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REPORT
OF THE
GOVERNOR'S TASK FORCE
ON
PRISON OVERCROWDING

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DECEMBER 31, 1981

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1. THE EMERGENCY

On February 3, 1981, the Criminal Disposition Committee reported to the Legislature that by the middle of 1981 "there would be a great emergency" in the prison and jail facilities of New Jersey. On June 19, 1981 such an emergency was officially proclaimed by Governor Brendan Byrne in Executive Order No. 106 which stated that the state prisons were "seriously overcrowded as a result of unusually large numbers of commitments to the state institutions and commitments for terms of years which are longer than heretofore imposed." (Attachment A) This order gave the Department of Corrections broad powers to control the transfer of inmates between state and county correctional institutions.

The executive order constituted an emergency response to an increasing number of disturbances and other problems at both state and local correctional facilities. Substantial prisoner disturbances occurred at several of the county jails during the middle of 1981. At the Bergen County uprising, hostages were taken and held for several hours. During July, the Trenton State maximum security prison was ordered by the Commissioner of Corrections to stay under 24-hour lockup after prison officials became aware of a potentially serious disturbance.

A basic cause of the rapidly mounting tensions is growing prison overcrowding. The state prison complex population has grown from 3,450 in September 1980 to 4307 fourteen months later. The youth complex likewise grew from 2,014 to 2,549 in the same period. The number of state prisoners housed in county jails

during the last year grew from 75 in September 1980 to 900 as of November 30, 1981, and an additional 60 state prisoners are housed in the county jails under the emergency order. Prison officials have increased the capacity by over 400 beds through use of trailers and reassigned dormitories but the problem continues to grow.

The following is a table showing a recent count of the resident population under the jurisdiction of the Department of Corrections:

DEPARTMENT OF CORRECTIONS
RESIDENT POPULATION COUNT

	<u>September 30 1980</u>	<u>November 30 1981</u>
Prison Complex	3,450	4,307
Youth Complex	2,014	2,549
Other	660	799
County Jail Waiting List	<u>75</u>	<u>960*</u>
Total Jurisdiction	<u>6,199</u>	<u>8,615</u>

*Including 60 transfers to county jail under emergency order.

More to the point, however, a focus directed only on medium and maximum bed spaces reveals a startling excess of inmate population over the operational capacity of the current resources of the Department. Operational capacity is the capacity which prison officials consider to be appropriate for the available facilities. The current operational capacity of the available maximum and medium security bed spaces is stated by

the Department to be approximately 4,371. A question which must be considered is whether and to what extent "operational capacity" can be increased by various devices such as use of trailers, putting more than one inmate into cells originally intended for only one, i.e., double-celling, and use of space originally intended for purposes other than bed space. However, it is important to keep in mind that the "operational capacity" already exceeds the "design-capacity", that is, the capacity of the facilities if all the cells and dormitories hold only the number they were originally designed to hold, and other spaces in the facilities are used only for the purposes for which they were originally intended. The design capacity of all medium and maximum facilities is approximately 4,025.

Against this operational capacity of 4,371 one must consider the current population of 4,474. However, this figure does not include the approximately 960 inmates who are occupying county jail space because they cannot be absorbed into the State prison complex. Were this number added to the current population, the State prison responsibility would greatly exceed the current operational capacity. When one considers two other factors, the picture truly becomes startling. Those two factors are: (1) That prison officials believe that in order to most efficiently and safely operate prison facilities, they should operate at 92% of operational capacity, and (2) that there is projected a rapid rise in the number of State prison inmates in the next 10 years.

The county jails have also continued to experience overcrowding at levels well above operational capacity. As of November 24, 1981,

18 county jails, out of 26, were over 100% operational capacity.

OPERATIONAL CAPACITY AND TOTAL POPULATION OF ALL COUNTY JAILS

	<u>Operational Capacity</u>	<u>Population as of 11/24/81</u>	<u>% of Population Compared to Capacity</u>
Statewide	4,899	5,945	121%

It should be noted that only 29% of the county jail population is actually sentenced to those institutions. Sixty percent are awaiting trial or sentencing, and the remainder are awaiting transport to state institutions. On June 11, 1981, the Administrative Office of the Courts issued a series of recommendations to all Assignment Judges to ensure close review of and expeditious processing of pre-trial detainees in county institutions. (Attachment B) The pre-trial population was thus maintained at the lowest possible figure consistent with avoiding an increased number of fugitives. Moreover, because the Speedy Trial Program called for accelerated goals for jail cases, the pre-trial populations have been kept as low as is reasonably possible. Notwithstanding, county institution populations have continued to steadily rise. However, when one considers that approximately 960 of the county jail population are inmates who belong in the Prison Complex, the situation in the county jails appears somewhat less serious. Furthermore, a review of the reasons for the prison overcrowding situation suggests that the substantial increases can be expected at the state rather than the county level.

2. THE REASONS FOR THE EMERGENCY

On September 1, 1979, the New Jersey Code of Criminal Justice became effective, resulting in a dramatic change in statewide sentencing practice. While the new Code includes a substantial overhaul of the criminal law, its greatest impact has been felt through several important changes in sentencing. One such change provides for new presumptive sentences of a certain number of years for persons imprisoned. N.J.S.A. 2C:44-1(f). These presumptive terms have resulted in an increase in ordinary (maximum) terms, and therefore a net increase in "real time served". Moreover, the "real time" which must be served has also increased due to parole ineligibility (mandatory minimum) terms which may be imposed; and recent amendments to the new Code have led to a presumption of incarceration in crimes of the first and second degree as well as the ability to impose a parole ineligibility term for any crime. These amendments will result in a further increase in the numbers of defendants imprisoned and the average length of sentence.

A third component of the new Code limits the amount of time to be served in a county jail (for first, second and third degree crimes) to six months, so that when a judge wants to incarcerate a defendant for more than six months the judge must sentence him to state prison for a term at least at the bottom of the range for the degree of crime involved. This has greatly increased the number of prison commitments.

Finally, extended terms which generally double ordinary sentences, may be imposed for persistent offenders, paid criminals, murderers, and professional criminals.

In addition to all of this, Chapter 31 of the Laws of 1981 requires both extended terms and ineligibility terms thereon for certain crimes involving use or possession of a firearm. With the passage of Chapter 31 of the Laws of 1981, the required mandatory parole ineligibility terms for some crimes and the ability to impose parole ineligibility terms for all crimes will increase the average length of sentence for offenses committed after February 12, 1981, and further exacerbate the overcrowding problem.

The impact of the new criminal justice code on the number and length of incarcerations is illustrated in the following table:

IMPACT OF CODE OF CRIMINAL JUSTICE ON SENTENCES

<u>% of all persons sentenced who were sent to</u>	<u>Prior Experience*</u>	<u>All Code Sentences (To date)</u>	<u>Percentage Increase</u>
State Prison Complex	13%	22%	70%
Indeterminate (Yardville)	10%	11%	10%
County Institutions	19%	22%	16%
Total Incarcerated	42%	55%	31%
Average Real Time to be Served	2.2 yrs.	3.6 yrs.	61%

*NOTE: Prior experience on percentage incarcerated is derived from a study of all persons sentenced in 1979. Prior experience as relating to actual time is based on data from the Department of Corrections. The time to be served as a result of 2C sentences is projected based on anticipated effects of higher ordinary terms and parole ineligibility terms, and is thought to be a conservative figure.

The preceding discussion on statewide changes indicates substantial increases in the portion of sentenced offenders who will serve real time. These changes do not even contemplate the fact that there is simply an increase in the number of persons being processed through the system and then sentenced. In the first nine months of 1981, New Jersey courts sentenced 12,953 offenders, a 28% increase in the number sentenced in the same time in the prior year. These increases are partially attributable to increases in arrests, and are largely caused by the State Speedy Trial Program which acts to move cases more expeditiously to disposition.

3. PROJECTIONS OF PRISON POPULATION

Critical to the decision on how to best deal with the present emergency is an understanding of the full scope of the increases in population in the long term. The present problem is not a temporary aberration; it is overwhelming and profound, and all information presently available indicates that it is permanent in nature.

As noted earlier, state complex imprisonments have increased nearly 70% with an additional impact of at least a 61% increase in actual length of stay. The chart below translates what these percentages mean in terms of annual prison complex population over the next nine years.

PROJECTED PRISON COMPLEX POPULATIONS

January 1, 1981	3,785
January 1, 1982	5,235
January 1, 1983	7,780
January 1, 1984	8,780
January 1, 1985	9,480
January 1, 1990	14,400

As can be seen from the above, it appears that at the present rate, prison complex populations will have doubled by late 1982 and more than ^{4x} ~~trebled~~ before the end of the decade. The more urgent message is that during 1982 the prison population will increase by approximately 635 inmates every three months.

NOTE: The 1982-85 figures were calculated by adding the difference between projected admissions and paroles to the prior year total.

The 1990 figure is a function of estimated sentences to prison (4,000) times the average stay (3.6 years). The latter figure suggest an increase in average length of stay from 27 to 40 months by virtue of minimum sentences and increased length of ordinary terms. These figures do not provide for mandatory sentences under the new gun law.

Since the Corrections Department estimates an operating cost of \$14,229 per state prison inmate, the additional cost for each year from 1982-1990 is:

1982	\$19,849,400
1983	56,844,800
1984	71,073,800
1985	81,034,100
1990	151,794,500

Another cost projection one may consider is this: if a conservatively estimated 8,000 of the 14,400 new inmates are medium/maximum security inmates, and this is multiplied by an estimated construction cost at current prices of \$60,000 per bed, capital needs for building new bedspaces may amount to \$480,000,000 by 1990. This figure does not include costs for renovation of existing sub-standard facilities nor the debt service (interest on bonds) which would be incurred to finance the extensive capital construction.

4. THE TASK FORCE AND ITS PURPOSE

The Task Force on Prison Overcrowding was announced by Governor Byrne on October 8, 1981. Its purpose was to "develop short-term as well as long-term recommendations for dealing with the problem of prison overcrowding". (Attachment C) As the Chairman indicated at that time in a press release, "One of the tasks of the Commission will be to find solutions that will avert the need for . . . court-ordered premature release of inmates in New Jersey. Every possible alternative that might help avoid such a drastic remedy will be pursued."

After several meetings, the Task Force decided that it should focus its attention on short-term remedies. It decided that, while it would suggest long-term solutions for further study, it should meet the need to avert the type of "court-ordered premature release of inmates" to which the Chairman had referred. However, the Task Force was sensitive to the need to try to avoid short-term solutions which might take the place of better long-term solutions and which might blunt the effort to seek and implement such long-term solutions.

The Task Force launched an intensive study on several fronts. The different aspects of the study included the following:

1. An assessment of existing facilities including an inquiry into what, if any, facilities needed to have the inmate population reduced;

2. An assessment of alternate available sites and of existing sites which might be able to receive more inmates;
3. A survey of how other states were coping with the overcrowding problem;
4. An evaluation of offender profiles to determine the nature of the prison population which must be maintained;
5. A survey of the authority of governmental officials to act, and of the legal issues involved in the authority of government officials to act;
6. Finally, an evaluation of the different solutions which might be recommended.

In the course of reviewing the problem of prison overcrowding, it became obvious to the Task Force that, broadly speaking, there are three ways to address the prison overcrowding problem: (1) Find new spaces for the increasing number of inmates, (2) reduce the number of persons being sentenced to State Prison, or (3) by some mechanism, effectuate the release of some portion of the prison population without endangering the general public.

5. AN ASSESSMENT OF EXISTING FACILITIES

The Task Force evaluated existing conditions at the State Prison in order to consider whether the current size of the population has resulted in overcrowding from various perspectives. The Task Force looked to the issue of constitutionality (in terms of violation of the Federal Constitution's Eighth Amendment prohibition against "cruel and unusual punishment" and, with respect to those awaiting trial, in terms of the Federal Constitution's Fourteenth Amendment's requirement of due process); the Task Force also looked to the effect of overcrowding on the capability of administration.

From the constitutional perspective, the following factors were considered: (1) Overcrowding (sanitation, recreation, space, etc.); (2) Availability of medical treatment; (3) Protection of the physical safety of inmates; (4) Access to the courts - including legal consultation and library access, and (5) Overall prison management. With respect to overall prison management, it is noteworthy that it is standard correctional practice in New Jersey and other jurisdictions to allow seven to eight percent vacant bedspaces for management control, protective custody, disciplinary action or ability to react to serious disturbances. The flexibility required to move offenders from one housing unit to another immediately is a management tool which will not be as available if all bedspaces are utilized. The lack of adequate backup bedspaces for potentially volatile situations must be tolerated with no means of segregating dangerous or violent individuals or

sub-groups within the general population. The prolonged use of total bedspaces within an institution could lead to significant management control problems and increase the potential for serious disruptions.

Attachment D outlines the product of the assessment of existing facilities.

6. AN ASSESSMENT OF ALTERNATE AVAILABLE SITES AND INCREASING THE CAPACITY OF EXISTING SITES

Prior to a review of the assessment of alternate available sites which are being proposed in this section, there are several very important points which must be made. First, some of the proposed facilities which are being considered here are currently used by the Department of Human Services for the care and treatment of the criminally insane and the mentally retarded. Negotiations must be accelerated between the Department of Human Services and the Departments of Corrections in order to develop plans to secure these facilities. Moreover, mutually agreeable arrangements would need be developed in order to effectuate the transfer of these residents to facilities, which would provide the same level of treatment and services currently being offered, as well as insure the safety of the staff and surrounding communities.

Second, it should also be noted that all of the bedspaces identified herein cannot be used on an interchangeable basis. For example, some of the proposed facilities do not offer the type of security and treatment services necessary for the various types of offenders under the jurisdiction of the Department of Corrections. Clearly, treatment offered to a juvenile delinquent could be inappropriate for an adult offender. Similarly, facilities designed for the treatment and housing of females may not be appropriate for males. The effect of this lack of interchangeability of bedspace is that the total number of bedspaces identified herein may result in a fewer number of bedspaces actually "useful" to the Department.

Third and perhaps most important is the potential impact of community reaction from the surrounding municipalities of the proposed sites. It cannot be overstated that the location of a "prison" near or within a community will elicit a strong negative reaction. For the past five years, the Department of Corrections has been actively seeking a site for a new medium security prison. Sites in Essex, Hudson, Mercer, Middlesex, and Hunterdon counties have been considered prior to the site selection in Camden County. In each of the counties which were considered, there was a groundswell of community opposition to the location of the prison. Local municipalities passed resolutions opposing the use of the site and various community groups have been organized to fight the construction of a prison in their respective communities. Similar community opposition can be anticipated with the sites proposed herein and the impact of this reaction cannot be ascertained at this time. However, it is clear to the Task Force members that community reaction will be a serious problem to overcome in order to secure these facilities.

Clearly, there are many difficulties and problems which need to be addressed prior to the occupancy of a single inmate. The Task Force does not want to give the impression that there are medium security bedspaces which are immediately available throughout the state which could easily be modified for correctional use. Presently, only the Vroom Building of the Trenton Psychiatric Hospital and the Yepsen Unit at the Johnstone Training School can easily be modified to house medium security offenders. Moreover, the use of these and other identified facilities will require more than fiscal resources to make them available, including the cooperation and coordination of

many state, county, and municipal agencies as well as the various branches of government.

