

# Resolution identifying flaws in the proposed jail ballot measure, and offering alternative solutions

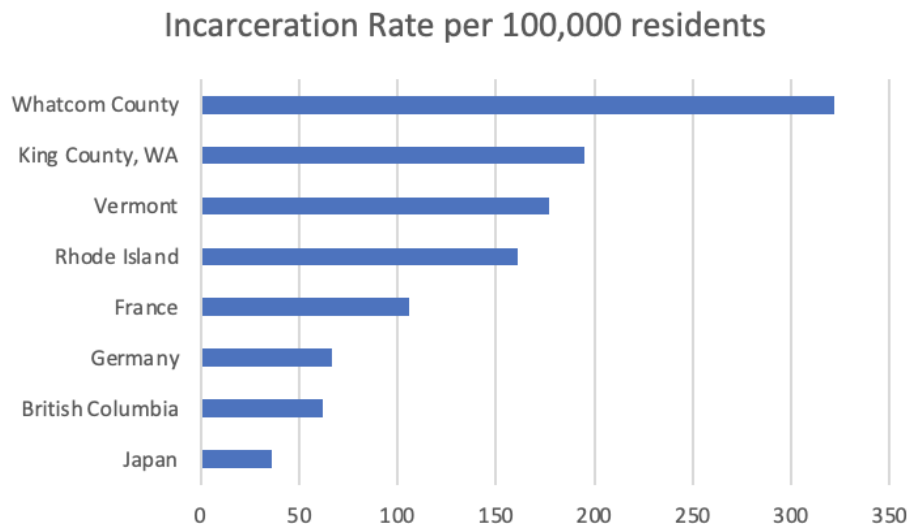
WHEREAS as Whatcom Democrats we support a safe, affordable, right sized jail for Whatcom County, with inpatient treatment outside of the jail.

WHEREAS the current proposal, [unlike in 2017](#), was placed on the ballot without an interlocal agreement with the cities, despite the reality that 40% of the sales tax collected under [RCW 82.14.450](#) will be city revenue.

WHEREAS the current proposal is to use a sales tax, the most regressive tax the county has at its disposal. A property tax is less regressive. Whatcom County has unused capacity in its property tax (banked capacity). Sales tax revenue is unstable as it is much more sensitive to economic swings than other tax bases.<sup>1</sup> Conversely, the property tax is more predictable during times of economic uncertainty or crisis.

WHEREAS, according to the Prison Policy Initiative, “Not only does the U.S. have the highest incarceration rate in the world; every single U.S. state incarcerates more people per capita than virtually any independent democracy on earth. ... The incarceration rates in every U.S. state are out of line with the entire world, and we found that this disparity is not explainable by differences in crime or “violent crime.” In fact, there is little correlation between high rates of “violent crime” and the rate at which the U.S. states lock people up in prisons and jails.”<sup>2</sup>

WHEREAS **Whatcom County’s incarceration rate (jail + prison) is over five times higher than in British Columbia just 20 miles north.** It’s also 65% higher than nearby King County:



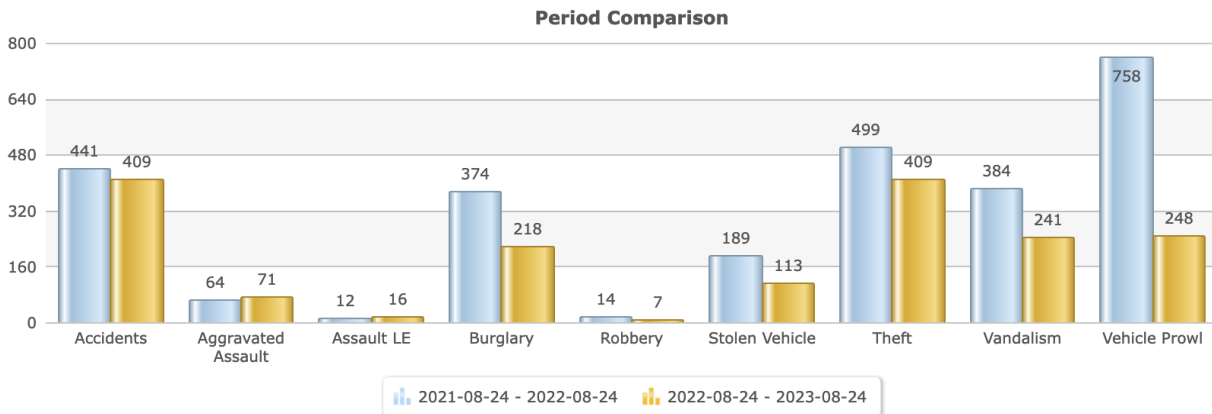
<sup>1</sup> Marlowe, Justin and Sharon Kioko. *Financial Strategy for Public Managers*. 2016. “Chapter 1: How We Pay For the Public Sector.” p. 21.

