

Criminal Justice Collaborative Council
Jail Overcrowding Retreat Summary
May 19, 2006
8:00 a.m.- 11:45 a.m.

Participants:

CJCC Members: Archie Brown, J. Cedric Simpson, Sheila Blakney, Wes Prater, Bob Guenzel, Brian Mackie, Barbara Ryan Fuller, Dan Minzey, Scott Patton, Paul Bunten, Jose Bartolemei, John Shea, Kerry Sheldon

Others Present: Kirk Filsinger, Julie Chaffee, Herb Mahony, Karen Korte, Fran Alexander, , Charlie Pope, Greg Bazick, Jennifer Watson, Gordon Burger, Larry Kestenbaum, Rick Visel, Renee Wilson, Ann Arbor News Representative

CJCC Mission

CJCC chair, Archie Brown, began with the introduction and welcome. He explained where the CJCC is currently, and reviewed the following elements of the CJCC mission/purpose:

“The purpose of the CJCC is to maximize efficiency, fairness, and cooperative efforts of criminal justice agencies by developing plans, programs, and positions on concerns which have a multi-disciplinary criminal justice system application to have a positive impact on crime. It is intergovernmental in scope.”

CJCC has no real authority, but exists to provide the Board of Commissioners with recommendations regarding jail overcrowding. Surveys have indicated that people want to resolve jail overcrowding, especially given the significant spike in the last three months in the jail’s average daily population.

Archie Brown offered ground rules to guide the session:

- put aside all the politics to resolve this huge problem together
- Respect boundaries, but be open.
- Focus on aggregate data, and share trends
- Be forthright and direct, but BE RESPECTFUL

CJCC Overview-Where are we in the system?

Fran Alexander took over as facilitator at this point to give a brief overview of the current state of the system and how it arrived to this point. As conversation ensued, it was stated that there is data about where the current system is up to Dec. 31, 2005. The National Institute of Corrections assessment recommended the creation of the CJCC two years ago. It found that there were many nationally tested best-practices already utilized by the county, but more could be added. The goal with this meeting was to revisit those best practices to see what further steps can be taken to help further alleviate the overcrowding. It is important that every member comes with the assumption that the part of the system they own can shift, and that improvements that matter can be found.

Fran advised the CJCC that it is appropriate offer questions, answers, and ideas, NOT PRESCRIPTIONS, because it does not have that authority. The goal is to find the solution that provides the least public safety risk and addresses the issue of overcrowding.

Next, Fran presented a slide show to give an overview of best practices (successful practices based on local realities) across the United States corrections systems employed to alleviate jail overcrowding. These are things that are possible across the country:

- Preventing offenders from entering the system. The goal is to manage the front line system, and not directing people to jail to readily. Try to use alternatives to jail, such as early screening, limited admissions, etc.
- Washtenaw County in particular needs to enhance its use of pretrial support services. Information needs to be available to judges sooner. *“There may be no stronger impact on jail overcrowding than the flexible hours and support of a good pretrial operation.”*
- Defense Attorney and Prosecutor working together very early in the process. Utilize experience and expertise early on in the process to move things through the system quickly.
- Keep caseloads manageable.
- Find ways to expedite Case Processing- (i.e. using retired Judges whenever possible).
- Coordinating Beds/Fixed allotment of beds that judges can trade.
- Maximizing investment in alternatives, such as increase tethering options, substance abuse treatment options, home release, etc., to offset the more expensive jail option.
- Knowing and responding to the jail population.

A summary from the monograph was included in the packet of information distributed to participants when they arrived. Participants were asked to fill out the various feedback forms, and their responses would, subsequently, be collected and summarized.

I. Initial contact with alleged offenders

Police Chief Paul Bunten, City of Saline, offered the police perspective during this segment of the retreat.

