Federal Intervention in County Jails

Preliminary Note

This memo is intended to provide information regarding the process of federal intervention in county jails in light of stated CJRC concerns about federal intervention in the Monroe County Jail. We believe that the best option in addressing the concerns and considerations surrounding the Monroe County Jail should revolve around investing in safe housing for everyone, decreasing the number of individuals incarcerated, and refusing to criminalize behavior centered around human survival.[1] Thus, we believe that this information can help in contextualizing the concerns surrounding federal intervention in the Monroe County Jail, but not the larger problem of how to address the issues with the Monroe County Jail in the larger societal picture and impact.

Introduction

As we were working with Care Not Cages, it became apparent that the Community Justice Response Committee (CJRC) repeatedly cited a concern about federal intervention as one of the reasons for building a new jail. As such, the organization asked that we conduct research and produce a memo regarding the validity of these claims, along with an idea of whether federal intervention is a legitimate concern. Our findings suggest that this is a potential concern, given the condition of the current jail. As such, we think it is important in organizing efforts to also draw attention to changes that can be made in the current jail to prevent federal intervention. However, our research also found that an expedited jail build is not a concern—if federal intervention were to occur, it would be a years-long process, with time to plan and collaborate. In

[1] *See generally #8toAbolition*, https://www.8toabolition.com/ (last visited February 1, 2023) (providing eight specific reforms that help to push society towards a society where "communities are equipped to provide for their safety and wellbeing").

addition, if there were federal intervention, the federal government can never force a county to build a new jail. Therefore, Monroe County would have options.

The How: Mechanisms of Federal Intervention

First, it is important to understand the basics of federal intervention in county jails. Most often this usually occurs when the ACLU (or similar organization) brings a suit against a local jail claiming Eighth Amendment violations because of jail conditions. The ACLU will usually bring suit in federal court, and the court will either find that the jail conditions are unconstitutional or the two parties will come to a settlement agreement. Regardless of the outcome, the jail is usually subject to continued monitoring of some type. This monitoring usually requires that the jail come into and remain in compliance with constitutional requirements and that the court continues inspections to ensure that the jail remains in compliance. In most of the Indiana County Jail lawsuits with the ACLU, these settlements have led to the construction of a new jail facility. Ken Falk, a Legal Director at the ACLU of Indiana, advised us that under the Prison Litigation Reform Act (PLRA), the federal courts can never order the building of a new jail.[2] However, private settlement agreements can require that the county build a new jail.

The process is similar when the Department of Justice (DOJ) gets directly involved in an issue with a local jail. The primary difference is that the DOJ utilizes a Special Investigations Team that conducts an investigation and discovers that a jail's conditions warrant an investigation. Once they do this investigation, they write a report, file a complaint in federal court, which leads to the same process as with ACLU suits. Just as within class action suits, the federal court must follow the PLRA and cannot order the county to build a new jail.[3] However,

[2] 18 U.S.C.A. § 3626(a)(C) (West, WestLaw current through P.L. 117-262).
[3] *Id.*

the DOJ and the county can agree to a settlement that includes building a new jail. Either way, following the resolution of the case, the DOJ oversees the building of a new jail or the renovation of the current jail.

The When: Federal Intervention Timeline

Given the fact that both processes involve investigations and resolutions of legal battles, correcting the constitutional violations is often a long process. For example, the ACLU brought a suit against the Monroe County Jail in 2008 that continues to be monitored even after settlement was achieved over a decade ago.[4] Similarly, the DOJ recently closed a 10-year case against Lake County.[5] The DOJ opened their investigation in 2009 (after providing warning to Lake County), filed a complaint in 2010, settled in 2011, and then monitored Lake County's progress until 2019.[6]

Therefore, these interventions are often not swift–they often do not lead to the rushed fix of the jail or a rushed building of a new jail. Instead, these federal interventions may actually lead to a better jail - whether a new jail in a new place, or a renovated jail. Further, this process can be used to better the practices of a jail. However, this process does not seek to prioritize an abolitionist mindset, which is also important to remember.

