

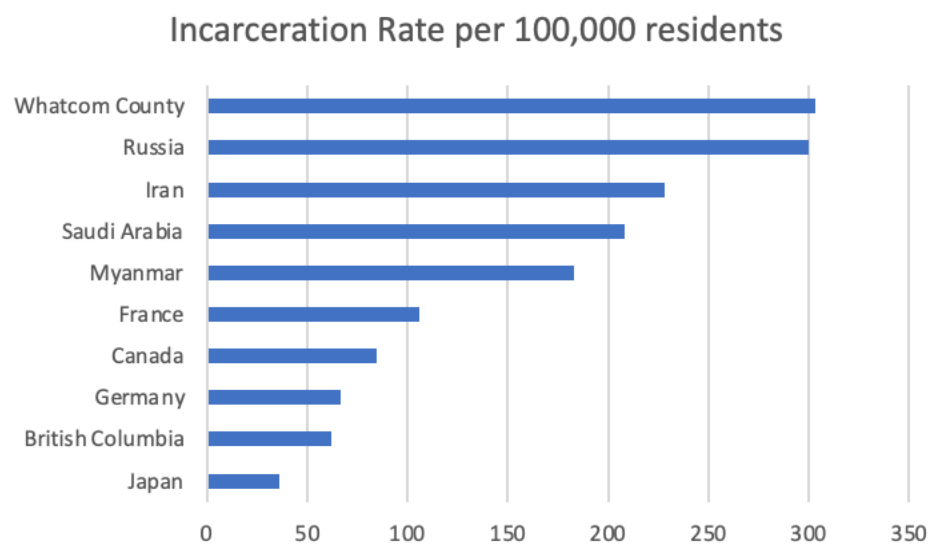
Resolution to reform Whatcom County’s criminal legal system, by reducing unnecessary and inequitable incarceration and fully funding jail diversion and treatment programs, prior to taxing the community for a \$150+ million new jail.

WHEREAS we recognize the current jail needs to be replaced by more humane alternatives and facilities. We wish to ensure the best outcomes for our community after two failed ballot measures. Let’s recall that, like today, the 2017 measure had bipartisan support from all seven Whatcom mayors, designated stakeholders, and almost all elected officials. Yet voters still rejected it by a bipartisan margin of 17 percent.

WHEREAS for a new jail to be more humane, it must be within a framework of a more humane criminal legal system that:

- reduces incarceration rates,
- limits pretrial detention to persons who are a danger to the public or a flight risk,
- ends cash bail,
- stops criminalizing drug use, poverty, and mental illness, by shifting to a harm-reduction public health model,
- addresses the incarceration rate disparity between white people and people of color, including Latino, Black, and Native people.

WHEREAS the U.S. locks up more persons per capita than any other large nation **and one third of them are in local jails** ([Prison Policy Initiative](#)). Whatcom County’s incarceration rate (jail + prison, 46% in jail) is not only five times higher than in British Columbia just 20 miles north of here, but higher than any liberal democracy and even brutal dictatorships:



Sources: [World Prison Brief](#), [U.S. Department of Justice](#), [Statistics Canada](#), [WA Association of Sheriffs and Police Chiefs](#), [Washington State Prisons](#), Whatcom County Jail. Whatcom County rate includes both jailed locally and sent by county courts to state prison, plus federal prison rate (43 per 100,000).

