

***Incarceration Prevention Reduction Task Force  
Behavioral Health Committee***

October 16, 2017

Health Department Creekside Conference Room, 509 Girard Street, Bellingham WA  
2:30 p.m. - 3:30 p.m.

**AGENDA**

Topic	Attachment
<b>1. Call to Order</b>	
<b>2. Discussion of objectives and role of the BH Ad hoc Committee vs. what other efforts are underway and lead by other community partners.</b>	1 - 2
<b>3. Review of VERA Report on Behavioral Health Committee sections</b>	3 - 52
<b>4. Phase III Report</b>	N/A
<b>5. Other Business</b>	
<b>6. Public Comment</b>	
<b>7. Adjourn</b> The next meeting is 2:30 - 3:30 p.m. on November 20, 2017, at the Health Department Creekside Conference Room, 509 Girard Street, Bellingham.	

Upcoming Meetings:

- Full Task Force: 8:30 am - 12:30 pm on October 23, 2017 in the Civic Center Garden Room, 322 N. Commercial, Bellingham
- Triage Facility Committee: 10:00 am - 11:30 am on November 9, 2017 at the Health Department Creekside Conference Room, 509 Girard Street, Bellingham.
- Legal and Justice Systems Subcommittee: 11:30 a.m. - 1:30 p.m. on November 14, 2017 at the County Courthouse Fifth Floor Conference Room 514, 311 Grand Avenue, Bellingham.

# ***Incarceration Prevention and Reduction Task Force***

## *Behavioral Health Programs and Services Ad Hoc Committee*

### Statement of Work

#### **Statement of Purpose**

The purpose of the Incarceration Prevention and Reduction Task Force is to continually review Whatcom County's criminal justice and behavioral health programs and make specific recommendations to safely and effectively reduce incarceration of individuals struggling with mental illness and chemical dependency, and minimize jail utilization by pretrial defendants who can safely be released. (Ord. 2015-037; Ord. 2015-025; County Code 2.46.020).

The purpose of the Behavioral Health Programs and Services Ad Hoc Committee is to develop recommendations for new, or enhancement of existing, programs designed along a continuum that effectively reduces incarceration of individuals struggling with mental illness and chemical dependency (Ord. 2015-037).

Recommendations will be based on local needs, recognized best practices and the work of the other two Ad Hoc Committees.

#### **Goals**

- Minimize jail utilization by pretrial defendants who can be safely released
- Identify new or enhancement of existing programs designed along a continuum that effectively reduces incarceration of individuals struggling with mental illness and chemical dependency.
- Improve the continuum of alternatives to incarceration and jail diversion programs.
- Identify and implement programs and services that are effective alternatives to incarceration
- Benchmark Whatcom County behavioral health programs and services against nationally recognized best practices
- Develop an understanding of the client profile of the population utilizing behavioral health services
- Provide comprehensive release planning to ensure citizens are connected to and engaged in available programs and services upon their return to the community (warm hand-offs)

#### **Scope (Project Tasks)**

- Assemble information about existing program and services
  - Services offered
  - Financial resources
  - Budgets and expenses
  - Number of people served
  - Demographics of people served
  - Effectiveness in reducing or preventing incarceration
- Map existing programs and services in the Sequential Intercept Model
- Identify gaps in existing programs and services
  - Consider pre-intercept One programs and services that may reduce incarceration
- Identify nationally recognized best practices for programs and services that are known to reduce incarceration
- Identify and recommend immediate opportunities for system improvements and measure effectiveness
- Create comparison with Whatcom County based programs
- Identify appropriate resources and supports for client departures from facility (warm hand-offs)
- Recommend improvements to existing programs and services
- Recommend additional or modified programs and services

# ***Incarceration Prevention and Reduction Task Force***

*Behavioral Health Programs and Services Ad Hoc Committee*

## **Statement of Work**

### **Deliverables**

- Progress report for Phase One deliverable date
- Recommendations to the Task Force for improvements to existing programs and services
- Recommendations to the Task Force for additional or modified programs and services

### **Schedule of Work**

- Workgroup meeting schedule
  - December 10, 2015, 3 – 5pm, WAHA, 800 East Chestnut LL, Bellingham, WA
  - December 17, 2015, 3 – 5pm, WAHA, 800 East Chestnut LL, Bellingham, WA
  - January 07, 2016, 3 – 5pm, WAHA, 800 East Chestnut LL, Bellingham, WA
  - Additional meetings TBD
- Phase One Progress Report: February 09, 2016
- Sequential Intercept Model mapping completed by: TBD
- Benchmarking completed by: TBD
- Recommendations to the Task Force regarding available alternatives to incarceration: September, 2016

### **Measures of Success**

Consistent with established deadlines, establish benchmarks, and deliver to the Task Force an evaluation of existing behavioral health programs, as well as recommendations for enhancements to existing programs and new services that can be implemented in Whatcom County.

### **Identified Best Practices**

Incorporate as appropriate for our work and any appropriate additional best practices that meet nationally recognized standards.

- Substance Abuse and Mental Health Services Administration, GAINS Center
- The VERA Institute of Justice
- National Association of Counties, the Stepping Up Initiative
- Council of State Governments Justice Center
- Other national standards

### **Other Ad Hoc Committees**

The purpose of the Triage Facility and Facility Programming Ad Hoc Committee is to make recommendations to Task Force regarding the construction and operation of a new or expanded multi-purpose crisis triage facility to assist with jail and hospital diversion of individuals struggling with mental illness and/or chemical dependency.

The purpose of the Legal System Ad Hoc Committee is to make recommendations to the Task Force regarding programs and services that have the potential to prevent or reduce incarceration. Current, enhanced and new programs and services are under consideration. Behavioral health programs and services are the purview of a different Ad Hoc Committee.

The work between Ad Hoc Committees is interrelated and interdependent.

September 2017

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## Report to Whatcom County Stakeholders on Jail Reduction Strategies

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*Elizabeth Swavola, Kristine Riley, Vedan Anthony-North, and Stephen Roberts*

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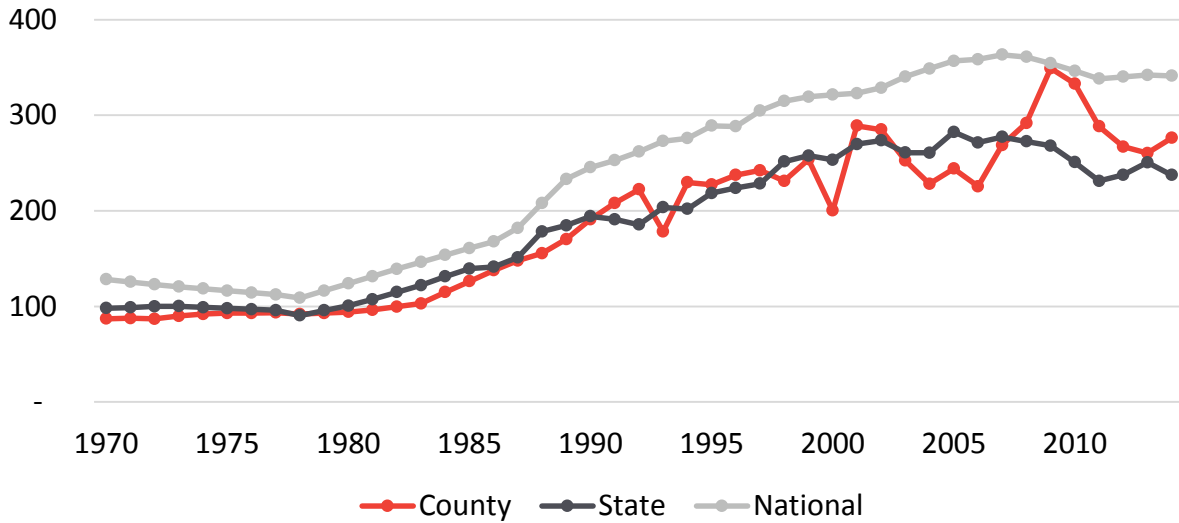
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DRAFT

# Introduction

Whatcom County has experienced dramatic growth in its local jail population over the past five decades: between 1970 and 2014, the number of people in jail in Whatcom County at any given time grew from 45 to 391, nearly a nine-fold increase.<sup>1</sup> During that same time period, the incarceration rate—the number of people incarcerated in jail per 100,000 county residents—more than tripled, from 87 to 276 (see Figure 1).<sup>2</sup> As the jail population has surged, both county and city governments, as well as community stakeholders, have become increasingly concerned with the fiscal, safety, and social consequences of an overcrowded jail. In an effort to understand the factors driving the growing number of people in jail and to reverse these trends, community and government have come together, forming the Whatcom County Incarceration Prevention and Reduction Task Force (“Task Force”).

Figure 1. Jail incarceration rates, 1970-2014



In September 2016, Whatcom County contracted with the Vera Institute of Justice (“Vera”), an independent nonprofit organization, to provide assistance to the Task Force in developing a more thorough understanding of the local justice system and drivers of jail population growth in order to identify and prioritize recommendations for safely reducing unnecessary jail use. Vera has worked over the last five decades to transform justice systems through research, policy, practice, and public engagement. Vera has assisted counties and local justice systems across the United States to achieve their jail reduction goals. This report presents the findings from Vera’s assessment and recommendations for how Whatcom County can reduce its jail population and create a safer, more effective local justice system.

## A Brief History of the Whatcom County Jail

### **Jail Capacity and Growth**

Built in 1983 and later expanded, the current downtown jail facility can hold up to 212 people safely. In 2004, when the jail population was 289, the County passed a ballot measure to impose a 0.1 percent sales tax for “costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of jail facilities.”<sup>3</sup> In 2006, the County used a portion of the funds raised by the tax increase to open an interim work center, a temporary minimum security facility that can hold up to 150 people, to alleviate overcrowding. The total jail population continued to swell, however, reaching a peak of 487 in 2009. The interim work center remains in operation today.

Authors of a 2011 assessment requested by Sheriff Bill Elfo and coordinated by the National Institute of Corrections found the physical conditions of the jail and work center—and lack of programming at both—cause for concern.<sup>4</sup> They noted limited levels of supervision and lack of activity and recreation for people incarcerated in the jail. The authors recommended greater use of supervised pretrial release and alternatives to incarceration to alleviate capacity pressures by reducing the jail population.

In 2015, in an attempt to ease overcrowding, the County added a stipulation to jail use contracts requiring municipalities to relocate in-custody pretrial defendants, those awaiting resolution of their cases, within hours after their first appearance in court to jails in other counties, such as Yakima and King Counties. The Sheriff’s Office also instituted restrictions on booking people arrested on gross misdemeanors and misdemeanors into jail when it approached capacity limits. To reduce its need to send people to other counties, Bellingham contracted with Friendship Diversion Services to provide electronic home monitoring of some pretrial defendants and people serving Municipal Court sentences.

In July 2016, the County hired architecture firm design2LAST, inc. to analyze the cost of renovating the existing jail and work center. The firm estimated a cost of approximately \$10.5 million to correct current building deficiencies at the jail and work center and an additional \$32.4 million for a longer-term, 20-year renewal plan.<sup>5</sup> With the total average daily jail population hovering around 324 in 2016, Whatcom County continues to face challenges with overcrowding and a deteriorating jail infrastructure.

### **Whatcom County Incarceration Prevention and Reduction Task Force**

In May 2015, recognizing the need to identify alternatives to detaining people in jail, the Whatcom County Council (“Council”) established the Whatcom County Incarceration Prevention and Reduction Task Force. The Council charged the Task Force with developing plans for a new or expanded crisis triage center, recommendations for programs that would reduce the incarceration of people with substance use and mental health challenges, and an array of jail diversion programs and alternatives to incarceration.<sup>6</sup> In July 2015, the Council amended the ordinance to include within the Task Force’s responsibilities



expansion of existing alternatives and programs, such as probation, home monitoring, and crisis intervention teams.<sup>7</sup>

The Task Force, which meets monthly, is made up of 24 multidisciplinary members and has four subcommittees: the Steering Committee, the Behavioral Health Ad Hoc Committee, the Legal and Justice System Ad Hoc Committee, and the Crisis Triage Ad Hoc Committee. Membership on the Task Force includes health care providers, community-based organizations, community members, including people who have been personally impacted by the justice system, and representatives from county, city, and tribal government and justice system agencies.

In three phased reports, the Task Force has recommended development of two adjoined 16-bed units—one for crisis stabilization and one for withdrawal stabilization—to replace the current, smaller Crisis Triage Center; further exploration of pretrial risk assessment and supervision; and implementation of the Ground-level Response and Coordinated Engagement (GRACE) program, a coordinated intervention and care model for people with frequent involvement with criminal justice and behavioral health agencies.<sup>8</sup> Since September 2016, Vera has worked with the Task Force to gain a deeper understanding of challenges contributing to jail population growth in Whatcom County and identify additional opportunities for reduction.

