

University of Pittsburgh  
Institute of Politics

# CRIMINAL JUSTICE TASK FORCE

report

## CRIMINAL JUSTICE IN THE 21ST CENTURY: IMPROVING INCARCERATION POLICIES AND PRACTICES IN ALLEGHENY COUNTY

NOVEMBER 2016





# CRIMINAL JUSTICE TASK FORCE REPORT

## GUIDING PRINCIPLES OF THE CRIMINAL JUSTICE TASK FORCE

- The preservation of public safety through effective law enforcement that is protective of individual rights is a fundamental responsibility of good government.
- Depriving a person of his or her freedom through the criminal justice system, especially prior to an adjudication of guilt, is a serious and intrusive action to be used wisely by governments created to respect and preserve individual liberty.
- Incarceration and other forms of correctional control should be used judiciously, with careful balancing of the goals of punishment and deterrence, preserving public safety, respecting victims' rights, maximizing opportunities for rehabilitation, and conserving scarce government resources.
- The processes of the criminal justice system should be fair; socially and financially equitable; and structured to avoid even the appearance of bias, particularly racial or ethnic bias.
- The criminal justice system and all expenditures made in support of it must be cost-effective and subject to appropriate oversight and budgetary review, as is true of all operations of government.
- In a society characterized by dramatic advances in information systems, modern methods should be employed to obtain the most timely and pertinent data that would be useful in supporting fact-based decision making and transparency within the criminal justice system.



# LETTER FROM THE COCHAIRS

In the fall of 2015, the Institute of Politics at the University of Pittsburgh devoted much of its annual retreat for elected officials to the serious and increasingly visible issue of “mass incarceration.” Following that program, which generated considerable interest, Allegheny County Executive Rich Fitzgerald asked that the Institute assemble a group of distinguished civic leaders to examine what could be done to make our current system of criminal justice “fairer and less costly, without compromising public safety.”

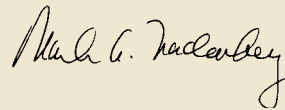
In response to the county executive’s request, the Institute convened the Criminal Justice Task Force, consisting of 40 regional leaders. The group included criminal justice professionals currently holding positions of leadership within the system; distinguished academics with expertise in such directly relevant areas as criminology, law, and psychiatry; and respected community leaders with a strong interest in the system but generally with no direct links to it.

Each task force member was recruited to serve because of the unique contributions that he or she was positioned to make by adding to the group’s collective potential to make a real difference in this area. The members met on a monthly basis for most of a year, with regular pre-session and post-session reading assignments.

Sessions typically began with a best-practices presentation from a respected professional from outside the region followed by an experienced task force member adding a sense of local context. At critical points in the process, we benefited from the help of Nancy La Vigne, director of the Justice Policy Center

of the Urban Institute, who served as our outside consultant. Though differing perspectives often surfaced, meetings were characterized by civil discussion and a commitment to building consensus, thoughtful reflection, recognition that Allegheny County already has been a leader in criminal justice reform, and a belief that we should strive to do even more to achieve ever-higher levels of fairness and cost-effectiveness.

We were privileged to lead this distinguished group and are pleased to present this report as the product of its committed efforts. In crafting this document, we deliberately chose to focus on a manageable number of targeted opportunities for reform. It is our hope, shared by the members of the task force, that the ideas advanced herein can make Allegheny County’s criminal justice system both more equitable and more cost-effective. As other communities continue to deal with similar challenges, we hope that some of these ideas also will be of help to them, just as we will continue to look for good ideas from other communities.



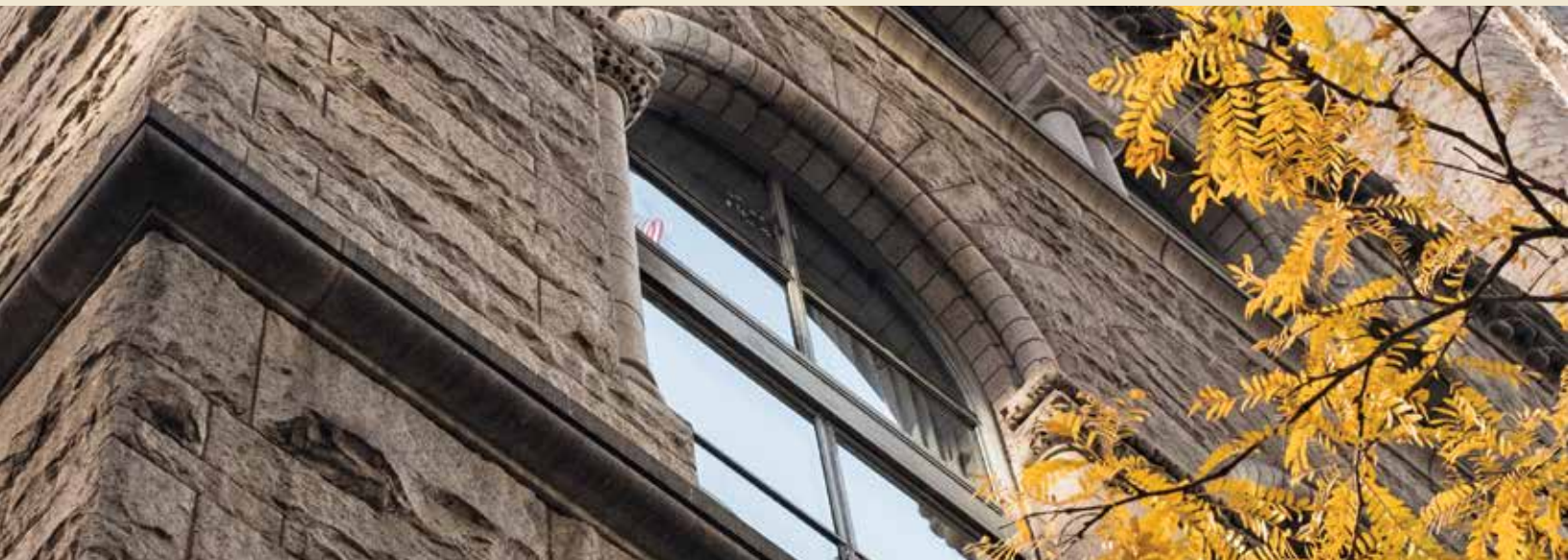
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## THE BUILDING PRESSURE FOR REFORM

The criminal justice system plays a critical role in our society. At every stage of the system, there is a responsibility to preserve public safety, which is one of the most fundamental functions of any government, while also protecting the individual rights that play a major part in defining what it means to be American. To a considerable extent, faith in government is tied to a belief in the effectiveness and fairness of its criminal justice system. The citizen protests taking place across the country today are due, at least in part, to a growing perception in many areas of the country that the criminal justice system is not fair.

In recent years, widespread attention has been focused on dramatic increases in both the rates of incarceration and the length of the terms of incarceration being imposed in this country, with many concluding that this change has pushed the system to a point where its societal harms and economic costs outweigh whatever benefits may have been produced. As a result, elected leaders as well as interested organizations and individuals from across the political spectrum are joining forces as advocates for reform.

