

Prison Reform

Are too many nonviolent criminals being incarcerated?

America has more people in prisons and jails — 2.2 million — than any other country in the world. And over the next five years, the number of prison inmates is projected to grow three times faster than the national population. Prison crowding in California has become so critical that Republican Gov. Arnold Schwarzenegger has tried sending inmates to other states. And in Philadelphia a federal judge has called crowded conditions in city jails inhumane, warning that prisoners might have to be released. With the cost of housing prisoners projected to reach \$40 billion by 2011, alternatives to incarceration for nonviolent crimes are being proposed, even by law-and-order prison officials and politicians. Meanwhile, support is growing for more rehabilitation programs in prisons as well as a bipartisan proposal to help ex-inmates stay out of prison.



Inmates are packed like sardines at the California state prison in Los Angeles. An independent agency says the state's overloaded corrections system is "in a tailspin that threatens public safety."

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Prison Reform

BY PETER KATEL

THE ISSUES

I jam 4,000 men into an aging prison designed for fewer than half that number. Then leave them with too much time on their hands, what with education and job training programs all but shut down. The outcome? More tension and conflict — the last things a prison needs.

Fights break out daily, says Joseph Baumann, a veteran correctional officer at the California state prison at Norco and chapter president of the California Correctional Peace Officers Association. “And if it crosses racial or gang lines, there are 15 to 20 people involved. We get those a couple times a month.”

The Norco prison, a converted World War II naval hospital 50 miles southeast of Los Angeles, bears the unintentionally ironic title of California Rehabilitation Center: A stunning 70 percent of the prisoners from Norco and California’s 32 other prisons wind up back behind bars within three years of release. California’s high recidivism rate — the national rate is 52 percent — helps explain why its prisons are so crowded.¹

California has more prisoners than any other state — 173,000 — living in facilities designed, by one calculation, for about 83,000 inmates.² “We have the highest recidivism rate in the country because there is no room for rehabilitation,” Republican Gov. Arnold Schwarzenegger said in February, while announcing an order to move 5,000 to 7,000 prisoners to other states with more room for the convicts.³

On Feb. 20, a state judge canceled the extraordinary move on the grounds that Schwarzenegger hadn’t met the legal



AP Photo/Daniel Hulshizer

Uplifting messages encourage Preston Townsend and other participants in the drug-rehabilitation program at Northern State Prison in Newark, N.J. With the cost of housing prisoners projected to reach \$40 billion in the U.S. by 2011, alternatives to incarceration for nonviolent crimes are gaining support along with more funding for rehab programs.

standard for an emergency. But Superior Court Judge Gail D. Ohanesian concluded the prison system faces a “crisis creating conditions of extreme peril.” Only weeks earlier, an independent state oversight agency known as the Little Hoover Commission had reported that the corrections system was “in a tailspin that threatens public safety.”⁴

Long a hothouse of racial-ethnic gangs such as the Aryan Brotherhood, Black Guerrilla Family and the Mexican Mafia, the California prison system racked up 316 disturbances in 2006, one of them a year-end battle between about 1,000 Hispanic and black inmates at the maximum-security prison at Chino. Los Angeles County jails, meanwhile, had so many violent outbreaks last year that authorities

ended up segregating gang-affiliated prisoners.⁵

The California prison situation represents an extreme version of what many prisoners’-rights advocates and law-enforcement officials call a national crisis created by the nation’s incarceration boom. The nation’s 2.2-million prison and jail population represents a 700 percent increase over 1970. With 727 prisoners per 100,000 Americans, the U.S. incarceration rate is way ahead of the rest of the world. Russia, number two on the list, imprisons 607 per 100,000. (See map, p. 292).⁶

And the overall trend is expected to continue, even though the pace of growth is slowing in many states, and some state prison populations are even declining. The Pew Charitable Trusts projects that over the next five years the number of federal and state prisoners will rise by 13 percent nationwide — three times faster than the general population.⁷

The racial-ethnic imbalance in the nation’s incarcerated population remains a troubling reality. About 8 percent of African-American men ages 25-39 were in state or federal custody in 2005, compared to 1.1 percent of white males and 2.6 percent of Hispanic men. (See graph, p. 302.)

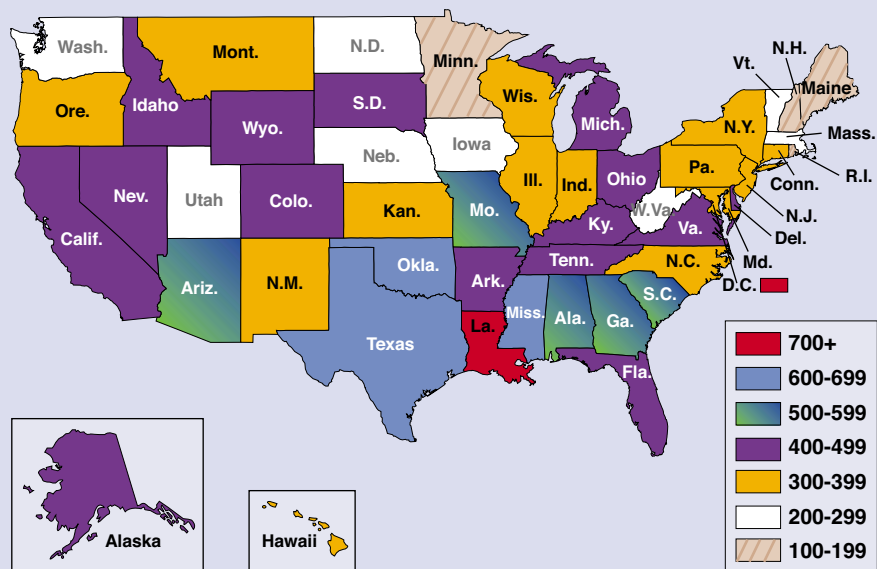
“Imprisonment does more than reflect the divides of race and class,” writes Jason DeParle, a *New York Times* reporter and author of a book on the welfare system. “It deepens these divides — walling off the disadvantaged, especially unskilled black men, from the promise of American life.”⁸

Yet, while some traditional law-and-order conservatives are calling for alternatives to incarceration, others welcome the steadily increasing prisoner

Incarceration Rate Is Highest in South

With 542 out of every 100,000 individuals in prison, the South has the highest regional incarceration rate in the United States, followed by the West. The Northeast's rate is the lowest, slightly more than half the rate in the South.

No. of Prisoners Per 100,000 Population, 2005



Source: "Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011," *Public Safety Performance, 2007*; District of Columbia Sentencing and Criminal Code Revision Commission

numbers and would even like to see them accelerate.

"We're not incarcerating everybody who should be incarcerated," says David Mulhausen, a senior policy analyst specializing in criminal justice at the conservative Heritage Foundation. He cites the latest crime statistics from the FBI: Violent crime rose 2.3 percent from 2004 to 2005, but police arrested suspects in only 45.5 percent of those cases.⁹ "There are people getting away with a lot of crime. We might need two-and-a-half million or three million incarcerated."

Prison-reform advocates say the growing crime statistics prove the nation's high incarceration rates — coupled with a trend away from prisoner education/rehabilitation programs — are not making society safer. "I agree [violent

criminals] need to be taken off the streets," says Jody Kent, public policy coordinator of the American Civil Liberties Union's National Prison Project. "But they should be coming out so they're no longer dangerous. The system we have in place hasn't solved that problem."

"Prior to the 1980s, rehab was a strong component in correctional health thinking," says M. Douglas Anglin, associate director of the Integrated Substance Abuse Programs at the University of California, Los Angeles (UCLA). "Then you had a huge philosophical shift. Rehab had shown only marginal results, [so] the thinking became, 'Let's throw a sentence at people.'" ¹⁰

Congress and state lawmakers have enacted a plethora of tough-on-crime laws — such as minimum sentencing and three-strikes laws — that ended up man-

dating incarceration even for nonviolent drug users and low-level dealers.

"The idea became that if we put enough people in prison we could solve the drug problem," says John Bradley, the district attorney for Williamson County, in central Texas, and a strong advocate of punishment for criminals. "I think we can say that's a failed policy."

Meanwhile, lawmakers cut funding for drug and mental-health treatment programs — both inside and outside of prisons — despite the fact that addicts and the mentally ill make up a disproportionate percentage of the nation's inmates.¹¹

"Look at the people who are coming out of prison — drug-addicted, mentally ill, no stable housing — of course they're going to fail parole," says Michael Jacobson, who ran the New York City jail system in 1995-1998 and now directs the Vera Institute of Justice, a New York-based nonprofit research and advocacy organization. "The system is set up for failure. The institutional mind-set is, 'We don't have enough money to deal with your issues, but we have enough money to catch you.' It's like shooting fish in a barrel."¹²

According to Steve J. Martin, an Austin, Texas-based corrections expert who has served as a court-appointed prison and jail monitor throughout the country, most incarcerated drug offenders "are inept users," who "deal some to feed their habits." Sophisticated drug distributors, he says, make up a minority in prison. "Those guys long ago perfected the use of intermediaries to shield them," says Martin, a former general counsel of the Texas corrections department who began his career as a prison guard.

Drug incarceration has been slowing slightly in recent years from its high point in the late 1980s and 1990s, in part because states — including such traditionally hardline jurisdictions as Mississippi — have begun enacting a variety of measures aimed at reducing time served by nonviolent drug offenders. Since 1989, for instance, local

and state governments have established about 1,000 “drug courts” to divert those arrested for drug use or possession of small quantities from prison to supervised treatment.¹³

Stiff sentences remain in place for a variety of other crimes, however, notes Marc Mauer, director of The Sentencing Project, a nonprofit that advocates alternatives to imprisonment. “Over the last decade or so, we haven’t increased all that much the number of people sent to prison,” he says, “but, on average, they’re serving more time than they used to.”

Meanwhile, there has been a growing movement to protect prisoners’ safety, partly because some prisoners have been filing federal civil-rights lawsuits claiming their rights were violated by prison administrators who did not protect them from rape. (See graph, p. 297.)

“I’m really concerned when we have people afraid of prison rape,” says Rep. J. Randy Forbes, R-Va., ranking Republican on the House Judiciary Committee’s Crime, Terrorism and Homeland Security Subcommittee. The Prison Rape Elimination Act of 2003 (PREA) that he co-sponsored ratchets up rape-prevention measures in all prisons.

But Paul Wright, an ex-convict who publishes the widely read *Prison Legal News*, calls the PREA a step forward, but not a big step. “It is tepid and weak” and “does nothing for rape victims.” He and other prisoners’-rights advocates want Congress to amend the Prison Litigation Reform Act (PLRA). Designed to block “frivolous” lawsuits by inmates, the 1995 law prevents prisoners from asserting their rights in federal court, critics say. (See “*At Issue*,” p. 305.)

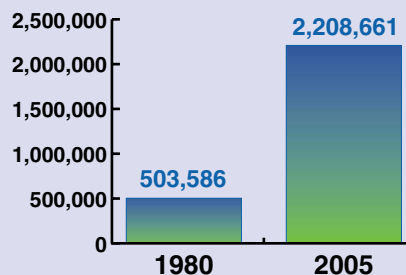
But looming above all policy debates is the population surge, which channels most prison resources into housing, feeding and guarding prisoners — leaving too little, critics say, for programs that help convicts turn their lives around.

