Issue Brief

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Overcrowded and Overburdened: West Virginia Counties Struggle to Pay Regional Jail Bills

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Part 1: Introduction

Because county governments must ultimately pay the costs associated with keeping people behind bars in their local jails, the explosion of county jail incarceration is driving enormous and growing pressure on county budgets. County spending on jails is rising, and the amount billed to counties by the Regional Jail Authority is rising even more quickly, leading to a significant and growing gap between the true costs of jail incarceration and counties' ability to pay. This is propelling a burgeoning jail debt crisis with the potential to cripple county budgets, especially now as the pandemic recession pushes many county budgets into deficit due to falling tax revenues.

Between 2000 and 2019, West Virginia's jail population increased by a staggering 81 percent, from approximately 2,853 inmates to 5,172, even as the state's population shrunk in the same period.[1] This follows the longer trend of mass incarceration in West Virginia and the United States as a whole. West Virginia state and local governments spent $195 per capita on corrections in 2017, up 387.5 percent from $40 per capita in 1977, according to data from the Urban Institute State and Local Finance Initiative. As counties look for ways to pay for needed investments in public services that could aid residents and businesses, there are few discussions about reducing the jail population despite the rising costs of incarceration.

As revenues from extractive industries like the severance tax continue to decline for counties and as state and local governments face major potential budget shortages as a result of the COVID-19 pandemic, county commissioners and policymakers could seek lower cost alternatives to jail incarceration that can improve public safety equitably. The money saved from jail incarceration could then be invested back into counties, i.e., via increased funding to services like parks, libraries, and public health, and could lead to improved outcomes.

Part 2: West Virginia's Regional Jail Authority and the Explosive Growth of People Behind Bars

Incarceration in county jails is growing rapidly. While most attention is often paid to incarceration in state prisons – which account for approximately 56 percent of the total incarcerated population in the United States and 65 percent of the incarcerated population in West Virginia— jail incarceration is also a critical policy issue with significant impacts on county budgets.

