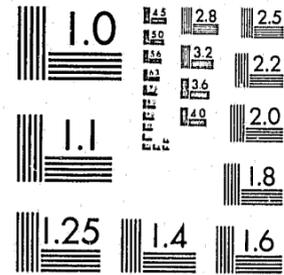


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# The Correctional Crisis: Prison Populations and Public Policy

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# The Correctional Crisis: Prison Populations and Public Policy

Stephen D. Gottfredson, Ph.D.  
Ralph B. Taylor, Ph.D.

U.S. Department of Justice  
National Institute of Justice 92423

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## Executive Summary

Crowding in prisons and jails is a national problem of epidemic proportion. Despite the fact that the majority of states in this country are now under court order to alleviate the problem, few if any states have been able to do so. Focusing on the State of Maryland, this paper reports on a series of studies designed to understand why correctional reform efforts vigorously undertaken in the late 1970's failed by the early 1980's. Based primarily on large-scale surveys of correctional policymakers, the general public, and the criminal justice system in the state, the study focused on goals and philosophies for correctional systems, attitudes toward reform strategies and their efficacy, and causes underlying the prison crowding problem.

Examination of the dimensions of the "correctional crisis" demonstrated that although crowding is the most visible and salient of the problems facing the corrections system, many of the factors which people feel are causing the crisis are issues the corrections subsystem *alone* cannot resolve. Little in the way of effective change is likely to occur if we continue to view prison crowding as a "crisis in corrections." Prison crowding is a crisis in the entire criminal justice system, and the active, aggressive, and coordinated efforts of the entire system are needed for its resolution.

Conflicts over philosophies of and goals for corrections are often cited as a principal cause of the lack of coordination commonly observed in criminal justice systems. In the course of this study, we observed this to be partly true, but partly false as well. Conflicts over goals and philosophies do clearly exist; and these conflicts are reflected in differing preferred reform strategies. We also observed, however, that the reform strategies pursued in Maryland in the late 1970's—and from which the system has retreated in the 1980's—had the support not only of the correctional systems' policymakers, but of the general public and of the majority of persons working in the criminal justice system as well. Failure to perceive this support was probably responsible, in part, for the abandonment of the reform efforts.

In addition to a serious misperception of public and system-wide support for "liberal" correctional reform, Maryland's policymakers were confronted with a criminal justice system in which coalition formation along traditional, functionally defined system-roles was difficult. Despite some homogeneity of opinion based on roles in the criminal justice system, heterogeneity of opinion is the rule with one or two exceptions. The attitudes of police officers and prosecutors are much more homogeneous than are those of other actors. Accordingly, they may have been able to form an effective coalition to oppose change strategies.

Since support for those strategies, although expressed by a majority, was "scattered" throughout the rest of the criminal justice system, the development of effective support coalitions was probably difficult. This too was probably partly responsible for the state's inability to achieve the desired goal.

Finally, we observed that although the correctional policymakers clearly distinguished between short-term strategies designed to meet the terms of court-ordered population reductions and long-term strategies designed to obviate the problem of prison crowding—the members of the criminal justice system

itself were unable to do so. It may well be the case that some of the opposition to proposed long-range reform strategies represented a backlash due to the perceived failure of short-term strategies.

How can these problems be overcome? First, it is clear that those concerned with correctional reform must have a more sophisticated understanding of the general public than they appear to have had in Maryland. Contrary to popularly accepted opinion, we found the general public to be very supportive of precisely the change strategies which the state was unable to implement. The question of "what the public wants us to do" is paramount—and without good information, based probably on a periodic and rather sophisticated assessment, we are likely to remain in the grip of "pluralistic ignorance." Sample surveys of the general public are now routinely used in the conduct of political campaigns, by newspapers and other of the media, as well as by social scientists. We see no reasons why corrections administrators and policymakers should not also benefit from accurate knowledge of the public will.

Likewise, it is important that correctional policymakers have a good assessment of the goals and preferred strategies of others working in the criminal justice system. Our policymakers underestimated the amount of support which existed for their reform strategies, and they probably found it difficult to form effective coalitions since that support was divided among persons occupying a wide variety of criminal justice system roles. Not only would the simple strategy of asking these people what their opinions are serve to overcome the "lack of information" problem, but it would probably help in the development of a system-wide attack on the problem of prison crowding.

The final section of this report outlines a short-term crowding relief strategy which may help reduce prison populations without endangering the public safety. The plan which we propose has three features: 1) it relies upon and stresses cooperation among the judiciary, corrections, and paroling agencies; 2) it stresses rationality, experience, and empirical research; and 3) it focuses on correctional goals and the protection of public safety. Further, the strategy may be systematically monitored and evaluated, so that it may be modified as necessary to meet the joint requirements of public safety and of court-ordered population reductions.

In concept, the plan simply requires the assessment, on an inmate-by-inmate basis, of (a) the probable (or actual) intent of the incarcerative sanction, and (b) the statistical likelihood of recidivism upon release. If risk and intent are considered simultaneously, it is possible to build and monitor a flexible early release decisionmaking matrix which, in conjunction with sanctioning alternatives, could provide a relief valve while also serving to maintain the public safety.

# The Correctional Crisis: Prison Populations and Public Policy \*

## 1. Introduction

### *A Crisis in Corrections*

The national criminal justice community increasingly is concerned with what has been called a "crisis in corrections." For many, the "crisis" is synonymous with overcrowding in prisons and jails.<sup>1</sup> Others insist that this equation is too simple, and stress that the "crisis" involves confusion and disagreement over the objectives and effectiveness of correctional treatment as well as crowding.<sup>2</sup>

That crowding of correctional institutions is a national problem of major importance cannot be disputed. Further, prison populations are increasing,<sup>3</sup> although there is a good deal of fluctuation in yearly<sup>4</sup> and state-by-state<sup>5</sup> incarceration rates. Projections of future prison population sizes have varied, as have procedures for developing these projections.<sup>6</sup> The problem of predicting prison population sizes is a difficult one both practically and methodologically, and it is the unfortunate case that current prison populations exceed both capacity and projections in the majority of states in this country. Finally, in addition to severe crowding in existing prison facilities, the age and physical condition of those facilities, and limitations of staff and other resources amply attest to a national problem of epidemic proportion; and little relief appears to be in sight.<sup>§</sup>

As noted above, some feel that to limit discussion of a correctional "crisis" to crowding alone is simplistic. In addition to rising inmate populations, the past decade has seen rising concern over the objectives of our correctional systems as well. At issue here are the very foundations of correctional treatment; and the relative merits of rehabilitation, deterrence, punishment, and incapacitation are now under reconsideration in the criminal justice community.

In part, concern over goals and objectives arises from debate over the effectiveness of correctional treatment. Although the problem of assessing the effectiveness of correctional treatment is difficult indeed, and major debates concerning this issue are intensifying, many have not found the available evidence encouraging.<sup>7</sup> Thus, concern over the objectives of incarceration, and success in meeting those objectives, lends a second dimension to the "crisis in corrections."

Recently, a third and immediate dimension to the crisis has come to the fore: In July of 1977, 29 states and territories were either under court order concerning the totality of conditions of confinement or for prison crowding, or were involved in litigation likely to result in court orders. By February of 1980, this figure had risen to 32 states and territories. By the end of 1981, 40 states and territories were either under court order or

\* This report is a summary of a much larger document (under the same title) available from the National Criminal Justice Reference Service, P.O. Box 6000, Rockville, Md., 20850. Readers interested in details of the study are urged to review the larger document.

§ Despite the magnitude of the prison crowding problem, few researchers have focused on its consequences. Megargee has reported an increase in the incidence of violence with increasing density within the institution—that is, as space per person decreases, the frequency of violent incidents increases.<sup>7</sup> Paulus *et al.* report increases in illness complaints with increasing density, and report further that increasing the number of persons per cell or cubicle appears to be more stressful than is simple density.<sup>8</sup> Further, Paulus *et al.* report a concomitant increase in death rates as prison population levels exceed capacity.

were involved in litigation—and in only four of these states was the issue of crowding not central to the suit.<sup>10</sup> Court decisions have mandated changes in correctional conditions and procedures ranging in topic from the alleviation of crowding to the modification of inmate classification procedures.<sup>11</sup> At present then, correctional administrators in the majority of states are faced with the prospect of developing immediate solutions to the "crisis."

### *Policy Options*

A limited number of policy options are available to those charged with the resolution of the crisis in corrections, and these options are subject to a number of constraints. Although rarely recognized as such, issues of moral and legal philosophy provide the most obvious constraint on policy options. Indeed, these constraints are embodied in the Constitution of the United States, which has provided the framework within which correctional administrators must operate.

More frequently recognized as constraints on policy options are issues such as economic resources, objective parameters of the criminal justice system, and the political milieu within which correctional systems and their administrators must operate. These latter constraints functionally define the correctional policymaking arena.

Complex problems are likely to require complex solutions; and proposals for the alleviation of prison crowding have varied widely. Not surprisingly, different proposals have appeared to reflect different philosophies with respect to the goals of corrections.

Some jurisdictions have responded to the problem of crowding in an apparently straightforward way: They have built new and larger institutions. This is an expensive and time-consuming alternative, and one which has not often worked. Those jurisdictions which have recently attempted this option have

found capacity reached or exceeded within a very short time after construction was completed. It is not our intention here to enter the "capacity/demand" debate. We merely point out that prison construction has not, to our knowledge, resolved the prison crowding problem in any jurisdiction. Although construction may help to alleviate the problem of prison crowding, it appears unlikely to fully resolve it. It may well be the case that massive programs of prison construction are neither economically nor politically feasible. Further, for some, such programs are seen as both morally repugnant and potentially dangerous.<sup>12</sup>

Alternative suggestions have of course been made. For example, several reports have suggested the desirability of expanding diversion programs,<sup>13</sup> particularly with respect to the diversion of juvenile status offenders from detention.<sup>14</sup> Increased reliance on and use of parole and/or probation services has also been proposed as a partial solution.<sup>15</sup> Further, suggestions for changes in release, sentencing, and juvenile processing policies have been made.<sup>16</sup> Some proposals have in effect turned the problem back to the courts, with calls to reduce the detention population, or with suggestions to restrict the powers of the courts to impose imprisonment.<sup>17</sup>

One recently popular proposal suggests an increased reliance on "community-based" corrections. To be sure, the potential power of this proposed solution lies partly in its generality; a myriad of programs could fall under its rubric, ranging from increased use of parole or probation to sentencing to community service on one's own recognizance.

