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Systemwide Strategies To Alleviate Jail Crowding

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The words "jail" and "crowding" seem inseparable these days. A 1983 National Institute of Justice survey of more than 1,400 criminal justice officials from all parts of the country identified jail and prison crowding as the most serious problem facing criminal justice systems.¹

The reality of more prisoners than available beds creates a dilemma for local justice officials. Crowded jails may compromise public safety through a lack of space to confine those who pose serious threats to the community. Lawsuits challenging crowded conditions may constrain a community's ability to incarcerate.

A recent Bureau of Justice Statistics *Bulletin* notes that 22 percent (134) of the Nation's 621 largest jails (those with a capacity of more than 100) were under court order in 1984 to expand capacity or reduce the number of inmates housed, and 24 percent (150) were under court order to improve one or more conditions of confinement.²

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From the Director

Communities throughout the Nation face the problem of jail crowding: Having more prisoners than space to house them. Despite construction innovations that may help cities or counties expand their confinement capacity both more quickly and at less expense, a host of problems, including fiscal pressures sometimes, may indicate solutions other than construction.

Some consequences of jail crowding are well known: Increased victimization and fear, decreased public confidence that dangerous persons can be locked up, lawsuits, court-imposed limits on the number of prisoners, damage to facilities and equipment. Crowding increases both tension in the institution and the strain on correctional budgets.

Less obvious but equally worrisome are delays in case processing due to cumbersome access to prisoners and the limits put on such necessary judicial options as pretrial release and sentencing.

National Institute of Justice surveys have shown that officials in law enforcement, courts, corrections, and other parts of the justice system were virtually unanimous in naming prison and jail crowding their number one concern.

Recognition of the gravity of jail crowding, however, offers a glimmer of hope. Officials in a growing number of jurisdictions have concluded that if each part of the local justice system does what it can to ease crowding, the sum of all these small solutions has a notable cumulative effect.

The separate decisions of law enforcement, judicial prosecution, defense, pretrial services, probation, corrections, and other officials can interact to influence the number of jail admissions and length of confinement. Jurisdictions taking this systemwide approach find that seemingly minor modifications in case processing can both reduce crowding and, more important, improve the overall administration of justice.

Jail crowding is a local problem that must be dealt with locally. The National Institute of Justice hopes to contribute to such endeavors, however, by assessing and synthesizing information on the program and process changes that local jurisdictions may want to consider. Without information on the experience of other jurisdictions, informed policy decisions are hard to come by.

At the Institute, our role is one articulated by President Reagan and Attorney General Meese: To support, not to direct, local responsibilities. Experience demonstrates that we have many useful tools to deal with jail crowding. This *Research in Brief* offers local jurisdictions their choice among such options.

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Building or expanding facilities is often necessary to house those who must be incarcerated. The time and costs of construction and operation of new institutions, however, argue that other options should not be overlooked.³

For the local sheriff or jail administrator, jail crowding creates increased prisoner and staff tensions, increased wear and tear of facility and equipment, budgetary problems from overtime staffing, and an inability to meet program and service standards. Less frequently recognized are the problems crowding creates for other justice system officials:

- Judges, prosecutors, probation and parole, and other officials often find crowding a severe constraint in cases where jailing offenders appears necessary but space is unavailable.
- Prosecutors, public defenders, and pretrial services officers find their functions impaired by delayed access to inmates caused by difficulty in processing large numbers of offenders.
- Court functions overall may suffer when crowding affects the movement of inmates to and from scheduled appearances.

Too often, however, agencies outside jail management are not fully involved in efforts to cope with the problem.

Many jurisdictions address the symptoms of jail crowding but leave the underlying causes unaddressed. Other jurisdictions, however, view jail crowding as a problem that demands the cooperative involvement of all key figures in the local justice system.

Given the success of this *systemwide* approach in a number of locations, the National Institute of Justice sponsored development of *Alleviating Jail Crowding: A Systems Perspective* (NCJ 99462, 1985), based on a survey of justice system officials and programs throughout the United States. The report stresses that while construction of new facilities may be part of a community's solution to crowding, emphasis must also be placed on

ensuring that existing bed space is used effectively. Accordingly, the report highlights the role of each local criminal justice agency in ensuring the effective use of jail bed space to prevent crime and maintain public safety. This *Research in Brief* summarizes the full report.

Looking at the local justice system

Virtually every decisionmaker in the local justice system exercises discretion that can affect the jail population. Jurisdictions using a systemwide approach to jail crowding see the local justice system as a screening mechanism that can be modified to enhance the use of scarce jail space.

