

BEYOND CAPACITY



ISSUES AND CHALLENGES FACING COUNTY JAILS

Commission Report

March 2007



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Beyond Capacity: Issues and Challenges Facing County Jails

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EXECUTIVE SUMMARY

In March 2006, the Tennessee General Assembly referred SB 3698/ HB 3747 to TACIR for study. This bill would have required the state to pay the daily cost of housing prisoners confined to a local jail when such prisoners, convicted of felonies, are arrested for probation violation and awaiting a probation revocation hearing.” The bill would have significantly reduced county expenses by \$16,507,900 based on its fiscal note and would have increased the state’s expenses by the same amount. Currently, counties are not reimbursed for housing probation violators until the inmate’s probation is officially revoked.

As SB 3698/HB 3747 was the impetus for this research, much of the report focuses on issues related to housing state prisoners in county jails and the reimbursement system in place to provide county jails incentives for doing so. This report also explores jail overcrowding, high medical and mental health care costs, illegal immigration and the impact it has on county jails, and the possibility of forming regional jails in Tennessee. Additionally, this report expands upon and updates information from previous reports, including two reports published by the Tennessee Comptroller of the Treasury, Office of Research and one report published by Tennessee County Services Association (TCSA).

To gather and evaluate information on challenges faced by county jails, TACIR employed various methods, including a review of pertinent statutes and rules, an analysis of various federal and state data sources, a review of previous research, interviews with state and local officials, and a survey of Tennessee sheriffs and jail officials. Key to the literature review was the review of two reports by the Tennessee Comptroller of the Treasury, Office of Research and one report by TCSA. Among the thirty-two counties responding to the survey

- six counties are located in West Tennessee, seventeen in Middle Tennessee, and nine in East Tennessee;
- the county populations range from 4,821 in Pickett County to 909,035 in Shelby County, the average county population of all respondents is 106,341;
- the jail populations range from 8 in Pickett County to 2,967 in Shelby County;

Tennessee does not reimburse counties for housing probation violators until the inmate’s probation is officially revoked.

In January 2007, TACIR commissioners formally adopted two recommendations regarding the housing of state prisoners in local jails.

- the average number of inmates housed in jails is 302, which is slightly higher than the average number of inmates housed in local Tennessee jails as a whole (223);
- percent of inmates to capacity in the responding jails range from 50.4% in Weakley County to 303.3% in Sequatchie County; and
- the average rate of inmates to capacity of the survey respondents is 105.8%, which is very close to the average capacity of local jails as a whole (109.8%).

FINDINGS AND RECOMMENDATIONS

Findings and recommendations in this report include two formal commission recommendations and a number of staff recommendations associated with the challenges of housing state prisoners in county jails, and those related to other jail challenges, including overcrowding, medical expenses, and the costs of jailing illegal immigrants. Additional findings and recommendations deal with the potential for regional jails in Tennessee. (See Table 1.)

COMMISSION RECOMMENDATIONS

A draft version of this report was first presented to TACIR Commissioners in December 2006. In January 2007, Commissioners formally adopted two recommendations.

The General Assembly should require the Tennessee Department of Correction to reimburse county jails for the daily costs of housing state prisoners who are awaiting probation revocation hearings. The time lag between the probation violating offense and the probation revocation hearing is lengthy, and the number of prisoners placed on probation is increasing.

The Tennessee Department of Correction should set \$35 as the flat daily reimbursement rate for local jails housing state prisoners. Additionally, TDOC should simplify the reporting process for local jails holding state prisoners, to include eliminating the cost sheets counties currently complete to be reimbursed. Completing the cost reports requires a large portion of staff time and regardless of the daily cost reflected in the report, the daily reimbursement cap is \$35.

Table 1. Findings and Recommendations
Including those previously noted by the Office of Research, Tennessee Comptroller of the Treasury, and Tennessee County Services Association.

Findings	Corresponding Page Number(s) In Report	Recommendations
Challenges Involved in Housing State Prisoners in Local Jails		
There is no constant evaluation of the County Corrections Incentive Program (CCIP).	20	The Select Oversight Committee on Corrections may wish to review the current process to reimburse local governments for housing state inmates in local correctional facilities. ¹
There is no management of how reimbursements are spent.	20-21	The state should enforce the statute requiring counties with non-certified jails to use 75% of their TDOC reimbursements to improve correctional programs and facilities. ¹ The inconsistency between the Rules of the Tennessee Department of Correction and TCA § 41-8-10 (c) should be corrected.
The cost of providing medical and dental services to state prisoners strains county budgets.	21	No recommendation
Counties must absorb the costs of housing prisoners who are awaiting probation revocation hearings.	21-22	Commission Recommendation: The General Assembly should require TDOC to reimburse county jails for the daily costs of housing state prisoners who are awaiting probation revocation hearings.
Reimbursements paid to county jails for housing state prisoners may be inadequate.	22-23	TDOC may wish to reconsider the \$35 daily reimbursement cap for state prisoners housed in county jails. Commission Recommendation: TDOC should set \$35 as the flat daily reimbursement rate for local jails housing state prisoners. Additionally, TDOC should simplify the reporting process for local jails holding state prisoners, to include eliminating the cost sheets counties currently complete to be reimbursed. <i>Note: TACIR commissioners did not choose to recommend increasing the rate at this time, but did express their intent to examine this issue in the future. For this reason, TACIR includes the staff recommendation above.</i>
Uncertified jails do not contract with TDOC to house state prisoners.	23	No recommendation
State prisons remain overcrowded.	23-25	No recommendation

Table 1. Findings and Recommendations (continued)
 Including those previously noted by the Office of Research, Tennessee Comptroller of the Treasury, and Tennessee County Services Association.

Findings	Corresponding Page Number(s) In Report	Recommendations
Overcrowding		
Many Tennessee jails are overcrowded.	26	<p>The General Assembly may wish to consider enacting legislation outlining a jail overcrowding relief plan, much like the plan that exists for state prisons under TCA § 41-1-503.</p> <p>Local governments should establish ongoing avenues of communication such as councils or committees composed of criminal justice agencies to seek solutions to problems such as overcrowding.²</p>
Overcrowded and uncertified jails house state prisoners.	26-27	<p>The General Assembly may wish to enact legislation prohibiting state prisoners from being held in facilities that are not certified by the Tennessee Correction Institute (TCI) because of safety issues.¹</p> <p>TDOC should not contract with overcrowded jails to hold state inmates.¹</p>
State inmates contribute to overcrowding in many county jails.	27-28	<p>The General Assembly may wish to consider enacting legislation that prohibits state prisoners from being held in overcrowded jails.</p>
General Medical Care		
County jail health care costs are rising.	28-30	<p>State agencies such as the Bureau of TennCare and the Department of Human Services should work more closely with jail personnel to reinstate benefits inmates lose while incarcerated.¹</p> <p>Tennessee County Services Association should explore the possibility of establishing and implementing a statewide, inmate managed health care program, using health care rates that have already been negotiated and are currently being used by the state.³</p> <p>Counties should stipulate that doctors prescribing medication to inmates use a formulary plan, which is a list of pre-determined medicines for most sicknesses and mental illnesses.³</p>

Table 1. Findings and Recommendations (continued)
 Including those previously noted by the Office of Research, Tennessee Comptroller of the Treasury, and Tennessee County Services Association.

Findings	Corresponding Page Number(s) In Report	Recommendations
General Medical Care (continued)		
County jail health care costs are rising. (continued)	28-30	<p>County jails may wish to purchase commonly used prescriptions collectively from pharmacies, allowing them to use their collective buying power to get the best price.</p> <p>TDOC should pay board and medical expenses of pretrial detainees, convicted of felony crimes, from the time of imprisonment.³</p>
Mental Health Costs		
Rising mental health care costs are a significant concern for county jails.	30-32	<p>Tennessee Department of Mental Health and Developmental Disabilities (DMHDD) should determine the impact of its criminal justice activities in local jails. If warranted, DMHDD should seek additional federal funds to expand the Mental Health Liaison Program statewide and increase the availability of mobile crisis teams.¹</p> <p>Sheriffs and jail administrators should provide discharge planning for inmates with mental illnesses who need continued care upon release.¹</p> <p>Jails that do not offer mental health services should consider doing so.</p>
		<p>Jails that do not offer substance abuse treatments should consider doing so.</p>
Many inmates are prescribed psychiatric drugs, and the cost of these medications strain county budgets.	33-34	See recommendation above about implementing a statewide, inmate managed health care program.
Inmates with mental illness serve more sentences and display more behavior problems than inmates without mental illness.	34-35	No recommendation

Table 1. Findings and Recommendations (continued)
 Including those previously noted by the Office of Research, Tennessee Comptroller of the Treasury, and Tennessee County Services Association.

Findings	Corresponding Page Number(s) In Report	Recommendations
Costs Associated With Housing Illegal Immigrants		
Illegal immigration is an issue that affects some county jails.	35-37	No recommendation
There is financial assistance available to state and local facilities that house illegal immigrants.	37	County governments may wish to consider applying for State Criminal Alien Assistance Program funds to assist with costs of housing inmates who are suspected or confirmed illegal immigrants.
Regional Jails		
No Tennessee counties operate regional jails, despite the fact that they have been permitted to do so since 1999, when TCA § 41-4-141 was enacted.	38	Some Tennessee counties should consider the feasibility of establishing regional jails. ¹
Other states have had success with regional jails.	38-41	Tennessee counties may wish to look in depth at other state's successful regional jails systems.
Designating a central authority and providing economic incentives to counties for forming regional jails may encourage their implementation.	41	Tennessee counties that are interested in implementing regional jails should consider designating a central authority responsible for organizing regional jail construction and management. The General Assembly may wish to consider creating financial incentives for counties to establish regional jails. ¹
Based on reports from other states, regional facilities can save local governments money in terms of general operations, programming, transportation and construction.	41	No recommendation
There are challenges to implementing regional jails, but they can be overcome.	42-44	Tennessee counties that are interested in implementing regional jails should consider utilizing the National Institute of Corrections' Planning a New Institution program and How to Open a New Institution program.

¹ Recommendation originally presented in 2003 Office of Research report, *The State of Tennessee's Jails*.

² Recommendation originally presented in both the 2003 Office of Research report, and the 2006 Office of Research report, *Building and Funding Jails in Tennessee*.

³ Recommendation originally presented in a 2005 report by the Jail Cost Study Committee, a part of Tennessee County Services Association.

Note: All of the above recommendations are TACIR staff recommendations, except for the two specifically labeled Commission Recommendations.

BEYOND CAPACITY: ISSUES AND CHALLENGES FACING COUNTY JAILS

INTRODUCTION

In March 2006, the Tennessee General Assembly referred SB 3698/HB 3747 to TACIR for study. SB 3698/HB 3747 would have required the state to pay the daily cost of housing prisoners confined to a local jail when such prisoners, convicted of felonies, are arrested for probation violation and awaiting a probation revocation hearing.”¹ The bill would have significantly reduced county expenses by \$16,507,900 based upon its fiscal note and would have increased the state’s expenses by the same amount.² Currently, counties are not reimbursed for housing probation violators until the inmate’s probation is officially revoked.

As SB 3698/HB 3747 was the impetus for this research, much of the report focuses on issues related to housing state prisoners in county jails and the reimbursement system in place to provide county jails incentives for doing so. In addition to discussing challenges faced when state prisoners are housed in county jails, this report explores jail overcrowding, high medical and mental health care costs, illegal immigration and the impact it has on county jails, and the possibility of forming regional jails in Tennessee. TACIR’s current report also expands upon and updates information from previous reports, including two reports published by the Tennessee Comptroller of the Treasury and one report published by the TCSA.

METHODOLOGY

To gather and evaluate information on challenges faced by county jails, TACIR employed various methods, including

- a review of previous research, including two reports by the Tennessee Comptroller of the Treasury and one report by TCSA;
- a review of Tennessee statutes on the CCIP;
- a review of the Rules of the TDOC;

TACIR staff gathered information for this report from many sources including a literature review, interviews with state and local officials, and a survey of sheriffs.

- an analysis of data on the prevalence of mental illness in jail inmates, including data compiled by the Bureau of Justice Statistics and DMHDD;
- a review of information on the impact of illegal immigrants on county jails, including information from the U.S. Census Bureau and the State Criminal Alien Assistance Program;
- a review of information on regional jail facilities in other states;
- interviews with state and local officials;
- an analysis of TDOC data on local jail populations;
- an analysis of TDOC information on jails that house state prisoners, including daily reimbursement rate; and
- a survey of Tennessee sheriffs and other jail officials.

SURVEY OF SHERIFFS

In September 2006, TACIR administered a survey to sheriffs and jail officials in all ninety-five counties. This was accomplished with assistance from CTAS and the Tennessee Sheriffs' Association (TSA). The survey was administered by fax and included questions on the following issues:

- Number of probation and parole violators currently housed in the facility
- Actual daily cost of housing a state prisoner
- Challenges encountered when state prisoners are housed in county jails
- Number of federal prisoners housed in the jail and federal reimbursements for these prisoners
- Cost of health care services, mental health care services and substance abuse services
- Impact of illegal immigrants on the jail
- Successful lawsuits against the facility

- Efforts to expand the facility
- Consideration of building a regional jail
- Perceptions of the biggest challenges facing county jails today as well as suggestions for how to improve these situations

There was a 34% response rate to the survey of sheriffs. TACIR would like to have had a higher return rate and took efforts to this end. The initial survey was sent, an email reminder was issued approximately two weeks later, and TACIR staff attended the September 2006 TSA meeting in attempt to generate interest in the study and encourage sheriffs to respond to the survey. Though 34% is not as large a sample as TACIR desired, the group of counties represented is diverse, so the conclusions drawn are still very meaningful. Additionally, many respondents provided similar answers, making trends clearly identifiable:

- Of the thirty-two respondents, six are located in West Tennessee, seventeen in Middle Tennessee, and nine in East Tennessee.
- The county populations of respondents range from 4,821 in Pickett County to 909,035 in Shelby County, the average county population of all respondents is 106,341.³
- The jail populations of respondent facilities range from 8 in Pickett County to 2,967 in Shelby County.⁴
- The average number of inmates housed in respondent jails is 302, which is slightly higher than the average number of inmates housed in local Tennessee jails as a whole (223).
- Percent of inmates to capacity in the responding jails range from 50.4% in Weakley County to 303.3% in Sequatchie County.
- The average rate of inmates to capacity of the survey respondents is 105.8%, which is very close to the average capacity of local jails as a whole (109.8%).

The 2003 Office of Research report focused on administration of the CCIP, jail conditions, and jail funding.

REVIEW OF PREVIOUS RESEARCH

THE STATE OF TENNESSEE'S JAILS

In this 2003 report, the Office of Research reviews state statutes, current jail standards, TCI inspection reports, and TDOC population reports, among other items. Staff also interviewed various state officials, sheriffs, and jail administrators and visited selected jails. Finally, the Office of Research surveyed ninety-five sheriffs by mail in 2002. The report's objectives were as follows:

- To determine the nature and extent of the conditions in Tennessee jails that leave counties at risk of lawsuits.
- To determine risks these conditions pose to inmates and the public.
- To determine the extent that state practices contribute to such conditions.
- To determine whether county jails have adequate funding to provide sufficient staff, essential inmate services, and safety precautions.
- To examine best practices shown to protect both inmates and the public.

