

Rural Washington State Needs Criminal Legal System Reform

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Policy Brief

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What's driving jail incarceration in five rural counties in Washington?

Between 2015 and 2021:

- The leading reason people were booked into jail pretrial was as a penalty for problems navigating technical rules set by the criminal legal system.
- Driving with a suspended license was one of the most common reasons that people were booked into jail.
- Statewide mandatory arrest policies for domestic violence charges also drive jail admissions. Domestic assault charges (mostly misdemeanors) were a leading reason for incarceration, including for women's jail admissions.

This brief is based on jail roster data provided by the sheriff's offices in five Washington counties, covering approximately five years.¹ The Washington Rural Jails Network team at Washington State University analyzed the data and published fact sheets describing the factors that contribute to jail incarceration in each county.² This brief, written by the Vera Institute of Justice, summarizes the findings and presents policy recommendations for local and state policymakers.

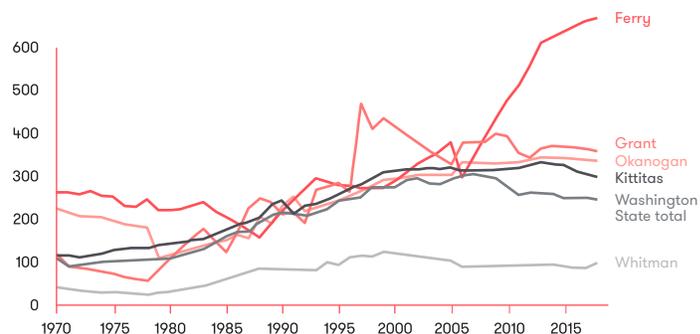
Although total jail incarceration rates in Washington are below the national average, rates in rural counties are mostly higher than the state average.

Washington is ranked among the states with the lowest jail incarceration rates in the United States.³ But looking closer, rural Washington counties are experiencing something different: while urban and suburban counties west of the Cascade Mountains have implemented reforms that lowered

jail populations, the numbers of people in rural Washington county jails on the eastern side of the state have remained stubbornly high. (See Figure 1.)

Figure 1

Jail population rate in five Washington counties, 1970-2018



Rate per 100,000 residents ages 15 to 64.

Source: Vera Incarceration Trends.

For more information

The findings in this brief come from analysis conducted by the Washington Rural Jails Network at Washington State University as part of the Rural Jails Research and Policy Network, a project of the Vera Institute of Justice made possible with support from Arnold Ventures. The findings in this brief come from data acquired through partnerships with Washington county sheriff's offices and is supplemented by historical data from the Vera Institute of Justice Incarceration Trends Dataset (available on GitHub at <https://github.com/vera-institute/incarceration-trends>). Analyses were conducted by Jennifer Sherman, Jennifer Schwartz, and Clay Mosher, with support from WSU graduate students. For more information and to see county-specific fact sheets, see <https://labs.wsu.edu/wrjn/> or contact Jennifer Schwartz at jennifer.schwartz@wsu.edu.

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Why are people going to jail in rural Washington?

Jails in rural Washington are not primarily holding people facing violent or dangerous charges. Data from five rural Washington counties for 2015 through 2021 show that rising rural jail populations are tied to several trends: the use of jail as a response to difficulties navigating technical criminal legal system rules, the practice of driver's license suspension as a response to unpaid fines and failure to appear in court, and the frequency of arrests involving domestic violence charges.⁴ (See Figure 2.)

The most common reason people were booked into jail pretrial was due to penalties around navigating technical criminal legal system rules.

In four out of five counties examined as part of this study, between 30 and 38 percent of all people booked into jail pretrial were admitted as a penalty for failing to navigate criminal legal system requirements.⁵ (See Figure 2.) This includes failure to appear for court, not paying a fine, or not complying with another technical system rule. Of these, failure to appear for court accounted for most jail bookings by far: from 23 to 30 percent of admissions.⁶

Notably, in the only county where navigating criminal legal system rules was not a primary reason for jail booking (Kittitas County), a district court judge has, according to comments from local stakeholders, exercised their discretion not to issue warrants for failure to appear. This appears to have driven down total jail admissions for failure to navigate technical system rules across the entire county.

