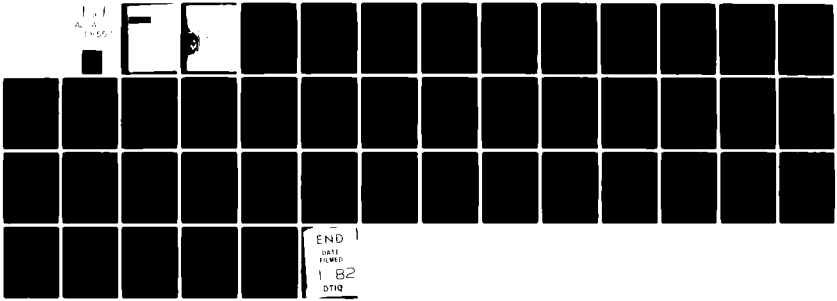
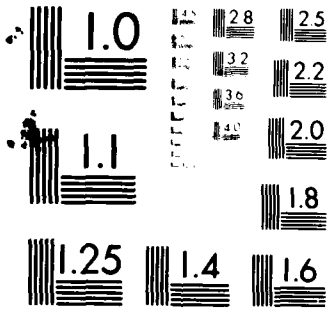
AD-A108 557 GENERAL ACCOUNTING OFFICE WASHINGTON DC GENERAL GOVE--ETC F/G 5/3
MORE THAN MONEY IS NEEDED TO SOLVE PROBLEMS FACED BY STATE AND --ETC(U)
SEP 81
UNCLASSIFIED GAO/GGD-81-104 NL





MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS 1963-A

AD A108557

FOREWORD

State and local Departments of Corrections are facing enormous problems and are essentially being asked to do more with less. The public, in response to rising crime rates and other concerns, is demanding stricter enforcement and longer terms of incarceration. In an attempt to be responsive to the public, State legislatures are enacting laws calling for mandatory and sometimes extended periods of incarceration for offenders. The courts, in partial response to these laws, have also become tougher on those who violate the law. In recent years, State and local governments have provided additional funds to police, prosecutors, and the courts to get criminals off the streets.

Departments of Corrections, on the other hand, have been virtually ignored. Many States are experiencing severe overcrowding problems in their correctional institutions. Services being provided in these institutions are at the margin, and the facilities themselves are often dilapidated and deteriorating. Federal courts have also become involved, ruling that housing inmates in this type of environment can be a violation of constitutional amendments banning cruel and unusual punishment.

Many see the increased use of alternatives to incarceration as a partial solution to these problems. But even the alternatives are often taxed to the limit. Because of inadequate correctional facilities and services, individuals are sometimes placed in alternative programs where they really do not belong. This situation can cause additional concerns in that the public, rather than being protected, is threatened by the same individuals they wanted to get off the streets.

Departments of Corrections are simply unable to cope with the external pressures being placed on them no matter how well their systems are managed. This staff study uses a case study of prison overcrowding in Massachusetts to illustrate the impact that external factors can have on Departments of Corrections. It helps to point out that the public, the legislature, and other components of the criminal justice system have contributed to correctional problems by demanding stricter law enforcement, tougher criminal laws, and longer sentences without providing the resources to help Departments of Corrections cope with the extra workload.

The study calls for all of these groups to become involved in helping to solve correctional problems and concludes with a look at what the Federal role might be in assisting States that want to develop a systemwide approach to dealing with them.

For
By
Distribution/
Availability Codes
Avail and/or
Dist Special
A

W. J. Anderson

William J. Anderson
Director

DISTRIBUTION STATEMENT A
Approved for public release;
Distribution Unlimited

Contents

		Page
FOREWORD		
CHAPTER		
1	DEPARTMENTS OF CORRECTIONS FACE SERIOUS PROBLEMS	1
	Overcrowding exists nationwide	1
	Safety and sanitation problems exist in prisons and jails	4
	Many prisons and jails are antiquated and dilapidated	7
	Services in correctional institutions are deficient	7
2	PRISON OVERCROWDING IN MASSACHUSETTS ILLUSTRATES WHY DEPARTMENTS OF CORRECTIONS CANNOT EFFECTIVELY DEAL WITH THEIR PROBLEMS BY THEMSELVES	14
	Overview of the Massachusetts prison system	14
	Factors contributing to overcrowding	20
	Efforts to alleviate overcrowding	23
3	THE FEDERAL GOVERNMENT COULD TAKE CERTAIN ACTIONS TO ENCOURAGE A SYSTEMWIDE APPROACH TO SOLVING CORRECTIONAL PROBLEMS	26
	More awareness could be given to the impact of Federal actions on State and local governments	27
	Federal financial assistance could be given to States developing systemwide approaches	32
	Federal research and demonstration projects could show benefits of interagency and intergovernmental coordination	36
APPENDIX		
	GAO reports on State and local corrections problems	40

ABBREVIATIONS

AMA	American Medical Association
BOP	Bureau of Prisons
GAO	General Accounting Office
LEAA	Law Enforcement Assistance Administration
NIC	National Institute of Corrections
NIJ	National Institute of Justice

CHAPTER 1

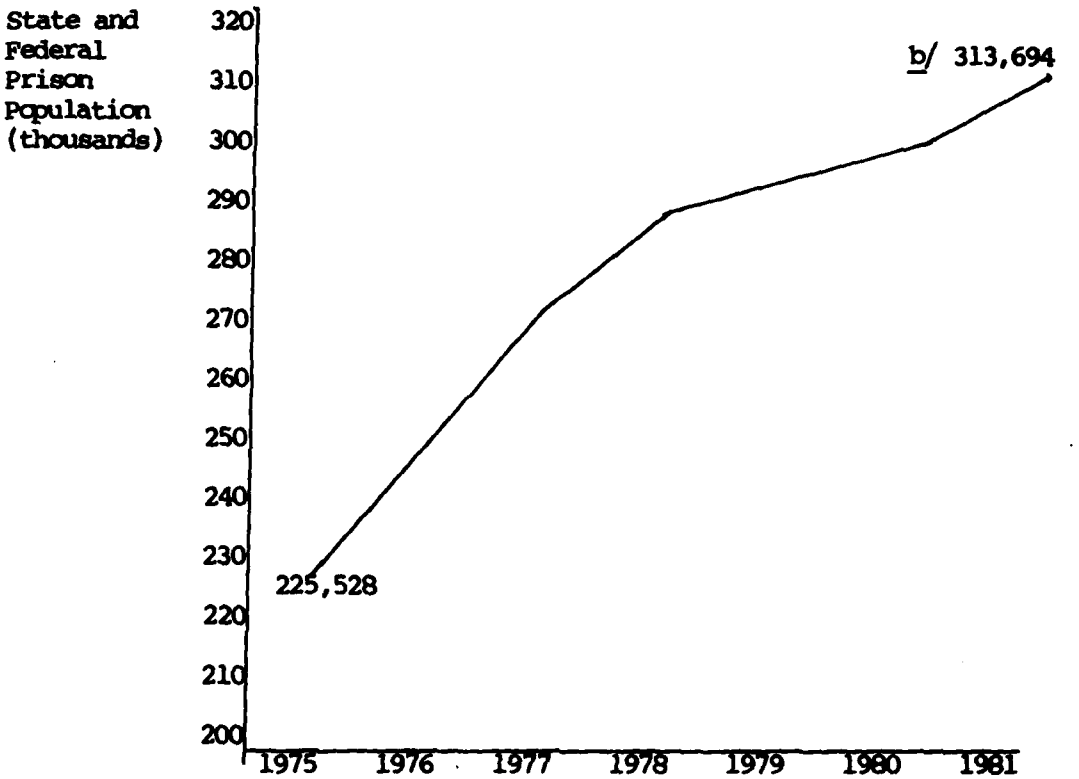
DEPARTMENTS OF CORRECTIONS FACE SERIOUS PROBLEMS

Overcrowded prisons, increasing prison populations, insanitary and unsafe prison facilities, and inadequate services are several of the major problems faced by many State and local correctional administrators throughout the Nation. These problems have contributed to the escalating violence within prisons which was dramatically demonstrated by the recent riots in Michigan and New Mexico. In addition, administrators are pressed by court orders mandating that the conditions of confinement be improved, by public demands for harsher punishment for criminal offenders, and by some legislators who are reluctant to provide the resources necessary to deal with these concerns. These problems became magnified during the 1970s when State prison populations rose dramatically, increasing almost 50 percent. It is anticipated that these problems will be with us through most of the 1980s.

OVERCROWDING EXISTS NATIONWIDE

Correctional institutions throughout the Nation are faced with critical overcrowding problems, and prison populations are continuing to rise. Since 1975, America's Federal and State prison population has increased 39 percent as illustrated on the next page. During 1980, the population grew at its fastest rate in 3 years. New prisons are being constructed; however, their increased capacity will be less than the net increase in the number of prisoners in State institutions. At least 33 States have been involved in litigation challenging confinement conditions in prison facilities, and the entire penal systems of eight States--Alabama, Arkansas, Florida, Mississippi, Oklahoma, Rhode Island, Tennessee, and Texas--have been ruled unconstitutional because of overcrowding or other confinement conditions. In addition, individual institutions are under court order in 15 States and the District of Columbia, and suits are pending against prison officials in 10 other States.

Trend in State And Federal Prison Population, 1975-1981
(see note a)



a/Does not include State prisoners held in local jails due to overcrowding in State prisons.

b/Does not include approximately 1,700 Cuban refugees detained in Federal Prisons.

