

Folsom Jail Blues: Understanding the Practice of Jail Leasing and its Effects

by

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Date: July 11, 2024

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Dissertation submitted in partial fulfillment of
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ABSTRACT

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Abstract

Jail leasing is the practice by which states enter into contractual agreements with local governments to house individuals under the state's jurisdiction in local jails. This dissertation is an attempt to understand this practice and its effects on individuals and communities. In the introductory chapter, I briefly explain the history of the jail as a carceral space and then explain jail leasing in the context of mass incarceration in the US. The focus of the second chapter is the location of the jail-leased population across and within states. I show the by-state distribution of the leasing population in 1999 and 2019, as well as the 2019 within-state (i.e., by county) distribution for the nine states for which data are publicly available.

In chapter three, I test the effects of jail leasing on recidivism outcomes. I do so using data from six US states over a period of 20 years, 2000-2019. Using matching techniques, I display Kaplan-Meier curves to compare the survival rates of release cohorts leaving prison or jail and Cox Proportional Hazard model results to show estimates of the effects of facility type on recidivism risk. I find that overall, the recidivism risk is higher for those individuals released from jails, but that the difference in risk varies greatly across states. I also show the results of a cost-benefit analysis meant to determine whether differences in recidivism further support or undermine efforts by the state to reduce spending on incarceration.

Chapter four explores what, if any, differences in mortality risk exist for the jail-leased population compared to the general jail and prison populations. Using data on deaths that occurred to individuals while they were experiencing incarceration in the US between 2013 and 2019, and data on the composition of the US corrections population over the same time period, I employ traditional demographic methods in order to be able to make the best possible comparisons of these mortality risks. The results suggest that the mortality risk for the jail-leased population is the lowest of the three populations compared in the analyses. In the conclusion chapter, I describe the ways in which jail leasing should and should not be considered a potential tool for decarceration.

Dedication

To my grandparents, Jim and Shirley Wygle.

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Acknowledgements

I wrote this dissertation on the losing side of twenty five. As such, I owe both acknowledgements and apologies in abundance.

First, I thank my committee members, past and present. Christopher Wildeman's patience and generosity have been both unparalleled and wholly undeserved. Scott Lynch is the best teacher I've ever had in the classroom. Tyson Brown's scholarship is the reason I applied to Duke University. Hedwig Lee has been the brightest of lights in the darkest of tunnels. And I will always remember Megan Comfort telling me that mass incarceration was and is the result of actors and decisions, not just something that occurred.

My family has endured my best and my worst, both my extended presence and absence, during the writing of this dissertation. I am especially grateful to my parents. Eric Wygle raised me on old school punk and Johnny Cash country. Nancy Wygle makes the best meatloaf in three counties. We're a happy family. I also want to acknowledge Sue Coyle for keeping me caffeinated, Faye Grobleski for making me an ancestor, my grandparents, Jim and Shirley Wygle to whom this dissertation is dedicated, and Derby June.

I am the luckiest girl in the world to have the amazing friends that I do. Adrienne Jones is the highest quality friend I have ever had and the absolute reason I am here to write this today. Nico Restrepo is the most brilliant person I've ever met. He's also one

of my dearest friends and favorite humans. Cece Yarbrough (and Moose and Ash) and Wade King have made Raleigh my home.

Additionally, this dissertation could never have been completed without the love and support of Alex Gibbons, Aneet Mattu, Anna Holleman, Anna Simpson, Caitlin Coyle, Dakota Becker, Devin Sheehan, Dominique Raymond, Emily Arsen, Erinn Pinckney, Garrett Baker (and Sadie), Jack Hollar, Jasmine Leonard, Kate Dennis, Katlyn Almond, Melissa Miller, Miles Marsala, Noah Gibson, and Tori Nadel.

Lastly, on behalf of the students from Vince Lombardi High who are here tonight, I'd just like to say one thing: Screw you, Principal Togar, we made it to the concert anyway!

1. Introduction

May 15, 1951: There is a jailhouse rumor that because of the overcrowded conditions of the state pen, they are going to start shipping some longtimers here. That would mean considerably tightened restrictions and increased vigilance. It may not be true, but if it is, I shall have to get the hell out before it happens. James Blake, *The Joint*, pp. 25

1.1 *Introducing this dissertation*

Jail leasing is the practice by which states enter into contractual agreements with local governments to house individuals under the state's jurisdiction in local jails. This dissertation is an attempt to understand this practice and its effects on individuals and communities. In this introductory chapter, I briefly explain the history of the jail as a carceral space and then explain jail leasing in the context of mass incarceration in the US. The focus of the second chapter is the location of the jail-leased population across and within states. In chapter three, I test the effects of jail leasing on recidivism outcomes in six US states. Chapter four focuses on the relationship between jail leasing and in-facility mortality, using data from all 50 US states. In the conclusion chapter, I describe the ways in which jail leasing should and should not be considered a potential tool for decarceration.

1.2 *A brief history of the jail*

The jail is actually the predecessor of the prison, the carceral space receiving the most scholarly and public attention (Peters 1995). At their inception, jails were used as holding places for individuals awaiting criminal conviction and punishment (Irwin

1985, Chapter 1). For most of human history, punishment involved physical harm, including death, often delivered in public spaces (Foucault 1975, Chapter 2; Rubin 2019a). Ideas of individualism and liberty that accompanied the Enlightenment prompted a movement away from such harsh punishments as public execution and gave rise to the increased reliance on these holding places for the purpose of incapacitation (Foucault 1975, Chapter 2; Sykes 1958, Chapter 1). Jails, often marked by poor conditions and labor requirements, were also meant to serve as deterrents to deviant behavior (McConville 1995).

By 1791, incarceration was the predominant form of punishment in France (Durkheim 1900). It was around this time across Western Europe and the US that jails also became holding places for debtors while they worked to pay off their owed balance (McConville 1995). To this point, jails were frequently privately owned, often by Church authorities, and were self-financing and even profit-deriving spaces (Peters 1995). Both public outcry about the extractive nature of private jailors' rents and fees, as well as a new interest in incarceration as a rehabilitative experience, resulted in the conversion of many jails into prisons (McLennan 2008, Chapter 5; Peters 1995).

In the US, the birth of this rehabilitative ideal in the 19th century resulted in the development of statewide corrections authorities and the construction of state-operated prisons (Lynch 2009). Between 1785 and 1822, more than 15 state prisons came into operation in the US (Rubin 2019b). One of the earliest, and perhaps most famous,

opened in Philadelphia in 1794 with the conversion of the Walnut Street Jail (Davis 2003, Chapter 3). The first federal prisons opened in 1895, whereas previously, all individuals convicted in felony courts were held in local jails through some of the earliest leasing contracts (Peters 1995). In New York, legislators went so far as to ban the use of jails for housing those who had been convicted of a felony (McLennan 2008, Chapter 5). Jails continued to exist as holding places for people awaiting processing through the court system and were operated at the county level. It is noteworthy that this separation of operational power by facility type is a largely unique feature of the US criminal justice system – the majority of other Western countries have one unified system at the country or state-level (Fassin 2016, Chapter 3; McConville 1995).

Potentially because of this separation, far less effort has gone into understanding the jail population in the US compared to the prison population. No national jail data collection efforts occurred until 1931, and jail population censuses have only been taken sporadically since 1978 (McConville 1995). Today, jails continue their historic role as holding places, but their function has also expanded considerably. Jails once again serve as places of punishment but are typically thought of as only doing so for individuals found guilty of low-level (i.e., misdemeanor) crimes for which the sentence is less than one year. Most recently, jails have been increasingly utilized to detain immigrants (Saadi et al. 2020). Consistently, jail authorities have also engaged in leasing agreements to

house individuals from other jurisdictions like state prison systems. This engagement is the focus of the remainder of this dissertation.

1.3 Jails and jail leasing in the era of mass incarceration

Today, the US has more than 6,000 confinement facilities in operation (Sawyer & Wagner 2023). The vast majority of these facilities are jails, and there are a small number of facilities dedicated to the detention of juveniles and immigrants. The remainder are prisons. This expansive carceral landscape is largely the result of what scholars and advocates have labeled “the era of mass incarceration” – a period in history marked by the enormous growth of the US corrections population between 1972 and 2009.

Criminologists and penologists have spent much effort trying to determine what caused incarceration rates to grow as they did in the US during this time. There is general agreement that it was largely caused by an overly punitive response, one at least in part motivated by racist ideals, to the increase in criminal behavior during a period of unprecedented social change. As a result of this punitive response, the experience of confinement in a prison or jail has become a common life course event in the US and particularly so for low-educated Black men (Pettit & Western 2004, Shannon et al. 2017). Recent estimates suggest that nearly half of Americans have ever had a family member incarcerated (Enns et al. 2019).

There is evidence of increased criminal behavior at the start of the era of mass incarceration (National Research Council 2014, Chapter 4). Under a social structure

framework, criminal behavior can be thought of as an act that imposes harm but is also typically the result of the actor feeling in some way harmed themselves (Agnew et al. 2002, Merton 1938). Post-war life in the US presented a variety of opportunities for actors to incur harm and also a variety of opportunities impose harm upon others (National Research Council 2014, Chapter 4). Examples of this include the rapid urbanization and then suburbanization that occurred in the first half of the 20th century. The Baby Boom also caused competition for resources, including labor, which only stiffened as the US began its process of deindustrialization. Additionally, our understanding of the concentration of strain in urban centers helps explain why crime rates were higher in these areas and for the largely nonwhite residents of these areas (Du Bois 1901).

The government response to these changing behaviors was highly punitive and marked a strong departure from the rehabilitative ideal born at the start of the prior century (Campbell & Schoenfeld 2013; Frampton 2022; Kohler-Hausmann 2017, Chapter 5; National Research Council 2014, Chapter 4; Pettit & Western 2004). However, there is also evidence that the growth in incarceration rates could not merely have been a response to crime as crime rates were largely unchanging in the second half of the 20th century (Raphael & Stoll 2013, Chapter 7; Tonry 1995, Chapter 6). More critical explanations of the motivations behind the decisions to incarcerate so many include the War on Drugs (Alexander 2010, Chapter 1), expanded federal funding of policing and

prisons (Hinton 2016, Chapter 2), and political favorability (Beckett 1997, Chapter 3).

Regardless of the cause, mass incarceration forced states to quickly expand their carceral capacity (Campbell 2011).

With prison expansion also came a need to expand the capacity of jails for use as pretrial facilities and as spillover facilities (Neal & Rick 2016). Between 1982 and 2003, the number of local jail inmates increased more than three-fold (Aviram 2015, Chapter 6). During this time, many states made use of “alternative sanction” legislation to permit the holding of individuals with lower-level felony offenses in local jails instead of prisons (Rubin & Phelps 2017). Since that time, jails have been increasingly tasked with confining convicted individuals as a way to decrease state spending on corrections (Aviram 2016, Enns & Shanks-Booth 2015). This is seen as a financially advantageous practice for both states and counties offering an additional revenue stream for the latter and a cheaper cost-to-incarcerate for the former. For example, Kentucky Department of Corrections annually rents 4,000 beds from local jails and pays less than 50% of what it would if it kept an additional 4,000 individuals in state facilities (Norton & Schept 2019). Jails in Kentucky collect the per diem fees and are also able to use these leased persons as free labor for their municipality.

Jail leasing has been acknowledged by many actors, activists, and academics of the US criminal legal system but has received very limited focal attention. BJS first acknowledged the use of jail leasing by state corrections authorities in the 1970s and said

the practice was being utilized as quick relief for prison overcrowding (Cantwell 1980). In their review of jails, Turney and Connor (2019) approximated that on any given day in the US, 16% of the jail population are persons being held for a state authority. May et al. (2014), in their article comparing differences in confinement conditions in prisons and jails, also acknowledged the changing functions of jails.

Likely the most known and studied instance of jail leasing is that which is occurring in California as part of its Public Safety Realignment initiative. As a result of a 2011 US Supreme Court Decision, California “realigned” its state prison system and increased reliance on leasing agreements to reduce prison overcrowding (Rubin 2015). In the first eight years of this initiative, more than 175,000 Californians served their sentence to incarceration for a felony conviction in a county jail rather than a state prison (VanSickle & Villa 2019).

Today, jails are a feature of almost every community in the US – for example, there are 97 of them in North Carolina, a state of 100 counties and where the majority of this dissertation was written. Jail is also the most common form of incarceration experienced – there were more than seven million jail admissions compared to just over four-hundred-thousand prison admissions in 2021 (Sawyer & Wagner 2023). In 2022, more than eight percent of the average daily population in US jails were those individuals being held for state authorities because of leasing agreements (Zeng 2023). In 2013, 84% of surveyed jails reported holding persons for other authorities, up from

45% in 1978. From the same survey, it can be inferred that 22% of persons incarcerated in jails on any given day in 2013 were being held for another authority (and more than half for a state authority), up from 13% in 1978 (Kang-Brown & Subramanian 2017). This suggests that jail leasing as a practice was used, either intentionally or not, to facilitate mass incarceration in the US.

What is quite interesting about the era of mass incarceration is that it is unclear where we are in this era at the present moment. While the incarcerated population in the US does seem to be slowly, albeit meaningfully, declining, it is questionable how long this decline will continue. Keeping the prison and jail systems full today is the result of massive investments placed into both policing and corrections capacity in the last few decades, as well as a lack of confidence in our current decarceration strategies. The latter is largely a by-product of dishearteningly high recidivism rates, which are themselves the result of the challenging reintegration process for individuals when they leave prison or jail. If reversing mass incarceration is to be sincerely attempted, we must look at what tools are in-use and available for its maintenance and dismantling. It is my hope that this dissertation will reveal the nature of jail leasing as one such tool.

2. The spatial distribution of jail leasing in the US

2.1 Introduction

Despite its longstanding and increasing use by state corrections authorities, scholars of crime and punishment know relatively little about the practice of jail leasing. This includes a limited understanding of the spatial distribution of this practice across or within states. The goal of this chapter is to fill some of this knowledge gap by showing the by-state distribution of the leasing population at the end of 1999 and 2019, as well as the within-state (i.e., by-county) distribution at the end of 2019 for the five states for which such data were available. Also in this chapter, I discuss how the spatial distribution of jail leasing can inform our understanding of incarceration as a financial practice, one with inextricable linkages to the American legacy of slavery.

2.2 Background

2.2.1 The geography of mass incarceration

In addition to studying how individual characteristics (e.g., gender, race, age, SES) influence risk of incarceration, there is also a line of inquiry focused on how place influences risk of incarceration. We can think of these studies of space as going in one of two directions: how an individual's place of residence influences their risk of engaging in criminogenic activity, getting arrested, and becoming incarcerated; or, what features of a community impact the likelihood that it will be a site of a prison facility, a large/small jail facility, a newly constructed facility, etc.

Rural areas are more likely than urban areas to be the site of prisons and new prison construction (Eason 2017, Chapter 2). Eason (pp. 175) argues that prisons are in fact stabilizing economic forces in rural areas and especially so since deindustrialization and refers to recent prison-expansion efforts in these areas as “a state-sponsored public works program.”

An alternative to prison building, which is quite costly and requires support from a number and variety of stakeholders, jail leasing has the potential to offer a similar economic boost to local economies as Eason describes. In this chapter, I attempt to visualize whether jail leasing falls along a similar rural-urban dividing line as recent prison expansion efforts have.

There is evidence of increased jail building efforts in rural areas, and anecdotal evidence that such construction is motivated by a desire to increase leasing opportunities (Kang-Brown & Subramanian 2017). There is also evidence of diverging trends in both jail construction and utilization in rural and urban areas (Mai et al. 2019, Zeng & Minton 2021). Whereas there are well-documented efforts in large, often politically liberal, cities to curb jail populations, both jail populations and capacities are increasing in smaller counties (Simes 2021, Chapter 3). Simes argues that both increases are driven by a desire in these smaller communities to be increasingly punitive in light of recent social challenges, including high child poverty rates and drug-related deaths. Using data from New York and Massachusetts, Simes found that a large majority of the

prison population in these states come from a very small number of neighborhoods in these states' largest cities. However, national data show that arrest and incarceration rates are fastest growing in small, rural areas. What is unknown about jail leasing, however, is whether the individuals incarcerated in jails as part of these agreements are residents of these communities or are being moved into jails in these communities from other areas of the state.

At the national level, we know there is regional variation in corrections facility expenditures at the national level (Williams & Vaughn 2023). Overall spending is lower in the South and Midwest, and in states where the Black-White incarceration ratio is higher. While jail leasing is less common in the Midwest, its high utilization in the South suggests that it might be part of the overall effort to minimize spending on corrections.

2.2.2 The financialization of incarceration

Jails have been financial institutions nearly since their inception and were used as holding facilities for debtors (McConville 1995). In the present day, many jails continue to charge “pay-to-stay” fees, and there is evidence that these charges have increased in recent years (Anderson 2009, Harris et al. 2010). Jails are also increasingly contracting with Immigration and Customs Enforcement (ICE) to function as detention facilities for noncitizens (Amuedo-Dorantes & Lopez 2022).

Post-deindustrialization, communities do seem to be supportive of prison and jail building efforts as a means of economic development (Cohen et al. 2007, Eason et al.