How do correctional policymakers choose from among these options? What are the constraints on their selections? Problems of prison crowding, confusion over correctional goals, and court interventions are at least a decade old; and so too are many of the reform proposals mentioned above. Why, then, does the problem remain? Indeed, why is it now greater than at any time in our history?

## 2. Maryland: A Case Study in Crisis

In mid-1979, we began an intensive study of correctional policy in Maryland. This report was completed almost three years later and the study could well and profitably continue—for the story of Maryland's attempts to respond to its correctional crisis is far from over. Indeed, Maryland's prisons and jails are as seriously crowded now as ever before. Major court orders remain in effect, and despite a recent and relatively ambitious program of prison construction, the crisis is likely to remain for the foreseeable future. In essence, what began as an attempt to provide the criminal justice community with an illustration of correctional reform ends as a documentation of failure in reform.

Simple documentation, either of success or failure, is probably of little value. Of considerably more value are insights into the mechanisms and causes of success or failure—for we can then learn from either. It is these which we attempt to provide in the pages that follow.

### *Corrections in Court*

Why study Maryland's correctional system? The first answer is that prison suits brought in Maryland are exemplary of those throughout the country. Although no two court suits or resulting actions are identical, many are similar, and confront corrections administrators with similar problems.

Litigation concerning prison and jail crowding has primarily (although not exclusively) concerned rights guaranteed by the Eighth Amendment to the Constitution of the United States. Simple in language and in concept, the Amendment provides that each of us—prison inmates included<sup>18</sup>—has the absolute right to freedom from cruel and unusual punishments. Bronstein suggests that three rather broad and vague tests appear to provide contemporary guidelines for the interpretation of the Amendment: (a) whether the punishment shocks the general conscience of a civilized society; (b) whether the punishment is unnecessarily cruel; and (c) whether the punishment goes beyond legitimate penal aims.<sup>19</sup> Under application of these guidelines, federal and state courts have found specific practices (e.g., physical abuse, crowding), the totality of conditions of confinement, and even entire state prison systems to be in violation of the Eighth Amendment.<sup>20</sup>

In Maryland, litigation on behalf of inmates has been brought by the Baltimore Legal Aid Bureau, the American

Civil Liberties Union, and others against the State correctional system, the Baltimore City Jail, and various county jails throughout the state. In 1978 alone, 310 suits were filed against correctional officials—most of them for crowding. The volume of litigation is such that a special Correctional Section was added to the Attorney General's office to handle these matters. The Maryland Penitentiary, the Reception, Diagnostic, and Classification Center, the House of Correction, the Maryland Correctional Institute, the Maryland Correctional Training Center, and the Maryland Correctional Institute at Hagerstown have all been accused of having conditions so crowded as to constitute a violation of the Eighth Amendment prohibition against cruel and unusual punishment, and federal courts have found on behalf of the inmates in most of these suits.<sup>21</sup> New facilities have been brought into the cases as parts of proposed and partial remedies to the problems of the state system. City and County jails have also been involved in litigation over crowding, and reduction orders in these institutions have exacerbated the state's problem (since state inmates have been routinely housed in local facilities).<sup>22</sup>

In most important respects, court suits brought in Maryland and which have involved Eighth Amendment issues are very similar to those which have been brought throughout the country; and the most recent rulings involving Maryland prisons have relied heavily on recent Supreme Court decisions.<sup>23</sup>

### *Prison Crowding as a National Problem: Maryland in Perspective*

Almost three-fourths of the states in this country are now either under court order or are involved in litigation concerning prison crowding. Clearly, the problem is not unique to Maryland. However, it is the case that Maryland's prison crowding problem is more serious than that in most states, and this provided a second reason for focusing on Maryland.

*Incarceration Rates.* Historically, the United States has an imprisonment rate that is high relative to other western cultures, and it has been estimated to be among the highest in the world.<sup>24</sup> For example, the average imprisonment rate over extended periods of time in the United States is over twice that of Norway and about 2½ times that of Canada.<sup>25</sup>

Examination of imprisonment rates (in state and federal institutions) in the United States and in Maryland during the

1970's shows both to be clearly increasing rapidly over this time period.<sup>26</sup> If we include persons incarcerated in local jails the increase is even more dramatic: In 1970, the prison and jail incarceration rate (per 100,000 civilian population) in the United States was 167.<sup>27</sup> Maryland's rate was 205 per 100,000; making it the 10th highest-ranked state in the nation in terms of incarceration rate. By 1978, the prison and jail incarceration rate for the United States had risen to 195 per 100,000 civilian population. Maryland (in the top 10 for both time periods) increased from a rate of 205 to 271 per 100,000 persons.

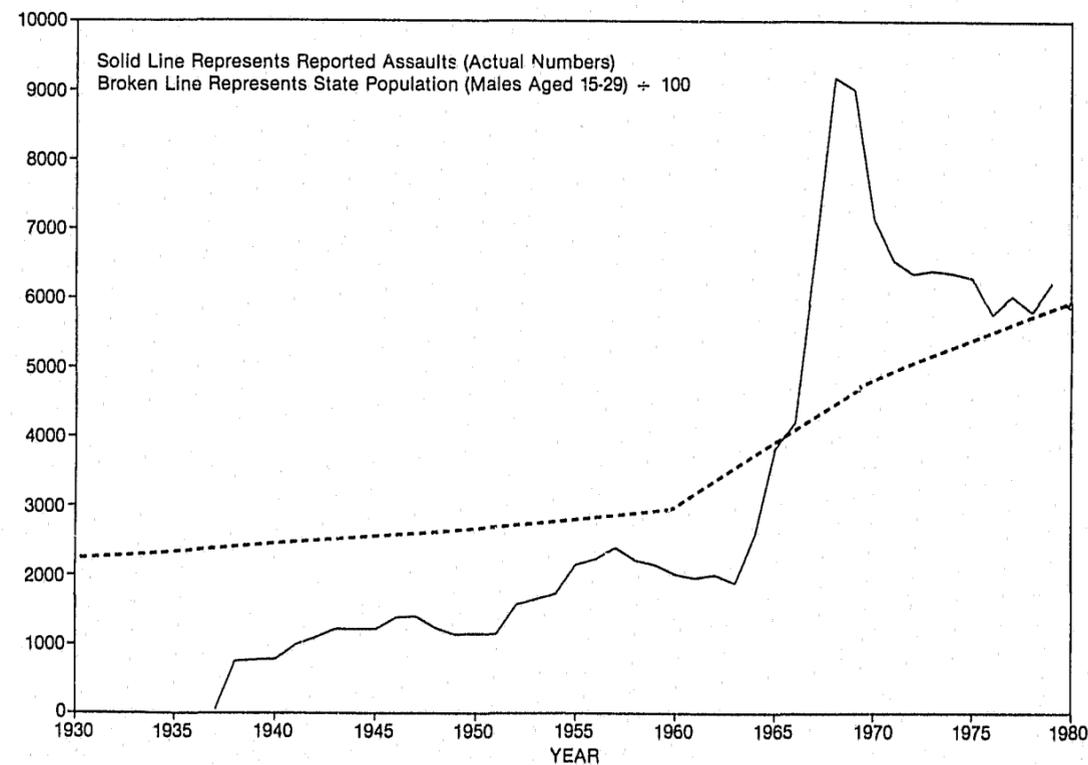
*Crime.* Maryland's crime rate is high relative to the United States' total (which, of course, is high relative to the rest of the Western World). In part, this is due to a disproportionately

large urban population, the bulk of which is concentrated in the City of Baltimore. For some offense categories, the picture over the past decade is one of relative stability. Murder rates and Robbery rates, for example, have remained virtually constant.<sup>28</sup> Others show moderate increases (Rape, Assault), and still others show dramatic increases (Burglary, Larceny). Overall, the pattern is one of a moderately increasing "serious" crime rate—defined as the total of Murders, Rapes, Assaults, Robberies, and Burglaries. It is also clear, however, that the recent rate of increase in crime rate is not as rapid as that of the incarceration rate.

What of the picture over a longer period of time? Figure 1 reports U.C.R. data for Baltimore City from the 1930's

\* Uniform Crime Reports have been available since the 1930's. (A major difficulty, of course, is that the Uniform Crime Reports have not been 'uniform' over that period. Changes in reporting, documentation, and definition are well-known and widely acknowledged limitations.) Nonetheless, such figures can be interesting and informative.

Figure 1  
REPORTED ASSAULTS 1938 TO 1979; STATE POPULATION, MALES AGED 15-29 (+ 100)



Sources: Uniform Crime Reports, Federal Bureau of Investigation

through 1979, for the crime of aggravated assault. The pattern observed is rather familiar and well-known, and is exemplary of those for other offenses. All have increased over time, and most show dramatic and abrupt increases in the 1960's. In part, these abrupt shifts result from changes in reporting practice or definition (e.g., the change in the dollar loss associated with a larceny in the 70's results in an extraordinary apparent increase in larcenies). Also in part, these shifts can be shown to be associated with the size of the "crime-prone" portion of the population relative to the remainder.<sup>29</sup> Also illustrated in Figure 1 is the distribution of state population of males between the ages of 15 and 29. This distribution is not dissimilar to the distributions for various crimes. Thus, when expressed as rates, these increases appear far less dramatic.

*Prison Populations.* Like other state corrections systems, Maryland's has grown over the years.<sup>30</sup> Still, the two largest facilities are so dated and decayed that two gubernatorial commissions have urged that they be replaced or substantially renovated.<sup>31</sup> The Maryland State Penitentiary was accurately described in 1979 as a "relic of the past."<sup>32</sup> Indeed, in 1967 it was reported that: "It must be recognized that the Maryland Penitentiary, originally built in 1811 to house around 400 and enlarged in 1900 to accommodate 997 inmates, but has housed at times as many as 1600, is antiquated and inadequate, and, in its present use as the State's maximum security prison, it presents a very explosive situation that requires both immediate and long-range remedial action."<sup>33</sup> In 1977, after a tour of the facility, the Baltimore City Grand Jury reported that the Penitentiary was "overcrowded, inadequate, and inhumane. The conditions create an environment not conducive to rehabilitation. We feel it is a waste of tax dollars to continue to spend monies to maintain this dying institution. Demolition and replacement is the sole solution."<sup>34</sup> Similar statements have been made concerning the Maryland House of Correction (built in 1879).

Figure 2 shows the average daily population of state Division of Correction facilities from the 1930's through 1979. While generally relatively gradual (with the exception of a dramatic increase in the 1970's), the increase in state prison population resembles that observed for crime and for population in the "crime-prone" age range. Thus, when expressed as a rate (per 100,000 males aged 15-29), the incarceration picture is dramatically different. In fact, Maryland's incarceration rate is currently substantially lower than it has been in the past.

