



THE SYCAMORE INSTITUTE

PRE-TRIAL DETENTION IN TENNESSEE

This report provides context for discussions about criminal justice reform, using historical data to reveal trends in Tennessee's incarcerated and corrections populations. It focuses on Tennessee's pre-trial detainees – individuals held in local jails before a trial, conviction, or acquittal.

Other reports in this series look at [historical trends in Tennessee's incarcerated populations](#), [the budgetary aspects of incarceration in Tennessee](#), and [community supervision, prison releases, and recidivism](#) for state felony offenses.

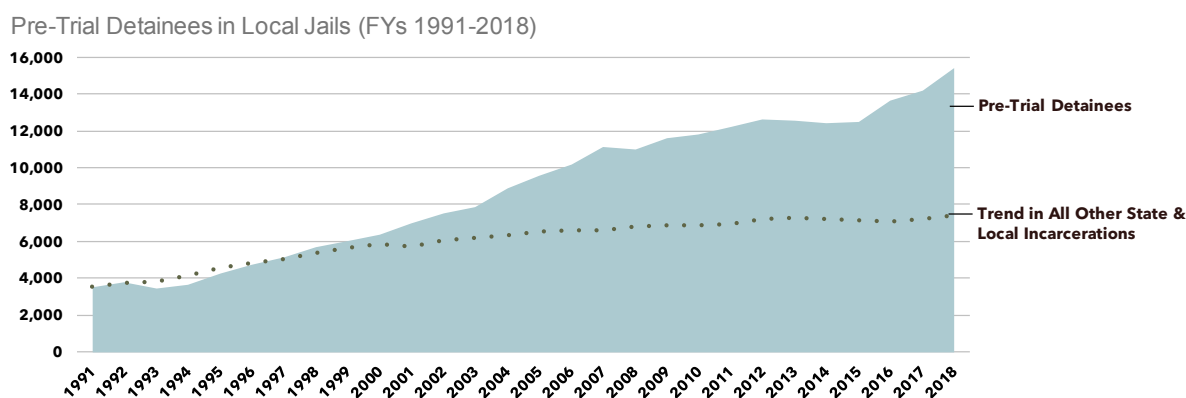
KEY TAKEAWAYS

- In 2018, local jails held about 15,400 pre-trial detainees, or people awaiting trial, conviction, or acquittal for felony or misdemeanor charges.
- Tennessee's pre-trial detainee population has grown faster than all other state and local incarcerations, accounting for 38% of the growth in total incarcerations from 1991-2018.
- Pre-trial detainees were 51% of Tennessee's local jail population in 2018, up from 30% in 1990.
- The state does not reimburse counties for housing inmates awaiting trial on felony charges. Pre-trial detention does directly affect the finances of local government and households.

Trends in Pre-Trial Detention

In 2018, local jails held about 15,400 pre-trial detainees, or people awaiting trial, conviction, or acquittal for felony or misdemeanor charges. (1) (2) From FYs 1991-2018, Tennessee's pre-trial detainee population grew faster (336%) than all other state and local incarcerations (109%) (**Figure 1**).

Figure 1. Pre-Trial Detention Has Grown Faster Than All Other State & Local Incarcerations in Tennessee



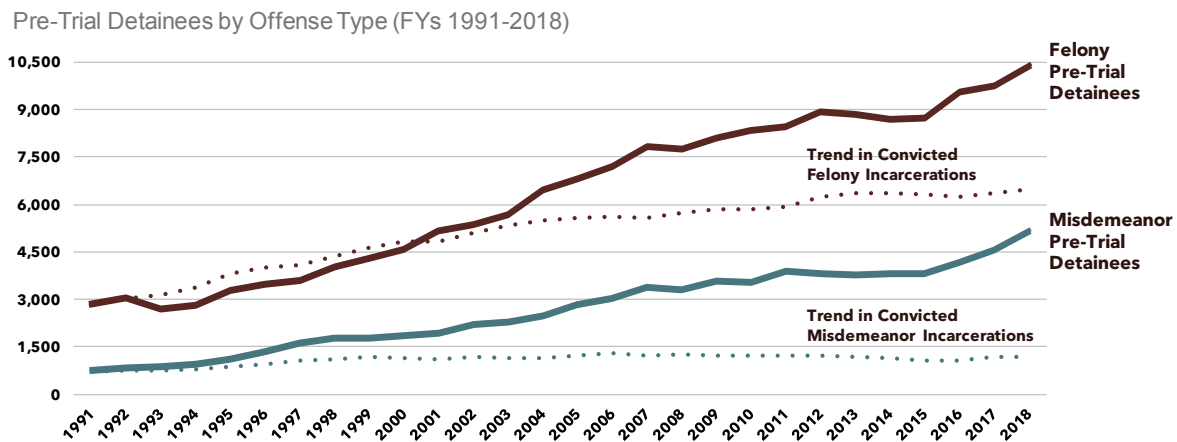
Incarceration numbers represent state fiscal year monthly averages.