Driving with a suspended license was one of the primary reasons that people were booked into jail pretrial.

Driving with a suspended license accounted for 10 to 14 percent of admissions in three of the five counties studied.⁷ In Washington, driver's license suspensions can result from unpaid fines, traffic tickets, missed child support payments, or failure to appear for hearings related to traffic infractions, among other reasons. In Washington, as is the case across the country, the burden of legal financial obligations (fines and fees) is associated with higher rates of poverty over time, especially for Black people, Indigenous people, and other

Figure 2

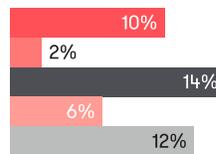
Top charge type, percentage of pretrial bookings per county

Ferry Grant Kittitas Okanogan Whitman

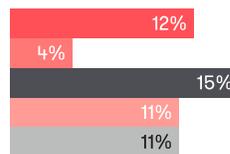
Penalties related to navigating system rules



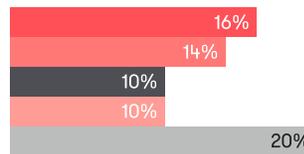
Driving while license suspended



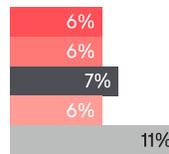
Driving under the influence



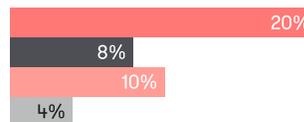
Assault (mainly domestic violence related)



Drug-related charges



Holds



Source: Washington Rural Jails Network analysis of county jail roster data.

communities of color.⁸ Charges of driving with a suspended license for failure to pay fines or fees or to appear in court (DWLS III) affect people of color disproportionately in Washington, too.⁹ In rural areas with few options for transportation other than driving, a license suspension can have cascading negative effects on a person's life and ability to pay any criminal legal system debts.

Mandatory arrest laws for domestic violence situations drive jail admissions, especially for women.

Washington state law requires that law enforcement officers make at least one arrest when responding to a call involving domestic violence, provided the officer has probable cause to believe domestic violence occurred.¹⁰ As a result, domestic violence charges make up a large portion of pretrial jail admissions involving assault and similar charges:

- › Domestic violence–related charges made up most pretrial jail bookings for assault.¹¹ These charges, mostly misdemeanors, were among the most common reasons for pretrial jail admissions across all five counties.
- › Domestic assault charges were the second most common type of top charge for women booked into jail pretrial—despite the purported goal of the mandatory arrest law to protect people who experience domestic violence.¹² (The most common charge for women, as for men, was failure to appear and to navigate system rules.)
- › Most domestic violence charges were misdemeanors, especially for women. In four of the five counties, more than 80 percent of domestic assault charges were misdemeanors.¹³

Studies have shown that mandatory arrest laws are associated with myriad unintended consequences, including higher arrest rates of women, arrests of survivors, arrest of the person suspected of causing harm regardless of a survivor's wishes, unwanted involvement of child protective services, and increased danger of retaliation from an abusive partner.¹⁴

Contrary to common narratives, drug-related charges made up a relatively small portion of admissions into rural Washington jails, accounting for just 6 to 10 percent of jail admissions across the participating rural counties.

In counties where data was available for substance type, methamphetamine was by far the most common: 28 percent in Kittitas County, 33 percent in Okanogan County, and 41 percent in Whitman County.¹⁵

Why are so many people staying in jail in rural Washington?

The people who are staying in pretrial detention the longest are not necessarily the people with the most serious charges.

Across all participating counties, the charges with the longest pretrial lengths of stays were drug-related and theft, about double the overall average length of stay.¹⁶ In contrast, in three counties, the shortest lengths of stays were for driving under the influence (DUI) charges.¹⁷

In some counties, holds for other counties, the U.S. Marshals, and for the Washington Department of Corrections' community custody program drove up the average daily population and jail bed days used.

