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# PHILADELPHIA'S LESS CROWDED, LESS COSTLY JAILS

Taking Stock of a Year of Change and the Challenges That Remain

July 20, 2011

## EXECUTIVE SUMMARY

From 1980 to 2008, the population in Philadelphia's jails quadrupled. The number of inmates grew by so much for so long that the idea that it might ever decrease significantly seemed unthinkable—as did the prospect of a decline in the budget of the Philadelphia Prison System.

In the last few years, however, the inmate count has dropped in a dramatic way. In 2010 alone, the average daily population declined by 11 percent. Population in the system peaked in January 2009 at 9,787; in June 2011, it stood at 8,048, after falling below 7,700 in the spring.

As a result, the city's budget for its jails in Fiscal 2012, at \$231 million, is \$10 million lower than it was three years ago. The declining population has also contributed to a reduction in the amount of overtime paid to police (\$6.4 million over two years) and sheriff's personnel (\$1 million in Fiscal 2011).

As we reported last year in the Philadelphia Research Initiative's initial look at this topic, *Philadelphia's Crowded, Costly Jails: The Search for Safe Solutions*, much of the early reduction in the city's jail population was due to a change in the state law that forced certain sentenced inmates to serve time in state prisons instead of the city's jails.

But in 2010, which is the focus of this report, the most significant factors in the declining jail population were drops in the numbers of those detained on a pretrial basis and those held for alleged violations of probation or parole.

Defendants detained pretrial are the largest group of inmates in the Philadelphia Prison System. The number of bed-days they occupied—one inmate staying one day accounts for one bed-day—fell 12 percent last year, due primarily to a 10 percent decrease in admissions. The drop in the pretrial population, which accounts for 49 percent of the overall decrease in bed-days in 2010, appears attributable to the following:

- A modest decline in the number of arrests, which parallels a corresponding drop in violent crime.
- Reductions in the overall severity of charges leveled against the accused. This has been due in part to a new approach to deciding what charges to pursue in individual cases, implemented by District Attorney R. Seth Williams, now in his second year in office. When initial charges are less severe, lower bail may be imposed or none at all, resulting in fewer individuals being held pretrial.
- Creation of new programs to divert some less serious cases from the court system, with individuals often being fined or made to perform community service. Among these initiatives are the Accelerated Misdemeanor Program (AMP) and the Small Amount of Marijuana Program (SAM).
- A decrease in the number of admissions to jail on bench warrants, which call for the detention of individuals who fail to show up for court dates. One factor in the decline was not the result of any new practice or procedure. A computer problem caused some new warrants not to show up in police checks for several months, meaning that some people were not picked up on warrants who otherwise would have been.

Thirty-nine percent of the overall drop in the jail population came from a reduction in bed-days consumed by those who were alleged to have violated the terms of their probation or parole. This decrease among violators of probation and parole was due to shorter incarcerations caused by a streamlining of the court process.

The sentenced population accounted for the remaining 12 percent of the drop, with length of jail-stays down here as well. This appears to be the continuing effect of the change in state law. Increased use of alternative sentencing programs like electronic monitoring and mental health court may also have contributed to this decline.

Even with all that has changed, Philadelphia's jail population remained high on a per-capita basis compared to other jurisdictions. For the 12 months ending June 30, 2010, Philadelphia had the fifth-highest rate of incarceration among the 50 jurisdictions in the country with the largest jail populations, according to our analysis of data from the federal Bureau of Justice Statistics. It should be noted, however, that jails are county institutions and that most other counties that include big cities also include lower-crime suburban areas.

Though much has happened since the publication of our initial report, several policy options mentioned in that document for reducing the jail population have not been acted upon, even though many officials have said they would like to pursue them.

One of those options is the creation of a day-reporting center for nonviolent individuals who would otherwise be in jail. Another is updating the bail guidelines (or risk-assessment tool) that help determine who gets held pretrial and for how long. The bail guidelines are widely considered outdated and ineffective; in New York City and Washington, D.C., where similar guidelines are revised frequently, a higher percentage of defendants have been permitted to remain in the community pretrial than in Philadelphia, and more of them have shown up for court.

Policy makers in Philadelphia’s criminal justice system, working together through the Criminal Justice Advisory Board, believe that their recent efforts demonstrate that, to a large extent, the size of the inmate population is within their power to manage.

While the savings recorded by the Philadelphia Prison System in the last few years have been significant, they are modest in percentage terms compared to the overall reduction in the jail population. For there to be substantially more savings, the population will have to fall enough to enable the city to close an entire facility or a section of one.

Officials say one goal in the next few years is to close the House of Correction, the oldest of the jails and the most expensive to maintain. And they say that bringing the system’s overall population down to 6,500 is feasible without jeopardizing public safety.

## UNDERSTANDING THE JAIL POPULATION

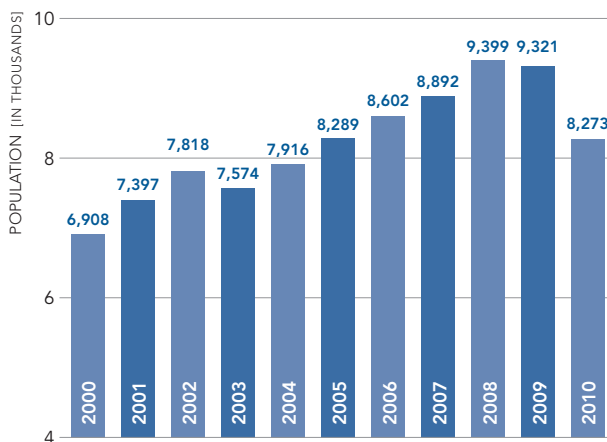
Although Philadelphia calls its detention facilities “prisons,” they are, in fact, “jails,” as the term is commonly used, meaning local institutions housing individuals awaiting trial or those convicted of relatively minor crimes. The word “prison” usually is reserved for state or federal institutions that confine people convicted of more serious crimes.

Philadelphia’s jails include six facilities on a sprawling main campus on State Road in Northeast Philadelphia, as well as several other smaller, privately run facilities throughout the city.

The average daily population in those facilities rose by 2,491 or 35 percent from 2000 to 2008, leveled off in 2009 and fell in 2010. See Figure 1. These developments—both the long-term rise and

FIGURE 1

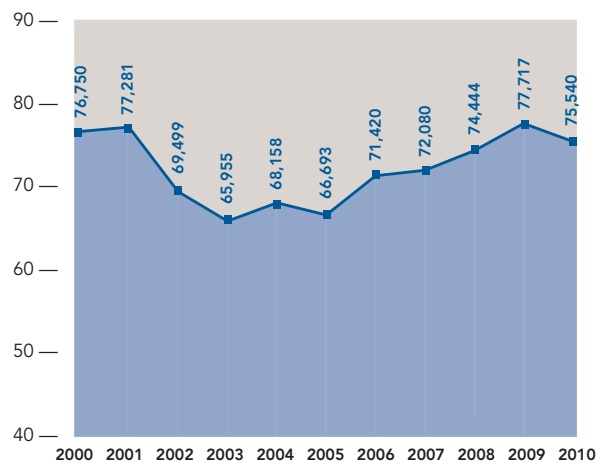
AVERAGE DAILY POPULATION, PHILADELPHIA PRISON SYSTEM 2000 – 2010



SOURCE: Philadelphia Prison System

FIGURE 2

ADULT ARRESTS IN PHILADELPHIA 2000 – 2010



SOURCE: Philadelphia Police Department

short-term fall—generally have not tracked arrests; last year, the jail population declined 11 percent even as arrests dropped only 3 percent. In 2010, Philadelphia had 1,210 fewer arrests than it did in 2000 but 1,365 more people in jail. Arrest totals over the last decade are shown in Figure 2.

### Policies and Practices Impact the Size of the Jail Population

There are three main pathways for an inmate to be admitted to the city jails. The policies and practices related to these pathways affect the size of the population:

- **Pretrial.** After arrest, defendants may be held prior to trial out of concern that they will not show up for court if they are allowed to remain at liberty.<sup>1</sup>
- **Sentenced.** After trial, defendants convicted of crimes and sentenced to periods of incarceration of less than two years serve their sentences in the Philadelphia jails. Sentences longer than two years are served in the Pennsylvania state prison system.
- **Violator.** Individuals already convicted of crimes who are either on probation (community supervision in lieu of incarceration) or parole (community supervision after incarceration) may be jailed if they are alleged to have violated the conditions of their supervision. Violations include missing meetings with probation officers, failing drug tests or being arrested for new crimes.

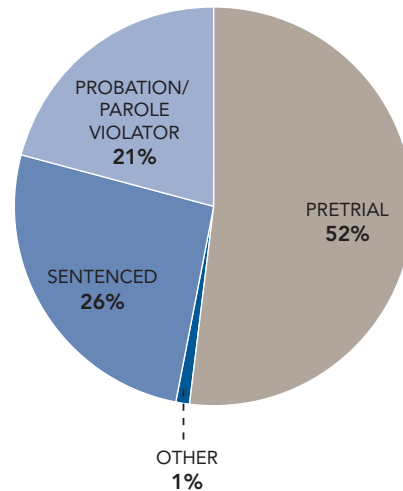
On June 30, 2010, 52 percent of the inmates in the city jails were being held solely on a pretrial basis. See Figure 3. The number of inmates held pretrial is influenced by policies about who gets arrested, what charges they face, what bail is set, and how the courts respond to defendants who miss court dates.

