

Report of the Committee on Decarceration to the District Task Force on Jails & Justice

August 14, 2019

I. Background

The Committee on Decarceration is made up of eleven individuals and includes representation from the philanthropic sector, community-based support organizations, the criminal justice system, and the civil rights community. Its composition was intended to reflect the homegrown expertise and varied perspectives that exist regarding the District's use of jail incarceration. The purpose of this committee, in Phase I, was to perform a preliminary assessment of the challenges and opportunities related to reducing local incarceration in the District. The assessment was primarily based on: the community engagement and qualitative research performed by the National Reentry Network for Returning Citizens (NRNRC), the Vera Institute of Justice's (Vera) analysis of jail data from the D.C. Department of Corrections (DOC), and the Committee's working knowledge of existing policies and practices.

The Committee used this information to proffer recommendations on three key issues: the principles which should drive approaches to decarceration, subgroups within the jail who should be initial priorities for decarceration, and the reforms to policy and practice and investments that can support these goals. This work was done with a limited amount of time and under the expectation that a deeper dive into identified priority areas will be conducted in Phase II. These initial recommendations are intended to be neither conclusive nor exhaustive. They are instead designed to advance an iterative, community-driven process for shaping the future of safety and justice in D.C. Thus, although potential policy areas of focus were identified, the Committee devoted much of its energy to reaching consensus on the values and priorities that should drive decarceration. The full recommendations are presented here as *Principles for Reducing Incarceration in D.C.*, *Initial Target Populations for Decarceration*, *Potential Justice-System Drivers of Incarceration*, and *Responsive Strategies*. They are discussed in greater detail below.

II. Recommendations

A. Principles for Reducing Incarceration in D.C.

The principles included here are broad value statements intended to guide policy and practice decisions around the use of incarceration in the District of Columbia. They may not be mutually exclusive with existing policies in all cases, nor do they have to be in order to serve their purpose. The Committee arrived at these principles through deliberation on the fundamental purpose of the jail as well as the effects of incarceration on the individual in custody, anybody they may have harmed, their families, their communities, and the District writ large.

Based on this deliberation, the Committee concluded:

- 1. The District of Columbia should only use incarceration when an individual poses an imminent risk of violence that no community-based resources may mitigate.**

The Committee recognizes that there may be some cases in which incarceration can contribute to public safety in limited ways. It also recognizes that incarceration is both insufficient for addressing the underlying contributors to criminal activity and comes with a high human and financial cost which may itself undermine public safety. This is particularly important for those who are unsentenced, a large component of the jail population: in 2018, 36% of the average daily population (ADP) in DOC custody was classified as “unsentenced”, making it the single largest status category.¹ Release to the community should be the default for these individuals. Research has demonstrated that incarceration itself is not an effective strategy to deter crime.² Any limited benefit to public safety that may be created by incarceration is associated with the temporary incapacitation of the person in custody.³ While this isolation may prevent an individual from committing a crime in the community, it can also prevent them from maintaining their housing, psychological health, and/or employment.⁴ These and other consequences can accrue after just a few days and cause individuals to leave the jail more destabilized than when they came in.⁵ Moreover, DOC’s facilities are limited in their ability to address the underlying socio-economic and health related factors behind criminal activity due to physical limitations, the relatively temporary nature of the time spent in custody, and the trauma associated with the experience of incarceration itself.⁶

Given this, the Committee concluded that incarceration should only be used when no other alternatives exist to mitigate specific risks to public safety. In the long term the community should be involved in determining what exactly constitutes a public safety risk.

2. It is the obligation of the District to invest in sustainable services and supports that reduce criminal justice involvement and obviate the need for arrest, detention, and incarceration.

Given the nature of jail incarceration’s impact, it should not operate as a primary public safety solution. Many on the Committee felt jailed should be viewed only as a crisis response when other investments and polices have failed. These members concluded that safely reducing the use of jail incarceration in D.C. will require a robust investment in non-carceral supports and services designed to address the needs of individuals who are either involved in the justice system or have a high risk of involvement and to support healthy communities. It is important to note that not all members shared these views regarding the jail and services. Proponents of this view of the jail argued services must be sustainable, broadly accessible, and coordinated so that they constitute an ecosystem of alternative supports for the residents that need them.