CONCLUSIONS

The Office of Research reached many conclusions regarding ambiguity among Tennessee statutes regarding prisons and jails, challenges with the administration of the CCIP, and poor jail conditions. Conclusions most relevant to TACIR's report are presented below, the full list of conclusions and recommendations is found in Appendix 2(a).

Tennessee statutes governing the transfer of state prisoners from county jails conflict with each other. The report states "TCA § 41-8-106(g) requires the department to take into its custody all convicted felons within 14 days of receiving sentencing documents from the court of counties not under contract with the CCIP. On the other hand, TCA § 41-1-504(a)(2) allows the department to delay transfer of felons

who had been released on bail prior to conviction for up to 60 days until prison capacity drops to 90%.” The report also points out that jails in Hamilton, Davidson, Knox and Madison counties are given priority when TDOC transfers inmates from local jails to state facilities. This is the result of a federal court ruling that places limits on the number of inmates these counties can hold.

The state does not evaluate the reimbursement process for housing state inmates in local correctional facilities as required by TCA § 41-1-405, enacted in 1983. TCA § 41-1-405 emphasizes “a continuing evaluation of the impact of the state correction system upon local correction systems is essential to determine the method and amount of assistance, financial or otherwise, necessary to equitably compensate such local systems for their continuing role in the overall correction system of this state.” The Office of Research report states that because the reimbursement process has not been continually reviewed, the current process may not comply with the General Assembly’s intent to equitably compensate local correctional systems. The report also states that any evaluation should include an analysis of marginal and fixed costs which can help to determine if the reimbursement process is equitable to counties and the state.

No state agency enforces or monitors compliance with TCA § 41-8-107 (c) which requires non-certified facilities to use 75% of the state reimbursement to improve correctional facilities or programs. The report points out that these facilities may remain in poor and uncertifiable conditions. In fiscal year 2001-2002, TDOC paid \$3,515,426 to county jails that were not certified, 75% of that amount is \$2,636,569.

Many Tennessee jails are overcrowded. The report emphasizes that overcrowding may strain county and state budgets and adversely effect safety and sanitation conditions. The Office of Research lists several contributing factors to jail overcrowding

1. TDOC inmates awaiting transfer to penitentiaries;
2. some judges not allowing bail for pre-trial misdemeanors;

3. some judges requiring sentenced misdemeanants to serve their full sentences;
4. changes in law enforcement practices leading to more arrests;
5. increase in the number of felons ordered to serve their sentences locally;
6. trial/hearing postponements.

Tennessee’s continuing failure to provide adequate capacity in state prisons has contributed to overcrowding in some jails. Tennessee statutes address only state prison overcrowding, but offer no contingencies for overcrowded local jails. The Governor has the ability to declare a state of overcrowding when the prison population exceeds 95% of capacity for thirty days or when there is reason to believe that within thirty days the capacity will be 95%.

Office of Research staff observed unsafe and unsanitary conditions in some of the jails visited.

No Tennessee counties operate regional jails, though they are allowed to, based on TCA § 41-4-141. The Office of Research explains that operating regional jails may save counties funds and lower liability risks. The paper points out that a regional jail is defined as “a correctional facility in which two or more jurisdictions administer, operate, and finance the capital and operating costs of the facility.”⁵ The Office of Research states that some counties explored establishing regional jails but did not reach an agreement. The paper relays several obstacles, originally cited by the National Institute of Corrections, to the development of regional jails⁶

- a perceived loss of authority by some county officials;
- a perception that not all counties are contributing equally;
- differing management styles;
- an increase in transportation costs;
- attorney complaints; and
- disagreements over the location of the facility.

Low funding for jails contributes to unsafe facilities, high correctional officer turnover, and staff shortages in some jails. The seventy-nine officials responding to the Office of Research survey reported budgets ranging from \$70,000 in Perry County to \$74.6 million in Shelby County. Sheriffs interviewed by the Office of Research said they had strained relationships with county executives and county commissions regarding jail funding. Sheriffs reported a feeling that the county officials do not recognize how much jails are underfunded.

Statewide, Tennessee continues to lack adequate community services and institutional placements for inmates with mental illnesses held in jail. The report states that the Criminal Justice/Mental Health Liaison program helps to divert inmates with mental illnesses from jails in specific areas, but that a statewide system is lacking. The Criminal Justice/Mental Health Liaison program was established in FY 2000-2001 and expanded from seventeen counties to twenty-one counties in FY 2002-2003. The report states that both mental health professionals and sheriffs agree that some inmates with mental illnesses would be better served by community resources. In most cases, Tennessee's local correctional officers are not adequately trained to deal with prisoners who suffer from mental illnesses and may not respond appropriately. This results in many prisoners with mental illness not getting proper treatment. The Office of Research also reports on a Public Act 730 of 2002, which aims to help jails secure housing in mental health institutes for inmates needing treatment. This Act specifies that the Commissioner of DMHDD must exert all reasonable efforts to admit an inmate requiring attention within five days of receiving a commitment order, including inmates who committed a minor crime, which may have been caused by their illnesses, or those inmates who need the treatment environment of a mental health facility. The Office of Research points out that the problem is that DMHDD does not have enough bed space to readily admit such inmates.

The 2006 Office of Research report focused on different approaches to construction and financing jails in Tennessee.

BUILDING AND FINANCING JAILS IN TENNESSEE

This report discusses different approaches to constructing and financing jails in the state of Tennessee. The report notes that these approaches can result in varied bed costs and operating costs. Office of Research staff conducted a survey of all ninety-five county sheriffs in Tennessee. Seventy-six of ninety-five county sheriffs responded to the survey. Twenty of these reported major jail construction projects in the past three years ranging from major renovations to new criminal justice centers including office space and courtrooms. The survey results showed that jail construction costs vary among counties due to things such as the facility that is actually constructed, site preparation, number of floors, type of supervision, and number of beds built or added and whether the project is new construction or a renovation.

CONCLUSIONS

The following are selected conclusions of the report, full conclusions and recommendations can be found in Appendix 2(b).

County commissions have funded jail projects that will not meet long-term needs to safely and efficiently house prisoners. To reduce the likelihood of this happening, the report suggests careful consideration of needs and construction costs, as well as involving sheriffs and their staff at an early phase.

Some county commissions and other officials do not seek expertise or technical assistance from organizations such as CTAS or NIC's Division of Jails. CTAS and NIC provide some assistance free of charge, and jail consultants will provide assistance for a fee.

County officials outside the sheriff's department often hire architects under professional service contracts. This results in county officials making design decisions, with sheriffs only advising.

Rule 1400-1-.04(24) requires counties constructing new jails to submit plans to TCI and the State Fire Marshall's Office for review and approval. However, the rule specifies

neither the elements required in jail construction plans, nor when counties should submit them. This has resulted in counties submitting plans late in the construction process, only to find out that the construction plans do not abide by square footage and other physical plant standards. When this happens, often times the county will have to appropriate additional funds to bring projects up to TCI standards.

The TCI board and staff lack expertise to assist counties in designing, constructing, and opening jails, and inspectors receive little training on reviewing plans. Additionally, there is no absolute interpretation of standards by TCI staff.

Some TCI construction standards (as well as those from other states) differ from court-tested American Correctional Association (ACA) standards, which architects often consult when constructing jails. This can result in jail designs meeting ACA standards, but not TCI standards.

No Tennessee counties have chosen to operate a jail jointly, although state law permits it. This could possibly save counties money, reduce liability and provide programs that might reduce recidivism. The Office of Research report discusses this issue in detail; findings are presented beginning on page eighteen of TACIR's current report.

REPORT TO THE TCSA BOARD OF DIRECTORS BY THE JAIL COST STUDY COMMITTEE

A 2005 report by the Jail Cost Management Committee, a special committee of TCSA, discusses issues in Tennessee jails. The report notes that overcrowding is a problem in many Tennessee jails, as is the increasing number of inmates with mental illnesses or disabilities and/or substance abuse problems. Additionally, the report discusses the amount of funding counties have been dedicating to jail construction and renovation.

CONCLUSIONS AND RECOMMENDATIONS

The following is a summary of the conclusions and recommendations cited in the TCSA report. The full report can be found in Appendix 2(c).

HEALTH CARE COSTS

TCSA should explore the possibility of establishing and implementing a statewide, inmate managed health care program, using health care rates that have already been negotiated and are currently being used by the state. Under this system, county governments would use the state of Tennessee TennCare rates or negotiated statewide rates. This would result in no additional cost to the state and would save counties money.

Counties should stipulate that doctors prescribing medication to inmates use a formulary plan, which is a list of pre-determined medicines for most sicknesses and mental illnesses. The report states that private companies indicate there is the potential to save up to 60% on drug costs by using a formulary. The committee points out that TDOC currently uses a drug formulary plan, and TCSA should investigate the possibility of jails using this same formulary. In addition to cost savings, if jails use the same formulary as the prisons, inmates could continue using the same medications upon transfer to another county jail or a TDOC facility. The report also stated that TCSA could explore hiring a private vendor to review all inmate medical bills for accuracy.

TCSA could explore utilizing vendors that provide a managed health care option. In this option, the county would use certain doctors and hospitals in their areas to provide medical services at a discounted rate. The committee also recommends that counties in Tennessee could contact vendors for inmate dental services.

The committee recommends that TCSA request DMHDD to establish a study committee consisting of all agencies involved in transporting mental health patients from emergency rooms to mental health facilities. TCSA should

support legislation that places the responsibility of the transportation of mental health patients on the local government in which the patient resides.

COUNTY CORRECTIONS INCENTIVE PROGRAM

The committee recommends that TDOC simplify the reimbursement formula for housing state inmates in county jails. The committee feels that a certified, county jail facility that holds state inmates should be paid a flat state rate based on inmates per day, eliminating the cost sheets counties currently complete to be reimbursed. The committee further recommends that the reimbursement rate paid to Tennessee counties be equal to that paid to Corrections Corporation of America or equal to the daily cost to the state for housing inmates.

TDOC should pay board and medical expenses of pretrial detainees, convicted of felony crimes, from the point of imprisonment. If county governments are not reimbursed for these inmates, the state should not count them in the reimbursement formula.

OTHER ISSUES

The training for county jail administrators needs to be more comprehensive, and made to include training on medical issues, jail management and supervision, professionalism and the application of cost saving measures.

TCSA and TSA should consider joining forces and filing legislation that would exempt county jail commissaries from the existing Blind Vending Industry statute.⁷

The report states that in the three years prior to the report, fifteen counties spent \$165 million on a jail or justice center project, providing an additional 4,096 beds. The report does note however, that \$122 million of the \$165 million was spent by large, urban counties. From 1996-2001, twenty-four counties built new jails, nineteen counties renovated existing facilities and fourteen expanded current facilities.

The CCIP statute allows local jails to house non-dangerous felony offenders and stipulates that the state reimburse them for doing so.

COUNTY CORRECTIONS INCENTIVE PROGRAM

Some of the findings by the Office of Research reference the housing of state prisoners in county jails. State prisoners are housed in county jails pursuant to guidelines set forth in Title 41, Chapter 8 of the Tennessee Code. This Title contains the County Corrections Incentive Act of 1981. The stated purpose of the Act is as follows:

“...to mutually benefit state and county governments by: helping alleviate overcrowding in state correctional facilities and reducing operation costs; and assisting counties in upgrading local correctional facilities and programs.”⁸

The Act gives TDOC the authority to establish rules for the administration of the CCIP. Based on the CCIP statute, local jails are permitted to house non-dangerous felony offenders and are to be reimbursed for daily housing costs by the state. Based on TCA § 41-8-104, participation in the CCIP is “absolutely voluntary.” No county shall be required to house convicted felons for longer than one year unless they have a contract with TDOC that specifies a longer term.

The rate of the compensation is determined by and is subject to the level of funding authorized in the general appropriations bill, and all funds are dispersed from the State Prosecution Fund by the Office of the State Comptroller.⁹ The daily reimbursement subsidy is capped at \$35 per day per prisoner unless a county has a contract with TDOC specifying a higher amount. Three facilities have such contracts currently. Metro Davidson County Detention Facility is reimbursed \$42.19 a day for each state prisoner, and Shelby County Penal Farm is reimbursed \$46.23 a day for each state prisoner. These two facilities house state prisoners for one to six years. In addition, Johnson City is reimbursed \$36.75 a day because it contracts with TDOC to house female state prisoners.

Aside from the counties that have special contracts with TDOC, counties are reimbursed either at flat rates or based on reasonable and allowable cost calculations. Under each option, there are counties that contract with TDOC and counties that do not.

For those counties contracting with TDOC and choosing the flat rate option, the rate is one agreed upon by both parties, not to

exceed \$35 a day. For counties not contracting with TDOC, the county commission must pass a resolution denoting that the county wishes to be reimbursed at a flat rate. For these counties, the amount of the reimbursement is dependent on the facility's operating capacity as determined by the TCI. If the county's rated capacity on January 1 of the preceding fiscal year is greater than, or equal to, one hundred inmates, the county is reimbursed at a flat rate of \$20 a day for each felon. Otherwise, the county is reimbursed at the rate of \$18 a day. Eighteen dollars a day is the minimum per diem reimbursement.¹⁰

For those counties choosing to be reimbursed based on reasonable and allowable cost calculations, the reimbursement rate is determined by TDOC. The county submits data sheets showing the actual, reasonable and necessary costs incurred by the county in housing a state felon and TDOC's judicial cost accountant reviews them to determine the daily reimbursement rate. The final compensation paid to a county by the state for the fiscal year will be equal to the state's proportionate share of the total for the state. However, the per diem reimbursement is capped at \$35 a day, even when counties' cost sheets reflect a higher daily cost for housing state prisoners.¹¹

The number of local jails housing state prisoners and how they are reimbursed has not changed since the 2003 Office of Research report (see Table 2). In both years, one hundred and one counties were reimbursed for housing state prisoners and twenty-four of these counties were under contract with TDOC.¹² Appendix 3 presents the 2006 reimbursement rates for all facilities. It is interesting to

The daily reimbursement rate is capped at \$35 a day per prisoner.

Table 2
County Jails That House State Prisoners

	2003			2006		
	Flat Rate	Reasonable and Allowable Costs	Total	Flat Rate	Reasonable and Allowable Costs	Total
Contract with TDOC	16	8	24	16	8	24
No Contract with TDOC	8	69	77	6	71	77
Total	24	77	101	22	79	101

Source of 2003 figures: *The State of Tennessee's Jails*, published by the Tennessee Comptroller of the Treasury, Office of Research and Education Accountability.

Figures originally from Tennessee Department of Correction.

Source of 2006 figures: Tennessee Department of Correction.

note that though the daily reimbursement rate is capped at \$35, only thirty-three of the one hundred and one jails that house state prisoners are reimbursed at a rate lower than \$35.

CHALLENGES INVOLVED IN HOUSING STATE PRISONERS IN LOCAL JAILS

Based on a review of previous studies, discussions with state and county officials, and a survey of sheriffs, TACIR has identified several issues that arise when county jails house state prisoners. Many of these issues, discussed below, were also identified by the Office of Research and the TSCA Jail Cost Study Committee.

