

Date: August 7, 2017

To: Whatcom County Incarceration Prevention and Reduction Task Force

Subject: Preliminary data findings – amended

From: Vera Institute of Justice

This memo provides a preliminary summary of the Vera Institute of Justice's (Vera) key findings regarding factors contributing to the growth of Whatcom County's jail population. The findings draw from Vera's investigation of policies and practices in Whatcom's local justice system, including individual and group interviews with county stakeholders, a detailed system mapping exercise, and analysis of administrative data from the Whatcom County Sheriff's Office, the Bellingham Police Department, and the Washington State Administrative Office of the Courts.

This interim memo lays the foundation for the next phase of Vera's work with the Incarceration Prevention and Reduction Task Force (Task Force): the development of recommendations to reduce the jail population safely and make justice system processes fairer and more effective. Vera staff will meet with the Task Force in the coming months to facilitate a more in-depth discussion about specific strategies to address challenges surfaced in our investigation. This discussion will inform the final report and recommendations Vera delivers to the Task Force.

Methodology

The size of the jail population is determined by two key factors: who goes into the jail and how long they stay there. To understand these factors, we review two different types of data: admissions to jail and average daily population (ADP). Admissions data provide information about everyone booked into jail, and how long they stay. The ADP provides a snapshot of who is detained in jail at any given time and how long, on average, they have spent there.

Vera's analysis examined admissions to and releases from the Whatcom County jail for calendar year 2016. Where possible, the analysis excludes admissions involving holds from other jurisdictions, including the Washington State Department of Corrections (DOC) and the federal government, because those holds tend to take longer to resolve, which can complicate timely release from jail, and therefore skew trends upward, particularly for length of stay. Excluding holds also has the benefit of focusing attention on cases that reflect policies and practices within the exclusive jurisdiction and control of local system actors and are not dependent on actors in other jurisdictions. Overall, holds accounted for 17 percent (approximately 54 beds, on average) of the Whatcom County jail's ADP.

Key Findings

Admissions and ADP

Excluding admissions involving holds from other jurisdictions, 38 percent of admissions had a felony as the most serious charge, while 62 percent had lesser charges:

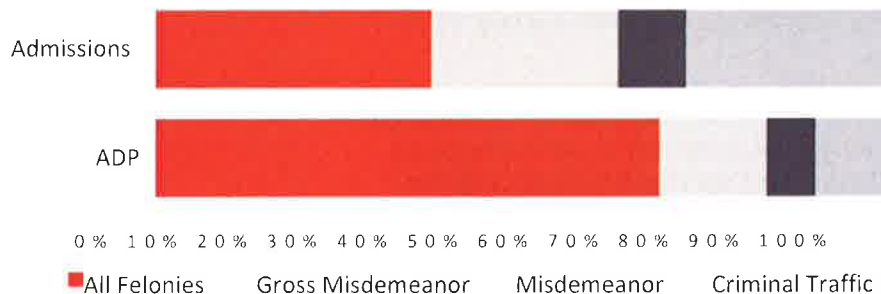
- 25 percent had no charge more serious than a gross misdemeanor;
- Nine percent had no charge more serious than a misdemeanor; and
- 28 percent had no charge more serious than a criminal traffic charge.

Figure 1: Admissions & ADP without holds by charge class

	Admissions		Average daily population	
	#	%	#	%
All felonies	1,966	38%	187	68%
Gross misdemeanor	1,329	25%	40	15%
Misdemeanor	479	9%	18	7%
Criminal traffic	1,464	28%	28	10%

Figures 1 and 2 show that although people admitted with felony charges represent a smaller proportion of admissions than people with lesser charges, they make up a substantially larger proportion of the jail population due to generally longer lengths of stay. On any given day, excluding holds, those in jail on felony charges make up 68 percent of the population while those with lesser charges are 32 percent of the population.

Figure 2: Admissions & ADP without holds by charge class



Among admissions, the most common top charges across offense categories were:

- Felony: controlled substance violation, second degree assault, and second degree burglary;
- Gross misdemeanor: fourth degree assault, third degree theft (less than \$750), and failure to appear on third degree theft charges;

- Misdemeanor: probation violation, shoplifting less than \$50, and second degree criminal trespass; and
- Criminal traffic: driving while under the influence (DUI), driving with a suspended license in the third degree, and reckless driving.