Irrespective of rates of incarceration, simple numbers of persons (body-counts, if you will) are the reality with which a corrections system must deal. Figure 2 suggests a period of slow growth in the 1950's and 1960's, followed by a drastic upturn beginning in 1973. While not shown in this Figure, this

increase has continued dramatically. As of this writing (February, 1983), the state correctional system population stands at well over 11,000. These data suggest a disruption or alteration of system functioning occurring in the mid-70's, and continuing (with minor relief in the late 1970's) to the present.

Intakes to the Division of Correction have rather regularly exceeded releases over this time period. Still, this does not fully account for the dramatic increase in prison population which occurred in the 1970's. Figure 3 provides another clue: The average length of stay in state prisons remained virtually constant from the 1940's until 1975. The dramatic increase in average length of stay which occurred from 1975 on clearly helps explain the similar increase in incarcerated population. And, if continued, this would tend to increase the incarcerated population in a cumulative, geometric fashion.

*Prison Crowding.* "Crowding" refers, in effect, to a psychological, rather than simply a physical, state or condition. As such, it is very difficult to operationalize a definition of "crowding" that will have utility across institutions and/or jurisdictions. Still, several operational schemes have been employed concerning the minimum square footage available for an inmates' confinement/sleeping quarters.<sup>35</sup> Although none of these recommendations are in agreement, they at least fall within a relatively limited range (50 - 80 square feet).

Recently, Mullen, Carlson and Smith conducted a national survey of American prisons and jails, completing research begun much earlier by Rutherford and colleagues.<sup>36</sup> This important work represents the bulk of what is known on a comparative basis concerning prisons, jails, and conditions of confinement in our prisons.

Based on these surveys, and utilizing a criterion of sixty square feet per inmate (ACA standards), they were able to provide a comparison of state situations relative to "crowding" so defined. Figure 4 provides a state-by-state summary of the percentage of state and federal prisoners so housed. Multiplying these proportions by the actual numbers of state and federal prisoners incarcerated in each state and summing these products suggests that about 65% of the nation's state and federal prisoners are held in crowded conditions.

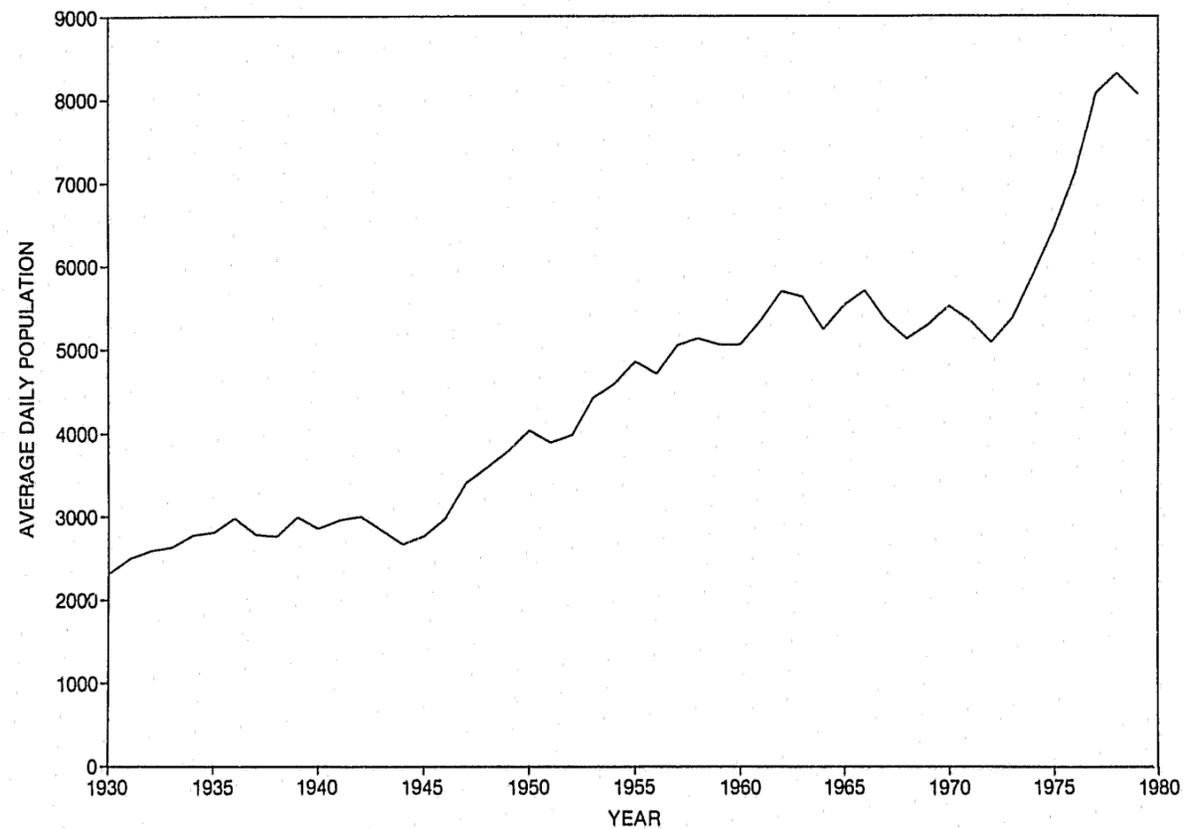
Overcrowding is a problem of equal or greater proportion at the local level. In the 43 states and the District of Columbia for which information is available for 1978 (excluding Connecticut, Delaware, Hawaii, New York, North Carolina, Rhode Island, and Vermont), 67% of the prisoners in local jails are confined in crowded conditions (see Figure 5).

### Correctional Reform Efforts

During the period that we monitored corrections in Maryland, a large number of activities designed to help alleviate prison

§ We focused on Baltimore City since a) the bulk of the crime committed in the state is committed in Baltimore City, and b) the majority of prisoners in the state prison system come from there.

Figure 2  
DOC DAILY POPULATION 1930 TO 1979



Source: Division of Corrections, State of Maryland.

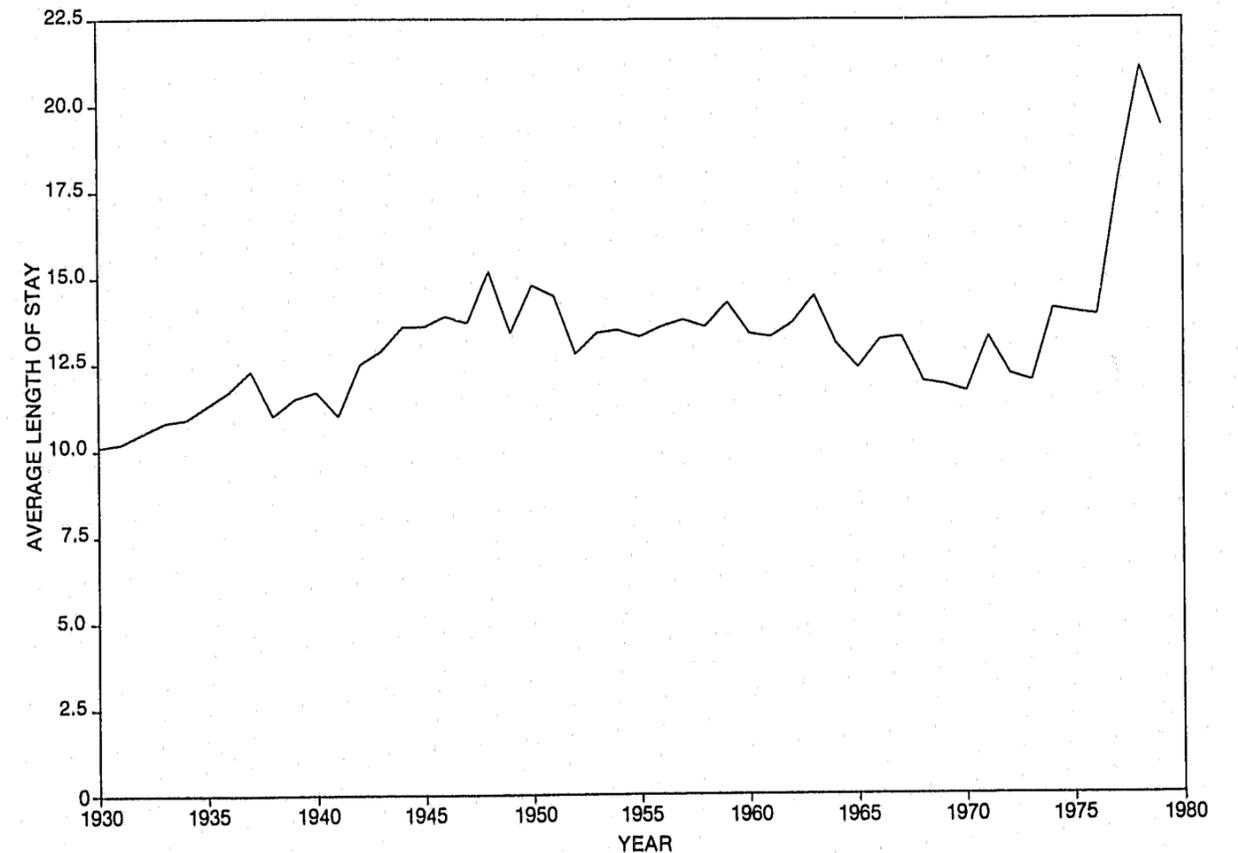
crowding were attempted, ranging from an increase in the use of emergency release, commutations, and early parole programs, to the addition of new correctional facilities and the development of alternatives to traditional incarceration. All of these efforts received great media attention, and criticism from various sectors was continuous.

Public, private, and political debates over correctional reform strategies have raged for over a decade in Maryland. From 1974 until 1977, the principal focus of the correctional policy debate was the building of new facilities, and major components of that debate centered on issues of potential sites for such a facility and issues of costs. After literally years of heated political debate and action, court battles, and legislative maneuvering, by 1978 the state's Acting Governor and the State Legislature had finally committed to a relatively large prison construction project.

With the outcome of the 1978 Gubernatorial election, however, this was to change. Shortly after his election, Governor Harry Hughes named a Task Force on Overcrowding consisting of local, state, and national correctional leaders. Their report urged against large-scale prison construction, and suggested that alternatives to large-prison construction, such as pre-trial programs, sentencing alternatives, increased use of parole and probation, and Community Adult Rehabilitation Centers (CARCs) be pursued instead.

