

TOOLS FOR FIGHTING JAIL EXPANSION

And other resources for advocates from the Prison Policy Initiative's "Advocacy Toolkit"
Visit: www.prisonpolicy.org/trainings

May 12, 2022



Supported by the John D. and Catherine T. MacArthur Foundation

The Advocacy Toolkit: What's there so far?

- Skills-based self-serve trainings/guides:
 - Data sources – sources the Prison Policy Initiative relies on and advocates can use, too
 - Making public records requests to get the data you need
 - The Prison Policy Initiative writing guide – using data in advocacy
 - Designing effective visuals – resources and readings on making visuals tell stories
 - Managing and organizing data – tips and tricks when working with data (for non-experts)
- Issue-specific trainings:
 - Fighting jail expansion – research and resources to illustrate the harms of jails
 - Video visitation – resources to protect in-person visitation
 - Prison gerrymandering – how to end prison gerrymandering in your own community

Fighting jail expansion: Key publications

May 2019



Does our county really need a bigger jail? a guide to avoiding unnecessary jail expansion

by Alexi Jones

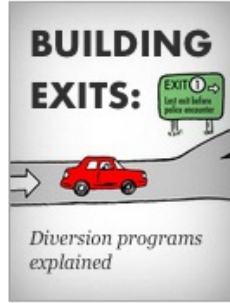
August 2019



Arrest, Release, Repeat: How police and jails are misused to respond to social problems

by Alexi Jones and Wendy Sawyer

July 2021



Building exits off the highway to mass incarceration: Diversion programs explained

by Leah Wang and Katie Rose Quandt

July 2021



Smoke and mirrors: A cautionary tale for counties considering a big, costly new jail

by Wendy Sawyer

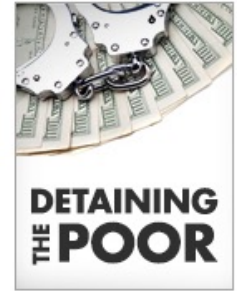
April 2020



Reforms Without Results: Why states should stop excluding violent offenses from criminal justice reforms

by Alexi Jones

May 10, 2016



Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time

by Bernadette Rabuy and Daniel Kopf

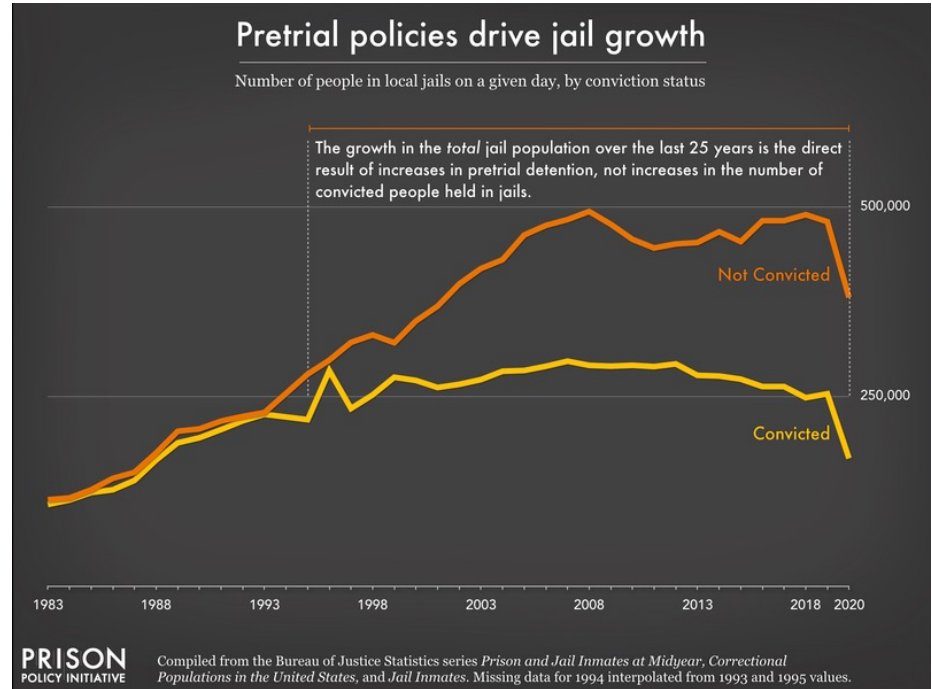
Fighting jail expansion: 4 key arguments