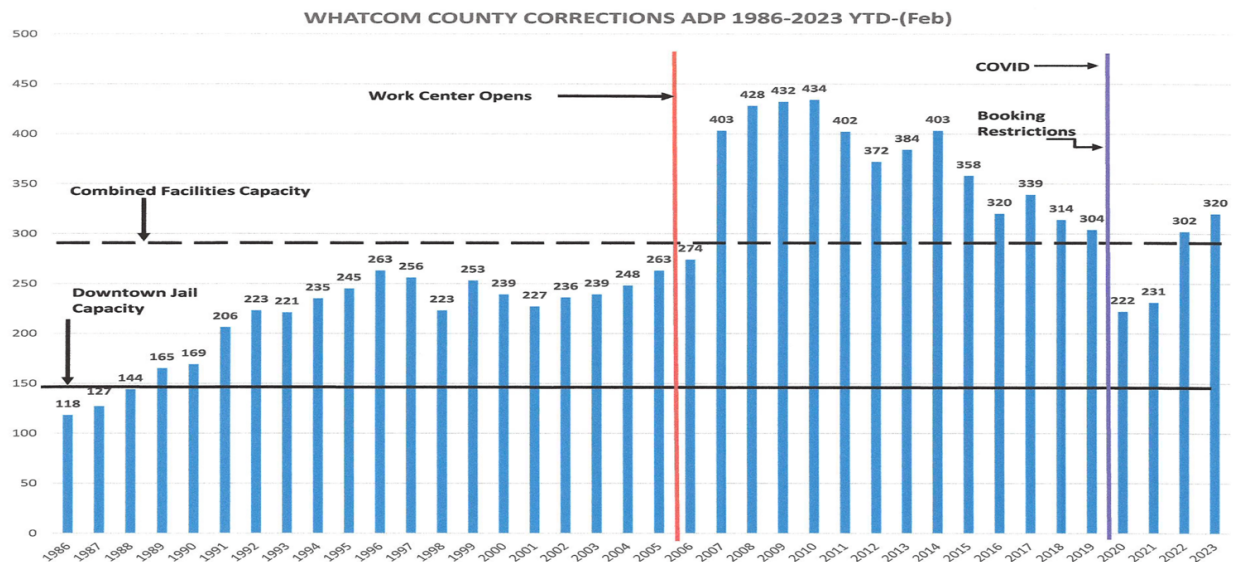
WHEREAS the United States had incarceration rates comparable to other high-income countries in the 1970s, but the rates tripled starting around 1980 because of mass incarceration policies including the “War on Drugs”. During this period, Whatcom County’s jail incarceration rate also tripled ([Vera Institute of Justice Report](#), 6).

WHEREAS in 2015 the County Council created the Incarceration Prevention and Reduction Task Force explicitly **to reduce local incarceration levels**.

WHEREAS several new programs implemented in Whatcom County and Bellingham since 2017 are intended to reduce the jail population and are providing vital services.

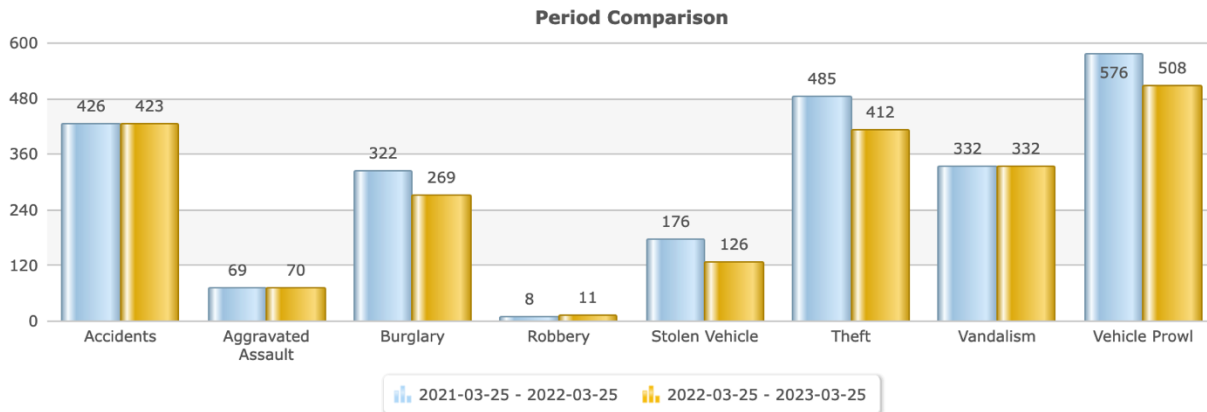
- GRACE, co-located at the Bellingham Police Department, has case managers who focus on stabilizing those who cycle through the healthcare, criminal legal, emergency shelter, and emergency response systems (primarily the unhoused).
- Law Enforcement Assisted Diversion (LEAD) is a countywide program that connects people with needed services when they have a history of chronic, low-level law violations stemming from substance use, mental health illnesses, or extreme poverty.
- The Mobile Crisis Outreach Team serves people countywide experiencing a behavioral health crisis, offering short-term crisis intervention and prevention services.
- Bellingham’s Alternative Response Team (ART) provides a mobile alternative response, instead of a police officer, to non-violent behavioral health 911 calls.

