

Dane County Jail Downsizing: How was it accomplished and who was still in on May 9, 2020?

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Data source: Scraping daily web reports of Dane County Jail. In custody status as of 6:30 a.m.

Concerns about the pandemic escalated during the week of March 9, 2020. Governor Evers declared a Public Health Emergency on March 12. By March 13, the University of Wisconsin Madison had announced that it would not reopen after its Spring Break, which began March 14. Concerns began to be raised about the health of people held in jails and prisons during this week. Sheriff Mahoney and other Dane County officials recognized the problem, and the data show that the Dane jail population began falling after March 15, reaching its current level by the second week in April. By April 19, five weeks later, the jail population had decreased by 39% (from 722 to 441) but the jail population stabilized after that and was 433 on May 9. The physical layout of the jail makes safe distancing and infection control nearly impossible. Despite decreasing the jail population, COVID19 did infect a significant fraction of both those in custody and the staff of the jail. Given the ongoing threat of infection and disease within the jail, members of MOSES and other concerned groups have argued that everyone who could be released from the jail should be released. As part of that discussion, this report is designed to shed light on the categories of people in the jail and who would have the authority to release them.

This report focuses on the people who were “under roof” in one of the three buildings of the Dane County jail. It excludes the 24 listed on the jail roster who are AWOL (most of whom have been AWOL for more than a year) and also excludes those who are officially in the custody of the jail but not inside one of the buildings. At 6:30 am on May 9, there were 433 people listed as “under roof” in the Dane County Jail and another 75 who were in the custody of the jail but were outside the jail. Of those 75 in custody but not under roof, 50 were listed as “DIVERSION CAMP”, 18 were listed as “STAY”, 5 as “OTCO” and 2 as “STAY-MEDICAL.”

How did the jail population decrease? Who is still in jail who was there before the pandemic downsizing? Who was been added to the jail since the pandemic downsizing? Is there a racial bias in who was released and who is still in? While the names of people and their court records are public information, there is no easy way to access these records without searching for people on at a time. This report cannot answer these important questions, and especially cannot address the racial issue as people’s race is not listed in the jail records. However, by showing various breakouts of who was in the jail, we can focus our attention on who has the authority to make these decisions.

Missing Information: Short Term Stays

This report is based on information that was collected twice a day at 6:30 am and pm. A separate study collecting data on jail bookings every 15 minutes for 16 days found between Feb 21 and March 9, before the reduction in the jail population, found that 26% of the people booked into the jail were out within 12 hours and 2/3 of these were missed in our daily data collection. A total of 69% of the people booked into the jail were released within four days and 79% within seven days. The large majority of these short stays in the jail were in pre-arraignment status. This report, which uses information collected in 35 and 20 days spans, therefore does not include possible changes in the length of stay in the jail for people who are released quickly.

Missing Information: Racial Classifications

The information available through the jail site is incomplete. People’s racial classification is not posted or available in web-scraped data. Racial classifications of people in jail have been made subjectively by some activist-analysts by looking at the pictures on the jail web site. Racial classifications are also often available in the court records, but these must be searched individually for each person’s name. There is anecdotal evidence that the proportion of people housed in the Dane jail are more disproportionately Black now than before the pandemic, but this is difficult to assess easily. MOSES has an ongoing concern with racial justice in the Madison community but it is not possible in this report to address these serious concerns about racial justice.

Because we have the names of the people who were in jail on any given date, it would be possible with work to trace the racial classification of people who were or were not released from the jail by looking each person up in the Wisconsin court records. However this would be a very time-consuming task that could never provide current information about the racial composition of the jail.

Decline in the Jail Population

Before the period of decline, the number of jail entries (313) was roughly comparable to the number of jail exits (297) within the five weeks February 9 to March 15, and the number of exits (84) and entries (81) is again roughly comparable between April 19 and May 9. But between March 15 and April 19, 350 people exited the jail but only 97 entered; the number of exits was 18% higher than for the baseline period, but the number of entries was 69% lower. So, the decrease in the jail population was accomplished primarily by admitting fewer people and only secondarily by accelerating people’s release.

Table 1.

Status	People who left jail			People who entered jail		
	Between 2/9 & 3/15 (35 days)	Between 3/15 & 4/19 (35 days)	Between 4/19 & 5/9 (20 days)	Between 2/9 & 3/15 (35 days)	Between 3/15 & 4/19 (35 days)	Between 4/19 & 5/9 (20 days)
PP hold only	54	86	12	71	26	23
Pre-Arraign	52	59	23	70	27	29
Pre-Trial	56	80	24	55	29	22
Pre-Sent	15	15	5	7	2	1
Sentenced	64	88	14	75	8	4
Prison Transit	56	22	6	35	5	2
Total	297	350	84	313	97	81
Prop change (Feb 9 to Mar 15)		0.18			-0.69	

If we look at departures from and entries to the jail as a proportion of those in the status during the period of decline, comparing February-March with March-April, we see that the proportion who departed the jail went down for people in pre-sentence status and those in transit to prison, while it went up for the pre-conviction status (PP hold, pre-arraignment, pre-trial). Looking at the other way, the

proportion in jail who were new admissions went down markedly for the post-conviction statuses and for PP holds, but held steady for pre-arraignment and pre-trial statuses.