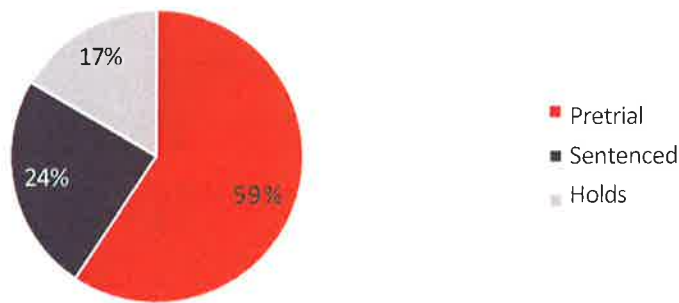
Comment [AD1]: DUI is a mandated arrest and should be called out here

Pretrial and Sentenced

On any given day, 59 percent of people in custody are pretrial—although a judicial determination of probable cause is made within 48 hours of arrest unless probable cause was determined prior to the arrest, they are legally presumed innocent—and awaiting resolution of their cases, compared to 24 percent of the jail population that is sentenced (see Figure 3).¹ Of those held pretrial:

- 78 percent had a felony as the most serious charge;
- 12 percent had a gross misdemeanor;
- Four percent had a misdemeanor; and
- Six percent had a criminal traffic charge.

Figure 3: ADP by legal status



Demographics

Men comprise 74 percent of admissions and 82 percent of the ADP, while women make up a smaller portion of each—26 and 18 percent, respectively. While these patterns are consistent with national trends, the proportion of women represented in both admissions and ADP is higher than national averages—21 and 14 percent, respectively.

¹ 'Pretrial' refers to individuals whose most serious cases—or all cases—have not yet reached resolution and who do not have a hold from a jurisdiction outside Whatcom County. They are detained because they cannot afford financial bail. 'Sentenced' refers to individuals whose most serious cases—or all cases—have reached disposition and do not have a hold. We infer that the sentence on the most serious case is the primary reason for their detention, not an unresolved lesser charge. Holds, which we again exclude here, account for the other 17 percent of ADP.

Comment [AD2]: Where is the evidence for this? Affordability of bail alone may not be the most important factor for some individuals.

The average age of someone booked into jail is 34, and the average age among the ADP is also 34.

While white people make up 76 percent of those booked into jail, black people and Native Americans are over-represented in jail admissions as compared to their representation in the Whatcom County population.² For example:

- Black men were admitted to jail at 8 times the rate of white men;
- Black women were admitted to jail at 5 times the rate of white women;
- Native American men were admitted to jail at 5 times the rate of white men; and
- Native American women were admitted to jail at 7 times the rate of white women.

Comment [AD3]: This is misleading should be removed. I assume VERA is basing these figures on "admissions" as opposed to "individuals". It also doesn't account for the practices of the tribal nations that may differ from county and municipal cases.

Similarly, looking across all races, people identified as Hispanic were admitted to jail at about 3.5 times the rate of non-Hispanic people. See Figure 4 for jail admission rates— **measured as admissions per 100 county residents**—and disparities measured against the baseline rates for white and non-Hispanic people.

Figure 4: Jail admission rates and disparities by race and ethnicity

	Men		Women	
	Jail Rate	Disparity	Jail Rate	Disparity
White	4.0	1.0	1.4	1.0
Black	32.6	8.1	7.5	5.4
Native American	19.7	4.9	9.3	6.7
Non-Hispanic	3.6	1.0	1.3	1.0
Hispanic	13.5	3.7	4.4	3.3

Length of Stay

The average length of stay (ALOS) for those booked into jail in 2016 was:

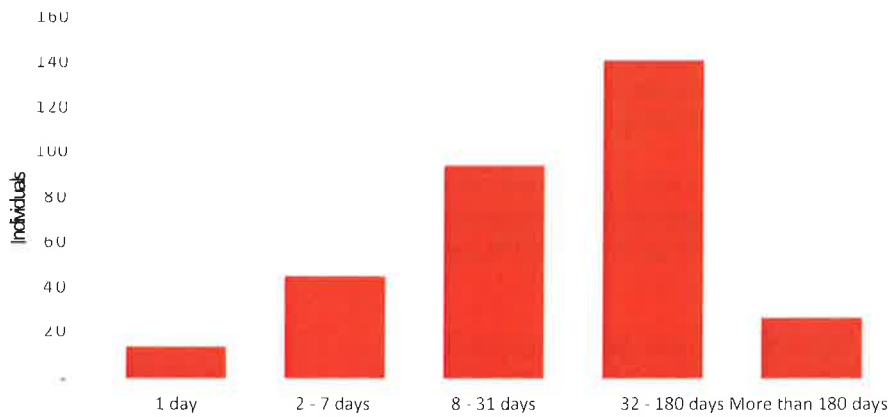
- 35 days for felonies;
- 11 days for gross misdemeanors;
- 14 days for misdemeanors;
- Seven days for criminal traffic; and
- 20 days for holds from other jurisdictions.