In two counties, people detained on holds for other agencies stayed longer than the overall average.¹⁸ In Whitman County, people on U.S. Marshals holds stayed on average two-and-a-half months. In Ferry County, people booked into jail for violating the terms of community custody under the supervision of the Washington Department of Corrections (which uses county jails to house people serving time for violations) made up 26 percent of all jail admissions—and had a slightly longer length of stay compared to the average pretrial booking (10.5 days and 9.9 days, respectively). Contracts with other localities or agencies to rent jail bed space can create additional problematic incentives for counties to expand local jails.¹⁹

Black people and Indigenous people are overrepresented in rural Washington jails.

Across all counties studied, Black people were represented in jail admissions at twice or more their proportion of the county population.²⁰ Across three counties, Indigenous people were represented in jail admissions at anywhere from 1.5 to four times their proportion of the county population.²¹ Disparities were not as immediately evident for Latinx people, which may be due to undercounting in jail records that rely on intake officers' guesses about a person's racial/ethnic identity.²²

More than a quarter of people admitted to rural Washington jails are women.

Women make up an increasing portion of jail admissions across participating rural counties.²³ The rate of women in jail in Washington increased more than five-fold from 1980 to 2019.²⁴ In participating counties, the most common charges driving women's jail admissions were failures to appear and to navigate criminal legal system rules, domestic violence-related assault charges (which can affect women who are survivors of domestic violence, too), and charges related to drugs and DUI.²⁵

Local and state policy changes can reduce the use of jail in rural Washington without compromising public safety.

Jails in rural Washington are being used mostly to detain people for minor charges, including situations related to poverty, substance use, and domestic violence. Rural communities should not be forced to use their limited resources and infrastructure to incarcerate people in jail for charges that are relatively minor. Here are some places to start addressing this issue:

Actions to take at the local level

- › **Provide supports to help people get to required court hearings, without using jail as a penalty for failure to appear.** Local courts can set up mechanisms to send automated court date reminders to all people with court dates. Reminders should be sent without requiring people to opt in. They should include clear instructions to access the courthouse as well as information regarding consequences for missing court. Research shows that proactive court date reminders can reduce failure to appear rates by as much as 43 percent.²⁶ Courts can also establish a grace period before issuing bench warrants after someone misses court, notifying people that they need to come to court to resolve the failure to appear before a warrant is issued. Finally, courts can set up clinics, hotlines, and websites for people to easily resolve warrants and request new court dates to avoid arrest.²⁷
- › **Establish a local automatic pretrial release policy for certain charges.** Local judiciaries can establish court rules requiring automatic pretrial release without conditions for certain types of charges. For example, courts might require automatic pretrial release for all charges that do not involve actual or threatened violence, sexual assault, or outstanding warrants or other holds. Prosecutors can publicly express support for automatic pretrial release policies and, in the meantime, as courts consider a standing order, prosecutors can tailor bail recommendations to the court to conform to the proposed policy.
- › **Resist proposals for jail expansion or new jail construction.** Some counties depend on unreliable crime projections to justify plans to build new, bigger jail facilities with valuable and scarce community resources.²⁸ Jail populations typically rise as new bed space becomes available: research suggests this is because local criminal legal system actors adjust their decisions in the face of material constraints.²⁹ System actors and community advocates should push back on plans to expand the jail and focus instead on changing local policies to reduce the number of people in the jail.

Actions to take at the state level

- › **End the practice of driver's license suspension for nonpayment of fines or for failing to appear in court.** In 2021, Washington state ended mandatory suspension of driver's licenses due to failure to pay fines, and now courts may exercise discretion in making the decision to order suspension or revocation. To have true impact, the state legislature should further act to prohibit driver's license suspension for nonpayment of fines and for failure to appear in court and should make license reinstatement automatic and free. Driver's license suspension only makes it harder for people to pay outstanding fines, make required court appearances, and otherwise comply with conditions of pretrial release. Such changes would significantly relieve pressures rural jurisdictions face in managing driving-related issues specifically.
- › **Provide resources for local pretrial services, including implementation funding for rural counties.** Counties can provide support services (such as peer navigators) and pretrial supervision to ensure people attend court without remaining in pretrial detention or under onerous supervision conditions. Rural places also need specific state support to offset the additional challenges rural residents face in navigating local systems, such as lack of access to transportation and lack of treatment options.
- › **End mandatory arrest policies for law enforcement calls involving domestic violence.** State legislators should hear from survivors and local advocacy organizations on the harms that can flow from such policies (including increasing arrests for survivors, especially Black people) and to learn about other avenues for ensuring safety of families. Legislators should support further research on this complex topic. Policymakers should consider more flexible responses to domestic violence that do not rely solely on jail detention. More broadly, expanding accessible housing and shelter options in rural areas would help people navigating domestic violence.