To give just a few examples, U.S. senators from both sides of the aisle have cosponsored legislation to reduce mandatory minimum sentences and allow judges greater discretion.<sup>1</sup> Texas, Georgia, and Louisiana,<sup>2</sup> along with California<sup>3</sup> and Ohio,<sup>4</sup> are closing prisons or adding diversion programs to avoid increasing their prison populations. More than 130 top police chiefs and prosecutors are pushing for criminal justice reforms to reduce incarceration.<sup>5</sup> Charles Koch, a very visible funder of conservative causes, has argued that improving the criminal justice system could reduce poverty by as much as 30 percent and has allied with such unlikely partners as the Center for American Progress, the Tea Party-oriented FreedomWorks, and the American Civil Liberties Union to form the Coalition for Public Safety to reduce incarceration in the United States.<sup>6</sup>

This shared quest for reform, not constrained by normal political divides or by geographic boundaries, presents the best opportunity in decades to thoughtfully change our criminal justice system so that it is more just, transparent, and cost-effective, without compromising public safety. Allegheny County is recognized as a leader in making evidence-based changes and has made great strides in implementing best practices, including the development of validated pretrial risk assessment tools, specialty courts, and a highly regarded reentry program for people exiting the Allegheny County Jail. Despite these many improvements, there is potential for further progress.

## THE NEED FOR REFORM

In just 25 years, the United States doubled the number of people in its prisons and jails, bringing the country to the highest incarceration rate in the world and eight times that of Western European nations—during a time when crime fell sharply.<sup>7</sup> The cost of our nation's corrections systems rose by 235 percent between 1982<sup>8</sup> and 2011<sup>9</sup>—without evidence that putting more people behind bars had anything but a modest impact on public safety.<sup>10</sup> For example:

- Analysts have concluded that incarceration was responsible for only 6 percent of the reduction in property crime between 1990 and 2014 and that it did not contribute to the decrease in violent crime during that period.<sup>11</sup> Economists have determined, in fact, that the increase in incarceration had no impact on the drop in the nation's crime rate from the year 2000 forward.<sup>12</sup>
- A study of state prisons showed that those states that had reduced their prison populations experienced a 17 percent decrease in their crime rates, while states that had increased their prison populations saw a decrease of less than half that amount.<sup>13</sup>
- Holding lower-risk pretrial defendants in jail for even a few days "is strongly correlated with higher rates of new criminal activity, both during the pretrial period and years after case disposition" (in part because those defendants can lose their jobs, have their benefits suspended, or lose their housing).<sup>14</sup> "When held 2–3 days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours."<sup>15</sup>

The concern about overincarceration has special significance for our nation's 3,200 jails—the short-term detention facilities run by counties or cities, as opposed to state- or federally operated prisons, which hold convicted criminals for longer periods of time.<sup>16</sup> Jail populations have been growing by an average of 1.3 percent annually since 2000 and today hold nearly 740,000 men and women, which is 32 percent of all people incarcerated in the country.<sup>17</sup> "As a result of the overall growth in jail populations, the nationwide jail incarceration rate in 2014 (326 per 100,000) exceeds the highest county rates registered in the 1970s, which rarely exceeded 300 per 100,000 county residents."<sup>18</sup>

Although the upward trend has been diminished in recent years, there also has been a substantial increase in the incarcerated population in Allegheny County. Those managing the Allegheny County Jail not only are responsible for the custody of individuals being held in that 16-story facility but also manage alternative housing sites and a handful of other small

Figure 1: Allegheny County Jail Population Trends (1995–2015)<sup>20</sup>

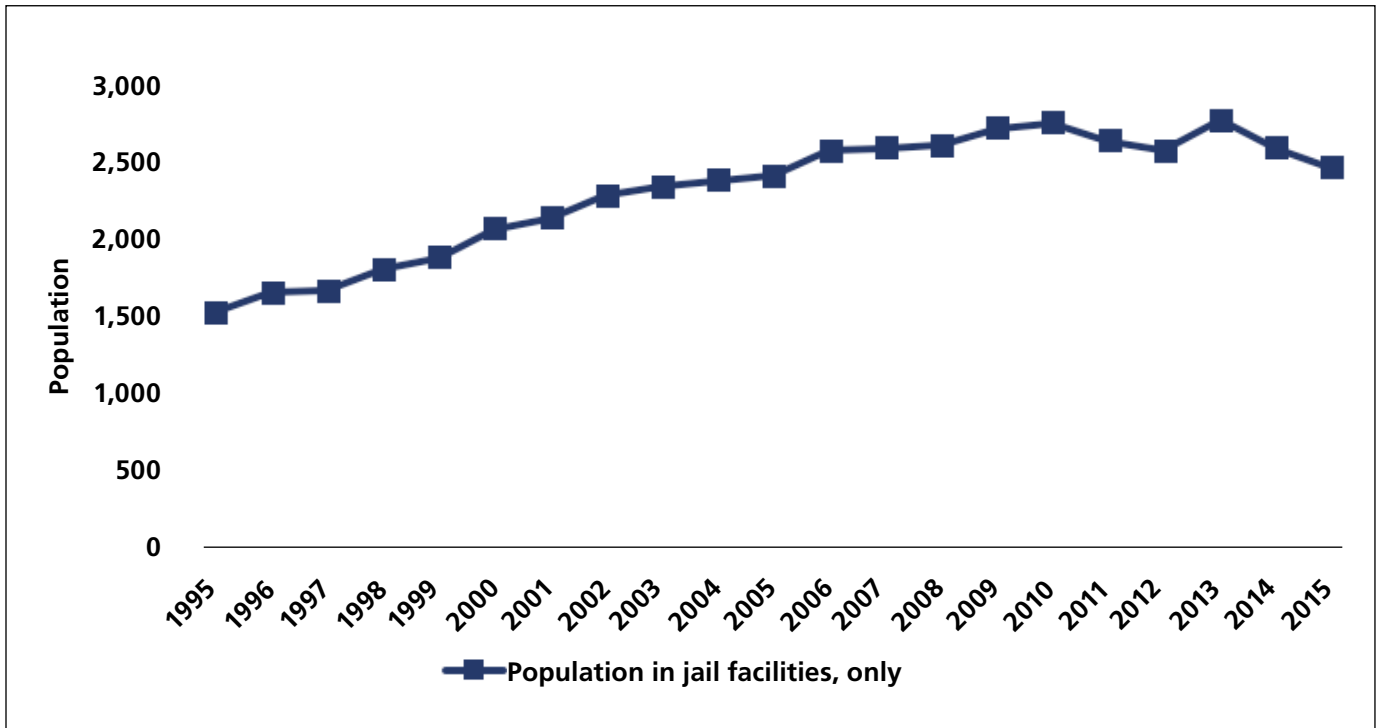
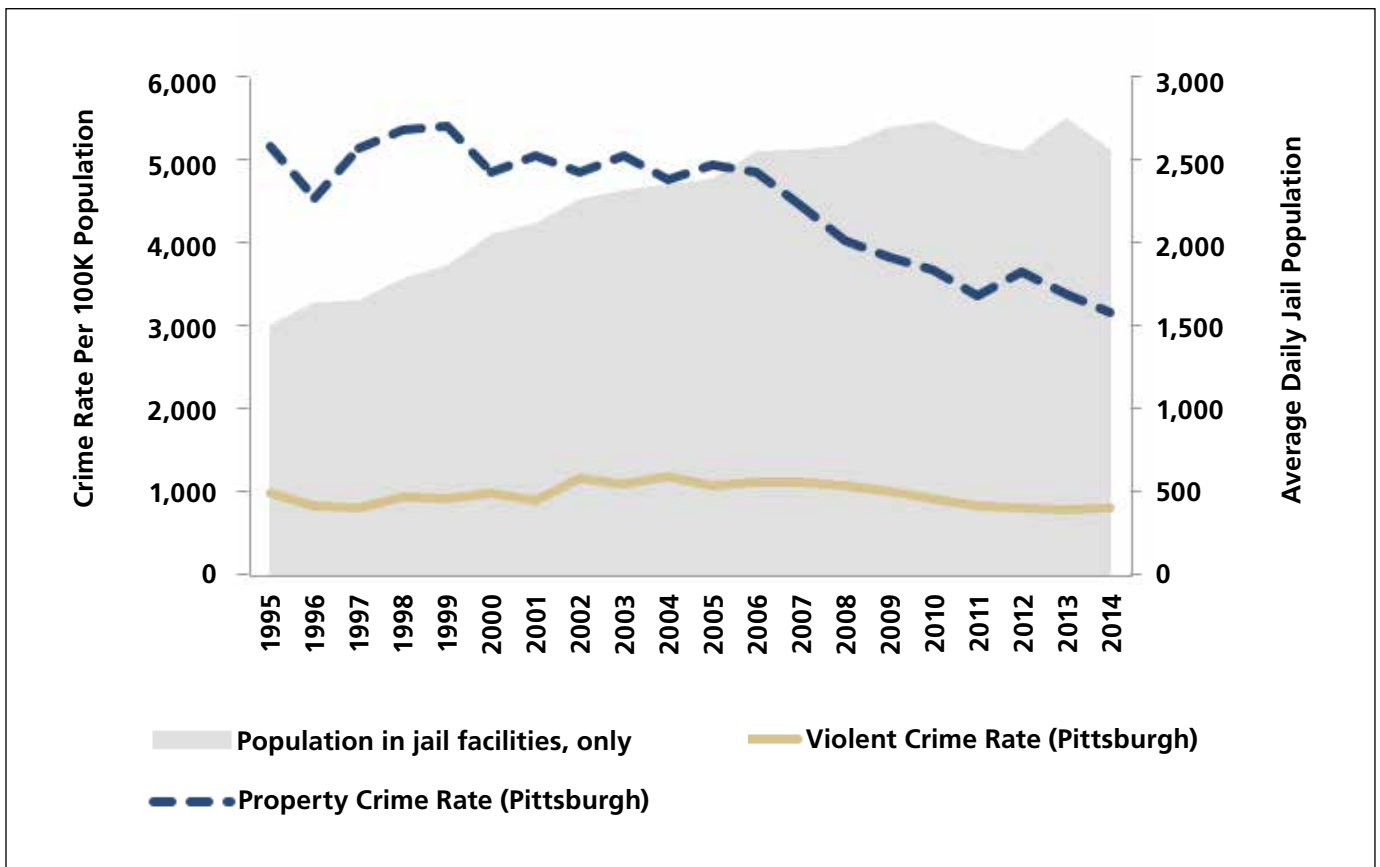