Status	Proportion in who left jail			Proportion in who had entered jail		
	Between 2/9 & 3/15 (35 days)	Between 3/15 & 4/19 (35 days)	Between 4/19 & 5/9 (20 days)	Between 2/9 & 3/15 (35 days)	Between 3/15 & 4/19 (35 days)	Between 4/19 & 5/9 (20 days)
PP hold only	0.39	0.60	0.17	0.50	0.37	0.34
Pre-Arraign	0.49	0.67	0.66	0.80	0.77	0.85
Pre-Trial	0.29	0.41	0.17	0.28	0.21	0.16
Pre-Sent	0.44	0.35	0.16	0.16	0.06	0.03
Sentenced	0.50	0.59	0.29	0.50	0.16	0.10
Prison Transit	0.49	0.21	0.05	0.34	0.04	0.02

Then when we look at April-May (where there are 20 days instead of 35) the proportion in each category who are new to jail seems roughly comparable to the March to April period, while the proportion in jail who leave jail seems to have declined markedly for all categories except pre-arraignment, compared to both of the prior periods. There is a steady state in which some new people are coming into the jail but the whole system is moving more slowly and people are not exiting very quickly. If this continues, the jail population could grow.

Time in the Jail for those in jail May 9

Table 3 shows that 297 of the 433 in jail May 9 (69%) had been in jail continuously since March 15 (the last day before the jail population decline started) and 50% had been there since February 9. On the other hand, 136 people (32%) were added after the jail decline began, and 19% were added after April 19. That is, a significant fraction of people in jail were added after concerns about the pandemic had led to attempts to reduce the population. Some people (24 or 5.5% of the total) were in jail on February 9 or March 15 but not on April 19, or in jail in February and again in April but not in March: the last two columns of Table 2 distinguish those who appear to have been in jail continuously from those who came and went after February; they are counted as new to the jail for the month beginning their continuous stay.

Table 3. Duration of time in jail under roof May 9

Duration of Stay	Total	Percent	Only Continuous	Also earlier
In Feb 9	216	50	216	0
In March 15	81	19	81	0
In April 19	55	13	46	9
New since April 19	81	19	66	15
Total	433	101*	409	24

* Rounding error

Status on May 9

Table 4 summarizes the status of people held inside a Dane County Jail building on Friday May 9 2020 at 6:30 am. Over a quarter are prisoners in transit; 16% are held on a probation or parole violation only; 33% are held pretrial, with nearly a half of these also having a hold. Less than 10% of those in jail were serving jail sentences. Seven percent were in pre-arraignment status, again about half also with a hold, and seven percent had been convicted and were awaiting sentencing.

Table 4. Status of People Held in Dane County Jail (under roof) at 6:30 a.m. on Friday, May 9

	Number			Percent of total		
	Combined	No hold	PP Hold	No hold	PP Hold	Combined
PP hold only	68		68		16	16
Pre-Arraign	34	19	15	4	3	7
Pre-Trial	141	77	64	18	15	33
Pre-Sent	31	25	6	6	1	7
Sentenced	40	38	2	9	<1	9
Prison Transit	119	119		27		27
Column Total	433	278	155	64	36	99*

*rounding error

The authority governing release depends upon the person's status.

	Authority	
	No hold	PP Hold
PP hold only		DOC
Pre-Arraign	Court	Court + DOC
Pre-Trial	Court	Court + DOC
Pre-Sent	Court	Court + DOC
Sentenced	Court	Court + DOC
Prison Transit	DOC/Fed	

This means that the proportion of people being held May 9 under the control of various institutions is: (1) DOC community corrections 16%, (2) Courts only 37% (with no distinction in the records between county/state and federal court) (3) Court plus DOC community corrections 56% and (4) a prison system, 27%.

Table 5 shows the status as of May 9 by the duration of the person's stay in jail and the percent were added after March 15. Nearly all of those in pre-arraignment status and the majority on PP holds were added to the jail after March 15, as were nearly a third of those in pre-trial status. Only a small fraction of those who have been convicted were added after March 15.

Table 5. People under roof in jail May 9: status in jail and duration of stay.