Source: Corrections Magazine, Survey of Inmates in State and Federal Prisons, 1975-1981

The trend of increasing prison populations has been attributed to several major factors:

--More stringent public attitudes have resulted in legislatures enacting tougher sentencing laws mandating minimum prison terms, longer sentences, and tighter parole guidelines.

--The "baby boom" population of the 1950s has recently reached the 16 to 25 age group when most crimes are committed, and it is not expected to peak until 1985.

--Unfavorable economic conditions.

In addition to being a problem by itself, overcrowding can exacerbate other problems in the prison environment. For example, crowded facilities can lead to higher maintenance costs because of increased "wear and tear." Studies have also noted that adverse psychological effects of overcrowding can lead to violence, disciplinary infractions, deaths, and suicide. The inability of correctional administrators to effectively solve these escalating problems has resulted in Federal courts stepping in and requiring that specific actions be taken to reduce overcrowding and improve confinement conditions. For example, a Federal judge recently fined the State of Maryland $3,417 per week for its continuing failure to end overcrowding at a Maryland correctional institution. Also, the courts have cited the relationship between overcrowding and other deplorable conditions of confinement as a violation of the Eighth Amendment of the U.S. Constitution, which bans "cruel and unusual punishment." Actions ordered by the courts have varied from a general requirement that a State comply with designated sets of standards to a more specific order that an institution be closed immediately.

Recently, Abt Associates, Inc., completed a study entitled "American Prisons and Jails" for the National Institute of Justice which included a review of the impact of litigation on overcrowded prison conditions. The study stated that:

> "In assessing the destructive psychological impact of crowding, courts take into consideration the average length of incarceration in the facility, the square feet of living space provided per inmate, the number of hours each day that inmates are confined to their quarters, and the adequacy of opportunities for physical exercise and recreation."

To accommodate the overflowing prison populations, many States have resorted to "double-celling," that is, housing two or more inmates in cells intended for only one person.

The Abt study also noted that, from the many cases in which overcrowding has been held unconstitutional, no clearly delineated set of standards emerged for determining constitutionally acceptable population levels. In setting limits on the number of inmates who may be confined to an institution, some Federal judges have decided

--to prohibit the practice of double-celling in cells ranging in size from 35 to 88 square feet,

--to limit the overall inmate population to the design (rated) or normal capacity of the facility, or

--to adopt expert testimony regarding the minimum amount of square feet of sleeping space per inmate that is humanely permissible.

Some States have established their own standards or adopted those set by the American Public Health Association, the American Correctional Association, or the Federal correction standards recently published by the U.S. Department of Justice. Even though a variety of standards are applicable, the courts have commonly assessed the total confinement conditions in evaluating the constitutionality of overcrowding. In fact, the U.S. Supreme Court recently ruled that double-celling did not constitute cruel and unusual punishment at Ohio's maximum security prison, because the total confinement conditions at this institution were given generally favorable ratings by the lower Federal courts.

SAFETY AND SANITATION PROBLEMS EXIST IN PRISONS AND JAILS

Unsafe, insanitary conditions in many State prisons and local jails endanger the health and well-being of inmates, correctional staff, and visitors. Safety and sanitation, sometimes referred to as environmental health, include such areas as fire prevention, hygiene, temperature and light levels, pest control, and air quality.

Many cases involving conditions of confinement have been filed in Federal and State courts, and environmental health is frequently an issue in such suits. In them, prisoners claim that conditions of confinement, including inadequate safety and sanitation, violate their constitutional rights. State and local inspection agencies frequently have found deficiencies in prisons and jails, including: leaking, inoperative plumbing; bedding made from materials which generate toxic smoke when on fire; inadequate ventilation, lighting, and heating; inoperative, unreliable locks; exposed electrical wiring; dirty, peeling paint on floors and walls; inadequate

firesafety training; missing or inoperative smoke and fire detection and control systems; no second means of exit; and cross-connections of potable water supplies to sewage lines.

In a review of environmental health conditions in State and local correctional facilities, we visited 8 prisons and 38 jails which had been previously inspected by health or safety agencies. 1/ In 39 of the 46 locations, safety and sanitation deficiencies still existed.

--One prison had no running water in the cells and had portable chemical commodes placed on the cell floors. Both of these conditions violated State health department regulations and various professional standards. The institution had no standpipes, sprinklers, or alarm systems, and cell floors were made of wood. The cells contained many combustible items, and cell doors had individual locks which were over 100 years old.

--Another prison had dormitories with a capacity of 50 which were unstaffed from 11 p.m. to 7 a.m. Roving guard patrols checked inside periodically. The dormitories did not have a telephone system, the emergency lights were inoperative, and the fire alarm system had not worked in years. The institution firesafety officer informed us that the correctional officer fire brigade was unable to practice using fire hoses or perform preventive maintenance on hydrants. The hydrants were connected to the normal water system, and using the hydrants rendered many institution toilets inoperable.

During our review, State and local officials informed us that the types of problems noted were not unusual. As a part of Statewide study in 1978, one State corrections department inspected all of its local jails and concluded that 43 (37 percent) should be totally renovated or replaced by new structures. The department found many deficiencies, including

--53 percent of the jails did not comply with the State's plumbing code,

--51 percent did not comply with the State's electrical standards (89 percent of those built prior to 1900 did not comply),

---

1/"The Department of Justice Can Do More To Help Improve Conditions At State and Local Correctional Facilities," (GGD-80-77, Sept. 15, 1980).

--34 percent had inoperative locking systems, and

--20 percent had substandard ventilation.

In another State, we spoke with officials regarding the State prison, which had been involved in a 1977 lawsuit involving conditions of confinement. They told us that State agencies, after being asked to determine whether conditions were as alleged in the suit, found numerous deficiencies needing attention, including:

--Cross-connections of potable water supplies to sewage lines, creating the potential for contamination of the drinking and bath water.

--Inadequate evacuation plans in the event of an emergency.

--Inadequate fire and smoke separations between building wings.

--Inadequate vertical separation between floors.

--Inadequate protection against spread of fire in hazardous areas.

Conditions similar to those previously noted also existed in other States. For example, a fire marshal in one State cited firesafety deficiencies at its maximum security prison on two occasions. Fire inspectors had not been successful in getting institution administrators to correct the situation. In the same State, the State jail inspector closed two jails because of severe firesafety violations. Two Department of Justice environmental health officials advised us that between them they had inspected prisons and jails in over 20 States. They stated that they had found violations of the most basic safety and sanitation standards and practices in correctional facilities throughout the country.

In recent years the courts have taken stringent steps to eliminate unconstitutional conditions. In November 1976, for example, a Federal Judge ordered the Mississippi Department of Corrections to close two camps at the State penitentiary. The Department was required to have the entire institution inspected quarterly by the State Board of Health, the State Fire Marshal's Office, and the State Building Commissioner. The warden was directed to improve preventive maintenance, sanitation, food service, and other aspects of the prison's operation. In January 1976, a Federal court assumed nearly complete control over the Alabama correctional system, making many major decisions. Only after the State agreed to remedy major deficiencies did the court release its control over the institutions.

In our September 1980 report, we pointed out that years of neglect and improper maintenance have contributed to inadequate institutional conditions. Maintenance includes all actions taken to keep buildings and equipment in a serviceable condition and those preventive measures designed to detect defects. The effects of inadequate maintenance could easily be seen--inoperative plumbing and lighting, exposed electrical circuitry, peeling and worn paint, inoperative alarms, broken screens and windows, and rotting firehoses.

Department of Justice environmental health consultants told us that the effects of an inadequate maintenance program are exacerbated by the overcrowded condition of many correctional institutions. They also said that comprehensive maintenance extends the useful life of equipment and facilities and decreases their lifecycle costs. They were aware of cases in which facilities needed to be replaced rather than rehabilitated because of lack of maintenance, which would have been far less expensive. They stated that even though preventive maintenance had been proven to reduce equipment failure and facility deterioration, rudimentary maintenance programs do not exist in many correctional institutions.

MANY PRISONS AND JAILS ARE ANTIQUATED AND DILAPIDATED

Many of the Nation's correctional facilities are aged and physically deteriorating. About thirty-seven percent of all inmates in Federal and State prisons are housed in facilities constructed more than 50 years ago. At least seventeen percent of the inmates in local facilities are incarcerated in jails constructed more than 50 years ago. Although it is recognized that some of these facilities should be phased out, the serious overcrowding problem has delayed these plans. In some cases, as in Colorado's maximum security prison constructed in the 1860s, conditions were so deplorable that in December 1979 the Federal District Court ordered the institution to be closed immediately.

SERVICES IN CORRECTIONAL INSTITUTIONS ARE DEFICIENT

Serious deficiencies in the quality of services and programs in correctional institutions have resulted in hundreds of court suits directed primarily against State and local correctional institutions. Problems with health care delivery systems and vocational training programs in State and local correctional institutions have been discussed in previous GAO reports. Major problems highlighted in these reports include:

--Most State prisons and jails did not meet minimum standards for providing adequate levels of medical and dental care.

--Most prisons and jails did not adequately identify inmates' mental health care needs or provide acceptable treatment services.

--The system to improve the employability of offenders in prisons did not provide adequate classification, assignment, counseling, and guidance services to identify offenders' needs.

--Educational and occupational training programs were not adequately preparing offenders for employment.

--Transitional services provided in prisons were not receiving enough attention to be of much help to offenders.

