



## Michigan Supreme Court Chief Justice Bridget M. McCormack

**April 16, 2020**

***“Court Reform in Michigan in 2020 and Beyond”***



# Today's Presentation



- Judicial Response to COVID-19 Crisis
- Jail and Pretrial Reform
- Trial Court Funding Commission Report
- Juvenile Justice
- Q & A





## OPINION

# Justices: Even during coronavirus outbreak, closing Michigan courts isn't an option | Opinion

Bridget McCormack and David Viviano

Published 11:00 a.m. ET March 21, 2020

*“When restaurants close, the public is urged to pick up takeout. But there is no such thing as takeout justice. While courts can postpone routine matters (like traffic tickets), judges and court staff must continue to provide essential services and protect public safety.”*



# Essential Court Functions



- Protecting vulnerable people
- Hearings and arraignments for criminal defendants
- Proceedings related to quarantine and other public health matters
- Personal protection orders
- Search warrants and other law enforcement actions



# Judicial Response to COVID-19



The screenshot shows the Michigan Courts website. The header includes the Michigan Courts logo and navigation links for 'GENERAL PUBLIC', 'MEDIA & NEWS', 'LEGAL COMMUNITY', and 'JUDGES & COURT STAFF'. The main navigation bar lists 'COURTS', 'CASES, OPINIONS & ORDERS', 'ADMINISTRATION', 'EDUCATION & REFERENCES', 'NEWS & EVENTS', and 'SELF HELP'. The 'News & Events' section is highlighted, showing a 'Home' link and a 'Print' button. Below this, there are links to 'One Court of Justice', 'Events Calendar', 'Newsroom', and 'News Releases'. The 'Resources for Courts' section lists 'Virtual Courtroom' and 'Resources for Courts'. The 'Virtual Courtroom Task Force' section includes a 'List of Members (pdf)' and a 'NEWS RELEASE: Courts, Counties, Clerks Commit to Cooperation; Create Task Force to Focus on Enhancing Virtual Services to the Public - March 25, 2020 (pdf)'. The 'Judicial Branch Response to COVID-19' section features 'Latest Information' and a 'List of Administrative Orders'. The 'Resources for the Public' section includes 'Summary Proceedings', 'The Future Is Now to Decriminalize Mental Illness', 'Parenting Time and Child Support Issues Under Executive Order 2020-35', and 'Reporting deadlines have been suspended until further'. The 'Watch Hearings Online!' section asks 'Do you know of a hearing coming up? Find it online.' and the 'COVID-19 FAQs Answered by Michigan Legal Help' section is also present.

- First step was a web page dedicated to the crisis
- Series of administrative orders targeted to slow the spread of COVID-19
- Guidance regarding essential functions
- Detailed FAQs
- Virtual Courtroom Resources



# Michigan Virtual Courtroom Task Force



Thank you to the county officials serving on the Task Force:

- Ms. April Lynch, Deputy County Executive, Oakland County
- Mr. Martin Marshall, County Administrator, Lenawee County
- Ms. Margaret McAvoy, County Administrator/Controller, Isabella County





# Virtual Courtroom Task Force



- Chaired by Macomb Circuit Judge Kathy Viviano
- Met via Zoom
- Identified best practices
- Shared more than 100 tips and ideas
- **RESULT:** Michigan Trial Court [Virtual Courtrooms Standards and Guidelines](#)

MJI



3-31-2020 Virtual Courtroom Task Force Meeting



# Zoom hearings are happening statewide



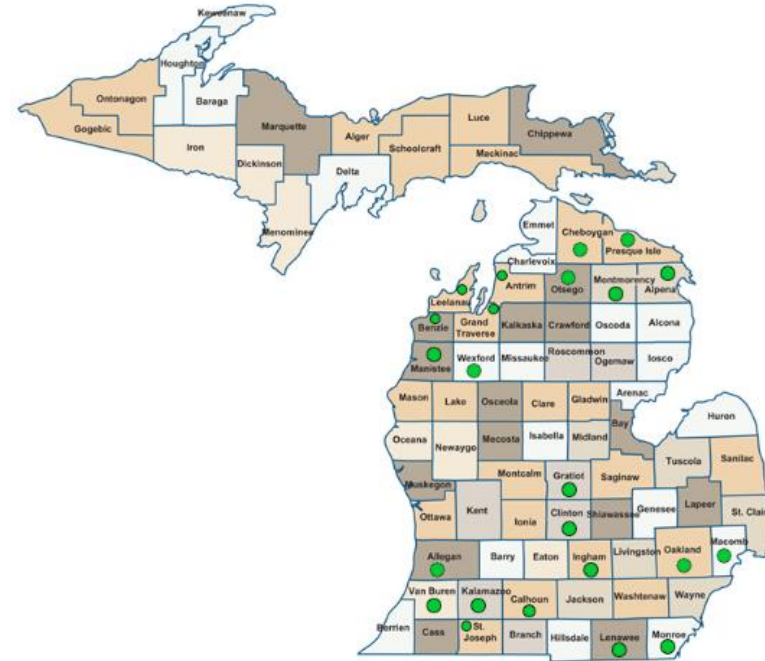
**Van Buren County Circuit Judge Karen Brickley  
presiding over a hearing using Zoom.**

