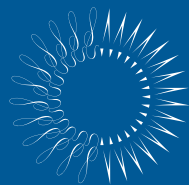


Philadelphia's Crowded, Costly Jails:

The Search for Safe Solutions



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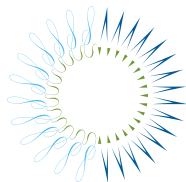


Aerial photo of the Philadelphia Prison System main campus in Northeast Philadelphia

CREDIT: POLICE AERIAL UNIT

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The Pew Charitable Trusts' Philadelphia Research Initiative provides timely, impartial research and analysis on key issues facing Philadelphia for the benefit of the city's citizens and leaders. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life. **For more information, visit www.pewtrusts.org/philairesearch.**

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Foreword >>

FROM THE MOMENT THE PHILADELPHIA RESEARCH INITIATIVE came into existence, taking a hard look at the Philadelphia Prison System was near the top of our agenda. We knew that the population in the city's jails—and the cost to the taxpayers—had been rising year after year with seemingly no end in sight. We wondered whether it had to be this way.

In the summer of 2009, as we turned our attention to the subject, there were about 9,400 men and women housed in the prison system, which occupies a vast complex along State Road in Northeast Philadelphia. On a per capita basis, among the 50 counties and cities with the most inmates, Philadelphia had the fourth highest inmate population in the country.

Then, something unexpected happened. The inmate population started to decline. And it kept falling into 2010.

The recent decline tells us something important: The city's jail population can be controlled when officials in the criminal justice system work together to make it happen. And if that work is undertaken with caution, creativity and an understanding of the makeup of the jail population, reducing the numbers can be done while protecting public safety.

Much of the drop in Philadelphia's inmate population is due to state legislation that has moved one group of convicted criminals from the city jails to the state prisons. Some of it is due to a reduction in arrests. Measures are being taken to make the criminal justice system more efficient and more innovative in the ways it deals with incarceration.

This report does a number of things. It analyzes why the city's jail population rose for most of the last decade. It studies why the population fell in the past year. It examines what is being done to manage the population, and it looks at measures in place elsewhere that might be worth considering for Philadelphia.

In doing so, it builds on the work on state prisons and corrections done by our colleagues at the Public Safety Performance Project of the Pew Center on the States. The Public Safety Performance Project has helped states such as Texas, Nevada and Kansas advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

This is not a report about conditions inside the city jails. The focus is on how people come to be in jail, how long they stay and how they get out.

Philadelphia's Crowded, Costly Jails: The Search for Safe Solutions is primarily the work of Claire Shubik-Richards, senior associate at the Philadelphia Research Initiative. Our original data analysis, which is central to this report, was performed by Don Stemen, assistant professor of criminal justice at Loyola University Chicago.

The Philadelphia Prison System is an integral part of a criminal justice system designed to protect the lives and property of all Philadelphians. Our purpose in this report is to give policy makers and the public the information and perspective necessary to understand the issues connected to managing this system.

Larry Eichel
Project Director
The Philadelphia Research Initiative

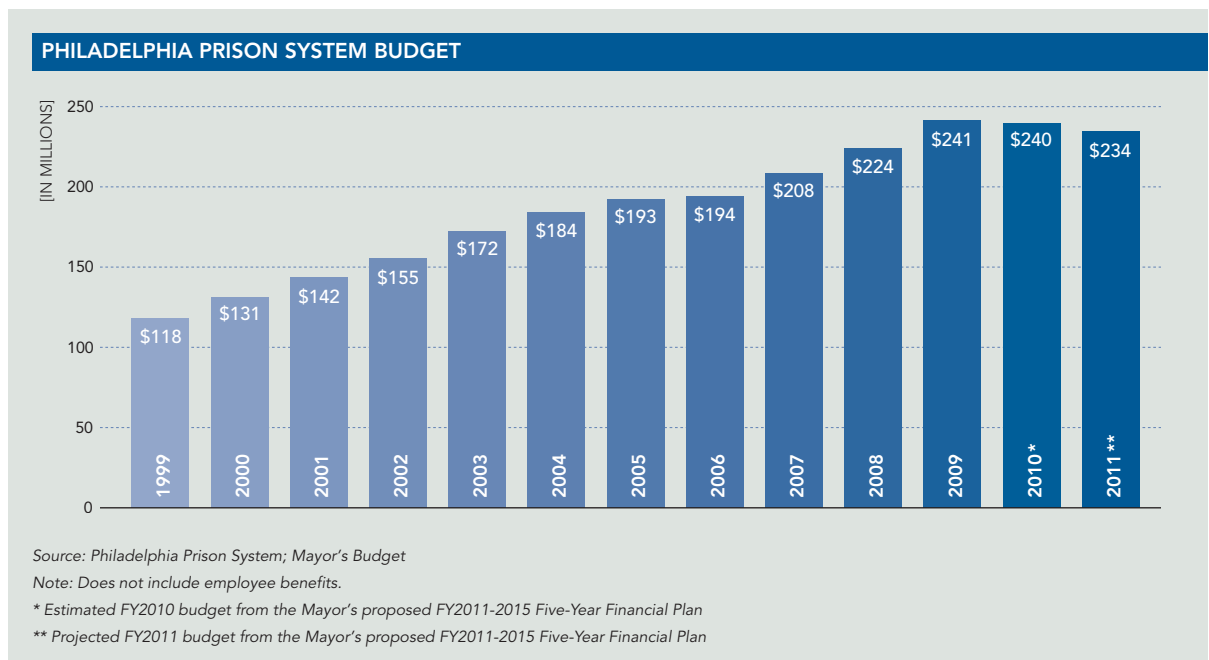
Executive Summary

Today, the government of the city of Philadelphia spends seven cents out of every tax dollar on holding people in its jails. That is more than it spends on any other function besides police and human services—and as much as it spends on the streets and health departments combined. Its spending on jails is nearly as high as that of Cook County, Illinois, even though Cook County, which includes the city of Chicago, has more than three times as many residents as Philadelphia. Over the last 10 years, the departmental budget has more than doubled, reaching \$240 million in the current fiscal year. That figure, however, understates the true cost of prison operations, as it does not include employee benefits. With benefits, the number is about \$290 million.

This increase in spending has been driven by a rising number of inmates. As of mid-2008, the most recent date for which comparative numbers are available, Philadelphia had the fourth-highest jail population on a per capita basis among the cities and counties with the nation's 50 largest jail populations. From 1999 through 2008, the Philadelphia Prison System saw its average daily inmate count climb by 45 percent, peaking at 9,787 for the month of January 2009. This was one of the largest such increases in the country, and it came at a time when jail populations in the nation's two largest jurisdictions, New York City and Los Angeles County, were declining.

Since mid-2009, however, the population in the prison system has fallen steadily; the average daily population stood at 8,464 for March 2010, down 13 percent from the peak. And some city officials, including Prison Commissioner Louis Giorla and Deputy Mayor for Public Safety Everett Gillison, say that they believe that the population can be substantially lowered without jeopardizing public safety.

These developments in the inmate population—both the long-term rise and short-term fall—generally have not tracked the crime rate; for most of the past decade, as the inmate





Riverside Correctional Facility

CREDIT: ROBERT LECONEY

population numbers were rising, the arrest numbers often were declining. Rather, the shifts in the population are related primarily to changes in procedures, legislation and policies involving the police, the courts and the various elements of the criminal justice system.

To a large extent, the evidence in this report indicates that the size of the population of the Philadelphia Prison System is within the power of policy makers to control—without compromising the fight against crime. It suggests that Philadelphia can have fewer people in jail, save money and be no less safe.

Some of the factors that dictate the size of the inmate population have also contributed to other problems in the city's criminal justice system. The same delays that can result in the guilty going free can keep the accused in custody longer than is necessary.

Leaders of Philadelphia's criminal justice system, motivated in part by the pressure to control spending throughout city government, have been working together for the last few years to reduce the inmate population, largely under the auspices of the city's Criminal Justice Advisory Board. As the latest numbers indicate, they have had a measure of success. They see no contradiction between a lower jail population and safe streets.

The recent population drop has allowed the city to budget about \$15 million less for the prison system for the year beginning July 1, 2010 than for the previous year. More substantial savings will be realized if the population continues to fall. That would allow for the closure of individual facilities and reductions in the size of the system's workforce.

It is often said that it costs \$95 to keep someone in a Philadelphia jail for a day. But that figure—which is derived by taking

the total annual cost of the system and dividing it by the number of inmate-days consumed in a year—does not represent how much the system saves by reducing the daily population by one. Because most jail costs are fixed, the savings is only about \$20 for the first day, when clothing is distributed and medical tests are conducted, and less for every day thereafter, our analysis shows. The savings are higher for inmates who need costly medical or mental-health treatment.

Despite its name, the Philadelphia Prison System is actually a complex of jails; prisons are usually thought of as state and federal institutions where convicted criminals serve out sentences of substantial length. As such, Philadelphia's inmate population consists of three groups: accused individuals being held pretrial, convicts serving out sentences of less than two years, and probationers and parolees who have violated the terms of their community supervision.

Behind the Long Rise and Recent Decline of the Jail Population

Our data analysis shows that the rise in the inmate population from 1999 through 2008 had little to do with the convicted criminals and mostly to do with the pretrial population:

- During that decade, the percentage of bed-days in the Philadelphia jails consumed by pretrial inmates on an annual basis rose from 44 percent of the total to 57 percent.
- Most of the increase in pretrial admissions came from individuals charged with misdemeanors, which range from disorderly conduct and loitering to simple assault and some types of theft of up to \$2,000. The number of inmates admitted pretrial on felony charges remained relatively constant.

- In recent years, fewer individuals have been released without bail than in years past; in cases where bail has been set, the average amount of the bail has risen. These two factors, higher bail and more people being ordered to post it, have driven up the number of people who spend time in jail before the resolution of their cases. The guidelines laid out for the magistrates who set bail have not changed, but the magistrates are following the guidelines in only about half of the cases.
- In the past few years, several other factors have contributed to the rising pretrial numbers. The police have made more arrests for drug possession. And changes in state law have led to more arrests for drunk driving and to higher bail being set for individuals charged with carrying a firearm without a license.
- Compared to other urban jurisdictions, Philadelphia had—and still has—a relatively large group of inmates, 15 percent, who stayed in jail for 120 days or more awaiting trial. This is due primarily to the length of the court process. Many pretrial stays are less than two weeks.

In addition, the Philadelphia Prison System experienced a steady increase in the number of inmates jailed for violating the terms of their probation (community supervision in lieu of incarceration) and parole (community supervision after incarceration):

- The number of individuals admitted for such violations went from a low of 3,101 in 2000 to 5,900 in 2008, a rise of 90 percent.
- Those individuals were staying in jail longer. Their average length of stay, which was 49 days in 2000, rose as high as 73 days in 2007. One reason is that the court process for hearing a violation can be cumbersome and lengthy.

The decline in the inmate population started early in 2009 and accelerated as the year went on. Several factors contributed to the drop:

- Most important, there was a sharp decrease in the number of sentenced inmates in the city jails due largely to a change in state law. In the fall of 2008, the state legislature ended a practice that had given individuals with sentences of two to five years the option of staying in the Philadelphia Prison System, at city expense, rather than

doing their time in a state prison at state expense. As a result, several hundred inmates were moved from the city to the Pennsylvania Department of Corrections. Others are now going to state prison upon sentencing rather than staying in the city jails.

- In addition, crime declined in Philadelphia in 2009, and arrests were down by 11 percent. Admissions declined by 5 percent. While the jail population and the arrest totals have not always moved in the same direction, they are doing so now.
- A number of changes related to probation appear to have played a role in reducing the city's jail population. In 2009, for the first time in a decade, the caseload of the Adult Probation and Parole Department leveled off and, with it, the number of people incarcerated for violations. At the same time, the department's reorganization made it easier for individuals deemed to be at low risk of committing major crimes to comply with the terms of their supervision. And the Philadelphia court system inaugurated a specialty court to hear violations of probation and parole more quickly.

Strategies to Reduce the Jail Population Safely

In Philadelphia's criminal justice system, there are six decision points that determine whether an individual will be sent to jail. They are arrest, charging by the district attorney's office, preliminary arraignment, disposition, probation violations and outstanding warrants.

For policy makers looking to control the jail population, there is no one decision point that holds the key, nor is there any single solution. Their challenge is to build on progress already made while protecting public safety; crime is far and away the top local concern of city residents, according to polls done by the Philadelphia Research Initiative in 2009 and 2010.

Our analysis shows that the size of the jail population in Philadelphia is driven largely by inmates held prior to trial, not by convicted criminals. So the greatest advances are likely to be achieved by focusing on the parts of the criminal justice system that impact that group.

Among the steps being taken to streamline the criminal justice system—and reduce the jail population—are these:

- District Attorney R. Seth Williams is restructuring his office’s charging unit with the intent of weeding out weak cases early. Although reducing the jail population is not the primary goal of this change, it could contribute to that end.
- Through the use of videoconferencing and other measures, the court system is expanding the use of “crash court,” an expedited-plea process in Municipal Court for people accused of lower-level misdemeanors and being held pretrial. One purpose of crash court is to avoid situations in which the indigent, if unable to post even modest bail, wind up spending more time in jail pretrial than they would have if convicted.
- City officials have begun the process of planning what is known as a day reporting center as an alternative to jail. Exactly who would be eligible to use the center remains to be seen.

As part of this study, we examined measures taken to address the size of the jail populations in other jurisdictions. From that research, a number of policy options emerged. They include the following:

- Expanding the options for diverting troubled, low-level offenders out of the court system so that their addictions or mental health problems can be addressed in a more appropriate setting, as happens in Bexar County, Texas.
- Revitalizing Philadelphia’s often-ignored bail guidelines with the goal of identifying defendants accused of relatively minor crimes who are at low-risk of failing to appear in court and allowing as many of them as possible to stay out of jail pending trial. Guidelines in New York City and Montgomery County, Maryland, appear to be working.
- Expanding the range of pretrial services so that more defendants can remain in the community, as has been done in Washington, D.C.
- Developing new responses to probation violations so that so-called technical infractions, such as missing a meeting with a probation officer, can be punished without sending the individual back to jail. The state of Georgia has done this.

- Devising programs—as New York City and Santa Cruz County, California, have—to allow defendants not in custody to deal with missed court dates and probation appointments quickly and effectively without the threat of swift incarceration.
- Taking some of the savings from reducing the jail population and putting the money into programs aimed at further reducing the population—with the goal of producing additional savings in the years to come. Federal legislation to encourage such investment is pending.
- Tracking the performance of the criminal justice system to give officials a clear sense of the impact of various reforms and potential reforms—on the jail population and other elements of the system.

This is a time of great ferment in the Philadelphia criminal justice system. A series of budget crises has placed renewed emphasis on reducing the jail population, saving money and making the entire system more efficient. Local criminal justice stakeholders, having made some progress on both fronts, are planning additional reforms. More are likely to come from the Pennsylvania Supreme Court, which has created a panel to look into the operations of the criminal courts in Philadelphia. This report is intended to help those policy makers and interested citizens chart an informed course for the future. ◉

The Issue



I don't want to spend more money on prisons, but I have to.

—Mayor Michael A. Nutter

The mayor of Philadelphia made that statement in November 2009. Ten months earlier, in January 2009, the population in the Philadelphia Prison System had peaked at a monthly average of 9,787 after rising steadily and seemingly inexorably for years. But by the time Nutter spoke those words, the numbers had started to drop, and not by insignificant amounts. And the decline continued into 2010. In March, there was an average of 8,464 people in the system, down 13 percent from the high point.

The decline in the number of inmates caused prison spending, which had more than doubled in the previous decade, to level off at an estimated \$240 million for fiscal year 2010—about \$9 million below the figure officials had budgeted. It also allowed city officials to do something they had not done in a very long time: allocate less money for the prison system for the next fiscal year than for the current one.

Neither the long-term rise in the prison population nor the recent fall is an inexplicable phenomenon. Nor is either one directly connected to the crime rate in Philadelphia, although the drop in arrests starting last year is a factor in the recent population decline. Rather, the rise and fall of the population are the result of administrative, legislative and policy decisions made at various levels of the criminal justice system.

The overriding lesson from these developments is this: to a substantial degree, the size of Philadelphia's prison population is within the control of public officials.

DEFINING THE SYSTEM

Although Philadelphia calls its detention facilities “prisons,” they are, in fact, “jails,” as the term is commonly used, meaning local institutions for housing individuals awaiting trial or those convicted of relatively minor crimes. The word “prison” usually is reserved for state institutions for the confinement of people convicted of more serious crimes.

This report looks at the size and nature of the inmate population that drives the city's spending on its jails. Our research shows that the changes in the inmate population over the last 10 years, first up and now down, have had less to do with murderers, rapists and robbers

than with individuals charged with offenses such as drug possession and drunk driving. And the long-term rise in population had less to do with convicted criminals than accused individuals being held pre-trial.

The factors at the heart of the long-term growth in the population of the Philadelphia Prison System are some of the same ones that have contributed to other problems in the city's criminal justice system, including how long it takes to resolve cases. Prolonged court proceedings can result in dangerous criminals going free without ever facing the charges against them. And they can keep nonviolent individuals in custody for months, awaiting resolution of their cases.

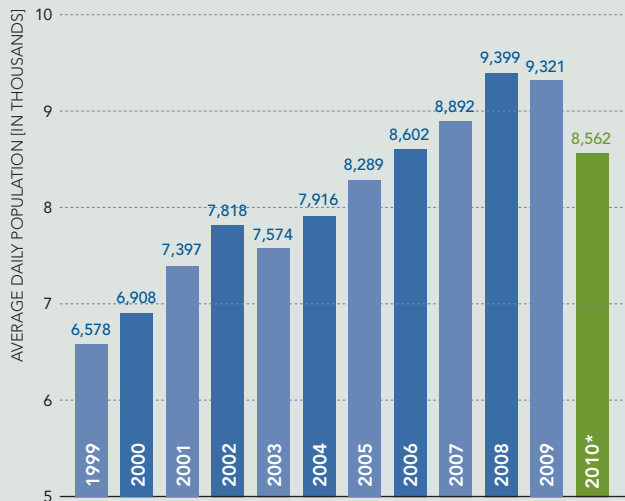
None of this is news to the criminal justice stakeholders. Earlier this year, District Attorney R. Seth Williams said that the criminal justice system in general—and the city's prisons in particular—have been burdened with “junk” cases that consume resources better allocated to more serious ones. Said Ellen T. Greenlee, the city's chief public defender: “For justice and for economic reasons, we can't continue to jail everyone we're now jailing. We have to find a better way.” Pamela P. Dembe, president judge of the Philadelphia Common Pleas Court, put it another way: “Incarceration should be used to keep the monsters away.”

Mayor Nutter's point-person on criminal justice, Deputy Mayor for Public Safety Everett A. Gillison, agrees and has said that the prison population could be lowered further, to 6,500, without jeopardizing public safety. Prisons Commissioner Louis Giorla said that he looks forward to a day when the facilities he runs will have 6,000 inmates. Such a decline would result in substantial savings for the city's taxpayers.