Figure 2: Allegheny County Jail Population<sup>23</sup> versus Crime Rate<sup>24</sup> (1995–2014)



custodial facilities. In the past 20 years, there has been a 62 percent increase in the population of the Allegheny County Jail itself and a parallel increase in the number of people held in other facilities or subject to some other form of “jail control.”<sup>19</sup>

The Jail itself consistently houses more than 2,200 individuals per day.<sup>21</sup> When the facility opened in 1995, and crime was peaking, that facility’s daily population was 1,450 inmates.<sup>22</sup>

In Allegheny County, as in the rest of the nation, the cost of this substantial increase in the number of people in jail has had serious negative consequences—both financial and societal. The county spends 42 percent<sup>25</sup> of its general fund on criminal justice, which includes the expenses of operating the Allegheny County Jail (whose budget totals \$80 million), the courts, the Allegheny County Police Department, the Sheriff’s Office, the District Attorney’s Office, the Public Defender’s Office, and the Shuman Juvenile Detention Center.<sup>26</sup> The dramatic increase in jail population over the past two decades has translated to \$12 million in additional costs each year to the county’s taxpayers—money that could be reinvested in additional police officers, mental health and drug/alcohol treatment, and more extensive rehabilitation programs that reduce recidivism<sup>27</sup>—or in support of other programs or initiatives that benefit taxpayers.

Researchers also argue that local practices of incarceration are contributing to poverty and family disruption because jails are holding fewer and fewer convicted violent felons even while showing an increasingly disproportionate impact on Black and Latino people, individuals suffering from mental illness, and people living in poverty. Consider the following examples:

- Black men in Allegheny County are booked in jail at even higher rates than the national average, which is already six times the confinement rate for White men.<sup>28</sup> In Allegheny County, the booking rate for Black men is 15.4 per 1,000<sup>29</sup>, while the national rate for Black men is 8.4 per 1,000.<sup>30</sup>
- Although making up only about 13.4 percent of the population of Allegheny County,<sup>31</sup> Black people represent 49 percent of the Allegheny County Jail population.<sup>32</sup>
- “In some low-income neighborhoods, virtually everyone has at least one relative currently or recently behind bars, so families and communities are continually disrupted by people going in and out of prison. Incarceration contributes to poverty by creating employment barriers; reducing earnings and decreasing economic security through criminal debt, fees, and fines; making access to public benefits difficult or impossible; and disrupting communities where formerly incarcerated people reside.”<sup>33</sup> A recent analysis by the Prison Policy Initiative found that, prior to their

arrest, incarcerated people had an income that was 41 percent less than similarly aged nonincarcerated people.<sup>34</sup>

Caught up in the much-larger jail populations are people with serious mental illness or substance use disorders. In Allegheny County, 75 percent of inmates have drug and/or alcohol or mental illness issues, and 48 percent have both.<sup>35</sup> Currently, across the country, 68 percent of people within jails have a history of abusing drugs, alcohol, or both, and 60 percent have demonstrated symptoms of a mental health disorder in the preceding 12 months.<sup>36</sup> This number of people with mental illness and substance use disorders in our nation’s jails is at odds with the design, operation, and resources of most jails, which are focused on confinement and rehabilitation, not treatment.

## ROOTS OF THE ISSUE

Why is it that Allegheny County’s jail population has been increasing so significantly—costing taxpayers and individuals dearly—even as crime rates were dropping? The Criminal Justice Task Force learned of several key drivers of the local jail population that are similar to what other jurisdictions in the United States have found. In summary, jurisdictions are arresting more people, holding more people who are not convicted and who are accused of committing non-violent crimes, and who are waiting for their day in court for longer periods of time.