**13<sup>th</sup> Circuit Court Judge Kevin Elsenheimer,  
presiding from home with his dog, Prince.**





- Select A County



# Courts are partnering with County Sheriffs



## Reducing Jail Populations

**Times Herald**

PART OF THE USA TODAY NETWORK

St. Clair County Sheriff, courts reducing jail population to lessen the spread of coronavirus



**MICHIGAN  
RADIO** npr

MICHIGAN'S NPR NEWS LEADER

## Court says jails should adopt inmate reduction plans now

By RICK PLUTA • APR 1, 2020



CHIEF JUSTICE BRIDGET M. McCORMACK | INDEPENDENCE · ACCESSIBILITY · ENGAGEMENT · EFFICIENCY

# Joint Statement with Michigan Sheriffs

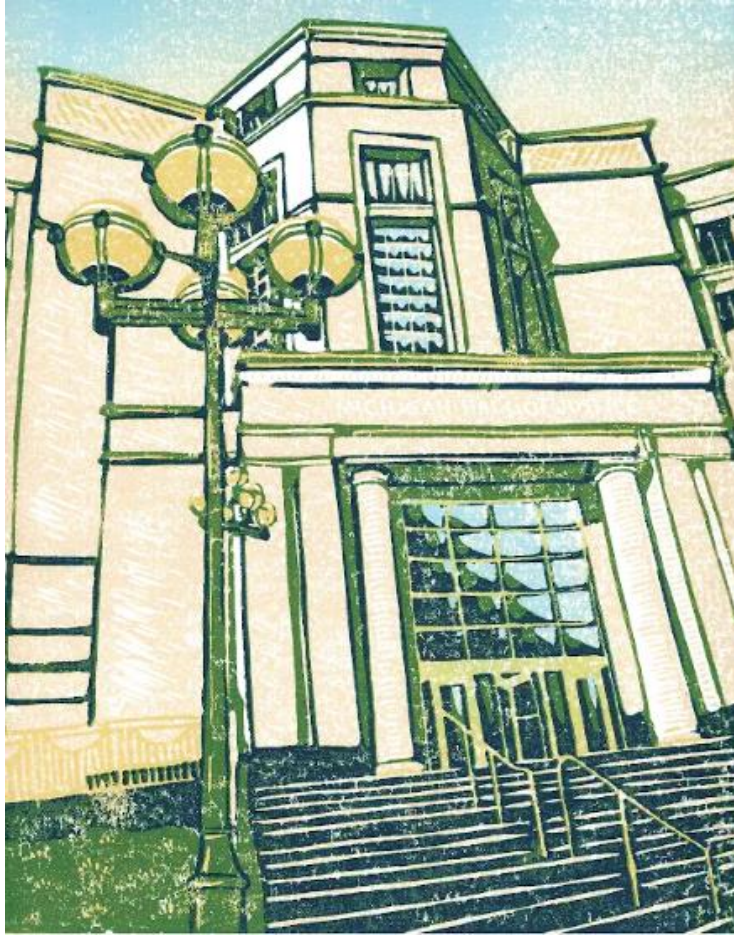


- Judges and Sheriffs should use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk.
- Law enforcement should only arrest people and take them to jail if they pose an immediate threat to people in the community.
- Judges should release far more people on their own recognizance while they await their day in court. For some, judges may want to release them under supervision or under a condition that they stay away from a particular place or person.
- And judges should use probation and treatment programs as jail alternatives.