1. Pretrial detention drives jail population growth.

- Counties can reduce overcrowding by reforming pretrial practices.
- Pretrial reform *does not* put community safety at risk (see next slide)

Find your state's chart here:

<https://www.prisonpolicy.org/reports/jailovertime.html#jailconvictionstatus>



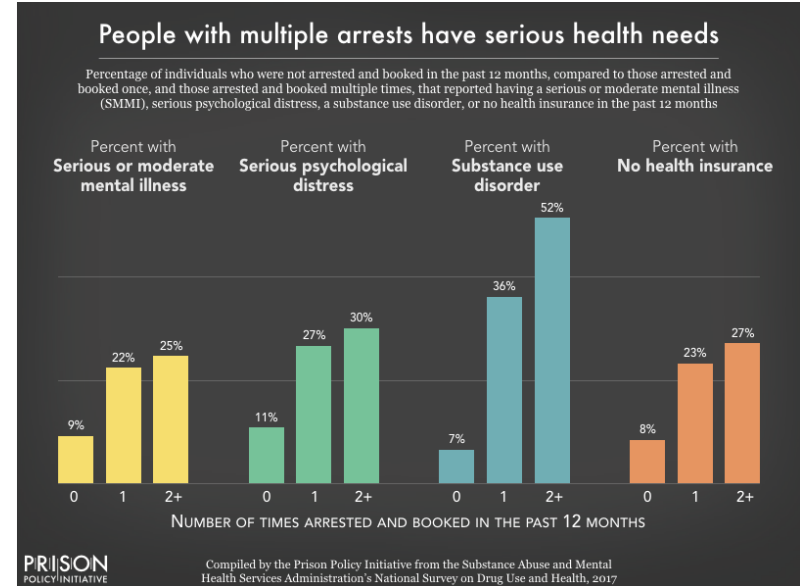
Releasing people pretrial doesn't harm public safety

- **NJ:** Pretrial pop. down 50%, violent crime down 16%.
- **NM:** Reforms took effect 2017, crime rates down, “new criminal activity rate” down (people released pretrial who are charged with a new crime).
- **KY:** Since 2013 reforms, new criminal activity rate unchanged.
- **NY:** Pretrial pop. down 45%, Human Rights Watch refuted “sensational stories” about increased arrests being caused by reforms. Impact unclear.
- **San Francisco:** Jail pop. down 47%, new criminal activity rate at a low 10%.
- **DC:** 90% released without financial bond, new criminal activity rate remains low (only 1% rearrested for violent crime).
- **Philadelphia:** 90% misdemeanor defendants released without bail; no difference in recidivism after reforms.
- And more... <https://www.prisonpolicy.org/blog/2020/11/17/pretrial-releases/>