Endnotes

- 1 Ferry County (January 2016 to August 2021), Grant County (January 2015 to July 2020), Kittitas County (January 2015 to August 2020), Okanogan County (January 2015 to December 2019), and Whitman County (September 2016 to November 2020).
- 2 See Washington Rural Jails Network, <https://labs.wsu.edu/wrjn/>.
- 3 The rate of jail incarceration per 100,000 people in 2019 was 243 in Washington, compared to 341 in the United States overall. Vera Institute of Justice, *Incarceration Trends*, <https://trends.vera.org/state/WA>.
- 4 This analysis is based on the most common top-charge types as listed in jail roster data provided by sheriff's offices from the five counties included in this brief: Ferry County (January 2016 to August 2021), Grant County (January 2015 to July 2020), Kittitas County (January 2015 to August 2020), Okanogan County (January 2015 to December 2019), and Whitman County (September 2016 to November 2020). All county-level figures cited in this brief are for these same periods.
- 5 Ferry, Grant, Okanogan, and Whitman Counties.
- 6 Failure to appear as the top charge made up 23 percent of admissions in Ferry County, 30 percent in Grant County, 29 percent in Okanogan County, and 24 percent in Whitman County.
- 7 Fourteen percent of people admitted to jail pretrial in Kittitas County, 12 percent of people in Whitman County, and 10 percent of people in Ferry County were booked on charges of driving with a suspended license.
- 8 Kate K. O'Neil, Ian Kennedy, and Alexes Harris, "Debtors' Blocks: How Monetary Sanctions Make Between-neighborhood Racial and Economic Inequalities Worse," *Sociology of Race and Ethnicity*, 8, no. 1 (2021), 43-61.
- 9 American Civil Liberties Union (ACLU) Washington, *Driven to Fail: The High Cost of Washington's Most Ineffective Crime - DWLS III* (Seattle: American Civil Liberties Union, 2017), <https://www.aclu-wa.org/docs/driven-fail-high-cost-washingtons-most-ineffective-crime>.
- 10 Revised Code of Washington, 10.99.030.
- 11 Domestic violence charges accounted for 73 percent of all admissions relating to assault in Okanogan County, 70 percent in Whitman and Kittitas Counties, 66 percent in Ferry County, and 63 percent in Grant County.
- 12 Revised Code of Washington, Chapter 10.99: Domestic Violence Official Response, <https://app.leg.wa.gov/RCW/default.aspx?cite=10.99.010>.
- 13 In Okanogan County, 95 percent of domestic violence charges were misdemeanors, 90 percent in Grant and Whitman, and 82 percent in Ferry.
- 14 See Victoria Frye, Mary Haviland, and Valli Rajah, "Dual Arrest and Other Unintended Consequences of Mandatory Arrest in New York City: A Brief Report," *Journal of Family Violence* 22, no. 6 (2007), 397-405; and Mimi E. Kim, "From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration," *Journal of Ethnic & Cultural Diversity in Social Work* 27, no. 3 (2018), 1-15.
- 15 This may be an undercount, as the drug type is unknown for 28 percent of bookings in Kittitas County, 33 percent of bookings in Okanogan County, and 28 percent of bookings in Whitman County.
- 16 In all counties except Whitman, people with these charges stayed on average more than 12 days, and in Okanogan County, more than 22 days. The average length of stay is 9.9 days in Ferry County, 9.4 days in Grant County (minus federal holds), 12.1 days in Kittitas County, 16.2 days in Okanogan County (minus holds), 3.7 days in Whitman County (minus federal holds).
- 17 2.1 days in Ferry County, 3.6 days in Okanogan, and 0.8 days in Whitman County.
- 18 In Grant County, Department of Corrections holds were 14 days on average and out-of-county holds were 9.6 days (9.9 days average length of stay overall). In Whitman County, the average length of stay for all charges was 6.6 days, but it only 3.7 days when people on federal U.S. Marshals holds are excluded. In Ferry County, the 35 percent of jail admissions that were for people charged with violating community custody under the supervision of the state Department of Corrections had an average length of stay of 10.5 days.
- 19 Jack Norton and Jacob Kang-Brown, "If You Build It: How the Federal Government Fuels Jail Expansion," Vera Institute of Justice, January 10, 2020, <https://www.vera.org/in-our-backyards-stories/if-you-build-it>; and Chris Mai, Mikelina Belaineh, Ram Subramanian, and Jacob Kang-Brown, *Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead* (New York: Vera Institute of Justice, 2019), <https://www.vera.org/downloads/publications/broken-ground-jail-construction.pdf>.

