

ACLU DATA REPORT

# There Are Better Solutions

An Analysis of Fulton County's Jail Population Data, 2022



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Georgia

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# Acknowledgements

**Report Authors:** Sophie Beiers, Brooke Madubonwu, Benjamin Sorensen, ACLU Analytics; Eunice Hyunhye Cho, ACLU National Prison Project; Julian Clark, ACLU Criminal Law Reform Project; Benjamin Lynde, ACLU of Georgia

**Report Consultants:** Devin Franklin, Micah Herskind, Tiffany Williams Roberts, Southern Center for Human Rights

**Report Review:** Emily Greytak, ACLU Research; Andrea Young, Fallon McClure, ACLU of Georgia; Brandon Buskey, ACLU Criminal Law Reform Project

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**Copyediting and Production:** Rebecca McCray

**Cover Design:** Neil Shovelin, Patrick Moroney

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# Executive Summary

In recent years, the Fulton County Sheriff's Office has been subject to numerous, costly lawsuits and complaints alleging prolonged detention, neglect, and inhumane conditions in its jails.<sup>1</sup> The Fulton County Sheriff's Office has acknowledged that overcrowding and conditions of confinement at the Fulton County Jail (Jail) must be addressed. The sheriff has asserted that these conditions require the lease of another jail: the Atlanta City Detention Center (ACDC). In August 2022, Atlanta's city council passed Ordinance No. 22-O-1632, which authorized the city to enter into an agreement with the Fulton County sheriff and Fulton County to transfer up to 700 adults detained at the Jail to ACDC, pending review of jail population data in Fulton County and ACDC by the Jail Population Review Committee of the Justice Policy Board (Committee).<sup>2</sup>

A careful analysis of data recently provided by the Fulton County Sheriff's Office to the Committee and other publicly available data indicates that population levels can be reduced and conditions improved at the Fulton County Jail through other simple, common-sense measures, without the need to lease additional beds at ACDC. As the Georgia Council on Criminal Justice Reform noted, these sorts of pragmatic, data-driven solutions for criminal justice reform allow common ground, even in an era marked by intense political partisanship.<sup>3</sup>

The current plan to lease ACDC does not address the policies and practices that drive overcrowding at the Jail. This current approach only ensures that the Jail population will continue to rise and that Fulton County will again face poor conditions and overcrowding—but this time, with even more incarceration.

In lieu of using ACDC to temporarily relieve the number of people held at the Jail, the following measures alone would sustainably eliminate overcrowding at the Fulton County Jail in the long-term: (1) end jailing people simply because they cannot afford bond; (2) release most people charged only with misdemeanors with appropriate nonmonetary supports and conditions; (3) indict people charged with felonies in a timely manner; and (4) incentivize law enforcement officers to divert more eligible people to diversion programs at the time of arrest.

Notably, this report cannot, and should not, supplant the work of the Jail Population Review Committee, as it is based on a more limited data sample than what will be provided to the Committee, and is less comprehensive in scope than the Committee's mandate. However, this report's findings provide clear evidence that population levels at Fulton County Jail can be reduced through other means.

## Summary of Findings

- On September 14, 2022, the Fulton County Sheriff's Office held 2,892 people at the Fulton County Jail, which has a capacity of 2,591 beds.<sup>4</sup> However, the Fulton County Jail detained 293 people unable to pay bail; 515 people who remained unindicted for over 90 days; 242 people charged with only misdemeanors; and 105 people eligible for diversion. Some individuals met more than one of these categories. In total, the Fulton County Jail over-detained 728 people. Fulton County's failure to account for people's ability to pay bail, confinement of people charged only with misdemeanors, failure to timely indict people, and local law enforcement agencies' failure to fully utilize diversion programs has led to population levels above capacity at Fulton County Jail. Without these cases, the population would be reduced to levels more than sufficient to eliminate overcrowding at the Fulton County Jail.

Figure 1  
Fulton County Jail Population and Causes of Overcrowding

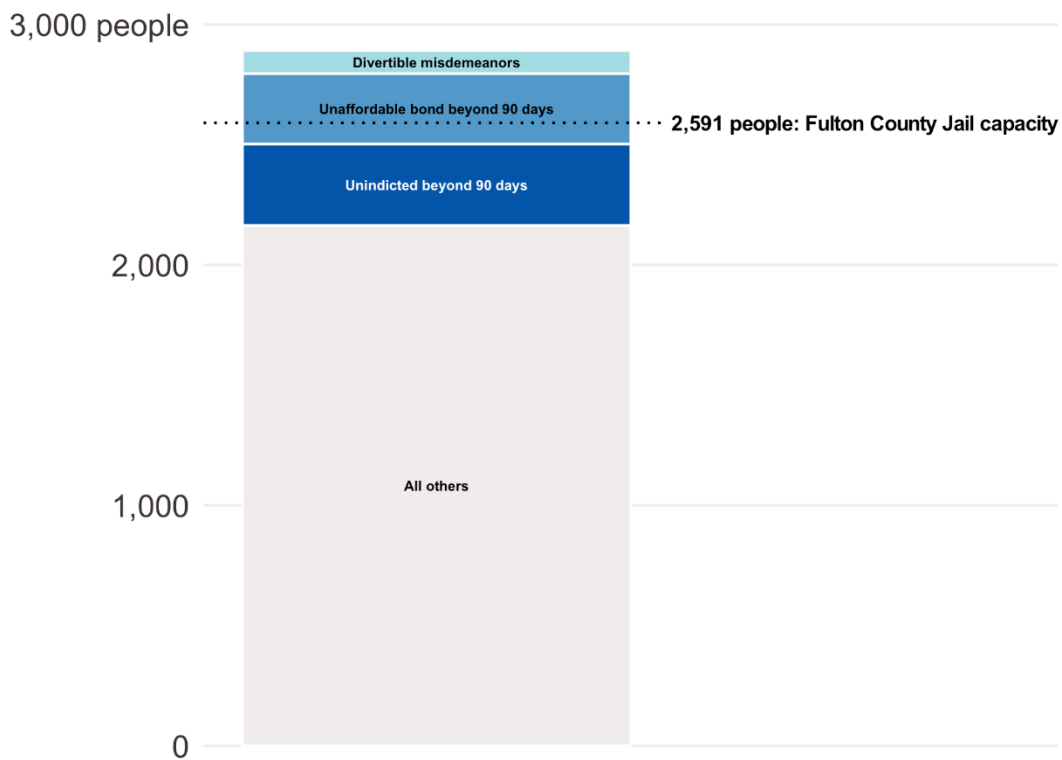


Figure 2

**Factors for Remaining in Jail, Surplus Population, Fulton County Jail**

The table below shows a more detailed breakdown of Figure 1, as many individuals fall into multiple categories of people eligible for release if recommended corrective measures were implemented.

