

**Differences between jails and prisons.**

(prepared for Prisons Seminar, Harvard Law School, spring 2003)

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A jail is paradigmatically a county or city facility that houses pretrial defendants who are unable to make bail, misdemeanor offenders, relatively short-term felony offenders (the term varies by state – most often, it’s under a year, but it can be far more), and short and long-term offenders awaiting transfer to a state prison. A prison, by contrast, is a state (or federal) facility that houses long-term felony offenders. Many observers of American corrections assume away jails, or at best, assume that jails are just like prisons. Both assumptions warp understanding. There are many areas of difference, but this essay will focus on four – size, population flow, political setting, and demography.

*Jail vs. prison size:* Most jails are very small, but a few are very big. Of the 3083 jail jurisdictions in 1999 (which housed 607,978 inmates on an average day) more than two-thirds had an average daily population of fewer than 100 inmates. The nation’s 30 largest jail systems (that is, 1% of all jail systems, with 4% of all jails) housed over a quarter of jail inmates in 1999. By contrast, there are about half as many state prisons (1562 in 2000) holding about twice as many people (1,170,171 inmates on an average day). But even more important, the distribution is far more even: even when the hundreds of small halfway houses are included, over half of the facilities in the 2000 prison census had an average daily population larger than 400 inmates.

**Table IV.A.: % of National Average Daily Population (“ADP”) by Decile  
Local Jails in 1999, State Prisons in 2000**

ADP decile		1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
		(0-9.9%)									
Jails	ADP	3	9	17	27	41	59	87	139	262	1331
	% of total population	.1%	.5%	.8%	1.4%	2.1%	3.0%	4.4%	7.0%	13.5%	67.2%
	cumulative %	.1%	.6%	1.4%	2.8%	4.9%	7.9%	12.3%	19.3%	32.8%	
Prisons	ADP	32	66	119	200	333	532	814	1,095	1,463	2,837
	% of total population	.4%	.9%	1.6%	2.7%	4.5%	7.1%	10.9%	14.7%	19.5%	37.8%
	cumulative %	.4%	1.3%	2.9%	5.6%	10.1%	17.2%	28.1%	42.8%	62.3%	

The difference between jails and prisons in the distribution is quite marked – but it would be even more so if the jails were considered individually, rather than grouped into systems, or if the prisons were grouped into their 52 systems (50 states, the District of Columbia, and the federal BOP).<sup>1</sup>

*Population and Population Flow.* Speaking generally, prisons take and hold inmates while jails take and release them. Michael O’Toole, the head of the National Institute of Corrections’ Jail Division, explained in 1996:

Probably the most significant difference between jail and prison populations is admission rates. In general, [annual] prison commitments, which include new court commitments and individuals returned to custody, are about 50 percent of the average daily population (ADP). In rounded figures, the ADP of the nation’s prisons in 1995 was about 1 million. Total admissions for that year were about 500,000. In contrast, the ADP of the nation’s jails was about 500,000 in 1995, but the admissions to jail for that year were estimated to be between 10 million and 13 million. Stated another way, it takes two years for the nation’s prison population to turn over once, while the jail population turns over 20 to 25 times each.<sup>2</sup>

So, O’Toole observed, it is typical in a jail for “up to 85 percent of new admissions [to] be released within four or five days.” At the same time, the inmates who don’t get out right away can stay for months or even years, unable to make bail and awaiting trial, or serving out their (relatively short) sentences.

The very fast population flow for the great mass of jail inmates is one of the reasons that jails are more chaotic places than prisons. Comparing jails to prisons, classification of jail inmates is

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<sup>1</sup>Table IV.A follows the Bureau of Justice Statistics, which gathers the data on which it is based, in the classification of jails and prisons. In Connecticut, Delaware, Hawaii, Rhode Island, Vermont, and (in major part) Alaska, any jails that exist are run by the state rather than counties or cities. BJS counts *all* the inmates in these integrated states as prison inmates, and counts all their facilities as prisons. Conversely, in Massachusetts (and perhaps other states as well), the counties are responsible for some of the prisons (the county Houses of Correction, which house felony offenders for sentences up to three years. But BJS counts all prisons run by counties as jails. BJS, that is, classifies all non-federal facilities not by function but by governmental type -- city and county facilities are jails, and state facilities are prisons. Classification by function would only augment the differences between the two categories described in text.

