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PRISON OVERCROWDING: THE CONNECTICUT RESPONSE

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I. INTRODUCTION

In the last decade, prisoner population in the United States has
doubled to an unprecedented level, measuring 412,203 by the end of
1982. The avalanche of new prisoners has produced what is popu­
larly termed a "prison overcrowding crisis."

The eighth amendment's ban on inflicting cruel and unusual pun­
ishment, made applicable to the states by the fourteenth amendment, acts as a parameter for conditions of prison life. Prison population
may not so greatly exceed capacity as to create an environment which
would "shock the conscience" of a reasonable person. Moreover, be­
cause state penal systems incarcerate the majority of new prisoners,
federal judicial intrusion on state penal systems has grown dramati­
cally in recent times. The federal courts have responded with an in­
creased willingness to find constitutionally mandated ceilings on state
prison populations, in some instances ordering the release of prison­

2. Id. at 238.
5. Comment, Prison Overcrowding-Evolving Standards Evading and Increasing Prob­lem, 8 NEW ENG. J. PRISON L., 249, 251 n.3 (1982).
"[I]ndividual prisons or entire prison systems in at least twenty-four states have been declared unconstitutional under the eighth and fourteenth amendments, with numerous cases still pending."

States have approached the dilemma with a variety of options: first, by constructing prisons in proportion to new population; second, by incarcerating persons in tents, prefab cells, warehouses, mobile homes, camps surrounded with barbwire, inmate produced prisons, or any other creative "lodging"; third, by accelerating the litigation process; fourth, by sentencing persons "with an eye toward the available number of prison beds;" and fifth, by adopting non-incarcerative systems and shorter prison terms.

The first option, constructing new facilities, maintains an equilibrium between supply of prison resources and demand for them. The economic and social costs of constructing prisons, however, so stagger the public that construction may not be viable. Even if sufficient funding exists, the time needed to construct a prison further burdens this option. The issue, however, must be addressed

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8. Jacobs, supra note 1, at 211. See Lareau v. Manson, 507 F. Supp. 1177, 1178 (D. Conn. 1980). The federal district court held that the Connecticut correction facility must not exceed its capacity of 390 persons and ordered a reduction of prisoner population within 45 days.
9. Comment, supra note 5, at 250.
12. Sentence Reform, supra, note 7.
18. Jacobs, supra note 1, at 239. An example is incarceration of only violent offenders, with emphasis on restitution for property offenders. Keeping the Lid on Prisons, supra note 17 at 10, col. 3.
19. Construction costs for building new maximum security institutions run as high as $70,000 per cell in New York State, exclusive of finance charges. Jacobs, supra note 1, at 217.
20. Site selection creates problems and seriously constrains prison expansion. Property owners fear reduction of property values, and danger from escapees: They object to living in proximity to institutions that symbolize to them violence, immorality, and degredation. Id.,
21. It takes four to five years to construct a prison. Keeping the Lid on Prisons, supra note 17 at 10, col. 3.
The second option, implementing creative “lodging,” also increases prison capacity. Theoretically, creative “lodging” represents a potentially infinite means of expanding prison resources. The political reality, however, suggests the general populace will not find it socially acceptable. Additionally, the cost of satisfying constitutional requirements such as maintaining adequate health and safety in creative “lodging” may actually exceed similar costs in traditional prisons.23

The third option, accelerating litigation, uses the pre-existing resources of the penal system in a more efficient manner. Accelerating the litigation process, however, increases the potential for injustice. The court focuses on caseload rather than justice. Plea-bargaining, used in 98 percent of all criminal cases,24 threatens completely to engulf the judicial process.

II. Public Act 84-505

In an effort to avoid having the federal courts dictate a solution to prison overcrowding25 and to preserve the safety of correction officers and inmates,26 the Connecticut legislature incorporated options four and five into Connecticut Public Act 84-505 (February Session), popularly termed the Overcrowding Emergency Powers Act. The act redefined the power structure in the state’s penal system to ease the overcrowding problem. In drafting the Act, Connecticut followed the lead of Michigan27 and several other states.28 Section 1 simply provides definitions; Section 2 concentrates power within the authority of

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23. Toilet, dining, and other facilities must be provided and “it’s not so easy as people would think.” Conn. General Assembly, Senate Proceedings 2032 (April 26, 1984) (statement of Sen. Owens).


the Commission of Correction; Section 3 allows for limited judicial discretion; and Section 4 creates an intensive probation program.

A. Section 2—Early Release by Commissioner

Section 2(a)(1) provides an advisory commission to recommend to the Commissioner of Correction the capacity for incarceration of prisoners in the state’s penal system. Although the determination of prison capacity arguably rests exclusively with the Commissioner,29 the advisory commission allows for legislative input into the process. In the absence of the advisory commission, the Commissioner of Correction would be “the final sensor of all the people in the State of Connecticut, in relation to the fact that he determines how many people are going to end up in the institutions.”30

Section 2(a)(2) provides the Commissioner the authority to promulgate regulations establishing the prison system’s capacity. The Connecticut General Assembly’s Regulation Review Committee may scrutinize his figure.31

Section 2(a)(3) specifies factors which the legislature mandated be taken into account in “formulating capacity.” They are: sound correctional management principles; inmate health and safety;32 maintenance of order and discipline;33 availability of educational, therapeutic, and recreational programs;34 and demand for available correctional bed space. It would be reasonable to infer that the specific factors chosen represent a response to the numerous court expres-

28. According to the National Institute of Corrections, Georgia, Iowa, and New Jersey have enacted similar laws. Id.


33. Osborn v. Manson, 359 F. Supp. 1107 (D. Conn. 1973). The court stated that when determining a possible eighth amendment violation, it takes into consideration that prison authorities have legitimate concerns of security. Id. at 1111.

