

To: Decarcerate KC

From: Prison Policy Initiative (Sarah Staudt, Policy and Advocacy Manager)

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RE: Kansas City Municipal Jail Needs Assessment

Table of Contents

<i>Introduction</i>	2
<i>Who are the authors of the needs assessment, and what expertise do they bring?</i>	2
<i>Foundational research: the harms of pretrial incarceration</i>	3
Pretrial Incarceration Undermines the Presumption of Innocence	3
Pretrial Incarceration Destabilizes Employment, Family Life, and Housing	3
Pretrial Incarceration Increases the Risk of Overdose and Suicide	4
Pretrial Incarceration Makes it More Likely that People Will be Re-Arrested In the Future	4
<i>The “Bed Shortage” Question</i>	4
The numbers do not show that a “shortage” of jail beds has had negative impacts	5
The Report uses misleading graphics regarding the relationship between increased release on recognizance and failure to appear in court	6
<i>Faulty assumptions in predicting future jail bed needs</i>	6
COVID-19 pandemic changes	7
Reform-related Changes	7
<i>How the current Kansas City jail beds are being (mis)used</i>	7
Detention for Mostly Low-Level and Non-Violent Crimes	7
Disproportionate Detention of Black People	8
Short Lengths of Stay	8
Inappropriate Use for Mental Health and Substance Use “Stabilization”	9
<i>Alternatives to Incarceration</i>	9
Constructive suggestions	9
Concerns regarding expanding specialty courts	10
Concerns Regarding Instituting a Pretrial Services Program	10

Introduction

In July 2023, Decarcerate KC contacted Prison Policy Initiative (PPI) asking for help evaluating the arguments in the needs assessment conducted by SFS Dewberry Pulitzer/Bogard entitled “Kansas City Detention Center: Needs Assessment: Population Trend Analysis & Forecasts – Final Report”. That report had been completed July 7, 2020, and updated September 16, 2022. The report contains information and population projections regarding people in the custody of the Kansas City Police Department, in preparation for a possible plan from Kansas City to build a new municipal jail to house those people. In September 2022, the Municipal Court released a [document](#) entitled “The Court’s Perspective on the Kansas City Detention and Rehabilitation Center” that contained additional arguments in favor of building a new city jail. This analysis looks at both documents.

Prison Policy Initiative, founded in 2001, is a non-profit, non-partisan organization that produces 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](#) on this topic as well as a [guide](#) 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.

Who are the authors of the needs assessment, and what expertise do they bring?

The needs assessment process began in 2019, and the report was completed in July 2020. The project team consisted of representatives from the Kansas City Public Works Department, the Kansas City Municipal Court, and the Kansas City Police Department, along with representatives from [SFS Dewberry Pulitzer/Bogard](#) is a corrections consulting firm with a long history of conducting jail assessments across the country. Their project team included architects as well as “corrections planners” a statistician. and a “community engagement specialist” from a local public relations firm.

The authors do not seem to have consulted community members, incarcerated people or their families in either their discussion of the needs assessment for the jail or their discussion of possible alternatives to incarceration. Although there is a “community engagement specialist” listed as part of the project team, there is no mention of any activities that resulted from community engagement in the report itself. The authors did interview a range of criminal legal system stakeholders, including prosecutors, judges, court administrators, specialty court coordinators, police, and probation.

Foundational research: the harms of pretrial incarceration

In order to evaluate the arguments presented in the needs assessment and “court’s perspective” document, the question first needs to be answered: **is it a good thing for more people to be incarcerated in Kansas City for the kinds of charges that move through municipal court?**

Both documents assume that there is a public benefit provided by incarceration – the needs assessment suggests that increased detention will “minimize the number of persons who commit violations or new crimes”, and the perspective document discusses the need for jail to “stabilize” people, and says that “defendants who are not stabilized may be a risk to public safety”. In both cases, the reports are discussing people who are pretrial and have not been convicted of a crime.

These statements may represent conventional wisdom about the purpose of jail, but they have been disproven by decades of empirical research showing that pretrial incarceration, particularly for people charged with low-level offenses, has overwhelmingly negative impacts. It undermines the presumption of innocence, destabilizes people’s employment, family life, and housing, increases the risk of overdose and suicide, and increases the likelihood that people will be re-arrested in the future.

