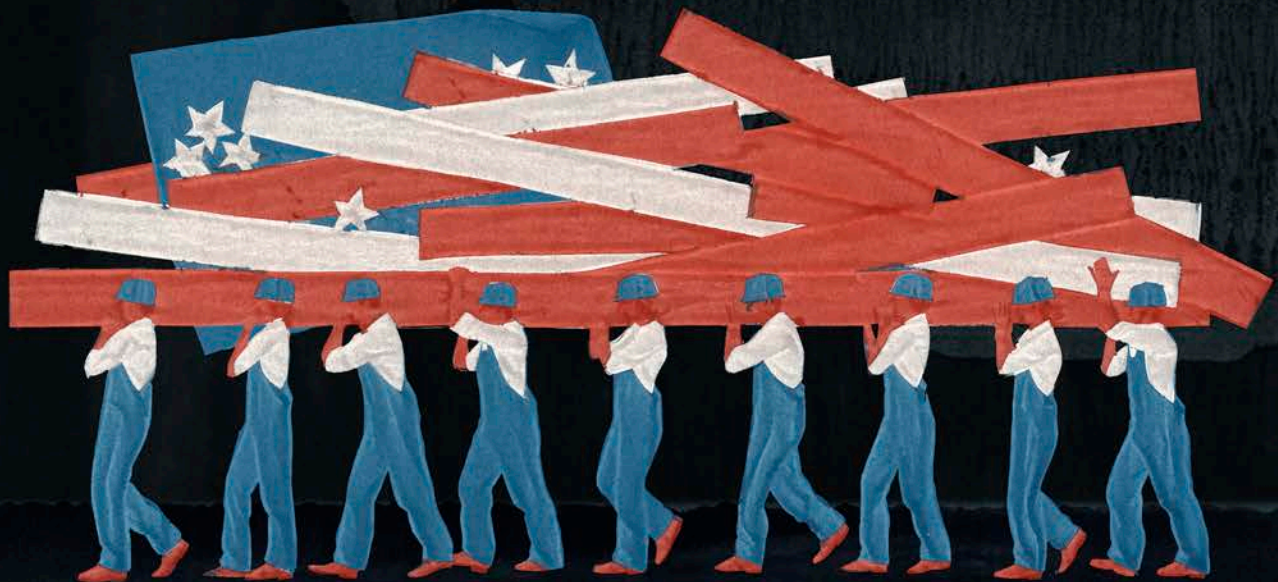





Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead

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 **SAFETY + JUSTICE**
CHALLENGE

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Foreword

Perennial headlines about the declining U.S. jail population have obscured the fact that America is in the midst of a quiet jail boom. As Vera's previous research has found, the reduction of the nation's jail population has been driven by remarkable downward trends in the largest cities. But while movements to close Rikers Island in New York City, tear down the Men's Central jail in Los Angeles, close the "Workhouse" in St. Louis, and repurpose the Atlanta City Detention Center have challenged elected officials to eliminate jail beds and invest in communities, hundreds of small cities and towns across the country have taken a completely different course and broken ground on new and larger jails.

The nation's biggest cities were long the epicenter of mass incarceration, with people of color suffering most acutely. Laura Kurgan and Eric Cadora's research on "million-dollar blocks" in the early 2000s illustrated the intense impact that incarceration had on urban communities of color. Their findings spotlighted neighborhoods in which the concentrated incarceration of people from a single city block consumed at least a million dollars each year—neighborhoods that otherwise received relatively little state investment. This insight sparked calls for sentencing reform, economic justice, divestment from confinement, and reinvestment in communities.

When Kurgan and Cadora's research was published, jail populations and prison admissions were beginning to plateau and then decline in big cities. But incarceration has continued its upward climb in smaller cities and rural areas, precipitating ongoing investment in correctional control. To justify this growth, incarceration is still often framed as a solution, rather than a problem, positioning jail expansion as a pragmatic answer to growing jail populations. But, as this report underscores, the choice to invest in the infrastructure of confinement can virtually guarantee increased levels of confinement.

Complicating the debate on jail expansion is the recognition that jails often warehouse people with substance use and mental health issues. Increasingly, jail expansion and jail-based responses are packaged and publicly promoted as the community's best solution to these problems. Local governments have learned that jail construction is often unpopular with voters and sometimes label their new facilities a "justice campus" or "law center" to obscure the building's principal function—and center jail-based substance use and mental health treatment services as the rationale for investment.

This "carceral humanism," a term coined by James Kilgore, positions corrections authorities as social service authorities. But even well-intentioned correctional efforts are still correctional efforts,

and the experience of isolating confinement in a facility the primary aim of which remains control, surveillance, and punishment, is antithetical to treatment goals. Carceral humanism is a troubling trend both because investments in corrections-based treatment services crowd out resources for community-based solutions and because the trend further establishes substance use and mental health issues as criminal matters.

As much of the nation grapples with the contemporary jail boom, we hope that this report will serve as a guide to policymakers, advocates, journalists, and concerned citizens facing the question of whether to construct more jails. The

vast majority of Americans are leery of new jails. In a 2018 poll commissioned by Vera, 67 percent of respondents agreed that “building more jails and prisons to keep more people in jail does not reduce crime,” and 61 percent felt that “the money spent on building prisons and jails can be better spent on other things.”

The good news is that there is a better way forward. Many counties have embraced alternatives to bigger jails and are thoughtfully reducing their jail populations and freeing up resources for other important uses within the community. The lessons from these places show that mass incarceration is not any community’s destiny.



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About this report

This report is one of a series that the Vera Institute of Justice (Vera) is releasing with the Safety and Justice Challenge—the John D. and Catherine T. MacArthur Foundation’s initiative to reduce overincarceration by changing the way America thinks about and uses jails. The initiative is supporting a network of competitively selected local jurisdictions committed to finding ways to safely reduce jail incarceration. Other publications in the series to date include:

- › *Incarceration’s Front Door: The Misuse of Jails in America*;
- › *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*;
- › *Overlooked: Women and Jails in an Era of Reform*;
- › *Out of Sight: The Growth of Jails in Rural America*;
- › *Divided Justice: Trends in Black and White Incarceration 1990-2013*;
- › *The New Dynamics of Mass Incarceration*;
- › *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention*;
- › *Gatekeepers: The Role of Police in Ending Mass Incarceration*; and
- › the multimedia storytelling project, *The Human Toll of Jail*.

Through the Safety and Justice Challenge, Vera’s office in New Orleans, and direct partnerships with jurisdictions nationwide, Vera is providing expert information and technical assistance to support local efforts to stem the flow of people into jail, including using alternatives to arrest and prosecution for minor offenses, recalibrating the use of bail, and addressing fines and fees that trap people in jail. For more information about Vera’s work to reduce the use of jails, contact Nancy Fishman, project director, Center on Sentencing and Corrections, at nfishman@vera.org. For more information about the Safety and Justice Challenge, visit www.safetyandjusticechallenge.org.

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Introduction

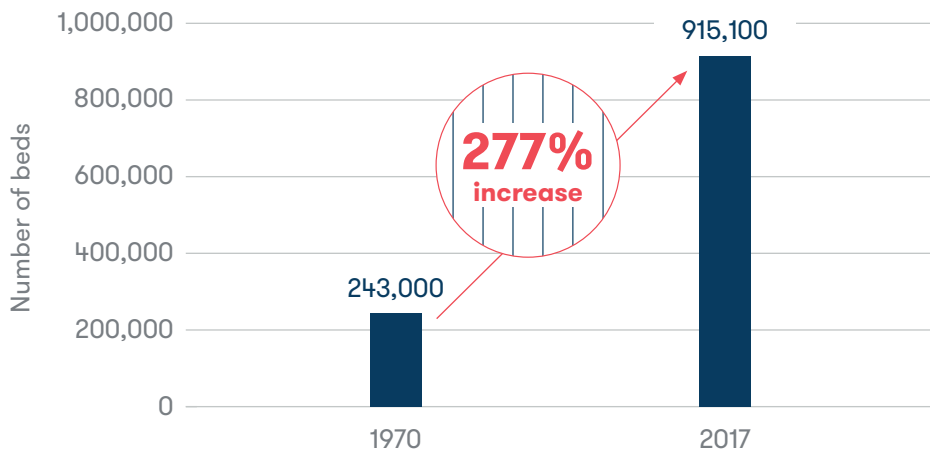
Jail construction in the past several decades has vastly expanded the capacity of America's jails to incarcerate people. In 1970, there were 243,000 jail beds in the United States.¹ After more than four decades of many counties investing heavily in constructing new jail facilities—or expanding existing ones—total jail capacity in the United States reached 915,100 beds by 2017.² (See Figure 1 on page 2.) Due to decades of “tough on crime” criminal justice policies that drove up the use of arrest and incarceration, the national jail population grew between 1980 and 2008 from 161,000 to 785,500 in lockstep with this upward trend in jail construction.³ In the past decade, however, the aggregate number of people

Rural areas, suburban areas, and midsized cities remain in a jail population boom and continue to build larger jails.

in jail has actually declined by 40,300 since peaking in 2008.⁴ Yet jail capacity nationwide continued to grow over that period by 86,400 beds—even during an era of declining crime rates.⁵ Urban counties have been at the forefront of the jail population decline nationally, and jail capacity also declined there by 9 percent between 2005 and 2013.⁶ But other areas of the country—particularly rural areas, but also suburban areas and midsized cities—remain in a jail population boom and continue to build larger jails; jail capacity in these areas grew by 11 percent over the same time period.⁷ (See Figure 2 on page 3.)

Figure 1

U.S. jail capacity, 1970 and 2017

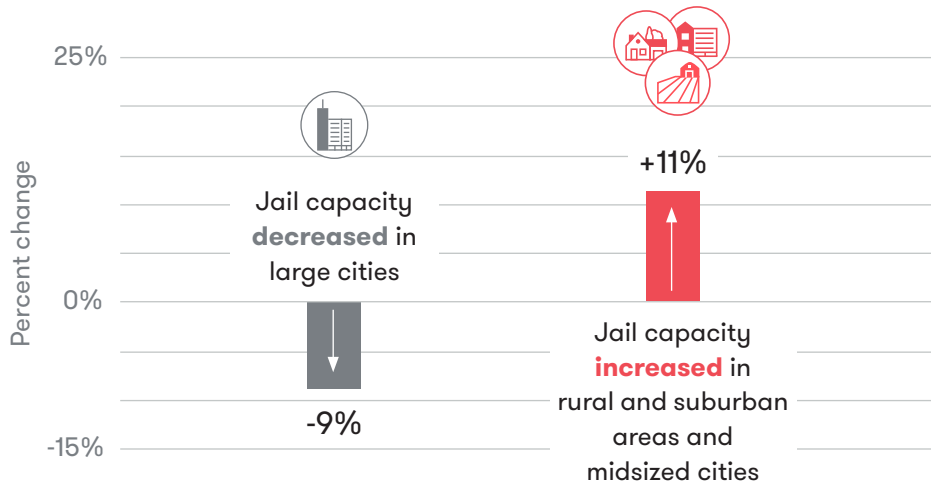


Source: For 1970 bed capacity, see U.S. Department of Justice, Bureau of Justice Statistics (BJS), “National Jail Census, 1970,” database (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2005), <https://perma.cc/BV5N-A56P>. For 2017 bed capacity, see Zhen Zeng, *Jail Inmates in 2017* (Washington, DC: BJS, 2019), 7, <https://perma.cc/8A9J-VQ2V>.

Thus far, scholarship related to the physical expansion of America’s capacity to incarcerate has largely focused on the prison building boom that started decades ago.⁸ These studies have examined where and why prisons are built, how prison construction has impacted host communities, local perceptions of the impact of new prisons, the relationship between prison litigation and prison expansion, and the relationship between increases in the number of prison beds and increases in incarceration levels.⁹ Although the parallel growth in local jail beds nationwide has not yet received consistent scrutiny, there has been increasing recognition that the expanding footprint of local incarceration is a key component in the “celling of America” that merits more study.¹⁰ Budding scholarship examining jail expansion, for example, is making clear that the language of economic development—a now-debunked frame used aggressively to promote prison expansion in the past—continues to be employed in jail expansion efforts.¹¹ Still, jail construction and expansion can be a difficult area to study. This is in part because the jail construction process can span a considerable amount of time, sometimes decades. The specific environmental factors that initiate, facilitate, inform, or even constrain potential jail expansion—whether political, economic, or social—are likely to shift over time, making it a challenge to draw neat linkages between

Figure 2

Percent change in jail capacity by urbanicity, 2005–2013



Source: For details on how Vera calculated capacity changes, see endnotes 6 and 7.

actors, actions, and events at different stages of the jail construction arc in any one county, let alone multiple counties.¹²

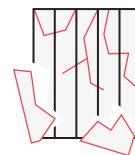
In this context, the Vera Institute of Justice (Vera) seeks to contribute to the emerging literature on America's decades-long carceral building project by exploring the persistence of jail expansion, looking at the arguments that county officials make in an effort to build new jails and describing some of the potential negative consequences of jail construction. To accomplish this, this report examines dozens of counties that considered or pursued jail expansion between 2000 and 2019, as indicated by county boards discussing the issue at county meetings, holding public meetings on the issue, hiring consultants, holding a vote on the issue, or ultimately beginning construction. Due to the absence of consistent national-level research on jail construction and the sheer number of jail jurisdictions—nearly 3,000—Vera staff selected a convenience sample of 77 counties in 31 states by conducting secondary research into media reports, jail litigation cases, academic papers, and government documents such as commissioned studies examining the needs of a jurisdiction's local jail.¹³ Of the counties in the sample, the majority ultimately built a jail or were in the process of construction as of September 2019. (See the Appendix on page 45 for the list of counties in the sample and their jail construction status. Vera



also examined jail population projection reports written for 10 of these counties to evaluate the information these documents provide.)

From this sample, Vera identified three major, often coexisting, arguments that county officials make in public support of jail expansion.

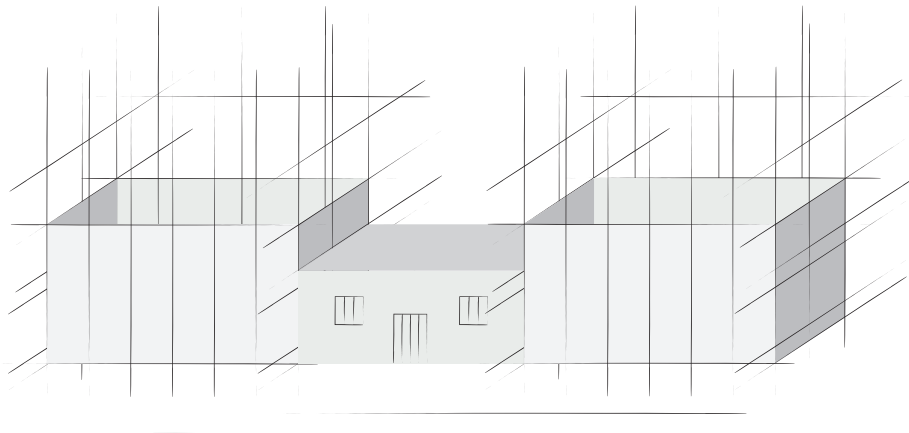
- › First, a number of policy changes over the past several decades, such as a greater reliance on money bail, have led to **overcrowded jails** in some places as pretrial populations surged.¹⁴ As jail populations have exceeded capacity, county policymakers have turned to jail expansion rather than alternatives to incarceration, often hiring architects and consultants to provide population projections that validate this decision to build. In some cases, decision makers also argue that **replacing older facilities** will provide safer living and working conditions for the increasing numbers of people in the jail—sometimes under pressure from courts or state oversight agencies. County officials often decide to build more jail beds than currently needed in an attempt to preempt future overcrowding.



› Second, the **high need for mental health care, behavioral health treatment, and primary care** among people in jail is often publicly used to justify new jail construction. Expanded jail populations include people who have histories of substance abuse, mental illness, and victimization.¹⁵ In some places, such as Los Angeles, many people in jail who need mental health services are staying for longer periods of time than people who do not require such services or landing in jail for a series of short stays.¹⁶ Some county policymakers make the argument that a new, larger jail is needed in order to create or expand services for these populations.



› Third, **financial incentives** can drive the decision to expand. With an overcrowded jail population, counties sometimes pay jails in neighboring jurisdictions to house some of their overflow population.¹⁷ Counties decide to build more jail beds in an effort to reduce these costs and even to make money themselves by renting out their new jail beds for a fee to neighboring counties, the state prison system, or the federal



government. Given this financial incentive, policymakers pushing to expand jail capacity may believe that building a larger jail is more financially prudent than building a smaller jail, since excess beds can serve as a potential source of revenue to help defray jail construction or operating costs.

The cycle of jail growth and overcrowding is not an inevitable feature of local criminal justice systems.