**IMPACT: Jail populations are down 25% to 75%**



# What we do.



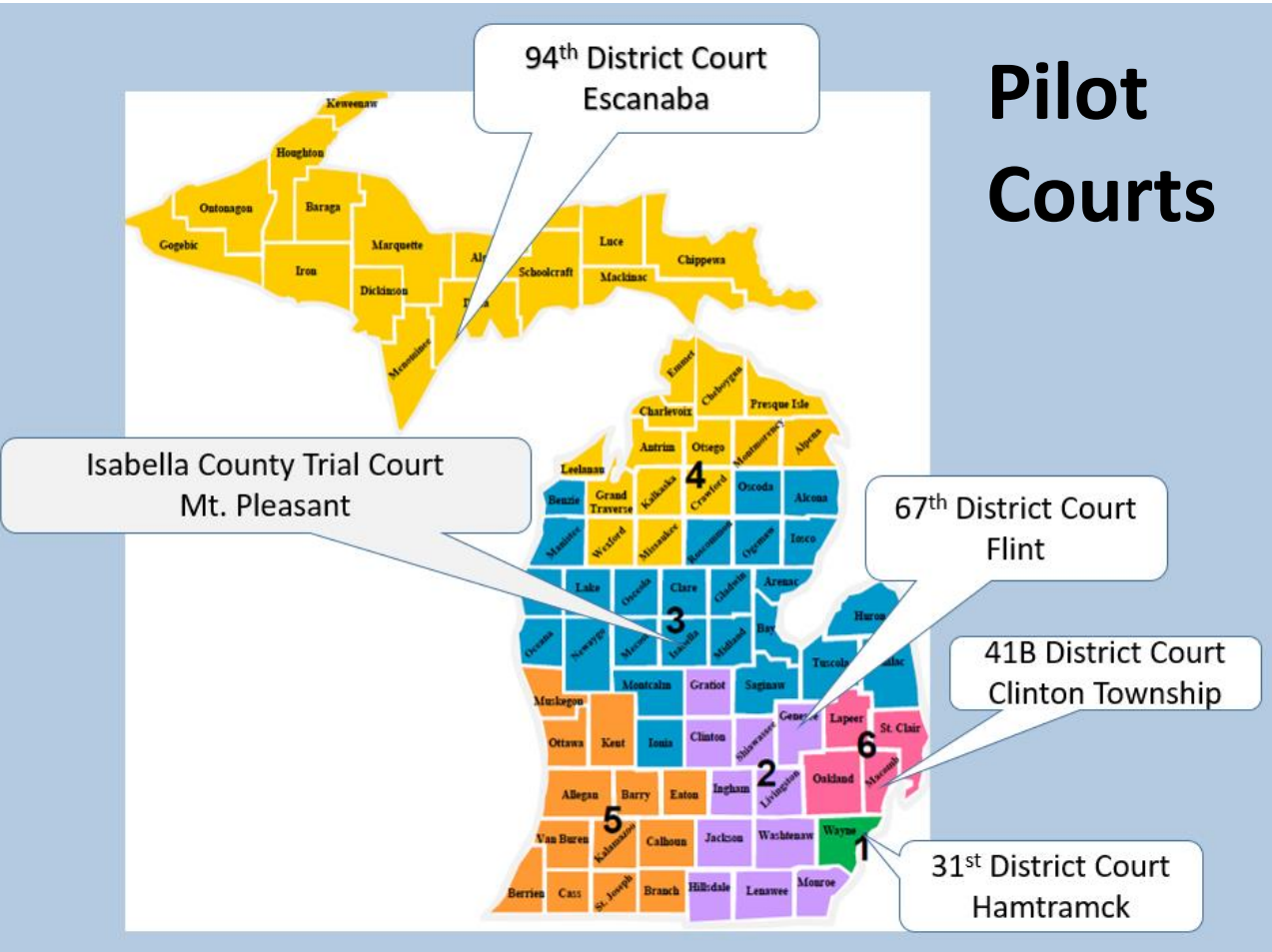
## Pretrial and Jail Reform



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# Pretrial Risk Assessment



PSA Score					
FAILURE TO APPEAR					
1	2	3	4	5	6
NEW CRIMINAL ACTIVITY					
1	2	3	4	5	6
NEW VIOLENT CRIMINAL ACTIVITY FLAG: No					

RISK FACTORS

1	Age at Current Arrest:	23 or older
2	Current Violent Offense:	No
	2a. Current Violent Offense and 20 yrs Old or Younger:	No
3	Pending Charge at the Time of Offense	No
4	Prior Misdemeanor Conviction:	Yes
5	Prior Felony Conviction:	No
	5a. Prior Conviction:	Yes
6	Prior Violent Conviction:	1
7	Prior Failure to Appear in Past 2 Years:	0
8	Prior Failure to Appear Older than 2 Years:	Yes
9	Prior Sentence to Incarceration:	No

Presumptive Release Level

Based on the Release Conditions Matrix, the defendant's presumptive release level is:	2
Appearance rate for defendants with similar scores:	80%
Percentage of defendants with similar scores who remained crime-free:	85%





