

Date: December 23, 2015

To: Oklahoma County Criminal Justice Task Force

Subject: Preliminary Observations and Recommendations on Addressing Jail Population Growth in Oklahoma County

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I. INTRODUCTION

This memorandum summarizes the Vera Institute's (Vera) preliminary observations on the local criminal justice system and possible drivers of jail population growth in Oklahoma County and outlines some opportunities for reform that could be explored to safely reduce the jail population.

Vera undertook this work at the request of the Greater Oklahoma City Chamber of Commerce and conducted a three-day site visit to Oklahoma City from November 17-19, 2015. During that visit, Vera staff toured the Oklahoma County Detention Center and met with representatives from the Oklahoma County Sheriff's Office, the Oklahoma City Police Department ("OCPD"), the Oklahoma County District Attorney's Office, the Oklahoma County Public Defender's Office, the City of Oklahoma City Manager's Office, the Oklahoma County Board of County Commissioners, the Oklahoma Department of Mental Health and Substance Abuse Services, the Oklahoma Department of Corrections, TEEM, a district judge from the Seventh Judicial Circuit, Oklahoma County Court Services, the Inasmuch Foundation and the Greater Oklahoma City Chamber of Commerce. Those conversations informed this memo, along with Vera's independent research and data analysis.

While the impetus for examining the jail population in Oklahoma County is the pressing question of whether to build a new jail facility, the focus of Vera's queries and this analysis was not on the physical plant of the jail or whether it is in need of rehabilitation or replacement. Rather, Vera focused its November visit and this subsequent analysis on the operations and policies of the local justice system: what paths lead people to jail incarceration; how decisions are made throughout the justice system in Oklahoma County that may influence who ends up jail, particularly pretrial; and what alternatives exist currently or could be implemented. These questions focus on the two factors that determine the size of any correctional facility: how many people are admitted (admissions) and how long they stay (length of stay).

While this review is necessarily preliminary, based on three days of fieldwork, phone interviews, policy reviews, and the limited data we were able to obtain and analyze within a short time frame, we hope that it will help inform the Oklahoma County Criminal Justice Task Force

(“Task Force”) in its work going forward and provide a helpful framework for thinking about the following questions, which are critical to a comprehensive and impactful discussion about the purpose and use of the Oklahoma County Detention Center:

- Who should be in your jail?
- Who is there now?
- Why are they there?
- What steps can be taken to ensure that the jail holds only those who should be there?

II. SHORT SUMMARY OF FINDINGS

Vera’s brief review of Oklahoma County’s local criminal justice system suggests that there are a number of potential drivers of jail population growth that could be addressed locally, with long-term impacts on the jail population. Many low-level (misdemeanant or traffic), non-violent defendants are taking up jail beds, not necessarily because anyone specifically decided that these individuals were at risk of failing to appear in court or were a threat to public safety and therefore should be in the jail. Case processing delays, which may be caused by problems with the process itself or by short staffing in many places due to budget issues and staff turnover, make those jail stays longer than they should be. There is an attempt to transfer the costs of running the system to those who pass through it, by assessing fines and fees. This is problematic, first, because that isn’t, to quote the bank robber Willie Sutton, where the money is, and, second, because the burden that it places on low-income individuals in the community may be counterproductive to the goal of improving public safety. All of these issues would merit a more detailed, data-driven review, which would help pinpoint specific changes that might be undertaken to address population growth and determine more effectively the right size of Oklahoma County’s jail.

III. OVERVIEW

As of November 8, 2015, the Oklahoma County Detention Center held 2,651 people, 2,200 (83%) of whom were detained pending disposition of a new case or an outstanding warrant. The remaining are primarily sentenced inmates being held under contract with the Oklahoma Department of Corrections (DOC) or awaiting transfer to a state DOC facility. It is the population of 2,200 people in the jail on pretrial detention or pending resolution of a warrant who should be the focus of the Task Force’s analysis and recommendations. We explained above that our review focuses on the systems that determine admissions and length of stay, and not on conditions at the jail or physical design issues. And yet we are compelled to note that given the conditions at the jail, where the vast majority of people detained do not leave their cells for more than 1-2 hours each day, Oklahoma County is essentially running a maximum security correctional facility for people who are legally innocent and, potentially, largely low risk. That fact, coupled with the impact of the jail’s overcrowding and understaffing on the administration of justice in Oklahoma County, underscores the urgency of the Task Force’s purpose and mission.

