

Impacts of Jail Expansion in New York State: A Hidden Burden

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centerforconstitutionalrights

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The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights.

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Executive Summary

There has been dramatic growth in the number of people held in local jails in New York State in the last decade, with the total capacity of jails in upstate New York and Long Island increasing by 20 percent, to a total of 19,984 beds in 2006. By the close of 2007, over 30 counties in New York State will have built some 6,000 new jail beds, 2,976 of which are currently either under construction or are in the planning stages. This construction has come at tremendous cost to the taxpayers of New York – an estimated $1 billion according to the New York State Association of Counties. In many counties, these projects have been the largest locally financed capital project in the history of the county. It has also occurred at the same time as the population of people held in state prisons has continued to fall.

The growth in the number of people held in jail has not been caused by an increase in crime, as index crime reports decreased by 30 percent in the last decade in upstate and suburban New York overall. It has also not been caused by an increase in the base population, which increased by just 2.6 percent over this same ten year time span.

One major factor in new jail construction has been the State Commission of Corrections, a state agency appointed by the govenor that has been directly responsible for the size and scale of new jail construction in New York State. Although providing no financial assistance to counties building new jails, the SCOC has mandated the size and timeline of their construction and dealt financial penalties to counties who have chosen to pursue alternatives to expansion instead or do not otherwise comply. County legislators across the state have voiced frustration with the Commission, claiming that these are unfunded mandates and that the agency is acting outside the scope of its regulatory authority. They maintain that the agency would better serve the counties by examining why jail populations are increasing and act to address those factors instead. Some of these factors include: arrest policies that cause more people to spend time in jail for low-level offenses, a rising number of people being housed in jail who are mentally ill, system inefficiencies that make it difficult for people to move rapidly through the justice system, local jails being used to hold people detained by the Department of Homeland Security's Bureau of Immigration and Customs Enforcement and the U.S. Marshal Service, and a lack of coordination between county and state corrections officials that leaves many people who have been sentenced to prison sitting in local jails.

The impacts of this jail expansion on New York State are significant. Economically, the cost of construction is estimated at $1 billion, causing property taxes to increase and cutting into county expenditures in other areas. Socially, the burden of new jail construction is disproportionately experienced by low-income communities of color, who form a disproportionate percentage of people being held in local jails. This disproportionate representation is due to racial bias at every stage of the criminal justice system, yet it has long term consequences for individuals' employment levels and economic success. Finally, new jail construction poses a large environmental risk to upstate and suburban New York, with the United States Environmental Protection Agency having identified correctional facilities as a large, but frequently overlooked, environmental issue.

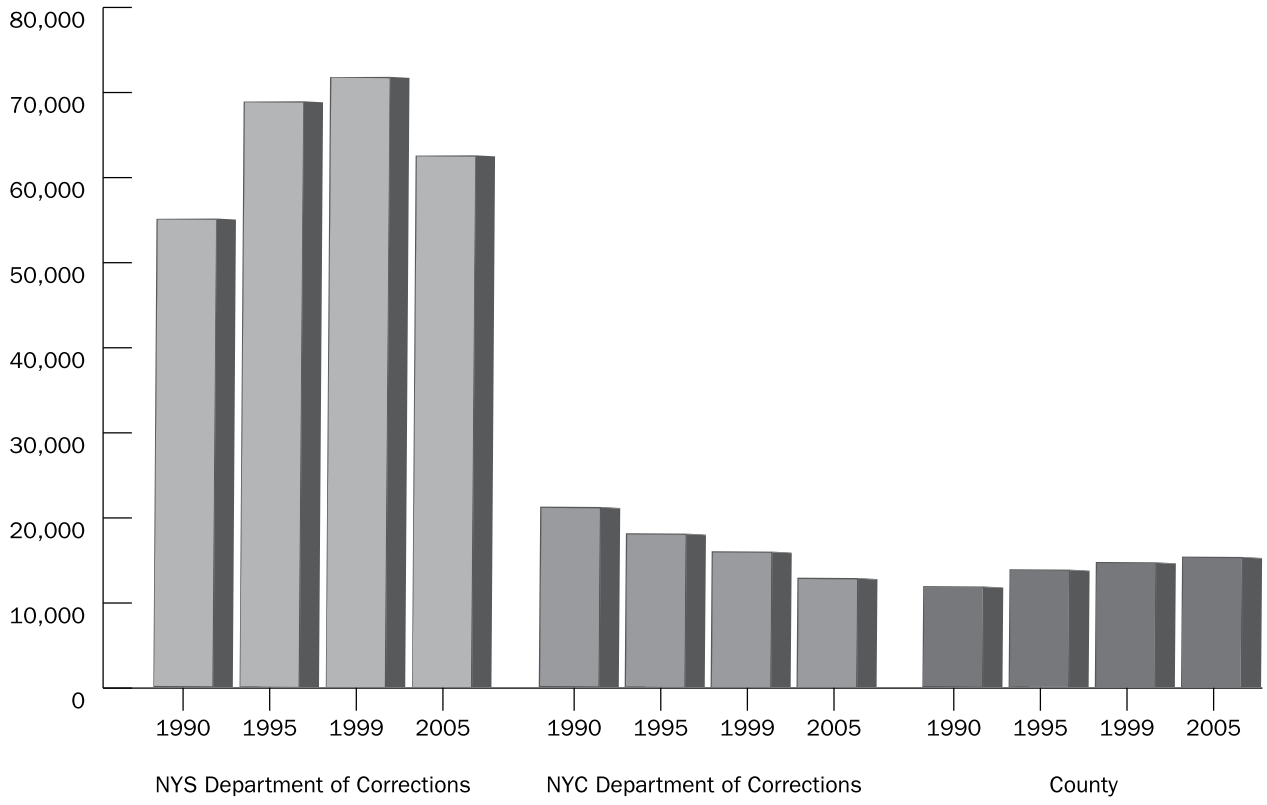
Given that jail expansion has such a heavy impact on the communities and taxpayers of New York State, all alternatives to expansion should be examined before any new construction takes place. To that end, the report endorses the following recommendations:

- The State Commission of Corrections should stop the practice of mandating the construction and size of correctional facilities in New York State;

