

**To:** Lancaster Bail Fund

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**Date:** March 8, 2024

**RE:** Lancaster County Jail Needs Assessment and Possible Alternatives to Incarceration

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## Introduction

In February, the Lancaster Bail Fund contacted the Prison Policy Initiative to ask for our advice on upcoming plans to build a new correctional facility to replace the current Lancaster County Prison (LCP). You asked us to review the jail needs assessment<sup>1</sup> created by CGL Industries and the JFA Institute based on our experience evaluating these kinds of reports across the country<sup>2</sup>. You also asked us to provide examples of alternatives to incarceration that Lancaster County could use to decrease its jail population and avoid the need to build a bigger jail.

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<sup>1</sup> CGL Industries and JFA Institute, "LCCF Needs Assessment Final Report Revised February 2023", available at: <https://lccf-pa.com/project-details/>.

<sup>2</sup> Lancaster County refers to the facility where it houses pretrial and county-sentenced people as Lancaster County Prison; in most parts of the country and in the research literature, this kind of facility is

Prison Policy Initiative, founded in 2001, is a non-profit, non-partisan organization producing cutting-edge research to expose the broader harm of mass criminalization. As part of our work, we have developed expertise in reviewing and evaluating the arguments made in jail needs assessments and similar documents produced by municipalities, counties, and states. We have published a [public-facing guide](#)<sup>3</sup> on this topic as well as a [guide](#)<sup>4</sup> to questions local decision-makers should ask when considering a larger or new jail. In addition, we have provided public testimony in county and state legislative bodies, and have provided help to non-profit community organizations seeking to better understand jail assessments. We are also experts on academic research regarding the best use of jails and prisons, the ways that jails and prisons can harm communities, and how communities can reduce reliance on jails and prisons while maintaining public safety.

This memo has three sections. First, we examine weaknesses in the needs assessment's analysis that have led to an overestimate of the need for new jail beds. Second, we look at the underlying data about Lancaster County's jail and courts provided in the needs assessment and elsewhere to note ways in which the county's current use of the jail is contrary to what the research says about the best use of jails. Lastly, we will examine some possible alternatives to over-incarceration that Lancaster County could consider if it chooses to further reduce its jail population.

## Needs assessment evaluation and critique

The Lancaster County Correctional Facility Needs Assessment was completed in December 2022, and revised in February 2023. [CGL Companies](#) and the [JFA Institute](#) were the primary authors of the report. Population projections were made using JFA's "Wizard" simulator model. CGL is a criminal justice consulting firm founded in 1974 that "specializes in facility planning, design, maintenance, and operations." JFA Institute lists itself as "established industry experts in prison and jail analytics, assessment, reform initiatives, and forecasting."

Needs Assessments are usually one of the first steps to jail construction. They are generally policy documents produced by private companies to analyze the operations of the current jail and make recommendations for future building. At the outset, it is important to note that needs assessments are as much a normative policy document as they are an objective statement of facts. Put differently, in order to make their assessment, the authors necessarily make judgments about what constitutes the *appropriate* use of a jail - something generally decided by policymakers like county legislators, sheriffs, and judges.

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referred to as a jail. As a result, we will refer generally to research on jails, and will refer to Lancaster County Prison as a jail.

<sup>3</sup> Prison Policy Initiative, "A how-to guide: Critically reviewing a jail assessment calling for a bigger jail" <https://www.prisonpolicy.org/trainings/jailassessments.html>

<sup>4</sup> Prison Policy Initiative "Does our county really need a bigger jail?" <https://www.prisonpolicy.org/reports/jailexpansion.html>.

We have three fundamental critiques of the needs assessment. First, the assessment presents multiple factors that point to a *reduced* need for jail beds in Lancaster County, but interprets those factors misleadingly to suggest that there is instead an *increased* need for jail space. Second, the assessment assumes, without basis, that there will be no reforms in Lancaster County's criminal legal system that would decrease jail bed need. Lastly, the assessment's forecast model uses assumptions that likely overstate the number of jail beds needed, creating inflated numbers for potential jail capacity.

## The needs assessment uses data misleadingly to suggest an increased need for bed space

Crime in Lancaster County, both violent and non-violent, is falling substantially, and has been for nearly a decade. The report's numbers look only at crime between 2015 and 2021, but this memo will examine data going through 2023 to show that these trends have continued.<sup>5</sup> All in all, these crime trends, combined with the fact that the jail population includes many people who do not pose an obvious threat to the community, suggests that in the long run, Lancaster County could need *fewer* jail beds, not more.

### Crime in Lancaster County has fallen since 2015

Crime in Lancaster County is declining more rapidly in Lancaster County than in Pennsylvania as a whole. According to the Needs Assessment analysis of Unified Crime Report data, between 2015 and 2020, "violent crime" in Pennsylvania rose 4.8%, and "overall crime" fell 0.4%. During the same period, violent crime in Lancaster County fell 5.5%, and overall crime fell 10.4%.<sup>6</sup> This is particularly striking because it has occurred while Lancaster County's population has continued to grow.

