



BAIL REFORM  
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**OHIO COULD SAVE BIG BY  
IMPLEMENTING BAIL REFORM:  
A FISCAL IMPACT ANALYSIS**

SEPTEMBER 2020

# DEFINITIONS

**Bail:**

The pretrial release, or to secure the pretrial release, of an individual from legal custody.

**Bond:**

A promise to perform a specific duty. In the pretrial context, this is usually a promise to appear at all future court dates. Some bonds require no collateral or upfront payment, while others do. The type of bond required is usually set either by a bond schedule or a judge. *See cash bail/cash bond/money bond below.*

**Bond schedule:**

A table used when a judicial officer is not available, which specifies the money bond amount an accused individual can post in order to be released from jail. Bond schedules either list specific crimes (i.e. theft) or crime levels (i.e. 1<sup>st</sup> degree misdemeanor) with a corresponding money bond amount.

**Cash bail/cash bond/money bond:**

A type of secured bond which requires the upfront payment of money before an accused person can be released from jail.

**Conditions of release:**

Any condition that an accused person is required to follow in order to be released. Conditions of release can be financial (secured/unsecured bonds), or they can include other forms of restrictions (home detention, maintaining employment, pretrial supervision, etc.).

**Crime categories:**

The four categories into which crimes were sorted for the purpose of this report: person crimes, property crimes, drug crimes, and other crimes. *See Crime Categories box on the next page.*

**Personal bond/personal recognizance/own recognizance:**

A promise made by the accused person to appear at all future court dates. This type of bond does not require any upfront payment before release.

**Pretrial:**

The pretrial stage of the criminal legal system represents the “front door” to our mass incarceration system for most court-involved people. Pretrial spans the point of arrest through the resolution of a case, and includes diversion, jail, pretrial release, and court processing. Decision makers include police, prosecutors, judges and magistrates, jail administrators, and pretrial services professionals.

**Risk assessment tools:**

A pretrial tool that uses algorithms and purports to indicate an accused person’s risk level. The Pretrial Safety Assessment, or PSA, is one type of risk assessment tool used in Ohio.

**Secured bond:**

A type of financial bond that must be paid before a person can be released from jail during the pretrial period. Secured bonds can take many forms, including cash bail/cash bonds/money bonds, percentage bonds (where only a percentage, not the entire amount, is required as upfront payment), property bonds (where property is pledged as bond), etc.

**Unsecured bond:**

A bond which does not require any upfront payment, but if violated, will require the payment in full of the amount for which the unsecured bond was set.

## CRIME CATEGORIES

While these crime categorizations are common, the crimes we sorted into each of these categories may vary in other reports based on how state law defines certain crimes.

**Person crimes:**

Crimes that involve contact with another person, including: assault, domestic violence, rape and other sex offenses, and robbery (robbery may include the use of force against another person.).

**Property crimes:**

Crimes that involve property, including: theft, fraud, forgery, and burglary.

**Drug crimes:**

Crimes that are drug-related, including: drug possession, trafficking, and illegal manufacturing.

**Other crimes:**

Crimes that do not fit into the above three categories, including: weapons crimes, driving crimes, and escape.

## OHIO'S STATE COURT/PRETRIAL SYSTEM

- **Municipal courts:**

In Ohio, all misdemeanor cases and the initial hearing for felony cases are handled by municipal courts. Some municipal courts, like Shaker Heights Municipal Court, act as the court for multiple municipalities.

- **Common pleas courts:**

In Ohio, courts of common pleas hear felony cases. Felony cases are either bound over or directly filed from the municipal court. Every county has a court of common pleas.

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The most recent statewide estimate showed that in 2018, there were nearly 12,600 people incarcerated pretrial on any given day at an estimated cost to Ohio of between \$300 to \$400 million annually.

## EXECUTIVE SUMMARY

Cash bail—also known as a money bond—creates a two-tiered system of justice in which people who can afford their release go home to their families, and those without financial resources are forced to unnecessarily suffer in jail. This system does not promote public safety—it simply allows some people to buy their release, regardless of what threat they may pose. It is also burdensome to taxpayers who end up footing the bill for long, unnecessary jail stays. Bail reform is needed to end wealth-based detention, bring Ohio’s courts into compliance with the United States Constitution, save money, and truly promote public safety.

While the Legislative Services Commission estimated in 2018 that pretrial detention in Ohio costs \$266 million each year,<sup>1</sup> there remained questions about the cost and potential cost savings of true bail reform. This report is the culmination of an 18-month project to analyze Ohio’s current bail system and determine what cost savings could be realized if common sense bail reform policies were implemented.

The ACLU of Ohio worked with Athens, Cuyahoga, and Franklin counties<sup>2</sup> to gather court processing, jail booking and release, and jail budget data to describe the pretrial system in a sample of metro and non-metro counties. The analysis below illustrates the impact of pretrial decision-making and estimates the financial costs to Ohio.

Despite experiencing the lowest crime rates since the 1960s, Ohio’s pre-pandemic pretrial incarceration rate was near the highest level since data was collected beginning in 1970. The most recent statewide estimate showed that in 2018, there were nearly 12,600 people incarcerated pretrial on any given day at an estimated annual cost to Ohio of between \$300 to \$400 million.

Many were in jail for non-person crimes or misdemeanors because they were unable to afford the money bond necessary to buy their freedom. In all four jurisdictions analyzed below (Athens, Cuyahoga, Franklin, and Vinton counties), Black people were charged and jailed at much higher rates than white people.

The ACLU of Ohio hired an expert economist who analyzed the data to develop and recommend policies that would promote public safety, end wealth-based detention, and create enormous cost savings for taxpayers. We’ve concluded that each of these goals can be accomplished by creating a release valve, much like what currently exists for wealthy people who can purchase their freedom, that would discharge most people but allow for a conditions of release hearing for those who are a flight risk or pose a threat to a specific person. We have also factored in the associated cost of expansions to pretrial supervision that would likely occur if more individuals are released pretrial.

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1 This Legislative Service Commission analysis relied on 2016 jail population numbers, while our report is relying on more recent population numbers. *See appendix for details.*

2 We were also able to get jail information from Vinton County, because both Vinton and Athens Counties use the Southeastern Regional Jail.

**We estimate our policy recommendations would save Ohio \$199 to \$264 million each year.**

## **KEY FINDINGS**

### **Crime Rates:**

- Ohio pretrial incarceration is near an all-time high, despite statewide crime rates that are nearly half of the peaks from the 1980s and 1990s.

### **Offenses:**

- The most common felony offense booking in the counties we analyzed was drug possession. Driving with a suspended license was the most common misdemeanor booking in three of the four counties.

### **Money Bond and Length of Stay:**

- In all four counties, on average, those with a higher money bond spent more time in jail pretrial.
- In Cuyahoga County, 10 percent of common pleas defendants were released after their bond amount was reduced. The average reduction was just under \$50,000, with these people staying an extra and unnecessary 24 days in jail before their bond was reduced.
- In Cuyahoga County, less than half of the people with felony bookings were able to post money bond on the same day that it was set. Those able to post bond the same day stayed in jail, on average, for three days total. Those who were unable to post bond on the same day that it was set stayed in jail, pretrial, an average of 68 days. This is 21 times longer than those who posted bond the same day.

**Policy recommendations start on [page 23](#).**



## WE RECOMMEND THE OHIO LEGISLATURE:

1. Create a release valve by instituting a presumption of release. This should require that everyone charged with a crime be released the same day as their arrest, unless a prosecutor or judge is concerned the person is a flight risk or poses a threat to a specific person, in which case a conditions of release hearing may be held.
2. Require a conditions of release hearing within 48 hours of the accused person's arrest and detention if they have not already been released. At the hearing, a judge could set a number of different conditions of release necessary to assure appearance and the safety of specific individuals (i.e. pretrial supervision, employment requirements, GPS monitoring, and even—under some circumstances—money bond). For those charged with the most serious crimes for which preventive detention is available, conditions of release hearings could turn into preventive detention hearings at the request of the judge or prosecutor.

### Racial Disparity:

- Racial disparities exist in all jurisdictions that were analyzed in this report. In most jurisdictions, the disparity grew for more serious charges and more time in jail. For example, in Franklin County, Black people were 2.3 times more likely to be charged with a misdemeanor and 3.7 times more likely to be charged with a felony than white people. In Cuyahoga County, Black people were 5.2 times more likely to be charged with a felony and nearly seven times more likely to occupy a jail bed prior to trial for a felony charge. These numbers highlight bias in the criminal legal system which, through arrest, charging, and prosecution choices, causes people of color to be overrepresented.<sup>ii</sup>

### Risk Assessments:

- Although stakeholders have sold risk assessment tools as a way to more quickly assess and release people, most defendants' assessments are not even used as part of the judge's decision-making. In Cleveland, of those whose assessments were considered, three quarters still had a money bond set. Even those who were determined to be "low risk" by the risk assessment tool were still detained or had bail set 60 percent of the time. On average, Black people also scored higher on the risk scale than white people.

### Cost Savings:

- Based on the analysis of four counties, 63 percent of the people held in jail pretrial were charged with a misdemeanor or non-person felony. Assuming the same percentages apply to the entire state, jailing people pretrial for misdemeanors or non-person felonies costs Ohio an estimated \$195 to \$253 million annually.
- Changing policy to allow most people to be released on their own recognizance (a promise to re-appear in court), with safeguards in place to allow for an individualized review for those the prosecutor or judge is concerned poses a threat, is estimated to reduce the statewide pretrial jail population by 69 percent and avoid between \$218 to \$284 million in jail costs annually.
- Taking into consideration the increased cost of pretrial supervision that our policy recommendations would create, **the total cost savings are estimated to be between \$199 and \$264 million per year.**

## MAURICE'S STORY

In 2018, Maurice Jennings was living what he describes as his “best life.” He was a security guard at Proctor & Gamble, a job he loved and held for five years. It provided him stability; he rented his own apartment, took great pride in his work, and was self-sufficient and happy. On May 1, 2018, it all changed when he was arrested for a crime he did not commit.

Maurice was subsequently charged with two counts of felonious assault for an incident that he not only was not involved in, but had no knowledge of, as it had taken place while he was on duty at work. He was taken to jail, and a cash bond was set for \$250,000. Maurice, who was unable to pay, was forced to remain in jail. Later, after he was indicted, the cash bond amount was raised to \$500,000, resulting in him having to spend four months in jail before a friend was able to pay a bail bondsman enough money to procure his release. Once he was back in the community, Maurice was able to hire an attorney and quickly gather the evidence to demonstrate his innocence, including his timesheet, which showed he was at work at the exact time that the crime was committed. As a result, Maurice's case was dismissed.

But that did not end his struggle. While in jail for a crime he did not commit and unable to post his cash bond, Maurice lost his job and apartment. Additionally, he sold nearly all of his possessions to hire an attorney upon his release. Now he lives with a friend, still unable to afford a place of his own since he was released from jail.

