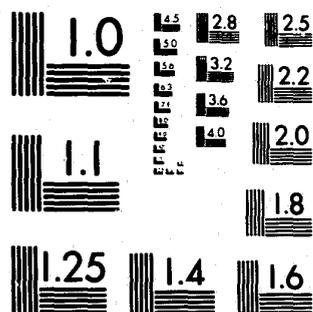


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CRIME FILE
Prison Crowding

A study guide written by:
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**Moderator: James Q. Wilson, Professor of Government,
Harvard University**

**Guests: Alfred Blumstein, Carnegie-Mellon University
Mark Corrigan, Brandeis University,
National Institute for Sentencing Alternatives
Thomas Reppetto, Citizens Crime Commission
of New York**

Your discussion will be assisted by understanding some of the factors contributing to the recent growth in prison populations and some of the approaches being considered for alleviating the crowding problems.

How Crowded Are Prisons?

Overcrowded prisons may be the most pressing problem facing the criminal justice system today. The number of prisoners in the United States has increased continuously since the early 1970's, and the rate of incarceration (the number of prisoners per capita) has doubled since 1970. By 1984, there were more than 463,000 people in State or Federal prisons, which is about 20 percent more than they were designed to accommodate. This represents one prisoner for every 500 persons in the United States. Another 220,000 people were in local jails. Most of these were being held awaiting trial; another large group were serving short sentences, generally under 1 year, for less serious crimes.

What Is Wrong With Crowded Prisons?

It is a widely accepted principle of prison management that a prison cell should not be used for more than one prisoner. The reason for this is obvious—people who are in prison have demonstrated a difficulty in getting along with others. A majority of prisoners either are serving time for a current violent crime or have a history of violent offenses.

If a prison with 1,000 cells must accommodate 1,200 prisoners, then 400 of its prisoners will be housed two to a cell. Prison managers generally agree that when the prison population exceeds capacity their ability to manage the unruly population is seriously degraded. As the numbers of prisoners increase, the space normally used for recreation or education is diverted to dormitory use. Incidents of violence between prisoners increase, and control of the institution gradually slips to the most aggressive groups of prisoners. The exhaustion of services and the limitation on recreational activities further lead to tension, boredom, and conflict among the prisoners, and between the prisoners and the guards. Eventually, there is a degradation of morale among the staff, greater staff turnover, and a vicious circle of diminished control.

Overcrowding is also of obvious concern to the large majority of prisoners who, in effect, become subject to harsher punishment as a result of the crowded conditions. Indeed, unreasonable crowding is one of the most frequently used bases for declaring a particular prison's conditions in violation of the eighth amendment's prohibition against "cruel and unusual punishment." This concern was expressed by the Supreme Court in the *Rhodes v. Chapman* decision, when it permitted double celling, under circumstances in which the conditions were temporary, and the prison was exemplary in other ways.

The Purposes of Prison

While there is general agreement on the purposes of prison as a punishment for crime, there are strong disagreements on how broadly prison should be used. At one extreme are those who view prison as a last resort, to be used only for the most violent or incorrigible offenders, and after all other

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means of reform have been exhausted. At the other extreme are those who insist that any person convicted of a felony deserves harsh punishment, and that prison is appropriate in most cases.

Both groups thus recognize that prisons serve two purposes. One is punishment of the offender as an end in itself regardless of any effect that it might have in reducing future crime. The other is that of controlling crime.

Prisons work in three distinct ways to control crime. First, they serve a symbolic purpose in that they communicate to the public that they should not commit crimes because they, too, could be punished. This is known as *general deterrence*, the influence on everybody else of imprisoning a single offender.

The other two ways relate to the effect on imprisoned offenders themselves. The first of these relates to the *rehabilitation* of offenders or the reduction in their crime-committing propensity after release. That change may result from rehabilitation approaches such as counseling or enhancement of job skills. It may also occur simply because the prison experience is sufficiently unpleasant that offenders will avoid repeating it. Critics point out that, at least for some people, the prison experience may lead to more or worse crime; they view prison as a "graduate school for crime." Undoubtedly, both rehabilitation and deterioration occur; some people come out better and some people come out worse.