The new Governor named a well-known advocate of community-based alternatives and opponent of large-scale prison construction to the position of Secretary of Public Safety and Correctional Services. The building plan already approved by the State Legislature was scrapped, and a vigorous campaign for the development of community-based alternatives was initiated. It was this climate of sudden change and

Figure 3  
DOC AVERAGE STAY 1930 TO 1939  
(IN MONTHS)



Source: Division of Corrections, State of Maryland.

Figure 4: Percent of Prison Inmates Confined with Less than 60 Square Feet of Floor Space per Inmate, by State: 1978

0-4	5-9	10-14	15-20	21-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65-69	70-74	75-79	80-84	85-89	90-94	95-100

Source: Mullen et al., 1980, p. 161.



Supervision officials (Wardens, Superintendents, etc.) (n = 15); Law Enforcement officials (Sheriffs, Chiefs of Police) (n = 11); and representatives of the legal system (judges, prosecuting and defense officials) (n = 11).

Since a "state vs. local" jurisdictional issue was clearly part of the policy debate, we sampled not only the larger urban jurisdictions, but also the smaller more rural jurisdictions.

The interview schedule was designed for in-person administration, and contained both open and structured questions. Questions concerned (a) the problems and assets of Maryland's correctional system, (b) perceptions of a "crisis" in corrections, and the reasons underlying it, (c) short- and long-term solutions to prison crowding problems in both state and local facilities, (d) attitudes toward proposed policy changes, (e) assessments of the attitudes of others concerning proposed policy changes, and (f) goals and philosophies for corrections. The interviews were conducted in June and July of 1980.

### *Survey of the General Public*

Findings from our survey of corrections policymakers suggested the importance of their perceptions of public opinion regarding corrections and correctional issues. Results showed that policymakers differed considerably among themselves with respect to perceived public opinion, and that while they felt that they knew what the public wanted corrections to do, they generally disagreed with those goals for the corrections system. It became clear to us that public opinion concerning correctional issues was so salient to the developing situation as to merit special attention. Accordingly, we conducted a sample survey of Maryland residents to address this concern, using a Random Digit Dialing telephone interviewing method.<sup>17</sup>

This sample was limited to the thirteen jurisdictions from which we had interviewed local and elected officials about correctional issues. These thirteen counties could therefore be considered to represent the constituency of the officials whom we had interviewed earlier. Together, these jurisdictions account for 87.3% of the state's 1980 population.<sup>18</sup> Unsampled counties, all of which are predominantly rural, account for the remaining 12.7% of the state population.

Interviewing began on December 12, 1980, and ended on January 5, 1981. The method used ensured adequate representation of adult respondents of both sexes. A total of 601 completed interviews were obtained, and the response rate for this survey was 64%. Demographic characteristics of survey respondents closely resemble those for the state adult population at large.

### *The Criminal Justice System*

These surveys were designed to assess, on a system-wide basis: (a) respondents' understanding of correctional problems and issues, (b) respondents' attitudes toward proposed policies and policy changes, (c) respondents' opinions of the efficacy

(or likely efficacy) of various policy changes, and (d) changes in attitude, opinion, or understanding as a function of time.

Corrections systems are only one part of that larger system which we call the criminal justice system. Although we often tend to regard the corrections subsystem as separate and distinct from the parent system, and although this simplification is helpful in some respects, it also ignores the true context of, and constraints upon, that subsystem. To ignore this context is to develop a potentially misleading and erroneous assessment of correctional functioning. Accordingly, we sampled from among the various criminal justice subsystems known to have an impact on corrections. These included police officers, parole/probation officers, judges, prosecutors, public defenders, state legislators, and correctional classification officers.

Since in most cases we were able to define the population of such persons in the state, these were randomly assigned to three samples, each of which was surveyed (by mail) at three different times. For a variety of practical reasons, we chose to survey different people in each of the three survey waves, rather than to survey the same group of people at three different times. Although there is no fully adequate way of determining whether observed differences across sample waves are due to changes in attitudes across time, or to peculiarities of the samples surveyed, we observed no sizable or statistically significant differences in respondent characteristics across the three survey waves. This, particularly given the patterns of change in responses observed across the three survey waves, gives us confidence that findings do not result simply from changes in the demography of the samples across the three survey waves.

The three waves of this system-wide survey were conducted every two months beginning February 9, 1981. Although a longer period between survey waves was originally planned, we shortened the lag period in an attempt to capture changes which occurred as a result of the unexpected resignations of the Secretary of Public Safety and the Commissioner of Corrections—whose policies were those under study.

A total of 2,207 persons were surveyed. Usable questionnaires were returned by 1,138 persons, for a response rate of 52%. Response rates varied across subsample groups (legislators, judges, etc.), but did not vary substantially across survey waves. Since variation in response rates did exist across subsample groups, subsamples were reweighted to adjust for this variation for each survey wave.

### *Correctional Policymaker Follow-Up*

Over a year after the original survey of the policy elite, and about six months after the change in corrections leadership, Maryland's correctional policy elite were again surveyed to assess changes in goals, problems, and policies since the time of the initial survey. System priorities had changed; incapacita-

tion received a higher priority, and rehabilitation a much lower priority, in the follow-up survey. Many fewer endorsed the concept of community-based correctional alternatives in 1981 than had done so in 1980. The Governor's office was reported to have had a negative impact on corrections, and the courts and the State Legislature fared little better. Interestingly, the opinions of the policymakers who had resigned or been

removed from office in the period between the surveys and those of the persons who replaced them were little different. The principal result of the replacements was to decrease emphasis on alternatives—particularly community-based alternatives—and to increase emphasis on simple incapacitation. The net result has been a tremendous exacerbation of the prison crowding problem.

## 4. Principal Findings

What can we learn from this series of surveys that may be of value to policymakers in other jurisdictions faced with problems similar to those facing policymakers in Maryland? In this brief summary, we shall address attention to four general findings which appear to us to warrant amplification because of their apparent role in Maryland's "retreat from reform": The dimensions of the correctional crisis; the demonstration of "pluralistic ignorance" with respect to correctional goals and reform strategies; the issue of coalition formation; and an inability to distinguish short- and long-term solutions.

### *The Dimensions of the Crisis in Corrections*

When surveyed in 1980, our sample of policymakers reported that Maryland's correctional system was facing a great many complex and inter-related problems. Crowding was reported to be the most pervasive and pressing of these problems but was also reported to be merely symptomatic of more fundamental issues. Based on the policymakers' statements, we developed a list of the most commonly-mentioned problems facing the correctional system, and used this information in our surveys of persons working in a wide variety of criminal justice system settings.

Through the use of factor-analytic methods, we sought to further our understanding of the crisis in corrections. No single factor was felt responsible for Maryland's correctional crisis: Rather, a complex set of issues appeared to underlie the dissatisfaction so unanimously reported by all whom we sampled. The six factors which we identified reflected (a) concern over a lack of alternatives to traditional incarceration and crowding, (b) dissatisfaction with correctional administration, (c) factors affecting the corrections system such as the poor condition of existing facilities, a lack of manpower, and insufficient funding, (d) poor relations between corrections staff and correctional leadership, (e) the impact (on corrections) of other criminal justice subsystems, and (f) a lack of coordination in the criminal justice system, poor planning, and sentencing practices.

To simply demonstrate that difficult problems are complex is hardly worth the effort. What is more interesting, and what our analyses demonstrated, is the nature of the complexity.

Although crowding is confirmed as the most visible and salient of the problems facing the corrections system, the preponderance of the factors remaining essentially address issues which the corrections subsystem cannot, by itself, resolve.

It seems clear to us that little change is likely to occur if we continue to view prison crowding and related correctional problems as a "crisis in corrections." It is not; it is a crisis in the criminal justice system. Because the most visible, salient, and immediate component of the crisis—prison crowding—so clearly involves corrections and correctional facilities, corrections becomes the scapegoat for the entire system.

Generally speaking, the corrections subsystem has little control over its "inputs" (offenders remanded to the custody of the subsystem) and in most cases, it has little control over the "outputs" as well (offenders released from such custody). Gottfredson and Gottfredson report that "The correctional . . . administrator must run a distinctive type of hotel facility without benefit of a reservation service. Typically, the jail or prison administrator has little to say about who comes to stay or for how long."<sup>39</sup> A business run on such a basis would soon founder on problems similar to those which our corrections systems are encountering now.

Reports that the criminal justice system does not appear to function as a true system are now so common-place that to repeat that claim seems trite. Yet many feel that we do not have a criminal justice "system" in the sense of a cohesive, interactive and interdependent set of functional entities. Rather, they insist, we have a disparate set of agencies and peoples which occasionally interact through their concern with criminal offenders. These sentiments appear to us to be true.

It is also clear to us that the current crisis in criminal justice—and its most pressing symptom, prison crowding—is unlikely to be resolved without the active, aggressive, and *coordinated* involvement of the entire system. This will not happen quickly, nor will it be achieved easily; but it is a goal toward which we must work. The final section to this report outlines one possible method which may help alleviate problems of prison crowding, and the proposed plan relies rather heavily on the coordinated efforts of the judiciary, correctional authorities, and paroling agencies.

This call—for greater coherence and coordination among the various components of the criminal justice system—is a

recurring theme throughout the criminal justice literature. Critics typically cite the fragmented and conflicting goals and policies of judges, parole boards, prison administrators, police and others as a major cause of the quagmire in which criminal justice finds itself today. Despite some dissent,<sup>40</sup> most commentators—conservative or radical—have advocated greater cooperation between the components of the criminal justice system as a crucial element to the resolution of one of our largest social problems.

One certain prerequisite to a coordinated effort is a correct understanding of the goals, attitudes, and opinions of actors in the various components of the criminal justice system, and of the constituency which that system is to serve. Only with such understanding is it possible to assess consensus or controversy regarding critical problems and their resolution. And only through such understanding may groups be targeted for special attention in order to coordinate them to a unified approach.

### 'Pluralistic Ignorance'

Throughout our research, we have sought to include the views of persons who deal with corrections and correctional issues from a wide variety of criminal justice system perspectives. With few exceptions, a common finding has been a remarkable concordance of opinion about what in fact ought to be done to help alleviate the problem of prison crowding. The persons we sampled and surveyed generally agreed that community-based alternatives were needed, and that they would help to alleviate prison crowding not only in the short run, but in the long run as well.

Since in many respects, the development of community-based alternatives to traditional incarceration was a principal thrust of the reform efforts which we initially set out to study, it may therefore seem surprising that despite this demonstrable consensus concerning the value of reform, the state completely retreated from the reform. To what might we attribute this remarkable occurrence? In part, we believe that the answer lies in the phenomenon of 'pluralistic ignorance.'

