



HENNEPIN COUNTY

PUBLIC DEFENDER



Hennepin County Public Defender

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Hennepin County Public Defender



One of every five of the 2.3 million people in U.S. jails and prisons is a person awaiting trial

People who are awaiting trial
account for 76 percent of those
held by local jails

NATIONALLY

- Pretrial incarceration costs an estimated \$14 billion each year
- Pretrial incarceration accounted for 95% of jail growth from 2000 to 2014
- African Americans and Latinos receive higher bail amounts – sometimes twice as high – than white people with identical backgrounds

Pretrial Justice Institute, “Have You Asked Them?” 2016

ADULT DETENTION CENTER - JAIL

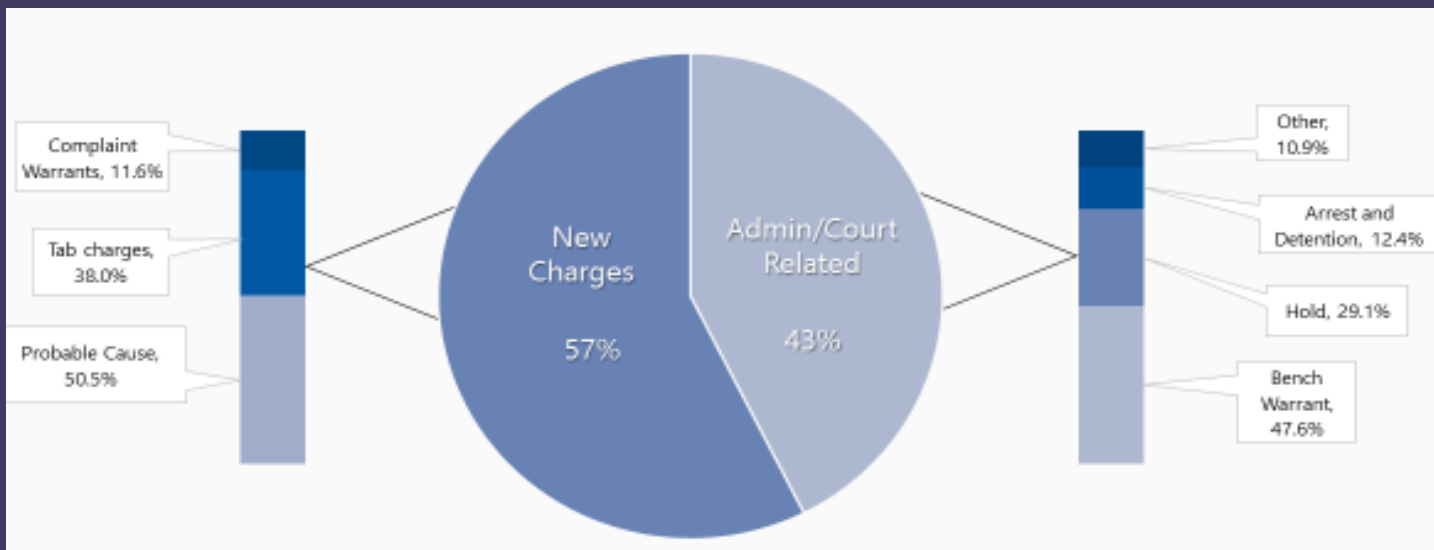


AFTER SENTENCING...



H.C. JAIL POPULATION – 2015

- There are approximately 33,000 admissions annually with a cost of \$132 per individual per day
- Nearly half have a length of stay of less than 24 hours
- Roughly a third of the jail population has a diagnosable mental health issues
- Too many people stay in jail because they can't afford a minimal amount of bail
- African Americans make up 12% of HC population yet constitute 53% of all jail bookings



Annual cost for Bench Warrants for failure to appear in Criminal Court (2016 costs)

Jail Costs

\$132.24/day

Avg. days in Jail: 1.78 for BW

25,926 bench warrants in 2016

\$6.1 million

For 2017 the per diem is \$1.33.68
or \$5.57/hr.

Community Costs – Lost Wages*

Average of 2 days in jail=16 hours
of lost pay

Minimum Wage: \$7.75

25,926 bench warrants in 2016

\$3.2 million

WHY DID PEOPLE MISS COURT?

- **39%** forgot, didn't know the date, mixed up the date, or had trouble rescheduling.
- **34%** had a work, personal, or health conflict or didn't have transportation.
- Other reasons:
 - Moved to flee domestic abuse
 - Phobia of court
 - Overslept



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IF INCARCERATED BEFORE TRIAL:

- 25% more likely than similarly situated people who are released to plead guilty
- 4 times more likely to receive jail time
- 3 times more likely to go to prison
- More likely to commit a new crime following release
- Less likely to appear for court if held longer than 24 hours

PJI – “HAVE YOU ASKED THEM?”