<sup>2</sup> Emily Widra and Tiana Herring, “States of Incarceration: The Global Context 2021,” Prison Policy Initiative, Sept. 2021, <https://www.prisonpolicy.org/global/2021.html>.

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

WHEREAS [Countywide data from the Washington Association of Sheriffs and Police Chiefs](#) show that while population increased by 9% between 2016 and 2022, arrests were down 5%, for a net decline of 13% in the arrest rate per 100,000 residents.

The [Sheriff's](#) website shows a further sharp decline in crime from 2022 to this year:



WHEREAS key recommendations of the 2017 [Vera Institute of Justice Report](#) commissioned by the County Council have been ignored. As a result, conditions have actually worsened.

- In 2017, the **jail population was “unnecessarily high”** because almost half of those assessed bail could not afford bail, so that 59 percent of those being held were pretrial (VIJ, 13).
- **Now 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](#) (SAC), Jan. 2023, 41)
- In 2017, the Vera Institute of Justice (VIJ) 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),
- **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 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 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 current 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 the jail previous to the present jail consists of the whole top (6th) floor of the Courthouse. It has been converted into the Juvenile Detention Center. Unlike the newer jail it has been renovated and maintained. It is well lit and attractive, with classrooms, a library, kitchen for teaching cooking skills, medical and mental health spaces. It is far superior to the current jail, and suggests how the latter could be upgraded.

WHEREAS we lack a 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 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.

WHEREAS unlike Whatcom County, Washington State has dramatically reduced its prison population. Right now, only 70% of available beds in the state’s dozen prisons are occupied and that decline is expected to continue. That will lead to closure of Larch Corrections Center in Clark County later this year.<sup>3</sup>

WHEREAS a downtown location adjacent to the Courthouse would 1) be more accessible to transit, walking, and other alternative modes of transportation, allowing easier access to family, friends, and professionals; 2) facilitate access to the courts, public defenders (whose office is one block away), and services; 3) have a lower transportation carbon footprint.

WHEREAS Project Labor Agreements (PLAs) govern terms and conditions of employment in complex construction projects. PLAs protect workers and the public interest by setting conditions of employment and performance. PLAs can be tailored to ensure fair wages and protection for contractors/employers while supporting the public interest and local economy.<sup>4</sup>

WHEREAS our 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:

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<sup>3</sup> <https://crosscut.com/news/2023/06/washington-department-corrections-close-one-12-prisons>.

<sup>4</sup> <https://www.dol.gov/general/good-jobs/project-labor-agreement-resource-guide>, <https://aflcio.org/what-unions-do/empower-workers/project-labor-agreements>.

- Why should a new jail have a larger capacity than the present one, given our local incarceration rate is already 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 homelessness is generating most of our jail population, why are we not taking bold action to address the housing shortage that is also burdening our population with high rents?
- Why a low/no barrier homelessness encampment shelter with services and amenities to comply with the 9th Circuit Court of Appeals Martin v. Boise decision has not been built?
- 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?

**THEREFORE, BE IT RESOLVED that we ask that Whatcom County Council provide direction to the executive to:**

### **1. Follow Best Practices in Building a New Jail**

Whatcom County hired one of the best jail planners in the nation in 2011 – Jay Farbstein. He made the following recommendations:

- A. The County should take immediate steps to obtain the services of a **corrections planner**.
- B. The first main task for the corrections planner should be to update and expand the 2008 **needs assessment**, revising projections to account for the implementation of jail population management initiatives.
- C. The County should create a Criminal Justice Planning (or Coordinating) Committee, in part to provide a forum for consideration and implementation of jail population management initiatives. (Completed!)
- D. Expand the jail facility planning options under consideration – and the sophistication of their evaluation.
- E. Consider establishing a **construction budget** for the project.
- F. Assign or **hire a project manager** or a program management company to support and guide the jail project.
- G. Get the key design and construction players on board early.

Three ballot measures have gone before the public and to date just one of the above recommendations have been followed. **The County Council and County Executive must ensure that the above best practices are followed.** Voters will not support a large, costly jail and are far more likely to vote yes for a new jail when national standards are followed.

### **2. Whatcom County must reduce incarceration**

- A. **Wherever possible, divert people away from jail and into treatment**
  - Incarceration contributes to homelessness. In the most recent jail survey, **almost half report having lost their housing as a result of being jailed** ([Whatcom County Jail Inmate Survey Results](#), Aug. 2022).
  - It disrupts benefits and employment. In the same survey, over one in three persons reports having lost their job.