2024, Gilmore 2007, Useem et al. 2003). Deindustrialization created a demand for the time-use of a large group of young-to-middle-aged men in the US. Gilmore (2007) argues that the prison-industrial complex was an effort to meet this demand by providing both cages for some men and prison jobs for others. This is especially the case in rural areas and places that have recently lost large job providers, like those where coal mining was historically prevalent (Schept 2022, Chapter 1). However, we are cautioned against placing too much emphasis on the revenue-seeking behavior of corrections authorities because these facilities do often operate at a financial loss (Pfaff 2017, Chapter 6). Further, Gottschalk (2010) describes a troubling cycle whereby challenging economic times result in increased crime and so, increased demand for punishment. But even when crime subsides, reducing corrections capacity is not favorable because of the jobs and other economic benefits it has brought to the area resulting in little-to-no effort to decrease the incarcerated population size. This could in part explain the growth in incarceration rates during the era of mass incarceration despite largely unchanging crime rates in the second half of the 20th century (Raphael & Stoll 2013, Chapter 7; Tonry 1995, Chapter 6).

Leasing is another mechanism by which jails are financialized – counties are essentially selling bed space to the state. And there is anecdotal evidence of these funds being used to expand jail capacity and build new jails (Mai et al. 2019, Rubin 2015). In fact, local governments have become so reliant on the financial incentives of jail leasing

that they actively oppose justice reform measures that seek to reduce incarceration rates (Grim 2016). Additionally, they see themselves as direct competitors to private prison facilities also fighting for contracts with states (Grim 2016, Wagner 2016). In some instances, when leasing agreements are ended or reduced, counties report loss of jobs in the jails (Grim 2016). However, many counties also report that the reimbursement rates are too low to actually cover the costs to incarcerate and certainly not sufficient for providing rehabilitative services (Cheves 2023, Thompson 2014).

2.3 Across state distribution of jail leasing

To understand how leasing is distributed across states, I rely on data from the BJS-CSAT tool, which allows users to build custom datafiles using data from the National Prisoner Statistics Program (NPS). This BJS effort involves collection and reporting of annual data about the number and characteristics of persons under the custody of state corrections authorities. For this chapter, I relied on the December 31 population counts of individuals under state custody being held in local jails. While the Federal Bureau of Prisons does also engage in leasing agreements with local jails, the focus here is solely on state authorities. This is because of differences in both the custodial population and the points of consideration for decision making (i.e., motivations to engage in jail leasing) between state and federal corrections authorities.

From BJS-CSAT, I downloaded the December 31 jail-leased population for each state for the years 1999 through 2019 (given state-level availability). I manually reviewed

the data and hand coded in a few instances as an attempt to increase the accuracy of the information. Specifically, I reviewed the extensive footnotes to clarify when states reported that their local jail population were solely those individuals awaiting transfer post-conviction. This was the case for Maryland and Michigan. In other instances, I removed counts for states that indicated elsewhere (e.g., their corrections agency webpage) that they did not engage in formal leasing agreements. In these cases, I assumed the people included in the reported counts were also individuals awaiting transfer post-conviction. This was my data-editing procedure for Iowa, Illinois, Arizona after the year 2009, Missouri, North Carolina, New Mexico, and Nevada. For three states – California, North Dakota, and Oklahoma starting in 2016, there were large disparities between the self-reported number of persons being held in local jails as part of leasing agreements and those numbers in the BJS-CSAT tool. Lastly, despite having a unified prison-jail system, Alaska reported a small number (<50) of individuals being held in local jails for the years 2014-2019; I manually changed these to reflect that jail leasing does not occur in the state.

Figure 1 shows the distribution of jail leasing across states from two perspectives. The left-side panel shows the proportion of the total 1999 and 2019 national jail leasing populations in each state. The right-side panel shows, for each state, what proportion of the total population under the custody of the state corrections authority in 1999 and 2019 were being held in local jails. I chose to focus on the years 1999 and 2019 because they

are the oldest and latest years of data available. This also provides a look at jail leasing before the onset of the COVID-19 pandemic, which temporarily changed the composition of the incarcerated population. From both maps, we can ascertain a concentration of this practice in the Southeastern region but not the Midwest or Northeast region of the country.

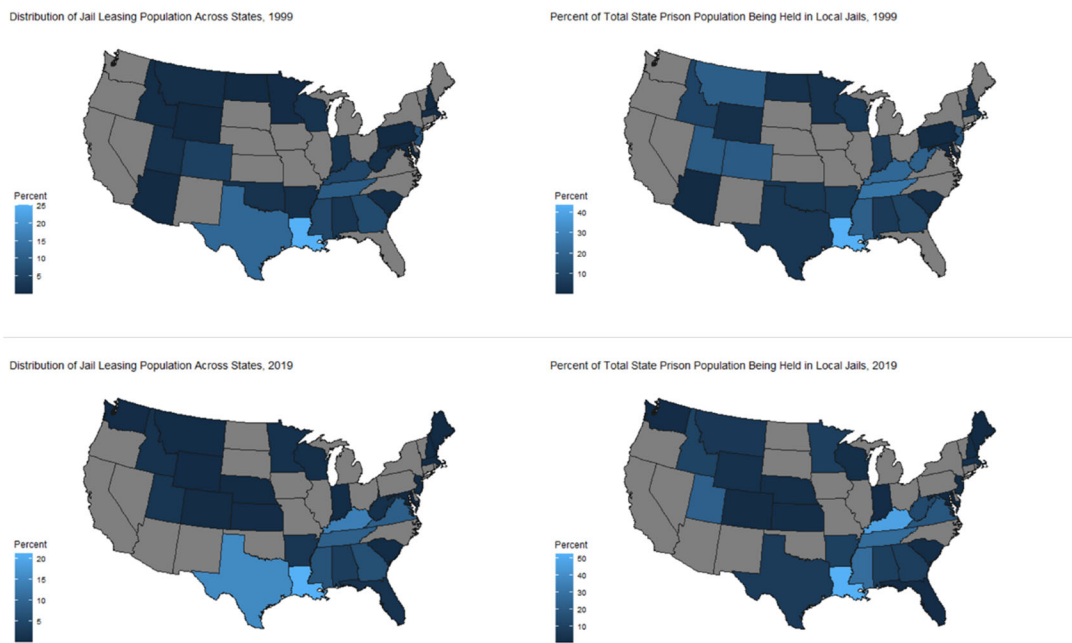


Figure 1 Distribution and utilization of jail leasing among US state prison systems, 1999 and 2019

Jail leasing is more concentrated in 1999 than in 2019 suggesting more states have made use of this practice over time. Additionally, states were holding a higher proportion of their population in local jails in 2019 in 1999. Both of these sets of maps suggest that jail leasing is being increasingly utilized across and within states.

2.4 Within state distribution of jail leasing

A major goal of this chapter was to describe the availability of county-level data about the location and intensity of jail leasing agreements and describe the within-state when data were available. To that aim, I manually reviewed the corrections agency website for all 50 US states to ascertain what data was available about jail leasing practices in each state. Table 1 summarizes the results of these search efforts for each state. County-level data appear to be publicly available for just seven states: Alabama, Arkansas, Georgia, Indiana, Kentucky, Tennessee, Wisconsin. Two states, Montana and West Virginia, report engaging in leasing agreements with just one county facility in their state and routinely publish information about the nature of those agreements, including the number of leased beds in the local facility.

If no data were available, I classified the missingness into one of four categories. First, six US states have unified prison-jail systems and as such, within-state leasing agreements are not possible. Eleven states do not currently report engaging in any jail leasing agreements. For twelve states where jail leasing is a practice, only total state counts were published on the corrections agency websites. Lastly, another twelve states where jail leasing is a practice reported in the Annual Surveys to BJS do not publish data about these agreements on their corrections agency websites.

Table 1 Availability of county-level jail leasing data

State Name	Data Status	Data Notes
------------	-------------	------------

Alabama	County-level data available	Monthly reports available since 2000
Alaska	Unified system	
Arizona	No published data (no reported leasing after 2009)	
Arkansas	County-level data available	Monthly payment reports available since 2004
California	No published data	
Colorado	No reported leasing	
Connecticut	Unified system	
Delaware	Unified system	
Florida	Total state counts available	
Georgia	County-level data available	Monthly reports available since 2005
Hawaii	Unified system	
Idaho	Total state counts available	
Illinois	No reported leasing	
Indiana	County-level data available	Monthly reports available since 2014; ADP for year available since 2007
Iowa	No reported leasing	
Kansas	No published data	
Kentucky	County-level data available	Weekly population reports available since 2011
Louisiana	Total state counts available	
Maine	No published data	
Maryland	Total state counts available	
Massachusetts	Total state counts available	
Michigan	No reported leasing	
Minnesota	Total state counts available	
Mississippi	Total state counts available	
Missouri	No reported leasing	

Montana	Data available for single county of agreement	
Nebraska	No published data	
Nevada	No reported leasing	
New Hampshire	No published data	
New Jersey	Total state counts available	
New Mexico	No reported leasing	
New York	No reported leasing	
North Carolina	No reported leasing	
North Dakota	Total state counts available	
Ohio	No reported leasing	
Oklahoma	No published data	
Oregon	No reported leasing	
Pennsylvania	Total state counts available	
Rhode Island	Unified system	
South Carolina	No published data	
South Dakota	No published data	
Tennessee	County-level data available	July population reports available since 2000
Texas	No published data	
Utah	No published data	
Vermont	Unified system	
Virginia	Total state counts available	
Washington	Total state counts available	
West Virginia	Data available for single county of agreement	
Wisconsin	County-level data available	Weekly population reports available since 1999
Wyoming	No published data	

Most often, if data were available, they were published in tables within statistical reports published (typically as PDF files) at varying frequencies (e.g., monthly, annually). When county-level data were available, I downloaded and saved all available reports and scraped these reports for the county-level leasing data, which I then consolidated into one complete dataset. This dataset, which I plan to make available for public use, can hopefully serve as a way for future scholarship to reveal more about the practice of jail leasing. Below, in Figures 2 through 8, I show the within-state (i.e., county-level) distribution of the jail leasing population at the end of December 2019 (for Tennessee, it is July 2019). I focus on this year to make these maps most comparable to those included above looking at the across-state distributions of the jail leasing population.

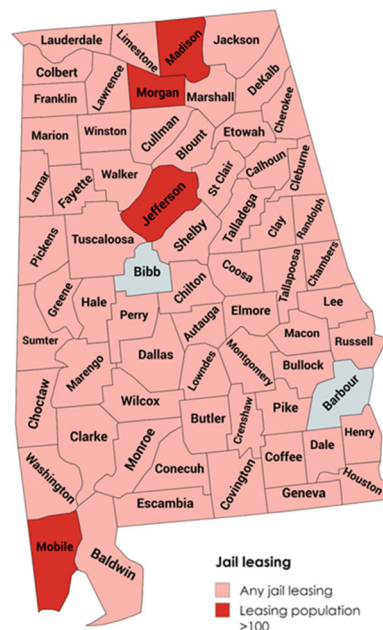


Figure 2 Jail leasing in Alabama, December 2019

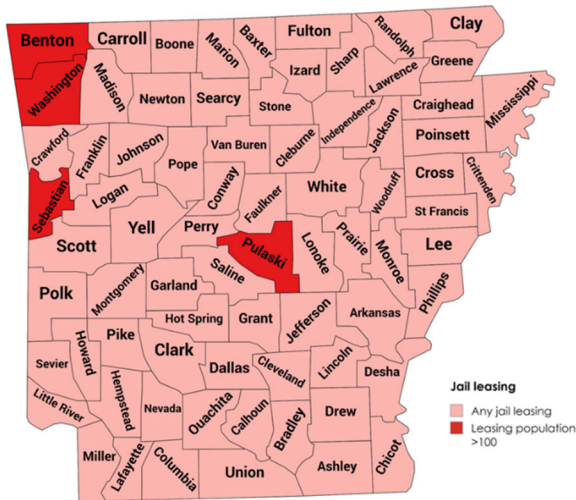


Figure 3 Jail leasing in Arkansas, December 2019

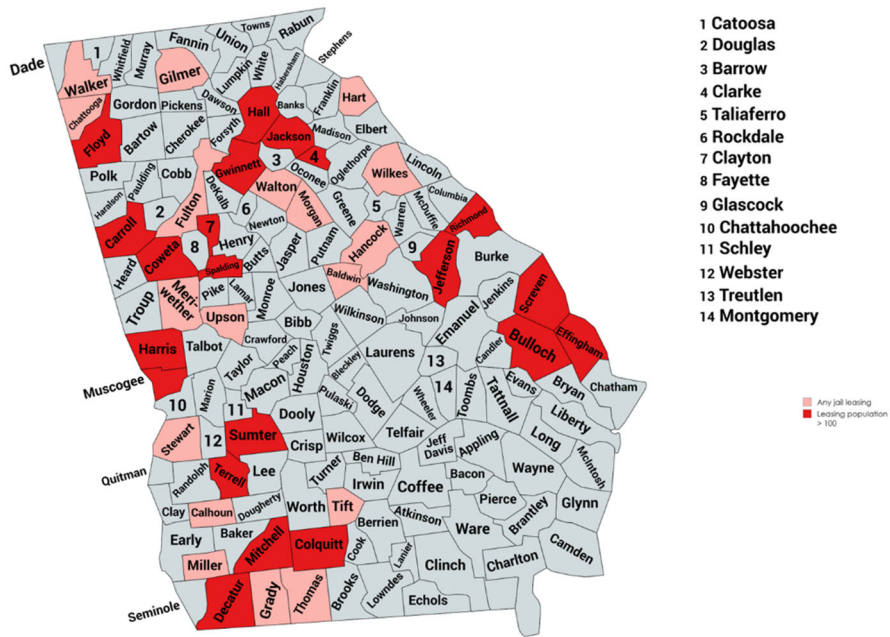


Figure 4 Jail leasing in Georgia, December 2019

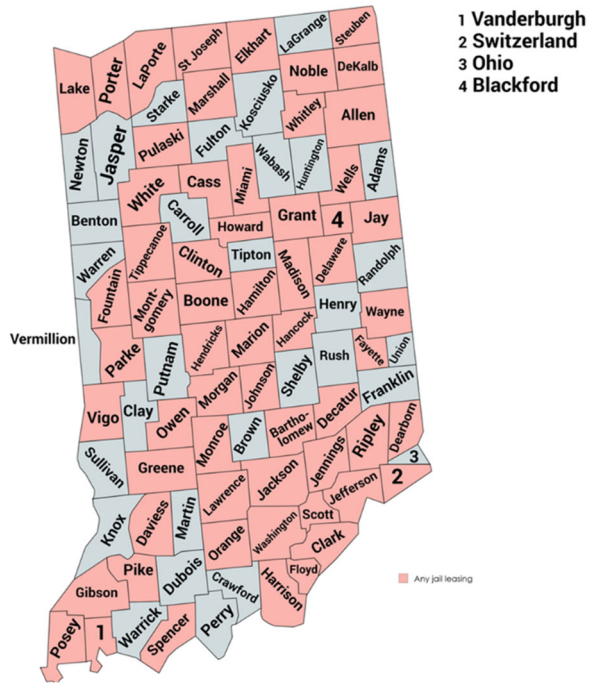


Figure 5 Jail leasing in Indiana, December 2019

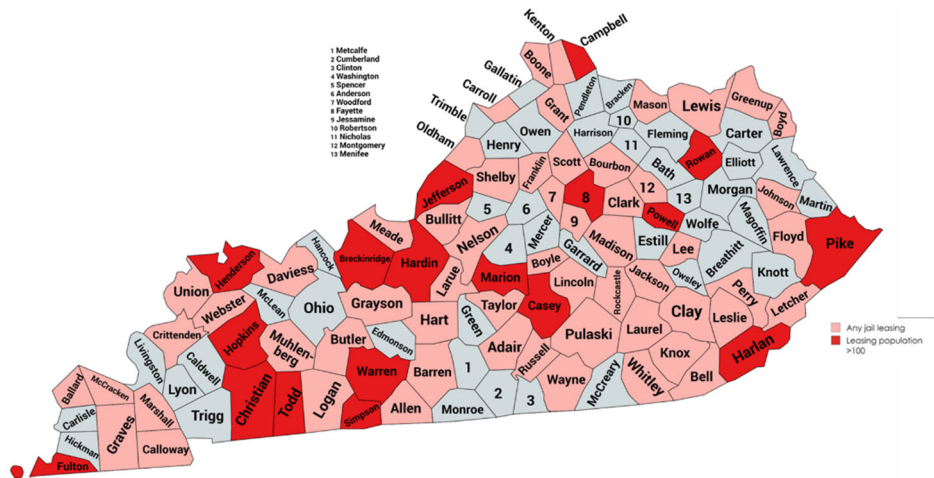


Figure 6 Jail leasing in Kentucky, December 2019

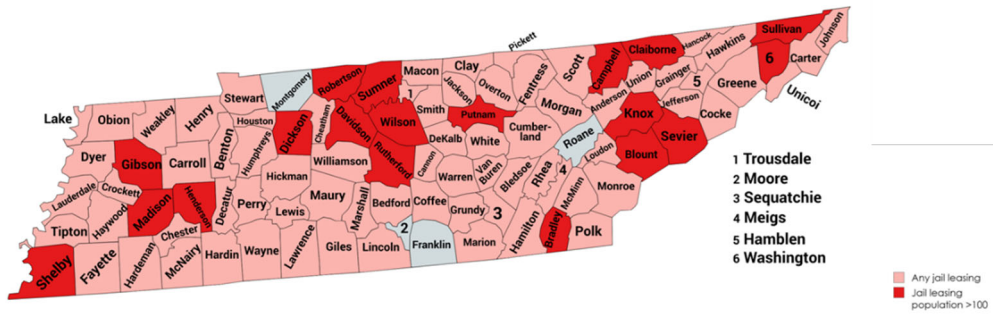


Figure 7 Jail leasing in Tennessee, July 2019

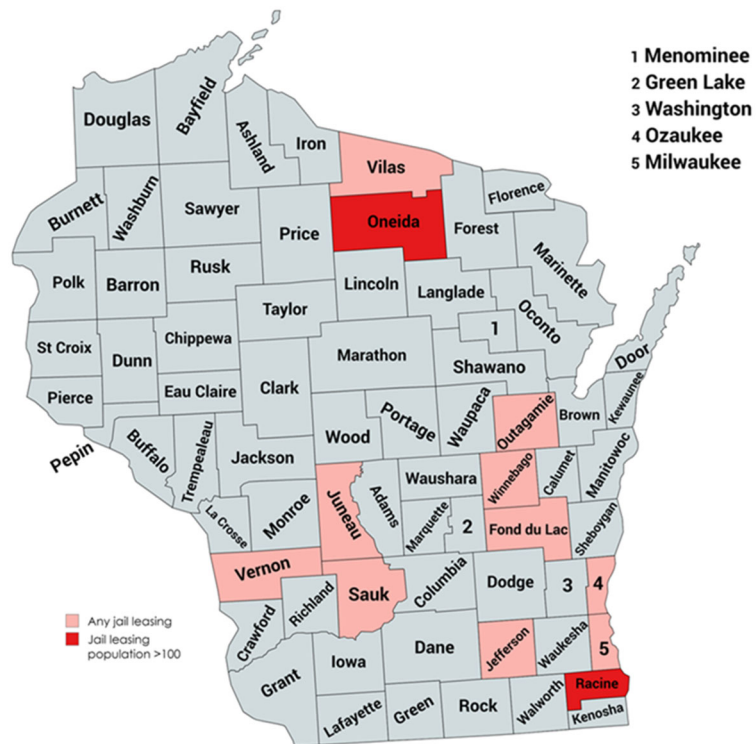


Figure 8 Jail leasing in Wisconsin, December 2019

2.5 Discussion

2.5.1 Limitations

The central limitation of this work to understand the spatialization of jail leasing is the lack of available data from states about whether, to what extent, and where they are engaging in leasing agreements with jails. For twelve states where jail leasing is a practice, only total state counts were published on the corrections agency website. Lastly, another twelve states where jail leasing is a practice reported in the Annual Surveys to BJS do not publish data about these agreements on their corrections agency website.