Category	Number	Percent
Unindicted after 90 days of detention	339	46.6%
Unaffordable bond & unindicted after 90 days of detention	174	23.9%
Unaffordable bond	110	15.1%
Divertible misdemeanor	94	12.9%
Unaffordable bond & divertible misdemeanor	9	1.2%
Divertible misdemeanor & unindicted after 90 days of detention	2	0.3%
Total	728	100.0%

- Fulton County’s failure to account for people’s ability to pay when setting bail is a significant factor in the number of people held in jail. Our analysis suggests that 435 people, or 12% of people held in Fulton County’s custody, and specifically, 293 people, or 10% of people those held at the Fulton County Jail were held in custody because of inability to pay bail—meaning a wealthier individual with the same charges and bail amount *would* be released.
- Even worse, a substantial number of people in Fulton County custody have been held for lengthy periods of time due in large part to their inability to pay relatively low amounts of bail. A person’s ability to pay bail should be determined by how much they could themselves pay without resorting to a bond agent or by borrowing from others. However, even under circumstances where the person must work with a bond agent, a \$20,000 bond would require payment of bond at up to \$2,500.
  - 196 people who had bail set at or under \$20,000 had been held in Fulton County custody for over 90 days, 121 people with bail set at or under \$20,000 had been held in custody for over six months, 58 people who had their bail set at or below \$20,000 had been in custody for over one year, and 15 people who had their bail set at or below \$20,000 had been in custody for over two years.

- At Fulton County Jail, 143 people who had bail set at or under \$20,000 had been held in custody for over 90 days. 89 people who had their bail set at or below \$20,000 had been in custody for over six months, 46 people who had their bail set at or below \$20,000 had been in custody for over one year, and 13 people who had their bail set at or below \$20,000 had been in custody for over two years.
- Other Georgia jurisdictions, like Chatham County, generally release people charged only with misdemeanors on their own recognizance. However, Fulton County detains hundreds of people charged only with misdemeanors, often for lengthy periods of time. Our analysis shows that in Fulton County, at least 290 people were detained on misdemeanor charges only. The median time in detention for people charged only with misdemeanors was 40 days, and the mean was 106 days. Thirty percent of these individuals were detained for more than three months.
  - At Fulton County Jail, at least 242 people were detained on misdemeanor charges only. The median time in detention for people charged only with misdemeanors was 28 days, and the mean was 83 days. Twenty-four percent of these individuals were detained for more than three months.
- Fulton County’s failure to timely present cases to the grand jury has greatly contributed to the number of people held in custody. When a person is indicted, the county provides the person with formal notice and basic information about their criminal charges. Almost half, or 46.6% of people held in Fulton County (1,666 of 3,572), had not yet been indicted in the first place.
  - At Fulton County Jail, 44.9% of people, or 1,299 of 2,892 people, had not yet been indicted in the first place.
- If Fulton County indicted people in compliance with required time limits under state law, it could significantly alleviate population pressure at the Jail. Georgia law requires that a person in jail must be provided bail or indicted within 90 days of arrest.<sup>5</sup> At the time of the study, 750 people, or 21% of people held by Fulton County had been in custody for more than 90 days without indictment. Alarming, 117 people have been held in custody for more than *one* year without indictment; 12 people had been held for over two years without indictment.
  - At Fulton County Jail, 515 people, or 17.6% of people held by Fulton County had been in custody for more than 90 days without indictment; 83 people had been held in custody for more than one year without indictment; 7 people had been held for over *two* years without indictment.



- Local law enforcement agencies, namely the Atlanta Police Department, failed to utilize established pre-arrest diversion programs designed to provide people experiencing poverty, mental health concerns, and substance use with community services and support. Our analysis shows that 120 people, or 3.4% of people in custody with charges eligible for diversion programs like the Policing Alternatives and Diversion program, but instead, were held in custody.
  - At Fulton County Jail, 105 people, or 3.6% of people in custody may have qualified for diversion programs like the Policing Alternatives and Diversion (PAD) program, but instead, were held in custody.

## Recommendations

To end overcrowding at the Fulton County Jail and to achieve a vision of reducing unnecessary and harmful detention of Atlantans and other Fulton County residents, we recommend Fulton County and the city of Atlanta, including the Atlanta Police Department, adopt the following solutions:

### To Fulton County:

- Fully cooperate with the Jail Population Review Committee in its study, in the time provided by Ordinance No. 22-O-1632 before any further action is taken regarding an intergovernmental agreement to lease the Atlanta City Detention Center.
- Ensure that Project ORCA stakeholders restructure the program to prioritize backlogged cases of individuals in custody, particularly for individuals with bonds set at \$20,000 or less, and those who are in custody because of an inability to pay bond.
- Ensure that the Fulton County magistrate, state, and superior court judges review cases older than 90 days and release people on bond where no sufficient cause is found.<sup>6</sup>
- Ensure that the Fulton County magistrate, state, and superior court judges hold bond hearings within 48–72 hours of arrest to ensure that individuals are not held unnecessarily and to ensure that no individual is held simply because of the inability to afford bond.
- Instruct Fulton County magistrate, state, and superior court judges make inquiries on the record regarding an individual’s ability to pay a bond before setting bond amounts, as required by O.C.G.A. § 17-6-1(e)(2)(A).

