

# Jails and Local Justice System Reform: Overview and Recommendations

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*Jennifer E. Copp and William D. Bales*

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## Summary

Over the past three decades, the number of people housed in local jails has more than tripled. Yet when it comes to reforming the nation's incarceration policies, write Jennifer Copp and William Bales, researchers, policymakers, and the public alike have focused almost exclusively on state and federal prisons.

If you took a snapshot on a single day, the prison population would far exceed the population of local jails. But, the authors show, compared to prisons, roughly 18 times more people are admitted to and released from jails every year. Furthermore, about two-thirds of jail inmates have yet to be convicted of a crime, and they often languish behind bars only because they can't afford to pay bail. And although jails are intended for adults, on any given day roughly 4,000 young people under age 18 are confined in local jails.

In this article, Copp and Bales provide a broad overview of US jails, including facilities and operations, characteristics of inmates, and the conditions of confinement, and they make a number of suggestions for policy and practice. In particular, they argue that the justice system should slash the use of money bail, which disproportionately harms the poor and minorities. Specifically, they recommend that jurisdictions adopt validated risk assessment tools to help make decisions about who should and shouldn't be detained before trial; expand pretrial services that can, among other things, monitor compliance with release conditions; divert more people away from the criminal justice system; consider alternatives to jail, such as probation, for convicted offenders; and expedite case processing to decrease the time to trial and thus the overall length of jail stays.

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Over the past 45 years, the US prison population grew from about 200,000 to more than two million—an increase characterized as “historically unprecedented and internationally unique.”<sup>1</sup> The social toll of America’s system of mass incarceration has been staggering. Imprisonment reduces future earnings and job opportunities, limits civic participation, contributes to mental and physical health problems, destabilizes families, and further disadvantages economically marginalized communities. The fiscal costs of penal expansion have also been burdensome. Corrections spending accounts for an increasing share of government budgets, taking funds away from education, health care, and other services. Despite these human and economic costs, incarceration has done little to reduce crime and improve public safety.<sup>2</sup> Accordingly, a political consensus is emerging that we need strategies to downsize the number of people housed in state and federal prisons. Yet local jails are often missing from discussions of our nation’s overreliance on incarceration. Given that jails represent a huge portion of the growth in incarceration, that oversight is shocking.

As the gateway to the criminal justice system, jails are a ubiquitous part of the American criminal justice experience. Remarkably, although the daily population of prisons outnumbers the jail population, nearly 18 times as many people are admitted to jails annually.<sup>3</sup> On any given day, roughly 730,000 people are held in more than 3,000 jails across the country; of these, the majority are awaiting trial and have not been convicted of a crime.<sup>4</sup> That includes nearly 4,000 juveniles confined in adult jails. An additional 34,000 youth

are housed in more than 900 juvenile detention centers and correctional facilities nationwide.<sup>5</sup> The overuse of jails exacts a toll like that of prisons on individuals, families, and communities, exacerbating inequalities across social, economic, and political lines. Paying for jails has also overwhelmed many communities. Growing jail populations have increased personnel and operational costs, in addition to the costs associated with building new facilities. Yet jails remain largely ignored by researchers and relatively misunderstood by the general public.

Despite similarities in the social consequences and economic burden of jail and prison incarceration, jails differ from prisons in many ways, and it’s important to understand these differences in order to guide policy. We begin by describing contemporary US jails, including the varied nature of their operations and facilities, inmate populations, and conditions of confinement. Next, we suggest future directions for policy. In particular, we assess pretrial release practices and discuss alternatives to pretrial detention for juveniles and adults awaiting trial. We also consider the potential for reform among those convicted and serving time in local jails. Recognizing that people who cycle in and out of our nation’s jails are disproportionately struggling with poverty, poor health, mental illness, and substance abuse, we discuss how the criminal justice system can work with local service providers to more effectively meet the needs of this population and reduce justice system inequality.

We also suggest that it’s unlikely the US jail and prison populations can be cut in tandem. Prison downsizing almost necessarily means transferring authority

for some convicted felons from the state to the county level. In the long term, counties would be expected to reduce their jail populations by connecting people to the programming and services they need, and by investing in rehabilitation and prisoner reentry. Yet many counties are ill equipped to manage the influx of prisoners (and parolees), and thus we can expect these shifts to further strain local communities. Drawing on examples of how decisions to downsize at the state and federal levels have affected local justice systems, we emphasize that researchers and policy makers should carefully consider the role of local jails as they pursue broad-based criminal justice reform.<sup>6</sup>