¹Vera Institute of Justice, Analysis of 2017-2018 Washington, D.C. Department of Corrections Administrative Jail Data (2019).

² National Institute of Justice. (2016). “Five Things About Deterrence”. Retrieved from: <https://nij.gov/five-things/pages/deterrence.aspx>

³ National Research Council. (2014). The Growth of Incarceration in the United States: Exploring Causes and Consequences. Washington, DC: The National Academies Press. doi: 10.17226/18613.

⁴ Ram Subramanian et al. Incarceration’s Front Door: The Misuse of Jail in America. New York, NY: Vera Institute of Justice, 2015.

⁵ Ibid.

⁶ Ibid; Office of the District of Columbia Auditor. (2019). Poor Conditions Persist at Aging D.C. Jail; New Facility Needed to Mitigate Risks.

This would include using eligibility and program participation requirements which do not place an undue burden on participants or otherwise exclude individuals due to housing instability and other factors related to economic hardship.

The focus on providing an ecosystem of alternatives is also in line with the views expressed by many of the residents who participated in NRNRC's focus groups. NRNRC asked residents to identify what they felt was necessary for safety in their community. None of the themes that were identified included the jail. The three most common needs voiced by residents were more control over investments in their community, enhanced local mental health treatment, and community-based violence prevention. Respondents' opinions on whether the District needed a new jail specifically, evidenced similar viewpoints. While there were residents who said that the District needed a new jail, most participants either expressed a desire for investments in alternatives to punishment or indicated that the issue was bigger than a yes or no answer.

3. The District should embrace and invest in a coordinated public health approach to safety and justice that includes community-driven strategies.

A coordinated public health approach involves addressing violence, substance abuse, mental illness, and crime with needs-based, instead of punishment based, interventions that take place outside of a carceral setting. The District has committed to using a public-health approach to violence prevention previously and this should be expanded to inform criminal justice policy more broadly.⁷ However, it is the Committee's assessment that to date specific strategies have been sporadically funded and poorly coordinated. The result is that there are few accessible alternatives to incarceration at any given time before court processes are initiated. Additionally, those residents who are most impacted and the communities they come from must be at the center of public-health strategies designed to provide alternatives to incarceration. Robust community engagement not only lends legitimacy to new public-health approaches, it also strengthens them by incorporating the experiential expertise of those closest to the issues.

B. Initial Target Populations for Decarceration

Based on the principles outlined above, and an analysis for the administrative jail data provided by DOC, the Committee has preliminarily identified select categories of frequently incarcerated residents who should not be booked into the D.C. jail at all or should spend less time in the facility whenever they are booked. These "target populations" should form the immediate focus for reducing the use of incarceration in the District. The issues faced by many of these residents are crosscutting. Therefore, these initial priorities should not be seen as mutually exclusive categories.

⁷ Brent Cohen. (2017). "Implementing the NEAR Act to Reduce Violence in D.C.". D.C. Policy Center. Retrieved from: <https://www.dcpolicycenter.org/publications/implementing-near-act-reduce-violence-d-c/>

Specifically, unless there is an imminent risk of violence, the District should focus on reducing the number of admissions and length of stay for:

1. Sentenced and unsentenced individuals with serious health, behavioral health issues and/or intellectual disabilities

The D.C. jail should not be used to house residents with serious health problems, intellectual disabilities, mental health disorders, and/or substance use disorders. The number of individuals who fall into this category currently in the jail is significant. In 2018, 35% of all individuals booked indicated having a history of serious mental illness, 54% met the criteria for substance use dependency, and 59% met the criteria for a chronic health condition.⁸ Although in some cases the jail may be able to provide services to some of these individuals while they are temporarily in custody, it is incapable of providing the longer-term care necessary to ensure individuals do not return and individuals should not be incarcerated as a way of getting them access to these services. Moreover, because incarceration itself can be traumatic, time in the jail may only further exacerbate the issues that contributed to the individual's confinement. Vera's analysis did not include information on serious intellectual disabilities specifically. However, Committee members noted that these issues may sometimes go unrecorded while substantially impacting a case to the defendant's detriment.

