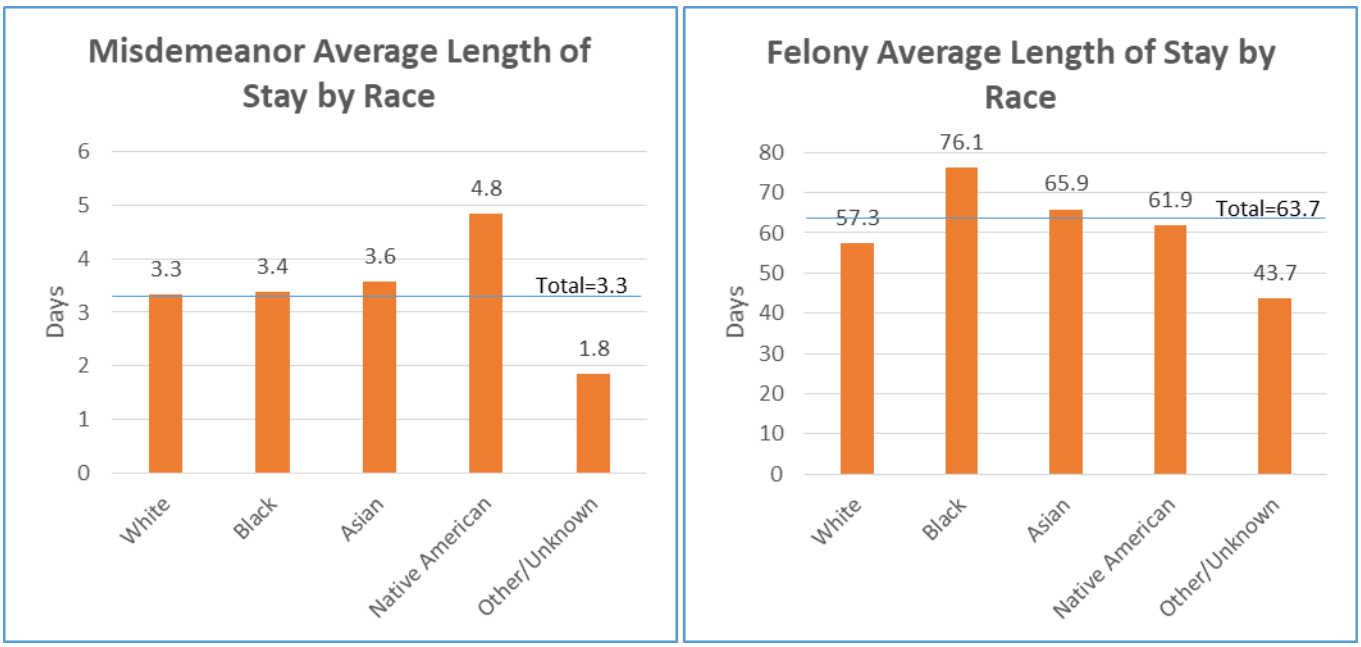
Exhibit 10



In addition to those held in a not sentenced status for felony and misdemeanor cases, 3,736 individuals were held for investigations that did not result in a criminal filing prior to release. The average length of stay for these investigation cases was 1.6 days.

Exhibit 11 shows the average length of stay by race for County-responsible individuals held for misdemeanor and felonies in a status of not sentenced.[23] Analysis of this data shows that African-American and Asian defendants had a similar length of stay to white defendants for misdemeanors, while the average length of stay for Native Americans was nearly 50 percent longer. Among those accused of felonies, the average length of stay for African-Americans was nearly a third longer than that of whites (18.8 days), and the average lengths of stay for Asians and Native Americans were also greater than that of whites.

Exhibit 11



Analysis of Superior Court Data[24]

As previously shown, the average daily population of those held pretrial by King County is largely composed of persons accused of felonies, although there are also a large number of individuals booked for less serious charges or investigation and released after a short stay. All King County felony cases are filed in Superior Court,[25] and the Department of Judicial Administration (DJA) manages Superior Courts records. Analysis of DJA data can help show the prevalence of failure-to-appear (FTA) warrants issued by judges when a defendant does not appear in Court.

[23] DAJD data on race is reported by law enforcement or DAJD staff rather than self-reported and includes limited categories, so it is not comparable to more robust data on race from sources such as the Census. For example, DAJD's data does not include categories for Latinx or other ethnicities. Also note that the sample sizes for the Native American and Other/Unknown categories are less than 10% that of the White or African American categories, too small to draw any reliable conclusions.

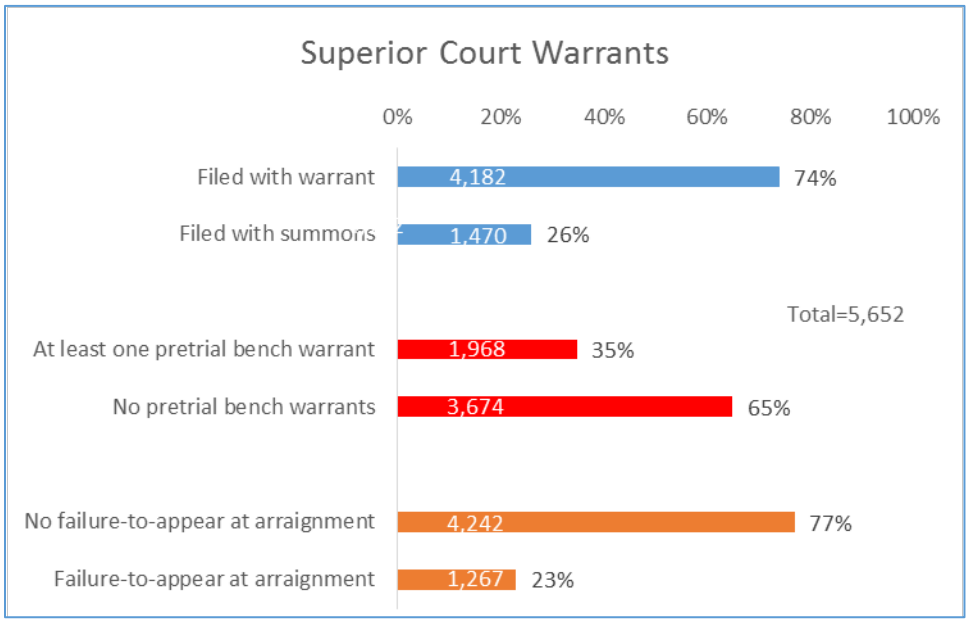
[24] Source of the data analyzed in this section: Department of Judicial Administration, dispositions between October 1, 2017 and September 30, 2018.

[25] With the exception of drop-down felonies filed in King County District Court and treated as misdemeanors.

During the analysis period, King County Superior Court (KCSC) reached final disposition on a total of 5,652 adult criminal cases, excluding drug court cases.[26] As shown in Exhibit 12, of these cases, 74 percent (4,182 cases) were filed with a warrant at the time of filing; the remaining 26 percent were filed with summons.

One limitation of DJA's data is that it is not possible to tell how many of the defendants in these 5,652 cases were in custody during the entire pendency of the case and therefore had no opportunity to FTA. Nonetheless, of the cases where an arraignment occurred, 23 percent (1,267 cases) had a Failure to Appear at arraignment. As shown in Exhibit 12, 35 percent of the cases analyzed (1,968 cases) had at least one pre-trial bench warrant. Pretrial bench warrants are those warrants issued by a judge during the period between the arrest and trial, frequently for Failure to Appear. The number of pre-trial bench warrants ranged from one to 15 per case. Were it possible to exclude the defendants who were in secure custody during the entire life of the case, then the percentage of cases with pre-trial bench warrants would likely be higher than 35 percent.

Exhibit 12



Analysis of PRINS Data[27]

DAJD contracted with the Institute for Criminal Justice at Washington State University to develop the tool now known as the Personal Recognizance Interview Needs Screen (PRINS). The PRINS was developed and specifically normed for King County using over 9,000 DAJD records collected between 2011 and 2013. DAJD personal recognizance interviewers began administering the PRINS at the time of booking in mid-2018. The King County PRINS creates standardized pretrial personal recognizance reports

[26] Drug Court is excluded because as a therapeutic court it has different goals than a standard criminal court. This fundamental dissimilarity makes it inappropriate to include Drug Court in aggregate analysis with other criminal courts.

July 2018 to July 2019, except for the months of January and February 2019. In total, 11,097 individuals were assessed using the PRINS tool during this time. Data in this section is reported using tools from the PRINS online dashboard, which offers little flexibility in formatting or labeling.

that are provided to the court at first appearance. There are two optional sub-reports that are part of the PRINS:

3. A probability assessment of an individual's low, medium or high likelihood of committing a crime or failing to appear if released pretrial. The six assessment areas include failure to appear, recidivism, drug crime, property crime, violence and domestic violence. This information is now only used for data analysis by DAJD and is not shared externally.

4. An assessment of criminogenic need areas is completed for some persons to match individuals with the most appropriate type (needs) and level (risk) of interventions and services. The Needs Assessment is administered by DAJD to individuals who are admitted to DAJD confinement and community-based programming as well as for some specialty courts.

At booking, personal recognizance investigators administer the PRINS to County-responsible individuals who are not booked on a capital case, not under Department of Corrections supervision, not subject to out-of-county transfer, and are able to participate in the interview. Although the data collected through the application of the PRINS are not necessarily representative of the broader pretrial population, they provide demographic and socio-economic information about the pretrial population that DAJD could not previously or easily produce.

For each of the data elements profiled in PRINS, DAJD can look further and link the data across multiple points to create a fuller picture of the population. For example, the data can be queried to determine if those reporting as homeless also reported prior mental health treatment or substance abuse by age, gender, race, and the prediction of risk level for any of the domains considered.

