

BREAKING THE CYCLE

Exploring Alternatives to a New Jail

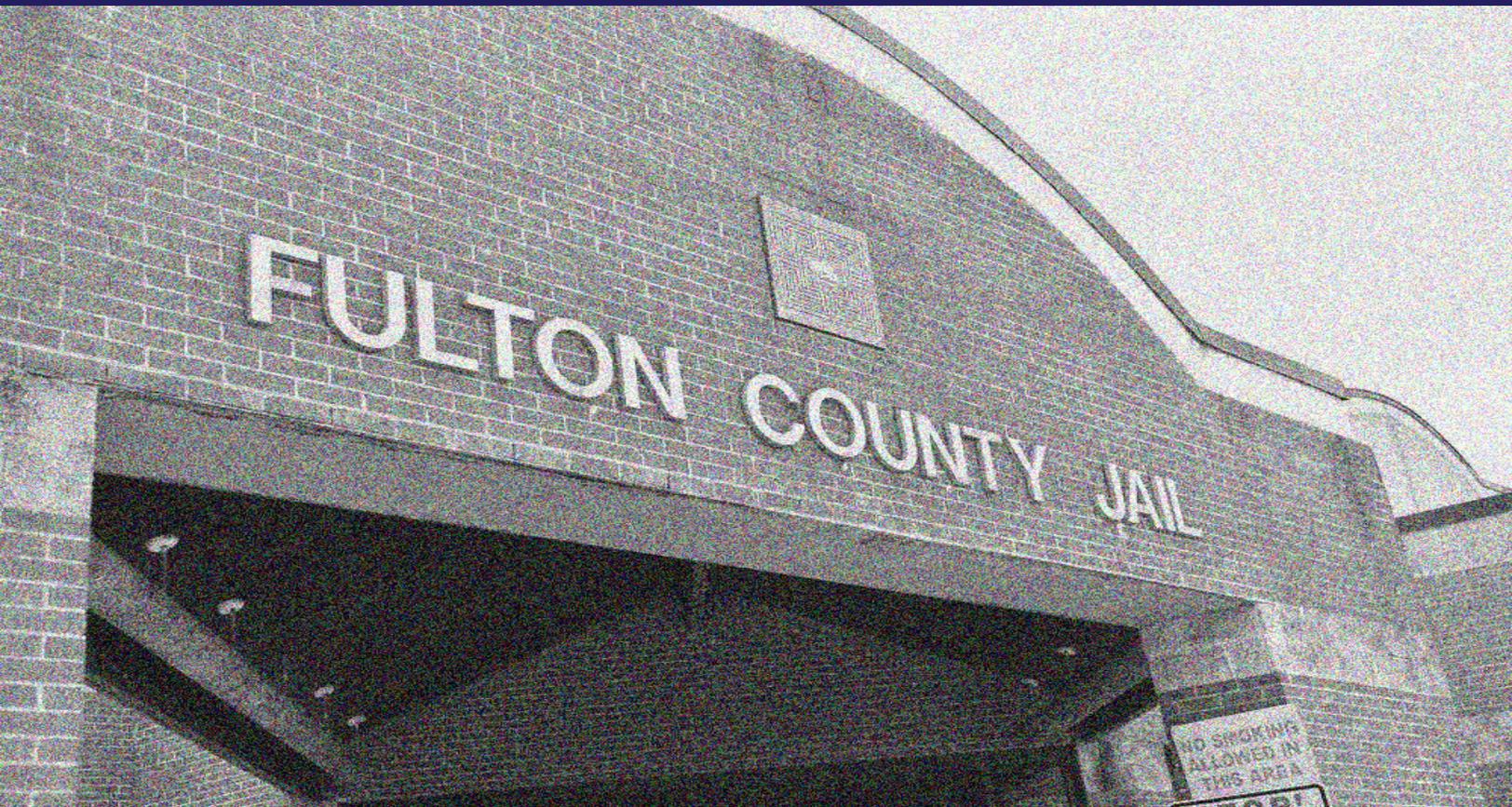


TABLE OF CONTENTS

Executive Summary.....	1
Background	3
Findings	5
Narratives of Impacted Persons	14
Recommendations.....	15
Conclusion.....	17
Methodology	18

Executive Summary

Fulton County's history shows building a new jail will not remedy the problems of jail overcrowding. In the 1980s, Fulton County leaders were similarly situated to those today with the Jefferson Street jail being intolerably overcrowded. The Jefferson Street Jail was filled with individuals sleeping on the floor for a lack of bedspace, insufficient personnel, inadequate plumbing, heating and ventilation, and inadequate medical facilities. Observers at the time remarked the jail was a "claustrophobic nightmare" where detainees would go as much as four months without seeing a judge. Thus, many individuals would plead guilty to anything if it would allow them to go home. Fulton County weighed its options and elected to build a jail on Rice Street that would be future proofed by doubling the footprint and being a modern facility. The Rice Street Jail was overcrowded and outdated the day it opened. Far from the cure to overcrowding, Rice Street has only brought frustration, litigation, and intolerable conditions.

Last year, Fulton County leaders leased bedspace at the Atlanta City Detention Center (ACDC) with similar intentions, to alleviate overcrowding by increasing the carceral footprint. As the ACLU of Georgia predicted, Fulton County leasing beds at ACDC did not eliminate overcrowding or meaningfully improve the conditions of Fulton County's detainees. While Fulton County has been authorized to use up to 700 beds at ACDC, the Sheriff has struggled to fill half those beds as individuals remained on the floor at Rice St. The Sheriff was never able to fully use the ACDC space because of a lack of staffing, an issue which precludes housing detainees at any of several jails around metro Atlanta.

Instead of adding jail beds, last year we advised Fulton County leaders that overcrowding in Fulton County could be solved by simply complying with state law regarding setting bond amounts, indicting cases timely, not detaining individuals for misdemeanors, and diverting eligible detainees from custody and into programs. Since our recommendations, thirteen individuals tragically died in custody, and some stakeholders began to make meaningful steps more in line with our recommendations, resulting in the detained population decreasing by more than 500 people.

