

**Interim Report
Regional Correctional Facilities
Sentencing Guidelines Commission**

2003

STATE OF WASHINGTON



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I. Overview

Last year the Legislature, at the request of the Sentencing Guidelines Commission, authorized an exploration of the possibility of “local and state corrections authorities sharing resources and jurisdiction over regional correctional facilities.” (SHB 1609). The Sentencing Guidelines Commission has spent the past year exploring the concept and feasibility of regional correctional facilities in Washington.

The concept of regional correctional facilities is not new in this state. Historically, county jails have acted as county-wide facilities housing inmates from cities as well as the state correctional system. In 2001, the Washington Association of Sheriffs and Police Chiefs issued its report, *Regional Jails In The State of Washington*, which recommended the establishment of “multiple jurisdictions jails” to serve cities, counties and the Department of Corrections. The Legislature has recognized and encouraged this concept by granting broad authority to counties, cities and the state to contract with each other to jointly provide any services that they are authorized to perform. This authority has been used in a number of instances and the successful experience of these efforts gives us confidence that the concept of regional correctional facilities is viable.

A review of the history of regional correctional facilities in Washington, the legal authority for governments at every level to come together and create regional correctional facilities and the array of problems which confront the existing correctional system, lead us to be cautiously

optimistic that the concept can become reality. In this interim report we survey the existing problems we believe regional correctional facilities can alleviate, trace the history of regional correctional facilities, identify the existing legal authority and identify constraints which exist and must be overcome to successfully implement the concept. We outline two models of regional correctional facilities designed to meet current needs that we believe can be implemented without legislative change.

II. The Need for Regional Correctional Facilities

A. Multiple Jail Populations

Historically, jails have served multiple and often inconsistent purposes. They serve as pre-trial detention facilities for those charged with misdemeanors and felonies; as holding facilities for convicted felons awaiting transportation to state prisons; as correctional facilities for all convicted misdemeanants and for convicted felons serving sentences of one year or less; and as detention facilities for misdemeanants and felons who have violated conditions of probation, community supervision or community custody. Because they provide the initial place of custody, they must deal with persons suffering from acute medical and emotional conditions that require immediate intensive treatment. This multiplicity of purposes contributes significantly to both overcrowding and inefficient operations.

1. Security Levels

One result of this combination of functions is to require jails to be designed at security levels necessary for the inmates with the highest security classification even though those security levels are not warranted for many inmates. This increases the cost of both construction and operation of jails.

2. Inmates serving felony and misdemeanor sentences

The felony misdemeanor distinction as it relates to the location where convicted inmates serve their sentences is an historical artifact. State law has long dictated that inmates convicted of misdemeanors and gross misdemeanors serve their sentences in jails regardless of the total length of sentence being served, including those that exceed one year where multiple sentences are being served. Felons serve their sentences of one year or less in jail and sentences longer than one year in prison. Currently almost two-thirds, 65.8%, of all felony sentences are served in jails, while only 30.6% of felony sentences are served in prisons. This historical distribution contributes to inefficient use of correctional space. The crucial factors affecting correctional placement, we believe, should be length of stay and security level not the legal classification of the crime of conviction. In addition, the structure of physical space in jails makes it difficult to operate correctional programs appropriate for inmates serving longer sentences. Offenders serving longer sentences can best be housed in facilities designed for that purpose.

3. Overcrowded Jails

Jail populations have increased steadily and by all measure, Washington's jails are severely overcrowded. In December 2002, the Washington Association of Sheriffs and Police Chiefs reported that the average daily population of the state's jails exceeded rated capacity by 116.3%. In 2001, almost 40% of jails imposed some form of booking restrictions requiring law enforcement officers to either not arrest offenders or to immediately release them into the community after arrest. While release on recognizance may well be appropriate for many offenders, that decision should be made on the merits of individual situations and not imposed because of space restrictions. Overcrowding also increases the difficulty of separating inmates

by appropriate levels of classification and of providing appropriate correctional programs. The fact that there are over 300,000 unserved warrants outstanding in Washington indicates that the demand for jail space will not soon be reduced.

Counties have responded to the need for future space by “building tomorrow’s jails at today’s prices.” They are financing and constructing jails based on contracts with other jurisdictions to use the new space. We believe this development is positive and wholly compatible with the development of regional correctional facilities.

B. Local Detention Space for Violations of OAA Conditions

The Offender Accountability Act, enacted in 1999, extended and intensified supervision in the community for many serious offenders. The premise was and is that by tailoring intensity of supervision to the risk presented by the offender, public safety will be enhanced and rehabilitation fostered. Offenders who violate the conditions of community custody which may include many affirmative obligations not previously imposed, are subject to immediate sanctions for violations. The sanctions are graduated according to the severity of the violation and require the availability of local confinement near the offenders’ residence. Due to the overcrowding previously described, many jailers now refuse to accept offenders ordered into custody for violations of the conditions of community custody. This lack of available local custody space significantly impacts the ability of the Department of Corrections to implement the Offender Accountability Act as intended.