Additionally, despite jail leasing being relatively concentrated within a handful of states, there are myriad ways other states are making use of jail facilities as part of their decarceration and cost-cutting efforts that are not fully considered here. Nevertheless, these related practices can also inform some of the theory-building efforts described in this chapter. Legislative bodies in many states, including North Carolina, have recently increased the length of time permissible for convicted persons to serve incarceration sentences in jails. This was a major tenet of the Justice Reinvestment Act framework, which also recommended the reclassification of certain felonies into misdemeanors (Sabol & Baumann 2020). In Massachusetts, all individuals sentenced to less than two-and-a-half years serve their sentences in a local jail (Albert 2010). Until recently, individuals sentenced in Pennsylvania could be expected to serve sentences up

to five years in jails, but this was reduced to two years in 2012 (Albert 2010). Michigan, which does not formally engage in leasing agreements, has been incentivizing judges to sentence individuals to jails instead of prisons since the passage of its Community Corrections Act in 1988 (Rubin & Phelps 2017). Short-term leasing agreements were also utilized during the COVID-19 pandemic to stop the transfer of incarcerated individuals across facilities as a means of slowing disease transmission.

Lastly, the maps and tables shown in this chapter are solely descriptive – a first pass at what should be a much larger and more thoughtful investigation and test of some of the theories and linkages discussed above and below.

3. Sentenced to less? Determining the effect of jail leasing on recidivism

3.1 Introduction

The enormous growth of the US prison population between 1972 and 2009, known as the era of mass incarceration, forced many states to increase the capacity of their corrections systems (Harris et al. 2023). States did so by expanding existing prisons, building new ones, contracting with private facilities, and relying on county facilities (i.e., local jails) through a practice known as “jail leasing.” As a result of the latter, it became increasingly common for individuals to serve some or all of their sentence for a felony conviction in a local jail rather than a state prison.

Despite the longstanding use of jail leasing – it was first acknowledged by the Bureau of Justice Statistics (BJS) in its annual report on the prison population in the late 1970s (Cantwell 1980), but there exists other documentation of this practice happening in the US as far back as the 1890s (McLennan 2008, Chapter 5) – little work has been done to understand the effects of this practice on the incarcerated population.

In this chapter, I seek to understand the effects of jail leasing on recidivism (defined in this study as the return to state custody). I do so because there is reason to believe that the incarceration experience in jail is sufficiently different from the incarceration experience in a prison, and that these differences could alter the post-release experience of individuals who experience incarceration in one facility type compared to the other. I do so using data from six US states over a period of 20 years,

2000-2019. Using matching techniques, I display Kaplan-Meier curves to compare the survival rates of release cohorts leaving prison or jail and Cox Proportional Hazard model results to show estimates of the effects of facility type on recidivism risk. Lastly, I present a cost-benefit analysis to demonstrate the estimated financial impact of this practice from the perspective of the state corrections authority.

3.2 Background

3.2.1 Jail leasing: what is known about its use and effects on recidivism?

Jail leasing is the practice by which states enter into contractual agreements with local governments and rent beds in jails to house individuals who would normally be confined in state-operated prisons, typically paying an agreed-upon per diem rate (Wagner 2016). These agreements are typically motivated by the state's desire to decrease both spending on and overcrowding in state-operated facilities, along with the county's interest in an additional revenue stream and low-cost labor source (Norton & Schept 2019).

In 2022, more than eight percent of the average daily population in US jails were those individuals being held for state authorities as a result of leasing agreements (Zeng 2023). In 2013, 84% of surveyed jails reported holding persons for other authorities, up from 45% in 1978. From the same survey, it can be inferred that 22% of persons incarcerated in jails on any given day in 2013 were being held for another authority (and more than half for a state authority), up from 13% in 1978 (Kang-Brown & Subramanian

2017). There is tremendous variation in these percentages across states. While 16 states did not report any utilization of jail leasing in 2019, five states (Kentucky, 47%; Louisiana, 52%; Mississippi, 28%; Tennessee, 27%; and Utah, 23%) reported that at least one-fifth of their prison-eligible populations were being held in jails (Carson 2020). There is also tremendous variation in the rules governing these agreements across states, including what types of offenses are “leasing-eligible” and how long individuals can be incarcerated in jails as part of these agreements (Albert 2010).

While I believe this chapter to be the first rigorous empirical study of the association between jail leasing and recidivism, there has been some previous effort by scholars, practitioners, and advocates to understand the effects of this practice. Probably the best known and most studied example of jail leasing is that which occurs in California as part of the Justice Reinvestment Act of 2011 (VanSickle & Villa 2019). Despite reports of poor and worsening jail conditions post-realignment, there has been limited evidence of an effect, positive or negative, of jail leasing on recidivism (Lofstrom & Martin 2015). Another study of post-Realignment California found that a heavy reliance on local jails in lieu of state prisons had no effect on violent crimes albeit some negative effect (i.e., increased crime as a result of decreased incarceration) on property crimes (Bartos & Kubrin 2018). Outside of California, several other state task forces have developed reports on the recidivism rates of the jailed leased-population (see for example, Karpos et al. 2010 study of recidivism in Tennessee). Most have found higher

rates for the group of individuals released from jails than for the group who served their sentences in prisons. However, most of these studies lack the methodological considerations necessary to truly make accurate comparisons as I try to do in this chapter.3.2.2 Recidivism: a fail to rehabilitate or reintegrate?

Per BJS estimates, we know that 97% of individuals currently incarcerated in US prison and jail facilities will return to society at some point (Jung et al. 2010). Of those, an estimated 82% will be arrested at least once, and 61% will return to prison sometime in the 10 years following their release (Antenangeli & Durose 2023). Most agree that high recidivism rates are the result of the failure to make incarceration a rehabilitative experience in combination with the stigmatization and legalized discrimination that marks the reentry experience. However, there is less agreement about how impactful each of these two distinct mechanisms are.

There is evidence that incarceration is negatively associated with crime. One test of this relationship found that decreased incarceration stemming from overcrowding litigation was associated with increased crimes, but the mechanisms were not specifically studied (Levitt 1996). In other words, it is not clear whether the decreased incarceration was undoing the incapacitation, deterrent, or rehabilitative effect it theoretically serves. Regardless of mechanism, the ability of incarceration to prevent crime does appear to have gotten smaller over the era of mass incarceration – likely the result of the increasing number of people being held in prisons and jails who pose a

relatively small threat to society (Johnson & Raphael 2012). Further, there are strong arguments for the ability of the incarceration experience to itself be criminogenic (Durlauf & Nagin 2011). This could be taken to mean that incarceration may become positively associated with crime and recidivism if, over time, the crime-reducing effect of incarceration continues to decline.

Some scholars have said that it is the prison “label” rather than the prison time that is responsible for the poor outcomes experienced by many individuals during reentry, which contributes to their extreme risk of recidivism (Alexander 2010, Introduction). Proponents of strain theory emphasize the ways in which the post-release experience is marked by the blocking of legitimate opportunities and the availability of illegitimate opportunities, which can lead to recidivism (Agnew et al. 2002). Justice-involved individuals face enormous amounts of legal discrimination, especially when seeking employment (Hwang & Phillips 2024, Pager 2003, Western 2002). Among those scholars studying the effect of incarceration on health, some have suggested it is not actually the period of incarceration that matters for long-term health, but rather the difficulties and the stigma faced by individuals post release (Schnittker & John 2007). Further, access to social welfare programs is more limited for those with a felony record (Bryan 2023, Sugie & Newark 2023). Individuals with felony records also have a harder time securing secure forms of credit, including mortgage loans for home purchases (Bryan 2020, DeMarco et al. 2021). Through voter disenfranchisement, reentering

individuals are also denied their right to civic participation (Manza & Uggen 2006, Chapter 7). This social and societal detachment can make individuals feel they have no other option than to turn to illegitimate means and also may restrict their ability to participate in other life-course events typically thought of as positive turning points for desistance (Apel & Sweeten 2010, Uggen & Massoglia 2003, Smith et al. 2020).

The importance of post-release residence has been identified in multiple quasi-experimental studies looking at recidivism in New Orleans' parishes before and after Hurricane Katrina, as well as a randomized control study of a randomized housing mobility program for individuals leaving prisons in Maryland (Kirk 2009, Kirk 2012, Kirk et al 2018). Relatedly, in her work about the spatialization of mass incarceration, Simes (2021, Chapter 7) argues that whatever rehabilitative programming is available to individuals while they are incarcerated will prove futile so long as those individuals are released to insufficiently resourced communities. These findings about the importance of the post-release experience would suggest that facility type would not matter strongly for one's recidivism risk.

3.2.3 Recidivism: do conditions of confinement matter?

Sykes introduced his seminal work on confinement conditions by saying the study was largely motivated by his perception that scholars of recidivism were focusing too little attention on prison life (Sykes 1958, Introduction). In his description of the myriad roles of the prison and its custodians, he acknowledged that rehabilitation might

not be possible as the most important role is incapacitation and the management of a large number of persons (Sykes 1958, Chapter 1). However, he also observed how the prison environment does have the ability to change people in ways that may not be beneficial for life upon release. Nearly two decades earlier, Clemmer (1940, Chapter 4) made quite similar observations about the process by which individuals become accustomed to prison life in ways that are not suitable outside the prison environment. More recently, there has been a renewed call by sociologists to discern the conditions of confinement and their effects (Wildeman et al 2018, Turney & Connor 2019).

There have been some attempts to study the effects of specific conditions of confinement on recidivism. Often these studies focus on the availability and efficacy of programming. Ability to receive visitors while incarcerated is positively associated with reduced risk of recidivism (Bales & Mears 2008, Mears et al. 2011, Mitchell et al. 2016). However, recent technology has allowed for virtual visitation, and there is some evidence that this is just as effective (Duwe & McNeely 2021), and that more generally, it is family contact via myriad means (e.g., visits, calls, letters) that matters, especially because it allows for post-release planning (Brunton-Smith & McCarthy 2017, Folk et al. 2019).

The evidence about the effect of participating in educational programming while incarcerated on recidivism is mixed albeit mostly positive (Bozick et al. 2018). Postsecondary education has been identified as particularly likely to improve reentry

outcomes (Ballou 2024, Duwe & Clark 2014, Denney & Tynes 2021, Stickle & Schuster 2023). This is suspected to be the case because it can help individuals obtain meaningful post-release employment. However, there is still strong evidence of discrimination against individuals with felony records as they seek employment even when they have the credentials necessary to obtain skilled work (Lindsay 2022) and as they try to enroll in higher education programs not located in corrections facilities (Stewart & Uggens 2019).

3.2.4 Recidivism: does facility type matter?

Confinement in jail and confinement in prison are distinctively different experiences with the former frequently being cited as the subjectively worse of the two – places of uncertainty, violence, and idleness (Fishman 1923, Chapter 1; Irwin 1985, Chapter 4; May et al. 2014; Petersilia & Cullen 2014; Turner et al. 2015; VanSickle & Villa 2019; Walker 2022a, Chapter 10; Walker 2022b).

Jails are highly transient spaces. In 2021, jails admitted approximately 6.9 million persons and held an average daily population of just over 600,000 (Sawyer & Wagner 2023). Much of this transience is driven by the relatively short length of a typical jail stay – about 26 days in 2019 (Zeng & Minton 2021). As a result, jail administrators are tasked with managing an ever-churning group of individuals, many of whom come from disadvantaged positions in their communities (Irwin 1985, Chapter 7). Prison administrators, contrarily, are tasked with managing (and ideally rehabilitating) a much

more stable population. In 2021, the average daily prison population was 1.2 million persons with nearly 420,000 annual admissions (Sawyer & Wagner 2023). The most recent estimates from BJS, using 2018 data, show an average time served in prison per stint of 2.7 years (Kaeble 2021).

This stability offers the chance for relationships and networks to form among incarcerated individuals (Clemmer 1940, Chapter 4; Haynie et al. 2018; Kreager et al. 2017; Sykes 1958, Chapter 5). Such networks can offer beneficial social integration and supports but can also increase access to criminogenic information and opportunities (Kreager et al. 2017). Less is known about network formation in jails (Walker 2016, Walker 2023). Given the dynamic population, it may be the case that relationship-building is less possible, and as a result, individuals incarcerated in these spaces are impacted less, positively or negatively, by the peer effects documented in the prison environment. In a study of the effect of prison security level on recidivism, Chen and Shapiro (2007) found no significant difference but did find evidence to suggest that harsher conditions were associated with increased post-release crime. Drago and coauthors (2011) found very similar results in their study of Italian prisons. However, it is unclear if jails are truly harsher spaces than prisons or whether they are more or less criminogenic spaces.

Jails are more likely to be overcrowded, which has been associated with poor mental health outcomes (Edgemon & Clay-Warner 2019). However, solitary

confinement, also shown to be detrimental for mental and physical health, is less common in jails than in prisons (Wildeman et al. 2018). Generally, incarceration has been shown to negatively impact the health of those who experience it (Massoglia & Pridemore 2015). Individuals in both prisons and jails are more likely than those in the general population to report having at some time had a chronic health condition or infectious disease (Maruschak et al. 2015). Mortality rates are higher in state prisons than local jails, but mortality rates in either facility type are lower than for individuals on probation (Wildeman et al. 2019). This suggests that access to care in either facility type is greater than what justice-involved individuals may be able to access when not incarcerated. Individuals are more likely to access health care in prisons than in jails, including an initial health assessment at the time of their admission (Maruschak et al. 2015, Petersilia & Cullen 2014, Wilper et al. 2009). However, there are numerous accounts of the health care provided in prison being inadequate and even inhumane, especially in light of recent spending cuts by many state corrections authorities (Strong 2022).

Jails are less likely to provide programming, including job training and formal education opportunities (Turkington 2017, Wildeman et al. 2018). This is in part because of the limited mobility that is possible for those incarcerated in jails due to population sizes and staffing ratios (Jung et al. 2010). However, the actual availability and quality of such programming in prisons has also been called into question, and we have been

cautioned against overstating their prevalence despite the rhetoric used by many corrections authorities about the rehabilitative ideal in the modern penal regime (Phelps 2011).

Lastly, the question of facility type also engages with another scholarly debate about the impact of privately-operated prisons on the outcomes of individuals who experience incarceration (see Montes & Mears 2019 for a strong review of the literature to date). One study looking at differences in recidivism using methods similar to those of this chapter did find worse recidivism outcomes among those released from private facilities compared to state-operated facilities (Duwe & Clark 2013). However, unlike the owners and profiteers of private facilities, jail authorities do have somewhat of an increased interest in ensuring positive outcomes for the populations in their custody.

3.3 Data and methods

For these analyses, I rely on data from the National Corrections Reporting Program (NCRP). An effort of BJS, the NCRP annually collects data on every entry, hold, and release for each participating state corrections agency. In addition to demographic characteristics and details of offending behavior, the NCRP also tracks the facility type where an individual served their sentence. Most importantly, the NCRP uses unique identifiers such that it is possible to track individuals as they enter, exit, and reenter a corrections system. The “term record files” connect the entirety of an individual’s

history in the custody of a state corrections authority and have been reliability created for 23 states (Gelb & Velazquez 2018).