Twenty-six percent were convicted offenders serving sentences. That number is impacted by decisions about who is eligible for alternatives to incarceration, what an appropriate sentence is, whether inmates should serve their sentences in local or state facilities, and who should be paroled.

Twenty-one percent of inmates were held for alleged violations of probation or parole. Many of these individuals had been arrested on new charges while under community supervision. The number of people jailed as violators is decided, in part, by the standards for determining who is given probation or parole, how long that status lasts, and what sanctions are used to respond to those who break the rules governing their supervision.<sup>2</sup>

FIGURE 3

#### DAILY POPULATION ON JUNE 30, 2010 BY PATHWAY



SOURCE: Philadelphia Prison System

Note: "Other" represents individuals held for other jurisdictions.

## Decades of Jail Growth End in 2009 with State Legislative Change

The size of the jail population is a function of the number of inmates admitted and the length of time they stay—the number of bed-days consumed. One inmate who stays one day takes up one bed-day. Another inmate who stays 50 days takes up 50 bed-days.

From 2000 to 2008, the annual number of bed-days consumed in the Philadelphia Prison System grew by about a third. Much of the increase was fueled by the pretrial population, which had a 50 percent increase in bed-days. Over the same period, bed-day usage among probation and parole violators more than doubled.

For inmates serving sentences, however, bed-days consumption started declining. That drop grew large enough to produce a small decline in the overall jail population in 2009—after the state legislature, acting in response to the coordinated efforts of Philadelphia's top criminal justice officials, changed the law regarding where sentenced inmates do their time.<sup>3</sup>

The change, which took effect in November 2008, meant that two groups of convicted inmates would no longer be allowed to stay in the Philadelphia jails and would have to go to state prison instead. One group consisted of inmates with single sentences of two years or greater but less than five years. The other consisted of individuals with multiple sentences totaling two years or greater but less than five years.

### DOING TIME FOR TRAFFIC VIOLATIONS: AN UPDATE

In our previous report, *Philadelphia's Crowded, Costly Jails*, we showed that approximately 1,500 inmates in 2008 spent a few extra days in jail as the result of outstanding traffic court cases. Typically, these individuals had been incarcerated for other matters. When those matters were resolved, they were kept in jail an extra day or two so they could be taken to Traffic Court to face charges on such items as driving without a license or driving with an expired registration.

Upon learning of our findings, city officials expressed concern about the cost and propriety of this practice. They pledged to do something about it. And they have. In 2010, the number of inmates spending extra days in jail in order to go to Traffic Court was down to 859.

What's changed? Many inmates now are appearing in traffic court prior to the resolution of their other criminal matters, often via video, saving the jail system several hundred bed-days a year.

## WHAT HAPPENED IN 2010

The story of what happened to the jail population in 2010 is more complex than in 2009. The decline in the average daily population was much bigger, 11 percent compared to 1 percent, and there were more moving parts. The drop in both years is shown on a monthly basis in Figure 4. Almost every month during 2010 brought a new procedure or program to Philadelphia’s criminal justice system. Many of these changes were aimed at improving conviction rates and increasing the efficiency of the courts. But the data indicate that some of them may have helped shrink the jail population as well.

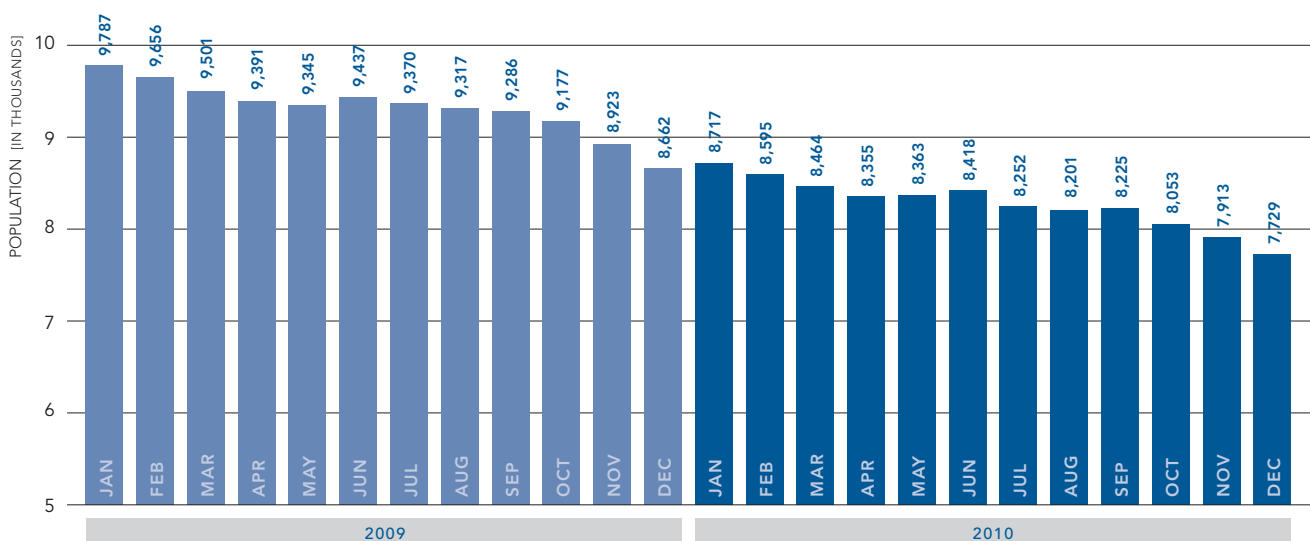
Figure 5 shows the number of bed-days by pathway in the Philadelphia Prison System over the last decade. From 2009 to 2010, the total number of bed-days consumed dropped from 3,402,165 to 3,017,165.

The pretrial population accounted for 49 percent of the decline, the violator population 39 percent, and the sentenced population 12 percent.

This section describes each of the factors that contributed to the 2010 decline and analyzes its impact on the jail population.

FIGURE 4

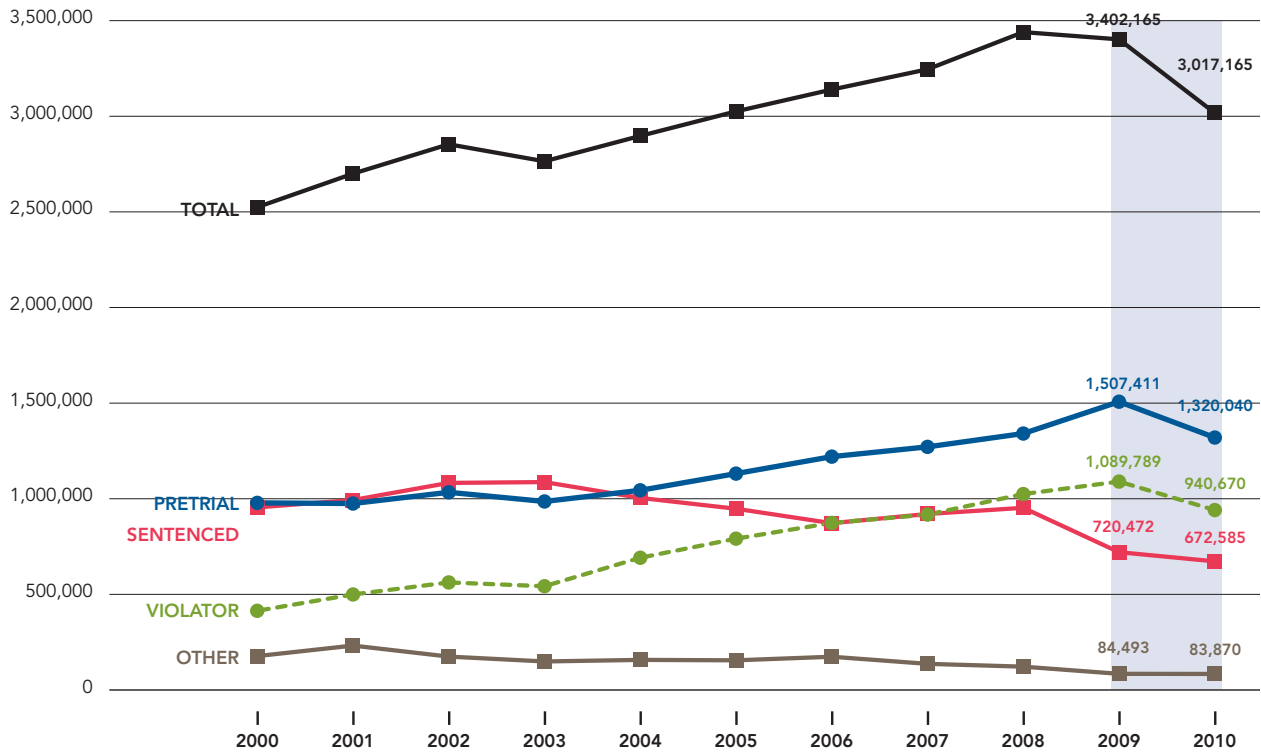
AVERAGE DAILY POPULATION, PHILADELPHIA PRISON SYSTEM JANUARY 2009 – DECEMBER 2010



SOURCE: Philadelphia Prison System

FIGURE 5

JAIL BED-DAYS CONSUMED 2000 – 2010



SOURCE: Philadelphia Prison System

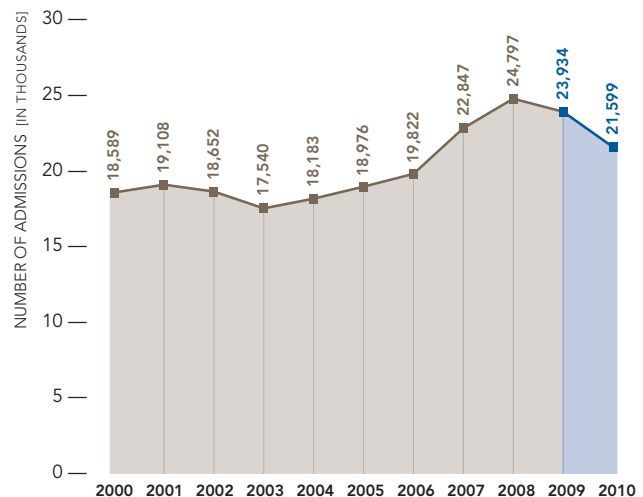
### The Pretrial Population: Many Factors Contribute to a Decline in Admissions

Between 2009 and 2010, the number of bed-days consumed by pretrial inmates dropped by 187,371 or 12 percent. The main cause was a 10 percent decrease in admissions. See Figure 6.

