

PRELIMINARY DRAFT FOR SAC DISCUSSION PURPOSES

A Brief History of the Whatcom County Jail

Prepared by Jennifer Moon, for the SAC Needs Assessment Process – 9.9.22

The existing Whatcom County Jail was completed in 1984. As soon as it was built, it was already out of date and inadequate in a number of ways. Constructed based on state standards dating to the 1960s, it was, for example, seismically unsound from the start. It was designed to hold up to 148 inmates. It was not designed as a place for rehabilitation and restoration to community life. It lacked adequate spaces for health care, behavioral health, and other needed services. Its construction reflected assumptions and approaches of an earlier era. These inadequacies have hampered the jail ever since.

From the early days following the completion of the Whatcom County Jail until now, there have been two consistent needs:

- To have a jail that is safe for those in it, with the services needed to ensure health and welfare and to support successful community re-entry.
- To limit costly jail stays and more appropriately respond to lower-level offenses by reducing and controlling the size of the jail population through jail alternatives, prevention, and diversion.

Addressing these two needs in tandem is key to meeting community expectations for improved public health, safety, and justice.

“It is time to do something most communities have not done”

Beginning in the early 1990s, jail overcrowding was already becoming a problem. For all but the first two years of the jail’s existence, the jail population has exceeded its original capacity. Built to last for 50 years, overcrowding increased wear and tear on the facility. It quickly deteriorated. It was soon remodeled to increase capacity, but more beds in the jail meant less space for needed services, programs, and operations.

In 1993, the Whatcom County Council established the Whatcom County Law and Justice Council, as required by state law. The purpose of the Law and Justice Council was to plan and coordinate efforts across systems. Its work focused primarily on criminal legal system procedures and operations. At the time, the Council included no community or agency representatives. Instead, it was comprised solely of court, law enforcement, corrections, and prosecution staff.

Following the formation of the Law and Justice Council, a **Whatcom County Comprehensive Law and Justice Planning Project was initiated. This group produced a report** written by two law and justice system experts. The study suggested that alternatives to jail be developed for low-risk offenders. “Putting someone who has come in on a warrant for driving without a license in a bed is asinine,” one of the study’s authors concluded.¹ To address jail overcrowding, the experts recommended that a minimum- or medium-security facility be built. The new facility should offer clinical services. Moreover, the study’s author argued that “It is time to do something most communities have not done, which is to put them into a clinical setting where they can be diagnosed, treated, and diverted to become productive citizens.” Pre-trial reforms such as electronic monitoring and house arrest were also suggested as strategies to reduce the jail population.

¹ “Discussion of the Phase 1 Report of the Whatcom County Law and Justice Plan: Findings and Recommendations,” December 6, 1999.

Bigger But Better

The Whatcom County Comprehensive Law and Justice Planning Project report estimated capacity needs for a new main jail but also recommended additional ways to reduce the jail population. These included citing and releasing all traffic and non-misdemeanant arrests, pre-trial release for some offenders, and jail alternatives for felons who had served two-thirds of their sentence.

Despite the report's focus on prevention and diversion, the recommended size for a new main jail was quite large. Based on population growth, incarceration rates, and length of stay at the time, the report projected jail capacity needs of 560 adult beds by 2010. This included 150 maximum-security beds, 120 work release beds, and 290 minimum- to medium-security beds. By 2020, the report estimated the need for over 700 adult beds. There was also a recommendation that additional spaces be created for recreational and rehabilitation programs, especially to treat those with substance use and mental health challenges.

The call for expanded services in the jail led to the expansion of the Law and Justice Council. It was soon reformed to include the staff of local behavioral health treatment facilities. Improved services would need to be a key piece of the incarceration reduction puzzle. **Whatcom County's Drug Court was also established at about the same time, in 1999.**

By the mid-2000s, the minimum-security facility recommended by the Comprehensive Law and Justice Planning Project report was funded, and construction was underway. In 1999, a 0.1% sales tax increase had been approved by the County Council for criminal legal purposes. A second 0.1% voter-approved sales tax increase followed in 2004. The latter funding was directed to construction of a new main jail and a minimum-security Work Center. **The Work Center, which opened its doors in 2006,** was intended to be a temporary facility while the County planned for a new jail. A new jail, however, was not built.

