

August 2017

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# Report to Tulsa County Stakeholders on Jail Reduction Strategies

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# Acknowledgements

Vera would like to sincerely thank our Tulsa partners for their collaboration and investment in this process. We are grateful for the generous support of the Tulsa County Board of County Commissioners, the Oklahoma Department of Corrections, the Tulsa Regional Chamber of Commerce, the Anne and Henry Zarrow Foundation and the George Kaiser Family Foundation, and particularly want to thank Amy Santee for her partnership and commitment.

The Tulsa County Criminal Justice Planning and Policy Council, especially its chair, District Court Judge Doug Drummond, provided critical expertise. Vera thanks the members of the Policy Council Subcommittee, Sherri Carrier, Jill Webb, Tammy Westcott, John Brasher, Michelle Robinette, Nathan Rhea, Mimi Tarrasch, and Stephanie Horten, for their time, knowledge, and guidance on analysis and recommendations. And to the staff of Women in Recovery for hosting many meetings.

A number of Tulsa County leaders and officials provided essential feedback on these strategies. They include Police Chief Chuck Jordan, Sheriff Vic Regalado, District Attorney Steven Kunzweiler, Tulsa County Sheriff's Office Jail Administrator David Parker, Public Defender Stuart Southerland, and Judge Drummond. Tulsa County Judges Rebecca Nightingale, Dana Kuehn, William Musseman and Judge Dawn Moody informed our understanding of district court procedure, and Judge Gerald Hoffmeister provided key insights about the municipal court. Deputy Chief Jonathan Brooks and Sgt. Malcolm Wightman of the Tulsa Police Department (TPD) provided valuable information on PDTPD policies and practices. Vera also thanks city and county leaders, including Tulsa City Mayor G.T. Bynum and Tulsa County Commissioners Karen Keith, Ron Peters, and John Smaligo for their insights. We also owe gratitude to Josh Turley, Scott Mayes, and Charles Wulff for their assistance with data access; and to Ruth Hamilton, Marq Lewis, the Outside Inside Collaboration for Justice and the Mental Health Association and their colleagues and staffs.

Lastly, we would like to recognize Vera staff who supported this work. Kaitlin Kall, thank you for thoughtful and meaningful engagement with Tulsa stakeholders. Thank you to Vera Communications staff, including Erika Turner and Karina Schroeder, for your contributions to this report.

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# Introduction

Like many other places around the country, Tulsa County has experienced a dramatic increase in its jail population over the past five decades. In 1970, there were 322 people in Tulsa County's jail on an average day. That number grew to 1,555 people in 2016, an increase of 383 percent.<sup>1</sup> In 1970, there was an average of eight women in the jail on any given day; by 2016, that number had climbed to 280, an overall increase of 3,400 percent.<sup>2</sup> This jail population growth is not simply a function of the growth of Tulsa County overall during this period. The per capita jail incarceration rate, the number of people in jail per 100,000 county residents aged 15 to 64, which controls for population growth, has also risen rapidly. It increased by nearly 200 percent from 1970 to 2016, and has grown 43 percent since 1999, when the current facility opened.<sup>3</sup> The expanded use of pretrial detention, the practice of incarcerating people in jail while their case is proceeding in court, before any conviction or sentence, is primarily responsible for this increase. Tulsa's pretrial jail incarceration rate increased 70 percent from 1999 to 2014, and has continued to climb.

The time is ripe to address this growth. Tulsa County's finances have been burdened by the increasing financial needs of the jail. The county imposes two different sales taxes to fund jail operations and jail expansion, but the jail still needs supplemental funding from the county to meet its expenses, and the jail costs taxpayers more than \$30 million a year.<sup>4</sup> There is considerable uncertainty about the impact of State Question 780, which reclassified drug possession from a felony to a misdemeanor. This may place a higher burden on local jails and will require all local jurisdictions to rethink how they use jail bed space. Help is not likely to come from the state, which is facing its own fiscal crisis, exacerbated by the continuous growth of the prison population. Criminal justice system agencies are under greater pressure to generate their own revenue through user fees, which, in turn, create additional pathways to the jail. The state has attempted to address its own prison population growth crisis, with mixed results.<sup>5</sup> Criminal justice stakeholders in Tulsa have grown increasingly concerned about the extent to which the current use of the jail is serving the county's public safety goals, and worry about the over-incarceration of people with mental illness and substance use disorders.

In response to concerns about the continuing growth of the jail population, its cost to taxpayers, and impact on the community, Tulsa County stakeholders sought the assistance of the Vera Institute of Justice, a national policy and research organization that partners with local government and others to improve the systems that people rely upon for justice and safety. With support from the Tulsa County Board of County Commissioners, the Tulsa Regional Chamber of Commerce, the Oklahoma Department of Corrections, the Anne and Henry Zarrow Foundation, and the George Kaiser Family Foundation, Vera began working with criminal justice leaders in Tulsa County in 2016. Together, they examined drivers of growth and overcrowding at the Tulsa County jail and devised strategies consistent with the county's public safety goals to reverse that growth. The report that follows is the culmination of those efforts.

During the last year, Vera has met with stakeholders across the system, including the Tulsa County District Attorney's Office, the Tulsa County Sheriff's Office (TCSO), district judges and special judges from

the Tulsa County District Court, the Tulsa County Public Defender's Office, the Tulsa Police Department (TPD), other law enforcement agencies in Tulsa County, the Tulsa County Board of County Commissioners, the mayor's office, the Tulsa Municipal Court, the Tulsa County Drug Court, the criminal defense bar, advocates and service providers for people with mental health needs, community activists and organizations, clergy, and providers of alternatives to incarceration. Through these meetings, most of which took place in person during visits to Tulsa in 2016 and 2017, Vera studied how the local justice system works in Tulsa, what the challenges are, what efforts are already underway to address these challenges, and where the opportunities lie to do more. With the guidance and participation of these stakeholders, Vera toured the jail, observed court hearings, attended meetings of the Tulsa County Criminal Justice Planning and Policy Council, which oversees the state community sentencing program, and produced a system map of the local justice system in Tulsa. In addition, Vera received administrative data on all bookings to the county jail and data on arrests and citations from the Tulsa Police Department, both for 2016. The recommendations in this report represent a combination of Vera's qualitative fieldwork and Vera's quantitative data analysis.

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This technical report provides great detail about the current state of Tulsa's criminal justice system and what can be done to safely reduce the jail population. The recommendations have been discussed at length with those doing the work on the ground in Tulsa and reflect their feedback and ideas. The specifics are important, but readers of this report should at the very least take away a few key ideas.

First, jail population growth is not inevitable. The size of the population in the Tulsa County jail, as in all local jails, is determined by two key factors: who goes into the jail (admissions) and how long they stay (length of stay). Admissions and length of stay are determined by policy and practice decisions that are made in large part at the local level by various criminal justice agencies and decision-makers. It is possible to make different decisions and achieve a different result. Other jurisdictions facing similar challenges have done so, and there is no reason why Tulsa can't as well.

Second, change won't happen without a coordinated effort. The decisions that impact admissions and lengths of stay in the Tulsa County jail are made largely autonomously by agencies that do not coordinate policy and share data and are not held accountable to each other. This will have to change in order to achieve the kinds of results that so many in the county want. There is some shared sense of urgency about the challenges facing the Tulsa criminal justice system, and a number of separate efforts attests to real commitment to finding solutions. The heavy lift will be bringing these efforts together in the service of a common vision for the justice system.

Finally, while the financial burden of the jail may be what brings people to the table, jail overuse is not just a matter for the bottom line. In 2016, 19,485 people were admitted to the Tulsa County jail; the majority of them were admitted pretrial, meaning that they were legally innocent. Research has shown that even short pretrial jail stays lead to worse case outcomes and increased recidivism, negatively

impacting public safety in the community. <sup>6</sup> And even short pretrial jail stays can have a devastating effect on peoples' lives—on their family, their employment, and their health. Cumulatively, this has implications for Tulsa as a whole.

# Summary of recommendations

The recommendations discussed in this report are organized thematically into six buckets and proceed chronologically through the phases of the criminal justice process. They focus on decisions that are controlled at the city- and county-level. While some of these recommendations are long-term goals that may require additional planning and an investment of resources, others could be implemented immediately without an investment of resources. We indicate within the recommendations which are which. The six buckets are as follows:

- 1. Reduce admissions and lengths of stay for lower-level charges.** Many people are booked into the jail on municipal offenses and lower-level misdemeanor offenses. In most of these cases, there is no public safety priority necessitating their pretrial detention. They are there because there is no alternative to jail admissions for these cases. The alternatives we suggest include issuing citations in place of arrest and booking for appropriate misdemeanor cases (Strategy 1(a)) or book-and-release (Strategy 1(b)). Greater use of alternatives to custodial arrest needs to be supported by court notification systems in the district and municipal courts (Strategy 1(c)). While racial disparities exist for all admissions classes, they are the most pronounced for municipal admissions; these should be examined and addressed (Strategy 1(d)). Many people are admitted into the jail multiple times in a year. These high utilizers should be identified and strategies should be devised to reduce their use of jail for the complex mental health and substance use treatment needs they may need (Strategy 1(e)).
- 2. To reduce unnecessary pretrial incarceration, create a pretrial release process that is individualized and not based solely on ability to pay financial bail.** The current system bases the pretrial release decision, whether someone is incarcerated or at liberty while their case is proceeding, largely around money: whether someone can afford the bail amount or not. Tulsa should shift to a risk-based system—this section describes how to do so. First, because a transformation of pretrial justice decision-making will take time and resource investment to effect, some short-term strategies to reduce bail amounts include calculating bond based on the top charge and allowing people to post partially-secured bond (Strategy 2(a)). Strategies also include assigning counsel earlier (Strategy 2(b)) so bond amounts and personal recognizance (PR) release decisions can be reviewed and challenged at arraignment (Strategy 2(c)). Another strategy is to increase the number of people released to Tulsa County Court Services’ (“Court Services”) pretrial supervision by making release decisions earlier and more consistently (Strategy 2(d)). In the long term, in order to successfully move to a risk-based pretrial release system, it is essential to educate stakeholders about risk-based pretrial release decision-making (Strategy 2(e)) and to use a validated risk-assessment tool (Strategy 2(f)) that will help judges decide which non-financial risk-based pretrial release supervision is appropriate (Strategy 2(g)).
- 3. Reduce lengths of stay by expediting simpler cases and identifying and reducing unnecessary case processing delays for more complex cases.** Reducing the lengths of stay in the jail is essential to reducing the jail population, and that can be done by reducing the length of time cases pend before they are resolved. Having counsel present at arraignment could create early opportunities for efficient case resolution (Strategy 3(a)). Sorting cases would allow non-complex cases to be expedited and weaker cases to be dismissed earlier (Strategy 3(b)). To determine with precision at what points delays occur in the case process and target them, the district court should undertake a case processing study (Strategy 3(c)). Finally, there should be a focus on reducing case processing times for the longest stayers in the jail—many of whom are being held on serious felony charges or are undergoing competency evaluations (Strategy 3(d)).

- 4. Ensure that alternatives-to-incarceration and diversion programs are accessible during the earliest stages of a case.** Some people spend weeks in jail before they can access the specialty court programming that exists. To avoid these protracted jail stays, potential participants should be identified and enrolled in these programs earlier and regardless of their indigency (Strategy 4(a)). Because mental health and substance use needs are not one-size-fits-all, there should be a continuum of diversion programming (Strategy 4(b)). In developing the sobering center, the City of Tulsa should ensure that it is responsive to the needs of the people coming into the jail on public intoxication charges (Strategy 4(c)).
- 5. Reduce admissions for failures to pay and reduce applications to accelerate and revoke.** Many people return to jail after their cases are disposed because they cannot pay the fines and fees imposed by their sentence. To avoid jail-booking for people simply because they cannot shoulder the burden of criminal justice debt, there should be alternatives to jail for applications to revoke or accelerate and for failure to pay costs (Strategy 5(a)). Law enforcement officers should be able to determine whether a warrant is for failure-to-pay in the field so they can issue summonses to the cost docket instead of making a custodial arrest (Strategy 5(b)). Conducting earlier indigency hearings to determine what fees can be waived or reduced will also help avoid later arrests for failure to pay (Strategy 5(c)).
- 6. Expand oversight and accountability mechanisms for the local justice system.** Tulsa's local justice system is in need of resources for collaboration, coordination, and research. First, we recommend that a criminal justice coordinator be hired to coordinate the policy reform work underway (including the recommendations herein) (Strategy 6(a)) and then establish a criminal justice coordinating council (CJCC) as permanent inter-agency inter-local body to monitor and provide policy guidance to system stakeholders (Strategy 6(b)). The system as a whole and the CJCC in particular will need research capacity to improve data collection across agencies; this could be done in partnership with a research institution, such as a local university (Strategy 6(c)). The CJCC should publish data regularly showing important metrics and goals in the performance of the criminal justice system (Strategy 6(d)). The importance of building research capacity to share and systematize data collection is particularly important to gain a better understanding of racial disparities and to monitor the impact of reforms on these disparities.

# Overview of the jail population

The first step to safely reducing a jail population is to understand who is in the jail, how that person got there, and what drives population growth. Effective strategies to reduce the jail population must address those drivers. To understand the jail population in Tulsa, Vera analyzed quantitative data, reviewed policies and practices, and met with key stakeholders from across the Tulsa County criminal justice system. In addition, Vera conducted a system-mapping exercise in which representatives from all criminal justice agencies worked together to create a common understanding of how the local justice system functions. This section focuses primarily on the quantitative data analysis component, including our data sources, and findings. The qualitative findings are integrated into the report that follows, as are some additional, more detailed quantitative analyses.

## Data sources

Using data provided by the Tulsa County Sheriff's Office for 2016, Vera conducted an analysis to understand the two key dimensions of the jail population: how many people are admitted (admissions) and how long they stay (length of stay, or LOS). The data also allowed for assessments of individuals in custody each day of the year, providing a sense of the average composition of the population on any given day (also known as average daily population, or ADP) and variations in lengths of stay. The jail data also included information for analyses of bond amounts by charges. Notably, the data did not provide information about criminal history. Criminal history may impact arrest, charge, and bail and sentencing decisions. Vera also analyzed custodial arrest and citation data from the Tulsa Police Department (TPD), the primary booking agency for the jail. For data about case-processing practices, Vera culled publicly-available case information from the Oklahoma Supreme Court Network for all cases filed in Tulsa County Criminal Court between January 1, 2016 and April 4, 2017. Finally, Vera's *Incarceration Trends* project, which utilizes the U.S. Department of Justice's Bureau of Justice Statistics Census of Jails, provides historical context from the last four and a half decades on both overall incarceration and pretrial detention rates in Tulsa County, compared to the state and national averages.

## Key findings

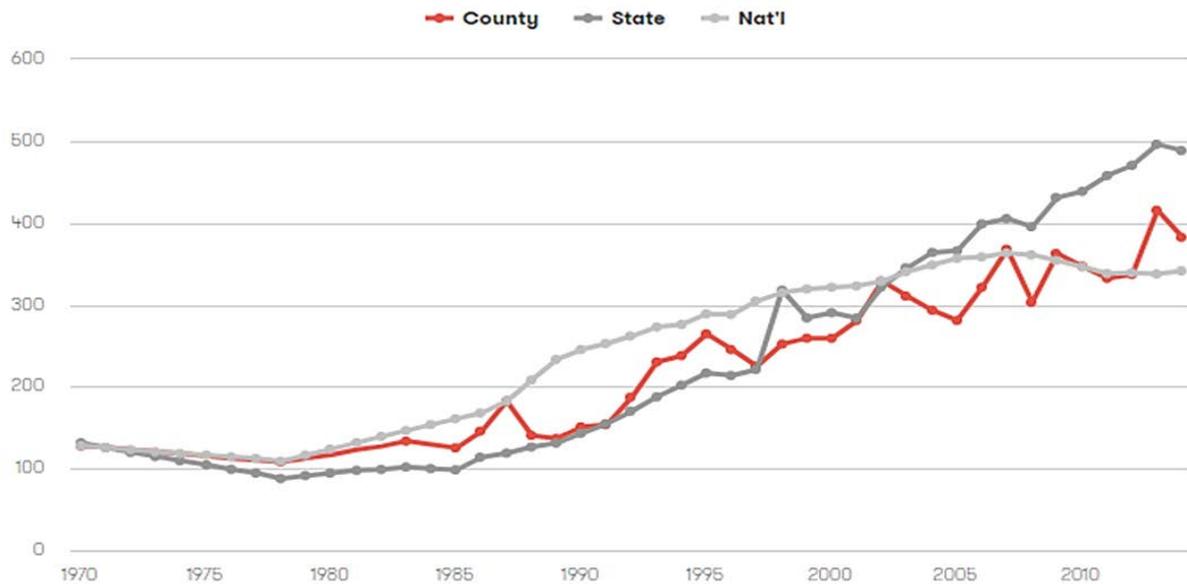
### *I. Incarceration Rate*

**Tulsa County's jail incarceration rate increased over the past several decades and, in 2011, surpassed the national average.** The incarceration rate is the number of individuals detained in the jail per 100,000 residents aged 15 to 64.<sup>7</sup> In 2014, Tulsa County had an incarceration rate of 382.4 compared to the state's rate of 488.3 and the national average of 341.4. As Figure 1 demonstrates, **the county's incarceration rate has increased by more than 150 percent in the last 25 years.**

Assessing jail population growth trends by the incarceration rate controls for the growth in Tulsa County's overall population since 1970—the jail doesn't simply hold more people, it holds a significantly greater

share of the population than it once did. And, as Figure 2 shows, this growth is primarily related to pretrial detention practices.