While strides have been made towards alleviating overcrowding, there is still more work to be done. Last year our report suggested that following our recommendations could reduce the Fulton County Jail population by 728 individuals.¹ Our analysis this year shows that by reducing the number of individuals waiting for indictment and by releasing individuals who could not afford their bond, Fulton County reduced its incarcerated population by over 500 individuals. However, people are simply spending too much time in custody in Fulton County. Nationwide, people only spend an average of 30 days in custody in local jails. In Fulton County, however, the average person can expect to spend 291 days in custody. As such, we believe there is still much work to be done for the following reasons:

First, there are still too many individuals who are in custody simply because they cannot afford their bond. Last year we determined that there were 435 individuals who couldn't afford their bond. This year that number is down to 311. We believe this reduction is based on efforts by the Fulton County District Attorney's Office and Public Defender's Office to identify these individuals and grant them an affordable bond. However, this work is being done on the back end and Georgia law is clear this work should be done much earlier in the process. Georgia law requires courts to consider an individual's ability to pay when setting bond, which is done within 72 hours. If the Fulton County Judges were properly setting affordable bonds, these people could avoid unnecessary detention and reduce Fulton County's inflated average length of detention.

Second, there are still too many cases who have not been indicted within 90 days. Last year we identified 750 individuals who were in custody and who had not been indicted within 90 days. This year we identified 503. We, again, believe this reduction is the result of greater efforts by the Fulton County District Attorney to indict cases as quickly as possible. However, Georgia law is clear that the intent of the legislature was that no person should be in custody longer than 90 days without having their case indicted. The Solicitor's office has implemented an expedited process where misdemeanor cases can be completely resolved in the days after arrest, largely eliminating the need to incarcerate individuals who are charged with misdemeanors in Fulton County.

We recommend stakeholders continue their work to prevent unnecessarily lengthy incarceration, not only to avoid needlessly costing taxpayers, but also to reduce recidivism rates and increase safety in the community, results that are well-documented in the bulk of scholarship along this issue. We also propose that Fulton County accepts the Grand Jury's recent recommendation to renovate and repair the Rice St. facility in lieu of building a new jail (a plan that would save Fulton County over \$1.98 billion). This recommendation is supported by the weight of research that concludes that building more jail cells only supports those with a financial interest in building jails and does not make communities safer. Fulton County's history shows we cannot build our way out of overcrowding, and the ACLU of Georgia recommends Fulton County leaders let state law and evidence-based scholarship be our touchstone to reducing the overcrowding at Rice Street before considering any new jail building.

Background

For decades, Fulton County's jail has been overcrowded, understaffed, unsanitary, and unsafe. Our local media regularly reports these conditions (and the frustrations of local leaders on how to address them) describing "conditions become intolerable when the jail is crammed with overflows."² Local leaders have lamented that "we've got more people than we have beds" with seemingly the only relief being that "there's always the floor" for detainees to sleep on when bedspace is not available.³ Unfortunately, there is little opportunity for relief, as the court backlog has often led to individuals being given the choice of their day in court or being able to be released. One news article noted the following: "As the wheels of justice turn ever slower, a rash of inmates is transforming a short-term holding facility into a claustrophobic nightmare with many times you go four months without seeing a judge. . . and after four months in there many guys are ready to plead guilty whether they are guilty or not."⁴ This sentiment alone should require dire attention, as no person's culpability should be determined by their ability to weather inhumane pre-trial detention.

Unfortunately, in addition to the human cost of overcrowding, an excessive detained population will have negative effects on the jail itself, further exacerbating the problem. As a grand jury empaneled to investigate jail conditions noted, "the ever-present overcrowding is causing drastically accelerated deterioration of the building, thereby not providing humane conditions for the incarcerated."⁵ This report specifically described the conditions as including the "insufficient personnel, inadequate plumbing, heating and ventilation, inadequate medical facilities" that exist within Fulton County.⁶

While familiar to the concerns today, the above observations regarding the inhumane conditions for pre-trial detainees in Fulton County are not from 2023, nor are they even about the facility commonly known as Rice Street. These quotes are from the 1980s, when Fulton County was facing rampant overcrowding and insufficient facilities just like it is in 2023, local leaders then, just as today, were looking to get detainees "off the floor" and in safe and humane conditions. Local leaders then decided the only option was to build a new jail, what is now Rice St. However, leaders soon realized that measure would not solve the problem. "A new Jail will provide relief but offer no ultimate solution. [Rice St.] will be filled the day it opens," predicted the Atlanta Constitution before Rice St. opened.⁷ Unfortunately, history proved them right and we are in the same situation 40 years later. Not only is Rice St. currently under investigation by the Department of Justice for unconstitutional conditions,⁸ it has previously been under consent orders for unconstitutional living conditions and lack of proper staffing.⁹ Building Rice St. to prevent overcrowding simply made a more expensive problem for future residents of Fulton County.

Despite the benefit of hindsight, Fulton County leaders are ready to address the same problems of overcrowding with the same failed solution; building a new jail. In 2022, the Fulton County Commission paid \$1.2 million to consultants from architectural firms STV and TreanorHL to study the need for a new jail and were presented with the recommendation of a new \$2 billion

jail, quadrupling the jail footprint from what exists today.¹⁰ Building a new jail to address overcrowding ignores Fulton County's history as well as research that provides other solutions, such as reducing case processing times, reforming bond practices, and expanding diversion programs, which address overcrowding and promote public safety.¹¹

Last year, the ACLU of Georgia released our report "There Are Better Solutions: An Analysis for Fulton County's Jail Population, 2022," which was intended to be a road map for Fulton County leaders to address overcrowding without expanding the jail footprint.¹² A close analysis of data produced by the Fulton County Sheriff's Office indicated that population levels and conditions at the Fulton County Jail could have and should have been reduced and mitigated through common-sense measures. We demonstrated that if Fulton County considered a person's ability to pay bond, released people charged only with misdemeanors, ensured timely indictment, and if the law enforcement agencies can take referred eligible people to community diversion programs, these measures alone would eliminate overcrowding. Unfortunately, only after 13 people lost their lives in Fulton County custody have there been some efforts to implement these solutions.¹³ As we will demonstrate below, there is still more work to be done. These reforms must be fully implemented before any new jail is built so future generations in Fulton County are not faced with the exact same problem.

