

Addressing the Burden of Housing State Prisoners in County Jails

Draft Report for Review and Comment

DRAFT

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Addressing the Burden of Housing State Prisoners in County Jails

Incarcerating individuals who have committed crimes is a central function of state and local governments, both for protecting public safety and for rehabilitating those offenders who are candidates for reentry into society. The correctional system in Tennessee is split between local jails—mostly county facilities, though some cities have their own jails—and state prisons. These jails and prisons are either government-run or operated under contract with private corporations. County jails house most individuals incarcerated in Tennessee, including those convicted of misdemeanors and all those incarcerated while awaiting trial, sentencing, or hearings for probation and parole violations. Tennessee’s prisons are reserved for state prisoners—those convicted of felonies—but have long lacked the space needed to house all of them, and prison expansions have not kept pace with increases in the incarcerated felon population. Rather than expand prison capacity to meet these needs fully, Tennessee has relied on its county jails to house state prisoners as a cheaper alternative for alleviating overcrowding in state prisons. But whereas prisons have traditionally been designed to serve as long-term correctional facilities, local jails were not originally intended to house felons for extended lengths of time. As the felon population has increased, more and more felons are remaining in local jails that often lack the beneficial services and programs available at state prisons.

In 2007, the Commission issued a report assessing whether housing state prisoners placed a burden on county jails and whether state reimbursements—then capped at \$35 per prisoner per day, but often less, beginning at the date of sentencing—were enough. At the time, about 27% of Tennessee’s state prisoners were held in county jails, a level where it had been for several years and has roughly remained since. The report included a number of staff recommendations and two Commission recommendations—calling for (1) reimbursing county jails for the daily costs of housing state prisoners who are awaiting probation revocation hearings and (2) setting \$35 as the flat daily reimbursement rate for local jails housing state prisoners, which would have brought those receiving less up to that rate, and simplifying the reimbursement reporting process.

Counties are still not reimbursed for housing prisoners awaiting revocation hearings, and despite the reporting process being simplified in 2011 and the reimbursement rate having been raised to \$37 in 2012, many county representatives continue to say that the reimbursement counties receive is too small. For this reason, and because sheriffs and other county representatives have also expressed concern that the process for determining which prisoners remain in county jails is opaque, members at TACIR’s

May 2016 meeting requested the Commission update its 2007 report to examine the current state of jails in Tennessee, how housing state prisoners in county jails affects county governments, and whether any changes are warranted in the way counties are reimbursed.

Tennessee state prisons do not currently have the capacity to hold all of the state's prisoners. At the end of July 2007, around the time TACIR published its report, the state's prison system was operating at 97.7% of its established capacity. In the years since, up until the opening of the Trousdale Turner Correctional Center in January 2016, the system fluctuated between 95% and 100% of capacity. Briefly dropping to 87.2% when the new prison opened, capacity rose above 90% again in February 2016 and climbed above 95% again in March 2017. At present, Tennessee houses approximately 27% of its state prisoners—approximately 8,000 inmates—in county jails. While not the only state to use county jails for this purpose, it does rely on them more than most. As of 2015, Tennessee ranks third-highest for its percentage of state prisoners held in local jails—behind only Louisiana (49%) and Kentucky (45%)—and fourth in total number—behind Louisiana (17,930), Texas (11,093), and Kentucky (9,738). Fifteen states report they don't house any state prisoners in county jails, though five of these have state-only correctional systems.

Reimbursing Counties for the Cost of Housing State Prisoners

Prior to 1981, counties could get reimbursed jailer's fees from the state for housing state prisoners. In 1981, when Tennessee's state prisons and county jails alike were under scrutiny for their overcrowding and unsatisfactory conditions, the legislature passed the County Correctional Incentives Act to provide additional financial incentives for counties to house non-dangerous felony offenders locally. It was intended to be mutually beneficial for state and county governments by helping to alleviate overcrowding in state correctional facilities, reduce high operational costs, and assist counties in upgrading local correctional facilities and programs. In 1989, the General Assembly changed the nature of this compensation, replacing the jailer's fees and additional subsidy with a maximum reimbursement amount for "reasonable allowable costs" as determined by the rules of the Department of Correction. Each year, the general appropriations act would set a maximum reimbursement rate. By law, counties could contract with the state to house convicted felons, and could not be forced to house state prisoners sentenced longer than a year unless they had done so.

Counties now receive \$37 per prisoner per day for sentenced felons and felons awaiting parole violation hearings, with these exceptions—Davidson County (\$53.62 in 2016), Shelby County (\$67.46 in 2016), and Johnson City (\$38.75, which houses only female prisoners) receive more, while Rhea (\$27.24), Cocke (\$30.62), and Hancock (\$33.00)

counties receive less. The average actual cost for all TDOC inmates in prisons, including those managed by private contractors, is \$76.82 per day, but varies greatly among the 14 facilities—from \$50.32 for the South Central Correctional Facility managed by CoreCivic (CCA) to \$167.13 for the DeBerry Special Needs Facility managed by TDOC.

Although counties can use state prisoners for labor both in their jails and in communities, offsetting the need to hire additional jail staff or government employees, almost all county representatives say that their reimbursements don't cover the daily costs of caring for state prisoners or provide money for facility improvements needed to house them, and TDOC representatives agree. Further, counties are not reimbursed for housing individuals incarcerated while awaiting trial on felony charges, convicted felons awaiting sentencing, and convicted felons awaiting probation violation hearings. Tennessee's 120 local jails statewide are 86% full, and 52 jails are each at 100% capacity or above.

Improving Outcomes by Expanding Access to Programs and Services

While the state is saving money by keeping felons in county jails rather than state prisons, most jails are not able to provide the same level of mental health and substance abuse treatment, educational, and other programs available in prisons. Department of Correction studies have shown that recidivism is higher among prisoners released from jails rather than prisons. Furthermore, the state is keeping hundreds of state inmates in jails that fail to meet the state's minimum standards as established by the Tennessee Corrections Institute.

One option available to the state to ensure that convicted felons receive access to programs they need, and to alleviate the burden on county governments, would be to increase prison capacity by prison expansion or construction. Another option would be to contract for private prison space, which would also need to be expanded or constructed. Either of these two options would be more costly to the state than housing prisoners in county jails. In addition to the higher operational expense, the cost to build new facilities is prohibitive. Prison construction costs per bed reported by states to the Pew Charitable Trusts in 2006 ranged from \$25,000 for a minimum-security bed to more than \$100,000 for a maximum-security cell. Adjusting for inflation, a "typical" medium-security bed that cost \$65,000 then would cost about \$80,000 today. Construction of the privately owned 2,552-bed Trousdale Turner Correctional Center, the most recently opened prison in Tennessee, was completed during the fourth quarter of 2015 at a cost of approximately \$56,426 per bed—\$144 million total.

The state is already making efforts to improve outcomes and reduce the burden on counties through the initiatives of the Public Safety Act of 2016 and the Department of Mental Health and Substance Abuse Services' (DMHSAS) criminal justice liaison program. Proactive assessment of inmates, as required by the Act, will help determine the risk and needs of prisoners, allowing TDOC to direct inmates toward jail programming or, when necessary, transfer them to a state facility better equipped for meeting their needs. This is expected to lower costs for counties, reduce recidivism, ease reentry, and generally improve prisoner outcomes. Continuing to improve prisoner assessment and data collection will enable TDOC and counties to work together to target limited resources towards the most effective programs and facilities.

County sheriffs interviewed view the DMHSAS criminal justice liaison program positively. According to its director, the program has been successful at diverting nearly 9,000 individuals from jail since 2014 and developing more than 1,200 long-term release plans to help keep those who have been in jail from returning. Outreach efforts across the state have reached more than 84,000 individuals to assist them in staying out of the criminal justice system. However, only 32 counties are currently part of a criminal justice liaison's coverage area. **To improve access to the services provided by this program, the state should provide funding to expand support for criminal justice liaisons and case managers statewide.**

There should be a balance between operating the state's corrections system efficiently within TDOC's financial and physical capacity and counties' needs to manage their jail operations within budgetary constraints. **In addition to existing initiatives, if the state's policy is to continue to rely on county jails to house large numbers of state prisoners, the state should reestablish an incentive program to assist counties, rather than simply relying on increases to per diem reimbursements. The state could offer funding assistance beyond the daily reimbursement rate to help counties implement programs proven to reduce recidivism and improve outcomes for prisoners and communities.** In some circumstances, this may require assisting counties in upgrading or expanding facilities to allow necessary space for implementing programs. Implementing such programs and evaluating them will require improved data collection, the adoption of standardized programs, and the development of measures of program success, which is in line with a recommendation in the 2015 *Final Report of the Governor's Task Force on Sentencing and Recidivism* to "establish a criminal justice research council to provide non-partisan, professional statewide research and information development." Those measures should be used to evaluate the housing and treatment of all state prisoners, whether in jails or prisons.

Another way for the state to reduce the burden on counties of housing state inmates is to begin reimbursing counties at some point earlier than sentencing—an example of which was the Commission’s 2007 recommendation to reimburse counties for holding probation violators in jail while they await hearings. Over the years, legislation has been introduced to expand coverage to pre-trial detainees as well, but this has been considered too costly to gain support. Most recently, in 2017 House Bill 182 by Hulse, Senate Bill 678 by Yager, would have required reimbursement from date of conviction, not sentencing, but this legislation has not advanced out of the committee process.

Enforcing Standards to Spend State Dollars Effectively

Adequate oversight and regulation of local jails is necessary for the state to balance its need for fiscally responsible management of the felon population with the responsibility to achieve the best prisoner and public safety outcomes. However, neither TCI nor TDOC has clear legal authority to require local correctional facilities to comply with the minimum standards promulgated by TCI. Although TCI inspects all jails annually, without the authority to enforce compliance, there is no penalty for a county jail that fails inspection, other than possible vulnerability to lawsuits and court intervention. TCI officials say that their most effective avenue for action is often through the fire marshal seeking a court order when safety is concerned. The state can choose—but has no obligation—to remove state prisoners from a noncertified jail. Counties continue to receive the same reimbursement for inmates in a noncertified jail, and there is no obligation to dedicate reimbursement funds towards improvements that would restore certification.

To clarify the framework for the oversight of county jails, state law should be amended to give the Tennessee Corrections Institute clear legal authority to require local correctional facilities to comply with set standards, including authority for its Board of Control to recommend that the Tennessee Department of Correction remove state prisoners from noncertified jails when conditions warrant. Noncertified county jails should not be eligible for additional funding above the current daily reimbursement rate. This would provide an incentive to maintain or regain certification and improve conditions in substandard facilities, a necessary step towards adding beneficial programs.

Managing Tennessee's Convicted Felons: Balancing State and County Needs

When the 12 inmates were refused admittance by the West Tennessee Reception Center, the Shelby County Sheriff, Gene Barksdale, chained them to the outside of the center's fence and left them there at sunrise. He was running out of room, he said, at his own jail.

For three weeks, the overcrowded, substandard state system has been under orders by Federal District Judge Thomas Higgins not to admit any more prisoners. But as Governor Alexander called a special session of the Legislature to deal with the problem in Nashville, trials and convictions proceeded, piling up new state convicts in the 95 county jails.—New York Times, 1985.¹

Our correction system is much improved since 1985, but like many states, Tennessee has struggled to handle prison and jail overcrowding for decades. In 1982, the state's correctional system was the subject of an extensive court order to relieve overcrowding, poor sanitation, poor medical care, and rampant violence; claims of cruel and unusual punishment, as prison conditions were so bad as to guarantee "inevitable serious physical and psychological deterioration."²

During the fall of 1985, Tennessee's prison problems mounted. Unable to meet inmate population-reduction targets, the system was operating far beyond its capacity. On October 25, 1985, Federal Judge Thomas A. Higgins ordered that no new convicts be admitted into the prison system's reception centers until the inmate population was reduced to the system's total designated capacity.³ While the state was attempting to remedy the prison situation, it shifted some of the burden for housing convicted felons to the counties. However, as conditions in county jails got worse, courts ordered relief of jail overcrowding in some counties—in 1989, Hamilton, Davidson, Knox, and Madison counties sued the state and the Middle Tennessee District of the US District Court placed limits on the number of inmates that could be held in those facilities.⁴

¹ Dudley Clendinen. "Tennessee and U.S. Court in a Dispute over Crowded Prisons". *New York Times*: November 15, 1985.

² Grubbs v. Bradley, 552 F. Supp. 1052 (M.D. Tenn. 1982).

³ Cody and Bennett 1987.

⁴ Roberts v. Tennessee Department of Correction, 887 F.2d 1281 (6th Cir. 1989).