<sup>2</sup>Michael O’Toole, “Jails and Prisons: The Numbers Say They Are More Different Than Generally Assumed,” *American Jails* (1996).

more haphazard, jail routines are less regular, jail time is more idle, and jail inmates themselves are more likely to be in some kind of crisis.<sup>3</sup> Jail inmates can be more vulnerable to harm in many ways -- mentally ill,<sup>4</sup> inexperienced with incarceration, drunk or high, suicidal.<sup>5</sup> In sum, many observers report that jails are just more dangerous places than prisons.<sup>6</sup> In addition, the minority of inmates

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<sup>3</sup>Katsaris interview; Campbell interview.

<sup>4</sup>Jeffrey L. Metzner, et al., Treatment in Jails and Prisons, in Treatment of Offenders with Mental Disorders 211, 230 (R. M. Wettstein, ed., 1998) (“Generally, rates of serious mental disorders are greater for inmates in jail than in prison. By the time an inmate has been convicted of a criminal offense and incarcerated in a prison, many severely mentally ill inmates will have already been hospitalized or treated on a pretrial basis, diverted to the mental health system, adjudicated NGRI, had their charges dismissed, or placed on probation.”). See also the comprehensive table on “the prevalence of mentally disordered persons in jails” summarizing 23 studies, in L. A. Teplin & E.S. Voit, Criminalizing the Seriously Mentally Ill: Putting the Problem in Perspective, in Mental Health and Law: Research, Policy and Services 283, 294-295 (Bruce D. Sales & Saleem A. Shah eds., 1996). Teplin and Voit conclude “that the jails have a significantly higher rate of severe mental disorder than the general population.” Note, however, that the research they cite is all at least 15 years old

<sup>5</sup>The annual suicide rate in the general population is about 12 per 100,000; in prisons it is 50% higher. But in jails, it’s widely reported that suicide is *nine* times greater than in the general population. See Lindsay M. Hayes, National Study of Jail Suicides: Seven Years Later (National Center on Institutions and Alternatives 1988); Prison Suicide: An Overview and Guide to Prevention. 6 Jail Suicide/Mental Health Update 1-16 (National Center on Institutions and Alternatives, 1995). Note however, that because this jail suicide rate is calculated by dividing the annual number of suicides by average daily population (rather than a measure the accounts at least somewhat for total population flow), some have argued it is misleading. See, e.g., Michael O’Toole, “Jails and Prisons: The Numbers Say They Are More Different Than Generally Assumed,” American Jails.

<sup>6</sup>There’s a long tradition of professional excoriation of jail conditions. See, e.g., National Commission on Law Observance and Enforcement, Report on Penal Institutions Probation and Parol 273 (Report of the Advisory Committee on Penal Institutions, Probation, and Parole) (the American jail is the “most notorious correctional institution in the world”); The Scandalous U.S. Jails, Newsweek (Aug. 18, 1980), at 74 (quoting criminologist Daniel Fogel: “The jails are much worse than prisons. . . . They are the worst blight in American corrections.”). And inmates often write or say that jails are more dangerous than prisons. The following message, posted on a corrections listserv, is typical: “I can only speak for myself as an ex offender, jail was much more violent than prison, even though I was incarcerated in one of the toughest prisons in Georgia at that time. I witnessed more rapes and fights in jail than prison. People were more seriously hurt for the most part in the jail.” (Posted by Jackie Thompson (jthom@randomc.com), on the NIC’s corrections exchange website, Feb. 25. 2000;

admitted to jails who actually do stay there long term often report that their time is far harder in jail than in prison, because it is more idle and crowded,<sup>7</sup> as well as more dangerous.