These jurisdictions develop case-processing flowcharts to understand the details of their case-handling process from the initial contact to final disposition. Flowcharts illustrate the stages of the legal process, specify the points at which decisionmaker actions affect the jail population, and identify opportunities to alleviate crowding.

Understanding the local flow of cases can help policymakers identify program and process changes to reduce crowding. Program changes frequently involve eliminating the jailing of persons whom a community deems inappropriate for criminal justice processing, such as the mentally ill.

Process changes improve system efficiency, eliminating case-handling "catch points" that unnecessarily prolong the confinement of persons who might eventually be released through bail, probation, or transfer to the State prison.

Reducing length of confinement often becomes the first focus of population reduction, because efficiency measures are generally less costly and more readily implemented than new programs. Local analysis often reveals that the primary underlying cause of crowding is excessive length of confinement due to inefficient case processing.

How system decisionmakers can affect jail crowding

System studies in a number of jurisdictions have suggested, as one judge said, "a lot of little ways" to halt or reverse jail population increases without releasing serious offenders. The following discussion highlights just a few of the "little ways" available at different parts of the system.

Law enforcement—Decisions surrounding local arrest practices—whether to arrest, transport to jail or stationhouse, book or detain for bail setting—are critical determinants of jail population size. Law enforcement practices both before and after arrest can be modified to reduce jail admissions. Jurisdictions such as San Diego County, California, and Frederick County (Winchester), Virginia, use perhaps the most common form of prearrest diversion through short-term "sobering up" facilities for public inebriates.

San Diego has been successful in reducing crowding through the use of a privately operated detoxification reception program where inebriates must remain for a minimum 4-hour period. Though in a largely rural area, the Winchester, Virginia, detoxification program, operated by the Division of Court Services, has also diverted a large number of persons from jail.

Similar prearrest diversion programs are in effect for persons involved in family disputes⁴ and for homeless persons in a number of jurisdictions throughout the United States.

Law enforcement officials in Galveston County, Texas, have instituted practices to divert the mentally ill—a population that frequently makes up 10 to 20 percent of a jail's population. A team of deputies receives special training to assist in meeting the emergency needs of the mentally ill, thereby allowing the agency to take them directly to a mental health facility.

Many agencies also use a number of postarrest practices such as stationhouse release before booking, field citations, and court-delegated authority to release suspects according to a bail schedule to eliminate unnecessary confinement.

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Jail administrators—Elected sheriffs or appointed jail executives are often viewed as the managers most affected but least powerful in dealing with jail crowding. While having little direct control over admissions and length of confinement, jail administrators nevertheless can help reduce crowding by assuring ready access for pretrial release screening and bail review.

Quick access to detainees tends to be a common characteristic of successful programs to reduce jail crowding. For example, the sheriff in Mecklenburg County (Charlotte), North Carolina, allows pretrial services staff to be present during the jail admissions process, which gives them access to defendants and speeds decisionmaking.

Individual judges often lack feedback regarding prisoners in jail awaiting or following adjudication. Yet such information is of interest to the court and critical to jail population reduction. The Bexar County (San Antonio), Texas, administrator provides data to help judges monitor the court status of prisoners and prevent length of confinement from being extended through oversight or inattention.

In some other jurisdictions, jail administrators are delegated authority to release defendants pretrial or divert drunk drivers to treatment centers. Other administrators help develop nonjail pretrial-release and sentencing options or cooperate with other jurisdictions to alleviate crowding on a multicounty basis.

Prosecutors—Prosecutors act at more case-handling decision points than any other officials. This gives them an especially important role in containing jail population growth.

Early case screening by prosecutors reduces unnecessary length of confinement by eliminating or downgrading weak cases as soon as possible.

Assistant prosecutors in Milwaukee County, Wisconsin, review arrests around the clock by examining police records and conducting meetings between complainants and suspects. This practice enables Milwaukee prosecutors to decide on the appropriate charge within 24 to 36 hours after arrest.

Prosecutors in Milwaukee also use “vertical case processing”—assigning the same attorney or team of attorneys to prosecute a case from start to finish. Though not necessarily the case in all jurisdictions, reassigning cases from one assistant prosecutor to another while the matter is before the court—“horizontal case processing”—may cause stagnation in caseload, increased requests for continuances, and lengthened time to trial.

Prosecutor cooperation is essential for alternatives in arrest, pretrial confinement, and sentencing. Prosecutor participation and leadership are essential to the effectiveness of task forces dealing with jail crowding. Since the prosecutor “owns” cases on behalf of the State, others are rarely willing to propose case-handling changes without the prosecutor’s support.

