

Date: March 31, 2017

To: Rogers County Jail Overcrowding Committee

Subject: Preliminary Findings and Recommendations in Addressing Jail Population Growth in Rogers County

From: Rebecca Silber and Chris Mai

I. INTRODUCTION

This memorandum summarizes the Vera Institute of Justice's (Vera) preliminary findings on the Rogers County criminal justice system, some of the drivers of jail population growth, and opportunities for reform to safely reduce the jail population.

Vera undertook this work at the request of the Rogers County Board of County Commissioners and conducted a three-day site visit to Rogers County from January 31- February 2, 2017. During that visit, Vera staff toured the Rogers County Jail and met with representatives from the Claremore Police Department, public defenders for Rogers County from the Oklahoma Indigent Defense System (OIDS), district and special judges, the county's court clerk, representatives from the Drug Court, Grand Lake Mental Health Center, and Human Skills and Resources, private defense attorneys, the District Attorney and several assistant district attorneys, the Rogers County Sheriff's Office, and the County Commissioners. Vera also attended the February meeting of the Jail Overcrowding Committee and observed preliminary hearings in Judge Crosson's court. Those conversations and meetings informed this memo, along with Vera's independent research and data analysis.

Vera focused its site visit and this subsequent analysis on the operations and policies of the local justice system: what paths lead people to jail incarceration; how decisions are made throughout the justice system in Rogers County that may influence who ends up jail, particularly pretrial; and what alternatives exist currently or could be implemented. These questions focus on the two factors that determine the size of any correctional facility: how many people are admitted (admissions) and how long they stay (length of stay).

While this review is necessarily preliminary, based on three days of fieldwork, phone interviews, policy reviews, and the limited data we were able to obtain and analyze within a short time frame, we hope that it will provide to the Rogers County Jail Overcrowding Committee a helpful framework for thinking about the following questions, which are critical to a comprehensive and impactful discussion about the purpose and use of the Rogers County Jail:

- Who should be in the jail?
- Who is there now?
- Why are they there?
- What steps can be taken to ensure that the jail is used appropriately and sparingly for pretrial defendants?

II. EXECUTIVE SUMMARY

- **The jail population has increased by 500 percent since the current facility opened in 2000.** Since the current jail opened, the county's jail incarceration rate, the number of people incarcerated in the county jail per 100,000 residents, has increased by 189 percent, from 107 per 100,000 in 1999 to 309.4 per 100,000 in 2013¹. In terms of population, when the current facility opened in 2000, it held 48 people. The population now averages around 280 people, with occasional spikes to more than 300 people. The rated capacity of the jail was 200 people when built and later modified to 250. As of March 2017, it was at 114 percent capacity.
- **People are in jail primarily for pretrial detention.** Eighty-three percent of people in the jail are being held on pretrial detention. They are legally innocent and awaiting disposition of their case. On March 3, 2017, only 8 people out of 284 (3 percent) were in the jail serving a sentence.
- **Most people in the jail are held on pretrial detention for felony charges.** Because people admitted to the jail on felony bookings tend to stay longer than misdemeanor admissions, pretrial felonies represent a large share of the average daily population. On March 3, 74 percent of the population was awaiting a felony trial
- **Money governs whether someone is free or not pending trial.** Cash bail is the default pretrial release decision. No assessment of flight risk or public safety risk is made except for the most serious offenses and no assessment of ability to pay is made for any offenses. That means that defendants, who, if assessed by an evidence-based pretrial risk assessment tool, might be deemed a flight risk or a public safety risk, are free pending trial simply because they can afford to bond out, and potentially low-risk defendants are kept in jail simply because they cannot afford to bond out.
- **Addressing the systemic drivers of jail population growth is the only effective method of controlling jail growth; this must be done through interagency collaboration and coordination.** Any attempt to ease overcrowding at the jail by building a new facility or expanding the current one will not address the root drivers of jail growth and the new jail will simply become overcrowded again. Criminal justice stakeholders must work together to achieve a sustainable, safe, and equitable local justice system.

III. JAIL DATA AND DEMOGRAPHICS

Vera used three data sources to understand the jail population in this analysis. First, the Sheriff's Office provided the jail population for March 3, 2017, which details the population's pretrial or sentenced status. Second, Vera obtained jail bookings data for December 2016, provided to Vera by the Sheriff's Office. This data provides charge and bail information, but is not tied to release information and does not show how long individuals spend in the jail. Third, Vera obtained data from the inmate roster on the Sheriff's website, which provides information on who is in the jail at a current point in time, including charge, bond amount, and demographic information. One limitation of this data is that the data does not specify if an individual is serving a jail sentence or held pretrial. A full charge analysis is also not possible from the jail's inmate roster data because many individuals

¹These figures are based on the reporting from the county to the federal Bureau of Justice Statistics. *See* Vera's Incarceration Trends project, <http://trends.vera.org/rates/rogers-county-ok?incarcerationSource=all>.

have “not classified” listed as the only charge or one of several charges (indicating an unspecified warrant or sanction). Vera collected data from this website during the two-week period from February 25-March 10, 2017.