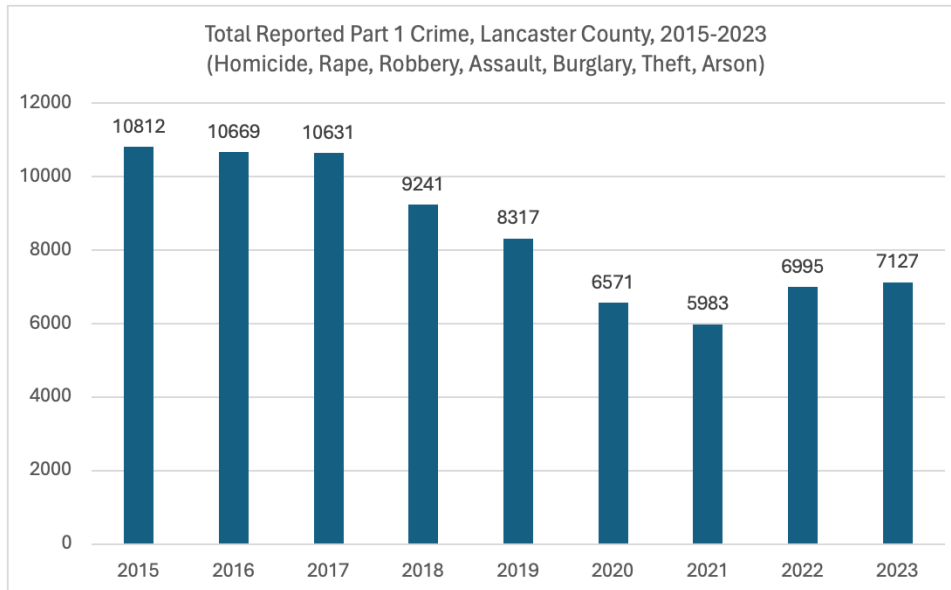
In general, reports of violent crime have fallen since 2015 and remain low even during and after the COVID-19 pandemic. The total reported "Part I" crime - a category consisting of homicides, rapes, robberies, assaults, burglaries, thefts, and arsons, was 34% lower in 2023 than in 2015.<sup>7</sup>

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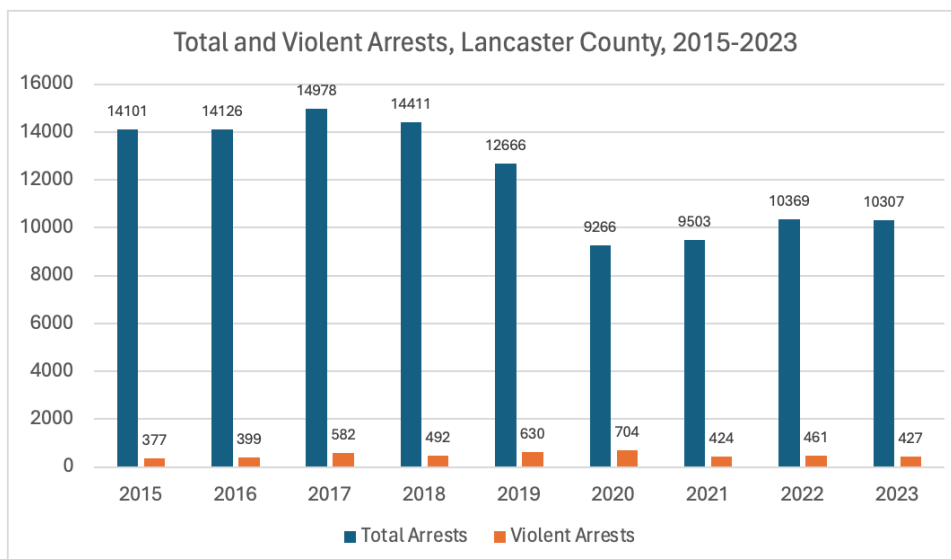
<sup>5</sup> Throughout the needs assessment, CGL and JFA use crime numbers for 2021 that do not match what is currently available on the [ucr.pa.gov](https://www.ucr.pa.gov) website. This is likely because data for 2021 was not yet complete when the report for the needs assessment was pulled, and then the analysis was not updated when correct numbers became available. Throughout our report, we will use the correct numbers from 2021 (which are slightly higher than the ones used in the needs assessment) to provide a more accurate picture of crime and arrests in Lancaster County.

<sup>6</sup> This analysis uses the historical crime rates presented on page 10 of the needs assessment, but excludes 2021 from the analysis.

<sup>7</sup> Data taken from the "Crime Dashboard" at <https://www.ucr.pa.gov/PAUCRSPUBLIC/Home/Index>.



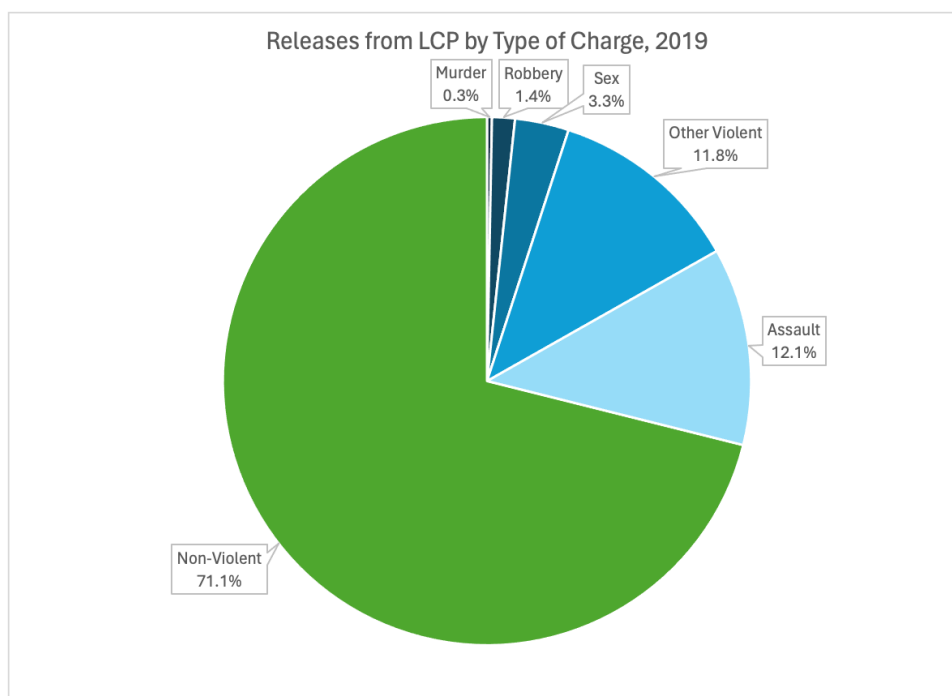
The needs assessment chooses to focus on *arrest* reports for violent crime, a particularly narrow measure. The assessment references a “recent increase in Part I violent arrests” (pg. 10). But when they reference this increase, they are referencing an *average* percent change between the years 2015 and 2021. This does not represent a consistent upward trend for violent crime. A look at a graph of the trends in arrests for violent crimes shows that there was a substantial increase in 2019 and 2020, but that numbers have now returned to similar levels as 2015 and 2016. It’s also important to note that violent arrests are a tiny percentage of total arrests. Total arrests in Lancaster County have fallen dramatically, and are down 26% between 2015 and 2023.