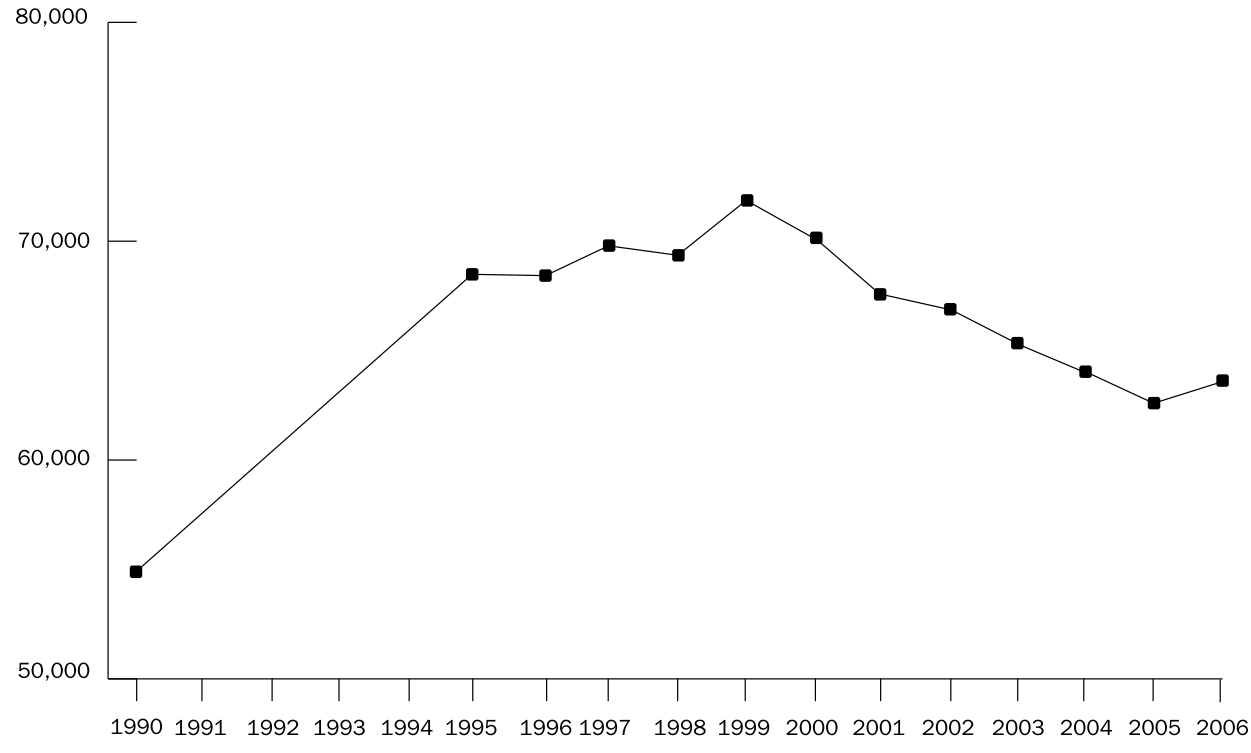
- In place of mandates regarding new construction, New York State counties should begin "evidence-based planning" regarding needs for local jail capacity, based on a real assessment of why increasing numbers of people are in jail and issuing recommendations accordingly; and

- New York State should institute contract controls to monitor how contracts are distributed and their impacts on taxpayers.

The issue of jail expansion in New York has to date been underexamined, yet the impacts are significant throughout the state. Failing to identify and address these impacts would be a considerable, and extremely costly, mistake.



Population of People Held in State and Local Correctional Facilities, New York State



Change in New York State Prison Population over Time

Source: New York State Department of Correctional Services

Introduction:
Jail Expansion in Upstate and Suburban New York

Over the last few years in New York State, the shift in prison population trends has received a notable amount of public attention from policymakers, the media, advocates, and community members concerned with criminal justice issues. Since 1981, the state has added an estimated 46,000 beds to its prison system, spending somewhere in excess of $4.5 billion on construction costs.[1] In 1995, the New York State Department of Correctional Services held 64,486 people in custody, and the state prison population peaked at 71,000 people in 1999. Yet by March 2006, the number had dropped to 62,928 people, an overall decline of 8 percent in a period of just over a decade. There has not been a new prison constructed in the state since 2000[2]—in fact, near the end of his term in office, former Governor Pataki had suggested closing state prisons to save money and to accommodate the smaller prison population, an action unprecedented in New York State history. In February 2007, Governor Spitzer also announced plans to form a commission that was specifically tasked with developing recommendations for downsizing the state prison system.[3] For the first time in two decades, it appeared that New York State's prison boom was beginning to slow significantly, if not reverse direction.

What has received far less public attention is the dramatic *growth* in local jail populations and the *expansion* of jail facilities throughout the state over the past decade. While prisons are state facilities that hold people who have been convicted of crimes, jails are local facilities that serve three functions: to hold people who are awaiting trial and who have not been convicted of a crime; to hold people who are serving short sentences for relatively minor offenses, usually less than a year; and, increasingly, to hold prisoners for other jurisdictions – usually state, federal, or immigration detainees – when jail space is rented out. Unlike prisons, jails are locally operated and locally financed, meaning that the counties in which they are housed bear both the responsibility and the cost of their operation.

The combined capacity of jails in upstate New York and Long Island increased by 20 percent in just over a decade to a total of 19,984 beds in 2006. By the close of 2007, over 30 counties in New York State will have built some 6,000 new jail beds, 2,976 of which are either currently under construction or in the planning stages. This construction has come at tremendous cost to the taxpayers of New York – an estimated $1 billion according to the New York State Association of Counties.[4] In many counties, these projects have been the largest locally financed capital project in the history of the county.

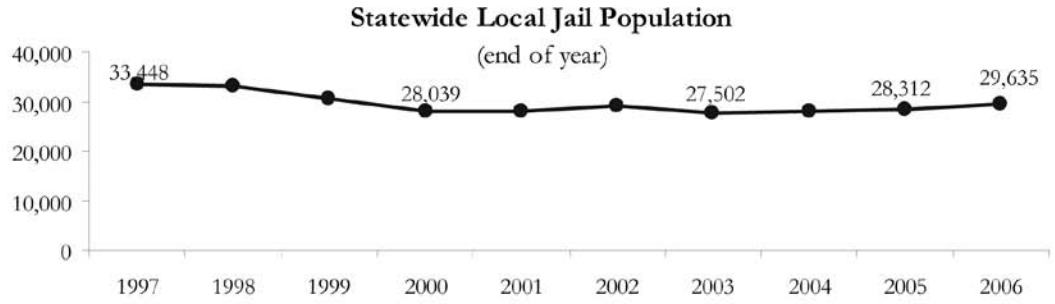
For the purposes of this report, all New York State calculations, unless indicated otherwise, represent upstate New York and Long Island. New York City has been excluded, both because the trend in New York City is distinctly different than the rest of the state, and because the large size of its population would skew statewide calculations heavily.

This growth is not distinct from national trends, which indicate that since 1995, the nation's jail population on a per capita basis has increased by 31 percent.[5] The rapid expansion of local jails is a national issue to consider.