Of the total jail admissions, 41 percent stayed in jail one day or less, which means the County likely expended significant staffing resources on them, including the time of the

² Hispanic ethnicity is collected as a subset of race and, therefore, cannot be broken down here.

arresting officer and jail and medical staff, only to release them shortly thereafter.³ Only 15 percent of admissions resulted in people staying in jail for one month or more, but on any given day, this population occupies 172 beds (52 percent) in the jail. While limiting admissions for those who stay a short time is a central part of jail reduction, it is the “long stayers” who cause the jail to be so full (see Figure 5). For this reason, it is critical to consider reduction strategies to address this more challenging population and not focus solely on those with more minor charges.

Figure 5: Length of stay so far for the ADP



Arrest

- Arrests that result in jail admissions frequently involve more than one law enforcement agency. When a single arresting agency was involved, the Bellingham Police Department (29 percent), the Whatcom County Sheriff’s Office (25 percent), the Washington State Patrol (15 percent), and the Department of Corrections (10 percent) accounted for nearly 80 percent of jail admissions.
- Though law enforcement officers have statutory authority to issue citations for misdemeanors and gross misdemeanors, with a small category of exceptions, they underutilize citations as a response to lower-level offenses. As mentioned above, more than 60 percent of jail admissions involve gross misdemeanors, misdemeanors, and criminal traffic charges as the most serious charges.

Comment [AD4]: What/Where is the qualitative data to support this assumption?

³ When people are churning through the jail, the environment can become more chaotic and staff time directed away from the more challenging, serious cases. When law enforcement is able to divert people, either through citation in lieu of arrest or diversion programs, they do not have to spend time taking people to jail, and churn at the jail is reduced, meaning jail staff have fewer people to process and oversee. This can be especially beneficial when staff sizes are smaller. Focusing on more serious cases is ultimately more efficient for staff time.

Comment [AD5]: Is there evidence that our jail is more chaotic because of “churning”?

Comment [AD6]: This is an assumption and should not be included.

- The high rate of outstanding warrants, which make custodial arrest mandatory, is likely impeding officers' ability to use citations to the fullest extent possible. Fifty percent of felony bookings had outstanding warrants—either for the current felony or for other charges in addition to the current felony. Fifty-three percent of gross misdemeanor bookings had outstanding warrants, as did 75 percent of misdemeanor bookings, and 40 percent of criminal traffic bookings.
- The county lacks law enforcement-led diversion opportunities that are responsive to the charges that are driving jail admissions.

Comment [AD7]: Of course! And this critical factor should somehow be incorporated into the statistics.

Comment [AD8]: Does this assume we have repeat offenders? If so, what is the public's view of efforts to quickly release these individuals back to the community, or to avert arrest and booking initially?

Assignment of Counsel

- Weekend probable cause hearings occur without defendants or defense counsel present, which likely limits pretrial release and delays assignment of counsel. Some defendants who are released as a result of this hearing do not apply for or hire counsel before arraignment, creating further case processing delays and failure to appear (FTA).
- In the small cities, public defenders are typically not available until after arraignment although the court may accept a guilty plea at arraignment, after advising the defendant of potential negative implications of a guilty plea.

Bail and Pretrial Release Decisions

- In Whatcom County, pretrial release is often determined by ability to pay financial bail. Vera's analysis found that of people booked into jail who did not have holds:
 - 21 percent were released on personal recognizance (PR);
 - 55 percent were assessed bail; and
 - 24 percent were not assessed bail (most of them were sentenced).
- Just over half of those assessed bail were able to secure release from jail by posting bond while the remainder stayed in jail until the disposition of their cases.
 - Although Washington Court Rule 3.2 allows for use of unsecured bonds, which does not require defendants to deposit any money upon release but holds them liable for the full amount if they FTA, Whatcom County courts do not use these bonds.
 - Bond reduction arguments may only be made by formal motion and are heard by a judge just one day a week, which lengthens the time a defendant spends in jail prior to disposition.