For a social system to be coordinated, it is necessary that the principal actors—not unlike the policymakers we have studied here—be especially aware of the opinions of groups which interact with and which compose the system itself, even if they do not necessarily agree with those groups. Further, in a representative democracy such as ours, many would argue that the goals and policies of the system should reflect public sentiment (within the limits of constitutional imperatives governing the rights of individuals).

We conducted our sample survey of the Maryland general public in December of 1980, a time at which debate over correctional reform strategies in the state were at a high,

Contrary to general belief, we found the general public not to be especially punitive; rather, they also appeared to stress more utilitarian goals, such as rehabilitation, deterrence, and incapacitation. These attitudes about the proper intents or goals for correctional systems are reflected in the public's views of various proposals for correctional reform. The reform strategies which received the most support stressed rehabilitation and increasing localization of correctional programs and facilities.

Almost without exception, these attitudes are echoed by our sample of policymakers. In no important respect did the attitudes of the policy sample and the attitudes of the general public differ. Where correspondence was lacking, the views of the policy sample appeared to be more liberal and reform-oriented.

Our initial survey of Maryland's correctional policymakers suggested that the perceptions of the public will held by those men and women were important to the correctional reform strategies that would actually be pursued—irrespective of their own personal opinions. This is comforting, for this is what is required for a representative democracy to function appropriately. What is not comforting, however, is the extent to which our sample of policymakers misperceive the public will. Although the attitudes of both the public and the policy group can be characterized as rather liberal, non-punitive, utilitarian, and reform-oriented, the policy sample attributed almost the reverse to the public. Several studies concerned with different policy arenas have observed this same phenomenon,<sup>41</sup> and the only other study concerned with correctional policy likewise confirms this finding.<sup>42</sup> We therefore feel it extremely unlikely that our results are spurious or in error. It appears, then, that we are observing the phenomenon of 'pluralistic ignorance,' a term used in the sociological literature to describe situations in which persons underestimate the extent to which others share the beliefs and sentiments which they themselves hold.<sup>43</sup>

First, let us examine the question of correspondence between members of the policymaking sample, the general public, and persons sampled to reflect the opinions of persons working in a wide variety of criminal justice settings.

Figures 6 and 7 concern the extent of agreement about the priorities assigned the goals of retributive punishment, incapacitation, rehabilitation, and deterrence. As a rough measure of this agreement, the Spearman rank-order correlation coefficient was computed between the mean ranks given the goals by each group.\* We used this index to measure two things: (a) how much agreement exists concerning what the goals of the system *should be*, and (b) the congruence between the policymakers' and the criminal justice system samples' assessments of what the goals are *in fact*, and what the *public* believes they should be.

As Figure 6 illustrates, there is complete agreement among these samples that punishment is the least proper of the

\* With only four ranks, one must obtain a value of rho equal to 1.00 to achieve traditional levels of statistical significance. It should be pointed out, however, that the data discussed here represent mean ranks, and are based on very large numbers of cases. Accordingly, the ranks discussed may be considered to be quite stable. Where differences between mean ranks did not exceed at least one standard error in magnitude, ranks are represented as tied. Our use of rho is intended simply as an aid to interpretation.

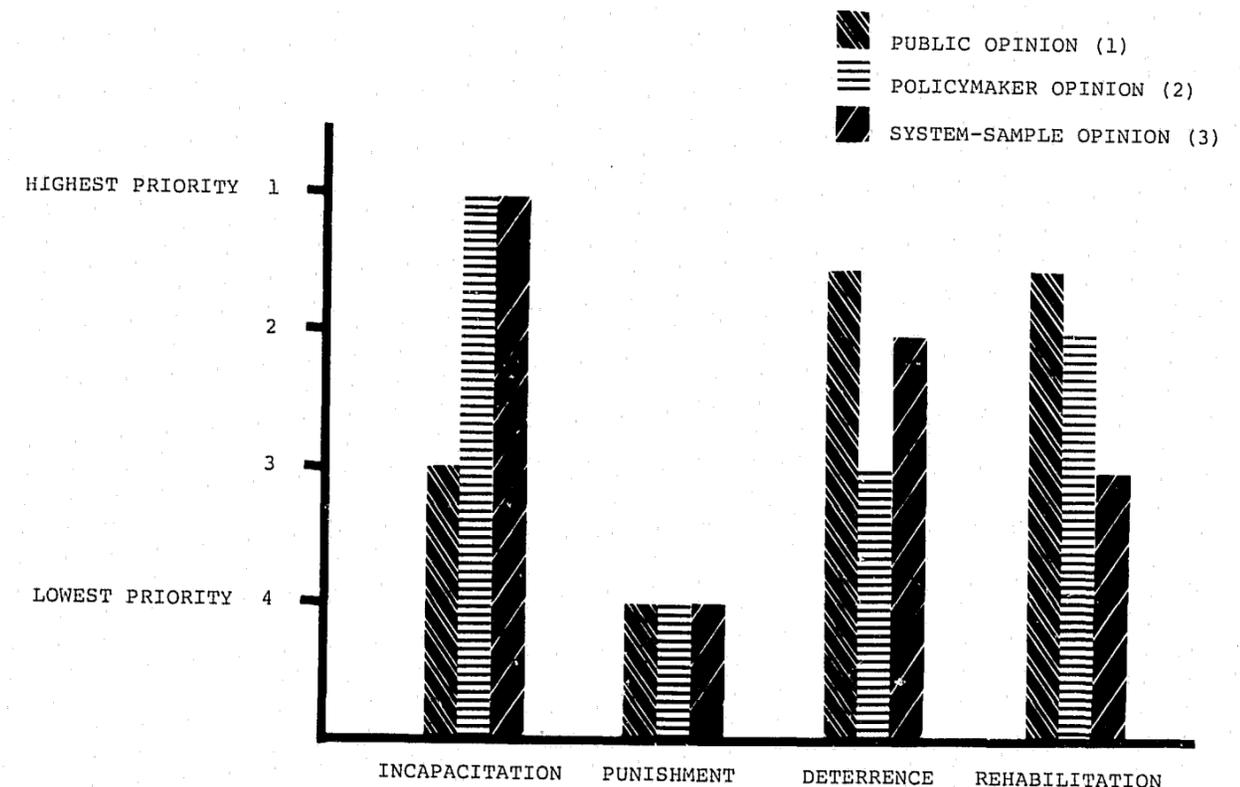


FIGURE 6: COMPARISON OF OPINION CONCERNING PROPER CORRECTIONAL GOALS; THREE SAMPLES.

Notes:  $\rho_{(1,2)} = .32$ ;  $\rho_{(1,3)} = .32$ ;  $\rho_{(2,3)} = .80$

correctional goals listed. Further, the policymakers and the system-wide sample are in good agreement ( $\rho = .8$ ), both ranking incapacitation as highest priority, and differing only in a reversal of the goals of deterrence and rehabilitation. Modest but apparent agreement also exists between the policymakers and the general public ( $\rho$  in both cases = .32). For the general public, simple incapacitation ranked third, while both the policymakers and the system-wide sample ranked this goal as first.

It may seem surprising that the general public did not also rank incapacitation as the first priority goal. In this light, however, it is also interesting to note that in a study of 982 actual sentencing decisions of adult offenders, the goal of incapacitation was given as the principal aim of the sanction—by the sentencing judge—in only 4% of the cases.<sup>44</sup> It should also be noted that the general public did feel that all four possible correctional goals were proper intents for Maryland's correctional system, and that in some cases differences were small.

The comparison of policymakers' and the criminal justice system's perceptions of what the actual goals of the corrections system are in fact, with public opinion of what the goals should be, demonstrates less concordance (Figure 7). The system is perceived as more punishing and incapacitating, and less deterring and rehabilitating than the public would have it. In general, this appears to be because neither the policymaking sample nor the system-wide sample appears able to distinguish present correctional system functions beyond that of incapacitation.

We observed that the correctional policymakers and those working in criminal justice system settings generally agree on the broad outlines of correctional priorities, but with differing emphasis on the priority of rehabilitation. Further, both are in general agreement with the priorities assigned by the public, although the policymakers attribute very different positions to the general public than actually held. How do these positions translate into opinions concerning specific proposals for change in correctional policy? To get an indication of areas of

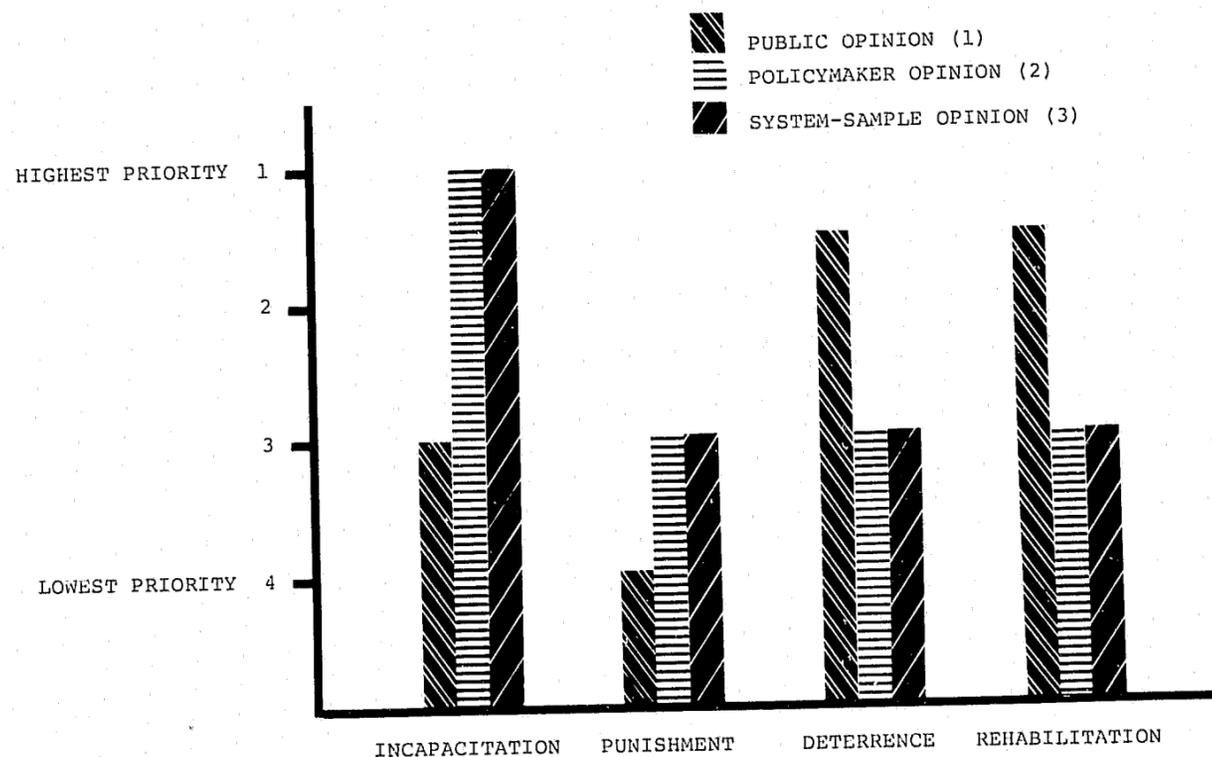


FIGURE 7: COMPARISON OF POLICYMAKER AND SYSTEM-SAMPLE PERCEPTIONS OF APPARENT SYSTEM GOALS WITH PUBLIC OPINION CONCERNING WHAT THESE GOALS SHOULD BE.