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 US 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”.

The impact on the presumption of innocence is more than theoretical. A [study](#) in Houston found that have 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. 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.

Pretrial Incarceration Destabilizes Employment, Family Life, and Housing

Pretrial incarceration has detrimental effects on housing, employment and family stability. A [2018 study](#) 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.
- 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.

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. People released from incarceration are [18 times more likely](#) to commit suicide than those without a history of incarceration. Suicide is the [single leading cause](#) of death for people in jails. 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.

Pretrial Incarceration Makes it More Likely that People Will be Re-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. [Another](#) showed that imposing a money bond – which often leads to pretrial detention – was associated with a 6-9% increase in re-arrest. Put simply, when cities use pretrial incarceration in the name of decreasing crime, they shoot themselves in the foot. Pretrial incarceration likely increases crime in the long-run.

The “Bed Shortage” Question

Throughout the report, the authors reference statements by jail stakeholders that Kansas City courts and police would have detained more people if there was more bed capacity in the municipal jail – and that this is somehow harming Kansas City. They note that

- The perception among multiple key stakeholders is that the need to house detainees with other jurisdictions possibly impacted the detention decisions for many people” (pg. 8)
- A possible reason [for the lack of trend in average daily population] is the artificial population constraint placed by having a finite number of beds (pg. 19).
- “By not having enough beds available, the population of females has historically been held lower than it otherwise would have been”. (pg. 41)

The report, in essence, assumes there is a problem – that there are people who the justice system would jail if they had more bed space, and that Kansas City would be better off if the people not currently being put in jail spent time in custody. Neither of these assumptions is borne out by evidence.

The numbers do not show that a “shortage” of jail beds has had negative impacts

Kansas City has not actually had a city jail since at least 2009. Instead, it has rented the beds it has needed to house people going through municipal courts from county jail facilities. Prior to 2019, the city rented 275 jail beds from Jackson County. In June of 2019, the intergovernmental agreement between the city and county dissolved, and Kansas City began instead renting beds from neighboring Johnson and Vernon counties. Between those two counties, the city now rents 35 beds in Johnson County and 70 beds in Vernon counties, for a total of 105 beds.

The conclusion that there are not enough beds seems to be primarily based on stakeholder interviews, not on numbers. The “Court’s Perspective” document does note that “city inmates are currently being released over the objection of Kansas City Municipal Court judges because there is insufficient space and contractual relationships”. This is surprising, given that the beds in these facilities are not full – on August 3, 2023, there were 88 people from Kansas City municipal court in Johnson and Vernon county jails, leaving about 17% of the space unused. It is also not explained in either report *why* more beds cannot be contracted from Johnson County or Vernon County, or why a contractual relationship with Jackson County jail is no longer possible. This is particularly notable given that Jackson County is in the process of constructing a new jail, which will have substantially more capacity and new facilities. The Court’s Perspective document justifies the idea that Kansas City detainees cannot be held at Jackson County by saying that their “needs are completely different” – but Jackson County Jail’s own [website](#) notes that “The Detention Center houses those arrested for crimes ranging from petty theft to homicide, but classifies these inmates differently” and that “Classification assesses the risks posed by and needs of each inmate. The physically and mentally ill are separated from the healthy.”

Furthermore, the idea that there is a bed “shortage” implies that there have been negative impacts from jailing fewer people. Stakeholder perceptions seem to be based on the idea that judges and other decision-makers are taking into account the number of jail beds available when they are making decisions about who to release and who to detain. Even if stakeholders perceive this to be true, the fact that judges feel constrained from jailing more people is not necessarily a bad thing. As discussed above, pretrial incarceration, particularly for low level charges, is an extremely harmful practice – and best practices dictate that its use should be minimized.

What is clear from the way jail beds are discussed in both reports is that if Kansas City municipal court actors have access to more jail beds, they will fill them. Both reports display a lack of understanding of best practices in reducing reliance on incarceration, and both fundamentally see *increased* pretrial incarceration as a benefit to Kansas City, when research

from around the country shows that municipalities should be moving towards decreasing pretrial incarceration, especially for low-level charges.