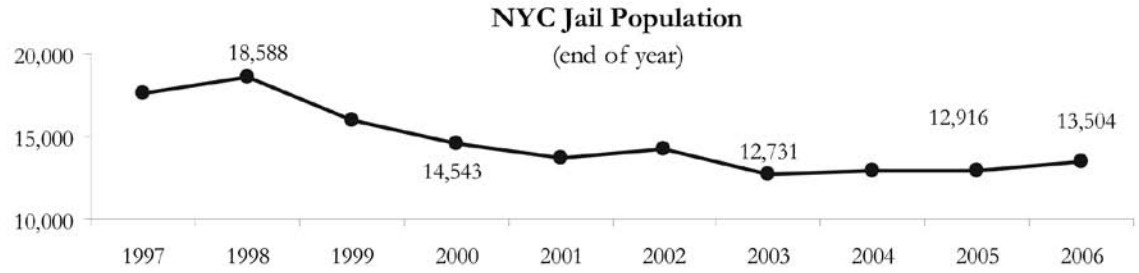
Criminal Justice Population Trends

Local Jail Population

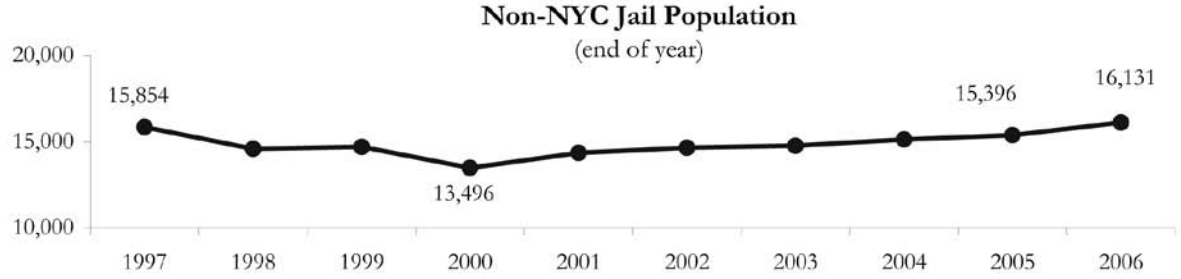
Through data submitted to the State Commission of Correction (SCOC), the daily population of county and New York City jails is monitored. These data show that the number of inmates in local jails has decreased by 11% since 1997. The substantial drop after 1998 was primarily driven by a decline in the New York City jail population. Two State level changes which contributed to this decrease are described on page 31 on this report.



Total jail population shown for CY 1997 -1998 are as of 11/30; all other years are 12/31.



√ New York City jail population has decreased 27% between 1998 and 2006, and has increased slowly since 2003. The population in December 2006 was 588 inmates higher than 2005 (+4.5%).



√ The non-NYC jail population decreased 15% between 1997 and 2000, but has increased steadily since that time. The non-NYC jail population, at 16,131 is at a ten year high, and is 735 inmates higher than 2005 (+4.8%).

Source: New York State Criminal Justice 2006 Crimestat Report, Division of Criminal Justice Services: Albany, NY, February 8, 2007. Full report available on the web: http://criminaljustice.state.ny.us/pio/annualreport/2006crimestatreport2-9-07.pdf

Explanation:
What Is Causing the Growth of New York State Jails?

Most people assume that jail populations increase when crime is on the rise and that they drop when crime is down. This pattern is visible in New York City, where the crime rate and the jail population both fell dramatically over the past two decades. The city's jails saw a 36 percent population reduction between the fiscal years 1991 and 2003 – from 21,500 to 13,750 people – while the crime rate decreased by 68 percent and the murder rate dropped by 70 percent.[6]

But the pattern does not hold for the rest of the state, where jail populations rose at the exact same time as crime rates fell dramatically—index crime reports decreased by 30 percent in the last decade in upstate and suburban New York overall, from 385,032 index crimes reported in 1995 to 263,389 reported in 2005.[7]

A second "common sense" explanation for changes in local jail population is growth of the base resident population, which can drive up demand for a wide range of services, including local corrections. Yet the number of people who reside in upstate and suburban New York increased by just 2.6 percent over this ten-year time span, while local jail populations grew by 20 percent overall.[8]

Given the lack of correlation between the rapid growth of local jails and the declining rate of crime, as well as the relationship to growth in population, we must examine the factors that are causing such a massive level of jail expansion throughout New York State. Although there is no single explanation, there are a number of factors that each play a significant role.

State Mandates that Force Local Jail Construction

To understand one major such factor, one needs to examine the actions of the State Commission of Corrections, a little-known state agency that in recent years has become a major force in driving the expansion of local jails.

In 1973, Article 3 of New York State Correctional Law established the State Commission of Corrections as an independent state agency within the Executive Branch with the power to "close any correctional facility which is unsafe, unsanitary or inadequate…or which has not adhered to or complied with rules or regulations" as well as to "approve or reject plans and specifications for the construction and improvement of correctional facilities."[9] The commission is comprised of three Commissioners appointed by the governor and a staff of 35. Historically, its activities have focused on directives such as regulating items of clothing received by people in prisons and jails, overseeing conditions of confinement, and the training of correctional officers.

In recent years the agency has emphasized another function—mandating the construction of new jails or the expansion of existing facilities to a timetable and size determined by the State. In 1993, the SCOC established the New Institutions Technical Assistance Program to provide technical assistance to counties undergoing expansions. NITAP staff assess facility transition efforts, review construction designs, and perform staffing analyses.[10] The agency also became much more hands-on in determining the size and timing of jail expansions that counties would have to undertake in order to avoid state financial penalties. Since the creation of this program, the SCOC has been responsible for mandating the size and timetable of nearly every new jail project in New York State while providing no financial support or alternative solutions to incarceration to local counties. The State Commission of Corrections has thus had direct responsibility for the scale of new jail construction throughout New York.

The State Commission of Corrections' involvement in county jail expansion occurs when it determines that a local jail is operating at a greater capacity than it was designed to hold or that the county will require increased jail space in the future and will therefore require expansion. The SCOC has legal control of the classification system of county jails, meaning that they can determine how many people can be held at a given facility at any time. While double-bunking is standard practice in New York State prisons, counties must receive approval from the SCOC to do so. This approval is granted in the form of "variances" that the commission issues to a county to allow them to hold beyond their single-bunk cell capacity. The SCOC has historically granted such variances for long periods while county officials work to resolve local crowding problems. When the State Commission of Corrections "pulls" the variances, counties must either pay legal penalties for holding more than their allotted capacity or pay to house people at neighboring county jails. Thus, variances have become a powerful tool that commissioners wield in their negotiations with counties over new jail construction. Richard Carbery, former police chief of Onondaga County, observes that when county officials find themselves in disagreement with the agency, "life suddenly gets miserable."[11]

What County Officials Across New York State Say About the State Commission of Corrections

"I think the bottom line becomes the question: how can we afford not to? I really feel like we're being backed into a corner here [by the Commission of Corrections]."
—Brent Reynolds, Chairman of Public Safety Committee, R-Alfred, Allegany County [12]

"We're the ones in charge of the money raised from Tompkins County taxpayers. They're saying we have to build a jail to accommodate the number of prisoners they think might be incarcerated 20 years from now. We think the number will be significantly less. Well, it's our money, and how it gets spent is our call, not theirs."
—Tim Joseph, Chairman of Tompkins County Legislature, D-Ithaca [13]

"That sounds like a mandate to me. I'd like to know where he thinks we're getting the money. The State should pay it."
—Supervisor Walt Rushby Junior, R-Moriah, Essex County on the State's order to build or expand jail facilities [14]

"I think that it is unfortunate that we have come to this whole process. I think the State of New York has put forth standards that don't take into account the county's ability to pay and taxpayers' ability to foot the bill also."
—James Caflisch, County Legislator, R-District 21, Chatauqua County [15]

"It's either a lack of communication or lack of fiscal discipline. The point is, here's half a million dollars of taxpayer dollars being wasted."
—Peter Kraft, County Legislator, D-District 3, Ulster County [16]

CASE STUDY – TOMPKINS COUNTY



In 1998, Tompkins County began to study a possible expansion of their 73-bed jail. In lieu of construction, the county decided to launch a set of alternatives to incarceration programs. These programs, including drug courts and a day reporting program, provided court supervision and treatment to individuals while still allowing them to reside in the community. They determined that the $1 million cost to operate these programs would be far less than the cost of a new facility. The State Commission of Corrections nonetheless began to pressure county leaders to construct a new 160-bed facility.