*Political setting.* Prison systems are headed by high-level state officials. The precise organization varies; state corrections departments are sometimes free-standing and sometimes just one division of broader departments (usually a department of public safety). Either way, there's a member of the Governor's cabinet who leads the enterprise. And (in part because of the prisoners' rights movement),<sup>8</sup> the highest correctional official in the state has usually made his or her career in corrections.<sup>9</sup> Although the bulk of these officials' jobs are political,<sup>10</sup> their claims on office are premised on specialized expertise in the profession of corrections. At the top of county jail

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([www.nicic.org/services/networks/.](http://www.nicic.org/services/networks/))

<sup>7</sup>Again, inmates say this all the time. See, e.g., "Phillip B. Taft, Jr., "Backed Up In Jail," *Corrections Magazine*, June 1979, pp. 32-39 ("It's worse here than at [prison]. Here, there is no room to move, nothing to do, no work. I can't see my wife and kids. I'd ten times rather be in a state place."). See also, e.g., Advisory Commission on Intergovernmental Relations, *Jails: Intergovernmental Dimensions of a Local Problem* 6 (1984) ("both absolutely and relative, time spent in jail is time spent in severe physical circumscription").

<sup>8</sup>See James B. Jacobs, *The Prisoners' Rights Movement and Its Impacts*, in *New Perspectives on Prisons and Imprisonment* 33 (1983).

<sup>9</sup>The state Departments of Corrections all have website, and nearly all have biographies of their department heads. For an index of the website, see [www.corrections.com/links/state.html](http://www.corrections.com/links/state.html). For a discussion of the professionalization of high level corrections officials, see Kevin N. Wright, *The Evolution of Decisionmaking Among Prison Executives, 1975-2000*, at 186-187, in 3 *Criminal Justice 2000: Policies, Processes, and Decisions of the Criminal Justice System* (Julie Horney, ed., 2000, NCJ 182410).

<sup>10</sup>Kevin N. Wright, *The Evolution of Decisionmaking Among Prison Executives, 1975-2000*, at 198, in 3 *Criminal Justice 2000 (Policies, Processes, and Decisions of the Criminal Justice System)* (Julie Horney, ed., 2000, NCJ 182410) ("According to the prison officials with whom I spoke, the chief executive of a correctional system . . . will spend about 70 percent of his or her time away from direct correctional practice, involved in the political processes of interacting with the legislative and executive branches of government, the press, and concerned citizens).

organization charts, by contrast, are typically elected sheriffs.<sup>11</sup> Sometimes, sheriffs are more or less career politicians; where this is not the case, their backgrounds tend to be in law enforcement rather than corrections. Either way, their route to office is more often tough-on-crime rhetoric and promises of public order than a professional identification with detention or corrections policy.<sup>12</sup> Whether it's because of this background, or because "more patrol cars get votes: more jail cells do not,"<sup>13</sup> observers often comment that sheriffs prioritize their police duties over their detention duties.<sup>14</sup>

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<sup>11</sup>Regional jails, which are on the increase nationally, are often run by appointed jail superintendents. In 1999, about 8% of the nation's jails, housing 8% of the nation's jail inmates, were city jails. 1999 BJS Census. These answer to city mayors, sometimes via a city chief of police. These are nearly all quite small facilities -- 85% of them have an average daily population under 100. On any given day, nearly half the population housed in city jails nationally are in the enormous systems in New York City or Philadelphia. I have made no study of city or regional vs. county jails, but I would think that most of what I say in text applies to the small city and regional jails, too.