The Report uses misleading graphics regarding the relationship between increased release on recognizance and failure to appear in court

In early 2019, Kansas City’s municipal courts had to adapt to losing access to the 275 jail beds in Jackson County Detention Center. The report does document that there was a change in release patterns during 2019 after the loss of access to the Jackson County beds. Judges use of non-monetary bail increased substantially, from around 30% of cases to 80% of cases. The report attempts to paint this change as a negative, but when viewed in the context of national trends and empirical research on the effects of jail stays and monetary bonds, this is a positive development. Given the immense harms caused by pretrial detention, and the fact that Kansas City municipal jail beds are used only for low-level crimes, municipal court decision-makers *should* be making every effort to use jail only when it is considered absolutely necessary.

The report uses a small increase in FTAs recorded over the years 2013-January 2019 to try to show that the increase in ROR releases in *April* 2019 might have had a negative impact. **The two graphs on page 34 are implied to be related to one another, but they actually show different time periods. The report provides no evidence that failure to appear increased in 2019 when Kansas City began releasing substantially more people on recognizance.**

Moreover, the failure to appear numbers recorded in the report are simply not substantial. The increase that’s shown in the graph in Figure 26 shows only 10-30 people every 3 months with FTA charges, a tiny portion of the total number of people moving through the municipal courts – there are about 17,000 jail bookings each year (Table 5). It then graphs this small increase against a completely different scale – the percentage of people who were released on their own recognizance. The report makes no effort to compare those FTA numbers to the total number of people moving through the court system, instead relying on a misleading graph to give the incorrect impression that FTAs increase substantially when ROR releases increase.

Faulty assumptions in predicting future jail bed needs

The report notes that there is “no evident long-term trend” in average daily population at the jail between 2013-2019: that is, the jail population is neither steadily rising nor steadily falling. Despite this, the authors project an increased need for jail beds over the next two decades, relying primarily on predictions that the population of Kansas City as a whole will increase. The assumption of a consistently rising jail population fails to take into account the substantial changes that have already taken place in Kansas City and nationally that have changed arrest, charging and jail trends. Some of these changes come from the COVID-19 pandemic; others are the result of reform efforts. The authors admit that they do not account for changes in the functioning of the Kansas City courts in their population forecasts: “Statistically speaking, population forecasts by their very nature assume that what is known and assumed at the time the forecast is produced remains in place for the duration of the forecast.” (pg. 39). They also

acknowledge that “population dynamics can constitute a necessary but not sufficient predictor of correctional bed need” – essentially, they acknowledge that population trends do not tell the whole story in projecting jail bed needs. There are two main categories of changes to the Kansas City municipal court system that the report does not consider – changes created by the COVID-19 pandemic, and changes that already have occurred and may continue to occur due to criminal legal system reform.

The report ignores COVID-19 pandemic changes

Because the report was written in 2019 and the data has not been updated, there has been no opportunity to re-evaluate expectations for the jail population in light of substantial changes in arrest patterns that occurred during the COVID-19 pandemic. During the pandemic, there was a [24% drop](#) in arrests nationally, and the largest decreases were in low-level crimes like vagrancy and drunkenness, the same kinds of low-level charges common among people in KC municipal jail custody. Some of that drop in arrests has likely rebounded, but without knowing by how much, it is impossible to make accurate predictions about the demand for municipal jail beds. The Missouri Supreme Court keeps [statistics](#)¹ of how many cases are filed in Kansas City municipal court; the number of filed cases is trending downward, and fell 59% between 2019 and 2022, suggesting that case filings have substantially changed post-pandemic.

The report ignores potential reform-related changes

There is also no discussion of changes in policy or potential changes in policy that may affect jail populations over the next 20 years. Kansas City already made a massive change in the percentage of people released on their own recognizance in 2019. As criminal legal system reforms become more prevalent throughout the country, it is likely that there will be changes in the next 20 years that change the number of people admitted to the jail. The report makes no effort to discuss those possible changes.