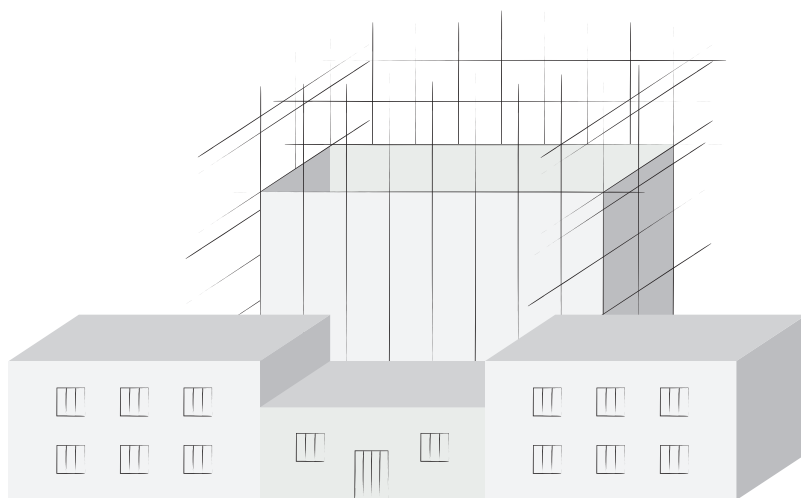
Examining the experiences of some counties around the country shows that jail expansion often does not live up to the expectations of policymakers. This report points to a number of counties drawn from the sample of 77 that experienced one or more negative or unanticipated outcomes of jail expansion. For example, larger jails built to accommodate an overcrowded population often see their populations continue to increase.¹⁸ This is because expansion alone fails to address the root causes of overcrowding, leaving in place the very policies and practices that drove the jail's population increase in the first place. Indeed, there is a risk that the existence of a larger jail with more beds may reduce the incentive to make policy changes that address the factors driving overcrowding due to the temporary relief expansion provides. Jail population growth and increasing capacity can thus exist in a vicious cycle, resulting in an ever-increasing number of people in jail. The push to increase jail beds as a way to improve health and social services can also backfire: the inherent harms of incarceration may limit the effectiveness of new service capacities, and investment in corrections-based treatment services may divert needed

resources for similar services and supports in the community. Finally, counties hoping for a financial payout from renting jail beds sometimes find that the costs of constructing and operating a bigger jail exceed the projected income. In rare cases, counties find it too costly to open and operate their newly built jails and thus leave them shuttered.

The cycle of jail growth and overcrowding is not, however, an inevitable feature of local criminal justice systems. Many counties around the country have rejected this assumption. Some have chosen instead to invest in appropriate and continual maintenance or to renovate existing jails. Others have interrupted cycles of growth with policy and practice changes that reduce the number of people they incarcerate and thus the need for a larger jail. In these communities, policymakers and community members question the need for a larger jail. When there is truly a need to replace an old jail building, decision makers consider building a facility the same size as—or smaller than—the current one, instead of relying on a default assumption of expansion. This report concludes with the experiences of several such counties, which call into question the logic driving the past several decades of intensive jail construction. Communities facing the decision to build a larger jail in order to alleviate jail overcrowding, improve jail conditions, or increase revenues can take note of these examples in order to implement similar changes. In the meantime, more research is necessary that directly tests some of the assumptions that have been used to support jail expansion in the past. Researchers may want to dig deeper into causal theories between jail expansion and local incarceration rates. One easy step would be for both local counties and the U.S. Department of Justice to keep regular statistics on jail construction and expansion. Doing so would not only facilitate research, it could also help localities better understand how they are using their jail facilities and the potential consequences of building bigger.

What drives jail construction?

Although the use of jails over the past decade has declined sharply in some places—mainly urban and suburban areas—such declines have not been felt everywhere.¹⁹ In many other places, especially small counties farther from major population centers, jail populations have grown ever higher.²⁰ Several factors have contributed to this growth. These include the consequences of “tough on crime” policies adopted between the 1970s and mid-2000s—including more punitive drug laws and increased enforcement of low-level, quality-of-life crimes, which together swept many more people into local jails.²¹ Increased reliance on cash bail has increased pretrial incarceration rates in many counties. Also, in many of these places, there is an absence of critical criminal justice and community services that could help decrease jail use—including fewer diversion programs, scant use of pretrial services, an absence of vital community-





based referral services, and fewer criminal justice personnel to process cases.²² In more recent years, state policy actions have also deliberately contributed to increases in the jail population. For example, in order to reduce their state prison populations, California (in 2011) and Indiana (in 2015) enacted new laws requiring people convicted of some low-level felonies to serve their sentences under county supervision—often in county jails—instead of in state prisons, even though prior to the bills' passing, many jails in these states were already functioning at or above capacity.²³ These laws have led to widespread jail construction. In fact, in 2019, Indiana Prosecuting Attorneys Council Executive Director David Powell said that more than a third of Indiana's 92 counties were actively building new jails.²⁴

As these policy changes led to increasing jail populations, many jails became overcrowded.²⁵ The 2006 Census of Jails—the last year for which national data was collected on the number and type of judicial sanctions levied on jail jurisdictions—revealed widespread overcrowding in some states. As many as 204 jail jurisdictions at the time were under court orders or consent decrees to limit their populations, including 28 percent of jails in California, 23 percent in Massachusetts, 22 percent in Louisiana, and 19 percent each in Mississippi and Oregon.²⁶ More recent

data suggests overcrowding remains a problem a decade later. In 2017, despite the existence of far more jail beds nationwide than people held in jail, one in five jails had a population at or above 100 percent of its rated capacity—a number assigned by a rating official (a regulatory body, an agency head, or facility supervisor) that represents the highest number of incarcerated people a facility can house and still operate safely, often based on architectural design and construction, staff capacity, and services and programs offered.²⁷

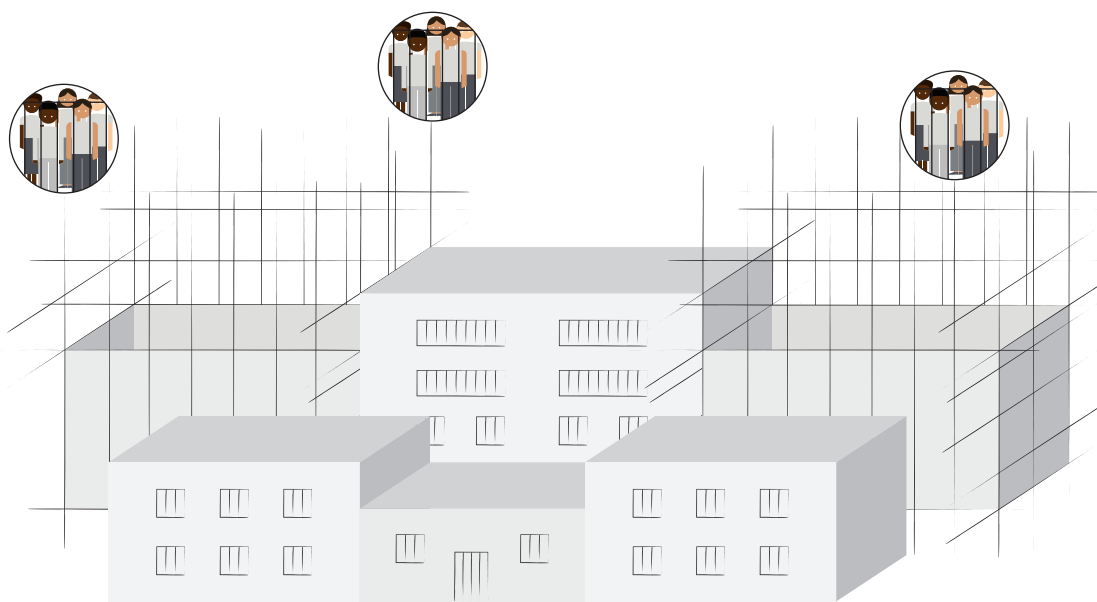
This overcapacity problem is brought into stark relief by focusing on specific states. In Ohio, a 2016 audit found that 42 of the state's 102 county jails exceeded their capacity, five of which held more than double the people they were rated to hold.²⁸ In Tennessee, half of the county jails are overcrowded, with some nearing twice their capacity—like the jail in Loudon County, which has the capacity to hold 91 people but averaged 170 to 180 people in 2018 as construction began on a new facility.²⁹ In some places, overcrowding has been a perpetual story. For example, Okaloosa County, Florida's Jail Director Stefan Vaughan admitted that overcrowding “has been going on systemically since the county originated” more than a century ago.³⁰

It is unsurprising, then, that for the many counties that continue to struggle with increasing numbers of people in their local jails, expansion is perceived as a logical solution to the problem. Jail expansion usually enters public debate once a community identifies jail capacity as a pressing problem to solve, whether as the result of jail litigation, an audit by a state oversight agency, or a sheriff's request for additional resources. (For specific state examples on the role of oversight boards and litigation in jail construction, see “How state oversight boards and jail litigation can catalyze jail expansion” on page 18.) In whatever context the jail expansion debate is initiated, the argument for increased jail capacity is rationalized using three often overlapping grounds: (1) health and safety concerns; (2) the need for space and infrastructure to improve provision of specialized services (such as medical services, mental health treatment, and programming); and (3) the opportunity for a revenue stream to help cover construction and operating costs as well as fill local budget gaps.

Health and safety concerns

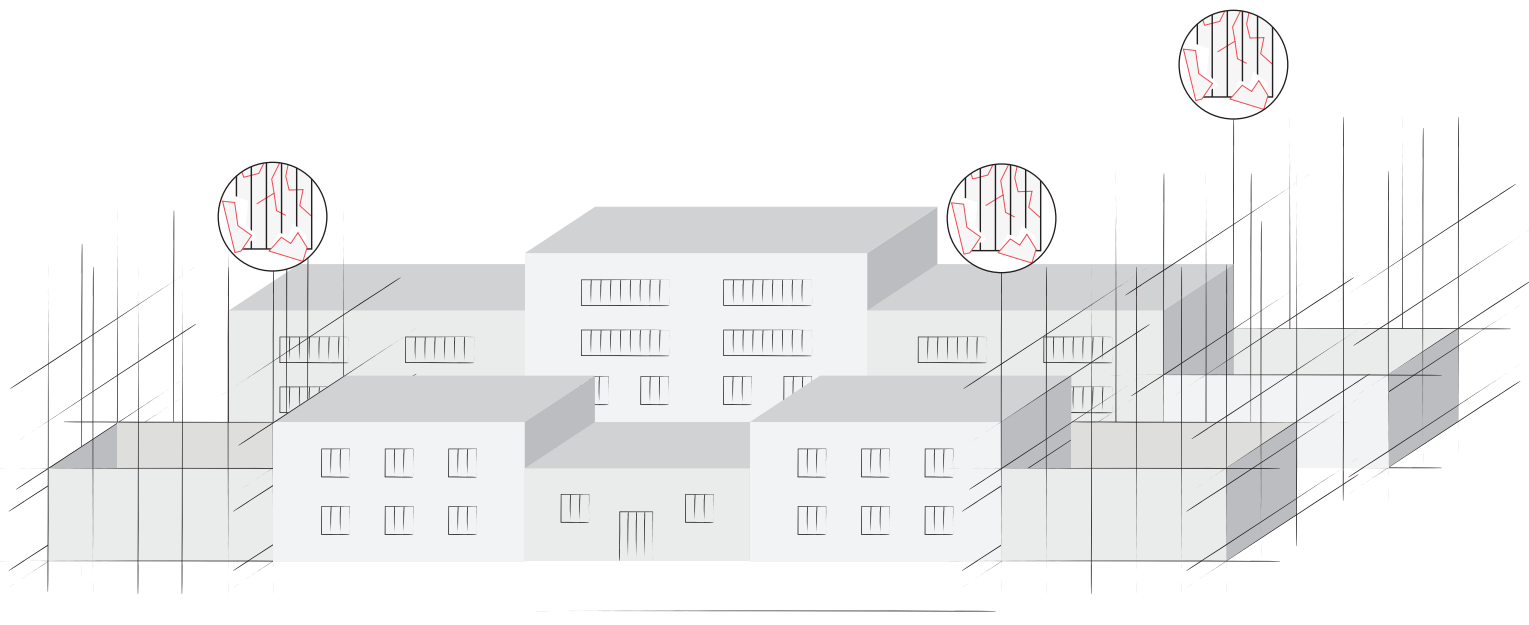
By law, jails are required to house people in reasonably safe, sanitary environments and to provide for basic human needs—from adequate food and medical services to recreational and other programming.³¹ These obligations derive from federal and state constitutions, national and state correctional standards, and federal and state statutes and regulations.³² Overcrowding can threaten a jail's capacity to maintain minimally adequate or safe living conditions. For example, housing too many people limits the staff's ability to classify and segregate people with different security needs and personal characteristics (e.g., age, gender, low-security versus high-security, or specialized treatment needs).³³ This can increase the risk of tension and violence among people who are packed in increasingly close quarters.³⁴

Tension and frustration in crowded conditions is unsurprising. In overcrowded conditions, people may be double- or triple-bunked in a single cell; forced to sleep dormitory-style in dayrooms, classrooms, or gymnasiums; housed in ad-hoc structures like tents or mobile



homes set up adjacent to a facility; or made to sleep on mattresses or “boats” —plastic temporary beds described as “casket-like”—on the floor.³⁵ Overcrowding can also prevent opportunities for rehabilitative programming or treatment; lead to limits on out-of-cell time, recreation, meal times, visitation, and access to staff; or result in inadequate medical care and attention.³⁶ Finally, overcrowding can overtax the many different operational systems in a facility—such as plumbing, ventilation, heating, and cooling, as well as food and health services systems—in ways that can result in environmental or health hazards that directly impinge on the well-being of both staff and incarcerated people.³⁷

Older jails, some built more than a century ago, can also pose significant health and safety risks to both staff and the incarcerated population through designs that do not meet modern health or fire code standards or the existence of harmful building materials such as asbestos or lead.³⁸ Aging jail facilities are a surprisingly common feature in many places across the country. According to the 2006 Census of Jails—the most recent national data on this subject—153 jails constructed before 1945 were still in use in 2006, 34 of which had been built before the 20th century.³⁹ Although rarely the sole argument that sheriffs and county officials make for new jail construction, poorly maintained or aged facilities are often part of the rationale.



Among the 77 counties Vera examined, around half sought jail expansion as the solution to the problems of overcrowding and aging or otherwise unsuitable facilities. The jail facility in rural Benton County, Missouri—built in 1856—is on the extreme end of age; it is a wood and stone structure with no fire sprinkler system.⁴⁰ The jail was rated to hold 28 people but held an average of 41 in 2016.⁴¹ The county is building a new

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facility to hold double that amount, with 80 beds and the opportunity to expand further.⁴² But even newer facilities face problems. The jail in Platte County, Missouri, was only 14 years old when the sheriff started planning to expand it in 2012, but he argued that deteriorating conditions, overcrowding, and the difficulty of separating a growing number of women and U.S. Immigration and Customs Enforcement (ICE) detainees (who, because their cases are civil, cannot be housed in cells designated for people convicted of crimes) from men in general population combined to create unsafe conditions, with people being held in overcrowded cells and sleeping on the floor in makeshift bunks, so that cells intended for two people housed three.⁴³ A measure on the ballot in April 2019 would have increased sales taxes to add 200 beds to the 180-bed facility.⁴⁴ Although voters rejected the proposal, the county's sheriff is planning future ballot measures to fund expansion.⁴⁵

Specialized services

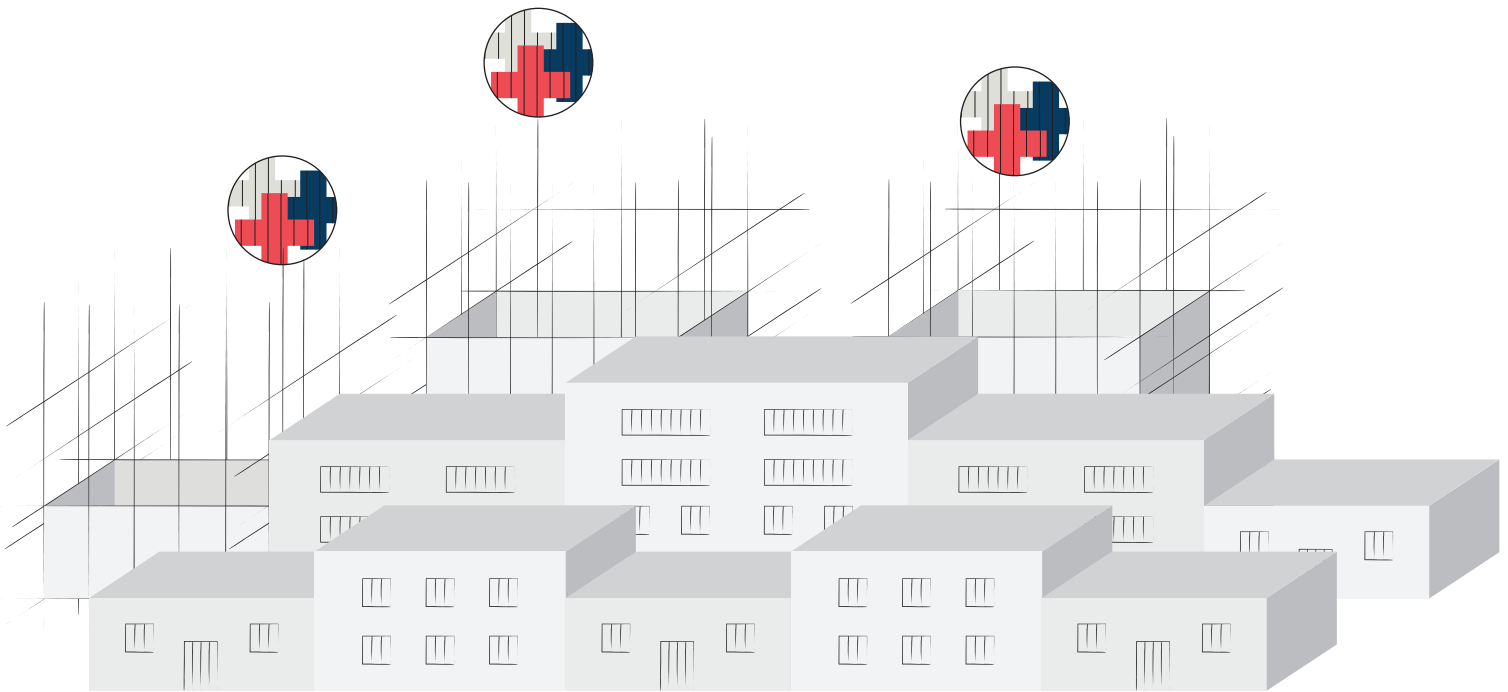
Another common rationale for jail construction is that sheriffs need additional space to implement programming, education, and behavioral and mental health treatment to better respond to the needs of people who are detained pretrial and those serving longer sentences in the jail.⁴⁶ This is especially the case in states that hold substantial numbers of people serving felony sentences in county jails. That a facility designed for