Overview of System:

Police Chief Bunten asserts that while practices vary across agencies, technological improvements allow police officers to identify more people that have warrants throughout the system. Thus, the potential for arrests has increased. Paul shared his opinion that no matter how many beds there are in jails, they can be filled. Law enforcement officials worry about things like allotment of beds to judges. Justice is not being served at this point, if you only have a few beds to fill and can trade them. The problem can be approached from a different angle.

Current Successful Practices:

Paul Bunten stated that law enforcement has already been proactive about assuaging overcrowding, and has implemented several successful practices.

- The county has instituted “Advise and Release,” only picking up people in their own jurisdiction.
- Agencies recognize that there has to be two set of practices, depending on whether the jail is in overcrowding. The County is currently doing no warrant sweeps, and not actively arresting misdemeanants, when overcrowding has been declared.
- Local lock-ups were discussed. Saline, (as well as other agencies), has a very state of the art lockup system that serves as an alternative to holding arrestees in the jail because of limited space. Not all agencies have a lockup system, and anybody that they arrest is actually held in the jail.

Possible Recommendations to Examine:

- Some agencies may take whatever amount of money in the offenders pocket as bond, and then release them. This was once practiced by Washtenaw County, and could potentially be restored.

- It is important that the agencies within the county communicate amongst each other to make sure that they have similar goals. However, some departments may not want to collaborate. The agencies could possibly benefit from working on their collaboration.

II. Initial Station House/Jail Contact

Washtenaw County Undersheriff Herb Mahony presented an overview of initial station house and jail contact. Mahony referred participants to a handout (“A Second Look at Alleviating Jail Overcrowding”) to accompany his presentation.

Overview of System:

Mahony began by maintaining that the underlying assumption is that the sheriff’s department can find improvements. They did not come up with any new significant decision points other than what was provided in the original material. Essentially, many agencies are doing the same things across the system, but practices may vary from agency to agency according to resources and assets available. Furthermore, these practices may or may not affect jail population, depending on what assets the agency has available.

Current Best Practices:

Essentially, Washtenaw County has done a good job with instituting some of the best practices noted earlier, and have even gone a step further. Some of the things that agencies implement now:

- Misdemeanor issuance of summonses
- Second state overcrowding policies. Agencies have are two sets of practices: over crowding and not overcrowding. For example, when the jail is in overcrowding there is an agreement to give non-violent, non-assault offenders agreement to give PR bond. This does not happen when the jails are not in overcrowding.

Possible Recommendations to Examine:

- Mahony offered that it may be appropriate to institute a single set of practices for pick-up range and bond agreements.
- The problem is that there are not enough resources before mental health arrestees make it to prison. There are gaps in the mental health evaluation, and an extremely high threshold for mental health arrestees to be committed once they are taken to PES to be evaluated. Resources should be available early on to help divert this population from prison. Also, lower the Psychiatric Emergency Services (PES) threshold for services.

III. Prosecutor Screening/Charging

This section was led by Country Prosecutor Brian Mackie.

Overview of System:

Mackie stated that there is general misconception about the system. Washtenaw County is not locking too many people up. There was actually an all time low in the system last May. It is hard to get into prison, and Washtenaw County is letting people out that should be in jail. The number one priority of the system should be safety in the community.

Current Best Practices:

Mackie confirmed some best practices already employed by Washtenaw County. As a national model, he believes Washtenaw County is doing what it is supposed to do. Some of the things that the county implement now:

- There's a prosecutor on duty 24 hours a day. There is a judge or magistrate on duty as well.
- Only experienced people review warrant requests, and 30-35% of warrant requests that come are denied or returned to police for further investigation.

This system is pretty good when compared nationally, and does a good job of screening cases. Washtenaw County is number one in the state on felony charges staying felonies in the Circuit Courts.

Possible Recommendations to Examine:

- Mackie offered that the use of a summons system may be worth trying. He did, however, express doubt about this system resolving the overcrowding issue.

IV. Arraignment and Preliminary Exam

The presentation on this part of the system was given by J. Cedric Simpson.

