



# Memo

Cherokee Nation

**To:** Chuck Hoskin, Jr., Principal Chief  
Chad Harsha, Attorney General; Chair, Criminal Law Reform and Planning Task  
**From:** Force  
**CC:** Mike Shambaugh, Speaker; Task Force Members  
**Date:** August 26, 2024

Attached are reports responsive to Principal Chief Hoskin's Executive Order of December 11, 2023, "Establishing a Criminal Law Reform and Planning Task Force." Executive Order 2023-05-CTH.

On behalf of the Task Force, we appreciate the opportunity to assess and inform future improvements to Cherokee Nation's criminal justice system.

Wado,

*Chad Harsha*

Chad Harsha  
Cherokee Nation Attorney General



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CHEROKEE NATION®

REPORT OF THE CRIMINAL LAW REFORM AND  
PLANNING TASK FORCE

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## **Members and Stakeholders of the Criminal Law Reform and Planning Task Force**

- Chad Harsha, Attorney General (chair)
- Shannon Buhl, Marshal (member)
- Shella Bowlin, Secretary of State (member)
- Todd Hembree, Cherokee Nation Businesses (member)
- T. Luke Barteaux, Presiding Cherokee Nation District Judge
- Mike Shambaugh, Speaker of the Council of the Cherokee Nation
- Daryl Legg, District 6 Tribal Councilor (member)
- Matt Lamont, Director of Cherokee Nation Reentry Program (stakeholder)
- Tralynna Scott, CNB Chief Economist (stakeholder)
- Janees Taylor, Treasurer (stakeholder)
- Kim Teehee, Executive Director of Government Relations (stakeholder)
- Corey Bunch, Chief of Staff (stakeholder)
- John C. Young, Attorney (stakeholder)

## **About the Criminal Law Reform and Planning Task Force**

The Criminal Law Reform and Planning Task Force was established by Executive Order 2023-05-CTH and charged with evaluating the Cherokee Nation's criminal justice system to ensure it is effective, efficient, and meeting pivotal objectives relating to rehabilitating Cherokee citizens convicted of criminal offenses. Specifically, the Task Force was tasked to consider (1) the Nation's current sentencing requirements; (2) options for alternative sentencing; and (3) the current sufficiency of the Nation's reentry services; (4) and the adequacy of the Nation's current detention facilities. This initial report addresses the first three considerations. The final consideration will be addressed in a separate report submitted at a later date, due to the breadth and complexity issues relevant to detention pose.

## Executive Summary

Executive Order 2023-05-CTH charged the Criminal Law Reform and Planning Task Force with evaluating three pivotal areas wherein the task force diligently examined the Cherokee Nation's current sentencing requirements, explored alternatives to traditional sentencing methods, and assessed the sufficiency of the Nation's current reentry services.

1. **Current Sentencing Practices:** Our examination considered sentencing practices across the Nation's jurisdiction and the general guidelines that have been established to promote justice and public safety, while also adequately considering individual circumstances.
2. **Options for Alternative Sentencing:** Recognizing the limitations of traditional sentencing models, the task force extensively researched alternative approaches. From restorative justice programs to diversion initiatives, a spectrum of innovative strategies exists to address the root causes of criminal behavior, promote rehabilitation, and reduce recidivism. Through comprehensive analysis, the task force identified promising avenues for integrating these alternatives into the broader criminal justice framework.
3. **Sufficiency of Reentry Services:** The task force identified that the successful reintegration of individuals into society following incarceration is paramount for fostering safer and more equitable communities. Despite notable advancements in the Nation's reentry services, challenges persist in ensuring widespread access to comprehensive support services. The task force identified gaps in service provision, including limited access to budgetary enhancement opportunities, staffing shortages, and mental health resources, which undermine successful reentry and contribute to cycles of incarceration.

In light of our findings, the task force presents a series of recommendations aimed at enhancing the fairness, effectiveness, and humanity of the Cherokee Nation's criminal justice system:

- Investing in evidence-based alternative sentencing programs to address underlying factors driving criminal behavior.
- Expanding access to comprehensive reentry services through enhanced programmatic funding and staffing.
- Fostering collaboration among stakeholders to implement and evaluate innovative approaches to sentencing and reentry.

By embracing these recommendations, the Nation's policymakers have the opportunity to advance a more equitable and effective criminal justice system that prioritizes rehabilitation, public safety, and the dignity of all individuals involved.

## Current Sentencing Practices

### Overview

- Currently, depending on the nature and severity of a charge, the Nation may sentence an offender to anywhere between zero and three years in confinement; with the associated costs ranging from none to thousands of dollars assessed in fines and costs. Under the Tribal Law and Order Act, the Nation may enhance sentencing terms up to a maximum of nine years. *See* The Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2258. This limitation results in reduced sentencing across the Nation’s jurisdiction.
- As of the issuance of this Report, around 1% of the sentences ordered are decided by a judge after a presentation of evidence at a hearing or trial. The remaining 99% of sentences ordered are the result of plea agreements reached by the Nation’s prosecutors and the defendant or the defendant’s defense counsel. The presiding judge approves all plea agreements, with some approved after reviewing the report issued after a Pre-Sentence Investigation (“PSI”). PSIs must be completed by a qualified individual and usually take sixty to ninety days to complete. At this time, the only individuals qualified to complete and issue a PSI are the Nation’s probation officers.

### Bail and Pretrial Detention

- Bail and pretrial detention play pivotal roles in the pretrial phase of the Nation’s current sentencing practices, serving as mechanisms to ensure a defendant’s appearance in court and to protect public safety. Bail, set by the judge pursuant to an established bond schedule, allows defendants to secure their release from custody by providing a financial guarantee that they will return for their court appearances. Though this practice is based on the presumption of innocence and aims to strike a balance between the defendant’s rights and the interests of justice, pretrial detention is sometimes required. Specifically, pretrial detention is utilized when there are concerns about flight risk or the potential for the defendant to pose a danger to the community if released.
- To avoid unnecessary pretrial detention, the Nation currently engages in pretrial release via electronic monitoring. This approach provides an alternative to incarceration, enabling defendants to remain in their communities while awaiting trial. Additionally, electronic monitoring can offer defendants an opportunity to maintain employment, family ties, cultural practices, and other crucial connections, thereby promoting stability and facilitating successful reintegration into society pending trial. However, it’s important to note that the effectiveness of electronic monitoring hinges on the availability of supportive services and robust supervision to address underlying issues and ensure compliance, highlighting the importance of comprehensive pretrial support programs.

## Pretrial Services

- Pretrial Services are used during the early stages of criminal prosecutions and play a critical role in the Nation's Criminal Justice System by providing programs to gather, verify, and present information on defendants and supervise defendants who are released from custody. Effective use of Pretrial Services can minimize unnecessary detention by releasing offenders who are likely to appear for their scheduled court dates and refrain from additional criminal acts; and significantly affect how limited confinement options are allocated. The information gathered during the pretrial process allows both the Court and the prosecutor to assess release options, balancing any potential risk to public safety and unnecessary detention. Information crucial to pretrial decision-making includes history of substance abuse or mental health problems, prior justice involvement, and employment history. In the Cherokee Nation's criminal justice system, this information is predominantly conducted by probation officers, but staffing is limited.
- Given the pivotal role probation officers fill, it is imperative to recommend expanding staffing in this area. Additional probation officers would bolster the capacity to conduct thorough and timely assessments, ensuring that judges have comprehensive information to make informed decisions. Moreover, enhanced staffing can provide additional pretrial services by facilitating more personalized and responsive supervision plans, identifying appropriate interventions to address defendants' needs, and fostering collaboration with community resources to support successful pretrial outcomes. Investing in staffing for pretrial services would not only create more capacity to conduct risk assessments and aid in providing recommendations concerning conditions of release to minimize risks to public safety; it would also promote fairness and efficiency in the Cherokee Nation's criminal justice system.

## Rehabilitation Services

- Current efforts to order rehabilitation services for offenders encounter significant hurdles, primarily due to the absence of 24-hour lockdown facilities tailored toward comprehensive rehabilitation. The lack of such facilities poses a challenge in providing structured environments conducive to intensive therapeutic interventions and ensuring the safety of both the individuals involved and communities at-large. Furthermore, the Nation's existing reentry service programs often fall short in addressing the specific needs of individuals requiring mental health treatment and rehabilitation. While current programs offer basic support such as job training and housing assistance, they frequently lack the specialized resources and expertise necessary to effectively address complex mental health issues. This gap in available services underscores the critical need for investment and innovation into reentry programming to ensure that individuals encountering the criminal justice system receive the comprehensive support they need to successfully reintegrate into society.



## Court Expansion

- The *McGirt* decision, and its progeny, have resulted in an unprecedented influx of criminal matters in the Nation's Courts. Expanding the court system through the establishment of additional courthouses, bolstered staffing, and an increased number of judges is an essential step to enhance the efficacy and fairness in our ongoing response. By investing in expanded court infrastructure and personnel, we can streamline case proceedings and ensure timely access to justice. Additional courthouses will not only alleviate the burden on existing facilities but also enhance accessibility for remote communities throughout the Cherokee Nation Reservation. Moreover, augmenting staff, including court clerks, bailiffs, and administrative personnel, will improve efficiency and support the smooth operation of court proceedings. Importantly, increasing the number of judges will enable courts to handle caseloads more effectively, reducing case backlog and expediting the resolution of legal matters. By expanding the court system, we can uphold the principles of fairness, due process, and swift adjudication, thereby strengthening public trust in the Nation's criminal justice system.

## Post-Sentencing Services

- After sentencing, offenders may be offered a range of post-sentencing services aimed at facilitating their rehabilitation, promoting successful reintegration into society, and reducing the likelihood of recidivism. Some of these services currently utilized by the Nation include:
  - *Supervised Release or Probation*: Offenders may be placed on supervised release or probation, during which they are required to comply with specific conditions set by the court, such as regular check-ins with a probation officer, participation in rehabilitative programs, and adherence to curfews or substance abuse treatment plans.
  - *Reentry Programs*: These programs provide comprehensive support to individuals transitioning from incarceration back into the community. Services may include assistance with securing housing, employment training and placement, substance abuse treatment, mental health counseling, and life skills development.
  - *Education and Vocational Training*: Offenders may be offered opportunities to further their education or gain vocational skills to increase their employability and socioeconomic stability post-release. These programs may include GED classes, vocational training workshops, and job readiness programs.
  - *Housing Assistance*: Individuals may receive assistance with securing stable and safe housing upon release from incarceration, including transitional housing, halfway houses, or supportive housing programs.

## Reentry Services

### *Reentry Program*

- The Reentry Program was established in 2015 and has since offered support services to Cherokee Citizens returning home from incarceration. The Reentry Program takes a holistic healing approach with each participant, using both evidence based and cultural approaches as appropriate to promote recovery. The Reentry Program has proven a great success leading to recidivism rates much lower than the state and national averages. As a result, Cherokee Citizens utilizing the Reentry Program get out of prison and stay out at a rate better than most anyone else. However, the services provided through the Reentry Program have been traditionally aimed at removing barriers to employment.

### *Justice Involved Program*

- Recently, the Reentry Program was expanded to provide services for Cherokee citizens who had not been incarcerated but were experiencing many of the same barriers to employment and additional life goals arising from their involvement with the justice system. The Justice Involved Program works with citizens and the court to offer alternative options to confinement. These alternative pathways include behavioral health programs, substance misuse treatment, sober living or other programs that are acceptable to the court in lieu of incarceration. Since the decisions in *McGirt* and *Hogner*, the Justice Involved Program has established a strong relationship with the Nation's Office of Attorney General, the Cherokee Nation District Court, the Office of the Marshal, and Probation & Parole. This collaboration is vital so staff can work with the appropriate department to identify justice involved citizens who may be eligible to participate in the Program and consider appropriate alternatives. By offering programmatic assistance, citizens are routed to services that better equip them to make more positive decisions and avoid collateral consequences often associated with incarceration. Under this approach though, it is often necessary to provide more intensive services over longer periods of time. This often includes assistance in areas of Behavioral Health, Substance Misuse and other issues arising from justice involvement.

## **Program Functionality**

- Successful program functionality requires appropriate staffing and participant services. As the program covers a large geographic region, this can pose an issue. Reentry Services currently have staff located in most Career Services field offices, but additional counseling staff and support staff in these areas would improve program services and delivery. In addition, specifically allocated funding to address the following would allow for continued service delivery at appropriate and improved levels:
  - *Appropriate Staffing*: Staffing is key to continued services at the current level and future identified needs. While current grant funding is being utilized for staffing it

would be beneficial if yearly tribal funding was secured to better attract and retain appropriate high-level personnel for the very specific nature of the program. This should also include training and services for staff in areas of vicarious and secondary trauma and issues in dealing with the very specific clientele of the program. It has also been determined that credentialed counseling staff as a part of the program will be very beneficial to the program and citizens.