WHEREAS pandemic safety measures temporarily reduced the Whatcom jail population, **but it has since risen to levels last seen before the introduction of these new programs** Compare 2023 with 2016 in the graph below, keeping in mind that GRACE and LEAD alone removed 367 persons from the jail stream in 2022 (Response Systems Division PowerPoint slides 12 and 13, Feb. 16, 2023), so there should have been a decline from 2016.



WHEREAS the Whatcom County jail incarceration rate is 77% higher than King County (Seattle), 56% above Pierce County (Tacoma), 35% above Clark County (Vancouver), and 32% above Thurston County (Olympia) ([2021 WASPC Jail Statistics](#), adjusted per capita).

WHEREAS crime has remained steady overall in this same period and cannot explain why diversion and treatment programs are not lowering jail counts. [Countywide data from the Washington Association of Sheriffs and Police Chiefs](#) show that while population increased by 7.6% between 2016 and 2021, reported crime increased by 3%. While other agencies have yet to release 2022 figures, the [Sheriff's Office](#) website shows a steady or declining trend over the past two years:



WHEREAS this may point to a form of **induced demand** similar to a vexing traffic conundrum. Highway congestion leads to demands for additional lanes. The new lanes quickly fill, leading to the same congestion on a widened road that is more costly to maintain. Could it be that beds released by diversion programs are being filled as fast as they are made available? According to the Vera Institute, which has studied county jails nationwide, building a bigger jail can likewise be expected to induce demand: [“If You Build It, They Will Come”](#).

- Following the opening of a large new jail in Orange County, Florida, for instance, a [study](#) found a big jump in jailing (similar to the jump when we opened our Work Center) that was unrelated to arrest rates, with the available space being filled with minor law violators, including individuals on probation who failed drug tests.
- **In the year following the opening of Skagit County’s new jail, the jail population rose by more than a third while arrests remained steady** (WASPC crime and jail reports, 2017, 2018), and Skagit’s jailing rate is now more than a third higher than Whatcom’s.

WHEREAS the 2017 [Vera Institute of Justice Report](#) commissioned by the County Council said the jail population was unnecessarily high because almost half of those assessed bail could not afford it, so that 59 percent of those being held were pretrial (VIJ, 13).

WHEREAS **the proportion of Whatcom jail inmates being held pretrial has risen to 98 percent** since 2017 **and almost two-thirds now report they are in jail because they cannot afford to pay bail** ([Stakeholder Advisory Committee Needs Assessment Final Report](#), Jan. 2023, 41)



WHEREAS we urgently need to [end cash bail](#):

- [U.S. and Philippines are the only countries with a cash bail system](#) run by a for-profit bail industry that charges a fee (usually 10-15%) even when a person is found innocent.
- **Cash bail leads to wealth-based detention:** It allows people with financial means to purchase their freedom, while those without cash remain in jail.
- **Cash bail is the leading cause of mass incarceration:** Since the 1990s pretrial detention rates have risen 72%, and 95% of U.S. jail growth since 2000 has been caused by an increase in inmates held without bail (Shima Bauhman, [The Bail Book: A Comprehensive Look at Bail in America's Criminal Justice System](#), 4,5).
- **Cash bail disproportionately impacts people of color:** A [study](#) of felony data from 40 of the nation's largest 75 counties found that Latino defendants were 25% less likely and Black defendants 12% less likely than whites to be granted a non-financial release.
- **Cash bail does not reduce failure to appear (FTA) for court dates:** A recent [study](#) of *felony* charges in Orleans Parish in Louisiana found that "ROR [release on own recognizance] does not increase an individual's likelihood of FTA, but drug tests, a common condition attached to ROR, do increase the chances of FTA." Nor did ROR increase odds of arrest for committing another crime on pretrial release.
- **Pretrial detention increases the likelihood of conviction and longer sentences.** Cash bail that results in pretrial detention often induces innocent people to accept a plea bargain (often for time served in detention) in exchange for their liberty. A recent New York [study](#) found that pretrial detention increases the likelihood of a guilty plea by 23%, a conviction by 24%, and a carceral sentence by 35%. The [National Bureau of Economic Research](#) similarly found pretrial release results in a 27% reduction in either accepting a plea bargain offer or being found guilty.
- [Nationwide data](#) show that in the 13 jurisdictions that have eliminated cash bail for some or all charges the results were the same – releasing people pretrial did not harm public safety. New Jersey virtually eliminated money bail in 2017. Only 19 persons in the entire state were assigned bail in 2020. 99.6 percent of released individuals remained arrest-free for a serious offense before and after bail reform (2017–2019). New Jersey's overall