C. Multiple Small Facilities Preclude Economies of Scale

There is no doubt that smaller jails are more expensive to operate per inmate day than are larger facilities. The increased costs apply to both construction and operation. For example, the recently constructed Kitsap and Benton County jails, 300 and 704 bed facilities respectively,

were built at a cost of \$57,000 and \$53,000 per inmate bed, while the Skamania County jail, a 47 bed facility, cost \$117,000 per bed to construct. Operational costs vary to the same extent.

Larger facilities are thus considerably less expensive to construct and operate.

D. Small Jails Offer less Flexibility to Deal with Special Needs Offenders

The most difficult and most expensive offenders for any correctional facility to handle are special needs offenders. The acutely mentally ill and those with acute or chronic medical needs present considerable difficulties for all correctional facilities, but these difficulties are exacerbated in smaller facilities where there are fewer possibilities for isolation and for special treatment. While these conditions are relatively infrequent, larger correctional facilities can be more flexible and generally have greater resources to respond to these cases.

In responding to the Commission's survey, jail administrators identified violent mentally ill and suicidal offenders among those requiring the greatest individual expenditures. These offenders require estimated yearly bed days ranging from a low of 30 bed days, pretrial, in Ferry County to a high of 6,000 in Cowlitz County.

The unavailability of the necessary medical treatment in local facilities is a significant factor in increasing the legal risk that accompanies housing of the special needs offender. This potential for liability can be significantly reduced if those inmates are housed in facilities of sufficient size to accommodate the infrastructure and staffing needed to adequately address their needs.

III. The History of Regionalization

For years, many county jails served as informal regional jails through the use of contracts with cities to house inmates pending trial on municipal charges or serving municipal sentences. In some situations, municipal jails with capacity in excess of need contracted with other municipalities to house their inmates. These arrangements varied over time and were subject to

bilateral negotiation pursuant to the Interlocal Cooperation Act (RCW 39.34) and the City and County Jails Act (RCW 70.48).

In 1984, Chelan and Douglas Counties and the City of Wenatchee initiated operation of the Chelan County Regional Jail. The jail serves inmates from the three original jurisdictions and is also a source of rental space for other cities in the region, as well as federal agencies. In 2000, fees for use of the jail were \$33 per day for offenders from the three jurisdictions that created the regional jail and \$56 per day for others.

In 1996, nine counties in Eastern Washington (Adams, Asotin, Douglas, Ferry, Lincoln, Pend Oreille, Spokane, Stevens and Whitman) jointly acquired and commenced operation of a juvenile detention facility. In 1999, the Department of Social and Health Services leased an existing facility located on the grounds of Eastern State Hospital in Medical Lake, to the nine signers of the Interlocal-Juvenile Detention Facility Agreement for the operation of Martin Hall.

A joint board oversees the operation of the facility with each county contributing an agreed upon percentage of the operating costs. Martin Hall is still being successfully operated pursuant to this agreement.

In 1993, while informal arrangements continued in other parts of the state, Yakima County expanded this concept significantly when it planned, constructed and began to operate a jail expressly designed to serve other local governments who needed jail space.¹ The expanded Yakima County Jail made 400 more beds available for use by other local governments for a per day fee. Pursuant to a master contract, approximately 65 cities and counties, including King County, contracted to use the jail. The jail provides all custody and correctional services,

¹ The main jail was completed in 1986. An annex was constructed in 1993 and the Restitution Center opened in 2000. Jail administrators expect to add another 288 beds in July 2004, with a like number being added 8 months later.

including transportation for a flat rate per day. In 2003 the county imposed rates of \$58.80 per inmate day plus a \$5.00 per inmate day medical payment. Rental rates will rise at 5% per year through 2009 when Yakima County projects that its needs for jail space will have increased to a point where it will no longer be able to rent existing space.

More recently, Benton County followed the same model and now offers jail space for rent. Five cities have contracted to use 740 inmate beds at the rate of \$55.00 per day. The Department of Corrections has contracted to use the facility at comparatively low rates.

As previously noted, in May 2001, the Washington Association of Sheriffs and Police Chiefs issued the final report of its regional jail study, *Regional Jails in the State of Washington*. This comprehensive report surveyed regional jail facilities throughout the United States. It concluded: “Regional jails are a viable alternative for Washington. They provide economy of scale, construction cost savings, and the possibility of operating expense savings based on annual per prisoner costs. They can help improve jail housing conditions, the provision of inmate services, the provision of special offender services, and they can provide a safer and more secure facility. Regional jails can enhance public and officer safety”.

