

Jail Bloating:
A Common But Unnecessary Cause of Jail Overcrowding

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Introduction

Jail bloating is a common condition that is often missed by county commissioners faced with what to do about jails that are bulging at the seams. Building more jail capacity is very costly and should only be undertaken after less costly options have been explored.

The options raised in this article are sometimes not explored and, if they are, they may be undertaken half-heartedly with an “I-told-you-it-wouldn’t-work” attitude. However, the success of those who earnestly explore the options has been impressive.

Because resistance may be encountered when someone asks if bloating is the cause of local jail overcrowding, this article provides more documentary evidence, i.e., references to articles and studies, than is typical of a nontechnical article. The purpose is not to impress the reader with the author’s scholarship, but to show that the ideas and recommendations are shared by some of the best minds and forward-thinking leaders of local criminal justice systems.

The purpose of this article is to define jail bloating, explain what produces jail bloating, provide indicators that will help diagnose its existence, and offer a variety of strategies for remedying jail bloating. Also, “before” and “after” examples from several criminal justice systems are provided to illustrate that bloating can be successfully reduced.

What is Jail Bloating?

Jail bloating is a condition in which a jail population is unnecessarily enlarged due to causes other than crime and sentencing laws. Jail bloating often goes unrecognized by county board members and the public, although members of the local criminal justice system are often aware, but not prone to openly discuss the existence of jail bloating. As a result, a perception arises that the only remedy to jail overcrowding is to build additional capacity.

Jail bloating is produced by two conditions: (1) A local condition involving inefficient practices in the local criminal justice system, and (2) Conditions external to the county involving backup of state-sentenced inmates in the local jail.

Jail Bloating Produced by the Local Criminal Justice System

Inefficient practices in the local criminal justice system contribute to and sustain jail bloating. Since a jail is located downstream in the criminal justice system’s flow, the impacts of inefficiencies accumulate at that point.

Inefficiencies in justice system practices have been addressed since early in the 20th century. Delay in the pace in which cases move through the justice system is one of the three major characteristics of inefficiency. The second is the failure to develop an appropriate range of sentencing options and the third involves practices that arise out of a biased view of a particular administrator or staff member about what constitutes justice.

In the 1970s a major leap forward in the understanding of criminal case processing dynamics occurred. Prior to that time, the common belief held that court resources, i.e., the number of judges

and related support staff, and formal rules of procedure determined the speed of case disposition. The solution to delay reduction was primarily one of matching workload and court resources.¹ However, in the 1970s a number of studies, task forces and commissions emerged that began to chip away at the common view.² One of the important findings of this research was that the “local legal culture,” i.e., “established expectations, practices, and informal rules of behavior of judges and attorneys,” is a major contributor to delay.³

Characteristic of this culture is the development of shared rationalizations for why the system functions as it does. Misperceptions, also, are often shaped in which inefficiencies are not seen to exist, or, if they are acknowledged, are not recognized as amenable to change. Unlike the business world, where efficiency in operations might mean the difference between staying in business or going out of business, no such market pressures spurs the justice system to higher functioning. Thus, leaders of the local criminal justice system are not prone to bring to the attention of county commissioners that an overcrowded jail may be the result of inefficient practices. The most frequently voiced shortcoming is that more judges and prosecutors are needed.

The idea that a local legal culture could affect a court may be a little uncomfortable for some to accept. For those persons, our system of courts is a symbolic process in which an arrested person is provided justice in the best manner possible. In this symbolic view, jail overcrowding could only be caused by too many offenders being arrested. The possibility is not considered that the system might operate in a manner that is less than ideal. However, by going beyond the symbolism of the criminal justice system to the look at how the system operates, a greater number of options to resolve jail overcrowding can be found.

The justice system, as exemplified in the gradual evolution of laws and legal thinking, is often slow to change. Not surprisingly, law schools focus on the intricacies of the law. Teaching justice system management skills is not an educational goal.⁴ As a result, information that could contribute to a grassroots change in the local legal culture is bypassed. Also missing is the early formative awareness of managerial techniques that will be important as the attorneys move up through the ranks to occupy positions that influence justice system efficiency.

The proponents of change outside of the law school are many, although they have to swim upstream against the strong influence of the local legal culture. These proponents include the

¹Steelman, David C., et. al. *Caseflow Management: The Heart of Court Management in the New Millennium*. Williamsburg, VA: National Center for State Courts, 2000, p. xv.

²One of the earliest studies was by Church, T.W. et. al. *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. Williamsburg, VA: National Center for State Courts. 1978. Also In 1978, the American Bar Association, ABA, created the Action Commission to Reduce Court Costs and Delay. In 1983 the National Conference of State Trial Judges adopted a set of standards dealing with trial court delay and in 1984 these standards were incorporated into the *ABA Standards Relating to Trial Courts*.

³Church, p. 54. The authors ascribe local legal culture as contributing in a large part to both delays and backlog in case processing, i.e., inefficiencies. This concept is also mentioned frequently in other studies of court systems.

⁴A recent sampling of course catalogs and interviews of law school faculty by this writer indicate that most law schools have no courses in which a substantial amount of time is devoted to efficiency issues in criminal caseflow management.

National Center for State Courts (NCSC), which provides through its Institute for Court Management (ICM) a variety of educational seminars, such as caseflow management. The American Bar Association (ABA) has established standards for the speed of case processing. Following that lead, about two thirds of the states and the District of Columbia instituted time standards.⁵ The Bureau of Justice Assistance and the NCSC also has supported research on reducing delay. On the non-attorney side of criminal justice operations, the National Institute of Corrections (NIC) provides publications on how to reduce jail populations. In addition, a number of criminal justice consultants specialize in criminal justice system studies and technical assistance.

Thus, the resources exist to assist in reducing jail bloating caused by inefficiencies within the local criminal justice system. The challenge facing the county commission is that of identifying inefficiencies, breaking the wall of local noncommunication, i.e., reluctance to talk about inefficient practices, and bringing together the resources and key criminal justice decision-makers so that change can be pursued.

