

ASSESSMENT OF THE DANE COUNTY
JAIL POPULATION CONTROL OPTIONS

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January 2023

Executive Summary

This report is in response to County Board resolution 320 which specifies that JFA Institute complete an analysis and recommendations on specific policy, practice and program reforms that would result in reductions of the jail population and minimize the use of incarceration. JFA assessed the current number and types of alternatives used by Dane County at various stages of the criminal justice system. JFA Institute was also tasked with analysis of the Dane County jail project's effects on racial equity. The authors attempted to gather information on all programs and policies that may reduce the jail population and/or mitigate racial inequity and acknowledge there may be some initiatives that are not listed. The report is relevant as the County seeks to determine how many jail beds are needed in the future to safely house people who are detained.

Additionally, the JFA Institute has completed an analysis of the potential impact of State of Wisconsin pretrial bail reform. Pretrial bail reform is a factor beyond the county's control. However, if passed it would have a dramatic impact on jail population (see Appendix B).

As this report indicates, there have been many programs implemented and policies adopted by the courts and the criminal justice system over the past few years that either directly or indirectly impacted the two factors that determine the size of a jail population – admissions and length of stay (LOS). Most of the reforms now in place are designed to limit jail admissions and/or provide supportive “wrap-around” services (e.g., counseling, drug treatment, etc.). These reforms collectively have served to reduce the jail population from about 1,100 in 2006 to its current population of about 675, thus producing very low state and local jail imprisonment rates.

As the jail population has safely declined, the attributes of the jail population have changed. Specifically, the jail population is increasingly comprised of people charged with more serious felony crimes which take longer to dispose of and thus increase the LOS.

To further reduce the jail population, new and more direct actions would be needed that would impact the jail's length of stay and, in particular, the amount of time required to dispose of criminal charges and probation/parole violations.

Jail Population Control Recommendations

1. Develop a criminal court continuance policy similar to the one developed by the National Center for State Courts (NCSC) that requires all requests to be submitted in writing to the court at least 48 hours prior to the hearing and only for reasons acceptable to the court.¹
2. Develop automated tracking of all continuances granted by the court in terms of entity requesting the continuance, reason for the request, decision by the court and the length of the continuance.
3. Develop a monthly report that summarizes the number and types of continuances granted by the court, average length of continuances, entity requesting the continuance and the reason for the request.

¹ <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1484/>

4. Increase the pool of private attorneys under the Dane County Criminal Defense Project by increasing the billing rates to more competitive levels.
5. Increase the number of community-based treatment beds sufficiently to eliminate the number of jail residents who are awaiting a CAMP, Pretrial Services, or other treatment bed.
6. Discontinue the federal contract to house federal detainees.
7. Implement an expanded supervised pretrial services program that targets defendants who are charged with felony crimes and have been in custody for three days or more.
8. Fully operationalize the current Jail Population Review Team (JPRT) so that the JPRT can request the courts to take actions on people currently incarcerated in the jail who do not require further periods of incarceration.

Implementation of these reforms would reduce the current “under the roof” jail population as of August 23, 2022, by about 128 people. Most of the reduction would be related to recommendations #6, #7 and #8. Additional reductions would result from the other recommendations. A 20% discount rate is applied to these statistical estimates knowing that there will be some resistance or unanticipated factors that will limit each reform’s impact on the jail population.

Summary of Jail Population Control Recommendations on the Current Jail Population

Reform	Jail Population Reduction	Jail Population 8/23/2022
Remove Federal Contract Detainees	48	48
Increase Pretrial Service Capacity	25	164
Increase Community Beds For CAMP	15	97
Adopt Case Processing Policy	25	N/A
Increase Public Defender Funding	25	N/A
Shorten Probation/Parole Violation LOS	15	105
Total	153	715
Estimated Total with 20% Discount	128	N/A
Jail Population With/Without Reforms	587	715
Jail Incarceration Rate Per 100,000	100	132

CJC Data Analysis and Evaluation Recommendations

It is recommended that the Dane County Criminal Justice Council (CJC) enhance its current data dashboard so that it reflects more current crime and criminal justice system time series data. This analysis would also form the basis for a more detailed CJC Annual Report.

The CJC should also identify a series of evaluations of its current major alternative-to-incarceration programs to assess their impact on the jail population, recidivism rates and cost benefits. These formal evaluations should focus on the cost-effectiveness of the CAMP and

Pretrial Services programs. The evaluations should utilize both pre and post time series and quasi-experimental designs. The later design would use a non-randomized control group that can be used to test the impact of CAMP and Pretrial Services on the jail population, recidivism, and costs.

Community Input

A mail-out survey of six non-governmental agencies found that they support additional reforms to reduce the jail population and to reduce racial disparities in that population. Some of the resulting survey recommendations mirror the ones made in this report. There is also a need for the CJC to better inform these and other groups via a detailed briefing on the drivers of the jail population and the potential for specific reforms to safely reduce the jail population and racial disparities. In so doing, these agencies would be better informed on what actions have already been taken and how they can better support current and future jail population control measures.

Introduction

The Dane County Board of Supervisors requested that the JFA Institute complete an analysis and produce a report that recommends specific policy, practice and program reforms that would result in reductions of the jail population and minimize the use of incarceration. In so doing, the JFA Institute met with key stakeholders to ascertain their views of current and potential new efforts to reduce the jail population. This report is separated into four parts.

Part 1: Current Jail Population Control Efforts

This section provides a summary of current efforts to reduce the jail population that have been implemented. A listing of other efforts that have been implemented in other jurisdictions but not in Dane County is also provided.

Part 2: Interviews with Key Stakeholders

This section summarizes the interviews with key stakeholders regarding their views on what additional reforms could be implemented to further reduce the jail population.

Part 3: Statistical Analysis of Jail Population Trends

This section provides an updated statistical analysis of the current jail population, aggregate jail population trends and the last 12 months of jail releases. Special attention is drawn to the changes in the two key factors that produce a jail population – admissions and length of stay (LOS).

Part 4: Evaluating Current and Future Initiatives

This section offers guidance on how current and future initiatives can be evaluated and the key data points that are needed to complete such an analysis on a regular basis.

Part 1. Current Jail Population Control Efforts

Nationally, throughout the past four decades, there have been a wide array of so called “alternatives to incarceration” that have been implemented in response to the massive increase in the jail and prison populations. In general, these programs and policies are expected to reduce either admissions or the length of stay (LOS) of people admitted to jails and prisons.

There has been much criticism of these alternatives to incarceration based largely the continued rapid growth in prisons and jail population between 1975 and 2010 even as these programs were being widely adopted.² The more specific criticism was that such programs failed to target people who, had the alternative program not existed, would have otherwise been arrested, convicted, and incarcerated. As such they only served to expand rather than shrink the size of the correctional population.

These alternatives to incarceration were generally listed as “diversion” programs where people were granted a non-incarceration disposition if they agreed to participate in some rehabilitative or

² Barry Krisberg and James Austin. 1982. “The Unmet Promise of Alternatives to Incarceration”, Crime and Delinquency, Vol. 28, No. 3:374-409. Austin, James. 1980. Instead of Justice, Diversion. Dissertation. Department of Sociology, University of California, Davis.

supervision program. Upon successful completion of the program, the charges would be dropped, and the stigma of conviction eliminated. Selection criteria for diversion programs generally targeted people who were “first offenders” and charged with non-violent crimes.

Today, many of these programs generally target people charged with drug possession, DUI, and people with mental illnesses. Typically, specialized courts (e.g., drug court, mental health courts, etc.) have been established that only handle certain non-violent crimes.

Drug courts have been evaluated in terms of their impact on recidivism but with mixed results. There have been no studies of their impact on the jail population. Quasi-experimental studies tend to show some positive results, but the fewer rigorous experimental studies do not. The most recent summary analysis by the University of Wisconsin professor Randall Brown concluded:

“Whether drug court participants post-release continue to demonstrate reductions in criminal behavior and substance use, and whether improvements are achieved by this group in other critical areas such as employment or educational attainment remains debatable.”³

Dane County has followed and even excelled in its efforts to install a wide variety of alternative programs and analytic capabilities. Over the past decade, a number of studies have been completed that have led to the implementation of various alternative programs. Much of this work followed the recommendations made by the Center for Effective Public Policy (CEEP) in its 2013 report.⁴

As shown in Table 1, there are 19 known alternatives to incarceration programs currently operating within the county. While there is no list of “best practices” for such programs, the ones shown in Table 1 are typically found in other jurisdictions. It’s fair to say that few jurisdictions have such a comprehensive list as Dane County’s programs.