--Women in correctional institutions were not provided services, educational programs, or facilities comparable to those provided to men prisoners.

Inadequate health care delivery in prisons and jails

Proper health care for inmates in correctional institutions has become a major prisoners' rights issue in recent years. Correctional officials, the courts, and the State legislatures are, to varying degrees, concluding that inmates must have access to adequate health care. The elements of what constitutes adequate health care are evolving through the promulgation of professional standards and Federal court decisions. But many correctional facilities still face the problem of how to bring their level of health care to that which is considered adequate.

In our December 22, 1978, report entitled "A Federal Strategy Is Needed To Help Improve Medical And Dental Care In Prisons And Jails" (GGD-78-96), we stated that to varying degrees the State prisons and local jails we visited in 10 selected States did not meet minimum standards for providing adequate levels of care, physical examinations, medical records, staffing, facilities, and equipment. The report's findings are highlighted below.

--Inmates' health needs can only be learned by giving them thorough physical examinations when incarcerated and periodically thereafter. Although the prisons visited gave comprehensive entrance physicals, diagnostic testing and dental examinations in State prisons were inadequate. None of the State prisons gave subsequent physicals unless requested by inmates. At most jails no physicals were given.

--Medical and dental records must be complete and confidential. The records we examined were not always complete, and many State prisons assigned inmates to maintain them. At most jails no medical records were kept.

--Sufficient, qualified health staff should be available. Nearly every prison system we visited had problems attracting and keeping qualified health staff because of unsatisfactory salaries, facilities, job status, personal safety, and protection from potential malpractice suits. Many small jails had no medical staff available to give first aid or entrance physicals.

--Prisons and jails should meet national medical and dental care standards for the services they provide, or obtain these services in the community. Health units in State prisons did not meet all the minimum standards. Most jails had limited facilities, and some had no facilities at all.

Mental health care needs are neglectd

Although improvements have been made in recent years, the treatment and care of inmates affected by mental disorders, mental retardation, and alcohol and drug abuse are inadequate in most State prisons and local jails. These facilities generally do not meet minimum standards of the American Correctional Association for identifying inmates' needs and providing a range and level of treatment appropriate for addressing these needs. Two of our recent reports detailed some of the inadequacies found in mental health care systems in correctional institutions. We reported that Federal and State prisons required that new inmates be screened to determine their needs, but the screening was not always adequate to identify mental health problems. The range of services varied among prisons, and treatment efforts focused on inmates who were violent and dangerous to themselves or others. Inmates who were not an immediate threat were generally ignored unless they requested help or their problems became acute.

Mental health care in prisons can be improved

Our November 23, 1979 report entitled "Prison Mental Health Care Can Be Improved By Better Management And More Effective Federal Aid" (GGD-80-11) pointed out that the treatment of the mentally ill often fell short of accepted standards at the five State prisons we visited. All prison systems had developed a framework of treatment services consisting of inpatient care at psychiatric hospitals and services in individual prisons. However, a variety of problems existed in providing adequate and

timely care on a daily basis. Due to a shortage of beds and staff, inmates had to wait for admission to psychiatric hospitals, and the hospitals sometimes released inmates before they were ready. Psychiatric facilities often could not provide long-term care for inmates, and we also noted that:

--Three of five States visited tended to treat behavioral disorders only when inmates requested help or when a crisis arose. Only two States had programs for treating behavioral disorders, and one of those concentrated primarily on sexual offenders.

--There was little emphasis on helping mentally retarded inmates in most of the Nation's prisons. Often they were not identified. If they were, some prisons did not recognize the need to protect them. Retarded inmates often did not receive appropriate education and training.

--States had recognized the need to treat drug and alcohol abusers, but relatively few had been getting help.

The American Medical Association (AMA) and other organizations contend that a significant number of inmates have mental health problems when they enter prison and that many prisons are unable to adequately treat them because prisons are overcrowded, understaffed, and underequipped. As a result, sometimes existing conditions are aggravated or additional mental health problems occur.

Mental health care of jail inmates is neglected

On November 17, 1980, we issued a report entitled "Jail Inmates' Mental Health Care Neglected; State and Federal Attention Needed" (GGD-81-5). We pointed out that until the early 1970s, little data had been compiled regarding the status of health care delivery systems in the Nation's jails. The results of a major study by the AMA indicated, among other things, that extensive deficiencies existed in the mental health services available to inmates. Subsequent studies, court cases, and other information we obtained in our review indicated that the deficiencies in such services continued to exist. Jails were not adequately screening inmates to identify their mental health care needs or providing them with adequate care.

In 1971, the American Bar Association voiced concern to the AMA about the defective quality of medical services in correctional institutions, particularly in jails. The AMA held discussions with the National Sheriffs' Association and the American Correctional Association and sent a survey questionnaire to 2,900 sheriffs. Over 40 percent responded, painting a dismal picture of the accessibility of health care in their jails. Regarding

mental health, the survey results indicated that only 14 percent of the jails for which responses were received had facilities for mentally ill, and only 20 percent had any special facilities for drug abusers. Subsequent studies indicated a similar pattern. In a 1976 study of drug treatment financed by the Law Enforcement Assistance Administration (LEAA), one-third of 118 jails surveyed did not have any systematic screening of prisoners to identify drug users. Studies made in 1977 by the Department of Justice and the AMA showed that only one-third of the jails surveyed had alcoholism treatment programs, and few jails were equipped to deal with the mentally ill.

Opportunites to improve offender employability are limited

Education and training programs designed to assist offenders in adjusting to society after incarceration and in helping to solve employment problems are offered in most correctional institutions. Nationwide, about 75 percent of all correctional institutions conduct formal vocational training programs; most offer some form of academic education. Approximately one-third operate prison industries and over 80 percent assign offenders to operational or maintenance activities.

In our February 6, 1979, report entitled "Correctional Institutions Can Do More To Improve The Employability Of Offenders" (GGD-79-13) we reported on the education and training programs in 16 Federal and State correctional institutions. We found that the following elements of a system to improve the employability of offenders in prisons had not worked properly.

--Classification, assignment, counseling, and guidance services had not identified offenders' needs and interests or encouraged their participation in appropriate programs.

--Academic education and related activities before release, job placement assistance, and financial resources had not received enough attention to aid offenders' integration back into the community.

State correctional agencies had not managed their classification programs in a way that would assure adequate identification of offenders' needs, development of program plans for offenders' goals, and routine reassessment of the offenders' progress in programs. Also, correctional agencies had not implemented comprehensive counseling programs which provided a full range of counseling services administered by qualified counselors. The absence of these services detracted from the ability of these agencies to identify, motivate, and aid those offenders who wanted to improve their employment prospects voluntarily or who would have done so if some guidance had been provided. Also, valuable resources had been wasted by making inappropriate program assignments.

The report also stated that there was no assurance that many offenders were being properly educated or trained in correctional institutions because:

--Most correctional systems did not use standard curriculum materials and could not tell what education and training each institution was supposed to provide;

--Program enrollment and completion criteria were not standardized or applied uniformly. Therefore, offenders could enroll in programs regardless of aptitude and be granted completions even if they left before finishing.

--Prison maintenance and industry programs did not provide organized training to unskilled offenders or jobs for skilled offenders to help them maintain their skills.

--Correctional agencies did not conduct routine comprehensive management evaluations of program operations.

State correctional institutions had not placed sufficient emphasis on programs to assist offenders in making a successful transition to the community. The absence of these services detracts from the offenders' chances of reintegrating into the community and wastes valuable resources.

Services for women offenders are not comparable to those for men

In December 1980 we reported that women in correctional institutions do not have access to the same types of facilities, job training, jobs in prison industries, and other services as men prisoners. 1/ Inequitable treatment is most prevalent at the State level, but it also exists at the Federal and local levels. Correctional systems have not been aggressive in providing programs and services to females due to the relatively small number of women prisoners, and many officials feel that women do not need the same type of training and vocational skills as men. Because of the small number of female facilities, women are usually placed in institutions housing a full range of security levels. A woman qualified for a minimum security risk classification may be confined under maximum security control. The institutions in many instances are in rural or isolated locations away from work and study release opportunities. In many instances there are few opportunities for industrial jobs and other training programs. Women have few opportunities to transfer to less secure environments offering outside activities and the opportunity to reestablish family and community ties.

1/"Women In Prison: Inequitable Treatment Requires Action (GGD-81-6, Dec. 10, 1980).

At local jurisdictions, men and women are usually housed in the same facility but separated. Differences in these systems relate more to unequal access to available opportunities rather than differences between facilities. Women are frequently denied access to the cafeteria and recreational facilities and confined to a specifi floor, wing, or cell for the duration of their confinement.

Women are beginning to demand equal treatment through the courts. An increasing number of suits on behalf of women inmates are demanding that correctional officials extend to women the same type facilities and other opportunities provided to men, and courts are frequently deciding in favor of female inmates.

- - - -

Although this chapter does not describe all the problems confronting correctional administrators, it highlights several major ones. Various factors, many of which are external to the jurisdiction of correctional systems, have contributed to the escalation of these problems. Correctional administrators have no control over who comes into their system, how long they stay, or how much money they get to operate their programs and facilities.

In the following chapters, we use a case study of overcrowding in Massachusetts to show how the actions of the public, the legislature, and components of the criminal justice system can have an impact on correctional problems. We point out the need for these groups to work together to resolve such problems and discuss ways in which the Federal Government might assist.