The best analysis of the issues addressed in this memo would rely on a thorough review and analysis of data detailing how individuals enter and move through the system. Vera had access

to only limited data for this brief look at Oklahoma County; we reviewed and converted to analyzable form printouts from the Oklahoma County Detention Center and also analyzed some publically available data from the OCPD on their daily bookings into the Detention Center. The observations and opportunities that we highlight here are presented with two caveats. First, in most cases a deeper, data-driven analysis is an advisable precursor to concrete reform recommendations. Second, we were unable to audit the accuracy of the data or the data collection systems.

The findings below are organized by six key decision points that determine the size of the jail population. For each decision point, we discuss what we observed during our visit or learned subsequently through policy review and data analysis and where there may be opportunities for change that the Task Force could explore.

IV. DECISION POINT 1: ARREST

The starting point for an individual's entry to the criminal justice system, law enforcement's decision to arrest someone depends on a number of factors including the seriousness of the offense; local and state policies governing alternatives to arrest (such as citation or summons and release); and the availability and appropriateness of community interventions, such as mental health or substance abuse treatment services.

OBSERVATIONS

- ***Most jail bookings by the OCPD appear to be for non-violent misdemeanors, municipal violations or warrants.*** According to a Vera analysis of one week of OCPD jail bookings,¹ the most common charges among those booked into the jail by the OCPD were traffic-related: of the 622 people booked into the jail that week, 30% had non-DUI traffic charges and 30% of all charges (2035) were traffic-related (non-DUI).² The most common traffic charge was driving on a suspended license. Only 10% of the individuals booked into the jail were there for traffic violations only, but the additional charges were in most cases not serious. Individuals with traffic violations usually had more than one of those charges. Out of 622 total bookings, 293 had only municipal charges, and of the 293, only 35 were released on the same day (although they still may have been released within 24 hours). Over all, the vast majority of bookings (77%) were for misdemeanors or lower, only 5% of which involved crimes against persons.
- ***Bookings for warrants.*** The second most common booking charge (15% of those booked) after non-DUI traffic violations during the November week of bookings that we reviewed was for “fugitive from justice”. Under the Oklahoma Code, this charge appears to relate to warrants from outside the state, but given the frequency of its use in Oklahoma County, a non-border county, it is possible that it is being used as a catch-all for open warrants no matter what county or state they originated in. We have an outstanding inquiry with the OCPD on the coding issue.

¹ The booking data was obtained from the OCPD website's “jail blotter” for November 15-21, 2015 (*available at* <http://www.okc.gov/okcpd/crimeinfo/index.html>).

² Note that most individuals booked into the jail had an average of three charges, so being booked on a non-DUI traffic charge does not mean that was the *only* charge for which that individual was booked.

- ***About 20% of people booked into jail by the OCPD in a week were released on the same day.*** Some of these quick releases may be those charged with municipal court violations: when people are jailed on municipal court violations they may be released 10 hours or 24 hours after booking if there are no state charges pending, no failure to appear citations and no outstanding warrants, according to internal OCPD policy. On the other hand, according to the data, while more of the people released the same day were charged with misdemeanors or violations, a larger percentage of people charged with felonies were released on the same day. This reflects the dynamics of the bail system.
- ***There is a lack of community interventions accessible to officers in the field:*** The OCPD is well aware and attempts to make best use of the mental health crisis and substance abuse treatment resources available in the county. However, these resources are oversubscribed, and in some cases, will not or cannot accept potential patients either due to previous behavioral issues or lack of bed space. Some of the mental health resources available to officers in the field are located far from Oklahoma City and the OCPD bears the substantial costs of transport and staff time to utilize these resources. A number of people cited the detox services available for people who are alcohol-dependent as an example of a resource they'd like to see available for those who need mental health and substance abuse treatment. Without those resources, the jail may be used as the only available option.
- ***Jail admissions spiked recently with a new officer class in the field:*** Both the Sheriff's Office and the OCPD confirmed that jail admissions have been high recently due to the transition of a new officer class into the field. This demonstrates how sensitive jail admissions figures are to even minor changes in arrest patterns and how jail admissions are by their nature erratic.

OPPORTUNITIES FOR CHANGE

The data Vera reviewed on jail admissions from the OCPD was limited (and OCPD is not the only law enforcement agency responsible for jail bookings in Oklahoma County) and raise many more questions than they answer, but there are patterns even in this small sample that would benefit from further investigation.