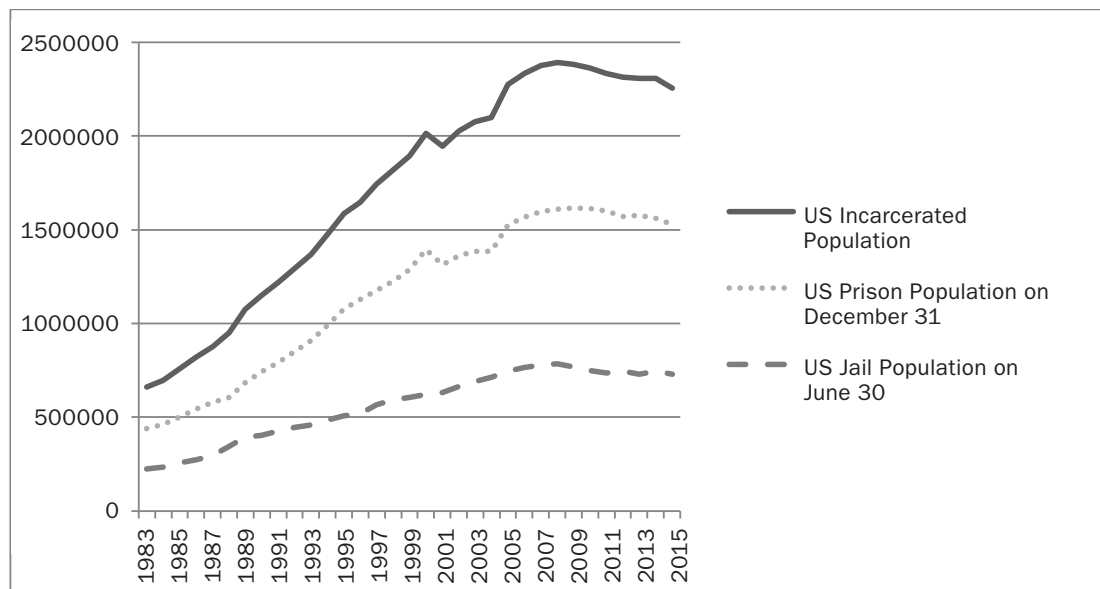
## **Jails in the United States**

Issues related to prisons, inmate populations, and the wider consequences of incarceration are well documented, but jails have been a neglected topic. This is due, in part, to the complex and dynamic nature of jail functions and populations as compared to the relatively uniform state and federal prison systems. Prisons and jails both house people who are serving time following a criminal conviction. But jails do more than that: they also hold people awaiting trial or sentencing, transfer inmates to state or federal facilities, detain people with serious mental illness, house those who are scheduled to testify in court, temporarily house juveniles pending transfer to juvenile authorities, and hold inmates for overcrowded state, federal, and other facilities.<sup>7</sup> Whereas prisons are operated at the state or federal level, most jails are managed by county governments and/or local law enforcement (except in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont,

where both prisons and jails are operated by state-level corrections authorities).<sup>8</sup> As a result, funding for jails comes not from state or federal budgets, but from the tax-supported budgets authorized by local funding authorities. It's hard to paint a broad portrait of US jails, since each of the more than 3,000 jails across the country is unique in terms of the composition of its population, the amount of resources available, and how those resources are allocated. In the following sections, we provide key facts and figures about jail facilities and operations, inmate populations, and conditions of confinement, noting that local jails vary immensely nationwide.

## **Jail Facilities and Operations**

In 2013, 3,163 jail facilities existed in the United States, down slightly (4 percent) from the previous census in 2006. That drop is misleading, however, as it was largely driven by decisions to consolidate jail jurisdictions, not by cuts in jail populations. In fact, from 1983 to 2015, the number of confined jail inmates more than tripled, to an average daily population of 721,300 (see figure 1).<sup>9</sup> This number appears relatively small when compared to the year-end population of our nation's state and federal prisons, which is 1,526,800.<sup>10</sup> Yet the number of people who enter and exit jails each year far outpaces the number of prison admissions and releases. In 2008, 738,631 people were admitted to state and federal prisons, and 13.6 million were admitted to jails.<sup>11</sup> Given the relative stability of inmate populations from year to year, this means roughly 1.5 million admissions and exits combined among the state and federal prison systems and 27 million admissions and exits among jails that

**Figure 1.** Trends in the US Incarcerated Population 1983–2015, by Facility Type

year—suggesting that about 18 times as many people entered and exited jails as prisons during that period.<sup>12</sup>

To demonstrate the turnover in jails relative to state prison systems, we compared the New York City jail system to the state prison system of New York. In 2011, the New York state prison system had a year-end population of 55,436 inmates, compared to an average daily population of 12,790 in the NYC jail system. However, those figures mask the enormous churn in and out of the NYC jail system, which admitted 87,515 people that year.<sup>13</sup> The state prison system admitted just 23,257 inmates—one-fourth of the city jail system’s total. And the 12,790 average daily population of the city jail system exceeded the number of inmates incarcerated in 25 of the other 49 states’ prison systems.<sup>14</sup>

Jails in America’s largest urban centers, like New York City’s, receive the most national attention. That’s unsurprising, as crime is often painted as an urban problem, and the major US population centers are responsible

for the country’s largest jail systems, as well as some of the most notorious jails (such as Rikers Island in New York, Cook County Jail in Chicago, and the Los Angeles County Jail). Yet the jail incarceration rate is actually lower in large cities than in most smaller jurisdictions. In fact, small counties (those with fewer than 250,000 people) have contributed the most to the quadrupling of the jail population since 1970.<sup>15</sup>

These trends reflect how the jail population trajectory has diverged across the urban-rural divide. Big cities have successfully reduced their jail populations through concerted systemic changes. But in smaller counties, the pretrial population has risen at the same time that other authorities have increasingly contracted with rural jails to house inmates. The limited tax base of smaller counties, and rural counties in particular, constrains their ability to offer alternatives to incarceration because they lack the resources to support effective programs and services. In many jurisdictions across the country, jails rely on “pay-to-stay” programs and other fines and

fees—shifting correctional costs to inmates and thus disproportionately burdening the indigent and racial/ethnic minorities.<sup>16</sup> The lack of resources also creates an incentive to expand jails: many rural facilities have added capacity to take in out-of-county boarders. On the one hand, the influx of state prisoners and undocumented immigrants has brought in money to help sustain struggling jurisdictions. But adding beds and building new facilities also encourages greater use of pretrial detention. The different reactions to growing jail populations across the urban-rural divide (that is, downsizing versus expansion) show that reform efforts should target all counties, and that a one-size-fits-all approach is unlikely to be effective.

The trends we've described help give context to the enormous financial burden that jails place on local communities, and show that this financial burden may be particularly onerous in resource-deprived areas—including many small, rural counties. In fact, jail expenditures are one of the most significant sources of community spending on public safety. Based on recent estimates, US communities spent \$22.2 billion on jails in 2011.<sup>17</sup> That figure vastly understates the true taxpayer cost of jails, however, because it excludes the resources provided by other local and government agencies.<sup>18</sup> It also obscures considerable variability in local correctional budgets. For example, we recently examined a selection of allocated budgets for fiscal year 2015 and found that the estimated daily cost per inmate ranged from \$40 in the Mobile County Jail in Alabama to \$368 in the Montgomery County Jail in Maryland.<sup>19</sup> We have little evidence to suggest that jail budgets alone indicate the quality of care and services or the outcomes of released offenders. But budgetary considerations necessarily affect decisions

about the types of educational programming, health care, and rehabilitative services available to inmates, as well as the upkeep of jail facilities.