Notes:  $\rho_{(1,2)} = -.27$ ;  $\rho_{(1,3)} = -.27$ ;  $\rho_{(2,3)} = 1.00$

agreement and significant disagreement on proposals for change, we divided each group into those who agreed and those who disagreed with four proposals for change. Two-by-two contingency tables were then built, contrasting the policymakers with each of the criminal justice groups sampled, and the general public, on each issue.

Table 1 displays a summary of these comparisons. For each proposed change strategy listed in the Table there are two headings: "Actual Opinion," and "Opinion as Estimated by Policymakers." Consider just the former; by reading from left to right across columns of the Table, we can see how much agreement or disagreement there is among the various samples for each change strategy. Thus (for example), while 42% of the policymakers thought that "not building any large new facilities" would be a good or a very good idea, only 37% of the general public, and only 8.7% of the police officers also thought that this strategy was a good/very good idea. The asterisks indicate comparisons which differed statistically. Thus, the opinions (on the strategy of large-scale construction) of the policymakers and the general public are not significantly

different, while those of the policymakers and the police officers are significantly different.

Two things are readily apparent from these analyses. First, the group with which the policymakers have the greatest disagreement is the police: Policymakers differed dramatically from the police on every single issue. Disagreement with prosecutors—the group that works most closely with the police and whose interests have traditionally been similar—is almost as great, with substantial disagreement on each issue except the proposal to shift some of the burden of inmates to local jurisdictions. Second, the issue on which the policymakers are most out of step with other system groups is that of CARCs. Every group polled showed less enthusiasm for the CARC idea than the 93% positive endorsement that the policymakers gave the idea except for the public defenders, who also largely endorsed the idea of establishing CARCs on a widespread basis. The general public also displayed less enthusiasm for CARCs than did the policymakers; *but the public did endorse the idea by almost a 3 to 1 margin.* Further, it should be noted that only one system-sample group—police officers—responded

Table 1: Opinions and Estimated Opinions of Four Proposed Change Strategies

PROPOSED CHANGE STRATEGY	POLICYMAKERS N = 80	GENERAL PUBLIC N = 601	POLICE OFFICERS N = 92	STATE LEGISLATORS N = 30	JUDGES N = 32	PROSECUTORS N = 52	PUBLIC DEFENDERS N = 22	CLASSIFICATION OFFICERS N = 15	PAROLE/PROBATION OFFICERS N = 95
<b>A. Not Building Any Large New Facilities</b>									
Actual Opinion (% Good/Very Good Idea)	41.6%	37.1%	8.7%***	41.9%	30.3%	12.0%***	33.3%	20.0%	30.5%
Opinion as Estimated by Policymakers (% Good/Very Good Idea)	—	33.0%	3.9%	26.1%	23.3%	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>
<b>B. Abolishing Parole</b>									
Actual Opinion (% Good/Very Good Idea)	23.1%	28.6%	57.8%***	23.3%	31.3%	58.0%***	0.0%*	60.0%*	34.0%
Opinion as Estimated by Policymakers (% Good/Very Good Idea)	—	62.7%***	68.9%	61.5%**	37.7%	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>
<b>C. Shifting Some of the State Burden to Local Jurisdictions</b>									
Actual Option (% Good/Very Good Idea)	73.7%	67.0%	34.8%***	53.3%	73.3%	60.8%	68.2%	80.0%	66.3%
Opinion as Estimated by Policymakers (% Good/Very Good Idea)	—	33.8%***	36.9%	61.4%	74.6%	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>
<b>D. Establishing CARCs on a Widespread Basis</b>									
Actual Opinion (% Good/Very Good Idea)	93.4%	73.2%***	30.8%***	70.0%**	80.6%	54.9%***	90.5%	66.7%**	76.6%*
Opinion as Estimated by Policymakers (% Good/Very Good Idea)	—	39.4%***	32.8%	61.4%	94.0%*	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>	— <sup>a</sup>

NOTE: Tests are Chi<sup>2</sup> comparisons with the policymaking sample. Sample sizes may vary slightly with the issue under consideration. Analysis based on First Wave of Three-Wave Survey. Substantive conclusions do not change if all three waves are considered.

\*\*\*p < .001  
 \*\*p < .01  
 \*p < .05  
 a sample not assessed

negatively to the CARC strategy. The majority of persons in each other sampled group endorsed the idea—just not as strongly as did the policymakers.

In the interviews with policymakers, we asked not only their own opinions of these proposals, but also for perceptions of the amount of support the ideas would receive among four groups; the general public, police officers, state legislators, and judges. By comparing the actual and estimated opinions of these groups, we can get an idea of how aware the policymakers were of disagreement or support for correctional policies among these groups. Table 1 also lists the results of this analysis. Here, we are interested in comparing Table entries under the heading "Opinion as Estimated by Policymakers" with the entry directly above it. It appears that the policymakers were accurate in estimating the police's disagreement with their own opinions concerning proposals for change. Some policymakers underestimated the support for CARCs among judges, however, and quite a number of policymakers incorrectly thought that most state legislators thought that abolishing parole was a good idea.

Also important is the extensive misperception on the part of the policymakers of the opinions of the general public which we mentioned earlier. The general public's opinions are very similar to those of the policymakers, yet the policymakers thought that they were very different. They did correctly perceive that a majority of the public did not agree with the no-building idea. On the other issues they were very inaccurate, and failed to recognize that the public also disagreed with the idea of abolishing parole, thought that moving prisoners to local jurisdictions was a good idea, and widely supported the idea of CARCs.

These findings have significant implications. First, within the system the major conflict facing the correctional policymakers pitted them against two major groups: The police and prosecutors. These analyses suggest that the policymakers were well aware of the conflict. It is also apparent however, that the policymakers were unaware that they were more accurate representatives of public opinion, at least on three of the four proposals, than were members of the police or prosecutor groups. This misperception may have cost them important points in their favor in trying to form a consensus on correctional policy in Maryland. This is especially true on the CARCs issue, where the policymakers may well have felt besieged. Although no group endorsed CARCs as strongly as policymakers, the general public was much closer to the policymakers' position than were most other groups.

### *Effective Coalitions*

For one series of analyses, we reclassified members of our system-wide survey samples based on (a) the priority which they would personally assign to the goals of rehabilitation, deterrence, and punishment, and (b) their assessments of the priorities which the corrections system actually assigns these

goals. This reclassification was based on the results of an Association Analysis, which is one type of statistical hierarchical clustering method.

One important finding which resulted from this analysis was that the various subsamples which we contacted (judges, prosecutors, police officers, etc.) are not as homogeneous with respect to correctional goals as one might have thought. In fact, the relation between position in the criminal justice system and personal and perceived goal priorities is so weak as to be indicative of considerable differences of opinion among persons functioning in similar roles within the criminal justice system.

Six groups were identified in this analysis, and we labeled these groups "satisfied" if their personal goal priorities and the priorities under which they felt that the system actually functioned were consonant. Groups whose personal and perceived priorities were not consonant we called "dissatisfied." We observed that fully 60% of the sample fell into one or another of the "dissatisfied" groupings. Regardless of personal goal preference, the majority of persons in the criminal justice system report that the correctional subsystem functions in opposition to the goal desired.

Those who sought to enlist support from a variety of groups critical to the functioning of a corrections system were faced with an interesting and difficult dilemma. While half of the judges sampled are "rehabilitators"—whether satisfied or not—the other half are equally distributed among the four remaining categories. While one-quarter of the state legislators are "dissatisfied rehabilitators," another quarter are "dissatisfied deterrents," and yet another quarter are "satisfied rehabilitators." While almost one-third of the prosecutors appear to be "satisfied deterrents," the remaining two-thirds are about equally likely to be anything else. If this is so, and if it is correct that (as observed in this study) sample members' goals for corrections systems are related to their assessments of proposals for correctional change, then strategies designed to garner support for proposed reforms must become complex. This finding would suggest that one cannot simply employ a strategy designed to address the concerns of judges and/or of prosecutors and/or of the legislature—any unitary strategy may appeal only to a minority of persons in any such grouping.

In their study of correctional system "elites," Berk and Rossi noted that many of the policy-elite were "rather sensitive to the possibility of political losses resulting from support of reform. Were strong anti-reform sentiment to arise... perhaps led by law enforcement interest groups—many of our elites would probably back off from a public liberal stand."<sup>15</sup> In addition, a lack of ability to easily form effective coalitions would likely have similar results.

The heterogeneity of attitudes which we observe across sample groups does suggest that coalitions would form with difficulty, with the possible exception of a "police" (and possibly a "police/prosecutor") coalition. Relative to the other groups sampled, the attitudes of police officers are much more

homogeneous, and Maryland's principal police departments have been very active in the correctional policy debate.

Thus, in addition to a serious misperception of public support for "liberal" correctional reform, Maryland's policymakers were also faced with a criminal justice system which in the aggregate was rather sympathetic to proposed change strategies, but in which coalition formation along traditional, functionally-defined system roles was difficult. Finally, one or two cohesive groups of actors repeatedly stressed the dangers and failures of proposed reforms. The result appears to have been the "retreat" predicted by Berk and Rossi.

### *Distinctions Between Short- and Long-Term Crowding Solutions*

The correctional policymakers whom we interviewed in 1980 were unanimous in acknowledging the fact of court-ordered reductions to Maryland's prison populations. Although people disagreed about the causes underlying the crowding problem, and although they also disagreed about the appropriate strategies which should be followed to meet the terms of the court orders, they did clearly differentiate short-term strategies designed specifically in response to court orders from long-term strategies designed to meliorate the problem in the future. We also discovered that the majority of the policymakers interviewed recognized that short-term remedies would not obviate the crowding problem in the future; that is, they clearly recognized the need for long-range strategies. Finally, the strategies felt required to meet the terms of court orders clearly differed from those felt required to obviate the prison crowding problem in the future.