Many people appear to be entering the jail because of traffic violations or other low-level non-violent misdemeanors or violations, and most are spending more than a day before being released. Given the persistent overcrowding at the jail, which leads to booking and release delays, it is worth examining, first, whether the post-booking short holds for municipal violations are a worthy investment of resources. According to Oklahoma City, they have reduced arrests for municipal ordinance violations but the data suggest that there are still regular bookings for these cases.³ OCPD has the authority under state law (OK Code § 22-209) to use summons and release

³ Data from around the U.S. demonstrates that police departments regularly use alternatives to arrest to address violations and misdemeanors. In New York City, a 10-year study of the use and success of "desk appearance tickets" found "failure to appear" (FTA) rates ranging from 14% to 25% during the period 2003-2012 (with increasing FTAs as the issuance of DATs increased). See Mary T. Phillips, *The Past, Present and Possible Future of Desk Appearance Tickets in New York City* (New York: Criminal Justice Agency, 2014), at 37-38, Figure 15 (available at <http://www.pretrial.org/download/research/The%20Past,%20Present,%20and%20Possible%20Future%20of%20Desk%20Appearance%20Tickets%20in%20New%20York%20City%20-%20NYCJA%202014%20.pdf>).

New York State law authorizes the use of desk appearance tickets and the police have the authority to issue them for

for violations and misdemeanors, but many people with low-level non-violent misdemeanors are still being booked into the jail (at significant cost) and occupying bed space. This is an area for review.

In Oklahoma County, as in a number of other jurisdictions where Vera has worked, driving under suspension (DUS) offenses appear to lead to a lot of jail stays. Drivers' licenses can be suspended for many different reasons but are commonly suspended for failure to pay fines or fees or for non-driving related criminal convictions, not for significant moving violations. OCPD policy permits release on personal recognizance for traffic violations except in the cases where drivers have revoked, suspended or cancelled licenses. Supervisors may grant an exception, however, under "exceptional circumstances," such as age, medical condition, or custody of children, where the community and justice would be better served by an exception. It is worth reviewing how that capacity to grant exceptions is currently being used, and whether both the city and the county could develop other responses to DUS offenses where dangerous driving is not the source of the suspension.

Given that OCPD officers have some discretion with respect to arrest decisions for certain misdemeanors, additional community-based treatment resources and referral resources would allow officers to divert individuals who suffer from mental health or substance abuse issues to needed treatment in lieu of immediate arrest and booking.

Finally, any changes in arrest patterns following the transition of an officer class into the field can be addressed in the academy's training itself, and also in how new officers are supervised and evaluated. Training and supervision can help communicate priorities for the appropriate use of arrests versus alternatives.

V. DECISION POINT 2: CHARGE

OBSERVATIONS

- ***Formal charging does not occur until long after release decisions are made:*** The District Attorney has ten days following booking to charge a defendant. Bond is set and release decisions are made, however, at a preliminary appearance that occurs within 24 hours of booking, via video from the jail. Bond and release decisions are thus made based on the charges filed by the arresting officer, charges which have not been reviewed by the district attorney's office. Our review of booking data showed that defendants booked into the jail averaged three charges per person; those charged with a traffic offenses had the greatest number of charges on average (e.g., failure to wear a seatbelt,

most non-felony offenses, excluding warrants, and even for some of the lowest-level felonies, excluding a number of offenses such as sexual offenses and domestic violence. Kentucky established a pretrial services program on a statewide basis which has become a national model. About 70% of pretrial defendants are released in Kentucky; 90% of whom make all future court appearances and 92% of whom are not rearrested while on pretrial release. Kentucky Administrative Office of Courts, "Pretrial Reform in Kentucky" (Frankfort, KY: Kentucky Administrative Office of Courts) 2013, 15 (*available at* <http://www.pretrial.org/download/infostop/Pretrial%20Reform%20in%20Kentucky%20Implementation%20Guide%202013.pdf>). In New Orleans, which also has a pretrial services program to encourage alternatives to pretrial detention, during the second quarter of 2015, the failure to appear rate ranged from 13-15% for low- and moderate-risk defendants who were assessed by New Orleans Pretrial Services and released. High-risk defendants assessed and released pretrial had a failure to appear rate of 34.5%. (Data provided to Vera by New Orleans Pretrial Services.) Pretrial Services in Washington, D.C. reported appearance rates of 90% for released defendants in FY 2015. 91% of released defendants were arrest-free and 98% were not arrested for a violent crime. Pretrial Services Agency for the District of Columbia, Performance Measures (*available at* https://www.psa.gov/?q=data/performance_measures).

broken tail light, driving under suspension), which will increase their bail amounts under the current schedule even though some of these charges will presumably not survive review by the District Attorney. In the interim, defendants can be held in the jail on bail based on the arresting charges for almost two weeks. Indigent defendants will not have been represented by counsel at the time that bail decision is made, and defense counsel generally won't be involved for at least two to three weeks following arrest and booking.