## **Inmates**

Jails are also distinguished by the tremendous diversity of their inmate populations. While a given prison typically holds individuals of the same gender, conviction status, and custody level, jails must manage and care for a much broader cohort of people. And because jails serve as the gateway to the criminal justice system, people arrive with a range of physical and mental health conditions—often stemming from problems associated with severe poverty, unemployment, exposure to trauma or abuse, mental illness, and substance abuse. Jails also house people accused (and convicted) of a broad range of offenses. Still, the majority of jail inmates are incarcerated for nonviolent traffic, property, drug, or public-order offenses. More specifically, about one-third of jail inmates are being held for misdemeanors and other minor offenses, with the remaining two-thirds behind bars for felonies.<sup>20</sup> Although felony offenders include people accused of violent crimes, three-quarters of jail inmates, including pretrial detainees and convicted offenders, are in jail for nonviolent offenses.<sup>21</sup>

Approximately 85 percent of jail inmates are men, but women make up a growing share of the jail population. From 2000 to 2015, the female jail population increased from 11 percent of the nationwide total to more than 14 percent, corresponding to a female incarceration rate of roughly 70 per 100,000 in 2014.<sup>22</sup> The majority of jail inmates are members of racial or ethnic minorities, and racial disparities in jail populations are particularly marked. For example, African-

**Table 1.** Characteristics of Jail Inmates, Midyear 2014

Characteristic	Percent
Gender	
Male	84.8%
Female	14.6%
Age	
Adult	99.4%
Juvenile	0.6%
Held as Juvenile	0.1%
Held as Adult	0.5%
Race/Ethnic Origin	
White	47.2%
Black/African	35.8%
Hispanic/Latino	14.8%
American Indian/Alaska Native	1.4%
Asian/Native Hawaiian/Other Pacific Islander	0.7%
Two or More Races	0.2%
Conviction Status	
Convicted	38%
Unconvicted	62%

Source: Todd D. Minton and Zhen Zeng, *Jail Inmates at Midyear 2014* (Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, June 2015).

Americans make up 13 percent of the US population but account for more than 35 percent of the jail population. In contrast, roughly three-fifths of Americans identify as non-Hispanic white, yet this group accounts for less than half of jail inmates (see table 1).<sup>23</sup> In fact, the jail incarceration rate among black Americans is four times that among whites. In many places we see even greater disparities; for example, in New York City, blacks are held in jails at 12 times the rate of whites.<sup>24</sup>

Poverty, unemployment, and low educational attainment are common among the jail population. In 2002, only about half of jail inmates had been employed full time before their arrest; nearly one-third were unemployed. Approximately three-fifths of inmates reported a monthly pre-incarceration income of less than \$1,000.<sup>25</sup> Recent reports suggest that the jail population is not only

more disadvantaged than the US population as a whole, but also significantly poorer than the population of state prisons. A number of reasons account for this, including the widespread use of money bail and jail sentences for failure to pay fines and fees. Jail inmates are also much less likely than the general population to have completed high school—nearly half of jail inmates have less than a high school education.<sup>26</sup>

Although jails are intended for adults, on any given day roughly 4,000 youth under age 18 are confined in local jails. That number has fallen considerably in recent years; according to the Bureau of Justice Statistics, the number of juveniles in adult jails peaked in 1997 at 9,105.<sup>27</sup> In response to an increase in serious violent offenses during the late 1980s and 1990s, states adopted legislation permitting the transfer of youth to adult courts, producing a corresponding increase

of juveniles in adult correctional facilities. Over the past decade states began to reverse those decisions, raising the age of adult court jurisdiction for juvenile offenses. The most recent state to pass raise-the-age legislation was New York, which did so in April 2017. Before that, New York was one of two states (along with North Carolina) to automatically view 16- and 17-year-olds as adults in criminal court.<sup>28</sup>

Most youth who are arrested are handled by the juvenile justice system. On any given day in 2013, 17,800 youth were being held before trial in juvenile detention facilities. Yet just as churn exists in the adult system, hundreds of thousands of youth may cycle through pretrial detention centers each year. Pretrial detention is intended for youth who are likely to either commit another crime before trial or fail to appear in court, but many who are detained don't meet these criteria.<sup>29</sup> In fact, most youth in detention are being held for nonviolent crimes, including property, drug, and public order offenses, or for technical violations (for example, violation of a valid court order). A small number (3 percent) are being held for status offenses—that is, behaviors that wouldn't be crimes if conducted by an adult, such as persistent truancy, incorrigibility, curfew violations, and such. After they go to court, many youth are sent to juvenile correctional facilities or other out-of-home placements (such as group homes and inpatient facilities). In 2013, more than 35,000 youth were held in juvenile correctional facilities on court orders. In contrast to the pretrial population, a greater share (roughly 40 percent) of committed youth is held for violent offenses, and a substantial minority, roughly one in five, is serving time for technical violations or status offenses.<sup>30</sup>

The majority of detained and committed youth are male (86 percent) and 15 or older (87 percent). Although far fewer younger children and adolescents end up behind bars, the figures vary slightly between the detained and committed population. Specifically, nearly one detained youth in five is under 15, compared to roughly one in 10 among committed youth. As in the adult jail population, the juvenile detention and commitment populations are marked by sizable racial disparities. African-Americans make up just over 16 percent of the total juvenile population but nearly two-fifths of youth in juvenile facilities. In contrast, approximately three-fourths of all juveniles are white, yet whites represent less than one-third of all detained/committed youth.<sup>31</sup> Juvenile commitment rates have been falling across the country, but not all groups have equally benefited from these trends. Strikingly, black youth are more than four times as likely to be committed as their white counterparts. The driving force behind this difference is the growth in arrest disparities.<sup>32</sup>

## Conditions of Confinement

Conditions in jails have consequences for inmates' health and wellbeing. Yet correctional institutions have largely failed to meet inmates' needs for services. Recidivism rates in the United States are staggering: roughly two-fifths of those discharged from parole or conditional supervision return to jail, and one in six jail defendants is rearrested before their case is resolved. Although it's hard to track recidivism rates among people serving sentences in jails, we do know that more than three-fifths of people released from state prison are rearrested within three years.<sup>33</sup> Local jails present a unique opportunity to identify and treat some of the factors underlying individuals'

continued involvement in offending behaviors.<sup>34</sup> Yet we know very little about which programs and services could help jail inmates the most.