How the current Kansas City jail beds are being (mis)used

The Kansas City municipal jail beds are being used mostly for short lengths of stay that destabilize people’s lives without providing any public safety benefit. Many of the people passing through the jail likely pose no threat to the community and should be being released directly from police custody or directly from court. The jail population is racially disproportionate to Kansas City’s population, and includes groups of people who could be safely and successfully diverted from the court system without the use of incarceration.

Detention for Mostly Low-Level and Non-Violent Crimes

Though the report goes to great lengths to try to paint the charges people in the Kansas City jail are charged with as serious, the reality is that the Kansas City jail is almost exclusively used for low-level charges, many of which are non-violent. Only 1/3 of people booked into the jail

¹ The statistics on Kansas City Municipal Court are found in each year’s Annual Statistical Report Supplement, table 94, “Municipal Cases”.

between March-December 2019 were booked for a violent crime. The remaining 2/3 were mostly booked for a mix of charges that included mostly non-DUI traffic charges, theft, drug charges, and “public order” and “offenses against government” offenses – things like vandalism, disorderly conduct, missing court, or resisting arrest.

Just 1% of the people held on what the report calls a “violent” charge are held while they await transfer to Jackson County (suggesting that those people have more serious felony charges that will be prosecuted by the state). Because people charged with felonies are almost all processed through the Jackson County jail system it’s important to note how just how low-level the charges of people in the Kansas City municipal jail actually are. For example:

- Since all drug possession and drug dealing charges in Missouri are felonies, municipal court cases are likely mostly or exclusively drug paraphernalia cases.
- Assault becomes a felony if someone knowingly causes physical injury to another person. Thus, the assault charges in municipal court are likely mostly or exclusively cases where no one was hurt.

Disproportionate Detention of Black People

Although Kansas City is only [26.5% Black](#), 67.8% of people held before court, and 71.2% of people held after court in the Kansas City jail are Black. Although there is no zip code data for the jail population, there is zip code data for the use of the municipal specialty courts. 29% of people in those courts come from two zip codes – 64127 and 64130, which have large Black populations (49% and 85% respectively). The Kansas City municipal courts are interacting primarily with Black people, which means the harms caused by the criminal legal system are falling primarily on Black communities.

Short Lengths of Stay

One of the most striking things about the assessment is the extremely short lengths of stay many people experience in Kansas City jail beds. The majority of people moving through the jail are there on pretrial status, meaning that they have not been convicted of a crime. Although the report does not specifically state what percentage of the jail population is pretrial, it notes that only 9.4% of individuals who appear in municipal court are sentenced to additional time. People incarcerated pretrial are likely there because they are unable to pay a monetary bond set at their first court date.

After spending an average of less than a day in custody before appearing in court, people incarcerated pretrial are held for an average of 1.68 days. This average length of stay seems to have spiked in early 2019 to be as high at 3.5 days.

Short lengths of stay for people incarcerated pretrial are a particularly concerning trend because even short periods of time in custody can destabilize people’s lives, negatively impact their employment and their family stability, and make it more likely that they will be arrested in the future. A [2022 study](#) by Arnold Ventures showed that just 24 hours in custody was associated

with a 24% increase in the likelihood that someone would be rearrested while released pretrial. It also found that people who are incarcerated pretrial for any period of time are twice as likely to receive a prison or jail sentence at the end of their case.

Short lengths of stay are needless disruptions in people's lives that are detrimental to public safety and community stability. They are also easy to avoid by simply releasing more people on their own recognizance (ie, without a monetary bond) at their first court date. Money bonds also have no public safety benefit. They [do not increase](#) rates of court appearance. They do lead to [an increased risk](#) of being rearrested and an increased likelihood of being convicted.

Inappropriate Use for Mental Health and Substance Use “Stabilization”

The Kansas City Courts write that “[most](#)” people in the municipal jail population have either mental health issues, substance use disorders, or both. The court argues that jail helps “stabilize” people with these issues, and that “defendants that are not stabilized may be a risk to public safety”. The court envisions a jail that will give what they call “accountable engagement in treatment. After inmates are stable and engaged in the detention center they will be transitioned to treatment in the community”. As noted in the research above, jail does not “stabilize” people with substance use disorders and mental illness – it destabilizes them, increasing the risk of suicide and overdose.