The reduction in pretrial admissions was attributable to fewer arrests, a change in charging practices at the District Attorney's Office, the expansion of diversion programs, and a reduction in bench warrants.

FIGURE 6

PRETRIAL ADMISSIONS 2000 – 2010



SOURCE: Philadelphia Prison System

**The Drop in Arrests**

In 2010, the number of adults arrested by the Philadelphia Police Department declined 3 percent. Much of this decline was in arrests for offenses against persons, such as murder, rape, and assault. Arrests for property offenses, such as robbery and car theft, remained fairly constant, as did those for drug offenses and “other” crimes, which include DUI, possession of a firearm without a license, and prostitution. See Figure 7.

The decline in arrests for offenses against persons parallels a decline in violent crime in the city. According to the Philadelphia Police Department, reported violent crime dropped 3 percent in 2010.

While the reduction in arrests contributed to the decrease in the number of pretrial inmates admitted to jail, it was far from the whole picture.

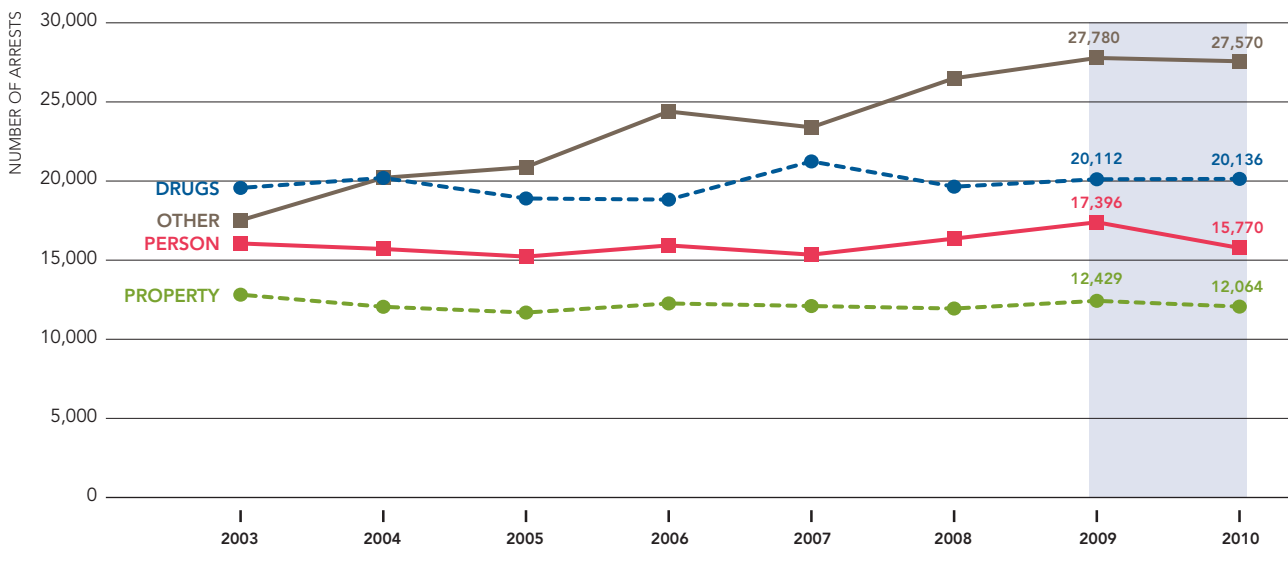
**Changing the Charging Standard**

The Philadelphia District Attorney’s Office has a charging unit—a group of prosecutors who look at arrest paperwork from the police, determine whether there is enough evidence to charge the defendant, and, if so, what the charges should be.

According to Cynthia Martelli, chief of the charging unit under former District Attorney Lynne M. Abraham, the emphasis under Abraham was on processing cases as quickly as possible so that defendants would not languish in police holding cells. During the Abraham administration, which came to a close at the end of 2009, prosecutors in the charging unit looked at the acts alleged by the police, wrote up the highest charge that correlated to that information, and passed the case along. Typically, defendants were in front of a bail commissioner within 24 hours.

FIGURE 7

ADULT ARRESTS BY OFFENSE TYPE 2003 – 2010



SOURCE: Philadelphia Police Department



The process had implications for how bail was set and, consequently, how many defendants entered jail pretrial.

Wishing to improve conviction rates, District Attorney R. Seth Williams, who took office at the beginning of 2010, changed the practices of the charging unit. Now, prosecutors are instructed to “look at the evidence and charge what we think can get proven in court,” said the charging unit chief, Assistant District Attorney Kirsten Heine. The charging unit works with the police to get the information needed to make this new kind of assessment. In the view of D. Webster Keogh, administrative judge of the Trial Division of the Philadelphia Court of Common Pleas, charging in many cases has become more “actual fact-based, considered and more reasonable.”

Jodi L. Lobel, who heads the Pre-Trial Division under Williams, gave this example of the changed approach: “[In the past,] if a fact pattern read that someone had smashed a store window, the lead charge likely would have been burglary, and the bail magistrate would have set bail consistent with that charge, when, without further proof of intent to commit a crime inside, that case probably would have ended in a verdict supporting vandalism. Now, without further proof of burglary, we would decline the burglary charge and charge vandalism only.”

Police brass generally laud this new approach, even though it can mean that officers spend more time collecting evidence and writing up reports in the hours post-arrest.

#### **POLICE PAPERWORK**

The new approach to charging by the District Attorney’s Office has impacted how the police write up arrests.

Under the old process, according to Police Inspector David Jardine, “We would ask for approval of all possible charges and the D.A. would approve them.”

In the new system, the D.A.’s Office is trying to be more selective in the charges it imposes, and the police are offering more information to back up the charges they recommend. Said Captain Ben Naish of the Southwest Detective Division, “We’re [now] being held to a higher standard, and our investigations are improving.”

The shift in how defendants are being charged is evident in certain categories of offenses. In 2010, for example, there were 453 fewer arraignments of individuals charged with third-degree felony theft than in 2009. At the same time, there were 479 more cases with various misdemeanor theft charges, which are lesser alternative charges. See Figure 8.

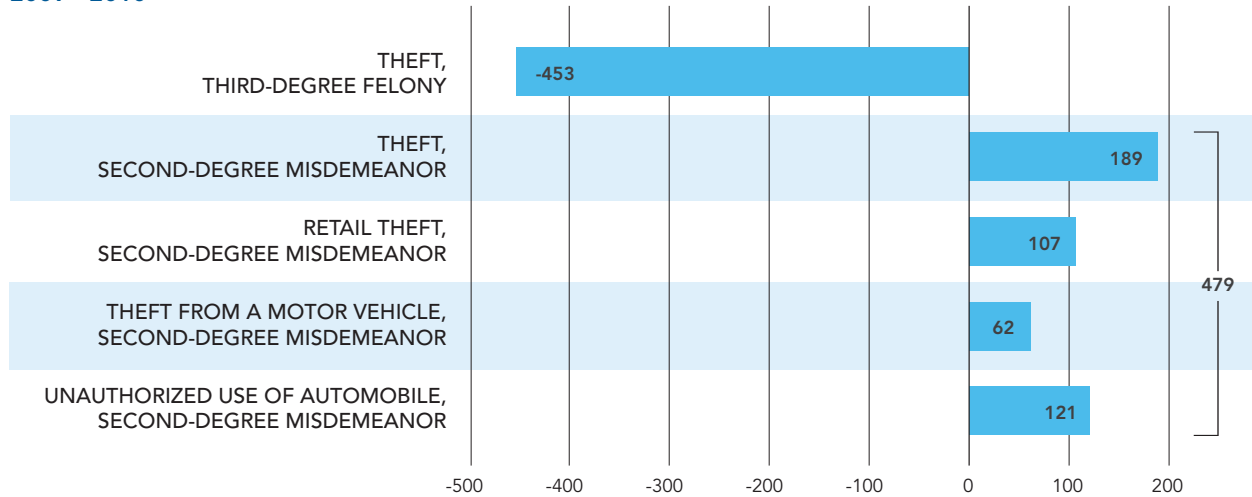
How does this impact the jail population? In Philadelphia, the most serious or “top” charge facing the accused is a significant factor in determining bail—the more serious the crime, the higher the bail. Our analysis of arraignment data shows that defendants facing less serious charges (first- or second-degree misdemeanors) are released without bail 65 percent of the time. Those charged with felonies are released without bail only 12 percent of the time.

