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## **Jail Charge Data Analysis and Jail Reduction Strategies for Douglas County, Kansas**

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## Executive Summary

Like many counties across the country, Douglas County, Kansas has experienced a dramatic increase in its jail population over the past several decades, with the per capita jail incarceration rate growing over 70 percent between 1990 and its peak in 2018. In response to concerns about this continued growth, its costs to taxpayers, and its effect on the community, Douglas County stakeholders sought the assistance of the Vera Institute of Justice (Vera) in analyzing the local drivers of jail incarceration and developing strategies to reverse this trend and advance public safety. Since 2019, Vera has used publicly available data to provide research and policy guidance to various Douglas County stakeholders. For this report, Vera used data that is publicly available from the Douglas County “Bookings and Offenses Dashboard” and from the Douglas County Criminal Justice Coordinating Council (CJCC). The data in this report include people released from the jail between January 1, 2017 - December 31, 2021 – just over 10,000 people in total.

### Key Findings

- Most bookings into jail are for minor, nonviolent charges, including charges related to substance use, supervision violations, and poverty.
- The Douglas County jail population is primarily driven by pretrial incarceration.
- Failures to appear (FTA), probation violations, remands and municipal charges are significant drivers of the Douglas County jail population, together accounting for just over half of all jail admissions and bed-days from 2017 to 2021.
  - FTAs were the most common top charge for overall admissions: they made up 21 percent of total admissions and accounted for 12 percent of bed-days. Overall, 40 percent of admissions in which FTA was the top charge were classified as traffic cases from either municipal or district court—and in over a third of those cases, the people jailed lived in another county.
  - Probation violations are the second-highest contributor to jail bed-days and the fifth-most-common top charge.
  - Almost a third of admissions with only municipal charges were classified as traffic cases.
- Overall, violent charges contributed to 21 percent of pretrial jail bookings.
  - Domestic violence (DV) charges represent a majority of admissions with a violent top charge. 45 percent of admissions with a DV top charge were dismissed by a judge or not filed by a prosecutor.
- The majority of admissions for drug-related charges were for drug possession rather than drug manufacture or delivery, and a substantial portion were facing low-level charges.
- DUI is a strong driver of pretrial jail admissions but has less of an impact on bed-days.
- About 40 percent of people were admitted two or more times; these individuals made up 70 percent of admissions and 78 percent of bed-days.
- Black people represent just 6 percent of the county population aged 15 or older, but 23 percent of jail bed-days and 18 percent of jail admissions.

## **Recommendations**

- To alleviate jail bookings for low-level offenses, the county should standardize and monitor implementation of alternatives to traditional arrest and booking, such as citations in lieu of arrest, co-response and/or civilian response teams, and a review of the municipal code.
- To reduce pretrial lengths of stay and a system where those who can afford bail are released and those who cannot stay in jail, the courts should expand the use of non-monetary conditions of release at the earliest point possible and eliminate the use of a bail schedule. This may also mitigate some of the racially disparate impacts of detention.
- To reduce the number of people who cycle in and out of jail on substance use charges, the county should enact a public health approach that recognizes the reality of relapse and takes an evidence-based harm reduction approach, investing in a range of necessary services.
- To reduce the number of DUI admissions and lessen the rate of drunk driving in the community, the county should expand accessible public transportation options and divert first-time DUI arrests to a sobering center with referrals to services.
- To address high rates of incarceration for FTAs, the county should develop additional court resources that help increase appearance and reduce bookings for nonappearance in court by enabling officers to reschedule people with FTAs for new court dates on the spot using either a mobile phone app or filling out a brief rescheduling form.
- To prevent the criminalization of poverty, the county should eliminate the use of financial sanctions, eliminate incarceration as a response to non-payment, and conduct indigency hearings at the earliest stage possible so that court debt may be waived.
- To preserve Due Process, the county should ensure all individuals in both municipal and district court have access to adequate counsel at the earliest stage possible.
- To reduce the number of people booked on probation violations, the county should prohibit incarceration for technical violations (e.g. a missed appointment, a positive urinalysis, missed payment of fees, etc).
- To repair harm done to victims and hold individuals accountable, the county should establish or expand a diversion policy that directs prosecutors to divert people to community-based restorative justice programs when both parties agree to participate.

## **Implementation**

There is immense opportunity for Douglas County agencies to expand on the COVID-era jail population reductions by implementing some of the evidence-based reforms recommended in this report. To manage implementation, the CJCC coordinator should lead individual working groups that define parameters and track implementation over time for each commitment that has generated alignment. These working groups should be composed of local government actors, agency representatives, community members, and the senior data analyst.

## Background & Data Sources

The Vera Institute of Justice (Vera) is a nonprofit, nonpartisan research and policy organization focusing on criminal legal system issues. Since 2019, Vera has used publicly available data to provide research and policy guidance to various Douglas County stakeholders on ways to reduce jail incarceration. In 2022, Vera presented preliminary analysis of county data and policy recommendations on several occasions to the Racial Justice Working Group Subcommittee of the Douglas County Criminal Justice Coordinating Committee (CJCC), as well as to several system actors and community groups.

This memo presents findings from an analysis of data from Douglas County Correctional Facility's jail management system. Vera used data that is publicly available from the Douglas County "Bookings and Offenses Dashboard" and from the Douglas County CJCC. The data in this report include people released from the jail between January 1, 2017 - December 31, 2021 – just over 10,000 people in total.

One limitation of the current jail bookings database, which underlies the dashboard, is that it lists the charges noted in a person's file at booking, but does not specify which charge is the most serious and is thus likely the primary factor determining a person's arrest, status in jail, and subsequent trajectory in the system. This is often called the "top charge" or "controlling charge," based on the relative severity of the charges associated with each booking. Looking at top charges separately from all charges that people in jail are facing can provide a clearer picture of the behaviors and enforcement priorities that are contributing to jail admissions and lengths of stay in jail. For example, less serious charges (like trespassing) may be among the most common charges for people booked into the jail, but they are less frequently the most serious charge on a booking. So, the "top charges" list is a subset of the overall charges list. This report uses a methodology based on Kansas law and local practice to determine which charge is the top/controlling charge in a booking with multiple charges. For further details on this method please see the methodology appendix at the end of this memo.

A further limitation of the analysis is that the originating charge is not available in the jail management system for people who were admitted for a number of charges that do not typically, by themselves, constitute new criminal charges—including failures to appear, probation and parole violations, bond failures, remands, and warrants or detainers. Throughout this document, we refer to these types of charges as "administrative charges." Generally, we assumed that if one of these charges was accompanied by a new criminal, municipal or traffic charge on a booking, that the new charge was driving the arrest rather than the administrative charge. If the administrative charge was listed alone, or only accompanied by other administrative charges, it was considered to be the most serious charge—and the person was considered to be booked for an administrative charge alone. This limitation affects the top charge classification in that, for people admitted on administrative charges, we are not able to assess the severity of their originating charges—for example, to distinguish between someone who was admitted for a failure to appear on a previous felony charge versus a previous traffic charge. However, this limitation is somewhat mitigated by the fact that the booking with the originating charge would presumably still be represented in the analysis the first time they were booked.

Using the top charge analysis, this report focuses on the types of charges underlying both jail admissions and longer stays. It also presents breakdowns of charge types and length of stay by demographic traits (race, ethnicity, gender), legal status (pretrial, sentenced, probation or parole violation), court type (district, municipal), case type (criminal, traffic, other) and other categories. It provides deeper analysis of the charge types that show up most frequently as top charges, such as failure to appear, violent charges, and driving under the influence, and on several types of charges for which potential policy changes are within the purview of local actors, such as municipal ordinance violations, probation violations, and drug possession.

This analysis is based on data about all people who were released from the Douglas County jail during the five-year period from 2017 to 2021, meaning only bookings that have been completed. By focusing on bookings for which both admission and release dates are known, we ensure the analysis is based on complete information about length of stay and release reasons. More information about the dataset, its limitations, and how the data was cleaned and prepared for analysis can be found in the methodology appendix at the bottom of this report. The second part of the report provides recommendations for future data collection and management (to enable ongoing analysis along these lines) and for policy changes that could help to reduce the use of the jail.

## Acknowledgements

Vera is grateful to Dr. Matt Cravens, Senior Data Analyst for the CJCC, for providing the data used in this analysis with permission from the Sheriff's Office, and for his generosity in answering questions about the jail management system. Vera would also like to thank the Douglas County Racial and Ethnic Disparities Working Group for inviting us to participate in a series of work sessions where many of the policies outlined in this memo were developed. Specifically, we'd like to thank Pam Weigand, Chuck Epp, Jill Jolicoeur, Jolene Anderson, LeRonda Roome, Gary Bunting, Tamara Cash, Shaye Downing, and Bryce Hirschman. We'd also like to thank Sheriff Jay Armbrister, Chief Rick Lockhart, District Attorney Suzanne Valdez and Deputy Prosecuting Attorney Josh Seiden, County Commissioner Shannon Portillo, County Commissioner Shannon Reid, City Commissioner Amber Sellars, City Commissioner Bart Littlejohn, City Commissioner Brad Finkeldei, Mayor Courtney Shipley, Craig Owens, Sam Alison-Natale, Shannon Young, Municipal Prosecuting Attorney Beth Hafoka and Vicki Stanwix for sitting down with us to talk about current practice and helping us better understand the aspects of the system that data alone cannot capture. We'd also like to thank the members of the Justice Matters Criminal Justice Reform Working Group for their tireless work to ensure efforts to make Douglas County a safer and more just community continue moving forward.

## Glossary of Key Terms

The following key terms are used frequently throughout this report:

**Jail admissions:** the number of individual bookings into jail within the time period covered by this analysis.

**Jail bed-day:** each day that a person spends in jail, or a fraction of a day for people who are released the same day as they are booked into jail. The number of bed-days is summed across all the individuals that were booked into the jail during the time period covered by this analysis to analyze which types of admission contribute to shorter/longer jail stays.

**Judicial status:** the court status of each charge on a booking at the time a person was admitted to jail—for instance, “pretrial,” which means an individual is legally innocent and has not been convicted or taken a plea, or “sentenced to county time,” which means an individual has either been convicted of or plead guilty to the charge and are serving a custodial sentence in the jail.

**Court type:** whether each charge originated in district or municipal court. Douglas County has one district court and three municipal courts—one each for Baldwin City, Eudora, and Lawrence. District court is divided into 8 divisions that each handle different types of criminal, civil, and juvenile cases, while the municipal courts primarily handle violations of city ordinances, including parking and traffic violations.

**Case type:** whether the case was classified as criminal, traffic, or other, based on top charge.

**Top charge:** the most serious charge among the charges listed on a person’s booking (see the methodology appendix for more details). Note that this represents the charge listed at booking, which may differ from what a person is ultimately charged with by the District Attorney and potentially convicted of.

## Key Findings

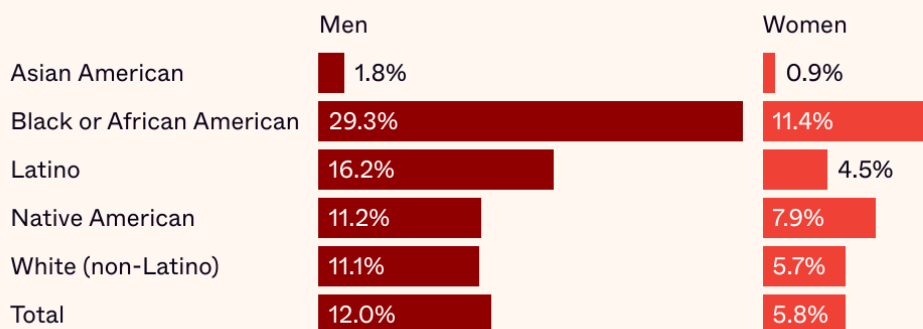
### 1. Demographics of people admitted to jail

People were released from the Douglas County jail over 21,000 times from 2017 to 2021.<sup>1</sup> This number represents 10,376 unique individuals—some of whom were sent to jail multiple times. Of those, at least 6,264 individuals (60 percent) were Douglas County residents at the time of their arrest.<sup>2</sup> Excluding the college-age population, police booked 1 out of 11 Douglas County residents aged 25 to 54 (prime working age) between 2017 and 2021.<sup>3</sup> Almost 1 in 3 prime-working-age Black men, and almost 1 in 6 prime-working-age Latino men, were booked into jail.

Figure 1

#### Police booked 12 percent of Lawrence-area men aged 25-54 into the Douglas County jail between 2017 and 2021

There were stark disparities by race and gender but no group had a truly low exposure to jail incarceration.



Note: Only jail bookings for people aged 25-54 and with an address in Douglas County are included in the numerator. Resident population aged 25-54 from Douglas County used for denominator.

Source: Jail bookings for 2017-2021 from Douglas County, Kansas; 2019 U.S. Census Bureau data.

White people made up the majority of jail admissions and jail-bed days, which reflects the demographic makeup of the resident population in Douglas County. However, as shown in Figure 2, **Black people represent just 6 percent of the county population aged 15 or older, but 23 percent of jail bed-days and 18 percent of jail admissions.** The

<sup>1</sup> The dataset is based on a cohort of people who were released during 2017-2021, some of who may have been admitted prior to 2017.

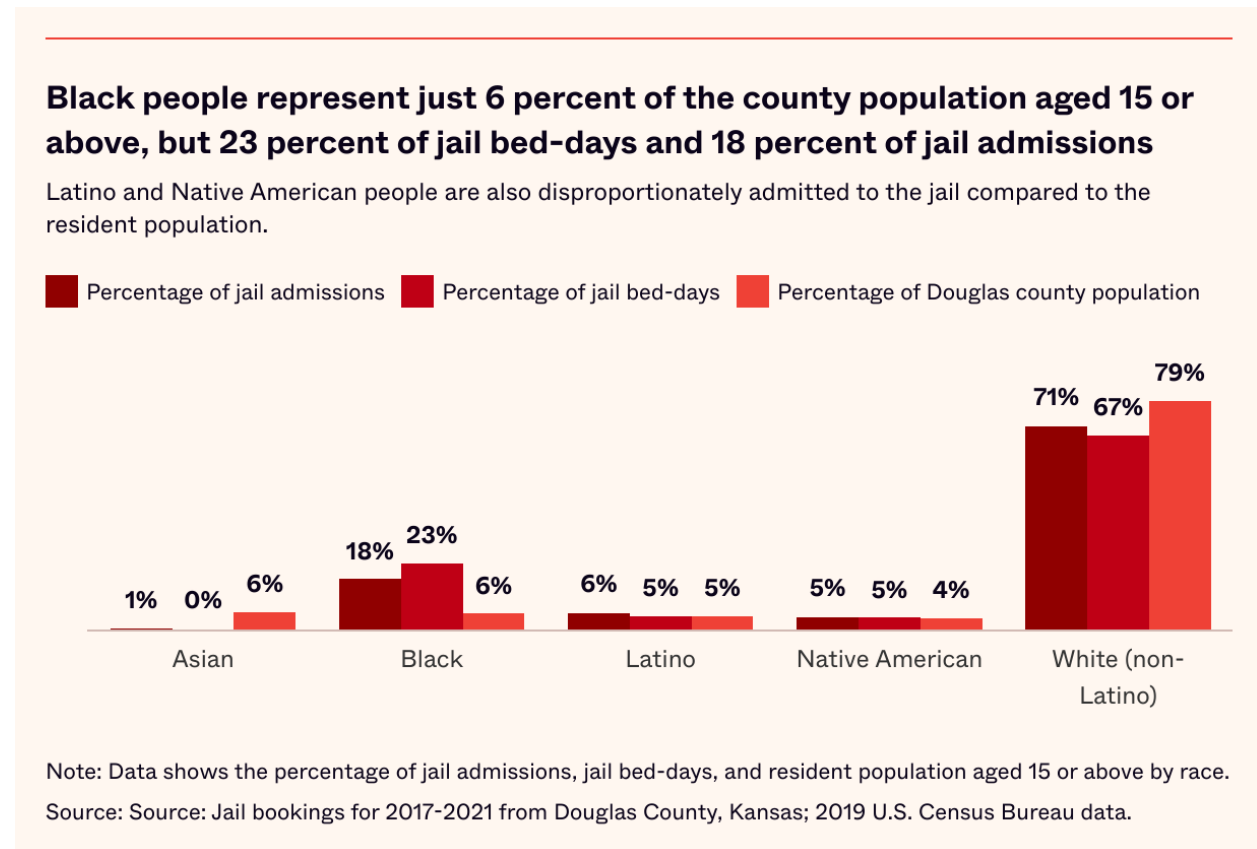
<sup>2</sup> This count excludes 302 people who had missing info for residence and who are most likely homeless people in Douglas County.

<sup>3</sup> To account for the fact that Douglas County is home to the University of Kansas and many students have a shorter residency period, the college-age population is excluded from these statistics, which use county residents aged 25 to 54 as the denominator. Percentage of Douglas county population is based on data from the U.S. Census Bureau Annual County and Resident Population Estimates by Age, Sex, Race, and Hispanic Origin: April 1, 2010 to July 1, 2019. See United States Census Bureau, *County Population by Characteristics: 2010-2019* (Washington, DC: United States Census Bureau, 2021).



disparities in jail admissions suggest that law enforcement officers are more heavily policing and/or more frequently deciding to make arrests when interacting with Black people relative to the general population.<sup>4</sup>

**Figure 2**



The fact that the disparities are even sharper for the proportion of bed-days than the proportion of admissions indicates that Black people are staying in jail longer than white people. This could be the result of money bail being set more frequently, higher bail amounts and/or greater difficulty affording money bail. Black people could also be spending more time in jail on supervision revocations or serving longer sentences.<sup>5</sup> The data also suggests that Latino and

<sup>4</sup> Studies show that racial disparities in the criminal legal system begin at the first point of officer interaction. “Pretextual stops,” or a stop that an officer makes for one reason (e.g. broken tail light) during which they look for evidence of additional crimes (e.g. possession of a controlled substance), are a key driver of inequity. See Vera Institute of Justice, Motion for Justice, accessed October, 2022 <https://motionforjustice.vera.org/>.

<sup>5</sup> Several studies have found that people of color are treated more harshly than white people at each stage during the pretrial process, beginning with the initial release decision, followed by the decision to set financial or non-financial conditions, and then if financial conditions are set, in the bail amount. These biases result in a 10-25 percent higher likelihood of pretrial detention for Black and Latinx people than white, and higher median bond amounts. Controlling for other factors, a Black person accused of a crime is more likely to have bail set, and on average, it is set in an amount \$10,000 or higher than that of a white person. See Wendy Sawyer, “How race impacts who is detained pretrial,” *Prison Policy Initiative*, October 9, 2019, [https://www.prisonpolicy.org/blog/2019/10/09/pretrial\\_race/](https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/); and one study found that Black people accused of drug offenses were 80 percent less likely to receive a recognizance bond than white

Native American people are disproportionately admitted to the jail compared to the resident population. However, common misclassification and smaller numbers make it more difficult to accurately measure disparities for these groups of people, as well as for people who identify with multiple races and ethnicities.<sup>6</sup>

**Women made up 27 percent of admissions to the jail from 2017 to 2021.** From 2000 to 2019, the women’s incarceration rate in Douglas County almost tripled, from 29 to 84 women in jail for every 100,000 working-age residents.<sup>7</sup> Most women were admitted to jail for low-level, nonviolent offenses: 35 percent of women’s admissions from 2017 to 2021 had an administrative charge as the top charge, and 27 percent had a nonperson, nonviolent misdemeanor as the top charge.<sup>8</sup> Nationally, women detained on unaffordable bail pretrial have a median annual income of \$11,071, making even comparatively “low” bond amounts just as out of reach as higher bonds.<sup>9</sup> Many women held on bail are the primary caregivers of minor children, which can create additional pressure to take a guilty plea just to be released from jail in order to care for their families.<sup>10</sup>

**Douglas county residents aged 25 to 54 (the prime working-age population) made up 71 percent of jail admissions and 78 percent of jail bed-days.** The fact that working-age people make up such a large portion of the local jail population raises questions about how local incarceration may be creating barriers to employment and economic mobility and further exacerbating existing racial disparities in income and economic outcomes. Pretrial detention has been shown to have negative impacts on labor market outcomes, including a decreased likelihood of formal sector employment and increased likelihood of receiving

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people. See Tina L. Freiburger, Catherine D. Marcum and Mari Pierce, “The Impact of Race on the Pretrial Decision,” *American Journal of Criminal Justice* 35, no. 1: 76-86.

<sup>6</sup> For a comparison of how Hispanic people are represented in criminal justice data across U.S. states, see Sarah Eppler-Epstein, Annie Gurvis, and Ryan King, *The Alarming Lack of Data on Latinos in the Criminal Justice System*, (Washington, DC: Urban Institute, December 2016).

<sup>7</sup> Vera Institute of Justice, Incarceration Trends, accessed December 2021, [https://trends.vera.org/state/KS/county/douglas\\_county](https://trends.vera.org/state/KS/county/douglas_county).

<sup>8</sup> Administrative charges are those that do not typically, by themselves, constitute new criminal charges. The most frequently recorded charges in this category were failure to appear and violations of probation and parole. Generally, we assumed that unless an administrative charge was accompanied by a new criminal or municipal charge, it was a technical violation such as missing a meeting with a probation officer, a positive drug test, or non-payment of court fines and fees. However, it is possible that a person’s supervision would be revoked after being charged with a new offense, but the offense may not be filed until later, which would make it appear like a technical violation in the data. In other cases, a person might be arrested on a new charge that the prosecutor later decides not to file. In some cases, this might be because the person would spend roughly the same amount of time incarcerated on a technical violation, but the prosecutor would not need to prove the violation beyond a reasonable doubt.

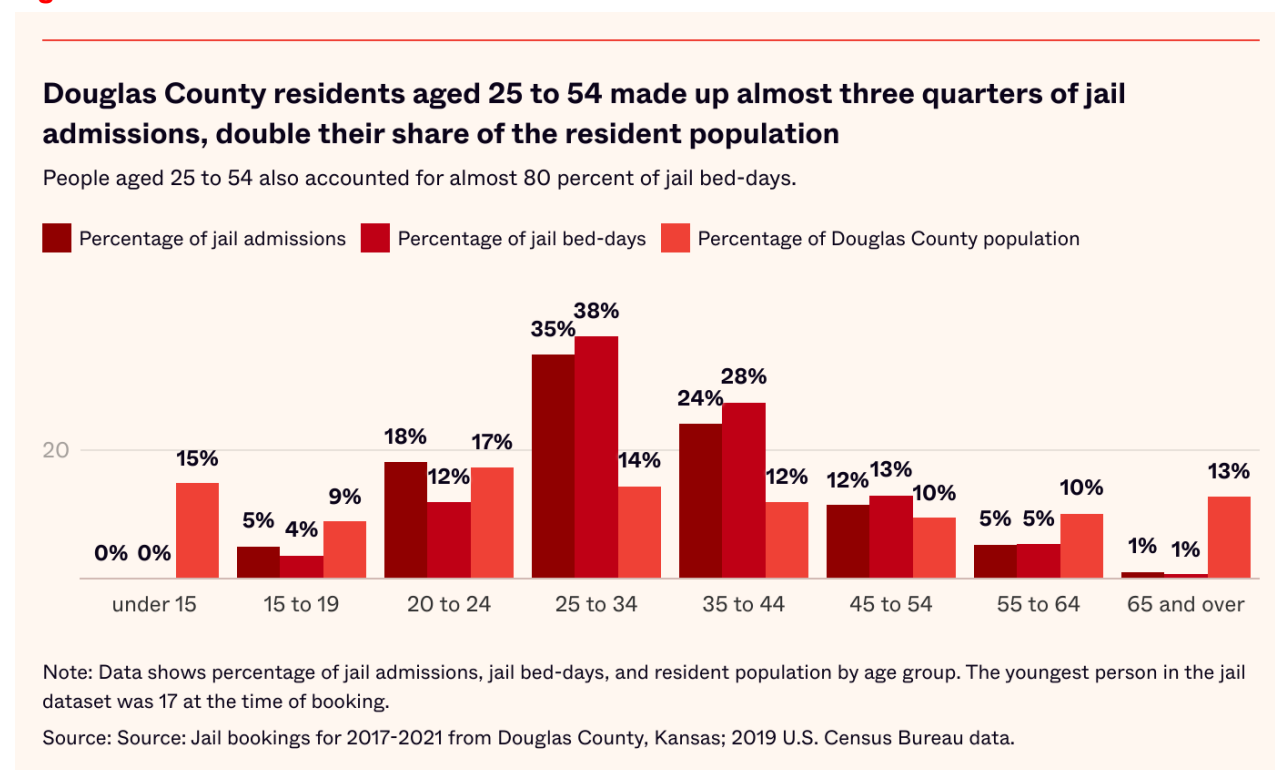
<sup>9</sup> Bernadette Rabuy and Daniel Kopf, *Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time* (Northampton, MA: Prison Policy Initiative, 2016).