Furthermore, forced treatment of the kind described in the court’s “accountable engagement” model is likely to be less effective than voluntary, community-based treatment. One [study](#) in Massachusetts found that people who received involuntary treatment were more than twice as likely to die of opioid-related overdoses than people who engaged in voluntary treatment.

Alternatives to Incarceration

Although the report considers alternatives to incarceration, the discussion of possible changes to the court system is not particularly robust. The authors of the report admit that “some of the recommendations described may serve to “widen the net” so to speak, in that they may result in more people needing to be incarcerated”. It should go without saying that if an alternative to incarceration increases the total number of people incarcerated, it has not achieved its goals.

Constructive suggestions – increased court efficiency and increased use of deferred prosecution

Some of the suggestions in the report are constructive and evidence-based possibilities for improving court functioning and decreasing the number of people incarcerated. The report recommends having arraignment court 7 days a week to avoid people sitting longer pre-arraignment on the weekend. That change would likely decrease length of stay and prevent needless incarceration of people who will soon be released anyway.

The report also suggests expanding criteria for deferred prosecution and eliminating the \$300 fee currently charged for the program. This is an excellent low-cost way to divert more people away from jail and court involvement.

Concerns regarding expanding specialty courts

The report recommends expanding Kansas City's already extensive Specialty Court program. There are fundamental problems with relying heavily on specialty courts in the municipal court space. But Kansas City's specialty courts are already overly punitive and demanding on participants, especially given the low-level of the crimes people are charged with. The report notes that the specialty courts have low engagement rates. This is likely because

- Processing a defendant's entry into problem solving courts takes upwards of 2-8 weeks;
- Drug court requires a minimum 12 months of intensive treatment including 21 days of inpatient treatment, along with weekly urinalysis, self-help (AA) meetings, and mandatory court appearances;
- Mental Health court requires 6-12 months of mental health treatment.
- During the full term of the program, people can be re-incarcerated if they fail to meet program requirements.

These intensive requirements are striking given that the maximum jail sentence for any case moving through Kansas City municipal courts is 1 year. Some people moving through the municipal courts are facing maximum sentences as low as 15 days. The current [jail roster](#) shows only a few people serving sentences more than 6 months, suggesting that sentences that reach these maximums are rare. This begs the question: why would someone charged with a low-level crime submit to 12 months of intensive supervision, including 21 days of mandatory inpatient treatment, when their jail sentence would almost certainly be shorter than the total length of the program?

Kansas City's specialty courts are flawed; they show a mismatch between the level of intensity of the program and the level of seriousness of the crimes people are charged with. Expanding these programs without substantially changing their requirements is unlikely to reduce jail populations, since it seems that the primary reason the courts are not being used is because people moving through the court system opt not to use them – they will continue to have that option even if the capacity of the specialty courts is expanded. The Needs Assessment encourages “incentivizing defendant's participation”, but gives no specifics as to how that might be achieved. There is also a concern that increasing specialty courts may actually *increase* jail populations if more people are violating the terms of these programs and receiving custodial sanctions.

Concerns Regarding Instituting a Pretrial Services Program

The Needs assessment also suggests that Kansas city municipal court institute a pretrial services program. But the report produces no evidence that such a program is necessary. It notes that

pretrial services programs “put into place those conditions and services that seek to ensure a defendant successfully navigates the judicial system without further alleged criminal activity and/or threat to public safety”. There is no evidence that there is a problem where pretrial defendants are *not* navigating the system successfully without re-arrest. The pretrial period in Kansas City municipal court is extremely short – most cases are resolved within 7 days. That is unlikely to be enough time to set up services that help people moving through the court system.

The report then says that a pretrial services model will mean fewer beds are needed in the future. **But what the model actually takes into account isn’t the presence of a pretrial services system – it is simply the continued use of the current release rate of about 80%.** That release rate can be continued without investing resources in surveilling and assessing people released pretrial. The Kansas City courts absolutely should continue to release as many people as possible – but there is no reason to believe that a pretrial services program will independently decrease jail admissions. It could also increase jail admissions, by imposing more conditions like check-ins with officers and urinalysis that were not in place before pretrial services, leading more people to be incarcerated for non-criminal violations.