2. Individuals who have not been charged with a crime against another person

According to Vera's analysis of DOC data, 58% of all people booked into DOC custody in 2018 exclusively had non-violent charges.⁹ This amounts to about 5,771 individuals. The Committee concluded that in most instances, there is no reason to presume an individual poses a substantial threat of violence to the community if they have been booked into the jail on an offense that does not involve direct harm to another person. This includes property offenses that do not involve the use of force against another person, such as theft and destruction of property, as well as technical violations of probation. Members of the Committee felt this principle should not apply when the behavior was connected to the presence or risk of domestic violence, even if the immediate case did not involve force against another person. The rationale was that these cases, even if they do not begin with direct violence against another person, involve an elevated risk of more severe behavior in the future.¹⁰ It is important to note that Vera's estimate of "technical violations" is based on the number of individuals who had a violation listed as their most serious charge. Both this methodology and the population it seeks to highlight will be areas of further investigation.

⁸ Vera Institute of Justice, Analysis of 2017-2018 Washington, D.C. Department of Corrections Administrative Jail Data (2019).

⁹ Ibid.

¹⁰ Katherine van Wormer. (2009). "Reducing the Risk of Domestic Homicide". Social Work Today Vol. 9 No. 1 pg. 18. Retrieved from <https://www.socialworktoday.com/archive/011909p18.shtml>.

3. Unsentenced individuals or those charged with probation violations who are “short-stayers”.

“Short-stayers” were defined by the Committee as individuals who on average are held for seven days or less. The largest proportion of unsentenced individuals who left the jail in 2018, were released within seven days.¹¹ This includes some individuals with charges such as non-domestic violence related simple assault and other lower level offenses. Non-domestic violence related simple assaults were the single largest contributor to bookings behind parole and probation violations.¹² Because some of these individuals and other short-stayers are generally released a few days after being booked, the Committee concluded that the system has already determined them to be little to no threat to public safety. Thus, these short stays serve little penological purpose but can have tremendous destabilizing effects on an individual and their family, demand additional resources from the DOC, and increase the number of people within the facility on a given day. It is worth noting, that “short” stays vary based on race: the median amount of time spent for Black residents charged with simple assault was 13 days, compared to seven days for Whites.¹³ Responsive strategies should take this disparity into account (along with addressing its causes).

4. Vulnerable Populations

“Vulnerable populations” were identified by the Committee as individuals whose safety and health are at greater risk within a facility, or whose incarceration will negatively impact vulnerable populations. Specifically, this includes young adults, single parents with custody of minor children, and elders. According to the data, 50% of all people in the jail on a given day in 2018 reported having at least one dependent; 29% reported having two or more.¹⁴ Some members called particular attention to the 15-17-year-old youth who are charged as adults and are frequently transferred to the Central Detention Facility (CDF) once they turn 18. In 2018, 26% of all people held in the jail on any given day were between the ages of 16 and 25.¹⁵ In addition to there being a higher threat to their safety once at CDF, they are no longer able to access the therapeutic and educational support provided by the Department of Youth Rehabilitation Services (DYRS).

C. Potential Justice-System Drivers of Incarceration: Areas of Further Work

Changes to policy, practice, and investments will be required to reduce the incarceration of the target populations outlined above. Phase II should include a detailed systems analysis to help identify the different drivers of incarceration for these groups, and the levers that can be pulled to

¹¹ Vera Institute of Justice, Analysis of 2017-2018 Washington, D.C. Department of Corrections Administrative Jail Data (2019).

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

shift course. Based on an analysis of the DOC data and its collective expertise, the Committee identified some drivers of admissions and length of stay that may impact the target populations, but a broader exploration is warranted. Particular systemic issues include:

- Policing practices in the District, including who is policed and how; available alternatives to arrest, particularly in Black communities; racially disparate enforcement and diversion practices; and restrictions on the use of release on citations¹⁶ as an alternative to jail booking;
- Lack of diversion alternatives, and/or barriers to access to existing diversion alternatives;
- Mandatory holds for people arrested or held on probation violations, and other case processing inefficiencies;
- Community supervision practices, including pretrial, probation and parole; probation and parole violations specifically were the single largest contributors to bookings in 2018.¹⁷ One in four individuals who were in the jail on any given day were there due to a probation or parole violation.¹⁸ This suggests a system of community supervision that is not designed to achieve success.

