

# Vera Institute of Justice

## Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/jail-incarceration-in-wayne-county-michigan>

### Policy Issue Resources

*Since this report was written, the world has changed dramatically due to the COVID-19 pandemic. As the pandemic has spread rapidly across the country, the importance of reducing the population of local jails has been heightened. Jails are unique incubators for viral spread, as the people incarcerated in them are unable to engage in social distancing and usually lack access to preventative measures like hand sanitizer, masks, or handwashing. Jails also have the potential to become significant vectors for the spread of COVID-19 in their communities.*

*Wayne County and especially Detroit have been hit hard by COVID-19. Responding to concerns about the spread of COVID-19 in the Wayne County Jail, stakeholders have engaged in extensive efforts to reduce the jail population. As a result of these efforts, the Wayne County Jail has seen a remarkable decrease in its population, dropping from 1,410 people at the end of February to 876 on April 28, a reduction of almost 38 percent. Vera Institute of Justice, COVID-19 and Criminal Justice: City Spotlights Detroit, <https://www.vera.org/covid-19/>. With this sharp drop in the population of the Wayne County Jail, the landscape has changed significantly from the pre-pandemic analysis laid out in this report. We believe, however, that the analysis and recommendations contained in this report can still be useful to Wayne County as it looks to the future.*

*The COVID-19 pandemic has brought devastation and tragedy. However, it has also shown us that significant jail decarceration is possible within an extremely short period of time. Wayne County, like other jurisdictions across the country, has an opportunity to learn from the experience of rapid decarceration and reconceptualize how its jail will be used when the immediate crisis of the pandemic passes, and regular life begins to resume.*

This report presents findings and recommendations from the Vera Institute of Justice's (Vera's) study of the Wayne County Jail and the policies and practices of the local justice system that affect who is admitted to jail and how long they stay. The study was completed for a newly constituted Wayne County Jail Population Study Working Group, chaired by the chief judge of the Third Circuit Court, Timothy Kenny, and funded by the Hudson-Webber Foundation. The Wayne County Jail Population Study Working Group first convened in April 2019 and includes many of the people who have been actively working to improve the operation of the justice system and the jail. Over the course of 2019, Vera's team analyzed five years of administrative data from the Wayne County Jail and collected qualitative data on policies and practices from stakeholders inside and outside of the local justice system. Vera also met with community members in Detroit who have direct experience with the local justice system and advocates who have been working for years to make their communities safer and healthier. This study comes at an important moment, as Wayne County (Michigan) is on the verge of constructing the Wayne County Criminal Justice Center, a new jail and juvenile detention complex, with the goal of resolving longstanding problems in existing facilities.

For almost 50 years, the Wayne County Jail has been the subject of a lawsuit brought on behalf of people held at the jail, *Wayne County Jail Inmates v. Wayne County Sheriff*, challenging conditions and overcrowding. When the suit was brought in 1971, the jail consisted of one facility built in 1929. Over the years, as the sheriff's office was challenged to improve conditions and reduce overcrowding, two additional facilities were built with the hope of solving these problems and ending the suit, without success. The Andrew C. Baird Detention Facility was built in 1984, but double-celling was instituted shortly thereafter, with many of the same violations that existed previously; the William Dickerson Detention Facility was added in 1991. Third Circuit Court oversight has continued to the present day. Through more recent consent orders in this case, the court has sought to address overcrowding by setting an effective capacity for the three jail facilities. Many of these efforts have achieved results, and the population of the Wayne County Jail has been steadily decreasing since 2014. The average daily population (ADP) for July 1, 2018 through June 30, 2019 (the study period for this report) was 1,701, which is approximately 25 percent lower than the same period in 2014 through 2015. These ADP figures are based on the jail data the Wayne County Sheriff's Office provided to Vera. They differ from the numbers reported by the Bureau of Justice Statistics because the bureau's Annual Survey of Jails data did not include all the Wayne County Jail facilities.

The new Wayne County Criminal Justice Center is projected to house a 2,280-bed jail, the sheriff's office and the prosecutors office, a criminal courthouse, and a juvenile detention facility. Community members have raised concerns about the lack of transparency in the process and that building a new jail will unnecessarily expand the use of incarceration and reverse the steady decline of the jail population, especially if the population cap is lifted.

Given the history of jail expansion in Wayne County and the failure of prior jail construction to solve the population and conditions issues, the Wayne County Jail Population Study Working Group has taken an important step in developing long-term solutions that respond to the drivers not just the effects of jail population growth. Moreover, this study is taking place in the context of [a statewide effort](#) to improve the administration of justice and the overuse of local jails.