- *Client Services:* Recently CARES Act, ARPA and Department of Justice funding have made it possible to maintain program growth for client services. Grant and federal funding will always be sought, but a reliable allocated funding source is vital to continue to provide the current level of services while also allowing for potential program growth if future grant opportunities are obtained.
- *Transportation Services:* It is often the case that transportation issues are a major barrier at many levels for Reentry Services participants. This has traditionally been remedied by staff transport, third-party transports, or other options when possible. Dedicated transportation services would allow for more reliable appearances at appointments, interviews, and transports to treatment while not taking counseling staff away from other duties.
- *Expanded Prerelease strategy and efforts:* Reentry Services is actively engaged in efforts to promote additional programming at the Nation's detention partners. Additional programmatic efforts could aid in providing prerelease strategies.
- *Facility and/or dedicated main office/location:* Currently Reentry Services staff office at various Career Services Department locations. While this is useful in ensuring employment and training opportunities are readily accessible, at times it can present an issue when considering the nature of some of the participants past offenses and their ability to be in the same vicinity as other Career Services employees or program participants.
- *Housing:* A dedicated transitional living facility would allow for better service delivery and allow the program to require and provide more intensive services.
- *Development and/or structure of an internal alternative sentencing or diversion program:* The Reentry & Justice involved programs often operate as a type of alternative to jail but sometimes lack the proper structure and capacity to carry out objectives and goals of these types of programs. Developing the base structure for diversionary practices would allow the programs to expand while maintaining continuous services in other areas of need.

## Program Barriers

- While the Reentry Services programs currently operate at a high level, some barriers and issues have been identified that, if adequately addressed, would allow Reentry to provide a higher level of service. This would ultimately lead to better rehabilitated citizens and safer communities. Many of the barriers were listed in the above section, including:
  - Tribally allocated funding;
  - Staffing;
  - Participant Services;
  - Non-Tribal citizens sentenced through tribal courts for domestic violence offenses;
  - Transportation;
  - Facility/Office Locations;
  - Diversion programs;
  - Stigma/Rebranding
- Rebranding the program to incorporate a focus on informing the public of how reentry services lead to enhanced community safety would allow Reentry Services to illustrate that improvements of opportunities for justice involved citizens leads to less criminal involvement and an overall increase in community safety.

## Expansion Opportunities

- Reentry Services provided a thorough assessment of the existing program to identify areas for expansion and improvement. As a result of this assessment, the Task Force recommends developing an internal comprehensive expansion plan which implements the following:
- *Service Expansion:* Expand the range of services offered within the reentry program to address the diverse needs of formerly incarcerated individuals. This may include:
  - *Enhanced Employment Services:* Enhance job readiness training, vocational skills development, and job placement assistance to facilitate successful reintegration into the workforce.
  - *Housing Assistance:* Increase support for transitional and permanent housing options to ensure stable accommodation for participants upon release.
  - *Enhanced Education and Training:* Expand access to educational programs, including GED preparation, literacy classes, and post-secondary education opportunities.

- *Substance Abuse Treatment:* Expand access for offenders struggling with substance abuse issues to substance abuse treatment programs, including counseling, therapy, medication-assisted treatment, and support groups, to address underlying addiction issues and reduce the risk of relapse.
- *Mental Health Services:* Increase access to mental health care for individuals with mental health disorders, through which they may receive access to therapy, medication management, and psychiatric support, to address their mental health needs and support their overall well-being.
- *Restorative Justice Program:* Establish access to a restorative justice program through which offenders may participate in to repair the harm caused by their actions by facilitating dialogue and reconciliation between offenders, victims, and the community. These programs may involve mediation, restitution, community service, and other restorative practices.
- *Additional Life Skills Training:* Offer programs focused on developing essential life skills, such as financial management, conflict resolution, and parenting skills.
- *Staffing Requirements:* Expand the program's staffing capacity to accommodate increased service delivery. This may involve hiring additional case managers, counselors, educators, vocational trainers, healthcare professionals, and administrative staff. Staff should be adequately trained and qualified to meet the complex needs of formerly incarcerated individuals and provide culturally competent care.
- *Budgetary Considerations:* Enhance budgetary funding to support the expansion of the reentry program to account for additional personnel costs, operational expenses, educational materials, vocational training equipment, and general programmatic expenses.

If the Reentry Program is expanded and the considerations are addressed, services for formerly incarcerated individuals can be expanded to better support their successful reintegration into society.

## **Alternatives to Incarceration**

### Current Alternatives to Incarceration:

- The Nation's current alternatives to incarceration encompass a diverse array of interventions designed to address the complexities of criminal behavior while minimizing reliance on incarceration. Among these alternatives are supervised release, probation, deferred release, and electronic monitoring. Supervised release and probation offer individuals the opportunity to remain in the community under close supervision, typically with conditions imposed by the court, such as regular check-ins with a probation officer and participation in rehabilitative programs. Deferred release, often known as deferred adjudication or pretrial diversion, allows individuals to avoid formal conviction by fulfilling certain requirements, such as community service or rehabilitation programs. Electronic monitoring, through the employment of technology like ankle bracelets, enables authorities to track individuals' movements and ensure compliance with court-ordered conditions, offering a middle ground between incarceration and complete freedom. These alternatives reflect the Nation's commitment to ensuring public safety, providing opportunities for offenders to address underlying issues and reintegrate into society, and thereby advance toward the ultimate goal of rehabilitation while minimizing the social and economic costs associated with incarceration.

### Potential Alternatives to Incarceration:

#### *Overview:*

- Alternative sentencing programs offer alternatives to traditional incarceration, focusing on rehabilitation and community reintegration rather than punishment. The primary goal of alternative sentencing is to divert individuals away from the traditional criminal justice system. This helps to prevent the stigma and practical consequences often associated with criminal convictions. These programs often include options like community service, substance abuse or misuse treatment, mental health counseling, and educational/vocational programs. By addressing underlying issues and providing support, alternative sentencing programs aim to reduce recidivism rates and promote the long-term well-being of both offenders and the community.
- Another key purpose of alternative sentencing programs is to offer offenders an opportunity to make amends for their actions without imposing the long-lasting consequences of a criminal record or the severe restrictions of imprisonment. Instead, individuals may be required to participate in community service, attend rehabilitation or counseling programs, undergo educational training, or comply with other forms of restorative justice.

- By focusing on rehabilitation and addressing the underlying causes of criminal behavior, alternative sentencing programs seek to not only punish offenders but to also reintegrate them back into society as law-abiding citizens. Additionally, these programs can be cost-effective compared to traditional incarceration methods, as they often require fewer resources and have been shown to reduce the likelihood of future criminal activity. Overall, the key purpose of alternative sentencing programs is to promote accountability, rehabilitation, and community safety while minimizing the negative consequences associated with criminal convictions and incarceration.

#### Programs:

- *Community Service Programs*
  - Offenders may be required to perform community service as ordered by the Court. The primary goals would be to hold offenders accountable for their actions by requiring them to actively participate in activities that benefit society, and second, to provide an opportunity for rehabilitation and reintegration into the community by contributing to public welfare within the Cherokee Reservation.
  - Community service assignments may vary widely based on the nature of the offense, the current needs of the community involved, and the skills and abilities of the offender. Service assignments could include cleaning up public spaces, assisting local charities or non-profit organizations, mentoring at-risk youth, or providing support to elderly or disabled individuals.
  - Community service programs can be more cost-effective and less disruptive to the lives of offenders and their families compared to incarceration. However, the Nation would need to identify and designate a proper authority to conduct supervision of programs to ensure enforcement and completion.

#### Specialized Courts/Diversion Programs

- *Drug Court Program*
  - Drug court programs represent an alternative approach to addressing substance abuse and related criminal behavior within the criminal justice system. Unlike traditional court proceedings, drug courts are specialized judicial programs that focus specifically on individuals with substance abuse issues who have committed non-violent drug-related offenses. Specifically, drug courts:
    - Emphasize treatment and rehabilitation over punishment; aiming to address the underlying causes of addiction.
    - Promote accountability through regular drug testing, court appearances, and compliance with treatment plans; to reduce the likelihood of relapse.
    - Offer comprehensive support services, including substance abuse treatment, mental health counseling, vocational training, housing assistance, and access to social services.

- Provide graduated systems of sanctions or incentives depending on compliance with ordered treatment and court requirements.
- Presently, CREOKS has approached the Nation’s Court System to explore establishing a preliminary drug court program. CREOKS is a non-profit organization that has traditionally organized and conducted diversionary drug court programs. Further, CREOKS is a familiar organization that are actively involved in the Nation’s criminal justice system.

#### *Mental Health Court Program*

- Mental health court programs seek to address the intersection of mental illness and the criminal justice system by providing specialized support and interventions for individuals with mental health disorders who have become involved in the legal system. Mental health courts aim to divert individuals away from traditional criminal proceedings and incarceration towards more appropriate treatment and support services. Key objectives include:
  - Prioritizing access to mental health treatment and support services;
  - Recognizing that many individuals with mental health disorders may commit offenses due to untreated symptoms, substance abuse, or lack of access to appropriate services; and
  - Diverting eligible individuals away from traditional court proceedings and thereby reducing the case load of the traditional justice system.

#### *Healing to Wellness Court Program*

- Wellness Courts are modeled to support a docket of cases for participants diagnosed with a substance abuse or misuse disorder. The participants and the cases diverted to a Wellness Court may vary, but the model centers upon a multi-disciplinary approach wherein needs are assessed; a case plan is developed; and participant engagement is required primarily weekly to foster immediate accountability. Such a model could be easily tailored towards restorative justice goals and incorporate culturally appropriate services.
- The Nation’s Juvenile Justice Department currently utilizes a healing to wellness program for certain juvenile offenders. This program could provide a working example to establish an adult healing to wellness program.



## Restorative Justice Programs:

### *Victim-Impact Panels*

- Victim-impact panels provide forums where victims offer personal testimonials of the impacts of crime to offenders. These forums do not place victims face-to-face with their offenders but put them into direct contact with individuals who have had similar experiences. The overall goal of a victim-impact panel is to individualize the consequences of an offender's crimes on the community. The use of victim-impact panels is used as a sentencing option for a variety of offenses such as property crimes, physical assault, domestic violence, child abuse, and elder abuse.

### *Circle Sentencing*

- Circle sentencing, sometimes called peacemaking courts or talking circles, represent a holistic approach designed to the criminal acts of offenders as well as the needs of victims, family members, and the community at large. The "circle" includes crime victims, offenders, family and friends of both, justice involved personnel (including police officers, lawyers, and judges) and interested community members. The members of the circle take turns discussing the event, trying to search for an understanding of what happened and identify the steps needed to assist in the healing of all affected parties and prevent future crimes. All circle members participate in deliberations to arrive at a consensus for a sentencing plan that addresses the concerns of all interested parties.

### *Community Reparative Boards*

- A reparative board usually includes small groups of specially trained citizens who conduct public, face-to-face meetings with offenders who have been court-ordered to participate. The members of the board develop a sanction agreement with offenders, monitor compliance, and submit compliance reports to the court. Board members develop a set of proposed sanctions and discuss the options with the offender until an agreement is reached on specific actions the offender will take to make reparation for the crime. The offender is required to document his or her progress in fulfilling the terms of the agreement. The board submits a progress report to the court on the offender's compliance with the agreed-on sanctions.

### Hurdles to Establishing Alternative Sentencing Programs:

- Though Implementing a combination of these alternatives can contribute to a more effective and culturally conscious criminal justice system within the Cherokee Nation Reservation, establishing alternative sentencing programs faces several significant hurdles. First, there's the pressing need for additional courtroom space and seated judges to effectively administer these programs. The current infrastructure often lacks the capacity to accommodate the increased caseload and specialized proceedings demanded by alternative sentencing. Moreover, the creation of a new department to oversee these programs, distinct from both the court system, the Office of the Attorney General, and the Marshal Service is crucial. A new department would help ensure impartiality and focus on rehabilitation rather than punitive measures such as prosecution and eventual confinement. Additionally, it's essential to recognize the added burden alternative sentencing places on offenders. While these programs offer opportunities for rehabilitation and reintegration, they often require a higher level of commitment and accountability from participants, which may pose challenges for some individuals. Addressing these hurdles is vital to realizing the potential benefits of alternative sentencing in fostering a more just and effective criminal justice system.

## Post-Conviction Review

- Currently, the Council of the Cherokee Nation has not adopted a post-conviction review process, a mechanism that holds significant potential in enhancing the fairness and effectiveness of the criminal justice system. A post-conviction review process involves a systematic examination of convictions or sentences after the conclusion of the trial process. This review may consider an offender's post-sentence progress to gauge the appropriateness of the conviction or sentence. By implementing such a process, the Nation could prevent unnecessary incarceration and promote rehabilitation. A post-conviction review process could also serve as an additional avenue for individuals to seek redress for potential errors or injustices that occurred during the trial or sentencing phases. Ultimately, by providing a mechanism for ongoing scrutiny and reassessment of convictions and sentences, a post-conviction review process could contribute to the integrity of the Nation's legal system and promote the principles of justice.
- Implementing a post-conviction review process would be a nuanced endeavor requiring careful attention to procedural uniformity and fairness. Generally, such processes are triggered after a specified percentage of time is completed within a sentence. Establishing a streamlined process with clear notice requirements will present a significant challenge for offenders sentenced under the laws of the Cherokee Nation, given the diverse nature of cases. Particularly because instances where multi-year sentences may be divided between facilities are prevalent in the Nation's sentencing. This fact would require a transparent application process to request review to ensure consistent treatment of prisoners, that also avoids overly complex procedures that could impede the ability of our current partners to accommodate prisoners. A comprehensive judicial review framework should encompass broad powers and exist under the authority of the Cherokee Nation District Court. Any framework should grant a right of the access to pertinent documents such as class transcripts and behavioral reports completed during an individual's prison sentence, to facilitate informed decision-making by the court. Additionally, an avenue through which interviews with collateral witnesses and family members may be conducted should exist to supplement institutional records and provide a holistic assessment of an offender. As a starting point, defining the trigger for review, potentially based on a percentage of time served, necessitates thorough deliberation. The Task Force was in overwhelming agreement with the following parameters of any judicial review component:
  - Such a mechanism should grant individuals the right to apply for review rather than create an entitlement.
  - Mandating factors should guide the court's discretion, with due consideration given to staffing and resource implications.
  - Certain crimes falling within the Major Crimes Act should be designated as unreviewable.