The majority of the programs are managed by the Department of Human Services (DHS). Most of the DHS programs are *not* designed to explicitly reduce jail bookings or the LOS. Rather they tend to provide an array of out of jail “wrap-around” support and treatment services to selected targeted populations. As such they may indirectly reduce recidivism rates and thus subsequent bookings and the jail population.

Other programs attempt to divert people from prosecution and/or admission to the jail system. These programs are operated by the District Attorney and Madison Police Department.

The one alternative that is having a direct impact on the jail population is the Custody Alternative Monitoring Program (CAMP) operated by the Dane County Sheriff’s Office. CAMP is an electronic monitoring/GPS tracking program for selected, sentenced inmates which enables them to serve all or a portion of their sentence at home and in the community. Incarcerated residents must volunteer for the program, pass a rigorous screening process by the Sheriff, have a Dane County residence, agree to all program rules, and be able to pay the daily program fee of \$26.74.

³ Brown, Randall T. “Systematic review of the impact of adult drug-treatment courts.” *Transl. Res.* 2010 Jun;155(6):263-74.

⁴ *Findings and Recommendations from the Dane County Mapping Process Presented to the Dane County Criminal Justice Council.* 2013. Silver Spring, MD: Center for Effective Public Policy.

For indigent residents there is no fee and for others a reduced fee of \$13.37 can be offered. Failure to comply with the program requirements results in one serving the remainder of their sentence in jail with a possible loss of good time.

Table 1. Currently Funded Programs Defined as Alternatives to Incarceration

Agency	Reduce Bookings	Reduce LOS	Reduce Recidivism	Intervention Strategy
Madison Police Department				
Madison Addiction Recovery Initiative (MARI)	Yes	No	Yes	Divert at the point of arrest to Treatment
Clerk of the Courts				
Pretrial Services Agency - Bail Monitoring Program	No	Yes	Yes	Increased Supervision
Veterans Court	No	No	Yes	Drug Treatment
District Attorney's Office				
First Offender/Deferred Prosecution	No	No	Yes	Mostly Supervision
Opioid First Offenders/Deferred Prosecution (TAD)	No	No	Yes	Mostly Supervision
Department of Human Services				
Drug Court Diversion Program (DCDP)	No	?	Yes	Services and Supervision
Drug Court (DCTP)	No	No	Yes	Services and Supervision
OWI Court	No	Yes	No	Supervision
Jail Opiate Program	No	No	No	Medication
Madison Areas Recovery Initiative (MARI)	Yes	No	Yes	Services
Community Restorative Court (CRC)	No	Yes	No	Wrap Around Victim Services
Alternative Living Services	No	No	No	Housing
ARC Community Services, Inc. – RESPECT	Indirect	No	Yes	Support Services for Prostitutes
Centro Hispano	Indirect	No	Yes	Support Services for Latinos
Journey Mental Health Center, Inc. - Community Treatment Alternatives	Indirect	No	Yes	Mental Health Treatment
Journey Mental Health Center, Inc. Emergency Jail Diversion Services	Indirect	No	No	Law Enforcement Coordination
SOAR Case Management Services, Inc., and Tellurian's Community Intervention Team	No	Indirect	Yes	Case Management Services
Urban League Fatherhood Program	No	No	Yes	Support Services for Fathers at Risk
Dane County Sheriff				
Custody Alternative Monitoring Program (CAMP)	No	Yes	No	Electronic Monitoring Home Detention

CAMP has recently been modified to accept people receiving a Huber sentence. The prior Huber program, in which sentenced individuals were allowed to leave the jail during the day to work or attend other approved appointments but return to the jail in the evening, has been discontinued. Under the modified program, people are no longer required to return to the jail each day. Rather, they can remain in the community, in their homes or approved places of residence. Formal evaluations of these programs in terms of their recidivism rates and cost-effectiveness have not been completed. Even basic process level evaluation data (number of referrals, program admissions, services delivered, program success rates, current caseloads, and budgets) are often not readily available.

Based on documents provided by the CJC, in addition to data from the CAMP program, data are available from two formal evaluations of the alternatives to incarceration programs. The first was a quasi-experimental study by University of Wisconsin researchers of the Madison Police

Department's Madison Addiction Recovery Initiative (MARI).⁵ That study created two groups -- MARI participants (n = 263) and a historical comparison group (n = 52) for 12 months before to 6 months after the arrest was made. The results showed that only 100 (38%) of the 263 MARI participants successfully completed the program. Of note, 80% of the MARI participants were white and about 60% were Madison residents. In terms of re-arrests, there were no differences between the historical comparison group and the MARI referrals (40% versus 41%). There were positive results for the MARI program completers, who had a very low 6-month re-arrest rate of 12%. However, due to the high number of MARI non-completers, the viability of the program in terms of having an overall impact on public safety has not yet been demonstrated (attrition bias).

The second study was the 2011 evaluation of the Dane County Drug Court program by the same Professor Brown cited earlier.⁶ All individuals (2,370) with a drug-related charge filed during years 2004–2006 were located but only 137 participated in drug treatment court. A comparison group of 274 drug offenders who did not participate in the drug court was created by matching them with the attributes of the experimental group. He found there was significant difference between the drug court participants and the comparison group in terms of recidivism rates (30% versus 46%), longer time to first subsequent arrest (614 days versus 463 days) and shorter jail time if re-arrested for a new crime (44 days versus 126 days). It's not clear from the report whether people who elected to participate but failed to complete the program were included in the analysis which would tend to lower the differential outcome results.

Regarding the CAMP program, the Sheriff's Office did provide aggregate data on the number of enrollments, monthly average daily population (ADP) and the number and type of program failures for the last four quarters. The data in Table 2 show an increasing population enrolled and a stable program success rate of about 88-90%. Most of the program failures are due to drug and alcohol violations and very few new charges (only 5 in the past 12 months). While not reported by the Sheriff's Office, the average LOS in the program is 54 days. It is not possible at this time to determine LOS by program success or failure rates.

The County also has implemented a pretrial services agency that is administered by the Dane County Clerk of Courts Office. This agency serves to assess defendants in terms of either their risk of being re-arrested or their risk of failing to appear for a scheduled court date, and then monitors them in the community. The risk instrument that is being used is the Public Safety Assessment (PSA) which was implemented in April 2017 as part of a collaborative assessment project with the Arnold Ventures Foundation (AV), the Access to Justice Lab (A2J) at Harvard Law School, and the CJCC. The current plan is to re-locate the pretrial services agency from the County Clerk of Courts Office and establish it as an independent agency.

⁵ Veronica M. White, Sebastian Alvarez Avendano, Laura A. Albert, Aleksandra E. Zgierska, Captain Joe Balles, Gabriel Zayas-Cabán, Impact of a community-policing initiative promoting substance use disorder treatment over criminal charges on arrest recidivism, *Drug and Alcohol Dependence*, Volume 227, 2021, 108915, ISSN 0376-8716,

⁶ Brown, Randall. (2011). "Drug Court Effectiveness: A Matched Cohort Study in the Dane County Drug Treatment Court", *Journal of Offender Rehabilitation*, 50:4, 191-201, DOI: [10.1080/10509674.2011.571347](https://doi.org/10.1080/10509674.2011.571347)

**Table 2. CAMP Enrollments, ADP, Success Rates and Calculated LOS
Q3 2021 – Q2 2022**

Reasons for Failure	2021-Q3	2021-Q4	2022-Q1	2022-Q2	Totals
Alcohol violations	4	7	7	12	30
Drug violations	4	4	9	5	22
Rule violations	1	0	0	3	4
New charges	1	1	1	2	5
Monthly ADP	66	75	90	103	83.5
Enrollments	97	136	164	166	563
Success Rates	90%	91%	90%	87%	89%
LOS in Program	62 days	50 days	50 days	57 days	54 days

Source: Dane County Sheriff Department. The LOS calculation is based on the number of enrollments (annualized) and the Monthly ADP.

The PSA was developed by Arnold Ventures (AV) to assist pre-trial judges in gauging the risk a defendant poses by helping to predict the likelihood that an individual will commit a new crime if released before trial, and to predict the likelihood that an individual will fail to return for a future court hearing. The PSA also flags defendants who present an elevated risk of committing a violent crime.