# Joint Jail and Pretrial Incarceration Task Force



Gretchen Whitmer  
Governor, State of Michigan

Bridget McCormack  
Chief Justice, Michigan Supreme Court

Mike Shirkey  
Majority Leader, Michigan Senate

Lee Chatfield  
Speaker, Michigan House

Stephan Currie  
Executive Director,  
Michigan Association of Counties

Blaine Koops  
Executive Director,  
Michigan Sheriffs Association

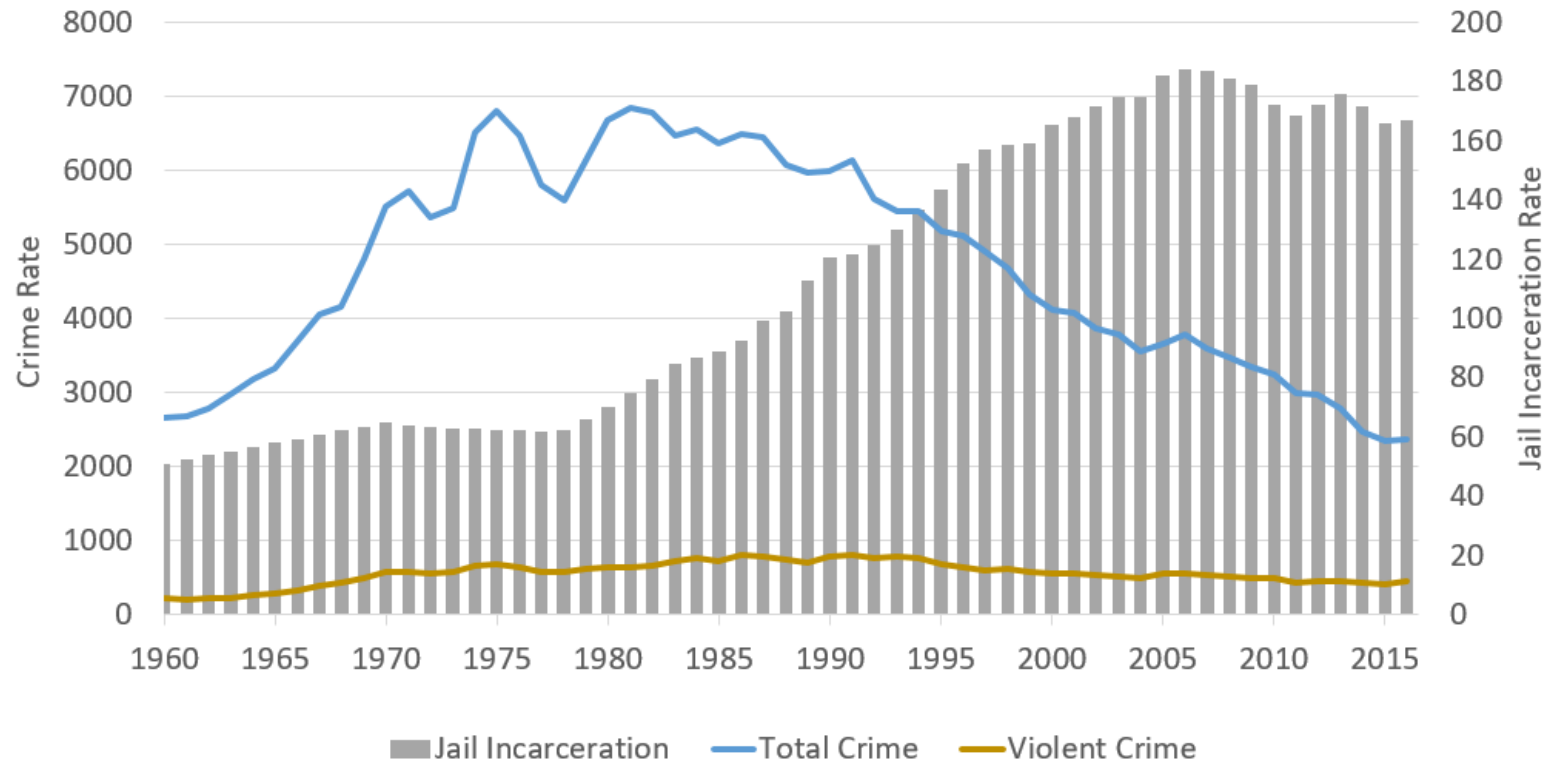


# The Problem



- Despite lowest crime rate in 50 years, jail populations tripled.
- \$478 million spent on county jails each year.
- Half of jail inmates are unconvicted and awaiting trial.
- Rural jail populations are growing faster than urban populations.

...and we (didn't) know why!



# The Task Force



## Michigan Joint Task Force on Jail and Pretrial Incarceration


- State and county leaders created a 21 member, bipartisan task force.
- Extensive research assistance from The Pew Charitable Trusts.
- Expand jail alternatives, support victims, safely reduce jail populations, improve efficiency and effectiveness.



Gretchen Whitmer  
Governor, State of Michigan



Bridget McCormack  
Chief Justice, Michigan Supreme Court



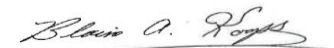
Mike Shirkey  
Majority Leader, Michigan Senate