Tompkins County officials were willing to accept a compromise and build a new 104-bed jail with an internal structure, or "spine", that would facilitate expansion to 196 beds if necessary. Yet in a phone call with the county in February 2004, the commission told county officials that the number of beds in the new plan was insufficient and that the county should plan to build or renovate the jail to have no less than 160 beds. Despite the fact that in 2004 the average daily population in the existing Tompkins County jail was just 69 people, the commission predicted a large increase in the number of people who would be in jail. They gave reasons that included past incarceration statistics as well as any possible reforms to the Rockefeller Drug Laws, which they asserted could swell local jail populations.[17]

The county, however, questioned the accuracy of the agency's projections. In an 8-to-7 vote, the Legislature ultimately decided that if the only choice were to build the number of beds determined by the SCOC, they would pursue reforms and alternatives instead of building a new jail. As stated by County Legislator Tim Joseph, "I had reconciled myself to a 104-bed jail with the spine for 196 beds. The [County] Legislature as a whole agreed on that. They [the commission] have eliminated that option. The option they offer us now is a very big jail or nothing. Given that, the only reasonable choice is not to build at all."[18]

The announcement that Tompkins County would not build a new jail was met by a punitive response from the State Commission of Corrections, which announced that the county's variances would be pulled and that their jail classification system would be reordered to allow an even smaller capacity, forcing a greater number of individuals to be boarded out. Only after a state elected official intervened and a major New York State newspaper called to ask the SCOC for their reasoning did the SCOC revoke their threat of a new classification system. They did not, however, give Tompkins County back their variances, which were pulled in December 2004.[19]

CASE STUDY – ULSTER COUNTY



The short jail construction timelines imposed on counties by the State Commission of Corrections have also made the projects particularly susceptible to both cost overruns and corruption. In 1999, the agency informed Ulster County officials that they had to expand their existing jail facility. The county rushed to meet the Commission's mandate with little foresight and planning and without having set up appropriate accountability mechanisms. The new 277,000-square-foot facility was designed to hold 484 people as well as the sheriff's office with an original opening date of 2004. However, contract and construction problems have plagued the facility and driven costs up far higher than initially projected and delayed the opening by years. These problems have included: finding bedrock during ground breaking, design and construction changes, leaks in the roofs and pipes that caused water damage, mold, improperly installed windows, and a shortage of corrections officers that caused the

State Commission of Corrections to determine that the facility had inadequate staffing to open. Three years after its initial planned opening date, the jail officially opened on February 17, 2007.[20]

The final price tag on the facility was $95.2 million, more than $20 million over the amount it was initially projected to cost. In addition, during the several months that Ulster County was required to have both the old and the new jails open, County Legislature Chairman David Donaldson reported that they were "bleeding about $300,000 a month."[21]

There remain two pending claims against the county from contractors on the jail – Bovis Lend Lease, the project's original manager, and Crandall Architect and Associates, Inc., the project's architect. The county is in the midst of countersuits against both companies. All parties are in disagreement over who is to blame for the cost overruns and who should foot the bill. Ulster County has formed a special committee to investigate the planning and construction of the facility in order to determine what went wrong with the project as well as whether any criminal charges will be filed for possible corruption.[22] As it stands, the jail is the largest capital project in county history, and property taxes in Ulster County have increased by 40 percent. According to County Legislator Richard Parete, "It was a project that was doomed to fail from day one."[23]

Despite these widespread criticisms from across New York State, the State Commission of Corrections continues to defend its jail expansion mandates, even while many county officials have argued that such mandates are only justified when conditions fall to unconstitutional levels. Further, they observe that the pressure placed on counties by the commission to build large new jails distracts attention from the critical question of why these jails are filling while crime rates fall.

Other Factors Contributing to Jail Population Growth

An examination of local and statewide trends can help to develop a more comprehensive understanding of the other factors behind jail population growth in New York State. These factors include:

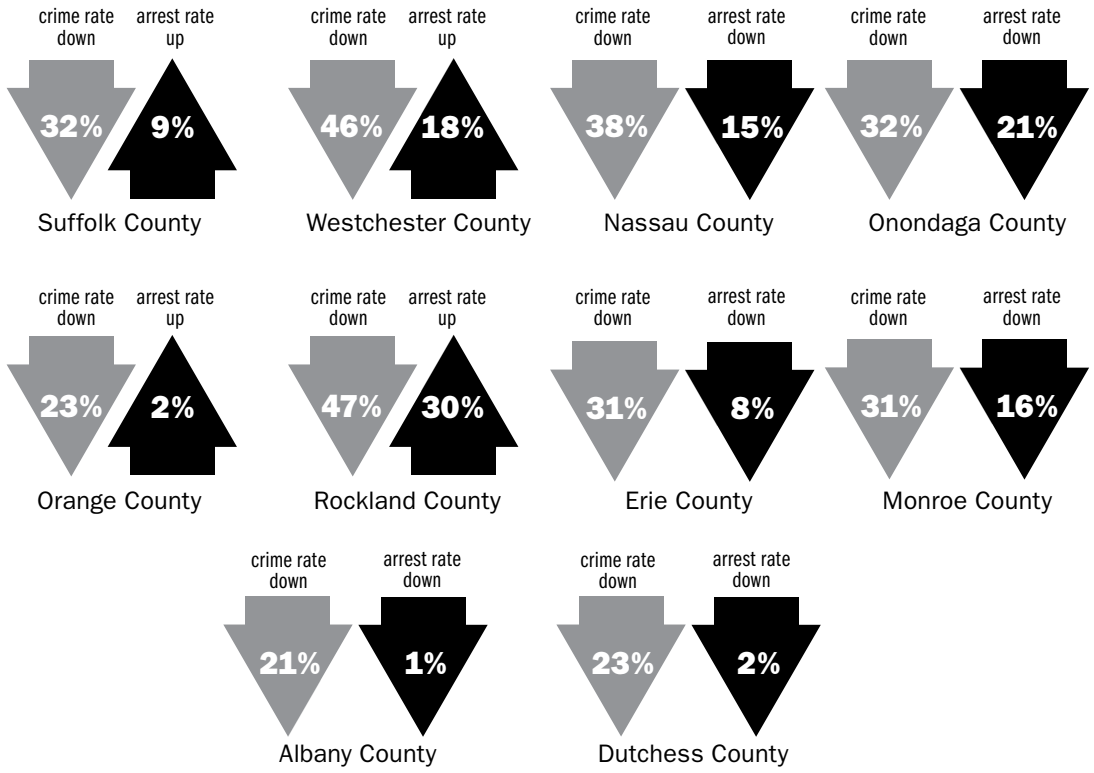
Arrest policies causing more people to spend time in jail for low-level offenses
Crime is down throughout New York State, but arrest rates are up statewide, especially for low-level offenses. This trend is driven in large part by a shift towards "quality of life" policing practices that target low-level offenses and often criminalize behavior such as loud noise, rowdy behavior, and hanging out on street corners or in other public places.

