

DISTRICT COURT

REDUCING A JAIL POPULATION IN RESPONSE TO COVID-19

The Experience of Kitsap County, Washington

Prepared by MEF Associates:

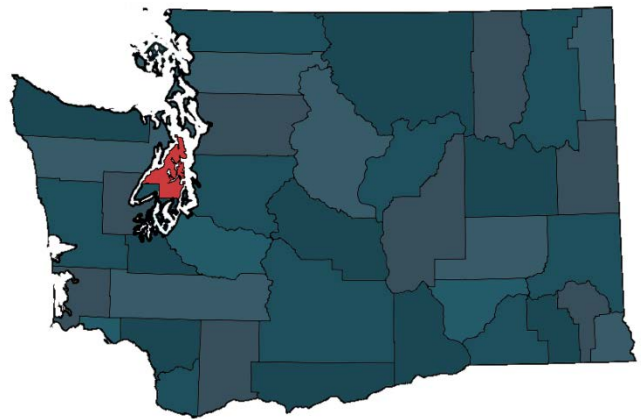
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Introduction

The COVID-19 pandemic generated fear and uncertainty across the country. In the early days of the pandemic, criminal justice agencies around the country became increasingly concerned about the risks that COVID-19 posed to individuals who were incarcerated and risks to jail and prison staff. Across the United States, federal, state, and local jurisdictions took steps to minimize the spread of COVID-19.¹ Many jails and prisons struggled to contain the spread of the virus, resulting in some of the highest rates of infection of any sector of society.²

This brief describes the efforts of one jurisdiction, Kitsap County, Washington, to respond to the COVID-19 pandemic.

Located on a peninsula across the Puget Sound from Seattle, Kitsap County has a population of roughly 270,000, the seventh largest county in the state. It includes several small cities, the tribal lands of two Native American Tribes, and three large naval facilities.



Kitsap County, Washington

1 Heiss, J., Hinds, O., Schattner-Elmaleh, E., & Wallace-Lee, J. (2020, August). The Scale of the COVID-19-Related Jail Population Decline. Vera Institute of Justice. <https://www.vera.org/downloads/publications/the-scale-of-covid-19-jail-population-decline.pdf>

2 Hooks, G., & Sawyer, W. (2020). Mass Incarceration, COVID-19, and Community Spread. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/covidspread.html>

In the early days of the pandemic, leaders of the Kitsap County Jail (KCJ) and justice system sought to reduce KCJ’s population to minimize potential spread of the virus and protect incarcerated individuals and jail staff. In early March 2020, KCJ, which ordinarily has a jail population of between 350 and 400 people, started releasing 20 to 30 people a day for about two weeks, eventually reducing the population in the county jail by about 65 percent, reaching a daily low of 138 people. As of early July, the daily population was roughly 200, though by January 2021 it was closer to 275, which is still less than its normal population.³

Though KCJ was not alone among jails across the country in attempting to reduce its jail population, its reduction was greater than the average reduction experienced in county jails, which was roughly 25 percent from mid-March through June 2020.⁴

The early focus on reducing the jail population was prescient given how jails have contributed to virus spread. The role of jails in virus spread is a function of proximity during incarceration as well as the population churn in jails. This churn heightens the chance someone can bring the virus into the jail from the outside, or the chance that someone who has been infected in the jail carries it out.⁵ Further, given the number of people who leave incarceration and transition into a homeless shelter or other shared living space, the possibility for spread is higher than overall community transmission rates.⁶ Correctional officers and jail staff also risked bringing the virus into the jail or taking it home with them and spreading it into the community, as did defense attorneys meeting with their clients in the jail.

This brief describes the effort of law enforcement, attorneys, the courts, and jail leadership and staff to rapidly reduce the jail population in Kitsap County in the first four months of the pandemic to minimize potential virus transmission.

Population churn is the turnover of people and how often people are entering and exiting the jail, considering factors like shorter sentences, pre-trial detention, and individuals being released shortly after booking.