## Most people entering the jail are there for non-violent charges and supervision violations

The needs assessment incorrectly asserts that the “vast majority” of people in the jail on September 30, 2022 were held for a charge that was violent in nature (pg. 15)<sup>8</sup>. But their own data on the very next page shows only 50.8% of the jail population is held for a violent charge - hardly the “vast majority.” In its largest category of violent charges, “assaults,” the data does not differentiate between aggravated assaults and simple assaults - aggravated assaults are generally considered serious violent crimes, while simple assaults do not generally involve a weapon or physical violence, and are often verbal threats. Because the “assault” category likely includes simple assaults, the percentage of people in the jail on a given day charged with serious violent crimes like murder, rape, and robbery is likely well under 50%.

Furthermore, looking at jail population by examining a “snapshot” of jail population on a given day can be a misleading way to capture who is actually moving through the jail. Because people with serious and violent crimes have longer lengths of stay than people with less serious and non-violent crimes, they will be overrepresented in a one-day snapshot of the jail population. The information on the jail’s releases shows this - only 28.8% of releases from the jail in 2019 were for violent crimes (and that number, again, includes simple assaults along with aggravated assaults in its count).<sup>9</sup>



<sup>8</sup> All table and page numbers in this memo refer to the needs assessment.

<sup>9</sup> We use 2019 numbers here from Table 11 on pg 24 of the assessment because the 2022 numbers include a large percentage of people whose charge is listed as “unknown” - however, it is worth noting that the proportion of released people with violent charges is listed as even lower in 2022, at 25.7%.

It also seems that a large percentage of the jail population is in custody on violations of release. 24.3% of people leaving the jail were admitted for being county parole violators, with an additional 2.3% being admitted as state parole violators (Table 10, pg. 22). This category is listed separately from the “Held for Trial” category, suggesting that these individuals do *not* have concurrent pending cases with their supervision violations. This means that 1 in 4 people held in the jail at any given time may have been charged with no crime at all, but simply non-criminal violations of parole conditions. The length of stay for these individuals has increased substantially post-pandemic - they are now spending an average of 75 days in custody, up from an average of 50 days. The needs assessment notes that the large proportion of the jail population who are county probation violators (30%) is an “unusually large proportion for a local detention facility” (pg. 14).

## The needs assessment fails to acknowledge Lancaster County’s potential for future reductions in the jail population

Throughout the needs assessment, the authors make clear that their projections assume that “most conditions in the jail, including the profile of individuals admitted, LOS and release practices will remain constant and reflect data presented in the above report” (pg. 26). But earlier in the report, the authors also note that jail populations are incredibly sensitive to law enforcement, court processing, and sentencing practice. The needs assessment notes that just a 3-day change in average length of stay would change the average daily jail population by 50 people (pg. 3).

What this means is that Lancaster County has an opportunity to make policy decisions that safely decrease jail populations. They have already done so. The average daily population at LCP has decreased by 13.5% between 2017 and 2022 (pg. 13). Total admissions to the jail have fallen even more steeply, and are 42.6% lower than they were in 2017 (pg. 12). Although the population fell most dramatically during the pandemic, the lower levels of admissions and lower daily population have remained relatively stable in 2021 and 2022. As noted above, crime levels have not risen even given these lower jail populations and arrest rates. Lancaster County has been able to successfully reduce its jail population, and likely can continue to in the future.

The needs assessment identifies many initiatives that are being implemented to reduce the jail population, many of which are quite new; for example, the District Attorney created a “Pathways to Recovery” diversion program in 2022 for offenses related to drug and alcohol addiction (pg. 5). Despite identifying multiple initiatives focused on reducing the jail population, the needs assessment model takes none of them into consideration in making its forecasting predictions.

## The needs assessment forecasting model is unclear and unreliable

The report's projections for Average Daily Population (ADP) also bear scrutiny. To calculate their projections, the authors rely on JFA's "Wizard Simulator" model, developed by Wendy Naro Ware. There are a number of problems with this model:

1. The model is proprietary, preventing a full examination of its assumptions;
2. The authors admit that the model is being used beyond the date range for which it is most reliable;
3. The model uses a "peaking factor" that significantly inflates the projected average daily population, with no explanation as to why the peaking factor is so high.