While stories of wrongful arrest are unfortunately not rare, their life-altering negative side effects can and should be. Maurice's life was upended not only because he was falsely arrested, but because he could not afford to post a money bond. While Maurice was losing everything, Hamilton County spent nearly \$9,000 to keep him in jail for four months.

Each of the proposals in this report address both of these dire problems: the great personal cost and tax-payer burdens of our current money bond system. The policy proposals provide mechanisms for safe release that promote public safety and offer opportunities for significant cost savings.

Roebling Suspension Bridge - Cincinnati, Ohio  
Photo: Warren LeMay, Flickr

## INTRODUCTION

This report examines court and jail data in a sample of four Ohio counties to measure the impact of pretrial decisions on the criminal legal system in order to determine the cost savings of much-needed bail reform. **Fortunately, solutions exist to simultaneously lower pretrial jail populations and its associated economic costs while maintaining public safety and court appearance rates.**

Pretrial decisions determine almost everything.<sup>iii</sup> Those detained pretrial are put at risk of losing their job, their housing, and even custody of their children.<sup>iv</sup> Unnecessary pretrial detention<sup>3</sup> often results in more people pleading guilty to get out of jail so they can return to their families and work,<sup>v</sup> increased likelihood of conviction,<sup>vi</sup> increased post-trial recidivism,<sup>vii</sup> and sentences that are two to three times longer.<sup>viii</sup> Therefore, someone being held pretrial simply because they cannot afford to post a money bond results in huge consequences not only for their individual lives, but also their families and communities.

The financial costs of pretrial detention are also significant; the Brookings Institute estimated the United States spends over \$15 billion annually to hold legally innocent people in jail.<sup>ix</sup> Many of these costs are straightforward: **taxpayers bear the burden of expenses to arrest, prosecute, and in some cases to supervise or detain people who have been accused of a crime.** Other costs of pretrial are less straightforward, and often extend far beyond the pretrial period. Jailed defendants like Maurice are put at risk of losing their jobs or housing,

putting their ability to contribute to society and care for their families at risk. These costs can impact taxpayers in the long term through social service needs.

**Despite these well-documented, devastating consequences and extensive costs, since the mid-1970s, the number of people in Ohio incarcerated pretrial has increased more than four and a half times.**

**Unnecessary pretrial detention often results in more people pleading guilty to get out of jail so they can return to their families and work, increased likelihood of conviction, increased post-trial recidivism, and sentences that are two to three times longer.**

Figure 1 (page 6) shows that even when accounting for increases in the state's total population, the rate at which people are incarcerated has disproportionately increased since the 1970s. This increase occurred steadily between the late 1970s and mid-2000s, with the pretrial jail population increasing from roughly 2,600 to over 12,000 by 2018. This increase in the Ohio pretrial jail population is consistent with national data that show nearly all of the increases in the nation's jail population over the past 20 years is related to the increase in the unconvicted population.<sup>x</sup>

3 Unnecessary pretrial detention here refers to the incarceration of unconvicted people in jail in an attempt to achieve the goals of their appearance at court hearings and law-abiding behavior until their criminal case reaches disposition, despite that incarceration not being needed because other, non-incarcerative methods, such as release on recognizance and certain research-supported interventions (e.g., court date notifications), are as effective at achieving these pretrial goals.

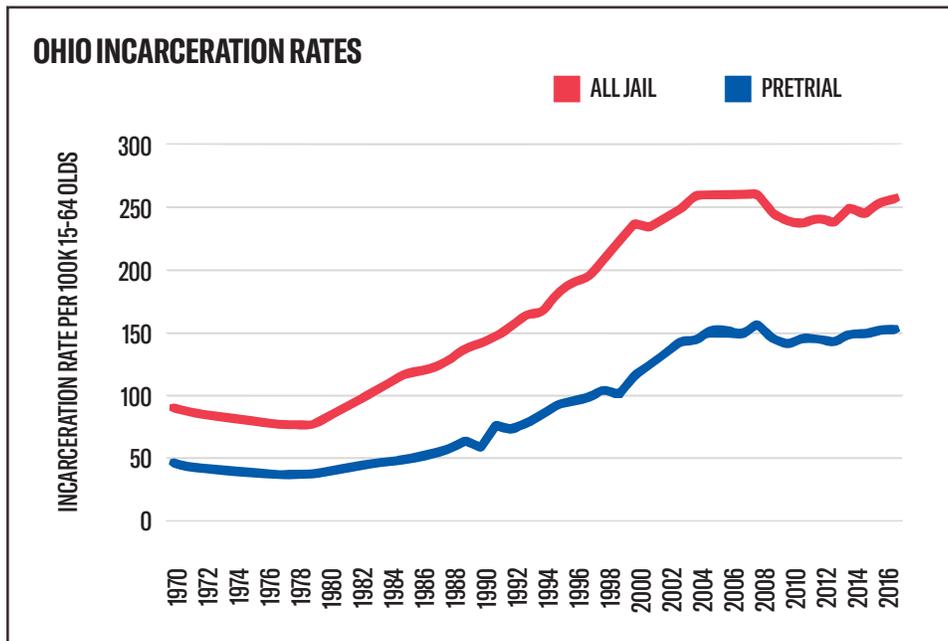


Figure 1.

This report will provide information about how long people stay in jail and why, with an analysis of the associated costs of pretrial detention. It will also provide information about the prominent racial disparities that the data highlight as well as outlining information about how jurisdictions are using risk assessments. The report will then offer policy recommendations which we estimate would result in an overall estimated cost savings of \$199 to \$264 million per year.

While the pretrial incarceration rate has flattened over the past decade, the number of people incarcerated pretrial is still near the all-time high despite plunging crime rates (see Figure 2). In 2018, the year the most recent crime data are available, Ohio experienced its lowest property crime rate since 1966 and its second lowest violent crime rate since 1969. Both property and violent crime rates are now less than half of the peak values in the 1980s and 1990s.

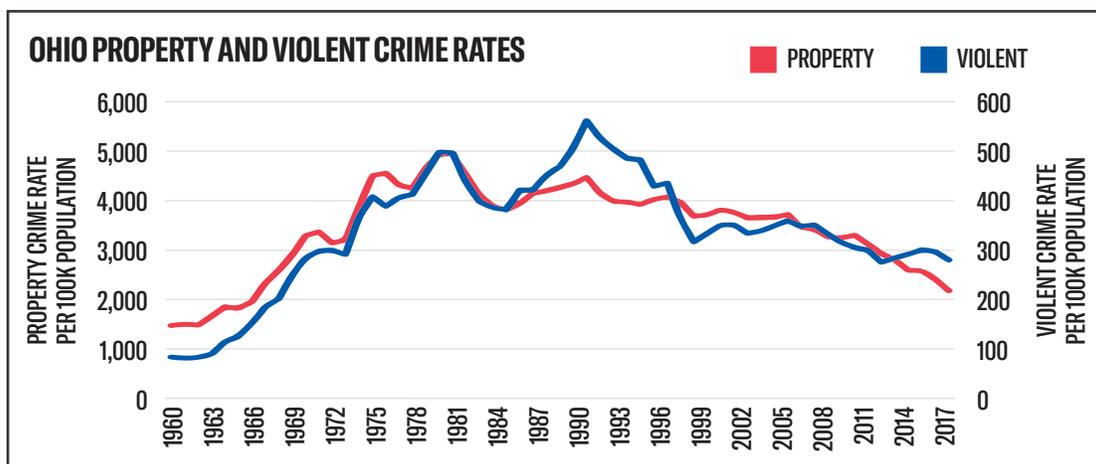


Figure 2.

## COSTS AND OPPORTUNITIES FOR COST SAVINGS

Ohio's pretrial jail population grew steadily from the early 1980s through the mid-2000s. While the pretrial rate has leveled off over the past 15 years, Ohio's pretrial population is near its all-time high despite plunging crime rates. As a result, spending on pretrial detention is at an all-time high.

Based on 2018 pretrial population estimates,<sup>4</sup> on any given day:<sup>5</sup>

- Over 3,000 people charged with a misdemeanor are awaiting trial in Ohio jails at an annual cost of \$74 to \$96 million.
- Nearly 9,600 people charged with a felony are awaiting trial in Ohio jails at an annual cost of \$235 to \$306 million.
  - From our sample of counties, 70 percent of the people admitted to jail pretrial and charged with a felony were charged with a non-person crime.
  - The most common primary felony charge for these people was possession of drugs.
  - Over half of the days spent in jail for people charged with a felony were for non-person crimes.
- Overall, 63 percent of the pretrial jail bed usage was for people charged with a misdemeanor or non-person felony with an estimated annual cost to the state of Ohio of \$195 to \$253 million.

Most people are in jail pretrial because they can't pay their money bond. Many are held on non-person charges or misdemeanors. As bail amounts increase, defendants stay in jail for longer periods of time, at greater taxpayer expense. If everyone who was given the opportunity to post bond—meaning they could buy their freedom if they had the financial resources—instead spent zero time in jail, the savings would be enormous.

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4 While the Vera tool and the DRC data do not break out the pretrial population by crime class or crime type, we can extrapolate based on the data analysis described above. In the four counties we examined, on average, 55 percent of pretrial bookings were for misdemeanors compared to 45 percent for felonies. However, felony defendants stayed much longer in jail pretrial and made up an estimated 76 percent of the jail population.

5 When estimating system costs, it is important to estimate the marginal or incremental change in costs rather than the average costs. To get a more accurate and conservative estimate of avoided costs, we focused on the marginal or incremental cost savings from changes in the overall jail population. For the marginal cost of a day in jail in Cuyahoga County, we relied on line item budget data from 2019 actual expenditures provided by the sheriff's office. We added the relevant expenditures together and divided by the 2019 jail population to calculate an estimated long-run marginal cost of \$89.47 per day. In Franklin County we used similar methods to calculate the marginal cost of housing people in the Franklin County Jail. Based on 2018 budget and population data, the estimated long-run marginal cost per day was \$89.41. We did not analyze line item budget data for the Southeastern Regional Jail, but instead used the per diem rate that counties pay for each day an individual spends in the jail. Based on the latest available data from 2017, Athens and Vinton counties paid \$71.12 per day per inmate. We combined these counties' costs to estimate a high-end cost per day of \$87.40. (See the appendix for more detail on the calculation.) For our low end estimate we relied on the fiscal note for HB 439 that lists the cost per day for inmates in Ohio's jails as \$64.45. (This value was adjusted for inflation for the estimated cost savings described below).

