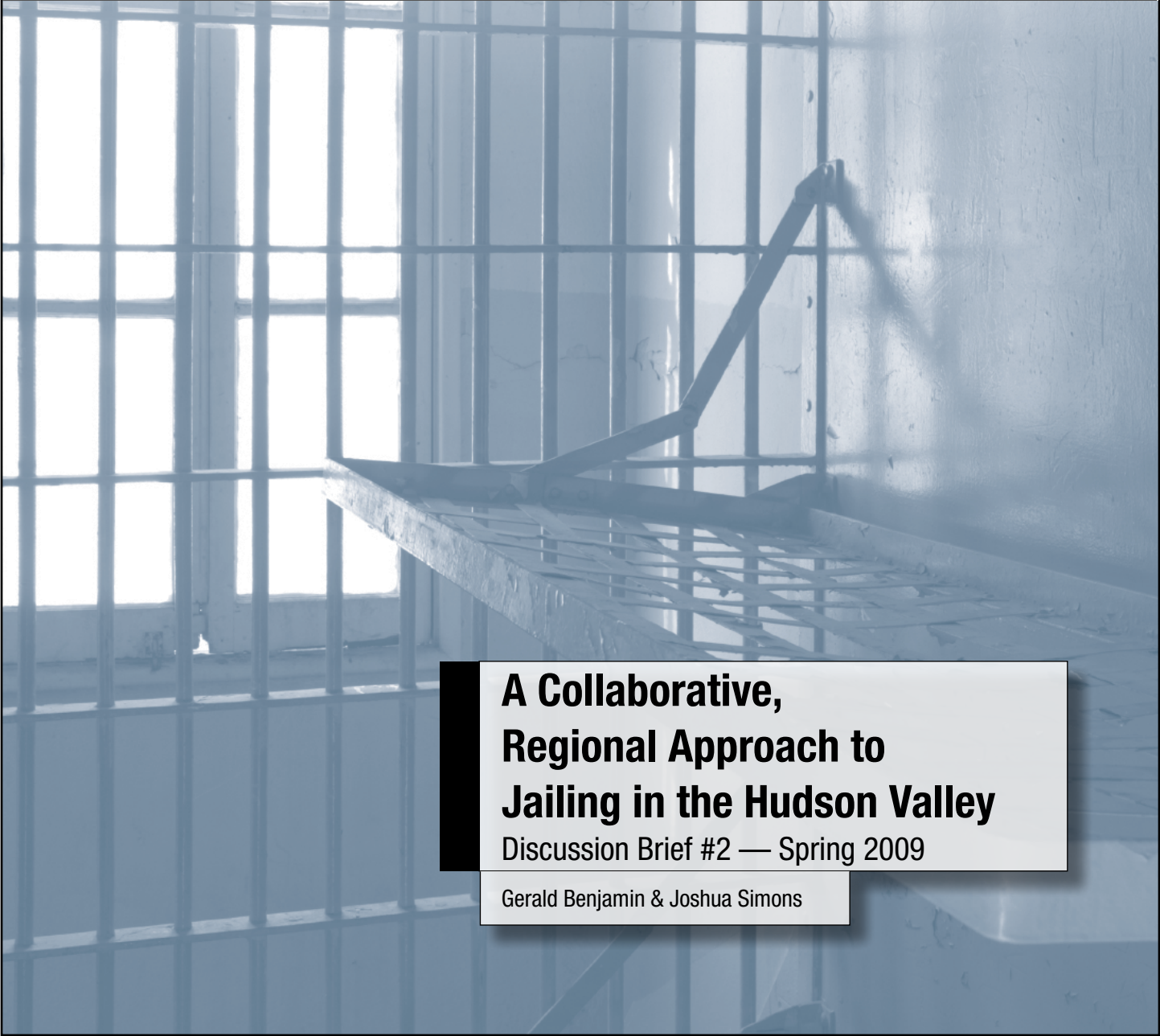


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CENTER FOR RESEARCH, REGIONAL EDUCATION AND OUTREACH

STATE UNIVERSITY OF NEW YORK AT NEW PALTZ

A photograph of a prison cell, showing metal bars and a bed. The image is in a blue-tinted, slightly desaturated style.

A Collaborative, Regional Approach to Jailing in the Hudson Valley

Discussion Brief #2 — Spring 2009

Gerald Benjamin & Joshua Simons



There is already enough **JAIL CAPACITY** in the eight Hudson Valley counties considered in this study to meet **current** and **future** regional needs.



Gerald Benjamin, CRREO Director and Associate VP for Regional Engagement, offers an unusual combination of academic and applied experience. A leading expert on New York State and local government, he has written or edited 14 books and government reports, and numerous articles and essays. Benjamin's public service includes twelve years as an Ulster County legislator (the final two as the legislature's chair and chief elected officer), chairman of the commission that developed and achieved adoption of Ulster County's first charter, staff director for the State Constitutional Revision Commission and membership on the State Commission on Local Government Efficiency and Competitiveness.



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JAILS ARE BIG BUSINESS IN THE HUDSON VALLEY. IN 2006, THE LAST YEAR FOR WHICH THE STATE COMPTROLLER HAS COMPLETE INFORMATION, THE COMBINED SPENDING TO OPERATE JAILS IN PUTNAM, ROCKLAND, ORANGE, ULSTER, DUTCHESS, SULLIVAN, GREENE AND COLUMBIA COUNTIES WAS \$92,989,892 (TABLE I).¹

County jails have been in the news most recently, however, not because of how much they cost to operate. The big story is how much they cost to build.

A legislative investigation of cost overruns in building the new Ulster County jail was released in September, 2007. This project, originally scheduled to cost \$72 million, will likely have a final cost of \$95.5 million. Ulster County will have to raise and pay an average of \$4.65 million per year for the next twenty years to meet the capital costs for its new jail. This year the price tag is over \$6.5 million. (And added operating costs will be extra.)

In Fall 2008, Dutchess County Executive Bill Steinhaus used his veto power to cut \$795,000 in inmate "boarding out" costs from his county's budget. This is the most recent chapter in Steinhaus's multi-year fight with the New York State Commission of Correction (SCOC) to resist building a 300 bed addition to the county jail at a projected cost of \$70 million. In response, Orange County officials said, with reimbursement doubtful, they would be unwilling to house inmates from Dutchess in 2009.