Findings

On October 26, 2023, Fulton County held 3,014 people in custody, this is a decrease from more than 3,500 individuals that were in custody when we evaluated the jail last year. While this decrease in the jail population suggests marked progress, our analysis shows that Fulton County still has failed to completely address the root causes of overcrowding. For instance, Fulton County's continued failure to account for people's ability to pay their bond has resulted in 362 individuals being held simply because they are too poor to afford their bond. Additionally, Fulton County still had 503 individuals in custody for over 90 days without having been formally charged and found 96 individuals in custody who could have been diverted at time of arrest. The greatest area of improvement this year was the reduction of people held on only misdemeanors, with only 85 individuals being held on misdemeanors (compared to almost 3.5 times that number of people last year).

While the ACLU of Georgia understands the need to support public safety, just as our report from last year indicated, there are still better solutions to address jail overcrowding than simply building a new jail. While much progress has begun to reduce the overcrowding in Fulton County, there is more work to be done before Fulton County has demonstrated a need for additional jail space. Specifically, to reduce the average length of stay to be in line with the national average, more work needs to be done to ensure that people are having their cases assessed and reasonable bonds set earlier in the process.

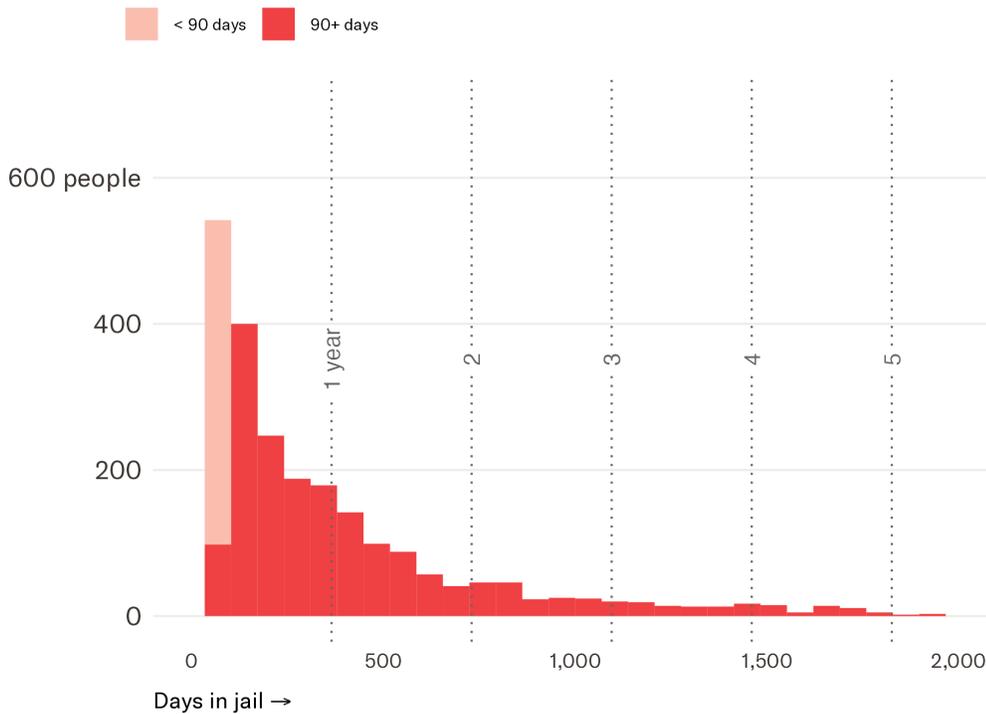
Report Findings

Fulton County has dramatically decreased its jail population, but people are still in custody for far too long.

Last year, data provided by Fulton County showed that Fulton County had 3,523 individuals in Fulton County custody, with 447 individuals sleeping on the floor. Our 2022 report provided recommendations that Fulton County could reduce its in custody population sufficiently to eliminate the need for any detainee to sleep on the floor. This year, Fulton County's jail population is down to 3,014, a reduction greater than the number needed to get individuals off the floor.

While the number of individuals in custody is trending in the right direction, people are simply being held for far too long in Fulton County Custody. The United States Department of Justice reports the average length of stay for a local jail is only 30 days.¹⁴ Our State Senate, when evaluating the Fulton County Jail suggested this 30-day number should be the target for average length of stay.¹⁵ Current data shows individuals spend 291 days (about 9 and a half months) in custody on average in Fulton County, a nearly 10-fold increase from what the number should be. This is a clear indication that while work is being done to reduce the jail population, it is not being done early enough in the process.

Figure 1
 Distribution of days spent confined in Fulton County jails



Several people who stayed in confinement for over 2k days removed from chart

Also of note, are the demographics of who is in custody in Fulton County. In Fulton County, 44 percent of the population is White, and 45 percent of the population is Black.¹⁶ In Atlanta, 48 percent of the population is Black, and 41 percent of the population is White.¹⁷ However, 89.6 percent of those in custody in Fulton County are Black and only 9.3 percent are White. Black people spend nearly 2 months on average longer in custody than White people.

Figure 2
 Jail population and confinement breakdown, by race

Race	Number of people confined	Percentage of confined population	Average length incarcerated (days)
Black	2,702	89.6%	296.8
White	281	9.3%	238.3
Native Hawaiian/Pacific Islander	11	0.4%	116.0
Hispanic	7	0.2%	372.3
Asian	5	0.2%	277.4
Other	4	0.1%	149.5
Unknown/Missing	4	0.1%	450.2
Total	3,014	100%	290.9

Note: the “Other” category includes the four total people identified as “Indian”, “Multiracial” and “Other”. The “Unknown/missing” category includes the four total people identified as “Unavailable” or had null values for race.

A. As was true in 2022, continued incarceration of individuals simply because they are too poor to afford bond is the greatest driver of overcrowding in Fulton County.