As defendants are being charged with lesser offenses, the likelihood is that fewer are being held on bail, contributing to the decline in pretrial admissions.

Though the city declined to provide numbers, Lobel said that most defendants still appear before a magistrate within 24 hours.

FIGURE 8

## CHANGE IN NUMBER OF ARRAIGNMENTS FOR THIRD-DEGREE FELONY THEFT AND RELATED OFFENSES 2009 – 2010



SOURCE: Philadelphia Preliminary Arraignment System

**Expanding Options for Diverting Cases From the Court**

For decades, it has been the practice in Philadelphia and other jurisdictions to divert some lower-level offenders out of the formal court process. Once diverted from court, these defendants are not at immediate risk of going to jail. In Philadelphia, as elsewhere, the District Attorney's Office identifies cases eligible for diversion at the charging stage.<sup>4</sup>

Philadelphia has had an array of specialized diversion programs targeted at specific groups of offenders.<sup>5</sup> In the summer of 2010, two more were established:

- Accelerated Misdemeanor Program (AMP). Within 10 days after arrest, defendants diverted into AMP by the district attorney's charging unit go to a courtroom located in the police district where they were arrested. There, a public defender explains that if they agree to complete 12-to-24 hours of community service and pay a fine of \$199.50, the case will not go to court for trial and the record of the arrest may be expunged. Only defendants charged with nonviolent misdemeanors are eligible; defendants may have prior convictions.<sup>6</sup> AMP defendants frequently are facing charges of drug possession, retail theft, prostitution or solicitation of prostitution. This program was started in West Philadelphia's 18th Police District in July 2010. It was expanded to four additional locations in November.
- Small Amount of Marijuana Program (SAM). A few weeks after arrest, defendants charged with possessing a small amount of marijuana report to the Criminal Justice Center.<sup>7</sup> There, a magistrate tells them that if they pay \$200 in court fines and attend a Saturday morning class on the legal repercussions of drug arrests, their cases will end and the charges may be expunged. This program began in June 2010.

The exact impact of the two new programs on the jail population is hard to measure for two reasons. One is that many of the participants in the programs would not have gone to jail in any event. The other is that the two new programs can take months to complete. By the end of 2010, only a small percentage of the admitted individuals had completed their requirements. Failure to complete either program results in a return to the formal court process and a risk of jail time.

That said, there clearly has been some impact. Our analysis shows that there were 541 jail admissions for possession of marijuana in 2009, mainly of individuals held pretrial. In 2010, admissions for marijuana possession dropped to 354.<sup>8</sup>

The apparent success of these programs has not gone unnoticed. "We're looking to see if we can expand diversion," said Municipal Court President Judge Marsha H. Neifield.

#### THE FATE OF COMMUNITY COURT

At a time when the city is looking to expand its diversion programs, one of the largest and most-established of these projects is disappearing.

Community Court, the brainchild of the Center City District, was established in 2002 to reduce quality-of-life crimes—such as shoplifting, vandalism and prostitution—in Center City. Its jurisdiction was later expanded into West Philadelphia. The court was supported with public and private money, including an initial grant from The Pew Charitable Trusts.

Staffed with attorneys, social workers, and a nurse, Community Court provided a combination of sanctions and services to those defendants who were diverted to it. The idea, said the court's executive director, William Babcock, was that "providing social service and health supports would get defendants out of the cycle of doing these lower-level offenses again and again." An independent evaluation indicated that this approach produced the desired results.<sup>9</sup>

Nevertheless, the court is being forced to curtail operations, due to a lack of funds. The Center City District, which had been paying about \$500,000 per year or 20 percent of the operating costs, decided to discontinue its subsidy. And the city court system has not made up the difference. Said Paul R. Levy, president and CEO of the Center City District, "While we strongly believe in and support the mission of the court, we indicated that we had more than helped establish both the proof of the concept and the fact that in fines, penalties and community sentences, the city was more than recouping the costs of operating the court."

Leaders of the city court system decided not to make up the difference, citing Community Court's cost and its geographic limitations. It appears likely that Community Court, minus its staff, will be absorbed into the Accelerated Misdemeanor Program. Deputy District Attorney Edward McCann said that he hopes AMP can do some of what Community Court has done. Those involved say that may be difficult, since AMP has a bare-bones staff and exists primarily to resolve cases quickly and consistently rather than to provide social services.

### **Fewer Admissions on Bench Warrants**

When a defendant fails to appear for a court date, the judge issues a bench warrant. If and when that defendant has an interaction with a police officer—such as a traffic stop or an arrest—the warrant pops up on the officer's computer screen, and the individual is taken into custody. The missed court date may have been in connection with a felony or a minor offense; it may have occurred a month earlier or three years earlier.

Individuals confined based on bench warrants are classified as pretrial—they are incarcerated awaiting the completion of their court cases. Each of them has a hearing before a magistrate three days after admission to jail. In some cases, the magistrate reviews the warrant and releases the defendant. In the majority of cases, the magistrate approves the defendant's confinement, and he or she remains in jail while the case proceeds.

In 2010, there were 11,847 fewer bench-warrant hearings at the jails than in 2009, a decrease of 44 percent.<sup>10</sup> Many people had more than one outstanding warrant, so this reduction produced a lesser but still significant decline in the number of people admitted to jail for warrants.

A number of factors contributed to the drop.

First, according to Terence Bigley, Director of Network Systems and Office Automation for the Philadelphia courts, a problem with the state court system's computer server delayed the automatic updating of thousands of warrant files in the police database from June through September of 2010. As a result, some warrants that should have popped up on police computer screens during that period did not, allowing the fact that an individual had failed to appear in court to pass unnoticed.

Second, in November 2010, the court closed more than 19,000 warrants dating from 1969 through 1998. The idea, according to the District Attorney's Office, was to unclog the overburdened warrant system by getting rid of warrants for old, nonviolent cases in which the defendant had not committed any other crime or was elderly or deceased. A few of those warrants were reinstated after the *Philadelphia Inquirer* found that they involved serious crimes.<sup>11</sup>

Third, the number of people returning to the Criminal Justice Center on their own initiative to have their warrants addressed increased significantly. In 2010, there were 16,304 warrants resolved this way, up from 10,798 in 2009.<sup>12</sup> In the vast majority of cases, individuals were given new court dates and not taken into custody. Court officials do not have a clear idea why so many people came in voluntarily. But, said Deputy Court Administrator Joseph A. Lanzalotti, "I think the word has gotten out that the process works, that you can get your warrant cleared up. It wasn't always that way."

### **Speeding Up the Court Process: Discovery Court, Crash Court, and SMART**

The time it takes to process cases can impact how long pretrial inmates stay in jail. Although most pretrial inmates stay only until they post bail—often within a week—those unable to do so stay for the duration of the case. The longer the case goes, the longer they stay.

In Philadelphia, most cases take 120 days or more to resolve, and only 22 percent are concluded in the first 90 days, according to our analysis of court records. In some other jurisdictions, including New York and San Diego, close to half of all cases are resolved within 10 days.<sup>13</sup>

Pretrial admissions are also affected by the length of the process. The longer it takes for a case to

be resolved and the more court appearances are scheduled, the greater the likelihood that a defendant who is not in jail will miss a court date and end up detained on a warrant.<sup>14</sup>

To speed up dispositions, the Philadelphia criminal court has undertaken three initiatives:

- **Discovery Court.** Discovery is the requirement that the prosecution and defense provide each other certain evidence prior to trial. According to judges and attorneys, a major contributor to the length of the trial process in Philadelphia is how long discovery takes. Without key evidence, the prosecution can't assess a case and make a plea offer, and the defense can't respond.

To address this issue, the Court of Common Pleas in January 2010 opened Discovery Court, a courtroom dedicated to working out discovery issues prior to trial. If discovery issues have not been resolved at formal arraignment—the hearing a month or two after arrest—the case is referred to this courtroom. Said Lanzalotti, “After we announced [that Discovery Court would start], suddenly discovery issues started going away even before we went live.” According to court data, 61 percent of cases in Common Pleas Court had incomplete discovery at formal arraignment in 2009. That number dropped to 21 percent in 2010.<sup>15</sup>

- **Expanding Crash Court.** For decades, the district attorney, public defender and courts have collaborated on a program to fast-track plea agreements for individuals held in jail pretrial on misdemeanor charges. The idea behind this program, known as “Crash Court,” is to save jail bed-days by quickly disposing of cases that involve a class of defendants that District Attorney Williams has described as “the folks who annoy us, not the folks who scare us”—those arrested for crimes such as drug possession, prostitution, and shoplifting. In the last year, this program has “undergone a complete overhaul,” said public defender Stewart H. Schuman.

Starting in 2010, individuals eligible for Crash Court became able to accept a “global” plea offer, meaning that all of their outstanding matters from Municipal Court could be resolved at once.<sup>16</sup> In the past, one case might get addressed at Crash Court, but other unresolved matters would keep the defendant in jail.

In addition, more defendants were being referred to Crash Court. According to the Municipal Court, the number of cases resolved by negotiated plea in Crash Court more than doubled from 450 in 2009 to 1,126 in 2010.<sup>17</sup>

All of this has been facilitated by the use of video. Thanks to video, the court, which convenes every Friday morning, can hear 40 or more cases without defendants being transported from the jails on State Road to the Criminal Justice Center in Center City.

- **SMART.** This program, which began in October 2010, seeks to resolve certain types of felony cases more quickly.