Trying to strike the proper balance in determining which prisoners are housed in state prisons and which are housed in county jails has been an ongoing challenge. The state has a constitutional mandate to provide safe prisons and treat prisoners humanely, and to inspect the prisons accordingly.⁵ At the same time, it is each county's duty to fund and maintain a jail and sheriff. Pursuant to Tennessee Code Annotated, Sections 5-7-104 and 106, it is the duty of the county legislative body to erect a jail and to maintain that facility at the expense of the county. In addition, Tennessee Code Annotated, Section 8-8-201(a)(3), delegates responsibilities related to the care and custody of prisoners held in county facilities to the office of the sheriff.

The Commission has been asked to study issues and challenges facing county jails in the past.⁶ Its 2007 report drew upon information from previous reports by other agencies, including two published by the Tennessee Comptroller of the Treasury's Office of Research^{7 8} and one published by the Tennessee County Services Association.⁹ And still, many issues noted in 2007 persist.

- Some county officials continue to be concerned about the financial burden and other effects of housing state prisoners in county jails. On the other hand, some counties use state prisoners and reimbursement funding to support a large part of their sheriff's office and jail operations.
- Crowded conditions and tight budgets can leave counties and the state open to liability from lawsuits.
- Many jails offer little or no programming for mental health, substance abuse, education, and reentry.

The report included a number of staff recommendations and two Commission recommendations:

- 1) *The General Assembly should require the Tennessee Department of Correction (TDOC) to reimburse county jails for the daily costs of housing state prisoners who are awaiting probation revocation hearings. The time lag*

⁵ Tennessee Constitution, Article I, Section 32.

⁶ Thurman, et al. (TACIR) 2007.

⁷ Tennessee Comptroller of the Treasury 2006.

⁸ Tennessee Comptroller of the Treasury 2003.

⁹ Tennessee County Services Association 2005.

between the probation violating offense and the probation revocation hearing is lengthy, and the number of prisoners placed on probation is increasing.

- 2) *The Tennessee Department of Correction should set \$35 as the flat daily reimbursement rate for local jails housing state prisoners. Additionally, TDOC should simplify the reporting process for local jails holding state prisoners, to include eliminating the cost sheets counties currently complete to be reimbursed. Completing the cost reports requires a large portion of staff time and regardless of the daily cost reflected in the report, the daily reimbursement cap is \$35.*

The General Assembly did not implement the first recommendation related to probation revocations, but did set a flat reimbursement rate at \$35 in Public Chapter 603, Acts of 2007, which brought those receiving less up to that rate. Each year the legislature sets the rate in the appropriations bill, and it has been set at \$37 a day since 2012. The General Assembly implemented the second part of recommendation two by passing Public Chapter 229, Acts of 2011, which removed the requirement of counties to submit a final cost settlement after they received the maximum amount allowed per prisoner per day as reasonable allowable costs for three or more continuous fiscal years.

Despite the reimbursement rate having been raised to \$37, many county representatives continue to say that the reimbursement counties receive is too small. Members at TACIR's May 2016 meeting requested the Commission update its 2007 report to examine the current state of jails in Tennessee, how housing state prisoners in county jails affects county governments, and whether any changes are warranted in the way counties are reimbursed.

Tennessee relies heavily on county jails to house state prisoners.

Tennessee's prisons are restricted to holding convicted felons, but jails may hold pre-trial detainees, those convicted of misdemeanors, locally sentenced felons, backup felons, and others such as federal prisoners under the jurisdiction of the US Marshal's Office and Immigration and Customs Enforcement (ICE). As of April 31, 2017, there were 29,120 individuals housed in Tennessee's 120 local jails. Nearly half of the jail population consists of pre-trial detainees—inmates charged with misdemeanors or felonies but not convicted—but 8,095 (28%) were convicted felons under the jurisdiction of the Tennessee Department of Correction. These convicted felons fall in two categories:

- TDOC Backup: Felon inmates sentenced to TDOC custody and held in local jails while awaiting transfer to a TDOC institution.

- Local Felon: Convicted felons serving time in a local jail because of a contract with TDOC, and/or convicted felons serving a split confinement sentence.¹⁰

There were also 602 “other” felons—“convicted felons awaiting sentencing or not yet ready for transfer to TDOC because of other pending charges, including technical violators awaiting a probable cause/revocation/recision hearing or adjudication of pending charges.” Just 18% of those in jail are serving time as convicted misdemeanants.¹¹

How many state prisoners are held in county jails—and is the number increasing?

There are about 8,000 convicted state felons housed in local jails on an average day during the current fiscal year 2016–17. This means that about 27% of the state’s nearly 30,000 incarcerated felons are held in local jails. At the end of fiscal year 2006–07 when the Commission’s last report was written, the total felon population was 26,551, with 7,210 in local jails (also 27%). However, the makeup of this population has changed: at the end of 2006/07, 7.6% were TDOC backup and 19.5% were locally sentenced; as of April 2017, 14.9% were backup and 12.0% locally sentenced. About 4,500 prisoners are TDOC backup now, compared to 2,000 in 2007.

Until recently, Tennessee’s total felon population had peaked at 30,039 in May 2014. At that time, 8,665 of those were in local jails (28.8%). The overall felon population has remained fairly constant over the past three years, falling below 29,000 for two months in December 2015 and January 2016 and only topping 30,000 again in April 2017—a new high of 30,063. The number of felons in local jails peaked in November 2012 at 9,685 (32.6% of 29,711), and has been below 8,000 since October 2016.¹² See Appendix A for the most recent “Tennessee Felon Population Update.”

Few other states house state prisoners in local jails to the same extent as Tennessee.

Tennessee relies more on local jails to house state prisoners than almost any other state in terms of both the overall number and percentage of state prisoners in local jails.

¹⁰ Those sentenced may be placed on probation as part of a split confinement, where they must spend some time in jail before being released to probation, or they may be sentenced to probation directly. See more at: <https://www.tn.gov/correction/topic/tdoc-community-supervision-types-of-release#sthash.6F1m3LwW.dpuf>.

¹¹ Tennessee Department of Correction. “Tennessee Jail Summary Report.” April 2017.

¹² Tennessee Department of Correction. “Tennessee Felon Population Update.” April 2017.

Tennessee reported housing the fourth most state prisoners in local jails as of December 31, 2015. Only Louisiana, Texas, and Kentucky reported more. Louisiana, by far the national leader, reported 17,930 state prisoners in local jails—almost 7,000 prisoners more than the next state, Texas, which reported 11,093. Kentucky, which ranked third nationally, reported 9,738 state prisoners in local jails. The only other state approaching Tennessee (8,416) was Virginia at 7,937 state prisoners in local jails. Of the rest, Mississippi and Georgia each reported approximately 4,900 prisoners in local jails, but no other state reported more than 2,000. Fifteen states reported that they don't house any state prisoners in local jails.¹³ Five of these—Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont—operate state-only correctional systems. A 16th state, Massachusetts, reported housing 431 state prisoners in local jails, but all funding for local jails in Massachusetts comes from the state.¹⁴ See figure 1 and appendix B.

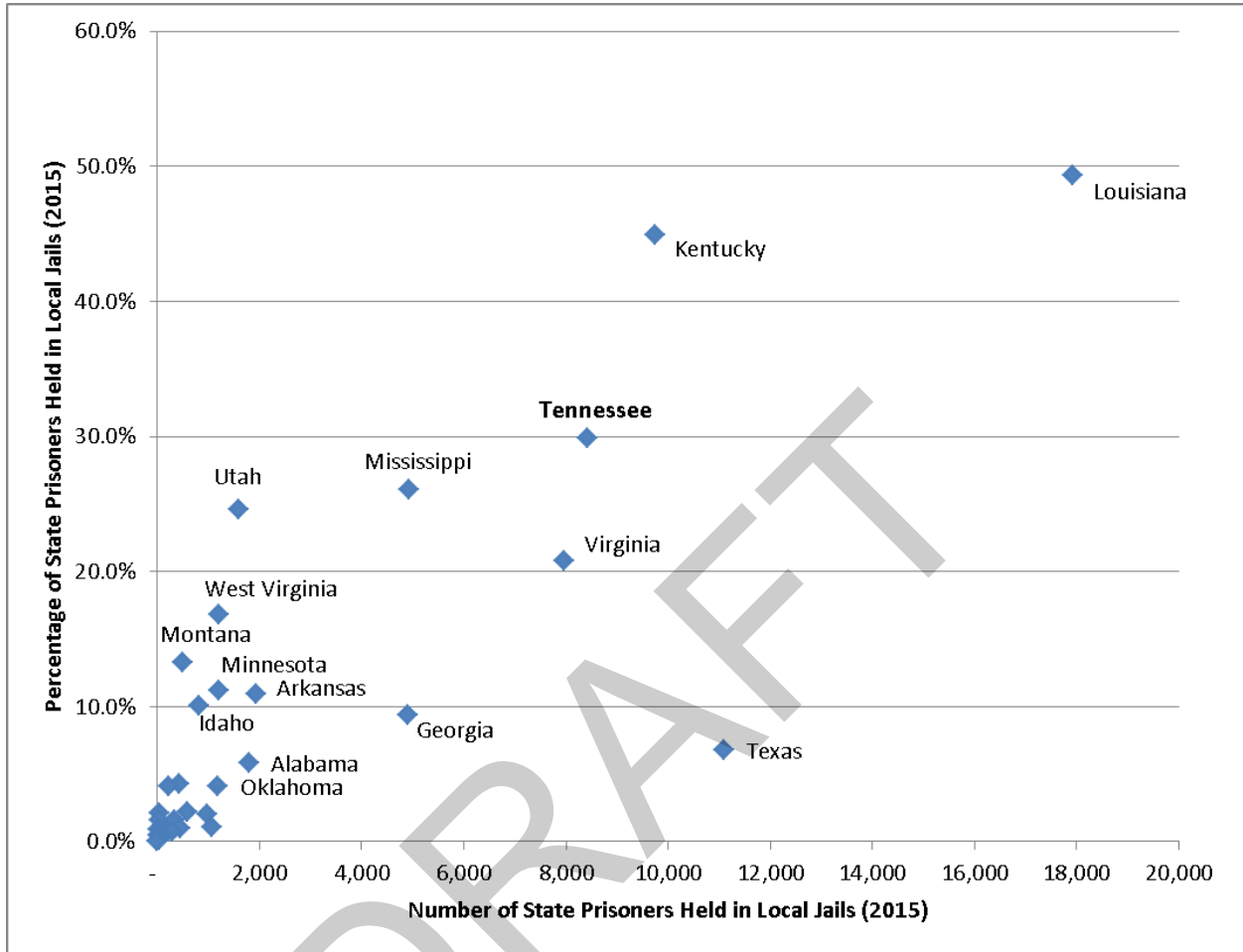
Similarly, Tennessee ranked third nationally for the percentage of its state prisoners housed in local jails as of December 31, 2015. Both Louisiana (49.3%) and Kentucky (44.9%) reported greater percentages than Tennessee (29.9%), just as they did for the total number of state prisoners in local jails. In addition to Tennessee, Mississippi (26.1%), Utah (24.6%), and Virginia (20.8%) are the only other states that reported housing more than 20% of their state prisoners in local jails. While Texas reported the second highest number of state prisoners in local jails, these prisoners account for less than 7% of the state's total. Thirteen states either reported housing no more than 1% of their state prisoners in local jails or, in Massachusetts' case, provide all funding for local jails through the state budget.¹⁵ See figure 1 below and appendix B for statistics for all states.

¹³ Carson and Anderson 2016.

¹⁴ Albert 2010; Henrichson, Rinaldi, and Delaney 2012.

¹⁵ Albert 2010; Carson and Anderson 2016.