With these general comments in mind, the following steps have already been taken. Fifty beds have been added at the Vroom Building of the Trenton Psychiatric Hospital. Trailers have been added at Rahway, Leesburg, Yardville, Bordentown, and Clinton to provide an additional 288 beds.

After reviews through either field visits or review of building drawings and architectural reports, the Department of Corrections also provided the following analyses of facilities that could be considered for medium security housing in a relatively short period of time.

The following facilities are currently occupied or committed but could be used as medium security housing without substantial delay and expense.

<u>FACILITY</u>	<u>CURRENT STATUS</u>	<u>ESTIMATED BEDSPACES</u>
1. Fort Dix Stockade	Vacant	400
2. Johnstone Research & Training Center (Yepsen Unit)	Partially Occupied	115
3. Trenton Psychiatric Hospital Vroom Building, Wards 7, 8, 9, and 10	Occupied	80
4. Trenton Psychiatric Hospital McCrae Building (300 dormitory; 46 cells)	Occupied	346
5. Willow Hall, Ancors Psychiatric Hospital	Vacant	80

The following facilities have possible application for relatively immediate utilization if appropriate waivers of advertising are obtained and cost is not a primary consideration.

<u>FACILITY</u>	<u>CURRENT STATUS</u>	<u>ESTIMATED BEDSPACES</u>
1. Bergen County Detention Center 2nd Floor New Addition	Vacant	60 Dorm Beds
2. Whitpen Building, Clinton (Women Only)	Vacant	60 Dorm & Single Rooms
3. Jersey City Lock Up, Hudson County	Vacant	74 Cells

It should be noted that two of these facilities, Whitpen and Jersey City Lock-up, are in an extensive state of disrepair and would require a significant capital outlay to make them habitable. Also, some problems may develop as a result of the direct use of state resources to make renovations for county and/or local facilities. However, with the resolution of these possible funding constraints, and the necessary waivers of advertising, these facilities could be available within four to six months.

In addition to the above alternatives, an additional 348 bedspaces could be secured at Trenton State Prison. The Task Force recognizes the longstanding commitment of the state to demolish the antiquated State Prison at Trenton - and with great reluctance recommends the retention on a temporary basis of certain bedspaces scheduled for demolition. The anticipated completion date of Phase I of the renovation of Trenton State Prison is July 1982. At that time, approximately 450 offenders will be transferred to the new building which will free up existing bedspaces in the old section. Because the housing wings which must be demolished in order to continue work on Phase II of the renovation, a total of 348 beds will become vacant. The following indicates the housing wings which will become available in mid-July 1982.

Trenton State Prison

<u>Housing Unit</u>	<u>Date</u>	<u>Beds</u>
1. Wing 2, Tier 4	March, 1982	68
2. Wings 1, 2, and 7 left	July, 1982	280 net

Thus, with the approval from the respective agencies involved, and with the transfer of patients from currently used facilities of the Department of Human Services, these additional facilities could conceivably provide an additional 1,563 medium security bedspaces by October 1, 1982. The following is a possible schedule for bedspace availability if all of the obstacles are removed. It must be noted that the availability of a substantial number of the units mentioned is subject to the solution of difficult problems.

1.	<u>Within 3 Months</u>	<u>400 Beds</u>
	A. Ft. Dix Stockade	400 Beds
2.	<u>Within 3 Months</u>	<u>195 Beds</u>
	(Provided current Psychiatric Forensic cases and Mental Retardation Cases can be Transferred to other Facilities)	
	A. Trenton Psychiatric Hospital	80 Beds
	VROOM Building Wards 7, 8, 9, and 10	
	B. Yepsen Unit	115 Beds
3.	<u>Within 4 - 6 Months</u>	<u>274 Beds</u>
	A. Bergen County Detention Center	60 Beds
	B. Whitpen Building, Clinton Correctional Inst.	60 Beds
	C. Jersey City Lock Up	74 Beds
	D. Willow Hall, Ancora Psychiatric Hosiptal	80 Beds

4.	<u>By July 1, 1982</u>	<u>348 Beds</u>
	Trenton State Prison, Wing 2, Tier 4	68
	Wings 1, 2 and 7 left	280
5.	<u>October 1982</u>	<u>346 Beds</u>
	McCrae Building	346 Beds

NOTE: This building will not be vacated by the Department of Human Services until July 1, 1982 at the earliest. Moreover, it would take a minimum of three months for the Department to prepare it for Corrections' occupancy resulting in a possible October 1, 1982 entry date.

It should be noted that the following facilities were evaluated and determined to be inapplicable for use as maximum or medium security facilities within relatively short time constraints or without excessive expenditure of funds:

Surplus State Facilities

1. Greystone Park Psychiartic Hospital
Curry, Check & Clinic Buildings & Main North
2. Glen Gardner
Old Infirmary, English Pavillion, Schoolhouse,
Employee Building
3. Marlboro Psychiatric Hospital
Cottages I and 17, Portions of Main Hospital Building
4. Trenton Psychiatric Hospital
Main Hospital, outer wings East and West
Paton Building
5. Camden Armory
6. Fairmount Building - NJCMD
7. Skillman
Clark, Moldenke & Alexander Buildings

Surplus Federal Facilities

1. Kearney Reserve Center
2. Nike Missile Sites
Gloucester Twp.
South Plainfield
Mahway

3. Middlesex County Marine Reserve Center
4. Coles Area, Fort Monmouth
5. Highlands

County & Local Facilities

1. Newark Street Jail
2. Newark Housing Authority -- Columbus Homes

Miscellaneous

1. Surplus Aircraft Carrier
2. Naval Ships in general

In November 1980, the voters of New Jersey approved the "New Jersey Public Purpose Building Construction Bond Act of 1980" which provided \$67 million for correctional construction. The Department of Corrections has allocated its portion of this bond money into three major areas: (1) \$30 million dollars for the construction of a new medium security prison in Camden; (2) \$30 million dollars for the construction and renovation of county facilities; and (3) \$7 million dollars for essential repairs, maintenance, and renovations of existing state facilities.

The total number of bedspaces which would be made available from this bond request would be approximately 650. There will be 400 medium bedspaces available from the new Camden Prison and 250 medium bedspaces from the five participating counties. Each county has agreed to house a total of at least 50 state sentenced inmates in return for capital construction funds.

The 400 bed prison at Camden is expected to become operational sometime in 1985. County bedspaces will become available earlier than the Camden Prison because construction has already been

initiated at several of the county facilities. All 650 bedspaces are expected to be available within four years.

The next question which must be met is whether existing facilities can be used to house more prisoners through either (a) double-celling, or (b) use of facilities intended for other purposes.

The Commissioner's views are reflected in his memorandum to the Task Force attached as Attachment E.

7. REVIEW OF AUTHORITY CURRENTLY AVAILABLE TO COPE
WITH THE OVERCROWDING PROBLEM

Essentially the following authority is available to deal with the overcrowding problem.

A. OPTIONS OF THE COMMISSIONER OF CORRECTIONS

Initially, it is important to keep in mind the fact that there are basically three types of facilities under the jurisdiction of the Commissioner: the State prisons and young adult institutions for males, the Clinton Correctional Institute for females, and the Training Schools for boys and girls. Each of these "complexes" must be analyzed separately because of the limitations of using certain types of facilities to house certain types of inmates. For example, it would not be possible to safely house State prison inmates in the Training Schools because of federal and state regulations prohibiting the mingling of adults and juveniles, as well as the fact that these facilities are not secure enough to house dangerous adult offenders.

The Commissioner has broad powers to issue regulations governing the Department of Corrections, N.J.S.A. 30:1B-6, but limited powers to release inmates. The Superintendents of each of the State facilities are required by law to keep prisoners committed to their custody "until lawfully discharged therefrom." N.J.S.A. 30:4-6.

The Commissioner has broad powers to transfer prisoners between the various state facilities, with certain restrictions based upon the age and sex of the prisoner. N.J.S.A. 30:4-85, 95.1.

Given the fact that all of the State facilities are overcrowded, this power has not allowed the Commissioner to reduce the problem to any significant extent. More juvenile offenders have been transferred from institutions like Yardville and Bordentown to the Training School at Jamesburg, making room for more sophisticated criminals in the more secure young adult facilities, but this has been of limited help. (Note that there may be constitutional limitations on the power to transfer prisoners. This also applies with respect to transfer of prisoners to other states, as discussed later in this section. For additional discussion with respect to constitutional issues see Attachment E.)

The Commissioner has the power to enter into contracts with the various counties for the housing of state prisoners in the county facilities, N.J.S.A. 30:4-85.1, in addition to the powers granted by Executive Order 106. Since the county facilities are generally at least as crowded as the State facilities, this power will not give significant relief in the foreseeable future. In addition, there are at least two lawsuits pending in the federal courts which could result in a court order requiring the Commissioner to remove prisoners from the county jails to reduce overcrowding in those facilities.

The Commissioner has the power to place prisoners in state, local, or private nonprofit community-based residential centers for education or training. N.J.S.A. 30:4-91.1. The number of these facilities and their physical capacities are extremely limited, however, and therefore this power has not been of significant value in reducing overcrowding.

The Commissioner has the power to allow prisoners to visit a specific place for up to thirty days to visit dying relatives, attend funerals, obtain medical services, contact prospective employers, etc. This period may be extended for any compelling state interest. N.J.S.A. 30:4-91.3. This power could be utilized as a pre-parole release mechanism. Also, it is possible to use this power to send inmates with medical and/or significant psychological problems to public or private health facilities.

The Commissioner has the power to promulgate rules governing the forfeiture of commutation ("good conduct") credits for State prison inmates. N.J.S.A. 30:4-140. The Commissioner has also promulgated rules which allow for restoration of previously forfeited credits for inmates who remain infraction-free for specified periods of time. More stringent rules governing forfeiture of credits and more liberal rules governing the restoration of lost credits could reduce the prison population. (Inmates with mandatory minimum sentences do not obtain the benefits of these credits until after the parole ineligibility term is fully served.)

The Commissioner has the power to transfer prisoners to other states pursuant to the Interstate Corrections Compact. N.J.S.A. 30:7-1 et seq. Since the overcrowding problem is nationwide, however, this provision will be of limited value for the foreseeable future.

Finally, the Commissioner could contract with federal authorities for the housing of State prison inmates in federal facilities. 18 U.S.C. §5003. Reports have indicated that the federal facilities are not as overcrowded as most state facilities,

but the federal authorities charge a high per diem amount for housing of state prisoners.

B. OPTIONS OF THE STATE PAROLE BOARD

In theory, the Parole Board has power consistent with public safety to reduce the population of the State facilities. In general, adult prison inmates sentenced under the new penal code are eligible for parole release after serving one-third of their sentence, less credits for good behavior, minimum custody, and work performed. Adult prison inmates sentenced under 2A are eligible for parole after serving one-third of their sentence less credits if they are first offenders, one-half of their sentence less credits if they are second offenders, two-thirds of their sentence less credits if they are third offenders and four-fifths of their sentence less credits if they are fourth offenders. Upon the enactment of the Parole Act of 1979 (effective April 21, 1980) inmates sentenced under 2A and classified as second, third or fourth offenders pursuant to N.J.S.A. 30:4-123.12 become eligible for parole after serving one-third, one-half or two-thirds of the maximum sentence imposed respectively, less the appropriate credits. However, if the prosecutor or sentencing judge is of the opinion that the punitive aspects of the sentence imposed will not have been fulfilled, then the inmates shall not be eligible for parole until serving an additional period which shall be one-half the difference between the parole eligibility dates computed on one-third and one-half of the maximum sentence in the case of a second offender, one-half and two-thirds of the maximum

sentence in the case of a third offender, and two-thirds and four-fifths of the maximum sentence in the case of a fourth offender.

Adult inmates sentenced to an indeterminate term of years as young adult offenders become eligible for parole consideration pursuant to a schedule developed by the Board less adjustment for program participation. Each juvenile inmate committed to an indeterminate term is immediately eligible for parole consideration.

The Parole Board has some limited discretion to apply existing and rather strict standards to effect a greater number of releases with regard to indeterminate young adult sentences. However, even if the Board were disposed to move in this direction, it would, as a matter of paramount importance, ultimately be required to be assured the public safety is not compromised, and its decisions would be subject to judicial review.

Besides exercising its limited discretion in such a manner the Parole Board also has the discretion to affect the date on which an inmate becomes eligible in certain cases.

First, the eligibility dates of adult prisoners may be accelerated in the case of "exceptional progress" in an education, training, or other such program within the institution. This date may even be set below that established by statute if the sentencing court consents. N.J.S.A. 30:4-123.53b.

Second, the Parole Board has the power to enter into contracts with inmates, provided the Commissioner consents, which may result in reduction of the inmates' primary parole

eligibility dates. N.J.S.A. 30:123.67. Since the inmate must complete the agreed upon program prior to the reduction in his primary parole eligibility date, institution of the "contract parole" program is probably more workable as a long-term rather than as a short-term solution to overcrowding. Additionally, the Parole Board has not yet instituted contract parole because of lack of funding. It may be noted that the Parole Board has estimated that there may be 500 inmates who have been denied parole primarily because of an absence of suitable residential and non-residential community-based mental health and substance abuse programs to assist such inmates with reentry and appropriate support services.

Third, the Parole Board has been delegated the power to set the primary parole eligibility dates for young adult offenders who are sentenced to indeterminate sentences. N.J.S.A. 30:4-123.51d. The Board has promulgated such a schedule which sets minimum dates such inmates must serve before being eligible for parole. N.J.A.C. 10A:71-3.3. This schedule could be reduced administratively making young adult offenders eligible for parole at earlier dates. Of course, such actions may be subject to legislative review.

Fourth, the Parole Board has the power to set parole eligibility dates for inmates who have been denied parole, N.J.S.A. 30:123.56a, as well as for inmates who have been released on parole and whose parole has been revoked. N.J.S.A. 30:123.64. The eligibility schedules promulgated by the Board for these two groups of inmates in N.J.A.C. 10A:71-3.19 and 7.16 could be altered administratively to provide for earlier reviews of these inmates. Again, such a course of action may be subject to legislative review.

For further discussion of the Parole Board's authority, see Attachment F.

C. OPTIONS OF THE GOVERNOR

The Governor is granted the power in the Constitution to grant pardons and reprieves in all cases other than treason and impeachment. N.J.S.A. Const. Art. V, §2, ¶1. This constitutional provision also permits the establishment of a commission or other body to aid and advise the Governor in the exercise of executive clemency. Id. The Legislature has provided that the Governor may establish such conditions, terms and limitations on any commutation as he deems fit, and that the Governor may refer any application for commutation to the Parole Board for investigation and recommendation. N.J.S.A. 2A:167-4 et seq. This statute gives the Governor the power to impose certain terms, conditions and limitations upon the individual whose sentence is commuted by a grant of executive clemency. Moreover, this person must agree to these conditions in writing, before the commutation would take effect. This procedure eliminates any future problems with a prisoner who violates a condition of clemency and then tries to claim that he was unaware of the conditions or that they were illegally imposed. The exercise of executive clemency is exclusively within the Governor's province. State v. Robinson, 140 N.J. Super. 459, 470 (Law Div. 1976), rev'd on other grounds 148 N.J. Super. 587, 691 (App. Div. 1952); moreover, actions exclusively within the discretion of the executive, i.e., the grant or denial of executive clemency, are not reviewable by any court. Id.

