

Issue Brief

Order Code IB81171

CONGRESSIONAL RESPONSE TO PRISON CONDITIONS
UPDATED 05/01/85

350

ВУ

Keith Bea

Government Division

Congressional Research Service

100342

U.S. Department of Justice

This document has been reproduced exactly as received from the person or organization originaling it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

granted by
Public Domain
US Library of Congress

to the National Criminal Justice Reference Service (NCJRS)

Further reproduction outside of the NCJRS system requires permission of the contract owner



0516

CRS- 1

IB81171 UPDATE-05/01/85

ISSUE DEFINITION

Approximately 463,000 offenders are currently housed in State and Federal prisons and the prison population continues to increase each year. Most prisons are seriously overcrowded, and in some cases they are also antiquated, ill-equipped and understaffed; prisoners are often exposed to an unsafe environment and to brutalities by both staff and fellow inmates. It is generally agreed that prisons need improvements in both physical facilities and institutional programs. The Federal role in effecting such improvements is at issue. Legislation which authorizes \$25 million per year through FY88 for jail and State prison construction has been approved (P.I. 98-473), but President Reagan did not include funds for the program in the FY86 budget.

BACKGROUND AND POLICY ANALYSIS

There is little dispute that most American prisons require improvements. The population of many prisons is at record levels and most correctional systems are seriously overcrowded. Not only are conditions in some prisons considered inhumane, but critics maintain that prisons apparently fail to protect society either through deterring offenders from crime after their release or through rehabilitating inmates.

A prison is generally defined as an institution of varying degrees of security, housing offenders sentenced to at least a year and a day for a criminal conviction. In the United States, 45 prisons under the jurisdiction of the Federal Government are used primarily to confine persons convicted of Federal crimes; about 500 institutions under the jurisdiction of State and territorial governments house violators of State or territorial laws.

Prisons are distinct from the Nation's nearly 3,500 jails, most of which are operated by local governments and are used to detain persons awaiting trial or offenders sentenced to short terms of confinement (less than a year).

CONDITIONS OF PRISONS AND DIRECTIONS FOR REFORM

Overcrowding: At present, the greatest and most immediate concern regarding U.S. prisons is overcrowding. Corrections officials have stated that overcrowding is no longer an emergency but a "disaster." A recent General Accounting Office (GAO) report projects that if current conditions remain unchanged, the Federal Prison System will be 40% overcrowded by 1990, and that State facilities will be almost 26% overcrowded. Data compiled by the U.S. Bureau of Prisons indicate that the Federal prison system currently is about 24% over capacity.

The most recent data collected by the U.S. Bureau of Justice Statistics (BJS) indicates a continued growth in the U.S. prison population, although the increase has been somewhat lower than for previous years. From 1980 to 1981, and from 1981 to 1982 the total prison population increased 12% each year. From 1982 to 1983 it increased 5.7%, and from 1983 to 1984 the increase was 6.1%. In part the dramatic population growth during 1980-1982 was a result of the inclusion in Federal counts of 2,000 refugees held under

IB81171 UPDATE-05/01/85

the jurisdiction of the Immigration and Naturalization Service. The State prison population growth rate has declined from a high of 12.4% between 1981 and 1982 to 6% from 1983 to 1984.

To cope temporarily with prison overcrowding, some States have housed inmates in tents or prefabricated buildings, or have converted multi-use space such as conference rooms into bedspace. Also, some States are releasing inmates early or housing them in local jails. In 1984, due to a lack of prison space, 11,555 inmates in 18 States were in jail facilities.

States are building new facilities to expand their prison capacity. It is estimated that prison building projects totaling over \$2 billion are currently underway in approximately 39 States.

Factors Behind Population Growth: Analysts point to a number of factors that have contributed to the growth in prison population. One is the "baby boom" of the 1950s and early 1960s that resulted in a large number of people now in the crime-prone age group of 16-25. Dr. Alfred Blumstein, an authority on crime statistics, has estimated that the baby boom will result in continued prison population increases throughout the 1980s.