First, since this model is proprietary, we don't know all the assumptions that go into it, and it is impossible to determine if those assumptions are reasonable. The authors claim the model is "accurate to within 2 percent" but provide no citation, evidence, or reference to where this 2% accuracy figure comes from, and no examples of other jurisdictions where this model has been used successfully. Because of these opacities, we know very little about how the model works. The little that we do know is concerning. The report does note that "the base assumption for the simulation model is that most conditions in the jail, including profile of individuals admitted, LOS and release practices will remain constant and reflect data presented in the above report." In other words, the model assumes that the policies and practices that have led to current levels of incarceration in Lancaster will remain exactly the same. This is a baseless assumption - in fact, policy changes in Lancaster County have already had major impacts on the jail populations in just the last 10 years, and there is no reason to think that changes will not continue in the future. The fact that the only assumption that the authors list is a particularly unreliable one raises serious concerns about other inaccurate assumptions that may be at the heart of the "Wizard" model.

Second, the authors admit that "the model is most reliable for projections up to 10 years, but the forecast was carried out to 2050 as requested by the County." This means that projections beyond the 10-year horizon are particularly prone to error and not well backed even by the simulation model itself.

Lastly, the way the model uses a "peaking factor" is problematic. Almost all jail projection models use some form of "peaking factor" to account for seasonable ebbs and flows in the jail population. However, the report notes that the peaking factor may be inaccurate, because they cannot include an important part of any peaking factor calculation - a "classification factor" that is normally added to ensure that the right security level of beds is available at any time. But despite making clear that it is impossible to calculate an accurate classification factor due to a lack of data availability, the model instead simply includes a 20% classification factor on top of the 11.8% peaking factor to the ADP, providing no information as to how JFA arrived at the 20% figure.

The results are dramatic. Overall, JFA applies a combined classification + peaking factor of 31.8% to its estimates, despite stating earlier in the report that “typically combined classification and population peaking factors average an additional 15% of the ADP” (pg 12). The table below compares the jail population projections in the report with and without the peaking and classification factors. If a figure closer to that “typical” 15% peaking and classification factor had been used, the projections would have been nearly 200 beds lower than they are.

Peaking and Classification Factor option	Baseline ADP projection, 2050	Alternative ADP projection, 2050
What the projection would be with a “typical” 15% classification and peaking factor	1,045 beds	1,089 beds
The projection with the 31.8% classification and peaking factor actually used	1,219 beds	1,271 beds
Difference	+174 beds	+182 beds

All of this suggests that the projection may be substantially overestimating the needed beds. **This is particularly notable because the model is the *only* factor in the report that would suggest an increased bed need - as noted above, crime rates and the information about the jail population both point towards *less* bed need, not more.**

## The need for change: how Lancaster County’s use of its jail harms residents and public safety

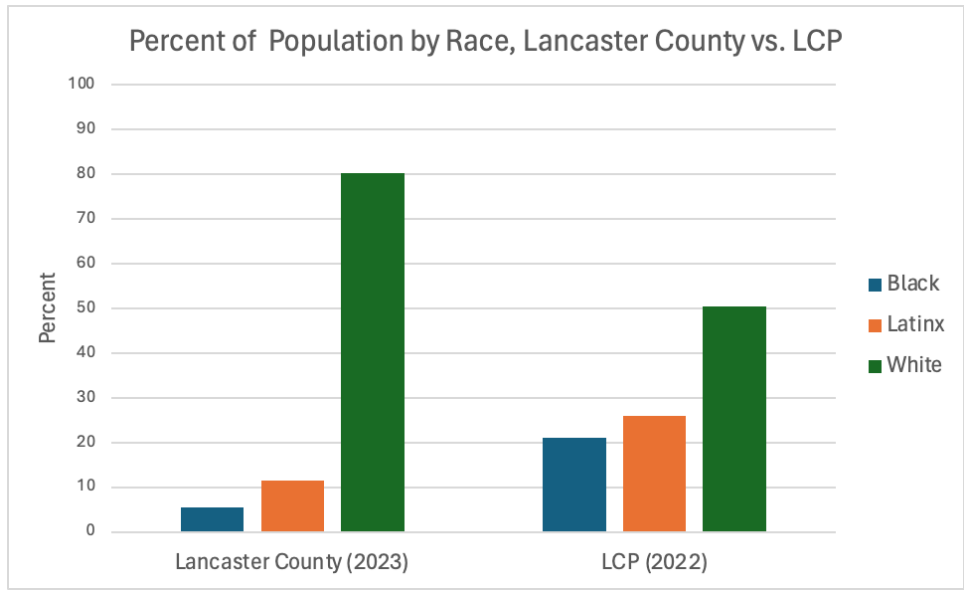
The data presented in the needs assessment gives insight into the way Lancaster County is currently using its prison. Lancaster County is currently using LCP to incarcerate people who are disproportionately Black, poor, and suffering from mental health and substance use issues. It is holding these people for a long time, despite many of them being charged for minor infractions and supervision violations.

**People incarcerated at LCP are disproportionately Black and Latinx, and Black and Latinx people are incarcerated longer**