## **Building a New Jail**

Simultaneous to other efforts to alleviate the problem of jail overcrowding, the County began exploring the possibility of building a new jail facility. In April 2011, the Council established the Jail Planning Task Force to recommend a size, location, and funding mechanism for the new jail.<sup>9</sup> Issuing its final report in March 2012, this Task Force recommended that the County move forward with plans to build a new jail with between 500 and 700 beds, but determined the other tasks, such as financing and location, were beyond the scope of the group's expertise.<sup>10</sup>

In 2013, the County hired an architecture consultant, DLR Group, to assess property the County intended to purchase for construction of a new jail facility. Upon completion of the consultant's review, the County purchased the property for nearly \$6.1 million and obtained a conditional use permit from the City of Ferndale, where the site is located. In November 2015, the County presented voters with a ballot measure to increase a sales tax for construction of a new 521-bed jail on the Ferndale property to replace the existing jail and work center at an estimated cost of \$100 million. With 51 percent of voters rejecting the sales tax increase, the measure failed.<sup>11</sup>

Deciding to revisit the ballot measure in the 2017 election cycle, the County Council established the Jail Stakeholder Workgroup, a 16-member body made up of city and county government officials, law enforcement, tribal representatives, and community members, to develop a funding proposal for a new jail.<sup>12</sup> The Workgroup recommended a sales tax measure to fund a \$110 million new jail construction, and expressed its support for an agreement that established the size of the new jail at 476 beds, including 36

medical and behavioral health beds. The county would contribute 78 percent of the capital costs, and the cities would contribute 22 percent, the majority of which would be paid by Bellingham (71.6 percent).<sup>13</sup> To address concerns that incarceration reduction remain a priority, Bellingham and the county crafted a separate agreement stating that annually, Bellingham would commit a portion of its net sales tax revenue to fund incarceration prevention programs, and the county would make a dollar-for-dollar match.<sup>14</sup>

In July 2017, the County Council voted four to three to approve the agreement and to submit a ballot proposition to Whatcom County voters to raise a 0.2 percent sales tax for “costs associated with financing, construction, maintenance, and operation of jail facilities, plus incarceration prevention programs, including medical and behavioral health facilities and programs.”<sup>15</sup> In November 2017, voters will decide whether the county can raise a sales tax to fund a new, larger jail.

## Vera’s Process

Working collaboratively with the Task Force and county and city leadership, Vera conducted an in-depth examination of the local justice system to understand how Whatcom County uses its jail and identify viable reduction strategies. Many jurisdictions across the country have safely reduced their use of jail, using a data-driven approach to understand and address drivers of jail population growth, while also increasing fairness and efficiency.<sup>16</sup> Vera’s work to accomplish these goals in Whatcom County can be broken down into three main components:

**Administrative data analysis:** The size of the jail population is determined by two key factors: who goes into the jail (admissions) and how long they stay (length of stay, or LOS). To understand these factors, we reviewed two different aspects of the data: (1) admissions to jail—information about everyone booked into jail; and (2) average daily population (ADP)—a snapshot of who is detained in jail at any given time and how long, on average, they have been there as of the “snapshot date.”

**Mapping caseflow:** To understand the various outcomes a defendant may have when entering the Whatcom County justice system, Vera convened a diverse group of system and community stakeholders to map the process. The system mapping exercise memorialized the flow of cases through the county’s three court levels, with the intention of building a common understanding of how the existing system actually functions. It also served as a facilitation tool for the group to identify challenges within the local justice system that may be contributing to jail population growth, as well as opportunities for change.

**Qualitative research:** Vera conducted four site visits, which included individual and group meetings with key stakeholders, tours of the jail, work center, crisis triage and detox facilities, as well as observations of first appearances in Superior, District, and Bellingham Municipal courts. Vera

supplemented site visits with written memoranda about evidence-based jail reduction practices—such as actuarial pretrial risk assessment, pretrial services and supervision, and risk management.

The recommendations included in this report are based on Vera’s quantitative and qualitative research. They should be seen as a starting point, understanding that reform takes time, dedicated cross-system collaboration, ongoing data analysis, and leadership. While the county can implement some of the recommendations right away, some will take more planning, further research, and a deeper investment of resources. Moreover, these recommendations are not the only steps the county can take to reduce the number of people in jail. To realize the benefits of jail population reduction fully, jurisdictions must continuously engage in data-driven processes to develop consensus on who should be in the jail and whom they are willing to release and/or divert at various system touch points. Whatcom County must capitalize on the momentum the Task Force’s work has generated, and the commitment among county and city officials to rethink how the entire Whatcom community uses the jail.

# Data Findings: Drivers of Jail Population Growth in Whatcom County

Using data provided by the Whatcom County Sheriff's Office, Vera's analysis examined admissions to and releases from the Whatcom County jail for calendar year 2016. Where possible, the analysis excludes admissions involving holds from other jurisdictions, including the Washington State Department of Corrections (DOC), other counties, and the federal government, because those holds tend to take longer to resolve, which can complicate timely release from jail, and therefore skew trends upward, particularly for length of stay. Excluding holds also has the benefit of focusing attention on cases that reflect policies and practices within the exclusive control of local system actors. Limitations in the data prevented more in-depth analyses of some aspects of the population, such as behavioral health needs and the nature of warrants involved in bookings.

Booking restrictions have been in place at the jail since the beginning of 2016, which presumably kept a certain number of people, who otherwise would have been booked, from going to jail, but the data available to Vera are not sufficient to estimate this number. County administrative reports provided counts of people being held in Yakima County for Bellingham and the Lummi Nation.

Vera analyzed court data provided by the Washington State Administrative Office of the Courts for Whatcom County Superior and District Courts and Bellingham Municipal Court, to learn about case processing. We were not able to examine court data from the Lummi Tribal Court. Court data allowed for an assessment of the time from case filing to result. Notably, there was no reliable link between the court data and the jail data to show whether defendants were being detained while their cases were pending. Vera was also able to supplement its analysis with data from the Bellingham Police, from publicly available crime reporting sources, publicly available data from the Whatcom County Jail Behavioral Health Program, and from Vera's *Incarceration Trends* project, which utilizes the U.S. Department of Justice's Bureau of Justice Statistics Census of Jails to provide historical context from the last four and a half decades on both overall jail incarceration and pretrial detention rates in counties, as compared to state and national averages.

In 2016, there were, on average, 324 people in the Whatcom County jail—including both the downtown facility and the work center. As mentioned above, in response to jail overcrowding, some municipalities had to use jail bed space in other county jails. Over the second half of 2016, an average of about 33 people from Whatcom County were held in the Yakima County jail on any given day—22 people from the Lummi Nation and 11 people from Bellingham. Combined, the total jail population from Whatcom County on an average day was 357 people.

What follows are the key findings from Vera's analysis of the administrative data addressing who was detained in the Whatcom County jail in 2016, what charges sent them there, and how long they stayed. All

averages of the daily population and all percentages are rounded to the nearest whole number. Due to rounding, the sums of percentages may not add up precisely to 100 percent, and the sums of averages may not add up precisely to the reported total.

## Who was detained in the jail in 2016?

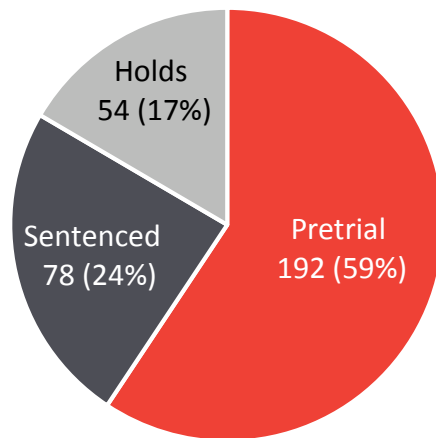
- Nearly 4,300 people entered the Whatcom County jail in 2016.** There were 6,298 bookings of 4,273 unique individuals, as some people were booked into the jail more than once in 2016.
- Most people (73 percent) were booked into the jail only once in 2016, but those who were booked more than once (27 percent of all individuals) accounted for 51 percent of the bookings (3,197).** A smaller number of people booked into the jail (11 percent) were admitted three or more times, accounting for 28 percent of all bookings (see Figure 2). Warrants may be driving the subsequent bookings for those booked more than once. Of all first bookings in 2016, 51 percent had warrants, but for people who were booked more than once, 73 percent of the bookings after the first had warrants.

Figure 2: Count of people and admissions into the jail, 2016

	Individuals	Bookings
People with one booking	3,101 (73%)	3,101 (49%)
People with two bookings	705 (16%)	1,410 (22%)
People with three or more bookings	467 (11%)	1,787 (28%)
Total	4,273 (100%)	6,298 (100%)

- 3. Almost 60 percent of the people detained in the jail in 2016 were held pretrial.** On an average day in 2016, of the 324 people in the jail, 192 people (59 percent) were pretrial, 78 people (24 percent) were sentenced, and 54 people (17 percent) had various holds (see Figure 3).<sup>17</sup> People held pretrial are legally presumed innocent and are awaiting resolution of their cases.<sup>18</sup>

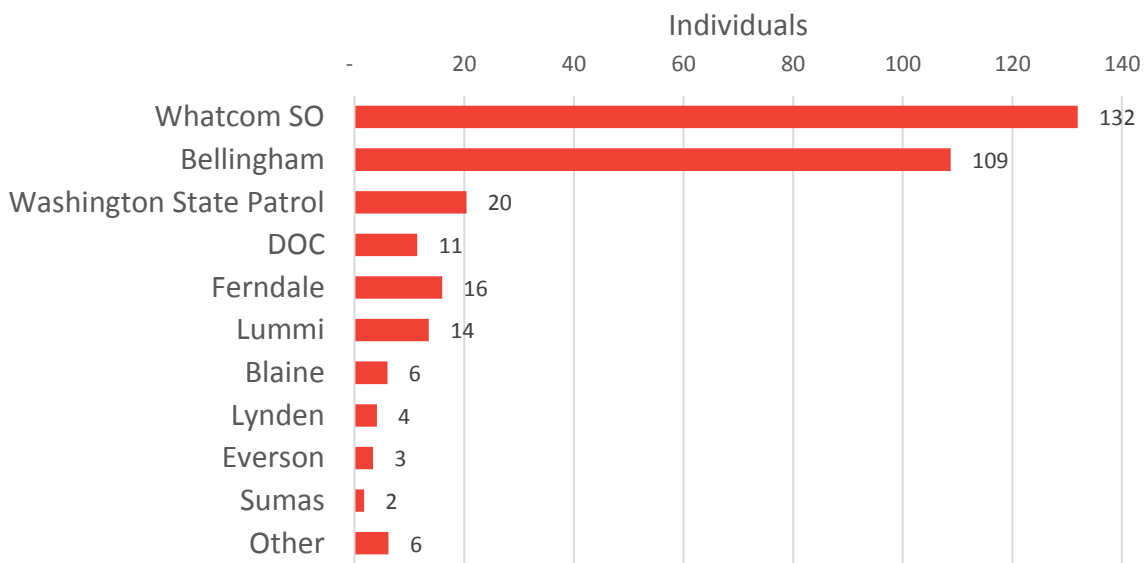
Figure 3: Breakdown of average daily population by legal status, 2016



**4. On an average day, most people in the jail had been booked in by the Whatcom County Sheriff's Office, followed closely by the Bellingham Police Department.**

Of the law enforcement agencies using the Whatcom County jail, the Sheriff's Office and Bellingham Police Department accounted for 74 percent of the average daily population (ADP), state agencies occupied 10 percent, followed most closely by Ferndale (five percent) and Lummi Nation (four percent). See Figure 4.<sup>19</sup>

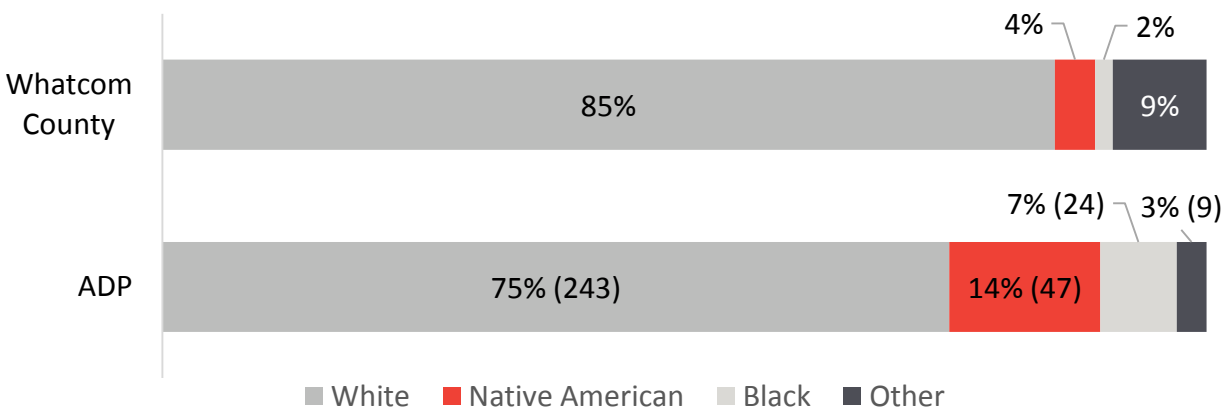
Figure 4: Breakdown of average daily population by booking agency, 2016



**5. The number of women incarcerated in the Whatcom County jail was high as compared to the national average.** Women made up 26 percent of total admissions to the Whatcom County jail in 2016, compared to 21 percent of admissions nationally.<sup>20</sup> On an average day in 2016, women made up 18 percent of the jail population, higher than the national average of 14 percent.<sup>21</sup>

**6. Native Americans, African Americans, and people who identified as Hispanic are overrepresented in the jail.** Native Americans and African Americans made up 14 and seven percent of the average daily jail population in 2016, respectively, even though Native Americans make up only four percent and African Americans make up only two percent of the county population, according to 2015 U.S. Census estimates.<sup>22</sup> See Figure 5.