Meanwhile the SCOC pressed Sullivan County to build a \$100 million, 407 bed jail facility. This is twice the size of that county's

Rising Costs of County Jails

Table 1

County	2003	2004	2005	2006	2007	Change 2003-2007	Average Yearly Change
Columbia	\$ 2,742,090	\$ 3,123,172	\$ 3,585,074	\$ 3,477,226	N.A.	N.A.	N.A.
Dutchess	\$ 18,627,982	\$ 19,237,871	\$ 20,912,941	\$ 21,053,280	\$ 22,384,310	20.2%	4.7%
Greene	\$ 1,952,707	\$ 2,021,437	\$ 2,215,431	\$ 2,244,080	\$ 2,724,063	39.5%	8.9%
Orange	\$ 20,542,919	\$ 22,219,591	\$ 24,561,745	\$ 25,212,902	\$ 27,009,395	31.5%	7.1%
Putnam	\$ 4,283,008	\$ 4,672,763	\$ 5,304,897	\$ 5,292,956	\$ 6,215,509	45.1%	10.0%
Rockland	\$ 14,275,359	\$ 14,766,550	\$ 16,486,640	\$ 17,060,586	\$ 17,828,368	24.9%	5.8%
Sullivan	\$ 5,131,218	\$ 5,204,599	\$ 5,319,180	\$ 7,155,629	\$ 7,360,808	43.5%	10.3%
Ulster	\$ 8,921,448	\$ 10,516,958	\$ 10,925,819	\$ 11,493,233	\$ 12,152,881	36.2%	8.2%
Totals:	\$ 76,476,731	\$ 81,762,941	\$ 89,311,727	\$ 92,989,892	\$ 95,675,333	25.1%	5.8%

Data Source: New York State Comptroller, Local Government and School Accountability (Unpublished)

current, admittedly antiquated jail; Sullivan negotiated down to a 256 bed facility, projected to cost \$73 million.

Also, in Greene County, again under the Commission of Corrections' scrutiny and direction, the county government is facing a choice of whether to build a jail with a capacity of approximately 150 cells at a cost (estimated in 2005) of \$30 million.

And yet, using the Commission of Correction's own criteria for analysis and prediction, there is already enough jail capacity in the eight Hudson Valley counties considered in this study to meet current and future regional needs.

The New York State Commission of Correction

The New York State Constitution provides that "There shall be a

state commission of corrections, which shall visit and inspect or cause to be visited and inspected by members of its staff, all institutions used for the detention of sane adults, charged with or convicted of crime," (NYS Constitution, Article XVII, §5). The chair of this body and two other commissioners are appointed for five-year terms by the governor, subject to the advice and consent of the Senate. The current agency head, recently appointed by Governor David Patterson, is Thomas A. Beilen; he formerly served as Niagara County Sheriff.

The 2009-2010 Executive Budget provided the Commission a staff of 34 and a budget of \$3 million (mostly for staff salaries) with which to oversee not only 60 county jails, but 70 state correctional facilities, 6 New York City correctional facilities, 316 local police department detention facilities and 4 juvenile detention facilities run for the state Office of Children and Family Services.

Building upon the SCOC's constitutional mandate, an addition to the state's Corrections Law in 1965 empowered the agency to establish minimum standards through the promulgation of rules and regulations regarding the "care, custody, corrections, treatment, supervision, discipline and other correctional programs for all inmates confined in local correctional institutions." (New York State Corrections Law, 1965, Article III, §5). Toward this end the commission may provide localities aid in assuring "humane and economic administration", "best sanitary conditions" and investigate the management of jails (NYS Corrections Law, 1965, Article III, §45, 2-4). It also has the power to approve or reject plans for jail construction or renovation.

Pursuant to these powers, and in accord with legal requirements arising from other statutory provisions and court decisions, the Commission has adopted and regularly updates

The Commission of Correction has been given **ENORMOUS POWER** over the **character** and **operation** of county jails.

Minimum Standards and Regulations for Management of County Jails and Penitentiaries (NYCRR, §7). These further detail the SCOC's power to review and approve any plans for new jail construction, and explicitly prohibit such construction without its approval. Additionally, they set out a great range of operational requirements for county jails.

Among the areas covered are:

- maximum jail capacities;
- size and furnishing of individual cells and shared living spaces;
- educational services required for some classes of inmates;
- requirements for classifying inmates and segregating them within institutions by class;
- health and mental health care standards and procedures;
- legal services for inmates;
- jail sanitation; and
- jail staffing requirements.

SCOC regulations also govern how and under what conditions counties may seek exceptions to these

rules (called variances), if “full compliance... cannot be achieved or maintained” (NYCRR, 7512.2). A variance, if approved, is given for a specified time period and with conditions attached to meliorate the circumstances that generated the need for it.

Generally, inmates must be housed in the county in which they are detained. The *Minimum Standards* (NYCRR, 7512.2) detail when and for what reasons an exception may be made to this requirement, and a specific inmate or group of inmates placed in a jail in another county. Such placements are authorized by the SCOC through the issuance of a “substitute jail order.”

Finally, the SCOC is empowered to have staff on-site to monitor facilities that don't meet minimum standards, and even – based upon authority first given in 1929 – to close a county jail that it finds “unsafe, unsanitary or inadequate to provide for the separation and classification of inmates required by law or which has not adhered to or complied with the rules or regulations promulgated with respect to any such facility by the commission.” (New York State Corrections Law, Article III, §45) In the Hudson Valley, the closing of the Putnam County jail prompted the

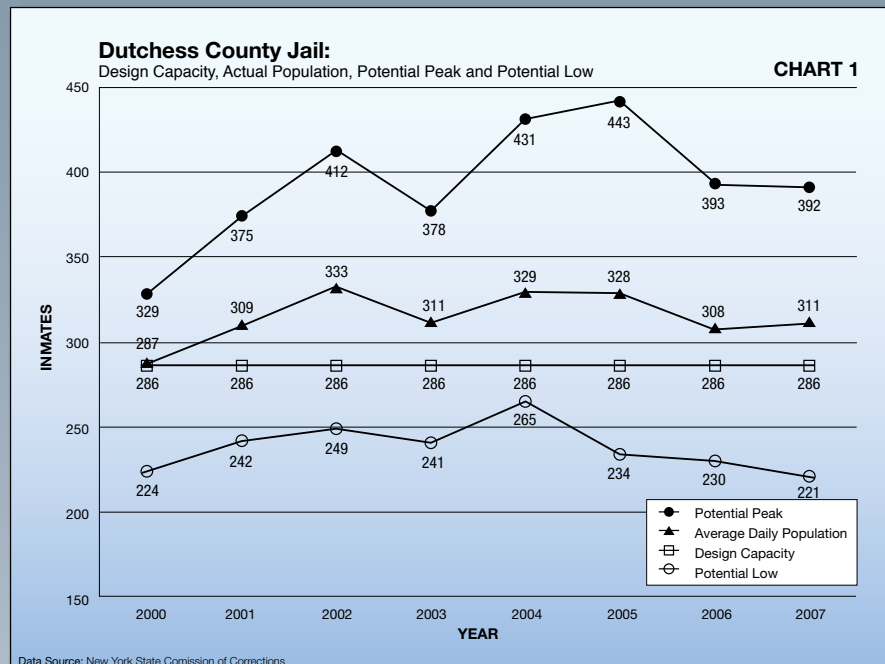
construction of the current jail there in the late 1970's.

The Commission of Corrections has been given enormous power over the character and operation of county jails for two reasons.

- The first is that, if left unregulated, there is a good chance that local governments might well give jails short shrift. “Jails are funded largely from local resources,” the Commission wrote in 1980. “Pressured to keep taxes down while providing a great range of services, county officials rarely place them high on their list of priorities.” (SCOC, 1980, p.1)
- The second is that abusive treatment of prison and jail inmates has at times been a serious problem in New York, establishing a need for independent oversight of these institutions.

