

Court backlog to blame for more Vermonters held in prison pre-trial, experts say

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Local News



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Vermont's overall prison population went down dramatically during the pandemic, but the number of people held pre-trial increased. Legal experts say the court backlog, and lack of jury trials during the pandemic, is to blame.

People accused of breaking the law aren't generally held in prison before they've been found guilty, unless they're accused of a violent offense or are a risk of flight. And if they are imprisoned, they have a constitutional right to a speedy trial.

But the pandemic halted jury trials in Vermont for more than a year. That's meant hundreds of people have languished in prison without being convicted of a crime, and in some cases, people have served longer sentences than they would have otherwise.

During the pandemic, in an effort to avoid COVID outbreaks, there was a push to reduce Vermont's prison population. The Department of Corrections (DOC) has some autonomy to release people using programs like furlough to let people serve their sentence in the community.

That led to a big drop in Vermont's overall prison population — there were about 34% fewer people incarcerated at the end of last year than there were in 2019. That was good news for advocates and lawmakers who have tried for years to shrink the number of Vermonters behind bars.

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But part of the state's prison population has gone up: people detained pre-trial.

There's not much the DOC can do about that, according to Commissioner Nick Deml.

"For the detainee population, we have zero discretion," Deml said. "We hold them until the court orders the next move to be made, whether that's a release, whether they're sentenced after a conviction, etc."

The number of pre-trial detainees has gone up about 14% since the beginning of 2019, even as the total number of people in prison declined, according to the DOC. There have been about 400 people detained pretrial in recent months — that's about 30% of the state's total prison population.

So, what's going on?

"Bottom line is less people were getting out than were coming in," said Defender General Matt Valerio in an interview. "And then there was a backlog that was not getting resolved."

Valerio and other legal experts say lack of jury trials during the pandemic led to the increase in the detainee population. According to the judiciary, there are about 1,100 felony cases that have been pending for more than two years.

"I fully expected that people would have their constitutional rights during the pandemic. And my feeling, having gone through the pandemic, is that that is not really the case."

Matt Valerio, Defender General

Valerio's office filed lots of motions asserting that peoples' rights to a speedy trial were violated, but most of those were denied.

"I fully expected that people would have their constitutional rights during the pandemic," he said. "And my feeling, having gone through the pandemic, is that that is not really the case."

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It costs a lot to keep someone in prison. DOC says the per capita cost to incarcerate someone in Vermont last year was more than \$95,000. That money doesn't take into account the emotional toll of incarceration. For people detained, that could mean being locked up for months — with no trial in sight — even though they're technically innocent until proven guilty.

That was the experience of Loren Bedward. He was arrested in August 2020 in Brattleboro initially on several counts of domestic assault, burglary and stalking.

"It was miserable," Bedward said in a recent phone interview. "I was locked in my cell ... I would say about 90% of the time I was there, because of COVID, I was only able to come out 15 minutes a day."

According to court documents, a woman accused Bedward of choking and hitting her. A judge tossed out the burglary charges for lack of probable cause, but prosecutors then added a sexual assault charge — which carries a potential life sentence. Court records say the woman told police on the same night of the alleged domestic assault that Bedward also allegedly forced her to have sex with him. A judge ordered Bedward held in prison without bail.

Bedward, who's Black, thinks his race played a role in why he was held.

"They chose to hold me without bail, for whatever reason — even though I have significant ties, over 20 years in Vermont," he said. "That was, to say the least, the beginning of my nightmare."

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Windham County State's Attorney Tracy Shriver, whose office prosecuted Bedward, wouldn't comment on specifics. But she said her office would typically want to hold someone accused of sexual or domestic violence.

"Those are the folks that we frequently consider holding without bail because of danger they pose to both the victim and/or the community," Shriver said in a recent interview.

Pre-pandemic, most felony cases in Vermont were resolved within a year, according to [the judiciary](#). But COVID caused massive delays. It took two full years for Bedward's case to resolve and for 18 months of that time he was in prison. He was eventually released before his trial under strict conditions.

"At that point I was working 14-hour days," Bedward said. "And then when I wasn't working, I barely slept because the case weighed heavily over my head."

"No one should spend more time in jail than they, if you will, need to. We need to keep the system moving as quickly as we can to get justice done."

Thomas Zonay, Chief Superior Court Judge

In August, a jury acquitted Bedward of all felony charges. He was found guilty of stalking — a misdemeanor. A judge sentenced Bedward to time-served for the 18 months he spent in prison waiting for his day in court.

That was a "massive sentence" for a misdemeanor, according to Jessica Burke, Bedward's attorney.

"We would never expect to see a sentence of that magnitude on that charge if that's the only charge you were facing," Burke said in a recent interview.

[Vermont law limits](#) how long people can be held without bail, but if someone faces a charge that carries a potential life sentence, they can be held without bail indefinitely.

Burke said she suspects prosecutors are filing more severe charges to make it easier to detain people for long stints before their trial dates.

"I just think that that was probably related to the fact that we could not get to trial in 60 days," Burke said. "And that simply was because we didn't have the judiciary holding jury trials."

Other defense attorneys noticed similar trends. Valerio, the Defender General, said the number of attempted murder charges during the pandemic went up, even though few of them resulted in an attempted murder conviction.

“It says to me they're overcharged aggravated assaults,” he said. “But with an aggravated assault, you have a right to bail. With attempted murder, because it has a potential life in prison, you don't have an automatic right to bail.”

Prosecutors, like Shriver in Windham County, contend they haven't changed their practices.

“I went through the worst of the worst of the worst in a time where I shouldn't have.”

Loren Bedward, who was detained in a Vermont prison for 18 months

There are signs that the courts are finally making some progress on the backlog. The judiciary is scheduling more trials, and that's starting to reduce the detainee population, said Chief Superior Judge Thomas Zonay.

“No one should spend more time in jail than they, if you will, need to,” Zonay said. “We need to keep the system moving as quickly as we can to get justice done.”

But Bedward, who spent 18 months in prison for a conviction that, in ordinary times, would not have carried that kind of sentence, knows he won't get back any of the time. While Bedward was behind bars, his father died.

“I went through the worst of the worst of the worst in a time where I shouldn't have,” he said.

After the trial, Bedward moved to Florida, though he's rarely home. He started a trucking business. Bedward said he's not looking back, and he's hopeful that he's on the right path.

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