Comment [AD9]: We know this is true in some instances. However, is this statement based upon local data of "individuals"? If it based upon aggregate data or general assumptions, then the statement should be eliminated or modified.

* The overall percentage of criminal traffic bookings with warrants (40 percent) includes bookings with DUI charges, which almost always result in custodial arrest, regardless of whether the individual has outstanding warrants. If DUI bookings are excluded, then 73 percent of the remaining criminal traffic bookings had outstanding warrants.

- Courts in Whatcom County do not use a validated pretrial risk assessment instrument and currently have little way of assessing the risk presented by people held in jail pretrial for FTA or for public safety. Moreover, pretrial services are not available to defendants in the Superior Court, and the other courts release very few defendants to monitoring or supervision by District Court Probation. The lack of a fully staffed and scaled pretrial release program limits the ability of the courts to release people to the supervision necessary, if any, to maximize their pretrial success, and to focus scarce resources, such as electronic monitoring and other intensive supervision requirements, on higher-risk populations.
- Nearly two-thirds of jail admissions had gross misdemeanors, misdemeanors, or criminal traffic charges as the most serious charge, and an estimated 14 to 23 percent had lower-level felonies.⁵ While charges are not synonymous with public safety risk or flight risk, they may be a place for the county to start.
- Overall, 34 percent of people admitted to jail with gross misdemeanor, misdemeanor, or criminal traffic as their most serious charge and assessed bond were not able to post bond to gain their release prior to disposition. In contrast, 48 percent of those with A or B felonies and assessed bond were able to post a bond to secure their release from jail.
- Even low amounts of financial bail can prevent the release of people with lower-level charges. Thirty-four percent of people admitted to jail and assigned bond were assessed bond amounts less than \$1,000 (see Figure 6)—20 percent of these had gross misdemeanors as the most serious charge; 10 percent had misdemeanors; and 57 percent had criminal traffic charges.⁶ Of people assigned bond amounts of \$1,000 or less:
 - 36 percent were ultimately released on PR after staying an average of one day;
 - 44 percent bonded out after staying an average of two days; and
 - 20 percent were not released prior to resolution of their cases—or their release to another authority—and stayed an average of 12 days.
 - They occupied 13 beds in jail on any given day.

Comment [AD10]: Is this accurate, or just a general statement?

Comment [AD11]: Has VERA conducted a staffing analysis of our local program? If not, this statement should be eliminated or modified.

Comment [AD12]: We need to know how many “individuals” since aggregate data that may include duplicative numbers won’t be helpful in determining improvements.

Comment [AD13]: Again, this statement is incorrect. 34% of “admissions” – not “people”.

Comment [AD14]: Same as above – these are admissions, not individuals, and therefore the statement is incorrect and misleading.

⁵ We define ‘lower-level felonies’ as C-level felonies, which accounted for 14 percent of admissions. A significant portion of felonies were not classified in the jail data, but many appear to be C-level. If unclassified felonies are included in ‘lower-level felonies,’ the total percentage of admissions with lower-level felonies as the most serious charge would be 23 percent.

⁶ Excludes admissions with holds from other jurisdictions.

Figure 6: Jail admissions that were assessed bail by bail amount

Bail ranges	Bookings	%
Less than \$500	318	9%
\$501 - \$1,000	877	25%
\$1,001 - \$2,500	764	22%
\$2,501 - \$5,000	603	17%
\$5,001 - \$10,000	405	11%
\$10,001 - \$25,000	326	9%
\$25,001 - \$100,000	197	6%
Greater than \$100,000	59	2%

- While just one percent of people who were detained on bond and not released pretrial ultimately had their cases dismissed, they stayed an average of 33 days in jail, which accounts for approximately four jail beds on any given day.
- As stated above, a significant number of jail admissions involve outstanding warrants. Overall, 58 percent of all admissions (including holds) had warrants; however, the type of warrant is not captured in the data. Further investigation is therefore necessary to determine what is driving the high rate of warrants. One possible contributor is that only some defendants in District and Bellingham Municipal Courts receive court date reminders. Lack of court date notification systems can increase FTA and the issuance of warrants, which increase admissions, particularly for low level charges.

Comment [AD15]: Admissions vs. people again?

Comment [AD16]: This assumes repeat offenders – do we know what the public expects in terms of keeping in jail as opposed to rapid release back to the community?