Figure 5: Racial composition of Whatcom County and jail average daily population, 2016



Disparities existed among all gender breakdowns, as evidenced in Figure 6.<sup>23</sup> The starkest disparities existed with black men and Native American women: black men were admitted to the jail at a rate 4.2 times the rate of white men, and Native American women were admitted to the jail at a rate 5.0 times the rate of white women. Looking across all races, people who identified as Hispanic were admitted to the jail at a rate about 3.5 times the rate of non-Hispanic people.

Figure 6: Racial and ethnic disparities in jail admission rates per 100 county residents, 2016

	Men		Women	
	Admission Rate	Disparity	Admission Rate	Disparity
White	4.0	n/a	1.4	n/a
Black	16.9	4.2	3.9	2.8
Native American	14.8	3.7	7.0	5.0
Non-Hispanic	3.6	n/a	1.3	n/a
Hispanic	13.5	3.7	4.4	3.3



Disparities were similar when looking at people instead of all bookings, counting each person only once even if they had been booked multiple times. Because there was not much variation by race in the likelihood of being booked multiple times, this analysis revealed similarly disparate impacts. See Figure 7.

Figure 7. Racial disparities by individuals, eliminating the effect of multiple bookings, 2016

	Men		Women	
	Admission Rate	Disparity	Admission Rate	Disparity
White	2.8	n/a	1.0	n/a
Black	11.1	4.0	2.7	2.8
Native American	9.1	3.3	4.4	4.5

### What charges sent people to jail?

**1. Most admissions into the jail had non-felony charges as the most serious charge.**

Felony charges accounted for 31 percent of all jail admissions in 2016. Sixty-eight percent of all admissions in 2016 involved nothing more serious than gross misdemeanor (21 percent), misdemeanor (7 percent), or criminal traffic charges (23 percent), or holds from other jurisdictions (17 percent). See Figure 8.<sup>24</sup>

Figure 8: Admissions by most serious charge, 2016<sup>25</sup>

	Admissions	
	Number	Percent
Felony	1,976	31%
Gross misdemeanor	1,320	21%
Misdemeanor	470	7%
Criminal traffic	1,459	23%
DOC holds	755	12%
Other holds	318	5%
Total	6,298	100%

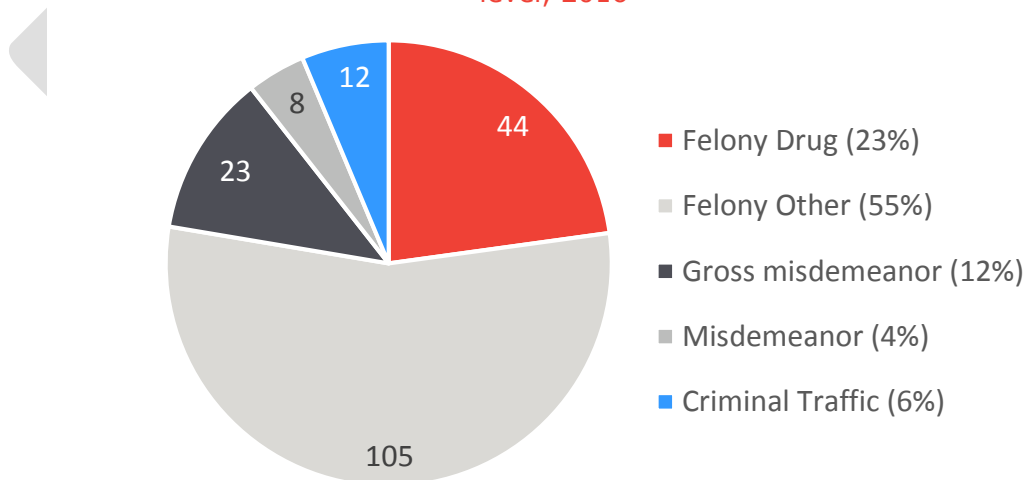
2. For felony charges, three of the five most common top charges that resulted in a jail admission involved drugs. The top three felony drug charges accounted for 291 admissions in 2016, and consumed 19 beds (6 percent) on an average day. See Figure 9.

Figure 9: Most frequent top felony charges resulting in an admission to jail, 2016

Statute Code	Felony Statute	Admissions	ADP
69.50.000	CONTROLLED SUBSTANCE VIOLATION	122	6
69.50.401.2	CONTROLLED SUBSTANCE-MFG/DEL/POSS W/INTENT	99	9
9A.36.021	ASSAULT 2ND DEGREE	87	10
9A.52.030	BURGLARY 2ND DEGREE	83	7
69.50.4013.2	CONTROLLED SUBSTANCE-POSSESSION NO PRESCRIPTION	70	4

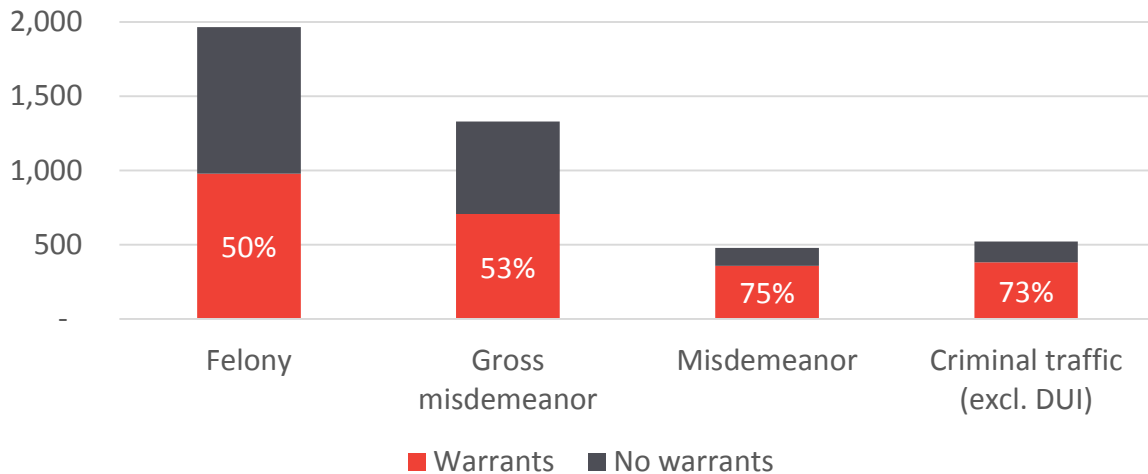
3. Twenty-two percent of the average daily pretrial population (43 individuals) was detained on non-felony charges and 23 percent (44 individuals) was detained on felony drug charges. Fifty-five percent of the pretrial population (105 individuals) was detained on felony charges other than drugs. See Figure 10.

Figure 10: Average daily pretrial population by charge level, 2016



4. **A large percentage of the non-felony charges that resulted in an admission to the jail involved warrants.** Fifty-five percent of the average daily pretrial population had warrants—which require law enforcement officers to make a custodial arrest rather than issue a citation—at the time they were booked into the jail. Fifty percent of all admissions with felony charges as the most serious had warrants. Figure 11 shows the percentage of jail admissions that involved a warrant broken out by charge class. When DUI charges, which almost always result in a custodial arrest, are removed from the analysis, 62 percent of the remaining non-felony bookings into the jail had outstanding warrants.

Figure 11: Jail admissions with warrants by charge class, 2016



As shown in Figure 12, an analysis of the most frequent gross misdemeanor and misdemeanor charges that resulted in a booking into the jail further demonstrates the impact of warrants on the jail: two of the top five gross misdemeanor charges and one of the top five misdemeanor charges involved an arrest for a failure to appear (FTA) warrant.

Figure 12: Most frequent top gross misdemeanor and misdemeanor charges resulting in an admission to jail, 2016

Statute Code	Gross Misdemeanor	Admissions	ADP
9A.36.041	ASSAULT 4TH DEGREE	393	8
9A.56.050	THEFT 3RD DEGREE <\$750.00	118	4
9A.56.050.A	THEFT 3RD DEGREE/FTA	103	3
9A.36.041.A	ASSAULT 4TH DEGREE/FTA	98	4
9A.52.070	CRIMINAL TRESPASS 1ST	53	2

Statute Code	Misdemeanor	Admissions	ADP
9.95.220	PROBATION/PAROLE VIOLATION	149	13
B10.12.020	SHOPLIFTING GOODS LESS THAN \$50	42	1
9A.52.080	CRIMINAL TRESPASS 2ND DEGREE	33	0
9A.52.080.A	CRIMINAL TRESPASS 2ND DEGREE/FTA	29	0
9A.84.030	DISORDERLY CONDUCT	20	0

5. **Three of the top five criminal traffic charges that resulted in a booking into the jail related to driving with a license suspended (DWLS).** See Figure 13. DWLS charges in the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> degrees together accounted for 362 admissions into the jail. A closer look at the 275 bookings on DWLS 3<sup>rd</sup> degree, which is the least serious DWLS charge, revealed that all but five included no other charges. Of the 270 bookings with no other charges, 244 (90 percent) had outstanding warrants, which is likely the reason the defendant was booked into the jail rather than issued a citation in the field.

Figure 13: Most frequent criminal traffic charges resulting in an admission to jail, 2016

Statute Code	Criminal Traffic	Admissions	ADP
46.61.502	DUI	942	19
46.20.342.1C	DWLS 3RD DEGREE	275	2
46.61.500	RECKLESS DRIVING	59	3
46.20.342.1B	DWLS 2ND DEGREE	46	0
46.20.342.1A	DWLS 1ST DEGREE	41	3

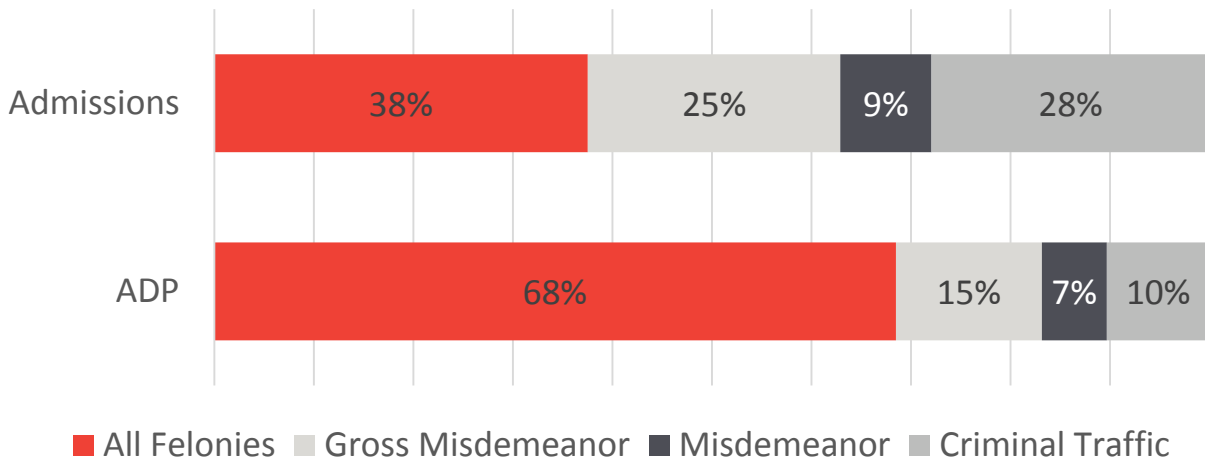
6. **More than half (56 percent) of jail admissions for probation or parole violations had no new charges.** People may be booked into the jail for violations of the conditions of their community supervision that are not by themselves a criminal offense (e.g., missing appointments with the supervising officer or a positive drug screen). On an average day, the jail held seven people admitted on probation or parole violations with no new charges. Their average length of stay was 18 days. Forty-four percent of the jail admissions for probation or parole violations did include new criminal charges; DWLS and drug charges made up three of the five most common new charges accompanying probation and parole violations. See Figure 14.

Figure 14: Most common new charges accompanying probation and parole violations, 2016

Charge	Admissions
DUI	30
DWLS 3RD DEGREE	15
ASSAULT 4TH DEGREE	9
POSSESSION OF DRUG PARAPHERNALIA	8
DWLS 2ND DEGREE	8

7. **People who were charged with a felony or who had a felony sentence occupied the most beds in the jail on any given day.** When examining both pretrial and sentenced populations, and excluding individuals detained in the jail on holds from other jurisdictions, felony cases accounted for 68 percent of the average daily population but only 38 percent of admissions. Conversely, gross misdemeanor, misdemeanor, and criminal traffic cases accounted for 32 percent of the average daily population but 62 percent of admissions. See Figure 15.