<sup>10</sup> Although recent national data on this subject is not available, a study using data from a 2002 Survey of Inmates in Local Jails conducted by the Bureau of Justice Statistics found that 2/3 of women who were unable to meet bail conditions were mothers of minor children. For a discussion of this analysis see Wendy Sawyer, *How does unaffordable money bail affect families?* (Northampton, MA: Prison Policy Initiative, 2018).

employment- and tax-related government benefits compared to people in similar circumstances who are initially released.<sup>11</sup>

**Douglas County residents between the ages of 18 to 24 made up 23 percent of admissions and 15 percent of bed-days.**<sup>12</sup> Lawrence is home to the University of Kansas, a campus with an enrollment of 22,500 students in Fall 2021.<sup>13</sup> Students represent a large share of the county population, although not all the people in the 18-24 age group are attending the university. When arrested, most people in this age group were booked for low-level, nonviolent charges: 31 percent of admissions for this age group from 2017 to 2021 had a nonviolent misdemeanor as the top charge (primarily driving under the influence), and 28 percent had an administrative charge as the top charge (most commonly failure to appear).

**Figure 3**



<sup>11</sup> Will Dobbie, Jacob Goldin, and Crystal S. Yang, “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,” *American Economic Review* 108 no. 2 (2018): 201-40.

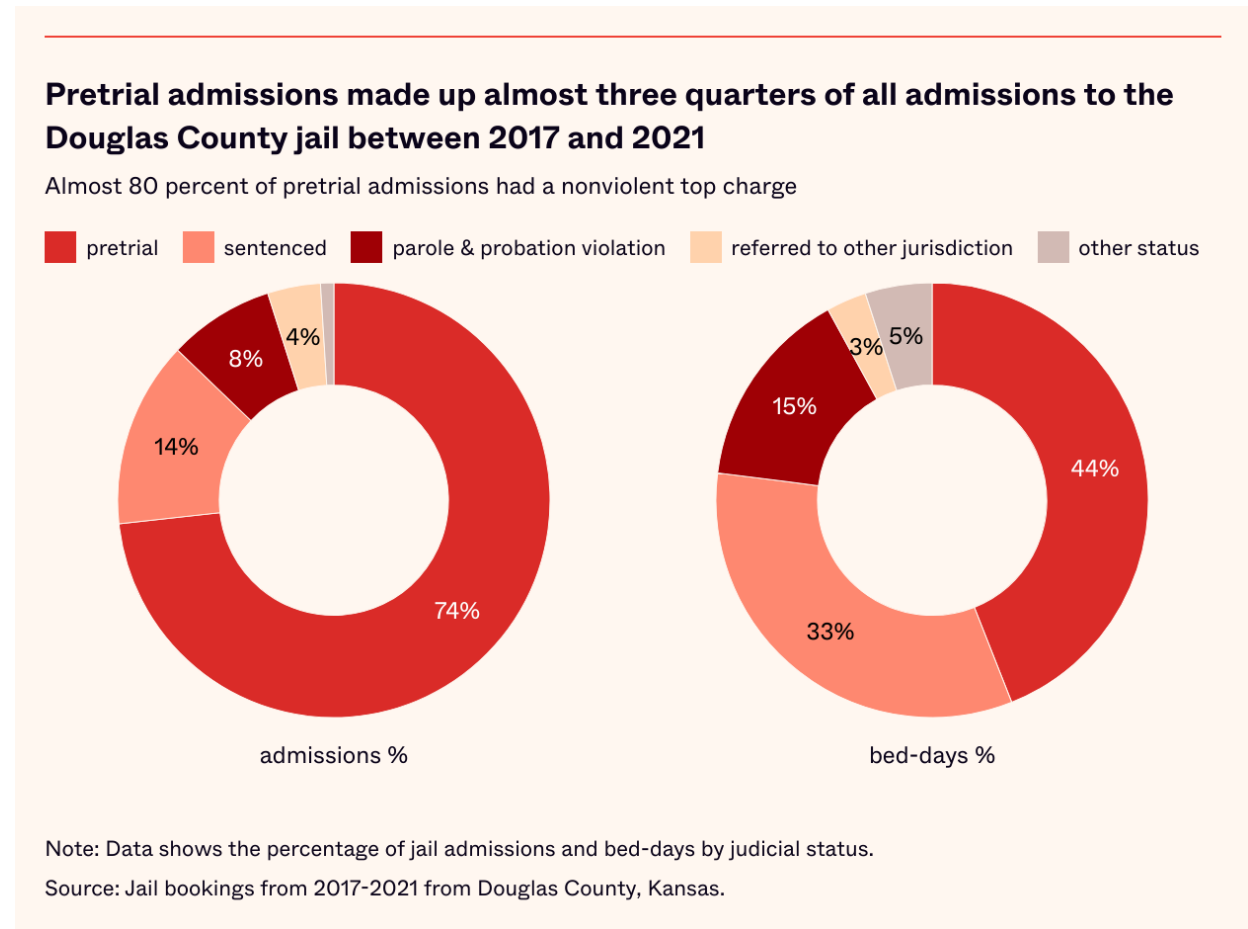
<sup>12</sup> Numbers differ from those presented in figure 3, which presents admissions and bed-days for groups that match age groupings provided in the U.S. Census Bureau data.

<sup>13</sup> We looked at enrollment data by physical campus, see The University of Kansas - Analytics, Institutional Research & Effectiveness, “Enrollment Dashboard: Fall Enrollment,” <https://aire.ku.edu/enrollment>.

## 2. Pretrial incarceration

**The Douglas County jail population is primarily driven by pretrial incarceration.** Pretrial admissions (including for pending charges and for charges not ultimately filed) accounted for 74 percent of admissions and 44 percent of bed-days, the largest portion of total bed days.<sup>14</sup>

**Figure 4**



<sup>14</sup> Charges with a status of “pending referral to prosecutor” and “charge not filed by prosecutor” are also considered to be pretrial in this analysis. According to discussions with an employee in the Douglas County Sheriff’s Office conducted in Spring 2022, when a person is arrested on a new charge, the charge is initially labeled in the jail management system as “pending referral to prosecutor.” The status is later changed to “pretrial” if the prosecutor decides to pursue the charge, or “charge not filed by prosecutor” if not. 54.2 percent of charges were labeled pretrial, 14.8 percent were pending referral, and 5.4 percent were not filed by the prosecutor.

## What is driving pretrial jail admissions?

The majority of people admitted to the jail pretrial (79 percent) had a nonviolent top charge, and 73 percent were facing a misdemeanor or failure to appear top charge.<sup>15</sup> Figure 5 shows the breakdown of pretrial admissions and bed-days by charge class. Although felony charges only made up 21 percent of pretrial admissions, they accounted for 62 percent of bed-days. By comparison, misdemeanors accounted for a far greater share of pretrial admissions (49 percent) and only 17 percent of bed-days. This finding is not surprising, given that people who are facing more serious charges tend to have higher bail amounts set and stay in jail longer, whereas people facing less serious charges might be able to come up with bail more quickly. Research from other places has shown that despite decreasing admissions, increasing lengths of stay have kept jail populations high, and a small number of people tend to account for the greatest portion of bed-days.<sup>16</sup> A comprehensive strategy to reduce jail populations must include strategies to both reduce jail admissions and address long lengths of stay.

Figure 5

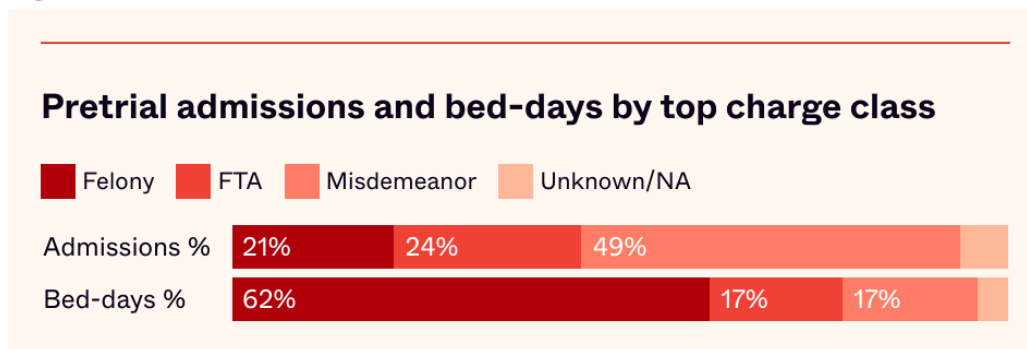
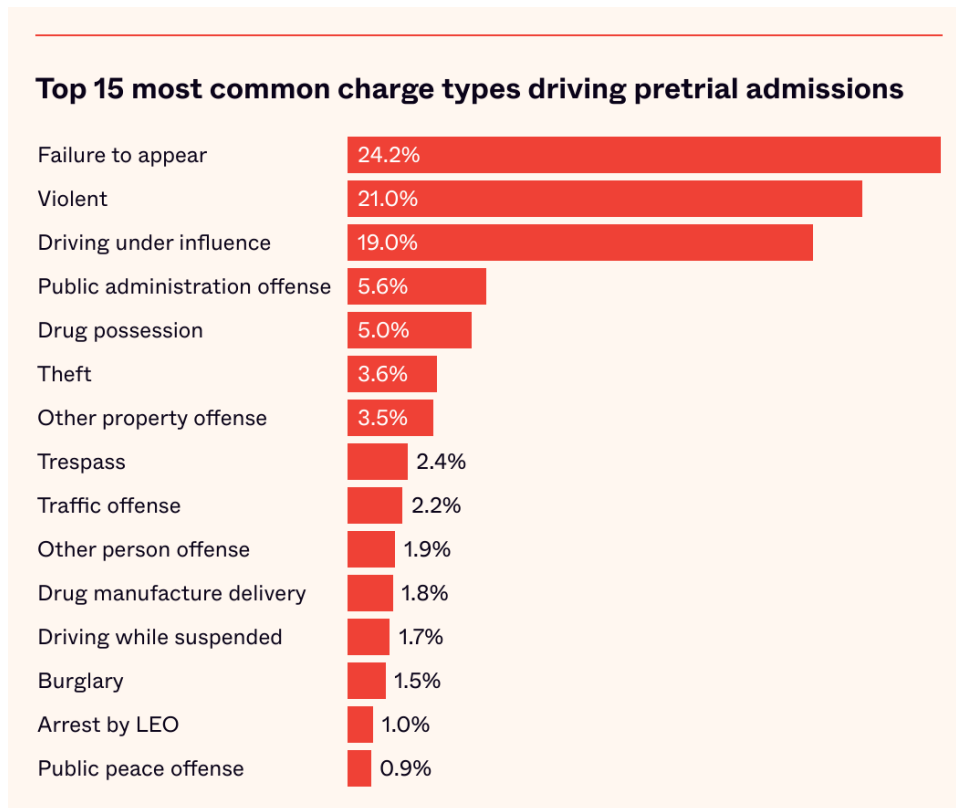


Figure 6 shows the top 15 most common charges driving pretrial admissions into the jail. Together, failures to appear (FTAs), public administration charges (a group of charges related to tampering or interfering with the work of government officers, including law enforcement and corrections staff), drug possession, theft, other property offenses, trespass, and traffic offenses (excluding vehicular homicide) made up almost half (47 percent) of pretrial jail admissions.

<sup>15</sup> In this analysis, charges are categorized as “violent” when they involve force or threat of force resulting in bodily injury or death, a definition that is based on the FBI’s definition of violent crime under the Uniform Crime Reporting (UCR) Program. This includes charges such as murder and non-negligent manslaughter, rape, robbery, assault, battery, and kidnapping. Involuntary manslaughter and vehicular homicide are categorized separately under “other person offenses.”

<sup>16</sup> See Jake Horowitz and Tracy Velázquez, *Why Hasn’t the Number of People in U.S. Jails Dropped*, (Washington, DC: Pew Research Center, March 27, 2020); and Melanie Close, Olive Lu, Shannon Tomascak, Preeti Chauhan, Erica Bond, *Understanding Trends in Jail Populations, 2014-2019: A Multi-Site Analysis*, (Data Collaborative for Justice at John Jay College, December 2021).

**Figure 6**



**Top charge type #1: Failure to appear**

Almost a quarter of pretrial jail admissions were due solely to failure to appear for a court hearing (FTA). See section 2 of this report for more detailed information about FTA bookings.

**Top charge type #2: Violent charges**

Violent top charges made up 21 percent of pretrial admissions and 32 percent of pretrial bed-days. Within the category of pretrial admissions with a violent top charge, 65 percent of pretrial admissions were for domestic violence charges for which arrest is mandatory in Kansas.<sup>17</sup> Looking specifically at pretrial admissions, domestic violence charges accounted for 61 percent of the top charges classified as violent on which men are booked into jail and 72 percent of the top charges classified as violent on which women are booked into jail. Notably, 45 percent of the total number of people booked into jail and 46 percent of the people booked pretrial with a domestic violence top charge were ultimately released due to the charge(s) being dismissed.<sup>18</sup> Research suggests that while mandatory arrest policies are meant to protect survivors of domestic violence, they can have unintended negative consequences, including higher arrest

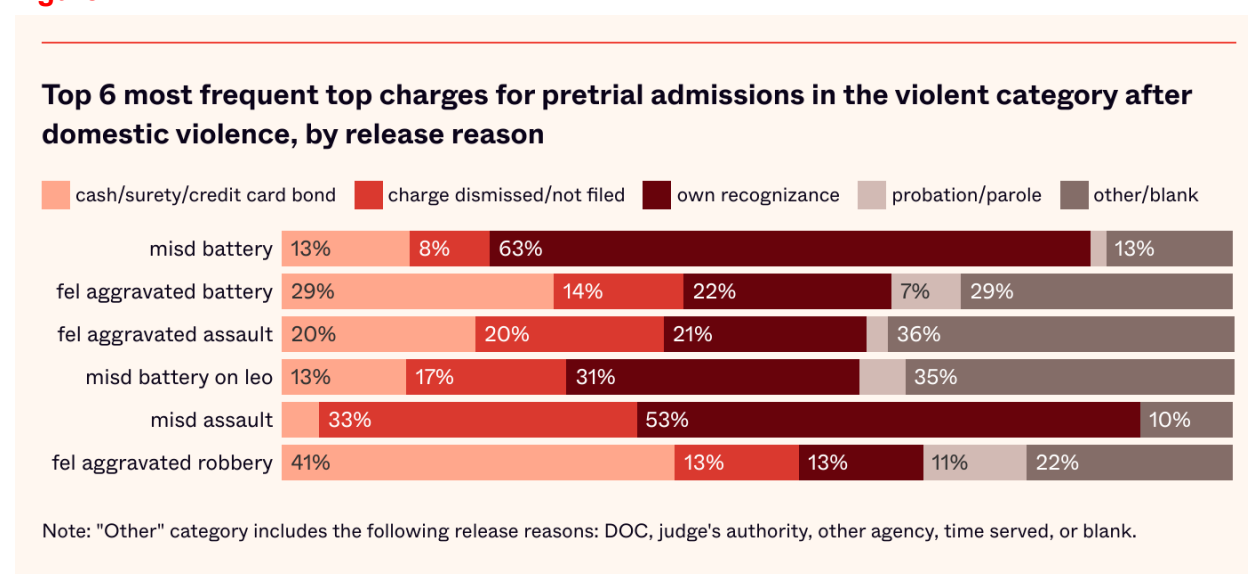
<sup>17</sup> This may be an undercount of overall domestic violence-related charges, since the data may not always note whether or not a violent charge was domestic in nature. See KS Stat § 22-2307 (2021).

<sup>18</sup> For men, 38 percent of domestic battery admissions were dismissed, and for women, 59 percent of domestic battery admissions were dismissed.

rates for survivors of domestic violence, unwanted involvement of child protective services, and increased risk of retaliation.<sup>19</sup>

After domestic violence charges, the next six most common types of charges classified as violent were misdemeanor battery (7 percent of violent pretrial admissions), felony aggravated battery (7 percent), felony aggravated assault (7 percent), misdemeanor battery on a law enforcement officer (3 percent), misdemeanor assault (2 percent), and felony aggravated robbery (1 percent). As shown in figure 7, people charged with misdemeanor battery or misdemeanor assault charges were released on their own recognizance more than half of the time. Misdemeanor assault and felony aggravated assault charges were the most likely to be dismissed or not filed—33 and 20 percent of the time, respectively.

**Figure 7**



### Top charge type #3: DUI charges

Driving under the influence (DUI) as a top charge made up 19 percent of pretrial admissions but less than 2 percent of pretrial bed-days. DUI charges—91 percent of which were misdemeanors—also require arrest in Kansas.<sup>20</sup> However, the median length of stay for people admitted pretrial on DUI charges was less than one day. People with multiple DUI convictions and/or a habitual violator charge may be an exception; these “enhanced DUI” cases make up only 17 percent of DUI-related pretrial bookings but account for 69 percent of DUI-related pretrial bed-days. DUI convictions also have mandatory jail stays, with penalties ranging from 48 hours to 6 months upon a first conviction up to 90 days to a year for a fourth or subsequent conviction.<sup>21</sup> Habitual violator convictions, which occur when people have been convicted of a

<sup>19</sup> Victoria Frye, Mary Haviland, and Valli Rajah, “Dual Arrest and Other Unintended Consequences of Mandatory Arrest in New York City: A Brief Report,” *Journal of Family Violence* 22, no. 6 (2007), 397-405; and Mimi E. Kim, “From Carceral Feminism to Transformative Justice: Women of-Color Feminism and Alternatives to Incarceration,” *Journal of Ethnic & Cultural Diversity in Social Work* 27, no. 3 (2018), 1-15.

<sup>20</sup> KS Stat § 8-2104 (2021).

<sup>21</sup> KS Stat § 8-1567 (2021).

number of motor vehicle-related charges three or more times in the last five years, also come with a 90-day minimum mandatory jail penalty.<sup>22</sup> While DUI charges may not be a significant driver of pretrial bed-days, the high number of DUI admissions likely account for a substantial amount of law enforcement time processing arrests, bookings, and releases. In addition, people between the ages of 18 and 25 accounted for a disproportionate 37 percent of admissions with a DUI top charge, compared to 28 percent of admissions due to all other charges.

#### **Top charge type #4: Public administration charges**

Public administration charges are a group of charges related to tampering or interfering with the work of government officers, including law enforcement and corrections staff. The most common top charge within this group was misdemeanor “interference with law enforcement officer” (40 percent of pretrial public administration charges), a charge that most commonly refers to obstructing or resisting arrest in the data, but can also be more serious allegations such as tampering with evidence or making a false report. Misdemeanor violation of a protective order made up 29 percent of pretrial admissions where a public administration charge was the top charge. Other types of charges in this category include (but are not limited to) unlawful tampering with electronic monitoring equipment, intimidation of a witness/victim, and violating the offender registration act.

#### **Top charge type #5: Drug possession charges**

This category refers to simple drug possession charges, excluding any drug possession charges that include an intent to sell or distribute (which are included in the category “drug manufacture/delivery”). Admissions where a drug possession charge was the top charge made up 5 percent of pretrial admissions and 7 percent of pretrial bed-days. More than half of pretrial drug possession admissions (53 percent) were for possession of an opiate, opium, narcotic or stimulant, which is a felony charge in Kansas.<sup>23</sup> Of the pretrial admissions where drug possession was the top charge, 40 percent were for misdemeanors—primarily possession of a hallucinogenic drug, followed by drug paraphernalia charges.

#### **Top charge type #6: Theft**

Admissions where a theft-related charge was the top charge accounted for 4 percent of pretrial admissions and 4 percent of pretrial bed-days. Almost half (43 percent) of pretrial theft admissions were for misdemeanor charges that are likely to be related to poverty—the majority for theft of property or services worth less than \$1,500, followed by criminal use of a financial card of less than \$1,000 and criminal deprivation of property.<sup>24</sup> Of the pretrial theft admissions where the top charge was a felony, 10 percent were for identity theft, a level 8 nonperson felony in Kansas except in cases where the monetary loss is greater than \$100,000.<sup>25</sup> Overall, 44 percent of pretrial theft admissions had a level 9 nonperson felony as the top charge—the least severe type of felony related to theft—but the specific details of these charges are unclear from the data. Based on Kansas statute, these charges could be one of three types of theft of property

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<sup>22</sup> KS Stat § 8-286 (2021); and KS Stat § 8-287 (2021).

<sup>23</sup> KS Stat § 21-5706 (2021).

<sup>24</sup> KS Stat § 21-5801 (2021) for theft of property or services; KS Stat § 21-5828 (2021) for criminal use of a financial card; and KS Stat § 21-5803 (2021) for criminal deprivation of property.

<sup>25</sup> KS Stat § 21-6107 (2021).



or services that are classified as level 9 nonperson felonies in Kansas: (1) theft of property or services between \$1,500 and \$25,000; (2) theft of property worth less than \$1,500 from three separate establishments within a period of 72 hours; and (3) theft of property worth between \$50 and \$1,500 committed by a person with at least two prior theft convictions in the previous five years.

### **Top charge type #7: Other property charges**

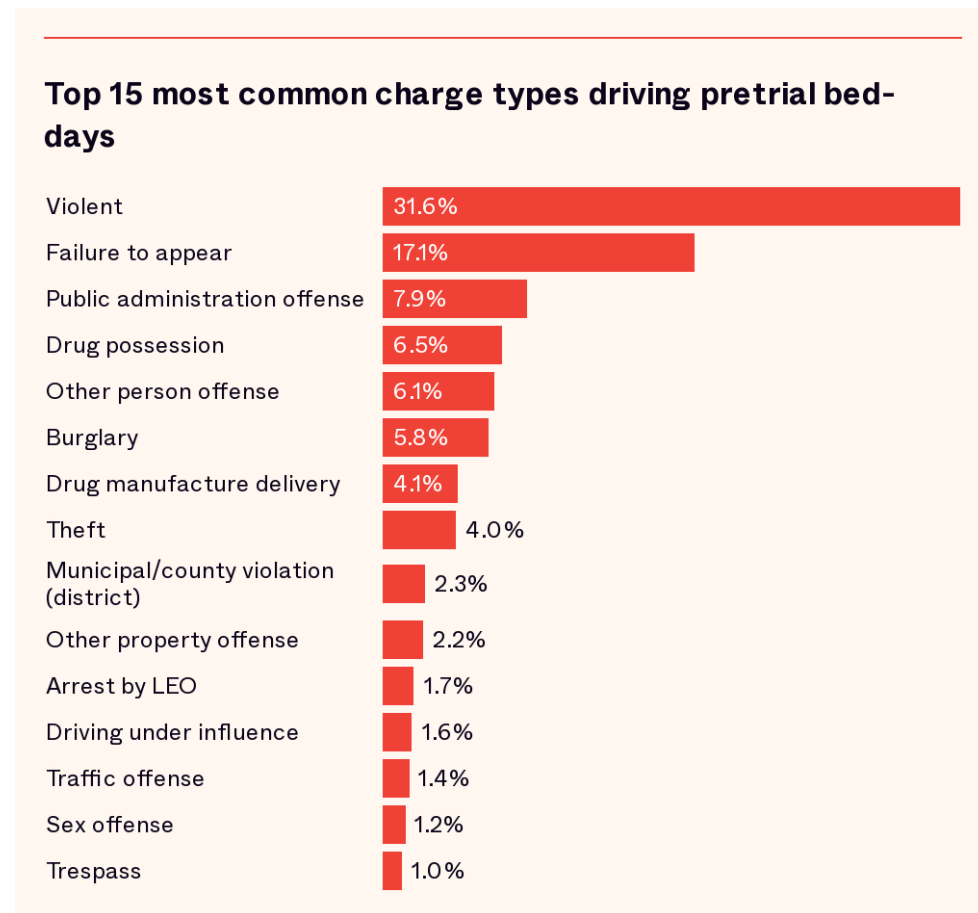
The group “other property offenses” primarily includes criminal property damage charges. Within people admitted pretrial with criminal property damage as a top charge, 74 percent were misdemeanors and 24 percent were felonies.