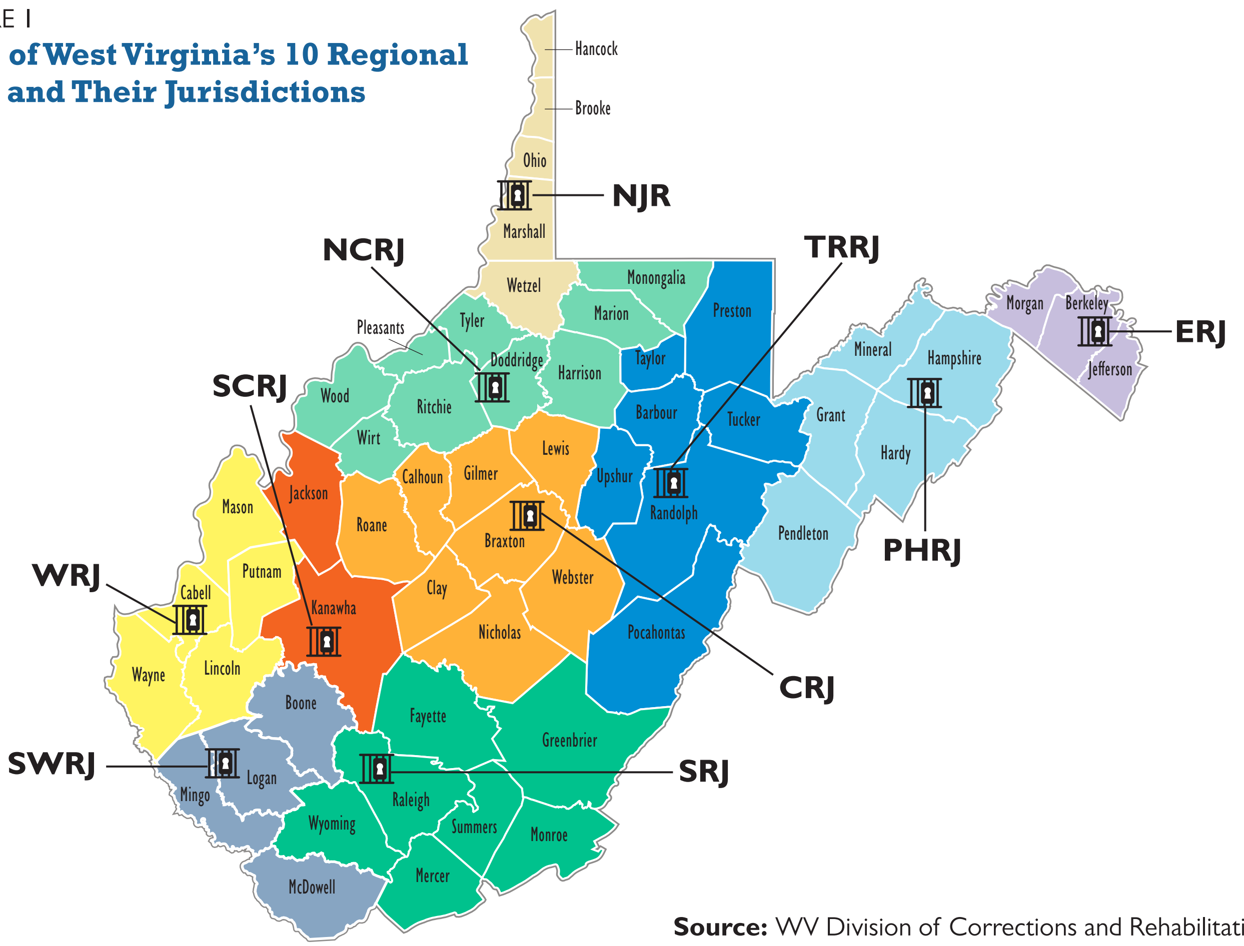
The regional jail system in West Virginia is primarily used to detain defendants pretrial— meaning people who have been charged with a crime but have either not been granted release before their trial or cannot afford their cash bail—and to house people who are convicted of a crime with a sentence of less than one year (misdemeanors). Counties are typically responsible for the costs of detaining their residents and for out-of-state residents arrested within their jurisdictions in regional jails across the state. For inmates who are held pretrial or are sentenced to a misdemeanor with jail time, counties are fully responsible for the incarceration costs, reimbursing the Regional Jail Authority for each day their residents are imprisoned at the per diem rate of $48.25. For example, if Cabell county committed 10 people to jail in November 2018 for five days each, they would be billed the following month for 50 person-days for a total of $2,412.50. The federal and state government pay for the daily expenses of jail inmates for which counties are not responsible, such as Immigration and Customs Enforcement (ICE) detainees.

Who is Housed in West Virginia's Regional Jails?

The West Virginia Regional Jail and Correctional Facility Authority currently oversees 10 regional jails throughout West Virginia (Figure 1). The regional jails typically house inmates that fit one of several categories.

1. Defendants being held pretrial because they were not granted bail or are unable to afford their bail amount
2. Inmates who have been convicted of a misdemeanor (one year or less of jail time)
3. ICE detainees
4. Inmates who were previously in prison but are relocated to jail to prepare for release
5. Inmates who have been sentenced to serve time in prison, but are awaiting transfer due to prison backlog