- Establish and utilize a pre-arrest diversion program for the Fulton County Police Department to divert the same offenses to PAD in the same manner presently available to the Atlanta Police Department, Metropolitan Atlanta Regional Transit Authority Police (MARTA), and Georgia Tech Police and encourage other law enforcement agencies within Fulton County which feed into the Jail to do the same.
- Pursuant to the sheriff's authority under O.C.G.A. § 17-6-15, modify the rules for bonding arrested people to include less onerous means of bonding out of jail.<sup>7</sup>

### To city of Atlanta:

- Allow the Jail Population Review Committee to conduct its study, in the time provided by Ordinance No. 22-O-1632, before taking any further action regarding an intergovernmental agreement to lease Atlanta City Detention Center,
- Repeal Ordinance No. 22-O-1632, which authorized a lease of ACDC to Fulton County. Instead, implement plans to repurpose ACDC into a community center dedicated to providing social services.
- Ensure that the Atlanta Police Department institute mandatory citation/summons (immediate release) practices, instead of booking, for any city ordinance violation, including those that would otherwise be a violation of state law. We generally suggest basing mandatory pre-booking release on charge level, though the city should work strategically to best ensure diversion practices are widespread.<sup>8</sup>
- In addition to a range of charges for which diversion is mandatory, jurisdictions should also utilize presumptive citation/summons (instead of booking) for all other nonserious charges. This is an additional category of pre-booking release, at the discretion of arresting officers, beyond the mandatory booking diversion outlined above. Those subject to this discretionary release would still receive release immediately in lieu of booking and would not need to proceed to a further hearing.
- Require the Atlanta Police Department to collect and report data on the use of citation and arrest for all cases, including traffic cases.
- Ensure that the Atlanta Police Department utilize pre-arrest diversion programs such as Policing Alternatives and Diversion to the maximum extent possible.

# Report Findings

To assess the root causes of overcrowding in the Fulton County Jail, we analyzed quantitative jail population data provided or made public by the Fulton County Sheriff's Office. Because Fulton County also holds people at several facilities, including the Fulton County Jail, Marietta Annex, South Annex, and a category of people designated as "out of county inmates," we examined data for the county as a whole, as well as the Fulton County Jail.

Based on a close analysis of this data, we determined that overcrowding in the Fulton County Jail is driven by three primary factors: unaffordable bail; delayed indictments; and underutilization of diversion programs and services.

Overall, if Fulton County effectively implemented solutions that would account for a person's ability to pay cash bail, timely issued indictments, released people charged only with misdemeanors, and utilized available diversion programs, it would reduce its jail population significantly—well enough to address overcrowded conditions at the Fulton County Jail.

## **A. Fulton County's failure to account for ability to pay bail, as required, has contributed to overcrowding.**

The practice of secured cash bail, or the requirement that a person pay a set amount of money upfront to be released from custody after arrest, has driven the growth of jail populations nationwide.<sup>9</sup> A person's ability to afford secured bail—as opposed to unsecured bail (agreement to pay bond later, if the defendant fails to appear in court)—too often determines whether they will be released before trial, or remain incarcerated. Secured cash bail disproportionately results in the incarceration of people based on their income and race,<sup>10</sup> and studies have consistently found that Black defendants receive significantly harsher bail outcomes than those imposed on white defendants.<sup>11</sup>

After arrest, and after bail has been set, a person in custody can pay the full amount of bail for release. That money will be refunded in full when the case has concluded and all required court appearances have been made. However, people who do not have the financial resources to pay the full amount may work with a bail bonding company. Under Georgia law, a bail bonding company typically requires a nonrefundable payment of no more than 15% of the bail set, as well as collateral, to secure the amount. For example, if bail is set at \$10,000, the person in jail must produce up to \$1,500 to a bail bondsman—which will not be returned—in order to be released. People who cannot pay that amount, or lack the financial resources sufficient to cover collateral, are forced to remain in jail.<sup>12</sup>

In 2018, Georgia passed legislation aimed at improving fairness in misdemeanor cases, which requires authorities who set bail to consider a person’s finances.<sup>13</sup> Georgia state law requires that courts grant bail to those charged with a misdemeanor and impose only reasonably necessary conditions to ensure that the person attends court and to protect the safety of any other person.<sup>14</sup>

Our analysis indicates that a significant percentage of people held by Fulton County remain in custody because of their inability to pay secured bail. Fulton County’s overreliance on secured bail and failure to account for people’s ability to pay bail has contributed to large numbers of people detained in county custody. Our analysis suggests that at least 435 people, or 12% of those incarcerated by Fulton County were held in custody because of inability to pay their bonds. At the Fulton County Jail, 293 people (10%) were held in custody because of inability to pay their bonds.

To calculate this amount, we examined the number of people held in Fulton County with outstanding bonds, and who had been held in custody for 90 days or longer. Because bail must be set within 72 hours of arrest, we estimated that individuals who have been in custody for 90 days have had sufficient time to secure funds for release if they were available. Of the 890 people in custody eligible for release on bond with an outstanding bond to pay, 48.9%, or 435 people had been in custody for 90 days or longer.

**Figure 3**  
**People in Fulton County Custody Unable to Pay Bond and Length of Detention\***

	<b>Detained less than 90 days</b>	<b>Detained 90 days or more</b>	<b>Detention length unknown</b>	<b>Total</b>
Not eligible for bond	37.5% (1,004)	62.4% (1,673)	0.1% (2)	100.0% (2,679)
Eligible for bond	51.0% (454)	48.9% (435)	0.1% (1)	100.0% (890)
Bond status unknown	66.7% (2)	33.3% (1)	0.0% (0)	100.0% (3)
Total	40.9% (1,460)	59.0% (2,109)	0.1% (3)	100.0% (3,572)

\*Two individuals in custody were missing booking dates, making it impossible to calculate length of detention. Three individuals were missing bond information.