Source: The Sycamore Institute's analysis of data from TDOC (1) (2)

Two-thirds of pre-trial detainees in 2018 were held on felony charges, while the other third were charged with misdemeanors. Both groups have grown faster than convicted incarcerations (Figure 2). From FYs 1991-2018, pre-trial detentions for felonies grew 266% while [the state prisoner population](#) (i.e. convicted felony offenders) increased 129%. Pre-trial detention for misdemeanors rose 612% compared to 66% growth in incarceration for misdemeanor convictions.

Pre-trial detainees accounted for 38% of the growth in total incarcerations from 1991 to 2018 (Figure 3). During that period, pre-trial detainees went from 17% of all incarcerations to 29%.

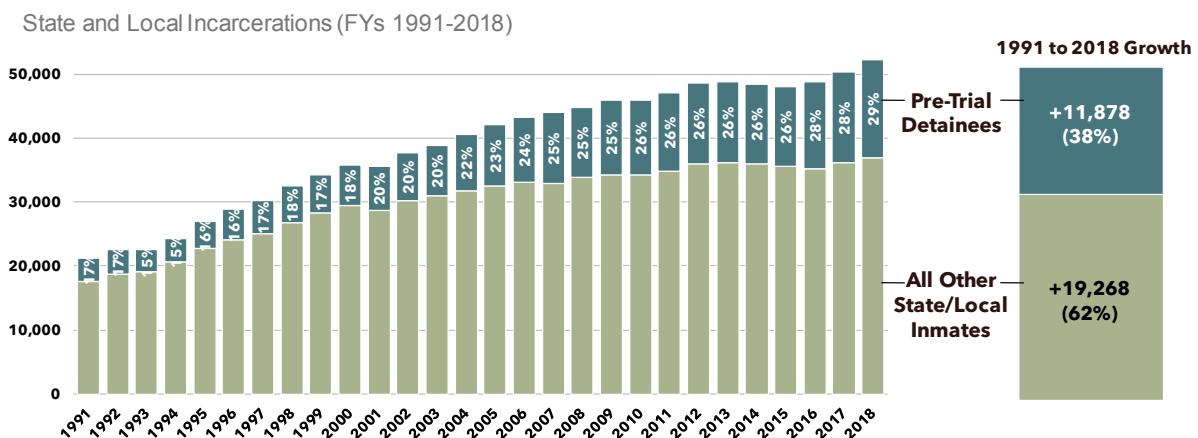
Figure 2. Two-Thirds of Tennessee's Pre-Trial Detainees Were Held on Felony Charges in 2018



Incarceration numbers represent state fiscal year monthly averages.

Source: The Sycamore Institute's analysis of data from TDOC (1) (2)

Figure 3. Pre-Trial Detention Accounts for 38% of the Growth in Tennessee's State and Local Incarcerations Since 1991



Incarceration numbers represent state fiscal year monthly averages and include all individuals incarcerated in state prisons and local jails for felonies and misdemeanors, including pre-trial detainees.

Source: The Sycamore Institute's analysis of data from TDOC (1) (2)