violent crime rate in 2020 decreased by 5.5 percent while the national average increased by 4.7 percent. As the [Center for American Progress](#) concluded, **“One thing is clear: Violent crime is being driven by guns rather than bail reform.”**

WHEREAS [Hawaii](#), [Rhode Island](#), and [Vermont](#) have small jail populations because they release almost all arrestees pretrial, [as was once true nationwide under the presumption of innocence until proven guilty prior to the 1980s “war on crime”](#) that led to mass incarceration.

WHEREAS in the most recent jail survey, **over one in three persons jailed reports having lost their job and almost half report having lost their housing as a result of being jailed** ([Whatcom County Jail Inmate Survey Results](#), Aug. 2022). Almost half of the present jail population say they were unhoused prior to being jailed, and a majority say a stable home would have kept them out of jail (SAC Final Report, 45-46). **In effect, the jail has become, in part, a generator of homelessness, and in part, an extraordinarily expensive homeless shelter.**

WHEREAS this has created a vicious circle of criminalizing the poor and/or unhoused in Whatcom County, and nationwide data show that the primary source of homelessness is insufficient affordable housing. Statistical analysis testing a range of conventional beliefs on what drives the prevalence of homelessness – including mental illness, drug use, poverty, weather, and generosity of public assistance – shows that none explain the regional variation observed across the country. Only one factor does: housing market conditions, such as the cost and availability of rental housing ([Homelessness Is a Housing Problem: How Structural Factors Explain U.S. Patterns](#), 2022).

WHEREAS the 2017 Vera Institute of Justice Report said the jail population was also unnecessarily high because Whatcom County jails Latino, Native, and African Americans at three to five times the rate of white people (VIJ, 16), **and there has been no improvement since then. The most recent jail survey, from August 2022, shows Whatcom County jailing Latinos at twice the rate of white people, and Black and Native American persons at six times the rate of white people** ([Whatcom County Jail Inmate Survey Results](#));

WHEREAS the 2017 Vera Institute of Justice Report stated that the Whatcom County jail population was also unnecessarily high because more than two-thirds of 2016 admissions to the jail were for non-felonies, and overall, the vast majority were nonviolent charges. Even among felonies, three of the top five charges were for drugs (VIJ, 17), and “More than half of jail admissions for probation or parole violations had no new charges” (VIJ, 28). **We need to know what, if any, progress has been made on these fronts since 2017.**

WHEREAS a third of the total bookings in 2021 continue to be traffic, DUIs, and driving while license suspended, or domestic violence and assault, and there has been minimal investment in interventions and community-based treatments or support for these charges – and the Vera report suggested that Whatcom County develop a sobering center for DUIs (VIJ, 32) which would divert nearly 17% of the jail's annual bookings to a different facility designed for better outcomes.

WHEREAS on October 17, 2011, Jay Farbstein and Associates, consultant to Whatcom County, recommended that Whatcom County expand its consideration of what is needed in a jail to consider and evaluate a downtown location. To date, Whatcom County has not evaluated the benefits, cost, and options of a downtown location.

