

The background of the top section is a faded, grayscale image of the Michigan State Capitol building, featuring its prominent dome and classical architectural details. The building is centered and framed by trees and street lamps on either side.

Michigan Joint Task Force on Jail and Pretrial Incarceration

January 2020

Executive Summary of Findings

In a relatively short period of time, county jail populations nearly tripled in Michigan. Elevating jails as a shared bipartisan priority, state and local leaders created the Michigan Joint Task Force on Jail and Pretrial Incarceration, directing the body to analyze jail populations across the state and develop legislative recommendations for consideration in 2020.

Jails as a tool for public safety. County jails are high traffic institutions, impacting hundreds of thousands more Michiganders each year than state prisons. Incarceration in a jail can prevent an immediately dangerous situation from escalating, enable a court to evaluate conditions of release or responses to probation violations, and allow a person who has been victimized to plan for their safety. At the same time, research shows that even short periods of jail incarceration can increase future criminal behavior, suggesting that, while jail may be appropriate for those who pose a significant threat to an individual or the public, policymakers should expand and incentivize jail alternatives for those who do not.

Constitutional protections. The use of jail as a tool is limited by the Constitution's guarantees of liberty, due process, and equal protection. Former Chief Justice Rehnquist wrote in *United States v. Salerno* (1987), "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." In just the last five years, courts across the country have

upheld challenges to common pretrial practices, finding that those detained in jails were not getting meaningful due process hearings, and that poor people were being denied equal protection of the laws when access to money was the deciding factor between those released and those detained. A similar lawsuit is currently pending in Michigan.

Increased jail use over time. Michigan's jail growth was driven equally by incarceration of pretrial defendants and of those serving a sentence post-conviction. Local estimates suggest that roughly a quarter of people entering jails have serious mental illnesses. Both the jail population growth and the prevalence of mental illness in jails were more pronounced in rural Michigan counties where treatment and other resources are less available. While taxpayers spend nearly half a billion dollars annually on jails, alternatives to jail and services for crime victims are relatively underfunded and in high demand across the state.

Little guidance on the use of jail alternatives. Law enforcement, pretrial, and sentencing practices vary widely and in many key policy areas, ranging from arrest and bail to sentencing and probation violations. Michigan law provides little to no guidance on when alternatives to jail should be the preferred or presumed intervention.

Who is coming to jail? Traffic offenses accounted for half of all criminal court cases in 2018 and driving without a valid license was the third most common reason people went to jail in Michigan. Other common reasons ranged from theft, drug possession, and probation violations to more serious charges like domestic violence, drunk driving, and drug sales.

How long are people staying in jail? Between 2016 and 2018, average jail stays were 45 days for felony offenses and 11 days for misdemeanor offenses. These averages comprised a wide range, however, with nearly half spending a day or less in jail, 65 percent staying less than a week, and 17 percent remaining for longer than a month (a relatively small group, but one that

accounted for 82 percent of the jail space used). This broad range was also seen in pretrial detention lengths, with a large portion of people able to post bond and be released within a day, a substantial number being detained for one or two weeks and then sentenced to “time served,” and some stays lasting months or years without going to trial.

Policymakers in Michigan aiming to address jail incarceration must therefore address both the large number of people whose lives are disrupted by short jail stays, who consume significant amounts of public safety resources, and the relatively small group of people whose long stays drive up county jail populations.

Overview of Recommendations

Traffic violations: Stop suspending and revoking licenses for actions unrelated to safe driving. Reclassify most traffic offenses and some other minor misdemeanors as civil rather than criminal infractions.

Arrest: Expand officer discretion to use appearance tickets as an alternative to arrest and jail. Reduce the use of arrest warrants to enforce court appearance and payments, and establish a statewide initiative to resolve new warrants and recall very old ones.

Behavioral health diversion: Provide crisis response training for law enforcement and incentivize programs and partnerships between law enforcement and treatment providers to divert people with behavioral health needs from the justice system pre- and post-arrest.

The first 24 hours after arrest: Release people jailed on certain charges pre-arraignment and guarantee appearance before a judicial officer within 24-48 hours for anyone still detained.

Pretrial release and detention: Strengthen the presumption of release on personal recognizance and set higher thresholds for imposing non-financial and financial conditions. Provide a detention hearing for all defendants still detained 48 hours after arraignment.

Speedy trial: Require defendants to be tried within 18 months of arrest and preserve speedy trial rights unless waived by the defendant.

Alternatives to jail sentences: Presumptively impose sentences other than jail for non-serious misdemeanors and for felonies marked for “intermediate sanctions” under the sentencing guidelines.

Probation and parole: Shorten maximum probation terms for most felonies, establish new caps on jail time for technical violations, and streamline the process for those in compliance to earn early discharge.

Financial barriers to compliance: Reduce fine amounts for civil infractions. Require criminal courts to determine ability to pay fines and fees at sentencing and to modify unaffordable obligations. Repeal the law authorizing sheriffs to bill people for their own incarceration.

Victim services: Invest significant resources in victim services and strengthen protection order practices.

Data collection: Standardize criminal justice data collection and reporting across the state.