Currently there are 234 defendants being supervised and monitored by the pretrial services agency. Of that number, 74 are assigned an electronic bracelet. Defendants are being supervised and monitored for their geographic location, alcohol, and drug use.

There is evidence that supervised pretrial release (SPR) is an effective method for reducing the pretrial felon population. A randomized field experiment in Miami, Portland and Milwaukee found that people charged with serious felony crimes could be successfully released without jeopardizing public safety (low re-arrest and failure to appear (FTA) rates).⁷

The above alternatives to incarceration strategies can be compared with those that have been implemented in other jurisdictions throughout the nation to reduce jail populations. As listed on the following page, these strategies can be separated into the two major categories that produce a jail population – effect on bookings and effect on the jail LOS. A jail population is the product of the bookings x LOS. Any change in bookings and/or the LOS will directly impact the size of the jail population.

Reduce Bookings

1. Increased use of field citations in lieu of arrest;
2. Crisis stabilization centers in lieu of jail booking;

⁷ Austin, James, Barry Krisberg, and Paul Litsky. “The Effectiveness of Supervised Pretrial Release”. **Crime and Delinquency**. Volume 31, Issue 4. <https://doi.org/10.1177/0011128785031004004>.

3. Revised bail amounts/own recognizance at pre-booking;
4. Reduce FTA incidence via court reminders/smart cellphone notification for indigent defendants;
5. Reduce FTA incidence for misdemeanor appearance warrants by not allowing bookings without a warning; and
6. Reduce probation and parole technical violations.

Reduced Jail Length of Stay

1. Revised bail amounts/own recognizance post booking;
2. Supervised pretrial release with validated risk assessment instrument to increase Own Recognizance (OR);
3. Case processing:
 - a. Reduce the number and length of continuances;
 - b. Provide adequate legal representation of indigent defendants to expedite case processing; and
 - c. Reduce LOS for probation and parole violators by streamlining violation process.

When compared to efforts that have been implemented in Dane County versus these national trends, there are two areas where the County now needs to focus. The County has already heavily invested in diversion reforms that have served to reduce jail bookings. The first area of exception is the lack of a Crisis Triage Center (CTC) where people who are charged with non-violent crimes and are also suffering from severe mental health disorders and/or substance abuse could be transported by law enforcement in lieu of being booked into the jail. The CTC could also be used for people being released from the jail who need a short period of stabilization. In response to this need, Dane County has allocated \$10 million to create and launch the CTC.

The second area that the County has not fully addressed is criminal court case processing. It is well recognized that delay in the time it takes to dispose of criminal charges is a major problem in the U.S. criminal courts. The National Center for State Courts (NCSC) has concluded that one of the major reasons for excessive court delay is the excessive use of requests for continuances – especially for those people detained in pretrial status.⁸

Currently, Dane County has no formal policy on the issuance of continuances in terms of how they should be submitted to the court, reasons for the continuance and the length of the continuances. There are also resource related issues that impact the use of continuances. In particular are delays in case disposition for detained defendants due to court continuances, largely triggered by insufficient resources allocated for the defense of indigent defendants. These delays can be triggered by delays in assigning counsel, adequate time to review the case and the associated evidence, or discovery of a conflict whereby new counsel needs to be located and assigned.

Finally, there is one large segment of the current jail population that could be reduced or even eliminated by simply adjusting current criminal justice policies, people under the jurisdiction of the federal courts. There is no local, state, or federal mandate that requires the County to house such

⁸ https://www.ncsc.org/__data/assets/pdf_file/0017/53216/Delivering-Timely-Justice-in-Criminal-Cases-A-National-Picture.pdf

individuals in the County jail. Removal of these defendants would have no impact on the Public Defender, District Attorney or the Courts as these people are under the jurisdiction of the federal court system.

Part 2. Interviews with Key Stakeholders

During the course of this study, representatives of the relevant criminal justice agencies were interviewed (see Appendix A for a list of the people interviewed). These included representatives from the District Attorney's Office, the State Public Defender's Office, the Sheriff's Office, the County Clerk of Courts, the County Criminal Justice Council, the Circuit Judges, and the Wisconsin Division of Community Corrections (DCC). The interviews and contacts focused on the actions that each entity could take to impact the jail populations.

One of the most recent policy reforms was the formation of the Jail Population Review Team (JPRT) in the summer of 2022. The JPRT presently consists of the representatives from the above criminal justice agencies who meet on a regular basis (typically weekly) for the overall purpose of identifying incarcerated people who should either have been diverted from the jail or whose criminal charges should have been disposed. A key assumption for having a JPRT is that there are some people who should not be in the current jail population based on their charges, time in custody to date, and/or risk to the county population if released.

To aid in this work, lists of people who are currently incarcerated and who meet certain criteria are reviewed by the JPRT. To date, the JPRT has not had an impact on the jail population, but the participants are finding it useful in terms of better understanding why certain people are having prolonged periods of time in custody given the nature their charges. In a recent meeting, there was acknowledgement that some people on this list are remaining in custody simply due to the lack of community treatment/residential beds. A weakness in the County jail/court data systems is the inability to know, without a time-consuming manual search of court records, just how many people in the jail would be released if such a bed were available. Such a number could be used to determine how many additional and what type of community beds are currently needed.

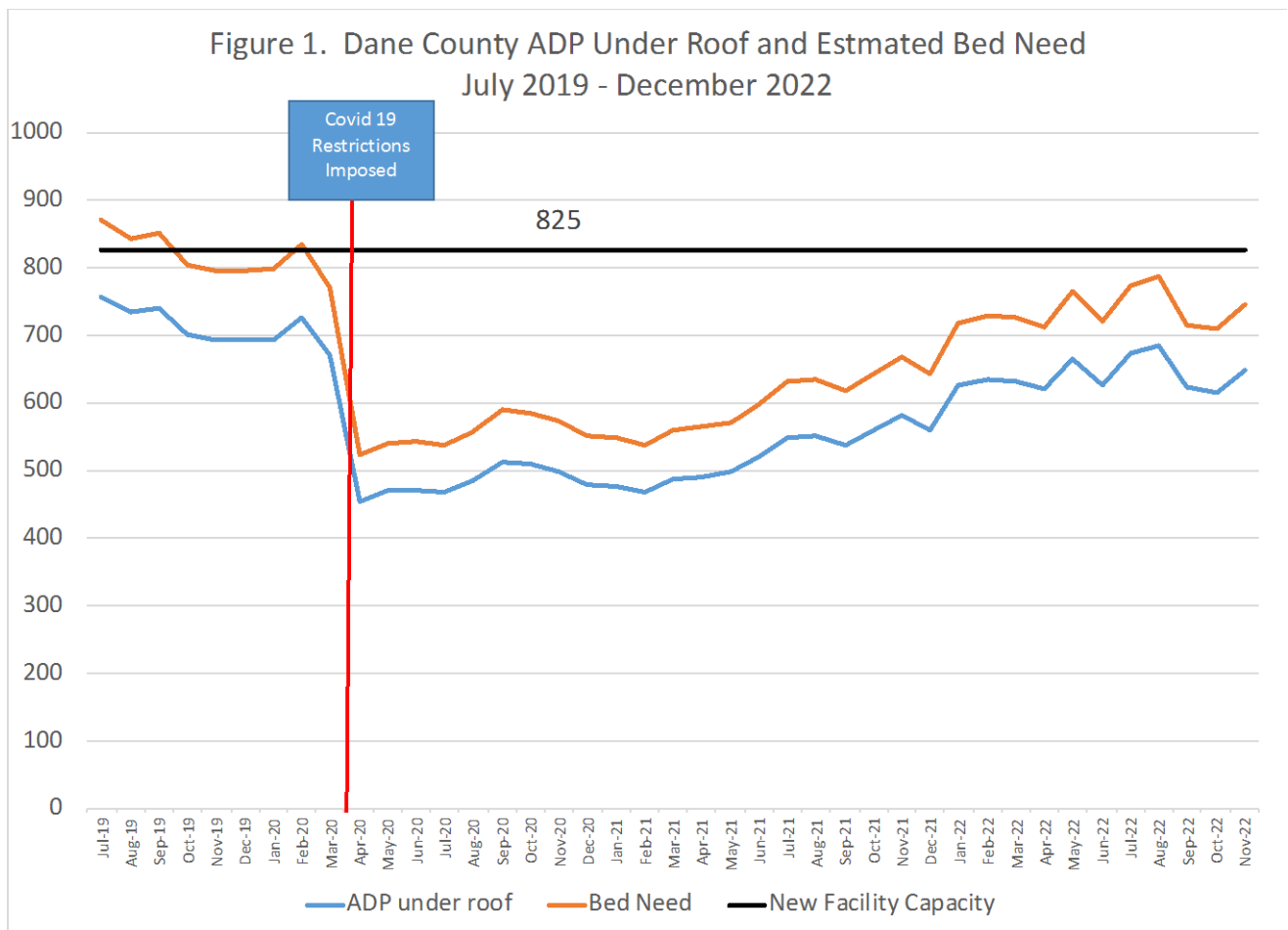
Additionally, as indicated earlier, there was also concern that many of the court continuances that are occurring are due to the lack of public defenders and contract attorneys needed to adequately represent indigent defendants as required by the U.S. Constitution. Based on an interview with the District Attorney there does not appear to be a significant lack of prosecutors.