<sup>12</sup>Note, however, that there are some recent signs that elected sheriffs (threatened by an uptick in political efforts to restrict their sphere of authority, alter their method of selection, or eliminate the office altogether, see sources cited in Boswell, at 44) may themselves be pursuing more professionalism. J.M. Brown, Accreditation Breeds Professionalism, Sheriff, at 12 (Sept.-Oct. 1995), A.D. Kennard, Law Enforcement: The Struggle to Break the Professional Barrier, Sheriff, at 10-11, 57 (Sept. - Oct. 1995).

<sup>13</sup>Donald Lee Boswell, "Virginia sheriffs v. police chiefs and jail superintendents: An empirical evaluation of local law enforcement services"(Unpublished Ph.D. dissertation, 1997). Boswell was a sheriff in Virginia until he lost reelection.

<sup>14</sup>See, e.g., Joel A. Thompson & G. Larry Mays, The Policy Environment of the American Jail, in American Jails: Public Policy Issues 1, 2 (1991) ("[W]ithin the sheriff's department jails must compete with more politically salient programs -- patrol, crime prevention, and drug interdiction."); L.L. Zupan, Jails, Reform and the New Generation Philosophy 48 (1991) ("The background, education, training and interests of most sheriffs are in law enforcement. Few have the expertise, training or incentive to spend inordinate amounts of time on jail concerns. . . . Nor is it politically expedient for sheriffs to devote time and energy to the jail. More often than not, sheriffs are elected on the basis of their crime control and law enforcement abilities, not their skills as jail administrators. It is certainly more glamorous and attractive to be a crime-fighter than a jail keeper.") In the only research of which I'm aware on the effect of having jails run by elected or appointed officials, Boswell's dissertation about Virginia jails, finds that, controlling for many other features, counties with sheriffs score lower in periodic state jail inspections than do counties with appointed jail superintendents. Boswell at 131.

Prisons get their money from state legislatures, which have a variety of methods to raise revenue and a very large resource base (although of course there is fierce political competition for budgetary support). County jails are funded by county commissions, which have far fewer (and more legally constrained) ways to raise revenue.<sup>15</sup> There is often a serious power struggle between county sheriffs, who spend an enormous amount of their counties' money, and county commissioners, who must come up with the money but have little control over how it is spent.

Prison administrators have quite ready access to lawyers, who either work for their department or for the state Attorney General's office. Certainly nearly all, and perhaps all, the states employ lawyers who specialize in prison-related litigation.<sup>16</sup> But only the very largest jails are big enough to justify employment of attorneys dedicated in whole or in part to inmate litigation. The very largest jail systems – Los Angeles County (1999 ADP = 20,683); New York City (1999 ADP = 17,562); Cook County (1999 ADP = 9430) – house more people than many entire state prison systems,<sup>17</sup> and have a full complement of litigation-processing staff. But while they hold most of the inmates (and are presumably the targets of most of the lawsuits – though this is currently impossible to know for sure) large jails are, to repeat, very much the minority. In 1999, only 122 of the over 3000 jail jurisdictions held more than 1000 inmates on an average day.<sup>18</sup> In small, medium, and

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<sup>15</sup>See, e.g., Mark Baldassare, Michael Shires, Christopher Hoene, & Aaron Koffman, *Risky Business: Providing Local Public Services in Los Angeles County* xv, xvi (2000) (pointing out that Los Angeles County, like other counties, “has little control over its revenues,” and “little control over its expenditures”). Beverly A. Ciglar, *Revenue Diversification Among American Counties*, in *The American County: Frontiers of Knowledge* (Menzel, ed., 1996) sets out the limited set of financial options available to counties.

<sup>16</sup>Such lawyers have their own professional networks, even; NAAG has a correctional lawyers section.

