

EMERGENCY COVID-19 JAIL REDUCTION STRATEGIES

Strategic Policy & Practice
Recommendations to Reduce
the Over-Reliance of Jails
Post COVID-19 Pandemic

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INTRODUCTION

MULTNOMAH COUNTY, OREGON AND THE ONSET OF COVID-19

Jails book and confine more than 10 million people every year in the United States. Even short stays – 72 hours or less – can have devastating consequences to individuals’ physical and mental health, employment, income, housing, and access to government benefitsⁱ. Most individuals confined to jails are not convicted and are, instead, held in *pretrial detention*ⁱⁱ which can also impact case processing outcomes: pretrial detention increases the likelihood an individual experiences a conviction, a sentence to incarceration, and a longer sentence overallⁱⁱⁱ. This is especially true for Black, Latine, and other historically racially minoritized groups. In response to the disproportionate impacts on these groups, practitioners and policymakers have pushed to reduce the size of US jails overall, reduce the population of people held in pretrial detention specifically, and decrease the footprint of the criminal legal system within communities.

The MacArthur Foundation launched the Safety and Justice Challenge (SJC) – a national initiative – in 2015 to reduce the over-reliance on jails across communities. The SJC provides funding and technical assistance to local sites to help them develop and implement strategies to safely reduce jail populations, address racial and ethnic disparities, and improve community safety. Since its inception, over 50 sites have engaged in the work including Multnomah County, Oregon.

As a participating site in the Safety and Justice Challenge, Multnomah County significantly reduced their jail population. Through the SJC, Multnomah County implemented strategies such as restructuring their pretrial system, reducing probation and parole revocations for technical (i.e., non-criminal) violations, and expediting releasing people from jail.

As Multnomah County continued to implement their SJC strategies in early 2020, the World Health Organization declared Coronavirus Disease 19 (COVID-19) a global pandemic^{iv}. COVID-19 posed a significant threat to the health and safety of staff and people incarcerated in the Multnomah County jail. In response, Multnomah County criminal justice stakeholders met regularly beginning in March 2020 to address two primary issues: (1) how to prevent the spread of COVID-19 in the jail system and (2) how to keep justice-involved people and staff safe.

Shortly after the onset of COVID-19 and the implementation of emergency jail reduction strategies, the county experienced over 100 days of social unrest and protests by community members in response to the murder of George Floyd, police brutality, and systematic racism in the criminal legal system. Early in the protests, one of the local courthouses – The Justice Center – which also houses intake for the jail and is located across the street from the epicenter of protests, experienced a firebomb and significant property damage.

Multnomah County, Oregon experienced the coalescing of many serious events in ways no other United States county did during this time. As a case study, it is not generalizable and the events that occurred are unlikely to present concurrently again. However, if during this contentious time between community members and the justice system, reducing the jail population did not lead to increases in violent bookings, then it is reasonable to conclude that in better times, this would be true, too.

COVID-19 posed a significant threat to the health and safety of staff and people incarcerated in the Multnomah County jail.



JSP CASE STUDY OF MULTNOMAH COUNTY'S EMERGENCY JAIL REDUCTION STRATEGIES

In January 2023, Justice System Partners began a mixed methods study to understand the impacts of Multnomah County's emergency jail reduction strategies during this contentious time. The study relied on local jail booking data from March 2018 through February 2022 and included analysis of changes in jail bookings over four key time periods. JSP staff also conducted 50 interviews with staff from the criminal legal system and community-based organizations, and with individuals who experienced a jail booking during the pandemic. The interviews offered insight into the implementation of emergency strategies and perceptions of safety during this time.