3 Kitsap County Jail Inmate Roster. (n.d.). Kitsap County. Retrieved July 10, 2020 and January 19, 2021, from <https://www.kitsapgov.com/sheriff/Pages/InCustody.aspx>

4 Heiss, J., Hinds, O., Schattner-Elmaleh, E., & Wallace-Lee, J. (2020, August). The Scale of the COVID-19-Related Jail Population Decline. Vera Institute of Justice. <https://www.vera.org/downloads/publications/the-scale-of-covid-19-jail-population-decline.pdf>

5 Reinhart, E., & Chen, D. L. (2020). Incarceration and Its Disseminations: COVID-19 Pandemic Lessons From Chicago’s Cook County Jail. *Health Affairs*, 39(8), 1412-1418. <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00652>

6 Gillespie, S., Batko, S., Chartoff, B., VeShancey, Z., & Peiffer, E. Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It. (2020, September 16). Urban Institute. Retrieved January 28, 2020, from <https://www.urban.org/features/five-charts-explain-homelessness-jail-cycle-and-how-break-it>

Setting the foundation

The reduction in the jail population in Kitsap County was largely possible because of the discretion and authority of the courts to make unilateral decisions about how to adjudicate cases. Before the courts and jails started releasing people, the courts made some swift decisions to guide the process.

The Washington State Supreme Court issued Order No. 25700-B-602 on March 4, 2020 that explicitly granted authority to presiding judges in county courts to “adopt, modify, and suspend court rules and orders, and to take further actions concerning court operations, as warranted to address the current public health emergency.”⁷

In early March, representatives from Kitsap County’s judiciary, the county sheriff (who oversees the jail), the county clerk, public defenders, prosecutors, and local tribes met with the County Health District to learn about the virus, how it spreads, and what they needed to do to keep the courts open and prevent transmission.

The presiding judges of Kitsap County Superior and District Courts took several steps on March 13, 2020 to reduce foot traffic in the courts and the jail population. They issued an Emergency Rule to temporarily stop hearing cases for people not held in pre-trial detention unless someone was charged with a felony or a charge which prosecutors and the courts determined rendered that individual a significant risk to public safety, namely driving while under the influence of drugs or alcohol and certain domestic violence charges. They also suspended all warrants issued by judges – bench warrants – for individuals who failed to appear in court for their hearing. This meant that the Sheriff’s Department would not bring people into custody for not appearing at a previous court hearing.

Reducing the jail population by releasing individuals in pre-trial detention

For individuals held in custody, jail staff helped the courts identify on a case-by-case basis those who could potentially be released. Prosecutors and defense attorneys also identified people they felt were suitable for release. The focus was on those being held in pre-trial detention for low-level charges, like property theft, property crime, or vandalism. They recommended that either the individual be granted a new hearing with a judge to reduce their bail or simply release them from custody on their own recognizance. Prosecutors and judges made the final determination on who would be released.

⁷ Order No. 25700-B-602. (Wash. 2020).

<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/SC%20Order%20Closure%2025700-B-602.pdf>

When making decisions regarding release, judges must adhere to Rule 3.2 (see sidebar) – Probable Cause Determination.⁸ Judges have significant discretion regarding their interpretation of Rule 3.2. Normally, judges will consider an individual’s entire criminal history as it relates to Rule 3.2 to determine that person’s likelihood to fail to appear for trial or pose a danger to the community. However, in the context of the pandemic, Kitsap County judges shifted their interpretation of the rule to help reduce the number of individuals being held pre-trial. The judges released anyone who was being held in pre-trial detention solely based on previous failures to appear. To assess danger to community, judges only considered the charges a defendant was being held for on that particular day, instead of taking their criminal history into consideration. For example, if someone was arrested for driving with a suspended license, the judges would only consider that singular infraction and would likely release the individual, even if that person had a previous arrest for driving under the influence which, in pre-pandemic circumstances, the judge would have also considered when assessing the safety risk to the community.

New bookings

A major concern related to virus transmission was bringing the virus into the jail from the community, whether via individuals booked into jail or the law enforcement officers who bring them there or work in the jail. County staff described shifts in the approach to policing and how they processed arrested parties in response to these concerns. Specifically, they described three potential courses of action, depending on the nature of the alleged offense.

RULE 3.2: PROBABLE CAUSE DETERMINATION

Rule 3.2 – Probable Cause Determination, provides guidelines on whether to release an individual or hold them in pre-trial detention.⁸ The presumption is that an individual who is arrested is not subject to pre-trial detention unless they meet at least one of two conditions: if the judge hears information suggesting (1) the individual is at risk of failing to appear for their trial, or (2) if the individual might be a danger to the community.