Overview of System:

J. Cedric Simpson outlined the current arraignment process.

Felony:

- A complaint is sworn out by the magistrate.
- The offender is then arraigned at the jail.
- Prior to this, all the info about this person is gathered so the magistrate has all the information he can about the case to determine what the appropriate bond for this person.
- If person is released, they are then given a date that they need to appear. This is where the person receives their preliminary examination, or
- The case will then either proceed to a circuit court, or the case may be dismissed or reduced to a misdemeanor (thus remaining at the district court).

Misdemeanor:

- An individual comes in on bench warrant, because this is what Judge Simpson terms a "notice court." It is rare to issue an arrest warrant when the complaint is sworn out. A notice is sent to the individual to appear in court. It is rare for misdemeanors to come in on new cases.

Current Best Practices:

J. Cedric Simpson believes that the courts are being very proactive in doing their part to help resolve the overcrowding issue. It was noted by Brain Mackie that these efforts represent a "triumph" in our system. Some of the things that the courts implement now:

- Seven-day rule states that an individual will not sit in jail for more than seven days without seeing a judge.
- The Courts have done a great deal to work with the Clerk's office to compress the time for preliminary examination. Typically, there is a 14 day felony case preliminary examinations. The courts have worked hard to reduce this time.
- There is also a great deal of work done to compress the time for case processing.
- Pretrial offers additional information for arraignment.

Judge Simpson cautions that attempting to compress too much, you will ultimately lose the efficiencies that you are trying to increase. There needs to be a balance. He also states that bonds have been identified by others as an issue. He believes bonds are being set appropriately. However, in the attempt to reduce overcrowding, people that would not normally be released are being released. This raises judicial concerns, because these people can pose a danger.

Possible Recommendations to Examine:

- We need to use technology when we can, such as the use of alcohol tethers. This helps to alleviate the issue of public safety, but saves jail beds.

V. Trial Processing

This section was presented by Archie Brown.

Current Best Practices:

Archie Brown asserts that Washtenaw County has done what it can over the years to speed up the trial process. Some of the things that courts implement now:

- Washtenaw County tries to keep trials within 90 days, even though current guidelines allow within 300 days of its arraignment to dispose a felony case.
- Also, the concurrent jurisdiction plan that has been in place for quite some time provides that all judges can hear felony files. This makes it easier to find judges to try cases, and allows for resolution much more quickly.

Possible Recommendations to Examine:

- Transcripts- Often times, prosecutors need a transcript from preliminary exams to prepare, if various motions are going to be filed. There is currently 30 days to get transcripts. This should be shortened. Bond motions cannot be made if transcripts have not been reviewed.
- Sentencing- Presently, sentencing is set out three weeks after taking a plea. This is because the Department of Corrections has three weeks to prepare a pre-sentencing investigation reports. This time has been shortened as well, especially when dealing with offenders who are in custody.
- Also, there needs to be more use of Community Corrections options.

VI. Community Corrections

Julie Chaffee, Director of Community Corrections, outlined the Community Corrections perspective on jail overcrowding. She presented a slideshow to accompany her presentation.

Overview of System:

Julie asserted that Community Corrections is no longer in a jail management position, but is attempting to provide all alternatives to jail possible to the judiciary at the front end of the process.

Current Best Practices:

Julie highlighted several practices implemented by Community Corrections that have been can have a very impact on lessening jail overcrowding. Some of these are:

- Expanded Eligibility Criteria: Initially, Community Corrections did not accept violent offenders. However, provisions have been made to leave it up to the judges' discretion to determine what exactly "violent offenders" meant and decide if they should come to Community Corrections. This expanded eligibility of those who could come to include all court ordered offenders who are not charged with capital offenses such as crimes class code A, B, C, and D.
- Phase 1 Pretrial verification- Community Corrections goes into jail to help arraignment officials to have verified information. This would allow for the official to have as much verified information as possible prior to setting the bond.
- Second part of pretrial process- This allows Community Corrections go into the jails prior to sentencing to see who was in the jail and why, so that they can provide options to

the judiciary. This allows for case planning to begin at the earliest possible point. Community Corrections began this in March of this year.