D. Responsive Strategies: Areas of Further Work

The Committee had preliminary discussions about policy and practice changes that would reduce the jail population by reducing admissions and length of stay for the groups described above. Identifying specific responsive strategies will require the more thorough systems analysis referenced above. Nationally, jurisdictions have achieved significant decarceration by implementing reforms that can serve as off-ramps across the criminal justice system, and by investing in communities in ways designed to reduce justice system involvement.

Moving forward, the Task Force should evaluate the range of options at each decision point along the criminal justice continuum:

1. Arrest and Booking

The Task Force should evaluate existing alternatives to arrest and identify new approaches as well. This can be particularly difficult in a jurisdiction with so many different law enforcement agencies responsible for booking individuals into the jail. Still, expanding options for law enforcement and community members to respond to harmful behaviors without resorting to arrest can be a critical component of reducing unnecessary jail incarceration. This is particularly true for people with behavioral health disorders, a priority decarceration target for the Committee. As noted above, expanding the criteria for the MPD's existing citation policy could be an important

¹⁶Code of the District of Columbia, § 23–584. Field arrest and release on citation.

¹⁷ Vera Institute of Justice, Analysis of 2017-2018 Washington, D.C. Department of Corrections Administrative Jail Data (2019).

¹⁸ Ibid.

first step to reducing bookings for short stayers. Sustainably investing in additional pre-arrest or pre-booking diversion programs has helped other jurisdictions substantially reduce jail bookings for people with behavioral health disorders and is another necessary step for the District. This could also potentially save MPD resources that are currently expended on arrests that may eventually be diverted into specialty courts later in the process.

2. Charging

What an individual is charged with, how charging occurs, when, and by whom, all have an impact on admissions and more particularly on length of stay. The initial charge may impact whether someone has access to alternatives to incarceration or whether they serve a sentence in a federal facility. Jurisdictions have looked to addressing length of stay by reducing time to charging, expediting declination of charges or dismissal, developing pre-charge diversion programs, and establishing pre-charge screening for diversion opportunities.

3. Pretrial Release/Bail

The District is considered a national leader because of its use of effective alternatives to cash bail and its robust Pretrial Services Agency, which successfully supervises individuals in the community prior to disposition on their case. Nonetheless, Vera's review of data from the jail found that 36 percent of the average daily population in 2018 were unsentenced. Some of this may be due to mandatory holds that delay release decisions. However, the Committee, and the Task Force, still needs to understand whether other issues are delaying or stopping pretrial release. In addition, while many jurisdictions are following the District's lead in using a pretrial risk assessment tool to guide release decisions, others are assessing the role such tools play in maintaining or exacerbating racial disparities in the jail population and elsewhere in the system. The District should engage that discussion in Phase II.

4. Case Processing

Case processing is the series of touch points with the court from first appearance through disposition; delays and inefficiencies in case processing can increase length of stay, and increase admissions if individuals fail to appear for delayed court dates. Strategies to improve case processing can address short stayers, ensuring that those who will be released quickly don't stay longer than they have to or avoid booking altogether. It also addresses processing delays that lead to long stays. Those can be procedural hurdles, docketing problems, or unnecessarily long presumptive continuances. The Committee has already identified certain mandatory holds that lead to short stays for those who will ultimately be released in five days on average; Phase II should include a review of this policy. Other needs may include an assessment of how cases currently flow through the system, an analysis of "long-stayers" or individuals who have been in DOC custody for an exceptionally long time and expediting access to existing diversion options.

