

WHATCOM COUNTY
SHERIFF'S OFFICE

BILL ELFO
SHERIFF



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To: The Honorable Rob Olson, Presiding Judge, Whatcom County Superior Court
The Honorable Matt Elich, Presiding Judge, Whatcom County District Court
The Honorable Eric Richey, Whatcom County Prosecuting Attorney
The Honorable Starck Follis, Whatcom County Public Defender
All Whatcom County Chiefs of Police

From: Bill Elfo, Whatcom County Sheriff

Date: June 7, 2022

The purpose of this communication is to advise you of the on-going and worsening situations that have impaired our ability to operate the jail system in a safe, humane and constitutional manner. At the same time, insufficient housing to detain those who commit serious crimes and those who fail to keep court dates or otherwise comply with court requirements are having a dramatic impact on victimization and the effective administration of justice. There are no immediate palatable solutions to these problems and the action planned to bring some relief is not taken lightly.

Challenges such as the COVID epidemic; the partial and/or full closure of courts and other offices necessary for the functioning of the courts; inadequate space throughout the Downtown Jail facility; the continuing failure in the jail infrastructure needed for safe operation; and most recently, critical staffing shortages, have combined to the point that it is necessary to implement operational changes within the Whatcom County Jail system. Your cooperation and coordination in helping mitigate the current situation will be most appreciated.

Since the beginning of 2022, populations at both the Downtown Jail and Work Center have steadily climbed despite increased booking restrictions that were put into place in October of 2021. As of last Friday morning, the combined population of the two facilities was 328. This represents a **41.4%** increase in the jail population over 2021.

In addition to the number of offenders, the characteristics of the offender population has also changed. Approximately 83% of the jail population is in custody on a felony offense, with the majority of those offenders being held on pre-conviction status. The percentage of offenders who are diagnosed with a serious mental illness has climbed to 42% and the percentage of offenders with an existing substance use disorder has increased to approximately 80%.

It is important to recognize that a jail is a reactive institution. Unlike treatment programs, hospitals, stabilization centers, or the community at large, once an individual is detained by either law enforcement or the courts, the Sheriff does not have the option of declaring an individual's behavior as being "too much" to manage. That creates the framework for many of the issues we are currently experiencing.

The level of assaultive and self-harming behavior has increased significantly, and the percentage of offenders who cannot be housed with other offenders due to behavior issues has resulted in a reduction in the number of beds available for housing.

Neither jail facility is equipped with systems designed to minimize the spread of airborne infectious disease, and during COVID outbreaks, we are restricted in our ability to transfer inmates between facilities as a population management measure. Unlike many other county offices, the Corrections Bureau staff continues to function in their assigned workplaces and has throughout the pandemic. A significant number of deputies contracted COVID which spread to some of their families.

As of last week, we were housing 14 convicted sex offenders who are awaiting the completion of pre-sentence investigations by the State Department of Corrections (DOC). DOC staff have been reluctant to come into the jail for fear of COVID exposure. After working with the DOC supervisor, we are starting to see some improvement in the level of responsiveness. We anticipate this will be an ongoing issue, as the Jail is currently holding 48 people for sexual offenses, 6 who have been in custody for over a year.

We currently have 12 offenders housed in the downtown jail awaiting competency restoration at Western State Hospital. Due to the lack of beds, the average wait time for an offender to be transferred to Western State for restoration is now 12 -18 weeks. The media recently reported that the State's other institution, Eastern State Hospital, may close due to accreditation issues. If this occurs, backlogs are likely and time frames lengthened.

There are currently 18 Whatcom County offenders at Western State who are undergoing restoration treatment; all of whom will be returning to the Jail. While the hospital is able to compel offenders to take psychiatric medications, the jail does not have that capability. The result is that a significant number of offenders refuse their medications once they return from the Hospital. Their symptoms rapidly return, and the process for evaluation and restoration begins again.

Workloads for the Corrections staff have increased exponentially. This includes COVID exposure control protocols; increasing level of care needed for vulnerable offenders; an explosive growth of the Medication for Opioid Use Disorder (MOUD) program; increases in offender to offender fights and assaults; assaults upon staff (including one resulting in a traumatic and debilitating brain injury); repeated failures of a critical elevator system; and the need for creative problem solving in order to make sure offenders have access to their attorneys. All of these factors have combined to stretch staff past all reasonable limits. While the Health Department has been a good partner, filling mental health specialist positions with excellent staff, recruiting and retaining staff has been a challenge. We are currently down one mental health professional short of the contracted staffing levels. This too impacts jail operations and staff.

Inadequate jail housing capacity; space for treatment; and repeated failures of critical infrastructure and life safety systems have persisted for decades, despite the findings, recommendations, and warnings, of numerous task forces, law and justice councils, the United States Department of Justice, consultants and engineering firms all of whom recommended replacing the Downtown Jail. Despite all of this, the commitment and teamwork of our Corrections Deputies have kept the existing system functioning. We are now facing unprecedented challenges in providing the staffing needed to maintain operational readiness and functionality.

We are currently down 11 Correction Deputy positions who are pursuing new careers or retirement. This represents approximately 16% of the commissioned Corrections staff workforce. As a result, Corrections staff are mandated to work "unvolunteered" overtime, and are subject to mandatory call backs to work at unheard of levels. Frankly, current workloads; a perceived sense of apathy and inaction on the part of decision-makers to correct long-standing facility deficiencies; and new demands have taken a substantial toll on the health and morale of the people we rely upon on to keep the jail operating.