The Whether: The Likelihood of a Successful Suit in Monroe County

The next question, the question that began this research, is how likely it is that the federal government would decide to intervene in the current Monroe County jail. The following are examples of conditions that have led to suits in the past:

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[4] *Richardson v. Monroe County Sheriff, et al*, Docket No. 1:08-cv-00174 (S.D. Ind. Feb 13, 2008).
[5] Special Litigation Cases and Matters, U.S. DOJ, https://www.justice.gov/crt/special-litigation-section-cases-and-matters/download#corrections.
[6] *Id.*

- Inadequate health care, physically or mentally;
- The jail as a whole is overcrowded or certain spaces within the jail are overcrowded;
- Unhygienic conditions, like little toilet, sink, or shower access;
- A lack of adequate access to drinking water and food; or
- The jailer's conduct is not rationally related to a legitimate, nonpunitive government purpose, or is excessive in relation to that purpose.[7]

These general descriptions are relevant to this case and suggest that federal litigation would likely be successful as it pertains to Monroe County for two major reasons. First, the American Civil Liberties Union (ACLU) brought a case against the Monroe County Jail in 2008. This case has since reached a settlement, but the settlement reviews have regularly been extended in hopes that Monroe County would create a more permanent solution to this problem. In December of 2022, the federal court, again, extended its oversight for another year, which indicates that the ACLU is still not satisfied with any solutions that have been implemented thus far.[8]

Second, the Ken Ray Report conducted regarding the Monroe County Jail makes allegations that resemble those found in previous DOJ reports. The Ken Ray Report is a 254 page report conducted in 2020 examining incarceration and criminal justice in Monroe County.[9] Notably, the Ken Ray Report includes a detailed description of the Monroe County Jail and alleges, among other things, that the jail lacks adequate bed space, kitchen storage, medical

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[7] *See, e.g.*, Alexandra Kukulka, *After years under federal oversight and millions of dollars later, Lake County Jail touts improvements in medical and mental health*, CHICAGO TRIBUNE - POST TRIBUNE (Feb. 28, 2020 2:50 PM), https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-doj-compliance-update-st-0223-20200228-mqnwacm6creupbhcdo4fy2tehi-story.html (describing extremely poor conditions of LA County Jail's booking center). See also, *Bell v. Wolfish*, 441 U.S. 520, 561 (1979); *Demery v. Arpario*, 378 F.3d 1020, 1030-33 (9th Cir. 2004).

[8] *Richardson*, Docket No. 1:08-cv-00174.

[9] Kenneth A. Ray et. al, Monroe County, Indiana Criminal Justice & Incarceration Study, June 20, 2021.

interview areas, medical treatment space, suicide cells, adequate laundry facilities, and adequate lighting.[10] The Ken Ray Report also continued to outline some recommendations for the Monroe County Jail to come into compliance with constitutional requirements.[11]

What to Do: Preventing (additional) Intervention

As such, the logical next question for abolitionists is what can be done to prevent additional federal intervention, and therefore prevent another jail from being built. There are four primary answers to this question. The first is that the jail could follow the guidelines provided by the Civil Rights of Institutionalized Persons Act (CRIPA).[12] The second option is for the county to fix any problems with their jail before the DOJ actually begins their investigation but after the DOJ provides them reasonable time to comply, according to 42 U.S.C. § 1997(b)(2). The third option allows the county to get federal funding to help correct any unconstitutional violations before the lawsuit. The final option requires the county to maintain an adequate population within the current jail to prevent any further intervention from the ACLU. We will look at each of these in turn. However, we believe that if the DOJ were to initiate an investigation, asking for reasonable time to take appropriate actions to rectify the problems with the Monroe County jail will likely be the most advantageous to avoid building a new jail.

CRIPA authorizes the United States Attorney General to investigate and appropriately act to enforce the constitutional rights of incarcerated individuals if there has been a pattern or practice of unconstitutional conduct or conditions.[13] The Act defines these as conditions that deprive individuals of their constitutional rights and "that such deprivation is pursuant to a

[10] *Id.* at 86-104.
[11] *Id.* at 15-21.
[12] 42 U.S.C. § 1997.
[13] *Id.*

pattern or practice of resistance to the full enjoyment of such rights . . .."[14] Furthermore, past precedent in jail condition cases have determined that the Fourteenth Amendment requires jails provide pre-trial inmates with adequate clothing, food, shelter, and medical care under the Eighth Amendment;[15] adequate safety and general well-being;[16] and "reasonably sanitary and safe" living conditions.[17] The Supreme Court has also noted that the duty to provide safety includes a duty to prevent the unreasonable risk of serious present, continuing, and future harm, even if it is a pre-emptive action; and that this duty includes a duty to protect against the risk of suicide and self-harm.[18] Additionally, the duty to provide medical care, includes a duty to provide adequate mental health care;[19] and, the duty is violated when jail officials are deliberately indifferent to inmates' serious medical needs.[20]