Calls for a new main jail escalated as the number of people within the jail continued to grow. The main jail regularly had a population of 280 to 300, hitting a high of 320 in 2010. The new Interim Work Center held about 150 people.

In 2011, the Whatcom County Council approved a resolution creating a Jail Planning Task Force as a subcommittee of the Law and Justice Council. The group was responsible for:

- Recommending the size, location, and funding options for a new jail,
- Determining the impact of jail alternatives and diversion programs on the jail population, and
- Planning a behavioral health triage facility to reduce incarceration of those with mental health challenges.

Ultimately, **the work of this group led to County Council approval of a formal jail planning process. The County hired jail planners and soon purchased an approximately 40-acre LaBounty Road property in Ferndale** as the intended site of a new jail. **A 0.2% sales tax increase measure was placed on the November 2015 ballot to fund the new 521-bed jail.** The new facility would be designed to eventually add another 128 beds to meet future capacity needs.

Concerns about the size of the proposed new facility prompted calls from some local officials and community members to link any new jail funding to the creation of more focused incarceration prevention and reduction efforts. These might include probation practices, electronic home monitoring, crisis intervention services, and intensive case management.

In response to these demands, **the Whatcom County Council passed an ordinance in 2015 establishing the Incarceration Prevention and Reduction Task Force (IPRTF).** Consisting of 30 community stakeholders, the IPRTF would soon take on the dual purpose of serving as the County's Law and Justice Council. It had several objectives:

- Review best practices and make recommendations to safely and effectively reduce incarceration.
- Identify alternatives to incarceration for those living with behavioral health challenges, as well as defendants awaiting trial who could be safely released.
- Plan for a new and expanded crisis stabilization facility to replace the existing Whatcom County Triage Center.

The Triage Center, which became fully operational in 2008, only provided 13 beds for those experiencing a mental health crisis of needing substance use withdrawal management, or “detox.” Space was limited and was insufficient to also include the provision of needed medical services.

Regardless of these initial commitments to a new approach to public safety, **voters rejected the sales tax ballot measure in November 2015** by a 51-49 margin.

Recommendations for a Path Forward

In the aftermath of the ballot measure’s defeat, Whatcom County, with the IPRTF, engaged the Vera Institute of Justice, an organization working on criminal legal reform nationally. **The Vera Institute was hired to conduct an analysis of Whatcom County’s jail population and recommend reforms to reduce incarceration rates, while protecting public safety.** The Vera Institute report made several recommendations, including reforms in warrant processing, risk-based assessment of pre-trial defendants as an alternative to bail, changes to improve the processing of cases through the court system, and the diversion of many individuals with mental health and substance use issues from jail. The report also noted the disproportionate rates of incarceration in Whatcom County for Native American, Black, and Hispanic populations and recommended additional work to reduce these disparities.

The need for either a new main jail or renovations to the existing jail, however, remained. **The Whatcom County Council commissioned a study in 2016 by an architectural design firm**, design 2LAST, Inc., which specialized in jail construction. The study examined the condition of the existing jail and assessed whether capital improvements at the jail and Work Center were feasible. The study found the Work Center to be in good condition, but in need of some improvements, such as better lighting and enhancements to meet the Americans with Disabilities Act (ADA) guidelines for accessibility.

The main jail, however, had significant deficiencies. The study found that it not only failed to meet current seismic building codes, but it also had:

- Significant heating and plumbing problems,
- Limited sightlines resulting in increased safety risks,
- A lack of ADA accessibility,
- An exposed medical area that violated patient privacy requirements,
- Poor lighting,
- Failing locks,
- An absence of a smoke evacuation system in violation of code requirements, and
- An unprotected natural gas line at the building’s entrance.