WHEREAS we are concerned that many of the advocates for building a new jail are the same officials who have been responsible for the poor maintenance of the jail over the less than 40 years it has stood. Our community is currently well served by the Whatcom Museum of History building built in the 1890s and Bellingham City Hall, built in the 1930s, demonstrating that carefully crafted and well-maintained public buildings can function for over a century.

WHEREAS we lack a centralized Whatcom County database tracking all the information needed for informed decision making, as urged by the Stakeholder Advisory Committee: “Build a data dashboard to track and publicly present trends and outcomes of criminal legal system changes, efforts to address racial disparities in the system, and efficacy of incarceration prevention and reduction work” (SAC Final Report, Jan. 2023, 60). **That repeats a never-implemented 2017 Vera Institute recommendation** (VIJ, 51). Without this we still don’t know exactly why people are in jail, how long they remain in each stage of the criminal legal system, or where the system is failing.

THEREFORE, BE IT RESOLVED THAT WHATCOM DEMOCRATS urge the County Council to:

- Commission an Update Report from an independent third party with demonstrated proficiency and commitment to criminal legal system reform to evaluate progress and shortcomings in fulfilling recommendations of the 2017 Vera report, and offer new recommendations based on nationwide best practices learned since the last report.
- Secure and expand funding for LEAD, the Mobile Crisis Outreach Team, and other jail diversion programs.
- Adequately fund **preventive** services and facilities for mental health treatment and substance use disorders, including harm reduction. We need fewer jail beds, more mental health and substance use care.
- Build a centralized *publicly accessible* (i.e., not requiring public document requests) Whatcom County database tracking all information needed for informed decision making, including data and trends on local crime, incarceration, diversion, racial/ethnic demographics, relationship to homelessness, drug use, percent pre-trial, etc.
- Follow best practices, **especially for what could easily become a quarter billion-dollar expenditure of public funds**, by commissioning a facilities report by an independent consultant to evaluate costs, benefits, and limitations of alternative options, **including downtown adjacent to the Courthouse**. Having a jail contractor produce that report, as happened last time, is a clear conflict of interest.
- Fully address the preceding bullet points before submitting a ballot measure to voters. **These are necessary to determine the proper sizing, siting, design, and cost of a new jail, and must be known to voters.** Prior ballot measures lacked specifics to ensure funds would be spent as directed by voters, and it is expected that a ballot writing committee would require several months to refine the ordinance and language for a successful ballot measure that leads to improved programs and facilities. If this cannot be done in time for a ballot measure this year, the council should ensure all prerequisites

are in place for a 2024 ballot measure rather than rushing an incomplete proposal and repeating the mistakes of past attempts.

- Appeal to our state legislators to get rid of cash bail and fund preventive services.

THEREFORE, BE IT FURTHER RESOLVED THAT WHATCOM DEMOCRATS:

- Urge our prosecutor to ask for, and judges to implement, Washington Court Rule 3.2, which allows for use of unsecured bonds, not requiring defendants to deposit any money to be released but holding them liable for the full amount if they fail to appear (VIJ, 40).
- Urge our state legislators to follow New Jersey and Illinois in getting rid of cash bail. Put the bail bond industry out of business.
- Urge our state legislators and local officials to ban the practice of charging people for their own detention, including electronic monitoring (\$190/week, lower income \$85/week).

THEREFORE, BE IT FURTHER RESOLVED THAT WHATCOM DEMOCRATS believe the community needs a robust discussion and our community must find solutions at all levels of government that address true public safety by reducing incarceration and fully funding diversion programs, treatment, ending cash bail, harm reduction approaches, and building more affordable and supportive housing. This discussion should address the following questions:

- Why should a new jail have a larger capacity than the present one, given our local incarceration rate is already higher than Russia's and 5.6 times British Columbia's?
- Our diversion programs are working. So why are we not achieving the anticipated reduction in jail population?
- When it's clear that the issue is homelessness, why are we not building more affordable and supportive housing?
- Why should courtrooms be inside a jail? Shouldn't there be a clear separation between courts and corrections to ensure impartiality and dignity?
- Why are 98% of our jail inmates pretrial? Why are our judges continuing to use cash bail?

Adopted at the March 25, 2023 General Membership Meeting by a vote of 70 to 2.