

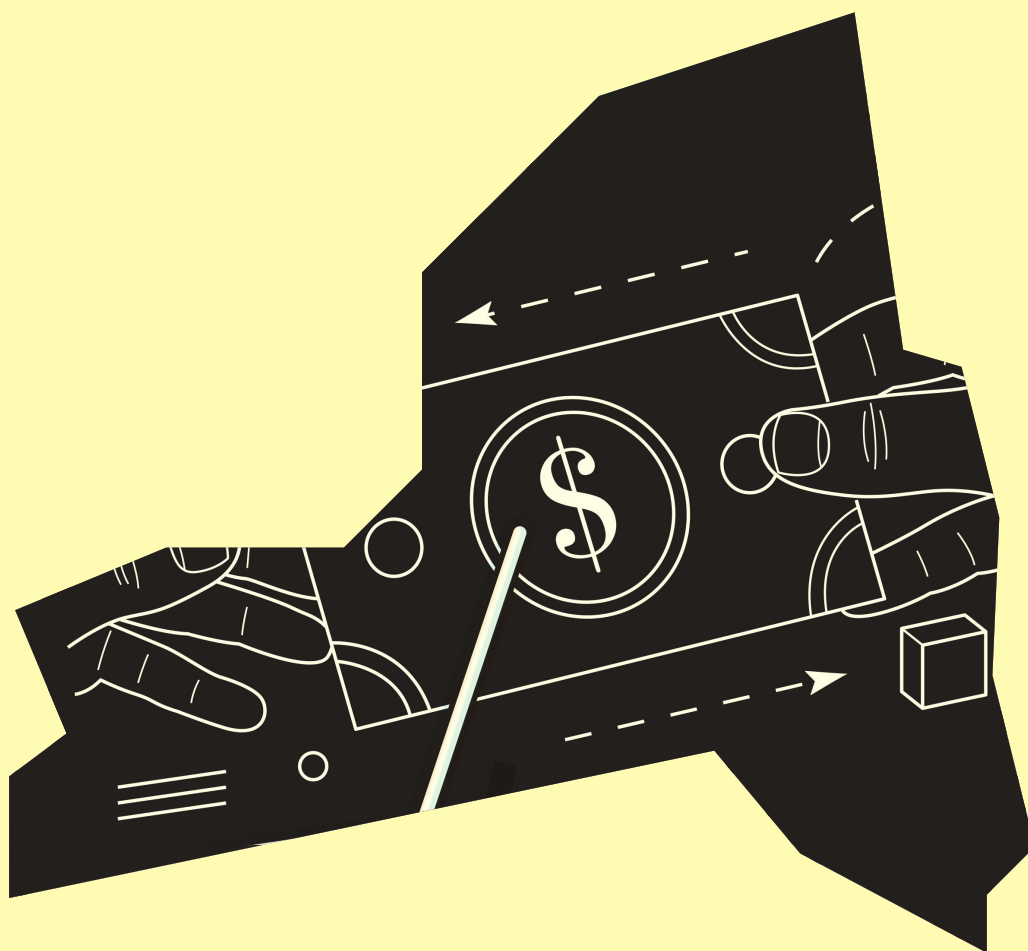
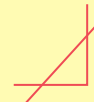


The Cost of Incarceration in New York State:

How Counties Outside New York City Can Reduce
Jail Spending and Invest in Communities

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Introduction

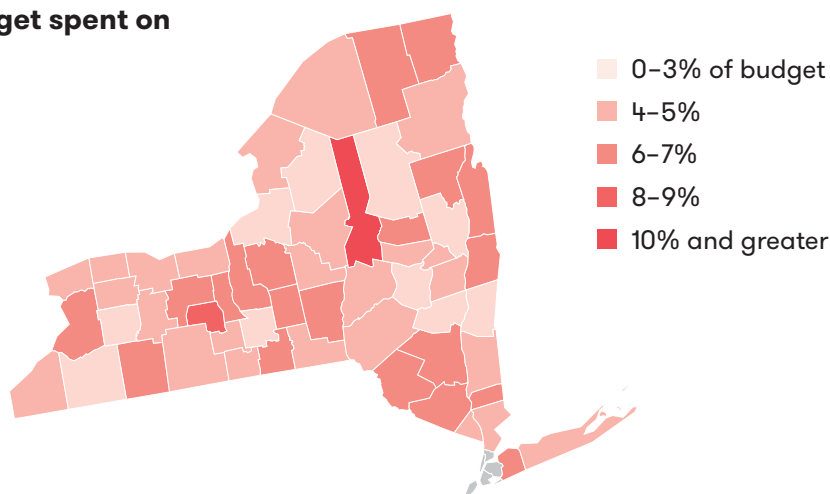
New York State is in crisis. More than 30,000 New Yorkers have died in the coronavirus pandemic.¹ The State, as well as local governments, is grappling with huge budget deficits.² Unemployment is the highest it has been since the Great Depression.³ And opioid overdoses, depression, and other behavioral health crises are all spiking.⁴

At the same time, New York is in the middle of a public reckoning with racism, particularly surrounding policing and the criminal legal system. After months of protests, localities are starting to heed calls to enact reforms and reduce police budgets.⁵

But with the spotlight trained closely on funding for police, another area of the criminal legal system that costs the State billions of dollars every year has received relatively little attention: local jails. In 2019, the 57 counties outside New York City—which are responsible for funding their own jails—collectively spent more \$1.3 billion to staff and run their jails.⁶ That is a conservative estimate, because in many counties it does not

Figure 1

Percentage of county budget spent on jail in 2019



Source: Vera Institute of Justice, *Bail Reform is an Opportunity for Savings in New York* (New York: Vera Institute of Justice, 2020), 1, <https://perma.cc/3ZYB-M9NN>.