The architectural firm concluded that the jail needed to be replaced and stated that several architectural firms, the National Institute of Corrections, and the Whatcom County Law and Justice Council had all come to the same conclusion.

A public hearing was held in June 2017 to gather citizen input on the size of a new jail. Speakers at the public hearing expressed concerns about the lack of a needs assessment to inform the jail planning process, the size and

location of the proposed facility, and pressing forward with new jail construction without addressing the findings of the Vera Institute report. Based on concerns about the condition of the jail and the safety of those living and working with it, the investments that had already been made in the LaBounty Road property, and the limitations of a local jurisdiction to respond to laws and policies that perpetuated arrests and sentences, the Whatcom County Council pressed forward. **Council approved a second ballot measure for a 0.2% sales tax increase to fund the construction, operation, and maintenance of a new jail the following month.**

In November 2017, Whatcom County voters again rejected the ballot measure to fund a new jail by an even wider margin of 59-41.

[A New Direction](#)

Significant progress has been made to re-envision Whatcom County's public safety systems since the defeat of the second ballot measure.

[Listening Sessions](#)

In 2018, the Whatcom County Council hosted a Criminal Justice and Public Safety Committee Listening Tour.

Seven two-hour listening sessions were held between April and June 2018 throughout the county. An unduplicated total of 115 Whatcom County residents provided verbal public comment and/or oral or written feedback. Listening session participants were asked about their concerns regarding the ballot proposal and their hopes and expectations for better solutions. Findings of the listening sessions included:

- Participants voiced a clear preference for criminal legal reform measures and incarceration prevention and reduction.
- Respondents felt that the proposed site of a new jail in Ferndale was too big, too costly, and in the wrong location.
- The 2017 ballot measure was too similar to the 2015 proposal and lacked a needs assessment or public process.

[Incarceration Prevention and Reduction Programs](#)

Several innovative programs have been created in recent years to effectively reduce incarceration rates and better serve those at risk of incarceration. New programs include:

- The **Community Paramedic Program, which was first established in 2013.** It has two goals: reduce non-emergency 911 calls to Emergency Medical Services (EMS) and connect those who frequently make non-emergency 911 calls with community-based medical, mental health, substance use, and housing services.
- The **Ground-level Response and Coordinated Engagement (GRACE) Program, created in 2018.** In many cases, community paramedics work closely with GRACE case managers to stabilize people with complex needs. They focus on those who have cycled through the health care, criminal legal, emergency shelter, and emergency response systems. The intent of the GRACE Program is to stabilize these individuals, address the root causes of the challenges they are facing, and reduce their interaction with these various systems.
- The **Law Enforcement Assisted Diversion (LEAD) Program, launched in 2019.** Based on a Seattle model, the LEAD Program similarly connects those with behavioral health issues who might otherwise become involved in the criminal legal system to needed services. Law enforcement officers work with community paramedics and GRACE case managers to improve health outcomes for those they work with while simultaneously protecting public safety and reducing the racial disparities within the criminal legal system.

- The **Alternative Response Team (ART)**, which will serve Bellingham residents beginning in 2022. When someone calls 9-1-1, this team will be available to respond to those experiencing a crisis, including a mental health or substance use crisis, instead of requiring a law enforcement response or Emergency Department visit. The team will be comprised of outreach crisis team triage specialists and will coordinate with other crisis services and outreach teams. It is being coordinated with the rollout of a new 9-8-8 system, which will be an alternative to 9-1-1 for behavioral health crises, and will eventually be expanded across Whatcom County.

Guiding Principles

In 2019, the Council unanimously approved a set of public health, safety, and justice facility planning principles. The principles, which updated a resolution first adopted in 2016, seek to balance the need for a new main jail facility with a focus on prevention and diversion to break the cycle of incarceration. The intent is to create a system that limits criminal legal system involvement and promotes rehabilitation and successful community re-entry.