The charts below show results on specific interview questions from the 11,097 interviews conducted through July 2019. For example, Exhibit 13 shows that 18 percent of those interviewed reported their housing status as homeless and another 5 percent as unstably housed.

Exhibit 14 shows that 14 percent of interviewees reported receiving mental health services in the six months prior to booking. Exhibit 15 shows that 45 percent of those interviewed at booking reported substance use within the month prior to booking.

Exhibit 13: PRINS Assessment Housing Status

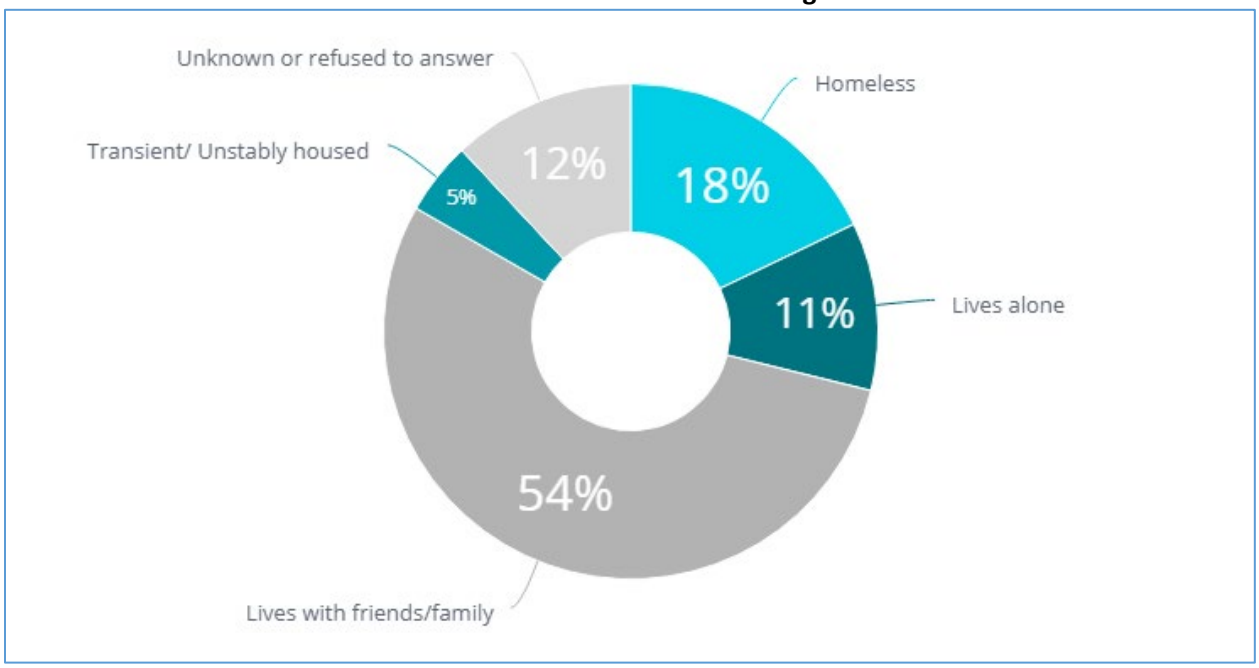


Exhibit 14: PRINS Assessment – Individuals Receiving Mental Health Services Six Months Prior to Booking

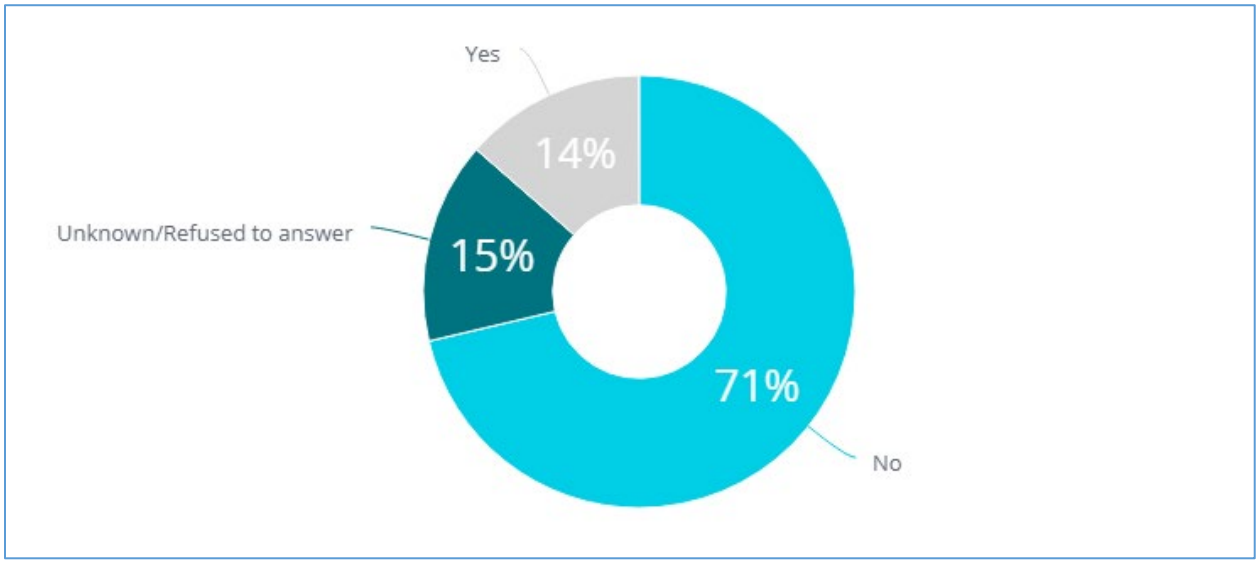
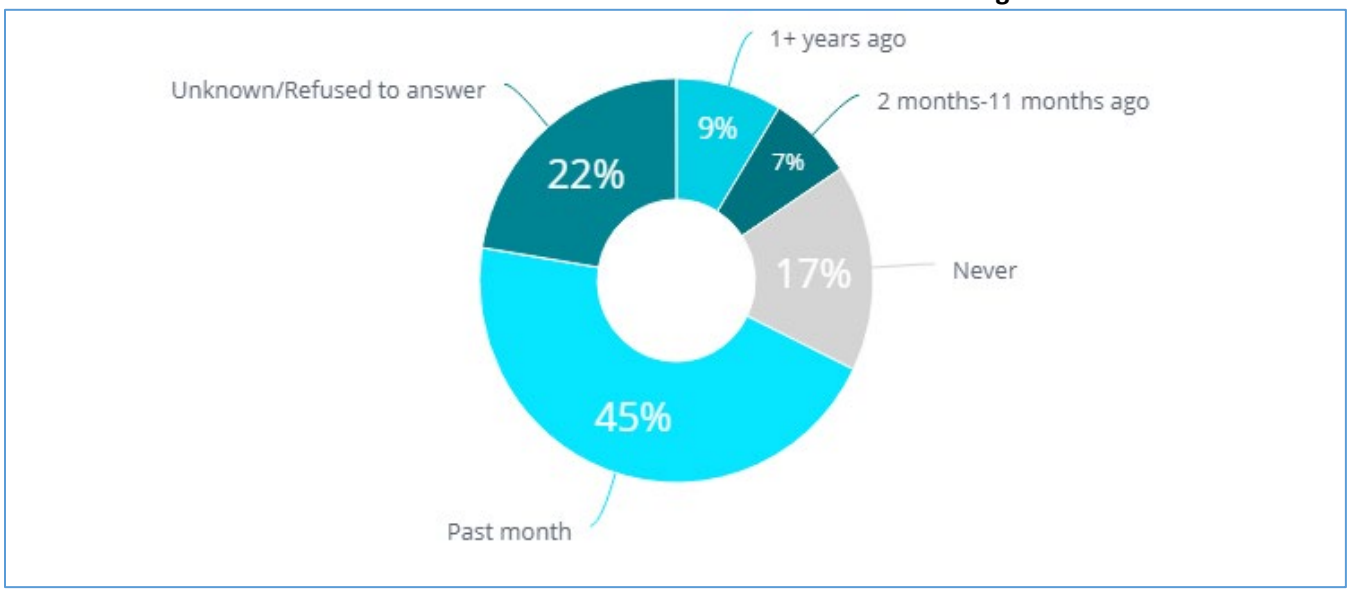


Exhibit 15: PRINS Assessment – Substance Use Prior to Booking



Based on inputs during the interview process, PRINS assigns a risk rating for failure to appear and any recidivism (Exhibit 16) as well as assesses the risk of committing different types of offenses if released pretrial (Exhibit 17). Exhibit 16 shows that over half of all interviewees were assessed to be at moderate risk of FTA and any recidivism.