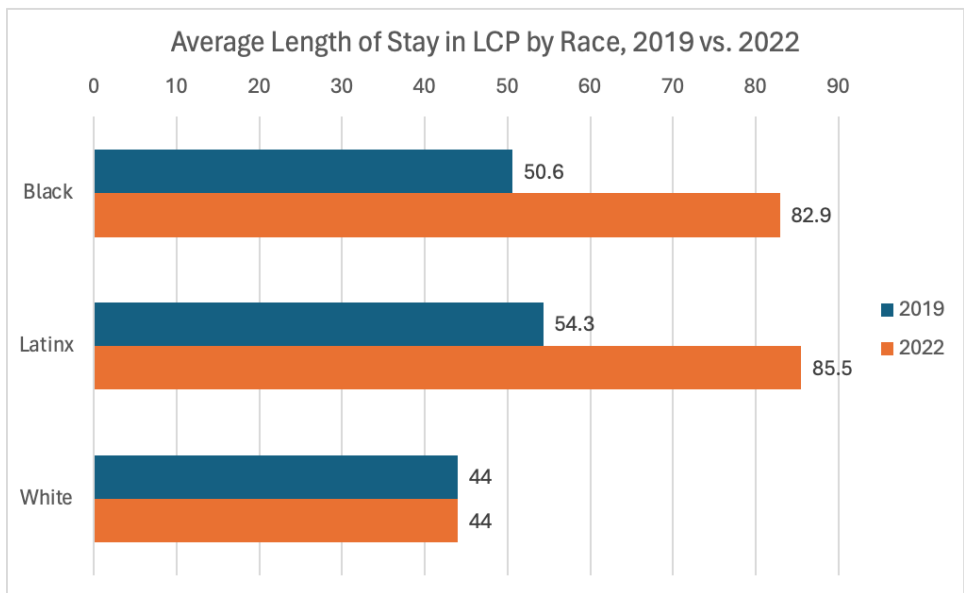
LCP incarcerates people who are disproportionately Black and Latinx, and incarcerates them for longer than it incarcerates white people. This problem has gotten worse post-pandemic, with the disproportionate share of Black and Latinx people in the jail getting larger, and with length of stay increasing for Black and Latinx people while remaining the same for white people. Lancaster County is not unusual in the state for having a disproportionately Black and Latinx population in LCP - Pennsylvania jails as a whole are 36% Black and 11% Latinx while



Pennsylvania is 10% Black and 8% Latinx.<sup>10</sup> However, Lancaster County’s jail is more disproportionately Black and Latinx than [Pennsylvania jails as a whole](#) (Table 5, pg. 16).



The difference in average length of stay by race is particularly concerning. Black and Latinx people have average lengths of stay that are 30 or more days longer in 2022 than they were in 2019 (Table 10, pg 22). Length of Stay has increased 64% for Black people and 57% for Latinx people compared to 0% for White people. Black people stay in LCP 88% longer than White people, and Latinx people stay in jail 94% longer than White people. This disproportionality means that the burden of post-COVID case processing slowdowns has fallen almost exclusively on Lancaster County’s Black and Latinx residents. It should be investigated and corrected.



<sup>10</sup> Prison Policy Initiative, Pennsylvania Profile Page, available at <https://www.prisonpolicy.org/profiles/PA.html>.

The disproportionate impact of mass incarceration on Black and Latinx people is of course not unique to Lancaster County. However, it means that the harms caused by incarceration fall hardest on communities that also face economic, educational, and other structural disadvantages.

## Pretrial incarceration undermines the presumption of innocence

Pretrial incarceration undermines the presumption of innocence. Jail is, inherently, a punishment, and should, as much as possible, be reserved for people who have been convicted of a crime. The [U.S. Supreme Court](#) has noted that “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”<sup>11</sup>

The impact on the presumption of innocence is more than theoretical. A [study in Houston](#) found that people incarcerated pretrial are 25% more likely to plead guilty, 43% more likely to be sentenced to jail, and receive sentences that are more than twice as long on average.<sup>12</sup> Jail is coercive because pleas may give people the ability to go home more quickly, at the expense of pleading guilty to something they did not do.

On any given day, 68.7% are in custody at the jail are “awaiting court action” (Table 5, pg. 16). In Lancaster County, as in most places in the state, the proportion of cases that end in trials is minuscule. Instead, the majority of cases in the criminal legal system (63.5%) end in a guilty plea. Only a tiny fraction - less than 2%, and less than 100 cases in 2022 - go to trial.<sup>13</sup> Although there are many reasons for the prevalence of guilty pleas in our legal system, research suggests that one of them is the overuse of pretrial detention.

## Pretrial incarceration destabilizes employment, family life, and housing

Pretrial incarceration has detrimental effects on housing, employment, and family stability. A [2018 study](#)<sup>14</sup> conducted by researchers at University of Missouri Kansas City found that:

- 38% of people detained pretrial for fewer than 3 days and 76% of people detained for more than 3 days reported that they lost their job, had to change jobs, or faced consequences at work because of their incarceration.

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<sup>11</sup> *US v. Salerno*, 481 U.S. 739 (1987)

<sup>12</sup> Heaton, Paul, Mayson, Sandra, and Stevenson, Megan “The Downstream Consequences of Misdemeanor Pretrial Detention”, *Stanford Law Review*, Vol. 69 Issue 3, 2017. Available at: <https://www.stanfordlawreview.org/print/article/the-downstream-consequences-of-misdemeanor-pretrial-detention/>

<sup>13</sup> Court of Common Pleas Caseload Statistics for Lancaster County, 2022, Unified Judicial System of Pennsylvania, available at <https://www.pacourts.us/Storage/media/pdfs/20231221/162402-lancastercounty.pdf>.

<sup>14</sup> Holsinger, Alexander, Holsinger, Kristi, “Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes” *Federal Probation*, September 2018, available at: [https://www.uscourts.gov/sites/default/files/82\\_2\\_6\\_0.pdf](https://www.uscourts.gov/sites/default/files/82_2_6_0.pdf).

- 30% of people incarcerated for fewer than 3 days and 37% of people incarcerated pretrial for more than 3 days reported negative impacts on their housing.
- 32% of people incarcerated for fewer than 3 days and 41% of people incarcerated for more than 3 days reported a negative impact on their children who were under 18.

In Lancaster County, housing is already a problem when people enter LCP; about 1 in 6 people entering LCP self-reported being homeless. But jail is likely making that number higher for people who *leave* LCP by making it harder for them to keep the housing they do have.