Under SMART, which stands for Strategic Management Advance Review and Consolidation Readiness and Trial, the District Attorney's Office makes a plea offer at formal arraignment, as early as five to six weeks after arrest.<sup>18</sup> Previously, plea offers in felony cases would be made at the pretrial conference, 10 weeks from arrest at the earliest.

The idea is to make this relatively early plea offer the best the defendant can expect to receive, thus producing an early disposition. Said Sheila Woods-Skipper, supervising judge of the trial division of Common Pleas Court, “The [SMART] offers are more reasonable and based on what

actually can be proven. The assistant district attorneys are now giving the best offer sooner. As a result, pleas are up.” In November and December 2010, Common Pleas Court accepted 2,026 guilty pleas, compared with 1,363 for the same two months in 2009.<sup>19</sup>

Our analysis of court data shows that cases in general are being resolved more quickly. In 2010, 47 percent of cases were resolved within six months, up from 39 percent in 2009.

Even so, the average length of stay for inmates held pretrial did not decline appreciably in 2010. This may be a product of other changes during the year that masked the impact of these programs. For example, in April 2010, a rule change extended the time between the setting of bail and a defendant’s first hearing from 10 days to 21 days.<sup>20</sup>

In addition, many members of Philadelphia’s criminal justice community theorize that, with the decline in pretrial admissions, the majority of defendants now being held pretrial are those facing serious charges. These defendants have higher bail, the thinking goes, and consequently stay longer, pushing up the average length of stay. Our analysis is inconclusive on this point.<sup>21</sup>

District Attorney Williams would like to shorten the court process further, which could reduce pretrial lengths of stay. But there are a number of obstacles.

One is that public defenders do not receive discovery evidence until formal arraignment at the earliest. Without the ability to assess the evidence against their clients, defenders can’t advise clients on plea offers. “Complete, prompt transmission of information from the Commonwealth to the defense—this is what would enable early disposition,” said Chief Defender Ellen T. Greenlee.

In addition, the SMART room offers have not been accepted as often as the D.A.’s Office had hoped; some defense attorneys think they will get lighter sentences for their clients if they go to trial. Finally, some private defense attorneys have objected to quicker dispositions, claiming that clients often skip out on their remaining legal fees when cases settle early.

### THE PROS AND CONS OF VIDEO

Video conferencing has been used in the Philadelphia courts for decades at preliminary arraignment, the hearing where bail is set. The image of the defendant, who remains in the police district where the arrest occurred, is beamed into a courtroom in the basement of the Criminal Justice Center in Center City.

In February 2010, video was introduced to Crash Court—the expedited process in which many defendants facing misdemeanor charges accept plea bargains. The use of video at Crash Court has allowed more and more cases to be heard without the need to transport inmates.

Court officials have plans to expand the use of video to probation violation hearings. The idea is to improve court efficiency and get people out of jail sooner.

Not everyone likes video justice. Cook County, Illinois, eliminated the use of video at bail hearings after a study compared bail decisions before and after the introduction of video. The study found a significant increase in bail amounts for the same charges under video conferencing. One contributing factor was the inability of the defendant to consult privately with counsel prior to the preliminary arraignment. In addition, the authors of the study concluded that the removal of the human presence in the room possibly “encourages harsher responses than would occur if the judge were faced with a live individual.”<sup>22</sup>

## **Violator Population: Lengths of Stay Get Shorter**

The probation/parole-violator population accounted for 39 percent of the overall decline in bed-days in the Philadelphia jails. This was the result of a reduction in average length of stay. The number of admissions of violators appears little changed.

### ***Lengths of Stay Decrease Due to Case Processing Changes***

The average length of stay for alleged probation and parole violators was 78 days in 2010, down from an average of 83 days in 2009. This drop appears to be due to changes in court process. Our method of calculating length of stay, which looks only at those inmates who were released from jail during 2010, likely understates how much the average has fallen.

Sixty-one percent of individuals jailed for alleged violations are simultaneously incarcerated on new arrests. In the past, the new case typically was heard by a new judge and the probation/parole violation by the original sentencing judge—but only after the new case was concluded. This often took months and contributed to long incarcerations. In 2009, such individuals spent an average of 119 days in jail awaiting adjudication. Individuals in jail solely because of alleged violations of probation or parole stayed an average of 35 days.

Both these groups had shorter jail stays in 2010. This trend was especially pronounced among alleged violators with new arrests; their average length of stay fell 10 days to 109 days. For alleged violators not held on new charges, average jail time dropped one day to 34 days.

These reductions resulted from a significant effort in Philadelphia to streamline the court process for violation hearings. The effort began in 2009 with the introduction of a dedicated courtroom for violation hearings and the start of case consolidation—allowing plea agreements that cover both the new charge and the violation stemming from the new charge. In 2010, both practices were adopted more widely.

At the moment, though, case consolidation remains cumbersome. The prosecutor or the defense counsel must look up all of the defendant's prior cases and request that cases be consolidated. Said one assistant district attorney, "In my courtroom, we don't make offers that include violations. There are too many. I can have a guy with 10 violations—I can't get all of those cases and put them in a global offer."

### ***On the Horizon: HOPE***

In 2011, Philadelphia's Criminal Justice Advisory Board was preparing an application for a federal grant to try to replicate the Honest Opportunity Probation with Enforcement (HOPE) program. Started by the state of Hawaii, HOPE is a highly structured approach to supervising drug-dependent probationers who are at high risk of violating the terms of their probation. Research shows that probationers supervised under HOPE are more likely to comply with reporting requirements—and less likely to use drugs and be rearrested.<sup>23</sup>

Central to the HOPE model is the idea of addressing every probation infraction—such as missing a meeting or failing a drug test—with a swift sanction. Offenders who violate their conditions are detained immediately and then brought before a judge within 72 hours. If the judge finds that the probationer has violated the terms of supervision, he or she is ordered to complete a short jail stay and then go back on probation.

It is not clear what impact a HOPE-style program would have on the jail population in Philadelphia. On the one hand, holding hearings in 72 hours has the potential to shorten the length of stay for violators significantly. On the other hand, under current practice, those who fail drug tests for the first time or miss appointments typically get verbal warnings instead of time in jail.<sup>24</sup>

### **The Sentenced Population Falls Slightly**

In 2010, sentenced inmates accounted for just 12 percent of the total drop in bed-days; they accounted for the entire reduction in 2009. Sentenced inmates leaving the Philadelphia jails in 2010 had, on average, spent 66 days there, down from 75 in 2009. There was a 2 percent decrease in admissions as well.<sup>25</sup>

### **Continuing Impact of the 2008 Legislation**

Both the decrease in admissions and length of stay among sentenced inmates in 2010 appeared to be the residual effect of the 2008 legislative change. The new law requires that convicted inmates sentenced to two-to-five years do their time in state prisons rather than local jails. Counties have until November 2011 to fully implement the law.<sup>26</sup> Most judges began sentencing state-eligible convicts to state prisons as soon as the law took effect. In some courtrooms, though, it took time for this practice to catch on.<sup>27</sup>

With the change in the law has come a different understanding of when the Philadelphia Prison System should be used for sentenced inmates. According to Sarah V. Hart, chief performance officer for the District Attorney's Office, prosecutors have become less likely to seek local jail time for defendants. "For offenders [who pose a high risk to public safety], we want to send them to the state where they can get better programming," she said. "If they are low risk, we consider whether an alternative to incarceration is appropriate."

As a result, more offenders go to a state prison or are put on probation.

Giving probation sentences to more offenders convicted of relatively serious crimes has contributed to an increase in orders for electronic monitoring. In the spring of 2010, for the first time, Philadelphia ran out of electronic monitors. In response, the courts purchased 50 more of them, bringing the total to more than 900. The city plans to spend \$4 million in Fiscal 2012 for additional monitors and probation officers to manage them.

### **Specialized Sentencing Alternatives**

For specific types of cases, Philadelphia has long had sentencing alternatives in place, including Drug Court, intermediate punishment and DUI Court. These programs impact the jail population by allowing an individual to serve all or part of a sentence in the community.

One of the newest of those alternatives, Mental Health Court, recorded its first full year of operation in 2010. The program provides behavioral health services and judicial supervision to convicted inmates with histories of mental illness. Participants have their jail time shortened. From inception in July 2009 through December 2010, Mental Health Court served approximately 251 individuals diagnosed with severe mental illness.



Another change that Williams envisions, and which is slated for 2012, is a community-based, alternative sentence targeted at cocaine dealers facing their first felony arrests. The premise of this program, *The Choice Is Yours*, is that such individuals are less likely to commit new crimes if they get job services and drug treatment rather than jail time. The program will start with 50-to-75 participants.<sup>28</sup>

### **Court-wide Administrative Changes**

Whom to admit, whom to detain, whom to let out and when—the Philadelphia Prison System gets its instructions from the clerks who sit in the courtrooms and record the judge's orders.

Until this year, those clerks worked for an independent city agency headed by an elected official. For 18 years that official was Vivian T. Miller. When Miller retired in March 2010, the office was folded into court administration. The title changed from the Clerk of Quarter Sessions to the Clerk of Court, and its new head, Joseph H. Evers, was appointed, not elected.

When Evers took office, he was surprised at how slow and open to error the process of getting orders to the jail could be. "Our staff logs in all of the release orders by hand [at the Criminal Justice Center]," Evers said. "At the end of the day, at around 6 or 7:30 at night, someone drives the orders out to the prison. Sometimes a clerk might decide not to finish their orders by the end of the day, or might leave [an order] at their desk ... In the meanwhile, family members are calling the prison."