If the DOJ presents a preliminary warning to the county for violating the CRIPA standards, the county can begin to remedy the Constitutional violations listed in those warnings before an investigation ever occurs. Before every investigation, the DOJ alerts the county of their desire to investigate and provides the county with an opportunity to rectify any issues prior to suit initiation. The DOJ must provide at least seven days for the AG to let the county know of any assistance that the federal government could provide to help correct the poor conditions.[21] The AG can then help the county solve any issues through informal processes. If the county fails to adequately address the issues, the AG may find that "reasonable efforts at voluntary correction

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[14] *Id.* at § 1997a(a).
[15] *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).
[16] *County of Sacramento v. Lewis*, 523 U.S. 833, 851 (1998) (citing *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989)).
[17] *Farmer*, 511 U.S. at 832.
[18] *See Matos v. O'Sullivan*, 335 F.3d 553, 557 (7th Cir. 2003); *Hall v. Ryan*, 957 F.2d 402, 406 (7th Cir. 1992) (noting that prisoners have a constitutional right "to be protected from self-destructive tendencies," including suicide).
[19] *Farmer*, 511 U.S. at 832.
[20] *Estelle v. Gamble*, 429 U.S. 97 (1976).
[21] 42 U.S.C § 1997b(a)(2)(A).

have not succeeded" and proceed with the investigation.[22] Additionally, this method requires that the appropriate officials take:

> reasonable time to take appropriate action to correct such conditions and pattern or practice, taking into consideration the time required to remodel or make necessary changes in physical facilities or relocate residents, reasonable legal or procedural requirements, the urgency of the need to correct such conditions, and other circumstances involved in correcting such conditions.[23]

Thus, the county would have time to make changes, which is why we believe that this is the best option for Monroe County, as we seek to resist building a new jail.

The third option is for the county to request federal funding to help correct violations before any lawsuit. There is a statutory preference for federal funding to go to institutions with unconstitutional conditions before other institutions that request funding for institutional improvement.[24] This option seems to be a proactive approach that the county could pursue.

Finally, the last option is for the jail to maintain adequate jail population levels and other conditions listed in the ACLU settlement agreement. This is the method that the Monroe County Jail sought to use when the ACLU suit was brought in 2008, and continues to use in order to avoid violating the settlement agreement. However, this is not a long-term solution as the court will

[22] *Id.* at § 1997b(a)(2)(B).
[23] *Id.* at § 1997b(a)(2)(C).
[24] *Id.* at § 1997g.

continue to monitor the county's progress until the ACLU is satisfied with a more permanent solution.

Conclusion

While researching the ways that the federal government *could* intervene with the Monroe County Jail, we found that they in fact already *have*. Monroe County Jail continues to be monitored by a federal district court in order to ensure the county follows through on their settlement agreement with the ACLU. Since 2008, Monroe County has been able to keep the ACLU at bay and meet the minimum standards of the settlement agreement. However, they have failed to enact a permanent solution to the jail's constitutional violations, which has left the case open and has prolonged federal court oversight.

While a new jail would be a solution that would satisfy the ACLU (provided their past lawsuits with other Indiana counties), it is not the only option. As long as the current jail meets the standards of CRIPA, a new jail is not necessary. In addition, the court could never order the county to build a new jail, so this would have to be on the county's own volition and a part of their settlement agreement. In sum, Monroe County has options.

Finally, the fear of Monroe County being pushed into building a new, "shitty" jail–as claimed at a city council meeting–does not seem to be rooted in facts. In fact, the process, whether with ACLU or DOJ involvement, seems to take at least a decade, which is more time than the county has claimed it would take to build a new jail without federal intervention. Therefore, the county should not fear a rushed build due to the federal government.

In conclusion, the county should focus on following CRIPA guidelines–either before or after any warnings of the DOJ– and finding a more permanent solution to the constitutional violations claimed in the ACLU suit. All of this can be done without building a new jail.