- 68% said money for release came from family and friends
- 77% used for-profit bail bonds company
- 84% of those jailed said they may lose jobs
- 30% of those released had lost jobs while in jail (more than half were in jail between one and three days)
- Over 50% were parents or guardians of children

FREEDOM FUND

“Client had to work that night and would have lost his job if kept in custody. He had no cash on him and nobody he could call to come bail him out on a loan until his next paycheck. He made it to pretrial and we had to get a continued date. He has kept in contact in the interim.”

“There was also a case in November of 2016, in which the client was charged with domestic assault against his adult sister. The offer was to plead guilty to disorderly conduct with stayed jail time, complete a presentence investigation report, and domestic abuse programming, etc. The client decided to wait to see if the Freedom Fund could post his bail before deciding whether or not to take a plea deal. Bail was posted and the case was dismissed at trial.”

“Client was held in custody and the judge imposed \$1,000 bail with no cash alternative. At the speedy pretrial, I asked the judge to reconsider bail and specifically asked for a cash alternative because she could have likely put together \$100 from friends and family. The City Attorney opposed the request and the judge kept bail as it was. Client was scared and didn’t belong in jail. She is young (23) and her mother has had contentious relationships with all of her kids.

Thank goodness Simon posted bail from the Freedom Fund because the offer from the City Attorney was pretty terrible. So, the case was set for trial. Literally right before we were going to start arguing our motions in limine, the City Attorney dismissed the case because the complaining witness didn’t appear.

Client is doing great. She is enrolled in GED classes and is working with a variety of Native groups to help get her back on track and out of her house. This dismissal continues her on a positive path. I’m extremely thankful she didn’t have to take a bad offer just to get her out of jail. In addition, when I dropped the ball on giving bail back to the Freedom Fund after the case was dismissed, she was sent a check for \$1,000. She could have kept that money since the check was made out to her, but once she received it she called me just as I asked and set up a time to meet with Simon in order to give him back the money. That was pretty incredible to be a part of.”

Rule 6.02 Release by Court or Prosecutor

- **Subd. 1. Conditions of Release.**
- A person charged with an offense **must** be released without bail when ordered by the prosecutor, court, or any person designated by the court to perform that function. On appearance before the court, a person must be released on personal recognizance or an unsecured appearance bond unless a court determines that release will **endanger the public safety** or will not **reasonably assure the defendant's appearance**. When this determination is made, the court must, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release that will reasonably assure the person's appearance as ordered, or, if no single condition gives that assurance, any combination of the following conditions:

RELEASE CONDITIONS

- (a) Place the defendant under the supervision of a person who, or an organization that, agrees to supervise;
- (b) Place restrictions on travel, association, or residence during release;
- (c) Require an appearance bond, cash deposit, or other security; or
- (d) Impose other conditions necessary to assure appearance as ordered.
- If the court sets conditions of release, it must issue a written order containing them. A copy of the order must be provided to the defendant and to the law enforcement agency that has or had custody. The law enforcement agency must also be provided with the victim's name and location.
- The court must set money bail without other conditions on which the defendant may be released by posting cash or sureties.
- The defendant's release must be conditioned on appearance at all future court proceedings.

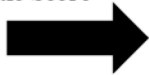
Subd. 2. Release Conditions

- In determining conditions of release the court must consider:
 - (a) the nature and circumstances of the offense charged;
 - (b) the weight of the evidence;
 - (c) family ties;
 - (d) employment;
 - (e) financial resources;
 - (f) character and mental condition;
 - (g) length of residence in the community;
 - (h) criminal convictions;
 - (i) prior history of appearing in court;
 - (j) prior flight to avoid prosecution;
 - (k) the victim's safety;
 - (l) any other person's safety;
 - (m) the community's safety.

Risk Assessments

HENNEPIN COUNTY PRETRIAL EVALUATION

Screen Date:	Div.	SILS #	Case #	SID/FBI #			
Name (Last)	(First)	(Middle)	DOB	Age	Sex	Race	
Street Address	Verified? <input type="checkbox"/> Yes <input type="checkbox"/> No	Apt #	City	State	ZIP	Duration	
Telephone #	Most Recent Prior Address					Duration	
Have you ever been in, or served in the armed services? <input type="checkbox"/> Yes <input type="checkbox"/> No	Aliases:	Birth Place:	Marital Status:	# Kids:	# Dep:		
Arrest Type:	Bail Amount:	Main Charge:	Felony				Points Assigned
		Other Charges:					Choose a number
Employment/Income Sources or School Status				Amount: \$		Choose a number	
Current Problematic Chemical Use						Choose a number	
Homeless or 3 or More Address Changes in Past Year						Choose a number	
Age at first Delinquency Adjudication/Conviction						Choose a number	
Criminal History Points							
Bench Warrant Points						Choose a number	