However, we recognize that setting a money bond as a condition of release is often inappropriately used as a way to detain individuals (for example, Ariel Castro was given a money bond amount of \$8 million,<sup>xi</sup> presumably with the intention of detaining him), instead of following the procedural safeguards required to formally detain someone pretrial.<sup>xiii</sup> Even if we were to assume everyone charged with a crime for which preventive detention is available continued to spend the same amount of time in jail, Ohio would save \$209 to \$271 million just by releasing those with a right to be released before they spent a night in jail. In Cleveland, people charged with misdemeanors who ultimately receive a bond of less than \$2,500 once they get in front of a judge, spend an average of nine days in jail. However, just three days in jail is enough for people to lose their jobs, their housing, and strain family relationships.<sup>xiii</sup> In Cleveland, holding just one person for nine days also costs taxpayers over \$800 in jail expenses alone. **If the system was created to more efficiently release people who are likely to be released anyway, we would significantly decrease personal hardship and cost to taxpayers.**

## COSTS AND OPPORTUNITIES FOR COST SAVINGS

### KEY TAKEAWAYS



The cost per person per day in jail is estimated to be between \$64.45 to \$87.40.

Hundreds of  
**Millions**  
of dollars

On any given day,

- Over 3,000 people charged with a misdemeanor are awaiting trial in Ohio jails at an annual cost of \$74 to \$96 million.
- 9,600 people charged with a felony are awaiting trial in Ohio jails at an annual cost of \$235 to \$306 million.
- This is a total cost of \$309 to \$402 million per year.

**63%**

Overall, 63 percent of the pretrial jail bed usage was for people charged with a misdemeanor or non-person felony with an estimated annual cost to the state of Ohio of \$195 to \$253 million.



**Vision:** If our policy recommendations are implemented, we estimate Ohio would save an average of \$199 to \$264 million annually.

## HOW LONG DO PEOPLE STAY IN JAIL AND WHY?

The only constitutional purpose of money bond is to provide an incentive for accused people to return to court.<sup>xiv</sup>

**When money bond—purposely or inadvertently—forces people to remain in jail unnecessarily, the system fails both individuals and taxpayers.** Other mechanisms exist under Ohio law to detain certain people pretrial. Using money bond to detain individuals creates wealth-based detention that violates fundamental constitutional rights and is dangerous. Additionally, it creates scenarios in which those with financial resources, who may pose a threat to public safety, are able to purchase their release.

It's also expensive. If someone is supposed to be released but is instead forced to stay in jail because they cannot afford to buy their freedom, taxpayers and that individual unnecessarily suffer. The analysis below examines the relationship between bond amounts and the length of time people spend in jail in the jurisdictions that were included in this analysis.

Across crime types and jurisdictions, people with higher bond amounts spend more time in jail. While this makes sense, because as money bond amounts increase, so too will the inability to pay such amounts, this correlation violates the very purpose of a money bond. Our analysis highlights that when a money bond is set, it often leads to unnecessary detention and that the length of stay in jail increases with the amount for which the money bond is set.

**If someone is supposed to be released but is instead forced to stay in jail because they cannot afford to buy their freedom, taxpayers and that individual unnecessarily suffer.**

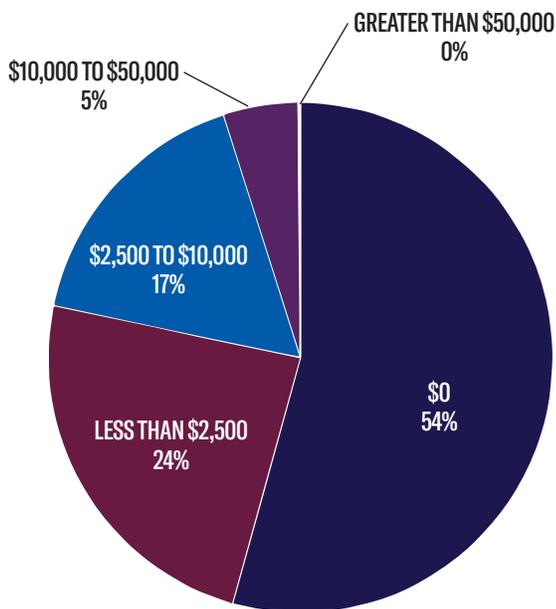
### MISDEMEANORS

Misdemeanors are crimes for which the maximum punishment is up to one year in jail. Often, misdemeanor convictions, depending on the type of crime, result in no sentenced jail time. And yet, people are held in jail every day while awaiting the disposition of misdemeanor charges. **In many cases, the pretrial process is more onerous than the ultimate sentence.**

## Cuyahoga County

Figure 3 below shows the percentages of cases in Rocky River, Euclid, and Shaker Heights by bond category over a recent two-year period.<sup>6</sup> More than half of the non-traffic misdemeanors<sup>7</sup> had a bond amount of \$0. There was wide variation between the courts, with nearly five out of six misdemeanor cases having a bond of \$0 in Rocky River and about one out of three in Euclid and Shaker Heights. Cleveland,<sup>8</sup> not shown in the pie chart below, had slightly higher bond amounts, with 40 percent of cases having a missing or \$0 bond amount.

### MISDEMEANOR BOND AMOUNTS - EUCLID, SHAKER HEIGHTS, AND ROCKY RIVER



**Figure 3.** (Note: Only 10 defendants had a bond amount greater than \$50,000 and therefore is rounded to 0%)

As seen in Figure 4 (page 11), as the bond amounts increase, the average time spent in jail pretrial also increases. **However, the data show that even those who are released on very low bond amounts or no financial conditions still spend an average of three or nine days in jail (in Euclid and Cleveland, respectively).**

During this time in jail, the individual is put at risk of losing their job, their home, and even custody of their children. And each day in jail comes with significant costs to taxpayers. Cash bail is supposed to act as an incentive for people to return to court. However, these numbers confirm that instead, it often acts as a barrier to release that forces people to remain in jail unnecessarily and sometimes indefinitely, again at great personal and taxpayer cost.

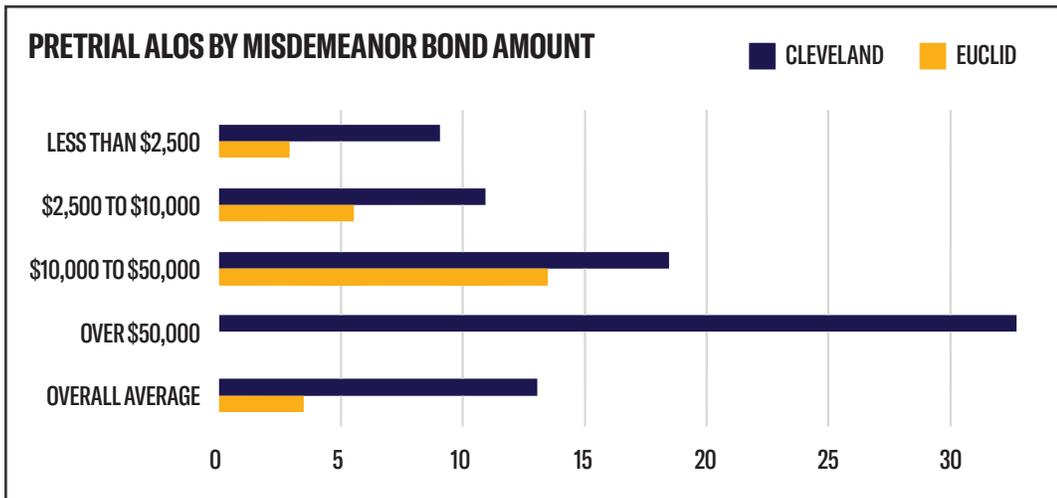
While the overall lengths of stay should not be compared between Cleveland and Euclid because of different prevalent crime types,<sup>9</sup> it is clear that in both jurisdictions, the length of time in jail increased as the bond amount increased. **People charged with a misdemeanor in Euclid or Cleveland municipal courts with a bond amount over \$2,500 stayed 2.3 times longer than those with a bond amount under \$2,500.**

6 Time ranges varied by municipal court but generally covered FYs 18 and 19.

7 Operating a vehicle under the influence cases were included in the total misdemeanor charges.

8 Cleveland Municipal Court data only contained those defendants who received a Public Safety Assessment (PSA) and therefore is not included in the analysis of overall cases filed.

9 Around five out of six pretrial defendants booked for a misdemeanor from Cleveland were booked for a person crime, while most defendants booked for a misdemeanor from Euclid were booked for other offenses, mostly driving related. For example, nearly 20 percent of misdemeanor bookings in Euclid were for driving with a suspended license, the most commonly charged offense.



Note: 'ALOS' is a shortened version of 'average length of stay.'

Figure 4.

### Franklin County

Nearly 70 percent of defendants charged with a misdemeanor either posted bond or were released on their own recognizance. On average, these individuals spent fewer than five days in jail. **The 30 percent of defendants charged with a misdemeanor who were not released on their own recognizance and did not post bond spent more than 13 days in jail pretrial, which is nearly three times longer.**

Table 1 below shows that the most common crime type for misdemeanor bookings was “Other,” making up one third of pretrial bookings.<sup>10</sup> The two most common crimes in this category were driving with a suspended license or operating a vehicle without a valid license and disorderly conduct. While the “Other” crime category was the most common booking charge, both person and property crimes had much longer average lengths of stay and accounted for more jail bed days than the “Other” category.

FRANKLIN COUNTY MISDEMEANOR BOOKINGS BY CRIME TYPE			
Crime Type	Bookings	Percent	Pretrial ALOS (Days)
Drug	917	15%	6.5
Other	2085	33%	3.9
Person	1762	28%	7.2
Property	898	14%	11
Unknown	652	10%	6.2
<b>Grand Total</b>	<b>6314</b>	<b>100%</b>	<b>6.4</b>

Table 1.

<sup>10</sup> In over half of Franklin County pretrial misdemeanor jail bookings, we were able to attach court records and examine whether the defendant was released on their own recognizance or if a financial condition of bail was required as a condition of release. Most bookings could be classified into four broad crime categories; however, there were about 10 percent of the misdemeanor bookings that could not be classified due to incomplete data.

## Athens and Vinton Counties

We also examined the impact of misdemeanor offenses in Athens and Vinton counties on the Southeastern Regional Jail. Overall, 44 percent of jail admissions from these two counties were made up of misdemeanors. However, the length of stay was much shorter for misdemeanors: five days compared to 21 days for felonies. As a result, only 16 percent of the jail beds were used by people charged with misdemeanors.

We used the previously described crime categories to examine admissions by crime type into the Southeastern Regional Jail (Figure 5). To attempt to match the people who were most likely to be in jail prior to the disposition of their case, we removed violations and holds as well as people with release reasons of transferred, prison, or time served. Half of jail admissions were in the “other” category, with the two most common crimes being driving with a suspended license and criminal mischief.