Lee Chatfield  
Speaker, Michigan House



Stephan Currie  
Executive Director,  
Michigan Association of Counties



Blaine Koops  
Executive Director,  
Michigan Sheriffs Association



# The Task Force



**Lieutenant Governor Garlin Gilchrist II**  
(Task Force Co-chair), Office of  
Governor Gretchen Whitmer

**Chief Justice Bridget McCormack** (Task  
Force Co-chair), Michigan Supreme  
Court

**Lt. Jim Miller** (Arrest and Arrest  
Alternatives Subgroup Chair), Allegan  
County Sheriff's Office

**Hon. Thomas Boyd** (Pretrial Release  
and Detention Subgroup Chair), 55<sup>th</sup>  
District Court

**Sen. Sylvia Santana** (Sentencing,  
Probation, and Parole Subgroup Chair),  
Michigan Senate

**Dr. Amanda Alexander**, Detroit Justice  
Center

**Sheriff Jerry Clayton**, Washtenaw County  
Sheriff's Office

**Craig DeRoche**, Prison Fellowship

**Hon. Prentis Edwards**, 3<sup>rd</sup> Circuit Court

**William Gutzwiller**, Michigan Association  
of Chiefs of Police

**Dale (DJ) Hilson**, Muskegon County  
Prosecutor

**Monica Jahner**, Advocacy, Reentry,  
Resources, and Outreach (ARRO)

**Dean Sheryl Kubiak**, Wayne State  
University School of Social Work

**Rep. Mike Mueller**, Michigan House of  
Representatives

**Attorney General Dana Nessel**, Michigan  
Department of Attorney General

**Takura Nyamfukudza**, Chartier &  
Nyamfukudza PLC

**Commissioner Bill Peterson**, Alpena  
County Commission

**Sen. Jim Runestad**, Michigan Senate

**Commissioner Jim Talen**, Kent County  
Commission

**Rob VerHeulen**, former member of the  
Michigan House of Representatives

**Rep. Tenisha Yancey**, Michigan House of  
Representatives



# The Research



## Stakeholder Roundtables

- ✓ Judges, prosecutors, and defense attorneys
- ✓ Crime victims, survivors, and victim-services professionals
- ✓ Law enforcement, jail administrators, and corrections officers
- ✓ District court probation officers
- ✓ MDOC probation officers
- ✓ Pretrial services and community corrections
- ✓ County commissioners
- ✓ Bail agents and underwriters
- ✓ Rural practitioners
- ✓ Currently incarcerated individuals
- ✓ Faith leaders

## The Task Force considered:

- National data trends.
- 10 years of arrest and court data from 600+ law enforcement agencies and 200 courts.
- 3 years of individual-level admission data from 20 county jails.
- Public testimony and roundtable discussions.
- Criminal justice research and constitutional jurisprudence.





# Reform has economic benefits

Published in **Economic Development**



## Criminal justice reform can help address workforce development, biz group says

In September, the Grand Rapids Chamber submitted testimony to the task force that was co-signed by executives from 11 area businesses, including Wolverine Building Group, RoMan Manufacturing, Mercy Health Saint Mary's and Cascade Engineering.

- Jailing people before trial because they can't pay bail or for other administrative violations negatively affects the workforce, businesses say.
- The letter includes four "shared principles"
  - "The fastest route out of a crime is a job"
  - "jail is not a one-size-fits-all solution"
  - "use data and evidence-based solutions" and
  - "no one should ever be in jail because they are poor."

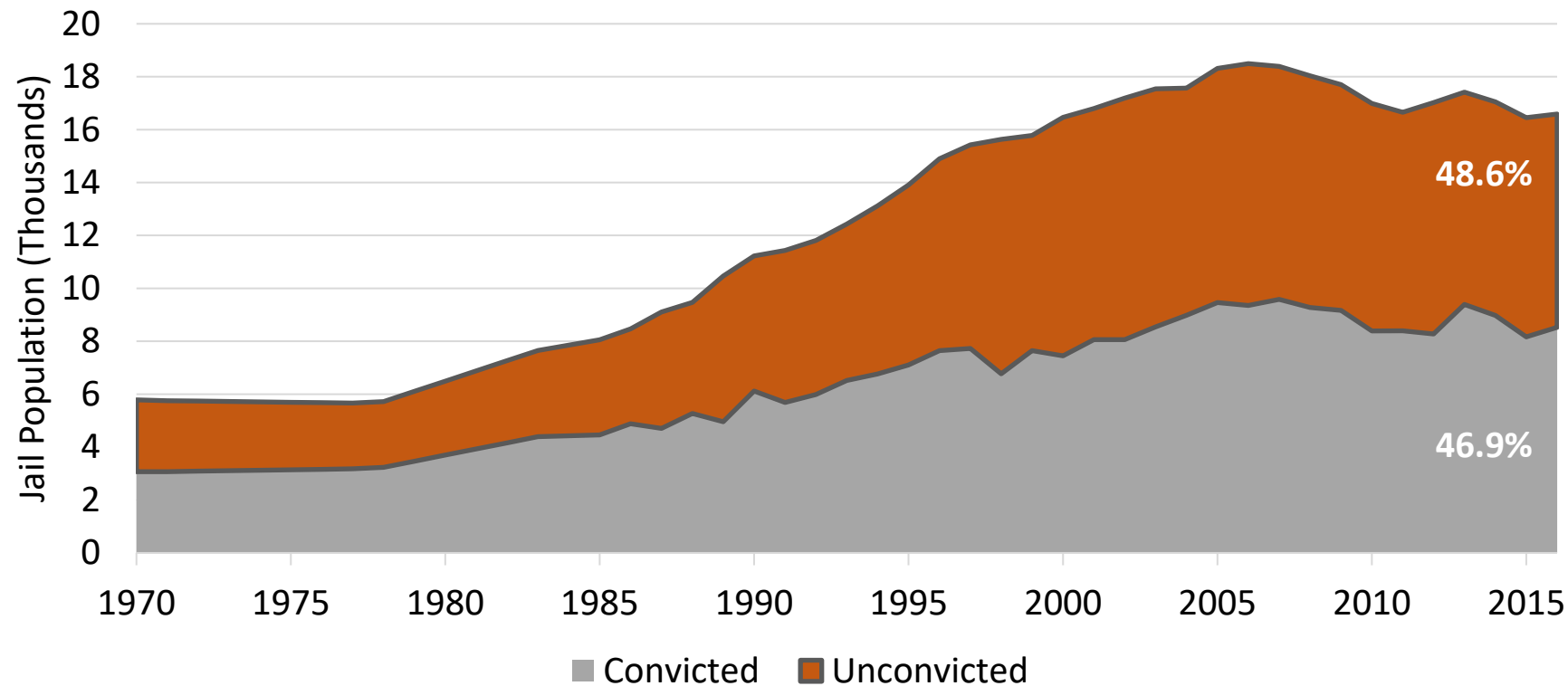
"These practices unnecessarily disrupt our businesses, destabilizing the individual's productivity and the productivity of their employer," the companies wrote in the letter.