CHAPTER 2

PRISON OVERCROWDING IN MASSACHUSETTS ILLUSTRATES WHY DEPARTMENTS OF CORRECTIONS CANNOT EFFECTIVELY DEAL WITH THEIR PROBLEMS BY THEMSELVES

Managers of corrections systems are experiencing great difficulty in dealing with too many prisoners in too few or inadequate facilities. The constant refrain is that prison authorities have little control over the size or composition of the inmate populations and thus, by themselves, are unable to alleviate overcrowding. Put simply, they neither control input nor output, but rather must react to and deal with the consequences of decisions, actions and attitudes of external elements--including police, prosecutors, courts, and State legislatures. For example, police activity determines the number of arrests; prosecutors choose whether and how to charge the person arrested; courts convict and select the type and length of sentences; parole boards decide on when persons should be released; and State legislatures provide resources, define and prescribe sanctions for criminal behavior and authorize possible alternatives to incarceration.

Under these circumstances, there is growing recognition that eliminating overcrowded prisons requires greater coordination and cooperation among the various components of the criminal justice system. While correctional officials can make some improvement in operations, services, and facilities to lessen the severe impacts of rising population, many of their efforts are likely to provide only temporary relief.

This chapter examines overcrowded prison conditions in one State, Massachusetts. It identifies the factors contributing to its overcrowding, and outlines some of the efforts being made to curb the problem.

OVERVIEW OF THE MASSACHUSETTS PRISON SYSTEM

In order to fully appreciate the pressures on correctional systems, it is necessary to understand how the various components of the criminal justice system interact on one another and can result in overcrowded prisons. The Commonwealth of Massachusetts, with its overcrowded State and local prisons and jails, provides good illustration of some of the external forces affecting corrections systems. Although some other States are experiencing more severe overcrowding, we selected Massachusetts because of its reputation as a State which has traditionally used alternatives to incarceration to minimize its prison populations. For example:

--Massachusetts has one of the lowest incarceration rates of the 50 States--it is ranked fifth lowest in imprisonments per 100,000 population.

--Probation has been, and continues to be, used extensively. A recent report prepared by the Director of Research of the Massachusetts Department of Correction indicated that only about two-thirds of those convicted of serious felonies against persons--robbery, rape, manslaughter, and kidnapping --were incarcerated. For those convicted of less serious felonies--breaking and entering, assault with a dangerous weapon, arson, larceny, forgery, and drug offenses--fewer than half were incarcerated.

--Parole--release prior to expiration of sentences--is liberal. Average time spent in the State prisons was 19.5 months in 1978, despite the fact that only prisoners with sentences of at least 2-1/2 years are generally incarcerated in State prisons. Massachusetts paroles about 70 percent of its inmates the first time they are eligible, and over 80 percent of the inmates released from State prisons are released via parole.

--Massachusetts is a leader in community-based corrections programs, having established 20 prerelease or halfway houses in the last 10 years.

The Massachusetts prison system is two-tiered, basically comprised of State prison facilities and county jails or houses of corrections. State prisons are used mostly for offenders sentenced to incarceration for 2-1/2 years or more. County jails are normally used to detain persons awaiting trial, and county houses of corrections hold inmates sentenced up to 2-1/2 years for one offense.

At the State level, the Massachusetts Department of Correction oversees prison operations. The primary mission of the Department is to protect society from criminal offenders by (1) isolating and securing dangerous offenders who present a threat to society and (2) establishing and maintaining programs and services designed to reduce the likelihood that offenders will commit new crimes when they return to society. The Department of Correction employs about 2,700 people and in fiscal year 1980 spent about $62 million, which is a little more than 1 percent of the State's budget.

Correctional facilities vary in terms of size and security, ranging from a large prison designed to accommodate 762 inmates to a 25-bed prerelease center. The Department operates one maximum security prison; four medium security facilities (one of which is a reception and diagnostic center which classifies prisoners prior to final placement in an appropriate State facility); five minimum security facilities; plus about 20 prerelease centers, some of which are operated on a contractual basis.

As of January 27, 1981, these State facilites had a total capacity of 2,846 beds, with a rated capacity of 2,641. Rated capacity is the maximum level corrections officials have determined will allow flexible, effective prison management. It represents 90 percent of the actual capacity for the maximum and medium security institutions and actual capacity for all other institutions.

Level of security	Facility beds	Rated capacity
Maximum	595	535
Medium	1,466	1,321
Minimum	365	365
Prerelease	301	301
Contract prerelease	119	119
Total	2,846	2,641

Most newer additions to the State's capacity have been in prerelease and minimum security facilities. Since the early 1970s, Massachusetts has added over 700 beds, mostly in these categories. The last significant increase in the capacity of maximum and medium security facilities occurred in the late 1950s.

In addition to the State's correctional facilities, Massachusetts counties operated 14 houses of corrections/jails, at a cost of about $28 million in fiscal year 1980. Although county facilities are funded at county expense and administered by County Commissioners and sheriffs, the State Commissioner of Correction is empowered to establish standards for county facilities and assure compliance.

The average age of the 14 major county facilities is over 100 years. There are 2,465 beds in county correction facilities--2,125 are cells, dormitories, and special housing units, while 340 are work release or prerelease spaces. Between 175-200 additional beds are not being used because units are under repair. By the time this work is completed an equal or greater number of beds will be retired due to court order, administrative ruling, or general deterioration.

In addition to the State and county prison systems, two State agencies dealing with parole and probation play a significant role in the overall corrections program in Massachusetts. Although both agencies can have substantial impact on the size of the State's inmate population, neither is under the supervisory control of the Department of Correction.

The Parole Board, which consists of 7 members appointed by the Governor, has an annual budget of about $3 million and a staff of about 140 employees. Its chief mission is to selectively

release offenders from prison when they reach eligibility for parole and supervise them in the community for the remainder of their sentences. The Board also renders advisory opinions to the Governor on pardons and commutations. Although administratively under the Department of Correction, the Parole Board is an independent agency.

The Massachusetts Office of the Commissioner of Probation is responsible for providing information on clients to the courts and supervising individuals placed on probation. This office, which is under the jurisdiction of the judiciary, employs about 950 probation officers who serve over 60,000 individuals on probation. The cost of probation services in fiscal year 1979 was about $23.5 million.

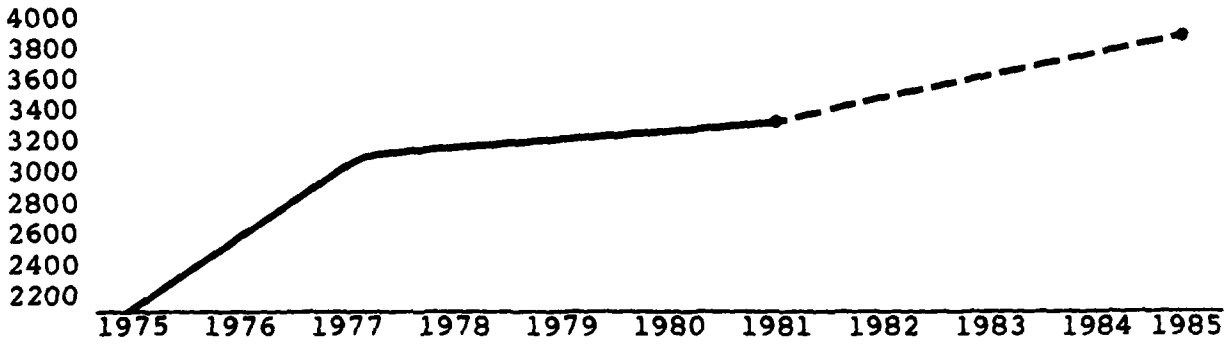
Overcrowding is Massachusetts' major corrections problem

State corrections officials believe prison overcrowding is their primary problem. The inmate population is at an all-time high, and projections indicate it will continue to increase. Of particular concern is the potential impact of mandatory sentencing proposals now pending in the State legislature.

The population in Massachusetts State prisons rose from 2,047 on January 1, 1975, to 3,249 on January 1, 1981--an increase of 59 percent. As depicted below there was a sharp increase from 1975 to 1977, a leveling off for the next few years, and a substantial increase beginning in 1980. The Department of Correction projects a continued increase to 3,900 by 1985.

State Prison Population

1975-1985



_____Actual

-----Projected

These projections do not reflect any increases which might occur if proposed mandatory sentencing legislation is enacted. The Governor's proposed anticrime package, currently being considered by the legislature, would extensively change the penalties and sentencing procedures in criminal cases. For example, upon conviction, defendants could not have their sentences suspended and would not be eligible for early release by the Parole Board. Under this proposal, prison terms could only be reduced by "good time," that is, time off for good behavior. An official of the Massachusetts Crime and Justice Foundation, a nonprofit organization devoted to improving criminal justice in the State, estimates that this sentencing reform would significantly increase the State prison population.

Any increase--even the amount projected without regard to the sentencing proposals--will be burdensome in a system which is already seriously overtaxed. As shown below, as of January 1981 the State prison system population exceeded the actual capacity by 291--about 9 percent--and the rated capacity by 496--about 19 percent. In addition, about 130 State inmates were being kept in local facilities, mostly in county houses of corrections, awaiting space in State prisons.