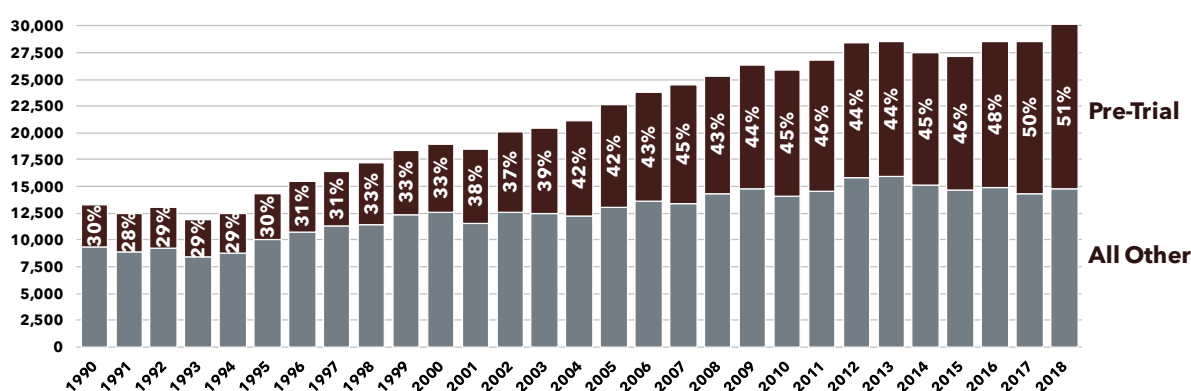
Pre-Trial Detainees Are a Growing Share of Local Jail Populations

Pre-trial detainees were 51% of Tennessee's local jail population in 2018, up from 30% in 1990 (Figure 4). (1) For context, 65% of local jail inmates nationwide had not been convicted in 2016. (3)

Local jails vary widely in the share of inmates who are pre-trial detainees (Figure 5). For example, a one-day snapshot from July 31, 2018 showed 86% of Meigs County Jail inmates were pre-trial detainees while Henderson County had 26%. (4) Historical data shows that most counties had a higher share of pre-trial detainees in July 2018 than they did in July 2000 (Figure 6).

Figure 4. Half of Tennessee's Local Jail Inmates Were Pre-Trial Detainees in 2018, Up from 30% in 1990

Local Jail Populations by Incarceration Type (FYs 1990-2018)

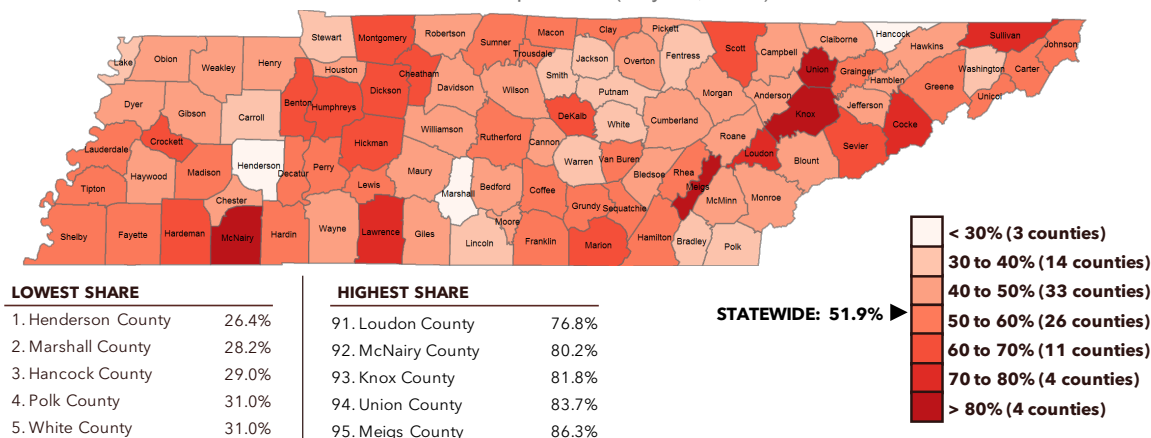


Represent state fiscal year monthly averages.

Source: The Sycamore Institute's analysis of data from TDOC (1)

Figure 5. Local Tennessee Jails Vary Widely in the Share of Inmates Who Are Pre-Trial Detainees

Pre-Trial Detainees as a Share of Total Local Jail Populations (July 31, 2018)