The Drive for Jail Construction

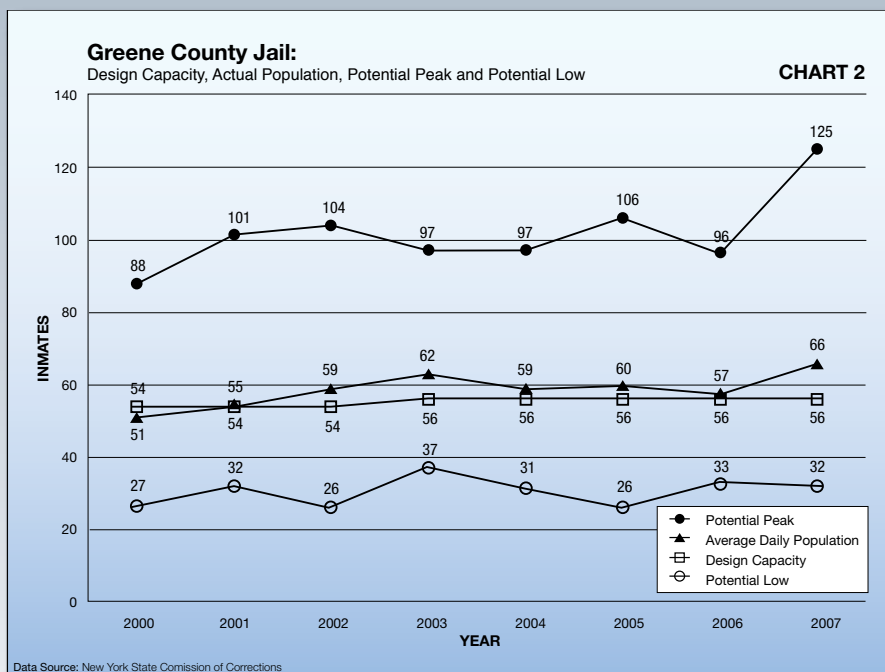
In the seminal *Report on Population and the Overcrowding of County Jails in New York State* (1980), the SCOC found “overcrowding, antiquated facilities, inappropriate incarceration, marginal use of alternatives, and lack of financial



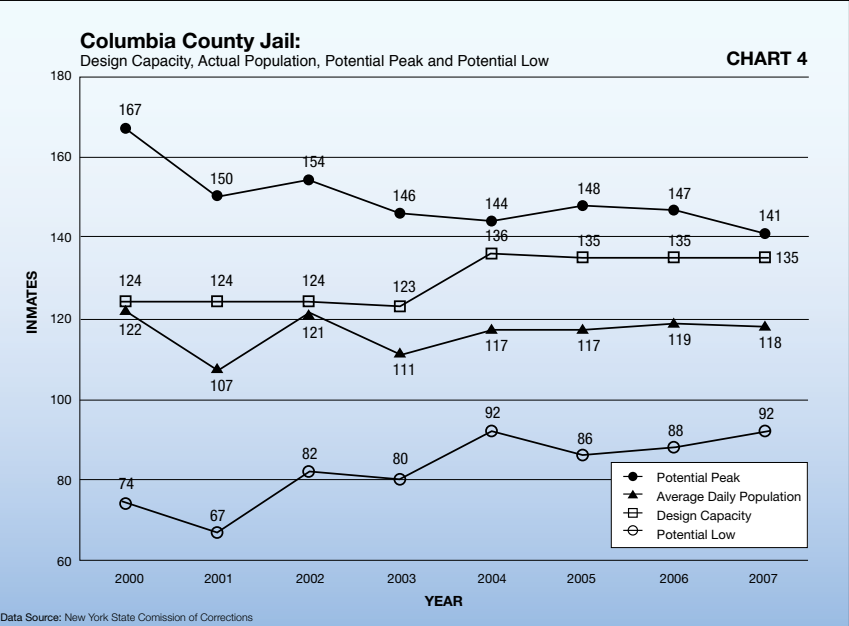
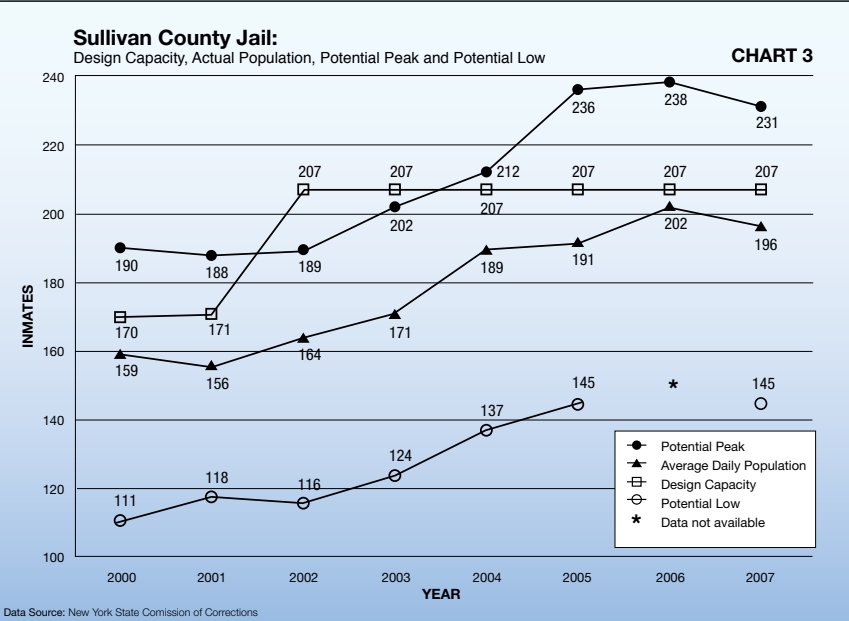
and public support” (p. 2). Three general policy responses were needed, it said, to remedy this situation: “better use of existing facilities, reducing the population, and increasing the capacity.” (p. 1) Looking back in 1995, the agency claimed success in responding to the increased population pressures of the late 1980's and early 1990's. “In June 1993,” it reported, “for the first time in seven years, the local correctional system had more permanent beds than county level inmates. During 1994, while this system was at approximately 97% of design capacity, twenty counties were involved in various stages of jail expansion, renovation, or new construction.” (SCOC, 1995, p. 8)

Reformers argued that “Historically jail capacity has created its own demand.” (SCOC, 1989, p.2) They advanced alternatives to incarceration, and advocated for efficiencies throughout the criminal justice system to reduce jail time for un-sentenced inmates, driving down demand for cells. Pressured to build, yet interested in avoiding the large capital costs of jail construction, many counties embraced these alternatives. For example, in Ulster County under the leadership of Legislative Chairman Richard Mathews and with state funding, a major commitment to alternatives to incarceration programs was made during the 1980's. (As the recent efforts in Tompkins County show, this strategy is still attractive to county governments.)