## Pretrial incarceration increases the risk of overdose and suicide

Jails do not “stabilize” people with substance use disorder and mental illness. In fact, jails are extremely dangerous places for people with mental health and substance use disorders. The short lengths of stay at the jail make clear that true treatment is not occurring behind bars. Instead, people are being taken away from any systems of care they do have in the community – like existing treatment providers, family, and friends – and being isolated in an environment that is not conducive to recovery. As an example, someone arrested and incarcerated for 1-2 days may lose access to their mental health or substance use disorder medication, leaving them worse off than they were when they went into the jail.

[Research confirms](#) that people released from incarceration are up to 40 times more likely to overdose than the general population in the two weeks following their release.<sup>15</sup> People released from incarceration are [18 times more likely](#) to commit suicide than those without a history of incarceration.<sup>16</sup> Suicide is the [single leading cause of death](#) for people in jails.<sup>17</sup> A person is more than twice as likely to die in jail from suicide when compared to similarly situated people who are not in custody. Half of people who died by suicide in jails between 2000 and 2018 had been in custody for less than 9 days, showing that even short stays in jail can be incredibly dangerous.

This is a particularly severe and increasing concern in Lancaster County. Mental health needs are common in the intake population at the jail: 1 in 10 people report a recent psychiatric hospitalization, and 3 in 10 have a mental health treatment history. The proportion of incarcerated people receiving mental health treatment in the jail is 39%, while the proportion of

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<sup>15</sup> Shabbar I. Ranapurwala, Meghan E. Shanahan, Apostolos A. Alexandridis, Scott K. Proescholdbell, Rebecca B. Naumann, Daniel Edwards Jr, and Stephen W. Marshall, 2018:

“Opioid Overdose Mortality Among Former North Carolina Inmates: 2000–2015”  
American Journal of Public Health 108, 1207\_1213, <https://doi.org/10.2105/AJPH.2018.304514>.

<sup>16</sup> Haglund A, Tidemalm D, Jokinen J, Långström N, Lichtenstein P, Fazel S, Runeson B. “Suicide after release from prison: a population-based cohort study from Sweden”. J Clin Psychiatry. 2014 Oct;75(10):1047-53. doi: 10.4088/JCP.13m08967.

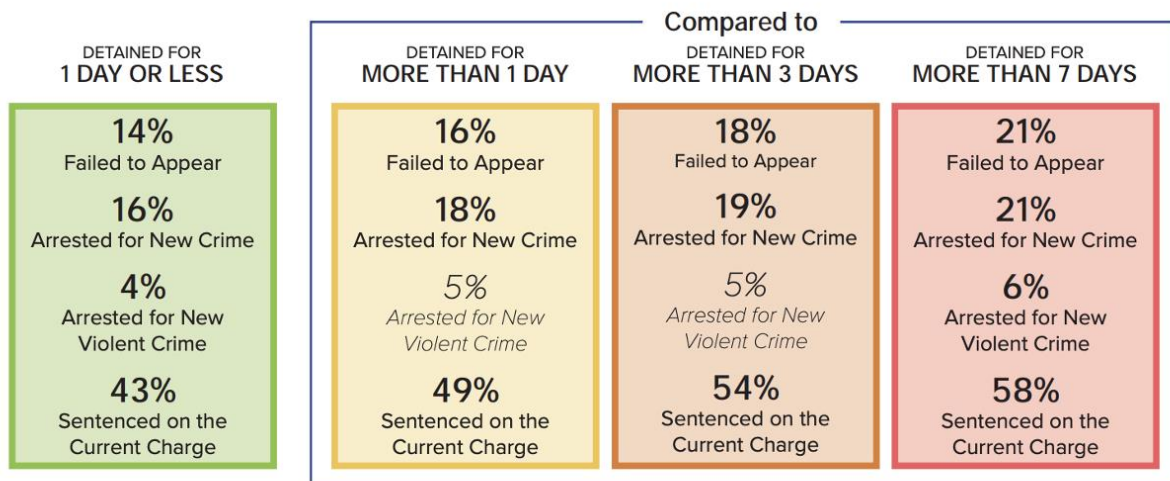
<sup>17</sup> Wang, Leah, “Rise in jail deaths is especially troubling as jail populations become more rural and more female”, Prison Policy Initiative, June 2021, available at:

[https://www.prisonpolicy.org/blog/2021/06/23/jail\\_mortality/](https://www.prisonpolicy.org/blog/2021/06/23/jail_mortality/)

people with serious mental illness is 7%. Although Lancaster County only had one recorded death in 2022, it was a death by suicide, of [Paul Reardon](#), age 35, in February of 2022.<sup>18</sup> That year, however, there were also [4 suicide attempts](#)<sup>19</sup>.

## Pretrial incarceration makes it more likely that people will be arrested in the future

Lastly, pretrial incarceration makes it more likely that people will be re-arrested in the future. “Tough on Crime” arguments rest on the idea that putting people in jail will decrease crime, but the evidence suggests the opposite. [One study](#) showed that people incarcerated for misdemeanors were 13.7% more likely to be re-arrested on new charges within 30 days of their release and 9.7% more likely to be re-arrested on new charges within 18 months.<sup>20</sup> [Another](#) showed that imposing a money bond – which often leads to pretrial detention – was associated with a 6-9% increase in re-arrest.<sup>21</sup> The longer people are detained - whether for 1, 3, or more days - [the more intense these effects are](#).<sup>22</sup>



Source: Advancing Pretrial Policy and Research, “Research Brief: The Benefits of Early Release from Pretrial Detention”

<sup>18</sup> See “Lancaster County Inmate Dies After Being Found Unresponsive in his Cell, Fox43 News, February 7, 2022, available at: <https://www.fox43.com/article/news/local/lancaster-county/lancaster-county-inmate-dies-dead-paul-reardon/521-a6f6dd70-51f4-469d-9b96-662dd5a89ce7>

<sup>19</sup> See Pennsylvania Department of Corrections, County Prison Extraordinary Occurrence Statistics, 2022, available at: <https://www.cor.pa.gov/Facilities/CountyPrisons/Pages/Inspection-Schedule,-Statistics-And-General-Info.aspx>

<sup>20</sup> Heaton et. al

<sup>21</sup> Gupta, Arpit, et al. “The Heavy Costs of High Bail: Evidence from Judge Randomization.” *The Journal of Legal Studies*, vol. 45, no. 2, 2016, pp. 471–505. JSTOR, <https://www.jstor.org/stable/26458538>.