“Our newer institutions,” says correctional officer Baumann, “are just warehouses.”

Inmate Population Tops 2 Million

The number of jail and prison inmates in the United States has quadrupled since 1980.

No. of jail/prison inmates



Source: “Public Safety, Public Spending: Forecasting America’s Prison Population 2007-2011,” *Public Safety Performance*, 2007

As prisoner advocates and state, local and federal officials cope with the burgeoning prison population, here are some of the questions they are debating:

Should nonviolent drug offenders be sent to prison?

The so-called “war on drugs” has served as a powerful engine of the prisoner population boom. Drug incarcerations jumped an extraordinary 1,000 percent between 1980 and 2005, according to Don Stemen, research director for the Center on Sentencing and Corrections at the New York-based Vera Institute for Justice.¹⁴

In 2003, the last full year for which detailed statistics are available, drug offenders accounted for 55 percent of federal prisoners — down from a high of 60 percent in 1995 — and about 20 percent of state prisoners.¹⁵

The slight drop in federal drug incarcerations reflects a growing debate about the value of imprisoning and jailing people for minor drug offenses, es-

pecially since about 74 percent of drug-offender inmates had no history of violence, according to The Sentencing Project. In fact, in recent years many states have been choosing to offer drug treatment instead of incarceration for low-level dealers and first- and second-time drug users.¹⁶

In 2000 California voters approved the Substance Abuse and Crime Prevention Act, which offers drug treatment rather than incarceration for first- and second-time drug offenders. And over the past four years about a half-dozen states have enacted measures that cut sentences for minor drug crimes or allow drug prisoners to qualify for early release.¹⁷

But while the number of drug offenders behind bars isn’t skyrocketing as in the recent past, it’s not declining either, points out Mauer of The Sentencing Project. “One could say it would be higher if we didn’t have drug courts and other alternatives in operation,” he says. “The other possibility is ‘net widening’ — are we bringing people into the court system who previously would not have been arrested or wouldn’t have been candidates for prison sentences” because there’s now a drug court option? “I think there’s a little of both going on.”

Mauer argues nonviolent drug offenders should only go to prison if all alternatives fail. “There should be a presumption against it,” he says. “Anybody who tries to stop smoking knows that you don’t succeed the first time. We should understand [drug] addiction and relapse that way too.”

Increasingly, conservatives talk in similar terms. Still, prisoners’-rights advocates give first preference to keeping nonviolent drug users out of prison, while law-and-order forces favor tipping the balance in favor of incarceration.

Rep. Forbes, a GOP leader on crime legislation, opposes a hard-and-fast standard on nonviolent drug crimes. “I don’t know if we can make a *carte blanche* case that anybody who commits a drug

The Bleak World of ‘Supermax’ Prisons

Isolation leads to mental deterioration

Theodore Kaczynski, the Unabomber, is in one, and terrorist Zacarias Moussaoui. Until his death, Mafia boss John Gotti was a “supermax” resident, too.

Over the past two decades, a trend has swept the prison world: locking away “the most dangerous” prisoners in ultra-high-security facilities where they’re confined to their cells 23 hours a day, receive few visitors and are escorted by several guards during their brief, solitary exercise outings.

Some 57 prisons in at least 44 states follow the ultra-isolation “supermax” model. About 20 years ago, only one facility, the federal penitentiary in Marion, Ill., was reserved for high-risk inmates like Gotti, who died of cancer in prison in 2002.¹

Supermaxes now hold about 25,000 prisoners, but a series of court decisions has limited states’ power to decide who gets sent to these institutions.

This year, the Indiana prison system settled a lawsuit with prisoners represented by the American Civil Liberties Union (ACLU), agreeing to keep mentally ill prisoners out of the Secured Housing Unit — a supermax-like wing of one of the state’s prisons. The settlement also calls for prisoners remaining in the unit to get regular psychiatric assessments.² Virtually total isolation and inactivity led four prisoners there to commit suicide, and others to hallucinate and mutilate themselves, the lawsuit claimed.³

The U.S. Supreme Court had previously turned down a challenge by Ohio prisoners to the process used to assign them to a supermax. In a 2005 decision, the court said a review process ensured their due-process rights were respected.⁴

Justice Anthony M. Kennedy wrote for the court that supermaxes were developed largely as a way to isolate the leaders of murderous, highly organized prison gangs. “Gangs seek nothing less than to control prison life and to extend their power outside prison walls,” he wrote.⁵

Nevertheless, supermaxes haven’t proven to be a foolproof anti-gang weapon. At the federal supermax in Florence, Colo., members of the fearsome Aryan Brotherhood actually recruited a guard into their organization.⁶

Some supermax supporters have argued that prisoners left behind in conventional prisons are better off once the most dangerous inmates are shipped off to supermaxes. But prisoners’ rights weren’t high on the agenda when the supermax boom took off. Criminologists Daniel P. Mears of Florida State University and Jamie Watson, a senior research specialist at the Travis County, Texas, Juvenile Probation Department, reported in a study that an unnamed government official had said supermaxes enjoy unbeatable public appeal. “There is an appetite for punishment. It taps into public fear without much cost and with a big political gain. . . . There’s not a huge difference between the Democrats and the Republicans on this issue.”⁷

The burst of popularity for supermaxes reflected an old trend, a prison expert has noted. “Typically, ‘new’ programs in the field of corrections are not based on extensive research,” wrote Chase Riveland, a former prison warden and Washington state corrections director, in a Justice Department-funded study. “Some are born out of emerging needs; some are created in reaction to a crisis or emergency; others are the result of political agendas. It would seem that the supermaxes have emerged from a blend of these influences.”⁸

Yet, Mears and Watson concluded in their study that the value of supermaxes is largely untested. “The concern, then, is that decisions about whether to build or close supermaxes will rest primarily on ideological or personal views,” they write. “Advocates, for example, can assume that supermaxes increase order, while opponents can assume that they increase mental illness.”⁹

The mental-illness issue runs through many of the legal restrictions on supermaxes. Apart from the recent Indiana settlement,

crime that happens to be nonviolent shouldn’t go to prison,” he says. “It depends on whether they’re selling drugs and the amount of drugs they sell. Certainly we want those people incarcerated because they are doing a huge harm to society.”

Some prison experts agree that big-time drug traffickers shouldn’t be confused with small-time dealers and users. But they add that society is also harmed when low-level drug offenders are incarcerated. “Some drug offenders actually come out of prison better adjusted to the criminal lifestyle than they otherwise

would be,” says Martin, the Texas-based consultant on prison and jail management. “That’s the last thing you want.”

But law-enforcement officials warn against assuming all nonviolent drug criminals are not dangerous. In Philadelphia, accused criminals deemed nonviolent were released without bail in large numbers under a federal court-imposed ceiling on admissions to chronically overcrowded jails. In one 18-month period, those released were rearrested for 9,000 new crimes including 79 murders, according to Assistant District Attorney Sarah Hart of Philadelphia. “And we

saw people who were drug-addicted being released over and over and over again,” she said. “There are really very significant public safety consequences when you have wholesale releases without individualized review.”¹⁸

Hart acknowledges that some convicts shouldn’t be locked up. “You try to make sure you reserve expensive resources for people who need to be there,” she says.

David Rudovsky, a University of Pennsylvania law professor representing Philadelphia prisoners in the latest lawsuit challenging overcrowding,

a federal judge barred California prison officials in 2002 from shipping mentally ill prisoners to supermaxes without court approval. That same year, the Connecticut prison system agreed to pay \$1.8 million in settlements to the families of two supermax prisoners, one of them a mentally ill inmate who committed suicide. And a federal judge in Wisconsin ordered the state to do a better job of identifying prisoners who would suffer mental breakdowns if sent to a supermax.¹⁰

An earlier settlement in Wisconsin led to relaxed conditions at one of the state's supermax prisons, with inmates allowed to have face-to-face visits from loved ones, and state officials prohibited from saying the institution housed the "worst of the worst."¹¹

Psychiatric effects of supermax confinement have proved a powerful legal issue, not only because of concerns about violating the Constitution but also because supermax prisons in at least 22 states release inmates directly to the street when they've served their time.¹²

"It's common knowledge that many people come out of these places extremely damaged," says ACLU attorney David Fathi, who has litigated against conditions in supermaxes in several states.

Indeed, Riveland observed that helping supermax prisoners get ready for release ranks among the most difficult issues for prison staff — because supermax confinement doesn't make prisoners any less dangerous. "An approaching release date seldom, if ever, changes the degree of threat to staff for the better," he wrote. "Most often, inmates who are dangerous pose a greater threat to staff as the term of control by the agency decreases."¹³



AFP/Getty Images/Bob Daemrich

The federal prison in Florence, Colo., is among more than 50 prisons that follow the ultra-isolation "supermax" model.

¹ For survey data, see Daniel P. Mears and Jamie Watson, "Towards a Fair and Balanced Assessment of Supermax Prisons," *Justice Quarterly*, June 2006, pp. 232-270, www.supermaxed.com/New-SupermaxMaterials/Mears-Watson-Balanced.pdf; and Daniel P. Mears, "Evaluating the Effectiveness of Supermax Prisons," Urban Institute, March 2006, p. ii, www.urban.org/UploadedPDF/411326_supermax_prisons.pdf. For details on Gotti, see Selwyn Raab, "John Gotti Dies in Prison at 61," *The New York Times*, June 11, 2002, p. A1. For details on Moussaoui, see Dan Eggen, "New Home is 'Alcatraz of the Rockies,'" *The Washington Post*, May 5, 2006, p. A6.

² See Jon Murray, "Prison Pact a Win for Mentally Ill," *The Indianapolis Star*, Feb. 5, 2007, p. A1.

³ See "Deal Would Move Mentally Ill Offenders Out of Supermax Units," *The Associated Press*, Jan. 29, 2007.

⁴ See Joan Biskupic, "High Court Upholds Ohio's 'Supermax' Prison Policy," *USATODAY.com*, June 13, 2005, www.usatoday.com/news/washington/judicial/supremecourt/opinions/2005-06-13-supermax-cells_x.htm?POE=NEWSWA.

⁵ Quoted in *ibid.*

⁶ See David Grann, "The Brand: How the Aryan Brotherhood became the most murderous prison gang in America," *The New Yorker*, Feb. 16, 2004, p. 157.

⁷ Quoted in Mears and Watson, *op. cit.*, p. 247.

⁸ See Chase Riveland, "Supermax Prisons: Overview and General Considerations," National Institute of Corrections, U.S. Department of Justice, January 1999, p. 22, www.nicic.org/pubs/1999/014937.pdf. For Riveland's professional background, see "Affidavit of Chase Riveland," in *Osterback et al. v. Michael W. Moore et al.*, Case NO. 97-2806-CIV-HUCK, http://hrv.org/reports/2003/usa1003/Florida_Osterback_Expert_Report_of_Chase_2003_Final.pdf.

⁹ *Ibid.*, p. 236.

¹⁰ See Jenifer Warren, "Court Approval Needed to Use 'Supermax' Cells," *Los Angeles Times*, Oct. 11, 2002, p. B10; "Connecticut to Pay \$2 Million to Settle Inmate Lawsuits," *The Associated Press*, March 14, 2002; Richard W. Jaeger, "Ruling May Shift Supermax Inmates," *Wisconsin State Journal*, April 16, 2002, p. B1.