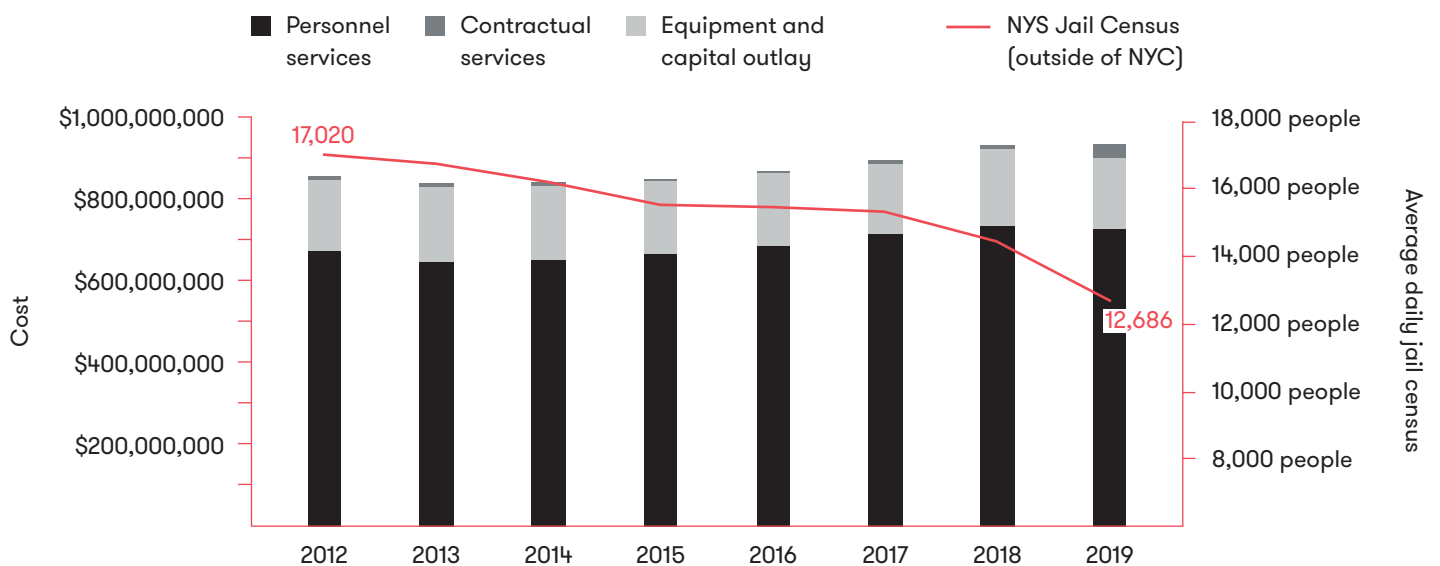
include debt service on the jails, building and grounds costs, insurance, and other expenses. On average, these counties spent more than \$20 million incarcerating people in 2019. (See Figure 1 on page 1.)

In this moment of economic crisis, counties must cut jail spending and reinvest those savings in communities most impacted by mass incarceration. Jail populations have fallen significantly statewide, dropping 57 percent in the counties outside New York City from 2012 to June 2020.⁷ As average daily jail populations fell, crime dropped as well.⁸ But although jail populations have decreased significantly, spending on jails continues to climb.⁹ (See Figure 2.) If counties keep their incarceration rates as low as they were in June 2020 and reduce their spending on staffing accordingly, they could save up to \$638 million annually.¹⁰

By diverting these savings to programming and social services, counties could build safer, more stable communities. A \$638 million statewide savings would allow counties to provide supportive housing—affordable housing paired with supportive services so that people can live and thrive

Figure 2

Spending on New York State jails versus jail census, 2012–2019



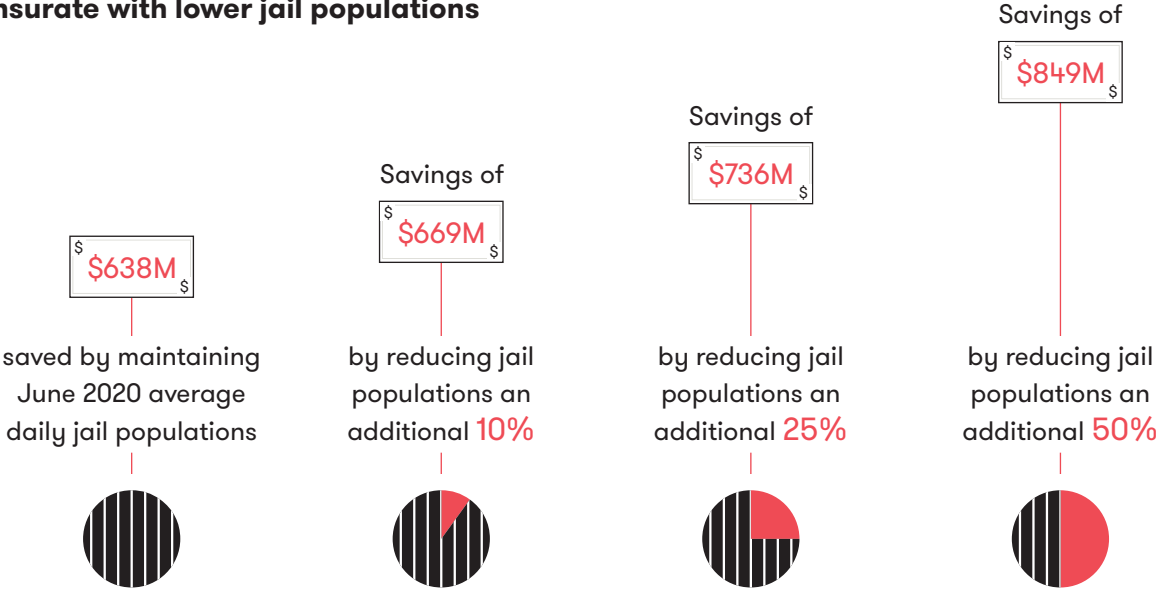
Source: Spending data sourced from the Office of the New York State Comptroller. Jail census figures from New York State Division of Criminal Justice Services (NY DCJS), *New York State Jail Population 10 Year Trends: 2010–2019* (Albany, NY: NY DCJS, 2020), 2, <https://perma.cc/75TJ-RW3H>.