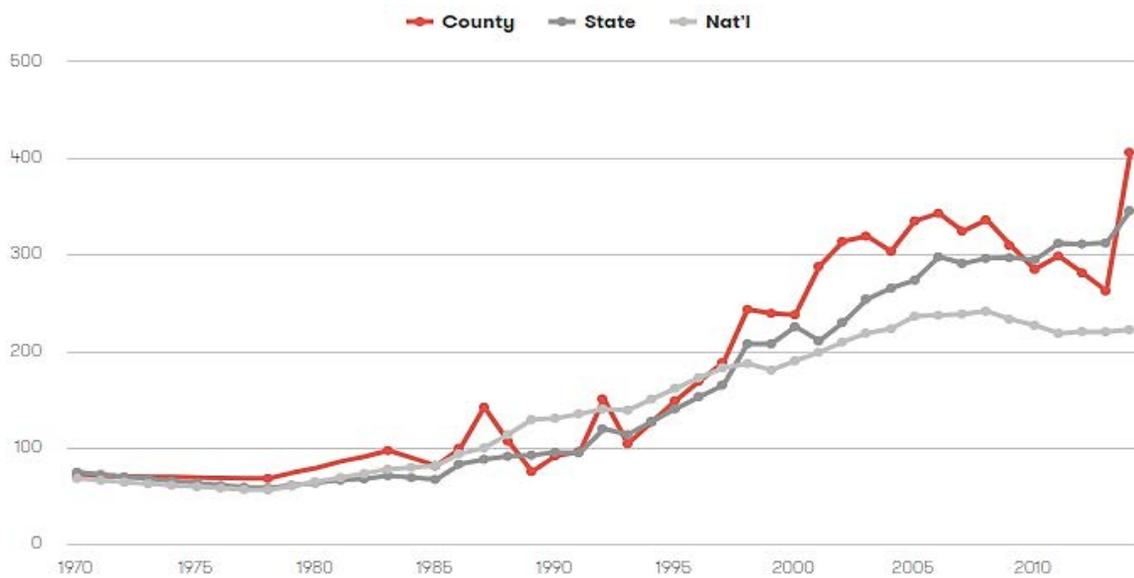
Figure 1. Jail incarceration rates, 1970-2014



Note: Rate is per 100,000 residents aged 15 to 64.

Tulsa County's pretrial detention rate has risen more dramatically than the overall jail incarceration rate in the past three decades and has surpassed the state and national average for much of the last 20 years. The pretrial detention rate is the number of individuals held in custody prior to sentencing (while legally innocent) per 100,000 county residents aged 15 to 64. In 2014, the county's pretrial detention rate was 18 percent higher than the statewide rate and 83 percent higher than the national average. **As Figure 2 demonstrates, Tulsa County's pretrial detention rate in 2014 was nearly 4.5 times what it was in 1990.** This shows that the population growth and increased use of the local jail is not simply a matter of the expansion of the correctional system in Oklahoma generally, but reflects mostly local decisions and policies that result in incarcerating a greater share of people in jail pretrial than the county once did.

Figure 2. Pretrial incarceration rate, 1970-2014



Note: Rate is per 100,000 residents aged 15 to 64.

## II. Admissions

**There were 25,704 admissions of 19,485 unique individuals into the county jail in 2016.** As Figure 3 demonstrates, the majority of individuals admitted were booked into the jail once during the year, but about 20 percent of individuals booked into the jail were admitted multiple times. Individuals with multiple bookings accounted for 40 percent of the total admissions.

Figure 3. Number of people and total admissions, by the number of times an individual was admitted to the jail in 2016

	People	Admissions
People with one admission	15,415 (79.1%)	15,415 (60.0%)
People with two admissions	2,740 (14.1%)	5,480 (21.3%)
People with three to five admissions	1,246 (6.4%)	4,236 (16.5%)
People with more than six admissions	84 (0.4%)	603 (2.3%)
<b>Total</b>	<b>19,485</b>	<b>25,704</b>

### III. Most common top charges

The jail data does not identify the most serious charge on a booking when an individual has multiple charges. In order to produce charge-based analyses, Vera designated “top”—or the most serious—charge on each booking. Charges were first sorted by category, ranking seriousness in order of federal, felony, misdemeanor, and municipal charges. Within a charge category, charges were ranked based on the bond schedule amount. In the case of charges with the same category and bond amount, the most common charge across all admissions was ranked highest. Holds for jurisdictions other than federal authorities were excluded in the ranking process as a separate charge.

**Almost half of all admissions to the jail had a misdemeanor or municipal offense as the top charge, as demonstrated in Figure 4.** People with a felony top charge represented the largest admissions category and were the greatest proportion of the average daily population (see Figure 5). This is to be expected, as people charged with felonies usually have longer case processing times and higher bond amounts; they stay longer so there will be more of them in the jail on any one day.

Figure 4. Admissions by top charge category

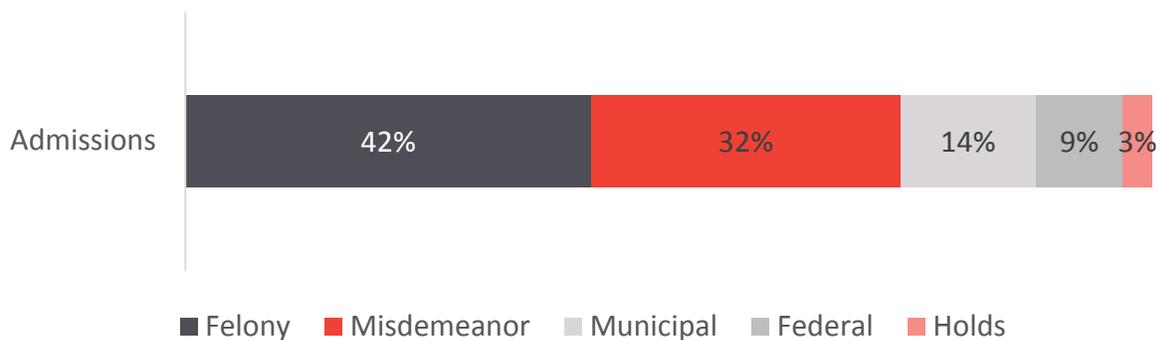
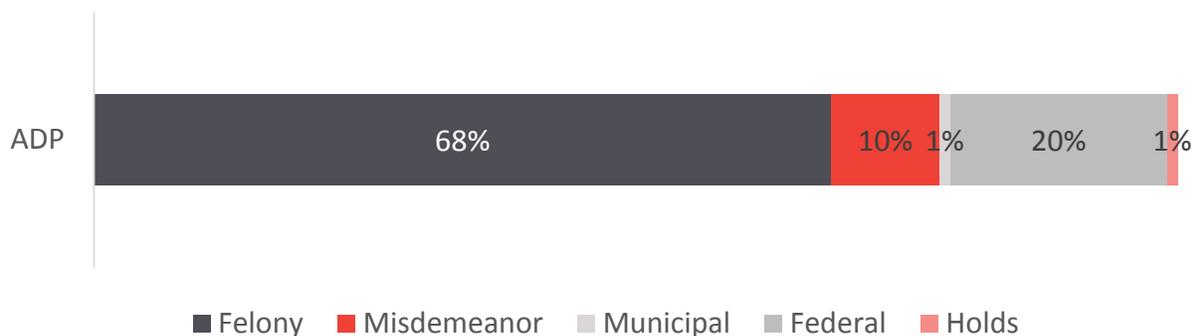


Figure 5. Average daily population by top charge category



**The majority of people booked into the jail (admissions) have a nonviolent top charge.** Ten percent of all bookings to the jail had a top charge of either first offense drug possession or public intoxication.

**Five of the 15 most common top charges for admissions were probation failures** (applications to revoke and accelerate for felonies or misdemeanors) **or failures to pay court costs.** Figure 6 below shows the number of admissions for each of the most frequent top charges, the average length of stay for cases with that top charge, and the number of jail beds occupied by that population on an average day. Figure 7 shows what the top charges are for people in the average daily population (ADP), a snapshot of who is in the jail on any given day in 2016. This list is dominated by those with more serious charges (for example, robbery with a firearm) who are admitted at a much lower rate but who stay a long time, and those with less serious charges (such as drug possession, first offense, and court costs) who are admitted in greater numbers but who don't stay very long. Overall, Figure 7 shows more felonies and more serious felonies as top charges in the ADP.<sup>8</sup>

Figure 6. Most common top charges for admissions

Top charge	Admissions	Average LOS	ADP
1. Possession of controlled substance Schedule I and II—1 <sup>st</sup> offense	1,326	21	75
2. Public—open intoxication	1,267	1	5
3. DUI—1 <sup>st</sup> offense	1,262	4	13
4. Court cost	1,163	5	16
5. Domestic assault and battery—1 <sup>st</sup> offense	655	12	22
6. Possession of controlled substance, Schedule I and II—subsequent offense	561	33	51
7. Suspended or revoked driver's license	482	3	3
8. Driving under suspended driver's license (DUS)	466	3	4
9. Application to revoke—misdemeanor	443	12	14
10. Application to revoke—felony	401	25	28
11. Application to accelerate—misdemeanor	318	8	7
12. Application to accelerate—felony	313	14	12
13. DUI, 2 <sup>nd</sup> offense	300	14	11
14. Larceny of merchandise from a retailer	298	3	3
15. Burglary—2 <sup>nd</sup> degree	292	31	25

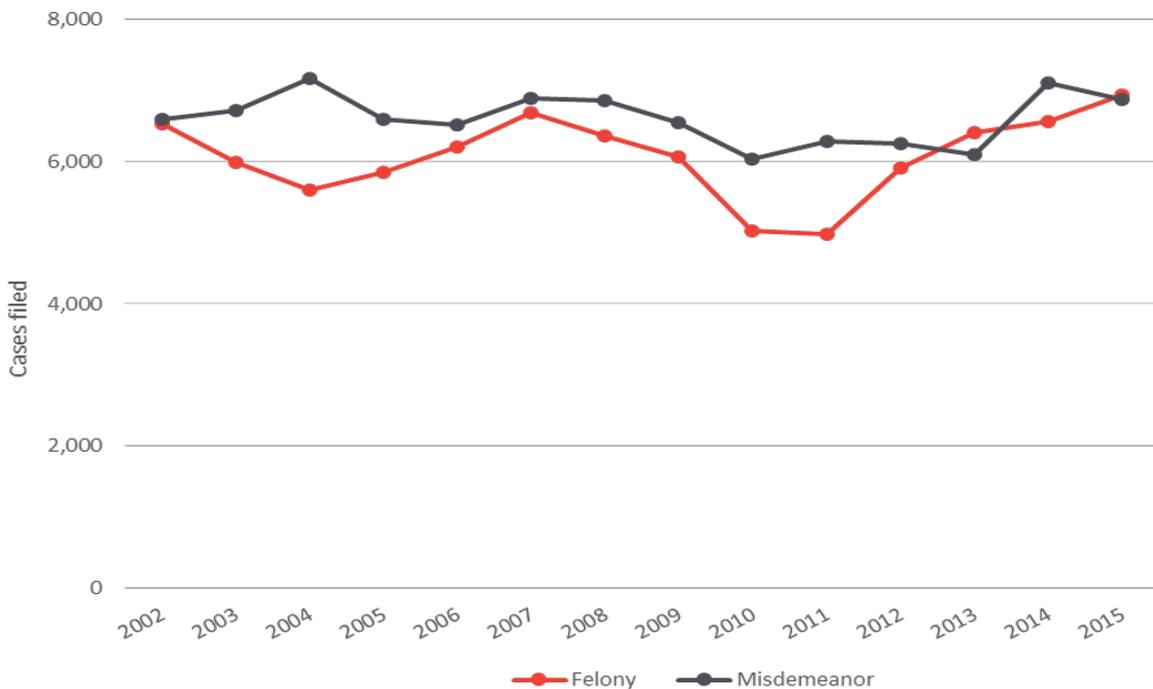
Figure 7. Most common top charges in the average daily population

Top charge	Admissions	Average length of stay	ADP
1. Possession of controlled substance, Schedule I and II—1 <sup>st</sup> offense	1,326	21	75
2. Robbery with firearm/dangerous weapon	134	179	66
3. Possession of controlled substance, Schedule I and II—subsequent offense	561	33	51

4. Child abuse	132	85	31
5. Application to revoke—felony	401	25	28
6. Burglary—2 <sup>nd</sup> degree	292	31	25
7. Murder—1 <sup>st</sup> degree	21	420	24
8. Possession of firearm after felony conviction	256	32	22
9. Domestic assault and battery—1 <sup>st</sup> offense	655	12	22
10. Possession/delivery of controlled substance with intent to sell, Schedule I and II	226	30	18
11. Court cost	1,163	5	16
12. Shoot with intent to kill	28	210	16
13. Burglary—2 <sup>nd</sup> degree, subsequent offense	88	63	15
14. Application to revoke—misdemeanor	443	12	14
15. Manslaughter—1 <sup>st</sup> degree	29	168	13

Since 2010, felony filings have been on an upward trajectory (see Figure 8). The increasing number of felony filings impacts the jail population because felonies command higher bail amounts, keeping people in jail or keeping them there longer. Felonies also generally have longer case-processing times, increasing lengths of stay of people who are in custody.

Figure 8. Felony and misdemeanor filings, 2002-2015



Source: Arianna Pickard, "Number of felony charges filed in Tulsa County District Court in 2015 highest in years," *Tulsa World*, January 2, 2016.

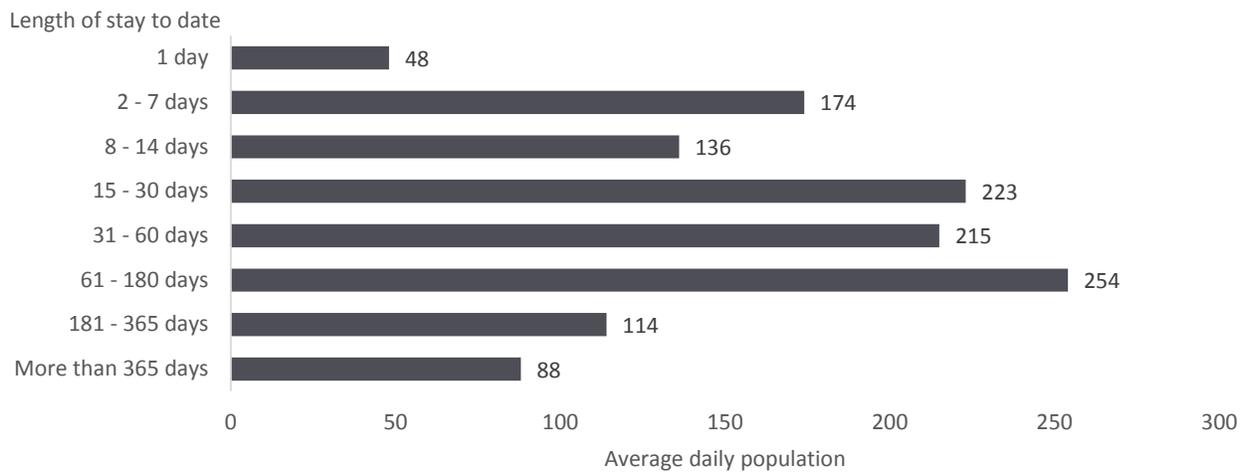
As of July 1, 2017, State Question 780 reclassified felony drug possession from a felony to a misdemeanor offense. Given that the felony of first offense drug possession is the most common felony top charge, SQ 780 will likely impact these filing trends, though it is not yet clear how. It's possible that some cases that

would once have been charged as felony possession (which no longer exists, as all possession is now a misdemeanor charge) may now be handled as a felony charge of possession with intent or another drug-sale-related charge, keeping the felony filing trends consistent. Alternatively, felony filings may dip and misdemeanor filings may increase. Since misdemeanor sentences are served in jail, there could be more sentenced people in jail as a result of SQ 780.

#### IV. Length of stay

The average length of stay for individuals released from the jail in 2016 was 20 days. However, on any given day in 2016, more than half of the individuals in jail had been in custody for more than a month. The average length of stay of individuals in custody on any given day was 95 days. See Figure 9.

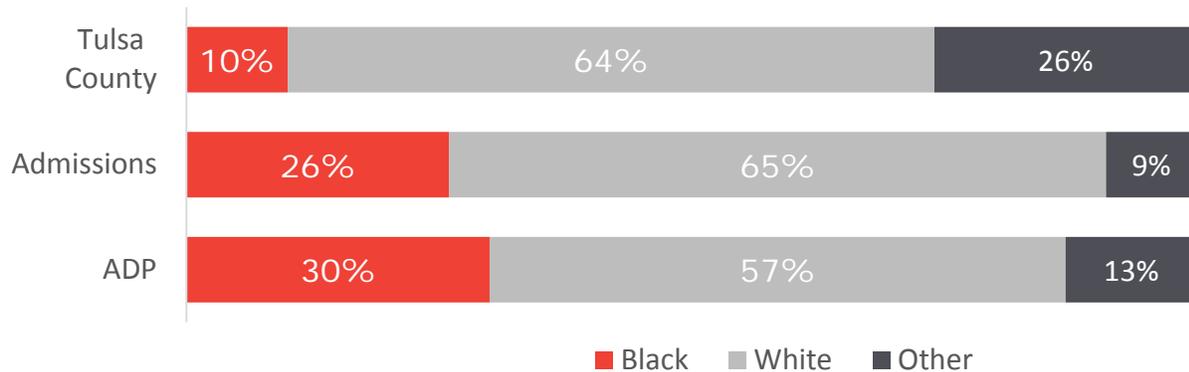
Figure 9. Length of stay to date for the ADP in 2016<sup>9</sup>



#### V. Race

**Relative to their representation in the Tulsa County population, black people were over-represented in jail admissions and the average daily population in the jail (see Figure 10). Black people also had a longer average length of stay in custody.**

Figure 10. Racial composition of Tulsa County, jail admissions and jail average daily population



Note: Tulsa County racial demographic data is based on the 2015 American Community Survey (ACS), issued by the U.S. Census Bureau. Vera calibrated the ACS data based on Hispanic as its own racial/ethnic group to parallel racial classifications in jail bookings. Thus the racial categories are white (non-Hispanic), black (non-Hispanic), and other, which includes Hispanic, American Indian, Asian, etc. The “other” category includes individuals categorized as bi- and multi-racial in the ACS data, though bi- and multi-racial individuals may self-identify as one race or be categorized as one racial identify during jail bookings.

Racial disparities—the rates at which races are disproportionately represented in the jail—exist for all offense class types.

**The largest racial disparities in jail admissions were for the lowest-level charges: municipal offenses.** Black women were admitted to the jail on municipal charges at 3.5 times the rate of white women and black men at 3.8 times the rate of white men. See Figures 11-15.

