

The City of Durham Human Relations Commission

Recommendations: Durham County Detention Facility

January 3, 2017

Updated: March 7, 2017

The Human Relations Commission recommends to Durham County the following regarding the Durham County Detention Facility (DCDF) as it concerns the residents of the City of Durham:

1. Allow a community-based research team to conduct a survey of detainees and staff of the DCDF.
2. Create a civilian oversight board for the DCDF, which includes formerly incarcerated individuals.
3. Do not institute the planned shift to video-only visitation at the DCDF.
4. Create a policy by which the public can participate in tours of the DCDF.
5. Leverage the Durham County Commissioners' authority to approve contracts and provide funding to demand more accountability and better services by private contractors and the Durham County Sheriff within the DCDF.
6. Increase resources for mental health services within the jail beyond the current level, while also implementing a mental health diversion program to connect qualifying defendants with appropriate services in lieu of detention.
7. End the use of lockbacks for jail-wide punishment and implement other responses to credible threats of violence within the DCDF.

Additionally, the Human Relations Commission recommends the following to the City, County and Judicial District of Durham as it pertains to people waiting for court proceedings in Durham:

8. Eliminate the cash bail system as well as other hindrances to releasing low-level defendants ahead of trial. Too often the current system works to keep defendants in jail solely because they cannot afford their cash bond—a direct violation of the 8th amendment, which states that “excessive bail shall not be required, nor excessive fines imposed.”
9. Expand anti-recidivism and diversion programs to minimize the number of detainees in the DCDF, namely the STARR Mental Health Program and the Misdemeanor Diversion Program.
10. Provide transparent information regarding policies and procedures, etc. with regards to noncitizen populations and limit cooperation with U.S. Immigration and Customs Enforcement (ICE).

CONTEXT

The Durham County Detention Facility detains people who have not been convicted of any crime, are mostly facing misdemeanor charges, and may be unable to pay a few hundred dollars to be released while awaiting trial. Of the detainees, the majority is people of color, which reveals the racial disparities inherent in the judicial system. Additionally, a significant portion of detainees suffer from mental illness. Most detainees are at DCDF due to charges brought by the City of Durham.

According to the Durham County Sheriff, 9,910 detainees were held in the Durham County Detention Facility (DCDF) in 2015. Most detainees (65%) are there on misdemeanor charges. The majority is held on bail of less than \$5,000, and 73% of such detainees are African American. If someone is held on a \$5,000 bail, this means they are unable to afford a bond of about \$500. One out of five people in the jail have a mental illness. Durham County Sheriff data show that 75% of the people in the jail are African American, even though only 38% of Durham County's population is African American.

A U.S. Department of Justice report found that annual admission to the DCDF has declined from about 12,000 detainees to under 10,000 detainees between 2011 and 2015. The decrease is largely due to a drop in people with felony charges; the number of people with misdemeanor charges has held relatively steady. The City of Durham was responsible for putting 60% of detainees in the jail from 2011 to 2015.

BACKGROUND

In May 2016, following several months of protests and the death of Matthew McCain in the Durham County Detention Facility, Durham community members approached the Human Relations Commission about concerns related to the conditions in the facility, and accountability of the city and county. In response, the Human Relations Commission hosted a public forum in September 2016 with panelists representing different perspectives about the jail and the people it affects.¹ To help inform the content of the Forum and to ensure that the voices of people inside the detention facility were included, the Commission invited letters from people currently detained in the jail. We received letters representing the views of 94 people inside the jail.

At the invitation of the Durham County Sheriff's Office, members of the Commission visited the DCDF for more than three hours, at which time we were able to speak with staff but not detainees. The Commission has deepened its understanding of the DCDF, its conditions, the community's concerns, the impact on people in our city, and possible solutions to these concerns. We have done this through reviewing external reports and news articles about the

¹ Link to video of the HRC's public forum, "The Impact of the Durham County Jail on Residents," can be found here: <https://www.youtube.com/watch?v=wZJEyYggrNA>

facility, listening to concerns raised in public protests during this time, and making additional inquiries to stakeholders such as the Sheriff Office, the County and community members.

The concerns raised in Durham cannot be viewed in isolation from the broader context of mass incarceration in our country. Although crime has fallen, the population of incarcerated people has exploded, quadrupling from roughly 500,000 in 1980 to over 2.3 million in 2008. Factors contributing to these increasing rates of incarceration include state and federal laws with harsh penalties such as, but not limited to, mandatory minimum sentences, zero tolerance policies, reliance on the cash bail system, and the growth of private industry profiting from increasing jail populations. The growth and consequences of incarceration have staggering racial disparities, rooted in a deep history of using criminalization as a tool of oppression of black and brown people. Here are two examples, though there are many, of the disproportionate impact of mass incarceration on the African American and Latino communities:

1. African Americans represent 12% of the total population of drug users, but 38% of those arrested for drug offenses, and 59% of those in state prison for a drug offense.
2. If African Americans and Latinos were incarcerated at the same rates of whites, today's prison and jail populations would decline by approximately 50%.²

Even just a few days of incarceration or pre-trial detention can have severe consequences, such as job loss and eviction, which can compound the reasons why people may be in jail in the first place. In light of the increasing costs of incarceration to communities, there is now a bipartisan movement to reduce the number of people incarcerated in the U.S.

What is happening in Durham is intertwined with the history and consequences of mass incarceration. In our investigation, we can see the trends present right here in our own community, particularly the racial disparities, the number of people in jail for low-level offenses, the incarceration of poor people unable to post bond, and the increasing role of private companies profiting from putting people in our jail. Durham is situated however to mitigate the impacts of incarceration on our community.

We understand that the bulk of our concerns and recommendations related to the conditions of the jail itself fall under the jurisdiction of the Durham County Commissioners or the Durham County Sheriff, rather than the Durham City Council. However, given that the City of Durham has fed over 60% of the population of the jail in the last four years, it is clear that the City itself can mitigate the harms of incarceration by addressing the way it polices and by making other investments to strengthen our communities, thus reducing the rates of incarceration.

The following provides our recommendations and findings about the impact of the Durham County Detention Facility on the citizens of the City of Durham.