<sup>17</sup>On any given day, Cook County holds more people than 21 of the 51 state prison systems; New York City holds more than 30 prison systems; Los Angeles County holds more than 32. [CHECK PUBLISHED SOURCE: I USED THE 2000 RAW DATA]

<sup>18</sup>BJS 1999. [CHECK PUBLISHED SOURCE: I USED RAW DATA]

even pretty large counties, most sheriff's departments largely rely on county counsel for their general legal needs. (Only if a case grows intense, and only sometimes even then, will they hire on an outside lawyer, paid by the hour, to handle the litigation.) And traditionally, the job of county counsel has been a patronage reward for supporters of county powerbrokers. In addition, county counsels work for their counties and handle a great many kinds of matters for their clients, with only a very small portion of the job devoted to detention-related issues.<sup>19</sup> Even the small number of sheriffs, mostly in the larger counties, who have sheriff's or jail counsel – either an employee or an attorney on retainer who works for the sheriff rather than the county – aren't so much better off. If there is such a person, he or she usually does a good deal of work completely unrelated to inmate litigation (employment disputes, warrant work, contracts with vendors, etc.). Only occasionally does even a sheriff's or jail counsel, much less a county counsel, grow terribly familiar with the kind of legal questions raised by inmate litigation. In sum, unlike prison administrators, most of the people who run jails simply don't have access to legal staff who actually have or gain either much expertise or efficiency in processing inmate litigation. "In jails," says Bill Collins, the editor of the *Corrections Law Reporter*, who frequently trains jail officials on legal issues, "there's lots of learning the hard way."<sup>20</sup>

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<sup>19</sup>Nathan interview, Collins interview.

<sup>20</sup>Collins Interview; see also DeLand Interview, Farber Interview; surveys.

*Demography.* Finally, where prison inmates are disproportionately housed in rural areas,<sup>21</sup> jails are, again, split. Since most counties, no matter how sparsely settled, have jails, small jails are in rural areas. But large jails, which house most of the inmates (and, again, probably defend most of the lawsuits), are in urban areas. This has racial consequences as well. Outside of the South, rural counties are nearly always much whiter, demographically, than urban areas.<sup>22</sup> So where non-Southern prison inmates do their time, disproportionately, surrounded by communities that are nearly all white, jail inmates do not.

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<sup>21</sup>No firm figures exist on how many prisoners are incarcerated in the counties labeled “nonmetro” by the Census Bureau (which have under 20% of the nation’s population), but it’s probably about half. (Personal communication from Calvin Beale, Senior Demographer, U.S. Department of Agriculture). See Calvin L. Beale, Prisons, Population, and Jobs in Nonmetro America, 8 Rural Development Perspectives No. 3, pp. 16-19 (1993) (the 390 prisons in nonmetro areas in 1991 housed 44% of all state and federal prisoners); Calvin L. Beale, Rural Prisons: An Update, 11 Rural Development Perspectives No. 2 (Feb. 1996), at 25 (documenting increasing shift towards nonmetro prisons); Calvin Beale, Cellular Rural Development: New Prisons in Rural and Small Town Areas in the 1990s (paper presented at the annual meeting of the Rural Sociological Society, Aug. 18, 2001) (same). See also, e.g., William G. Nagel, The New Red Barn: A Critical Look at the Modern American Prison 46-52 (1973) (analyzing reasons for prison site selection in rural areas); Daniel L. Feldman, 20 Years of Prison Expansion: A Failing National Strategy, 53 Public Administration Review 561 (Nov./Dec. 1993) (in 1992, in New York state, “low-density, Republican districts . . . housed over 89 percent of state inmates)

<sup>22</sup>See Jesse McKinnon, The Black Population: 2000, at 5 (Census 2000 Brief, August 2001) (C2KBR/01-5, available at [www.census.gov/prod/2001pubs/c2kbr01-5.pdf](http://www.census.gov/prod/2001pubs/c2kbr01-5.pdf)) (Southern counties with populations that are more than 50% Black are “generally” nonmetropolitan; concentrations of blacks in the Midwest and West “tended to be either in counties located within metropolitan areas or in counties containing universities or military bases or both”; in the Northeast, blacks are concentrated along the coast from Philadelphia and up the Hudson River Valley northward from New York City).