FIGURE 1
Map of West Virginia's 10 Regional Jails and Their Jurisdictions

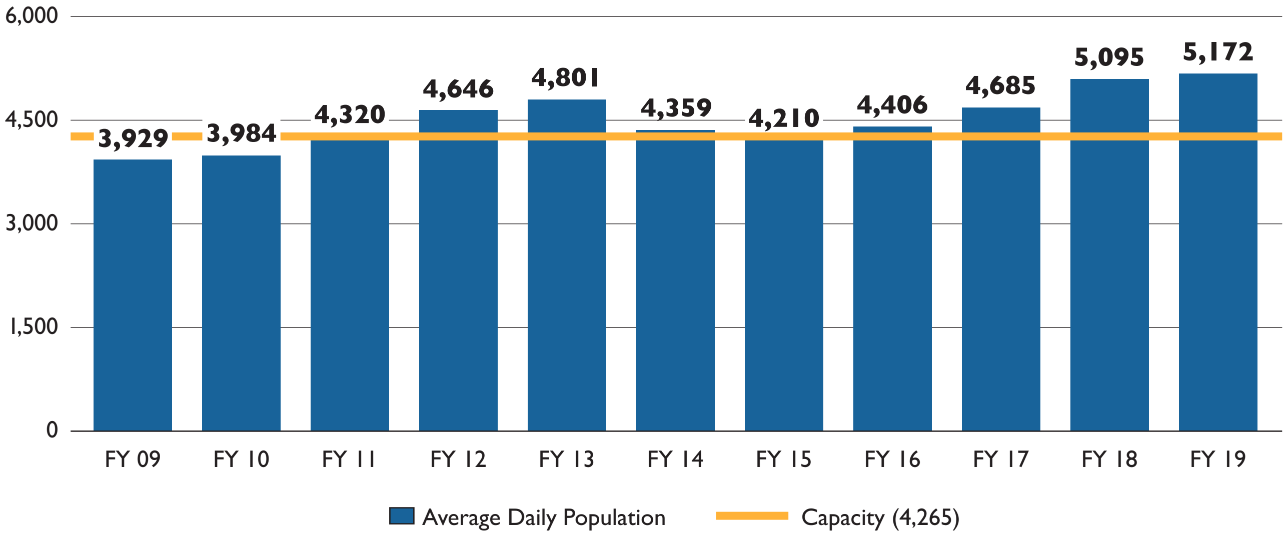


Source: WV Division of Corrections and Rehabilitation

The number of people behind bars in county jails is exploding. The average daily Regional Jail population in West Virginia has increased nearly 32 percent since 2009 and 19 percent since 2014, severely straining the state's maximum jail capacity. In 2019, the average daily count was 5,172 inmates, compared to 3,929 in 2009 (Figure 2). The total capacity of the regional jails is only 4,265 inmates, which the state has exceeded in eight of the last 11 years. In 2019, the highest year so far, the average daily occupancy was more than 20 percent overcapacity, putting those incarcerated at extreme risk of harm, including health consequences such as exposure to COVID-19 and other infectious diseases, increased chance of violence, and inferior access to medical care.

FIGURE 2

Avg. Daily Regional Jail Population Increased by Nearly One-Third between 2009 and 2019



Source: WVCBP analysis of WV Division of Corrections and Rehabilitations data

Since 2009, an average of 1,358 people who have been convicted of a crime and should be serving their sentences in the state's prisons are instead kept in a jail backlog due to prisons being overfilled. Counties are not responsible for paying for these inmates' time in jail as they are under West Virginia Division of Corrections and Rehabilitation (DCR) supervision.

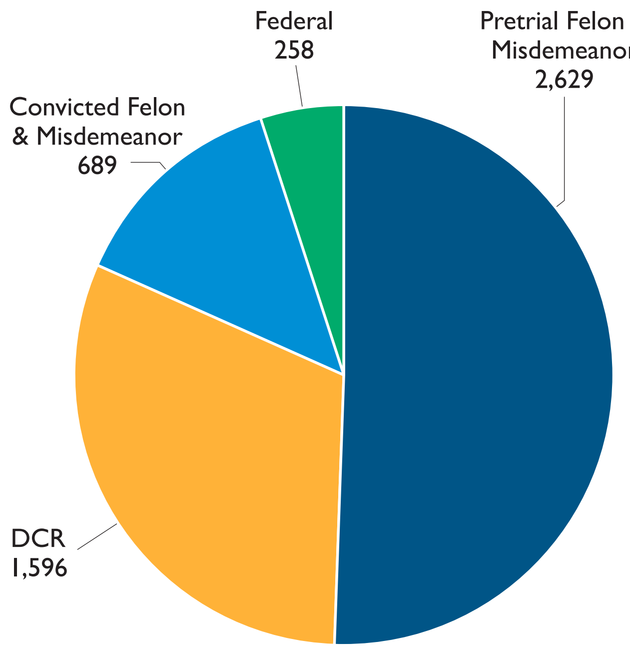
Much of the increase in jail population is a result of the pretrial jail population. In 2019, 51 percent (2,629) of the inmates in jails were being held pretrial for state felony or misdemeanor charges (Figure 3). The cost for incarcerating the majority of these inmates falls onto the counties, costing county budgets about $44 million in 2019 alone.[2]

If the pretrial population had been reduced by just 25 percent in 2019, counties would have saved nearly $11 million. In addition to the immediate costs of housing people, there are downstream costs to jail incarceration. Pretrial incarceration threatens employment, housing, and parental custody. As little as two to three days in jail can lead to someone falling behind on their rent or mortgage, or even cause them to be terminated from their job. Pretrial incarceration also prevents people from getting the continuous medical treatment they may need as jails are ill-equipped to provide care for chronic health conditions.