### SOME POLICE DEPARTMENTS USE THE JAIL AT DISPROPORTIONATELY HIGHER RATES.

When police encounter criminal activity, they can decide to make an arrest, issue a summons or verbal warning (when appropriate), or refer the person to services such as substance abuse or community mental health treatment programs. “Even when a police officer feels that circumstances justify an arrest, that decision need not always open the door to the jail. Under most state laws, the officer may take the suspect to the station house to be photographed and fingerprinted and have a more detailed background check completed. Where available, computers in cars or handheld tablets allow police officers to conduct some of these procedures in the field. Law enforcement can then release the defendant using a notice-to-appear or desk appearance ticket to secure a promise from the person to appear in court when required.”<sup>37</sup>

Most states, including Pennsylvania, have passed laws that permit police officers or other peace officers to issue a written

order (citation) instead of arresting a defendant (cite and release).<sup>38</sup> The Pennsylvania Criminal Code Rule 519 says that officers shall release people whose most serious offense is a second-degree misdemeanor or a DUI if they do not pose an immediate threat of harm to others or themselves and if “the arresting officer has reasonable grounds to believe the defendant will appear as required” in court at a later date.<sup>39</sup> In those cases, the officer can issue a summons instead of a warrant of arrest.

The degree to which officers in the county’s 113 municipal (and other) police departments use cite and release varies and is likely one of the reasons that the use of the jail also varies significantly across police departments.<sup>40</sup> Allegheny County Jail data show that while the City of Pittsburgh Bureau of Police commits the most people to the jail,<sup>41</sup> its arrest rate of 27 arrests per 1,000 adults is actually lower than some other departments.<sup>42</sup> For example, Frazer Township’s rate is 108 arrests per 1,000 adults,<sup>43</sup> Homestead Borough’s rate is 74 arrests per 1,000 adults,<sup>44</sup> and McKees Rocks Borough’s rate is 68 arrests per 1,000 adults.<sup>45</sup>

With 113 police departments within 130 municipalities in Allegheny County, cooperative policing is difficult at best.<sup>46</sup> Additionally, because of their small size, some police departments lack the funding, training, and other resources that help support effective law enforcement in situations that involve factors such as de-escalation, implicit bias, mental health, and substance abuse. The difficulty in adequately addressing these types of encounters can result in harm to both the officer and the community. Moreover, because police are the leading edge of the criminal justice system and typically will be the main contact most people have with the criminal justice system, a shortage of officers or inadequate resources for training risks a further deterioration of police-community relations that already are tense in many communities.

## **DISTRICT JUDGES ARE DETAINING PEOPLE PRIOR TO TRIAL AND SETTING MONETARY BOND THAT OFTEN KEEPS LOW-RISK DEFENDANTS BEHIND BARS.**

Our jails increasingly are filled with people who have not been convicted and are being held for nonviolent offenses. A majority of men and women in jail today are simply waiting for a trial or a hearing but must wait in jail rather than staying with their families in the community.<sup>47</sup> These “pretrial” individuals have yet to go before a criminal court judge. “Since 2000, 95 percent of the growth in the

overall jail inmate population (123,500) was due to the increase in the unconvicted population (117,700 inmates)” versus the other major category—those individuals who are sentenced.<sup>48</sup> District judges and others with the authority to release defendants to await trial in the community are increasingly choosing to detain people, including those who pose little risk to public safety and/or are likely to appear in court. Eighty-one percent of people in the Allegheny County Jail are unconvicted,<sup>49</sup> compared with 62 percent nationally.<sup>50</sup>

Most people in jail have not been arrested for violent crimes: more than 80 percent of those held in the Allegheny County Jail had a nonviolent offense as their highest convicted or pending charge<sup>53</sup>, and nationally, 75 percent of people held in jail are being held for nonviolent traffic, property, drug, or public order offenses.<sup>54</sup>

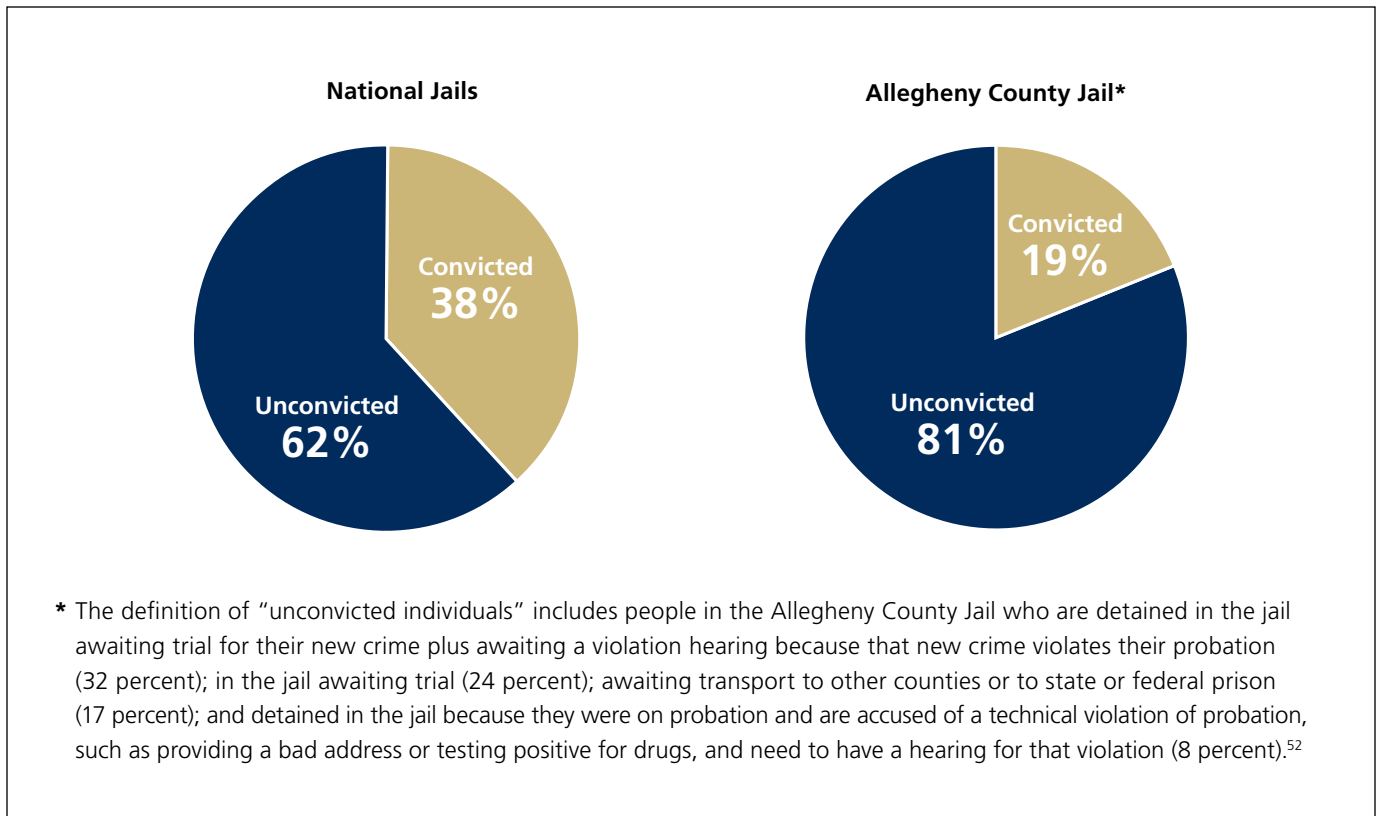
In recent years, tools have been developed to better predict the risks that individuals pose—either to flee before trial or to present a danger to the public if they are released from jail before their case can be heard. Despite the benefits of such tools, district judges have not used them consistently. In 2014, within Allegheny County, only 63 percent of all pretrial recommendations made using the tool were followed in the initial decision by the district judge.<sup>55</sup>