### **What is driving pretrial bed-days?**

In addition to pretrial admissions, we also look at pretrial bed-days—that is, the sum of days spent in jail across persons admitted pretrial—to understand not just which types of charges are contributing the greatest number of admissions, but which types of charges are responsible for both high admissions *and* long jail stays, and thus impacting the size of the jail.

**Figure 7** shows the top 15 most common charges driving pretrial bed-days. Compared to the types of charges that drive pretrial admissions, violent charges, burglary charges, drug manufacture and delivery charges, other person offenses, and sex offenses are stronger drivers of pretrial bed-days. This is expected, as there are fewer people admitted to jail on these more serious charges, but they spend longer in jail, likely either because they have been remanded without bail, or are unable to pay the higher monetary bail amount set on more serious felony cases. While the top or controlling charge is generally thought of as the charge that is keeping someone in jail, there may also be cases in which someone is pending trial on a charge and would be released—save for a probation violation related to another charge that is keeping them in jail pending a hearing. During the time period covered by this analysis, people in this situation were not eligible to be released, even if their bond was paid; however, according to the CJCC, people with probation violations were made eligible for pretrial release with pretrial services in March, 2022. Additional analysis should be undertaken to see whether people charged with probation violations are being released more quickly and/or at higher rates as a result of this policy change.

**Figure 7**



FTA as a top charge accounted for almost one in five pretrial bed-days (17 percent). This is due to the high number of admissions for these charges, rather than longer jail stays. The median length of stay is 0.8 days for people admitted pretrial with FTA as a top charge. Unfortunately, the absence of an originating charge in the jail management system does not allow us to identify the portion of admissions with FTA as a top charge that have a serious or violent felony originating charge. Nevertheless, the high volume of short jail stays for these types of charges raises serious questions about the public safety rationale of booking people into jail—especially given that better alternatives exist to ensure peoples’ appearance at court. It is also impossible to distinguish between failures to appear that reflect intentional efforts to evade justice as opposed to missed court dates that stem from conflicts, challenges, forgetting, or a misunderstanding of the judicial process. As discussed further in Section 3, available evidence suggests that the majority of FTA charges are in the latter category. If most or all bookings in this category were to be eliminated, the county would likely realize cost savings, reduce jail staff administrative time spent processing bookings and releases, and prevent the unnecessary trauma and destabilization people experience in jails.

Admissions where a public administration charge was a top charge accounted for 8 percent of pretrial bed-days—again, mainly due to the high number of admissions for these charges, rather

than long jail stays. The median length of stay was less than 1 day for people admitted pretrial with this top charge.

Admissions where a simple drug possession charge was the top charge accounted for 7 percent of pretrial bed-days, and admissions where a drug manufacture or delivery charge was the top charge accounted for 4 percent of pretrial bed-days. Similar to FTAs and public administration charges, these charges factor in the top 10 types of charges driving pretrial bed-days due to the high number of admissions for these charges, rather than long lengths of stay. The median length of stay is 0.4 days (almost half a day) for people admitted pretrial on simple drug possession charges and 0.8 days for those admitted pretrial on drug manufacture or delivery charges. Again, this raises questions about opportunities to avoid jail bookings altogether, particularly given the well-documented negative consequences of incarceration for people who use drugs.

The category “other person offense” includes charges that are classified as person crimes in the Kansas sentencing guidelines, but are not included in the list of violent charges or other categories delineated in this report. Person charges generally refer to offenses that inflict, or could inflict, harm to another person. People charged with other person offenses made up 2 percent of pretrial admissions and 6 percent of pretrial bed-days. The majority (78 percent) of pretrial admissions for other person offenses were for attempted or actual criminal threat, for which the median pretrial length of stay was 1.5 days.

Admissions where burglary was the top charge accounted for less than 2 percent of pretrial admissions and 6 percent of pretrial bed-days. The median pretrial length of stay for people admitted on burglary charges was 2.5 days, and 3.5 days for aggravated burglary cases.

The category “municipal/county violation” is used as an “other” category when officers don’t know or didn’t list the charge on a booking. This charge has been less frequently used in more recent years.

The category “other property offense” includes charges that are classified as property crimes in the Kansas sentencing guidelines, but that fall outside of the other categories. The majority (88 percent) of pretrial admissions in this category were for criminal damage to property, for which the median pretrial length of stay was 0.1 days.

Pretrial admissions resulting from arrest warrants (denoted as “Arrest by LEO”) accounted for 2 percent of pretrial bed-days and 1 percent of pretrial admissions.<sup>26</sup> People admitted to jail pretrial with an arrest warrant as the top charge had a relatively high median length of stay—8.7 days. The lack of originating charge in the data means we do not know what these warrants were for; however, for the majority of these cases, the warrant is likely an outstanding warrant for a past action or missed hearing. Out of a total of 478 pretrial admissions in which the person booked into jail had a warrant listed one or more times on the booking, 30 percent had no other type of charge listed, and 21 percent were only accompanied by an administrative charge. In 13

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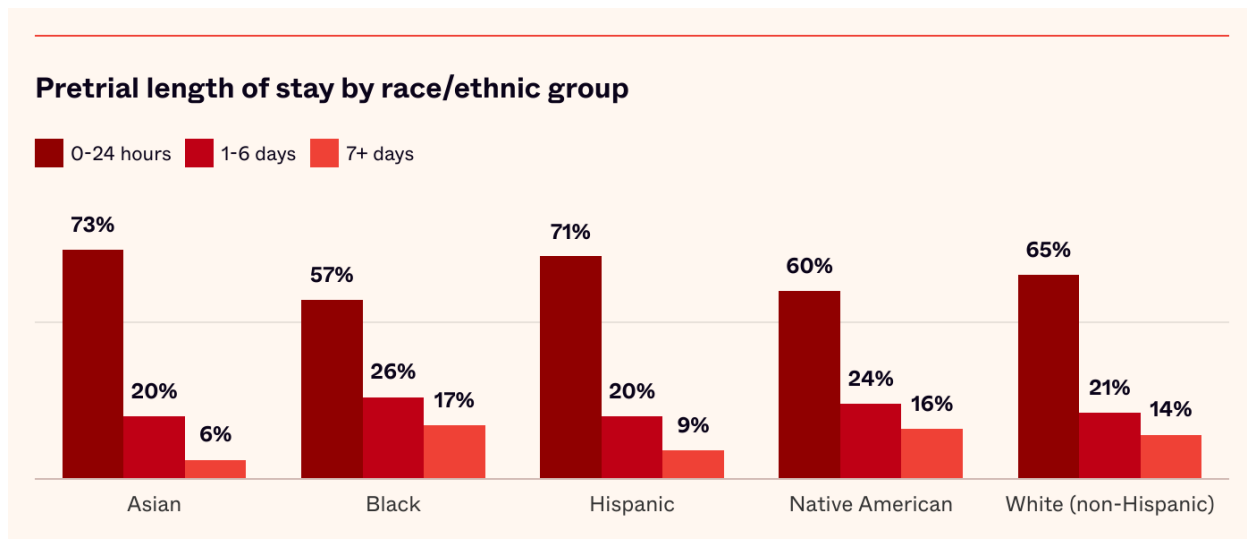
<sup>26</sup> The relevant statute for this charge states that it can occur when there is a warrant out for a person’s arrest or when an officer has probable cause to believe that a person is committing or has committed a crime; however, in all instances where this charge appears in the dataset, the charge is denoted as a warrant arrest, either local or for another state or jurisdiction. See KS Stat § 22-2401 (2021).

percent of pretrial admissions with an arrest warrant, the warrant was only accompanied by a misdemeanor or unknown charge and no felony—most commonly domestic battery, driving while suspended, DUI and interference with a law enforcement officer (which includes resisting or obstructing arrest). In 36 percent of pretrial admissions with an arrest warrant, the warrant was accompanied by one or more felony charges—most commonly interference with a law enforcement officer, followed by possession of stolen property and drug paraphernalia charges. Whether or not an arrest was made pursuant to a warrant may not be uniformly or reliably recorded in the jail management system, given the relatively small number of admissions and lack of overlap with, for example, FTA bookings. Instead, it is likely that this is only recorded in a subset of situations.

### How long did people being held pretrial stay in jail?

The majority of people admitted pretrial (64 percent) were booked and released within 24 hours, and the median length of stay overall for people held pretrial was half a day. However, Black and Native American people were less likely than white people, Latino people, or people of Asian descent to be released the same day, and more likely to have longer pretrial lengths of stay. **Figure 8** shows pretrial lengths of stay by race/ethnic group. Fifty-seven percent of Black people and 60 percent of Native American people were released the same day they were booked, compared to 65 percent of white people, 71 percent of Latino people, and 73 percent of Asian people. Black people were more likely to be held pretrial for at least one week than people of any other race or ethnicity.<sup>27</sup>

**Figure 8**



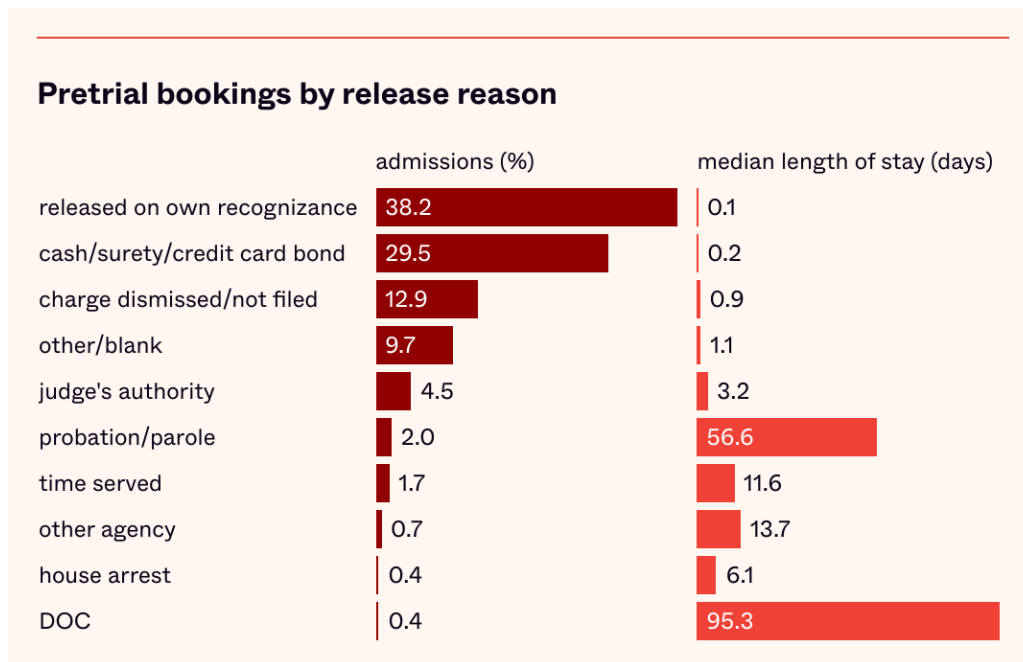
<sup>27</sup> This does not control for the severity of the charges, though it is well-documented that Black people are treated more harshly at every stage of the criminal legal system.

## What is driving pretrial releases?

Given the well-documented harms of pretrial detention for individuals and their families, we look at the release reasons for people who were held pretrial in order to better understand how frequently people are able to avoid lengthy pretrial detention by paying cash or surety bonds versus by being released without any financial conditions, and how this differs based on peoples' most serious charge. Looking at release reasons also gives us insight into how frequently people are released because the charge or charges against them are dismissed by a judge or not filed by a prosecutor.

Figure 9 shows release reasons and median length of stay for people who were admitted pretrial. Of the total number of people admitted pretrial, 38 percent were released on their own recognizance (OR) and 30 percent were released after they or someone else paid a cash or surety bond.<sup>28</sup> In 13 percent of pretrial admissions, people were released because the charge or charges against them were dismissed or not filed. Notably, 36 percent of pretrial admissions with a violent top charge—primarily misdemeanor domestic battery charges—were dismissed by a judge or not filed by the prosecutor. Violent charges were the most likely category of charges to be dismissed or not filed in the dataset. Other types of charges that are commonly dismissed or not filed in pretrial cases include child endangerment, burglary, arson, theft or possession of stolen property, and criminal threat.

Figure 9



<sup>28</sup> Release on one's own recognizance, or OR, is a court decision to allow a person charged with a crime to remain out of custody while they await their trial. In Kansas, OR release is sometimes given without conditions or collateral, and sometimes involves a cash deposit of 10 percent of the bond amount. Cash bonds require an individual to pay the court the full amount of a person's bail in cash to secure pretrial release, while surety bonds involve paying 10 percent or more of the bond amount plus fees to a bail bond company.

A small number of people (260 pretrial bookings or about 2 percent of pretrial admissions) were admitted to jail pretrial and then released for “time served.” This category is likely made up of people who were held on unaffordable bond and pleaded to time served. More than half of admissions in this category were people held pretrial on an FTA top charge with a median length of stay of 10 days.

**Figure 10** shows the percentage of pretrial bookings by release reason for charges grouped by severity. People who were booked pretrial on an FTA top charge were the most likely to be released with cash, surety, or credit card bond, followed by those with nonperson, nonviolent felonies.<sup>29</sup> This may reflect a belief that posting monetary bond compels future court appearance or reflect the assignment of a risk level based on previous non-appearance. All available evidence shows, however, that non-monetary conditions of release are just as effective in ensuring court appearance, and that pretrial detention prior to posting a bond can actually reduce appearance rates.<sup>30</sup> People booked pretrial on an FTA top charge were also the most likely to be released on “judge’s authority”—likely because such a large share of people booked on FTAs have municipal court FTAs. A person can be released at a judge’s discretion in a range of situations, such as if the judge eliminates a person’s bond. This might be analogous to being released on one’s recognizance, but is recorded differently.

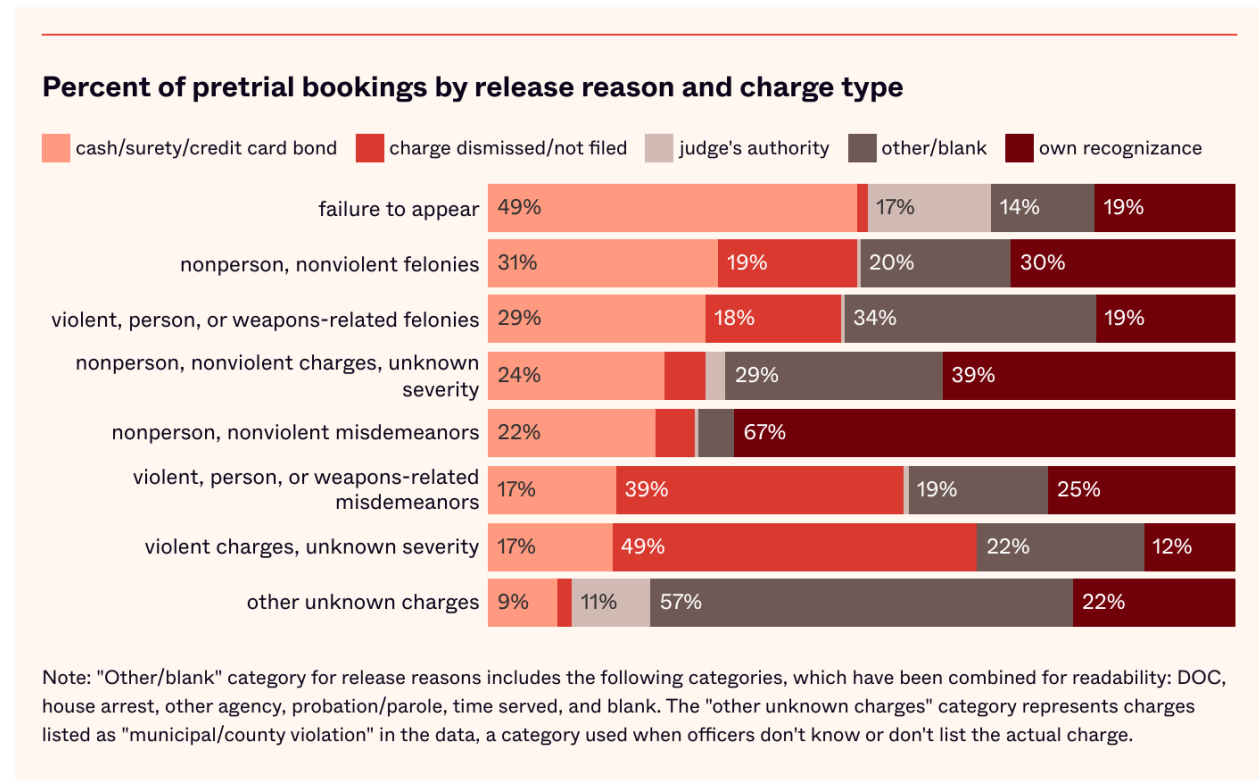
Overall, violent charges were the most frequent to be dismissed or not filed. Almost 70 percent of admissions for nonperson, nonviolent misdemeanors were released on their own recognizance.

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<sup>29</sup> Kansas is a “right to bail” state, meaning that anyone arrested on a non-capital offense is entitled to the right to freedom pending trial, and that any bond amount that is higher than necessary to ensure that the individual does not evade justice nor pose a threat to public safety is considered excessive.

<sup>30</sup> Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option* (Washington, DC: Pretrial Justice Institute, 2013); and Christopher Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (Houston, TX: Laura and John Arnold Foundation, 2013).

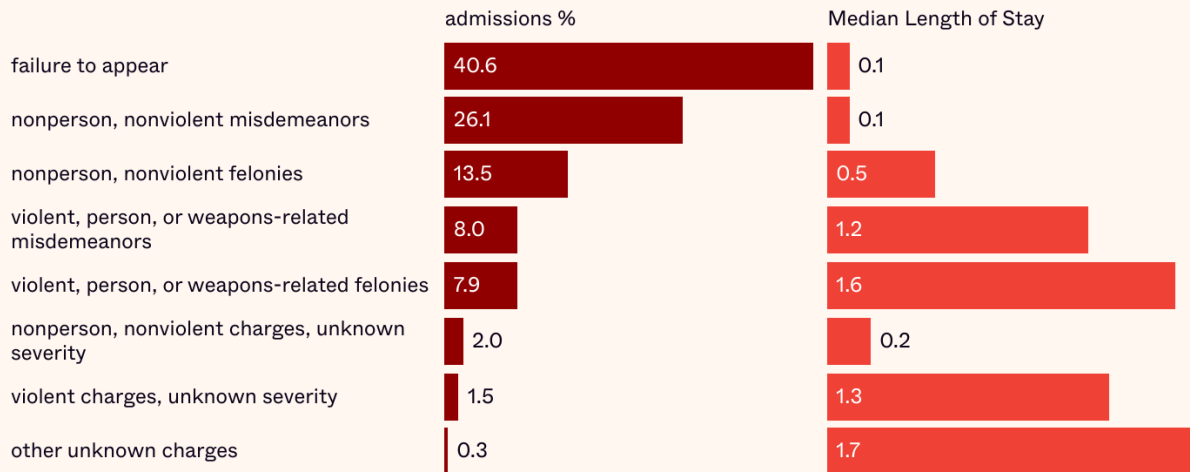
**Figure 10**



Taking a closer look at people who were released with cash, surety or credit card bonds, **figure 11** groups these admissions by severity and type of charge. Approximately three quarters of those released with cash or surety bond had a misdemeanor or FTA as their most severe charge. Over a quarter of these individuals were admitted for nonperson, nonviolent misdemeanor charges. The most common of these charges was DUI (16 percent). Other types of nonviolent misdemeanor charges frequently released with financial bond include criminal damage to property, driving on a suspended license, violating a protection order, interference with a law enforcement officer, and drug possession charges.

**Figure 11**

**Top charge types for pretrial admissions released on cash, surety, or credit card bonds**



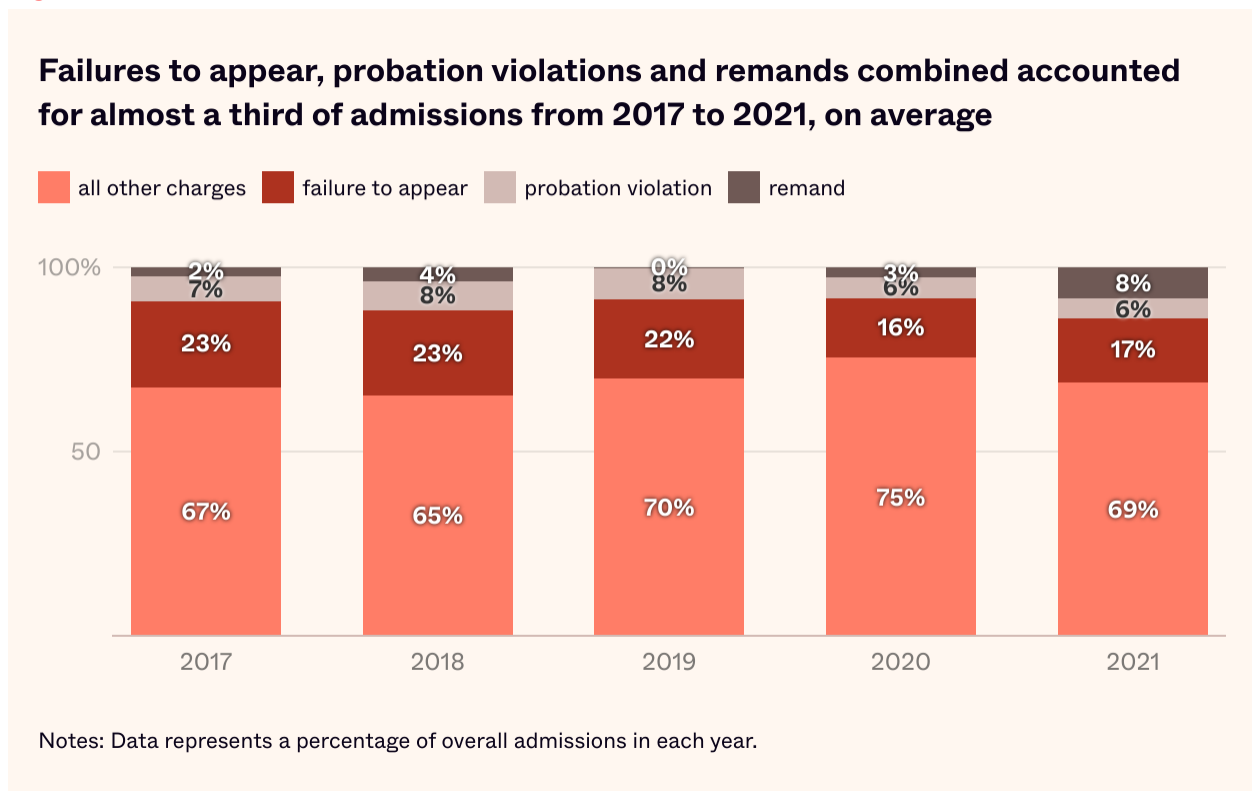
Note: The "other unknown charges" category represents charges listed as "municipal/county violation" in the data, a category used when officers don't know or don't list the actual charge.