Pretrial detention is still increasing despite bail reform. House Bill 2419, which went into effect on June 5, 2020, provides a presumption of release for people charged with nonviolent misdemeanors, among other changes.[3] Under the law, these individuals are to be released on their own personal recognizance, meaning a cash bail condition of pretrial release isn't required. However, news reports and communication with public defenders around the state indicate that magistrates and prosecutors haven't broadly adhered to the requirements of the law.[4] Weekly jail population reports since June show that there are often nearly as many people being held pretrial after the reform went into effect as before its implementation. Full implementation and adherence to this law would improve the lives of these individuals and reduce the economic burden of incarceration on counties.

FIGURE 3

FY 2019 Average Daily Jail Population by Category



Source: WVCBP analysis of WVDCR data

Part 3: Rising Incarceration Spurs Possible Jail Debt Crisis for County Budgets

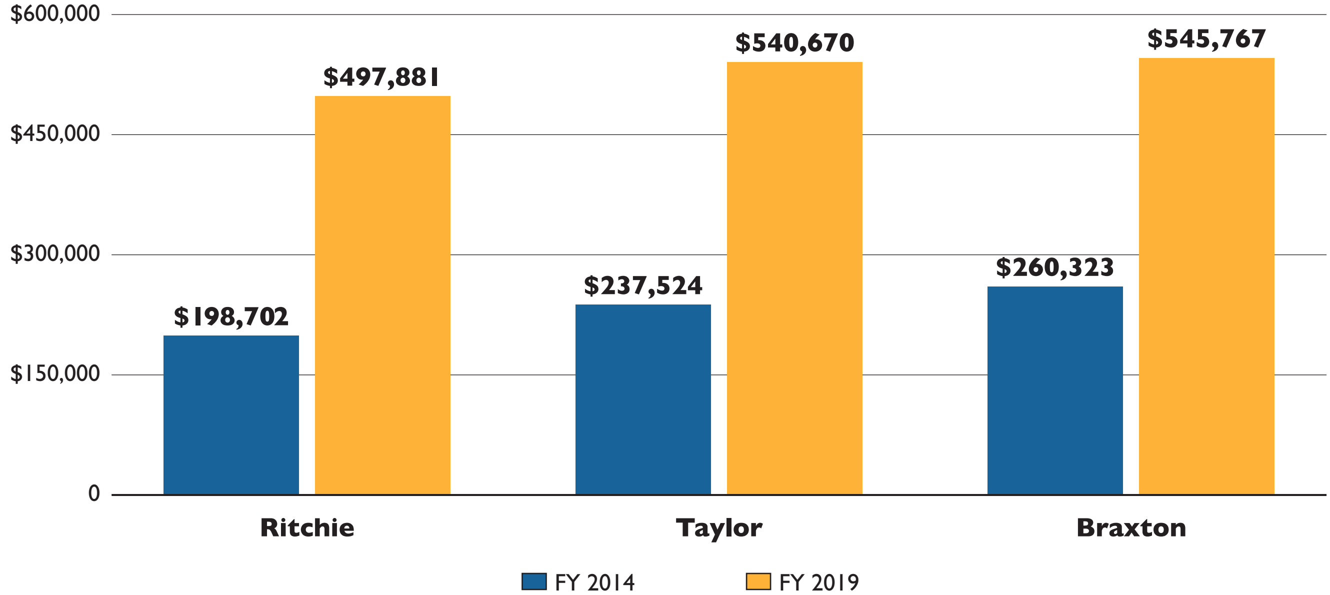
Because county governments are responsible for paying the majority of costs associated with keeping people incarcerated in their local jails, the increased reliance on jail incarceration is driving significant pressure on county budgets alongside a burgeoning jail debt crisis for those counties unable to pay.

