

# “What County Commissioners Can Do About Overcrowding in Their Jails”

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## Introduction

In the past, many counties throughout the country have tried to build their way out of their jail problems, but haven't had much success. While it is clear that the construction of new jails can answer the problems of security, life-safety and environment, it has become apparent that new construction alone is not the answer to the problems of jail overcrowding. In fact, a study commissioned by Congress has concluded that vacant jail space fills up as soon as it becomes available, which is another way of saying that no matter how many cells are created, the system can always provide another offender to fill it. A natural law in criminal justice seems to work on the assumption that there are always more offenders than cells to house them. In view of the tremendous capital and operating costs of corrections, the question “How Big Should Our New Jail Be?” is no longer valid. The question that county commissioners should be asking instead in the austere 1990s is “How Small Can Our New Jail Be, and Still Perform Its Proper Function?”

## The Purpose of Jail

Construction is an expensive response to jail problems. Before telling the voters that your county is going to have to raise large sums, county officials need to take a long, hard look at the purpose of jail. The common public notion is that jails house only hardened criminals who need to be behind bars for the public's safety. As part of this thinking, it is also assumed that we need larger new jails to control crime. Neither of these assumptions is true. Jails alone will not solve our society's crime problem.

The fact is that most jails hold young, local males with a poor education, charged with misdemeanors or violation of local ordinances. The mentally ill, the homeless and the inebriated also use up a large portion of jail resources. A substantial majority of people admitted to jail stay for very short periods of time, usually less than three weeks. Many stay less than three days.

Jails should have two primary functions. They hold individuals whose appearance at court cannot be guaranteed in any other manner, and in most states they hold those who have been sentenced to less than one year. It is true that people in jail can be dangerous. However, by and large, most jails are “turnstiles” of justice, through which multitudes of people pass in short periods of time.

Now that jail has become an expensive and scarce public resource, county commissioners should scrutinize more severely the call for additional jail capacity as a cure-all for crime.

## Who Controls the Jail Population?

The jail is a captive of the criminal justice system. Those who operate the jail have practically no control over admissions or releases. The flow of people into and out of the jail is controlled by legislation and by the practices of law enforcement, the district attorney, the courts and the probation agencies. These agencies determine the jail population. Until recently, county commissioners are beginning to realize that if they have to take the responsibility for asking voters to fund large,

new jails, then they deserve a voice in deciding how large the jail should be.

The sheriff impacts the jail population through the arrest guidelines (use of citations, summonses, etc.) and booking and bail procedures. The district attorney impacts the jail population by his posture on bail, by his attitude toward plea bargaining and cooperation in court scheduling. Defense attorneys drive up the jail population by using delay tactics. The courts affect jail population by their bail policies, by the scheduling of court proceedings and by the efficiency of paper flow through their system. Probation departments, typically understaffed, are usually responsible for pre-sentence investigations. The delay in preparation of these reports creates a backlog in jail of people awaiting sentence.

The jail is a passive container into which flows people from all parts of the criminal justice system. If the jail is overcrowded, the county commissioners feel the pressure to build a new, larger jail. In effect, the county commissioners are taking the responsibility for a situation that they didn't create, and over which they have no control. If county commissioners are responsible for funding new jail construction, they have to insist on a strong role in deciding the size of the new jail.

Law enforcement, judges, district attorneys, public defenders and probation officials – not county commissioners – determine who goes to jail and how long they stay. County commissioners must insist that these agencies provide assurances that they will control the future jail population. With these assurances in hand, commissioners can go to the public with confidence that their new jail won't be overcrowded on the day it opens.

## Figuring Out the Appropriate Size of a New Jail

Determining the appropriate size of a new jail is a matter of public policy and not - as many believe - a technical problem. No one can foretell the future. Therefore, no one can predict the future population of a

jail. It is simple as that. The purpose of long range jail planning is not to foretell the future; the purpose is to shape the future. The shape of the future should include not only the jail building, but also improvements to the criminal justice system that reduce costs without reducing public safety. The cost of these improvements has to be politically acceptable. That makes the issue a policy question that has to be decided by elected officials and not by technicians and planners. Planners can provide the technical analysis, but only county commissioners can make policy.