### 3. Jail admissions for court system failures and municipal charges

**Failures to appear, probation violations, remands and municipal charges are significant drivers of the Douglas County jail population, together accounting for just over half of all jail admissions and bed-days from 2017 to 2021.**<sup>31</sup> Figure 12 shows the portion of total admissions for failures to appear, probation violations, and remands compared to admissions for all other charges from 2017 to 2021. More details about how failures to appear, probation violations, and remands figure in municipal court charges is provided in the later section “Admissions where a municipal charge is the sole or top charge.”

**Figure 12**



In recent years, efforts to reduce the Douglas County jail population have had some impact on reducing admissions for FTA, probation violations and municipal charges, indicating momentum toward continued reforms. Annual jail admissions declined by almost half from 2017 to 2020, from 5,297 to 2,838, before increasing again to 3,230 in 2021. Almost 20 percent of that drop occurred from 2017 to 2019, prior to the onset of the COVID-19 pandemic, during which time the court system, district attorney’s office and sheriff’s office adopted protocols to

<sup>31</sup> Municipal charges are defined as those originating from Douglas County’s three municipal courts - one each for Baldwin City, Eudora, and Lawrence, including failures to appear, probation violations, and remands originating from municipal court.

reduce the jail population.<sup>32</sup> From 2017 to 2021, FTAs as a portion of total admissions declined from 23 to 17 percent, probation violations declined from 7 to 6 percent of total admissions, and municipal charges declined from 35 to 28 percent of admissions. Remands increased from 2 to 8 percent of admissions.

## Failures to appear

**FTAs were the most common top charge for overall admissions: they made up 21 percent of total admissions and accounted for 12 percent of bed-days.** They were also the most common top charge for pretrial admissions, and for admissions from municipal court. Although FTA top charges as a portion of overall admissions declined slightly from 2017 to 2021, the median length of stay for FTA admissions doubled from less than 1 day to almost 2 days.

Of the admissions with FTA as top charge, 45 percent were released on cash or surety bond; only 17 percent were released on their own recognizance, and another 14 percent were released on “judge’s authority.”<sup>33</sup> About half were released the same day, and half were released after having been in jail for 24 hours or more—staying in jail a median of 5 days. It is notable that a large portion of people are facing jail stays and posting money bail to secure their release for a missed court appearance—a charge with a number of effective alternative responses.<sup>34</sup> Even people booked into jail and released on the same day generate costs associated with the intake and release process, can strain limited jail resources and contribute to capacity challenges.

Overall, 31 percent of all admissions from 2017 to 2021 had one or more FTAs among the charges listed on the booking. **Figure 13** shows the most common types of accompanying charges for admissions where one or more FTAs were present on booking. Among these admissions, FTAs were the only type of charge on the booking 65 percent of the time. In 15 percent of cases, FTAs were accompanied by at least one felony-level charge. In 10 percent of cases, FTAs were accompanied only by misdemeanor-level or unknown charges and no felony charge, and in 9 percent of cases, FTAs were accompanied only by a probation violation, remand or arrest warrant and no other charges. Issuing and strictly enforcing warrants for people who miss court appearances is often justified as the only way to manage court dockets. Evidence shows, however, that most people do not fail to appear in court because they are willfully evading prosecution, but because they are facing barriers such as a lack of transportation, childcare or an inability to take time off of work. Others forget their court dates or don’t understand the consequences of not appearing, particularly when longer periods of time elapse between charges and hearings.<sup>35</sup>

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<sup>32</sup> “Covid-19 Impact on Jail Population and Criminal Justice Processing,” Presentation to Criminal Justice Coordinating Council, (Douglas County, KS: June 9, 2020) <https://www.douglascountyks.org/sites/default/files/docs/county-news/pdf/june92020covidandcriminaljustice-jailpresentedtocriminaljusticecoordinatingcouncil.pdf>.

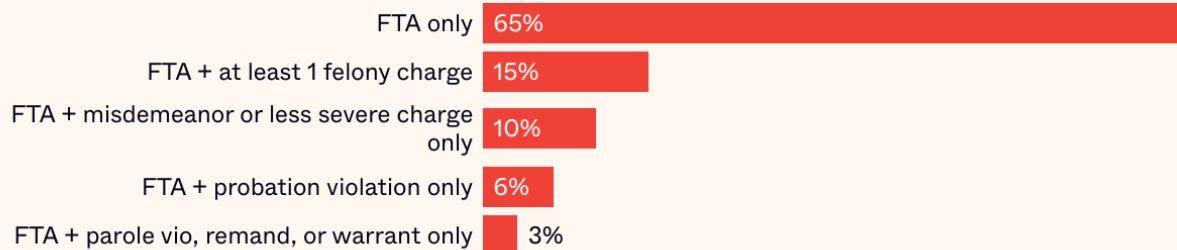
<sup>33</sup> A person can be released based on a judge’s discretion in a range of situations, such as if the judge eliminates a person’s bond. Ninety percent of these “judge’s authority” releases for FTA admissions were out of Lawrence Municipal Court.

<sup>34</sup> Evelyn F. McCoy, Azhar Gulaid, Nkechi Arondu, and Janeen Buck Wilson, *Removing Barriers to Pretrial Appearance*, (Washington, DC: The Urban Institute, 2021).

<sup>35</sup> B.H. Bornstein et al., “Reducing Courts’ Failure-to-Appear Rate by Written Reminders,” *Psychology, Public Policy, and Law* 19, no. 1 (2013): 70-80; and Brice Cooke, Binta Zahra Diop, Alissa Fishbane,

Figure 13

### Most common accompanying charge types for admissions with at least one failure to appear



**Overall, 40 percent of admissions in which FTA was the top charge were classified as traffic cases from either municipal or district court—and in over a third of those cases, the people jailed lived in another county.** Of the traffic-related FTA cases, 58 percent were from municipal court (all but 1 case were from Lawrence), and 42 percent were from district court—primarily from the pro tem division, which handles criminal first appearances, small claims, and traffic offenses. Thirty-five percent of traffic-related admissions with an FTA top charge were for people with an address outside of Douglas County (non-residents), mainly district court cases. The data suggests that a large number of failure to appear warrants are being issued when people fail to appear in court following a traffic or parking-related offense, and that this situation frequently leads to a subsequent arrest. This raises questions about underlying misaligned incentives that may be fueling this practice. The practice of using traffic enforcement and resulting warrants to collect court costs and “pay to stay” jail fees is well-documented. Also called a “backdoor tax,” this is a mechanism increasingly used by municipal governments to fund their operations without raising taxes.<sup>36</sup> For example, the high-profile investigation by the U.S. Department of Justice into the Ferguson, MO Police Department found that law enforcement practices were “shaped by the City’s focus on revenue rather than by public safety needs,” raising constitutional concerns and compromising the role of the municipal court.<sup>37</sup> Scrutiny practice of jailing poor people in connection with generating revenue has not been confined to Ferguson, however and has resulted in lawsuits in multiple states on grounds that it violates the Fourteenth Amendment to the U.S. Constitution.<sup>38</sup>

Jonathan Hayes, Aurelie Ouss, Anuj Shah, *Using Behavioral Science to Improve Criminal Justice Outcomes* (Chicago, IL: University of Chicago Crime Lab, 2018).

<sup>36</sup> Tony Messenger, *Profit and Punishment: How America Criminalizes the Poor in the Name of Justice* (New York, NY, St. Martin's Press, 2021).

<sup>37</sup> United States Department of Justice Civil Rights Division, *Investigation of the Ferguson Police Department*, (Washington, D.C.: United States Department of Justice, 2015)

[https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>38</sup> “See for example, “Litigation: *Cain v. New Orleans*,” Fines and Fees Justice Center, August 23, 2019, <https://finesandfeesjusticecenter.org/articles/cain-v-new-orleans/>; and “*Wilkins v. Aberdeen Enterprises*,” Civil Rights Litigation Clearinghouse, November 2, 2017, <https://clearinghouse.net/case/17700/>.

Economic research has also suggested a revenue-generating incentive for traffic enforcement, showing a significant increase in tickets after revenue declines.<sup>39</sup>

## Probation violations

Probation violations were the fifth most common top charge for overall admissions and the second-highest contributor to jail bed-days—accounting for over 49,000 bed-days from 2017 to 2021.<sup>40</sup> Probation violations were also the fourth most common top charge for admissions from district court and the second most common top charge for out-of-county admissions. Probation violations were also prevalent in municipal court, which only handles misdemeanors and infractions, but they were less frequently the top charge. The portion of overall admissions with a probation violation as the top charge declined slightly from 2017 to 2021, but the median length of stay for probation violation admissions increased from 8 to 12 days.

Of the bookings with a probation violation as a top charge, 28 percent were released on cash or surety bond. Only 13 percent were released on their own recognizance. An additional 21 percent of people were released to a probation/parole agency, to house arrest, or to some other agency; 19 percent were released for time served; 7 percent were released under “judge’s authority”; and 5 percent were released to the DOC. More than 78 percent of bookings with a probation violation as the top charge were released after 24 hours or more—staying in jail a median of 18.5 days.<sup>41</sup> According to discussions with the Lawrence Prosecuting Attorney in April 2022, the Lawrence Municipal Court commonly jails people who have not been able to complete probation requirements—such as the payment of court fines and fees or attendance at a court-mandated program—and sets the bond at the same amount the person already owes the court. The municipal court rationale is that, upon payment, a person’s outstanding court debt will be settled. However, a person who could not pay a financial sanction prior to detention is unlikely to be able to pay that same amount while detained, which could contribute to longer lengths of stay. If a person is ultimately forced to pay the private bail industry a non-refundable percentage of the bond to secure their release, it only deepens financial precarity and makes them more vulnerable to future incarceration for nonpayment of costs, fees and fines. This practice opens the county up to potential legal liabilities. Rutherford County, Tennessee was the subject of a 2015 class action lawsuit for its practice of jailing people for failing to pay probation fees, which resulted in a monetary settlement and permanent injunction prohibiting an individual from being “held in jail for nonpayment of fines, fees, costs or a pre-probation revocation money bond imposed by a court without a determination, following a meaningful inquiry into the individual’s ability to pay, that the the individual has the ability to pay such that any nonpayment is

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<sup>39</sup> Thomas A. Garrett, Thomas A., and Gary A. Wagner. “Red ink in the rearview mirror: Local fiscal conditions and the issuance of traffic tickets.” *The Journal of Law and Economics* 52, no. 1 (2009): 71-90; Min Su. “Taxation by citation? Exploring local governments’ revenue motive for traffic fines.” *Public Administration Review* 80, no. 1 (2020): 36-45.

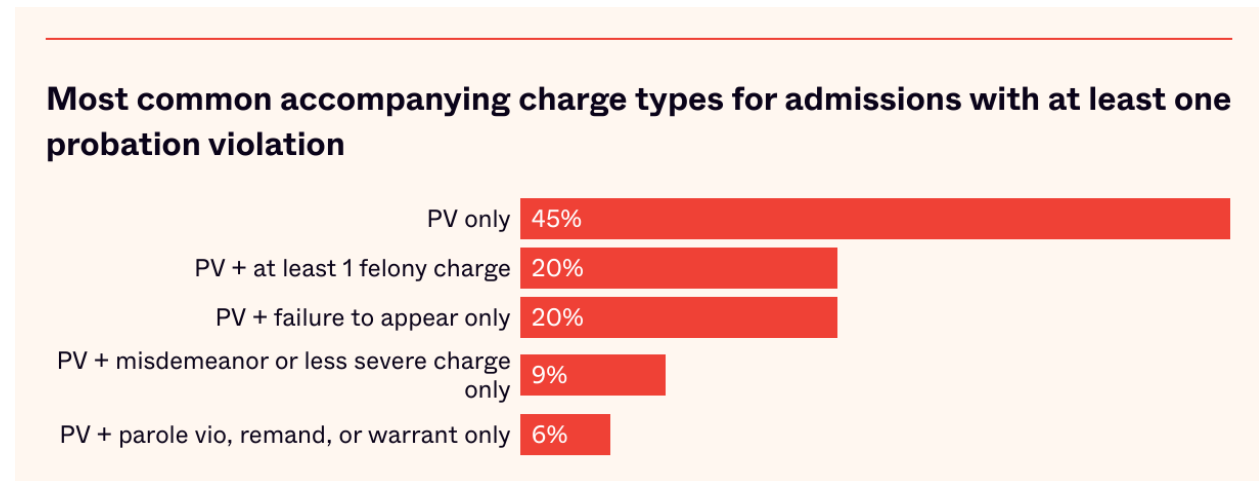
<sup>40</sup> Unfortunately the data do not allow us to identify the nature of the probation violation, nor the original charge for which the person was put on probation. However, we are able to differentiate technical violations from more serious ones, because the more serious ones show up as other charges listed on a booking—and these would outrank the probation violation as the “top charge” on a booking.

<sup>41</sup> For this analysis, probation violations were separated out from pretrial admissions and sentenced admissions. See figure 4 for details.

willful.”<sup>42</sup> This practice has also been challenged in other jurisdictions. It also raises good governance questions from a fiscal perspective, given that the county is paying to incarcerate someone who is further impoverished by their jail stay. Previous Vera research has shown that counties pay more to incarcerate people for nonpayment than they are able to generate in fines, fees and costs.<sup>43</sup>

Overall, 10 percent of all admissions from 2017 to 2021 had one or more probation violations among the charges listed on the booking (even if a probation violation was not the top charge). **Figure 14** shows the most common types of accompanying charges for these bookings. Among these admissions, probation violations were the only type of charge on the booking 45 percent of the time. In 35 percent of cases, probation violations were accompanied only by misdemeanor-level or unknown charges, failures to appear, supervision violations, remands, or warrants but no new charges. In 20 percent of cases, probation violations were accompanied by at least 1 felony charge.

**Figure 14**



## Remands

Remands were the eighth most common top charge for overall admissions: they made up 3 percent of total admissions and accounted for 4 percent of bed-days. Remand refers to court-ordered detention without bail, and was historically reserved for people charged with capital offenses. However, in the data, remands are often listed without an accompanying charge and with no indication of the originating charge, so it is somewhat difficult to assess how remand is currently being used in Douglas County. We know that the use of remand has increased in recent years, and the data suggests it is frequently used for less serious offenses. From 2017 to 2021, the total number of admissions with remand as the top or sole charge increased from 130 to 269 (+107 percent). The portion of admissions with remand top charges

<sup>42</sup> *Rodriguez v. Providence Community Corrections, Inc.*, No. 3:15-cv-01048 (U.S. District Court for the Middle District of Tennessee, 2018); Case Summary, Civil Rights Litigation Clearinghouse, accessed October 5, 2022, <https://clearinghouse.net/case/15160/>.

<sup>43</sup> Mathilde Laisne, Jon Wool, Christian Henrichson, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans* (New Orleans: Vera Institute of Justice, 2017).

increased from 3 percent to 8 percent, and the median length of stay for people with a remand top charge was cut in half—from 5 days to 2. Of admissions with remand as top charge, the majority came from district court (65 percent), and most had “sentenced county time” listed as the judicial status. Further investigation is needed to understand how and why people are being remanded in Douglas County, and the degree to which it reflects detention after the violation of some of the conditions of release or supervision.

**Overall, 51 percent of remand top charge admissions were classified as traffic cases from either municipal or district court.** Fifty-one percent of traffic-related remand cases were from Lawrence municipal court, and 49 percent were from district court. Although the data do not allow us to identify the exact originating charge leading to remand, this seems to indicate that remand is being frequently used in practice to jail people for less serious traffic-related charges, most of which are presumably low-level—particularly those originating from municipal court.<sup>44</sup>

Overall, 5 percent of all admissions from 2017 to 2021 had one or more remands among the charges listed on the booking (even if remand was not the top charge). Among these admissions, remands were the only type of charge on the booking 64 percent of the time. In 18 percent of cases, remands were accompanied only by misdemeanor-level or less severe charges, failures to appear, supervision violations, or warrants, and no other charges. In another 18 percent of cases, remands were accompanied by one or more felony-level charges.

### **Admissions where a municipal charge is the only type of charge**

Bookings where a municipal court charge was the only type of charge someone was facing accounted for 30 percent of overall admissions and 8 percent of bed-days from 2017 to 2021.<sup>45</sup> This is an under-representation of bookings resulting from municipal court charges as it does not include bookings with a mix of charges from district and municipal court, or those where a municipal court charge is accompanied by an out-of-county charge. **Figure 15** shows the proportion of admissions by court type over the previous five years. The fact that a quarter to a third of admissions to the jail over the past five years were due solely to municipal court charges—which are generally low-level charges—signifies there is significant opportunity to reduce the use of the jail for people charged with municipal offenses. This would also have a positive impact on the City of Lawrence's finances: according to data provided to Vera by local government officials, Douglas County charges the City of Lawrence a daily fee to hold people exclusively facing Lawrence Municipal Court cases. In 2023, the daily rate will be \$226.

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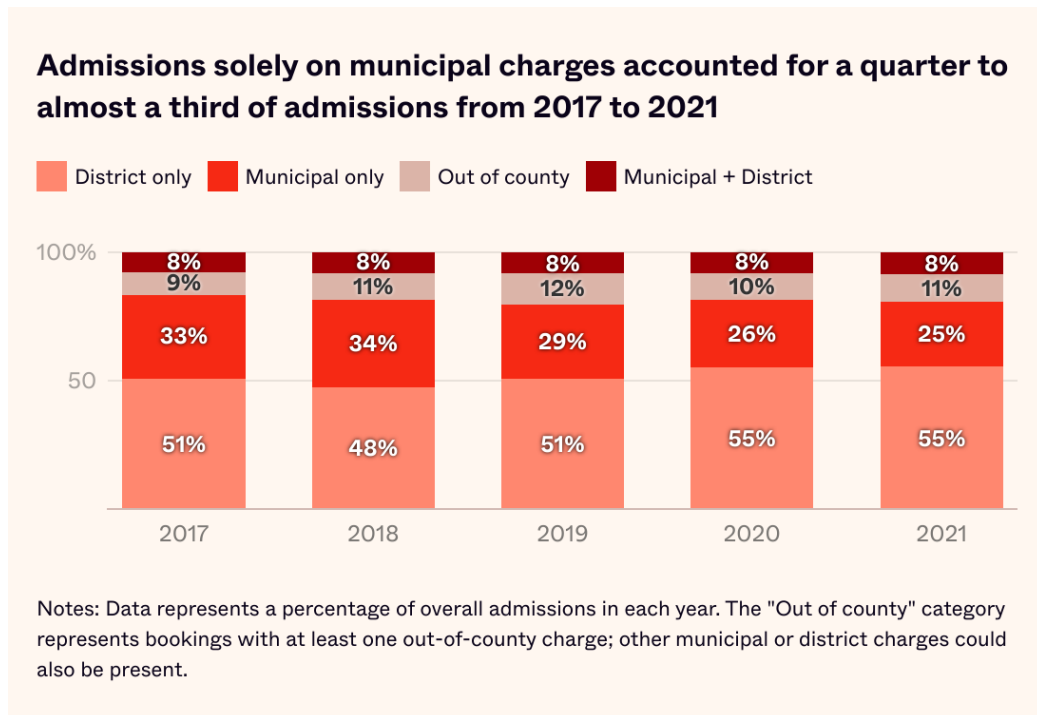
<sup>44</sup> It is also important to note that almost all DUI charges from municipal court are categorized as “other” cases and not “traffic” cases, and thus are not included in the traffic-related cases driving remands.

<sup>45</sup> Municipal charges are those originating from Douglas County's three municipal courts - one each for Baldwin City, Eudora, and Lawrence - which primarily handle violations of city ordinances including traffic and parking violations. This includes failures to appear, probation violations, and remands originating from municipal court.

Overall, roughly 70 percent of people admitted only on one or more municipal charges were held pretrial.<sup>46</sup> The majority were quickly released from jail; 60 percent of people admitted for municipal charges were released the same day; those that stayed for 24 hours or more spent a median of 3 days in jail.

**Almost a third of admissions with only municipal charges were classified as traffic cases.** Of these admissions for traffic-related municipal charges, about 45 percent had an FTA top charge, 41 percent had a “municipal/county violation” top charge (indicating the charge was not listed or not known), 9 percent had a remand top charge, and 5 percent had a probation violation top charge. People admitted on municipal traffic related charges spent a median of 2 days in jail; 33 percent were released for time served, 26 percent were released after posting cash, surety or credit card bond, 14 percent were released to house arrest, 12 percent were released per a judge’s authority, 9 percent had an unknown release reason, and only 3 percent were released on their own recognizance.

**Figure 15**



As noted above, bookings on municipal charges alone declined from 2018 to 2020, but then increased from 2020 to 2021. Despite this slight downward trajectory, more is left to be done.

Figure 16 shows the change in the number of admissions for the top 10 most common top

<sup>46</sup> The “pretrial” label may be inaccurate in a small number of municipal court cases. Some people’s judicial status may be labeled as “pretrial” even though they are technically serving a sentence. Although it is impossible to identify in the data how many people may have an inaccurate pretrial label, jail staff indicate that this is likely a small number of people and that data practices have reduced this problem in recent years.

municipal charges from 2017 and 2021, in order from most to least common type of charge in 2017.

**Figure 16**

**Change in top charges for municipal-only admissions from 2017 to 2021**

	# municipal-only admissions, 2017	# municipal-only admissions, 2021	absolute change, 2017 to 2021
Failure to appear	572	187	-385
Driving under influence	427	211	-216
Municipal county violation*	292	12	-280
Interference with LEO	80	56	-24
Trespass	75	57	-18
Driving while suspended	40	15	-25
Probation violation	36	9	-27
Crim property damage	34	57	23
Drug possession	30	9	-21
Assault/battery	26	20	-6
Theft	25	18	-7
Traffic offense	22	14	-8
Disorderly conduct	21	15	-6
Remand	15	131	116
Alcohol	15	3	-12
Other charges	16	8	-8

\*The charge "municipal/county violation" is used as an "other" category when officers don't know or didn't list the specific charge. The decline in this category is due primarily to booking officers using the category less in more recent years.