Interviews revealed that key stakeholders created the COVID Check-In group to coordinate the policy and practice response to the pandemic. This included expanding its use of SJC strategies, including the use of citation-in-lieu of arrest, expedited release of individuals detained pretrial with non-violent charges, and near elimination of returns to jail for technical probation violations. Multnomah County also implemented new strategies, including eliminating warrants for missing court hearings and expediting jail release via manual review of individuals who had served most of their jail sentence. At the same time, Ballot Measure 110 went into effect, decriminalizing possession and drug use, contributing to fewer arrests and bookings for substance-related offense types. Combined, **these efforts reduced jail bookings by nearly 50% from the start of the pandemic in March 2020. Importantly, the county reduced its jail bookings without experiencing a rise in bookings for violent offenses.**

This important finding suggests that COVID-19 accelerated SJC jail reduction efforts and likely the volume of the reduction

– which may not have been possible but for safety concerns related to the spread of the virus. However, since February 2022, concerns for the spread of COVID-19 within jails have waned within Multnomah County, as well as in other SJC and non-SJC sites. With fewer COVID-19 safety concerns, it is possible many sites may return to pre-COVID-19 jail population numbers.

However, based on the results of this study, criminal legal system stakeholders in Multnomah County and elsewhere should be cautious about allowing jail populations to increase. JSP's case study findings and recently published data from CUNY's Institute of State and Local Governance show implementing smart policy designed to decrease unnecessary incarceration does not lead to increases in crime or violence⁴. Therefore, returning to the over-reliance of jails seen pre-pandemic will not increase community safety. Policymakers must remain motivated beyond COVID-19 related concerns to minimize the reliance on jail – not doing so will continue to criminalize poverty and exacerbate racial and ethnic disparities.

This brief offers several recommendations to stakeholders in Multnomah County, SJC sites, and non-SJC sites to continue momentum to reduce the over-reliance on jails.

Policymakers must remain motivated beyond COVID-19 related concerns to minimize the reliance on jail.

STRATEGIC POLICY AND PRACTICE RECOMMENDATIONS TO REDUCE THE OVER-RELIANCE ON JAILS POST PANDEMIC

DE-EMPHASIZE ARREST WHERE POSSIBLE AND PRIORITIZE RELEASE OF INDIVIDUALS

Recommendation: Rely upon citation-in-lieu of arrest for non-person, misdemeanor offenses and implement deflection programs.

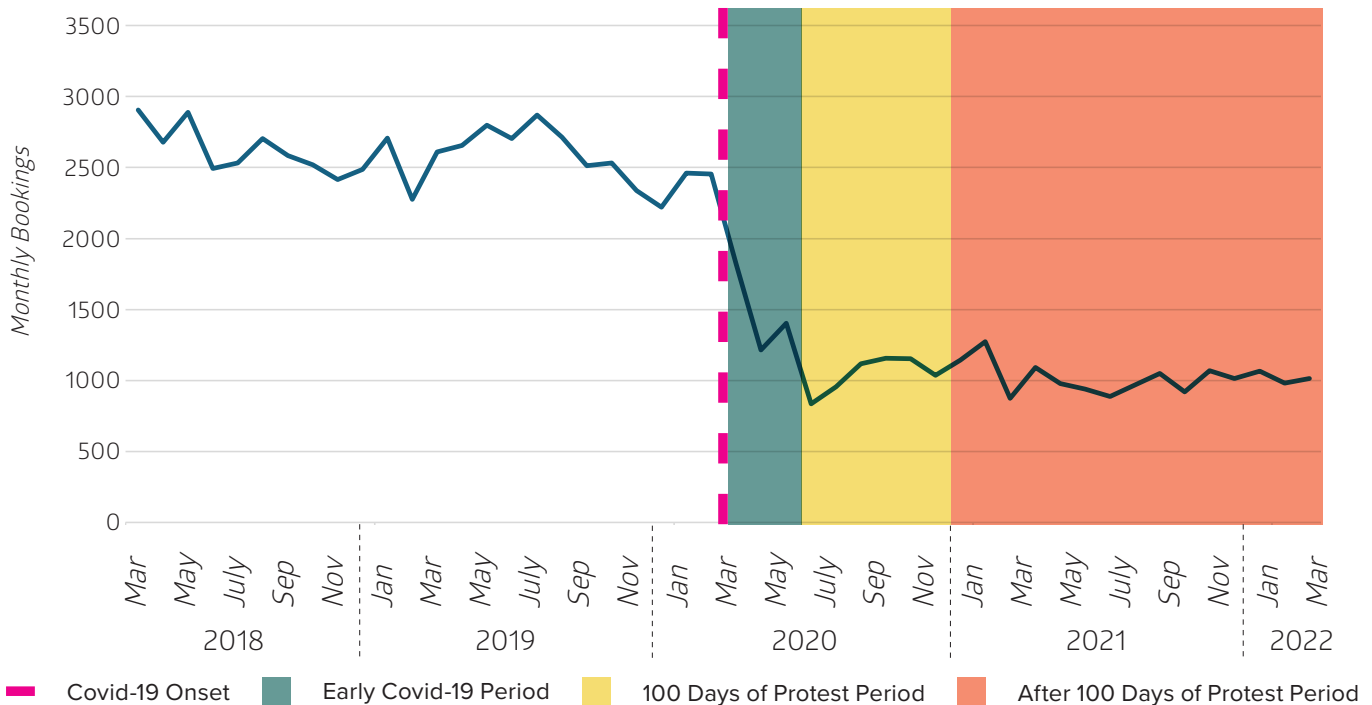
Justice System Partners (JSP) found that implementation of emergency COVID-19 jail reduction strategies led to significant reductions in the number of people who were booked into jail in Multnomah County.