PREVIOUSLY REPORTED ISSUES

There is no constant evaluation of the CCIP. TCA § 41-1-405 states that there should be continual evaluation of the effect the state correction system has upon local correction systems in order to “determine the method and amount of assistance, financial or otherwise, necessary to equitably compensate such local systems for their continuing role in the overall correctional system” of the state. Furthermore, the statute suggests that a task force “composed of all facets of the criminal justice system” complete the evaluations. The lack of evaluations was pointed out in the 2003 Office of Research report, *The State of Tennessee’s Jails*, and TACIR has found no evidence of the implementation of such a program. Since the reimbursement system has gone unchecked, very few updates have been made since it was instituted.

There is no management of how reimbursements are spent. As stated in the statute outlining the housing of state prisoners in county jails, one intention of the CCIP is to assist counties in upgrading local correctional facilities and programs. Presumably, TCA § 41-8-107(c), was intended to help fulfill this goal. This statute states that the allowable use of subsidies paid to local jails vary based on whether the jail is certified or uncertified. Uncertified jails are to spend 75% of the subsidies they receive for improving correctional programs or facilities,

meaning only 25% can be used for operating expenses. Certified jails are permitted to use the full subsidy for operating expenses. Though TCA § 41-8-107 (c) has not been officially revoked, an Attorney General Opinion¹³ states that the stipulation was deleted from the Rules of TDOC, and had been “implicitly repealed and is not enforceable.” There is a conflict between the Rules of TDOC and TCA § 41-8-107(c).

The cost of providing medical and dental service to state prisoners strains county budgets. Counties are responsible for the medical and dental costs of state prisoners held in their jails. TCA § 41-4-115(a) states that it is the duty of county legislative bodies to provide “medical attendance upon all prisoners confined in the jails in their respective counties.” TCA § 41-4-115(b) mandates that the state is responsible for expenses incurred only from emergency hospitalization and medical treatment for any state prisoner held in a county jail or workhouse. However, the inmate must be admitted to the hospital for the state to be liable for costs.

Respondents to TACIR’s survey stated that one of the primary issues with the CCIP is that counties must absorb health care costs of state inmates housed in their jails. Thirty-one percent of respondents reported that providing medical care for state prisoners is very expensive and strains the budget.

ADDITIONAL ISSUES IDENTIFIED BY TACIR

Counties must absorb the costs of housing prisoners who are awaiting probation revocation hearings. The current report was initiated based on the referral of SB 3698/HB 3747 to TACIR. The bill would have required the state to pay for the daily costs of state prisoners housed in county jails while they are awaiting probation revocation hearings. TDOC Rules govern the administration of CCIP and the compensation paid to counties for housing state prisoners.¹⁴ Based on these rules, an individual awaiting his or her probation revocation hearing is not a state prisoner until probation is revoked.¹⁵

Costs associated with housing probation violators strain county jail budgets due to the high numbers of these inmates and lengthy time lags between imprisonment and revocation hearings.

The bill's fiscal note states that this would reduce county expenses by \$16,597,900, and increase the state's expenditures by the same amount. One reason that this figure is so high is that probation violation hearings seldom occur immediately following the individual's being taken into custody for the violation. The average time period between a probation violation offense and a probation hearing is seventy-five days, based on information in the fiscal note for SB 3698/HB 3747. Counties are feeling the strain of housing these prisoners for another reason; the number of prisoners being sentenced to probation is increasing. The 2004-2005 Annual Report for the Board of Parole and Probation indicates that the percentage of prisoners on probation has risen 16.5% from 2002 to 2005 (from 35,000 to 40,765). This indicates that the problem will become exacerbated for county governments if the bill is not approved.

Reimbursements paid to county jails for housing state prisoners may be inadequate. The per diem reimbursement rate paid to counties is capped at \$35, which for many counties, does not cover the costs of housing state prisoners. The TDOC website states that on average in fiscal year 2005-2006, the daily cost of housing a TDOC inmate in a state facility is \$58.91.¹⁶ This is well over the daily reimbursement cap of \$35 for which counties are eligible. TACIR surveyed sheriffs about whether or not the subsidy provided by the state was sufficient to cover costs.

- Seventy-two percent of the respondents report that daily reimbursements provided by the state do not cover the actual costs of housing state prisoners.
- Three respondents said the reimbursements do cover costs, three said the reimbursements sometimes cover the costs, and three provided no response to the question.
- Just over half (59%) of the respondents who provided actual cost information stated that the daily cost of

housing a state prisoner is in excess of \$35. Thirty-five dollars is the cap on daily reimbursements.

- The lowest actual daily cost reported is \$30 a day in Pickett County, and the highest daily cost is \$96.43 a day in Shelby County.
- Among respondents, the average actual daily cost of housing a state prisoner is \$47.75 a day.
- Among respondents who stated the daily reimbursement paid by TDOC is inadequate to cover costs, the shortfall between the daily reimbursement rate and actual cost per day per prisoner ranges from \$1.97 per inmate per day (Washington County) to \$61.43 per inmate per day (Shelby County).
- The average shortfall between the reimbursement rate and actual cost among these counties is \$15.78 per inmate per day.

It is worth noting that the daily reimbursement rate paid to county jails to house federal prisoners is higher than the rate paid by the state to house state prisoners. Thirty-one percent of respondents to TACIR's study reported housing federal prisoners. Each county must contract with the federal government to house federal prisoners. The rates paid to TACIR survey respondents to house federal prisoners range from \$30 to \$56.29, with an average daily reimbursement of \$43 a day. Jails are reimbursed by the U.S. Marshal's Service their actual costs for housing federal prisoners.

Uncertified jails do not contract with TDOC to house state prisoners. TDOC Rules do not indicate that uncertified jails must contract with TDOC,¹⁷ but the state statute does indicate this.¹⁸ There seems to be a conflict between the rules of the TDOC and the state statute. Nineteen uncertified facilities currently house state prisoners without a contract.

State prisons remain overcrowded. Based on the information in the statute, the CCIP is designed not only to help county jails improve their facilities but is also intended to help relieve

The daily reimbursements paid to county jails for housing felony offenders do not always cover actual costs.

overcrowding in state prisons. A review of inmate population numbers in state prisons reveals that though local jails are no doubt *relieving* overcrowding in state prisons, overcrowding is still a significant problem. The percent operating capacity for the sixteen state institutions as a whole was 97.8% in September 2006. The highest capacity among the institutions was 99.1% at Mark H. Luttrell Correctional Center and the lowest was 92% at DeBerry Special Needs Facility.¹⁹ Some respondents to TACIR’s sheriff survey stated that getting bed space for an inmate at a TDOC facility is a problem, especially when the inmate is a female. One respondent reports having to hold female inmates for extended periods of time, due to a shortage of prison bed space.

Just how much does TDOC rely on county jails to relieve state prison overcrowding?

- In FY 2005-2006, TDOC housed an average of an average of 8.7% state inmates in local jails as backup felons, and an average of 17.6% in local jails as locally sentenced felons.²⁰
- These percentages have remained stable over the last eleven years.
- The *number* of felons housed in local jails has increased substantially over the last eleven years (See Table 3).
- From 1994-1995 to 2005-2006 the average number of inmates housed in local jails as TDOC backups increased 63% (from 1,773 to 2,293), and the average number of locally sentenced felons increased 44% (3,221 to 4,624).

Table 3
Felons Held in TDOC Facilities and Local Facilities (Fiscal Year Averages)

Fiscal Year	Average Felon Population	TDOC Inmates	% of Total Felons Housed in TDOC Facilities	TDOC Backups	% of Total Felons Housed Locally as TDOC Backups	Locally Sentenced Felons	% of Total Felons Locally Sentenced
1994-1995	17,749	12,755	71.90%	1,773	10.00%	3,221	18.10%
1995-1996	18,694	13,302	71.20%	2,042	10.90%	3,350	17.90%
1996-1997	19,163	13,815	72.10%	1,904	9.90%	3,444	18.00%
1997-1998	20,401	15,269	74.80%	1,617	7.90%	3,515	17.20%
1998-1999	21,632	15,933	73.70%	1,941	9.00%	3,758	17.40%
1999-2000	22,608	16,764	74.20%	1,927	8.50%	3,917	17.30%
2000-2001	22,625	17,140	75.80%	1,742	7.70%	3,743	16.50%
2001-2002	23,891	17,611	73.70%	2,143	9.00%	4,137	17.30%
2002-2003	24,913	18,436	74.00%	2,313	9.30%	4,164	16.70%
2003-2004	25,635	19,404	75.70%	2,021	7.90%	4,210	16.40%
2004-2005	26,036	19,431	74.60%	2,180	8.40%	4,428	17.00%
2005-2006	26,323	19,406	73.70%	2,293	8.70%	4,624	17.60%

Source: Tennessee Felon Population Update August 2006, Tennessee Department of Correction

Prison overcrowding is expected to become more problematic in the future.

- The total number of state felons is expected to rise 17% over the next eleven years.²¹
- TDOC operational capacity is expected to rise only 3.3% during this time period, resulting in a large unmet bed demand.
- The unmet bed demand at the end of FY 2006 was 1,980. It is expected to be 6,261 at the end of FY 2017.
- The TDOC Strategic Plan states to meet this unmet bed demand, TDOC will need to construct new bed space, rely on county jails, or contract for additional private beds in Tennessee or another state.²²

The 2003 Office of Research report notes that there is existing legislation to help the state deal with overcrowded prisons. The Reduction of Prison Overcrowding Act states that the Governor can take action when a facility is at or above 95% relevant designated capacity for thirty days or there is reason to believe that in the next thirty days it will reach this capacity for a consecutive thirty days.²³ According to TCA § 41-1-501, relevant designated capacity is the number of inmates who can be confined under humane and constitutional conditions. The actions available to the governor under this Act aim to reduce the relevant designated capacity to 90%. No such legislation exists to ease overcrowding in local jails.

Other issues involved with housing state prisoners in county jails, as identified by TACIR survey respondents include

- keeping up with the sentence time of state prisoners;
- inmates confuse state prison policies and county jail policies;
- small jails lack sufficient programs for inmates, including drug abuse treatment, counseling and work programs;
- disciplinary problems among state prisoners;

- keeping convicted state inmates separate from pre-trial inmates; and
- personnel shortages.

OTHER COUNTY JAIL ISSUES

OVERCROWDING

Many Tennessee jails are overcrowded. TDOC's *August 2006 Tennessee Jail Report* shows that nineteen county facilities are operating between 90 and 99% capacity. Fifty-one local jails are operating at 100% or more capacity, and eleven facilities operate at 150% or more capacity. Many respondents to TACIR's survey reported that their counties had expanded the current jail or built a new jail to help with overcrowding. Several stated that the new or expanded facility helped with overcrowding, but only temporarily. Many other counties said their facilities had plans to expand the current jail or construct a new one in the future.

Many Tennessee jails are overcrowded, and in several jails, housing state inmates contributes to this problem.

Overcrowded and uncertified jails house state prisoners. The state CCIP statute, as well as TDOC Rules of the CCIP do not prohibit overcrowded and uncertified jails from housing state inmates, however, when inmates are housed in these facilities, it may increase the likelihood of lawsuits against the state and local governments. Overcrowding is a serious issue because it can increase the potential of lawsuits against county jails for violation of the Eighth Amendment (banning cruel and unusual punishment) and the Fourteenth Amendment (guaranteeing due process rights). Additionally, overcrowding has detrimental affects on safety, food service, medical care, recreation and sanitation in jails. Eight respondents to TACIR's survey reported that there had been successful lawsuits against their facilities, and at least one was due to overcrowding. All respondents who stated there had been a successful lawsuit against the county said it resulted in the county either building a new jail or expanding the current jail.

Some research suggests that the addition of inmates to a jail does not inherently increase costs, and for jails with fixed annual

budgets, the addition of inmates to the jail can actually lower the per inmate per day cost (PIDC). One researcher states that for jails with fixed annual budgets, 80 to 90% of the annual budget is comprised of expenditures for utilities, office supplies, clothing and laundry, medical services (excluding prescriptions), equipment wear and tear and personnel costs.²⁴ Hart states that these costs do not fluctuate based on the number of inmates housed in the jail. The remaining costs are variable costs, and fluctuate with the addition or subtraction of inmates. Variable costs include costs for food, disposables and medication. Based on TACIR's survey responses, prescription drug costs can be extremely high and may outweigh any cost savings resulting from lower PIDCs. It is also important to note that personnel costs can vary from jail to jail depending on the configuration of the jail and the types of inmates housed there. For instance, some jails may be able to operate with an inmate to guard ratio of four to one, in other jails, one guard may only be able to supervise three inmates.

Twenty-three uncertified jails currently house state prisoners. Seventeen of these jails are over 100% capacity.²⁵ Seventeen of the twenty-three uncertified jails house locally sentenced felons, meaning that the inmates were sentenced to serve part or all of their sentences in local jails. Four of the twenty-three housed TDOC "backups" only. "Backups" is the term used describe inmates awaiting transfer to TDOC facilities.

State inmates contribute to overcrowding in many county jails. TCA § 41-4-140(b)(2) and (e) state that TCI is not to deny certification if overcrowding is caused by state prisoners being held in local jails. This may be problematic however, as in many county jails state prison inmates contribute to overcrowding. Based on the *August 2006 Jail Summary Report*,

- If backup felons are excluded from jail populations and the capacities refigured, the number of jails at or over 100% capacity drops to forty.

- If backup felons and local felons are excluded from jail populations and the capacities refigured, only twenty-eight county jails would be at or over 100% capacity.

Overcrowding was one of the primary issues mentioned by TACIR survey respondents, in relation to state prisoners. Thirty-one percent of respondents stated that housing state prisoners contributes to overcrowding in the county jail.

GENERAL MEDICAL CARE

County jail health care costs are rising. County jail health care costs are increasing for many reasons. First, jails are housing larger numbers of inmates and based on TCA § 41-4-115(a), counties must provide medical care to prisoners incarcerated in their jails. In addition to county inmates, jails must provide medical care to state prisoners held in the jail, except in cases where the inmate requires emergency hospitalization.²⁶ In the case of emergency hospitalization, the state pays the medical costs. Twenty-four of the counties that house state prisoners have contracts with TDOC designating that the county will pay for the first \$1000 of health care for inmates, and after this dollar amount is reached, the state will pay for health care.²⁷

Another contributing factor to rising health care costs is that prescription drugs are not always purchased in the most cost-effective manner, as stated by a 2002 report by the Tennessee Comptroller of the Treasury titled *Prescription Drug Costs in Tennessee*. The report states that some jails contract with firms to purchase prescription medications and some buy through local pharmacies. However, the report states that many jails do not have a doctor or nurse on site and must transfer inmates to local emergency rooms to receive prescriptions. This is extremely costly and time consuming.

In addition, the report points out that many jails have formularies in place, but it is not always possible to get the ER doctor to comply with the jail formulary. The report states that because the county jails purchase drugs individually, they do not use their collective purchasing power to negotiate discounts

from pharmacy service providers or pharmaceutical companies.