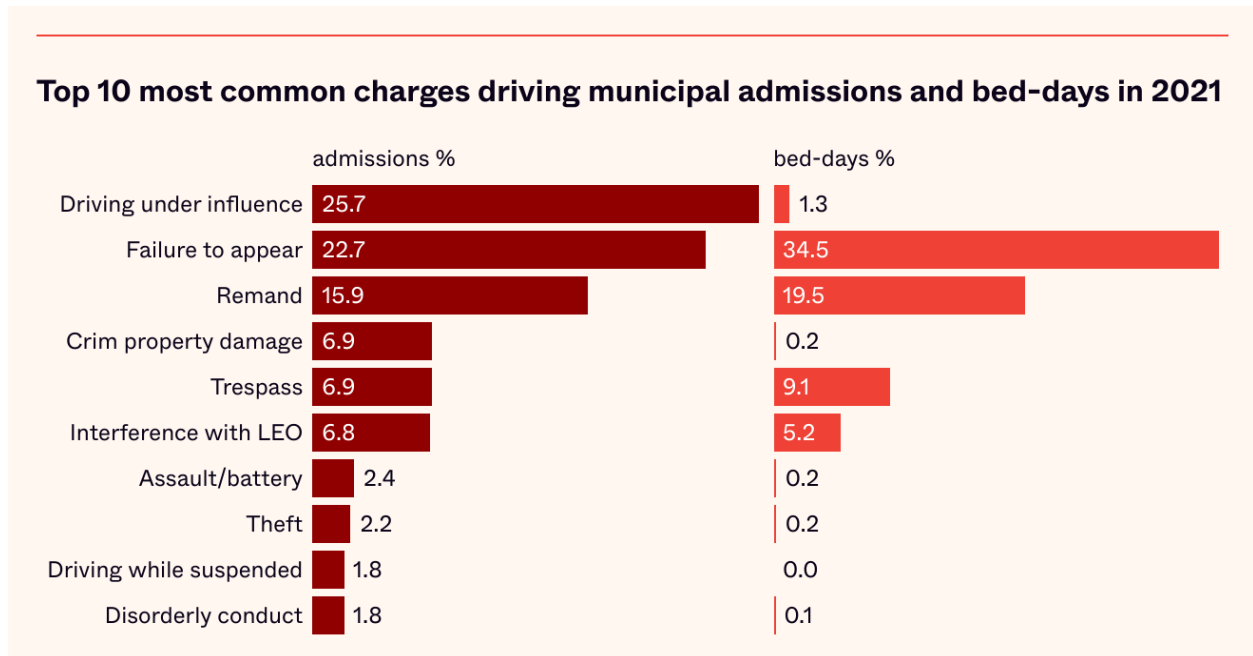
Municipal-only admissions with a top charge of failure to appear or DUI declined during this time. Municipal-only admissions with a top charge of probation violation, driving while suspended, interference with a law enforcement officer, drug possession, and trespass also declined moderately. These reductions likely reflect specific practice changes made by the municipal court judges, such as creating warrant clinics. However, the number of municipal-only admissions with remand as the top charge increased from 15 to 131 (+773 percent). As noted previously in this report, it is difficult to assess how remands are being used in Douglas County due to data limitations. However, 98 percent of municipal-only admissions



with a top charge of remand originated in Lawrence municipal court, and about three-quarters were classified as traffic-related cases. As noted above, this suggests that remand is being used by the municipal court primarily to jail people in connection with low-level traffic-related charges. Municipal-only admissions with criminal damage to property as a top charge also increased from 34 to 57 (+68 percent).

To hone in on the most pressing issues to address in municipal court, [figure 17](#) shows the percentage of municipal-only admissions and bed-days for the top 10 most frequent types of municipal charges in 2021—the most recent year of data included in this analysis. Failures to appear and remands accounted for significant portions of municipal-only admissions and bed-days, while driving under the influence charges made up a quarter of municipal-only admissions and only 1 percent of bed-days. Nonviolent, nonperson charges including criminal property damage, criminal trespass, interference with a law enforcement officer, theft, driving while suspended, and disorderly conduct, combined, accounted for a quarter of municipal-only admissions and 15 percent of municipal-only bed-days.

**Figure 17**



#### 4. Systemic issues driving multiple bookings into the jail

As shown in [figure 18](#), the majority of people (61 percent) were admitted to the jail once from 2017 to 2021. However, people with one jail stay only made up about a third of admissions and 22 percent of bed-days. **About 40 percent of people were admitted two or more times; these individuals made up 70 percent of admissions and 78 percent of bed-days.**

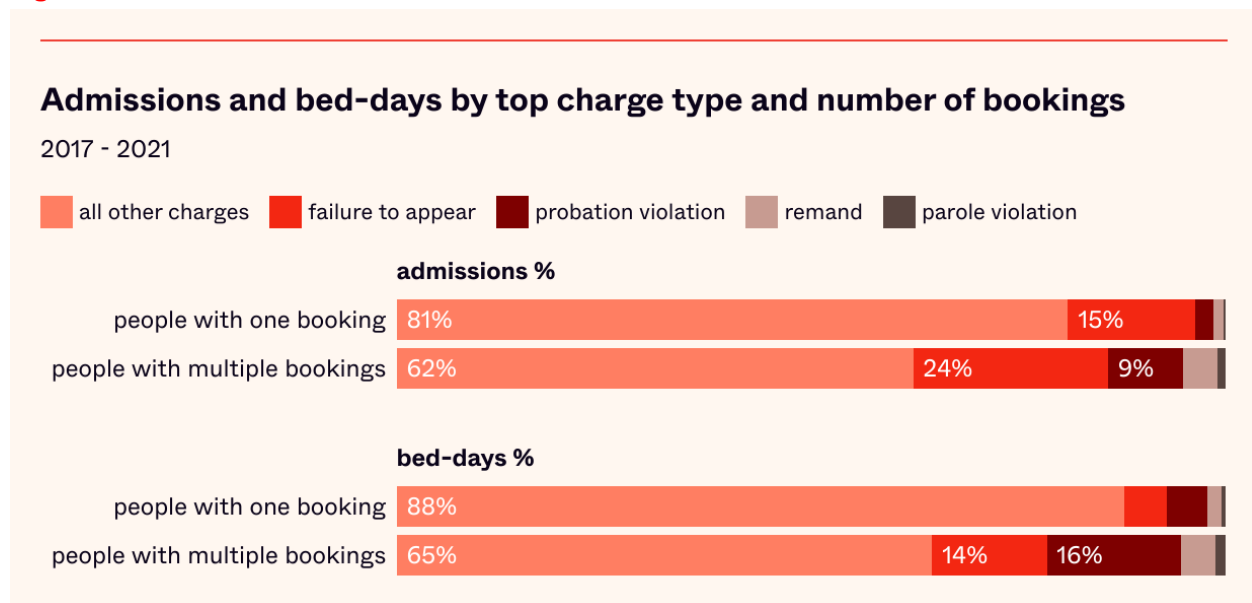
**Figure 18**

Number of people with multiple jail admissions			
	people	admissions	bed-days
1 booking	6,293 (60.6%)	6,293 (30.3%)	78,898 (22.0%)
2-3 bookings	2,800 (27.0%)	6,478 (31.2%)	94,520 (26.4%)
4-5 bookings	702 (6.8%)	3,078 (14.8%)	58,849 (16.4%)
6+ bookings	581 (5.6%)	4,945 (23.8%)	126,121 (35.2%)
<b>Total</b>	<b>10,376 (100%)</b>	<b>20,794 (100%)</b>	<b>358,388 (100%)</b>

People with multiple bookings were more likely to be admitted and to spend longer in jail for administrative charges than people who were admitted only once. [Figure 19](#) shows admissions and bed-days by top charge type for people with one booking versus people with multiple bookings from 2017 to 2021. People with multiple bookings were more likely to be admitted for a failure to appear, probation violation, remand, or parole violation than people with one booking. This indicates that violations of probation and/or other forms of supervision are a significant driver of recurring jail admissions: once people have more than one jail booking, they likely become more entangled in the various system and supervision requirements and assorted penalties for non-compliance. Evidence also suggests that people on probation have markedly higher rates of behavioral health challenges than the general population, making compliance with complicated and/or strict conditions of release even more challenging to navigate.<sup>47</sup>

<sup>47</sup> Alex Roth, Sandhya Kajeepeta, Alex Boldin, *The Perils of Probation: How Supervision Contributes to Jail Populations*. (New York: Vera Institute of Justice, 2021), 9.

**Figure 19**



A subset of people—581 individuals—were admitted to the jail six or more times from 2017 to 2021. This group of people accounted for almost a quarter of all admissions and 35 percent of bed-days. About 43 percent of admissions for this group of people were due to administrative charges such as failures to appear, probation violations, remands, parole violations, and arrest warrants. Another 31 percent of these admissions were due to nonperson, nonviolent charges, and 16 percent were due to violent, person, or weapons-related charges—most commonly for charges related to domestic violence, although these were slightly less prevalent than for overall admissions. Of the admissions for nonperson, nonviolent charges, the most common top charges were misdemeanor criminal trespass, misdemeanor DUI, felony possession of an opiate, opium, narcotic or stimulant, and misdemeanor interference with a law enforcement officer.

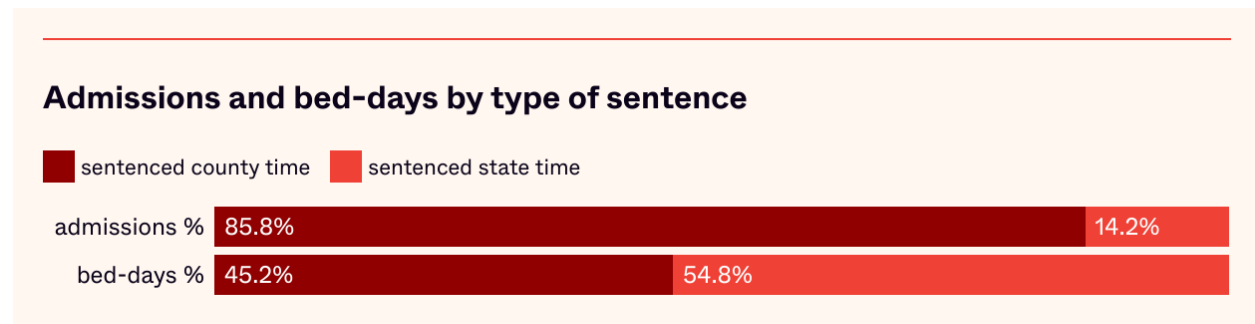
The prevalence of these types of charges among people with multiple bookings suggests that many people are cycling in and out of jail for issues related to mental illness, drug and alcohol use, and poverty rather than more serious alleged crimes involving violence against another person or persons. In 2021, 28 percent of the Douglas County jail population was assessed as having serious mental illness, although the true percentage may be higher due to underreporting.<sup>48</sup> This subset of people likely have unmet needs related to behavioral health and substance abuse that would be better addressed outside of the jail via community-based resources.

<sup>48</sup> Data on Douglas County Correctional Facility bookings and population from Spillman Jail Management System, reported in the Stepping Up Initiative Dashboard, <https://gis.douglascountyks.org/portal/apps/dashboards/f4a65d6ba1a3422caf3cfe1501c74284>.

## 5. Admissions for people serving county and state sentences

People who were serving county and state sentences made up 14 percent of overall admissions and 33 percent of bed-days from 2017 to 2021. The terms “sentenced county time” and “sentenced state time” refer to whether people have been ordered to serve their sentence in a county jail or a state prison.<sup>49</sup> People whose judicial status is listed as “sentenced state time” in the jail are likely awaiting transfer to the Kansas Department of Corrections, although there may be other reasons that state-sentenced people are being held in the jail. **Figure 20** shows the breakdown of admissions and bed days by type of sentence. Most people who were sentenced were serving county sentences; however, state-sentenced people accounted for a greater share of bed-days. People serving county sentences stayed in jail a median of 2 days, compared to 118 days for people serving state sentences.

**Figure 20**



### County sentences

From 2017 to 2021, the share of total admissions represented by people serving county sentences declined from 12 percent to 9 percent. It is somewhat unclear what drove the decline in county-sentenced admissions, since it was mainly driven by a large reduction in the number of admissions where the top charge was listed as “municipal/county violation”—a category that is used when officers don’t know or didn’t list the actual charge, and which officers used less frequently in recent years. The number of county-sentenced admissions for this category declined from 509 (78 percent of county-sentenced admissions) in 2017 to 15 (5 percent of county-sentenced admissions) in 2021. **Over the same time period, the number of county-sentenced admissions due to remands more than doubled, from 99 to 234—and 71 percent of remand cases in 2021 were traffic-related.**

In 2021, there were 277 county-sentenced admissions to the jail—and only 21 of these admissions were for non-administrative charges, meaning that those serving county sentences in the jail are almost always serving time for administrative charges. Of those serving county sentences in 2021, remand as a top charge accounted for 84 percent of admissions and 33 percent of bed-days, and people serving a county sentence with a remand top charge spent a median of 2 days in jail. Failure to appear as a top charge accounted for 8 percent of

<sup>49</sup> For this analysis, people serving time for probation or parole violations are not included in the “sentenced county time” and “sentenced state time” populations.

county-sentenced admissions and 24 percent of bed-days, and people spent a median of 30 days in jail for this charge. More than half of county-sentenced remand admissions and 74 percent of county-sentenced FTA admissions in 2021 came from Lawrence municipal court.

### **State sentences**

From 2017 to 2021, there were a relatively small number of state-sentenced admissions—373 in total, and the share of admissions for people serving state sentences stayed about the same—increasing from around 1 percent of total admissions in 2017 to almost 3 percent in 2019, before declining back to 1 percent of total admissions in 2021. Most people categorized as “serving state time” in the dataset were ultimately transferred to the Kansas Department of Corrections (KDOC). During the COVID-19 pandemic, the KDOC was not accepting new transfers from jails due to space considerations. Perhaps as a result, the median length of stay for state-sentenced admissions increased from 132 days in 2019 to 158 days in 2021, before declining to 101 days in 2021. Overall, people serving state sentences spent longer in jail than any other group.

Overall, 26 percent of state-sentenced admissions had an administrative top charge (mainly remands and FTAs), and spent a median of 27 days in jail. Another 29 percent of state-sentenced admissions had a nonviolent, nonperson top charge, most commonly burglary, drug manufacture/delivery, and drug possession charges. A minority of state-sentenced admissions, 30 percent, were due to violent, person, or weapons-related charges—most frequently felony aggravated assault/battery and felony aggravated robbery. Fifteen percent of state-sentenced admissions were due to other unknown charges.

## Key Takeaways and Recommendations

The findings included in this memo are meant to provide stakeholders with a detailed analysis of the factors, practices and policy decisions that determined how the Douglas County Jail was used over the last five years. Below are key takeaways and policy recommendations to safely reduce the use of jail in Douglas County.

### I. **The majority of pretrial admissions are for nonviolent charges, and nearly half are for misdemeanor charges**

- ◆ In most of these cases, there is little or no public safety rationale for arrest and pretrial detention. While this analysis cannot reflect the individual circumstances of each case, the high number of cases in which a person was booked into jail and released the same day suggests that many people moving through the system could avoid pretrial booking altogether.
- ◆ In Kansas, state statute affords law enforcement officers the power to issue notices to appear or citations for misdemeanors and many traffic infractions (with the exception of impaired driving or fleeing, and felonies).<sup>50</sup> The volume of bookings where an eligible misdemeanor or traffic infraction is the top charge suggests that law enforcement agencies throughout Douglas County do not use their discretion to issue notices and citations expansively.
- ◆ A small subset of people (581) are cycling in and out of the jail repeatedly (six or more times), which contributes significantly to admissions and bed-days. These individuals are booked primarily on administrative charges related to civil issues and/or alleged nonperson, nonviolent offenses, and their frequent interaction with the criminal legal system indicates there are likely underlying needs that continue to go unaddressed.
- ◆ The total number of bookings with municipal-only charges has declined during the five-year period, but municipal court bookings still account for over a quarter of jail admissions. The practices that helped lead to this reduction should be celebrated and expanded, but there are additional opportunities to reduce detention for municipal charges. Many municipal court bookings stem from underlying traffic charges that could be dealt with outside the criminal legal system.
- ◆ Continued street-level enforcement of minor ordinance violations continues to have a significant impact on jail admissions, and likely results in the disruption of daily life. Even after a person's release from jail on municipal charges, this enforcement carries the potential of days, weeks, or months of detention, should that person forget a court date or fail to pay probation fees or other outstanding criminal legal debt.

#### **Recommendations:**

1. The Lawrence City Police Department's current cite and release policy encourages officers to issue citations in lieu of arrests for eligible misdemeanor and traffic violations using officer discretion. However, to date, there has not

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<sup>50</sup> KS Stat § 22-2408 (2021); and KS Stat § 8-2106 (2021).

been analysis of when, how, and for whom this policy has been used for, and whether officer discretion leads to racially inequitable application.

- 1.1. The Sheriff and Chiefs should develop written department policies requiring their officers to issue notices to appear and/or citations in all eligible cases where there is no identifiable imminent threat to another person or people, and make the policy uniform across departments. Implementation should be monitored and examined for any unintended disparities that may persist.
- 1.2. The Courts should redesign their summons forms to ensure they are clear and user-friendly. Jurisdictions that have redesigned court summons paperwork to be more accessible and implemented text message reminders for court dates decreased their FTA rate by 36 percent.<sup>51</sup>
2. Law Enforcement Agencies in Douglas County should expand the use of non-law enforcement and/or co-responder teams that are equipped to handle issues relating to mental or behavioral health and domestic violence.
  - 2.1. Ideally, teams should be operational at all hours (not just during the traditional work-day) and should be integrated into 911 and 988 dispatch.
  - 2.2. Civilian response programs should be constructed with the engagement of justice system stakeholders *and* directly impacted community members. Response teams should not be restricted to licensed clinicians in order to ensure that requirements do not unduly limit the workforce to people who don't reflect the communities they serve.
3. The Douglas County District Attorney's Office should establish or expand a district-wide declination policy that directs prosecutors to decline lower-level misdemeanors, as well as referred cases stemming from unmet needs related to poverty, addiction, homelessness, or mental health, except in extraordinary circumstances.<sup>52</sup>
  - 3.1. The declination policy should not include narrow eligibility requirements based on a person's previous contact with the criminal legal system. This is likely to inadvertently exclude Black people who are disproportionately

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<sup>51</sup> Jason Tashea, "Text-message reminders are a cheap and effective way to reduce pretrial detention," *American Bar Association Journal* (July 17, 2018), [https://www.abajournal.com/lawscribbler/article/text\\_messages\\_can\\_keep\\_people\\_out\\_of\\_jail#](https://www.abajournal.com/lawscribbler/article/text_messages_can_keep_people_out_of_jail#).

<sup>52</sup> See, for example, the Suffolk County (Boston) District Attorney's Office's policy to decline 15 charges, including drug possession, intent to distribute, trespass, and breaking and entering into a vacant property, Rachael Rollins, *The Rachael Rollins Policy Memo* (Boston, MA: Suffolk County District Attorney's Office, 2019); A study of Suffolk County data found that following implementation of DA Rollins' declination policy, future system-involvement for individuals affected by the policy decreased by 58 percent, Amanda Y. Agan, Jennifer L. Doleac, and Anna Harvey, *Misdemeanor Prosecution*, (Cambridge, MA: National Bureau of Economic Research, 2021); and Baltimore State's Attorney Marilyn Mosby also announced in early 2020 that she would stop prosecuting low-level drug and drug paraphernalia possession and prostitution. Initially a response to the COVID-19 pandemic, the policy was later announced as permanent. An analysis of its impact found that the policy had a pronounced effect on reducing criminal justice system contact for Black people in Baltimore and that fewer than 1 percent of the people whose charges were dropped were re-arrested for serious crimes during the study period. See Saba Rouhani, Catherine Tomko, Noelle Weicker, and Susan Sherman, *Evaluation of Prosecutorial Policy Reforms Eliminating Criminal Penalties for Drug Possession and Sex Work in Baltimore, Maryland* (Baltimore, MD: Johns Hopkins Bloomberg School of Public Health, 2021).

likely to have had previous contact, due in part to disproportionate policing, which can make criminal history a racially inequitable criterion.<sup>53</sup>

4. The Lawrence City Commissioners, alongside directly impacted community members and other community leaders, should review the municipal code and convert charges that are currently being dealt with by the criminal legal system into non-criminal violations and/or eliminate penalties altogether.
  - 4.1. A work group of the CJCC could identify charges that would be good candidates for decriminalization and/or alternative approaches.<sup>54</sup>
5. Consider diverting traffic control and road safety to a civilian first responder model and/or identifying a set of offenses that no longer require traffic stops, and can instead be responded to with mailed citations or notices to appear. This could greatly reduce the number of people interacting with the criminal legal system at both the district and municipal levels. Nationally, minor traffic violations are among the most common types of law enforcement interactions. However, numerous studies have shown that discretionary traffic stops not only have little impact on public safety, but that they also greatly contribute to the racial disparities in the criminal legal system and drive unnecessary and lethal use of force.<sup>55</sup> Unarmed civilian traffic response units could focus on safety instead of criminal law enforcement, and would be run by the department of transportation or public works. Civilian responders could also handle collisions and be given the authority to stop drivers to address traffic violations and/or safety concerns

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<sup>53</sup> For a discussion of the disparate racial impact stemming from policies, procedures and bias in the criminal legal system, see Elizabeth Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, (New York: Vera Institute of Justice, 2018); and Susan Nembhard and Lily Robin, *Racial and Ethnic Disparities throughout the Criminal Legal System: A Result of Racist Policies & Discretionary Practices*, (Washington, DC: The Urban Institute, 2021). National Academies of Sciences, Engineering, and Medicine. 2022. *Reducing Racial Inequality in Crime and Justice: Science, Practice, and Policy*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26705>.

<sup>54</sup> This effort has been blueprinted by other cities. For example, as part of Atlanta's effort to safely close the City Detention Center, Atlanta City Council repealed a significant number of "quality-of-life" ordinances that criminalized poverty and personal drug use. For more, see Neighbor Staff, "Atlanta City Council repeals 40 outdated ordinances" *Northside Neighbor*, March 20, 2017, [https://www.mdjonline.com/neighbor\\_newspapers/northside\\_sandy\\_springs/atlanta-city-council-repeals-40-outdated-ordinances/article\\_b521ba86-0dab-11e7-b5ba-f338e3ddf757.html](https://www.mdjonline.com/neighbor_newspapers/northside_sandy_springs/atlanta-city-council-repeals-40-outdated-ordinances/article_b521ba86-0dab-11e7-b5ba-f338e3ddf757.html). For the smaller subset of offenses that were converted to civil penalties, there was a concurrent effort to ensure that people retained access to counsel in civil proceedings and that incarceration was not the default response to unpaid civil penalties.

<sup>55</sup> Marsha Mercer, "Police 'Pretext' Traffic Stops Need to End, Some Lawmakers Say," *Pew Stateline*, September 3, 2020, <https://perma.cc/8LWQ-4QXD>.



without capacity for arrest and law enforcement.<sup>56</sup> In order to ensure that nonappearance for traffic offenses does not continue to result in detention for so many people, some of the provisions around court reminders, support and delayed issuance of warrants should also be implemented.

- 5.1. As an alternative to issuing traffic tickets, implement a voucher program to provide drivers with the resources to fix broken tail-lights or other maintenance-related safety concerns. These vouchers would address the problem directly while also preventing cycles of debt that often result from expensive fines associated with traffic tickets.<sup>57</sup>
- 5.2. Implement a Driver Accountability Program for people with driving-related offenses that threaten public safety. Designed by the Center for Court Innovation, the Driver Accountability Program increases self-awareness of dangerous driving behavior, identifies root causes, and helps participants change their beliefs and habits.<sup>58</sup>
6. Alternatively, develop local law enforcement policies deprioritizing arrest and enforcement for minor traffic violations with the goal of eliminating all non-public safety stops.
  - 6.1. End the practice of conducting searches during pretextual stops when officers believe they smell marijuana.
7. Investigate the percent of the Lawrence and Douglas budgets that are derived from fines, fees, and costs and identify alternative budgetary strategies where necessary to avoid misaligned incentives.