That a facility designed for punishment and isolation appears to many as the logical site for a county's investment in specialized treatment services is the result of decades of policy choices—choices that have shifted tasks like responding to behavioral health crises from health care providers to police and the courts and put jails at the center of public health and mental health policy.

punishment and isolation appears to many as the logical site for a county's investment in specialized treatment services is the result of decades of policy choices—choices that have shifted tasks like responding to behavioral health crises from health care providers to police and the courts and put jails at the center of public health and mental health policy.⁴⁷ These decisions have been made in concert with divestment in public education and health care and are sharpened by the lack of living wage jobs and

affordable housing as well as the criminalization of poverty in the United States.⁴⁸ This is the context in which many county officials find themselves arguing for jail expansion for the treatment of incarcerated people. Indeed, one architect framed jail construction as a “new prescription for mental illness.”⁴⁹

For people living in communities where services are lacking, being booked into jail is theoretically an opportunity to have medical or behavioral health issues identified; to have any acute needs stabilized, such as detoxification from alcohol or opioids or treatment for acute mental health episodes; and to receive referrals to in-house or community-based services.⁵⁰ But many jail facilities fail to provide minimal health care, often struggling to offer even the most basic medication or treatment to incarcerated people.⁵¹ A 2009 study found that, among people incarcerated in local jails who have a persistent medical problem, as many as 68 percent did not receive a medical examination while incarcerated.⁵²





Similarly, a 2017 national study found that only 35 percent of people in jail who met the threshold for serious psychological distress had received treatment since admission.⁵³ Moreover, when they do receive health care services, those services might not meet community standards of care. In a 2015 national survey of people in jail, fewer than half (43 percent) of respondents reported that such services were the same or better than the services they had received in the 12 months prior to incarceration.⁵⁴ This explains why some jail administrators—as was the case in nearly a quarter of counties examined for this report—make the public case that the county needs to improve health services and other programming behind bars.⁵⁵ Whether it is a new wing or a new facility to accommodate and enhance service provision, these efforts are often accompanied by an increase in the number of jail beds. For example, the sheriff in Penobscot County, Maine, stated of the county’s plan to build a 300-bed jail to replace the 157-bed jail: “The mental health, substance abuse, medical and special needs of inmates require a facility capable of providing meaningful services. Many new and current inmates’ services will be able to expand, truly helping our mission of reducing recidivism.”⁵⁶ Iredell County, North Carolina, is tripling the size of its jail-based medical facilities and more than doubling jail capacity; the expansion increases capacity from 277 beds to 700.⁵⁷

Other examples abound. Jail construction in McLean County, Illinois, nearly doubled the number of jail beds in 2018. The public discussion of the project by members of the county board emphasized the ways the larger jail could better serve those with mental health needs.⁵⁸ Sheriff Jon Sandage said the jail addition would provide a more comforting environment for people with mental illnesses who are incarcerated there: “[It’s] a quieter place and . . . conducive to them being able to relax and hopefully get on the road to recovery.”⁵⁹ The mental health area has additional facilities for incarcerated people to spend time out of their cells, as well as cells that include “softer” features, such as doors with a wood grain finish, additional seating, and less steel framework.⁶⁰ In Skagit County, Washington, the chief of corrections called the new jail, which roughly doubled jail capacity to 400 beds and provides new behavioral health treatment and job training, “an exciting opportunity to guide our inmate populations in a new way.”⁶¹ And in Gallatin County, Montana, officials called the 160-bed jail constructed in 2010, which quadrupled the capacity of its old jail, “an innovative way of looking at corrections.”⁶² These counties stand in stark contrast to prior modes of looking at incarceration: even as recently as 2005, one Wyoming sheriff reassured his constituents that adding treatment facilities wouldn’t make the new jail less punitive.⁶³

After the California Board of State and Community Corrections issued a request for proposals in 2013 calling for county jail construction projects that included space for programming and treatment, some counties initiated jail expansion projects with a stated purpose to expand treatment.⁶⁴ In Butte County, Sheriff Kory Honea said that the new jail facility will help rehabilitate a population that is increasingly in jail for longer stays, while expanding capacity by 96 jail beds.⁶⁵ In Kings County, a similar jail expansion project added 33,000 square feet to the jail, including housing, program, vocational, and office space, as well as a 24-bed mental health unit.⁶⁶ And, in 2018, Stanislaus County completed an 840-bed expansion that included a new 288-bed minimum security facility called the REACT center, containing classrooms, a family reunification room, and multimedia facilities.⁶⁷

How state oversight boards and jail litigation can catalyze jail expansion*

Beyond internal county decision making, two external factors can play an important triggering role in shaping a jurisdiction's decision to expand its local jail: jail oversight boards and litigation. Thirty-three states—covering three out of four jail beds in the United States—have established jail oversight agencies to ensure safety and establish standards of practice and care.¹ The organizations' functions may include investigating complaints against a facility or staff member, monitoring facilities regularly to identify possible problems, or developing standards applicable to all jails in the state.² Although oversight bodies rarely mandate new jail construction, they create pressure—such as financial sanctions or even a lawsuit—that may indirectly lead local decision makers to solve identified problems such as overcrowding with jail expansion. If jail expansion is the adopted solution, some oversight bodies directly support the construction process by reviewing construction plans and providing technical assistance.³

Lawsuits or the threat of litigation—whether initiated by another government body (such as an oversight board), people who are currently or formerly incarcerated, or third parties suing on behalf of these people—can also lead counties to pursue jail expansion. In fact, litigation frequently results in explicit orders—through court judgments, consent decrees, or settlement agreements—to build or expand jail facilities and increase staffing levels. These mandates are often backed up by judicial sanctions for noncompliance, including threats to close the existing facility, contempt orders, or fines. Even if not specifically ordered to build, many counties perceive expansion as the only way to meet court-decreed constitutional standards. Of 43 jail lawsuits filed between 1975 and 1989 in California, 37 percent ended with orders to build new jails or make substantial renovations to expand existing capacities.⁴ And, of 35 counties under court order, 17 increased their capacity between 1976 and 1986 at rates of 40 percent or higher.⁵

Examples from across the country demonstrate how oversight body sanctions or litigation can lead to decisions to expand jail capacity.

Decisions by oversight bodies:

- › In Arkansas, the jail in Logan County failed several inspections conducted by the state and was cited for being overcrowded and unsafe.⁶ This led the county to replace its 34-bed existing jail with a new 100-bed facility completed in May 2019.⁷ A similar issue developed farther north in

Logan County, AR



Marion County. After a state official threatened to close the current jail for failing to meet state standards due to overcrowding and the deteriorating condition of the 36-year old facility, the county constructed a new facility that more than tripled its original capacity of 18 beds.⁸

Marion County, AR



- › In Texas, the Texas Commission on Jail Standards reported “great concern” about jail conditions and overcrowding in Ector County following an inspection in 2015.⁹ The agency threatened to compel the jail to produce a plan to reduce overcrowding, likely requiring the jail to pay other county jails to house some of its population.¹⁰ A few years later, in February 2018, Ector County began construction on the expansion of the Ector County Detention Center, adding 412 new beds.¹¹

Ector County, TX



- › In Indiana, Dubois County received notice in early 2017 from the Indiana Department of Correction (IDOC) that it was in violation of state jail standards due to overcrowding in its jail.¹² The jail, built in 1990 with 46 beds and currently rated for 67, frequently holds as many as 84 people.¹³ IDOC mandated that, within six months, the county conduct a jail needs assessment and develop a plan to address the issues—including a plan of action and a timetable for funding, expansion, or new construction.¹⁴ The county had received notice of noncompliance the previous year as well, but that notice had not mandated action.¹⁵ The sheriff commented: “If we don’t do something by next time, this will become more strict.”¹⁶ By the end of that year, the jail still had failed to come into compliance, prompting a visit by representatives from the National Institute of Corrections (NIC), who toured the facility, reviewed data, conducted interviews with staff and other justice system stakeholders, and produced a high-level needs assessment and report for recommended next steps.¹⁷ NIC told county officials that more data should be collected on people in the jail in order to understand the county’s needs.¹⁸ In 2019, the county presented NIC with a justice system study

Dubois County, IN



facilitated by an architect that included jail population projections.¹⁹ The architect advised that Dubois County’s jail facility should have between 244 and 270 beds—approximately 4.5 beds per 1,000 people in the county—to keep up with anticipated needs for the next 20 years.²⁰

> In New York, the state jail oversight agency—the New York State Commission of Correction (NYSCOC)—determines the number of people each jail can legally hold.²¹ In 2006, it found that the Herkimer County jail was in violation of its assessed capacity of 41.²² Despite alternative proposals to address the issue—including permanently transferring people to other counties; renovating and expanding the existing facility; implementing alternatives to incarceration to bring the jail population down; and even constructing a new, but smaller facility—NYSCOC pushed the county to build a new and bigger 130-bed facility.²³ By 2010, with little progress made in construction, NYSCOC rescinded previously granted capacity exemptions that had allowed the county’s jail to operate pending the opening of the new facility, requiring the county to pay legal penalties or send jail residents to other counties at substantial financial cost.²⁴ The county began construction on a 131-bed facility in late 2018.²⁵

Herkimer County, NY



overcrowding conditions.”²⁸ The county had already doubled the jail’s capacity after a 2001 lawsuit alleging unconstitutional conditions in the jail, eventually agreeing to a 268-person cap in a 2002 settlement.²⁹ The county regularly exceeded this cap in the years following—even while outboarding people to other county jails—and the ACLU of Indiana sued in 2013 to enforce the settlement.³⁰ During the 2016 lawsuit, the county commissioned several jail population analyses, ultimately receiving a projected need of 527 beds—nearly double the current capacity.³¹ (See “Population projections presume continued growth” on page 22.) Vigo County commissioners approved a sales tax to pay for a new, larger jail effective January 2018 and signed a construction contract.³² The county has since settled the 2016 lawsuit.³³

> The jail in Delaware County, Indiana, has been at the center of multiple lawsuits, and the county continues to struggle with litigation. The current facility was constructed as a result of a 1978 lawsuit filed on behalf of incarcerated people over unconstitutional conditions, but when it opened, it was immediately judged too small and outdated—quickly filling and becoming overcrowded once again.³⁴ In August 2017, a jail inspector for the Indiana Department of Correction (IDOC) notified the county that its jail was understaffed and overcrowded—and thus noncompliant with state jail standards.³⁵ IDOC gave the county 180 days to develop a plan of action.³⁶ In 2018, more than two dozen handwritten lawsuits were filed by jail residents, again alleging overcrowding and unsafe, inhumane living conditions.³⁷ In 2018, county officials finally agreed to buy and repurpose a former middle school for a new 500-bed jail at a cost of between \$37 million and \$45 million.³⁸

Delaware County, IN



Lawsuits:

> In Vigo County, Indiana, three consecutive rounds of civil rights litigation have forced county leaders to re-examine the county’s overcrowded jail. Most recently, a 2016 lawsuit was filed on behalf of people incarcerated in the Vigo County Jail alleging that overcrowding and conditions in the jail violated the Eighth and 14th Amendments.²⁶ A federal judge granted a preliminary injunction in May 2017, ordering the parties to agree on a form of injunction to protect those incarcerated while the county worked to remediate the facility.²⁷ By February 2018, the parties were still unable to agree on a course of action—or even the form of injunction—that would settle the claims in the case, although the plaintiffs called building a new jail “the only feasible solution in the long run to address the chronic

Vigo County, IN



* Box notes at end of report.

An additional revenue stream

The rise in overcrowding in many jail and prison facilities—and a shortage of federal immigration detention beds—has driven the growth of an active jail bed market in which counties, state prison systems, and the federal government rent jail beds from county jails.⁶⁸ Counties enter into contracts with other government entities, offering them jail bed space in return for a per diem payment per person.⁶⁹ In fact, many overcrowded jails already make use of this market by outboarding some of the people held by their jurisdictions to other jail facilities. The desire to reduce outboarding and the associated costs to house people elsewhere (and then transport them



to and from court dates) can be a key incentive driving counties to build larger jails.⁷⁰ But some counties see the moment of jail construction as an opportunity to be on the receiving end of jail outboard payments. For these counties, the potential revenue from inboarding people from other counties, state prisons, the U.S. Marshals, or ICE may incentivize them to build larger jails than they would if they were only planning to incarcerate people from their own counties.⁷¹ Combined with a concern that jail populations will perpetually grow into the future, these counties perceive that larger jails will provide consistent revenue that can help cover the costs of building and operating new and bigger jails.

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In at least 20 percent of the 77 counties examined, stakeholders made public arguments in support of jail expansion based on the possibility of additional revenue. In Meigs County, Ohio, county decision makers planned to build a jail of 60 or 70 beds to replace the 100-year-old jail facility that had only five beds, counting on per diem payments from neighboring counties that they argued would not only help pay for the jail building, but would also save money that could be funneled into the county general fund.⁷² In Jasper County, Iowa, in 2018, the board of supervisors approved an expansion to its 84-bed jail, around half of which was already occupied

Population projections presume continued growth*

Some counties that consider building more jail beds contract with an architectural or planning firm to analyze their current and future jail needs. The needs assessments and population projections such consultants produce can play an important role in the jail construction process. Vera researchers reviewed projection documents written for 10 counties in eight states—a subset of Vera’s 77-county sample—in order to better understand the information these documents typically contain and the methodologies they employ to predict future jail populations; Vera researchers also reviewed how those projections were covered in local media. The counties were selected for diversity in geography and size and include Canyon County, Idaho; Codington County, South Dakota; Douglas County, Colorado; El Dorado County, California; Stanislaus County, California; Gallatin County, Montana; Greene County, New York; McLean County, Illinois; Sarpy County, Nebraska; and Washington County, Nebraska.¹

In general, projection documents provide counties with a review of the current jail population data and an estimate of the number of beds needed in the future. Some of the documents provided additional analysis, such as the usefulness of the current physical space. But, crucially, there is no standardized, accepted methodology by which to conduct these projections. In the 10 projections reviewed, policy changes that had reduced jail populations were not taken into serious consideration, and authors rejected models that predicted a decline in population.

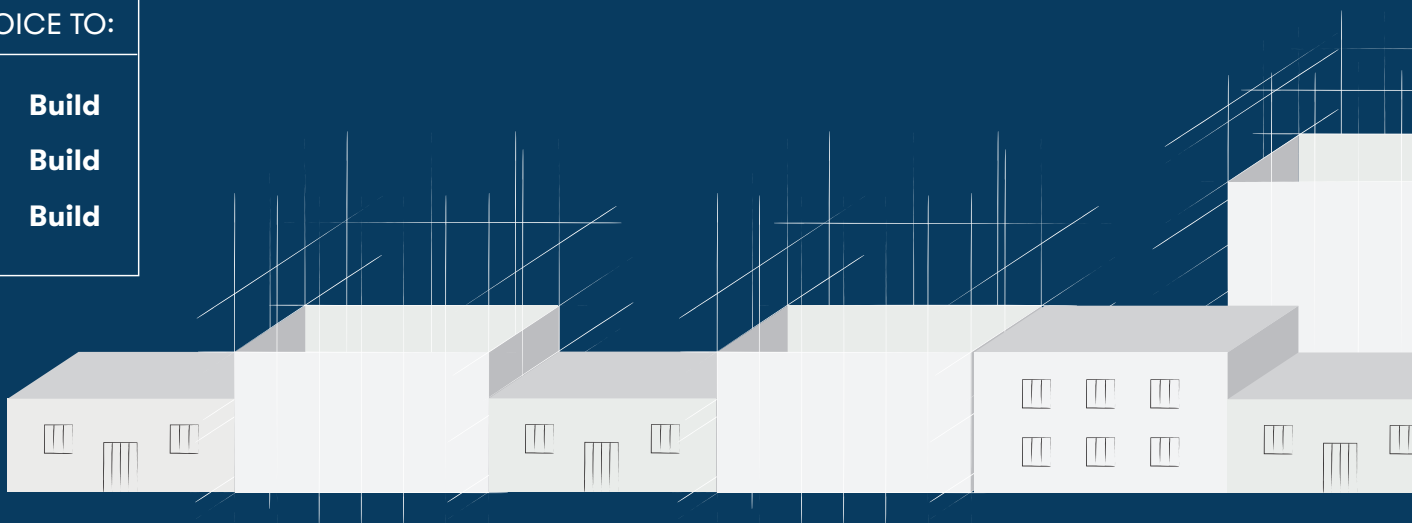
There is no accepted population projection methodology