Recognizing that a lack of space to confine dangerous persons is a threat to public safety, prosecutors in a number of jurisdictions have taken an active role in reducing jail crowding by serving on “key court officials” groups or chairing jail population reduction boards.

Pretrial services—Providing background information on defendants, release recommendations, and other pretrial assistance can be an important component of solutions to crowding. Pretrial services can often help merely by adjusting staff schedules to ensure timely screening and interviews for a maximum number of defendants.

In Mecklenburg County, North Carolina, for example, pretrial services and magistrate bail setting are available 24 hours, 7 days a week. In Kentucky, pretrial staff are on call 24 hours a day to interview persons arrested, notify judges by phone of the prisoner’s qualifications for release, and supervise the release process if nonfinancial bail is authorized.

Limited release authority is delegated to pretrial services staff in an increasing number of jurisdictions. In San Mateo County (Redwood City), California, pretrial staff are authorized to release misdemeanor suspects prior

to their first court appearance. Seattle, Washington, is experimenting with delegated release on certain felony charges.

Many pretrial programs respond to jail population pressures by expanding the range of release options (conditional and supervised release, third-party custody, unsecured bail, deposit bail) and by conducting regular bail reviews for those detained for trial.

A National Institute of Justice study found that supervised release programs in Miami, Florida; Portland, Oregon; and Milwaukee, Wisconsin, significantly reduced the bail-held population without significantly increasing the risk to public safety.⁵

Judiciary—Judges make more decisions affecting jail population than anyone else; this often makes them leaders in seeking jail-crowding solutions. Judges can issue summonses instead of arrest warrants; provide guidelines authorizing direct release by police, jail, and pretrial staff; and provide bail setting outside normal court hours. Evaluators of the 4-year Jail Overcrowding Reduction Project of the former Law Enforcement Assistance Administration found that the project’s most successful sites were those with strong judicial leadership.

Many courts provide 24-hour bail-setting magistrates. The King County (Seattle), Washington, District Court has a “three-tier” release policy that reduces court time, jail admissions, and length of confinement. The court-established guidelines specify the charges for which pretrial services staff may (1) release without consulting the court, (2) release after phoning a duty judge, or (3) make recommendations to the court in the most serious felony cases.

Reducing court delay is crucial to effective use of jail space. Bexar County, Texas, seeks to eliminate “dead time” by having the court administrator work with a jail case coordinator to identify cases in need of special attention and processing steps that can be shortened. Each judge receives weekly a list of prisoners awaiting indictment, trial, sentencing, or revocation in his or her court.

One result is a 50-percent time saving in disposing of misdemeanor charges and thus a significant cut in overall length of confinement.

Many judges have worked to extend the range of nonjail sentencing options, using probation supervision, suspended sentences, fines, community service and restitution, halfway house placements, and specialized treatment facilities as true alternatives to incarceration.

A growing number of courts now defer service of jail sentences, when the jail is at capacity, in cases in which jail is believed an appropriate sentence but immediate jailing is not essential for the community's safety.

Defense—The National Institute's field test on Early Representation by Defense Counsel found that early screening for indigency, defender appointment, and defendant contact can decrease length of confinement and thus yield substantial savings of jail space.⁶ Vertical case processing in defense offices also helps cut length of confinement.

In Mecklenburg County, pretrial conferences between defense and prosecution help identify, eliminate, or downgrade marginal cases and facilitate plea negotiation. Both offices can thus budget staff time efficiently and lessen pretrial confinement.

In St. Louis, Missouri, efforts to reduce staggering defender caseloads by appointing private attorneys in felony cases have also reduced case disposition time, stimulated bail review, and resulted in shorter pretrial confinement.

Probation and parole—Not only do probation and parole agencies provide nonjail alternatives for sentencing, they can enhance case-processing efficiency by streamlining presentence investigation (PSI) procedures and expediting revocation decisions. All this helps cut length of confinement.

In Brevard County, Florida, the jail population oversight committee spotlighted PSI delays and worked with

probation and parole officers to cut PSI preparation time from 90 days to 30 or 35 days for jail cases. The county also cut to 24 hours the time required for decisions on probation revocation, thus decreasing the use of jail beds for persons on probation "hold" orders.

Outside the local level—State legislation, court rules, executive orders, and other "external factors" can affect jail populations. Guidelines on diversion, bail policy, appointment of legal counsel, sentencing practices, and jail operation all can affect the range of solutions available.