¹¹ See Jaeger, *ibid.*

¹² Mears and Watson, *op. cit.*, p. 251.

¹³ See Riveland, "Supermax Prisons . . .," *op. cit.*, p. 10.

agrees an across-the-board policy of not incarcerating any drug offenders wouldn't work.

"Maybe somebody after four or six drug arrests should go" to prison, he says. "But as a general principle it's a huge waste of resources. If people are looking to limit prison population, that's one part of the population that could be targeted."

Should prisons provide more rehabilitation programs?

In the 1970s state and federal lawmakers began to reject the convention-

al wisdom that prisons should offer vocational training and psychological counseling to help inmates build new, crime-free lives. Some social scientists helped pave the way for the new doctrine with research that seemed to prove that rehabilitation did not work (*see p. 302*).

Perhaps as a result, rehabilitation funds have grown scarce in recent years, according to the Commission on Safety and Abuse in America's Prisons, formed by the Vera Institute of Justice. "Along with the dramatic rise in the prisoner population, there has been decreasing support from lawmakers for improving

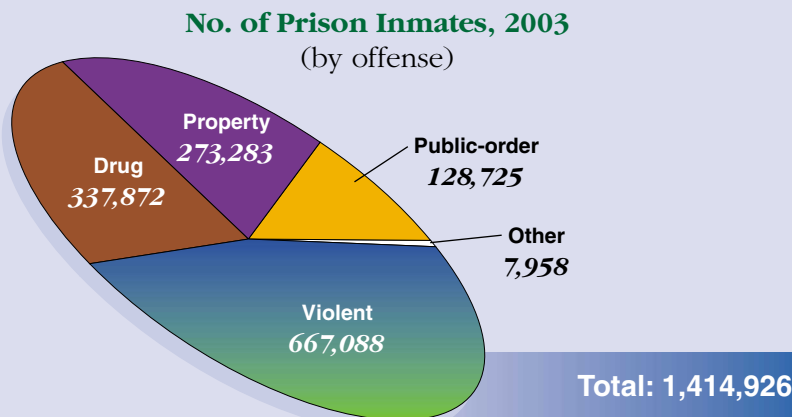
the education and skills of people in prison," said the commission.¹⁹

A 2006 survey by the nonprofit Institute for Higher Education Policy found that 41 states offered postsecondary programs to inmates in 1983, with nearly 5 percent of the national prison population participating. By 1997, 21 states offered programs, and fewer than 2 percent of prisoners were enrolled.²⁰

The commission, other reform advocates and some law-enforcement officials cite the lack of improvement in the nation's recidivism rates as evidence that prisons are not providing prisoners

Majority of Inmates Commit Nonviolent Crimes

Of 1.4 million inmates in state and federal prisons in 2003, more than half committed offenses considered nonviolent.



Source: Allen J. Beck and Paige M. Harrison, "Prisoners in 2005," Bureau of Justice Statistics, Department of Justice, November 2006

the tools needed to change the behavior that got them locked up in the first place. "All the people we put in jail 10 years ago are now back, said Atlanta Police Chief Richard Pennington. "They come out of the system more hard-core than when they went in." ²¹

But funding for rehabilitation programs remains a hard sell if the programs help prisoners get a college education. In 1994 when federal lawmakers learned that 27,700 state and federal prisoners were taking college courses from behind prison walls using federal Pell grants — which provide indigent students with up to \$4,000 a year to help pay for college courses — Congress banned prisoners from the program.

"The honest and hard-working are being elbowed out of the way by criminals," said Sen. Kay Bailey Hutchison, R-Texas, who sponsored the ban. "Prisons exist for the protection of society, not the comfort and convenience of criminals." ²²

Some prison administrators, not generally considered a liberal interest group, decried the result. "By making life tougher for the average prisoner, they're also

making it tougher for us to run the prison," said John Whitley, who had recently retired as warden of the Louisiana State Prison at Angola. "They're taking away the one thing that keeps many of these prisoners peaceful: hope." ²³

Advocates of educational rehabilitation like Vera Institute executive director Jacobson, who was trained as a sociologist, say the research is "pretty conclusive" in showing that "the more education you have when you leave [prison], the better off you're going to be. It's not in dispute."

"You'll be safer, and you'll wind up spending less money," Jacobson continues, "because you'll have fewer people going back to prison."

But Roy Pinto, vice president of the Pennsylvania State Corrections Officers Association, disputes Jacobson's conclusion. "We tried that here in Pennsylvania," he says. "We used to give them Penn State degrees, but we had one of the highest recidivism rates in the country. That ought to tell everybody something." Pinto also serves as vice-chair of Corrections USA, a federation of 20 correctional officer unions in 15 states.

Pennsylvania abolished college courses for prisoners in 1998. At the time, 400 of the state's 35,075 prisoners were taking college correspondence courses, half the number that had been doing so before the Pell Grant ban. ²⁴

But Pennsylvania kept providing vocational and basic education courses that could lead a prisoner to qualify for a general education diploma, or GED. "I think every state should do that, because you'd be surprised at how many people in prison can't read or write; if you can't read or write you can't support yourself honestly," Pinto says. But, as for college, he says, "If I've got to pay for my kid to go to college, why should I be paying for someone who couldn't follow the law?"

That's an appealing argument, education advocates acknowledge. But they insist that it doesn't settle the question. "Everybody in the United States, should be able to have access to education — including people behind bars," says Jamie Fellner, director of U.S. programs for Human Rights Watch, a New York-based international investigative and advocacy organization that has critically examined American penal policy and prison conditions.

Fellner says Americans should "get over the 'We're supposed to be punishing them,' attitude," because promoting a smoother re-entry into society saves public money. "None of this is about coddling."

But many in the law-enforcement community disagree. "Rehabilitation happens when people examine their lives," says Bradley, the Texas district attorney and a prominent law-and-order conservative. "We can give them support, but, fundamentally, all the choices that have to be made are individual choices."

Similar reasoning has led some state governments to pick religious organizations to run rehabilitation programs that take a "faith-based" approach to helping convicts turn their lives around. In past decades, the Nation of Islam developed a reputation for working with

African-American prisoners; Malcolm X was the organization's most famous religious rehabilitation success story.²⁵

In this decade, Prison Fellowship Ministries (PFM) has become the biggest and best-known faith-based rehabilitation organization, with programs in 50 states and 110 countries. The evangelical Christian organization, praised by President George W. Bush, was founded in 1976 by ex-Watergate felon Charles W. Colson. Increasingly, PFM is turning to private funding for its programs because courts have been frowning on public funding for activities that require acceptance of specific religious doctrines as an integral part of the program.

U.S. District Judge Robert W. Pratt ruled last June that the PFM-affiliated InnerChange Freedom Initiative at the Newton Correctional Facility in Iowa violated the constitutional ban on government preference for one religion over another. He didn't dispute that program participants may have benefited, but he cited testimony by prisoners of other faiths, including a Catholic inmate, who said they couldn't reconcile the program with their own beliefs. "It cannot be permissible to force taxpayers to fund such an enterprise," Pratt ruled. InnerChange received \$1.5 million in public funding, which Pratt ordered repaid to the state.²⁶

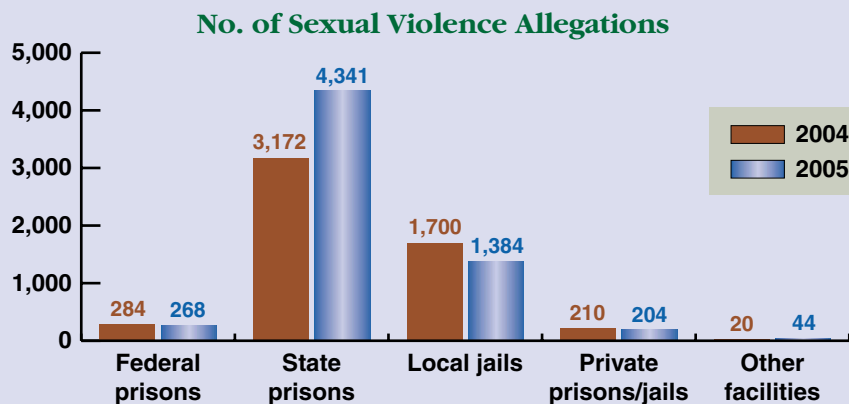
InnerChange is appealing the ruling, which came in a lawsuit by Americans United for the Separation of Church and State.²⁷

Advocates of Christian rehabilitation say participants undergo a moral transformation that results in lower recidivism rates. The programs produce "dramatic results in changing the lives of hardened criminals and stopping the revolving door of crime," said PFM president and former Virginia Gov. Mark Earley.²⁸

According to PFM, a 2002 study showed faith-based prison programs produce significantly lower recidivism rates than vocation-based programs — 16 percent vs. 36 percent, and a 2003 University of Pennsylvania study found that

Sexual-Violence Allegations Rise

Two years after the 2003 Prison Rape Elimination Act was enacted — requiring collection of national statistics on the problem — state prisons reported an increase of more than 1,000 allegations of sexual violence between 2004 to 2005. Allegations declined at federal and private prisons and jails, but experts say many rapes go unreported. Only 15 percent of all 2005 allegations were substantiated by correctional authorities.



Source: Allen J. Beck and Paige M. Harrison, "Sexual Violence Reported by Correctional Authorities, 2005," Bureau of Justice Statistics, July 2006

graduates of InnerChange in Texas were 50 percent less likely to be rearrested, and 60 percent less likely to be re-incarcerated than a control group.²⁹

But skeptics point out that faith-based rehabilitation programs often are the only ones offering follow-up care and job counseling for ex-inmates. They say lower recidivism rates could be less the result of the Christian message than the influence of extra family time allowed for participants or the fact that they are handpicked for the programs.

In addition, Todd R. Clear, a professor of community justice and corrections at John Jay College of Criminal Justice in New York, noted that religious programs in Florida prisons revealed another advantage that faith-based rehabilitation often enjoys. The state has "systematically over the last decade made prison time nasty time," he told *The Washington Post*. "But then they say private individuals can set up other types of facilities with amenities that make

much more comfortable places to do time, and all you have to do is give your life to Jesus Christ."³⁰

On the non-religious rehabilitation front, many law-enforcement officials, including Texas District Attorney Bradley, would like to see more money spent on drug and alcohol treatment. "It's the only form of rehabilitation that has a provable track record of success," Bradley says. But legislators have been so stingy with funding that "most of the time prisoners get paroled without having gotten treatment."

The Vera Institute commission found the same shortage of drug treatment nationwide. "The wait for treatment often outlasts a prisoner's sentence," the commission said.

Martin, the Texas-based prison consultant, says prisoners often need both types of rehabilitation programs. The most effective tool against recidivism, he says, is "real-world education — giving them a skill — along with actual drug treatment."

Based on his 35-year experience with convicts and drug users, he says, “education can open up a wonderful world” for many. “Once they learn they can read a sentence and comprehend it, it works miracles.”

Should prisoners be better protected against rape?

For decades, prison rape was the crime that dared not speak its name, at least in the halls of Congress and similar venues. By contrast, books and movies about prison frequently depicted rape — especially of male prisoners by fellow inmates — as an inescapable part of prison life. “Oz,” a former HBO TV series, was a particularly terrifying example.