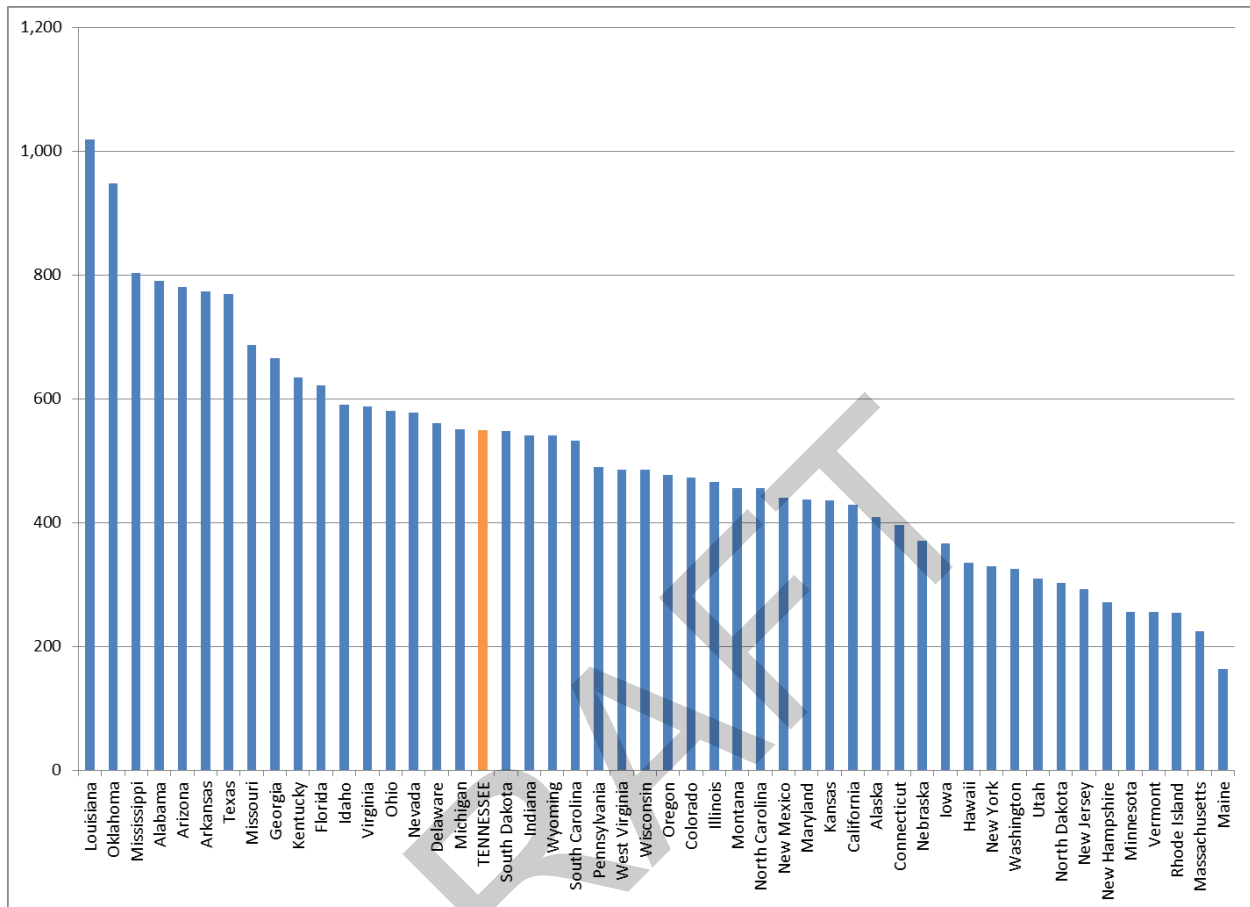
Figure 1. Number and Percentage of State Prisoners Held in Local Jails by State, 2015.



How does Tennessee’s incarceration rate compare to other states?

According to Bureau of Justice Statistics data for 2015, 593 out of every 100,000 US residents over the age of 18 are imprisoned by state or federal correctional authorities. Tennessee’s rate falls a little below that at 549 per 100,000. The median incarceration rate for all states is 481 per 100,000. See figure 2 below. Whereas states like Louisiana and Mississippi that lead the nation in total incarceration might significantly lower their prisoner population through sentencing reforms and alternatives, Tennessee has less room to address its prison and jail overcrowding issues by pursuing these types of reforms because many have already been implemented—and continue to be adopted, as in the case of the Public Safety Reform Act of 2016. That said, bringing Tennessee’s total incarceration rate of adults down to the national median would result in about 3,500 fewer felons in the system.

Figure 2. State Incarceration Rates per 100,000 US Residents Age 18 or Older, 2015.

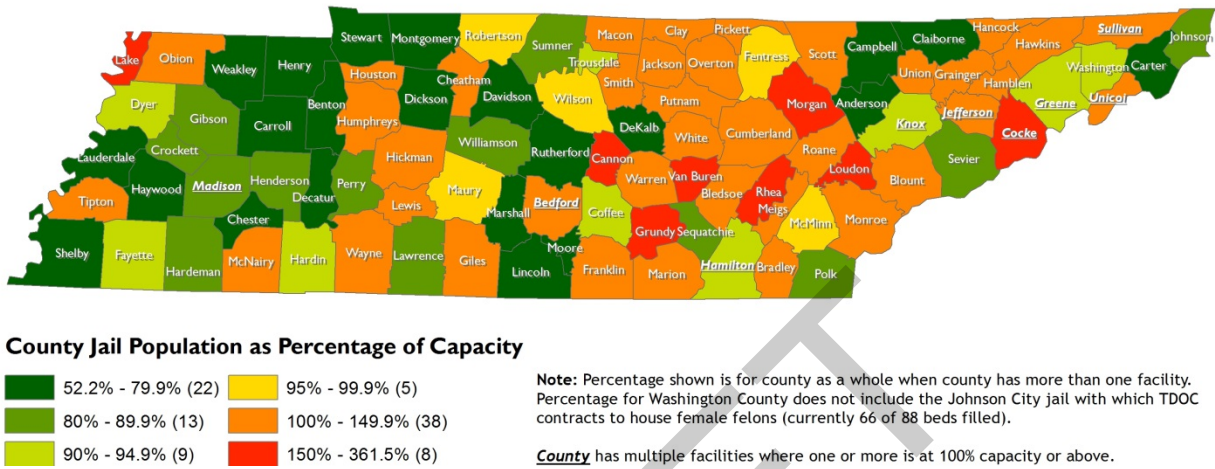


What are the capacities of Tennessee’s county jails and are they overcrowded?

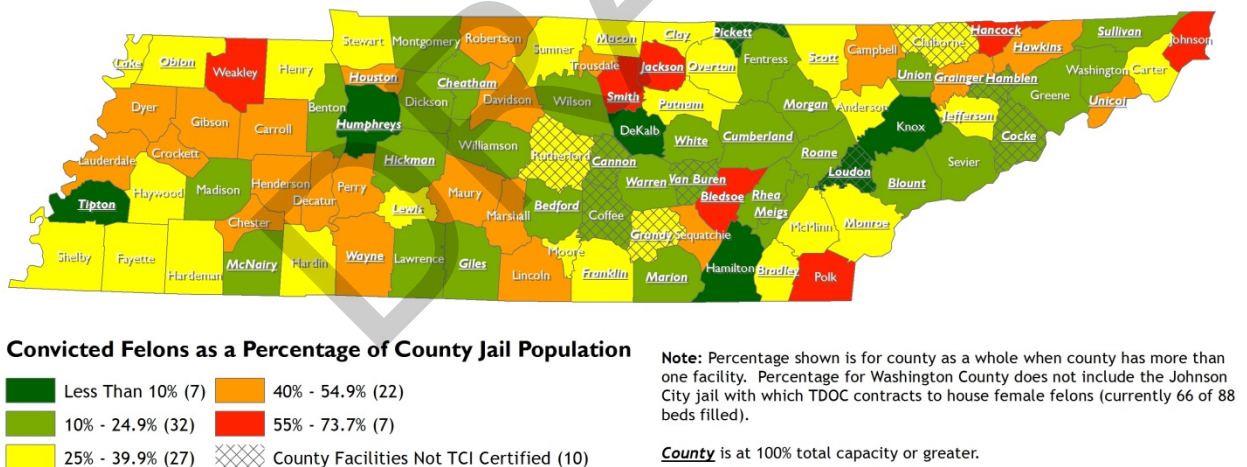
There are 120 local jail facilities in Tennessee, with 33,343 total beds. As of the March 2017 snapshot, jails statewide taken as a whole are at 86.4% capacity, with 28,825 inmates. Fifty-two jails, however, report being at 100% capacity or greater. The state is housing 1,548 backup felons (2,163 total, including locally sentenced and other) in the 52 jails at 100% or above. An additional 14 jails are at 90%-100% capacity. See map 1 for county jail populations as a percentage of their capacity and map 2 for the number of convicted felons as a percentage of county jail population. See appendix C for the complete jail summary report, with information by county and facility. Jails near capacity often run into operational challenges, such as a lack of segregated space for female inmates or isolation for those with mental health issues or particularly violent behavior. To address their needs for additional jail space and to improve outdated

facilities, since 2007 at least twenty-five counties have completed or are currently constructing new jails or jail expansions.¹⁶

Map 1. County Jail Population as Percentage of Capacity, March 31, 2017



Map 2. Convicted Felons as a Percentage of County Jail Population, March 31, 2017



What is the capacity of the TDOC prison system?

As of April 2017, Tennessee has 23,841 total beds in TDOC facilities, with an established operating capacity of 23,075. The department’s capacity has increased by more than

¹⁶ Staff compiled information from TACIR infrastructure inventory; also e-mail with Jim Hart, CTAS Jail Management Consultant, May 2, 2017.

3,200 since the Commission’s 2007 report, with several projects adding capacity to offset closings at Brushy Mountain Correctional Complex and Charles B. Bass Correctional Complex. See table 1 below. The TDOC system is currently at 95.2% of its established operating capacity, leaving more than 1,100 beds open for possible transfer of inmates from county jails that need to relieve overcrowding of their own or have particularly difficult inmates who need to be in a TDOC facility. See appendix D for the most recent TDOC Bed Space and Operating Capacities Report.

Table 1. Prison Construction and Expansion Projects since 2007.¹⁷

Institution Name	When Completed	Additional Capacity
Morgan County Correctional Complex	April 2009	1,414
Bledsoe County Correctional Complex	November 2012	1,230
Bledsoe County Correctional Complex (Females)	September 2013	294
Trousdale Turner Correctional Complex	January 2016	2,619
West Tennessee State Penitentiary (Females)	August 2016	993

Costs of additional prison space:

Although the state has added prison capacity, it has not added enough beds to reduce the number and percentage of felons housed in local jails. Recent prison projects have merely kept up with prisoner growth over time. Building additional prisons is expensive—in general, construction costs per bed reported by states ranged from \$25,000 (in 2006 dollars) for a minimum-security bed to more than \$100,000 for a maximum-security cell.¹⁸ Adjusting for inflation, a “typical” medium-security bed that cost \$65,000 in 2006 would cost more than \$80,000 today.¹⁹

Construction of the privately owned 2,552-bed Trousdale Turner Correctional Center was completed during the fourth quarter of 2015 at a total cost of approximately \$144 million (\$56,426/bed).²⁰ That amount, however, does not include the cost of work done to prepare the site before the contract to build the prison facility. CoreCivic (CCA), the

¹⁷ Tennessee Department of Correction. “Tennessee Bed Space and Operating Capacities Report.” April 2017.

¹⁸ Pew Charitable Trusts 2007.

¹⁹ US Bureau of Labor Statistics. https://www.bls.gov/data/inflation_calculator.htm.

²⁰ CoreCivic, Inc., news release, February 10, 2016.

private contractor, paid for construction. TDOC did not pay any money for the development of the facility, and only started paying at the point the facility was opened to inmates. In 2017, the Alabama Senate was considering issuing \$775 million in bonds to replace several aging prisons with three new ones, before that idea was rejected and scaled back to a possible \$350 million.²¹ At the Commission’s December meeting, the TDOC Chief Financial Officer noted that the last facility the state built cost more than \$230 million in state funds and took nearly 5 years to complete.²² A 2016 report by the Louisiana Legislative Fiscal Office for the Southern Legislative Conference compared construction costs for selected prisons, and found Tennessee’s per-bed cost of \$168,283 for that project the highest in the report’s 15-state region—well above the average of \$94,988.²³

How Will the Public Safety Act of 2016 Affect County Jails?

In 2011, Governor Bill Haslam created a public safety subcabinet, comprised of commissioners and directors from 11 state agencies,²⁴ which developed a multi-year public safety action plan. In 2014, the Governor convened a larger task force on sentencing and recidivism, and in 2015, the task force published a report making several recommendations regarding sentencing reform, data collection, and alternatives for probation and parole violations. The Public Safety Act of 2016 (Public Chapter 906, Acts of 2016—included as appendix E), was enacted to implement components of the task force recommendations.

To ensure offenders are properly evaluated, the Public Safety Act:

makes a validated risk and needs assessment, designed by the Department of Correction, part of an offender’s presentence report and an item the judge must consider when sentencing a defendant, and requires the department to conduct an

²¹ Cason 2017. “Prison-building Plan Changed; State Bond Capped at \$350 million.” Alabama Media Group, March 14.

²² Testimony by Wes Landers, TDOC Chief Financial Officer, at the TACIR December 6, 2016 meeting.

²³ Appeaning 2016.