Case Processing

- In 2016, 9,070 cases were disposed in Bellingham Municipal Court; 18,298 were disposed in District Court; and 909 in Superior Court.
- When defendants have multiple cases pending simultaneously, there can be significant case processing delays.
 - Defendants often have multiple cases within the same court—15 percent of defendants in Bellingham Municipal Court; 10 percent in District Court, and 16 percent in Superior Court.
 - Among 5,079 bookings, 1,444 (28 percent) had more than one case pending simultaneously, and for this group, 790 (more than half) had their cases spread across two or more courts.
 - There were 1,305 people admitted to jail with cases only in the Superior Court, and they had an ALOS of 27 days and took up 96 beds in the ADP. While there were fewer who had cases in Superior and another court (768), their ALOS was 56 days, and they took up 131 beds in the ADP.
- Delays in discovery also **delay case processing and defense counsel’s ability to** conduct client meetings, though Task Force members have noted improvements.

- Continuances keep cases pending for too long as well, lengthening custodial stays for defendants and crowding dockets.⁷
 - In Bellingham Municipal Court:
 - Each case had 3.7 hearings, on average.
 - 30 percent of calendared hearings were not held.
 - In District Court:
 - Each case had 4.7 hearings, on average.
 - 29 percent of calendared hearings were not held.
 - In Superior Court:
 - Each case had 8.8 hearings, on average.
 - Seven percent of calendared hearings were not held.
- In the small cities, arraignments occur just once a week or in some cases, every two weeks. Generally, these courts hold hearings less frequently than the other courts.

Disposition and Sentencing

- Tension between the incentives of Fast Track and Drug Court prevents greater use of these options. Offers for these programs are not timely, and about half of Fast Track offers lapse or are rejected.
- Whatcom County lacks pre- and post-charge diversion programming tailored to the level of risk that defendants present.
- The small cities have even fewer opportunities for diversion and alternatives to incarceration. The option of converting fines and fees to community service hours is not available in all Municipal Courts.
- The application process and fee for Jail Alternatives bar defendants who would otherwise be eligible to participate, though Task Force members have noted ongoing improvements.

Comment [AD17]: What is the evidence of “tension” and lack of timeliness of program offers? This statement is a bit pejorative, and consideration for amending it should occur.

Data-driven decision-making and system oversight

- The local justice system in Whatcom County is not data driven—agencies do not separately or collaboratively review, analyze, or track key performance metrics for the system and do not make decisions based on that data.
- Whatcom County lacks an effective mechanism for coordinated and collaborative oversight of the local justice system. While the official charge of the Task Force is limited and discrete in nature, the cross-agency cooperation it demonstrates provides a model for a more expanded and established collaborative body, such as a Law and Justice Council. Ideally, this body would be

Comment [AD18]: This is an extremely broad “black/white” statement that is misleading and should be amended. Agencies do use data. The fact that things can be improved can be stated.

Comment [AD19]: Again, this statement is too broad and infers that the county doesn’t do anything in this regard.

⁷ While court data were limited regarding hearings—only 61 percent of cases in Bellingham Municipal, 51 percent of cases in District, and 99 percent of cases in Superior had available data—analysis was possible for a smaller sample of cases disposed in 2016.

facilitated by a coordinator who is viewed as neutral and unbiased and has deep cross-systems expertise.

Conclusion

Through interagency collaboration and coordination, Whatcom County must address the systemic drivers of jail population growth. This is the only effective means of controlling jail growth. Any attempt to ease overcrowding by building a new facility or expanding the current one will not address the underlying causes of jail population growth, and the new facility will quickly become overcrowded. Criminal justice and community stakeholders must work together to achieve a safe, sustainable, and fair justice system.

Comment [AD20]: This infers that we aren't doing anything – not true! And it infers that the jail population is growing because of our lack of collaboration, etc. There are multiple factors for the jail population, including community population growth. This statement should be eliminated or modified.

Comment [AD21]: This is simplistic and incorrect.

Comment [AD22]: The purpose of this statement appears to be an opportunity to state opinion – building a skating rink won't address the underlying causes of jail population growth either! So why say it???

Comment [AD23]: What is the evidence for this? This statement is not based on fact and compromises the credibility of this report. Three counties in our state have unused jail beds and resort to renting them out in order to fill them! This statement should be eliminated. Indeed, this entire "Conclusion" paragraph should be eliminated. Perhaps the memo could end with "Future Considerations" or something less biased and more factual.