The Rogers County jail held an average of 284 people over the two week period from February 25-March 10, 14 percent above the rated capacity of 250 with the population rising to 299 on Sunday, February 26 (20 percent above rated capacity). On Wednesday, March 8 the jail population was 276 people.² The jail was 21 percent female (59 people) and 79 percent male (217 people). On the same date, the jail population was 80 percent White, 9 percent Black, 7 percent Indian/ Alaska Native, 1 percent Asian/ Pacific Islander, and 3 percent unknown. The average age of the jail population is 34 years, with 56 people (or 20 percent) age 24 or younger and 13 people (or 5 percent) age 55 or older.³

Jail Population, March 8, 2017

	Number	Percent
Male	217	79%
Female	59	21%
White	220	80%
Black	25	9%
Indian/ Alaska Native	20	7%
Asian/ Pacific Islander	4	1%
Unknown	7	3%
18-24 years	56	20%
25-34	109	39%
35-44	70	25%
45-54	28	10%
55+	13	5%

Source: Rogers County Inmate Roster (3/8/2017)

Jail populations are the product of two factors: who enters the jail (admissions/bookings) and how long they stay (length of stay). To understand the jail population we look at both admissions data,

²Because the jail population varies from day to day, March 8, 2017 was selected because it was tied for the lowest population in the two week sample.

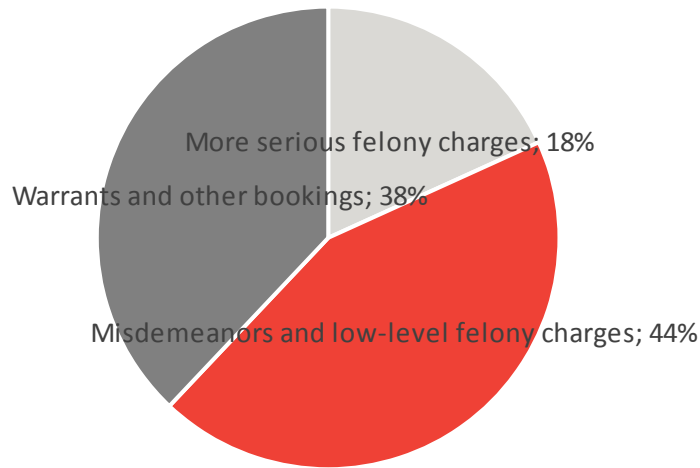
³Fifty-five is the age generally considered by corrections professionals to be elderly, because people who are incarcerated tend to age much faster than the general population. See R.V. Rikard and Ed Rosenberg, “Aging Inmates: A Convergence of Trends in the American Criminal Justice System,” *Journal of Correctional Health Care* 13, no 3 (2007):150-162.

which we have analyzed for the month of December 2016, and the average daily population on any given day, which is represented here by the population of March 3, 2017. The admissions or booking data shows who enters the jail overall. The population data, on the other hand, shows who stays in the jail.

On March 3, 2017, the jail population was 284 people, with 209 awaiting a felony trial (74 percent), 15 awaiting a misdemeanor trial (5 percent), 2 held on a municipal charge (1 percent), and 11 with charges not yet filed (4 percent). The other people were sentenced to the Oklahoma Department of Corrections (18), held on a writ (14), serving a jail sentence (8), ready for transport (4), held on a courtesy hold (2), or a sanction/ weekender (1).

An analysis of the 324 jail bookings in December 2016 showed that 142 (44 percent) of them were for misdemeanors or low-level felonies, such as drug possession (this excludes bookings solely on warrants), 59 (18 percent) for felonies (excluding bookings solely on warrants), 64 (20 percent) solely on felony warrants, 43 (13 percent) solely on misdemeanor warrants, and 3 (1 percent) solely on municipal warrants.⁴ The remaining 4 percent were on a combination of warrants coded as “adult pick-up orders,” sanctions, court remands, and bond surrender. All told there were 110 bookings exclusively on warrants, which comprised 34 percent of all jail bookings.

Bookings into the Jail, December 2016 (n=324)



Source: Rogers County Sheriff’s Office

IV. OBSERVATIONS AND OPPORTUNITIES

⁴We included in the “misdemeanors and less serious felony” category all municipal violations, misdemeanors, and the least serious felonies, such as drug possession, property crimes, and DUI. We excluded any violent felony, any domestic violence-related charges, any charges related to firearms, and any charges related to drug sales or distribution.