²⁴ Commissioners of the departments of Safety and Homeland Security, Correction, Mental Health and Substance Abuse Services, Children’s Services, Health, and Military, along with the chairman of the Board of Parole, and the directors of the Governor’s Highway Safety Office (Department of Transportation), Office of Criminal Justice Programs (Department of Finance and Administration), Law Enforcement Training Academy (Department of Commerce and Insurance) and the Tennessee Bureau of Investigation. - See more at: <https://www.tn.gov/governor/news/23459#sthash.vGhN9FHd.dpuf>.

updated validated risk and needs assessment at least annually for each offender under the department's supervision.

According to the governor's report, the use of "swift, certain and proportionate responses to non-criminal rule-breaking is a key component of an effective strategy to change behavior." However, the report also notes that

Sending offenders back to prison for violating supervision conditions when the violation is not a new criminal offense—particularly for non-compliant behavior such as missing appointments—is an expensive and ineffective means of addressing offender misconduct. Moreover, spending time in jail or prison can increase the risk of future offending, rather than decrease it.

The Act gives probation and parole officers discretion to use sanctions such as drug testing and rehabilitative interventions instead of placing technical violators in jail for extended periods to await revocation hearings. The use of graduated sanctions can be included as a condition of probation by the court with jurisdiction over the case. Non-compliant behavior other than an arrest for a new crime can now result in the imposition of a proportionate sanction as a mechanism to return the probationer or parolee to compliance with supervision conditions. This should relieve county jails from one of their biggest burdens—housing violators while they await hearings. Although reimbursed for housing parole violators, counties are not reimbursed for housing felony probation violators. Changes to the felony thresholds for property theft will probably reduce sentences for those convicted of these crimes.

On the other hand, the additional sentencing reforms included in the Act will increase the number of state felons in county jails. A third and subsequent domestic violence conviction is now a Class E felony instead of a misdemeanor. A person guilty of such an offense will likely be sentenced to serve time locally, meaning that the state will now reimburse counties for holding these inmates, rather than them being the counties' responsibility while serving at least 90 days on misdemeanor charges. The Act also set the mandatory minimum period of incarceration to 85% for third and subsequent convictions for aggravated burglary, especially aggravated burglary, and Class A, B, and C felonies for the sale, manufacture, and distribution of controlled substances. Inmates serving these longer sentences, however, should be housed in state prisons rather than county jails.

Governor's Power to Declare Overcrowding Emergency

During the extraordinary legislative session of 1985, the General Assembly passed the Comprehensive Corrections Improvement Act of 1985 that gave the Governor the

power to declare an overcrowding emergency under certain conditions. If the TDOC commissioner reports that the in-house felon population has exceeded 95% of the relevant designated capacity for 30 consecutive days, the governor may declare that a state of overcrowding emergency exists.²⁵ The declaration authorizes the governor to choose to reduce sentences and place enough inmates on parole to reduce the population below 90% of capacity, or he can notify judges and sheriffs to delay commitment of felons to TDOC facilities until the 90% target is reached.²⁶ The system was at about 97% capacity when the Commission's 2007 report was published, and with a brief exception in January 2016 when the Trousdale Turner Correctional Center first opened it has remained roughly that ever since—95.2% as of April 31, 2017.

The Commission's 2007 report noted that, "The Governor has the ability to declare a state of overcrowding when the prison population exceeds 95% of capacity for thirty days," but not whether such an emergency was in effect at that time. According to the report, "The percent operating capacity for the sixteen state institutions as a whole was 97.8% in September 2006."

Since then there have been conflicting reports as to the status of an overcrowding declaration. In a 2008 opinion, the Office of the Attorney General wrote that, "It is the understanding of this Office that the governor has not invoked his authority to delay commitment to the department."²⁷ Likewise, in 2015 *The Tennessean* reported:

Our operating capacity is established lower than the total number of beds available to TDOC. Based on those numbers TDOC is within guidelines and no declaration of overcrowding is required," said Neysa Taylor, a spokesman for the department. "We consistently utilize efficient bed management strategies to ensure that we are optimizing our resources and taxpayer funding.

The Tennessee prison system is at a capacity level that could allow the governor to declare an overcrowding emergency, giving him and other state officials the power to reduce the number of inmates to a safer level, according to data obtained by The Tennessean.

²⁵ Tennessee Code Annotated, Section 41-1-503.

²⁶ Tennessee Code Annotated, Section 41-1-504.

²⁷ Opinion No. 08-103, Office of the Attorney General of the State of Tennessee, May 6, 2008.

Despite that data—and a shortage of correctional officers—the head of the Department of Correction and Gov. Bill Haslam say no overcrowding emergency exists.

As of June 30, the prison system was operating at 98.5 percent capacity, with 95.1 percent of total beds filled. State law says if the in-house prison capacity exceeds 95 percent for more than 30 days, the commissioner can ask the governor to declare an overcrowding emergency. . .

The law says if an emergency is declared, state and parole officials may determine which prisoners should be granted early probation until capacity reaches 90 percent.²⁸

However, others say that the state has been working under an ongoing overcrowding emergency declaration for more than 30 years. In 2015, then-TDOC Commissioner Schofield told reporters that TDOC was operating under a crowding emergency declaration issued in 1995:

“We are operating under that emergency guideline right now. It was declared in 1995 and it was never lifted. So what we have to do is we have to drop back down to 90 percent in terms of what’s operating capacity. At 98 percent we’re OK. We have available beds in the system to be able to operate. But 98 percent is to help us monitor and make good use of our beds in the system,”

Asked if that means the early-release provisions are in effect, Schofield replied, “Those options were in place when this administration took over and are still in place.”²⁹

According to *The Daily Times* in 2016,

“In 1985, Gov. Lamar Alexander declared a state of overcrowding emergency for Tennessee prisons and issued a directive implementing ‘safety valve’ dates for eligible offenders,” according to Alison Randgaard of the TDOC Communications Division. “The TDOC has operated under this declaration since that time.”³⁰

²⁸ Boucher and Wilemon 2015. “Despite Data, TN Not Declaring Prison Overcrowding Emergency.” *The Tennessean*, August 9.

²⁹ Locker 2015. “Tennessee Prison Head Defends New Rules, Addresses Overcrowding.” *Memphis Commercial Appeal*, Aug. 11.

³⁰ Davis 2016. “State to Move 99 Blount County Prisoners to Other Facilities.” *The Daily Times*, June 28.

Regardless of whether a declaration exists and is in effect, the state has chosen to maintain the prisons in an ongoing state of near-capacity:

“While this declaration is in effect we must note that it is ideal to keep the prisons at around 97-98 percent operating capacity in order to best utilize our resources through the use of effective, evidence-based bed management.”³¹

How does the state determine which inmates stay in county jail?

For many defendants convicted of lesser felonies, it isn't certain that they are going to serve any time at all in a state prison. The Tennessee Criminal Sentencing Reform Act of 1989 (Title 40, Chapter 35 of the Tennessee Code Annotated) put in statute a number of requirements for some inmates to fulfill their sentences in county jails. Under Section 104 of the chapter, it states that:

A defendant who is convicted of a felony [and] sentenced to a total sentence of at least one (1) year but not more than three (3) years, shall not be sentenced to serve the sentence in the department of correction, if the legislative body for the county from which the defendant is being sentenced has . . . contracted with the department . . . for the purpose of housing convicted felons with such sentences. If the sentencing court concludes that incarceration is the appropriate sentencing alternative, the defendant must be sentenced to the local jail or workhouse and not to the department.³²

The range of sentence length is extended to six years in Davidson and Shelby counties.

Section 303 contains conditions for probation eligibility. Defendants sentenced for less than 10 years may be eligible for probation, rather than incarceration, depending on the type of offense and whether the person has a previous record. This includes the option for a judge to order “split confinement,” where the person convicted serves up to a year in local jail before completing the remainder of the sentence on probation.³³ Individuals may also be sentenced to serve “periodic confinement” coupled with probation, in which they spend certain days or even hours in jail while otherwise out on probation.³⁴

³¹ Ibid.

³² Tennessee Code Annotated, Section 40-35-104(b).

³³ Tennessee Code Annotated, Section 40-35-306.

³⁴ Tennessee Code Annotated, Section 40-35-307.

Both types of sentenced felons are included in TDOC's count of "locally sentenced" inmates.

When a convicted felon's sentence does not meet these conditions, and the state does not have a contract with that county to house state prisoners, the inmate is supposed to be transferred to a state prison within 14 days of the Department of Correction receiving documentation from the court:

*If confinement in a local jail or workhouse is not mandated by § 40-35-104(b), § 40-35-306 or § 40-35-307, all convicted felons sentenced . . . to continuous confinement for a period of one (1) year or more shall be sentenced to the department of correction.*³⁵

*"The department shall take into its custody all convicted felons from any county that had not contracted with the state as authorized by subsection (b). The department shall not be required to take actual physical custody of any of the felons until fourteen (14) days after the department has received all certified sentencing documents from the clerk of the sentencing court.*³⁶

No person convicted of a Class B felony or above would be sentenced locally, as those crimes carry a minimum sentence of 8 years. A person with no prior convictions convicted of a Class C felony could be sentenced to less than three years, and serve that time in a local jail. Below are some examples of felony by class. See table 2 for a table of felony classes and sentence ranges.

- A. First and Second Degree Murder, Aggravated Rape, Aggravated Child Abuse, Especially Aggravated Robbery
- B. Rape, Aggravated Robbery, Aggravated Sexual Battery, Manufacture or Sale of Schedule I Substance
- C. Robbery, Theft of Property (\$10,000 - \$59,000), Intentional Aggravated Assault, Kidnapping
- D. Reckless Aggravated Assault, Reckless Homicide, Theft of Property (\$2,500-\$9,999)
- E. Sexual Battery, Theft of Property (\$1,000 - \$2,499), Auto Burglary

³⁵ Tennessee Code Annotated, Section 40-35-314.

³⁶ Tennessee Code Annotated, Section 41-8-106(g)(1).

Table 2. Felony Classification and Sentence Ranges³⁷

Felony Class Sentence Range	Sentence Range with Mitigating or Enhancement Factors				
	Mitigated No priors	Standard Range I 0-1 priors	Multiple Range II 2-4 priors	Persistent Range III 5+ priors	Career
A 15-60 years RED % RED years	13.5 years 20% 2.7 years	15-25 years 30% 8.8-14 years	25-40 years 35% 4.2-7 years	40-60 years 45% 9-13.5 years	60 years 60% 36 years
B 8-30 YEARS RED % RED years	7.2 years 20% 1.4 years	8-12 years 30% 2.4-3.6 years	12-20 years 35% 4.2-7 years	20-30 years 45% 9-13.5 years	30 years 60% 18 years
C 3-15 YEARS RED % RED years	2.7 years 20% 0.5 years	3-6 years 30% 0.9-1.8 years	6-10 years 35% 2.1-3.5 years	10-15 years 45% 4.5-6.8 years	15 years 60% 9 years
D 2-12 YEARS RED % RED years	1.8 years 20% 0.4 years	2-4 years 30% 0.6-1.2 years	4-8 years 35% 1.4-2.8 years	8-12 years 45% 3.6-5.4 years	12 years 60% 7.2 years
E 1-6 YEARS RED % RED years	0.9 years 20% 0.2 years	1-2 years 30% 0.3-0.6 years	2-4 years 35% 0.7-1.4 years	4-6 years 45% 1.8-2.7 years	6 years 60% 3.6 years

Note: First Degree Murder excluded from chart as sentencing is solely according to First Degree Murder statute. RED = Release Eligibility Date (the amount of the sentence served before eligible for parole)

³⁷ From the *Tennessee Criminal Justice Handbook, 2016 -2017 Edition*, Tennessee Administrative Office of the Courts.

Counties may contract with the state to house inmates

Each county may choose whether it contracts with the state to house state inmates or not. The greatest benefit to counties contracting with the state is an agreement for the state to cover medical expenses. The Tennessee Court of Appeals has recognized that it is the statutory duty of the county legislative body to furnish the services of a physician to treat illnesses of inmates.³⁸ Where the state has no statutory responsibility to cover basic health care for felons in county jails, it includes in its contracts with counties provisions to cover all expenses above \$1,000 per year for each inmate.³⁹ For non-contract counties, the state only pays for overnight emergency hospitalization of inmates in backup and for locally sentenced inmates.⁴⁰

Table 3. TDOC Contract Counties (contracts expiring June 30, 2017)

Carter	Hancock	Lake	Sevier
Cocke	Haywood	Lauderdale	Shelby Corr. Ctr.
Davidson (CCA)	Henderson	Lewis	Smith
Fayette	Henry	Lincoln	Sumner
Fentress	Hickman	McMinn	Trousdale
Greene	Johnson City	Overton	Washington
Hamblen	Johnson County	Scott	Wayne

On several occasions, and as recently as 2016, the Tennessee Attorney General has confirmed that, “No county may be required to house convicted felons who have been sentenced to more than one year of continuous confinement unless the county has contracted with Tennessee Department of Correction.”⁴¹

Management of Backup Population is Largely Informal

The Department of Correction is required to take custody of state inmates not sentenced to serve their time locally within 14 days of receiving the person’s sentencing

³⁸ *George v. Harlan*, 1998 WL 668637, *4 (Tenn. Ct. App. Sept. 30, 1998).