Assessing Service and Facility Needs

In addition to growing the scope of prevention and diversion services available in Whatcom County, the continuing need to find a solution to the long-standing problems inherent in the existing jail facility remains and has grown more dire. The health and safety concerns associated with the facility have continued to worsen over time. **Between 2011 and 2021, Whatcom County spent approximately \$9 million on needed repairs and maintenance for the existing jail. Estimates for future maintenance for the inadequate and deteriorating facility over the next 20 years are as high as \$27 million.**

The imposition of booking restrictions as a means of controlling jail overcrowding, exacerbated by the COVID-19 pandemic, has heightened public safety concerns. Some community members fear that there are those who should be jailed who currently aren't because of capacity issues.

For others in the community, the jail environment is not seen as one that facilitates the kind of stabilization and restoration desired. It was not designed to accommodate the types of services needed to support and rehabilitate those in the jail. Jail remodels done to accommodate more people have simultaneously reduced service capacity. Designed to hold 148 people, the jail has been remodeled over the year to add capacity. Space has been carved out of operational areas to add beds, for a current operational capacity of 212. There is currently limited available space for confidential services, including the ability for inmates to speak privately with their lawyer or receive behavioral health care.

To take a comprehensive look at the programmatic, service, and facility needs that would result in a jail that is safe and fosters community re-entry along with prevention and diversion services that limit the jail population, **the Council's Criminal Justice and Public Safety Committee approved a Needs Assessment process in 2019** to guide deliberations. **A Stakeholder Advisory Committee comprised of 38 members was formed and charged with creating a Public Health, Safety, and Justice Facility Needs Assessment.** In early 2020, a consultant was hired to lead the Needs Assessment process.

Progress Interrupted

And then came COVID-19. The Needs Assessment was paused, although the work of the IPRTF continued.

Construction of the Crisis Stabilization Center, which replaced the previous Triage Center, also got underway. With funding from the state, the North Sound Behavioral Health Organization, and the Whatcom County

Behavioral Health Fund², **the new facility was completed in 2021**. It now provides 16 beds for mental health support and 16 substance use detox beds.

In the fall of 2021, the Stakeholder Advisory Committee reconvened. A new consultant was named to lead the planning process, and the Stakeholder Advisory Committee's first meeting was held on January 20, 2022.

Controlling the Jail Population

A desire to limit the population of the Whatcom County Jail has been a recurring theme for many years.

Regardless of concerns about crime and what the need for correctional facilities may be, there is a recognition in Whatcom County that the jail population cannot continue to grow in proportion to overall population growth. The jail needs to be right-sized to detain those identified as posing a threat to public safety. In all other cases, prevention and diversion can avoid costly jail sentences.

This reflects a growing national consensus that too many Americans are jailed. The U.S. has the highest rate of incarceration in the world. According to data from the Vera Institute, **Whatcom County's incarceration rate per 100,000 tripled between 1970 and 2014**. Jail as a response to societal ills is both costly in terms of public expenditures and the impact on individuals and families. It fails to address the root causes of issues and perpetuates racial and socioeconomic inequities.

Between 2014 and 2019, Whatcom County's incarceration rate did decline. It fell from 193.64 per 100,000 to 132.61 per 100,000.

Jail Alternatives

Much progress has been made over many years to develop jail alternatives. These include:

- **Electronic Home Detention (EHD):** Whatcom County's EHD program is well-developed and second only to King County in Washington State. Those monitored wear ankle bracelets which enable supervision. If a person violates the terms of release, they can be returned to full custody.
- **Work/School Release:** This program enables those housed at the Interim Work Center to go to school or work during the day. These individuals may pose a higher risk than those participating in EHD, but they have the opportunity to develop their skills while held in a minimum- to medium-security facility.
- **Work Crews:** There are in-custody and out-of-custody work crews. Out-of-custody work crews are managed through the Work Center and do community projects, such as park maintenance, five days a week. Work done can cover unpaid fines that an individual may not have been able to afford. In-custody work crews are housed at the Work Center. They do community jobs, such as litter collection or maintenance projects, 40 hours a week.
- **Targeted Jail Tours:** First-time offenders can be sentenced to a tour of the Whatcom County Jail. This provides a first-hand look at life in the jail in an effort to deter future criminal legal system involvement.