<input type="checkbox"/> Yes <input type="checkbox"/> No					
Arrest Type:	Bail Amount:	Main Charge: Felony			Points Assigned
		Other Charges:			Choose a number
Employment/Income Sources or School Status				Amount: \$	Choose a number
Current Problematic Chemical Use					Choose a number
Homeless or 3 or More Address Changes in Past Year					Choose a number
Age at first Delinquency Adjudication/Conviction					Choose a number
Criminal History Points					
Bench Warrant Points					Choose a number
Holds/Type:	<input type="checkbox"/> Complaint <input type="checkbox"/> Police Report:		Scale Score		
Collateral/Relationship:	Collateral Comments:		PreTrial Score		
Address/Phone #			Lower = 0-11 points		
			Moderate = 12-25 points		
			Higher = 26 or more points		
Victim Name/Relationship:	Victim Comments:				
Address/Phone #:					

RISK ASSESSMENTS – WHAT ARE THEY?

- Algorithmic tool that forecasts outcomes based on historical data
- Seek to find patterns in past data that correlate with some definition of success
- Success defined as when an arrested person does not fail to appear for court and/or is not rearrested during the pretrial period

“Making Sense of Pretrial Risk Assessments,” Buskey & Woods, The Champion 2018

RISK ASSESSMENTS - ISSUES

- False negatives v. false positives
- Is sharing a risk score with a group deemed more likely to be “deviant” fair?
- “Stereotypes – whether by people or algorithms - are necessarily overbroad and intentionally blind to the individual.”
- Supreme Court recognizes that right to pretrial release is fundamental



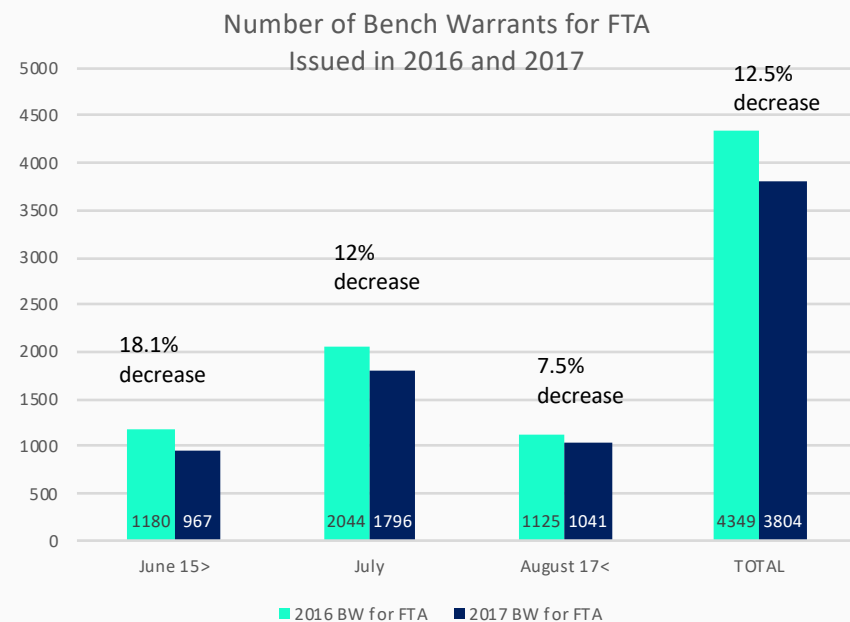
WHY NOT?

- Requires an amendment to the Minnesota Constitution
- Judges will substitute hold without bail for any amount of bail
- Make prosecutors, judges and probation officers (using risk assessments) follow the law
- There are great alternatives to help people get to court

Alternative to bench warrants

Electronic Court Reminder Project: eReminders

- Full implementation of electronic reminders began June 15, 2017
- Court is sending **texts** and **emails** on each defendant for each hearing in Criminal Court.
- Defendants are reminded 3 days out and 1 day prior to a scheduled appearance.
- Defendants can Opt-Out
- **Preliminary Results (2 months)** show a 12.5% decrease in Bench Warrants Issued for Failure to Appear



SIGN AND RELEASE PROJECT

Sign and release pilot (City of Minneapolis)

- Started July 5, 2016- September 2016
- Preliminary numbers through September
 - 344 Warrants issued
 - 96 people located
 - 78% appeared

LOCAL

Who says there's no free ride? Grant will get public defender clients to court

MacArthur Foundation grant aims to get offenders to court, avoid night in jail.

By **Rochelle Olson** Star Tribune | OCTOBER 31, 2018 — 7:38PM

- Hennepin County public defender clients with misdemeanor cases in Minneapolis soon can get free rides to court, thanks to a \$50,000 grant from the MacArthur Foundation.
- The MacArthur Foundation, which focuses on social issues and is known for its “genius grants,” awarded the money to the county and city as part of a warrant reform project called Hitch Health designed to remove a barrier to defendants showing up for court dates.