Due to the caliber of our Corrections Deputies and their level of training, they make attractive peace officer candidates for the many law enforcement agencies around the State that are in a frenzy trying to fill hundreds of vacant positions with higher salaries and better retirement benefits. Not only have we lost many experienced

Deputies, and we fully expect losing more; we currently are unable to attract sufficient qualified applicants to replace those who are leaving. Where we used to sometimes have 50-60 people apply for a single position, we currently have zero qualified candidates on our register despite increased recruitment efforts. We are not alone in this dilemma and find that we are competing with other agencies who offer substantial hiring bonuses for new recruits, retention bonuses and reward longevity in order to retain their experienced staff.

In an effort to mitigate some of these challenges, we are currently in negotiations with Snohomish County to contract for 45 beds for Whatcom offenders. We have come to an agreement in principle, and anticipate bringing an Interlocal Agreement and Supplemental Budget request to the County Executive and Council this month. If approved we will implement operations as soon as possible. We are setting up the logistics and anticipate it will be similar to the system use back in 2005-2006. The transport vehicles currently travels to Snohomish county 5 days a week, and unlike housing at Kittitas, offenders can be moved on relatively short notice. However, it must be remembered that these interlocal agreements are subject to availability and previous agreements have been cancelled on extremely short notice.

We realized that during the unique circumstances of the initial COVID epidemic surge, we had moved away from the 1995 agreement with the court systems regarding courtroom responsibilities. Core to that agreement was that the Deputies handled offender movement, safety and security, and that attorneys or court personnel handled Court paperwork. Safety and staffing require that we return to those protocols.

Given the concerns outlined above, and the effectiveness of the standard COVID protocols in the Downtown Jail, it is critical that deputies return to their primary court functions relating to the safety and security of all court participants. Thus, we will no longer be able to continue the practice assumed at the advent of COVID of having deputies facilitating the review and signing of court paperwork in the downtown jail. **Effective June 13th, court staff will be needed to resume this function and to ensure a smooth process, it is requested that judicial officers, court staff and attorneys return to the Downtown Jail courtroom for 1st Appearance and other hearings.**

All participants in the Courtroom will need to be masked, and the Corrections Bureau will continue using COVID screening, testing and quarantine protocols for new offenders and for staff when appropriate. Individuals who are COVID positive or who are showing symptoms of COVID will be held back from Court until it is medically determined it is safe for them to be in that environment.

While defense attorneys may call into the housing units to speak with their clients, we understand the need for confidential conversations. We have re-opened the attorney visiting booth at the Downtown Jail, and additionally can allow attorneys to use booth 1-A on the first floor, or a standard visiting booth to talk with their clients. Additionally, a confidential attorney line that has been installed in the second floor of the jail, and can be accessed by defense attorneys. Once the elevators are replaced in the Downtown Jail, we will be able to reinstate the 2nd attorney visiting booth on the 2nd floor.

We understand that only one courtroom is available for jury trials and that an on-going trial that is unprecedented in length has compounded backlogs. We will continue to follow up with both the Prosecuting Attorney's Office and defense attorneys to identify offenders who are experiencing long delays in getting cases resolved. An analysis of the trends in the jail population has identified a key factor in the growing jail population is the increasing length of stay while waiting for cases to be resolved.

Law enforcement officers, crime victims and the public are rightfully outraged at the scope and extent of existing booking restrictions. Again, the effective administration of justice and public safety require adequate jail space and an ability to detain people accused or convicted of crimes. However due to current circumstances and anticipated trends, we have no choice but to expand current restrictions.

Effective June 13th:

- Fugitive Warrants: Will only accepted if a) warrant/extradition is confirmed with originating agency and b) the underlying charge fits our current local restriction criteria;.
- Out of County Failure to Appear Warrants: Warrants confirmed only if underlying charges conforms with our booking restriction criteria or the demanding agency can come and pick up the subject within eight hours;
- Local Failure to Appear Warrants for Offenders contacted outside of Whatcom County. Warrants confirmed only if the underlying charge meets our local criteria;
- DOC "Swift and Certain". DOC offenders sanctioned administratively for up to 48 hours under the "Swift and Certain" program will only will be accepted for booking at the Work Center, depending on the current jail population as determined by the sergeant in charge.
- Drug Court or Mental Health Court Sanctions We cannot accept open ended bookings at this time. Individuals who are being placed into custody from court for short periods of times (24-48 hours) as a sanction will be accepted for housing at the Work Center, depending on jail population as determined by the sergeant in charge.
- Commitments: All courts may continue to utilize the Jail Alternative programs, including the Work Crew, EHD and Work Release programs via the Jail Commitment system. This system allows for scheduling when the Jail populations and staffing levels permit in the judgement of the sergeant in charge.

It is requested that local law enforcement agencies who hold warrants adjust their confirmation practices to reflect the current booking restrictions.

To help remedy current situations, the Superior Court has noted on some categories of failure to appear warrants as "book and release." However, this practice only started in October 2021. If the Court would consider and suggest a method to apply "book and release" to the pre-October 2021 eligible warrants, it would be helpful.

We will continue to review existing booking restrictions in light of evolving jail conditions and as circumstances permit or require, make adjustments.

Please feel free to have your staff contact Chief Corrections Deputy Wendy Jones regarding any further specifics, logistics or suggestions.

We would welcome a meeting to collaborate on strategies for reducing impacts.

Sincerely,


Bill Elfo, Sheriff

cc: Dave Reynolds, Clerk of the Superior Court
Bruce Van Glubt, Clerk of the District Court
All Municipal Courts
Whatcom County Executive Satpal Sidhu

Whatcom County Council
All Whatcom County Mayors
Washington State DOC
Incarceration Prevention and Reduction
Task Force
Stakeholder Advisory Committee