5. Disposition and Sentencing

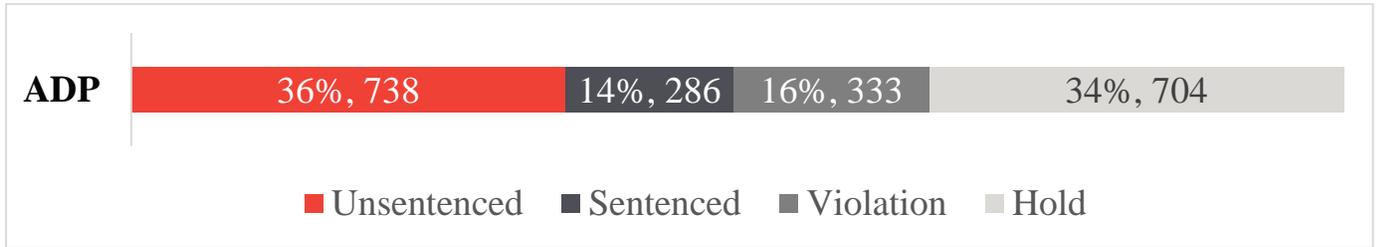
Disposition and sentencing generally impact length of stay. The jail population will be impacted by the number of people given local sentences and also the availability of alternatives to incarceration, including not just probation supervision but also treatment and other community-based programming. In Phase II, the Task Force should assess if residents who are serving sentences in the D.C. jail may be better served by community-based programs that will increase safety by investing in rehabilitation and restoration.

6. Post-Release and Supervision

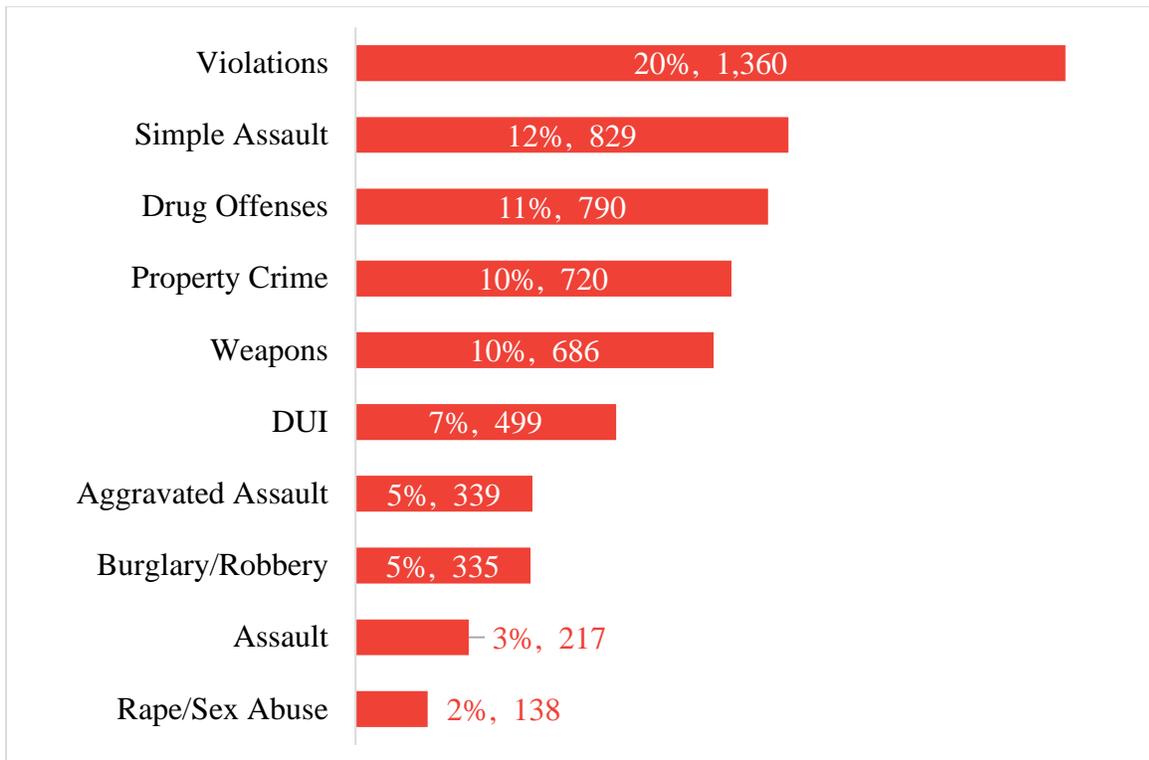
As in many jurisdictions nationally, probation and parole violations are driving jail incarceration in the District. Some strategies to address this problem focus on reducing admissions. This includes ensuring that the conditions of supervision are not unnecessarily onerous and are designed to promote success, deploying graduated responses to violations and success, and using summonses rather than arrest when a technical violation is alleged. Other strategies focus on length of stay, by, for example, addressing delays in the hearing process for violations, allowing release to the community during the pendency of the process, and limiting the amount of incarceration an individual can receive in response to a technical violation of probation.