Vera found no dominant scientific methodology for projecting future jail population growth in the sample of documents it reviewed, and many lacked a clear scientific methodology

at all. The projection document for Codington County, South Dakota, explicitly states: “There is no commonly accepted methodology for making inmate population projections. . . . Counties that are designing new or expanded jails have to determine for themselves which trends and which mathematical models will provide them with reasonable growth estimates for facility planning purposes.”² The El Dorado County, California, needs assessment noted that “the large number of variables that can [a]ffect jail capacity make it difficult to totally, accurately predict the needs for the future. The magnitude or extent to which individual variables can impact a detention facility is also difficult to estimate.”³ These variables can include county population trends, arrests, jail population, bookings and releases, and length of stay. In the absence of a scientific methodology, authors of the reviewed projection documents used a range of methods and assumptions. For example, consultants produced several models of future population growth for Washington County, Nebraska, one of which relied on an assumption that the county jail incarceration rate would grow annually by the average national growth in the incarceration rate since 1985, a period of immense jail expansion.⁴ In most jurisdictions, because jail sentences are no more than a year and the typical pretrial stay can run from a few days to a few weeks, jail populations can turn over quickly and fluctuate significantly.⁵ Projecting a jail population 20 or even 30 years into the future is thus an inherently uncertain task.⁶ In Douglas County, Colorado, consultants in 2006 projected a need for 535 beds by the year 2010 and 990 beds by the year 2020, a 184 percent increase over the 2006 population of 349.⁷ According to a later assessment conducted in 2011, these projections “did not come to fruition, and instead the jail has experienced a decline in both bookings and average daily inmate population counts [emphasis in original],” with an actual average daily population of 323 people in 2012.⁸

CHOICE TO:

- Build**
- Build**
- Build**



Projections presume population growth despite evidence to the contrary

In all the projection documents reviewed, the consultants concluded that the jail population was very likely to rise and recommended that the county increase the number of jail beds. This was true even when there seemed to be evidence suggesting a potential decline in the jail population. Consultants for Canyon County, Idaho, stated that length of stay and jail admissions—the two factors that influence jail populations—had both declined over several years.⁹ This decline can possibly be attributed to a bed cap imposed by a lawsuit—as well as a new classification system imposed by the state of Idaho to reduce the number of bookings for low-level offenses—that led stakeholders to increase the use of cite-and-release instead of jail booking.¹⁰ Because bookings and population had declined, several of the consultants' models predicted that the population would continue to decrease in the future.¹¹ But the consultants discarded these models, one for being “unrealistic.”¹² The consultants ultimately recommended more than doubling the number of jail beds from 477 to 1,044.¹³

In addition to sometimes dismissing trends or policy changes that threaten the argument for expansion, some consultants relied on evidence of short-term increases in jail population to justify a prediction of future growth—even though those increases may simply have been evidence of normal jail population fluctuation. In Codington County, South Dakota, a consultant noted that the average daily population had barely changed from 57 in 2008 to 59 in 2014, but also highlighted a population spike in the most recent three

months in 2015—when the report was written—including one month in which the average daily population reached 80. The consultant recommended an increase to between 120 and 140 beds.¹⁴ Voters, however, have repeatedly rejected construction of a new facility.¹⁵

The potential impact of criminal justice reform is ignored

In the projections reviewed, consultants rarely considered the impact of proactive policy change or major reforms undertaken by counties. For example, authors of a needs assessment for El Dorado County, California, stated, “The entire El Dorado County criminal justice system will continue to strongly support and implement a wide range of validated risk/needs assessments and evidence-based programming within community supervision caseloads and [in the] County jail which is designed to reduce long-term recidivism among male and female offenders. . . . [N]o estimate has been made which would identify any reduction in jail custody bed requirements resulting from the use and incorporation of these evidence-based programs.”¹⁶ In Sarpy County, Nebraska, authors stated that “[t]he forecasts also do not take into account any policy changes which may occur, [including] the expansion of alternatives to incarceration,” and concluded that in this regard “[a] comprehensive study looking at system issues may be of value for the County but is beyond the scope of this study.”¹⁷

* Box notes at end of report.



by people from neighboring Warren County, where the jail was closed for building code violations.⁷³ Because Warren County's jail construction effort has been delayed by public debates, land disputes, and budget reviews and adjustments, the Jasper County board decided to renovate a previously unfinished pod to gain 10 more beds, anticipating further revenue from Warren County that could be used to pay for the construction costs.⁷⁴

Further northwest, in Davis County, Iowa, voters approved the construction of a new 28-bed jail and law center in 2015 that would more than double its capacity of 12—even though the average jail population had remained steady at around five people since 2012, and would do so for another two years.⁷⁵ In fact, according to the jail's daily population reports, there were many times in 2015 when the jail sat empty.⁷⁶ Part of the impetus for jail expansion was the prospect of added revenue from housing jail population overflow from contiguous counties. Once the new jail opened, the jail population jumped into the double digits—in part due to incoming people from neighboring Appanoose County, which averaged a daily population roughly triple what its own jail could hold legally.⁷⁷ “I thank you for your money, Appanoose County . . . you've created three jobs . . . in my facility, that's completely paid for. And we're going to have money left over,” remarked Davis County Sheriff Dave Davis in 2017.⁷⁸

Meanwhile, Northumberland County, Pennsylvania, designated around 80 of the nearly 300 beds in the jail it completed in 2018 for women, explicitly hoping to make money from other counties that had run out of space to hold incarcerated women.⁷⁹ Laurel County, Kentucky's jailer stated in 2015 that he “can't generate enough revenue without space and beds,” and he pushed the county to construct a new jail in order to bring “additional revenue from housing state, federal and out-of-county inmates.”⁸⁰ Oldham County, Kentucky, finished expanding its jail from 115 beds to 332 beds in 2018—with the possibility to expand to 500 beds—although the jail population had never exceeded 172 as of 2016.⁸¹ The new jail houses people for the state and federal governments as well as for ICE, with which the county signed a new contract in 2017.⁸²

The risks and limitations of jail expansion

Local jurisdictions that considered or pursued jail expansion over the last two decades based their decisions on one principal assumption: that jail populations, although they fluctuate from day to day, always trend upwards in the long term. This assumption was readily accepted by many despite growing evidence that many places have deliberately reduced their jail populations. In fact, some jurisdictions have expanded jails even while touting the success of their diversion programs, as Flagler County, Florida, did when it opened a new jail with more than 400 beds in 2016—despite the former 132-bed jail having steadily operated below maximum capacity.⁸³

Pursuing infrastructure expansion as the purported best solution to the varied problems that many jails face—whether it is overcrowding, aging facilities, insufficient service provision, budget shortfalls, or some combination of the above—can obscure the problems that directly influence jail population size and, therefore, how jails are used. Narrowing the field of vision in this way, a jurisdiction may pursue jail expansion instead of focusing on the actions of a multitude of different actors who impact jails, from law enforcement officers to prosecutors to bail commissioners to judges. When the issue is formulated solely as one of capacity—rather than as an inquiry into how and why a community decides to use its jail—there can only be one solution: a bigger facility.

Having adopted such an analytical frame, it becomes easy to understand why some county officials view jail expansion as a panacea. It can appear to be an entirely sensible modernization strategy to update facilities while expanding and deepening provision of services—or a much-needed opportunity to defray costs or fill budget holes. But by pursuing jail expansion in this way, the existing criminal justice practices that drive people into the jail remain intact. This leaves in place not only entrenched patterns of discretionary policy (such as bail practices), but also a lack of sufficient investment in community-based services (such as public health

policies that neglect treatment for substance use or mental illness), which likely helped expand the reach of local jails in the first place. Unless the script about jail construction and expansion changes, the push to physically expand local incarceration's capacity, particularly in places where jail populations continue to rise, will likely endure.

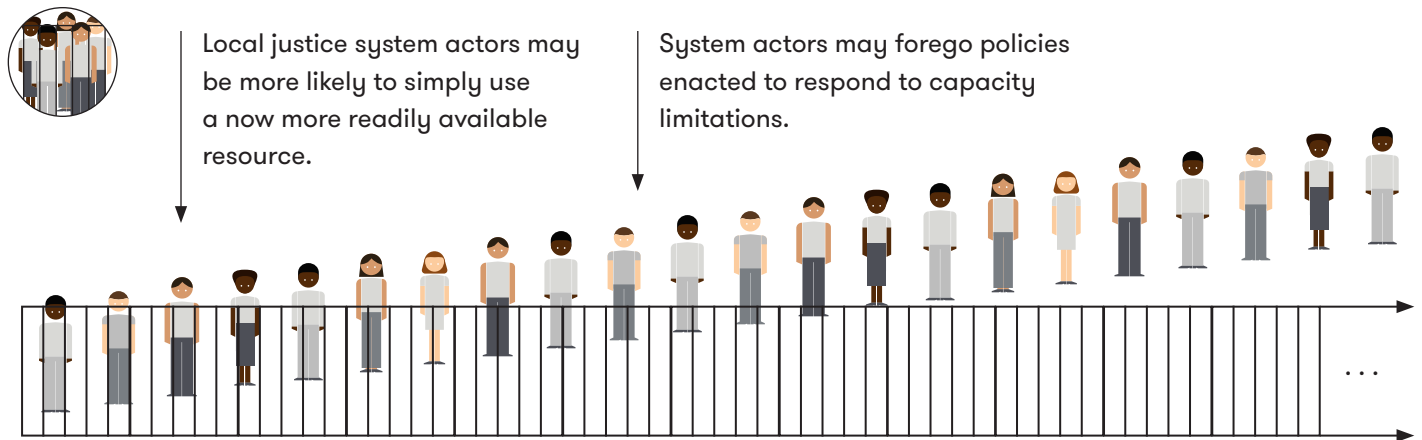
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However, if the jail expansion question—to date, primarily focused on why places should build bigger—expands to include an examination of the possible consequences of doing so, the straightforward “more people, more beds” calculus used by many jurisdictions in choosing a larger jail may begin to unravel. Although jail expansion as an infrastructure improvement may be paved with good intentions, the realities of jail expansion in a number of counties reveals, on closer inspection, unintended consequences and striking limitations—three of which are discussed below.

More jail beds, more people?

Counties that build larger jails typically hope the facility will provide enough space for their needs for at least a few decades. But the scale of local incarceration is directly tied to the policy environment and political culture of a local justice system. Although jail expansion provides

New jails seem to fill their beds quickly.



additional beds to house increasing numbers of people, including local residents who had previously been outboarded to other county jail facilities, it does not fundamentally address the policies and practices—such as those related to arrest, bail, or sentencing—that directly impact the number of people sent to jail and how long they stay. This approach runs the risk that the jail population will continue to rise. In fact, once jail capacity expands in these places, inertia among key institutional players (law enforcement, prosecutors, judges, etc.) may bias the local justice system to simply use a now more readily available resource: jail beds. National data suggests this possibility. Of the 216 county jails constructed between 1999 and 2005—a time of declining crime rates—the median jail population rose 27 percent after construction was completed.⁸⁴ A quarter of the new jails more than doubled in size by 2006, and the facilities had maintained their increased populations by 2013.

Several local examples seem to exemplify this trend. In Salt Lake County, Utah, a \$135 million new jail built in 2000 with 2,000 beds was filled to capacity within 21 days of opening.⁸⁵ The jail replaced an 870-bed jail as well as an older facility called Oxbow, which was also able to close when the new jail opened.⁸⁶ But with the new jail running at capacity, the county had to partially reopen Oxbow in 2009.⁸⁷ After Utah's 2015 criminal justice reform legislation—which reclassified certain misdemeanors to result in jail versus prison sentences—the county corrections system was flooded with an additional 7,000 people per year, and the city council authorized funding in 2019 to reopen yet two more pods at Oxbow.⁸⁸ Likewise, a 1997 study looking at the impact of jail expansion on incarceration in Orange County, Florida, found that available capacity was correlated with the increased use of available jail beds and the consequent



rise in the jail population—with the particular effect of increasing the number of misdemeanor defendants landing in jail.⁸⁹ On the western edge of Tennessee, a newly expanded jail that increased capacity from 122 beds to 201 in Tipton County became overcrowded the month that it opened.⁹⁰ When the jail opened in January 2018, the population was 215, and it rose to 239 by February 2019.⁹¹ Counties throughout Colorado also experienced this trend through the 1980s and 1990s. Jefferson County opened a 480-bed jail in 1986 that was intended to serve the county until 2005 but was filled within five years, while Adams County’s jail—also opened in 1986—was intended to suffice through 2000 but was filled to capacity within two years.⁹²

Why do newly expanded jails seem to fill their newly created beds once they are made available? Experiences in some counties demonstrate that a limit on the number of available jail beds can act as a built-in mechanism to keep jail populations in check. Many sheriffs who operate under court-ordered population caps in California, for example, express appreciation for these restrictions because, among other things, they typically give sheriffs more control over jail population size—usually by granting them early release authority.⁹³

On the other hand, additional jail capacity may prompt system actors to forego the very policies and practices—such as early release

policies or decreased police enforcement—that had been implemented to accommodate previous capacity limitations.⁹⁴ A consultant assessing the jail capacity needs of Codington County, South Dakota, described this phenomenon: “In many cases, arrest decisions, prosecution policies, and sentencing practices are all impacted, to some extent, by the knowledge that the jail is full. As new and additional jail beds become available, these policies and practices can change, resulting in even greater demands for jail capacity. This is why many new jail facilities are either full when they open—or fill up much quicker than had been predicted.”⁹⁵

Although jail expansion provides additional beds to house increasing numbers of people, it does not fundamentally address the policies and practices that directly impact the number of people sent to jail and how long they stay.

The experiences of two counties illustrate this principle. The 2007 opening of a new jail in Ulster County, New York, appears to have led to cutbacks in the funding for alternative-to-incarceration programs that had kept jail populations in check, causing the new jail beds to quickly fill.⁹⁶ And once Coffee County, Tennessee’s new 400-bed jail opened in 2015, the county probation department decided to resume filing probation violations—they had ceased when the old jail was full—causing an immediate influx of people being held on violations of their community supervision.⁹⁷

Finally, as mentioned earlier, added capacity does little to alter the true drivers of jail population and, thus, the causes of overcrowding.⁹⁸ In Coffee County, although the newly expanded jail was opened to address severe

overcrowding, three years later the jail was on track for overcrowding once more as the population had risen by more than 40 percent to 390 people.⁹⁹ A number of different practices drove this phenomenon, including an increase in the issuing of bench warrants for failure to appear, scant use of summons for misdemeanor arrests, and increased use of jail sentences instead of probation for certain crimes.¹⁰⁰ The single largest driver, responsible for nearly half the jail's population, was pretrial incarceration for misdemeanors.¹⁰¹ Only once Coffee County began to make policy changes systemwide to reduce overcrowding in its jails—by, for example, increasing the frequency of hearings and reducing court delays—was it able to bring the jail population down to 320 people.¹⁰²

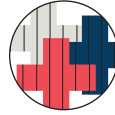
The limits of jail-based behavioral health services

Casting new jail space as rehabilitative and treatment-oriented—as some states and counties have when rationalizing jail construction—might sound like an improvement for the large number of people with high needs who end up behind bars and need treatment services. But however well-intentioned jail expansion may be—and no matter how much services improve as a result—the experience of isolating confinement in a facility the primary aim of which remains control, surveillance, and punishment will still be traumatic for people, intrinsically limiting the rehabilitative potential of a jail's new treatment capacity.

Although Tulsa, Oklahoma, opened a state-of-the-art new mental health pod in 2017—with specialized mental health services and programming and a stated more “relaxed and therapeutic environment”—the new pod's residents ultimately still reside in the punishing circumstances of jail.¹⁰³ When Mary Welton went to the new mental health pod to visit her son, she was shocked to find him inside a cell with bare white walls, a stainless-steel toilet, and a slab for a bed.¹⁰⁴ Jail administrator David Park admitted that “we're not a mental health hospital. . . . We're doing our best to give people treatment they need, but we're still a jail, and we can't change that.”¹⁰⁵

Expanded jail-based services also may result in fewer resources allocated elsewhere in the community—resources that might help prevent

The limits of jail-based behavioral health services

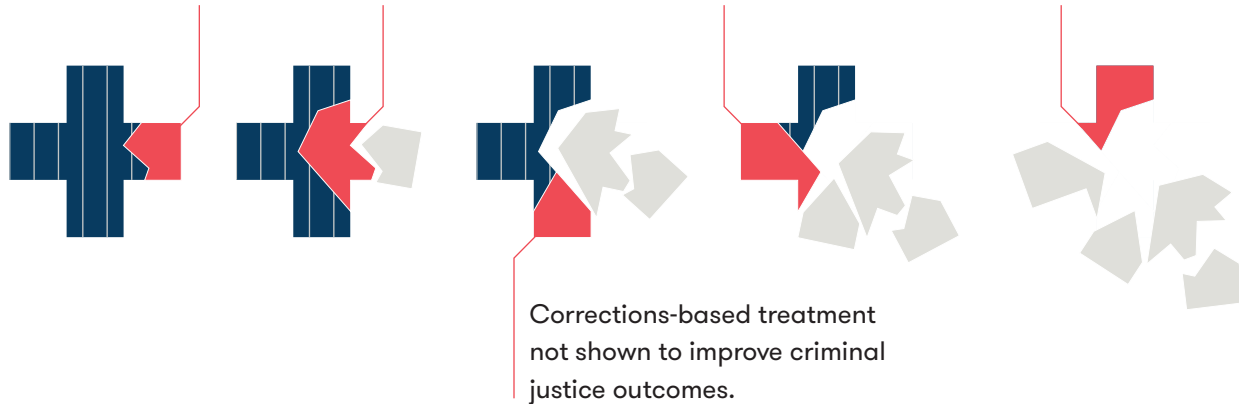


Punishing conditions of jail inherently limit the potential of jail-based treatment.

May decrease investment in community-based resources.

Short jail stays reduce impact of treatment.