Essentially, the Governor has the power to release inmates without the strictures placed upon the Parole Board. The Governor thus has the broadest powers of all state officials to reduce the population of the State facilities.

The Governor is also vested with the executive power of the State and has the duty and power to "take care that the laws be faithfully executed." N.J. Const. (1947), Art.V, sec. 1, Para. 11.

To this end he shall have power, by appropriate action or proceeding in the courts brought in the name of the State, to enforce compliance with any constitutional or legislative mandate, or to restrain violation of any constitutional or legislative power or duty, by any officer, department or agency of the state; but this power shall not be construed to authorize any action or proceeding against the Legislature.
[Id.]

Unmistakably, the executive power reposed in the Governor under the Constitution must be given effect by investing him with the authority to implement his responsibilities. Kenny v. Byrne, 144 N.J. Super. 243, 251 (App. Div. 1976), aff'd o.b. 75 N.J. 458 (1978). To that end the Governor may issue executive orders. However, an executive order is only valid (1) where there exists a state of facts which creates an emergent situation or (2) where it is based upon the furtherance of a legislative act or constitutional mandate. DeRose v. Byrne, 135 N.J. Super. 273, 288 (Ch. Div. 1975), app. vacated and dism. 139 N.J. Super. 132 (App. Div. 1976).

Clearly, under the New Jersey Constitution, the Governor has the authority to commute sentences and the responsibility to ensure compliance with constitutional and legislative mandates.

In furtherance of these responsibilities the Governor may issue an executive order or establish a commission to study the problem and to advise him accordingly.

D. MODIFICATION OF TIME LIMITATIONS FOR REDUCTION OF SENTENCE BY THE SENTENCING COURT

Motions for change of sentence must be filed within 60 days from the date of the judgment of conviction and the Court must enter its order within 75 days from said date. R. 3:21-10(a). If a direct appeal is taken the motion must be filed within 20 days after the date of the judgment of the Appellate Court and the order entered within 35 days from said date. Id. Neither of the parties nor the court may enlarge these time limits under the present court rules. R.1:3-4(c).

Currently, there are only four exceptions to these time restraints; under these exceptions a motion may be filed at any time and an order entered:

1. changing a custodial sentence to permit entry of the defendant into a custodial or noncustodial treatment or rehabilitation program for drug or alcohol abuse; or
2. amending a custodial sentence to permit the release of a defendant because of illness or infirmity of the defendant; or
3. changing a sentence for good cause shown upon the joint application of the defendant and prosecuting attorney; or
4. changing a sentence as authorized by the Code of Criminal Justice.

R.3:21-10(b).

8. SURVEY OF RELIEF MECHANISM UTILIZED BY OTHER STATES

Eighteen states were surveyed to determine how they dealt with the problem of prison overcrowding. Each of the states surveyed regarding prison overcrowding acknowledged significant problems. Although each state developed an individualized program to address relevant concerns, a multi-faceted approach was used in all instances. Most states, faced with emergent needs to reduce overcrowding, utilized both short-term and long-term remedies. In general, a combination of the following mechanisms are being utilized to provide relief for prison overcrowding:

- Building expansion programs,
- Classification system improvements,
- Parole system modifications,
- Pre-release programs,
- Diversionsary programs,
- Community-based programs,
- Renovation of existing facilities,
- Utilization of vacant federal properties,
- Enactment of emergency legislation.

Summaries of each state's activities are provided in Attachment G.

The survey is extremely useful not only in demonstrating a great many alternatives that are available to try to deal with the prison overcrowding problem, but also simply to show that this problem is a common one in a great many of the states.

The survey also lends weight to the concept that no single step can effectively deal with the problem. A package of approaches appears to be necessary.

9. SUMMARY OF THE PROBLEM

Before making its recommendations of steps which should be taken to meet the prison overcrowding problem, it may be valuable to try to put the problem in perspective in summary form.

The following tables summarize the current operational capacities of the county and state (medium/maximum) institutions, their respective populations as of November 1981.

TABLE A

COUNTY JAIL
INSTITUTIONS

<u>OPERATING CAPACITY</u>	<u>POPULATION 11/24/81</u>	<u>% OF CAPACITY</u>
4899	5945	121%

(Includes 960
State Inmates
Housed in County
Facilities)

TABLE B

STATE INSTITUTIONS
(MEDIUM/MAXIMUM SECURITY)

<u>OPERATING CAPACITY</u>	<u>POPULATION 11/30/81</u>	<u>% OF CAPACITY</u>
4371	4474	102%

TABLE C

STATE INSTITUTIONS
MEDIUM/MAXIMUM SECURITY

<u>OPERATING CAPACITY</u>	<u>POPULATION 11/30/81</u>	<u>% OF CAPACITY</u>
4371	5434	124%

(Including
approx. 960
State Inmates
Housed in
County
Facilities)

The projected increase of state sentenced offenders who will need medium/maximum security will exceed the projected rate of additional bedspaces which could become available on April 1, 1982. It is clear that even if all of the 869 bedspaces which are identified in section 6 of this report are available for occupancy by April 1, 1982, the Department of Corrections will still be operating substantially in excess of its new operational capacity. Moreover, even if the most optimistic projections hold, the Department will be operating well over its ideal capacity of 92% which is the suggested capacity for the safe and efficient administration of medium/maximum facilities. Furthermore, as reflected in Table C, the picture becomes bleaker if state inmates housed in county facilities are transferred to state facilities.

These projections anticipate that the transfer of the 960 state sentenced offenders who are presently housed in county facilities will alleviate the overcrowding at the local levels. The effect of sentencing limitations under the penal code is to reduce the average duration of sentences to county institutions as a result of which there will be a higher turnover rate of county bedspace. Because of these two factors, the county jail overcrowding problem is not considered to be of a permanent nature, and in fact is a direct result of the prison overcrowding situation.

This summary suggests that the short term alternatives identified in this report are in fact "short term" and can only address the immediate influx of state sentenced offenders.

These "stop gap" alternatives will temporarily alleviate the overcrowding on the county level; however, they do not address the more permanent problem in state facilities.

10. RECOMMENDATIONS FOR SHORT-TERM SOLUTIONS

The Task Force believes that a series of steps must be taken to cope with the prison overcrowding problem in the short term.

(1) Every effort must be made by the Department of Corrections to continue to seek additional space to house the increasing numbers of individuals being sentenced to State Prison. While this Task Force opposes additional double-celling because of its potentially adverse effect on safe and effective prison administration, the Task Force sees this as a last alternative which may have to be considered where feasible in the judgment of the Commissioner within constitutional limitations. Additional locations may develop in time, and every effort should be made to increase the operational capacity of the prison facility.

(2) It is evident that it is within the power of each of our three branches of government to affect the prison population. However, it is the Legislature which has the power and the obligation to set policy in criminal sentencing. The court system can extend the time for application for resentencing, but if it does so, and acts to reduce severity of punishment for large numbers of offenders, it will be assuming a role which is traditionally legislative. Similarly, if the Governor uses his clemency power as a means of shortening sentences across the board, instead of employing it in exceptional cases for reasons of justice or clemency, he may well be charged with misuse of power. Therefore, it is the function of the Legislature to enact legislation to rectify the immediate crisis, as well as the long-range problem.

We make this statement with the knowledge that if the State of New Jersey does not act, the Federal Courts, and perhaps the State Courts, will. There are now suits pending in the Federal Court for the District of New Jersey under the Eighth Amendment to the United States Constitution. More may be anticipated. Judgments directing release of prisoners may be expected. The counterpart of the Eighth Amendment in the New Jersey Constitution is Article I, Paragraph 12. The judicial remedy is not likely to be as good as action by the Legislature, and may not implement State policy. If the problem is to be handled in a reasonable, orderly, uniform manner, it must be by Legislative action.

(3) There are an estimated 500 individuals who having been denied parole would be eligible for release to suitable residential and non-residential mental health and substance abuse programs if these were available. Every effort should be made to locate and appropriate funds for more community facilities.

(4) We recommend also that the Legislature consider appropriating funds for the purpose of establishing alternatives to incarceration. Techniques and facilities which can be used for parole purposes can be used also for probation. A strong argument can be made that if practical alternatives to incarceration are created, judges may feel that they can responsibly make more use of probation.

The logic of improving probation and parole facilities is strong. This can be done much more quickly and at much less cost

than constructing places of imprisonment. Additionally, the cost of handling an offender on probation or parole is much less than the expense of incarceration.

(5) Currently the Parole Board has jurisdiction to hear only inmates having county jail terms in excess of twelve months upon service of nine months. The Legislature should consider amending this jurisdiction to allow parole eligibility for inmates serving less than one year except those incarcerated as a condition of probation. This would establish uniform treatment for all incarcerated offenders eliminating the inappropriate exclusion from parole consideration of the least serious offender.

(6) It is incumbent on the Legislature to set policy by determining a course of action which will address the problem in a constitutionally acceptable manner. In examining the alternatives, and to meet the pressures of the immediate problem, we suggest a statute similar to one which has been used in Michigan. A draft of the suggested statute will be submitted. It has the merit of reducing custodial population only in the event of severe overcrowding, and of selecting for release those inmates who would shortly be released on parole anyway.

Faced with this crisis situation, the suggested statute will have the following advantages: (1) it accelerates parole eligibility by only ninety days; (2) it identifies for parole eligibility only those meeting existing standards for parole; (3) it handles the overcrowding problem expeditiously; and (4) it operates equally for most inmates. This statute would be triggered only by a declaration of emergency by the Commissioner of Corrections, concurred in by the Criminal Disposition Commission and the Governor upon a finding of serious and protracted prison overcrowding.

11. RECOMMENDATIONS FOR LONG-TERM SOLUTIONS

The Task Force feels compelled to emphasize that the short-term solutions set forth in the previous section of the Report are intended to be exactly that. The Task Force has had the opportunity to deliberate for only two months in the face of an urgent request from the Governor to address this problem. It is one which begs for more extensive study - and yet the time for study is not without a limit.

The Task Force believes that the Criminal Disposition Commission created by Chapter 48 of the Criminal Justice Code is the appropriate body to deal with this problem. It makes provision for representatives from various segments of the criminal justice system, all branches of government and the public. There are positions on it which a new administration will have to fill. It will, therefore, represent the point of view of the new administration, as well as other aspects of our government. It has been studying the problems involved in prison overcrowding. It is staffed by the same persons who have provided this Task Force with the technical material upon which we have based our recommendations. We therefore suggest that all vacancies in the Criminal Disposition Commission be filled as soon as practical after inauguration of the new administration, and legislature, and that it issue its recommendation as to long-range solutions as soon as possible.

The dramatic increase in crime has outraged the public and has resulted in a substantial increase in the prison population through the imposition of more and longer

custodial sentences. It is not within the province of the Task Force to comment on this result. However, this Task Force is impelled to call on appropriate governmental officials to recognize that the State and the public must be ready to cope with the problem and bear the cost of a substantial increase in the prison population which such a course of action entails. Thus, if the current criminal code provisions are retained, the Legislature must be prepared and willing to finance construction, at high cost, of a great number of additional medium and maximum security prison cells.

This problem must be faced immediately.

ATTACHMENTS--REPORT OF THE GOVERNOR'S
TASK FORCE ON PRISON OVERCROWDING

ATTORNEY GENERAL'S LIBRARY
JUN 2 1981

EXECUTIVE ORDER NO. 106

WHEREAS, the State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections are housing populations of inmates in excess of their capacities and are seriously overcrowded as a result of unusually large numbers of commitments to the State institutions and commitments for terms of years which are longer than heretofore imposed; and

WHEREAS, the Department is physically unable to accept from the Sheriffs of the various counties the custody of inmates sentenced to the custody of the Commissioner of the Department of Corrections, as mandated by N.J.S.A. 2C:43-10(e); and

WHEREAS, many county penal institutions of the various counties are also presently overcrowded and are housing inmate populations in excess of their capacities while other county penal institutions have available space for additional inmates; and

WHEREAS, there is a need to efficiently allocate inmates of state and county penal and correctional institutions to those institutions having available space in order to alleviate overcrowding; and

WHEREAS, the New Jersey Correctional Master Plan recommends the coordination of resources for jail operation and services by the State, while the jails remain under local jurisdiction; and

WHEREAS, these unusual conditions endanger the safety, welfare and resources of the residents of this State, and threaten loss to and destruction of property, and are too large in scope to be handled in their entirety by regular operating services of either the counties or the New Jersey Department of Corrections;

NOW, THEREFORE, I, BRENDAN T. BYRNE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby DECLARE a state of emergency and ORDER and DIRECT as follows:

1. I DECLARE, that a state of emergency exists in the various State and County penal and correctional facilities by reason of the facts and circumstances set forth above.

2. I invoke such emergency powers as are conferred upon me by the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-30, et seq.) and all amendments and supplements thereto.

3. I hereby DIRECT that the authority to designate the place of confinement of all inmates confined in all State and/or County penal or correctional institutions shall be exercised for the duration of this Order by the designee of the Governor.

4. I hereby designate the Commissioner of the Department of Corrections to effectuate the provisions of this Order.

5. The Commissioner may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether owned by the State, a County, or any political subdivision of this State, or any other person, for the confinement of inmates confined in the State and/or County penal or correctional institutions.

6. When it appears to the satisfaction of the Commissioner that an inmate should be transferred to a penal or correctional institution or facility of the State or the various Counties more appropriate for his needs and welfare, or that of other inmates, or the security of the institution in which he has been confined, he shall be authorized and empowered to designate the place of confinement to which the inmate shall be transferred.

7. This Order is intended to be temporary and to remain in effect only during the duration of the prison and jail overcrowding crisis.

8. I further ORDER that the authority of the Commissioner to designate the place of confinement of any inmate may be exercised when deemed appropriate by the Commissioner regardless of whether said inmate has been sentenced or is being held in pretrial detention, except that only persons sentenced to a prison or committed to the custody of the Commissioner may be confined in a State Prison.

9. The Commissioner of the Department of Corrections shall have full authority to adopt such rules, regulations, orders and directives as he shall deem necessary to effect the above provisions.

10. The Commissioner of Corrections shall develop an appropriate compensation program for the counties.

11. It shall be the duty of every person in this State or doing business in this State, and the members of the governing body, and of each and every official, agent or employee of every political subdivision in this State and of each member of all other governmental bodies, agencies and authorities in this State of any nature whatsoever, fully to cooperate in all matters concerning this emergency.

12. Any person who shall violate any of the provisions of this Order or shall impede or interfere with any action ordered or taken pursuant to this Order shall be subject to the penalties provided by law under N.J.S.A.App.A:9-49.