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

DECISION POINT 1: ARREST

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

OBSERVATIONS

- **Many people enter the jail for minor charges.** In December 2016, 23 of the 324 bookings (7 percent) were solely or primarily for public intoxication. While people admitted for this offense generally do not stay long (we do not have length of stay data by offense type), the high volume of jail bookings for such minor offenses represent a significant investment of law enforcement and correctional resources.
- **Citations for misdemeanors are rarely used by law enforcement.** Although officers have the statutory authority to use citations for misdemeanor offenses and municipal violations, they are rarely used with the exception of moving violations.
- **There are few resources for people with mental illness available to law enforcement as an alternative to jail booking.** Stakeholders shared that the mental health facilities in the area are oversubscribed. For example, when Claremore police officers encounter someone in a mental health crisis, they often have to detain the person until a bed at a facility becomes available, typically the next day. This usually accounts for 1-2 cases every few weeks. To qualify for a bed, people must be considered a danger to themselves or others. There are minimal treatment options for those exhibiting signs of mental illness that do not rise to the level of an emergency detention order. These individuals are often taken to the jail where they may fall through the cracks and fail to receive services.

OPPORTUNITIES FOR CHANGE

Expand the use of citations. The Sheriff's Office and the local police departments should expand their use of citations for minor offenses. In Oklahoma, citations may be used for misdemeanor or municipal violation offenses after an arrest is made, rather than booking the individual into the jail. In particular, citations can be a useful option for non-violent offenses, traffic offenses, drug possession, or first-time offenders. While the number of people who could be impacted is relatively modest (17 people of people in the jail on March 3, or 6 percent, were held pretrial on a misdemeanor or municipal charge) this is a change that could be implemented immediately, without an investment of resources. It would reduce the number of people being admitted to the jail for minor charges, who may stay up to a day before bond is even set. Even short jail stays can adversely

impact people by keeping them separated from their employment, families, and education.⁵ Citations also use far less officer time. The county should monitor the number of citations issued as the practice increases to ensure that it is not used for cases that previously would have resulted in no action. An expansion in the use of citations should be supported by a notification system to ensure appearance in court. We discuss such a system below, see p. 11.

Invest in community mental health resources and pre-arrest mental health diversion. The Claremore Police Department has invested in Crisis Intervention Training (CIT), but officers have no place to bring or refer individuals they encounter who exhibit signs of mental illness. There are no non-crisis resources and accessing crisis resources is cumbersome and requires a significant expenditure of an officer's time. The county should consider investing resources in pretrial diversion programming for people needing mental health services. It is likely that with treatment, many of these individuals can be safely managed in the community and do not belong in the jail, off-setting some of the increased costs.

DECISION POINT 2: CHARGE

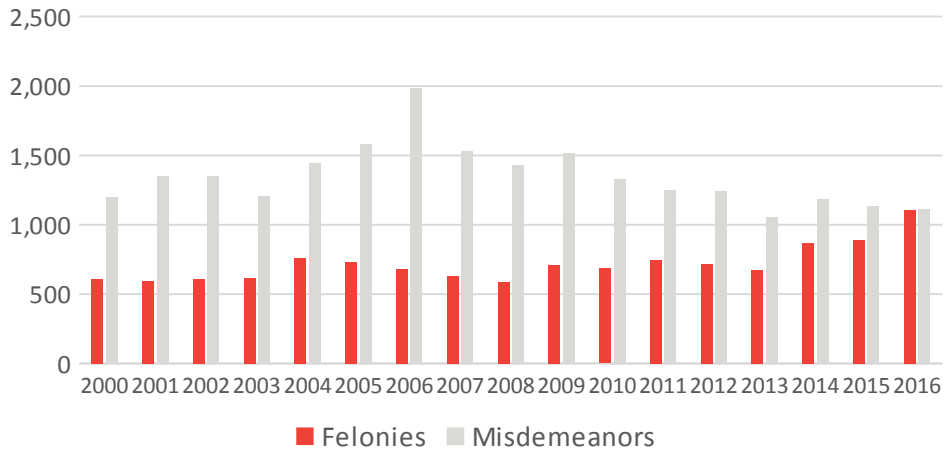
The charging decision refers to the district attorney's formal decision to charge someone with a crime. It includes the choice to charge someone with a misdemeanor or a felony, to add an enhancement, and the timing of such decisions.

OBSERVATIONS

- **Felony filings have increased 62 percent in the past ten years.** Conversely, misdemeanor filings which spiked to 1,987 in 2006 have since declined to 1,116 in 2016, a 44 percent decrease.