Figure 11. Comparison of admission rates by race and gender

Top charge category	Rate at which black men are admitted to jail compared to white men
Felony	3.3
Misdemeanor	2.9
Municipal	3.5
Overall	3.2

Top charge category	Rate at which black women are admitted to jail compared to white women
Felony	1.9
Misdemeanor	2.3
Municipal	3.8
Overall	2.3

Figure 12. Racial composition of 2016 jail admissions of men, by charge category, and the county population

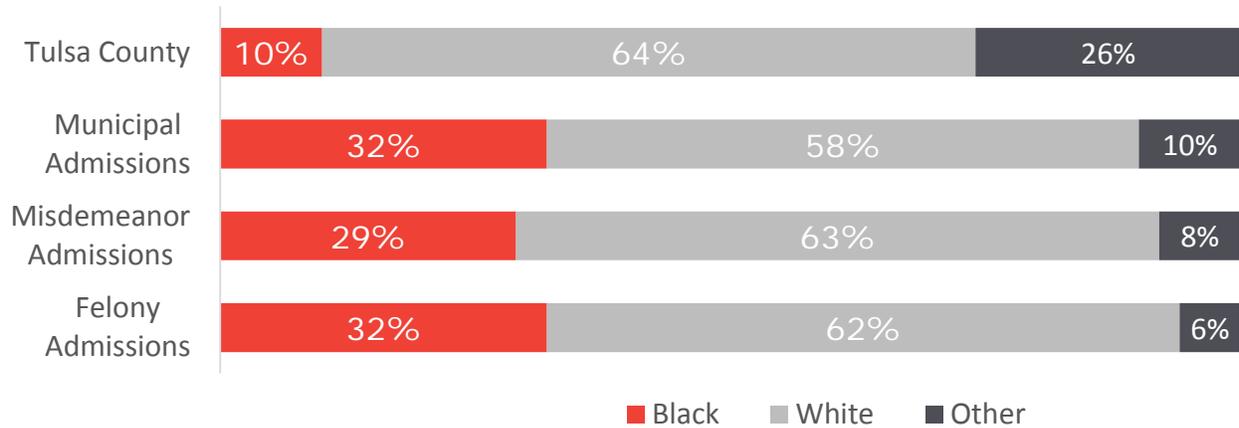
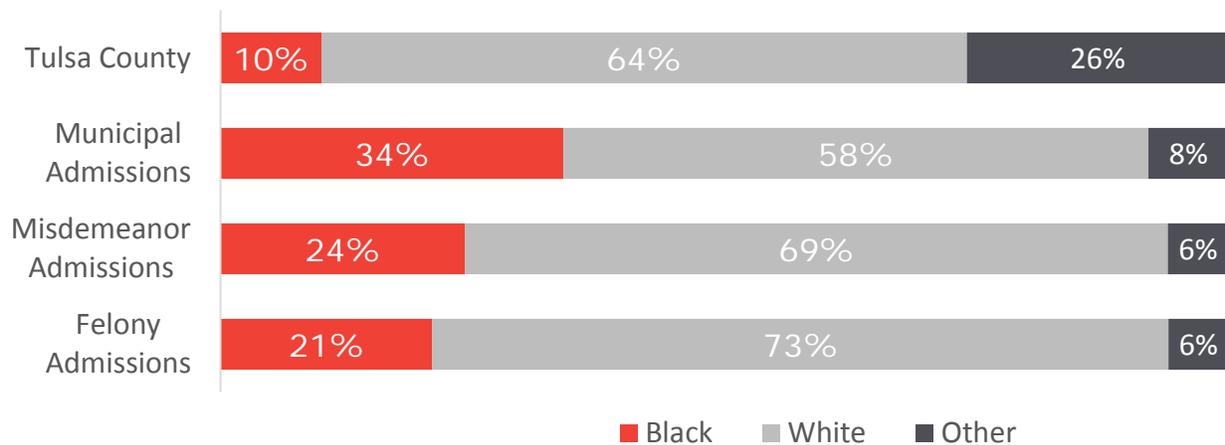


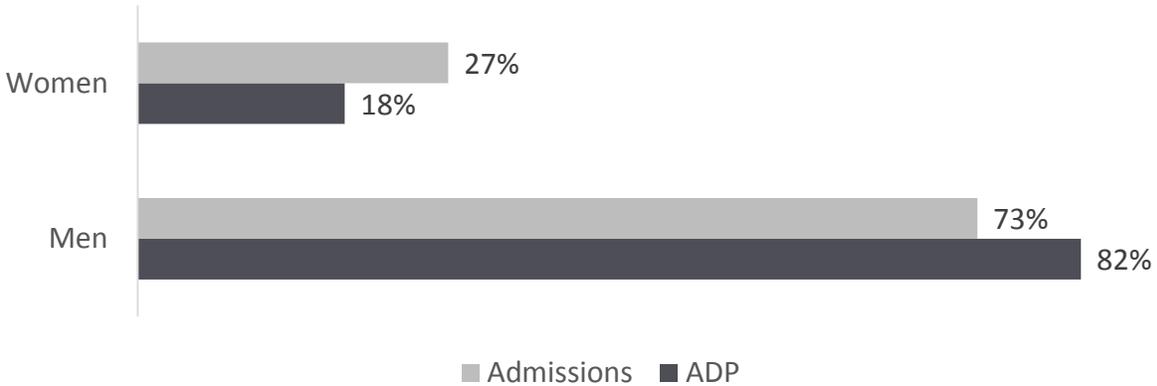
Figure 13. Racial composition of 2016 jail admissions of women, by charge category, and the county population



## VI. Gender

**More than a quarter of the individuals admitted to the jail in 2016 were women.** Women represent a smaller proportion of the ADP due to their lower-level charges and subsequent shorter lengths of stay. See Figure 14.

Figure 14. Gender composition of jail admissions and ADP



As mentioned above, **women are most frequently admitted for lower-level, nonviolent charges. See Figure 15.** Of the 15 most common top charges for women, five are probation violations or court costs, three are shoplifting charges, and two are drug possession charges. Men were admitted for felony top charges more often than women, but the most common top charges were still lower-level offenses. See Figure 16.

Figure 15. Most common top charges for women

Top charge	Admissions	Average LOS	ADP
1. Possession of controlled substance, Schedule I and II—1 <sup>st</sup> offense	493	19	25
2. DUI—1 <sup>st</sup> offense	366	7	7
3. Court cost	334	5	4
4. Public—open intoxication	250	1	1
5. Domestic assault and battery—1 <sup>st</sup> offense	175	7	3
6. Suspended or revoked driver’s license	157	2	1
7. Possession controlled substance, Schedule I and II—subsequent offense	154	31	13
8. Larceny from retailer	145	15	6
9. Larceny of merchandise from retailer	141	3	1
10. Driving under suspended license (DUS)	131	3	1
11. Application to accelerate—felony	122	10	3
12. Application to revoke—misdemeanor	122	12	4
13. Application to accelerate—misdemeanor	117	10	3
14. Larceny of merchandise from retailer—1 <sup>st</sup> offense, less than \$500	112	6	2
15. Application to revoke—felony	105	36	10

Figure 16. Most common top charges for men

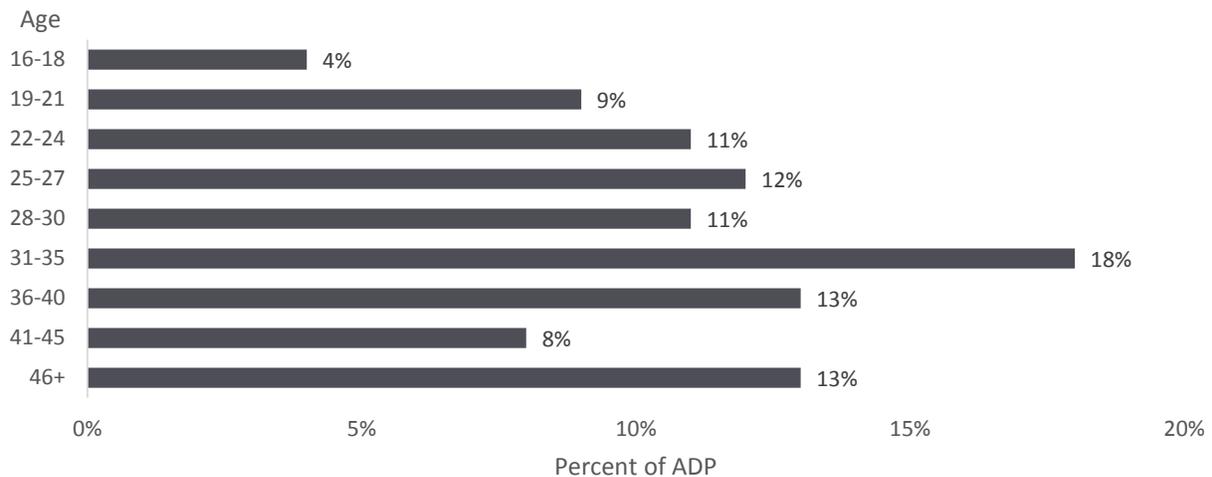
	Admissions	Average LOS	ADP
1. Public—open intoxication	1,017	1	4
2. DUI—1 <sup>st</sup> offense	896	2	6

3. Possession controlled substance, Schedule I and II—1 <sup>st</sup> offense	833	22	50
4. Court cost	829	5	12
5. Domestic assault and battery—1 <sup>st</sup> offense	480	14	18
6. Possession controlled substance, Schedule I and II—subsequent offense	407	34	38
7. Driving under suspended license (DUS)	335	3	3
8. Suspended or revoked driver's license	325	3	2
9. Application to revoke—misdemeanor	321	12	10
10. Application to revoke—felony	296	22	18
11. DUI—2 <sup>nd</sup> offense	244	14	9
12. Possession of firearm after felony conviction	240	32	21
13. Burglary—2 <sup>nd</sup> degree	239	34	22
14. Application to accelerate—misdemeanor	201	7	4
15. No proof of liability insurance	192	2	1

### VII. Age

About a quarter of individuals in the jail on any given day are younger than 25 years old. Thirteen percent of the ADP is 46 or older. The number of older adults in the jail is significant for two reasons. First, research has shown that people generally age out of criminal behavior and have lower recidivism rates than younger adults.<sup>10</sup> Second, elderly adults impose greater costs on corrections systems as they generally have more complex and chronic health conditions than younger adults.<sup>11</sup>

Figure 17. Average daily population by age



### VIII. Admissions by law enforcement agencies

Eighty-one percent of the admissions to the jail were made by the Tulsa Police Department (TPD) or the Tulsa County Sheriff's Office (TCSO). (See Figure 18.) (The most common bookings by TPD were for

lower-level, nonviolent charges. (See Figure 19.) Most bookings by TCSO were for lower-level charges, but TCSO most frequently books on federal holds and through its courthouse duties. (See Figure 20.)

Figure 18. Percent of admissions by booking agency

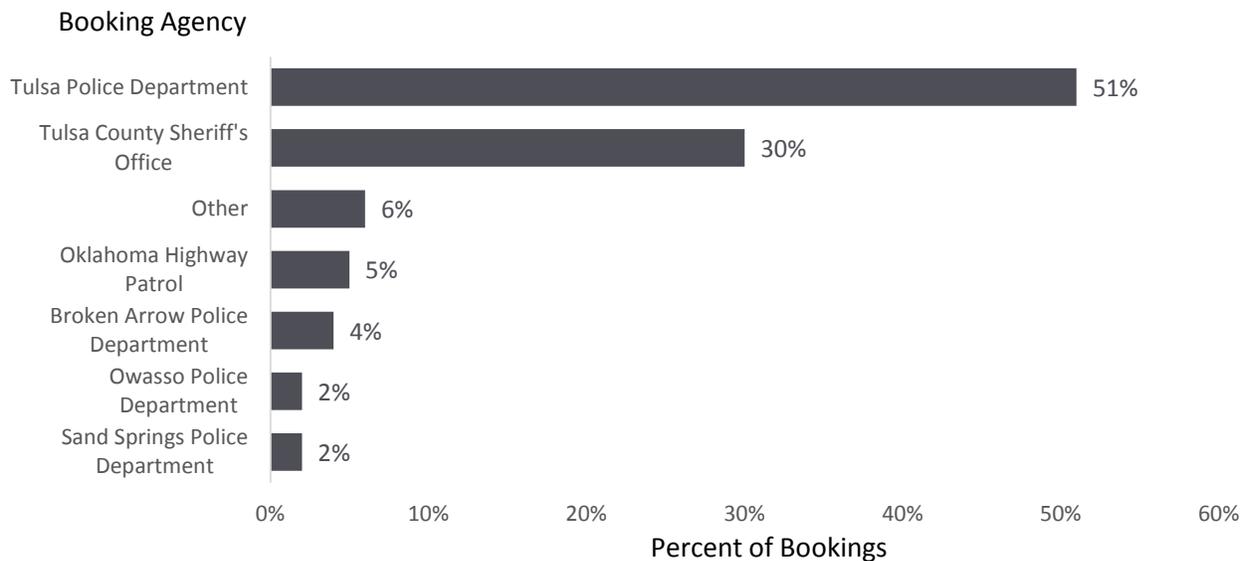


Figure 19. Most common top charges on bookings made by TPD

Top charge	Bookings
1. Public—open intoxication	1,253
2. Possession controlled substance, Schedule I and II—1 <sup>st</sup> offense	636
3. Court cost	569
4. Domestic assault and battery—1st offense	459
5. Suspended or revoked driver's license	439
6. Possession controlled substance, Schedule I and II—subsequent offense	430
7. Application to revoke—misdemeanor	401
8. No proof of liability insurance	269
9. Larceny of merchandise from a retailer	269
10. Application to accelerate—misdemeanor	243

Figure 20. Most common top charges on bookings made by TCSO<sup>12</sup>

Top charge	Bookings
1. Federal hold	1,044
2. Possession of controlled substance, Schedule I and II—1 <sup>st</sup> offense	412
3. Court cost	408
4. DUI—1 <sup>st</sup> offense	368
5. Application to revoke—misdemeanor	327
6. Application to accelerate—misdemeanor	273
7. Drug court sanction (criminal)	193

8. Larceny from retailer	165
9. Driving under suspended license (DUS)	153
10. Domestic assault and battery—1 <sup>st</sup> offense	127

### *IX. Key takeaways*

The details of the data are important, and more analysis can provide further guidance to stakeholders in Tulsa seeking to understand what is happening in their local justice system. Here, however, are some general takeaways for the analysis above:

1. To decrease the jail population, focus on people who are detained pretrial.
2. To reduce admissions to the jail, address the drivers of municipal and misdemeanor admissions, especially those related to substance use, mental health problems, and court costs and fines. These are not individuals who necessarily need to enter the jail at all in order to be held accountable to the court or to ensure public safety.
3. Divert individuals with mental health and substance use issues out of the jail and disrupt patterns that lead to multiple jail bookings.
4. Decreasing admissions for people charged with low-level offenses alone will not significantly reduce the jail population. To reduce the jail population, Tulsa will also need to reduce length of stay for people with more serious charges. There are fewer of them, but they stay longer.
5. Racial disparities, which exist for all admissions classes, are widest for the lowest-level charges, municipal offenses. To begin to address racial disparities, Tulsa can start by looking at the process related to these charges.

# Findings and recommendations

The following six sections detail Vera’s findings and recommendations, arranged roughly chronologically through the stages of the pretrial process. For each section, the findings stated are based on qualitative and quantitative research and analysis. Then, proposed strategies for reform are discussed.

## 1. Reduce admissions and lengths of stay for lower-level charges.

### Key findings and challenges

1. *Forty-six percent of all admissions to the jail had a top charge of a misdemeanor or a municipal offense.*
  - There were 8,262 admissions with a misdemeanor as the top charge and 3,588 admissions with a municipal offense as the top charge, a combined total of 11,850 for these types of admissions.
  - Of the 11,850 misdemeanor and municipal admissions, 47 percent, or 5,549 of them, relate predominantly to two issues: substance use and poverty.<sup>13</sup> See Figure 21.

Figure 21. Most common admissions in 2016

Charge	Admissions
1. Public intoxication—municipal	1,267
2. Court costs	1,163
3. Driving with a suspended license (DUS)—municipal	482
4. Driving with a suspended license—misdemeanor	466
5. Application to revoke	443
6. Application to accelerate	318
7. Larceny less than \$500—municipal	298
8. No proof of insurance	289
9. Larceny less than \$500—misdemeanor	211
10. Public intoxication—misdemeanor	190
11. Intoxicated and disturbing the peace	104
12. No driver’s license on one’s person	97
13. Trespass—refusal to leave	82
14. Marijuana possession—municipal	71
15. Trespass—with warning	68

- The Tulsa Police Department’s most frequent charge for jail bookings is public intoxication. Overall, 20 percent of TPD’s jail booking charges are related to substance use.
2. *Felony admissions are driven mostly by nonviolent crimes related to substance use and inability to pay costs, fines, or fees.*
    - The two most frequent felony admissions top charges are first and subsequent offense drug possession. These charges represent 19.4 percent of all felony admissions and 9.4 percent of

average daily population. The additional most frequent top felony charges are, in order, applications to revoke (3.7 percent of admissions, 1.8 percent ADP), applications to accelerate (2.9 percent of admissions, 0.77 percent ADP), and second offense DUI (2.79 percent admissions, 0.71 percent of ADP). Following these charges are two property crimes—shoplifting and possession of a stolen vehicle, second-degree burglary (non-residential), possession of a firearm after a felony conviction, and drug possession with intent to sell.

3. *Driving under a suspended or revoked license (DUS) was the fifth most common top charge for bookings by the Tulsa Police Department.*

- A high number of jail admissions due to DUS charges is a common problem not just in Tulsa but nationally. Many people have suspended or revoked driver's licenses due not to moving violations but to failure to pay fines or fees. Because driving is often necessary to get around in a city without extensive public transportation, people with suspended licenses continue to drive, leading to more fines and, in Tulsa, arrest. The City of Tulsa has tried a provisional licensing program, which allows individuals with suspended licenses to drive for limited purposes, but it can only address open cases in the city court system. Many people have open cases in more than one court system and county.
- Many of the municipal jail bookings for DUS are cases with open warrants. Of those open warrants, many of them are from municipal court.

4. *Warrants drive admissions to the jail.*

- Thirty percent of admissions to the jail involved some kind of warrant, although having a warrant does not necessarily imply a risk to public safety. Warrants are issued for things like failure to pay fines or costs or failure to appear in court. According to the Tulsa Police Department, less serious warrants can sit around for a very long time if a person does not come in contact with the police; last year, someone was arrested on a warrant from 1980.
- Law enforcement officers in the field cannot distinguish between a warrant related solely to court costs and other types of warrants.

