



Jailing Communities

*The Impact of Jail Expansion and
Effective Public Safety Strategies*

A Justice Policy Institute Report
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Introduction: Jails Are Part of the Country's Mass Incarceration Challenge

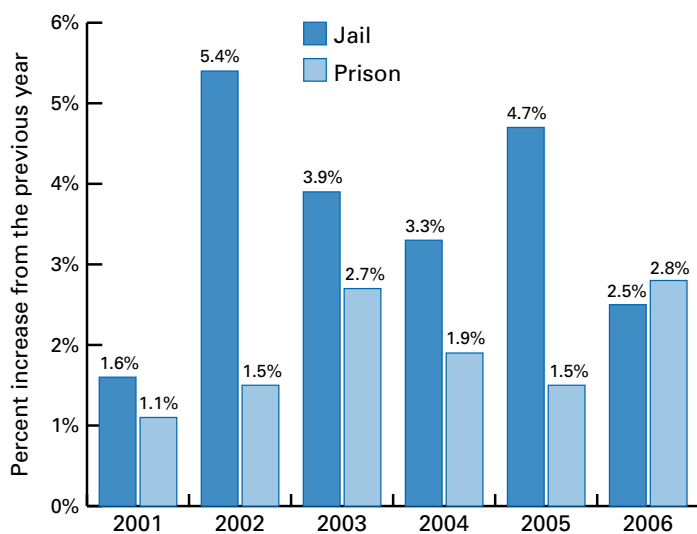
Jails have historically been overlooked as a contributing factor to the United States' addiction to incarceration. While the prison population continues to grow steadily, albeit at a slower pace than 10 years ago, the jail population has increased dramatically. Although the United States still has the highest incarceration rate in the world,¹ prison population growth has slowed since the 1990s. In 2006, prison population growth was half what it was in 1996, but in recent years, jail population growth has exceeded that of prisons. Public attention has been focused on prisons, with increased support for reducing prison spending, sentencing reform, and treatment rather than incarceration for drug addiction.² However, the same attention has not been leveled at jails and the impact that they have on the people held in them, the communities surrounding them, and the counties that must bear the financial burden.³

With prisons growth rates leveling off in the past decade, are jails now driving mass incarceration? Jails once had a focused role in detaining people awaiting trial or in incarcerating people who received short sentences. But as Americans chose to deal with drug abuse, mental illness, homelessness, and concerns over immigration through the criminal justice system, the country has also filled the nation's jails beyond capacity—a fact that has serious consequences for both the communities that now pay billions to maintain large jails and the millions of people who face serious, lifelong consequences once they have been jailed.

Since 2001, jail population growth exceeded prison growth, with a slight reversal in 2006. Between 2001 and 2006, prison populations grew 11 percent, while jail populations grew 21 percent.⁴ The one-day count of 766,010 people in jail in 2006 under-represents the reality, which is that the majority of people who experience locked custody in the United States do so in jail. With 219,000 people admitted to America's jails in just one week in the 1990s,⁵ there could be as many as 11 million jail admissions every year.

Changing crime rates do not explain the surging growth seen in jail incarceration. Between 1993 and 1999, a period in which violent crime rates fell, the nation added 10 new jails⁶ a year and the jail population grew by 146,000.⁷ Since 2000, when crime rates were basically flat,⁸ the U.S. added 145,000 more people to its jails. Thus, jail growth does not appear to be a function of crime trends.

Jail populations have been increasing at higher rates than the prison population.



Source: Harrison, Paige M., and Allen J. Beck. 2007. *Prison and jail inmates at midyear 2006*. Washington, DC: Bureau of Justice Statistics.

Why are America's jail populations on the rise?

As the responsibility of running America's jails falls to the country's more than 3,000 counties, it is hard to generalize practices and roles to each locality. Traditionally, jails only held people deemed a threat to

public safety pending trial, people who were thought to be unlikely to return to court, and people sentenced to a term of incarceration of usually less than a year. But as the United States has come to respond to a variety of social problems through the criminal justice system, jails are taking on new and expanded roles.

Today, 10 percent of the people in jail on any given day are people who have been sentenced to *prison*, a population that has increased 16 percent in just five years.⁹ Jails may be housing more sentenced prisoners because of overcrowding in the prison system, the inability of the corrections system to move people from jail to prison, and a shifting of responsibility for housing prisoners from the state to counties. As the country has chosen to respond to drug addiction through the criminal justice system, instead of the public health system, the number of people in jail for drug crimes has increased from 10 percent to just under a quarter of the jail population.¹⁰ The bold vision to deinstitutionalize America's psychiatric hospitals and shift the delivery of mental health services to the community failed to be realized. Jails have been likened to the "new asylums," where six out of 10 people in jail suffer from a mental health problem.¹¹ And, during the last decade—as the country has become more anxious about immigration—the jailing of people for immigration violations grew by 500 percent.¹²

U.S. jail populations may be on the rise because society has simply become more punitive—we are more likely to detain people pretrial for longer periods of time and less likely to use alternatives to pretrial detention. In blurring the lines between prison and jail, the public and media often forget that the majority of people held in jail have *not* been found guilty of any crime. According to the Bureau of Justice Statistics, 62.1 percent of people in jail in 2006 were unconvicted—a percentage that has grown and is still increasing.¹³ More people are being held pretrial than once were. During a time when the jail population increased by a quarter of a million people, the proportion of those jailed who were unconvicted grew by 20 percent.

People are less likely to be released pretrial. Fewer people detained for violent offenses are being released, but the three quarters of people in jail who are awaiting trial for property, drug, and public order related charges are also significantly less likely to be released. Overall, fewer people are being released from jail on their own recognizance, and the courts are more likely to impose bail amounts that fewer people can afford to pay. Once, more than half of those jailed received bail amounts of \$5,000 or less;

today, just about half of the people in jail receive the highest bail amounts (\$10,000 to the maximum).¹⁴ Since eight out of 10 people jailed made less than \$2,000 in the month before they were jailed,¹⁵ steep bail obligations make it harder to release the vast majority of people arrested for low-level, nonviolent offenses who crowd United States jails.

Many counties and local governments have developed a rich array of alternatives to jail incarceration and community-based corrections that supervise people outside of the jail environment. But during a time when jail populations have grown, the number of people in community corrections programs and under county community supervision has fallen. When a county invests the bulk of its local public safety budget in jails, it limits funds for less expensive, and often more effective, community-based programs.

Why are growing jail populations a concern for communities?

"What's a couple of days in jail?" As most people who are jailed are there for shorter periods of time than people sentenced to state prison, it is easy for those who do not know the facts to minimize the impact of jail time. But the days, weeks, months, and years that some people spend in jail carry significant consequences for the individuals jailed and the communities that have to house, maintain, and pay tens of billions of dollars to maintain the jails. In fact, the first day that someone is admitted to jail is usually the most expensive because of administrative needs, assessments, and often increased surveillance due to a high risk of suicide within the first 24 hours.

Jail incarceration has a negative impact on health, mental health, employment, and the family and community connections of people incarcerated. Jails rarely have adequate resources available to treat people with physical or mental health problems and, according to the National Association of Counties, jail often "*traumatizes persons with mental illness and makes them worse.*"¹⁶ No surprise, then, that the suicide rate in jails is nearly four times the rate in the general population.

Jail incarceration is an expensive proposition for counties, with hidden financial costs and impacts on the environment. Between 1983 and 2002, local spending on corrections grew from \$3 billion to \$18 billion a year—a 500 percent increase.¹⁷ When small counties cannot manage an overcrowded jail properly,

they can face multimillion-dollar lawsuits over poor conditions—lawsuits whose judgments create more fiscal obligations that the community must shoulder. Even when counties try to offset costs by leasing jail beds to the state or federal government, some communities are still awaiting the cash windfall. Several communities have been stuck with million-dollar tabs because they must pay for jail beds they do not need even as state and federal contracts vanish.

In return for the billions being spent on jails, are increasing jail incarceration rates making communities any safer? The places with the highest incarceration rates have not necessarily seen violent crime rates fall. New York City decreased its jail population and has experienced a drastic reduction in crime rates.¹⁸ Research from the Washington State Institute for Public Policy suggests that when the costs and benefits of incarceration in terms of reduced crime and savings to taxpayers are taken into account, jailing people for drug offenses is a net money loser.¹⁹ In contrast, for every dollar invested in community-based drug treatment, \$18 is generated from reduced crime and improved public safety savings to taxpayers. Since three-quarters of people in jail are there for property, drug, or public order offenses, and drug treatment or mental health needs are prevalent among people in jail, community-based supervision and treatment holds more promise than does a jail bed in helping people improve their life outcomes.

While all communities may suffer when jail populations increase, the impact of increased jail imprisonment is not borne equally by all members of a community. Though the proportion of people held in jail who are white is higher than in prison (44.3 percent and 34.6 percent, respectively),²⁰ people of color are disproportionately confined in jail. Jail incarceration rates for whites are 170 per 100,000 compared to African Americans at 815 per 100,000 and Latinos at 283 per 100,000.²¹ Women are also slightly more likely to be held in jail (12.9 percent) than in prison (7 percent),²² though men continue to constitute the vast majority of jail populations. New data reveal that Latinos are more likely than are whites or African Americans to have to pay bail, and they have the highest bail amounts, are least likely to be able to pay,²³ and are by far the least likely to be released prior to trial.²⁴

This report summarizes recent research findings on jails, the changing nature of jail populations, and the known impact of jails on communities and individuals. The Justice Policy Institute (JPI)

performed an extensive literature review and original data analysis and found that jail populations are increasing at a time when county budgets are tight and more cost-effective solutions are available. While this report does not make extensive recommendations, communities facing new jail construction should think twice about the various costs of that policy choice and consider the myriad alternatives to incarceration and community corrections that could be implemented to reduce jail overcrowding without spending millions of dollars building and operating new jails. Making different policy choices can help individuals get healthy, return home, return to work, and make contributions to their families and their communities.



Background: What Are Jails and How Are They Used?

Jails are correctional facilities operated and funded by counties and localities, and they are usually centrally located in a community. In comparison, prisons are usually state-operated and located outside city limits. Jails and prisons originally had very distinct roles, but these roles are beginning to blur due to longer sentences and the overcrowding of prisons.

Prisons are meant to hold people who are generally sentenced to more than one year, and jails are intended to hold people who are at risk of reoffending, are unlikely to return for their court date, and/or are sentenced to a year or less. Some prisons provide programming and rehabilitative services, but because jails have historically been intended to hold people for short lengths of time, they typically have no or few services or programming. Today, jails hold people for more reasons and purposes than they once did.²⁷

Historically, jails have served two main purposes:

- To detain people prior to trial and pending conviction or sentencing. These people either have not been released pretrial because they have been deemed a threat to society or themselves, or they have not been able to post bail. They comprise the largest proportion of people held in jails.
- To hold people sentenced to county time (usually less than one year).

Today, new obligations have fallen on jails:

- To hold people in space leased from the federal government, state, or another county, usually due to overcrowding in prisons.
- To hold people who are awaiting pickup from other places such as Immigration and Customs Enforcement, the federal government, or mental health facilities.
- To provide protective custody for those in contempt of court and for court witnesses.²⁸

The growth in prison populations and the resulting overcrowding have caused jails to hold more people for longer periods of time and to provide the services

and programming needed by people serving longer sentences. The National Association of Counties (NACo) says that jails are now providing psychiatric services, vocational and educational programming, drug treatment, and other services usually without compensation from the state.²⁹ Counties have said that the role of jail is changing but that few fiscal resources are available to support the change.³⁰

The First Jails

The concept of jail as it is understood now can be traced to “gaols” that were used in 12th century England. Early English gaols were the first to be locally run and administered by local officials. Gaols were meant to hold drunkards, prostitutes, thieves, debtors, and orphaned children. Those who had violated the law were held in gaols until a trial could be held and a punishment established. Often, people were gaoled at their own expense and expected to pay a fee to the sheriffs and gaol keepers.²⁵

In an effort to reform U.S. prisons, Quakers founded the Walnut Street Jail in 1787 in Philadelphia. The Quakers separated prisoners based on the seriousness of the offense and also by gender. Men, women, and children were no longer housed together. Prisoners were given employment and men received a small wage. Many of the jails and prisons that followed were based on the Walnut Street model.²⁶



Why Are Jail Populations Growing?