Exhibit 16: PRINS Assessments by Risk Level

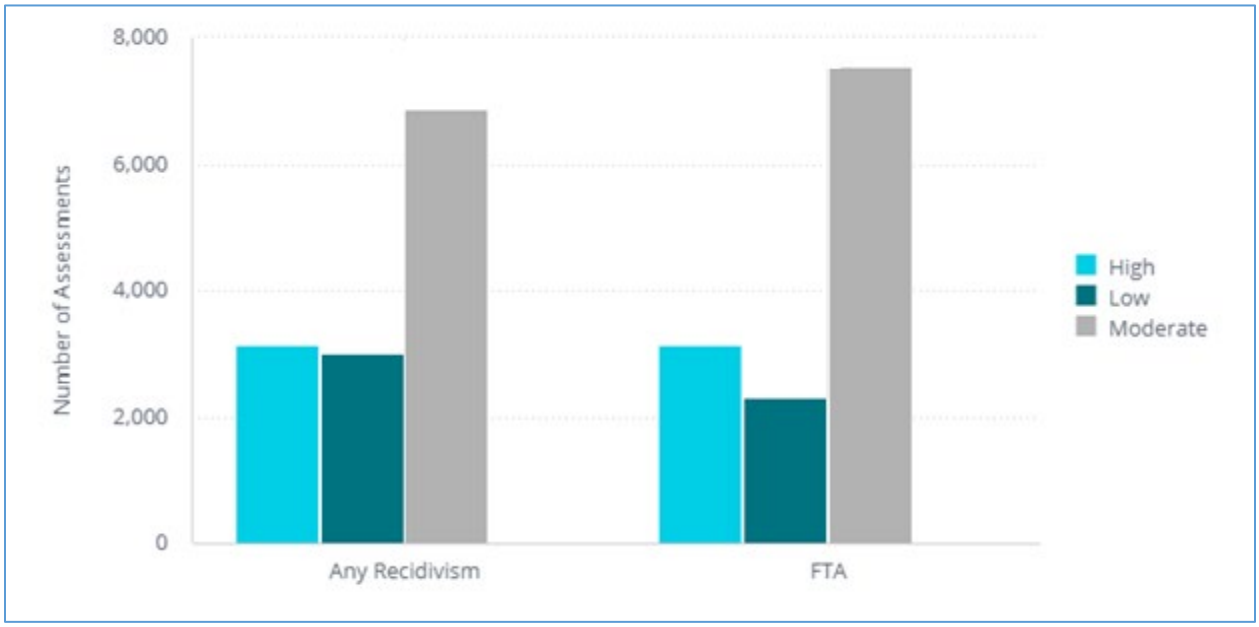
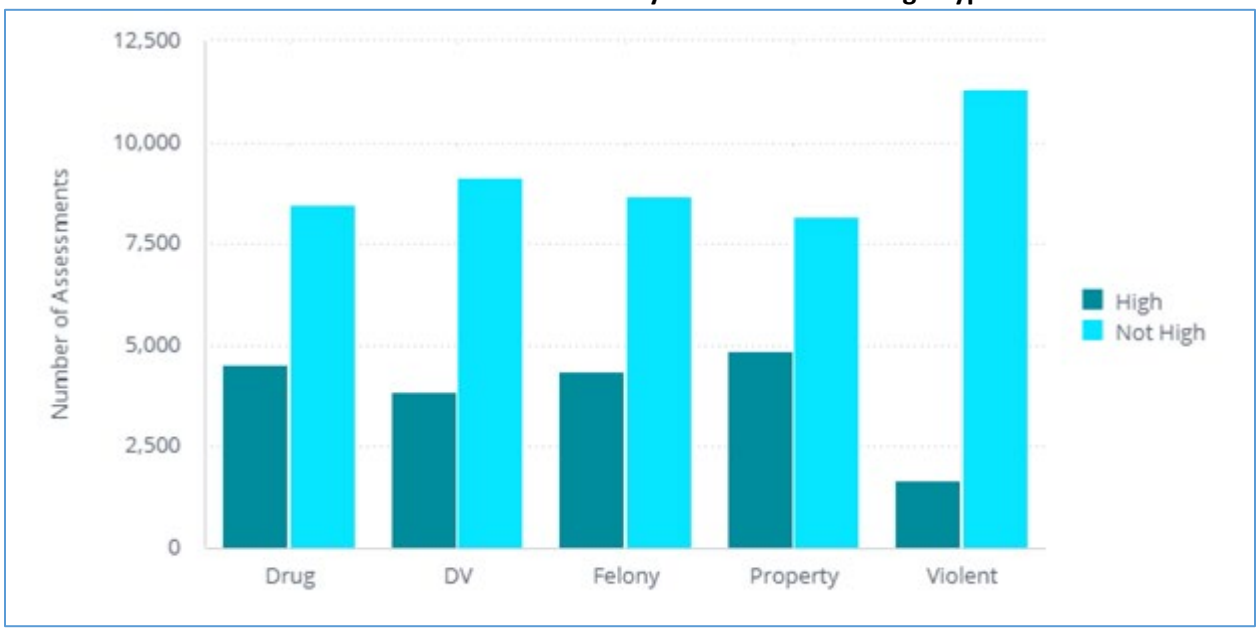


Exhibit 17 shows that most of the pretrial population are not predicted to be at a high level for commission of drug, domestic violence, any felony, property, or a violent offense if released pretrial.

Exhibit 17: PRINS Assessments by Risk Level and Charge Type



In January 2020, Washington State University will conduct a re-evaluation of the predictive validity of the PRINS and will define concurrence between the predicted ratings and the outcomes for individuals both pretrial and following disposition of the case. The findings of this evaluation will be used to refine and improve the PRINS in the future.

One-Day Snapshot

In order to provide proof of the value and feasibility of a larger data integration project and to provide some data about who is in custody pretrial, the workgroup conducted a snapshot analysis of King County Defendants in custody in the King County Jail on a single day. This analysis required combining data from multiple agencies through a cumbersome manual process. The process was so time consuming that it was necessary to severely limit the more detailed analysis portion of this snapshot. The data provided below is only a snapshot. It only shows who was in custody on that particular day and is not generalizable to King County's pretrial population as a whole. It does not show how this compares to who has been in custody historically or make any predictions about who will be in custody in the future. However, the snapshot does provide a view into the types of analysis that would be possible for all King County cases if an integrated data hub were created. The data points reviewed here are just a small slice of what would be possible with an integrated hub. King County agencies collect far more detailed and quality data than was possible to present here.

The snapshot examined the open criminal cases that PAO had in King County Superior and District Court at the close of business on March 25, 2019, excluding drug court, mental health court, and juvenile court.[28] An open criminal case was defined as an active case (that was not on warrant status for the defendant failing to appear) that had not been adjudicated (no guilty plea entered or a verdict reached). A defendant failing to appear for court and having a warrant issued for their arrest removes the case

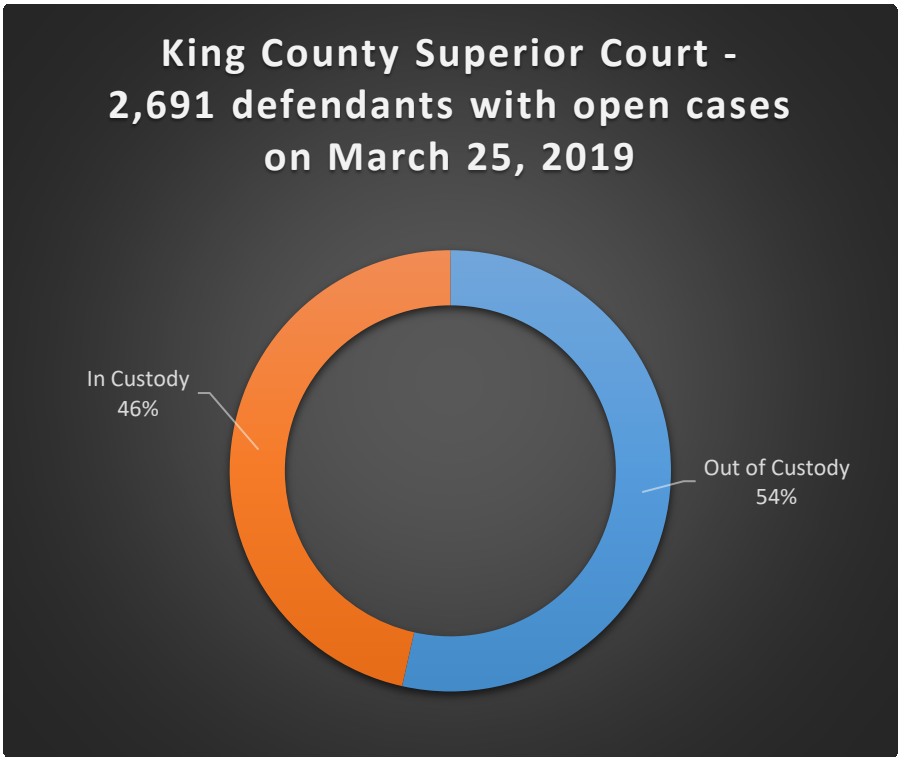
[28] Juvenile cases are outside the scope of this proviso, and treatment courts were judged to be fundamentally different from other criminal courts and not appropriate to include in this analysis.

from what would be considered “open” status because no further court dates are set and no further substantive action can be taken on the case until they return.

The data from the PAO on those cases was matched to data from DAJD and DJA to provide a reasonably robust dataset on those individuals. The snapshot showed that on March 25, 2019, the PAO had 6,113 open criminal cases against 5,533 unique defendants (some defendants had multiple cases). Of those 5,533 defendants, 1,300 or about 23 percent were in custody on March 25, 2019.