Findings based on our samples of persons working in a wide variety of criminal justice system settings differed. Respondents appeared to make no distinctions between short- and long-term strategies. Even when examined on a subgroup-by-subgroup basis, this failure to differentiate short- and long-range strategies is observed.

With the exception of the police officers, the majority of respondents in each subsample reported that a short-term strategy of placing selected offenders in alternative community-based facilities was theoretically sound. Similar sentiment was expressed with respect to a short-term strategy of increasing the use of parole to provide early release to selected offenders; police officers and prosecutors rejected the concept, with the majority of persons in other subsamples expressing support for the strategy. An identical pattern of response was observed with respect to the short-term strategy of reducing the intake of prisoners through the use of alternatives to incarceration such as probation, restitution, and community service. The only "short-term strategy" designed to alleviate crowding in state prisons which received support from the police officer subsample was that of quickly constructing a new prison facility (or facilities). These findings were precisely replicated with respect to long-term strategies, and comparison of preferred

short- and long-term strategies shows them to be virtually identical.

It is possible that this inability to distinguish between short- and long-term strategies results from a perception that no short-term strategy being attempted was felt to be succeeding. However, neither was any long-range strategy judged to be effective. It is also the case, of course, that the members of our policymaking sample are the people on the hot-seat: They are the ones who must make the decisions (and the headlines); they are the ones who must make and respond to court orders (or directly do the bidding of those who must). Regardless of the criminal justice system setting from which they came, members of this sample were many of the people most involved in the problem of prison crowding and its resolution. This, of course, is not necessarily the case with respect to our system-wide samples. While clearly involved throughout, the nature of the involvement, for most, is quite different. Perhaps it is simply the case that for the majority of actors in the criminal justice system, the immediacy of court orders is not as apparent as to those in policymaking positions. Regardless, in addition to the problems we have already noted, Maryland's policymakers were apparently unable to convince their colleagues of the necessity of immediate action—ordered by the courts—even though that action may not have been optimal in terms of long-range melioration of the state's problem.

### *Summary*

This section has focused attention on four general findings which appear to us to have been critical impediments to the implementation of correctional reform efforts undertaken in Maryland in the late 1970's and early 1980's.

Examination of the dimensions of the "correctional crisis" demonstrated that although crowding is the most visible and salient of the problems facing the corrections system, many of the factors which people feel are causing the crisis are issues the corrections subsystem *alone* cannot resolve. We suggested too that little in the way of effective change is likely to occur if we continue to view prison crowding as a "crisis in corrections." Prison crowding is a crisis in the entire criminal justice system, and the active, aggressive, and coordinated efforts of the entire system are needed for its resolution.

Conflicts over philosophies of and goals for corrections are often cited as a principal cause of the lack of coordination commonly observed in criminal justice systems. In the course of this study, we have observed this to be partly true, but partly false as well. Conflicts over goals and philosophies do clearly exist; and these conflicts are reflected in differing preferred reform strategies. We also observed, however, that the reform strategies pursued in Maryland in the late 1970's—and from which the system has retreated in the 1980's—had the support not only of the correctional system's policymakers, but of the general public and of the majority of persons working in the criminal justice system as well. Failure to perceive this support

was probably responsible, in part, for the abandonment of the reform efforts.

In addition to a serious misperception of public and system-wide support for "liberal" correctional reform, Maryland's policymakers were confronted with a criminal justice system in which coalition formation along traditional, functionally-defined system-roles was difficult. Despite some homogeneity of opinion based on roles in the criminal justice system, heterogeneity of opinion is the rule with one or two exceptions. The attitudes of police officers and prosecutors are much more homogeneous than are those of other actors. Accordingly, they may have been able to form an effective coalition to oppose change strategies. Since support for those strategies, although expressed by a majority, was "scattered" throughout the rest of the criminal justice system, the development of effective support coalitions was probably difficult. This too was probably partly responsible for the state's inability to achieve the desired goal.

Finally, we observed that although the correctional policymakers clearly distinguish between short-term strategies designed to meet the terms of court-ordered population reductions and long-term strategies designed to obviate the problem of prison crowding—the members of the criminal justice system itself were unable to do so. It may well be the case that some of the opposition to proposed long-range reform strategies represented a backlash due to the perceived failure of short-term strategies.

How can these problems be overcome? First, it is clear that those concerned with correctional reform must have a more sophisticated understanding of the general public than they appear to have had in Maryland. Contrary to popularly accepted opinion, we found the general public to be very supportive of precisely the change strategies which the state was unable to implement. The question of "what the public wants us to do" is paramount—and without good information, based probably on a periodic and rather sophisticated assessment, we are likely to remain in the grip of "pluralistic ignorance." Sample surveys of the general public are now routinely used in the conduct of political campaigns, by newspapers and other of the media, as well as by social scientists. We see no reasons why corrections administrators and policymakers should not also benefit from accurate knowledge of the public will.

Likewise, it is important that correctional policymakers have a good assessment of the goals and preferred strategies of others working in the criminal justice system. Not only did our policymakers underestimate the amount of support which existed for their reform strategies, but they probably found it difficult to form effective coalitions since that support was divided among persons occupying a wide variety of criminal justice system roles. Not only would the simple strategy of asking these people what their opinions are serve to overcome the "lack of information" problem, but it would probably help in the development of a system-wide attack on the problem of prison crowding.

## 5. Planning For Crisis

Faced with prison populations that exceed capacity, and which, perhaps in combination with other factors, have resulted in court-orders to reduce populations, what options are available to the criminal justice community and to society? In general, there are four things which might be done: 1) Build new prisons, or expand existing ones; 2) Reduce (somehow) intake into the prison system; 3) Accelerate (somehow) releases from the prison system; or 4) Tolerate (somehow) existing conditions.<sup>46</sup> Since alternative number four is out of the question given court orders (although it is by no means clear that this alternative is *in fact* out of the question given recent experience), we are left with three basic options.

Long-term correctional planning must, in our view, critically examine each of these options in detail, and in combination. Further, a system-wide coordinated approach to the planning process must be undertaken. Prison construction must of course be considered, but the enormous costs of new construction must be acknowledged, as must the fact that this is an era of severe fiscal constraint. Further, estimates of needed capacity must be made with full attention to issues of population demography. Indeed, some estimate that on demographic bases alone, we may find relief from the prison crowding problem by the 1990's.<sup>47</sup> However, it should be noted that prison populations do not appear to reflect a simple natural phenomenon which responds solely to the dynamics of past trends.<sup>48</sup> Prison populations are subject not only to crime trends and population demography shifts, but to social and political influences and constraints based on resources as well. As we have seen, changes in sentencing and/or release practices can have dramatic impacts on prison populations.

### *Toward Rational Short-term Planning*

Regardless of the need for, and the complexities of, long-term planning for the melioration of the prison crowding problem, we are in fact, and at present, faced with the problem of responding to court orders mandating immediate relief. This section focuses on a short-term strategy which may help alleviate the immediate and severe crowding in corrections institutions while planning for a long-range solution to the problem.

We judge the first of our alternatives—the building of new prisons, or the expansion of existing ones—to be an inappropriate short-term solution to court-ordered population reductions. Prison construction simply takes too long to achieve, given the requisite planning, siting, and construction issues—each phase of which is often subject to delay—for this to be a viable short-term strategy.

The second alternative—the reduction of intake into the prison system—appears to us to be rather attractive. However, even if we were to somehow achieve a rational plan which would immediately begin to reduce the numbers of persons entering our prison systems by substantial amounts, the numbers already in those systems, and the lengths of the sentences they are serving, are such that we would be unlikely to see relief for some time to come.

Accordingly, the short-term strategy which we will propose here focuses—almost by process of elimination of attractive alternatives—on the third possibility: accelerate (somehow) releases from the prison system. As we shall see, however, the strategy also has implications for the second alternative (the reduction of intake). *We stress that short-term strategies are seldom attractive in all respects. A better and more rational plan would be to have ensured that short-term strategies such as that which we will propose are unnecessary. That we have failed to do so, and that some such plan is now necessary, is abundantly clear.*

The plan which we shall propose in the pages that follow has three features: 1) it relies upon and stresses cooperation between the judiciary, corrections, and paroling agencies; 2) it stresses rationality, experience, and empirical research; and 3) it focuses on correctional goals and the protection of public safety. Finally, the strategy may be systematically monitored and evaluated, so that it may be modified as necessary to meet the joint requirements of public safety and of court-ordered population reductions.

### *A Rational, Capacity-based Early Release Plan*

In concept, the plan simply requires the assessment, on an inmate-by-inmate basis, of (a) the probable (or actual) intent of

the incarcerative sanction, and (b) the statistical likelihood of recidivism upon release. If risk and intent are considered simultaneously, it is possible to build and monitor a flexible early release decisionmaking matrix which, in conjunction with sanctioning alternatives, could provide a crisis relief valve while maintaining public safety to the maximum extent possible under such circumstances.

Since our studies of attitudes concerning the proper intents of a correctional system have clearly demonstrated the overriding salience of the goal of incapacitation, expressed in our study as "protecting the public by removing offenders from the community where they might commit additional crimes," the decisionmaking tool we propose requires judgments of the extent to which incapacitation was an intent of the incarcerative sanction imposed. Since empirically-based studies of the risk of recidivism have been demonstrably successful, they also will be employed. Finally, since research has demonstrated that both clinical or subjective assessments of risk and empirical or actuarial assessments of risk may be enhanced through a combined use of these approaches, that too is proposed.

**Statistical Risk Assessment.** The concept of prediction is central to most general concerns of the criminal justice system. Not surprisingly, then, many of the classification decisions made in the criminal justice process have an implicit or explicit predictive intent. This is perhaps most clearly illustrated in classification decisions involving early release from a period of incarceration; for example, in paroling decisions. Almost all inmates are eligible for some sort of early release from their incarceration, and most eventually receive one. In making these decisions, members of paroling agencies routinely attempt to "predict" the future behavior of eligible inmates.

