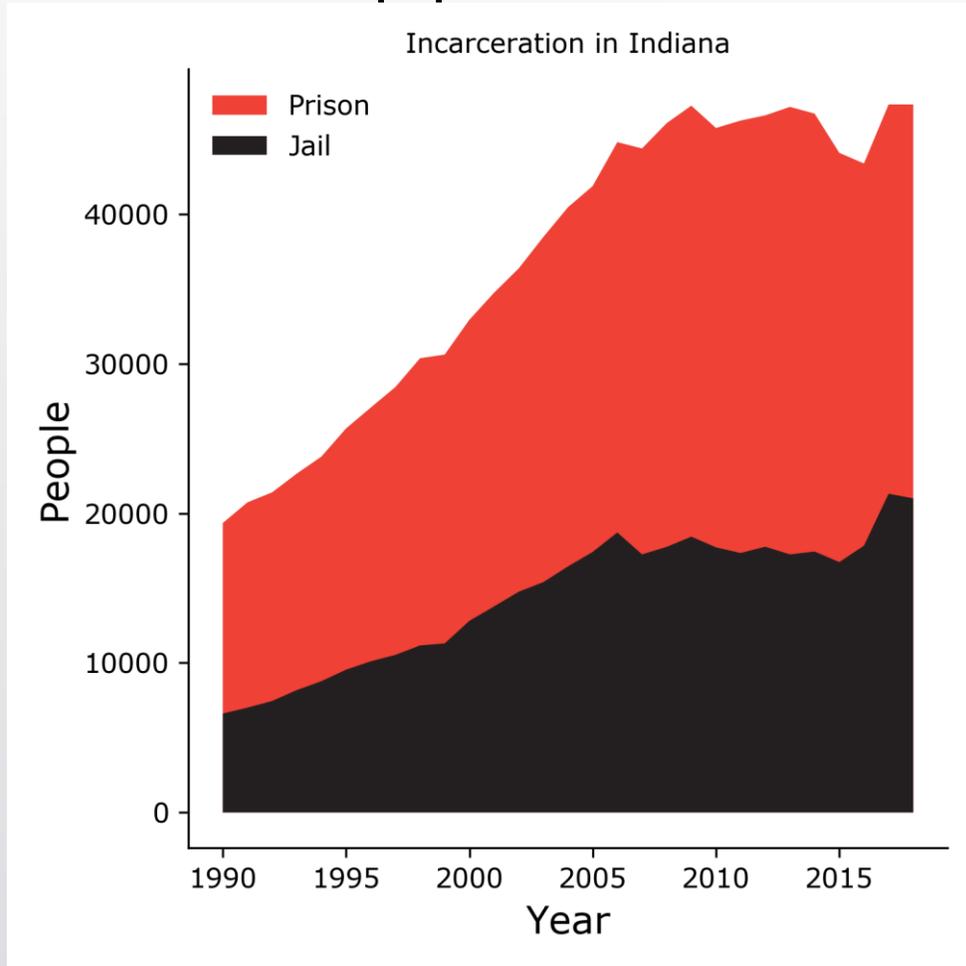




# Owning A Jail

# What Happened in Indiana



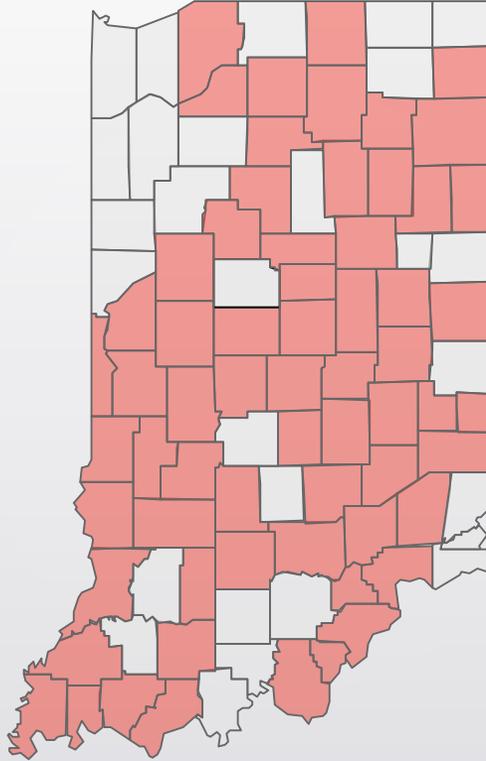
- As reported by the Vera Institute (see [https://www.vera.org/in-our-backyards-stories/crisis-at-the-crossroads-of-america\\_](https://www.vera.org/in-our-backyards-stories/crisis-at-the-crossroads-of-america_)) over the past 5 years, as Pence's reforms were implemented, incarceration rates in Indiana have risen to all-time highs.



# Indiana Jails

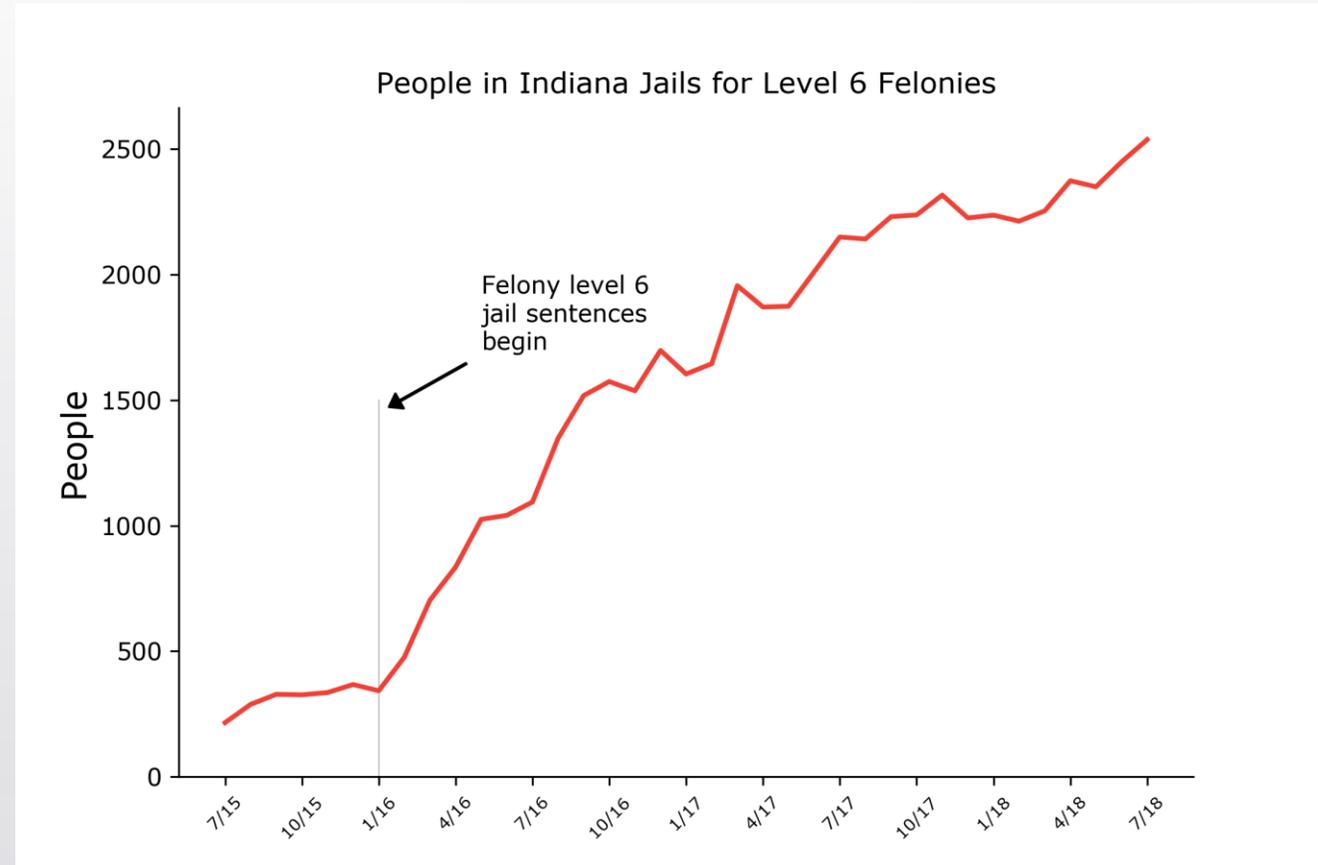
- According to the Vera Institute...
  - Jails in 64 of Indiana's 92 counties are overcrowded.
  - Currently, 70 percent of Indiana's jails would be considered out of compliance with current Jail Standards, due solely to overcrowding,
  - HB1006 simultaneously passed the costs of incarceration onto counties, while lengthening prison sentences for people in the state system who were convicted of violent crimes. Over the two years following its passage, the number of people sent to prison plummeted, while the number of people held in jail increased sharply.

