



June 17, 2019

To: Spokane County Board of Commissioners

CC: Spokane Regional Law and Justice Council, Criminal Justice Administrator, Spokane City Council, JFA Institute, Vera Institute of Justice, members of the media

Dear County Commissioners French, Kerns, and Kuney,

We are writing to raise concerns we have with part of the current process that the County and City have undertaken to evaluate Spokane's criminal justice system and the potential for replacing the current Spokane County jail. Currently, Spokane has a significantly higher incarceration rate than Washington State as a whole. This process must ensure that this disparity is eliminated.

It is also important to note that Spokane has received millions of dollars from the MacArthur Foundation as part of the Safety and Justice Challenge effort to reduce the jail population and decrease racial disparities in Spokane's criminal justice system. Unfortunately, those efforts have yet to demonstrate great success, we believe in part because many essential steps have yet to be taken or have only just begun. Spokane must ensure that the goals of reducing the jail population and reducing racial disparities are fully realized before it can begin real planning for any future jail project.

Many of us attended and encouraged others to attend the meetings held by the Vera Institute during the week of May 20. We appreciate their efforts to seek community input on such important issues. However, we are very concerned regarding a parallel process that we understand is currently underway.

As you may know, the County has reached an agreement with the JFA Institute to do some sort of projection of future jail populations. Unlike the Vera process, JFA will apparently not be soliciting any community input as it makes these projections.

As JFA acknowledges in materials on its website, any projection of future jail populations is heavily, if not exclusively, determined by the criminal justice policies and practices of the local jurisdiction studied. Accordingly, any legitimate study of a projection for Spokane must take into account criminal justice reforms that are currently being pursued, those that will be pursued and those that should be pursued. Absent an analysis of all of these reforms, any projection will be invalid and likely skewed toward a larger facility than is actually necessary.

Spokane's own experience with jail projections demonstrates how incorrect such efforts can be. In 2008, David Bennett projected that Spokane's current jail need would be many hundreds of beds greater than it actually is. Given that Spokane will be obligated to financially support any future jail, the implications of an incorrect projection are incredibly significant and could result in millions of dollars ill spent or needlessly wasted for years going forward.

Furthermore, it has been shown that the maxim "if you build it, they will fill it" is often true. Studies have demonstrated that criminal justice professionals adjust their policies and practices to increase incarceration rates when larger jails are built in their communities. The policies and practices of, particularly the Spokane County Prosecuting Attorney's Office, will undoubtedly adjust in an effort to fill any larger jail facility without any additional benefit to public safety or community health.

With this in mind, we have set out the reforms that must be included in any projection for criminal justice needs in the future. Crucially, this is not an exclusive list. In fact, we understand that the Vera Institute process will likely identify other reforms as that process goes forward, reforms which should be implemented in order to ensure that Spokane uses incarceration only when absolutely necessary.

These reforms include the following.

#### RACIAL DISPROPORTIONALITY MUST BE SUCCESSFULLY ADDRESSED.

Reducing racial disproportionality in Spokane's criminal justice system is one of two Safety and Justice Challenge goals that the County and City have pledged to reach. Unfortunately, to date there have been no discernable successes in reducing historical and deep racist outcomes. **People of color in our community remain more likely to be targeted, arrested and incarcerated. Spokane can no longer pay lip service to racial justice and must instead take immediate steps to actually address the inequities that permeate all levels of the criminal justice system.** Any outcome of this current process must include on-going commitments of resources and attention to efforts and reforms that have been proven to reduce racial disproportionality. **In addition, any analysis of the future needs for jail space in Spokane must identify how and to what extent different jail capacities and criminal justice reforms will impact communities of color.** JFA's work must include such an analysis.

#### PRE-TRIAL SERVICES AND SUPERVISION MUST BE EXPANDED WITH THE COSTS BORNE BY THE SYSTEM.

**Spokane's jail population can be almost immediately and significantly reduced by increasing pre-trial supervision and services that keep people out of jail.** Other communities have dramatically reduced their jail population and saved tax dollars for other more socially beneficial purposes by reorienting the system to limit incarceration to only when absolutely necessary and increasing resources to assist people in staying out of jail pre-trial. The County and City should immediately invest in providing a broader and more robust range of services to people awaiting trial that will allow them to remain at home, remain employed and remain connected to their families and communities. However, the costs associated with any such services must be borne by the system. Requiring individuals to bear the costs of home monitoring or other similar systems simply reaffirms a disproportionate and inequitable system, where the ability to pay dictates whether someone remains in the community or is locked away. A system based on user fees is unfair and will inevitably exacerbate racially disproportionate outcomes.