Fighting jail expansion: 4 key arguments

2. Most people in jail pose little threat to public safety.

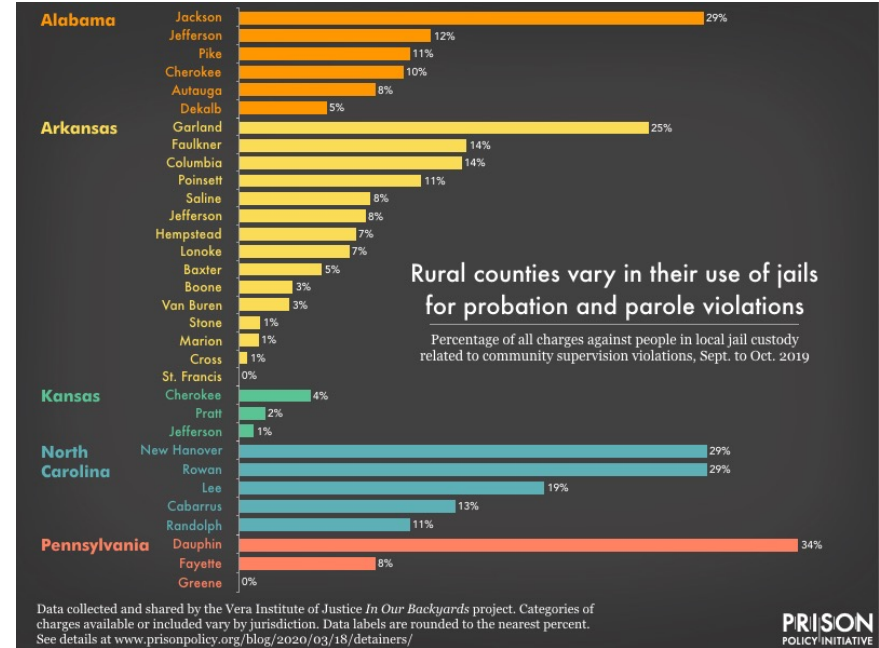
- Counties can reduce jail populations by taking a public health approach to low-level offenses rather than a punitive approach.
- More than $\frac{3}{4}$ of people in jail who have been convicted are there for public order offenses, property crimes, and drug-related offenses. Misdemeanors account for over 25% of daily jail populations, nationally.
- Substance use disorders and mental health problems are frequently underlying issues:
 - Over half of people arrested multiple times in the past year also report a substance use disorder in the past year.
 - And people with multiple arrests are 3x as likely to report serious psychological distress than people with no arrest in the past year.



Fighting jail expansion: 4 key arguments

3. Non-criminal violations of probation and parole violations (“technical violations”) comprise over 1/3 of some jail populations.

- Counties can reduce jail overcrowding by reforming their community supervision practices.
- Detainers or “holds” are administrative requests that a person be held in jail due to an existing sanction.
- The most recent data show that nationally, almost 1 in 5 (18%) people in jail are there for a violation of probation or parole, though in some places these violations or detainers account for *over one-third* of the jail population.



Fighting jail expansion: 4 key arguments

4. The 2020 response to the COVID-19 pandemic showed us that we can reduce jail populations when we want to.

- Policy responses to the pandemic reduced jail populations by as much as 25% in the first year:
 - **Police departments** were encouraged to use arrest as “a tool of last resort,” reducing stops, and **shifting to citations in lieu of arrest**. Nationally, by June 2020, the number of people held for misdemeanors dropped by 45% and the number of people held pretrial dropped by 21%, compared to June 2019.
 - **Jails expedited releases**: For example, in Washington County, Ore., the sheriff reduced the jail population by half through early releases of people held for “low-level offenses.”
 - **Jails admitted fewer people for low-level charges**: For example, in Cuyahoga County, Ohio, the sheriff announced that the jail would stop admitting people on new misdemeanor charges, except in cases of domestic violence charges.
 - **Prosecutors used their discretion**: For example, in April 2020, district attorneys worked with jails in Penn. to reduce the jail population by 30%.
 - **Courts vacated bench warrants**: In Maine, courts vacated outstanding bench warrants for unpaid court fines and fees and for failure to appear.
 - **State officials changed bail practices**: California implemented an “emergency” \$0 bail policy for most low-level offenses.
 - **Probation and parole offices and law enforcement reduced incarceration for violations**: by changing practices that result in violations (such as requiring in-person meetings and monthly fees) and suspending the use of carceral sanctions for violations.

Countering arguments for jail expansion

Argument

“Our jail is overcrowded, and overcrowding makes staff and incarcerated people unsafe.”

First counterargument

Multiple practices and policies can be adopted to reduce jail populations and the need to create more jail capacity.