⁵ Additionally, research has shown that as the amount of time in pretrial detention increases, so does the risk of post-disposition recidivism. Defendants who are detained for the entire pretrial period are also more likely to receive a jail or prison sentence. See Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (New York: The Laura and John Arnold Foundation, 2013), and Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (New York: The Laura and John Arnold Foundation, 2013).

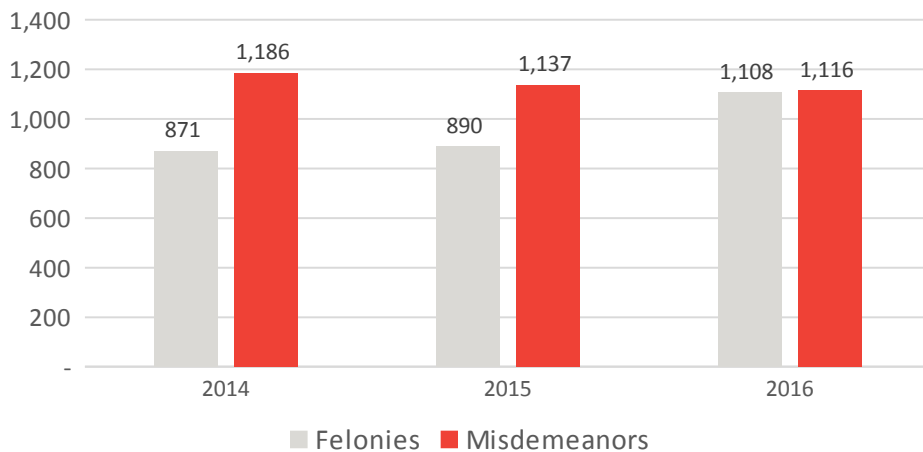
Felony and Misdemeanor Charges, 2000-2016



Source: Rogers County Court Clerk

The trend has continued in recent years too. From 2014 to 2016, felony filings increased by 27 percent. The number of felony filings in 2016 was 1,108, nearly equal to the 1,116 misdemeanor filings (according to data provided by the Court Clerk and the District Attorney’s Office).

Felony and Misdemeanor Charges, 2014-2016



Source: Rogers County Court Clerk and the Office of District Attorney Matt Ballard

While it is inadvisable to read too much into a two-year change, it is worth trying to understand what is driving this striking increase. Does this reflect a surge in serious crime during the last ten years? Or it is a product of a change in approach and practice? Those charged with felonies tend to stay in jail longer pretrial because they tend to have larger bond amounts and longer case processing times. Felony convictions also carry much harsher collateral consequences, so the decision to charge a felony over a

misdemeanor can have a profound impact on someone's life and reentry. These reentry failures—violations of probation, failure to pay court costs—also impact the jail population.

- **More than half of people booked into the jail have multiple charges, which drives up bond amounts which are calculated cumulatively.** Of the 201 bookings in December 2016 that were not for warrants, there were 533 charges, or about 2.7 charges per booking. This is important to jail size because bond amounts are cumulative. Someone with multiple traffic offenses could face a bond amount as high as someone with a single misdemeanor charge. Of the group booked into the jail in December 2016, the median bond amount was \$3,261. If instead of a cumulative bond these individuals' bond amount were set based on the highest charge, the median bond for the group would have been 39 percent lower, or \$2,000.
- **Pretrial release decisions are based on the arresting charge, not the district attorney's charges.** Because formal charging doesn't occur for weeks after the arrest, bond amounts are not based on the charges filed by the District Attorney's Office but rather the arresting charge or charges. The period of time between arrest and filing can be several weeks for felonies. Bond amounts are typically set at the time of the probable cause review, within 24 hours from arrest. People who cannot afford the bond may be in custody for two weeks or more on charges that the district attorney has not formally filed and, in some cases, ultimately won't file.

OPPORTUNITIES FOR CHANGE

Explore causes for the increase in felony filings. People facing felony charges make up the majority of the jail's population, as they have higher bail amounts and longer case processing times. It is not clear, however, if the increase in felony filings reflects an increase in more serious crime or changes in charging practices. Understanding this growth is an important precursor to developing approaches to reducing the jail population.

Investigate the use of multiple charges. The use of multiple charges should also be examined closely since they can quickly increase an individual's bond. What is the district attorney's declination rate? Is that tracked? How often are individual charges or cases dropped? The combination of bond-setting based on police charges and multiple charges per cases that are not yet reviewed by the district attorney's office may be inflating bond amounts and keeping people in custody.

Speed up the charging process, at least for certain cases. Opportunities to speed up the charging process should be examined. For example, under the current system, all cases are docketed for arraignment/initial appearance two weeks after the probable cause review. Rather than treat all cases the same, the docketing times can be reduced for cases that are likely to be fairly simple or routine. Certain charges could be designated for earlier charging and arraignment, thus reducing times for defendants in custody on those charges. Charging can also be specifically sped up for people who are in custody.