A district judge’s decision not to follow a recommendation based upon a valid risk assessment tool can mean that an individual who could be released to await trial will be incarcerated instead. A tendency to require monetary bond of defendants who cannot afford even relatively low amounts of bail contributes to the significant number of people awaiting trial in the Allegheny County Jail. In Allegheny County, inability to make bail is one of the reasons people charged with nonviolent crimes remain in jail while they wait for their trial.<sup>56</sup> There is little correlation between the bail amount set and whether someone is released—some people with high bail amounts are able to pay and are released, and some people with low bail amounts are unable to pay and remain detained.<sup>57</sup>

Through more uniform and consistent use of a validated risk assessment, such as the current tool that Allegheny County Pretrial Services uses and the Arnold Foundation’s risk assessment tool (which pretrial services will deploy throughout Allegheny County in the fall of 2016), district judges can reach more equitable pretrial decisions that also can reduce costs and preserve public safety.



**Figure 3: Individuals in Jails, National and Allegheny County: Unconvicted\* and Convicted<sup>51</sup>**



## CHARGING DECISIONS BY THE DISTRICT ATTORNEY MATTER.

Following an arrest, it is the district attorney’s office that determines the offenses for which someone ultimately will be charged and tried. This matters because the initial charging decision is a baseline for future dealings between prosecutors and those charged with a crime and can impact pretrial release determinations, eligibility for deferral programs, and length of sentence. Overcharging is a term used to denote a practice, in some jurisdictions, of filing more serious charges to provide leverage in dealing with defendants.

One researcher who examined the trend in charging within recent decades found that “the probability that a district attorney files a felony charge against an arrestee goes from about 1 in 3, to 2 in 3. ... over the course of the ‘90s and 2000s, district attorneys just got much more aggressive in how they filed charges.”<sup>58</sup> “Arrests are not driving the growth in incarceration, and by extension neither are trends in crime levels, since their effect is wholly mediated by these arrest rates,” but since felony filing data grew by 129 percent across the 1990s and 2000s, “The decision to file charges thus appears to be at the heart of prison growth.”<sup>59</sup>

Given such national trends, it is important for the Allegheny County District Attorney’s Office to track charging decisions and the reasons behind them, as local data show that 36 percent of all felony charges filed by the District Attorney’s Office are reduced to a misdemeanor, and 12 percent of all felonies are reduced to a lower grade of felony.<sup>60</sup> While plea bargaining and the reduction of criminal charges is a normal aspect of the criminal justice system, overcharging as a practice must be monitored and eliminated where present.

## DEFENSE COUNSEL IS NOT ALWAYS AVAILABLE TO THE INDIGENT AT A CRUCIAL STAGE.

The Allegheny County Public Defender’s Office is responsible for “furnishing competent and effective legal counsel to any person who lacks sufficient funds to obtain legal counsel in any proceeding where representation is constitutionally required.”<sup>61</sup> But the public defender does not have the resources to consistently represent indigent defendants at one of the most critical stages of the criminal justice process: the preliminary arraignment. The preliminary arraignment is when district judges make decisions that can impact the trajectory



of the case, including determining whether the defendant can be released to await trial in the community and whether the defendant receives bail. Having counsel present provides an opportunity to advocate for greater adherence to proven risk assessment tools that district judges should deploy.

## **THE CRIMINAL JUSTICE SYSTEM DIVERTS TOO FEW PEOPLE FROM JAIL.**

Allegheny County has a number of programs that aim to divert people to treatment and community support and away from the criminal justice system, but these programs ultimately serve only a small share of the people who could qualify. For example, the Crisis Intervention Team program, which has been in operation for more than a decade, has trained hundreds of officers to recognize the signs of mental illness and to transport individuals with mental illness to crisis treatment centers in lieu of jail when they do not pose a risk to public safety. Yet, since 2011, law enforcement officers have diverted only 166 individuals to the county's designated central recovery center.<sup>62</sup> By comparison, Bexar County in Texas (population 1.8 million) has diverted more than 20,000 individuals since opening its crisis treatment center in 2008.<sup>63</sup>

## **THE TIME IT TAKES TO MOVE INDIVIDUALS THROUGH THE CRIMINAL JUSTICE PROCESS CAN KEEP SOME PEOPLE IN JAIL LONGER THAN NECESSARY.**

The jail and courts have succeeded in reducing the time it takes to complete key processes, such as the time it takes to book individuals into the jail and then transfer them to court for an initial appearance and the time it takes to dispose of a case, but the processes can be further improved.

When the jail's booking process takes longer than necessary, individuals are held in jail for longer periods of time without the opportunity to appear before a district judge, which is the first opportunity to be released pending future court proceedings. Likewise, if court case disposition times lag behind national standards (see Recommendations), the county incurs the higher costs of additional days the defendant spends in jail while people who are waiting to be exonerated or sentenced must wait to receive justice.

## **JUDGES SENTENCE PEOPLE TO UNUSUALLY LONG AND SOMETIMES CONSECUTIVE TERMS OF PROBATION, AND FINES AND FEES CAN BE EXORBITANT WHEN THE ABILITY TO PAY IS NOT CONSIDERED.**

Most individuals released from jail in Allegheny County undergo a period of supervision known as probation. A term of probation often carries numerous restrictions on what an individual can do as well as possible sanctions for violating these conditions and rewards for achieving progress. Probation has a significant, positive impact on public safety, but research shows that longer terms of probation are not effective.<sup>64</sup> Instead, longer supervision often leads to minor or technical violations that result in weeks or months in jail while waiting for a hearing. Despite the costs that can result from unnecessarily long periods of probation, Allegheny County's probation terms are especially long when compared to those in the rest of the country. Nationally, probation terms average 22 months,<sup>65</sup> while in Allegheny County, the average term of probation is 30 months for misdemeanors and 60 months for felonies.<sup>66</sup> Furthermore, Allegheny County judges are more likely to impose consecutive terms of probation, which also can further increase the length of probation.



In addition, individuals in the criminal justice system incur significant fines and fees. In Pennsylvania, individuals can be charged for electronic monitoring (in some circumstances), probation supervision, public defender or legal costs, and room and board.<sup>67</sup> For people with limited income, these fees or court fines can be insurmountable and serve as a barrier to successfully completing supervision. Most states, including Pennsylvania, do not adjust criminal justice

debt based on the person's ability to pay, which can have profound consequences for individuals when ramifications can include additional fees and penalties for nontimely payments, further incarceration, license suspensions, and the inability to vote.<sup>68</sup> The over-utilization of fines and costs, without regard to the ability to pay, contributes to the reality that the lack of financial resources remains a leading reason why individuals who are likely to appear in court are nonetheless held in jail before their trials.<sup>69</sup>

# DOING THINGS DIFFERENTLY, GUIDED BY PRINCIPLES

In response to these issues within the criminal justice system, jurisdictions across the country have taken action to implement reforms that improve equity and transparency, maintain public safety, and reduce the financial cost of correctional control. Allegheny County has been a leader in this reform movement with numerous improvements that have been recognized nationally, including problem-solving courts aimed at addressing the underlying problems of people convicted of specific crimes, a validated pretrial risk assessment tool, and one-stop community resource centers to address the social service needs of medium- and high-risk people on probation. But despite the many improvements that already have been implemented by Allegheny County's criminal justice system, there is great potential for further progress.