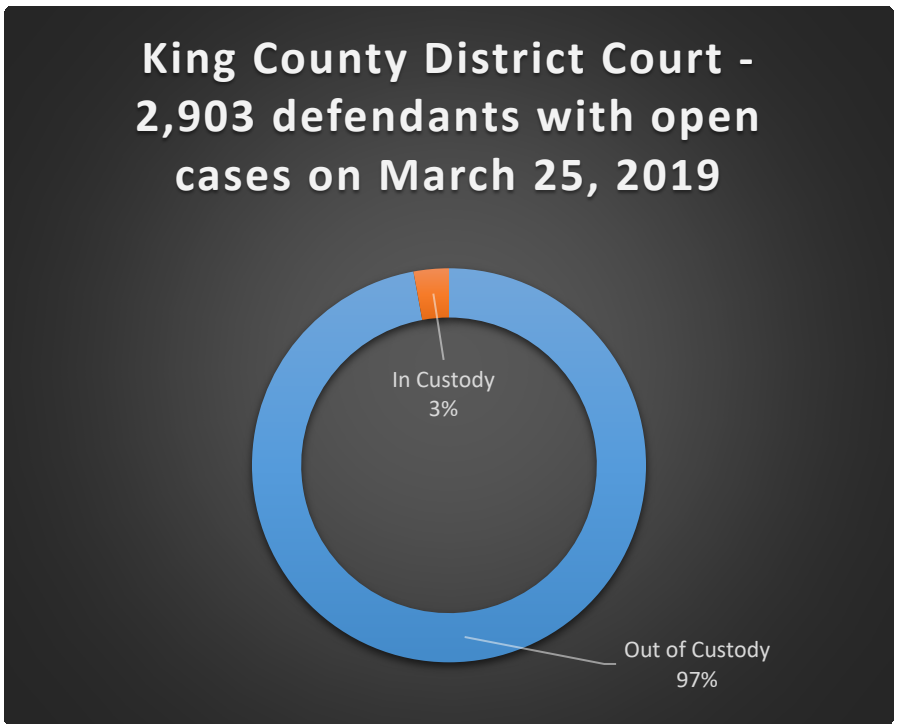
Of those defendants charged with a Superior Court case (typically a felony), about 46 percent, or 1,251 out of 2,691, were in custody, as shown in Exhibit 18. Exhibit 19 shows that of those defendants charged with a District Court case (misdemeanors only) about 3 percent, or 84 out of 2,903, were in custody. The in-custody percentage and number for District Court includes 35 defendants who also had a Superior Court case. If those are removed, that leaves 49 defendants charged in District Court who were in custody, or less than 2 percent of open District Court cases on March 25, 2019.[29]

Exhibit 18



[29] There are also some out of custody defendants who had both District and Superior Court cases.

Exhibit 19

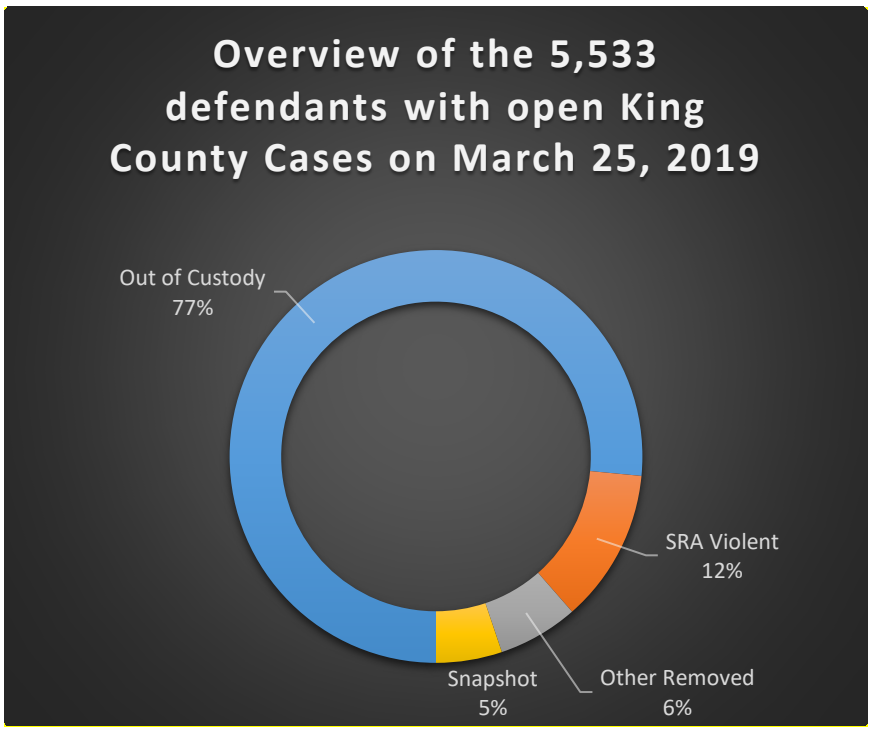


Of those 1,300 defendants who were in custody, about 51 percent, or 666, were charged with at least one Sentencing Reform Act (SRA) Violent or "strike" offense. The definition of a SRA Violent offense is narrower than what might be generally considered violence. For example, some degrees of assault are considered SRA Violent offenses (Assault 1st Degree and 2nd Degree), while others are not (Assault 3rd and 4th Degree). These defendants were removed from analysis because of the need to select a smaller sample for detailed analysis.

The workgroup then identified a smaller subset of defendants who were in custody on March 25, 2019 for a more detailed review. To narrow the sample group further, the workgroup removed defendants charged with other offenses involving violence, generally more serious offenses, those associated with a concern for community safety, or those already taking advantage of an alternative to total confinement in jail. The types of cases removed were mostly domestic violence related, assaults, DUIs, and unlawful possession of firearms.[30] That left 286 in-custody defendants who were charged with what the workgroup considered non-violent offenses to be analyzed further. Given the substantial amount of time it took to manually review and combine the data on these 286, it was necessary to limit the scope of the analysis to this extent. It would certainly be valuable to analyze all defendants; however, that was not possible given the timeframe and resources available for this proviso. As shown in Exhibit 20, this represented about 5 percent of the 5,533 open cases on March 25, 2019 for further analysis.

[30] Generally speaking, excluded cases included all SRA Violent (strike) offenses, cases with a SRA seriousness level 5 or above and certain case types below level 5, including Assault 3 and 4, DUIs, Unlawful Possession of a Firearm 2nd Degree, Harassment, and Unlawful Imprisonment.

Exhibit 20



The 286 defendants identified for further analysis were charged with a variety of crimes. However, when looking at the most serious offense each defendant was charged with they break down into five general groups, as shown in Exhibit 21: Auto Theft related, Residential Burglary, Burglary (non-residential), Drug Related, Theft or Stolen Property Related, and Other (including Eluding, Malicious Mischief, Hit and Run, Money Laundering, and other offenses).

The 286 defendants analyzed were also held on a wide range of bail amounts. As shown in Exhibit 22, 24 percent were held without bail allowed (likely holds on sentenced matters), and another 24 percent were held on more than $50,000 bail. Twenty percent of the 286 were held on $10,000 or less bail at that time. However, it is likely that some of the defendants with low bail amounts would have been released without bail if they did not have other holds keeping them in jail anyway. For defendants that will remain in jail anyway due to other offenses, it is standard practice for defense counsel to request that the Court set a low or nominal bail to ensure that the defendant gets credit for the time served in jail.

Exhibit 21

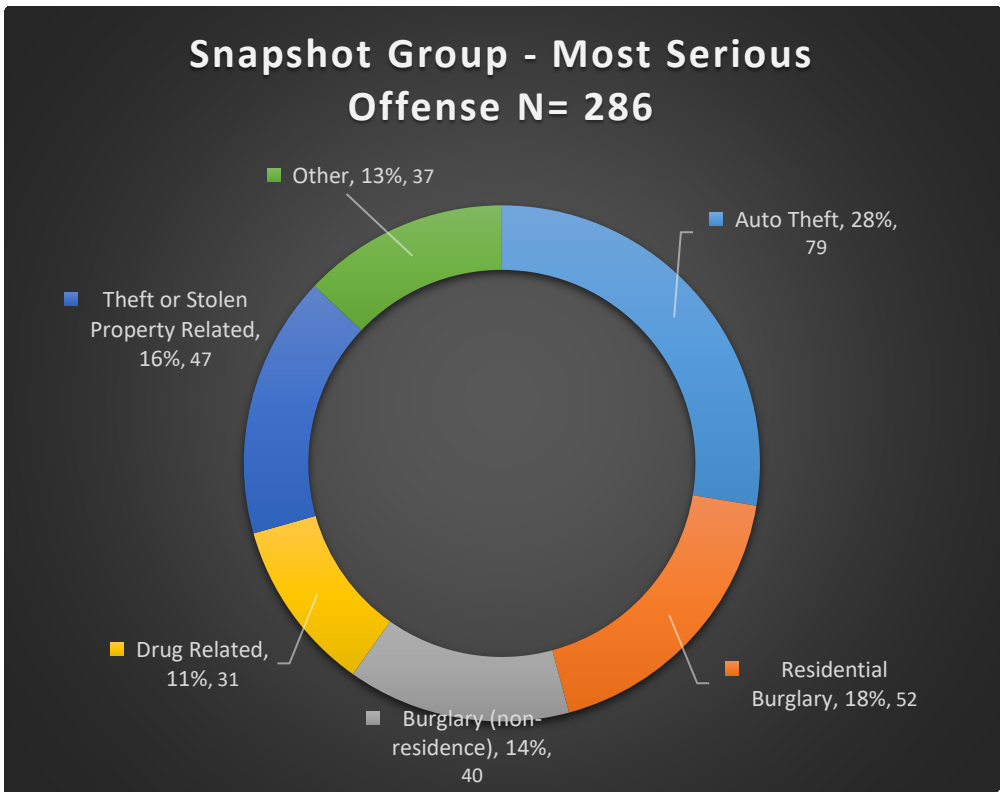
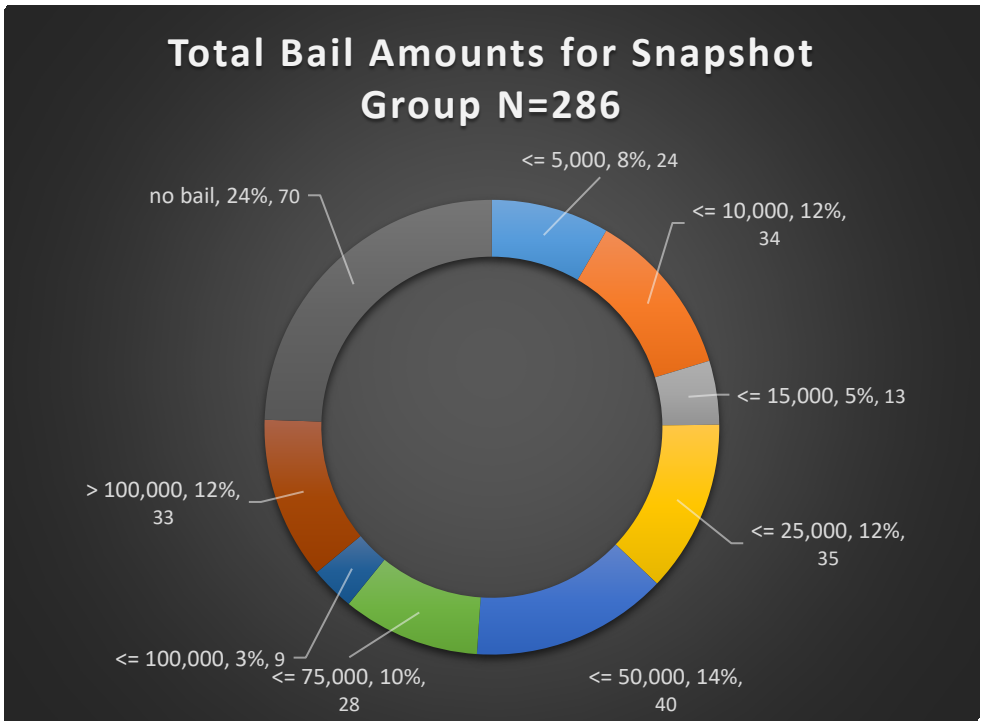