## II. Most women were admitted to jail for low-level, nonviolent offenses

- ◆ This is unsurprising given that most people admitted to the Douglas County jail are detained on low-level, nonviolent charges. Still, the gendered impact of jailing women with little or no public safety rationale merits further discussion.
- ◆ Studies have shown that women in jail have experienced high rates of victimization and trauma. Nationally, 86 percent of women in jail are survivors of

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<sup>56</sup> Janie Har, “Berkeley Moves Toward Removing Police From Traffic Stops,” *Associated Press*, July 15, 2020, <https://apnews.com/article/police-reform-us-news-ap-top-news-berkeley-transportation-1fd5db1955d5ce8b7e60a6d4619dd214e>; Rigel Robinson, Loris Droste, Ben Bartlett, and Jesse Arreguin, “BerkDOT: Reimagining Transportation for a Racially Just Future,” Proposal to Berkeley City Council, Revised Agenda Material (July 14, 2020); and Jill Cowan, “Berkeley Moves Closer to Ending Police Traffic Stops,” *New York Times*, February 24, 2021, <https://www.nytimes.com/2021/02/24/us/berkeley-police.html>; and Dennis Romero, “Minneapolis to Limit Police Traffic Stops for Minor Violations,” *NBC News*, August 14, 2021, <https://perma.cc/LL38-5ZWL>.

<sup>57</sup> A nonprofit in Minneapolis, Minnesota, implemented a voucher program to prevent punitive traffic stops that disproportionately harm people without the financial resources to pay tickets or fix broken car parts. See the Lights On! website, accessed October 27, 2022, <https://lightsonus.org/about/>.

<sup>58</sup> The Center for Court Innovation found that participants in the Driver Accountability Program were 40 percent less likely to be rearrested for traffic-related offenses than drivers who had been arrested on similar traffic-related offenses and had not gone through the program. See Amanda Berman, *Driver Accountability Program*, (New York, NY: Center for Court Innovation, 2019).

sexual abuse, 77 percent have experienced partner violence, and 60 percent have experienced caregiver violence.<sup>59</sup>

- ◆ Nationwide, an estimated 80 percent of women in jail are mothers, and the majority are the primary caregivers of their children.<sup>60</sup> This means that the incarceration of women also has broader consequences for communities.

#### **Recommendations:**

1. Douglas County administrators report a lack of recreational and programming space for the women detained in the jail. Given that most women are admitted for low-level, nonviolent offenses, Douglas County should focus on investing in community-based trauma-informed supportive services, which could serve as alternatives to arrest and incarceration and offer support for people released pretrial.
2. Prioritize non-custodial sentences, particularly for primary caregivers. Research shows that people who serve sentences have higher recidivism rates than similar people who are not incarcerated.<sup>61</sup> Children also suffer the collateral consequences of incarceration, including economic instability, behavioral health problems, poor physical health, homelessness and vulnerability to future incarceration.<sup>62</sup> Maternal incarceration, specifically, is linked to a pronounced impact on a child's likelihood of future justice system involvement.<sup>63</sup>

### **III. Pretrial lengths of stay could be reduced by expanding the use of non-monetary conditions of release. This may also mitigate some of the racially disparate impacts of detention and better serve public safety.**

- ◆ The majority of people admitted pretrial (64 percent) were booked and released within 24 hours. Black and Native American people were less likely to be released the same day, however, and face longer median pretrial lengths of stay.
- ◆ Even short jail stays can make people more vulnerable to future arrest. This is known as the “criminogenic” effect of incarceration. A person's life can be profoundly destabilized by even a few days in pretrial detention; consequences escalate as the length of detention increases.<sup>64</sup>

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<sup>59</sup> Shannon M. Lynch et al., “Women's Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma,” (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2012), 32.

<sup>60</sup> Wendy Sawyer and Wanda Bertram, *Prisons and jails will separate millions of mothers from their children in 2022* (Northampton, MA: Prison Policy Initiative, 2022).

<sup>61</sup> W.D. Bales and A.R. Piquero, “Assessing the Impact of Imprisonment on Recidivism,” *Journal of Experimental Criminology* 8, no. 1 (2012): 71-101.

<sup>62</sup> Sara Wakefield, Christopher Wildeman, *Children of the prison boom: mass incarceration and the future of American inequality* (New York: Oxford University Press, 2014).

<sup>63</sup> Melinda Tasca, Nancy Rodriguez, Marjorie S. Zatz, “Family and Residential Instability in the Context of Paternal and Maternal Incarceration,” *Criminal Justice and Behavior* 38, no.3 (2011): 231-247. Several states have worked to expand non-custodial sentencing of primary caregivers, who are overwhelmingly mothers of dependent children. This includes Tennessee, Massachusetts, Oregon and Washington.

<sup>64</sup> Christopher Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (Houston, TX: Laura and John Arnold Foundation, 2013).

## **Recommendations:**

1. Currently, Pretrial Services determines supervision monitoring levels by conducting a risk assessment prior to first appearance. This monitoring report is then sent to the judge, district attorney and jail staff. People who are in custody appear in front of the judge and District Attorney via Zoom for first appearance, where the conditions of release are determined. People who have retained counsel are represented at first appearance, otherwise bail decisions are made in many cases without defense counsel present.
  - 1.1. To minimize the number of people detained and total number of bed-days, Douglas County should enable a subset of people who are deemed low-risk to be released prior to first appearance. Given the presumption that most low and moderate risk people will be released with minimum conditions of supervision by pretrial services, all people charged with nonperson misdemeanors and some nonperson felonies who are given a low to moderate risk level could be released with court reminders or minimum supervision by pretrial services until their court date. For example, anyone charged with a nonperson misdemeanor, any felony class 6-10 felony, or a class 4-5 drug felony who scores within the low-risk band on the pretrial praxis should be released pre-judicial presentation with administrative monitoring.<sup>65</sup> Anyone charged with a qualifying offense who scores within the moderate-risk band should be released prior to judicial presentation on a monitoring level no higher than intensive monitoring.<sup>66</sup> Findings on risk, needs, and responsiveness (RNR) show that for people who are deemed lower-risk, interactions with the justice system beyond the lightest possible touch increases the likelihood of future system contact, as does unnecessary pretrial detention. For this reason, release should be expedited and first appearance used to reassess the conditions of supervision and ensure that they are appropriately tailored to each case. Currently, the risk assessment tool recommends that people who are charged with a misdemeanor, nonperson offense and who score low to moderate risk be released on administrative monitoring, while those who score in the high-risk category be released on enhanced monitoring. The above recommendation is consistent with current practice, but moves the release valve to prior to judicial presentation, thus reducing unnecessary incarceration and destabilization during the period before first appearance when people are waiting to see a judge. This process would also free up limited judicial resources.

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<sup>65</sup> According to the Douglas County Criminal Justice Services Explanation of Pretrial Release Assessment Process, administrative monitoring includes monitoring for new arrest and court reminders.

<sup>66</sup> According to the Douglas County Criminal Justice Services Explanation of Pretrial Release Assessment Process, enhanced monitoring, which is the next highest level above administrative monitoring, includes telephone check ins no less than one time per month. The next level, intensive monitoring, includes case management meetings up to four times per month, and could include electronic monitoring as ordered by the Court.

- 1.2. Additionally, in accordance with RNR, the county should ensure that as many people as possible are released without overly onerous or costly conditions, such as electronic monitoring or mandatory drug testing, which have been found to expose people to higher rates of pretrial failure without improving appearance rates or reducing re-arrests.<sup>67</sup> We recommend eliminating drug testing as a condition of release, and imposing electronic monitoring in as narrow a set of cases as possible. For people who would remain ineligible for release pre-judicial presentation, recommended monitoring levels should be changed from a minimum of intensive monitoring (current level) to a minimum of enhanced monitoring, with more onerous conditions set only when there is a written finding that they are reasonably necessary to protect the safety of another person. This will both reduce the burden on pretrial services and the likelihood of pretrial failure.
- 1.3. If the County continues to use a risk tool, it should be made clear in written policy that the risk score should never be used as the sole basis for detention, given that it shows a person's risk of missing a court date or getting rearrested *absent any other intervention*.
2. Prioritize in-person first appearances with counsel present whenever possible rather than conducting court hearings via video from the jail. This is meant to ensure that a person's lawyer can consult with them, explain release conditions, or otherwise communicate clearly. While remote video appearances have become more ubiquitous in recent years, there is mixed evidence about their impact. Some research suggests that judges impose significantly higher bond amounts during proceedings over video, and that video appearances impact perceptions of credibility.<sup>68</sup> For any hearings conducted via video, it is imperative that the County enables private communication between an attorney and their client such that they can confer quickly during proceedings.
3. The establishment of Kansas Holistic Defenders is an important step in reducing the number of people who appear in court without counsel. However, because funding for indigent defense in felony cases is provided at the state level in Kansas, Douglas County lawmakers should continue to pursue funding from the Kansas State Board of Indigents' Defense (BIDS) to establish holistic defense for accused people across all charge categories.
4. Judicial actors should limit the imposition of money bail to cases in which there is an imminent articulable risk to the physical safety of another person. Non-financial conditions of release and referrals to services should be individually tailored in each case to support court appearance and prevent willful flight.
5. The Douglas County courts should eliminate the use of a bail schedule, which precludes an individualized inquiry into the circumstances of each case and

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<sup>67</sup> Aidan Cotter and Madeline Bailey, *Successful Pretrial Systems Rely on Supportive Pretrial Services* (New York, NY: Vera Institute of Justice, 2022).

<sup>68</sup> Alicia Bannon and Janna Adelstein, *Impact of Video Proceedings on Case Outcomes* (New York, NY: Brennan Center for Justice, 2020).

necessity of money bail. Instead, the courts should prioritize establishing constitutionally adequate bail hearings.<sup>69</sup>

- 5.1. At a hearing, a person accused of a crime should be given a meaningful opportunity to be heard, present evidence and confront evidence against them.
  - 5.2. If a money bail is required, there should be either an individualized finding that the person can afford to pay the amount (such that it will not result in detention), or that the money bail amount is necessary to protect the physical safety of another person or people.<sup>70</sup>
  - 5.3. If money bail is imposed, judicial actors should make written findings regarding the reasons for the decision and make the findings available to the person accused of a crime and to their lawyer.
  - 5.4. In order to prevent unintentional wealth-based detention, the Courts should establish automatic bond review hearings within 48 hours of first appearance for anyone who has not been found by the Courts to be a clear and convincing risk to the physical safety of another person or people, but remains in jail because they cannot pay money bail or other financial conditions of release.
6. Unless there is an identifiable risk to public safety or willful flight that cannot be mitigated by other conditions, the District Attorney's office should support pretrial release. Data from Pretrial Services shows that the DA's office opposed release recommendations made by Pretrial Services in 29 percent of cases in 2021.<sup>71</sup> Given the successful outcomes demonstrated by Douglas County's pretrial services program, the rate of opposition by the DA's office should be examined and addressed.

#### **IV. Violent charges contributed to 21 percent of pretrial jail bookings, and should be handled with specific approaches meant to address the root causes of the problem, rather than a one-size fits all approach. People charged with violent offenses should still enjoy the presumption of innocence.**

- ◆ Among violent charges, the majority of admissions were for domestic battery. Notably, in 46 percent of pretrial admissions for domestic battery, a person was released after the charge was dismissed. This high dismissal rate may be tied to mandatory arrest policies for alleged domestic battery, which often has the

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<sup>69</sup> The elements of a bail hearing that comports with due process have been laid out by several courts. See, for example, the Consent Order for Preliminary Injunction in *Allison, et al. v. Allen, et al.*, No. 19-cv-1126 (US District Court for the Middle District of North Carolina).

<sup>70</sup> In 2018, Vera began a pilot program in New York City court, which included an ability to pay "calculator" meant to estimate how much bail a person could truly afford and in what form. At first appearance, public defenders make referrals to the Bail Assessment specialist who uses the bail calculator to interview people awaiting arraignment. For more information, see Sandra van den Heuvel, Anton Robinson, Insha Rahman, *A Means to an End* (New York, NY: Vera Institute of Justice, 2019).

<sup>71</sup> The District Attorney's office opposed release recommendations by Pretrial Services in 16% of cases in 2019, 11% in 2020, and 29% in 2021, according to a presentation by Dr. Matt Cravens, Douglas County, Pretrial Release Program Evaluation, April 2022, <https://www.youtube.com/watch?v=FoRRVRnWa6I>.

unintended consequence of criminalizing the person reporting harm in addition to the alleged perpetrator. Additionally, survivors frequently decline to press charges. In a survey that the National Domestic Violence Hotline conducted about law enforcement responses to partner abuse with survivors, they found that 1 in 3 survivors surveyed reported feeling less safe after calling the police, and 1 in 4 reported they had been arrested or threatened with arrest when reporting partner abuse or sexual assault to the police.<sup>72</sup>

**Recommendations:**

1. Invest in community violence interruption and prevention programs, which have demonstrated success at reducing gun violence.<sup>73</sup>
2. Implement alternate or co-responses to Domestic Violence calls that address safety concerns but that do not contribute to the criminalization of survivors, as is often the case with current mandatory arrest for domestic battery policy. Use these calls as opportunities for intervention and to connect survivors with resources and care.
  - 2.1. The Center for Court Innovation has created a set of guiding principles for engagement and intervention with people who cause harm through intimate partner violence to inform abusive partner intervention programming and community response.<sup>74</sup>
3. Establish or expand a diversion policy that directs prosecutors to divert people to community-based restorative justice programs designed to repair harm when both parties agree to participate.<sup>75</sup>
  - 3.1. Ensure diversion is not used as a tool to widen the net of the justice system. If someone's charges should otherwise have been declined or dismissed, they should not be offered a diversion program.
  - 3.2. Ensure that the diversion policy does not have eligibility requirements based primarily on a person's previous contact with the criminal legal system. Black people are disproportionately likely to have had previous contact with the system due to disproportionate policing, which can make "criminal history" a racially inequitable criterion. Additionally, there may be more services or programs available at the time of arrest than when a person previously interacted with the system.

**V. People are cycling in and out of jail for issues related to mental illness, drug and alcohol use, and poverty.**

- ◆ Over 30 percent of the people repeatedly booked into jail were facing charges that are often related to unmet behavioral needs or social precarity, including misdemeanor criminal trespass; misdemeanor DUI; felony possession of an

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<sup>72</sup> TK Logan and Rob Valente, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses* (Washington, DC: National Domestic Violence Hotline, 2015).

<sup>73</sup> Jeffrey A. Butts, Caterina Gouvis Roman, Lindsay Bostwick, and Jeremy R. Porter, "Cure Violence: A Public Health Model to Reduce Gun Violence," *Annual Review of Public Health* 36, no. 39-53 (2015).

<sup>74</sup> Center for Court Innovation, *Guiding Principles for Engagement and Intervention with People Who Cause Harm through Intimate Partner Violence* (New York: Center for Court Innovation, May 2022).

<sup>75</sup> For key concepts, tools, and training materials pertaining to establishing a community-based restorative justice program, see *A Diversion Toolkit for Communities*, (Impact Justice, 2019).

opiate, opium, narcotic or stimulant; and misdemeanor interference with a law enforcement officer. People with mental illness often have co-occurring substance use and/or housing insecurity, making them more vulnerable to disorderly conduct or disturbing the peace charges and other low-level offenses.

- ◆ Nearly half of the people repeatedly booked into jail were admitted due to failures to appear and other kinds of administrative charges. Policy recommendations regarding court appearance and supervision violations are discussed at greater length below, focusing on systemic responses to underlying drivers and obstacles.

### **Recommendations:**

1. Continue and expand the Housing First pilot for people who are chronically housing insecure, particularly those who have mental health and/or substance use disorder related needs. This entails placement for people directly from homelessness into permanent, rather than transitional, housing where they can access programs and services, but are not required to maintain sobriety as a condition of being housed. An analysis of housing first programs found that the approach reduced both jail bookings and emergency services, producing cost savings that far surpassed program costs.<sup>76</sup>
2. Prevent overdoses by investing in harm reduction rather than prioritizing enforcement.
  - 2.1. Jail cannot keep people safe from overdose; in fact people are more likely to die by overdose in the weeks following release from jail or prison.<sup>77</sup> Instead, reducing harm and improving health requires drug-related illness, injury, and overdose death prevention, as well as evidence-based treatment for problematic use.
  - 2.2. Naloxone, an FDA-approved generic drug, reverses an opioid overdose, has no potential for abuse, and can be administered intranasally by anyone. Equip mobile crisis response teams with Naloxone, and also make it widely and freely available. Educate community members, particularly those who use drugs or who have family members who use drugs, on how to access and use it.
  - 2.3. Fentanyl test strips and sterile syringe access programs also help reduce drug-related injuries, illness, and death, and should also be widely distributed.

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<sup>76</sup> Debra Srebnik, Tara Connor, and Laurie Sylla, "A Pilot Study of the Impact of Housing First—Supported Housing for Intensive Users of Medical Hospitalization and Sobering Services," *American Journal of Public Health* 103, no. 2 (2013): 316–321.

<sup>77</sup> A study conducted by Washington State in 1999–2003 found that during the two weeks following release from prison, people were nearly 13 times more likely to die than the general population. Drug overdoses are the most frequent cause. See Ingrid A. Binswanger, Marc F. Stern, Richard A. Deyo, Patrick J. Heagerty, Allen Cheadle, Joann G. Elmore, Thomas D. Koepsell, "Release from Prison—a high risk of death for former inmates," *New England Journal of Medicine* 356, Issue 2 (2007): 157–165; and Another study from North Carolina in 2000–2015 found overdose mortality was 40 times higher for people in their first two weeks out of state prison compared to the general public. See Shabbar I. Ranapurwala, Meghan E. Shanahan, Apostolos A. Alexandridis, Scott K. Proescholdbell, Rebecca B. Naumann, Daniel Edwards Jr, and Stephen W. Marshall. "Opioid overdose mortality among former North Carolina inmates: 2000–2015," *American Journal of Public Health* 108, no. 9 (2018): 1207–1213.

- 2.4. County legislators should pass a local Good Samaritan ordinance to protect people from some criminal penalties when they seek medical assistance for drug-related crises, including when they are witness to an overdose. One key reason people do not call 911 for help is fear of arrest and prosecution stemming from their own use or possession of drugs. Kansas is one of only three U.S. states that does not have a Good Samaritan law.<sup>78</sup>
3. Effectively treat substance use and broader behavioral health needs by emphasizing a public health approach that recognizes the reality of relapse.
  - 3.1. Divert 911 calls and/or officer interactions stemming solely from alleged drug use to the new Treatment and Recovery Center instead of using arrest and booking. Incorporate dispatch diversion into the rollout of 988—the recently established national 24-hour suicide and crisis response line.
  - 3.2. Prioritize early diversion to care for people struggling with substance use disorder (SUD) and other behavioral health needs. To ensure equitable access, all people facing booking should be screened using an evidence-based tool, and referred to a clinician for assessment for appropriate levels of care and service. Taking a plea should not be a requirement of diversion, and criminal legal actors such as judges and prosecutors should have limited to no discretion to make clinical decisions about the appropriate length and type of treatment or programming.<sup>79</sup>
  - 3.3. Pilot alternatives to incarceration (ATIs) for people struggling with stimulant drug use such as methamphetamines, for which medication-assisted treatment is not currently available. Positive incentives including material rewards for adherence to a plan have shown promising results. This is called contingency management, and is among the interventions recommended by The Substance Abuse and Mental Health Services Administration (SAMHSA) for treatment of stimulant use disorders.<sup>80</sup>
  - 3.4. Ensure that incarceration is not used as a sanction for drug use for people in recovery. The National Institute of Drug Abuse (NIDA) estimates that

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<sup>78</sup> A review by the U.S. Government Accountability Office found that states with good samaritan laws had lower rates of opioid-related overdose deaths after enactment of the laws and compared to the small handful of states without such laws. See U.S. Government Accountability Office, *Drug Misuse: Most States Have Good Samaritan Laws and Research Indicates They May Have Positive Effects* (Washington, DC: GAO-21-248, 2021).

<sup>79</sup> Blue Earth County, Minnesota has operated the Yellow Line Project (YLP) since 2018. The project launched with an emphasis on screenings in the pre-booking area, before people crossed the “yellow line” of the jail door. The project has since expanded to include street-level screenings and screenings for people within three days of booking into jail. For more, see the Yellow Line Project’s website, accessed October 27, 2022, <https://www.yellowlineproject.com/>.

<sup>80</sup> See Zachary Siegel, “What If We Pay People to Stop Using Drugs?,” *The New Republic*, February 25, 2021, <https://newrepublic.com/article/161325/pay-people-stop-using-drugs>; and Claire Ronsley, Seonaid Nolan, Rod Knight, Kanna Hayashi, Jano Klimas, Alex Walley, Evan Wood, and Nadia Fairbairn, “Treatment of stimulant use disorder: A systematic review of reviews,” *PLoS ONE* 15, no. 6 (2020).



people in recovery relapse 40-60 percent of the time, sometimes more than once. As long as a person remains connected to programming and/or services, relapse should not indicate failure to complete a diversion program or other alternative to incarceration.

- 3.5. Invest in more inpatient and out-patient substance use disorder treatment programs in the county.

## **VI. A substantial portion of the people admitted to jail pretrial on drug possession charges were facing low-level charges.**

- ◆ 40 percent of pretrial drug possession admissions were for misdemeanor charges, primarily for possession of a hallucinogenic drug, followed by drug paraphernalia. A large body of research has emerged around the use of psilocybin mushrooms and other psychoactive substances, which have been used both medicinally and ceremonially for thousands of years and are not considered addictive. Not only do psilocybin and lysergic acid diethylamide (LSD) have very low levels of toxicity, but epidemiological studies have also shown lower rates of mental health disorders and suicide among people who have used them.<sup>81</sup>

### **Recommendations:**

1. Pass local ordinances decriminalizing personal drug possession, and invest in accurate drug education and safety-planning. Alternatively, develop local law enforcement policies deprioritizing arrest and enforcement for psychoactive substances.

## **VII. DUI is a strong driver of pretrial jail admissions but has less of an impact on pretrial bed-days.**

- ◆ Although most people admitted pretrial for DUI-related charges were released the same day, bookings with a DUI top charge made up 19 percent of overall admissions, thus accounting for a substantial amount of law enforcement time and jail resources to book, process, and release people. Additionally, people aged 18 to 25—a population with specific needs—accounted for a disproportionate share of those admitted with a DUI top charge.

### **Recommendations:**

1. Law enforcement should develop a written policy to divert first-time DUI arrests to a sobering center with referral to services, when possible. Sobering centers allow people who are inebriated or, in some cases, under the influence of drugs, to sober up while offering connections to resources including recovery programs.<sup>82</sup> In Douglas County, the Treatment Recovery Center could potentially be used for this purpose, or a different facility can be used to serve this need. For people who are not diverted pre-booking, infrastructure for diversion to treatment should still be made available post arrest and/or booking.

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<sup>81</sup> Drug Policy Alliance, *Psilocybin Mushrooms Factsheet*, (Washington, DC: Drug Policy Alliance, 2017).

<sup>82</sup> Suzanne V. Jarvis, Leonard Kincaid, Arlo F. Weltge, Mike Lee, Scott Basinger, "Public Intoxication: Sobering Centers as an Alternative to Incarceration, Houston, 2010-2017," *American Journal of Public Health* 109, no. 4 (2019), 597-599.

2. Douglas County should consider expanding accessible public transportation options to prevent intoxicated driving—for example, by expanding the regular fixed-route bus service hours, which currently only run Monday - Saturday from 6 a.m to 8 p.m. hours in Lawrence.<sup>83</sup> Although Lawrence does offer a night line that runs Monday-Saturday from 8 p.m. to 6 a.m., this service must be scheduled in advance by calling a phone number, and the fare is double the regular bus fare, both potential disincentives for intoxicated individuals seeking public transportation options.
3. Douglas County should work with the University of Kansas, Haskell Indian Nations University and Baker University to ensure that the student population is being educated and supported in reducing risky alcohol consumption.