While it is impossible to disentangle exactly which strategies accounted for the largest decrease in jail bookings, citation-in-lieu of arrest undoubtedly limited the reliance on arrest and jail booking for many non-person, misdemeanor offenses. Additionally, JSP found that among individuals with a history of jail bookings for violence pre-pandemic, only 25% experienced a subsequent booking for any offense after March 2020. Importantly, only 7% of these individuals experienced a subsequent booking for a violent offense after March 2020.

This suggests that relying on strategies such as citation-in-lieu of arrest does not lead to increases in jail bookings broadly, or for violence specifically. Sites must consider implementing citation-in-lieu of arrest and consider expanding eligibility to select felony offense types. This strategy combined with comprehensive deflection programs triaging individuals from the criminal legal system to community-based providers, can create a stronger public health response while decreasing reliance on jail as the primary response to behavioral health needs.

Relying on citation-in-lieu of arrest does not lead to increases in crime and violence.

**MONTHLY JAIL BOOKINGS
MARCH 2018 – FEBRUARY 2022**





Recommendation: Rely on release on recognizance for non-violent misdemeanor and felony offense types.

Courts across the country rely on four primary release types: (1) release on recognizance (ROR); (2) release on security or financial bail amount; (3) release to pretrial monitoring, or; (4) a combination of financial bail and reporting to pretrial monitoring.

Following COVID-19 in March 2020, Multnomah County relied more on the immediate release on recognizance of booked individuals to better protect staff and individuals already in jail. While this strategy did not reduce jail bookings, it did reduce the number of individuals detained in the Multnomah County jail. These immediate releases on recognizance did not lead to an increase in subsequent jail bookings while on pretrial release.

Relying on release on recognizance did not lead to increases in subsequent jail bookings while on pretrial release.

While this may be an artifact of the reduction strategies themselves, it also did not lead to subsequent jail bookings for violence – a practice Multnomah County maintained during the case study period.

Maintaining lower jail populations post-pandemic across SJC and non-SJC sites will require courts to use the least restrictive release option as often as possible, particularly for people with behavioral-health related offenses. This will not only reduce reliance on jails, but also reduce the criminalization of poverty behavioral health diagnoses.



EASE BURDENS TO ATTEND COURT

Recommendation: Allow people to appear in court virtually for nearly all hearings.

As the pandemic necessitated physical distancing, courts across the country, including Multnomah County, became more amenable to the use of virtual technology (e.g., Zoom, Webex) to attend hearings^{vi}. However, since pandemic concerns waned, many courts have returned to in-person norms for many case processing hearings.