in their communities—for more than 36,000 people;¹¹ pay a year’s rent for more than 53,000 New Yorkers;¹² or fund more than 10,500 social workers to help people experiencing mental health- or drug-related crises.¹³ To realize these savings, the State first must amend rules that require each county to maintain its own jail and mandate minimum staffing obligations.¹⁴ Without regulatory or legislative changes, counties will continue to lose millions in potential savings.

The State must also incentivize counties to invest in programs and services that will build healthier, safer communities that do not rely on jails. It also should create data reporting requirements so that communities can monitor their progress. And counties, for their part, should continue to lower jail populations and implement participatory budgeting processes guided by input from communities most affected by mass incarceration.

The Vera Institute of Justice (Vera) analyzed county budgets, including spending on local jails, in all 57 counties outside New York City. To see how your county has allocated its budget to fund its jail as well as critical social services, visit <https://perma.cc/9SDK-DLAG>.

Potential annual cost savings from reducing spending on jail staff commensurate with lower jail populations



Note: To calculate the potential savings from reducing average daily jail populations further, Vera used the annual staffing costs per person incarcerated (see note 10) and multiplied it by 90 percent, 75 percent, and 50 percent of the June 2020 average daily jail census respectively. The actual cost of jail personnel in 2019 was then subtracted from the calculation based on the 2012 numbers to find potential savings.

New York has a growing need for behavioral health and social services

Even before New York became an epicenter of the coronavirus pandemic in March 2020, millions of New Yorkers were struggling. (See Figure 3.) More than 1.3 million New Yorkers were living with a substance use disorder.¹⁵ Every day, nine New Yorkers died from an overdose in which opioids were involved.¹⁶ More than one in five New Yorkers experienced symptoms of a mental health disorder, and one in 10 had symptoms that were severe enough to interfere with their work and home lives.¹⁷ Nearly one in seven New Yorkers was living in poverty.¹⁸ And on any given day in January 2019, there were more than 92,000 people experiencing homelessness across New York State.¹⁹

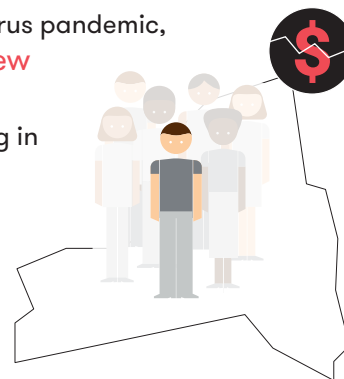
Figure 3

New Yorkers are struggling

More than 1 in 5 New Yorkers have experienced symptoms of a mental health disorder.



Before the onset of the coronavirus pandemic, 1 in 7 New Yorkers was living in poverty.



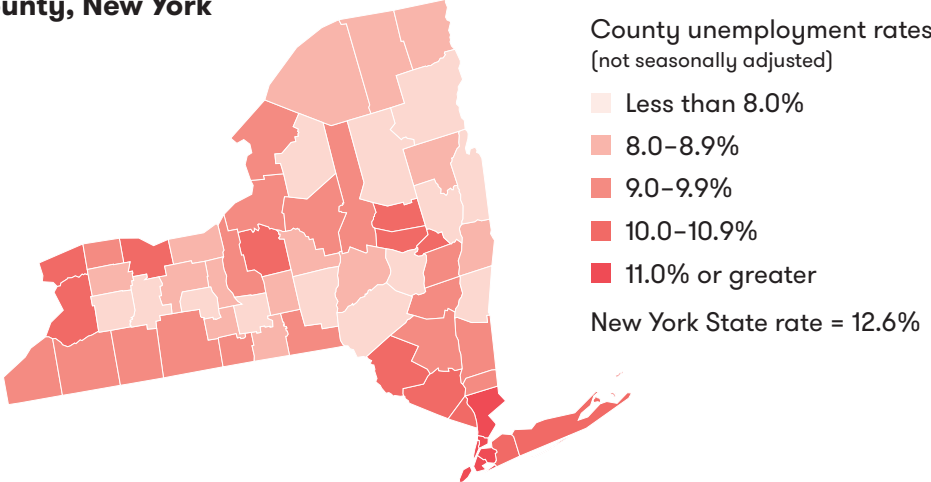
Source: U.S. Census Bureau, "QuickFacts: New York," <https://perma.cc/SSM6-QBR5>.

The coronavirus pandemic and the resulting economic crisis have exacerbated all those issues. Almost three-quarters of behavioral health providers have experienced a surge in demand for services.²⁰ Yet more than one in five providers lack the capacity to meet the community's needs.²¹ Those numbers will almost certainly get worse.²²

As the economic crisis continues, more people will almost certainly fall into poverty and housing instability. From mid-March to mid-May 2020, more than two million New Yorkers filed for unemployment insurance—15 times as many as during the same time period in 2019.²³ As of August 2020, the unemployment rate grew to 12.6 percent.²⁴ (See Figure 4.) When pandemic-related eviction moratoriums end, 1.5 million New Yorkers risk eviction.²⁵ Now more than ever, New Yorkers need investments in behavioral health, affordable housing, and a social safety net.