What makes the population decrease of the past year particularly notable is the magnitude and persistence of the population in-

While the jail population rose for most of the past decade, the number of adult arrests fell slightly.

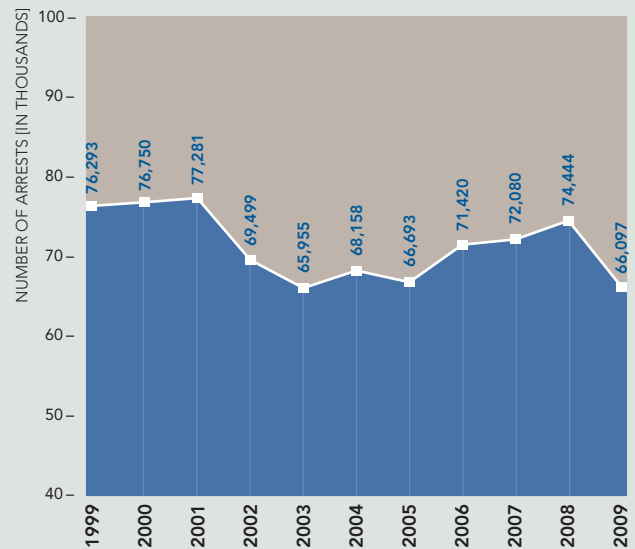
1.1 AVERAGE DAILY POPULATION, PHILADELPHIA PRISON SYSTEM 1999 – 2009



Source: Philadelphia Prison System

Note: *2010 shows average daily population from January through March.

1.2 ADULT ARRESTS IN PHILADELPHIA



Source: Pennsylvania Uniform Crime Reporting System

creases throughout the past decade. From 1999 to 2009, the average daily population of the Philadelphia Prison System grew from 6,578 to 9,321, an increase of 45 percent. See Figure 1.1.

The recent decline in the population is only barely reflected in the average daily population for 2009 because the big fall-off did not start until last autumn. For 2009 as a whole, the average daily population decreased only a small amount, from 9,399 to 9,321. The population for 2010 is on track to be much lower.

The decade-long population growth that peaked early in 2009 took place at a time when the number of people arrested in Philadelphia was trending lower, fluctuating between a high of approximately 77,281 in 2001 and a low of 65,955 in 2003. See Figure 1.2.

As Figures 1.1 and 1.2 indicate, there appears to be no direct relationship between the size of the population in the prison system and the crime rate, as reflected by total arrests.

Even with the reduced inmate population this year, the Philadelphia Prison System remains the third-biggest department in the city budget, trailing only human services and police. The city plans to spend \$51 million more this year on its prison system than on fire protection. It spends about as much on prisons as for the streets and health departments combined. The growth of the system's budget is shown in the figure on page 4.

Actually, the current \$240 million figure understates the true cost of the prison system, since Philadelphia places the healthcare and pension benefits of all city employees in a separate category. When those benefits are included, the total cost rises to about \$290 million, slightly more than 7 percent of the city's general fund budget.

The National Perspective

How does what is happening in the Philadelphia jails compare to what is happening in other jurisdictions around the country?

One of the most telling ways to look at Philadelphia in a national context is by jail population per capita. Among the 50 jurisdictions in the country with the largest jail populations, Philadelphia had the fourth highest rate of incarceration as of mid-2008, the last date for which data from the federal Bureau of Justice Statistics are available. As shown in Figure 1.3, Philadelphia had 5.72 individuals behind bars for every 1,000 residents; the highest figure for any large jurisdiction was New Orleans at 7.76.

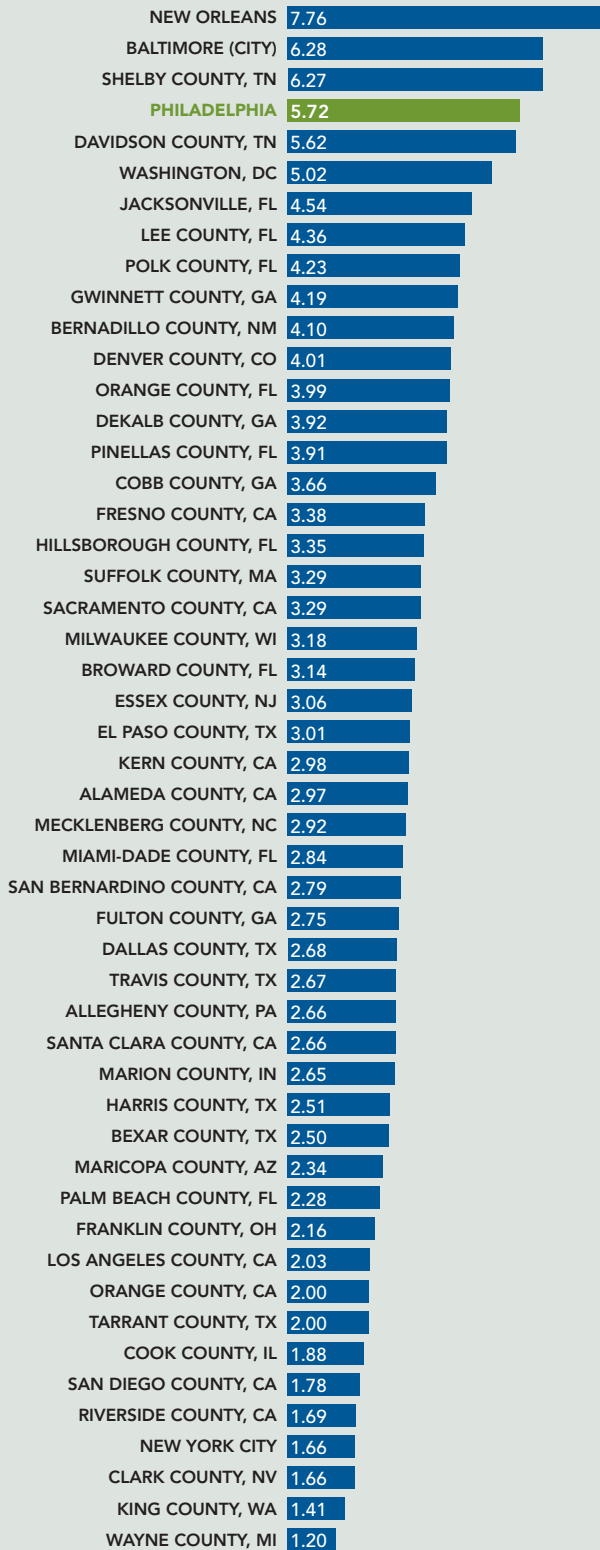
In most places, jails are county institutions, meaning that the areas they cover—unlike the area covered by the Philadelphia Prison System—include suburbanites as well as city residents. This makes precise city-to-city comparisons impossible and, to some degree, overstates Philadelphia's incarceration rate compared to urban counties that also have large numbers of suburbanites.

Even so, and taking into account the recent decline in the population in Philadelphia jails, the city's population number on a per capita basis is among the highest in the country.

Another way to compare Philadelphia to other jurisdictions is in terms of spending. Many metropolitan jurisdictions have struggled with rising jail spending in recent years, but the growth in Philadelphia in the past decade has been dramatic. See Figure 1.4.

Consider that last year the city spent almost as much on incarceration as Cook County, which has three-and-a-half times as many resi-

1.3 JAIL POPULATION PER 1,000 RESIDENTS IN THE 50 LOCAL JURISDICTIONS WITH THE LARGEST JAIL POPULATIONS



Note: To calculate these numbers, we used the average daily populations for local jails for the 12 months ending June 30, 2008, as reported by the U.S. Bureau of Justice Statistics, and the population estimates from the U.S. Census Bureau for July 1, 2008. The 2008 jail numbers are the latest available.

dents as Philadelphia and includes a city, Chicago, which has twice as many people as does Philadelphia. In the 2009 fiscal year, Philadelphia spent \$241 million, Cook County \$255 million.

And while Philadelphia has experienced one of the biggest increases in jail expenditures over the last decade among the jurisdictions studied, it also experienced one of the biggest increases in jail population. As shown in Figure 1.5, other jurisdictions had large increases, including Allegheny County, which includes the city of Pittsburgh, and Suffolk County, which includes the city of Boston. At the same time, the nation's two largest local jurisdictions, New York City and Los Angeles County, have seen their jail numbers decline.

What, then, is behind the rising and falling number of inmates in Philadelphia's jails? The answer lies in a series of policy and administrative choices:

- Who should be detained prior to trial and who should be allowed to remain in the community while his or her case proceeds?
- How long does it take to try a case?
- Are other sanctions besides a trip to jail used to punish those who break the rules governing their probation or parole?
- Which convicted inmates serve out their sentences in the local jail and which are sent to state prisons?

The answers to these and similar questions determine how many people are jailed in Philadelphia, how long they stay and, consequently, how much money the city spends on incarceration.

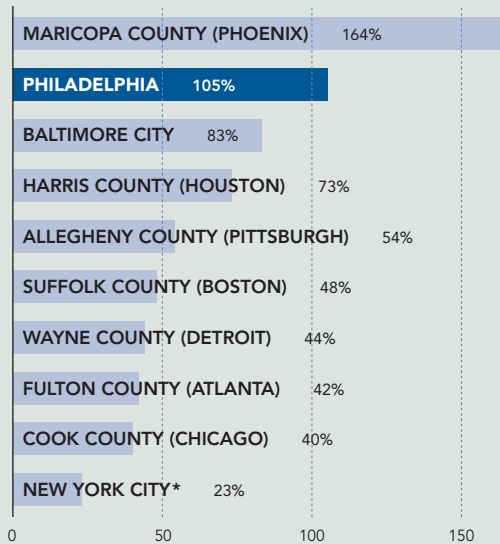
Said Michael Jacobson, New York City's commissioner of corrections and probation from 1995 to 1998: "Once you look at any of these [local jail] systems, you see there are people who don't have to be incarcerated who are, and there are people who are being jailed for a certain amount of time when they could just as safely be staying half or two-thirds that amount of time. The people who work in these systems know this. They know their populations are not solely linked to the crime rate. They're linked to policy decisions."

COMPARISON JURISDICTIONS

In deciding which jurisdictions to use for statistical comparison, we chose places with one of four factors in common with Philadelphia.

- 1. POPULATION.** We looked at New York City and the counties containing the four other cities more populous than Philadelphia—Los Angeles County, Cook County (Chicago), Harris County (Houston) and Maricopa County (Phoenix).
- 2. CRIME RATE.** Philadelphia has a relatively high crime rate. Fulton County (Atlanta) and Wayne County (Detroit) do, too.
- 3. DENSE, NORTHEAST LANDSCAPE.** Philadelphia has a lot in common with Baltimore and Suffolk County (Boston)
- 4. LEGAL FRAMEWORK.** Allegheny County (Pittsburgh) functions under the same legal system as Philadelphia.

1.4 PERCENTAGE CHANGE IN JAIL EXPENDITURES 1999 – 2009



Source: Allegheny County Prison System, Maryland Department of Corrections, Cook County Hospital & Health System and Cook County Department of Management and Budget, Fulton County Sheriff's Department, Harris County Sheriff's Department, Maricopa County Sheriff's Department, New York City Office of Management and Budget, Philadelphia Prison System, Suffolk County Sheriff's Department, and Wayne County Communications Department.

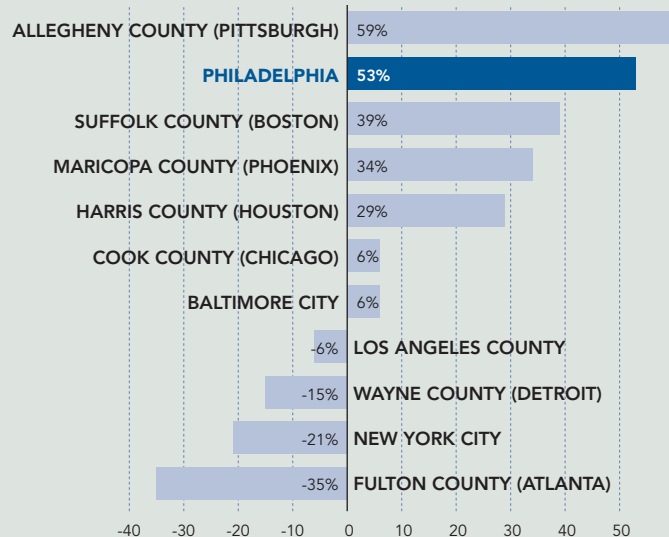
Note: For all jurisdictions, inmate healthcare was included in the calculation. For Baltimore City, Fulton County, Harris County, Philadelphia, and Suffolk County, this was included in the county jail budget. In Allegheny County, inmate health care cost was obtained from Allegheny's Office of Budget and Finance; in Cook County from Cook County Health and Hospitals System; in Maricopa County from Maricopa's Office of Management and Budget; in New York from the New York City Office of Management and Budget; and in Wayne County from Wayne County Communications.

The following jurisdictions do not include employee benefits in their jail budgets: Cook County, New York City, Philadelphia, and Wayne County.

Los Angeles County is not included because the County Sheriff's Department was unable to provide FY1999 expenditures.

* New York City numbers are based on 2000 expenditures.

1.5 PERCENTAGE CHANGE IN JAIL POPULATIONS 1998 – 2008



Source: U.S. Department of Justice, Bureau of Justice Statistics, Jail Inmates at Midyear, Average Daily Population 1998 and 2008.

Turning the Corner

Motivated by lawsuits challenging the overcrowding in the Philadelphia Prison System and by the city's budget crisis, city officials have been working for the last several years to reduce the jail population. In recent months, under the auspices of the city's Criminal Justice Advisory Board, leaders of the criminal justice system have been re-examining the policy and administrative choices that contributed to the population increases of the past.

Much of this work has focused on ensuring that convicted inmates eligible to serve their sentences in state-run facilities are identified and transferred out of the Philadelphia Prison System—a move that shifts rather than reduces costs and does not involve moving inmates out of custody and into the community. To a lesser degree, officials have taken steps to streamline court processes in order to shorten the stays of individuals incarcerated for probation and parole violations.

These initiatives have required cooperation and coordinated planning among the courts, the prosecutors, the defense attorneys and the prisons. As a result of their work and other factors, the city's jail

population declined from 2009 into 2010.

For those who run the criminal justice system, the challenge now is to figure out how to make the current decline a lasting one. Said Prisons Commissioner Giorla, "There have been downturns [in the prison population] before ... But this is the first time it's been done through cooperation and coordinated efforts of the whole criminal justice system. So we believe we can sustain it."

The stakes are high. "You could drop [the prison population] by 10, and if it's the wrong 10, the city is going to be more dangerous," said Police Commissioner Charles H. Ramsey. "You could also probably drop the prison population by 1,000 without impacting public safety—but what matters is who those 1,000 people are and what we're doing with them."

Succeeding will require the consensus of the criminal justice community, the support of elected officials, the buy-in of a public that consistently lists crime as its top local concern, and a willingness to do things in ways that have not been done before in Philadelphia. ○

The Philadelphia Prison System: An Overview

The Philadelphia Prison System consists of six facilities on a sprawling main campus on State Road in Northeast Philadelphia, as well as several other smaller, privately run facilities throughout the city.

The buildings on State Road were designed to accommodate roughly 6,500 inmates—the size of the 1999 jail population.¹ By adding dormitory space to areas built for common or administrative use, the prison system has increased its rated capacity to about 8,500.² Despite the added beds, Philadelphia's jails, like those in Baltimore, Houston, Phoenix and Chicago, have struggled to operate within this expanded capacity; in 2009, the jail population in Philadelphia fluctuated between 100 and 112 percent of rated capacity.³

The Curran-Fromhold Correctional Facility is the system's intake and administrative building; it opened in 1995 and houses approximately 3,000 inmates. There are three other jails for men: the Philadelphia Industrial Correctional Center (opened in 1986; 1,100 inmates), the Detention Center (opened in 1964; 1,300 inmates) and the House of Correction (opened in 1925; 1,500 inmates). The jail for women, the Riverside Correctional Facility, opened in 2004, houses approximately 750 inmates. The Alternative and Special Detention Division—a group of buildings and trailers on State Road and a number of small facilities throughout the city—houses up to 1,000 work-release, weekend-stay and other minimum-security inmates.

To manage overflow population, Philadelphia, like other cities, employs two main strategies:⁴

- Philadelphia pays other counties to house inmates in their jails. In fiscal year 2009, the city had contracts with Lehigh County in Pennsylvania and Passaic and Monmouth Counties in New Jersey, paying Lehigh \$90 per inmate per day, Passaic \$88 and Monmouth \$105. When the population in the Philadelphia jails started to fall, the city stopped sending inmates to New Jersey, saving roughly \$4.9 million on an annual basis.⁵ The contract with

Lehigh County remains in place. Other metropolitan jurisdictions—including Fulton County (Atlanta) and Harris County (Houston)—have similar arrangements.

- In some facilities, Philadelphia assigns a third inmate to cells that are rated for two, a practice known as triple celling.⁶ At the Detention Center, where inmates live in open dorms rather than separate cells, extra bunks have been added to housing areas that were already considered full; other jurisdictions employ similar measures. These practices are the subject of a civil rights lawsuit against the city.

Although putting additional inmates into existing space is not as expensive as sending them to other counties, it does result in increased overtime pay for guards—about \$1.5 million per year in Philadelphia, according to local officials. In addition, the litigation resulting from these conditions has a high price; according to estimates provided by the city, the annual cost of dealing with the current cases and settling prior ones is about \$1.2 million.⁷ All of the costs associated with overcrowding give city officials a financial incentive to reduce the population in the Philadelphia Prison System as much as possible, assuming they can protect the public at the same time.

1. Talking about jail capacity is less straightforward than it might seem. There is design capacity, which is the number of people the jail was designed to house. This can be different from rated capacity—the number of people a rating agency has certified the jail to house—especially if, as in Philadelphia, additional beds have been added to spaces not originally designed as dormitories. And there is operational capacity, which is the number of people the jail can accommodate while keeping a sufficient number of beds unoccupied in order to allow inmate movement and repairs.
2. Todd D. Minton and William J. Sabol, *Jail Inmates at Mid-Year 2008* (U.S. Department of Justice, Bureau of Justice Statistics, 2009).
3. Ibid.
4. In addition to these two strategies, starting in 2006 Philadelphia retrofitted the gymnasium area at the old Holmesburg jail to serve as a temporary intake center. Holmesburg, site of a 1973 riot in which two correctional officers were killed, was closed in 1995 as the result of federal litigation related to prison conditions. The temporary intake area was closed in September 2009 when the population decreased to 9,300.
5. In FY2008, Philadelphia paid Monmouth County approximately \$4,400,000 and Passaic approximately \$500,000 for housing Philadelphia inmates.
6. The House of Corrections, Philadelphia's oldest facility, was designed to house one inmate per cell. For decades, two inmates per cell have been the norm in this facility, and some cells currently have three inmates.
7. This figure combines settlement costs (indemnities) paid by the prison system for civil rights cases (\$925,000) and the average annual cost of hiring outside counsel in these cases. According to Michael Resnick, chief of staff to the deputy mayor for public safety, the city has paid a combined \$820,000 over the last three years for outside counsel in prison-related civil rights litigation.