	Since Feb 9	Since March 15	Since April 19	New since April 19	% new since March 15
PP hold only	16	14	15	23	56
Pre-Arraign	2	1	2	29	91
Pre-Trial	72	24	23	22	32
Pre-Sent	23	4	3	1	13
Sentenced	17	12	7	4	6
Prison Transit	86	26	5	2	6

Prisoners in Transit

Of the 433 people under roof on May 9, 119 or 27% were prisoners in transit of whom 112 had been in jail since March 15. Of these, 74 or 62% are federal prisoners, 41 or 34% are state prisoners, and 4 or 3% are “non-federal” prisoners. These people would have to be released by the federal or state prison authorities. Wisconsin state prisons are not admitting new people, so people are staying in jail awaiting transfer. It is possible that federal prisons also are not accepting new prisoners.

Pre-arraignment

People in general should not stay long in pre-arraignment status. The large majority of people in the status on May 9 were admitted to jail after April 19. Of the 19 people in pre-arraignment status with no PP hold on May 9, only 4 were still held in the jail on May 21 at 5pm;

1. one had been released and then re-arrested on May 20,
2. one had been in jail before the pandemic and was being held for another agency for what appears in the court a commitment for lack of competency,
3. one had been converted to pre-trial status for sexual assault of a child and was now being held for \$10,000 bail
4. one was held in early May on a range of offenses involving burglary, operating a motor vehicle without owner’s consent, and prior bail jumping with new charges added May 11 and perhaps a new arrest and had a cash bail of \$3000.

By contrast, of the 14 people in pre-arraignment status with a PP hold on May 9, only 2 have been released, the rest are still held, generally on a PP hold, sometimes a conversion to PP hold plus pretrial status. Often there is a signature bond of \$500 but the hold keeps them in jail.

Probation/Parole Hold

Of the 68 people who were on a PP hold on May 9, 11 (16%) were no longer in jail on May 24, 8 (11%) were now in prisoner transit status, 5 (7%) were now in presentence status, one now in Extended Supervision sanction status and one in pretrial status. The majority, 39 (57%) were still listed as being on a PP hold. Inspection of court records revealed that in some cases there is a new charge pending, but the court had determined that there was no urgency about a preliminary hearing as the person was already in custody. In other cases, the hold appears to be the only reason the person is still in custody. Of the 11 people no longer in jail, six had no new court case (simply released from the PP hold), one is not in the court records at all and four were released on a signature bond for a new offense after the hold was lifted.

Pre-trial

There were 141 people in pretrial status on May 9, 64 also had a PP hold and 77 did not. Those without a hold could have been released on a signature bond but if they are still in jail, the assumption is that they would need to pay a cash bail to get out of jail. The only way to learn the amount of the bail is to look up the court record for the individual. Some of the bails are set very low and some would generally have cash bails of varying amounts. The only way to determine what the cash bail amount is and whether the person is still in jail would be to check the court records and the current day's jail report. As Table 5 shows, many more people were added after March 15 in hold status than without hold status; those in pretrial status who lack holds have mostly been in jail since February and presumably have high bail amounts.

Table 5 Duration of Stay for those in pre-trial status on May 9, by hold status

Duration of Stay	No hold	Hold	Outside hold
Since Feb 9	41	47	
Since March 15	12	25	1
Since April 19	9	28	1
New since April 19	15	29	1

Conclusions & Recommendations

Jail populations normally include a high proportion of people who are held only briefly before posting bail. Because of this rapid turnover, any snapshot of the jail population in a time of change is out of date by the time the data are analyzed and the report written.

The authority to release people from jail is diffused across many different institutions. The Dane County sheriff's authority to release people from jail is legally uncertain, as, unlike some states, Wisconsin has no specific statute authorizing jails or prisons to release people for reasons of epidemic or disease.

On May 9, 27% of the people in jail were prisoners in transit, of whom 62% were federal prisoners. The authority to release these individuals lies with the federal or state court that sentenced the individuals.

The community corrections branch of the Department of Corrections has full or partial authority of a large proportion of the people in jail.

On May 9, 26% of the people in jail were on PP holds controlled by the community supervision branch of the Department of Corrections. A majority (56%) of those held on May 9 had been put into custody after the pandemic response began March 15 and most of these remained in "hold" status on May 24. The DOC should be asked whether these holds were really necessary and why they were not acting to release people more rapidly. There are cases in which it appears that the court is using the fact of the PP hold to allow it to avoid the matter of setting bail or expediting preliminary hearings.

A majority (56%) of the people in jail on May 9 were under the joint authority of the courts and the community supervision branch of the Department of Corrections. Securing their release requires the cooperation of two different systems. There are many cases in which the court has offered a signature bond but the person remains in custody due to the PP hold. There are other cases in which it appears that the court is using the fact of a PP hold to avoid the matter of bail.

Addressing these issues and proposing alternatives to release more prisoners involves untangling these tangled lines of authority and probing court records of offenses. At the same time, the ability of the system to downsize rapidly by 40% suggests that the jail population could be held to a lower level going forward.