Nevertheless, bolstered by state and national statistics documenting

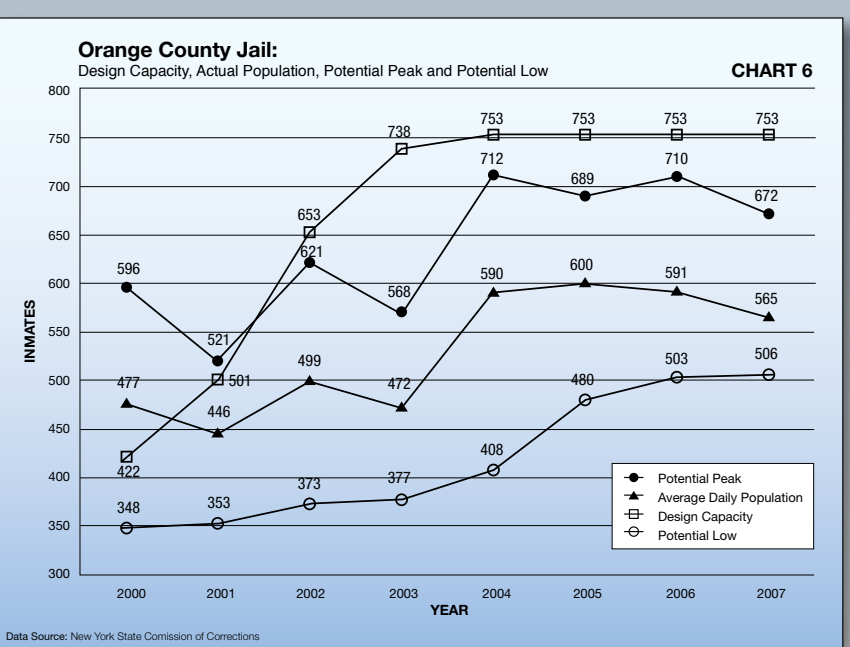
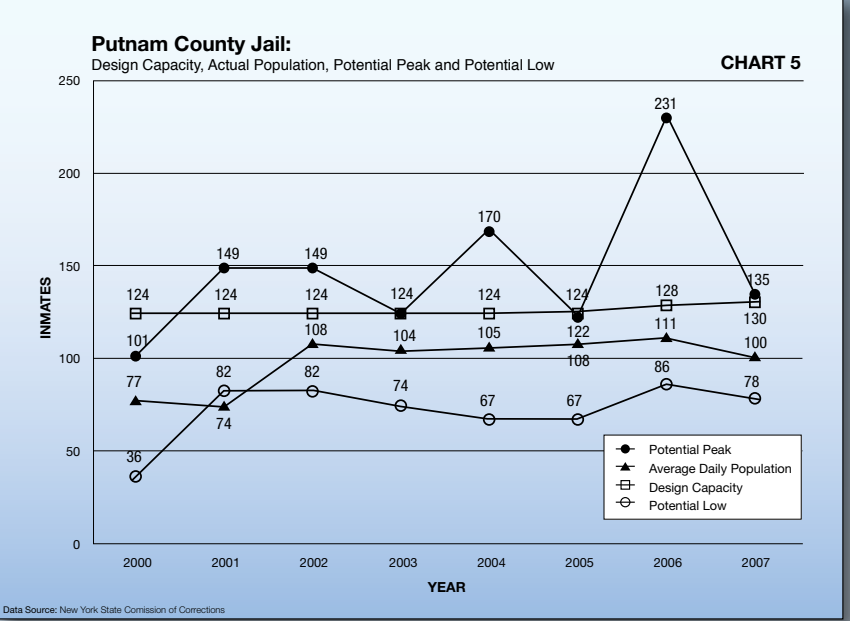


Most county elected leaders count its efforts to require them to spend on prisons **NEAR THE TOP OF THE LIST** of unfunded state mandates that **drive up** local government capital and operating costs and therefore property taxes.



increased demand, the SCOC used a combination of its powers with remarkable persistence over years and even decades to push, pull, induce and – some county officials would say – coerce – counties to spend their resources to construct new facilities designed to meet current and projected jailing needs. When jail capacity is reached, variances are given for limited time periods, conditional on commitments to progress toward new construction. If county commitments are not met, variances are denied, forcing them to “board out” inmates at considerable expense. But “boarding out” also needs commission approval, which is granted on a limited basis. If local resistance persists, “boarding out” may be made inconvenient, with inmates required to be transported relatively long distances at increased cost. One recent review concludes that since the creation of its New Institutions Technical Assistance Program in 1993 “the SCOC has been responsible for mandating the size and timetable of nearly every new jail project in New York State while providing no financial support or alternative solutions to incarceration to local counties.” (Center for Constitutional Rights, 2007, p.5).

For the provision of county jail services, the opportunity for such a shift is now. The shift? **THINKING REGIONALLY,** not county-by-county.



From the SCOC point of view the modernization of county jails and addition of capacity has been a positive outcome, indeed a singular achievement. James Lawrence, Director of Operations for the agency wrote with pride in the *New York State Association of Counties Newsletter* (2006) that eighteen county jail projects totaling 4936 beds had been completed between 1994 and 2004, three of these in the Hudson Valley (Orange:800 beds, Dutchess:100 and Westchester Penitentiary:436). Moreover, Lawrence said, over \$1 billion in additional projects were in various phases of planning and completion, in eighteen other counties, including five in the Hudson Valley (Ulster:400 beds, Delaware:100, Putnam:24, Sullivan:400 and Greene:100).

The Ulster County project was completed amidst massive cost overruns and opened in 2007. But many of the other counties on this list (and some, like Dutchess, not even on the list) continue to resist the SCOC’s pressure to build. Most county elected leaders (not all, the SCOC finds some support among sheriffs), count its efforts to require them to spend on jails near the top of the list of unfunded