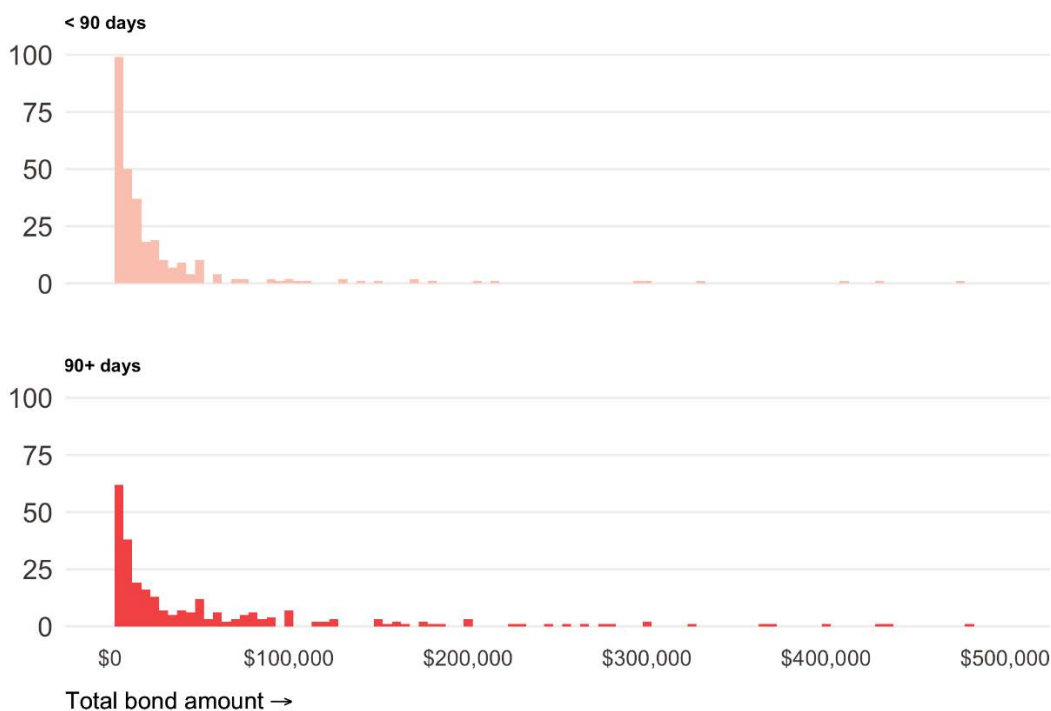
Figure 4  
**People at Fulton County Jail Unable to Pay Bond and Length of Detention\***

	<b>Detained less than 90 days</b>	<b>Detained 90 days or more</b>	<b>Detention length unknown</b>	<b>Total</b>
Not eligible for bond	40.5% (901)	59.4% (1,321)	0.1% (2)	100.0% (2,224)
Eligible for bond	55.8% (371)	44.1% (293)	0.2% (1)	100.0% (665)
Bond status unknown	66.7% (2)	33.3% (1)	0.0% (0)	100.0% (3)
<b>Total</b>	<b>44.1% (1,274)</b>	<b>55.8% (1615)</b>	<b>0.1% (3)</b>	<b>100.0% (2,892)</b>

\*Two individuals in custody were missing booking dates, making it impossible to calculate length of detention. Three individuals were missing bond information.

In addition, it is clear that inability to pay even relatively low amounts of bail—for example those set under \$20,000, which would require up to \$2,500 upfront payment, have resulted in lengthy stays in custody. As Figure 5 shows, 435 people, or 12% of people in Fulton County custody had bond set over \$0 and under \$20,000, and had been in custody for over 90 days. At the Fulton County Jail, 293 people, or 10% of people had bond set over \$0 and under \$20,000, and had been in custody for over 90 days.

Figure 5  
**Distribution of Bond Amounts by Length of Custody in Fulton County Jail**



Several people with a sum of bonds above \$500k removed from chart

## B. Fulton County holds hundreds of people detained only on misdemeanor charges, for lengthy periods of time.

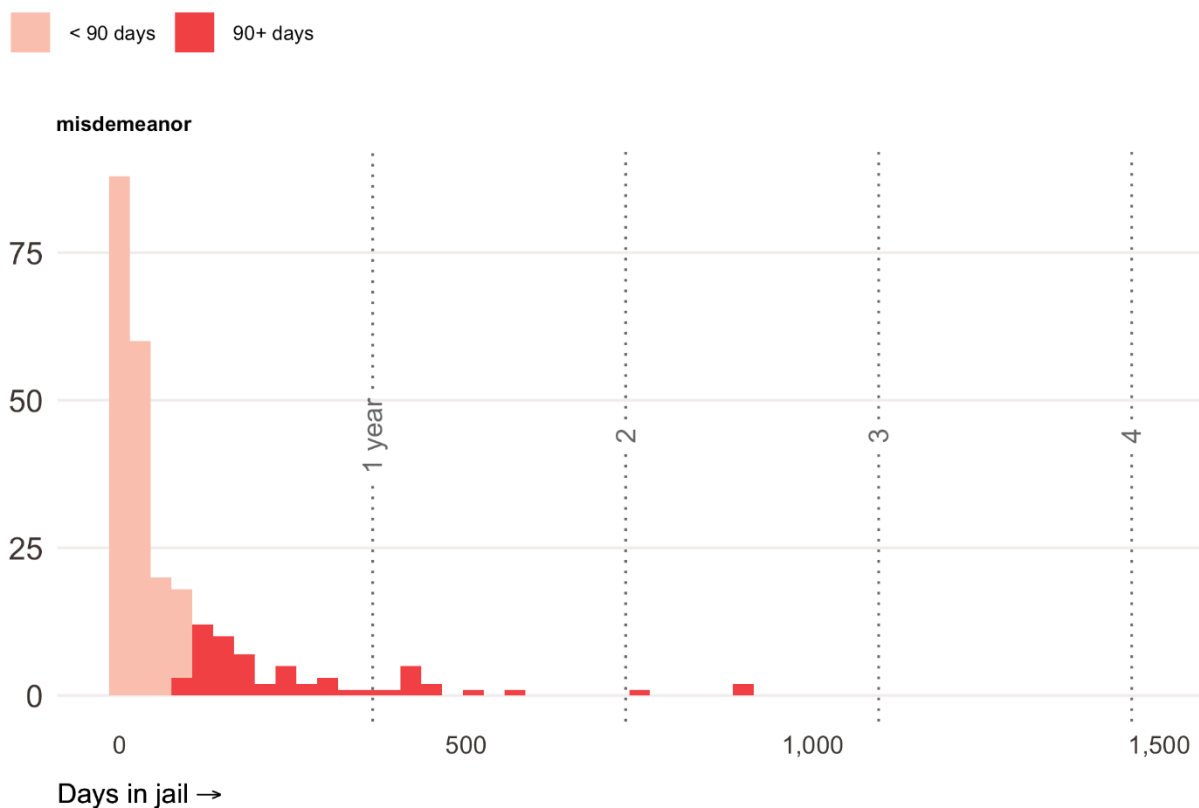
Although other jurisdictions, including Chatham County, have generally ceased to jail people charged only with misdemeanors,<sup>15</sup> Fulton County detains hundreds of people charged only with misdemeanors, and often for lengthy periods of time.