## **Recommendations:**

After conducting thorough assessments of the Nation's current practices, gathering diverse perspectives of stakeholders, and considering evidence-based approaches aimed at fostering a more equitable, efficient, and rehabilitative approach to criminal justice in the Cherokee Nation, the Task Force respectfully submits the following recommendations:

- Implement programmatic expansions to Reentry Services to better support justice involved individuals throughout their successful reintegration into society.
- Enhance funding allocations for reentry services programs and probation services to expand their capacity to enhance the pre-trial decision-making process and provide comprehensive support to individuals transitioning from incarceration to community life.
- Develop and implement additional support services within Reentry Services, tailoring to mental health counseling, substance abuse treatment, vocational training, and housing assistance, to address the diverse needs of individuals reentering communities throughout the Cherokee Nation Reservation.
- Establish alternative sentencing programs to divert individuals away from the traditional criminal justice system.
- Establish a workgroup to draft post-conviction relief legislation, address the Nation's current expungement laws, and ensure current statutorily created funds are in place to enable effective alternatives to sentencing.
- Secure additional physical locations to increase court access across the Reservation.



MEMORANDUM

To: Chief Hoskin  
From: Tralynna Scott, Sr. Director Chief Economist, and Criminal Law Reform and Planning Task Force  
Date: August 26, 2024  
Re: Cherokee Nation Jail Feasibility Study

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In light of the recent *McGirt v. Oklahoma* Supreme Court ruling, which affirmed the jurisdiction of the Cherokee Nation over a significant portion of eastern Oklahoma, the question of enhancing the Nation's judicial infrastructure, including the construction of a jail facility, has emerged as a pressing concern. This memo aims to outline the potential benefits and drawbacks associated with this proposed endeavor.

Attached to this memo is the full needs assessment conducted by Justice Planners—a national criminal justice consulting firm with over 30 years of experience. Cherokee Nation Businesses, LLC (CNB) contracted with Justice Planners to scientifically explore the population-related factors involved with the establishment of a jail. The Nation currently lacks such a facility, and public policy circumstances warrant a formal examination of the issue. The needs assessment reflects a significant statistical research effort combined with a variety of conversations with key Cherokee Nation criminal justice stakeholders.

A summary of recommendations from the needs assessment is listed below. The full recommendations can be found on page 18 of the needs assessment.

**RECOMMENDATIONS FROM NEEDS ASSESSMENT**

- Pretrial beds needs forecasted by 2048: **428**
- Sentenced beds needs forecasted by 2048: **205**
- Pretrial and Sentenced beds needs forecasted by 2048: **633**
- Other recommendations (developed during both statistical analysis and stakeholder interviews)
  - Consider the use of gain time/good time for sentenced individuals. Using “good time” will reduce the number of needed sentenced beds and serve as a behavioral modification tool.
  - **Create more opportunities for custody diversion near the beginning of the system.** Options include:
    - The use of a statistically validated risk assessment instrument, such as the Public Safety Assessment (PSA), developed by Arnold Ventures.
    - A pretrial services staff could assist with the release/detain decision by providing criminal history and other pertinent information to the judiciary at the time of arraignment.
    - An electronic monitoring program can be expanded to reduce the needed number of beds.
  - **Expand the use of releases to the Federal Bureau of Prisons (BOP).**
  - Implementing a medical/mental health assessment at the time of booking/intake will help with the development of a treatment plan for affected individuals. Perhaps some of the people can be diverted from custody to treatment, reducing some of the bed need while also providing a significant benefit to the people involved.

## PROS AND CONS OF CHEROKEE NATION BUILDING A JAIL

### Pros:

1. **Enhanced Judicial Sovereignty:** Building a 633-bed jail facility would bolster the Cherokee Nation's ability to assert its judicial sovereignty and manage law enforcement within its reservation, aligning with the principles upheld in the *McGirt* ruling.
2. **Increased Capacity:** With a growing population and jurisdictional expansion, a larger jail facility would provide the necessary capacity to accommodate the Nation's judicial system needs, ensuring adequate space for inmates and facilitating efficient operations.
3. **Reduced Reliance on External Facilities:** Currently, the Cherokee Nation relies on external facilities to detain and process individuals involved in criminal cases. Establishing its own jail would mitigate dependence on external entities, offering greater control and flexibility over judicial proceedings.
4. **Economic Benefits:** The construction of a 633-bed jail facility could stimulate economic growth within the Nation, creating job opportunities during both the construction phase and subsequent operation, while also supporting local businesses and suppliers.

### Cons:

1. **Financial Burden:** Building and operating a 633-bed jail facility entails *significant* financial investments, including construction costs, staffing expenses, and ongoing maintenance. Based on recent cost estimates<sup>1</sup> of jail facilities across the United States, the Nation should estimate a cost of \$333,000 per bed<sup>2</sup> to construct the facility. **Total cost for a 633-bed facility would be approximately \$210,578,000.** The \$210.5 million cost does not include the cost to purchase land (if any), nor does it include annual operating costs of the facility. **The annual operating costs can vary widely based on services and programs offered to inmates, but the Nation should budget no less than \$35,000,000 per year to operate the facility.**<sup>3</sup> Securing these levels of funding amidst competing budgetary priorities would result in significant cuts to the Nation's other governmental services.
2. **Legal Liability:** Owning and operating a jail exposes the Nation to *significant* legal liabilities, including lawsuits arising from inmate injuries/death, civil rights violations, or inadequate conditions/healthcare. Mitigating these risks requires rigorous adherence to regulations and standards, demanding substantial administrative oversight—again, at substantial cost.

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<sup>1</sup> According to the U.S. Bureau of Labor Statistics, non-residential building construction costs have climbed 37% just since 2020. [Producer Price Index by Commodity: Construction \(Partial\): New Nonresidential Building Construction \(WPU801\) | FRED | St. Louis Fed \(stlouisfed.org\)](#)

<sup>2</sup> Oklahoma City, OK - \$335,000/bed; Cuyahoga County, OH - \$393,000/bed; Alabama - \$270,000/bed. [Help over housing key aim behind designs for new Oklahoma County jail \(oklahoman.com\)](#).

<sup>3</sup> Based on a 2022 report, the daily cost per inmate to operate facilities ranged from \$75.17 to \$420.90, with an average of \$133.89. Adjusted for inflation, the range to operate a 633-bed facility would be between \$19,104,418 and \$106,971,525, with an average of \$34,028,077. <https://rga.lis.virginia.gov/Published/2024/RD37/PDF>

3. **Community Opposition:** The construction of a large-scale jail facility may face opposition from community members and Cherokee citizens concerned about its impact on local neighborhoods, property values, and social dynamics. Addressing these concerns and garnering community support could prove challenging.
4. **Marshal Travel Time:** Building one facility for pretrial booking would result in the Marshals spending the majority of their shift traveling from the point of arrest to the jail facility to book the inmate. The alternative would be to build multiple facilities across the reservation at an even greater cost due to the duplicative operating and maintenance costs.
5. **Alternative Solutions:** Alternative sentencing, such as diversion programs and rehabilitation, may offer more solutions that are more cost-effective, more humane, and have less recidivism when approaching addressing the Nation's judicial system needs, reducing the necessity for the Nation to build its own facility.

### **ANALYSIS**

The Cherokee Nation faces a challenging economic landscape with multiple unfavorable factors inhibiting the construction of a jail. Inflation in materials and wages, along with high interest rates could significantly increase the cost of building a 633 bed facility, burdening the Nation with substantial debt payments over time. Moreover, the possibility of a recession threatens to disrupt economic activity, reducing the Nation's revenue streams and potentially straining its financial capacity to undertake large-scale infrastructure projects. If the Nation chose to only build a pretrial facility, thus reducing the number of beds needed to 428, the problem remains of location and Marshal travel time. If only one pretrial jail was built within the reservation, the Marshals would spend an overwhelming amount of their time driving individuals to the facility for booking after arrest. To remedy this, multiple pretrial jail facilities would have to be built around the reservation, thus increasing the building and operating costs of the facilities and negating any savings that might be gained by reducing the number of beds. In light of these economic headwinds, the prudent approach for the Cherokee Nation may involve reassessing the timing and feasibility of building a jail, considering the broader economic context and potential long-term implications for the Nation's fiscal health.

Additionally, most jail facilities owned and operated by governments rely on funding from a citizenry tax base. The Cherokee Nation would not be able to utilize such funding, as it has no such tax base. Thus, both the initial and continuing costs relating to construction, maintenance, and liability would mostly fall upon funding from CNB. This arrangement would result in a substantial reduction of the dividend and a significant loss of opportunities for CNB to expand and develop its businesses.

The legal liabilities associated with owning and operating a jail present formidable obstacles for the Nation in contemplating the construction of such a facility. Beyond the considerable financial investment required for construction and maintenance, the Nation would assume significant legal responsibilities for the welfare and safety of inmates, staff, and surrounding communities. Incidents of inmate injuries, civil rights violations, or inadequate healthcare could result in costly lawsuits, damaging the Nation's reputation and depleting its resources. Moreover, ensuring compliance with complex regulations and standards governing correctional facilities demands substantial administrative oversight and ongoing training, further straining the Nation's capacity. Given these legal and operational challenges, this taskforce advises that the potential risks and liabilities exceed that which with the Nation should assume.

There are deeper cultural and historical contexts to contemplate when considering the construction of a jail as well. The construction of a jail may evoke negative associations of past injustices and trauma many Cherokees have experienced at the hands of the government for generations. Rather than perpetuating a punitive approach to justice, we should explore restorative justice practices that align with Cherokee values and traditions, such as rehabilitation programs, mental health services, and substance abuse treatment which address the root causes of crime and promote community well-being. These initiatives have the potential to reduce recidivism rates and enhance public safety more effectively than simply incarcerating individuals.

## **CONCLUSION**

After substantial research and analysis, the Criminal Law Reform and Planning Taskforce believes the financial implications to the Cherokee Nation are such that, on this basis alone, we do not recommend moving forward with building a jail. When the potential legal liabilities and risks are coupled with the financial implications this taskforce strongly recommends the Nation not move forward with building any type of jail facility at this time—whether it be the recommended need of 633 beds, 428 pretrial beds, or 205 sentenced beds. Instead, we feel strongly that Recommendation #2 (expanded opportunities for custody diversion) and Recommendation #3 (expanded use of release to the Federal bureau of Prisons) will greatly reduce the number of beds needed both pretrial and sentenced, thus significantly reducing cost to the Nation over time.

Wado,  
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# Cherokee Nation Correctional Needs Assessment



Final Report  
May 17, 2024

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## **INTRODUCTION**

The Cherokee Nation contracted with Justice Planners to scientifically explore the population-related factors involved with the establishment of a correctional facility. The Nation currently lacks such a facility, and public policy circumstances warrant a formal examination of the issue. This needs assessment reflects a significant statistical research effort combined with a variety of conversations with key criminal justice stakeholders.

### **Goal**

The primary goal of the Cherokee Nation Correctional Needs Assessment is to determine the projected bed need for a possible detention facility, or facilities, through the year 2048. This is a complex undertaking due to the fact that the Nation does not currently have a correctional facility. Thus, with no existing population history in place, our efforts concentrated on determining what the population of such a facility would have been had a facility existed. In addition, there is an examination of the factors which drive the in-custody population as well as some possible strategies for avoiding significant future detention population growth. Our main statistical analysis is based on a series of large data extracts covering custody factors, court event dates, and other relevant variables. The research effort culminated in a forecast of the future size of a hypothetical facility's population, reflecting both a continuation of current policies and practices as well as the impact of possible changes to the Cherokee Nation criminal justice system.

### **Methodology**

We undertook five main tasks to execute this study.

First, we conducted multiple interviews and meetings with stakeholders from across the Cherokee Nation criminal justice system, both onsite and via virtual meetings.

Second, we acquired multiple comprehensive data extracts from the Cherokee Nation Attorney General's Office which included key information about every single individual charged with an offense between April 1, 2021, and January 31, 2024. We synthesized the extracts into a database that enabled us to construct a profile of the individuals who had a criminal matter.

Third, using known lengths of stay measures from other jurisdictions, we were able to build a hypothetical population range for a Cherokee Nation facility for the dates of our analysis.