According to the Georgia Council on Criminal Justice Reform, excessive pretrial detention leads to harsher criminal justice outcomes and the use of money-based bail exacerbates racial disparities in the criminal legal system.¹⁸ Requiring cash bail for individuals who are not a public safety risk or a flight risk is a significant factor to the overcrowding in all of Georgia's jails. Cash bail disproportionately results in the incarceration of people based on their income and race, and studies have consistently found that people who are victims of wealth-based detention receive much harsher sentences and worse outcomes than those who can bond out.¹⁹

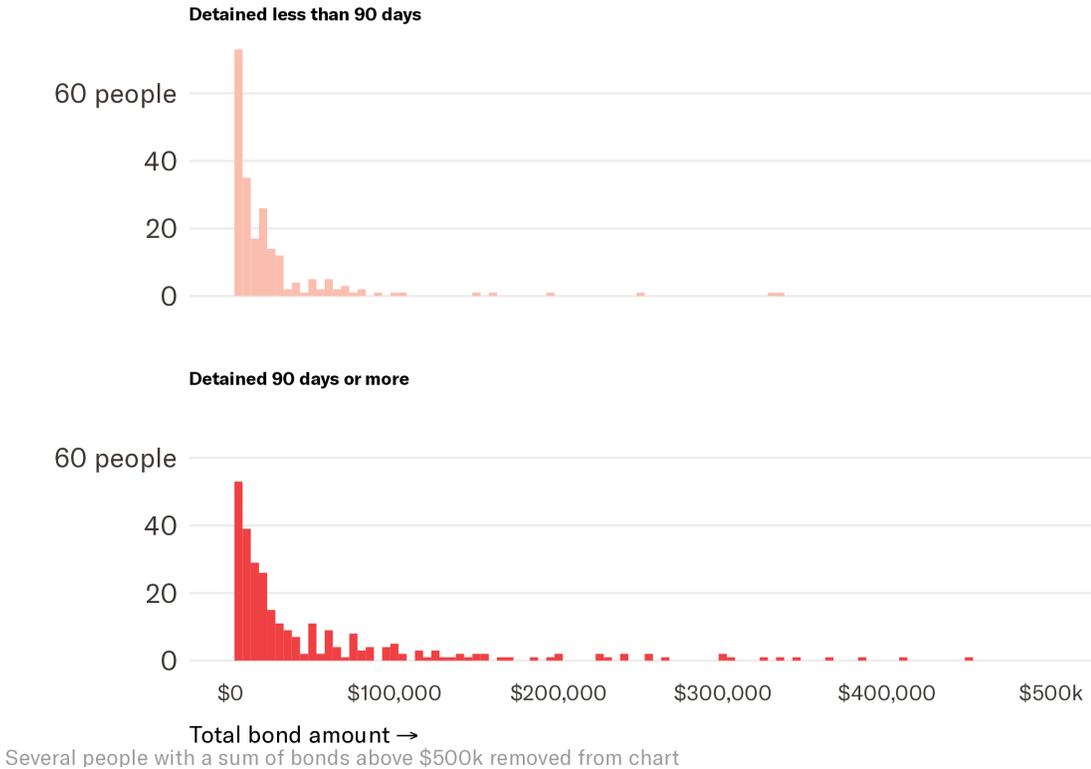
Recognizing the negative impact of wealth-based detention, the Georgia General Assembly passed a law in 2018 which requires authorities who set bail to consider a person's finances. This law requires that courts to set bond on all misdemeanor charges and can set bond on felonies if the individual meets certain criteria. When a bond is set, the court can impose only conditions which are necessary to ensure that the person attends court and to protect the safety of any other person. This law is especially important in Georgia where approximately 90 percent of those charged with criminal offenses are legally indigent and are likely unable to afford to post their own bond. This law was changed principally because keeping individuals in custody simply because they cannot afford bond was a major cause of overcrowding and actually causes more crime by driving up the rates of recidivism.²⁰ People held in jail pre-trial often lose their jobs and lose their ability to support their families.²¹ People held for only two or three days after arrest are more likely to be arrested for a new charge than people who are released on the first day.²² Importantly, these are individuals who are legally innocent and are simply awaiting their day in court.

Because cash bond is a major driver in jail populations, makes criminal justice outcomes harsher and less fair, and makes communities less safe, our analysis begins with whether Fulton County is keeping individuals in jail simply because they are too poor to pay their bond. Our analysis indicates that a significant percentage of people held by Fulton County remain in custody because of their inability to pay secured bail. To calculate this amount, we examined the number of people held in Fulton County with bonds that would be affordable for most people, 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.

As compared to last year, we saw a significant reduction in this wealth-based detention, but still found that 362 individuals who had bonds under \$20,000 were still in custody. Of these individuals, 42.8 percent (155) had been in custody for at least 90 days, meaning they likely were only in custody because of their inability to pay their bond. We found 89 individuals with bonds that had been in custody over six months: 41 of those individuals had been in custody over one year, and 13 of those individuals had been in custody over 2 years.

Figure 3

Distribution of days spent confined in Fulton County jails for people unable to pay bond



Before writing this report, we met with Fulton County’s elected prosecutors, who both highlighted the work done by their offices to reduce the number of people held unnecessarily before trial. Fulton County District Attorney Fani Willis indicated that she personally reviews the incarcerated population to identify individuals who appear to have been detained because they cannot afford bonds, and she has been working towards releasing these individuals. We believe that this work is reflected in the significant reduction of the total jail population.

While we recognize these positive steps, bonds should be affordable from the onset and that is not the reality in Fulton County. Given that the total jail population has declined dramatically from last year, but the average length of stay is nearly 10 times higher than it should be, these issues should be addressed much earlier in the process. In Fulton County, the Magistrate Court is largely responsible for initially setting bond and it does not appear magistrate courts are considering an individual’s ability to pay when setting bond, as required by state law. In fact, the Chief Magistrate recently suspended one of her judges after he set an affordable bond,²³ and we are gravely concerned this reflects the culture in the court. We offered to meet the Chief Magistrate hoping to get her input on that case and why her judges are not considering individuals’ ability to pay for this report, but we received no response.