Actually achieving that potential, though, requires both a recommitment to established principles that should guide every step of the criminal justice process and the implementation of changes that advance those principles. These are the guiding principles embraced by the Criminal Justice Task Force:

- The preservation of public safety through effective law enforcement that is protective of individual rights is a fundamental responsibility of good government.
- Depriving a person of his or her freedom through the criminal justice system, especially prior to an adjudication of guilt, is a serious and intrusive action to be used wisely by governments created to respect and preserve individual liberty.
- Incarceration and other forms of correctional control should be used judiciously, with careful balancing of the goals of punishment and deterrence, preserving public safety, respecting victims' rights, maximizing opportunities for rehabilitation, and conserving scarce government resources.
- The processes of the criminal justice system should be fair; socially and financially equitable; and structured to avoid even the appearance of bias, particularly racial or ethnic bias.
- The criminal justice system and all expenditures made in support of it must be cost-effective and subject to appropriate oversight and budgetary review, as is true of all operations of government.
- In a society characterized by dramatic advances in information systems, modern methods should be employed to obtain the most timely and pertinent data that would be useful in supporting fact-based decision making and transparency within the criminal justice system.

Using these principles to guide its work, the Criminal Justice Task Force crafted a series of recommendations intended to preserve public safety while also advancing the broader interests of the entire community and with the goal of making Allegheny County a model of fairness and effectiveness.

## RECOMMENDATIONS

- 1. Given the strong and growing public interest in the fair and effective functioning of the criminal justice system, the Allegheny County executive should appoint a panel to review progress in implementing these recommendations and advancing the guiding principles, providing a new measure of accountability and a new source of information.**

An educated public can better assess the fairness and cost-effectiveness of the criminal justice system. The panel, in conjunction with the new criminal justice system coordinator, will publish relevant information about the system to encourage the ongoing development of creative and innovative mechanisms to improve fairness and effectiveness.

- 2. The Allegheny County executive should create a criminal justice system coordinator position, reporting to the county manager and focused on monitoring the criminal justice system, to better manage the criminal justice system and advance the goals of maintaining public safety, enhancing equity, and reducing costs.** The Allegheny County criminal justice system is a decentralized system of separate departments, a number of which are headed by independently elected officials. For more large-scale improvements to be achieved, greater communication among the various sectors within the criminal justice system should be pursued. The coordinator will take a leadership role in facilitating collaboration among the sectors of the criminal justice system to ensure that the sectors are working together on initiatives that have the potential for the greatest positive impact and to further ensure that any contemplated reforms do not cause unintended consequences in other sectors of the system. In addition, because existing data show that municipalities and judges use the county jail in widely disparate ways, the coordinator should be charged with analyzing these variations and developing programs to provide higher levels of consistency.
- 3. To improve the transparency and effectiveness of the criminal justice system, Allegheny County should build on its considerable technology assets to deliver**



**timely data and analysis to manage the overall system and monitor key performance metrics, including racial disparities.** Even though Allegheny County has an enviable record of developing strong data systems, there is room for further improvements in how data are collected and used across the criminal justice system. The county should develop additional real-time data tools, including information on pretrial detention periods within the jail, alternative housing availability, mental health or drug and alcohol treatment availability, and probation officer caseloads. This improved access to information also could provide important opportunities for identifying and correcting practices or procedures that might adversely impact Black or Latino people, other minorities, or people living in poverty. Even with an improved data system in place, however, decision makers must fully appreciate its potential, embrace its use, and be educated in how to properly maximize its benefits.

**4. Because even a brief period of pretrial detention can have a devastating impact on the person jailed and because the costs of incarceration are a significant burden for county taxpayers:**

**a. Police, courts, and the district attorney should develop and use proven alternatives to arrest and booking, including establishing programs to divert individuals who otherwise might have been charged with nonviolent offenses into community-based treatment and support services, using summons in lieu of arrests, and establishing community-based restorative justice programs.**

Jails were never intended as treatment facilities for those suffering from mental illness or addiction. To the contrary, research has established that costly jails are not the best solution for societal issues that can be addressed more effectively by directing particular individuals, especially those involved in nonviolent, low impact offenses, away from the criminal justice system and into the appropriate rehabilitative alternatives at the earliest opportunity.<sup>70</sup> Effort should be made to identify such opportunities and to expand those that are already in place, with the goal of improving lives, reducing recidivism, reducing costs, and improving communities. To date, implementation of such evidence-based practices has shown promising results both in Allegheny County and in other jurisdictions across the country.

**b. District judges should rarely use monetary bail and instead should use the county's risk assessment tool for pretrial release determinations, avoiding pretrial incarceration except when**

**necessary to preserve public safety or to ensure the defendant's presence in subsequent proceedings.** The decision to incarcerate a person while awaiting trial or hearings on a charge, especially for a lower risk defendant, can have profound negative impacts on a person's life, even though the ultimate result might be a finding of not guilty or release on a subsequently reduced charge. In recent years, tools have been developed, both locally and nationally, that better predict the risks that particular defendants might pose, either to flee before trial or as a danger to the public, if released pending trial. Despite the potential benefits presented by such tools, both to the individual defendant and to the taxpaying public, their utilization has been inconsistent. In 2014, only 63 percent of all pretrial recommendations resulting from the use of these tools in Allegheny County were followed in the initial decision by the district judge.<sup>71</sup> In many of the remaining cases, the district judges' bail decisions resulted in incarceration of the individual who could have been released to await trial, increasing both disadvantages to the defendant and public cost. Through more uniform use of validated risk assessment tools, district judges can reach more equitable pretrial decisions that can improve lives and reduce costs while preserving public safety.

- c. Jail personnel and the courts should reduce the processing time between a person's admission to the jail and his or her first court appearance.** Although the jail and courts have improved the processing time it takes to book individuals into the jail and then transfer them to court for an initial appearance, delays in processing still occur. The result of these delays is that individuals are held in jail for longer periods of time than necessary without the opportunity to appear before a district judge, which is the first opportunity to be released pending future court proceedings. There is room for further improvement to reduce the harmful effects of even short periods in jail that can result in loss of employment, disruption in living arrangements, or family stress.
- d. The district attorney should guard against the practice of overcharging and also consider alternatives to prosecution that do not require filing formal charges, such as precharge diversion programs.** Because initial charging decisions are a baseline for future dealings between prosecutors

and those charged with a crime, this first charge can have a significant impact on a defendant, regardless of the ultimate outcome. For instance, initial charges are used as a basis for determining bail amounts or eligibility for nonfinancial pretrial release, diversion programs, or other community-based sanctions. In addition, research shows that the seriousness of this first charge has a profound influence on whether a person will be detained pretrial and, if convicted, what length of sentence he or she receives.<sup>72</sup> District attorney offices often subsequently reduce charges to more accurately reflect the offense, yet by the time that happens, the person being charged has already experienced the consequences resulting from the initial charges. In Allegheny County, some 52 percent of felony charges filed were later reduced to less serious charges, with nearly 36 percent of such felonies being reduced to misdemeanors.<sup>73</sup> By that time, the defendant may have already been detained in jail or missed the opportunity for remedial programs.