# Crowded Jails

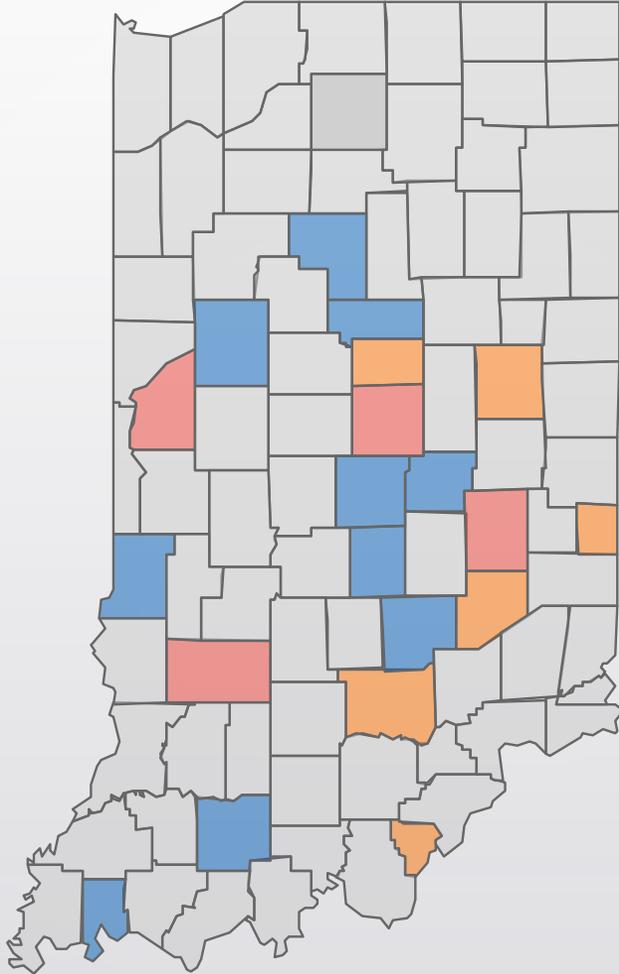


# Vera Report

- All but 2% of the IDOC beds are filled.
- 64 of 92 county jails in Indiana are crowded.
- Despite crowded jails, Indiana still has a higher overdose rate than any neighboring state.







# INDIANA JAIL EXPANSION



# Causes of Jail Crowding

- Crime Rates.
- Delays in accessing justice.
- Increasing numbers of drug charges.
- Increasing numbers of mental health needs.
- The impact of HEA 1006.



# The Impact of Jail Crowding

- Minimum space.
- Nutrition and food budgets.
- Sanitation.
- Activities.
- Physical and mental well-being.
- Staffing both in numbers and experience.
- Separating and classifying inmates/
- Health Services.