- **Compass Assessment-** Community Corrections works to provide circuit court judges with a **compass assessment**. This is a list of the risk and needs of the pretrial-felon. Community Corrections workers take a look at offenders, give a survey, and then provide report to probation office, and the probation office will make recommendations. The judges now have two pieces (compass assessment and the initial verification) of information before the bond review that they did not have at first. This allows for a structured sentence or alternative sentencing.

Essentially, Julie asserts that the CC advisory board says that it is important for Community Corrections to be in the front in of the decision making process. Previously Community Corrections used to wait for the judge to make the decisions on offenders, and intervene in the back end of the process. Now they are focusing on the front end of the sanctioning process.

Possible Recommendations to Examine:

Julie followed her overview of current Community Corrections successful practices with an outline of where Community Corrections would like to go in the future. She offered several recommendations.

- A major problem is that very little attention is given to the people that are still in jail. Once it is determined that offenders will not go to Community Corrections, there still need tracking to see who's in jail still. This is a gap in the system that could be discussed, and Community Corrections is willing to work on this process as well.
- Be more vocal about Community Corrections expanded eligibility criteria. It has been engrained that Community Corrections does not take violent offenders, which may serve as a deterrent to some.
- Expand staffing to enhance the pretrial verification process. The goal is to get more resources to have more staff in the jails that could spend more hours to verify more information.
- Intensive Outpatient Services-Provide judges with a proven program in the community as an interim step to incarceration.
- Additional probation residential center beds. Community Corrections could be an alternative, but the number of beds is not available. There are about 18 people in the beds, and 12-15 waiting. Other people in the community have the resources though, but those beds are taken by the jail offenders. The county has to decide collectively who to let in.
- Substance abuse testing money for felony pretrial offenders. This reduces the violation of bonds due to the lack of resources that offenders have.
- Requested money for pretrial felons to be on electronic monitoring.

Overall, these all have a positive impact on public safety, jail overcrowding, prison commitments, and reduction in recidivism. Julie recommends that there be an overcrowding/banding committee to make sure there is comprehensive information presented to the judiciary early on.

VII. Incarceration-Sheriff's Department

Washtenaw County Undersheriff Herb Mahony presented the led this section of the retreat, as well. Mahony, again, referred participants to a handout ("A Second Look at Alleviating Jail Overcrowding") to accompany his presentation.

Overview of System:

The incarceration process is iterative. Mahony stated that there is constantly case review to determine if there is district court release criteria are available now that were not available during the initial booking and intake process. The Sheriff Department is always going back to inmate files to determine if things are available today that weren't initially available for this person to earn release from jail. Then there is a petition to the court for this option to be considered as an alternative to jail.

Current Successful Practices:

Mahony confirmed several successful practices that the agencies are employing at the incarceration stage. These include:

- Jail case monitoring to continually review inmates to identify people that can go to alternative programs. There is a staff that deals with inmate services and monitoring.
- The jail requests early releases from Court for inmates who have successfully completed specific programming and have no disciplinary problems.
- The jail is working with the Department of Corrections to curtailing the time it takes to transfer sentenced inmates from jail and prison. There is still a disconnect in getting info to the sheriff which adds another 2 weeks to get paper work.

Possible Recommendations to Examine:

Mahony offered several suggestions on how the law enforcement can impact jail overcrowding at the incarceration level. These included:

- Expand good time release policy as an incentive for program completion and proper conduct while in jail. The system currently does not use this as a behavior modification tool. There could be a greater effort to put out right away to offenders the things that would help get time reduced: an orientation up front for inmates, so they know what the system is looking for.
- Setting time limits for releasing pretrial defendants brought in on certain charges.
- Hiring staff whose priority is jail overcrowding and reclassification issues, and not just dealing with monitoring when the jail is in overcrowding. Currently, staff who deal with inmate services, have the secondary job of dealing with jail classification.
- Curtailing the time it takes to transfer sentenced inmates from jail to prison.