DECISION POINT 3: PRETRIAL RELEASE

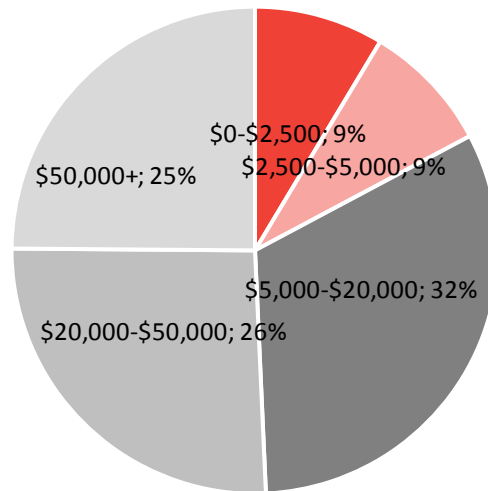
The pretrial release decision is whether and on what terms defendants are released from jail while their cases are pending trial. Are there alternatives to financial bond? Is cash bond the default mechanism for release? Is there non-financial pretrial release and what are the release conditions? These decisions are made by prosecutors, judges and pretrial services agencies, if they exist.

OBSERVATIONS

- **Pretrial release is determined by ability to pay cash bail, not by an individualized determination of flight risk or public safety risk.** Rogers County uses an advisory bond schedule, and the amounts per charge are cumulative. Because bond amounts are cumulative, total bail amounts can be high even for low-level charges. There is no determination of an individual's ability to pay before a bond or cash bail amount is set, as required under Oklahoma law⁶, nor is there any assessment of risk. Nearly every defendant has a financial bail set. Non-financial "PR" (personal recognizance) bonds are rarely used at first appearance. There appear to be ad hoc approaches to getting those on misdemeanor charges out of the jail. The Sheriff's Office typically contacts the District Attorney's Office if someone is held on a misdemeanor charge for more than a few days, which could lead to a PR bond.
- **Bond amounts for many people held in the jail are high.** On March 8, 2017, 209 of the 276 individuals in the jail had a bond amount listed (the rest had "null" listed, indicating they were held on a sanction, held for other agencies, or were serving sentences). The average bond was \$50,500 and the median was \$22,400. These amounts are considered high by national standards.
- **Nearly 20 percent of the population is held on low bond.** Of the 209 people with a set bond amount incarcerated on March 8, 18 people, or 9 percent, were in on bond amounts of \$2,500 or less, 12 of whom had spent more than 5 days in jail. Two individuals were held on bonds of \$187 and \$192 and had been in jail for 4 and 9 days, respectively. One was held on an intoxicated person charge and one for possession of a controlled substance. An additional 18 people were held with bond amounts between \$2,500 and \$5,000. With the typical bondsman accepting a 10 percent premium to execute the bond, that means that \$250 or \$500 or less respectively kept these individuals in the jail on that day.

⁶ See *Petition of Humphrey*, 601 P.2d 103, 108 (Okla. Crim. App. 1979).

Bond Amount, Jail Population March 8, 2017 (n=209)



Source: Rogers County Sheriff's Office Inmate Roster (3/8/2017). Excludes people with a "null" bond amount.

- **There are no meaningful non-financial release options.** A pilot pretrial release program operated through the Sheriff's Office began in 2016. The program was in operation for about a year and released about 25 individuals, of which five returned to jail. Decisions for release were based on a reference check, background check, and interview. The recommendations for release were sent to the DA, who did not approve many candidates for release. The conditions of release typically involved drug tests and check-ins. Common charges for those approved for release were drug possession and larceny. While a good first step towards expanding alternatives to money bail, the program lacked the basic components of best practices in pretrial services. No validated risk assessment tool was used to determine who could be released and what if any type of supervision was necessary, and there was no dedicated staffing. Screening for pretrial release does not happen until weeks after arrest.
- **There is no court notification system.** For those who do pay bail or who are released through the pretrial pilot, there is no notification system in place to remind people about court dates.
- **Indigent defendants do not have access to counsel until *after* the pretrial release decision is made; they are not represented at initial appearance.** Defendants who do not bond out, which is typical for indigent defendants, also do not have access to counsel until weeks after their arrest. The process for assignment of counsel through OIDS does not even begin until after the arraignment/initial appearance, which is two weeks after arrest. At that hearing, in-custody defendants are instructed how to apply for OIDS representation. Even before defendants file the paperwork to obtain OIDS representation, however, the court will put the process into motion by informing OIDS of the expected assignment.
- **Bond reduction arguments are not entertained until weeks after arrest and may only be made by a formal filing.** Once the bond decision is made, there is no opportunity for defendants to challenge the bond amount until their arraignment/initial appearance, two weeks after the probable cause review. For indigent defendants who will be represented by OIDS attorneys, bond reduction arguments cannot be heard until after OIDS is assigned,

which is after arraignment. In addition, requests for bond reduction are only considered via written motions.