**VIII. Failures to appear, probation violations, and remands are significant drivers of the jail population, together accounting for almost a third of all jail admissions from 2017 to 2021**

- ◆ Almost a quarter of pretrial jail admissions were due solely to nonappearance (FTA), the most common top charge driving bookings into the jail. FTAs were also the most common top charge for admissions from municipal court. The Douglas County Risk Assessment Tool also considers both previous FTA arrests and pending FTA warrants when assigning a risk score, making people less likely to be released without paying bail.<sup>84</sup> Evidence shows that most people do not appear in court because of barriers such as a lack of transportation, childcare or an inability to take time off of work, or because they forget their court dates or don't understand the consequences of not appearing. This suggests that there are systemic interventions that could more effectively support court appearance than simply relying on FTA warrants.
- ◆ Probation violations were the fifth most common top charge overall, and the fourth most common top charge for admissions from district court. Probation violations resulted in a median length of stay of 18.5 days for people who were held for 24 hours or longer, suggesting that probation is not currently serving as an effective alternative to incarceration. Concerns about lengthy periods of detention after alleged probation violations were previously raised in a 2018 report submitted to the Douglas County Board of Commissioners by Dr. Allen Beck. This analysis suggests that problems associated with probation violations continue to impact the jail population.<sup>85</sup>

**Recommendations:**

1. Implement portable court date rescheduling practice across courts and law enforcement agencies, as endorsed by both Sheriff Armbrister and Chief Lockhart. Portable court date rescheduling, if approved by the judges, would enable officers to reschedule people with FTAs for new court dates on the spot

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<sup>83</sup> Lawrence Transit Guide, The University of Kansas and the City of Lawrence, August 2022.

<sup>84</sup>As described in Douglas County Criminal Justice Services, *Explanation of the Pretrial Release Assessment Process*, provided to the Vera Institute of Justice via email in March, 2022.

<sup>85</sup> Allen R. Beck, *Recommendations for Improving the Criminal Case Processing of Inmates in the Douglas County Jail* (Kansas City, MO: Justice Concepts Inc, 2018).

using either a mobile phone app or filling out a brief rescheduling form that can then be entered into the system, thus reducing unnecessary jail bookings in response to failures to appear.

2. Allow attorneys to stand in for clients at hearings where their attendance is not necessary (at most calendared appearances a person appears before a judge and receives a new court date, but does not participate in any formal plea negotiations that require attendance).
3. Enable judges to delay issuing a warrant in a subset of cases to allow a person's lawyer, family members, or the courts themselves to produce them within 24 hours.<sup>86</sup>
4. Fund and implement additional court resources that will help increase appearance, including:
  - 4.1. Expand court hours for both district and municipal courts so that people who work or have caregiver responsibilities can appear either in the evenings or on weekends.
  - 4.2. Implement text and phone call reminders for court appearances, and follow up with individuals immediately following a missed court appearance to reschedule.
  - 4.3. Provide rides to court, either via transportation passes or providing a bus/van to pick people up on their scheduled court dates. This can be funded through community-based organizations, rather than through the criminal legal system.<sup>87</sup>
  - 4.4. Provide childcare at court so that people with caregiver responsibilities do not face additional barriers to appearance. Similarly, this is an opportunity to contract community-based organizations rather than expand the criminal legal system.
  - 4.5. Adequately fund a holistic public defender's office to staff both municipal and district court so that everyone has access to an attorney who can communicate court scheduling changes, appearance challenges, and contact clients after a missed appearance.

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<sup>86</sup> In Michigan, reforms passed in 2021 reduce the use of warrants for nonappearance by making a summons to appear in court the default method for initiating a case against people charged with nonviolent offenses. Additionally, people who miss court for the first time are given two days to reschedule their appearance before a warrant is issued, and any people with low-level warrants up to a year old are able to show up to the courthouse and be arraigned or receive a new court date without being arrested. See Jake Horowitz, *Michigan Enacts Landmark Jail Reforms*, (Washington, DC: Pew Charitable Trusts, 2021).

<sup>87</sup> In 2019, Dakota County expanded access to transportation in order to ensure no one missed a court appearance due to lack of transportation. The program provided free shuttles on a loop to all community-members receiving county services and their families, in addition to those going to court or probation meetings. The loop stopped at both the court and jail, among other transit hubs. See Tim Harlow, "Dakota County offers free bus rides to court, county services," *Star Tribune*, December 30, 2019, [https://www.startribune.com/dakota-county-offers-free-bus-rides-to-court-county-services/566552852/?refresh%3Dtrue&sa=D&source=docs&ust=1666903079812995&usg=AOvVawoVo4QZq\\_xhYP\\_VUGN4S7sU](https://www.startribune.com/dakota-county-offers-free-bus-rides-to-court-county-services/566552852/?refresh%3Dtrue&sa=D&source=docs&ust=1666903079812995&usg=AOvVawoVo4QZq_xhYP_VUGN4S7sU).

- 4.6. Eliminate the use of fines and fees so that people do not avoid court out of fear they will be remanded due to inability to pay court-mandated fines or fees.
5. Prevent bookings for individuals who have warrants due to failure to pay court fines, fees, or surcharges by reducing or eliminating the use of financial sanctions, eliminating incarceration as a response to non-payment, and conducting indigency hearings at the earliest stage possible so that court debt may be waived. Create a presumption of indigency in a set of circumstances, for example in which a person is currently receiving public benefits, is housing insecure, or has recently returned from incarceration.
  - 5.1. To the extent that financial sanctions/fees remain in use, establish full court hearings and require a finding that a person had the ability to pay without incurring significant financial hardship and chose not to before jailing them for nonpayment.<sup>88</sup>
6. Provide adequate counsel for all people going through municipal and district courts so that people do not plead to probation for charges that might otherwise be dismissed. Divert cases to alternate sanctions rather than incarceration or probation, where possible.
7. Prohibit incarceration for technical violations, which are violations for noncompliance with conditions of probation. These violations are not in themselves illegal and would not constitute a crime for anyone who is not on probation (e.g. a missed appointment, a positive urinalysis, missed payment of fees, etc).<sup>89</sup> Nationally, people on probation have to comply with an average of 10 to 20 or more different conditions, which can be overly burdensome and make people especially vulnerable to committing a technical violation.<sup>90</sup>
8. Establish probation caps and implement automatic earned good time credits, which enable people to earn time off their probation term for compliance, such as maintaining employment or completing programming.<sup>91</sup> To increase equity and reduce the burden on probation officers, make earned credits automatic (e.g. everyone receives 30 days off a probation term for every 30 days of compliance). Longer terms of probation have been shown to be counterproductive, since

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<sup>88</sup> See *Bearden v. Georgia*, 461 U.S. 660 (1983).

<sup>89</sup>Alex Roth, Sandhya Kajeepeta, and Alex Boldin, *The Perils of Probation: How Supervision Contributes to Jail Populations* (New York: Vera Institute of Justice, 2021).

<sup>90</sup> *Ibid.*

<sup>91</sup> For limits on probation terms and information on earned compliance credits, see Kendra Bradner, Vincent Schiraldi, Natasha Mejia, and Evangeline Lopoo, *More Work to Do*, (New York: Columbia Justice Lab, 2020), 13; Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez, *Less Is More: How Reducing Probation Populations Can Improve Outcomes*, (Cambridge, MA: Executive Session on Community Corrections, the Harvard Kennedy School, 2017), 11; Cecelia Klingele, “Rethinking Community Supervision,” *Journal of Criminal Law and Criminology* 103, issue 11 (2013), 1062-1063; Ellen Dinsmore, Linnea Lassiter, Lisa Margulies, Celeste Gander, Juliene James, Cybele Kotonias, Amy Solomon, and Brian Elderbroom, *Policy Reforms Can Strengthen Community Supervision*, (Washington, DC: Pew Charitable Trusts, 2020), 24, 29; and *The Potential of Community Corrections*, (New York, NY: Vera Institute of Justice, 2013), 27; Adam Gelb and Connie Utada, *For Better Results, Cut Correctional Populations*, (Washington DC: Pew Charitable Trusts, August 25, 2017).

onerous conditions make risk of revocation due to technical violations especially high.<sup>92</sup>

## Summary of Recommendations by Decision-Point

### Pre-Arrest

1. Align cite and release policies across police departments and direct officers to utilize the practice in more eligible cases.
2. Redesign the summons form to make it more accessible and reduce confusion.
3. Invest in community violence interruption and prevention programs.
4. Use alternate responders who are trained to address mental and behavioral health calls to respond to appropriate 911 and 988 calls.
5. Divert DUI cases to a sobering center with referral to services.
6. Review municipal code and strike ordinance violations that would be better dealt with outside the criminal legal system.
7. Pass local ordinances decriminalizing personal drug possession.
8. Invest in harm reduction and community-based resources.
9. Pass a Good Samaritan ordinance to protect people seeking emergency responders during a potential overdose.
10. Implement alternate responses to domestic violence calls that address safety concerns but that do not contribute to the criminalization of victims, as is often the case with current mandatory arrest for domestic battery policy.
11. Establish civilian traffic response units that handle collisions and minor traffic violations with a safety-first approach, while reducing or eliminating non-public safety traffic stops by law enforcement.

### Pre-Charging

1. Divert people who would be better served by mental or behavioral health treatment by conducting behavioral health screens at booking for all individuals arrested by law enforcement and brought to the jail.
2. Divert people with public safety traffic-related violations to a free Driver Accountability Group program at booking.<sup>93</sup>

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<sup>92</sup> James Byrne, Adam Gelb, and Jake Horowitz, *Maximum Impact: Targeting Supervision on Higher-Risk People, Places and Times* (Washington, DC: Pew Charitable Trusts, 2009), 2-3.; Todd R. Clear, Patricia M. Harris, and S. Christopher Baird, "Probationer Violations and Officer Response," *Journal of Criminal Justice* 20, no. 1 (1992), 1-12, 7; M. Kevin Gray, Monique Fields, and Sheila Royo Maxwell, "Examining Probation Violations: Who, What, and When," *Crime & Delinquency* 47, no. 4 (2001), 537-557, 550-551; Cecelia Klingele, "Understanding Revocation from Community Supervision," in *Ex-offenders Under Watch* (Milwaukee, WI: Badger Institute, 2019), 4, 12; Ellen Dinsmore, Linnea Lassiter, Lisa Margulies, Celeste Gander, Juliene James, Cybele Kotonias, Amy Solomon, and Brian Elderbroom, *Policy Reforms Can Strengthen Community Supervision*, (Washington, DC: Pew Charitable Trusts, 2020), 24; Michelle S. Phelps, "Ending Mass Probation," *Future of Children* vol. 28, no.1, 2018, 125-146, 130; and Barbara Sims and Mark Jones, "Predicting Success or Failure on Probation: Factors Associated with Felony Probation Outcomes," *Crime & Delinquency* 43, no. 3 (1997), 314-327, 322-324.

<sup>93</sup> Financial sanctions, like tickets or fines, trap poor people in the system and have little to no impact on changing the underlying behavior that led to the traffic stop. Diversion programs, like the Driver

3. Establish or expand a Prosecutor declination policy that directs prosecutors to decline referred cases stemming from unmet needs related to poverty, substance use, homelessness, or mental health.<sup>94</sup>
4. Establish or expand a Prosecutor declination policy that directs prosecutors to decline referred cases stemming from pretextual stops.
5. Establish or expand a diversion policy that directs prosecutors to divert people to community-based restorative justice programs designed to repair harm when both parties agree to participate.<sup>95</sup>

### **Bail-Setting**

6. Enable a subset of people who are deemed low-risk to be released prior to first appearance, and a subset of people deemed moderate-risk to be released with conditions prior to first appearance.
7. Eliminate the use of drug testing as a condition of pretrial release, and reduce the use of electronic monitoring.
8. Prioritize in-person first appearances with counsel present whenever possible rather than conducting court hearings via video from the jail.
9. Pursue funding to ensure holistic defense for accused people across charge categories.
10. Unless there is an identifiable risk to public safety or willful flight that can not be mitigated by other conditions, the District Attorney's office should support pretrial release.
11. Limit the imposition of money bail to cases in which there is an imminent articulable risk to the physical safety of another person. Individually tailor non-financial conditions of release and referrals to services to support court appearance and prevent willful flight.
12. Eliminate the use of a bail schedule, which precludes an individualized inquiry into the circumstances of each case and necessity of money bail. Instead, prioritize constitutionally adequate bail hearings.<sup>96</sup>
13. Establish automatic bond review hearings within 48 hours of first appearance for anyone who has not been found by the Courts to be a clear and convincing risk to the physical safety of another person or people, but remains in jail because they cannot pay money bail or other financial conditions of release.
14. Implement a daily look-back docket to identify whose holds have been lifted or could be quickly addressed.

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Accountability Program established by the Center for Court Innovation, improve equity, reduce case processing time, and have been found to be 40 percent more effective than both tickets and arrest at preventing future traffic-related system contact, see Amanda Berman, *Driver Accountability Program* (New York, NY: Center for Court Innovation, 2019).

<sup>94</sup> See, for example, the Suffolk County (Boston) District Attorney's Office's policy to decline 15 charges, including drug possession, intent to distribute, trespass, and breaking and entering into a vacant property, Rachael Rollins, *The Rachael Rollins Policy Memo* (Boston, MA: Suffolk County District Attorney's Office, 2019).

<sup>95</sup> For key concepts, tools, and training materials pertaining to establishing a community-based restorative justice program, see *A Diversion Toolkit for Communities*, (Impact Justice, 2019).

<sup>96</sup> The elements of a bail hearing that comports with due process have been laid out by several courts. See, for example, the Consent Order for Preliminary Injunction in *Allison, et al. v. Allen, et al.*, No. 19-cv-1126 (US District Court for the Middle District of North Carolina).

## **Failure to Appear and Failure to Pay**

1. Redesign summons forms to ensure they are clear and user-friendly.<sup>97</sup>
2. Implement portable court date rescheduling practice across courts and law enforcement agencies, as endorsed by both Sheriff Armbrister and Chief Lockhart.
3. Allow attorneys to stand in for clients at hearings where their attendance is not necessary.
4. Enable judges to delay issuing a warrant in a subset of cases to allow a person's lawyer, family members, or the courts themselves to produce them within 24 hours.
5. Fund and implement court resources that will help increase appearance, including:
  - a. Expanded court hours for both district and municipal courts so that people who work or have caregiver responsibilities can appear either in the evenings or on weekends.
  - b. Text and phone call reminders for court appearances, and follow up with individuals immediately following a missed court appearance to reschedule.
  - c. Rides to court, either via transportation passes or providing a bus/van to pick people up on their scheduled court dates. This can be funded through community-based organizations, rather than through the criminal legal system.
  - d. Childcare at court so that people with caregiver responsibilities do not face additional barriers to appearance. Similarly, this is an opportunity to contract community-based organizations rather than expand the criminal legal system.
  - e. A holistic public defender's office at both the municipal and district court levels so that everyone has access to an attorney who can communicate court scheduling changes, appearance challenges, and contact clients after a missed appearance.
  - f. Eliminate the use of fines and fees so that people do not avoid court out of fear they will be remanded due to inability to pay court-mandated fines or fees.
6. Prevent bookings for individuals who have warrants due to failure to pay court fines, fees, or surcharges by reducing or eliminating the use of financial sanctions and conducting indigency hearings at the earliest stage possible so that court debt may be waived.
  - a. To the extent that financial sanctions/fees remain in use, establish full court hearings and require a finding that a person had the ability to pay and chose not to before jailing them for nonpayment.<sup>98</sup>

## **Probation**

1. Provide adequate counsel for all people going through municipal and district courts so that people do not plead to probation for charges that might otherwise be dismissed.
2. Divert cases to alternate sanctions rather than overuse probation as a means to force pleas.
3. Prohibit incarceration for technical violations, which are violations for noncompliance with conditions of probation. These violations are not in themselves illegal and would

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<sup>97</sup> Jason Tashea, "Text-message reminders are a cheap and effective way to reduce pretrial detention," *American Bar Association Journal*, (2018).

<sup>98</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983).

not constitute a crime for anyone who is not on probation (e.g. a missed appointment, a positive urinalysis, missed payment of fees, etc).<sup>99</sup>

4. Establish probation caps and implement automatic earned good time credits, which enable people to earn time off their probation term for compliance, such as maintaining employment or completing programming.<sup>100</sup>

## Sentencing

1. Offer alternative sentences that divert people out of custodial sentences and address root causes.
2. Establish a net of charges for which there is a presumption of non-custodial sentences.
3. Prioritize non-custodial sentences, particularly for primary caregivers.

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<sup>99</sup> Alex Roth, Sandhya Kajeepeta, and Alex Boldin, *The Perils of Probation: How Supervision Contributes to Jail Populations* (New York: Vera Institute of Justice, 2021).

<sup>100</sup> For limits on probation terms and information on earned compliance credits, see Kendra Bradner, Vincent Schiraldi, Natasha Mejia, and Evangeline Lopoo, *More Work to Do*, (New York: Columbia Justice Lab, 2020), 13; Michael P. Jacobson, Vincent Schiraldi, Reagan Daly, and Emily Hotez, *Less Is More: How Reducing Probation Populations Can Improve Outcomes*, (Cambridge, MA: Executive Session on Community Corrections, the Harvard Kennedy School, 2017), 11; Cecelia Klingele, “Rethinking Community Supervision,” *Journal of Criminal Law and Criminology* 103, issue 11 (2013), 1062-1063; Ellen Dinsmore, Linnea Lassiter, Lisa Margulies, Celeste Gander, Juliene James, Cybele Kotonias, Amy Solomon, and Brian Elderbroom, *Policy Reforms Can Strengthen Community Supervision*, (Washington, DC: Pew Charitable Trusts, 2020), 24, 29; *The Potential of Community Corrections*, (New York, NY: Vera Institute of Justice, 2013), 27; and Adam Gelb and Connie Utada, *For Better Results, Cut Correctional Populations*, (Washington DC: Pew Charitable Trusts, August 25, 2017).



## Data Recommendations

This section provides recommendations related to data collection, database improvement, and data transparency. These recommendations are intended to either cut down on time spent cleaning and processing data for analysis; broaden the set of questions that the data can be used to answer; increase the accuracy of any potential future analysis; and increase transparency and oversight into local jail dynamics.

### General recommendations for improvements to the Spillman Jail Management System

1. Add a drop-down menu that lists out the possible options for charges that someone can be booked in on. While many charges already have standardized language, some charges in the dataset currently use non-standard phrasing, capitalization, acronyms, etc. requiring data cleaning before data can be analyzed.
2. Add a field to capture more detailed information about charge severity than the charge class that is currently tracked (for example, specifying that a charge is a “level 5 person felony” rather than just “felony”). If possible, this field should be auto-populated based on the charge information. The Kansas Sentencing Commission (KSC) publishes files with the detailed severity classification for every felony and misdemeanor charge in the Kansas criminal code—as well as for anticipatory versions of each charge (attempt, conspiracy, and solicitation). These files are available for download via the Kansas Sentencing Commission website.<sup>101</sup>
3. Add a way of either identifying the most serious charge on a booking or ranking the charges based on a pre-established severity ranking when they are entered into the system at booking. Having charge rankings or a most serious charge flag built into the database would cut down significantly on the time needed to process data as it would remove the need for the “top charge methodology” described in detail in the appendix to this report.
4. Add a field to document the original charge and current status of the original charge for people booked in on a failure to appear, probation/parole violation, warrant, or remand. Currently the system does not include information about the original or underlying charge for people who are booked into jail with a probation or parole violation, remand, warrant, or failure to appear (either alone or among other charges). Having information about the original or underlying charge would make it easier to assess how many people are booked into jail for technical (non-criminal) violations and to understand the types of underlying charges driving admissions for administrative charges.
5. Add fields for bond type, bond status (i.e. bond set, bond paid, etc.), updated bond amount, and bond updated date.
6. Improvements to how demographic information is collected:
  - a. Add an option for “some other race” in race.
  - b. Add an option for “non-binary/other” in gender.
  - c. Add a field to capture whether or not someone is homeless or housing insecure at the time of booking.

### Police at booking

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<sup>101</sup> See files labeled “felony listings” and “misdemeanor listings” at the following: Kansas Sentencing Commission, *Reports: 2011 Criminal Code Recodification*, (Topeka, KS, 2011).

1. Ensure police officers have information about the nature of warrants so that they can opt to cite and release rather than book people into jail whenever possible. Ensure police officers are provided with up-to-date information on all charges eligible for cite and release.
2. Document in police records if the encounter led to a result other than arrest (cite and release, referral to a program, no action).

#### **Intake officer at the jail**

1. Adopt a standard method to capture race and gender at intake (i.e. for example, ask the person to self-identify).
2. Adopt a standard method to capture homeless status or housing insecurity at intake (for example, if an individual has not had their own place with a lease, ownership interest or occupancy agreement in the last 60 days).
3. Flag the most serious charge on the booking when entering charge information. Note: the most serious charge should be based on a pre-established severity ranking (as described above in recommended changes to the Spillman system) rather than based on the intake officer's determination.
4. Capture information about the original/underlying charge and current status of the original charge for people booked in on a failure to appear, probation/parole violation, warrant, or remand. If possible, the original/underlying charge should be automatically populated if the information is available in the jail management system.

#### **Data analysis & dashboards**

1. Integrate top charge algorithm or process in an ongoing way, such as once a week.
2. Consider using more descriptive charge categories (i.e. separating out drug possession from drug manufacturing charges, re-classifying the "not listed elsewhere" charges, etc.)
3. Pursue further analysis and/or integration of case/court data and probation data.
4. Dashboards:
  - a. Incorporate information about top charge where possible.
  - b. Incorporate filter for judicial status, so that information can be viewed for people held pretrial versus those serving sentences. Separate out probation and parole violations into their own judicial status.
  - c. Present information on length of stay by charge category and judicial status rather than generally.
  - d. Consider using people-first language (i.e. avoid the terms "inmate" and "offender").
  - e. Consider using the term "charge" rather than "offense" to reflect that most people in jail have not been convicted.
  - f. Remove information about education level from the dashboard, as this is not necessarily useful for the public and potentially stigmatizing.
  - g. Considering adding a visual on the number of people booked into the jail more than once.
5. Investigate the revenue incentives around traffic stops and other enforcement priorities and seek to replace revenue from fines, fees, and costs with an alternate funding strategy.

#### **Data transparency**

1. Douglas County and the Criminal Justice Coordinating Council should consider developing and adopting a set of principles or a policy around making timely and

relevant data and analysis about the local criminal legal system publicly available. This could be accompanied by trainings for the community about how to understand any existing and future dashboards and data to explore local criminal justice issues.

2. Consider making the dataset for current dashboards publicly available for download (cleaned, anonymized).
3. Establish agreements that support data sharing between local criminal legal system actors, including but not limited to the Sheriff's Office, local courts, pretrial services, and public health agencies.
4. Build processes and metrics to track implementation of new practices:
  - a. Cite and release
  - b. Diversion
  - c. Reduced probation terms and enforcement
  - d. Changes to FTA warrants
  - e. Bail practices
  - f. Reduction of repeat bookings

### **Community-based oversight**

1. Community-based organizations in Douglas County should consider working with local partners (including policy groups, university departments, Vera, and others) to build a clear monitoring and evaluation plan for new policies that are implemented to address specific issues in the local criminal legal system (such as cite & release, diversion, decriminalization, FTA reform, bail reform). Any evaluation plans should include, at minimum:
  - a. Input from people with direct experience of the local criminal legal system about what reform and progress would look like and how success should be measured.
  - b. A clear statement of the goal and expectations of the policy or policies being considered for implementation.
  - c. Clear parameters on the population(s) that would be most directly impacted by the policy or policies being considered.
  - d. Baseline information on pre-reform metrics, including but not limited to jail admissions, as well as targets for success, and a plan for assessing the relative impacts of policy reforms on certain groups, such as by race, gender, and legal status.
  - e. A plan for periodically assessing and publicly sharing progress along predefined metrics. This should include quantitative metrics (for example, percent of admissions with an FTA charge), as well as qualitative metrics that help assess the degree to which reforms promote fair treatment, a sense of dignity, and equal access to services.
  - f. Plan for assessing changes that cannot easily be captured using metrics, including changes in how people experience the local criminal legal system and identifying local contextual factors that may play a part in promoting or hindering the success of a new policy.
  - g. Plan for making the results of the evaluation publicly available in a timely manner.
  - h. A process to secure commitments from county agencies to present and share evaluation frameworks, reports, methods, and data.