“We’re putting too many people in jail... We’re putting people in jail who need to be in treatment for addiction. We’ll save a lot of money if we treat them instead of jailing them.”³²

*Rep. Kathy Stein, D-Lexington,
Chair of the House Judiciary
Committee, Kentucky*

Jail populations have been increasing, and the number of people in jails has nearly doubled since 1990.³¹ Many factors contribute to the increase in jail populations and they vary greatly by county and state.

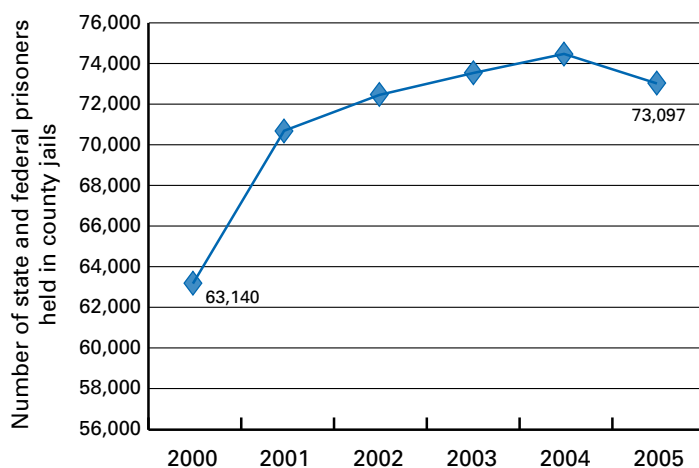
Prison overcrowding

Although the percentage increase in the number of people incarcerated in prison has leveled out over the last five years, more than 1.4 million people are still held in prison.³³ Prisons across the country continue to be overcrowded. In 2000, federal prisons were at 134 percent capacity and state prisons had reached 101

percent capacity.³⁴ Among the other negatives associated with prison overcrowding, such as unsafe and unsanitary conditions and loss of programming, prison overcrowding impedes the transfer of sentenced individuals from jails to prison facilities, thus overcrowding jails. The number of state and federal prisoners being held in local jails has increased more than 15 percent in the last five years.³⁵

County jails are being called upon to hold people who would have previously been sent to the state or federal prison.³⁶ In some cases, counties lease jail beds to other government agencies in an effort to alleviate prison overcrowding and to bring in extra revenue for the county to maintain the jail. As a result, some jails are filled to capacity. At midyear 2006, 35 of the 50 counties with the largest jail capacities had filled their jails to 90 percent or more.³⁷ More than half of those jails reported being over capacity.

The number of state and federal prisoners being held in local jails has increased more than 15 percent in the last five years, now constituting nearly 10 percent of the entire jail population.



Source: Harrison, Paige M., and Allen J. Beck. 2006. *Prisoners in 2005*. Washington, DC: Bureau of Justice Statistics.

Changes in policing practices

Changes in policing practices contribute to the steady increase in arrests for low-level offenses, such as drug offenses. These low-level offenses usually result in some amount of jail time. Two important changes in policing occurred in the 1990s.

Increase in drug arrests

Through federal legislation, thousands of law enforcement officers were hired across the country, greatly increasing the capacity of law enforcement agencies to make arrests. While programs like the Community Oriented Policing Services (COPS) grants have been shown to have a small impact on the overall crime rate,³⁸ they have increased the ability of law enforcement to identify illegal behaviors, such as behaviors related to drugs. Coupled with the escalation of the war on drugs, resources were widely available for police to focus on drug offenses, as other crimes were declining during this time.³⁹ Drug offenses re-

quire proactive policing. Officers must find people who are using or selling drugs, whereas violent crime or robbery requires a response, often because the crime is reported.⁴⁰ A recent Justice Policy Institute study shows that counties with the highest per capita spending on law enforcement and the judiciary have the highest drug admission rates, regardless of the lack of variation in drug use rates across counties.⁴¹ In other words, counties that spend more on police lock up more people for drug offenses.

As violent crime started to decline after 1993, police were able to further focus on proactive policing, particularly in regards to drug offenses.

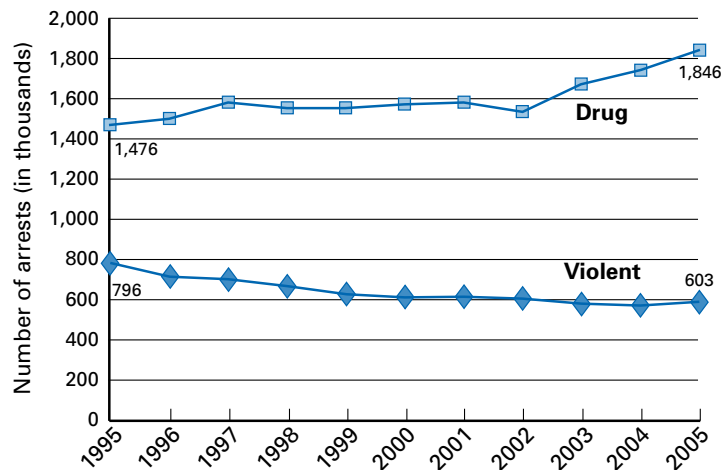
- Between 1986 and 2005, the number of drug arrests increased 150 percent, whereas violent arrests only increased 26 percent over this time period,⁴² although there is no evidence that imprisoning people for drug offenses significantly decreases violent or property crime rates.⁴³

- Just in the last decade, drug arrest rates have increased 7 percent, whereas property and violent arrests have each decreased more than 30 percent.⁴⁴

- In 2005, 81.7 percent of all drug arrests were solely for possession, and nearly half of these charges were for marijuana possession.⁴⁵

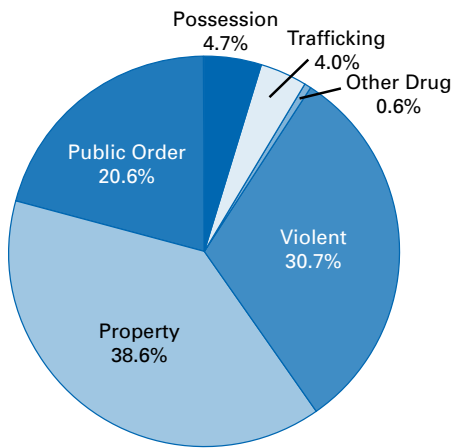
Additional evidence of increasing punitive policies toward drug abusers is shown by the changing demographics of the jail population, where there are now nearly as many people held for drug offenses as

The number of arrests for drug offenses has increased 25 percent since 1995, while arrests for violent offenses have decreased 24 percent.

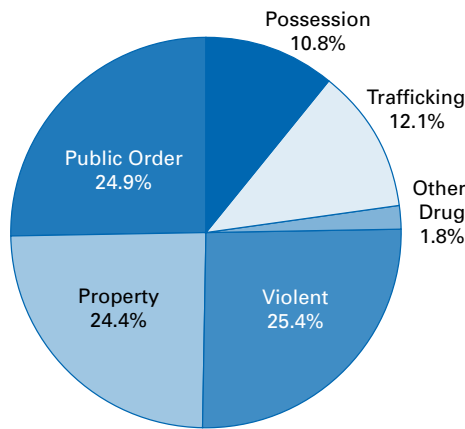


Source: FBI Uniform Crime Reports, *Crime in the United States*, Table 29.

In 1983, fewer than 10 percent of people in jail were incarcerated for any drug offense.



In 2002, almost a quarter of people in jail were incarcerated for a drug offense.



Note: Public order offenses include drunkenness, vagrancy, disorderly conduct, unlawful assembly, morals, and commercialized vice, amongst other nonviolent, nondrug offenses.
 Sources: 2002: James, Doris J. 2004. *Profile of jail inmates*, 2002. Washington, DC: Bureau of Justice Statistics; 1983: Harlow, Caroline W. 1998. *Profile of jail inmates*, 1996. Washington, DC: Bureau of Justice Statistics.

for violent offenses. In 1983, fewer than 10 percent of all people in jails were held for drug offenses. By 2002, almost a quarter of all people in jail were held for drug offenses, over 10 percent of which were for possession only. In 2002, the United States imprisoned more than 155,000 nonviolent drug offenders in local jails across the country.⁴⁶

Zero tolerance policies

Second, many cities and communities have moved toward “zero tolerance” policies for quality of life crimes, such as prostitution, graffiti, loiterers, and panhandlers. As indicated in the previous section, people arrested on public order offenses, which encompasses zero tolerance offenses, have increasingly been detained in jails. These policies have been driven by the theory that “broken windows” or the appearance of disorder in a neighborhood fuels criminal activity. In the 1990s, the New York Police

Department, under the direction of then-police commissioner William Bratton and former mayor Rudy Giuliani, employed such zero tolerance policies and were highly praised for their ability to “clean up the streets” and lower crime rates.⁴⁷

“These zero tolerance policies often lead to longer sentences of low-level offenders, which may offer a short-term resolution to the crime problem, but does not address the latent community problems that caused this behavior.”⁵³

Judith Greene, Justice Strategies

San Diego: An alternative to zero tolerance policies

In contrast to policies in New York City, San Diego witnessed a comparable decline in crime during the same period, without implementing a zero tolerance policy.⁴⁸ Instead, San Diego favored a neighborhood policing approach in which police and citizens share the responsibility for identifying and solving crimes and form connections to help share information and provide communities with resources to combat crime problems. Using this method, crimes declined 36.8 percent from 1990 to 1995 and arrests fell 15 percent. The evidence from San Diego shows that cooperative problem-solving can provide effective crime control while promoting positive ties to the community. According to researcher Judith Greene who reviewed both the New York City and San Diego policies, “The San Diego strategy seems better designed to support and sustain vital elements of community social organization that can inhibit criminality and build safer neighborhoods over the long run.”⁴⁹

Most states have implemented laws specifically directed toward the punishment of the homeless population, and this can result in more people being admitted to jails. The National Coalition for the Homeless and the National Law Center on Homelessness and Poverty issued a report in 2006 that surveyed 224 cities around the country on their laws involving the criminalization of the homeless.⁵⁰ This report found that city ordinances frequently serve as a prominent tool to criminalize homelessness through “quality of life” crimes and that these laws are increasing.

- 28 percent of cities surveyed prohibit “camping” in particular public places in the city and 16 percent had city-wide prohibitions on “camping”
- 27 percent prohibit sitting/lying in certain public places
- 39 percent prohibit loitering in particular public areas and 16 percent prohibit loitering city-wide
- 43 percent prohibit begging in particular public places; 45 percent prohibit “aggressive panhandling” and 21 percent have city-wide prohibitions on begging

Directly drawing from “broken windows” theories and William Bratton’s experiences in New York, the Los Angeles Police Department expanded the Safer Cities Initiative (SCI) in 2006, which added 50 additional officers to police Skid Row, an area of less than a square mile. Skid Row has the highest concentration of homeless people in the United States. Although the increase in officers was supposed to be coupled with an increase in services for homeless people, a study by the University of California Los Angeles indicates that more resources and energy have been put into citing and arresting people on Skid Row.⁵¹

In the first year of the concentration of SCI on Skid Row, the study found that police issued 12,000 citations, primarily for walking against the light (57 percent) and jaywalking (31 percent). The total penalty for such citations is \$159. However, recipients of General Relief—a county-funded program that provides financial assistance to indigent adults who are ineligible for federal or state programs—in Los Angeles receive only \$221 per month. The penalty for unpaid fines is jail or prison time. The officers working on Skid Row also made 750 arrests per month, the largest percentage of which were for drug offenses. Increased arrests translate directly into an increase in the number of people held in jails.⁵²

Jails have become institutions for people with mental illness

Over the last 35 years, the mental health system has undergone tremendous changes. The closing of mental health facilities and an increased reliance on medication have changed the way mental illness is managed in communities. People with mental illness may often be left to manage their illness on their own, with fewer options for treatment. With few treatment options available for people living with mental illness, many end up in the criminal justice system.

Prisons and jails in the United States have been depicted as the “new asylums.”⁵⁴ Currently, the majority of people held in state prison or jail have some type of mental illness.

