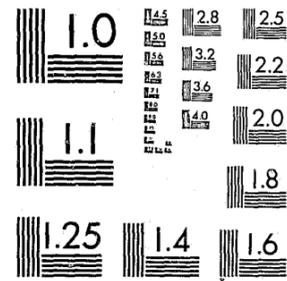


National Criminal Justice Reference Service



This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



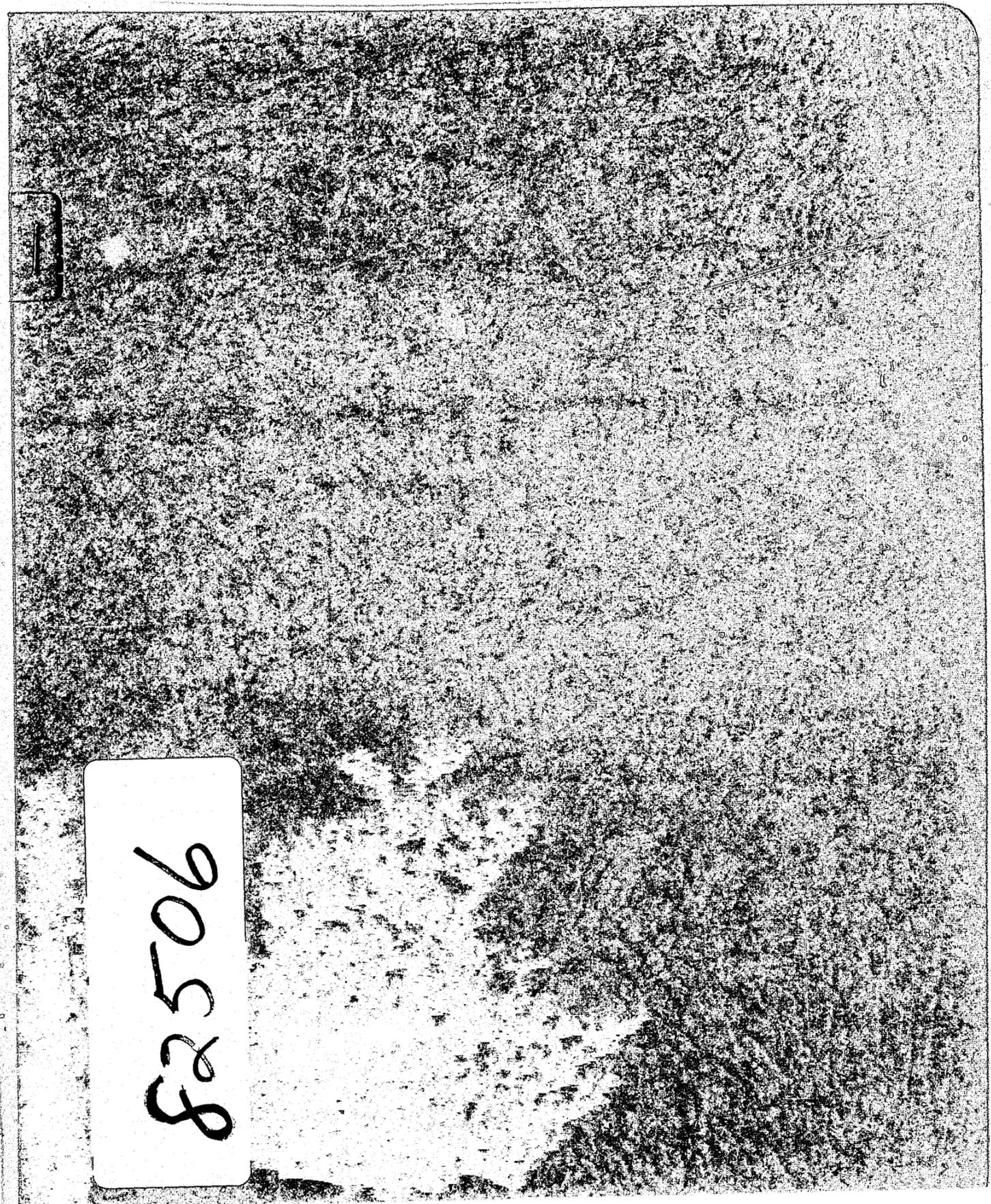
MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

3/8/83



82506

CRS
7-19-82

U.S. Department of Justice 82506
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating 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

National Institute of
Corrections

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

TOO MANY PEOPLE IN TOO LITTLE SPACE

Prepared for:

The National Governor's Association

By:

The National Institute of Corrections

February 21, 1982

NCJRS

MAR 22 1982

ACQUISITIONS

82506

Statement of the Problem

Prison overcrowding sometimes is defined superficially as "too many people in too little space." However, even this statement of the problem masks an underlying complexity.