Many upstate and suburban counties have seen arrest rates rise despite drops in crime rates. Others have seen arrest rates decline, but at a much slower pace than crime rates. Some counties that have seen decreases in arrest rates – such as Nassau County and Albany County – are, perhaps notably, not on the SCOC list of new jail expansion projects.

The large majority of these arrests are for low-level misdemeanor offenses. In Suffolk County, for instance, 75 percent of those in the criminal justice system committed non-violent crimes, and 35 percent are charged only with alcohol or drug-related charges.[24]

A rising number of people being held in jail who are mentally ill
The deinstitutionalization of the mentally ill and cutbacks in mental health services have produced a startling rise in the number of mentally ill people behind bars. Many are incarcerated for low-level misdemeanor offenses that are more symptomatic of mental illness

Arrest Rates and Crime Rates in Ten Most Populous New York State Counties, 1995-2005



While crime rates take into account the population of the county, arrest rates are calculated as the percentage change in the number of arrests. However, the population increase in Upstate New York during this same time period of 1995-2005 was 2.6 percent, far less than the average increase in arrest rates themselves.

than criminal activity. Studies have estimated that on a national level, 16 percent of local jail populations suffer from mental illness.[25] These figures are reflected in New York State's jail population—in Suffolk County, one study estimated that annually, 10.4 percent of the probation population, 7.7 percent of the pretrial population, 7.1 percent of parolees, and 16 percent of the jail population overall are individuals with mental illness.[26]

Research has also shown that a greater proportion of individuals with mental illness are arrested compared to the general population, not because they are involved in more criminal activity but because their mental illness makes them more susceptible to arrest—they are frequently picked up and booked for actions that others are not arrested for. One study demonstrated that people with mental illness have a 65 percent greater chance of being arrested than those who are not mentally ill who are committing the same infraction.[27]

Inefficiencies keep people from moving rapidly through the criminal justice system
Across the state, a large majority of the people in jail are housed for low-level offenses, with system inefficiencies causing them to sit behind bars for far longer than may be necessary. These inefficiencies may include people's inability to post bail or lack of adequate access to legal counsel. Even spending one or two days in jail beyond what is necessary can take up thousands of beds of jail space across the state.

On October 13, 2005, a fairly typical day in Dutchess County, 47 people in jail – or 13 percent

Chart of Completed and Current Projects 1995–2004, Local Correctional Facility Development Projects

Completed Projects 1995 – 2004

Orange County Jail	800 beds
Tioga County Jail	98 beds
Oneida County Jail	614 beds
Niagara County Jail	224 beds
Montgomery County	152 beds
Broome County Jail	400 beds
Putnam County Jail	100 beds
Steuben County Jail	149 beds
Onondaga County	616 beds
Dutchess County	100 beds
Franklin County Jail	85 beds
Cayuga County Jail	120 beds
Cattaraugus Jail	36 beds
Monroe County Jail	400 beds
Ontario Jail	276 beds
Washington Jail	150 beds
Warren Jail	180 beds
Westchester Co. Pen	436 beds