Who is in Jail?

There are several ways to answer the question of who is in Philadelphia's jails. One is through demographics. On a typical day last year, as shown in Figure 2.1, 66 percent of the inmates in the Philadelphia Prison System were African American men.

Inmates also were young: as shown in Figure 2.2, 48 percent of them were between the ages of 18 and 29. Note that 18 percent of Philadelphia's overall population is in this age group.⁸

A second way to describe the jail population is by how inmates come to be incarcerated. There are three main pathways to jail:

- Individuals are held prior to trial out of concern that they will not show up for court if they are allowed to remain at liberty. This is the *pretrial* population.
- Individuals are convicted of crimes and sentenced to a period of incarceration. This is the *sentenced* population.
- Individuals already convicted of a crime and sentenced to a period of supervision in the community are incarcerated as a result of an alleged or proven violation of the conditions of their community supervision. This is the *violation* population.

On a typical day last year, as shown in Figure 2.3, less than a quarter of the inmates in the Philadelphia jails were convicted criminals serving sentences. More than half were being held pretrial, and almost all of the rest were violators.

A third way to look at who is in jail is by the severity of the charges inmates have faced or will face.

On a typical day last year, 82 percent of Philadelphia's jail inmates were charged with or convicted of felonies; in Pennsylvania, felonies include all crimes in which the maximum sentence is greater than five years. Sixteen percent were charged with or convicted of first- or second-degree misdemeanors (crimes with maximum penalties between two and five years). The other 2 percent were charged with or convicted of summary offenses, such as minor shoplifting and disorderly conduct, or third-degree misdemeanors, such as prostitution, loitering and persistent disorderly conduct.⁹ These numbers are broken down by type of inmate—pretrial, violator or sentenced—in Figure 2.4.

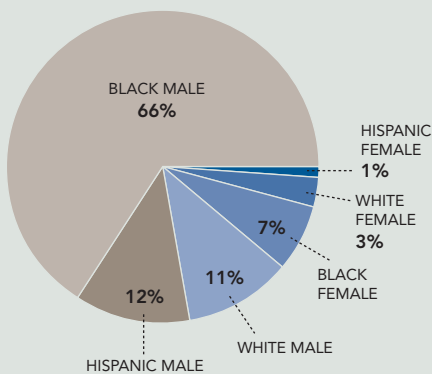
MENTAL HEALTH, SUBSTANCE ABUSE AND HOMELESSNESS

Another way to examine Philadelphia's jail population is by the conditions that have contributed to inmates' criminal behavior. Prior studies estimate that:

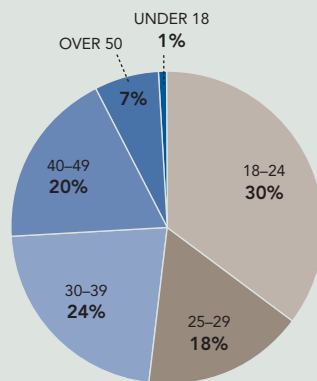
- About 30 percent of inmates in the Philadelphia Prisons experience mental illness;
- About 42 percent report having abused drugs and alcohol;¹⁰
- And a third expects to be homeless at the time of release.¹¹

For some, said Bruce Herdman, chief of medical operations for the Philadelphia Prison System, "the prison has by default become the primary source of social, medical and psychiatric care."

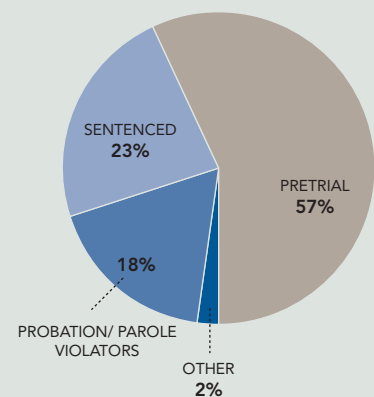
2.1 DAILY JAIL POPULATION BY RACE AND GENDER



2.2 DAILY JAIL POPULATION BY AGE



2.3 DAILY JAIL POPULATION BY PATHWAY



Source: Philadelphia Prison System

Note: Daily Population on June 30, 2009. In Figure 2.3, "other" represents individuals held for other jurisdictions.

8. U.S. Census Bureau, *2008 American Community Survey 1-Year Estimates* (2008), Table B01001 (accessed April 12, 2010).

9. In most other states, a felony is defined as a crime with a maximum sentence of one year or more. So what is a first- or second-degree misdemeanor in Pennsylvania is a felony in most other jurisdictions. And a misdemeanor in most jurisdictions is classified as a third-degree misdemeanor in Pennsylvania.

10. John S. Goldkamp, E. Rely Vilcica, Doris Weiland, Wang Ke, *Confinement and the Justice Process in Philadelphia: Its Features and Implications for Planning*, Crime and Justice Research Center, Temple University (2006) 72.

11. Philadelphia Prison System, *Homelessness Among PPS Inmates* (2004), provided by the Philadelphia Prison System (unpublished memoranda on file with the author).

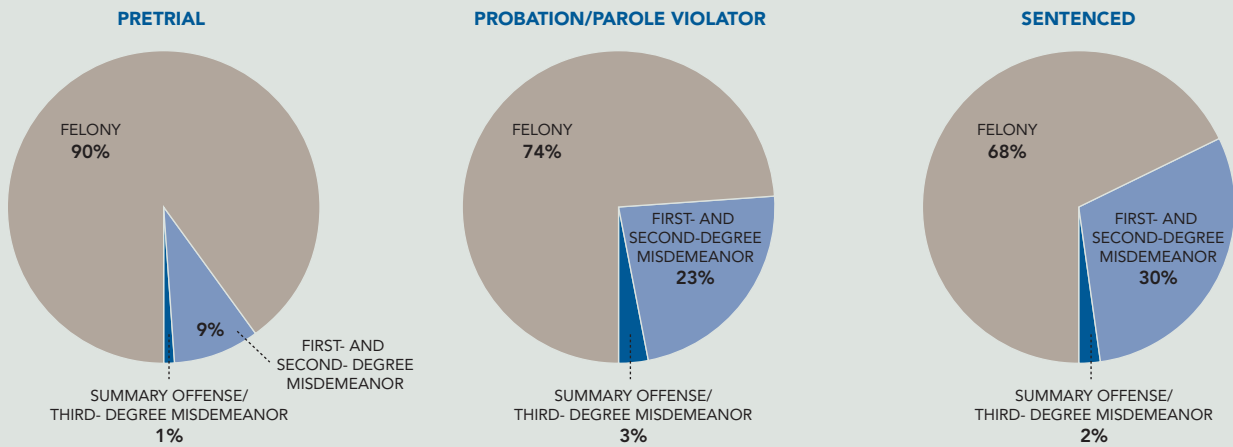
A fourth way of looking at the population is in terms of the substantive nature of the most serious or “top” charges lodged against them.

Thirty percent of all inmates had an offense against a person—such as assault, armed robbery, harassment, rape or murder—as their top charge. Twenty-eight percent were charged with property offenses including theft, robbery and arson, and 25 percent with drug offenses. These numbers are broken down by type of inmate in Figure 2.5.

THE CHALLENGE OF MULTIPLE HOLDS

Some inmates are in jail for more than one reason. They may be held on bail for a new arrest combined with a probation violation and/or an outstanding bench warrant. Criminal-justice stakeholders refer to such inmates as having “multiple holds.” And because there are multiple reasons for keeping them in jail, it can require multiple actions to get them out in a timely fashion, even if none of those reasons on its own would merit a prolonged stay in custody.

2.4 DAILY JAIL POPULATION BY CHARGE SEVERITY

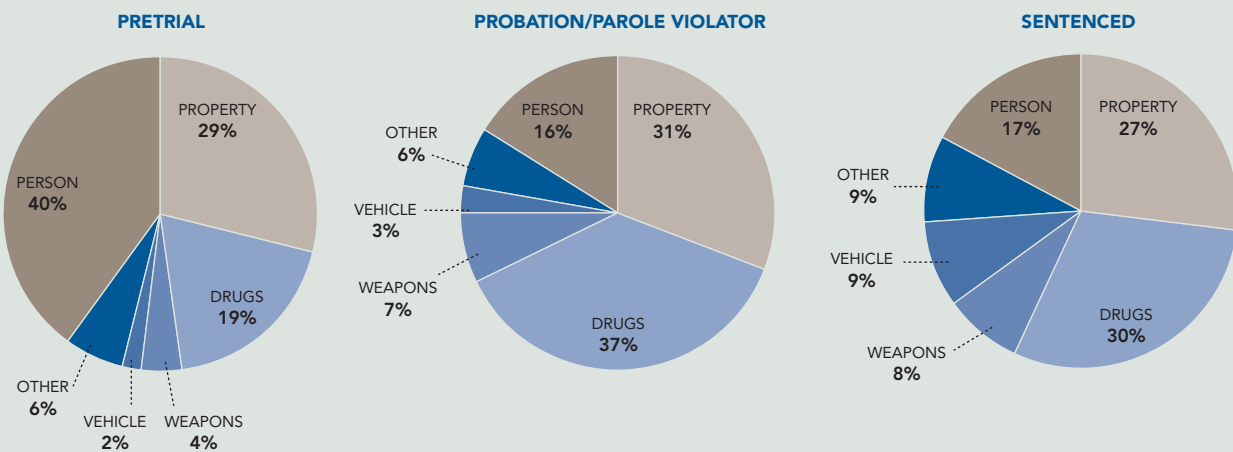


Source: Philadelphia Prison System

Note: Daily Population on June 30, 2009.

Pretrial charge is defined as the top charge the inmate was facing on June 30, 2009. Violator charge is defined as the top charge the inmate was convicted of in the case that resulted in a sentence of probation or a period on parole.

2.5 DAILY JAIL POPULATION BY CHARGE TYPE



Source: Philadelphia Prison System

Note: Daily Population on June 30, 2009.

Person offenses include all offenses listed under Offenses Involving Danger to the Person in the criminal code, such as assault, neglect of a care-dependant person, rape, and homicide.

Property offenses include all offenses listed under Offenses against Property in the criminal code, such as theft, vandalism, trespass, and burglary.

Drug offenses include all offenses listed under Title 35, Chapter 6 of the Penn. Statutes such as purchase, manufacturing, and sale of a controlled substance.

Vehicle offenses include offenses such as failure to properly insure a vehicle, DUI, and vehicular homicide.

Weapons offenses include offenses such as possession of a firearm by a former convict and carrying a firearm without a license.

Other offenses include all other offenses listed under 18 Pa.C.S.A. or other section of the Penn. Statutes that were not included in other offense categories such as bribery, perjury, resisting arrest, obstruction of justice, disorderly conduct, public drunkenness, and prostitution.

How Philadelphia's Jail Population Rose: 1999–2008

To understand what caused the population to increase over the past decade—and what has caused it to go down in the past year—one needs to look at the population in another way. The size of the jail population is a function of the number of inmates admitted and the length of time they stay: the number of bed-days consumed. One inmate who stays one day takes up one bed-day. Another inmate who stays 50 days takes up 50 bed-days and has a much larger impact on the prison's budget. In the past decade, as Figure 3.1 shows, the annual number of bed-days consumed in the Philadelphia Prison System has risen 38 percent.

In 2009, the total number of bed-days was 3,310,991, up from 2,400,970 in 1999. This increase was caused by a rise in the number of jail admissions combined with the relatively long lengths of stay experienced by many inmates.

Over that period, our data analysis shows that admissions to the Philadelphia jails grew 27 percent, from 30,599 to 38,890. See Figure 3.2. This increase was due largely to increases in pretrial admissions (40 percent) and admissions for probation/parole violations (80 percent).

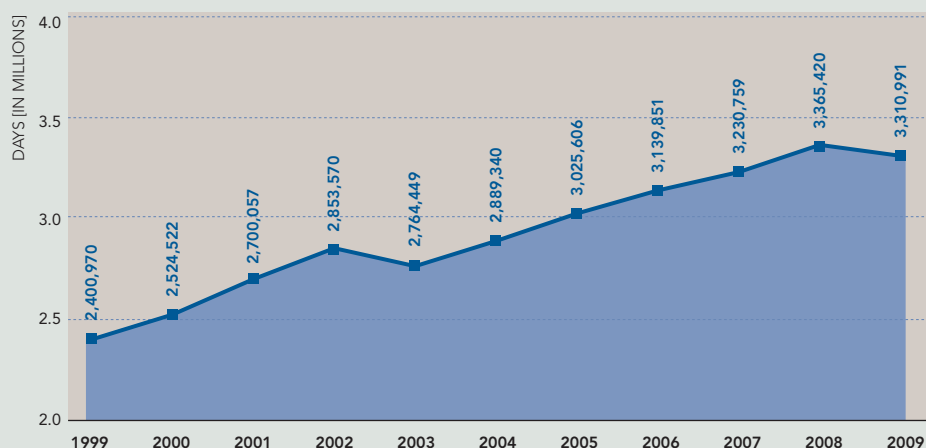
Length of stay varies by inmate type. Sentenced inmates typically have the longest stays; many pretrial inmates make bail after only a few days. This is illustrated in Figure 3.3. As a result of these variations, the profile of inmates admitted in a year looks quite different

from the profile of inmates in the prison system on any one day. For example, 39 percent of all pretrial admissions last year were for inmates charged with misdemeanors, but only 10 percent of the pretrial inmates jailed on a given day were facing such charges.

The rise in total bed-days was caused by the pretrial and violator populations and was offset somewhat by a decrease by the sentenced population. This is shown in Figure 3.4.

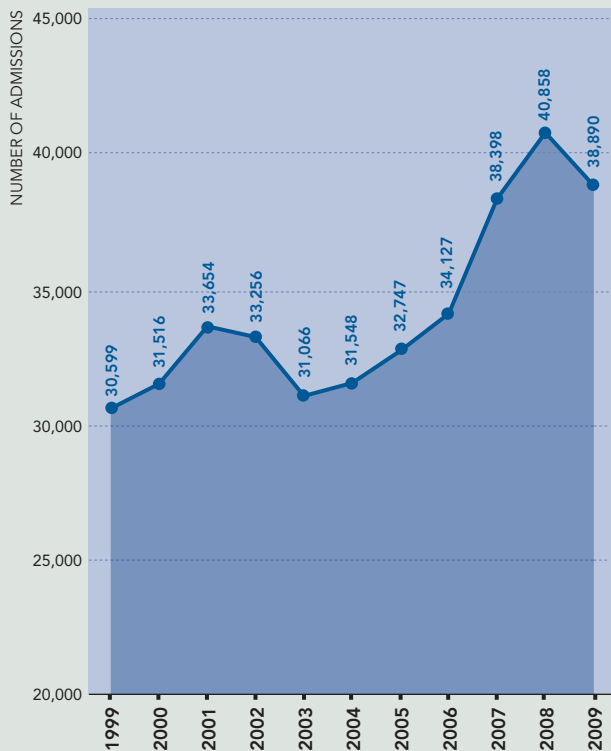
From 1999 through 2009, the number of bed-days used by pretrial inmates increased from approximately 1,050,000 to nearly 1,900,000; in 2009, pretrial inmates consumed 57 percent of all bed-days, up from 44 percent in 1999. This meant that the Philadelphia Prison System was populated mostly by people awaiting trial, not by convicted criminals serving sentences.

3.1 JAIL BED-DAYS CONSUMED 1999 – 2009



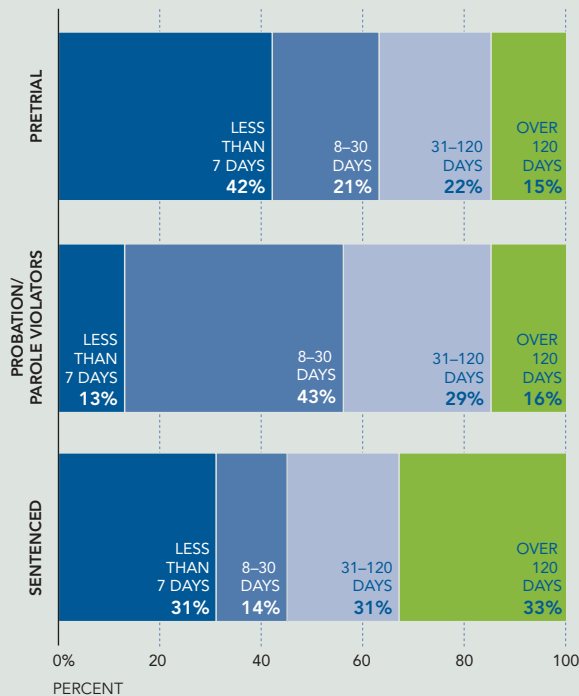
Source: Philadelphia Prison System
 Note: Individuals who were admitted but stay less than one day are counted as staying half a day regardless of the amount of time they actually spent in the facility. Numbers are calculated based on number of days spent in the Philadelphia Prison System at time of release. Because some individuals admitted in 2009 have not yet been released, bed-days in 2009 are undercounted.

3.2 ADMISSIONS TO THE PHILADELPHIA PRISON SYSTEM



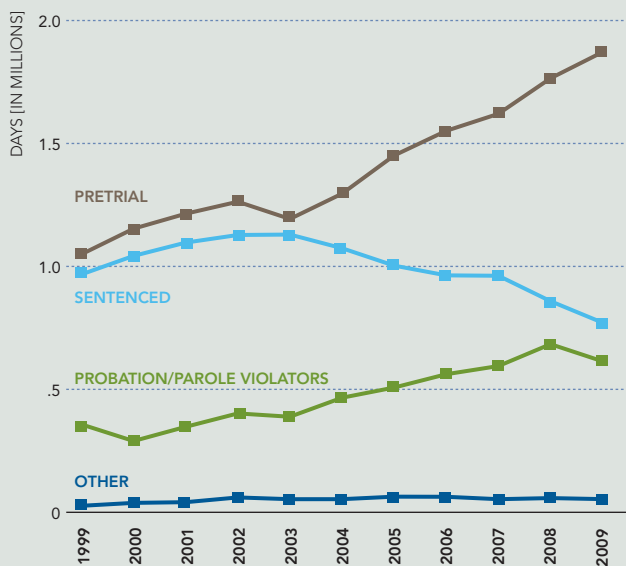
Source: Philadelphia Prison System
 Note: Data reflects number of intakes not number of individuals.

3.3 LENGTH OF JAIL STAY BY PATHWAY



Source: Philadelphia Prison System

3.4 JAIL BED-DAYS CONSUMED BY PATHWAY 1999 – 2009



Source: Philadelphia Prison System

THE ROLE OF "FREQUENT FLYERS"

Twenty-eight percent of the people admitted to the Philadelphia prison return at least once in any given year. Forty percent return within two years. At the prison, these inmates are known as frequent flyers.

Our analysis of prison admissions and releases shows that these chronic offenders are predominantly male, single and unemployed. Most are accused of drug offenses, others of the kind of property crimes that, while non-violent, can have a real impact on the lives of the victims. Many suffer from some form of mental illness. Most are readmitted for the same type of crime for which they've gone to jail in the past. And the majority, 75 percent, are readmitted either pretrial or for a probation or parole violation.