- People who would be better served by community-based health and social services should be diverted. These resources may also need to be expanded.
- Reducing the “renting” of jail space to other agencies – where practicable – frees space for local authorities’ use.
- Jail population projections should not be based primarily on past jail usage and projected population growth. They should be based on needs after an assessment of the local justice process *as a whole* (i.e., consider police, prosecutorial, judicial practices, pretrial processes, and diversion opportunities).
- Jail assessments of future needs should also account for anticipated effects of recent legislative changes (such as decriminalization of cannabis, pretrial reforms, etc.). Assessments we’ve seen rarely do this.

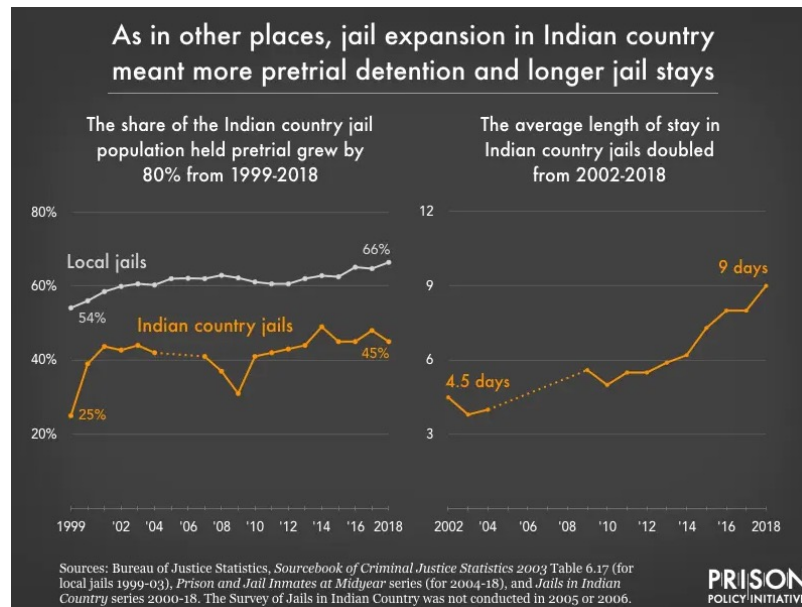
Countering arguments for jail expansion

Another counterargument

Building a larger or new jail in response to overcrowding often has a perverse effect and results in higher levels of incarceration.

Or: “If you build it, they will fill it.”

- In response to overcrowding, the number of jails on tribal lands grew from 69 to 84 from 200—2018, and 35% of those jails are still overcrowded.
- At the same time, the number of people in jails has grown about 60%, while the population has remained steady.
- For 16% of people in those jails, the most serious charge on which they are held is “public intoxication.”
- The Vera Institute for Justice report “Broken Ground” reports that in 2000, Salt Lake County built a 2,000-bed jail to replace an 870-bed jail. It filled to capacity within three weeks of opening.



Countering arguments for jail expansion

Argument 2

"We need to increase our jail size to provide better medical services to our mentally ill population."

Counterargument:

Jails should never be the response to mental health concerns. Even a few days in jail can be especially devastating for people with serious mental health and medical needs. Research suggests that people with mental health and substance abuse needs are better served with social services in their communities, not in jails.

- Most jails refuse to provide medication-assisted treatment (MAT) for opioid use disorder.
- People released from incarceration are up to 120 times more likely to die of overdose than the general population.
- Investing in community-based health care and treatment for substance use disorders yields a return of \$12 for every \$1 spent.

Countering arguments for jail expansion

Argument 3

"We need to build a modern, more humane jail to close an old jail with terrible living conditions."

Counterargument:

All jails have terrible living conditions and technology has not changed that. The U.S. has been on a jail construction boom for almost forty years, building "modern" jails and expanding old jails. Deaths in jails have only gone up. If proponents are looking for humane solutions to terrible living conditions, the data points away from jail expansion. Research suggests that jail incarceration drives deaths.

Who should be included in assessing needs and making decisions about jail construction and/or expansion?