- e. **Indigent defendants should be represented by a public defender at the preliminary arraignment, when initial incarceration decisions are made.** The preliminary arraignment is a critical proceeding at which decisions are made that determine whether a defendant will be released to await trial or will be held in jail, for months on average, while awaiting trial. Despite the importance of this determination, a public defender is usually not present at such proceedings in Allegheny County. Even though the bail or other pretrial detention decision can be appealed to the Court of Common Pleas, the defendants still may be incarcerated for several days while waiting for that appeal to be heard. This can result in long-term consequences for the person and his or her family. If indigent defendants had proper representation at the preliminary arraignment, there would be greater opportunity to advocate for the use of a validated risk assessment tool to ensure that an individual is not unnecessarily detained pretrial.
- f. **Police and district judges should commit to the use of the jail in a uniform and consistent manner commensurate with the seriousness and frequency of crime in their particular communities.** The use of the jail varies widely among law enforcement agencies in the county. Because the capacity of the county's system of correctional control is limited, disproportionate

use by particular municipalities can stress the system's resources in ways that are unfair to others. Ideally, police departments should use the system's resources more uniformly, when crime rates and other factors are considered.

- 5. **A high priority should be placed on expanding crisis intervention training for police and other law enforcement personnel and on diverting individuals who are suffering from mental illness or substance use disorders into effective treatment programs.** The purpose of jail is deterrence, incapacitation, punishment, and rehabilitation. Jails were never intended to be a major provider of treatment for mental illness or addiction. Increasingly, however, the jails and prisons of America have housed large numbers of defendants suffering from mental illnesses, substance use disorders, or both. Housing such individuals is both expensive and inhumane, and it is counterproductive if it worsens these preexisting conditions, making future treatment even more challenging and costly. Police and other law enforcement officials should be trained to recognize the root causes of what might be mistaken for criminal conduct and refer such individuals to professionals experienced in treating those underlying causes. The increased use of such diversion can reduce utilization of the jail while improving the outcomes for the individuals involved, oftentimes reducing the likelihood of recidivism.
- 6. **The Court of Common Pleas should take steps to enhance both fairness and cost-effectiveness by:**
  - a. **Disposing of cases within time frames that are equal to or better than national standards.** Allegheny County has significantly reduced the median days to disposition (the final resolution of a case). Today, most cases are resolved within one year.<sup>74</sup> In 2015, the median days to disposition in Allegheny County was 130 days.<sup>75</sup> Nevertheless, Allegheny County can continue to improve, using the National Center for State Courts (NCSC) Model Time Standards as its yardstick. For example, NCSC recommends that 75 percent of felonies be disposed of within 90 days, 90 percent of felonies be disposed of within 180 days, and 98 percent of felonies be disposed of within 365 days.<sup>76</sup> In Allegheny County, only 29 percent of felonies are resolved within 90 days, 59 percent within 180 days, and 92 percent within 365 days.<sup>77</sup> The Model Time Standards for misdemeanors recommend that 75 percent of misdemeanors be resolved within 60 days, 90 percent be resolved within 90 days, and 98 percent of misdemeanors





be disposed of within 180 days.<sup>78</sup> In Allegheny County, only 27 percent are resolved within 60 days, 47 percent within 90 days, and 72 percent within 180 days.<sup>79</sup> Speedier times to disposition not only are fairer, they also reduce the costs associated with incarceration.

**b. Reducing the length of probation terms to be consistent with national standards.**

The length of probation (the period of supervision following release from incarceration) greatly influences the likelihood that people might be returned to jail or face other sanctions because it increases the time period within which even minor or technical probation violations can occur. Such violations can result in weeks or even months back in jail while waiting for a day in court. Probation terms in Allegheny County are especially long when compared to the rest of the country. Nationally, the average probation term is 22 months.<sup>80</sup> Within Allegheny County, the average probation term is 30 months for misdemeanors and 60 months for felonies.<sup>81</sup> These unusually long terms of probation are among the precipitating factors in the large number of individuals being held in the county jail on probation violation detainers.

**c. Eliminating the use of consecutive probation terms.** The use of consecutive probation terms (the practice of imposing separate terms of probation for each violation and then having the terms run back to back rather than simultaneously) also contributes to Allegheny County's unusually long probation terms. Consecutive probation terms further contribute to the fact that Allegheny County probation officer caseloads are almost twice the national average.<sup>82,83</sup> Excessively long probation terms contribute directly to exceptionally high probation officer caseloads, which means that Allegheny County probation officers have a difficult time giving appropriate attention to those they are expected to supervise. This can result in serious violations going undetected. Probationers also have longer windows within which to be charged with a technical violation and detained in jail awaiting a hearing for what might ultimately be determined to be a minor infraction. It also can be harder for individuals with years of required probation to find employment.

**d. Using graduated sanctions that are fair, swift, and certain for probation violations.**

Research shows that probation programs that offer fair, swift, and certain responses to probationer behavior can improve compliance with probation requirements while preserving public safety and reducing the use of costly jail sanctions.<sup>84</sup> These types of probation programs can set a schedule of graduated steps that impose increasingly severe sanctions for failures to adhere to the conditions of probation. Probationers know the exact consequences for violations and penalties can be promptly imposed, reducing the use of scarce judicial resources and freeing court dockets for more serious matters.

**e. Assessing court fines and fees on a sliding scale that reflects a person's ability to pay.**

Violating the law often results in not only significant fines but also in the assessment of significant fees. As noted earlier, in Pennsylvania, individuals can be charged for electronic monitoring (in some circumstances), probation supervision, public defender or legal costs, and room and board.<sup>85</sup> For people with limited income, these fees or court fines can be insurmountable and serve as a barrier to successfully completing supervision. Most states, including Pennsylvania, do not adjust criminal justice debt based on the person's ability to pay, which can have profound consequences for individuals, whose costs include additional fees and penalties for nontimely payments, further incarceration, license suspensions, and the inability to vote.<sup>86</sup> The over-utilization of fines and costs, without regard to the ability to pay, contributes to the reality that lack of financial resources remains a leading reason why individuals who are likely to appear in court are held in jail before their trials instead.<sup>87</sup>

**7. To the extent that cost savings are realized from a reduction in the population of the Allegheny County Jail, the county executive should give high priority to additional investments in the broader criminal justice system that will improve its effectiveness. These include:**

**a. Increasing the number of police on the beat—who, properly trained in a sentinel role, could be a major force in preventing crime and improving police-community relations.**

By increasing the number of officers, law enforcement agencies could better deter crime and strengthen

community ties. Research shows it is the fear of apprehension, and not fear of the severity of punishment, that has the greatest correlation to deterrence.<sup>88</sup> Directing savings from system improvements into hiring more police, especially officers using the principles of community policing, can translate into greater deterrence and less crime. Additionally, more police serving in crime prevention roles within communities helps to build public trust and improve community-police relations, which, in turn, can generate more cooperation in the apprehension of lawbreakers and greater neighborhood safety.