Difficult to find qualified health providers.



jail incarceration in the first place. New jail construction often uses available capital that could be employed for community health initiatives and, at times, elected officials have cut child care and youth delinquency prevention programs when building new jail space.¹⁰⁶ By institutionalizing much-needed medical and behavioral health services behind the jailhouse walls, counties with finite resources may not be able to make parallel investments in similar services in the community—services that jails cannot simply replace. Community-based treatment is generally more effective than jail-based treatment, and success must still depend on a jail's ability to link people to quality services in the community, because jails house most people for a matter of only days or weeks, and thus their capacity to make a lasting impact in terms of treatment is inherently limited.¹⁰⁷ Mental health interventions that are embedded in the criminal justice system—including crisis intervention teams, mental health courts, specialty probation models, and mental health programs such as Forensic Assertive Community Treatment (FACT)—may not be particularly effective in reducing the number of justice-involved people.¹⁰⁸ Reviews of program effectiveness have found only mixed or modest evidence that they reduce recidivism and, of those that collected mental health outcome data, none have shown that improved psychiatric symptoms and mental health status lead to improved criminal justice outcomes.¹⁰⁹

From a practical standpoint, it may not matter how much a jail improves its treatment capacity. Without the existence of and coordination

with high-quality health care and supportive services in the community, newly expanded in-house capacities—such as the new mental health pod in Tulsa—are likely to garner few long-term benefits for either the individual or the jail. And the problem with the provision of behavioral health services writ large in Oklahoma is acute: the state only has 820 state-funded beds to address the needs of adults with mental illnesses

However well-intentioned jail expansion may be, the experience of isolating confinement in a facility the primary aim of which remains control, surveillance, and punishment will still be traumatic for people, intrinsically limiting the rehabilitative potential of a jail's new treatment capacity.

and substance use disorders, and community mental health centers—considered the backbone of the state's mental health system—regularly turn people away.¹¹⁰ The waiting period for these beds is approximately five weeks, and mental health centers can only take people who are an active danger to themselves or others—which helps explain why jails in the state have become the default behavioral health treatment provider.¹¹¹ Expanding jail-based treatment services through jail construction ignores this gap in service provision in the community, perpetuating a system that only focuses on late-stage intervention—after someone has landed in jail—as opposed to prevention, and provides potentially higher quality interventions to people once they become harder to serve.

Los Angeles County provides a dramatic example of this principle. Until recently, the county was on track to replace the aging Men's Central facility with a new \$2 billion "mental-health focused jail."¹¹² The question of what should replace the decrepit jail had been debated for years, and this solution was intended to respond to the increasing numbers of people in the jail with mental illness.¹¹³ But, facing pressure from grassroots activists like #BlackLivesMatter, JusticeLA, and Reform L.A. Jails, the County Board of Supervisors voted first in February 2019 to build a mental health treatment facility operated primarily by health officials; and then again in August 2019 to cancel the construction project entirely in order to pursue community treatment, diversion, and local reinvestment options rather than incarceration for people with mental illnesses and substance use disorders.¹¹⁴ Community activists and leaders alike have expressed hopes that after implementing these new policy options, the "dungeon-like" 1963 Men's Central facility can be closed entirely, rather than replaced.¹¹⁵

Moreover, the success of any new jail expansion that is rationalized as a way to provide improved behavioral health services depends on having an adequate number of trained personnel. Although it is too soon to tell whether the counties examined in this sample have encountered a problem with recruitment and retention, it can be challenging to recruit and retain qualified clinicians and other key treatment health providers in custody environments.¹¹⁶ This was one reason why California's newest medical state prison in Stockton, opened in 2013, was forced to halt admissions just six months later. Entire wings of the prison remained unopened because the state could not hire enough staff—in particular, psychiatrists—and inadequate staffing resulted in fragmented and poor-quality care.¹¹⁷

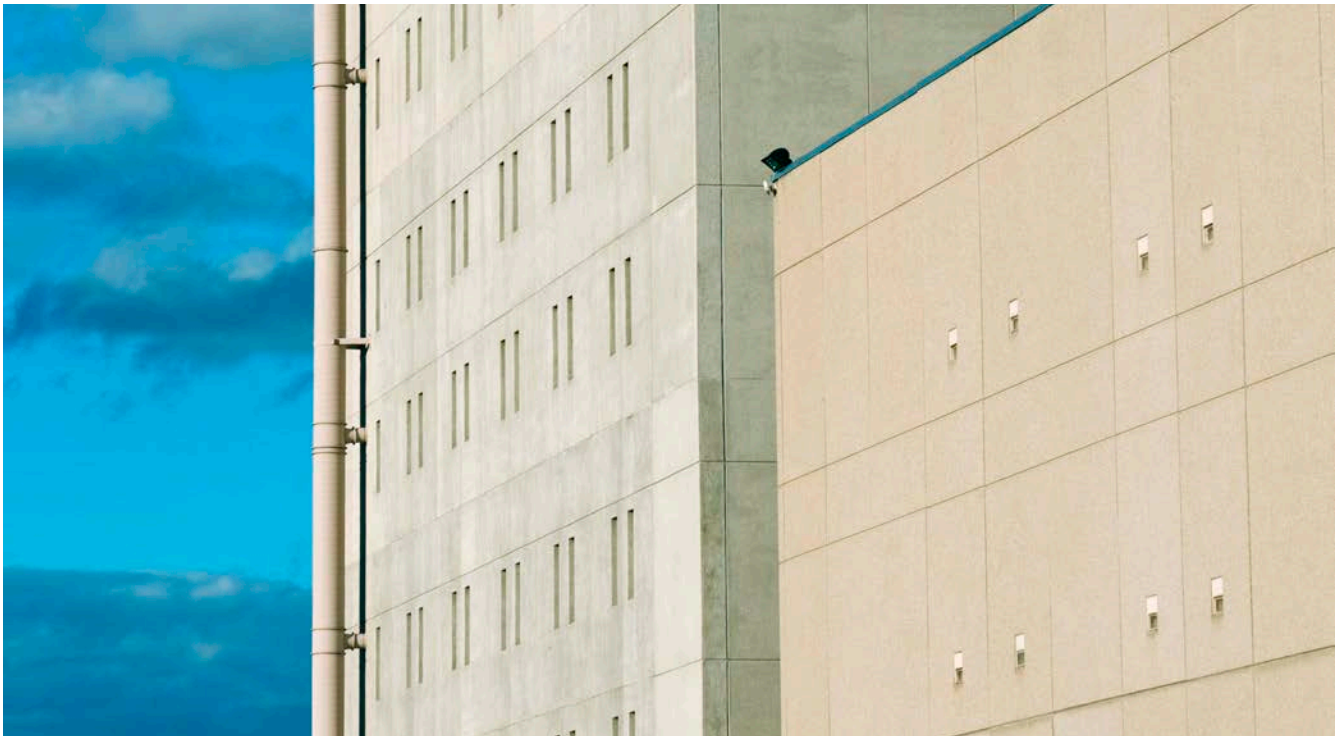
Large and escalating costs

The costs of building a new or expanded jail can be staggering, such as the \$571 million price tag for Marion County, Indiana's new jail complex.¹¹⁸ But smaller counties also face steep costs relative to the size of their budgets, such as \$12 million for Logan County, Arkansas, with a population of 22,000; and \$9 million for Geneva County, Alabama, with a population of 26,000.¹¹⁹ The costs of construction can also change drastically from the period of initial planning. In Greene County, Missouri, the initial estimate

to expand the jail from 601 to 1,215 beds was budgeted at \$59 million as the county finalized the sale of bonds to fund the jail.¹²⁰ Once the county hired a construction manager, the projected cost increased by more than double to \$144 million, and the county is planning to scale back the project.¹²¹ These costs can be concerning even where policymakers intend to build smaller. The projected cost of a new, smaller jail in Dane County, Wisconsin, for example, doubled from the \$76 million that had been approved by the county board to \$150 million after it was discovered that it was structurally unsafe to add additional floors to the current facility as planned.¹²²

Counties face an additional risk when building a larger jail in anticipation of rental revenues: by expanding their long-term ability to incarcerate, counties may come to fill these beds with local residents.

Beyond construction, there is another often underestimated cost associated with building a larger jail: the additional cost of operations. Experts estimate that capital costs represent only 10 percent of the total cost of operating a new jail over a 30-year period.¹²³ A larger jail holding more incarcerated people requires additional corrections officers and health care staff, which typically make up three-quarters of the costs of running a jail.¹²⁴ A larger jail population also requires higher expenditures for food, health care services, laundry, and utilities. These increases in operating costs are not financed through borrowing—in fact, most states prohibit borrowing to pay operating costs.¹²⁵ Instead, county managers have to make up these often substantial costs elsewhere, either by raising



taxes, cutting other county services, or attempting to raise revenue on the jail bed market.

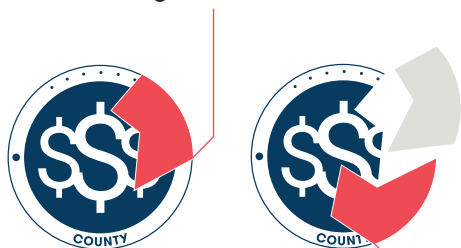
In early 2019, Hancock County, Indiana, was planning to build a new jail of 440 beds, a vast increase over its jail capacity of 157 people.¹²⁶ The consultants hired by the county estimated that the larger facility would drive operating costs as high as \$9.3 million, compared to the current operating costs of \$6.5 million in the smaller facility, an increase of 43 percent.¹²⁷ Elsewhere in Indiana, in Vigo County, county officials raised the local income tax in order to construct a new jail, even though the county still owed nearly \$1 million to pay off the bond for the current jail.¹²⁸ The county predicts an increase in operating costs from around \$5 million to nearly \$7 million.¹²⁹ And, only four years after Gwinnett County, Georgia, completed a jail expansion, people were triple-bunked again while six housing units—360 beds—sat empty because the county could not finance the staff to open and operate them.¹³⁰

Counties that build larger jails to rent beds in order to make money for jail operations—or even to pad the county’s general fund—can find that their plans backfire. In exchange for a per diem payment, counties are agreeing to operate a larger facility with more staff, an expensive and sometimes risky endeavor that may not be fully covered by the amount of the per diem.¹³¹ The bed rental dynamic turned out poorly for McHenry

The large and escalating costs of building and operating a new jail



Costs are staggering and can increase during construction.



Cost of operations are often underestimated.

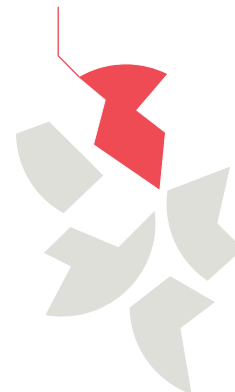
Operating costs may exceed bed-rental revenues.



Changes in contract terms can rapidly alter a county's fiscal outlook.



Beds meant for rental may be filled with local residents instead.



County, Illinois, with revenues from ICE falling \$3 million below projections in fiscal year 2014—and one estimate predicting that county taxpayers would be paying at least \$40 million over a seven-year period to house a “rental” population.¹³² County Board member Donna Kurtz said, “Knowing what we know now, we shouldn’t have gotten into this jail bed-rental program.”¹³³

Counties that enter these contracts also take on the risk of the other jurisdictions or authorities changing the terms of the contracts, which can rapidly change the county’s fiscal outlook. Yakima County, Washington, faced this dilemma in 2011 when other counties in the area, many of which had rented beds from Yakima for years, did not renew their contracts.¹³⁴ After constructing a jail facility in 2006 solely to house such a contract population, the county faced stiff competition from other jails offering cheaper rental beds, while a state policy change to decriminalize driving with a suspended license reduced jail admissions.¹³⁵ Revenues from nearby King County jurisdictions dropped from nearly \$11 million in 2010 to less than \$300,000 in 2011.¹³⁶ Midland County, Michigan, built a 250-bed jail in 2009 to replace the old jail, which held 140 people, expecting to rent beds to nearby counties.¹³⁷ By 2010, these contracts were not yet in place, leaving two pods of the jail empty.¹³⁸

Counties face an additional risk when building a larger jail in anticipation of rental revenues: by expanding their long-term ability to incarcerate, counties may come to fill these beds with local residents,

reducing outside revenues and increasing the local costs of incarceration. This drop in revenue occurred in Washington County, Nebraska, where people held for other counties generated nearly half a million dollars in 2001.¹³⁹ As the locally held jail population increased, however, these revenues had declined to \$116,000 by 2011.¹⁴⁰ Johnston County, North Carolina, signed a deal with the U.S. Marshals Service in 1999 in which the county received \$1.5 million to nearly double jail capacity from 100 to 191 in exchange for the Marshals use of up to 60 beds as needed.¹⁴¹ The county has since come to rely on those beds for its own use and, in 2016, held 239 people.¹⁴² By mid-2019, the county was planning to build again—this time a 600-bed facility.¹⁴³ Grayson County, Kentucky, decided to add an additional 200 beds onto its 517-bed capacity because the rising number of county residents in jail has reduced space for people held for federal authorities, a crucial source of financial support.¹⁴⁴

Alternatives to bigger jails

Although jails continue to grow in many counties around the country, some counties have bucked the trend. Lifting the jail construction blinders, as these places have, reveals that much can be done to help reduce overincarceration at the local level without resorting to physical expansion. These counties have recognized that jail population growth is not inevitable. Indeed, the numbers reveal an emerging story of jail population contraction in many jurisdictions around the country. Since 2008, the nationwide jail population has declined by 6 percent, or more than 40,000 people.¹⁴⁵ In 1,200 counties—40 percent of counties in the country—jails had smaller populations in 2015 (the most recent year for which county-level jail population data is available) than they did in 2008. And, in more than 800 counties, populations declined by 10 percent or more.¹⁴⁶

Although Vera's sample was constructed of counties that either are considering or ultimately pursued jail construction, a number of other counties have taken concrete steps to ensure that jails are used judiciously

in their communities. They have done so using a number of different strategies, outlined below.

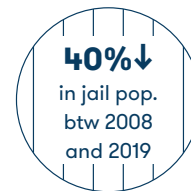
Implementing policy changes to expand use of jail alternatives

Recognizing that too many people with mental illnesses were cycling through its county jail, Miami-Dade County, Florida, founded the Criminal Mental Health Project in 2000 to channel this population away from incarceration and toward community-based treatment.¹⁴⁷ People diverted through the project can receive services such as temporary housing and connections to public assistance, in addition to mental health treatment.¹⁴⁸

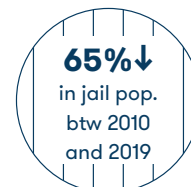
Thousands of police officers—in 2017, 5,400 officers representing all 36 police departments in the county—were also trained on mental health issues, including recognition of people in crisis and de-escalation techniques.¹⁴⁹ In addition, the county established more receiving facilities—treatment locations focused on emergency mental health and substance use services—for people with mental illnesses, providing officers with an alternative to booking them into jail.¹⁵⁰ These efforts have helped to reduce the size of the county's jailed population from 7,044 in 2008 to 4,206 in January 2019, a 40 percent decline.¹⁵¹

Following a drastic drop in its jail population in the post-Hurricane Katrina period, Orleans Parish, Louisiana, was able to further reduce its jail population from 3,400 in 2010 to fewer than 1,200 today as a result of reforms.¹⁵² Crucially, a city ordinance passed in 2011 imposed a cap of 1,438 beds.¹⁵³ Other strategies included releasing more people on their own recognizance instead of making them post money bail, increasing the availability of public defense at first court appearance, increasing the frequency of a second bail review for people who could not initially post bail, fast-tracking court hearings for people who have violated the

Miami-Dade County, FL



Orleans Parish, LA



terms of their probation or parole, issuing summons in lieu of arrest, and creating more opportunities for people who have mental health or substance abuse issues to be directed to community-based programs.¹⁵⁴

Some specific policy changes can have a rapid impact on the jail population. Although the Cook County, Illinois, jail population has been decreasing for years as a result of declining arrests, a 2017 order by the chief judge requiring that bond amounts for people charged with nonviolent felonies be affordable further reduced the jail population by 1,500 people over a three-month period.¹⁵⁵ Although the population increased again as some judges resumed their former bail-setting practices, a far larger number of people charged with nonviolent felonies are still being released on their own recognizance, while the number required to pay bail has dropped.¹⁵⁶

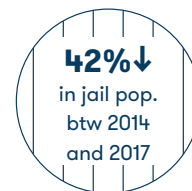
Cook County, IL



Since 2015, Philadelphia, Pennsylvania, has reduced its jail population by more than 40 percent to a level not seen since the 1990s, and it plans to close its oldest facility—the 91-year old House of Correction—by 2020.¹⁵⁷ The city implemented a range of jail reduction strategies, including expanding diversion programs, increasing releases with low or no money bail or through the use of money bail alternatives, and relying on the civil rather than the criminal code to respond to low-level nonviolent offenses.¹⁵⁸ For those already detained pretrial, the city worked to identify people who were good candidates for release because they posed no threat to public safety and were unlikely to miss a court appearance.¹⁵⁹

In 2013, confronted with an overcrowded jail that consumed more than half of its budget, Bernalillo County, New Mexico, faced a stark choice: reduce its jail population or increase jail capacity by constructing new jail beds at an estimated cost of \$44 million.¹⁶⁰ The county chose the former route and began to progressively implement a number of policy and practice changes to reduce jail bookings or facilitate pretrial release. These included the increased use of citations for petty misdemeanors; the roll-out of an evidence-based risk assessment tool to help judges determine people who are