The third way prisons affect crime is through *incapacitation*. Removal of offenders from the community prevents them from committing crimes there. Some assaultive crimes may be transferred to prison. And some crimes—like drug sales—may persist in the community but be committed by someone else.

Thus, for those who are convicted, the prison serves a number of functions as part of society's response to crime. There is little debate over the purposes. There is some disagreement over their relative effectiveness, but research is beginning to resolve that question. There may even be general agreement on the ranking of convicted offenders in the order of those for whom prison is most appropriate. The major disagreement relates to how far down that list imprisonment should be imposed, and for how long.

Since there are many more eligible candidates for imprisonment than there is available capacity, prison is typically reserved for those who commit the most serious crimes or for those who are repeatedly convicted of less serious crimes that would normally lead to probation on the first or first few instances.

Factors Leading to Current Crowding

The current situation of prison crowding in the United States follows from the steady growth in prison population that began in the early 1970's. Until that time, there was a broad consensus that the primary purpose of imprisonment was "correction," that is, rehabilitation of the offender. Evaluations of a wide variety of techniques presumed to be rehabilitative failed to show any to be particularly effective. These results shattered the old consensus and led to a new consensus that changing behavior was extremely difficult. There was no agreement, however, on what to do next.

During the rehabilitation era, parole authorities were empowered to decide when a particular prisoner was "rehabilitated" and ready for release. This role was also well suited for accommodating increases in the inflow of prisoners. Any release of any prisoner involves some degree of risk, and so marginal shifts in that risk are barely perceptible—especially in view of the considerable difficulty of estimating future criminality. Thus, when prisons became too crowded, the parole board could become somewhat more liberal in deciding whether an inmate was a good candidate for release. In this way, parole provided an important "safety valve" to adjust prison populations to their available capacity.

The mid-1970's saw a major reaction to this "indeterminate" sentencing system. Since rehabilitation services were not shown to be effective, it was argued that judgments about a prisoner's state of rehabilitation should no longer influence the length of time served. There came a general shift toward more "determinate" sentences, established by the judge at the time of sentencing, but often within the guidelines established by a legislature or a sentencing commission. The true sentence, as reflected in the time actually served, became more explicit and more public, and pressure grew to increase sentences in response to the public's concern over rising crime rates in the 1970's.

The changing age composition of the U.S. population has exacerbated the crowding problem. The number of people in their mid-20's, the ages at which people are most likely to be sent to prison, has grown steadily over the last 20 years. That increase reflects the population growth associated with the postwar baby boom, which started in 1947 and peaked in 1961. Thus, even if there had been no change in the fraction of each age group represented in prison, the larger numbers of people in the most prison-prone ages would still have crowded the prisons. This situation, together with the increasing severity of sentences, created the current dramatic increase in prison population.

Alternative Approaches to Relieving Prison Crowding

A major theme of the Crime File program concerns the variety of approaches one might use for dealing with overcrowding. Basically, there are only three: providing more capacity, diverting convicted people to sentences other than prison (the "front-door" approach), or shortening the time served in prison by those who do go there (the "back-door" approach).

Additional prison capacity would permit keeping the same number of prisoners (or more), but under more acceptable conditions. Providing the additional capacity costs money, however. Construction costs typically range between \$50,000 and \$75,000 per bed. Additional money is needed each year—about \$10,000 to \$15,000 per prisoner—to maintain, guard, and manage prisoners. These high costs were undoubtedly influential in the rejection several years ago by New York State voters of a bond issue to provide additional prison space.