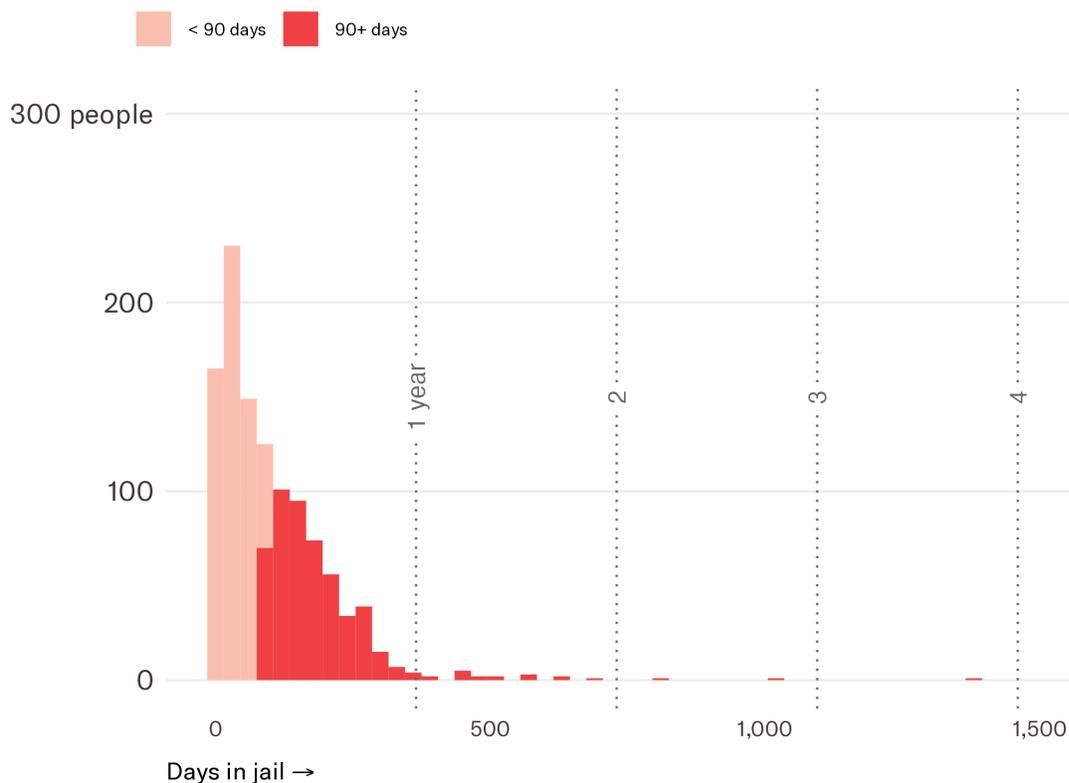
B. Fulton County’s delay in issuing indictments remains a major contributor to its jail population.

After an individual is arrested in Georgia, prosecutors must formally charge the person for their case to move forward. For felony cases, this is generally done by prosecutors seeking an indictment, a formal charging document that is returned by a grand jury. Under Georgia law, a criminal defendant who is arrested for a crime and denied bond must have their case presented to a grand jury within 90 days.²⁴ Otherwise, the defendant must be granted bond.²⁵ This statute protects against indefinite detention without grand jury review. The Georgia Supreme Court indicated the legislative intent of this law, one of the oldest in Georgia, was to ensure that no defendant must wait indefinitely for prosecutors to formally charge their case.²⁶ Unfortunately, hundreds of people in custody in Fulton County are forced to wait much longer than 90 days before their cases are indicted, sometimes waiting years.

This year showed improvement from last year’s numbers, but there is still much work to be done to ensure that no individual is in custody longer than 90 days without their case being indicted. This year we found that 1,114 individuals, or 37 percent of the total population, are detained while unindicted. A total of 45.2 percent (503) of these unindicted individuals were in custody for 90 days or more. Of those, 207 were in jail for over six months, 22 have been in custody for over a year, and 3 have been in custody for over 2 years. The average length of custody for those waiting for an indictment was 106 days. Despite the reduction from last year, individuals in Fulton County on average spend more than two weeks longer than the maximum of 90 days any individual should spend waiting for an indictment while in custody.

Figure 4

Distribution of days spent confined in Fulton County jails for people held without indictment



A major contributor to overcrowding is the failure to timely indict cases within 90 days, which has led to the average length of stay being 10 times higher than the suggested length. Without formal charges, unindicted cases cannot be resolved. We discussed this issue with District Attorney Fani Willis who indicated that her office does not indict cases until they are ready to prosecute, hoping to avoid situations where people are waiting months or years for cases that won't be prosecuted to be identified and dismissed. We want to give credit to this policy choice and note that some elements of indicting cases are outside of the DA's control. Georgia law, however, is clear that no one should be in custody indefinitely waiting for their charges, and these decisions need to be made within 90 days if prosecutors want a suspect to remain in custody. This reality may mean the prosecutor must make hard decisions on what to prioritize to keep the public safe, but that is a hard decision Georgia law requires.

The magistrate judges are not doing enough to identify unprosecutable cases from the onset as well, leaving untold defendants waiting months or years for someone to dismiss their case. Magistrate judges can evaluate cases for probable cause less than three days after arrest. Our office has reviewed hours of proceedings in magistrate court over the past year, and we are concerned that magistrate court judges are not consistently considering cases for probable cause at these hearings. Fulton County is not served by incarcerating people without probable cause and magistrate judges should be doing this analysis. Requiring individuals to remain in custody on charges for months or years on cases that do not have probable cause to prosecute does not keep Fulton County safer, and this practice contributes to the extreme average length of detention in Fulton County.

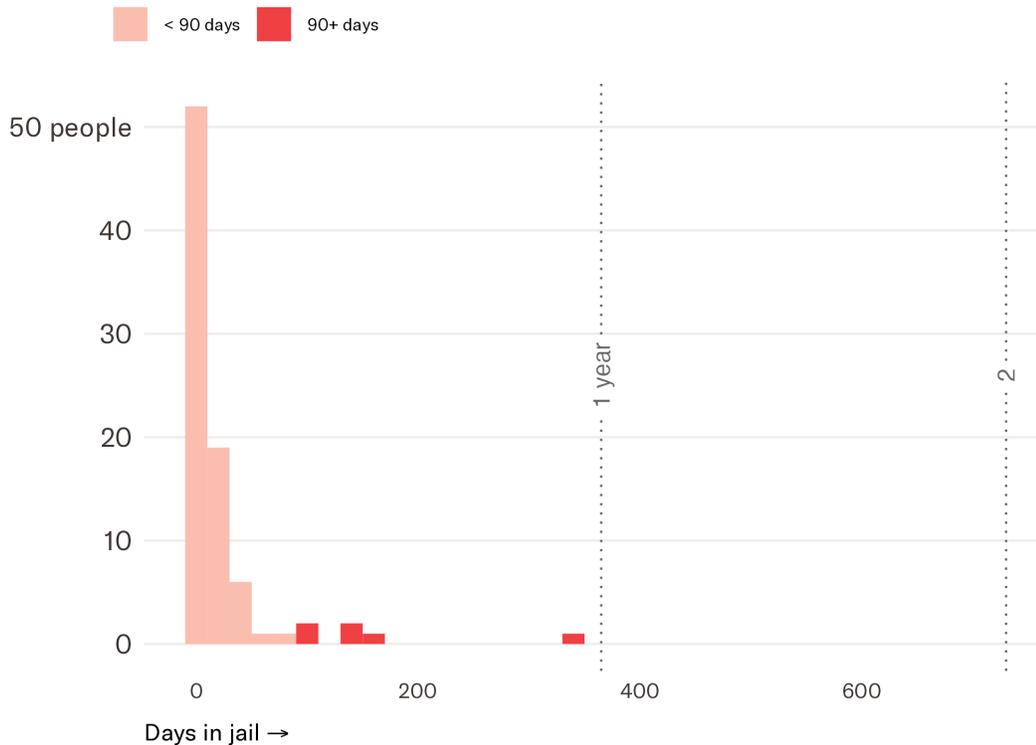
C. Fulton County has made a dramatic improvement in reducing the population of those charged with Misdemeanors.