- Almost half (49 percent) of state prisoners have “symptoms of a mental disorder [that were] based on criteria specified in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV),”⁵⁵ and 60 percent of people in the custody of jails suffer from a

“Jails and prisons are swollen with people suffering some form of mental illness.”

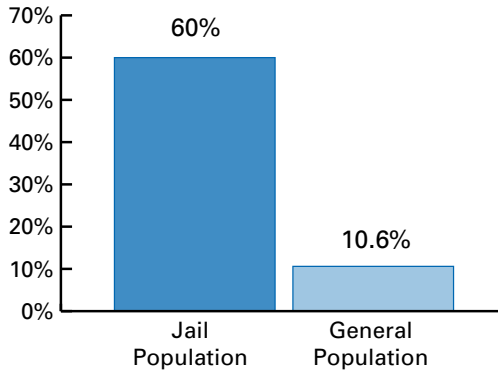
Consensus Project, Executive Summary

mental health problem. Comparatively, only 10.6 percent of the general population exhibits symptoms of a mental health disorder, including major depressive disorders, mania disorders, or psychotic disorders.⁵⁶

- The Los Angeles County Jail, one of the largest jails in the country, holds as many as 3,300 people with mental illness on any given day.⁵⁷
- A study conducted in New York State found that men involved in the public mental health system over a five-year period were four times as likely as men in the general population to be incarcerated; for women, the ratio was six to one.⁵⁸
- Seventy-five percent of women in jail in the U.S. have a mental health problem.⁵⁹ As will be discussed later in this report, this has particular consequences for families and children.

Further increasing the chance that people with mental illness will be in contact with the criminal justice system is the general lack of affordable or supportive housing for this population. Estimates from the Na-

Sixty percent of the jail population suffers from a mental health disorder,* compared to 10.6 percent of the general population.



*Major mental health disorders include major depressive disorder, mania disorder, and psychotic disorders.

Source: James, Doris J., and Lauren E. Glaze. 2006. *Mental health problems of prison and jail inmates*. Washington, DC: Bureau of Justice Statistics.

tional Coalition for the Homeless show that 20 to 25 percent of homeless people have some type of serious mental illness.⁶⁰ Homeless people with mental illness are more likely to be the target of “zero tolerance” policies, because behaviors that may be manifestations of untreated mental illness, such as public urination, disturbing the peace, and drug abuse, will be on public display. According to a recent Bureau of Justice Statistics study, 17 percent of people in jail were homeless at the time of arrest and also suffered from a mental health problem.⁶¹

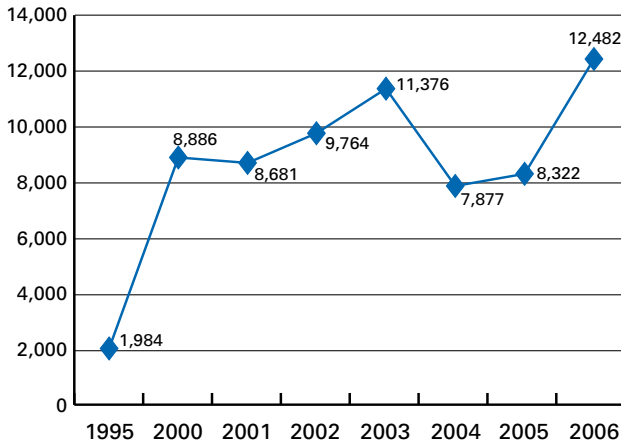
“The nation’s largest mental health facilities are now found in urban jails in Los Angeles, New York, Chicago, and other big cities.”⁶²

Heather Barr, Urban Justice Institute

People detained for immigration violations are increasingly held in jails

Concerns about immigration have driven an increased focus on the status of non-citizens in the United States. The heightened attention on immigration may have led to an overall increase in detention of people for immigration violations under the jurisdiction of U.S. Immigration and Customs Enforcement (ICE). In 2006, ICE detained slightly more than 40 percent more people than it did in 2000.⁶⁴ The majority of people in ICE custody are held through intergovernmental agreements in state prisons or local jails. In 2006, local jails held 45 percent of the people under

Between 1995 and 2006, the number of people held by ICE in local jails increased more than 500 percent.



Source: Sabol, William J., Heather Couture, and Paige M. Harrison. 2007. *Prisoners in 2006*. Washington, DC: Bureau of Justice Statistics; Pastore, Ann L., and Kathleen Maguire, eds. *Sourcebook of criminal justice statistics online, Table 6.61.2005*. <http://www.albany.edu/sourcebook/pdf/t6612005.pdf>.

“If in the course of their day-to-day duties a state or local law enforcement officer encounters an immigration status violator who may pose a threat, Section 287(g) authority allows an officer to question and detain the suspect if necessary. Currently, [Immigration and Customs Enforcement] is focusing 287(g) authority for use in state and local jails.”⁶³

U.S. Immigration and Customs Enforcement, 2006 Annual Report

ICE custody, the largest portion of all facilities used by ICE.⁶⁵ Jails have seen the largest increases in people held under the jurisdiction of ICE. From 1995 to 2006, the number of people held in local jails under ICE custody has increased more than 500 percent.⁶⁶

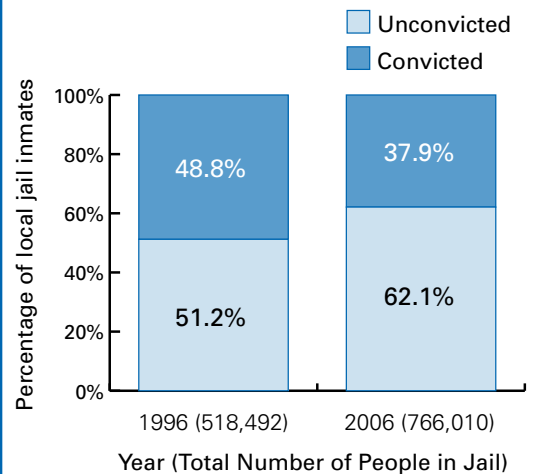
More people are being held pretrial

The vast majority of people held in jail have not been convicted and are being held prior to trial for a variety of reasons, including their own safety, the safety of the community, their risk of flight, or because they have not been able to post bail. The proportion of people held in jail who have not been convicted and are being held pretrial has increased steadily over the last 10 years, during a time when the jail population grew

from 518,492 in 1996 to 766,010 in 2006.⁶⁷ The increase in the number of unconvicted people held in jails accounts for 85 percent of the total increase of the jail population between 1996 and 2006.

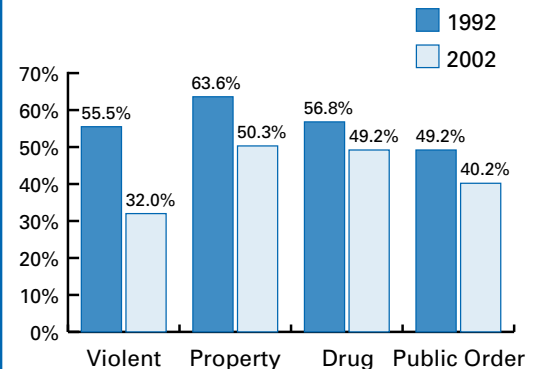
As expected, people arrested for violent offenses are the least likely to be released pretrial. However, only about half of people arrested for property or drug offenses are released, and this number has declined in the past 10 years.⁶⁸

The percentage of people being held pretrial in jails has increased more than 20 percent in the last decade.



Source: Harrison, Paige M., and Allen J. Beck. 2007. *Prison and jail inmates at midyear 2006*. Washington, DC: Bureau of Justice Statistics.

The percentage of felony defendants being released pretrial has been declining in the last decade across all offense types.



Source: State Court Processing Statistics (SCPS). Provided by David Levin, Pretrial Justice Institute, September 4, 2007.

More people are denied pretrial release and of those who are granted bail, fewer can afford to post it

Research and data on pretrial release, bail, bail practices, and bail bondsmen is relatively limited, however the State Court Processing Statistics (SCPS) series prepared by the Pretrial Justice Institute for the Bureau of Justice Statistics provides data on bail and pretrial release for those accused of felonies.

SCPS data indicate that since 1992, fewer people have been released pretrial without bail, fewer have been granted bail at all, and, of those granted bail, fewer have been able to make the payment.

There are two primary ways that a person accused of a felony can be released pretrial: 1) financial and 2) nonfinancial release. Nonfinancial release usually requires no transaction of money in exchange for release from jail. Financial release, or bail, requires that money be provided to the court or bail bondsman in exchange for release. Often these funds must be guaranteed by the person posting the money.

Nonfinancial release

People who are released by nonfinancial means usually fall into one of four categories:⁶⁹

- *released on their own recognizance (ROR) or citation release*: usually administered by law enforcement;
- *conditional release*: the person has to contact or report to someone to ensure compliance with the conditions of release (i.e., drug treatment);
- *unsecured bond or bail*: a person does not have to back up his or her bonds with collateral as in a surety bond; or
- *emergency release*: usually due to jail crowding.

In 2002, the most recent year available, fewer than half (49.6 percent) of all nonfinancial conditions of release set by judges were on their own recognizance. This number was down 21 percent from just a decade before in 1992, when 62.8 percent were on their own recognizance. In 2002, 14 percent of all releases were on their own recognizance compared to 24 percent in 1992.⁷⁰

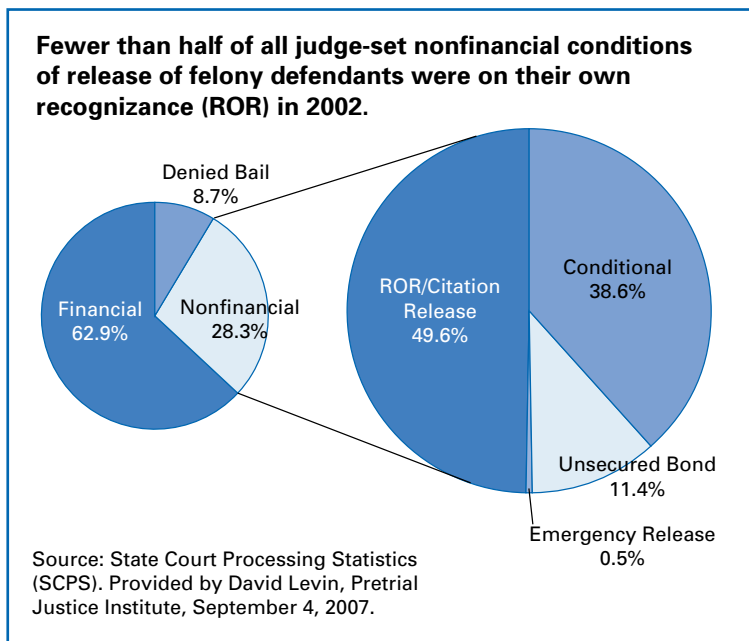
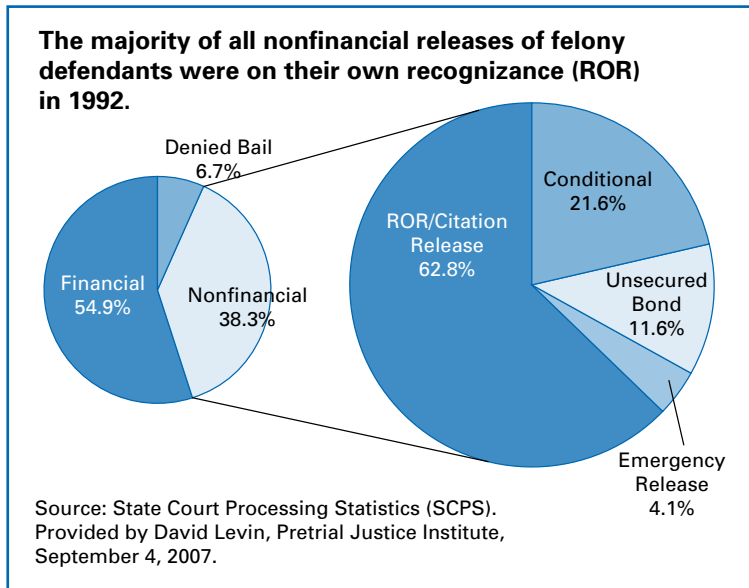
Financial release

There are four types of bail:⁷¹

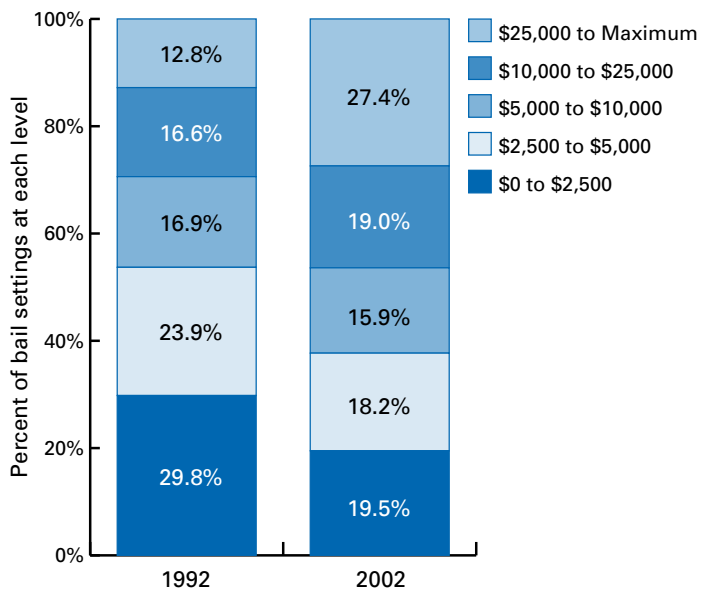
- *full cash bail*: requires that the full bail amount be paid;

- *surety bail*: requires that 10 percent of the bail be paid to a bondsman, attorney, or similar party to be released;
- *deposit bail*: the defendant secures release by posting a percentage of the bail amount directly to the court; and
- *property bail*: property is posted as collateral with the court.