13. This Order shall remain in effect for a period of ninety days from the date of execution.

14. This Order shall take effect immediately.



GIVEN, under my hand and seal
this 14th day of June,
in the year of Our Lord,
one thousand nine hundred
and eighty-one, and of the
independence of the United
States, the two hundred
and fifth.

/s/ Brendan Byrne

GOVERNOR

Attest:

/s/ Harold L. Hodes

CHIEF OF STAFF, SECRETARY

FROM THE OFFICE OF THE GOVERNOR

SEPTEMBER 14, 1981
FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION
KATHRYN FORSYTH

Governor Brendan Byrne has extended the Executive Order he signed in June authorizing the Commissioner of Corrections to transfer inmates between state and county penal institutions in an effort to ease overcrowded conditions in the prisons.

That Executive Order, #106, expires on September 16.

Under the Executive Order signed today, Byrne said the provisions of Executive Order #106 will remain in effect until January 20, 1982.

"The conditions in our State prisons and other penal and correctional institutions of the New Jersey Department of Corrections specified in Executive Order #106...continue to endanger the safety, welfare and resources of the residents of this State," Byrne said.

A copy of Executive Order #108 is on the reverse side.

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STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 108

WHEREAS, the conditions in our State Prisons and other penal and correctional institutions of the New Jersey Department of Corrections specified in Executive Order No. 106, signed June 19, 1981 continue to endanger the safety, welfare and resources of the residents of this State; and

WHEREAS, Executive Order No. 106 expires on September 16, 1981.

NOW, THEREFORE, I, Brendan Byrne, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby declare a continuing state of emergency and Order and Direct as follows:

1. Executive Order No. 106 shall remain in effect until January 20, 1982 notwithstanding any section in it stating otherwise.
2. This order shall take effect immediately.

GIVEN, under my hand and seal
this 11th day of September
in the year of Our Lord, one
thousand nine hundred and eighty-
one, and of the independence of
the United States, the two hundred
and sixth.

/s/ Brendan Byrne
BRENDAN BYRNE
GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

HAROLD L. HODES
CHIEF OF STAFF, SECRETARY

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEYROBERT D. LIPSCHER
ADMINISTRATIVE DIRECTOR OF THE COURTSSTATE HOUSE ANNEX
CN-037
TRENTON, NEW JERSEY 08625
609-984-0275

July 24, 1981

MEMORANDUM TO: Assignment Judges
FROM: Robert D. Lipscher *RDL*
RE: County Jail Overcrowding Recommendations

Implementation of the Jail Overcrowding Project Recommendations should be well underway in every vicinage. This project was reviewed at length at the CJ/AJ meeting of May 14, 1981.

A Committee further considered the report and submitted a final set of recommendations which were discussed, along with suggestions made by the prosecutors, at the June 11, 1981 CJ/AJ meeting. It was agreed that 8 of the original 10 recommendations would be implemented in each county. The final set of 8 recommendations is enclosed.

You will recall that Judge Philip A. Gruccio has volunteered to pilot test the central criminal intake team in Atlantic County. Moreover, as suggested by the prosecutors, non-residents have been added to the recommendation with respect to the non-indictable 72 hour try or release; and the recommendation which would encourage moving cases of incarcerated defendants by accusation has been deleted. It should also be noted that utilization of the 10% bail option still remains within the discretion of the court; and that at least one in person review should occur within 21 days of incarceration.

I am enclosing for your information and review the weekly county jail population analysis through July 21, 1981. This report analyzes the county jail information received weekly from county facilities and compares it to the information contained in the "County Jail Overcrowding Report."

Section V of the enclosed report contains a breakout of individual facility populations and inmate status for the period May 4, 1981 through July 21, 1981. You should review this information with your criminal assignment judges, judges

County Jail Overcrowding
Recommendations - pg. 2

assigned to hear criminal matters during the month of August, and TCA, analyzing it with respect to the efforts being made to implement the county jail recommendations. Please forward a short status report on implementation of the recommendations to Donald F. Phelan, Chief, Pretrial Services Unit, Administrative Office of the Courts, State House Annex, CN-037, Trenton, New Jersey 08625.

RDL:kf

cc: Acting Assignment Judges
Criminal Assignment Judges
Trial Court Administrators

COUNTY JAIL OVERCROWDING -
RECOMMENDATIONS FOR IMMEDIATE IMPLEMENTATION

June 11, 1981

1. Assignment Judges should encourage staff of the county pretrial release units to be available on holidays and weekends to assure that bail is set and to assist in bail determinations with regard to both indictable and non-indictable cases. If additional funds are required, the matter should be discussed with the Freeholders.
 - (a) Assignment Judges should consider implementing a program whereby no defendant is committed to the county jail without bail or conditions of pretrial release set with regard thereto.
2. All non-indictable offenses, which are not accompanied by indictables, must be tried within 72 hours after defendant is incarcerated, or the defendant must be released absent contrary order by the Assignment Judge.
 - (a) District or regional municipal courts should be considered for purposes of trying jail non-indictable cases. If District Court resources are not available, cross-assignment orders can be entered so that a municipal judge is sitting daily to try jail cases or other matters assigned by the Assignment Judge in each region.
 - (b) Public Defender cooperation should be solicited with respect to non-indictable jail cases under N.J.S.A. 2A:158A-5.2, wherever downgrades in jail cases are involved. In the absence of a municipal court defender, accelerated assignment should be made under R. 3:27-2.
 - (c) The Assignment Judge personally may grant extensions from this non-indictable "try or release rule" in drug cases, where counsel is not available, for non-residents or for other special circumstances.
3. The Criminal Assignment Judge should receive immediate notice on all no-bill remands, no-bills, administrative dismissals, and administrative remands so that discharge on revised bail and conditions of pretrial release can be immediately established.
4. The 10% option shall be made available throughout the State as permissive condition of pretrial release unless otherwise ordered by the court.
5. A Superior Court judge should review the bail or conditions of pretrial release on each case, including non-indictable cases, upon commitment to the county jail.

6. Each Assignment Judge should review R. 3:3-1 and the summons-warrant procedure with all police chiefs, municipal court judges and municipal court clerks within the vicinage.
7. Sentence review on municipal appeals should be de novo, pursuant to State v. DeBonis, 58 N.J. 132 (1971), but appeals from the sentence in plea cases should be accelerated by the Assignment Judge on filing.
8. Assignment Judges should personally monitor jail lists on a periodic basis with at least one in-person review of cases involving no more than 21 days of incarceration.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE

MEMORANDUM

ATTACHMENT D

TO: Dr. Wayne Fisher

DATE:
October 21, 1981

FROM: Carol M. Henderson, D.A.G.
Debra L. Stone, D.A.G.
and Shawn Leyden, Legal Assistant

Evaluation of Facilities at Rahway, Yardville, Bordentown
and Leesburg State Prisons

We have been asked to evaluate existing conditions at the State Prisons at Rahway, Yardville, Bordentown and Leesburg in order to determine whether the current overcrowding¹ has resulted in these institutions violating the United States Constitution. We have also been asked to determine whether placing two inmates in a single cell will result in the prisons violating the Eighth Amendment prohibition against cruel and unusual punishment. Accordingly on October 19, 20 and 21, 1981 we toured the main facilities at each of these institutions. On the basis of these tours we have concluded that the existing condition at each of the facilities are well within constitutional guidelines. We have also concluded that double-celling is feasible only at Leesburg, Yardville, and possibly in some of the cells at Rahway. Increasing the inmate population at these locations will, of course, place a greater

1

We were informed by corrections officials that New Jersey's rate of incarceration is not unduly high and that to be sent to prison in New Jersey a defendant has to commit a "serious" offense. We were also told the inmate population is more violent than it was 10 years ago.

strain on resources and security. If the inmate population can be increased without substantially increasing the time spent in the cells (inmates currently spend only 8 to 10 hours a day in their cells), impinging greatly on medical facilities and treatment or, generally causing a serious deterioration in the overall quality of the facility, double-celling of inmates will not be violative of the constitution.²

A. YARDVILLE

This institution is a medium security facility with a capacity of 708 in the permanent population and a total population of 968, including those inmates in the classification center. The inmate population is a mixture of juvenile offenders between the ages of 16 and 18, adults sentenced to indeterminate terms, and a small number of adults sentenced to determinate terms. The average age of the inmates is 22. There is one guard for every 66 inmates.

The majority of inmates are housed in single man cells 6'8" by 10' (approx. 70 sq. ft). There is one dorm housing 66 prisoners in each 31'4" by 27'8" wing. There are also spaces for 47 inmates in trailers. The reception area has been partially converted into permanent cells housing 87 inmates. As of October 19, 1981 all currently available bed space was in use.

2

All of the Superintendents of the various institutions stressed that double-celling is not penologically sound. We are not trained to make a judgment on this issue, nor have we been asked to do so. Accordingly we have simply presented the information we have and noted possible consequences of double-celling. We take no position on the desirability of double-celling from a penological view point.

Inmates are confined to their cells only during sleeping hours. The remainder of the day is spent in school, vocational training, work or recreation. Juveniles are completely separated from adults at all times. This is a requirement of the American Correctional Institute and is necessitated by federal guidelines. This places great stress on prison resources because all services must be duplicated.

The sanitation and recreation facilities are excellent. There is both a law library and general library available for the inmates. There is a small infirmary (8 beds) with 24 hours a day nursing staff. Doctors are available during the day. There is also a full time dentist and two part-time dentists.

The average term for inmates is 12 to 14 months. Inmates in the Classification Center are generally processed within one week unless there is no space at the receiving facility.

General Comments

The facility at Yardville is within the mandates of the United States Constitution. The institution was designed for single cells. It does not have the capacity to house two men each in a single bed in a cell. The cells are large enough, however, for the installation of bunk beds which would then increase the capacity of each cell to two men. Double-celling is not per se unconstitutional.³ It may become so if the

3

The United States Supreme Court rejected the proposition that a specific minimum square footage is required for prison cells. Rhodes v. Chapman, ___ U.S. ___ (1981). The inmates in Rhodes were double-celled in 63 sq. ft. cells. Id.

double-celling results in inmates remaining in their cells for the majority of the day and in other services deteriorating. Moreover, as it is now, all inmates are involved in some activity i.e., work, school, vocational training, during the day and a dramatic increase in the inmate population would place a severe strain on these resources. Thus while it might be constitutional to house two people in a single cell only used for sleeping, the increase in population and concomitant drain on resources could make it impossible to ensure that inmates are out of their cells and involved in educational or work programs for the majority of the day.

Another consideration is the security factor. At present there is one guard for 66 inmates. If the population doubled, that same guard would be hard pressed to effectively control and monitor the activities of 132 inmates. The one saving grace is that inmates are generally at Yardville an average of 14 months which is a relatively short period. This factor has also been important in deciding whether a facility is constitutional. Therefore, an increase in personnel may be necessary. In sum, it does appear to be feasible to increase the number of prisoners housed in the existing cells at Yardville.

B. Bordentown

The main facility at Bordentown is a medium security institution. There are however, four satellite facilities which are minimum security: New Lisbon; Skillman; the trailer area on the grounds of the main facility, and the work release building

down the road from the main facility. The total rated capacity for all facilities is 820. The total population as of October 19, 1981 was 826 resulting in six inmates sleeping in the halls. The cells are 56 sq. ft. There is one dormitory wing containing 85 inmates on each of the 3 floors. As at Yardville, the inmates are only in their cells during sleeping hours; the majority of time is spent in work and training programs.

The main facility contains a drug rehabilitation unit and is developing an alcohol rehabilitation unit. Medical staff here, as at Yardville, consists of a 24 hour nursing staff and doctors on duty during the day.

The inmates here are older and more sophisticated than those at Yardville. The average age is approximately 24. There are virtually no juveniles housed here, thus there is no need for duplication of programs. The few juveniles who are housed at Bordentown are there because they are too "sophisticated" to be housed with other juveniles. Special permission from the Commissioner must be obtained before any juvenile is placed in Bordentown.

Like Yardville, the sanitation, vocational and recreational facilities are very good. There are two libraries, law and general, and the gymnasium is open all day.

The Superintendent informed us that the overcrowding has created security problems. For example, the dormitories, which were built to house 50 inmates, now contain 85 inmates and there is one guard on each floor during the day but only 1 guard for all the floors on the "graveyard" shift. This is true of

the cell areas as well.

Moreover in the cell wings, some prisoners are sleeping in the halls, creating an extra hazard for the guards on duty. On the grounds of the main facility there are minimum security trailer units housing 46 inmates. The units are self-contained and the inmates have no contact with the inmates in the main facility.

The work release home was converted from a old barn at a cost of \$50,000. It houses 34 inmates who work on the New Jersey Turnpike and at various businesses in the nearby area.

General Comments

Overcrowding at the institution has not yet reached unconstitutional proportions. Unlike Yardville, here double-celling does not appear to be a feasible solution to the increased prison population because of the age of the main facility and the configuration of the cells.

C. Rahway State Prison

The main facility at Rahway is a medium/maximum institution which was built in 1896. In addition to the main prison, Rahway includes two satellite minimum security camps at Rahway and Marlboro and various halfway houses. The total population in all facilities is 1374. The population of the main building, which is located on 87 acres, is 1170 inmates. The building was designed to hold 950 inmates but the capacity has been increased to 1170 through the creation of dormitories, the conversion of an industrial building and by adding a trailer. The inmates here are generally older than those at

Bordentown but range in age from 18 to 70 years. Generally, they are serving sentences of between one and twenty years.

Cell size in the institution varies. The four main wings have cells 35 sq. ft., 53 sq. ft, 69 sq. ft. and newer cells of 80 sq. ft. Because of the age and condition of the building double-celling could not possibly occur except in the newer 80 sq. ft. cells. Even here, however, it is questionable since the ceilings in the cells are rather low which may make it impossible to fit bunk beds into the cell. Placing two cots side by side in a cell is not physically possible.

Double-bunking already has been instituted in the dormitory areas. Those areas house 40, 60 or 100 persons depending on the unit. Inmates are carefully screened before being assigned to the dorms, in an attempt to rule out aggressive and assaultive inmates.

Like the other insitutions we viewed, the medical, recreational, vocational, educational and library facilities seemed quite good. We were told however, that these facilities are already overtaxed since they were designed to function with an inmate population of approximately 500 people. Nevertheless all inmates are involved in these programs and are only confined to their cells from 9:30 p.m. to 7:00 a.m. The ratio of guards to prisoners is one to three, much higher than at the other facilities.

General Comments

Rahway currently is not in violation of the Constitution. Because of the age and condition of the main

building, double-celling, even if it is physically possible in the 80 sq. ft. cells, could push the institution closer to the edge of unconstitutionality, especially if it results in the inmates being confined to their cells for most of the day. The courts consider an overview of the conditions of the prison in deciding whether it has become unconstitutionally overcrowded. If the overcrowding causes substantial deterioration in the overall condition of the facility it will be deemed cruel and unusual punishment even though the double-celling of inmates itself is not per se violative of the constitution.

Given the large acreage surrounding the facility, it may be desirable to erect trailers or other additional housing.