Bernalillo County, NM





candidates for release, which increased the number of people released within 72 hours of arrest by 20 percent; and “safe surrender” events that allow people to clear up outstanding warrants without being arrested.¹⁶¹ And, in 2015, because the county suffered from significant delays from arrest and indictment to disposition—contributing to overcrowding at the Bernalillo Metropolitan Detention Center (BMDC)—the New Mexico Supreme Court enacted Local Rule 2-400 to reduce overcrowding at BMDC and increase speedy resolution of cases countywide.¹⁶² The new rule requires that cases go to trial within a specific time frame—which varies depending on the factors of the case—and imposes sanctions and fines for failing to meet the established deadlines.¹⁶³ The county also established special dockets designed to clear thousands of backlogged cases.¹⁶⁴ Finally, in 2016, voters approved a constitutional amendment to ensure that people who are neither a danger nor a flight risk cannot be detained pretrial solely because they are too poor to post bail.¹⁶⁵ After its implementation, the number of people on bond but held in custody at the BMDC fell from 402 in January 2017 to 66 in May 2018.¹⁶⁶ As a result of these many initiatives, the county’s jail population declined to approximately 1,200 people by 2017, a 23 percent drop from the year prior and a nearly 42 percent decline from December 2014.¹⁶⁷

Staying at capacity or downsizing

Although the push to build larger is pervasive, in some counties officials choose to build new jails with the same number—or even fewer—beds as the old jail. Orange County, North Carolina, for example, is in the process of replacing its 138-bed jail, originally built in 1925, with a facility very nearly the same size at 144 beds.¹⁶⁸ In Dane County, Wisconsin, a jail renovation project approved in 2018 would decrease the total number of jail beds by 91, minimize the use of solitary confinement cells, and increase overall programming space.¹⁶⁹ Schoolcraft County, Michigan, a county with a shrinking jail population, is considering closing its outdated jail and outboarding the few people it continues to incarcerate as a fiscally responsible alternative to continuing to operate its own jail.¹⁷⁰ And, in New York City, the City Council voted in October 2019 to approve the construction of four new borough-based jails to replace the decaying facilities that currently exist in the Bronx, Queens, Brooklyn, and Manhattan—including closing and decommissioning the notorious Rikers Island complex.¹⁷¹ The plan is forecast to reduce the number of operating jails from 11 to four and cut the city's jail capacity by 76 percent—from nearly 14,000 beds today to a projected 3,300 by 2026.¹⁷²

In addition, some counties that have traditionally used excess jail beds to house people from other county jails or the federal government are deciding that operating a much larger jail than the county needs no longer makes fiscal sense. In Dodge County, Wisconsin, the board of supervisors rejected a proposal to add additional beds to the county's jail facility and agreed to close a 108-bed pod.¹⁷³ The jail holds 420 people, only around one-third of whom are local to Dodge County.¹⁷⁴ The rest of the beds are filled with immigration detainees and people held for the U.S. Marshals.¹⁷⁵ Closing the pod will still allow sufficient beds for county needs.¹⁷⁶

Conclusion

The growth of mass incarceration in communities across America was accompanied by a boom in jail construction, vastly increasing the capacity of local governments to incarcerate hundreds of thousands more people. Nationwide, this growth continues, with thousands of new jail beds added each year, a hugely expensive investment for local governments—especially in an era of falling crime rates. As jails grew more overcrowded, concerns about safety and conditions, especially in old or out-of-date facilities, have driven many counties to build larger jails. The organizations and individuals that stand to benefit from jail expansion build support for these projects using the justifications that most resonate with the community—whether it be economic development, safety, better jail conditions, or substance use and mental health treatment. In many counties, decision makers and the consultants they hire take for granted that a larger jail is needed. They frame the debate as a question of how to use the larger jail, rather than considering whether a new jail is needed or how they can reduce the jail's size.



There are numerous risks to this approach. With a larger jail, county taxpayers are on the hook for a more expensive system to run. And the existence of more jail beds does not address the underlying factors driving jail population growth. With these factors left unaddressed, the county risks an ever-increasing jail population. Can counties both build more jail beds and invest in policy change to reduce jail populations over time? Many try, but find that their motivation to do so is reduced with increased capacity now existing for decades to come. Services in the jail rarely match the quality of services in the community, and even the most ambitious plans to radically improve health care through more jail beds often fall short.

A growing number of counties view the assumption of perpetual growth with suspicion. These places are renovating older facilities instead of building larger jails, maintaining smaller jail populations, and voting down proposals to build bigger. They are also looking for ways to invest in community-based treatment services, rather than locating such services within a jail expansion project. By pushing back against the cycle of construction, these counties can save money, hold fewer of their community members behind bars, and dedicate more resources to evidence-based practices that more effectively ensure community safety. These are places that are breaking new ground. It's a model all of America's counties should consider.

Appendix: Methodology and summary of sample

Vera selected a convenience sample of 77 counties in 31 states to better understand the major public arguments made in favor of jail expansion. Vera selected counties that considered jail expansion in the years between 2000 and 2019 as indicated by county boards discussing the issue at county meetings, holding public meetings on the issue, hiring consultants, holding a vote on the issue, and/or ultimately beginning construction. Vera conducted secondary research into these counties by examining media reports, jail litigation cases, academic papers, and government documents including commissioned studies.

State	Jurisdiction	Construction status	New or replacement/ expansion ¹
Alabama	Geneva County	Under construction 2019	Replacement
Arkansas	Logan County	Completed 2019	Replacement
Arkansas	Marion County	Completed 2018	Replacement
California	Butte County	Under construction 2019	Replacement
California	El Dorado County ²	RFP expected 2020	Replacement
California	Fresno County	Under construction 2019	Replacement
California	Kings County	Completed 2016 and 2018	Expansion
California	Los Angeles County	Contract canceled 2019	Replacement
California	Merced County	Proposal for funding rejected 2013	
California	Santa Barbara County	Under construction 2019	New
California	Santa Clara	Construction in RFP stage 2019	Replacement
California	Stanislaus County ²	Under construction 2019	Replacement
California	Tulare County	Completed 2019	New
Colorado	Douglas County ²	Completed 2015	Expansion
Florida	Flagler County	Completed 2016	Expansion
Florida	Okaloosa County	None	
Georgia	Gwinnett County	Completed 2006	Expansion
Idaho	Canyon County ²	Voters rejected bond in May 2019	Replacement
Illinois	McHenry County	Completed 2005	Expansion
Illinois	McLean County ²	Completed 2018	Expansion
Indiana	Adams County	Completed 2017	Replacement
Indiana	Bartholomew County	None	

Indiana	Carroll County	Looking for site; construction to start 2020	Replacement
Indiana	Delaware County	Approved 2019	Replacement
Indiana	Dubois County	Study in feedback stage 2019	
Indiana	Fayette County	Under construction 2019	Replacement
Indiana	Floyd County	Completion expected 2019	Expansion
Indiana	Fountain County	Completion expected 2019	Replacement
Indiana	Hamilton County	Completed 2019	Expansion
Indiana	Hancock County	Construction expected 2020	Replacement
Indiana	Henry County	Regional jail proposal rejected September 2019	
Indiana	Jackson County	Considering funding	
Indiana	Johnson County	Study completed 2019	Replacement
Indiana	Marion County	Under construction 2019	Replacement
Indiana	Vanderburgh County	Seeking funding	Expansion
Indiana	Vigo County	Accepting bids in late 2019	Replacement
Iowa	Davis County	Completed 2017	Replacement
Iowa	Jasper County	Bid approved 2018	Expansion
Kentucky	Grayson County	Under construction 2019	Expansion
Kentucky	Laurel County	Completion expected 2019	New
Kentucky	Oldham County	Completed 2018	Replacement
Louisiana	Winn Parish	Completed 2018	Replacement
Maine	Penobscot County	Design approved 2019	Replacement
Michigan	Midland County	Completed 2009	Replacement
Michigan	Schoolcraft County	Rejected by voters 2018	
Michigan	Wayne County	Under construction 2019	Replacement
Mississippi	Coahoma County	Under construction 2019	Replacement
Mississippi	Rankin County	Completion expected 2019	New
Mississippi	Warren County	In design 2019	Replacement
Missouri	Benton County	Accepting bids in 2019	Replacement
Missouri	Franklin County	Under construction 2019	Expansion
Missouri	Greene County	Funding approved 2019	Expansion

Montana	Gallatin County ²	Construction completed 2010	Replacement
Nebraska	Sarpy County ²	In design phase 2019	Replacement
Nebraska	Washington County ²	Under construction 2019	Replacement
New York	Greene County ²	Approved 2019 new or regional jail	Replacement
New York	Herkimer County	Under construction 2019	
North Carolina	Iredell County	Completion expected 2019	Expansion
North Carolina	Johnston County	In design phase 2019; bids open 2020	New
North Carolina	Orange County	Construction expected late 2019	New
Ohio	Clark County	Needs assessment done 2019	
Ohio	Meigs County	Voters rejected levy 2018	Replacement
Oklahoma	Tulsa County	Completed 2017	Expansion
Oregon	Benton County	Needs assessment done 2018	
Pennsylvania	Butler County	Completed 2009	Replacement
Pennsylvania	Northumberland County	Completed 2018	Replacement
South Dakota	Codington County ²	Voters rejected 2017	Replacement
Tennessee	Coffee County	Construction completed 2015	Replacement
Tennessee	Loudon County	Completion expected 2019	New
Tennessee	Tipton County	Completed 2018	Expansion
Tennessee	Wilson County	In evaluation stage 2018	
Texas	Ector County	Completion expected 2019	Expansion
Utah	Salt Lake County	Completed 2000	
Washington	Yakima County	Completed 2006	New
Wisconsin	Dane County	Budget approved 2018, approved by committees 2019	Replacement
Wisconsin	Dodge County	Rejected by building committee 2018	
Wyoming	Sweetwater County	Completed 2005	Replacement

¹ “New” construction means a county has constructed a facility where none existed before, without closing an existing facility. “Replacement” means that a county has decided to close an existing facility and build a new one either on the same or a different site. “Expansion” means that an existing facility will remain open and the county has undertaken to add jail beds either by adding onto that building or constructing additional buildings in a complex or remotely.

² Vera reviewed population projection documents for this county. See “Population projections presume continued growth” on page 22.

Endnotes

- 1 U.S. Department of Justice, Bureau of Justice Statistics (BJS), “National Jail Census, 1970,” database [Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2005], <https://perma.cc/BV5N-A56P>.
 - 2 Zhen Zeng, *Jail Inmates in 2017* (Washington, DC: BJS, 2019), 7, <https://perma.cc/8A9J-VQ2V>.
 - 3 For the jail population in 1970, see Margaret Werner Cahalan, *Historical Corrections Statistics in the United States, 1850-1984* (Washington, DC: BJS, 1986), 79, <https://perma.cc/47VS-GUNF>. For the jail population in 2008, see Todd Minton and William Sabol, *Jail Inmates at Midyear 2008* (Washington, DC: BJS, 2009), 2, <https://perma.cc/C4YE-3WFK>. For “tough on crime” policies, see note 21.
 - 4 In 2008, the number of people incarcerated in jails at midyear was 785,500; in 2017 it was 745,200. Zeng, *Jail Inmates in 2017*, 2019, 2.
 - 5 For the increase in number of jail beds between 2008 and 2017, compare table 2 in Minton and Sabol, *Jail Inmates at Midyear 2008*, 2009, 3, with table 6 in Zeng, *Jail Inmates in 2017*, 2019, 7. In 1970, the violent crime rate was 363.5 per 100,000, and the property crime rate was 3,621 per 100,000; in 2014, the most recent year available in the database, the rates were 375.7 and 2,596.1 per 100,000, respectively. BJS, “Uniform Crime Reporting (UCR) Statistics Data Tool: Violent and Property Crime Rates from 1960-2014,” database (Washington, DC: BJS), <https://www.bjs.gov/ucrdata/Search/Crime/State/RunCrimeStatebyState.cfm>.
 - 6 To calculate jail capacity data, Vera researchers compiled jail incarceration data from BJS, which collects data on every jail in the United States at uneven intervals through the Census of Jails. The Census of Jails has been performed in 1970, 1972, 1978, 1983, 1988, 1993, 1999, 2005, 2006, and 2013. The most recent data available is from 2013, and the most recent comparison data on capacity is from 2005. BJS also conducts a survey of a sample of jails in each intervening year. For more information, see methodology related to Vera’s Incarceration Trends project. Jacob Kang-Brown and Oliver Hinds, *Incarceration Trends Project: Data and Methods for Historical Jail Populations in U.S. Counties, 1970–2015* (New York: Vera Institute of Justice, 2018). Vera’s analysis of the urban-rural continuum collapses the six categories defined by the National Center for Health Statistics (NCHS) Urban-Rural Classification Scheme for Counties to four. A county is labeled “urban” if it is one of the core counties of a metropolitan area with a million or more people and “suburban” if it is within the surrounding metropolitan area. Vera collapses the remaining four categories into two by combining medium with small metropolitan areas and micropolitan (an urban area with a population of at least 10,000 but less than 50,000) with noncore areas (all other areas not considered metropolitan or micropolitan). Vera considers the former “small and midsized metros” and the latter “rural.” Rural areas are the most numerous, with more than 1,900 counties. See Deborah Ingram and Sheila Franco, *2013 NCHS Urban–Rural Classification Scheme for Counties* (Hyattsville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, 2014), 2-5, <https://perma.cc/J434-9NJ4>.
 - 7 Ibid. During that time, rural counties invested in the largest increase, but suburban and midsized cities also built substantial new jail capacity. See Ram Subramanian, Christian Henrichson, and Jacob Kang-Brown, *In Our Own Backyard: Confronting Growth and Disparities in American Jails* (New York: Vera Institute of Justice, 2015), 7-11, <https://perma.cc/65D7-D8QM>; and Jacob Kang-Brown and Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America* (New York: Vera Institute of Justice, 2017), 9-13, <https://perma.cc/MHT7-UHE8>.
 - 8 In 1970, there were 511 prisons in the United States. In the next 30 years, 1,152 new prisons were built, covering 580 square miles. See John Eason, “Prisons as Panacea or Pariah?: The Countervailing Consequences of the Prison Boom on the Political Economy of Rural Towns,” *Social Sciences* 6, no. 1 (2017), 1.
 - 9 See generally Ruth W. Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley, CA: University of California Press, 2007), 87-127 (arguing that the prison boom in California came about through a surplus in financial capital, political capital, and rural land), <https://perma.cc/UY39-7V9U>; and Eric Schlosser, “The Prison Industrial Complex,” *Atlantic*, December 1998, <https://perma.cc/J2HC-KF8A>.
- For studies that examine prison siting and the demographics of prison sites, see John M. Eason, “Mapping Prison Proliferation: Region, Rurality, Race, and Disadvantage in Prison Placement,” *Social Science Research* 39, no. 6 (2010), 1015-1028 (finding that new prison placement is more likely to occur in densely populated towns with prior proximate prisons and with a higher than average percentage of poverty and Black and Latinx populations); Michele Hoyman and Micah Weinberg, “The Process of Policy Innovation: Prison Sittings in Rural North Carolina,” *Policy Studies Journal* 34, no. 1 (2006), 95-112, 107 (finding that population density, owner occupants, and college graduates are negatively correlated with prison siting); Suzanne M. Kirchhoff, *Economic Impacts of Prison Growth* (Washington, DC: Library of Congress, Congressional Research Service, 2010), 5, 16, 29-32 (60 percent of prisons built during the “boom years” of 1980–1991 were sited in rural counties that account for 20 percent of the nation’s population), <https://perma.cc/X8ZS-DXES>; and Sarah Lawrence and Jeremy Travis, *The New Landscape of Imprisonment: Mapping America’s Prison Expansion* (Washington, DC: Urban Institute, 2004), <https://perma.cc/MUD3-3SX5>.
- For studies that look at the economic and other impacts of new prison construction on host communities, see Eason, “Panacea or Pariah?,” 2017, 31-32 (finding that locales that adopted new prisons at earlier stages of the prison boom era received only a short-term

economic boom, but that prison building protected towns against additional economic decline), <https://perma.cc/C7G5-ZY6Y>; Tracy Huling, "Building a Prison Economy in Rural America," in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, edited by Marc Mauer and Meda Chesney-Lind (New York: The New Press, 2002), 197-213; Amy K. Glasmeier and Tracey Farrigan, "Economic Impacts of the Prison Development Boom on Persistently Poor Rural Places," *International Regional Science Review* 30, no. 3 (2007), 274-299 (finding that prisons may provide nominal positive economic impact in persistently poor rural communities); Terry L. Besser and Margaret M. Hanson, "Focus on Rural Economic Development," *Journal of the Community Development Society* 35, no. 2 (2004), 1-16 (arguing that new prison towns experienced less growth than nonprison towns, and that prison towns had a greater increase in unemployment and poverty); Gregory Hooks, Clayton Mosher, Thomas Rotolo, and Linda Lobao, "The Prison Industry: Carceral Expansion and Employment in U.S. Counties, 1969-1994," *Social Science Quarterly* 85, no. 1 (2004), 37-57 (finding no evidence that prison expansion stimulates economic growth, but it may negatively impact rural economies by limiting other types of development), <https://perma.cc/PLR6-64GP>; Gregory Hooks, Clayton Mosher, Thomas Rotolo, and Linda Lobao, "Revisiting the Impact of Prison Building on Job Growth: Education, Incarceration, and County-Level Employment, 1976-2004," *Social Science Quarterly* 91, no. 1 (2010), 228-244 (there is reason to doubt that prisons provide economic benefits to struggling communities); Rebecca U. Thorpe, "Perverse Politics: The Persistence of Mass Imprisonment in the Twenty-first Century," *Perspectives on Politics* 13, no. 3 (2015), 618-637, 622-623 (prison development reinforces and incentivizes perceptions that rural economies benefit, ultimately at the expense of poor urban neighborhoods); Michael A. Burayidi and Mamadou Coulibaly, "Image Busters: How Prison Location Distorts the Profiles of Rural Host Communities and What Can Be Done About It," *Economic Development Quarterly* 23, no. 2 (2009), 141-149; and Ryan S. King, Marc Mauer, and Tracy Huling, *Big Prisons, Small Towns: Prison Economics in Rural America* (Washington, DC: The Sentencing Project, 2004), <https://perma.cc/2MK2-ZXV7>.