Capacity and Occupancy
State Institutions
(January 27, 1981)

Level of security	Actual capacity	Rated capacity	Occupancy
Maximum	595	535	692
Medium	1,466	1,321	1,695
Minimum	365	365	364
Prerelease	301	301	292
Contract Prerelease	119	119	94
Total	2,846	2,641	3,137

The most severe overcrowding problems exist at the State's maximum and medium security institutions. Although some of the less secure institutions could absorb additional inmates, corrections authorities told us that the level of security is not adequate to supervise the potentially more troublesome inmates.

Several examples of the overcrowded conditions at maximum and medium security facilities follow.

--At one maximum security unit the number of inmates exceeds the number of general housing units by over 100. In order to accommodate the additional inmates, the Department is using specialized units, such as the

departmental segregation unit, the institution infirmary, and the new men's initial receiving section for general housing.

--At a medium security institution, an antiquated section in the basement of a building is being used as well as former staff housing units and isolation cells. The Commissioner of Correction said that the very existence of this location as a correctional facility illustrates the department's desperate straits in dealing with overcrowding, since none of the rooms have running water.

--The situation is particularly acute in the Reception and Diagnostic Center. This medium security institution, which provides classification and placement of all committed inmates, was designed to accommodate 272 prisoners. In March 1981, over 500 prisoners were in the institution. This is being accomplished primarily by double bunking and using isolation cells, makeshift dormitories, and hospital beds for general housing purposes.

The overcrowding problem is not unique to the State correctional system. On January 27, 1981, the county facilities, which have an overall capacity of 2,265 beds, were operating with a count of 2,743 inmates, about 21 percent over capacity. Although occupancy rates varied by facility, ranging from 77 percent to 212 percent, almost every major county prison was overcrowded. The only exceptions were three facilities that have faced, or were threatened with, court challenges on their conditions, and a fourth facility that is located in a remote region of the State. The situations in some county houses of correction are even worse than those prevailing in State institutions. One facility, designed to hold 72 inmates, has recently housed as many as 181. Another had 179 inmates confined in a cell block designed to hold 104.

Part of the counties' overcrowding problems could be attributed to the State's practice of placing State inmates in county facilities until space becomes available in the State prisons. Recent action to end this practice will ease overcrowding in county facilities but will further strain the State system.

Overcrowding has an adverse affect on prison operations

The effects of overcrowding are difficult to isolate and measure. The major concern is that overcrowding creates a dangerous, tense environment with high potential for violence. Massachusetts has been fortunate in that it has thus far escaped violent disturbances on the scale recently experienced by several States. But Massachusetts corrections authorities see the current overcrowding as dangerous and point to recent disturbances as proof of the

danger. For example, a recent riot at the newest county corrections facility resulted in widespread damage estimated at $255,000. Furthermore, corrections officials have expressed the belief that current overcrowding in maximum and medium security prisons has resulted in some inmates requiring these levels of security being placed in less secure facilities. Thus, tension and the potential for violence in the less secure environment are increased.

Various corrections officials have cited other serious impacts of overcrowding:

--Prisoners are held in inadequate or inappropriate accommodations (double bunking, cells with no running water, and temporary arrangements such as the use of infirmary beds).

--Prison managers lack the flexibility needed to properly run prison facilities, making it difficult to adequately maintain physical plants and provide a full range of services.

--Facilities are subject to accelerated deterioration due to excessive use and vandalism.

--Backlogs in the system are increasing, especially in the classification process. Because of larger numbers coming into the system, classification is taking as long as 10 to 12 weeks.

--Provision of certain services, such as care for mentally disturbed inmates, is hampered because it is difficult to transfer inmates needing such services into the appropriate State facility due to overcrowding at those facilities.

--The amount of time that inmates are idle is increasing, because there are insufficient jobs and training programs to meet the needs of the increased number of inmates.

FACTORS CONTRIBUTING TO OVERCROWDING

Crowded prison conditions are not unique to Massachusetts. Nationwide, the number of persons incarcerated has jumped 42 percent since 1975, straining many State systems. Factors not specifically related to criminal justice operations receive a large share of the blame, in particular

--poor economic conditions, especially unemployment; and

--the increase in the population group which commits most crimes--ages 16 to 25.

In addition, specific actions taken by other components of the criminal justice system and other entities--many taken in reaction to increased crime--have contributed to the increase in the number of persons imprisoned. According to various officials in Massachusetts, these actions include

--more efficient court operations resulting from an increase in the number of judges and changes in the case management and appeal procedures,

--changes in sentencing practices and enactment of legislation requiring mandatory sentences resulting in a trend toward longer sentences,

--deinstitutionalization of persons from mental health institutions,

--increases in the number of parole revocations, and

--public opposition to the construction of additional corrections facilities.

Court actions have sped up convictions

An extensive study of the Massachusetts court system conducted in 1976 concluded that the administration of justice in Massachusetts was inefficient. A major problem cited was a large criminal case backlog. For example, the backlog in the Superior Court rose from approximately 6,000 cases to 35,000 cases in the period from 1964 to 1974. According to the report, Massachusetts needed to reorganize its courts, introduce modern management tools and caseflow techniques, and increase the number of judges.

In order to eliminate the backlog and court inefficiencies, a number of steps have been taken,

--In 1978, the State legislature approved an increase in the number of Superior Court judges from 50 to 73. Also, retired judges and some District Court judges have begun receiving Superior Court assignments.

--In 1979, the State legislature enacted new case management procedures that substantially decreased the waiting period for bringing a criminal case to trial in the superior and district courts. Between July 1979 and June 1982 the time from arraignment to trial will be gradually reduced from 24 months to 12 months for most cases heard in the courts.

--In 1978 the Massachusetts law was changed to remove the right of appeal from district courts to the superior court. This reduced the caseload of the latter court.

These factors, along with the State legislature's decriminalization of intoxication and minor traffic violations, allowed the courts more time to hear serious criminal cases. With the increased number of judges, the backlogs in the Superior Court were reduced by about 3,000 cases during the 8-month period from July 31, 1979, to March 31, 1980. The drop in the number of appeals freed judges to work on other cases, and the revised case management procedures fostered more expeditious handling of pending cases. A May 1980 report by the Commissioner of Correction concluded that these factors had contributed to the upswing in prison population and will continue to do so over the next few years. Available statistics tend to support this view: court commitments to State facilities increased from 788 in 1978 to 1,117 in 1980. Similarly, court commitments to county facilities increased 35 percent from 1977 to 1980.

Changes in sentencing

Over the past decade there has been a clear trend of judges imposing longer sentences. For example, in 1970 only 28 percent of those sentenced to the State's maximum security facility had a sentence of 6 years or longer. In 1979, 55 percent of those sentenced to that institution had a sentence of 6 years or longer. Similarly, less than 1 percent of those committed to medium security facilities in 1970 had a sentence of 6 years or longer. In 1979, that figure had jumped 63 percent.

Also, since the mid-1970s, legislation has been passed requiring mandatory sentences for certain gun offenses, drug violations, and car theft. It is difficult to measure the impact of these laws on prison populations. Some officials believe that drug dealing and car theft legislation has not been in effect long enough and that many of the cases are still tied up in court. Although the impact of existing mandatory sentences on overcrowding is uncertain, corrections officials are concerned that the broader application of mandatory sentencing embodied in the Governor's proposed anticrime package will have a devastating impact on prison conditions.

Increased parole revocations

The Massachusetts Parole Board is the primary corrections release valve--about 80 percent of the inmates released from prison in 1980 were paroled. An accelerated parole program, begun in 1977, led to a surge in numbers of paroles granted. For example, paroles increased 31 percent in the second half of 1977 compared to the same period in 1976. However, Department of Correction officials stated that the increased parole activity might have provided only temporary relief from overcrowding because a large number of parolees are returning to prison. Parole violators represented 35 percent and 29 percent of admissions to State

facilities in 1979 and 1980, respectively--this is above the national average of 25 percent. In absolute numbers, 449 parole violators reentered prison in 1980, as compared to 267 in 1977, 277 in 1978, and 387 in 1979. Some officials expect the number of parole violators returning to prison to remain high because of the extensive use of parole in Massachusetts.

Deinstitutionalization of mental health care patients

Some Massachusetts criminal justice experts believe the deinstitutionalization of Massachusetts mental health hospital patients in the mid 1970s has adversely affected the State's corrections system. They reasoned that former patients, some of whom had been institutionalized for many years, were probably not capable of being on their own and as a result are winding up in correctional facilities after committing criminal acts that are often minor in nature. Although no statistics were available on this problem, officials believe that at least to some degree correctional facilities have become substitutes for mental health institutions. In addition to an increasing population, officials are concerned about the inability and unpreparedness of corrections to assume this role.

Resistance to the construction and expansion of correctional facilities

Also contributing to overcrowding has been the slow progress in constructing additional facilities. One factor curbing prison expansion has been local opposition. Public reaction has successfully resisted or delayed several projects. For example:

-- Although $7.4 million was authorized to construct a new jail, house of correction, and sheriff's quarters in one county, local opposition delayed this project a number of years. It recently cleared the last obstacle and construction should start soon. However, the delays caused the cost of the project to substantially increase.

--Local opposition defeated plans to construct a maximum security unit within one of the medium security facilities.

--A plan to open a 160-bed medium security unit at a military base is facing strong local opposition. Local officials believe that the prison could have an adverse effect on tourism.

EFFORTS TO ALLEVIATE OVERCROWDING

To combat overcrowding, the Massachusetts Department of Correction is implementing a facilities expansion program. However, as in other States, there is growing recognition that corrections

officials cannot control most major factors leading to overcrowding and thus, by themselves, are unable to devise effective long-term solutions. The severity of the overcrowding problem is prompting State and local governments to take a broader approach involving all major components of the criminal justice system in efforts to solve correctional problems.