³⁹ Testimony by Wes Landers, TDOC Chief Financial Officer, at the TACIR December 6, 2016 meeting.

⁴⁰ Tennessee Code Annotated, Section 41-4-115(b): “The state shall be liable for expenses incurred from emergency hospitalization and medical treatment rendered to any state prisoner incarcerated in a county jail or workhouse; provided, that the prisoner is admitted to the hospital.”

⁴¹ Opinion No. 16-21, Office of the Attorney General of the State of Tennessee, June 6, 2016.

documents; inmates left in local jails beyond that are counted as “backup.” Because of the state’s prison overcrowding condition, TDOC is allowed to delay intake of felons for up to six months.⁴² After that, there does not appear to be a clear system to proactively manage the backup population and prioritize transfers from county jails to state facilities. The decision is largely driven locally by the sheriff and jail administrators, who must communicate with TDOC a desire to have inmates transferred from their jails. TDOC’s Local Jail Resource Coordinator said that the department prioritizes taking in violent inmates and those with longer sentences, but there is no defined set of parameters it has to follow.⁴³ There is, though, statutory authority for counties to get a court to order transfer of inmates with serious medical problems—even those sentenced to less than three years who are required to serve time locally—although it is typical that TDOC cooperates with such requests without court order when contacted by a local jail.⁴⁴ More proactive management of backup by TDOC could alleviate local jail overcrowding. As of March 2017, there are 1,548 backup felons in 52 jails at 100% capacity or above.

One of the recommendations of the Governor’s Task Force on Sentencing and Recidivism was to, “Ensure that validated risk and needs assessments are uniformly used as a part of decision-making in felony cases, including pre-trial decisions, sentencing decisions, decisions on programming and treatment options, and post-prison supervision conditions for those who have been incarcerated.”⁴⁵ Integrating this assessment into a policy for backup felon management could be of benefit to the state and local governments. If there were a way to identify certain convicts upon sentencing—whether a part of the validated risk and needs assessment or through classification based on category of offense and/or length of sentence—it could help reduce the burden on local jails to determine for themselves which prisoners they should try to have transferred. It would also fulfill TDOC’s strategy to sort offenders by risk and need through implementation of a standard assessment across the criminal justice system in Tennessee.⁴⁶

⁴² Tennessee Code Annotated, Section 41-1-506.

⁴³ Testimony by Bob McKee, TDOC Local Jail Resource Coordinator, at the TACIR December 6, 2016 meeting.

⁴⁴ Tennessee Code Annotated, Section 40-35-114.

⁴⁵ State of Tennessee 2015.

⁴⁶ Tennessee Department of Correction 2016.

Court Orders to Reduce Jail Overcrowding: Roberts cases

In 1989, Hamilton, Davidson, Knox, and Madison counties sued the state for shifting its overcrowding burden to their facilities.⁴⁷ As a result, the Middle Tennessee District of the US District Court placed limits on the number of inmates that could be held in those facilities. In *Roberts*, the court declared that

Priority for removal of individual TDOC-sentenced inmates from county jails to a state correctional facility shall, to the extent practicable, be based upon the inmates' length of stay in local jail facilities after sentencing, consistent with inmate health, safety and security considerations as determined by local officials.

It was noted in the 2003 Comptroller's report and the 2007 TACIR report that, because of the suit, the Department of Correction gives priority to inmates in those facilities when deciding which inmates to transfer to state facilities. The terms of the order, including the population restrictions, were to expire after three years, so long as, "the District Court for the Middle District of Tennessee and the originating court are satisfied that the unconstitutional conditions which were linked to overcrowding have been corrected." In 2001, the Metropolitan Government of Nashville-Davidson County filed a motion for the court to remove it from the population restrictions; the motion was granted in March 2002.⁴⁸ As such, it appears that TDOC is not bound by the court to grant priority to Davidson County to take prisoners there into custody. However, the injunction remains in effect for Hamilton, Knox, and Madison counties until those counties petition the court to show that they have met the conditions of the *Roberts* ruling.

How are state prisoners assigned jobs like cooking or laundry service?

Locally sentenced inmates "shall be ordered as part of the sentence" to participate in the jail's work programs.⁴⁹ Those sentenced to TDOC custody but waiting in "backup" may participate in work programs as well.⁵⁰ What jobs inmates can perform depends on their type of offense and on what work is available in each jail. Many county governments like to use inmate labor as a low-cost solution for a variety of jobs in their communities. Likewise, many jail administrators rely upon inmates to work jobs within

⁴⁷ *Roberts v. Tennessee Department of Correction*, 887 F.2d 1281 (6th Cir. 1989).

⁴⁸ *Armstrong v. Metro. Gov't*, 196 F. Supp. 2d 673 (M.D. Tenn. 2002).

⁴⁹ Tennessee Code Annotated, Section 40-35-314.

⁵⁰ Tennessee Code Annotated, Section 41-2-146.

the jails, such as laundry and in the kitchen. The Department of Correction says it communicates regularly with local jail administrators and works cooperatively with them to decide which inmates remain in the jails. Administrators see state inmates as being more reliable workers, since they are serving longer sentences than those convicted of misdemeanors, so they want to work with the state to be able to keep preferred inmates. If TDOC chooses to remove state inmates from a jail without discussing it with the Sheriff, it could be difficult for the county to make up for the loss.⁵¹

Statutory limits on the state's use of private prison facilities

When Governor Lamar Alexander called the 1985 special session of the general assembly to address the problems of the prison system, he requested the legislature consider the alternative of privatizing the prisons. In September 1985, Nashville-based Corrections Corporation of American (CCA) offered to lease Tennessee's prison system, promising to pay the State \$50 million immediately and another \$50 million over the next twenty years. Additionally, the company indicated that it would spend \$150 million to build two maximum-security institutions and renovate other facilities. In return, CCA sought a ninety-nine year lease of the facilities of an annual amount, not to exceed \$175 million dollars the first year, to operate the system.⁵² Following extensive debate over the legality of the state privatizing prisons, the Attorney General concluded that legislative action probably was necessary to permit a private firm to operate one or more correctional facilities.⁵³

Private Prison Contracting Act of 1986

In the 1986 regular session of the General Assembly, legislation was introduced, debated, and revised, ultimately ending with the passage of Public Chapter 932—the Private Prison Contracting Act of 1986.⁵⁴ The Act authorized the state to contract directly for one private facility.⁵⁵

⁵¹ For an example, see Davis 2016.

⁵² Cody and Bennett 1987.

⁵³ Opinion No. 85-286, Office of the Attorney General of the State of Tennessee, November 27, 1985.

⁵⁴ Senate Bill 1684, by Longley and others; House Bill 1334, by Tanner and others.

⁵⁵ Tennessee Code Annotated, Section 41-24-101 et seq.

41-24-103. Contracts for correctional services. A contract for correctional services as defined in § 41-24-102(2)(F) is authorized only for one (1) medium security or minimum security facility opened after July 1, 1991.

Although the Private Prison Contracting Act authorized the state to make just one direct contract, other laws permit the state to contract with counties that have contracted with private companies. Under the general provisions of Title 5, Tennessee Code Annotated, county governments may exercise certain powers granted to municipalities elsewhere in statute.⁵⁶ Among those are the power to “contract and be contracted with” and “Provide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences and services.”⁵⁷ The law then authorizes the Department of Correction to contract with local governments to house inmates as necessary:

In addition to any other duties provided by law, when it appears to the commissioner, in the commissioner’s sole discretion, that the available facilities and institutions of the department that are designed for the custody of inmates are overcrowded, the commissioner shall endeavor to alleviate such overcrowded conditions by contracting with local governmental entities, when possible, for the care, custody, and control in local jails, workhouses, penal farms or other such facilities, of inmates who have been committed to the department, or by any other means permitted by law.⁵⁸

According to the County Technical Assistance Service, authority for counties to contract with private companies to manage public works projects—including jails and workhouses—existed at one time, but was repealed in 1988. Lacking specific statutory to do so, counties cannot privatize their **jails**, but may however construct other additional facilities and contract with private companies to operate them, and contract with the state to provide those beds to house state inmates.⁵⁹

A bill proposed in 2017 would have required these contracts between the state and counties to meet the requirements of the Private Prison Contracting Act in the same way as the state’s one direct contract with CoreCivic (formerly Corrections Corporation

⁵⁶ Tennessee Code Annotated, Section 5-1-118.

⁵⁷ Tennessee Code Annotated, Section 6-2-201.

⁵⁸ Tennessee Code Annotated, Section 4-3-603(b).

⁵⁹ E-mail from Stephen Austin, CTAS Consultant, February 3, 2017.

of America, CCA) to operate South Central Correctional Facility.⁶⁰ The Fiscal Review Committee noted that this would “codify current practice of the Department.”⁶¹ The bill failed to advance out of committees in the 2017 session.

Table 4. Correctional Facilities Currently Managed by Private Contractors

Facility Name	Operating Capacity	Year Opened
South Central Correctional Facility	1,642	1992
Hardeman County Correctional Facility	1,976	1996
Whiteville Correctional Facility	1,505	2002
Trousdale Turner Correctional Center	2,619	2016
Counties with Privately Operated Facilities		
Hamilton County Silverdale Detention Facility	1,084	1984
Metro Davidson County Detention Facility	1,368	1992

Minimum Standards and Inspecting Tennessee’s Jails

The Tennessee Corrections Institute (“TCI”) provides oversight, training, and technical assistance to local jails. Originally established as a standalone agency in 1974, TCI has been administratively attached to the Department of Commerce and Insurance since 2012. The TCI is under the direction of a Board of Control, which consists of the governor’s designee, the commissioner of correction, two sheriffs, a county mayor, a chief of police or a county commissioner. According to Tennessee Code Annotated, Section 41-4-140, the TCI has the power and duty to

- establish local jail minimum standards, which must approximate the standards established by the Inspector of Jails of the Federal Bureau of Prisons and by the American Correctional Association’s Manual of Correctional Standards;
- establish guidelines for the security of local jails;
- annually inspect all local jails based on those minimum standards; and
- establish and enforce procedures to ensure compliance with those minimum jail standards.

⁶⁰ Senate Bill 649 by Niceley, House Bill 546 by Rogers.

⁶¹ <http://www.capitol.tn.gov/Bills/110/Fiscal/HB0546.pdf>.

Local Jail Minimum Standards

The TCI establishes the statewide local jail minimum standards. See appendix F for a copy. These minimum standards consist of prescriptive statements that establish requirements or levels of performance for specific jail functions, activities, or conditions. They help translate the numerous legal requirements that jails are already legally responsible for into comprehensible guidelines that jails can incorporate into policy and operational practice. The standards represent what the state considers acceptable practice and the minimum conditions of confinement. According to the National Institute of Corrections, compliance with minimum standards ensures that

*jails operate in an orderly manner that promotes the safety of inmates, staff, visitors, and the surrounding community. They experience fewer inmate-inmate assaults, suicides, and suicide attempts and have fewer problems with contraband. Because these jails protect inmates' basic human rights, they ensure that inmate punishment consists only of a separation from society, and not ill-treatment or dangerous and unhealthy living conditions during custody.*⁶²

The National Institute of Corrections explains that statewide minimum jail standards are necessary for the following reasons:

- jails are high-risk environments where the likelihood of a crisis occurring is higher than in any other government function;
- a statewide jail standards and inspection program can stay informed about evolving court rulings and adjust the standards as needed to meet new legal requirements, while local governments may not have the resources to do so;
- jails significantly restrict individual liberties and must strike a delicate balance between affording basic rights to inmates and the obligation to operate a safe and secure facility;
- the cost and impact of litigation can be reduced through independent validation of compliance with accepted standards;
- standards provide consistency and fairness to inmates, local governments, and the general public; and
- enforcement of the minimum standards compels public officials to commit needed resources to jails, which are historically a low budgetary priority.

⁶² Martin, Mark 2007. "Jail Standards and Inspection Programs." U.S. Department of Justice National Institute of Corrections.