# The Findings



Michigan's jail growth was driven equally by pretrial and sentenced populations.



# The Findings



Jail admissions were comprised of a wide ranges of offenses.

## Top 10 Offenses, Most Serious Charge at Jail Admission

1. Operating Under the Influence (OUI)
2. Assault
3. Driving Without Valid License
4. Probation/Parole Violation
5. Theft
6. Possession or Use of Controlled Substance
7. Obstruction of Justice
8. Other Person Offense
9. Domestic Violence
10. Delivery or Manufacture of Controlled Substance

In 2018, **358,000** drivers licenses were suspended for failing to appear in court or failing to pay.

Michigan has the **6<sup>th</sup> highest** rate of community supervision in the nation.

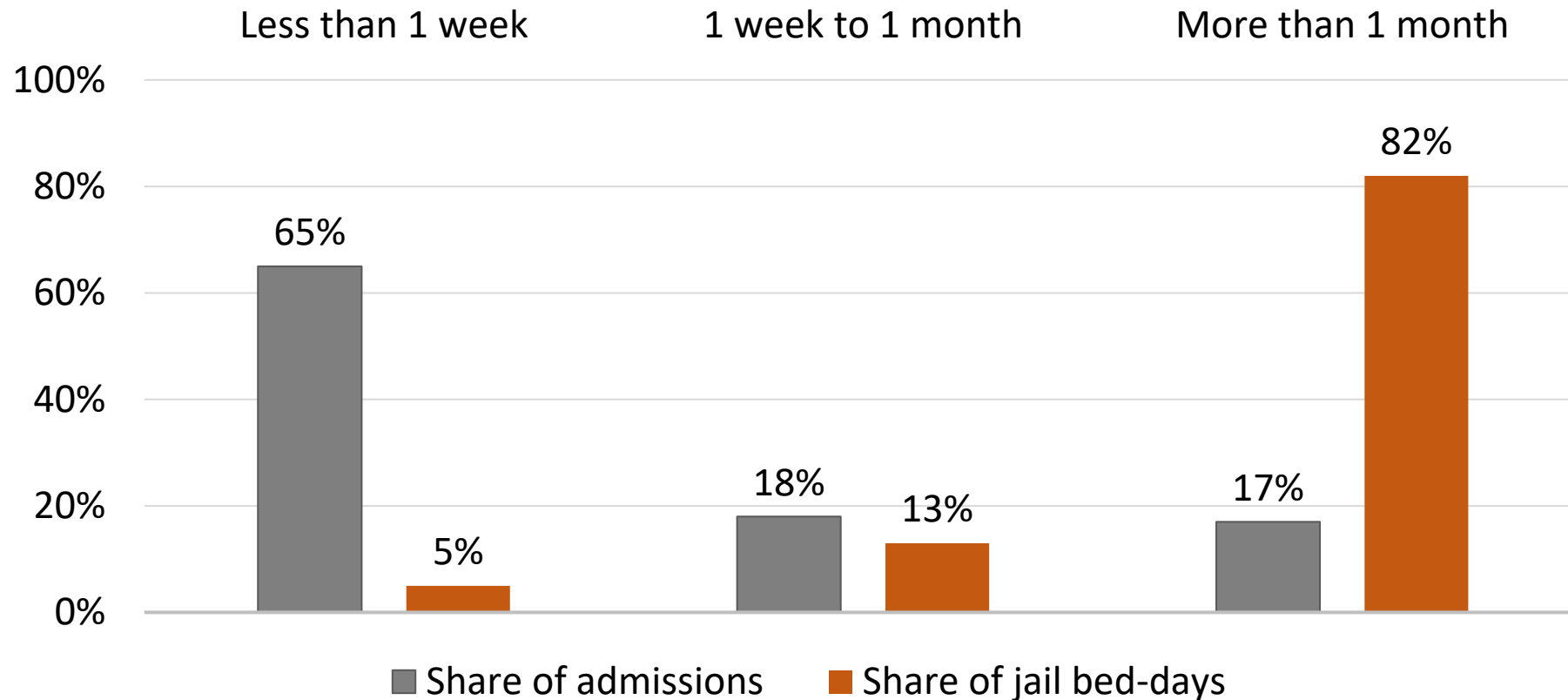
**54%** of all individuals booked in Michigan jails report some type of substance abuse issue.