"Chronic, low-level, offenders, they're the biggest pain in our neck," said Prisons Commissioner Giorla. "We have one guy who's been coming in and out of here for 30 years. Usually [he's picked up on] retail theft. Each time, they set his bail higher so he's here a little longer. He's functionally mentally ill. His medical treatment alone is costing a fortune."

The Rise in the Pretrial Population

In 1999, 18,605 inmates were admitted to jail pretrial; by 2009 that number had jumped 40 percent to 26,095. Most of the increase in pretrial admissions came from individuals who were charged with first- or second-degree misdemeanors. The number of inmates admitted pretrial charged with felonies rose by a smaller amount. See Figure 3.5.

Three variables factor into pretrial admissions: the number of people arrested, the number of people required to post bail and the amount of bail set. In Philadelphia, all of these factors have been working at times to push up pretrial admissions.

ARREST: DRIVING UNDER THE INFLUENCE AND DRUG POSSESSION.

Overall, the number of arrests in Philadelphia has remained fairly constant over the last decade, trending downward. In 2009, for instance, there were roughly the same number as in 2002. But from 2005 to 2008, the total went up, due largely to an increase in arrests for driving under the influence (DUI) and drug possession. See Figure 3.6.

For DUI, legislative changes produced much of the increase in arrests and pretrial admissions. Starting in 2004, Pennsylvania enacted new laws which, among other things, lowered the minimum blood alcohol level for DUI from .10 to .08.¹² These efforts to get tougher on drunk driving led to more arrests: 5,478 in 2008, up from an average of 4,000 per year between 2000 and 2005. More people were admitted to jail pretrial as a result.

For drug possession, a change of focus by the police appears to account for a 7 percent increase in arrests from 2005 to 2009. According to Deputy Police Commissioner William Blackburn, the department intensified its street-patrol efforts to combat street-corner crime with an emphasis on clearing high-crime locations.

BAIL: CHANGED DECISIONS AND RISING AMOUNTS.

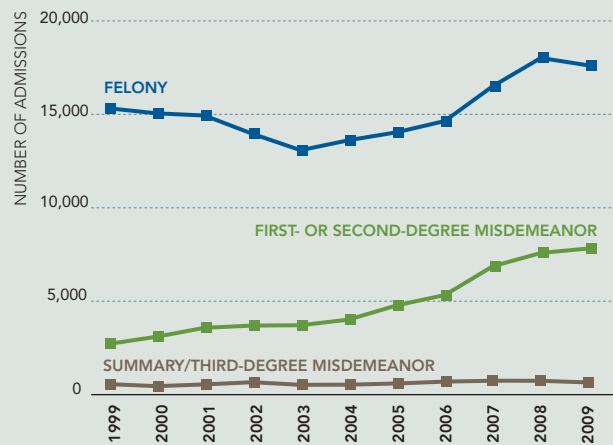
From 2003 to 2009, a higher percentage of accused offenders had bail set. This meant that a lower percentage was released on their own recognizance (ROR), meaning without bail—40 percent in 2009 compared to 46 percent in 2003. See Figure 3.7.

The decline in the use of ROR and increase in bail were seen across the board. But it was particularly pronounced for those accused of third-degree misdemeanors, such as disorderly conduct and prostitution. In 2003, 74 percent of such defendants were released on their own recognizance; in 2009, 60 percent were.

Another shift in bail decisions came in cases in which the most serious charge was carrying a firearm without a license.

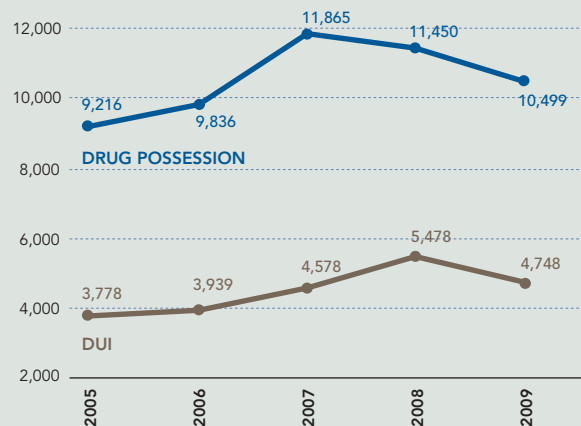
In 2005, Pennsylvania changed the sentencing guidelines to increase the punishment for carrying a firearm without a license. The new guidelines called for a presumed jail sentence of one to two years; the previous ones had called for community-based sanctions in some cases.¹³ This change appears to have had an impact on bail

3.5 PRETRIAL ADMISSIONS BY CHARGE SEVERITY



Source: Philadelphia Prison System

3.6 ARRESTS FOR DRUG POSSESSION AND DRIVING UNDER THE INFLUENCE



Source: Pennsylvania Uniform Crime Reporting System

3.7 BAIL DECISIONS

YEAR	RELEASED WITHOUT BAIL	BAIL SET	MEAN BAIL
2003	46%	54%	\$14,445
2004	44%	56%	\$15,335
2005	40%	59%	\$17,402
2006	40%	59%	\$21,417
2007	45%	54%	\$24,940
2008	44%	56%	\$21,164
2009	40%	60%	\$20,008

Source: Preliminary Arraignment System

Note: Each year less than one percent of defendants are detained with bail denied at preliminary arraignment. Bail amounts of \$1,000,000 or more were excluded from this calculation; overall, these represented just 0.4 percent of all bail amounts set. Their inclusion would distort typical bail amounts.

12. For a description of the law change, see Pennsylvania Driver and Vehicle Services, "0.8 DUI Legislation," Pennsylvania Department of Transportation, <http://www.dmv.state.pa.us/legislation/dui.shtml> (accessed April 12, 2010).

13. Adoption of Sentencing Guidelines, 35 Pa. Bull. 1508 (March 5, 2005).

decisions. Prior to the change, about 50 percent of defendants facing that charge were released on their own recognizance. Last year, only 5 percent were, meaning more of them wound up in jail pretrial.

Bail determination is not meant to be an element of punishment; while a case is pending, the presumption of innocence remains in place. The point of pretrial detention and bail is to deal with people who might not otherwise appear in court. Several factors go into making the bail determination: whether the defendant has a valid phone number, has a job, lives with a spouse or children, has a criminal history or has missed court dates in the past.¹⁴ The severity of the offense with which the individual is accused also is taken into account. In the case of carrying a firearm without a license, it apparently made a big difference.

While the use of bail was increasing, so was the amount of bail being set. From 2003 to 2009, our analysis shows, the mean bail set for all offenses rose nearly 39 percent, from \$14,445 to \$20,008, as shown in Figure 3.7, although it has fallen in the past few years.

These two factors, higher bail and more people being asked to post it, drove up the number of defendants who could not make bail and consequently ended up spending time in jail pretrial, thereby adding to the overall jail population in Philadelphia.

DOING TIME FOR TRAFFIC VIOLATIONS

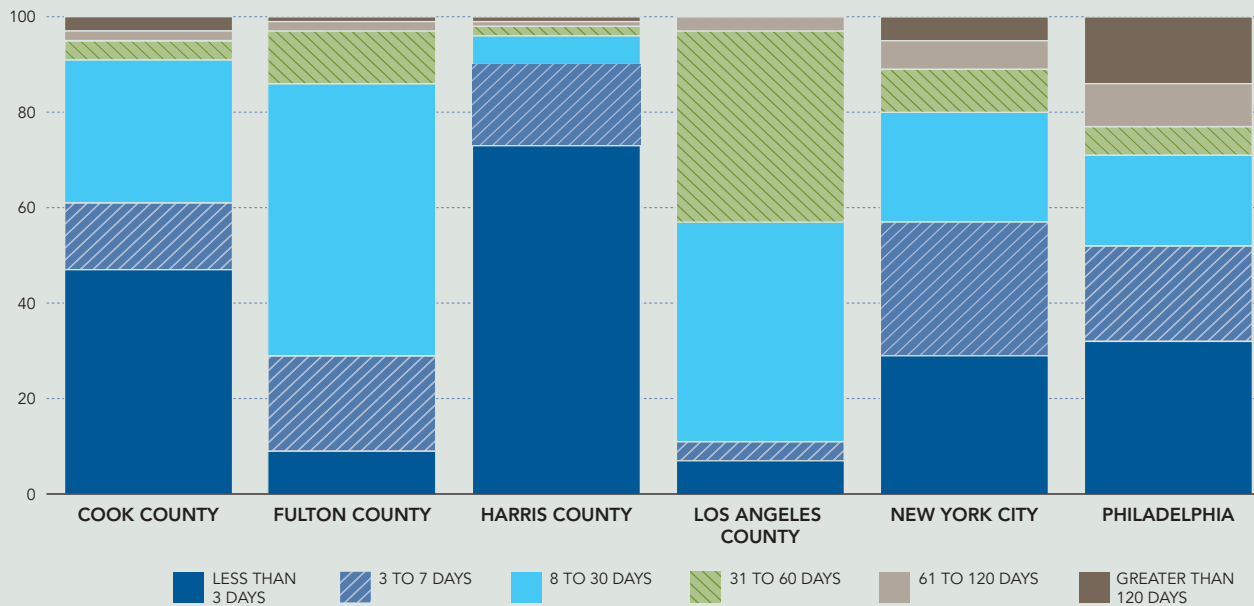
You do not expect to get jail time for failing to pay a parking fine. And that almost never happens unless you are already in jail.

In 2008, our analysis shows that more than 1,500 inmates had their stays in the Philadelphia Prison System extended—typically by one or two days—so that they could be transported by the sheriff’s department to traffic court to pay fines. That number was up from less than 200 inmates in 2003. While other circumstances initially brought these inmates to jail, they were kept in jail after those issues were resolved so that they could appear in traffic court.

In a system that uses about three million bed-days a year, this practice, which accounts for perhaps 2,000 bed-days, is not a big item. But city officials are concerned about the propriety of incarcerating people for traffic fines. And they know that holding inmates for extra days and transporting them to traffic court may cost more than the system recoups in fines paid. They are working to change this practice.

In Philadelphia, nearly a quarter of detained pretrial defendants are jailed for more than 60 days, a higher share than in some other jurisdictions.

3.8 PRETRIAL LENGTHS OF STAY



Source: Sheriff’s departments of Cook, Fulton, Harris, and Los Angeles counties, New York City Department of Corrections, and the Philadelphia Prison System.
 Note: Cook County includes Chicago. Fulton County includes Atlanta. Harris County includes Houston.

14. These are the factors collected and weighed by Philadelphia’s bail guidelines according to Todd Van Gunten, Preliminary Arraignment System (PARS) Technical Lead for the Philadelphia Department of Technology. They include several of the factors the criminal code enumerates for consideration at preliminary arraignment. See Release Criteria, 234 PA. CODE §523 (2001).

PRETRIAL LENGTHS OF STAY: VERY SHORT OR VERY LONG.

In Philadelphia, defendants are required to post 10 percent of the assigned bail amount. Almost all defendants with bail set at \$500 or less are able to post the money within one day of arraignment.¹⁵ For those with bail over \$500, the picture is very different. Forty percent of them never post bail. The other 60 percent typically spend 5 to 15 days in jail while they put together the money required for their release.

About half of the pretrial population stays in jail for less than seven days. These people are not being detained to protect public safety; one way or another, they will be out on the street for most of the time prior to the resolution of their cases. The fact that they are admitted to jail in the first place—as well as how long they stay—is primarily a function of how long it takes them to post bail.

For the Philadelphia Prison System, these short stays are particularly expensive. Much of the cost of incarcerating someone is incurred at intake. At admission, prison officials conduct medical examinations, issue clothing, catalogue belongings and begin a lengthy paperwork process. This is true even for inmates who stay one day or less.¹⁶

Philadelphia also has a comparatively large group of pretrial inmates who stay for more than 120 days, about 15 percent of all pretrial admissions. In other jurisdictions, including the counties that include Atlanta, Chicago and Houston, 5 percent of the pretrial population stays this long. See Figure 3.8. The difference is due, at least in part, to the length of the court process in Philadelphia. Our analysis of data from the Administrative Office of Pennsylvania Courts shows that 75 percent of cases in the city remain unresolved after three months. As a result, criminal justice stakeholders report, defendants sometime serve more time before their cases are resolved than they would have received in a sentence. Ultimately, many defendants held pretrial are released on time served.

While pretrial stays in Philadelphia may be long compared to other jurisdictions, they did not get any longer during the past decade. One factor that appears to have helped—even though bail amounts were going up—was the opening in 2007 of a bail office at the prisons. Before then, bail could be posted only at the Criminal Justice Center in Center City. Anyone wanting to post bail for an inmate had to go to Center City to deliver the bail deposit, then head out to Northeast Philadelphia to pick up the inmate. Now both tasks can be accomplished at once. This change has resulted in a noticeable decrease in the time it takes to post bail. In 2006, it took a defendant with bail set at less than \$500 an average of five days to post the 10 percent needed. Today it takes an average of one day. Similar trends are evident for defendants with higher bail rates.

STAYING TOO LONG IN JAIL

Philadelphia inmates sometimes spend additional time in jail because the orders releasing them were late getting from the court to the jail.

In 2001, Philadelphia civil rights lawyers sued the city on behalf of defendants who remained in jail past the date they were supposed to be released. Plaintiffs included a mix of both pretrial and sentenced inmates. According to David Rudovsky, one of the lawyers in the case, the problem was that “sometimes the Clerk of Quarter Sessions wasn’t sending the release paperwork from court, and on the prison end, sometimes the paperwork did not reach the file or the officer in charge of releases. Simply, there was not a system in place to ensure that an ordered release was, in fact, effectuated.”

Thanks to procedures enacted as part of the settlement of the litigation, the staff of the Defenders Association now generates a daily list of their clients whose releases have been ordered. They then check the files at the prison to make sure all of the releases actually happen.¹⁷ Attorney Tom Innes, who does most of the checking, counted 20 instances in October 2009 when defendants would have remained in jail past their release dates had he not notified the prison.

Admissions for Violations Increased

The Philadelphia Prison System also experienced a steady increase in the number of inmates admitted for violating the terms of community supervision. Such supervision falls into two categories: probation and parole. Probation is community supervision in lieu of incarceration; parole is supervision after incarceration. Both are supervised by Philadelphia’s Adult Probation and Parole Department.¹⁸

As shown in Figure 3.9, the number of individuals admitted to Philadelphia’s jails for violating probation or parole rose from 3,101 in 2000 to a high of 5,943 in 2009, contributing to the overall growth of the prison population during that time. In 2009, violators accounted for 15 percent of all jail admissions, up from 10 percent in 2000.

This rise tracks with the overall increase in the number of probation and parole cases. From 2004 to 2009, the Philadelphia probation department’s caseload rose from 19,065 to 26,318. See Figure 3.10.

Philadelphia’s experience in this regard is similar to the experiences of jurisdictions across the country. From 1984 to 2009, the number of Americans under community supervision rose from 1.6 million to 5 million—one in every 45 adults.¹⁹

15. Ninety percent of defendants with bail of \$500 or less eventually post bail. Some defendants who do not post bail do so as the result of a legal calculation rather than a lack of money. Many defendants in the Philadelphia prison system have more than one reason for being in custody at a given time (see “The Challenge of Multiple Holds” on page 12.) For example, a defendant might have bail set for \$500 on a new arrest and also be detained on a bench warrant in a previous court case. In such a situation, the defendant would be detained on the warrant even after posting bail. Individuals in this situation often choose not to post bail, as they would not be released anyway.

16. New York City is piloting a program in two boroughs designed to reduce the number of inmates who spend only a few hours or days in jail while putting together small amounts of bail. In the program, defendants ordered to post \$250 or less are reinterviewed after preliminary arraignment. If they are able to identify people who can post bail for them soon, they are kept in the police holding cell rather than transported to jail for intake processing.

17. No similar process exists for inmates represented by private counsel.

18. Individuals who, because of sentence length, serve sentences in state facilities are supervised by the Pennsylvania Board of Probation and Parole. For purposes of this report, admissions to the Philadelphia Prison System based on community supervision violations include inmates under the supervision of both the Philadelphia and state agencies. Of the 5,943 admissions based on violations in 2009, 9 percent (or 535) involved individuals supervised by the state’s probation and parole agency.

19. Pew Center on the States, *One in 31: The Long Reach of American Corrections* (2009).

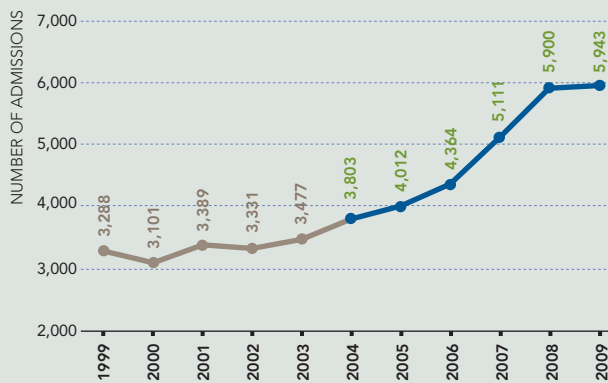
The idea behind the use of probation is to try to punish and rehabilitate offenders without incarcerating them. But a lot of offenders on probation end up in jail. How many? It's hard to say because no one keeps track. Some get there by failing to comply with what is known as a "technical condition" of their supervision. A probationer fails a drug test, and a court hearing on the violation is scheduled—or misses a meeting with a probation officer and a warrant is issued. Others are re-arrested for new crimes.

While admissions for probation and parole violations have risen steadily, the length of stay for this population has gone up as well, thereby contributing to the growth in the jail population. The average length of stay, which was as low as 49 days in 2000 and as high as 73 days in 2007, stood at 68 days in 2008.²⁰ See Figure 3.11.

One reason for these significant lengths of stay is the cumbersome and lengthy court process for hearing a violation of probation or parole. Violation hearings traditionally have been held in front of the judge who sentenced the defendant in the first place. Scheduling a hearing before that judge can take time. And when the defendant's alleged violation is for a new crime, a different judge is assigned to hear the new arrest. The original judge often waits until after the new case is concluded before conducting a hearing on the probation violation, delaying final resolution and keeping in jail a defendant who might otherwise have been released.

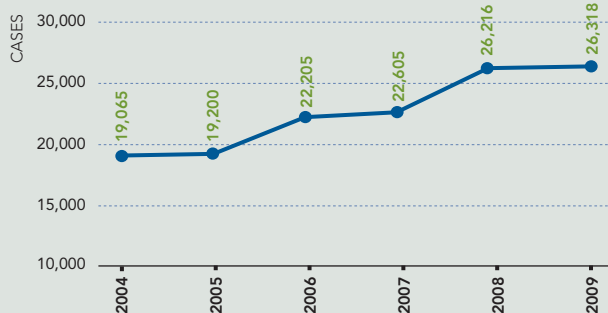
As probation and parole caseloads rose from 2004 to 2008, so did admissions to jail for probation and parole violations.