County spending on jails is rising, with county payments to the Regional Jail Authority increasing from $52 million in 2014 to $52.2 million in 2019, an increase of 0.3 percent.[5] Yet over the same period, jail billing has risen almost seven times faster, growing from $50.1 million in 2014 to $53.3 million in 2019, an increase of 7 percent. This is part of a long-term trend, with jail billing increasing 9 percent between 2009 and 2019.

Even more troubling is the scale of the challenge across West Virginia. Thirty counties in West Virginia—more than half—spent more on regional jail incarceration in 2019 than in 2014. Collectively, these counties paid $5.3 million more to the Regional Jail Authority in 2019 than in 2014, with an average increase of $176,357 per county.[6] What's more, some of them saw astronomical increases in jail spending. For example, jail spending in Ritchie, Taylor, and Braxton counties rose by more than double (Figure 4).

FIGURE 4

Three Counties More than Doubled Their Jail Spending in 2019 Compared to 2014



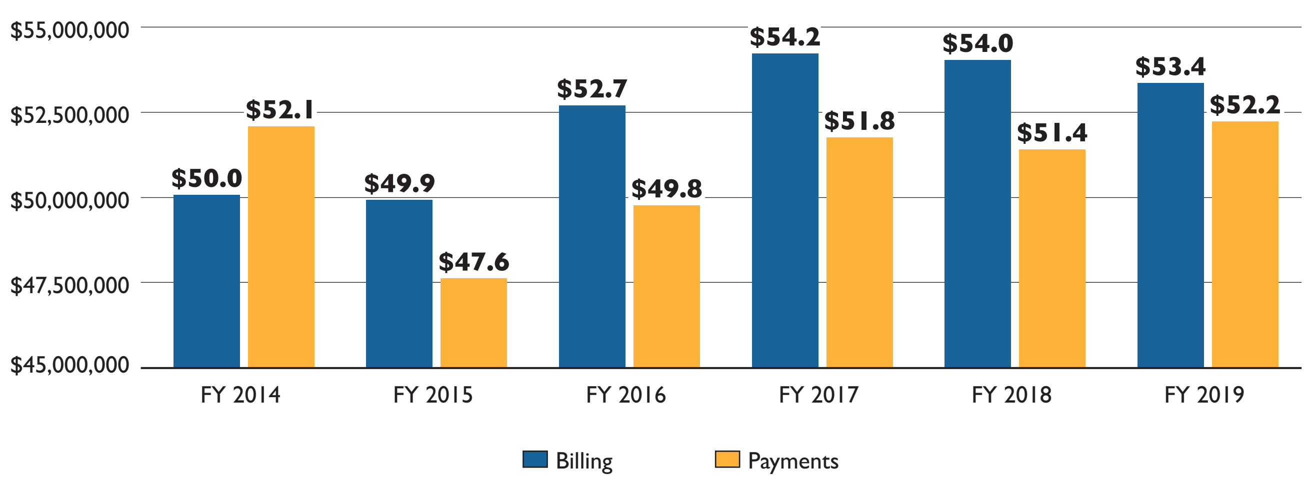
Source: WVCBP analysis of WVDCR Freedom of Information Act data

While county jail spending is rising, jail billing is rising even more quickly, and counties are facing a growing gap between the true costs of jail incarceration and the amount they can actually pay. The amount billed to the counties by the Regional Jail Authority represents the true cost of jail incarceration. Yet this amount does not necessarily reflect what counties are able to pay to the Regional Jail Authority. The average gap between billing and payments from 2014 to 2019 was $1.6 million. This masks the true depth of the problem, as jail debt exploded in 2015. In fact, between 2015 and 2019, counties were unable to fully meet their jail costs collectively, with total payments falling short by an average of $2.3 million per year, indicating that counties are incarcerating beyond their ability to pay (Figure 5).