For studies of local perceptions of prison impact and their accuracy, see Robert C. Turner and David Thayer, "Yes in My Backyard! Why Do Rural Communities Use Prison Based Economic Development Strategies?," paper presented at the annual meeting of the Northeast Political Science Association Conference, Philadelphia, PA, November 8-9, 2003 (arguing that differences between counties that have decided to build and not build prisons are based on a calculus of "jobs versus quality of life"), <https://perma.cc/F2LU-PRRQ>; Douglas Clement, "Big House on the Prairie," Federal Reserve Bank of Minneapolis, January 2002, <https://perma.cc/2FEF-E6MS>; Matthew R. Engel, "When a Prison Comes to Town: Siting, Location, and Perceived Impacts of Correctional Facilities in the Midwest" (PhD diss., University of Nebraska, 2007), <https://perma.cc/6D5J-BD64>; Andrea R. Morell, "The Prison Fix: Race, Work, and Economic Development

in Elmira, New York" (PhD diss., City University of New York, 2012), <https://perma.cc/64GL-QNZE>; Kevin E. Courtright, Michael J. Hannan, Susan H. Packard, and Edward T. Brennan, *Prisons and Rural Communities: Exploring Economic Impact and Community Satisfaction* (Harrisburg, PA: Center for Rural Pennsylvania, 2006) (examining factors, including hiring decisions, that influence community perceptions of local correctional facilities), <https://perma.cc/9NXC-4DP6>; Susan H. Packard and Kevin E. Courtright, "Exploring Satisfaction and the Perception of Economic Impact among Communities Hosting Correctional Institutions: A Qualitative Examination of Four Rural Communities in Pennsylvania," *International Journal of Business and Social Science* 6, no. 8 (2015), 1-13, 8-10 (the perception of economic benefit, more than any actual benefit, drives community perceptions of locally sited prisons), <https://perma.cc/SDM4-ZDRY>; and U.S. Department of Justice (DOJ), National Institute of Corrections, *Issues in Siting Correctional Facilities* (Washington, DC: DOJ, 1994) (discussing management of public perception of correctional facilities), <https://perma.cc/DHE5-CKCE>.

For studies examining the relationship between prison litigation and prison expansion, see Joshua Guetzkow and Eric Schoon, "If You Build It, They Will Fill It: The Unintended Consequences of Prison Overcrowding Litigation," *Law & Society Review* 49, no. 2 (2015), 40-32 (finding that litigation leads to an increase in spending on prison capacity and increased capacity leads to increased incarceration rates); and Heather Schoenfeld, "Mass Incarceration and the Paradox of Prison Conditions Litigation," *Law & Society Review* 44, no. 3 (2010), 731-768 (arguing that prison overcrowding litigation produced increased prison-building rather than decreased prison populations).

For studies examining the relationship between increased capacity and increased incarceration levels, see J. Mullen and B. Smith, *American Prisons and Jails Vols. 1 and 2* (Washington, DC: DOJ, National Institute of Justice, 1980); and Alfred Blumstein, Jaqueline Cohen, and William Gooding, "The Influence of Capacity on Prison Population: A Critical Review of Recent Evidence," *Crime & Delinquency* 29, no. 1 (1983), 1-51 (re-examining computations in a prior study that estimated how long it would take to fill added capacity in prisons at the then-current rate of expansion); and William Spelman, "Crime, Cash, and Limited Options: Explaining the Prison Boom," *Criminology and Public Policy* 8, no. 1 (2009), 29-77 (finding that "the best predictors of prison populations are crime, sentencing policy, prison crowding, and state spending"), <https://perma.cc/RKE6-26PL>.

- 10 For example, only one empirical study could be located on the subject: Stewart D'Alessio and Lisa Stolzenberg, "The Effect of Available Capacity on Jail Incarceration: An Empirical Test of Parkinson's Law," *Journal of Criminal Justice* 25, no. 4 (1997), 79-288 (finding that available jail capacity increased daily levels of incarceration). The phrase "celling of America" was coined in Daniel Burton-Rose, Paul Wright, and Dan Pens, eds., in *The Ceiling*

of America: An Inside Look at the US Prison Industry (Monroe, ME: Common Courage Press, 2002).

- 11 County and state leaders still often use such justifications to support rural county jail expansion, despite evidence that the purported economic benefits of prison construction were not borne out—or the fact that county jails are usually funded by local taxes, thus directly siphoning resources from the community. See Mark Edelman and Adrian Mayer, “A Rural Community Developer’s Guide to Jail Alternatives and Costs,” *Journal of the Community Development Society* 32, no. 2 (2001), 254-271 (a 2001 study reviewed the economic incentives for building—or not building—eight rural county jails, including how local officials made determinations and what frameworks, methods, and cost estimate styles were used), <https://perma.cc/2BV5-M5SA>. Indeed, the notion that incarceration can bring economic development remains so commonplace that the U.S. Department of Agriculture has been providing community development loans for rural counties to expand their jails since 1996. See Jack Norton and Jacob Kang-Brown, “Federal Farm Aid for the Big House,” Vera Institute of Justice, October 2018, <https://perma.cc/8MXB-ANS6>. Also see Jack Norton and Judah Schept, “Keeping the Lights On,” Vera Institute of Justice, March 2019 (discussing how some Kentucky counties have become reliant on revenues from housing state prisoners as severance tax revenue from coal extraction has declined, building larger prisons to continue meeting the need), <https://perma.cc/FXV5-X7PW>.

For literature detailing the use of economic advancement arguments in promoting prison proliferation, see Gilmore, *Golden Gulag*, 2007 (an examination of how prisons were built in California); Jack Norton, “Little Siberia, Star of the North: The Political Economy of Prison Dreams in the Adirondacks,” in *Historical Geographies of Prisons: Unlocking the Usable Carceral Past*, edited by Karen M. Mori and Dominique Moran (New York: Routledge, 2015), 168-184 (an examination of how prisons were built in upstate New York); and Anne Bonds, “Discipline and Devolution: Constructions of Poverty, Race, and Criminality in the Politics of Rural Prison Development,” *Antipode* 41, no. 3 (2009), 416-438 (an examination of discourse on prison construction in Idaho and Montana), <https://perma.cc/4T5Y-3JQ4>. For an examination of local decision drivers in siting prisons, see Turner and Thayer, “Yes in My Backyard!,” 2003. For an examination of strategies developed to influence local perception of correctional facilities, see DOJ, *Issues in Siting Correctional Facilities*, 1994. For a discussion of the economics of prison, see generally Hooks, Mosher, Rotolo, and Lobao, “Carceral Expansion and Employment,” 2004; and Hooks, Mosher, Rotolo, and Lobao, “Revisiting the Impact of Prison Building on Job Growth,” 2010. For an economic discussion about and comparison of eight jails, see Edelman and Mayer, “Guide to Jail Alternatives and Costs,” 2003.

- 12 New Orleans is a good example of a place where multiple rounds of jail expansion have consumed much time and energy. After Hurricane Katrina critically damaged the city’s massive jail complex

in 2005, resulting in the demolition of two jail buildings in 2007, the city broke ground on a new 1,438-bed jail in 2010. Although the new facility opened in 2015, the jail complex remains under court supervision—established in 2013—due to poor conditions of confinement. Although the jail complex was originally envisioned with an additional wing designed to focus on people with mental health and substance use issues, further construction on the complex has been stymied by an ownership dispute between the sheriff and the city over one of the proposed jail sites stemming from how jail construction/expansion funding was allocated in 1989 on the site, as well as a dispute over how to equitably distribute Federal Emergency Management Agency funds allocated to the city for capital projects post-Hurricane Katrina. In March 2019, the federal judge monitoring the jail ordered officials to add another facility for incarcerated people with mental health issues, rather than housing them in the main jail, a project the city has estimated may cost another \$5 million. See Richard Rainey, “Mayor Landrieu, Sheriff Gusman: Who Controls \$54 Million for Jail?,” *nola.com*, September 25, 2015, https://www.nola.com/politics/2015/09/a_mayor_a_sheriff_and_a_54_mil.html; Katy Reckdahl, “New Orleans Breaks Ground on New Jail,” *Times-Picayune*, September 2, 2011, https://www.nola.com/crime/2011/09/new_orleans_breaks_ground_on_n.html; and Matt Sledge, “‘Culture Change?’: Federal Judge Sees Improvement in Embattled New Orleans Jail under New Chief,” *New Orleans Advocate*, June 13, 2018, https://www.nola.com/news/courts/article_df63b41d-a61e-57a4-ae1c-745bfd9039a.html. Also see Raven Rakia, “New Orleans Wants to Make Its Notorious Jail Bigger,” *The Appeal*, April 15, 2019, <https://perma.cc/ZL6Y-BLAN>; and Matt Sledge, “Judge Orders Renovations of New Orleans Jail to House Mentally Ill Inmates,” *CorrectionsOne*, March 20, 2019, <https://perma.cc/WSY2-3KKN>.

- 13 For the number of jail jurisdictions in 2016, see Zeng, *Jail Inmates in 2017*, 2019, 10. Data on jail construction is no longer collected by the Bureau of Justice Statistics. The last national survey that collected any data on jail construction was more than a decade ago, in 2006, and that data simply reported the years of jail construction and expansion projects. See James Stephan, *Census of Jail Facilities, 2006* (Washington, DC: BJS, 2011), 4.
- 14 Bernadette Rabuy and Daniel Kopf, *Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time* (Northampton, MA: Prison Policy Institute, 2016), <https://perma.cc/JF56-WTUV>.
- 15 Matt Ford, “America’s Largest Mental Hospital Is a Jail,” *Atlantic*, June 8, 2015, <https://perma.cc/4RKE-X353>. For an examination of the links between victimization and justice system involvement, see for example Dana DeHart, *Pathways to Prison: Impact of Victimization in the Lives of Incarcerated Women* (Washington, DC: U.S. Department of Justice, 2005), <https://perma.cc/S789-RCTP>.
- 16 Ram Subramanian, Ruth Delaney, Stephen Roberts et al., *Incarceration’s Front Door: The Misuse of Jail in America* (New York: Vera Institute of Justice, 2015), 11-18, <https://perma.cc/XNM8-7PBG>.

- 17 Many state departments of corrections are renting an ever larger number of beds from county jails to house people who would normally serve out their sentences in prison. At year-end 2016, a total of 83,700 prisoners were held in the custody of local jails for 35 states and the Federal Bureau of Prisons. Louisiana, in particular, held a significant proportion (58 percent) of its state prison population in local facilities. Other states that held a large proportion of their state prison population in local facilities include Kentucky (48.4 percent), Mississippi (26.3 percent), Tennessee (23.8 percent), Utah (26.2 percent), Virginia (21 percent) and West Virginia (17.6 percent). See E. Ann Carson, *Prisoners in 2016* (Washington, DC: BJS, 2018), 14 & table 17, <https://perma.cc/MWQ8-FSMS>.
- 18 See for example Pat Reavy and Katie McKellar, “The Jail Crisis: How Did We Get Here?,” *Deseret News*, May 12, 2017, <https://perma.cc/UZ7N-ZBBZ>.
- 19 See generally Kang-Brown and Subramanian, *Out of Sight*, 2017.
- 20 *Ibid.*, 9-15.
- 21 See for example Bernard E. Harcourt and Jens Ludwig, “Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989–2000,” University of Chicago Public Law & Legal Theory Working Paper 142 (2006), <https://perma.cc/K2EC-A7CN>; and Andrew Golub, Bruce D. Johnson, and Eloise Dunlap, “The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City,” *Criminology & Public Policy* 6, no. 1 (2007), 131-164, <https://perma.cc/66SD-ZBQW>.
- 22 Kang-Brown and Subramanian, *Out of Sight*, 2017, 16-20.
- 23 For California, see California AB 109 (2011), <https://perma.cc/U8JU-92ST>. The main focus of this law is the location of incarceration. Due to overcrowding in the state prison system, the legislation identifies hundreds of felonies—typically less serious offenses including most drug and property crimes—that are eligible for county jail sentences or split county jail/county community supervision sentences. People who are eligible are those convicted of so-called “non-non-non offenses”—or nonviolent, nonserious, nonsexual offenses—who have no prior violent, serious, or sexual criminal history. See California Penal Code § 1170(h) (2018), <https://perma.cc/4MPH-534F>. On the eve of the law’s implementation, 15 counties (nearly a third of the state’s jail jurisdictions) were already operating under court orders limiting the number of people incarcerated in their jails. These counties are El Dorado, Fresno, Kern, Los Angeles, Merced, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, Santa Barbara, Stanislaus, Tulare, and Yolo. Magnus Lofstrom and Katherine Kramer, *Capacity Challenges in California’s Jails* (San Francisco, CA: Public Policy Institute of California, 2012), 5 & note 8, <https://perma.cc/2GV4-RNCF>. By 2013, 55 of the 123 jail facilities in California housed more people than their rated capacities, while 39 jail facilities in 19 counties faced court-ordered jail population caps. Magnus Lofstrom and Brandon Martin, *Key Factors in California’s Jail Construction Needs* (San Francisco, CA: Public Policy Institute of California, 2014), 2, <https://perma.cc/6ECG-VSWG>.
- For Indiana, see Indiana HB 1006 (2014), <https://perma.cc/FZU2-SFHX>; and Indiana HB 1006 (2015), <https://perma.cc/KH8R-EHU4>. The 2014 law allowed Level 6 (formerly Class D) felonies to be reduced to misdemeanors at sentencing. The 2015 law further revised Indiana’s criminal code by permitting courts to commit people convicted of a Level 6 felony to probation, a community corrections program, or a term of confinement in a county jail instead of to the custody of the state department of corrections, with certain exceptions. As a result of increased Level 6 felony filings after 2015, jail populations also increased due to an influx of these people. See Scott Miley, “Jails Being Crowded by Level 6 Felony Obligation,” *Tribune Star*, March 6, 2019, <https://perma.cc/P578-9C9W>. Some of the increase has been due to an increased number of people held pretrial on Level 6 felony charges (52 percent of people with Level 6 charges in Indiana jails have not been convicted). Overall, people with Level 6 charges, whether held pretrial or convicted, make up 45 percent of Indiana’s jail population. See Dave Stafford, “Criminal Code Reform Packs Jails with Level 6 Inmates,” *Indiana Lawyer*, September 20, 2017, <https://perma.cc/LNJ2-JMFA>.
- 24 Network Indiana, “Dozens of Indiana Counties Report Jail Overcrowding, Including Dubois,” WITZ, March 6, 2019, <https://perma.cc/3P8K-QL67>. Counties reviewed for this report include Adams, Bartholomew, Carroll, Fayette, Floyd, Fountain, Hamilton, Henry, Jackson, Johnson, and Vanderburgh. Adams County completed construction in 2017. “Adams County Jail Almost Open for Business,” WANE, January 5, 2017, <https://perma.cc/7PD8-UJY7>. Bartholomew County has been considering reopening an old portion of its jail. Mark Webber, “Official: Bartholomew County Jail Upgrade Costly, Complex,” *Republic*, March 8, 2018, <https://perma.cc/PA4Q-DLFK>. Carroll County plans to build a new jail that will increase its capacity from 34 beds to 112. The jail housed 42 people in early 2019. Micah Upshaw, “Carroll County is Getting a New Jail after Ongoing Overcrowding Issue,” WLF1, March 26, 2019, <https://www.wlfi.com/content/news/Carroll-County-is-getting-a-new-jail-507696551.html>. Fayette County expects to complete its new jail in 2020. Jennifer Woods, “Jail Construction to Begin June 17,” *Record Herald*, June 6, 2019, <https://perma.cc/D7SF-7NDB>. Floyd County expects to complete a jail renovation and expansion in late 2019. Chris Morris, “Floyd County Jail Renovations Expected to Wrap Up in September,” *News and Tribune*, April 4, 2019, <https://perma.cc/MMF7-XLCM>. Fountain County expects to complete construction in 2019. Nick Hedrick, “Fountain Co. Eyes Jail Groundbreaking,” *Journal Review*, May 1, 2018, <https://perma.cc/H3E4-J6WQ>. Hamilton County completed a jail expansion that added 120 beds in 2019. “Hamilton County Jail Shows Off \$13.5 Million Expansion,” *TheIndyChannel.com*, June 28, 2019, <https://www.theindychannel.com/news/local-news/hamilton-county-jail-shows-off-13-5-million-expansion>. Henry