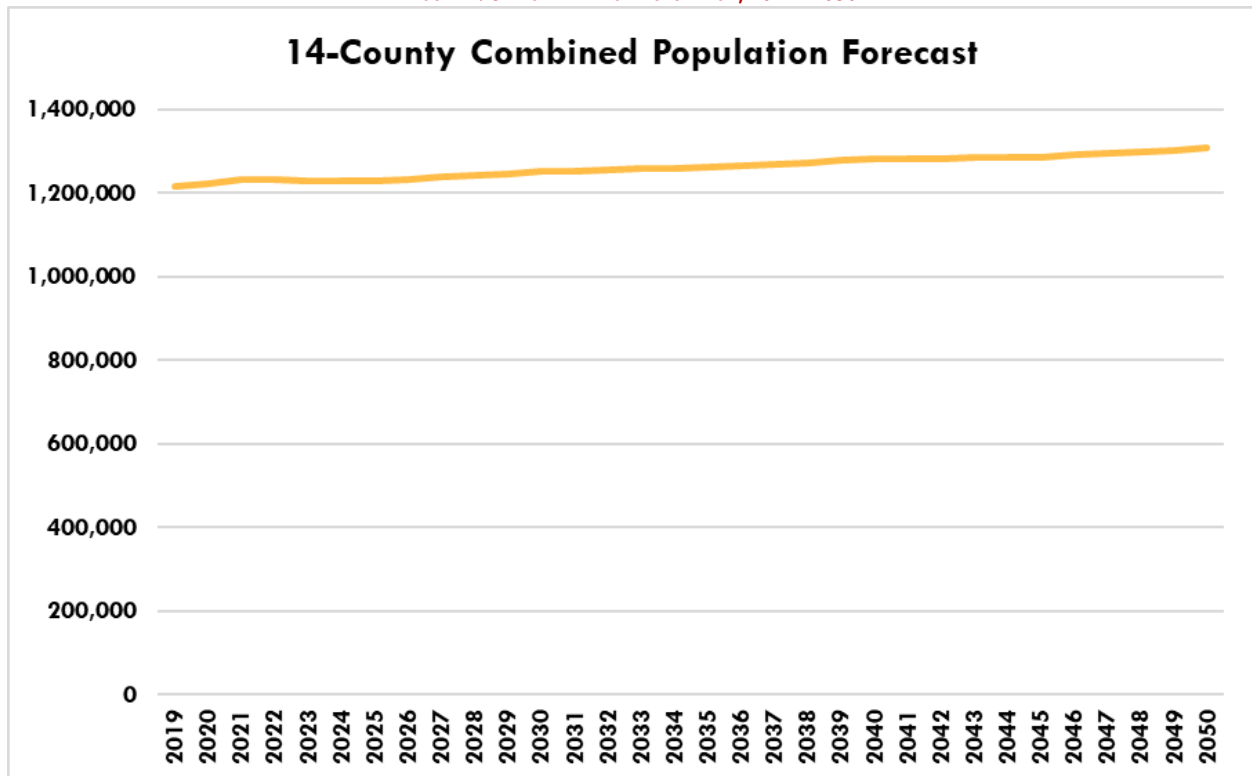
Fourth, the results of the statistical analyses were combined into multiple time series forecasts using Autoregressive Integrated Moving Average (ARIMA) methods.

Finally, we developed findings and recommendations based on all our conversations, meetings, analyses as well as our past experience working with other jurisdictions.

## CHEROKEE NATION POPULATION

To provide some context for the analysis of a correctional facility's current and future population, we must examine the overall population of the Cherokee Nation. Unfortunately, we were not able to obtain a statistically validated dataset that was specific to the Nation. We were offered access to a dataset emanating from the Citizen Portal. Our understanding is that participation in the portal is voluntary and that a significant number of people have not (as of this writing) signed up for it. Statistically speaking, the concern is that the people who have signed up for the portal share characteristics not possessed by the people who are not participating in the portal, and vice-versa. The portal may be a good resource in the future as adoption of it becomes more universal. As a proxy for the population data, we instead used the population of the 14 counties that are within the Cherokee Nation's boundaries. We utilized the population projections produced in March 2023 by the Oklahoma Department of Commerce's Research and Economic Analysis Division<sup>1</sup>. We combined the projected populations of the 14 counties in question into a single number, which is plotted in Figure 1 below.

FIGURE 1. CHEROKEE NATION POPULATION, 2019 - 2050



Taken together, the 14 counties have a combined growth rate of 6.1% by 2050. Some counties are expected to grow much more quickly (Tulsa County is expected to grow nearly 12%) while others are projected to experience population decline (McIntosh County may have 20.5% fewer residents by 2050). While the population size of any jurisdiction is an important consideration, it is certainly not the most important factor when predicting the optimal size of a future correctional facility. We explore these more important predictors in the pages that follow.

<sup>1</sup> <https://www.okcommerce.gov/wp-content/uploads/Oklahoma-State-and-County-Population-Projections-Through-2070.pdf>

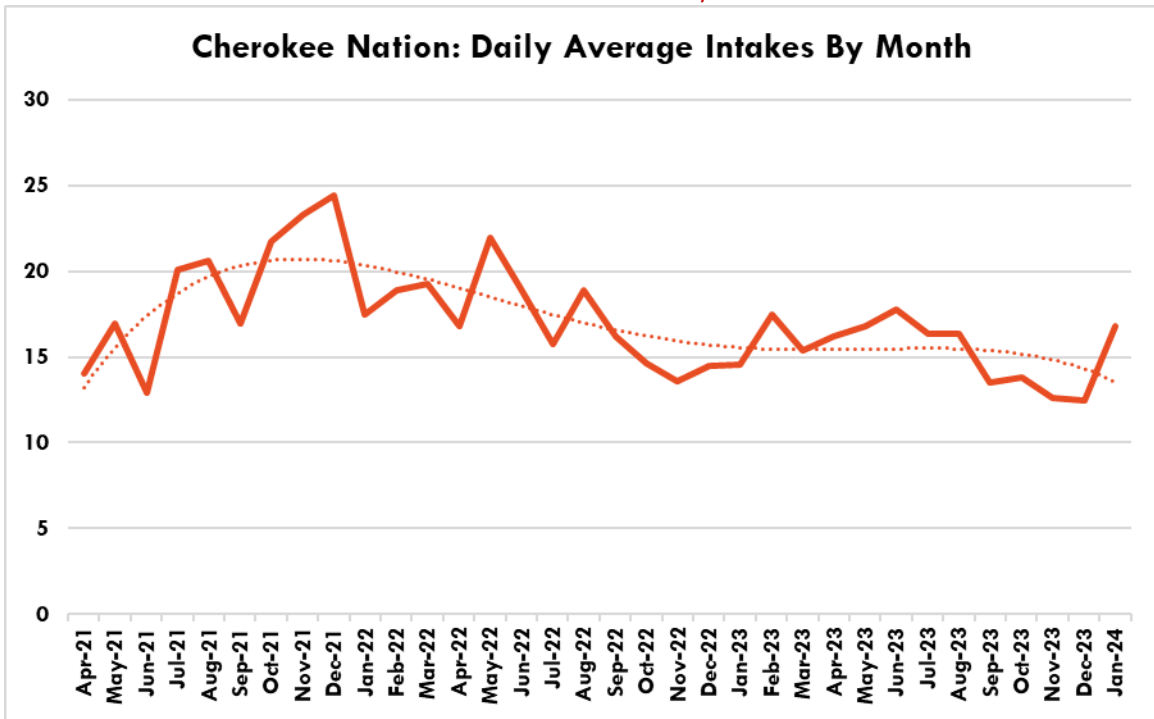
## CORRECTIONAL FACILITY POPULATION CONSTRUCTION

Key measures that would impact a Cherokee Nation correctional facility population were employed in a comprehensive set of analyses such as commitments (the number of people booked into the facility), average daily population (ADP), average length of stay (ALOS, a measure of how long, on average, detainees stay in custody), arrest offenses, a review of alternatives to incarceration, and a profile of the detainee population. To perform our correctional facility population analysis, a significant set of data extractions from the Cherokee Nation Attorney General's Office was obtained and analyzed. Our intention was to examine every charge for every person with a criminal matter between April 1, 2021 and January 31, 2024, along with demographic and release information. Due to methodological requirements and data updates, some measures of the analysis may have a later start date or a more recent end date.

### Commitments

All detention facility population capacities are determined by two factors: How many people are booked into the detention facility and how long those people stay (ALOS). Because there is no Cherokee Nation corrections facility, we first examined the number of people who had a criminal case filed against them. For the purposes of clarity, we are calling these events 'intakes' and we are using them as a substitute for facility commitments. In reality, the vast majority of these individuals do end up in either one of the 14 county facilities, or in one of two municipal facilities. Initially, the research team acquired the roster or billing information reports for these myriad facilities, but quickly found out that there was a wide variation in the reliability, validity, and presentation of the data involved. There were enough data issues with this type of information that we used this dataset only for occasional checking or reference purposes, rather than the forecast effort. Figure 2 below provides the daily average number of intakes for the Cherokee Nation from the Attorney General data. We utilized a daily average to avoid the impact of the different number of days in each month.

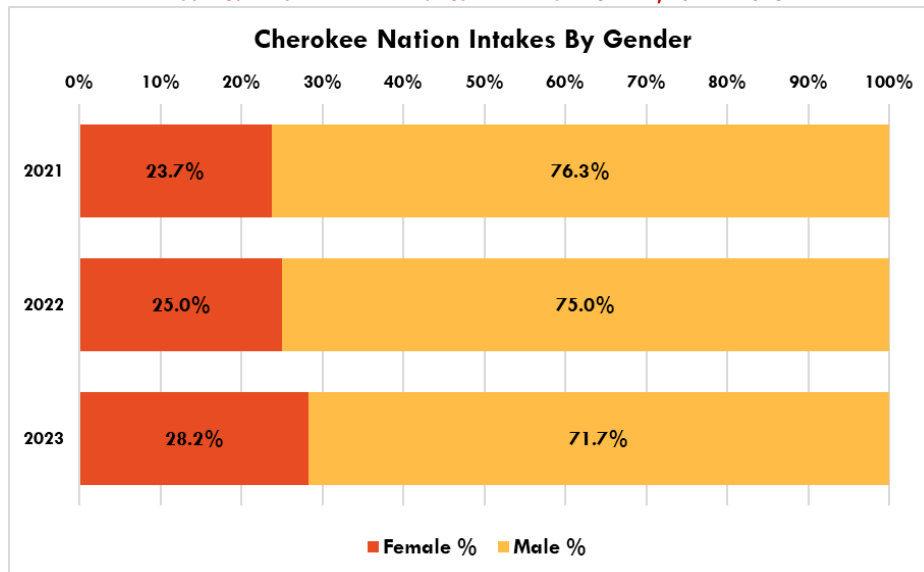
FIGURE 2. MONTHLY DAILY AVERAGE INTAKES, 2021 – 2024



Overall, Figure 2 tells us that intakes rose in late 2021 to more than 20 per day, before gradually falling between 2022 and the end of 2023. The average number of daily intakes fell below 14 for the final four months of 2023 before rebounding to 16.8 at the end of our dataset.

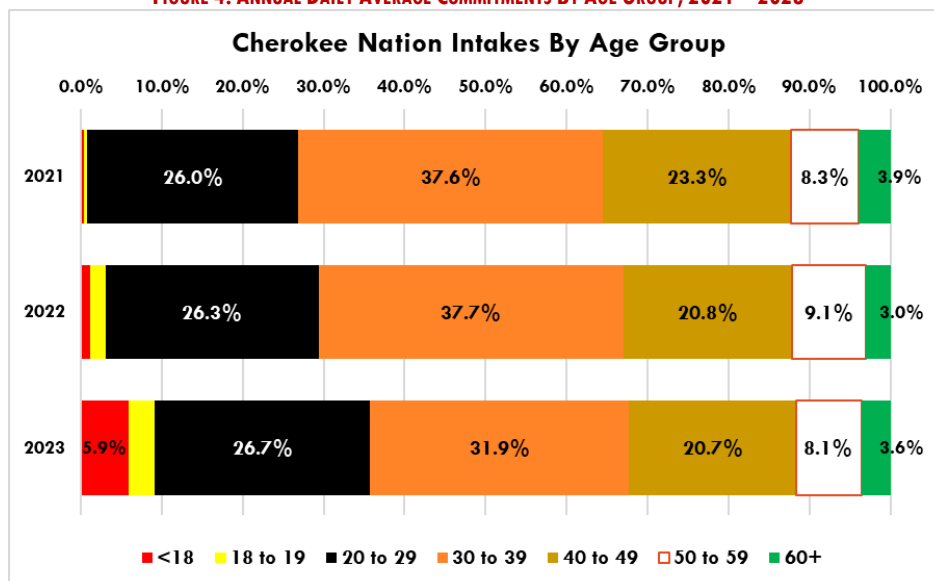
The research team was able to link the intake information to some demographic information so that we could learn more about the population. Figure 3 depicts the annual intakes by gender between 2021 and 2023. As we have seen elsewhere across the United States, the proportion of females involved with the criminal justice system is increasing over time.

**FIGURE 3. ANNUAL DAILY AVERAGE COMMITMENTS BY GENDER, 2021 – 2023**



Meanwhile, Figure 4 breaks out the intake information by age group. We note an increase in people under age 20, as well as a reduction in people who are in their 30s. This is not what we are seeing in the rest of the country, and we also note an increase in individuals under 18 years of age during 2023.