Facilities expansion program

The State has implemented a facilities expansion plan which was expected to add 318 beds to the State corrections system by July 1, 1981. However, on that date the projected population was to have exceeded the number of available beds by 271, or 9 percent. Thus, the State anticipated that ongoing expansion efforts would not be adequate to accommodate the increasing population--a situation which might worsen if proposed sentencing revisions are passed.

In addition to the ongoing expansion projects, there are other proposals for expansion. Some of these are in the exploratory stages, but others are further along. For example:

--Consideration is being given to renovating some vacant buildings on the grounds of a U.S. Air Force Base in Massachusetts. The State would use it for a 160-bed medium security facility.

--Utilization of a vacant 123-bed facility in the Middlesex County Courthouse. The construction of this facility was completed in late 1975; however, before occupancy a sprinkler system has to be installed in the building. The Department of Correction has agreed to install this system.

--Contemplation of a new 200-bed medium/maximum security facility.

--Consideration of expanding existing facilities and converting vacant State buildings to correctional facilities.

According to a Department of Correction report dated January 29, 1981, if each of these expansion proposals were to be fully implemented by mid 1985, (and there is no assurance that they would be) the number of beds would increase by 823 to 3,987. The report further states that the projected population is expected to be about 3,900 inmates by mid 1985 (not considering the potential impact of sentencing reform). To accommodate 3,900 inmates, actual capacity should be about 4,278 to allow for flexible operations of maximum and medium security institutions. Therefore, at least 291 additional beds would still be needed.

Massachusetts is moving toward a systemwide approach to solve overcrowding

In addition to expansion plans, efforts are being made to attack the overcrowding problem through coordination of all major components of the criminal justice system. A major focal point for this activity in Massachusetts is the Crime and Justice Foundation. This nonprofit organization, dedicated to improving the administration of justice in the State, has recently convened several meetings on the dimensions of the overcrowding situation and possible solutions. Attendees included officials representing corrections, courts, probation, parole, and police activities. Some proposals emerging from these meetings include:

--A review of parole revocations by the Parole Board to determine why the numbers have increased so sharply and to determine whether alternatives to reimprisonment exist. Possible alternatives include (1) disciplining persons who technically violate conditions of parole but allowing them to remain under community supervision and (2) placement of these persons in residential centers under a "halfway back" concept.

--Identifying inmates in county facilities who could be transferred immediately to one of the State's less secure institutions where space is currently available.

In addition, the Crime and Justice Foundation has suggested that the State judiciary consider reducing relatively short sentences by 1 or 2 months. The Foundation estimated that the reduction of 1 month from standard 6- or 12-month sentences would result in almost 120 beds becoming available in county systems.

Perhaps the most visible move toward a systemwide approach is the recent introduction in the State legislature of a resolution to establish a special commission to study overcrowding and devise solutions. According to the proposed resolution, the composition of the Commission would include representatives of all groups who could significantly affect the size of prison populations. Specifically included are six members of the State House of Representatives, three members of the State Senate, six gubernatorial appointees, the State Secretary of Public Safety, the Commissioner of Correction, the chief justice of the State's trial courts, a county sheriff, and a county commissioner. Although the resolution has not yet been debated, its sponsor believes it will be passed.

CHAPTER 3

THE FEDERAL GOVERNMENT COULD TAKE CERTAIN ACTIONS TO ENCOURAGE A SYSTEMWIDE APPROACH TO SOLVING CORRECTIONAL PROBLEMS

The principal Federal correctional activity is the operation of the Federal prison system by the Bureau of Prisons of the Department of Justice. The Department also, through LEAA, National Institute of Justice (NIJ), and National Institute of Corrections (NIC), provides some support to State and local agencies in the forms of

--financial and technical assistance,

--research and demonstration programs, and

--training programs.

The Federal role in the criminal justice system in general, and corrections in particular, is relatively small. For every Federal dollar spent on corrections in 1979, State governments spent $9.62 and local governments $5.60. But Federal activities, small as they are, can be used to encourage and aid States and localities in developing systematic approaches to solving correctional problems. To begin with, more awareness could be given to the impact that Federal actions can have on State and local governments. Other actions could include using Federal funds to aid States in developing systemwide approaches or conducting research and development programs to show the benefit of interagency coordination.

Officials from all three branches of the Federal Government are focusing renewed attention on the Federal role in corrections and the whole criminal justice system particularly in the area of violent crime. For example, the Attorney General recently noted that "There has been no comprehensive examination of the Federal government's role in this area for many years***. The climate of crime today makes such a review necessary." Dealing specifically with corrections, Chief Justice Warren Burger has called for a "broad scale" program to modernize prisons and provide educational and training opportunities for inmates, perhaps with the Federal Government sharing the costs. The opportunity for the Federal Government to be a catalyst in this important area could also be considered at this time.

MORE AWARENESS COULD BE GIVEN TO THE IMPACT OF FEDERAL ACTIONS ON STATE AND LOCAL GOVERNMENTS

Policies and actions of all three branches of the Federal Government can and do affect State and local criminal justice systems, including corrections.

The Congress enacts legislation which defines the Federal role in the criminal justice system, sets broad Federal goals and policies, and provides funds to carry them out. The executive branch, through the Department of Justice, translates the broad goals and policies into specific law enforcement, prosecutorial, and correctional policies and priorities. The priorities given to specific criminal justice efforts by the Department can affect State and local law enforcement and corrections policies.

Federal courts are often called on to determine whether or not practices of criminal justice agencies are consistent with the rights of persons under the Constitution. Court decisions can force authorities at all levels of government to alter or discontinue established policies and practices, or adopt new ones.

Federal policymakers, administrators, and judges could be more aware of what effects their decisions can have on States and localities.

Executive branch policy changes can influence State and local corrections systems

The Department of Justice has the responsibility to enforce the civil and criminal laws passed by the Congress. Given limited resources, the Department sets priorities. Changes in emphasis by the Department can influence State and local criminal justice systems operations. A case in point was the Carter administration's decision to vigorously pursue "white-collar" crime. To support the administration's decision, the Federal Bureau of Investigation had to realign its priorities and resources, and crimes like bank robbery and auto thefts, which the Bureau routinely handled, were turned over to State and local authorities. Some States indicated this change in strategy by the Bureau has led to increased inmate populations in already crowded municipal jails and State prisons.

The Reagan administration has designated the problem of violent crime as one of its top priorities. In March 1981, Attorney General William French Smith appointed a Violent Crime Task Force composed of criminal justice professionals and representatives from academia. The stated purpose of the Task Force was to make recommendations on what the Federal role should be in the area of violent crime. The Task Force held hearings throughout the

Nation, soliciting the views of criminal justice officials, anti-crime program administrators, and private citizens. The hearings focused public attention on the violent crime problem. During the summer of 1981, two reports were prepared. The first report focused on "what can be done within existing statutory law and existing resources", and the second offered recommendations for

> "necessary and appropriate changes in Federal laws, funding levels and allocation of resources which would increase the coordinated Federal-state-local fight against violent crime."

The Task Force looked at the crime problem and the criminal justice system as a whole, weighing the benefits of controlling violent crime against its costs. As it considers possible shifts in Federal criminal justice policies, the impact of these changes in policy on other levels of government can also be examined.

Congressional proposals for stricter criminal laws could set example for States

The Congress, responding to increasing public fears of crime, is considering several bills designed to create new classes of Federal crimes and mandate specific, and often harsher sentences for some existing crimes. Bills introduced in the 97th Congress include provisions that would

--provide mandatory life sentences for persons convicted three times of violent felonies;

--establish a mandatory additional 5-year sentence for persons using a handgun in a Federal felony;

--establish procedures for imposing the death penalty for certain Federal crimes, such as treason, espionage, or murder of a Federal law enforcement officer; and

--designate "contract murder" as a Federal offense.

Careful consideration of such proposals as possible solutions to the violent crime problem can include assessment of their impact on corrections. Laws requiring more persons to serve longer prison terms can create added pressures on a Federal prison system whose population has recently exceeded its institutional capacity.

Many State legislatures have either passed or are considering similar types of legislation, especially mandatory sentencing and determinate sentencing proposals. Thus, Federal actions could serve as models for similar actions at the State level. Institutional population pressures at the State and local levels will be much more difficult to deal with than at the Federal level because

many State and local institutions are already overcrowded and in poor condition. Many, too, are already being forced to reduce populations under court orders. Several State corrections administrators have stated that despite extensive use of alternatives to incarceration, their prisons are still overcrowded, and consequently they are planning new construction. At some point, the public must accept the fact that if they want criminals kept off the streets, they must be willing to pay the cost of new prisons and jails to house them. Legislatures, when considering changes in criminal laws, could also provide the public with their estimated impact on corrections.

Federal court decisions can serve as a catalyst for improving State and local correctional systems

Until the late 1960's, the courts consciously adopted a "hands-off" attitude toward complaints filed against corrections agencies. It has been suggested that the Attica tragedy in 1971 first alerted the judiciary to the possibilities of cruel and unusual punishment in America's prisons and jails. Since that time, the courts have acted to enforce the constitutional rights of offenders in numerous States and localities.