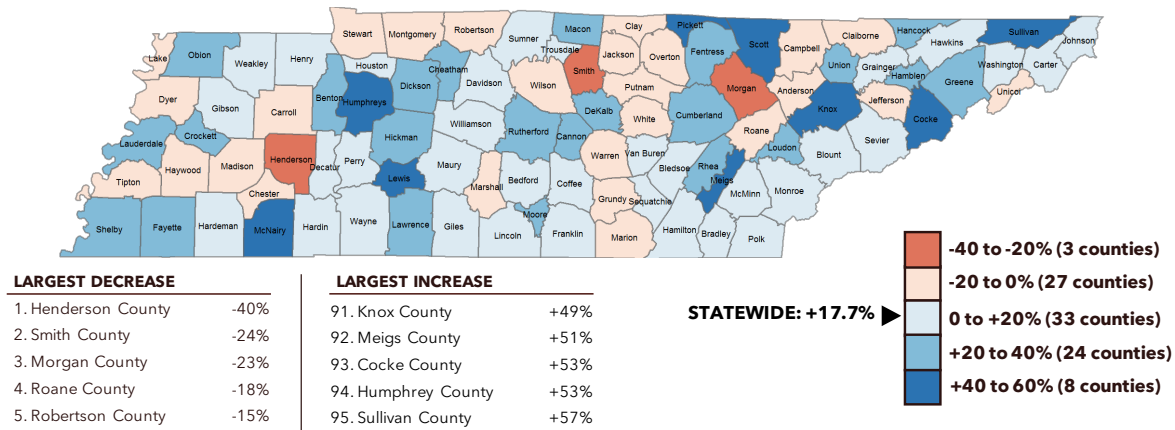


Note: Data are a one day snapshot of pre-trial detainees as of July 31, 2018.

Source: TDOC (1)

Figure 6. Pre-Trial Detainees Became a Larger Share of Local Jail Populations in Most Tennessee Counties from 2000 to 2018

Percentage Point Change in Pre-Trial Detainees as a Share of Total Local Jail Populations (July 21, 2000 vs. July 31, 2018)



Note: Data are a one day snapshot of pre-trial detainees as of July 21, 2000 and July 31, 2018.

Source: TDOC (1)

Paying for Pre-Trial Detention in Tennessee

Pre-trial detention directly affects the finances of local governments and households but not

Tennessee's state budget. The state does not reimburse counties for housing inmates awaiting trial

on felony charges or convicted felons not yet sentenced. (5) Instead, local governments must cover the costs and often require detainees to pay as well. (6) (7)

State law allows local jails to charge pre-trial detainees a daily fee for the costs of incarceration.

(8) (9) Currently, counties can charge up to \$60 per day. (9) (10) All 95 counties collected jail fees from inmates in 2015. (11) Davidson County, for example, charged \$44 per day until the city council eliminated the fee in 2018. (12) In addition, jails may also charge inmates for supplies, services, and health care. (13)

Local officials can take civil action against inmates who fail to pay local jail fees, such as sending the debt to collections, garnishing wages, or placing liens on property. (10) (14) Until recently, they could also have driver's licenses revoked. (15)

At least some counties likely cover most of the costs of pre-trial detention out of their own

budgets. In FY 2017, for example, Nashville only collected about 4% of the \$12 million in jail fees it assessed. The remainder were either waived or unpaid. (16)

How and Why Pre-Trial Detention Occurs

Pre-trial detention can occur for a number of reasons, including when the person charged with a crime:

- Is not eligible for release.
- Fails to meet the conditions of their release.
- Cannot afford the required bail.
- Chooses not to pay the required bail.

For most criminal charges, the law permits the accused to be released from jail before trial. State law ensures everyone the right to release and/or bail unless they are charged with “capital offenses where the proof is evident or the presumption great.” (17) Release can occur either with no conditions (called “**release on recognizance**” or ROR) or under the **bail system**, which often includes other requirements in addition to bail. (18) (19)

State law requires judges to consider a number of factors when deciding whether to detain or release and when setting bail. These include the accused’s personal and community ties, mental condition, prior record, probability of conviction, flight risk, finances, and the risk of danger to the community. (20) (18)

If ultimately convicted, any time a person spent in jail before trial counts toward their sentence. (21) As a result, some individuals may choose to forgo release in order to start earning time towards any sentence they may receive.

The Bail System

The bail system seeks to ensure alleged offenders who are released appear for trial. If a judge sets bail, the accused can obtain release by paying that amount in cash or through a surety bond. They may have to meet special conditions while released, such as undergoing drug/alcohol treatment if charged with a DUI. (20) If an individual fails to meet their release conditions, bail can be revoked, and they must return to jail until trial. (22)

Under a surety bond, a bondsman agrees to pay the full bail amount if someone fails to appear for trial or meet their release conditions. In exchange, that individual pays the bondsman a non-refundable fee equal to no more than 10% of the bail amount (plus taxes). (23)

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