Regardless of the hearing type, people involved in the criminal legal system often must use vacation or sick time, secure childcare, and find transportation options to attend court^{vii}. Individuals from historically disinvested neighborhoods or individuals who are also navigating poverty disproportionately experience challenges to attending court in-person. When individuals do not appear in court as scheduled, regardless of the reason, judges often issue bench warrants and return individuals to jail.

Returning to virtual technologies or expanding access to these technologies for court hearings that do not necessitate in-person attendance is not a resource heavy burden for courts. The use of virtual platforms allows individuals to attend court without the financial and resource implications, ultimately improving the number of people who attend court as scheduled and reducing the number of individuals who return to jail on a bench warrant.

Since pandemic concerns waned, many courts have returned to in-person norms for many case processing hearings.

Recommendation: Minimize the number of required hearings an individual must attend and/or implement a waiver of appearance for select hearings.

For many individuals, navigating their case involves attending several court hearings. At times, these hearings are for status updates from the prosecutor's office that do not necessarily require their presence or necessitate an individual's participation. Importantly, individuals can expend and exhaust their resources (e.g., time off, lost wages, transportation costs, favors from their support networks) to attend even one court hearing.

When individuals miss court as scheduled, even for status hearings or other procedural hearings, a judge can issue a bench warrant for the individual's arrest and return the individual to jail. This practice effectively jails individuals for events that are not a crime while they are presumed innocent.

There is a need to minimize the number of required hearings an individual must attend, and/or implement a waiver of appearance for select hearings. This strategy will dramatically reduce the number of individuals who return to jail while minimizing the criminalization of poverty.

There's a need to minimize the number of required court hearings an individual must attend.

REDUCE THE NUMBER OF INDIVIDUALS RETURNING TO JAIL FOR NON-CRIME RELATED EVENTS

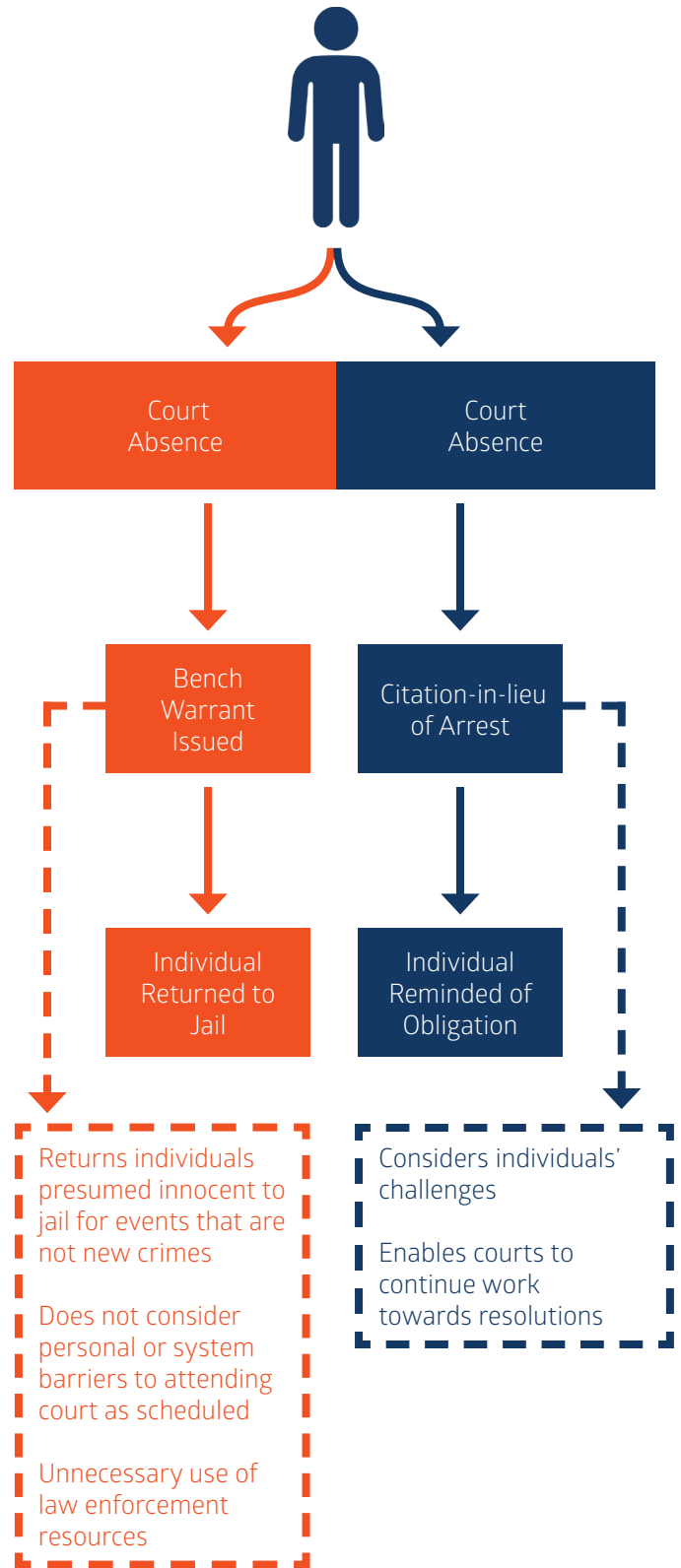
Recommendation: Rely on citation-in-lieu of arrest for all missed court appearances.