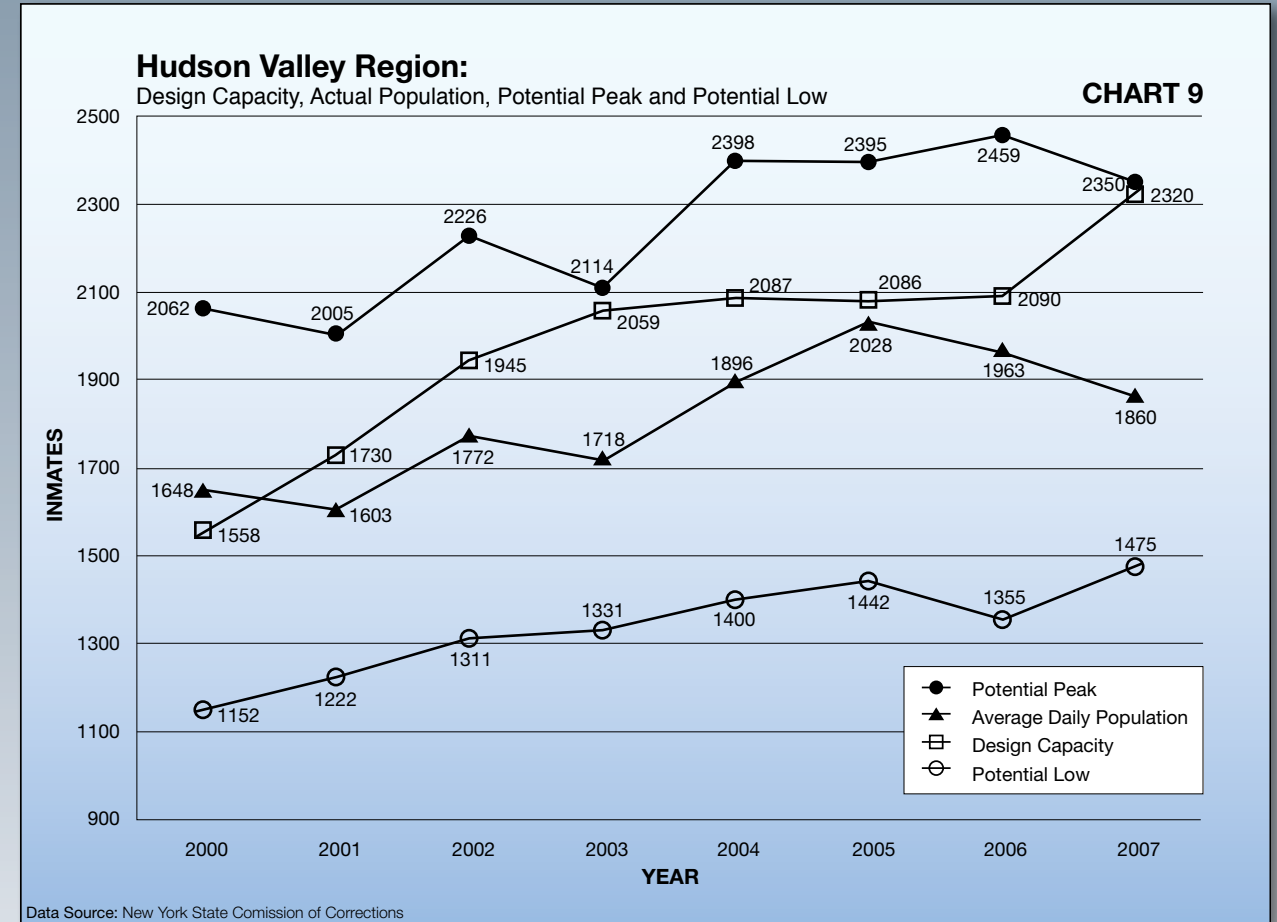
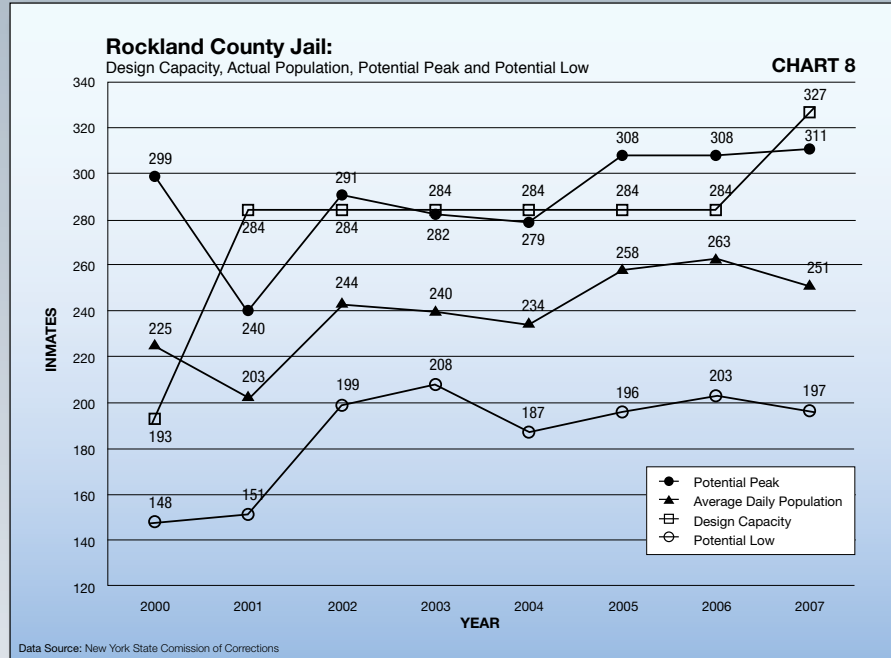
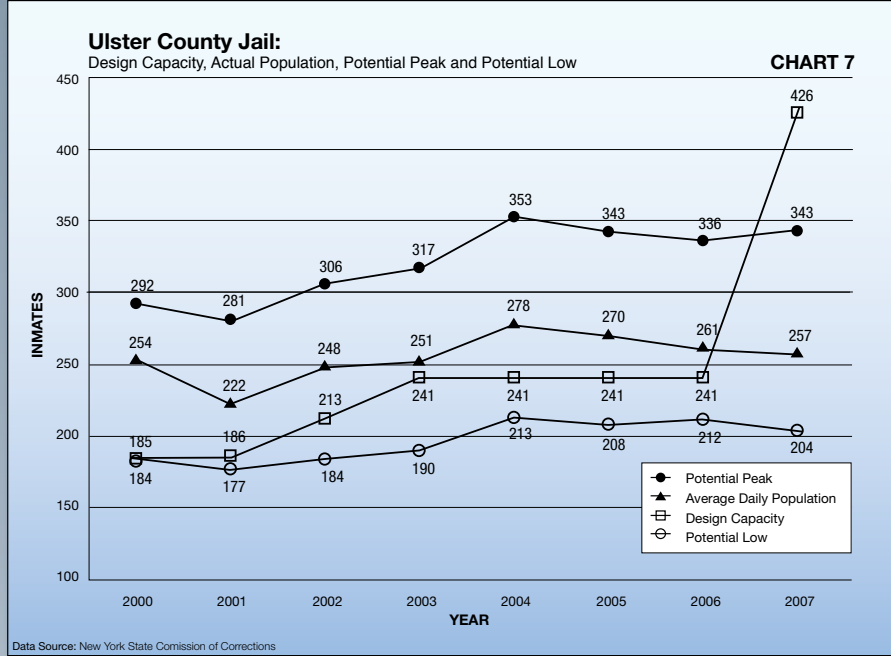
state mandates that drive up local government capital and operating costs and therefore property taxes.