# The Findings



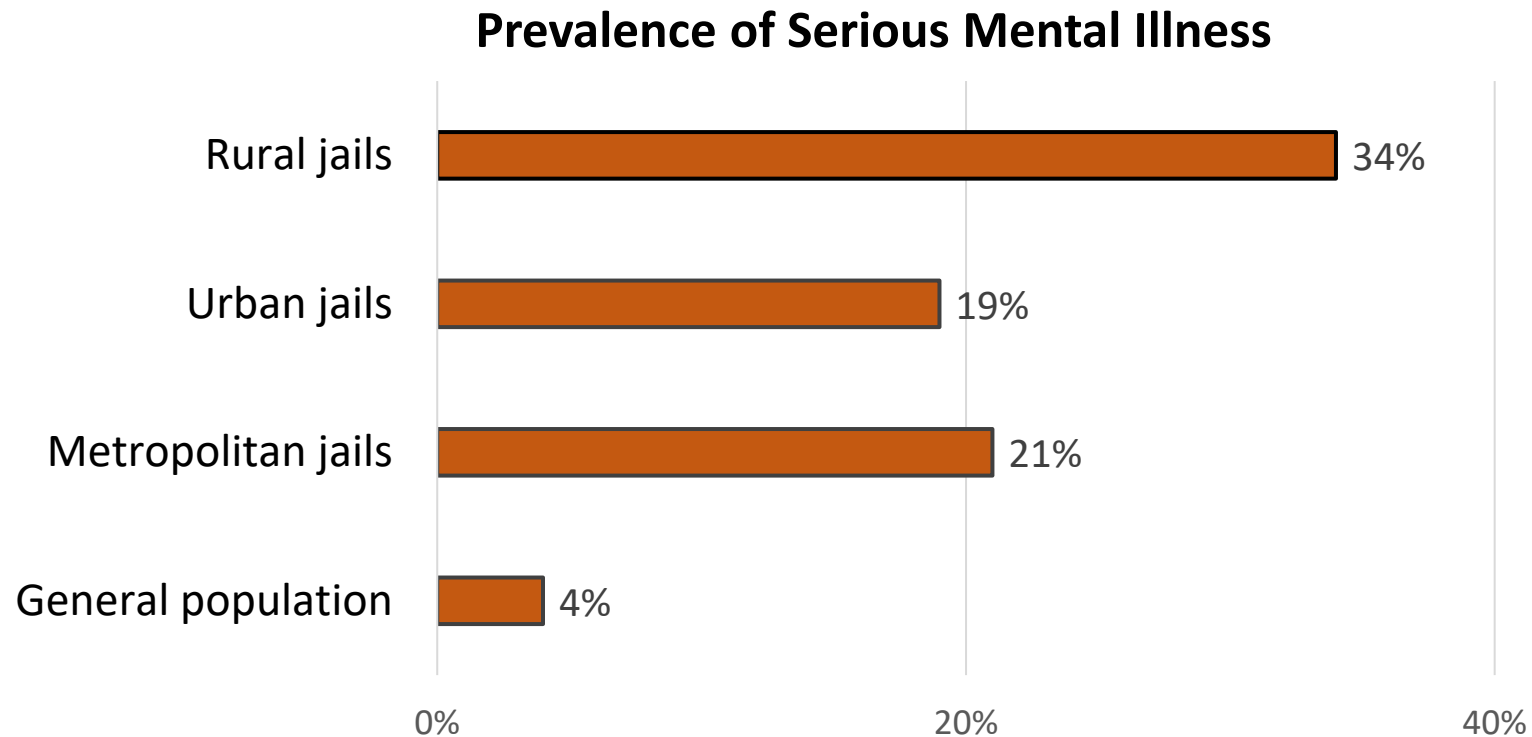
Most people stayed in jail less than a week, but the 1 in 5 who stayed longer than a month took up more than 80 percent of jail space.



# The Findings



People admitted to jail have much higher rates of serious mental illness than the general population.





# The Findings



Research suggests pretrial incarceration can have profound impacts upon individuals, families, and communities.

People held before trial are more likely to:

Fail to appear for their case	Be convicted	Increase dependence on public assistance	Lose a job, income, or residence	Experience negative impacts on dependent children	Commit crimes in the future
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# Highlights of Recommendations



- Stop suspending and revoking licenses for actions unrelated to safe driving
- Reclassify most traffic offenses as civil rather than criminal
- Expand officer discretion to use appearance tickets as an alternative to arrest and jail
- Provide crisis response training for law enforcement and encourage diversion of people with behavioral health needs
- Strengthening the presumption of release on personal recognizance and set higher thresholds for imposing other conditions (financial and nonfinancial)
- Presumptively impose sentences other than jail for non-serious misdemeanors
- Reduce fine amounts for civil infractions and require courts to determine ability to pay at sentencing and to modify unaffordable obligations.
- Invest significant resources in victim services and strengthen protection order practices
- Standardize data collection and reporting statewide



# Report presented to legislative leaders



*“We have made significant progress in reforming our criminal justice system in recent years, but there is much more we can do to protect the rights, freedoms and safety of every single Michigan resident. The House will review every one of these recommendations and begin work immediately to help protect the people of our state and give them the local and state government they deserve.”*

Speaker Lee Chatfield



# Statewide reaction very positive



[Opinion: The verdict is in; Michigan spends too much](#)