Emerging research suggests many individuals generally do attend court hearings as scheduled, but for individuals who miss court they do not do so intentionally^{viii}. Research suggests individuals miss court because of lack of resources (e.g., access to personal or public transportation) or because they have competing obligations (e.g., work, caretaking responsibilities)^{ix}. When individuals miss court, regardless of the reason for the absence, it slows court proceedings and efficiency, inflates court volume from unresolved cases, and inconveniences witnesses and victims who appear as scheduled. In response, courts around the country issue bench warrants for an individual's arrest and return the individual to jail to ensure court appearance^x. However, the bench warrant process also expends law enforcement resources as personnel become responsible for booking these individuals into jail, even if the post-warrant police contact began with a minor traffic violation.

Multnomah County stakeholders reported that during the COVID-19 pandemic, judges issued citation-in-lieu of arrest summons for nearly all offense types for individuals who missed court. This process allowed the court to remind individuals of their court obligations while eliminating the return of these individuals to jail exclusively for missing court.

Although pandemic-related concerns have waned, many individuals still experience barriers to attending court as scheduled – barriers potentially compounded by the long-term effects of the pandemic. The practice of citations-in-lieu of arrest for missed court considers these challenges while helping courts work towards case resolution. Implementing or maintaining these policies across the country, especially in tandem with virtual technologies and reducing the number of required hearing individuals must attend, is critical for maintaining lower jail populations while minimizing the criminalization of poverty.

During the pandemic, judges issued citation-in-lieu of arrest summons for nearly all individuals who missed court.



Recommendation: Reduce booking individuals into jail for violations of community supervision conditions, especially technical, non-criminal violations.

Courts across the country sentence individuals to terms of probation supervision and include a requirement to comply with a set of conditions or rules. Sites differ in the number of conditions they assign to individuals with as few as 3 to as many as 82^{xi}. While most individuals can comply with these rules, some individuals struggle to do so because they lack resources (e.g., private transportation to attend appointments) or because they live in historically disinvested communities presenting challenges for compliance (e.g., limited/no access to public transportation). When individuals do not comply with the rules, even rules that relate to behavior that is not illegal (e.g., missed probation or treatment appointments) or “technical violations,” probation agencies can submit violation reports to the court where a judge can revoke their probation sentence and return the individual to incarceration. Research shows most individuals who return to jail for probation violations do so for technical violations^{xii}.

As part of their participation in the MacArthur Foundation’s Safety and Justice Challenge, Multnomah County implemented strategies to reduce short-term jail sanctions for some probation violations (e.g., missing appointments, positive drug tests). During the pandemic, the Multnomah Department of Community Justice (DCJ), the local community supervision agency, agreed to eliminate the processing of these sanctions for nearly all community supervision technical violations. DCJ only submitted reports to the court for violations against victims from the underlying offense (e.g., non-compliance to no-contact orders) or for new crimes with a victim. This policy change contributed to the declines in jail bookings during the pandemic.