Figure 15: Admissions & ADP without holds by charge class, 2016

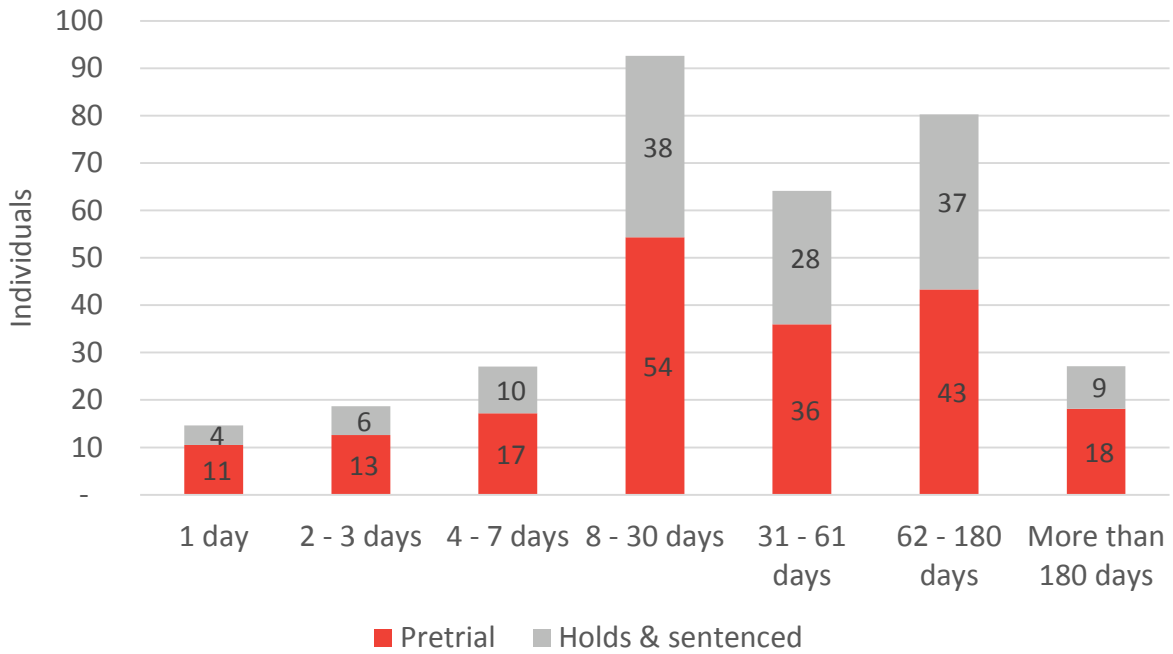


### How long did people spend in jail?

1. **Fifty-seven percent of those released from the jail in 2016 were released within 3 days.** Forty-one percent of admissions stayed in the jail one day or less. Due to a number of individuals with longer stays, however, the average length of stay for people admitted into the jail was 19 days, which is shorter than the national average.<sup>26</sup> When examining pretrial populations exclusively, the average length of stay in the jail was 14 days.

2. **Of those who were not released within three days, the average length of stay was 43 days.** Only 15 percent of admissions resulted in people staying in jail for more than one month, but on any given day, they account for 53 percent (172 individuals) of the population. The same pattern holds for the daily pretrial population. On any given day, 51 percent of the pretrial population (96 individuals) have been in jail for more than one month awaiting the outcomes of their cases. See Figure 16.

Figure 16: Length of stay for the average daily population, 2016



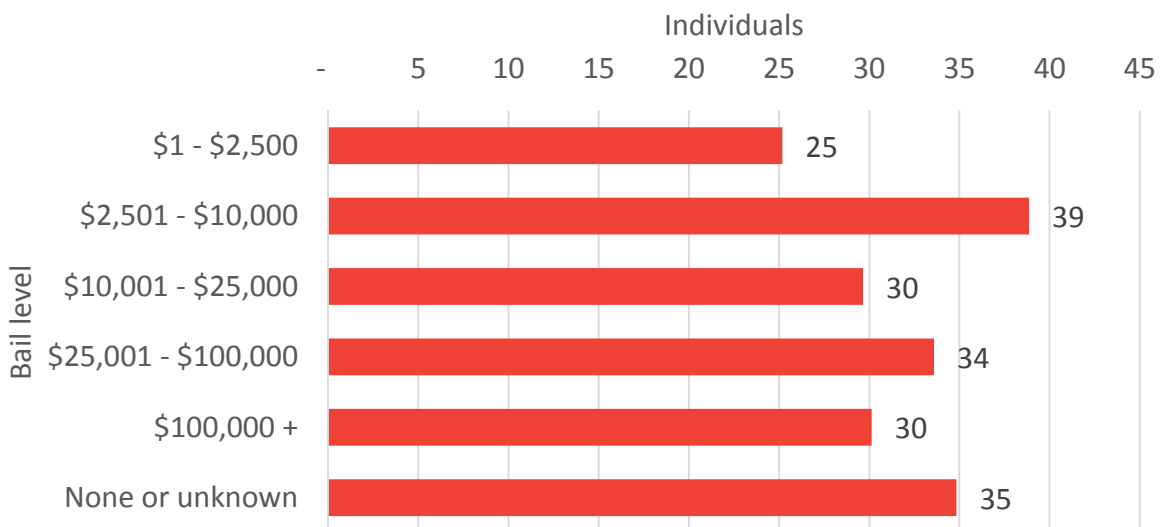
- 3. Small differences in length of stay exacerbate disparities within the jail’s average daily population.**<sup>27</sup> While the differences in lengths of stay were not large between racial categories, even slightly longer stays in the jail and disparate admissions rates can exacerbate disparities in the average daily population. For example, because black men stayed in jail longer on average, they were overrepresented in the average daily population by a factor of 5.2 compared to white men (see Figure 17). As mentioned above, the admission disparity was 4.0.

Figure 17: Length of stay and racial disparities in the average daily population, 2016

	Men		Women	
	Avg. LOS	ADP Disparity	Avg. LOS	ADP Disparity
White	20	n/a	13	n/a
Black	23	5.2	21	3.4
Native American	23	3.8	22	6.8

- 4. On an average day, at least 82 percent of the pretrial jail population had a bail amount that they had not yet posted; many would not do so and would remain in jail until their cases were disposed.** This indicates their incarceration had more to do with their inability to post the set bail amount than any other factor. Sixty-four people on average (33 percent) were facing bail of up to \$10,000. Another 30 people (16 percent) were facing bail between \$10,000 and \$25,000. See Figure 18.<sup>28</sup>

Figure 18: Average daily pretrial population by bail level, 2016





5. **Nineteen percent (660) of the 3,549 people admitted for whom bail was set were eventually released on personal recognizance (PR), which is a promise to appear in court; 44 percent (1,560) were released after posting bail; and 37 percent (1,329) remained in jail until the disposition of their cases.** Another 444 who were admitted into the jail were released on PR without bail having been set.<sup>29</sup> See Figure 19.

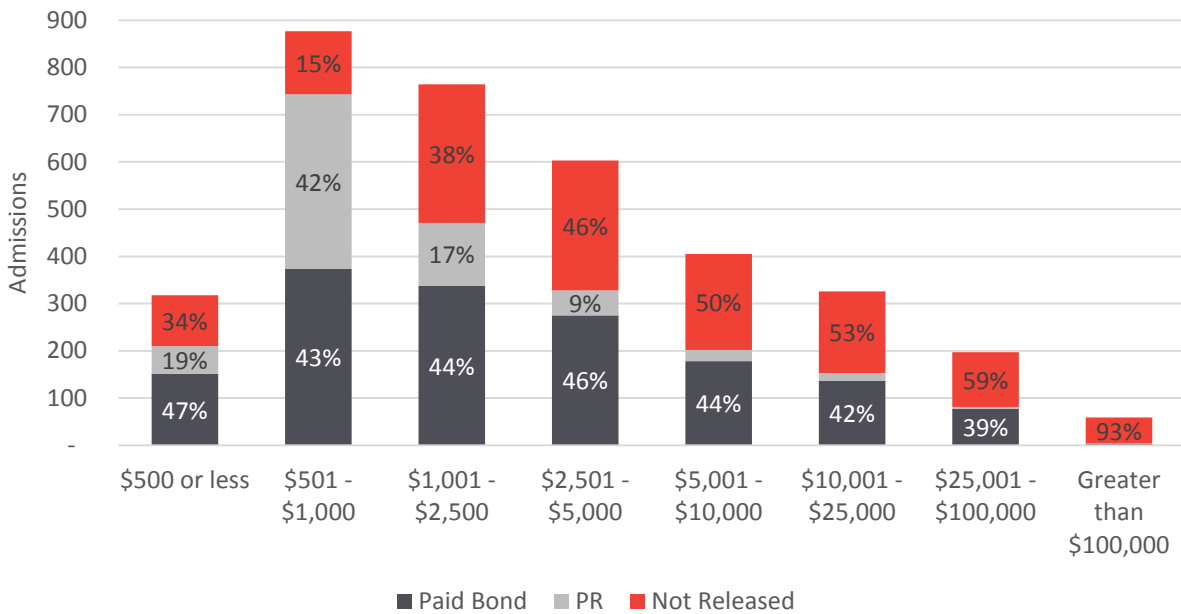
Figure 19. Pretrial bail and release, 2016

Assessed bail	3,549	67%
<i>Released on PR after bail set</i>	660	19%
<i>Released on bond</i>	1,560	44%
<i>Detained until disposition</i>	1,329	37%
Released on PR with no bail set	444	8%
Other	1,286	24%
	5,279	

6. **Of those who were released after posting bail, 84 percent did so within a week of their booking.** Sixteen percent spent more than a week in jail before making their bail.
7. **People with low bail amounts (\$500 or less) spent, on average, a week in jail.** Thirty-four percent of people assessed bail amounts of \$500 or less remained in jail prior to the resolution of their cases. Seventy-three percent of them had non-felony charges.
8. **Nearly half (48 percent) of people with A and B felony charges were able to post bail prior to their case resolution.** In contrast, a third (34 percent) of all admissions to the jail with non-felony charges as the most serious charge were not able to post bail prior to the disposition of their cases.

**9. Twenty percent of people with bail of \$1,000 or less were not able to post bail prior to the disposition of their cases.** In contrast 41 percent of people with bail between \$10,000 and \$100,000 were able to post bail to secure their release. See Figure 20.

Figure 20: Bail outcomes by bail level, 2016



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**10. In Whatcom County Superior and District Courts and Bellingham Municipal Court, the number of cases resolved within benchmark timeframes is lower than prescribed standards.**<sup>30</sup> The National Center for State Courts calls for resolving 90 percent of felony cases within 180 days, while Washington State calls for resolving 98 percent of felony cases within 180 days. Our conservative estimate is that no more than 65 percent of felony cases are being resolved within 180 days in Whatcom Superior Court.<sup>31</sup> See Figure 21.

Figure 21: Resolution of cases in Whatcom Superior Court compared to prescribed standards

Within:	NCSC Standard	WA Standard	Whatcom Superior
90 days	75%		45%
120 days		90%	53%
180 days	90%	98%	65%
270 days		100%	77%
1 year	98%		84%

In both Whatcom District Court and Bellingham Municipal Court, 73 percent of cases were resolved within 180 days compared to the prescribed standards of 98 percent of cases.<sup>32</sup> See Figure 22.

Figure 22: Resolution of cases in Whatcom District Court and Bellingham Municipal Court compared to prescribed standards

Within:	NCSC Standard	WA Standard	Whatcom District	Bellingham Municipal
60 days	75%		47%	42%
90 days	90%	90%	54%	50%
180 days	98%	98%	73%	73%
270 days		100%	85%	86%

**11. People with cases in multiple courts are detained longer in jail on average.** People with cases only in Whatcom Superior Court spent an average of 27 days in jail and accounted for 96 people in the average daily population, while people with cases in the superior court and at least one other court remained in jail an average of 56 days and accounted for 131 people in jail on an average day.

## Key Data Takeaways

The details of the data are important, and additional analysis can provide further guidance to stakeholders in Whatcom County seeking to understand how their local justice system is functioning. Here, however, are some takeaways from the analysis above:

1. People who are pretrial make up a significant portion of the average daily jail population; to reduce the population of the jail, focusing on this group is key. This can be accomplished by decreasing the number of people entering the jail who have not been convicted of a crime, and by decreasing the time people spend in jail before their cases are resolved.
2. People arrested on charges related to substance use are a significant driver of both admissions and length of stay. Approaches to reducing the jail population will need to address this issue.
3. Financial bail lengthens the amount of time people stay in jail.
4. To reduce the number of people booked into the jail, address the drivers of non-felony admissions, especially those involving warrants.
5. In order to reduce the average daily population, shorten case processing times, especially for felony cases.
6. To impact the racial disparities in the average daily population of the jail, begin by understanding and reducing the disparities in admissions—and the various pathways to admissions—which are the largest contributing factor.

# Recommendations

The recommendations that follow are informed by the quantitative data analysis as well as Vera's qualitative data collection, with the goal of safely reducing the jail population and decreasing disparate contact with the justice system.