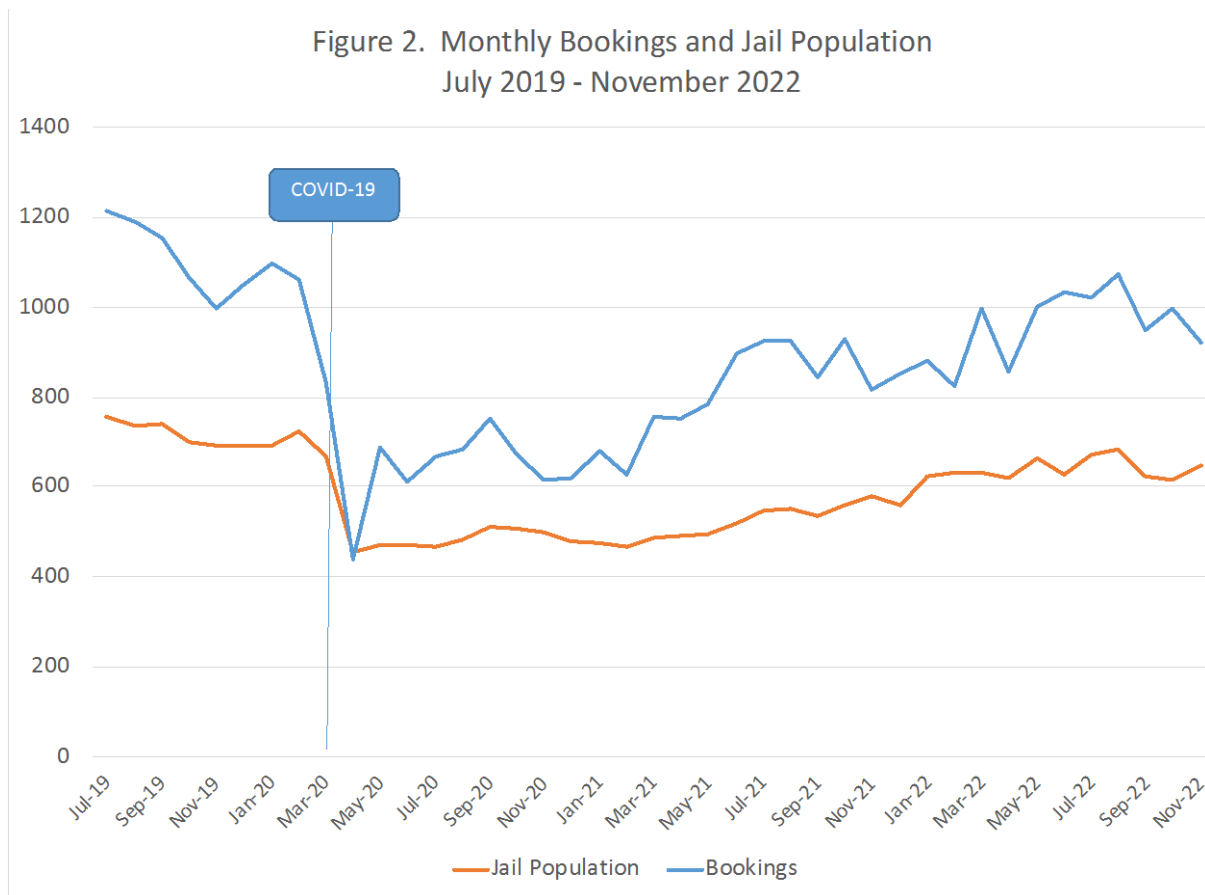
The County could also address the issue and the associated violation of a defendant's constitutional right to adequate counsel by enhancing its own Criminal Defense Project which is administered by the Dane County Clerk of Courts Office. This project is designed to attract and retain a pool of private attorneys who can represent defendants who are eligible to be represented by appointed counsel on a flat-rate basis. The current basic rate of pay is \$750 for Misdemeanor and Criminal Traffic cases, \$1000 for Class C Felony cases and below, \$1500 for Class B Felony cases, and \$2500 for Class A Felony cases. Additional compensation at the rate of \$100/hour is awarded for cases that go to trial.

Part 3. Updated Jail Population Trends and Analysis

Similar to national, state, and local trends, there was a sharp decline in the Dane County jail population after social and economic restrictions were imposed in the Spring of 2020 due to the COVID-19 pandemic (Figure 1). The drop in bookings was singularly caused by declines in arrests and not by the introduction of a new diversion program or policy. But as the pandemic eased so too have some of the factors that reduced the jail population. In particular, jail bookings have steadily increased but have not yet reached their pre-COVID-19 levels (Figure 2).

The increase in bookings is somewhat surprising given pre and post COVID-19 crime and arrest trends. There were sharp declines in the number of arrests after COVID-19 restrictions were imposed in March 2020 (Table 3). The 2021 figures show no major rebound with the exception of the “other” crime type which are non-violent lower-level crimes.





Madison Police Department is the major law enforcement agency in the County and generates the largest number of arrests each year. It has more complete data which shows a plateauing of the number of arrests between 2020 and 2021. Reported crimes are also relatively flat (Table 4), yet jail bookings are rising at a faster pace.

Table 3. Dane County Adult Arrests by Selected Crime Type 2017 - 2021

Year	Total	Violent	Property	Society	Drug	Other
2017	18,225	582	3,578	6,310	1,809	5,946
2018	18,077	616	3,613	5,983	1,773	6,092
2019	18,000	677	3,635	5,866	1,535	6,287
2020	13,201	481	2,635	4,096	1,115	4,874
2021	13,608	534	2,179	4,370	894	5,631

*Source: <https://www.doj.state.wi.us/dles/bjia/ucr-arrest-data>

**Table 4. Madison Police Department Reported Crime and Arrests
2018 -2021**

	2018	2019	2020	2021
MPD Crimes ⁹				
Total	24,887	26,689	25,308	25,188
Group A	14,106	14,127	14,548	13,524
Group B	10,781	12,562	10,760	11,664
B-All Other	6,376	7,514	6,585	7,314
MPD Arrests	8,005	8,330	6,357	6,184

Source: Madison Police Department website.

In terms of the current jurisdictional jail population, two data sources were utilized. First there is the daily report that is available on the Sheriff’s website. That report shows there are several statuses that constitute what could be referred to as the jurisdictional population. As shown in Table 5, there were 812 people under the jurisdiction of the Sheriff’s Office as of August 23, 2022, with 650 in the jail – known as the “under the roof” population. The difference between the 812 and 650 figure consists of people supervised outside of the jail in the CAMP electronic monitoring program and residents who have been transferred to other county jails – known as the “relocation” population.

The relocation population was recently created when the Sheriff decided to close one floor in the City-County Building due to 1) long-standing inadequate conditions of confinement and 2) insufficient staff to operate the two major jail facilities.

“A lack of safe and humane jail space, along with ongoing staffing shortages, has brought us to the difficult decision to place some of our jail residents in other counties.”

- Sheriff Calvin Barrett, Dane County Sheriff Website.

Also contained in the jail population daily report are several demographic and legal status attributes that relate to the current and projected size of the jail population, as well as the prior discussion on existing alternatives to incarceration.