Now, the secrecy and shame that shrouded prison rape are eroding.

“My rectum bled for several days, but I was too afraid to come forward, even to see a doctor,” former prisoner T. J. Parsell told the Prison Rape Elimination Commission in 2005. “I was too terrified [that] I’d have to explain what had happened. . . . Everyone knew that snitches were killed.”³¹

The unusual public hearing on prison rape was mandated by the Prison Rape Elimination Act (PREA), passed by Congress in 2003. The law ordered the Justice Department’s Bureau of Justice Statistics to conduct annual reports on the frequency of prison rape and in which institutions it is most common. It also created the nine-member Prison Rape Elimination Commission to study the effects of rape on individuals, prisons and society — including the impact of prison rape in spreading HIV — and to devise standards on how to investigate sexual assaults and protect inmates from rape.³²

“Everyone has come to understand that a prison sentence in the United States should not include rape as added punishment,” Rep. Frank R. Wolf, R-Va., a co-sponsor of the bill, said after its passage.³³

In the years leading up to the PREA enactment, an uptick in the number of middle-class drug prisoners — with friends, relatives or parents on the outside — played a role. “One medium that’s available to middle-class America is the Internet,” says Ron McAndrew, former warden of the Florida State Prison in Raiford. “If they get a call from their son’s bunk partner and he says, ‘They hauled your son out of the dormitory last night, and he was bleeding badly,’ they’ll be sending an e-mail the next morning saying, ‘I demand to know what’s going on.’ ”

Concern over prisons as a growing source of HIV infection added to the concern. And the simple overwhelming force of numbers added to the ranks of convicts, ex-convicts and others willing to speak out about an ugly subject. A groundbreaking, 378-page report by Human Rights Watch in 2001 — “No Escape: Male Rape in U.S. Prisons,” played a role as well.³⁴

According to the Bureau of Justice Statistics’ most recent report issued under the 2003 law, 6,241 incidents of sexual violence allegedly occurred in the nation’s prisons and jails in 2005 — up from 5,386 in 2004. Investigators were only able to substantiate 855 of the allegations, which ranged from rape to staff sexual “misconduct” with an inmate.³⁵

The report found that allegations of sexual violence had gone down at federal, local and private institutions since 2004 but had increased dramatically at state prisons — from 3,172 to 4,341. And that’s just the number of rapes that get reported, the report said.

“Due to fear of reprisal from perpetrators, a code of silence among inmates, personal embarrassment and lack of trust in staff, victims are often reluctant to report incidents to correctional authorities,” said the report.³⁶

The report found that in substantiated incidents of inmate-on-inmate rape the victim was placed in protective custody 49 percent of the time, while the perpetrators were arrested or prosecuted 58 percent of the time. In

substantiated cases involving sexual misconduct with a prisoner by staff, the employee was discharged, fired or resigned 82 percent of the time and were arrested or prosecuted 45 percent of the time.

Some states are stepping up anti-rape efforts. During training sessions for prison staff in Pennsylvania, prisoner Keith DeBlasio, 39, told participants his HIV infection resulted from rape at a federal prison in Milan, Mich., where he was serving time for interstate trafficking of forged securities and fraudulent use of a credit card. “In Pennsylvania, there’s a lot less of this attitude of, ‘You brought it on yourself, or, ‘You’re not telling the truth,’ ” DeBlasio says in an interview. “It’s a really progressive system; I was amazed.”

Prison-reform advocates who hailed enactment of the PREA, however, say another federal law blocks prisoners’ and relatives’ attempts to sue prisons for allegedly failing to protect inmates from rape. The 1996 Prison Litigation Reform Act (PLRA) bars prisoners from filing federal lawsuits over prison conditions until available administrative remedies “are exhausted” — legalese for first going through all reporting and grievance procedures.³⁷

Margo Schlanger, a law professor at Washington University in St. Louis who specializes in prisoner-rights law, says the so-called exhaustion provision does not take into account fear of retaliation. “If you’ve been raped by a staff member, often the person you have to complain to is that staff member or their shift supervisor,” she says. “And many systems have tight [reporting] deadlines, which can be as few as two days. When people are traumatized, it often takes them a while to be able to report.”

Hart of the Philadelphia District Attorney’s office, who helped draft the PLRA, counters that the exhaustion requirement does not prohibit lawsuits. “It just requires that you raise the matter first with prison officials,” she says. “Prison

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Chronology

1970s-1980s

Rehabilitation falls out of favor, replaced by long sentences and isolation from society.

Sept. 13, 1971

State troopers storm the New York state prison at Attica to put down an inmate takeover; 43 people are killed, including 11 hostages. Inmates demanded better medical care and food, among other changes.

1973-1974

Massachusetts and New York pass tough new laws imposing mandatory-minimum terms for drug offenses and gun possession.

April 1974

Sociologist Robert Martinson challenges the value of prison rehabilitation programs.

1976

Federal judge takes over Alabama prison system, ruling its “rampant violence and jungle atmosphere” violate the constitutional ban on cruel and unusual punishment.

Feb. 2-3, 1980

Inmates kill 33 fellow prisoners, some identified as “snitches,” during an uprising at the New Mexico state prison at Santa Fe.

1984

In the first of a series of measures, the Sentencing Reform Act sets tough federal sentencing guidelines to reverse past “undue leniency.”

1985

U.S. jail and prison population reaches 750,000, up from 330,000 in 1972.

1989

First “drug court” opens in Miami, offering supervised drug treatment as an alternative to incarceration.

1990s

Surge in violent urban crime during late-'80s crack epidemic triggers wave of harsh anti-crime laws including mandatory sentencing and “three-strikes” policies.

1991

U.S. Supreme Court upholds Michigan law requiring mandatory life sentence for possessing more than 650 grams — nearly 23 ounces — of cocaine.

1993-1994

Voters in Washington and then California approve “three-strikes” laws requiring up to life in prison for the third serious offense — which can include property crimes such as burglary and car theft. Eventually, 26 states adopt such laws.

1994

Congress bans Pell Grants for prisoners’ college courses.

1996

Prison Litigation Reform Act restricts prisoners’ federal civil rights lawsuits to stop “frivolous” litigation.

2000s

States begin promoting alternatives to incarceration.

2000

California voters approve a law offering drug treatment instead of incarceration to first- and second-time drug offenders.

2002

Federal judge prohibits California from transferring mentally ill prisoners to “supermax” prisons, where inmates live in virtually total isolation.

2003

Congress passes and President George W. Bush signs the Prison Rape Elimination Act (PREA).

2004

Bush calls for a “second chance” for people released from prison.

2005

Violent crime nationwide rises 2.3 percent over previous year. . . . U.S. jail and prison population increases 700 percent since 1970, to 2.2 million inmates.

2006

Congress defeats “Second Chance Act” providing assistance to newly released prisoners. . . . Federal judge declares a faith-based prison rehabilitation program unconstitutional.

Feb. 14, 2007

Pew Charitable Trusts project the national prison population will increase by 192,000 inmates by 2011.

Feb. 18, 2007

Two Texas newspapers reveal systematic sexual abuse and brutality — and official indifference — at the state’s youth prisons.

Feb. 20, 2007

California judge concludes that California prisons are in “crisis” but rejects an attempt by Gov. Arnold Schwarzenegger to transfer 5,000 to 7,000 prisoners out of state.

March 2007

Sentencing Project reports that 22 states have changed sentencing laws or parole-probation procedures over the past two years in order to lower incarceration rates. . . . “Second Chance” bill reintroduced, approved by House subcommittee.

Brutality Revealed at Texas Youth Facilities

Officials implicated in widespread abuses

Revelations of staff sexual abuse and brutality at Texas youth facilities have erupted into a full-scale scandal. Accounts of beatings and rapes of young inmates have surfaced along with clear evidence that authorities knew about the assaults — as well as prisoner-on-prisoner violence — but didn't stop them.

Since the disclosures about Texas Youth Commission (TYC) prisons began in February, Republican Gov. Rick Perry has fired the agency's executive director; two other high-level employees were sacked; the commission's entire board resigned and a youth prison director has been arrested for lying to police. In addition, as many as 1,000 youths could be freed if investigators find they were wrongly blocked from release. Under Texas law, most young people don't serve fixed sentences and are released when they're deemed worthy of return to society.¹

The governor has appointed a former prosecutor to oversee an investigation of the entire TYC system, which is responsible for about 4,000 young people in 24 facilities for offenses ranging from burglary and drug crimes to assault. The commission also contracts with private firms who run 19 other detention centers.²

By late March, about 100 investigators reporting to the governor's "special master," Jay Kimbrough, had opened 1,100 investigations; 282 have been closed so far with no action. The leading allegations include sexual misconduct between staff and inmates, and staff-on-inmate violence.³

While the conditions in Texas may be especially scandalous, violence and abuse also have been surfacing in other states,

shining a spotlight on youth detention institutions that tend to be overlooked in discussions of national prison policy. More than 109,000 youths were being held in detention facilities in 2003 (the most recent figures available). Because youth facilities generally embrace the doctrine of rehabilitation, episodes of brutality and exploitation seem all the more shocking.⁴

Over the past several months alone:

- Seven guards and a nurse from a now-closed "boot camp" for young people in trouble in Panama City, Fla., were charged in November with aggravated manslaughter on a child. The 14-year-old victim died after he was beaten following his collapse during a run. The beating was videotaped.⁵
- A 15-year-old inmate in Johnstown, N.Y., died on Nov. 18, 2006, after being restrained face-down by guards handcuffing him. A medical examiner ruled the death a homicide, but a district attorney said the death was unintentional.⁶
- Ohio youth officials in January settled a class-action lawsuit filed on behalf of teenagers who said they were brutalized by guards in 2003-2004. One allegedly sexually assaulted a 17-year-old girl on suicide watch; another allegedly choked an 18-year-old boy into unconsciousness.⁷
- The U.S. Justice Department sued Oklahoma in December over conditions at a juvenile detention center near Tulsa where allegations included sexual contact between detainees and staff, staff-on-detainee violence and multiple suicide attempts by detainees.⁸

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officials want to know what's going on in their prisons. In a good correctional system, grievances alert you to problems early on so you can fix them."

Prisoners'-rights advocates also complain that under another PLRA provision prisoners must show proof of "physical injury" before they can file a federal civil action — even if they are charging mental or emotional injury suffered while in custody. Not all courts require such a showing in cases in which a prisoner — for instance — does not allege he was beaten to make him submit to rape.

But Federal Magistrate Judge John M. Roper Sr., of Gulfport, Miss., invoked the provision when he dismissed a lawsuit last year by an ex-prisoner claiming he'd been raped by a jail guard. "The pris-

oner did "not make any claim of physical injury beyond the bare allegation of sexual assault," Roper wrote.³⁸

Thus, says Vera Institute Washington director Alexander Busansky, "if you are compelled to have sex with someone but there's no physical injury, you have no redress." Busansky, a former New York City and federal prosecutor who specialized in cases of excessive use of force by police and corrections officers, is helping draft the rape-protection standards being developed by the Prison Rape Elimination Commission.

Still, Texas District Attorney Bradley is skeptical about many prisoners' rape allegations. "Certainly there's a fair number of people in prison who lie about anything to get out or to sue somebody," he says. "I see lots and lots of

perjury in affidavits to try to get sentences undone. I've prosecuted inmates for that."