## 1. Reduce Unnecessary Admissions to the Jail.

### Key findings and challenges

1. Most jail admissions in Whatcom County involve non-felony charges.
  - Sixty-eight percent of all admissions in 2016 involved holds from other jurisdictions or nothing more serious than gross misdemeanor, misdemeanor, or criminal traffic charges.
  - There were 184 jail admissions with municipal shoplifting charges and 30 admissions with municipal disorderly conduct charges in 2016.<sup>33</sup> While most of these charges were accompanied by other state charges, they often had a separate bond amount attached, increasing defendants' total bond amount.
  - Two of the top five gross misdemeanor charges and one of the top five misdemeanor charges involved an arrest for a failure to appear (FTA) warrant.
  - DWLS charges account for three out of five of the most frequent criminal traffic charges that result in a booking into the jail, with 362 admissions in 2016.
2. It is likely that many people in the jail have behavioral health needs that would be better served in the community.
  - The most recent publicly reported data from the Jail Behavioral Health Program show that 59 percent of jail admissions in 2014 were referred for behavioral health services.<sup>34</sup> While this includes pretrial, sentenced, and holds for other jurisdictions, the percentage serves as a barometer of how the jail is used to serve this population.
3. More than half of jail admissions for probation or parole violations had no new charges.
  - People may be booked into the jail for violations of the conditions of their community supervision that are not by themselves a criminal offense (e.g., missing appointments with the supervising officer or a positive drug screen).
  - On an average day, the jail held seven people admitted on probation or parole violations with no new charges, and their average length of stay was 18 days.

## Responsive strategies

*Strategy 1 (a): Remove select low-level offenses from the municipal codes.*

When aiming to reduce admissions to the jail, many counties start by increasing their use of citations in lieu of an arrest. Stakeholders in Whatcom County reported, however, that law enforcement is already in the habit of using citations whenever possible, in part due to the booking restrictions in place at the jail. To provide law enforcement with another option in lieu of arrest, stakeholders from the cities should identify low-level municipal offenses that could be decriminalized and reclassified as civil charges, like nuisance offenses. By removing certain low-level offenses from their criminal codes, municipalities within Whatcom County can safely reduce their jail use while continuing to hold people accountable.

### **Decriminalizing nuisance offenses in Philadelphia, PA**

Last year, Philadelphia decriminalized certain nuisance offenses, such as disorderly conduct, allowing police officers to issue a ticket with a fine instead of making an arrest. Converting low-level criminal violations to civil citations has the dual benefit of avoiding arrest and diverting cases completely from the criminal court system to civil courts.<sup>a</sup> It is important with such efforts, however, to ensure that: (1) people who cannot afford fines do not end up incarcerated due to their failure to pay and have other options such as payment plans or community service; and (2) fines are not issued excessively to fund the local justice system.<sup>b</sup>

<sup>a</sup> David Gambacorta, "Here's What Philly Cops Thought of the DNC Protests," *Philadelphia Magazine*, July 29, 2016.

<sup>b</sup> Alexandra Natapoff, "Misdemeanor Decriminalization," *Vanderbilt Law Review* 68, no. 4 (2015): 1055-1116. Many jurisdictions use the funds generated from fines and fees to fund the local criminal justice budget. This can create perverse incentives to increase or maintain a certain number of arrests or tickets, even when crime decreases. For example, the U.S. Department found officials in Ferguson, Missouri directed the police to increase law enforcement efforts specifically to increase revenue. See United States Department of Justice Civil Rights Division, *Investigation into the Ferguson Police Department* (Washington, DC: DOJ, 2015), 9-15.

*Strategy 1 (b): Expand the use of "book and release" practices, including from police stations.*

"Book and release" is an intermediate step between citation in the field and full jail booking; individuals are arrested and, when certain criteria are met, released on PR directly from either the jail or a police station. The process is particularly appropriate when an officer would typically issue a citation, but cannot determine the identity of the person in the field. The criteria often include the level or type of charge and the absence of any holds or warrants.

### **Book and Release in Milwaukee, WI**

The Milwaukee Police Department recently developed a protocol allowing officers to bring people arrested on non-violent misdemeanor charges to a police station for fingerprinting and a background check, a practice that was already in use in suburban police departments. Following a supervisor's approval, people will be released from custody on personal recognizance with a citation and court date. These defendants will avoid the jail altogether, yet still be held responsible for their alleged offenses.<sup>a</sup>

<sup>a</sup> Safety and Justice Challenge, "Milwaukee County, WI," <http://www.safetyandjusticechallenge.org/challenge-site/milwaukee-county/>.

In September 2017, Sheriff Elfo worked with judges to establish a policy in some of the lower courts of issuing book-and-release warrants when defendants facing certain misdemeanor and gross misdemeanor charges, primarily DWLS 3<sup>rd</sup> degree, fail to appear but do not have a prior history of failing to appear.<sup>35</sup> This policy will allow jail staff to book and release defendants on PR after they are arrested on the FTA warrant. Building on these efforts, Whatcom County justice stakeholders should expand this policy, including charges that are driving FTA jail admissions—such as Theft 3<sup>rd</sup> degree and Criminal Trespass 2<sup>nd</sup> degree—and charges that are not in warrant status to allow for book and release on new misdemeanor and gross misdemeanor charges that drive admissions—such as Malicious Mischief 3<sup>rd</sup> degree and DWLS.

The police departments should also explore whether they could book and release eligible people directly from their stations, without taking them to the jail, and institutionalize any current informal practices by developing protocols for law enforcement officers when booking and releasing someone. To reduce the risk of FTAs for people who are booked and released, first appearance court dates that occur promptly, and court date reminders (see Strategy 2(c)), have been found to be effective.<sup>36</sup>

*Strategy 1 (c): Facilitate opportunities for individuals to pay off fines associated with previous moving violations.*

To address the underlying causes of DWLS charges and admissions to the jail, Whatcom County can develop mechanisms for individuals to pay off fines and fees, including payment plans, and can explore opportunities to remove debt from collections agencies, eliminating unnecessary interest and fees. Many counties across Washington State have developed similar programs, which allow individuals to reinstate their licenses and drive legally as long as payments are made.<sup>37</sup>

One challenge, which has arisen in previous attempts in Whatcom County to address DWLS 3<sup>rd</sup> degree, is that some people are not able to make payments even with this assistance due to obligations in multiple jurisdictions. To assist people with reinstating their licenses, the County should explore alternatives to payment, such as community service or work crew opportunities, and develop consistent criteria across all courts for accepting and rejecting requests for payment relief.<sup>38</sup>

*Strategy 1 (d): Pursue opportunities to coordinate care between county agencies for people with behavioral health needs who come into contact with the justice system to prevent jail admissions.*

Recognizing the need to better serve people with health needs and to divert them from the justice system, the Task Force's Behavioral Health Ad Hoc Committee has proposed a program designed to improve care coordination for some people who frequently utilize the County's justice and health systems. The Ground-level Response and Coordinated Engagement (GRACE) program seeks to stabilize people—primarily through case management, housing, and treatment—who are referred to the program through multiple health and justice pathways.<sup>39</sup> As the Task Force and GRACE leadership team continue to refine the programmatic design, they should:

- *Define “high utilizers” as people who have had significant contact with law enforcement or are admitted to the jail with frequency, in order to impact the jail population.* While heavy utilization of other local systems, like the health system, is an important consideration as well, to reduce the jail population, Whatcom County will need to identify individuals who rotate between the jail and other systems, linking them to services that stabilize and support them in the community rather than the jail.
- *Develop a clear understanding of how people graduate from the program.* In addition to outlining criteria for program eligibility, Whatcom County will need to design exit ramps from the program. The GRACE leadership team should have benchmarks for when someone ceases to be a frequent utilizer and a plan to transition them from the program.
- *Connect people to legal services* to support them with any criminal or civil charges they may have, as well as immigration challenges that may be preventing them from accessing services.
- *Incorporate harm reduction principles into the GRACE program design.* While some people who have substance use disorders and who are involved in GRACE will be prepared and ready to abstain from future drug use, some individuals will not and will continue to use substances. To ensure GRACE is inclusive of both categories of people, Whatcom County should build a program centered on reducing the negative consequences of drug use (e.g., social isolation, incarceration, overdose, and death).<sup>40</sup> Providing access to clean syringes, medication-assisted treatment options, and naloxone—which can reverse opioid overdoses—are some of the ways GRACE can meet the needs of people with substance use disorders.<sup>41</sup>
- *Ensure participation is voluntary.* If people are to be diverted from the justice system, any programmatic participation must be the decision of the individual alone and cannot have immediate justice consequences if they decide not to participate. Without this framework, GRACE runs the risk of being seen as a supervision mechanism, and could potentially lead to more justice involvement rather than less.
- *Emphasize transparency to help people feel safe about their decision to participate.* Continuing to include community members, especially people with behavioral health needs and prior justice



involvement, in the planning and development of the GRACE program will help County leadership to design an effective program.

- *Consider diversion opportunities for those who do not rise to the level of a “high utilizer” but whose substance use has brought them into contact with the justice system.* For example, piloted in Seattle and replicated in jurisdictions across the country, Law Enforcement Assisted Diversion (LEAD) programs allow officers to exercise discretion at the point of contact to divert people to community-based, harm-reduction interventions for unlawful conduct—most commonly, drug possession, sales, and prostitution—that is driven by unmet behavioral health needs.<sup>42</sup> In these programs, people suspected of engaging in drug possession and other low-level offenses are offered client-centered case management rather than booked into jail and linked to community resources, like housing placement, medical care, legal advocacy, job training, mental health counseling, and treatment programs for chemical dependency.<sup>43</sup> Preliminary evaluations of the Seattle LEAD program have found that participants were nearly 60 percent less likely to be arrested after enrollment than people who went through the traditional criminal justice process and more likely to obtain stable housing and employment.<sup>44</sup>

*Strategy 1 (e): Establish a sobering center to bring people arrested on DUI and other charges related to substance use.*

As DUI charges—the most frequent criminal traffic charge resulting in a jail booking—almost always result in a custodial arrest, Whatcom County should develop a sobering center as an alternative option for people who are arrested on DUI charges. A sobering center is a safe environment other than a hospital or jail for intoxicated people to sober up, and can offer an opportunity to connect individuals to longer-term treatment.<sup>45</sup> Locating the center conveniently to allow access to both people who have not come into contact with law enforcement and officers will increase its utilization and prevent jail admissions.

### **Sobering centers to divert people arrested on DUIs**

Santa Barbara, California established the Santa Barbara Community Sobering Center as an alternative to jail for people “detained for being intoxicated in public and driving under the influence of alcohol within city limits.” The center, run by a local non-profit called Threshold to Recovery, is open 24 hours, holds people for a minimum of four hours, and both police and hospital staff can refer people to the center. While the sobering center allows people to avoid being booked into jail, it does not mean people are free from a citation or, when necessary, prosecution. Evaluations of sobering centers have been positive, and a 2005 report found the Santa Barbara initiative saved the county \$47,400 in a one-year period. A study of a similar sobering center in Grand Rapids, Michigan found the center saved taxpayers more than \$280,000 annually.<sup>a</sup>

<sup>a</sup> To learn more about county sobering centers, see Santa Barbara County Grand Jury, *A Sobering Thought: The Santa Barbara Community Sobering Center An Alternative to Jail*, (Santa Barbara, CA: Santa Barbara County, 2005), B2-3; County Civil Grand Jury, *A Sobering Center In Marin: One Small Step in Solving a Big Problem*, (Marin County, CA: County of Marin, 2013), 3-4.

*Strategy 1 (f): Equip law enforcement officers throughout the county with the tools needed to de-escalate and divert people experiencing behavioral health crises.*

Law enforcement officers frequently come into contact with people with mental health needs, and many of those people end up in the jail because officers have limited resources to respond to people in crisis. In order to divert people in crisis from the justice system effectively, it is important that police officers know how to de-escalate crises and understand the service landscape in Whatcom County. To support law enforcement in those efforts, Whatcom County should:

- *Increase the availability of Crisis Prevention and Intervention Teams (CPIT)—community-based outreach teams who are trained to respond to behavioral health crises—to law enforcement. The Bellingham Police Department reported CPIT is a helpful resource to its officers, but is not available on a regular or consistent basis. Ensuring officers know about CPIT is also critical. Furthermore, CPIT should be available to other municipalities throughout Whatcom County as well as Lummi Nation and the Sheriff’s Office.*
- *Expand the use of a Mental Health Liaison beyond the Bellingham Police Department. The Bellingham Police Department has a Mental Health Liaison who is available five days a week to work with officers responding to people in crisis and assess whether their needs can be addressed in the community. This co-responder approach allows people in crisis to be connected with services rather than arrested and brought to the jail. Replicating this model at other law enforcement agencies, especially the Sheriff’s Office, is an important tool to reduce the jail population.*

### Co-responder models

Some departments deploy officers paired with a behavioral health specialist to respond to crises. Milwaukee's Crisis Assessment Response Team (CART) can be requested through the Milwaukee Police Department's dispatch or through the County's Behavioral Health Division Crisis line. Teams consisting of officers and a medical or behavioral health clinician are deployed to assess whether individuals in crisis can be diverted to community resources. On average, teams are able to divert people to community-based supports and resources 85 percent of the time. One assessment found CART intervention also decreased emergency room admissions in the County by 50 percent between 2011 and 2017.<sup>a</sup>

<sup>a</sup> To learn about Milwaukee's CART program, see Milwaukee Police Department (MPD), *Milwaukee Police Department Crisis Intervention Services* (Milwaukee, WI: MPD, 2013) and Chris Abele, "Milwaukee County's Approach to Mental Health Reform is a National Success Story," *Milwaukee Courier*, February 18, 2017.