**ATHENS AND VINTON  
JAIL ADMISSIONS  
FOR MISDEMEANORS  
BY CRIME TYPE**

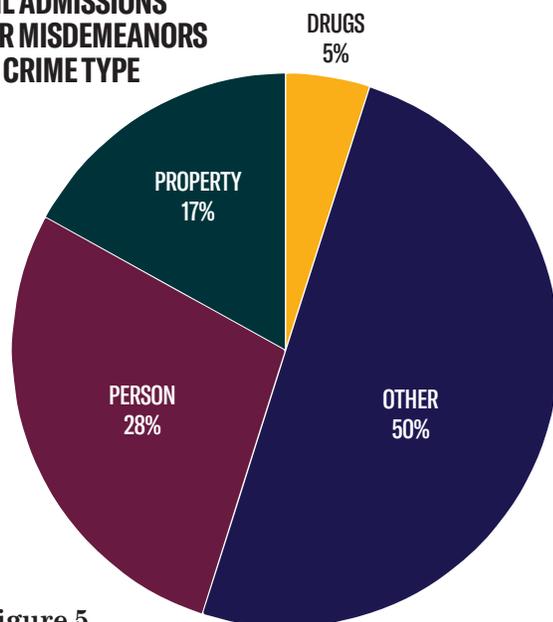


Figure 5.

Those with a bond amount between \$2,500 to \$10,000 stayed 2.3 times longer than those with a bond amount under \$2,500, and those with a bond amount over \$10,000 stayed 3.7 times longer than those with an amount under \$2,500.

The vast majority of the bonds for these people were either “null” at 23 percent, or less than \$2,500 at 64 percent. Misdemeanor defendants with higher bond amounts did spend more time in jail. Those with a bond amount between \$2,500 to \$10,000 stayed 2.3 times longer than those with a bond amount under \$2,500, and those with a bond amount over \$10,000 stayed 3.7 times longer than those with an amount under \$2,500.

## FELONIES

Felonies are crimes for which the maximum punishment is greater than one year in prison, however, some people convicted of felonies are sentenced to less or no time at all. The classification of crime types is determined by the state legislature, meaning that legislators can change a crime from a misdemeanor to a felony. **In Ohio, there is an enormous range of crimes classified as felonies (i.e. drug possession and murder are both felonies).** Felony cases are first filed in the municipal courts, but the vast majority of those cases are disposed of through the courts of common pleas.<sup>11</sup>

11 In Cuyahoga County over 80 percent of felonies charged in the municipal court were successfully merged with the common pleas data. The true percentage is likely to be higher, as data entry errors and differences between data systems mean some additional matches are lost. The Cuyahoga County Common Pleas data was the most complete data and easiest to join to the Cuyahoga County Jail data because of a common inmate identification number.

## Cuyahoga County

In the Cuyahoga County Court of Common Pleas, 69 percent of initial bond amounts were between \$2,500 to \$50,000. 16 percent of the cases had a bond amount greater than \$50,000 and the remaining 15 percent of cases had a bond amount under \$2,500 or were missing. There is a relationship between the bond amount and length of stay for both municipal courts and the common pleas court, with higher bond amounts resulting in longer time spent in jail. The length of stay in jail is nearly 2.7 times longer for those with a bond between \$10,000 to \$50,000 compared to those with a bond between \$2,500 to \$10,000. Those with bond over \$10,000 spend 4.6 times longer in jail than those with a bond that is under \$10,000. Figure 6 below illustrates the impact of the initial bond amount on the length of time defendants spent in jail. Several other studies have demonstrated

the relationship between higher amounts of monetary pretrial release conditions and pretrial jail stays in misdemeanor defendants<sup>xv</sup> and felony defendants.<sup>xvi</sup>

The bond terms are also extremely important for determining how long defendants stay in jail pretrial. In Cuyahoga County, nearly 70 percent of felony level defendants have a cash or surety bond, while 26 percent have a personal bond. Defendants who are released on a personal bond have an average pretrial stay of fewer than four days. Defendants who have a cash or surety bond stay in jail pretrial on average for 51 days, which is more than 13 times longer. This finding, that secured financial conditions of pretrial release (e.g., cash, surety) result in lengthier pretrial jail stays than do unsecured or non-financial conditions, is consistent with other studies.<sup>xvii</sup>

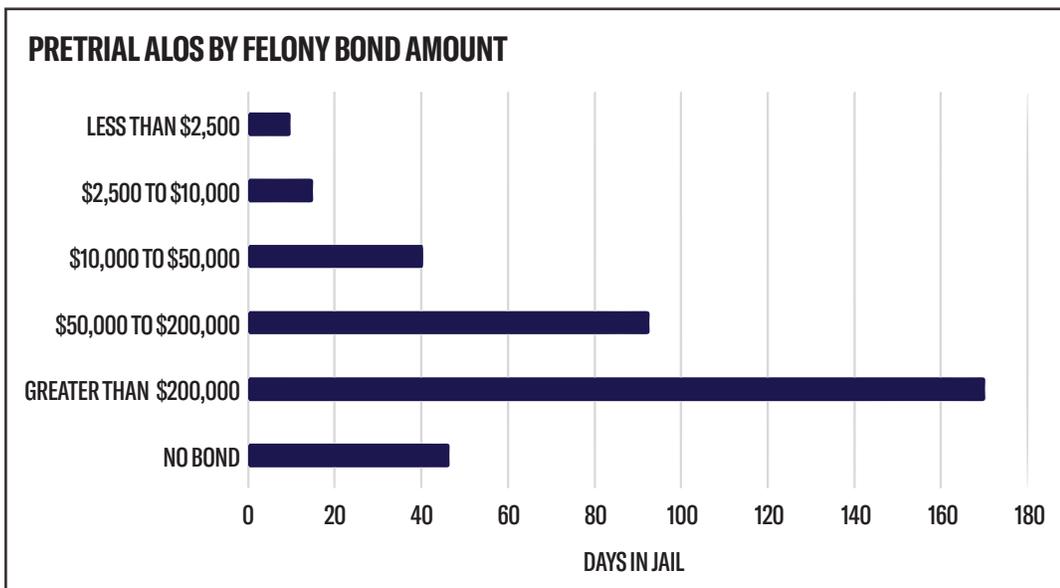


Figure 6.

Felony charges were split evenly between four broad categories: person, property, drug, and other, with person crimes being the most common (see Table 2). Bond amounts vary considerably by crime category.

**Nearly three out of four defendants**

**charged with a drug crime have a bond amount of under \$10,000**, while only 18 percent of defendants charged with a person crime have a bond amount under \$10,000. Table 2 below shows that on average, defendants charged with a person crime stay in jail much longer, nearly 2.8 times longer on average, than those charged with a non-person crime. As shown above, the time defendants spend in jail pretrial is closely related to the amount of the bond and bond terms. Nearly half of the defendants are able to post their bond the same day that it is set. A little more than a quarter post the bond later, and another quarter are unable to post the bond at all.

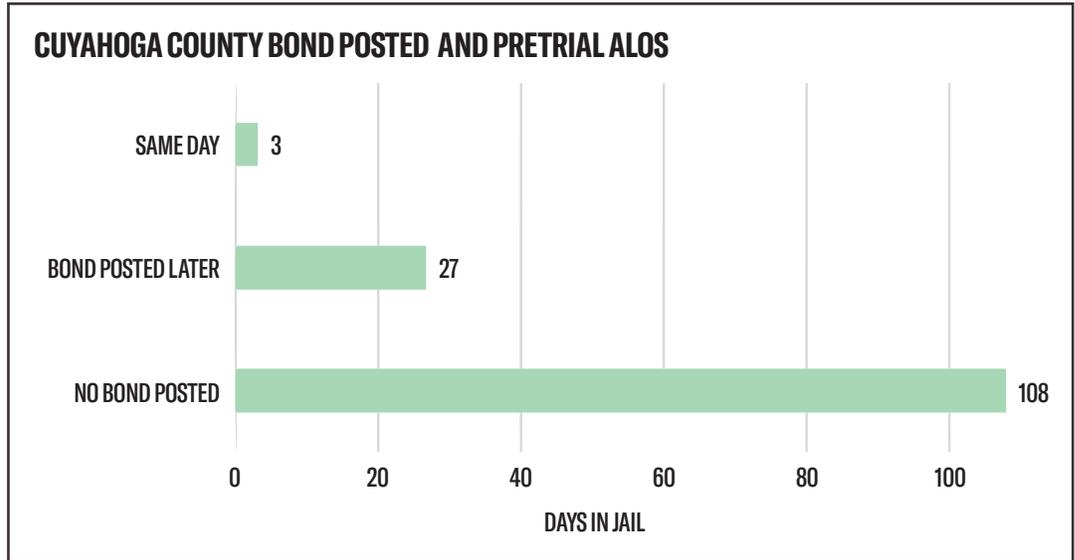


Figure 7.<sup>12</sup>

**In Cuyahoga County an average defendant charged with drug possession and unable to post a bond of under \$10,000 was incarcerated pretrial for two months.**

Defendants with higher bond amounts were less likely to post bond, but there were also defendants with relatively low bond amounts for less serious offenses who were also unable to post bond and therefore remained in jail. For example, in Cuyahoga County an average defendant charged with drug possession and unable to post a bond of under \$10,000 was incarcerated pretrial for two months. This means that even when a judge is not legally permitted to detain an individual, and may not be intending to detain the individual, that individual is nevertheless detained because they cannot afford to post a money bond. Other studies have also shown that secured financial release conditions cause people to remain in jail pretrial, even when that was not the intended outcome.<sup>xviii</sup>

CUYAHOGA COURT OF COMMON PLEAS CHARGES AND AVERAGE LENGTH OF STAY		
Crime	Number of Charges	Pretrial ALOS (Days)
Drug	5,292	17
Other	5,624	26
Person	6,742	65
Property	4,996	28
<b>Grand Total</b>	<b>22,654</b>	<b>35</b>

Table 2.

12 Figure 7 shows the importance of posting bond quickly. Those who are unable to post bond spend on average three and half months in jail pretrial while those who post bond the same day it was set spend just over three days in jail. For those who posted bond after the first day, 39 percent had their bond amount reduced by an average amount of nearly \$50,000.

## Franklin County

In Franklin County, felony bookings made up about 40 percent of the pretrial bookings into the jail.<sup>13</sup> The average individual charged with a felony stayed in jail over 22 days,<sup>14</sup> or 3.4 times longer than individual charged with a misdemeanor.

Just over 50 percent of felony defendants either posted bond or were released on their own recognizance. On average, these people spent less than nine days in jail.

**The defendants who were not released on their own recognizance and did not post bond spent nearly 36 days in jail pretrial, or nearly four times longer (Figure 9).** While we were not able to analyze defendants' ability to post bond by bond amount, lengths of stay were much longer across all crime categories for defendants who were unable to post bond. For the lowest level felonies, people who did not post bond stayed in jail pretrial more than eight times longer than those who were able to post bond.

FRANKLIN COUNTY PRETRIAL FELONY BOOKINGS BY CRIME TYPE

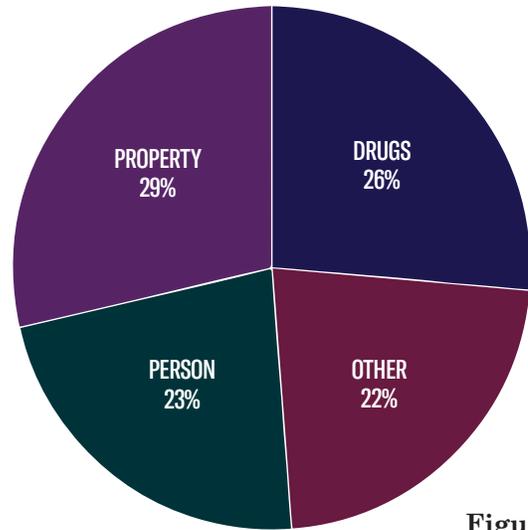


Figure 8.