Exhibit 22



Analysis of 286 Non-Violent Pretrial Defendants

For the 286 defendants identified above, multiple data points from the PAO, DAJD, and DJA were combined. That dataset has been maintained and can be further analyzed as desired. Those 286 defendants were then reviewed for factors that commonly explain why a defendant might be held in custody and have bail imposed. This should not be taken as a statement that any particular defendant should have been in custody or that they would have been in custody if other alternatives were available. This analysis simply highlights some of the most common factors that complicate a release decision and can increase the likelihood of bail being imposed. Many defendants had multiple potential factors explaining their pretrial incarceration; however the analysis below is ordered by what might be considered as the most likely factors affecting the detention decision. This was done for the sake of simplicity; any attempt to describe all the overlapping categories would be too lengthy and complex for the purposes of this proviso's recommendations. This analysis cannot determine whether pretrial incarceration was appropriate for each of these individuals; however it can provide some insight on their circumstances and provide a more complete picture of the pretrial jail population on March 25, 2019.

- Of the 286 defendants identified for analysis, 102 had post-conviction holds, holds from other jurisdictions, or other holds that would have kept them in custody regardless of any decision by the King County Superior or District Courts. Absent the additional holds, it is impossible to say whether these individuals would have been incarcerated for the active cases under analysis here.

- Of the 184 remaining defendants, 42 had pending legal competency proceedings or had been flagged for such issues, which can substantially complicate any release decision. Legal competency is the capacity for an individual to understand the nature of the charge against them and to assist in their own defense. Although the same presumption of release applies to defendants facing competency evaluation, the lack of effective options on release for these individuals can place judges in the difficult decision of deciding whether a potentially incompetent person has the ability to return to court and be evaluated without meaningful assistance. Without in-depth analysis of each individual it is not possible to determine if they would have been held in custody were other options available.

- Of the 142 defendants remaining, 79 had warrants issued for their arrest after the case was filed or were booked into jail 30 or more days after their case was filed. These are indications that the defendant violated the conditions of release, failed to appear for court, or were otherwise booked on a new offense after their original case was filed. Arraignment must occur within 14 days of filing and any booking after that requires some violation or new offense. It is likely that some of these 79 were held in custody primarily for failure to appear in court for their existing case. However, it was not possible to determine how many of the 79 were held primarily for FTA without substantial additional analysis of these individuals and their cases. Given the data already tracked in various systems, improved data integration would allow for a detailed analysis of these defendants which would clarify how many failed to appear for court, how many violated conditions of release, how many were taken into custody on something unrelated, and a host of other factors.

- Of the 63 defendants remaining, 25 had multiple court cases holding them in custody in the King County Jail (these are commonly referred to as holds). Those 25 individuals had anywhere from two to five separate criminal cases holding them in custody. Given the way DAJD classifies defendants, it

is likely that some of these holds could be for cases on which the defendants had already been convicted, although this could not be readily determined. This left 38 defendants.

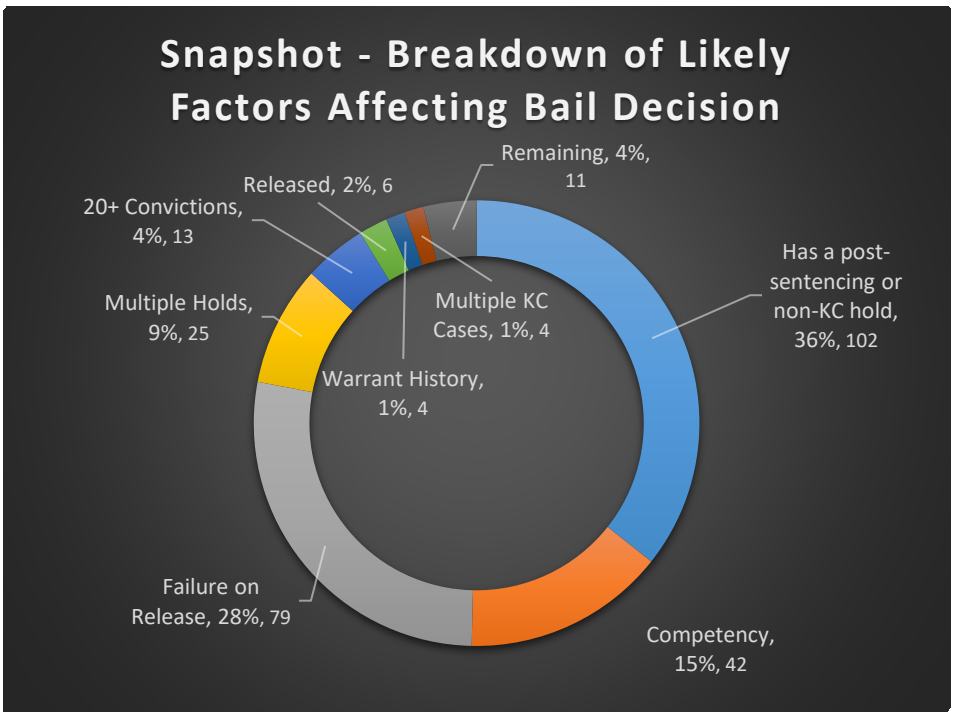
- Of the remaining 38 defendants:
    - Six were released from custody by April 3, 2019 (from zero to eight additional days in custody);
    - Another 13 defendants had 20 or more prior criminal convictions;
    - Four had three or more King County Superior Court warrants, some of which may have been for FTA; and
    - Four had two or more pending criminal cases with the PAO.

Criminal history, history of warrants, and current pending cases are all factors that are considered by the Court under CrR 3.2 when deciding whether something less restrictive than incarceration would be appropriate.

- The 11 remaining defendants had bail amounts set by the court ranging from $5,000 to $250,000. All were charged with felonies. To understand why bail was set for a particular defendant there would need to be detailed examination of the specific facts and circumstances surrounding them.
    - Two of those persons had been in custody for fewer than 14 days and were awaiting arraignment.
    - Two persons had bail set at $5,000.
    - Seven had bail set at over $50,000.

Exhibit 23 shows the breakdown of the 286 defendants included in the snapshot analysis according to the categories above. If more than one category applied to a defendant, they were grouped in the category ranked highest in the bullet points above.

Exhibit 23


Snapshot - Breakdown of Likely Factors Affecting Bail Decision
Remaining, 4%, 11
Released, 2%, 6
20+ Convictions, 4%, 13
Has a post-sentencing or non-KC hold, 36%, 102
Multiple Holds, 9%, 25
Multiple KC Cases, 1%, 4
Warrant History, 1%, 4
Failure on Release, 28%, 79
Competency, 15%, 42

VI. Stakeholder Consultation and Recommendations

Pretrial Justice Institute

Using State Court Assistance grant funds, accessed via King County District Court, the workgroup consulted with the Pretrial Justice Institute (PJI) as a subject matter expert. In a presentation to the workgroup, PJI outlined the elements of a "Smart Pretrial Justice System," which include:

1. Intentional arrest policies:
    a. Create an intentional release/detain policy that is collaborative, aligned with state law, and follows the principles of least restrictive conditions.
    b. Increase the availability of deflection, keeping persons from incarceration.
    c. Provide for the immediate release of eligible persons on citations.
2. The early review of charges by a seasoned prosecutor.
3. The presence of defense counsel at the earliest hearing that could result in pretrial detention.
4. The use of an actuarial pretrial assessment to guide release conditioning.
5. Assure full due process provided through an adversarial hearing for the individual.
6. Implement supportive, community-based strategies for successful release such as universal court date reminders, case management, support services, and/or diversion for released individuals.

    In reviewing King County's snapshot data, PJI notes that generally, when we talk about release rates (or conversely, detention rates) in pretrial justice, it is defined as the proportion of pretrial defendants who are released or detained throughout pretrial case processing. Typically, jurisdictions do this based on closed cases.[31]

As King County improves its data infrastructure, it is important to align data analyses and presentations with system maps or flow charts so that rates and outcomes are contextualized with local practices/decision making.