3.9 PROBATION/PAROLE VIOLATORS ADMITTED TO JAIL



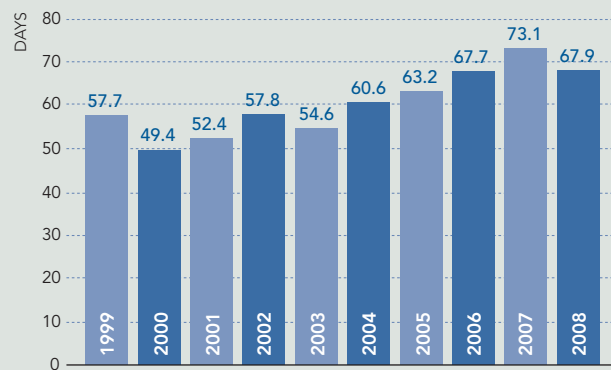
Source: Philadelphia Prison System

3.10 PHILADELPHIA'S ADULT PROBATION AND PAROLE DEPARTMENT CASELOAD



Source: Adult Probation and Parole Department
Note: Data not available prior to 2004.

3.11 PROBATION/PAROLE VIOLATORS LENGTH OF STAY IN JAIL



Source: Philadelphia Prison System

Note: Length of stay calculated based on number of days spent in the Philadelphia Prison System at time of release. Length of stay not calculated for 2009 admissions because many had not been released at the time of data collection.

HOW LONG IT CAN TAKE TO RESOLVE A PROBATION VIOLATION

To illustrate the impact of the court process on the jail population, we asked several attorneys to share with us examples from their caseloads. A criminal defense attorney pulled the following case:

A twenty-five year old man was on probation for a 2006 drug conviction. On November 7, 2009, he was a passenger in a car that was pulled over by the police. An altercation ensued, and the driver and the probationer were charged with aggravated assault. The bail commissioner set the probationer's bail at \$2,500 on the new charge. The man chose not to post the bail since the arrest meant that he would be held on the probation violation anyway. And he went to jail.

On January 11, 2010, after the case was continued four times, there was a preliminary hearing on the assault charges, and the charges were withdrawn. But the man's hearing on the probation violation—for getting arrested—had yet to take place. So he was sent back to jail to wait to appear before the judge who had sentenced him on the drug charges back in 2006.

On February 3, the violation hearing was held before the original sentencing judge, who ordered him released. Total time in jail: nearly three months.

20. The median length of stay was 26 days at the low in 2000 and 34 days at the high in 2007. In 2008 it was 30 days.

How Philadelphia's Jail Population Fell: 2009–2010

After decades of growth, the population of the Philadelphia Prison System started to fall in 2009. See Figure 4.1.

As a result, the system was able to cancel some contracts to send inmates out of county and close a housing unit at the Alternative and Special Detention Division. By February 2010, officials announced that the system was on target to end the fiscal year \$9 million under budget.

What caused this turnaround? Here are some of the answers.

A Decline in Sentenced Inmates

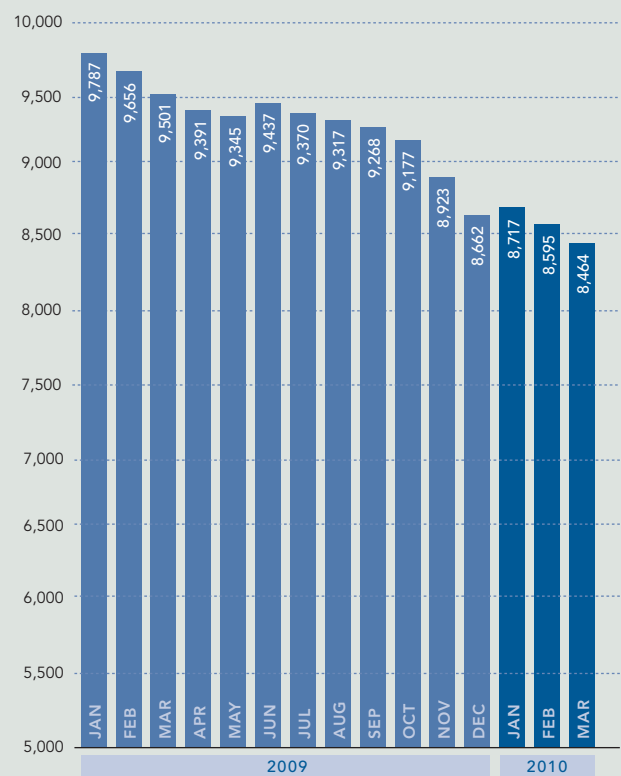
The largest factor in the lower population was a drop in the number of convicted inmates serving their sentences in the Philadelphia Prison System. In 1999, as shown in Figure 4.2, 6,642 inmates were admitted to serve their sentences in Philadelphia custody. By 2009, that number had shrunk to 5,105.

Officials in the criminal justice system are not sure what caused the early stages of this decline. Some attribute the trend to the development of new alternative-to-incarceration programs, including drug treatment court, DUI court and the use of electronic monitoring for some sentenced felony offenders; these programs have allowed some inmates to serve all or part of their sentences in the community. Others speculate that judges sentenced more inmates to longer sentences, the kind that had to be served in state prisons and not in the Philadelphia jail.

There is no question, however, about what happened more recently. In 2008, due in large part to the coordinated efforts of the Philadelphia judges, attorneys and advocates, the state legislature changed the law regarding where sentenced inmates do their time.²¹

The change, which took effect in November 2008, meant that two groups of convicted inmates would no longer have the option of staying in the Philadelphia jails; they would have to go to state prison instead. One group consisted of inmates with single sentences of two to five years. The other consisted of individuals with multiple sentences totaling two to five years.

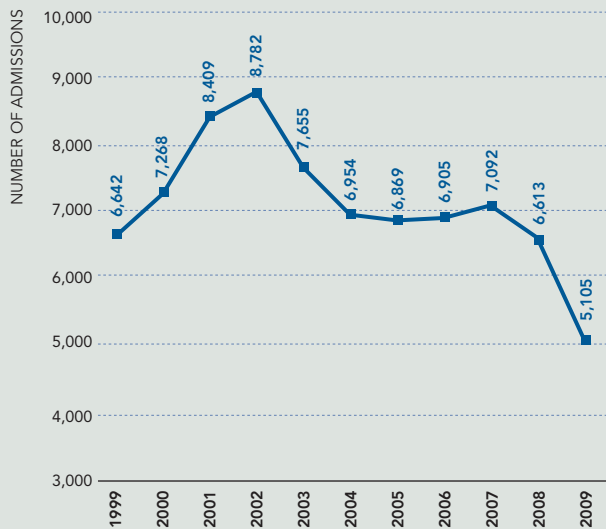
4.1 AVERAGE DAILY POPULATION, PHILADELPHIA PRISON SYSTEM JANUARY 2009 – MARCH 2010



Source: Philadelphia Prison System

21. An act amending sentencing laws in the Pennsylvania Consolidated Statutes, H.B. 4, Gen. Assem. 2007 Sess. (Pa. 2008).

4.2 SENTENCED ADMISSIONS TO PHILADELPHIA PRISON SYSTEM



Source: Philadelphia Prison System

According to Philadelphia Deputy District Attorney Sarah V. Hart, one of the prime movers behind the legislation, “We looked at other states, and we were one of only three states where inmates with sentences of over two years could end up in the county jail. It didn’t make sense. From the budget perspective, we wanted long-term inmates with the state, not with the city. The state has better services to meet the treatment needs for long-term inmates.”

As soon as the change became law, city officials moved aggressively to start transferring an estimated 400 inmates already serving two- to five-year terms in Philadelphia to state facilities.²² Almost all sentenced inmates in this category (except work release prisoners) now go to state prison at the start of their sentence.²³ Although Philadelphia does not keep track of how many inmates it transfers to the state, there is no doubt the change has reduced the number of sentenced admissions. It also should eventually decrease the average length of stay for the sentenced population in the city facilities.²⁴ And ultimately, it should reduce the caseload of the Philadelphia Probation and Parole Department as more probationers and parolees are supervised by the Pennsylvania Board of Probation and Parole.

Fewer Arrests

Another factor in the decreasing jail population was the decline in arrests. In 2009, the Philadelphia police made 8,000 fewer arrests than in 2008, a decrease of about 11 percent. See Figure 1.2 on page 7. This appears to have contributed to several trends: the leveling off of pretrial admissions (26,095 in 2008 and 26,346 in 2009), a 27 percent decrease in the number of inmates admitted for violations, and an overall 5 percent drop in admissions. That said, the degree to which this drop in arrests caused the population decline is not clear. As we have seen, a variety of factors play into the numbers, and in years past, arrest rates and the jail population have not always moved in the same direction.

Changes in Probation and Parole

From 2000 to 2008, the number of probation and parole violators admitted to the Philadelphia Prison System grew by an average of 7 percent a year. In 2009, however, this trend leveled off. And the number of bed-days consumed by violators fell somewhat.²⁵

Two factors appear to have contributed to these trends. One was that the number of new probation and parole cases remained constant at just over 26,000. See Figure 3.10. The other was that significant changes were taking place at the Philadelphia Adult Probation and Parole Department.

A GROWING STATE PRISON POPULATION

From 2008 to 2009, even as Philadelphia’s inmate population peaked and then fell, Pennsylvania’s Prison System was recording the largest increase in prisoners of any state in the nation in absolute numbers. Only two states, Indiana and West Virginia, had bigger percentage increases than Pennsylvania’s 4 percent. Over the same period, 26 states had population declines.²⁶

Philadelphia is responsible for a significant share of the increase being experienced by the state. Last year, the number of new inmates going to the Pennsylvania Department of Corrections from the Philadelphia courts rose by 6 percent.

Without enough capacity to handle the growing population, Pennsylvania is sending prisoners to Michigan and Virginia.²⁷ Plans are in place to build four new state prisons. For fiscal year 2011, Governor Edward G. Rendell requested an additional \$137 million for the corrections department.²⁸

22. This estimate, provided by the District Attorney’s Office, includes both inmates transferred under General Transfer Authorization, 61 Pa. Cons. Stat. § 1151 (2009) which permits the temporary transfer of inmates from county to state facilities and vice versa and under separate petitions based on the law change. See Sentencing Proceeding; Place of Confinement, 42 Pa. Cons. Stat. §9762 (2008).

23. After conviction, inmates sentenced to state time return to the Philadelphia Prison System for a few days prior to being transferred. They are not, however, counted as sentenced “admissions” in the prison case management system.

24. Data for this report was run in January, 2010, a time at which many inmates sentenced in 2009 were still in custody. Consequently, a length of stay analysis could not be completed for this group.

25. As discussed in the Notes on Methodology section, bed-day consumption for 2009 is an estimate.

26. Pew Center on the States, *Prison Count 2010* (2010).

27. Joseph N. DiStefano and Amy Worden, “2,000 Pa. Prisoners to be Housed Out-of-State,” *Philadelphia Inquirer*, 22 December 2009, B01.

28. Pennsylvania Governor’s Budget Office, *2010-11 Governor’s Proposed Budget* (Harrisburg, 2010), 27.

THE COST OF HOUSING INMATES—NOT A SIMPLE CALCULATION

Officials often say that it costs \$95 to house one inmate in jail for one day, implying that reducing the population by one inmate would save that much. But it does not work that way.

The \$95 figure is simply the total annual cost of the system divided by the number of inmate-days. Decrease the population by one inmate, and the system must still operate the same facilities and programs.

What does Philadelphia actually save per day by reducing the population by one inmate? It depends on who the inmate is. For every inmate, the city saves on the cost of that person's food and clothing. As Figure 4.3 shows, this runs about \$20 for the first day of incarceration—when clothing is issued and medical tests are conducted. The savings is only about \$7 for subsequent days, much more if the inmate has serious medical or mental health needs.²⁹ (If the inmate had been housed in Lehigh County, the daily savings for Philadelphia would be \$90.)

Should the jail population continue to decrease, there would be more significant savings to be realized. At some point, the prison system would be able to reduce triple-celling, saving legal costs and

4.3 ESTIMATED DAILY COST FOR ONE INMATE

Food	\$ 3.84
Pharmacy	2.29
Lab Work	1.34
Intake diagnostics (one time)	3.82
Clothing (one time)	9.00
Total	\$20.29

Note: Information on costs of individual items and services provided by the Philadelphia Prison System. Analysis of daily cost per inmate conducted by the Philadelphia Research Initiative.

overtime for the additional staff needed for triple-celled areas. And it would be able to end the practice of sending inmates out of county.

The biggest savings would come through closing an entire housing area or jail facility. That could happen only if there were a large and seemingly lasting drop in the inmate population.

With a nearly flat budget and a shrinking staff—probation and parole was short 56 probation officers out of 324 approved officer-positions early in 2010—the department was having trouble managing its caseload. So it looked for ways to better utilize its resources.

Working with criminologist Lawrence W. Sherman and statistician Richard A. Berk, both of the University of Pennsylvania, the department developed a statistical model to determine what factors made probationers and parolees likely to commit major crimes within two years after entering the probation or parole system. Using the model, the department began a controlled experiment in October 2008, giving each probationer or parolee a risk-score based on those factors including age and first contact with the criminal justice system. The department took a portion of its clients who had scored “low risk” and assigned large numbers of them (400 as opposed to the previous 160) to individual officers. In addition, the reporting conditions for low-risk probationers and parolees were reduced: they would have to make contact with the probation department only once every three months, alternating between phone calls and in-person visits as opposed to one in-person visit per month.

As it turned out, the probationers and parolees involved in the experiment had few new arrests for major crimes.³⁰ The reduction in reporting requirements also gave them fewer opportunities to violate the terms of their supervision. As a result, there were fewer violations. All of this translated into fewer probationers being sent to jail.

Based on the results of the experiment, the department began last year to change its reporting requirements and the distribution of its caseload.

In the new system

- high-risk clients are seen by officers with caseloads of 50 and have a weekly reporting requirement;³¹
- medium-risk clients are seen by officers with caseloads of 120 cases and must report on a monthly basis; and
- low-risk clients are seen by officers with caseloads of 400 and must report in-person once every six months.

“Before now, we’ve dealt with many offenders the same way; now we’re shifting to dealing with offenders in a more individual, a more targeted way,” said the department’s director, Robert Malvasutto. “It’s helped the individual offender; it’s helped the department.”

Along with these changes within the Adult Probation and Parole Department, the court system has begun to streamline the court process for violators. These changes, discussed in detail later in this report, have resolved some probation violations sooner than would otherwise have been the case. Our own courtroom observations, however, suggest that many of the individuals who have benefited from these changes were not in custody when they appeared in court. ☺

29. In 2009, the prison spent around \$7.2 million on medication and \$14 million in hospital fees.

30. Lindsay Ahlman and Ellen Kurtz, *The APPD Randomized Controlled Trial in Low Risk Supervision: The Effect of Low Risk Supervision on Rearrest* (First Judicial District of Pennsylvania, Adult Probation and Parole Department, 2008).

31. On a given day, about half of the offenders supervised by an officer with a high-risk caseload are incarcerated. Consequently, probation officers with high-risk caseloads typically supervise about 25 offenders in the community.

Decision Points for Admission to Jail

At various points in the criminal justice process, decisions are made about who should go to jail and how long they should spend there. This next section of this report looks at the six main decision points. It describes how they play out in Philadelphia and in some other jurisdictions.

Understanding all of this is essential to understanding what is being done to try to reduce the jail population in Philadelphia and what else might be done—without jeopardizing public safety.

Four of the six main decision points for sending someone to jail are related to pretrial incarceration: arrest, charging by the district attorney's office, preliminary arraignment and enforcement of outstanding warrants. A fifth, case disposition, determines the number of sentenced inmates in jail. The sixth, probation or parole, has impact on the number of inmates jailed for violations.

The flow chart on page 23, Figure 5.1, provides a basic map of how defendants travel through the Philadelphia criminal justice system and either do or do not enter the Philadelphia Prison System.

① Arrest

If a police officer believes there is probable cause that a person has committed a crime, the officer can take the suspect into custody or, for some lower level crimes, give the individual a paper notice to appear in court at a later date.³²

② Charging by the District Attorney's Office

When arrested defendants are brought to a police district for processing, the paperwork is transmitted to the charging unit of the district attorney's office. The charging unit then determines whether there is enough evidence to charge the defendant and, if so, what the charges should be.³³

Charging involves a balancing of priorities and resources. Among the factors in play are the need to complete the process expeditiously so that suspects are not held in police lock-ups for excessive lengths of time; the need to select the correct charges so that those charges will not be reduced or thrown out later on; and the need to see that justice is done.

In recent years, getting the work done expeditiously has been the focus of the charging unit in Philadelphia. Under long-time District Attorney Lynne M. Abraham, who left office in January 2010 after nearly 19 years in office, charges typically were issued and cases sent to preliminary arraignment within 24 hours of arrest. Philadelphia was known for having one of the fastest-charging units in the country.

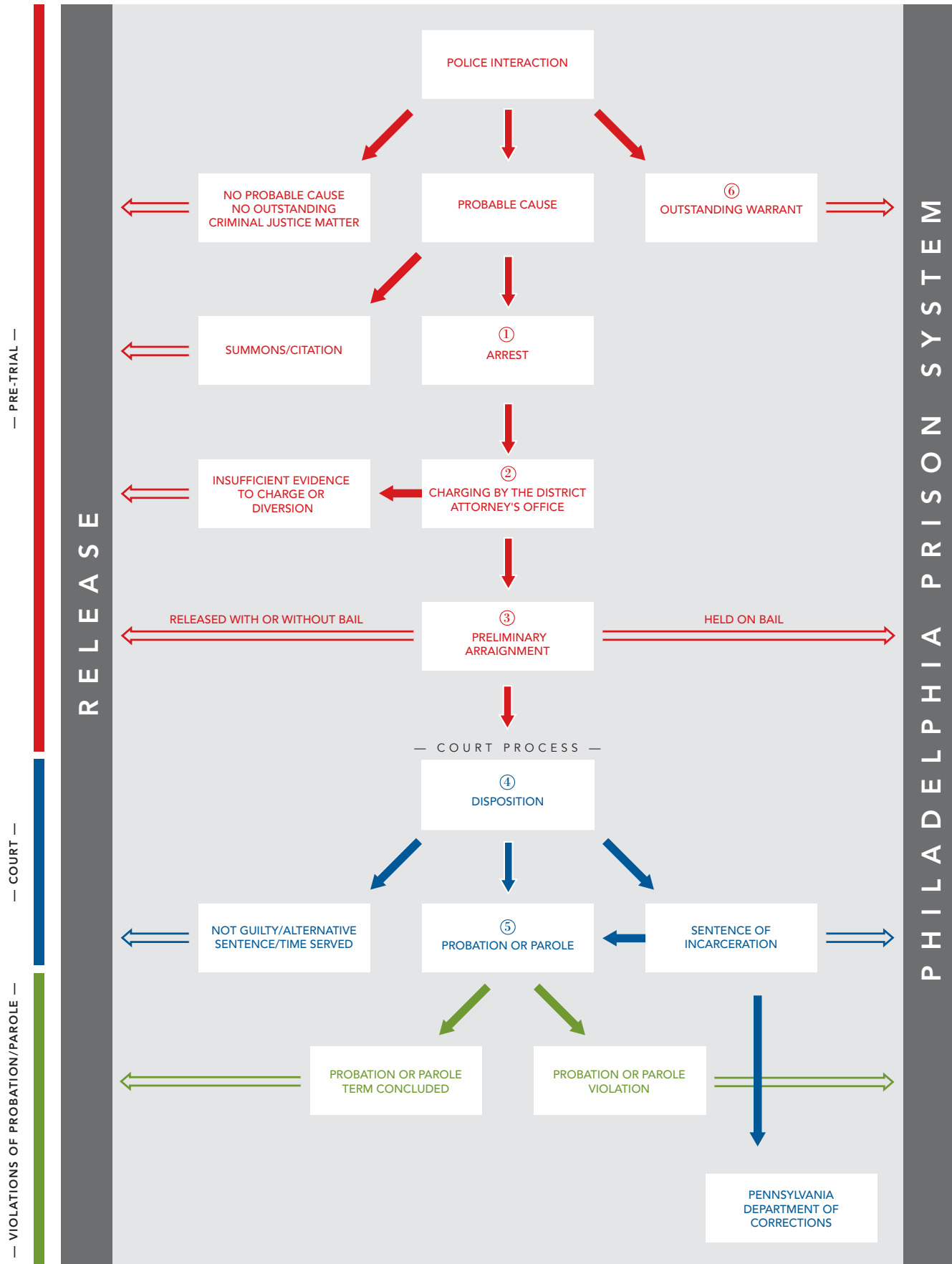
The new district attorney, R. Seth Williams, says that the emphasis on speed made the charging unit an "inefficient gatekeeper" in which weak cases were allowed to go to court. In his view, weeding out weak cases, if done with care, allows prosecutors to focus on stronger cases. It also helps manage the jail population. With fewer cases being charged, there are fewer people who can be detained pretrial.