FRANKLIN COUNTY PRETRIAL LENGTH OF STAY

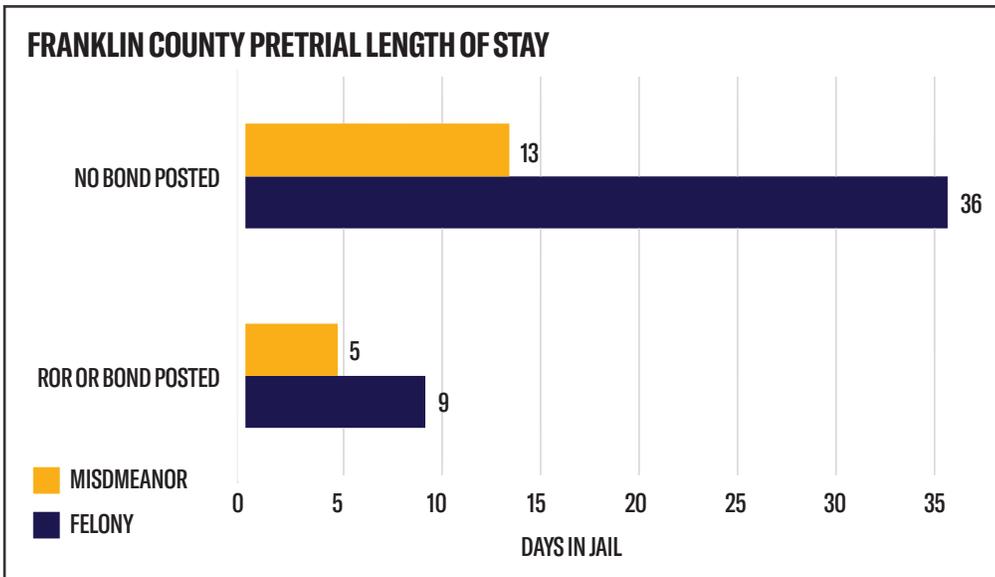


Figure 9.

13 For nearly two thirds of felony jail bookings, we were able to attach court records and examine whether the defendant was released on their own recognizance or if a bond was posted.

14 The data provided by the county included all bookings between January 27, 2018 and July 19, 2018. More than 12 percent of all individuals and more than 21 percent of individuals booked for a felony were still in jail as of July 19th when the data was pulled. In order to include all bookings in the length of stay analysis, we assumed individuals who were still in jail on July 19th were released on the 19th. As a result, the average length of stay estimates are an underestimate since some of these defendants would have spent many more additional days or months in jail after July 19th.

## **Athens and Vinton Counties**

For Athens and Vinton counties, there were a similar number of felony and misdemeanor defendants admitted to the Southeastern Regional Jail, but people charged with a felony stayed in jail more than four times longer on average than those charged with a misdemeanor. Because of the longer length of stay, felony defendants take up 84 percent of the jail beds used by these two counties.

The crime categories for people charged with a felony and admitted to the regional jail are fairly evenly split between drug (31 percent), “other” (28 percent), and property (29 percent). Person felonies stay in jail the longest, but only make up 12 percent of admissions.

In Athens and Vinton counties, felony defendants are much more likely to be released on their own recognizance than in Cuyahoga or Franklin counties. As seen in all jurisdictions in this analysis and in Figure 10 below, the length of time spent in jail increases substantially as the bond amount increases. Those with a bond amount over \$10,000 spend 3.3 times longer in jail than those with a bond amount of less than \$10,000.

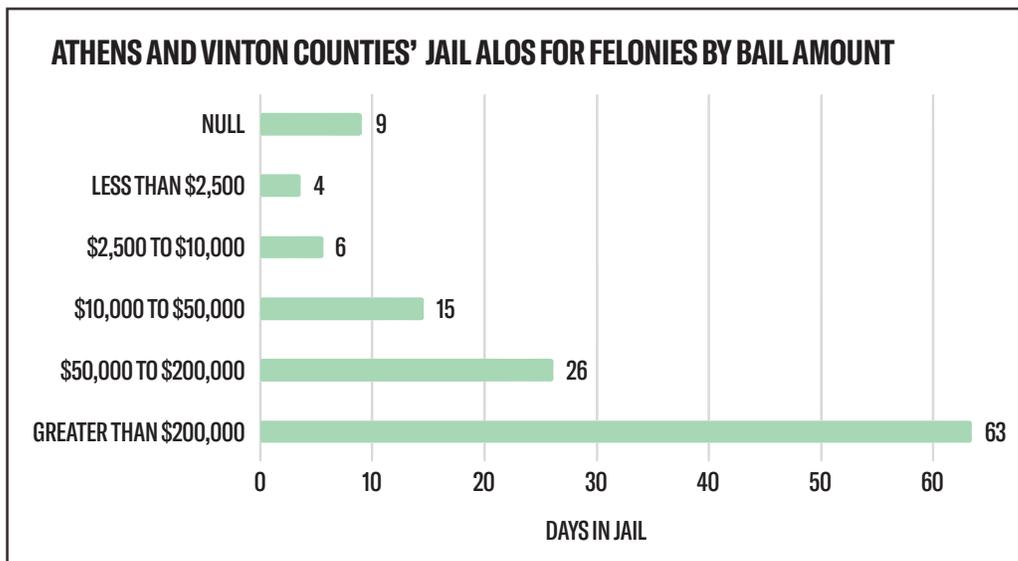


Figure 10.

# HOW LONG DO PEOPLE STAY IN JAIL AND WHY?

## KEY TAKEAWAYS



The most common felony booking in the counties we analyzed was drug possession. Driving with a suspended license was the most common misdemeanor booking in three of the four counties.



For both misdemeanors and felonies, those with higher bond amounts spend significantly more time in jail.

**2x-3x**

People booked into jail and charged with a misdemeanor in Euclid Municipal Court, Cleveland Municipal Court, Athens County, and Vinton County and with a bond amount of over \$2,500 stayed in jail two to three times longer than those with a bond amount of under \$2,500.

**3x-5x**

People booked into jail and charged with a felony in Athens, Vinton, and Cuyahoga counties and with a bond amount of over \$10,000 spend three to five times longer in jail than those with a bond amount of under \$10,000.

**3x  
4x**

In Franklin County, misdemeanor defendants unable to post bond spent three times longer in jail than those who were able to post bond or released on their own recognizance. Those charged with a felony who are unable to post bond spend four times longer in jail than those who posted bond or were released on their own recognizance.

**13x**



In Cuyahoga County, felony defendants who have a cash or surety bond stay in jail 13 times longer than those released on a personal bond. Those charged with a felony who are unable to post bond spend three and half months in jail pretrial while those who post bond the same day it is set spend just over three days in jail.

**10%**

In Cuyahoga County, 10 percent of common pleas defendants were released after their bond amount was reduced. The average reduction was just under \$50,000, with these individuals staying an extra and unnecessary 24 days in jail before their bond was reduced.

# RACIAL DISPARITY

Based on data from Cuyahoga County, across every crime category, Black individuals were more likely to have a bond set over \$10,000 and more likely to be denied release compared to white individuals charged with a crime in the same category. These numbers highlight bias in the criminal legal system which, through arrest, charging, prosecution choices, and later choices pertaining to money bonds, causes people of color to be overrepresented.<sup>xix</sup>

In Rocky River, Shaker Heights, and Euclid, 57 percent of defendants were Black, 40 percent were white, and the remaining three percent were another race. Recent census data shows over 54 percent of the population in these jurisdictions as white and 40 percent as Black. **This means that people who are Black are nearly twice as likely to be charged with a crime as people who are white.** While Cleveland data only included those with a PSA—or Public Safety Assessment, one of the risk assessment tools used in Ohio—there was an even greater racial disparity there. Over three quarters of defendants with a PSA were Black.

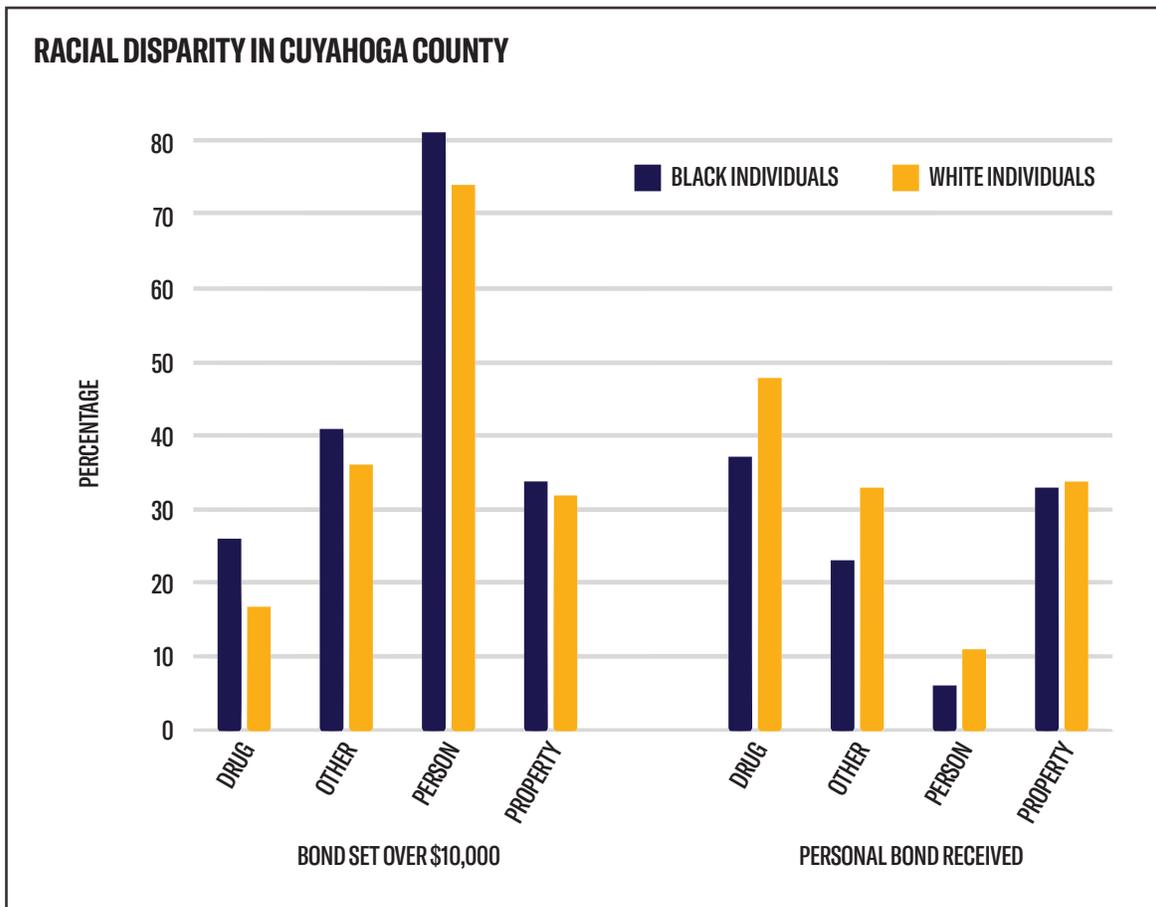


Figure 11.