When asked if paying for health care for state and county inmates strains the facility budget, 88% of respondents to TACIR's survey said that it does. Additionally:

- Only three respondents said that paying for health care did not strain the facility budget. Two of the three respondents stated that health services are included in the health department budget, not the facility budget.
- Some respondents noted that the county is not reimbursed for costs they expend on the medical care of state inmates; others said they do get reimbursed, but the reimbursements are not timely.
- Several respondents mentioned that the possibility of lawsuits causes them to spend more on health services.
- At least two respondents said that correctional officers are not medical professionals, and often times must make a judgment call on whether or not an inmate needs to go to the emergency room. More often than not, the inmate is transported to the ER. These visits are extremely costly, both in terms of the ER fee itself, and the staff time required.
- Many respondents discussed the cost of medical care and medications in terms of the percent of the facility budget they comprise. One respondent said that medical expenses are the highest line item in the budget, and another stated that medical and dental expenses were the highest budget item following payroll.
- Several respondents discussed inmate ineligibility for TennCare as problematic.
- Others stated that inmates often require medical care for chronic conditions such as diabetes and hypertension. These types of conditions require ongoing care and become very expensive.

County jail budgets are strained due to the high cost of providing medical care to state and local inmates.

- Several respondents stated that it only takes one inmate with a serious health problem to wipe out the entire health care budget.

MENTAL HEALTH COSTS

Rising mental health care costs are a significant concern for county jails. Mental health care costs are increasing due to several factors, such as rising prescription drug costs and a larger percentage of inmates having mental health and substance abuse problems. Inmates are not eligible for TennCare coverage, and sometimes persons who were on TennCare prior to being incarcerated have difficulty getting back on TennCare upon release. Sita Diehl, Executive Director, Tennessee branch of the National Alliance for the Mentally Ill (NAMI) offered the following information in a presentation to the TennCare Oversight Committee in April 2006, following widespread TennCare disenrollment:

“.....jail administrators report increased numbers and sicker inmates with mental illness coming into the jails. The Davidson County Mental Health Court reports that last year 100% of those who appeared before the court were able to get TennCare, facilitating transition from the criminal justice system to the mental health system. This year, 85% of those that come before the court are uninsured and cannot get insurance. Without insurance they spiral down into psychosis, re-offending and eventually being sentenced to prison.”

This quote speaks to the finding that mental illness among inmates has serious implications. The prevalence of mental health problems among county jail inmates is increasing. This is true for the United States as a whole, and Tennessee.

UNITED STATES

- In September 2006, the Bureau of Justice Statistics (BJS) issued a special report titled *Mental Health Problems of Prison and Jail Inmates*. BJS surveyed jail

inmates and reported that at midyear in 2005, 64% of all jail inmates nationally had a mental health problem. An inmate was identified as having a “mental health problem” if one of the following conditions was met: a recent history (including a clinical diagnosis or treatment by a mental health professional) or symptoms of a mental health problem based on criteria in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition.²⁸ Sixty-four percent prevalence is a high figure in light of the information that only an estimated 11% of the U.S. population age eighteen or older met the criteria for mental health disorders.²⁹ The BJS study also found that 76% of local jail inmates who had a mental health problem also met the criteria for substance abuse or dependence, and female local jail inmates were found to have higher rates of mental health problems than males (75% compared to 63%).

Rising prescription drug costs and a higher prevalence of mental illness among inmates contribute to high mental health care costs.

TENNESSEE

- Data on the prevalence of mental illness in Tennessee jails is available from DMHDD. DMHDD published three reports that present results of surveys conducted in Tennessee jails. A 2003 publication, *A Survey of County Jails in Tennessee: Four Years Later*, updates information gathered in 1998 in a survey by TennCare Partners Roundtable. In addition to updating the 1998 information, *A Survey of County Jails in Tennessee: Four Years Later* also provides information on the mental health and substance abuse supports available to inmates, and the training of correctional personnel. The information in the report was gathered through telephone interviews with sheriffs, jail administrators, correctional medical personnel, and other jail personnel. A 2004 publication, *Survey of County Jails in Tennessee: One Year Follow Up*, updates information from the 2003 survey.
- Based on information collected by DMHDD and TennCare Partners Roundtable, the percentage of local jail inmates diagnosed with mental illness has increased

(See Table 4). In 1998, 18.9% of inmates had a diagnosis of mental illness, in 2003, 17.8% had a diagnosis, and in 2004, 19.1% had a diagnosis.

Table 4
Prevalence of Mental Illness and Substance Abuse Problems in Tennessee Jails 1998-2004

	1998 TennCare Partners Roundtable Survey	2003 DMHDD Survey	2004 DMHDD Follow-up Survey
Percent of local jail inmates diagnosed with mental illness	18.9%	17.8%	19.1%
Percent of local jail inmates displaying symptoms of mental illness but not diagnosed	5.6%	8.6%	4.6%
Percent of respondents who felt that the prevalence of mental illness had increased in their facilities in the last 12 months	67.5%	73.7%	56%
Percent of inmates with serious substance abuse problems	48.7% (serious alcohol problem) 17.1% (serious drug problem)	55.1%	Not Available
Percent of inmates receiving psychiatric medications	18.2%	22.1%	20.6%

Sources:

A Survey of County Jails in Tennessee: Four Years Later, 2003, Department of Mental Health and Developmental Disabilities.

Survey of County Jails in Tennessee: One Year Follow Up, 2004, Department of Mental Health and Developmental Disabilities.

- The number of inmates in county jails who display symptoms consistent with mental illness, but who are not diagnosed, has decreased. This percentage was 5.6% in 1998, 8.6% in 2003, and 4.6% in 2004.
- The percent of respondents to the TennCare Roundtable survey and the DMHDD surveys who felt that the number of inmates with mental illness had increased in the prior twelve months is also down. In the 1998 survey, 67.5% of respondents said the number of inmates with mental illness had increased in the last year, in 2003, 73.7% of respondents said the number had increased, and in 2004, 56% of respondents said the number had increased.
- The 2003 DMHDD survey indicated that 55.1% of inmates had serious substance abuse problems. The 1998 survey addressed alcohol and drug abuse in different questions and found that 48.7% of local jail inmates had a serious alcohol problem and 17.1% had a serious drug problem. The question was not asked in the 2004 survey.

Many inmates are prescribed psychiatric drugs, and the costs of these medications strain county budgets. In addition to housing inmates with mental illnesses and substance abuse problems, many local jails provide psychiatric medication to inmates. Nationally, the BJS study found that 14.4% of local jail inmates used prescription mental health medications. When only inmates with mental health problems are considered, the figure is 32.7%. Based on the 2003 DMHDD survey, an estimated 22.1% of all inmates were receiving psychiatric medications, up from 18.2% in 1998. The 2004 follow up survey found that a slightly lower percentage of inmates (20.6%) were taking psychiatric medications. Though the number of inmates receiving these medications has decreased slightly, providing them continues to strain county budgets, due to the high cost of the medications.

- The 2003 DMDHH survey reports that jails reported monthly psychiatric medication costs from \$23.10 per inmate to \$1,006.50 per inmate, with an average cost of \$200.35 per inmate per month.
- Based on the 2003 survey, total monthly psychiatric costs per jail ranged from \$206.90 to \$39,963 with an average monthly jail cost of \$6,555.
- The report points out that there was not a correlation between size of jail and cost of medication.
- The 1998 survey did not inquire about the cost of psychiatric medications. However, there is good reason to believe that costs have increased, since more inmates are taking medication, and, as reported in the DMHDD report, recently developed psychiatric medications are more expensive than older medications.
- All but one jail surveyed in 2003 by DMHDD reported having some provision for prescribing psychiatric medications. Jails use different medication prescribers, including medical staff of the jail, community mental health center personnel and their personal physicians.
- Many jails reported having medical personnel on staff or under contract, but they still transport inmates to

Based on a 2003 survey by the Department of Mental Health and Developmental Disabilities, 22.1% of Tennessee local jail inmates receive psychiatric medications.

mental health centers for medication evaluation, which costs money and causes treatment lag time.

Inmates with mental illnesses serve more sentences and display more behavior problems than inmates without mental illnesses. In addition to increasing jail costs, the high prevalence of mental illness in jail inmates is problematic for other reasons.

- BJS reports that a larger percentage of inmates with mental health problems had served more prior sentences than those inmates without mental health problems.
- Among inmates without mental health problems, 30.6% have served no prior sentences, 20.3% have served three prior sentences, and 4.4% have served eleven sentences or more.
- Among inmates with mental health problems, 24.5% have served no prior sentences, 22.8% have served three prior sentences, and 6.7% have served eleven sentences or more.
- BJS found that inmates with mental health problems were more likely than inmates without mental health problems to be charged with facility rule violations (19% compared to 9%), be charged with a physical or verbal assault on correctional staff or another inmate (8% compared with 2%), and have been injured in a fight since admission (9% compared to 3%).

Seventy-eight percent of the respondents to TACIR's survey stated that paying for mental health care strained the facility budget. Four respondents said paying for services did not strain the budget, two of the four noted that mental health care is included in the department of health budget, not the facility budget. One respondent said the budget is sometimes strained by these costs, but costs are kept to a minimum because the local mental health center does not charge the facility for visits.

The cost of psychiatric medications was the most commonly mentioned reason for high mental health care costs. Many respondents commented on how expensive these medications

are, noting that they are much more expensive than other medications. Other respondents reported that psychiatric medications are usually name brand, which significantly increases costs. One respondent said “An average of 56% of our population during calendar year 2006 is receiving some type of medication. Of the 56%, 36% are receiving psychotropic meds.” This represents a significant portion of the jail population. Many respondents said that the number of inmates with mental illness is increasing, making it difficult to budget for mental health costs from year to year. One respondent stated that the costs of mental health services, prescriptions, and transportation to the hospital have steadily risen for the last seven to ten years. As with health care, respondents said that one inmate with a mental health problem could drain the entire health care budget. One respondent stated that the mental health agencies focus more on prescribing medications than counseling and that \$1,000 a month for one inmate’s mental health medications is not uncommon.

TACIR also inquired about the strain, if any, that providing substance abuse treatment places on facility budgets. Eight respondents said providing these services strains the budget, twelve respondents said it does not strain the budget, ten provided no response or answered “NA,” and two said it sometimes strains the budget. Of the respondents who said that substance abuse treatment did not negatively impact their budgets, three stated that this is the case because treatment is paid for by another source. Two counties reported that their county had a drug court program, and this program handles all substance abuse treatment. Many respondents said that their facilities did not have substance abuse treatment programs. This is worrisome, as the BJS survey and DMHDD survey show that a substantial percentage of jail inmates have substance abuse problems.

COSTS ASSOCIATED WITH ILLEGAL IMMIGRANTS

Illegal immigration is an issue that affects some county jails. According to the 2005 American Community Survey administered by the U.S. Census Bureau, in 2005 there were

The cost of housing known or suspected illegal immigrants is an issue for some county jails.

over 154,000 non-citizen foreign-born persons in Tennessee. Furthermore, a report from the Department of Homeland Security reports that in FY 2007 there will be 605,000 foreign-born individuals admitted to state correctional facilities and jails across the nation, though not all of these individuals are illegal immigrants. The effect illegal immigration has on county jails varies across the state. The U.S. Census Bureau maintains detailed information about non-citizen foreign born persons in the larger Tennessee counties. Based on this data, in 2005, the percent of non-citizen foreign born persons among nineteen Tennessee counties ranged from 0.42% (Blount County) to 7.74% (Davidson County). Figures for all nineteen counties can be viewed in Table 5. Again, it should be noted

Table 5
Estimated Percent of Population Represented by Non-U.S. Citizens

County	Total Population	Non-U.S. Citizen	
		Population	Percent
Anderson	71,553	1,003	1.40%
Blount	113,393	480	0.42%
Bradley	90,039	3,191	3.54%
Davidson	549,850	42,557	7.74%
Greene	67,268	1,077	1.60%
Hamilton	302,475	7,594	2.51%
Knox	392,382	10,704	2.73%
Madison	91,316	1,421	1.56%
Maury	75,054	1,380	1.84%
Montgomery	142,799	3,829	2.68%
Putnam	63,749	2,003	3.14%
Rutherford	212,434	9,709	4.57%
Sevier	78,645	1,260	1.60%
Shelby	889,955	31,823	3.58%
Sullivan	150,027	1,549	1.03%
Sumner	143,618	1,698	1.18%
Washington	108,537	1,928	1.78%
Williamson	152,604	3,548	2.32%
Wilson	99,204	1,814	1.83%

Source: American Community Survey, 2005. U.S. Census Bureau.
Data are based on a sample and are subject to sampling variability.
The American Community Survey includes data for selected counties.

that not all of these persons are illegal immigrants. When asked about the impact illegal immigration has on their facilities,

- Fifty-six percent of the respondents to TACIR's survey said the county facility houses foreign-born individuals, some of whom are suspected to be illegal immigrants. Several respondents did note the difficulty in determining whether or not an inmate was a U.S. citizen or not.
- Respondents report that these individuals comprise from 0.5% to 11% of the facility's average daily population.
- Forty-one percent of survey respondents whose facilities house suspected illegal immigrants report that the crimes that bring these individuals to the facility are primarily misdemeanors.
- Nineteen percent of survey respondents whose facilities house suspected illegal immigrants report that the crimes are primarily felonies.
- Forty-four percent of respondents state that housing these inmates does not strain the county budget. Some respondents note that these individuals are housed for short periods of time, and others note that these inmates do not strain the budget any more so than does another prisoner.

There is financial assistance available to state and local facilities that house illegal immigrants. SCAAP provides federal payments to state and local governments that incur costs for incarcerating undocumented criminal aliens who violate state or local law. In FY 2005, five local governments and the state of Tennessee received SCAAP funds totaling \$451,609 (see Table 6). These governments were reimbursed for 160 inmates whose identities could be verified by Immigration and Customs Enforcement and partially reimbursed for slightly over 1,000 inmates whose identities could not be verified.

Table 6
FY 2005 SCAAP Payment Recipients

Jurisdiction	Final Award Amount
Hamilton County	\$15,404
Knox County	\$6,375
Maury County Government	\$1,069
Metropolitan Nashville and Davidson County	\$159,174
Shelby County	\$57,152
State of Tennessee	\$212,435
Total Amount Received by Tennessee Jurisdictions	\$451,609

Source: Bureau of Justice Assistance, U.S. Department of Justice

Though there are no regional jail facilities in Tennessee, other states have had success with these types of jails.

REGIONAL JAILS

No Tennessee counties operate regional jails, despite the fact that they have been permitted to do so since 1999, when TCA § 41-4-141 was enacted. TCA § 41-4-141 states that “The general assembly finds that regional jails would allow counties to save funds and lower their liability risks.” The Act provides several options for the management of regional jails

1. *One (1) county actually operates the facility, but all participating counties equally share policy and decision-making responsibilities;*
2. *Adjoining counties may contract with a single county to house their prisoners and relinquish their authority regarding policy and decision-making; or*
3. *Each participating county operates its own facility for pre-trial inmates, but joins with other counties for post-conviction incarcerations.*

Despite the fact that this Act was passed in 1999, no counties operate regional jails in Tennessee, though some have considered doing so.