TCI Annual Jail Inspection

A key function of TCI is its annual inspection of all local jails in Tennessee to determine if statewide local jail minimum standards are being met. Tennessee law provides that if not all minimum standards are met, then the jail will not be certified with the exception of the following instances where a jail may receive a certificate of compliance despite a failure to comply with the minimum standards in their entirety:

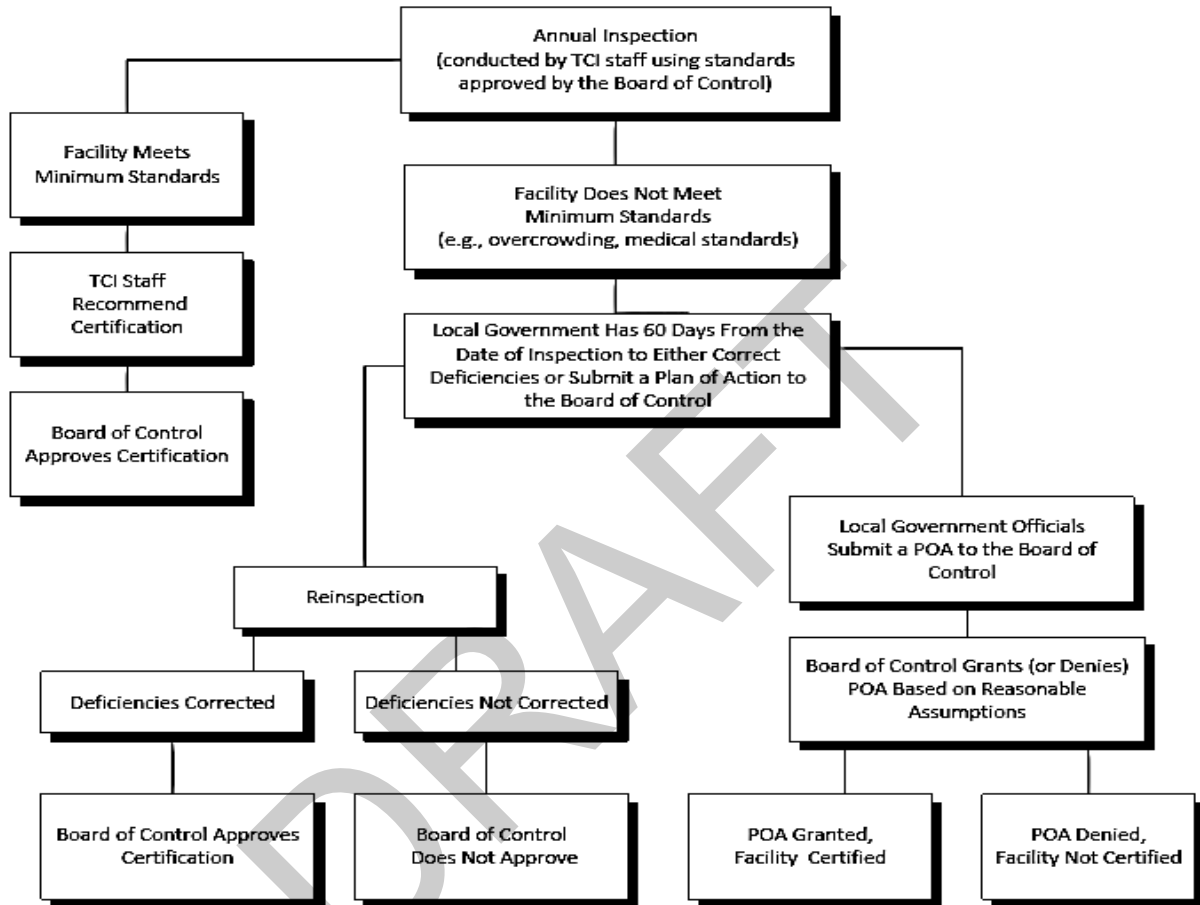
- if the sole cause of noncompliance is based on overcrowding because of state prisoners sentenced to the Department of Corrections or pursuant to a federal court order when such prisoners are being held by a county pending such commitment; and
- if the local government has submitted a plan within 60 days of the initial annual inspection that is reasonably expected to eliminate fixed ratio deficiencies and cause the facility to remain certified.

The TCI certification process begins with the annual inspection. If the TCI determines that the minimum standards are being met, then TCI staff will recommend certification, which the Board of Control will then approve. If staff determines that the jail does not meet minimum standards, the local government has 60 days from the date of the inspection to either correct the deficiencies or submit a Plan of Action (“POA”) to the Board of Control. If the local government does not submit a POA within 60 days, the TCI staff will conduct a re-inspection and recommend to the Board of Control certification if the deficiencies are corrected or decertification if not corrected.

If the local government submits a POA to the Board of Control, the Board can either grant or deny the POA based on reasonable assumptions. If the POA is granted, the jail will receive certification. If the POA is denied, the facility will not be certified. As of March 2017, there were 10 counties in Tennessee with noncertified facilities, housing 1,761 individuals—including 402 state felons. See figure 3 for a flowchart of the TCI certification process and map 3 for jail certification status by county.

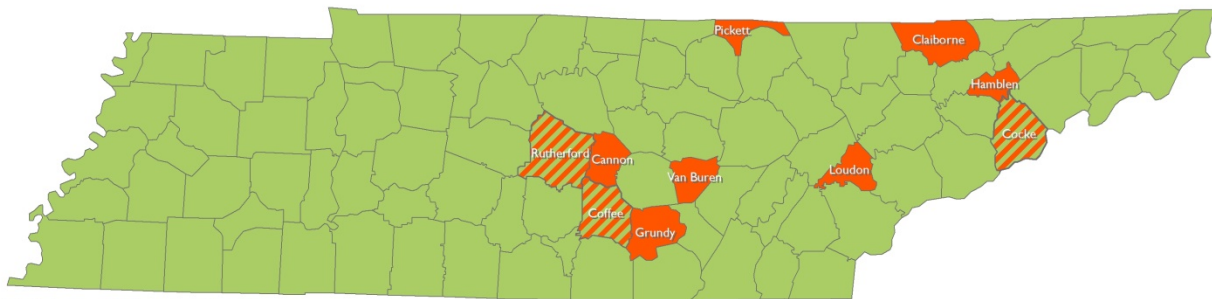
Figure 3.

TCI Certification Process






Source: Tennessee Comptroller of the Treasury, Performance Audit of the Tennessee Corrections Institute October 2013.

Map 3. Jail Certification Status by County, March 31, 2017



T.C.I. Certification by County

Certification as of March 31, 2017

-  No Certified Facilities (7)
-  County has Multiple Facilities; One Not Certified (3)
-  All County Facilities Certified (85)

TCI has no power to enforce compliance with local jail minimum standards.

The TCI has no authority to shut down, penalize, or otherwise enforce compliance with the local jail minimum standards. Local jails that fail to meet minimum standards and are not certified are allowed to continue to house state prisoners and receive the same level of funding as jails that are certified. TCI officials say that their most effective avenue for action is often through the fire marshal seeking a court order when safety is concerned. Three local jails—in Grundy, Pickett, and Van Buren counties, have been noncertified for the last decade, but it should be noted that Grundy County has built a new jail that has recently gone into service and this could bring them into compliance.

Tennessee Code Annotated, Section 41-4-140(a) and 41-8-107(c), both appear to provide TCI some power to enforce compliance with local jail minimum standards. However, the Tennessee Attorney General has concluded that the two statutes do not provide TCI enforcement power. This conclusion has been followed by the TCI and the state.

Tennessee Code Annotated, Section 41-4-140(a), states that the TCI has the “power and duty to . . . establish and enforce procedures to ensure compliance with the standards.” However, Tennessee Attorney General Opinions from 1980⁶³ and 1983⁶⁴ both determined otherwise, opining that the statute’s legislative history demonstrates that the “legislature intended that the TCI have the authority to recommend, but not to compel compliance by correctional facilities with the minimum standards.”

⁶³ Opinion No. 80-392, Office of the Attorney General of the State of Tennessee, August 5, 1980.

⁶⁴ Opinion No. 82-434, Office of the Attorney General of the State of Tennessee, October 5, 1983.

Furthermore, prior to 1988, Tennessee statute placed restrictions on funding to noncertified jails. Tennessee Code Annotated, Section 41-8-107(c), required noncertified facilities to use 75% of the state reimbursement to improve correctional facilities. However, according to a 2005 Attorney General Opinion, Tennessee no longer enforces this section because it was implicitly repealed by the 1988 legislative restructuring of the county reimbursement program from a flat rate subsidy system to a system of reimbursement of reasonable allowable costs as determined by the General Appropriations Act.⁶⁵

Failure to Meet Local Jail Minimum Standards

While a county jail incurs no direct consequences—such as reduced funding or forced closure—from operating a non-certified jail, there are indirect consequences, including the potential increase in legal liability from lawsuits, negative publicity, and insurance costs. Verified compliance with TCI minimum standards helps insure that constitutional and statutory legal requirements are being met.

Recent Efforts to Increase Oversight and Collaboration

Though it is the duty of TCI to establish minimum jail standards and inspect each facility, there have been recent efforts to create additional means of oversight and opportunity for more comprehensive coordination of the state's corrections system. Some of these efforts are a continuation of Governor Haslam's initiatives since the 2011 establishment of the Public Safety Subcabinet through the passage of the Public Safety Act of 2016.

Additional Inspection and Oversight

Two different pieces of legislation were introduced in the 110th General Assembly that would have added more oversight to the state's jails and correctional institutions. One, Senate Bill 620 by Harris, House Bill 761 by Hardaway, would amend existing language in Tennessee Code Annotated, Section 41-4-116, that permits county legislative bodies to appoint jail inspectors, and instead would require each county to do so. These inspectors would be required to visit their county jail monthly and report to the county legislative body. While current law permits counties to appoint these independent inspectors, none of them seems to be doing so.⁶⁶ The bill proposed amending TCI

⁶⁵ Opinion No. 05-177, Office of The Attorney General of the State of Tennessee, filed December 13, 2005.

⁶⁶ Email correspondence with Jim Hart, CTAS Jail Management Consultant, March 31, 2017.

standards⁶⁷ to add that, in addition to the existing requirement that TCI report failed inspections to, “the commissioner of correction, sheriff, judge, [and] mayor or head of the political subdivision, as appropriate,” written inspection reports would also be presented annually to, “the judiciary committee of the senate, the state and local government committee of the senate, the criminal justice committee of the house of representatives, and the local government committee of the house of representatives.” Reports of failed inspections would have been required to be sent to the “state senator, and state representative, as appropriate, for the district in which the jail or penal institution is located.” Representative Hardaway expressed concern that TCI inspectors do not have enough authority under existing law. He said that monthly visits and reporting by local inspectors—particularly in Shelby County, which he represents part of—would be more effective at ensuring compliance with standards than one annual inspection by TCI. However, these bills did not advance out of committees in the 2017 session.

Senate Bill 1145 by Hensley, House Bill 1188 by M. Hill, Matheny, and Hardaway, would restore a joint legislative oversight committee on corrections (as well as committees to oversee TennCare and children’s services). The Select Oversight Committee on Corrections was originally created during the 1985 Special Session on Corrections, but was allowed to expire after the 2011 legislative session. A separate bill to reform the committee—Senate Bill 1299 by Yarbrow, House Bill 652 by Miller—was also introduced in 2017. Support for the bills centered on safety concerns at state prisons, both for prison staff and inmates. Senator Yarbrow argued that a committee with a full-time staff is needed to investigate concerns appropriately. These bills did not advance out of committees in the 2017 session.

Opportunities for Collaboration and Study

Governor Haslam’s 2015 task force report recommended that the state, “Establish a criminal justice research council to provide non-partisan, professional statewide research and information development.” This is also a component of the Governor’s Public Safety Subcabinet 2016-2018 Public Safety Action Plan:

The council would serve as an informational resource, providing policy-makers in the legislative and executive branches with objective research and analysis on current crime trends, resource allocations, corrections capacity and usage, corrections outcomes, community program outcomes, and cost-benefit

⁶⁷ Tennessee Code Annotated, Section 41-4-140.

calculations; and research and analysis on proposed policies and budget allocations, including budget and population impact statements; and reviews of current research and practices drawn from national sources.

Senate Bill 708 by Yager, House Bill 911 by Wirgau—proposed as the "Comprehensive Local Correctional Enhancement Task Force Act"—would create a panel of more than 20 people “to study best practices and new approaches to the management and coordination of local correctional facilities.” The stated goals of the task force are to

- enhance overall operations of the criminal justice system at the local government level,
- ensure that taxpayer money invested in local correctional facilities is used wisely and efficiently,
- ensure that the rights of individuals involved in local correctional facilities are protected, and
- ensure that such individuals are directed or diverted into appropriate programs that will best protect public safety, reduce recidivism, and provide the best likelihood for those individuals to become productive citizens.