Other major factors that have led to prison population growth are changes in the criminal justice system. According to BJS, during the last 7 years most jurisdictions have enacted mandatory sentencing laws and 9 States have instituted determinate sentencing. Such laws require offenders to be incarcerated in prison for a fixed period that cannot be shortened by parole and tend to result in longer time served in prison. Also, stricter parole policies, longer sentences imposed by judges, less frequent use of alternatives to incarceration such as probation, and greater numbers of convictions influence prison population levels.

An Environment Conducive to Failure: In addition to being overcrowded, many prisons are antiquated, too large to operate efficiently, unsafe and understaffed. An estimated 43% of all prisoners are housed in facilities that were built before 1925. Nearly three-quarters of maximum security prisons were built to house over 1,000 inmates. The American Correctional Association (ACA) believes that it is "essential" that such institutions house no more than 500 inmates on the grounds of program management and security.

Many institutions also have unsafe and unsanitary conditions. A 1980 report by the General Accounting Office (GAO) concluded that significant environmental health problems existed in the institutions of 10 of the 11 States it visited. GAO blamed not only lack of funds but also the failure of States to maintain a regular inspection program, a general neglect of maintenance, and inadequate training for corrections personnel.

Understaffing, coupled with overcrowding in prisons, can subject inmates to brutalities including assault, rape, extortion and theft. A recent study by the U.S. National Institute of Justice (NIJ) concluded that prisoners subjected to sustained overcrowding have a higher death and suicide rate, more disciplinary problems, and a larger number of illness complaints. Furthermore, the study suggested that large institutions produce more negative psychological and physiological effects than small institutions.

The extent to which conditions in prisons foster frustrations and resentments against society has been illustrated by major prison riots such as those at the Attica State Correctional Facility in New York and more

recently in New Mexico and Michigan.

Recidivism statistics have been cited in support of the contention that prisons fail to rehabilitate criminals and to deter future criminality. Studies have shown that about one-third of persons released from prison will be reimprisoned within 5 years, sometimes for violations more serous than the crignal charge.

Some analysts believe that prison conditions and their desocializing effects preclude rehabilitation while others claim the rehabilitation programs themselves have failed. As for the seeming failure of prisons to deter future offenses, some believe this is not a fault of prisons but of the certain, swift and equitable punishment. Development of Standards Although some notable improvements in prison conditions in some States. Not only have a number of prisons been built or renovated, but there have been improvements programs aimed at equipping inmates with basic educational and vocational skills.

A number of groups have developed standards for U.S. prisons that have been used to guide reforms. The American Correctional Association (ACA) has the physical plant, health care, inmates rights, staffing, educational vocational and social services. Since 1976 the Commission on Accreditation for Corrections (which helped developed the ACA standards but is now separate correctional institutions based on compliance with the ACA standards. By the end of 1984, 118 State and Federal institutions had been accredited.

Primarily in response to findings that current prison conditions violate the Constitutional protection from "cruel and unusual punishment", State and Federal judges also have set standards. According to a report by the Bureau District of Columbia and 7 States were under court orders or consent decrees to remedy prison conditions, especially overcrowding. In 25 other States at However, the Supreme Court identified limits to claims of unconstitutional Court found that housing two prisoners in a cell intended for one to relieve previous holdings to the effect that the Eighth Amendment does place limits to the Court, double celling, unlike "deliberate indifference to an inmate's medical needs," does not constitute cruel and unusual punishment.

Prison Construction: Because of the overpopulation problem and prison conditions, some believe that prison construction and renovation should be a part of any prison reform program today. Whether such activities should matter of dispute.

Advocates of the construction of additional prison space believe that judges must have imprisonment as a sentencing option and that the current limits of prison capacity prevent this. They argue that the prison population will continue to grow because of higher crime rates, better detection and prosecution of offenders, and public demands for longer

sentences.

The Attorney General's Task Force Report on Violent Crime (1981) recommended that any decision to build new prisons should take into consideration the makeup of the inmate population. For example, the higher the degree of security needed, the higher the construction and operating costs. Estimates indicate that today only 15% to 20% of inmates require maximum security while 70% of facilities offer such confinement.