OPPORTUNITIES FOR CHANGE

Rethinking the county's approach to pretrial release is a major undertaking and is the crux of a serious jail reduction effort. There are clear alternatives, some of which, like the implementation of a pretrial system with a validated evidence-based risk-assessment tool, will take time and the investment of resources to develop. There are also smaller fixes that the county can adopt immediately with minimal investment of time and resources that may help reduce the number of people in the jail who could be safely managed in the community. Here we look at both.

In the short term

Designate charges eligible for PR release. A collaborative effort between the District Attorney's Office, OIDS and private defense counsel and judges could identify arresting charges that would carry the presumption of PR release. Although pretrial risk is not necessarily tied to the seriousness of the charge, such an effort could be useful first step towards reducing the jail population.

Set the bond amount based on the highest charge. The practice of setting bail amounts cumulatively, based on all the charges, is not prescribed by state law and can be changed by judicial practice. Most cases have multiple charges. This method of calculating the bond amount reduces the likelihood that someone can bond out, increasing the jail population.

Allow bond reduction motions to be heard immediately in court. Instead of requiring bond reduction motions to be filed and put on the calendar, allow counsel to make an oral motion for bond reduction and allow it to be heard in court immediately. It would particularly enable the overburdened OIDS attorneys, who cover multiple counties, to make these motions for clients. They rarely do at present.

Adequately staff the pretrial release program and screen candidates earlier. Create a mechanism for defendants to be screened immediately and considered for pretrial release *before* arraignment/initial appearance. Designate charges for presumptive release on personal recognizance. Ensure that a dedicated staffer oversees the program and has the means to monitor people under his/her supervision. The program could be run by the court, the county, or the Sheriff's Office and could be coordinated, in terms of supervision infrastructure, with other community supervision mechanisms currently operating.

Assign counsel earlier in the process. The court already does not wait for the formal paperwork filing to begin the assignment of indigent counsel. Rather, while the defendant is advised of the process during the initial appearance/arraignment, the court informally sets the assignment into motion, advising the OIDS lawyers of cases coming down the pike. Having counsel assigned earlier so defendants could be represented at their arraignment would offer the opportunity for much earlier review of bond amounts and even help resolve cases earlier. Early assignment of counsel has been shown to reduce jail time for defendants, both pretrial and post-disposition.

Implement a notification system. Implementing a simple reminder system for all people released from jail, including those who paid bail, will likely decrease failures to appear. Research shows that

appearance rates can be improved for most people simply by reminding them, via phone call or even text message, of a pending court date. This is especially important in Rogers County, when the time between arrest and a first court date may be long. This will also further reduce the need for financial or nonfinancial conditions of release. These messages or calls can be automated.

In the long term

Because there is no formal risk assessment, Rogers County currently has no way of knowing if the people sitting in the jail pretrial need to be there in order to assure that they show up to court or to protect public safety. The only thing that is known about most of those taking up a jail bed is that they cannot make bail, or bail was not set.

Implement an evidence-based pretrial services program. Rogers County has significant opportunity to expand its use of pretrial release. The county should consider whether an expanded pretrial services program is best placed within the Sheriff's Office, or whether it could achieve greater independence as a part of the court system. Even for a small county such as Rogers, a pretrial release program will require at least one dedicated, trained staff person to maintain. Rogers County should investigate the use of a validated, evidence-based pretrial risk assessment tool to use as a part of the pretrial release process. Judges will use the information from the tool to help guide bond decisions and conditions of release. Successful implementation will require buy-in from all stakeholders to be successful.

Such a system would pay large dividends and reduce the fiscal burden of the overcrowded jail. Based on our review, more than 40 percent of admissions to the jail are for misdemeanors and non-violent low-level felonies. Ensuring that many of these defendants are not admitted at all to the jail—cited rather than arrested for certain charges (see our discussion on p. 5)—or are candidates for non-financial release should be a priority of this committee. While charges are not synonymous with public safety risk or flight risk, they may be a place for the county to start, as was done during the pretrial release pilot. An effective, fully staffed and fully scaled pretrial release program with supervision levels tied to risk assessed by an evidence-based instrument would allow Rogers County to reduce its jail burden and better ensure public safety.

Additional resources:

- The Pretrial Justice Institute has a Pretrial Services Program [Implementation Starter Kit](#) which offers an implementation plan, examples from other jurisdictions, and key sample documents such as an interview guide.
- Pretrial Justice Institute's [The Delivery of Pretrial Justice in Rural Areas](#) has recommendations and examples from the field specifically for small and rural jurisdictions.