CHARGING STANDARD. Under Abraham, the district attorney's office used a "probable cause" standard to assess what charges to bring. That meant that charges were lodged if the facts and circumstances alleged in the police report would lead a reason-

32. Under Pennsylvania criminal procedure, there is a presumption that officers will give paper notices rather than make custodial arrests for all third-degree misdemeanors—those in which the maximum sentence is less than one year, including prostitution, theft of less than \$50 from a motor vehicle and public drunkenness. See *Summons and Arrest Warrant Procedures*, 234 PA. CODE §1003(C)(1) (2010). It is the custom in Philadelphia, however, to arrest individuals on these types of charges.

33. *Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth to Local Option*, 234 PA. CODE § 507 (2010).

5.1 PHILADELPHIA CRIMINAL JUSTICE SYSTEM FLOW CHART



able person to believe that the suspect had committed a specific offense. As a result, most cases were charged with the highest offense arguable under the facts alleged in the report. Cindy Martelli, who headed the charging unit for Abraham, said the idea was to look “at what we can charge if everything on the police report is true” and not “to determine the quality of the case.”

Other jurisdictions, such as San Diego County, California, employ a different standard at charging. “To issue a charge, we use proof beyond a reasonable doubt, meaning that we have to believe we can get a conviction on this charge before we’ll bring it,” said Terri Wyatt, chief of the case issuance division in the district attorney’s office there. “If we read the police report, and we can tell we won’t have the evidence to prove a case, we’ll send it back to the police and ask for further investigation if appropriate.”

PLEA OFFERS. In Philadelphia, an offer from the district attorney to the defendant for a plea bargain generally comes several weeks or months into a case. Other jurisdictions move more speedily. In San Diego County, a recent study that looked at cases entering criminal court over a three-week span found that 60 percent of felony cases were concluded within 10 days.³⁴ In New York, plea bargains are reached at the preliminary arraignment—the post-arrest court hearing where bail is set—in 30 percent of all cases, and another 17 percent are dismissed or diverted at this stage.³⁵ In Philadelphia, few cases are disposed of at preliminary arraignment. And only 25 percent of all cases are concluded in the first 90 days, with the majority of cases taking 120 days or more, according to our analysis of court data. These processing times contribute to pretrial inmates in Philadelphia experiencing long stays in jail.

DIVERSION PROGRAMS. For decades, it has been the practice in Philadelphia and other jurisdictions to divert some lower-level offenders out of the formal court process. Once diverted from the criminal justice process into social-service programs, these defendants are no longer at immediate risk of being incarcerated. In Philadelphia, as elsewhere, the district attorney’s office identifies cases eligible for diversion at the charging stage.

Although Philadelphia’s diversion programs are generally lauded, they apply only to certain categories of individuals, with an emphasis on first-time offenders. Currently, the city operates five programs:

- Accelerated Rehabilitative Disposition, in which first time, non-violent offenders agree to a period of probation supervision.
- Alternative Treatment for Misdemeanants, in which defendants charged with prostitution, retail theft or drug possession who do not have prior convictions for violent felonies or any felony convictions in the past five years are supervised by probation officers for two years and can be referred to drug and alcohol treatment.

FRONT END V. BACK END

Philadelphia operates a number of alternative court and sentencing programs. These programs, which include Mental Health Court, DUI Court and Intermediate Punishment, come into play at the “back end” of the criminal justice system, after an offender has accepted a guilty plea or has been convicted.

Some of these programs, like the newly-created Mental Health Court, are designed to shorten the stays of already-incarcerated inmates by helping them make the transition back into the community. The expansion of such alternative-sentencing options may be partially responsible for the decline in the number of sentenced inmates in the Philadelphia Prison System.

Diversion programs are different. They take offenders out of the criminal justice system at the “front end,” often before preliminary arraignment. The idea is that certain types of offenders can be treated more appropriately outside the traditional criminal justice process and need not be incarcerated.

- Community Court, in which individuals charged in Center City with “quality of life crimes” (such as retail theft, minor drug possession and prostitution) perform community service or get help obtaining job training, health benefits and other services.
- Diverting Offenders into Treatment, in which defendants charged with domestic-violence misdemeanors participate in counseling classes or substance abuse treatment.
- Drug Treatment Court, in which drug-dependent defendants charged with first-time drug offenses receive treatment. This program can be used as a diversion program or an alternative sentence.

③ Preliminary Arraignment

For defendants who are arrested and then charged by the district attorney’s office, the question becomes whether they should be put in jail or permitted to remain in the community pending the outcome of their cases. Under Pennsylvania law, a defendant may be detained prior to conviction only if there is reason to believe he or she will not appear at subsequent court proceedings. (In some jurisdictions, the law allows public safety to be taken into account—not in Pennsylvania.) A variety of factors may be considered in making the determination of how likely a defendant is to appear for court dates, including his or her community ties, criminal history and record of appearing or not appearing in court.³⁶

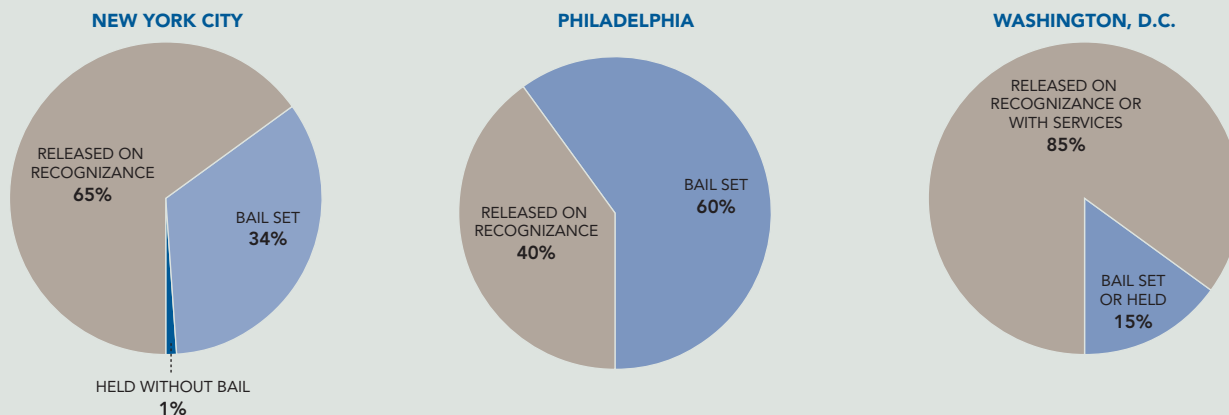
Much of the information related to community ties and past non-appearances is collected by the Pretrial Services Division, an agency of the courts. In the first several hours after arrest, a social worker from

34. “Disposition Trends of Felonies for Sept. 1, 2009 Through Sept. 30, 2009 For All Divisions and Units for All Branches,” provided by the San Diego District Attorney’s Office (unpublished chart on file with the author).

35. New York City Criminal Justice Agency, *Annual Report 2009* (2010), 16. “Preliminary arraignment” refers to the hearing in Pennsylvania in which the court rules on probable cause and pretrial detention.

36. Release Criteria, 234 PA. CODE § 523 (2001).

5.2 JURISDICTIONS COMPARED: PRELIMINARY ARRAIGNMENT DECISIONS



Source: District of Columbia Pretrial Service Agency, New York City Criminal Justice Agency and Philadelphia Preliminary Arraignment System

Note: New York City numbers are for 2008, the most recent data available. Philadelphia and Washington, D.C., numbers are for 2009. The New York chart includes only the 52 percent of cases that were not resolved at preliminary arraignment (by dismissal or plea).

pretrial services interviews the defendant to determine the defendant's living situation and employment status. This information is entered into the Preliminary Arraignment System (PARS), a computerized data collection system shared by the police, district attorney's office and the courts. Using a formula, PARS weights this information along with information retrieved from the court system's database on criminal history, history of appearing in court and the current charges. The formula then produces a "score" with a corresponding recommendation that the individual should be released, detained or have a specified amount of bail set.

Once the guideline recommendation has been calculated, the defendant, who is being held in the police district where the arrest took place, is linked by video to a hearing room in the basement of the Criminal Justice Center.³⁷ At that point, a Municipal Court magistrate determines whether the defendant will be released or have bail set—and if so, how much. The magistrate takes account of the guideline recommendation, arguments from the lawyers and the magistrate's own judgment.

In Philadelphia, 40 percent of the defendants arraigned in 2009 were released on their own recognizance while 60 percent were or-

dered to pay bail.³⁸ In New York City, the numbers were reversed, with 65 percent of defendants released on their own recognizance and 34 percent having bail set.³⁹ In Washington, D.C., where the law restricts the use of monetary bail, 85 percent of all defendants were released at preliminary arraignment and the rest held.⁴⁰ See Figure 5.2.

Not only do New York and Washington release a higher percentage of defendants into the community pretrial, they also have fewer of them missing court dates. In New York, in 2009, 16 percent of released defendants failed to show up for their court appearances.⁴¹ In Washington, it was 12 percent.⁴² Unlike New York City and Washington, Philadelphia does not keep track of its failure-to-appear rate for defendants released at preliminary arraignment. But our analysis shows that the percentage in Philadelphia was about 30 percent.⁴³

Why are Philadelphia defendants less likely to make their court appearances even though more of them have had to post bail? The answer lies largely in how the two main tools designed to ensure that defendants released into the community appear in court—the bail guidelines and pretrial supervision—have been implemented and maintained.

37. The use of videoconferencing at preliminary arraignment has grown in acceptance around the country. However, the chief judge in Cook County, Illinois, eliminated the practice in 2008 after reviewing a study that compared bail decisions before and after its introduction. The study found a significant increase in bail amounts for the same charges under videoconferencing. One contributing factor was the inability of the defendant to consult privately with the public defender prior to the preliminary arraignment. In addition, the authors concluded that the removal of the human presence in the room possibly "encourages harsher responses than would occur if the judge were faced with a live individual." Shari Diamond, et al. "Efficiency and Cost: The Impact of Video-conferenced Hearings on Bail Decisions," *Journal of Criminal Law & Criminology*, 100 (forthcoming). See also Matthew Walberg, "Video bond court to end; Northwestern study found it set bail 65% higher," *Chicago Tribune*, 12 December 2008, 29.

38. Less than one percent were held without bail.

39. New York City Criminal Justice Agency, *Annual Report 2009* (2010), 16.

40. Spurgeon Kennedy, Director of Research for the District of Columbia Pretrial Service Agency, "Memoranda regarding council member request for information," March 26, 2010, provided by the District of Columbia Pretrial Service Agency (unpublished memoranda on file with the author). For publicly available data on this topic, see District of Columbia Pretrial Service Agency, *Leading the Field: FY 2008 Annual Report* (2008). Use of pretrial detention also has consequences for the sentenced population. Defendants who are incarcerated pretrial are significantly more likely to be incarcerated after conviction, even controlling for other predictors of sentence severity. See Cassia C. Spohn, *How Do Judges Decide* (Thousand Oaks, California: SAGE Publications, Inc., 2008), 101.

41. New York City Criminal Justice Agency, *Annual Report 2009* (2010), 26.

42. Clifford T. Keenan (deputy director of the District of Columbia Pretrial Services Agency), interview with the author March 24, 2009.

43. In calculating the percentage of pretrial defendants in the community who miss court dates, we linked two data sources. From the courts, we looked at all cases in which a bench warrant was issued. We removed all cases in which it was obvious that the warrant was issued for another purpose. In many cases, the bench warrant did not specify a cause. So we may have included some cases with warrants for reasons other than missed court dates. All of these cases were then linked with prison data. If the defendant did not appear in the prison data or was listed as having posted bail within the first few months after admission, the defendant was counted as being in the community. Stakeholders report that some warrants are issued when the defendant is not absent intentionally. The defendant may be in custody, in the hospital or otherwise unable to get to court. Or the defendant may have left the courtroom temporarily and missed hearing the case called.

SPECIAL RELEASE

Since the 1990s, the city has had a “special release” procedure in place. It mandates review of all cases in which an individual has been sent to jail even though the bail guidelines recommended that he or she be released on his or her own recognizance.

The city’s director of prison management looks at these cases on a regular basis and sends some of them back to a magistrate. Twice a week, a magistrate re-hears bail decisions. This process, from preliminary arraignment to re-hearing, can take five to 10 days. Each week, about 40 cases are reheard. Most result in the immediate release of the defendant.

BAIL GUIDELINES. The bail guidelines were adopted in Philadelphia in the early 1980s. Officials viewed them as a tool to help manage jail overcrowding and to standardize bail decision-making.

The factors considered in the guidelines were based on empirical research about what might predict a defendant’s appearance or nonappearance in court including strength of community ties and employment status. The idea was to help the court make sure that all defendants who could remain in the community and make their court dates were allowed to do so, thereby reducing the pretrial jail population without endangering the public.

At the time the guidelines were introduced, researchers and criminal justice officials expected that magistrates would follow the recommendations 70 to 75 percent of the time. The expectation was that the other 25 to 30 percent of cases would involve factors that the guidelines could not take into account. In 1981 and 1982, when the guidelines were tested, magistrate decisions matched the recommendations in 76 percent of all cases. When the guidelines were updated in 1997, magistrate decisions matched recommendations 65 percent of the time.⁴⁴

Today, according to the most recent analysis of bail decisions, magistrates follow the guideline recommendations in only 50 percent of cases. When magistrates do not follow the recommendations, they usually set higher bail.⁴⁵ Most criminal justice stakeholders, including some who participate in preliminary arraignments, appear to know little about what factors the guidelines consider or how those factors are weighted.⁴⁶ Attorneys report that the argument at pre-

liminary arraignment often focuses on the severity of charges and whether these charges will be reduced at a later date, rather than the totality of the factors in the guidelines. And once again, the amount of bail set varies widely from magistrate to magistrate.⁴⁷

Many magistrates, judges and lawyers believe that the guidelines are out of date. It has been more than a decade since research was conducted on how well the guidelines predict whether an individual will appear for court dates.⁴⁸ One problem with the guidelines, said Municipal Court President Judge Marsha H. Neifield, is that “there are now offenses that weren’t even on the radar screen when the guidelines were developed, such as gun straw-purchase [purchasing a gun for someone else] and violations of protection from abuse orders.”

PRETRIAL SUPERVISION AND SERVICES. Currently, Philadelphia’s magistrates have four main choices at preliminary arraignment: set bail, hold the defendant without bail, release the defendant without conditions pending trial or order the defendant to check-in periodically with pretrial services.⁴⁹ Defendants ordered to check-in attend an orientation about the court process and then call into an interactive voice-response system once or twice a week.

For some defendants who cannot make bail and thus are jailed, a judge may reduce bail at a later court hearing. Or the judge may order that the defendant be released on an electronic monitor or with intensive supervision and restricted movement. Pennsylvania criminal procedure limits the amount of time anyone can be held pretrial to 180 days.⁵⁰ Frequently, electronic monitoring and intensive supervision are used for defendants who have already been held for 180 days.

In other jurisdictions, judges have additional choices. They can order defendants with higher risk profiles to begin substance-abuse treatment, receive mental health services and engage in frequent face-to-face contact with pretrial staff. All of this occurs in the community rather than in jail. In Harris County, Texas, which includes the city of Houston, one option is for defendants charged with DUI to be given a device that prevents them from starting their vehicles without passing a breathalyzer test.⁵¹ In Washington, D.C., some pretrial defendants are ordered to wear electronic monitors from the outset; in Philadelphia, such monitors are used primarily for sentenced offenders. The more options that are available, the more ways there are to manage accused offenders safely without putting them in jail or increasing the risk of their not appearing in court.

44. John S. Goldkamp and E. Rely Vilcica, “Judicial Discretion and the Unfinished Agenda of American Bail Reform,” *Studies in Law, Politics and Society* 47 (2009) 133-142.

45. John S. Goldkamp et al., *Confinement*, 72. Our request for data on guideline scores was denied by the PARS steering committee. Consequently, we were unable to conduct our own analysis of bail guidelines recommendations and magistrate decisions. The numbers cited rely on the 2006 analysis conducted by Goldkamp, a professor in the department of criminal justice at Temple University.

46. In conducting research for this report, we asked for copies of the bail guidelines from the District Attorney’s Office, the court system and the Defenders Association. No one was able to provide a copy.

47. John S. Goldkamp, et al., *Confinement*, 72.

48. The 1994 Philadelphia guidelines manual states that the guidelines will be used to “collect data on a periodic basis showing the use of the guidelines and their results (failures to appear and re-arrests) so that use of the guidelines, the impact of conditions of release and the performance of defendants can be reviewed and modifications can be made if necessary.” John S. Goldkamp and M. Kay Harris, “Pretrial Release Guidelines,” vol. 3 (draft operational manual, Crime and Justice Research Center 1994). Little research on guideline effectiveness or revision has been done since those words were written 16 years ago.

49. In addition, pretrial services calls all released defendants—both those released on their own recognizance and those released after posting bail—to remind them of court dates.

50. Prompt Trial, 234 PA. CODE § 600 (2000).

51. Harris County Pretrial Services, *2008 Annual Report* (2008), 5-6. In 2008, approximately 660 Harris County defendants were required to install ignition interlock devices while on pretrial supervision.

④ Disposition

Every case eventually concludes in a verdict, a plea agreement or dismissal of charges. If the defendant is found guilty, the court can send him or her to the Philadelphia Prison System if the sentence is less than two years. Those sentenced to more than two years go to the Pennsylvania Department of Corrections. The court can also sentence the defendant to a period of probation or community-based programming such as substance-abuse or behavior-health treatment. If the individual has been held in jail pending resolution of the case, the court can sentence that person to time served and thus immediate release.