- Lower incarceration rates are possible by adopting the principle of therapeutic jurisprudence where people with serious mental illnesses charged with non-violent crimes are diverted into programs designed to address their treatment and service needs, rather than jail.
- Fully fund crisis respite<sup>5</sup> or in-patient treatment for behavioral health and substance abuse disorders. Nationally, less than half (45%) with a history of mental illness receive treatment while held in local jails<sup>6</sup>. Benefits far exceed costs.<sup>7</sup>

**B. Expand use and have the relevant jurisdictions pay for electronic monitoring as a less expensive alternative to jail.**

**C. Reduce length of stay and reform policies and practices that have led to unacceptably long stays in jail – including for those who are pretrial.**

- Just three days of pretrial detention dramatically increases the odds of job loss: “The percentage of respondents reporting employment disruption (job loss or job change) increased from 17 to 59.1 percent for those spending less than three days in jail versus three days or more, respectively”.<sup>8</sup>
- The annual cost per incarcerated individual nationwide is \$47,057 – \$128/day. In 2021 the daily bed rate in Whatcom was \$193.<sup>9</sup>
- The way to bring down long-term cost is to reduce the number of people in jail.<sup>10</sup>

**D. The jail must eliminate fines and fees**

Phone calls, commissary, food costs must be eliminated. Jail shouldn't be a profit center.

**3. Jail Size and Location**

- A. Start with a budget the county can afford - this is a recommended best practice by the National Institute of Corrections and was reinforced by Jay Farbstein. The right budget needs to come first.
- B. In **2017 Whatcom County proposed a jail of 244 cells**. Today they are proposing a substantially larger jail of **400 to 440 cells with no explanation or public discussion**.
- C. Build a jail that's the **right size** for the county. It should be expandable in the future, but **NOT 400 to 440 cells (that is 800+ beds.)**
- D. There's been **no analysis of the cost to build a 440-cell jail**. The recent analysis cost under \$10,000, wasn't conducted by an experienced jail planner, and the council has not seen the report. That study should be set aside and revisited by a qualified jail planner.
- E. Analyze **operating costs by location** to include additional costs of transit back and forth to a Ferndale jail by staff, attorneys, visitors, judges, and inmates.

<sup>5</sup> <https://www.nami.org/Support-Education/Publications-Reports/Public-Policy-Reports/Divert-to-What-Community-Services-that-Enhance-Diversion/DiverttoWhat.pdf>, 10-11.

<sup>6</sup> <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>.

<sup>7</sup> <https://www.wsipp.wa.gov/BenefitCost?topicId=2>

<sup>8</sup> [https://www.uscourts.gov/sites/default/files/82\\_2\\_6\\_0.pdf](https://www.uscourts.gov/sites/default/files/82_2_6_0.pdf), 41-42.

<sup>9</sup> <https://www.whatcomcounty.us/DocumentCenter/View/71318/2021-WCSO-Annual-Report>

<sup>10</sup> <https://www.vera.org/publications/the-price-of-jails-measuring-the-taxpayer-cost-of-local-incarceration>

- F. According to the National Institute of Corrections, “On average, construction costs for a new county jail represent **only 10 percent of overall operating costs over a 30-year period.**”<sup>11</sup> We need to work now to bring that future budget under control. The Council should insist on a life-cycle cost analysis of various bed sizes for the new jail that would help shape the total cost over a 30-year period. We start with investments in treatment to reduce the need for jail beds.

#### **4. Maintain the jail**

As we’ve seen downtown, jails require regular maintenance that should be included in estimated operating costs and annual budgets. Lack of maintenance at the existing jail is the result of **poor management by the Sheriff** and we must do better going forward.

#### **5. Involve the County Treasurer in planning**

According to Treasurer Steve Oliver:

- The county budget is stretched tight, only getting by because of federal pandemic relief funds. The additional staff and maintenance costs not covered by the tax will eat up our capacity to provide other services to the community.
- Debt payments should be no higher than \$5 to \$6 million per year for new jail.
- Jail will cost \$150 million +; we need to be below \$100 million.

#### **6. Use Project Labor Agreements (PLAs)**

Any construction expenditures over \$5 million should use a Project Labor Agreement so contractors can’t misclassify workers, and to ensure workers get full benefits, in coordination with the Washington State Building and Construction Trades Council (WSBCTC) and/or individual member unions of the WSBCTC.

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 county council members to ban charging people for their own detention, including electronic monitoring (\$190/week, lower income \$85/week).

THEREFORE, BE IT FURTHER RESOLVED THAT WHATCOM DEMOCRATS recognize the unacceptable conditions of the current jail, but due to the previously enumerated flaws the current proposal fails to provide what Whatcom voters have a right to expect in terms of transparency, attention to detail, fiscal responsibility, and addressing the underlying causes of incarceration.

*Adopted by Whatcom County Democrats by a vote of 50 to 1 at the August 26, 2023, General Membership Meeting.*

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<sup>11</sup> <https://info.nicic.gov/nicrp/system/files/022722.pdf>