For example, without having a fuller data and policy picture, reviewing a limited slice of data about pretrial release revealed a potentially inflated detention rate. Ideally a pretrial data system should be able to answer at its most basic level three questions:

- What is our release rate?
- What is our court appearance rate?
- What is our public safety rate?

King County Community Stakeholders

At the first workgroup meeting, volunteers were solicited for a stakeholder consultation subgroup. Representatives from the Public Defender Association and ACLU volunteered, and the subgroup was supported by PSB staff. The group identified the following three categories of stakeholders to be interviewed, Communities impacted by the criminal legal system, representatives of crime victims and the Commercial Bail Bond Industry

[31] New Jersey is a good example, and an example of data representation on detention/release can be found in this chart, which can serve as a resource as King County prioritizes specific data collection and coordination going forward.

Communities Impacted by the Criminal Legal System

Representatives from Community Passageways, the Urban League of Metropolitan Seattle, Seattle King County NAACP, and the Northwest Community Bail Fund were interviewed. They talked about the individual and community impacts of pretrial detention and bail requirements, and made recommendations for reform. Their comments include:

- When an individual is detained it destabilizes their entire life, from employment to housing to emotional resiliency.
- Family dynamics of communities of color create an extended chain of support. One person missing from that chain of support, even for brief periods, can destabilize a family and the broader community.
- Poverty itself destabilizes people. They lose jobs, housing, credit, and hope. The money to pay the 10 percent requirement for bail often comes from family members, diverting money needed to support the family. Financial empowerment is essential to ending a person's CJ involvement.
- Some of the most vulnerable individuals who need and want resources and treatment are often cut off from those resources because of their criminal histories, including time in pretrial detention that interrupts their continuum of care.
- The effects of historical and ongoing racially disparate impacts on African Americans and other persons of color – economic, educational, criminal legal, and other effects – are cumulative. In daily life these impacts mount up and increase the barriers the person is trying to surmount.
- The community wants its members to be accountable to one another. Accountability can look different from person to person, and community-based organizations can provide individually tailored opportunities for accountability and healing.
- We should divest from probation and bail systems and invest in community-based organizations.

Combined recommendations from stakeholders of community impacted by the criminal legal system include:

Access

- Gather both primary and secondary contact information to send notices about court hearings.
- Make hearings more accessible. Hearings could be held outside of traditional business hours or by video; the number of hearings clients must attend could be reduced; and childcare could be provided during court hearings.
- Reduce the number and complexity of conditions of release, which can be logistically impossible to meet if you're employed, in school, or responsible for family members.

Services

- Get clients connected with community organizations early (prior to first appearance) using a 24/7 dispatch model so the organization can provide accountability and services to support a release on personal recognizance.
- Assist detained individuals and their families with navigating the criminal legal system, possibly using a peer-to-peer model.
- Reduce barriers to public defenders getting the information they need from detained clients to meet requirements for release. Make it easier for public defenders to reach their clients by

phone rather than requiring in-person contact, including providing cell phones to those defendants who do not have one.

Data

- Improve data reporting: it is important to have accurate data about the criminal legal system including performance measures.

Representatives of Crime Victims

Representatives of the Prosecuting Attorney's Office Victim Assistance Unit were interviewed for this perspective. They cited the lack of resources (type and amount, purpose) dedicated to crime victims beyond domestic violence and homicide cases. It can be difficult for victims to understand the criminal legal process and come to terms with the ultimate case resolution, and the lack of resources and case information along the way can leave victims without the help they need to deal with the effects of the crime.

Additional crime victim consultation should be conducted in order to capture the experience and recommendations of a broader range of organizations representing crime victims.

Commercial Bail Industry

Representatives from Aladdin Bail Bonds, All City Bail Bonds, and the Washington State Bail Agents Association were interviewed for this perspective. They talked about gaps in services for the population that is the focus of this proviso and made recommendations for improved data collection and analysis. Highlights from the interviews include:

- Bail agencies typically will not write a surety bond for bail under $500. A surety bond is ten percent of the total bail bond, i.e., $50 surety bond for a $500 bail bond set by the judge.
- In addition to guaranteeing payment of the $500 bail bond if bail is revoked, the surety bond fee covers the cost of ensuring court appearance and comes at no additional cost to the taxpayer.
- Bail agencies calculate the risk of an individual's failure to appear. Agencies thus typically work with individuals who have family or community supports who will help ensure the client's appearance at hearings. The surety bond fee is frequently paid by family members.
- Gaps include the need to address the category of individuals who are detained pretrial on less than $500 bail bond and remain detained for lack of a surety bond and to address the category of individuals whose social or behavioral health issues contribute to their failures to appear and implement infrastructure to target underlying needs.

Bail industry recommendations include:

Access

- Hearings to request reconsideration of bail are available for individuals being detained and are an option that should be more frequently used.

Data

- Use data to ensure there is a baseline from which to measure the effects of any program or policy changes.
- Uniformity in data collection among local jurisdictions would help inform this issue.

VII. Workgroup Recommendations

Although not all strategies were equally supported by all workgroup members, the workgroup did identify and agreed to highlight for this report several strategies that could be explored and/or employed to reduce the use of pretrial detention. Workgroup members were encouraged to consider feasibility and impact during discussions, but more work will be required moving forward if County leaders choose to pursue these policies. This report notes the issues raised for each.

A Balanced Investment Approach – Data, Access, and Services

As you will see in the recommendations below, addressing pretrial reform in King County will require a significant investment in integrating our robust but independent criminal legal system data systems, while maintaining required areas of confidentiality. Improving the integration of data would provide policy makers and criminal legal system actors with timely, complete information to inform policy and fiscal decisions. We acknowledge the scope and long-term timeline of such an investment.
At the same time, increasing access and service supports in the near term could reduce pretrial detention for those booked on or charged with nonviolent crimes while the data system integration is in development.

Data

1. **Plan for Integrated Data System**
   As described earlier in the quantitative data, the robust data systems maintained by the various criminal legal system agencies (superior and district courts, judicial administration, jail, prosecutor, and public defense) do not interface with each other and do not include unique keys that would enable linking of data to support analysis. This is a system-level infrastructure barrier that limits effective measurement and improvement efforts in the pretrial system as well as the legal system broadly. All stakeholders in the workgroup, including the subject matter expert from PJI, identified this issue as a high priority challenge to address. The data subgroup started initial conversations on potential next steps working with the King County Department of Information Technology (KCIT) to design an IT project to address this need.

   Next Steps: A recommendation related to data system integration has been passed along to a separate group of King County criminal legal system leadership from the judicial and executive branches. The Executive included in the second 2019-2020 Omnibus supplemental budget proposal a budget request supporting data system integration.

Access

2. **Send Text Message Reminders to All Clients**
   Many jurisdictions have begun to use automated systems to send text message reminders to all clients about upcoming court dates in an effort to reduce failure to appear rates. This aligns with the PJI Smarter Pretrial system recommendations. Multiple studies of effectiveness find improved court appearance rates of 30-50 percent through the use of live callers, recording, or text messaging.

   Next Steps: DPD is currently launching a text message reminder system that has gradually been phased into operation. Once the DPD system is stabilized, a text reminder system being piloted by King County Superior Court (KCDC) could possibly be modified to avoid duplication with DPD's system. Not all individuals charged with crimes are represented by DPD, and the King County District

Court (KCDC) will be implementing a reminder system in the new Case Management System (CMS) for all case types, including infractions and small claims.

3. **Expand Navigators/Case Management Services to Support Court Appearance and Other Needs**
   Individuals failing to appear for scheduled court hearings is one of the driving factors in the destructive and wasteful "revolving door" cycle of warrants, arrest, detention, and release shown earlier in the Person Centered Pretrial Pathways graphic. This recommendation would provide peer navigators and/or case management services to help individuals attend court and to access community-based services. This aligns with the Pretrial Justice Institute (PJI) recommendations and the strategies employed by the Northwest Community Bail Fund to implement supportive, community-based strategies for successful release while partnering with community-based organizations. The intensity and type of services would be tailored to the needs and risk associated with each individual.

   Next Steps: The workgroup identified several different ways in which these navigator and case management services could be provided but more work needs to be done to refine a formal proposal and identify potential funding sources. This work should be linked with existing approaches to case management which are field-based, not office-based, such as the Northwest Community Bail Fund, Community Passageways, LEAD, and Vital case management. Several members of the workgroup have volunteered to work on a proposal.

Services

4. **Side Door: Pre-booking Diversion to Behavioral Health or Other Services**
   When direct linkages with Law Enforcement Assisted Diversion (LEAD), the Crisis Solution Center, and other diversion options cannot be immediately accessed, and law enforcement deems some action is needed to protect the individual or the community, other non- confinement-based options need to be enhanced. This idea has been referred to as a pre-booking "side door" diversion focused option that provides law enforcement officers with an alternative to booking in predefined cases. At a location that can also offer temporary shelter and care, officers could bring candidates to a stabilizing site where assessments, service linkages, connections to LEAD, VITAL, Community Passageways, and other deflection and diversion options can occur. A seasoned prosecutor and public defender could be part of a multi-disciplinary team of jail and community based providers who can jointly make the best decision for the individual in need and the community. Use of such an option supports the National Stepping Up model that serves to reduce the number of people with behavioral health needs in Jail. This concept is in alignment with the PJI Smart Pretrial system recommendation that includes an early review of potential charges by a seasoned prosecutor that can result in reduced filing.

   Next Steps: Complete system assessment and convene a work group to develop a 2021-2022 biennial budget proposal.