² NAACP Criminal Justice Fact Sheet, <http://www.naacp.org/criminal-justice-fact-sheet/>

RECOMMENDATIONS AND FINDINGS

The following 10 recommendations are divided into two groups:

- A. Recommendations to Durham County regarding the conditions of the Durham County Detention Facility, and
- B. Recommendations to the City, County, and Judicial District of Durham as it pertains to people waiting for court proceedings in Durham.

A. Recommendations to Durham County regarding the conditions of the Durham County Detention Facility.

1. Allow a community-based research team to conduct a survey of detainees and staff of the DCDF.

The express intention of a community-based research team is to better understand the detainee experience in order to address critical, recurring grievances. We hope such transparency will not only contribute to greater understanding but also thereby ease the mounting tension between the DCDF and the portions of our community most directly affected by conditions within the jail.

This recommendation is in response to increased community focus on the Durham County Detention Facility, which includes the loss and renewal of accreditation between 2015 and 2016, three recent deaths in the facility, a months-long jail-wide lockback in 2015 which left detainees in their cells for an average of 23 hours a day and coincided with weekly protests outside the jail, a Department of Justice-issued report, repeated community demands for increased transparency and accountability, and continuing efforts by jail leadership to improve the conditions of the jail with unknown success.

The Durham-based Jail Investigation Team (JIT), which grew out of prisoner advocate and solidarity organizing, submitted a letter to the Human Relations Committee with a proposal. The JIT's chief proposal is for "an independent, community-based investigation of the jail, conducted by qualified experts working in concert with and following the leadership of those directly affected by the violence of incarceration", which "is a way to systematically document these abuses and begin to build community power to address them." The JIT is supported by over a dozen community organizations including The People's Alliance, Black Workers for Justice, Triangle Jewish Voices for Peace, Muslims for Social Justice, Showing Up for Racial Justice, Witness for Peace Southeast, and Durham Association of Educators.

Furthermore, it is the JIT's recommendation that UNC professor, Catherine Grodensky, MPH, conduct the formal survey within the jail. Grodensky has eight years of experience working on "federally-funded research projects focused on the intersection of criminal justice and public health at UNC" and she "specializes in conducting survey and qualitative research within

incarcerated populations.” Grodensky would train a team of community volunteers to conduct a non-biased survey of detainees and workers.

This recommendation seems reasonable and potentially effective in light of the ongoing grievances and wide disagreement regarding conditions within DCDF. To address a problem we need to understand the problem. This is where surveying becomes important.

As the JIT says “we need to know not just the jail’s ‘official policies’, but the way it functions in practice, and the way it regularly treats the individuals detained there. The people who know the jail best are the people who live there.” For example, “reports and inspections can tell us how many people visit the jail’s medical facilities on a monthly or weekly basis, but only prisoners can tell us when they are receiving adequate treatment...and there are things that the official reports cannot tell us...they cannot tell us about neglect or mistreatment by the jail staff.”

In response to past requests, the Durham County Sheriff’s office, which operates the jail, has ruled against such an independent, community-based investigation. During our tour of the DCDF, a representative of the Durham County Sheriff’s office said there is “no way in hell” that the community group, the Inside-Outside Alliance, is coming into the jail. He was likewise dismissive of detainee grievances, including those of neglect and retaliation by staff, as well as critical components of the report by the U.S. Department of Justice (DoJ). Major Martin pointed to the DoJ inspection as an example of allowing an independent entity into the jail. We put forth that it is important to have a community-based investigative team, with local accountability, as the DOJ is not a taxpaying entity in Durham.

We feel it is critically important to have goals following the completion and analysis of the survey data. Here are a few ways the survey results and analysis could be used:

1. The JIT intends that survey data "be available for use by Durham County Detention Facility administrators, the Durham community, and other parties interested in learning about the [incarcerated persons] and conditions inside Durham County Detention Facility.”
2. The data and analysis would inform a potential oversight board’s work to improve accountability and overall conditions for detainees.
3. The information could be used to create better-informed recommendations to the elected officials.

2. Create a civilian oversight board for the DCDF, which includes formerly incarcerated individuals.

It is clear that the issues and concerns surrounding the incarceration of people in the DCDF are complex, and will be ongoing. As Durham County moves forward in addressing these issues,

we recommend creating an oversight board to report on and make recommendations to those in charge of the DCDF.

The makeup of such an oversight board must represent key stakeholders in the detention system and those people most impacted by it. The people best positioned to understand the impact of the jail on Durham's citizens are people who have themselves been incarcerated, and thus formerly incarcerated people, their family members, and members of Durham's immigrant community need to be fairly represented.

We encourage a percentage of the board members be selected by community members and organizations. In addition, the selection process should not only be reserved for organizations that prioritize the civil and human rights of incarcerated people, but also have a percentage of board members that have been previously incarcerated in Durham County. We also recommend that no law enforcement sit on the board (thereby making it a completely civilian board).

Although some cities in North Carolina have oversight boards for their police departments, we are not aware of any jail oversight committees in NC. This may be due to the broad authority given to Sheriffs under the NC Constitution, thereby essentially allowing Sheriffs to set policy. However, when we search for civilian review or oversight boards for county sheriff and jails in other states, we are able to find a number of examples. We have identified oversight boards for county jails in NM,³ PA,⁴ CA⁵ and LA⁶.

We put forward one model for a community-based oversight board for a County Sheriff and local jail, by the Los Angeles-based, Dignity and Power Now (DPN), an alliance which works for the dignity and power of incarcerated people, their families and communities. Their report offers concrete recommendations for a robust civilian review board; "A Civilian Review Board for the Los Angeles County Sheriff's Department" was released May 19th, 2014.⁷

We would expect this volunteer review board to, among other things, intake complaints on the jail and make recommendations to the Durham County Board of Commissioners. We encourage serious outreach efforts to the community as well.