5. *The Tulsa Police Department makes use of citations for traffic and municipal offenses generally, but will arrest instead when there is a warrant of any kind, if an officer in the field cannot verify someone's identity, or for other reasons based on the officer's discretion.*

- Ninety-three percent of citations issued by the TPD in 2016 were for traffic offenses and 6 percent were for criminal offenses.<sup>14</sup>
- There were as many instances of criminal citations for municipal offenses (3,479) as there were municipal jail bookings (3,588).
- While most municipal jail bookings were accompanied by open warrants, several common municipal top admission charges were mostly not accompanied by open warrants, such as public

intoxication (1,267 admissions, 88 percent of which did not have accompanying warrants), intoxicated and disturbing the peace (104 admissions, 89 percent of which did not have accompanying warrants), and trespass/refusal to leave (82 admissions, 84 percent of which did not have accompanying warrants).

6. *Racial disparities—the rate by which racial minorities are disproportionately represented in the jail—are greatest for municipal offenses.*

- Black men are admitted to jail on a municipal offense at 3.5 times the rate for white men; the rate for black women is 3.8 times the rate for white women admitted for municipal offenses.

7. *More than 1,000 people were booked into the jail three or more times in 2016. Although these bookings tend to have shorter stays than other admissions and do not individually represent a significant share of the average daily population, these admissions are resource- and time-intensive.*

- The 1,330 people who were admitted to the jail three or more times last year were admitted for mostly nonviolent, lower-level charges (public intoxication, first offense drug possession, applications for revocation or acceleration, shoplifting, etc.). Many of these people may be “high utilizers” across other public services—like emergency rooms—as well. These recurring admissions drain law enforcement and jail booking resources. Also, their frequent cycling in and out of jail suggests that the current system may be perpetuating, rather than addressing, the reasons for their law-breaking.
- The two most common top charges for high-utilizer admissions are public intoxication and drug possession. The most common charge for the 883 individuals booked into the jail three times during 2016 was first offense drug possession. For the 447 people booked into the jail four or more times in a year, the most common top charge was public intoxication.
- The average length of stay for bookings of people who had three or more bookings in a year (eight days) is below the average length of stay for all admissions (20 days). For high-utilizer bookings, the average length of stay decreases for each additional booking. Individuals with three bookings in a year have an average length of stay of 15 days; those with six bookings in a year have an average length of stay of eight days.
- The short stays of individual high-utilizer bookings, however, belie their impact. They are costly and tax staff and other resources. Even if reducing individual bookings by high-utilizers will not have a significant impact on ADP, the frequency of short stays for this population adds up to a significant use of jail beds. People who are booked three or more times in a year use 57,970 jail beds per year, representing 159 people in the average daily population, or 10 percent of the ADP.

## Responsive strategies

Reducing lower-level admissions is an important step toward rethinking how the county and city use the jail. Even though the shorter stays for these admissions won't have the largest impact on ADP (that would come from the bookings with longer lengths of stay, which also are the more serious offenses), they will impact bed days. High utilizers alone account for 57,970 jail beds per year. These frequent lower-level admissions impact staff time and operational efficiency.

Most of these lower-level admissions are pretrial admissions, which means they can potentially be eliminated while still ensuring that individuals are held accountable for any offenses for which they are ultimately convicted. The challenge is finding alternatives to jail, which is the focus of the recommendations below. Post-conviction admissions for lower-level charges reflect primarily an inability to pay fines, fees, and other court costs. This issue is addressed in Section 5.

Rethinking jail admissions for the lowest-level charges has an impact on people's lives. Even one day in jail could result in a lost job and research has shown further long-term consequences. Controlling for the seriousness of charges and risk levels, even two days in jail can increase someone's likelihood of reoffending before trial and after a sentence is served and the likelihood of a longer prison sentence than someone who is released within a day, and the effect increases with the amount of time spent in pretrial detention.<sup>15</sup> The overuse of jail incarceration is thus not only a matter of fairness and fiscal prudence; it may actually contribute to bad public safety outcomes.

Many stakeholders we spoke to believe that the criminal justice system has many entrances and few exits. Additionally, a more sparing use of the jail (and of early diversion opportunities; see Section 3) would help Tulsa focus its criminal justice resources on where they are most needed.

*Strategy 1(a): Use citations, in place of arrest and booking, for appropriate misdemeanor charges.*

State law permits law enforcement officers to issue citations in lieu of arrest for state misdemeanors. (See 22 OK Stat § 22-209 (2016).) Currently the Tulsa Police Department only issues citations for municipal offenses to the municipal court and there is no mechanism for the TPD to issue a citation to district court for a misdemeanor charge. Other law enforcement agencies, such as the Oklahoma Highway Patrol, already issue citations to district court.

The district attorney's office is already collaborating with law enforcement agencies to establish a misdemeanor citation procedure and to identify state misdemeanor charges for which a citation or book and release (see Strategy 1(b), below) would be appropriate. The recent implementation of State Question 780, which reclassifies drug possession offenses from felonies to misdemeanors, is a good opportunity to expand the range of possible law enforcement responses to misdemeanors, especially those that are already permissible under state law.

If district court citations are adopted, TPD should ensure that officers are encouraged to use them. The decision to arrest someone versus some other police action may be influenced by internal performance and evaluation metrics. In order to reduce arrests and jail bookings for citable offenses, TPD should review internal practices and revise any policies that incentivize arrest over citation.

*Strategy 1(b): In situations where citations are not practical or appropriate, allow people to be booked and released.*

“Book and release” is an intermediate step between a citation and a full jail booking. It can be used, for example, in situations where an officer is unable to determine the identity of the individual in the field, or for more serious charges. In some cities, book and release is done at district police stations, avoiding the jail altogether. Individuals are arrested, brought to the station or the jail, fingerprinted and given a background check, and released with a citation and court date.

Tulsa county and city law enforcement should work towards creating a book-and-release procedure and mechanism to avoid full booking into jail for people charged with misdemeanors where a field citation is not appropriate. This would essentially be a personal recognizance (“PR”) release, but done at the jail instead of the court, through a standing administrative order by the district court outlining eligibility based on charge. The way the booking area is currently set up at the jail would be conducive to this. The process would be similar to the approach for individuals who will be able to bail out relatively quickly; they wait in the main booking area and are not fully booked into the jail. Individuals with eligible charges could wait while their identity is confirmed and checks are made for other holds or warrants. They can then be released with a citation and court date.

*Strategy 1(c): Reduce failure to appears (FTAs) by instituting a court notification system in the municipal and district courts, and examine the actual current rates, timing, and causes of FTAs.*

Releasing more people with citations can raise concerns about increasing failures to appear in court, and also about increasing the number of warrants arising from those FTAs. Court reminder systems are effective in increasing the likelihood that people show up for their upcoming court dates.<sup>16</sup> Notification systems use texts and automated or live phone calls to remind individuals with pending court appearances of the date, time, and location of their next court date. Research has shown that live callers are most effective, but automated texts have also been shown to reduce failure-to-appear rates, warrants, and subsequent court and jail-bed costs.<sup>17</sup>

A text message notification pilot developed by the public defender’s office called “Court Bot” has recently been rolled out. It is limited to litigants on dockets where the judge has opted to participate. It should be open to all defendants and should take the form of an opt-out program, rather than opt-in, so more people can join. Although this program is not run by the district court, it is useful to measure and track the results to demonstrate how reminder systems work and to expand it. While Court Bot is a useful resource

for those who can access it for now, a reminder system should be managed by the district and municipal courts themselves, rather than the public defender's office.

It is, however, challenging to devise a more comprehensive approach to addressing FTAs and the resulting warrants when the courts do not currently know what the actual FTA rates are, when FTAs most commonly appear, and what some of the systemic causes might be. This should be a priority in particular for the district court, as the municipal court has already undertaken some strategies to reduce FTAs and warrants for failures to appear. There are many potential approaches to addressing FTAs beyond better notification systems, including providing for an FTA warrant resolution office or desk in the courthouse, extending grace periods for appearance before a warrant issues, and improving the design and clarity of citation forms. Without knowing what the problem is, it will be difficult to engineer a solution.

*Strategy 1(d): Examine and address the causes of racial disparities in municipal admissions.*

Tulsa is not unique in the persistence of racial disparities in jail usage. While there are likely many reasons for these disparities—such as structural inequities in education and opportunity—stakeholders should use data to further examine what accounts for these trends. Municipal admissions are a good place to start both because the disparity is greatest there and because it is an identifiable and discrete target population, subject to local discretion, which makes it easier to have a data-driven and specific conversation about decisions and policies that might be at play. This should not be an exercise in finger-pointing, but an opportunity for collaborative problem-solving. Confronting disparities in jail admissions rates for white people and people of color for the most minor offenses can be an important first step in increasing confidence in the local justice system.

*Strategy 1(e): Use an interdisciplinary and interagency team to identify and develop targeted responses to the high-utilizer population.*

Many of the 447 people admitted to the Tulsa County jail four or more times in 2016 are admitted for low-level charges. While low-level charges are not necessarily proxies for pretrial risk, in most cases these individuals do not need to be incarcerated either to ensure public safety or achieve appearance in court. Additionally, it is likely that many of these high-utilizers experience mental illness, substance use, or both. This is an area where city and county law enforcement, behavioral health experts and service providers should work together to determine who these people are, what determines their pathways to jail, and what can be done to reduce not only their admissions to jail but also the use of other emergency services. Tulsa County already has a history of interdisciplinary collaboration in regards to mental health issues—the Outside Inside Collaboration for Justice (OICJ) and the Stepping Up Initiative, with which OICJ is involved. OICJ is a group of behavioral health provider organizations and agencies that works to coordinate mental health treatment services for people who have contact with the criminal justice system. Stepping Up is a national initiative to reduce the number of people with mental illness in jail.

There are models elsewhere from jurisdictions that are starting to look at solutions to this challenge. For example, an analysis undertaken by Snohomish County, WA, in 2012, looked at 23 people who had nine or more bookings into the county jail during a 10-month period.<sup>18</sup> In just 10 months, these high-utilizers had 300 visits, combined, to mental health centers, hospitals, emergency rooms, and other medical services. To combat this, the county developed an in-patient facility with the goal of diverting individuals experiencing a behavioral health crisis from jail and the emergency room. A similar effort in Miami-Dade County, FL identified 97 residents who spent a combined 39,000 days in jail, emergency rooms, state hospitals, or psychiatric facilities at a cost of \$13.7 million.<sup>19</sup> The county implemented pre-booking diversion by officers trained in crisis intervention to divert people to treatment in lieu of arrest. Ultimately, the jail population dropped from 7,800 to 4,800 individuals and the county was able to close one facility. As these examples show, reducing high-utilizer admissions can have a significant impact on costs and resources, even if their relatively short stays won't have significant impact on the size of the custodial population.

The City of Tulsa is in the process of developing a sobering center that law enforcement can use as an alternative to a custodial arrest for people who would be charged with public intoxication. This may provide a stopgap alternative for some people who otherwise are brought to the jail with some frequency. This resource should be designed with a target population in mind and eligibility requirements that will maximize its utility and help reduce unnecessary admissions to the jail. It will also be important that it has the ability to connect individuals to longer-term solutions. Fortunately, OICJ is part of the sobering center's planning process. That is important to ensure that the policies and practices are appropriately matched to Tulsa County's public safety needs.

### ***Beginning implementation***

1. The Tulsa Police Department (TPD) and the Tulsa County Sheriff's Office (TCSO) should work with judicial leadership and the court clerk's office to create a citation process and form for citations to district court. Then, together with the DA's office and the public defender's office, the TCSO and the TPD should begin a process to consider what misdemeanor charges should be eligible for citations.
2. The TPD, TCSO, DA's office, and public defender's office should decide on charges eligible for book-and-release.
3. Convene a group of stakeholders, including the city prosecutor's office, the municipal court, the TPD and the mayor's office, to examine the drivers of racial disparities in municipal jail admissions.
4. Expand the Court Bot notification system to all cases in the district court while planning for a court-run notification system.
5. OICJ, in collaboration with the City of Tulsa, should begin to use data to analyze the high-utilizer population, potentially bringing in representatives from local hospitals and other involved resources, and identify potential alternatives to arrest and/or pretrial incarceration.

2. To reduce unnecessary pretrial incarceration, create a pretrial release process that is individualized and not based solely on one's ability to pay financial bail.

### Key findings and challenges

1. *The majority of people incarcerated in the Tulsa jail are being held pretrial.*
  - More than 62 percent of people incarcerated in the jail on an average day are there awaiting disposition on state misdemeanors and felonies.<sup>20</sup> The remainder are people held on federal charges (14 percent), people serving sentences (9 percent), people held on municipal charges (0.26 percent), and about 13.5 percent who are “unclassified,” which may include people admitted for a range of post-dispositional issues, such as parole or probation violations or failures to pay, or other reasons.
  
2. *Financial bond is the default pretrial release decision-maker.*
  - A cash bond amount is set on nearly all people who are booked into the jail, except some charged with the most severe offenses for whom no bond amount is set. More than 40 percent of people released from the jail (all releases, not just pretrial releases) were released upon the payment of cash bond, either by the defendant themselves or through a commercial bail bondsman.
  - The bond amount is determined by a bond schedule, approved by the district court, which sets out the amount of bond charged for every offense. People who are arrested and brought to the jail can bond out immediately based on the schedule before they even see a judge. Those who don't bond out immediately and are still in custody have a first appearance hearing in front of a special judge via video from jail. Because no counsel is present at that hearing on either side, there is no opportunity for argument regarding the necessity or amount of bond, and there is no information with which a judge could make an individualized release decision. The bond amount is largely based on the schedule, using the booking charges, which have not yet been accepted or declined by the district attorney's office.
  - Individuals without the money to pay the bond themselves in full but with enough to pay the 10 percent premium charged by commercial bondsmen may still get out. Those who can't afford even that 10 percent premium wait in jail.
  
3. *Bond is calculated cumulatively based on all charges, which can make bail amounts harder to pay, even for individuals charged with less serious offenses.*
  - The practice of aggregating the bond amount for each charge makes bond amounts high (see Figures 22 to 24). The average felony jail admission contains 3.7 charges, the average misdemeanor jail admission contains three charges and the average municipal jail admission contains 2.6 charges. Stakeholders reported that the number of charges has increased in recent years.<sup>21</sup> As the number of charges goes up, the bail amount may triple or quadruple. Individuals facing the most common top admission charge, felony Schedule I and II drug possession (first

offense), have an average of four charges per booking. While the bond schedule amount for felony drug possession (first offense) is \$2,500, the median bond amount for individuals with this charge as their most serious charge is \$4,789 and the average is \$38,127.

4. *Even “low” bond amounts are too high for many people.*

- Twelve percent of the average daily population consists of people with bond amounts of \$5,000 or less. Figure 19 shows that even for low bond ranges, significant percentages of people do not bond out. Although some of these individuals will be released pretrial some other way, such as PR bond or supervised release, those forms of release may take days while jail beds are occupied.
- Low bond amounts usually reflect the court’s expectation that individuals with these charges will be released, but for low-income people, even a low bond serves as a holding mechanism, rather than a release mechanism.

5. *Assignment of counsel does not happen until after arraignment, usually a week or more after arrest and booking.*

- Most people in custody are not represented by counsel at the first two video court appearances, the initial appearance and arraignment. As such, there is no opportunity for an attorney to present information relevant to the release decision or argue for release on personal recognizance, non-financial conditions, or reduced bond.
- There is a rebuttable presumption under state law that those who are able to bond out are not indigent and thus do not qualify for assigned counsel. It is unclear how this presumption operates in Tulsa. Some stakeholders expressed concern that people who post bond but cannot afford to hire private counsel are threatened with re-arrest unless they retain counsel before their next appearance, which may increase the likelihood of failure to appear. Others suggested that this happens rarely and, if anything, the assignment of counsel is not subject to a rigorous financial assessment. There is consensus, though, that the presumption leads individuals to hire private counsel that they cannot afford and who have the ability to delay a case until they get paid, thus causing more delays and continuances and increasing the likelihood of failures to appear.

6. *There are two forms of non-financial release: the Pretrial Release Program run by Tulsa County Court Services (Court Services) and personal recognizance release. Both are underutilized and inconsistently granted.*

- *Court Services supervision.* Less than 500 people each year are released to Court Services supervised release, a program widely lauded by Tulsa justice system stakeholders. The state law authorizing pretrial release programs such as Court Services’ supervision excludes numerous offenses, including drug offenses, violent offenses, and the most serious felonies, but a district judge (though not a special judge) has authority to release a person charged with an excluded offense. There isn’t a specific point in the pretrial case process where Court Services’

recommendations are considered; they usually reach the court after arraignment and therefore are considered by whatever judge has been assigned the case. There are no time limits on judges' decisions on release recommendations. Consequently, the decisions are often inconsistent and dilatory. There are some judges who refuse to release people charged with certain offenses to Court Services supervision, even though many defendants with a similar charge may bond out (DUI, for example).

- *Personal recognizance release.* Oklahoma law allows district court judges to release individuals on personal recognizance (“PR”) bonds, but this provision is irregularly used; mostly, judges may use it to address temporary jail overcrowding or later in a case, post-plea, when an individual is awaiting sentencing on a charge that will not lead to incarceration. Stakeholders characterize this process as an ad hoc and undesirable way to make decisions. In 2016, the DA’s office and the public defender’s office piloted a “PR docket” for about six months. The PR docket consisted of defendants whose charges were approved for PR release and who were released on PR bonds from jail while their cases proceeded. The return rates of the defendants released were tracked. Approximately 100 people were released and 80 percent of them returned to court, 10 percent were rearrested on other charges, and 10 percent failed to appear. These outcomes, according to stakeholders, are comparable to the appearance rates for commercial bond releases.

## **Responsive strategies**

Pretrial release decisions—whether someone is released pretrial or not, under what conditions, financial or otherwise, and when these decisions are made and reviewed—have a significant impact on the jail population. American jurisprudence holds pretrial release as the presumption; the only constitutional justification for holding someone in jail before they are convicted of a crime is when there is a likelihood that he or she will not appear in court and/or poses a serious risk to public safety. Oklahoma law requires that the pretrial release decision be an individualized assessment of a defendant, taking into account risk of flight, risk to the community, and financial means.<sup>22</sup> The primacy of cash bond in Tulsa, however, has created a system whereby judicial decision-making regarding public safety risk, flight risk, and ability to pay is abrogated by the bail schedule.