Other states have had success with regional jails. To demonstrate how these jails can work, regional jail systems in three states are discussed here. Two of the states, Virginia and West Virginia, were discussed in the 2006 report *Building and Financing Jails in Tennessee*, published by the Tennessee Comptroller of the Treasury. All information in this section pertaining to Virginia and West Virginia was obtained from this report.

VIRGINIA

- County and cities wishing to form a regional jail must first form a regional jail authority. This authority is subject to all rights, privileges, and obligations as other local governments.³⁰
- Regional authorities must follow the same procurement rules as state agencies, including rules governing construction and architectural services.

- Each regional jail authority is able to decide how and where to build its own jail, but most jails must meet the same construction standards required of local jails.
- The state government reimburses regional authorities 50% of the capital costs for building a regional jail.
- The state government also pays a portion of staff salaries at regional jails, the appropriation of which is established by a State Compensation Board.
- These payments do not affect the state reimbursements to counties for housing state inmates in local or regional jails.
- Regional jail facilities in Virginia decide how they want to administer construction projects and day-to-day operations. The way they handle construction duties varies, regional authorities may use regional authority staff to manage construction projects, hire project managers, divide duties among participating governments, or contract with one participating government.
- Local governments pay the regional jail a per diem rate for housing prisoners.
- The regional authority passes an annual budget that establishes the per diem payment.
- The local governments pay for regional jail beds in advance and pay for the beds whether they use them or not.

WEST VIRGINIA

- The state runs the regional jails in this state in the form of the West Virginia Regional Jail Authority (WVRJA), established in 1985.
- The state pays to build regional jails, and counties pay a per diem rate to house local prisoners there. The state uses revenue from the per diems to pay back bonds used to build the facilities and for operational costs.
- The law that established the WVRJA also designates county governments as the primary judicial administrators. Municipalities are allowed to establish their own courts, but

only as a part of the county system. All prisoners are county prisoners and counties are assigned the responsibility of housing them.

- WVRJA is governed by a nine member board, comprised of state and county officials, as well as two private citizens representing the areas of law and medicine.
- WVRJA includes a construction division that manages the construction of regional jails, state prisons and juvenile detention facilities.
- WVRJA was established as a corporation which can sell bonds without a public vote, provided there is a dedicated revenue source to pay them back.
- In addition to per diem payments, regional jails receive funding from fees added to certain types of citations, court cases and convictions: \$40 added to every ticket or citation written by any police agency in the state, \$30 added to each civil court filing in the state, and \$48.50 added to each DUI conviction.
- West Virginia's regional jails are built on a prototype design and have two to four pods.
- Recently, counties have been reluctant to expand any regional jails because of the high numbers of state prisoners residing in them. Counties feel that they are subsidizing state prisons.
- Regional jails use video for some arraignments and parole hearings, which helps with transportation costs.

OHIO

- Ohio's enabling legislation requires that counties and municipalities that seek to implement a regional jail must form a "corrections commission."³¹
- The commission consists of the sheriff of each participating county, the president of the board of county commissioners of each participating county, the presiding judge of the court of common pleas of each participating county, the chief of police of each municipality, the mayor or city manager of

each municipality and the presiding judge of the municipal court from each participating municipal jurisdiction.

- The commission designates the person in charge of the regional facility, the categories of employees to be employed at the facility, the appointing authority of the center, and the standards of treatment and security to be maintained at the center.
- One commission in Ohio is the Corrections Commission of Northwest Ohio. It is comprised of six jurisdictions (five counties and one city) which share proportionately in the cost of operating the facility based on the number of beds each is allocated. The jurisdictions are billed quarterly for their operating portions.
- Ohio legislation includes economic incentives for implementing regional jails, including up to 60% in matching funds for the construction of a regional jail.³²

Designating a central authority and providing economic incentives to counties for forming regional jails may encourage their implementation. Enabling legislation in the three states discussed above designates a central authority responsible for organizing regional jail construction and regional jail management (Virginia: Regional Jail Authorities, West Virginia: the State of West Virginia, and Ohio: corrections commissions.) Tennessee's enabling legislation designates no such authority. Additionally, each of these three states provides some sort of economic incentive to counties when they establish regional jails. Virginia and Ohio reimburse counties for 50% or more of the costs of building regional jails. In West Virginia, the state pays 100% of the cost of building regional jails. Moreover, Virginia also assists with operating costs because it provides partial compensation for correctional officers and non-security staff. The cost of building a regional jail in Tennessee may be a significant deterrent for counties. If there was assistance available from the state, counties may be more likely to consider regional jails.

Based on reports from other states, regional facilities can save local governments money in terms of general operations, programming, transportation and construction.

Tennessee regional jail legislation designates no central jail authority and provides no economic incentive to counties for implementing regional jails.

- Regional jails in Ohio report success with outsourcing services such as medical services, food services, commissary, substance abuse programming, psychological counseling, and educational services.³³ When two or more counties join to form regional jails, they increase their scale of economy, which may allow them to reach more favorable agreements with contractors.
- The Corrections Center of Northwest Ohio (CCNO) makes sure to have much contact with providers of contract services, and CCNO includes contractors in all regular meetings, planning sessions, and in-service training.³⁴
- CCNO reports that it has a schedule of transportation, preventing a large number of single transports by deputies and police officers.
- In Virginia, regions have saved construction costs. It costs less to build one large facility than it costs to build several smaller units, which each require laundry and kitchen facilities.³⁵

CHALLENGES

There are challenges to implementing regional jails, but they can be overcome. The NIC sites the following obstacles to regional jail implementation:³⁶

- Absence of legal authority to permit the sharing of resources across jurisdictional lines
- “Turf issues,” the loss of authority and control by sheriffs and county governing bodies
- Differences in management philosophy
- Perceived inequalities in proportionate sharing of costs
- Lack of cooperation from judicial authorities
- Increased transportation costs in geographically remote rural areas
- Disagreement over the location of the jail

Additionally, some jurisdictions have found that public resistance is a big challenge to the implementation of regional jails. The public may not want the regional facility located in their area due to fears of escaped inmates and lowered property values.³⁷

WAYS TO OVERCOME CHALLENGES

- **Leadership.** The experience of the CCNO has led them to declare that leadership is imperative at all stages of regional jail implementation. CCNO utilized the PONI program. The PONI program consists of three phases and encompasses topics including needs evaluation, financing methods, new construction technology and monitoring construction projects.³⁸ In addition to the PONI program, NIC also offers a HONI program. This program offers free technical assistance on transitioning to a new facility. The HONI program includes information on topics such as organizing staff training, planning the transition budget, policy and procedure development, and assessing staff needs.
- **Have a team dedicated to the implementation of a regional jail.** CCNO also utilized a Criminal Justice Planning Team, which was dedicated to researching regional jail issues. A full time project director for the regional jail facility was hired, and this person worked with the planning group and the Corrections Commission. CCNO reports that if the proposed regional jail is large in size, outside assistance is often necessary.³⁹
- **Involve county officials and jail officials in all phases of the planning process.** Jail officials such as sheriffs and chiefs of police will be able to provide input on the operation and management of jails. County officials will be providing the financing and it is helpful if they are involved at every step of planning so that they fully understand the planning process. They can also be very helpful at identifying cost saving measures, increasing public awareness, and obtaining the cooperation of community resources.⁴⁰
- **Establish a transportation schedule.** Unmanageable transportation costs are one issue often cited by county and jail officials as an obstacle to implementing regional jails.

However, this obstacle can be overcome by purchasing regional jail facility buses and scheduling daily or weekly runs to each county. This will reduce the number of trips that individual officers must make with one or two inmates. This also demonstrates how important it is to have the cooperation of judicial officials, as trials must be scheduled to fit with the regional jail facility transportation schedule.

- **Develop a formula for the proportionate sharing of costs.** This should be based on bed utilization, and can be adjusted at designated time intervals, depending on the changing needs of the jurisdictions.
- **Have local governments pay for beds in advance.** The 2003 Office of Research report states that in Virginia, this practice saves administrative costs for regional jails and local jails, because they do not have to account for bed-days each month in order to determine payments.

CONCLUSIONS

This report presents many findings related to the challenges involved when state prisoners are housed in county jails, as well as findings related to overcrowding, medical expenses, and illegal immigration. Additional findings deal with the potential for regional jails in Tennessee.

The CCIP statute states that the program is meant to help relieve overcrowding in state prisons and assist local jails in improving facilities and programs. The findings presented in this report suggest that these objectives are not being met. Many local jails remain overcrowded, in poor condition, and are able to offer only limited programs to inmates. This may be a result of inadequate funding and a high influx of local and state inmates into the jail. Additionally, uncertified jails are to use 75% of the subsidies they receive from TDOC to improve jail conditions and programs. This stipulation is not enforced. If the CCIP were to be evaluated by a body representing all arenas of the criminal justice field, the program may be able to better fulfill its goals.

Many local jails struggle with high inmate health care and mental health care costs. Based on the information TACIR gathered from sheriffs, as well as information presented by the Office of Research

and TCSA, this is a complex issue. Improving conditions in this area will require collaboration among jails and county commissions, as well as among counties themselves. Since many county jails are facing this problem, joining forces and establishing a solution together may prove more effective than each county trying to solve the problem on its own. The TCSA report discusses this, and TCSA even recommends exploring the possibility of establishing and implementing a statewide inmate managed health care program.

Illegal immigration is producing problems for some local jails, but not others. Based on estimates of the number of immigrants expected to enter the United States and local jails in the future, illegal immigration may become a problem for more county jails.

Finally, regional jails may be a solution to many county jail woes. There is much resistance to regional jails, both by county and jail officials, and the public. A large part of the resistance may be based on uncertainties about whether regional jails can actually produce cost savings, and if they can, many wonder whether the cost savings are worth the trouble of implementing a regional jail. This paper has discussed successful regional jail systems in three states. TACIR hopes that this information will encourage counties to explore building regional jails.

COMMISSION RECOMMENDATIONS

A draft version of this report was first presented to TACIR Commissioners in December 2006. In January 2007, Commissioners formally adopted two recommendations.

The General Assembly should require the Tennessee Department of Correction to reimburse county jails for the daily costs of housing state prisoners who are awaiting probation revocation hearings. The time lag between the probation violating offense and the probation revocation hearing is lengthy and the number of prisoners placed on probation is increasing.

The Tennessee Department of Correction should set \$35 as the flat daily reimbursement rate for local jails housing state prisoners. Additionally, TDOC should simplify the reporting process for local jails holding state prisoners, to include eliminating the cost sheets counties currently

complete to be reimbursed. Completing the cost reports requires a large portion of staff time and regardless of the daily cost reflected in the report, the daily reimbursement cap is \$35.

STAFF RECOMMENDATIONS FOR FUTURE CONSIDERATION

Many of the issues discussed in this report have previously been studied by the Office of Research and TCSA. These agencies made very good recommendations that are still valid, and in addition to making new staff recommendations, TACIR reprints some of Office of Research and TCSA recommendations in way of endorsement.

RECOMMENDATIONS REGARDING HOUSING STATE PRISONERS IN LOCAL JAILS

The Select Oversight Committee on Corrections may wish to review the current process to reimburse local governments for housing state inmates in local correctional facilities (Office of Research 2003 and 2006).

Tennessee Department of Correction may wish to reconsider the \$35 daily reimbursement cap for state prisoners housed in county jails. This cap has not been increased since the mid 1980s, and many sheriffs state that the daily rate does not cover the costs of housing state prisoners. TACIR Commissioners did not choose to recommend increasing the rate at this time, but did express their intent to examine this issue at a later time. (TACIR)

The state should enforce the statute requiring counties with non-certified jails to use 75% of their TDOC reimbursements to improve correctional programs and facilities (Office of Research 2003 and 2006).

The inconsistency between the Rules of the Tennessee Department of Correction and TCA § 41-8-107(c) should be corrected. TCA § 41-8-107(c) mandates that uncertified jails are to use 75% of the subsidies they receive to improve correctional facilities or programs. Attorney General Opinion

No. 05-177 states that this stipulation has been deleted from the Rules of the Department of Correction and is not enforceable (TACIR).

The Select Oversight Committee on Corrections may wish to evaluate the CCIP statutes, as well as Rules of Tennessee Department of Correction outlining the CCIP. If a particular stipulation has been deemed of no value, the Committee may wish to consider asking the General Assembly and TDOC to remove it from the statutes and the rules (TACIR).

The General Assembly may wish to enact legislation prohibiting state prisoners from being held in facilities that are not certified by TCI because of safety issues. This would reduce the risk of costly suits against the state as well as help protect state inmates from injury or death (Office of Research 2003 and 2006).

RECOMMENDATIONS REGARDING OTHER COUNTY JAIL ISSUES

The Department of Correction should not contract with overcrowded jails to hold state inmates (Office of Research 2003 and 2006).

The General Assembly may wish to consider enacting legislation that prohibits state prisoners from being held in overcrowded jails (TACIR).

The General Assembly may wish to consider enacting legislation outlining a jail overcrowding relief plan, much like the plan that exists for state prisons under TCA § 41-1-503 (TACIR).

Local governments should establish ongoing avenues of communication such as councils or committees composed of criminal justice agencies to seek solutions to problems such as overcrowding (Office of Research 2003).

State agencies such as the Bureau of TennCare and the Department of Human Services should work more closely with jail personnel to reinstate benefits inmates lose while incarcerated (Office of Research 2003 and 2006).

TCSA should explore the possibility of establishing and implementing a statewide, inmate managed health care program, using health care rates that have already been negotiated and are currently being used by the state (TCSA 2006).

Counties should stipulate that doctors prescribing medication to inmates use a formulary plan, which is a list of pre-determined medicines for most sicknesses and mental illnesses (TCSA 2006).

County jails may wish to purchase commonly used prescriptions collectively from pharmacies, allowing them to use their collective buying power to get the best price (TACIR).

County jails may wish to work with their county commissions to determine if there is a possibility of including some or all inmate health care costs in the department of health budget, rather than in the jail budget, as some sheriffs reported that this helps to ease pressure on the facility budget (TACIR).

TDOC should pay board and medical expenses of pretrial detainees, convicted of felony crimes, from the point of imprisonment (TCSA 2006).

The Department of Mental Health and Developmental Disabilities should determine the impact of its criminal justice activities in local jails. If warranted, DMHDD should seek additional federal funds to expand the Mental Health Liaison Program statewide and increase the availability of mobile crisis teams (Office of Research 2003 and 2006).

Sheriffs and jail administrators should provide discharge planning for inmates with mental illnesses who need continued care upon release (Office of Research 2003 and 2006).

Jails that do not offer mental health services should consider doing so. This likely will improve the recidivism rates and behavior problems in the jail (TACIR).

Jails that do not offer substance abuse treatments should consider doing so. These programs can be implemented in a very cost effective manner and could help large numbers of inmates (TACIR).

County governments may wish to consider applying for SCAAP funds to assist with costs of housing inmates who are suspected or confirmed illegal immigrants (TACIR).

RECOMMENDATIONS REGARDING REGIONAL JAILS

Some Tennessee counties should consider the feasibility of establishing regional jails (Office of Research 2003 and 2006).