Specialized Courts

Whatcom County has also developed an array of specialized courts that offer an alternative to incarceration.

The Drug Court is one of these. It now serves both juveniles and adults. Its creation in 1999 was followed by the creation of a Mental Health Court and a Family Treatment Court.

² The Whatcom County Behavioral Health Fund is the result of a 0.1% sales tax for expanded substances and mental health treatment programs that was authorized by the Whatcom County Council in 2008.

Booking Restrictions

Booking restrictions have been another means of limiting the jail population, primarily as a result of facility capacity issues. The Sheriff's Office has resorted to booking restrictions repeatedly since the main jail opened. COVID-19 presented additional challenges in maintaining adequate spacing in a facility that lacks adequate ventilation or health safeguards. Even with restrictions during the pandemic, COVID-19 outbreaks occurred in the jail.

Although effective in controlling the size of the jail population, booking restrictions raise concerns about those who are not jailed who some believe should be.

Prevention and Diversion Programs

The Community Paramedic, GRACE, and LEAD programs have offered new approaches to prevention and diversion in recent years. Based on data available thus far, they have also been shown to have had a positive effect on individual participants. Between 2018 and June 2022, there have been 502 unduplicated participants involved in the GRACE and LEAD programs. Comparing booking 24 months pre- and post-program involvement, the GRACE program has seen a nearly 88% reduction in bookings among those actively engaged in the program. Similarly, the LEAD program has seen an 89% reduction in jail bookings, based on the same measure. A caveat is that bookings also declined because of COVID-19 restrictions, so these results may be due in part to non-programmatic factors. There is, however, a strong correlation between continued engagement in services and a reduction in jail bookings 24 months post-engagement. The LEAD program has also seen reductions in interactions with law enforcement for program participants.³

There is also a strong correlation with reductions in EMS contacts. This results in reductions in public expenditures. According to 2020 EMS program data, there was a noticeable cost reduction of more than 75% related to those individuals who completed these programs. Since a typical response to a call costs \$3,000 and a transport costs another \$1,000, the public expenditure savings associated with these kinds of outcomes are substantial. This does not account for all the other costs associated with criminal legal system involvement or a reliance on crisis response systems.

Court System Process Improvements

In recent years, there have also been improvements undertaken within the several court systems to reduce a reliance on incarceration. For example, the District Court uses phone calls and text reminders to reduce instances of "failure to appear" for court proceedings as a case moves forward.

For several years, a Pretrial Processes Work Group (PPWG), directed by Superior Court judicial officers but including IPRTF members, has also been tasked with identifying and implementing pre-trial reforms. Prior to such reforms, Superior Court, unlike District or municipal courts, could use only a bail amount in releasing a pretrial defendant. At the PPWG's recommendation, **a Pretrial Services Unit within the Superior Court was created to monitor defendants who are released to the community while awaiting trial. The Superior Court also adopted the Public Safety Assessment**, the most carefully researched and validated pretrial risk assessment tool available, to inform a judicial officer about the likelihood of an individual's failure to appear or committing a new violent crime when making a decision to release or detain the individual.

³ Data provided by Whatcom County Emergency Management Services, August 10, 2022; <https://www.respondwhatcom.org/>.
Preliminary DRAFT for SAC Discussion Purposes: A Brief History of the Whatcom County Jail – 9.9.22

Implementation of these initiatives was interrupted by the COVID-19 pandemic and the closure of courts and in-person pre-trial services. Recently, the Superior Court has resumed operations, but considerable backlogs persist. Full implementation of these reforms is pending.