5. **Begin Jail Release Planning at Intake**
   Another factor contributing to the revolving door cycle of arrest, detention, and release is a lack of community-focused release planning that connects individuals with community resources and services upon release, as well as a great lack of viable places and services to release people to. Due to the short jail stays for many pretrial cases, it is difficult to prepare for and provide release

planning. Further, most persons released from jail do not have access to formal Jail Health Release Planning services which tends to focus on medically/psychologically fragile individuals. As part of an evidence-based continuum, this proposal would identify individuals with behavioral health, housing, or other criminogenic needs at the time of intake and develop/coordinate a discharge plan which would include not only a peer-supported "warm hand off" but also focus on housing and other connections to community-based services. This practice in partnership with robust community services can interrupt the revolving door of release and return for vulnerable populations, including minimizing the multiple uncoordinated, but similar, assessments conducted by a variety of agencies, which can be frustrating and futile for individuals who touch multiple agencies within the behavioral health, human services, or criminal legal systems.

Next Steps: Like the case management recommendation, this concept needs to be developed further by members of the workgroup for further consideration by Council and the Executive.

Ideas Considered and Found to be Working Well

6. **Provide Behavioral Health Organization Service Enrollment Information at First Appearance**
   Increase Jail Health staff capacity to provide information on behavioral health service enrollment at first appearance. This could be provided by release planners and or added to the PRINS report.

   Next Steps: A subgroup observed several first appearance hearings and found, for the most part, that public defenders are already receiving this information from their clients. No further action is recommended.

Ideas Discussed Without Agreement

7. **Implement a Pre-booking Jail Calendar for District Court**
   Implement new pre-booking calendar(s) in jails to determine whether to book individuals.

8. **Implement a tiered warrant system**
   Build on lessons learned from the juvenile system and provide a Tier II warrant option for judges that does not result in a jail booking but provides a court date for individuals. Law enforcement would need access to court scheduling.

9. **Consider jail booking standards**
   King County Juvenile Court has, for many years, applied booking standards. Under these booking standards, law enforcement must get approval from a judge prior to bringing a youth to the juvenile detention facility for booking. Some members of the workgroup recommend considering jail booking standards in the adult system.

10. **Expand Use of Unsecured Bonds and Partially Secured Bonds Paid Into the Court Registry**
    It should be noted that these practices are governed by Washington State Supreme Court rule and by local court rule. The judicial branch has exclusive authority to set and amend court rules. In addition, the courts never adopt policy that directs individual judges to rule in a certain way or affect an individual judge's discretion.

    Unsecured Bond: CrR 3.2 authorizes courts to require the execution of an unsecured bond – basically a written promise to appear secured by cash bail that won't be collected unless and until

an individual fails to appear. In practice, this mechanism is not used because of the difficulties associated with collecting bail upon a failure to appear and little confidence that a promise to pay upon failure to appear will motivate attendance. As a result, in a case where an unsecured bond would be appropriate, judges typically instead release the individual on personal recognizance.

Partially Secured Court Registry Bonds: Also referred to as "cash bail." CrR 3.2 further authorizes the court to require a bond of up to 10% of the bail, payable to the registry of the court, to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release. Some members of the workgroup would like to see the use of this option expanded. Some members would like to see better education of both the judges and the defense bar on the potential for expanding the use of this mechanism.

11. **Expand the Availability of Pretrial Services**
    CrR 3.2 provides that if the court finds an individual is not appropriate for unconditional release after applying the CrR 3.2 criteria, the court must consider all less restrictive alternatives before it can impose bail as a last resort.

    Some workgroup members would like more pretrial services and alternatives to detention as less restrictive alternatives to imposing bail. Other workgroup members would like to see an expansion of personal recognizance without those additional conditions.

12. **Voluntary use of video hearings**
    Some court hearings could be made more accessible via video or audio, however, the client should never be required to appear by video nor should a decision to appear in person as opposed to video ever be held against them. Some members would limit this to out-of-custody hearings. Superior Court is in the process of implementing video appearances for case setting hearings.

VIII. Appendices

Appendix A
King County Pretrial Reform Workgroup Members

Participants
Judge Sean O'Donnell, King County Superior Court
Judge Theresa Doyle, King County Superior Court
Judge Bill Bowman, King County Superior Court
Chief Presiding Judge Donna Tucker, King County District Court
Gordon Hill, Department of Public Defense
Mark Larson, Prosecuting Attorney's Office
Steve Larsen, Department of Adult and Juvenile Detention
Barbara Miner, Department of Judicial Administration
Clif Curry, King County Council
Jenny Giambattista, King County Council
Jaime Hawk, American Civil Liberties Union of Washington
Lisa Daugaard, Public Defender Association
Tanya Hannah, King County Information Technology

Staff
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Lakhmeet Singh, King County Information Technology
Prachi Dave, Public Defender Association

Pretrial Reform Task Force

Final Recommendations Report

February 2019

Intisar Surur, Esq.

Andrea Valdez, MPA

Special thanks to the Washington Center for Court Research (WSCCR) for their consultation.

Contents

Message from the Executive Committee

We are honored to lead Washington's Pretrial Reform Task Force as its Executive Committee. As members of the Washington State Minority and Justice Commission, the Superior Court Judges' Association, and the District and Municipal Court Judges' Association, we are pleased to represent these organizations and work together to find ways to improve pretrial practices in Washington.

We embarked upon this endeavor to improve Washington's pretrial practices in June 2017. Over the past 18 months, we asked stakeholders from across the state to participate in learning more about Washington's pretrial practices and participate in proposing improvements to them. The Task Force's stakeholders worked diligently to learn more about Washington's pretrial systems, local pretrial improvements, and national pretrial reform efforts. We would like to thank the Task Force's stakeholders for their countless hours of work and dedication.

In addition to our diverse stakeholder participants, the Task Force partnered with the Pretrial Justice Institute (PJI), a national organization striving to make pretrial practices safer, fairer, and more effective. We thank them for their support. PJI's technical expertise, encouragement and advice has been invaluable.

In crafting the following report and recommendations, the Task Force addressed the many complex issues related to pretrial practices at the national, state, and local levels. These recommendations serve as an important step towards improved pretrial practices in Washington State.

Sincerely,

Justice Mary I. Yu
Washington State Supreme Court
Minority and Justice Commission

Judge Sean P. O'Donnell
King County Superior Court
Superior Court Judges' Assoc.

Judge Mary Logan
Spokane Municipal Court
District and Municipal
Court Judges' Assoc.

Executive Summary

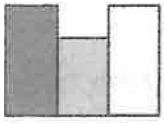
The Task Force divided into three subcommittees: (1) Pretrial Services; (2) Risk Assessments; and (3) Data Collection. The Executive Committee appointed Chairs to lead the each subcommittee and tasked the respective subcommittees with developing recommendations that address the following issues:

Pretrial Services:

- What services are currently provided to people accused of crimes?
- What are the costs of the pretrial programs?
- Which services are the most effective?

Risk Assessment:

- What are the best practices for assessing risk?
- What are the considerations for adoption of a risk tool?
- How to account for racial and ethnic impact?



Data Collection:

- What are the current state and local pretrial populations?
- How to ensure uniform data collection for those populations?
- How to provide meaningful analysis of that data?

This report outlines the work of and the data collected by the subcommittees. Using the information collected, the subcommittees developed recommendations on best pretrial practices. In weighing their inclusion in this final report, the Executive Committee focused on ensuring items were easily understood and actionable by local jurisdictions. In implementing these recommendations, jurisdictions should strive for: transparency and open communication with their partners; inclusivity of ideas based in evidence-based best practices; and a commitment to begin and follow through on pretrial reforms.

Summaries of each subcommittee's recommendations are below.

RECOMMENDATIONS

Pretrial Services

1) **Governments should bear the cost of pretrial services rather than the accused**: Accused persons cannot and should not be required to incur additional costs or debts as a result of their participation in pretrial services. Pretrial services include, but are not limited to: electronic monitoring, drug and alcohol monitoring, mental/behavioral health treatment, and court reminders.
2) **Court Reminders**: The available research consistently shows that pretrial court date reminders through texts, emails, mail or phone calls are an effective method to reduce the risk of failure to appear, and should be available to all defendants.
3) **Voluntary Service Referrals**: Referrals such as mental and/or behavioral health treatment, vocational services, or housing assistance should be offered to assist defendants maintain court attendance and supervision compliance, and prevent re-arrest. Referrals should be individualized,

offered voluntarily rather than as a condition of release, and should involve little or no cost to the individual.

4) **Stakeholder Involvement**: A local stakeholder group can make actionable recommendations to improve the practices and outcomes of the pretrial system, and can ensure the success of reforms by soliciting input from all participants and by making informed decisions as a team, rather than separate and distinct entities.
5) **Transportation support**: Offering free or subsidized transportation to defendants for court appointments can help ensure low-income people and people with disabilities can attend their court-ordered appointments.

Risk Assessment

The Task Force takes no position on whether local jurisdictions should, or should not, adopt a pretrial risk assessment (PTRA) tool. But the Task Force does recommend that jurisdictions choosing to employ a PTRA consider the following minimum criteria before the adoption or creation of a PTRA.