**FIGURE 4. ANNUAL DAILY AVERAGE COMMITMENTS BY AGE GROUP, 2021 – 2023**



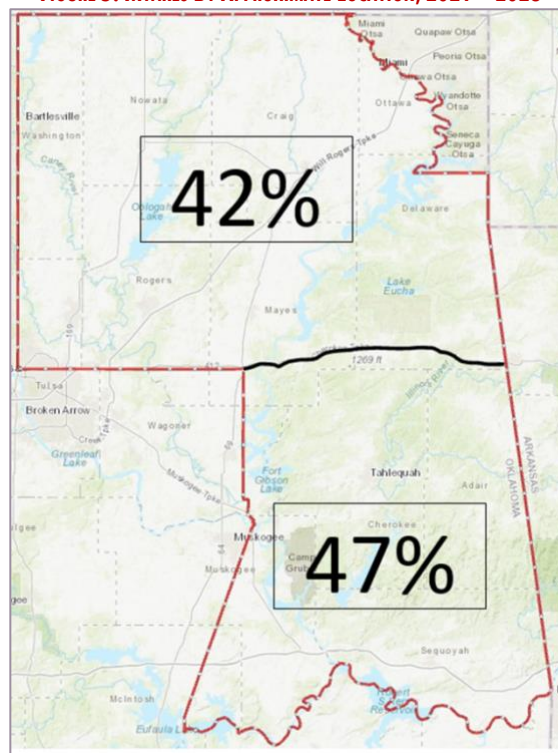
Using the agency information for each arrest in the data, we were able to estimate an approximate location for the intakes. Table 1 breaks out the top agencies with a Cherokee Nation intake.

**TABLE 1. CHEROKEE NATION INTAKES BY AGENCY, 2021 – 2023**

Agency	2021	2022	2023
Tahlequah Police Department	13.0%	10.4%	12.4%
Cherokee County Sheriff's Office	10.4%	8.8%	7.7%
Sallisaw Police Department	5.0%	4.4%	5.1%
Sequoyah County Sheriff's Office	3.7%	4.8%	5.5%
Claremore Police Department	4.1%	5.2%	4.1%
Adair County Sheriff's Office	5.9%	4.0%	3.1%
Rogers County Sheriff's Office	4.0%	4.6%	4.3%
Cherokee Nation Marshal Service	2.7%	3.9%	4.9%
Bartlesville Police Department	5.1%	3.1%	2.8%
Tulsa Police Department	2.8%	4.1%	3.8%
Pryor Police Department	3.6%	3.4%	3.1%
Owasso Police Department	2.8%	3.1%	3.9%
Stilwell Police Department	3.2%	2.7%	3.3%
Delaware County Sheriff's Office	3.7%	2.8%	2.3%
Mayes County Sheriff's Office	2.9%	2.7%	2.8%
77 Other Agencies	27.2%	31.9%	31.0%

Applying the intake agency data to a map enabled the production of Figure 5, which is in some cases a loose estimation of where arrests actually occurred. In approximately 11% of the intakes, the precise location is unknown due to the agency in question having operations throughout the Nation's borders (the Cherokee Nation Marshal Service, FBI, etc.) When examining the two regions, we saw only a few differences in terms of offense types and levels, and there were almost no differences in terms of demographics.

**FIGURE 5. INTAKES BY APPROXIMATE LOCATION, 2021 – 2023**



The Attorney General data also enabled an analysis of the charge levels and types of the people involved. The first part of this analysis examined the levels of each person's offense. The methodological strategy in this case was that all felonies outweigh all misdemeanors. For instance, if a person has been charged with 2 offenses, a felony and a misdemeanor, the research team regarded the intake as a felony intake because of the more serious level of the felony. Figure 6 shows the monthly trend of felony and misdemeanor intakes across time. Normally, we would expect to see misdemeanor intakes outpace felonies by about a 4 to 1 ratio (and then, in the actual population, felony-level detainees would outnumber misdemeanors by about a 4 to 1 ratio due to having much longer lengths of stay). In this case, however, the felony and misdemeanor levels are very comparable, and the trends follow each other quite closely.

**FIGURE 6. MONTHLY FELONY VS. MISDEMEANOR INTAKES, 2021 – 2023**

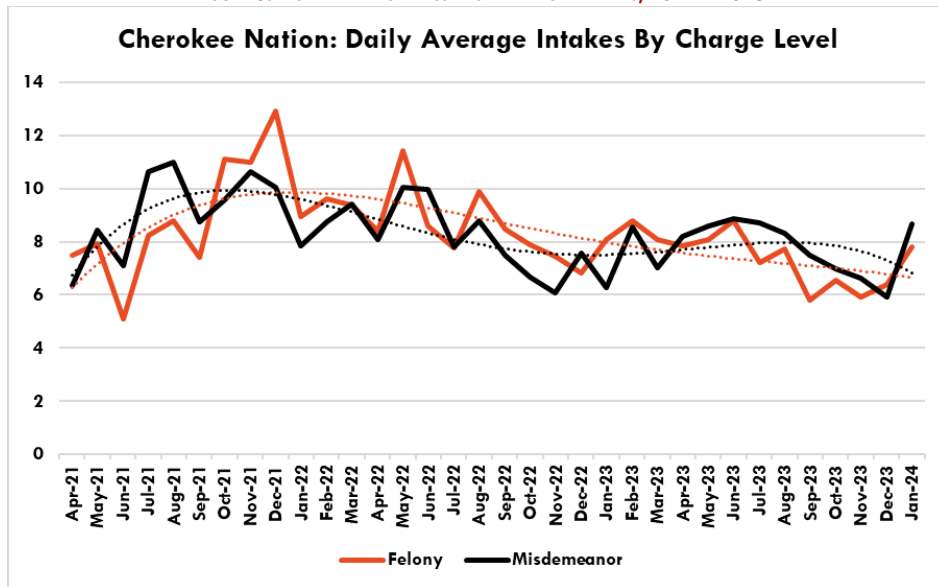
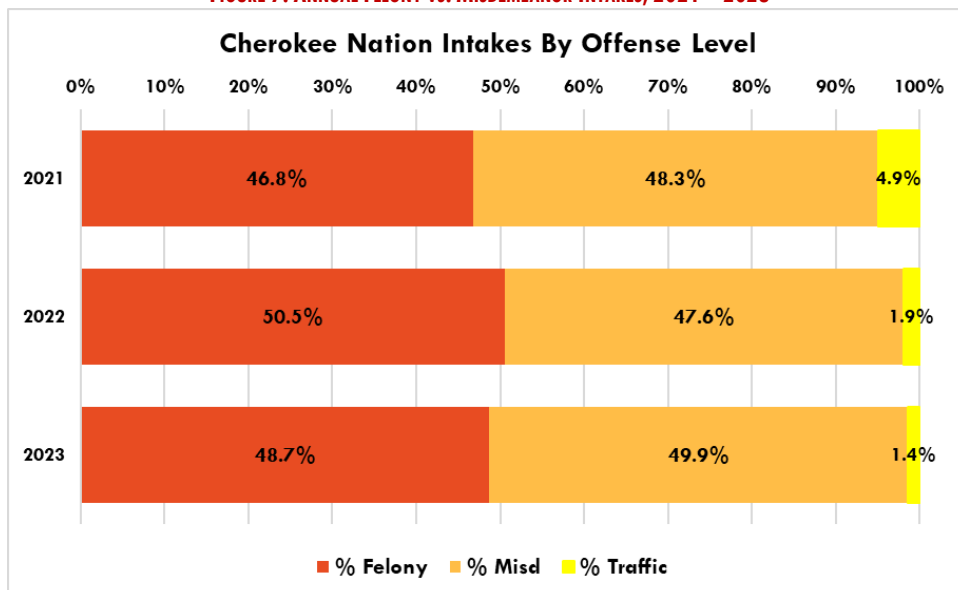


Figure 7 depicts an annual view of the same data, and it is evident that the split between felony and misdemeanor intakes is relatively even as well as stable.

**FIGURE 7. ANNUAL FELONY VS. MISDEMEANOR INTAKES, 2021 – 2023**





## Commitments By Charge

The research team also examined the offense that necessitated each intake during the period of our analysis. Because most people are booked with more than one offense, to make comprehending the nature of the offenses involved across the population easier, it is necessary to determine the most serious offense of each person. The data extracts produced by Cherokee Nation staff contained every single charge for every person charged between April 2021 and January 2024. These extracts were analyzed, and the charge information was reclassified into multiple categories. This helped construct a further reclassification to develop the most serious charge for each detainee. The categories used to make the final determination are (presented in order of seriousness):

- Violent
- Sex Offenses
- Offenses vs People
- Weapons
- Burglary
- Theft/Fraud
- Drugs
- Offenses Against the Administration of Government
- DUI
- Public Order
- Other
- Alcohol
- Traffic
- Supervision/Temporary Release Violation
- Hold/Writ

'Offenses vs. People' is defined as crimes such as neglect, endangerment, corruption of minors, harassment, etc.). 'Offenses Against the Administration of Government' is defined as crimes such as Failures to Appear in Court or Resisting Arrest. 'Public Order' offenses include things like Vandalism, Trespassing or Disorderly Conduct. Using the information collected from the large data extract, when a detainee has multiple charges, a primary charge category is assigned according to the priority listed above. The priority listing is premised on the most serious offense having the highest priority. For example, if an arrestee was charged with a DUI and a violent offense, the primary charge category for that person would be violent. In addition, as previously discussed, in our logic, felony charges will trump a misdemeanor charge. For instance, a person with a misdemeanor theft and a felony public order offense would have a most serious charge category of 'Felony Public Order.' Finally, we also ranked offenses based on the level of seriousness (felonies vs. misdemeanors, such that any felony outranked any misdemeanor).

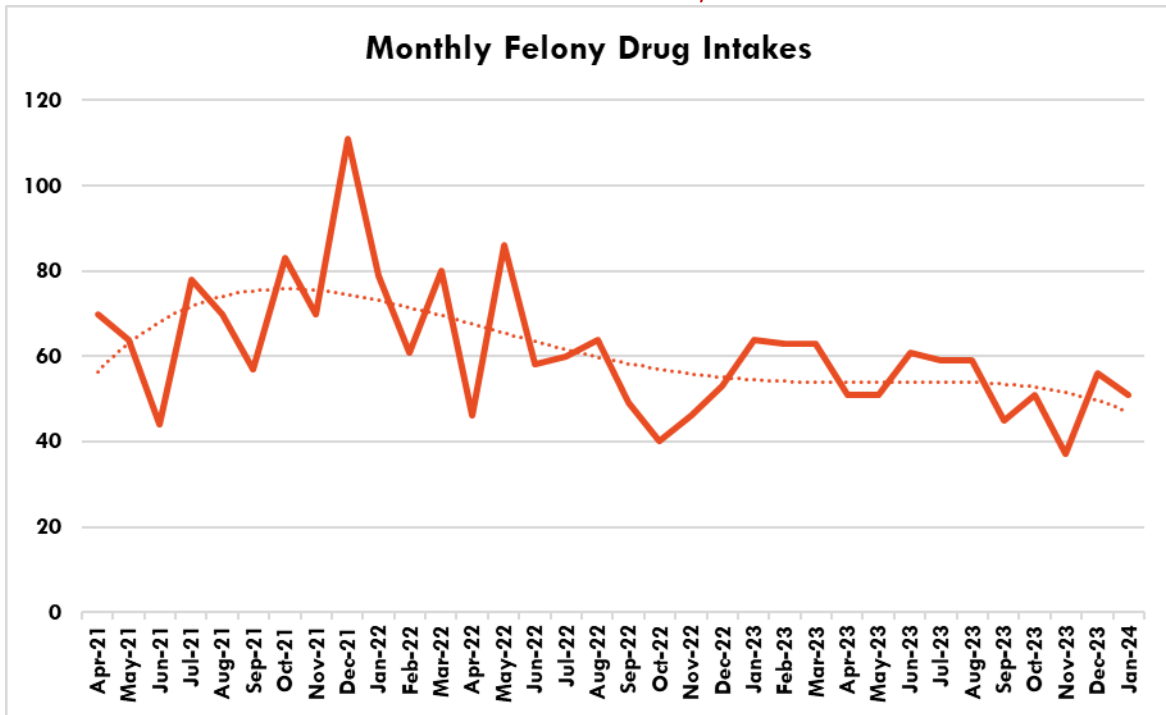
Table 2 breaks down the Cherokee Nation intakes by most serious charge and is sorted by their proportions of all intakes for 2023. Felony drug intakes are the largest category, but the misdemeanor level of 'Offenses vs. People' is a close second. The largest increase in the data is for 'Alcohol/Public Intoxication.' The number of such intakes dropped significantly in 2022 before rebounding in 2023.