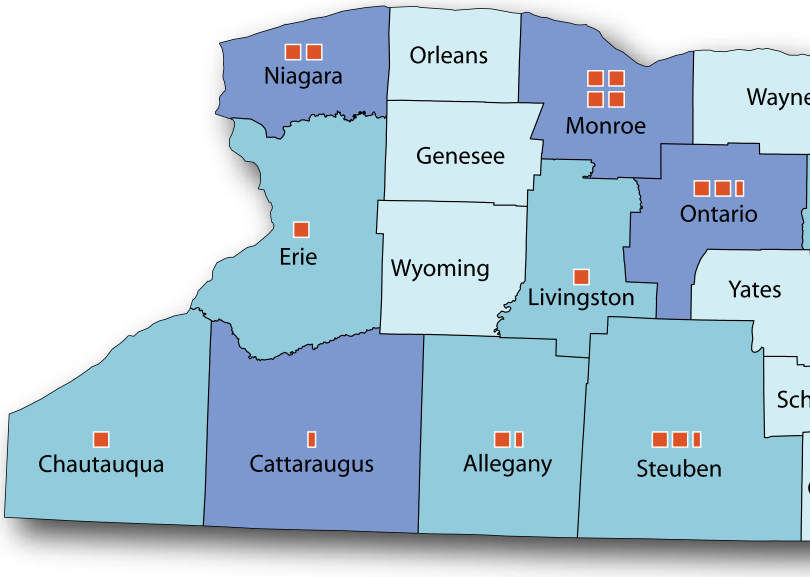
Total Completed Jail Beds: 4,936

Current Local Correctional Facility Development Projects

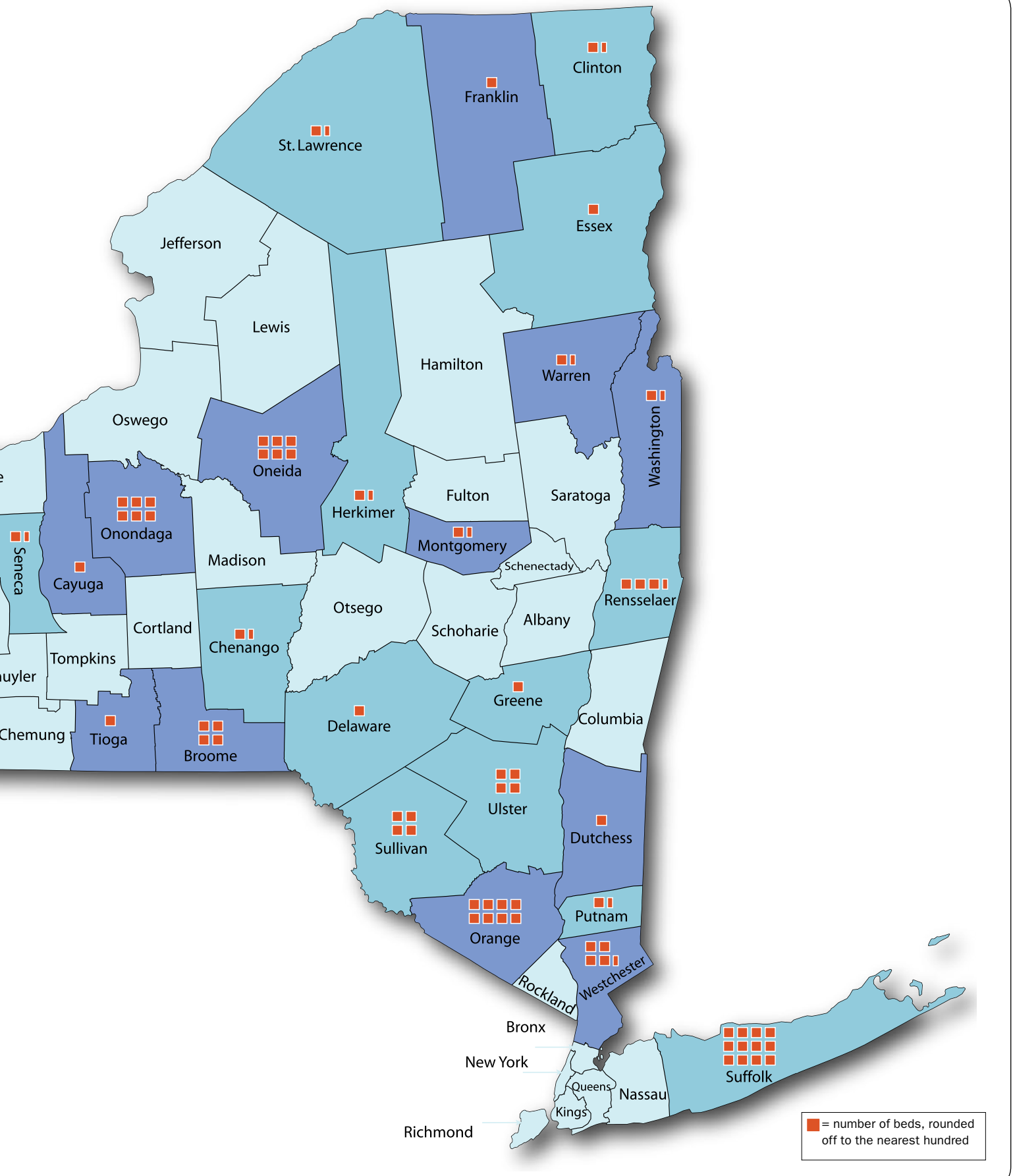
Ulster County Jail	400 beds
Clinton County Jail	160 beds
Essex County Jail	120 beds
Erie County Pen.	96 beds
Chautauqua Co. Jail	116 beds
Allegany Co. Jail	120 beds
Delaware Co. Jail	100 beds
Chenango Co. Jail	140 beds
Seneca Co. Jail	130 beds
Herkimer Co. Jail	140 beds
St. Lawrence Co. Jail	160 beds
Putnam Co. Jail	24 beds
Steuben Co. Jail	100 beds
Sullivan Co. Jail	400 beds
Livingston Co. Jail	106 beds
Greene County Jail	106 beds
Suffolk County Jail	1,200 beds
Rensselaer Co. Jail	384 beds

Total Current Jail Bed Expansions Planned: 4,002

Total New Jail Beds, New York State: 8,938



Source: NYSAC News. New York State Association of Counties: Volume 27, Number 1, Winter 2006.


Clinton
Franklin
St. Lawrence
Essex
Jefferson
Lewis
Hamilton
Warren
Washington
Oswego
Oneida
Herkimer
Fulton
Saratoga
Onondaga
Montgomery
Schenectady
Seneca
Cayuga
Madison
Rensselaer
Otsego
Schoharie
Albany
Cortland
Chenango
Tompkins
Greene
Columbia
Chemung
Tioga
Broome
Delaware
Ulster
Sullivan
Dutchess
Putnam
Orange
Westchester
Rockland
Bronx
New York
Queens
Nassau
Suffolk
Kings
Richmond
= number of beds, rounded off to the nearest hundred

of the Dutchess County jail population – were being held on bail amounts that were less than $2,500. Ten of these people were being held on bail amounts that were set at $500 or lower, for offenses that included aggravated unlicensed operation of a motor vehicle, possession of minor amounts of a controlled substance, and criminal contempt.[28] Sixty-five people were being held in jail for disorderly conduct.[29]

Local jails are used increasingly to hold people detained by the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE) and the U.S. Marshal Service

The number of immigrants being held in detention centers across the country has risen exponentially in recent years to approximately 235,000 in 2004, and local county jails have responded by renting out their bed space to immigration authorities.[30] Officials in several counties that are under pressure from the State Commission of Corrections to build costly new jails have looked to fill excess beds with people detained for immigration violations.

In fact, housing immigrants detained by ICE is a way that many counties are funding their underused jail space. In Allegany County, officials are seeking to fund their jail through immigration detention contracts. County Administrator John E. Margeson says that he hopes "that we can house approximately 75 inmates per day from outside [our] jurisdiction, county and federal. It's our hope that the revenue will pay the debt service on the facility, which is about $1.6 million a year."[31]

Clinton County was also banking on receiving substantial ICE detention revenues when it financed a large jail expansion in 2002. County legislators borrowed the largest sum in county history to help build a $23 million state-mandated expansion that will nearly double the size of the facility from 92 beds to more than 160. David Dimmit of the U.S. Marshals Service told a crowd gathered outside the jail in Plattsburgh, New York, "The day this opens, we will have at least 20 inmates here the next day." County Sheriff David Favro echoed the sentiment, saying "It will be nice to have them here, and it gives us some additional revenue to pay for all this."[32]

A lack of coordination between county and state corrections officials leaves many people who have been sentenced to prison sitting in county jails

When New York State prison populations were on the rise and state correctional facilities were facing crowding problems, county jails helped to contain the overflow by holding individuals detained on state parole violations or awaiting transfer to state facilities. This practice continues despite the fact that New York's prison population is decreasing and there is a real possibility that some state facilities may be closed. The housing of state prisoners in local jails "has contributed to overcrowding in many county facilities and has forced counties to board out their own inmates," according to the New York State Association of Counties. "This growing problem has forced the [S]COC to mandate the construction of larger facilities that are more substantial than counties need, or in some cases, can pay for."[33]

Approximately 5.6 percent of people held in jails outside of New York City are detained by state corrections officials for technical parole violations. This number more than doubles when new arrest parole violators or parole violators with new charges pending are factored in and increases even more when "state-ready" prisoners are taken into consideration. According to the New York State Division of Parole, there are approximately 4,700 technical parole violators who are being held in local jails at any given time. A 2005 fiscal analysis revealed that in Suffolk County alone, state parole violators cost the county approximately $6 million annually and took up approximately 100 jail beds a day.[34] While Governor Spitzer's last budget provides an increase in funding to counties for holding people for the state, this population remains a factor in driving up the total population of people in local jails.

Impact of New Jail Construction in New York State

Counties also share comparable social, economic, and environmental costs of new jail construction in addition to similarities in jail population growth trends.