One of jail inmates' most pressing service needs is mental health treatment. In 2005, more than three-fifths (64 percent) of jail inmates showed indications of a mental health problem. That included a clinical diagnosis or treatment by a mental health professional and/or symptoms that met the criteria of a mental disorder based on the DSM-IV, a standard classification of mental disorders used by US mental health professionals. Inmates with mental health problems were more likely to have been previously incarcerated, to report substance abuse and dependency, to have been homeless in the year before their arrest, and to have experienced physical or sexual abuse.

Most jails don't have the facilities or services to offer the mental health treatment this population requires. Mental health professionals are seldom involved in classifying inmates' mental health status, and fewer than one in five inmates with documented mental health problems receives treatment.<sup>35</sup> Mental health conditions often occur together with alcohol and drug abuse. In 2007–09, more than two-thirds of jail inmates reported substance abuse or dependency, but only one in five received substance abuse treatment after entering jail.<sup>36</sup> Inmates also have trouble finding legitimate work because of their low levels of education and limited job experience and training.<sup>37</sup> Jail inmates are more likely than state and federal prison inmates to have dropped out of high school and less likely to have obtained a GED; nearly half the inmates in local jails didn't finish high school or its equivalent. Yet only 14 percent of jail

inmates take part in educational classes and fewer than one in 10 (7 percent) participates in vocational training.<sup>38</sup> And less than half (46 percent) of jails nationwide offered a work release program in 2006.<sup>39</sup>

Because jails are short-term facilities, it's a contentious issue whether treatment and other programming should be made available to inmates—particularly those in pretrial detention. Yet precisely because people often stay in jail only briefly before returning to the community, many practitioners suggest that jails can offer a critical opportunity to focus on inmates' immediate needs, such as detoxification, housing, transportation, financial assistance, or maintaining existing services. Such attention could reduce recidivism and contribute to the inmates' overall health and wellbeing. For example, although jail inmates may not stay long enough for more intensive substance abuse programs, counselors and staff members could screen them to determine their need for detoxification services. Improved mental health screening and assessment would ensure that inmates receive appropriate care in that area.

An even more fundamental concern is whether jails can provide for the basic safety of their inmates. A chief worry here is inmate sexual assault. In 2011–12, an estimated 3.2 percent of jail inmates reported experiencing sexual victimization in the past 12 months (or since admission). The prevalence of inmate sexual victimization varied considerably across jails, however, ranging from 0 to 8 percent.<sup>40</sup> In 2003, Congress passed the Prison Rape Elimination Act (PREA), which established prison rape and sexual assault as a top priority in American jails and prisons. PREA requires that corrections facilities adopt a zero-tolerance policy toward all



forms of sexual abuse and harassment. It also calls for adopting a variety of standards, including training staff to stop sexual assaults and to use proper reporting procedures, and providing sexual assault victims with rape kits and counseling. States that don't comply with PREA standards can lose 5 percent of the federal grant money designated for corrections purposes. But local facilities don't face the same penalty, so there's less oversight for PREA compliance in jails. Despite the lack of a standardized compliance monitoring or enforcement mechanism for jails, however, several factors do encourage jail compliance. For one, certain agencies are prohibited from entering into contracts with noncompliant facilities. States may also independently decide to require local facility compliance. Further, jails that are housing federal prisoners, and jails seeking accreditation by organizations that receive federal grant funds, are required to adopt PREA standards.

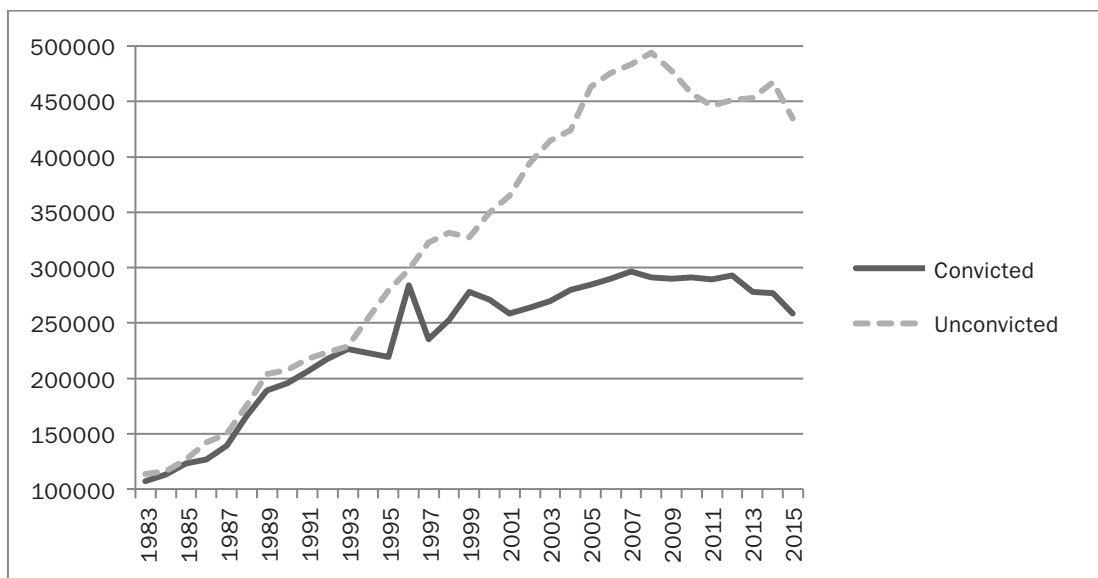
In addition to shining a spotlight on prison rape, PREA standards explicitly address the safety of juveniles in adult jails and prisons. Compared to other groups, juveniles have the greatest risk of experiencing sexual assault in adult facilities, and are significantly more likely than other age groups to be violently victimized—including at the hands of facility personnel.<sup>41</sup> PREA mandates that all inmates under age 18 must be “sight and sound separated” from adults, and given the opportunity to participate in educational and employment programs. Yet two-fifths of adult jails don't provide educational programming, and fewer than one in 10 offers young people job training.<sup>42</sup> In addition, separating juvenile and adult populations is impracticable in some facilities, which has led to placing youth in isolated settings, including solitary confinement. Thus sheriffs, correctional