**TABLE 2. PROPORTION OF BOOKINGS BY MOST SERIOUS OFFENSE**

	2021	2022	2023
Drugs Felony	12.4%	11.5%	11.8%
Offenses vs People Misd	10.6%	10.8%	10.4%
Offenses vs People Felony	6.6%	8.2%	9.0%
Violent Felony	8.0%	8.3%	7.6%
Theft/Fraud Misd	6.2%	7.5%	7.4%
Alcohol/Public Intoxication Misd	6.7%	4.5%	7.3%
Theft/Fraud Felony	7.8%	8.2%	6.8%
DUI Misd	7.4%	6.9%	6.7%
Violent Misd	5.4%	6.6%	6.3%
Burglary Felony	4.9%	4.7%	4.9%
Public Order Misd	4.6%	4.7%	4.9%
Offenses vs Government Misd	3.1%	3.5%	4.2%
Weapons Felony	3.5%	3.8%	3.3%
Sex Offense Felony	1.8%	2.0%	2.5%
Drugs Misd	2.8%	1.4%	1.5%
Traffic Misd	4.9%	1.9%	1.4%
Everything Else	3.3%	5.5%	3.8%

Figure 8 depicts the monthly number of intakes for those whose most serious charge was a felony-level drug offense. The overall pattern is very close to the total number of intakes that was presented in Figure 2, with a spike in late 2021, followed by a steady decrease. The number has slowly declined over time since early 2022.

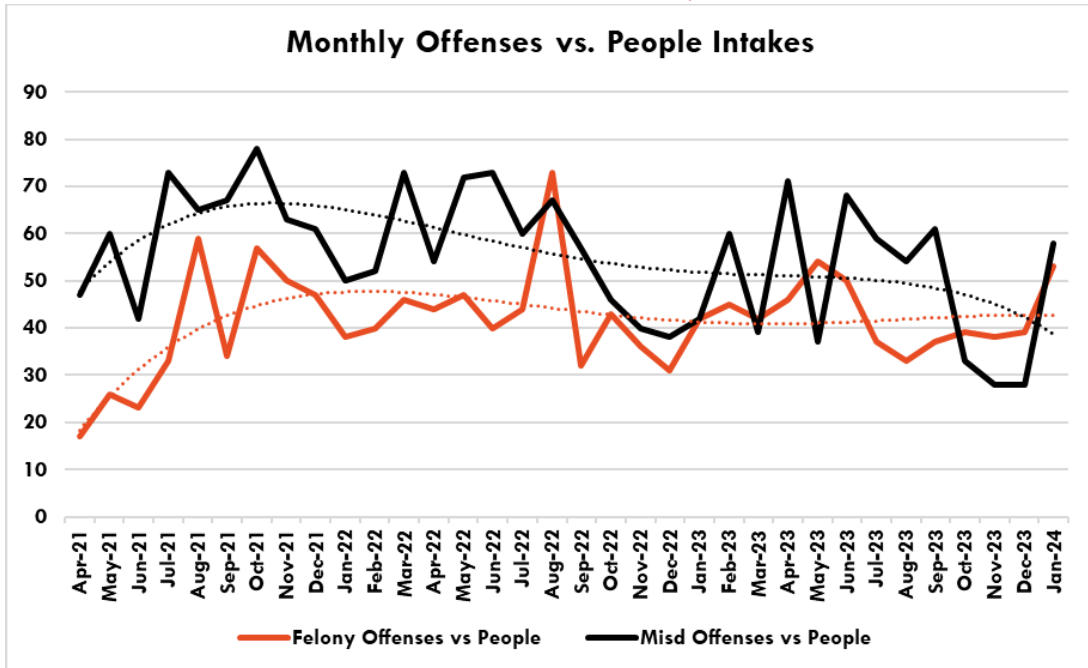
**FIGURE 8. MONTHLY FELONY DRUG INTAKES, 2021 – 2023**



The second and third largest charge categories in the intake data involve ‘Offenses vs. People.’ Figure 9 plots both the felony and misdemeanor levels of these intakes. The overall shape of the two trends is a bit different than what we saw in the overall and felony drug intake charts. The numbers are a bit more stable from month to month, but, again, the numbers decrease in late 2023 for the misdemeanants. We

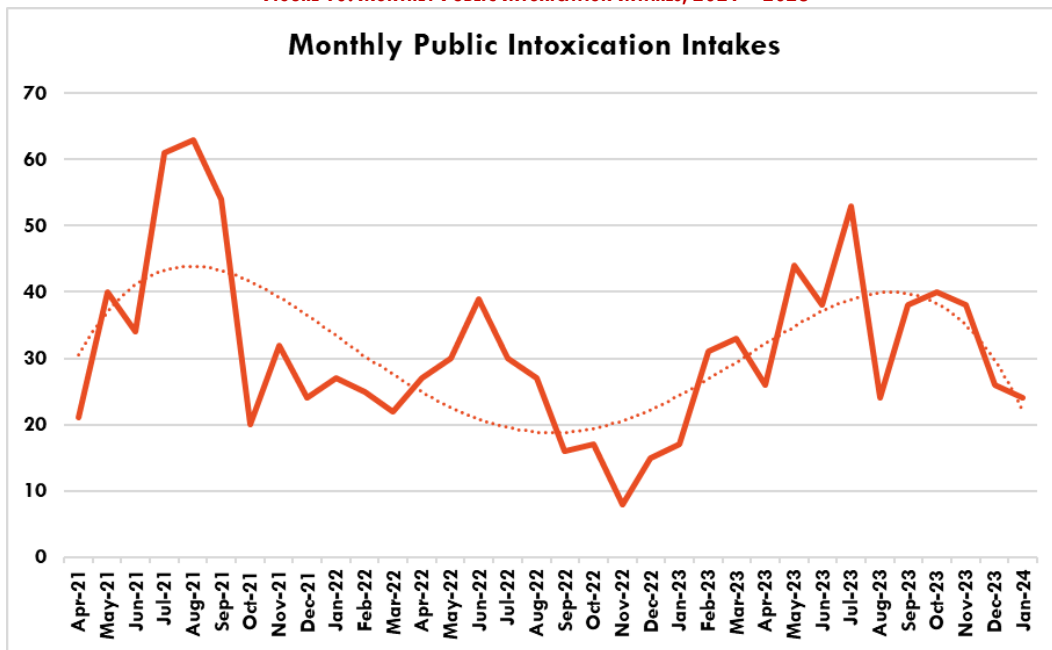
also note that there are more of these types of offenses in the northern areas of the Nation.

**FIGURE 9. MONTHLY OFFENSES VS. PEOPLE INTAKES, 2021 – 2023**



Because of the annual increase in 2023 for alcohol/public intoxication defendants we discussed above, Figure 10 is presented in order to look at the monthly trend. There is a much more dramatic spike in 2021, followed by a small increase in Summer 2022, a significant trough in late 2022. The trend builds up again during 2023, before falling again in late 2023. This is a fairly clear 12-month seasonal pattern (although the 2022 spike is not as prominent as 2021 and 2023).

**FIGURE 10. MONTHLY PUBLIC INTOXICATION INTAKES, 2021 – 2023**



## Average Length of Stay

While commitments are one half of the equation for determining the size of a correctional population, the second determinant is how long those booked into a facility remain in custody. The average length of stay (ALOS) is the total number of days on average the detainee population is incarcerated from commitment into a correctional facility until they are released from the correctional facility. For the purposes of the present study, the local facility-level data were problematic enough that estimates of ALOS were not possible.

Given the shortcomings of the jail rosters, and the fact that the Attorney General data only gave us insight regarding case processing times (which aren't a very good substitute for custody times because the majority of arrestees secure their release prior to case disposition), the research team attempted to estimate appropriate ALOS measures through other means.

Utilizing data from our past portfolio of projects across the country, we sought to construct a pretrial ALOS number that, together with the intake data, could be used in estimating a correctional facility population. Thirteen projects involving local correctional facilities were utilized in the analysis. Several additional facility projects were excluded from our analysis because the data in those projects were not as good as the Cherokee Nation Attorney General data in terms of charge and disposition. The data from the 13 projects in question were combined in such a way that it was possible to calculate a median length of stay by the most serious charge. In doing this, we noted that some of the facilities involved experience case processing challenges and opportunities that perhaps inflated the ALOS measure, something for which we tried to control in the analysis proper.

The next step of the analysis was to multiply the intake numbers for each charge category by the estimated ALOS derived from our 13 project median. The result of this multiplication operation gives us the number of bed days. Once the bed days was calculated, we divided the bed days by calendar days in a given time period to produce a population number. For the sake of clarity and understanding, it is perhaps prudent to walk through an example. Taking people who have a most serious charge of felony drugs, it is possible to convert the intake number to a population number, as follows: In 2023, the Nation had 660 intakes of people who had a most serious offense category of felony drugs. Our estimate of the ALOS for felony drugs from past projects was 31.2 days. To calculate bed days, we multiply the 660 people by the 31.2 days, resulting in 20,592 bed days in 2023 for felony drugs. The 20,592 is then divided by the 365 days in 2023 to produce a pretrial average daily population (ADP) for felony drugs of 56.4.

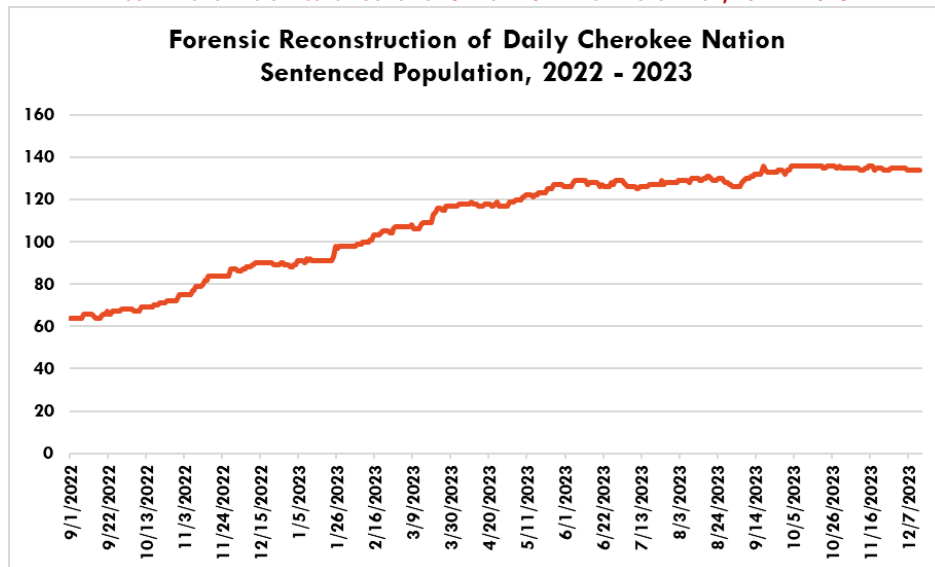
This analysis was done across all 25 charge groups in the data. Hence, for 2023, the 5,575 intakes was multiplied by 31.15 (the total estimated ALOS), resulting in a total bed day number of 173,673. This number was divided by 365 days so that the ADP for 2023 is estimated to be 476. Table 3 shows the intakes, ALOS, and ADP for all of the charge groups. In addition, knowing that several of the jurisdictions which contributed to our ALOS estimation had inordinately high pretrial ALOS numbers, the research team treated this first part of the analysis as an 'upper limit.' After excluding the high ALOS facilities, a new set of ADP estimates was produced. The two columns on the far right of Table 3 show the results of these estimates, which is being called the 'Optimal LOS' and reflects our judgment that the Cherokee Nation's criminal justice system can meet the lower LOS estimates. The takeaway is that the 'true' pretrial population of the Cherokee Nation's correctional facility would be somewhere between 278 and 476. We note that during our conversations with key stakeholders during our onsite visit that the prevailing estimate of the pretrial population ranged between 260 and 290.

**TABLE 3. FULL ALOS TO ADP ANALYSIS**

Offense Type	2023 Intakes	Median LOS	ADP	Optimal LOS	ADP
Alcohol/Public Intoxication Misd	408	2.3	2.5	1.0	1.1
Arson Felony	13	116.4	4.1	90.0	3.2
Burglary Felony	275	67.8	51.1	25.0	18.8
Burglary Misd	33	15.1	1.4	7.0	0.6
Drugs Felony	660	31.2	56.4	20.8	37.6
Drugs Misd	86	9.6	2.3	4.0	0.9
DUI Felony	47	32.3	4.2	19.9	2.6
DUI Misd	374	6.0	6.1	2.0	2.0
Offenses vs Government Felony	55	33.8	5.1	22.5	3.4
Offenses vs Government Misd	235	12.5	8.1	7.0	4.5
Offenses vs People Felony	502	56.9	78.3	35.9	49.4
Offenses vs People Misd	581	14.2	22.6	6.5	10.3
Public Order Felony	33	30.3	2.7	19.8	1.8
Public Order Misd	272	8.8	6.6	4.0	3.0
Sex Offense Felony	140	98.0	37.6	63.9	24.5
Sex Offense Misd	4	20.1	0.2	13.0	0.1
Theft/Fraud Felony	379	32.3	33.6	21.4	22.2
Theft/Fraud Misd	413	10.7	12.1	5.0	5.7
Traffic Felony	1	19.5	0.1	11.4	0.0
Traffic Misd	78	3.1	0.7	1.0	0.2
Unknown Misd	0	7.3	0.0	1.0	0.0
Violent Felony	422	92.6	107.1	56.2	65.0
Violent Misd	350	10.5	10.1	5.0	4.8
Weapons Felony	185	43.6	22.1	31.8	16.1
Weapons Misd	28	10.4	0.8	5.0	0.4
<b>Total</b>	<b>5,574</b>		<b>475.8</b>		<b>278.3</b>

While the above analysis is sufficient to capture the pretrial population, it does not help calculate what the population would be for people who are sentenced. Estimating the sentenced population was a more straightforward task. The research team acquired a list of all individuals who were currently sentenced as well as a list of all individuals who had been released after serving a sentence. Both lists had sentencing dates and the released list had a date of release. Given those factors, it was relatively simple to calculate the number of sentenced people who were held each day. Figure 11 provides the time series of this population between September 2022 and mid-December 2023. The sentenced population has held relatively steady at around 134 people for the last 6 or 7 months in the data. Taken together, our pretrial population estimate of 278 and the 134 people in the sentenced population reconstruction equate to 412 people.