FIGURE 5

County Payments to the Regional Jail Authority Haven't Kept Up with Billing

Amounts (in millions) billed to West Virginia counties by the Regional Jail Authority and paid by West Virginia counties to the Regional Jail Authority, FY 2014 – FY 2019



Source: WVCBP analysis of WVDCR Freedom of Information Act data

The growing gap between jail billing and jail spending is driving a burgeoning jail debt crisis for county budgets. Since 2014, two out of every three counties in the state (a total of 36 counties) were unable to pay their jail bill in full every year.[7] There are several consequences that can occur when too many counties are unable to pay their regional jail bills. When some counties carry jail debt, other counties that are able to pay may have to pick up the burden. Counties like Kanawha have raised taxes to pay for rising jail bills.[8] Additionally, falling revenues could lead to a downgrade of a county's bond rating, which reduces a county's ability to secure loans to finance future projects. Several counties consistently carried large debts during this period, including Cabell, Calhoun, Clay, Lincoln, Mingo, and Webster, which all had multiple years with relatively significant unmet obligations to the Regional Jail Authority. Webster County has been unable to pay its full bill in a *single year* since 2014.

And it could have been worse. Healthy national economic growth kept county tax revenues afloat over the past five years. This ensured that growth in county budgets kept pace with rising jail costs, so that the share of the overall budget going to jail payments stayed relatively flat, at 6.9 percent in 2014 and 6.8 percent in 2019. But below the statewide average, the picture becomes much bleaker for the majority of West Virginia's counties. Even during the recent economic recovery, declines in industries like coal mining and subsequent tax revenue losses have impacted many of the state's counties, even as natural gas production has increased in some areas of the state. In fact, 29 counties had smaller operating budgets in 2019 than they did in 2014,[9] all while the overall state economy was growing strongly.

At the same time, jail payments as a share of total operating budget increased for 30 counties—by a total of almost 2 percent. For 21 of these counties, their total operating budgets also decreased between 2014 and 2019. For example, Randolph County's total operating budget decreased 14.7 percent, but its regional jail payment as a share of the total operating budget increased by 7 percent between 2014 and 2019. Even for those counties where regional jail payments as a share of operating budget went down, it was mostly due to rising revenues and overall budget growth, rather than reductions in jail payments.

Part 4: Policy Recommendations

Jail debt and inability to pay will continue to plague county budgets unless West Virginia policymakers pursue significant reforms to the county jail system.

One easy way for counties to save money is to consider decarceration as a means of reducing the strain on their budgets. Every dollar spent on incarceration is money that can't be invested elsewhere. Additionally, there are other, non-carceral options that local governments could pursue that would lead to stronger, healthier, and safer communities, and that are less expensive than the cost of jails. This could include larger investments in public education, diversion and drug treatment programs, job training, or housing services.

Reducing jail and prison populations can be done equitably without posing a threat to public safety. Several studies show that decarceration initiatives lead to no increase in crime in rates, and appearance rates after policies go into effect are comparable to the rates before the policy change.[10]

The following recommendations are ways for counties to reduce their jail bills, particularly by decreasing the number of pretrial detainees, for whom counties must pay daily housing costs.

Strategies for Reducing Pretrial Jail Population

- **Improve implementation of House Bill 2419 — the personal recognizance bill.** As noted in Part 2 of this report, the bail reform bill that went into effect in June has not yet had a measurable impact on the number of people being released from jail. In fact, at certain times there have been more people being held pretrial after the reform went into effect in June than before its implementation. Communication with public defenders indicates that all magistrates throughout the state may not be fully aware of their obligation to presume release for nonviolent offenders and ensure the least restrictive means necessary are used for all offenders. Policymakers and the West Virginia Supreme Court could take steps to educate magistrates of the change and ensure better adherence to the new law with public data collection and analysis.

- **Adopt automated court hearing notification service.** A major factor prosecutors and magistrates consider when determining whether someone should be released from jail pretrial is the likelihood that they will appear for their subsequent court hearings. While some people do intentionally abscond and miss their hearings, failure to appear (FTA) often happens when people simply aren't aware of their court and hearing dates. Processing rearrests for FTA strains judge, prosecutor, law enforcement, court clerk, and defense resources. Jurisdictions in other states have found that routine communication with defendants reduces the likelihood of failure to appear, allowing defendants to maintain their work and family obligations without waiting in jail.[11] Washington, D.C., for example, has a dedicated pretrial services agency that ultimately leads to 94 percent of defendants being released pretrial.[12] A notification system that can reduce the likelihood that defendants will miss their hearings can be a time- and resource-saving initiative. While there is a cost to install notification systems, the cost is outweighed by the money saved from reducing jail incarceration costs. One company offers its services for as low as $20,000 to install software and $2 per defendant per year after that.[13] The Kanawha County Public Defender Office is considering implementing a notification service in 2021, and if successful, this could be a model for other counties to replicate to reduce pretrial costs.