3.3.1 Selecting states

The inclusion criteria and list of states meeting or not meeting each is available in Appendix A. First, I excluded the six US states with integrated prison/jail systems. Next, I used the National Prisoner Statistics (NPS) data to identify states that reported participating in leasing agreements with local jails, and excluded those states which did not. For those states I did identify as participating in leasing agreements, I reviewed the NCRP data and dropped states for which it would not be possible to determine the facility type where an individual was incarcerated for a given term.¹ Next, I dropped those states for which the leasing population was less than 5% of the total incarcerated population over the entire observation period.² Lastly, I validated the average daily population and annual release counts from the NCRP with the NPS data and with state

¹ Some states do not report data to through the NCRP and thus could not be included. In other instances, states did not provide information about the facility type where the sentence was being served or labeled all terms as being served in prisons.

² This exclusion criterion was made for two reasons. First, it was something of a data validation activity. If from the NPS data it appeared that a state relied on leasing agreements for a sizeable portion of its incarcerated population but NCRP data labeled only a small percent of terms as having been served in jails (as was the case with California), I had concerns about potential data errors that would lead to mistakenly constructed comparison groups (i.e., would be including terms in the “prison” group that were really served in jails). The second reason for this criterion was to ensure there was a large enough leased population to be able to make meaningful comparisons between the leased and prison population and to ensure I was not just comparing a very small, and likely select, group of persons to the rest of the incarcerated population.

department of corrections data as available.³ These validation tables are available for review in Appendix A. After the inclusion and validation exercises, I was left with six states for inclusion in my analyses – Georgia, Kentucky, Louisiana, South Carolina, Tennessee, and Texas. Term record files (i.e., observations) from these states (n=3,163,310) make up 23.2% of all term record files in the NCRP 2000-2019 datafile (n=13,638,372). It should be noted that Louisiana only started reporting data to the NCRP in 2015 and so, are underrepresented in the data compared to other states.

3.3.2 Constructing variables necessary for survival analysis

To understand the movement of individuals in and out of state custody, I created several variables. First, I numbered the term record files for each unique individual in sequential order and calculated the number of days between the end of the prior term and the start of the next term. For those term record files without a subsequent term file (i.e., the individual did not recidivate during the observation period), the length was calculated as the number of days between release and the end of the observation period, and the length variable was marked as censored. I also made a categorical variable for crime category using the specific offense information and classification information from BJS, and an indicator variable to label whether the reason for reincarceration was

³ In the case of Texas, the facility labels used in the NCRP data are “prison” and “other.” Using NPS data and Texas Department of Corrections data and reporting, I ascertained that those terms with the “other” label were those served in local jails as part of leasing agreements.

because of a technical violation received while an individual was under community-based supervision (as opposed to a new charge regardless of supervision status).

3.3.3 Isolating the analytic sample

Terms that were still being served at the end of 2019 were excluded, as were those terms for which the release occurred before the year 2000. I also excluded terms labeled as having been served in a facility type other than a prison or jail (e.g., residential treatment facility), or which had no facility information. I removed a small number of term record files for which the admission date was the same as either the admission or release date for the prior term (i.e., duplicate or consecutive terms), and also a small number of term record files for which the admission and release dates were the same (i.e., the length of incarceration was 0 days). I removed a small number of term record files for which the individual's birth year or information about the offense that led to their current incarceration spell was missing. If the reason for admission or release involved transfer between facilities, escape, or death in custody, the term record file was excluded. Lastly, I only included men in the analytic sample because of the gendered nature of both the treatment (i.e., the experience of incarceration in either a prison or a jail) and the outcome (i.e., the risk of recidivism). For example, in a recent report authored by the Legislative Research Commission (Thomas et al. 2016), it was acknowledged that women being held in county facilities as part of leasing agreements

were being denied access to formal programming because of gender-segregation procedures and resource constraints in these facilities.

After these deletions, the total analytic sample consisted of 1,814,261 term record files – a retention of 57.4% of all term record files for these six states and 13.3% of all term record files in the entire NCRP 2000-2019 datafile. By-state retention varied from 30.8% for Georgia to 69.5% for Texas.

3.3.4 Isolating the analytic sample

Drawing from the isolated analytic sample, I employed exact matching without replacement and a ratio of many-to-one to create a treatment (i.e., individuals released from jails) and control (i.e., individuals released from prison) group. This matching strategy ensured sufficient overlap between the sample populations of individuals from each facility type and is a useful technique for attempting to determine a causal effect (Rubin 2006, Chapter 3).

In the interest of including as many individuals in the analysis as possible, I restricted matching to three key predictors of recidivism and used regression techniques to account for the influence of other observed covariates. Individuals released from jails were matched with individuals released from prisons who experienced the same length of incarceration (measured by number of days), were incarcerated as the result of a conviction for the same offense, and were released in the same month and year. The first two are necessary conditions because they are well-established predictors of recidivism

and are also those most likely to differ by facility-type assignment. Year and month of release are also highly influential of recidivism as they impact the availability of both legitimate (e.g., employment) and illegitimate opportunities (e.g., crime) for time use.

The use of many-to-one matching without replacement means the sample is subject to up-weighting and allows for calculation of the average treatment effect among the treated, or the ATT (Ho et al. 2011). Each treated case (i.e., a term served in jail) can only be in the matched sample once while each control case (i.e., a term served in prison) can be matched to multiple treatment cases. Each control case is then assigned a weight proportional to the number of treatment units it serves as a match for. The sum of these weights is equal to the total number of control units. The number of term record files included in the matched sample was 698,815. This is 22.1% of all term record files from the six states and 5.1% of all term files in the entire NCRP 2000-2019 datafile. By-state retention varied from 8.9% for Louisiana to 33.5% for Texas. Appendix A has information about the by-state retention and composition rates, as well as the descriptive statistics of the samples at each state of the analytic sample identification and matching process.

3.3.5 Survival analysis

Recidivism can be thought of and measured in several ways. For the purposes of this study, recidivism is defined as being released from a period of confinement under state custody and returning to confinement under state custody, both times as a result of

a felony conviction. To compare the recidivism trends for individuals released from prisons versus jails, I utilized techniques for analyzing survival times that have been well established in the field of demography (Hosmer et al. 2008, Chapter 3). I first constructed Kaplan-Meier curves to visualize the instantaneous probability of survival (i.e., not recidivating) assuming survival (i.e., not recidivating) to a given point. These visualizations are useful because they show differences in the time-to-event and not just whether the event (i.e., an individual recidivates) ever occurred. I subsequently constructed Cox proportional hazard models to estimate the association between survival times and predictor variables, including facility type and other observed covariates known to be associated with differences in recidivism. These include prior incarceration history, age, and race (Jung et al 2010, Steffensmeier et al. 1989).

By pooling years, I used an offender-based approach by looking at recidivism over a large period of time, rather than following one release cohort in an event-based approach. This generates a more conservative estimate of recidivism (Rhodes et al. 2019). The event-based approach is useful for studying the effects of one particular event or policy change, while the offender-based approach more accurately describes the cyclical nature of incarceration and reflects criminologists' oft-used life-course approach to studying crime and punishment.

3.3.6 Cost-benefit analysis

A large motivator of jail leasing agreements are the perceived financial benefits for both the state corrections and local jail authorities. However, understanding the true costs (and savings) associated with crime and punishment is quite difficult because there are many different “payers” (Becker 1968). For example, for each instance of recidivism, there are costs incurred by law enforcement agencies, court systems, victims, the incarcerated individuals and their families and communities, and corrections authorities. And, as the majority of these “payers” are using tax dollars, there are also opportunity costs (i.e., each dollar spent by the law enforcement agency to arrest an individual could have been spent in a different way by the law enforcement agency but also could have been spent differently by the taxpayer, either not as taxes or as taxes distributed to another government entity).

Nevertheless, when thoughtfully specified, cost-benefit analyses are a useful tool for assessing public policy. For this cost-benefit analysis, I took on the perspective of one payer, the state corrections authority, and sought to answer the following question: how do differences in recidivism based on facility type affect the actual difference in expenditures associated with housing individuals in jails instead of state-operated prisons?

To do so, I manually searched for and pulled data from each state corrections authority webpage about the estimated average cost-per-night to incarcerate an

individual in a state-operated facility, as well as the per-night payment to jails for leasing agreements. I divided the latter by the former to generate a “cost-savings rate” for each state. I subsequently compared these cost-savings rates to the hazard ratios generated by the Cox proportional hazard models.

3.4 Results

Table 2 shows the descriptive statistics of the matched sample, stratified by facility type, for each state and for the entire six-state sample. Because of differences in state laws and practices, scholars using national data are encouraged not to compare states when using return-to-prison as a measure of recidivism (Rhodes et al 2019). This is because the threshold for a felony conviction, which would be most likely to place an individual back into prison, can vary significantly between states. Further, states have different policies about the sentence lengths that are eligible for jail leasing (Albert 2010). As such, these findings are best considered as six separate sets of estimates. However, I do also provide a set of results that considers the entire sample together, as well as a “state-weighted” set of results which gives each state 1/6th of the contribution to the total estimate. The numbers reported in Table 2 are at the term-level.

Table 2 Descriptive statistics for the matched samples

	Sample size (# of term record files)		Days incarcerated (SD)		% with prior felony		Age at release (SD)		% with Black racial identity		% reimprisoned	
	Prison	Jail	Prison	Jail	Prison	Jail	Prison	Jail	Prison	Jail	Prison	Jail
Total	389,897	308,918	204 (241)	204 (241)	52	56	35 (11)	35 (11)	44	42	47	57
Total, state-weighted	389,897	308,918	282 (316)	282 (316)	44	49	36 (12)	36 (12)	50	47	45	49
Georgia	41,679	25,532	462 (415)	462 (415)	43	54	35 (11)	33 (9)	65	64	45	43
Kentucky	18,658	32,587	231 (214)	231 (214)	25	36	37 (10)	34 (10)	29	19	50	53
Louisiana	4,378	16,664	321 (359)	321 (359)	29	33	37 (11)	35 (10)	66	58	32	36
South Carolina	146,132	13,954	256 (368)	256 (368)	54	41	35 (11)	34 (10)	61	57	40	49
Tennessee	29,739	50,090	283 (276)	286 (276)	76	70	35 (10)	34 (10)	40	53	56	56
Texas	274,339	175,671	125 (93)	125 (93)	53	60	34 (11)	37 (11)	43	38	45	63

The average length of stay is around 7 months. This fits with our understanding that jail leasing is likely used for those with lower-than-average sentence lengths relative to the entire prison population. There are differences in the prison and jail-leased populations with regards to what proportion of each group has a prior felony conviction. However, there are differences across states in which group is likely to have a higher proportion – this suggests potential differences in eligibility determination for jail leasing. There are differences in the racial composition of the prison and jail-leased populations, however, it is not immediately clear what could be driving these differences – sentencing disparities and location of leasing facilities are two potential factors, but neither are directly tested in this dissertation. In the right-most column, we see initial indications of whether jail leasing is favorable or punitive for recidivism risk. In both the total and state-weighted populations, a higher proportion of the jail-leased population recidivate.

Figure 9 shows the Kaplan-Meier survival curves for both the entire unmatched and matched samples. Survival, in this case, is defined as remaining out of confinement for a felony conviction after the initial release (Day 0). Any point on these curves can be read as the instantaneous probability of not recidivating assuming one has avoided doing so up to that point. We can also look at the vertical distance between these two curves at any value along the x-axis and see the relative difference in survival probabilities. Both sets of curves have a significant p-value when subjected to the log-

rank test. Thus, we know that for each sample the difference between the two curves is statistically significant.

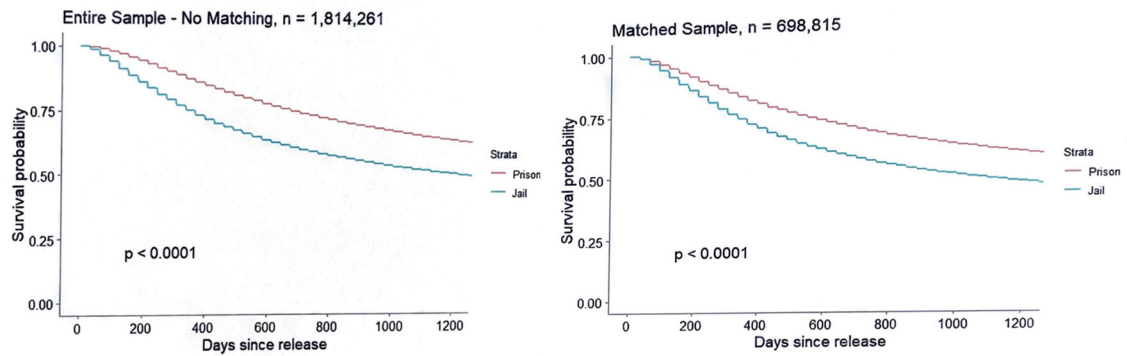


Figure 9 Kaplan-Meier curves for entire unmatched and matched sample

But it is apparent that this difference is much smaller for the matched population. This highlights the importance of matching for these types of studies. Had matching not been performed, the importance of facility type would have been overstated. Figure 10 shows the matched samples for each individual state – those for the unmatched samples are presented in Appendix A. Looking across states, we see tremendous heterogeneity. Only in Georgia does leasing appear to be beneficial for recidivism. In Kentucky and Tennessee, the matching on key covariates appears to explain away nearly all differences in recidivism across facility type. Even after matching, the risk of recidivism remains much higher for those leaving jails in Texas compared to prisons. This size of this difference and the proportion of the total population from Texas (~64%) largely explains the curves in Figure 9. To account for this overrepresentation, I assigned a weight to each term record file such that when

considered together, all terms from one state contributed 1/6th of the final estimate. These “state-weighted” curves are shown in Figure 11.

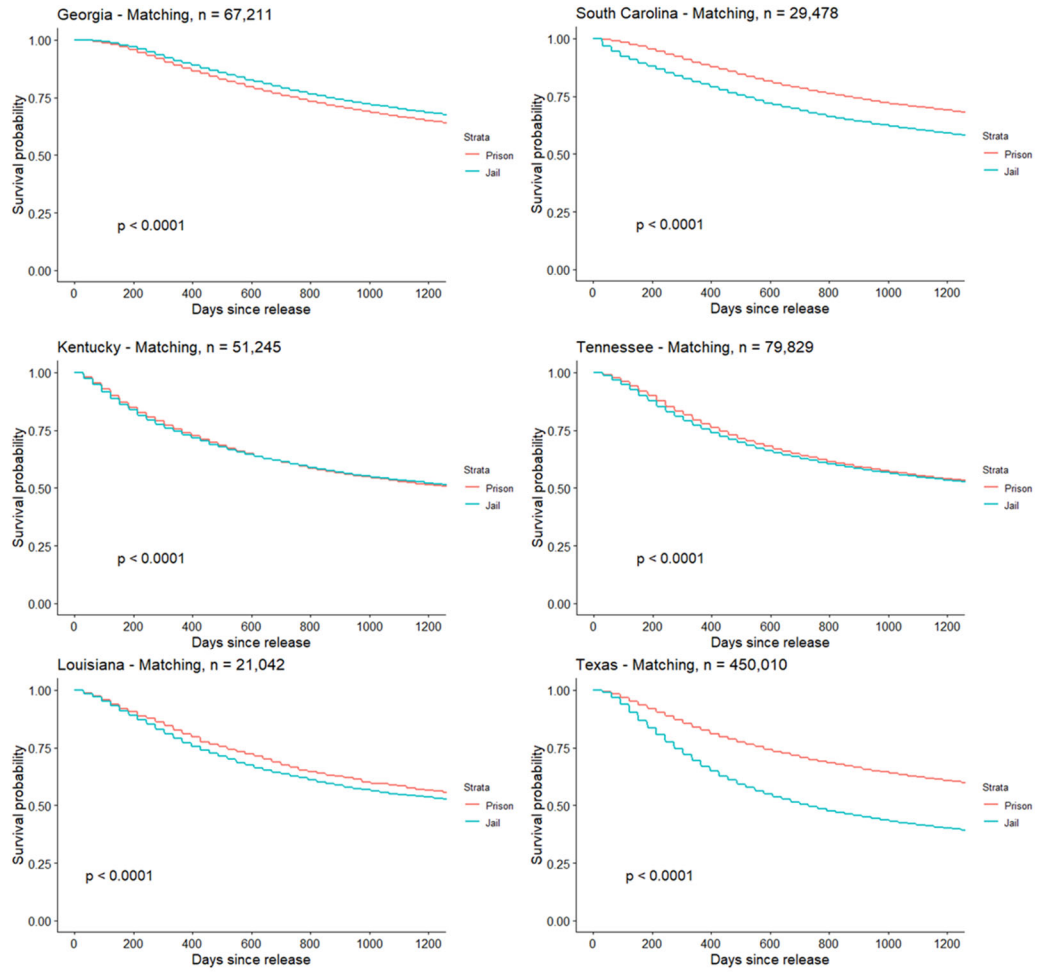


Figure 10 Kaplan-Meier curves for matched state samples

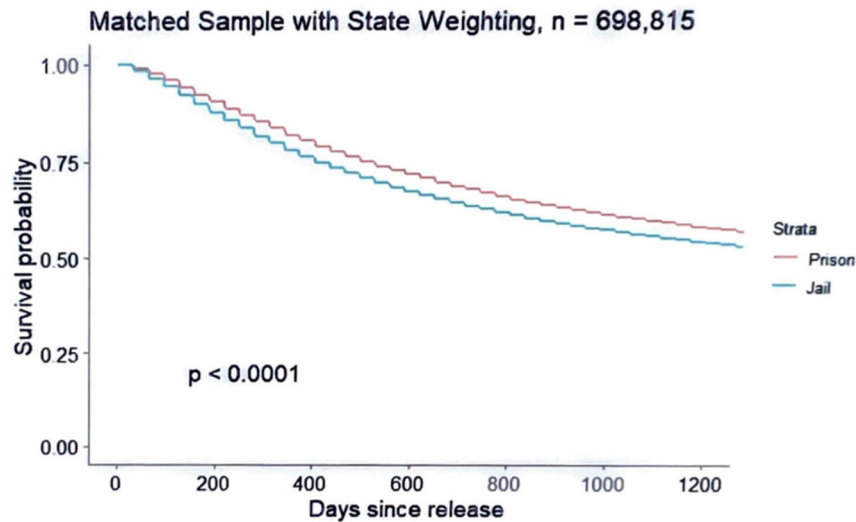


Figure 11 Kaplan-Meier curves for matched and state-weighted sample

The results of the Cox proportional hazards models, shown in Tables 3 and 4, also suggest facility type is important but again suggest cross-state heterogeneity. Cox regression models generate estimates of the association between survival times and predictor variables. In Tables 3 and 4, I show the hazard ratios generated from two sets of models. Hazard ratios, the exponentiated regression coefficient describe the relative risk rather than absolute risk, similar to odds ratios. A hazard ratio of 1 indicates no difference in risk if the predictor variable is present or not. A hazard ratio smaller than 1 indicates that the predictor variable is associated with reduced risk. A hazard ratio larger than 1 indicates increased risk. For example, in the first model, which just considers facility type (see Table 3), the hazard ratio for serving one’s sentence in a jail for the total population is 1.39. This means that if an individual was released from a jail, their risk of recidivism is 39% greater than for an individual released from a prison. As

with the Kaplan-Meier curves, only for Georgia is jail leasing associated with reduced risk of recidivism. And despite being statistically significant, the increased risk of recidivism associated with jail leasing is quite small in both Kentucky and Tennessee. Statistical significance for these model estimates is based on the p-value associated with the Wald value, which is the regression coefficient divided by its standard error.