How much space should be allotted per person or per bed? Based on practical experience, the American Correctional Association recommends sixty square feet and, under certain circumstances, eighty. A recent Supreme Court decision (Rhodes v. Chapman), however, advises that the "totality of conditions" must be considered to determine what is an appropriate square footage. Among these conditions are amount of time outside the cell and the extent to which prisoners can move freely from housing to other areas.

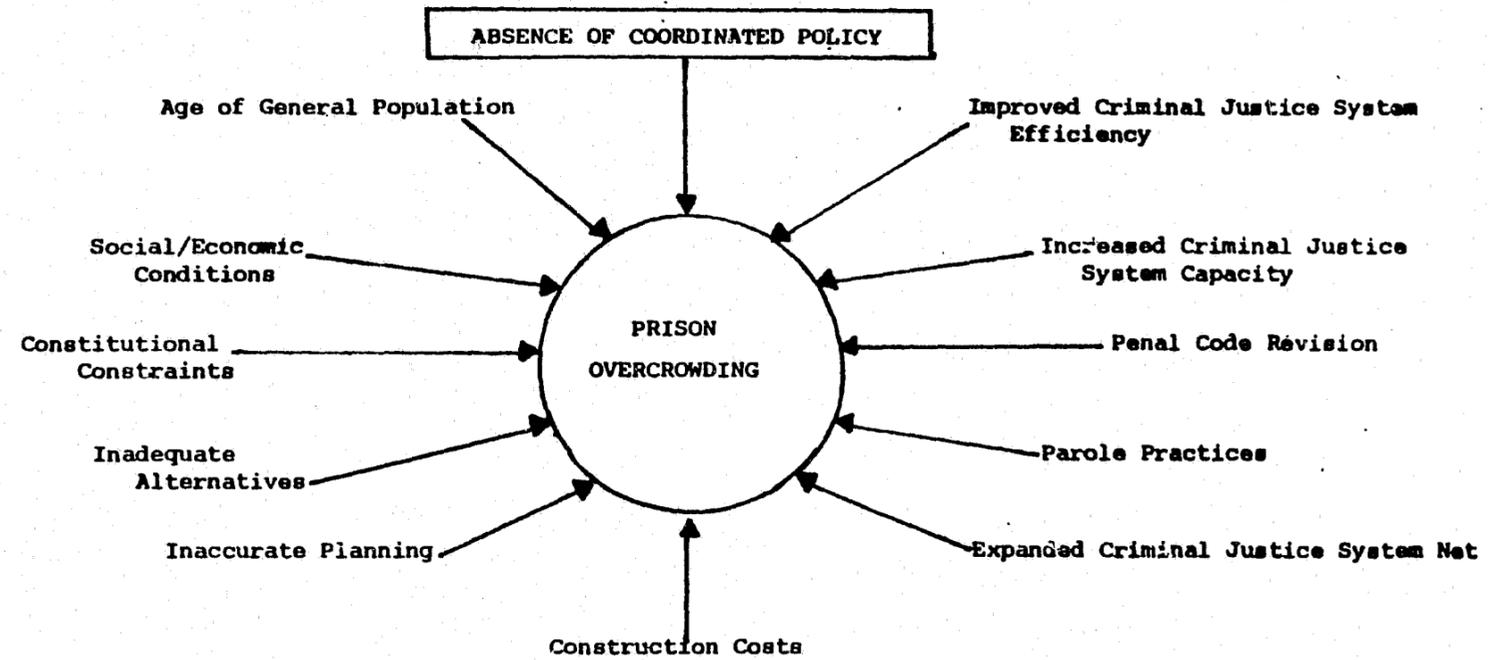
What is the quality of the space? Beyond simple numbers, there is the question of environmental conditions: lighting, ventilation, sanitation and heat. A single 40 watt bulb in seventy square feet is insufficient for reading; temperature extremes, also, are to be avoided. In sum, converted basements, tents, trailers, corridors, and classrooms could easily meet square footage requirements, yet fail to provide environmentally sound conditions.