Timothy Murray, executive director of the Pretrial Justice Institute in Washington, D.C., says that the vast majority of unconvicted people in jail are there because they could not post bail. As much as 65 percent of those held pretrial are there because they

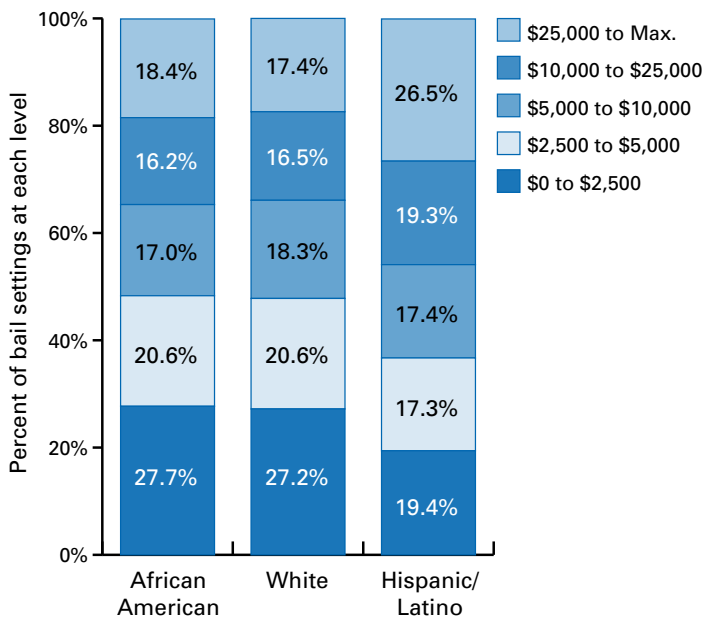


The average bail amount set has been increasing in the last decade.



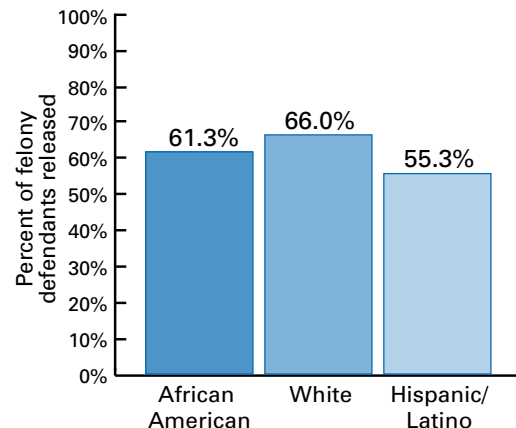
Note: These data are not adjusted for inflation. Source: State Court Processing Statistics (SCPS). Provided by David Levin, Pretrial Justice Institute, September 4, 2007.

Latino felony defendants receive the highest bail amounts set by the court.



Source: State Court Processing Statistics (SCPS). Provided by David Levin, Pretrial Justice Institute, September 4, 2007.

In general, whites are more likely to be released than people of color.



Source: State Court Processing Statistics (SCPS). Provided by David Levin, Pretrial Justice Institute, September 4, 2007.

could not post bail, for reasons that include a lack of funds, high bail amounts, or not being approved by a bail bondsman.⁷² Statistics from the Bureau of Justice Statistics may substantiate that idea: 83.5 percent of the jail population in 2002 earned less than \$2,000 per month prior to arrest.⁷³ With bail amounts increasing over the last 10 years, it may be difficult for people to post bail, and therefore more people are kept locked up in jails prior to trial.⁷⁴

According to a recent study, Latinos, more than whites or African Americans, are more likely to have to pay bail, have the highest bail amounts, and are least likely to be able to pay.⁷⁵

Latinos are by far the least likely to be released prior to trial.⁷⁶ This may be due to the fact that as a group, they face higher bail amounts. Research suggests that limited English proficiency, immigration status, lack of understanding of the judicial process, lack of access to counsel, and racial and ethnic stereotypes, among other factors contribute to these disparities.⁷⁷

Outcomes of people released pretrial

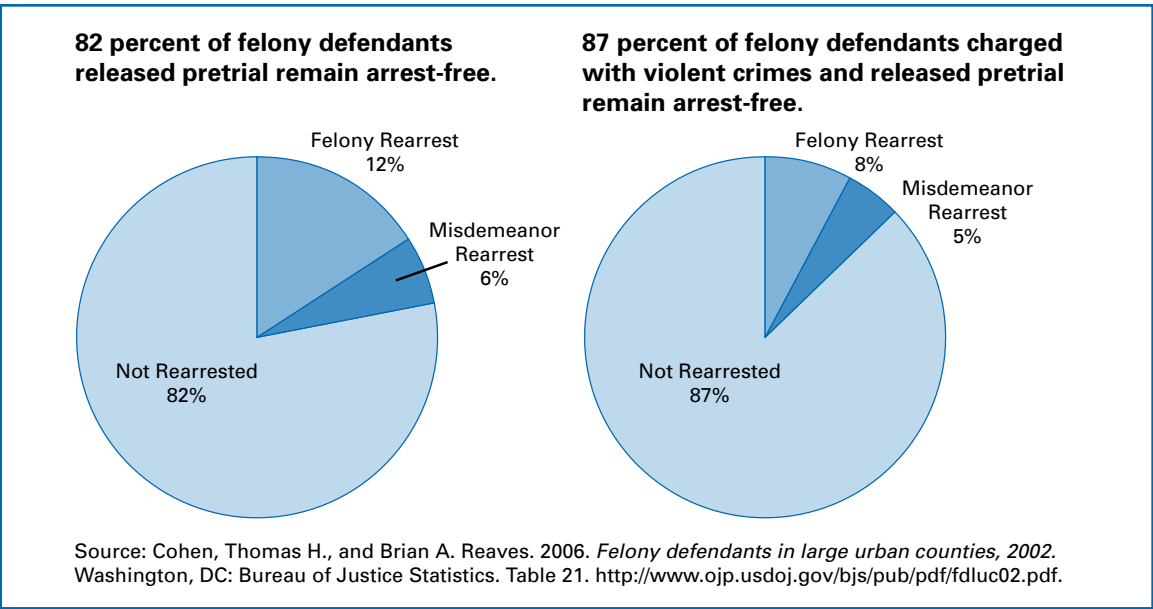
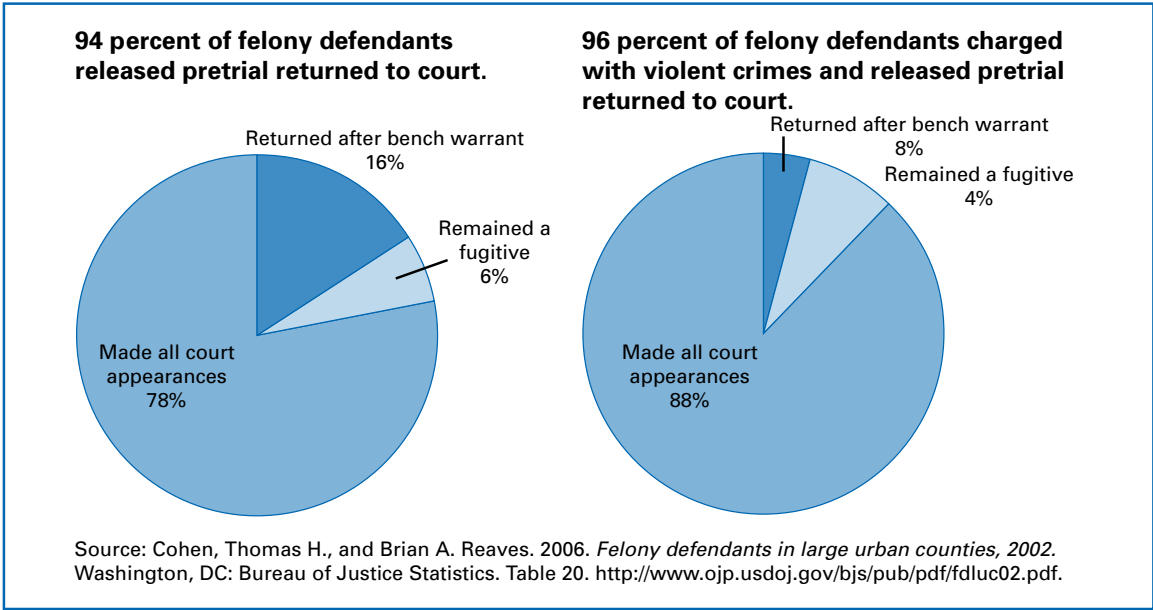
Advocates for higher bail amounts and keeping people in jails pretrial voice concerns that people who are released pretrial do not return to court. There is particular concern that people who had been charged with felonies will commit more crime or fail to return for court,

also known as bail risk. A 1976 study of Charlotte, N.C., court records revealed no significant difference in bail risk between people released pretrial on felony or misdemeanor charges.⁷⁸ Recent data from the SCPS database further substantiate that felony defendants return to court: more than nine out of 10 felony defendants released pretrial returned to court in 2002.⁷⁹

SCPS data also show that felony defendants are not likely to be rearrested while on pretrial release. Statistics from 2002 show that more than eight out of 10 defendants who are released pretrial remain arrest-free.⁸⁰ Defendants charged with violent crimes are

“Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant’s appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.”

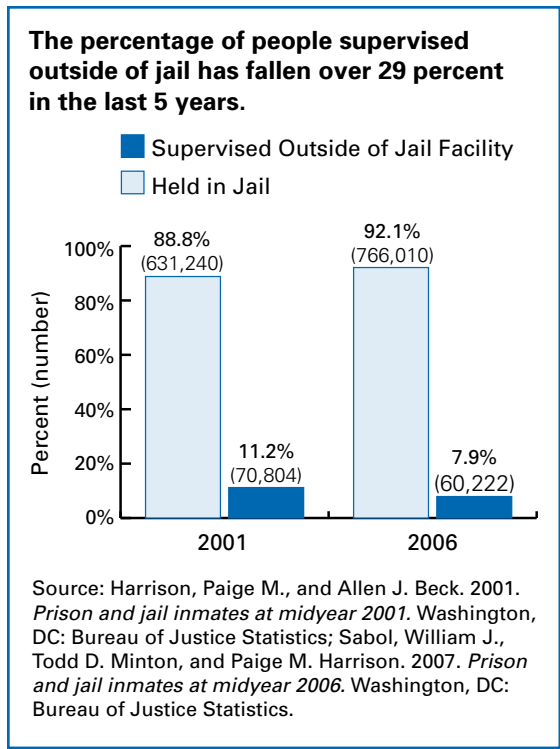
*American Bar Association
Criminal Justice Section Standards, Standard 10-5.3(a)*



even less likely to commit a crime while on pretrial release; 87 percent will remain arrest-free.