- **Community members** – particularly those most impacted by local criminal legal system policies and practices – **should always be included in discussions and decisions that affect them**, their loved ones, and their neighbors. Too often, evaluations, planning meetings, and decision making groups involve only government officials and exclude community members, only to meet fierce resistance later *or* to implement plans that then worsen existing systemic problems.
- **Assessments** of current processes and future needs **should examine *the whole system***, not just the jail itself. This means an in-depth look at each step, from law enforcement to sentencing to release decisions and the role of community supervision. Each part of the system (and other community-based supports, or lack thereof) plays a role in determining jail populations.
 - **Population projections are the least useful information of all**; there is no reason to assume that there is a fixed ratio of population size to jail usage. Conditions, policies, and practices change over time – especially when there is political will to do so.

Examine jail assessments carefully

- What assumptions do they rely on?
 - Using current practices to forecast future needs “assumes that the system is operating as effectively as possible and that no changes will occur in the future,” according to David Bennett, a national expert.
 - Otsego Co., Mich.: Jail assessment ignored the anticipated impacts of recent state jail reforms, which would make many offenses non criminal or non jailable.
- What data do they include – and what do they leave out?
 - Otsego Co.: Proponents cited 1,100 outstanding warrants as evidence of the need for a new jail. A records request found that many of these were unrelated to public safety and many of the underlying offenses would no longer be jailable under the new reforms.
- Do the data interpretations and arguments make sense?
 - Otsego Co.: Annual court caseloads showed a decrease in caseloads. Consultants concluded there was “no apparent relationship to population growth” but then proceeded to rely on population growth models.
 - *And* after presenting pages of charts based on 10 years of jail data, the consultants concluded the data were “unreliable” and “invalid” to try to justify their reliance on “interviews with justice and law enforcement personnel” rather than what the data show.

Criminal legal system data sources

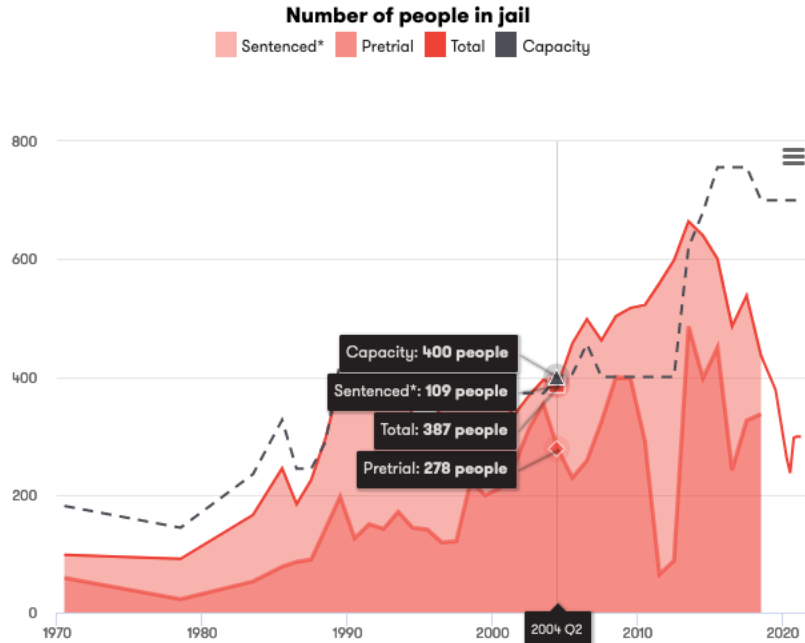
- **Jail incarceration: trends, admissions, daily populations, demographic information, conviction status, and more** – static (not interactive) sources
 - Bureau of Justice Statistics' Census of Jails (national, state, local, most recent is 2019)
 - Capacity, admissions/releases, jurisdiction (boarding), conviction status, probation/parole status, demographics, drug treatment programs, and more
 - BJS' Annual Survey of Jails (national)
 - National trends: ADP, LOS, jurisdiction (boarding), conviction status, probation/parole status, felony/misdemeanor, demographics, and more
 - BJS' Mortality in Correctional Institutions (national, state)
 - Deaths in custody, by cause, demographics, conviction status, offense type, time in custody, location, and more