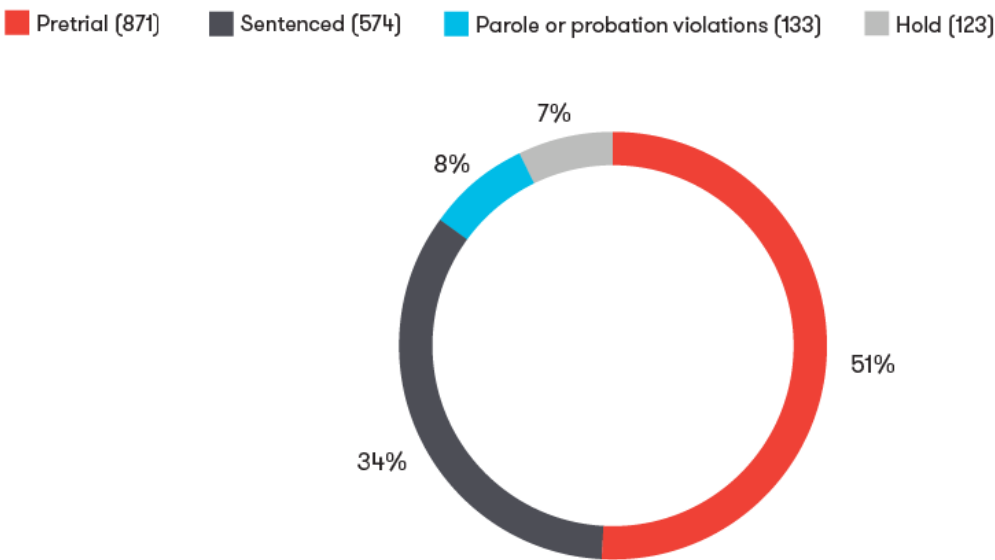
The findings highlight that there are many opportunities to further reduce the jail population and support the county's interest in safety and fairness. The recommendations focus on decisions that are made at the local level by county officials, police, judicial leadership and judges in the district and circuit courts, prosecutors, and others. We believe there is significant potential for change in these areas that can further reduce the jail population and improve the efficacy and equity of Wayne County's criminal justice system.

Read Vera's [full report](#). For consistency, figures in this special digital report are numbered to correspond to those in the print report and are not sequential.

Pretrial incarceration—the detention of people presumed innocent who remain in jail pending the resolution of the charge(s) against them—is the single biggest factor driving the Wayne County Jail population. Large numbers of people are booked into the jail for lower-level offenses, such as misdemeanors, local ordinance violations, or civil offenses. Because the people charged with these offenses do not stay in the jail as long, they make up a smaller proportion of the average daily population (ADP) than those charged with felonies. It is important to note, however, that the Wayne County Jail is a post-arraignment facility, which means that even people who are released quickly usually have spent one to three days in the Detroit Detention Center or local lockups before even getting to the Wayne County Jail. Many people are held in jail pretrial because bail has been set, and they cannot afford to pay. Even for a post-arraignment facility, the number of people released without having to post cash bond is very low. Finally, while many people are held in the jail pretrial and then released on time served, even people who are ultimately sentenced to jail time frequently spend most of their time in jail before being sentenced.

Research shows that pretrial incarceration can increase both the likelihood of a sentence to incarceration and the length of that sentence; it can also increase the likelihood of a new arrest or failure to appear in court after being released. See for example Lon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention* (New York: Vera Institute of Justice, 2019), <https://perma.cc/5QCG-3GEL>; Christopher Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (Houston, TX: Laura and John Arnold Foundation, 2013), <https://perma.cc/RNE6-2Y2X>; Christopher Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (Houston, TX: Laura and John Arnold Foundation, 2013), <https://perma.cc/BH95-RRHS>; Paul Heaton, Sandra G. Mayson, and Megan

Figure 1  
ADP by legal status



**Reduce pretrial incarceration by reducing custodial arrests, increasing pretrial release, reducing the criminalization of civil issues, and expanding pretrial diversion.**

There are several immediate steps that Wayne County can take to reduce pretrial detention. First, the county should reduce the number of custodial arrests that lead to jail bookings. One way to achieve this would be to use alternatives to arrest, such as issuing appearance tickets or using alternative approaches to help people with mental illnesses. Custodial arrests can also be minimized by reducing the number of outstanding bench warrants that are issued for failure to appear in court, which drive admissions into the Wayne County Jail. There are many ways to improve court appearance rates without using arrest, such as:

To further reduce pretrial incarceration, Wayne County should:

Electronic monitoring, or what is commonly called tether in Wayne County, is widely used pretrial, but there is not compelling evidence that it increases public safety. There is limited research on pretrial electronic monitoring generally, and the research that does exist is often methodologically flawed, equivocal, or limited to specific populations like people charged with domestic violence or sex offenses. A number of meta-analyses and literature reviews have concluded that there is not enough evidence to support the effectiveness of electronic monitoring, with some studies even showing an increase in pretrial failure for those on electronic monitoring. See for example Marc Renzema and Evan Mayo-Wilson, "Can Electronic Monitoring Reduce Crime for Moderate to High-Risk Offenders?" *Journal of Experimental Criminology* 1, no. 2 (2005), 215-237; Marie VanNostrand, Kenneth Rose, and Kimberly Weibrecht, *State of the Science of Pretrial Release Recommendations and Supervision* (Rockville, MD: Pretrial Justice Institute, 2011), <https://perma.cc/B8YF-G39E>; Jyoti Belur, Amy Thornton, Lisa Thompson et al., *A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders* (London: What Works Centre for Crime Reduction, 2017), <https://perma.cc/K6LH-3R6F>; and Karla Dhungana Sainju, Stephanie Fahy, Katherine Baggaley et al., "Electronic Monitoring for Pretrial Release: Assessing the Impact," *Federal Probation* 82, no. 3 (2018), 3-10, <https://perma.cc/B22G-59A3>. Two recent studies did find some benefit from pretrial electronic monitoring, but their results were contradictory. One study of federal pretrial defendants in New Jersey found that electronic monitoring reduced rearrests but had no effect on failure to appear, while the other study, of state pretrial defendants in Santa Clara County, California, found that electronic monitoring reduced failure to appear but slightly increased rearrests. See Kevin T. Wolff, Christine A. Dozier, Jonathan P. Muller et al., "The Impact of Location Monitoring among U.S. Pretrial Defendants in the District of New Jersey," *Federal Probation* 81, no. 3 (2017), 8-14; and Sainju, Fahy, Baggaley et al., "Electronic Monitoring for Pretrial Release: Assessing the Impact," 2018. It is also worth noting that pretrial success rates in both studies were very high for all defendants, regardless of whether they were electronically monitored. A large number of people spend several months on such monitoring. According to Veras analysis of Wayne County Jail data, the longer people spend under electronic monitoring, the more likely they are to violate its rules and return to jail. While the electronic monitoring program in Wayne County has effectively reduced the jail population, it comes at a cost: people assigned to monitoring pretrial pay fees of \$100 for enrollment and \$100 per month, which can cause them to incur significant debt paying for the cost of monitoring regardless of whether any unpaid fees result in reincarceration.