- ***Trends:*** As of mid-November 2015 felony filings had increased and misdemeanors had decreased from filings at the same time the previous year. While it is inadvisable to read too much in a one-year change, it is worth understanding what might be driving that change. Those charged with felonies tend to stay in jail longer pretrial and this will impact the jail population.
- ***Charging practices:*** We weren't able to review charges in relation to overall admissions and length of stay, which would provide a lot of information about the types of charges that drive jail population growth. This will be important to review, because it can inform a discussion about the county's public safety priorities and priorities for the use of jail space. It can also inform a review of existing diversion and alternative to incarceration programs to evaluate whether those programs are reaching the populations that the County and City would like to see out of the jail.

OPPORTUNITIES FOR CHANGE

While we don't know yet how many jail beds are occupied by defendants awaiting formal charging who are unable to make bail or who have stayed longer in jail trying to make bail on three charges when they will only be formally charged with one, possibly in the context of a plea deal, it's fair to hypothesize that these account for a sizeable number. Earlier review of charges by the District Attorney's office and earlier representation by defense counsel would lead to more appropriate release decisions and faster case resolution in some cases.

While the District Attorney is required to file charges within ten days of booking, we do not know what the average time to charging actually is, which would help estimate how many bed days could be saved. Oklahoma County should also have a better understanding of the District Attorney's declination rate (the rate at which the office declines to prosecute on charges filed by the police) which would also shed light on the impact arresting and charging practices have on the jail population.

A more efficient charging and arraignment process could assist in earlier identification of candidates for diversion programs. It appears that the majority of diversion programs in Oklahoma County are post-disposition. Nationally, many jurisdictions utilize these programs much earlier in the process.

VI. DECISION POINT 3: PRETRIAL RELEASE

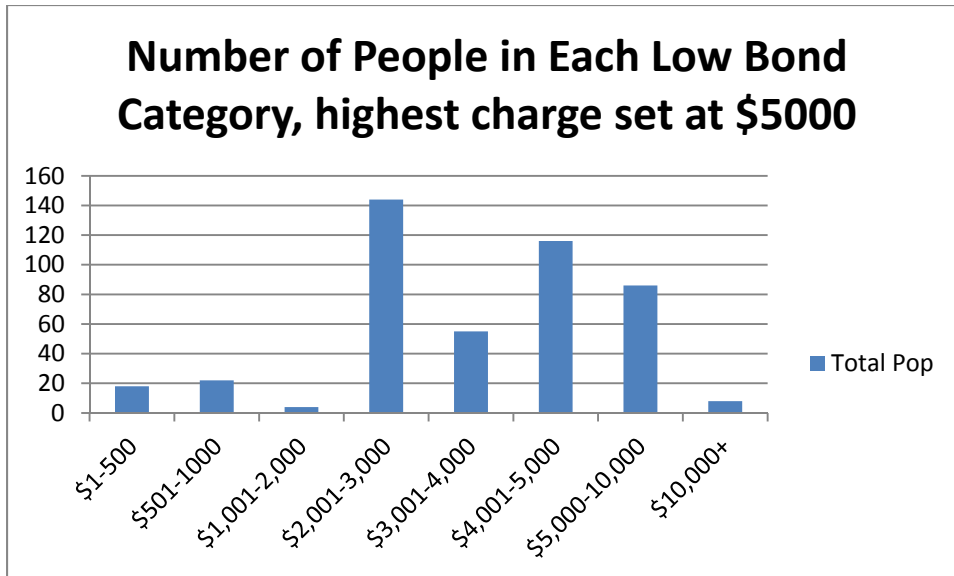
Pretrial release was the decision point that generated the most discussion during our visit. Reforming the pretrial release process—whether through changes to how bond amounts are calculated, who is eligible for non-monetary pretrial release, and how non-monetary pretrial release is managed—is the area ripest for change.

OBSERVATIONS

- ***Bond and pretrial release decisions are based on arresting charge:*** A preliminary appearance via video is conducted within 24 hours of arrest/booking, at which point bond is set and counsel is appointed. As noted above, bond amounts are based on the charges filed by the OCPD and are not reviewed by the District Attorney's office before bond is set at the preliminary appearance. The total bond amount is cumulative of all charges set by the arresting officer which are not reviewed by the District Attorney's Office before the bond amount is set. Judges use a bail schedule which has been in place for a long time without thorough review.
- ***There is no determination of an individual's ability to pay before a bond or cash bail amount is set.*** As noted above, most of the individuals booked into the jail in our week-long sample had multiple charges: the 622 individuals had 2035 charges among them. Those with the lowest charges tended to have the most, which means that despite the low level of their charges, total bail amounts would be high, based on the schedule and the cumulative calculation of bond amounts. The use of a fixed bail schedule, where bond is set based on a charge with no inquiry into an individual's ability to pay, has recently come under increased legal scrutiny, with strong Supreme Court precedent to suggest the practice is unconstitutional.⁴
- ***There are many people held in jail in Oklahoma County on low bail amounts.*** Using data received from the Sheriff's office, Vera reviewed the number of people held in the jail pretrial as of November 17, 2015, whose highest charge was set at \$5000 bond. As of that date, there were more than 450⁵ people who fell into that category.