⁸ Procedure Following Warrantless Arrest - Preliminary Appearance, CrR Rule 3.2.1 (Wash. 2014).
https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=crr&ruleid=supCrR3.2.1



Cite and release. County staff indicated that citing and releasing individuals for a broader array of infractions than they did prior to the pandemic helped minimize the potential virus transmission risk by bringing fewer people into the jail. When citing and releasing, a law enforcement officer writes somebody a ticket and gives them a summons to appear in court at a future date. The individual is not brought to the jail. Though, pre-COVID, officers typically used cite and release for individuals with minor traffic infractions, they started doing so for more serious infractions such as driving with a suspended license as well.



Book and release. County staff reported an increase in book and release compared to longer-term pre-trial detention to reduce the jail population. In these cases, a law enforcement officer brings somebody to the jail and they remain in a holding cell while an officer processes their paperwork and takes their fingerprints. Law enforcement officers might book and release individuals for shoplifting or property theft. This approach still requires a short period in a holding cell prior to release. Though this approach does not bring the individual in contact with the main jail population, there is some risk of exposure.



Book and stay. People who were charged with offenses such as domestic violence, driving under the influence, or violent felonies faced mandatory arrest. Law enforcement and prosecutors identified these offenses as ones where the risk to public safety was too high to not detain these individuals pending a pre-trial hearing, despite the risk of virus transmission. However, the jail introduced a 10-day quarantine process to reduce the likelihood of virus transmission inside.

Immediate implications: A backlog of cases

A backlog in cases has accumulated on the courts' dockets due to the temporary pause on court hearings, suspension of trials, increase of citing and releasing individuals, and suspension of bench warrants for failure to appear. Given this backlog, the courts had to suspend the Speedy Trial rule, which results in automatic dismissal of cases not heard within 60 days if held in custody and 90 days if out of custody. This means cases are not dismissed outright and will eventually be heard, though processes to hear these cases have drastically

slowed. Though the courts had a videoconferencing system to hear some cases remotely, the backlog has grown faster than their capacity to hear them even with this functionality.

Thinking in the longer term, KCJ and justice system stakeholders projected that the temporary suspension of bench warrants and the release of individuals in pre-trial detention will increase the backlog of open cases and decrease show-rates for hearings and trials. Bench warrants and pre-trial detention are mechanisms meant to increase the probability that individuals show up in court. It may be that shifts in policy reduce show-rates, though it is too early to know whether this is the case.

If individuals do not appear in court, it will result in an increase in the number of bench warrants. And, if people are eventually arrested because of these warrants, KCJ could also experience a significant increase in its jail population.

Looking ahead

The steps taken by KCJ, prosecutors, and judges in the weeks following the onset of the pandemic led to a swift and dramatic reduction in the jail population in the County. These steps included a mix of formal policy changes as well as shifts in how key actors in the criminal justice process exercised their discretion. In addition to changes in policing and jail processes, the courts expanded their use of videoconferencing and electronic communications, noting that offerings like remote hearings do expand access to the courts. Overall, County staff, emphasized that they were responding to what felt like a rapidly evolving situation in which they had limited information. Despite the uncertainty, they appreciated the ability to draw on guidance from the County Health District and state-level stakeholders such as the State Supreme Court.

As of the time of publication, COVID-19 remains an ongoing threat to public health and state and local jurisdictions continue in their efforts to adapt to changing facts on the ground. Though the jail population has started to increase again from the volume in spring 2020, it remains well below pre-pandemic levels. The County's efforts to reduce the jail population underscore the flexibility and discretion available to key actors in the criminal justice system and the implications for pre-trial detention. Given broader policy debates about reducing and eliminating inequities in the criminal justice system, efforts like those in Kitsap County to rethink the circumstances under which individuals are incarcerated prior to conviction are useful examples of alternatives to the status quo.

About this Brief

The Port Gamble S’Klallam Tribe contracted with [MEF Associates](#) in 2018 to evaluate a re-entry program the tribe operates in Kitsap County, Washington. Funded by the Bureau of Justice Assistance in the U.S. Department of Justice, this grant focuses on supporting re-entry for individuals incarcerated in the Kitsap County Jail. The views expressed in this publication do not necessarily reflect the views or policies of the Port Gamble S’Klallam Tribe or the Bureau of Justice Assistance.

The primary focus of MEF’s work for the Tribe is a descriptive evaluation of the Tribe’s re-entry program. However, with the onset of the pandemic, MEF and the Tribe recognized the importance of documenting the approaches the County’s criminal justice system took in response to the COVID-19 pandemic. To that end, MEF staff conducted semi-structured conversations with key stakeholders, including representatives from the county Sheriff’s Department, a county prosecutor, and a county judge focused on approaches the county took in the weeks immediately following the start of the pandemic.

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