3. Do not institute the planned shift to video-only visitation at the DCDF.

During our visit to the jail and through letters received from detainees, we learned that DCDF plans to move to video-only visitation. This change means that when people come to the jail, they will only be able to talk to their loved ones via a video screen, and no longer able to visit

³ Bernalillo County, New Mexico Detention Facility Oversight Board, <http://goo.gl/OM70tp>

⁴ Allegheny County, Pennsylvania Jail Oversight Board, <http://oo.gl/qYlylu>

⁵ Los Angeles County Sheriff's Department Civilian Oversight Commission, <http://www.lacounty.gov/sheriff-oversight>

⁶ <https://opprcnola.org/2016/07/21/an-open-letter-regarding-community-oversight/>

⁷ <http://dignityandpowernow.org/wp-content/uploads/2014/11/CRBreport2014.1.pdf>

face-to-face (through a plexiglass window) as they do now. The Durham County Sheriff's office estimates that in 2015, the jail receives 30,000 visitors a year.⁸

The Durham County Sheriff states that he plans to implement video visitation as early as this Spring or Summer, and has not stated that in-person visits will also remain available.⁹ The Durham County Commissioners approved the funding for moving to video visitation in 2013.¹⁰

We are concerned about video-visitation as a way for Durham County to profit from families visiting their loved ones. The company providing telephone services for the DCDF, Global Tel*Link, promoted revenue generation as a benefit of video visitation, stating in their proposal to the County for their services: “[U]ntil now there has not been an effective way to generate revenue from [incarcerated person] visitation. GTL’s WS Solution can generate revenue, for example, by charging for extra additional visits...You might select specific days, times of day, or locations for which to charge.”¹¹ While the Durham County Sheriff states that right now the his decision is to not charge families using video visitation at the jail, this does not alleviate the concern of eliminating in-person visitation. In addition, the Sheriff notes they are deciding whether or not to charge fees for other types of video visitation, such as remote video visitation from people’s homes.¹²

We are primarily concerned about the impact of reduced visitation on the wellbeing of people inside the jail, as well as on their families. A December 2016 report by National Public Radio documents families’ concerns with video-only visitation, particularly in county jails. The report cites experts from the Prison Policy Initiative who note, “banning in-person visits in [county] jails, which are typically closer to the families, makes little sense.”¹³

To further aid the ability of people to see their loved ones, we urge that the DCDF accept identification such as the Faith Action ID and Consular ID cards to be used for in-person visitation visits.

4. Create a policy by which the public can participate in tours of the DCDF.

While we greatly appreciated the opportunity to tour the DCDF, we are concerned that there is not a formal process to do so. The Durham County Sheriff's Office indicated that community members could make a request for a tour, but that it would be considered on a case-by-case

⁸ Durham County Sheriff's Office 2015 Annual Report, <http://dconc.gov/home/showdocument?id=19766>

⁹ Memo from Durham County Sheriff Mike Andrews to Durham County Commissioners, “Human Relations Commission Draft Report,” Feb. 3, 2017

¹⁰ Durham County 2014 Budget, <http://dconc.gov/home/showdocument?id=10172>, See also 2013 Grant Award to Durham County Commissioners, <http://goo.gl/R37GBf>

¹¹ Contract between Durham County Sheriff and Global Tel*Link, April 21, 2015, Attachment B: “Global Tel*Link RFP Response Inmate Telephone Service.”

¹² Memo from Durham County Sheriff Mike Andrews to Durham County Commissioners, “Human Relations Commission Draft Report,” Feb. 3, 2017.

¹³ Natasha Haverty, “Video Visits Replace In-Person Visits in Some Jails,” Dec. 5, 2016, <http://goo.gl/cBsL5c>

basis. Throughout the DCDF tour, the Mecklenburg County facility was referenced as a comparable site. The Mecklenburg County Sheriff's Office offers two tours, one of Jail Central and one of Jail North. Often, class tours are provided at the Mecklenburg County facility through UNC-Charlotte as a tool for educational purposes as well. Mecklenburg County Sheriff's Office jail tours are offered to persons over the age of 16, for groups between 10-40 people, and last from 45 minutes to 2 hours.¹⁴ As another example, Gaston County Sheriff's Office jail tours are "offered to all citizens," including "civic organizations, schools, churches, scouts, individuals [and] juveniles with behavioral problems."¹⁵

We propose that the Durham County Sheriff follow the Mecklenburg County Sheriff's Office procedure for allowing groups to tour the facility, and when appropriate, accept alternative valid forms of identification, such as the Faith Action ID and Consular IDs.

5. Leverage the Durham County Commissioners' authority to approve contracts and provide funding to demand more accountability and better services by private contractors and the Durham County Sheriff within the DCDF.

In the letters from people inside the jail and comments from people at the public forum, there is clear concern for the low quality and high costs of services provided to people inside the jail. This includes food in the cafeteria and commissary, medical care, telephone use, care packages from family members, and receiving monetary support from friends and family members. Private companies provide all of these services. In the public forum, the Durham Sheriff's Office provided the names of these contractors as follows: Aramark (commissary), ABL Management (cafeteria), Correct Care Solutions (medical care), and Global Tel*Link (telephone, money services, and video visitation).

Food:

- Cafeteria: Many of the complaints about the food provided by Aramark included concerns such as a "LOT of soy food and sometimes meat by-product patties," and "the food is not wholesome or nourishing." In our visit to the jail, the Sheriff's Office told us that they decided to change food providers because Sheriff Andrews did not like the way the food tasted. The U.S. DOJ report echoed these concerns. In August 2016, the Durham County Commissioners approved changing food service contractors from Aramark to ABL Management.¹⁶ With the contract change, the cost per meal will fall from \$1.95 to less than \$1.33 per meal.¹⁷ The review and selection committee did not include community members or formerly incarcerated people.

¹⁴ Mecklenburg Sheriff Facility Tours, <http://www.mecksheriff.com/facilitytours.asp>

¹⁵ Gaston County Sheriff Jail Tours, <http://www.gastoncountysheriffsoffice.com/jail-tours/>

¹⁶ Durham County Board of Commissioners Meeting, Agenda, Aug. 22, 2016, <http://goo.gl/IEA207>

¹⁷ Victoria Bouloubasis, "The Durham County Jail Classifies Inmate Kitchen Workers as Volunteers," Indy Week, Sept. 14, 2016, <http://goo.gl/RIsCPn>

The ABL Management contract, which started on September 30, 2016, was not yet in effect at the time of the HRC Public Forum or receipt of the detainee letters. As such, it is not yet clear if detainee's concerns about the food have been addressed. The ABL Management contract is up for renewal by the Durham County Commissioners on June 30, 2017.