Bradley says he does not excuse rape, but "If you create a harsh environment, you're going to have harsh consequences. It's not acceptable, but it is a reality." ■

BACKGROUND

Takeover at Attica

A four-day prisoner takeover of the New York state penitentiary at Attica in 1971 led to a national debate

- Arkansas in November canceled a contract with a firm running a youth prison after learning that staffers were injecting detainees with sedatives, often without prescriptions.⁹

Steve J. Martin, a Texas-based prison consultant, sees a connection between treatment of juveniles and adults. “Many of us in the business believe we’re in a mean season,” he says. “Whatever happens in the adult system has a trickle-down effect. We demonize inmates, even the youth. And as you do, the measures which you use to control them reflect that.”

In Texas, the *Dallas Morning News* and the *Texas Observer*, a muckraking bimonthly, broke the first stories on mistreatment of prisoners and officials’ failure to act.

State legislators leapt on the issue, obtaining testimony from some of the key players, including a Texas Ranger who had turned up evidence of crimes against youth during a 2005 investigation at the West Texas State School but couldn’t get a prosecutor to file charges. Brian Burzynski told a legislative committee he told a district attorney (D.A.) in 2005 that two senior staff members of the facility were forcing male students into sex, but the official took no action. And the state attorney general’s office said it couldn’t step in without a request from the D.A.

“I saw kids with fear in their eyes, kids who knew they were trapped in an institution where the system would not respond to their cries for help,” Burzynski testified on March 8. “I promised each of those victims I would do everything in my power as a Texas Ranger to ensure justice would be served. . . . I can only imagine what the students think about the

ranger who was unable to bring them justice.”¹⁰

The D.A., Randall Reynolds, recently offered an explanation for failing to act. He blamed a “breakdown in communications.”¹¹

¹ See Emily Ramshaw, “Hundreds May be Freed from TYC,” *Dallas Morning News*, March 24, 2007, p. A1.

² See Ralph Blumenthal, “Complaints Flood Texas Youth Hotline,” *The New York Times*, March 26, 2006, p. A14; and Texas Youth Commission Web site, www.tyc.state.tx.us. See also Emily Ramshaw, “TYC director outlines reforms,” *Dallas Morning News*, March 17, 2007, p. A1.

³ See Blumenthal, *op. cit.*; and Ramshaw, *op. cit.*, March 24, 2007.

⁴ For youth detention statistics, see Howard N. Snyder and Melissa Sickmund, “Juvenile Offenders and Victims: 2006 National Report,” Office of Juvenile Justice and Delinquency Prevention, Department of Justice, March 2006, p. 197, <http://ojjdp.ncjrs.org/ojstatbb/nr2006/index.html>. For adult statistics, see “Public Safety, Public Spending: Forecasting America’s Prison Population 2007-2011,” Pew Charitable Trusts, February 2007, p. 29, www.pewtrusts.com/pdf/PSPP_prison_projections_0207.pdf.

⁵ See Alex Leary, *et al.*, “8 Charged in Teen’s Boot Camp Death,” *St. Petersburg Times*, Nov. 29, 2006, p. A1.

⁶ See Cassi Feldman, “States Facilities’ Use of Force is Scrutinized After a Death,” *The New York Times*, March 4, 2007, p. 29.

⁷ See Carrie Spencer Ghose, “Ohio Youth Prisons to Offer Juveniles Access to Attorneys,” *The Associated Press*, Feb. 3, 2007.

⁸ See Josh Rabe, “Feds Sue State Over Juvenile Site,” *The Oklahoman*, Dec. 16, 2006, p. A18.

⁹ See Amy Upshaw, “Arkansas Fires Firm Running Youth Lockup,” *Arkansas Democrat-Gazette*, Nov. 4, 2006.

¹⁰ Quoted in Emily Ramshaw, “Prisons Rife with Physical Abuse,” *Dallas Morning News*, March 9, 2007, p. A1.

¹¹ Quoted in Doug J. Swanson, “Youth Jail Sex Inquiry Revived,” *Dallas Morning News*, Feb. 20, 2007, p. A1.

about prison policy. The uprising began on Sept. 9, when about 1,200 of the prison’s 2,245 inmates seized 39 guards and civilian employees — and most of the institution itself.³⁹

The rebellion in the predominantly African-American facility came at a time when black prisoners, especially in California and New York, were becoming politically radicalized, seeing their imprisonment as evidence of systematic repression of blacks. Ironically, the uprising followed a series of liberalization efforts by a new prison boss, who had expanded visiting and mail privileges, provided pork-free meals for Muslim prisoners and lessened censorship of inmates’ mail.

“His actions had angered many staff members and raised inmates’ expecta-

tions to a level that would be difficult to meet,” historian Scott Christianson wrote decades later.⁴⁰

During the takeover, a prisoner committee demanded 28 improvements in prison conditions. Rebellion leaders also insisted the warden be ousted and that all prisoners participating in the uprising be granted amnesty and passage to a “non-imperialistic” country.

New York Gov. Nelson A. Rockefeller rejected all the demands, and ordered the State Police to retake the facility. On Sept. 13, a helicopter-supported assault quelled the uprising; 32 prisoners and 11 hostages died; some inmates had been killed by other inmates. A prison official’s statement that the prisoners had killed nine of the 11 hostages turned out to be false.

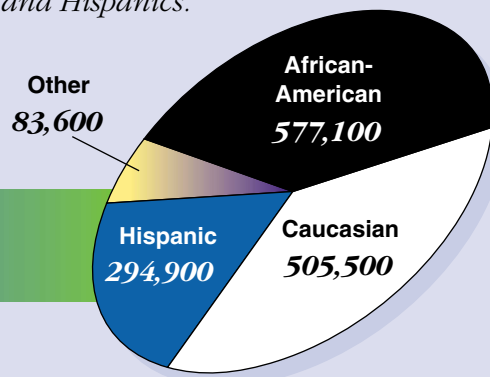
A year after the uprising was crushed, a state commission appointed by Rockefeller concluded the police operation had been poorly planned and was followed by organized, systematic beatings of prisoners — hundreds of whom were made to crawl naked over broken glass. More important from a national perspective, the commission said injustices and mismanagement that gave rise to the rebellion weren’t confined to Attica.

“Attica is every prison, and every prison is Attica,” the commission concluded.⁴¹

After decades of lawsuits by prisoners and guards (and their survivors) who’d been injured in the uprising or the police assault, or both, New York settled the prisoners’ lawsuits with an \$8 million payment to be divided among 500

Nearly 40 Percent of State Prisoners Are Black

African-Americans accounted for nearly 40 percent of the nation's 1.5 million state prison inmates in 2005 — the largest ethnic/racial group — followed by whites and Hispanics.



No. of Prisoners by Race, 2005

Source: Allen J. Beck and Paige M. Harrison, "Prisoners in 2005," Bureau of Justice Statistics, Department of Justice, November 2006

prisoners and their relatives. U.S. District Judge Michael Telesca of Rochester, N.Y., who divided the money, said prisoners beaten during the retaking had been treated "like garbage."⁴²

Throw Away the Key

At a time when rising crime was raising public fears, the Attica rebellion seemed to confirm the view that prisoners were dangerous people who should be dealt with harshly.

By the end of the 1960s, crime had become a major political issue after an uptick in crime accompanied the decade's social and political turbulence. By 1975, the serious-crime rate had more than doubled over the 1960 rate — to 5.3 crimes per 100,000 population.⁴³ State and federal politicians competed with one another to introduce ever-tougher proposals raising sentences and building more prisons.

Meanwhile, politicians and officials began discarding the idea that prisons should aim to rehabilitate prisoners through therapy by psychologists and social workers. "There is little or no evidence that correctional 'treatment' pro-

grams will work," *Corrections Magazine*, a (now-defunct) publication reported in 1975, summing up the consensus at the time among law-enforcement professionals.⁴⁴

Research by some academics — including some left-leaning ones — helped propel this harder-nosed approach. In 1974, sociologist Robert Martinson of City University of New York published articles in both the influential neoconservative magazine *The Public Interest* and in the liberal journal *The New Republic*. "The present array of correctional treatments has no appreciable effect — positive or negative — on the rates of recidivism of convicted offenders," he wrote in the latter.⁴⁵

Martinson, whose writings reflected a left-liberal perspective, was writing in the context of the "indeterminate" sentencing that prevailed at the time. In effect, many prisoners remained confined until they could show they had been rehabilitated.

Five years later, Martinson changed his mind about rehabilitation. "Some treatment programs do have an appreciable effect on recidivism," he wrote in a 1979 article in the *Hofstra Law Review*. Specifically, he said, "individual psychothera-

py, group counseling, intensive supervision and what we have called individual/help (aid, advice, counseling)," proved effective in many cases.⁴⁶

But by that time, the law-and-order policy shift had acquired unstoppable momentum. "For far too long, the law has centered its attention more on the rights of the criminal than on the victim of the crime," President Gerald R. Ford said in a 1975 statement to Congress in which he urged enactment of "mandatory minimum" sentences. "It is high time we reversed this trend."⁴⁷

Even before that, some states had begun establishing mandatory minimum sentences for some crimes, including minor drug offenses. The most well-known was New York's Rockefeller Drug Law of 1973. In Massachusetts, the 1974 Bartley-Fox Amendment mandated that anyone possessing an unregistered handgun would serve a year in jail.⁴⁸

New Mexico Savagery

The Attica revolt had been marked by a high level of prisoner organization and political consciousness. Inmates prevented hostages from being killed by other prisoners, and rebels' demands — while unrealistic — were rational and coherently explained. But a takeover of the New Mexico State Penitentiary at Santa Fe nine years later showed no aims beyond killing other prisoners.⁴⁹

Prisoners tagged as informants — "snitches" — were special targets, though they accounted for only 13 of the 33 prisoners killed during the Feb. 2-3, 1980, uprising. The other victims seemed to have been targeted because they'd made enemies over unpaid gambling debts and the like.

The organizers were hardened troublemakers serving lengthy sentences who had been temporarily housed

* Some guards also were badly beaten but survived.

in a lightly guarded dormitory while their own high-security cellblock was under repair. That fact came to light in the weeks after rioting prisoners surrendered, leaving the prison's interior a smoldering ruin. Bodies lay in corridors; the burned remains of one prisoner could be seen in the "protective custody" cell where he'd been confined — for his own safety.

Documentary evidence soon surfaced that some prison staff had predicted the uprising — in writing and in great detail, down to the dormitory where it started — less than a month before it started. And, just two weeks before the uprising, national prison expert Raymond Procnier had warned publicly that overcrowding, understaffing and mismanagement had created a disaster waiting to happen. New Mexico officials, Procnier wrote, were "playing Russian roulette with the lives of inmates, staff and the public."⁵⁰

Though the New Mexico riot has faded from the public memory, it is embedded in the collective psyche of prison experts because of the powerful lesson it teaches about the consequences of ignoring danger signs.

'Jungle Atmosphere'

In the 1980s, a tough-on-crime trend took hold around the country. Congress passed the Sentencing Reform Act of 1984, which established minimum ranges for sentences federal judges were to follow in order to correct past patterns of "undue leniency."⁵¹

With state and federal sentencing laws now in place, prisoners were being

locked up for longer periods of time.