<sup>22</sup> Advancing Pretrial Policy and Research, “Research Brief: The Benefits of Early Release from Pretrial Detention”, available at <https://cdn.filestackcontent.com/security=policy:eyJleHBpcnkiOjQwNzg3NjQwMDAsImNhbGwiOlsicGljaylSlnJIYWQiLCJ3cmI0ZSIsIndyaXRIVXJslwiw3RvcmlUjLjJj252ZXJ0IiwicmVtb3ZlIiwicnVuV29ya2Zsb3ciX00=,signature:9df63ee50143fbd862145c8fb4ed2fcc17d068183103740b1212c4c9bc858f63/NPfbpQtCQzYqFam13VLU>.

In Lancaster County, only a tiny percentage (2%) of people held in the jail are released within 24 hours (Table 13, page 25). In addition, 88.5% of people admitted to the jail said that they had been in jail before (Table 8, page 18). Each time people spend time in pretrial custody, their lives are destabilized anew, increasing the risk that they will be back behind bars in the future. One of the best ways Lancaster County can decrease its jail population in the long run is to “close the front door” of the jail, and ensure that people do not enter the cycle of incarceration, release, and re-incarceration that can ensnare so many people.

## Alternatives to incarceration and ideas for decreasing the jail population in Lancaster County

There are many successful strategies that have been used in suburban and rural counties around the country to reduce jail populations. Although there are a myriad of models around the country for how to reduce jail populations, we focus in this section on successful strategies in suburban and rural communities much like Lancaster County.

### Stronger data transparency and careful examination of the current jail population

Although the needs assessment provides a good starting point for assessment of the current jail population, one of the best ways to identify opportunities to reduce the jail population is to provide more transparency for jail data and analyze that data more closely. Some jurisdictions have invested in a jail population dashboard, like the one for [Hays County, Texas](#), which provides up-to-date information about who is in the jail, what they are charged with, and how the jail population is changing over time.<sup>23</sup> These insights can help pinpoint problems; for example, certain kinds of cases where case processing times are slower, or profiles of individuals who are spending more time in jail. Armed with this information, policymakers can tailor diversion and decarceration efforts specifically to people who have the highest need. Making this data public also allows community organizations to see where they can best spend their resources to help people in the jail and people exiting the jail.

### Reducing incarceration for technical violations of probation and parole

Lancaster County has an “unusually large proportion” of county probation violators in its jail - 31% of the jail population in September 2022 (Table 5, pg 16). These individuals also spend an average of over 3 months behind bars. Although we lack information on what the violations that people are being re-incarcerated for are, it is likely that many of them are “technical” or non-criminal violations of probation. The state of Pennsylvania allows leeway in the way that courts

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<sup>23</sup> See Hays County-Vera Justice Institute Jail Dashboard, available at <https://hayscountytexas.com/jaildashboard/>.

set conditions of probation and respond to violations. In fact, [Pennsylvania law](#) requires that there be an “individualized assessment” of the defendant, and that the court attach “only those conditions that the court deems necessary and the least restrictive means available to promote the defendant’s rehabilitation and protection of the public.”<sup>24</sup>

Despite this latitude allowed in the law, Lancaster County’s probation department seems to impose a strict set of rules on *all* people on probation and parole. The [“Intake Packet”](#) provided on Lancaster County Adult Probation’s website lists twelve categories of requirements.<sup>25</sup> Some of those categories are quite restrictive, including obtaining permission whenever traveling more than 30 miles from home, and obtaining a complex written travel permit to leave the state. These restrictions are particularly notable in Lancaster County, which is more than 30 miles across, and is a border county, where people can be expected to leave the state of Pennsylvania frequently for work or other reasons. The regulations also require urinalysis and/or breathalyzer tests and fines and fees.

Lancaster County should engage in an analysis of which probation conditions are most often putting people back in jail, and how to better help people on probation comply, including by loosening unnecessary restrictions, providing more supports like transportation help and payment plans for fees, and using graduated sanctions for violations rather than resorting to incarceration as punishment.

Other jurisdictions have successfully addressed over-incarceration for technical violations. In New York, the 2021 [“Less is More” Act](#) decreased the use of incarceration for technical violations of parole, allowing it only in cases of serious and repeated violations. Incarceration for technical violations is also capped at 30 days.<sup>26</sup> The law has had numerous positive effects, but most strikingly, it decreased the number of people detained in local jails for technical violations by more than 87 percent - from 1,711 people statewide in 2019 to just 214 in 2022.<sup>27</sup> This reduction happened both in cities and in more rural and suburban counties in New York. Although the Less is More Act was created by statute in New York, its principles could easily be adopted voluntarily by courts in Lancaster County, given the wide latitude judges have in setting conditions of probation and consequences for violations.

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<sup>24</sup> PA Title 42, §9763, Conditions of Probation, available at <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=42&div=0&chpt=97&sctn=63&subsctn=0>.

<sup>25</sup> Court of Common Pleas, Lancaster County PA, Adult Probation and Parole Services, Probation and Parole Regulations, available at: <https://www.court.co.lancaster.pa.us/DocumentCenter/View/1181/General-Intake-Packet-for-Defense-Counsel>.