# County Commissioners Responsibility

- IC 36-2-2-24
  - Sec.24. (a) The executive shall establish and maintain a county courthouse, county jail, and public offices for the county clerk, the county auditor, the county recorder, the county treasurer, the county sheriff, and the county surveyor.
    - (b) Offices for the surveyor must be in the courthouse or at the county seat.
    - (c) Offices for the sheriff may be located:
      - (1) in the courthouse
      - (2) inside the corporate limits of the county seat; or
      - (3) outside the corporate limits of the county seat but within the limits of the county.



## Establish and Maintain

- Indiana Courts have interpreted this statute (IC 36-2-2-24 (a))- to create a duty "**to keep the jail open for use and in good repair.**" Weatherholt v. Spencer County, 639 N.E. 2d 354 (Ind. Ct. App. 1994).
- "Maintain is to be synonymous with "kept in good repair."



## Establish and Maintain

- "Once the county establishes and then reasonably maintains the **jail**, it is not responsible for administering the manner of an inmate's incarceration." Hooper v. Lain, Dist. Court, ND Indiana 2015
- The county, and thus its commissioners, have a duty to "maintain" the county jails, which requires them "to keep the jail open for use and in good repair." Lewis v. Mellinger, Dist. Court, SD Indiana, 2017
- When an inmate in a county jail is injured as a result of the manner in which the jail is administered and not by any defect in the jail facility, the county does not owe him a duty of care.... Rather, it is the sheriff who is charged with a statutory duty to administer the jail in a manner which preserves the safety of inmates." Raketich v. Porter County, Dist. Court, ND Indiana 2010



# Open and in Good Repair

- Remember...you cannot remove yourself from being involved in legal issues arising from jail operation.
- All jails are an unavoidable and prominent concern.
- Have you visited the Jail?
  - What did you examine?
  - What are your jail's operational strengths and weaknesses?
  - How do you determine a request for increased funding?
  - Are you familiar with the jails current lawsuits?



# Open and in Good Repair

- Is Your Jail Maintained and Kept in Good Repair?
  - The Indiana Jail Standards require the sheriff to submit no later than March 31 after the conclusion of each calendar year, a written report setting forth the annual statistical data and the extent and availability of services and programs to inmates identifying major events that have occurred in the jail and unfunded operational needs. The report shall be directed to the circuit court judge, and copies shall be provided to the state jail inspector, president of the county council or city-county council, prosecutor, and president of the board of commissioners.
  - This report is to include a statement on the maintenance and upkeep of the jail and any unfunded needs and projects essential to jail operations and maintenance.



# Open and in Good Repair

- Indiana Jail Standards Require:
  - Emergency equipment (equipment necessary to maintain central lights, power and communication) is tested at least weekly for effectiveness.
  - All areas of a jail shall be inspected by a designated jail official at least once per week. Each living area shall be inspected by designated jail officials daily. Written inspection reports shall be maintained, and steps shall be taken promptly to remedy unsafe or unsanitary conditions.



# Signs of Maintenance Issues

- Graffiti, dirt and grime on the ceiling, walls and floors.
- Presence of mold.
- How does it smell?
- Lighting and plumbing issues.
- Signs of clutter.
- Security equipment not functioning.
- HVAC and Kitchen equipment in proper working order.



## Maintenance Issues – Individual Claims

- Mr. Brock was a 62 year old man jailed in Tennessee during a summer heat wave. Upon admission to the jail his health was regarded as being in good health. State inspectors had noted the jail had poor cooling and ventilation. The sheriff had requested additional funds to make needed repairs and replacement. County Commissioners denied the request.
- Temperatures soared to over 110 degrees during the day and only cooled to 103 degrees at night. A medical nurse had requested a fan be placed in front of Mr. Brock's cell. The request was denied by the sheriff.