These practices explain why on a Friday morning this past April, in Courtroom 403, public defender Megan Brown was instructing client after client, "You should be released today, but if you are not released by Monday, call me." The slow transmission of orders can add days to a defendant's jail time.

Determined to make this process more efficient, Evers has piloted a program that allows his office's Center City staff to securely e-mail orders to the jail. The program started in two courtrooms in December 2010.

## **WHAT HAS NOT HAPPENED**

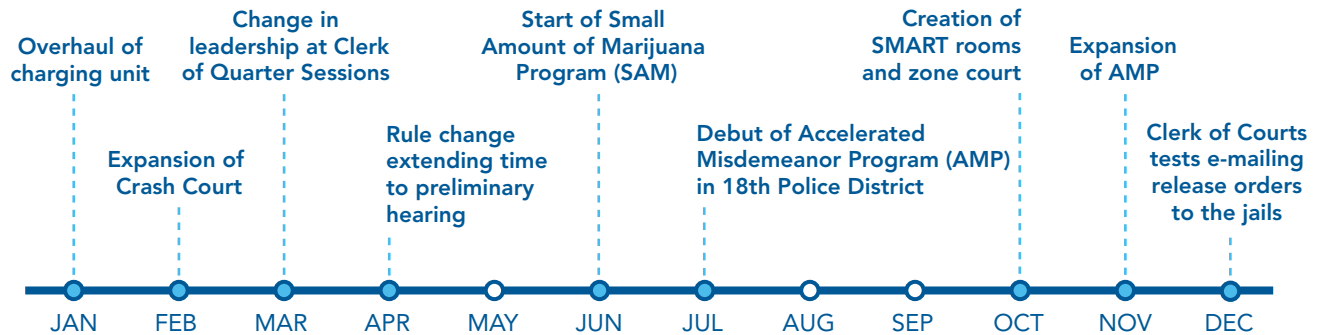
A lot happened in 2010 in the Philadelphia criminal justice system. See Figure 9. Some of the changes appear to have had an immediate impact on the jail population, and some are likely to have an impact in the years to come. But officials agree that much remains to be done, including the adoption of changes that some of them discussed during a public forum hosted by the Philadelphia Research Initiative on May 19, 2010, in conjunction with the release of our first report.

### ***Day Reporting***

In 2009, the City of Philadelphia issued a request for a private vendor to operate a day-reporting center where nonviolent individuals who otherwise would be in jail could report daily and be supervised while remaining in the community. The goal of a day-reporting center is twofold: to cut back the jail population by keeping offenders out of custody and closely supervised, and to reduce recidivism by allowing offenders to maintain community and family ties and get linked to job training and social services.

FIGURE 9

## 2010 CHANGES TO THE PHILADELPHIA CRIMINAL JUSTICE SYSTEM



More than a year later, the city identified a vendor and a potential site—52nd Street and Grays Avenue in Southwest Philadelphia. But neighborhood resistance and a shortage of funding have slowed progress. Said Deputy Mayor for Public Safety Everett A. Gillison, “Money is the main issue.”

### Guidelines and Pretrial Services

Philadelphia, like many cities, screens defendants soon after arrest to measure how likely they are to make their court dates and, therefore, whether they should be detained prior to trial. The screening instrument that Philadelphia uses, known as the bail guidelines, is widely considered by judges and attorneys to be out of date and unreliable in predicting whether a defendant will appear. As a result, judges and attorneys err on the side of caution. “We haven’t had good research data about who to let out [pretrial],” said Pamela P. Dembe, president judge of the Philadelphia Common Pleas Court. “All of us live in terror of the guy who is let out or whose case is dismissed who shoots another cop.”

As a result, Philadelphia sets bail more frequently and incarcerates defendants pretrial more often than some other cities. For example, in 2010, 60 percent of all defendants in Philadelphia were ordered to pay bail at preliminary arraignment, while 40 percent were released on their own recognizance, meaning without bail. In New York City, where the city’s risk assessment tool is regularly reviewed and updated, only 32 percent had bail set and 67 percent were released on their own recognizance.<sup>29</sup>

Washington, D.C., also conducts ongoing research into pretrial risk assessment. And it provides targeted services to those defendants who demonstrate some risk of missing court dates, thus enabling them to remain in the community pretrial without bail. In Washington, 87 percent of defendants were released at preliminary arraignment without bail in 2010; only 13 percent were assigned bail or detained without bail.<sup>30</sup>

Not only do New York and Washington release a higher percentage of defendants without bail, they also have more of them making court dates. In New York, 85 percent of defendants made all their court appearances in 2009.<sup>31</sup> In Washington, it was 88 percent.<sup>32</sup> Our analysis last year showed that the percentage in Philadelphia was about 70 percent.

District Attorney Williams, Deputy Mayor Gillison and President Judge Dembe have said that Philadelphia would be well-served by updated research on who can effectively be released pretrial. “We have to revisit the bail guidelines ... we need to reevaluate pretrial, who [should] be incarcerated pretrial and also alternatives to pretrial incarceration,” said Williams, who has suggested that conditions and services, like those available in Washington, are needed. But little has happened on these fronts.

This issue is also under consideration by the Pennsylvania Supreme Court commission on the Philadelphia criminal justice system. The commission, formed in 2010 in response to a series of stories in the *Philadelphia Inquirer*, has a broad purview that includes the functioning of Philadelphia Municipal Court, bail issues, witness intimidation, probation and parole, and information technology.<sup>33</sup>

### ***Closing the House of Correction***

Built in 1927, the House of Correction, which has 666 cells, is the oldest structure in the Philadelphia Prison System. Among 10 other big cities surveyed, only Chicago uses a facility of similar age. City officials, including Gillison, would like to close and ultimately demolish the building, which is expensive to maintain and to operate. Gillison hopes that a new booking and diagnostic facility eventually will rise in the same location.

Demolition was to have begun later this year, with inmates moved to temporary structures, but funding was removed from the Fiscal 2012 budget. Prison officials say they remain committed to closing the House of Correction.

### ***Developing New Responses to Probation Violations***

Over the last decade, the number of individuals jailed for alleged violations of probation or parole has more than doubled. This trend shows no signs of letting up.

Various policy changes, already in use in other jurisdictions, could help reduce the numbers. Among them:

- Developing non-jail sanctions to respond to violations, such as mandated community service, increased reporting, attending a day-reporting center, or electronic monitoring.
- Shortening the periods of supervision for probationers who willingly follow the rules. Arizona attributes the introduction of this concept in 2008 to much of the reduction in the number of probation violators entering the state’s jails and prisons.<sup>34</sup>
- Tracking down missing clients before issuing arrest warrants. The probation department in Santa Cruz County, California, works with a community-based organization to help locate missing probationers and reconnect them with the department. Since starting this program, the probation department has cut the number of warrants filed by 51 percent.<sup>35</sup>
- Developing programs specifically for drug dealers. In Philadelphia, our analysis of jail data shows that the most frequent charges against rearrested probationers and parolees involve the sale of drugs—the same charges for which most of these individuals were under community supervision in the first place. A targeted response for this population, such as one focused on connecting dealers to vocational alternatives, has the potential to reduce violations and admissions for violations.

## WHAT THE INMATE POPULATION MEANS FOR THE CITY'S BOTTOM LINE

As a result of the falling jail population, down 18 percent from its peak as of June 2011, the Philadelphia Prison System is budgeted to spend \$231 million in Fiscal 2012, 4 percent less than in Fiscal 2009.<sup>36</sup> See Figure 10.

Why has a 18 percent drop in the population resulted in only a 4 percent reduction in spending?

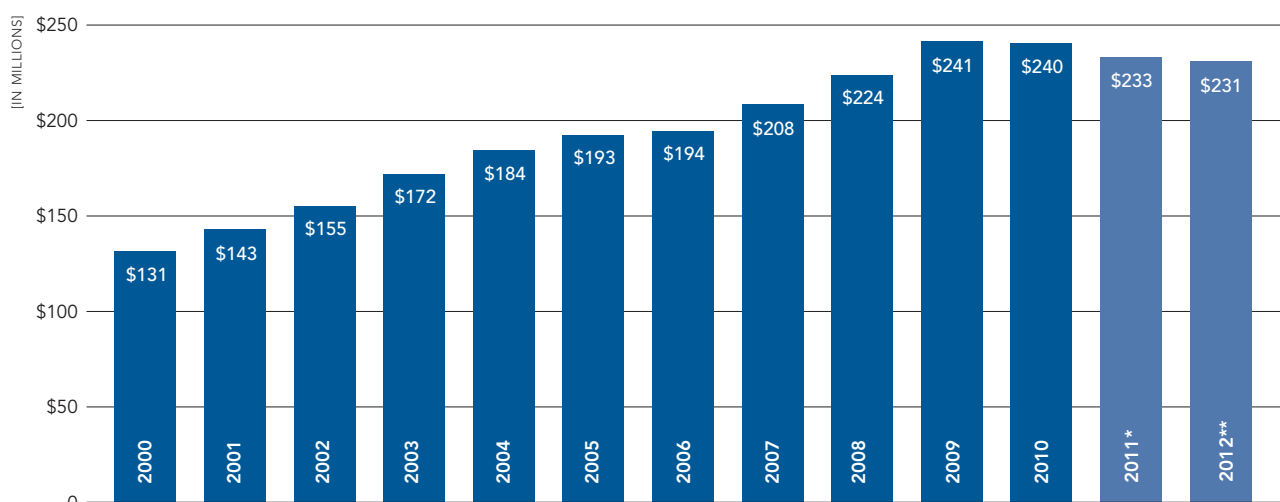
Most prison costs are fixed. Decrease the population by one inmate for one day, and the system must still run the same facilities and programs. Removing an inmate from a Philadelphia jail can save the city as little as \$7 per day, more if the inmate has medical issues.<sup>37</sup> Bigger savings come only when a contract can be ended or a facility shut.

