

Checklist of Strategies and Procedures to Help Alleviate Jail Overcrowding in Texas - 2025

Introduction

This guide can be utilized for many different aspects of Jail Population Management including, but not limited to: Overcrowding, Disaster Relief, Epidemic/Pandemic and other emergencies that may require the reduction in jail populations. This guide built upon work conducted by the Meadows Mental Health Policy Institute (MMHPI) in response to the COVID-19 pandemic. The guide was used by Texas counties to examine policies to reduce the jail populations at the height of the pandemic. (1). This guide provides a checklist of areas for counties to examine and is related to the potential need to address increases in county jail population in 2025. In 2024 the population in Texas jails increased by 4% according to the Texas Commission on Jail Standards (TCJS). An increase in persons sentenced to prison, the potential adoption of tougher pretrial release policies in the state legislature in 2025 and the unforeseeable impact of immigration policies on the detention in jails of immigrants awaiting federal detention may continue to impact an increase in the state jail population.

There are many times when operating a jail, the capacity to hold these individuals or staff the facility may face some adversity. This may require major changes to standard operating protocols by both governmental entities and private agencies. The County Jail is often the costliest resource a county operates and does not tend to be a safe or healthy place to hold an overflowing population. Jail capacity issues effect a multitude of operational processes and can have huge, negative implications for all people (staff and inmates) associated with maintaining the population as a whole as well as the community they are intending to serve.

The primary objective of reviewing and planning jail populations in Texas should be to ensure that jails have the necessary space to operate effectively by improving control over who is eligible for release and who should remain in custody. This will impact the costs associated with housing inmates, including transportation, medical care, and health-related expenses, and will help optimize the use of jail resources. The jail's own assessment tools can be used to identify defendants who could be released under alternative supervision in the community, reducing the need for costly jail beds. Such measures could also minimize the risk of communicable diseases spreading within the facility and, importantly, protect jail staff who must remain healthy to ensure smooth operations. Public officials will face tough decisions when creating jail population review guidelines. They must carefully balance reducing jail populations with ensuring public safety, while making release decisions based on individual assessments.

The secondary goal is to ensure jails have sufficient capacity to detain a larger number of violent offenders and those who pose significant public safety risks, as determined through proper assessment of the pretrial population. Public safety, in this context, means preserving space for violent offenders and maintaining a healthy jail staff to run the facility efficiently. This should be the immediate priority as local jail populations grow, and effective release strategies are not keeping pace. However, local conditions, such as the economic implications of housing defendants, the community's safety priorities, and the availability of post-release services, must all be considered by county leaders. For counties looking to review their jail populations and enhance public safety, the ten strategies outlined in this briefing offer a framework to reduce risks while implementing diversion and release strategies.

This briefing does not advocate for releasing individuals on bond or granting good time without the thorough evaluation of local judicial officials, based on an individualized review of each person's history. As emphasized, local officials should collaborate to reach consensus on protocols for reducing the jail population, ensuring public safety, and planning for future capacity needs to house individuals charged with or convicted of violent offenses, while also enabling appropriate releases that safeguard public health and safety.

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CREATED COUNTY CONSENSUS

- Creation of a Coordinating Council of County Officials

The National Institute of Corrections (2) is a federal agency which helps strengthen state and local correctional agencies. In response to the silo effect seen in many areas of corrections, they have created a guide to using Criminal Justice Coordinating Councils and to help identify resources which may be available.