Persons who oppose increases in prison capacity through new construction point to the extremely high cost. Although estimates range anywhere from \$15,000 to \$130,000 per cell, most agree that the expense of new construction to meet today's population needs would be staggering. A recent study for the National Institute of Justice by Abt Associates, a private consulting firm, concluded that it would cost between \$8 and \$10 billion to bring U.S. prisons up to minimum space standards. Abt used a standard of 60 square feet per inmate for the purposes of its analysis, as a reasonable reflection of space standards set by the American Correctional Association, the Federal Government, and court decisions. The Abt study questioned whether a massive construction effort would relieve overcrowding, citing the conclusions of some analyses that the more prison space available, the higher the rate of incarceration. In contrast, other analysts believe that in the 5 to 7 years it would take to build new facilities, the need for them will abate.

Others, including Chief Justice Warren Burger, have urged increased attention to the development of alternatives to incarceration such as probation, restitution, and community service. Not only are such alternatives less costly than the amount needed to imprison an offender, it is argued, but alternative sentences are also believed to be more appropriate sanctions for some, particularly for non-violent offenders.

The previously mentioned Abt study, as well as a GAO report, have concluded that the problem of prison overcrowding will be eliminated only with criminal justice systemwide coordination and cooperation in recognizing specific limits of prison and jail space. Abt proposed that States should statutorily define minimum space standards for prison inmates that would establish the capacity of their prisons. As a second step, States should authorize accelerated release of inmates when the capacity is reached or exceeded. As part of this plan, States should develop an information system to apprise judges and releasing authorities of the relative "trade-offs" involved in their sentencing and release decisions.

THE FEDERAL ROLE IN PRISON REFORM

Under the U.S. Constitution, crime control has traditionally and primarily been the responsibility of State and local governments because the authority is not expressly granted to the Federal Government. The Federal Government primarily enacts and enforces Federal criminal law and assists States and localities in their efforts to cope with crime. Consequently, in the area of prison reform, the Federal role is limited to the policy and operations of the Federal prison system, and to the provision of assistance to States. The major issue currently before Congress is the extent to which the Federal Government should aid State prison systems, and how such aid should be provided.

The Federal role in prison reform is limited, but varied. For example, one role of the Federal prison system has been to provide guidance and leadership to the States and to serve as a model for reform. Federal legislation such as the Federal Prisoner Rehabilitation Act of 1965 (P.L. 89-176: 18 U.S.C. 4082) has served as a model in certain areas such as work release, halfway house programs and emergency furloughs.

More recently the Federal Government has developed and issued standards for prisons for implementation in Federal facilities. While there is no intention to impose these standards on State and local governments, the Department of Justice intends to use them to evaluate grant applications and research proposals.

Federal financial assistance to improve prison facilities and programs was available through the Justice Department's Law Enforcement Assistance Administration (LEAA) from FY69 through FY80. Part E of LEAA's enabling legislation, title I of the Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3701 et seg.), authorized block and discretionary grants specifically for corrections activities, and some \$800 million was expended under this program. In addition, beak's general block and discretionary grant program funded numerous corrections-related activities. From FY80 through FY83 no Federal funds were authorized for state prison construction. In 1984 the Omnibus Reconciliation Act (F.L. 98-473) authorized \$25 million for each year from FY84 through FY88 for prison construction. These funds, limited to 20% of the estimated total cost of construction, may only be awarded to projects representing "a prototype of new and innovative methods and advanced design". These funds are to be administered by the Bureau of Justice Assistance and awarded with the concurrence of the Director of the National Institute of Corrections. The Administration's budget requests no funds for this program in FY 85, however.

The National Institute of Corrections (NIC) provides Federal information assistance to the corrections community. Initially created as an administrative unit within the Justice Department in the early 1970s, the NTC was established by statute in 1974 (P.L. 93-415; 88 Stat. 1139; 18 U.S.C. 4351 et seq.). The NIC is a separate agency within the Federal Bureau of Prisons that provides both direct services and grants in the following areas: 1) training, 2) technical assistance, 3) research and evaluation, and 4) policy and standards formulation and implementation. The NIC also serves as an information clearinghouse. States have peen assisted by the NIC in developing plans to comply with Federal court orders to improve conditions.