Jail Bloating Caused by Backup of the Prison System

A second contributor to jail bloating is the backup of state prisoners in the jail. This condition usually stems from either overcrowding in the prison system or slow pickup of inmates for transportation to state prison. The county commissioner is less likely to be able to do anything about backup caused by a crowded prison system than the problem of slow pickup of the inmates. In some states, the state Department of Corrections transports inmates and, in other states, the local sheriff is responsible for transportation. In either case, the issue of transportation essentially boils down to seeing how schedules can be arranged for more timely pickup.

The magnitude of the prison backup problem is not always well defined. As will be shown in a subsequent section of this article, the techniques for diagnosing prison backup are an extension of those used to analyze the effects of criminal justice system inefficiencies.

How Can Jail Bloating Be Diagnosed?

There are seven major indicators of jail bloating, any of which would suggest that a problem exists. These indicators have been selected because they are relatively easy to apply and are usually indicative of a sizable problem.

Several of these indicators can be applied by anyone, whether they are familiar with the criminal justice system or not. For example, a county commissioner or interested member of the community who is unfamiliar with jails can apply Indicators 1, 3, and 4, just by asking a few general questions.

Indicator 1. A High Percentage of Inmates in Pretrial Status

The typical jail has a population that contains three general categories of inmates: (1) Pretrial inmates who are being held during criminal case processing, some of which will receive some form of pretrial release, such as bail bond, (2) Inmates sentenced to local time (usually less than a year in most states), and (3) Inmates who are in a transitional status, such as those who are being held on a warrant from another county and will be subsequently transferred to that county, and those

⁵Steelman, p. 108.

who have been sentenced to state prison and are awaiting transportation. Indicator 1, pertains to those inmates in the first general category, those in pretrial status. The other two categories will be addressed in subsequent indicators.

Only in several situations would Indicator 1 not be applicable:

- In combined county-state facilities: In several small states, such as Delaware, separate county jails and state prisons do not exist. These states house inmates in multipurpose, regional correctional facilities.
- In jail systems having more than one facility for confining persons: For example, if the jail population has been placed into different facilities for sentenced and pretrial inmates, the differentiation between facilities must be ignored and the total population counted. However, if a release unit exists, that unit should be excluded from the calculation of this indicator. Since work release is not a universal part of jails, its inclusion will diminish the ability to compare jails.
- In jail systems in which some persons under the jurisdiction of the sheriff are not held in jail: Sometimes the jail count will include persons who have been placed on electronic monitoring (house arrest) and are permitted to live at home. These persons are not part of the in-jail population and should be excluded from the calculation of this indicator.
- In jails that are holding inmates for other jurisdictions as part of an agreement: Some jails offset their operational costs by holding inmates from other jurisdictions, such as the U.S. Marshal's Service, Bureau of Prisons, other counties, or state prison system. In this instance, inmates from other jurisdictions must be subtracted from the jail population count before calculating the indicator.

The general rule of thumb for **small to large size jails** (50 to 1,000 beds) is that as the percentage of pretrial inmates moves past 50 percent, the likelihood of jail bloating increases. A scale for making judgments might be thusly devised:

- 90% and Above:** Almost certain that jail bloating exists – A good bet for a betting person.
- 80-89%:** Very strong possibility – Usually found to be associated with jail bloating.
- 60-79%:** Reason for suspicion – A frequently found percentage in jails; however, reduction is often possible.
- Below 60%:** Need to check other indicators to determine if bloating exists.

The rule of thumb may be applicable to very large systems of more than 1,000 beds. However, the difficulty of calculating the percentage may be greater than in smaller jails due to the many types of facilities and programs that may comprise the system.

Indicator 2. Slow Case Processing

Few, if any, persons in most counties know just how much delay exists and where it occurs in the processing of criminal cases.⁶ Local judges, prosecutors, public defenders, court

⁶Court case processing encompasses the events after arrest up to final conclusion of a case. An example of felony case processing events in a medium size Illinois justice system include: screening by prosecutor (State's

administrators, and probation administrators may be able to identify one or two case processing practices that could be characterized as being slow. Rarely are local court information systems used to track delay at various case processing points. The state administrator of courts office in many states have information systems that collect data from local courts; however, these data are usually too general to track case processing points.

The cost of delay, in terms of impact on the jail, is phenomenal. For example, the Detroit Recorders Court (felony court) implemented procedures to reduce case processing times and found that, after 17 months, the jail population had been reduced from 1,226 inmates to 580 – more than half!⁷ This finding is not unique, as study after study shows that dramatic reductions in jail populations can be obtained by improving the speed of cases moving through the criminal justice system. Contrary to what some criminal justice administrators in slow systems might say, reducing delay does not detract from the quality of justice – just the opposite, it improves it! A key phrase to keep in mind is that justice delayed is justice denied.⁸ For example, the longer cases are delayed, the more likely changes will occur in the witnesses, such as forgetting details, moving away, or failing to appear. Furthermore, reducing delay can affect such factors as the number of defendants failing to appear in court.⁹

Probing to determine if serious delay problems exist can be accomplished by asking a few general questions, as well as by data analysis. For example, members of the court system can be questioned to determine if they share a common goal of reducing delay. Since efficient courts are characterized by a shared and spoken awareness of this goal, the astute observer can gauge the likelihood that delay reduction is being pursued in an orderly fashion by asking this question of judges, prosecutors, public defenders, court administrators, court clerks, and court services (probation) staff. The absence of a shared response suggests that major problems are likely to be found.

The examination of the average time it takes a court to resolve criminal cases is a clearer way of assessing the efficiency of a court. For this purpose, a general rule of thumb is proposed to evaluate processing times:

Rule of Thumb About Case Processing Speed: Obviously slow court systems are those in which at least 80% of the felony cannot be resolved within 180 days from the time that

Attorney), appearance in bonding court, preliminary hearing, filing of indictment, arraignment, hearing on motions, scheduling conference, trial, presentence investigation, and sentencing.