Economic Costs

As previously stated, the total cost of new jail construction in New York State is estimated to be $1 billion, and jail construction represents the largest county capital expenditure project in many New York counties.[35] While New York homeowners already pay the highest taxes in the country – 72 percent higher than the national average – these new capital projects are driving property taxes even higher.[36] For example, property taxes in Ulster County rose 40 percent after the newly-built jail cost more than $20 million over its initial budget.[37]

The high price tag of new jails also cuts into county expenditures in other areas. The cost of housing an individual in the Suffolk County Jail in 2002 was $113.85 a day, meaning that the approximate cost of holding their jail population over the course of a year was in excess of $23 million. Suffolk County's operating budget for "Public Safety" – the vast majority of which is spent on the sheriff, police, district attorney, probation, and jail staff – is already one of the largest expenditures in the county budget, representing 19 percent of the 2003 budget versus the 9 percent earmarked for education and 6 percent for health. In other words, for every $100 spent by Suffolk County, $19 is spent on "public safety" compared with only $9 spent on education and $6 spent on health services. The construction of a massive new jail will in all probability widen that disparity even further.[38]

Social Costs

Low-income communities of color throughout New York State – who form a significant percentage of the people being held in local jails – disproportionately bear the burdens of new jail construction. Studies across the United States have demonstrated that the overrepresentation of blacks and Latinos in jails and prisons, referred to as "disproportionate minority confinement," is not a result of more criminal behavior within these communities. Rather, it is the result of racial bias at every stage of the criminal justice system – including policing, arrests, sentencing and parole.[39]

The New York State Division of Criminal Justice (DCJS) studied the disproportionate confinement of blacks in the criminal justice system and found significant evidence of racial bias as a factor. Examining both black and white offenders convicted of similar crimes, DCJS found that blacks were more likely to be incarcerated than whites. The rates of difference were 5 percent in New York City, 13 percent in the suburbs of New York City, and 17 percent in Upstate New York. DCJS concluded that "this evidence can be interpreted as establishing a *prima facie* case that race plays an important role in sentencing defendants from the suburbs and upstate regions of New York."[40]

In Suffolk County, the black community is grossly overrepresented in the Suffolk County jail system. African Americans make up 7 percent of the total population of Suffolk County but 40 percent of the total jail population. Over half – 54 percent – of the people detained in jail before trial because they are unable to make bail are black. The Latino community is also overrepresented in Suffolk County jails. While making up 11 percent of the Suffolk County population and 9 percent of the people who get arrested, Latinos make up 18 percent of the jail population and 20 percent of the pretrial detainees.[41]

The same disproportion exists in Rensselaer County, New York. Although blacks comprise only 5.5 percent of the county's residents, in 2005 they made up 35 percent of the jail population. While Latinos comprise only 2.5 percent of the population of Rensselaer County, they make up 7 percent of the local jail population.[42]

For all community members, the policy of sending an increasing number of people into jail for even short periods of time has its own set of negative repercussions and is less likely to prevent crime than it is to disrupt people's lives and produce further marginalization. For people who are mentally ill, any time in jail can make it more difficult to receive treatment. According to the National Association of Counties, counties are better able to serve the mentally ill by keeping them within health and human services, where they can monitor their condition, provide humane treatment, and dispense medication when needed. Psychiatrists that work with county health departments claim that when their clients enter jail, the trauma is so severe that they "have to work twice as hard to get individuals to where they were" before they entered detention.[43]

Spending time in jail, however short, also has long-term implications for people's future success, including their levels of employment and their probability of continuing contact with the criminal justice system. Looking at youth aged 14 to 24, Princeton University researchers found that a youth who spent some time incarcerated in a youth facility experienced three weeks less work a year as compared to a youth who had no history of incarceration. The effect was larger for black youth, who experienced five weeks less work a year than black youth who had served no juvenile jail time. Fifteen years later, people who had been incarcerated as youth worked between three and five weeks less a year than those who had never been incarcerated. According to a different study that examined economic outcomes of incarceration, jailing a young person between the ages of 16 and 25 for any amount of time reduced their work time over the next decade by 25 to 30 percent. According to the study's author, "having been in jail is the single most important deterrent to employment."[44]

Environmental Costs

Finally, new jail construction on such a grand scale poses a large environmental risk to upstate and suburban New York. The construction of prisons and jails has a large impact on the local community in that prisons and jails resemble small towns or cities with their attendant industries, populations, and infrastructure. The United States Environmental Protection Agency (EPA) has identified correctional facilities as an important but frequently overlooked environmental issue. Environmental hazards that are associated with the construction and maintenance of detention facilities include wastewater treatment, hazardous waste and trash disposal, asbestos management, pesticide use, vehicle maintenance, and power production.

Correctional facilities can also drain the resources of their host communities. They use significant amounts of limited resources such as water and sewer capacity, can take valuable land out of productive use and off the tax roll, and create traffic and congestion.[45]

Recommendations

Given the tremendous impact that such massive new jail construction has had and will have on local communities across New York State, state and local elected officials should first seek alternatives to this massive drain of social and fiscal resources in the form of efficiency measures and alternatives to new jail construction *before* moving forward with expansion. The recent proposal by Governor Eliot Spitzer to examine the possibility of closing New York State prisons particularly calls into question the efficacy of building new jails. For one, it does not make fiscal sense to expend resources expanding local correctional facilities when the overall need for correctional space has declined. In addition, the changing trend of the New York State prison population should sound a cautionary note for what is occurring at the local level. The decline reveals the extent to which increases in the population of people incarcerated reflect shifts in public policy, not long-term trends. Building costly new facilities in response to these trends may in the long-run produce needless bed space. Experience also shows that it is more politically difficult – and financially wasteful – to close down an existing facility than it is to eliminate the need for new construction. Immediate steps that can be taken to dramatically reduce the pressure for costly new jail construction include the following:

The State Commission of Corrections should stop the practice of mandating the construction and size of correctional facilities in New York State. While the SCOC should continue its charge to ensure that conditions in local jails are safe and humane as well as work with local counties to ensure that people held in jail are not subject to any risks due to overcrowded facilities, they should curtail giving mandates to local governments that dictate how and when to build. This unfunded mandate from the state has severe consequences for local budgets, ignores the myriad alternative solutions that can be implemented first, places county governments in the perilous position of being forced to make critical governmental decisions without proper planning to avoid financial sanction from the state, and has already created boondoggle projects that cost local taxpayers millions of dollars. The SCOC would be a more effective agency if its mandate shifted to working *with* local governments to ensure that correctional facilities are safe and humane, instead of issuing blanket recommendations that come with little planning, technical, or financial assistance.