⁴ A series of Supreme Court cases during the past fifty years has found that the practice of incarcerating people solely because of their inability to pay for their release is unconstitutional. *See Bearden v. Georgia*, 461 U.S. 660, 671 (1983) (The Fourteenth's Amendment's Equal Protection Clause prohibits "punishing a person for his poverty"); *Tate v. Short*, 401 U.S. 395, 398 (1971); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970); *Smith v. Bennett*, 365 U.S. 708, 709 (1961). This issue is currently being litigated in federal court in Alabama and the U.S. Department of Justice has taken a position in support of the plaintiffs against Clanton, Alabama's fixed bail scheme. *See* U.S. Dep't of Justice, Statement of Interest, *Varden v. City of Clanton* (available at <http://www.justice.gov/file/340461/download>).

⁵ The figure may in fact be higher than that. Some individuals were listed on the OKCSO's low-bond data as having "\$0" bond, but were still being detained. We do not know what the \$0 coding means—whether bond was not set at all (meaning the judge determined that the defendant did not even merit high bond) or (more likely) perhaps a warrant is pending. In any case, the 450 figure excludes people coded as having a "\$0" bond.



Some of these individuals held pretrial on low bail amounts have total bail amounts higher than \$5000 because bail in Oklahoma County is calculated cumulatively for each charge. But the highest charge in each of these cases commanded a bond amount no higher than \$5000. As most bail bondsmen require a defendant to post 10% of the total amount as a security, that means \$500 separates people held on \$5000 bond from pretrial release. Our conversation with a district judge suggested that judges set low bond amounts with the expectation that those defendants will get out; they stay in jail not because the judge believes that they pose a risk but because they cannot afford the full cash bail or even the amount to secure release through a bail bondsmen.

- ***Pretrial release decisions are not based on a formal assessment of pretrial risk.*** Oklahoma County has no way of knowing if the people sitting in the jail pretrial need to be there in order to assure that they show up to court, or to address a serious risk to public safety. The only thing that is known about most of those taking up a jail bed is that they cannot make bail, or bail was not set.
- ***There is no formal structure or process for reviewing bail amounts or release decisions.*** Bail amounts once set are rarely challenged or reviewed, according to those we interviewed, and there is no calendar for doing so once the decisions have been made, before defendants are not represented by counsel until weeks after the decision is made. It is apparently not common practice to challenge bail amounts once they have been set.
- ***There is no notification system in place to remind people about court dates, which would reduce the need for financial or nonfinancial conditions of release.*** Research shows that appearance rates can be improved for most people simply by reminding them, via mail or even text, of a pending date.
- ***There is very limited use of pretrial release mechanisms other than secured bond or cash bail.*** The district court has a court services office that reviews potential candidates for “OR bond” (own recognizance; pretrial release with no conditions) and “conditional bond” (pretrial release with conditions) and makes recommendations to the court. The OR bond/conditional bond recommendations are based on both state and local restrictions on who is eligible for non-monetary pretrial release. County policy has added additional restrictions on a more discretionary state policy regarding OR bond and conditional bond

eligibility. Both alternatives are relatively rarely used. Only 8% of individuals investigated for OR bond by Oklahoma County Court Services in 2014 were released on OR bond (937/11,154). Similarly, of the 3,620 individuals investigated for conditional bond in 2014, only 488 were released, a rate of 13%. The conditional bond program is basically one size fits all, and is not tailored around individual risk or needs. It does not appear that the judiciary has confidence in the recommendations made by the court services office or in the supervision that is provided for those on conditional bond. There is also no time limit imposed on the court for consideration of OR bond and conditional bond requests made; some requests pend for weeks or months.