- *Train officers on crisis intervention.* Originally developed in Memphis, Tennessee, Crisis Intervention Team (CIT) training is a law enforcement-based model of de-escalation for individuals experiencing mental health crisis, allowing officers to direct those in crisis towards appropriate services.<sup>46</sup> CIT is recognized both nationally and internationally as a best practice for law enforcement.<sup>47</sup> Studies have found a lack of CIT training among officers increases the risk of harm to mentally ill people during law enforcement interactions.<sup>48</sup> Additionally, CIT provides the opportunity for behavioral health providers and officers to share knowledge, has been proven to increase officers' confidence in their ability to intervene, and has resulted in reduced number of arrests, admissions to jail, and fatalities.<sup>49</sup> The Bellingham Police Department began the initial eight-hour core CIT training for officers in 2014, with the plan to have all officers complete the full 32 hours of training by 2018.<sup>50</sup> Opportunities for other law enforcement agencies throughout Whatcom County to receive CIT and de-escalation training will likely strengthen the County's ability to move people in crisis toward behavioral health resources in the community and away from the jail.

*Strategy 1 (g): Develop mechanisms to prevent jail admissions for technical violations of probation or parole.*

Whatcom County can reduce the jail population by decreasing the number of people who are admitted for violations of the terms of their community supervision. District Court Probation is working to establish evidence-based policies and institutionalize procedures that provide alternatives to jail incarceration for people on local probation who commit technical violations. Staff should continue to build on those efforts. In addition, the County should consider making probation available to Superior Court defendants.

While the data did not allow for identification of the supervising agency, a portion of the bookings for community supervision violations are for violations of DOC community custody. Although Whatcom County stakeholders cannot change state policy, they can advocate for reform with their state partners.

Responses to community supervision violations should, for example, emphasize reconnecting people with their probation or parole officer when they miss appointments, rather than relying on arrest and incarceration, and can offer opportunities to identify underlying challenges that may have contributed to violation (e.g., challenges with transportation to and from appointments or childcare needs). This shift in focus away from detention can encourage people who pose little risk to public safety to reengage in their case plan.

### **Reducing warrants for technical violations in Santa Cruz, CA**

In California, the Santa Cruz County Probation Department partners with a local non-profit, Friends Outside, to help low- and moderate-risk individuals who miss probation appointments reconnect with their Probation Officer (PO). The Warrant Reduction Advocacy Project (WRAP) allows Friends Outside staff and volunteers to contact individuals under supervision and encourage them to check in with their PO. If a person reschedules a missed appointment within 30 days, no warrant is issued for their technical violation. WRAP also offers case management and resource referrals for people who need extra support. In 2014, a conservative estimate projected the warrants averted through WRAP saved 2,260 jail bed days during the 2013-14 fiscal year (using a 30-day average length of stay per individual), which translated to a reduction of six jail beds on any given day.<sup>a</sup>

<sup>a</sup> Santa Cruz County Probation Department—Adult Division (SCPD), *Jail Alternatives Annual Report-2013*, (Santa Cruz, CA: SCPD, 2013), 9.

## **2. To reduce unnecessary pretrial detention, create a pretrial release process that is individualized and based on data-driven risk assessments.**

### **Key findings and challenges**

1. The majority of people incarcerated in the Whatcom County jail are held pretrial.
  - Almost 60 percent of the people detained in the jail on an average day in 2016 were held pretrial. Of the average daily pretrial population, 22 percent was detained on non-felony charges, 23 percent was detained on felony drug charges, and 55 percent was detained on other felony charges.

2. In Whatcom County, pretrial release is often determined by a defendant's ability to pay financial bail.
  - A financial bond amount is set on most people who are booked into the jail. Of the people without holds released from the jail in 2016, at least 67 percent had been assessed bail; just eight percent were released on PR without a bond amount having been set.
  - Of those assessed bail, 44 percent were released after posting bail, 37 percent remained in jail until the disposition of their cases, and 19 percent were eventually released on PR.
  - In Washington, when someone is arrested, a judicial determination of probable cause must be made within 48 hours (unless made prior to arrest), or that person must be released from custody. Most people appear before a judicial officer the day after they are booked into the Whatcom County jail; although, those arrested and brought to the jail for some non-felony offenses can bond out immediately without appearing before a judicial officer by posting the bond amount set by a bond schedule.
  - If a person is arrested and booked on a Friday or over the weekend, the County Prosecutor and a rotating judge conduct probable cause hearings over the phone, without the individual or defense counsel present. The person can then bond out by posting the amount set by the judge. In Whatcom County Superior Court, felony defendants who are in custody have a first appearance on the first court day after arrest. The prosecutor makes a recommendation regarding bail and the conditions of release, and defense counsel can counter. An arraignment date must be set within 14 days of first appearance. In District and Municipal Courts, first appearances and arraignments are combined. The defendant is advised of the charges, bail is addressed, and pleas of guilty or not guilty are taken. In the smaller municipalities, public defenders are typically not available until after arraignment although the court may accept a guilty plea at arraignment, after advising the defendant of potential negative implications of a guilty plea.
3. Even low bond amounts are too high for many people.
  - Thirty-four percent of people assessed bond amounts of \$500 or less remained in jail prior to the resolution of their cases. Seventy-three percent of them had non-felony charges. People with bail amounts of \$500 or less spent, on average, a week in jail.
4. Washington State Court Criminal Rule 3.2 provides for non-financial conditions of release. These options are underutilized in Whatcom County.
  - In keeping with constitutional principles of due process and safeguards against excessive bail, Rule 3.2 establishes a presumption of pretrial release on personal recognizance (PR) in all but capital cases, unless the court determines recognizance will not ensure a defendant's

appearance, or it is likely the defendant will commit a violent crime, seek to intimidate witnesses, or “unlawfully interfere with the administration of justice.” As mentioned above, only eight percent of releases from the jail in 2016 were releases on PR without a bond amount having been set.

- Rule 3.2 mandates that after making an individualized release determination based on relevant factors, courts impose the *least restrictive* conditions that will reasonably ensure a defendant’s appearance in court, and may impose listed conditions upon a finding of substantial danger. Non-financial conditions include unsecured bonds and pretrial supervision, but the courts in Whatcom County do not use unsecured bonds and pretrial services are not available to defendants in Superior Court. Currently, on any given day, Whatcom County District Court Probation supervises approximately 200 people whom a District Court judge has released pretrial and 100 people whom five of the Municipal Courts have released.<sup>51</sup>

## Responsive Strategies

Whatcom County, like many jurisdictions, has relied on financial bail to ensure that defendants appear for court and do not commit crimes while in the community awaiting case resolution; this means that defendants’ ability to pay bail often determines whether they remain in jail or not, rather than their risk for failure to appear (FTA) or to public safety. Jurisdictions around the country are moving away from this approach because it is not supported by research.

Assessing a financial bond is not necessary to prevent defendants from failing to appear in court or committing offenses while in the community on pretrial release (i.e., public safety rate). For example, a key study of Colorado counties found after release on unsecured bonds—which does not require defendants to deposit any money, but holds them liable for the full amount if they FTA—defendants did not have statistically significant different FTA rates or public safety outcomes as compared to those released on secured bonds (cash bonds and commercial bail bonds).<sup>52</sup> Defendants with secured bonds did, however, have significantly longer lengths of stay in jail before securing release than defendants with unsecured bonds.<sup>53</sup>

Research suggests that rather than improving public safety, detaining people who pose low or moderate risk to the community—even for just two to three days—makes them *more likely* to commit new offenses, not only while their cases are pending, but also years later.<sup>54</sup> A 2013 study of pretrial defendants in the state of Kentucky found that when held in jail for two to three days, low-risk defendants were almost 40 percent more likely to commit new crimes than equivalent defendants (in terms of criminal history, charge, background, and demographics) held no more than 24 hours, both while their cases were pending and within two years *after* completion of their cases.<sup>55</sup> These negative outcomes can worsen the longer people are held in custody pretrial.<sup>56</sup> Holding people in jail can disrupt employment, housing,

education, caregiving for children, and any community-based treatment or services in which they may have been engaged, leaving them destabilized upon their release.<sup>57</sup>

Nor does jail incarceration necessarily reflect the outcome desired by victims and survivors of crime. While some may want a punitive criminal justice response, many do not. A national survey of victims on safety and justice concluded that “the overwhelming majority of crime victims believe that the criminal justice system relies too heavily on incarceration, and strongly prefer investments in prevention and treatment to more spending on prisons and jails.”<sup>58</sup> Crime victims preferred investments in mental health treatment and substance use treatment over prisons and jails by a seven-to-one margin and by a four-to-one margin, respectively.<sup>59</sup>

Pretrial justice systems grounded in financial bail have been shown to result in greater costs for jurisdictions than risk-based systems. A recent study compares financial and risk-based pretrial systems using three and a half years of criminal case data from two counties in Texas. Tarrant County determines pretrial release almost exclusively by means of financial bond, while Travis County uses a validated risk assessment tool to identify lower-risk people for release without financial requirements. In Travis County, total pretrial costs were 30 percent lower due to lower rates of new criminal activity committed by high-risk people inappropriately released, and low-risk individuals being more likely to be released on PR with shorter detention periods following arrest. Victim costs, case processing costs, and detention costs were all higher in Tarrant County.<sup>60</sup> Risk-based practices allow system actors to allocate criminal justice resources effectively by identifying which defendants can be released safely from jail with little oversight or moderate supervision, and conserving resources for more intensive supervision of those identified as high risk.

Whatcom County should shift from a cash-based to risk-based pretrial justice system that provides for individualized release decisions informed by a validated risk assessment instrument and a range of pretrial release and supervision options. This is considered best practice in the field. The Task Force has already begun exploring ways to adopt evidence-based pretrial practices and should continue toward implementation of policies that support risk-based decision-making and reduce the justice system’s harmful reliance on cash bail. Although the shift requires long-term commitment and reallocation of local resources, there are more immediate steps Whatcom County can take to mitigate the negative consequences of a system based on financial bail.

### **Short-term Strategies**

*Strategy 2 (a): Ensure defense counsel is present at all bail determinations.*

Public defenders should be present for weekend probable cause hearings between the County Prosecutor and judicial officers, and at all Municipal Court first appearances and arraignments. When present, counsel can help to secure appropriate pretrial release by providing additional, relevant context about the defendant. The presence of defense counsel at bail hearings has been shown to reduce jails’ ADP

by increasing pretrial release, due to greater use of release on PR and lower bond amounts, and thereby shortening defendants' LOS. In a study in Baltimore, making counsel available at bail hearings contributed to a decrease in the jail population from 50 percent above capacity to 20 percent below capacity over the course of nine months.<sup>61</sup> Defendants with representation at their bail hearings were more than 2.5 times more likely to be released on PR and almost twice as likely to be released on the day of arrest as compared to defendants who were not represented.<sup>62</sup>

Moreover, representation at arraignments in the smaller municipal courts would ensure that defendants who wish to enter a guilty plea have the assistance of counsel at this critical stage. The Sixth Amendment right to counsel attaches at a defendant's initial appearance before a judicial officer, and once he or she has that right, the defendant is entitled to counsel during any "critical stage"—court events that "amount to 'trial-like confrontations,' at which counsel would help the accused 'in coping with legal problems or meeting [the] adversary.'"<sup>63</sup>

*Strategy 2 (b): Develop a policy for early and meaningful bail review.*

Defendants sometimes wait in jail for up to two weeks before a judge reviews the bond amount initially set. In Superior and District Courts, for example, there is just one motion calendar a week, at which judges will review bail and release conditions. Stakeholders identified this as a challenge because defendants remain in jail awaiting bail review until the next motion calendar. In some cases, defendants must wait two weeks because there is delay in defense counsel receiving the case file and counsel misses the deadline for filing a motion.

To ensure that defendants who could be safely released do not remain in jail due to inability to afford financial bail, the courts in Whatcom County should take steps to institutionalize bond review processes. In some jurisdictions, Pretrial Services or other court staff identify defendants with low bond amounts who are still detained a certain number of days after first appearance—typically five to seven—and share this list with the public defenders' office sufficiently ahead of the time needed to file a motion to request a review. In others, courts have a policy requiring an automatic hearing on bail for any misdemeanor or nonviolent felony defendant who did not post bail after a set number of days.



### **Early Bail Review hearings in Philadelphia**

In July 2016, Philadelphia’s Municipal Court, in collaboration with the Defender Association and the District Attorney’s Office, started conducting Early Bail Review hearings within five days for people in jail on non-violent charges who have bail amounts of \$50,000 or less and no other holds.<sup>a</sup> Since the program started, 84 percent of defendants who received a hearing were granted release and, of those, 90 percent appeared at their next court date.<sup>b</sup>

<sup>a</sup> In Philadelphia, a defendant is only required to make a 10 percent deposit. For more information on bond in Philadelphia, see The Philadelphia Courts: First Judicial District, “Bail Judgments,” <http://www.courts.phila.gov/mtvr/>.