DECISION POINT 4: CASE PROCESSING

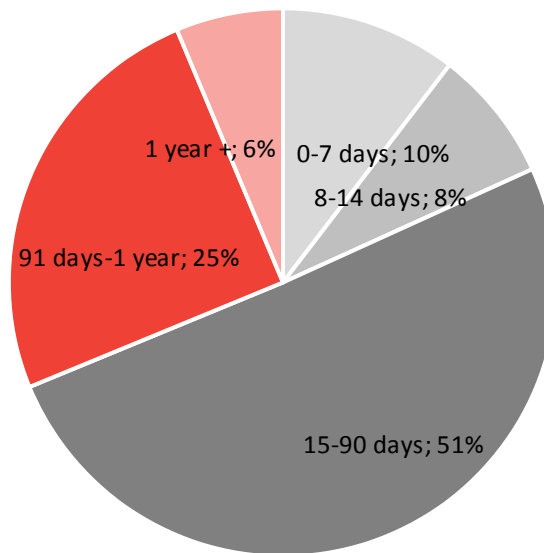
OBSERVATIONS

- **Multiple continuances keep cases pending for too long, lengthening custodial stays for defendants in custody and crowding dockets.** According to many we spoke with, requests for continuances are pervasive from counsel on both sides. High caseloads for OIDS attorneys impact the pace and efficiency of the criminal case process. Moreover, there are no incentives to move cases along efficiently. While there are state-imposed time limits on prosecution of a case, counsel rarely move to dismiss cases on

the basis of speedy trial violations. Because the felony docket only takes place twice a month, each continuance could add two weeks or more (since jury terms disrupt regular dockets) to the length of the case.

- **Dockets are crowded and spread across a small pool of judges.** District felony court only takes place twice per month, or once a month if there is a jury trial. There used to be four felony dockets each month, providing more opportunities for cases to be resolved. Currently, dockets are large and the volume of cases frequently creates delays. Judge Crosson is testing a new misdemeanor disposition docket to increase case processing speed.
- **Many individuals in the jail have been there for long lengths of stay.** On March 8, 84 people (31 percent) had been in the jail for more than 90 days, with 17 spending more than one year in jail. The chart below showing length of stay excludes the 7 people charged with homicide who typically have long lengths of stay pretrial. It also does not distinguish between those held on sentences and those held pretrial, as the inmate roster data does not specify status.

Length of Stay, March 8, 2017 (n=269)



Source: Rogers County Inmate Roster (3/8/2017). Excludes the seven people charged with homicide.

- **Recent changes to dockets have been made to ease case processing delays.** Monday conferences have recently changed. These conferences now take place in the individual Assistant District Attorney's offices, rather than in the court room. Instead of reserving the timeslot for OIDS cases exclusively, the docket now also accepts private cases. OIDS may no longer have a continuance approved by a judge without the DA's approval as well. One district judge added an additional criminal docket each month. Because these changes have been in place only a few months, it is still early to determine their impact.
- **OIDS attorneys have high caseloads and often lack the time and charge information to prepare for cases in advance.** Many stakeholders shared that the

OIDs caseloads were too large. The county has only two OIDs attorneys and they serve the majority of individuals held in the jail, in addition to clients in other nearby counties. OIDs attorneys would like to review the plea recommendations in advance of the Monday conference docket but lack the staff support to request these in advance from the DA, and often do not receive this information until the day of the docket. It is unclear how this process may be changing in light of the new docket system, which is intended to alleviate this issue.

OPPORTUNITIES FOR CHANGE

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

Provide plea recommendations earlier. Since most cases are likely to be resolved through a plea negotiation, having a process by which these offers are always in the file might expedite the process of defense attorneys communicating with their clients.

DECISION POINT 5: DISPOSITION & SENTENCING

OBSERVATIONS

- **There is notable collaboration between the alternative to incarceration programs.** The alternative to incarceration programs—drug court, mental health court and community sentencing—work together in a highly collaborative process to ensure that individuals who are approved for an alternative court or community sentencing enter the program most appropriate for their needs and to ensure that limited alternative to incarceration resources are used most effectively.
- **People often stay in jail for a long period of time—typically at least a month—before they are recommended for alternative courts.** Drug court dockets take place twice per month. Because treatment services are often maxed out in the community, individuals may have to wait for space to open up. Other people lack stable housing to return to and the court has to work with them to make arrangements before they can be released.
- **There is a limited pool of applicants to drug court and a lack of clarity regarding eligibility standards.** Several stakeholders mentioned that there is capacity for the alternative courts to take on additional clients. Applications must be filed through the DA's office, and typically only those individuals with a high chance of acceptance into the program are permitted to apply. Because of the closed nature of the application process, it is unclear how many people would like to apply but are not given the opportunity.