OPPORTUNITIES FOR CHANGE

Currently, money plays an outsized role in who occupies pretrial beds in the Oklahoma County Detention Center. Decisions about who is released and under what conditions are not based on an individualized assessment of circumstances, including risk as well as ability to pay. Many of the restrictions on the use of alternatives to secured bond or cash bail are set by state law, but others are a function of county rules and local practice, which can be addressed locally. Nationally, recommended practice in pretrial requires the use of a validated evidence-based risk tool to inform the pretrial release decision. The tool, administered by a pretrial services agency, produces a score that the court can use to inform its decision about release and whether financial or non-financial conditions are warranted to ensure that a defendant appears in court. The risk tool also allows for smart resource allocation, with more investment and intervention dedicated to managing those who pose a higher risk, and fewer scarce resources expended on those who do not.

In order to make the best use of a validated pretrial risk assessment tool, the alternatives to jail incarceration and bail imposed by a set schedule need to be robust and appropriately calibrated to the supervised population. As important and perhaps more difficult to achieve, they will also need to have the support of the judiciary, and both the District Attorney and Public Defender. Given the state statutory limitations on non-financial release for certain types of charges, an effort to expand alternatives to jail and bail will have implications for charging practices as well.

Other changes to how cases are processed might also impact the jail population. As discussed above, moving up formal charging and ensuring that indigent defendants are represented when pretrial release decisions are made and bail amounts set could improve both efficiency and fairness and reduce unnecessary jail bed days.

Less dramatic revisions to the current system could also be considered. Oklahoma County could reconsider locally-imposed limits on the existing OR and conditional bond systems. Some of these restrictions may not be based on current public safety needs in Oklahoma County and tie the hands of the courts and law enforcement, whose judgments, if informed by a rigorous risk assessment process, could better serve the local justice system. For example, one past failure to appear makes non-monetary release discretionary to the court. But modern and non-resource intensive notifications techniques have proven an effective tool in improving appearance rates.

The process for releasing people on OR and conditional bond could be streamlined, and time limits imposed, potentially using a specialized docket for consideration of such cases. The existing bail schedule could be evaluated to determine whether it reflects current public safety needs and priorities. It could be modified to set bail based on the highest charge rather than an

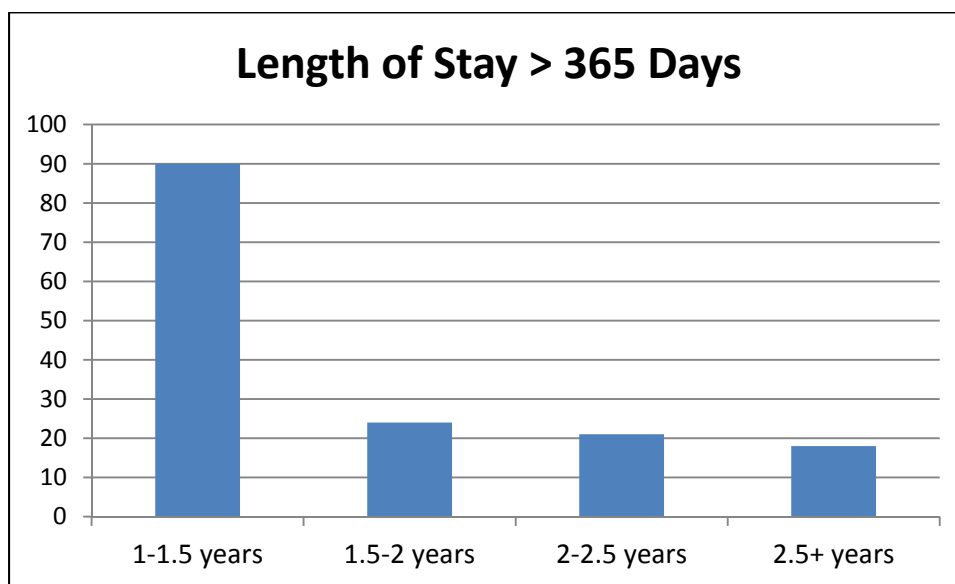
amount cumulative of all arresting charges. The bond desk at the jail could be open 24/7 to expedite release for those who are able to pay bond. And the use of unsecured or partially secured bond (as opposed to bond secured by a bondsman or property or paid in cash) may be considered. We do not know what mechanisms for pretrial release other than OR bond, conditional bond, cash bail and secured bail are in use, if at all, in Oklahoma County.

VII. DECISION POINT 4: CASE PROCESSING

OBSERVATIONS

- ***The challenge of multiple continuances:*** According to some individuals we spoke with, requests for continuances (postponements) are pervasive. Counsel on both sides regularly request continuances and requests are rarely denied. High caseloads and high staff turnover at both the District Attorney's Office and the Public Defender's Office (as a result of uncompetitive salaries and high caseloads) impact the speed and efficiency of the criminal case process. Moreover, there are no incentives to move cases along efficiently. While there are state-imposed time limits on prosecution of a case, counsel rarely move to dismiss cases on the basis of speedy trial violations. An irrational payment structure for private indigent defense also plays a role, even though private counsel only represent about 25% of defendants. Lawyers are paid per appearance, thus incentivizing additional appearances.