Table 3 Effect of serving term in jail on recidivism

	Hazard Ratio ¹
Total	1.39 ***
Total, state-weighted	1.14***
Georgia	0.91 ***
Kentucky	1.01
Louisiana	1.14 **
South Carolina	1.38 ***
Tennessee	1.03 *
Texas	1.76 ***
¹ *P < .10; **P < .05; ***P < .01	

For a second set of models, I estimated the impact of facility type and also considered other covariates known to influence risk of recidivism. These include length of most recent incarceration spell, measured in days; whether (binary indicator) the individual had a prior felony conviction before starting the most recent incarceration stay; whether (binary indicator) the most recent incarceration stay was for a new offense conviction or a violation of prior terms of release; the individual's age at release,

measured in years; and whether (binary indicator) the individual was Black or held another racial identity. Table 4 shows the estimated hazard ratios for these fuller models.

Table 4 Results of Cox proportional hazard models to estimate risk of recidivism

	Released from jail	Length of stay (# of days)	Has a prior felony conviction	Most recent incarceration was for technical violation	Age at release (years)	Black racial identity
	Hazard Ratio ¹	Hazard Ratio ¹	Hazard Ratio ¹	Hazard Ratio ¹	Hazard Ratio ¹	Hazard Ratio ¹
Total	1.24 ***	1.00 ***	1.48***	0.75 ***	0.98 ***	0.93 ***
Total, state-weighted	1.08***	1.00***	1.52***	0.79***	0.97***	0.85***
Georgia	0.88 ***	1.00	1.64 ***	0.79 ***	0.97 ***	0.94 ***
Kentucky	0.97	1.00 ***	1.47 ***	0.97	0.97 ***	0.79 ***
Louisiana	1.06	1.00	1.70 ***	0.82***	0.96 ***	0.79 ***
South Carolina	1.35 ***	1.00 ***	1.85 ***	0.68 ***	0.97 ***	0.95 *
Tennessee	0.97 *	1.00 ***	1.59 ***	1.01	0.97 ***	0.95***
Texas	2.04 ***	1.00***	1.61 ***	1.05 *	0.98 ***	1.01
1 *P < .10; **P < .05; ***P < .01						

In both sets of models, the total and state-weighted estimates suggest that jail leasing, on average and across states, increases the risk of recidivism. Looking individually across states, leasing appears to meaningfully decrease risk of recidivism only in Georgia. The impact on risk is small and/or not significant in both Kentucky and Tennessee before controlling for any other important predictors. In the expanded model, the risk of recidivism is actually lower for the jail-leased populations in Kentucky and

Tennessee (albeit to a statistically significant degree only for the latter). This suggests that other factors are more important in these states, especially whether the individual had a prior felony conviction before the most recent incarceration spell. The estimates of the impact of the other predictors on recidivism align well with prior literature. Having a prior felony conviction (i.e., having already recidivated at least once) is highly predictive of recidivating. Age is inversely associated with recidivism risk, and increasing the length of stay increases risk of recidivism.

Lastly, Table 5 shows the cost-benefit analysis generated from the perspective of the state corrections authority. For most states, there does appear to be a cost-savings associated with jail leasing even considering differences in recidivism risk. This is especially true for the states where leasing appears to reduce risk of recidivism and costs the state less money.

Table 5 Cost-benefit analysis

	Per-night cost, leasing	Per-night cost, prison	Cost-savings rate for leasing	Difference in recidivism risk if released from jail (from Hazard Ratios of Table 3)
Georgia (\$2021)	\$30.00	\$73.79	41%	-12%
Kentucky (\$2019)	\$36.70	\$75.91	48%	-3%
Louisiana (\$2023)	\$26.39	\$76.62	34%	+6%
South Carolina (\$2019)	--	\$64.86	--	+35%

Tennessee (\$2017)	\$49.36	\$76.82	64%	-3%
Texas (\$2019)	\$36.79	\$43.18	85%	+104%

3.5 Discussion

This chapter was motivated by the idea that the differences between prisons and jails could result in differences in recidivism risk for individuals who experience incarceration in one facility type versus the other. The results of these analyses suggest that jail leasing, on average, results in worse recidivism outcomes for individuals who are subjected to jail incarceration instead of prison incarceration. However, these differences do not appear to negate the cost savings experienced by the state corrections authorities. The tremendous variation in effect and effect size across the six states reinforces the need for scholars of crime and punishment to think locally and consider the true utility of national estimates when large within-nation differences exist.

While I did not test any specific mechanisms in this chapter, there are several likely explanations for these results. The differences across states are likely the result of state-specific context not captured in the data, which are at the level of the individual. For example, overall state expenditures on law enforcement, court systems, and corrections are likely to affect both the incarceration and post-release experience. Of the states examined in this chapter, per capita spending on corrections is quite similar. However, there is more variation in the incarceration rate per capita. Only the rate of

South Carolina (303 per 100,000 residents) and Tennessee (334 per 100,000 residents) is lower than the 50-state average of 355 incarcerated persons per 100,000 residents.

Louisiana (596 per 100,000 residents) has the highest incarceration rate, which is likely the reason the state is forced to rely so heavily on jail leasing agreements. The other states have very similar incarceration rates in the mid-400 per 100,000 residents. That South Carolina and Tennessee have similarly low incarceration rates and corrections expenditures but vastly different recidivism outcomes for their jail leased populations suggests further work is necessary to determine the relationship between these factors.

Another potential mechanism explaining the effect of jail leasing on recidivism could be the use of jail leasing largely for individuals convicted of what we colloquially refer to as crimes of poverty. Such crimes already have higher-than-average recidivism rates because they are often committed as a means of survival and are also somewhat immune to any rehabilitative intent of the corrections authority because individual-level interventions are seldom able to surpass society-level problems. This could explain why in several states the recidivism rates for the jail-leased and prison-released cohorts, matched by crime of conviction, were quite similar.

Whether jail leasing occurs closer to home than the alternative prison site is located also could affect recidivism risk. While that could not be specifically tested for in this analysis, I can infer from the maps presented in chapter 2 what might be happening in Georgia, Kentucky, and Tennessee. In all three states, leasing is happening in large

volumes in the largest counties in the state, which suggests that individuals are being leased to their local jail. If jail leasing results in individuals experiencing incarceration in their home community, rehabilitation efforts offered there may prove more effective for improving reentry outcomes. Jails could be uniquely situated to increase the likelihood of post-release continuation of education if they offered educational programming in partnership with local colleges and universities. Similarly, access to social services could be more tailored, like Medicaid enrollment (Rosen et al. 2014) and community-based care handoffs (Rich et al. 2014).

However, there are reports of jail leasing facilities having fewer available programs than in the prisons of the same state (Spears 2024, Thomas et al. 2016). Reports of frequent transfers between jail facilities could mean that access to services is disrupted or not prioritized (Kaufman 2020, Turkington 2017). There also remain questions about whether the jail leasing population has access to federally funded programs like Pell Grants or those associated with the First Step Act. And as states continue to make their own investments in prison-based initiatives meant to curb recidivism, disparities in outcomes between the prison and the jail-leased populations may only grow if jails are not also adequate recipients of such investments.

Additionally, it is largely unknown what effect jail leasing has on the remainder of the jail population, the majority of whom will never be convicted of a crime. If jail leasing is accompanied by increased availability of programming in jails for the entire

population, this could be beneficial. In California, there is some evidence of individuals being released pretrial to make space for leased persons (Lofstrom & Raphael 2013, Turner et al. 2015). However, in other states where leasing has prompted jail expansion and new jail construction efforts, there is evidence of leasing preceding increased local pretrial jail incarceration populations and overcrowded conditions (Lofstrom & Martin 2015, Mai et al. 2019).

As this is one of the first empirical tests of the effects of jail leasing, there remain myriad directions for future work. More implementation evaluation is necessary to understand how rehabilitation and reentry-preparation programs are being facilitated in jails. This work can help explain the differences in recidivism by facility type that were described in this chapter, as well as the heterogeneity of results across states. Starting the research process at the time of implementation would also give the researchers the ability to test the effects of specific conditions of confinement, like crowding. It could also be interesting to study whether or not jail leasing influences, positively or negatively an individual's relationship with local law enforcement if they are released from a local facility, also typically operated by local law enforcement. Lastly, it would be prudent to do similar analyses as presented in this chapter looking at women who are part of leasing agreements to see if the effects are any different than those for men.

3.5.1 Limitations

This study is not without limitations. The first has to do with the dependent variable. My use of “return to prison” generates both a conservative estimate of recidivism (in comparison to rearrest or self-report of return to illegal activity, for example) and implies that punishment is the only sufficient response to wrongdoing (Duwe & Clark 2013). Additionally, as with many studies of recidivism, this one largely conceptualizes recidivism as an individual issue despite recent discussion that it is more accurately a structural and community one (Leverentz et al. 2020, Chapter 1; Simes 2021, Chapter 7) and calls to more broadly examine the post-release experience and outcomes of individuals (Leverentz et al. 2020, Chapter 1; National Academies of Sciences 2022).

The second limitation has to do with the independent variable. This study relies on the assumption that conditions of confinement are demonstrably different in prisons compared to jails. However, there is also considerable heterogeneity within each facility type (Kirk & Wakefield 2018, Loeffler & Nagin 2022, Phelps 2012, Wildeman et al. 2018). These differences are likely to be especially strong across states (Campbell 2018, Phelps & Pager 2015), which encouraged my generation of state-specific estimates for this chapter. Some key considerations for how within-facility-type heterogeneity may permeate the leasing population include utilization rates at the state and jail level, as well as jail size.

Additionally, insufficient information from the NCRP data prevented me from considering a few covariates that have been identified as important predictors of recidivism: education; Hispanic ethnicity; and post-release residence. I also did not attempt to estimate any time effects, although it is likely the case that risk of recidivism varied both within and across the years in the observation period. I also did not control for pre-trial detention despite growing evidence that it may matter for recidivism (Heaton et al. 2017, Lowenkamp et al. 2013). However, I did compare the mean length of pretrial detention, and it did not vary significantly for the two populations being compared.

The NCRP does not currently allow researchers to link incarceration experiences across states. Estimates suggest that around 16% of individuals released from prison in one state will be rearrested in a different state within ten years of release (Antenangeli & Durose 2023). This means that some individuals in my sample who appear to have not yet recidivated were actually incarcerated in other states. However, other estimates suggest that approximately 11% of rearrests that occur within five years of release occur in another state, and that only about 28% of these arrests result in a prison stay (Durose et al. 2014). From this, I infer that upwards of 3% of my sample could be at-risk of being falsely labeled as having not yet recidivated, but I do not have reason to believe this risk differs for the leasing or prison-released populations.

Lastly, I was only able to include six states in this analysis because of data limitations. While these state-specific estimates are valuable contributions, the two multi-state estimates should not be conflated with accurate national estimates because this analysis relied on a convenience sample.

4. Comparing mortality rates of the jail-leased population to those of the general jail and prison populations

4.1 Introduction

Today in the US, there are more than 6,000 corrections facilities in operation, the majority of which are jails or prisons (Sawyer & Wagner 2023). Jails are locally operated facilities, which most often serve as short-term holding places for people either immediately after arrest or while they await processing through the court system (Irwin 1985, Chapter 1; Turney & Connor 2019). Prisons, in contrast, are operated by state or federal authorities and house individuals who receive a felony conviction and are sentenced to confinement as punishment (Clemmer 1940, Chapter 2). Jails can also serve as places of punishment but are typically thought of as only doing so for individuals convicted of low-level (i.e., misdemeanor) crimes and for which the sentence is less than one year (Kohler-Hausmann 2013). However, through the practice of jail leasing, these distinctions are blurred, and many of these local facilities become holding places for persons with felony convictions and longer sentences.

Jail leasing is the practice by which states enter into contractual agreements with local governments and rent beds in jails to house individuals who would normally be confined in state-operated prisons, typically paying an agreed-upon per diem rate (Wagner 2016). These agreements allow states to avoid facility overcrowding and cut costs, as the per diem rate paid to the local authorities is often considerably less than the

cost of confining a person in a state-run facility. Leasing also creates an additional revenue stream for participating counties and is often used to bring in a free source of labor for the county (Norton & Schept 2019). In 2022, more than eight percent of the average daily population in US jails were those individuals being held for state authorities as a result of leasing agreements (Zeng 2023).

In this chapter, I seek to determine what, if any, differences in mortality risk exist for the jail-leased population compared to the general jail and prison populations. This chapter is an extension of a prior study comparing the differences in mortality risk for the prison, jail, and supervised populations (Wildeman et al. 2019). The purpose is to determine, as possible, the extent to which the mortality risk of the jail-leased population more closely resembles that of the prison or general jail population, which are each shaped by differences in the populations typically confined in these two facility types, as well as the confinement experience in these two facility types.

There has previously been anecdotal evidence of increased deaths in jails following the implementation of leasing agreements in California (VanSickle & Villa 2019), but to my knowledge, mine is the first effort to calculate mortality risk using national data from the US. Using data on deaths that occurred to individuals while they were experiencing incarceration in the US between 2013 and 2019, and data on the US correctional population over the same time period, I employed traditional demographic methods in order to be able to make the best possible comparisons of these mortality

risks. I did so in order to add to our understanding of the effects of jail leasing and in an attempt to further our collective explanation for the link between incarceration and health.

4.1.1 Incarceration and health

Much work has been done to understand the effects of incarceration on the health outcomes, including mortality, of those who experience it. There are three widely accepted mechanisms linking incarceration and poor health outcomes: poor conditions of confinement; the stressful nature of the incarceration and the post-release experience; and selection of unhealthy individuals into carceral spaces (Daza et al. 2020, Massoglia 2008, Massoglia et al. 2014, Massoglia & Pridemore 2015). Below, I briefly summarize the literature on each of these three mechanisms and attempt to explain why differences in facility type, as well as the practice of jail leasing, might moderate or mediate each.

4.1.1.1 Conditions of confinement

Discerning the differences in conditions and consequences of prisons and jails has been identified as an important future direction by several prominent sociologists study the relationship between incarceration and health (Turney & Connor 2019, Wildeman et al. 2018). Jails have long been considered worse spaces than prisons (Fishman 1923, Chapter 1; Irwin 1985, Chapter 1; Walker 2022a, Chapter 1). Survey studies show that both the general public and justice-involved persons consider jails to be worse and more punitive spaces (May et al. 2014, Petersilia & Cullen 2014).

Jails are also highly transient spaces compared to prisons, for which the typical minimum sentence is more than one year. In 2022, the average time-per-spell in jail was 32 days, and the weekly turnover rate was 43% (Zeng 2023). Most recent estimates from BJS, using 2018 data, show an average time served in prison per stint of 2.7 years (Kaeble 2021). Because they are long-stay facilities, relationships and networks form in prisons, often at the helm of those with long incarceration histories (Kreager et al. 2017). Such relationships can have positive effects on health (Haynie et al 2018). Alternatively, jails have been characterized as disorienting (Irwin 1985, Chapter 4) and uncertain (Walker 2022a) spaces, which likely means less opportunity for persons incarcerated in jails to experience the positive effects of social integration and peer support.