[AUDIO: Michigan's Debtors Prisons? Task Force](#)

[Detroit Today \(Jan. 30, 2020\)](#)

[Editorial: Limit license suspensions](#)

[VIDEO: Chief Justice](#)

[VIDEO: Chief Justice](#)

[Editorial: Keep men](#)

[AUDIO: Chief Justice McCormack](#)

[VIDEO: McCormack & DeRoche](#)

[Michigan plans to overhaul its justice system](#)

[Editorial: Limit license suspensions to dangerous drivers](#)

[M](#)

[Finley Court](#)

[Local sheriff hopes jail reform](#)

[Task force urges overhaul of Michigan's justice system](#)

[18 ways Michigan could change its criminal justice system](#)

[The answer to swelling jails? Stop jailing so many folks, Michigan](#)

**The verdict is in: Michigan spends too much to jail too many**

[Detroit News \(Jan. 29, 2020\)](#)  
[Economic Club \(Jan. 28, 2020\)](#)  
[Point - WDIV \(Jan. 26, 2020\)](#)

**Opinion: Michigan can reduce jail populations while preserving public safety**

[Model for others – The Economist \(Jan. 23, 2020\)](#)

[The end - Traverse City Record-Eagle \(Jan. 19, 2020\)](#)

[Reduce jail populations while preserving public safety - Detroit News \(Jan. 18, 2020\)](#)

[Safer - Detroit News \(Jan. 15, 2020\)](#)

[Lockup - WNEM \(Jan. 14, 2020\)](#)

[Jan. 14, 2020\)](#)

[Jan. 14, 2020\)](#)

[Magazine \(Jan. 14, 2020\)](#)



# What's Next? (Prior to COVID-19)



- Governor's proposed budget includes \$7.2 million to fund crisis intervention training for law enforcement.
- Implementing bills are being drafted.
- Senate and House hearings.
- Town hall meetings statewide to discuss reforms.
- Continue the remarkable bipartisan spirit and commitment to cooperation across all levels of government.
- Make Michigan a national leader in criminal justice reform that enhances and protects rights.





# Trial Court Funding Reform



- While trial court funding has been a source of debate for more than a generation, the most recent attention has been the result of the Cunningham case.
- Cunningham said: Courts can impose costs in criminal cases only if authorized by statute
- Legislative response: Authorized trial courts to levy costs, but statute includes a sunset provision that ends this authority on October 17, 2020 (Act 64 of 2017).
- The Trial Court Funding Commission was created to review and make recommendations to resolve issues regarding funding for Michigan's trial courts.



# An Inclusive Transition Plan



- We need a detailed plan for the transition to a new funding model.
- The Michigan Legislature should create a broad-based group, supported SCAO, to draft and proposed legislation to implement each recommendation.
- Success will depend on thoughtful planning of a phased implementation that recognizes it will take time to fully achieve the goals laid out in the first four recommendations.



# Establish a Stable Court Funding System



- The TCFC recommends establishing a stable court funding model to invest in improved justice and performance outcomes, building on existing resources.
- Rebalancing funding between state and local government is essential to ensure ongoing and sustainable funding.
- Establishing a funding model that is consistent, and predictable, with proportional resources across courts is essential in providing due process and judicial independence.
- This new funding model will ensure the integrity of the courts and just outcomes for all the people of Michigan.



# State to Offer all Court Technology



- To create a uniform system and alleviate burden on court funding units, the State of Michigan must fund all court technology needs.
- SCAO would offer consistent services at no cost to local government.
- Services must include case and document management, and must supply and manage technology products and services, including hardware, software, infrastructure, training, and ongoing technology support.
- Access to useable data would dramatically improved.



# Establish Uniform Assessments and Centralized Collections



- The TCFC recommends that a system of uniform assessments and centralized collections be implemented for all courts as a function of SCAO.
- Maintain judicial discretion for ordering fines within the limits set by law and determining indigence (ability to pay).
- Help ensure that the administration of justice is separate from the business function of the court.





# Move Toward a Uniform Employment System



- Michigan lacks a uniform system of justice due in large part to disparate and unequal local funding.
- All court employees, beginning with trial court judges, court administrators, and probate registers, should be transitioned to state employment, which would provide for uniform compensation, wages, and benefits as well as standardized qualifications for nonjudicial personnel, training, and conduct requirements.
- This is a long-term goal that should be achieved incrementally after other recommendations are enacted.



# What's Next for the TCFC Recommendations?



- **Get past the COVID-19 crisis.**
- **Must address the October sunset.**
- **Encourage legislative creation of transitional group.**
- **Must develop stakeholder engagement in details.**
- **Must engage the public to build support for reform.**
- **Court funding reform may never happen unless it comes from the grass roots.**



# Q & A



## ONE COURT OF JUSTICE WEBSITE

[courts.mi.gov](https://courts.mi.gov)



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[facebook.com/misupremecourt](https://facebook.com/misupremecourt)



[linkedin.com/company/michigan-supreme-court](https://linkedin.com/company/michigan-supreme-court)



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[instagram.com/msc\\_1836](https://instagram.com/msc_1836)