Much of the work done by the Georgia Council of Criminal Justice Reform was focused on the negative effects of detaining individuals charged only with misdemeanors. These minor charges require bond to be set from the onset because Georgia's leaders recognized that detaining people for misdemeanors, even for a few days, has dramatic negative effects for those charged and the community.²⁷ As we indicated last year, jurisdictions around Georgia, including Chatham County, have generally ceased to jail people charged only with misdemeanors. In fact, the Fulton County Sheriff suggested to the Fulton County Commission in July that he may stop accepting those charged with misdemeanors into the Fulton County Jail.²⁸

Compared to last year, Fulton County was able to reduce those detained only on misdemeanors (whether awaiting trial, serving their misdemeanor sentence, or for violating probation) from 290 to only 85 individuals. Fulton County also reduced its average time in custody for those with only misdemeanors cases from 106 days to only 22 days. This number is below the target of 30 days, and most individuals charged with misdemeanors were released within 6 days.

Figure 5

Distribution of days spent confined in Fulton County jails for people charged with misdemeanors



We met with Solicitor-General Keith Gammage, the elected prosecutor responsible for misdemeanor cases, to hear what has worked to reduce the population of those charged with misdemeanors. Solicitor Gammage noted the implementation of the State Expedited Accusation Calendar system requires his office to work around the clock to ensure that prosecutors have the initial incident report and victim contact on the first day after an arrest so that formal charges, plea offers, and discovery may be sent the first day following an arrest. People in custody have an opportunity to plea less than a week after their arrest and have jury trials within 30 days. This system bypasses the Fulton County Magistrate bottleneck and reduces a process which took up to 10 months for arraignment down to potentially a single day. Solicitor Gammage noted some areas for improvement remain, but we want to highlight the positive steps that have been implemented.

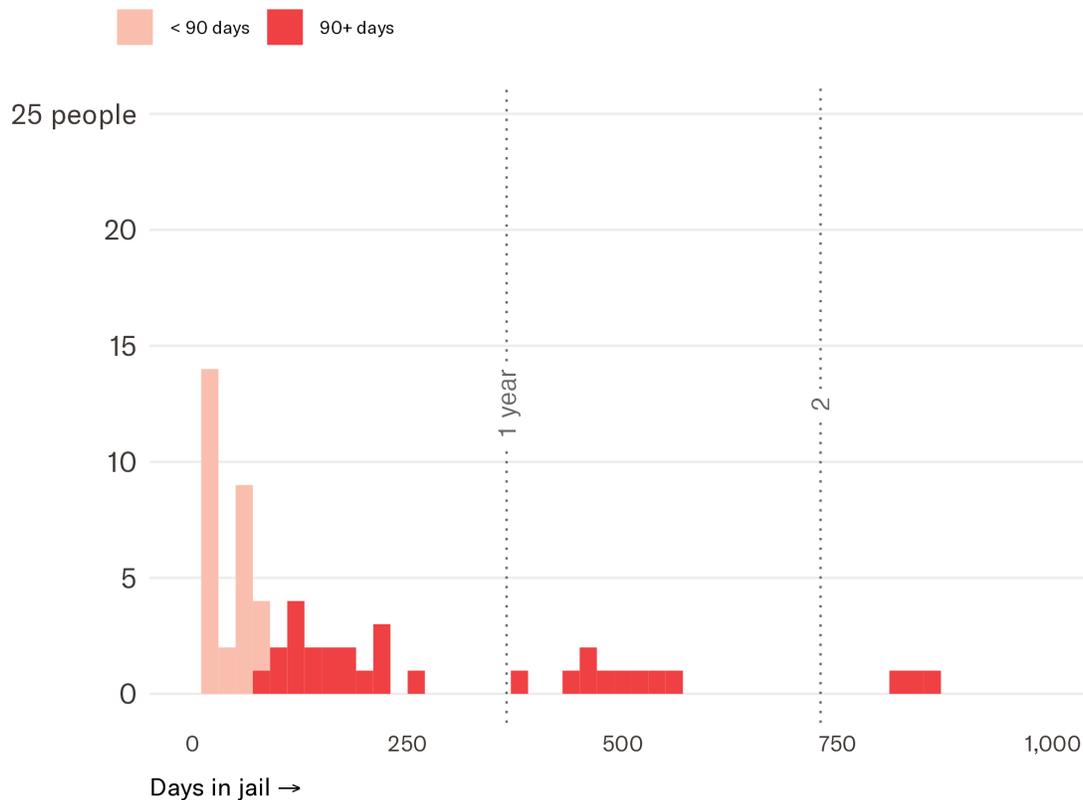
D. Pre-Arrest Diversion continues to be underutilized at a rate similar to last year.

Last year we noted 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. We also note that presently only the Atlanta Police Department, Georgia Tech Police and MARTA Police can use PAD, despite there being many more agencies among the 15 cities in Fulton County that feed Rice St.