The Federal Government also may be involved in State corrections through the Civil Rights of Institutionalized Persons Act (P.L. 96-247;) which authorizes the Attorney General to institute civil suits on behalf of prison inmates who are being deprived of their Federal constitutional or statutory rights. This statute also requires the Attorney General to develop minimum standards for inmate grievance procedures, and to establish a mechanism under which State and local governments may be certified, on a voluntary basis, for adopting the standards. A final rule on the standards pursuant to the Act was issued on Oct. 1, 1981 (Federal Register, v. 46, Oct. 1, 1981: 48181).

RECOMMENDATIONS OF THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME-

Early in the Reagan Administration, Attorney General William French Smith appointed a Task Force on Violent Crime to recommend actions the Federal Government could take to combat violent crime. The Task Force report, issued Aug. 17, 1981, included several major recommendations concerning the future Federal role in prison reform.

The Task Force's most significant proposal called for a 4-year \$2 billion Federal assistance program to finance the construction of State prisons. In justifying this proposal, the group concluded that States are in a "crisis" situation due to prison overcrowding and that Federal assistance is appropriate and necessary. Recognizing resource limitations, the Task Force stated that the assistance could be used to make the best use of available space rather than actually expanding prison capacity. It recommended that the program be confined to the construction and renovation of State prisons rather than including local jails because of the greater needs of the former. It proposed that the Federal share of the cost of the project be limited to 75%.

The Task Force also suggested other areas for Federal initiatives. As an immediate step, it urged the Federal Government to make abandoned military bases available to State and local governments to house prisoners on an emergency basis. For the long range, it proposed that the Federal Property and Administrative Services Act be amended to permit Federal surplus property to be conveyed or leased at no cost to State and local governments for corrections purposes, and that requests for such property be given priority.

The Task Force noted that as many as 70 Federal educational assistance programs are potential sources of funds for vocational and educational training in prisons but that eligibility under existing legislation is vague. It recommended that efforts to fund prison programs with these resources be enhanced, and that, when necessary, related statutes be amended specifically to establish eligibility for corrections programs.

The Task Force pointed to the possibility of the development of regional prisons to be operated by the Federal Government, and private sector involvement in corrections management as areas for further study.

SUMMARY OF REAGAN ADMINISTRATION POLICY TOWARDS PRISON REFORM

The Reagan Administration has shown little interest in a Federal financial assistance program for state prison construction, apparently because of the high cost. As an alternative, the Administration advocates the transfer of Federal surplus property to States for use as correctional facilities, arguing that such facilities would be available immediately, and that the cost to the Government would be a fraction of the cost of new construction.

In 1981, the Justice Department announced the first such transfer of a Federal facility — the Watertown Air Force Station — leased to the State of New York for use as a 200-bed prison. Other transfers have followed: Opa Locka Coast Guard Station purchased by Florida in 1982; the purchase of Camp Atterbury Fish and Wildlife Area by Indiana in 1983; and the lease of McNeil Island to Washington State in 1984, to name a few.

In response to a recommendation of Chief Justice Burger, the Administration has opened a National Corrections Academy at Boulder, Colorado, under the auspices of the NIC to train State and local corrections personnel. The Bureau of Prisons is also sharing its training resources with State and local governments.

Congress is faced with several broad options regarding prison reform. One is to appropriate funds to implement the \$25 million construction assistance program authorized in P.L. 98-473. Supporters of this option point to the critical situation in U.S. prisons and to the fact that judges, in some cases, are not free to use imprisonment as a sentencing option to protect improvements, but that State and local governments cannot afford these changes without Federal aid. Opponents, including the Administration, object to the high costs of such assistance.

Another approach is to increase Federal assistance for program improvements and the development of alternatives to incarceration, not for capital improvements. Part of this rationale may be economical — compared proponents of rehabilitation program support requires less funding. Also, indicate that well-designed and well-administered programs do lead to reduced the difficulty of distributing and for capital improvement assistance also consider States with poor prison conditions could be rewarded while States that have attempted improvements could be penalized.

Perhaps the most innovative option facing Congress is the increased use of prisons constructed and/or administered by private corporations. It is community correctional facilities) are currently being administered by private firms. The primary contractors in this burgeoning field include the Corrections Corporation of America, Inc. (Nashville, Tennessee), RCA Service California). Other firms, such as Justice Systems, Inc. of Atlanta, specialize in jail administration.