Then a crack-cocaine epidemic hit the nation's cities in the mid- and late-1980s, sending crime rates soaring and driving a tough response from police, courts and lawmakers. In 1986 Congress passed the Anti-Drug Abuse Act, which — combined with new guidelines set by the National Sentencing Commission — re-



Arkansas inmates being held for misdemeanors learn from Sheriff Pat Garrett, right, they may be released early due to jail overcrowding.

sulted in sentences for crack trafficking that were three to six times longer than for equivalent crimes involving cocaine powder — a disparity that remains controversial because crack is mainly used by African-Americans.⁵² In 1991, the U.S. Supreme Court upheld a Michigan law that imposed a life sentence without parole on anyone convicted of possessing more than 650 grams of cocaine.⁵³

In penitentiaries, the population expansion put enormous pressure on both inmates and administrators. By 1980, the country was locking up 138 prisoners for every 100,000 people in the national population. By Dec. 31, 1987, that rate had soared to 228.

"Nationwide, we're still putting about 720 more inmates in prison each week than we're releasing," Allen F. Breed, of the National Council on Crime and Delinquency, a liberal Oakland, Calif.-based think tank, said in 1988.⁵⁴

The overcrowding was affecting prisoner health and welfare. Between 1982 and 1983, overcrowding forced prison officials and federal judges to free prisoners early, in some cases releasing several hundred at a time in Alabama, Florida, Michigan and South Carolina. But prisons remained jammed past capacity in at least 40 states, with prisoners in 18 states sleeping on floors.⁵⁵

In Alabama, the state prison system was under federal court supervision for 13 years, from 1976 to 1989, after a prisoner filed suit in 1971 claiming that at least six men had died in the prison hospital because of improper treatment. In 1976, U.S. District Judge Frank M. Johnson Jr. assumed control of the entire system after finding the "rampant violence and jungle atmosphere" in Alabama prisons met "any current judicial definition of cruel and unusual punishment."⁵⁶

But Alabama was no exception. Court orders or consent decrees covering entire state prison systems, major prisons or jails were in effect in nearly every state by 1994, according to the ACLU National Prison Project.⁵⁷

Court orders covering entire systems, with judges supervising efforts to bring institutions into compliance with humane standards of confinement, were in place in Arkansas, Florida, Mississippi, New Mexico, Rhode Island, South Carolina, Tennessee, Texas and Puerto Rico.⁵⁸

Congress Gets Tough

In 1986 jail conditions in Philadelphia reached such a critical point that the city agreed with prisoners' lawyers to a court-imposed "cap" on population.

AP Photo/The Daily Citizen/Philip Holsinger

Whenever the number of prisoners exceeded 3,750, prisoners arrested for non-violent crimes would be released automatically without bail.⁵⁹

The result, city officials said, was a giant crime spree, with drug traffickers and other lawbreakers taking full advantage of what amounted to a get-out-of-jail-free card.⁶⁰ The Philadelphia district attorney's office would later help write and lobby for the Prison Litigation Reform Act of 1995, which set strict limits on judges' power to release prisoners.⁶¹ Under the act, releases can only be ordered by three-judge panels, and only after — among other things — “clear and convincing evidence” that overcrowding violates prisoners' federal rights and that no other measure can right the wrong.⁶²

Prison-reform advocates generally didn't object to the limitations, but provisions designed to limit prisoner lawsuits in federal court proved more controversial. In introducing the PLRA, Sen. Robert Dole, R-Kan., complained that prisoners were filing lawsuits over such seemingly trivial grievances as “insufficient storage locker space, a defective haircut by a prison barber . . . and yes, being served chunky peanut butter instead of the creamy variety.” The notion that trivial issues dominated prisoner lawsuit filings was a persistent theme of the National Association of Attorneys General, which led the push for the PLRA.⁶³

But after analyzing the effects of the PLRA on prisoners' lawsuits, Washington University's Schlanger wrote in 2003 that the four leading topics of correctional-conditions litigation in federal court were:

- Physical assaults (by correctional staff or by other inmates),
- Inadequate medical care,
- Alleged due-process violations relating to disciplinary sanctions, and
- General living-conditions such as nutrition or sanitation.

In other words, she wrote, they were suing over “real hardships inherent in prison life, not peanut butter.”⁶⁴ ■

CURRENT SITUATION

California Crisis

As California begins devising rescue plans for America's biggest prison system, official monitors are reporting that conditions there are even worse than was previously thought.

For instance, the prison system's drug-abuse treatment programs add up to a “\$1 billion failure,” State Inspector General Matthew L. Cate reported in February.⁶⁵ Beyond wasting funds, the programs amount to “a missed opportunity to change lives,” he said in a detailed, 51-page account of his office's findings. Among other specifics, investigators found that ex-prisoners who had gone through drug-abuse programs showed a greater tendency to be back behind bars within a year of release than ex-prisoners who hadn't gotten any treatment.⁶⁶

“The entire \$143 million California spends each year for in-prison and aftercare substance abuse treatment combined appears to be wasted,” the inspector general reported. State Corrections and Rehabilitation Secretary James E. Tilton greeted Cate's conclusions as largely accurate.⁶⁷

The report came on the heels of the grim assessment by the Little Hoover Commission, which hit the news amid a series of events indicating a deepening of the crisis enveloping the 173,000-prisoner system.⁶⁸ Two months before a state judge rejected Schwarzenegger's plan to ship up to 7,000 prisoners out of state, a federal judge gave the state until June to show progress in easing overcrowding. Otherwise, said U.S. District Judge Lawrence Karlton, he would set up a three-judge panel to set a population “cap” on the state's prisons.⁶⁹ By March, however, the legislature hadn't taken action yet on major prison legislation.

Schwarzenegger has announced a \$9.6 billion plan to add about 30,000 new beds to prisons and 50,000 to jails, plus medical and mental health facilities. He also wants a commission to examine the possibility of shortening sentences — though he wants no changes in the state's 1994 “three-strikes” law that requires prison time on a third felony conviction.⁷⁰

The law does contribute to some of California's prison overcrowding, though not as much as some had feared. A national prison population survey by the Pew Charitable Trusts found that prosecutors didn't always apply it but sometimes used it as a negotiating tool to pressure defendants into pleading to lesser charges.⁷¹

In any event, some of Schwarzenegger's fellow Republicans are leery of any suggestion that sentences be reduced. State Sen. George Runner says Republicans worry formation of a “sentencing commission . . . is code for less time in prison.”⁷²

Meanwhile, a major force in California prison politics, the prison officers' union, has backed a proposed \$2 billion bond issue to build an unspecified number of small facilities for prisoners in rehabilitation programs or about to be released. Some of those “could be up and running within a year,” says Ryan Sherman, the union's public affairs director. The union also wants the state to build temporary housing for low-security prisoners on the grounds of existing prisons and construct new prisons for maximum-security inmates. The union has asked for pay hikes and other personnel measures aimed at restoring full staffing to the system — now lacking nearly 4,000 guards.⁷³

Meanwhile, the union representing about 14,000 prison support staff, such as nurses, teachers and cooks, would like to see more emphasis on adding rehabilitation programs. “For every additional \$1 spent to ensure that offenders are rehabilitated before they return to our communities the governor would

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At Issue:

Should Congress amend the Prison Litigation Reform Act?



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k eith was a securities dealer, Marilyn owned a car-repair shop with her husband, TJ was in high school and Hope was a college student. Each was the victim of a violent rape. And federal law prevents them from filing suit to be compensated for the trauma they endured. Why? Because they were in prison when they were raped.

It is easy to scoff at the ridiculous claims of some prisoners, like receiving chunky rather than creamy peanut butter or being served cold food. However, when Congress passed the Prison Litigation Reform Act (PLRA) it not only cut off such absurd claims but also eliminated many legitimate ones.

As a member of the National Prison Rape Elimination Commission, I have heard heart-rending testimony from inmates who have been savagely raped and beaten. Most were too traumatized and terrified to report it while they were in prison. If their assailant were a correctional officer, they were at risk of retaliation. If they were attacked by another inmate, their life would be at risk for being a “snitch.”

Yet, the PLRA requires that inmate lawsuits be dismissed unless they have exhausted their administrative remedies. In most prisons, that means reporting the rape within 15 days; in some, it’s as few as two days. Despite the physical and mental trauma of being raped, the inmate must file a report in a very narrow window of time.

The commission recently heard testimony that children in the custody of the Texas Youth Commission (TYC) were repeatedly raped and molested by high TYC officials. How did they get away with it?

One of the officials had a key to the complaint box and simply threw away complaints that incriminated him and his friends. The children had no chance to “exhaust” their administrative remedies because their rapist *was* the administrative remedy. Under the PLRA, these children have no recourse in federal court.

The PLRA can easily be amended to allow such legitimate claims, while eliminating frivolous complaints. When the opponents offer up the old chestnuts about peanut butter and cold food, please remember the children in Texas, plus Marilyn, Keith, TJ, Hope and thousands of others raped in prison. While Congress can never undo the horrors they endured, it can give them access to the justice.



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WRITTEN FOR *CQ RESEARCHER*, APRIL 2, 2007

t he American Bar Association (ABA) has passed a resolution urging repeal of substantial portions of the Prison Litigation Reform Act (PLRA). Congress should not adopt these misguided proposals. The ABA now proposes to:

Eliminate limits on prisoner releases — Under the PLRA, a federal court cannot order prisoner releases if there is a safer solution that makes the conditions constitutional. The ABA wants to return to the pre-PLRA standards, making large-scale prisoner releases easier. Under this old regime, Philadelphia suffered an unprecedented crime wave. In one 18-month period, the city rearrested 9,732 defendants released by a federal judge, for new crimes including 79 murders, 959 robberies, 90 rapes and 1,113 assaults.

Discourage early resolution of prison problems — The PLRA encourages prisoners to try to resolve disputes before filing lawsuits. If prisoners first use the prison grievance process, they may later sue in federal court. If they don’t, they may sue only in state court. This requirement (known as exhaustion of administrative remedies) serves important policy goals — it promptly alerts prison managers to problems so harms can be mitigated and future problems prevented. It is also an effective form of alternative dispute resolution that saves taxpayers’ dollars and limited federal court resources.

Tie up federal courts with insubstantial claims — The PLRA also prevents prisoners from tying up federal courts with insubstantial claims. Instead, they must file these suits in state courts. Limiting the availability of federal court suits is not new. For example, a rape survivor cannot sue her attacker in federal court unless he lives in another state and the value of her claims exceeds \$75,000. Our overburdened federal system already lacks the ability to handle many serious criminal cases. Why should Congress make matters worse by turning federal courts into small-claims courts for prisoners? And it’s also hard to explain to crime victims why criminals should get such preferential access to the federal courts.

Make taxpayers pay prisoners’ lawyers exorbitant fees — In the United States, most litigants must pay their own attorney fees. In prisoner civil rights cases, however, taxpayers pay these fees. In such cases, the PLRA caps fees at \$138/hour. The ABA now wants taxpayers to pay these lawyers at a stunning rate — up to \$450/hour.

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spend \$250 to expand the current broken system,” said Service Employees International Union Local 1000.⁷⁴

But some prison-system veterans question whether California voters are ready for a more rehabilitation-oriented approach. “I don’t see the governor having the intestinal fortitude to build 500 classrooms and hire teachers,” says Baumann, the correctional officers union chapter president at Norco. “Nobody votes for that.”