Figure 6

Distribution of days spent confined in Fulton County jails for people charged with diversion-eligible offenses



Last year we identified that 3.4 percent of the jail population, or 120 people, were in custody for divertible charges. This year that number was reduced to 96 people, but still approximately 3.2 percent of the jail population. We spoke to District Attorney Willis and Solicitor Gammage about

their respective diversion programs and were encouraged about their commitment to prosecution alternatives that support public safety and support individuals' avoidance of future criminal conduct. However, these programs largely only cover individuals following an arrest, while pre-arrest diversion ensures these individuals never have to face the conditions of incarceration in Fulton County.

The Atlanta Police Department is simply arresting too many people for low level offenses. Research by the Southern Center for Human Rights (SCHR) has shown that APD, despite having one of the best staffed, trained and funded departments in the country, is spending its resources arresting too many people for low-level offenses.²⁹ SCHR found that half of the arrests by APD were for low-level and non-violent offenses, many of which represent quality of life issues like mental illness, substance abuse, and homelessness. These are individuals who should be diverted for services instead of incarceration. Black Atlantans are 14.6 times more likely to be arrested for these types of offenses than White residents,³⁰ and we believe this is reflected in Black being a minority of the Fulton County population, but almost 90 percent of jail admissions. As Fulton County leaders address the issues in the criminal legal system, we should be looking at how excessive arrests are contributing to the jail overcrowding in Fulton County.

Narratives of Impacted Persons

While the statistics above speak for themselves that there is much more work to be done regarding the criminal legal system in Fulton County, we wanted to share some experiences of those incarcerated in Fulton County. We spoke with many justice-impacted individuals who offer the following:

“I experienced deplorable conditions that myself, along with many others, have experienced at Fulton County Jail. My intention is not to complain but to shed light on the sub par living conditions that inmates are made to go through on a daily basis. The overcrowding has made already unsanitary living conditions worse, and the jail has created an environment that is not only detrimental to physical health but also takes a toll on everyone’s mental health there. Many times, these meals are inadequate, and sometimes inedible due to being past expiration dates. Every person, regardless of status, deserves to be treated with dignity. I hope in speaking out, positive change can happen.”

“The overcrowding really amped up the tensions between people, which lead to more conflicts and fighting. When you have very limited personnel[sic] space it messes with you and creates problems. The bathrooms and showers were always a mess, and then the jail can’t handle our basic needs because there’s too many people. A lot of the people I knew didn’t even do anything violent, but they threw everyone together in the same conditions. It was terrible.”

“From the moment we stepped into Fulton County Jail it was steeped in neglect. Cells were filthy, there was no toilet paper, and prisoners were left to waste away in cells for days, screaming for help with no response from the guards. The guard hurled homophobic slurs, were verbally abusive. They denied us access to food and water. The guards joked about ‘shutting us up’ with their fists. They made good on these threats when someone was handcuffed and dragged into a private room.”

Recommendations

Before Fulton County spends any taxpayer money on building a \$2 billion jail, leaders must do more to ensure the community that we are not repeating the same failed process that allowed Rice Street to become what it is today. While stakeholders have made positive strides since last year, additional work must be done to address cases earlier and align Fulton County's 291-day incarceration average with the national average of 30 days.

We recommend the following actions to ensure individuals are not being held simply because their case has not been formally charged or because they are too poor to make their bond:

- Ensure that every police department in Fulton County is participating in pre-arrest diversion so that Fulton County can avoid the substantial costs and negative social impact of detaining individuals simply for substance abuse or mental health challenges or being unsheltered.
- Ensure the District Attorney, Judges of Magistrate Court, and Judges of Superior Court continue their efforts to identify and release any individual who is being held on bonds that they cannot afford and end wealth-based detention.
- Ensure that Judges of Magistrate Court begin assessing financial ability to pay with factual findings and only set bonds that individuals can afford at the first opportunity. Since 90 percent of individuals charged with a crime in Georgia are legally indigent, this likely means many will require a signature or nominal bond.
- Ensure that the District Attorney, Magistrate Court Judges and Superior Court Judges review any cases of individuals in custody for over 90 days without indictment to ensure that (1) bond is set, and (2) set at an amount the defendant can afford. The District Attorney should be notifying the Fulton County Chief Judge of individuals who have not been indicted after 45 days under Georgia law.
- Ensure the District Attorney continues to reduce the time to indict cases so that no one has to wait longer than 90 days in custody before their case is presented to the grand jury.
- Ensure that the Atlanta Police Department institutes mandatory citation or diversion practices, instead of booking, for any city ordinance violation or divertible offense to reduce the number of individuals being held because they are experiencing homelessness, substance abuse issues or mental illness.

In 1986, when Fulton County was facing a similar crisis, the County Sheriff set a standing release order prioritizing certain groups for release when the jail population met a certain threshold.³¹ We are providing this priority for release list below for consideration by Fulton County leaders to promote similar criteria today, with the benefit of hindsight and evidence-based recommendations validating such measures:

- Individuals in custody for fines or costs who have been in jail for five days;
- Individuals held for other jurisdictions who are otherwise eligible for bond;
- Individuals charged with misdemeanors who have been in custody more than 10 days;

- Individuals convicted of misdemeanors who have served more than 90 days of a sentence on those offenses;
- Individuals who have allegedly violated their probation or parole and have not had a hearing after 45 days; and
- Individuals who have been arrested for felony offenses, have a bond under \$5,000, and have been in jail for over 30 days.

While this list is imperfect, releasing these individuals would have the benefit of addressing much of the front-end backlog that exists within Fulton County today.

Finally, we want to lift up the recommendations from the 2023 grand jury panel which was responsible for the annual review of the Fulton County jail:²⁶

- Increase the Fulton County Sheriff's budget as necessary to accommodate recommended staffing levels. The grand jury found that, at most, it would require \$19.5 million to fully staff the jail and would substantially improve the operation and safety of the jail and reduce the number of costly lawsuits. This would be less than one percent of the cost of a new jail (which would require more staff to operate effectively regardless).
- Provide funding as needed to the Sheriff's Office to bring equipment and facilities within the jail into compliance. The grand jury reported that the Sheriff's office provided a "potentially over-estimated" figure of only \$13.1 million to bring the buildings into compliance, providing a significant improvement to jail operations, well-being and safety at less than one percent of the cost of a new jail.
- Advocate and partner with Fulton County offices and other related organizations to aggressively identify alternative means of rehabilitating inmates with mental health issues, those who are convicted of lesser crimes, or those charged with lesser crimes and awaiting indictment.
- Implement new policies and procedures involving the Sheriff's office and other county offices and supporting organizations as necessary to make reasonable attempts to contact family members, emergency contacts, or representatives of inmates with significant mental health issues to promote outside support for inmates and to increase the number of inmates who are able to post bond.