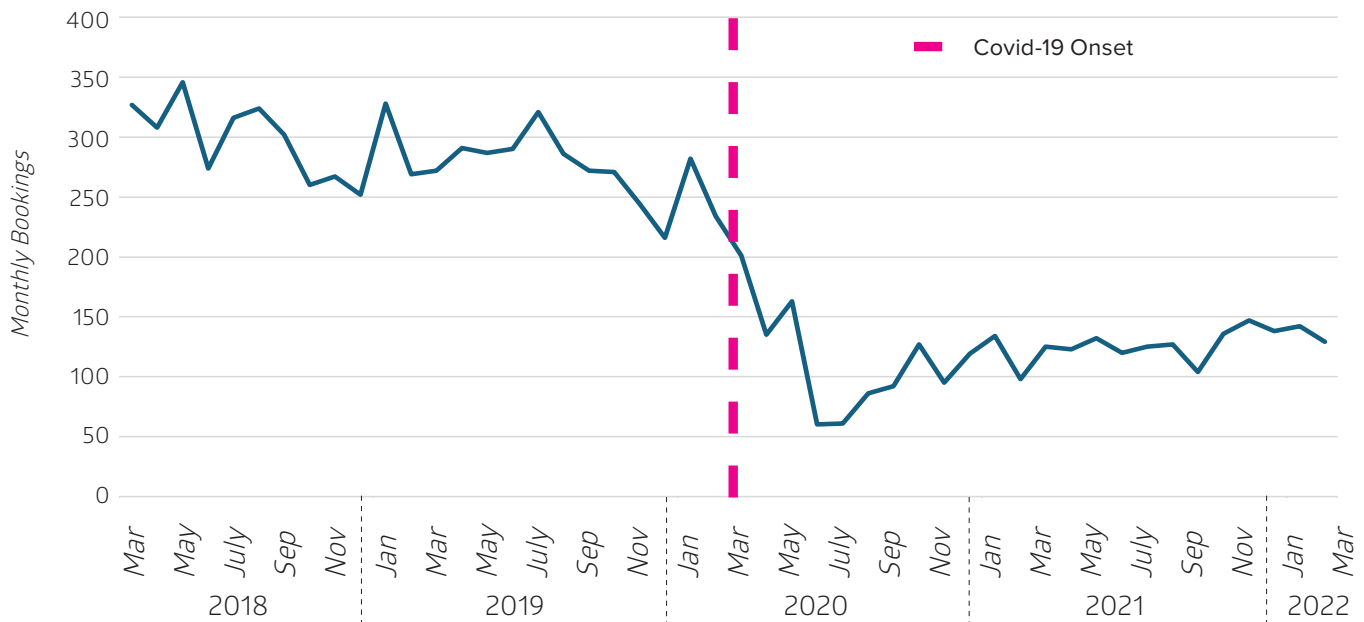
Maintaining low jail populations will require policymakers to rethink their use of jails for community supervision technical violations.

However, since COVID-19 health concerns have waned, Multnomah County, and other courts across the country, have returned to processing jail sanctions for new technical violations.

Short-term jail sanctions or long-term probation revocations for technical violations ultimately return individuals to jail for events that are not new crimes. This contributes not only to rising jail populations but increases the personnel and fiscal costs to probation agencies, prosecutor offices, and courts to process these violations without increases to community safety. Emerging research from South Carolina shows eliminating the option for technical revocation did not lead to a rise in new crime while saving the state over \$39 million in costs^{xiii}.