D. Leesburg

Leesburg Prison consists of a modern (1970) medium security facility containing 635 inmates, a minimum security farm located a short distance away which houses 350 inmates and a minimum security camp at Ancora State Hospital housing 95 inmates. The medium security unit was originally designed to house 504 inmates in single person cells of 74 sq. ft. The capacity of the institution has been increased through adding a trailer unit, which holds 80 inmates in area of 3270 sq. ft. in one wing and 1872 sq. ft. in the other and through the conversion of 7 classrooms into dorms of 480 sq. ft. housing eight men in each unit.

The facility has a large central courtyard onto which the four main wings of the facility open. There are large windows in the walls facing the cells giving a great deal of

light and space to the facility. The cells are large enough to house two inmates in bunk beds. Presently inmates are permitted televisions, stereos and refrigerators in each cell and are permitted to decorate them any way they choose. Additionally, the inmates are in their cells only 8 hours a day the remainder of the time is spent at work, school, vocational training or recreation. The inmates range in age from 18 to 70 with the average inmate being around 30.

The minimum security units have the following facilities:

<u>MINIMUM UNIT</u>				
#1	Barrack	Dorms	48 Men	3846 Sq. Ft.
	Up	2 Rooms	2 Men	167 Sq. Ft.
		1 Room	4 Men	336 Sq. Ft.
#2	Barrack	Dorms	48 Men	3846 Sq. Ft.
#3	Barrack	8 Rooms	2 Men	126 Sq. Ft.
		40 Rooms	1 Man	70 Sq. Ft.
#4	Barrack	8 Rooms	2 Men	126 Sq. Ft.
		40 Rooms	1 Man	70 Sq. Ft.
		Dorm Up	8 Men	624 Sq. Ft.
#5	Barrack	8 Rooms	2 Men	126 Sq. Ft.
		17 Rooms	2 Men	120 Sq. Ft.
		12 Rooms	1 Man	64 Sq. Ft.
		Dorm Up	8 Men	624 Sq. Ft.

Additional inmates would of course put further strain on resources, especially on Leesburg's internal classification system. If there is a break down in the classification system, there is the danger of improperly classifying inmates and releasing them prematurely.

It would not be desirable to shift any additional inmates to the minimum facility unless they are thoroughly screened. The inmates at the farm can simply walk away at any time. Thus prisoners who are are dangerous or who require close supervision are not, appropriate candidates for transfer here.

C.M.H.

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D. TRANSFER OF PRISONERS

Historically, the courts, when confronted by an inmate's claims against his correctional administrator, have evidenced a strong desire to avoid unnecessary interference with the conduct of intra prison affairs. See, e.g., Garcia v. Steel, 193 F. 2d 276, 276 (8 Cir. (1951)). This judicial policy of abstention, which has been denoted as the "hands-off doctrine,"¹ in essence holds that the courts have neither the authority nor jurisdiction to act as prison review agencies. See Holland v. Oliver, 350 F. Supp. 485, 487 (E.D. Va. 1972); Ferrell v. Huffman, 350 F. Supp. 164, 165 (E.D. Va. 1972). This doctrine has always prevented judicial review of "deprivations which are necessary or

¹ The "hands-off doctrine" was first articulated by the United States Supreme Court in Price v. Johnson, 334 U.S. 266 (1948). According to one commentator this doctrine rests on three distinct theoretical bases: "the theory of separation of powers; the lack of judicial expertise in penology, and the fear that intervention by the courts will subvert prison discipline." Goldfarb & Singer, Redressing Prisoners' Grievances, 39 Geo. Wash. L. Rev. 175, 181 and n.120 (1970).

reasonable concomitants of imprisonments." Edwards v. Duncan, 355 F.2d 993, 994 (4 Cir. 1966).

This doctrine remained firm in the area of inmate transfers into the early 1970's and recent opinions confirm its present viability. Courts generally have held either that transfers were in the discretion of prison officials and should not be disturbed unless they were arbitrary and capricious or that transfers affected no constitutionally protected right of an inmate. See, e.g. Gray v. Creamer, 465 F.2d 179, 187 (3 Cir. 1972); Urbano v. McCorkle, 334 F.Supp. 161, 164 (D.N.J. 1971), aff'd 481 F.2d 1400 (3 Cir. 1973); Lawrence v. Willingham, 373 F.2d 731 (10 Cir. 1967) (per curiam). Moreover, the decision to transfer has been considered best left to the administrative expertise of prison officials who are given broad discretion in determining whether or not the transfer of prison inmates is necessary to preserve prison security. See Bell v. Wolfish, 441 U.S. 520, 546-47 (1979); United States ex rel. Fallagher v. Daggett, 326 F.Supp. 387, 389 (D.Minn. 1971); Holland v. Ciccone, 386 F.2d 825 (8 Cir. 1967). Cf. Brown v. Hilton, 492 F.Supp. 771 (D.N.J. 1980). Nevertheless, this approach has been rejected by some courts which have held that the due process clause of the Fourteenth Amendment guarantees inmates, under certain circumstances, the right to a fair hearing prior to, or soon after, their transfer from the correctional institution of one state to another, or intrastate transfers. Gaines v. Travisano, 353 F.Supp. 457 (D.R.I. 1973) (interstate); Ault v. Holmes, 506 F.2d 288 (6 Cir. 1974) (interstate). Cf. Aikens v. Lash, 514 F.2d 55 (7 Cir. 1975). Hoitt v. Vitek, 361 F.Supp. 1238 (D.N.H. 1973) aff'd on other

grounds, 497 F.2d 598 (1 Cir. 1974).² The notion that due process considerations must be incorporated into the transfer decisions is particularly true in the transfer of juveniles to adult correctional institutions and in the transfer of all inmates to mental health facilities. See e.g., Baxtrom v. Herold, 383 U.S. 167 (1966); Shore v. Maine, 406 F.2d 844 (1 Cir. 1969). In these cases the courts are more scrupulous in protecting the rights of inmates than in cases involving the transfer between penal institutions. Notwithstanding these exceptional circumstances, where the courts have actually inquired into the rationality of a transfer decision, the weight of authority of the law on this subject still supports the relatively unhampered discretion of correctional administrators to transfer prisoners from institution to institution without notice or hearing.

The first question to be answered in any case involving due process is whether in fact the clause applies. Generally, courts have had a difficult time in transfer cases in determining

² The courts that have invalidated summary interstate inmate transfers have done so by extending the conceptual analysis of Morrissey v. Brewer, 408 U.S. 471 (1972), (wherein the Court held that due process safeguards applied to parole revocations) to include these situations as well. See e.g. Hoitt v. Vitek, supra at 1252-53.

whether the loss is of constitutional magnitude. The Supreme Court has said that in order "[t]o have a property right in a benefit, a person clearly must have more than an absolute need or desire for it. He must, instead, have a legitimate claim of entitlement to it." Board of Regents v. Roth, 408 U.S. 564, 577 (1972). In Goss v. Lopez, 419 U.S. 565, 572-73 (1975), the Supreme Court in addressing this issue held that property interests protected by the due process clause are normally "not created by the Constitution; rather they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits."

Moreover, the United States Supreme Court in Meachum v. Fano, 427 U.S. 215 (1976) and Montange v. Haymes, 427 U.S. 236 (1976) has conclusively held that "no Due Process Clause liberty interest of a duly convicted prison inmate is infringed when he is transferred from one prison to another within the State, whether with or without a hearing, absent some right or justifiable expectation rooted in State law that he will not be transferred except for misbehavior or upon the occurrence of other specified events." 427 U.S. at 242. [emphasis supplied].³

³ Justices Stevens and Brennan joined by Justice Marshall dissented. In their view, while not every adversity would amount to a deprivation within the meaning of the Fourteenth Amendment, where grievous loss is present a hearing must be afforded. See Montange v. Haymes, *supra* at 235 (Stevens, J.,; Brennan, J.; Marshall, J., dissenting). See also Morrissey v. Brewer, *supra*. The dissenters recognized, however, that this did not mean that every decision by a prison official should be subject to judicial review or that the courts, rather than experienced administrators, should write prison regulations. *Id.* at n.4.

Subsequent cases in applying the rationale of Meachum and Montange have held that the power to transfer inmates from one institution to another permits transfer without a hearing to prisons in other states. In Ali v. Gibson, 631 F.2d 1126 (3 Cir. 1980), the Third Circuit considered the propriety of a transfer from a prison in the Virgin Islands first to a penitentiary in Atlanta, Georgia, and then to a penal institution in Marion, Illinois. The court, in upholding the validity of the transfer without a hearing, concluded that based on Meachum and Montange "a prisoner has no liberty interest in remaining in a particular institution," and therefore "[i]f the prisoner can lawfully be held in the facility to which he has been transferred, he cannot object to that transfer, even if the transfer results in his being placed in a more restrictive or less accessible facility." Id. at 1134-35. See also Beshaw v. Fenton, 635 F.2d 239 (3 Cir. 1980) (transfer from a state prison in Vermont to federal prison in Massachusetts and Pennsylvania); Fletcher v. Warden, 467 F.Supp. 777 (D.Kan. 1979); Shakur v. Bell, 447 F.Supp. 958 (S.D.N.Y. 1978).

It is significant to note that Meachum recognized that while states are not required by the Due Process Clause to provide for pre-transfer hearings, they may do so. Meachum v. Fanno, supra at 226. If a state does establish such requirements, however, the United States Constitution may be relied upon "to insure that the state-created right is not arbitrarily abrogated." Id. Illustrative of this principle is

Dozier v. Hilton, 507 F.Supp. 1299 (D.N.J. 1981) in which the District Court noted that New Jersey has adopted procedures for out-of-state transfers and is a party to the Interstate Corrections Compact. Id. at 1308. See also N.J.S.A. 30:7C-1. In addition, the Department of Corrections has adopted detailed regulations implementing the compact which sets forth various transfers and procedures for affecting an out-of-state transfers. Id. In light of these regulations, the court concluded that New Jersey had limited its unbridled discretion to transfer prisoners⁴ and that there was a state-created right⁵ which could not be arbitrarily abrogated by prison administrators. Id. at 1308, 1310. See Meachum v. Fano, supra. See also Wolff v. McDonnell, 418 U.S. 539 (1974).

⁴ The regulations provide that one of the categories of inmates subject to transfer is comprised of "those whose behavior demonstrates that they constitute an exceptional threat to the safety, security or orderly operation of any New Jersey correctional institution or those whose continual presence in a New Jersey correctional institution poses a substantial threat, for any reason to an inmate thereof." Dozier v. Hilton, supra at 1308 (quoting Stds. 868 (D)(2)).

Moreover, procedures are established in the regulations for processing inmate requests for out-of-state transfers. Id. See Stds 868(h). In the case of non-consensual transfers, a hearing is required. Id. See Stds. 868(I).

⁵ The Court, in holding that there was a state-created right, relied on para. 6 on the Wooten Stipulation which read in pertinent part that "[i]t shall not be a justification for retention of an inmate in [Vroom], that the superintendent of no other State penal facility is desirous of having the inmate sent to his institution." Id. at 1309.

On the basis of the foregoing, correctional administrators would be well advised to a document transfer decisions and procedures extensively and develop a standard of sufficiency with reference to the documentation so that under subsequent court scrutiny the record will reflect: compliance with applicable statutes and regulations; a "fair" decision making procedure, and a substantive rationale for the transfer which is penologically and constitutionally supportable.

It is noteworthy that in many of the predecessor cases to Meachum and Montange, the courts have reasoned that the issue of whether or not liberty or property deprivations are involved in transfers turned on the circumstances of the transfer in each case. See e.g. Newkirk v. Butler, 499 F.2d 1214, 1217 (2 Cir. 1974), vacated as moot sub nom., Preiser v. Newkirk, 95 S.Ct. 2330 (1975); King v. Higgins, 370 F.Supp. 1023 (D. Mass. 1974), aff'd on other grounds, 495 F.2d 815 (2 Cir. 1974) (per curiam). This analysis, however, is contrary to that articulated by the United States Supreme Court in its holding that "[a]s long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed on him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by Prison authorities to judicial oversight." Montange v. Haymes, supra at 242.

In any event, one issue addressed by almost every court prior to the Supreme Court's decision which had held that the Due Process Clause was applicable, was the recognition that

in an emergency situation, its safeguards may be postponed. The rationale for this was clearly stated by the circuit court in Gomes v. Travisono, supra at 1215, aff'd per curiam on this point, 510 F.2d 537 (1 Cir. 1974).

We recognize that present and pending disturbances which might overtax the control capacity of a prison creates a dominant interest in prison authorities being able to act without delay if they feel that delay would endanger the inmate, others, or the prison community This is so even though the assessment of difficulties may subsequently prove to be unfounded and the transfers unjustified.

An examination of the pertinent statutes immediately reveals that New Jersey has invested the Commissioner of the Department of Corrections with broad and discretionary power over those persons who are committed to the State's institutions. See N.J.S.A. 30:1B. The Commissioner has been granted the authority to administer the work of the Department of Corrections and the power to issue rules and regulations in connection therewith. He has also been empowered to "determine all matters relating to the unified and continuous development of the institutions . . . within his jurisdiction" and to determine all matters of policy. N.J.S.A. 30:1B-6(a), (e), (f), (g). In addition, under the statute, the power to transfer inmates from one institution to another and the power to designate places of confinement are entrusted to him. N.J.S.A. 30:4-91.1. It should also be noted that the Commissioner is even empowered to transfer inmates to an institution in a state other than New Jersey when it is determined that such

confinement is desirable. N.J.S.A. 30:7C-5.

In brief, an inmate can never realistically expect that transfers will be only for misconduct for which he might arguably be entitled to a hearing. A prison may be closed, or it may change security status or become overcrowded. Any of these and other conditions can prompt a transfer decision. Thus, it can be argued that in the absence of any statutorily created right or regulation conferring such a recognizable liberty or property interest, a prisoner has absolutely no expectation that after his initial assignment, he will be transferred only in case of misconduct. As noted by the Appellate Division of the New Jersey Superior Court in Robcca v. Groomes, 144 N.J. Super. 213, 215 (App. Div. 1979) "a prisoner is sentenced to the state prison and not to a particular component thereof." Hence, this court concluded that administrative transfers between institution works no denial of due process notwithstanding that such a transfer is accomplished without a prior hearing. Moreover, in view of the broad discretion vested in prison officials to transfer, due process does not require a hearing, irrespective of whether the transfer is the result of the inmate's behavior. Id. See also N.J.S.A. 30:4-91.1. The court citing Meachum v. Fano, supra stated that "[w]hatever expectation a prisoner may have in remaining at a particular prison so long as he behaves himself, it is too ephemeral and insubstantial to trigger procedural due process protections." Id. (quoting Meachum v. Fanno, supra at 228). Based on this court's reasoning, any expectation on an inmate's part that he will not be transferred except for misconduct would be purely

unilateral. That the transfer admittedly might have been made for a punitive purpose, providing it is not arbitrary, is of no independent constitutional significance. The nature and source of the interest is the key, not the weight or impact of the transfer on the inmate. Moreover, a prisoner has no legitimate claim of entitlement to be placed or to remain in any one prison. His liberty is not affected by a transfer, especially to a prison with an equal custody rating, since in the receiving institution, he suffers no different confinement than he did in the transferring prison. Thus, he undergoes no major change in the conditions of his imprisonment. By definition, a prisoner has less liberty than a non-prisoner and therefore transfers neither increase nor decrease his limited state of liberty. Thus, while the individual states may require a pretransfer hearing, this jurisdiction does not. Id. at 216. See also Tully v. Tramburg, 57 N.J. Super. 377, 385 (App. Div. 1959).