For the prison system, most of the savings have come from eliminating contracts for housing inmates outside the city, contracts that had been necessary due to overcrowding. In Fiscal 2012, the Prison System expects to spend \$6.4 million less on outside housing contracts than it did in Fiscal 2009.

Savings have also come from the reduced use of "triple celling," the practice of housing a third inmate in a cell approved for two. Triple celling requires the deployment of additional guards, often on overtime. The elimination of triple celling at the House of Correction, combined with changes to departmental overtime policy, allowed the Prison System to budget \$5.8 million less for overtime in Fiscal 2012 than in Fiscal 2009.

FIGURE 10

### PHILADELPHIA PRISON SYSTEM BUDGET 2000 – 2012



SOURCE: Mayor's Budget

Note: Does not include cost of employee benefits.

\* Estimated fiscal year 2011 budget from the Mayor's Budget Fiscal Year 2012

\*\* Projected fiscal year 2012 budget from the Mayor's Budget Fiscal Year 2012

If the population continues to drop, there are more savings to be had. Getting rid of triple celling at the system's largest facility, the Curran-Fromhold Correctional Facility, could produce reductions in staffing costs. In addition, further significant population reductions would reduce the city's exposure to lawsuits challenging conditions of confinement. The city spends approximately \$4 million a year in defending and paying damages for civil rights litigation against the jail.<sup>38</sup> Due to the population reductions that have occurred, one suit related to overcrowding is scheduled to be settled this summer without a damage reward. Another remains unresolved.

For there to be a lot more savings, the jail population would have to fall to the point that the city could shut down an entire facility or a unit in a facility. The preferred candidate for closure is the House of Corrections.<sup>39</sup>

Reforms that have brought down the jail population have generated savings in other parts of the city budget. Fewer inmates mean fewer people for the sheriff to transport to the jail. Increased use of video conferencing means fewer trips between the jails in Northeast Philadelphia and the courts in Center City. These factors have contributed to a \$1-million decrease in overtime in the sheriff's department.

These changes have affected the police budget as well. According to Police Inspector Christopher Flacco, the department reduced expenditures on officer overtime for court appearances by a total of \$6.4 million over the last two fiscal years. Flacco attributes this decline to a number of changes in procedure, some of them designed to address officer overtime directly. But, he adds, some of the changes that brought down the jail population also helped. For example, cases diverted to AMP and SAM mean fewer hearings for officers to attend.

Changes at the charging unit have also affected police overtime. Now that officers are being asked to provide more information at the time of charging, the District Attorney's Office is more selective in which officers it subpoenas. "If a D.A. scans a report that just lists every officer who touched a case, the D.A. will call down every officer," said Flacco. "But now we are writing the reports so the D.A. knows which officer did what. So they'll only subpoena the officers who are necessary."

### **Criminal Justice Reinvestment**

The concept of "justice reinvestment" calls on jurisdictions saving money from reduced jail or prison populations to channel some of the savings back into the criminal justice system to implement additional policy measures. The idea is to create a cycle: once a policy produces a savings, part of the savings is used for other policies that improve safety and lead to future savings. But cities like Philadelphia have competing needs, particularly during a time of declining state and federal assistance.

The Fiscal 2012 budget provides about \$5.8 million in additional funds for the criminal justice system, including money for the District Attorney's Office, Defender Association, counsel and juror fees, and hiring probation officers.

## 2011 AND BEYOND

Buoyed by a year of success in 2010, the leaders of Philadelphia's criminal justice community, working through the Criminal Justice Advisory Board, are moving ahead with new plans to expand existing programs and implement new initiatives.

"Everyone has worked tremendously to make all of this happen, even with budget issues and the inability to hire additional personnel," said Municipal Court President Judge Neifield. "But because everyone is communicating and working collaboratively, we're getting positive initiatives done, and we're getting things done fast."

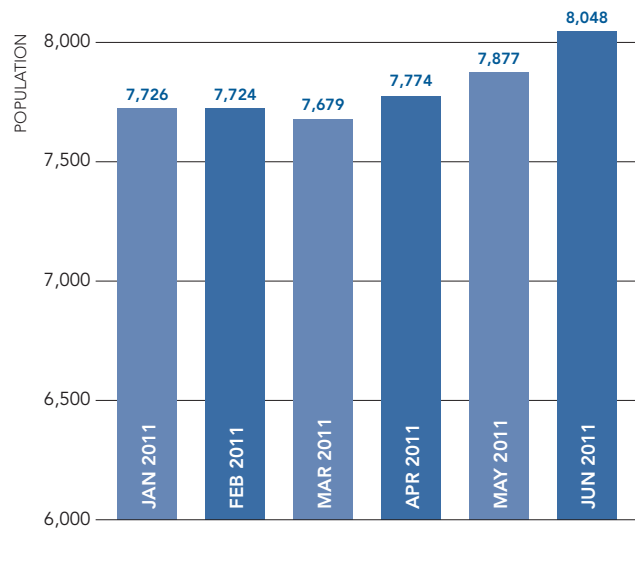
But even with all of the changes, the jail population crept up in the first half of 2011. See Figure 11.

Said Prisons Commissioner Louis Giorla, "My hopes are that the progress will continue. But all the work isn't done, and we could easily slide back. We need to keep our focus and keep working at it. I am encouraged because for the first time in over 30 years, progress was not the result of court order but collaboration."

"We're reversing the tide," said Deputy Mayor Gillison, "but we still have farther to go." ◉

FIGURE 11

### AVERAGE DAILY POPULATION, PHILADELPHIA PRISON SYSTEM JANUARY 2011 – JUNE 2011



SOURCE: Philadelphia Prison System

## ENDNOTES

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- <sup>1</sup> 234 PA. CODE § 523 (2011).
- <sup>2</sup> One percent of inmates were held for other reasons, often because they had matters pending in other jurisdictions.
- <sup>3</sup> An Act amending sentencing laws in the Pennsylvania Consolidated Statutes, H.B. 4, Gen. Assem. 2007 Sess. (Pa. 2008).
- <sup>4</sup> Diversion is distinct from alternative sentencing. Diversion programs take offenders out of the criminal justice system at the “front end,” often before preliminary arraignment. The idea is that certain types of offenders can be treated more appropriately outside the traditional criminal justice process and need not be incarcerated. Alternative sentencing programs, such as Drug Court, DUI Court or Intermediate Punishment, are employed after an offender has accepted a guilty plea or has been convicted.
- <sup>5</sup> For a list of diversion programs see Pew’s Philadelphia Research Initiative, *Philadelphia’s Crowded, Costly Jails: The Search for Safe Solutions*, The Pew Charitable Trusts (2010), 24.
- <sup>6</sup> In most other states, a felony is defined as a crime with a maximum sentence equal to or greater than one year. In Pennsylvania, crimes with maximum sentences less than or equal to five years are considered misdemeanors.
- <sup>7</sup> 35 PA. CONS. STAT. § 780-113(a)(31), the “small amount” of marijuana statute applies to 30 grams of marijuana or less.
- <sup>8</sup> Prior to 2010, individuals arrested for marijuana possession often were charged both with possession of a “small amount” of marijuana and simple possession of narcotics. For that reason, this analysis counted both individuals admitted to jail with only a SAM charge and individuals admitted with that charge as well as a charge of narcotics possession. In 2009, there were 20 admissions for SAM alone and 521 admissions for SAM plus possession. In 2010, there were 78 admissions for SAM and 276 for SAM plus possession.
- <sup>9</sup> Fred Cheesman, et al. *Philadelphia Community Court Evaluation Final Report: Outcome/Impact Analysis and Update on Process Evaluation*, National Center for State Courts (2010).
- <sup>10</sup> First Judicial District, Common Pleas Court, *Trial Division 2010 Annual Report* (2011), 51.
- <sup>11</sup> R. Seth Williams, “Philadelphia DA Seeks Better Implementation of Fugitive Policy,” *Philadelphia Inquirer*, November 21, 2011.
- <sup>12</sup> First Judicial District, 51.
- <sup>13</sup> “Disposition Trends of Felonies for Sept. 1, 2009, Through Sept. 30, 2009, For All Divisions and Units for All Branches,” provided by the San Diego District Attorney’s Office (unpublished chart on file with the author); New York City Criminal Justice Agency, *Annual Report 2009* (2010), 16.
- <sup>14</sup> A study that tracked 800 Philadelphia defendants starting in spring of 2005 found that 30 percent of all failures to appear occurred when a case was more than 120 days old. John S. Goldkamp, E. Rely Vilcicã, Doris Weiland, Wang Ke, *Confinement and the Justice Process in Philadelphia: Its Features and Implications for Planning* (2006), 66.
- <sup>15</sup> First Judicial District, 50.