<sup>26</sup> Less is More Coalition, “New York’s Less is More Act: One Year Anniversary Report” December 2022, pg. 7, available at: <https://drive.google.com/file/d/1th-ku4PYiHFC-dOu9qr9y2asFcRWi1OO/view>

<sup>27</sup> Less is More Coalition, pg. 11.



## Promoting access to counsel at first appearances

One of the best ways to ensure that people are treated fairly in court, and, by extension, see the minimum necessary jail time, is to ensure they have appropriate representation in court. A proposed Pennsylvania Supreme Court rule would ensure counsel at first appearances. This rule is under consideration, but Lancaster County could make efforts to increase representation at first appearances on its own.

A study of three rural counties in New York found that providing lawyers at first appearances led to lower bonds being set and more people avoiding pretrial detention. In one county, having counsel increased more than four times the percentage of people who were able to post bail at court, avoiding pretrial incarceration entirely.<sup>28</sup>

## Increase diversion and deflection for low-level charges

Currently, Lancaster County's diversion programs are woefully underutilized. The Pennsylvania Court System's [Problem Solving Courts dashboard](#) shows that in 2022, Lancaster County had just 23 admissions to its Drug Court, 24 admissions to its Mental Health Court, and 8 admissions to its Veterans Court, for a total of 55 admissions<sup>29</sup>. This is in comparison to [4,301 new cases](#) filed in criminal court in Lancaster County in 2022<sup>30</sup> - meaning that only about 1% of people moving through the courts are seeing the benefit of drug, mental health, or veterans courts.

Counties like Lancaster around the country have decreased their jail populations by investing in diversion and deflection programs.<sup>31</sup> Some promising models include:

- Co-responder and alternative responder models dispatch non-police professionals like mental health workers and social workers to calls either alongside police or instead of police. These professionals can link people with mental health and substance use needs to services rather than involving them in the criminal legal system. There are many models for alternative response across the country; one successful one in a county similar to Lancaster County is the [Crisis Outreach Response Team \(CORT\)](#) in Marion

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<sup>28</sup> Worden, Alissa & Morgan, Kirstin & Shteynberg, Reveka & Davies, Andrew. (2018). "What Difference Does a Lawyer Make? Impacts of Early Counsel on Misdemeanor Bail Decisions and Outcomes in Rural and Small Town Courts". Criminal Justice Policy Review. 29., available at [https://www.researchgate.net/publication/325087768\\_What\\_Difference\\_Does\\_a\\_Lawyer\\_Make\\_Impacts\\_of\\_Early\\_Counsel\\_on\\_Misdemeanor\\_Bail\\_Decisions\\_and\\_Outcomes\\_in\\_Rural\\_and\\_Small\\_Town\\_Courts](https://www.researchgate.net/publication/325087768_What_Difference_Does_a_Lawyer_Make_Impacts_of_Early_Counsel_on_Misdemeanor_Bail_Decisions_and_Outcomes_in_Rural_and_Small_Town_Courts)

<sup>29</sup> Unified Judicial System of Pennsylvania Problem Solving Courts Data Dashboard, available at <https://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/adult-drug-court-data>.

<sup>30</sup> See 2022 Court of Common Pleas Caseload Statistics for Lancaster County, available at <https://www.pacourts.us/Storage/media/pdfs/20231221/162402-lancastercounty.pdf>.

<sup>31</sup> In general, "diversion" programs refer to programs that are offered after criminal proceedings begin with arrest or charging, while "deflection" programs are offered earlier in the process, before a formal arrest or charge is made.

County, Oregon. In 2016, only 3.6% of calls handled by CORT led to jail time, and jail bookings have been reduced since the program's inception.<sup>32</sup>

- "Cite and Release" programs give law enforcement the ability to cite people for minor charges and give them a date to appear in court, rather than arresting them and taking them to jail. [Whatcom County, Washington](#) is one of many jurisdictions that have expanded cite and release policies, particularly for Driving on a Suspended License charges, and have decreased jail bookings as a result.<sup>33</sup>
- Developing teams that review all booking sheets to determine eligibility for diversion programs. In [Johnson County, Iowa](#), Jail Alternatives Coordinators review booking sheets, attend initial appearances, and meet weekly to identify potential program participants who could be served by community resources. Between 2006 and 2015, the county estimated that it saved 35,108 jail beds for a total savings of over \$2.4 million.<sup>34</sup>

## Conclusion

The Needs Assessment suggests that Lancaster County is best served by a jail that is substantially larger than the one it has. But careful consideration of the facts in the assessment itself leads to the opposite conclusion. Whatever construction Lancaster County contemplates for its jail, it should consider ways to reduce its jail population and build a facility that fits those reduced needs. Reducing the jail population will likely have long-term positive effects for Lancaster County that extend well beyond the criminal legal system into every community in the county.

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<sup>32</sup> Mobile Crisis Response Team, Marion County Sheriff's Office, available at: <https://okb.oregon.gov/Pages/mobile-crisis-response-team.aspx>.

<sup>33</sup> Schwartz, Jennifer: "Progress Report: Report to Whatcom County Stakeholders on Progress towards Reducing the Jail Population", 2023, available at <https://whatcom.legistar.com/View.ashx?M=F&ID=12355270&GUID=DE86F859-E535-474C-80E7-5534A3932CD3>

<sup>34</sup> The Stepping Up Initiative, "Reducing Mental Illness in Rural Jails: Case Study, Johnson County, IA". available at: [https://www.naco.org/sites/default/files/documents/SU-case%20studies\\_JOHNSON\\_FINAL\\_0.pdf](https://www.naco.org/sites/default/files/documents/SU-case%20studies_JOHNSON_FINAL_0.pdf).