According to Durham County, efforts are underway to explore options for providing fresh, local food to people in the jail: "County staff from several departments, including the Sheriff's Office, County Manager's Office, and Soil & Water Conservation District, have been working Farmer Foodshare, Reinvestment Partners, Bull City Cool (food hub), and representatives of the Detention Facility's new food service provider, ABL Management, Inc., to develop a proposal which would starting adding some local produce and food products to add to the food service in the Detention Facility."¹⁸

- Commissary: Detainees have the option to purchase additional food or hot meals through the commissary at an additional cost. Friends and family members can also purchase a pre-determined set of commissary items on behalf of the detainee.¹⁹ Many detainees noted concerns about the "sky high costs of the commissary." They noted, "these canteen prices Aramark charge us is nothing less than criminal acts of price gouging and nobody in local government gives a damn about it because it doesn't come out of your pockets. There is absolutely no excuse for one square package of cheap ramen noodles to cost us 82 cents! One can buy 4 to 5 at any dollar store or Food Lion for \$1 and they still make a good profit. The markup should be no more than 25% to 35% for any item Aramark sells us, not 300% to 400%!" and "they sell small bags of chips and stuff that adds up to a lot of money... [If] they would sell the big bags, our money could go further." During our visit to the jail, we also noted the small sizes of the items for sale in the commissary. A list of commissary prices charged by Aramark shows that a pack of ramen costs 82 cents.²⁰

Medical Care: A consistent concern among people in the jail is both the difficulty in accessing needed medical care and the cost of available services. Letters from people in the jail noted concerns such as:

- "I'm homeless outside and can get care way better and quicker than in here."
- "I'm not getting the right medical care. I'm getting some medication I need, but I'm mental health and I need outside care."
- After returning from the hospital for internal bleeding: "Back here in the jail, they have tried to give me the wrong medication at least 3 times. They for sure don't read the kiosk... Every time you go to medical, you'll have someone different. On their computer, they don't make notes. They can't even communicate amongst themselves."

¹⁸ "County Comments and Feedback on the Human Relations Commission Draft Report," Feb. 3, 2017

¹⁹ Durham County Inmate Commissary, <http://goo.gl/KKD2Y4>

²⁰ Aramark, "Durham County Commissary," Feb.3, 2017

- The cost of a non-emergency medical visit is \$20. While state law allows this fee to be waived for people who cannot afford it, we heard concerns about whether this is happening in practice.

The medical care in the Durham County Detention Facility is provided by the private company Correct Care Solutions (CCS), at a current cost of \$3.1 million annually.²¹ CCS has been the subject of numerous lawsuits across the country, including here in North Carolina.²² Although the contract is managed by the Durham County Health Department, the Durham County Commissioners approve the contract. As a result, even the Durham Sheriff notes, “The recommendation of a community-based research team to assess medical care within the facility is more appropriately presented to the Durham County Public Health Department and the Durham County Government, the parties with a contractual agreement with CCS.”²³ The CCS contract is up for renewal in June 30, 2017.²⁴

Regarding the \$20 cost of the medical visit, Durham County provided the following information about how the Medical Unit charges and collects these costs, including the fact that it potentially creates a debt which stays on someone’s account for 3 years:

“The Medical Unit is allowed, by state statute, to charge \$20 for voluntary sick call visits. All [incarcerated persons] who request a visit to Medical are seen regardless of ability to pay. The Medical Unit does not withdraw funds from any accounts, including [incarcerated person] accounts, at the jail. The process is as follows:

- Each [incarcerated person] who goes to Medical for a Sick Call signs an Authorization to debit their accounts for the \$20 charge (If the [incarcerated person] refuses to sign the authorization, the refusal is witnessed and signed off by a staff)
- The authorizations are forwarded to Michelle Baker, the Money Intake staff
- Ms. Baker checks each [incarcerated person’s] authorization against their account.
- If the money is in the account, the account is debited.
- If no money is in the account, the debt stays on the account for 3 years.
- Ms. Baker is responsible totaling the funds and sending the check here to Health Department.
- A Payable Report is attached to the check. It shows who was charged, the number of [incarcerated persons] charged and the amount.

In calendar year 2016, \$4,333.23 was collected on behalf of the Medical Unit. Medical staff do not collect fees for services rendered. Out of the 5,607 sick call visits, the \$20 fee was paid by approximately 217 [incarcerated persons].

²¹ Virginia Bridges, “Durham Commissioners Approve Health Care Contract,” June 27, 2016, <http://goo.gl/RraSJU>

²² Danny Hooley, “Durham County Jail Provider Correct Care Solutions Faces Scrutiny,” Indy Week, Feb. 10, 2016, <http://goo.gl/BJsvfk>

²³ Memo from Durham County Sheriff Mike Andrews to Durham County Commissioners, “Human Relations Commission Draft Report,” Feb. 3, 2017

²⁴ Durham County Board of Commissioners, Agenda, June 27, 2016, <http://goo.gl/yznial>

The 5,607 sick call visits do not include Chronic Care Clinic visits, visits requested by a healthcare provider, emergency care and post-hospitalization follow up care and assessments. [Incarcerated persons] are not charged for these visits, and do not incur the costs for hospitalizations. Chronic Care Visits, assessments for opiate withdrawal, nursing pathways to determine how nursing care will be delivered, lab work, flu vaccines, and other medical services are provided for [incarcerated persons] free of charge. These costs are incurred by Durham County.”²⁵

Telephone and Money Services: One company, Global Tel*Link (GTL), operates the following services: telephone services, services for people inside the jail to receive monetary support from friends and family outside the jail, and likely the upcoming plans for video-only visitation. GTL has been under scrutiny by the ACLU, not only its high prices, but also for the commissions it provides to the county governments with which it contracts.²⁶

- Telephone costs: One letter from a person in the jail described the costs as follows, “Aramark sells us \$10 and \$20 GTL prepaid phone card, plus a \$7 fee for the card. Highway robbery!” According to the Durham County website, “A GTL account is required to accept [incarcerated person] calls from the Durham County Detention Facility.” A GTL pricing sheet shows that a call within the local calling area costs \$1.85 per call, plus 60 cents per minute. This means that a 10-minute phone call costs \$7.85. Other costs include fees for billing and adding pre-paid minutes to the account.²⁷ These fees range from \$2.00 to \$5.95. GTL contracts directly with the Durham County Sheriff. The current contract extends from April 2015 until April 2020. Under the terms of the contract, “the Durham County Sheriff generates revenue from [incarcerated person] phone calls by receiving a kickback of 50% of the charges on in-state calls made from the facility.”²⁸
- Money services: In order for family or friends to send money to people inside the jail to help pay for things like medical care, food and telephone (since people in the jail have no way of earning income), the person in the jail must set up an account with GTL. There is no fee to set up the account, but there are fees to deposit money into the account if depositing online or by phone. Information provided by Durham County shows the fees that loved ones will be charged for sending money to someone in the jail: Deposits made by credit card or debit card, or ACH transaction will carry fees ranging from \$2.95 to \$4.95. Deposits made by credit cards or debit cards will carry an additional fee of 3.5% of the deposit amount.²⁹ The only way someone can avoid these fees in Durham is to make the deposit in cash at the kiosk in the lobby or in-person at one of the appointed times in which deposits are accepted.