Figure 4

Unemployment rates by county, New York State, August 2020



Source: New York State Department of Labor, *Unemployment Rates by County, New York State, August 2020* (Albany, NY: New York State Department of Labor, 2020), https://web.archive.org/web/20201018024333/https://labor.ny.gov/stats/PDFs/ur_map.pdf.

New York has consistently defunded mental health, public health, and human services

New York's investment in social services has been declining for years, even as the need for it has increased. From 2007 to 2018, for example, the demand for food stamps outside New York City increased by more than 50 percent.²⁶ But from 2011 to 2017, total spending on human services, mental health, and public health (including federal, state, and local spending, adjusted for inflation) dropped 46 percent in downstate counties and 32 percent in the 51 counties in upstate and western New York.²⁷

Much of the problem lies at the feet of State government. Although most spending on social services, mental health, and public health flows through—and is reflected in—county budgets, the bulk of the money in those categories comes from state aid, not money the county itself raises or controls. From 2011 to 2019, New York State

- › cut aid to counties for behavioral health and social services by 8 percent—from \$12.3 billion to \$11.3 billion;²⁸ and
- › reduced state spending (that does not flow through county budgets) on human services by 21 percent from 2011 to 2017 and by 26 percent from 2017 to 2018.²⁹

These deep cuts in funding for social services, mental health, and public health have left counties without sufficient resources to provide treatment, care, and supports that help people get and stay healthy. Even before the coronavirus hit

- › 75 percent of counties reported that they needed more heroin- and opioid-related programs and services;

- › 68 percent of counties said they did not have enough drug crisis services;
- › 74 percent of counties—particularly those in rural areas where there is little to no public transportation—reported that they needed more resources to help people travel to drug treatment; and
- › 84 percent of counties reported that they did not have enough housing for people with behavioral health issues, leaving many to live on the street or in substandard rentals, including places without heat or utilities.³⁰ (See Figure 5.)

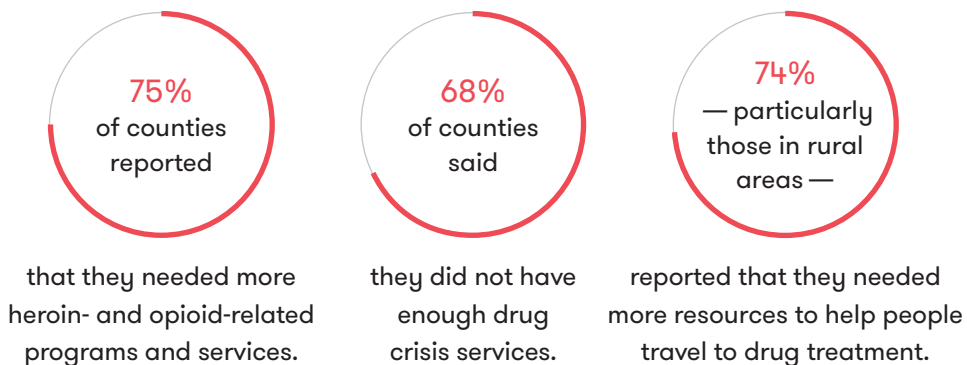
Concurrently, chronically low wages for human services personnel—and years of cutting salary increases from the state budget—have rendered 60 percent of the human services workforce eligible for public assistance.³¹ The result is that behavioral health providers have a hard time finding and keeping staff to serve communities.

The State requires counties to fund public health, mental health, and emergency assistance for families in addition to county jails.³² But last year, counties collectively spent approximately 11 times as much on jails as they spent on community mental health.³³ They spent almost three-and-a-half times as much on their jails as on housing assistance.³⁴ More than one in four counties failed to fund employment services for out-of-work New Yorkers.³⁵ Conversely, on average, counties outside New York City spent more than \$20 million running and staffing their local jails.³⁶

Figure 5

County drug treatment needs, pre-COVID

Even before the coronavirus hit...



Source: New York State Office of Addiction Services and Supports, *Statewide Comprehensive Plan 2020-2024* (Albany, NY: New York State Office of Addiction Services and Supports, 2020), 9, 11-13, <https://perma.cc/38CM-3FMR>.

New York has increasingly relied on jails to address mental health disorders, drug use, and poverty

For decades, New York has invested heavily in one response to mental health issues, drug use, poverty and other social challenges: jails. Someone is experiencing a mental health crisis? We send the police. Someone is self-medicating with drugs to address physical or psychological pain? We send them to jail. Someone is sleeping on a park bench? Again, we rely on jail. We have criminalized behaviors that could and should be addressed with care, treatment, and a social safety net. And because New York has failed to invest in a continuum of care that provides alternatives to incarceration—from walk-in crisis services for behavioral health emergencies to supportive housing for long-term care—police often engage in what they call “mercy bookings”: arresting someone for a minor offense because they believe that jail is the only place that person will have access to food, a place to sleep, and basic medical care.³⁷ Without sufficient drug treatment and harm reduction services, jails have become primary detoxification centers.³⁸

In addition to criminalizing behavior best addressed with treatment and care, by not providing adequate supports counties fail to prevent crime driven by those underlying conditions, such as petit larceny to obtain basic goods when a person cannot afford them or burglary to find money to buy drugs. These low-level, largely property-related, charges have filled jail cells. In the year before Tompkins County changed its policies and practices to address drug use with harm reduction and treatment instead of jail, for example, police made 592 arrests for low-level property crimes, which the county attributed largely to drug use.³⁹