- 20 For the years studied, in Whitman County, Black people represented 7.5 percent of pretrial jail admissions but only 2.4 percent of the total county population; in Grant and Okanogan counties they made up 4 percent of pretrial jail admissions and only 2 percent of the county population.
- 21 For the years studied, in Okanogan County, Native people made up 19 percent of jail admissions compared to 13 percent of the county population; in Whitman County the disparity is 4 percent compared to 1 percent, and in Grant it is 2 percent compared to 1 percent. (In Ferry County, the reverse pattern appears, with 7 percent of jail admissions being Native people, compared to 17 percent of the county population.)
- 22 Sarah Eppler-Epstein, Annie Gurvis, and Ryan King, “The Alarming Lack of Data on Latinos in the Criminal Justice System,” Urban Institute, December 2016, <http://urbn.is/cjdata>.
- 23 Although the rate per capita of the women’s jail population has fluctuated in the past decade across the counties included, it increased sharply in the 1990s (from 44 to 82 per 100,000 people in Washington from 1990 to 2000). See Vera Institute of Justice, *Incarceration Trends*, <https://trends.vera.org/state/WA>. According to Vera’s *Incarceration Trends*, women’s jail admissions as a portion of total jail admissions increased in four of the five counties from 2000 to 2019: from 16 to 26 percent in Grant County, from 3 to 22 percent in Kittitas County, and from 9 to 24 percent in Whitman County. In Ferry County, the proportion fell from 21 percent to 14 percent during the same period. The jail roster data studied for this project, covering approximately 2015 to 2021, shows that the proportion of people admitted to jail who were women has remained fairly steady since 2015. Overall, for the time periods covered by the data in this study, women accounted for 23 percent of admissions in Grant County and Kittitas County, 24 percent in Whitman County, 26 percent in Ferry County, and 27 percent in Okanogan County.
- 24 According to Vera’s *Incarceration Trends* data, the rate of women in jails in Washington per 100,000 people was 14 in 1980 and 77 in 2019. The number of women in Washington jails was 200 in 1980 and 1,908 in 2019, a nearly 10-fold increase.
- 25 The top-charge categories driving admissions were similar for men and women. For the years studied, drug-related charges made up a slightly higher proportion of women’s charges than men’s (about 9 percent across participating counties, compared to about 7 percent for men). For women, drug-related charges were the third most common, similar to DUI charges.
- 26 See Timothy R. Schnacke, Michael R. Jones, and Dorian M. Wilderman, “Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado, FTA Pilot Project and Court Date Notification Program,” *Court Review: The Journal of American Judges Association*, 48, no. 3 (2012), 86-95, 89, <https://perma.cc/JXR4-FJVM>.
- 27 See, for example, Daniel Bernal, “Taking the Court to the People: Real-World Solutions for Nonappearance,” *Arizona Law Review*, 59, no. 2 (2017), 547-571, 566, <https://perma.cc/6VNS-AJ2B>.
- 28 See Mai, Belainah, Subramanian, and Kang-Brown, *Broken Ground*, 2019.
- 29 Ibid.