In December 2001 the Sentencing Guidelines Commission issued its *Comprehensive Review and Evaluation of Sentencing Policy in Washington State*. In that report we recommended: “That state and local governments add regional corrections capacity to the current system, with the following features:

1. Cooperation between state and local governments in leveraging better use of correctional resources at each level and in siting regional facilities.
2. Using jails for processing defendants and for very short sentences, and locally held offenders with longer sentences should be placed in a regional facility.

3. Using regional facilities for less serious felony offenders that are currently being housed in prison.
4. Using a strong treatment component in regional facilities to serve special populations, especially those with chemical dependency and/or mental illness”.

The 2002 Legislature responded to these recommendations in two ways. It enacted RCW 70.48.095 which provided: “Regional jails may be created and operated between two or more local governments, or one or more local governments and the state, and may be governed by representatives from multiple jurisdictions.”

The Legislature also directed the Sentencing Guidelines Commission to develop and present a “plan for establishing pilot regional correctional facilities.” The development of a plan for regional correctional facilities in Washington has been the major activity of the Sentencing Guidelines Commission during the past year.

IV. Legislative Attempts To Manage Populations

In recent years, there have been a number of legislative initiatives designed, in whole or in part, to reduce the pressure of growing prison and jail populations. Expansion of the Drug Offender Sentencing Alternative (DOSA) in 1999, the adoption of a new sentencing grid for drug offenses accompanied by a funding mechanism to significantly increase drug treatment in 2002 and last year’s increase of good time credits for non-violent offenders and acceleration of the effective date of the new drug grid all are intended to reduce the need for prison or jail space. Their effect, however, will not be immediate. Because they will reduce the length of sentences, these changes will actually increase the number of inmates serving shorter sentences for whom regional correctional facilities are the most appropriate and cost-effective place of incarceration.

V. Legal Authorization

On a number of occasions, the Legislature has provided the legal framework for counties, cities and the state to engage in joint cooperative endeavors. In 1967 in the Interlocal Cooperation Act, the legislature authorized “any two or more public agencies” to “enter into agreements with one another for joint or cooperative action” (RCW 39.34.030(2)) and to “contract with any one or more other public agencies to perform any governmental service, activity or undertaking which each public agency ...is authorized to perform.” RCW 39.34.080. Public agencies include any “unit of local government,” and...any agencies of the state government.” (RCW 39.34.020). In 1977, as part of the City and County Jails Act in which the state funded capital construction costs of local jails throughout Washington, the Legislature authorized “Contracts for jail services...between a county and city located within the boundaries of a county, and among counties.” RCW 70.48.090.

In 1989 the Legislature adopted the Washington Intrastate Corrections Compact, which permits any county to enter into a compact with another county or the state Department of Corrections for the exchange or transfer of inmates. The Legislature stated: “It is the intent of the legislature to enable and encourage a cooperative relationship between the Department of Corrections and the counties of the state of Washington, and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders through the exchange or transfer of offenders.” (RCW 72.076.005)

In 2002, the authority of the City and County Jails Act was reaffirmed with passage of the aforementioned RCW 70.48.095, where, for the first time the legislature specifically authorizes “regional” facilities.

There can be no legal doubt of the authority of cities, counties and the state to enter into cooperative endeavors regarding regional correctional facilities. Existing law provides no legal barrier to the creation of regional facilities. No new legislation is necessary. All that is necessary is that regional facilities be feasible and that the will to create and operate them exists.

VI. Constraints

We believe the following constraints will exist throughout the process of creating regional correctional facilities. Success will depend on the extent to which plans address these constraints.

A. Given the fiscal constraints facing all levels of government, the regional correctional facilities must be developed and operated within existing resources. There will be increases in prison and jail populations driven by population increase if nothing else. Additional resources over current levels will be available only when a decision is made to expand capacity and/or correctional services provided. We believe planning for regional correctional facilities must proceed on the assumption that no governmental unit will subsidize any other. Each entity must bear its fair share of the cost of incarcerating its criminal offenders. While these fiscal constraints are significant, we believe the economies of scale offered by regionalization can add to the feasibility of operation.

B. Currently there is greater demand for incarceration than the current state and local correctional system can provide. Any shift of inmate populations from local jails or state prisons to regional facilities may free up space, which will in turn be filled with inmates who are not now receiving incarceration as part of their sentence. Should this happen, costs will increase and total correctional costs will rise. While the increased costs will be due to increased capacity, the total dollars spent on corrections will nevertheless have increased.

C. The development of regional correctional facilities requires a high degree of cooperation among counties, cities and the state. Our history reveals many periods in which suspicion and lack of trust existed among these governmental entities. The creation of regional facilities requires that this history be overcome.