The figure below shows that as of November 2015, about 150 individuals have been held in jail for more than a year. This chart excludes people charged with homicide who generally have long lengths of stay.



- ***The process for identifying candidates for diversion programs like drug court and mental health court appears to be protracted.*** It takes about 30 days from the point when potential candidates for diversion are identified (which may vary and doesn't necessarily occur at booking or charging) to mental health court diversion (and that has improved

with recent institution of DOMHSAS jail screening). It takes 40 days from identification for a drug court referral.

- ***Case processing delays at the jail impact case processing overall.*** The persistent understaffing of the jail creates delays that can impede counsel visits, and delay releases once bond is posted. A number of those we interviewed reported that it can take up to 24 hours to get booked in to jail and 48 hours to get booked out once people post bond and 12 hours to be released on a court order. It would be valuable to actually have a better, data-informed, rather than anecdotal, understanding of delays to better pinpoint the most efficient ways to address them.

OPPORTUNITIES FOR CHANGE

A systemic review of how cases move through the system is necessary to get a complete understanding of the case processing challenges faced in Oklahoma County. Such a review, through a comprehensive exercise called system mapping, would bring together all of stakeholders involved in case processing to understand and agree on how cases move through the courts and to identify what the delays are and how and where they arise. Counties that have struggled with protracted case processing delays have successfully reduced case backlogs through a range of different approaches, from shifting staff to key points of delay to special dockets devoted to efficient resolution of stale cases.

VIII. DECISION POINT 5: DISPOSITION AND SENTENCING

OBSERVATIONS

- ***Long probation terms:*** It would be valuable to understand the full range of probation terms and how they are determined, and what the failure rate is. It does appear to be the practice to sentence people to terms as long as 10 years, which is far in excess of the national norm and what is considered good practice. Studies have shown that the key time period in terms of risk for reoffense for people on supervision is during the first year and protracted terms merely serve to increase the likelihood that a minor infraction will result in incarceration. In addition, people on probation in Oklahoma County are assessed fees for supervision, which is a significant burden and can impede efforts to advance beyond past criminal behavior.
- ***Alternative sentencing generally:*** Many programs are available, but they impose what to many are substantial fees, which may drive away those who could be well-served by them. Even when those fees are waivable, people may not be aware of that option and may drop out when they can no longer afford to participate, leading to probation violations and jail time. Carrying the cost of these programs is challenging, however, particularly as specialized dockets may be in jeopardy due to looming budget cuts. The personnel running the specialized drug, veterans and mental health court dockets are the most vulnerable to personnel cuts.
- ***Drug Court:*** Oklahoma County has had a drug court for more than 15 years. The drug court operates based on the best national standards, targeting high-risk high-needs participants, and is highly regarded by many of the people we spoke with. We did encounter criticism that the drug court has not graduated that many people in its 15 years and that the recidivism rate is inaccurate because it does not account for absconders.

People abscond from drug court due to the onerous requirements, not least of which are numerous and expensive fees that people cannot afford. The fee structure for drug court participation includes

- \$100/month for drug testing (this figure is cumulative of the multiple drug tests required each month)
- \$10/mo. for participation
- \$2-4 co-pay for treatment
- **Community sentencing:** Onerous requirements for drug testing and supervision can impede employment. Some community sentencing programs require drug testing more than twice a week. Those types of requirements make it unlikely that someone participating in such a program could be employed or engaged in any productive activity outside the program.

OPPORTUNITIES FOR CHANGE

Aside from drug and mental health courts, Oklahoma County has many alternative sentencing and community sentencing programs. These programs have different requirements and eligibility standards, designed to target different populations, but targeted early assessments based on key eligibility requirements could be attempted earlier in the process to reduce time spent in jail awaiting referral. We do not know how long a person may wait in jail once referral to a program is made or how long it takes for someone to be referred once arraigned. That data would be necessary to determine the impact of these delays.

Significant fines and fees for participation and onerous reporting and drug testing requirements may hinder the appeal and effectiveness of well-intended diversion and community sentencing programs. To the extent that the purpose of these programs is keep people out of jail and prison, it may be worth asking if such requirements are necessary to accomplish this goal or instead set people up to fail. Getting a solid data-informed understanding of the participation and success rates for these programs would be important.