Fewer people are serving sentences in the community

Since 2001, there has been a steady decrease in the number of people under jail supervision who have been enrolled in programs outside the jail, also known as community corrections. In 2001, 11.2 percent of those under the supervision of the jail were serving their sentences outside the jail, but in 2006, that percentage had decreased to 7.9 percent during a time when the jail population grew by 21 percent.⁸¹ Nine thousand fewer people were supervised outside the jail facility from 2005 to 2006, and the number of people serving sentences in treatment programs for substance abuse or mental health problems outside of jail facilities decreased by 25 percent from 2005 to 2006.⁸²





What Are the Consequences of Over-Using Jails?

Although the original purpose of jails was to hold people for short periods of time, these periods often vary as many people are admitted for only a day, while others are in the jail for a year or more. Thus, many people reenter the community from jail every day. Some people will enter, exit, and reenter the jail many times within a given time period. As a result, people in jails often have many interactions with the community around the jail facility, in a way that people held in prisons do not. This has implications for the health and well-being of the people in the jail as well as of the people in the community.

Jails have a harmful effect on people who are held in them

The increase in the volume of people going to jail may be putting new stress on these institutions and the people in them. Jails house a large number of people at any given time and often those people are held for only short periods of time. As mentioned, the majority of people in jails also live with some form of mental illness and many also struggle with substance abuse.

Conditions in all jails have a negative impact on the health and well-being of the people in them; however, the impact of older jails can be even more damaging. In the 1990s, researchers revealed that more than 700 of the jails in the U.S. were more than 50 years old, and of those, 140 were 100 years old.⁸³ Older jails tend not to be built for the purpose of providing services and may suffer from many of the problems associated with older buildings, including mold, poor ventilation, lead pipes, asbestos, and other problems. These problems can be extremely detrimental to the health and rehabilitation of people in them.

Physical health

The proximity of a jail to the community, the frequent comings and goings of people and prisoners in the jail, and the closeness of the inhabitants make

it possible for disease to be easily transmitted. Serious infections and sexually transmitted diseases are highly concentrated in jails.

- HIV/AIDS is four to six times higher in the jail population than in the general U.S. population.⁸⁴
- In 1997, the rate of infection of tuberculosis was 17 times higher in jail than it was in the general U.S. population.⁸⁵ A study of tuberculosis in New York City in the early 1990s found that one year of jail time increased the odds of contracting tuberculosis by 2.2, suggesting that the jail system may have been an important amplification point in New York City's tuberculosis epidemic.⁸⁶ Furthermore, inadequate treatment of tuberculosis in correctional facilities has been shown to contribute to the spread of drug-resistant tuberculosis strains.⁸⁷
- Staph infections have plagued jails around the nation, including large jails in Maricopa County, Ariz., and Gloucester County, Pa.⁸⁸ These staph infections spread through close contact and contaminated surfaces, require medical treatment, and can sometimes be fatal. Staph infections not only affect people imprisoned in jails, but also correctional staff, who take these infections home to their families. As most of these infections go untreated, the likelihood of a person carrying the infection into the community upon release is high.

Additionally, county administrators find it difficult to provide healthcare to people who will only be staying in the jail for a limited amount of time. Many jails do not have adequate facilities to provide healthcare. Sometimes jail officials do not have time to even test someone being admitted to jail before that person is once again returned to the community.⁸⁹ In some cases, jails will postpone medical diagnoses because the jailed person will soon be the responsibility of another system, whether it is prison, the community, or the person's family.⁹⁰

Many people who are admitted to jails had limited access to healthcare prior to arrest and may be suffering from untreated diseases or illnesses. When people

with illness are released from jail, they often return to the community with these conditions, which may have gone untreated for long periods of time. The stress of incarceration frequently exacerbates existing physical ailments. Given the crowded, close-quartered conditions in jails, some people return home having contracted serious disease. Most jails do not provide assistance in planning for health conditions upon release from the jail.⁹¹ People emerging from jail with

“On any given day, the Los Angeles County Jail holds as many as 3,300 individuals with mental illness—more than any state hospital or mental health institution in the United States.⁹² Without adequate planning to transition inmates with mental illness back into the community, many will quickly return to jail or prison; recidivism rates for inmates with mental illness can reach over 70 percent in some jurisdictions.”⁹³

Consensus Project on Mental Health

infectious diseases may be unable to find treatment successfully once they are back in the community, and those with chronic conditions that may have been managed in the jail are left to deteriorate on the outside without access to public health services.

Mental health

According to the Consensus Project on Mental Health,⁹⁴ a collaboration of mental health professionals, corrections and law enforcement officials, crime victims, and advocates who work to improve outcomes for people with mental illnesses involved with the criminal justice system, the majority of people in jail with a mental illness have not committed a serious crime; rather, they have been arrested for displaying manifestations of untreated mental illness in public that involve some aspect of criminality.⁹⁵ The Bureau of Justice Statistics recently reported that 73.5 percent of people in jail with mental health problems are there for property, drug, or public-order offenses.⁹⁶

Incarceration tends to further harm people with mental illness, often causing them to decompensate and making them more at risk of harming themselves or others. According to the National Association of Counties, jail often “traumatizes persons with mental illness and makes them worse.”⁹⁷ Upon release, community health professionals say they then have to work “twice as hard to get them back to where they were before they entered

the jail.”⁹⁸

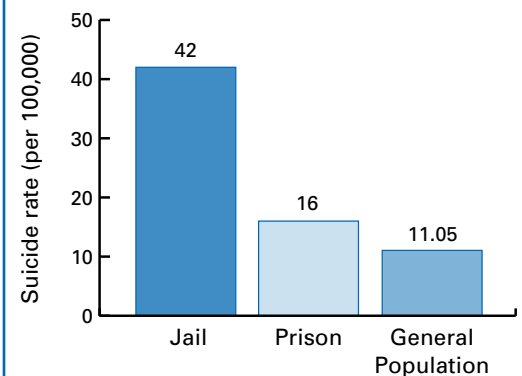
Suicide is a close second to illness in the leading cause of death in jails.⁹⁹ The chance that a person will commit suicide in jail is more than double than for people in prison.¹⁰⁰ The suicide rate in local jails is 42 per 100,000 and the suicide rate for the general U.S. public is 11 per 100,000.¹⁰¹ Researchers have found that people with mental illness who are admitted to jail experience amplified feelings of shame, isolation, stigma, distrust, and fear of the unknown.¹⁰²

Such high suicide rates are associated with untreated depression, which is common in correctional facilities. Several studies suggest that jails have insufficient mental health resources to meet the needs of inmates.¹⁰³ The Department of Justice reports that in 2004, less than half of people in jail with a mental illness received some type of treatment.¹⁰⁴ Overcrowding and the concentrated needs of people in jail make it difficult for counties to provide adequate services.

Lack of treatment due to an overburdened jail system also means that people who go untreated are likely to have difficulty following jail rules and may have their sentences elongated as a result. For example, in the 1990s on Riker’s Island, New York City’s largest jail, the average stay for all prisoners was 42 days, but the average stay for people with mental illness was 215 days.¹⁰⁵ Mental illness and long jail stays also make it more likely that someone with a mental illness will be victimized by another prisoner or jail staff.¹⁰⁶

When released from jail, people with mental illness are rarely given adequate resources or options for lo-

The suicide rate in jails is almost 4 times that of the general population.



Source: Mumola, Christopher J. 2005. *Suicide and homicide in state prisons and local jails*. Washington, DC: Bureau of Justice Statistics; Center for Disease Control and Prevention. 2007. *Suicide facts at a glance*. <http://www.cdc.gov/ncipc/dvp/suicide/SuicideDataSheet.pdf>.

ating and utilizing treatment outside of jail.¹⁰⁷ Frequently, when leaving jail, a person with a mental illness is provided only a short course of medication (two weeks or less) and only enough money to take a one-way trip on public transportation. Upon leaving jail, it is also often difficult for a person to find housing and to access appropriate treatment.¹⁰⁸ A criminal record may prevent someone with mental illness from receiving treatment.¹⁰⁹ Without social supports and treatment, people with mental illness are likely to return to jail: 65 percent of those in jail with mental illness had a prior sentence.¹¹⁰

Employment

Jail disrupts the employment and economic outcomes of a person who is admitted. Youth are especially affected by time spent in jail. A study by Bruce Western and Katherine Beckett shows that youth who spent time in jail experienced three less weeks of work than youth who had not been in jail. The impact of incarceration was still felt fifteen years later. People formerly held in jail were still working between three and five weeks less in a year than people who had never been in jail.¹¹¹ An arrest also leads to approximately a 4 percent decrease in average earnings.¹¹²

Jails, like prisons, are damaging to a person's employment and economic outlook and do not provide adequate opportunities for education or job training. In 1999, 60 percent of all jail systems offered some type of educational programs, and only 3.4 percent of jails offered college courses.¹¹⁴ Jails not only interrupt the employment track of a person, but they also prevent him or her from gaining skills or experience that would otherwise have been gained while still working in the community.¹¹⁵

Upon reentering the community, people held in jail face the additional challenge of finding employment. The social stigma associated with being incarcerated often hinders a previously incarcerated person's ability to find meaningful employment.¹¹⁶ People with a record of incarceration are banned from some occupations, such as certain healthcare or childcare services,¹¹⁷ and some employers are reluctant to hire someone who has been convicted or has been held in jail without conviction. In a 2005 study of people leaving New York City jails, only about a third had formal employment within one year of release.¹¹⁸

Recovery from addiction

Approximately 50 percent of convicted people in jail were using alcohol or drugs at the time of the offense, and 53 percent of people entering jails have

some form of addiction.¹¹⁹ People with mental illness are even more likely to wrestle with addiction. Only 30 percent of jail inmates who met the criteria for substance dependence or abuse had participated in substance abuse treatment while under correctional supervision, and only 7 percent participated while incarcerated.¹²⁰ Further, the jail system is ill-equipped to detoxify people admitted to jail with an addiction. The U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) found that almost all jails in the country report that they never detoxify arrestees.¹²¹ Many people struggling with addiction will begin to feel symptoms of withdrawal before they are formally charged with a crime.¹²² Those who are not given the opportunity to overcome addiction are more likely to return to jail.

Disruption of families

Families are deeply affected by the placement of a family member in jail. With more than 11 million admissions to jail a year, many children have parents who have spent time in jail. For example, the Cali-

“Areas with the most rapidly rising rates of incarceration are areas in which youths, particularly African-American youths, have had the worst earnings and employment experience.”¹¹³

*Bruce Western and Katherine Beckett,
The American Journal of Sociology*

fornia Research Bureau estimates that approximately 97,000 children have parents in jail.¹²³ Most children, 90 percent, are able to stay in the custody of their mother when their father is sent to jail, however, only 25 percent of children are able to stay in the custody of their father when their mother is sent to jail.¹²⁴

Though approximately 88 percent of people in jail are men, women make up a higher percentage of the population in jails than in prisons at 11 percent,¹²⁵ compared to 7 percent in prisons.¹²⁶ Given the low percentage of children who are able to stay in the custody of their father when their mother is in jail, children of women who are in jail are likely to be displaced. The combined cost of foster care and other social services for those children greatly increases the financial cost of imprisoning women in jail.¹²⁷

Family members of people in jail may experience a great deal of stress, financial strain, social stigma, increased risk of illness, and other emotional burdens. Often family members must adjust their lives to take

care of a displaced child and may be under new financial stress.¹²⁸ Not only do family members of the person in jail experience emotional and economic hardships, but some also have reported physical ailments and declining health. A study by researchers at Virginia Polytechnic Institute and State University showed that 48 percent of the people participating in their study on family members of people in jail experienced declining health after the person was jailed, and 27 percent reported that their children's health had declined.¹²⁹

Disruption of relationship with the community

Connections and attachments to the community are severely damaged as a result of incarceration or jail time. The ability of a person to secure housing is the most obvious example of the disconnection that a person may feel upon reentry. A survey, conducted by the Center for Poverty Solutions and sponsored by the Open Society Institute, of people who reported not living in a traditional housing situation in Baltimore City found that 63 percent of people surveyed had owned or rented a home prior to incarceration, but only 29 percent owned or rented a home after release.¹³⁰ Housing and housing assistance are very restricted for people who are returning from correctional facilities. Often, family members receiving public assistance are prohibited from sheltering someone who has been incarcerated for any

reason or for any period of time.¹³¹

Jails are also much less likely than prisons to offer services that would help a person reenter society when released. Because people are usually held in jail for short periods of time, jail administrators are less likely to enroll them in programs that require a time commitment. At the same time, those held in jail for longer periods of time or instead of being sent to prison will be unable to benefit from programs and opportunities offered in prisons.