In Fulton County, at least 290 individuals were detained on misdemeanor charges only.<sup>16</sup> The median detention length for people charged only with misdemeanors was 40 days, and the mean was 106 days. Thirty percent of these individuals were detained for more than three months.

At Fulton County Jail, at least 242 individuals were detained on misdemeanor charges only. The median detention length for people charged only with misdemeanors was 28 days, and the mean was 83 days. Twenty-four of these individuals were detained for more than three months.

Figure 6

### Distribution of Days in Fulton County Jail for People Charged Only with Misdemeanors



**C. Fulton County’s delay in issuing indictments has largely contributed to the number of people held in its custody.**

Fulton County’s delay in seeking indictments against people who face felony charges is a significant cause of overcrowding.

Under Georgia law, a criminal defendant who is arrested for a crime and denied bail must have their case heard by a grand jury within 90 days. Otherwise the defendant must be granted bail.<sup>17</sup> This statute protects against indefinite detention without grand jury review.<sup>18</sup>

Our analysis of the Fulton County data found that 1,666 individuals, or 46.6% of people in Fulton County custody as of September 14, 2022, were unindicted. For those 1,666 individuals that were unindicted as of September 14, 2022, the mean length in custody was 127 days, and the median length in custody was 78 days. While the majority (54.9%, or 914 people) of people unindicted had been in custody for under three months, 22.3% (371 people) had been incarcerated for 3–6 months, and 22.7% had been in jail for longer than six months.

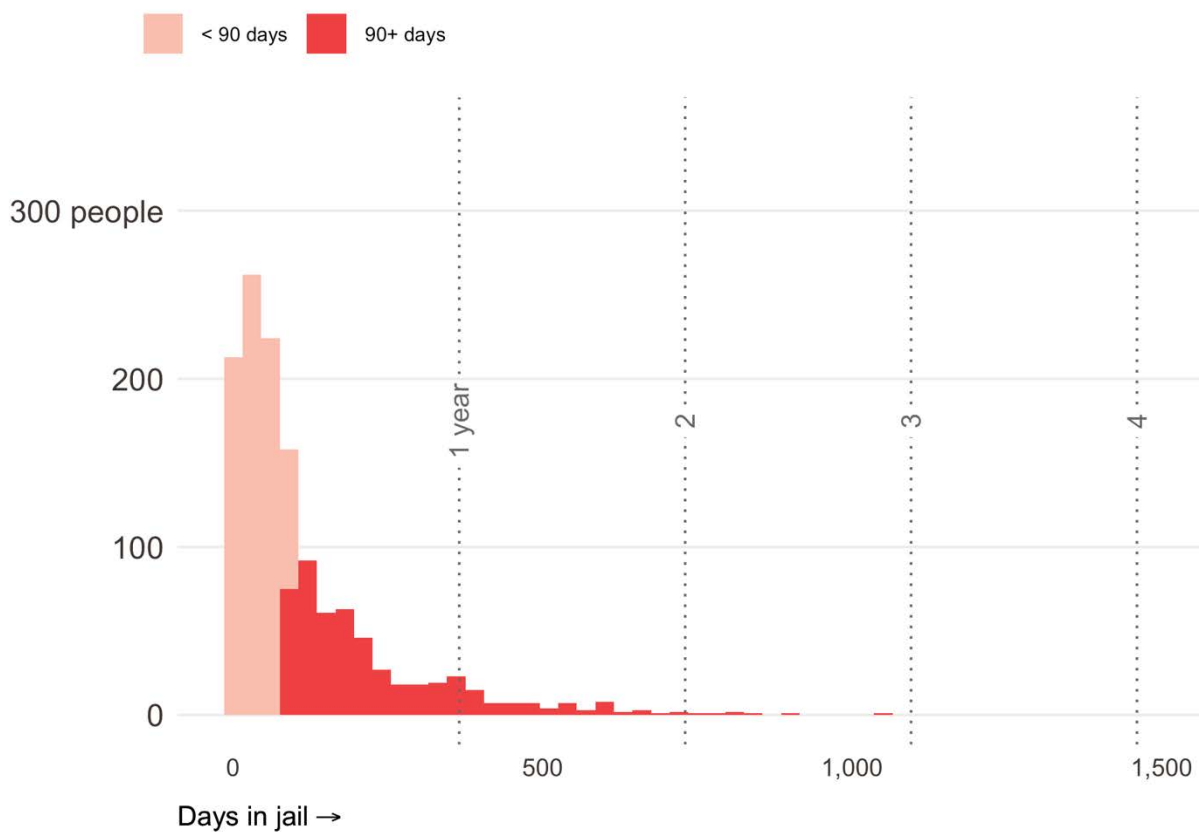
On September 14, 2022, 750 people, or 21% of people held in Fulton County custody had been held for more than 90 days without indictment; 117 people have been held in custody for more than one year without indictment; 12 people had been held for over two years without indictment.

Figure 7  
**Number of People in Fulton County Jail Held Without Indictment and Length of Detention\***

<b>Length of detention</b>	<b>Number of people held without indictment</b>	<b>Percentage of people held without indictment</b>
Over 2 years	7	0.5%
1.5 - 2 years	20	1.5%
1 - 1.5 years	56	4.3%
9 - 12 months	58	4.5%
6 - 9 months	103	7.9%
3 - 6 months	271	20.9%
0 - 3 months	782	60.2%
NA	2	0.2%
<b>Total</b>	<b>1,299</b>	<b>100.0%</b>

\*Two individuals in custody were missing booking dates, making it impossible to calculate length of detention.