Prosecutorial Process Improvements

In addition to the creation of the LEAD program, other **changes in charging practices** of the Whatcom County Prosecuting Attorney's Office also resulted the risk of incarceration. For example, **driving with a suspended license in the third degree is no longer charged as a stand-alone offense**. These types of charges have historically been disproportionately brought against people of color. A **Discovery Specialist has also been hired** to expedite the discovery process.

Other Factors Affecting the Size of the Jail Population

Even assuming a robust prevention and diversion system, **there are a number of factors affecting the size of the jail population:**

- **Law enforcement:** Within available capacity, the jail books and manages those who are brought to the jail by local law enforcement. The greater the number of arrests for offenses of all kinds, the greater the demand on the jail.
- **Courts:** The jail holds those who have been sentenced by a court. The jail also holds those who are brought in on a variety of warrants. However, because of jail capacity challenges, bookings for warrants are being restricted.
- **Holds:** The jail can temporarily hold offenders who are being transferred to other facilities or jurisdictions. For example, the local jail can hold offenders awaiting transfer to Washington State Department of Corrections officials or occasionally to federal authorities. These are typically short in duration.

Whatcom County's proximity to the Canadian border can result in holds of other kinds. Offenders who re-enter the U.S. and are picked up on a fugitive warrant, along with those trying to flee the U.S. into Canada, have some impacts on jail population. Data from 2019 indicated that Whatcom County had 65 fugitives in custody, reportedly a fairly large number for the size of the county. These are either people detained at the border or extradited to the U.S. It can take up to 90 days to transport the individuals to the appropriate jurisdiction. There are also those with in-state warrants who live outside of Whatcom County and are detained at the border. They can be similarly held for a short time in the jail. Border closures resulting from COVID-19 paused these patterns, but they can be reasonably expected to resume with a return to pre-COVID levels of border traffic.

- **Case Processing:** There are those who have extended stays in jail awaiting processing or evaluation by other systems.
- **Pre-Trial:** The pre-trial population typically is incarcerated because of an inability to pay for bail. Some individuals may have also failed to appear in the past, resulting in a higher bail amount, which they cannot pay. An exception to this is sex offenders. They are required to be taken into custody immediately without the possibility of bail. In the past, pre-trial defendants have been moved to other counties because of local jail capacity issues. This has created challenges both for public defenders working with clients and for the family members of those held pre-trial. The Vera Institute found pre-trial defendants comprised nearly 60% of the jail population in 2016. With expanded options for pre-trial defendants and/or bail reform, the size of this group could be safely reduced.
- **The type of crime:** More serious crimes usually take longer to process and also result in longer sentences. In June 2022, approximately 83% of the jail population was being held (mostly pre-conviction) for a felony offense.

- **Number of charges:** If someone has multiple charges in multiple jurisdictions, the time spent in jail can increase as the person works their way through the system. This can be true even for a series of minor crimes.
- **Assessments, evaluations, and/or service provision by other systems:** The process by which someone is determined to be competent to stand trial has become one path by which people are finding themselves stuck in jail. In order to be determined competent, there is an assessment process, followed by, in many cases, a competency restoration process. This requires that someone receive in-patient mental health services, including medications. That typically requires a wait for a bed at Western State Hospital that can extend to 12-18 weeks. While the assessment process happens fairly quickly, the competency restoration process has become a bottleneck.

Once someone is deemed competent, they are returned to jail to stand trial. Back in jail awaiting trial, however, they are then able to refuse to take the medications that led to the determination of competency. People often decompensate in jail and then have to start the whole process over again. As of June 2022, 12 people were waiting for competency restoration services, with an average of a 55-day jail stay.

Similarly, sex offenders tend to be in jail longer before sentencing as they await evaluations that can take weeks to complete. In June, there were 14 convicted sex offenders awaiting Department of Corrections evaluations.

- **Court backlogs:** Processing lesser or more serious cases all take more time when courts lack capacity to try cases. Typical backlogs became much worse due to the COVID-19 pandemic and full or partial closures of the courts. These backlogs persist and have become a serious challenge to reducing or controlling the jail population.