Jails are costly and negatively impact communities

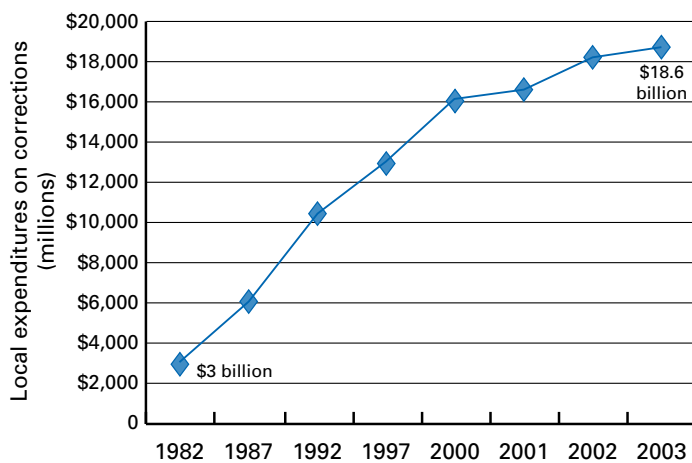
Jails are expensive for counties and localities

Today, many counties are considering expanding their jails or building new jails to alleviate overcrowding without seriously considering the negative consequences of jail expansion, especially on the county budget, as jails represent a tremendous cost to local governments. Local governments experienced a 347 percent increase in criminal justice spending between 1982 and 2003, including a 519 percent increase in corrections spending.¹⁴⁹ In 2004, local governments spent a staggering \$97 billion on criminal justice, over \$19 billion of which went to corrections alone.¹⁵⁰ By way of comparison, during the same time period local governments spent just \$8.7 billion on libraries and only \$28 billion on higher education.¹⁵¹

The most recent numbers available for calculating the average cost per person in jail come from the 2002 *Corrections Yearbook*, using 2000 data. According to the *Yearbook*, the average daily cost per person in jail custody was \$68.58 for the largest jail systems (greater than 2,000 prisoners), with an average cost of \$58.64 per person per day for all jails.¹⁵⁶ If this one person were to be in jail custody for one year, he or she would cost the county a minimum of \$21,403. Comparatively, the average cost of community-based substance abuse treatment is \$2,198, and surveillance-oriented intensive supervision is \$3,296 per year.¹⁵⁷

With more than 200,000 people being admitted to jail in one week,¹⁵⁸ the costs of housing each of these inmates for just one day is staggering. Assuming that each of these admissions remains in jail custody for just one day, a situation that is highly unlikely, the cost to counties for this one week would total

Local* spending on corrections has increased over 519 percent since 1982.



*Local spending includes counties and municipalities.

Source: Sabol, William J., Heather Couture, and Paige M. Harrison. 2007. *Prisoners in 2006*. Washington, DC: Bureau of Justice Statistics; Pastore, Ann L., and Kathleen Maguire, eds. *Sourcebook of criminal justice statistics online, Table 6.61.2005*. <http://www.albany.edu/sourcebook/pdf/t6612005.pdf>.

“Crime flourishes where the conditions of life are worst.”

— *President’s Commission on Law Enforcement and the Administration of Justice*¹³²

Los Angeles County Men’s Central Jail

Known as the “largest jail in the free world,”¹³³ the Los Angeles County Men’s Central Jail (MCJ) is notorious for dangerous overcrowding. The overwhelmed facility “house[s] some 7,000 inmates—for a capacity generously estimated at 5,200 after converting classrooms, gymnasias, bathrooms and broom closets into cells – crammed six together in 4-by-3-meter ‘multi-cell units’ and stuffed in gigantic dormitories where up to 150 men jostle idly...with a single television set for sole distraction.”¹³⁴ After touring the facility as part of a suit in which the ACLU cited “almost unspeakable conditions,” U.S. District Judge Dean D. Pregerson wrote, “...inmates, particularly pretrial detainees who are imbued with presumption of innocence, deserve better than to be housed in a system which has defaulted to the lowest permissible standard of care.”¹³⁵ In the fall of 2007, the same judge ruled that by forcing those held in the jail to sleep on the floor, the jail officials had violated the right of protection from cruel and unusual punishment, and handed down a hefty fine for the jail.¹³⁶

In a recent study, UC Berkeley scholar Loic Wacquant described the MCJ as a filthy place, devoid of natural light, where inmates get only one 2-hour outdoor recreation session per week—on the jail’s roof.¹³⁷ Wacquant highlights that MCJ endangers inmates by grossly violating municipal fire code; despite repeated court orders to fix this problem, changes have not been made.

Maricopa County (Phoenix, Ariz.) Tent City Jail

Sheriff Joe Arpaio, also known as “America’s Toughest Sheriff,” opened Maricopa County’s Tent City Jail in 1993 as a response to jail overcrowding.¹³⁸ The jail is located in central Phoenix, where harsh desert temperatures reach upwards of 100 degrees in the summer.¹³⁹ Despite these conditions, inmates are housed outdoors in military tents without air conditioning.¹⁴⁰ Sheriff Arpaio’s jail policies are strict and intentionally demeaning. Banned items include cigarettes, coffee, and hot lunches. Inmates are forced to wear pink underwear and old fashioned black-and-white striped outfits, and use only pink towels.¹⁴¹ Additionally, inmates work in chain gangs, providing thousands of dollars of “free labor” to the community each year.

Although Sheriff Arpaio’s website boasts that inmates are fed 15-cent meals only twice a day to cut costs (the guard dogs’ meals cost more than this), the county has faced hundreds of inmate-related lawsuits, incurring millions in legal damages. A 1998 U.S. Department of Justice report “harshly criticized the use of excessive force at [the Tent City jail].”¹⁴² In 2002, an Arizona Court of Appeals decision held Sheriff Arpaio accountable for an incident in which an inmate went into a coma and suffered permanent brain damage following a severe beating by other inmates. Judge Lankford wrote the following in the case decision: “The Sheriff admitted knowing about, and in fact intentionally designing, some conditions at Tent City that created a substantial risk of inmate violence: i.e. the lack of individual security and inmate control inherent in a tent facility; the small number of guards; a mixed inmate population subject to overcrowding, extreme heat, and lack of amenities. The history of violence, the abundance of weaponry, the lack of supervision, and the absence of necessary security measures supports the jury’s finding of deliberate indifference to inmate safety.”¹⁴³

Washington, D.C., Central Detention Facility

The Washington, D.C., Central Detention Facility has had a host of sanitation and maintenance problems since it opened more than 30 years ago, despite inmate lawsuits and persistent court orders for improvement.¹⁴⁴ A recent inspection by the Health Department revealed the following hazards: mouse feces throughout the facility, little to no air circulation in four cellblocks, broken showers, and cells without running water. Although improvements motivated a federal judge to lift a 17-year-old population cap in 2002,¹⁴⁵ the inmate population then grew nearly 50 percent within six months.¹⁴⁶ During this half-year period, outbreaks of violence resulted in three stabbings within four days, leaving two detainees dead and another wounded. Philip Fornaci, executive director of the D.C. Prisoners’ Legal Services Project, noted that along with the increased violence, the overcrowding resulted in “more squalid living conditions, and even more inadequate healthcare.”¹⁴⁷ Ongoing problems with women’s health services, including denials and delays for essential healthcare such as HIV medication, have proved “a clear threat to inmate health,” according to a study run by the D.C. Prisoners’ Legal Services Project and the Johns Hopkins Bloomberg School of Public Health.¹⁴⁸

\$11,728,000.

Jail construction comes with hidden costs to taxpayers and citizens

Although counties are normally responsible for jail construction costs, even when states do provide

Increasingly, general county budgets are directed toward corrections. The following are some examples of what counties spend on public safety and corrections.

- Atlantic County, N.J., spends 26 cents of every dollar on law and public safety, including 4 cents of every dollar for the Sheriff’s Office, which includes the county jail.¹⁵² By comparison, the county spends less than 8 cents per dollar on human services and only 7 cents on educational institutions.
- Mecklenberg County (Charlotte), N.C., spends 6.8 percent of its budget on the Sheriff’s Office, which includes jails, compared with 2.2 percent on public health.¹⁵³
- Wayne County (Detroit), Mich., spends over 16 cents of every dollar of its general funds on the county jail.¹⁵⁴ Less than 4/10 of a percent of the general funds goes to youth homes for mental health and a quarter of a percent goes to health and community services.
- Cook County (Chicago), Ill., spent over half a billion dollars (16.9 percent of its total budget) on corrections in 2007.¹⁵⁵

funding for building the jails, the county is still responsible for maintenance and operations, the processes that go into building the jails, and any other financial consequences that result, including lawsuit settlements over conditions inside jails.

Aside from the costs that are assumed because of the increase in use, there are costs associated with simply building and operating jails, such as administrative and court-related costs, that are different from the associated costs for prisons. Because jails are largely financed by counties, they are drawing from different resources to construct the jail.

A primary method for financing prisons is by using bonds. Although some local jurisdictions finance jail construction from taxpayer revenues, this method has become less common since the 1980s.¹⁵⁹ As corrections costs increased, municipalities looked for alternative ways to build jails.¹⁶⁰ Today, municipalities raise the bulk of the money for jail construction by issuing bonds to investors, a risky action that could lead to negative impacts on bond ratings for counties.

A bond is a loan made to a company or government entity by an investor. The length of a bond, known as its maturity, can range from one day to more than 30 years. When a bond is issued, an agreement between the debtor and lender establishes how and when the interest and principal will be paid. Unlike a typical or traditional loan, a bond is a security that can be bought and sold and its value fluctuates.¹⁶¹

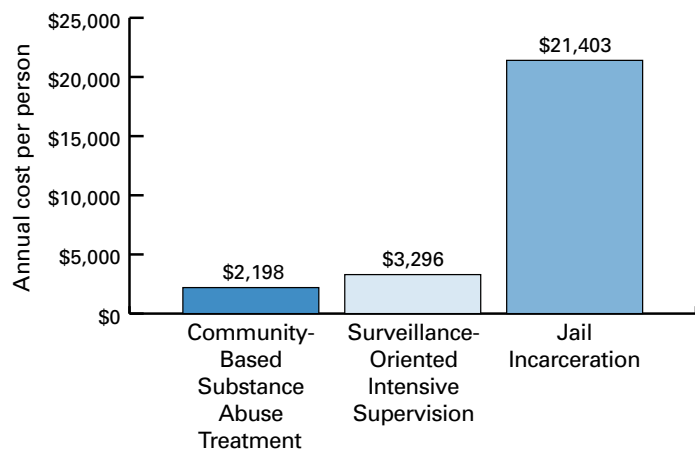
A county government may want to issue bonds to pay for a capital project that it cannot finance with money raised from taxes. For elected officials, there are also incentives in issuing bonds as opposed to paying for the project directly. First, bonds are politically more appealing than imposing higher taxes on voters. Second, politicians can get around voter disapproval for a project by issuing bonds that do not require a referendum.

For more information on the costs associated with using bonds to finance jail construction, see the Appendix.

Jail lawsuits can reach millions of dollars—a bill that counties must pay

Though the Prison Litigation Reform Act created barriers to some types of prison litigation, lawsuits continue to be filed against counties resulting from overcrowding, lack of treatment, and undesirable jail

Counties can save thousands of dollars by using community-based services over incarceration.