## **Cuyahoga County**

In the Cuyahoga County Court of Common Pleas, racial differences exist in both the bond terms and the bond amounts set for white and Black defendants. Nearly 33 percent of white defendants received a personal bond, while less than 23 percent of Black defendants received a personal bond. Over 58 percent of white defendants had a bond set below \$10,000, while only 47 percent of Black defendants had a bond set below \$10,000. These differences exist across crime categories, and the disparity exists even when comparing white and Black individuals charged with crimes in the same crime category. For example, Black people charged with drug crimes received a bond set over \$10,000 26 percent of the time, but white people charged with drug crimes received bonds set over \$10,000 only 17 percent of the time. Similarly, Black people charged with drug crimes received a personal recognizance bond only 37 percent of the time, while white people charged with drug crimes received a personal recognizance bond 48 percent of the time.

**As a result, Black people spent on average more than 10 days or 36 percent longer in jail pretrial than white people. These racial disparities in pretrial bond setting and the resulting pretrial detention are consistent with other research.<sup>xx</sup>**

There is also racial disparity in the percentage of cases filed for Black and white defendants. Based on census data, nearly 64 percent of residents of Cuyahoga County are white and nearly 31 percent are Black. For felony cases filed, more than 68 percent were Black and 27 percent were white. **This means that Black people were 5.2 times more likely than white people to be charged with a felony.** As described above, when Black people are incarcerated, they are more likely to stay in jail longer than white

people, meaning the racial disparity grows as people move further into the criminal legal system. **In Cuyahoga County, Black people were nearly seven times more likely than white people to be in jail pretrial on a felony charge.**

**As a result, Black people spent on average more than 10 days or 36 percent longer in jail pretrial than white people. These racial disparities in pretrial bond setting and the resulting pretrial detention are consistent with other research.**

## **Franklin County**

Racial disparity in charging, jail bookings, and overall jail bed usage also existed in Franklin County. White people made up the highest percentage of bookings at 49 percent, with Black people a close second at 48 percent. Based on census data, nearly two thirds of Franklin County's population is white, and less than one quarter is Black. This means that Black people are 2.6 times more likely than white people to be charged in the Franklin County municipal court. Black people who are charged are slightly more likely to be booked into jail and to stay longer when they are booked. **As a result, Black people are nearly three times more likely than white people to be in jail pretrial in Franklin County.**

## Athens and Vinton Counties

Athens and Vinton counties have a much higher percentage of white people in both the county population and the criminal legal population than do Franklin and Cuyahoga counties. In these two non-metro counties, nearly 93 percent of the population is white, and just over 2

percent is Black. While very few Black people are booked into jail in these two counties, the percentage is still higher than the overall percentage of the population. **Black people are nearly two times more likely than white people to be in jail in these two non-metro counties.**

## RACIAL DISPARITY KEY TAKEAWAYS



In all jurisdictions analyzed, Black people were more likely to be charged and booked into jail than white people.



In Cuyahoga County, Black people were less likely to receive a personal bond and more likely to have a bond set above \$10,000, even when looking at crimes within the same category.



There was greater racial disparity for more serious charges, meaning Black people had an even higher likelihood of being charged with a felony.



There was also greater racial disparity for time spent in jail. In Cuyahoga County, Black people were nearly seven times more likely than white people to be in jail pretrial on a felony charge.

## RISK ASSESSMENTS

Risk assessment tools use algorithms to help determine whether an individual defendant creates a risk of failing to appear at future court dates or of engaging in new criminal activity. While these algorithms purport to provide an objective assessment, they rely on pre-existing data from the criminal legal system, which we know, as outlined above, is riddled with racial bias. Some factors utilized by certain risk assessment tools are a direct criminalization of poverty (i.e. is the defendant from a high crime neighborhood?). Other risk assessment tools use factors that are a better indicator

of police bias and decision-making (i.e. the person's age at first arrest). Even factors like prior convictions do not take into consideration the coercive factors that exist, especially in jurisdictions that still use money bond (i.e. for some defendants, pleading guilty may mean you get to go home to your family today, but maintaining your innocence could require you to stay in jail for many more weeks if not months). Additionally, these tools do not take into consideration any mitigating factors such as whether support measures like court text reminders could lower the person's "risk."

The risk assessment tool used in Cleveland Municipal Court, the Pretrial Safety Assessment or PSA, was designed by Arnold Ventures to provide judges with additional information for pretrial decision-making. The assessment relies on nine factors to create three scores: failure to appear, new criminal activity, and new violent criminal activity. The failure to appear and new criminal activity scores use a six-point scale, and the new violent criminal activity score is a yes/no flag. **While many, including some public defenders, hoped that the PSA would help the court to quickly release those who do not pose a high risk, the data do not support this outcome.**

Very few assessed defendants have a release decision indicated in the data set, with nearly three quarters of defendants having a blank value for release decision. As seen in Figure 12, of those with a release decision indicated, **nearly three quarters have a release decision labeled “detain.”** Of defendants who had a three or lower on both their failure to appear and new criminal activity scores and did not have the new violent criminal activity flag, over 60 percent had “recommendation to detain” indicated in the dataset. This means that the majority of the lowest risk individuals without a violence flag are not being recommended for release. **When a defendant has a release decision of “detain” instead of release with conditions or own recognizance, they stay in jail three to four times longer for misdemeanors and five to six times longer for felonies.<sup>15</sup>**

**The majority of the lowest risk individuals without a violence flag are not being recommended for release.**

Racial differences also exist in the PSA scoring. In both the failures to appear and new criminal activity scales, Black people are more likely than white people to score higher. Black people are also significantly more likely to have a violence flag than white people—41 percent of Black people have the flag compared to 36 percent of white people.

**CLEVELAND RELEASE DECISION BY ASSESSMENT**

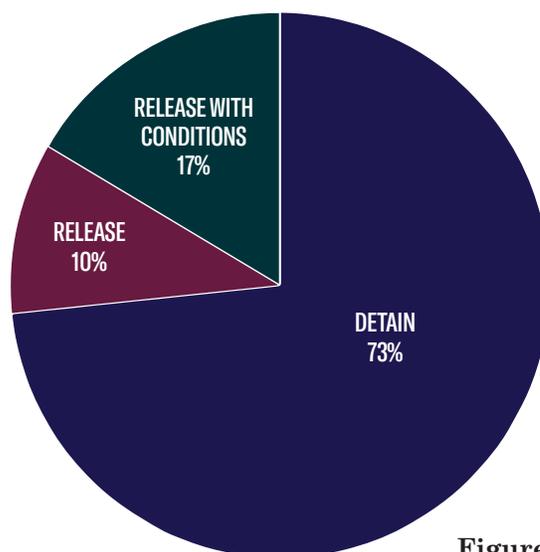


Figure 12.

<sup>15</sup> It should be noted that the current PSA guides and resources available at the PSA Help Desk state that a release conditions matrix that incorporates PSA scores should never recommend or presume that a person be detained pretrial because a person scores a certain way on the PSA. Rather, pretrial detention must be determined consistent with federal and state pretrial law (which do not include the results of an actuarial assessment such as the PSA).

Franklin County also provided data on their pretrial program with assessment scores<sup>16</sup> and release recommendations for people charged with a misdemeanor. Some, but not all, defendants in Franklin County are interviewed by their Pretrial Services Department, which can lead to a report being provided to the judge in addition to the risk assessment score.<sup>xxi</sup> Nearly 80 percent of misdemeanor bookings were not assessed. Of the 20 percent that were assessed, 38 percent were not interviewed and were not assigned a risk level. Out of all misdemeanor bookings, just under 13 percent received a risk score of high, moderate, or low, with 32 percent scoring low, 47 percent moderate, and 21 percent high. The length of time in jail pretrial increased as the risk score increased, with “high-risk” defendants staying more than three times longer than low-risk defendants and moderate-risk defendants staying more than twice as long as low-risk defendants.

The risk scores are used to help inform bail recommendations in Franklin County. Table 3 below shows that lower risk defendants have a higher likelihood of a recommendation of release on own recognizance, but even the high-risk defendants have a recommendation of release on own recognizance more than two thirds of the time.

FRANKLIN COUNTY PRETRIAL RISK AND BAIL RECOMMENDATION					
Risk	Defer		ROR		Total
	Number	Percent	Number	Percent	
LOW	19	8%	229	92%	248
MOD	59	16%	306	84%	365
HIGH	54	33%	111	67%	165
<b>Grand Total</b>	<b>132</b>	<b>17%</b>	<b>646</b>	<b>83%</b>	<b>778</b>

Table 3.

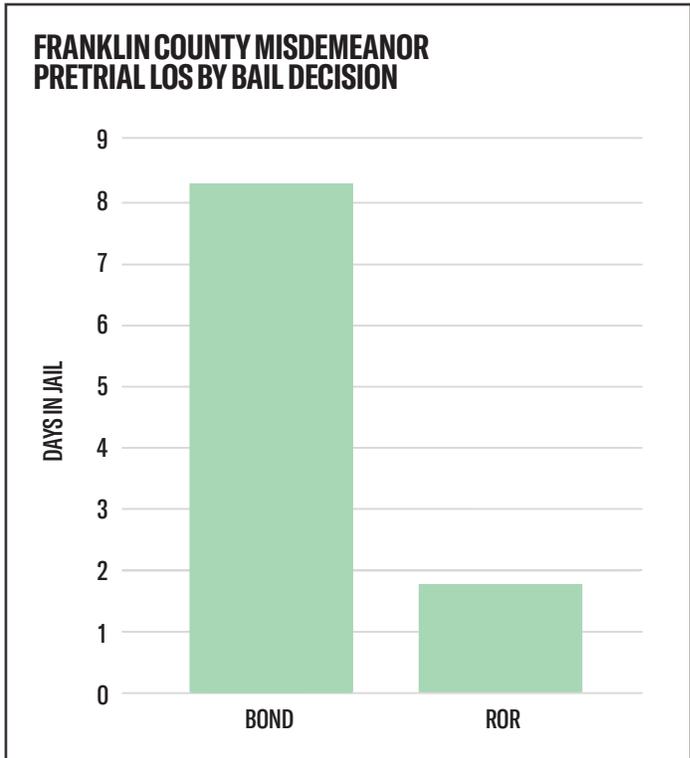


Figure 13.