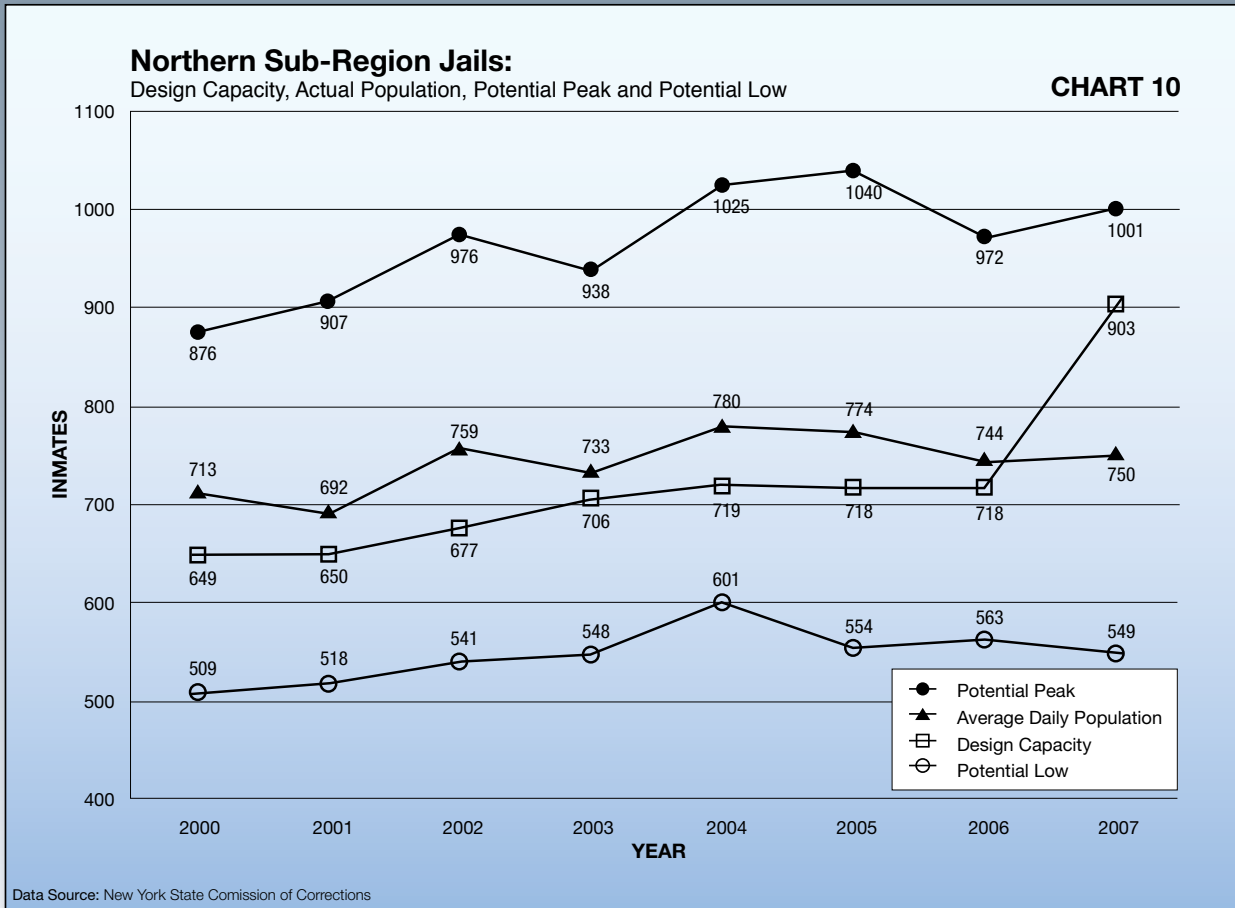
Counties also argue that jail censuses are increased by the requirement that they house state parole violators. Frequently before a new facility there was built, Ulster officials say, the number of state-ready inmates in the county jail equaled or exceeded the number boarded out. And to add insult to injury, state reimbursement did not cover the costs of this imposition. Additionally, counties' debt capacity is constitutionally limited; the ability to borrow for other pressing purposes is thus diminished when priority is given to financing jail construction. Certainly as the economy worsens, jail building is low on the list of priorities of county officials with enormous capital and service demands upon them.

Switching the Paradigm: Regional Thinking About Jails

Almost a half century ago Thomas Kuhn, the philosopher of science, famously observed in his book *The Structure of Scientific Revolutions* that people almost all of the time do not challenge existing paradigms, that is, established frameworks for doing things. They prefer to work within them. As a result, change tends to be slow and incremental. But sometimes, for reasons not always clear – perhaps a particularly charismatic leader, perhaps a scandal, perhaps a major shock to the existing system – like the economic and fiscal crisis we now

What we wanted to show — **and do show** – is that even using the very same methodology that the SCOC uses, but on a regional not a county basis, the argument that hundreds more cells are needed in the Hudson Valley region **IS NOT SUSTAINABLE.**





face – there is the chance for a “paradigm shift,” defined (in the Encarta World English Dictionary) as “a radical change...in assumptions about or approach to something.”

For the provision of county jail services, the opportunity for such a shift is now. The shift? thinking regionally, not county-by-county.

Thinking county-by-county, as the Commission on Corrections does, and using a formula developed by

the National Institute of Corrections to assess current and future needs, the actual average daily demand for jail space in Dutchess and Greene Counties has regularly exceeded design capacity since 2001. In Sullivan, the demand has recently been so close to the design capacity as to raise concerns. In Columbia, average daily jail population has recently been at about 87% of design capacity. In Putnam, the percentage has been 77. When potential worst-case jail demand is considered, only Orange, Ulster

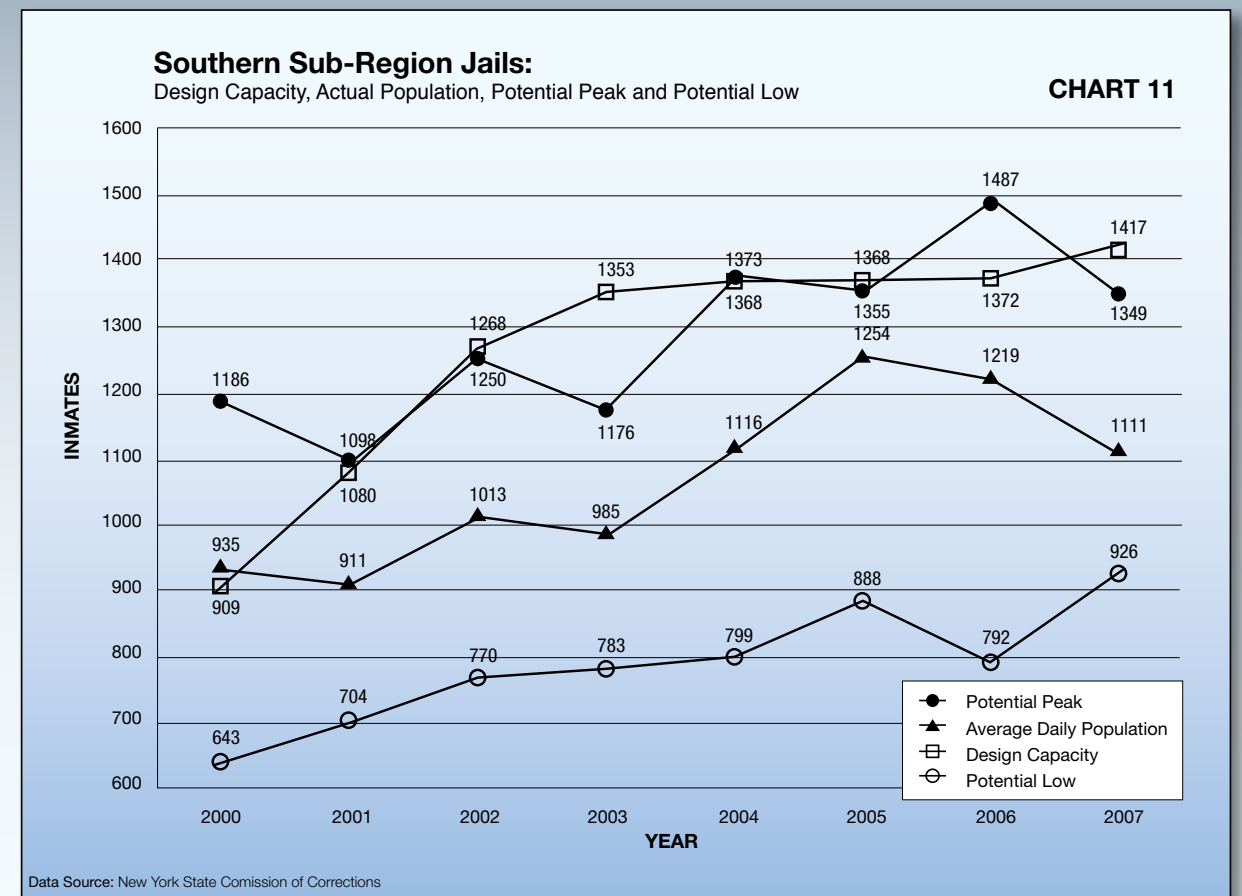
and Rockland in the Hudson Valley had sufficient jail capacity in 2007.² (Charts 1-8)