VIII. Early Release/Probation-

Judge Brown led the discussion on early release and probation.

Overview of System (probation):

Archie Brown stated that there is a general misconception on violation of probation. It often takes several violations (unless it is at the felony level), not just one violation for the Department Of Corrections to process a violation.

Current Successful Practices:

Archie Brown spoke briefly on a practice that is currently being used by the Courts.

- Instead of issuing bench warrants for violations, show cause. This way, the offender shows up to determine the next step, instead of sitting in jail until they get to see a judge.

Possible Recommendations to Examine:

Archie Brown offered a suggestion to be considered to further enhance the efficiency of this process.

- There should be a bond amount already set in the bench warrant. Therefore, the person knows ahead of time that how much bond they need to post to go free once they appear in front of the judge.

Overview of System (Early Release):

Archie Brown gave a synopsis of the early release process.

- Once jail overcrowding is declared, judges have to see if they will release or reduce sentencing, based on what an inmate has done.
- If judges then release some, and it does not solve the overcrowding, then they move to the next stage of overcrowding release, which is banding. Judges identify whether offenders are low-risk or high-risk, and then release enough offenders based on classification to get past the overcrowding.
- If this does not work, the Sheriff then makes a decision. He has three options:
 - Do nothing, and allow the jail to remain overcrowded.
 - Send people elsewhere (boarding inmates in other jails).
 - Reduce inmate sentences by up to 30%.

Conversation then ensued, and an issue arose about the Sheriff's role in early release. Herb Mahony stated that this situation is very complicated. First, the Sheriff's department is not trying to undercut the judges' decisions. Also, it seems that the Sheriff's department is making a somewhat "arbitrary" decision, and don't have the luxury or the resources to make informed decision that the judges have. This is a concern, as the Sheriff needs more info to make those types of determinations.

Archie Brown stated that the Sheriff would not be overstepping his bounds by exercising his statutory authority. It is the elected official/legislature that has arranged the system this way. The Sheriff was given this power. It is a balancing issue. Judges do not believe that they should have to reverse these decisions that they believe are appropriate. This process is a concern to judges as well. Judges are not arbitrary in their sentencing decisions.

As issues arose over whether there was a real "system" in determining the additional 30% of offenders to be released. However, it was stated that it is based on classification.

Also, a question arose of whether there was any criterion with respect to banding. It was stated that that judges make those decisions every day, so there is tacitly a criteria. Because of their sentences, typically the person would be banded high. There is some guidance, and it is not just arbitrary decision.

Current Successful Practices:

Archie Brown spoke about how judges already employ early release practices.

- Prisoners should be given EARNED release, not early release. They have completed programs, no misconduct, etc., to earn their way out of jail. Judges are not simply releasing people because the jails are overcrowded. Judges make this decision all the time.

Possible Recommendations to Examine:

Many concerns surfaced regarding the early release practice. One recommendation resulted from the discussion.

- Some states actually have a task force to review the info that judges have to aid the jails in early release decisions. Washtenaw County could possibly create such a task force.

The County Perspective-Bob Guenzel

County Administrator Bob Guenzel wrapped up the presentations with an overview of the County's Perspective on things.

Overview of System:

Bob Guenzel had several key points.

- Bob highlighted that the most recognized political slogan in this county is “NO GIANT JAIL.” All the recommendations suggested today revolve around more beds, but the public does not want it. Ultimately, this all falls on the head of the Board of Commissioners.
- Most of the property taxes dollars go to fund the criminal justice system. In this system, the county has the least control over how those dollars are spent. However, it boils down to knowing where the money goes. There are no explanations for why the spike occurred. There needs to be answers. The county is directly responsible to the system.
- There is no short term solution. There are opportunities to do more to support this system. We have to work on the margins, but there is no “silver bullet.” The CJCC should follow through on all the great suggestions.
- In the long term, it will ultimately rest on public engagement.

Meeting was adjourned around 11:50 a.m. See Addendum for CJCC next steps.