Figure 8  
**Distribution of Days in Custody for Unindicted People at Fulton County Jail**



In Fulton County Jail specifically, 1,299 individuals, or 44.9% of people detained as of September 14, 2022, were unindicted. For those 1,299 individuals that were unindicted as of September 14, 2022, the average length in custody was 114 days, and the median length in custody was 68 days. While the majority (60.2%, or 782 people) of people unindicted had been in custody for up to three months, 20.9% (271 people) had been incarcerated for 3–6 months, and almost 19% had been in jail for longer than six months.

On September 14, 2022, 515 people, or 17.8% of people held at Fulton County Jail had been held for more than 90 days without indictment. 83 people have been held in custody for more than *one* year without indictment; seven people had been held for over two years without indictment.

Significant numbers of pretrial detainees who sit for weeks, months, or even years in Fulton County jails prior to indictment occupy jail beds that would otherwise be occupied by a transient jail population. And while under Georgia law these extended pre-indictment detentions may be lawful,<sup>19</sup> significantly delayed indictments inevitably lead to more people being held in jail and for longer periods of time, which contributes to the overcrowding of Fulton County’s jails. Reducing



the time to indictment will almost certainly bring about a sizable drop in the average length of stay in the Fulton County jail system and be a key element in lowering its overall jail population.

Fulton County has implemented Project ORCA, which “utilizes a combination of capacity expansion and productivity enhancement initiatives to expedite the case adjudication process.”<sup>20</sup> Since the program’s inception at the end of 2021, there were nearly 150,000 open and active cases.<sup>21</sup> As of September 4, 2022, there were still approximately 73,000 pending open and active cases.<sup>22</sup> The project has not cleared the backlog’s effect on the Fulton County jail system—people continue to be incarcerated for inordinate amounts of time at Fulton County jails while awaiting a grand jury.

#### **D. Fulton County and the city of Atlanta have underutilized diversion programs and services.**

Although the city of Atlanta and Fulton County have made considerable strides to limit the influx of people into the criminal legal system by expanding diversion programs, like Policing Alternatives and Diversion Initiative (PAD), these programs have not been used to their full potential, nor have they been scaled to adequately serve the greater-Atlanta population.

Diversion programs have the potential to significantly impact jail overcrowding because in lieu of the normal criminal legal system cycle—booking, detention, prosecution, conviction, incarceration—people are instead referred into a trauma-informed intensive case-management program where they can receive a wide range of support services, such as transitional or permanent housing, drug treatment, and mental health care. Yet in order for these programs to meaningfully reduce the number of people arrested and subsequently jailed, law enforcement officers in the greater-Atlanta area must exercise discretionary authority at point of contact to consistently divert individuals to a community-based, harm-reduction intervention for the over 150 diversion-eligible criminal offenses.

The following example demonstrates how the already sizable impact diversion has on overcrowding at Fulton County Jail could be even greater. In the first six months of 2022, 176 people who could have been booked and detained at the Fulton County Jail were instead diverted to PAD, while in that same time period, another 312 people were arrested and booked into the Fulton County Jail during PAD operating hours for diversion-eligible charges.<sup>23</sup>

In order to understand whether this trend persisted into the second half of 2022 and people continue to be arrested and booked into Fulton County custody for diversion-eligible charges, we analyzed the jail data produced by the Fulton County Sheriff’s Office. Specifically, we carefully cross-referenced the criminal charges

faced by individuals detained in Fulton County custody with the 168 criminal charges that are diversion eligible.

Based on our understanding of potentially divertible misdemeanors and criminal charges, our analysis showed that 120 people in Fulton County custody, or 3.4% of people were charged only with divertible misdemeanor charges. At Fulton County Jail, 105 people, or 3.6%, were charged only with divertible misdemeanor charges.

## Conclusion

A close analysis of data produced by the Fulton County Sheriff's Office demonstrates that population levels and conditions at the Fulton County Jail can be reduced through common-sense measures, without the need to lease ACDC. If Fulton County eliminated wealth-based detention, released people charged only with misdemeanors, ensured timely indictment, and if Atlanta-area law enforcement agencies referred eligible people to community diversion programs, these measures alone would reduce the population held at the Fulton County Jail at levels more than sufficient to eliminate overcrowding at the Fulton County Jail.

The cycle of overcrowding and jail expansion is not an inevitable feature of local criminal legal systems.<sup>24</sup> Many counties around the country have rejected this assumption. We encourage Fulton County to do the same. By interrupting this cycle of growth with policy and practice changes that address the root causes of jail overcrowding, Fulton County and the city of Atlanta can significantly reduce the number of people they incarcerate and thus eliminate the need for additional jail beds.

# Methodology

This data report analyzes data provided by Fulton County Sheriff Patrick Labat to the Committee on September 27, 2022, and subsequently shared by the Sheriff's Office with local advocates upon request. This data covers individuals jailed in Fulton County custody on one day: September 14, 2022. The report also analyzes information publicly available online regarding bond for individuals jailed in Fulton County.<sup>25</sup> This analysis examines data available for people held in custody in Fulton County as a whole, as well as specifically at the Fulton County Jail.<sup>26</sup>

Data Sources. This report is based on publicly available data provided by the Fulton County Sheriff's Office to the Justice Policy Board's Jail Population Review Committee in September 2022, which includes a dataset of people in custody in Fulton County on September 14, 2022. This dataset included information about each person's race, gender, book-in date, age, location, length of stay, charges, and case numbers. Case numbers are coded in a way that indicates whether a case is unindicted or indicted and whether the case is assigned to state court (misdemeanor allegations) or superior court (felony allegations).<sup>27</sup>

The report also analyzes bond information for individuals detained on September 14, 2022. This information is made publicly available online by the Fulton County Sheriff's Office, which hosts an Inmate Search database online that is updated on a daily basis and provides information regarding criminal charges, offense date, amount set for bond and type of bond, and disposition. Information analyzed includes all people identified on the data sheet provided by the Fulton County Sheriff's Office.<sup>28</sup> For each unique booking number provided in the dataset of people in custody on September 14, 2022, bond information was programmatically downloaded from Fulton County's Inmate Search database using a custom web scraper built using the programming language R. This search was completed between October 5 and October 6, 2022.