Sources: Aos, Steve, Polly Phipps, Robert Barnoski, and Roxanne Lieb. 2001. *The comparative costs and benefits of programs to reduce crime*. Olympia: Washington State Institute for Public Policy; Corrections Yearbook, 2002. Data provided by Sandy Schilling, National Institute of Corrections, September 7, 2007.

conditions. The suits can reach into the millions of dollars, money that counties pay alone, without help from the state. In other cases, plaintiffs seek to have conditions improved, an endeavor that may be costlier after courts are involved. In either instance, the county must bear the additional costs associated with court and litigation.

- Carl Moyle, who was picked up on misdemeanor traffic charges and placed in jail, was murdered by another inmate. The investigation into the incident determined that jail staff failed to properly assess the risk posed by the other inmate. Moyle's family sued Sherburne County, Minn., and the sheriff in February 2007, seeking \$30 million in damages in the U.S. District Court of Minneapolis.¹⁶⁸
- On March 10, 1999, a federal jury imposed \$5.4 million in compensatory and punitive damages against the Sparta, Wis., jail administrator and supervising sheriff for depriving Scott Lawson, who has schizophrenia, of mental health treatment while he was in the jail. Lawson was held in solitary confinement for more than 65 days.¹⁶⁹
- In January 1999, Maricopa County, Ariz., settled a wrongful-death suit filed by the family of Scott Norberg for \$8.5 million. He died, reportedly of asphyxiation, as he struggled with correctional officers in 1996.¹⁷⁰
- In Harrison County, Miss., a \$3.5 million lawsuit was settled against Harrison County supervisors and the sheriff in connection with the death of Jessie Lee Williams, who was held and beaten to death in the Harrison County Jail in February 2006.¹⁷¹

Jails are harmful to the environment

A facility that houses many people over the course of the year has an impact on the surrounding environment. Correctional facilities are like small towns and have their own water, waste, and energy systems. According to the United States Environmental Protection Agency (EPA), correctional facilities must be aware of their impact on the surrounding environment, paying particular attention to wastewater treatment, hazardous wastes, power production, and emissions.¹⁷² Older facilities are likely to be inefficient and may have problems with asbestos or lead.

Further, overcrowding in jails puts pressure on sewer systems not only from day-to-day use, but also from misuse of facilities. In San Mateo County, Calif., peo-

What are the dangers of county jails leasing beds to the state and other entities?

With the recent problem of overcrowding in state and federal prisons and falling county budgets, many counties lease beds to state and federal prisons to supplement their shrinking budgets. These counties receive per diem rates ranging from \$20 to \$60 per prisoner housed in their jails, often helping the county turn a profit.¹⁶² Some counties, such as Bernalillo County, N. Mex., have even built larger jails in anticipation of the excess state prisoners who would need housing.¹⁶³

Bernalillo County, N. Mex.

When the jail was constructed in 1998, the hope was that it would generate enough revenue not only to pay off the bonds that financed the project, but also to cover payments to the private company operating the facility. The 648-bed jail was very expensive to build (\$22 million) and expensive to run, and it did not fill up with state prisoners as anticipated. Multiple counties and states have been approached to lease these beds, but not one has signed a contract. This has become such a problem that Bernalillo County has had to lower its per diem rates to attract "business" and have a competitive edge, with little success. Furthermore, the state has been housing prisoners in this jail and not paying the lease, causing the county to have to approve a new tax increase in 2007 in order to support the jail.¹⁶⁴ The cost of housing state prisoners in New Mexico's county jails approaches \$26 million per year, a cost that counties have been absorbing for several years, and will continue to absorb until the jail is able to lease out its beds and get the money owed from the state.

Reeves County, Tex.

Other counties have constructed new jails or expanded the jail they already had because the state or the federal government has told them that they would pay for their prisoners to be housed there. Counties are responsible for the full cost of the construction, as well as the gross expenditures of running the facility—whether it contains state prisoners or not. Reeves County in Pecos, Tex., built a \$40 million, 960-bed expansion to its detention center with the idea that it could lease the beds to the federal government. The expansion, titled Reeves County Detention Center (RCDC) III was the third phase of the center's expansion; RCDC I and II hold thousands of prisoners on contracts from the Federal Bureau of Prisons and the U.S. Marshals Service. However, after the center was built, Reeves could not fill the beds and federal officials repeatedly claimed that they had made no assurances to the county that they would be able to provide the facility with prisoners. Without the funds from leasing beds to the government, the county was at serious risk of defaulting on the bond used to build the facility and owed \$475,000 on its first payment.¹⁶⁵ By November of that same year the county's bond rating had been downgraded to that of a junk bond,¹⁶⁶ and in order to save the county and the jail, Reeves signed a 10-year agreement with a private prison company—Wackenhut Corrections—which immediately fired 91 of the county's 435 employees.¹⁶⁷

ple held in the local jail had been regularly flushing clothes, linen, plastic bags, and toothbrushes down the toilet as an act of rebellion and to express frustration with overcrowding at the jail. The foreign objects clog city drains, potentially forcing sewage into homes and businesses. The waste management agency responsible for the jail billed the county \$700,000 to increase maintenance and fix damage.¹⁷³

Jails may be located directly in the city limits, also adding to already stressed traffic and congestion, sewage and water capacity, and the availability of land for housing or tax purposes.



Building More Jail Beds and Holding More People in Jail Has Not Been Shown to Make Communities Safer

Currently, the United States is experiencing record low crime rates, however some counties continue to jail people at growing rates. Over the last five years, counties that have increased their jail populations the most have not necessarily witnessed the biggest decreases in crime. In fact, New York City decreased its jail population the most and experienced a drastic decrease in crime rates over the last five years.¹⁷⁴

Despite the availability of less restrictive options such as electronic monitoring, day reporting, and community service, 91 percent of people held under the supervision of jails are held in facilities.¹⁷⁵ Those populations comprise mostly people who have not

committed a violent offense. In 2002, 74.6 percent of people held in jails had committed a nonviolent offense such as a property, drug, or public-order offense. Three percent of people in jail reported a probation or parole violation as their most serious offense.¹⁷⁶

“In most cases, correctional facilities should be reserved for higher risk offenders who have been sentenced or are being held for violations of supervision conditions, while their lower risk counterparts should be supervised within the community.”¹⁷⁷

Gary Christensen, PhD, Dutchess County Jail and
Elyse Clawson, Crime and Justice Institute.

Declining jail incarceration rates are associated with declining violent crime rates in the country's largest jails.*

	2005		Percent Change 2000-2005		
	Number of Inmates	Incarceration Rate (per 100,000)	Number of Inmates	Incarceration Rate (per 100,000)	Violent Crime Rate (per 100,000)
Los Angeles County	19,732	198	-1.1%	-5.0%	-23.8%
New York City**	13,153	162	-7.7%	-11.9%	-31.2%
Cook County, Ill.***	9,872	186	-4.7%	-3.3%	-26.6%
Harris County, Tex.	9,031	240	45.7%	32.3%	37.4%
Philadelphia City, Pa.**	7,769	527	10.2%	8.6%	-6.6%
Dade County, Fla.	6,558	276	-2.4%	-7.2%	-30.1%
Orange County, Calif.	6,493	217	44.4%	37.8%	-23.7%
San Bernardino County, Calif.	5,753	293	10.2%	-3.6%	-12.5%
Broward County, Fla.	5,618	315	12.2%	2.8%	-44.1%
San Diego County, Calif.	5,186	177	8.3%	4.1%	16.7%

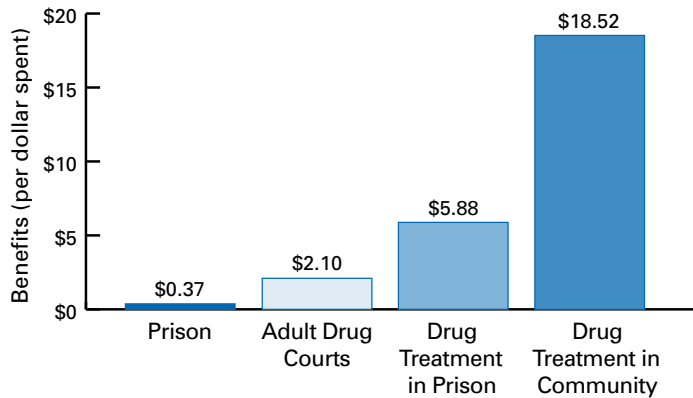
*These localities constitute the Top 10 Counties/Cities with the largest jail populations in the U.S. Maricopa County, Ariz., and Dallas County, Tex., were excluded due to incomplete crime data. Orleans Parish, La., was excluded due to incomplete crime and population data after Hurricane Katrina.

**City populations came from the FBI UCR, Table 8; County populations came from the U.S. Census Bureau.

***Chicago was substituted for Cook County for violent crime rate calculations; incarceration rate calculations are based on U.S. census data for Cook County. Chicago does not count rape as a violent offense.

Sources: FBI Uniform Crime Report, *Crime in the United States 2000, 2005*; U.S. Census Bureau; Harrison, Paige M. and Allen J. Beck. 2007. *Prison and jail inmates at midyear 2006*. Washington, DC: Bureau of Justice Statistics.

Community-based drug treatment provides bigger returns than prison.



Sources: Aos, Steve, Marna Miller, and Elizabeth Drake. 2006. *Evidence-based public policy options to reduce future prison construction, criminal justice costs, and crime rates*. Olympia: Washington State Institute for Public Policy. <http://www.wsipp.wa.gov>; Aos, Steve. 2003. *The criminal justice system in Washington State: Incarceration rates, taxpayer costs, crime rates and prison economics*. Olympia: Washington State Institute of Public Policy.

People were held in jail the longest for violent and drug offenses in 2002. The average maximum sentence is longest for drug offenses.

JAIL (Most Serious Offense)	Maximum jail sentence length (Average)	Time expected to be served in jail (Average)
All Offenses	24 mos.	9 mos.
Violent Offenses	33 mos.	14 mos.
Property Offenses	23 mos.	9 mos.
Drug Offenses	35 mos.	11 mos.
Public-Order Offenses	10 mos.	5 mos.

Source: James, Doris J. 2004. *Profile of jail inmates, 2002*. Washington, DC: Bureau of Justice Statistics.

Whether convicted or not, the majority of people in jail custody in 2002 had not committed a violent offense.

Most Serious Offense	Total	Convicted	Unconvicted	Both*	1996
Violent Offenses	25.4%	21.6%	34.4%	22.3%	26.3%
Property Offenses	24.4	24.9	21.5	27.4	26.9
Drug Offenses	24.7	24.0	23.4	30.2	22.0
Public-Order Offenses	24.9	29.1	20.2	19.2	24.4
Violation of Parole/ Probation**	2.9	3.5	1.5	3.3	2.6
Other	0.5	0.4	0.6	0.9	0.5
Number of Jail Inmates	623,492	342,372	178,035	100,348	496,752

* Includes inmates with a prior conviction, but no new conviction for the current charge.
 **Includes parole or probation violations, escape, AWOL, and flight to avoid prosecution.
 Source: James, Doris J. 2004. *Profile of jail inmates, 2002*. Washington, DC: Bureau of Justice Statistics.

People incarcerated for nonviolent offenses make up the majority of people in jail

Acknowledging that people convicted of violent offenses are more likely to be sentenced to prison time, people convicted of drug offenses can expect to serve the most amount of time in *jail*, surpassing even that of violent offenders who are sentenced to jail time. Even people convicted of a public-order offense could expect to receive almost a year of jail time.¹⁷⁸

Community supervision can be a more effective public safety strategy than incarceration

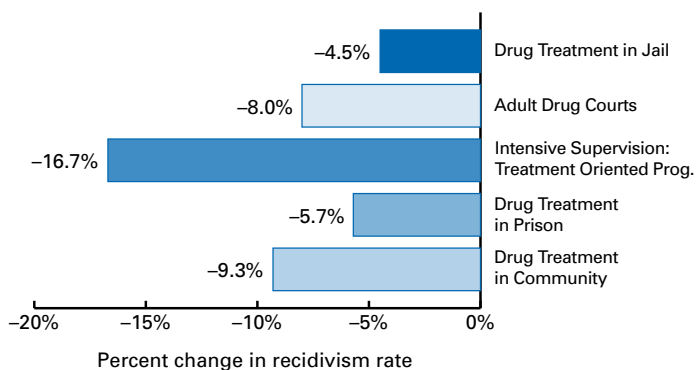
Community supervision has been shown to reduce the chance that a person will participate in criminal activity in the future and has the added benefit of being more cost-effective than incarceration. Research from RAND and the Washington State Institute for Public Policy (WSIPP) have both issued reports revealing the public safety and cost benefits of providing treatment over incarceration.