Maintaining pandemic-level jail populations will require policy makers to rethink their use of jails for technical probation violations. Local probation agencies can develop graduated responses to probation noncompliance by responding with treatment and services rather than submitting violations to the court. When probation agencies do submit violations to the court, prosecutor’s offices can implement vetting practices that more stringently evaluate the need for a revocation hearing for technical violations. Ultimately, judges can deny recommendations for revocation and, instead, issue continuation of probation sentences. Collectively, these approaches can significantly reduce the number of individuals returning to jail for events that are not new crimes while decreasing operating costs.

**MONTHLY BOOKINGS FOR COMMUNITY SUPERVISION VIOLATIONS
MARCH 2018 – FEBRUARY 2022**



TAKE NUANCED APPROACHES TO TERMS AND MEASUREMENT WHEN EVALUATING SUCCESS OF JAIL REDUCTION STRATEGIES

Recommendation: Define safety and violence with community members when evaluating the success of jail reduction strategies.

During case study interviews, JSP researchers asked staff stakeholders to discuss decision-making and perceptions of safety related to the emergency strategies they implemented. JSP researchers also asked community members about their perceptions of safety during the pandemic. During these discussions, each group often referred to their perceptions of “public safety” and “violence” but did so differently.

Often Multnomah County staff stated they considered “public safety” when selecting eligibility criteria for release strategies. However, in practice, staff interview participants meant they did not expand eligibility of release to “violent offenses” such as weapons possession and offenses against people. When community members discussed “public safety,” they more often referenced destruction of property and business, general lawlessness, and social disorder from protests contributing to a sense of “violence” and declines in their perceptions of safety.

The case study found that expanding eligibility criteria across strategies did not lead to increases in jail bookings broadly, or specifically for violent offense types as defined by local stakeholders. Despite this finding, community members’ perceptions of violence increased, namely because they defined violence differently for themselves.

Without clear definitions of “safety” and “violence” in the implementation of various community strategies, system stakeholders and community members may have different and misaligned perceptions of these terms, and the success of strategies. As perceptions of crime become more politicized and polarized nationally, building consensus *with* community of definitions of “safety” and “violence” can ensure that both system stakeholders and the community understand the outcomes of jail reduction strategies similarly.

■ Sites must build consensus with community about definitions of safety and violence.





INVEST IN INTER-AGENCY COLLABORATION

Recommendation: Invest in inter-agency collaboration to build and maintain momentum of reducing the over-reliance on jails.

Participation in the MacArthur Foundation's Safety and Justice Challenge required a strong culture of collaboration from multiple stakeholders to reduce jail populations. Importantly, Multnomah County's Local Public Safety Coordinating Council (LPSCC) coordinated many policy group meetings for each of the strategies the county implemented as part of their SJC work. These policy groups met often, both in-person and virtually, and included stakeholders from the District Attorney's Office, Sheriff's Office, Department of Community Justice, various public defender agencies, Portland Police Bureau, and the Multnomah County Circuit Court. At the start of COVID-19 in March 2020, LPSCC leveraged an existing policy group to create a coordinated effort to address: (1) how to prevent the spread of COVID-19 in the jail and (2) how to keep justice-involved people and staff safe. The existing collaborative infrastructure allowed stakeholders to transition easily into a pandemic-focused group.

As part of this collaboration, stakeholders implemented several strategies to reduce their jail population. The success of the various strategies in Multnomah County was the direct result of a deep mutual understanding of the roles of each stakeholder and a collective commitment to reducing the harms of jail.

▣ A relentless approach to reducing the harms of jail requires commitment only experienced through investing in inter-agency collaboration.

It is unlikely Multnomah County and other jurisdictions across the country will experience another global pandemic and the need to implement jail reduction strategies at such scale and speed. However, maintaining historically low jail populations from the pandemic will still require collective commitment; a relentless approach to reducing the harms of jail on individuals and communities requires momentum and commitment only experienced through investing in inter-agency collaboration.

END NOTES

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This report was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. Core to the Challenge is a competition designed to support efforts to improve local criminal justice systems across the country that are working to safely reduce over-reliance on jails, with a particular focus on addressing disproportionate impact on low-income individuals and communities of color.

More information is available at www.SafetyandJusticeChallenge.org.



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