Re-entry

A prison construction boom in the 1990s saw the addition of 417 new state and federal prisons. And the private corrections business experienced a burst of activity as well. From 1995 to 2000 alone, the number of private prisons under contract to states or the federal government increased by 140 percent, to 264 in 2000, the last year for which complete statistics are available. During that period, the average daily number of privately held prisoners rose by 455 percent, to more than 91,000.⁷⁵

Conservatives and liberals who traditionally have been at odds over most crime-and-punishment issues are forging a new alliance to help prisoners re-enter society. “There’s real consensus, with support from both ends of the spectrum,” says Gene Guerrero, a senior policy analyst at the Open Society Policy Center, a criminal-justice advocacy organization related to the New York-based Open Society Institute established by philanthropist George Soros.⁷⁶

Guerrero is helping coordinate support for a bill that would fund grants to states and local governments for programs to help prisoners get back on their feet. “We need to do as much as we reasonably can to assure they don’t return to prison,” Rep. Robert C. Scott, D-Va., said during a markup session on the Second Chance Act of 2001 in the House Judiciary Committee’s Crime, Ter-

rorism and Homeland Security Subcommittee, which approved the bill on March 27. The point, Scott said later, is not to coddle them but to ensure that “all of us are not victims” of ex-prisoners committing new crimes.⁷⁷

“It’s difficult to find anyone who’s against it,” says Nolan Jones, deputy director of federal relations for the National Governors Association, which has thrown its weight behind the legislation. “There are certainly no organized forces against it.”

Nevertheless, an earlier version of the bill didn’t survive the previous Congress despite broad support. In 2006, Second Chance legislation had backers ranging from religious conservatives such as Sen. Sam Brownback, R-Kan., to liberals including Sen. Joseph R. Biden, D-Del. — both now candidates for presidential nominations. But in December the Senate version was blocked by Sen. Tom Coburn, R-Okla., a religious conservative who had first supported the bill. He said it would duplicate existing programs he insisted be eliminated as the price of the new bill’s passage.⁷⁸

This year’s bill would authorize \$382 million over two years for programs including keeping convicts in touch with mentors during incarceration and immediately after and to assist with housing, medical care and schooling and job training.

The measure took its name from a little-noticed passage in Bush’s 2004 State of the Union address: “America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life.”⁷⁹

Lawmakers have also been hearing from people on the front lines of law enforcement, who complain they have to deal with a constant stream of newly released inmates with few prospects for building law-abiding lives. On Feb. 15, Paul Logli, the state’s attorney in Rockford, Ill., and chairman of the board of the National District Attorneys Association, surprised some of those attending a House Crime subcommittee hearing

on youth gangs by saying he had all the laws he needed.

What he needed most, he said, was help in keeping young people out of prison and from returning.

“We need to develop meaningful re-entry programs so those . . . who have already been convicted and sent to prison can somehow be reintegrated back into our societies with a chance to succeed,” Logli said.⁸⁰ ■

OUTLOOK

No Paradigm Shifts

Overwhelmingly, those in the corrections world see a future very similar to the present. The consensus holds true across the spectrum of political views and experiences.

“I don’t see anything that’s going to change sentencing practices or management practices even though we are becoming more cost-conscious,” says Martin, the Texas consultant. U.S. incarceration rates are so enormous that bringing them down appreciably would require a major reorientation of the entire criminal justice system, he adds. “That’s a paradigm shift I don’t see in the offing in this country. It’s going to take decades of change.”

Schlanger, the Washington University prison litigation specialist, hopes for “at least a plateau in the prison population, and maybe even some minor decarceration.” But after the huge prison-building boom of the 1990s, she says, “there’s not much reason to empty them out. It’s a question of how many more do you build.”

Law-and-order advocate Rep. Forbes speaks in remarkably similar terms. “What I hope we can do is bump that system and make it more a more humane and better system and ultimately get us to where we want to be — less crime and less victims,” he says, adding, “I don’t

think we're going to have enormous shifts and changes in 10 years."

In Texas, District Attorney Bradley sees little evidence that politicians are up to the long-term task of reshaping sentencing and incarceration policy. "I don't see the long-term political will to get that done," he says. "When budgets get tight, those are the kinds of things that get cut. You won't see a cut in the prison budget, but you will see a cut in treatment programs. It's the nature of that beast."

Bradley bases his outlook on experience. "I saw them promise back in 1993 that we'd have 18,000 treatment beds across the state. But that number went down over the years, not up," he recalls. "Nor do I think that a better set of legislative people will make a difference over the next 10 years."

But others point to law-and-order bastions like Mississippi trying to promote alternatives to imprisonment, and hope that political resistance to anything that could be depicted as soft on crime may be weakening. "There's a tremendous opportunity to innovate," says Busansky of the Vera Institute.

Anyone looking for new approaches to incarceration should look to the states and localities rather than to Congress, he says. "There's more of an alignment between what good correctional management wants to do and what the public wants," he says. "At the grass roots, they don't want prisons and jails to be warehouses. They want them to be productively engaged in improving inmates' lives."

But in Philadelphia and the rest of Pennsylvania, prisoners'-rights lawyer Rudovsky predicts "more, rather than fewer, prisoners. The murder rate is going up, people are demanding more police. I remain pessimistic."

The public, says California's Schwarzenegger, is in a "state of denial" about prisons. "You talk about prisons, people feel like, 'OK, go out and get the criminal and you send him somewhere, but wherever that is, I don't want to look there, I don't want to know. That's your problem,'" he

said recently. "When the people are not excited about it, how do you make the legislators excited about it?"⁸¹

Even so, Busansky argues that the pragmatic perspective he sees spreading represents a citizen awakening, as well as a slow erosion of the traditional political divide between prisoners'-rights advocates and lock-'em-up conservatives.

"It's not some tree-hugging group of people who are going to bring the change," he says. "It's people saying, 'Why am I not feeling safer?'" ■

Notes

¹ More than half of returning prisoners are sent back for breaking parole, a proportion higher than in states with looser parole supervision, according to a study by a California Department of Corrections and Rehabilitation-funded think tank. See Ryan G. Fischer, "Are California's Recidivism Rates Really the Highest in the Nation?" Center for Evidence-Based Corrections, University of California, Irvine, September 2005, http://ucicorrections.seweb.uci.edu/pdf/bulletin_2005_vol-1_is-1.pdf. For more information about the union, see California Correctional Peace Officers Web site, www.ccpoanet.org/default.php?inc=aboutUs. For recidivism statistics, see Patrick A. Langan and Daniel J. Levin, "Recidivism of Prisoners Released in 1994," Bureau of Justice Statistics, June 2002, www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf.

² The California Correctional Peace Officers Association uses a design capacity figure of "about 80,000." See "From Sentencing to Incarceration to Release: A Blueprint for Reforming California's Prison System," California Correctional Peace Officers Association, January 2007, p. 3, www.ccpoanet.org/publications/default.php?news_id=1&pagemode=view&inc=ccpoaDocsArch&pagetype=. California's Legislative Analyst's Office explains that that figure is based on the system's capacity for housing all prisoners in single cells or in single bunks in dormitories, though prisons throughout the country double-cell and double-bunk. By that standard, California's capacity is about 155,000. See "Adult Corrections: Who is in Prison?" Legislative Analyst's Office [California Legislature], Feb. 21, 2007, p. D5, www.lao.ca.gov/analysis_2007/crim_justice/crimjust_anl07.pdf. For comparative prison-

jail population figures nationwide, see "Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011," Pew Charitable Trusts, February 2007, p. 29, www.pewtrusts.com/pdf/PSPP_prison_projections_0207.pdf.

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⁴ Quoted in "Solving California's Corrections Crisis: Time is Running Out," Little Hoover Commission, Jan. 25, 2007, p. i, www.lhc.ca.gov/lhcdir/185/Report185.pdf. For Schwarzenegger's prisoner-transfer plan, see Jenifer Warren, "Judge Rejects Gov.'s Inmate Transfer Tactic," *Los Angeles Times*, Feb. 21, 2007, p. A1; and "Ruling on Submitted Matter," *California Correctional Peace Officers' Association, et al., v. Gov. Arnold Schwarzenegger, et al.*, Judge Gail D. Ohanesian, Superior Court of California, County of Sacramento, Ca., Case No.: 06CS0 1568.

⁵ On number of conflicts, see Warren, *op. cit.* On disturbances, see Stuart Pfeifer, "Inmate's Death is Ruled a Homicide," *Los Angeles Times*, Dec. 12, 2006, p. B1. On Chino disturbances, see Rong-Gong Lin II and Paul Pringle, "Dozens Hurt in Prison Riot," *Los Angeles Times*, Dec. 31, 2006, p. B1.

⁶ Statistics compiled in "Public Safety, Public Spending," *op. cit.*, p. 1.

⁷ *Ibid.*, pp. ii, 1, 9.

⁸ See Jason DeParle, "The American Prison Nightmare," *The New York Review of Books*, April 12, 2007, p. 33. For statistics, see Paige M. Harrison and Allen J. Beck, "Prisoners in 2005," November 2006 (revised Jan. 18, 2007), Bureau of Justice Statistics, U.S. Department of Justice, p. 1, www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf.

⁹ See "FBI Releases its 2005 Crime Statistics," Federal Bureau of Investigation, Sept. 18, 2006, www.fbi.gov/ucr/05cius/about/crime_summary.html.

¹⁰ Quoted in Marcia Clemmitt, "Prison Health Care," *CQ Researcher*, Jan. 5, 2007, pp. 1-24.

¹¹ *Ibid.*

¹² See "Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons," Vera Institute of Justice, June 2006, p. 91, www.prisoncommission.org/pdfs/Confronting_Confinement.pdf.

¹³ For background, see Peter Katel, "War on Drugs," *CQ Researcher*, June 2, 2006, pp. 481-504. For details on recent laws, see Ryan S. King, "Changing Direction? State Sentencing Reforms, 2004-2006," The Sentencing Project, March

2007, <http://sentencingproject.org/Admin/Documents/publications/sentencingreformforweb.pdf>.

¹⁴ See Don Stemen, "Reconsidering Incarceration: New Directions for Reducing Crime," Vera Institute of Justice, January 2007, p. 8, www.vera.org/publication_pdf/379_727.pdf.

¹⁵ For additional data, see "Prisoners in 2005," Bureau of Justice Statistics, November 2006, p. 10, www.ojp.usdoj.gov/bjs/abstract/p05.htm. Also, Ryan S. King and Marc Mauer, "Distorted Priorities: Drug Offenders in State Prisons," September 2002, pp. 3-4, www.sentencingproject.org/PublicationDetails.aspx?PublicationID=321.

¹⁶ For details, see "California Proposition 36," Drug Policy Alliance, www.prop36.org/index.html. For an assessment of the program's results, see Douglas Longhore, *et al.*, "Evaluation of the Substance Abuse and Crime Prevention Act," UCLA Integrated Substance Abuse Programs, March 13, 2006, www.uclaisap.org/prop36/documents/SACPA_COSTANALYSIS.pdf.

¹⁷ For details, see Fox Butterfield, "With cash Tight, States Reassess Long Jail Terms," *The New York Times*, Nov. 10, 2003, p. A1.