Historically, such classification decisions have been made subjectively rather than statistically, and this remains general practice today. Since the 1920's, however, statisticians and behavioral scientists interested in classification and prediction have attempted to aid criminal justice decisionmakers through the construction of actuarially-based instruments.<sup>49</sup> Although even the crudest such devices have proven of value, the sophistication of the methods used to develop predictive devices for parole-risk assessment has increased rapidly.<sup>50</sup>

It is not our purpose here to describe in detail the construction or actual implementation of such statistically-based decisionmaking tools. Rather, the reader is referred to Gottfredson and Gottfredson for a detailed discussion of the construction of such devices,<sup>51</sup> and to Gottfredson, Wilkins, and Hoffman for discussion and illustration of their practical implementation.<sup>52</sup> Discussion of legal and ethical issues concerning the practical use of such devices is also available.<sup>53</sup>

It generally has been found that statistical prediction devices can be developed that are both more reliable and more valid than unguided or intuitive clinical predictions: They are more dependable, and they work better.<sup>54</sup> Further, statistical and clinical prediction methods may be used together in mutually

supportive ways.<sup>55</sup> In most practical situations, decisions based on predictions will be made, and help toward more rational decisions can come from either the clinical or the actuarial sector (or from some combination of the two, such as that to be proposed here).

**Sanctioning Decisions.** There exists a vast and controversial literature on the goals and proper purposes of the sentencing of criminal offenders.<sup>56</sup> In many respects, principal aspects of this debate concern the four goals which we have been discussing throughout this paper: rehabilitation or treatment, desert or retributive punishment, deterrence (general or specific), and incapacitation. Each has a long history in practice, in moral philosophy, and in legal discussion and debate.

The intents of a correctional system are seldom unitary. Not only do we apparently seek to deter some offenders, punish others, incapacitate some, and rehabilitate still others, but these "simple" intents may in fact be melded in a sanctioning decision even with respect to a single offender. Thus, part of our intent may be to incapacitate (for example), while we retain also the goals of rehabilitation, deterrence, and punishment. These need not be—and probably are not—dependent concerns on either the aggregate or the individual level.

Unfortunately, philosophical and legal debate concerning sentencing purposes and practices is far more extensive than is research on these purposes and practices. Although considerable research has focused on the correlates of sentencing decisions,<sup>57</sup> very little has focused on its purposes.

An exception is a recent study by Gottfredson and Stecher.<sup>58</sup> For this study, eighteen judges from a large, eastern metropolitan county completed research forms which documented their judgments, at the time of sentencing, of the purposes for the sanctions imposed on almost 1,000 adult offenders. The purposes or intents studied were: retribution, incapacitation, special deterrence, rehabilitation, and "other" (including general deterrence). The judges' task was to distribute 100 points among these purposes—or to assign this value to any single purpose—provided only that the total points assigned summed to 100.

As was anticipated, the judges usually did not assign any one goal as the single purpose for the sentence imposed. Rather, they generally distributed the points among the various purposes listed. Rehabilitation was the purpose given the principal weight in the largest proportion of cases (36%) followed closely by "other purpose, including general deterrence" (34%). Surprisingly, only 4% of the cases reportedly had incapacitation as a primary intent. However, based on multivariate analyses, it did appear that incapacitation may have been chosen more often, but just not labeled as such.

Regardless of the actual proportion of cases for which an incapacitative intent is primary (although this will of course impact upon the potential utility of the proposed scheme), it is clear that judges, at least, can rather easily apportion a sanction in terms of its compound intents. Further, the study demon-

strated that at some level at least, judges make an intuitive or clinical judgment of the risk—particularly risk associated with recidivistic harm to persons—associated with the offender.

The short-term crowding relief remedy which we are proposing here makes use of this important assessment (or a similar assessment made by like persons and others) of intent and risk, combined with statistical information concerning the likelihood of criminal recidivism.

### Operationalizing the Relief Valve

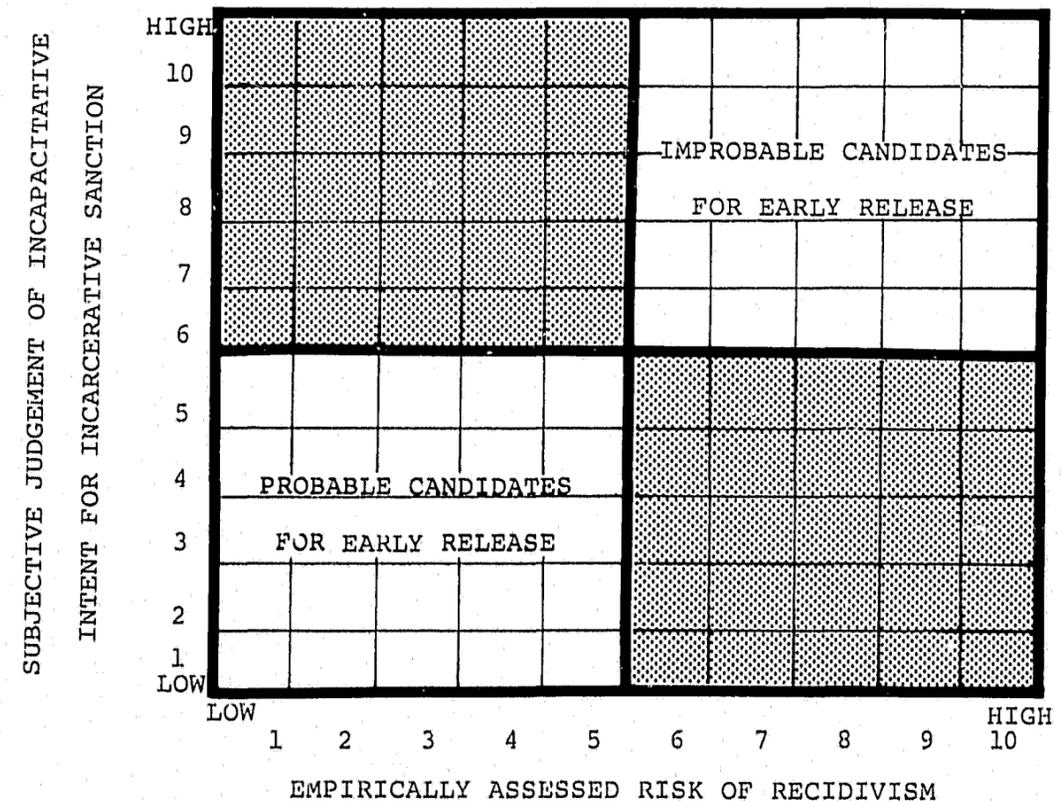
Diagrammatically, the early-release decisionmaking tool is as characterized in Figure 8. On the vertical axis we have arranged hypothetical judgments of the extent to which incapacitation was (or is) an intent of the incarcerative sanction. Persons falling in cells toward the top of the Figure would therefore represent those for whom an incapacitative intent was high, and those falling in cells toward the bottom of the Figure represent those for whom an incapacitative intent was (or is)

low. Persons falling in cells toward the middle of the Figure represent mid-ranges of the scale of incapacitative intent.

On the horizontal axis we have arrayed persons according to an empirical or statistical assessment of the likelihood that they will recidivate upon release from a period of incarceration (also hypothetical). Thus, persons falling in cells toward the left side of the Figure appear, on a statistical basis, to be relatively good recidivism risks, and those falling toward the right side of the Figure appear to be more likely to recidivate upon release. Again, those falling in the mid-ranges of the recidivism scale would fall in cells toward the middle of the Figure.

If such a device were to be constructed, then persons falling in the upper right hand quadrant of the Figure would appear to be improbable candidates for an early release from prison: They have a high probability of recidivism, and the intent of the sentence which they are serving is principally incapacitative. Thus, on both statistical and purposive grounds, they should not be considered good candidates for an early release program.

FIGURE 8: HYPOTHETICAL RATIONAL EMERGENCY RELEASE DECISIONMAKING MATRIX



Persons falling in the lower left hand quadrant, however, have a low probability of recidivism, and incapacitation is not a principal intent for the sentence which they are serving. On both statistical and purposive grounds, a sanction other than simple incarceration may therefore be appropriately applied.

Persons falling in either the upper left hand or the lower right hand quadrants of the Figure represent (respectively) persons for whom the incapacitative intent is high, but the statistical risk is assessed as low, or persons for whom the incapacitative intent is low, but the statistical risk is assessed as high. In a sense, the labeled cells in the Figure represent areas of subjective and statistical agreement, and the shaded cells represent areas of disagreement.

What would be required for a scheme such as that proposed in Figure 8 to be operationalized? The two principal components, of course, are (a) an assessment of the intent for the incarcerative sanction imposed, and (b) a statistically-based assessment of the risk of recidivism.

Neither requirement can be met immediately or without effort. Although statistically-based assessment devices have been carefully constructed and operationalized in several jurisdictions, generalization of these or other similar instruments to other jurisdictions are to be avoided.<sup>59</sup> Accordingly, the best plan is to construct and validate a recidivism risk assessment device for the particular population and jurisdiction of interest. Most state correctional systems have research staff fully capable of completing this task in a relatively short time period, and support for precisely this purpose has recently been available from the National Institute of Corrections (although it should be noted that costs should not be substantial, and that

existing personnel, perhaps with advice from others concerning statistical and other methodological issues, should suffice).

We would suggest that the assessments of the intent for an incarcerative sanction must take place in two ways: First, judges should be required to provide, at the time of sentencing to a period of incarceration, an assessment of the extent to which incapacitation or protection of public safety is reflected in the sanction imposed. Clearly, however, this will be of more help "down the road," and will be of little value to the immediate question of what to do with offenders presently incarcerated in crowded prison facilities. What is needed is an assessment of what the *likely* intent was for the sanction imposed.

For this assessment, we would suggest that a small panel of persons composed of judges, psychologists, and classification personnel, review offender files to arrive at a probable assessment of incapacitative intent. Information typically available in these files (such as criminal history, presentence investigation reports, psychological and other diagnostic material) should provide most of the requisite information. Further, it may be possible in some instances to actually interview inmates to aid in what will surely be a complex decisionmaking process. Once such assessments have been made—a process which will require organization, time, and effort—it is a simple matter to norm the judgments, combine this information with the statistically-based assessments of risk, and complete the matrix as illustrated in Figure 8.

Finally, through the routinization of feedback mechanisms and the empirical monitoring of the success of the enterprise, it is possible to continually refine both these devices and their joint application.<sup>60</sup>

## Notes

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- <sup>34</sup> The quote is taken from Watts Commission, *op. cit.*, 1979.
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**Frank K. Richardson**  
Associate Justice  
California Supreme Court  
San Francisco, Calif.

**Bishop L. Robinson**  
Deputy Commissioner  
Baltimore Police Department  
Baltimore, Md.

**James B. Roche**  
Massachusetts State  
Police Force  
Boston, Mass.

**H. Robert Wientzen**  
Manager  
Field Advertising Department  
Procter and Gamble  
Cincinnati, Ohio

**END**