- County is exploring construction options, including a regional jail to be operated in conjunction with neighboring Madison County, although Madison County rejected that proposal in late 2019. “Madison County Scuttles Idea of Joint Jail with Henry County,” *Daily Reporter*, September 13, 2019, <https://perma.cc/J7TH-JCPM>. Jackson County is planning to construct a work release center and hopes to coordinate with nearby counties for funding. Jordan Richart, “Work Release Center Moves Forward Without Seymour Funding,” *The Tribune*, April 18, 2019, <https://perma.cc/7YXF-Y6ZC>. Johnson County is under state mandate to relieve overcrowding and completed a feasibility study in 2019. The county is currently exploring ways to fund an expansion. Zach Myers, “Tax Increase Proposed for Johnson County Jail Expansion,” *Fox59*, June 10, 2019, <https://perma.cc/JP2M-97A2>. Vanderburgh County is also exploring how to fund a 350- to 500-bed expansion, including leasing beds to the federal government. John Martin, “Vanderburgh County Council Grapples with Jail Expansion Cost,” *Evansville Courier & Press*, July 10, 2019, <https://perma.cc/49UP-MDEC>.
- 25 For California, see for example Anat Rubin, “California’s Jail-Building Boom: What Comes After Mass Incarceration? Local Incarceration,” *The Marshall Project*, July 2, 2015, <https://perma.cc/K5GZ-598T>; and ACLU, “The Rush to Build New California Jails,” December 2015, <https://perma.cc/Q7W3-69WR>. For Indiana, see Oliver Hinds and Jack Norton, “Crisis at the Crossroads of America: Jail Expansion as Prison Reform in Indiana,” *Vera Institute of Justice*, October 2018, <https://perma.cc/S6FJ-NL83>.
- 26 James Stephan and Georgette Walsh, *Census of Jail Facilities*, 2006 (Washington, DC: BJS, 2011), 12, <https://perma.cc/D9QK-28GU>. Although construction is not the only option to relieve overcrowding, it is a frequently chosen one. Rankin County, Mississippi, not only built a new jail, it also plans to keep the old one open. Cheryl Lasseter, “Rankin County’s Misdemeanor Jail to Open in 2019,” *WLBT*, October 1, 2018, <https://perma.cc/EH6N-4936>. Warren County intends to replace its 1907 facility. DeAngelo Vaxter, “Warren County Jail One Step Closer to Reality,” *WJTV*, February 14, 2019, <https://perma.cc/N8W4-X8E4>. In Oregon, Benton County completed a needs assessment in 2018. Bennett Hall, “Benton Eyes New Jail and Courthouse,” *Corvallis Gazette-Times*, October 23, 2018, <https://perma.cc/D6RQ-3CJW>.
- 27 Zeng, *Jail Inmates in 2017*, 2019, 7-8. For an explanation of the calculus behind rated capacity, see American Jail Association, “Jail Statistics,” <https://perma.cc/M6EE-RTFR>; and Gary Zajac and Lindsay Kowalski, *An Examination of Pennsylvania Rural County Jails* (Harrisburg, PA: Center for Rural Pennsylvania, 2012), 9-10, <https://perma.cc/3AYT-PPEA>. In contrast, design capacity refers to the number and type of people that a jail facility’s architects planned for it to hold, expressed primarily in the minimum floor-space per person or by security level. See BJS, “Terms & Definitions: Jail Inmate Characteristics,” <https://perma.cc/9DVY-EF7A>.
- 28 Josh Sweigart, “Local Jails Overcrowded, Failing Safety Standards, Investigation Shows,” *Dayton Daily News*, November 9, 2017, <https://perma.cc/ECF3-FEFW>.
- 29 Jeannie Naujeck, “They Keep Coming and I Can’t Get Them Out: Some Rural Jails at Twice Capacity as Counties Struggle to Build More,” *Tennessee Ledger*, September 21, 2018, <https://perma.cc/7EXD-QWCP>. Loudon County’s new facility will be rated for 270 beds, and the county plans to leave the old jail open after renovations to hold women. Allison Woodall, “Loudon County Leaders Break Ground on New Jail,” *WBIR*, April 27, 2018, <https://perma.cc/HVT2-F7BJ>.
- 30 Annie Banks, “Overcrowding at the Okaloosa County Jail,” *Northwest Florida Daily News*, October 25, 2018, <https://perma.cc/H82A-PUCW>.
- 31 The Eighth Amendment to the U.S. Constitution prohibits “cruel and unusual punishments.” Although jails house both pretrial detainees and people who have been sentenced, the 14th Amendment due process rights of pretrial detainees are generally evaluated under the same analytical framework as the Eighth Amendment rights of people serving jail sentences. See *Bell v. Wolfish*, 441 U.S. 520, 535, note 16 (1979) [“Due process requires that a pretrial detainee not be punished. A sentenced inmate, on the other hand, may be punished, although that punishment may not be ‘cruel and unusual’ under the Eighth Amendment.”]. See also *Simmons v. Navajo County*, 609 F.3d 1011, 1017 (9th Cir. 2010). In evaluating whether the conditions of incarceration constitute cruel and unusual punishment, courts look to the overall effect of those conditions on incarcerated people. For example, are they adequately protected from injury and violence (including self-harm)? Do they receive adequate medical care (including treatment for drug dependency withdrawal symptoms)? And do they have access to exercise, religious, rehabilitative, and educational programs (whether the barrier to access is lack of permission or failure to accommodate a disability)? See *Hernandez v. County of Monterey*, No. 5:13-cv-2354-PSG (N.D. California, April 14, 2015) (order granting motion for preliminary injunction), <https://perma.cc/9U2Y-W7WU>. Additional factors that courts will consider are sanitation, ventilation, pest infestations, fire safety, and access to utilities like light, sanitary facilities, and hot and cold water. See *Gillis v. Litscher*, 468 F.3d 488, 568 (7th Cir. 2006) [“[A] state must provide . . . reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities (i.e., hot and cold water, light, heat, plumbing)”]; *Board v. Farnham*, 394 F.3d 469 (7th Cir. 2005) (requiring adequate ventilation); *Isby v. Clark*, 100 F.3d 502, 506 (7th Cir. 1996) [“Sanitation, we assume, includes things like odors and general cleanliness around the cell [emphasis in original].”]; *French v. Owens*, 777 F.2d 1250, 1257 (7th Cir. 1985) (fire safety is a “legitimate” concern under the Eighth Amendment); and *Antonelli v. Sheahan*, 81 F.3d 1422, 1432 (7th Cir. 1995) (requiring adequate pest control). In Douglas County, Oregon, officials settled a case in early 2019 after incarcerated women were denied medication and menstrual hygiene products and crowded 12 at a time into a cell with a single toilet. Meerah

Powell, "Douglas County Settles ACLU Lawsuit over Unsanitary Jail Conditions," Oregon Public Broadcasting, February 14, 2019, <https://perma.cc/UQ3X-E26V>. And in 2018, Hamilton County, Ohio, settled a case under 42 U.S.C. § 1983 in which incarcerated people in overcrowded facilities had been forced to use temporary plastic beds called "boats" that sat on the floor and could not safely be used by people with disabilities. The settlement enjoined the jail from forcing incarcerated people to sleep in a "boat" for more than five consecutive days and limited the number of "boats" that could be used. *Robinson v. Neil*, No. 1:17-cv-652 (S.D. Ohio, Western Div., 2017), <https://perma.cc/ZR37-FATW>.

- 32 Incarcerated people do not forfeit all of their constitutional rights upon incarceration, although those rights may be circumscribed. For example, their First Amendment rights are largely governed by the test developed in *Turner v. Safley*, 482 U.S. 78, 89 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests"). First Amendment rights affect incarcerated people's access to reading material, mail, and telephones, as well as their ability to develop and maintain relationships inside and outside the facility. *The Jailhouse Lawyer's Handbook*, 5th ed., edited by Rachel Meeropol and Ian Head (New York: The Center for Constitutional Rights, 2010), ch. 3 ("Your First Amendment Right to Freedom of Speech and Association"), <https://perma.cc/6AKT-SRL8>. For a more expansive discussion of the rights of incarcerated people under the federal constitution, see Cornell Law School Legal Information Institute, "Rights of Prisoners," <https://perma.cc/UXB7-VDH3>; and William C. Collins, *Jails and the Constitution: An Overview* (Washington, DC: DOJ, 2007), <https://perma.cc/MXG7-ZMQ2>. People incarcerated in jails are also protected by federal statutes such as the Americans with Disabilities Act (codified at 42 U.S.C. § 126) and the Prison Rape Elimination Act (codified at 34 U.S.C. § 303). The National Institute of Corrections has developed materials meant to assist states in preparing standards for jails governing inspection, conditions, and compliance. Mark Martin, *Jail Standards and Inspection Programs: Resource and Implementation Guide* (Washington, DC: DOJ, 2007), <https://perma.cc/S4WP-6MEP>.

The rights of incarcerated people are also controlled by state constitutions and statutes that afford them varying measures of protection. The Model Sentencing and Corrections Act, a uniform law promulgated in 1978 by the National Conference of Commissioners on Uniform State Laws (NCCUSL), suggests standards for facilities and for the treatment of incarcerated people. NCCUSL, *Model Sentencing and Corrections Act* (Washington, DC: DOJ, 1979), <https://perma.cc/HH8Z-EY2F>. The model act was not widely adopted. Clair Cripe and Michael Pearlman, *Legal Aspects of Corrections Management*, 2nd ed. (Sudbury, MA: Jones & Bartlett, 2005), 479. Instead, the administration and condition of jails are regulated under statutes such as California's Title 15, Division 3, <https://perma.cc/3APU-EECZ>; New York's Title 9, <https://perma.cc/UC7P-VY6Q>; and

Chapter 95 of the Pennsylvania Code, <https://perma.cc/BT8R-DJK5>. The American Correctional Association (ACA) has developed its own set of standards designed to assist jails in complying with federal and state constitutional and statutory requirements, and these standards have been integrated into operations in more than 1,300 facilities and agencies. ACA, "Standards," <https://perma.cc/MM8N-ZEEB>. Finally, jail conditions may be governed by individual state and county building, fire, and electric codes as well as federal building codes. See for example Robert Dikkers and Belinda Reeder, *Standards for Building Materials, Equipment and Systems Used in Detention and Correctional Facilities* (Gaithersburg, MD: U.S. Department of Commerce, National Bureau of Standards, 1987), <https://perma.cc/WJZ2-LXWF>.

- 33 Mark Martin and Paul Katsampes, *Sheriff's Guide to Effective Jail Operations* (Washington, DC: DOJ, National Institute of Corrections, 2007), 23-24, <https://perma.cc/6WHH-MFC7>. In 1970, a federal district court judge in Rhode Island described the benefits of classification: "Classification is essential to the operation of an orderly and safe prison. It is a prerequisite for the rational allocation of whatever program opportunities exist within the institution. It enables the institution to gauge the proper custody level of an inmate, to identify the inmate's education, vocational, and psychological needs, and to separate non-violent inmates from the more predatory. Classification is also indispensable for any coherent future planning." See *Morris v. Travisono*, 310 F. Supp. 857 (D.R.I. 1970), <https://perma.cc/A4TM-TJ4T>.
- 34 See for example Jennifer Wadsworth, "Jail Violence on the Rise," *San Jose Inside*, March 3, 2014, <https://perma.cc/5AEZ-6WT7>; and Santa Clara County Sheriff's Office, *Report to Board of Supervisors, Public Safety and Justice Committee*, 2014, <https://perma.cc/R45H-VNAK>.
- 35 For example, in Clark County, Ohio, people in the overcrowded jail have been forced to sleep on mattress pads on the floor or even relocate to trailers in the parking garage under the jail, creating additional security and space concerns. Sweigart, "Local Jails Overcrowded," 2017. Clark County commissioned a needs assessment in 2019 to explore its options. Parker Perry, "Clark County Talking About Building New Jail," *Springfield News-Sun*, May 13, 2019, <https://perma.cc/Y7C6-QAEG>. In Hamilton County, Ohio, a 2019 settlement includes limits on how many and which people can be made to sleep on the floor in "boats" but does not forbid their use. Kevin Grasha, "Settlement Includes Plan to Stop Overcrowding Emergencies at the Hamilton County Jail," *Cincinnati Enquirer*, June 29, 2018, <https://perma.cc/9FB2-F5LX>. Other jails are housing people in portable facilities built from semitrailers, the kind of structure that often serves as a temporary construction office, mobile command center, or housing for relief work. Alissa Zhu, "Missouri's Trailer Jail: Innovative Solution or 'Recipe for Disaster'?", *The Crime Report*, January 2, 2019, <https://perma.cc/BTP3-6EQZ>; Nicole Foy, "Jail Trailer Builder Sees Opportunity in Overcrowding," *Idaho Press*, August 18, 2018; and Disability Rights California, "Report on Inspection of the Santa

Barbara County Jail" (conducted on April 2, 2015) (Sacramento, CA: Disability Rights California, undated), <https://perma.cc/BMV6-NHDC>.

- 36 This state of affairs was well captured by a judge overseeing a jail conditions case in Virginia: "The fact is that the convicted inmates in the Tazewell County Jail are currently serving substantial portions of their sentences in a facility designed as a very short-term lockup. They have no access to workshops, road work, pool tables, or walks in the prison yard such as are available in most state penal institutions. Instead, they spend their days in a room of about 162 square feet, most of which is routinely taken up with mattresses of other inmates. Due to close and constant proximity with other inmates, emotional unrest is manifest." See *Gross v. Tazewell County Jail*, 533 F. Supp. 413 (W.D. Va. 1982), <https://perma.cc/A7C2-3MZ2>. See also Norma Mancini, *Our Crowded Jails: A National Plight* (Washington, DC: BJS, 1988), 4, <https://perma.cc/7EEV-QNCJ>.
- 37 For example, the jail in Madison County, Tennessee, has missing tiles and exposed subfloors in the kitchen, the ceilings leak, and the 1,030-gallon hot water heater stopped working and needed replacement in 2018. Cassandra Stephenson, "Overcrowding Taxes Madison County Jail Facilities," *Jackson Sun*, September 13, 2018, <https://perma.cc/C4YQ-7T5K>. A 2015 ACLU report found that Montana's jails were routinely overcrowded and that the facilities displayed a "lack of overall cleanliness, inadequate plumbing, and extensive mold." ACLU of Montana, *Locked in the Past: Montana's Jails in Crisis* (Helena, MT: ACLU, 2015), 28, <https://perma.cc/9JWP-FKPB>. Beyond cleanliness, overtaxed HVAC systems cannot adequately heat or cool facilities to keep temperatures appropriate for comfort and health, especially in the face of accelerating climate change. See Daniel Holt, *Heat in US Prisons and Jails* (New York: Columbia Law School Sabin Center for Climate Change Law, 2015), 34-36 & notes 181 & 182 (examining lawsuits in which a broad cross-section of federal courts have held that inappropriate heat or cold in an incarceration facility constitutes an Eighth or 14th Amendment violation), <https://perma.cc/5CWP-K44A>. See also generally Wayne Welsh, *Counties in Court: Jail Overcrowding and Court-Ordered Reform* (Philadelphia, PA: Temple University Press, 1995), 33-34 (stating that "security and supervision become less efficient; food services become more irregular or meager; visitation is more restricted; physical plant maintenance suffers; and individual movement is curtailed.>").
- 38 For example, in Yakima County, Washington, a federal study requested by the police chief outlined a number of deficiencies in the county jail's structure (built in 1909), including a lack of sprinklers for fire suppression, inadequate heating and air conditioning, and a flawed layout design that led to poor visibility along a number of its passageways. The study also found that wiring harnessed together with plastic ties ran along wall and ceiling corners without being enclosed in a conduit and that corridor and cell doors were equipped only with manual locks that require a key, making evacuation in case of a fire or other emergency hazardous. See Phil Ferolito, "As Dilapidated Rural Jails Outlive Their Time, Wapato Looks to Upgrade," *Yakima Herald*, May 26, 2016, <https://perma.cc/43CV-MD4K>. Greene County, New York, closed its 113-year-old jail—classified as the worst jail in the state—because, among many other structural deficiencies, the walls and floor were buckling and steel was rotting. See Rachel Yonkunas, "Local Jail Closing Over Safety Concerns," *News10*, April 24, 2018, <https://perma.cc/E4HM-SAL3>; and Steve Hughes, "Greene County Legislators Meet About Crumbling Jail," *Times Union*, April 30, 2018, <https://perma.cc/B9Q5-3U9X>. Greene County ultimately determined that the best option was to replace the facility rather than rent beds in other counties. CJ McIntyre, "New Jail Coming to Greene County," *WZAD-WKXP*, May 1, 2019, <https://perma.cc/3K6D-W7FG>. In Winn Parish, Louisiana, a malfunctioning plumbing system was a key factor driving construction of a 150-bed jail to replace the current 47-bed facility. Brandon Lawrence, "Winn Parish Prepares to Build New Jail," *myarklamiss.com*, January 22, 2016, <https://www.myarklamiss.com/news/local-news/winn-parish-prepares-to-build-new-jail/339347992>. Similarly, the need for a new jail in Sullivan County, New York, is due to the physical deterioration of the facility itself, first opened in 1909, with additions in 1958, 1984, and 1990. Joshua Simons and Gerald Benjamin, *Collaborative Approach to County Jailing in the Hudson Valley* (New Paltz, NY: Center for Research, Regional Education and Outreach, 2011), 56-57, <https://perma.cc/34XW-K6E9>. See also Allison Sherry, "'We Make Do': Jails Aren't Always Purpose-Built In Rural Counties Like Saguache," *Colorado Public Radio*, March 30, 2018, <https://perma.cc/WHG9-CCNU>; and Tim Sheehan, "New 300-Bed Jail Will Cost Almost \$82 Million But Replace 1940s-Era Facility," *Fresno Bee*, November 14, 2017, <https://www.fresnobee.com/news/local/article184640788.html>.
- 39 BJS, "Census of Jail Facilities, 2006," database (Washington, DC: BJS, 2010), <https://www.icps.umich.edu/icpsrweb/NACJD/studies/26602>.
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Box notes

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