Analysis. When analyzing data regarding bonds and ability to pay, we examined the number of people held at the Jail with outstanding bonds, and who had been held in custody for 90 days or longer. Because individuals should be brought before a judge within 72 hours of arrest, we estimated that individuals who have been in custody for 90 days have had sufficient time to secure funds for release, if they were available, and thus define "inability to pay" as any individual detained on bond for more than 90 days.

We summarized charge-level information for each individual based on unique booking ID. Total bond was calculated by summing all bonds for all of an individual's charges. If any single charge did not have a bond, or was deemed not

bond eligible, that individual was deemed ineligible for bond-based release. We made one exception to this rule—if the only charge that was not bond-eligible for a given individual was a “Foreign Warrant,” we deemed that individual as bond eligible, given that if those individuals pay the remaining bond on substantive charges, they will no longer be in Fulton County, but would rather be transferred to different jurisdictions. This impacted our determination for 21 people detained in Fulton County custody.

Pre-arrest diversion eligibility was determined by manual review of the unique charges available in the data. Because charge descriptions, not charge codes, were made publicly available, we took a conservative approach when determining potential diversion eligibility and reported only misdemeanor offenses eligible for diversion. Thus, this report may underestimate the total number of individuals eligible for release via diversion programs. However, it is important to note that not all arresting agencies in Fulton County participate in pre-arrest diversion programs, such as PAD. We were unable to distinguish between arresting agencies based on the data available to us, and thus, assumed all individuals with charges eligible for diversion were arrested by agencies that participate in pre-arrest diversion programs.

Length of stay was calculated (and provided) as of the date of the snapshot data report, September 14, 2022.

Assumptions and Limitations. This research, like all research, has limitations. This study is limited in its scope, as the data provided by and sourced from the Fulton County Sheriff’s Office is a snapshot of the people in its custody on one day alone—September 14, 2022. The population of Fulton County Jail varies daily, and further analysis would be necessary to understand if the bond amounts, lengths of stay, and charges of people detained on September 14, 2022, are typical of individuals detained in the Fulton County Jail. Nevertheless, because this is data provided by the Fulton County Sheriff’s Office to the Justice Policy Board, analysis of this data offers important value and may be directly compared to analysis conducted by the Fulton County Sheriff’s Office.

Our analysis makes assumptions about categories of individuals who could potentially be released from detention. It necessarily does not fully assess the circumstances of each individual that could make some people deemed “eligible for potential release” actually ineligible, or vice versa. For example, because we had little visibility into the individual reasons as to why a person would remain in custody even after bond was set, it is possible that some individuals could afford to pay bond but chose to remain in custody for other reasons. In addition, we are not able to determine in all cases whether detained individuals had underlying supervision holds that might prevent immediate release in their criminal case.

Conversely, it is possible that some individuals who had been detained for fewer than 90 days were also detained due to inability to pay.

Bond data was pulled from the Fulton County Sheriff's Office Inmate Search website three weeks after the date of the jail roster snapshot, on September 14, 2022. Individuals' bonds likely changed during this time period, making the bond information lagging. Though a number of these individuals had dispositions or release dates by the time bond information had been collected, we restrained our analysis to the single date of September 14, 2022, for consistency.

Finally, this analysis takes the Fulton County Sheriff's Office data at face value, assuming that the data is complete and true without confirming bond amounts against independent sources. Any errors in the underlying data or the presentation of the data on Fulton County's inmate search website will be propagated in our analysis. Fulton County's website asserts that "no warranty is expressed or implied as to the accuracy or completeness of any information obtained through the use of this service."<sup>29</sup>

# Endnotes

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<sup>1</sup> *Georgia Advocacy Office v. Jackson*, No. 1:19-cv-01634 (N.D. Ga. Apr. 10, 2019) (challenging Fulton County Jail’s use of prolonged solitary confinement on individuals with mental disabilities); *Harper v. Bennett*, No. 1:04-cv-1416-MHS (N.D. Ga. June 25, 2004) (addressing chronic understaffing and overcrowding at the Fulton County Jail, as well as sanitation, maintenance of the jail’s failing physical plant, medical and mental health care, and other issues); *Foster v. Fulton County*, 223 F. Supp. 2d 1301 (N.D. Ga. 2002) (alleging poor conditions and inadequate medical care in Fulton County Jail); *Johnson v. Fulton County Bd. of Comm’rs*, No. 1-94-CV-240-GET (N.D. Ga. 1999) (alleging that overcrowding and poor conditions in Fulton County Jail were due to indigent defendants being denied access to counsel pre-indictment).

<sup>2</sup> Atlanta, Ga. Ordinance 22-O-1632, § 13 (2022).

<sup>3</sup> Michael P. Boggs & Carey A. Miller, *Report of the Georgia Council on Criminal Justice Reform* 3, 2018, <https://dcs.georgia.gov/document/publication/2017-2018-criminal-justice-reform-council-report/download>.

<sup>4</sup> Fulton County Sheriff’s Office, *Proposed Acquisition of the Atlanta City Detention Center*, Feb. 18, 2021, <https://citycouncil.atlantaga.gov/home/showpublisheddocument/5769/637492462438600000>.

<sup>5</sup> Ga. Crim. Code § 17-7-50.

<sup>6</sup> Ga. R. Super. Ct. 26.3 states the “chief judge may take any action deemed necessary or appropriate under the circumstances,” after the district attorney notifies them of “any unindicted accused who has been in custody under criminal felony charges for 45 days.” Given the circumstances, this discretion should be expanded to all Superior Court judges and release of unindicted persons on unsecured bond should be the presumptive “necessary or appropriate” action. We further recommend that Fulton County ensure that the Fulton County Magistrate, State, and Superior Court judges move away from the use of secured cash bond where appropriate and offer non-financial bail conditions at first appearance. Available options include recognizance release and signature bond/ unsecured bond, which have been found to be as effective at achieving public safety as are secured bonds and as effective at achieving court appearance as are secured bonds. *See* Michael R. Jones, “Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option,” Pretrial Justice Institute, Washington, D.C., 2013). Additionally, the expansion of pretrial release in jurisdictions experiencing jail overcrowding — such as Harris County, Texas — has been found to measurably and appreciably reduce the utilization of local jails. Paul Heaton, “The Effects of Misdemeanor Bail Reform,” Quattrone Center, Aug. 16, 2022 (finding that misdemeanor pretrial reform produced more lenient outcomes and reduced the system’s imprint without adversely impacting public safety).