⁷Gish, George. “Detroit Recorder’s Court Program Results.” A training handout used in the Institute for Court Management seminar on Special Issues in Criminal Caseflow Management, April 17, 1990.

⁸“Justice delayed is justice denied. Delay devalues judgments, creates anxiety in litigants, and results in loss or deterioration of the evidence upon which rights are determined. Accumulated delay produces backlogs that waste court resources, needlessly increase lawyer fees, and create confusion and conflict in allocating judges’ time.” –ABA National Conference of State Trial Judges. *Standards Relating to Court Delay Reduction*. (Commentary to Sec. 2.50.) Chicago: American Bar Association, 1984, p. 5.

⁹A 1976 study of bail practices in 21 cities indicated that the number of failures to appear could be reduced significantly if cases were brought to disposition within 60 days of pretrial release. See Thomas, W.H., Jr. *Bail Reform in America*. Berkeley: University of California Press, 1976, p. 124.

defendants are formally accused of a crime.¹⁰

This time goal is a variation of a time standard established by the American Bar Association (ABA) which specifies that 90 percent of felony cases should be disposed within 120 days after arrest and 98 percent within 180 days.¹¹ This variation is based on several studies of court systems.¹²

Identification of which specific criminal case processing steps contribute to delay requires analysis of case processing times. For example, in 1990, this writer performed a study in a Florida county jail system containing several geographically dispersed facilities with 450 beds in its facility for unsentenced inmates. Each step of the criminal case processing system was examined and recommendations about reducing delay were provided. Followup, three years later, showed the effects on the jail of modifying one of these steps.

Figure 1, on the next page, shows that prior to the making the modification in early 1990, up to 66 of the jail's population of 400+ inmates were waiting for a sentence to be imposed. They had been found guilty, but could not be moved to state prison or released to probation until a presentence investigation was conducted and the judge reconvened court for sentencing.¹³ After the change, the number of inmates awaiting sentencing almost disappeared.

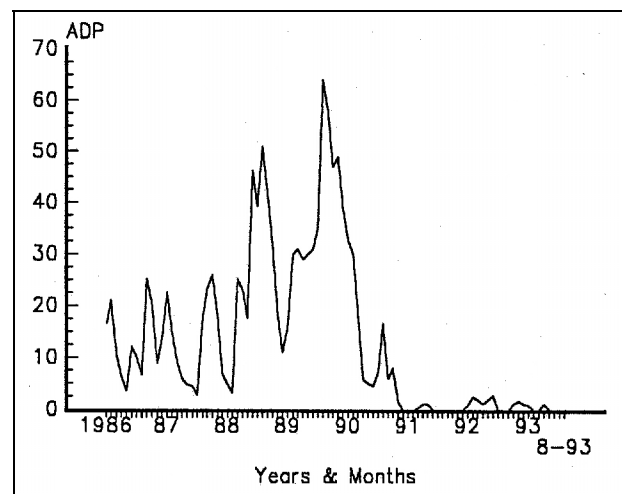
¹⁰A person is not formally accused of a crime, legally speaking, at the time of arrest. This occurs, later, in the processing of a case. Due to the differences between states and local jurisdictions, there are variations in how and when a person is formally accused. For example, in some court systems a case may start out in a lower court in which a judge decides that sufficient evidence exists to support the charges. The case is then passed up to a felony court or "bound over" as the event is called. In other jurisdictions, a grand jury makes the decision to formally accuse the individual and issues an "indictment." Due to differences in the speed in the processes, researchers Ostrom and Hanson suggest that the time standard used to comparing courts in different states be applied from the point at which the formal accusation occurs rather than from the time of arrest. (Ostrom, Brian J. and Hanson, Roger A. "Efficiency, Timeliness, and Quality: A New Perspective From Nine State Criminal Trial Courts." Washington, D.C.: National Institute of Justice, Research Brief, June 2000.)

¹¹American Bar Association. *Standards Relating to Court Delay Reduction*. Chicago: American Bar Association, 1984.

¹²In a 1987 study of 26 urban trial courts by John Goerd, et. al, the most time efficient courts came within 5 to 10 percent of the ABA standard, i.e., 88 to 93 percent of cases were disposed within 180 days. (Goerd, John, et. al. *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts*. National Center for State Courts, 1987.) A later study of nine state trial courts by Ostrom and Hanson, found that the courts they characterized as "most expeditious" were only able to resolve 80 to 89% of their felony cases within 180 days of indictment or bindover. Ostrom and Hanson also pointed out that the calculation of processing times in different communities should be based on time of indictment or bindover, rather than a arrest, due to the different organizational structures of court systems. (Ostrom and Hanson) In developing the Rule of Thumb in this article, the bottom of the percentage range (80%) for the "most expeditious" felony courts was selected, rather than the highest.

¹³Of course some, up to about one-third, of the inmates would have been sentenced to serve local jail time. However, not all would require a jail bed, as the sheriff had instituted several alternatives to incarceration, such as a week end community work program.

Figure 1. Average Daily Population of Male Felony Defendants Who Were Awaiting Sentences Before and After Changes in Criminal Case Processing in Early 1990¹⁴



The analysis of delay in the many case processing events of the criminal justice system is easiest if the court information system captures the needed data. These data are the average times taken by cases at each event/step in case processing.¹⁵ If the court information system cannot provide the data, then a combination of sampling and flow charting can be used. A secondary goal of this study should be to establish data collection and reporting procedures that will support ongoing monitoring of delay reduction efforts.

Indicator 3. Lack of or Low Use of Pretrial Release

The primary purpose of pretrial detention cannot be punishment. In the American system of justice, a person cannot be punished for a crime for which he or she has not been convicted. Thus, confinement is a tool to ensure that the individual shows up for court and stays out of trouble in the meantime. As with any tool, confinement should be efficiently and effectively used. If confinement was the only tool available, it would be overused. This is reminiscent of the adage that if the only tool that people have is a hammer, then all the world gets pounded. Likewise, if confinement were the only tool available to criminal justice decision-makers, then it is likely to be overly applied.