officials, and others have advocated for keeping juveniles in the juvenile system, often citing the financial burden of noncompliance.

Inmate suicide is another key safety concern in jails. A recent report found that suicide has been the leading cause of jailhouse deaths since 2000; in 2013, more than one-third of all inmate deaths in jails were suicides.<sup>43</sup> This corresponds to a suicide rate of 46 per 100,000 inmates—three times greater than the suicide rate in prisons. Most jailhouse suicides occur before trial, among inmates who have yet to be convicted of a crime. In fact, the suicide rate of pretrial detainees is seven times higher than for convicted inmates. Wide variation in suicide rates across facilities suggests that some jails do a much better job than others at screening for suicide risk. The rates tend to correlate with jail size—between 2000 and 2007, the suicide rate in the smallest jails was 167 per 100,000, compared to 27 per 100,000 in the largest jails.<sup>44</sup> Suicides are also frequent among juvenile populations; the suicide rate for juveniles in adult jails was eight times greater than the rate for youth in juvenile detention facilities, and five times greater than the rate among youth in the general population.<sup>45</sup>

Few facilities appear to have the necessary staff and resources to meet the needs of their often vulnerable and high-risk inmate populations. That remains true despite pressure from the federal government to improve conditions (for example, to fix identified problems and constitutional violations, including failure to provide adequate medical and mental health care, protection from harm, use of force, and suicide prevention) in the form of consent decrees and other formal agreements between the Department of Justice and a

**Figure 2.** Trends in the US Incarcerated Population 1983–2015, by Conviction Status



number of jails and juvenile facilities across the country.<sup>46</sup>

## Reforming the System

The justice system has become an important part of the national conversation regarding inequality. Researchers, activists, and policy makers have told the public about the collateral consequences of involvement with the justice system—from police contact to incarceration—and outlined how America’s harsh penal policies disproportionately affect poor, minority communities. This has led to debates about stop-and-frisk, police brutality, and mass incarceration, among other topics. But for too long, jails have been missing from the conversation. As we’ve shown, millions of people cycle in and out of our nation’s jails every year, and many of them are too poor to post bail, suffer from mental illness or substance abuse, and have been accused of nonviolent offenses. Reducing our nation’s overreliance on incarceration—including deliberate steps to address the unequal impact on low-income and minority

communities—must start at the local level.

To cut the jail population and shorten jail stays, we suggest a number of strategies:

- adopt validated pretrial risk assessments;
- expand pretrial services, including pretrial supervision and monitoring and court date notification;
- divert people away from the criminal justice system using civil citation and other diversion programs;
- consider alternatives to detention for people who are sentenced to jail, including community corrections; and
- expedite case processing to decrease the time to trial and overall length of stay.

Most of these strategies are equally relevant for juvenile and adult populations. But we also recommend paying explicit attention to the juvenile justice system,

including decriminalization, diversion, and deinstitutionalization.

## **Pretrial Detention and Release**

Since 2000, the main factor driving jail population growth has been the increase in pretrial detainees (see figure 2). By the end of 2015, more than two-thirds (63 percent) of all jail inmates were awaiting trial (and thus legally presumed innocent). The share is much higher in some jurisdictions; for example, 85 percent of San Francisco’s jail population is made up of people awaiting trial or case resolution.<sup>47</sup> Unnecessary pretrial detention is expensive; the direct cost to county governments of pretrial detention practices alone is an estimated \$9 billion annually.<sup>48</sup>

So how do authorities determine whether a person is released or detained before trial? Pretrial release decisions are most often made by a judge, a magistrate, or a bail commissioner, who typically has three choices: release on bail, release without bail (that is, on the accused’s own recognizance), or hold in jail until trial. In most states, the court must determine whether the accused poses a serious risk to the safety of the community, and how likely it is that he or she will appear in court. As a proxy for such determinations, it’s common practice to set a monetary bail amount to help ensure that defendants appear in court. Money bail has become increasingly widespread since the 1980s and is now the primary pretrial release mechanism in the United States.

In 1992, release on recognizance was the most common pretrial release option. But by 2006 its use had declined by one-third. The same period saw a corresponding increase in the use of money bail. In 2006, 70 percent of people suspected of a felony were assigned

money bail. And average bail amounts have increased substantially. By 2006 the average bail was \$55,500, and half the people who remained in jail until trial faced a bail amount of \$40,000 or more.<sup>49</sup> The Bail Reform Act (1984) introduced the notion that defendants should be released under the “least restrictive conditions” that provide reasonable assurance that they’ll neither flee nor pose a risk to the community.<sup>50</sup> Yet because many people can’t pay bail, they’re unable to benefit from such conditions. The disparate impact on the poor is particularly troubling, as pretrial incarceration can affect employment, housing, and family economic stability. Pretrial detainees may also feel pressure to plead guilty in a plea bargain so they can be released sooner and thus avoid losing a home or job, or resume care of a family member or children.<sup>51</sup> Pretrial detainees also fare worse at the trial stage. Compared to those released before trial, they’re more likely to be convicted of a felony, receive a sentence of incarceration, and receive longer sentences.<sup>52</sup> The focus on money leads to arbitrary pretrial release decisions that deprive people of liberty, often unjustifiably, and produce excessive jail costs. Let’s take a look at our recommended strategies in detail.