Access to health care is also different in prisons and jails. Individuals in prisons are more often assessed for their health care needs at the time of admission and to have seen a health care provider since their admission than are individuals in jails (Maruschak et al. 2015). Health care in jails is often less comprehensive than that offered in prisons, with providers focusing solely on acute conditions, and can also cost money, which is not the case in prisons where provision of free health care is constitutionally mandated (Schnittker et al. 2022, Chapter 2). However, despite this constitutional mandate, there are plenty of reports of inadequate health care in prisons, and one must be cautious to not overstate the quality of care in prisons compared to jails. More than half of individuals in both prisons and jails reported experiencing worse health care

while incarcerated than in the 12 months prior to their incarceration and nearly half reported dissatisfaction with the health care provided in the corrections facilities, with slightly higher rates of dissatisfaction among the jail population (Maruschak et al. 2015). Among those with reported chronic conditions, jailed respondents were almost twice as likely to report having not seen a doctor while incarcerated. Individuals are also more likely to access health care in prisons than in jails (Wilper et al. 2009). Like increased reliance on jails, cuts to health care spending have also been a common austerity measure taken by state corrections authorities in recent years (Strong 2022).

There have also been efforts to test specific conditions of confinement, like solitary confinement, which is associated with increased risk of suicide while incarcerated (Dillon 2013) and increased post-release mortality (Brinkley-Rubinstein et al. 2019, Wildeman & Anderson 2020), and availability of air conditioning, which is protective against mortality in carceral spaces (Skarha et al. 2022). If there are clear differences in the likelihood of some of these conditions to be present in prisons or jails, then this could explain some of the differences in health outcomes of individuals incarcerated in these two facility types. However, within-facility-type heterogeneity is quite large (Wildeman et al. 2018).

Despite relative consensus that jail conditions are worse than those of prisons, there is some potential for jail leasing to improve jail conditions because in some instances leasing agreements come with additional funds for facility improvement,

including facility expansion and expanded programming (Emslie et al. 2016). But there are also reports of these funds being insufficient, never being received by the jails, and being used for facility expansion rather than improvement (VanSickle & Villa 2019). The leasing population is also often subjected to frequent transfers between jail facilities, which may prevent leased persons from benefiting from programming or increased family visitation (Turkington 2017). However, transfers between prison facilities are also not uncommon. Further, jail leasing could improve prison conditions by alleviating overcrowding, a condition which is associated with increased transmission of communicable diseases (Freudenberg & Heller 2016). Recent findings by Alder and Chen (2023) also reinforce the potential for jail leasing to suppress mortality risk for the entire jailed population as they found a high association between in-facility mortality risk and in-facility turnover rate, which is conceivably lower in facilities that reserve a higher volume of bed space for leased persons.

4.1.1.2 The stress of incarceration

Incarceration is a highly unpleasant experience, the stress of which has been connected to myriad poor health outcomes (Massoglia 2008, Massoglia & Pridemore 2015). However, prisons and jails are differentially stressful. In prisons, individuals are often subjected to long, and even unending, sentences, which Clemmer (1940, Chapter 2) says leads to a slow loss of hope and a need to simply assimilate to the prison life without regard for life upon release. Jails, however, where most of the population are

awaiting adjudication, are, as Walker (2022a, Chapter 10) characterizes them, uncertain spaces. Suicide rates are higher in jail than in prisons and among the general population (Carson 2021). Many advocates calling for the end of cash bail have made the link between pretrial detention and suicide in jails as a reason to end the practice (Riley 2020, Santo 2015). However, studies of suicides in jail also point out many key structural features of the jail that might enable these facilities to experience higher suicide rates. Jails are less equipped than prisons to identify and mitigate suicide risk (Thigpen et al. 2010). Staff-to-inmate ratios are also much higher in jails than in prisons (Wildeman et al. 2018). This could be taken to mean that differences in suicide rates across facility types are the result of structural conditions and not a statement about the differential nature of the stress experienced across facility types.

Walker (2022a, Chapter 10) also says that those individuals in jails who accept their circumstances fare better. With this in mind, we could reasonably expect that those individuals experiencing jail leasing might be subject to less stress than the general jail population because they know the day upon which their incarceration experience will end. Similarly, individuals who are jail leased might have more reason to be hopeful than those in the prison population serving much longer (or unending) sentences, which might prevent them from engaging in certain behaviors, including those resulting in death.

The post-release, or reentry, experience has also been identified as highly stressful, in part because of the stigmatization and legalized discrimination faced by reentrants (Schnittker & John 2007). Mortality risk in the immediate days and months post-release are quite high (Binswanger et al. 2007, Ranapurwala et al. 2022). Massoglia et al. (2014) place nearly all of the blame for this on the difficulties of the reentry experience and place far less on the actual incarceration experience. Massoglia and Pridemore (2015) also suggest that it is the post-release stigma that is more harmful and show a strong association between having experienced any incarceration, but not the length of incarceration, and post-release morbidity and mortality. Daza and co-authors (2020) also found a negative association between incarceration and post-release life expectancy but were unable to account for length of incarceration. Accounting for such is quite important, however, and should be a focus of future studies in order to determine whether or not such policy efforts as shortening sentences or relying increasingly on jails are likely to have an effect on post-release outcomes.

4.1.1.3 Selection of unhealthy persons into carceral spaces

Many individuals experiencing incarceration also experience mental illness, substance use disorders, and traumatic life histories (Fazel & Baillargeon 2011). Individuals in both facility types are more likely than those in the general population to report having at some time had a chronic health condition or infectious disease and to have a chronic condition while incarcerated (Binswanger et al. 2009, Maruschak et al.

2015). Individuals in prisons and jails are one-and-a-half times more likely than those in the general population to report having at some point had a chronic condition and three to four times more likely to have had a reported infectious disease (Maruschak et al. 2015). If selection effects are the dominant driver of poor health outcomes, it is unlikely that jail leasing would matter.

Selection effects also help explain why incarceration has been found to have somewhat of a protective effect against mortality, especially for young men (Patterson 2010, Spaulding et al. 2011, Wildeman 2012, Wildeman et al. 2019). This protection is likely the result of increased access to health care for a population likely to be low-utilizers of health care services when not incarcerated, and the decreased ability to participate in certain risky health behaviors. Given what is known about differences in confinement conditions, this protective factor is likely greater in prisons than jails. This could also help explain why the age-standardized mortality risk is greater among the prison population than the jail population, but higher in jails during those ages at which the risk of incarceration is highest (i.e., between the ages of 18 and 44) (Wildeman et al. 2019).

4.1.1.4 Incarceration and community health

There is also evidence that high incarceration rates, both in prisons and jails, have negative consequences for the health of entire communities (Hickson et al. 2022, Nosrati et al. 2021). This is in part because of the increased demand for health care and

social services from individuals post-release, which can decrease access for others in the community (Kajeepeta et al. 2021, Lara-Millán 2014, Schnittker et al. 2015). A high prevalence of justice-involved persons in health care and social service settings can also result in these spaces becoming more heavily policed and less comfortable to occupy, which could result in underutilization by all (Lara-Millán 2014). High rates of jail incarceration in a community are also associated with increased morbidity and mortality from infectious diseases which enter the community when individuals are released from jails where such diseases are highly prevalent and undertreated (Kajeepeta et al. 2020).

Incarceration also has the potential to negatively impact the families of individuals experiencing incarceration (Lee et al. 2014, Sundaresh et al. 2021). However, Lee and coauthors also astutely point out that prison and jail waiting rooms could become health screening sites for family members. If leasing meant that individuals experienced incarceration closer to home, the efficacy of such screening sites could be amplified as screened persons could meet with or receive referrals to providers in their own community. Incarceration closer to home, as could be facilitated with jail leasing, could also increase chances for visitation and improve reentry planning, two practices which are predictive of better post-release mental health (Folk et al. 2019) However, such ideas to invest in more jail-based care must be scrutinized for their potential to take away resources to invest in more community-based health care, which could benefit

both the justice- and non-justice-involved populations (Binswanger et al. 2007, Kilgore 2014, Mai et al. 2019, Ranapurwala et al. 2022).

4.2 Data and methods

To compare the mortality risk of the jail-leased population to that of the general jail and prison populations, I calculated crude and standardized mortality rates for these three populations using US data for the years 2013 to 2019.

4.2.1 Data sources

I used three data sources to complete these analyses. Information about the deaths of incarcerated persons came from the Bureau of Justice Statistics (BJS)' Mortality in Correctional Institutions (MCI) data-collection effort. Population information, used to calculate the mortality rates, came from the MCI, as well as the BJS National Prisoner Statistics (NPS) Program and the BJS National Corrections Reporting Program (NCRP).

Through the MCI, administrators at local jails and state prisons provide annual information about each decedent who died while under custody that year, including demographic characteristics (e.g., age, race or Hispanic origin, and sex), history of criminal legal involvement, legal status (i.e., unconvicted or convicted), and circumstances of death. Starting in 2013, BJS also started requesting information about the hold status of decedents who died in jails (i.e., whether a decedent was being held for a state or federal authority at the time of their death), which made it possible for me to identify those deaths that occurred to members of the jail-leased population.

I used the MCI: Jail Population and Population Distribution series to get information about the size and composition of the jail population stratified by age, race or Hispanic origin, sex, legal status, and offense type for the current incarceration spell. I used NPS and NCRP data, accessed through the BJS Corrections Statistical Analysis Tool (CSAT), to get this same information for the prison and jail-leased population.

4.2.2 Analysis

I first calculated the total number of deaths that occurred within each of the three populations of interest between 2013 and 2019. Because of minimal sample size requirements for users of the MCI restricted-access data files, it was not possible to show death counts for individual years. Instead, I pooled all deaths that occurred during this seven-year period. I also disaggregated death counts by age, race or Hispanic origin, sex, legal status, offense type for current incarceration spell, cause of death, and time served prior to death.

Next, I calculated crude mortality rates for each of the three populations. I did so by dividing the number of deaths over the seven-year period by the sum of the population counts taken on December 31 of each year in the period. Where possible, I calculated the crude mortality rates disaggregated by decedent characteristic using the same approach. This included calculating the age-specific mortality rates (ASMR) for the jail and prison populations. Ideally, these rates would have been calculated by dividing the number of deaths by the number of person-years lived during the period. However,

this most accurate measure of exposure cannot be calculated because we lack precise admission and release data for these populations. So, I rely on the single-day population count approach as it is that taken by the BJS in their own reporting of mortality rates within corrections facilities (Carson 2021).

The results using two other measures of exposure were quite similar. The first alternative approach was to make the denominator the sum of the average of the December 31 population count for the observation year and the year prior for each year in the observation period. The second was to make the denominator the average of the December 31 population counts for each year in the observation period multiplied by the length of the observation period (i.e., 7).

To compare the mortality risks of the three populations, I calculated the standardized mortality rates using both direct and indirect standardization techniques (Preston et al. 2000, Chapter 2). In both instances, I used the prison population as the standard population.

With direct standardization, comparisons are possible by refitting the data such that each population follows the same standard age distribution. Direct standardization requires having the ASMR of each comparison population and the standard population. In order to calculate the ASMR of the jail-leased population, I did have to make an assumption about the age distribution of this population because the actual age distribution is unknown. I made three sets of assumptions and conducted the direct

standardization exercise three times. First, I assumed that the age distribution of the jail-leased population followed that of the general prison population. Second, I assumed it followed that of the general jail population. Third, I assumed that the jail-leased population for the entire US followed that of the jail-leased population in seven states, the age distribution data for which are available in the NCRP. I then multiplied the age-specific mortality rates (ASMR) for the jail-leased and jail populations by the number of persons from the prison population in each age group to generate the number of expected deaths. I then summed the number of expected deaths across all age groups and divided by the population count to calculate the age-adjusted mortality rates (AAMR).

With indirect standardization, comparisons are possible by revising the calculations such that each population experiences the same standard age-specific mortality rates. To do this, I first multiplied the number of people in each age group within the jail-leased and general jail populations by the ASMR of the prison population. I then summed the number of expected deaths and divided this by the number of observed deaths to calculate the standardized mortality ratio (SMR). By multiplying the SMR by the CMR for the jail-leased and general jail populations, I was able to calculate the adjusted mortality rate (AMR).

Lastly, I generated 95% confidence intervals for the crude and directly standardized mortality rates using the Brillinger method also employed by BJS to

measure random error for death counts (Brillinger 1986, Carson 2021). To generate a 95% confidence interval for the standardized mortality ratio generated by the indirect standardization procedures, I followed Breslow and Day’s method (Breslow & Day 1987, Washington State Health Department 2012).

4.3 Results

In total, 34,347 deaths to persons experiencing incarceration were recorded in the MCI between 2013 and 2019. The vast majority, 26,348 happened to persons experiencing prison incarceration. Deaths in jails totaled 7,653, and there were 346 deaths among the jail-leased population.

Table 6 describes the jail, prison, and leasing deaths that occurred between 2013 and 2019. The age, sex, and offense distributions for the jail and jail-leased population decedents are quite similar. This finding is consistent with the assumption that individuals most likely to be subjected to jail leasing agreements are younger individuals with shorter and less severe criminal legal histories. Prison decedents are more likely to be older and more likely to die of illness. Nearly half of all jail (45.4%) and leasing deaths (41.6%) were classified as suicide, drug/alcohol intoxication, or accident, compared to 11.7% of prison deaths.

Table 6 Inmate deaths, by facility type and selected decedent characteristics, 2013-2019¹

		Leasing ²	Jail	Prison

		#	%	#	%	#	%
Total deaths		346		7,653		26,348	
Age	24-	22	6.4	549	7.3	455	1.7
	25-34	81	23.4	1,728	22.9	1,862	7.1
	35-44	79	22.8	1,713	22.7	2,641	10.0
	45-54	86	24.9	1,745	23.1	5,309	20.2
	55+	78	22.5	1,814	24.0	16,060	61.0
Race/ethnicity	<i>White, non-Hispanic</i>	195	56.4	4,464	58.3	14,442	54.8
	<i>Black, non-Hispanic</i>	111	32.1	1,923	25.1	8,419	32.0
	<i>Other³ or unknown</i>	40	11.6	1,266	16.5	3,487	13.2
Sex	<i>Male</i>	305	88.2	6,545	85.6	25,279	96.0
	<i>Female</i>	41	11.8	1,105	14.4	1,045	4.0
Legal status	<i>Convicted, new court commitment</i>	176	50.9	1,034	13.7		
	<i>Convicted, parole/probation violation</i>	170	49.1	805	10.7		
	<i>Unconvicted</i>			5,576	73.9		
	<i>Other or unknown</i>			128	1.7		
Offense	<i>Violent</i>	78	22.5	2,775	36.3	19,046	72.3
	<i>Property</i>	55	15.9	1,475	19.3	2,881	10.9
	<i>Drugs</i>	62	17.9	1,147	15.0	1,990	7.6
	<i>Public order⁴</i>	124	35.8	1,842	24.1	1,968	7.5
	<i>Other⁵ or unknown</i>	27	7.8	414	5.4	463	1.8
Cause of death	<i>Heart Disease</i>	98	28.3	1,925	25.2	7,703	29.2
	<i>Cancer</i>	17	4.9	285	3.7	7,010	26.6
	<i>Respiratory Disease</i>	12	3.5	232	3.0	1,679	6.4

	<i>All other illnesses⁶</i>	57	16.5	1,193	15.6	5,773	21.9
	<i>Suicide</i>	83	24.0	2,410	31.5	1,798	6.8
	<i>Drug/Alcohol intoxication</i>	48	13.9	886	11.6	1,001	3.8
	<i>Accident</i>	13	3.8	176	2.3	274	1.0
	<i>Other⁷ or unknown</i>	18	5.2	546	7.1	1,110	4.2
¹ Source: Bureau of Justice Statistics, Mortality in Corrections, 2000-2019.							
² The "leasing" population is comprised of those decedents categorized as having a legal status of "convicted" and a hold status of "for state or federal authority."							
³ Includes persons of Hispanic origins, Asians, American Indian/Alaska Natives, and persons of two or more races, or of other races.							
⁴ Public order offenses include weapons offenses, DUI/DWI, court offenses, commercialized vice, and morals and decency offenses.							
⁵ Other offenses include holds and holds for other jurisdictions and probation and parole violations.							
⁶ Includes AIDS and liver disease and other unspecified illnesses.							
⁷ Includes homicide and other unspecified causes.							

The crude mortality rates (CMR) are presented in Table 7. The jail-leased population has the lowest CMR, 61 deaths per 100,000 population. That of the jail population is 158 per 100,000 population. Among the jail population, those with a legal status of "unconvicted" (i.e., those being held in jail before and during their trial adjudication process) have almost twice the mortality risk (184 per 100,000 population) than those with a legal status of "convicted" (i.e., those being held in jail as punishment post-conviction). Individuals experiencing prison incarceration have the greatest mortality risk (307 per 100,000). However, much of this is driven by the large number of deaths experienced by older adults (i.e., those ages 55 and older). Sixty-one percent of all

prison deaths that occurred during the observation periods happened to older adults compared with just 22.5% and 24.0% of the observed deaths within the leasing the jail populations.

