



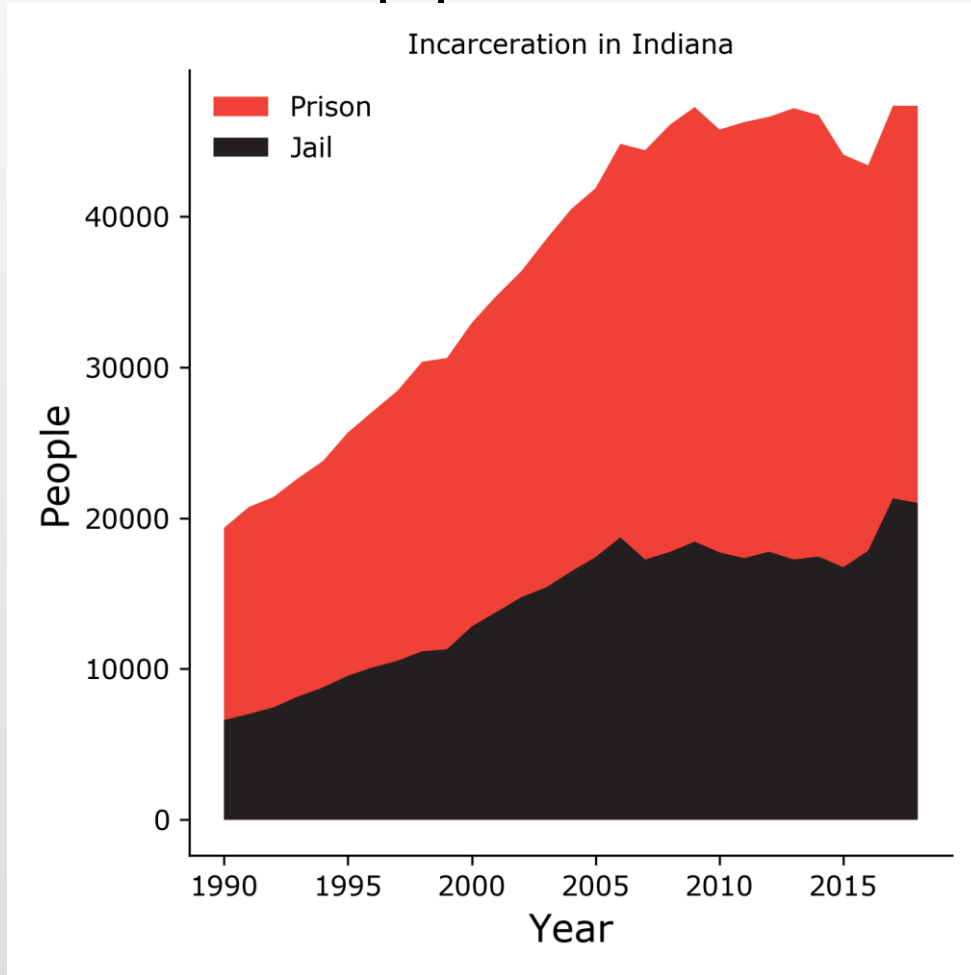
Owning A Jail



INDIANA JAIL CROWDING

- According to the Indiana Criminal Justice Institutes 2018 evaluation, 77 percent of Indiana's jails were overcrowded or at capacity. There were an estimated 21,187 people in Indiana county jails in 2018, more than half of whom were awaiting trial and had not been convicted of a crime.
- In 2013, lawmakers enacted House Enrolled Act 1006, as the first major change to state criminal code in three decades. It separated murder into its own crime class and expanded felony classifications into six categories. In addition, House Enrolled Act 1006 allowed for several new changes to the criminal code. The proposal included a new rule stating that persons convicted of a Level 6 felony could no longer be sent to the Indiana Department of Correction and established new funding options for mental health and addiction services, among other changes.

What Happened in Indiana



- As reported by the Vera Institute an independent research group that assesses state justice systems nationwide, reported that Indiana was the only state in the last 15 years to see a jail population growth of 32 percent or more in a two-year period (2016-2017). (see https://www.vera.org/in-our-backyards-stories/crisis-at-the-crossroads-of-america_).



INDIANA JAIL CROWDING

- Research Associate for Vera Jack Norton says Indiana's reform efforts also haven't reduced costs, like so many legislators promised. "Instead of a real reduction of costs, it's been the devolution of costs, the cost of mass incarceration, from the state onto counties by increasing jail incarceration rates at the county jail level," Norton says. "Which of course creates a more stripped down, locally based system of incarceration."