The task force is also intended to address “challenges raised by individuals dealing with mental illness or substance abuse problems who may become involved with local law enforcement or correctional facilities.” This bill was passed by the Senate but taken off notice in the House for the 2017 session.

Existing Stakeholder Partnerships

TCI already has a voluntary partnership program—the County Corrections Partnership Initiative (CCP)—designed to address local jail issues, and particularly to create a path to certification for jails that fail to meet minimum standards.⁶⁸ The CCP draws on technical assistance from the University of Tennessee’s County Technical Assistance Service (CTAS) and Municipal Technical Assistance Service (MTAS), the Tennessee Sheriff’s Association, Tennessee County Services Association, Association of County Mayors, and the Tennessee Association of Chiefs of Police.

Any future legislation or consideration for additional oversight and collaboration should take into account existing structures and build upon them where appropriate.

⁶⁸ See <https://www.tn.gov/commerce/topic/tci-county-corrections-partnership-initiative>

Does the state provide reasonable reimbursements to the counties for housing state prisoners?

Attempting to answer, “whether the current amount the state reimburses a county for housing a state prisoner is reasonable” depends greatly on the particular county and specific prisoners. In addition, the Commission was asked to study broadly “the effect of state prisoners on county jails,” which encompasses much more than just the amount counties are compensated. Therefore, the more accurate question becomes, “How can the state minimize the effect housing state prisoners has on county jails?” As well as, “How should the state target spending effectively to achieve the best outcomes for prisoners and communities?”

Incentivizing Counties to House State Prisoners: the County Correctional Incentives Act of 1981

The County Correctional Incentives Act of 1981 created financial incentives for counties to house non-dangerous felony offenders locally, mutually benefitting state and county governments by helping alleviate overcrowding in state correctional facilities and reducing high operation costs, and assisting counties in upgrading local correctional facilities and programs.⁶⁹

Under court orders to reduce the prison population, the General Assembly in 1981 enacted the County Correctional Incentives Act as a way to address the overcrowding and poor conditions in Tennessee’s prisons, providing incentives for counties to house state prisoners in jails. At the time, the state paid counties \$6 per prisoner day if the jail was not certified or \$8 per day for those that were certified. This money was considered a “subsidy”, and was in addition to jailers’ fees that the counties could charge the state for housing inmates.

1982 Tennessee Code Annotated, Section 41-8-106

Those counties selected by the commissioner to participate in this program shall be compensated in accordance with the following formula:

(1) The commissioner shall determine “felony population base” of each participating county as of September 1, 1981.

⁶⁹ Tennessee Code Annotated, Section 41-8-102.

(2) The commissioner shall pay to the county the sum of eight dollars (\$ 8.00) where the facility is certified or provisionally certified, or six dollars (\$ 6.00) where the facility is not certified, for those "prisoner/days" in excess of the facility's "felony population base." This subsidy shall be in addition to any moneys received by the county pursuant to §§ 8-26-106, 40-23-104 and 41-2-139.

In 1989, the State and Local Correction Reform Act changed the nature of this compensation, removing the two-tier subsidy amounts tied to certification and replacing them with a reimbursement amount for "reasonable allowable costs" as determined by the rules of the Department of Correction.⁷⁰ Each year, the general appropriations act (state budget) would set a maximum reimbursement rate. The law also authorized counties to contract with the state to house convicted felons, and ensured that counties could not be forced to house state prisoners sentenced longer than a year unless they had contracted to do so. This change went hand-in-hand with the provisions of the Tennessee Criminal Sentencing Reform Act of 1989 that required certain sentences to be served locally in contract counties.

What is the current reimbursement amount?

At the time of the Commission's 2007 report, the reimbursement rate was capped at \$35 per day. It was raised to \$37 per day in 2012, where it has remained.⁷¹ Counties are reimbursed only for convicted felons after sentencing. They are not reimbursed for pre-trial defendants, convicted felons awaiting sentencing or a hearing for a technical probation violation. There are three exceptions to the maximum rate: Johnson City gets \$38.75/day for housing female felons (currently 66 with a capacity for 88), and both Shelby and Davidson counties are reimbursed the full amount for their actual costs, with Shelby capped at \$73 per day. The budget for 2017 raises the base amount to \$39 per day:

Item 15. From the appropriation made to State Prosecutions in Section 1, Title III7, Item 7, payments to reimburse counties for housing convicted felons shall not exceed \$39.00 per inmate per day.

⁷⁰ Public Chapter 462, Acts of 1989.

⁷¹ Public Chapter 1029, Acts of 2012.

It should be noted that each appropriations bill cautions local governments about making long-term debt obligations based on state reimbursement payments; that the amounts may be reduced or even eliminated in the future:

Item 16. The General Assembly recognizes that demands on available state revenue are such that it may be necessary to establish priorities among state services and programs and to revise the methods of allocating state resources. Therefore, it is the legislative intent that local governments should consider in undertaking long-term obligations based on state payments, specifically state per diem payments for housing state inmates in local jails, that existing payments may be reduced or eliminated in the future and such not be regarded as the principal source of funding for debt repayment obligations.

In fact, the rate was lowered from \$35 to \$32 in 2003 and 2004 before returning to \$35 in 2005.⁷² This language is somewhat in contrast to statute, which specifically includes “debt service” among reimbursable allowable costs. The Department of Correction can enter into an agreement with a county to reimburse the county for the cost of constructing correctional facilities that will be contracted to the state to house state felons. The statute assures debt-holders that the state will not amend this provision.⁷³

Because of the higher payment amounts made to Shelby and Davidson counties, the state pays an overall average of \$49.36 per day to house state prisoners in county jails. On an average day, there are more than 700 inmates in the Davidson County facility (managed by CoreCivic) the state contracts with, at a cost of \$53.62/day. There are also approximately 1,500 inmates on average at the Shelby County Correctional Center at a cost of \$67.46/day.⁷⁴

What are the actual costs of housing prisoners in jail?

While the reimbursement rate for housing state prisoners in county jails has been set at \$37 per day, and the average fiscal year 2015-16 cost to the state for reimbursing counties is \$49.36 per day, there is not enough reliable data available to measure the true costs of housing prisoners in most jails across the state. TDOC representatives have stated that the reimbursement likely does not cover all costs for most counties. At the Commission’s December 2016 meeting, TDOC’s Chief Financial Officer stated that

⁷² Public Chapter 842, Acts of 2002; Public Chapter 503, Acts of 2003; Public Chapter 961, Acts of 2004; Public Chapter 503, Acts of 2005.

⁷³ Tennessee Code Annotated, Section 41-8-106(c)-(d).

⁷⁴ TDOC Jail Summary Reports and cost data for FY 2016.

“there is probably a gap” between what the state pays and counties’ actual costs, but that costs vary among counties, and the department does not know each county’s expenses. He estimated that costs are generally \$43 to \$45 per day.⁷⁵ The average actual cost for all TDOC inmates is \$76.82 per day, but varies greatly among the 14 facilities, including those managed by private contractors. See table 5.

Table 5. Average Daily Cost by TDOC Facility

Privately Managed Facilities:	
South Central Correctional Facility	\$50.32
Hardeman County Correctional Center	\$56.97
Trousdale Turner Correctional Complex	\$60.82
Whiteville Correctional Facility:	\$61.37
Department of Correction General Purpose Facilities:	
Northwest Correctional Complex	\$63.88
Turney Center Industrial Complex	\$69.85
Northeast Correctional Complex	\$72.28
Bledsoe County Correctional Complex	\$87.46
Tennessee Prison for Women	\$88.77
Department of Correction High-Security Facilities:	
Morgan County Correctional Complex	\$81.11
West Tennessee State Penitentiary	\$89.08
Riverbend Maximum Security Institution	\$106.29
Department of Correction Special Purpose Facilities:	
Mark Luttrell Transition Center	\$102.22
DeBerry Special Needs Facility	\$167.13

While health care and medical expenses for each county jail would be difficult to compile, the total fiscal year 2015-16 health care budget for the Department of Correction is \$133,390,500. On a per-inmate-day basis, the department’s contract for physical health care is roughly \$11 and behavioral health is about another \$3.⁷⁶ When counties are required to house state inmates in their jails for extended periods, it is

⁷⁵ Testimony by Wes Landers, TDOC Chief Financial Officer, at TACIR December 6, 2016 meeting.

⁷⁶ E-mail correspondence with Wes Landers, February 15, 2017.

possible that they spend similar amounts, but detailed county-by-county medical expenditures on state inmates would require further study.

Actual Cost Data is not Widely Reported to the State

Before 2011, counties had been required to submit detailed cost sheets to the DOC for reimbursement. However, no matter counties' documented costs, the reimbursement rate was capped by the legislature. The Commission's 2007 report noted that counties wanted to discontinue the reporting if their costs were continuously greater than the maximum amount they could be reimbursed. The law was amended in 2011 so that, if a county documents its costs and receives the maximum rate for three consecutive years, it could stop filing cost sheets.⁷⁷ Currently, just five counties are required to submit cost sheets: Davidson and Shelby, who are exempt from the \$37 cap; Coffee, Rhea, and White. Coffee County reported average daily costs of \$42.80 in fiscal year 2015-16, and White County reported \$48.16. Both receive the \$37 maximum allowed. Rhea reports the lowest costs of any county in the state at \$27.24 per day. Some counties have contracted for a flat rate less than the \$37 maximum: Cocke County receives \$30.62 and Hancock County \$33.00. Since the state would benefit from better reporting of county costs, it could provide funds or incentives to help counties with the cost of reporting. As was noted in the 2007 report, counties don't want to do it if they aren't going to benefit.

Reasonable Allowable Costs—What is covered by reimbursement?

The County Correctional Incentives Act says that:

Counties shall be reimbursed for housing convicted felons pursuant to the general appropriations act and according to rules and regulations for determining reasonable allowable costs as promulgated by the department, in consultation with the comptroller of the treasury.

The rules dictate to counties what may and may not be included in their claims for reimbursement, for the most part allowing all, "direct costs for inmate care and treatment and facility maintenance and operation."⁷⁸ Counties are allowed to include direct personnel cost—including personnel benefits, insurance programs, and retirement programs—as well as part-time or contract services (e.g., janitorial, laundry, legal, maintenance and repair, medical and dental, etc.) and consultants. Capital costs

⁷⁷ Public Chapter 229, Acts of 2011.

⁷⁸ Rules of the Tennessee Department of Correction, Rule No. 0420-2-3-.06.

and debt service for facility improvements are also allowed. Counties may also include a portion of “indirect costs”—accounting functions, data processing, purchasing and similar services furnished by other county departments to support the correctional facility.

There are no longer statutory or regulatory restrictions on what counties do with reimbursement money.

Because the State and Local Correction Reform Act removed the two-tier subsidy amounts tied to certification, replacing them with a reimbursement amount for “reasonable allowable costs,” the requirement elsewhere in statute that noncertified counties had to dedicate 75% of any reimbursement money they received towards facility improvements was nullified. While that language has been implicitly repealed, the law does specify that reimbursement money “shall be dedicated exclusively for use in the county’s correctional programs. The entire subsidy received shall be appropriated for the benefit of the correctional program.”⁷⁹ Staff analysis of county financial audit information shows that no county receives more reimbursement money than it spends on jails and law enforcement, however many counties offset a large part of their budget with these funds.

Counties that do not contract with the state

Counties that choose not to contract with the state to house state prisoners voluntarily are reimbursed in mostly the same way as those with contracts. Under the County Correctional Incentives Act of 1981, “The commissioner is authorized to compensate any county that has not contracted with the state as authorized by subsection (b) for that county’s reasonable, allowable cost of housing felons. The rate of compensation to these counties shall be determined by and is subject to the level of funding authorized in the appropriations bill.”⁸⁰

There are, however, two major differences for counties that do not contract with the state compared to those that do. As noted above, for state prisoners in non-contract counties the only medical or health care expense the state pays for is overnight emergency hospitalization. This places a burden on the counties to treat inmates left in their custody for extended lengths of time—which is one reason why TDOC is supposed to take custody of convicted felons within “fourteen (14) days after the

⁷⁹ “Subsidy” means that amount of money paid by the state to a county in accordance with Tennessee Code Annotated, Section 41-8-106.

⁸⁰ Tennessee Code Annotated, Section 41-8-106(g).

department has received all certified sentencing documents from the clerk of the sentencing court.” However, because of the declared overcrowding emergency, delayed commitment up to six months is allowed. Anecdotally, there seem to be many inmates left in backup longer, but there is no statewide data to track how long felons are being left in backup in non-contract counties (or any counties).