¹⁴Source of data: Collier County Detention Facility monthly reports prepared by the Collier County Sheriff's Office in September, 1993. Since the data represent an average, on some days the number of inmates would have been more than 66 and on others less than 66.

¹⁵This writer has encountered several court information systems that could have been used to analyze delay. However, disinterest on part of the judges and prosecutor resulted in the analyses not being conducted. In one, very large, court system this writer found that the judges had directed the court's information analysts to remove the software routines that could have analyzed delay contributed by each judge. According to the information analyst, the judges were afraid of the "political" repercussions of such analysis and reporting.

The lack of alternatives to confinement is one of the contributors to jail overcrowding. Given that differences in people exist, it is logical to assume that not all persons who violate the law should be held in jail until their cases are adjudicated. Determining which tools/options are needed and which pretrial defendants could be released is one of the management goals of the criminal justice system.

In some jurisdictions, the only form of pretrial release is through the posting of bonds. In this setting, the bail bondsmen become an ex-officio extension of the criminal justice system. Some financially challenged pretrial defendants, who are good risks for showing up for court and for staying trouble-free, may not be released in pretrial status or, if released, may be delayed while trying to secure money for bail. In comparison, pretrial defendants, who are higher risk but possess funds, may more quickly gain release. The healthy skeptic will realize that being released on bail does not automatically guarantee that unlawful behavior will cease. For example, a bond does not assure that a drug addict will stop using drugs and the unlawful behaviors that accompany drug use. Sometimes bail bond programs create an unfortunate public misperception that putting up money for jail release is the best motivator of human behavior for ensuring that the individual shows up for court and stays trouble-free in the meantime. Unfortunately, the public does not know that bail bond programs provide little or no supervision of their clients.

An effective pretrial release program will contain a well-designed risk and needs screening process and a well-structured continuum of supervision options. The screening process will serve two functions: (1) weeding out persons who have a high likelihood of failing to appear for court and those who pose a grave danger to the community as indicated by the nature of their charges, and (2) matching the individual's risk level and supervision needs with supervision options. The risk and needs assessment should look not only at the individual's offense, but at such aspects as stability in the community. The options for supervising an individual in the community should consist of more than just letting the person loose with a promise to appear in court. An effective range of options could include, for example, one or more (in combination) of the following. Keep in mind that this is a partial list of options:

- Report by telephone once a week.
- Report by telephone several times a week.
- Report in person once a week.
- Report in person several times a week.
- Curfew.
- Report daily at a day reporting center.
- Electronic monitoring, i.e., electronic home detention.
- Urine monitoring for drug use.

The impact of pretrial release on a crowded jail can be quite large. For example, the author analyzed follow-up data on a pretrial release program in a jail having about 400 inmates. Figure 2 illustrates the program's impact on the average daily population (ADP) and number of people removed per month from jail.

Figure 2. Monthly ADP and Number of Inmates Removed from Jail¹⁶

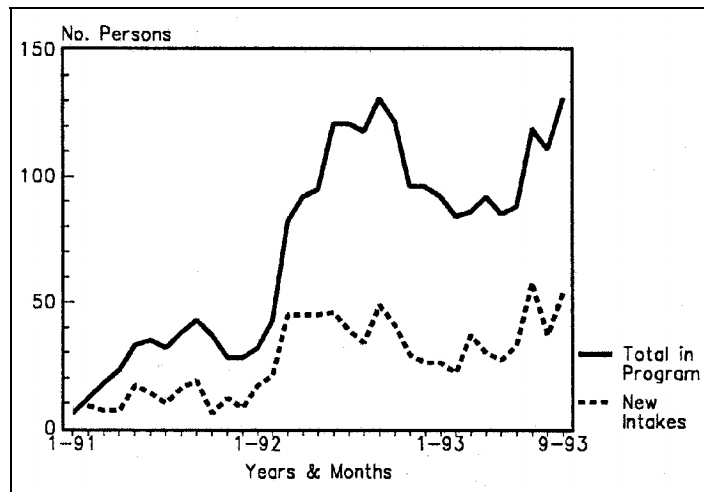


Figure 2 shows that the program began slowly during the startup period and hit its stride in its second year. During the second year, a high of 49 persons (new intakes) was removed from jail and the monthly average number of persons in the pretrial release program climbed to 131. Even though precise calculation of the impact is difficult, because of the various factors that must be considered, the estimated impact would lie somewhere within the range of 49 and 131 beds, very possibly near 100 beds.¹⁷ For a jail having 450 beds, the freeing of even 49 beds, let alone 100 beds, is a significant accomplishment.¹⁸

Of course there will be costs associated with a pretrial release program. In small counties, only several new staff members will be needed – along with office space, supplies, etc. In some communities, program costs will be covered entirely by the county budget. In others, some or all of the costs may be paid by program participants. The assessment of fees for participation has come to be known as “self-pay.” Unlike the private bail bondsman, the self-pay programs use a sliding scale so that financially challenged individuals can be accommodated. In the last several years, private vendors of community supervision services have emerged that use the self-pay method. The benefit is that the county does not have to incur the costs of adding more staff or of going through a process of developing and managing the program. The drawback is that the county must be of a size to provide a sufficient volume of clients to make the services

¹⁶Source of data: Collier County Florida Sheriff’s Office Pretrial Release Program month-end reports, October 1993.

¹⁷The impact of a pretrial release program is difficult to estimate because, if the persons released had stayed in jail, some would have bonded out, some would stay until they plead guilty and were placed in a community supervision program, etc. Thus, it is difficult without setting up a rigorous evaluation study to say precisely what the impact would have been. It would be logical to assert that significantly more than 49 beds would have been opened in the jail but not the full number of 131 beds.

¹⁸Just because a bed is freed for other use, does not mean that they will remain vacant. In criminal justice systems without a strong inmate growth management plan, the informal criteria for jail placement can vary from day to day as space becomes available in a crowded jail.

economically viable for the vendor.