Relative to demographics, most of the residents are males (703) and Black (433). In previous reports, JFA has noted the extremely high incarceration rate for Blacks. In terms of legal status, about 100 people are under the Sheriff’s CAMP (electronic monitoring) program which, as noted earlier, is the major alternative to incarceration program. However, there are five other jail population sub-groups that merit further discussion (Table 6).

⁹ **Group A.** Animal Cruelty, Arson, Assault Offenses, Bribery, Burglary, Counterfeiting/Forgery, Damage to Property, Drug/Narcotic Offenses, Embezzlement, Extortion, Fraud Offenses, Gambling Offenses, Homicides, Human Trafficking, Kidnapping/Abduction, Larceny/Theft Offenses, Motor Vehicle Theft, Pornography/Obscene Material, Prostitution, Robbery, Sex Offenses, Non-Forcible, Stolen Property, Weapon Law Violations.

Group B. Bad Checks, Curfew/Loitering/Vagrancy Violations, Disorderly Conduct, Driving Under the Influence, Drunkenness, Family Offenses, Nonviolent, Liquor Law Violations, Peeping Tom, Runaway, Trespass of Real Property, All Other Offenses,

**Table 5. Key Attributes of the Resident Population
August 23, 2022**

Status	Residents
Total	812
CAMP	97
Resident Relocation	65
Dane County Under the Roof	650
With Relocation	715
Gender	
Male	703
Female	109
Race	
Black	433
White	369
Other	8
Hispanic Origin	56
Key Legal Statuses	
Pretrial – No Holds	164
Probation/Parole Violation Hold	105
CO Pretrial with Hold	101
Sentenced with Huber	78
Probation Sentence Work Release	59
Federal Resident Intransit	48
Juveniles under age 18	8
Sub-Total	563

*Source: Dane County Sheriff Website

**Table 6. Comparison of Total vs. Under the Roof Jail Counts
August 23, 2022**

Key Legal Statuses	Total	Under the Roof	Avg. LOS to Date
Total	812	715	95 days
Sub-Groups			
Pretrial Population – No Holds	164	164	123 days
Pretrial Probation/Parole Violation Hold	105	105	44 days
Sentenced with Huber	78	27	92 days
Probation Sentence Work Release	59	16	67 days
Federal Resident Intransit	48	48	146 days

Source: Dane County Sheriff snapshot date file and website.

In conducting this analysis, it was important to clearly understand the differences between the “under the roof” population and those outside of the jail. The resident profile on the Sheriff’s website does not separate the various legal statuses to clarify whether the persons incarcerated in a given status are being held under the roof or being supervised in the community. This can lead to an inaccurate picture of the possible size of an alternative to incarceration policy.

Pretrial Population – No Holds

This is the largest legal status group (164) in the jail population. A sizable portion of this group was charged with murder (28) or various sex crimes (8), but another large number were charged with a variety of non-violent crimes. Some portion of this population may be suitable candidates for a supervised pretrial release monitoring programs assuming their risk assessment score is acceptable.

Probation/Parole Violation Holds

The next largest group are people who have violated their terms of probation or parole supervision thus resulting in a warrant being issued for their arrest and detention. Once arrested, these people will remain in custody until the court or parole board makes a decision to either revoke the probation order or parole. For probationers, revocation hearing must occur within 50 days of when the probationer was first detained. The 50 days can be extended for a just cause. The revocation hearing will take place in front of an administrative law judge and not a county circuit court judge. It is this 50-day time period that results in a lengthy detention. Once the revocation decision is made, the person is returned to either community supervision or the prison system. There is an appeal process that allows the person to appeal the revocation decision.

Sentenced with Huber

Traditionally these are people who have been convicted of a crime and have been sentenced to the jail for a fixed sentence. However, these people are allowed to leave the jail during the day for jobs and other commitments and return at night. People sentenced under Huber are also charged a daily fee to cover the costs of imprisonment. However, as shown earlier, under the new Sheriff CAMP policy, these people are not required to return to the jail each day. Rather, they can remain in their homes on electronic supervision.

There are about 27 people in the jail who could be in the community under CAMP but are not. An unknown number of these people are “homeless,” so they do not qualify. Others are simply refusing to participate in CAMP. The Sheriff has suggested that the County create more community beds either by expanding community treatment beds or hotel stipends. One can assume that such an investment would reduce the Huber in-custody population by 50% or 13 people.

It is also recommended that people who have been successful on CAMP for 90 days be brought back to the court for a commutation of their remaining sentence. Such a “carrot” would probably increase success rates and, more importantly, reduce the daily CAMP caseload.

Probation Sentence Work Release

This status is similar to the Huber sentenced status. The same issues may apply to this group. However, there are only 16 people who are currently in custody and it's not clear if the County could reduce the population since they are under the jurisdiction of the Wisconsin Department of Corrections and Community Supervision. Further analysis would be required to see why these people have been unable to secure release.

Federal Resident Transit

These are people charged with federal crimes and are under the jurisdiction of the U. S. Department of Justice and not the Dane County criminal justice system. Dane County has voluntarily agreed to house these federally charged people in the County jail as opposed to their being housed in a nearby jail or a federal Bureau of Prison facility(s). For example, the FCI Oxford, a maximum-security federal prison is located about 72 miles from Madison.

Examining the steady increase in the jail population from July 2021 through December 2022, the increases have been across all of the major legal statuses in the jail (Table 7). Of note are the increases in the Sentenced with Huber, probation and parole violators, and the federal contract populations.

**Table 7. Changes in the Jail Population by Key Legal Statuses
July 1, 2021, and December 1, 2022**

Status	July 1, 2021	December 1, 2022	Difference
Total Population	606	686	+80
Under the Roof	539	632	+93
CAMP	67	105	+38
Relocated	0	54	+54
Sentenced with Huber	74	104	+30
Prob/Parole Hold	69	102	+33
Federal Contract	32	64	+32

The other source of analysis is a comparison between the jail population as of April 2019 and August of 2022. These comparisons are based on snapshot files that may differ slightly from the aggregate counts reported on the Sheriff's website. Here one can see how the population demographics have shifted as the jail population has declined. Overall, the average LOS to date has remained unchanged. Relative to demographics, the population is increasingly male, Black, arrested by the Madison Police Department, and having a hold/warrant from another jurisdiction (Table 8).

Relative to the most serious charge, there has been a shift toward people charged with felonies and violent crimes (Table 9). Collectively, these data show it will be more difficult to further lower

the current jail population as it is increasingly comprised of people charged with or convicted of a felony or violent crime or with a warrant from another jurisdiction. The increase in the Black jail population is a reflection of that demographic being disproportionately charged with felony violent and drug possession crimes as compared to whites (Table 10).

**Table 8. Dane County Jail Snapshot Comparison
Demographics, Arresting Agency, and Judicial Status at Arrest**

Attribute	August 23, 2022			April 25, 2019			Numeric Diff.	Percent Diff.
	Number	Percent	Average Length of Stay to Date (days)	Number	Percent	Average Length of Stay to Date (days)		
Total	707	100.0%	93.0	825	100.0%	91.4	-118	-14%
Gender								
Female	90	12.7%	42.4	129	15.6%	66.3	-39	-30%
Male	617	87.3%	100.4	696	84.4%	96.1	-79	-11%
Race								
Black	399	56.4%	105.0	379	45.9%	100.0	20	5%
White	252	35.6%	69.3	430	52.1%	83.7	-178	-41%
Arresting Agency (Most serious offense)								
Dane County Circuit Court	23	3.3%	82.1	108	13.1%	116.9	-85	-79%
Dane County Sheriff	126	17.8%	96.7	222	26.9%	90.5	-96	-43%
Madison PD	334	47.2%	89.7	243	29.5%	96.6	91	37%
Other	120	17.0%	115.8	183	22.2%	91.6	-63	-34%
Parole and Probation	50	7.1%	50.0	69	8.4%	37.1	-19	-28%
Age at Booking								
Under 18	13	1.8%	231.2	0	0.0%	93.0	13	n/a
18 - 24	104	14.7%	145.6	122	14.8%	94.0	-18	-15%
25 - 34	262	37.1%	91.2	309	37.5%	79.2	-47	-15%
35 - 44	198	28.0%	75.4	202	24.5%	110.0	-4	-2%
45 and older	130	18.4%	69.4	192	23.3%	90.1	-62	-32%
Average Age	35.5			36.6			-3%	
Judicial Status								
Hold	316	44.7%	82.6	294	35.6%	70.8	22	7%
In transit	72	10.2%	147.8	102	12.4%	132.5	-30	-29%
Pretrial	272	38.5%	92.7	209	25.3%	89.8	63	30%
Sentenced	47	6.6%	81.6	220	26.7%	102.3	-173	-79%