- In its 1997 study, RAND Corporation, one of the nation's leading research organizations, estimated that treating cocaine users reduces serious crime 15 times more effectively than incarceration.¹⁷⁹
- The Alcohol and Drug Abuse Administration (ADAA) found that in Maryland both ADAA-funded and non-funded treatment programs reduce substance abuse, crime, and homelessness, while increasing employment.¹⁸⁰
- WSIPP conducted a meta-analysis and cost-benefit analysis revealing that drug treatment in the community is the most beneficial in terms of costs as well as crime reduction. Drug treatment not only provided \$10,054 in benefits per participant after deducting costs of treatment, but also lowered the chance that a person will commit crimes in the future by 9.3 percent.¹⁸¹
- A 2003 WSIPP study found that every dollar invested in prison in Washington State for a convicted drug user produced \$.37 in crime reduction benefits.¹⁸² However, the 2006 study revealed that drug courts, drug treatment in prison, and drug treatment

in the community yielded much better public safety results for the cost.¹⁸³

Diverting nonviolent offenders, particularly drug offenders, into community programs would relieve the stress on overcrowded facilities, save money, and provide space for people charged with more serious, violent crimes. By allowing people convicted of non-violent offenses to return to the community, they will be less likely to commit crime in the future and more likely to return to work, family, and community obligations.¹⁸⁴

Treatment-oriented supervision lowers recidivism rates more than all other drug treatment programs.



Source: Aos, Steve, Polly Phipps, Robert Barnoski, and Roxanne Lieb. 2001. *The comparative costs and benefits of programs to reduce crime*. Olympia: Washington State Institute for Public Policy.

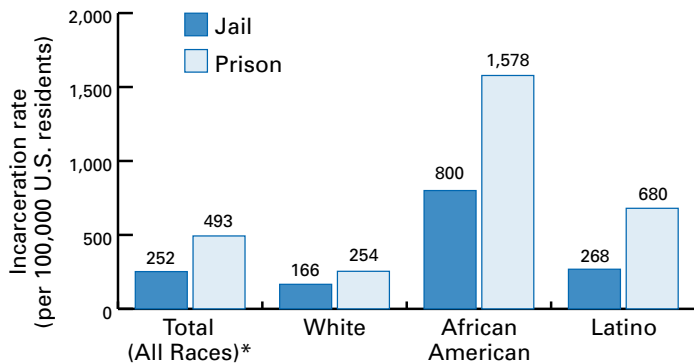


The Impact of the Increased Use of Jails in the U.S. Is Not Borne Equally

Bureau of Justice Statistics data on the U.S. jail population indicates that African Americans are disproportionately affected by jail incarcerations. Per capita, African Americans are four times more likely

than whites and close to three times more likely than Latinos to have been in jail in 2005.¹⁸⁵ Although African Americans were approximately 12.7 percent of the U.S. population in 2005, they comprised 38.9 percent of jail inmates.¹⁸⁶

Prison incarceration rates are more racially disparate than jail incarceration rates, but African Americans are still more than four times as likely as whites to be in jail.



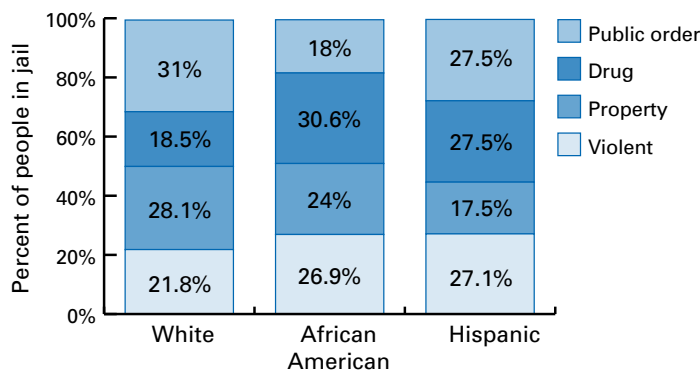
*Jail total includes "other" category, prison total does not.

Source: Harrison, Paige M., and Allen J. Beck. 2006. *Prison and jail inmates at midyear 2005*. Washington, DC: Bureau of Justice Statistics; Harrison, Paige M., and Allen J. Beck. 2006. *Prisoners in 2005*. Washington, DC: Bureau of Justice Statistics.

Though African Americans and whites use and sell drugs at similar rates, African Americans are imprisoned for drug offenses at higher percentages than whites.¹⁸⁷ Almost a quarter of the people held in jail in 2002, either convicted or unconvicted, are held for drug offenses.¹⁸⁸

The reasons for the disproportionate imprisonment of people of color in jail are varied and can be traced to longstanding social problems, law enforcement practices, and judiciary systems. Law enforcement is more likely to focus its efforts on low-income neighborhoods or racial or ethnic minority neighborhoods. Police are far more likely to observe an offense occurring on the street than in a suburban home.¹⁸⁹ In addition, whites tend to have better access to counsel, programs, and services than do people of color, without which disadvantages quickly accrue.¹⁹⁰

People of color make up the largest percentage of the jail population incarcerated for drug offenses.



Source: James, Doris J. 2004. *Profile of jail inmates, 2002*. Washington, DC: Bureau of Justice Statistics.



Recommendations: Communities Can Take Action to Reduce Jail Populations

The steady increase in the use of jail for both convicted and unconvicted people has directed county money away from other county services that benefit all citizens and that may reduce the chance that someone commits a crime. Counties can do many things to lower jail populations, increase public safety, and support healthy communities.

- **Improve release procedures for pretrial and sentenced populations.** Implementing pretrial release programs that release people from jail before trial can help alleviate jail populations. Reforming bail guidelines would allow a greater number of people to post bail, leaving space open in jails for people who may pose a greater threat to public safety.
- **Develop and implement alternatives to incarceration such as community-based supervision for people who would have been given a prison or jail sentence.** Community-based corrections would permit people to be removed from the jail, allowing them to continue to work, stay with their families, and be part of the community, while still under the supervision of judicial officials. Someone serving a sentence through community corrections could contribute to society while continuing family, community, and work connections and also taking advantage of treatment opportunities that are not accessible in the jail setting.
- **Re-examine policies that lock up individuals for nonviolent crimes.** First and foremost, counties should determine which policies and practices are causing more people to go to jail for offenses that do not create a public threat such as zero tolerance or “broken windows” policies that incarcerate people for quality-of-life offenses. By reducing the number of people in jail for these types of offenses, resources and space could be directed toward people who may need to be detained for a public safety reason.
- **Divert people with mental health and drug treatment needs to the public health system and community-based treatment.** People who suffer from mental health or substance abuse problems are

better served by receiving treatment in their community. Treatment is more cost-effective than incarceration and promotes a positive public safety agenda.

- **Divert spending on jail construction to agencies that work on community supervision and make community supervision effective.** Reallocating funding to probation services to allow people to be placed in appropriate treatment or other social services is a smart and less costly investment in public safety.
- **Avoid building additional jails by changing pretrial release policies and using community-based alternatives.** By allowing more people to be released pretrial and putting more money into treatment programs and community-based alternatives, jails that are struggling with overcrowding can ease this problem, provide more services for people who are in jails, and avoid the expense and harmful consequences of building more jails.

Alternatives to Incarceration

Alternatives to incarceration programs emphasize rehabilitation rather than punishment, providing a broad set of services to their clients, including drug treatment, counseling, and employment or job placement services. These programs are a court-ordered sanction that allows clients to stay in their communities under supervision. Some examples of effective alternatives to incarceration include:

- Electronic monitoring
- Drug treatment in the community
- Treatment-oriented intensive supervision
- Employment and job training

These alternatives have been shown to be cost-effective options for reducing jail and prison populations while promoting public safety.

- **Provide more funding for front-end services such as education, employment, and housing.** Research has shown that education, employment, drug treatment, health care, and the availability of affordable housing coincide with lower crime rates. Jurisdictions that spend more money on these services are more likely to experience lower crime rates. An increase in spending on education, employment, and other services not only would improve public safety, but also would enhance and enrich the community to the benefit of all citizens.



Appendix: Types of Bonds¹⁹¹

General Obligation Bonds (GOBs) – The government (borrower) issues bonds to investors such as banks or corporations (lenders) who will receive payments covering the principal and interest. GOBs are paid out of a state’s general fund, which is supported by tax revenues. Many states, including California, require voter approval to issue GOBs and limit the amount of debt that can be incurred from such bonds. Elected officials can circumvent these obstacles by issuing two different types of bonds: *revenue bonds* and *lease-revenue bonds*.

Revenue Bonds – Revenue bonds are backed by the revenue from a project. For example, the revenue generated by leasing extra bed space in a jail would be used only for the repayment of the principal and interest on the bonds. Revenue bonds are not backed by the full faith and credit of the state and generally do not require voter approval.

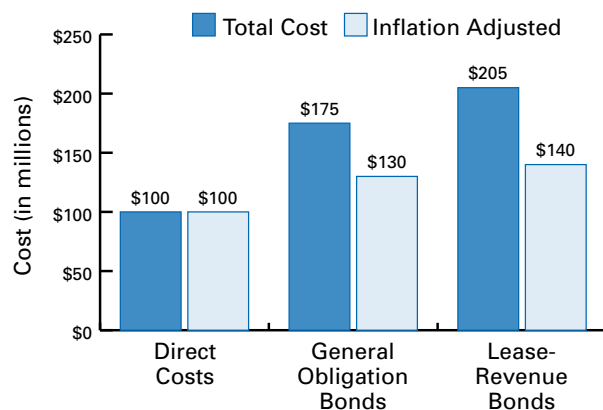
Lease-Revenue Bonds (LRBs) – LRBs allow an agency created by the government to build a prison or jail by issuing tax-exempt bonds and then leasing the right to use the facility back to the government. The government, which generally gains ownership of the project at the end of the lease period, uses funds appropriated by the legislature to make lease payments. These bonds do not require voter approval. Certificates of Participation (COPs), a form of lease-revenue bond, are often used to finance prison and jail. Investors who buy COPs are essentially purchasing a share of the lease payments for the prison or jail. The county makes lease payments to the lessor (private or public), who relies on a trustee to prepare and execute the certificates and make payments to certificate holders. Ownership of the facility is granted to the county once repayment of the certificates is complete.

Lease-revenue bonds are extremely costly because they carry high interest rates resulting from the lease agreement that backs the loan. Other bonds are backed by the state and do not carry high interest rates. Lease financing agreements provide a way to hide the true costs of a project. These bonds are not considered debt because a municipality can decide to stop making lease payments. In reality, localities are often locked into payments because breaking the lease could lower their credit rating.

Revenue bonds and lease-revenue bonds are not as accountable to the public as general obligation bonds. With general obligation bonds, voter approval affirms public support for the construction of a jail. Revenue and lease-revenue bonds, however, are not approved by the public. In fact, many elected officials favor these types of bonds *because* they can bypass the public. The drawback is the removal of an additional check on excessive borrowing or the construction of projects that are not in the public’s interest.

Counties that rely on revenue bonds to finance jail construction may encounter financial difficulties if they overestimate revenues.

A \$100 million project costs more if funded through a general obligation or lease revenue bond, because interest will accrue on the bond and inflation will affect the cost of the bond as it is paid over a long period of time.



The figure compares the direct cost of a \$100 million project financed on a pay-as-you-go basis and with the total principal and interest payments for the same project using general obligation and lease-revenue bonds.

Graph from: Pyle, Kevin, and Craig Gilmore. 2005. *Prison town: Paying the price*. Northampton, MA: The Real Cost of Prisons, <http://www.realcostofprisons.org>; Data from: *A primer on state bonds*. Jan 1996. California: Legislative Analysts Office. <http://www.lao.ca.gov>.

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