There is no research evidence that financial bonds are more effective in preventing a defendant’s failure to appear than other forms of release. A key study of Colorado counties, for example, found that individuals released on unsecured bonds (where the defendant does not post any money up front prior to release) did not have statistically significant different failure to appear rates or reoffending rates compared to those released on secured bonds.<sup>23</sup> Not surprisingly, defendants with secured bonds had much longer lengths of stay in jail before securing release than the defendants with unsecured bonds.<sup>24</sup> Furthermore, there is no research indicating that money bonds have any impact on the likelihood of committing new offenses while in the community.<sup>25</sup> Cash bonds disproportionately impact low-income individuals, including women and people of color who are more likely to be poor.<sup>26</sup> The disproportionate incarceration of black people in Tulsa and the high rates of incarceration for women may derive in part from the prevailing use of money

bail. Shifting away from a cash-based system is possible, but requires long-term commitment and the reallocation of local resources.

In the long-term, Tulsa should aim to move from a cash-based to risk-based system that provides for individualized release decisions informed by a validated risk-assessment tool and a range of pretrial release and supervision options. This is considered best practice in the field and Tulsa County should aspire towards those best practices. In the interim, there are immediate steps the district court could take to improve the current system and create the basis for more significant changes.

### **Short-term strategies**

*Strategy 2(a): Make it easier for people to post bond by ending the practice of calculating it cumulatively by charge and allowing people to post partially secured bond.*

Ending the practice of aggregating bond amounts by charge is a simple way to reduce bond amounts and could be accomplished through an administrative or standing order in the district court. Cumulative bond setting is not required under state law but is a common practice in Oklahoma. It would not obviate the need for an early bond hearing but it might help more people get out of jail early by significantly decreasing bond amounts for the most common, lower-level charges.

As the charts below demonstrate, setting bail on the top charge instead of cumulatively would reduce median bond amounts, in some cases significantly. The two most common top felony charges are first offense and subsequent offense drug possession. Currently, the median bond amounts for those with these top charges—\$4,789 for first offense possession and \$8,025 for subsequent offenses—are much higher than the bond amounts of the most serious charge. Bond for these would decrease 48 percent for first offense possession (from \$4,789 to \$2,500) and 38 percent for subsequent offense possession (from \$8,025 to \$5,000), respectively. For DUS charges (driving under a suspended license, often caused by failure to pay court costs, rather than moving violations), the fourth most common misdemeanor admission and the second most common municipal admission, it would decrease the median bond amount 72 percent (from \$1,429 to \$396) and 74 percent (from \$1,247 to \$324), respectively. Setting bail on the top charge rather than cumulatively will not require any amendments to local or state law and could be enacted immediately by district court.

Another approach to making it easier to post bail is to allow a partially secured bond. Defendants would post a portion of the bail amount to the court, usually 10 percent, with liability for the full amount, should they fail to appear. While this is the same amount usually paid under a bail bonds agreement with a third party surety, in this case the money will be remitted to the defendant at the end of the case or used to offset any court costs, instead of being retained by the bail bondsman. Even though this method of bond is unusual in Oklahoma, it is not disallowed.

Figure 22. Cumulative vs. top-charge bond for the 10 most common felony charges

Top charge	Median cumulative bond on booking	Median bond on top charge	Average # of charges	% decrease in bond if top charge rather than cumulative
1. Possession of controlled substance, Schedule I and II—1 <sup>st</sup> offense	\$ 4,789	\$ 2,500	3.9	48%
2. Possession of controlled substance Schedule I and II—subsequent offense	\$ 8,025	\$ 5,000	4.7	38%
3. Application to revoke—felony	\$ 8,100	\$ 5,000	2.8	38%
4. Application to accelerate—felony	\$ 5,000	\$ 5,000	2.4	0%
5. DUI—2 <sup>nd</sup> offense	\$ 3,000	\$ 2,000	3.8	33%
6. Burglary—2 <sup>nd</sup> degree	\$ 6,000	\$ 3,000	3.4	50%
7. Larceny of merchandise from retailer	\$ 2,750	\$ 1,000	2.8	64%
8. Possession of firearm after felony conviction	\$ 8,200	\$ 4,000	4.4	51%
9. Possession/delivery of controlled substance with intent to sell, Schedule I and II	\$ 10,250	\$ 5,000	4.4	51%
10. Possession of stolen vehicle	\$ 3,435	\$ 2,000	3.5	42%

Figure 23. Cumulative vs. top-charge bond for the 10 most common misdemeanor charges

Top charge	Median cumulative bond on booking	Median bond on top charge	Average # of charges	% decrease in bond if top charge rather than cumulative
1. DUI 1 <sup>st</sup> offense	\$ 1,300	\$ 1,000	3.3	23%
2. Court cost	\$ 2,961	\$ 1,537	4.3	48%
3. Domestic assault and battery 1 <sup>st</sup> offense	\$ 5,000	\$ 5,000	2.1	0%
4. Driving under suspended license	\$ 1,429	\$ 396	5.5	72%
5. Application to revoke—misdemeanor	\$ 2,673	\$ 2,500	1.9	6%
6. Application to accelerate—misdemeanor	\$ 2,500	\$ 2,500	1.7	0%
7. Driving under the influence of drugs, 1 <sup>st</sup> offense	\$ 1,600	\$ 1,000	3.8	38%
8. Larceny from retailer, 1 <sup>st</sup> offense, less than \$500.00	\$ 1,000	\$ 500	2.6	50%
9. Public intoxication	\$ 100	\$ 100	1.5	0%
10. Obstruct/interfere with police officer	\$ 1,189	\$ 500	3.3	58%

Figure 24. Cumulative vs. top-charge bond for the 10 most common top municipal charges

Top charge	Median cumulative bond on booking	Median bond on top charge	Average # of charges	% decrease in bond if top charge rather than cumulative
1. Public/open intoxication	\$ 150	\$ 150	1.4	0%
2. Suspended or revoked driver's license	\$ 1,247	\$ 324	6.1	74%
3. Larceny from retailer	\$ 592	\$ 500	2.4	16%
4. No proof of liability insurance	\$ 700	\$ 250	4.5	64%
5. DUI	\$ 900	\$ 750	2.5	17%
6. Intoxicated and disturbing peace	\$ 150	\$ 150	1.1	0%
7. No driver's license on one's person	\$ 383	\$ 200	2.8	48%
8. Trespass, refusal to leave	\$ 150	\$ 150	1.1	0%
9. Obstruct or resist officers	\$ 150	\$ 150	1.5	0%
10. Possession of marijuana	\$ 1050	\$ 750	3.7	29%

*Strategy 2(b): Assign counsel earlier.*

Counsel should be assigned earlier, especially to defendants who don't bail out of jail. Currently, indigent defendants in custody are not assigned counsel until after the video arraignment, which comes after the first appearance where bail is technically set (although this process generally just confirms the bail schedule amount). In some instances, defendants at the jail move from the video arraignment room directly to the library, where they meet with the public defender. These steps should be reversed: an opportunity to confer with defense counsel before the arraignment, ideally before the first appearance, would allow defendants still in custody to argue for bail reduction or PR release where appropriate. Empirical research has demonstrated that early assignment of counsel, beginning at the pretrial release decision point, can help reduce unnecessary pretrial incarceration.<sup>27</sup>

*Strategy 2(c): Review bail decisions at arraignment and consider PR release for people still in custody on low bond amounts.*

The earlier assignment of counsel will provide an opportunity to review bail decisions at arraignment. The review will ensure that people are not in custody simply because they are too poor to afford bail. The presence of counsel will allow defendants to make a case for non-financial release (PR release) based on their community connections, or for reduced bail based on their inability to pay the original bail amount.

The district court should issue an order allowing special judges to do PR bond release for a range of specified charges that the district attorney's office and the public defender's office agree upon. Expanding and systematizing PR release at initial appearance or arraignment would provide a pretrial release option for low-risk defendants who do not need pretrial supervision. Pretrial supervision resources should be focused on higher-risk defendants. Over-supervising low-risk defendants is contrary to evidence-based practice and risks *increasing* their recidivism rate rather than decreasing it.<sup>28</sup>

It is important to note here that while a risk-based release decision is preferable to a charge-based early release system, a charge-based system such as this could serve as an interim measure until a risk-based system is in place. Not all defendants who are released pretrial need supervision. PR bond release would be appropriate for low-risk defendants who do not need active supervision and will be likely to appear with a reminder system in place.

*Strategy 2(d): Improve consistency and timing of decisions to release people to supervision by Tulsa County Court Services by centralizing release decisions with one judge.*

Court Services recommendations regarding pretrial release are usually made post arraignment and therefore pend with whichever judge is assigned the case. Each judge has different practices and policies about approving these recommendations, and there is no specific point in the pretrial process when recommendations are considered. One way to improve the consistency in release decisions and ensure that they are made at the earliest possible moment would be to assign one judge or one docket to handle all Court Services pretrial release recommendations.

### **Long-term strategies**

The short-term strategies discussed above will go some distance to improving decision-making around pretrial release by ensuring that lack of money is not the only reason individuals are incarcerated and, in appropriate cases, by improving the efficiency of release to supervision. As noted above, in the long-term, Tulsa should aim to move from a cash-based to a risk-based system. This approach will enable Tulsa to ensure that use of the jail aligns with the county and the city's long-term public safety goals and priorities. It will also allow Tulsa to use its limited public safety resources most effectively.

*Strategy 2(e): Educate stakeholders about risk-based pretrial release decision-making.*

Transforming the pretrial release decision process in Tulsa from one orientated to bond amount to one based on risk will require thoughtful education and outreach strategies in advance of implementation of such a change. Implementing an evidence-based risk tool to inform pretrial decision-making results has demonstrated both improved public safety and reduced jail populations.<sup>29</sup> Such a reorientation, however, is challenging, and will require a significant change for local justice system stakeholders. Success requires education and communications strategies for the judiciary, the defense bar (including the private bar), the DA's office, and the general public. Such efforts to build a new consensus would be an essential part of Tulsa undertaking this kind of change.

*Strategy 2(f): Use a risk assessment tool validated on the Tulsa County population.*

The use of an objective, validated risk assessment instrument by pretrial services agencies to inform judicial decision-making around pretrial release is strongly recommended by both the American Bar

Association and the National Association of Pretrial Services Agencies.<sup>30</sup> Risk tools are actuarial instruments, essentially questionnaires that produce a score that represents a defendant's risk of flight and of committing a new crime pending trial. They are not designed to replace judicial discretion around pretrial release but to inform it. Any instrument used to assess a defendant's risk should be validated to ensure it accurately predicts pretrial risk in the community in which it is being applied. Tulsa Court Services currently uses a risk tool on the small subpopulation of individuals deemed eligible for its supervised release program, but the tool has not been validated and is only used on a subsection of the jail population. This tool could be validated and applied at admissions, generally, or the county could consider alternative tools. To do that, Court Services will need to be staffed more fully at the jail to ensure that everyone is assessed and that a recommendation is available to the judge at first appearance.

Tulsa will then need a range of options to respond appropriately to each risk category.

*Strategy 2(g): Expand nonfinancial pretrial release options to ensure that there are appropriate responses to all risk levels.*

Tulsa already has a trusted and well-functioning pretrial services program that provides an opportunity for nonfinancial release under pretrial supervision. As noted above, it uses a risk tool, but not one that has been validated. Moving to a risk-based system requires that there be a range of appropriate responses based on risk level. Properly assigning individuals to different levels of supervision will also help allocate criminal justice resources effectively. For example, low-risk defendants should be released into the community with limited intervention, usually just calls or text reminders of upcoming court dates. Over-supervising or intervening with this population can have adverse impacts and actually increase failure to appear rates and public safety risk.<sup>31</sup> Moderate-risk defendants may be more successful in the community with oversight by Court Services, where supervision and conditions can be matched to their risk and needs.<sup>32</sup> Pretrial incarceration would be available to higher risk defendants where resources don't exist in the community to ensure that they will return to court and not put the community at serious risk.

### ***Beginning implementation***

1. The district court should end the practice of setting bail cumulatively by issuing a standing order instructing special judges to set bail based on the top charge.
2. The TPD, TCSO, DA's Office, public defender's office and the district court should agree on a list of PR-eligible charges.
3. Consolidate Court Services' recommendations for pretrial release onto one docket by issuing the recommendations before arraignment. This would require increased funding of the Court Services program to have it staffed sufficiently to make their recommendations by arraignment.
4. Commence the process of validating the risk tool that Court Services currently uses or identify an alternative tool.
5. Develop an education and communications strategy to build consensus around a new approach to pretrial release, based on evidence-based principles of risk and needs.

### 3. Reduce lengths of stay by expediting simpler cases and identifying and reducing unnecessary case processing delays for more complex cases.

#### Key findings and challenges

1. While the average length of stay for all admissions was 20 days in 2016, most people in the jail on any given day had been there for much longer.

- The average length of stay (LOS) for all individuals who were released from the jail in 2016 was 20 days. However, the average LOS for people in the jail on any given day is 95 days. Most admissions to the jail are for short lengths of stay (42 percent of admissions have a length of stay one day or less and 66 percent of admissions have a length of stay less than a week) but the long-stayers represent a greater share of the ADP. See Figures 25 and 26.

Figure 25. Lengths of stay for individuals released from the jail in 2016

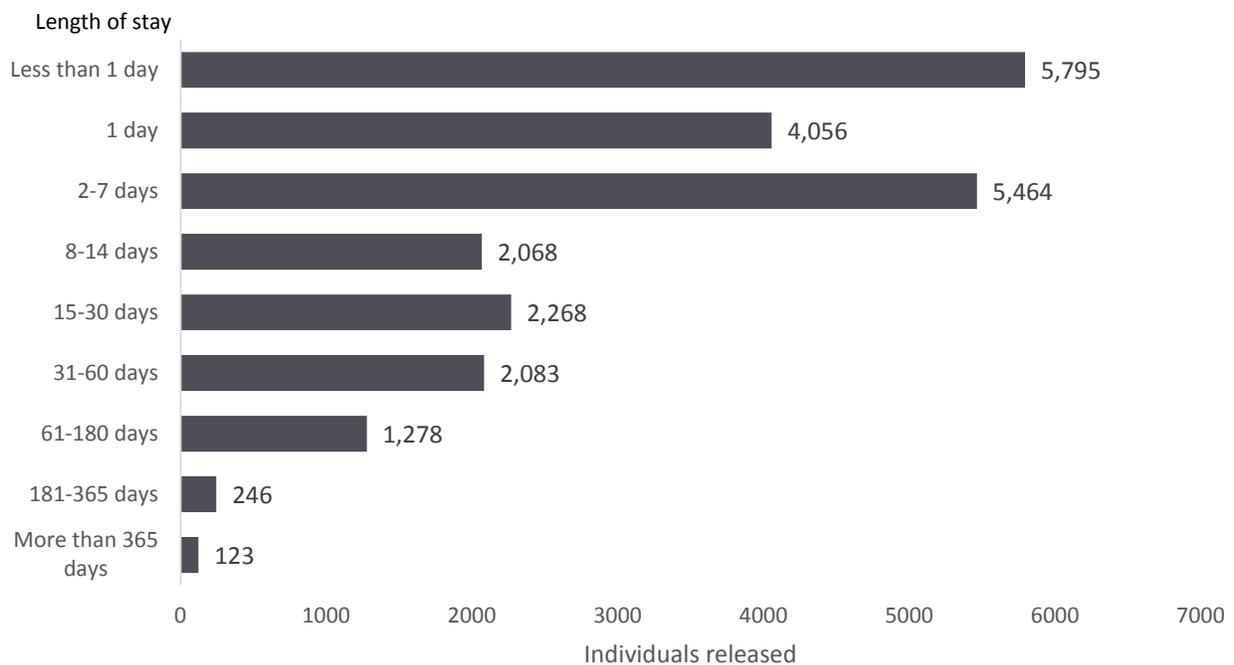
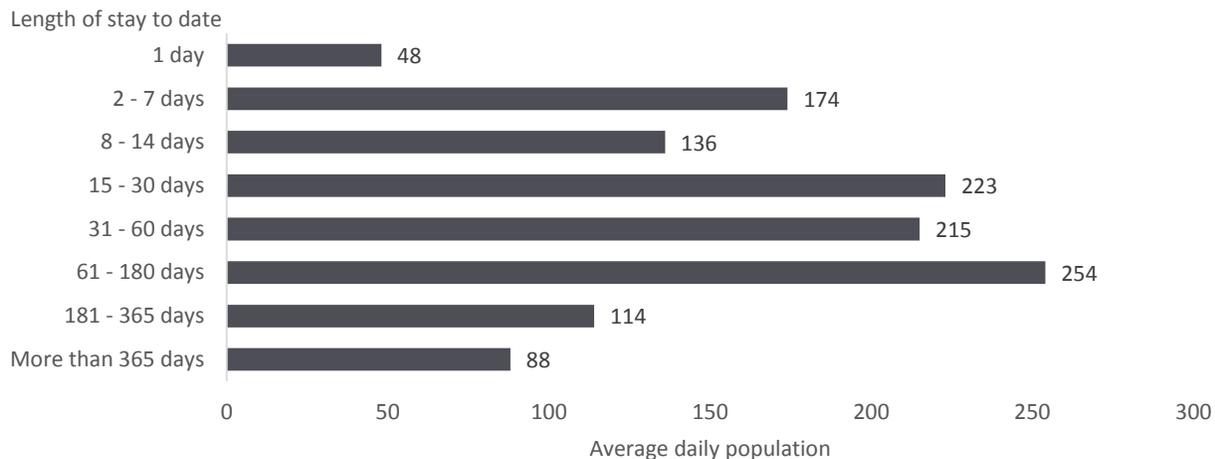


Figure 26. Lengths of stay for the average daily population in the jail in 2016



- Most of the individuals in custody on any given day have been charged with felonies which generally take longer to dispose. Ninety-four percent of admissions with an average LOS of more than 60 days had a felony as the top charge.
- While lengths of stay were longer for individuals with more serious charges, 79 percent of the cases for which defendants had lengths of stay 60 days or longer were not those with the most serious charges (the “85 percent crimes”).<sup>33</sup>
- The average LOS for those with a top charge of first offense drug possession—the most frequent felony top charge—was 33 days.
- Some portion of the LOS of long stayers, those in custody for 60 days or longer, includes time they spent in jail once they are sentenced, usually awaiting a DOC bed. Half of the long-stayers had their status converted from pretrial to sentenced during their jail stay. Even so, their average LOS pretrial (147 days) is much longer than their LOS as sentenced (50) and awaiting a bed.