## Appendix. Methodology

### Data Sources

The analysis presented in this memo relies on a dataset that Vera received from the Douglas County Criminal Justice Coordinating Commission (CJCC). The dataset contains anonymized information about all people released from the Douglas County jail and their charges between January 1, 2017 and February 9, 2022. This dataset includes information about each person's gender, race/ethnicity, age, and education level. For each booking, it also includes information about how long each person stayed in jail and information about each charge on a booking. For each charge, the dataset includes the following: whether each person was being held before trial or serving a sentence in jail; whether the case was a district or municipal court case; whether the case was a traffic or criminal case; the release reason for each charge; a description of the charge; and the charge class.

### General Cleaning Procedures

- The raw dataset included information about 10,503 individuals, 21,104 bookings, and 40,402 charges.
- The final dataset used for analysis is limited to people who were released from the Douglas County jail one or more times during the 5-year period from January 1, 2017 to December 31, 2021. This represents information about 10,376 people, 20,794 bookings (since some people were booked into jail multiple times during this time period), and 39,809 charges (since some people had multiple charges on their booking).
- We manually standardized the open text for charge description to improve consistency within this data field. This primarily consisted of creating consistency in capitalization of text and abbreviations (e.g., viol vs. violate vs. violation or poss vs. possess vs. possession).

### Data Limitations

- The data do not distinguish between people who were admitted to jail on a new charge, and those who were admitted for a number of other types of violations that do not typically, by themselves, constitute new criminal charges—including failures to appear, probation and parole violations, bond failures, remands, and warrants or detainers. Throughout this document, we refer to these types of charges as “administrative charges.” A further limitation of the analysis is that the originating charge is not available in the jail management system for people who were admitted for these charges. Generally, we assumed that if one of these charges was accompanied by a new criminal, municipal or traffic charge on a booking, that the new charge was driving the arrest rather than the administrative charge. If the administrative charge was listed alone, or only accompanied by other administrative charges, it was considered to be the most serious charge—and the person was considered to be booked for an administrative charge alone. This limitation affects the top charge classification in that, for people admitted on administrative charges, we are not able to assess the severity of their originating charges—for example, to distinguish between someone who was admitted for a failure to appear on a previous felony charge versus a previous traffic charge. However, this

limitation is somewhat mitigated by the fact that the booking with the originating charge would presumably still be represented in the analysis the first time they were booked. See Step 5 below for more details about our treatment of these types of charges in the methodology.

- The data does not provide an indication of which charge is the “most serious” or “controlling” charge, or the charge that is most likely driving the arrest. Below, we detail the methodology we developed to assign a top charge to each booking in order to analyze the charges that are contributing the most to lengths of stay and to the average daily jail population.
- The “pretrial” label may be inaccurate in a small number of municipal court cases. Charges originating from municipal court are initially logged as “pretrial” by jail staff, even though some people may actually be serving short-term periods of imprisonment under a temporary jail commitment or “shock probation.”<sup>102</sup> In other cases, a small number of people may be opting to preemptively serve time in jail in order to later receive credit for time served. As a result, some people’s judicial status may be labeled as “pretrial” even though they are technically serving a sentence. Although it is difficult to identify in the data how many people may have an inaccurate pretrial label, jail staff indicate that this is likely a small number of people and that data practices have reduced this problem in recent years.<sup>103</sup>

### Assigning “Most Serious Charge”

The data extracts that Vera received from the Douglas County CJCC contain every charge for every person that was released from jail. In order to determine which charge is likely driving the arrest, Vera developed an algorithm utilizing a weighted sum model to assign a “most serious charge” for each booking. We assigned weights to three variables: charge class, charge severity, and charge category. The weights were designed to ensure that charges with a higher ranking in class (e.g., felony) would always have a higher total score than another charge of lower ranking in class (e.g., misdemeanor), even if the lower ranked class charge had higher rankings in severity or category.<sup>104</sup>

Each charge is then assigned a total score based on the sum of the sub-scores for each of the three variables—with the charge with the highest score per booking identified as the top charge. In the example booking with four charges below, charge 4 would be the most serious charge according to our scoring; charge 2 would be next highest, followed by charge 3 and 1.

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<sup>102</sup> Shock probation refers to the practice whereby a court will order a person to serve a period of incarceration followed by a period of parole or probation supervision. This practice is typically reserved for first-time offenders, juvenile or youth offenders, or those charged with minor crimes.

<sup>103</sup> In the dataset used for analysis, 257 people (1.2 percent of total admissions) were admitted to jail pretrial and then released for “time served,” which may represent this population.

<sup>104</sup> It is possible that a misdemeanor-level charge could, in some cases, be considered to be equally or more severe than a felony-level charge, depending on whether the misdemeanor charge was violent or included weapons, for example. However, the rationale for prioritizing charge class first in the ranking of charges (prior to consideration of charge severity and charge category) is that the charge class frequently corresponds to severity in sentencing guidelines. See Kansas Sentencing Commission, *Kansas Sentencing Guidelines Desk Reference Manual 2021*, (Topeka, KS, 2021).

	Criteria			Total Score
	<i>C<sub>1</sub>: charge class (range from 0-4)</i>	<i>C<sub>2</sub>: charge severity (range from 0-26)</i>	<i>C<sub>3</sub>: charge category (range from 1-33)</i>	
<b>Weighting</b>	0.99	0.0099	0.000099	
charge <sub>1</sub>	2	14	33	2.121867
charge <sub>2</sub>	4	9	25	4.051575
charge <sub>3</sub>	2	15	31	2.131569
charge <sub>4</sub>	4	10	21	4.061079

The section below describes this process in further detail.

### Step 1 - One Charge

For bookings that have only one charge, that charge is assigned as the top charge. The steps below are applied to bookings that have more than one charge.

### Step 2 - Charge Class

The dataset Vera received from the CJCC includes a “charge class” variable that classifies each charge as a felony, misdemeanor, failure to appear, or other/unknown.<sup>105</sup> Each charge is assigned a subscore based on charge class, where felony level charges receive the highest charge class subscore, followed by misdemeanors. Failures to appear are assigned a charge class subscore of zero.<sup>106</sup>

The dataset included 7,773 charges (representing 19.2 percent of all charges in the dataset) for which the charge class was unknown. The majority of these charges were either administrative charges (as defined above) or “municipal/county violations,” a category used when officers don’t know or didn’t list the charge on the booking and that has been used less frequently in more recent years. In these cases, we assigned a charge class subscore of zero.<sup>107</sup>

Of the charges with unknown charge class, 1,039 charges were some sort of criminal or traffic charge (not a municipal/county violation or administrative charge). The majority of these charges were considered to be misdemeanor-level based on the charge descriptions, so we assigned them a charge class subscore equal to misdemeanor.<sup>108</sup>

<sup>105</sup> We identified 268 charges where the charge class was potentially misclassified based on our reading of the statute code and sentencing guides. In these cases, rather than overwriting the existing data, we assumed the existing data was correct—our justification being that there may be other circumstances relating to the booking that were not visible in the data and contributed to the given charge class.

<sup>106</sup> See step 5 below on the treatment of failures to appear and other administrative charges.

<sup>107</sup> Ibid.

<sup>108</sup> 12 of these charges may actually be felonies based on our own reading of the statutes, but as we don’t have enough information in the dataset to know for sure whether these were erroneously misclassified, we conservatively classified them as misdemeanors.

The charge class field alone was generally insufficient for determining the most serious charge on a booking, as many bookings have multiple charges with the same charge class. Vera supplemented the existing charge class information in the dataset with additional information produced by the Kansas Sentencing Commission (KSC) to determine the most serious charge on bookings with multiple charges.

### **Step 3 - Charge Severity**

The KSC, which was established in 1989, established determinate sentencing in Kansas based on sentencing grids. The KSC publishes a desk reference manual, as well as two sentencing grids - one for non-drug charges and one for drug charges.<sup>109</sup> Presumptive sentences are determined based on the severity level of the current charge as well as a person’s criminal history. The KSC also publishes files with the detailed severity classification for every felony and misdemeanor charge in the Kansas criminal code—as well as for anticipatory versions of each charge (attempt, conspiracy, and solicitation). These files are available for download via the Kansas Sentencing Commission website.<sup>110</sup>

Using these files as a guide, Vera assigned a severity to most of the charges in the Douglas County dataset that was more detailed than the charge class provided in the original dataset (for example, specifying that a charge is a “level 5 person felony” rather than just “felony”).<sup>111</sup> Each charge is then assigned a subscore based on the charge severity ranking, where off-grid person felony charges receive the highest subscore, and level u not scored misdemeanors receive the lowest subscore (see directly below for a list of the severity levels used).

The additional consideration of charge severity allows for the ability to more accurately assign a top charge in cases where multiple different felonies, or multiple different misdemeanors, are present on the same booking. Note: Vera only identified charge severity for approximately 85 percent of total charges. Another 13 percent of charges represented municipal/county violations of unknown severity and administrative charges. The remaining 2 percent of charges consisted of low-level charges, such as liquor violations for minors and traffic-related misdemeanors. The following severity levels were used, ranked in order of decreasing seriousness<sup>112</sup>:

- off-grid person felony
- level 1 person felony
- level 2 person felony

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<sup>109</sup> See Kansas Sentencing Commission, *Kansas Sentencing Guidelines Desk Reference Manual 2021*, (Topeka, KS, 2021). See also Kansas Sentencing Commission, *Sentencing Range: Drug Offenses and Sentencing Range: Non-Drug Offenses* (Topeka, KS, 2022).

<sup>110</sup> See files labeled “felony listings” and “misdemeanor listings” at the following: Kansas Sentencing Commission, *Reports: 2011 Criminal Code Recodification*, (Topeka, KS, 2011).

<sup>111</sup> In some cases, the charge class listed on a charge in the data differed from the severity level in the KSC data file. In these cases, the charge class given in the data was taken as the primary source of “truth,” the assumption being that the person entering the data may have had other information, such as details about a person’s criminal history, that would influence the charge class but that is not otherwise reflected in the dataset.

<sup>112</sup> Note that some severity rankings were given the same charge severity score—for example, nongrid nonperson felonies and level 4 person felonies. See the relevant footnotes for more information.

- nongrid person felony<sup>113</sup>; level 3 person felony
- level nongrid nonperson felony; level 4 person felony
- level 5 person felony
- level 6 person felony
- level 7 person felony
- level 8 person felony
- level 9 person felony
- level 10 person felony; not scored person felony<sup>114</sup>
- level 1 drug felony<sup>115</sup>; level 3 nonperson felony; level a person misdemeanor
- level 2 drug felony; level 4 nonperson felony; level b person misdemeanor
- level 3 drug felony; level 5 nonperson felony; level c person misdemeanor
- level 4 drug felony; level 6 nonperson felony
- level 5 drug felony; level 7 nonperson felony
- level 8 nonperson felony
- level 9 nonperson felony
- level 10 nonperson felony
- level a nonperson misdemeanor
- level b nonperson misdemeanor
- level b not scored misdemeanor; level b scored / select misdemeanor<sup>116</sup>
- level c nonperson misdemeanor; level c not scored misdemeanor; level c scored / select misdemeanor
- level u not scored misdemeanor<sup>117</sup>

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<sup>113</sup> See Kansas Sentencing Commission, *Kansas Sentencing Guidelines Desk Reference Manual 2021*, (Topeka, KS, 2021), 7; nongrid crimes are not subject to the sentencing grid, and instead contain specific penalties and provisions within their respective statutes. Four types of charges are classified as nongrid charges in Kansas: felony driving under the influence (§8-1567), felony domestic battery (§21-5414 (b)(3)), animal cruelty (§21-6412), and harming or killing certain dogs (§21-6416). Of these, only domestic battery is considered to be a “person” charge, which is typically treated more severely than a nonperson charge. Vera compared the sentencing penalties listed in the statute codes for these charges to the penalties in the relevant sentencing grids to determine which level of grid charge they are most similar to. According to this method, Vera assigned felony domestic battery charges the same severity score as level 3 person charges, and the other nonperson non-grid charges the same severity score as level 4 person felonies.

<sup>114</sup> See Kansas Sentencing Commission, *Kansas Sentencing Guidelines Desk Reference Manual 2021*, (Topeka, KS, 2021), 4; “all unclassified felonies will be scored as level 10 nonperson crimes.”

<sup>115</sup> Comparing the severity of drug- and non-drug charges on the same booking poses a particular challenge since these use different sentencing grids. Vera compared the min and max imprisonment across the drug- and non-drug grids in order to determine a relative order of severity that, while imperfect, would sufficiently allow our algorithm to discern which charge is most severe for bookings containing both drug- and non-drug charges.

<sup>116</sup> “Select” refers to specific weapons violations. In the dataset, these were limited to a single charge: possession of a firearm by a person addicted to and using a controlled substance, see Kansas Sentencing Commission, *Kansas Sentencing Guidelines Desk Reference Manual 2021*, (Topeka, KS, 2021), 19; and KS Stat § 21-6301(a)(10) (2021). Based on the statute, these are typically less severe than level b person misdemeanor charges and not as severe as nonperson misdemeanor charges.

<sup>117</sup> See Kansas Sentencing Commission, *Kansas Sentencing Guidelines Desk Reference Manual 2021*, (Topeka, KS, 2021), 11. These refer to “Unclassified misdemeanors,” which are punishable as specified by law, but treated as level c misdemeanors if no such penalty is provided.



#### Step 4 - Charge Category

The dataset includes a description of each charge along with the relevant statute code, which Vera used to group charges into high-level categories. Each charge is assigned a subscore based on the charge category, where “violent” charges receive the highest charge category score, and charges in the “other” category receive the lowest charge category score. Anticipatory crimes (conspiracy, solicitation, or attempt) are also included in the categories below. The following categories were used, ranked in order of seriousness:

- **Violent:** loosely based on the FBI’s Uniform Crime Reporting (UCR) Program definition of violent crime, which includes charges that involve force or threat of force. Includes the following types of charges: assault/aggravated assault (including sexual assault and assault of a law enforcement officer); battery/aggravated battery (including sexual battery and battery of a law enforcement officer); domestic battery/aggravated domestic battery; rape; criminal sodomy; aggravated robbery; kidnapping/aggravated kidnapping; murder in the 1st and 2nd degree. Total: 4,381 charges.
- **Sex Charge:** refers to charges listed in Chapter 21, Article 55 of the Kansas penal code (“Sex Offenses”), except those included in the “violent” category above; For example: indecent liberties with a child; sexual exploitation of a child; indecent solicitation of a child; unlawful voluntary sexual relations; lewd and lascivious behavior; internet trading in child pornography. Total: 165 charges.
- **Child Abuse:** refers to charges listed in Chapter 21, Article 56 of the Kansas penal code (“Crimes affecting family relationships and children”); For example: endangering a child/aggravated endangering a child; abuse of a child; abandonment of a child; criminal nonsupport of a child; contribute to child misconduct. Total: 179 charges.
- **Other Person Charge:** Includes charges that are classified as “person” crimes in the Kansas sentencing guidelines (the “person” designation generally refers to crimes that inflict, or could inflict, harm to another person), but that fall outside of the other categories listed here. For example, criminal threat, criminal restraint, and stalking charges. Total: 591 charges.
- **Arson:** arson and aggravated arson charges. Total: 33 charges.
- **Burglary:** burglary and aggravated burglary charges. Total: 462 charges.
- **Theft:** generally includes charges related to theft. For example: theft of property or services; theft by deception; criminal deprivation of property; criminal use of a financial card; theft of property lost, mislaid or delivered by mistake. Total: 1,428 charges.
- **Forgery:** forgery charges. Total: 142 charges.
- **Other Property Charge:** Includes charges that are classified as “property” crimes in the Kansas sentencing guidelines (the “nonperson” designation generally refers to crimes that inflict, or could inflict, damage to property), but that fall outside of the other categories listed here. Most of these charges are for criminal damage to property. Total: 1,518 charges.
- **Drug Manufacture/Delivery:** Drug distribution or possession with intent to distribute charges and drug manufacture charges. Total: 581 charges.
- **Driving Under the Influence:** all driving under the influence charges, including enhanced charges and driving under the influence of a drug or combination of drugs charges (a minority). Total: 3,398 charges.

- **Drug Possession:** Simple drug possession charges, excluding any drug possession charges that include an intent to sell or distribute (which are included in the category “drug manufacture/delivery”). Total: 2,344 charges.
- **Other Drug Charge:** The only charge in this category is violating a drug law via use of a communication facility (an instrument used for communication). Total: 58 charges.
- **Weapons:** Primarily charges related to the unlawful possession of a firearm by a person previously convicted of a felony. Total: 317 charges.
- **Driving While Suspended:** Driving while license canceled, suspended or revoked. Also includes habitual violator charges, a class A misdemeanor charge given when a person is convicted of three or more driving on a suspended license charges. Total: 888 charges.
- **Alcohol:** Includes liquor-related charges other than driving under the influence. Primarily consists of transporting open container charges, as well as illegal purchase or consumption of liquor (such as by a minor), and possessing or using a fake ID in an alcohol-related charge. Total: 566 charges.
- **Trespass:** criminal trespass charges. Total: 629 charges.
- **Public Administration Charge:** Includes charges related to the obstruction of normal government operations, such as interference with a law enforcement officer, intimidation of a witness, and violating a protective order. Total: 1,906 charges.
- **Public Trust Charge:** Only includes 2 bookings with an official misconduct charge.
- **Personal Rights Charge:** Includes breach of privacy and eavesdropping charges. Total: 11 charges.
- **Public Morals/Decency Charge:** Includes charges listed in Chapter 21, Article 64 of the Kansas penal code (“Crimes against the public morals”), such as cruelty to animals, promoting obscenity, and promoting the sale of or buying sexual relations. Total: 23 charges.
- **Business Charge:** Only includes 1 booking with an embezzlement charge.
- **Public Peace Charge:** Includes charges listed in Chapter 21, Article 62 of the Kansas penal code (“Crimes against the public peace”). Primarily disorderly conduct charges, as well as disturbing the peace, giving false alarm, and harassment by telecom service. Total: 318 charges.
- **Traffic Charge:** Traffic-related charges other than driving under the influence and vehicular homicide, which is included in “other person charges.” Total: 1,717 charges.
- **Municipal/county violation:** A category used by officers when the charge is unknown. Total: 2,607 charges.
- **Other:** Includes a range of miscellaneous low-level charges, such as boating and fishing violations, wildlife and big game permitting violations, and reporting violations. Total: 93 charges.
- **Contempt of Court:** contempt of court charges, a very small category. Total: 4 charges.
- **Parole Violation:** violation of parole conditions. See KS Stat § 75-5217 (2021). Total: 235 charges.
- **Probation Violation:** violation of probation conditions. See KS Stat § 22-3716 (2021). Total: 2,668 charges.

- **Bond Failure:** Includes only 1 booking with a forfeiture appearance bonds charge. See KS Stat § 22-2807 (2021).
- **Failure to Appear:** Missed court appearance. See KS Stat § 21-5915 (2021). Total: 10,263 charges.
- **Detainer, Hold or Warrant:** Primarily arrest by a law enforcement officer on a warrant. See KS Stat § 22-2401 (2021). Total: 783 charges.
- **Remand:** Court-ordered detention without bail. Total: 1497 charges.

## Step 5 - Treatment of administrative charges

Vera identified a number of violations and other non-criminal charges in the data, which we refer to throughout this document as “administrative charges.” These include failures to appear, probation and parole violations, arrest warrants, bond failures, and remands. Generally, we assumed that if one of the charges listed above was accompanied by a new criminal, municipal, or traffic charge on a booking, the new charge rather than the administrative charge was driving the arrest.

There is one exception to this general approach. In most cases, administrative charges had a charge class of either “FTA” or “other/unknown” and were assigned a charge class sub-score of zero. However, in a subset of cases, these charges had a charge class of misdemeanor or felony. It is possible that in these cases, the charge class applies to the originating charge to which the violation or warrant applies. However, it is also possible that the charge class pertains to the violation itself—for example, it is plausible that a failure to appear could be considered a felony depending on other circumstances that are not visible on the booking, such as repeat violations. Vera opted to follow an overall approach that avoids making assumptions and overriding existing information in the data throughout this analysis. Therefore, in cases where an administrative charge had a charge class of misdemeanor or felony, they were assigned the relevant charge class sub-score (not zero).

Practically, this overall approach means that administrative charges are only assigned as the “top charge” on a booking if they are the only charge listed, or if they are accompanied only by other administrative charges that are ranked as less severe in the charge hierarchy ranking given in “Step 4 - Charge Category.”

## Step 6 - Combining Scores

Finally, the subscores assigned for charge class, charge category, and charge severity are added together to arrive at a final combined total score for each charge. This final combined total score is then used to rank charges for bookings where multiple charges are present and thereby identify the most serious charge. In some cases, there was a “tie” between several charges on a booking that were actually multiple counts of the exact same charge. In these cases, we randomly assigned one of the duplicate charges as the top charge (see “duplicate top charge” in the table below).

The methods described above allowed Vera to assign a top charge to over 20,000 bookings, or 98.7 percent of bookings in the final dataset. For the remaining bookings with multiple charges, we relied on deterministic random assignment (with staff review) to assign a top charge, as the

charges were too similar for our methods to assign a ranking based on charge category, charge class, and charge severity (for example, the model may be unable to break a “tie” between several traffic charges of a similar nature, or a possession of a stimulant drug charge along with a possession of a hallucinogenic drug charge, on a booking). The random assignment method was used for a total of 122 bookings, or 0.6% of bookings in the dataset. In these cases, careful staff review of these bookings validated that the randomly assigned top charge was plausible.

In 1.3 percent of cases (269 bookings), Vera staff overrode the top charge that had been assigned by the model based on judgments made via careful reading of the relevant statute codes. For example, when listed on the same booking and tied for top charge, a possession of marijuana charge was assumed to be more severe than a possession of drug paraphernalia charge, driving while suspended was assumed to be more severe than driving while habitual violator, and battery on a law enforcement officer was assumed to be more severe than assault on a law enforcement officer.

Vera staff also overrode the top charge identified by the model in some cases where charges have a relatively low severity but also have a mandatory arrest provision. Vera identified several charges that require mandatory arrest in Kansas statute:

- Driving under the influence and fleeing or attempting to elude a police officer (KS Stat § 8-2104 (2021))
- Domestic violence related charges (KS Stat § 22-2307 (2021))
- Stalking (KS Stat § 22-2310 (2021))

Sometimes, these mandatory arrest charges had levels of severity similar to other charges in the data that do not have a mandatory arrest provision. For example, misdemeanor DUI charges in many cases had the same severity level as misdemeanor drug possession charges (commonly level a or b nonperson misdemeanor). Similarly, misdemeanor domestic battery charges had a similar (or lower) severity level as criminal restraint, violation of a protective order, simple battery, and endangering a child charges. In these cases, Vera opted to override the weighted sum model’s charge assignment to ensure that, in cases where a mandatory arrest charge is tied for top charge with a non-mandatory-arrest charge of similar severity, the mandatory arrest charge would prevail as the top charge.

The table below provides a summary of bookings based on which method of assigning top charge was the primary deciding factor.

#### **Bookings by Top Charge Assignment Reason**

<b>Assignment Reason</b>	<b>Bookings (#)</b>	<b>Bookings (%)</b>
One charge	11,751	56.5
Charge severity	2,813	13.5
Charge class	2,411	11.6
Duplicate top charge	2,344	11.3

Charge category	1,084	5.2
Staff override	269	1.3
Random	122	0.6