- The county judge, a designated county or judicial official, should create a local criminal justice coordinating council or group which sole purpose is to effectively manage the jail population and other criminal justice areas of concern within the county.
- Designation of Key Officials as Members
 - The county judge, or the chair of a local justice coordinating council should call a meeting of key officials to review options to form consensus on a local plan to address issues related to the management of the jail population. At a minimum, the main officials should include the county judge or designee, the district and / or county attorney, the sheriff or local jailer, presiding judges, director of the county or district health agency, probation and pretrial directors, criminal defense attorney representatives, local mental health authority, the jail health care provider, and chief law enforcement officer of the largest police agency in the county.
 - Definition of Purpose
 - This group should review jail population management strategies and create a cohesive plan for the county and courts to prevent jail overcrowding. It is imperative to have a coordinated response, not an ad hoc response by each official.
 - Local leaders must consider conditions on the ground in the county including the rate of community transmission of any epidemic/pandemic disease, the local economic consequences of suppression measures, the community's broader public safety priorities, and the availability of post-release services.
 - County officials should also appoint a local official or senior staff member to represent the county's interests with the Texas Department of Criminal Justice (TDCJ). TDCJ can assist, in many respects, if they have the right information from a county. For example, TDCJ may speed up the admission of offenders already sentenced to a TDCJ facility or help with parole violators in jail awaiting a parole violation hearing.

EXAMINE USE OF PERSONAL BOND OFFICE / PRETRIAL AGENCY TO EXPEDITE REVIEW OF CASES

The Texas Code of Criminal Procedure chapter 17 sets the law regarding Bail in Texas including the types, eligibility and processes of release throughout the State. In most Texas counties today, ability to pay financial bond amounts determines which defendants will be released until adjudication/dismissal of criminal charges. In Texas, local jails spend an estimated \$90/day per person to house these individuals in local jails, though their actual risk of failing to appear for court or committing another crime after their release has never been fully assessed.

It has also been determined lengthy pretrial detention decreases the chances an individual has to be successful once released. This can lead to an increased change of future recidivism, which can exacerbate public safety issues and criminal justice costs. Most defendants are required to gain the social needs and networks which were lost during an arrest and their stay in the jail while their case was being processed, even if the case is dismissed or they are found not guilty. Those who plea and are now on Probation find themselves at a further disadvantage due to now trying to gain those needs and networks with a criminal conviction.

- Review Role of Pretrial Services Agency in Conducting Assessment to Identify Population in Jail That Could Potential be Considered for Pretrial Release
 - The personal bond office or agency in charge of pretrial release should be used to help review and assess the jail booking population to identify potential defendants with indicators suggesting possible bond release to help with jail population management. Some counties already have these assessments in place.
 - Most jails also utilize a Statute 15.17 Probable Cause Hearing and 17.15 Bail Setting process with local JP/Magistrate Judges to identify defendants for appropriate release.
 - In conjunction with the district and/or county attorney's, those individuals who are not released during the initial hearing could be reviewed again for possible release with different bond conditions which would meet the states appropriate recommendation for release conditions.
 - All of this coordination and final recommendations could then be submitted back to the JP/Magistrate for reconsideration prior to being subject to the next Strategy.

EXAMINE IF SHERIFF'S OR JAILER OFFICE CAN REVIEW ON-HAND JAIL POPULATION CASES

In many jails, there is a classification system set up to determine housing, access to services, and to try and separate pretrial defendants from those serving time for other adjudicated sentences. The sheriff should identify those on pretrial and fitting into the lower risk or classification level system for review and possible release. These individuals could be further reviewed by the pretrial assessment, DA review of the case or likelihood of dismissal/no file or appropriate release conditions, and submission of recommendations to the Judge with jurisdiction.

- Identify Jail Populations that Could Be Safely Release or Have Reductions in Time-Served
 - The Sheriff should review the records of the jail population to apply statutory and discretionary "good time" to inmates, where appropriate.
 - Inmates on "Blue Warrants" for administrative parole violations should be identified for evaluation of release on bond. These warrants are required to state if an inmate is bond eligible.
 - The personal bond office should check with the parole office to determine what to do with parolees who have already had their revocation hearings and to inform the parole office of bond-eligible parolees found during the review; their input is critical.
 - The sheriff should work in coordination with the district and / or county attorney and designate judges to create a list of parolees who could be considered for personal bond after appropriate review.
 - Any private attorneys of record representing these parolees should be notified of these reviews on a timely basis.
 - The sheriff, working with the jail health care provider, should identify medically vulnerable inmates for release and appropriate medical follow up in the community.
- Plan for the Development of Protocols to Address Potential Overcrowding and Timely Request a Capacity Variance from the Texas Commission on Jail Standards
 - Jail protocols for handling overcrowding should be developed based on Texas Commission of Jail Standards guidelines, if the sheriff has not already done so.
 - County officials should agree on a plan, with the local health or mental health agency or district, to determine follow-up or supervision policies for those inmates who are released from jail.