The previous chapters in this report touched upon the impact of Federal court decisions on State and local correctional systems. Although opinions are mixed regarding the benefits of judicial intervention, the courts have obviously provided the impetus for reforms in many States. Governors and State legislatures have been forced to recognize and deal with long-neglected corrections problems. Courts have fashioned a variety of remedies to force States to relieve unconstitutional conditions, often implementing them by requiring States to present plans and timetables for reform with the court approving and overseeing them, or appointing a "special master" to act on the behalf of the court. Some executive agencies and legislatures have been forced to take specific actions, such as changing correctional policies and procedures and providing additional money.

The Judiciary also has had a major impact on the development of correctional standards. When deciding on cases involving conditions of confinement, courts are often guided by the various available voluntary standards and by testimony from corrections experts. Court orders forcing corrections agencies to relieve poor conditions have drawn on these standards to set, with varying degrees of exactness, standards that must be met by the institutions in question.

In December 1980, the Department of Justice added to the growing volume of correctional standards by promulgating "Federal Standards for Prisons and Jails." These standards are intended to

--help evaluate Bureau of Prisons' policies and programs;

--provide guidance for Federal aid programs in corrections; and

--provide guidance in Federal litigation involving Federal, State, and local correctional systems.

Although courts have intervened in correctional administration in numerous States and localities, they have done so reluctantly, and only when institutional conditions were violating constitutional standards. However, once a suit has been filed, there are ways for jurisdictions to correct poor conditions while maintaining administrative control over their facilities. Several suits against States' prisons have been settled through consent decrees, in which States have agreed to take specific corrective actions. In New Mexico, for example, the State agreed to change its policies covering such matters as inmate correspondence, access to legal services, food services, visitation rights, classification, medical care, and security at the State penitentiary.

Thus, within the context of the litigative process, courts can encourage States and localities to work toward addressing their problems. Such efforts can involve other State agencies (such as Parole Boards) and State legislatures in devising solutions. An example of the possibilities of this approach occurred in Oregon, where an inmate sued the Governor to stop overcrowding at two State prisons. The Federal District Court attempted to coax the two parties to the suit to achieve a settlement by asking the Director, NIC, to serve as a mediator. However, settlement was not reached, and the court ruled that the overcrowding situation was unconstitutional. The State then submitted a plan to relieve overcrowding, involving the Department of Corrections, the Parole Board and the legislature. The plan provided that:

--Parole procedures would be changed to lengthen sentences for the most serious crimes and shorten sentences for relatively minor crimes, with more minor offenders being paroled earlier.

--Prisons would no longer accept accused parole violators prior to parole revocation hearings, leaving them in county jails.

--The capacity of the State's prison forest camp would be expanded.

--New legislation would permit prisoners up to 90 days leave immediately prior to their parole dates as time to seek outside employment.

--The Legislature and the electorate would approve funding for a long-range prison construction program.

The court, without approving or disapproving the actions, accepted the plan as a good-faith effort to ease overcrowding and only ordered that the State meet deadlines for specific population reductions.

The Federal Government has helped the process of corrections reform along by participating in litigation involving State and local corrections agencies. At the same time, Federal aid sources exist that could provide the means to help States and localities develop voluntary, systemic approaches to institutional problems. The Civil Rights of Institutionalized Persons Act, passed in 1980, gave the Attorney General authority to sue, or intervene in suits against, State and local governments to force them to correct unconstitutional conditions in institutions, including prisons and jails. This authority, administered by the Civil Rights Division, allows the Department of Justice to use its resources in cases where it decides that unconstitutional conditions exist. The act requires that the Department give a jurisdiction 7 days' notice before it conducts an investigation of institutional conditions, and 49 days' notice before filing a suit under this law. Before initiating a suit, the Department must notify jurisdictions of alleged unconstitutional conditions, encourage them to voluntarily correct these conditions, and inform them of possible sources of Federal assistance.

An available source of assistance, both to the Civil Rights Division and States and localities, is the NIC. It could work with the Civil Rights Division in trying to settle cases short of court orders and could help States and localities faced with court orders or pending suits. NIC already has several programs to assist States and localities under litigation. In fiscal year 1981, these include:

--A series of seminars for attorneys representing corrections agencies in litigation.

--A program of grants to corrections agencies facing suits or under court orders, including aid to "special masters" to help monitor compliance with orders, and aid to public and private organizations to develop and implement means of settling complaints against institutions short of litigation.

--Technical assistance to help individual prisons and jails implement court-ordered improvements.

In its fiscal year 1982 budget justification, NIC stated that in fiscal year 1980 it helped four States--Alabama, Georgia, Louisiana, and Florida--develop plans to comply with court orders. NIC staff have been asked by courts to assist corrections agencies in several other States. For example, a series of consent decrees settling a suit against the Penitentiary of New Mexico requires the State, with NIC help, to draft a new plan for inmate classification. NIC plans to provide more technical assistance in fiscal year 1982 to help correctional institutions correct unconstitutional conditions. Some of this aid could be channeled to jurisdictions facing suits by the Department of Justice. In addition, NIC's expertise could help some jurisdictions avoid litigation through systemwide approaches.

As we have noted, the Department of Justice now has its own set of standards to guide its litigative efforts. In them, the Department specifically stated it would not sue jurisdictions complying with them or those "engaged in good faith efforts to comply * * * within reasonable timetables." In May 1981, Attorney General Smith directed the Civil Rights Division to revive the practice of working with the Bureau of Prisons in reviewing pending suits and suits to be filed to ensure that "the federal government is not asking the states to do more than the Constitution requires."

FEDERAL FINANCIAL ASSISTANCE COULD BE GIVEN TO STATES DEVELOPING SYSTEMWIDE APPROACHES

Federal resources to aid State and local criminal justice agencies are shrinking due to the phasing out of LEAA. However, the Congress is considering several proposals for new criminal justice assistance programs.

LEAA has had limited success in promoting systemwide coordination

LEAA has been a key source of Federal aid to State and local criminal justice systems since it was created by the Omnibus Crime Control and Safe Streets Act of 1968. In passing the Act, Congress recognized crime control as primarily a State and local concern, but also determined that the Federal Government could provide some assistance to those levels of governments. Part C of the act authorized LEAA to award block grants to States and to spend an additional amount of funds at its discretion. State planning agencies were established to receive block grants, and to serve as the statewide law enforcement planning agency in each

State. One requirement of each State's comprehensive plan was that it

> "incorporate innovations and advanced techniques and contain a comprehensive outline of priorities for the improvement and coordination of all aspects of law enforcement dealt with in the plan ***."

When LEAA was reauthorized by the Omnibus Crime Control Act of 1970, a program of block and discretionary grants (Part E) for improvement of State and local correctional facilities and programs was created. Between fiscal years 1971 and 1979, Part E grants totaled about $796 million. In addition, some of the Part C discretionary and block grant program funding was awarded to States for corrections activities.

In fiscal year 1979, State planning agencies spent $290 million in Part C and Part E block grant funds. Of this amount, $70.3 million, or about 24 percent, was for correctional programs. In addition, LEAA spent $43.5 million for Part E correctional discretionary grants; $0.7 million for Part C discretionary grants for major corrections programs; and $5.2 million for correctional programs of the National Institute of Law Enforcement and Criminal Justice (the predecessor of NIJ.)

Within the limits of its funding, LEAA encouraged innovative approaches to solve criminal justice problems. Some approaches involved interagency, intergovernmental, and interstate cooperation. LEAA's Treatment Alternatives to Street Crime program, for example, was designed to identify and treat offenders with alcohol and drug abuse problems through cooperation between criminal justice and drug and alcohol abuse treatment agencies. Also, efforts to help similar offenders already in prison or on parole were being developed through the Treatment and Rehabilitation for Addicted Prisoners program. Carefully targeted "seed money" could further encourage innovative systemic approaches like these.

A major criticism of LEAA has been that most State planning agencies did not in fact become comprehensive State planning agencies. Criticisms have included:

--Many State planning agencies did not plan for all criminal justice activities, only the small proportion funded out of LEAA grants.

--State planning agencies had been accepted in some States only because they were a condition for receiving LEAA funds. With increasing statutory and administrative requirements placed on the the planning process, these agencies often "focus more on ensuring statutory compliance rather than on undertaking effective planning."

Still, some State planning agencies have had some success in working with specific problems using systemic approaches. For example, Virginia:

--Provided funds to merge two multicounty groups operating juvenile detention facilities; seven counties will share two facilities, precluding the need to build an additional facility.

--Developed a model for planning comprehensive local detention facilities and developing correctional programs, involving local and State agency input. The model considered the needs of corrections, courts, and law enforcement and stressed sharing facilities on a regional basis.

Many State planning agencies could be retained under a new aid program. They could help bring the components of the criminal justice system together to resolve corrections and other criminal justice problems.

Proposed legislation might provide assistance to help States and localities develop systemwide approaches

Several bills currently before the 97th Congress are designed to provide new sources of Federal aid to State and local criminal justice agencies. Three bills--the Justice Assistance Act of 1981 (H.R.3359), the Criminal Justice Assistance Amendments of 1981 (H.R.2972), and the National War on Violent Crime Act (S.953)--would create LEAA-style block and discretionary grant programs. All three proposals would create agencies in the Department of Justice to replace LEAA. Each would also provide a narrower focus for usage of block grant funds by States, centering on LEAA-sponsored programs that proved successful. Programs cited included community anticrime, career criminal, anti-arson, and prosecutor management information system. All would provide small programs of technical assistance to States and localities and aid for emergency situations, such as the recent murders of black children in Atlanta.