Criminal legal system data sources

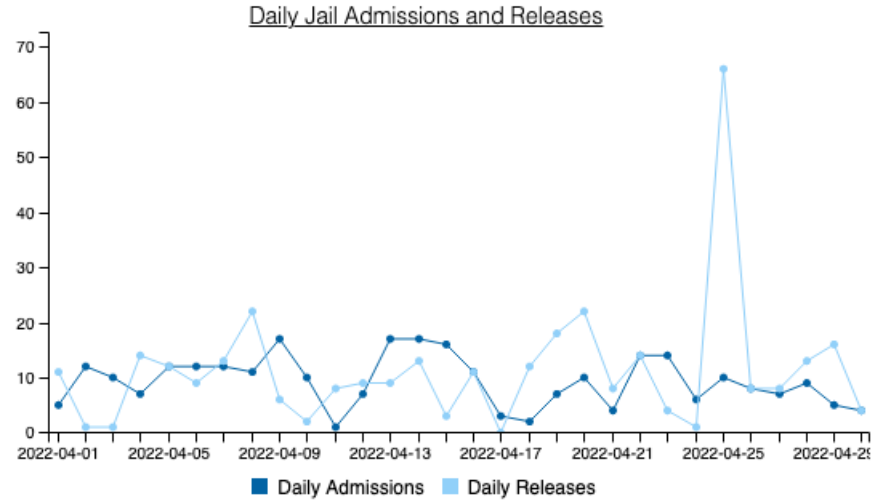
- **Jail incarceration** – Interactive tools
 - Vera Institute of Justice's Incarceration Trends tool (national, state, county, urbanicity)
 - Trends (including conviction status) and demographic information
 - Note that the rates differ from other sources, because they base rates on the population age 15-64
 - CSG's Justice Counts data dashboards (select state and county data)
 - Shows limited but most up-to-date publicly available data (jail population and confinement rate & comparison to previous measures)
 - NYU Jail Data Initiative (local, and can be used as a large sample of jails)
 - Web scrapes jail rosters in hundreds of counties – most up-to-date data (raw data are available on Github)

Criminal legal system data sources:

Examples of interactive tools



Vera's Trends tool



Jail Data Initiative

<https://jaildatainitiative.org>

Criminal legal system data sources

- **Local data**

- Agency websites (local)
 - Vary in how much and what type of data they provide. A good place to start.
- The Prison Policy Initiative's Correctional Facility Locator based on the 2020 Census
 - Searchable list of state and county facilities, with the population as of the 2020 Census
- Muckrock.com: catalogues records requests made to local agencies
 - If it's already been requested and supplied you may be able to find it here.
- Public records requests

Public records requests: Things to consider before sending a request

- When the data you're looking for is not available through one of the sets we just discussed, the best way to access the information you need may be through a public records request to the relevant local or state agency.
 - But before sending a records request:
 - Check to see if someone has already requested the records you are looking for and that information is available online
 - Example: FOIA.gov has a search tool (<https://www.foia.gov/search.html>) that lets you search the FOIA libraries that have been created by federal agencies and Muckrock.com provides a number of records requests to and responses from various federal, state and local actors that have been collected by the site's members (<https://www.muckrock.com/agency/?q=&jurisdiction=>).
 - If the information you're looking for has been discussed in a news story, reach out to author and see if they will share the information with you.
 - If you have a relationship with an agency, you can make a call or less formally ask for records and may receive a faster response.

Public records requests: Prison Policy Initiative guide

If you do need to submit a records request, we have put together a guide to help:

<https://www.prisonpolicy.org/trainings/records.html>

- Explains what is a public record and what isn't
 - Keep in mind: Public record laws do not require new documents be created to respond to requests**
- Describes what agencies tend to hold information on the criminal legal system
- Notes that the type of police, prison, parole, and probation records available differ by state
 - The Reporters Committee on Freedom of the press provides details about what records are specifically available in your state: <https://www.rcfp.org/open-government-guide/>
- Provides a sample fill-in-the-blank records request.
- Provides details about the laws in each state, including the relevant provisions of state statute, if the records need to be submitted by a state resident, the deadline state law sets for a response, and the consequences of failing to respond.