The General Assembly may wish to consider creating financial incentives for counties to establish regional jails (Office of Research 2003 and 2006).

Tennessee counties that are interested in implementing regional jails should consider designating a central authority responsible for organizing regional jail construction and management (TACIR).

Tennessee counties may wish to look in depth at other state's successful regional jail systems. One or more of these could be used as a model for Tennessee (TACIR).

Tennessee counties that are interested in implementing regional jails should consider utilizing the National Institute of Corrections' Planning a New Institution program and How to Open a New Institution program (TACIR).

ENDNOTES

- ¹ See Appendix 1.
- ² Calculation based on 5,168 probation or community correction violations during FY 2004-2005, 75 days average time between violation and hearing, \$42.59 per day per prisoner paid to counties for state prisoners held in county jails.
- ³ U.S. Census Bureau, population estimates as of July 2005. <http://www.factfinder.census.gov>
- ⁴ Jail population and capacity figures based on the *August 2006 Tennessee Jail Summary Report*, published by Tennessee Department of Correction.
- ⁵ National Institute of Corrections. 1992. *Briefing Paper: Regional Jails*, p1. <http://www.nicic.org/pubs/1992/010049.pdf>
- ⁶ *Ibid.*
- ⁷ Tennessee law gives the blind vending industry the first right of refusal in government buildings for any vending service.
- ⁸ TCA § 41-8-102
- ⁹ TCA § 41-8-106(g)(2)
- ¹⁰ Rules of the Tennessee Department of Correction, Division of County Programs, Rule 0420-2-3-.07.
- ¹¹ Exceptions are Metro Davidson County Detention Facility and Shelby County Penal Farm. These facilities contract with TDOC and are reimbursed for their actual costs.
- ¹² Johnson City Jail is not included in these figures because this report focuses on county jails. Johnson City has a contract with TDOC to house female felons.
- ¹³ Attorney General Opinion No. 05-177. December 13, 2005.
- ¹⁴ Rules of the Tennessee Department of Correction, Division of County Programs, Chapter 0420-2-3.
- ¹⁵ Rules of the Tennessee Department of Correction, Division of County Programs, Rule 0420-2-3-.07(d).
- ¹⁶ This figure is from the *2005/2006 Annual Report*, however, the FAQs section on the TDOC website states the FY 2005/2006 daily cost per state inmate was \$57.33.
- ¹⁷ Tennessee Department of Correction, Division of County Programs, Chapter 0420-2-3.
- ¹⁸ TCA § 41-8-104 (a).
- ¹⁹ Tennessee Department of Correction. *September 2006 Tennessee Bed Space and Operating Capacities Report*.
- ²⁰ Tennessee Department of Correction. *August 2006 Tennessee Felon Population Update*.
- ²¹ Tennessee Department of Correction, *FY 2005-2006 Annual Report*.
<http://www.state.tn.us/correction/planning/annualrpt.html>
- ²² Tennessee Department of Correction. September 2003. *Strategic Plan for Prison Population Management*.
- ²³ TCA § 41-1-503.
- ²⁴ Hart, R. Brett. *American Jails*, November/December 2006, p. 31-37.
- ²⁵ *Ibid.*
- ²⁶ TCA § 41-4-115(b).
- ²⁷ Lambert, Judith. Judicial Cost Accountant, TDOC. Washington, DC.
- ²⁸ American Psychiatric Association. (1994). *Diagnostic and statistical manual of mental disorders* (4th ed.). Washington, DC.
- ²⁹ *National Epidemiologic Survey on Alcohol and Related Conditions*, 2001-2002, as cited in BJS 2006.
- ³⁰ Code of Virginia. 53.1-95.2.
- ³¹ Ohio Code 307.93.
- ³² *Ibid.*
- ³³ Dennis, Jim. October 1998. "Cooperation Works." *Corrections Today*.
- ³⁴ *Ibid.*
- ³⁵ Tennessee Comptroller of the Treasury, Office of Research and Education Accountability. 2006. *Building and Financing Jails in Tennessee*.
- ³⁶ National Institute of Corrections, 1992. *Briefing Paper: Regional Jails*.
- ³⁷ *Ibid.*
- ³⁸ National Institute of Corrections. 1990. *NIC Jail Center Offers Programs on Planning and Opening New Institutions*.
<http://nicic.org/library/period72>
- ³⁹ Corrections Center of Northwest Ohio (CCNO). *Leadership in Implementing a Regional Jail*.
<http://ccnoregionaljail.org/Regional%20jail.htm>
- ⁴⁰ Paquette, Paul. 1987. "The nuts and bolts of implementing the regional jail concept." *American Jails*.

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APPENDIX 1

SENATE BILL 3698

Filed for intro on 02/23/2006

SENATE BILL 3698
By Kyle

AN ACT to amend Tennessee Code Annotated, Title 40,
Chapter 35, relative to reimbursement of costs for
felony probation violators.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-35-311, is amended by adding
the following language as new subsection (f):

(f) Whenever any prisoner, convicted of a felony under state law, is confined to a
county jail under the provisions of this section, the state shall pay the costs of
incarceration of such prisoner for each day the prisoner is confined in the county jail in
accordance with title 41, chapter 8.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.

APPENDIX 2

FISCAL NOTE

SB 3698 - HB 3747

March 10, 2006

SUMMARY OF BILL: Requires the State to pay the cost of housing prisoners in local jails awaiting probation revocation hearings.

ESTIMATED FISCAL IMPACT:

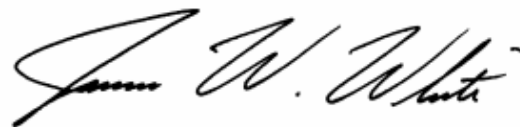
Increase Local Govt. Revenues - \$16,507,900
Increase State Expenditures - \$16,507,900

Assumptions:

- According to the Department of Correction, there were 5,168 probation or community correction violations in FY04-05.
- According to the Board of Probation and Parole, the average time before a hearing was 75 days.
- Local jails are reimbursed for the cost of state felons at a cost of \$42.59 per day.
- $5,168 \text{ violators} \times 75 \text{ days} \times \$42.59 = \$16,507,884.$
- No increase in the number of probation violations in FY06-07.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

APPENDIX 3(a)

TENNESSEE COMPTROLLER OF THE TREASURY, OFFICE OF RESEARCH AND EDUCATION ACCOUNTABILITY. 2003. *THE STATE OF TENNESSEE'S JAILS.*

EXECUTIVE SUMMARY

Over the past several decades, courts have found that conditions of confinement in many U.S. jails violate constitutional rights contained in the Eighth Amendment (banning cruel and unusual punishment) and the Fourteenth Amendment (which guarantees due process rights). In some cases, including in Tennessee, courts have ordered counties to make extensive changes, costing extraordinary amounts, to deal with matters such as medical care, staffing, overcrowding, sanitation, religion, nutrition, recreation, safety, and security.

Although state law gives sheriffs responsibility to manage county jails, some state agencies impact their operations—most frequently, the Tennessee Corrections Institute, the Department of Correction, and the Department of Mental Health and Developmental Disabilities. The Tennessee Corrections Institute inspects jails; the Department of Correction holds some state inmates in jails; and the Department of Mental Health and Developmental Disabilities is responsible for serving inmates with mental illnesses.

This report concludes:

Many Tennessee jails are overcrowded. Overcrowding presents many implications for governments. It strains county and state budgets and severely limits a facility's capacity to provide adequate safety, medical care, food service, recreation, and sanitation. The total number of inmates in Tennessee's jails increased 56 percent, from 13,098 in fiscal year 1991-92 to 20,393 in fiscal year 2002-03. Local jails held an average of 2,301 Department of Correction inmates awaiting transfer to state prisons during FY02-03. By June 2003, the department had 1,956 inmates awaiting transfer.

During fiscal year 2000-01, 47 Tennessee county facilities operated at an average capacity of 100 percent or greater and 12 operated at an average capacity of 90-99 percent. The number operating at 100 percent or greater rose to 60 in fiscal year 2001-02, and declined to nine operating at an average capacity of 90-99 percent.

A National Institute of Corrections publication states that jail crowding is a criminal justice system (emphasis added) issue, and its roots lie with decisions made by officials outside the jail, such as police, judges, prosecutors, and probation officers. Like some other communities, Shelby and Davidson Counties have created criminal justice coordination committees to examine jail crowding and other criminal justice issues. The committees provide a forum for key justice system professionals (such as law enforcement officials, judges, prosecutors, and

public defenders) and other government officials to discuss justice system challenges. Committees analyze the implications that individual agency decisions impose on the entire criminal justice system.

Tennessee’s continuing failure to provide adequate capacity in state prisons has contributed to overcrowding in some jails. Tennessee statutes address only state prison overcrowding, but offer no contingencies for overcrowded local jails. Inmate lawsuits against Tennessee resulted in several pieces of legislation that allowed the state to respond to prison overcrowding. These laws specify that the governor can declare a state of overcrowding under certain conditions and may direct the Commissioner of Correction to notify all state judges and sheriffs to hold certain inmates until state facilities have lowered their population to 90 percent of capacity. The department has operated under this statute continuously since the 1980s.

Tennessee statutes governing the transfer of state prisoners from county jails conflict with each other. TCA § 41-8-106 (g) requires the department to take into its custody all convicted felons within 14 days of receiving sentencing documents from the court of counties not under contract with the County Correctional Incentives Program. On the other hand, TCA § 41-1-504 (a)(2) allows the department to delay transfer of felons who had been released on bail prior to conviction for up to 60 days until prison capacity drops to 90 percent.

In 1989, Hamilton, Davidson, Knox, and Madison Counties sued the state for shifting its overcrowding burden onto their facilities. A federal court placed certain limits on the number of inmates that each of those jails could hold. The Department of Correction takes inmates from those facilities before those from other jails when transferring inmates to state facilities. (See pages 11-12.)

In spite of TCA § 41-4-141, which allows two or more counties to jointly operate a jail, no Tennessee counties have done so. As a result, some counties miss the opportunity to save county funds and to lower their liability risks. A regional jail is defined as a correctional facility in which two or more jurisdictions administer, operate, and finance the capital and operating costs of the facility.

Comptroller’s staff observed unsafe and unsanitary conditions in some of the jails visited during this study. Comptroller’s staff visited 11 jails during this study. Staff selected rural, urban, and medium sized counties in all three grand divisions of the state. Additionally, staff chose some counties recommended as model facilities and others described as substandard. Two of the jails were new with no visible problems. In others, however, research staff observed conditions that pose danger or violate standards. (See pages 13.)

The Tennessee Corrections Institute has no power to enforce its standards, resulting in conditions that endanger inmates, staff, and the public. In 2002, 25 county jails failed to meet certification standards. Without sanctions, counties often fail to correct conditions that may be dangerous and likely to result in costly lawsuits. Several other states impose an array of sanctions for

facilities that do not meet standards. In 2001 the General Assembly considered, but did not pass, a bill that would have given TCI more enforcement authority. House Bill 398/Senate Bill 764 would have allowed TCI to:

- issue provisional certifications;
- decertify facilities;
- exclude counties from participating in the County Correctional Incentives Act of 1981; and
- ask the Attorney General and Reporter to petition circuit courts to prohibit inmates from being confined in facilities that do not meet standards or impose threats to the health or safety of inmates.

At least 53 sheriffs report that inmates have sued their facilities in the last five calendar years, but that most suits are frivolous and eventually dismissed. As of calendar year 2001, at least nine jails are under a court order or consent decree.

TCI continues to certify inadequate and overcrowded jails that do not meet state standards. State law prohibits TCI from decertifying deficient facilities if the county submits a plan within 60 days of the initial inspection to correct deficiencies related to square footage and or/showers and toilets as well as jail capacity. Many counties delay implementing their plans indefinitely, yet TCI continues to certify the facilities.

TCI standards do not appear to meet the level of quality mandated by TCA § 41-4-140. The law requires that TCI standards approximate, as closely as possible, those standards established by the inspector of jails, federal bureau of prisons, and the American Correctional Association. However, TCI standards are minimal and are not as comprehensive as those of the American Correctional Association. TCI omits ACA standards dealing with monthly fire and safety inspections, prerelease programs, population projections, staffing patterns, and administrators' qualifications.

TCI has not developed minimum qualification standards for local correctional officers and jail administrators. Few local correctional officer positions are civil service. Newly elected sheriffs usually hire new officers. TCI standards require that correctional officers receive 40 hours of basic training within the first year of employment. According to several jail administrators and sheriffs, newly hired correctional officers frequently report on their first day with no experience or training on how to perform their duties or handle unruly inmates and emergencies.

The Tennessee Corrections Institute appears to have inadequate staff to fulfill its mandate. TCI reduced its staff from 26 positions in 1982 to 11 positions in 2002 because of forced budget cuts. The agency's staff now consists of only six inspectors, an executive director, and

clerical staff. The six inspectors must cover all 95 county jails, nine county jail annexes, 14 city jails, and eight correctional work centers. The lack of staff contributes to conditions that negatively affect the quality of jail inspections.

The six inspectors provide training and technical assistance to jail staff as well as conducting inspections. Mixing regulatory and assistance functions can result in a lack of objectivity by inspectors.

TCI inspection practices appear inadequate to ensure safe and secure jails. Office of Research staff observed several problems with TCI's inspection practices during jail inspections, including differences in interpreting standards, timing of inspections, assigning inspectors, and quality of inspections.

Although TCI inspections are unannounced, they generally occur within the same or an adjacent month of the previous year's inspection. As a result, jail staff can anticipate inspections and present themselves in ways during the inspections that do not reflect their normal routines and practices.

TCI inspectors provide minimal training to correctional officers (jailers), who must attend 40 hours of basic training during their first year of employment. TCI provides no training to sheriffs and jail administrators. As a result, some correctional officers begin work with no preparation and, in fact, may never receive training, increasing the potential of liability. Training is critical to protect both inmates and correctional officers. Newly elected sheriffs without previous law enforcement certification must attend training provided by the Peace Officers Standards and Training Commission. However, most of this training relates to law enforcement activities, with little time devoted to jail management.

The state does not evaluate the reimbursement process for housing state inmates in local correctional facilities as required by TCA § 41-1-405, enacted in 1983. Although the various reports submitted by counties to determine reimbursements are reviewed, the overall reimbursement process is not continually evaluated. The statute explains the General Assembly's intent: "a continuing evaluation of the impact of the state correction system upon local correction systems is essential to determine the method and amount of assistance, financial or otherwise, necessary to equitably compensate such local systems for their continuing role in the overall correction system of this state." The statute suggests that a "task force composed of all facets of the criminal justice system" conduct the evaluation. Because the process has not been continually reviewed the current method may not comply with the General Assembly's intent to equitably compensate local correctional systems. Any evaluation should include an analysis of marginal and fixed costs which can help to determine if the reimbursement process is equitable to the counties and the state.