Only county commissioners can decide which projects will proceed and which will get 'shelved.' Only county commissioners can decide when to spend dollars on jails, and when not to spend dollars on health, education, public works and social services. The policy role of county commissioners is to balance and harmonize the competing demands of the people and resources in the public fund. Therefore, the size of the jail has to be appropriate: to the needs, and also appropriate to the resources of the community. Determining whether a projected jail size is appropriate is a task for policy makers using data proved by planners.

As part of the process of determining the appropriate size of a new jail, county commissioners should ask the following questions:

### 1. How well is the jail doing its job?

Given the high cost of incarceration, decision-makers will have to examine the types of people awaiting trial and sentencing, and ask whether or not they can be dealt with by means that are less expensive and equally safe. The jail is performing its role as a scarce resource only if it is used as the last – rather than the first – method of dealing with people awaiting trial or serving sentence.

### 2. How are other agencies affecting the use of scarce resources of jail space and jail time?

County commissioners are being asked to appropriate enormous sums of money for new jail

space (buildings) and jail time (energy, salaries, food, and clothing). Law enforcement, court, probation, prosecution and public defender agencies – not county commissioners – determine who goes to jail. County commissioners should insist that these new agencies provide assurances that they will control the future jail population.

The concept that the jail population can be controlled is a new one. It is common to imagine that the number of people in jail will increase to fill the number of jail beds. A locality that has decided not to increase the size of its jail will find other methods to deal with people awaiting trial, or if convicted, without an increased public sense of insecurity.

### **3. What are the alternatives to increasing local jail space and jail time?**

With a clear concept of the function of the jail and its associated costs and of the alternative means and costs of accomplishing the same goals, local policy makers can compare objectively the costs and benefits of various solutions.

Once it becomes clear that jail population can be controlled by using alternative programs at different points in the system, county commissioners can call for an objective examination of options that will maintain public safety and at the same time reduce capital and recurrent operations costs.

A new jail building may be necessary to replace an unsafe, insecure and overcrowded facility. But the introduction or expansion of alternative programs will substantially reduce the size of such a facility, leading to substantial savings in construction costs and operating expenses.

One of the lessons learned in recent years is that it is possible to control the flow of people into and out of jail by coordinated action among all criminal justice agencies. As part of developing jail policy, county commissioners will have to take a leadership role in fostering cooperation among criminal justice agencies in

order to plan and implement alternatives to jail for eligible individuals. They will have to find out which alternatives are currently being utilized; what their capacity is; and what additional measures can be enacted to keep people flowing through their criminal justice system.

With a clear concept of the function of the jail, of the alternatives to jail and their associated expense: county commissioners can objectively compare the costs and benefits of various solutions, such as new construction of innovative facilities and changes in criminal justice practice.

It may be that a new jail building is necessary to replace an old, unsafe and overcrowded facility. But the introduction or expansion of alternative programs, intermediate punishment and improved practices can reduce the size of such a facility substantially, and thereby lead to considerable savings in construction and operating costs.

The process of arriving at an appropriate number of beds in a new jail requires technical input, dialogue and cooperation among criminal justice system agencies, public input and above all – leadership by county commissioners.

## **Conclusion**

The exorbitant human and dollar costs of the jail have placed it high on the priority of concerns for the decade. Jail problems are too important, and poor solutions too costly to be left to outside “experts.” The long range solution must be forged at the local level, just like other public policy issues. County officials should consider the following as they prepare to deal with the issue:

- Understand the role of the jail
- Gather good, reliable data
- Insist on accountability from the criminal justice system
- Educate the voters
- Develop a constituency for long range plans
- Follow up with feedback and refinements

There is no 'cookbook' for planning the 'perfect jail'; no formula has yet been devised to yield the correct jail size; no process has been developed that will make the planning process perfect; and what may be appropriate in one community may not be feasible in another. However, experience dictates that critical ingredients to

jail planning include: the leadership and initiative of county commissioners to identify and involve key enactors to provide proper funding for the planning process; and to allow sufficient time and attention to assess the complexity of issues.

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