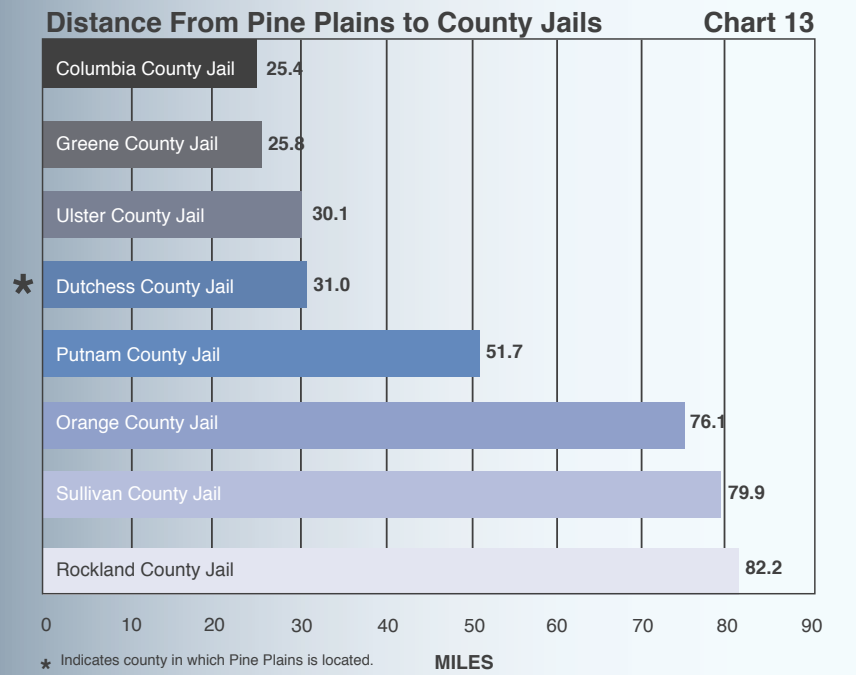
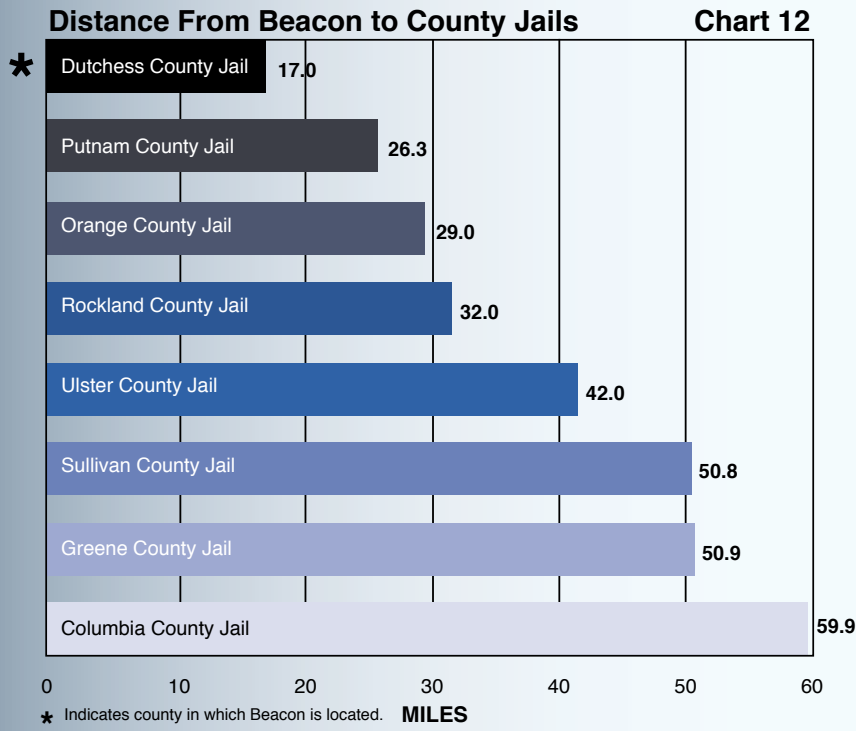
However, when the eight Hudson Valley counties are considered as a single unit it is clear that the region has sufficient jail capacity to meet actual current needs, and regularly over the past seven years has fallen only slightly short of meeting hypothetical potential peak needs. (Chart 9)

This is also true if we divided the

² Because of the need to separately house different classes of prisoners, and for special segregation of some prisoners, jail professionals claim that facilities operating at in excess of 80% of capacity are stressed.

We don't yet know how this all might net out. But in such parlous times as these, there is **SURELY ENOUGH EVIDENCE** in this preliminary report to give the regional idea a detailed, **serious** look.





eight counties in the valley into two groups; we’ve labeled them the northern and southern sub-regions. The northern sub-region, Ulster, Greene, Columbia and Dutchess, follows a pattern similar to the entire region: sufficient jail capacity to meet current needs, but somewhat short of meeting potential peak needs. In the southern sub-region, Orange, Sullivan, Rockland and Putnam, jail capacity in place now exceeds both actual and potential peak needs. (Charts 10 and 11)

No one has a crystal ball. In this area of policy, as in all others, there is always room for debate about what future needs will likely be. We are in fact sympathetic to some of the counties’ criticisms of how the Commission on Corrections arrives at its estimates of need for jail cells in the future. But for the purposes of this analysis we do not seek to contest the Commission on Corrections’ planning assumptions. What we wanted to show – and do show – is that even using the very same methodology that the SCOC uses, but on a regional not a county basis, the argument that hundreds more cells are needed in the Hudson Valley region is not sustainable.