2. While Vera did not have access to case-level court data, which would allow for deeper analyses of what drives LOS in court cases, stakeholders identified a number of system inefficiencies which may be driving longer case processing times and some of the long lengths of stay:

- There are no opportunities to identify and fast-track simpler cases. All cases are set down for a preliminary hearing, and preliminary hearings are sometimes reset multiple times. As a result, even individuals who will ultimately receive noncustodial sentences still spend on average 41 days before being released on a deferred sentence and 38 days on a suspended sentence. This number may include those released to participate in a diversion program, such as a specialty court. As noted in Section 3, there is no system set up to expedite referrals into treatment courts.
- Publicly available data from the Oklahoma Supreme Court Network (OSCN) suggests that the average time between continuances is 36 days. Attorneys and judges interviewed by Vera agree

that there are a lot of continuances, although they do not agree on why. High caseloads at both the district attorney's office and the public defender's office are probable contributing factors.

- Resources for addressing mental competency issues are limited. OSCN data suggests that cases where competency assessments have been requested are reset the most and may have some of the longest times to disposition.
- Private attorneys may delay cases until they are paid. About 20 percent of all cases involve a private attorney, so these delays can become substantial.

## **Responsive strategies**

*Strategy 3(a). Have counsel present at arraignment to create early opportunities for efficient case resolution.*

Early assignment of counsel (as discussed in Strategy 2(b)) would not only allow for bail review hearings at arraignment, it could also provide an opportunity for earlier case resolution. Currently, neither the district attorney nor the public defender play a role at arraignment, which is a missed opportunity to make substantive movement on a case early on. By having counsel from both sides present, judges could encourage both sides to identify possibilities for early pleas and expedite discovery. Even a cursory review of the factual allegations at an early date could expedite plea negotiations and discovery.

*Strategy 3(b): Develop and institute strategies for expediting less complicated cases and dismissing weak cases.*

A number of jurisdictions have created early resolution dockets for simpler cases, such as those that are unlikely to include a custodial sentence, where the defendant would like to plea, and/or there are no witnesses and discovery is limited. The district attorney's office and public defender's office should identify those cases immediately before or after arraignment, assuming earlier assignment of counsel.

The district court created an early resolution docket in the past without success. That effort, however, did not have the structure or the commitment to make it workable. The DA's office, public defender's office and the court should reexamine why that effort failed in the past to ensure that rules are in place to make it successful now. An early resolution docket must be able to impose rules regarding expedited discovery, and shorter and fewer continuances.

*Strategy 3(c). The district court should conduct its own data analysis to identify points in the process where the progression of cases slows.*

In order to determine reforms with the greatest potential impact, county stakeholders should have a data-informed sense of case processing times. This may include evaluations of the number of continuances, the time between hearings, backlogs, or time to gather discovery.

Timely processing of cases and effective use of court hearings are essential to reducing the jail population and are a central component to the administration of justice for both crime victims and defendants. If individuals make several appearances in court but few hearings are meaningful court events where all relevant parties are present and substantive progress is made on the case, the predictability of their experiences in court decreases. A lack of meaningful court events may also dissuade defendants from appearing for court and may increase the risk of FTAs. Because hearings may not be perceived as meaningful, the challenges defendants face to appear in court, including missing work, arranging childcare, and coordinating transportation, may seem as worth the resources and coordination required.

It is clear that continuances and other systemic delays are playing a role in longer lengths of stay and thus the size of the jail population, but the data available to Vera at this time couldn't provide much detail beyond what was gathered from qualitative research. Deeper analysis is a crucial task for the district court and other local stakeholders to take on. Where quantitative data is hard to get, file reviews of sample cases can help shed light on practices and procedures.

In addition to conducting an analysis of case processing of current and recent cases, resources and procedures should be put in place for routine and continuous evaluation of case processing in order to track the impact of any reforms and identify opportunities for further changes. This may include greater data collection and regular reporting to county stakeholders on metrics such as time to disposition, time between hearings, number of continuances and reasons for them, etc.

Tulsa should consider in this process whether time standards for case processing may be helpful. Even for cases where the defendant is not in custody, slow movement of cases clogs up dockets and contributes to a culture where all cases move at a slow pace. The National Center on State Courts has model time standards for felony and misdemeanor cases, with the goal to have 75 percent of felony cases resolved in 90 days and 75 percent of misdemeanor cases resolved in 60 days.<sup>34</sup> To be effective, time standards cannot simply be imposed, they must be enforced and measured. That means that felony cases pending for more than 90 days (or misdemeanors for more than 60 days) should require case conferences to resolve delays.

*Strategy 3(d). Target long-stayers for reductions in case processing times.*

The greatest dividends in jail population reduction will come from closely examining long-stayers in the jail and addressing reasons why they have such long lengths of stay. These cases do include some of the most serious and complicated cases that cannot be sped along as easily, but not all of the long-stayers are those charged with serious 85 percent crimes or with very complicated cases. Within the group of long-stayers, there are likely opportunities where cases are unnecessarily delayed, and where a careful review of the obstacles to efficient resolutions would demonstrate opportunities for reducing case processing times, and therefore lengths of stays in the jail.

***Beginning implementation:***

1. Undertake a case processing study to provide a data-informed assessment of the case processing challenges in the district court. This may be grant-funded at no cost to the county or the district court. Gaining a better understanding of what the delays are in the processing of cases will inform many of the other strategies Tulsa undertakes.
2. Convene a group of stakeholders to determine why specialized dockets were unsuccessful in the past and what could be done to make them an effective tool for better case management. Representations should include the judiciary, the court clerk's office, the court administrator's office, the DA's office, the public defender's office, and private defense counsel.
3. Examine who the long-stayers are in the jail and how better case processing strategies could target these defendants and cases for shorter lengths of stay.

#### 4. Ensure that alternatives to incarceration and diversion programs are accessible during the earliest stages of a case.

##### Key findings and challenges

1. *There are large numbers of individuals with mental health and substance use needs incarcerated in the jail.*
  - While the jail admissions data does not flag mental health or substance use needs (as there is no universal screening for mental health/substance use issues for everyone booked into the jail), the admissions data shows that about 10 percent of admissions, more than 2000 bookings, are related to drug possession.
  - The jail and the contracted health care provider are currently working on adding an assessment of mental health, substance use, and suicidality to the current medical intake process. This is a strategy that has emerged from the Outside Inside Collaboration for Justice (OICJ)'s participation in the national Stepping Up initiative. It is worth noting that it will not reach those who bail out before being fully booked into the jail.
  - The county recently spent \$15 million on four new jail pods with 283 beds. Two of these pods are for people with mental health issues who are admitted to the jail.
2. *There are insufficient community behavioral health and substance use treatment resources to keep people in need out of the jail.*
  - Stakeholders consistently noted the absence of avenues to obtain treatment in the community—there are no treatment resources available for those who cannot pay and don't come through the justice system. People with mental health and substance use needs often end up in the jail because they cannot access treatment services in the community. This information is based on interviews with stakeholders; we have not done an assessment of the availability of services or the referral process.
3. *The substance use treatment options that are available to people in the criminal justice system are treated as one-size-fits-all and are costly.*
  - There is not a wide spectrum of substance use treatment that can be individualized based on peoples' needs, in contrast to evidence-based practices around treatment and dosage.
  - For the services that are available, like drug court, there are numerous costs attached to participation, such as costs for the program itself, and for each drug test.
4. *Specialty courts offer treatment as an alternative to prison but they do not divert people from jail incarceration.*
  - While case processing appears to be fairly efficient for proceedings in specialty courts once the defendant has applied, the process prior to their referral is not. Once someone applies, they can be reviewed and placed on the docket within a week. But people in custody spend weeks or

months before they are even referred for these programs.

- For those who have at least one hearing in drug court, the average time between their case being filed and their first appearance in drug court is 72 days. Therefore, an individual may spend more than two months, on average, before they are referred to the system's existing treatment resources.
  - There is no early point for automatic screening and referral to the diversion courts. Prosecutors do not flag potential cases at any point and some defense attorneys may hold off requesting a referral until they have a better understanding of the merits of their case and the possibility of getting a community sentence without the burdens and financial cost of diversion court participation. Thus, the referral process usually doesn't begin until after the preliminary hearing; preliminary hearings are often postponed.
  - The fees imposed on people who participate in specialty courts are onerous and make defense counsel wary of recommending such dispositions to their clients.
5. *Other than specialty courts there are few pretrial diversion options.*
- There are no pre-arrest or pre-booking diversion options.
  - Women in Recovery is an alternative-to-incarceration program for women; sentencing is delayed pending completion of the program. If they are successful in the program, participants are eligible for deferred or suspended sentences.

## **Responsive strategies**

*Strategy 4(a): Identify and enroll participants in specialty courts earlier in the criminal justice process and ensure that indigency isn't a barrier to participation.*

Right now people often spend weeks or months in jail before being released to participate in a specialty court. An ability to get into these programs earlier might change the incentives for defendants, some of whom choose a community sentence over drug court participation. Tulsa needs a new process for more quickly referring and screening eligible defendants; OICJ should continue its work to streamline this process and identify earlier points for referral. In addition, as noted in Strategy 5(c), defendants should be screened for indigency as early as possible and the costs of participating adjusted so that low-income individuals are not barred from diversion and treatment. Earlier referral to diversion courts will save jail bed days and relieve the pressure on regular district court dockets.

*Strategy 4(b): Invest in a continuum of diversion programming.*

Criminal justice diversion, when adhering to best practices, has been proven to decrease costs to systems and improve outcomes for participants.<sup>35</sup> By moving up placement and also expanding early options, local diversion options can lessen the collateral consequences on individuals who could be more efficiently and effectively served in the community. It can also reduce the use of jail, particularly pretrial detention. The challenge in considering diversion is often "divert to what?" Currently, those options are limited in Tulsa

County, in terms of the point of diversion, the type of intervention and treatment, and its duration. Right now, for example, the most widely used alternative to incarceration, the drug court, requires all participants to go through the same steps of its program. There isn't a variety of treatment options (for example, residential, in-patient, out-patient, medication-assisted therapy). A first step is a better understanding of the range of treatment needs in the population. Expanding the range of diversion and alternative-to-incarceration programs in Tulsa County will require the investment of resources, particularly for treatment. This is no small challenge in Tulsa and in Oklahoma generally. But there are effective diversion programs targeted to low-level offenses that are not necessarily resource-intensive.<sup>36</sup> Rethinking what diversion programs Tulsa County offers is particularly urgent in light of State Question 780. More generally, given the role that issues like substance use and mental illness play in filling Tulsa's jail, these are the kinds of investments that make sense.

Fortunately, Tulsa County stakeholders are well aware of these challenges and have already begun to address them. Recently, stakeholders participated in an exercise called "sequential intercept mapping," which focuses particularly on mental health treatment—that is, at what points in the system mental health treatment is accessible. It could provide an alternative to traditional law enforcement responses and an analysis of the ranges and types of treatment available locally with an eye towards ensuring that the offerings are diverse and are responsive to local needs.

*Strategy 4(c): Ensure that the sobering center currently being developed by the City of Tulsa is designed with the needs of people entering the jail in mind.*

See Strategy 1(e).

### ***Beginning implementation***

1. Develop new approaches to screening individuals for diversion programs closer to intake into the jail. OICJ and the Stepping Up initiative are already working with the jail's medical provider to do this as part of the new intake medical screen.
2. Use those assessments to start the specialty court referral process at arraignment.
3. Determine how SQ 780 impacts specialty court admissions and what treatment resources are needed for people with misdemeanor drug possession charges.
4. Ensure the eligibility for the sobering center matches the needs and profiles of those who need diversion resources.

## 5. Reduce admissions for failures to pay and applications to accelerate and revoke.

### Key findings and challenges

1. *Applications to accelerate and revoke—which largely represent probation failures and are often related to non-payment of fees—are common pathways to jail.*
  - On an average day in 2016, there were 77 people in the jail whose top charges were applications to revoke, applications to accelerate, or for court costs.
  - Misdemeanor and felony admissions for applications to revoke and accelerate are the ninth (misdemeanor application to revoke), tenth (felony application to revoke), eleventh (misdemeanor application to accelerate), and twelfth (felony application to accelerate) most common top admissions charges. Most people with applications have other charges as well, but there were 869 jail admissions for people who were charged only with applications to revoke or accelerate.
  - People admitted with applications to revoke and accelerate have longer lengths of stay than people admitted without applications. The average LOS for felony admissions without any applications is 32 days. The average increases to 39 days with an application to accelerate and to 56 days with an application to revoke. For misdemeanors, the average length of stay is six days with no applications, 10 days with an application to accelerate, and 14 days with an application to revoke.
2. *Many people are admitted to jail for failure to pay court costs.*
  - 1,163 admissions in a year were for a top charge of misdemeanor nonpayment of cost courts, the fourth most common admissions reason overall and third most common for women. There are other admissions that are related to nonpayment of fees or fines, including applications to revoke or accelerate, which are likely based on failure to pay, and certain municipal and traffic offenses, like driving under a suspended license, which is often related to nonpayment of costs, fines, or fees. Others may have nonpayment issues in addition to more serious charges.
  - Defendants and individuals who have been sentenced face a broad array of fees, court costs, and fines related to their cases, as well as fees for district attorney probation, drug testing, and program participation. In reviewing state statutes, Vera found more than 100 different fees, not including fines imposed as part of a penalty. For example, there are 11 different fees laid out by the state statute on deferred and suspended sentences (22 O.S. § 991a(1)). Most court costs are assessed per charge rather than per case, so the increased number of charges per case has cost implications.
  - People who incur fines and fees often lack complete information about the entirety of their legal debt and do not know what to prioritize. Different fees and costs need to be paid in different locations. Failure to pay, in some cases, has more dire consequences than in others, but individuals are not counseled on how to manage their debt.

3. *Indigency determinations are not conducted when fines and fees are assessed.*

- There is no ability-to-pay assessment done at the time costs are imposed.
- Some fees may be waived, but others may not be fully waived. For example, fees for incarceration costs, under 22 O.S. § 979a(D), cannot be waived, but can be proportionally reduced with other fines and costs.
- Although practice varies, it appears that some judges do conduct indigency assessments at the early stages of a case, well before any decision on imposing fees.
- The district court recently instituted a new cost docket to speed up resolution of failure-to-pay cases and better manage the large dockets of people unable to pay their costs. The docket currently takes place on Tuesdays and Fridays, which means that individuals arrested on cost warrants on Fridays may still spend four days in jail before they can be seen (unless they have \$250, which is the bail amount set for failure to pay).

## **Responsive strategies**

*Strategy 5(a): Develop alternatives to jail and to applications to revoke or accelerate for failure to pay costs.*

Tailoring probation fees to ability to pay at the outset might help alleviate these failures. For example, the DA probation program imposes a standard fee of \$40 per month regardless of someone's financial means. Given the variation in people's ability to pay, it makes sense to impose fees and costs that people can actually afford, as additional incarceration may actually cost the county more money. The DA's office can also withhold charging a fee until someone is employed, as seeking and/or maintaining employment is also a condition of probation; subsequent fees can be scaled to income. Another alternative would be to issue a summons to appear on the cost docket in lieu of filing an application.

*Strategy 5(b): Distinguish failure-to-pay warrants for officers in the field so they can issue a summons to the cost docket rather than make a custodial arrest.*

When law enforcement officers have an encounter with someone and discover an outstanding warrant, they cannot distinguish whether the warrant is a cost warrant or for something more serious, and they must make an arrest. Now that the cost docket is active, law enforcement should be allowed to issue summonses to the cost docket in lieu of arrest and booking into the jail.

*Strategy 5(c): Conduct early indigency determinations.*

Under the current system, indigency determinations are not conducted until *after* someone misses payments and is found in noncompliance. Early determinations of indigency can ensure that people are not jailed simply for being poor. Conducting one determination, prior to arraignment, in order to address

eligibility for a public defender as well as future assessments of court costs and fees would be an efficient approach; the district court is already considering this option. As this is an issue faced by courts around the country, there are emerging best practices in this area. One practice that has been taken up by courts is using bench cards for judges to help guide inquiries into indigency and ensure that defendants' constitutional rights in this area are protected.<sup>37</sup> Other measures that can be advanced by the local judiciary include education and training in conducting and standardizing ability-to-pay assessments.<sup>38</sup>

### ***Beginning Implementation***

1. The DA's office should engage with the judiciary, law enforcement, and the PD's office to examine the process for filing applications to revoke or accelerate with an eye towards procedures that would induce compliance short of filing an application.
2. The TPD, TCSO, and other county law enforcement should work with the DA's office and the district court to determine how warrants can be coded for officers in the field so they can tell if an outstanding warrant is a cost warrant and issue a citation to the cost docket rather than arrest the person. Oklahoma City has recently instituted this approach and should be able to provide guidance on how they did it.
3. The district court should begin the process of implementing earlier determinations of indigency and identifying the tools and mechanisms to expedite that process.

## 6. Expand oversight and accountability mechanisms for the local justice system.

### Key findings and challenges

1. *Tulsa criminal justice system stakeholders have developed effective interagency collaborations on certain criminal justice issues, but there is no body with oversight over the local justice system and the use of the local jail as a whole.*
  - The Tulsa County Criminal Justice Planning and Policy Council (the Policy Council) brings together many of the local criminal justice system stakeholders, but it has a limited purpose. It is part of the oversight and monitoring of the local community sentencing program, and its membership is set by statute (see 22 OK Stat. § 988.5). Its focus is primarily on the management and funding of the community sentencing program.
  - The Outside Inside Collaboration for Justice (OICJ) is an interagency and interdisciplinary group that collaborates on mental health issues, and is leading Tulsa's participation in the Stepping Up initiative, but, similarly does not have a broader mandate.
  - Neither the Policy Council nor OICJ has dedicated administrative or data analytical staffing capacity to serve as an overall planning and oversight body.
2. *While criminal justice agencies in Tulsa do share some data about jail population, there is not data-informed, collaborative decision-making about how and for whom the jail is used.*
  - Agencies that do collect and share this data do not have an established formal mechanism to use this data and analysis to review decision-making. Some agencies that collect information lack the capacity to analyze it and use it as the basis for decision-making. The courts and the DA's Office have very limited electronic data collection capacity; much of the information regarding what and how decisions are made is in paper files. Even where the electronic data are available, it is not used to engage in interagency collaboration. For example, the sheriff's office has a wealth of information about jail admissions, lengths of stay, and releases. While this information is shared with some other stakeholders, for example through the Policy Council, it is not publicly available.
  - Creating interagency data sharing for better governance is one of the strategies being pursued by the data working group of OICJ's Stepping Up Initiative.
3. *The collection of racial and ethnic data is not consistent across agencies, making racial disparities difficult to analyze and address.*
  - There is no common goal or vision regarding the importance of understanding and addressing the local criminal justice system's disparate impact on different communities in Tulsa.
  - This is a challenging issue because it raises highly-charged questions about racial inequity, which are sensitive to stakeholder agencies and the public alike. This discomfort is exacerbated by not having and/or sharing data that would help the public and the local justice system better answer

these questions.