Low funding for jails contributes to unsafe facilities, high correctional officer turnover, and staff shortages in some jails. Most sheriffs interviewed by Office of Research staff noted

strained relationships with county executives and county commissions regarding jail funding. The sheriffs believe that these county officials have other budgetary priorities and do not fully appreciate the liability issues caused by underbudgeting. Inadequate funding usually leads to unsafe conditions, including critical understaffing or physical plant deterioration that endangers inmates and jail personnel. Most sheriffs report a high correctional officer turnover rate because of low salaries.

No state agency enforces or monitors compliance with TCA § 41-8-107 (c), which requires non-certified facilities to use 75 percent of the state reimbursement to improve correctional programs or facilities. These facilities may remain in poor and uncertifiable conditions. In FY 2001-02, DOC paid \$3,515,426 to county jails that were not certified; 75 percent of this amount is \$2,636,569.

The Criminal Justice/Mental Health Liaison program helps divert inmates with mental illnesses from jail in specific areas of the state. Statewide, however, Tennessee continues to lack adequate community services and institutional placements for inmates with mental illnesses held in jail. Both mental health professionals and sheriffs agree that some inmates with mental illnesses would be better served by community resources than by placing them in jails for minor offenses possibly caused by manifestations of their illnesses. Other offenders may need the treatment environment of a mental health facility. In at least one case, a Davidson County judge ruled that the right to a speedy trial for an inmate with a mental illness had been violated after the inmate spent over a year in jail awaiting a competency hearing.

In an attempt to relieve jails housing inmates who need treatment in mental health institutes, Public Chapter 730 of 2002 specifies that the Commissioner of Mental Health and Developmental Disabilities (DMHDD) must exert all reasonable efforts to admit such an inmate within five days of receiving a commitment order.

The Department of Mental Health and Developmental Disabilities (DMHDD) established a Criminal Justice/Mental Health Liaison pilot project to improve communication and coordination among the community, the criminal justice system, and the mental health system, and to establish diversion activities. Although the liaison program is too new to determine the impact of its criminal justice activities, many jail staff told researchers that the program is an asset.

Office of Research staff were unable to determine whether sheriffs comply with federal and state special education mandates. In 2003, the Department of Education sent a copy of the department's Policy and Procedure for Incarcerated Children with Disabilities to all county sheriffs and local education agencies (LEAs). State policies and procedures follow the directives of the federal law. The policy applies to all students with disabilities, who are legally mandated to receive an education in Tennessee through their 22nd birthday. Most sheriffs and jail administrators denied that they hold inmates who are eligible for special education services. However, most smaller jails do not use a classification system to identify eligible inmates. Thus, some eligible students may not receive services to which they are entitled. Providing special

education programming could help such inmates as well as protect jail staff from suits for failing to ensure that they identify such children.

Most jails do not help inmates access social or health services upon release. Most jails do not offer help to inmates to prepare them to reenter society, often resulting in inmates who are unprepared for the challenges they encounter. On the other hand, Davidson County officials are committed to assisting inmates scheduled for release to help them avoid reincarceration. Officials expressed concerns about inmates being disenrolled from TennCare upon incarceration and the difficulties in reenrolling them upon release. They also believe that the Department of Human Services should be more involved in assisting released inmates to access its services, such as food stamps, TANF, or vocational rehabilitation. An American Correctional Association standard recommends prerelease planning.

An ACA non-mandatory standard suggests facilities adopt a written policy, procedure, and practice to provide continuity of care from admission to discharge from the facility, including referral to community care. Some criminal justice and mental health professionals expressed concern that inmates with mental illnesses receive services in jails, but upon release, are not always linked to community resources to provide continued services. Because of a potential lapse in services, these same persons may return to the criminal justice system.

LEGISLATIVE RECOMMENDATIONS

- The General Assembly may wish to authorize the Tennessee Corrections Institute to ask the state's Attorney General and Reporter to petition circuit courts to close jails that fail to correct unsafe conditions.
- The General Assembly may wish to enact legislation prohibiting state prisoners from being held in facilities that are not certified by TCI because of safety issues.
- The General Assembly may wish to clarify statutory language regarding the transfer of state prisoners from county jails.
- The Select Oversight Committee on Corrections may wish to review the current process to reimburse local governments for housing state inmates in local correctional facilities.

ADMINISTRATIVE RECOMMENDATIONS

- Local governments should establish ongoing avenues of communication such as councils or committees composed of criminal justice agencies to seek solutions to problems such as overcrowding.

- The Department of Correction should make every effort to transfer state inmates held in non-certified jails as quickly as possible.
- The Department of Correction should not contract with overcrowded jails to hold state inmates.
- Some Tennessee counties should consider the feasibility of establishing regional jails.
- The Tennessee Corrections Institute should review its standards and inspection practices annually, revising them as needed to adequately protect jails from liability.
- The Tennessee Corrections Institute should provide training to sheriffs, jail administrators, and other supervisory personnel.
- The Tennessee Corrections Institute should request reinstatement of the positions it lost because of budget reductions in the 1980s and 1990s.
- The Tennessee Corrections Institute should establish two distinct divisions within the agency – one for inspections and the other for training and technical assistance because mixing regulatory and assistance functions can reduce inspectors’ objectivity.
- The Tennessee Corrections Institute should vary its inspection cycle and rotate inspector assignments from year to year.
- The state should enforce the statute requiring counties with noncertified jails to use 75 percent of their DOC reimbursements to improve correctional programs and facilities.
- The Department of Mental Health and Developmental Disabilities should determine the impact of its criminal justice activities in local jails. If warranted, DMHDD should seek additional federal funds to expand the Mental Health Liaison Program statewide and increase the availability of mobile crisis teams.
- The Department of Mental Health and Developmental Disabilities should prioritize bed space to ensure that inmates awaiting competency hearings are evaluated in a timely manner.
- Sheriffs and jail administrators should provide discharge planning for inmates with mental illnesses who need continued care upon release.
- Sheriffs and jail administrators should report all inmates who may be eligible for special education services to the LEA.
- State agencies such as the Bureau of TennCare and the Department of Human Services should work more closely with jail personnel to reinstate benefits inmates lose while incarcerated.

APPENDIX 3(b)

TENNESSEE COMPTROLLER OF THE TREASURY, OFFICE OF RESEARCH AND EDUCATION ACCOUNTABILITY. 2006. *BUILDING AND FINANCING JAILS IN TENNESSEE.*

EXECUTIVE SUMMARY

Several Tennessee jails are antiquated, dilapidated, and may be unsafe for inmates, jail staff, and the community. An August 2003 report by the Comptroller, The State of Tennessee Jails, identified conditions in many of the state's jails that potentially violate inmates' constitutional rights.

Since the report's release, many county officials have noted their increased risk of litigation and enhanced liability. In addition, the Tennessee Corrections Institute (TCI), the state agency charged with setting standards and inspecting jails, began notifying counties not meeting standards that they could lose their certification if they did not show progress toward correcting deficiencies. As a result, several counties decided to build, enlarge, or renovate their jails to reduce this exposure. These counties, however, have used various approaches to construction and financing, resulting in very different bed costs and subsequent operating costs.

This report concludes:

County commissions have funded jail projects that will not meet long-term needs to safely and efficiently house prisoners. Officials from counties that have recently built facilities reported several concerns with those facilities. The concerns appear to arise from:

- Initial designs that exceed a county's needs, then have to be scaled back, leading to perceptions that the county is not receiving what it paid for;
- Cutting construction costs that increase long-term operational costs;
- Elaborate needs assessments that provide more information than necessary to make decisions. This may lead some counties to retreat from projected needs after they find out how much meeting those needs will cost; and
- County commissions reluctant to commit limited resources for adequate jail construction projects, cutting construction costs on the front end to make it appear they have saved the taxpayers money, without realizing or addressing the increase in long-term maintenance and operating costs that result from those decisions.

Careful consideration of such issues, with sheriff's department staff involved from the earliest stages, could help counties better meet long-term jail needs safely and efficiently.

Some county commissions and other officials do not seek expertise or technical assistance from organizations such as CTAS or NIC's Division of Jails. Adequate assessments of counties' jail needs may help decision makers ensure jails remain adequate at least until counties pay off the resulting debt. Also, while there are jail consultants qualified to conduct needs assessments for a fee, similar assistance (as well as guidance in the form of free literature) is available free from the U.S. Department of Justice's National Institute of Corrections (NIC), as well as the University of Tennessee's County Technical Assistance Service (CTAS).

County officials outside the sheriff's department often hire architects under professional services contracts. Unless those officials specifically grant the sheriff's department some authority over design decisions, the architect answers primarily to those officials. Six out of twenty survey respondents that built jails since 2002 reported that the county commission or county mayor, or both, chose the architect. Several reported that sheriffs played only an advisory role during jail planning. In such cases, officials making decisions may focus on cutting initial construction costs with little concern for long-term maintenance and operational costs, about which sheriffs' department personnel may have more knowledge.

Rule 1400-1-.04(24) requires counties constructing new jails to submit plans to TCI and the State Fire Marshall's Office for review and approval. However, the rule specifies neither the elements required in jail construction plans, nor when counties should submit them. The rule requires counties constructing new jails to submit plans to TCI and the State Fire Marshal's office for review and approval. However, TCI has limited oversight authority of the jail construction process. Instead, rules allow counties great flexibility through construction, only to hold them accountable for meeting construction standards, for certification purposes, once construction is complete.

Because of the lack of a standard plans review process, some counties have submitted plans in late stages of construction or not at all, only to have the plans disapproved or have constructed facilities that do not meet square footage or other physical plant standards. This has forced the counties to appropriate additional funds to complete projects to comply with TCI standards.

TCI in fact lacks authority to force counties to comply with standards, but has the statutory authority to certify county jails that meet standards. Counties can use such certification to defend themselves against lawsuits filed by prisoners based on conditions of confinement.

The TCI board and staff lack expertise to assist counties in designing, constructing, and opening jails, and inspectors receive little training on reviewing plans. Additionally, TCI's Executive Director allows inspectors to interpret standards as they understand them, as long as they can defend their decisions in court. The Executive Director requested five additional positions in the 2006-07 Fiscal Year Budget to increase professional staff to better perform its duties, including providing better jail construction oversight. The administration, however, declined to fund those positions. According to a correctional consultant, of the 22 states that have jail regulatory agencies, many hire staff with expertise or they contract with professionals

to assist their local communities in designing, constructing, and opening jails. Other states report sending inspectors to blueprint reading classes through local vocational schools, as well as taking advantage of courses offered free of charge (excluding travel expenses in some cases) by the National Institute of Corrections, such as a course on “Managing Jail Design and Construction.” Five of TCI’s six inspectors have attended an NIC Class such as “Detention Facility Inspectors Training,” and “Jail Administration.”

Because of TCI staff’s lack of expertise, counties must rely on architects for direction. Some architects follow nationally regarded American Correctional Association standards rather than TCI standards, leading to costly changes or non-certification of the jail.

Some TCI construction standards (as well as those from other states) differ from court-tested ACA standards, which architects often consult when designing jails. The differences between TCI Standards and ACA Standards cause confusion when architects design jails to meet nationally regarded ACA standards and discover later that the design does not meet TCI standards. These inconsistencies have caused unnecessary expenditures in some cases when counties had to alter plans or redesign structures after construction had begun.

No Tennessee counties have chosen to operate a jail jointly, although state law permits it.

One group of counties, however, is currently discussing the possibility of a regional jail. Regional jails may offer some counties the opportunity to save funds and to lower liability risks. Any attempt to establish a regional jail calls for an examination of several issues, including:

- a perceived loss of authority by some county officials;
- a perception that not all counties are contributing equally;
- differing management styles;
- an increase in transportation costs;
- attorney complaints; and
- disagreements over the location of the facility.

Counties without regional jails may also miss opportunities to potentially provide programming to prisoners that may reduce recidivism. Virginia and West Virginia have successfully established regional jails.

LEGISLATIVE RECOMMENDATIONS

The General Assembly may wish to consider restructuring TCI’s Board, designating persons with expertise in areas such as jail construction and operation, architecture,

and engineering. Including persons with such expertise on the board may improve TCI's plan review process, prevent some costly design changes, and help to ensure jails operate as efficiently as possible.

The General Assembly may wish to amend TCA § 41-4-140, which requires TCI standards to approximate, as closely as possible, those standards established by the inspector of jails, federal bureau of prisons, and the American Correctional Association. Lawmakers may wish to adopt ACA standards for Tennessee to prevent confusion among architects, sheriffs, and other county officials with regard to jail design.

The General Assembly may wish to consider creating financial incentives for counties to establish regional jails. Benefits of regional jails include cost savings through economies of scale; fewer county jails for TCI to inspect; and better opportunities to attract professional correctional administrators and social service providers. Potential revenue from housing state and federal prisoners also may offset some operational costs.

ADMINISTRATIVE RECOMMENDATIONS

TCI should amend Rule 1400-1-.04(24) to specify the documents counties should submit during the four phases of design, establishing an organized system of plan review and approval. Such amendments should include a timeline and authority to halt the design process if counties do not submit proper documents, or prohibition against moving forward until TCI approves each step.

TCI should request free technical assistance from the National Institute of Corrections (NIC) to evaluate its operations and send its chief jail inspector to the free annual training offered by NIC. Professional training and educational opportunities offered by the NIC may improve the quality of TCI's jail inspection program and improve the ability of TCI staff to review jail construction plans.

TCI should hire staff or outsource services that require expertise in architecture and engineering. Technical aspects of design documents sometimes require that highly skilled professionals review them to accurately interpret elements of the design.

TCI standards should not be open to individual interpretation by jail inspectors. TCI management should train all inspectors consistently on jail standards, leaving little room for individual interpretation.

Some Tennessee counties should consider the feasibility of establishing regional jails. While exploring the possibility of establishing a regional jail, the counties involved should fully examine the potential benefits of regional jails.

County commission members should acknowledge that jails are facilities with special architectural, building material and fixture needs when approving a building budget. While keeping county taxpayers in mind, they should also ensure adequate funding for jail construction projects to enhance the safety of the community, staff, and inmates and to lower operational costs.

County decision makers should construct jails or additions based on valid needs assessments, keeping in mind that cutting construction costs may result in poor design and quality. In some cases, spending more on initial construction may lead to greater long-term savings through reduced maintenance and staffing costs.

Sheriffs and other county officials should contact NIC and CTAS for technical assistance and advice about planning for and building jails. These agencies can offer expertise, free of charge, to help county officials make wise jail design decisions that may save public money over the life of the buildings.

County commissions and county executives should hire architects who are knowledgeable about jail operations and who will consider jail security needs and destructive inmate behavior, as well as designing less labor-intensive facilities. While technical assistance can help counties make wise design decisions, architects experienced in jail design can reduce difficulties for all parties.

Sheriffs and other county officials should consider using or establishing Public Building Authorities (PBAs) as an independent funding/project management mechanism for constructing jails. A PBA can save money and provide quality project management if persons with relevant expertise work for and serve on the PBA boards.

APPENDIX 3(c)

REPORT TO THE TCSA BOARD OF DIRECTORS BY THE JAIL COST STUDY COMMITTEE MARCH 15, 2005

INTRODUCTION

For many years, courts have found that conditions of confinement in many U.S. jails violate constitutional rights contained in the Eighth Amendment (banning cruel and unusual punishment) and the Fourteenth Amendment (which guarantees due process rights). Federal courts have ordered counties to make extensive changes, costing extraordinary amounts, to address a wide array of jail problems and issues.