The result of these policies and investment decisions is that today New York State incarcerates more people with serious mental illnesses in its jails and prisons than it treats in hospitals.⁴⁰ Nearly one in five

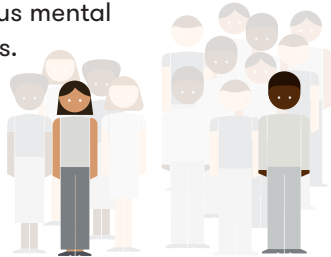
women and one in 10 men entering New York jails has a serious mental illness.⁴¹ Almost three out of every five people in New York State jails have a substance use disorder.⁴² And nearly half of adults experiencing homelessness report having spent at least five nights in a local jail.⁴³ (See Figure 6.) As Barry Virts, Wayne County sheriff and president of the New York State Sheriffs' Association, described, "Sheriffs have increasingly found that individuals . . . are coming to their jail facilities with serious medical, mental health, and substance use issues."⁴⁴

Jails are ill-equipped to provide quality treatment to people with mental health and drug use issues. In fact, studies have shown that incarceration exacerbates behavioral health problems.⁴⁵ More than four out of five people in jail who have a mental illness do not receive treatment there.⁴⁶ Even when people do receive care, the trauma and destabilizing impact of jail—which includes being held in overcrowded, dehumanizing, and often violent environments—worsen mental health challenges.⁴⁷ People who have been incarcerated are also up to 120 times more likely to die of an overdose in the two weeks after being released from prison as those in general population.⁴⁸ And incarceration deepens the cycle of poverty. One

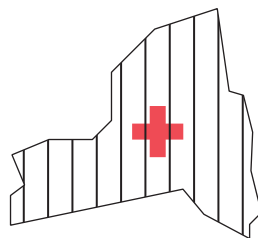
Figure 6

Behavioral health in New York's jails

Nearly **1 in 5** women and **1 in 10** men entering New York jails has a serious mental illness.



Almost **3 in 5** people in New York State jails have a substance use disorder.



Nearly **1 in 2** adults experiencing homelessness report having spent at least five nights in a local jail.



Sources:

Serious mental illness: New York State Office of Mental Health, "Mental Health Resource Handbook Chapter 2: Providing Mental Health Services in Local Detention/Correctional Facilities," <https://perma.cc/RG-S8-MX23>.

Substance use: Policy Research Associates, *Completing the Recovery Treatment Continuum: Jail-Based Substance Use Disorder Services* (Albany, NY: NYS Conference of Local Mental Hygiene Directors, 2017), 3, <https://perma.cc/D695-R4BB>.

Homelessness: Stephen Metraux, Caterina G. Roman, and Richard S. Cho, "Incarceration and Homelessness," in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research*, edited by Deborah Dennis, Gretchen Locke, and Jill Khadduri (Washington, DC: U.S. Department of Health and Human Services, 2007), 9-7, <https://perma.cc/X8CU-CSZP>.

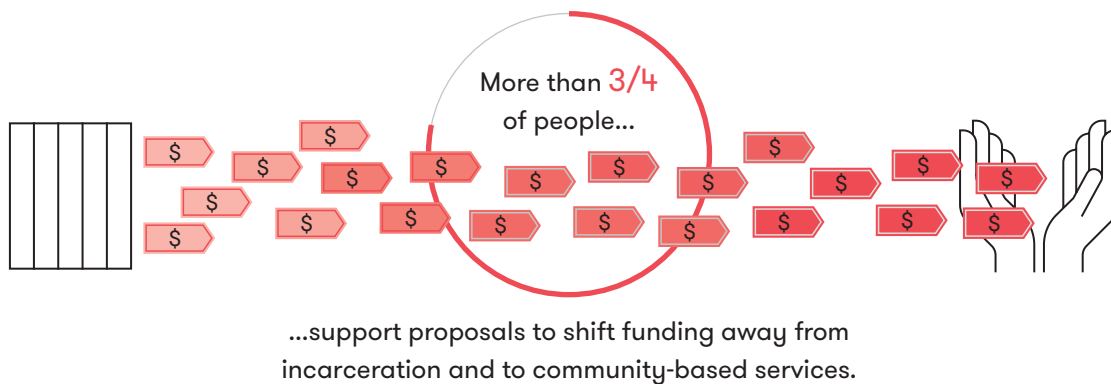
study found that because of lost income, legal costs, and court fees and fines, 65 percent of families with a loved one in jail or prison had trouble meeting basic needs. Of those, almost half had trouble affording food and struggled to pay for housing.⁴⁹

It is common sense that addressing poverty, mental health, and drug use would lead to less crime and break cycles of incarceration. It is also supported by a substantial body of research. Study after study has found that affordable housing, access to quality health care and behavioral health treatment, educational opportunities, and jobs that pay a living wage are much more successful at preventing crime than a reliance on policing and jails.⁵⁰ They are also more cost effective. It costs two to three times as much to incarcerate someone with a serious mental illness as to provide treatment in the community.⁵¹ And studies show that providing supportive housing can create a net savings of \$10,000 per person per year by reducing residents' number of jail days, emergency room visits, and hospital stays.⁵²

While funding for programs and services that address the drivers of incarceration has dropped over time, funding for jails has increased. From 2012 to 2019, counties outside New York City collectively spent almost \$300 million more on staffing and running their local jails—an 18 percent increase in constant dollars.⁵³