Indicator 4. Lack of or Low Use of Alternatives to Incarceration for Sentenced Offenders

The lack of alternatives to incarceration for sentenced offenders is similar to the lack of options for pretrial release. The major difference is that sentenced offenders can be made to atone for their crimes, such as by paying back victims, paying fines and court costs, performing community service, and serving time in jail. Both pretrial defendants and sentenced offenders can be subject to participation in treatment programs and by abiding in the requirements of supervision while living in the community. Pretrial defendants usually participate voluntarily in treatment and supervision programs, such as in pretrial release programs and diversion programs run by the prosecutor's offices.

The most common alternative to incarceration is probation. Usually, within probation is a range of options, such as those found in a comprehensive pretrial release program. However, not all probation departments have the same menu of available services. Some probation departments have more than others. The goal in this instance would be to identify supervision and treatment needs of the jail population, to identify where gaps in community supervision exist, and to identify options that have been developed in other communities to fill those gaps.¹⁹

The healthy skeptic should keep in mind that, just because the justice system says that "alternatives to incarceration" exist does not mean that they exist as substantial alternatives to incarceration. In many communities, what starts out as an alternative to incarceration ends up being filled with offenders who would have not been sentenced to jail anyway. In other instances, the participant selection criteria have been set so stringently that the size of the program is ineffectively small. In any analysis of alternatives to incarceration, the analyst must verify if the selection criteria are not too stringent and that qualified jail inmates are given first priority.

Indicator 5. Holding Defendants Who Have Relatively Minor Charges

Inefficient charging and arrest practices sometimes result in holding persons who have relatively minor charges. In checking for this possibility the questions to ask include: (1) Could any of these persons have been given a notice to appear (NTA) in court rather than being taken to jail? For low level offenses, this process is similar to that of issuing traffic citations. Jurisdictions not likely to use NTAs include those in which the prosecutor makes public statements about being tough on crime. (2) Does the bond schedule (amount of bonds set by the court and often with input of the prosecution) need to be revised because some bonds for persons accused of low level offenses are set too high? (3) Are many of the charges greatly reduced or dropped later in plea negotiations?-- There have been prosecutors known to substantially overcharge cases in order to boost the prosecutor's advantage in plea negotiations. Of course, some reduction in charges is characteristic of the plea negotiation process. So the examination must differentiate between what is typical versus that which is excessive.

¹⁹Alternatives to incarceration (for sentenced offenders) and intermediate sanctions are interchangeable terms.

Indicator 6. Presence of a Large Number of Persons Held for Failure to Appear

Failure to appear, FTA, occurs in an obvious manner—the defendant misses a court date altogether or is late. Given that a number of court dates occur during criminal case processing, failure to show for one date will usually land the individual in jail.

Some members of the criminal justice system and public perceive that the criminal justice system should not take any extra measures to ensure that defendants appear. This is just the opposite of what the business world practices. For example, this writer's orthodontist and dentist both have automated phone services that call patients a day prior to their appointments. These professionals have come to realize that forgetfulness is often not a matter of choice, but something that just happens and that reducing the number of missed appointments results in a cost-savings.

Realizing that many of the defendants who come into the justice system are less organized than middle- and upper-class citizens who frequent an orthodontist, there should be no surprise to find that a certain percentage of defendants will miss appointments. An example of this is one woman who was observed running into a courthouse and expressing to the officers at the building entrance security checkpoint that she had gotten the time of her court appearance mixed up and was late. When she arrived in the courtroom she was taken into custody and escorted to jail. The judge had already declared her an FTA and set the process in action.

Clearly, from a business standpoint, it is more economical to set up a process of notifying defendants of court times than to put them in jail. The goal of an effective process should be to reduce the percentage of persons who miss court appointments and focus on those who purposely flee.

The diagnosis of an FTA problem is not difficult. In many criminal justice systems employing traditional case processing practices, the existence of unnecessary detainees for FTA can usually be expected. The magnitude of the problem can be found by examining inmate files in the jail or simply by asking the jail administrator or court administrator if a problem exists. However, caution should be taken in interpreting the “no-it-doesn't-exist” response; some administrators take the position that all persons missing court dates deserve to be punished. For this reason, an actual count of inmates who cannot qualify for pretrial release due to a current or previous FTA is a better indicator of the magnitude of the problem.²⁰

Assessing what constitutes a large number of FTAs in a jail should be undertaken in the light of how many could have been avoided given various types of notification strategies. In many jails, 10 percent or more of the bed space can be freed by reducing the number of FTAs.

Indicator 7. Backup of State-Sentenced Inmates in the Jail

As previously mentioned, the backup of state-sentenced inmates in the jail can arise from a lack of prison space or an inadequate schedule for transporting inmates to the state Department of Corrections. Obviously, the lack of prison space is not something that county commissioners have much direct power to remedy, other than seeking state legislation that requires the Department of Corrections to remove their inmates within a specified number of days. However, the timely

²⁰The analysis should consider the existence of a previous FTA in a earlier incarceration if the FTA disqualifies the individual from pretrial release. Thus, magnitude of the problem would be the number of persons having an FTA in the time period considered by the pretrial release screening criteria, e.g., three to five years.

transportation of inmates is sometimes amenable to schedule tightening.

The exploration of schedule tightening should begin with a count of the average number of state-sentenced inmates held on each day of the week, for example, during the peak month of jail population during a year. Given these data, the transportation schedule can be examined to determine if a better transport date (or dates) can be arranged. For example, if the bulk of the state-sentenced inmates tends to accumulate at the beginning of the week, then transportation would be most effective close to that time, rather than waiting until Friday. In some instances, two or more trips might be arranged.

Of course, the changing of transportation schedules may be difficult, particularly if the state provides the transportation. However, this writer was involved in a jail overcrowding project in which the county was able to negotiate a schedule change in the state pickup schedule.

STRATEGIES AND RESOURCES FOR REMEDYING JAIL BLOATING

A variety of ways can be used to approach the problem of jail bloating. Since the selection of an approach is dependent on the characteristics of the local criminal justice system, no specific approach fits all situations. In this section, the strengths and weaknesses some of the most frequently used strategies will be discussed.