The bail recommendation is then included as part of the information used to make the bail decision. In more than two thirds of the cases, the bail recommendation and bail decision agree. When the bail recommendation is “Defer,” 75 percent of the bookings have a bond set. When the bail recommendation is “Release on Own Recognizance,” 63 percent of the bookings are released on own recognizance. Figure 13 above shows the difference in length of stay by bail decision. Those released on their own recognizance stay less than two days, while those with bail set stay over 8 days or 4.7 times longer.

16 Franklin County uses the Ohio Risk Assessment System – Pretrial Assessment Tool (ORAS-PAT), which places defendants into low-, moderate-, and high-risk categories.

## RISK ASSESSMENTS

### KEY TAKEAWAYS



In both Cleveland Municipal Court and Franklin County Municipal Court, risk assessment information was only used for a small percentage of defendants.



In Cleveland, Black people were more likely to score higher on the new crime, new violent crime, and failure to appear risk scores.

40%

In Cleveland, even the lowest risk individuals received a recommendation of release only 40 percent of the time.

## POLICY RECOMMENDATIONS

Our policy recommendations are responsive to three goals: promoting public safety, ending wealth-based detention, and saving taxpayer dollars.

As the American Bar Association's 2007 and National Association of Pretrial Services Agencies' 2020 national best practice standards recommend, **courts should release nearly all people on their own recognizance before their first court appearance. This release valve currently exists in Ohio, but only for those with financial resources.** Across Ohio, many jurisdictions have bond schedules that allow people to pay for their release before seeing a judicial officer. This is problematic for two reasons: it promotes unconstitutional wealth-based detention, and it allows people who may pose a threat to purchase their release if they have the resources to do so.

These reforms will actually promote public safety, compared with our current system which allows wealthy people to buy their release.

This policy change is estimated to reduce the pretrial population by 71 percent, or an estimated 8,892 fewer people in jail on any given night, and avoid between \$218 to \$284 million in jail costs annually.

## We propose the Ohio legislature:

1. Create a release valve by instituting a presumption of release. This should require that everyone charged with a crime be released the same day as their arrest, unless a prosecutor or judge is concerned the person is a flight risk or poses a threat to a specific person, in which case a conditions of release hearing may be held.
2. Require a conditions of release hearing within 48 hours of the accused person's arrest and detention if they have not already been released. At the hearing, a judge could set a number of different conditions of release necessary to assure appearance and the safety of specific individuals (i.e. pretrial supervision, employment requirements, GPS monitoring, and even—under some circumstances—money bond). For those charged with the most serious crimes for which preventive detention is available, conditions of release hearings could turn into preventive detention hearings at the request of the judge or prosecutor.

Based on our data analysis, if Ohio were to adopt the practices summarized above, **we estimate that all people charged with a misdemeanor, and 75 percent of people charged with a felony not eligible for preventive detention, would be released from jail within a few hours, with the remaining 25 percent released within three days after a conditions of release hearing.** For those who are eligible for preventive detention,<sup>17</sup> we estimate that 25 percent would be released within 10 days and the remaining 75 percent would stay an average of 64 days.<sup>18</sup> **This policy change is estimated to reduce the pretrial population by 71 percent, or an estimated 8,892 fewer people in jail on any given night, and avoid between \$218 to \$284 million in jail costs annually.**<sup>19</sup>

Some who are no longer held in jail will presumably be supervised until their case is disposed. While it is not necessary to supervise all pretrial defendants, we assumed that for each avoided day in jail, there would be an additional cost for a day on pretrial supervision. While pretrial supervision costs will vary by county,<sup>20</sup> we used the recent data from Cleveland as a rough estimate of statewide costs per day, which comes to six dollars per person per day. Based on the above estimates of 8,892 fewer jail beds, the assumption that each avoided jail bed would result in an additional individual supervised pretrial, and a cost per day of six dollars, we estimated an offsetting pretrial supervision cost of \$19.5 million. **This means our policy recommendations result in an overall estimated cost savings of \$199 to \$264 million per year.**

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17 This includes all first and second degree felonies, vehicular homicide, aggravated murder, felony menacing by stalking, and felony operating a vehicle while intoxicated.

18 This is the current length of pretrial stay for defendants who are eligible for preventive detention.

19 A more detailed description of this calculation can be found in the appendix.

20 In 2017, Summit County pretrial supervision costs varied from \$1.32 per day for minimum supervision to \$5.02 per day for maximum supervision.

# POLICY RECOMMENDATIONS

## KEY TAKEAWAYS



We propose the Ohio legislature create a release valve by instituting a presumption of release that would require everyone charged with a crime to be released the same day unless a conditions of release or detention hearing is scheduled, which should take place within 48 hours of the accused person's arrest and detention.

71% ↓

Our policy recommendations are estimated to reduce the pretrial population by 71 percent, or 8,892 fewer jail beds, and avoid between \$218 to \$284 million in jail costs annually.



We estimate that there would be offsetting costs of increased pretrial supervision of \$19.5 million per year.



Overall, our policy recommendations result in an estimated annual cost savings of \$199 to \$264 million.

## CONCLUSION

Ohio's current money bond system costs us in ways we cannot quantify. People, like Maurice, spend months in jail and are put at risk of losing their jobs, their homes, and even custody of their children, not because of what they have done, but because of what they don't have. Today, years after Maurice was arrested for a crime he did not commit, he is living with a friend, and still holds a less lucrative job than the one he loved and lost while in jail.

This fiscal impact analysis does not begin to assess the larger individual and taxpayer costs of the devastating personal consequences caused by our current money bond system. It does not address the financial cost of a depressed work force, increased social benefits requests, or burdens on children's services that could result when people are unnecessarily jailed pretrial. **However, this report does provide a detailed analysis of the significant cost savings that could be realized, looking solely at decreased jail populations and increased pretrial supervision costs. True bail reform, like what is recommended above, would end wealth-based detention, promote public safety, and save Ohioans between \$199 to \$264 million annually.**

# APPENDIX – DATA COLLECTION AND METHODOLOGY

## **Data Collection**

Data was gathered from four Cuyahoga County municipal courts, the Cuyahoga County Jail, the Cuyahoga County Court of Common Pleas, the Athens County Municipal Court, the Southeastern Regional Jail, the Franklin County Municipal Court, the Franklin County Jail, and Franklin County Pretrial Services. Because of staff capacity and the collection process taking over a year, the data were gathered from slightly different time periods.

Euclid and Shaker Heights municipal court data came from the same data system and was gathered from January 1, 2017, through June 30, 2019. To be consistent with the common pleas data, we chose two full years of data from July 1, 2017, through June 30, 2019. To analyze misdemeanor bookings into the jail, we merged data from the Euclid Municipal Court with data from the Cuyahoga County Jail. This data was merged using the defendant's date of birth, the last four digits of their social security number, the defendant's first and last name, and a date range for the booking between seven days before the case was filed and the disposition date. When there were multiple charges or the multiple cases filed on the same day for the same individual, the most serious charge was chosen for the analysis. The most serious case was selected using the crime class and crime type, with class one person felonies being the most serious.

Data from the Rocky River Municipal Court was collected for cases arraigned from January 1, 2017, through October 21, 2019. To be consistent with other Cuyahoga County court data, we chose two full years of data from July 1, 2017, through June 30, 2019, for the analysis in this report. We did not have disposition data from Rocky River, making it difficult to attach jail records to the court records. We made attempts to match jail records using the same criteria as described above for Euclid but did not include the jail analysis in this report.

While the Euclid, Shaker Heights, and Rocky River data included all criminal charges, the Cleveland data only included people who had a Public Safety Assessment administered. As a result, the Cleveland data was not included in the analysis that examined all criminal charges. The Cleveland Municipal Court data was collected for cases with a PSA between August 28, 2017, and October 9, 2019. For the analysis in this report we included two full years of data for people with a PSA from September 9, 2017, to August 30, 2019. We applied the same logic as described above

to choose one case per PSA date. To attach jail records, we relied on the same unique identifiers as described above. We did not have a disposition date from the municipal court data, so we attached disposition dates for felonies from the common pleas data set. When a disposition date was available we used the same logic as described above. When a disposition date was unavailable we matched jail records by ensuring the PSA or case filing took place in between the booking date and release date.

The Cuyahoga County Court of Common Pleas supplied records from July 1, 2017, through December 10, 2019. For the analysis in this report, we included records that were bound over or indicted between July 1, 2017, and June 30, 2019. For case level analysis we took the most serious charge and chose one case per indictment date. The court records were merged with jail data from the Cuyahoga County Jail. Records were joined by the last four digits of the social security number, the date of birth, and the booking date between seven days before the case was filed and the disposition date. This provided a reliable match, but some records that should have matched did not match because of data entry errors. There were also likely some records that did match that were jail bookings on other cases. There were also jail records that merged to two or more different charges. For the length of stay analysis we chose the most serious case per booking so that one booking was not double counted.

The Cuyahoga County Jail provided data for bookings from January 1, 2016, through August 22, 2019. This data was used to match Euclid and Cleveland municipal court charge data and Cuyahoga Court of Common Pleas charge data to the jail bookings and release data. The jail data did not contain a court number or other identifier to directly tie a booking to a specific charge. In order to attach a jail record to a specific charge we matched based on the unique identifiers and date ranges described above. When there were multiple matches we chose the booking that most closely matched by date and then by charge. Only one booking was matched to each charge.

For the Franklin County analysis, we received the same data used by P3 for their 2018 analysis.<sup>xxii</sup> This data included municipal court records from November 2, 2017, to June 30, 2018, jail data from January 27, 2018, to July 19, 2018 and pretrial data from January 10, 2018, to August 7, 2018. We first attempted to merge jail records to the municipal court data. We were able to merge some records using name, date of birth, and date

matches. However, the lack of a unique identifier and recent data system upgrades made this process unreliable. Instead, we followed the same process as P3 and used the jail file as the starting point for our analysis. The jail file contained data that described court events (e.g. arraignment, pretrial, revocation hearing, etc.) that allowed us to flag bookings that were pretrial. We were also able to use the dates associated with those pretrial events to estimate the amount of time spent in jail pretrial. An important limitation to note is that Franklin County Jail data included bookings that occurred over a relatively short time period, January 27, 2018, to July 19, 2018. This means the longest possible length of stay captured in the data is 173 days. Many people were still in jail when the data was pulled, and there is no way of knowing when they would have been released. This causes the overall length of stay calculations to be lower than it would otherwise be if a fuller dataset were available.

We received Athens Municipal Court data from January 1, 2017, through May 30, 2019. Unfortunately, this was not in a format where it could be joined with jail data. There were also limitations in the data for case outcomes and we were unable to use the municipal court data for our analysis.