**FIGURE 11. FORENSIC RECONSTRUCTION OF CHEROKEE SENTENCED POPULATION, 2022 – 2023**



## **CORRECTIONAL POPULATION FORECASTS**

Multiple jail population forecast models were built to develop an overall Cherokee Nation Detention Facility population forecast through the year 2048.

### **Background and Methodology**

The best predictor of any trend's future levels is the history of that trend. A correctional facility's population time series is no different. However, because of the existence of unforeseen circumstances, it should be noted that the precision of forecasts of all kinds diminishes the further into the future one projects. All forecasts are only as good as what is known when the forecast was produced. The long-term accuracy of correctional population forecasting is heavily impacted by changes in public policy, law enforcement strategies, socioeconomic factors, and a host of other influences. Statistically speaking, correctional population forecasts by their very nature assume that the status quo at the time the forecast is produced remains in place for the duration of the forecast. The margin of error for these forecasts is essentially plus or minus 10% by the year 2048.

In terms of actual forecast development methodologies, there are multiple methods for building statistical forecasts. The forecasting technique developed from Box and Jenkins' Autoregressive Integrated Moving Averages (ARIMA) approach is one of the best options. To that extent, a series of ARIMA forecasts of jail population variables were employed in this study. ARIMA is generally used in time series forecasting situations primarily because of its ability to avoid the built-in errors of other forecasting techniques. ARIMA approaches are designed to estimate, diagnose, and control for autoregression problems. In addition, because ARIMA examines the past behaviors of a given trend, this approach can forecast multiple time points into the future. Moreover, ARIMA approaches allow the statistician to account for seasonal fluctuations in data as well as smooth out random fluctuations.

### **Average Daily Population Forecast**

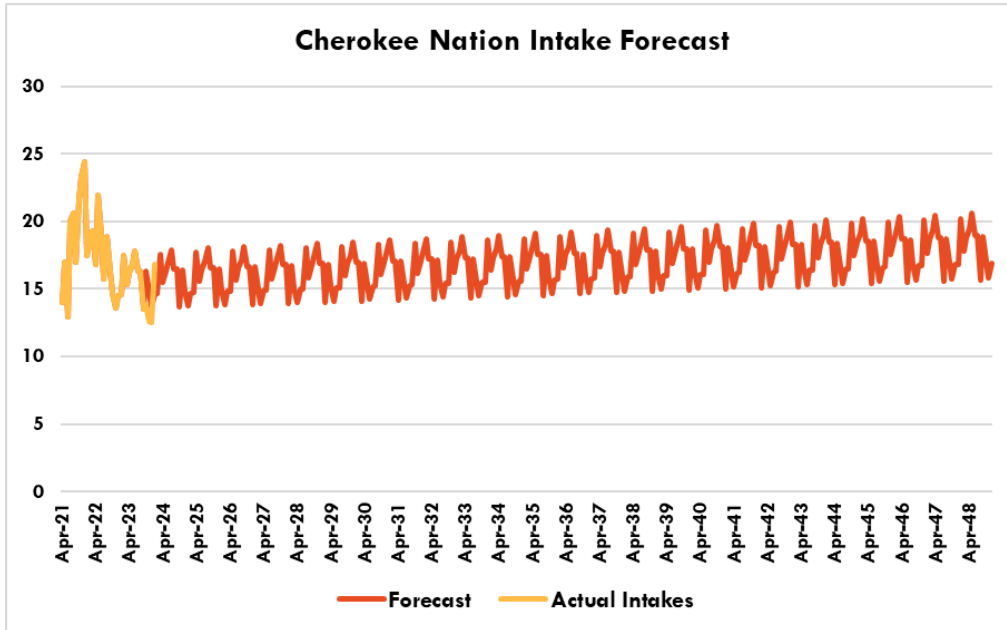
#### **Methodological Strategy**

To develop the forecast for the future ADP of a Cherokee Nation correctional facility, with no real long-term previous history of an ADP upon which to rely, we first developed a projection of the future level of intakes. Then, holding the projected pretrial ALOS to a constant 18.8 days, it was possible to calculate a pretrial ADP forecast. The next step in the process involved applying the forecast models for pretrial population growth to the sentenced population. Subsequently, the pretrial and sentenced forecasts were combined into an overall forecast of ADP. At the end, the population forecasts are then translated into bed counts over time.

#### **Intake Forecast**

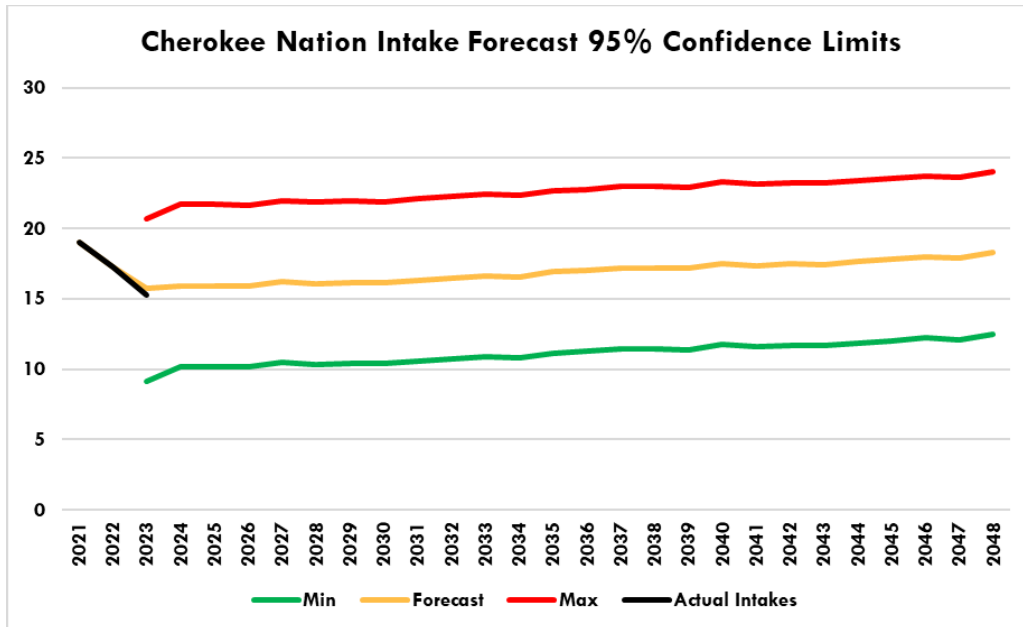
A large number of ARIMA forecast models were tested on the monthly intake data. The best performing model (diagnostically speaking) was selected for use. This model calls for a gradual growth (overall, 6%) in the number of Cherokee Nation intakes. Figure 12 shows the forecast. Note the model replicates the seasonal processes at work with the intakes time series.

**FIGURE 12. CHEROKEE NATION INTAKE FORECAST TO 2048**



The intake forecast, like all forecasts, involves a degree of uncertainty and error. It is possible to statistically quantify the uncertainty and this is represented by Figure 13 below. The red line represents the upper confidence limit, while the green line presents our lower confidence limit. The actual 'true' result for the intake number is expected to be within those two lines around 95% of the time.

**FIGURE 13. CHEROKEE NATION INTAKE FORECAST CONFIDENCE LIMITS**

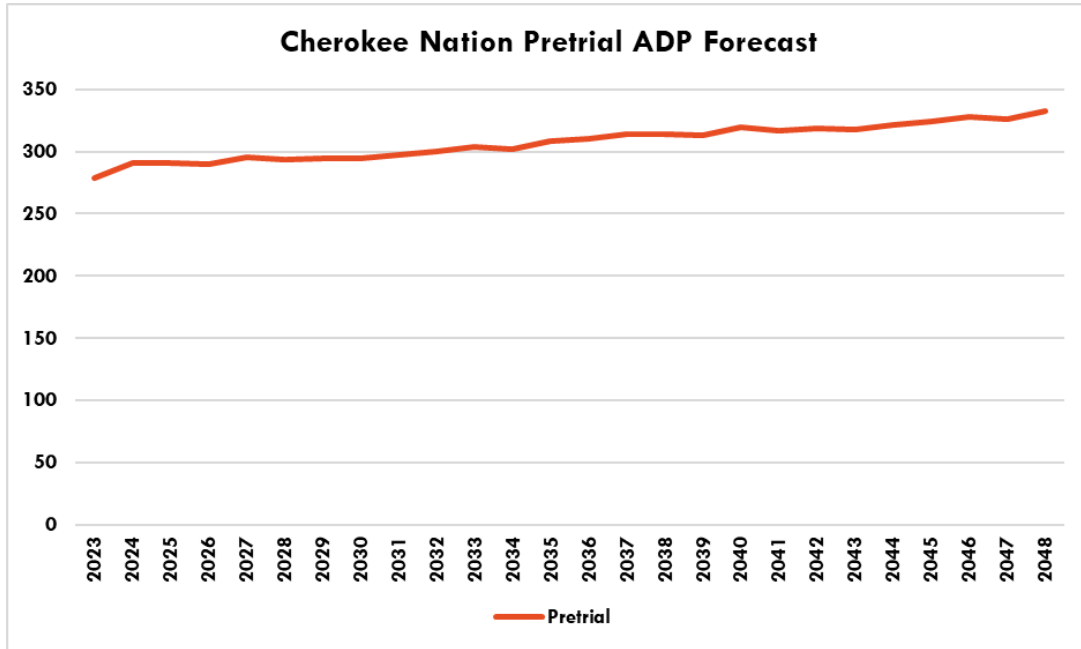


**Conversion of Intake Forecast to Pretrial Population**

The next step in the analysis involved translating the intake forecast into a population forecast for pretrial detainees. To do this, the ALOS was held at a constant 18.8 days. If the system reduces the ALOS below this number, the actual population will be lower than what is projected here. Naturally, if ALOS exceeds

this number, our forecast guidance will end up being lower than the actual number as time passes. Figure 14 shows the projected pretrial population growth through the year 2048. The pretrial ADP for 2048 is forecast to be 333.

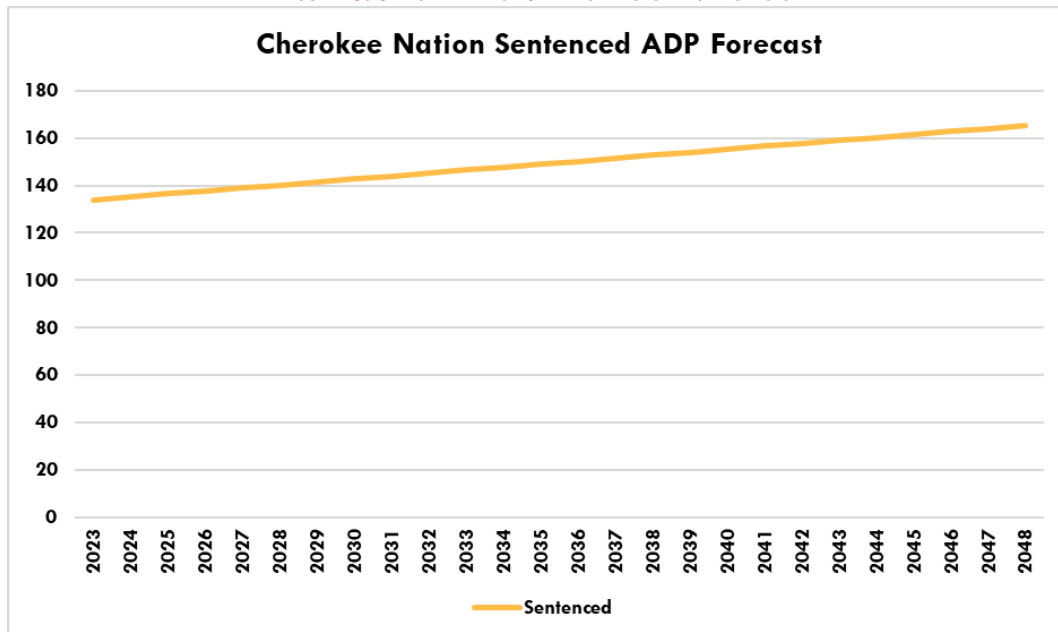
**FIGURE 14. CHEROKEE NATION PRETRIAL POPULATION FORECAST**



### Sentenced Population Forecast

The ARIMA process was used to model the sentenced population. We utilized the growth rate of intakes and pretrial ADP (and the 14 county freeworld population) as predictors of the sentenced population. Figure 15 shows the projected sentenced population.