## END DRACONIAN FELONY DRUG CHARGING DECISIONS BY COUNTY PROSECUTOR'S OFFICE.

Unfortunately, Spokane incarcerates people at a much higher rate than most of the rest of the state and a significantly higher rate than other comparable Washington counties. As detailed in a recent Spokesman Review article, the Spokane County Prosecuting Attorney's Office charges more felony drug crimes than any other large county and as the Spokesman mentions "it's not even close." This criticism is nothing new. David Bennet also noted in his 2008 report that the jail population was significantly impacted by the large number of felony narcotics charges. The Spokane County Prosecutor's Office and local law enforcement have abused their inherent discretion and consciously decided to incarcerate people suffering from substance use disorders and mental health disabilities. Unlike other county prosecutors who have taken a more humane approach, guided by evidence-based research, Spokane's prosecutors continue to incarcerate people who should be provided community based treatment and supports. **One essential reform is to end the draconian charging policies of the County Prosecutor and instead replace incarceration with treatment and social services.**

## BLUEPRINT FOR REFORM MUST BE COMPLETELY IMPLEMENTED

Only five years ago, the Spokane community came together to identify essential criminal justice reforms. Many of those reforms were included in the Blueprint. Unfortunately, many of those reforms have yet to be implemented or are just being implemented. They include the following:

*Recommendation 5.1(5) & 5.2(2) – Tech. workgroup to research and implement video monitoring system, and performance measures* – The Technology workgroup has not yet been created. Nor have the reforms it was supposed to implement.

*Recommendation 5.3(6) – Create LEAD program* – The County and City have yet to create a LEAD program. The legislature this session allocated a significant amount of money to support LEAD programs.

*Recommendation 5.3(3) – Renew efforts and expand neighborhood crime prevention programs* – The County has yet to expand neighborhood crime prevention programs.

*Recommendation 5.3(4) – Expand Crisis Intervention Team program across all local law enforcement agencies* – The City has four teams and the County has one team, all which have been created within the last year. Spokane Valley has not yet created a team. These teams have demonstrated tremendous success in diverting people in mental health crises from entering the criminal justice system. In fact, the Spokane City Police Department teams have diverted more than 75% of contacts away from emergency rooms and jail. More teams need to be created and funded.

*Recommendation 5.4(2) & 5.8(1) – Create a 24 hour intake facility and Community Corrections Center* – The 24 hour intake facility and Community Corrections Center has not yet been created.

*Recommendation 5.4(3) & 5.6(2) – Expand diversion and alternative programs for low-level and first-time offenders, including a DWLS alternative program* – The County has yet to expand diversion and alternative programs for low-level and first time offenders, including DWLS alternatives. In fact, the County Prosecuting Attorney's Office charges drug arrests as felonies at many times the rate of other comparable counties and refuses to appropriately use diversion programs and therapeutic courts. The Prosecuting Attorney's Office appears to be actively working against the SJC efforts to reduce the jail population.

*Recommendation 5.5(1) & 5.5(3) – Collaborative efforts should be taken to minimize and avoid unnecessary court hearings* – The courts have yet to work together to minimize and avoid unnecessary court hearings.

*Recommendation 5.5 (2) – Defendants with criminal cases pending in more than one court should have all pending matters handled by a single court and prosecuting attorney’s office* – The courts and prosecuting attorneys offices have yet to work together to ensure that people with criminal cases in different courts can have all of their charges addressed in one court. People languish in jail as a result.

*Recommendation 5.5(5) – Superior Court judges, prosecutors and defense attorneys should work collaboratively to meet BJA time standards for felony prosecutions* – Criminal justice system professionals have been unable to work together to meet BJA time standards for felony prosecutions. The County Prosecuting Attorney’s Office continues to overcharge cases and public defenders are underfunded and have too many cases per attorney.

*Recommendation 5.5(9) – Expand Adult Drug Court* – The County Prosecuting Attorney’s Office continues to refuse to utilize diversion programs, including Adult Drug Court, appropriately. In fact, Prosecuting Attorney’s Office is actively making it more difficult for people to access the Drug Court and continues to overcharge drug cases at a rate unseen in other comparable counties.

*Recommendation 5.6(4) – Spokane County should make specific modifications to ECR program based on Differentiated Case Management best practices & commission independent evaluation of the program* – People who have been convicted have not been provided appropriate treatment options. Another example of where the Prosecuting Attorney’s Office is actively sabotaging efforts to provide alternatives to incarceration.

*Recommendation 5.9(1) – Develop inter-local agreement to combine City and District Court probation services to remove duplication* – The City and County probation departments apparently refuse to work together to remove duplication.

*Recommendation 5.9(3) – Probation to collaborate with law enforcement and community agencies to enforce risk/needs/responsivity and active case management techniques* – This collaboration has not occurred because various offices cannot figure out how to work together – another example of bureaucratic turf battles hindering efforts to reduce the jail population.

It is unconscionable that people sit in jail because the County Prosecuting Attorney’s Office and other offices and agencies are either actively refusing to implement essential reforms or are unable to work together to accomplish them. **These agencies must be required to implement all of these reforms and fully resource them before any decisions about the future of the jail can be made.**

SPOKANE IS ABOUT TO REALIZE A MASSIVE INVESTMENT IN RESOURCES SUPPORTING OUR MENTAL HEALTH CARE SYSTEM

The legislature in the just-completed session has allocated millions of dollars to support Spokane’s mental health care network and to focus on the needs of people living with serious mental health issues in our County. These investments will dramatically improve the manner in which local community based service providers can assist clients and limit instances in which people with mental illness are left without support. **Undoubtedly, hundreds of people who are currently cycling in and out of Spokane’s jail will be assisted in new and meaningful ways, seriously reducing the pressures that the jail is currently experiencing.** Those impacts must be fully understood and realized before the County can determine with any certainty what its future jail usage needs may be.