How many prisoners can staff adequately supervise? The layout of a housing unit can create a host of safety and security problems, apart from environmental conditions or square footage. A single exit provides no margin of error in the event of a fire. One person cannot adequately supervise a 100-bed dormitory when line-of-sight is obstructed by pillars, double bunks or irregular walls. Nor can one officer patrol two cell blocks as is frequently done on the morning shift. Frequent movement of individuals or groups in and out of housing units makes supervision more difficult. And, finally, if there are insufficient programs, maintenance jobs or industrial work, idle prisoners in housing units will likely result in more assaults and other breaches of security.

The overcrowding problem is more than simply too many people for a prison's physical capacity. There are, also, the questions of how many people can be safely supervised; how can idleness be minimized; how safe are conditions generally; and what is the quality of the space. If the prison overcrowding issue is not complicated enough by these considerations, someone interested in solutions can begin to examine the causes of overcrowding.

Prison overcrowding is not attributable to a single, easily identifiable cause; rather it is a multitude of causes and problems which beleaguer staff, arouse a cost conscious public, distract our leaders by seemingly endless crises, place prisoners in unsafe conditions and force the judiciary to intervene in Executive Branch functions. Figure 1 shows some of the causes which are discussed in the following sections.

Figure 1
Factors Contributing to Prison Overcrowding



Social and Economic Causes

Some of the causes of prison overcrowding are rooted in more pervasive social and economic change over which no individual or group has any control. For example, the dissolution of neighborhoods and a sense of community creates strangers whose victimization is uncontrolled by informal social pressures. A shortage of legitimate income sources for youth and others increases the attractiveness of purse snatching, robbery, shoplifting and other means to satisfy a demand for designer jeans as well as life's "necessities." A fertile postwar population provided in the 1970s and 1980s an abundance of people in high crime age groups. Time alone will mitigate some of these causes; others will ebb and flow as economic conditions fluctuate; and some may even be a permanent condition of post-industrial, urban society which is immune to any public policy intervention.

Public Policy Causes

In contrast to these broad social and economic forces, prison overcrowding is an unintended consequence of public policy during the 1970s. This decade saw increased resources for police, prosecution and courts, which expanded their capacity to detect, apprehend and adjudicate; but expenditures per prisoner declined in real terms, thereby restricting prison and non-incarceration capacity.¹ Technological developments and training in crime analysis techniques, case screening, police dispatching, prosecutorial specialization and other techniques increased the flow of prisoners to a slowly expanding corrections system. Between 1973 and 1978 victimization rates increased by 3.6 and 6.2 percent for crimes of violence and theft, respectively; state prison populations increased by 55 percent. Underfunded or poorly conceived pre- and post-adjudication alternatives probably increased the number of persons supervised by criminal justice agencies² and, thereby, the pool of potential incarcerated. Information systems improved prosecutor's and judges' ability to track cases and manage caseloads. These and other improvements in capacity and efficiency were a result of explicit policy decisions which increased the capacity and efficiency of all criminal justice agencies, except corrections.

Sentencing Philosophy

Prison overcrowding is the result of shifts in social philosophy which began to question the equity of indeterminate sentencing and the efficacy of traditional correctional practices. The presumed deterrent effect of certain punishment³ joined with the apparent disparity of sentence severity to energize a movement for code revision. Once the momentum for reform was initiated across the spectrum of political views, it provided the opportunity to respond to a concerned public by increasing sentence minima, expanding the list of prohibited behaviors and requiring prison terms for more offenses. Seldom did these revisions incorporate other sanctioning options, such as restitution, intermittent confinement, intensive supervision, etc.; never did they reduce the number of behaviors considered criminal. Rather than trying to structure administrative discretion, code revisions usually eliminated the most immediate safety valve for prison overcrowding -- parole; and sometimes substituted a cumbersome administrative procedure requiring prosecutor's

and judges' concurrence but, then, only in "emergency" situations. What began as a legitimate philosophical concern for efficiency and equity helped to put "too many people in too little space."