County Commissioners Responsibility

- IC 36-2-2-24
 - Sec.24. (a) The executive shall establish and maintain a county courthouse, county jail, and public offices for the county clerk, the county auditor, the county recorder, the county treasurer, the county sheriff, and the county surveyor.
 - (b) Offices for the surveyor must be in the courthouse or at the county seat.
 - (c) Offices for the sheriff may be located:
 - (1) in the courthouse
 - (2) inside the corporate limits of the county seat; or
 - (3) outside the corporate limits of the county seat but within the limits of the county.



Establish and Maintain

- Indiana Courts have interpreted this statute (IC 36-2-2-24 (a))- to create a duty "**to keep the jail open for use and in good repair.**" Weatherholt v. Spencer County, 639 N.E. 2d 354 (Ind. Ct. App. 1994).
- "Maintain is to be synonymous with "kept in good repair."



Establish and Maintain

- "Once the county establishes and then reasonably maintains the **jail**, it is not responsible for administering the manner of an inmate's incarceration." Hooper v. Lain, Dist. Court, ND Indiana 2015
- The county, and thus its commissioners, have a duty to "maintain" the county jails, which requires them "to keep the jail open for use and in good repair." Lewis v. Mellinger, Dist. Court, SD Indiana, 2017
- When an inmate in a county jail is injured as a result of the manner in which the jail is administered and not by any defect in the jail facility, the county does not owe him a duty of care.... Rather, it is the sheriff who is charged with a statutory duty to administer the jail in a manner which preserves the safety of inmates." Raketich v. Porter County, Dist. Court, ND Indiana 2010



Open and in Good Repair

- Remember...you cannot remove yourself from being involved in legal issues arising from jail operation. County executives are routinely named in jail crowding lawsuits.
- All jails are an unavoidable and prominent concern.
- Have you visited the Jail?
 - What did you examine?
 - What are your jail's operational strengths and weaknesses?
 - How do you determine a request for increased funding?
 - Are you familiar with the jail's current lawsuits?



Open and in Good Repair

- Is Your Jail Maintained and Kept in Good Repair?
 - The Indiana Jail Standards require the sheriff to submit no later than March 31 after the conclusion of each calendar year, a written report setting forth the annual statistical data and the extent and availability of services and programs to inmates identifying major events that have occurred in the jail and unfunded operational needs. The report shall be directed to the circuit court judge, and copies shall be provided to the state jail inspector, president of the county council or city-county council, prosecutor, and president of the board of commissioners.
 - This report is to include a statement on the maintenance and upkeep of the jail and any unfunded needs and projects essential to jail operations and maintenance.



Open and in Good Repair

- Indiana Jail Standards Require:
 - Emergency equipment (equipment necessary to maintain central lights, power and communication) is tested at least weekly for effectiveness.
 - All areas of a jail shall be inspected by a designated jail official at least once per week. Each living area shall be inspected by designated jail officials daily. Written inspection reports shall be maintained, and steps shall be taken promptly to remedy unsafe or unsanitary conditions.



Signs of Maintenance Issues

- Graffiti, dirt and grime on the ceiling, walls and floors.
- Presence of mold.
- How does it smell?
- Lighting and plumbing issues.
- Signs of clutter.
- Security equipment not functioning.
- HVAC and Kitchen equipment in proper working order.



Does the Jail Have Adequate Staffing

- Understaffing can be detectable by:
 - The amount of overtime.
 - The number of jail posts that are not adequately covered.
- Safety of staff and inmates should take precedent over budget problems.



Policies and Procedures

- Must keep in mind the constitutional and civilized approach to dealing with inmates.
- Is there a policy manual?
- Are the policies up to date?
- Are the policies and procedures translated into consistent jail operations?



Design Issues

- How does the design of the jail affect the jail's security?
- Does the design remove staff from direct contact with inmates?
- Can an inmate in a cell contact staff in an emergency?
- Compliance with the Americans with Disabilities Act.
- How to manage the mentally ill while incarcerated?
- Does the design allow for appropriate separation of violent from non-violent, male from female, transgender, PREA considerations, gangs, security threat groups and PC inmates?



When the Jail is Crowded

“The court is well aware of the premium on bed space. Prime real estate in the state of Indiana now is jail beds.” - Chief Judge Jane Magnus-Stinson

- When crowding results in substandard inmate conditions, the risk of liability increases.
- If the jail fails to meet basic standards for health and safety, the county is at risk for a lawsuit.