B. REVIEW OF THE "PAROLE ACT OF 1979"

Parole is an act of leniency or grace toward a prisoner. The New Jersey Constitution states that a system of parole shall be provided by law. N.J. Const. (1947) Art. V, §2, ¶1. The Legislature, acting pursuant to this constitutional directive, has full authority to devise the system and affix such conditions and restrictions to the privilege of parole as it deems appropriate. Zink v. Lear, 28 N.J. Super. 515, 522 (App. Div. 1953). Courts have no constitutional or inherent authority to grant parole. Mastriana v. N.J. Parole Bd., 95 N.J. Super. 351, 356 (App. Div. 1967). In the area of parole the authority of the courts is limited to those responsibilities so delegated by the legislature.

The system of parole established by the legislature of this state lodges the responsibility for administering the program with the State Parole Board. N.J.S.A. 30:4-123.45 et seq. The granting or withholding of parole is the exclusive decision of the State Parole Board. Judicial review of any action taken by the Board in a specific case is limited essentially to a determination of whether it was taken within the statutory powers of the parole authority. Mastriana v. N.J. Parole Bd., supra, at 356.

The State Parole Board is responsible for setting the "primary parole eligibility date" and the "parole release date."

N.J.S.A. 30:4-123.45b(3), (4). The "primary parole eligibility date" is the date established for parole eligibility pursuant to statute. The "parole release date" is the actual day of release of an inmate which has been certified by a board member. While the State Parole Board has broad discretion in establishing the actual date of release once an inmate is eligible for parole, its authority to reduce the primary parole eligibility date is limited by various statutory provisions.

N.J.S.A. 30:4-123.51a provides that each adult inmate sentenced to a specific term of years at State Prison shall "become primarily eligible for parole after having served any judicial or statutory mandatory minimum term, or one third of the sentence imposed where no mandatory minimum term has been imposed. . .". When the adult inmate has been sentenced to life imprisonment and no mandatory minimum term for parole has been imposed the prisoner becomes eligible for parole in 25 years.

(Emphasis added)

In each of the instances related above, the time of parole eligibility must be reduced by an commutation time earned for good behavior or work credits. N.J.S.A. 30:4-92, N.J.S.A. 30:4-123.51, N.J.S.A. 30:4-140. No adult inmate sentenced to a specific term of years at State Prison may become eligible for parole, however, until service of nine

months of his sentence. N.J.S.A. 30:4-123.51. All adult inmates sentenced to county jail become primarily eligible for parole upon service of nine months of the sentence. Id.

The legislature has not statutorily prescribed primary parole eligibility dates for young adult offenders sentenced to indeterminate terms at the Youth Correctional Institution Complex under N.J.S.A. 2C:43-5. Rather, the legislature has delegated the responsibility for establishing primary parole eligibility dates for young adult offenders serving indeterminate terms to the State Parole Board pursuant to a schedule developed by that body. N.J.S.A. 30:4-123.51d. The schedule promulgated by the State Parole Board specifying the presumptive primary eligibility dates for youthful offenders is contained in N.J.S.A. 10A:71-33. This is an administrative regulation which may be amended upon the initiative of the State Parole Board.

If the State Parole Board determines that an adult inmate has made exceptional progress, the primary parole eligibility date for that inmate may be reduced but the consent of the sentencing court is required before such action can be taken. N.J.S.A. 30:4-123.53B. The sentencing court, however, is not required to conduct a hearing prior to granting its consent to the reduction. Id.

Reduction of the primary parole eligibility date may also be accomplished through a formal written agreement entered into by the Parole Board, Department of Corrections and

the inmate. N.J.S.A. 30:4-123.67. Again, the original sentencing court may authorize the reduction. Id. An individual program of training or education which supports the proposed reduction must be contained within the agreement. In no case, however, whether pursuant to the provisions of N.J.S.A. 30:4-123.53b or N.J.S.A. 30:4-123.67 may the parole eligibility date be set below a minimum term fixed by statute or by the court in imposing a sentence.

In summary, there are three alternatives which may be employed to alleviate prison overcrowding under the parole laws of this State without requiring any further legislative amendments, those being:

1. The primary parole eligibility dates schedule promulgated by the State Parole Board could be modified to hasten the release of young adult offenders serving indeterminate terms.
2. An increased effort could be undertaken to identify suitable inmates for early release under the exceptional progress provisions of N.J.S.A. 30:4-123.52b. Although the consent of sentencing courts is required to reduce primary parole eligibility dates no hearings are required.

3. Inmates can be encouraged to participate in individual programs of education or training to gain early release. Again, the consent of the court is required to reduce primary parole eligibility dates and may limit the effectiveness of this alternative.

SURVEY OF OTHER STATES

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**PRISON OVERCROWDING:
A SURVEY OF RELIEF MECHANISMS
UTILIZED BY OTHER STATES**

Each of the states surveyed regarding prison overcrowding acknowledged significant problems. Although each state developed an individualized program to address relevant concerns, a multifaceted approach was used in all instances. Most states, faced with emergent needs to reduce overcrowding, utilized both short-term and long-term remedies. In general, a combination of the following mechanisms are being utilized to provide relief for prison overcrowding:

- Building expansion programs,
- Classification system improvements,
- Parole system modifications,
- Prerelease programs,
- Diversionsary programs,
- Community-based programs,
- Renovation of existing facilities,
- Utilization of vacant federal properties,
- Enactment of emergency legislation.

Summaries of each state's activities are provided on the next few pages. A more detailed account of these activities follows on the pages noted.

Summary by State

Ohio page 8

The State of Ohio, Department of Corrections, was faced with a law suit in 1980 charging unconstitutional confinement due to overcrowding. Several means of addressing this problem are being utilized, including: (1) an increase of parole releases for eligible inmates using a revolving door policy, shock parole, and furloughs; (2) a building expansion program; and, (3) enactment of a Community Corrections Act.

Massachusetts 9

Massachusetts Department of Corrections is contending with prison overcrowding problems in the following ways: (1) utilizing specialized units (e.g., departmental segregation units, infirmaries, initial receiving sections, and isolation cells) to house the prison general population; (2) renovating existing space into make-shift dormitories; (3) renovating vacant U.S. Air Force buildings; and; (4) completing construction on an unfinished county prison facility.

The facilities expansion program undertaken by Massachusetts is viewed as only a temporary solution and is not expected to keep up with the increasing number of inmates. Therefore, other solutions are being proposed but are not yet underway. These proposed solutions encompass a cooperative criminal justice effort including the review and revision of parole policies, the use of less secure state facilities to house certain county inmates, the reduction of short-term sentences, the construction of new facilities and the establishment of a commission to study the problem and devise solutions.

Pennsylvania 11

Pennsylvania recognized the need to address a potential prison overcrowding problem in April 1981. However, prison overcrowding became a reality much sooner than expected when county facilities discontinued granting temporary housing for state inmates who were awaiting parole revocation hearings and court appearances. The double-celling and overcrowding in state institutions which resulted from this transfer of inmates was addressed in the following ways. (1) Inmates housed in a drug and alcohol rehabilitation/therapeutic unit within one institution were transferred to trailers placed within the prison compound. The more secure

cells were, in turn, utilized for general housing purposes. (2) A forestry camp used to house working inmates only five days a week was converted to a seven day week facility. This freed 120 beds in the regular institution for additional inmates. (3) Storage space and day rooms were renovated for cell use. (4) Cottages previously closed at a women's facility were restored and re-opened. (5) Two additional prerelease community centers were authorized by the State legislature. In addition to utilization of existing resources, the Pennsylvania legislature is proposing new construction.

Connecticut 13

Connecticut, faced with prison overcrowding problems, enacted an emergency plan through the State's legislature to reduce the prison population. Essentially, the statute provides the Commissioner of Corrections the authority to petition the court to (1) reduce an inmate's bond to a written promise to appear and (2) hear a motion for modification of sentence. The emergency plan is intended to provide a system of release for inmates with the shortest time remaining on a sentence or the smallest bond set.

California 15

California, although experiencing no current pressures due to overcrowding in State institutions, recognizes the potential for future problems. To address this, the prison system is currently under re-evaluation. Concerns about on-going double and triple-celling practices were alleviated by recent federal court decisions which did not find all such practices inherently unconstitutional.

County and city facilities, on the other hand, are experiencing pressures due to overcrowding. As a result of this, judges are authorized to grant prereleases if the number of inmates exceeds the number of beds. Criteria for prereleases have been established: (1) only those inmates closest to their release dates; (2) prerelease can not exceed 10% of the original sentence; and, (3) prerelease cannot exceed five days.

New Mexico 17

New Mexico undertook several measures to address overcrowding after experiencing prison riots. These measures included: (1) a transfer of 400 inmates to out-of-state facilities; (2) a building construction program; (3) classification system improvements; (4) legislative action to expand good-time and work-time

policies to facilitate early releases; and, (5) investigation of alternative programs such as community-based programs, intensive probation supervision, work release programs, and the use of county jail sentences.

Rhode Island 19

Rhode Island is currently faced with overcrowding problems for inmates awaiting trial but not sentenced offenders. Since both sentenced and unsentenced inmates are confined in the same facility, only one section is under re-evaluation. New construction has been considered, but future plans are not specific.

Oregon 20

Oregon adopted a multi-faceted approach to prison overcrowding following court intervention. The approach consisted of both short-term and long-term measures. The following short-term remedies were undertaken. (1) The practice of housing county inmates in state facilities was discontinued. (2) The prison work-release program was modified whereby 90-day leaves are granted to eligible inmates in lieu of providing housing for a traditional program. (3) As a result of other court decisions, inmate beds were "legitimately" placed in areas not specifically designed as living quarters. (4) The inmate classification system was modified to more efficiently determine parole eligibility. Long-term remedies, sought through legislative action, included sentencing law revisions and modified probation and parole practices.

Michigan 23

Michigan introduced several mechanisms to relieve prison overcrowding including emergency legislation, increased use of community placements, increased use of probation and parole programs, construction of new facilities, and revisions to existing sentencing laws and practices.

The Emergency Powers Act, legislatively enacted, allows a systematic prerelease of inmates upon the governor's authorization. To invoke the Act, a state of emergency is declared by the governor when the prison population exceeds the rated capacity for 30 consecutive days.

South Carolina 27

South Carolina, faced with prison overcrowding, has undertaken several measures to alleviate the problem. (1) State inmates, in some instances, are housed in county and local jails. (2) The State legislature enacted a Parole and Community Corrections Act to induce more efficient parole procedures and increase the number of potential parolees. This was accomplished by eliminating a six-month backlog in parole hearings, reducing the amount of time an inmate must serve on a sentence before being eligible for parole, and introducing a new more liberal prerelease program--Supervised Furlough. (3) Additionally, a task force, the Legislative Audit Council, was established to study prison overcrowding and is due to report their findings in January 1982.

New York 29

New York, although not under any court mandate regarding prison overcrowding, realizes a problem and has been addressing it in several ways: (1) a building expansion program; (2) a restoration program for facilities that have not been in use; (3) the utilization of vacant military bases; (4) the consideration of diversionary and community-based programs; and, (5) a review of existing sentencing laws.

Maryland 31

Maryland has been under a governor's mandate and federal court order to reduce prison overcrowding. In December 1980, the Governor used commutation authority before Christmas and granted an early release to 245 prison inmates to reduce overcrowding. Additionally, the Maryland Division of Corrections and Department of Education have undertaken a joint effort to develop a comprehensive plan and program model for the systematic release of inmates.

Tennessee 33

In 1976, Tennessee was faced with a law suit declaring unconstitutional prison conditions due to overcrowding. At the time, inmates were housed in areas not structurally designed for living quarters such as the prison gymnasium, recreation areas, and the school room. Although the court decision was overturned on appeal, a consent agreement to correct problems was entered. Overcrowding was reduced through improvements in the prison classification system, identification of un-used bed space, and completion of three facilities already under construction.

Other possible solutions are also under examination. These include initiation of programs to encourage counties to house state inmates in existing, but up-graded county facilities, increased use of work-release programs, expansion of minimum security facilities for prison work gangs, and further improvements within the existing classification system.

Texas 35

Texas is currently subject to a court order to reduce prison overcrowding. As a result, a two-fold approach has been planned to address overcrowding. Firstly, an emergency State budget appropriation was awarded for the construction of additional facilities. Secondly, a conditional parole program under development to increase the volume of community placements. In the interim, prison inmates have been housed in tents and vacant military bases.

Mississippi 37

Mississippi, currently under a federal court order to reduce overcrowding, has responded by enacting legislation to provide a variety of remedies including sponsored earned-release programs, work-release programs, and unconditional early release. Additionally, the Mississippi Probation and Parole has been releasing prisoners without any system or order.

Arkansas 38

Arkansas has been involved in various litigation regarding prison overcrowding in 1969. Population limits were established for prison facilities and county jails had to place inmates on waiting lists for transfers to state facilities. These actions and a building expansion program are expected to control prison overcrowding problems.

Georgia 39

Georgia, while under a court order, reduced prison overcrowding using the following relief mechanisms: (1) Execution of mass prereleases; (2) The use of trailers to house prison inmates; and, (3) The implementation of a long-term plan to complete building renovations and construction.

The State of Washington, under court order to reduce overcrowding, has introduced several remedies to alleviate the problem including: (1) establishment of a task force to study the problem and report relevant findings, (2) development of construction plans, (3) improvements in the offender classification system through cooperative efforts, and (4) the restructuring of existing facilities and introduction of additional beds. Furthermore, a high volume of inmates were granted early release as a result of overcrowding and additional prerelease programs are under consideration.

OHIO

- A law suit was filed against the Ohio Department of Corrections in 1980 due to overcrowding.
- Several relief mechanisms were undertaken.
 - (1) Parole releases were increased (revolving door, shock parole, furloughs).
 - (2) A new prison was scheduled to open in 1980.
 - (3) A Community Corrections Act was passed by State legislature which provided funding for diversion and release programs. Funding began in October 1980.
 - (4) A building program was initiated.
 - (a) A \$2.1 million appropriation was passed by the State legislature on September 10, 1980 for site acquisition and six 500-bed facilities. (b) The money, however, is inadequate. Land cost, alone, was estimated at \$4.8 million.
 - (5) Cuyahoga County sheriffs' deputies were called in off the street to slow down arrests and alleviate overcrowding in the county jail.

Resources:

"Ohio Reaches Pivotal Point in Corrections Implementations," Corrections Digest, Vol. 11, No. 19, September 12, 1980, pp, 2, 3 and 8.