Corrections Effectiveness

Finally, there were subtle causes of prison overcrowding which can never be documented conclusively but which may be no less important. From the mid-seventies onward, there was a growing skepticism about the effectiveness of any intervention in altering criminal behavior.⁴ Vocational training, counseling, education, community centers and a host of other approaches were evaluated and found wanting. These findings, although very tentative, probably affected the willingness of prosecutors, judges, parole boards, and even corrections professionals to advocate and use alternatives, independently of their opposition on public safety grounds. Alternatives themselves may have contributed to or had no effect on prison population levels, either because they simply added new persons under criminal justice supervision, or because they both expanded the net and increased the likelihood of being caught in a new criminal act.

Summary

By the 1980s, corrections did not have a technology for changing behavior (whether prison or otherwise) which was accepted either within the field itself, by other criminal justice professionals or the public in general. Yet, sentencing revisions, parole abolition, improved efficiency and expanded capacity by other criminal justice professionals or the public in general. Yet, sentencing revisions, parole abolition, improved efficiency and expanded capacity in other criminal justice agencies, a postwar baby boom and undoubtedly other socio-economic forces had coalesced to put "too many people in too little space." Not only is this space too little by contemporary correctional standards but it also is substandard in terms of staff safety, prisoner security and the capacity to minimize idleness.

Prison populations increased by over 20,000 in the first six months of 1981.⁵ This increase of over six percent nationally masked even more startling increases of 12 percent in New Jersey, 13 percent in Indiana, 16 percent in Alabama and 11 percent in Washington. Now, however, the construction solution to prison overcrowding is severely constrained by escalating costs of \$50,000 and upwards per bed, insufficient state revenues and increased state responsibilities. The more common solution of simply putting more prisoners in existing institutions (double bunking, double ceiling, converting space) exposes the state to legal challenges of constitutionality.

The earlier discussion of probable causes was not intended to imply hopelessness but, rather, to underscore that neither a stroke of the pen to enact new laws, a bountiful appropriation, nor a new commissioner by themselves will make prison overcrowding go away. However, all the studies, analyses and technical solutions will be vacuous without a vision of what the state's policy should be, without the courage to tackle the multiplicity of overcrowding problems and without the tenacity to shepherd long term solutions. Do we need more prisons? No! Yes! Maybe! The

processes leading to and the conditions surrounding overcrowding are as varied as the 50 states, as the many courts which send prisoners and as the officers who arrest. An appropriate solution for one state may be politically, economically and legally infeasible in another.

Solutions to Prison Overcrowding

Even though specific solutions are tempered by the context, there are three, generic approaches to the problem:

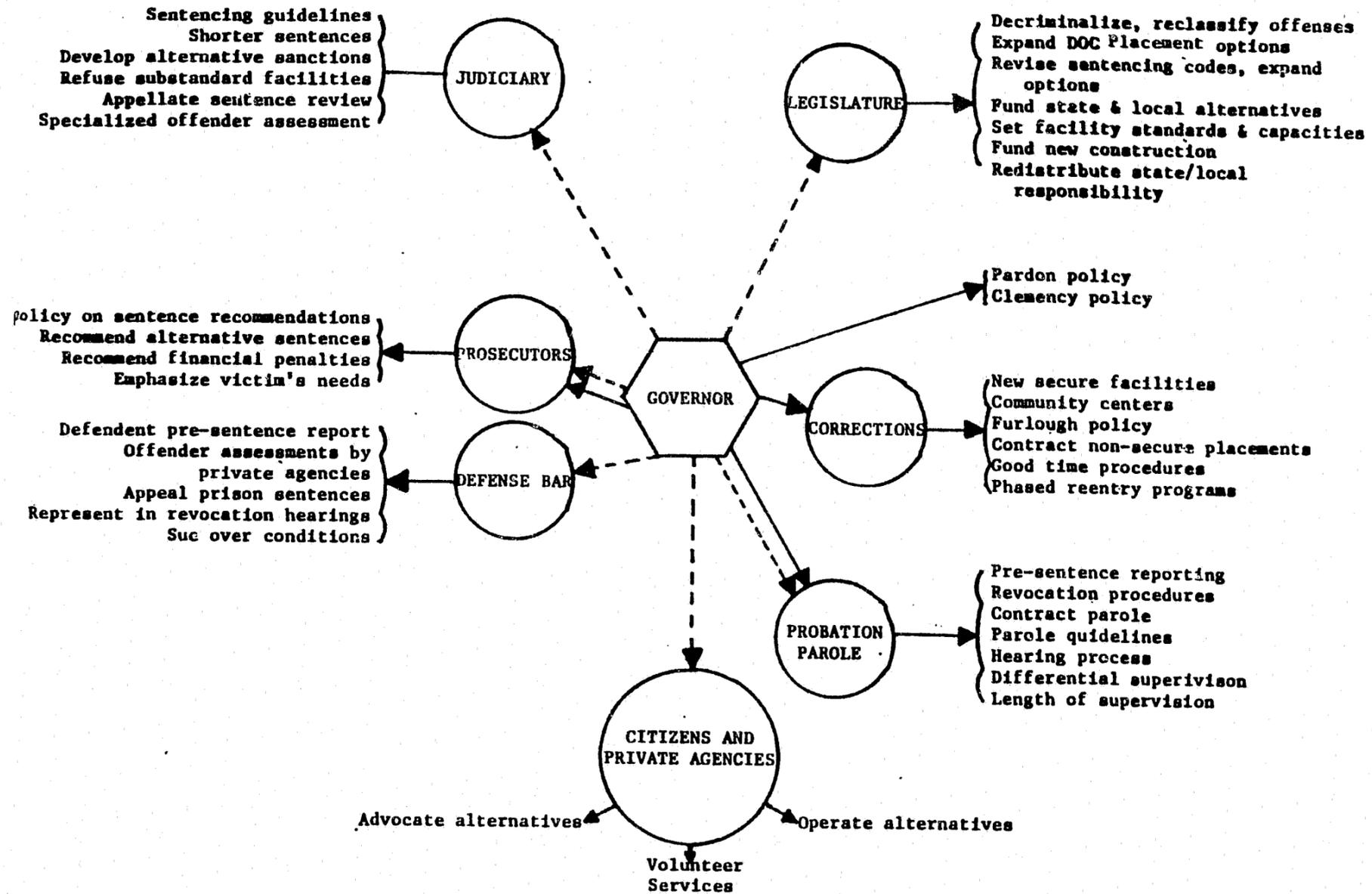
1. affect the number who go to prison;
2. affect the length of time they stay including release mechanisms; and
3. affect the capacity of the corrections system.

Each of these three variables act independently and interrelatedly to determine a state's capacity needs. Before discussing specifics, it is important to note two effects of trying to solve overcrowding problems. Any of these approaches will impact on individuals and groups who have an interest in the status quo. That is, there is no solution which permits everyone to maximize their objectives; consequently, an overcrowding policy is inextricably a part of the political environment in each state. A bond referendum to finance construction will arouse both groups concerned with the state's fiscal situation and those opposed to expanding prison capacity. A policy to reduce the number going to prison will engender opposition from citizens concerned with crime and judges who understandably do not want their discretion limited. Parole boards will likely object to commutation policies to reduce time served which attempt to circumvent normal release procedures. Given these pervasive effects, governors, the legislature, judiciary, prosecutors, defense bar, probation and parole, corrections departments, private agencies and individuals are the principal actors necessary to establish and implement policies to reduce overcrowding.

A second effect will be to increase the complexity of managing criminal justice agencies responsible for implementing changes. More prisons, for example, means higher staffing levels, increased training needs and probably more organizational levels. More alternatives to prison means more private agency contracts, better screening, appellate sentence reviews and expanded supervision in the community. In sum, organizational structures, administrative processes and interagency relationships will become more varied and more complex as solutions to prison overcrowding are implemented.

Figure 2 graphically summarizes the relationships between governors, the principal actors in developing a policy, and some specific actions which can be taken to reduce prison overcrowding. Solid lines indicate where key groups have authority to act independently; dotted lines, that solutions must be undertaken cooperatively; solid and dotted lines together are meant to reflect organizational variations among states.

FJ e 2
Options for Reduc. Prison Overcrowding



A fuller explanation of each option is provided in M. Kay Harris and Becky Siebens, Reducing Prison Overcrowding: An Overview of Options (Washington, DC: National Council on Crime and Delinquency, 1981) and detailed descriptions can be obtained from the National Institute of Corrections.

The forty options in Figure 2 encompass legal, policy, program and procedural changes which may be taken by the various actors to reduce prison overcrowding. Although each option has been tried for other reasons by some jurisdictions, they have never been undertaken in concert as a means of addressing overcrowding problems.