**b. Increasing the number of probation officers to better provide more effective supervision to higher-risk individuals on probation.**

Establishing manageable caseloads for probation officers is critical to the effective supervision and rehabilitation of probationers. The American Probation and Parole Association (APPA) sets forth general guidelines for caseload ratios. Allegheny County caseloads are substantially higher than nationally recognized standards. APPA guidelines recommend 20 high-risk probationers per probation officer, 50 moderate-to high-risk probationers per probation officer, or 200 low-risk probationers per probation officer.<sup>89</sup> In Allegheny County, there are roughly 100 medium- or high-risk probationers per probation officer (two to five times the recommended ratio) and more than 1,000 low-risk probationers per probation officer (five times the recommended caseload).<sup>90</sup> When probation officers are overburdened, it becomes difficult to adequately address probationers' issues, with the attendant risks of failing to uncover serious violations or overreacting to minor ones. Heavy caseloads also make it harder to assist probationers who need rehabilitative supports. Closer attention to rehabilitation benefits not only the individuals involved but also the broader community.

**c. Expanding programs that have a proven record of reducing recidivism, including reentry programs.**

Allegheny County currently offers a successful reentry program through the Allegheny County Jail Collaborative. Through a coordinated jail/probation/human services/community partnership, the collaborative screens and assesses individuals in the jail using a validated risk assessment tool; develops individualized service plans that build on strengths

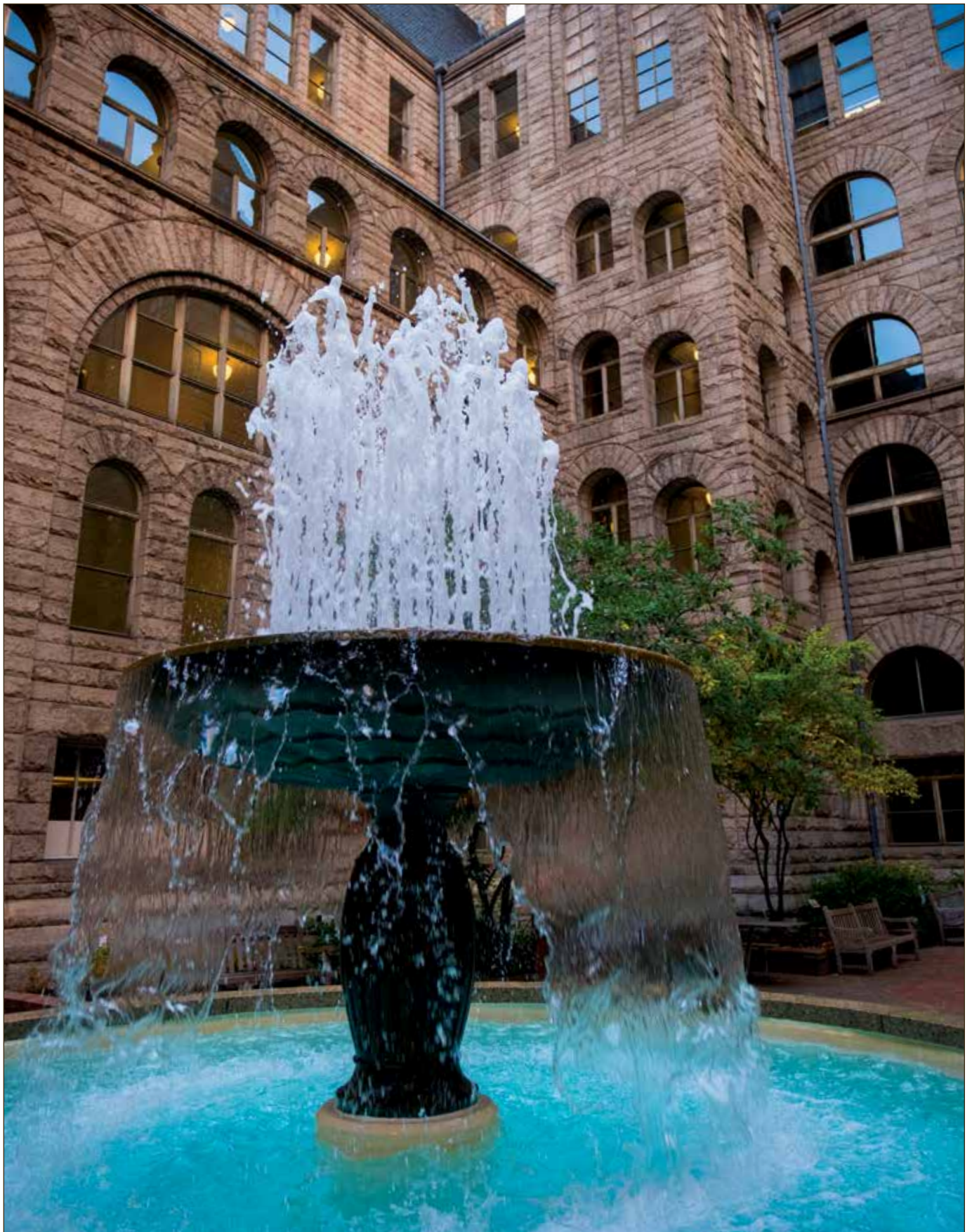
and address needs; enrolls clients in evidence-based services; and provides effective, consistent service coordination both inside and outside the jail. Program participants receive the services they need as well as the encouragement and accountability that matter—paired with supervision by dedicated reentry probation officers. The jail collaborative's reentry program has been shown to significantly reduce rates of recidivism, which, in turn, improves public safety<sup>91</sup>, and the U.S. attorney general has described it as a model program.<sup>92</sup> Funding limitations, however, restrict it from being offered to the vast majority of Allegheny County Jail inmates.

**d. Incentivizing district judges and municipal police departments to develop creative programs to reduce their use of the county jail even while maintaining public safety.**

Ideally, police departments should use the system of correctional control according to their share of population, crime rates, and other factors that might affect crime in a community. To incentivize local police and district judges, the county should reinvest some criminal justice savings into a grant program designed to reward municipalities for creatively reducing use of the county jail while preserving or enhancing public safety. The grant funds could be used for further criminal justice-related activities, such as expanding community policing or improving access to mental health or substance abuse programs.

## CONCLUSION

Improving a system as important as the criminal justice system, which has so many complex, dynamic, and interdependent parts, is a considerable challenge. The fact that Allegheny County has built a national reputation as a center of excellence in criminal justice is a tribute to the men and women who work every day administering the system to advance the safety of the public while protecting the rights of citizens. Even so, there is always room for improvement, and the significant increase in jail utilization over the past two decades, coupled with the substantial escalation in criminal justice costs, confirms the need for continuing improvement efforts. The Criminal Justice Task Force's recommendations and the principles on which they are based are advanced with the firm belief that, if implemented, Allegheny County can become an even safer, more equitable, and more livable community. ■



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