- **Increase use of home incarceration.** Home incarceration, typically monitored with the use of electronic ankle monitor, is an option for all counties in West Virginia for pretrial release, probation, and as an alternate sentence. The defendant is typically responsible for paying for the cost of their own monitoring, which can range from $5 to $12 per day depending on the county, unless they are indigent. Because home incarceration is a cheaper alternative to pretrial jail incarceration and allows the defendant to still be employed, take care of their families, and attend any health or counseling services, counties could elect to use the option more frequently. However, the service should be paid for entirely by the counties and not fall onto the defendant. It would still result in approximately $36 to $42 in savings per day for counties. Additionally, the service should not be used when the defendant is eligible for personal recognizance pretrial release.

- **Reduce arrests for technical violations of probation and parole.** Labeled as alternatives to incarceration, probation and parole use has increased drastically across the country in recent decades. However, the stringent conditions of parole and probation mean that people can be rearrested and sent to jail for violations as benign as failing to report an address change or missing an appointment with a probation officer. A recent study of jails in Washington D.C. found that people who are jailed for parole violations alone spend more time incarcerated than people who are sentenced for misdemeanor crimes.[14] Jailing people for technical violations contributes to the cycle of mass incarceration, and particularly to jail overcrowding.

- **Stop using jails for long-term incarceration.** Regional jails were not meant to house defendants long-term. Compared to prisons, they offer few education and rehabilitative opportunities. Additionally, jails don't offer the same medical care as prisons, although they tend to house people who are uninsured and with high rates of infectious disease, chronic disease, and mental health needs.[15] That means that when people languish behind jail bars, they can't work, take care of their families, or get adequate medical or drug treatment — and counties are footing the bill.

- **Reinvest jail savings in building thriving local communities.** If counties were able to save on regional jail costs and reinvest those funds, the alternatives could have much stronger returns. Counties that spend more on community health care, public health, parks, fire departments, and libraries have better health outcome rankings.[16] More investment in these areas could significantly impact rural West Virginia, in particular, which is heavily reliant on county-level infrastructure and governance. Counties could find alternative uses for the money that could be saved from reducing incarceration costs, especially as potential budget shortfalls from the economic fallout of COVID-19 loom. In addition to typical county expenses like road maintenance and emergency service spending, there are novel programs that would benefit county residents or employees. For example, in January 2020, Kanawha County became the first government employer to grant 12 weeks of paid family leave to new parents, foster parents, and grandparents who will be the primary caregivers. Additional beneficial policies such as this would be made possible if we reduced the exorbitant amount that counties spend on jail incarceration and reinvested those funds.

Endnotes

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2 Assuming that counties end up paying 95% of pre-trial costs in a given year.

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4 Dylan Vidovich, "Retiring magistrate Lenoard Codispoti reflects on 40-year career," *The Logan Banner*, (October 28, 2020), https://www.loganbanner.com/news/retiring-magistrate-leonard-codispoti-reflects-on-40-year-career/article_4ed3a5ec-5458-548d-a44b-3fc786e31547.html?fbclid=IwAR3wO9IQBLDyxiH-PKGs6yAVQ6tRUBiSCo_STGusFTck9AWOXu2D5D0K0zs; Emily Allen, "W.Va Jails Still Overcrowded During Pandemic, Despite New Law for Pretrial Release," West Virginia Public Broadcasting, (August 20, 2020), https://www.wvpublic.org/news/2020-08-20/w-va-jails-still-overcrowded-during-pandemic-despite-new-law-for-pretrial-release.

5 WVCBP received county payment and billing records dating back to FY 2014 and 2009, respectively.

6 Mineral County is excluded from this report due to incomplete billing and payment information.

7 For the purpose of this analysis, a county was determined to have unmet bill obligations if its difference between bills and payments was greater than its average monthly payment for the respective fiscal year.

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