Figure 7

Public support for community-based services over incarceration



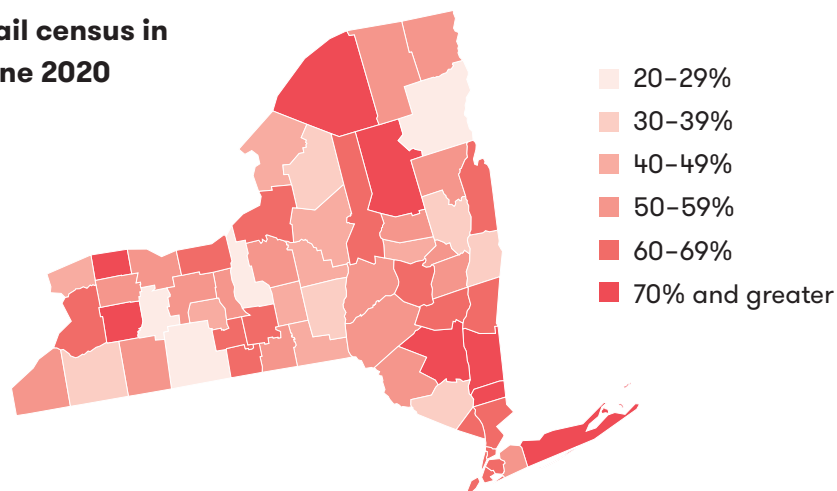
Source: Leah Sakala, Samantha Harvell, and Chelsea Thomson, *Public Investment in Community-Driven Safety Initiatives* (Washington, DC: Urban Institute, 2018), <https://perma.cc/52LF-996S>.

Momentum for change: Average daily jail populations have already fallen by more than half

Although funding for jails has continued to rise, average daily jail populations have fallen significantly. From 2012 to 2019, average daily jail populations fell 25 percent in counties outside New York City.⁵⁴ In preparation for bail reform, which went into effect in January 2020, the number of people held in jails across New York State dropped 27.9 percent from January 2019 to January 2020.⁵⁵ Jail populations fell another 30 percent by March 2020.⁵⁶ And by June, when counties had lowered their jail populations further as a result of COVID-19, average daily jail populations outside New York City had fallen a total of 57 percent since 2012.⁵⁷ (See Figures 8 and 9.) In June 2020, on any given day in New

Figure 8

Change in average daily jail census in New York State, 2012 to June 2020

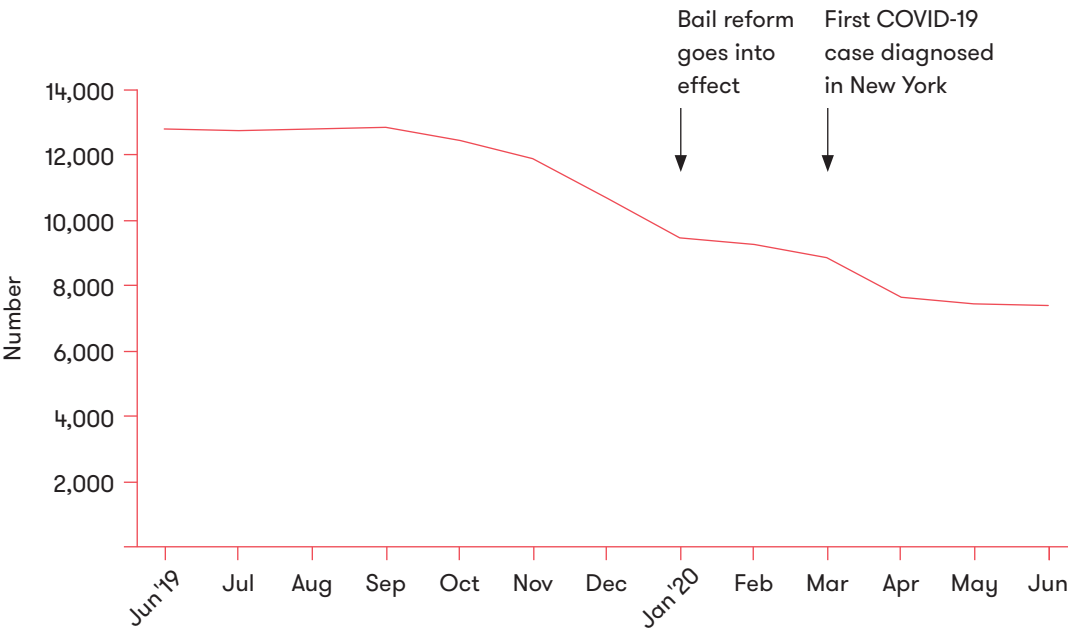


Source: New York State Division of Criminal Justice Services, “Jail Population in New York State, Average Daily Census by Month,” as of October 1, 2020, <https://perma.cc/GU23-VDJW>.

York there were more than 10,000 fewer people in jail in counties outside New York City than on any given day in 2012.⁵⁸

If counties build on the hard work they have already done to decrease their jail populations and take steps to turn those transformations into savings, they could free up valuable dollars during this fiscal crisis—dollars that could be key to addressing behavioral health crises, mitigating the surge in unemployment and housing instability that is already underway, and investing in building healthy, safe communities.

Figure 9
Average daily jail population in non-New York City counties, June 2019–June 2020



Source: New York State Division of Criminal Justice Services. Also see Vera Institute of Justice data analysis at <https://public.tableau.com/profile/christian.henrichson#!/vizhome/NYJailPopulations/Dashboard?publish=yes>.