Alternatives to Bench Warrants

Warrant Forgiveness Day

- **122** pre-registered through ACLU and District Court websites
- **150** attendees regardless of the heavy rain (100 did not pre-register)
- Public defenders discussed over **500** cases with their clients
- **145** warrants were cleared for **96** defendants
 - Others had license suspension issues or other unresolved statuses
 - Oldest warrant resolved was from **1995!**
- Hearings held on **262** cases and another **49** handled administratively
- **103** cases/**187** charges resolved
- **130** cases scheduled for future hearings
- **122** hours of community service work completed by **30** defendants
- 3 interpreters (Spanish, Somali, Hmong)

30



Driver's Licenses



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AMERICA

The Driving Life And Death Of Philando Castile

July 15, 2016 · 4:51 AM ET
Heard on [Morning Edition](#)

EYDER PERALTA



CHERYL CORLEY

An NPR analysis of those records shows that the 32-year-old cafeteria worker who was [shot and killed by a police officer during a traffic stop](#) in a St. Paul, Minn., suburb, was stopped by police 46 times and racked up more than \$6,000 in fines. Another curious statistic: Of all of the stops, only six of them were things a police officer would notice from outside a car — things like speeding or having a broken muffler.

The records show that Castile spent most of his driving life fighting tickets. Three months after that first stop, for example, his license was suspended and he went into his first spiral: Police stopped him on Jan. 8, 2003. They stopped him on Feb. 3 and on Feb. 12 and Feb. 26 and on March 4.

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Tennessee Ordered to Reinstate Driver's License After Judge Calls Law Unconstitutional

By Ryan J. Farrick - Jul 8, 2018

Purkey first argues that the suspensions are rationally related to the state's legitimate interest in ensuring the safety of the roadways. For that to be so, however, the underlying laws would have to draw some distinction based on actual expectation of safety risk, such as, for example, a distinction based on the severity or numerousness of the underlying offenses. The provisions at issue here are concerned only with whether the offender has paid her Traffic Debt or not. An individual capable of paying her fines and costs may, in any particular case, in fact be demonstrably more dangerous than an individual who cannot, but the provisions at issue do not take account of that fact. The state's interest in safety, therefore, is insufficient to support the distinction challenged by Robinson and Sprague.

A far different calculus prevails, however, when the privilege lost is the ability to operate a car on the state's roadways. Unlike the power to vote, the ability to drive is crucial to the debtor's ability to actually establish the economic self-sufficiency that is necessary to be able to pay the relevant obligations. Robinson and Sprague have previewed substantial evidence demonstrating the necessity of driving to the ability to earn a living in Tennessee (*see* Docket No. 19-1 to -10), but one needs only to observe the details of ordinary life to understand that an individual who cannot drive is at an extraordinary disadvantage in both earning and maintaining material resources. Suspending a driver's license is therefore not merely out of proportion to the underlying purpose of ensuring payment, but affirmatively destructive of that end. In the parlance of *Johnson*, taking an individual's driver's license away to try to make her more likely to pay a fine is not using a shotgun to do the job of a rifle: it is using a shotgun to treat a broken arm. There is no rational basis for that.

2018 PROPOSED MN LEGISLATION

Driver's License suspension bill:

Section 1:

Prohibits the suspension of a driver's license based solely on the fact that a person has failed to appear in court on a citation for a petty misdemeanor parking or traffic violation or a citation for Driving after Suspension (DAS) or Driving after Revocation (DAR).

Section 2:

Prohibits the suspension of a driver's license based solely on the fact that a person is convicted of DAS or DAR. Currently Rule 7409.2200 requires the Commissioner of Public Safety to impose an additional license suspension period of up to a year after a DAS or DAR conviction.

Section 3:

Prohibits the suspension of a driver's license based solely on the fact that a person has failed to pay the fine or surcharge on a parking or traffic ticket.

FINES, FEES & SURCHARGES



MN TOTAL FINANCIAL OBLIGATION

- Base Fine
- Surcharge
- Court Fees
- Correctional fees
- Restitution

2018 PROPOSED FINE/SURCHARGE LEG.

Draft Surcharge Waiver/Ticket Language/FTA Language bill

Sec. 1 amends Section [357.021](#), subd. 6, to give the court discretion to waive or reduce the \$75 state surcharge in cases of financial hardship, or to allow community work service in lieu of the surcharge.

Sec. 2 amends Section [609.101](#), subd. 5, to requires judges to consider a person's ability to pay a fine before sentencing a person to pay a fine, fee or surcharge.

Sec. 3 & 4 amend Section [169.99](#), subd. 1 and add a new subdivision to add language to the standard citation form about requesting a waiver based on ability to pay.

Sec. 5 (not written yet) requires the State Court Administrator to add language related to

Questions?

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