The proposed National War on Violent Crime Act would retain the State planning agency structure set up by LEAA to administer grants, as well as the requirement for statewide comprehensive criminal justice plans, though the bill contains few of the specific constraints on States that LEAA's charter had. The other two bills entrust each State to designate the agency to receive the funds. The National War on Violent Crime Act also would make formula grant funds available to the States on a 90-10 match basis, while the Justice Assistance Act of 1981 and the Criminal Justice Assistance Amendments of 1981 would do so on a 50-50 basis.

Other legislation addresses the major financial burden of corrections agencies, capital construction, and renovation. Three bills--the Criminal Justice Construction Reform Act (S.186), the Corrections Construction and Program Development Act of 1981 (H.R.658), and the Correctional Services Improvement Act (H.R.791) --would provide this kind of assistance. The Criminal Justice Construction Reform Act would create a Criminal Justice Facilities Administration in the Department of Justice to administer grants to States. Each State desiring this aid would have to develop a comprehensive statewide plan for construction and modernization of criminal justice facilities. Demonstration grants would be available for testing advanced design techniques, and a clearinghouse to disseminate information on criminal justice construction would be established.

The Corrections Construction and Program Development Act of 1981 would provide a program of grants to States for construction, expansion, acquisition, and renovation of corrections facilities and for correctional programs. This program would be administered by the Department of Commerce. Finally, the Correctional Services Improvement Act would take a different approach: the Attorney General would be authorized to build and operate demonstration correctional facilities and turn them over to a State without cost, as long as the State pays to operate them and makes them available for Federal prisoners and prisoners from neighboring States. In addition, funds would be provided to help State and local facilities meet correctional standards and for a Federal Corrections Coordinating Council and a Federal Corrections Institute.

Hearings were held on both the Justice Assistance Act of 1981 and the Criminal Justice Construction Reform Act in May 1981. State and local law enforcement and criminal justice professionals were in favor of legislation to continue Federal criminal justice assistance efforts. State and local corrections administrators testified in favor of the Criminal Justice Construction Reform Act as a source of Federal aid to help undertake building and renovation needed to cope with burgeoning institutional populations and meet court mandates.

The Reagan administration has not yet taken a position on new Federal aid programs in the criminal justice area. In his testimony before the Subcommittee on Crime, House Committe on the Judiciary, Associate Attorney General Rudolph Giuliani said that the decision on this issue would await the reports of the Attorney General's Violent Crime Task Force. He supported the notion that any new aid program should be "targeted narrowly at areas identified, clearly and consistently, as national priorities," and that funding should be used to implement approaches which, after research and evaluation, have been proven successful.

If some form of assistance is approved it could carefully target financial and technical assistance and make use of existing State planning agencies as vehicles to encourage systemwide approaches to criminal justice problems, including correctional problems.

FEDERAL RESEARCH AND DEMONSTRATION PROJECTS COULD SHOW BENEFITS OF INTERAGENCY AND INTERGOVERNMENTAL COORDINATION

Federal research and demonstration projects can provide State and local governments an opportunity to assess how systemwide approaches can ease correctional problems. The results of these projects can be disseminated to jurisdictions wishing to develop better intergovernmental and interagency coordination in the criminal justice area.

National Institute of Justice

NIJ was created in the 1979 reorganization of LEAA to replace the National Institute of Law Enforcement and Criminal Justice. Through grants, contracts, and cooperative agreements with private and public organizations and educational institutions, NIJ seeks to foster useful research and develop, evaluate, and disseminate information on approaches to solving criminal justice problems.

The purposes of NIJ's Exemplary Projects Program are to identify outstanding criminal justice programs throughout the country, verify their achievements, and publicize them widely. Through this program, NIJ seeks "to encourage widespread use of advanced criminal justice practices," which can include those focusing on systemwide approaches to correctional problems.

According to NIJ, rigorous screening procedures have been established to glean only the very best programs, those which warrant adoption on a broad scale. Particular emphasis is placed on the extent and sophistication of the project's documentation and evaluation efforts. To be eligible for designation as an Exemplary Project, projects must demonstrate:

--Goal Achievement: overall effectiveness in the reduction of crime or improvement in the operations and quality of the justice system;

--Replicability: adaptability to other jurisdictions;

--Measurability: formal evaluation data or other conclusive evidence of project achievement (minimum of 1 year's results);

--Efficiency: demonstrated cost effectiveness; and

--Accessibility: willingness of project staff to provide information to other communities.

Brochures and detailed handbooks are prepared on each Exemplary Project to guide policymakers and criminal justice administrators interested in benefiting from the project's experience. These materials provide considerable detail on operating methods, budget, staffing, training requirements, potential problem areas, and measures of effectiveness. Particular attention is focused on evaluation methods which allow other localities to gauge the potential for their own success and shortcomings.

The NIJ also sponsors workshops, conferences, and other activities to disseminate information on designated Exemplary Projects nationwide. The objectives are to capitalize on the progressive concepts of Exemplary Projects and to encourage their widespread replication. Examples of Exemplary Projects in corrections include;

--The Pre-Release Center program in Montgomery County, Maryland, designed to ease the reentry of offenders into the community and reduce recidivism.

--A coordinated community corrections program in Polk County (Des Moines), Iowa, involving pretrial release programs, probation, and a facility offering work and educational release opportunities.

NIJ utilizes research results to develop useful approaches for criminal justice administrators. Its Program Models effort involves collecting and analyzing research results and discussing advantages and problems of specific approaches. In fiscal year 1980, Program Models were developed in several areas, including Victim Compensation Programs and Employment Services for Ex-Offenders. Some model programs are tested in selected jurisdictions, then evaluated to determine their potential success if replicated in other States and localities.

Through NIJ, Federal, State, and local efforts to devise systemwide approaches to correctional problems could be documented, analyzed, and evaluated. The results may well point to more efficient and effective methods.

National Institute of Corrections is developing a demonstration project to address prison overcrowding in States

NIC was created administratively in the Bureau of Prisons in 1972, was authorized in the Juvenile Justice and Delinquency Prevention Act of 1974, and received its first appropriation from the Congress in fiscal year 1977. NIC was intended to be

> "a center in the nation to which the multitude of correctional agencies and programs of the states and localities can look for many different kinds of assistance that they require."

Although NIC is a small agency (a budget of only $9.9 million in fiscal year 1981), it provides specific assistance to States and localities in several areas

--training and staff development;

--clearinghouse and information activities;

--technical assistance and consulting for individual jurisdictions; and

--correctional research, evaluation, and program development.

NIC is currently developing a demonstration project in the area of prison overcrowding. NIC staff will select several target States on the basis of the severity of their overcrowding problem and the receptivity of criminal justice administrators, legislators, and judges to its project. An organization will be designated by each State to undertake data analysis and planning functions. NIC will provide funds for these organizations, hold training seminars for selected officials in each target State, and provide direction and technical assistance. The results of work in these States will be documented to allow the evaluation of various approaches to relieve overcrowding. NIC has stated as its goals for this program

--development of greater awareness of the overcrowding problem, not only by corrections officials, but by legislators, judges, and the public as well;

--development of systemwide approaches to overcrowding; and

--greater use of alternatives to incarceration as a means to reduce prison overcrowding.

This prison overcrowding demonstration project could serve as a model for systemic approaches to many other correctional problems.

- - - -

As we have noted in this study, several States are beginning to develop systemic methods to deal with the correctional problems that confront them. Although the Federal Government's role in corrections is limited, it does have programs of financial and technical assistance which can be used by corrections agencies. At the same time, changes in Federal criminal justice policies and priorities can affect State and local corrections activities.

In considering changes in criminal justice laws and policies and new justice assistance programs, the Congress and the Department of Justice can consider their impact on corrections and the possibilities that exist for encouraging the development of systemwide approaches to solving corrections problems.

GAO REPORTS ON STATE AND LOCAL CORRECTIONS PROBLEMS

Women In Prison: Inequitable Treatment Requires Action (GGD-81-6, Dec. 10, 1980).

Jail Inmates' Mental Health Care Neglected: State And Federal Attention Needed (GGD-81-5, Nov. 17, 1980).

The Department of Justice Can Do More to Help Improve Conditions At State And Local Correctional Facilities (GGD-80-77, Sept. 15, 1980).

Community-Based Correctional Programs Can Do More To Help Offenders (GGD-80-25, Feb. 15, 1980).

Prison Mental Health Care Can Be Improved By Better Management And More Effective Federal Aid (GGD-80-11, Nov. 23, 1979).

Female Offenders: Who Are They And What Are The Problems Confronting Them? (GGD-79-93, Aug. 23, 1979).

Correctional Institutions Can Do More To Improve The Employability Of Offenders (GGD-79-13, Feb. 6, 1979).

A Federal Strategy Is Needed To Help Improve Medical And Dental Care In Prisons And Jails (GGD-78-96, Dec. 22, 1978).

Housing Federal Prisoners In Non-Federal Facilities Is Becoming More Difficult (GGD-77-92, Feb. 23, 1978).

Managers Need Comprehensive Systems For Assessing Effectiveness And Operation Of Inmate Grievance Mechanisms (GGD-78-3, 17, 1977).

Conditions in Local Jails Remain Inadequate Despite Federal Funding For Improvements (GGD-76-36, Apr. 5, 1976).

Federal Guidance Needed If Halfway Houses Are To Be A Viable Alternative To Prison (GGD-75-70, May 28, 1975).

(182680)