## **Responsive strategies**

Several interagency and interdisciplinary bodies and organizations are already at work in Tulsa. The Policy Council, which oversees and administers community sentencing; the Criminal Justice Authority, which is the jail trust authority and provides fiscal administration and oversight of the tax revenue designated for jail operations and construction; and OICJ which addresses mental health issues. These interagency and interdisciplinary groups have built relationships and encouraged education and engagement across the system.

These existing multiagency committees and organizations, however, do not monitor or review what has been driving jail population growth, or the policies and practices that determine who goes into the jail and for how long. There is no place for creating a shared vision for the criminal justice system in Tulsa and directing the coordinated implementation of strategies that will help achieve that vision. There is also no shared accountability for results, which can lead to finger-pointing when new approaches don't work out as planned, and inhibits the opportunity to learn from failure and build on and sustain successes.

The following strategies are aimed at enabling local oversight of the jail population and sustaining reform.

*Strategy 6(a): Hire a criminal justice coordinator to help coordinate policy reform work across the system.*

In the long-term, Tulsa needs to establish a permanent and staffed interagency criminal justice coordinating council ("CJCC"). (See Strategy 6(b).) But that will take time and much planning and policy development activity is already underway. In the interim, while the work is underway to establish the CJCC, Tulsa should hire a criminal justice coordinator. The coordinator can ensure that there is coherence to the work being done by different subgroups and the city mayor's office. The coordinator can manage work coming out of the recommendations in this report. The Policy Council has already created a subcommittee to focus on reforms but it does not have dedicated staff. A coordinator will add needed resources to push these policy reforms forward.

*Strategy 6(b): Establish an interagency criminal justice coordinating council.*

Criminal justice coordinating councils (CJCCs) are interagency bodies that bring together stakeholders from across the local justice system to provide a forum for interagency engagement, planning, and data sharing. Some key characteristics of CJCCs:

- They have their own research capacity to help monitor and oversee reforms undertaken and propose new ones.
- They are public, so that data about the local justice system is subject to public scrutiny and accountability.

- They are often collaborative efforts by cities and counties and include membership from both county and city leadership, as well as law enforcement, prosecutors, defense counsel, jail administration, the courts, community providers, and the public.
- They are a response to the endemic challenge of local justice systems: they are made up of independent agencies and actors that function independently.
- They have capacity to apply for grants and thus bring in resources for the county.

A Tulsa County CJCC would likely include many of the same agencies and individuals participating in the Policy Council, but would also include city actors, such as the police department, the city manager, and others. It would also have a broader vision and a more expansive brief than the Policy Council. To be most effective and efficient, it should be staffed. In order to be effective, a CJCC needs staff, typically one coordinator position, to administer the group, collect and analyze data, produce reports, apply for grants, and take on other necessary tasks. Thus, although the investment is not significant, it is not without cost and it must be sustainable.

*Strategy 6(c): Improve data capacity and collection across agencies and share data through a CJCC partnership with a research institution.*

The local justice system has limited capacity to collect, share, and analyze data. A CJCC could perform this function for a number of agencies, creating efficiencies even as it encourages collaboration and planning. While many CJCC bodies have their own research staff, another approach used is to partner with a local university or research institution, which may be the best route for Tulsa. University research institutes or departments in particular combine local knowledge with capacity bolstered by graduate students and research fellows. Such a partnership would help a new CJCC get off the ground and continue to enhance local capacity to sustain and build on reform efforts.

*Strategy 6(d): Report and publish data regularly to ensure transparency and accountability.*

Transparency and accountability improve public confidence in the justice system, which in turn can have a positive impact on public safety. Regularly reporting on key justice system benchmarks, trends, and outcomes are critical components to achieving that kind of accountability. Local justice system agencies, either through a CJCC or independently, should be developing mechanisms to report their key data points and trends to the public. Even while the CJCC is being created, agencies should try to share as much information as they can about the work they are doing. Some counties have developed “report cards” or “scorecards” that measure goals, successes, and challenges.<sup>39</sup> The data can also include more general system-wide information about the jail population, crime rates, victimization, fiscal trends, and demographics.

*Strategy 6(e): Improve and systematize the collection and sharing of data on race in order to better understand the causes of racial disparities and monitor the impact of reforms.*

People of color are disproportionately admitted to the Tulsa County jail and stay there for, on average, longer periods of time than their white counterparts for similar crimes. It is likely that these disparities exist throughout the decision points of the local justice system—from arrest to sentencing. Addressing these disparities is hard, and it’s critical that the data used to evaluate the problem and identify potential strategies to alleviate it are accurate, useful, and trusted. Anything less than shared acceptance by the public and local justice system stakeholders about the magnitude of the problem will hinder a substantive discussion of the issues. Agencies should collect data on race and ethnicity systematically, asking questions the same way and using the same categories. Accurate data is a key first step in addressing the problem.

Although getting the data right is essential, it’s only the precursor to devising strategies that undo these disparities, and there isn’t one comprehensive solution. Successful efforts to reduce and eliminate racial disparities are multi-faceted and targeted. They are consistently monitored and evaluated to determine their impact. Monitoring reforms to assess their impact on racial disparities is critical, even for reforms that do not implicitly aim to address racial disparities in their impact.

### ***Beginning implementation***

1. Hire a criminal justice coordinator to assist the Policy Council subcommittee that will work on building and creating the CJCC. The Policy Council has already approved a subcommittee to work on this. Ensure that the subcommittee is represented by the different agencies whose participation in the CJCC will be needed.
2. Secure funding for the CJCC, perhaps through joint participation between the city and the county.
3. Begin outreach to research universities to form a research partnership with the CJCC.
4. Start publicly sharing data and performance goals with the public.

## Conclusion

This report presents a wide range of strategies for Tulsa to chart a new course for its pretrial justice system. As this report has demonstrated, the need is urgent and the opportunities are plentiful. Although change is possible through meaningful collaboration and coordination, it is not easy. But decision-makers in Tulsa possess the power to make these changes and should support each other to achieve a more just and equitable system.

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<sup>1</sup> A small part of that increase is attributable to the county jail absorbing people held in the Tulsa city jail. When the current jail opened in 1999, the City of Tulsa ceased operating its own municipal jail and transferred its municipal jail population to the county jail under a contract between the city and the county. People who are in the Tulsa County jail who are categorized as having only municipal charges, however, represent a small share of the county jail's average jail population.

<sup>2</sup> This explosive growth is consistent with national trends—the average number of people in local jails across the United States also grew during this time, from 157,000 to 700,000 people, an increase of 346 percent (this is distinct and separate from state prison populations). The 1970 jail population data is derived from a Vera Institute of Justice analysis of the Bureau of Justice Statistics *Census of Jails and Annual Survey of Jails*. The 2015 figure is from the Bureau of Justice Statistics. See Todd D. Minton and Zhen Zeng, *Jail Inmates in 2015* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2016), 3.

<sup>3</sup> Tim Hoover, "Old Jail Shut Down," *Tulsa World*, August, 21, 1999.

<sup>4</sup> Two sales taxes in Tulsa County pay for the jail—a one-fourth penny sales tax for the general operations which goes to the Tulsa County Criminal Justice Authority, approved in 1995 to build and fund the current county jail, and a smaller sales tax, 0.026 percent approved in 2014, to expand the jail. See Tulsa County Oklahoma Fiscal Year 2017-2018 Annual Budget, June 2017, at 60; Randy Krehbiel, "Jail construction costs prompt debate over how to pay for it," *Tulsa World*, May 4, 2016.

<sup>5</sup> Randy Ellis, "Governor Signs Bills on Criminal Justice Reform," *The Oklahoman*, June 7, 2017.

<sup>6</sup> See Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (New York: The Laura and John Arnold Foundation, 2013), and Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (New York: The Laura and John Arnold Foundation, 2013).

<sup>7</sup> A more accurate picture of incarceration rate removes people under the age of 15 and over 64 from the general population because of their low risk of jail incarceration. Additionally, because the proportion of these groups varies greatly by county—less than 50 percent in some counties to over 75 percent in others—keeping them in would skew rates and make comparisons between counties difficult. This method is unlike most other calculations of statewide and national incarceration rates, which are based on the total resident population or the population aged 18 and older. See Jacob Kang-Brown and Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America* (New York: Vera Institute of Justice, 2017).

<sup>8</sup> As this report explains, admissions are a factor in determining the size of the jail population, referred to as the average daily population (ADP). The other factor is length of stay (LOS), how long someone stays in jail. Many admissions to the jail are for short stays and reducing those admissions may not have a significant impact on the ADP. To understand how admissions affect the size of the jail population, it's useful to think in terms of jail bed days: how many days a bed is occupied by a particular population in a given year, and what percentage of the population on any given day is represented by that particular population. This calculation is done by multiplying the number of admissions for that particular group by their average LOS. When that figure is divided by the number of days in a year, 365, that figure is the number of people in the ADP who are in custody on that charge.

<sup>9</sup> This ADP analysis excludes people held on federal charges.

<sup>10</sup> Tina Chiu, *It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release* (New York: Vera Institute of Justice, 2010), 5.

<sup>11</sup> Robynn Kuhlman and Rick Ruddell, "Elderly Jail Inmates: Problems, Prevalence and Public Health," *Californian Journal of Health Promotion* 3, no. 2 (2005): 49-60, 57.

<sup>12</sup> The TCSO bookings include those made pursuant to the TCSO's court security responsibilities (such as taking someone into custody after sentencing) in addition to patrol responsibilities.

<sup>13</sup> Those offenses are: failure to pay court costs (1,163), public intoxication (1,267 (muni) + 190 (misdemeanor), 1457 total), driving with a suspended or revoked license (often due to failure to pay tickets or administrative issues, not as the result of a moving violation) (482 (municipal) + 466 (misdemeanor), total 948), applications to revoke (443) or accelerate (318) (essentially misdemeanor probation violations, many of which stem from failure to pay court costs or probation fees), larceny below \$500 (298 municipal + 211 misdemeanor, total 509), not having proof of insurance (289) or driver's license on one's person (97), trespass (refusal to leave, 82; trespass with warning, 68; total, 150), intoxicated and disturbing the peace (104), and municipal marijuana possession (71).

<sup>14</sup> The remainder are for regulatory violations, for example, offenses related to the maintenance and upkeep of property.

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15 See Christopher T. Lowenkamp, et al., *The Hidden Costs of Pretrial Detention*, and Christopher T. Lowenkamp, et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*.

16 See for example Timothy R. Schnake, Michael R. Jones & Dorian M. Wilderman, “Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Resulting Court Date Notification Program,” *Court Review* 48 (2012): 86-95.

17 Pretrial Justice Institute, *Using Technology to Enhance Pretrial Services: Current Applications and Future Possibilities*, (Rockville, MD: Pretrial Justice Institute, 2012).

18 Sean DeBlicke et al., *Frequent Utilizers Project: Policy Brief No. 1-2013* (Snohomish County, WA: Human Resources Division, October 2013).

19 The White House, *Fact Sheet: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration* (Washington, DC: The White House Office of the Press Secretary, June 30, 2016).

20 Based on the 7/8/16 Daily Population Summary of the jail from the Tulsa County Sheriff’s Office.

21 Vera did not have access to historical court data to independently determine the trend.

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

23 Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option* (Washington, DC: Pretrial Justice Institute, October 2013).

24 *Ibid.*

25 Melissa Neal, *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail* (Washington, DC: Justice Policy Institute, 2012), 3-4, 21-22.

26 *Moving Beyond Money: A Primer on Bail Reform* (Cambridge, MA: Harvard Law School, 2016) p. 7.

27 Don’t I Need a Lawyer?: Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing, A Report of the Constitution Project National Right to Counsel Committee, March 2015, at 32-36, <http://www.pretrial.org/download/infostop/Don%27t%20I%20Need%20a%20Lawyer%20-%20Constitution%20Project%202015.pdf>.

28 Christopher T. Lowenkamp and Edward J. Latessa, “Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders,” *Topics in Community Corrections*, Annual Issue (2004).

29 Subramanian et al., (2015).

30 See for example National Association of Pretrial Services Agencies, *Standards on Pretrial Release*, 3d ed. (Washington, DC: NAPSA, 2004), <https://perma.cc/Y339-UJK3>.

31 Marie VanNostrand, *Legal and Evidence-Based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services* (Boston, MA: Crime and Justice Institute, 2007).

32 Christopher T. Lowenkamp and Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes* (Houston, TX: The Laura and John Arnold Foundation, November 2013).

33 85 percent crimes are the most serious felonies defendants are required to serve 85 percent of their sentence before they are eligible for parole. (O.S. §§ 21-12.1 and 13.1.) Non-85-percent crimes are offenses that do not have such a stringent requirement.

34 Richard Van Duizend, David C. Steelman, and Lee Suskin, *Model Time Standard for State Trial Courts* (Williamsburg, VA: National Center for State Courts, 2011), 3.

35 Catherine Camiletti, *Pretrial Diversion Programs: Research Summary* (Washington, DC: Bureau of Justice Assistance, October 2010).

36 There are diversion programs that are not necessarily resource-intensive. The Choice is Yours in Philadelphia was developed by the district attorney’s office and allows prosecutors to divert people charged with nonviolent felony drug offenses into job training programs. Successful graduates have their records expunged. See Wendy S. McClanahan et al., *The Choice is Yours: Early Implementation of a Diversion Program for Felony Offenders* (Washington, DC: Urban Institute, September 2013). A pre-charge prosecutorial diversion program in Lucas County, Ohio (Toledo) focuses on charges that drive racial disparities in jail admissions. See Lucas County 2016 Safety and Justice Challenge Fact Sheet, <https://perma.cc/N96S-QHTV>.

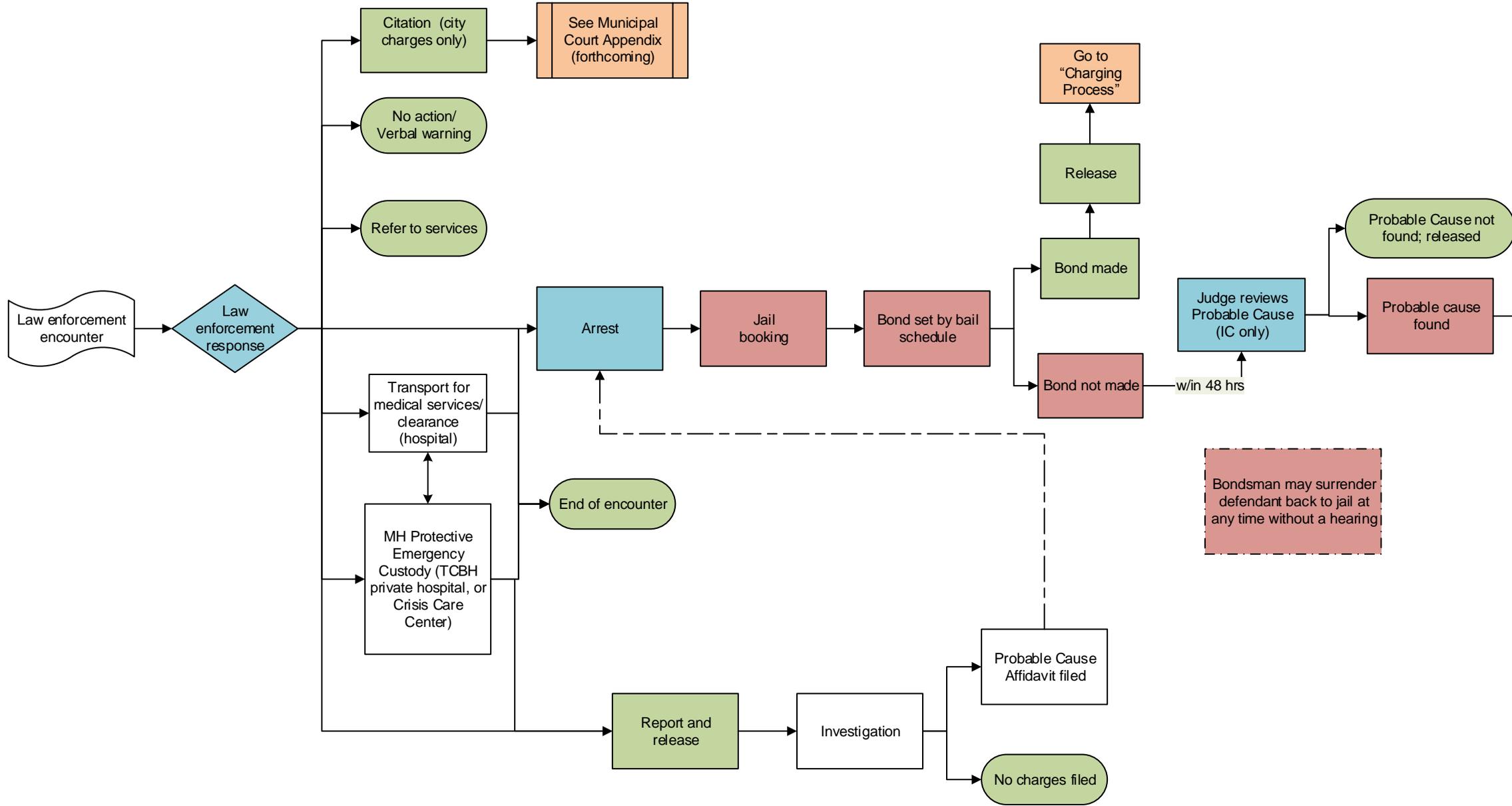
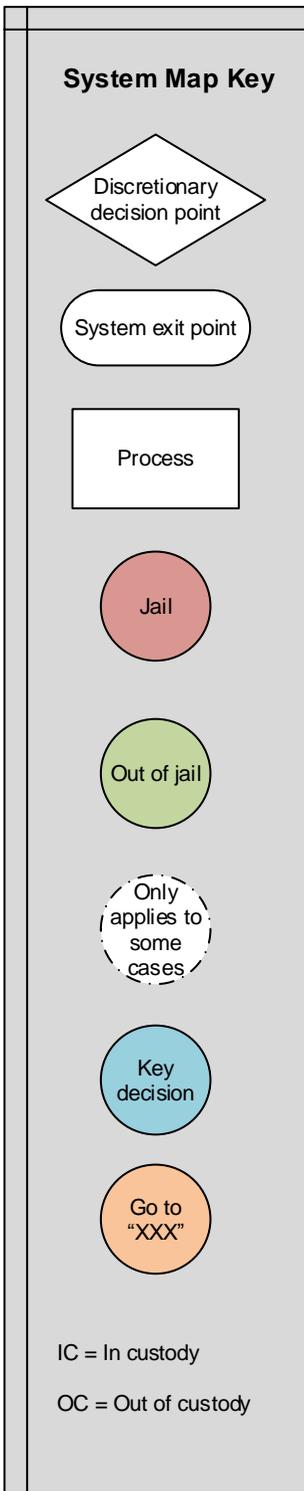
37 Lawful Collection of Legal Financial Obligations: A Bench Card for Judges, National Task Force on Fines, Fees and Bail Practices, available at [http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard\\_FINAL\\_Feb2\\_2017.ashx](http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx).