Let’s give credit to the SCOC where credit is due. There is currently sufficient regional capacity to meet the Hudson Valley’s current and future jailing needs because two of our counties – Orange and Ulster – acceded to the Commission’s pressure to build new jails. The new Ulster County jail, opened in 2007, can

house 426 inmates; its average daily population in 2007 was 257, and hypothetical peak population was 343. The latest addition to the Orange County jail was built in 2004-2005; that facility’s capacity is 753, while its average daily population in 2007 was 565 and hypothetical peak population was 672. Actions induced by the SCOC and taken in the Hudson Valley under the county-by-county paradigm now enable us to consider whether this old paradigm is still best.

Further Exploring Regionalism

Changing from a county-based to multi-county, collaborative, regionally-based approach to jailing will take political will, and a lot of work by a lot of people. Laws will have to be amended, and regulations revised. Formal intergovernmental agreements among counties will have to be developed and approved by legislatures and county executives. Usual ways of doing business within and across counties will have to be reconsidered, not only by Sheriffs and their deputies but by a host of others working throughout the entire local criminal justice system.

The availability of enough cells in the region to house the number of inmates we are likely to need to house is not sufficient basis upon which to take such major steps. Jails house several classes of inmates, male and female; adolescent and adult; sentenced

and un-sentenced; addicted or not; healthy or not (physically or mentally). Attempts to save money in one area – financing new facilities, for example – may increase costs in another – transporting inmates. We don’t yet know how this all might net out. But in such parlous times as these, there is surely enough evidence in this preliminary report to justify giving the regional idea a detailed, serious look.

Some Things to Consider

Continuing County Responsibility
Nothing in a collaborative regional approach to jailing should diminish counties’ responsibility for this function. Financial responsibility for persons arrested and incarcerated within a county would remain with that particular county. Intergovernmental payments would still flow from a county sending an inmate to another for jailing. The change will be that these actions would occur as a matter of routine practice within a mutually agreed upon regional framework.

Reining in Capital Costs and Operating Costs
Jails are not cheap. As noted, when all is said and done, the newest facility built in the Hudson Valley region, the Ulster County jail, will have cost over \$95 million to construct (including litigation costs) and another \$47.7 million to finance. It will also, over time, cost millions more to operate. Ulster County’s costs may not be a good guide; overruns experienced during its construction caused a major

scandal. Moreover, construction and borrowing costs shift with changes in the economy, and estimates used for advocacy in specific counties on both sides, pro- and anti-jail construction, may not be completely reliable.

What is certain is that building three or more new jails in the Hudson Valley will cost tens of millions of dollars, and this is without considering increased operating costs. New York State and its localities are in a deep fiscal crisis that is not likely to go away soon. Property taxes in our state are, on average, the highest in the nation. If we could avoid at least some of the cost of additional jail construction by thinking and acting regionally, doesn’t it make some sense to give consideration to this idea?

Restoring Local Choice
The Sullivan County jail is the oldest in the state in current use; it was originally brought into service in 1896. The Greene County jail celebrated its centennial this year. (Both have had additions, Sullivan in 2002 and Greene in 1978.) Officials in both of these counties acknowledge the need for more modern jail facilities. If these are built within the framework of a collaboratively organized regional network, however, their size, character and cost may be left to a far greater extent to local choice and will therefore be far more likely to be within local governments’ means.



Achieving Economies of Scale
Systematic, structured regional collaboration might allow counties to regularly achieve better prices in purchasing essential goods and services, thus lowering the cost of government. (Note: the State Sheriffs' Association is already working on the idea of collectively purchasing drugs to lower this cost for jails.)

Looking at Real Not Hypothetical Costs
It has often been argued that increased transportation costs would offset any gains made from a regional approach to jailing. This point requires examination, and must be considered on the basis of actual experience. Our preliminary work shows, for example, that population concentrations in one county are often equidistant or near equidistant from jails in two or more counties (Charts 12 and 13). This suggests that the actual costs of a collaborative regional approach might not be greater than current costs. We need to look at actual experience to find out.

Examining the Idea Within the Frame of the Entire System
Jailing is only one part of each county's criminal justice system. Other parts of the system would not be regionalized. We have to make sure that regionalization of jails may properly be coordinated with other elements of the system within each county, and with other proposed reforms, for example electronic court appearances proposed by Putnam County Sheriff Donald B. Smith and others.

Further Harness Technology
Electronic technology may allow meeting mandated requirements that now limit reform through regionalization. For example family visits and reentry programs may also be achieved, at least in some measure, through the use of interactive video technology.

Specialization to Achieve Greater Efficiency
Classification requirements often result in counties using their facilities less efficiently than they might. Under a system of regional collaboration one class or another of inmates – women, for example – might be concentrated in one or two facilities, allowing more efficient use of all facilities. Additionally, services specially needed for specific populations – health services for women, to extend the point – might be delivered more effectively, and at lower cost.

Specialization to Achieve Better Outcomes
For example, jails are required to provide education for adolescent inmates. Concentration of persons in this category in some facilities might allow better and more cost effective delivery of this mandated service.

Broader Program Availability to Targeted Populations
Some jails in the region have acknowledged best practices programs targeted for specific sub-groups of inmates. Other jails in the region might be of insufficient size, or have insufficient numbers of inmates in the target group,

to sustain such programs. A collaborative regional approach might assure that such programs are available to all who are best enrolled in them, benefiting both the inmate and the community.

Consider Change

Times are hard.
Money is in short supply.

We ask:
Should we continue to do local government in the twenty-first century the way we did for most of the nineteenth century and all of the twentieth century?

We answer:
Maybe, maybe not.

But surely, let's take a hard look at some alternatives.

Should we continue to do local government in the twenty-first century **THE WAY WE DID FOR MOST** of the **nineteenth century** and all of the **twentieth century**?

Data

Data for this paper was provided by the New York State Commission of Correction and Office of the New York State Comptroller, Division of Local Government and School Accountability.

Sources

For a complete list of sources for this paper please reference the electronic version on the SUNY New Paltz CRREO website: <http://www.newpaltz.edu/crreo/>

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Comment

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Thanks

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This Discussion Brief is part of an ongoing project to consider regional approaches to jailing undertaken in collaboration with Pattern for Progress and Orange, Sullivan and Ulster county governments.

The Center for Research, Regional Education and Outreach (CRREO) conducts studies on topics of regional interest; brings visibility and focus to these matters; fosters communities working together to better serve citizenry; and advances the public interest in our region.

The State University of New York at New Paltz was named "Hottest Small State School" in the 2008 Kaplan/Newsweek Hot To Get Into Colleges Guide, which identifies America's 25 Hottest Schools. The guide features schools that all offer top academic programs and are making their mark in the competitive world of higher education.

New Paltz is a highly selective college of about 8,000 undergraduate and graduate students located in the Mid-Hudson Valley between New York City and Albany. Degrees are offered in the liberal arts and sciences, which serve as a core for professional programs in the fine and performing arts, education, healthcare, business and engineering.



Independently and in collaboration with local governments, business and not-for-profits across the Hudson Valley, CRREO: conducts independent research on topics of regional interest; brings visibility and focus to these matters; fosters communities working together to better serve the citizenry; and seeks to advance the public interest in our region.