The Durham County Sheriff notes that revenues generated by fees charged to detainees are used to pay for other detainees’ basic needs: “Any revenue generated by commission goes

²⁵ “County Comments and Feedback on the Human Relations Commission Draft Report,” Feb. 3, 2017

²⁶ ACLU, “Prison Profiteers: Global Tel Link,” 2013, <https://www.youtube.com/watch?v=zs3WHNzOcj4>

²⁷ GTL Pricing Sheet, Feb. 3, 2017

²⁸ Contract between Durham County Sheriff and Global Tel*Link, April 21, 2015, Attachment B: “Global Tel*Link RFP Response Inmate Telephone Service.”

²⁹ Document provided by the Durham County Commissioners to the Durham Human Relations Commission, Feb. 3, 2017.

directly to the Detainee Welfare Fund which helps to pay for a variety of items and services for detainees. These funds are used to pay for [incarcerated person] vocational training, high school equivalency training for youthful offenders, library items for indigent [incarcerated persons], such as shoes and undergarments.”³⁰

6. Increase resources for mental health services within the jail beyond the current level, while also implementing a mental health diversion program to connect qualifying defendants with appropriate services in lieu of detention.

The Durham County Sheriff states that 20% of detainees have a mental illness.³¹ In 2015, this means nearly 2,000 people who passed through the jail had a mental illness. . In 2015, Durham County’s budget for the jail was \$21 million. By contrast, according to Durham County, “Mental Health Services in the jail are provided by and through the Criminal Justice Resource Center, the services are not included in the jail’s budget. For FY16-17, the allocation is over \$600,000, the contract for psychiatric services (\$74,000) is included in this amount.”³²

In October 2016, the Sheriff announced receiving about \$300,000 from the federal and county governments to be spent over a three-year period in order to develop a better system and process to identify individuals with mental health issues and to provide services based on their identified risks and needs.³³

Even with this grant, it is clear that the mental health needs in the jail far exceed the available resources. Additional training for DCDF staff, specializing in mental health, could be another improvement.³⁴

We are primarily concerned that incarceration is substituting for appropriate mental health treatments, which could help keep people out of jail. We recommend that Durham County build on its existing diversion programs, such as the Stepping Up Initiative which works to reduce the number of incarcerated persons with mental health issues,³⁵ and increase services to support

³⁰ Memo from Durham County Sheriff Mike Andrews to Durham County Commissioners, “Human Relations Commission Draft Report,” Feb. 3, 2017

³¹ Durham County Sheriff’s Office, 2015 Annual Report, <http://goo.gl/2pbyGj>

³² “County Comments and Feedback on the The Human Relations Commission Draft Report,” Feb. 3, 2017.

³³ Virginia Bridges, “Federal grant will help Durham County treat jail inmates with mental illness,” Oct. 3, 2016, <http://www.newsobserver.com/news/local/community/durham-news/article105750536.html>

³⁴ For example, reforms undertaken by the Santa Clara Jail to address mental health issues in its jail include, “Specialized training needs to be developed for all staff working with the Mentally Ill. This training must be different from that given to first responders because staff in the jail work with the mentally ill on an ongoing basis rather than responding to an individual incident.” <http://goo.gl/wRgAip>

³⁵ Durham County Criminal Justice Resource Center Annual Report, “Stepping Up Initiative,” noting “Since the fall of 2015, Durham community stakeholders have met to implement the Stepping Up Initiative approach. Chaired by a county commissioner and a criminal justice agency administrator, this committee has sought to find ways to fill the gaps of service for the mentally challenged criminal justice population. With the goal of greatly reducing the individuals who cycle through the criminal justice system, the

people in the community with mental illness in order to keep them from being incarcerated in the first place.

We are thankful to hear of existing plans to expand support for mental health needs³⁶

- Durham County plans to implement a Mental Health Diversion Court Program which is scheduled to start in early 2017
- Durham County expanded Jail Mental Health Services in fiscal year 2017 by enhanced coordination of release planning with the Public Defender's Office, as well as adding a Peer Support Specialist to provide follow up services at and after discharge (including housing and other supports) and two additional hours per week to the Psychiatrist's contract.

7. End the use of lockbacks for jail-wide punishment and implement other responses to credible threats of violence within the DCDF.

In 2015, the Durham community inside and outside of the jail raised concerns about the use of lockback measures in the jail, during which time people remained in their cells between 22 and 23 hours a day. When Human Relations Commission members asked during our jail visit, about these lockback conditions, the Durham Sheriff's office stated that the lockbacks went as strict as limiting detainees to 3 to 4 hours a day out of their cells. In its report, the US DoJ noted: "One consequence of this approach is that s are less able to have time out of their cell, which could potentially increase the overall agitation level of the population."

In this process, we also learned that even during normal time, when lockback procedures are not in effect, people are in their cells for significant time, without the option for any activities. For example, we learned during our visit that people are not allowed to have pencils in their cells to write letters. Staff indicated that incarcerated persons who are bunked are able to perhaps play cards with each other. The U.S. DoJ report also noted that people are allowed to access the library for only 20 minutes every two weeks.

Both the US DoJ report and our visit to the jail confirm that people remain inside their cell between 16 and 14 hours a day. The time spent inside of their housing pod is even greater. The US DoJ noted, "With the exception of the workforce and a few treatment programs, [incarcerated persons] are locked in their housing unit for approximately 23-24 hours each day with the dayroom being considered an acceptable recreation area. Any person left with so much unoccupied time will often find counterproductive activities to fill that time."

In addition, currently only about 50 of the approximately 500 people in the jail at any given time participate in the "workforce" program. During our visit, staff told us that people could work

Durham Stepping Up initiative will press forward diverting mentally ill persons from jail to crisis facilities when appropriate, treat inmates with medication and connect discharged inmates with ongoing treatment."