Moreover, additional capacity does not become available instantly. Many bureaucratic processes are involved in the construction of any new facility by a State government: deciding to provide the additional capacity, agreeing upon

a site (especially gaining acceptance by neighboring residents), authorization and appropriation of funds by the legislature, architectural design, and finally construction. All these processes can take 4 to 7 years or more. Thus, a commitment to provide additional capacity to solve today's crowding problem will not provide the capacity until several years into the future, when the crowding problem may have diminished. By 1990, for example, the earliest date by which new prisons might become available, the number of people in the prison-prone ages will have decreased significantly, and so at least the demographic factor in the overcrowding problem will have begun to diminish.

Many who argue against providing additional capacity are concerned that the imprisoned population will simply expand to fill the available capacity—a variant of "Parkinson's Law." One study seemed to show by statistical evidence that this would happen; further studies, however, pointed out errors in those initial studies. It is still possible, of course, that there could be such an effect (even though the initial study failed to demonstrate it). Indeed, some judges are known to inhibit their sentencing when they know prisons are filled. However, during the 1960's, when prison populations were well below the available capacity, there was no pressure on judges to send more people to prison in order to fill that available capacity. Thus, the issue is far from simple.

The "front-door" approach involves finding alternatives to prison for those whom a judge might want to send there. This is clearly the approach favored by Mark Corrigan, who heads the National Institute for Sentencing Alternatives. "Front-door" solutions are not intended for the most serious offenders, for those who commit heinous crimes, or for those who represent a serious continuing risk in the community. They are, however, possibilities for "marginal" offenders who might otherwise be candidates for probation had they not already had one or more prior sentences to probation; these offenders warrant something more severe than probation. The problem is to develop an array of alternatives so that the judge, the victim, and the community can be satisfied that the level of punishment is appropriate and that the alternative might be more successful in reforming the offender. The alternatives most often considered are some combination of intensive probation, restitution, community work, or residence in a group home under tight surveillance but with the right to go to work during the day.

The "back-door" approach involves shortening the time served by imprisoned offenders. Indeed, this is the form traditionally used by parole boards to regulate prison populations. Parole boards hold the key to the "back door" by their authority to release prisoners who have served an appropriate minimum sentence but less than their maximum term. Some States have adopted "emergency release" laws under which some prisoners' eligibility for release is advanced, and some prisoners are released, once the prison population reaches a designated level.

The problem of prison crowding is one of the most vexing ones facing the criminal justice system today. There is widespread agreement that people who commit serious crimes must receive punishment and that people *who do so as recidivists* must be punished more severely. There is also agreement that the objectives of prison for punishment and crime control (through general deterrence, rehabilitation, and incapacitation) are appropriate, but there is some disagreement on how effectively they are achieved. There may also be general agreement in ranking convicted offenders

in terms of those most and least deserving of prison. There is still significant division, however, over how deeply into that list imprisonment ought to be applied, and for how long. As a richer array of intermediate sanctions is developed to fill the gap between the slap-on-the-wrist referral to an overworked probation officer, at the low end, and a sentence to a State prison at the high end, and as the cost of imprisonment becomes an important part of the choice, there may emerge greater agreement on how deeply and how broadly the imprisonment sanction should be applied.

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Discussion Questions

1. Which of the three approaches to relieving prison crowding—building more prisons, diverting offenders from prison, and shortening sentences—do you prefer? Why? How do you think your neighbors feel?
2. If a Federal court orders a State to reduce its prison population to the level of its capacity, what factors should be taken into account in deciding which prisoners to release?
3. Do you think prisons are very effective in reducing crime? How would you go about finding out?
4. What can be done to require those who want stricter punishment to also take account of the costs involved?
5. Should judges' sentencing decisions be different when prisons are crowded? That is, should a judge who would impose a prison sentence in a given case if the prisons were not crowded, impose a shorter or different sentence if the prisons are crowded?

This study guide and the videotape, *Prison Crowding*, is one of 22 in the CRIME FILE series. For information on how to obtain programs on other criminal justice issues in the series, contact CRIME FILE, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850 or call 800-851-3420 (301-251-5500 from Metropolitan Washington, D.C., and Maryland).

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