Conclusion

Our 2023 analysis shows that there have been some meaningful improvements in Fulton County, most of which represent a partial implementation of our recommendations from last year. This work is unfinished and will continue to be unfinished as long as a single individual is allowed to remain in custody simply because they are too poor to afford their bond or are languishing more than 90 days in custody without being indicted. We believe that Fulton County must look to its history and not repeat the mistakes of the 1980s - replacing meaningful reform with an expensive (but outdated and overcrowded) jail. If Fulton County eliminates wealth-based detention and timely indicts cases these measures alone will reduce the population sufficiently to avoid the need for an expensive new jail. At less than a one percent cost to a new jail, we can address all the attendant problems with jail overcrowding and eliminate the need for a new jail.

Methodology

This data report analyzes data obtained from the Fulton County Case Management System and online jail records. This data covers individuals jailed in Fulton County custody on one day: October 26, 2023. This analysis examines data available for people held in custody in Fulton County as a whole.

Data Sources. This report is based on publicly available data for October 26, 2023. This dataset included information about each person’s race, gender, book-in date, age, location, length of stay, bond amounts, charges, and case numbers. Case numbers are coded in a way that indicates whether a case is unindicted or indicted, and misdemeanor cases were identified by parsing through the remaining cases without case numbers on Odyssey.

Analysis. When analyzing data regarding bonds and ability to pay, we examined the number of people held in the county jails that were eligible for bond (had no marker of “no bond”, 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 90 days or more.

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 was deemed not bond eligible due to a marker of “no bond”, 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 would no longer be in Fulton County, but would rather be transferred to different jurisdictions.

As mentioned, individuals’ indictment statuses could be determined through their associated case numbers, when provided. In cases with multiple case numbers per booking ID with one or more of those case numbers indicating unindictment, we defined the individual as unindicted only if there was also no case number with that individual that indicated indictment. 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.

Length of stay was provided in days as of the date of the snapshot data report, October 26, 2023.

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—October 26, 2023. 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 October 26, 2023, are typical of individuals detained in the Fulton County jails. Nevertheless, because this was 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.

Likely due to a short difference in exactly when reports were pulled, there were three individuals that appeared as booked in Odyssey's Court Assignment data that were not found in the other Odyssey reports. Thus, we removed these three individuals from analysis. There were 126 individuals who were represented in all reports except Odyssey's Court Assignment data – meaning we had all information but associated case numbers – so we manually checked these individuals' case statuses.

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.”

ENDNOTES

- ¹ Last year our report used data from September 14, 2022 as a snapshot in time of the jail population. This year we used data from October 26, 2023 as snapshot in time. All of our analysis of data and comparisons between years will be relying on the populations on these two dates.
- ² Fulton County Jail Swallows a Bitter Pill, Atlanta J. & Const., Jul. 14, 1989.
- ³ Amy Wallace, New Place, Old Problem: "Jail Warming" Guests Sleep on the Floor, Atlanta J. & Const., Jul 9, 1988.
- ⁴ Jails, Atlanta J. & Const., Jun. 2, 1988.
- ⁵ Fulton County Grand Jury, Alternatives to Incarceration as a Means of Relieving the Overcrowding Conditions in Georgia's Prisons, Atlanta J. & Const., Jan 3, 1983
- ⁶ Id.
- ⁷ Supra, n. 1.
- ⁸ Justice Department Announces Investigation into Conditions in Fulton County, Georgia Jail, United States Department of Justice, Jul. 13, 2023.
- ⁹ Consent Order, Harper v. Bennett, No. 04-CV-1416-MHS (N.D. Ga 2005).
- ¹⁰ Fulton Commission Receives New Jail Study, Atlanta J. & Const., Feb. 1, 2023.
- ¹¹ See Chris Mai, et al., Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead, Vera Institute for Justice, Nov. 2019.
- ¹² There Are Better Solutions: An Analysis for Fulton County's Jail Population, 2022, American Civil Liberties Union, 2022.
- ¹³ Doug Reardon, Family of man slain in Fulton County jail: 'He didn't deserve that', Atlanta News First, Sep. 1, 2023.
- ¹⁴ See Jail Inmates in 2021 - Statistical Tables, U.S. Department of Justice, Dec. 2022.
- ¹⁵ Testimony of Sen. John Albers, Public Safety Subcommittee on the Fulton County Jail, Nov. 2, 2023.
- ¹⁶ Quick Facts: Fulton County Georgia, United States Census Bureau, Jul. 1, 2022.
- ¹⁷ Quick Facts: Atlanta city, Georgia, United States Census Bureau, Jul. 1, 2022.
- ¹⁸ Michael P. Boggs & Carey A. Miller, Report of the Georgia Council on Criminal Justice Reform 2017-2018, Georgia Council on Criminal Justice Reform, at 9, Feb 2018,
- ¹⁹ Id.
- ²⁰ Id.
- ²¹ Id.
- ²² Id.
- ²³ Judge suspended after setting \$2 bond for man facing serious charges, WSB-TV, Oct. 21, 2022.
- ²⁴ O.C.G.A. 17-7-50
- ²⁵ Id.
- ²⁶ Bryant v. Vowell. 282 Ga. 437, 439 ("OCGA § 17-7-50 is a legislative attempt to ensure that a person arrested based on a prosecutor's information or on an arrest warrant obtained by a law enforcement officer is not incarcerated indefinitely without any review by the grand jury") (2011).
- ²⁷ Supra, n. 11.
- ²⁸ Diedra Dukes, Sheriff suggests refusing non-violent offenders be booked into Fulton County Jail, Fox 5 Atlanta, Sep. 21, 2023.
- ²⁹ Pain and Power: Confronting Police Violence in Atlanta, Southern Center for Human Rights, Aug. 19, 2023.
- ³⁰ Id.
- ³¹ Jail, Atlanta J. & Const., December 23, 1986.