Strategy 1. Instituting a Court Delay Reduction Program

A commentary section in the ABA *Standards Relating to Trial Courts* asserts that a reliable court delay program cannot be achieved without “purposeful commitment,” otherwise “segments of the court will work at cross-purposes, and institutional inaction will lead to a reversion back to inefficient and unproductive practices.”²¹

A. Essential ingredients of the program are:

- 1. A strong continuing judicial commitment to delay reduction, expressed in written goals and objectives to guide court operations.*
- 2. A published case management plan detailing the delay reduction techniques, ultimate time standards, and a transition program for reaching those standards where there is a backlog problem.*
- 3. A system to furnish prompt and reliable information concerning the status of cases and case processing.*

B. The program should be enhanced by:

- 1. Bar support and lawyer cooperation.*
- 2. Adequate resources.*
- 3. Use of special expertise.*
- 4. Consideration of alternative methods of dispute resolution, which should facilitate an earlier termination of actions. (Note: Applicable to civil cases.)²²*

²¹American Bar Association (ABA). *Standards Relating to Trial Courts*. 1992 Edition. Chicago: American Bar Association, p. 92.

²²Note added by author.

- C. *Where unacceptable delay exists, there should be a published transition program designed to achieve these time standards. The transition program should include:*
1. *Assessment of the current caseload including backlog identification.*
 2. *Analysis of productivity.*
 3. *A conscious effort to use internal resources.*
 4. *Use of special expertise.*
 5. *Revision of rule and practice to implement the transition program.*
 6. *A scheduled termination of the transition program with interim goals ultimately resulting in full implementation of Section 2.52 time standards.²³*

Section 2.52 of the standards specifies the time targets for both civil and criminal case processing. Only criminal case processing time standards will be noted here.

1. *Felony—90% of all felony cases should be adjudicated or otherwise concluded within 120 days from the date of arrest, 98% within 180 days, and 100% within 1 year.*
2. *Misdemeanor—90% of all misdemeanors, infractions, and other nonfelony cases should be adjudicated or otherwise concluded within 30 days from the date of arrest or citation and 100% within 90 days.*
3. *Persons in Pretrial Custody—Persons detained should have a determination of custodial status or bail set within 24 hours of arrest. Persons incarcerated before trial should be afforded priority for trial.*
4. *Sentence—90% of all sentences in felony cases shall be filed with the court within 14 days of the rendering of the court's decision; 98% within 21 days of such decision; and the remainder within 28 days of such decision, except for individual cases in which the court determines exceptional circumstances exist and for which a continuing review should occur.²⁴*

The purpose of providing these excerpts from the ABA publication is to not to attempt transforming the reader into an expert, but to show what real commitment by the judiciary, prosecution attorneys, and defense attorneys to the reduction of jail bloating would entail. These excerpts also provide a basis for evaluating the statements made by judges, prosecutors, and court administrators about the adequacy of their current operations to control unnecessary delays in criminal cases.

The first citation of the standards above refers to “adequate resources.” This should not be construed to mean that all requests for more judges, prosecutors, etc., are necessary. Since inefficiency in case management usually results in the duplication of work, i.e., hearings in which continuances are granted, the need for court staff has, in some instances, been reduced when inefficiencies are resolved. Putting more staff into an inefficient system is hardly a wise and economical course of action. On the other hand, as pointed out by studies of judicial staffing, the lack of judicial and support resources can thwart the best intentioned efforts to reduce caseflow

²³ABA, p. 91.

²⁴Ibid, pp. 86-87.

delay.²⁵

In a way, the ABA concept represents wishful thinking. Getting an inefficient and strongly resistive court system to suddenly drop all of the trappings of the local legal culture and embrace a comprehensive program of delay reduction is highly improbable. State court systems have adopted time standards, some of which are less challenging than the ABA standards, and other strategies to reduce delay, such as prescribing that local courts employ court administrators. However, those state efforts have not overcome the local legal culture in resistive justice systems.

How to move a court system toward implementing a comprehensive caseflow reduction program will require leadership on the part of the chief judge. A county commission cannot substitute in that role. Certainly, the county commission cannot cross the boundary that separates the executive and judicial branches of government and mandate that change be undertaken. Essentially, the challenge is that of determining how to provide support in situations that will make the difference and identifying how to stimulate the process when only a nudge is needed. In situations in which strong barriers to changes are encountered, the adoption of the ABA model may not be viable in the short-range future. In that instance, the county commission may need to pursue the options discussed in Strategies 5 and 6 below.

The strength of the ABA program is that it can reduce the largest source of jail bloating, delays in case processing. The weakness of this strategy is that it does not address the lack of pretrial release options, lack of alternatives to incarceration (intermediate sanctions) for adjudicated offenders, and the FTA problem. Although, part of the FTA problem may be alleviated when time to adjudication is reduced.²⁶

Sources of technical assistance for planning and implementing a comprehensive delay reduction program can be found through the National Center for State Courts (NCSC), whose website is www.ncsc.dni.us. State-provided assistance also may be possible through the Office of the Administrator of Courts (AC), which is usually located in the organizational structure of the state supreme court. However, the NCSC consultants tend to be more widely experienced.

Strategy 2. Refining Skills of the Leadership Team

In a court system in which the key players, i.e., chief judge, prosecutor, and court administrator, agree that improvements can be made, the possibility exists that they will be amenable to attend a seminar presented by the Institute of Court Management (ICM) on delay reduction. This seminar, "Fundamental Issues of Caseflow Management," is a five-day program. Although the title of the seminar sounds as if it is on the elementary level, the program provides insights for even the most senior of courts staff. Participants of the ICM seminar have demonstrated such apparent success in applying caseflow management techniques that the ICM program description asserts that "you should be able to reduce the size and age of your pending

²⁵Steelman, David. "What Have We Learned About Court Delay, Local Legal Culture, and Caseflow Management Since the Late 1970s?" *The Justice System Journal*, Vol. 19, No. 2, 1997, pp. 145-166. Steelman notes that very large courts, such as Chicago, that are growing at extreme rates and very small courts, which have only a part-time judge, are often found to be resource-challenged courts.