The use of private corporations to administer prisons raises several questions. First, is the use of private corporations a more cost effective and treatment programs be reduced? Second, what is the liability of the Finally, what types of oversight mechanisms are required to ensure that the governments' needs are fully met?

LEGISLATION

H.R. 443 (Hall)

Requires study of the classification of the correctional officers' positions within the Bureau of Prisons to improve prisoner rehabilitation. Also places a moratorium on the downgrading of positions in the Bureau of Prisons. Introduced Jan. 3, 1985; referred to the Committees on the Judiciary and Post Office and Civil Service.

H.R. 365 (McCollum)

Eases restrictions on prison labor by permitting the transportation of prison-made goods and enhances job training and employment skills in Federal prisons. Introduced on Jan. 3, 1985; referred to the Committee on the

Amends the Internal Revenue Code to remove restrictions on depreciation allowance and investment credit for correctional facilities leased to State and local governments. Introduced Jan. 3, 1985; referred to the Committee on Finance.

S. 486 (Specter)

National Violent Crime Program Authorization Act. Authorizes \$125 million for construction and operation of Federal facilities, and \$175 million for State facilities, including detention facilities used for overflow. Introduced Feb. 21, 1985; referred to Judiciary Committee.

S. 669 (D'Amato)

Amends the Comprehensive Crime Control Act of 1984 (P.L. 98-473) to provide Federal Assistance to State and local governments for the construction of correctional facilities. Increases the funding from \$25 million to \$200 million per year for 3 years. Introduced Mar. 14, 1985; referred to Committee on the Judiciary.

HEARINGS

- U.S. Congress. House. Committee on the District of Columbia. Subcommittee on Judiciary and Education, Prison Overcrowding and Alternative Sentencing. Hearing, 98th Congress, 1st session, July 12, 1983. Washington, U.S. Govt. Print. Off., 1983. 76 p.
- U.S. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties and the Administration of Justice. Correctional Policy. Hearings, 96th Congress, 1st session. Feb 23 and 24, 1983. Washington, U.S. Govt. Print. Off., 1983. 567 p.
- ----Civil rights for institutionalized persons. Hearings, 95th Congress, 1st session, on H.R. 2439 and H.R. 5791. Apr. 29 . . . May 23, 1977. Washington, U.S. Govt. Print. Off., 1977. 900 p.
- ----Civil rights of institutionalized persons. Hearings, 96th Congress, 1st session, on H.R. 10. Feb. 14-15, 1979. Washington, U.S. Govt. Print. Off., 1979. 418 p.
- ----Prison construction plans and policy. Hearings, 94th Congress, 1st session. July 28 and 30, 1975. Washington, U.S. Govt. Print. Off., 1975. 473 p.
- ----Prison inmates in medical research. Hearings, 94th Congress, 1st session, on H.R. 3603. Sept. 29 and Oct. 1, 1975. Washington, U.S. Govt. Print. Off., 1975. 612 p.
- U.S. Congress. Senate. Committee on Finance.
 Subcommittee on Taxation and Dept Management.
 Tax treatment of property leased by a tax exempt entity to certain correctional facilities.

- Hearing 98th Congress, 2d session, on S. 2933. Sept. 14, 1984. Washington, U.S. Govt. Print. Off., 1984. 51 p.
- U.S. Congress. Senate. Committee on the Judiciary.
 Subcommittee on the Constitution. Civil rights of
 institutionalized persons. Hearings, 95th Congress, 1st
 session, on S. 1393. June 17 . . . July 1, 1977.
 Washington, U.S. Govt. Print. Off., 1977. 1138 p.
- ----Civil rights of the institutionalized. Hearings, 96th Congress, 1st session, on S. 10. Washington, U.S. Govt. Print. Off., 1979. 502 P.
- ----Subcommittee on Criminal Law. The Criminal Justice Construction Reform Act. Hearings, 97th Congress, 1st session, on S. 186, May 18, June 8, and Nov. 19, 1981. Washington, U.S. Govt. Print. Off., 1981. 501 p.
- U.S. Congress, Senate. Committee on the Judiciary.
 Subcommittee on Penitentiaries and Corrections. The role
 of prisons in society. Hearings, 95th Congress, 1st
 session. Oct. 5-6, 1977. Washington, U.S. Govt. Print.
 Off., 1978. 131 p.