The Tennessee Constitution requires each county to elect a sheriff and other officials, whose duties are determined by the General Assembly. TCA § 41-4-101 places sheriffs in charge of county jails and all their prisoners. The sheriff may appoint a jailer, but the sheriff is civilly responsible for the jailer's actions.

Tennessee jails hold inmates who:

- have been committed for trial for public offenses
- have been sentenced to a penitentiary, but await transfer to the prison
- have been committed for contempt or on civil process
- have been committed for failure to give security for their appearances as witnesses in criminal cases
- have been charged with or convicted of criminal offenses against the United States
- are awaiting transfer to a mental health facility, or
- have otherwise been committed by authority of law

BACKGROUND

In Tennessee, sheriffs have the responsibility to manage county jails, however, several state agencies impact jail operations. The Tennessee Corrections Institute (TCI), the Department of Correction (DOC), and the Department of Mental Health and Developmental Disabilities (DMHDD) are state agencies that affect county jail operations.

In 1980, the legislature gave TCI the responsibility to inspect all county jails and workhouses. TCI staff inspect local correctional facilities using standards approved by the Board of Control. Staff recommend certification or non-certification based on compliance or non-compliance with existing law and regulations. Non-certified facilities are in a less defensible position in a lawsuit and run the risk of losing insurance coverage. As of February 2005, there are twenty-eight (28) non-certified county jails in Tennessee.

The Department of Correction pays local jails to house inmates for various reasons. In some cases felons await transfer to penitentiaries to serve their sentences, but remain in local facilities for extended periods because state facilities lack space. The Department of Correction also contracts with some local jails to hold state prisoners to alleviate overcrowding in state facilities. In other cases, judges sentence felons to serve their terms in county facilities.

ANALYSIS AND ISSUES

According to a recent CTAS survey, county governments in Tennessee are continuing to spend substantial amounts of money on jail projects. During the past three years, fifteen counties have spent \$165 million on a jail or justice center project. This construction has provided an additional 4,096 inmate beds. A substantial portion of this funding comes from the larger, urbanized counties: Shelby \$39 million; Davidson and Montgomery \$30 million each; Sumner \$23 million.

Nine counties are currently working on a jail/justice center project for an additional cost of \$55.5 million.

From 1996-2001, 24 counties increased jail capacity by building new jails, 19 counties renovated existing facilities, and 14 added new space to existing facilities. Tennessee counties continue to invest huge sums of tax dollars in jail construction and improvements.

Another growing jail issue is the increase in the number of inmates with mental illnesses or disabilities and/or substance abuse. The Department of Mental Health and Developmental Disabilities (DMHDD) is responsible for court ordered forensic evaluations to determine a defendant's competency to stand trial and/or mental condition at the time of the offense. Regional Mental Health Institutes, administered by DMHDD, serve pre-trial individuals from jails who meet emergency involuntary commitment standards. Defendants ordered for forensic evaluations or other pre-trial defendants are admitted without regard to bed availability upon meeting standards for emergency involuntary commitment. DMHDD has created a diversion program with community mental health centers to serve inmates in selected areas of the state. In these programs, criminal justice/mental liaisons work to find alternative placements and services for inmates with mental illnesses.

Many county governments in Tennessee continue to wrestle with the challenges of overcrowded jails. The number of inmates in Tennessee's local correctional facilities increased 56%, from 13,098 in fiscal year 1991-92 to 20,393 in fiscal year 2002-03. In reviewing the Jail Summary Report for the week ending December 17, 2004, the total jail population in Tennessee jails was 21,870 inmates. Based on the number of available beds in Tennessee jails (24,450), that is 89.4% of the available capacity of jails in Tennessee. The number of rated beds ranges from 7 in Pickett County to 3,562 beds at Shelby County Corrections Center. The December 2004 Jail Summary Report also shows that 51 counties had inmate populations that exceeded 100% of capacity.

The total county jail population in FY 1993-1994 was 12,451. In FY 2003-2004, the total county jail population was 21,118.

RECOMMENDATIONS

1. Health Care. Inmate health care costs continue to be a very substantial part of the jail operating budget. Some counties have been very successful in lowering jail medical costs by negotiating with local and regional doctors and health care facilities for medical services. There are also private companies that will provide medical services for county jails by providing a doctor and around-the-clock nursing staff. Fees for these services are based on the daily population of the jail and vary across the state. Most of these medical services are provided at the jail and therefore save the county in transportation costs and security risks.

The committee recommends that TCSA explore the possibility of establishing and implementing a statewide, inmate managed health care program, using health care rates that have already been negotiated and are currently being used by the state. Rather than negotiate with every local doctor and hospital, county governments would use the State of Tennessee TennCare rates for medical services or negotiated statewide rates. The State of Tennessee has already established these rates with several medical providers for state employee insurance as well as TennCare enrollees. County governments would simply use these already established rates, and there would be no costs to the state.

The committee further recommends that counties stipulate that doctors prescribing medication to inmates use a "formulary" plan. A formulary is a pre-determined list of medicines that provides adequate medications for most sicknesses and mental illnesses. The doctor or jail nurse working under the doctors protocols, would examine the inmate, refer to any medical information provided by a private physician, then prescribe the medications necessary from the formulary drug list. Private companies indicate that there is the potential to save up to 60% of the overall drug costs by using a formulary drug list. Jails can purchase prescription

drugs from “formulary” pharmacies. (Regardless of whether the jail doctor is contracted or a private doctor, or an emergency room doctor)

The committee also recommends that TCSA investigate the possibility of using TDOC’s existing, statewide, prescription drug formulary plan. TDOC uses this formulary plan for all its prisons. A statewide formulary plan would save a substantial amount of money for most counties. Additionally, inmates being transferred from jail to jail and then to TDOC would remain on the same formulary prescriptions thereby reducing the number of complaints and medical lawsuits.

There are also private vendors that will review all of the inmate medical bills for accuracy, double billing and other errors. These companies usually charge for their services on a fee per person basis or a percentage contract for the service.

There are vendors that provide a managed type, health care option where the county would use certain doctors and hospitals in their area to provide medical services at a discounted rate. Some vendors charge a per person fee and some companies contract with the county for a percentage of the amount of savings realized by using the vendor’s network of providers.

Additionally, the committee recommends that counties in Tennessee contact vendors for inmate dental services. There is at least one vendor that travels to various county jails providing dental services. Smaller counties could explore the possibility of establishing a regional agreement with each other. One jail could provide space for a dentist office and the surrounding counties could transport inmates to that location at designated times each month. Escape risks would be greatly reduced compared to transporting inmates to a private dentist office. The costs would vary depending on the number of inmates.

2. The Jail Board Bill. The committee recommends that TDOC simplify the reimbursement formula. A certified, county jail facility that holds state inmates should be paid a flat state rate based on inmates per day. It is redundant and inefficient to require counties in Tennessee to spend hours completing required forms when the current rate is capped and does not cover the actual expenses of housing state inmates. The reimbursement rate to counties in Tennessee should be equal to the rate paid to Corrections Corporation of America or equal to the daily cost to the state for housing inmates. It is fundamentally unfair to expect county governments to house state inmates in a certified county facility and receive less money than TDOC’s daily costs or CCA’s daily costs to keep the same inmates.

TDOC should pay board and medical expenses for pretrial detainees that are convicted of felony crimes. If county governments are not reimbursed for pretrial detainee inmates, TDOC should remove them from the reimbursement formula and not count those inmates against the counties.

Parole violators are TDOC's responsibility as well. Parole violators are state inmates that have been released from a state prison that were being supervised by a state parole officer. Once violated, the expenses of parole violators should be the responsibility of the state.

3. **Training.** The training for county jail administrators and correctional officers is inadequate. County government decision-makers, including sheriffs, jail administrators, mayors, and county commissioners need more information and training regarding county jail operations, particularly in regards to inmate medical issues. Very few sheriffs in Tennessee have a professional corrections background. Currently, TCI requires forty hours basic instruction during the first year of employment and then requires forty hours of in-service training annually thereafter. Sheriffs and Jail Administrators should become certified in Jail Management. TCSA should recommend to the Board of Directors of the Tennessee Corrections Institute that a Jail Management program be mandated as part of the jail certification process. The current training for correctional officers should be expanded to include: medical issues, jail management and supervision, professionalism, and the application of cost-saving measures.
4. **Mental Health Transportation.** The committee recommends that TCSA request the Department of Mental Health and Developmental Disabilities establish a study committee consisting of all agencies involved in transporting mental health patients from emergency rooms to mental health facilities. The function of the committee is to discuss and recommend laws and policies regarding the transportation of mental health patients. According the results of the CTAS survey, a majority of the mental health transports live inside a town or city. TCSA should support legislation that places the responsibility of the transportation of mental health patients on the local government in which the patients resides.
5. **The Blind Vending Industry.** Tennessee law gives the blind vending industry the first right of refusal in government buildings for any vending service. TCSA and the Tennessee Sheriffs Association should consider joining forces in filing legislation that would exempt county jail commissaries from the existing statute. County jails and workhouses could be excepted out of the law just as county Departments of Education are excluded in the law currently.

APPENDIX 4

County Jails Housing State Prisoners

Counties that Contract with TDOC

Counties Reimbursed at a Flat Rate		
Facility	Per Diem Reimbursement	Certification Status
Carter	\$29.40	C
Cocke	\$28.62	N
Fayette	\$26.53	C
Hamblen	\$24.70	N
Hancock	\$31.00	C
Hickman	\$25.00	N
Johnson	\$35.00	C
Lake	\$35.00	C
Lauderdale	\$35.00	C
Lewis	\$35.00	C
Lincoln	\$35.00	C
McMinn	\$35.00	C
Scott	\$35.00	C
Smith	\$35.00	N
Sumner	\$30.00	C
Trousdale	\$35.00	C
Counties Reimbursed Based on Reasonable and Allowable Cost Calculations		
Facility	Per Diem Reimbursement	Certification Status
Davidson-Detention Facility <i>(managed by CCA)</i>	\$42.19	C
Fentress	\$34.11	C
Greene	\$35.00	C
Haywood	\$35.00	C
Overton	\$35.00	C
Sevier	\$28.25	C
Shelby-Penal Farm	\$46.23	C
Washington	\$35.00	C

Source: Tennessee Department of Correction, Certification Status as of August 2006, Per Diem Reimbursement for FY 2006.

County Jails Housing State Prisoners

Counties that Do Not Contract with TDOC

Counties Reimbursed Based on Reasonable and Allowable Cost Calculations		
Facility	Per Diem Reimbursement	Certification Status
Anderson	\$35.00	C
Bedford-Jail	\$32.00	C
Bedford-Workhouse	\$32.00	C
Benton	\$32.00	C
Bledsoe	\$32.00	N
Blount	\$35.00	C
Bradley	\$35.00	C
Campbell	\$35.00	N
Cannon	\$34.09	C
Carroll	\$31.68	C
Cheatham	\$35.00	C
Claiborne	\$35.00	N
Clay	\$32.76	N
Coffee	\$25.11	C
Crockett	\$32.38	C
Cumberland	\$35.00	C
Davidson-Combined	\$35.00	C
Decatur	\$35.00	N
Dekalb	\$32.00	C
Dickson	\$32.14	C
Dyer	\$35.00	C
Franklin	\$35.00	C
Gibson	\$21.98	C
Giles	\$35.00	C
Grainger	\$32.00	C
Grundy	\$35.00	N
Hamilton-Jail	\$35.00	N
Hamilton-Penal (<i>managed by CCA</i>)	\$35.00	C
Hawkins	\$30.21	C
Henderson	\$31.35	C
Henry	\$30.26	C
Houston	\$35.00	C

County Jails Housing State Prisoners

Counties that Do Not Contract with TDOC (continued)

Counties Reimbursed Based on Reasonable and Allowable Cost Calculations		
Facility	Per Diem Reimbursement	Certification Status
Jackson	\$35.00	N
Jefferson	\$35.00	C
Knox-Combined	\$35.00	KCJ, KCDF, AND KCWRC YES, KJAX, NO
Loudon	\$35.00	C
Macon	\$35.00	C
Madison-Jail	\$35.00	C
Madison-Penal Farm	\$35.00	C
Marion	\$35.00	C
Marshall	\$35.00	C
Maury	\$35.00	C
McNairy	\$35.00	C
Meigs	\$33.93	C
Monroe	\$32.00	C
Montgomery-Jail	\$35.00	C
Montgomery-Penal Farm	\$35.00	C
Moore	\$35.00	C
Morgan	\$35.00	C
Obion	\$35.00	C
Perry	\$35.00	C
Polk	\$30.74	N
Putnam	\$35.00	C
Rhea	\$30.75	C
Roane	\$35.00	C
Robertson	\$35.00	C
Rutherford-Jail	\$35.00	C
Sequatchie	\$32.81	N
Shelby-Jail	\$35.00	C
Stewart	\$35.00	C
Sullivan	\$28.29	C
Tipton	\$35.00	C
Unicoi	\$32.38	C
Union	\$32.09	N

County Jails Housing State Prisoners

Counties that Do Not Contract with TDOC (continued)

Counties Reimbursed Based on Reasonable and Allowable Cost Calculations		
Facility	Per Diem Reimbursement	Certification Status
Van Buren	\$21.13	N
Warren	\$30.62	N
Wayne	\$22.91	C
Weakley	\$35.00	C
White	\$35.00	C
Williamson	\$35.00	C
Wilson	\$35.00	N
Counties Reimbursed Based on Resolutions: Flat Rates		
Facility	Reimbursement	Certification Status
Chester	\$18.00	C
Hardeman	\$18.00	N
Hardin	\$18.00	N
Humphreys	\$18.00	N
Pickett	\$18.00	N
Rutherford-Workhouse	\$20.00	C

Source: Tennessee Department of Correction, Certification Status as of August 2006, Per Diem Reimbursement for FY 2006.



TACIR Members

Representative Randy Rinks, Chairman
Mayor Tom Rowland, Vice Chairman
Harry A. Green, Executive Director

Legislative

Senator Ward Crutchfield
Senator Mark Norris
Vacant
Vacant
Representative Jason Mumpower
Representative Gary Odom
Representative Randy Rinks
Representative Larry Turner

Statutory

Representative Craig Fitzhugh, Chairman, Finance Ways & Means Committee
Senator Randy McNally, Chairman, Finance Ways & Means Committee
Comptroller John Morgan

Executive Branch

Paula Davis, Department of Economic & Community Development
Drew Kim, Governor's Office

Municipal

Tommy Bragg, Mayor of Murfreesboro
Sharon Goldsworthy, Mayor of Germantown
Bob Kirk, Alderman, City of Dyersburg
Tom Rowland, Mayor of Cleveland

County

Rogers Anderson, Mayor of Williamson County
Kim Blaylock, County Executive of Putnam County
Jeff Huffman, County Executive of Tipton County
R.J. (Hank) Thompson, County Executive of Sumner County

Private Citizens

John Johnson, Morristown
Vacant

Other Local Officials

Brent Greer, Tennessee Development District Association
Charles Cardwell, County Officials Association of Tennessee



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