*Adopt pretrial risk assessment tools.* One way to limit the number of inmates awaiting trial is to prioritize the pretrial detention of dangerous defendants—and increase the use of personal recognizance and unsecured bonds—by adopting validated pretrial risk assessment tools.<sup>53</sup> Such tools can assess the defendant’s likelihood of appearing in court and reoffending during the pretrial period; they can also help identify treatments and interventions that could reduce the likelihood of committing a new offense. In contrast, pretrial decisions based on money bail hinge on the defendant’s ability to pay,

which indicates neither guilt nor risk in release. Though validated risk assessments are available, only 40 percent of county jails use them at booking.<sup>54</sup> And fewer than 10 percent of jurisdictions use empirically based, data-driven pretrial risk assessments. Counties that have successfully developed and implemented pretrial risk assessment tools report drops in both their jail population and the average monetary bond; such successes have been reported in both the adult and juvenile justice systems.<sup>55</sup>

But not all pretrial risk assessments are created equally. For example, relying on data from defendant interviews can be time-consuming, expensive, and inaccurate. Many risk assessments were designed using data from one jurisdiction. Some risk tools are proprietary, and the criteria they use aren't readily apparent; some may contain criteria that serve as proxies for race or other extra-legal factors.

Over the past few years, the Laura and John Arnold Foundation has worked to develop a national model for pretrial risk assessment, the Public Safety Assessment (PSA), to guide pretrial release decisions. The PSA doesn't include factors such as race, gender, or socioeconomic status. Instead, it focuses on objective information related to the defendant's current offense and offending history to give three scores: one for the likelihood of new criminal activity, one for the likelihood of failure to appear, and one for the likelihood of new violent criminal activity.<sup>56</sup> However, the PSA assesses only risk, not defendants' needs. And many jurisdictions that have adopted the PSA and other pretrial risk assessment tools still continue to use money bail.

*Expand pretrial services.* Since the 1960s, pretrial services programs have gathered information on defendants, given the courts key information for risk assessment, and supervised defendants released on bail, including monitoring compliance with release conditions. In jurisdictions without pretrial services programs, judges must make release decisions using very limited information (for example, they may know only the current charge and a partial criminal history) and with few options for supervision and monitoring during the release period. These judges are more likely to rely on money bail. Pretrial services programs help judges make more informed release decisions, and also provide a range of individualized options to help manage the risks presented by defendants. These options range from notifying low-risk defendants of their court dates via text messaging to supervising release (that is, monitoring compliance with release conditions such as check-ins, curfews, and drug testing) for those who face more serious charges or have been determined to pose a flight risk. As a result, pretrial services programs can help jurisdictions use jail resources more efficiently by decreasing pretrial detention rates and reducing the average length of stay, leading to substantial cost savings.<sup>57</sup>

*Divert people from the criminal justice system.* A third strategy to reduce the pretrial population is to reconsider the criminal justice system's role in responding to misdemeanor offenses more generally. For example, the Misdemeanor Justice Project at John Jay College has objectively analyzed low-level offenses to promote data-driven policy initiatives, including the decriminalization of certain minor offenses in New York City. As part of the city's Criminal Justice Reform Act, these changes

encourage police officers to issue fines and summonses for eligible offenses, instead of making arrests. Many states have statutes permitting civil citations, including citation and release before and after arrest. The New Orleans Police Department is one of many that has increased its use of citation and release. In 2008, the New Orleans City Council mandated the use of a summons in lieu of arrest for municipal offenses (such as public intoxication, disturbing the peace, or criminal trespassing), with the exception of domestic violence. As a result, summonses are being issued in 32 percent of municipal offenses, and 41 percent of municipal offenses other than public intoxication.<sup>58</sup> By offering an alternative to pretrial detention, such citation and release policies can lower pretrial detention rates and reduce costs to local jails by diverting people who pose little risk to the community and are likely to appear in court.

Another option for misdemeanors is diversion. Diversion programs were first used in the juvenile justice system and became an alternative to prosecution for adults during the rehabilitative movement of the 1960s and 1970s.<sup>59</sup> Such programs operate at different stages of the criminal justice process, but pre-arrest diversion programs are the ones most likely to affect jail populations. These pre-arrest programs rely on police officers to divert people suspected of low-level crimes to community-based treatment or services. A good example is Seattle's Law Enforcement Assisted Diversion (LEAD) program, which encourages police officers to direct people suspected of minor crimes, including drug offenses and prostitution, to treatment. Preliminary research finds that LEAD participants were significantly less likely to commit new crimes, suggesting that such programs can not only benefit people

accused of low-level crimes but also save money for local correctional systems.<sup>60</sup> Many jurisdictions are also teaching police officers and other first responders how to handle people who appear to be mentally ill or under the influence of alcohol or drugs, often coordinating with mental health professionals to help connect such people with community services (see Traci Schlesinger's article in this issue for more on diversion).<sup>61</sup>

Civil citations and pre-arrest diversion programs are particularly appealing because they help people avoid criminal justice sanctions, and often connect them to the local services they need. Despite these advantages, such programs can have unintended negative consequences. Many people can't pay the associated fines, which may ensnare them more deeply in the criminal justice system. Local jurisdictions have increasingly used monetary sanctions over the past several decades, at the same time as the incarcerated population has grown.<sup>62</sup> Judges and other court officials have little flexibility when it comes to these monetary sanctions. That is, the amount is usually based on the offense and not the defendant's ability to pay, and sanctions can rarely be revoked or altered.<sup>63</sup> A sanction that a person can't pay is neither useful nor fair. It is indefensible that people who meet the eligibility criteria for diversion programs can be remanded to jail because they can't pay fines or fees.