Other outside factors that need to be considered in local planning for jail use include local demographics, availability of State and Federal resources, public opinion and media coverage of criminal justice issues, activities of local civic groups and community organizations, and political campaigns and referendums.

Outside the system—Organizations outside the justice system can be instrumental in alleviating shortages of jail space by providing emergency shelter, detoxification, and treatment facilities for the mentally disturbed, public inebriates, and drunk drivers. Many jurisdictions use local mental health centers to provide prompt mental health assessments, diversion, and outpatient treatment. Private agencies in several jurisdictions provide temporary shelter for juveniles, pretrial supervision, and community-service placements.

Formulating solutions

While individual parts of the system can help through such practices as those highlighted above, one or two agencies in the local justice system are not enough to bring about comprehensive solutions to crowding. Jail crowding results from the actions of many, with their decisions interacting to determine jail admissions and length of confinement. Effectively combating crowding requires taking into account the interactive nature of the problem.

Jurisdictions that successfully implemented a systemwide approach to jail crowding have identified as critical needs (1) the participation of key decisionmakers in formulating solutions and (2) detailed information on case processing and on the actual characteristics of the jail population.

Key decisionmaker participation—Whether it is a "jail population management board" or some other body, experience in many jurisdictions argues for a forum that encourages communication and participation by judges, prosecutors, sheriffs, police, probation officials, and other policymakers in developing solutions to crowding.

Collective involvement provides increased awareness of the impact of one agency's actions on another and of the other agency's procedures. Also, recommendations of a broadly constituted planning group are more likely to gain systemwide support. Finally, the political pragmatism that may accompany committee action may permit some participants to support more imaginative policies.

Information—A systemwide approach to jail crowding requires improved information about jail use. In addition to the detailed flowcharts that help assess the timeliness of case-processing decisions and the availability of nonjail options, planners need information on precisely who or what type of person is in jail and why and how long they stay. This permits administrators to learn the frequency of admissions and the size and variation of distinct segments of the jail population, as well as indicating sluggish case processing.

Statistical analysis of the population identifies symptoms of jail crowding, greatly enhancing the ability to identify and treat the causes. But while jail population data are valuable, they should not overshadow case-processing information.

Analysis of data on the jail population might show, for example, that persons detained before trial are released only

after 7 to 10 days. Alone, this finding could indicate the need for a special pretrial services program to expedite screening and bail review. Information on caseload, however, might reveal the actual cause to be inefficient case processing.

Evaluation information is also critical to developing effective strategies. Evaluation data should be collected and analyzed to determine if planned modifications in decisionmaking are being made and the resulting positive or negative implications for crowding and public safety.

Implementing strategies and conclusions

Localities that take a systemwide approach to jail crowding generally follow some important steps:

Involve all key system decision-makers;

Collect all necessary data on jail population and case processing;

Identify, implement, and evaluate appropriate changes in programs or processes; and

Inform the public of system changes when initiated and successful strategies when confirmed.

While many communities have taken great steps, experience has also confirmed the complexity of the jail crowding problem and the futility of seeking a panacea through one or two changes. Long-term success requires a variety of solutions and, most important, the time, patience, and attention of the entire criminal justice community.

Andy Hall is an associate of the Pre-Trial Services Resource Center, Washington, D.C., and principal author of the NIJ publications Alleviating Jail Crowding: A Systems Perspective and Pretrial Release Program Options (NCJ 94612).

Notes

1. Stephen Gettinger, "Assessing Criminal Justice Needs," National Institute of Justice *Research in Brief*, June 1984, NCJ 94072.
2. *Jail Inmates 1984*.
3. Those jurisdictions that must build or expand jails can learn from the experiences of others through the National Institute of Justice Corrections Construction Initiative. For information, call 800-851-3420 or 301-251-5500 and ask to speak with a corrections specialist.
4. In violent family disputes, however, research now indicates that arrest is the preferred police response. This research, now being replicated under NIJ sponsorship, was reported in Lawrence W. Sherman and Richard A. Berk, *Minneapolis Domestic Violence Experiment*, Washington, D.C., Police Foundation, 1984, NCJ 98905.
5. James Austin, Barry Krisberg, and Paul Litsky, *Evaluation of the Field Test of Supervised Release—Final Report*, 1984, NCJ 95220.
6. An executive summary of the *Early Representation by Defense Counsel* evaluation, by E.J. Fazio, Jr., et al., is available in microfiche as NCJ 97595.

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