- <sup>16</sup> Outstanding matters in Common Pleas Court, the court that hears felony cases, cannot be resolved at this hearing.
- <sup>17</sup> June 2, 2011, email from Rosemary Unger, deputy director for Municipal Court Administration (on file with the author).
- <sup>18</sup> Formal arraignment occurs 21 days from the preliminary hearing. The preliminary hearing is initially scheduled for 14-to-21 days from arrest. Formal arraignment and, therefore, the first plea offer, can occur approximately five weeks from arrest. But preliminary hearings are often continued, pushing back formal arraignment by several weeks.
- <sup>19</sup> May 17, 2011, email from Joseph A. Lanzalotti, deputy court administrator for the Court of Common Pleas (on file with the author). Most of the increase in pleas is an increase in negotiated pleas. There were 936 negotiated pleas accepted by the Court of Common Pleas in November and December 2009 compared with 1,634 accepted over the same two months in 2010.
- <sup>20</sup> 40 Pa. Bul. 2012 (2010).
- <sup>21</sup> We compared the top charge of pretrial inmates detained for seven days or less with inmates who stayed 8-to-30 days, 31-to-120 days and longer than 120 days. There were no other legal reasons for detaining these inmates. The analysis found that manufacture and delivery of drugs (i.e., selling drugs) was the most frequent top-charge for defendants across the board.
- <sup>22</sup> Shari Diamond, et al. "Efficiency and Cost: The Impact of Video-conferenced Hearings on Bail Decisions," *Journal of Criminal Law & Criminology* 100 (2010). See also Matthew Walberg, "Video bond court to end; Northwestern study found it set bail 65% higher," *Chicago Tribune*, December 12, 2008, 29. In Philadelphia, preliminary arraignments are staffed by paralegals from the Defender Association, not by attorneys. Typically, the defendant, who is in the police district, does not speak with the paralegal at the Criminal Justice Center prior to the proceeding, although a phone is available for that purpose. In Crash Court, a lawyer from the Defender Association meets with each defendant individually at the jail before the video proceeding begins.
- <sup>23</sup> Angela Hawken, Mark Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE*, National Institute of Justice (2009). For a summary of this research see Pew Center on the States, *The Impact of Hawaii's HOPE Program on Drug Use, Crime and Recidivism*, The Pew Charitable Trusts (January 2010).
- <sup>24</sup> As implemented in Hawaii, HOPE did not impact the jail population. Probationers supervised under the HOPE model consumed an equal amount of jail bed days as those supervised under standard probation. HOPE probationers had more jail stays, but they were shorter. The program did, however, reduce the number of probationers who had their probation revoked and were sentenced to prison. Hawken, 25.
- <sup>25</sup> The Pennsylvania Commission on Sentencing reports a statewide drop in reported convictions and sentences in 2010.
- <sup>26</sup> H.B. 4, Gen. Assem. 2007 Sess. (Pa. 2008).
- <sup>27</sup> Chip Junod, director of population management for the City of Philadelphia, reports that, as of June 2011, about 200 state-eligible inmates remained in Philadelphia's jails. Prior to the law change, there were more than 400.
- <sup>28</sup> Renata Cobbs Fletcher, *The Choice is Yours: Concept Paper*, Public/Private Ventures (March 2011).



- <sup>29</sup> New York City Criminal Justice Agency, *Annual Report 2009* (2010), 16.
- <sup>30</sup> June 8, 2011 email from Clifford T. Keenan, deputy director of Pretrial Services for the District of Columbia (on file with the author). For publicly available data on this topic, see District of Columbia Pretrial Service Agency, *Leading the Field: FY 2008 Annual Report* (2008).
- <sup>31</sup> New York City Criminal Justice Agency, 26.
- <sup>32</sup> Spurgeon Kennedy, director of research for the District of Columbia Pretrial Service Agency, "Memoranda regarding council member request for information," March 26, 2010, provided by the District of Columbia Pretrial Service Agency (unpublished memoranda on file with the author).
- <sup>33</sup> Amaris Elliott-Engel, "FJD's Year Marked by Criminal Justice Changes, Family Courthouse Uproar," *Legal Intelligencer*, December 27, 2010.
- <sup>34</sup> Pew Center on the States, *The Impact of Arizona's Probation Reforms*, The Pew Charitable Trusts (March 2011).
- <sup>35</sup> "Bench Warrants 2005-2009" (March 2010), provided by the County of Santa Barbara Probation Department (on file with the author). This approach to finding and re-engaging with probation clients is not unlike the approach taken by Philadelphia's own Youth Violence Reduction Partnership, a specialized probation supervision unit.
- <sup>36</sup> City of Philadelphia, *Mayor's Budgets Fiscal Year 2010–Fiscal Year 2012*. Budget numbers referenced in this section come from the *Mayor's Budgets*, with the exception of numbers on police court overtime. Those were provided directly by Police Inspector Christopher Flacco of the Philadelphia Police Department. The \$231 million prison system budget for Fiscal Year 2012 includes \$4 million for the court system for electronic monitoring.
- <sup>37</sup> Pew's Philadelphia Research Initiative, 21.
- <sup>38</sup> This estimate is based on the average amount the prison system spent on damages and attorney's fees from civil rights litigation in Fiscal 2009 and Fiscal 2010 combined with an estimate, provided by the office of the deputy mayor for public safety, on expenditures for outside counsel in these suits.
- <sup>39</sup> Because inmates are housed based on different factors—men, women and juveniles separately, higher and lower security risks in different places, inmates who are in for short times on work release separate from those serving long sentences—a large enough reduction in one type of inmate is required before a unit or a facility can be shuttered.

## METHODOLOGY

This report relies on five data sources to examine population trends in the Philadelphia Prison System: admissions and release data maintained by the Philadelphia Prison System (PPS), arraignment data maintained by the Preliminary Arraignment System (PARS), case-processing data maintained by the Administrative Office of the Pennsylvania Courts (AOPC), arrest data maintained by the Philadelphia Police Department, and crime reporting data housed at the Pennsylvania Uniform Crime Reporting System.

### **PPS Data**

PPS data were used to examine the number of admissions, the daily population on June 30, 2010, the lengths of stay for persons released from PPS, and the number of bed-days consumed. For each of these, the analyses focused on the individual's pathway to jail or hold status (pretrial, violator, sentenced, or other) and the most serious holding offense for each pathway.

Determining hold status, most serious holding offense and length of stay in each hold status is a complicated process. Individuals can be held in jail for multiple reasons at the same time, and their status can change as charges are dropped or adjudicated. For example, an individual can be admitted pretrial on a new arrest and as a probation violator at the same time.

For each unique intake into PPS—each time an individual physically enters PPS from outside the jail—the case management system assigns an intake number. To examine admissions, our analysis counts intake numbers. In some circumstances, an individual could have multiple admissions from one case. For example, if an individual was admitted pretrial, posted bail, was released, and then readmitted after sentencing, this method would count two admissions.

The analysis allowed individuals to have only one status per unique intake (admission). To determine this status, we ranked statuses in the following way: serving a sentence was ranked first, being held on a violation of probation or parole second, being held pretrial third, and being held for another jurisdiction fourth. Individuals with multiple holds for the same intake number or whose hold status changed while incarcerated (without a new intake) were categorized as having only one status for the purposes of counting admissions. Thus, an individual who had a status of "sentenced" at any point during an intake was categorized as "sentenced" for counting admissions. Similarly, an individual who had a status of "probation violator" at any point during an intake but was never sentenced was categorized as a "violator" for counting admissions.

For some analyses, we also produced a more nuanced categorization of hold statuses by creating a fifth status category: violation/pretrial hold. For these analyses, we differentiated between inmates admitted with an alleged probation or parole violation and a pretrial hold for the same intake and those probation or parole violators who did not have pretrial holds.

After ranking the hold status, the analyses further ranked admissions by most serious offense as determined by the offense gravity score contained in the Pennsylvania Sentencing Guidelines. When it was impossible to match the specific offense to a specific offense gravity score, the lowest applicable offense gravity score was assigned to the offense.

To examine the daily population, we looked at hold status on June 30, 2010; if an individual had multiple hold statuses on that day, the ranking procedure described above was used to categorize individuals.

For length of stay and bed-days consumed, we looked at an individual's entire admissions period and calculated how long the individual was incarcerated on each hold status. Since individuals may have multiple hold statuses at the same time, the previously described ranking of hold statuses was used to determine the primary hold status at any given point. In counting length of stay and bed-days consumed, an inmate's stay was assigned to the year in which the defendant was released, regardless of when he or she was admitted.

### ***PARS Data***

Data on the arraignment decisions were obtained from the case management system maintained by the Preliminary Arraignment System (PARS).

PARS data were used to examine the bail decisions for individuals who had preliminary arraignments between 2003 and 2010. The analysis focused on the decision to release individuals on their own recognizance (ROR) pretrial or to set bail and, if bail was set, the amount. The analysis examined bail decisions for unique-offender tracking numbers or arrest incidents. Decisions were reported based on the most serious arraignment offense, as determined by PARS.

### ***AOPC data***

Data on the processing of cases through the court system were obtained from the system maintained by the Administrative Office of the Pennsylvania Courts (AOPC). APOC data were used primarily to examine time to disposition.

### ***Crime and Arrest Data***

Longitudinal data describing crime and arrest trends were obtained from public data sets through the Philadelphia Police Department and Pennsylvania Uniform Crime Reporting System.

#### ACKNOWLEDGEMENTS

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#### ABOUT THE PHILADELPHIA RESEARCH INITIATIVE

The Pew Charitable Trusts' Philadelphia Research Initiative provides timely, impartial research and analysis on key issues facing Philadelphia for the benefit of the city's citizens and leaders. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life.

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