Reducing the Burden: Balancing Needs, Funding Better Outcomes, and Improving Results

If the state continues to rely on county jails to house large numbers of state prisoners, it should provide funding assistance to help counties with implementing programs proven to reduce recidivism and improve outcomes for prisoners and communities, rather than only increasing per diem reimbursements to cover basic costs. In some limited cases, this may require assisting counties in upgrading or expanding facilities to allow necessary space for implementing proven programs. Going forward, policies should shift some of the burden back to the state to effectively manage and administer the system of state/local incarceration.

Using assessment and better data will let TDOC assign prisoners to facilities and programs needed, and more substantive enforcement of standards will help move state prisoners from noncertified facilities when especially deficient and with no foreseeable correction. All parties—state, counties, private facilities, and service vendors—should be able to show evidence of improved outcomes. The goal for the state should be to ensure “return on investment” for money spent on the corrections system as a whole, seeking lower recidivism, higher educational attainment, and stable employment for those returning to the community.

Earmarking additional reimbursement for programs

With the County Correctional Incentives Act of 1981 as a model, the state should focus future investments above the basic reimbursement rate in a way that will help counties implement programs proven to reduce recidivism and improve outcomes. In appropriate circumstances, this may require assisting counties in upgrading or expanding facilities to allow necessary space for implementing proven programs.

To put it another way, it is beneficial for all parties to reduce the burden of state prisoners in county jails by finding ways to reduce the overall number from the beginning, and to reduce the number of convicted felons going back to jail in the future.

The jail is one of a community's largest investments, and its funding is drawn from the same sources that support public hospitals, schools, social services, roads, and many other essential functions of local government. It is exactly for this reason that counties and cities are well positioned to reinvest jail savings into programs and services that will help keep many people, especially those who are poor or have serious mental illness, from entering or staying in jail in the first place.⁸¹

According to the US Bureau of Justice Statistics definition, “jails” are “locally operated short-term facilities that hold inmates awaiting trial or sentencing or both, and inmates sentenced to a term of less than one year, typically misdemeanants.”⁸² Because they are not usually intended to be long-term rehabilitation facilities, county jails typically lack physical space and operational capability to offer services that state prisons do.

In a 2010 study on recidivism rates, TDOC noted that more than 60% of felons released in Tennessee between 2001 and 2007 were released from local jails, not prisons. The study also revealed that recidivism rates for inmates released from jails were much higher than from TDOC facilities.⁸³ While this is the most recent breakdown of recidivism available by type of release, table 6 below shows that the majority of felons released in a given year is still coming from jails rather than prisons.⁸⁴ Statewide recidivism for 2016 was 47.1%, down from 50.5% in 2010.⁸⁵

⁸¹ Henrichson, Rinaldi, and Delaney 2015.

⁸² “What is the difference between jails and prisons?” Accessed April 28, 2017 at <https://www.bjs.gov/index.cfm?ty=qa&iid=322>.

⁸³ Tennessee Department of Correction 2010.

⁸⁴ Tennessee Department of Correction. “Tennessee Felon Population Update.” April 2017.

⁸⁵ Tennessee Department of Correction, news release, April 20, 2017.

Table 6. Comparison of Releases from Prisons and Jails

Fiscal Year	Total Releases	Releases from TDOC	Releases from Backup	Releases Locally Sentenced	% of Total Releases from Jails
2010-11	15,423	5,817	6,424	3,182	62.3%
2011-12	16,115	5,541	7,289	3,285	65.6%
2012-13	16,879	5,782	8,118	2,979	65.7%
2013-14	16,465	5,937	7,884	2,644	63.9%
2014-15	15,515	5,845	7,361	2,309	62.3%
2015-16	14,647	5,357	7,032	2,258	63.4%

There are several programs and services offered by TDOC at its prison facilities that are not available for prisoners serving their sentences in local jails, and additional funding could assist counties with implementing these programs at the county jails. The department requires treatment for substance abuse when assessment documents a need for it. For offenders with severe substance use disorders, intensive nine-to-twelve month residential programs are available in which participants progress through multiple treatment phases. For offenders with moderate substance use disorders, less intensive group therapy services are available. Group therapy is a four-to-six month intensive outpatient program in which participants are required to complete, at minimum, 150 hours of structured evidence based treatment services.⁸⁶

The Parole Technical Violator Diversion Program (PTVDP) is additionally available for offenders who are reincarcerated due to a technical violation of their condition of parole. Currently located at the Turney Center Industrial Complex Annex, this 75-bed program runs in conjunction with the modified therapeutic community program at the facility.

All TDOC facilities offer adult basic education and high school equivalency test preparation. College programs leading to an associate’s degree are offered at two male facilities and one female facility. Vocational training is offered in 12 of 14 facilities.

Two other states provide examples of ways programs can be incentivized in local jails. Kentucky provides \$9/day extra for some counties to administer the same inpatient

⁸⁶ See Tennessee Department of Correction Division of Rehabilitative Services at <https://www.tn.gov/correction/section/tdoc-rehabilitation>.

substance abuse treatment program that the state has in prisons.⁸⁷ In Louisiana, the state pays an additional \$6.68 per inmate per day (separate from the existing premium of \$24.39) for some jails to serve as reentry facilities:

Currently, almost half of the state offender population is housed at the local level. Each year local jails release approximately 11,000 DOC offenders back to the community. The Secretary, in collaboration with the Louisiana Sheriffs Association, has identified ten (10) local facilities located in strategic geographic areas across the State that will serve as reentry programs. These local reentry programs will be required to provide an increased level of service (education/job skills) in a treatment modality specific to the Department's reentry strategies.

The Department is also using these facilities to serve as reception centers for inmates entering the correctional system at the local level. These centers determine a baseline educational level, provide medical and mental health diagnostic services, and provide classification services not otherwise provided at the local level.⁸⁸

In Tennessee, some counties are already implementing programs and services, but at their own expense. At the Commission's December 2016 meeting, the Dyer County Sheriff described two levels of programming they provide, and what each level of service costs. The county's baseline cost starts at \$48.59 per inmate day. For an additional \$5 per day (\$53.69), he is able to provide basic education and job training programs. It costs another \$11 per day beyond that (\$64.72) to fund a comprehensive re-entry program. The sheriff reports improvements in recidivism at each level, with fewer than 10% of the re-entry program participants returning to jail. Rutherford, Franklin, and Shelby counties each have similar programs.⁸⁹

Reimbursing counties before prisoner sentencing

Another way for the state to reduce the burden on counties of housing state inmates is to expand the number of inmate-days for which a county can be reimbursed—an example of which was the Commission's 2007 recommendation to reimburse counties for holding probation violators in jail while they await hearings. Over the years, legislation has been introduced to expand coverage to pre-trial detainees as well, but

⁸⁷ Conversation with Kirstie Willard of Kentucky DOC; but also see: <http://www.lrc.ky.gov/recorddocuments/note/17RS/SB14/LM.pdf>.

⁸⁸ Louisiana 2009.

⁸⁹ Testimony by Jeff Box, Dyer County Sheriff, at TACIR December 6, 2016 meeting.

this has been considered too costly to gain support. Most recently, House Bill 182 by Hulsey, Senate Bill 678 by Yager, would have required reimbursement from date of conviction, not sentencing, but that bill failed to advance during the 2017 session. In other states where convicted felons are housed in local jails, the time at which reimbursement begins varies, from sentencing to conviction or a number of days after (up to 45 in Texas).

Supplementing Existing State Initiatives to Help Local Jails

In addition to supplementing the county reimbursement program, the state can relieve some of the burden on counties of housing state inmates through improvements to some existing state-level programs. The state is already making efforts to improve outcomes and reduce the burden on counties through the initiatives of the Public Safety Act of 2016, discussed above, and the Department of Mental Health and Substance Abuse Services' (DMHSAS) criminal justice liaison program.

Many inmates need mental health services—at the Commission's December 2016 meeting, the Tennessee County Services Association Executive Director cited a report that said there are 6,188 inmates in the state prison system with diagnosed mental health issues, and he estimated there to be another 7,000-8,000 in county jails.⁹⁰ According to the TDOC 2016 Statistical Abstract, approximately 20% of the offender population is receiving psychotropic medication for a mental illness. Counties report the high cost of handling mentally ill inmates and those with substance abuse issues. The state can often move inmates to special facilities if needed, and have substance abuse treatment and mental health services that most counties cannot offer. But even state government doesn't have enough beds and capacity to serve all inmates who need extensive services.

Criminal Justice Liaisons and Case Managers to Coordinate Mental Health Services

Mental health services are often scarce or unavailable in many rural counties, according to state departments and CTAS. Tennessee is down to 577 public mental hospital beds; the Lakeshore Mental Health Institute in Knoxville closed in 2012. According to *The Knoxville News Journal*:

⁹⁰ Testimony by David Connor, Executive Director, Tennessee County Services Association, at TACIR December 6, 2016 meeting.

Lakeshore was the only area permanent residential mental health facility serving about 2,300 patients daily, according to the Tennessee Department of Mental Health.

Those who would have been admitted to Lakeshore must now be transported to another institution, usually by law enforcement officers, taking some as far as Moccasin Bend Mental Health Institute in Chattanooga. The closure also means more mentally ill patients will be forced to spend more time in jails in and around Knox County, while attempting to place them in another facility. Ironically, that is how mental health facilities began, as an arm of the prison system, to keep the mentally ill out of jails.⁹¹

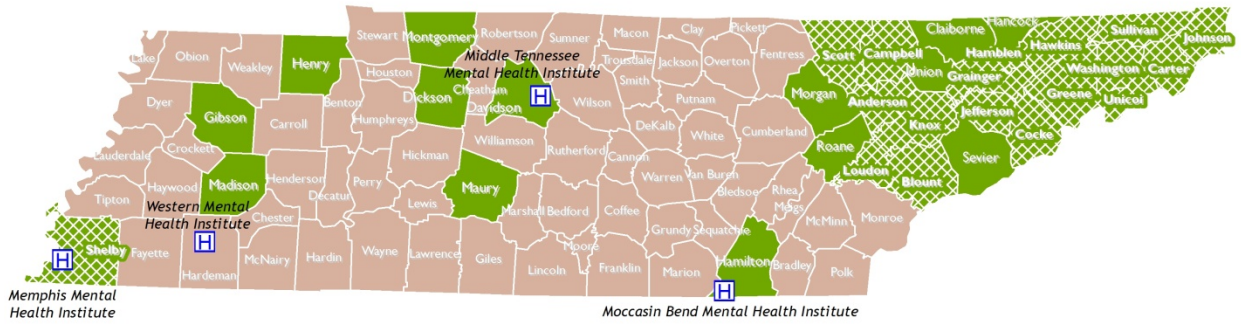
Interviewed county sheriffs view the DMHSAS criminal justice liaison program positively. Criminal justice liaisons and case managers serve individuals with serious mental illness and substance abuse issues who are incarcerated or who are at risk of being incarcerated, but only in 32 covered counties. See map 4. They work to provide a continuity of care for individuals who have been incarcerated or are at risk of incarceration in designated counties. According to the program's director, outreach efforts across the state have reached more than 84,000 individuals to assist them in staying out of the criminal justice system. Other services include providing early identification of individuals with mental illness within the county jails; identifying diversionary options and/or resources (diverting nearly 9,000 individuals from jail since 2014); consulting and training law enforcement, county personnel, and court officials; and providing discharge planning (developing more than 1,200 long-term release plans to help keep those who have been in jail from returning).⁹² To improve access to the services provided by this program, the state should provide funding to expand the criminal justice liaisons and case managers statewide—approximately \$1.6 million would be necessary to fully staff additional positions across the state.⁹³

⁹¹ Hall 2012.




⁹² Testimony by Ellen Abbott, Director of Criminal Justice Services Tennessee Department of Mental Health and Substance Abuse Services, at TACIR December 6, 2016 meeting.

⁹³ Calculations based on information obtained in correspondence from Tennessee Department of Mental Health & Substance Abuse Services and from TDMHSAS SB2070/HB2107 *Public Chapter 894 of 2016 Report January 2017*.

Map 4. Department of Mental Health & Substance Abuse Services Criminal Justice Liaison Program Service Areas



Tennessee Department of Mental Health and Substance Abuse Services
Office of Criminal Justice Behavioral Health Liaison Program

-  Served by Criminal Justice Liaison and Case Manager (18)
-  Served by Criminal Justice Liaison only (14)
-  Not Served by either (63)

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Persons Interviewed

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