We received data from the Southeastern Regional Jail. This data contained bookings and releases for all of 2018 and 2019. This jail serves Athens, Hocking, Morgan, Perry and Vinton counties and includes data for all five of these counties. For our report we analyzed the jail records for Athens and Vinton counties. This data contained detailed information on crime types and classes as well as jail release reason. However, there were no clear indicators of whether an individual was in jail pretrial or post-disposition. For our pretrial length of stay estimates, we removed records with a release reason of prison, sentence complete, time served, transferred, and transported. We also removed people who were in jail on a hold or violation.

### **Crime Categorization**

All of the datasets provided contained the Ohio Revised Code provision, and most also contained a description of each charge. We used these two fields to create four broad crime categories: person, property, drug, and other. To create the person category, we looked for key words in the crime description such as assault or domestic violence, robbery, rape or sex offense, and other person crimes. We used the same process for property crimes, using key words

such as burglary, theft, fraud, forgery, and other property crimes. Drug crimes contained key words such as drug possession, trafficking, illegal manufacturing, and other drug-related crimes. Other crimes included weapons charges, driving charges, escape, and charges not captured in the other three categories. When the jurisdiction did not provide offense descriptions, we created a lookup table using the Ohio Revised Code to classify crimes in the proper categories.

### **Racial Disparity**

Racial disparity calculations were created by dividing the rate of criminal justice involvement for Black people relative to the rate of criminal justice involvement for white people. We used court and jail data to estimate the number of charges, jail admissions, or jail bed usage for each racial group and then divided by the most recently available census population data<sup>21</sup> to estimate the rate of system involvement for each group. We then divided the criminal justice involvement rate for Black people by the criminal justice involvement rate for white people to estimate the rate of racial disparity. For example, in Cuyahoga County there was an annual average of 3,059 felony cases where the defendant was white and 7,690 people cases where the defendant was Black. Based on 2019 census data there were 785,500 white individuals and 376,700 Black people in the county. The formulas below show the rate of felony charges per 1,000 people.

$$\begin{aligned} \text{Charge Rate}_{\text{Race}} &= \text{Felony Charges}_{\text{Race}} \times 1,000 / \text{Population}_{\text{Race}} \\ \text{Charge Rate}_{\text{White}} &= 3,059 \times 1,000 / 785,506 = 3.9 \\ \text{Charge Rate}_{\text{Black}} &= 7,690 \times 1,000 / 376,697 = 20.4 \end{aligned}$$

The racial disparity calculation divides the charge rate for Black people by the charge rate for white people:

$$\begin{aligned} \text{Racial Disparity} &= \frac{\text{Charge Rate}_{\text{Black}}}{\text{Charge Rate}_{\text{White}}} \\ \text{Racial Disparity} &= \frac{20.4}{3.9} = 5.2 \end{aligned}$$

This number can be interpreted as the likelihood in Cuyahoga County of a Black person being charged with a felony relative to a white person being charged with a felony. A number greater than one means Black people are more likely than white people to be involved in the criminal justice system. In this example, a Black person is more than five times as likely to be charged with a felony.

21 Population data was found at the Census Bureau's QuickFacts page: <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

## **Jail Data**

Most states do not collect comprehensive jail statistics that describe how many people are in jail in each county or whether they have been sentenced or are incarcerated pretrial. The Ohio Department of Rehabilitation and Correction (DRC) published that on June 30, 2018, there were 20,561 people in jail, with 61 percent being unsentenced. Unfortunately, this data is not broken out by county.

While it was not feasible to study pretrial decision making in all of Ohio's 88 counties, we were able to estimate impacts from two non-metro and two metro counties. We also used the pretrial population data from all 88 counties using the Vera's Institute of Justice incarceration tool. While the two non-metro counties only make up a small fraction of the state's jail population, Franklin and Cuyahoga counties make up 22 percent of the state's population and 27 percent of the state's pretrial population.

Incarceration Trends, created by the Vera Institute of Justice, contains county level jail data from 1970 to 2017. This data includes the overall number of people in jail as well as the pretrial jail population and is a snapshot of the June 30 population of each year.<sup>22</sup> While the Vera 2017 estimates do not exactly match the number provided by the Ohio DRC, the overall jail population is within 2.5 percent and the unsentenced population is within 0.5 percent. Since the Vera data so closely matches Ohio's DRC jail population and is presented at the county level, we relied on the Vera pretrial population estimates for our statewide analyses. On June 30, 2017, there were an estimated 1,980 people in non-metro county jails awaiting trial and 3,846 people total. Nearly 83 percent or 9,598 people incarcerated pretrial were in a metro county jail and over 80 percent or 15,605 of all people in jail were in a metro county.

## **Marginal Cost**

Average costs include fixed costs such as utilities, administrative staff, and capital costs.

By contrast, marginal costs assume changes in operational costs based on smaller changes in service units because of fluctuations in the daily jail populations. Accordingly, operational budgets for these estimates exclude certain staff salaries and benefits. Expenses for materials, supplies, transportation, front line staff, and similar expenses should be included. The average cost is more easily obtained but will overstate the true costs or savings of smaller changes in population. For example, many studies that examine the savings from avoided jail beds often mistakenly use the average cost of a jail bed to calculate the overall savings from a policy.<sup>23</sup> For very small and short-term changes in the jail population, marginal costs include food, linens, and possibly medical costs, but will not include staffing changes. For our estimates, we assumed larger and longer-term changes in the jail population that would allow for changes in front-line staffing.

For our estimates we included staff wages and benefits, office supplies, food, linens, medical, and other direct costs to house, feed, and care for inmates. We excluded indirect costs and maintenance costs. We also obtained more detailed staffing data so that administrative and supervisory staff could be excluded from the long-run marginal cost estimate.<sup>24</sup>

Based on data from the Vera Institute of Justice's Incarceration Trends and federal data sources that report data for non-metro counties,<sup>25</sup> we estimated that 17 percent of Ohio's pretrial jail population is in non-metro counties. Using the estimated cost per day for Athens and Vinton counties as a proxy for non-metro counties' costs and using Cuyahoga and Franklin counties' cost per day as proxy for metro costs, we estimate the statewide marginal cost of jail to be \$86.30 per day. For our low end estimate we relied on the fiscal note for HB 439 that lists the cost per day for inmates in Ohio's jails as \$64.45. For the estimated fiscal impact of our proposed policy change, we adjusted these costs to account for inflation<sup>26</sup> and used these two estimates to form a range of jail costs.

22 For a more detailed description of this data source visit the Incarceration Trends website.

23 See the Vera Institute of Justice guide on calculating marginal costs (<https://www.vera.org/publications/a-guide-to-calculating-justice-system-marginal-costs-1>).

24 In Franklin County, if the population changes 30 percent or less, the short-run marginal cost was estimated to be \$24.62. Changes larger than 30 percent result in changes in staffing which increases the long-run marginal cost to \$89.41.

25 The metro/non-metro designation was based on data from the 2010 United States Census and the Office of Management and Budget. The list was compiled by the USDA and Office of Rural Health Policy. The complete list of Ohio metro/non-metro counties can be found in the Appendix.

26 We used the consumer price index to adjust 2017 and 2018 costs to 2019 inflation adjusted costs. Our inflation adjusted marginal cost range was \$67.22 to \$87.40 per day.

## Cost Avoidance Calculation

The cost avoidance calculations relied on the most recent estimates of Ohio’s pretrial population. The Ohio DRC published that on June 30, 2018, there were 12,592 individuals in jail that were not sentenced. We relied on this number, the marginal cost of jail estimate described in the cost section above, data analysis of those eligible for preventive detention, and the estimates of changes in practice. Based on Cuyahoga and Franklin counties’ data, we estimated that 43 percent of felony jail bed usage was for people who were eligible for preventive detention. We used the Cuyahoga County average pretrial length of stay in jail as it contained the most reliable length of stay estimates. The average pretrial lengths of stay for those eligible for preventive detention was 64 days, and for those not eligible the average pretrial length of stay was 23 days. We assumed that under the new policy 75 percent of people who were not eligible for preventive detention would spend half a day in jail and the other 25 percent would spend three days in jail. For those who are eligible for preventive detention, we assumed that 25 percent would have their average length of stay reduced to 10 days in jail, and the remaining 75 percent would continue with their current average length of stay. This results in an estimated length of stay reduction of 21 percent for those eligible for preventive detention and a 95 percent length of stay reduction for those who are not eligible for preventive detention. For misdemeanors, we found the average length of stay from Cleveland, Franklin County, Athens County, and Vinton County of 7.4 days. We assumed defendants would now stay half a day, or a 93 percent reduction in their length of stay. The specific jail bed reduction calculation for this impact is:<sup>27</sup>

$$\begin{aligned} & \text{Total PT beds} \times (\% \text{No PD} \times \% \text{PT ALOS Red} + \% \text{PD} \times \% \text{PT} \\ & \text{ALOS Red} + \% \text{Misd} \times \% \text{PT ALOS Red}) = \text{PT Bed Red} \\ & 12,592 \times (43\% \times 95\% + 33\% \times 21\% + 24\% \times 93\%) = 8,892 \end{aligned}$$

To estimate the overall cost avoidance, we multiply the estimated bed reduction by the statewide marginal cost per day of jail and subtract off supervision costs. We estimated this using two different marginal cost estimates. The calculation below uses the higher of the two estimates.

$$\begin{aligned} & \text{Bed Reduction} \times (\text{Jail Cost per day} - \text{Supervision Cost per day}) \\ & \times 365 = \text{Annual Cost Avoidance} \\ & 8,892 \times (\$87.40 - \$6.00) \times 365 = \$264 \text{ million} \end{aligned}$$

## Non-metro County Designation

Non-metro county designations were taken from United States Department of Agriculture’s Economic and Research Services.<sup>28</sup> These designations are updated after each census with the most recent update occurring in 2013.

Non-metro County	Metro County	Non-metro County	Metro County
Adams	Allen	Logan	Miami
Ashland	Belmont	Marion	Montgomery
Ashtabula	Brown	Meigs	Morrow
Athens	Butler	Mercer	Perry
Auglaize	Carroll	Monroe	Pickaway
Champaign	Clark	Morgan	Portage
Clinton	Clermont	Muskingum	Richland
Columbiana	Cuyahoga	Noble	Stark
Coshocton	Delaware	Ottawa	Summit
Crawford	Fairfield	Paulding	Trumbull
Darke	Franklin	Pike	Union
Defiance	Fulton	Preble	Warren
Erie	Geauga	Putnam	Wood
Fayette	Greene	Ross	
Gallia	Hamilton	Sandusky	
Guernsey	Hocking	Scioto	
Hancock	Jefferson	Seneca	
Hardin	Lake	Shelby	
Harrison	Lawrence	Tuscarawas	
Henry	Licking	Van Wert	
Highland	Lorain	Vinton	
Holmes	Lucas	Washington	
Huron	Madison	Wayne	
Jackson	Mahoning	Williams	
Knox	Medina	Wyandot	

<sup>27</sup> The total from this calculation will be slightly lower due to rounding errors.

<sup>28</sup> The county breakdown of metro and non-metro can be found here: <https://www.ers.usda.gov/data-products/rural-urban-continuum-codes/>.

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