As discussed in the last section, this is the decision point that has been a prime focus of the recent changes that have helped drive down the Philadelphia jail population.

⑤ Probation or Parole

Defendants who are sentenced to periods of probation or released on parole typically sign agreements committing to comply with a series of conditions. These conditions may include regular check-ins with a probation officer, passing drug tests, attending therapy sessions and refraining from criminal activity.

If there comes a time when the probation officer decides that the offender has violated his or her agreement, the officer can file a “violation”—a request that the court revoke the offender’s probationary status and put him or her in jail. If the offender’s violation is for missing an appointment, the department may also issue a warrant for the arrest of the offender.

The types of people jailed for probation violations range from violent criminals who have committed new crimes to individuals originally arrested for low-level offenses who have failed to show up for a meeting with a probation officer and are picked up on a warrant. Whatever the circumstances, violators can be held in jail for up to 12 days before seeing a magistrate who has the authority to release them.

Every weekday, a magistrate rules on the detention of between 60 and 100 recently-admitted inmates alleged to have violated the conditions of their supervision. At those hearings, 20 to 25 percent are released.

Rev. Ernest McNear, founder of the Kingdom Care Offender Reentry Network, a support program for offenders headquartered in South Philadelphia, says that the decision to jail someone for a probation violation often seems arbitrary. “Much of what we see is someone who smoked drugs and doesn’t want to report so he wouldn’t get a hot urine [a positive drug test], or someone who is tired and forgetful about reporting after a year or two,” McNear said. “Depending on the officer, that guy might get a violation even though he’s been living safely in the community for years. Or he might not.”

WHEN LANDING IN JAIL MAKES YOU HOMELESS AND WHEN BEING HOMELESS KEEPS YOU IN JAIL

A 2004 survey of inmates in the Philadelphia Prison System found that a third of prisoners expected to be homeless at the time of release.⁵² Of that group, a quarter reported that they were not homeless when they entered jail but had become homeless as the result of being incarcerated—through losing a job, falling behind in rent or developing strained relationships with family members and roommates.

According to Byron Cotter, director of alternative sentencing for the Defenders Association, many inmates find themselves caught in another bind: incarceration makes them homeless, and being homeless makes them ineligible for programs that could get them released. Said Cotter, “We could get a lot more inmates released both pretrial and after sentencing if they had appropriate housing available; inmates don’t qualify for alternative programs like electronic monitoring if they’re returning to a shelter or to the street. The fact is, the city can’t implement alternatives to incarceration without supportive housing.”

This situation, which adds to the jail population, is not unique to Philadelphia. In Chicago and New York, the local jails and human services agencies have partnered with a nonprofit group, the Corporation for Supportive Housing, to identify and provide housing, advocacy and mental health services to individuals who cycle in and out of jails and shelters. Early evaluations of these programs show a significant decrease in shelter and jail stays for participating individuals.⁵³ Philadelphia’s Office of Health and Opportunity has begun discussion with the group to create a similar program for Philadelphia’s homeless.

Probation officials say that in the past there has been “no hard and fast rule” for when a violation is filed or a warrant issued but add that all have always required supervisor approval. They say that some discretion is needed in order to manage clients on an individual basis.

One thing is clear. In Philadelphia, the probation and parole department is overwhelmed. In 2001, the city spent \$1 on probation and parole for every \$100 spent on jail; today, it spends 70 cents.⁵⁴ During this time the number of probation officers declined while the number of cases grew. Today, probation officers have less time and few tools to deal with individuals who do not comply with their conditions of probation and parole. After admonishing an offender verbally or sending a letter reminding a missing client of a skipped appointment, there is little an officer can do other than file a violation or issue a warrant that may send the individual to jail.

52. Philadelphia Prison System, *Homelessness Among PPS Inmates (2004)*, provided by the Philadelphia Prison System (unpublished memoranda on file with the author).

53. Cooperation for Supportive Housing, *Frequent Users of Public Services: Ending the Institutional Circuit (2009)*.

54. “First Judicial District Budget Submissions FY02-FY09,” provided by the First Judicial District Office of Financial Services (on file with the author).

⑥ Outstanding Warrants

For some inmates in the Philadelphia jails, incarceration does not begin with an arrest, conviction or violation of probation. Rather, it begins with a bench warrant.

Here's how it usually works: An individual accused of a crime misses a court appearance, or a probationer misses a meeting with a probation officer. A warrant is filed calling for the immediate arrest of the individual. For some time, nothing happens. Then, the individual has an interaction with police, perhaps for a traffic violation or something more serious. The warrant pops up on the police officer's computer screen, and the individual is taken into custody. The missed court date or meeting may have been in connection with a felony or a minor offense; it may have occurred a month ago or three years ago.

As of April 9, 2010, there were nearly 48,000 active bench warrants in the Philadelphia court system for missed court dates. Of those 48,000, roughly 17,000 have been issued since January 1, 2005. The rest are older, some of them decades old.


To deal with the problem of missed appearances, a number of jurisdictions have developed programs to follow-up with absent defendants and get them back into court or probation quickly, without bench warrants and the threat of jail time.

In New York City, individuals who miss court dates receive calls informing them of their missed dates and instructing them to go to the courthouse to reschedule. The nonprofit agency involved keeps calling for up to 29 days after the missed court date; half of all defendants return to court within 30 days without penalty.

In Santa Cruz County, California, the probation department works with a community-based organization in an area where there is a high concentration of residents with violations of probation and missed court dates. Before warrants are issued, community members knock on the doors of such residents and help reconnect them to the court or their probation officers. According to Barbara Lee of the Santa Cruz probation department, the program was initiated because putting many violators in jail seemed inappropriate. "They haven't committed a crime, they aren't dangerous, they've just been irresponsible," she said. Since the program's inception, Santa Cruz has cut the number of warrants filed by 51 percent.⁵⁵

Philadelphia has no similar program to actively seek out absent defendants and probationers. For several days in 2008, however, the city participated in the national Fugitive Safe Surrender program. Administered by the U.S. Marshals Service and the Philadelphia courts, the program gave individuals with outstanding warrants the chance to go to several churches and mosques and have their warrants lifted.

In all, 1,207 individuals participated, many with multiple outstanding warrants or violations of probation.⁵⁶ According to Joseph A. Lanzalotti, deputy court administrator, the churches were "packed door to door with people spilling onto the street."

The program has not been repeated since, although the court allows individuals to clear-up outstanding warrants by coming to the Criminal Justice Center voluntarily. Lanzalotti estimates that about 90 people do so every day without being incarcerated. More might come except for this: in a survey of Fugitive Safe Surrender participants, 37 percent said they had been afraid that they would be sent to jail if they returned to court. 

WHO'S IN JAIL FOR PROBATION VIOLATIONS

One day in November 2009, we observed hearings at the Curran-Fromhold Correctional Facility for individuals jailed for alleged violations of probation or parole. At each hearing, a magistrate determined if the inmate should be released prior to a judge ruling on the violation.

On this day, there were 125 cases before the magistrate. Many were for individuals re-arrested for serious crimes. But many were not. Some of the probationers released from jail that day included the following:

- A man in his twenties who had been convicted of possession of narcotics and sentenced to probation three years earlier. In the last year, he had stopped reporting to his probation officer. When he'd gone to the Criminal Justice Center to check the date of a traffic court hearing he had coming up, the clerk there had run his name through the court's database and found that he had a warrant for violating the conditions of his probation. He had been held in jail for more than a week.
- A man in his forties who had violated the terms of his probation by failing to take the required psychotropic drugs. While in jail, he had begun to take the drugs again. The prison gave him a three-day supply of the medication upon his release.
- A professional truck driver who had been stopped while driving his truck. The officer who made the stop said that a records check had revealed an outstanding warrant against the man for failing to report to his probation officer. The man told the magistrate that he had recently taken a new job and had missed one appointment with his probation officer while working with the officer to get his reporting time changed from daytime to evening. Before releasing the man, the magistrate read the probation department's case file. The file described the man as an exemplary probationer who had missed only the one appointment.

55. "Bench Warrants 2005-2009" (March 2010), provided by the County of Santa Barbara Probation Department (on file with the author). According to Santa Cruz Probation Director Scott MacDonald, the program is primarily used for missed probation meetings though it can be used for missed court dates. The program, operated by the nonprofit Friends Outside, costs the county approximately \$50,000 annually.

56. "Statistics and Survey from Fugitive Safe Surrender" (March 15, 2008), provided by the First Judicial District of Pennsylvania (on file with the author).

What is Being Done to Reduce the Jail Population

A lot is changing in the Philadelphia criminal justice system, much of it aimed at reducing the jail population while maintaining public safety. Many of these reforms affect the decision points that determine whether people go to jail and how long they stay.

Changing the Charging Standard

District Attorney Williams has overhauled the charging unit, crafting new procedures and giving it a bigger and more experienced staff than in the past. “The reinvigorated unit is in the process of changing the charging standards from ‘probable cause’ to ‘reasonable doubt,’” Williams said. “I want people to know that only the right cases are being charged; that when we charge a case, we can convict beyond a reasonable doubt.”

Williams and his team hope that this approach will help speed up the court process by encouraging more defendants to accept plea bargains earlier and by keeping more low-level cases out of the courts. He also hopes that it will allow his office to focus its resources on the cases that remain. In April 2010, he announced that his office would no longer charge low-level marijuana possession cases as misdemeanors; instead, it would treat them as summary offenses—cases that receive citations and do not go through the preliminary arraignment process.⁵⁷

These changes have the potential to shrink the jail population and save money, although Williams said that is not his primary concern. “My role is to seek justice in individual cases,” he said. “We should be more efficient in assessing our cases, determining to whom pleas should be offered and for whom diversionary programs are most appropriate. Such a strategy will allow us to focus more energy and resources at targeting violent criminals.”

The challenge, according to other prosecutors and defense attorneys, will be how to make these determinations when, at preliminary arraignment, the charging unit often has little more than a bare-bones police report. And the risk is that an individual released without being charged will go on to commit a serious crime.

Expediting Plea Agreements

“Crash court” is an expedited plea process run through Municipal Court to deal with individuals being held pretrial on certain lower-level misdemeanor charges. Cases are selected by the city’s director of prison management and the public defender’s office. Under an accelerated time frame, the public defender and district attorney negotiate pleas. If a defendant agrees to the plea offer, the case is placed on the crash-court docket. On a typical week, about 50 cases are heard in this manner. According to the public defenders, cases referred to crash court are completed within two to three weeks after preliminary arraignment.

Crash court has been in existence for several decades, but now the district attorney’s office has broadened the range of eligible cases to include some domestic violence cases and individuals with warrants. In addition, the court, the prison system and the attorneys are working to speed up the process through videoconferencing; previously, defendants were transported to the Criminal Justice Center twice a week for crash court. Thanks to videoconferencing, the court is now able to operate on a daily basis, thereby getting eligible inmates out sooner.

Said chief public defender Greenlee: “The changes to crash court are making a big difference. The defendants are getting the [plea] offers earlier. It’s taken a lot of effort, and all of the different stakeholders working together. But it’s paying off.”

57. Nancy Philips, Dylan Purcell, and Craig McCoy, “Philadelphia to Ease Marijuana Penalty,” *Philadelphia Inquirer*, April 5, 2010, A01.

Day Reporting Center

Philadelphia is making plans for a day reporting center—a place where nonviolent individuals who otherwise would be in jail can report daily and be supervised while remaining in the community. Eligibility to participate would be limited, and the proposed center would provide participants with a range of supportive services.

Plans for the Philadelphia center are taking shape. Policy makers are deciding whether it would be used by the probation department for violators, by judges for alternative sentencing, or by the courts and pretrial services for individuals who otherwise would be in jail awaiting trial.

Said Deputy Mayor for Public Safety Gillison: “What do we need to reduce the jail population? We need a place for people to go if we’re not putting them in jail. That’s what this will be.”

DAY REPORTING

The term “day reporting center” has different meanings in different communities.

Generally speaking, a day reporting center is a place where individuals who would otherwise be in jail go for supervision and social services. Hours of reporting vary. Most centers require that participants stay at the facility for the better part of the day, but some allow participants with jobs or other obligations merely to check in.

In the last 20 years, day reporting centers have been established from western Massachusetts to central California, from Chicago to Orlando. They have been used for individuals who have violated conditions of probation, for individuals awaiting trial who would otherwise be incarcerated and for people who would otherwise be serving sentences.

Some centers focus on ensuring that people show up and keep off the streets. Others concentrate on providing social services.

There are few studies on the impact of the centers. Research done in 1998 and 1999 on the center in Cook County, Illinois, which is designed for pretrial defendants, found that less than 1 percent of the individuals being supervised failed to appear in court and that 5 percent were arrested while in the program.⁵⁸

One of the obstacles to establishing a day reporting center, of course, is finding a neighborhood that accepts it.

Sentencing and Reentry

In 2009, Philadelphia opened the Mayor’s Office of Reentry Services, since renamed the Mayor’s Office of Reintegration Service for Ex-Offenders. The office provides services to help convicted inmates leaving state or local incarceration reintegrate into the community; the focus is on employment assistance and mentoring.

Advocates for reentry services argue that these services can reduce the populations of the city jail and state prison in two ways. First, successful reintegration reduces the number of people who commit new crimes. Second, judges and the state parole board are more likely to release convicted inmates early if inmates can be released to an established program.

The city’s new Mental Health Court also has the potential to shorten the jail-stays of sentenced inmates. Opened in 2009, it provides behavioral health services and judicial supervision to convicted inmates with histories of mental illness. Individuals, identified while in jail, can have their periods of incarceration shortened by agreeing to participate.

Streamlining the Court Process for Violators

The city is also updating court practices regarding individuals on probation or parole. Since March 2009, the courts have launched three programs designed to reduce the time it takes to get a violation of probation heard by a judge:

- **Accelerated Violation of Probation Program.** Individuals alleged to have violated a “technical” term of their probation—by missing a meeting or failing a drug test—now can have their cases heard on an expedited basis by a judge specializing in such hearings. To participate, they need the consent of the judge who originally put them on probation. Our observation of the program indicates that many of the 440 cases it handled in 2009 involved probationers who were not in jail at the time of their hearings; no statistics on this matter are available. The program affects the jail population to the degree that it deals with violators who are in custody.
- **Non-Sitting Judges Cases.** A problem for some probationers awaiting violation hearings is that the judge who sentenced them originally now sits in civil court and has trouble making time for a violation hearing. Since last year, however, more than 1,000 of these hearings have been reassigned to the judge specializing in violation hearings.
- **Advanced Review and Consolidation Program.** This covers probationers accused of new crimes. They typically face two legal problems: the new accusation and a probation violation stemming from the new arrest. Defendants who accept a plea agreement on the new charges can have those charges and the probation violation heard together by the violations judge. Many of these cases also involve people not in jail at the time of the hearing. In 2009, 1,635 cases were resolved through the program.

58. Christine Martin, Arthur J. Lirigio, and David E. Olson, “An Examination of Rearrest and Reincarceration Among Discharged Day Reporting Center Clients,” *Federal Probation*, 2003: 26.


Cautiously rolled out last year, these new programs are gaining acceptance. The experience of other jurisdictions indicates that the programs, if expanded to include more of the people who are in detention, have the potential to reduce the jail population. For example, in Hillsborough County, Florida, which includes Tampa, it used to take 37 days on average for a violation of probation to make it through the court system. Now, the county has a specialty court that hears all violations and new cases related to the violations. All outstanding matters are consolidated, and cases get resolved in less than half the time. The county's former detention department commander, David Parrish, said the change has been a substantial contributor to a decline in the inmate population by 1,000 from 2005 to 2009.

Other Changes to Court Processes

In Philadelphia, it often takes six months or more for a case to move through the criminal justice system. Judges, prosecutors and defenders agree that continuances are at the heart of this problem. Once a case is approaching trial, the most frequent cause of continuances is unfinished discovery, said D. Webster Keogh, administrative judge for the trial division. Discovery is the requirement that prosecution and defense provide each other certain evidence prior to trial.

To address this issue, the Court of Common Pleas in January 2010 opened Discovery Court, a courtroom dedicated to working out discovery issues prior to trial. All cases headed to trial must first stop in discovery court. The goal, said Keogh, is to "reduce disposition impediments and get the parties to address the case in a meaningful way earlier on" and thereby "reduce continuances, witness appearances, police overtime and busy work for the court and move the process along."

Although it is too soon to know, this new court could impact the jail population by reducing the time spent in jail by inmates awaiting trial and by reducing the number of bench warrants issued for those not in custody. Why fewer warrants? Research indicates that the longer a case lasts, the more likely defendants are to miss court dates.⁵⁹ So, speeding up the court process may result in fewer warrants and fewer people in jail as a result.

While Discovery Court may reduce how long some defendants stay in jail, the impact of another recent court practice is open to debate. On April 17, 2010, the rules governing Philadelphia courts were changed to increase the time between the preliminary arraignment, when bail is set, and the preliminary hearing, when the court determines whether the prosecution has grounds to proceed with the charges.⁶⁰ Under the old system, proponents of the change say, prosecutors often did not have time to notify witnesses; as a result, hearings were postponed, keeping jailed defendants behind bars pretrial. Others counter that the new system means it will take longer for some cases to be dismissed, resulting in longer pretrial stays for some. 

THE IMPORTANCE OF GOOD PAPERWORK

Whom to admit, whom to detain, whom to let out and when—the Philadelphia Prison System gets its instructions from the Clerk of Quarter Sessions.

For 18 years, Vivian T. Miller, an elected official, had the responsibility for recording court orders and transmitting them to the prison. Her office lacked the necessary technology and quality controls. Judges, lawyers and prison officials complained that the clerk's office often recorded and transmitted inaccurate, late or confusing orders. These mistakes led to some high-profile cases of inmates getting out too early while others were held too long.

In March, Miller announced her retirement, and on April 1, Mayor Nutter and President Judge Dembe announced that the court system would take charge of the work. "We are excited to bring the functions of the clerk's office to 21st century standards," Judge Dembe said.

59. Goldkamp, et al., *Confinement*, 66.

60. Amendment to Rule 1003 (Procedure in Non-Summary Municipal Court Cases) 40 PA Bulletin 2012 (2010).

What More Can Be Done to Reduce the Jail Population

The population in the Philadelphia Prison System has fallen, thanks largely to a sharp decline in the number of sentenced inmates there. But the overall population continues to be driven primarily by inmates sent to jail prior to trial, many of whom only stay for a matter of days. Unless innovations are made at the decision points that influence pretrial detention, Philadelphia's gains in controlling its jail population may be hard to maintain or build upon.

Some work is already going on in this area, including the changes in the district attorney's charging unit and the planning for a day-reporting center.

The final section of this report outlines additional options for change, based on programs already in place in other jurisdictions. If any of these options are adopted, they would have to be tailored to Philadelphia's needs. Unlike the transfer of inmates to the state system, some of these changes would be slow in producing measurable results. Several are items the city has considered and worked on in the past.