³⁶ "County Comments and Feedback on the The Human Relations Commission Draft Report," Feb. 3, 2017

assisting with jail duties, on tasks such as laundry, cleaning, or kitchen detail. Staff referred to people in the workforce program as “volunteers.” The staff explained that detainees are not paid for the labor in the form of monetary compensation. Rather, state law allows people’s labor be counted towards reducing their sentence—a four day reduction for every 30 days of work. Unrelatedly, the people who had participated in this program brought concerns about the volunteer nature of their work to the media’s attention:

“Vincent...will go to court after already serving six months in the Durham County Detention Facility to learn whether he still owes the state \$900 in unpaid child support, which led to his incarceration. This, despite the fact that he worked essentially full time in the jail's kitchen while he was locked up—all unpaid. Technically, he was a volunteer, though he chuckles at that description. "If you're going to hire inmates, you should pay them," he says. "How can you work for someone, get released, and then still owe money?”³⁷

The U.S. Department of Justice recommended providing more programs in housing units, and that perhaps these programs could be set up as therapeutic communities. We also recommend that people who are in the jail and providing work for its services be fairly compensated for their labor.

B. Recommendations to the City, County and Judicial District of Durham as it pertains to people waiting for court proceedings in Durham.

8. Eliminate the cash bail system as well as other hindrances to releasing low-level defendants ahead of trial. Too often the current system works to keep defendants in jail solely because they cannot afford their cash bond, a direct violation of the 8th amendment, which states that “excessive bail shall not be required, nor excessive fines imposed.”

In the public forum, the community expressed a lot of concern about people unable to afford bail, or to post bond, even for minor offenses. During the Public Forum, the Durham County Sheriff’s office noted that young men are in jail for lack of paying child support, and it’s the dumbest thing in the world to have them in jail where they can’t work and thus can’t pay child support. Similarly, Umar Salute Muhammad of the Southern Coalition for Social Justice provided an example of exactly this scenario of someone in the jail at the time of the Forum, based on data provide by the Durham County Sheriff: an African-American male in jail for 34 days in jail for not paying child support.

Data presented at the Public Forum showed that many people are in the jail, unable to post a bond of a few hundred dollars. Data show that between June and July 2016, the majority of people in the jail were held on bail of less than \$5,000 and 73% of them were African American. If someone is able to afford to post a bond, then they can be released from incarceration until

³⁷ Victoria Bouloubasis, “The Durham County Jail Classifies Inmate Kitchen Workers as Volunteers,” Indy Week, Sept. 14, 2016, <http://goo.gl/RIsCPn>

their trial date. Typically, posting a bond costs between 10% and 15% of the bail amount. This means that the majority of people in the DCDF are unable to pay a bond of \$500-750. In short, those who cannot afford to post their bond remain incarcerated until their trial. In Durham, bail policy is set by the Chief District Court Judge and the Senior Resident Superior Court Judge, but judges and magistrates can use their own discretion in setting bond amounts for individual cases.³⁸

Even three days of incarceration can have devastating consequences including job loss, eviction or having their children taken away.³⁹ The Movement for Black Lives notes that nationally, “Low-income people who are arrested spend an average of 23 days in a cage *before* their day in court simply because they often cannot afford to pay bail” and that “Black defendants have 44 percent higher odds of being denied bail and kept in jail pretrial than white defendants with similar legal circumstances.”⁴⁰ Many jurisdictions across the country are being successfully sued for their unconstitutional cash bail systems, such as in Jennings, Missouri, which reached a \$4 million settlement with agreements to eliminate cash bail.⁴¹

In 2009, Charlotte-Mecklenburg began assessing ways it could change its bail process to “be consistent with the concept of pretrial justice.” They engaged an intergovernmental task force, sought the help of non-profit Luminosity to conduct a system-wide assessment of their bail practices, and within 6-months of the report implemented a series of changes to reduce reliance on cash bail for pre-trial detention.⁴² A 2010 report reported on the first three months of implementation of the changes, finding: a decline in the average bond amount, an increase in releases, and no increase in new arrests of people waiting for court date.⁴³

Durham County’s Criminal Justice Resource Center already provides some limited pre-trial services that help divert people from being detained in the DCDF while they wait for trial.⁴⁴ In 2015, of the approximately 500 cases, 78% of people diverted from detention attended all court dates without acquiring a new charge, 94% attended all required court dates, and 93% did not obtain any new charges. As a result, this work reduced the number of jail bed days by 39,000 and achieved more than \$3.8 million in savings. According to information provided by Durham County, plans are underway to expand its pre-trial services, “In FY17, Durham County funded a one position each in the District Attorney’s and the Public Defender’s Offices to support jail management efforts and assist in identifying individuals appropriate for release. Pretrial Services also added staff to expand its operating hours to evenings and weekends.”⁴⁵

³⁸ Memo from Durham County Sheriff Mike Andrews to Durham County Commissioners, “Human Relations Commission Draft Report,” Feb. 3, 2017

³⁹ Pretrial Justice Initiative, www.pji.org

⁴⁰ Movement for Black Lives, <https://policy.m4bl.org/end-war-on-black-people/>

⁴¹ St. Louis American, “Federal judge settles Jennings jail case,” Dec. 2016, <http://goo.gl/LoFQOS>

⁴² Luminosity, “Mecklenburg County Bail Process Re-Engineering,” <http://goo.gl/Q4m0aQ>

⁴³ “2010 Bail Policy Review,” Mecklenburg County Manager’s Office, <http://goo.gl/I3C96X>

⁴⁴ Durham County Criminal Justice Center, 2015 Annual Report, <http://goo.gl/cFpaVo>

⁴⁵ “County Comments and Feedback on the The Human Relations Commission Draft Report,” Feb. 3, 2017

Meanwhile, the Movement for Black Lives points to Washington DC as a model for addressing racial and class disparities in pretrial incarceration:⁴⁶

- 85% of defendants are released without bail, 88% of them show up for their court dates, and 88% of them stay out of trouble while free. Of those re-arrested, less than 1% are alleged to have committed a violent crime.
- Most significantly, and unique in the entire nation, the District accomplishes this without using money bonds.
- DC saves at least \$398 million a year by releasing defendants into supervision programs that are far less expensive than keeping the defendants behind bars.⁴⁷