In this moment of economic crisis, counties can look to jail budgets to save money

During this fiscal crisis, county jail budgets present a unique opportunity to save funds. If counties were to return to the same ratio of spending on staff to incarcerated people that they had in 2012, Vera's analysis shows they could collectively save almost \$638 million annually.⁵⁹

Take Albany County, for example. In 2019, Albany County spent almost \$35 million running and staffing its jail—7 percent of its total budget.⁶⁰ The majority of that funding went to paying for personnel. From 2012 to June 2020, Albany County's average daily jail population fell a remarkable 58 percent, but there was no commensurate decline in staffing—or spending—on the jail.⁶¹ Simply by returning to the ratio of spending on staff to incarcerated people that existed in 2012, Albany could save more than \$14.6 million annually. (See Figure 10.)

Alternatively, Albany County's jail could serve as a regional jail, holding people for neighboring counties as well as its own. The county has already taken steps in that direction. In 2019, the average daily jail census in the Albany County jail was 416 people, with 51 of those “boarded in” from neighboring counties.⁶² Many of those people were from Greene County. Since April 2018, Greene County, which is just south of Albany, has had to “board out” all the people in its jail, sending them instead to Albany and other neighboring counties because the conditions in Greene County's jail had deteriorated so far that engineers warned a “slight tremor” could destroy the building.⁶³

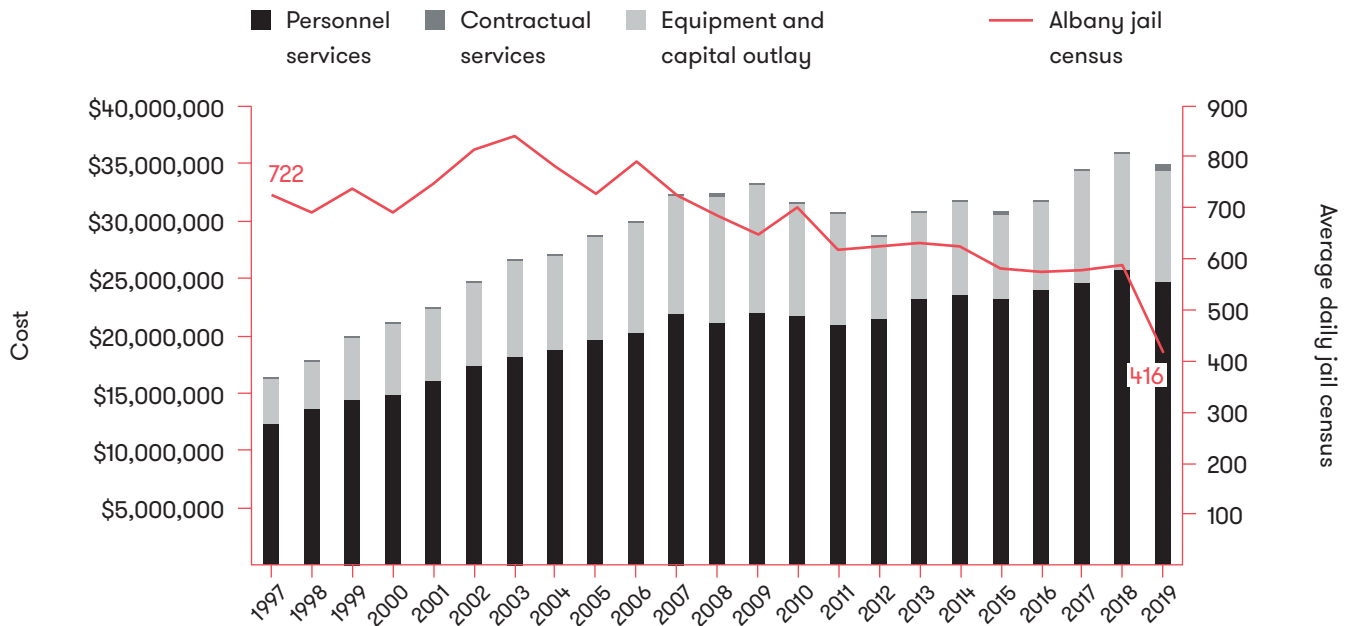
Closing the Greene County jail entirely and transforming the Albany County jail into a regional jail could save money for both counties while allowing incarcerated people access to more robust services. In 2019, Greene County paid \$75 per person per night to neighboring counties holding people in their jails.⁶⁴ In June 2020, there were 26 people from

Greene County held in jail on any given night, all in neighboring county jails.⁶⁵ At that incarceration rate and cost, Greene County would spend \$711,750 annually on incarceration by sending people to a regional jail. That is significantly less than the \$4.7 million Greene County spent in 2019 to maintain jail equipment and pay its staff.⁶⁶ And it does not even account for the millions of dollars Greene County will have to spend building a new jail.⁶⁷

Albany County Correctional Facility cannot continue to take people from neighboring counties long term, essentially serving as a regional jail, unless the New York State legislature changes requirements that each county maintain its own jail. If the State eliminates that requirement, counties could save millions of dollars by avoiding new jail construction, sharing jail space, closing increasingly vacant jails, and reducing daily staffing.

Figure 10

Spending on Albany County Jail versus jail census, 1997–2019



Source: New York State, “Jail Population by County, Beginning 1997,” <https://data.ny.gov/Public-Safety/Jail-Population-By-County-Beginning-1997/nymx-kqkn>.

To build healthy and safe communities, counties must invest in social services now

It will be tempting in this moment, when counties are facing budget crises, to use any fiscal savings from jails to fill unrelated gaps in the budget. But if counties use the savings to invest in programs and services that address the root problems that so often lead to incarceration, they can build safer communities and break the cycle that leads people back to jails, shelters, and emergency rooms.