Jail Crowding and Inmate Housing

- Crowding may result in inmates sleeping in common areas or jail officials may “multi-bunk “ inmates. Jail officials must show that such housing for a pre-trial detainee is **“rationally related to a legitimate nonpunitive governmental purpose” and their (jail officials) actions do not appear excessive in relation to that purpose.**
- The purpose of crowding cannot be to further the county’s interest in housing more inmates without creating more jail space. Officials need to demonstrate the County’s interest in **ensuring a detainee's presence at trial, maintaining security and order or anything else which has the tendency to promote the effective management of the jail.**
- County officials must consider the following factors when multi-bunking:



Factors

- Factor 1- Space – Inmates must be entitled to adequate space. Courts have determined that celling with less than 24 square feet per inmate was unconstitutional.
- Factor 2 - Time out of cell – How long does an inmate spend in his cell.



Factors

- Factor 3 – Hygiene. What is the overall cleanliness of the jail cells and common housing areas? How often do inmates receive cleaning supplies? How are complaints handled?
- Factor 4 Your state of mind – are crowded conditions inflicted deliberately or recklessly? What are you doing to remedy crowded conditions? Is there a record of action?



Managing a Crowded Jail

Areas of Concern include...

- Substandard healthcare. Is the care provided adequate or cursory (inadequate)?
 - This includes addressing mental health concerns
- The continued use of segregation cells for general population housing.
- Violence among inmates and inmates being denied protective custody.
- Lack of exercise.
- Staffing.
- Excessive Noise that results in hearing loss or mental distress.
- Inadequate Ventilation – is mold present and/or a persistent smell?
- Faulty plumbing and electrical issues.
- Adequate space for showers.
- Inadequate service areas (Kitchen and laundry).



Managing Mental Illness

- According to NAMI, in a mental health crisis, people are more likely to encounter police than get medical help. As a result, 2 million people with mental illness are booked into jails each year.
- Once in jail, many individuals don't receive the treatment they need and end up getting worse. After leaving jail, many no longer have access to needed healthcare and benefits. A criminal record often makes it hard for individuals to get a job or housing. Many individuals, especially without access to mental health services and supports, wind up homeless, in emergency rooms and often re-arrested. At least 83% of jail inmates with a mental illness did not have access to needed treatment.



Mental Illness in Jails

- The mentally ill remain in jail longer than other inmates
 - Difficult to understand and follow jail rules
- Jailing the mentally ill is costly
 - Cost of psychiatric medications
 - Cost of settling or losing lawsuits stemming from the treatment
- Mentally ill inmates create behavioral problems that result in isolation
 - Because of impaired thinking, many inmates with serious mental illness present behavioral management problems.
- More likely to commit suicide
 - Multiple studies indicate as many as half of all inmate suicides are committed by the estimated 15 – 20% of inmates with serious mental illness

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Managing Mental Illness – A New Approach





The Opioid Issue

- A 2010 study found that roughly 65 % of the nations then 2.3 million prison inmates suffered substance abuse or addiction disorders.
- The consequences of doing nothing can be fatal...In the first two years following release from prison, former inmates are 3.5 times more likely to die compared with their peers in the general population. In their first 2 weeks of freedom, their risk of death, mainly due to drug overdose is 13 times higher.
- Opioid Use Disorder and the Americans with Disabilities Act
 - The disorder is a chronic condition and is often accompanied by changes to brain chemistry. A policy and practice of denying life-saving medication to people suffering from Opioid Use Disorder (OUD) is discrimination in violation of the ADA.
 - MAT services can include Suboxone, Subutex and Vivitrol. By stabilizing physical and psychological cravings for opioids, MAT can help people manage their OUD and achieve better outcomes in recovery.



OUD Liability

- Kortlever v. Whatcom County – jails policy of providing people access to MAT even though it provides other clinically appropriate medications to inmates.
- Smith v. Fitzpatrick, Et Al. – The Maine Department of Corrections agreed to continue providing necessary medication to Zachary Smith when he is in state custody, as part of a settlement in a lawsuit filed by the ACLU.
- Pesce v. Coppinger – a federal court judge issued a preliminary injunction requiring a Massachusetts sheriff to provide Pesce with continued access to his methadone during his incarceration.
- A report out of Pima County Arizona showed a high correlation between inmates withdrawing from opioids or alcohol and increased risk of suicide.



A Time to Act

- But the time for a solution is now, not when financial circumstances have improved or until all of Vigo County's citizens agree on the size and location of a new jail. Public officials are accountable to the citizens, but they also are accountable to an oath sworn to uphold the Constitution regardless of dissent or dispute from the public. The objective now is to make demonstrable progress toward a solution, without further delay. Delay risks the establishment of a three-judge panel and even more draconian outcomes such as mandated reduction in jail population or, at the extreme, closure of the Jail.
- The Court remains confident that Vigo County can solve this problem. But, if it fails to do so, the Court will do what the law permits to solve the problem for Vigo County.



Questions??