Several intergovernmental components of Washington D.C.'s bail system qualify as "best practices" in a system of effective pretrial justice, including:⁴⁸

- A *bail statute* that emphasizes least restrictive release for eligible defendants, statutory-based detention for those who would pose an unacceptable risk to the community, and an absolute prohibition on money-based detention.
- Progressive use of "*cite-and-release*" procedures by the Metropolitan Police Department for low risk defendants charged with misdemeanors. Citation release has helped increase the proportion (about 20% of persons securing release) of lower-risk defendants released on personal recognizance without supervision.
- *Quick assignment of defense counsel* prior to initial appearance. This affords defendants an effective advocate to support appropriate conditions of supervision.
- *Prosecutorial charging decisions* made within 24 hours of arrest. By statute, the United States Attorney must decide whether to charge arrestees or dispose of ("no paper") the complaint. Quick charging decisions ensure that release/detention decisions are based on the most accurate charges and that defendants are not detained on charges that eventually are dismissed days or sometimes weeks later.
- A *high-functioning pretrial services agency* that helps courts make informed pretrial release and detention decisions and provides appropriate levels of supervision and treatment for released defendants. This has been a critical component of the court's ability to move away from the money-driven system we had in 1970s and even the 1980s (in addition to the critical statutory language).

We note specific concerns that require more exploration as it pertains to bail for immigrants who may encounter Immigration and Customs Enforcement during their time at DCDF. Anecdotally, we heard from community members that remaining in the detention facility might also provide them with a longer amount of time to fight immigration detainers that may be placed on them. Recommendation 10 also relates to these concerns.

⁴⁶ Pretrial Services Agency for the District of Columbia, <https://www.psa.gov/?q=node/390>

⁴⁷ Sara Dorn, "How D.C. Court Reforms Save \$398 Million," Cleveland.com, Nov. 21, 2016 http://www.cleveland.com/metro/index.ssf/2016/05/how_dc_court_reforms_save_398.html

⁴⁸ Pretrial Services Agency for the District of Columbia, <http://goo.gl/KmXisM>

Overall, we think that eliminating cash bail for pre-trial detention in Durham would have many significant benefits for the community. Primarily, it would greatly reduce the collateral consequences of even just three days of incarceration, such as job loss, eviction and loss of child custody. Thus, it may help keep people and families stable as people await their trial. Additionally, it has the potential to result in significant savings to the County itself, perhaps as much as \$11 million a year. (See savings estimations below).

Estimated Savings of Eliminating Cash Bail for Pre-Trial Detention in Durham

Scenario 1: Estimated Savings Eliminating Cash Bail for All Pre-Trial Detention

People Admitted to DCDF in 2015	9,910
Held on Pre-Trial Detention (57%)	5,649
Average Number of Days Detained DCDF	19
Cost Per Day to Hold Someone at DCDF	\$110
Total Savings	\$11,805,783

Scenario 2: Estimated Savings of Eliminating Cash Bail for Pre-Trial Detention of People with Misdemeanor Charges

People Admitted to DCDF in 2015	9,910
Held on Misdemeanor Charges in 2015 (65%)	6,471
Held on Pre-Trial Detention (57%)	3,672
Average Number of Days Detained DCDF	19
Cost Per Day to Hold Someone at DCDF	\$110
Total Savings	\$7,708,902

Notes:

- “People Admitted to DCDF in 2015,” “Held on Misdemeanor Charges in 2015,” “Average Number of Days Detained DCDF,” and “Cost Per Day to Hold Someone at DCDF,” are from the Durham County Sheriff 2015 Annual Report, <http://dconc.gov/home/showdocument?id=19766>, page 7.
- “Held on Pre-Trial Detention” is directly from the 2013 Durham County Budget, providing the data for 2012, the last year that the data was reported. It reflects the percent of the 2012 DCDF population that was in pre-trial status. Also reported, in 2012, the average stay for pre-trial detainees was 21 day. For sentenced detainees, it was 31 days. <http://dconc.gov/home/showdocument?id=7972>

9. Expand anti-recidivism and diversion programs to minimize the number of detainees in the DCDF, namely the STARR Mental Health Program and the Misdemeanor Diversion Program.

In the letters received by people in the jail and in the public forum, several programs were highlighted as having success in reducing the harms of incarceration.

- The STARR program was recognized many times in the letters as being very helpful. The STARR program provides substance abuse treatment to people inside the jail, as well as provides transitional support upon release.⁴⁹ STARR is a program of Criminal Justice Resource Center (CJRC) and therefore part of CJRC's budget. STARR is funded entirely by Durham County.⁵⁰ The Durham County Sheriff also "embraces its value and willingly grant the program space, time, and other resources inside the facility to help detainees struggling with addiction."⁵¹ Durham County states that the STARR program is not at capacity and provides the examples of reasons why people may not be admitted into STARR: classification, prior attendance, court status.⁵² We urge continued resources dedicated to the STARR program, as well as increased substance abuse treatment for people in Durham to prevent people from being incarcerated in the first place.
- The Durham County Misdemeanor Diversion Program (MDP) "is a 90 day diversion program that seeks to avoid a first arrest for many low-risk youth in Durham County, keeping youth out of the adult criminal system."⁵³ People between the ages of 16 and 21 who are charged with a misdemeanor and do not have a prior offense are eligible. Whether eligible people are referred to the program is dependent on the referrals by law enforcement officers in the Durham Police Department and Durham County Sheriff's office.
 - 263 people between 16-21 year olds have participated. 98% of them have completed the program.
 - All youth are required to attend a Diversion Court session. Direct and collateral consequences of adult criminal involvement are explained and reviewed by Judge and attorneys.
 - In the words of the Durham Police Department, "The Misdemeanor Diversion Program is an opportunity for us to measure or impact within the community, not in the number of arrests made, but in the number of lives changed."