**Table 9. Dane County Jail Snapshot Comparison
Most Serious Charge**

Charge	August 23, 2022			April 25, 2019			Numeric Diff.	Percent Diff.
	Number	Percent	Average Length of Stay to Date (days)	Number	Percent	Average Length of Stay to Date (days)		
Total	707	100.0%	93.0	825	100.0%	91.4	-118	-14%
Total Felony	588	83.2%	99.4	594	72.0%	91.7	-6	-1%
Violent	278	39.3%	155.5	197	23.9%	139.6	81	41%
Murder	53	7.5%	269.3	22	2.7%	353.9	31	141%
Sex	33	4.7%	216.9	38	4.6%	201.5	-5	-13%
Assault/battery	55	7.8%	103.9	32	3.9%	116.7	23	72%
Robbery	21	3.0%	165.2	16	1.9%	157.3	5	31%
Other Violent	116	16.4%	108.7	89	10.8%	98.2	27	30%
Drug	64	9.1%	59.6	61	7.4%	95.2	3	5%
Drug Sale	38	5.4%	78.4	36	4.4%	110.4	2	6%
Drug Possession	26	3.7%	32.1	25	3.0%	73.4	1	4%
Non-Violent	246	34.8%	46.3	336	40.7%	62.9	-90	-27%
Burglary	19	2.7%	92.7	17	2.1%	89.4	2	12%
Fraud/forgery	10	1.4%	66.9	16	1.9%	149	-6	-38%
Theft	27	3.8%	48.5	30	3.6%	88.2	-3	-10%
DUI	32	4.5%	63.3	64	7.8%	114.2	-32	-50%
Weapons	6	0.8%	59.1	4	0.5%	142.9	2	50%
Other Non-Violent	20	2.8%	39.5	73	8.8%	59.1	-53	-73%
Other Property	9	1.3%	36.9	29	3.5%	82.3	-20	-69%
Probation/parole violation	109	15.4%	38.0	103	12.5%	47.9	6	6%
Bail jumper	14	2.0%	16.0	n/a	n/a	n/a	n/a	n/a
Misdemeanor	82	11.6%	25.0	150	21.2%	40.6	-68	-45%
Violent	29	4.1%	20.8	32	3.9%	44.2	-3	-9%
Drug	2	0.3%	0.9	3	0.4%	2.2	-1	-33%
Property	6	0.8%	39.8	21	2.5%	37.7	-15	-71%
Other Non-Violent	23	3.3%	33.0	94	11.4%	41.3	-71	-76%
DUI	11	1.6%	30.5	n/a	n/a	n/a	n/a	n/a
Bail Jumper	5	0.7%	15.2	n/a	n/a	n/a	n/a	n/a
Disorderly Conduct	6	0.8%	5.6	n/a	n/a	n/a	n/a	n/a
Other	37	5.2%	137.3	81	9.8%	81.6	-44	-54%

**Table 10. Dane County Jail Population – August 23, 2022
Most Serious Charge by Race**

Charge	Percent Black	Percent White	Percent Other
Total	56%	36%	8%
Total Felony	58%	39%	3%
Violent	66%	30%	4%
Murder	85%	15%	0%
Sex	51%	49%	0%
Assault/battery	69%	31%	0%
Robbery	81%	19%	0%
Other Violent	66%	34%	0%
Drug	59%	38%	3%
Drug Sale	68%	29%	3%
Drug Possession	83%	17%	0%
Non-Violent	50%	49%	1%
Burglary	42%	58%	0%
Fraud/forgery	60%	40%	0%
Theft	48%	48%	4%
DUI	31%	69%	0%
Weapons	83%	17%	0%
Other Non-Violent	40%	55%	5%
Other Property	56%	33%	11%
Probation/parole violation	55%	45%	0%
Bail jumper	50%	50%	0%
Misdemeanor	43%	56%	1%
Other	41%	57%	2%

The third view of the jail population is based on jail releases between May 2021-April 2022. In terms of releases and LOS, the average LOS is about 23 days which is similar to the national average (Table 11).

There are four release types that account for 545 of the 660 people in the “under the roof” population: 1) those whose jail sentence has been completed, 2) those transferred to another jurisdiction after their Dane County crimes have been disposed of, 3) those transferred to the state DOC typically after receiving a state sentence, and 4) those for release on bail.

The first three types are people/cases that are not “divertible” at the time of arrest. They are, however, excellent candidates for case processing reforms that can serve to modestly reduce their LOS without necessarily altering their current court dispositions. The fourth group (bail releases) and OR releases constitute half of all jail releases but only occupy about 100 beds at any given time. This is due to their relatively short LOS (5-8 days). However, any effort to restrict these releases would have a dramatic impact on the jail population.

For example, consider a recent proposal to not allow people to be released in pretrial status who have a felony charge and/or a prior conviction for a violent misdemeanor crime. An impact analysis of this proposal, which is contained in Appendix B, shows that if implemented it would increase the pretrial population from 300 to 700.

These data show there are other Dane County correctional populations that are external to the jail but contribute to its size, in particular, the state prison, and parole and probation populations. People who fail probation and parole take up a large number of jail beds on any given day. Additionally, prison-bound people take up jail beds during the lengthy pretrial process.

Table 11. May 2021-April 2022 Jail Release by Release Reason

Release Reason	Number	Percent	Average Length of Stay (days)	Calculated Under the Roof ADP
Total	10,374	100.0%	23.3	660
Sentenced completed	1,169	11.3%	54.4	174
Transfer out to other agency	1,473	14.2%	41.1	166
Transfer to DOC	291	2.8%	171.0	136
Bail	3,019	29.1%	8.3	69
Sub-Total	5,952	57.4%	33.4	545
Own Recognizance (OR)	2,147	20.7%	4.8	28
Temporary release	42	0.4%	183.7	21
Charge dismissed/dropped	650	6.3%	8.7	15
Hold dropped	501	4.8%	10.4	14
Credit time served	56	0.5%	73.5	11
Probation	51	0.5%	71.5	10
Sentence stayed	10	0.1%	284.1	8
Court order	72	0.7%	12.3	2
Release to appear/court	601	5.8%	1.1	2
Recog at jail	150	1.4%	4.4	2
Other	34	0.3%	11.3	1
Fine stayed	108	1.0%	3.3	1

It is possible to capture the entire Dane County correctional population that includes the Dane County portions of the state probation, parole/extended supervision, and prison populations. On any given day there are about 5,400 people under some form of correctional supervision (Table 12). While that may seem to be a large number, it produces a rate of 1,250 per 100,000 adult population which is well below the U.S, rate of 2,140.

When comparing only Dane County’s state imprisonment rate per 100,000 total population, it has a very low state imprisonment rate as compared to the Wisconsin or the rate of United States.

These lower rates are not explained by a lower crime rate for the County. While the violent crime rate is lower than the Wisconsin and U.S. rates, the serious property and overall crimes rates are either higher or about equivalent (Table 13). These lower rates show the successful collective effects of the County's effort to reduce the use of state imprisonment.

Table 12. Dane County Adult Correctional Populations

Status	Number
Prison	913
Jail – Under the Roof	705
Probation	2,337
Parole	243
Extended Supervision	1,202
Pretrial	234
Total Correctional Population	5,634
Dane County Total Population	542,459
Dane County Adult Population	431,982
Rate Per 100,000 Adults	1,250
U.S. Rate Per 100,000 Adults	2,140
Dane County State Prison Rate Per 100,000	168
Wisconsin State Prison Rate Per 100,000	347
U.S. State Prison Rate Per 100,000	371

Table 13. Dane County, Wisconsin, and U.S. Crime Rates per 100,000

Crime Rates	Dane County*	Wisconsin**	US**
Violent	238	323	399
Property	1,895	1,486	1,958
Total	2,133	1,809	2,357

*Wisconsin Department of Justice, 2021

** UCR, FBI 2020

Part 4. Evaluating Current and Future Jail Population Initiatives

As shown above, there are many programs and policies that have been implemented in Dane County that are expected to have some impact on the jail population by either reducing jail admissions, reducing the LOS, and/or reducing recidivism. It's also fair to say that it remains difficult to measure or evaluate which current reforms are having the most positive effects and at what costs to the taxpayers. In this final section, a research strategy is proposed that the County should consider adopting so that decisions can be made regarding which current reforms should continue and which new ones should be implemented.