¹⁸ Hart wrote in an article that in 1993 and the first part of 1994, police rearrested 9,732 defendants released because of the consent decree. Apart from the 79 murders, they were charged with 959 robberies, 2,215 cases of drug-dealing, 90 rapes and other crimes. See Sarah Vandenbraak [maiden name], "Bail, Humbug! Why Criminals Would Rather Be in Philadelphia," *Policy Review*, Hoover Institution, summer 1995, www.hoover.org/publications/policyreview/3565992.html.

¹⁹ See "Confronting Confinement," *op. cit.*, p. 106. Among commission members were a former U.S. attorney general, a former federal prison warden, a current corrections system director and an ex-prisoner, along with other experts.

²⁰ See Wendy Erisman and Jeanne Bayer Contardo, "Learning to Reduce Recidivism: A 50-state Analysis of Postsecondary Correctional

Education Policy," Institute for Higher Education Policy, November 2005, p. X; www.ihep.org/Pubs/PDF/Recidivism.pdf.

²¹ Quoted in "A Gathering Storm — Violent Crime in America," Police Executive Research Forum, October 2006, p. 9, www.policeforum.org/upload/Gathering-Storm-PRINT-Final_110473745_1027200610304.pdf.

²² Quoted in Sheryl Stolberg, "School's Out For Convicts," *Los Angeles Times*, Sept. 14, 1995, p. A1. Statistic cited in Tamara Henry, "Pell's prison pullout," *USA Today*, Dec. 15, 1994, p. D1.

²³ Quoted in Garry Boulard, "Locked Education Door Raises Fears for Inmates," *Los Angeles Times*, March 7, 1995, p. A5.

²⁴ Statistics cited in The Associated Press, "PA Cutting College Classes for Inmates," *The Philadelphia Inquirer*, March 4, 1998, p. B5.

²⁵ See Malcolm X, *The Autobiography of Malcolm X* (2001), (reprint).

²⁶ Quoted in Peter Slevin, "Ban on Prison Religious Program Challenged," *The Washington Post*, Feb. 25, 2007, p. A13.

²⁷ See *ibid.*

²⁸ Quoted in "Statement by Prison Fellowship President Mark Earley on Today's Verdict in Iowa Lawsuit Filed Against InnerChange Freedom Initiative," June 2, 2006, www.demosnewspond.com/ifi/releases/EarlyStmIowaVerdict060306.htm.

²⁹ "Assessing the Impact of Religious Programs and Prison Industry on Recidivism," *Texas Journal of Corrections*, February 2002; for more information, see www.demosnewspond.com/pf/.

³⁰ Quoted in Alan Cooperman, "An Infusion of Religious Funds in Fla. Prisons," *The Washington Post*, April 25, 2004, p. A1.

³¹ See Allen J. Beck and Paige M. Harrison "Sexual Violence Reported by Correctional Authorities, 2005," Bureau of Justice Statistics, Special Report, July 2006, p. 1, www.ojp.usdoj.gov/bjs/pub/pdf/svrc05.pdf.

³² *Ibid.*

³³ Quoted in Neely Tucker, "Reform Plan Targets Prison Rape," *The Washington Post*, July 26, 2003, p. A10.

³⁴ The report is available at www.hrw.org/reports/2001/prison/report.html.

³⁵ *Ibid.*, p. 1.

³⁶ Quoted in Beck and Harrison, *op. cit.*, p. 2.

³⁷ See Prison Litigation Reform Act of 1995 [enacted 1996], Pub. L. No. 104-134, <http://ojdp.ncjrs.org/pubs/walls/appen-b.html>.

³⁸ See Hancock, *et al.*, *v. Payne*, *et al.*, *United States District Court for the Southern District of Mississippi*, Southern Division, Civil Action No. 1:03cv671-JMR-JMR, Jan. 4, 2006.

³⁹ Unless otherwise indicated, this subsection is drawn from Scott Christianson, *With Liberty for Some: 500 Years of Imprisonment in America* (1998), pp. 269-273, and "Racial Tensions in Prisons," *Editorial Research Reports*, Oct. 20, 1971.

⁴⁰ Quoted in Christianson, *ibid.*, p. 270.

⁴¹ Quoted in "A Year Ago at Attica," *Time*, Sept. 25, 1972, www.time.com/time/magazine/article/0,9171,903593,00.html. See also David W. Chen and Randal C. Archibold, "Attica Siege Still Shadows Its Survivors," *The New York Times*, Jan. 9, 2000, p. A1.

⁴² Quoted in *ibid.*

⁴³ FBI statistics compiled in Joseph Dillon Davey, *The Politics of Prison Expansion: Winning Elections by Waging War on Crime* (1998), pp. 118-119.

⁴⁴ Quoted in "Reappraisal of Prison Policy," *Editorial Research Reports*, March 12, 1976.

⁴⁵ See Robert Martinson, "Can Corrections Correct?" *The New Republic*, April 8, 1972, p. 13. For discussion of Martinson's ideas, see Rick Sarre, "Beyond 'What Works?' A 25-Year Jubilee Retrospective of Robert Martinson," [academic conference paper], December 1999, <http://aic.gov.au/conferences/hcgp/sarre.pdf>.

⁴⁶ Quoted in *ibid.*

⁴⁷ See John M. Crewdson, "President Urges Stiff new Laws on Violent Crime," *The New York Times*, June 20, 1975, p. A1.

⁴⁸ For background on Rockefeller Drug Law, see Katel, *op. cit.* See also Brian Forst, "Prosecution and Sentencing," in James Q. Wilson and Joan Petersilia, eds., *Crime* (1995), pp. 377-379.

⁴⁹ Unless otherwise indicated, this subsection is drawn from Michael Serrill and Peter Katel, "New Mexico: The Anatomy of a Riot," *Corrections Magazine*, April 1980, p. 7; and Christianson, *op. cit.*

⁵⁰ Quoted in Serrill and Katel, *op. cit.*



About the Author

Peter Katel is a *CQ Researcher* staff writer who previously reported on Haiti and Latin America for *Time* and *Newsweek* and covered the Southwest for newspapers in New Mexico. He has received several journalism awards, including the Bartolomé Mitre Award for coverage of drug trafficking from the Inter-American Press Association. He holds an A.B. in university studies from the University of New Mexico. His recent reports include "The New Philanthropy" and "War in Iraq."

⁵¹ For details, see "Mandatory Minimum Penalties in the Federal Criminal Justice System," United States Sentencing Commission, August 1991, p. ii, www.ussc.gov/r_congress/MAN-MIN.PDF; for background, see Kenneth Jost, "Sentencing Debates," *CQ Researcher*, Nov. 5, 2005, pp. 925-948.

⁵² For background, see Margaret Edwards, "Mandatory Sentencing," *CQ Researcher*, May 26, 1995, pp. 465-488. For additional details see "Final Report on the Impact of *United States v. Booker* On Federal Sentencing," United States Sentencing Commission, March 2006, p. 126, www.ussc.gov/booker_report/Booker_Report.pdf.

⁵³ See Linda Greenhouse, "Mandatory Life Term is Upheld in Drug Cases," *The New York Times*, June 28, 1991, p. A15.

⁵⁴ Quoted in Peter Applebome, "With Inmates at Record High, Sentence Policy is Re-assessed," *The New York Times*, April 25, 1988, p. A1.

⁵⁵ See "State Prisons Around Nation Scramble for Relief as Overcrowding Mounts," *The New York Times*, Sept. 29, 1983, p. A18; E.J. Dionne, "Courts and Prisons: An Expanding Role Sets Off Controversy," *The New York Times*, Jan. 1, 1982, p. B26.

⁵⁶ See "U.S. Relinquishes Alabama Prisons," *The New York Times*, Jan. 15, 1989, p. A17.

⁵⁷ For details, see Edward I. Koren, "Status Report: States Prisons and the Courts — Jan. 1, 1994," *The National Prison Project Journal*, winter 1993-1994, p. 3.

⁵⁸ *Ibid.*

⁵⁹ See Julia Cass, "Prison-Cap Control May Revert to City," *The Philadelphia Inquirer*, July 6, 1995, p. A1.

⁶⁰ See Vandenbraak, *op. cit.*, www.hoover.org/publications/policyreview/3565992.html.

⁶¹ See Joseph A. Slobodzian, "After Ruling, Fears Rise Over Prisoners' Rights," *The Philadelphia Inquirer*, May 3, 1998, p. E3.

⁶² See "Prison Litigation Reform Act of 1995," *op. cit.*

⁶³ Quoted in "Changing Trends in Prisoner Filings," in "The Third Branch: Newsletter of the Federal Courts," December 1999, www.uscourts.gov/ttb/dec99ttb/prisoner.html.

⁶⁴ See Margo Schlanger, "Inmate Litigation," *Harvard Law Review*, April 2003, pp. 1570, 1572, <http://law.wustl.edu/Faculty/Documents/Schlanger/publications/Final%20except%20pagination.pdf>.

⁶⁵ See "Special Review Into In-Prison Substance Abuse Programs Managed by the California Department of Corrections and Reha-

FOR MORE INFORMATION

American Civil Liberties Union National Prison Project, 915 15th St., N.W., Washington, DC 20005; (202) 393-4930; www.aclu.org/prison/index.html. Files lawsuits nationwide on behalf of prisoners claiming violations of constitutional rights.

Bureau of Justice Statistics, 810 Seventh St., N.W., Washington, DC 20531; (202) 307-0765; www.ojp.usdoj.gov/bjs. Justice Department agency compiles data on crime and prison trends.

Corrections and Criminal Justice Coalition, 413 7th Ave. North, Surfside Beach, SC 29575; (888) 315-8784; www.cjc.org. Provides daily updates on disturbances and other events in prisons across the country.

The Heritage Foundation, 214 Massachusetts Ave., N.E., Washington DC 20002; (202) 546.4400; www.heritage.org/Research/Crime/index.cfm. Conservative think tank that provides research and analysis on prison and crime.

National Prison Rape Elimination Commission, 1440 New York Ave., N.W., Suite 200, Washington, DC 20005; (202) 233-1089; www.nprec.us/welcome.html. Created by Congress in 2003 to conduct research on sex crimes in prisons.

Prison Legal News, 2400 N.W. 80th St., Suite 148, Seattle, WA 98117; (206) 246-1022; <http://prisonlegalnews.org/Visitors>. Posts news articles and lawsuit documents from events and cases nationwide.

The Sentencing Project, 514 10th St., N.W., Suite 1000, Washington, DC 20004; (202) 628-0871; www.sentencingproject.org. Advocates changes in incarceration policies and publishes detailed research on the effects of sentencing laws.

Vera Institute of Justice, 233 Broadway, 12th Floor, New York, NY 10279; (212) 334-1300; www.vera.org/section3/section3_1.asp. Conducts research and advocacy on alternatives to existing penal and criminal-justice policies and practices.

bilitation," Office of the Inspector General, February 2007, p. 5, www.oig.ca.gov/reports/pdf/SubstanceAbusePrograms.pdf.

⁶⁶ *Ibid.*, p. 1.

⁶⁷ *Ibid.*, pp. 2, Attachment A (department response).

⁶⁸ See "Public Safety, Public Spending," *op. cit.*, p. 29.

⁶⁹ See Jenifer Warren, "State ordered to ease prison overcrowding," *Los Angeles Times*, Dec. 12, 2006, p. B7.

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