<sup>b</sup> Anna Orso, “Philly slashed its jail population by almost 20 percent in just 2 years,” *Billy Penn*, June 12, 2017; and Office of the Mayor, *First Year of Kenney Administration*, (Philadelphia, PA: Office of the Mayor, 2017).

*Strategy 2 (c): Implement a court date reminder system to allow for greater use of release on personal recognizance.*

Currently, there is no systematic way of reminding pretrial defendants who are not detained in jail of upcoming court dates. In many cases, defense counsel will remind clients, or District Court Probation will notify those under pretrial supervision of upcoming court appearances, but the courts lack a consistent means of reminding all out-of-custody defendants of upcoming court dates. As the courts increase the use of non-financial pretrial release options, implementing a court date reminder system will help to keep FTA rates low. In particular, research has shown that defendants assessed to be at low-risk can be released to the community with supervision limited to calls or text reminders of upcoming court dates.<sup>64</sup> A reminder system would replace the practice of setting low bond amounts on low-risk defendants, in keeping with the principles set forth in Rule 3.2. Moreover, actively preventing FTAs has the added benefits of reducing workloads related to warrants for judges, court staff, law enforcement, attorneys, and jail staff, and mitigates tangible and intangible costs for victims, witnesses, and defendants.<sup>65</sup>

### **Court date notification systems to reduce FTAs**

Counties that have adopted court date reminder systems have seen a significant FTA reduction. In a pilot program in Jefferson County, Colorado (which was designed to replicate programs in King County and Seattle Municipal Courts, where FTA rates had declined 60 percent), court staff contacted people scheduled for upcoming court appearances. The result was a 43-percent reduction in the FTA rate. When the live caller left a message or was able to speak with the defendant directly, the appearance rate rose from an overall rate of 79 percent to 87 and 92 percent, respectively.<sup>a</sup> Court staff also began notifying defendants one day after an FTA that a warrant was issued, and the percentage of people who returned to court on their own initiative within five business days increased from ten to 50 percent. Multnomah County, Oregon uses the Court Appearance Notification System (“CANS”), an automated calling system, and has reported an overall decrease in FTAs of 37 percent with the target population.<sup>b</sup> Other counties use email and text-based notification systems.<sup>c</sup>

<sup>a</sup> Timothy R. Schnacke et al., “Increasing Court Appearance Rates and Other Benefits of Live-Caller Telephone Court Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Court Date Notification Program,” *Court Review: The Journal of American Judges Association* 48, (, 2011): 90-93.

<sup>b</sup> *Ibid.*, pp. 89-90.

<sup>c</sup> For example, the City of Spokane Municipal Court provides courtesy text reminders to defendants who opt in for the service. See Spokane City, *Authorization for Court to Transmit Courtesy Text Reminders* (Spokane, WA: Municipal Court, 2016), 1.

### **Long-term strategies**

*Strategy 2 (d): Adopt and validate a data-driven pretrial risk assessment instrument.*

Pretrial risk assessment tools that have been validated (i.e., determined to be predictive with the local population) provide judicial officers with more accurate estimates of defendants’ risks of FTA and of committing a crime while their cases are pending.<sup>66</sup> Actuarial (or data-driven) risk models tend to outperform unaided judgments of individual practitioners in assessing risk accurately.<sup>67</sup> A growing body of research suggests, for example, that high-quality risk assessment determines risk for future crime more accurately than professional judgment alone.<sup>68</sup> Not meant to replace professional judgment, formal risk assessment tools can assist justice system actors in making more informed decisions.

When a jurisdiction plans to adopt a risk assessment tool, stakeholders must take several additional steps. Training for all impacted staff on the tool and how to use it is critical. The tool will not work as intended if judicial officers, attorneys, pretrial staff, and court staff are not properly trained and refreshed on an ongoing basis. Stakeholders should put in place quality assurance processes to ensure fidelity with the tool, including tracking performance measures such as the rate at which both pretrial and judicial officers follow or deviate from the tool’s recommendation (i.e., concurrence rates), release rates, appearance rates, and public safety rates.<sup>69</sup> Additionally, stakeholders should consider developing guidelines or a decision-making framework to assist judicial officers in determining whether to release a

defendant pretrial and what level of supervision is warranted in an individual case based on the risk assessment.<sup>70</sup> Once the risk assessment tool has been in use for some period of time, jurisdictions should partner with experienced quantitative researchers to conduct a validation study, which ensures that the tool is working appropriately and as anticipated, and not introducing any disparities into pretrial decision-making.

*Strategy 2 (e): Establish a regional pretrial services program to serve all Whatcom County courts.*

When assessed using a validated pretrial risk assessment instrument, defendants' scores will range from very low-risk to high-risk. Whatcom County will then need a range of options to respond appropriately to each category of risk. To supervise defendants' pretrial release conditions, assess their risks for public safety and FTA, make release recommendations to judicial officers based on that assessment, and offer a range of release options, national organizations—such as the American Bar Association, National Association of Pretrial Services Agencies, and the National Association of Counties—recommend that *every jurisdiction* in the country establish a pretrial services program.<sup>71</sup> These programs are the most effective way to ensure defendants appear for all court hearings and do not engage in illegal activity while in the community awaiting resolution of their cases.<sup>72</sup>

Defendants assessed to be low risk can be released to the community with limited supervision—reminders for upcoming court dates are generally sufficient. Defendants who present moderate risk will be more successful in the community with oversight by Pretrial Services matched to level of risk. This includes phone and in-person check-ins, as well as voluntary linkages to services. Release conditions that include alternatives to pretrial detention such as electronic monitoring and intensive programming or treatment should be required only sparingly because they generally *increase* pretrial failure rates for lower-risk defendants. It is important to remember that participants in pretrial programming are legally presumed innocent, and efforts to link them to mandatory services must account for this reality. To maximize participation in a pretrial services program, jurisdictions should avoid charging defendants fees. A pretrial program's net cost or savings depends on the extent to which it serves people who otherwise would have remained in jail.<sup>73</sup>

Pretrial services officers in many jurisdictions also conduct indigence assessments, which can help to ensure assignment of counsel at the earliest stage of a case. They assist with making sure defendants—both those released on recognizance and those under supervision—appear for court with reminders and, in some cases, transportation, such as free bus passes. When a defendant does miss a court date, pretrial officers can follow up and work to return the defendant to court as soon as possible. By using graduated sanctions—e.g., more frequent check-ins—*and* positive incentives—e.g., less intensive supervision—pretrial programs serve to improve defendants' chances of completing pretrial supervision successfully.<sup>74</sup> Finally, many pretrial programs help to facilitate early and efficient diversion by identifying appropriate candidates at the very beginning of a case, based on risk assessment, and provide supervision for those who are diverted.<sup>75</sup>

### 3. Curtail the number of new and outstanding warrants for lower-level charges.

#### Key findings and challenges

1. Arrests on warrants are contributing significantly to the number of bookings into the Whatcom County jail.
  - Fifty-three percent of gross misdemeanor bookings had outstanding warrants, as did 75 percent of misdemeanor bookings, and 40 percent of criminal traffic bookings.
  - The overall percentage of criminal traffic bookings with warrants (40 percent) includes bookings with DUI charges, which almost always result in custodial arrest, regardless of whether the individual has outstanding warrants. If DUI bookings are excluded, then 73 percent of the remaining criminal traffic bookings had outstanding warrants.
  - For people booked into the jail more than once, 73 percent of the bookings after their first booking had warrants.
  - Ninety percent of the bookings into the jail on DWLS 3<sup>rd</sup> degree with no other charges involved a warrant.
2. Many admissions involve bench warrants for FTAs.
  - Two of the top five gross misdemeanor charges that resulted in a booking into the jail involved an arrest for an FTA warrant; one of the top five misdemeanor charges that resulted in a booking into the jail involved an arrest for a FTA warrant.
3. People with warrants consume more than half of pretrial jail beds on an average day.
  - Fifty-five percent of the average daily pretrial population had warrants at the time they were booked into the jail.

#### Responsive strategies

Warrants can lead to jail population challenges because they require law enforcement to make an arrest, driving up admissions to local jails. When a warrant is issued, any future contact with law enforcement will result in a person's arrest—even if this contact is unrelated to new criminal activity. Warrants therefore prevent law enforcement from utilizing pre-arrest and pre-booking deflection opportunities and limits their ability to issue citations. In addition to increasing admissions, warrants can lengthen the time defendants spend in jail due to case processing delays, particularly when warrants and new charges have to be addressed in different courts.

There are numerous ways the quantity of outstanding warrants can be reduced while maintaining public safety, thereby decreasing the number of people who enter the jail. The recommendations below begin, however, with trying to get a better understanding of the warrants themselves—from which court or

agency they originate, for what charges, reason for issuance, etc.—in order to best target the county’s response.

*Strategy 3 (a): Analyze warrant data to understand the scope of the problem and to target responses appropriately.*

Examining data from all the courts regarding warrants will allow the County to determine the number, nature, and age of outstanding warrants. Attention should also be paid to how warrants and new charges are resolved, and how those processes impact case processing times in order to identify opportunities for streamlining case processing. Once these questions are answered, Whatcom County can develop strategies that reduce the number of new and outstanding warrants while maintaining public safety.

*Strategy 3 (b): Implement policies and practices that will reduce the number of bench warrants issued for FTAs.*

To reduce the number of bench warrants for FTAs, Whatcom County will need to reduce the overall number of FTAs. See Strategy 2 (c) for suggestions on how to reduce FTAs.

*Strategy 3 (c): Increase opportunities for people to resolve outstanding warrants.*

As the county analyzes its data, it may discover a large number of outstanding warrants—perhaps from many years prior—for underlying charges or violations that pose relatively little public safety risk (i.e., outstanding fines for motor vehicle violations, or failure to appear on public nuisance charges, etc.). Many jurisdictions have chosen simply to clear these warrants to get rid of backlogs or host warrant resolution events, where people can clear up outstanding warrants without fear of arrest. In some jurisdictions, court is held in places other than the courthouse—traveling to locations where people with these types of warrants live or work—or hours of the court are extended so people who are not available during normal operating hours have the opportunity to resolve their cases.

### **Warrant Clearing Events to Reduce Backlogs of Outstanding Warrants**

Three cities offer examples of how to reduce backlogs by hosting warrant clearing events.

- The City of Spokane, Washington hosts “WarrantFest,” a periodic event that allows people who have outstanding warrants in the Spokane Municipal Court to schedule a new court date and have eligible warrants recalled.<sup>a</sup> A judge, court clerk, prosecutor, and public defender travel to multiple locations throughout the city, with an emphasis on reaching transient communities, and reschedule hearings within a week’s timeframe for individuals with outstanding FTA warrants.<sup>b</sup>
- The City of Atlanta Municipal Court held a “warrant amnesty” period between April and May 2017. This program allowed eligible individuals, who would otherwise face arrest or other penalties, to resolve their outstanding cases and reduce the amount owed in fines and fees. The initiative was only open to people with FTAs, which may have resulted from outstanding traffic tickets, city ordinance, or misdemeanor violations.<sup>c</sup>
- Since 2015, the District Attorney’s Office in Brooklyn, New York has held five “Begin Again” events where people can resolve outstanding summonses and bench warrants. Hosted in different community churches throughout Brooklyn, defendants first meet with a representative from the public defender’s office and then enter a makeshift courtroom with a judge, prosecutor, and police officer.<sup>d</sup> The events have cleared 1,700 warrants with no arrests made.<sup>e</sup>

<sup>a</sup> Mitch Ryals, “Warrant Fest 2016, squash your warrants no questions asked,” *Inlander*, June 1, 2016; and Nina Culver, “Spokane offers chance to dismiss misdemeanor arrest warrants,” *The Spokesman-Review*, June 9, 2016.

<sup>b</sup> Shelley Szambelan, “How clearing outstanding warrants can change lives and reduce jail populations,” Safety and Justice Challenge Blog, July 6, 2016, <http://www.safetyandjusticechallenge.org/2016/07/clearing-outstanding-warrants-can-change-lives-reduce-jail-populations/> (accessed September 23, 2017).

<sup>c</sup> Pamela Miller, “Atlanta Municipal Court announces 2017 Warrant Amnesty program,” *Atlanta Journal-Constitution*, April 4, 2017.

<sup>d</sup> The Brooklyn District Attorney’s Office, “Begin Again Continues in 2017,” <http://brooklynda.org/begin-again/>.

<sup>e</sup> District Attorney Kings County, “Brooklyn District Attorney’s Office Announces First Begin Again Event of 2017,” press release (Brooklyn, NY: Brooklyn DA, April 10, 2017).

## **4. Develop a caseload management plan to reduce time to disposition and shorten defendants’ length of stay**

### **Key findings and challenges**

1. The Whatcom County Superior and District Courts and the Bellingham Municipal Court are not meeting state and national model time standards for case processing.