Evaluation Designs

There are two basic evaluation design types that can be undertaken – time series analysis and experimental designs. The latter is generally the least rigorous design but is useful in terms of documenting basic changes in trend lines that may be associated with changes in policies, program implementation or legislative actions. The experimental designs are used to test the impact of an intervention or new policy on specific individuals. Unlike time series analysis, experimental studies require a control group that is unimpacted by the reform or program but is comparable to the experimental group in terms of demographics, criminal history, and risk level. The so-called “gold” standard for experimental studies requires random assignment of people into the control and treatment groups. When that is not possible, quasi-experimental designs are used by creating a statistically matched control group.

What follows is a discussion on how these evaluation designs can be applied to Dane County’s criminal justice system.

Time Series Analysis

Dane County CJC through its various state and local agencies is already collecting a large amount of aggregate data that can be applied to a time series design. The key data points that should be collected and assessed on a monthly basis are listed in Table 14. These data should also be added to the CJC data dashboard so that others can readily track up-to-date crime and criminal justice trends. It is also recommended that the CJC enhance its current data dashboard so that more current crime and criminal justice system time series data can be maintained on its website. An annual report should be developed that reviews these trends and can be used to track the effectiveness of various reforms or unexpected developments like COVID-19.

Quasi- and Experimental Program/Policy Evaluations

There is also a need from time to time to conduct a formal evaluation of a specific program or policy. For example, programs like the recently expanded CAMP or the current Pretrial Supervision program should undergo periodic evaluations to assess their overall cost effectiveness. These types of studies require individual level data that consists of the people who are being admitted to the program as well as meaningful control groups or comparison time frames. Such data can be used to conduct three types of evaluations

1. Process Studies

This is the most fundamental level of analysis which is largely descriptive. It consists of reporting how many people are referred to a program, the type of services and/or supervision provided, successful and unsuccessful termination rates and length of time in the program. The costs of the program or policy would also be required to calculate a cost per person (see cost benefit analysis section below).

Table 14. Summary of Data Sources Needed for Time Series Analysis

<i>Data Type</i>	<i>Source</i>	<i>Frequency</i>
Part 1 Reported Crime by Type of Crime	Wisconsin Dept Justice	Monthly
Arrests by Type of Crime	Wisconsin Dept Justice	Monthly
Jail Bookings	Dane County Sheriff	Monthly
Average Jail Population by Legal Status	Dane County Sheriff	Monthly
Jail Releases	Dane County Sheriff	Monthly
Length of Stay	Dane County Sheriff	Monthly
Felony Cases Filed	Dane County Clerk of Courts	Monthly
State Corrections – Dane County	Wisconsin Dept Corrections	
Probation	Wisconsin Dept Corrections	Monthly
Prison	Wisconsin Dept Corrections	Monthly
Parole	Wisconsin Dept Corrections	Monthly
Extended Supervision	Wisconsin Dept Corrections	Monthly
Pretrial Supervision	Dane County Clerk of the Courts	Monthly

2. Impact Analysis

This analysis would require a control or comparison group that would document recidivism rates by the experimental and control groups. Recidivism can be based on FTA, re-arrest, re-conviction, or re-incarceration rates. Differences in the recidivism rates between the control and experimental groups are used to assess impact. An example of such a study is the randomized experimental study of the Pretrial Services PSA risk instrument that the Dane County Criminal Justice Council (CJC) is conducting in partnership with Harvard Law School’s Access to Justice Lab. Other such studies could be conducted of the recently expanded CAMP, the recommended Supervised Pretrial Release program, and other alternative to incarceration policies or programs.

3. Cost Benefit Analysis

Finally, there is a need to develop estimates of criminal justice system agency costs and alternatives to incarceration costs. This type of assessment is more difficult to achieve but it begins with tabulating the annual agency budgets and then tracking them over time. Alternatives to incarceration are often touted as being cost effective but such claims often lack empirical evidence. By having such costs tabulated, important funding decisions on what programs and agencies to invest in will be better grounded actual data.

Collectively these data and studies can form the basis for a more detailed CJC annual report that better serves the public and other county agencies (both criminal justice and others). A good model for such a report is the Charleston County CCJC annual report which can be located on its website at <https://cjcc.charlestoncounty.org/files/CJCC-2021-ANNUAL-REPORT.pdf>. Such a report initially takes a great deal of effort to produce but once the basic format is developed, subsequent updates are much easier to produce. The key point is that such a report and analytic capability will better position the CJC to be the central criminal justice agency for information and guidance.

Community Survey

The CJC recently conducted a survey of the following six non-governmental agencies that are either delivering direct services or are advocating criminal justice reforms:

1. Madison Street Medicine formerly MACH OneHealth;
2. Centro Hispano Inc;
3. Madison-area Urban Ministry d/b/a/ JustDane;
4. Chrysalis;
5. Urban Triage; and,
6. MOSES (Madison Organizing in Strength, Equity and Solidarity).

In addition to background information about each organization, respondents were directly asked what programs or policies would reduce the jail population and /or racial disparity in the jail population. What follows is a synthesis of these responses. These are sorted in terms of the specificity of the reform.

Jail Population Reduction Recommendations

Specific Recommendations

1. Implement Weekend Court;
2. Implement Homeless Court;
3. Reduce in jail Huber program;
4. Fund additional community treatment beds;
5. Provide language access and other supports to clients;
6. Provide training to law enforcement about immigration;
7. Empower Jail Population Review Team (JPRT) to release people on signature bond;

Generic Recommendations

8. Fully implement the recommendations of the County Board Black Caucus;
9. Fund Jail Diversion Programs;
10. Increase funding for permanent supported housing, increased mental health funding, fair housing, sustainable living wage, mental health and substance use support, access to healthcare, meaningful work, meaningful relationships, and a strong sense of belonging;
11. Give people wellness support, psychotherapy, and basic needs;
12. Invest less in the Sheriff's budget (currently \$70 million) and more in violence reduction (currently only \$500,000);
13. Divert mentally ill patients from the jail or being released from the jail to a mental health crisis or treatment program.

Racial Disparity

Specific Recommendations

1. Reduce arrests for homelessness;
2. Require unconscious bias training for criminal justice agencies;

3. Fully implement the recommendations of the County Board Black Caucus as well as the recommendations of previous task forces looking at racial disparities in Dane County; and
4. Use data to identify areas and programs where there is racial disparity. Review the data on a regular basis to tentatively determine policies increasing the disparity. Identify policies that are being applied differently and need to be applied correctly. Verify the effectiveness of changing or eliminating the policies leading to racial disparity.

Generic Recommendations

5. Place more emphasis on housing, access to healthcare (physical, mental health, and substance use), and work support services;
6. Collaborate with school districts to support reductions in student suspensions, expulsions, and arrests and replace these actions with restorative approaches to support children of color and help them to thrive in our society;
7. Identify all of the areas (beyond fines and fees) where inability to pay leads to racial disparity. Change or eliminate the policy;
8. Enhance Youth leadership; and
9. Fund Civic action programs.

Significantly, none of the above recommendations point to the need to install case processing reforms. The CJC has completed a number of reports, community engagement events, and dashboards to better address community needs. However, in addition to this work, the CJC should organize specific briefings on the type of analysis provided in this report to better inform their community-based service providers and advocates on the drivers of the jail population and racial disparities. Such briefings would better inform the community on which reforms should be advocated and their potential impact on the jail population and racial disparities.

Appendix A

List of People Interviewed

Ismael Ozanne, District Attorney

Catherine Dorl, Public Defender

Terry Porter, Captain, Dane County Sheriff's Office

Patrick Miles, Supervisor District 34 – County Board Chair.

Nicholas McNamara, Circuit Court Judge – Branch 5, Dane County Circuit Court

Judge John Hyland, Circuit Court Judge – Branch 14, Dane County Circuit Court

Troy Enger, Wisconsin Department of Corrections Regional Chief – Region 1

Joe Parisi, County Executive, Dane County

Carlo Esqueda, Dane County Clerk of Courts, CJC Chair

Appendix B

Preliminary Impact of Senate Bill 856

Introduction:

In order to complete a holistic view of factors that may impact jail population size, JFA Institute completed the following analysis of potential State of Wisconsin legislative action on pretrial reform.