In addition to reducing sentence lengths, as done in North Carolina in 1981, legislatures can authorize more sanctioning options, such as community placement at sentencing (Colorado), longer work release periods (Iowa) and expanded contracting with private agencies (Connecticut). Oklahoma, Michigan and Connecticut have created mechanisms for releasing prisoners when institutional capacity is exceeded.

Prosecutors can affect the number of persons going to prison by supporting restitution payments to victims which require offenders to work. Private agencies have been retained by defense counsel to assess offender's needs and prepare presentence reports for judges. These frequently result in alternative sentences of community service, restitution, intensive supervision, etc.

The judiciary, of course, plays a central role in prison overcrowding within legislatively mandated constraints. Minnesota's Sentencing Guidelines Commission explicitly considered prison capacity when preparing its recommendations to judges for sentence lengths and whether incarceration or alternatives were warranted. Judges can require the presentence recommendations prepared by prosecutors, defense and probation explicitly address the appropriateness of non-prison sanctions. Some courts use a technique — sometimes called "shock probation" — which gives a short incarceration period followed by supervision in the community (Ohio).

The parole policy and process sometimes contributes to prison overcrowding. New Jersey recently enacted a law which presumes parole at the first eligibility date, unless the Board can show reasons for continuing incarceration. In one state, parole hearings are held only every six months, so inmates can conceivably spend an additional 179 days in prison! In contrast, some have accelerated the parole hearing process to relieve overcrowding or created a special review process after one year of incarceration for a non-violent offense (Mississippi). Parole guidelines, which formally establish parole release dates at time of entry, have helped not only in projecting the requirements but also in structuring discretion (Oregon).

Probation agencies have increased judges', prosecutors', victims' and citizens' acceptance of community alternatives by closer supervision of serious cases (Wisconsin). They, also, have begun to monitor community service, restitution and sanctions other than probation as a way of ensuring penalties are carried out.

A corrections department, in many cases, can do the least about overcrowding, since it does not enact penal codes, prescribe sentence conditions, or determine

release dates. Most have been surprisingly inventive in dealing with overcrowding. Departments have expanded use of community centers to free up prison beds (Ohio, Oklahoma, Oregon); increased administrative good time (Illinois); used minimum security facilities during release transition (North Carolina); and expanded opportunities to earn work credit days against sentences (South Carolina).

Conclusion

The above discussion highlights only some of the many options for reducing prison overcrowding which are available to governors, legislators, judges, prosecutors, probation, parole and corrections departments. Extensive technical material and operational experience are available from other sources for developing detailed proposals and implementation plans. What has been lacking are coordinated, statewide efforts to bring these options to bear on a single issue -- prison overcrowding. However, there are forces at work which will make such efforts a necessity, not a luxury to be reserved until slack resources are available. Burgeoning prison populations, runaway construction costs, increased competition for state revenues and other forces require that something be done to change:

1. the number who go to prison;
2. the length of time they stay in prison; and
3. the number who are released from prison.

Otherwise, states will continue to experience the lawsuits, prison disturbances, staff hazards and other negative effects which come from having "too many people in too little space," the consequence of public correctional policies that do not plan for change, but irrationally react to it.

Footnotes

1. Gail S. Funke, The Economics of Corrections: An Exposition (Ph.D. Dissertation, City University of New York, 1981) p. 83.
2. Barry A. Krisberg and James F. Austin, "The Unmet Promise of Alternatives to Incarceration" (unpublished manuscript, 1980).
3. Alfred Blumstein, Jacqueline Cohen and Daniel Nagin, eds., Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (Washington, DC: National Academy of Sciences, 1978), passim.
4. Douglas Lipton, Robert Martinson and Judith Wilks, The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (New York: Praeger, 1975), passim.
5. U.S. Department of Justice, Bureau of Justice Statistics, "Prisoners at Midyear 1981" (Washington, DC: 1981), p. 2.
6. M. Kay Harris and Becky Siebens, Reducing Prison Overcrowding: An Overview of Options (Washington, DC: National Council on Crime and Delinquency, 1981), passim.
7. Kay Knapp, Minnesota Sentencing Guidelines Population Project Program User's Manual (St. Paul, MN: Minnesota Sentencing Guidelines Commission, 1981) p. 1.

END