MASSACHUSETTS

- Prison overcrowding believed by state corrections officials to be a primary problem.
- Prison population increased 59% from 1975 to 1981.
- Mandatory sentencing proposals now pending in State legislature are of particular concern to prison overcrowding.
- The most severe overcrowding exists at state maximum and medium security institutions. Minimum security facilities, although not overcrowded, do not provide adequate supervision for a troublesome population.
- County overcrowding is also a problem. Facilities are 21% over capacity.
 - (1) This is attributed, in part, to housing State inmates temporarily (until state prisons have space available).
 - (2) There was recent action to end housing state prisoners in county facilities. This, in turn, will increase the overcrowding problem in State institutions.
- Relief mechanisms:
 - (1) Utilizing specialized units in a maximum security facility to house general population of inmates (e.g., departmental segregation unit, institution infirmary, initial receiving section);
 - (2) Utilizing an antiquated (basement) section of a medium security facility as well as former staff housing units and isolation cells to house general population (these areas have no running water);
 - (3) Utilizing isolation cells, make-shift dormitories and hospital beds for housing over 500 inmates in a medium security facility designed to house 272 inmates.
- The facilities expansion program is viewed as only a temporary solution. It is anticipated that expansion will not keep up with increasing population.

- Solution proposals for overcrowding:
 - (1) Cooperative criminal justice effort;
 - (2) Review parole revocations to determine if alternatives to prison exist;
 - (3) Identify inmates in county facilities for transfer to less secure State institutions where space is available;
 - (4) Judiciary reduce relatively short sentences by one or two months (from six to twelve month sentences) to make beds available in county facilities;
 - (5) Establish a commission to study the problem and devise solutions; and
 - (6) Facilities expansion.
- Expansion proposals:
 - (1) Renovate vacant U.S. Air Force Base building for medium security facility (160 beds);
 - (2) Use vacant 123-bed facility in Middlesex County for state facility (construction was completed in 1975, but sprinkler system still need); and,
 - (3) Contemplation of a new 200-bed medium/maximum facility.
- Overcrowding remains a threat even with expansion proposals--there is no allowance flexible operations.

Resource:

U.S. General Accounting Office, More Than Money Is Needed to Solve Problems Faced by State and Local Corrections Agencies, U.S. General Accounting Office, Gaithersburg, Maryland, September 23, 1981.

PENNSYLVANIA

- No court order re: overcrowding in effect.
- Recognized serious overcrowding problem in April 1981. This was advanced when county institutions took action to deal with their overcrowding situation.

State inmates being temporarily housed in county facilities for parole revocation hearings and court appearances were immediately sent to State institutions. This was done to eliminate any double-celling in county facilities by August 1, 1981.

● Double-celling and overcrowding was dealt with by various means:

- (1) Inmates being housed in a 120-bed block being used as a drug and alcohol rehabilitation/therapeutic program were transferred to trailers which were newly placed within the prison compound;
- (2) A forestry camp used to house inmates only five days a week became a seven-day a week facility. This freed 120 beds in the regular institution for additional inmates;
- (3) Storage space was renovated (Dallasprison) and used for dormitory facilities. The cubicles used provided living space for 40 more inmates;
- (4) Day rooms in the newest institution were renovated to provide housing for 40 additional inmates;
- (5) Certain cells, previously used for storage, office space, etc., were renovated for use as inmate living space--adding 120-150 more beds;
- (6) Cottages previously closed at a women's facility were restored and re-opened. These cottages were closed when the female population was down to 40. Currently, 300 female inmates are being housed in this same facility; and,
- (7) Two additional prerelease/community centers were authorized by the State legislature. This provides an additional 16 beds.

- Utilization of existing resources has allowed the prison to maintain its current population but overcrowding problems continued.
 - (1) 600 inmates are currently in double cells;
 - (2) Mandatory minimum sentences for violent crimes are under consideration by the State legislature;
 - (3) New construction will depend upon approval of a bond issue to add cells to three existing facilities, build five new facilities, and renovate three mental facilities for prison inmates. (Even with the bond, population will be close to the new prison capacity).

Resources:

Ken Robinson, Public Information Officer, Pennsylvania
Bureau of Corrections, Harrisburg, Pennsylvania, 717-787-7482.

CONNECTICUT

- Emergency plan to reduce prison population enacted into law during 1981 Legislative Session (effective 7/1/81).
- This "Model" legislation. . .

requires involvement of state's judges in release procedures,

takes onus off corrections by spreading the resolution of overcrowding problem across the criminal justice system and

gives the commissioner of corrections and state's judges joint authority to control prison population levels.

- (1) If the commissioner of corrections determines that there is overcrowding, he may petition the court for reduction of bond to a written promise to appear (consider those with the lowest bonds, least serious charges or other possible alternatives to such release).
 - (2) If overcrowding exists, the commissioner may petition (superior court) to hear a motion for modification of any inmates' sentences.
 - (a) Those inmates with shortest time left to serve will be considered for a modification of sentence.
 - (b) If a modification of sentence is granted on a determinate sentence, the inmate will be placed on probation (with inmate's consent) for a period not to exceed the remainder of sentence.
 - (c) If a modification is granted on an indeterminate sentence, the inmate will be released on parole.
 - (d) The system of release enacted was established to control release, i.e., shortest time remaining and smallest bond.
- The new statute has not been used at this point but it is anticipated that it will be used within a few weeks or one month's time.

- The emergency plan is intended to reduce prison population a few at a time (gradually) rather than in one fell-swoop.
- A Governor's Task Force was also established through legislation to study the problem.

Resources:

John Manson, Commissioner of Corrections, Department of Corrections, Hartford, Connecticut, 203-566-4457.

Travisano, Anthony P., "Kudos for Connecticut's Response to Overcrowding," On the Line, Vol. 4, No. 6, September 1981, p. 1.

CALIFORNIA

- Although no current pressure is noted, prison population is increasing and overcrowding is projected.
- The prison system is currently under re-evaluation.
- Because of recent federal court decisions, California was fearful of court intervention based on double celling practices. Double and sometimes triple celling is being used to house prisoners. When tested by court/constitutional standards, double celling was permitted under federal standards. This alleviated overcrowding concerns.
- No current provisions under State Penal Code for pre-release.
- A Bill introduced into the Legislature which would classify prisoners and allow prerelease of those representing the minimum risk when prison population reached 90% capacity was defeated.
- A recent bond issue for new prison facilities was defeated.
- Overcrowding conditions are also being addressed on the county and local levels.
 - (1) Accelerated release for city and county prisoners is being practiced. In these cases, the city or county judge is authorized to prerelease inmates, that is, if the number of inmates exceeds the number of beds.
 - (a) Only those inmates closest to their release dates are considered for release.
 - (b) The days given as early release will be no more than 10% of the original time.
 - (c) Judges are authorized to prerelease inmates up to a maximum of five days.
 - (2) Furthermore, the State Legislature appropriated funds to counties to develop alternative programs and job training programs.

Resources:

Bob Spindler, Joseph Arellano, Criminal Justice Planners,
Criminal Justice Planning Agency, State of California,
916-366-5340.

NEW MEXICO

- As a result of riots, 400 inmates were transferred to out-of-state prisons.
- A major construction program was undertaken.
- Legislature passed an expanded good-time policy.
 - (1) Work-time credit granted--one day credit for one day work.
 - (2) Good-time--one day credit for two days of good behavior.
- Lump-sum, good-time credit policy implemented legislatively.
 - (1) Liberal use of good-time credit for extraordinary behavior.
 - (2) 30-60 days and up to one year early release granted.
 - (3) This was a direct result of the prison riots.
 - (4) Approximately 200 inmates released in this manner.
- Modifications made in determinate sentencing to reduce the length of incarceratory sentences.
- Better classification system developed.
 - (1) Prior to 1978 there was only one major penitentiary and one farm.
 - (2) The number of minimum security facilities was increased along with the number of medium and maximum security facilities.
- Sentencing alternatives are being investigated.
 - (1) Community-based programs have been inadequate.
 - (2) More effective and more intensive probation supervision is under consideration. Traditionally, probation supervision has been ineffective because of poor case management and lack of staff.
 - (a) The courts are responding by approving an increase in staff.

(b) Case management procedures are under evaluation and re-organization.

- Other possible solutions/improvements being investigated--
 - (1) Use of county jail time (presently does not exist).
 - (2) Implementation of work-release programs.

Resources:

JoAnne Brown, Assistant Director (Adult Institutions)
New Mexico Department of Corrections, 505-827-5222.

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Corrections, 505-827-5222.

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Resource:

John Moran, Directo
Connecticut 401-464-2611

RHODE ISLAND

- A class action suit was filed against Rhode Island in 1977. Prisons were declared unconstitutional but not because of overcrowding.
- Overcrowding, however, became a recent reality for inmates awaiting trial.
 - (1) Overcrowding problems do not affect sentenced offenders.
 - (2) Prisoners--sentenced and unsentenced--are confined in the same facility, but are not integrated. Therefore, only one section of the prison facility is overcrowded.
 - (3) There is not, in every instance, the adequate cell space (square footage) for every inmate.
- Future problems are predicted even though prison population (both sentenced and unsentenced) totals just under 1000 inmates.
- Federal funds were considered a possible means of addressing what could become a problem, but such funds for new facilities were not approved.
- Specific alternatives or solutions were not noted.

Resource:

John Moran, Director Department of Corrections, Hartford, Connecticut 401-464-2611

OREGON

- U.S. District Court issued an injunction ordering state officials to remedy the overcrowding prison situation after declaring unconstitutional conditions of confinement, June 1980.
 - (1) The injunction involved three institutions.
 - (2) Unconstitutional overcrowding was based on cell design--bedding two inmates to a cell and using a day room for dormitory space.
 - (3) The use of mattresses placed on the floor of any cell or living area was also forbidden.
 - (4) The order stated a combined reduction of population--500 by February 1981 and an additional 200 by April 1981.
 - (5) The three institutions involved were ordered to implement a plan for phased reduction to the design capacity of each facility (and submit monthly progress reports).
- In January 1981, the State obtained a stay of the court-ordered injunction pending disposition of a similar case in Ohio. The decision in the Ohio case stated that two inmates per cell is not necessarily unconstitutional. Oregon requested a continuation of the stay in their case based on the Ohio decision.
- While awaiting the final outcome of the court case, the State did four things to address the problem.
 - (1) Courtesy housing in state institutions for county inmates was discontinued reducing the prison population by an average of 30 inmates per month.
 - (2) A modified work release program was implemented to reduce the prison population. The State granted inmates (120) 90-day leaves in lieu of the traditional work release. Work-release centers, in turn, were closed. This allows inmates to return to their home communities throughout the state and dropped a 200-person backlog of 200 inmates awaiting placement in a work-release program.

- (3) The parole board developed a matrix system of classification of inmates which would give better predictions of parole eligibility dates. This provided a more efficient means of determining and granting parole releases.
 - (4) Additional cell space was gained by transferring female inmates out of a partially populated release facility to a work-release center. The release facility, in turn, was used to capacity to house male inmates.
 - (5) As a result of other court decisions, inmate beds were placed legitimately in areas of the prison not specifically designed as living quarters.
 - (6) These various actions reduced the inmate population in three facilities by 477.
- Long-term actions to alleviate overcrowding problems were being addressed by the State legislature through the enactment of a series of Bills which will reduce prison population an average of 300 inmates.
 - (1) Sentences imposed in Oregon can now be served concurrently with other sentences imposed by jurisdictions. Previously, this was not permissible under Oregon law.
 - (2) The parole board can now ignore consecutive prison terms ordered by a sentencing court under certain circumstances.
 - (3) Probation violations can now be disposed of with extended probation terms rather than incarceration if the violation occurs at the end of the original term.
 - (4) Parole supervision is now classified as active or inactive. The law provides that after serving six months under active parole supervision, inactive supervision can be effected. (This is based on the premise that national figures show that nine to eleven months after release from prison, supervision has little meaning other than catching technical violations). This, in turn, makes some parole staff available to supervise probationers and deter prison sentences in the first place.

(5) Under old Oregon law, a parolee could not be released from parole until a mandatory exit interview was completed. Under new law, this is optional. This, in turn, speeds release and improves the parole system of case management.

- A bond issue is planned for the May 1982 ballot to provide money for additional bed space and new institutions.

Resources:

Neil Chambers, Executive Assistant to the State Administrator of Corrections, Oregon Department of Corrections, 503-378-2467.

MICHIGAN

- No federal court order in effect, but the State Circuit Court intervened because of prison overcrowding conditions.
- Relief mechanisms for overcrowding consist of both short-term and long-term measures--a multi-faceted approach.
- Prison Overcrowding Emergency Powers Act, Public Act 519 of 1980, enacted by the State legislature.

Four-step approach:

- (1) Governor can declare a state of emergency when prison population exceeds rated capacity for 30 consecutive days.
 - (2) Upon declaration of state of emergency, the minimum sentences of inmates would be reduced by ("rolled back") 90 days thereby increasing the number of potential parolees.
(The only instance where the governor would not declare the emergency would be if he found that the commission acted in error, e.g., that the population did not exceed rated capacity or that administrative remedies had not been exhausted.)
 - (3) If the initial rollback does not sufficiently reduce the population within 90 days, an additional 90 day sentence reduction in minimum sentences would be effected. Again, such a reduction would increase the pool of prisoners eligible for parole.
 - (4) The governor would be required to rescind the state of emergency at any point during this process once the commission certified to him that population was reduced to 95 percent of rated capacity.
- The Emergency Powers Act was enacted as a short-term measure.
 - (1) to handle pressure,
 - (2) to avoid riot conditions,
 - (3) to alleviate the need for federal intervention and respective costs,
 - (4) to maintain State control,

- (5) to serve as an alternative to costly new construction since funds are not anticipated and a recent bond issue was defeated.
- Although the Emergency Powers Act was not needed when enacted in 1980, it was invoked May 20, 1981.
 - (1) As a result, approximately 600 inmates were granted an early release.
 - (2) No adverse public reaction to prerelease has been noted.
 - (3) Bad press is believed to have been alleviated by the great amount of legislative support and overall commitment for the Emergency Powers Act.
 - (4) Support and commitment for this Act is shared by legislators, some members of the judiciary, the sheriffs' association, the prosecutors' association, and the executive branch of State government.
- State prisons are currently under capacity, but it is expected that the Emergency Powers Act will again be invoked either later this year or early next year.
- Long-term overcrowding relief mechanisms are also under consideration in Michigan.
 - (1) Increased use of community placements are being considered. These include: community programs for those who were in prison and are now on the way out; community programs for those who have not served time; and, probation and parole supervision.
 - (2) Although a new prison was recently completed, construction of additional facilities is under consideration.
 - (3) Revisions in current sentencing laws and practices are being reviewed.

- A total of 47,000 individuals are under a sentencing order. Of those under a sentencing order approximately...
 - 26,000 are on probation,
 - 6,000 are on parole,
 - 2,200 are in community-based programs,
 - 12,650 are in prison.

- The Ingham County Circuit Court of Michigan took the following actions to address overcrowding in state prisons:
 - (1) A ceiling was placed on the prison population.
 - (2) State prisoners were permitted to be returned to county jails when the state facility reached capacity.
 - (3) Expanded use of parole and community corrections placement was ordered.
 - (4) An order to return non-violent offenders to county jails was entered.