6) **Identify Desired Goals**: A jurisdiction should clearly identify what it intends to accomplish in order to determine whether the use of a PTRA has been successful in reaching its stated goals, such as reducing the jail population or increasing pretrial release.
7) **Defining Terms**: A PTRA must have clear, operational definitions for "FTA" and "new offense" and jurisdictions should train all court partners on their usage.[1]
8) **Comparative Data**: Jurisdictions should collect data relevant to the identified goals before, during, and after implementation of the PTRA in order to measure the PTRA's performance.
9) **Clarify Interpretations of "Risk"**: Jurisdictions must (a) understand the different kinds of "risk" a tool may measure for (non-violent versus violent offenses), (b) differentiate the factors courts must consider under Washington's criminal rules to address the likelihood of an individual's failure to appear (FTA), danger to the public, or interference with the administration of justice, and (c) have a deep understanding of the risk "scoring" provided by the tool.
10) **Validation for Predictive Accuracy and Race Neutrality**: The PTRA must be validated using local data prior to adoption and periodically throughout its use in order to ensure the PTRA is predicting new (violent)[2] offenses and FTAs with accuracy and precision.
11) **Disproportionate Racial Impact of a PTRA**[3]: Jurisdictions must examine whether the PTRA has or is likely to have a disproportionately negative effect on certain racial, ethnic, or socio-economic groups. This should occur before implementation of the PTRA and then periodically throughout its use.
12) **Community Participation**: The adoption and utilization of a PTRA should be transparent and should engage communities of color, marginalized groups, and victims' rights groups in the development, implementation, and validation of any jurisdiction's PTRA.
13) **Planning and Implementation**: Many organizations, including the National Center for State Courts, have developed materials to help jurisdictions plan for the phases of implementation. A list of

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[1] For example, "FTA" could mean any failure to appear, or only a failure to appear that results in the issuance of a warrant. Similarly, a "new offense" could mean an arrest, a charge, or a conviction. CrR and CrRLJ 3.2 (a)(2)(a) address risk to "commit a violent crime" but do not define how commission of a violent crime is to be measured: arrest, charge or conviction.

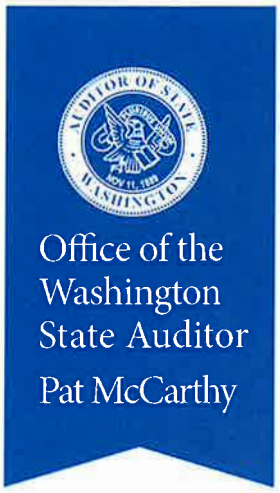
[2] Only the PSA measures for commission of a violent offense. *See* above.

[3] More than 100 civil rights organizations have endorsed a letter that sets forth opposition to the use of risk assessment tools and algorithms as a substitution for ending money bail. This "Shared Statement of Civil Rights Concerns" is available here: http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf.

Resources, following the Appendix, provides reports and tools for jurisdictions to use in the planning stages of implementation.

Data Collection

14) **Collect and Record Data**: Jurisdictions should collect and record complete information at all points of the pretrial system, including: defendant demographics; booking and first appearance; release/detention decisions and bail; and, release, new criminal charges and failure to appear.
15) **Data Analysis**: Jurisdictions should conduct data analysis on all pretrial elements related to: time from booking to arraignment; pretrial releases and detentions; and pretrial outcomes.
16) **Data Analysis Results**: Jurisdictions should use the results of the data analysis to evaluate pretrial services and conduct improvements as necessary.
17) **Data Dissemination**: Jurisdictions should provide data analysis to stakeholders and/or the public on a regular basis.
18) **Pretrial Services Data**: If implementing a pretrial program, jurisdictions should collect and analyze at all points of the pretrial services program, to: measure program success, identify areas of improvement, and support adherence to best practices.
19) **PTRA Data**: Jurisdictions that implement a pretrial risk assessment tool should collect data to assess (a) the concurrence between supervision level or detention status and their assessed risk; (b) the percentage of cases with release eligible defendants who received a risk assessment; and (c) percentage of judge's release decisions that differ with a risk assessment tool recommendation.



PERFORMANCE AUDIT

Reforming Bail Practices in Washington

February 28, 2019

Report Number: 1023411

Executive Summary

Background (page 5)

The presumption of innocence is a basic tenet of the criminal justice system. State and federal law say that every person charged with a crime should be presumed innocent until proven guilty. Yet in practice, thousands of individuals who have not been convicted are held in jail for days, months or even years, through the conclusion of their trials. The Washington Constitution and court rules presume most defendants should be released before their trials. Judges can impose bail to create a financial incentive for defendants to return to court after release. However, defendants will remain in jail if they cannot afford bail.

To address this issue, many jurisdictions are using pretrial services as an alternative to bail. Pretrial services allow jurisdictions to release defendants from jail in place of bail while offering supports, like court date reminders or periodic check-ins, to ensure defendants come to court. This audit examines the potential impact of expanding pretrial services in Washington.

In 2017, the Washington State Superior Court Judges' Association, the District and Municipal Court Judges' Association, and the Supreme Court's Minority and Justice Commission formed the Pretrial Reform Task Force to gather data and formulate recommendations concerning the expansion of pretrial services statewide. We conducted the audit independently of the task force, but worked with it to gain an understanding of bail and pretrial practices and to ensure efforts were not duplicated.

Can Washington use pretrial services, as an alternative to bail, to better serve qualified defendants while maintaining public safety and controlling costs to taxpayers?

On any given day, about 4,700 people held in Washington jails are candidates for pretrial services. Releasing these defendants and providing them pretrial services can save taxpayers between $6 million and $12 million a year. Analyses of two Washington counties also suggest pretrial services can be effective and comparable to bail in maintaining public safety. Pretrial detention can have negative consequences for defendants, including an increased likelihood of reoffense and worse case outcomes. However, jurisdictions should also consider the additional risks to the public that may result from releasing more defendants from jail.

State Auditor's Conclusions

Judges have used traditional money bail for years as a way of creating financial incentives for defendants to appear in court for their trials. When defendants cannot afford to pay bail, they remain in jail until the trial. Keeping them in jail is costly to the taxpayers. Perhaps more importantly, extended jail time before trial can have significant consequences for defendants, as they become more likely to be convicted, more likely to receive a longer sentence, and less likely to gain and maintain future employment.

As this audit demonstrates, pretrial services offer an effective alternative to money bail. Releasing defendants through pretrial services is less costly than holding them in jail before trial. The experience in Washington and other states suggests the likelihood that a defendant will fail to appear for their trial or that they will reoffend pending trial is comparable, if not better, when pretrial services are used instead of bail.

The purpose of this audit was to give stakeholders in the criminal justice system additional information about pretrial services and explore the potential for expanding their use. This audit provides information that can help local jurisdictions assess the risks and opportunities that come with pretrial services. Although we see tremendous opportunity, pretrial release and the conditions imposed on defendants are ultimately a judicial matter. We did not make any specific recommendations to judges regarding how they should use pretrial services. However, the Pretrial Reform Task Force established by the Washington State Superior Court Judges' Association, the District and Municipal Court Judges' Association, and the Supreme Court's Minority and Justice Commission made several recommendations in its February 2019 report reviewing pretrial services.

Recommendations

The audit does not make any recommendations.

Superior Court and Courts of Limited Jurisdiction Rules on RELEASE OF ACCUSED

Superior Court Criminal Rule (CrR) 3.2
RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases.

Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (d) and (g) of this rule.

(b) Showing of Likely Failure to Appear--Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(5) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(6) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not
limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger--Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors--Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(7) The accused's past record of committing offenses while on pretrial release, probation or parole; and

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victims or witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person's safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the person's mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(j) Review of Conditions.

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion, both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (i). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

(k) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (j). Release may be revoked only if the violation is proved by clear and convincing evidence.

(l) Arrest for Violation of Conditions.

(1) Arrest With Warrant. Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration ofconditions of release pursuant to section (k).

(2) Arrest Without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (k).

(m) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(n) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) 3.2

RELEASE OF ACCUSED

If the court does not find, or the court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, "violent crimes" may include misdemeanors and gross misdemeanors and are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear—Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release. If this requirement is imposed, the court must also authorize a surety bond under subsection (b)(5);

(5) Require the execution of a bond with sufficient solvent or the deposit of cash in lieu thereof;

(6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required.

A court of limited jurisdiction may adopt a bail schedule for persons who have been arrested on probable cause but have not yet made a preliminary appearance before a judicial officer. The adoption of such a schedule or whether to adopt a schedule, is in the discretion of each court of limited jurisdiction, and may be adopted by majority vote. Bail schedules are not subject to GR 7. The supreme court may adopt a uniform bail schedule as an appendix to these rules.

If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger--Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

(1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;

(2) Prohibit the accused from going to certain geographical areas or premises;

(3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;

(4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;

(5) Prohibit the accused from committing any violations of criminal law;

(6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice;

(7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors—Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

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(2) Arrest without Warrant. A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (j).

(l) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(m) [Reserved.]

(n) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violates conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

(o) Bail in Criminal Offense Cases--Mandatory Appearance.

(1) Except as provided in subsection (2) or (3) below, when required to reasonably assure appearance in court, bail for a person arrested for a misdemeanor shall be $500 and for a gross misdemeanor shall be $1,000. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.

(2) A court may adopt a local rule requiring that persons subjected to custodial arrest for a certain class of offenses be held until they have appeared before a judge.

(3) Pursuant to RCW 10.31.100, a police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 (Driving Under the Influence) or RCW 46.61.504 (Physical Control of a Vehicle Under the Influence) or an equivalent local ordinance and the police officer: (i) has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within 10 years; or (ii) has knowledge, based on a review of the information available to the officer at the time of arrest, that the person is charged with or

is awaiting arraignment for an offense that would qualify as a prior offense as defined in RCW 46.61.5055 if it were a conviction.

NOTE: A police officer is not required to keep a person in custody if the person requires immediate medical attention and is admitted to a hospital.

(p) [Reserved.]

(q) [Reserved.]

[Adopted effective September 1, 1987; Amended effective November 17, 1989; September 1, 1991; January 1, 1992; September 1, 1992; June 25, 1993; May 1, 1994; September 1, 1994; August 15, 1995; September 1, 1995; June 5, 1996; October 31, 2000; September 1, 2002; April 1, 2003; September 1, 2005; July 1, 2012; December 8, 2015; February 28, 2017; November 20, 2018.]

Washington State Pretrial Reform Task Force

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