Figure 8

### Electronic monitoring ADP by legal status

Hold    Pretrial    Sentenced    Parole or probation violation

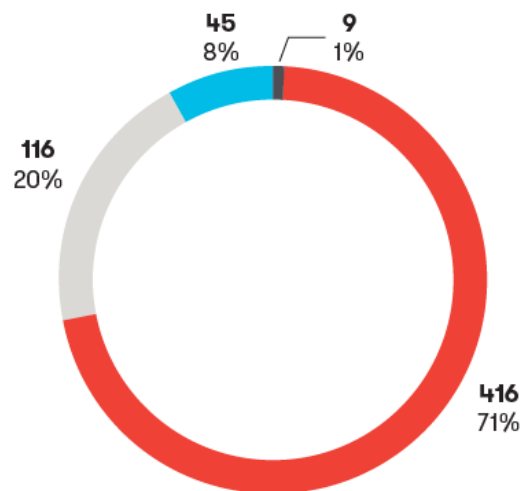
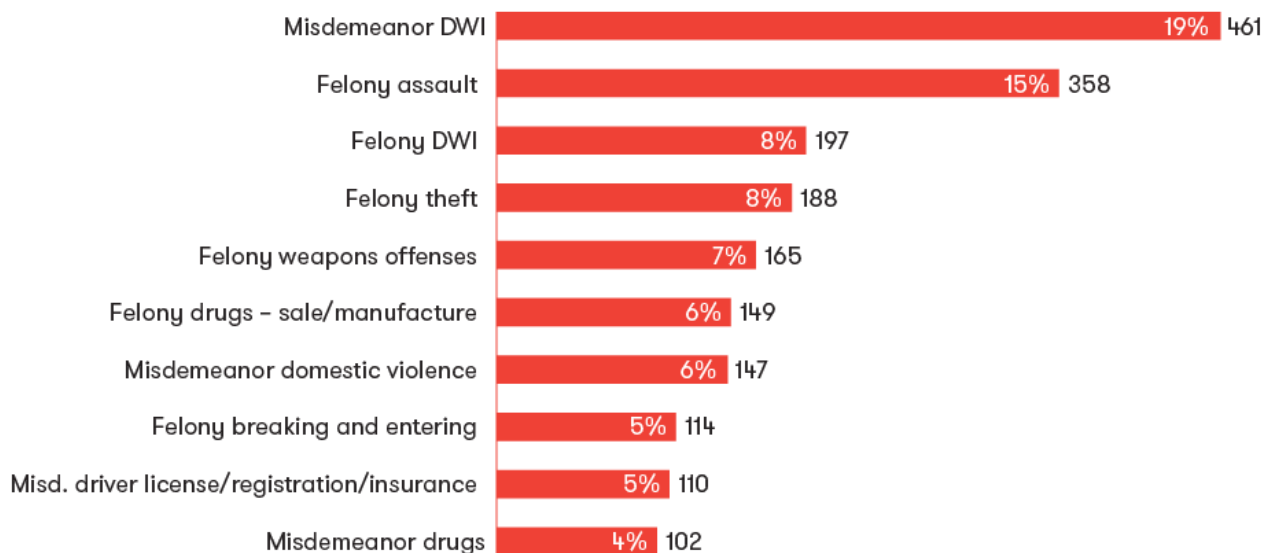


Figure 9

### Pretrial electronic monitoring by top charge category



#### Reduce the use of pretrial electronic monitoring and improve its administration in cases where it is used.

Wayne County should take steps to reduce the use of electronic monitoring pretrial, as many people can be safely managed in the community without such restrictions. If electronic monitoring is going to be used, Wayne County should limit its use to cases where there is a specific justification for monitoring that relates to an individualized assessment of a persons pretrial risk of reoffending. Even in cases where monitoring is considered necessary and a device is assigned, there are several ways Wayne County can improve its administration, such as by:

Probation violations also make up a significant number of bookings into the Wayne County Jail, most often for what appear to be technical violations meaning noncompliance with conditions of the probation sentence rather than for new criminal charges. Detaining people in jail for probation violations, particularly for

technical violations, is increasingly viewed as unnecessary or even counterproductive as research has shown that community-based responses can be at least as effective as jail in changing behavior and that jail sanctions may even increase future violations. Pew Public Safety Performance Project, *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations* (Washington, DC: The Pew Charitable Trusts, 2019), <https://perma.cc/C8CS-JCNT>; Eric J. Wodahl, John H. Boman IV, and Brett E. Garland, "Responding to Probation and Parole Violations: Are Jail Sanctions More Effective than Community-Based Graduated Sanctions?" *Journal of Criminal Justice* 43, no. 3 (2015), 242-250; E. K. Drake and S. Aos, *Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism?* (Olympia, WA: Washington State Institute for Public Policy, 2012), <https://perma.cc/MD54-RPNE>; and Andres F. Rengifo and Christine S. Scott-Hayward, *Assessing the Effectiveness of Intermediate Sanctions in Multnomah County, Oregon* (New York: Vera Institute of Justice, 2008), <https://perma.cc/L7YN-5H9C>. Reducing the number of people who are incarcerated in the Wayne County Jail for probation violations would not only reduce the jail population but also could help ensure better outcomes for people on probation.