- **The drug court imposes onerous requirements.** The drug court sees 10-20 cases every two weeks. Participation requires individuals to attend 90 meetings in 90 days, either outpatient substance abuse treatment or a self-help group. Other requirements include random drug tests 12 times per month, meetings with case managers, wraparound services with Grand View, counselor meetings at least once per month, attending the drug court review docket twice per month, and obeying curfew and other rules. These requirements are not tailored to a risk-needs assessment of the individual. Fees for the program are substantial. The Court reports a completion rate of 65-75 percent.
- **Use of intermediate sanctions is being piloted.** The District Attorney's office is testing intermediate sanctions such as weekend jail terms or community service instead of an application to revoke or accelerate for a probation violation.

OPPORTUNITIES FOR CHANGE

Accelerate the selection process for drug court. The court should explore ways to identify and accept eligible candidates more quickly. If the drug court process itself cannot be sped up, individuals likely to be accepted should be prime candidates for pretrial release on PR bond while awaiting the drug court process.

Widen the applicant pool for alternative courts to ensure that the drug court is serving high-risk defendants. The Rogers County drug court model is designed to serve high-risk defendants, thus the heavy supervision required. It is not clear, however, that the drug court is currently ensuring that it serves high-risk individuals. Rather, the screening process seems to exclude potentially high-risk individuals. Social science research indicates it is the higher-risk individuals who both need and reap the greatest returns on the programming and treatment investments. The county should explore how to have more individuals apply, be accepted into, and complete all the alternative programs—the drug court, the mental court, and community sentencing. There may be individuals who are appropriate candidates who are not currently permitted or encouraged to apply. The drug court may also want to reevaluate the criteria for acceptance into the program. For example, the rule that an individual must have not prior violent offenses might keep many otherwise qualified individuals from participating because of violent convictions in the distant past.

Reconsider the requirements for successful completion of alternative courts. Significant fines and fees for participation and onerous reporting and drug testing requirements may hinder the appeal and effectiveness of well-intended diversion and community sentencing programs, especially given the low incomes of many of the participants. To the extent that the purpose of these programs is to keep people out of jail and prison, it may be worth asking if such requirements are necessary to accomplish this goal. Getting a solid data-informed understanding of the participation and success rates for these programs would be useful as well as ensuring that the treatment requirements are evidence-based.

DECISION POINT 6: POST CONVICTION

OBSERVATIONS

- **Legal financial obligations are substantial for many defendants.** For example, in a court observation we saw cases with total fines as high as \$2,000 for charges of drug

possession or open container. There is no assessment of a person's ability to pay at the point when court fines and fees are imposed. Such determinations are only made *after* a person fails to pay, despite the generally acknowledged reality that many defendants will likely be unable to meet these financial obligations.

- **Stakeholders expressed interest in alternatives to jail.** There is interest amongst some stakeholders to build an “honor farm”, which would provide work opportunities and other services for those awaiting a prison sentence on a nonviolent conviction.

OPPORTUNITIES FOR CHANGE

Assess indigency early, before a warrant or arrest for non-payment. Defendants should have early access to Rule 8 hearings for an indigency determination. This would reduce the number of applications to accelerate or revoke, and the number of warrants, both of which lead to arrest and jail time.

Consider alternatives to the “honor farm.” While the honor farm presents an interesting opportunity, only a small share of the population currently in the jail would be considered eligible since the vast majority is awaiting trial. The idea also raises concerns of net-widening in that it may be used for low-risk individuals who previously would have received a suspended or deferred sentence. Clearly there is a need for additional mental health, education, and job services within the jail population and the community at large. Rogers County should consider ways to provide or expand upon existing services in the least restrictive ways possible.

V. CONCLUSIONS

The goal of this memo is to begin an analysis of jail population growth drivers in Rogers County, and suggest the kinds of questions that the county should be asking in order to gain a more complete understanding and prioritize areas for change. A deeper, data-driven analysis detailing how individuals enter and move through the system is an advisable next step to more substantial reforms—such an analysis would understand how lengths of stay vary by charge, what impact multiple admissions have (people who are booked into the jail multiple times in one year), the impact of failure to pay and failure to appear on admissions, and a case processing study to assess what points in legal process are particularly lengthy, among others.

The formation and work of the Committee is a promising sign of the urgency with which Rogers County officials view the unsustainable population growth in the jail. Although Rogers County's small size makes resource investments challenging, it also provides a critical advantage for determined collaboration which could pay dividends to the county by ensuring that the jail, the county's most restrictive and most expensive criminal justice resource, is used deliberately and parsimoniously.