This paper presents a preliminary assessment of 2022 Senate Bill 856 which, if implemented would have the following limitations on pretrial release

969.02 (2g) If a defendant has a previous conviction for a felony, as defined in s. 939.60, or a violent misdemeanor, as defined in s. 941.29 (1g) (b), a judge may release the defendant only if the judge requires the defendant to execute an appearance bond with sufficient solvent sureties, or requires the deposit of cash in lieu of sureties, in an amount not less than \$10,000.

To conduct this analysis, a data file that consisted of all jail releases between May 1, 2021, and 30, 2022 was used. This file contained a wide array of data elements but most importantly the method of release.

As shown in Table 1, there were 10,374 jail releases during that time frame. A significant portion of them were people released on bail and own recognizance (OR). It is these two releases groups that would be impacted by SB 586. Note that these constitute 50% of all jail releases but have very short lengths of stay (LOS). Depending upon how many of them have a prior felony conviction or a prior violent misdemeanor conviction, the proposed legislation could have a significant impact on the current Dane County jail population.

Methodology

To conduct the impact analysis, the following steps were completed. Because the release data file does not contain the prior conviction record of the person released, it was necessary to draw a stratified random sample of 100 people who were released either on OR (50 cases) or bail (50 cases). For each of these 100 releases, a manual search was completed to determine if the person had one of the prior convictions that would disqualify them for pretrial release.

A test was made to ensure the sampled cases were representative of the entire jail release cohort. As shown in Table 2, the sample is equivalent allowing one to generalize the findings of the sampled cases to the entire bail and OR jail releases.

The assessment found that 24 members of the sample group had a prior violent misdemeanor conviction and 29 had a prior felony conviction (Table 3). Because some people had both (misdemeanor convictions and prior felony conviction), the number of people that did not have either one of these disqualifying convictions was 59, meaning that 41 or 41% of the sample would be impacted by the requirements of SB 856. The bail amounts for each of the 41 cases were also located to ensure that none had bails amounts that were \$10,000 or higher as these people would not be impacted by the new law.

Table 1. May 2021-April 2022 Jail Release Cohort by Release Reason

Release Reason	Number	Percent	Average Length of Stay (days)	Calculated Under the Roof ADP
Total	10,374	100.0%	23.3	660
Sentenced completed	1,169	11.3%	54.4	174
Transfer out to another agency	1,473	14.2%	41.1	166
Transfer to DOC	291	2.8%	171.0	136
Bail	3,019	29.1%	8.3	69
Sub-Total	5,952	57.4%	33.4	545
Court Own Recognizance	2,147	20.7%	4.8	28
Temporary release	42	0.4%	183.7	21
Charge dismissed/dropped	650	6.3%	8.7	15
Hold dropped	501	4.8%	10.4	14
Credit time served	56	0.5%	73.5	11
Probation	51	0.5%	71.5	10
Sentence stayed	10	0.1%	284.1	8
Court order	72	0.7%	12.3	2
Release to appear/court	601	5.8%	1.1	2
Jail Own Recognizance	150	1.4%	4.4	2
Other	34	0.3%	11.3	1
Fine stayed	108	1.0%	3.3	1

Table 2. Comparison of Random Sample and Total Bail and OR Releases

Attribute	Sample		Bail and OR Jail Releases	
	Number	Percent	Number	Percent
Total	100	100%	5,066	100.0%
Average LOS (days)	6.6		6.9	
Gender				
Female	23	23%	1,245	25%
Male	77	77%	3,821	75%
Race				
Black	50	50%	2,097	41%
Hispanic	8	8%	516	10%
Other	2	2%	100	2%
White	40	40%	2,353	46%
Age at Release				
Under 18	3	3%	145	3%
18 - 24	16	16%	1,079	21%
25 - 34	29	29%	1,696	33%
35 - 44	26	26%	1,166	23%
45 and older	26	26%	980	19%
Top Charge				
Felony	48	48%	2,309	46%
Violent	26	26%	994	20%
Drug	6	6%	370	7%
Property	4	4%	383	8%
Other	12	12%	562	11%
Misdemeanor	52	52%	2,665	53%
Other	0	0%	92	1.8%

Table 3. Number of Sampled Pretrial Jail Releases with Prior Felony and/or Prior Misdemeanor Violent Convictions

Attribute	Jail Releases	%
None	59	59%
Prior Violent Misdemeanor Conviction	24	24%
Prior Felony Conviction	29	29%
Any one of the above	41	41%

Once these 41 jail releases are identified, one can apply the percentages to the total numbers of pretrial releases in the May 2021-April 2022 Jail Release Cohort. As shown in Table 4, 13% of the bail releases could not be released due to their prior convictions, and another 28% of the OR releases would also be required to remain in custody.

Table 4. Simulation of the Impact of SB 856

Release Type	Annual Jail Releases	% Disqualified	Number Disqualified	Current LOS	New LOS	Additional Jail Pop	With 20% Discount
Bail	3,019	26%	785	8.3	119	256	205
OR	2,297	56%	1,286	4.8	177	623	499
Total	5,316	41%	2,071	6.8	159	879	703
Alternate LOS	5316	41%	2,071	6.8	73	414	331

The more difficult question to answer is how long the LOS would be for these people. To get a sense of what the new LOS might be, we recorded the date that the charges were disposed of by the courts. Unfortunately, 16 of the 41 cases had not yet had a final court disposition, so no date can be recorded. For those that have had their charges disposed of, the average LOS was 159 days. Using that figure in jail population calculation results in a large increase in those jail residents who are in pretrial status by approximately 880. The current pretrial population for the entire Dane County jail is 400. The rest of the approximately 700 jail population are either sentenced or are probation or parole violators.

However, one must assume that the new law will not be rigidly applied to all eligible cases. It is a fact that projected impacts of new legislation or policies based solely on statistical simulations, and which do not allow for some organizational resistance to the law will overestimate the actual impact. For that reason, JFA typically applies a 20% discount to all of its population estimates. But even with that discount, the jail population would eventually increase by about 700 within the first year of its implementation.

One can also argue that even this estimate is too high as once a defendant is released from custody there may be more delays in the processing of the charge(s) since there is less urgency to determine the defendant's guilt and final sentence.

Another approach would be to use the LOS for jail resident releases who receive 1) a probation sentence or 2) credit for time served. The assumption here is that these releases are being detained until the court reaches a disposition of each charge. As shown in Table 1, these people have a LOS between 71 and 73 days. Using that lower LOS produces a jail population increase of 414 and with the 20% discount an increase of about 330.

Impact on FTAs and Public Safety

One final observation is the impact of the proposed legislation on FTA rates and public safety. To do this we can conduct a follow-up assessment of the 41 cases that would be impacted by the proposed legislation.

To assess the impact on FTA rates, an initial effort was made to determine how many of the people who would be denied pretrial release in the future incurred an FTA. That analysis found that about 30% of the 41 impacted cases had an FTA warrant issued by the court (Table 5). These FTAs would be avoided if these people had been continuously detained until the courts disposed of their criminal charges.

But on the other hand, 70% of the people (or about 1,450 people) would be needlessly detained under the proposed legislation to achieve the FTA reduction. This analysis is a preliminary one as not all of the people in the sample have had their criminal charges disposed of by the courts.

Table 5. Estimated Impact on FTAs

Release Method	FTA Rate	Impacted Cases	Total FTAs Per Year
Bail	31%	785	243
OR	29%	1,286	373
Total	30%	2,071	616

Also, yet to be determined is the impact on public safety. This will be done by determining how many people were re-arrested for a new crime while they were under pretrial release status. This is best completed once all of the sampled cases have had their criminal charges disposed of by the court.

Summary

There is no doubt that legislation like SB 856 would have a profound impact on not only the Dane County jail system but also on all of the Wisconsin jail systems. For Dane County, the current jail population of about 720 residents, would increase the average daily population by 300 to 700 jail residents.

The impact on FTAs and public safety is yet to be fully completed. But preliminary data show that the current FTA rate is 30% for the impacted jail releases and that the new law would reduce the total number of FTA each year by 616. However, the new law would also needlessly detain about 1,450 people per year in Dane County alone.