<sup>7</sup> Currently, the Sheriff’s Office’s only non-monetary collateral option for bond is known as “Driver’s License Collateral,” which allows for a valid Georgia’s driver’s license to be used as bond. This option is currently only available to jailed persons who have been charged with a misdemeanor, have a bond amount of \$1,000 or less, have been in custody for no less than five days, and who have a valid Georgia driver’s license. Eligibility for this option should not be conditioned on such arbitrary requirements (e.g., five days of prior incarceration).

<sup>8</sup> Andrea Woods and Portia Allen-Kyle, “A New Vision for Pretrial Justice in the United States,” ACLU, 2019, <https://www.aclu.org/report/new-vision-pretrial-justice-united-states>.

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<sup>9</sup> Bernadette Rabuy and Daniel Kopf, “Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time,” Prison Policy Initiative, 2016, <https://www.prisonpolicy.org/reports/incomejails.html>.

<sup>10</sup> John Matthews II and Felipe Curiel, “Criminal Justice Debt Problems,” American Bar Association, Nov. 30, 2019, [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/economic-justice/criminal-justice-debt-problems/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/criminal-justice-debt-problems/); Allie Preston and Rachael Eisenberg, “Profit over People: Primer on U.S. Cash Bail Systems,” Center for American Progress, Jul. 6, 2022, <https://www.americanprogress.org/article/profit-over-people-primer-on-u-s-cash-bail-systems/>.

<sup>11</sup> Cynthia Jones, “Give Us Free”: Addressing Racial Disparities in Bail Determinations,” N.Y.U. Journal of Legislation and Public Policy 919, (2013): 938.

<sup>12</sup> Ga. Code Ann. § 17-6-30 (2020).

<sup>13</sup> Ga. SB 407 (2018), <https://www.legis.ga.gov/legislation/52661>. For a closer analysis on the law, see Andrea Woods et al., “Boots and Bail on the Ground: Assessing the Implementation of Misdemeanor Bail Reforms in Georgia,” *Georgia Law Review* 54 (2020): 1235.

<sup>14</sup> Ga. Code Ann. § 17-6-1.

<sup>15</sup> Will Peebles, “Chatham County Jail Won’t Hold Misdemeanor Criminals if Coronavirus Comes to County,” Savannah Morning News, Mar. 11, 2020,

<https://www.savannahnow.com/story/news/coronavirus/2020/03/11/chatham-county-jail-wont-hold-misdemeanor-criminals-if-coronavirus-comes-to-county/1531735007/>;

“Misdemeanor Arrests Will Not Be Taken to Chatham County Detention Center as a Health Precaution,” *WTOC 11*, Mar. 20, 2020,

<https://www.wtoc.com/2020/03/20/misdemeanor-arrests-will-not-be-taken-chatham-county-detention-center-health-precaution/>.

<sup>16</sup> An additional 143 individuals’ charge statuses could not be determined.

<sup>17</sup> Ga. Code Ann. § 17-7-50.

<sup>18</sup> *Bryant v. Vowell*, 282 Ga. 437, 439 (2009) (abrogated on other grounds).

<sup>19</sup> In Georgia, there is no statute of limitations (or time limit by which the State must initiate a prosecution) for murder. The crime of rape must be charged within 15 years. Charges for all other serious felonies punishable by death or life imprisonment must be brought within seven years and all other felonies must be brought within four years. Cases for misdemeanors must be started within two years. O.G.C.A § 17-3-1 (a)–(e).

<sup>20</sup> Fulton County Board of Commissioners, *Fulton County COVID-19 Response Update*, Jul. 13, 2022, [http://www.chatthillsdistrict3.com/uploads/3/4/8/4/3484343/2022-0475\\_july\\_13\\_covid\\_response\\_update\\_1.pdf](http://www.chatthillsdistrict3.com/uploads/3/4/8/4/3484343/2022-0475_july_13_covid_response_update_1.pdf).

<sup>21</sup> *Id.*

<sup>22</sup> Jasmina Alston and ORhonde Chapman, “Fulton County Leaders Work to Clear Court Backlog,” *Atlanta News First*, Sept. 13, 2022,

<https://www.atlantaneewsfirst.com/2022/09/13/fulton-county-leaders-work-clear-court-case-backlog/>.

<sup>23</sup> Policing Alternatives & Diversion Initiative, Statement,

<https://static1.squarespace.com/static/5e9dddf40c5f6f43eacf969b/t/62f7b1fe9dde732e672bc0c6/1660400126466/PAD+Statement.pdf>.

<sup>24</sup> Chris Mai, Mikelina Belaineh, Ram Subramanian, and Jacob Kang-Brown, “Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead,” Vera Institute of Justice, 2019, <https://www.vera.org/downloads/publications/broken-ground-jail-construction.pdf>.

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<sup>25</sup> “Inmate Search Database,” Fulton County Sheriff’s Office, <https://fcsoga.org/inmate-search/>.

<sup>26</sup> Fulton County holds people at several facilities, including the Fulton County Jail, Marietta Annex, and the South Annex, as well as a category of individuals designated as “out of county inmates.”

<sup>27</sup> We determine indictment status based on the case ID associated with each detained individual. The following codes in the case ID are associated with each of the following: CR indicates MISDEMEANOR cases being handled in State Court. CP indicates unindicted cases with felony charges being handled in Superior Court. PF, or “pre-filed” cases, are also indicted felony cases that were filed before the person was arrested. MAGC cases are misdemeanor cases that have not yet been accused. 143 individuals were either missing a case number, or had a case number whose indictment status was unable to be determined.

<sup>28</sup> “Inmate Search Database,” Fulton County Sheriff’s Office, <https://fcsoga.org/inmate-search/>.

<sup>29</sup> *Id.*



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