State	State Law	Must the records request be submitted by a person in the state?	Deadline for Response ¹⁵	Consequences of Failing to Respond
Alabama	Ala. Code §§ 36-12-40 to 36-12-41	Possibly. State law says any citizen may request a record—it does not specify that the person must be a citizen of Alabama. However, a 2018 opinion from the Alabama attorney general stated that “[i]t is axiomatic that an Alabama statute that references the rights of a citizen denotes the rights of a person who is a resident of this state.” This means that some agencies may respond to requests from people who are not residents of Alabama, while others may deny these requests.	State law does not establish a time limit. However, a 2008 attorney general opinion said that the custodian of the records requested could not cause any unreasonable delays. See Op. Att’y Gen. Ala. No. 2008-073 (Apr. 21, 2008).	Alabama courts have awarded court costs and attorney fees to parties who have successfully sued for access to public information. In addition, state law establishes that those who knowingly fail to comply with a lawful request for records are guilty of a class A misdemeanor. Ala. Code §§ 13A-10-12(a)(3)-(b).
Alaska	Alaska Stat. §§ 40.25.100 to 40.25.350	No	State law does not establish a time limit. However, the state administrative code requires that state executive agencies provide records requested of them within 10 business days of the time a request, with a sufficient description of the records requested, is received. 2 Alaska Admin. Code tit. 2, § 96.325(a); see also id. § 96.900(7).	Failure to comply with Alaska open records law can result in the award of court costs and attorney fees. In addition, state law imposes criminal penalties on those who knowingly suppress or conceal a public record. Alaska Stat. §§ 11.56.815 and 820(a)(2).

Public records requests: Tips

- **Be clear** about the information you want.
 - I.e., use the technical names of documents if you know them, set a date range you're requesting documents
- **Be flexible.**
 - All the information you want may not be available, or may not be available in your preferred format. Ask yourself what records are available that will help you get the information you need.
- **Include language to make the process smoother.**
 - Ask that information be produced in a way that is easiest for you to use (i.e., by email, in a machine-readable format, in an excel or .csv document).
 - Anticipate fees upfront.
 - Ask for a waiver of costs / say how much you're willing to pay.
 - The Reporters Committee for Freedom of the Press has compiled information on fee waiver laws in each state: <https://www.rcfp.org/open-government-sections/3-provisions-for-fee-waivers/>
 - Ask that if the agency does not have the information you requested, they identify who does.
 - Offer to discuss the scope or terms of the request.

*Always
Remember:
Agencies do not
need to produce
original research
or format files in
different or more
accessible ways.*

Public records requests: Troubleshooting what to do if...

- You do not receive a response
- You've been quoted a high price and are trying to reduce the cost
- You've been told it will take a long time to fulfill your request
- You're told the agency does not keep the information you requested
- Your request is denied

Public records requests: Restrictions on access for people who are incarcerated or have a conviction history

- **Some states have restricted access to records for people who are incarcerated or under community supervision.** For example:
 - Several states have excluded people who are incarcerated from those granted rights of access under their public records laws.
 - In Alabama, a court held that it does not violate state public records law for an agency to refuse to copy and mail records to a person who is incarcerated. (The court found that if an agency provides the opportunity to copy or inspect the requested documents, that was enough.)
 - In Kentucky, state law prohibits the Department of Corrections from accepting the hand delivery of a records request from a person who is incarcerated.

Questions or feedback?

Contact us:

- Naila Awan, Director of Advocacy - nawan@prisonpolicy.org
- Wendy Sawyer, Research Director – wsawyer@prisonpolicy.org

Thank you



SafetyAndJusticeChallenge.org