*Consider alternatives to jail for convicted offenders.* Many of the strategies we've presented help defendants avoid criminal sanctions entirely, consistent with the principle of minimizing the collateral consequences of contact with the criminal justice system. When these options aren't suitable, community corrections can be an

alternative to jail (for more on this topic, see the article by Michelle Phelps in this issue). Community corrections—which may include probation, a split sentence of incarceration and probation, or part of a custodial sentence served on parole—accounts for the largest share of the US correctional population, and it is the most obvious alternative to incarceration for convicted offenders.<sup>64</sup> The decision to use community corrections is made by a sentencing judge, who typically requires the offender to follow certain conditions. Probation officers or supervising agencies can establish additional rules and guidelines, including program participation (for example, transitional housing programs, anger management, alcohol and drug counseling, and mental health counseling) and frequency of check-ins. Those who violate the conditions of probation may face sanctions, including a return to jail.

Some jurisdictions use validated risk and needs assessment tools to guide the conditions of probation. This individualized approach increases probationers' chances of success. Although a number of states have mandated that state agencies use risk and needs assessments to guide supervision, the use of these assessments at the local level is more limited. Instead, local jurisdictions often apply a standard set of guidelines to probationers, which can increase the odds that rules will be violated.<sup>65</sup> According to a recent report from the Vera Institute of Justice, using validated risk and needs assessment tools for people placed on probation is "the most important change needed to improve supervision and reduce recidivism."<sup>66</sup>

*Expedite case processing.* A final way to reduce the number of people in jail and decrease the average length of stay for jail

inmates is to expedite case processing. That can mean limiting the time between arrest and first appearance hearings, for example, by using video conferences. Other strategies include reduced continuances and vertical prosecution, which is a case organization method that encourages judges and attorneys to stay on the same case until it's completed. Large jail systems might also consider hiring a jail release coordinator who ensures that cases awaiting trial are moved along, and coordinating with local social service agencies and service providers to see that inmates are released to appropriate programs, facilities, and treatment centers.<sup>67</sup> The fact that jail turnover in small jurisdictions is three times higher than in the largest jails suggests that lessening the burden of case processing, as well as the burden of admissions and releases, could help reduce inmates' overall length of stay.<sup>68</sup>

### A Focus on Juveniles

The juvenile justice system has always been oriented more toward rehabilitation than the adult system. We must maintain that orientation so that kids get prevention and treatment resources early in life to derail problem behaviors before they become firmly entrenched. Promisingly, over the past several years many states have begun to reconsider policies regarding the transfer of juveniles to adult court that were enacted during the Get Tough movement. Juveniles should be treated as juveniles, and juvenile processing should occur in the juvenile court system. Similarly, to interrupt the school-to-prison pipeline and mitigate the collateral educational damage caused by harsh school sanctions, we must reverse the trend toward zero-tolerance policies and decriminalize infractions that occur in schools.<sup>69</sup> The diversion programs described above, which

allow eligible first-time offenders to avoid formal sanctions, are promising. But such opportunities must be equally available to all youth, so that they don't contribute to racial disparities. Finally, commitment to correctional institutions—whether juvenile or adult facilities—must be a last resort. Among the wide-ranging consequences of juvenile detention are an increased risk of recidivism and poorer physical and mental health. Pretrial detention of youth also increases the likelihood that their cases will be handled formally and that they'll receive an out-of-home placement. Yet detention's most detrimental effect in the long term may be its impact on educational attainment and later employment. Keeping youth out of detention facilities and in the community gives them a better shot at achieving their educational goals and avoiding future involvement with the criminal justice system.<sup>70</sup>

## Jails in an Era of Criminal Justice Reform

### Prison Downsizing and Jails

Trends in prison and jail population growth over the past few decades appear to be closely related. Accordingly, as criminal justice reform became a viable possibility, it seemed plausible that decarceration would reduce jail and prison populations alike. Recent evidence, however, suggests that the size of prison and jail populations are not inherently linked.

As a result of a 2011 US Supreme Court decision, *Brown v. Plata*, California was ordered to downsize its prison population by 25 percent within two years. To comply with this order, Governor Jerry Brown signed the Public Safety Realignment Act (A.B. 109), which effectively transferred

authority for people convicted of certain “non-non-nons” (nonviolent, nonsexual, nonserious offenses) from the state prisons and parole to county jails and probation. The idea behind this shift is that local communities are better suited to promote rehabilitation and reentry. Yet for California's realignment experiment to succeed, counties must be able to bear the burden the state placed on them.

Counties received state funding to help care for the increased number of offenders occupying local jails and under community supervision. They were also granted considerable discretion in managing these funds—in terms of both allocation and setting priorities. But the statewide initiative was rolled out with little warning, and it overwhelmed many communities. A number of problems have cropped up. For example, because only the current conviction is considered when determining whether to place offenders on state parole or county probation, counties have seen an influx of people who committed serious and violent offenses in the past. As a result, local probation offices are facing unmanageable caseloads, and community responses have tended toward surveillance rather than rehabilitation. Observers have also worried about public safety. Given the complex needs of the growing number of offenders under local authority, communities are struggling to provide essential health care and social services, including mental health care and substance abuse treatment. County officials must also deal with growing jail populations and lengthened jail sentences. Jails are typically used to house convicted offenders for up to one year, but sentences are now extending beyond that, raising the question of whether local jails are suited to longer-term confinement.

Although a key objective of realignment was to support community-based programming, a portion of the funds was to be used for county jail construction—suggesting that increases in the jail population were anticipated.<sup>71</sup> Coupled with longer jail sentences and the jails’ inability to provide adequate services and treatment, the rise in jail populations calls into question the effectiveness of realignment as a decarceration strategy. Stanford University legal scholar Joan Petersilia has characterized what happened under realignment as “trans-incarceration”—that is, simply shifting the population of convicted offenders from one type of institution to another.<sup>72</sup> That’s particularly troubling in California, where realignment was driven by a Supreme Court order to rectify the violation of prisoners’ constitutional rights. Early evidence suggests that instead of being remedied, those constitutional violations have simply been passed from the state to the county level. California’s experiment with prison downsizing is important to keep in mind as we devise future prison reforms.