## BAIL REFORM, THE PSA, AND THE BAIL PROJECT WILL DRAMATICALLY REDUCE THE NUMBERS OF PEOPLE HELD PRE-TRIAL

**Information provided by Vera indicates that 49% of the current population of the jail are there awaiting trial on misdemeanors or serving low level misdemeanor sentences.** Many people awaiting trial on misdemeanor charges pose no danger to public safety and should be immediately releasable with little or no bail. Furthermore, people wait on average 10.8 days before being bonded out of jail. This lag can be dramatically reduced by ending the reliance on cash bail and expediting the bail setting process.

Spokane has only recently begun to take steps to minimize the use of cash bail and to introduce the PSA risk assessment. While we have significant concerns that the use of the PSA will result in greater racial disproportionality, it may serve to assist Spokane in reducing the number of people being held pre-trial with bail amounts that they cannot afford. Moreover, the Bail Project began its work in January and is quickly moving to reduce the number of people in the jail who can be released, except for their inability to afford the bail set by a court.

## THE COUNTY HAS YET TO OPEN THE MENTAL HEALTH CRISIS INTERVENTION FACILITY

Money has been allocated for construction of the mental health crisis intervention facility that can be run using Medicaid funds. However, it is not slated to open until 2020. This facility will likely significantly reduce the need to house people suffering from serious mental health crises in the jail. **Any future projection must accurately determine how significant a reduction in jail usage such a facility will mean.**

## BUREAUCRATIC TURF BATTLES MUST BE ADDRESSED AND NECESSARY REFORMS IMPLEMENTED

It has come to our attention that a number of reforms set forth in the Blueprint For Reform have been stymied by different courts and governmental agencies that are unwilling to work together to implement essential systems that will allow people to leave jail more quickly than currently possible. These turf battles injure people and keep families apart and must be resolved. **You, as County Commissioners, have a particular role to play to ensure that these courts and agencies resolve their differences and help Spokane move forward after so many years of intransigence.**

## THE TRUE COSTS OF DIFFERENT JAIL PROPOSALS MUST BE IDENTIFIED AND PUBLICIZED.

The current jail suffers because of a lack of staffing which has led to serious problems inside the jail. Any jail that will be built in the future will require a significant increase in staffing to ensure that the same problems that have occurred in the current jail do not continue into the new one. Any plans to configure a new jail to allow fewer staff to monitor more people are inhumane, ineffective and will lead to significant problems. **Any future jail must ensure that all people receive much more health care, behavioral health services, programming options, out of cell time, and careful, respectful supervision and monitoring. More staffing will be required in any future jail.** As Vera noted in its presentations, 74% of costs associated with building a new jail arise from employees' salaries and benefits, while only 5% come from capital expenditures and debt service. Before any decision is made, the County must provide the public with accurate numbers related to the costs associated with building and operating jails of different sizes that provide adequate services and therapies.

Without all of these reforms being realized and properly analyzed, no projection of future jail needs will be accurate and so cannot be relied upon. The County must ensure that all of these reforms are put into place and their impacts properly understood before any decision can be made regarding the need for and size of any future jail.

We look forward to working with you and others on these important issues as this process moves forward.

Sincerely,

Smart Justice Spokane Executive Committee

Terri Anderson, Tenants Union of WA

Curtis Hampton, Spokane Community Against Racism

Bill Kane, Spokane Centers for Independent Living

Anne Martin, Greater Spokane Progress

The Rev. Rick Matters, Spokane Community Against Racism

Liz Moore, Peace & Justice Action League of Spokane

Kurtis Robinson, NAACP Spokane, AOW State Area Conference Criminal Justice Chair

Devon Wilson, NAACP Spokane

Cam Zorroza, Center for Justice

**The Smart Justice Spokane campaign coalition:** ACLU/Washington · All Saints Lutheran Church · Center for Justice · Chihak & Associates - Disability Attorneys · Community Building Foundation · Community-Minded Enterprises · Fulcrum Institute Dispute Resolution Clinic · Greater Spokane Progress · KYRS/Thin Air Community Radio · League of Women Voters Spokane Area · NAMI Spokane - National Alliance on Mental Illness · Neighborhood Alliance of Spokane · Northwest Fair Housing Alliance · Peace and Justice Action League of Spokane · SEIU Healthcare 775 NW · Smith-Barbieri Progressive Fund · Spokane Branch Unit 1137 NAACP · Spokane Center for Independent Living · Spokane Community Against Racism · Spokane Tribe of Indians · Unitarian Universalist Church of Spokane · University Legal Assistance, Gonzaga Law School · Washington Community Action Network · Washington Education Association, Eastern Washington · Washington NORML · Washington State Council of City & County Employees - Local 270 AFSCME