In place of set mandates regarding new construction, New York State counties should begin "evidence-based planning"[i] regarding needs for local jail capacity based on a real assessment of why increasing numbers of people are in jail and issue recommendations accordingly. The first step in ensuring proper planning is for county legislatures to bring together a local planning body comprised of stakeholders, including: representatives of the different justice systems; representatives of local civic organizations and fiscal watchdog groups; social service providers, in particular mental health practitioners; and community representatives, particularly those who have had direct contact with the local correctional system; with assistance from state and national experts on detention reform. This planning body should conduct a full assessment of the local jail system and issue recommendations for reform, to include 1) population projections at the short-, mid-, and long-term range, 2) the necessary jail capacity for the county given these projections, 3) an assessment of how to improve jail conditions and programming, and 4) what current inefficiencies exist in the system that cause inflation of both the jail population and the cost of running the facility. The body

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i. "Evidence-based planning" calls for the use of the best available objective evidence and systematically collected data when engaged in planning processes. Drawn from the definition of "evidence-based medicine," the intention is to ensure that there is the "conscientious, explicit, and judicious use of current best practice evidence" in making all decisions.

should also develop impact assessments of all proposed solutions on the county budget and tax levy. To ensure complete accountability and transparency to all county residents, the planning body should conduct its meetings with public accessibility, make all materials available to the public via open meeting and FOIA laws, host a public meeting on the issue with a 30-day public comment period for draft recommendations, and make all reports and recommendations available both online and at local libraries. These recommendations should form the baseline for planning on detention reform, with the mandate to develop a system that is cost-efficient and does not unnecessarily keep people in detention.

One partial model of such a planning body is Suffolk County's Criminal Justice Coordinating Council, which was convened by the County Executive and included participation from Probation, Legal Aid, the County Executive's Office, the Department of Health Services, the courts, SUNY-Stony Brook, the District Attorney's office, the Sheriff, Community Mental Hygiene, Public Works, the Office of Legislative Budget Review, the League of Women Voters, and the Long Island Progressive Association, with assistance from the National Institute of Corrections. After spending a period of months collecting data from various agencies, they issued a public report in May 2005 that determined that some factors of increased jail population were:

- **Policy Changes in Suffolk County/Different Use of Jail:** These changes included more non-felony crimes resulting in incarceration; increased use of incarceration for both pre- and post-sentencing; defendants identified with gangs being treated more severely, even for minor offenses; and changes in judicial and prosecutorial practices

- **Lack of Adequate Resources for the Mentally Ill:** The closure of mental health facilities in Suffolk County has given the criminal justice system fewer options and resulted in more mentally ill people in jail.

- **Underutilized Alternatives to Detention Programs:** Community-based supervision programs have empty space but are being underutilized due to a lack of communication within the justice system.

- **Changes in the Flow of the System:** With minor offenses like public disorder making up 60 percent of all Suffolk County arrests, more people are flowing into the system. There is a resultant back-up in the court docket.

The Coordinating Council issued a set of 29 recommendations on ways to address these factors without building more jail space, including: better mental health screening, supervised pretrial release, better transportation to court for people facing hearings, and better communication among systems to identify existing alternative programs. If fully implemented, the CJCC recommendations could potentially eliminate the need for any additional jail construction in Suffolk County.[46]

The counties and the state should institute contract controls to monitor how contracts are distributed and what their impact is on taxpayers. The practice of mandating jail construction without fully assessing the costs or the jail-building process has created a troubling incentive for a small number of construction agencies and correctional providers to vie for county contracts. Due to the external pressures created by the SCOC, these contracts have sometimes escaped oversight, to the detriment of taxpayer accountability. A system of contract controls should be implemented that can monitor how contracts for jail construction, expansion, and services are distributed throughout the state. In addition, the financial impact of these contracts on local taxpayers must be monitored.

Are There Alternatives to Jail Construction?[47]

Solutions to jail overcrowding are as specific to each locality as the factors that drive it, and local stakeholders must come together to determine what might work best in their own municipality. However, concerned officials can certainly look to reforms and efficiency measures other counties have successfully implemented to help determine what might be viable in their own community. Some examples of the possible programs, reforms, and efficiency measures that have been implemented throughout the country as mechanisms to reduce jail populations and save costs include:

Creating Pre-Arrest Programs

Citation programs: Many counties have implemented programs that give citations to offenders without booking them through the arrest process. These citations can entail a notice to appear or a desk appearance ticket and help eliminate unnecessary jail bookings. Offenders are booked only when they present a flight risk, present a clear and present danger to their community, or are unable to prove their identity. This solution has been used in the case of low-level misdemeanor crimes.

Programs for the mentally ill: Through hiring civilian police employees with mental health training and by creating training programs to help officers recognize mental illness, counties can divert people with mental illness away from jail and into emergency mental health care programs instead. Trained officers identify mental illness and work with other agencies to provide the necessary treatment outside of detention facilities.

Improving Release Procedures for the Pretrial and Sentenced Populations

These improvements decrease jail populations by ensuring that people are moving through the system in a timely fashion. Examples include: setting time limits for releasing pretrial defendants brought in on certain charges such as public drunkenness, transferring committed offenders ("state-readies") to state facilities rapidly, and transferring mentally ill inmates to state hospitals in a more timely fashion.

Pretrial Diversion: Pretrial services programs can help alleviate jail crowding by releasing inmates before trial and by providing three essential services. First, they provide information about the defendant to help decision makers make an appropriate pretrial release or detention decision. Second, they provide the decision maker options for safely releasing the defendant. Third, they have the capacity to monitor and supervise defendants who are released before trial.

Bail Reform: National studies show most pretrial inmates are those who cannot post a money bond, or bail. Instituting bail reform is a means of alleviating overcrowding in this population. Examples of such reform include increasing the frequency of initial appearance hearings that set bail and holding bond review hearings several days after defendants enter jail to determine whether they might qualify for case disposition, bond reduction, or pretrial release consideration.

Specialty Courts

Including drug courts, domestic violence courts and mental health courts, specialty courts were developed as a means to provide individuals with a sanction that includes treatment that would not be provided though the standard criminal justice system.

Alternatives to Incarceration

In response to increased jail populations, probation agencies are working with other criminal justice agencies to develop alternative punishment programs, which are court-sanctioned programs that mandate supervision but do not hold individuals in secure detention. The most widely used alternative to incarceration program is supervised probation, which allows a person found guilty of an offense to stay in the community, usually under the conditions and supervision of a probation officer. Other alternatives to incarceration include measures such as court-mandated treatment.

Conclusion:

The rising number of people in local jails in New York – and the rest of the country – is an issue that deserves much greater attention than it has received. The social, fiscal, and environmental impact on community residents throughout New York State – both those incarcerated within the jails and those who reside in the communities that house them – are significant.

The public must be more actively informed and engaged in the process of determining jail policy. State elected officials and county legislators must also re-evaluate their spending priorities to determine whether massive investment in detention is the most effective use of taxpayer money, instead of investing in, for example, education or health initiatives.

Lessons learned from recent expansion projects, possible alternatives to jail construction, and the impacts of these respective policy decisions on the people of New York State must all be taken into greater consideration when making these critical planning decisions.

As the state of New York undergoes an evaluation of many of its current criminal justice practices, there is also an opportunity to re-examine its detention policies. Failure to do so may leave us in a position much like our prison incarceration policies, where we are now bearing the social and fiscal costs of public policy that was informed by politics instead of rational assessment, and whose consequences are far harder to undo than was its implementation.

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