REVIEW INMATES ON PROBATION UNDER ORDERS TO BE TRANSFERRED TO OTHER FACILITIES AND EXPEDITE TRANSFER

- Involve the Local Probation Department in Examining Areas Impacting Probationers in Jail Awaiting Revocation Decisions
 - The probation department should identify inmates on probation awaiting transfer to other state or private facilities and inform the sheriff of actions they are taking to accelerate transfers.
 - If prompt transfer is not possible, the probation department and the district and / or county attorney should discuss the merits of releasing these inmates and ask the appropriate judge to review the recommendation.
- Examine protocols to reduce the filing of motions to revoke probation for technical violations
 - Attempts should be made to reduce the filing of motions to revoke probation for technical violations, other than absconders. Probationers arrested on Class A, B, and C misdemeanors, who have bonded out on their charge, should be reviewed by the probation office and the district and / or county attorney to determine if a motion to revoke and warrant request can be postponed to prevent the probationer's re-arrest by law enforcement.
 - Many probation offices may have in-house protocols to address technical violations and should be utilized in lieu of utilizing the jail as a deterrent/enforcement mechanism.
 - There should be *no misdemeanor defendants* in a county jail on motions to revoke of any type unless the probationer is in jail based on prohibitions based in 17.027 or similar situation.

ENCOURAGE LAW ENFORCEMENT TO CITE RATHER THAN ARREST FOR AUTHORIZED OFFENSES SET FORTH IN THE CODE OF CRIMINAL PROCEDURE

- Examine the adoption of new policies or expansion of present policies to issue citations in lieu of arrests

The Texas Code of Criminal Procedure chapter 14.06 sets forth the law regarding issuing a citation in lieu of arrest under 14.06 (c) with a listing of appropriate charges in 14.06(d).

- This Strategy should only be applied to cases that do not adversely affect public safety.
- Determine if the county needs to adopt a cite-and-release policy for persons living in the county and include the offenses for which this is applicable, as allowed by law. The sheriff should review the policy with the law enforcement agencies in the county.

- Examine magistration strategies in regard to the use of cite and release policies
 - Develop a policy for scheduling when persons cited and released on eligible offense are to appear for magistration, so peace officers can issue a citation with a time and place for magistration and record that a citation was issued. This can include via electronic means instead of in-person court.
 - Train the magistrates on their duty to magistrate just as they would if the person had been arrested; a magistrate may release a person on personal bond unless good cause is shown and can issue a warrant if the person does not appear in court.

ADOPT PROTOCOLS TO ENSURE THAT ARTICLE 17.032, CODE OF CRIMINAL PROCEDURE, MENTAL HEALTH BOND HEARINGS ARE CONDUCTED IN A TIMELY MANNER

The Texas Code of Criminal Procedure Chapter 17.032 sets forth the law regarding issuing a personal bond to those who meet certain mental health criteria and have not been able to post bond after being identified by the local mental health provider or in jail health provider.

- Examine effectiveness of local mental health screening policies in jail
 - Any jail inmate screened as potentially mentally ill at jail admission should have the required “written assessment” as directed in Texas Code of Criminal Procedures Chapter 16.22 performed within 24 hours during the emergency period.
- Examine if local policies are effectively using “Mental Health Personal Bonds”
 - Mentally ill inmates who have been in jail 96 hours must have a review under Article 17.032, Code of Criminal Procedure, and be considered for a mental health personal bond.
 - If the county has a mental health court, the presiding judges should issue an order to consolidate hearings under Article 17.032, Code of Criminal Procedure, in the mental health court. The mental health court should prioritize these hearings.
 - Keep in mind that aftercare service providers can ensure release plans are consistent with current service availability. All releases of inmates with mental illness, under Article 17.032 or otherwise, should include medications for a longer duration than usual to maintain continuity of care.