Figure 14  
Probation violations with and without new charges

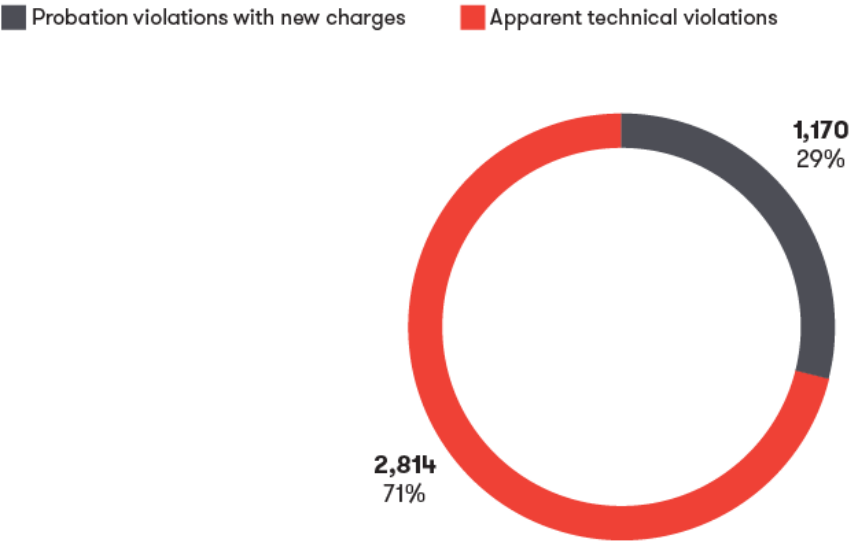


Figure 16  
Top 10 charge categories for people with 3+ bookings

Probation violation	4,131
Agency hold (mostly U.S. Marshal)	2,038
Misd. driver license/registration/insurance	1,765
Felony assault	1,390
Felony theft	1,234
Felony weapons offenses	1,052
Felony drugs – sale/manufacture	847
Misdemeanor drugs	752
Felony drugs – possession	675
Misdemeanor domestic violence	667

## **Reevaluate approaches to community supervision and reduce incarceration for probation violations.**

Black people are disproportionately represented in the Wayne County Jail and among those on electronic monitoring, although the population of people on electronic monitoring contains more white people than does the jail population. Racial disparities also appear to be driven more by admissions into the jail than length of stay, and disparities in jail admissions are worse outside of Detroit. Although the racial disparity stemming from Detroit is less significant, high rates of jail incarceration in Detroit, a majority Black city, reflect the complicated history of race in Detroit and inequities that go beyond the justice system. Therefore, addressing the level of jail incarceration in Detroit is a critical part of facing that history and addressing longstanding harm to Black communities in the county.

## **Establish a framework for action on racial equity.**

Reducing racial disparities in the Wayne County justice system and working toward the larger goal of achieving greater racial equity will not be accomplished by making a few quick policy changes; the numbers reflect longstanding problems that are individual, institutional, and structural and not unique to Wayne County. Wayne County leadership has the responsibility and capacity to address racial disparities in the justice system by establishing a framework for action on racial equity that tracks progress toward measurable goals. A suggested framework, outlined below, should incorporate government as well as community members and be grounded in quantitative, qualitative, and historical data about the origins and current experience of disparities in the system.

## **Key components of a framework for change include:**

Violence and public safety are of great concern to both community members and system stakeholders. There are two problems, however, with current approaches to addressing violence in Wayne County. First, there is no clear agreement on what should be considered a violent offense or which offenses are the most serious, which makes it harder to prioritize and target efforts. For example, some crimes may be classified as violent when there is no element of physical harm, while other serious crimes that do involve physical harm may be excluded from categorization as violent. Veras analysis of state laws, court rules, and agency reports found multiple and at times discordant offense categorizations and definitions of violent crime. For example, Article 1, Section 15 of the Michigan Constitution defines a violent felony as one that has an element involving an actual or threatened violent act against another person, a definition also used in MCR 6.106. However, MCL 600.1060, 600.1090, and 600.1200, the laws relating to admission for drug courts, mental health courts, and veterans courts, all define a violent offender as someone who is currently charged or has pled guilty to an offense that involves death or serious bodily injury, whether or not those are an element of the offense, or any degree of criminal sexual conduct. Separately, Michigan's Anti-Terrorism Act defines violent felony as a felony having an element that involves the actual, attempted, or threatened use of physical force; harmful biological, chemical, or radioactive substances or devices; or explosive or incendiary devices. The category of assaultive crimes in MCL 770.9a is also referenced by a number of other statutes. Although this category does include a number of the most serious violent offenses, it does not include others, like child abuse or home invasion. The Michigan Incident Crime Reporting (MICR) system appears to model the National Incident-Based Reporting System used by the Federal Bureau of Investigation, with Group A and Group B offenses followed by three broad categories. The Michigan Department of Corrections, at least in its statistical reporting, uses three different broad categories. The Michigan Sentencing Guidelines Manual uses six general offense categories, set out in state legislation, two of which are at least nominally the same as two of the three categories used by MICR. Second, in cases where violence has occurred, the current responses are limited primarily to incarceration, with little done to address the underlying causes of violent behavior. National research indicates incarceration does not always meet the needs of survivors. Judith L. Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, *Journal of Traumatic Stress* 16, no. 2 (2003), 159-166. Their perspectives and preferences often have little impact on sentencing, and many survivors report that the incarceration of the person who harmed them made them feel less safe. Edna Erez and Pamela Tontodonato, *The Effect of Victim Participation in Sentencing on Sentence Outcome*, *Criminology* 28, no. 3 (1990), 451-474; Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair* (New York: The New Press, 2019); and Alliance for Safety and Justice, *Crime Survivors Speak*, <https://perma.cc/J44S-53WQ>. Additionally, research has shown that when compared to noncustodial sanctions, incarceration makes it more likely that a person will commit new crimes and be re-incarcerated. Paul Gendreau, Claire Goggin, Francis T. Cullen, and Donald A. Andrews, *The Effects of Community Sanctions and Incarceration on Recidivism*, *Forum on Corrections Research* 12 (2000), 10-13; Paula Smith, Claire Goggin, and Paul Gendreau, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (Ottawa: Solicitor General of Canada, 2002), <https://www.publicsafety.gc.ca/cnt/rsrcts/pblctns/ffcts-prsn-sntncs/index-en.aspx>; Patrice Villettaz, Martin Killias, and Isabel Zoder, "The Effects of Custodial vs. Non-Custodial Sentences on Re-offending: A Systematic Review of the State of Knowledge," *Campbell Systematic Reviews* 2, no. 1 (2006), 1-69; and Sered, *Until We Reckon*, 2019. Incarceration may increase the likelihood that people will use violence by making it harder for them to meet their economic needs, isolating them from their communities and pro-social connections, exposing them to more trauma and violence while inside, and enhancing feelings of shame. Sered, *Until We Reckon*, 2019. Many direct service providers and community advocates organizing to improve safety and justice in Wayne County see jail incarceration as ineffective for addressing or preventing violence and are calling for better tools.