**FIGURE 15. CHEROKEE NATION SENTENCED POPULATION FORECAST**

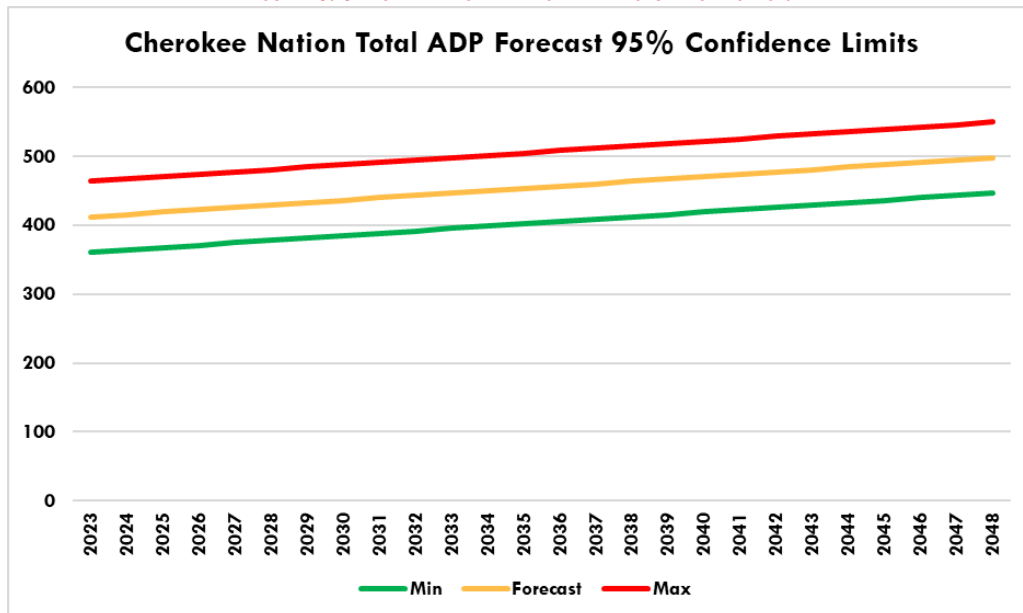




## Completed Average Daily Population Forecast

In the final step of the forecast analysis, the projected pretrial and sentenced populations were combined into a forecast of the total ADP. The confidence limits were calculated in order to show the model's guidance for how the population is expected to develop over time (Figure 16).

FIGURE 16. CHEROKEE NATION AVERAGE DAILY POPULATION FORECAST



## Conversion of Average Daily Population Forecast Into the Needed Number of Beds

The forecast effort provides a starting point for the determination of a correctional facility's future population. However, the forecast simply reflects only an average and as such it must be increased by two factors to arrive at the number of needed beds:

1. Peaking factor - to reflect the daily and seasonal variations in jail occupancy and to accommodate the temporary closure of beds due to the need for maintenance, and,
2. Classification factor - to adjust for the requirement to separate detainees as needed based on gender, security requirements, treatment needs, etc.

For the peaking factor calculation, we took the average of the top 5% highest reconstructed population days between 2022 and December 2023 (for both the sentenced and pretrial populations) and compared those numbers to the ADP. The jail's daily population fluctuations were such that one could expect the highest population during any day to be 25% greater for pretrial females/11% for sentenced females; and 10% larger for pretrial males/8.7% for sentenced males than the ADP.

In addition, not all detention beds are always available for use by every detainee. For instance, a vacant bed in a female unit cannot be filled with a male detainee, a maximum-security detainee cannot be placed in a vacant bed in a minimum-security setting, etc. A classification factor is, in effect, an acknowledgement of this reality. To include this factor, we used a commonly accepted standard of 15% for our estimations.

The peaking and classification factors are added to the ADP to complete the actual number of needed beds. Table 4 shows the bed need calculations for the pretrial populations. Thus, the projected ADP for 2048 of 333 pretrial detainees would require 428 beds to operate a safe and secure facility.

**TABLE 4. PRETRIAL FORECAST BED NEED CALCULATION**

Year	Females				Males				Total ADP	Total Bed Need
	ADP	Plus Peaking (25%)	Plus Classification (15%)	Bed Need	ADP	Plus Peaking (10%)	Plus Classification (15%)	Bed Need		
2028	69.5	17.4	10.4	97.2	219.9	22.0	33.0	274.9	289.4	372.2
2033	72.1	18.0	10.8	100.9	228.2	22.8	34.2	285.3	300.3	386.2
2038	74.7	18.7	11.2	104.6	236.5	23.7	35.5	295.6	311.2	400.2
2043	77.3	19.3	11.6	108.2	244.8	24.5	36.7	306.0	322.1	414.2
2048	79.9	20.0	12.0	111.9	253.1	25.3	38.0	316.4	333.0	428.2

Meanwhile, the same analysis was performed on the sentenced population forecast. The peaking factors are different for this population, but the logic used above is the same. Table 5 presents the bed need calculation for the sentenced population. We have projected that 205 beds are needed for a 2048 ADP of 165.

**TABLE 5. SENTENCED FORECAST BED NEED CALCULATION**

Year	Females				Males				Total ADP	Total Bed Need
	ADP	Plus Peaking (11%)	Plus Classification (15%)	Bed Need	ADP	Plus Peaking (8.7%)	Plus Classification (15%)	Bed Need		
2028	13.6	1.5	2.0	17.1	126.7	11.0	19.0	156.7	140.3	173.8
2033	14.2	1.6	2.1	17.9	132.3	11.5	19.8	163.7	146.5	181.6
2038	14.8	1.6	2.2	18.7	138.0	12.0	20.7	170.7	152.8	189.4
2043	15.4	1.7	2.3	19.4	143.6	12.5	21.5	177.7	159.1	197.1
2048	16.0	1.8	2.4	20.2	149.3	13.0	22.4	184.7	165.3	204.9

All told, the forecast process indicates that in 2048 there will be a total ADP of approximately 498. The bed need to safely house these people is 633.

## SYSTEM RECOMMENDATIONS/OPPORTUNITIES FOR POPULATION REDUCTION

During our study (combining both the statistical analysis as well as our conversations with stakeholders), multiple recommendations were developed regarding potential areas of improvement for the Cherokee Nation criminal justice system. We present our recommendations below.

Recommendation 1: Consider the use of gain time/good time for sentenced individuals. Currently there is no provision for accumulating gain time for people who are serving their sentences. The result is that Cherokee Nation inmates are serving a significantly higher proportion of their sentenced time than other jurisdictions' inmates. Using gain time will reduce the number of needed sentenced beds. Gain time also can serve as a behavioral modification tool by motivating people to follow the institution's rules in order to serve a somewhat shorter time.

Recommendation 2: There are more opportunities for custody diversion near or at the beginning of the system. Several stakeholders expressed the need for more diversion from custody. With a correctional system that is currently existing in multiple facilities in multiple jurisdictions, it is difficult at best to apply some standardized diversion/release practices in a timely manner. However, there are several options:

- The criminal justice system may be well-served by exploring the use of a statistically validated risk assessment instrument, such as the Public Safety Assessment (PSA), developed by Arnold Ventures. The PSA does not require an interview, and it is possible to pull the data for the PSA in an automated manner from the proposed Tyler data system. The judiciary would then have a basis at arraignment to judge whether a given individual is a good candidate for release or not.
- A pretrial services staff could assist with the release/detain decision by providing criminal history and other pertinent information to the judiciary at the time of arraignment. In addition, pretrial services staff can supervise a caseload in order to improve the chances of court appearance. Adding pretrial services staff can also complement the current probation staff, who have a high caseload (approximately 200 cases per person).
- Persons who have a risk level that is a bit higher than what is desired for non-monetary pretrial release may be better suited for electronic monitoring. The electronic monitoring program can be expanded to reduce the needed number of beds. Some jurisdictions around the country are relatively heavy users of electronic monitoring and it may be worth exploring this option as a way of limiting the size of any new facility.

Recommendation 3: Expand the use of releases to the Federal Bureau of Prisons (BOP). The BOP will accept detainees from the Nation if they meet several criteria, the most significant one being that the offense is a violent felony. Sentenced individuals who are serving more than 1 year (a significant proportion) could be appropriate candidates for being sent to the BOP system. One of the barriers to sending people to the BOP is an application process that is extremely detailed and intricate. It appears that the Nation is becoming more skilled regarding this process, and it is possible that if the Nation can truly develop an expertise, more individuals can be sent to BOP at no cost to the Nation.

Recommendation 4: Any envisioned facility will need to accommodate people with mental health or substance use disorder issues. Implementing a medical/mental health assessment at the time of booking/intake will help with the development of a treatment plan for affected individuals. Perhaps some of the people can be diverted from custody to treatment, reducing some of the bed need while also providing a significant benefit to the people involved.





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Office of the Chief

**Chuck Hoskin Jr.**  
*Principal Chief*

**Bryan Warner**  
*Deputy Principal Chief*

**EXECUTIVE ORDER**  
**2023-05-CTH**

**EXECUTIVE ORDER ESTABLISHING THE PRINCIPAL CHIEF'S CRIMINAL LAW  
REFORM AND PLANNING TASK FORCE**

1. **AUTHORITY:** The Constitution and laws of the Cherokee Nation.
  
2. **POLICY:** It is in the national interest of the Cherokee Nation to periodically evaluate and reform its criminal justice system to ensure that the system is effective, efficient and meets important objectives, including but not limited to the rehabilitation of Cherokee citizens convicted of criminal offenses. Sentencing requirements, alternative sentencing, reentry services as well as the adequacy of detention facilities are important subjects to review in this regard. To this end, the establishment of the "Principal Chief's Criminal Law Reform and Planning Task Force" is warranted.
  
3. **Principal Chief's Criminal Law Reform and Planning Task Force ("Task Force"):** The Principal Chief's Criminal Law Reform and Planning Task Force, a work group within the executive branch, is hereby created.
  - A. **Subject matters under review:** The task force shall study
    1. Criminal sentencing reform.
    2. Reentry program expansion.
    3. Threshold review of future detention facility needs.

**B. Membership**

The Task Force shall be composed of the following members:

- Attorney General Chad Harsha, (chair)

- Attorney General's designee (co-chair)
- Marshal Shannon Buhl (member)
- Secretary of State Shella Bowlin (member)
- Todd Hembree, CNB Vice President, Legal Department, Former Cherokee Nation Attorney General (member)
- By invitation: Cherokee Nation Judiciary (Chief Justice John Garrett's designated member)<sup>3</sup>
- By invitation: Cherokee Nation Council Member (Speaker Mike Shambaugh or designated member) (member)<sup>1</sup>
- By invitation: Cherokee Nation Council Member (Speaker Mike Shambaugh's designated member) (member)<sup>2</sup>

C. **Stakeholder Engagement:** The Task Force shall, at a minimum, engage the following for subject matter inquiries:

- Matt Lamont, Director of Cherokee Nation Reentry Programs (Recommendations as to reentry programs).
- Tralynna Scott, CNB Chief Economist (CNB conducted detention center feasibility study).
- Treasurer Janees Taylor (Cherokee Nation budget).
- Kim Teehee (Government Relations / Federal policy and funding).
- Chief of Staff Corey Bunch (Detention center staffing).
- One or more representatives of the local defense bar who are members of the Cherokee Nation Bar Association (defense counsel perspectives).

The Attorney General shall utilize such clerical or other support staff as necessary to assist the Task Force in its work.

#### D. **Objectives / Timeline**

The Task Force shall examine the subject areas along the following timelines:

##### 1. **Criminal Sentencing Reform (Recommendations Due 2/1/24)**

The Task Force shall examine current Cherokee Nation sentencing laws and practices and make recommendations for statutory changes that carefully balances Cherokee Nation's interests in justice and rehabilitation.

##### 2. **Reentry Program Expansion (Recommendations Due 2/1/24)**

The Task Force shall examine the operation and efficacy of the Cherokee Nation reentry program and make recommendations for programmatic and budgetary changes to improve outcomes and such other recommendations that align with Cherokee Nation's interest in providing support for its citizens who face post-conviction barriers to rehabilitation and reentry.

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<sup>1</sup> Speaker Mike Shambaugh has indicated interest in filling this seat.

<sup>2</sup> Speaker Shambaugh has indicated an interest in appointing Councilor Daryl Legg to this seat.

<sup>3</sup> Justice Garrett has indicated an interest in appointing Judge Barteaux to this seat.

**3. Threshold review of future detention facilities (Recommendations Due 6/1/24)**

The Task Force shall examine Cherokee Nation's current approach to criminal detention and make threshold recommendations as to operations, third party agreements and potential construction of a tribally owned and/or operated detention facility. The Task Force will forecast the operating and capital cost of operating Cherokee Nation's criminal detention system in future years.

Mindful that this subject area is wide ranging, the Task Force should approach the subject as a threshold review to guide future deeper analysis of the subject.

**E. Extensions of Time**

The Task Force Chair may request an extension time, based on good cause shown, for any of the deadlines described above.

**F. Public Disclosure**

Though the Task Force is an internal governmental work group and not a "public body" under Cherokee Law, its recommendations shall be disclosed to my office, the Speaker of the Council, the Chief Justice of the Supreme Court and to the public via Cherokee Nation's website within two weeks of the deadlines (or any extension thereof) described above.

4. **ORDER:** The Principal Chief's Criminal Law Reform and Planning Task Force ("Task Force") is hereby created.
5. **Effective Date:** This order is effective December 11, 2023.



Chuck Hoskin, Jr.  
Principal Chief of the Cherokee Nation

Date: 12/11/23