ADOPT PROTOCOLS TO ENSURE THAT ATTORNEYS REPRESENTING JAIL INMATES WILL BE READILY AVAILABLE AT ALL CRITICAL STAGES (ARTICLE 15.17, CODE OF CRIMINAL PROCEDURE, AND BOND REVIEW HEARINGS) TO GUARANTEE THAT DEFENDANTS ARE PROPERLY REPRESENTED AND REVIEWED FOR EXPEDITED BOND RELEASE

The Texas Indigent Defense Commission has stated a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of the adversarial judiciary proceedings that trigger attachment of the Sixth Amendment right to counsel. In making sure this process maintains the rights of all the accused, the following should also be implemented:

- Create and maintain a schedule at magistration and bond review hearings for defense lawyers to be present.

- Review the technology infrastructure to draft contingency plans to have defense counsel join from a remote location, if necessary.
- Discuss options for additional work for defense counsel to expedite processes.
 - For the jurisdictions where lawyers are paid hourly to be present for work in the jail but not filling a full hour with representation, defense counsel can do work that can expedite processes. For example, defense counsel can review Blue Warrants for bond eligibility, represent defendants that have been screened as mentally ill to secure a mental health bond release or expedite the Article 17.032, Code of Criminal Procedure, process if that process is in place in the county, or write habeas writs for persons with municipal holds from other jurisdictions.

DEVELOP PROTOCOLS FOR THE DISTRICT AND/OR COUNTY ATTORNEY TO CONTINUE TO REVIEW ALL PENDING MISDEMEANOR AND FELONY CASES FOR EXPEDITIOUS PLEA NEGOTIATIONS

- Expedite review of cases and plea bargain
 - The district and / or county attorney should continue an expedited review of all pending misdemeanor and felony cases where the defendant is currently incarcerated in the county jail.
 - The district and / or county attorney should attempt to negotiate pleas daily, in the interest of justice, that will resolve cases through plea agreements and reduce the jail population.

CONDUCT A SYSTEMATIC AND COORDINATED REVIEW OF THE TECHNOLOGY INFRASTRUCTURE TO FACILITATE EMERGENCY PROTOCOLS

The coordinating council should review all available technology infrastructure as new protocols will require the identification of gaps in internet video capabilities that must be addressed to support the above processes. The identification of pain points or weakness in the systemic process should be shared among the group so they can be addressed. Some of these needs may be but not limited to:

- Review and enhance remote work and conferencing that may continue to facilitate any of the processes adopted above
 - Protocols for key staff to work remotely but continue to interact with other members of their offices
 - Acquisition and distribution of appropriate technology to key staff, protocols on how to use hardware and software, and department policies on appropriate use
 - Identification of video links and terminals to allow for jail defendants to access their attorneys and participate in required hearings, as well as ways to sanitize these terminals between each use
 - Protocols regarding the use and validation of electronic signatures in lieu of wet signatures
 - Identification of an internet-based reporting system that will allow defendants on pretrial or probation supervision to report to their officers and for courts to notify defendants of hearings and appearances
 - Processes for training people (judge, defendants, and attorneys) to use these resources and providing technical support for issues with the technology

- Consideration of the possibility that the county will need to provide kiosk reporting locations for indigent defendants with no access to technology, and a strategy for kiosk location and accessibility

CONCLUSION

All of these strategy's should be reviewed and a strategic plan developed in coordination with all members of the council. It is not a statement of fact anyone one department agrees with all of the strategy's listed here, but they are willing to work towards the better utilization of the jail as the counties most expensive resource and what is in the best interest of their community. The strategic plan should also provide guidelines for the use, distribution, handling and protection of sensitive information in compliance with national and state law.

References:

- 1 <https://mmhpi.org/topics/policy-research/covid-jail-diversion-prioritization-and-admission-protocol-considerations/>
- 2 <https://nicic.gov/about-nic>
- 3 <https://www.texaspretrial.org/resources-and-publications>
- 4 <https://www.prisonpolicy.org/reports/pie2024.html>
- 5 <https://www.prisonpolicy.org/reports/pie2024.html#myths>
- 6 <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.17.htm>
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