Table 7 Crude mortality rate per 100,000 inmates, by facility type and selected decedent characteristics, 2013-2019¹

		Leasing ²		Jail		Prison	
		CMR	95% CL ³	CMR	95% CL ³	CMR	95% CL ³
Total deaths		61	55-67	158	155-162	307	304-311
Age	24-			43	40-47	47	43-51
	25-34			103	98-108	67	64-70
	35-44			170	162-178	117	113-121
	45-54			254	243-266	339	330-349
	55+			916	874-958	1604	1579-1629
Race/ethnicity	<i>White, non-Hispanic</i>			253	245-260	531	522-539
	<i>Black, non-Hispanic</i>			131	125-136	292	286-298
	<i>Other⁴or unknown</i>			80	75-84	118	114-122
Sex	<i>Male</i>	60	53-66	159	155-163	318	314-322
	<i>Female</i>	73	51-96	155	146-164	169	158-179
Legal status	<i>Convicted⁵</i>			106	101-111		

	<i>Unconvicted</i> ⁶			184	179-189		
Offense	<i>Violent</i>			255	246-265	405	399-410
	<i>Property</i>			121	115-127	194	187-201
	<i>Drugs</i>			101	96-107	155	148-162
	<i>Public order</i> ⁷ , <i>other</i> ⁸ , <i>unknown</i>			162	155-168	222	213-231
Cause of death	<i>Heart Disease</i>	17	14-21	40	38-42	90	88-92
	<i>Cancer</i>	3	2-4	6	5-7	82	80-84
	<i>Respiratory Disease</i>	2	1-3	5	4-5	20	19-21
	<i>All other illnesses</i>	10	7-13	25	23-26	67	66-69
	<i>Suicide</i>	15	11-18	50	48-52	21	20-22
	<i>Drug/Alcohol intoxication</i>	8	6-11	18	17-20	12	11-12
	<i>Accident</i>	2	1-4	4	3-4	3	3-4
	<i>Other or unknown</i>	3	2-5	11	10-12	13	12-14

¹Source: Bureau of Justice Statistics, Mortality in Corrections, 2000-2019; Bureau of Justice Statistics, Corrections Statistics Analysis Tool; Bureau of Justice Statistics, Mortality in State and Federal Prisons, 2001-2019 – Statistical Tables.

²The "leasing" population is comprised of those decedents categorized as having a legal status of "convicted" and a hold status of "for state or federal authority."

³Calculated using methods described in Brillinger 1986

⁴Includes persons of Hispanic origins, Asians, American Indian/Alaska Natives, and persons of two or more races, or of other races.

⁴Public order offenses include weapons offenses, DUI/DWI, court offenses, commercialized vice, and morals and decency offenses.

⁵All decedents in the leasing and prison populations have a legal status of "convicted." Includes persons who returned to jail on a probation or parole violation.

⁶Includes persons with a missing or unknown legal status.

⁷ Public order offenses include weapons offenses, DUI/DWI, court offenses, commercialized vice, and morals and decency offenses.
⁸ Other offenses include holds and holds for other jurisdictions and probation and parole violations.

For both the jail and prison population, the crude mortality rate is highest for those individuals for whom a violent crime is the offense resulting in their current incarceration spell. Only for the jail-leased population is the CMR greater for women than for men (73 vs 60 per 100,000 population). However, the sex ratio of deaths is similar for the jail-leased and jail populations (0.82 male-to-female for leasing and 1.02 for jail) yet quite different (1.88) for the prison population. In both prisons and jails, non-Hispanic Whites are nearly twice as likely to die while experiencing incarceration than non-Hispanic Blacks. Lastly, the crude mortality rate for deaths labeled as suicide are much higher for the jail population than for the jail-leased or prison populations (50 vs 15 vs 21 per 100,000 population).

The standardized mortality rates are shown in Table 8. Even after standardization, the mortality risk for the jail-leased population is still much lower than that of the jail and prison populations. But there is some convergence of the mortality rates for the jail and prison population.

Table 8 Standardized mortality rate per 100,000 inmates, by facility type, 2013-2019¹

			Indirect standardization ²			Direct standardization ³	
	<i>CMR</i>	<i>95% CI⁴</i>	<i>SMR⁵</i>	<i>AMR⁶</i>	<i>95% CI⁷</i>	<i>AAMR⁸</i>	<i>95% CI⁴</i>

Leasing ^{Prison}	61	55-67	0.20	62	56-69	61	55-68
Leasing ^{Jail}	61	55-67	0.35	108	97-120	91	82-101
Leasing ^{NCRP}	61	55-67	0.29	89	80-99	75	67-82
Jail	158	155-162	0.91	280	274-289	234	229-239
Prison	307	304-311	1.00	307	304-307	307	304-311
¹ Sources: Bureau of Justice Statistics, Mortality in Corrections, 2000-2019; Bureau of Justice Statistics, Corrections Statistics Analysis Tool; Bureau of Justice Statistics, Mortality in State and Federal Prisons, 2001–2019 – Statistical Tables; Bureau of Justice Statistics, National Corrections Reporting Program, 2000-2019							
² Using the ASMR calculated for the prison population							
³ Using the age distribution of the prison population							
⁴ Calculated using methods of Brillinger 1986							
⁵ Calculated by dividing the number of observed deaths by the number of expected deaths estimated as the product of each population's ASMR and the age distribution of the prison population							

Table 9 displays information about the time served prior to death for each population. Similar to other studies of deaths occurring in jails, I find that decedents most often die soon after admission. The median number of days served prior to death in jail was 15 days, and 59.8% of all jail deaths in the observation period happened within a month. Prison deaths, alternatively, often occur have an extended incarceration experience – the median number of days served prior to death in prison was 2,880 (i.e., about 8 years). The median number of days served prior to death for the jail-leased population was 54, but nearly a third of leasing deaths occurred after a stay between one and six months, and another third after a stay of more than six months.

Table 9 Time served prior to death by facility type, 2013 - 2019¹

	Mean # days	(SD)	Median # days	Less than 1 month, %	Between 1 and 6 months, %	More than 6 months, %
Leasing	175	307.79	54	39.9	32.7	27.5
Jail	93	216.84	15	59.8	25.6	14.6
Prison	4433	4354.44	2880	1.9	5.9	92.1
¹ Source: Bureau of Justice Statistics, Mortality in Corrections, 2000-2019.						

4.4 Discussion

Decarceration is a goal of many stakeholders in the US criminal justice system. Jail leasing is a potential practice that could support this goal because increasing reliance on jails could mean that average sentence lengths would shorten and state-run prison facilities could be closed. Individuals could also experience incarceration in a space more embedded in their community, which could lead to better reentry outcomes, including decreased recidivism. But as with all practices, jail leasing is one that requires careful planning in order to have the best outcomes for individuals, families, and communities experiencing incarceration. This chapter aimed to determine if jail leasing was potentially changing the mortality risk for persons who would traditionally have experienced their incarceration spell in a state-run prison.

The results suggest that the mortality risk for the jail-leased population is actually the lowest of the three populations compared in the analyses. These results are not causal but are still encouraging given increasing reliance on leasing agreements. I

found no evidence that jail-leased individuals experience the same deaths of despair that occur all too often in the general jail population. This is likely because their incarceration spell is not as shocking or fear-inducing as the spell of incarceration that occurs immediately after arrest or while an individual is waiting to be processed through the court system. That the mortality risk of the jail-leased population is so much smaller than that of the general prison population is likely an artifact of selection effects. Individuals deemed eligible for leasing agreements are likely those with shorter sentences (i.e., those who will not be incarcerated long enough to die from chronic illness) and in relatively good health, as jail authorities are likely not going to willingly take on added health costs.

Further, it should be the goal of all corrections authorities to minimize the number of preventable deaths that occur in their facilities. Some of the findings of this chapter can be useful for identifying mechanisms of preventing such deaths, and how they might differ across people, facilities, and circumstances of incarceration. Death in jail is most likely to occur soon after commitment, while death in prison is typically experienced after an extended period of incarceration. Deaths in prison are most often the result of decedents being in the process of serving long, in some cases “life,” sentences. These deaths would be preventable if sentencing and corrections authorities made efforts to curb sentence lengths and to expand eligibility for compassionate release. Deaths in jail often occur at a very fragile time when sufficient and

compassionate medical and social support interventions would be most appropriate and effective. Further, conditions in both facility types can be improved both with regards to structure and personnel.

4.4.1 Limitations

This chapter is not without its limitations, many of which relate to the deaths data I used. First, because of the wording of the question about whether a decedent was being held for another authority, there is a chance that decedents being held for the federal authority were included in the count of state leasing decedents. However, the jail-leased population from the federal Bureau of Prisons is much smaller than is that coming from state corrections authorities, and so, the risk of contamination for these purposes is quite low. Second, there have been many critiques of the deaths data from the MCI reporting program (Behne et al. 2022, Thomas et al. 2018). Lack of ability to mandate reporting has been a particular challenge for BJS, and as a result, the agency formally ended the data collection effort in 2021 (Bryant 2022). As such, it is possible that the data used for these analyses undercount the actual number of deaths that happen while individuals are experiencing incarceration, as well as the cause of such deaths.

Further, the measure of exposure used to calculate the mortality rates is suboptimal because I lack data on the entry and exit times of individuals experiencing incarceration that would allow for matching and survival analysis, which would be generate a more accurate comparison of mortality risk. Relatedly, I am only able to use

the current incarceration spell to calculate exposure, rather than look at the individual's collective history of incarceration spells. Logically, it could matter for a person's ability to navigate the incarceration experience and avoid potentially life-threatening encounters and behaviors if it was their first or tenth time experiencing incarceration. However, the at-admission health status of someone being incarcerated for the first time is likely better than for someone who has cycled in and out of the system repeatedly (Greene et al. 2018). The ability to look at an individual's complete incarceration history would also mitigate concerns that the measure of exposure is too different between the prison population (marked by fewer individuals observed for a longer period of time) and the jail population (comprised of many more individuals observed for short stints).

Another lot of limitations stems from our lack of demographic information about the entire jail-leased population, including the age distribution. To mitigate, I was forced to make three sets of assumptions about the potential age distribution of the jail-leasing population. First, I assumed that the age distribution of the jail-leased population followed that of the general prison population. Second, I assumed it followed that of the general jail population. Third, I assumed that the jail-leased population for the entire US followed that of the jail-leased population in seven states, the age distribution data for which are available in the NCRP.

I am least confident about the first assumption given the graying nature of the US prison population (Widra 2023). Congested with individuals serving long, and in

some cases unending, sentences handed out at the peak of the era of mass incarceration, the age distribution of the prison population is likely demonstrably older than that of the leasing population, which largely consists of individuals serving shorter sentences for less serious offenses presumably earlier on in their criminal careers (Porter et al. 2016). I believe it is sensible to assume that the age distribution of the leasing population tracks more closely that of the whole jail population because I believe it is reasonable to assume that their resemblance to the jail population is what marks individuals as strong candidates for leasing agreements in the first place. Using the seven-state subset of the leasing population is also probably quite reasonable. However, less is known about the variation in utilization strategies for leasing agreements across states. In other words, it could be the case that differences in offense types, criminal histories, or other factors make the US leasing population more heterogenous than is reasonably assumed. However, the similarity of the estimates suggests that none of these assumptions are inherently misleading.

Lack of data on the racial composition of the jail-leased population prevented me from being able to compare the mortality risk by race, which would have been a useful exercise given earlier work documenting and trying to make sense of racial disparities in health (and health care utilization) and mortality outcomes for the incarcerated population (Nowotny 2016, Nowotny et al. 2017, Rosen et al. 2012). Getting more accurate data on the jail-leased population should be a focus of future work. Lastly, it is

important to remember that mortality is just one outcome that needs to be examined when testing the merits of jail leasing as a practice in the US criminal justice system. Future work should look at other health outcomes, including those morbidity and mortality risks experienced post-release.

5. Conclusion

5.1 Contributions of this dissertation

Jail leasing is the practice by which states enter into contractual agreements with local governments to house individuals under the state's jurisdiction in local jails. In this dissertation, I briefly explained the history of the jail as a carceral space and then explained jail leasing in the context of mass incarceration in the US. The focus of the second chapter was the location of the leased population across and within states with a concerted effort to describe potential future work that could explain jail leasing as a financial practice. In chapter three, I tested the effects of jail leasing on recidivism outcomes in six US states. I found that overall, the recidivism risk is higher for those individuals released from jails, but that the difference in risk varies greatly across states. Chapter four focused on the relationship between jail leasing and in-facility mortality, using data from all 50 US states. The results showed that the mortality risk for the jail-leased population is the lowest of the three populations compared in the analyses. In this conclusion chapter, I attempt to explain how jail leasing should or should not be considered a tool for decarceration.

5.2 Towards a normative understanding of jail leasing

At the crux of this dissertation is a discussion of what jails have been, what they are, and what they could be. While jail leasing likely was and still is a pressure valve

that has allowed states to create and sustain the era of mass incarceration, in the present day I do believe jails have the capacity to be a tool for decarceration.

The incredible amount of autonomy and discretion held by local jail authorities is likely to determine whether jail leasing leads to improved outcomes for the individuals, families, and communities experiencing incarceration. In California for example, counties receive grant funds in addition to the per diem payments as part of the state's widespread leasing program (Lin & Petersilia 2014). While some counties are using these funds to invest in the deployment of evidence-based reentry practices, others are using these funds to increase local law enforcement capacity. In Los Angeles County, for example, these funds were used to increase capacity to manage the jail population most at-risk of experiencing homelessness post-release (DiMario 2022).

We must be observant of the ways that these differences in spending behavior might vary across place in ways that will only grow existing disparities. For example, in New York, jail expansion is prevalent in small, rural communities whereas a commitment to expanding access to community-based reentry services is more prevalent in wealthier suburban areas and New York City (Lopoo et al. 2023, Martin 2016). At the state level, some states seem to view jail leasing solely as a way to cut corrections spending, regardless of the effect on total incarcerated population size or outcomes (Cate 2021, Strong 2022).

Jail leasing proponents must be weary of the “if we build it, we must fill it” mentality that often accompanies the increasing of corrections capacity. There is older empirical evidence to prove this phenomenon and more recent empirical evidence coming out of Indiana in light of their recent expanded utilization of leasing (D’Alessio & Stolzenberg 1997, Hinds & Norton 2018). There is other recent empirical evidence, however, based on analysis of national data, which suggests that intentional efforts by states to decrease their prison populations do not appear to result in increased jail populations (Lerman & Mooney 2021). The authors speculate local authorities are actually responsive to state authorities’ expressed desire to see fewer felony convictions. Jail leasing could also help eliminate the moral hazard, or “free lunch,” that county law enforcement and court systems have when they can gain public favoritism by being “tough on crime” and sending numerous individuals to prisons for which they are not fiscally responsible (Aviram, Chapter 6; Pfaff 2017, Chapter 6).

Other scholars exploring potential paths out of mass incarceration have described the ability of the jail to help reduce the incarcerated population by being the intermediary between the prison and assignment to community supervision (Phelps 2016). However, using jail beds to add to the overall incarceration capacity in a state could just result in the increasing of both the incarcerated and supervised populations, a phenomenon which has historically been labeled “transcarceration” (Beckett 2018, Lowman et al. 1987, Phelps 2016) and more recently “netwidening” (Lopoo et al. 2023).

We must also acknowledge the imperfections of the current community supervision system, often accompanied by burdensome methods of “e-carceration,” which can contribute to high recidivism rates, as well as the detrimental nature of the “felon” label regardless of incarceration or supervision status (Alexander 2010, Introduction; Schenwar & Law 2020, Chapter 1). Efforts to reclassify felony offenses into misdemeanors in parallel with efforts to transition the incarceration burden from prisons to jails, as is the case with the Justice Reinvestment Act framework, is one way to avoid this pitfall (Sabol & Baumann 2020).

The public nature of the jail relative to that of the prison could also strengthen the jail’s ability to be a tool for rehabilitation and, ultimately, decarceration. Advocates of a reduced carceral state frequently use corrections facility expansion efforts as a site of protest (Kurti & Brown 2023). Because jails are embedded in each community, awareness by the community of what is happening in these facilities could be more easily increased. Jail leasing could become something of a modern “public spectacle” that drives opinions about the role of incarceration in modern society. However, as I discussed in chapter 2, the political favorability of jail leasing is quite mixed.

One of the more contentious features of jail leasing is its common use as a low-cost labor source for the county. The prison’s reliance on private companies is one of the main critiques by Angela Davis in her seminal work, *Are Prisons Obsolete?* (2003, Chapter 5). Davis argues that the role of the prison as a buyer and a supplier of private industry

is a societal flaw. But should we think any differently about this when this labor is being used to benefit the community by freeing up resources for other public spending? Labor has nearly always been a feature of the incarceration experience, and most agree it has a rehabilitative purpose (McLennan 2008, Chapter 5; Sykes 1958, Chapter 2). If the labor associated with jail leasing is framed as a way for individuals to contribute to the communities they have been found guilty of harming, this could be a positive alternative to states contracting with private facilities where the goal is more explicitly profit extraction.

Foucault (1975, Chapter 1) said the reduction in penal severity over the past 200 years should serve as encouragement that modern society will likely continue down this path towards an increasingly humane view of punishment. Just as jail leasing was one such way that states were able to grow and maintain such large incarcerated populations, moving forward, this same practice could be used to do the opposite. Jail leasing could result in less reliance on prisons, and maybe one day, less reliance on incarceration. And we do have some reasons to be hopeful - prisons have been closing at an increasing rate since 2000 (Harris et al. 2023). Moving forward, it is imperative that this process of facility closure be informed by the mistakes of past efforts to close facilities such as those made during the period of deinstitutionalization. This process happened quite slowly and lost significant momentum once key stakeholders realized it was not going to result in the anticipated cost savings (Gottschalk 2010). The result was

a community in need of unavailable resources (Lurigio & Swartz 2000). We know that when resources are community-based rather than solely available in corrections facilities, the benefits are stronger and more widespread (Lara-Millán 2021, Chapter 4; Sharkey et al. 2017; Simes 2021, Chapter 7).

Filling our communities with the resources needed for all residents to flourish is the key pillar of the abolition project. Its ability to be a tool for such redistribution, I believe, makes jail leasing a potentially powerful tool for the completion of this project.