- › By investing up front in supportive housing, counties could realize a net savings of \$10,000 per person per year by reducing the number of days people spend in jail, the number of nights they spend in shelters, and the number of times they go to the hospital.⁶⁸ With the almost \$638 million counties could save by reducing spending on jail staffing commensurate with the decrease in average daily jail populations since 2012, New York could fund supportive housing for more than 36,000 people.⁶⁹
- › For people who are experiencing homelessness or facing eviction who do not need supportive housing, the \$638 million saved from reducing spending on jail staffing could pay one year of rent for more than 53,000 people.⁷⁰
- › A \$9.5 million investment in medication-assisted treatment (MAT), considered the gold standard of care for opioid use disorders, could save 1,500 lives.⁷¹
- › With the money they save from shrinking jail footprints, counties could hire more than 11,000 social workers.⁷²

During this fiscal crisis, New York State and its counties must take action to invest in building healthy, safe communities that do not rely on jails.

Recommendations

Recommendation 1

New York State should allow counties to staff their jails commensurate with the jail population, not the maximum capacity of the jail

The State Commission of Correction (SCOC), which sets staffing regulations for each county jail, ties staffing requirements to the maximum capacity of the jail rather than the county's average daily jail population.⁷³ A jail, therefore, could be half empty, but the SCOC could require the county to staff the jail—paying all of the salaries, benefits, and equipment costs—as if it were full. There are at least two ways to fix the problem:

- › the SCOC can change its staffing requirements, factoring in the average daily jail population over the last two years rather than the maximum capacity of the jail, which would allow counties to reduce staffing to match current needs; or
- › the State legislature could pass legislation requiring the SCOC to coordinate with local jail administrators and allow counties flexibility in establishing staffing numbers.⁷⁴

Recommendation 2

New York State should eliminate the requirement that each county maintain its own jail

Allowing counties to close their jails, either by eliminating the need for jail entirely or by entering into agreements in which contiguous counties create regional jails, could generate millions of dollars in savings. New York County Law § 217 currently requires each county to maintain its own jail. Average daily jail populations, however, dropped more than half from 2012 to June 2020. For counties to realize savings from shrinking jail footprints, the New York State legislature should eliminate the requirement that each county maintain its own jail.

Regular visitation from lawyers and loved ones, however, is critical for people who are incarcerated. In-person visits are crucial to successful reentry and preventing future arrests.⁷⁵ Any effort to establish regional jails—or arrangements where counties “board out” a very small number of people—must, therefore, limit the distance loved ones and lawyers must travel to visit people in jail. Counties should use a portion of the money saved to provide free transportation at least twice a week—and at least once on weekends—or to pay for regular carfare so that people can see their loved ones while they are in jail.

Recommendation 3

Counties should continue to decrease jail populations and create participatory budgeting processes that give the community power to determine reallocation of jail savings

Counties should continue to decrease jail populations, including by releasing people pretrial, diverting people from jail, and providing community-based responses to crime. When it comes to reinvesting the money saved from shrinking jails to build healthy, safe communities, there is no one-size-fits-all solution. Participatory budgeting—which allows local residents to decide how to allocate part of the budget—gives those closest to the problem a direct say in crafting the solution. Participatory budgeting generally follows these basic steps:

- › a steering committee that represents communities—usually divided geographically and including those most directly impacted—drafts rules and an engagement plan;
- › through meetings and online tools, community members brainstorm and share ideas for projects and investments;
- › volunteer “budget delegates” use the ideas to create feasible proposals;
- › county residents vote on the proposals, deciding which best serve the community’s needs; and
- › the county funds the ideas the community selects.⁷⁶

Counties should create participatory budgeting processes to reinvest savings from jail budgets with guidelines that the money must be used to

address some of the root causes of incarceration, including mental health, drug use, homelessness, and poverty-related issues.

Recommendation 4

New York State and individual counties should pass laws requiring data collection and public reporting of criminal legal system statistics

New York has made remarkable progress in reducing the number of people held in jails. To continue that forward momentum—and to realize the ongoing savings of incarcerating fewer people—New York State and individual counties should create mechanisms for public accountability. The first step is to make data about the criminal legal system publicly available.

Comprehensive data reporting laws in New York State and in individual counties should require public reporting—at regular intervals—including on data regarding arrests, district attorneys' charging decisions, judges' bail-setting practices, and incarceration trends. At each step, the data should be broken down by category, including racial and ethnic demographics, sex, age, history of serious mental illness, and more. Making that data publicly available in real time—or as close to real time as possible—will allow legislators and community members to hold criminal legal system actors accountable for continuing the progress on shrinking jails and provide insight into areas for improvement.

Recommendation 5

New York State should incentivize counties to invest in interventions that prevent incarceration and save money long term

Addressing the root causes of incarceration can create an economic windfall not just for counties, but for New York State as well. By providing services that address mental health, drug use, and poverty-related issues, counties can create fiscal savings for the State by reducing the number of people sent to state prisons and the amount of state spending on things like emergency room visits and hospital stays. It is therefore in the State's best interest for counties to invest in behavioral health, affordable housing, and

social supports—not just because these are good for individual residents, but because they will also create long-term savings while building the foundation for a healthier, safer New York.

To incentivize counties to address the root causes of incarceration, New York State should match the dollars that counties divert from jails and invest instead in behavioral health and social supports. By creating a one-to-one matching plan that gives counties additional funding for every dollar they move from jail budgets into behavioral health, social supports, and the other priorities that participatory budgeting processes identify, the State will not only support New Yorkers' well-being but also help spur long-term savings at the local and state levels. That is good for communities and for budgets too.

Endnotes

- 1 “New York Coronavirus Map and Case Count,” *New York Times*, June 19, 2020, updated October 17, 2020, <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html>.
- 2 Zach Williams, “Cuomo Warns of \$8.2 Billion in Cuts to Localities,” City and State, April 26, 2020, <https://perma.cc/TFF2-CXB8>.
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