Appendix I: Relevant Charts

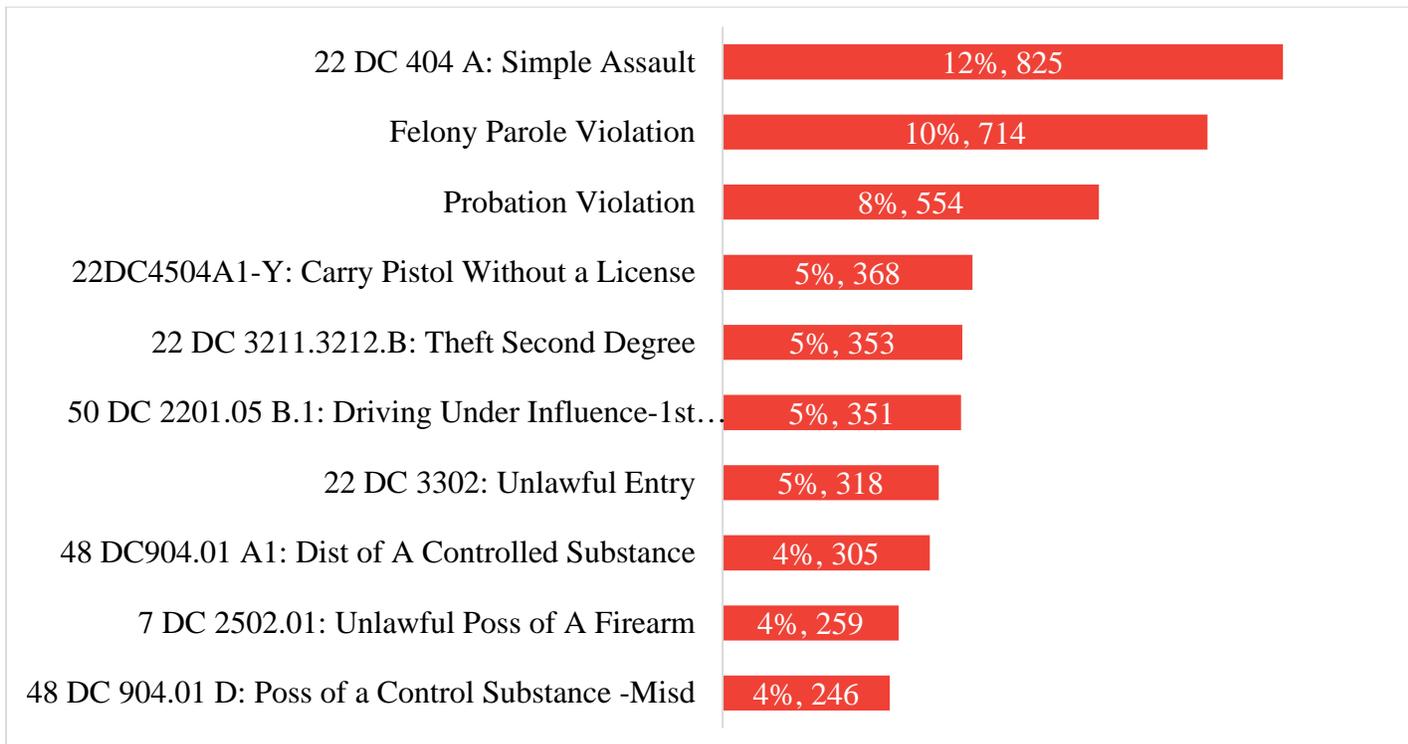
Average Daily Population (ADP)



Top Charge Categories by Bookings



Top Charges by Booking



Probation and Parole Violations

1 in 4



people in the jail that aren't on an administrative hold, or
333 people on any given day in the DC jail in 2018 were
there due to a parole or probation violation

Length of Stay (LOS) for Individuals Classified as Pretrial and Sentenced who were Released in 2018