## Maintenance Issues – Individual Claims.

- Inmates notified staff that Mr. Brock was delirious however staff ignored the notification. Mr. Brock was eventually transported to the hospital where he was diagnosed with heatstroke. Mr. Brock died two days later.
- The court found that forcing a person to live in such an environment endangered his health and was cruel and unusual punishment. The court awarded \$100,000 in compensatory damages against the county and sheriff and \$10,000 in punitive damages against the sheriff because the sheriff took no remedial measures (putting a fan in front of the cell). See *Brock v. Warren County, Tennessee*, 713 F.Supp 238 (1989).



## Design Issues

- How does the design of the jail affect the jail's security?
- Does the design remove staff from direct contact with inmates?
- Can an inmate in a cell contact staff in an emergency?
- Compliance with the Americans with Disabilities Act.



# Does the Jail Have Adequate Staffing

- Understaffing can be detectable by:
  - The amount of overtime.
  - The number of jail posts that are not adequately covered.
- Safety of staff and inmates should take precedent over budget problems.



# Policies and Procedures

- Must keep in mind the constitutional and civilized approach to dealing with inmates.
- Is there a policy manual?
- Are the policies up to date?
- Are the policies and procedures translated into consistent jail operations?



“The court is well aware of the premium on bed space. Prime real estate in the state of Indiana now is jail beds.” - Chief Judge Jane Magnus-Stinson



# When the Jail is Crowded

- When crowding results in substandard inmate conditions, the risk of liability increases.
- Check your law enforcement liability policy. You may not have coverage for a crowded lawsuit that has no inmate damages.
- If the jail fails to meet basic standards for health and safety the county is at risk for a lawsuit.



# Managing a Crowded Jail

- Areas of Concern include...
- Substandard healthcare. Is the care provided adequate or cursory and inadequate?
- The continued use of segregation cells for general population housing.
- Violence among inmates and inmates being denied protective custody.
- Lack of exercise.
- Staffing.
- Excessive Noise that results in hearing loss or mental distress.
- Inadequate Ventilation – is mold present and/or a persistent smell?
- Faulty plumbing and electrical issues.
- Adequate space for showers.
- Inadequate service areas (Kitchen and laundry).



# Hamilton County Ohio





# Managing a Crowded Jail

- The Prison Litigation Reform Act sets forth the parameters within which a court may grant injunctive relief in the corrections context.
- Relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.



# PLRA

- Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.
- In addition the Federal Court cannot enter a prisoner release order unless..
- (i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and (ii) the defendant has had a reasonable amount of time to comply with the previous court orders.



# Lessons from Vigo County

- Crowding causes...
  - Increase in inmate injuries
  - Increased tensions between inmates.
  - Not able to provide immediate emergency medical attention.
  - Breakdown in inmate classification.
  - Breakdown of evacuation process.



# Efforts to Address Crowding

- Housing inmates out of county.
- Suspending the incarceration of non-violent offenders on arrest warrants.
- Increase in public defender assistance for indigent pre-trial detainees.
- Funding additional court staff so cases can be processed more quickly.
- Creation of a Drug Court.



# The Lawsuit

- The jail is unconstitutional due to crowding, understaffing and inadequate space.
- The court will enter permanent injunctive relief.
  - Build a new jail (agreed by Vigo County) or any alternate plans to achieve a permanent resolution of the Jail's constitutional deficiencies
  - Imposing reporting requirements on Vigo County.
  - Increase staff to provide recreation and make sure that the health and safety of the inmates is safeguarded.
  - Attorney fees to plaintiff.



## Final Thought

- But the time for a solution is now, not when financial circumstances have improved or until all of Vigo County's citizens agree on the size and location of a new jail. Public officials are accountable to the citizens, but they also are accountable to an oath sworn to uphold the Constitution regardless of dissent or dispute from the public. The objective now is to make demonstrable progress toward a solution, without further delay. Delay risks the establishment of a three-judge panel and even more draconian outcomes such as mandated reduction in jail population or, at the extreme, closure of the Jail.
- The Court remains confident that Vigo County can solve this problem. But, if it fails to do so, the Court will do what the law permits to solve the problem for Vigo County.



Questions??