REPORTS AND CONGRESSIONAL DOCUMENTS

- U.S. Congress. House. Conference Committee, 1980. Civil Rights of Institutionalized Persons Act; conference report to accompany H.R. 10. Washington, U.S. Govt. Print. Off. 1980. 18 p. (96th Congress, 2d session. House. Report no. 96-897)
- U.S. Congress. House. Committee on the Judiciary. Civil rights of institutionalized persons; report together with dissenting views to accompany H.R. 9400, including the CBO cost estimate. Washington, U.S. Govt. Print. Off., 1978. 35 p. (95th Congress, 2d session. House. Report no. 95-1058)
- ----Civil rights of institutionalized persons; report together with supplemental and dissenting views to accompany H.R. 10. Washington, U.S. Govt. Print. Off., 1979. 32 p. (96th Congress, 1st session. House. Report no. 96-80)
- U.S. Congress. Senate. Committee on the Judiciary. Civil rights of institutionalized persons; report on S. 1393, together with minority views. Washington, U.S. Govt. Print. Off., 1978. 38 p. (95th Congress, 2d session. Senate. Report no. 95-1056)
- ----Civil rights of the institutionalized; report on S. 10, together with minority and additional views. Washington, U.S. Govt. Print. Off., 1979. 68 p. (96th Congress, 1st session, Senate. Report no. 96-416)

ADDITIONAL REFERENCE SOURCES

- Hagstrom, Jerry. Crowded prisons pose a budget problem for this law and order administration. National journal, v. 13, no. 41, Oct. 10, 1981: 1821-1823.
- Krajick, Kevin, The boom resumes. Corrections magazine, v. VII, April 1981: 16-20.
- ---- Prisons for profit: the private alternative. State legislatures, v. 10, April 1984: 9-14.
- Knapp, Elaine S. American's prisons: no vacancy. State government news, v. 24, July 1981: 4-7.
- Knoll, Michael A. Prisons for profit. The progressive, v. 48, Sept. 1984: 18-23.
- ---- Time to build? the realities of prison construction.

 New York, Edna McConnell Clark Foundation, 1984. 64 p.
- U.S. Dept. of Justice. Attorney General's Task Force on Violent Crime: final report, Aug. 17, 1981. Washington, U.S. Govt. Print. Off., 1981. 94 p.
- ----Prisoners in 1983. [Washington] 1984. 11 p.
- ---- Prisoners in 1984 [Washington] 1985. 9 p.
- U.S. Department of Justice. National Institute of Corrections.
 Private Sector Involvement in Prison Services and Operations.
 Washington, U.S. Govt. Print. Off., 1984. 25 p. plus appendices.
- ----Corrections and the Private Sector. Washington, U.S. Govt. Print. Off., 1984. 7 p.
- ---- The Privatization of Corrections. Washington, U.S. Govt. Print. Off., 1985. 92 p. plus appendices.
- U.S. General Accounting Office. Federal, District of Columbia, and States future prison and correctional institution populations and capacities; report to the Honorable Arlen Specter, United States Senate [by] the Comptroller General of the U.S. [Washington] 1984. 90 p.
- ---- More than money is needed to solve problems faced by State and local corrections agencies; study by the staff of the U.S. General Accounting Office. [Washington] 1981. 40 p.
- ----Prison mental health care can be improved by better management and more effective Federal aid; report to the Congress by the Comptroller General of the U.S. [Washington] 1979. 98 p.
- ----The Department of Justice can do more to help improve

- conditions at State and local correctional facilities; report to the Congress by the Comptroller General of the United States. [Washington] 1980. 52 p.
- ----What can be done about overcrowding in long-term Federal correctional facilities; study by the staff of the U.S. General Accounting Office. [Washington] 1978. 31 p.
- U.S. Library of Congress. Congressional Research Service. Prisons: selected references, 1978-1981 [by] Marsha Cerny. May 28, 1981. 4 p.

END