## **Partner with communities to address violence and other harm.**

Wayne County would benefit both by clearly identifying which violent offenses are the greatest concern and by investing in a range of approaches to violence that do not depend on the jail and which better address the underlying causes of violent behavior. To begin to address violence and other harm, Wayne County should partner with the county's most affected residents. The county should create inclusive structures for collaboration and partner with community-based organizations to develop alternatives to incarceration that address the root causes of violence, such as programs rooted in principles of restorative justice. Restorative justice programs are survivor-centered, accountability-based, safety-driven, and racially equitable.

Wayne County should also work to *prevent* violence through more strategic investments in the resources residents of communities impacted by violence have identified as necessary for their safety and well-being. This might include government support for behavioral health services, educational and economic resources, and nonpolice-led crime prevention efforts. To do this, Wayne County should consistently and proactively seek input from the county's most affected residents to learn how to better respond to violence and make decisions pertaining to the criminal justice system more broadly.

Some strategies for proactive community engagement by government stakeholders might entail:

Transparency, accountability, and collaboration are key features of a well-functioning justice system. Wayne County lacks a formal structure for stakeholder collaboration and coordination, which limits its ability to drive system change and its accountability to the public. The decisions that influence the population of the Wayne County Jail are made by multiple, largely autonomous, system actors. Implementing reforms like the ones recommended in this report will require the collaboration of stakeholders from across the criminal justice system, county and local governments, service providers, and community organizations.

Many nongovernmental stakeholders also reported having little to no access to aggregated data regarding prosecution, policing, changes in the jail population, or judicial decision making; or information about decisions regarding new facilities, diversion programs, and investments.

## **Provide oversight for the criminal justice system by creating a standing criminal justice coordinating council and improving system transparency and public accountability.**

Implementing reforms like the ones recommended in this report will require the collaboration of stakeholders from across the criminal justice system, county and local governments, service providers, and community organizations. Wayne County should create a permanent criminal justice coordinating council (CJCC) and commit to making the justice system more transparent. A CJCC could be responsible for collecting and analyzing criminal justice system data and sharing information with the public. The creation of a CJCC would:

Wayne County has made progress over the past several years in reducing its jail population, and that positive momentum should serve as a catalyst for continued reform. As this report highlights, there are several steps that Wayne County can take to further reduce the jail population and make the criminal justice system more equitable and transparent.

This work is especially important in the context of the construction of the new Wayne County Criminal Justice Center. By implementing changes like the ones

recommended here, Wayne County could limit the population enough that it could shrink the currently planned capacity of the jail within the new complex and devote more space to other uses. We hope that this report will serve merely as a first step in continued work by Wayne County to become more intentional about how it uses its jail.

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