The key to building on recent gains is not just creating individual new programs; it is designing a coordinated plan that allows for ongoing monitoring and adjustment. Said Joanne Fuller, former director of the Department of Community Justice in Multnomah County, Oregon, and a noted criminal-justice reform leader: "System reform is never done—it is an ongoing process where each reform leads to better understanding both of what is working well and what is not. So each reform exposes the need for the next reform. It becomes not a thing you do but a way of thinking about your work and the work of whole systems."

None of this is easy. Most of the measures discussed here have up-front costs. And all must be tested against the need to maintain public safety and get defendants who are not in jail to appear in court.

Expanding Options for Diverting Cases away from the Courts

In interviews for this report, multiple stakeholders in the Philadelphia criminal justice system expressed a desire to see the system expand its programs to divert various types of cases away from the criminal justice system and thus the possibility of individuals going to jail. In particular, they cited the need to create alternative responses for nonviolent, chronic offenders who have underlying issues that contribute to their criminal behavior but that are not addressed through the traditional court process.

"Some of these people go through intake three or four times during a year," said Chip Junod, the city's director for prison management. "Every time they come through, the city has to pay for initial cost of intake. It's easier not to put them in than trying to get them out after the fact. What we need is something other than jail for these people."

It was this type of thinking that led Milwaukee County, Wisconsin, to expand its diversion programs. "There are low risk offenders in need of treatment," said John Chisholm, the district attorney there. "I said to the public, 'Let me create responsive diversion programs for the categories of offenses and offenders who annoy us but don't scare us.' In the process, we'll reduce violent crime, and we'll put less people in jail."

None of Philadelphia's five diversion programs, described earlier, is targeted at chronic offenders or defendants whose mental health contributes to their criminal conduct. And while the city has an array of alternative sentences and specialty courts for these types of offenders, they come into play only after a defendant has entered the



Philadelphia Detention Center
CREDIT: ROBERT LECONEY

criminal justice system. Without alternatives diverting offenders from the beginning, the city will continue to send chronic, low-level offenders to jail over and over again, particularly pretrial.

Here are some examples of what other jurisdictions are doing:

- In Milwaukee County, a network of community-based agencies provides services to clients diverted from court. These include drug and alcohol counseling, general equivalency diploma and work-placement programming for men between the ages of 17 and 19, healthcare for the homeless, life skills and esteem-building for women, and anger management education.
- In Allegheny County, Pennsylvania, at preliminary arraignment, workers from the county’s Office of Behavioral Health screen defendants suspected of having behavioral-health problems. When services are needed, the behavioral-health workers design appropriate service-plans. With the consent of all parties, the defendants are released into services without further court involvement.
- In Bexar County, Texas, which includes San Antonio, individuals suspected of minor crimes and thought to be mentally ill are taken by police officers directly to a 60-bed facility known as the Crisis Care Center. If these individuals turn out to be mentally ill and accept treatment, they are not at risk of going to jail. “Treatment works,” said Leon Evans, who conceived the program and heads the agency that runs it. “When they’re lucid, these people have no propensity to commit crimes.”

Revitalizing the Bail Guidelines

As discussed earlier, the guidelines for determining whether a defendant should be released at preliminary arraignment or have bail set—and how much that bail should be—are frequently ignored in Philadelphia. Bail is being set in an increasing number of cases, bail amounts have risen and the city has a relatively high rate of defendants who miss court dates. Other cities, including New York and Washington, set bail in a lower percentage of cases and yet report lower levels of missed court dates. For Philadelphia, the challenge is to transform the existing guidelines into a useful and effective decision-making tool.

What does such a decision-making tool look like? In New York City and Montgomery County, Maryland, courts rely consistently on the recommendations generated by bail guidelines—and a relatively high percentage of released defendants show up for their court dates. The guidelines in those places have three things in common:

- Magistrates and judges get full write-ups of all of the factors that go into a guideline recommendation, such as the defendant’s living and employment situation. In Philadelphia, the magistrates get only a guideline score.⁶¹
- The guidelines are used as the basis for ongoing research into the predictors of whether a defendant will appear in court. No such research is being done in Philadelphia.
- In New York City and Montgomery County, the guideline recommendations do not suggest specific bail amounts, as do

61. New York judges are also given information on factors not considered in their guideline recommendation. When New York revised its guideline tools in 2003, the research that led to the revision indicated that several elements previously included—someone meeting the defendant at preliminary arraignment as well as the absence of any prior bench warrants or unresolved cases—were no longer predictive of appearance in court. The Criminal Justice Agency, which compiles the pretrial reports, took these factors out of the calculation. But at the request of the judges, it continues to include them in its write-ups to the court.

Philadelphia's guidelines. Rather, they simply sort defendants into three categories: low risk of failure to appear (recommended release), moderate risk of failure to appear (no recommendation), and high risk of failure to appear (bail or detention recommended).

A transformed bail-guideline tool—one that is shown to be effective and presents useful information in a clear format—could change current practice. It would have the potential of increasing the percentage of defendants who show up for court and reducing the number of pretrial admissions to jail.

Creating a Broader Range of Pretrial Services

At preliminary arraignment, Philadelphia's magistrates have limited choices: release defendants on their own recognizance, require them to check-in weekly with a voice-response system, set bail or order them held without bail. This could change if the city opens a day reporting center. But even with this addition, Philadelphia's pretrial options would remain relatively thin.

Jurisdictions including Washington, D.C., and Montgomery County, Maryland, tie pretrial services to their bail guidelines. Defendants who score in the moderate-risk category—meaning that they pose some risk of failing to appear for court dates—are linked to services designed to counterbalance the factors that make them flight risks. These services typically include drug counseling and housing support. Intensive supervision, including electronic monitoring or assignment to a day reporting center, is reserved for the members of the group considered least likely to appear in court.

Said Nola Joyce, chief administrative officer of the Philadelphia Police Department and a former police official in the District of Columbia, "When you put people back into the street without doing an effective sort and matching on risk and need, I don't feel safer because all you're doing is putting people back on the street. But what happened in the District made more sense. D.C. Pretrial Services worked to match individuals with programs and appropriate levels of supervision. You knew that the [pretrial defendants] who needed it were getting the support they required."

A broader selection of pretrial services would allow more members of the moderate-risk population to remain in the community safely pretrial while potentially increasing court appearance rates.

Developing New Responses to Probation Violations

In 2009, there were 5,943 admissions to the Philadelphia Prison System for violations of probation or parole. These violations ran the

gamut from individuals getting arrested for new and violent crimes to those who missed single meetings with probation officers.

Recognizing that probation officers have growing caseloads and limited options, community corrections departments around the country are working to standardize the circumstances under which violations and warrants can be filed. These departments are establishing clear policies about when to issue formal violations; they are developing administrative sanctions that allow probation officers to respond to infractions without using incarceration or involving the court. Sanctions include requiring probationers to make more frequent check-ins, do weekend community service, accept electronic monitoring or go to day reporting centers.

In Georgia, the state probation department began employing such sanctions in select counties in 2004. An initial study of the practice found that probationers in those counties spent far fewer days in jail than probationers in other counties.⁶² The program has been expanded to include the entire state.

Getting People to Show Up

Every day in the Philadelphia Prison System, a magistrate hears dozens of cases of people jailed on warrants, usually for missed court dates or missed probation appointments. As discussed earlier, jurisdictions such as New York City and Santa Cruz County, California, have developed programs that reach out to defendants who miss court dates. These programs give defendants the chance to get back into court promptly without punishment, saving jail bed-days.

Reinvesting for Safety and Savings

Jurisdictions that have experienced savings from reduced jail or prison populations are hungry for more. And they are eager to use these savings to fund other priorities. Philadelphia is no exception.

But some programs that could reduce the population further have up-front costs. Under a concept known as "justice reinvestment," some of the savings generated by reduced incarceration-levels is put back into such programs. In Texas, for example, state officials put a portion of the funds no longer needed for prison construction into community alternatives to imprisonment. The result has been a continued decline in incarceration levels and an estimated savings of \$230 million over two years.⁶³

A national Justice Reinvestment Act is currently under consideration in Congress.⁶⁴ If enacted, the act would provide federal grants to local and state jurisdictions that use data analysis to help craft policy options that safely "manage the growth of corrections spending" and agree to reinvest "averted prison or jail costs" into programs that improve public safety.

62. Applied Research Services, Inc., *An Evaluation of Georgia's Probation Options Management Act* (Atlanta: Applied Research Services, Inc., 2007).

63. Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas* (New York, NY: Council of State Governments Justice Center, 2007).

64. Criminal Justice Reinvestment Act, H.R. 4080, 111th Cong. (2009).

Tracking Performance

What impact are various measures having on the jail population? Which decision points in the criminal justice system are functioning as intended and which are not working as well?


How many sentenced inmates are going to state prisons? What is the effect of the revamping of the district attorney's charging unit? Are new court practices changing the pretrial lengths of stay for inmates? Has the number of violations and warrants in probation and parole cases risen or fallen since the probation department changed its supervision model?

On a monthly basis, Philadelphia's Criminal Justice Advisory Board reviews aggregate daily population numbers from the prison. And the Court of Common Pleas provides numbers on hearings and dispositions. But these statistics are not sufficient to let criminal justice stakeholders track the performance of the system in general or their reforms in particular.

An increasing number of other jurisdictions are adopting performance indicators—statistics that help describe changes over time,

establish key benchmarks, identify when a course correction is needed and figure out what the new goals should be.⁶⁵ In many places, one of those goals is managing the use of incarceration.

"We need to set milestones and track our performance," said Deputy District Attorney Hart. "We need to be able to see how the system is performing and be able to systematically identify the types of cases that are falling through the cracks."

Without careful monitoring, programs designed to reduce jail populations such as day reporting centers and electronic monitoring can end up serving defendants who would be in the community anyway. These programs ultimately cost money instead of saving it and have little or no impact on how many people are in custody. Absent reliable and current data, the public is unlikely to support innovations that claim to reduce jail populations without compromising public safety. 



Philadelphia Industrial Correction Center

CREDIT: ROBERT LECONEY

65. Performance indicators can be implemented without integrating data systems. Stakeholders identify a few, easily collectable statistics for each decision point or innovation. The agencies responsible for those points or reforms then report out from existing data sources.

METHODOLOGY

Notes on Methodology

This report relies on five data sources to examine population trends in the Philadelphia Prison System: admissions data maintained by the Philadelphia Prison System (PPS), arraignment data maintained by the Preliminary Arraignment System (PARS), case-processing data maintained by the Administrative Office of the Pennsylvania Courts (AOPC), crime data maintained by the Pennsylvania Uniform Crime Reporting System and jail population data collected by the Bureau of Justice Statistics.

PPS Data

Data on the population of the prison were obtained from the case-management system maintained by PPS. Data included information for all persons admitted between January 1, 1999 and December 31, 2009. A series of individual-level variables extracted from the data included demographic information (such as gender, race, and marital status), arrest charges, admission date, admission reason, release date, release reason, case number, charge disposition and sentence and sentence date (if applicable).

PPS data were used to examine the number of admissions, the daily population on June 30 of each year, the lengths of stay for persons released from PPS and the number of bed-days consumed. For each of these, the analyses focused on the individual's pathway to jail or hold status (pretrial, violator, sentenced, or other) and the most serious holding offense for each pathway.

Determining hold status, most serious holding offense and length of stay in each hold status is a complicated process. Individuals can be held in jail for multiple reasons at the same time, and their status can change over time as charges are dropped or adjudicated. For example, an individual can be admitted pretrial on a new arrest and as a probation violator at the same time. For each unique intake into PPS—each time an individual physically enters PPS from outside the jail—the case management system assigns a unique intake number.

To examine admissions, our analysis counts unique intake numbers—the same method used by the prison system. The analysis allowed individuals to have only one status per unique intake (admission). To determine this status, we ranked serving a sentence first, being held on a probation or parole violation second, being held pretrial third and being held for another jurisdiction fourth. Individuals with multiple holds for the same intake number or whose hold status changed while incarcerated (without a new intake) were categorized as having only one status for the purposes of counting admissions. Thus, an individual who had a status of "sentenced" at any point during an intake was categorized as "sentenced" for counting admissions. Individuals could have multiple admissions on the same case—if, for instance, they posted bail and were released pretrial but later came back sentenced.

After ranking the hold status, the analyses further ranked admissions by most serious offense as determined by the offense gravity score contained in the Pennsylvania Sentencing Guidelines. When it was impossible to match the specific offense to a specific score, the lowest offense applicable gravity score was assigned to the offense.

To examine the daily population, the lengths of stay and bed-days consumed, our analysis categorized individuals by a different method. For daily population, we looked at hold status on June 30. For length of stay and bed-days consumed, we looked at an individual's entire admissions period and calculated how long the individual was incarcerated on a given hold status. Because individuals may have multiple hold statuses at the same time, the previously-described ranking of hold statuses was used to determine the primary hold status at any given point.

In counting length of stay and bed-days consumed, an inmate's stay was assigned to the year in which the defendant was released, regardless of when he or she was admitted. Because data was provided to us in January 2010, many inmates admitted in 2009 (particularly sentenced and violator inmates) had not been released by then. Consequently, length of stay and bed-day numbers for 2009 were estimated.

PARS Data

Data on preliminary arraignment decisions were obtained from the case management system maintained by PARS. Data included information for all persons who had preliminary arraignments between January 1, 2003 and December 31, 2009. A series of individual-level variables extracted from the data included demographic information, most serious charge, offense tracking number (OTN), arrest date, bail disposition and bail amount.

PARS data were used to examine the bail decisions for individuals who had preliminary arraignments between 2003 and 2009. The analysis focused on the decision to release individuals on their own recognizance (ROR) pretrial or to set bail and, if bail was set, the amount. The analysis examined bail decisions for unique OTNs or arrest incidents.

AOPC Data

Data on the processing of cases through the court system were obtained from the system maintained by AOPC. Data included information for all persons with criminal cases filed against them in Municipal or Common Pleas Court between October 1, 2006 and December 31, 2009. This time period was chosen because the Philadelphia court system began reporting data into the AOPC system starting in September 2006.


The AOPC data were developed from several data sets, containing information on bail, confinement, charges, dispositions, sentences, case events and warrants. Data from these sets were merged using common case number identifiers, which allowed for the creation of a single database and the analysis of linked demographic and case information.

AOPC data were used primarily to examine bail outcomes and warrants issued for individuals arraigned between 2006 and 2009. The analysis focused on the individuals who posted bail and the time it took them to post bail. The analysis also considered the cases with warrants issued and the warrants issued for individuals released pretrial. This required merging AOPC data with PARS and PPS data to determine which individuals were released ROR and which individuals with bail set were released pretrial. Data from AOPC were first merged with PARS data using the OTN assigned to each charge; the data were then merged with PPS data using the docket number assigned at arraignment.

Crime and Arrest Data

Longitudinal data describing crime and arrest trends were obtained from public data sets through the Pennsylvania Uniform Crime Reporting System.

National Jail Data

Data describing jail populations in other jurisdictions were obtained from public data sets maintained by the Bureau of Justice Statistics, a division of the U.S. Department of Justice. Additional data on corrections spending were obtained directly through interviews and surveys of corrections administrators in other jurisdictions. 

ACKNOWLEDGEMENTS

This report would not have been possible without the cooperation of Commissioner Louis Giorla and his staff at the Philadelphia Prison System. In addition to providing much of the raw data used for the analysis in this report, the staff at the prison worked with us to make sure we understood the nuances of the system. In particular, we would like to acknowledge James DiNubile, Roseanne Duzinski, Robert Eskind, Robert Fitzmartin, Marco Giannetta, Bruce Herdman, Cheryl Morrison, Richard Petrelli, Christopher Thomas and Robert Tomaszewski.

We gratefully acknowledge the judges and administrative staff of the Philadelphia Court system who gave us their time and insights. They include Common Pleas Court President Judge Pamela P. Dembe; Judge D. Webster Keogh, administrative judge of the trial division; Judge Sheila Woods-Skipper, supervising judge of the criminal section of the trial division; Municipal Court President Judge Marsha H. Neifield; and David C. Lawrence, Joseph A. Lanzolotti, Kathleen M. Rapone, Kevin Cross, Keith Smith and their colleagues in court administration. In addition, we would like to thank all of the members of the Preliminary Arraignment System working group for providing us data on preliminary arraignments and Todd Van Gunten, the system's technical lead, for making sure that we understood the data.

Additional officials throughout Philadelphia's criminal justice system have shared with us their perspective: Director Robert Malvestuto, Ellen Kurtz, Kathleen M. Intenzo and the staff of the Adult Probation and Parole Department; William Babcock from Community Court, Chief Defender Ellen T. Greenlee and her staff at the Defender Association, including Byron C. Cotter, Charles A. Cunningham, Abigail Horn, Elizabeth Hurt, John M. Konchack, Thomas J. Innes III, Joanna McClinton, Stuart Schuman and Adrienne Winney; District Attorney R. Seth Williams and his staff, including John Delaney, Christopher P. Diviny, Robert Foster, Sarah V. Hart, Deborah Harley, Kristen Heine, Dawn M. Holtz, John Andrew Jenemann, Thomas Lipscomb and Catherine Thurston; Deputy Mayor for Public Safety Everett A. Gillison and his staff, including Chip Junod and Michael Resnick; Police Commissioner Charles H. Ramsey and members of the Philadelphia Police Department, including Kevin Bethel, Francis Healy, and Nola Joyce; former District Attorney Lynne M. Abraham; Councilman Bill Green; former Prison Commissioner Leon A. King II; and former candidate for district attorney Michael Untermeyer.

This report was enriched by our conversations with several service-providers and advocates: Rev. Ernest McNear and Greg Thomas from the Kingdom Care Reentry Network; Angus R. Love and Su Ming Yeh from the Institutional Law Project; Amy Augustine and Deborah Schlater from the Philadelphia Health Management Corporation; Cameron Holmes, Betty-Ann Soiefer Izenman and Ann Schwartzman from the Prison Society; and David Rudofsky, civil rights attorney and professor at the University of Pennsylvania Law School.

A welcome orientation to the Philadelphia criminal justice system, its data and its history was provided by Temple University professor John S. Goldkamp.


In addition to these individuals listed by name, many Philadelphia attorneys, clerks, judges, inmates, scholars and magistrates spoke with us about their experiences and ideas. We are truly grateful for their contribution.

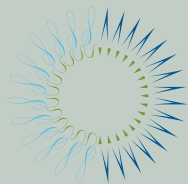
We would also like to thank the officials throughout the country who took time to talk with us about their jails and jail reforms, particularly Scott MacDonald and Barbara Lee in Santa Cruz County, California; Jerome McElroy in New York City; Sharon Trexler in Montgomery County, Maryland; David Parrish in Hillsborough County, Florida; and Leon Evans in Bexar County, Texas.

And we are thankful for the support and guidance we received from Adam Gelb, Jake Horowitz and Richard Jerome, our colleagues at the Public Safety Performance Project of the Pew Center on the States. Their broad expertise in the field of corrections provided us with wise counsel in conceiving, executing and completing this report.

Other Pew colleagues contributed to this effort as well. They include Cindy Jobbins, Donald Kimelman, Jennifer Lowes and Emily Cheramie Walz. Kristen-Elise Brooks, a student at the University of Pennsylvania Law School, joined the Pew team as an intern to assist on this report.

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