IX. DECISION POINT 6: POST-CONVICTION

OBSERVATIONS

- As noted above, many fees are imposed on people convicted even of minor offenses. The myriad fees imposed by every actor in the local justice system (jail bed fees, court fines, court costs, drug and mental health courts, District Attorney probation, community supervision, etc.) keeps people mired in a cycle of debt and poverty. Even where waivers are available, people may not know this and may preemptively abscond from a program or accrue a violation because they feel overwhelmed by the costs.
- More data and analysis is necessary to properly assess the impact of fines and fees on the jail population. For example, we do not know how many people are in jail on cost warrants, or for probation violations arising from failure to pay fees. This may have a significant impact on the jail population.

OPPORTUNITIES FOR CHANGE

It is worth understanding which, if any, fees are subject to local control and decision-making. Additionally, collections from these fees should be measured against the costs of collection. For example, Oklahoma County has a special court docket devoted entirely to court

cost collections. A cost-benefit analysis could provide a well-informed evaluation of whether the collections generated from these fees (particularly the fees that are subject to local control) are worth the judicial, law enforcement and jail bed resources they require. Oklahoma City has seen a reduction in fee revenue by classifying some low-level offenses as non-arrestable, but believes that the reduction in fee revenue will be offset by reduced use of jail beds. Oklahoma City may already have data on how this is working, but it may be too soon to know.

We did not examine the extent of collateral consequences of criminal convictions. These include restrictions on licensing, housing, etc., that operate as a continuing punishment on people who have completed prison or jail sentences and impairs mobility and workforce participation. These are usually governed by state policy, but localities across the counties have made impactful policy in this arena. For example, some counties and cities have enacted local “ban-the-box” policies which make early pre-interview inquiries into criminal histories a form of employment discrimination, with numerous exceptions for sensible public safety concerns and professional standards requirements.

X. CONCLUSION AND THOUGHTS ABOUT SUSTAINABILITY

The goal of this memo is to give the Task Force ideas about what might be driving jail population growth in Oklahoma County, and suggest the kinds of questions that you should be asking in order to gain a more complete understanding and prioritize areas for change. We want to emphasize that these questions matter regardless of whether the County chooses to build a new facility, or remodel the existing one. If challenges in the system are not addressed, national experience shows that issues with the old jail will carry forward to the new jail.

Members of the Task Force have asked us to speak specifically to the challenge of sustaining system reforms over time as elected leaders change. There are a number of mechanisms that other jurisdictions have put in place that have specifically helped with this issue.

Criminal Justice Coordinating Councils. Many jurisdictions that have implemented lasting local reforms have been guided by standing multi-agency councils which monitor local criminal justice operations. Most commonly referred to as criminal justice coordinating councils (CJCCs) these bodies vary in responsibilities ranging from data collection to setting budget priorities to address key systemic issues such as slow case processing times. They differ from special task forces or temporary subcommittees, as CJCCs are permanent bodies and able to respond to new issues as they arise. One strength of CJCCs is that membership often includes county and city agencies, which can help to break down silos and enhance cooperation. CJCCs also enable justice system actors to partner with non-traditional partners such as community members, mental health services, departments of transportation, and so forth.⁶

Development of implementation plans and performance measures. One strategy that other jurisdictions have relied on for successful reform implementation is the creation of detailed

⁶ Aimee Wickman and others, *Improving Criminal Justice System Planning and Operations: Challenges for Local Governments and Criminal Justice Coordinating Councils*, Justice Management Institute.

implementation plans with clear lines of responsibility for different policies.⁷ Another is agreed-upon performance and outcome measures to track the progress and success of reforms.⁸

Community engagement. Engaging early with the local community regarding the reform process has proven effective for local justice reform. Such engagement of the local community creates buy-in that may help reforms succeed and also holds all stakeholders accountable. Productive engagement in other jurisdictions has also sought out the input and expertise of groups that may not be natural allies to a criminal justice reform process, such as victims' advocate groups, whose support is important.

We can discuss these types of mechanisms at greater length with the Task Force. It will be important going forward that the Task Force consider its own composition with an eye to ensuring representation from all key stakeholders. This would include adding the OCPD, the judiciary, court operations, and potentially representatives from communities impacted most by the local justice system.

⁷ See National Institute of Corrections, EBDM—The Starter Kit: 8a Building a Plan for Implementation (*available at* <http://ebdmoneless.org/starterkit/8a-building-a-plan-for-implementation>).

⁸ For guidance on establishing performance measures, see NIC, EBDM—The Starter Kit: 6A Measuring Your Performance (*available at* <http://ebdmoneless.org/starterkit/6a-measuring-your-performance>).