- While Washington recommends courts resolve 100 percent of felony cases within nine months, and the National Center for State Courts (NCSC) recommends 98 percent within one year, the Superior Court resolves 84 percent of felony cases within one year.
  - Washington and NCSC recommend courts resolve 98 percent of misdemeanor cases within six months; District and Bellingham Municipal Courts each resolve 73 percent of misdemeanor cases within six months.
2. While limitations to available Whatcom County and Bellingham court data prevented a thorough case processing analysis, members of the Task Force consistently expressed that case processing delays, such as the routine use of continuances, extend the time it takes for cases to reach disposition.
  3. People with cases in multiple courts are detained longer in jail on average.
    - People with cases only in Superior Court spent an average of 27 days in jail and accounted for 96 people in the average daily population, while people with cases in the Superior Court and at least one other court remained in jail an average of 56 days and accounted for 131 people in jail on an average day.

### **Responsive Strategies**

Unlike other decision points that focus on a particular moment in a criminal court proceeding, the processing of a case encompasses its entire adjudication, from initial appearance through disposition and sentencing. Given the large proportion of defendants held in jail pending the resolution of their cases, the pace at which cases proceed through the courts directly impacts the jail population. Despite laws meant to guarantee defendants a speedy trial, postponements or continuances occur regularly.<sup>76</sup> Cases are postponed or continued for a host of reasons, including lack of readiness, logistical challenges, and tactical use of delay. These delays in justice can impact all parties—victims of crime and their families, who are waiting for closure; prosecutors and their cases, which become more difficult to prove as time goes on and memories fade; and defendants, who must keep coming back to court or who remain in jail while their cases are pending.<sup>77</sup>

According to the NCSC, court control of case processing—or “caseflow management”—“promote[s] quality of justice, timeliness, and avoidance of wasted resources,” particularly with felony cases.<sup>78</sup> Though the judiciary must lead the way in reducing case processing delays, all justice agencies have a role to play. Prosecutors, for example, can turn discovery information over to the defense soon after they obtain it and make better and earlier plea offers and diversion decisions, and defense attorneys can engage in earlier plea negotiations in earnest.

*Strategy 4 (a): Collaboratively, Whatcom County justice system agencies can develop a plan to ensure efficient and fair caseflow management.*

To evaluate the effectiveness of caseflow management efforts, jurisdictions should first establish case processing time standards. These standards should not be based on the most complex cases and should be aspirational—not reflective of the current situation. Systems can establish both overall case processing time standards and intermediate case event time standards. Adopting case processing standards demonstrates a justice system’s commitment to timely case resolution.<sup>79</sup>

In an effort to unify various national time standards from case filing to resolution for state trial courts, NCSC developed the Model Time Standards cited above, in the Data Findings section.<sup>80</sup> The National Association for Court Management (NACM), the Conference of Chief Justices, the Conference of State Court Administrators, and the American Bar Association have all endorsed the NCSC Standards. When NCSC adopted the Standards, the Washington Court Management Council had in place its own more ambitious set of advisory time standards for case filing to resolution.<sup>81</sup> All courts in Whatcom County should monitor their compliance with, and strive to adhere to, the Model Standards, if not the State’s advisory time standards.

Vera’s qualitative and quantitative data analyses revealed delays in case processing in Whatcom County, which may keep defendants in the jail longer than necessary. To reduce delays, system stakeholders should develop a caseflow management plan that establishes internal processes and measures to facilitate timely and fair disposition, standards for intermediate court events, and performance monitoring, and adjust the plan as needed.<sup>82</sup> High-performing courts follow the basic principles of giving every case individual attention, treating cases proportionately, and exercising judicial control over the legal process.<sup>83</sup> The following recommendations flow from those principles:

- *Exercise early court involvement and continuing control.* Early control enables the court to monitor progress as soon as a case is filed and at certain intervals to ensure the case is progressing in line with established time standards.<sup>84</sup> In cooperation with the attorneys, beginning at the earliest appearance, involvement allows judges to encourage resolution of cases as early as reasonable without sacrificing any party’s rights and to establish a realistic schedule for key pretrial events, such as completion of motions, discovery, and plea negotiations, to minimize unnecessary delay. Early case screening with the prosecution and defense counsel can also facilitate earlier determinations of indigency, whether the defendant has mental health challenges, and whether the case can be resolved by an early plea or referred to a diversion program or problem-solving court. Court management of court events should continue after disposition to ensure timely sentencing and to control the pace of post-sentence events, such as those relating to probation violations and post-conviction review.<sup>85</sup>
- *Treat cases proportionately.* High-performing courts use “differentiated case management.”<sup>86</sup> This means screening cases upfront for their level of complexity and priority needed—



distinguishing those that are likely to go to trial, those that pose complex discovery issues, and those that may be appropriate for diversion—and allocating time, court resources, and proceedings accordingly.<sup>87</sup> The least complex cases should be fast-tracked for rapid disposition, and more complex cases have a separate track with different intermediate time standards.

- *Establish a practice of “meaningful court events.”* NCSC recommends that courts make deliberate efforts to create and maintain the expectation that case processing events will occur as scheduled and will contribute significantly toward case resolution. When court events do not occur as scheduled or do not serve to move the case forward, respect for the judicial process erodes, and participants are less likely to appear or prepare for future hearings.<sup>88</sup> A fundamental principle of caseload management is that cases are not interrupted without good cause once initiated.<sup>89</sup> The practice of ensuring that court events are meaningful includes encouraging the parties to reach a plea agreement, but also setting a firm trial date when there is no agreement and balancing the need for reasonable time to prepare with the need to resolve cases promptly.<sup>90</sup>
- *Apply a continuance policy with reasonable consistency.* The NACM recommends courts have a strict written policy to limit continuances.<sup>91</sup> To help enforce the policy, courts should actively encourage hearing readiness, reprimand attorneys for lack of preparation, and limit the length of continuances.<sup>92</sup> Each continuance should have a purpose, and courts should hold attorneys accountable for completing tasks between appearances.<sup>93</sup> Generally, appearances should be reset for the soonest date possible to complete the necessary tasks, with an established upper limit on the number of days allowed—such as 30—and fewer days allowed at the very beginning and end of cases (prior to sentencing).<sup>94</sup> Courts should monitor continuances closely, tracking: (a) the type of event continued; (b) the party making the request; and (c) the reason for granting the request.<sup>95</sup>

*Strategy 4 (b): Develop and track case processing performance measures.*

High-performing court systems increasingly rely on performance measurement—collecting, analyzing, and reporting on performance data—to inform system leaders and managers about how internal operations are functioning and to drive court success.<sup>96</sup> Performance measurement also builds public trust and confidence in the courts’ use of public resources.<sup>97</sup> NCSC has a performance measurement program called CourTools, which many courts have used to develop quality performance measures.<sup>98</sup>

As mentioned above, court systems can track overall measures—such as filing to disposition time, the number of cases pending (also broken down by court and by judge), and the number of cases beyond the time standard (i.e., the backlog)—and interim measures—such as time to gather discovery, number of appearances per case, time between court events, and continuances.<sup>99</sup> Attention should be paid to how these measures compare for defendants who are in custody versus out of custody.

Tracking these measures can pinpoint causes of delay and suggest solutions by answering questions such as: how many appearances per case would there be if continuances were reduced or eliminated, and

how would that impact case processing times? To supplement the quantitative data analysis, stakeholders can conduct reviews of case files to shed light on practices and procedures, and to set a direction for further analysis of the administrative data.

## 5. Create oversight and accountability mechanisms to ensure successful and sustained jail population reduction.

### Key findings and challenges

1. Whatcom County stakeholders have not yet come to consensus about who should be in the jail, and who can be safely managed in the community.
  - The system-mapping exercise facilitated by Vera, along with follow-up discussions with key stakeholders, revealed there are competing ideas about how the local justice system is currently functioning. These inconsistencies were never resolved, indicating an ongoing need for collaboration and communication among justice system actors in Whatcom County.
  - Past attempts to address jail overcrowding have resulted in differing solutions and tension between city and county agencies—and have not resulted in jail population reductions.
2. Whatcom County established a Law and Justice Council in 2000 as required by Washington State law, but it no longer meets.<sup>100</sup>
3. Challenges with data collection, extraction, sharing, and analysis have limited Whatcom County's ability to rely on systemic data to inform decision-making.
  - Data concerning race and ethnicity are not collected consistently across agencies, making analysis difficult.

### Responsive strategies

The following recommendations support the implementation of responsive strategies and ensure the overall sustainability of efforts to prevent and reduce incarceration.

*Strategy 5 (a): Reconvene a Law and Justice Council and institutionalize the Council with regular meetings, sufficient staffing, and research capacity.*

Many counties have convened standing multi-agency bodies, most commonly referred to as criminal justice coordinating councils (CJCCs) to guide justice system reforms, coordinate responses to agreed-upon challenges, and oversee implementation. CJCCs meet regularly, monitor local justice operations, collect data, track performance measures, and set budget priorities to address systemic challenges. These councils are meant to be permanent and ongoing advisory boards that both resolve issues as they arise and manage the local justice system's collective workload on an ongoing basis.<sup>101</sup> A permanent, fulltime

staff that can provide administrative and planning support to CJCC members is essential to a successful CJCC. Other staffing considerations can include:

- The capability to fundraise, including the ability to write grants;
- An understanding of data, research methods, and cross-system data matching; and
- Comprehensive knowledge of best practices and data-driven decision making.<sup>102</sup>

*Strategy 5 (b): Report and publish data regularly to ensure transparency and accountability.*

Regularly reporting on key justice system trends and benchmarks is critical to achieving the accountability that leads to public confidence in the justice system. Either through a CJCC or independently, local justice system agencies should establish performance measures and develop mechanisms to report their key data points to the public.

Whatcom County criminal justice agencies such as the police, jail, and courts collect abundant data but have limited capacity for extraction and analysis. There appears to be little sharing of data between these agencies or communication between computer systems. Key data elements that are necessary for matching records across systems, such as case numbers, are input inconsistently. The CJCC could become a place for coordinating sharing and analysis of data, either with its own research staff or in partnership with a local university. Additionally, the CJCC or partners could identify inconsistencies in data entry between agencies and establish standards to ensure accuracy in reporting.

*Strategy 5 (c): Collect data regarding race and ethnicity at all system points.*

Vera's analysis showed substantial disparities for racial and ethnic minorities in bookings and in the average daily population. Because the pathways into jail are complex, this analysis did not determine particular causes for disparities. The County should take on this challenge and continue to monitor disparities to determine if reforms are reducing or increasing them. The analysis should include (but not be limited to):

- Law enforcement records to determine if similar infractions are met with similar responses (i.e., citations, arrests, or bookings) among various racial and ethnic groups;
- Booking data to build a more nuanced understanding of the possible causes for disproportionate admissions into jail for racial and ethnic minorities;
- Bond amounts and defendants' ability to post bail—and to post bail quickly—to determine if bail contributes to fewer releases and longer stays for people of color;
- Charging and sentencing data to determine if similar infractions are met with similar responses (i.e., dismissal, diversion, prosecution, custodial versus community sentences) across racial and ethnic groups; and
- Associations between bookings and indicators of behavioral health needs to determine where needs are not being met and greater outreach may be warranted.

To improve practices regarding the collection of race and ethnicity data, Whatcom County should undertake the following steps:

- *Allow people to self-identify.* To get the most accurate understanding of the racial and ethnic breakdowns of the people who come into contact with the justice system, people should be asked how they identify, or asked to confirm how their race and ethnicity is recorded. While this is true for all people, it is especially relevant for people who identify as Latino, as their phenotype may not match their cultural identity.
- *Update methods of recording and reporting data.* Many justice system databases have pre-programmed options for the person entering the information to choose, in an attempt to reduce human error in data entry. These categories, however, can create challenging limitations in recording data that do not conform to the pre-determined categories. Updating technology to reflect current standards is an important step in accurately recording race and ethnicity data.
- *Standardize data collection practices through official policies.* To the extent possible, justice system agencies within the same jurisdiction should collect data in similar ways to allow them to review racial and ethnic disparities across every point of the justice system—arrest, charge, pretrial outcomes, case processing, sentencing, re-entry, recidivism, and all the diversion or alternative options in between. It may be helpful to standardize practice with other county government agencies or social services that are frequented by people in the justice system, including hospitals, behavioral health providers, and public assistance programs.
- *Institutionalize systems of review.* Periodic review of data regarding race and ethnicity can help Whatcom County understand disparity trends, and can help answer outstanding questions (e.g., differences in case processing times, bail amounts, etc.). Further analysis of race and ethnicity at the various decision points throughout the justice system is critical to reducing disparate impacts.
- *Be transparent.* Sharing findings regarding race and ethnicity with the larger community is important in building trust in the justice system and collaboratively generating solutions to challenges.

## Conclusion

This report provides a range of strategies that Whatcom County can undertake to safely reduce the number of people in its jail and create a fairer, more efficient local justice system. These strategies include deflection of people away from the justice system before they enter jail; shifting from relying on financial bail to data-driven, risk-based pretrial justice; eliminating backlogs of outstanding warrants and preventing new warrants from issuing; and increasing case processing efficiency. More than any other factor, including the economy and crime rates, jail size is a function of these system policies and practices. Change has been possible in communities across the country due to strong leadership, collaboration, and willingness among justice system actors to take a hard look at how the justice system is currently functioning, and in partnership with the community, envision a new way forward. In Whatcom County, the foundation has already been laid for this process, but continued investment and commitment will be needed to truly transform how the local jail is used.