38 *Confronting Criminal Justice Debt: A Guide For Policy Reform* (Cambridge, MA: Criminal Justice Policy Program, Harvard Law School, 2016), 30-31.

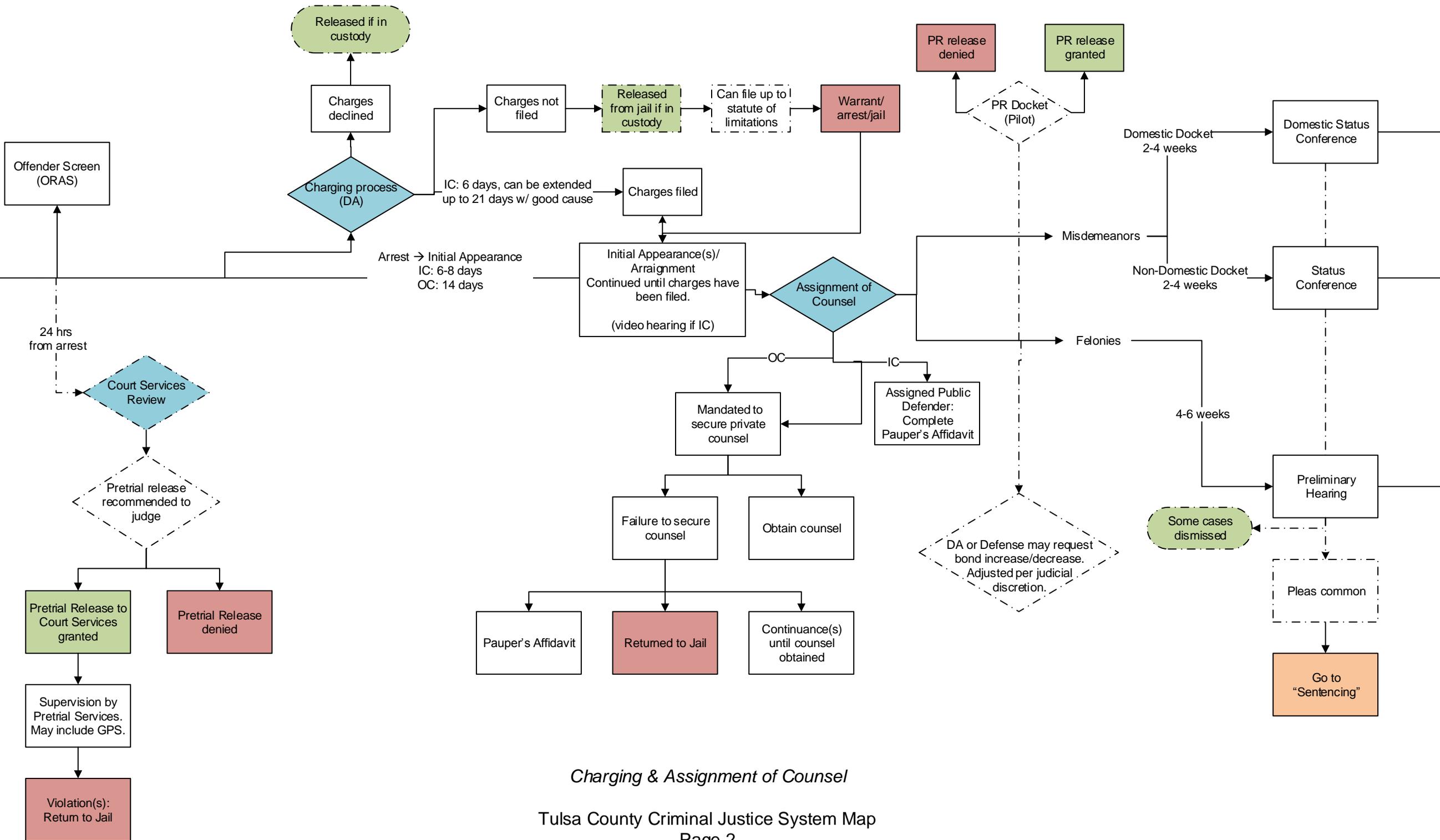
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39 As an example of such a dashboard, see Cuyahoga County, OH (Cleveland)'s online criminal justice dashboards at <https://perma.cc/H6ZM-ELDM>.

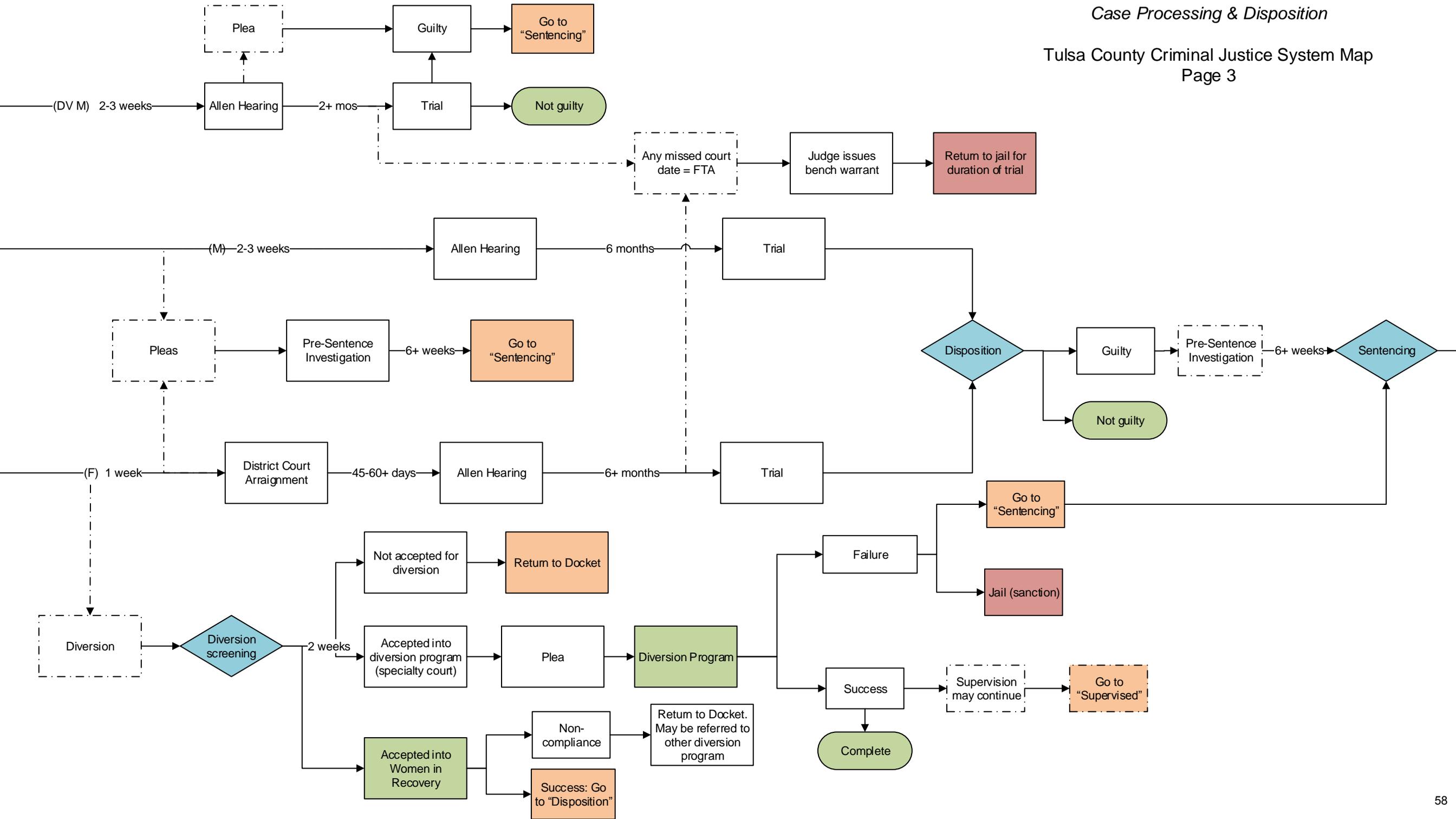
## **Appendix 1: System Map**



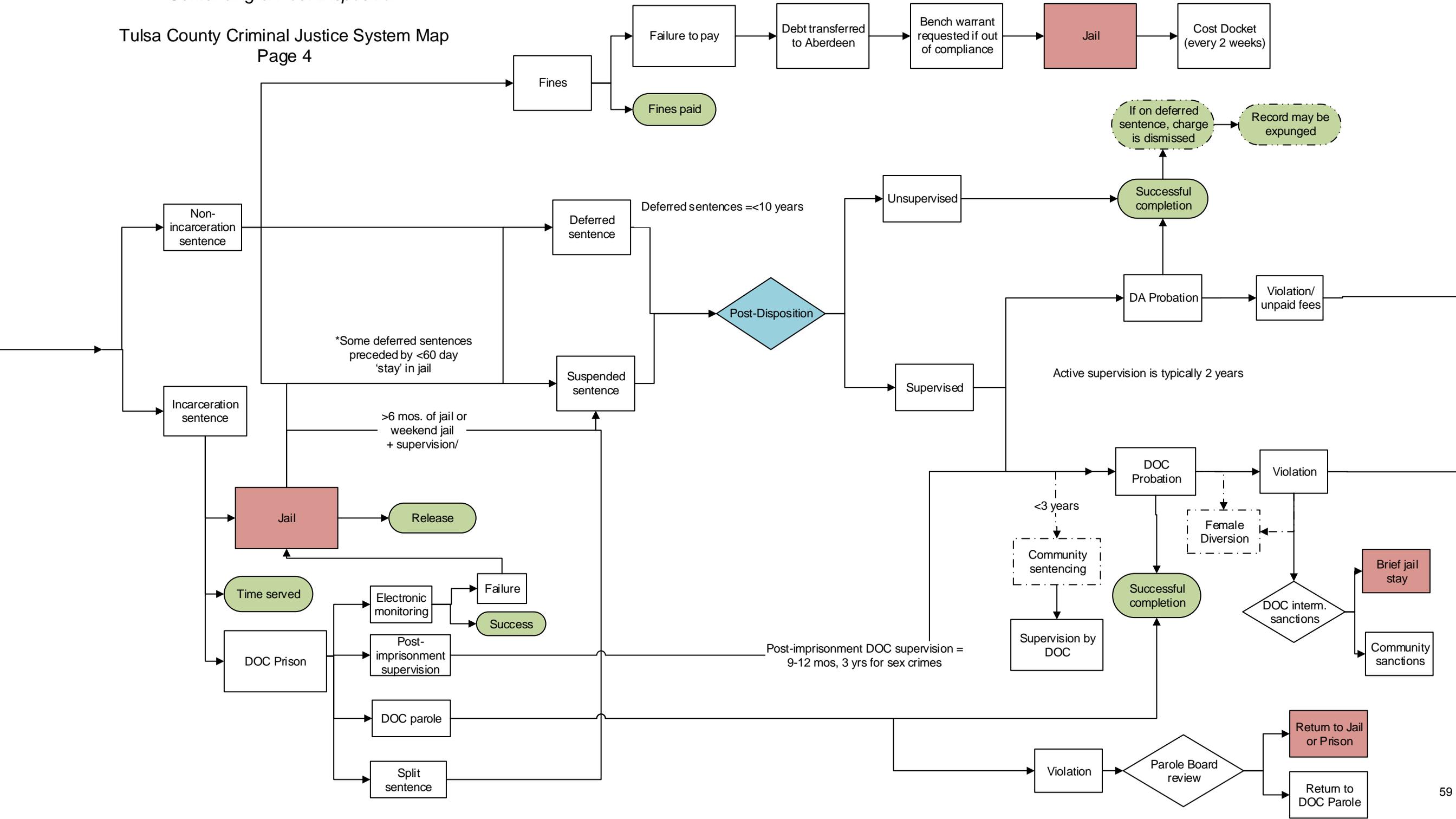
*Arrest and Booking*

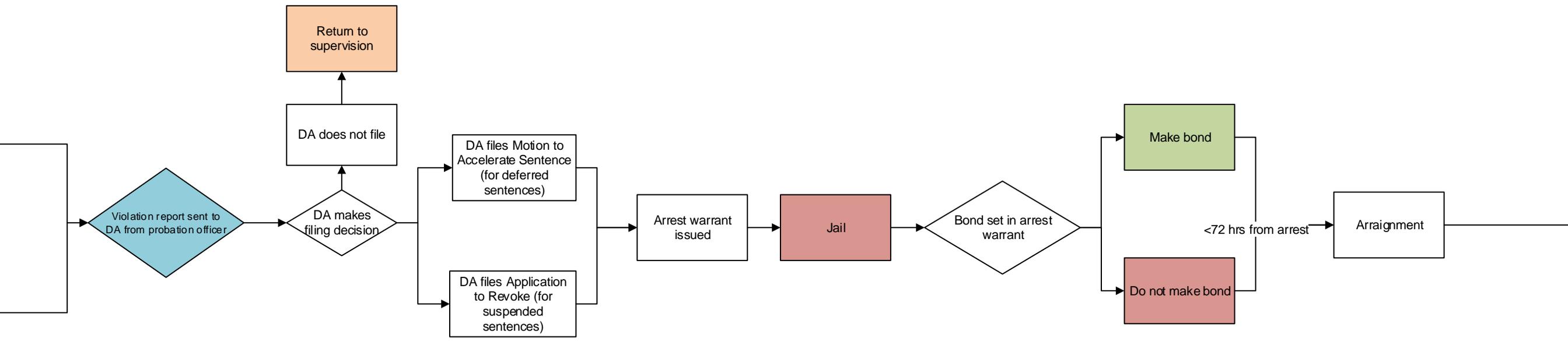


*Charging & Assignment of Counsel*

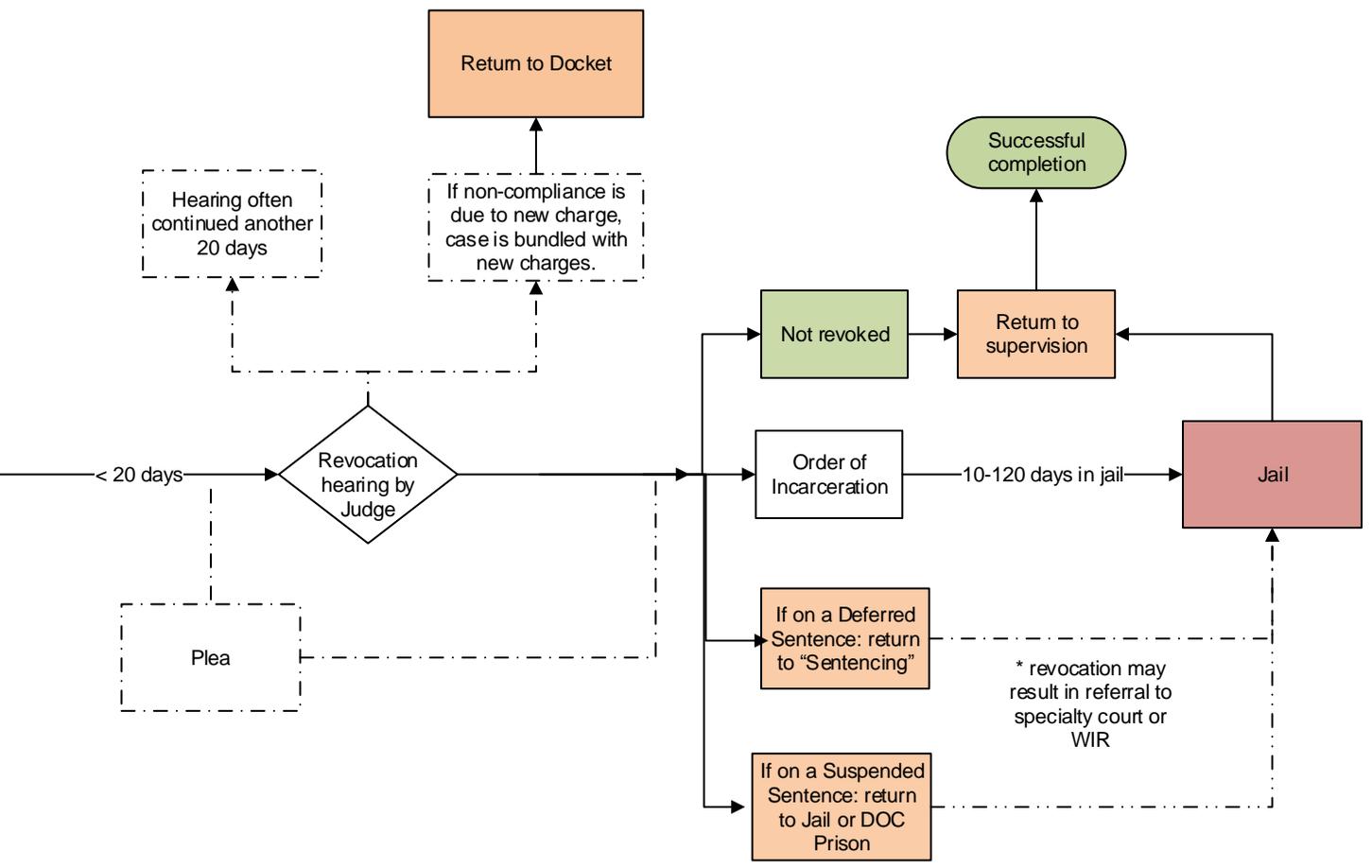


Sentencing & Post-Disposition





*Violations of Supervision*



*Revocation Process*