## Conclusions

In the national debate about the high costs and deleterious consequences of the US criminal justice system, we’ve reached a general consensus that we need to scale back the number of men and women housed in our state and federal prisons. Yet somehow, despite the fact that millions of people cycle in and out of our nation’s jails, these local facilities remain at the periphery of the discussion and outside the purview of most criminological research. This oversight has allowed jails to keep operating in ways that are both costly and unjust, and that often contradict scientific evidence.

Our review of the research shows that jails touch the lives of millions of people each year, the majority of whom face problems such as poverty, homelessness, unemployment, substance abuse, and mental or physical illness. Furthermore, although jails take billions of dollars to operate, their design is often at odds with the populations they serve, given that they were intended for short-term stays. Limited access to physical and mental health care and substance abuse treatment is especially problematic. Because mental health problems and substance abuse often underlie offending behaviors, the failure to treat those issues translates to high rates of recidivism and high costs to local correctional systems.

Strikingly, two-thirds of those detained in our nation’s jails have yet to be convicted of a crime. Pretrial detention is intended for people who pose a threat to public safety or are unlikely to appear in court. Yet as many as nine in 10 pretrial detainees remain in jail because they can’t post money bail. This practice, which keeps people behind bars despite the legal system’s presumption of innocence, costs communities roughly \$9 billion a year. Numerous studies have documented pretrial detention’s cascading effects on decisions made at other stages of case processing. And these consequences aren’t evenly distributed, because members of racial/ethnic minorities are less likely to meet bail. Thus pretrial detention and money bail further contribute to inequality in the criminal justice system, and exacerbate the problems of those at the margins by jeopardizing homes, jobs, relationships, and mental and physical health.

Fortunately, we have alternatives. Because money bail policies and practices are the greatest contributors to the jail population,



we must first take steps to reduce the use of financial forms of release. The research we reviewed makes clear that money bail doesn't meet the standards of evidence-based practice. No empirical evidence suggests that putting up a cash bond increases public safety or the odds of court appearance. Many jurisdictions have already moved to eliminate cash bail. For example, Washington, DC, uses money bail in just 5 percent of cases, cutting out the need for for-profit bail bonding companies. Instead, DC jails rely heavily on a risk assessment model and pretrial service system, and they operate at 45 percent capacity. Similar changes are coming in New Orleans, where a recent vote jettisoned bail for most minor offenses. Statewide reforms have also been implemented in Colorado, Kentucky, Maryland, and New Mexico. Most recently, New Jersey joined the list of states that have taken a more evidence-based approach to pretrial release. Using a validated risk assessment tool to guide release decisions, New Jersey judges set bail in only three of the 3,382 cases processed during the first month after reform.

In addition to eliminating money bail, jurisdictions should adopt validated risk assessments to determine whom to release and under what conditions. Jurisdictions should also make use of pretrial services agencies wherever they're available. Such agencies perform a variety of functions: they gather information and conduct risk assessments to make release recommendations to court officials; and they also handle supervision, treatment, and court date notification to monitor defendants and improve compliance during the release period. Studies confirm that it's more cost-effective to provide these services in the community than to detain defendants

before trial, so it may be worthwhile to use pretrial services agencies more extensively.

Police officers can also help manage pretrial incarceration levels. In particular, jurisdictions can enlist police officers to participate in pre-arrest diversion programs by empowering them to steer people suspected of minor offenses to community-based treatment and services in lieu of arrest. Some jurisdictions are now training officers to respond to people with behavioral health problems. Police departments are also forming partnerships with mental health professionals to connect people with community-based services. Another way that police can reduce arrests and detention levels is to issue more civil citations. With citations and summonses, officers can circumvent the process of arrest and booking by releasing people suspected of certain offenses who pose little risk to the community and are likely to appear in court.

We must also evaluate the use of jail incarceration for convicted offenders, most of whom are serving sentences of up to one year for nonviolent offenses related to traffic, property, drugs, and public order. In particular, we must consider whether confining people convicted of relatively minor offenses in settings with few rehabilitation programs is the best way to use local resources—especially when affordable and effective alternatives to jail are available. For example, given the low-level nature of the crimes committed by most jail inmates, communities could further cut their jail populations by using community corrections.

In our review, we've discussed these alternatives in detail and identified many

successful examples—both for pretrial detainees and convicted offenders. But there's a real dearth of research and evaluation on jails and these alternative practices. Thus communities are implementing programs and services without a clear understanding of what works best for jail inmates. We need research and evaluation to take a serious look at current practices and identify what works, under what conditions, and for whom. Just as importantly, we must invest in the infrastructure, programs, and services that do work, and abandon those that don't.

We're encouraged by recent attention to local justice systems and, in particular, by the Safety and Justice Challenge, a massive initiative funded by the John D. and Catherine T. MacArthur Foundation that supports local jurisdictions across the country as they devise strategies to reduce jail incarceration. We look forward to the knowledge and policy changes generated

by efforts like these. Still, we believe that funding agencies, scholars, policy makers, and practitioners should devote substantially more attention to local jails: improving their operation, reducing their inmate populations, and identifying what practices and interventions work best in these correctional systems. If we continue to neglect the study of jails and postpone the implementation of evidence-based practices, local governments will continue to spend millions of dollars on programs that may be not only ineffective but even detrimental to inmates.

Finally, we urge researchers and policy makers to keep jails in mind when discussing large-scale decarceration. California's experiment with prison downsizing suggests that it's a mistake to omit jails from strategic efforts to reduce America's prison population, given the central role that local correctional systems play in rehabilitating offenders and helping them reenter society.

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