Kelly Andrews, MDP's program coordinator, says that MDP "is a wonderful way for us to reduce the amount of young people in jail and curtail the collateral consequences of an adult arrest record. As of now, we have funding for MDP from a Governor's Crime Commission (GCC) grant; therefore, there are limitations via the grant funding to populations we are allowed to

⁴⁹ Durham County Criminal Justice Resource Center, STARR Program, <http://goo.gl/9Mcn6A>

⁵⁰ "County Comments and Feedback on the Human Relations Commission Draft Report," Feb. 3, 2017

⁵¹ Memo from Durham County Sheriff Mike Andrews to Durham County Commissioners, "Human Relations Commission Draft Report," Feb. 3, 2017

⁵² "County Comments and Feedback on the The Human Relations Commission Draft Report," Feb. 3, 2017

⁵³ Durham County Criminal Justice Resource Center, Misdemeanor Diversion Program, <http://goo.gl/Sweru3>

serve. Once the grant is over, we do hope to expand diversion efforts to more age ranges, perhaps additional allegations, and levels of need.”

Judge Marcia Morey has been instrumental in implementing the misdemeanor pre-arrest diversion program to Durham and advocating for pretrial services. She specifies that while MDP is currently for 16 to 21 year olds, she would like “it to be for anyone who does not have a criminal record.

The police chief is on board to make it mandatory for all young people up to 21. Getting line officers to follow this policy is a challenge. The sheriff’s office also needs to buy into it more.”

We wholeheartedly support Judge Morey and the police chief in advocating for an expanded MDP. We recommend that MDP be expanded at first opportunity to include defendants of all ages without a criminal record as well as all youth. We also recommend that the Sheriff join the Police Chief in directing their officers and deputies to refer all applicable offenders to the program.

We also recommend that Durham look to see if the King County, Washington LEAD program may complement our current programs.⁵⁴ LEAD is “a pre-booking diversion program that allows officers to redirect low-level offenders engaged in drugs or prostitution activity to community-based services instead of jail and prosecution.” The Durham FADE coalition first brought the LEAD program to the Human Relations Commission in 2013. According to Durham County, “Members of the Durham Crime Cabinet have already begun looking at the Law Enforcement Assisted Diversion (LEAD) model. The November meeting included a presentation by the North Carolina Harm Reduction Coalition on the implementation of LEAD in Fayetteville and there have been follow up discussions to explore the feasibility of the program for Durham.”⁵⁵

10. Provide transparent information regarding policies and procedures, etc. with regards to noncitizen populations and limit cooperation with U.S. Immigration and Customs Enforcement (ICE).

Durham County Sheriff Mike Andrews recently stated during a Faith Action ID outreach meeting that the Durham County Sheriff’s Office participates in Secure Communities,⁵⁶ an information-sharing program between local, state and federal law enforcement agencies to determine the immigration status of arrested individuals. The Durham County Sheriff confirms that, “Typically, an arrestee’s immigration status is determined during the intake process at the Durham County Detention Facility,”⁵⁷ meaning possibly before they have been convicted of any crime.

⁵⁴ Law Enforcement Assisted Diversion, <http://leadkingcounty.org/about/>

⁵⁵ “County Comments and Feedback on the Human Relations Commission Draft Report,” Feb. 3, 2017

⁵⁶ <https://www.ice.gov/secure-communities>

⁵⁷ Memo from Durham County Sheriff Mike Andrews to Durham County Commissioners, “Human Relations Commission Draft Report,” Feb. 3, 2017

Local officers send the fingerprints of arrested individuals to the federal government to be checked against federal immigration databases. If U.S. Immigration and Customs Enforcement (ICE) wants to assume custody of an individual for deportation purposes, it can issue an immigration detainer to the local jail—a written request to detain the named individual for up to 48 hours after that person would otherwise be released from criminal custody.

We have heard anecdotally from community members that the DCDF has held non-citizens for ICE pick-up after they posted bond or after their criminal case was resolved. It is unclear, however, whether the Sheriff's Office tracks the number of non-citizens it books and processes and whether the Sheriff's Office has any sort of official policy in place regarding whether it will honor a request from ICE to detain a non-citizen solely for immigration purposes.

National organizations like the Immigrant Legal Resource Center, which work with local law enforcement agencies around immigration enforcement, have found:

“tremendous success of local policies that disentangle local law enforcement from ICE, and we continue to support those initiatives. Immigrants who know that their local law enforcement agents are not involved in deportations are better integrated, more secure, and more involved in our communities. Their children are less likely to live in fear of losing a parent. Crime has continued to fall.”

The Durham City Police Department has also previously supported the separation of immigration enforcement from local policing: “It will cause individuals to flee the police, on the belief that some minor incident is going to get them deported.”⁵⁸ In 2003, the City of Durham passed a resolution stating that “Durham employees and officers shall not inquire or seek to obtain the immigration status of individuals, unless otherwise required as part of their duties.”⁵⁹

Moreover, over two hundred jurisdictions across the country—including many in Washington, Colorado, New Mexico, Illinois, California, Oregon, and Vermont—no longer comply with ICE detainer requests, or comply with them only in limited circumstances due to concerns regarding legal liability. Detainer lawsuits occur regularly, and a number of courts have held that holding an individual on an ICE detainer is an illegal arrest where it is not based on probable cause.⁶⁰ For example, in 2015, Clackamas County, Oregon agreed to pay \$30,100 settlement to an undocumented immigrant because the Court found that her detention on the basis of an ICE hold was unlawful.

In addition to potential legal liability, holding people at ICE's request costs local jurisdictions money. For that reason, some localities, such as Washington, D.C., will only honor ICE detainers if the federal government agrees to pay the full cost of the detention (and where the

⁵⁸ “Sanctuary City Ban Brings Uncertainty to North Carolina,” News and Observer, Nov. 20, 2015, <http://goo.gl/jU1V6z>

⁵⁹ “Durham leaders reviewing anti-Sanctuary City law,” News and Observer, Nov. 20, 2015, <http://www.newsobserver.com/news/local/community/durham-news/article42199959.html>

⁶⁰ See *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015).

underlying convictions are deemed dangerous).⁶¹ It would be helpful to know the costs to Durham County taxpayers of holding non-citizens solely for immigration purposes.

We recommend:

- Proper documentation be provided to detained persons and their lawyers regarding any ICE notifications, ICE holds, ICE transfer requests, etc. and that this information be updated on the Detention facility's website within a timely manner.
- Durham City and County limit its compliance of ICE detainers based on best practices.
- Increased transparency regarding the ability for non-citizens to access programs within the facility, particularly in regards to their treatment while in custody.
- Increased transparency regarding the costs to taxpayers.

⁶¹ https://www.ilrc.org/sites/default/files/resources/21_-_washington_dc_ordinance.pdf