Appendix A

Table 10 Selecting states for analysis

<i>Consider only states without integrated prison/jail systems (n=44)</i>	<i>Consider only states that do participate in leasing agreements with local jails, per NPS data (n=30)</i>	<i>Consider only states for which NCRP data does distinguish between facility types (n=12)</i>	<i>Consider only states for which leasing population is greater than 5% of the state's total jurisdiction population over the entire observation period (n=6)</i>
ALASKA	ALABAMA	ALABAMA	CALIFORNIA ³
ALABAMA	ARIZONA	ARKANSAS ²	GEORGIA
ARIZONA	ARKANSAS	CALIFORNIA	KENTUCKY
ARKANSAS	CALIFORNIA	FLORIDA	LOUISIANA
CALIFORNIA	COLORADO	GEORGIA	NEW JERSEY
COLORADO	FLORIDA	IDAHO ²	OKLAHOMA
CONNECTICUT	GEORGIA	INDIANA	PENNSYLVANIA
DELAWARE	IDAHO	KANSAS	SOUTH CAROLINA
FLORIDA	ILLINOIS	KENTUCKY	TENNESSEE
GEORGIA	INDIANA	LOUISIANA	TEXAS
HAWAII	IOWA	MAINE	WISCONSIN
IDAHO	KANSAS	MARYLAND	WYOMING
ILLINOIS	KENTUCKY	MINNESOTA	
INDIANA	LOUISIANA	MISSISSIPPI	
IOWA	MAINE	MONTANA	
KANSAS	MARYLAND	NEBRASKA	
KENTUCKY	MASSACHUSETTS ¹	NEW JERSEY	
LOUISIANA	MICHIGAN	NORTH DAKOTA	
MAINE	MINNESOTA	OKLAHOMA	
MARYLAND	MISSISSIPPI	PENNSYLVANIA	
MASSACHUSETTS	MISSOURI	SOUTH CAROLINA	
MICHIGAN	MONTANA	SOUTH DAKOTA	
MINNESOTA	NEBRASKA	TENNESSEE	
MISSISSIPPI	NEVADA	TEXAS	

MISSOURI	NEW HAMPSHIRE	UTAH	
MONTANA	NEW JERSEY	VIRGINIA ²	
NEBRASKA	NEW MEXICO	WASHINGTON	
NEVADA	NEW YORK	WEST VIRGINIA	
NEW HAMPSHIRE	NORTH CAROLINA	WISCONSIN	
NEW JERSEY	NORTH DAKOTA	WYOMING	
NEW MEXICO	OHIO		
NEW YORK	OKLAHOMA		
NORTH CAROLINA	OREGON		
NORTH DAKOTA	PENNSYLVANIA		
OHIO	SOUTH CAROLINA		
OKLAHOMA	SOUTH DAKOTA		
OREGON	TENNESSEE		
PENNSYLVANIA	TEXAS		
RHODE ISLAND	UTAH		
SOUTH CAROLINA	VIRGINIA		
SOUTH DAKOTA	WASHINGTON		
TENNESSEE	WEST VIRGINIA		
TEXAS	WISCONSIN		
UTAH	WYOMING		
VERMONT			
VIRGINIA			
WASHINGTON			
WEST VIRGINIA			
WISCONSIN			
WYOMING			

¹Massachusetts law allows for individuals convicted of a felony but sentenced to a period of 2.5 years or less to serve their sentence in a local facility, but Massachusetts DOC does not count these individuals as being under the state jurisdiction

²Arkansas, Idaho and Virginia did not contribute data to the NCRP for the years of this observation period

³While California DOC does participate in a large number of leasing agreements as a result of its Realignment legislation, very few NCRP term record files have a release location of "jail," so we cannot reliably use NCRP data to test effects of jail leasing

Table 11 Validating NCRP Leasing Data Against NPS and State DOC Leasing Data

Jail Leasing ADP/single-day count							
Year	Data source	Georgia	Kentucky	Louisiana	South Carolina	Tennessee	Texas
2000	<i>NCRP</i>	4,323	210	210	660	4,697	19
	<i>BJS NPS</i>	3,888	3,850	15,599	421	5,204	14,689
	<i>State</i>	3,888		15,504	436	5,204	
2001	<i>NCRP</i>	4,705	234	256	715	5,115	37
	<i>BJS NPS</i>	3,934	4,706	16,050	446	6,230	15,158
	<i>State</i>	4,682		15,874	406	6,230	
2002	<i>NCRP</i>	4,826	278	327	728	5,102	60
	<i>BJS NPS</i>	4,975	3,657	16,022	415	6,717	12,375
	<i>State</i>	4,975		16,048	404	6,423	
2003	<i>NCRP</i>	4,323	210	210	660	4,697	19
	<i>BJS NPS</i>	4,949	3,969	17,549	424	6,283	13,331
	<i>State</i>	4,925		16,547	403	6,283	
2004	<i>NCRP</i>	4,030	655	462	856	5,581	5,131
	<i>BJS NPS</i>	5,117	5,084	17,469	429	6,577	13,228
	<i>State</i>	5,117		17,269	405	6,577	
2005	<i>NCRP</i>	3,671	1,463	535	934	5,954	5,381
	<i>BJS NPS</i>	4,948	5,674	16,183	384	7,112	10,569
	<i>State</i>	5,012		17,456	408	7,112	14,755
2006	<i>NCRP</i>	3,725	5,453	620	1,146	5,687	5,310
	<i>BJS NPS</i>	4,970	5,921	16,230	381	6,451	15,091
	<i>State</i>	4,970		15,995	372	6,444	14,387
2007	<i>NCRP</i>	3,693	7,186	767	1,206	6,221	5,331
	<i>BJS NPS</i>	4,919	7,912	17,079	377	7,019	12,774
	<i>State</i>	4,919		17,035	372	7,019	13,808
2008	<i>NCRP</i>	3,343	6,876	998	1,143	6,527	6,261
	<i>BJS NPS</i>	4,690	7,363	17,524	361	7,860	12,805
	<i>State</i>	4,690		17,371	375	7,860	13,106
2009	<i>NCRP</i>	3,777	6,882	1,391	1,085	6,123	6,290
	<i>BJS NPS</i>	3,390	7,639	19,891	379	7,047	12,270
	<i>State</i>	4,835	8,314	19,891	370	7,047	12,537
2010	<i>NCRP</i>	3,726	6,511	1,896	1,065	6,687	6,518
	<i>BJS NPS</i>	3,634	6,716	20,436	384	7,432	12,990
	<i>State</i>	4,980	7,549	19,287	360	7,432	12,133

2011	<i>NCRP</i>	3,394	7,624	2,733	1,089	8,013	5,745
	<i>BJS NPS</i>	3,100	7,190	20,866	366	8,660	11,906
	<i>State</i>	5,022	7,868	19,892	373	9,043	11,919
2012	<i>NCRP</i>	3,511	7,606	3,963	1,215	7,963	5,788
	<i>BJS NPS</i>	4,896	8,487	21,571	374	8,618	10,814
	<i>State</i>	5,035	8,433	20,624	371	9,381	11,729
2013	<i>NCRP</i>	3,257	6,968	6,274	1,341	6,982	6,260
	<i>BJS NPS</i>	4,887	8,213	20,505	364	7,790	12,527
	<i>State</i>	5,035	6,609- 8,938	19,393	355	8,581	10,951
2014	<i>NCRP</i>	3,263	7,520	12,441	1,441	7,081	6,230
	<i>BJS NPS</i>	4,946	8,966	19,320	298	7,987	11,395
	<i>State</i>	5,141	8,006- 8,824	18,308	330	8,517	10,524
2015	<i>NCRP</i>	3,248	7,892	12,081	1,220	6,725	5,894
	<i>BJS NPS</i>	4,902	9,738	17,930	332	8,416	11,093
	<i>State</i>	5,037	8,698- 9,645	16,877	298	8,890	9,411
2016	<i>NCRP</i>	3,359	8,694	11,679	816	5,865	6,340
	<i>BJS NPS</i>	5,066	11,151	20,623	344	6,725	12,051
	<i>State</i>	5,176	9,880- 11,553	19,504	317	7,738	8,705
2017	<i>NCRP</i>	2,770	8,541	9,534	679	5,442	6,726
	<i>BJS NPS</i>	4,752	11,531	18,587	341	7,038	11,549
	<i>State</i>	4,858	11,287- 12,251	17,594	312	8,002	7,867
2018	<i>NCRP</i>	1,989	6,970	6,750	468	4,218	6,312
	<i>BJS NPS</i>	4,689	11,137	17,517	314	6,828	13,504
	<i>State</i>	4,791	10,850- 11,316	16,542	324	8,183	7,433
2019	<i>NCRP</i>						
	<i>BJS NPS</i>	4,867	10,862	16,567	346	7,048	12,055
	<i>State</i>	4,983	10,945- 11,439	15,538	312	8,114	6,177
Jail Leasing Releases							
Year	Data source	Georgia	Kentucky	Louisiana	South Carolina	Tennessee	Texas
2000	<i>NCRP</i>	1,873				7,652	
	<i>State</i>						

2001	NCRP	1,814				7,263	
	State						
2002	NCRP	2,410				7,517	
	State						
2003	NCRP	2,643				7,073	
	State						
2004	NCRP	2,854				7,383	
	State						
2005	NCRP	2,437				8,209	14,864
	State	2,493				8,572	25,515
2006	NCRP	2,506				8,447	15,742
	State	2,557		5,941		9,457	24,705
2007	NCRP	2,256				8,703	15,551
	State	2,319		5,776		9,283	24,753
2008	NCRP	2,072				9,077	15,169
	State	2,115		6,189		9,665	24,389
2009	NCRP	2,505				9,051	16,246
	State	2,383		6,676		9,979	24,200
2010	NCRP	2,849				8,576	16,514
	State	2,159		7,764		9,270	23,124
2011	NCRP	2,519				9,685	16,355
	State	2,417		7,832		9,606	22,705
2012	NCRP	1,985				10,591	16,410
	State	2,001		8,441		10,574	22,784
2013	NCRP	2,613				10,598	16,898
	State	2,658		9,052		11,097	22,601
2014	NCRP	2,256				9,568	17,572
	State	2,315		9,193		10,528	22,192
2015	NCRP	2,126		11,468		9,047	17,605
	State	2,175		9,166		9,670	21,676
2016	NCRP	2,074		11,384		8,720	16,890
	State	2,099		8,803		9,324	19,985
2017	NCRP	2,401		12,856		8,325	18,057
	State	2,407		9,566		8,379	18,442
2018	NCRP	2,380		12,199		8,177	17,996
	State	2,373		9,050		9,033	17,025
2019	NCRP	2,600		12,102		8,316	16,992
	State	2,597		9,024		8,010	16,294

Table 12 Retention and composition of the analytic and matched sample

<i>State</i>	<i>Records in NCRP 2000-2019 datafile</i>	<i>% of six-states total</i>	<i>Records in isolated analytic sample</i>	<i>% retained from NCRP 2000-2019 datafile</i>	<i>% of six-states total</i>	<i>Records in matched sample</i>	<i>% retained from NCRP 2000-2019 datafile</i>	<i>% of six-states total</i>
Georgia	751,170	23.7	231,074	30.8	12.7	67,211	8.9	9.6
Kentucky	381,722	12.1	209,286	54.8	11.5	51,245	13.4	7.3
Louisiana	118,155	3.7	60,397	51.1	3.3	21,042	17.8	3.0
South Carolina	238,327	7.5	160,077	67.2	8.8	29,478	12.3	4.2
Tennessee	331,190	10.5	220,845	66.7	12.2	79,829	24.1	11.4
Texas	1,342,746	42.4	932,582	69.5	51.4	450,010	33.5	64.4
Total	3,163,310	100.0	1,814,261	57.4	100.0	698,815	22.1	100.0

Table 13 Descriptive statistics for whole sample across stages of sample isolation

Sample	Facility type	# of term record files	Mean length of stay, days (SD)	% with prior felony conviction	Mean age at release, years (SD)	% with Black racial identity	% with subsequent term record file
Entire analytic sample	Prison	1,260,314	895 (1.326)	51	36 (11)	47	45
	Jail	553,947	273 (438)	54	36 (11)	42	53
Matched sample	Prison	389,897	204 (241)	52	35 (11)	44	55
	Jail	308,918	204 (241)	56	35 (11)	42	57
Matched sample, with state-weighting	Prison	389,897	282 (316)	44	36 (12)	50	55
	Jail	308,918	282 (316)	49	34 (12)	47	49

Table 14 Descriptive statistics for matched and unmatched state samples

State	Sample	Facility type	# of term record files	Mean length of stay, days (SD)	% with prior felony conviction	Mean age at release, years (SD)	% with Black racial identity	% with subsequent term record file
Georgia	Entire analytic sample	Prison	187,552	931 (1,216)	47	36 (11)	63	43
		Jail	43,522	612 (647)	53	33 (9)	63	42
	Matched sample	Prison	41,679	462 (415)	43	35 (11)	65	45
		Jail	25,532	462 (415)	54	33 (9)	64	43
Kentucky	Entire analytic sample	Prison	95,522	803 (1,019)	58	36 (10)	31	49
		Jail	113,764	260 (311)	34	35 (10)	20	50
	Matched sample	Prison	18,658	231 (214)	25	37 (10)	29	53
		Jail	32,587	231 (214)	36	34 (10)	19	53
Louisiana	Entire analytic sample	Prison	10,390	1,764 (2,415)	37	40 (13)	67	29
		Jail	50,007	495 (808)	35	35 (10)	59	34
	Matched sample	Prison	4,378	322 (359)	29	37 (11)	66	32
		Jail	16,664	322 (359)	33	35 (10)	58	36
South Carolina	Entire analytic sample	Prison	146,132	710 (1,154)	57	34 (11)	64	43
		Jail	13,945	502 (874)	52	34 (10)	57	46

	Matched sample	P	21,104	256 (368)	54	35 (11)	61	40	
		J	8,374	256 (368)	51	34 (10)	57	49	
Tennessee	Entire analytic sample	P	89,748	1,215 (1,456)	74	37 (11)	44	49	
		J	131,097	291 (378)	69	34 (10)	49	53	
	Matched sample	P	29,739	283 (276)	76	35 (10)	40	56	
		J	50,090	283 (276)	70	34 (10)	53	56	
	Texas	Entire analytic sample	P	730,970	882 (1,370)	46	37 (11)	42	45
			J	201,612	124 (109)	59	37 (12)	40	63
Matched sample		P	274,339	125 (93)	53	34 (11)	43	45	
		J	175,671	125 (93)	60	37 (11)	38	63	

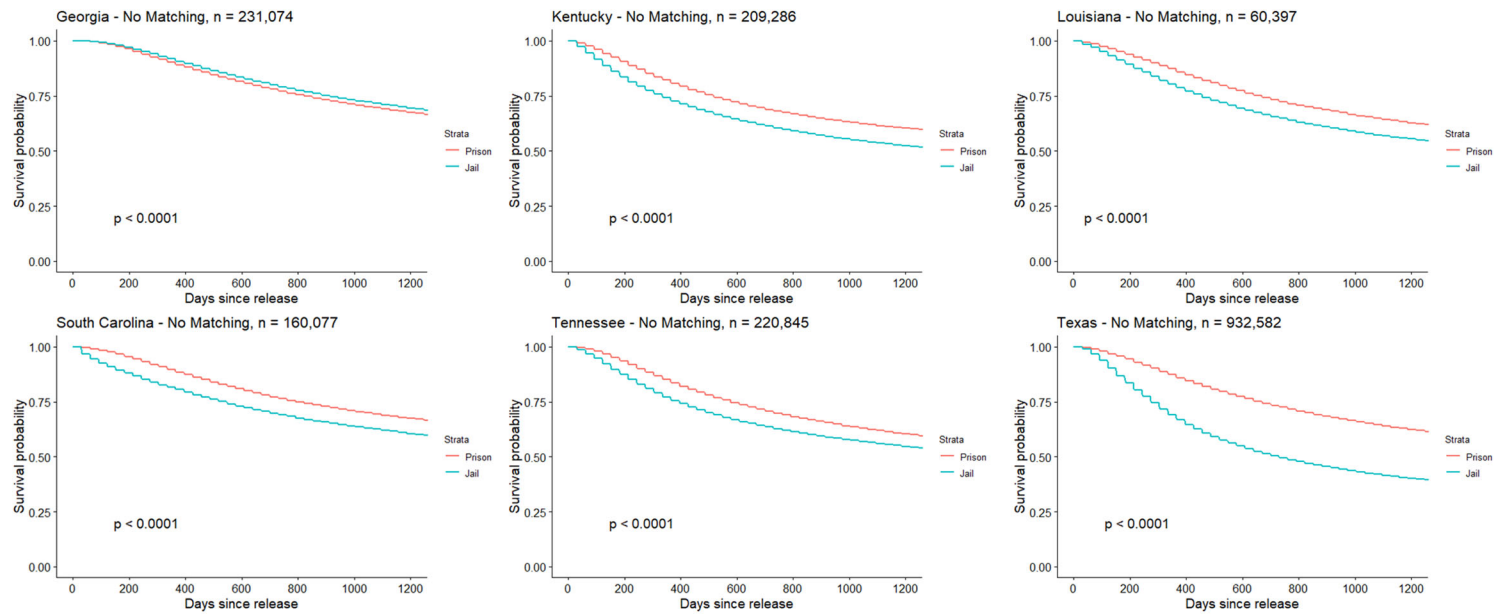


Figure 12 Kaplan-Meier curves for unmatched state samples

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Biography

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