- County jail overcrowding, in turn, has not been adequately addressed and may become a problem.
 - (1) This concern is currently under investigation.
 - (2) An emergency act, similar to the Emergency Powers Act, is under consideration to address county overcrowding problems.
 - (3) In the interim, Cant County initiated a solution to overcrowding within that jurisdiction, i.e., county judges agreed to allow an overall reduction of inmates' sentences to reduce overcrowding. This action, however, has been contested by the State Prosecutor on the basis that Michigan law grants such authority only to the governor. A court decision (Michigan Supreme Court) in this matter is pending.

Resources:

Nolan Jones, National Governors' Association

"Michigan Law Aims to Ease Prison Crunch,"
Criminal Justice Newsletter, Vol. 12, No. 2, January 19, 1981.

Jim Boyd, Corrections Committee, House of Representatives,
Lansing, Michigan 48909 (517-373-9225).

"Overcrowding," Criminal Justice Executive Briefs, No. 3,
February 1, 1981.

SOUTH CAROLINA

- State prisons designed to house 4,800 inmates are housing almost twice the noted capacity.
- Some state inmates are housed in local jails to reduce overcrowding.
- Legislation was enacted to address overcrowding through reorganization of the state probation and parole agency. The Parole and Community Corrections Act incorporated several measures to induce more efficient parole procedures and increase the number of eligible parolees.
 - (1) A mandate was effected to insure that parole hearings are held as soon as an inmate becomes eligible for parole release. Previously, when no mandate was in effect, a six-month case backlog existed. With the new mandate, inmates will be granted hearings more quickly and those who pose no threat to society or risk to public safety will be released earlier.
 - (2) A reduction of the time served before eligible for parole will become effective in 1984. Currently an inmate must serve one-third of the sentence imposed before being eligible for parole. In 1984, an inmate must serve only one-fourth of the sentence imposed before being eligible for parole.
 - (3) Supervised furlough, a new program, was effected in May 1981.
 - (a) Inmates sentenced up to five years for non-violent offenses are eligible for supervised furlough after serving six months of the sentence with a clear disciplinary record.
 - (b) Those under supervision will be handled in the same manner as parole supervision.
 - (c) Supervised furlough release differs from parole release in that those released on this new program can be released to find employment. Those released on parole, however, must have employment before being released.
 - (d) There are 50 inmates now in this program.

- (e) A reduction in the prison population of 600 to 700 inmates is expected over the next five years as a result of this program.
- Another aspect of the legislation involves the imposition of fines or penalty charges assessed to convicted offenders to defray the cost of community programs and reduce the burden to taxpayers.
 - (1) An additional \$2.00 fine will be assessed on non-criminal offenses.
 - (2) An additional \$20.00 fine will be assessed on criminal offenses.
 - (3) Those who participate in any community program will be assessed \$21.00 per week or \$3.00 per day toward supervision costs.
 - The Governor viewed this new legislation, the Parole and Community Corrections Act, as a means of circumventing new prison construction.
 - A task force, the Legislative Audit Council, was established to conduct a thorough study of the overcrowding conditions in South Carolina. The study, to be completed in December 1981 and released in January 1982, will recommend solutions to the overcrowding conditions.

Resources:

U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, Prisoners in State and Federal Institutions on December 31, 1977, U.S. Government Printing Office, Washington, D.C., February 1979.

Dr. Hugh Clements, Executive Assistant to the Commissioner, Department of Corrections, Columbia, South Carolina, 803-758-6321.

(George L. Schroeder, Director, Legislative Audit Council, 620 Bankers Trust Tower, Columbia, South Carolina 29201, 803-758-5322.)

(Ed Atwater, 3rd, Director, Court Administrator, South Carolina Court Administration, P.O. Box 1178, Columbia, South Carolina 29211, 803-758-2961. Study re. sentencing patterns, disparity.)

NEW YORK

- Prison population is ten percent over capacity (i.e., 2,500 beds short).
- A multi-faceted approach is underway to address overcrowding.
- A building expansion program is in effect.
 - (1) A bond issue concerning the construction of new facilities is scheduled for the November 1981 ballot.
 - (2) Modular, pre-fabricated buildings are under construction for minimum security, farm-worker facilities.
- Existing resources and facilities are being utilized.
 - (1) Renovations were made to restore old, un-used facilities such as Sing Sing Prison. Sing Sing was renovated and ready for use within six months.
 - (2) Several vacant military bases were acquired and utilized as temporary housing facilities--minimum and medium security facilities.
 - (a) Watertown Air Force Base houses approximately 200 inmates.
 - (b) Lockport Air Force Base houses approximately 320 inmates.
 - (c) Military properties declared surplus or excess property can be obtained upon application.
 - (d) Surplus property information is available from John Byrnes, Director, Real Property Bureau, Federal Property Resource Services, 26 Federal Plaza, New York, New York.
 - (3) Excess property can be applied for through other federal agencies such as the Department of Education (e.g., if all inmates will be involved in an educational program) or Department of Health and Human Services (e.g., if the facility will be used as a prison hospital).
- Restitution and community-based programs were enacted through recent legislation.

- Sentencing laws and requirements are being reviewed. Specific aspects under review include:
 - (1) Tough mandatory felony laws,
 - (2) Plea bargain restrictions,
 - (3) Violent felony laws and mandatory imprisonment requirements,
 - (4) Second felony offender sentencing requirements,
 - (5) Incarceration requirement for second non-violent offenses such as driving while under the influence.

- An application for an overcrowding policy grant was submitted to the National Institute of Corrections. The grant would be used to establish a policy board consisting of legislators, members of the executive branch, corrections representatives, reform group representatives, judges, probation and parole representatives, etc.

- Projections for future facility needs based on risk population group (18-35 years of age) have been prepared. These figures indicate that there will be a decline of inmates at the end of the decade.

Resources:

Mr. Horn, Assistant Commissioner, New York Department of Corrections, Albany, New York, 518-457-7261.

(Office of Assistant Secretary, Federal Property Assistance Program, Region II, 26 Federal Plaza, New York, New York, 212-264-4032).

MARYLAND

- A federal court order to reduce prison overcrowding is in effect.
- A Governor's mandate to reduce overcrowding is also in effect.
- The federal court assessed a weekly fine of \$3,417.00 for continuing failure to end overcrowding at a correctional institution.
- A joint effort to develop a comprehensive plan and program model for the systematic prerelease of inmates was undertaken by the Maryland Division of Corrections and Department of Education.
 - (1) Program elements will include intake and diagnosis of inmate needs, development of individualized programs for participants, preemployment training, counseling, and a contractual agreement between each inmate and the prerelease system.
 - (2) Funds to develop the program model were received from the State Manpower Planning Office (i.e., CETA monies).
- Early release was granted to 245 inmates in December 1980 to reduce overcrowding.
 - (1) This was achieved through the Governor's use of commutation time before Christmas, (Governor Harry Hughes).
 - (2) The inmates released were within six months of their mandatory release.
 - (3) This was considered to be only a temporary respite.

Resources:

"ACA and Maryland Forging Expanded Prerelease Program,"
Corrections Today, Vol. 42, No. 5, September-October 1980,
p. 17.

U.S. General Accounting Office, More Than Money Is Needed
To Solve Problems Faced by State and Local Corrections Agencies,
U.S. General Accounting Office, Gaithersburg, Maryland,
September 23, 1981.

TENNESSEE

- Tennessee was faced in 1976 with a law suit declaring unconstitutional prison conditions due to overcrowding, security, and the age of facilities.
- Although the law suit was overturned on appeal, a consent agreement was entered between the State of Tennessee and the court. The agreement incorporated the following conditions:
 - (1) The inmate population would not exceed 1900.
 - (2) Areas not structurally designed for living quarters would no longer be used for bed-space. At the time, the gymnasium in one facility was used to house 300 inmates. A recreation room was used to house 100 inmates and a school room was used to house additional inmates.
 - (3) Additional security would be provided during showering.
- The following measures were undertaken to address overcrowding:
 - (1) A Division of Offender Classification was newly established to provide better organization and management to inmate classification.
 - (2) All available bed-space was identified. Those inmates being housed in areas such as the gymnasium, recreation room and school room were transferred to legitimate cell areas.
 - (3) A central classification facility and transportation system were developed to facilitate efficient movement and management of the prison population.
 - (4) Three new 400-bed facilities already under construction were completed.
- A task force was appointed to examine issues, problems and possible solutions.
- Future facility needs are being anticipated based on inmate net gain projections.
 - (1) Tennessee prison population is expected to reach maximum capacity by 1983.
 - (2) Anticipated future needs include two-800 bed modular buildings and two-1400 bed conventional buildings by 1985.

● Viable alternatives for future needs include:

- (1) County incentive programs whereby the state will pay counties to house inmates who meet certain criteria.
 - (a) First, county facilities must be up-graded to meet State standards.
 - (b) Local resistance to this is noted.
- (2) New construction for medium security facilities. Minimum security housing is currently underway using inmate labor, but this will not satisfy future needs.
- (3) An interagency agreement between the Department of Corrections and Department of Conservation is planned.
 - (a) The Department of Conservation will furnish the land for minimum security facilities (e.g., parks and forests).
 - (b) The Department of Corrections will furnish inmate labor to maintain the government lands.
 - (c) Four 120-bed facilities are expected to be completed over the next two years.
- (4) Increased use of work-release programs. (Approximately 40% of state prison inmates are now eligible for parole based on the time served).
- (5) Increased use of minimum security facilities and prison work programs.
- (6) More sophisticated classification procedures.

Resources:

Ronald Bishop, Tennessee Department of Corrections, Nashville, Tennessee (heading the task force on prison overcrowding), 615-741-6797.

(Dorothy Greer, Asst. Commissioner, Adult Institutions, Tennessee Department of Corrections, 615-741-2071).

TEXAS

- Texas is currently under a court order to reduce overcrowding.
 - (1) Due to overcrowding, 2,650 of the 32,000 total inmate population were sleeping on floors.
 - (2) To comply with the court order to reduce overcrowding by August 1, 1981, 1,200 convicts were housed in tents at 11 sites within Texas.
- A new jail is under construction in Harris County to address local jail overcrowding.
 - (1) That jail is scheduled to be open in 1982. However, because of the increase jail population it will be overcrowded at the time it opens.
 - (2) The additional three floors (3,600 beds) needed to address the increasing population needs will cost \$12 million.
- In essence, Texas is using a two-fold approach to address overcrowding.
 - (1) Construction of additional facilities for which an emergency State budget appropriation was granted.
 - (2) Implementation of a conditional parole program which will qualify inmates for half-way houses and increase the number of community placements.
- An interim solution was sought while awaiting completion of new facilities--utilization of vacant military camps.
 - (1) This is viewed as only a temporary solution.
 - (2) Thus far, no serious security threats have been experienced.
- A mass prerelease program has not been utilized.

Resources:

"Ohio Reaches Pivotal Point in Corrections Implementation,"
Corrections Digest, Vol. 11, No. 19, September 12, 1980, pp. 9, 10.

"The Prison Nightmare," Time, Vol. 117, June 8, 1981,
pp. 16-18.

"Why Prisoners Are Being Turned Loose," U.S. News, Vol. 9,
No. 10, August 10, 1981, p. 10.

Rick Hartley, Assistant Director, Department of Corrections
Huntsville, Texas, 713-295-6371.

MISSISSIPPI

- Mississippi is currently under a sweeping federal court order (Northern District of Mississippi) to alleviate their overcrowding problem (resulting from the Gates v. Collier case).
- Emergency legislation has been enacted consistently to provide various remedies to this situation (e.g., sponsored earned-release programs, work-release programs, unconditional early release, etc.).
- Currently the Mississippi Probation and Parole Board is simply "disregarding all laws" and releasing prisoners.
- Although the release of prisoners in this manner is believed to be illegal, it is considered necessary.

Resources:

Karen Gilfoy, Assistant Attorney General, Mississippi Attorney General's Office, Criminal Justice, P.O. Box 220, Jackson, Mississippi 37205, 601-354-7130.

ARKANSAS

- The state has been involved in various litigation since 1969 concerning overcrowding.
- In 1978, as a result of a court order, (Eastern District of Arkansas) the federal courts established population limits for the state facilities.
- County jails then had to place their inmates on waiting lists to get a cell at a state facility. As a result, one county sheriff transported his group on the waiting list to a state facility and handcuffed them to the outside fence.
- Currently, Arkansas feels they have the prison population problem under control. With further construction, they appear confident they will never have no other problem complying with the population limit orders.
- The most critical problem today concerns the quantity and quality of their staff.

Resources:

Dennis Molock, Deputy Attorney General, Arkansas Attorney General's Office, Justice Building, Little Rock, Arkansas 72201, 501-371-2007.

Finney v. Hutto, 450 F. Supp. at 254-258 (E.D. Ark 1976).
Addresses the overcrowding issue.

Finney v. Mabry, 458 F. Supp. at 723 (E.D. Ark 1976).
Addresses the Consent Decree.

GEORGIA

- Under a general court order by the Southern District of Georgia for overcrowding conditions in one state prison (Reidsville, Georgia).
- Georgia Constitution grants powers to the Pardons and Parole Board for release purposes.
- Mass releases have been approved and executed.
- Federal government programs have provided trailers for housing as a temporary remedy.
- A long-term plan, "Plan 360," was implemented to address overcrowding.
 - (1) Long-range state instituted remedial program.
 - (2) Projected date of completion to be in 1985.
 - (3) Plan to include renovations and some construction.

Resources:

John Walden, Senior Assistant Attorney General, Atlanta, Georgia.

(David C. Evans, Commissioner, Department of Offender Rehabilitation, Attention: William Baughman, Project "360" Manager, 800 Peachtree Street, Atlanta, Georgia, 30309.)

WASHINGTON

- Washington has been under a court mandate to reduce overcrowding because of unconstitution conditions.
- The governor established an interagency task force to study prison overcrowding.
 - (1) The task force is responsible for describing the problem and reporting relevant findings.
 - (2) Prison population projections are being utilized to determine future needs.
 - (3) Based on population projections, building needs will be determined and planned.
- A consolidated offender system has been effected as a result of the cooperative efforts of the Department of Corrections and Parole Board.
- Emergency actions undertaken to reduce prison overcrowding include:
 - (1) The addition of 800 beds between January 1 and August 1, 1981.
 - (2) Restructuring existing facilities.
 - (3) Building new facilities.
- Prerelease programs are under consideration.
 - (1) Anyone within 90 days of release may be considered for early release.
 - (2) Work-release program participants may be considered for early release.
- A high volume of inmates were granted early release as a result of overcrowding.
 - (1) This action provided temporary relief only.
 - (2) Prison population is reduced but the mobility of prison bed space is also reduced. (The pool of inmates eligible for prerelease is quickly exhausted when mass releases are granted. Within a relatively short period of time, the prison population consists of mainly those inmates with long-term sentences or inmates who are a risk to public safety.)

- Although these various measures have alleviated current overcrowding problems, the prison population is expected to be at full capacity by January 1982. At this time, the prisons are receiving 80 admissions over release.

Resources:

Terry Ross, Department of Corrections, Olympia, Washington,
206-753-1573.