VII. Models of Regional Correctional Facilities

The commission has worked intensively on developing models for regional correctional facilities to address existing needs and those expected in the future. We believe two types of facilities are feasible and in this report we will outline the characteristics of each. Our study convinces us, however, that the success of any regional correctional facility will depend on the willingness of the affected jurisdictions to come together and work cooperatively. We believe this atmosphere of trust is most likely to develop when the affected jurisdictions are involved, from the beginning, in the planning and design of the facility and where the design is tailored to the needs as identified by the participants. We believe that imposition of a model, particularly a model developed at the state level, will impede rather than promote the process. While the commission has undertaken extensive research on the details of a plan for a regional correctional facility, we believe that it would be premature to present that plan now. The following, however, summarizes the major characteristics we believe, to be vital for a practicable regional correctional facility.

A. The Transition Model

This type of facility would house sentenced offenders with 60 days to 24 months remaining to be served on their sentence and are classified as medium custody or less. The population would include those who have “jail” sentences with 60 days to 24 months remaining to be served and those who have “prison” sentences with less than 24 months to serve, regardless of whether

those sentences arise from convictions of felonies, gross misdemeanors, misdemeanors or some combination of sentences. Optimum size of such a facility would be from 400 to 800 beds.

Limiting inmates to those with low security classifications will reduce both capital and operating costs. On March 31, 2003, DOC identified 2,008 prison inmates classified “MIP” and 986 inmates classified “MI3 with 24 months or less left to serve.”²

Because regional facilities would house inmates whose release dates are relatively near, these institutions should include correctional programming focusing on re-entry skills designed to maximize the inmate’s chances of success after release. These facilities should be governed by those jurisdictions which use them.

The most successful regional facilities throughout the United States appear to be those governed by a board based on equal representation of the user agencies. We also examine successful operations where one jurisdiction takes the lead and operates the facility while other jurisdictions use the facility pursuant to contractual arrangements. In our opinion, the crucial factor is that the governance mechanism be created by and participated in by those jurisdictions that will use the facility.

B. “Special Needs” Facility

The most difficult inmates to house are those suffering from acute mental or physical illnesses. They present both management and treatment needs which most correctional facilities are not designed or equipped to provide. The problem is particularly burdensome for small facilities where space for isolation is severely limited. Necessary specialized medical services tend to be clustered in major population centers and thus are not readily available to treat inmates in small facilities which are distributed throughout the state. These factors combine to drive the

² These labels, “MIP” and “MI3,” refer to custody units used for minimum security level prisoners, including offenders in pre-release status.

costs of providing necessary services to these inmates to levels which severely strain the budgets of local jurisdictions.

Addressing the challenges of these “special needs” inmates has proven to be the most difficult impediment to the development of plans for regional facilities. The most promising approach appears to be the centralization of management and treatment of these inmates in large correctional facilities located near major population centers where the specialized treatment resources are available. In practice, this would result in transferring those inmates from smaller jails operated by cities and counties to larger jails and prisons operated by metropolitan counties or the state. We anticipate that economies of scale will reduce the cost of managing and treating these inmates, but those costs will always remain considerably higher than those associated with inmate populations. Given the fiscal constraints facing all levels of government, we believe an equitable solution to the cost factor is essential to any attempt to address this problem.

We believe that the greatest promise of success lies in a flexible cooperative approach in which all jurisdictions remain responsible for the costs associated with housing inmates from their respective jurisdictions. For example, the Department of Corrections might agree to accept “special needs” inmates from local jurisdictions in exchange for those jurisdictions agreeing to house state inmates in their jails. Such an exchange could involve DOC inmates who have violated community custody orders. The state could “pay” to incarcerate these inmates in local facilities by agreeing to accept “special needs” inmates in its major institutions. Acceptable exchange rates would need to be developed since the cost of managing and treating the “special needs” inmates far exceeds the cost of housing community custody violators.

Development of this or a like system will require a high level of trust among all levels of government. This approach does have the advantage, however, of being capable of incremental

implementation in small steps. We believe that success at the level of one or two local jurisdictions working out such an exchange program with the Department of Corrections could create a model, which could be expanded across the state.

VIII. Recommendations

From our review and discussions, we believe that there are no legal impediments to the creation and operation of regional correctional facilities. We do not, however, propose new legislation but rather propose continued cooperative work toward the establishment of regional correctional facilities. Much work has been done and we believe the time is right to build on current successes. The Sentencing Guidelines Commission plans to expand its work in cooperation with Washington Association of Sheriffs and Police Chiefs, the Washington State Association of Counties, the Association of Washington Cities, the Washington Association of Prosecuting Attorneys and the Department of Corrections. We remain optimistic that committed individuals can make progress in addressing this most vexing set of problems.