²⁶Thomas, W.H., JR. *Bail Reform in America*. Berkeley: University of California Press, 1976. This study of bail practices in 20 courts found that FTAs were significantly reduced if cases were brought to disposition within 60 days after pretrial release.

inventory (of cases) by 20 percent in the first year!”²⁷

The strength of this strategy lies in the way that change could occur. Delay reduction efforts will grow out of the informed leadership of the courts, rather than being urged by persons outside of the courts. The weakness of this strategy is that it does not address the lack of pretrial release and sentencing options.

A variation of this strategy is for county commissioners to provide support for a local offering of the ICM seminar using ICM instructors. Local seminars have been provided in a number of communities with good results. A benefit of this approach is that a wider audience of court-related staff could attend.

Information on the ICM seminar is posted on the ICM website at the address given in the footnote for the ICM seminar description in the preceding paragraph. To explore the option of arranging a local offering of the seminar, contact the Director of National Programs for ICM at 800-616-6160.

Strategy 3. Hiring a Consultant to Perform a Criminal Justice System Study

Hiring a consultant is a frequently employed strategy. Both favorable and not-so-favorable results can be achieved through this strategy. The outcomes are most favorable when a study oversight group is formed that includes the chief judge, elected prosecutor, court administrator, administrator of the public defender’s office or (if this office does not exist) a representative of the court-appointed defense attorneys, sheriff, jail administrator, director of court services (probation), representative of the local bar, community corrections administrator (if community corrections exist in the community), and a county commissioner. An important aspect of forming an oversight group is to ensure that the principals are involved, e.g., chief judge, and not their stand-in representatives. Accepting stand-ins on the committee is a quick way of diluting the decision-making ability of the group. It is also a way to avoid taking the study recommendations seriously.

The consultant must treat the committee as a participatory body, as the members will be involved in later implementation of the study’s recommendations. Thus, a greater level of implementation is likely to be achieved by working on buy-in early in the meetings by asking for assistance in scheduling the data collection process and later, through sharing findings and discussing recommendations. Resistance is highest when members of the criminal justice system encounter the recommendations, for the first time, in the final report.

If participation of the key court-related offices cannot be obtained, the county commission should consider the best manner of proceeding with the study. Usually the administrators of various court-related offices will grant the consultant interviews and access to readily available data. Given this opening, the consultant can use this personal contact to develop rapport and to pursue buy-in. Also, the county commission should avoid pointing out the reluctance of various administrators to participate. When the report’s recommendations are provided, the commission should demonstrate leadership in pursuing those recommendations that fall within its domain to support and fund. A task force or committee to follow-up on the status of implementation of

²⁷Institute for Court Management. “Fundamental Issues of Caseflow Management” (a program description). ICM web site: <http://www.ncsc.dni.us/ICM/calendar>, August 8, 2001. Notation in parentheses was added by the author.

recommendations might also be established. Such follow-up is essential, as the recommendations in many studies fall by the wayside, even in the best of situations.

Two problems are commonly encountered when using outside consultants. The first is that of poor qualifications of consultants. Many claim to know the criminal justice system, while their education, skills, and knowledge of the system are much narrower. A consultant is not proficient just because he or she has performed several studies. Without having to look too hard, system studies can be found that have been performed by consultants who lack knowledge of criminal caseflow management issues and how to evaluate them. Typically those consultants have a background only in jails or community correctional programs.

Two telltale signs of poorly qualified consultants are detectable in proposals to perform studies. The first is the reliance on interviews and self-identification of system problems by the key players in the criminal justice system. This approach is prone to obtain a biased perspective of system problems. Issues and solutions unknown or avoided by the criminal justice administrators are not likely to be brought to light. The second sign is the reliance on available data in problem identification. For example, the reliance on existing jail data will not disclose needed information about how many jail inmates might be eligible for pretrial release and alternatives to incarceration. Readily available jail data are typically collected for jail purposes, not for the study of alternatives to incarceration or delay reduction. Statements found in the proposal which indicate that the analysis will primarily rely on “inmate profiles” are red flags in evaluating a consultant’s skills. Coincidentally, the reliance on available data also keeps the cost of a study low so that the consultant has a competitive price advantage. Unfortunately, many, if not most, proposal review panels believe that all studies are alike. They do not realize that a “bargain basement” study is likely to produce a poor product.

The second most common problem with outside consultants is found in a counterproductive attitude about how to perform a system study. Consultants can be found who have great credentials, but like to “play to the press” by disclosing tentative findings to reporters’ inquiries without first providing the courtesy of discussing with the oversight committee the best approach for such communication.²⁸ As a result, the county commission may have gotten a decent report from the consultant, but in a manner that has raised the defenses of the people who would implement the report’s recommendations.

The strength of the strategy of hiring an outside consultant to perform a criminal justice system study is that it is more likely to ensure that both caseflow delay issues and alternatives to incarceration are examined, than are Strategies 1 and 2. The weakness of this strategy, however, is that it often overlooks building the infrastructure suggested in Strategy 1 and the development of the court leadership skills in caseflow management that is facilitated in Strategy 2.

Strategy 4. Hiring a Consultant to Perform a Study of the Court System

The hiring of a consultant to perform only a study of just the court system is sometimes a strategy selected by the judiciary. In some situations, the judiciary may be concerned about the qualifications of a consultant brought in to review court operations. As discussed above, such wariness of unskilled consultants may be well founded. In a few instances, the court’s hiring of

²⁸“Playing to the press” does not seem to be an appropriate label when several counties voice this problem about the consultant.

a consultant has served as a way of controlling outside scrutiny.

The strength of this strategy is that it could lead to the adoption of a strong court-based infrastructure, as discussed in Strategy 1, and in acquiring the training provided in Strategy 2. Financially, the courts often pay for such studies, thus reducing the cost and scope of a system study funded by the county commission. The weakness of this strategy is that it will produce two sets of findings--one by the court's consultant and one by the county's consultant. This situation presents a challenge in trying to integrate the disparate efforts into a comprehensive effort to reduce jail bloating. The findings of the courts study may have different priorities and focus than might have been obtained from a comprehensive criminal justice system study that pursued ways of reducing jail bloating. However, discussion with the court leadership about the need to coordinate efforts of the two studies could improve the utility of the two studies.

Just as in the discussion of Strategy 3, the skills and focus of the consultant are important in selecting a person or team to perform the study. A resource for courts-only consultants is the National Center for State Courts. The person to talk to is the Court Services Operations Manager at 800-466-3063.

Strategy 5. Establishing a Jail Overcrowding Task Force

Appointing a jail overcrowding task force is a common strategy that has been met with only mild success. The reasons for their limited success include bias and influence of the local legal culture, lack of knowledge and skills to perform an adequate study, and lack of time and staff to commit to the effort.

Typically, jail overcrowding task forces meet once or twice a month. The problems brought to the table are often narrow in scope and lack adequate research needed to define problem characteristics and, thereby, to guide development of effective action plans.

Such task forces are least effective when the leaders avoid important aspects and when favorite solutions are advanced for problems. Typically, after the first flurry of issues are discussed, followed by decisions about solutions to some problems, the meetings begin to deteriorate--members begin to miss meetings and the agenda becomes more discussion than problem-solving. If these highly probable conditions occur, the appointment of a jail overcrowding task force may further contribute to opposition to a thorough criminal justice system study. This entrenched attitude may be heard in such statements as "we tried it and made changes in the system" or "we tried it and it didn't work."

For a jail overcrowding task force to be effective, it must bring in outside expertise. This call for outside expertise is also echoed in the ABA standards previously described. In addition, the expert(s) will need to train someone, such as a criminal justice coordinator, to support ongoing work of the task force. Such support is needed to identify issues, collect and analyze data, find informational resources about options, and follow-up on solutions, so that feedback can be provided about the extent of implementation, impact, success, and needed refinements.

The background of an effective resource expert should include experience in criminal justice system studies, a strong background in group facilitation, and experience in training justice system analysts.

Strategy 6. Undertaking Piecemeal Improvements

Piecemeal improvements occur in settings in which changes are made without considering priorities or the best mix of improvements. Such improvements often involve looking more at solutions and less at the nature of the problem. Solutions are often “backed into problems” and the selection of solutions boils down to choosing among favorites.

Four approaches to problem resolution are often found in piecemeal improvements. One approach is that of asking someone to make a survey of other counties to find out what they have done. A second is that of seeking publications containing ideas about ways to reduce jail overcrowding. Both of these approaches assume that some form of group, e.g., a task force, will be involved in discussing the findings and making recommendations about which ideas to present to agency administrators.

Approach three is that of asking the various criminal justice agencies to make recommendations about programs they would like to implement. The fourth approach pursues currently available government grants.

A benefit of Strategy 6, undertaking piecemeal improvements, is that some improvements might be possible; however, those improvements are not likely to be integrated into a coordinated or comprehensive plan that substantially achieves the goal of reducing jail bloating.

A resource of information about various options is the recent publication from the Bureau of Justice Assistance (BJA) entitled: “A Second Look at Alleviating Jail Crowding: A Systems Perspective.”²⁹

CONCLUSION

The size of the jail population is a combination of two conditions: how many persons are brought to jail and their length of stay. Jail bloating occurs when inefficiencies in the criminal justice system negatively affect those two conditions. The primary contributor to jail bloating is criminal case processing delays. These delays increase the number of days that pretrial inmates stay in jail, which in turn reduces the total number of persons that can be held in jail. The next major contributor to jail bloating is the lack of appropriate options that can be used in lieu of jail. County commissioners and justice system officials must avoid the fallacy of assuming that anything less than jail will be ineffective in controlling behavior or serving as a sanction.

Most of the ways of diagnosing jail bloating are not complicated. The concepts are logical and can be understood by persons outside of the justice system. The most detailed, but not necessarily logically complex, diagnostic procedure involves the flow analysis of the criminal case processing system.

The strategies for dealing with jail bloating range from the major to the minor undertakings. Of the six strategies, Strategy 1: Instituting a Court Delay Reduction Program will likely have the longest lasting effect; however, that strategy may also be the most difficult to implement. An indicator of the difficulty of implementation rests not in assessing the skills of the court system, but in the level of willingness of the court leadership to set delay reduction as a major and ongoing goal and to stimulate buy-in of the other judges, prosecution, public defenders, and local bar. The

²⁹A monograph published in October 2000. Publication number NCJ 182507. Available online in PDF format at <http://www.ncjrs.org/pdffiles1/bja/182507.pdf>.

weakness of Strategy 1 is that it does not directly address the issue of providing a wider range of options for pretrial release and alternatives to incarceration for sentenced offenders.

The most common strategy that attempts to deal with jail bloating, the use of a task force, was pointed out as often producing only a limited benefit; however, there are ways of strengthening the productivity of task forces.

To adequately address the primary contributing factors of jail bloating, a mixture of several strategies should be considered. Which strategies to pursue will require an assessment by the county commissioners of the willingness of the members of the criminal justice system to pursue change and improvement. The commissioners also may have to demonstrate that they will support, both politically and financially, some of the options for reducing jail bloating, such as new or expanded programs for pretrial release.

Although jail bloating is a common phenomena, many counties have pursued the construction of new jails without assessing if the demand for bed space could be reduced. In some instances, county commissioners did not know about the phenomena of jail bloating and, perhaps, in other instances they shied away from issues perceived as politically sensitive. This article is written to show that there are often ways to deal with jail crowding other than calling on the taxpayer to support construction of new facilities. In addition to avoiding jail construction costs, the community will gain an improvement in justice system efficiency and effectiveness. In keeping with the maxim of good administration, there is no system that cannot be improved – some more than others. The skill of the astute decision-maker in serving the public good, is to distinguish between the two and then to craft appropriate courses of action.

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