34. The potential for rehabilitation for inmates factors significantly in eighth amendment analysis. Comment, supra note 5, at 254.
ensions of their relevance in determining possible violations of the eighth amendment. 35

Section 2(b) imposes on the Commissioner the duty to declare a prison overcrowding emergency when the state's prison population exceeds one hundred ten percent capacity for thirty consecutive days. 36

Sections 2(c) and (d) and (e) prescribe the technical procedures the Commissioner must follow in a prison overcrowding emergency. The subsections instruct the Commissioner to accelerate parole eligibility dates, thereby allowing him to release prisoners into community residences. 37 Particularly, the legislature intended the Commissioner first to release persons serving indeterminate or indefinite sentences. 38 Only necessity would permit the release of prisoners serving determinate sentences. 39

Section 2(f) prescribes a limit as to those who may never be released, such as those convicted of capital felonies or those serving minimum mandatory sentences. 40

Section 2(g) requires that the Commissioner explain his actions after emergencies to both the Governor and a joint standing committee of the General Assembly. 41

B. Section 3—Early Release by Judicial Discretion

Section 3 allows for judicial discretion in an "early release program," but varies the scope of discretion according to the classification of the prisoner. 42 Judicial discretion is maximized if a prisoner is serving a definite sentence of three years or less. "[T]he sentencing court or judge may, after hearing and for good cause shown, reduce the sen-

35. See supra notes 32, 33, 34.
38. The General Assembly intended Public Act 84-505 to release as few physically dangerous and violent individuals as possible. Inevitably, however, dangerous or violent prisoners will be released. Conn. General Assembly, House Proceedings 6119 (May 7, 1984) (statement of Rep. Tulisano).
39. "[T]o make punishment more certain, some states have moved to determinate sentencing, in which the initial courtroom sentence fixes a specific prison term, with no time off for good behavior behind bars." Sentence Reform, supra note 7, at 4, col. 5.
40. Mandatory sentencing is growing more politically attractive as wide-spread popularity exists in "being tough on crime." Keeping the Lid on Prisons, supra note 17, at 10, col. 5.
41. "Legislative decision making on prison issues is typically dominated by a handful of powerful legislators and a few crucial committees." Jacobs, supra note 1, at 226.
42. Compare to Conn. Gen. Stat., § 53a-39 (repealed 1984), which allowed the judiciary unlimited discretion to modify sentences upon good cause.
tence, order the defendant discharged, or order 43 the defendant discharged on probation or conditional discharge for a period not to exceed that to which he could have been previously sentenced." 44 The scope of judicial discretion is further restricted if a prisoner is serving a definite sentence of at least two years but not more than five years. 45 Despite the overlapping classifications for a prisoner serving a definite sentence between two and three years, the general proposition grants less judicial discretion for the prisoner with the greater sentence.

C. Section 4—Intensive Probation

Section 4(b) allows the judiciary to release prisoners serving definite sentences of between two and five years and to order that they be entered into an intensive probation program. "The purpose of intensive probation is to remove convicted persons from incarceration and place them in the community under close supervision and restriction to ensure public safety, reduce prison overcrowding and contribute to the rehabilitation of persons in the program." 46 Probation under section 4 is "intensive" because each probationer must contact his probation officer at least three times per week. 47 Weekly collateral contacts provide further monitoring. 48 Additionally, weekly testing checks probationers with a history of drug and alcohol abuse. 49 New Jersey, with a similar plan, has found that many prisoners only reluctantly participate in the program due to the extensive observation of probationer activities. 50

III. Analysis

The success of Connecticut Public Act 84-505 depends on two factors. In granting the Commissioner of Correction a massive concentration of power, the General Assembly weighed the efficiency attained against the potential for abuse. Commissioners must strictly adhere to the prescribed guidelines. Responsible behavior on their part will prevent the need for judicial intervention. Yet, institutional

43. Compare to CONN. GEN. STAT. § 18-87(d)(c) (repealed 1984), which allowed the prisoner to remain incarcerated at his/her option.
45. Id.
46. Id.
47. Id.
48. Id. "Collateral contacts" mean persons who have a relationship with the probationer.
49. Id.
realities naturally encourage Commissioners to release prisoners early or unnecessarily, as they would thereby make their job as prison manager easier. Commissioners, moreover, face no political check, as they are not elected. Serving in a non-political position allows Commissioners the ability to be objective in identifying a prison overcrowding crisis: their detrimental decisions, however, may go unchecked, at least until the judiciary or legislature has adequate time to react. The negative impact of the situation on public opinion should not be underestimated. Public dissatisfaction with the penal system already has reached its highest level.

In addition, the success of the intensive probation program depends on funding. Substantial costs are easily predicted. Administration and implementation of the program require many resources. Taxpayers may be reluctant to support the wages of probation officers, the costs of testing for drug abuse, and other necessary expenditures. In addition, the temptation to use the program as a "relief valve" will vary due to the fluctuation in the number of qualified prisoners. As of April 26, 1984, for example, Senator O'Leary observed that 25 percent of the prison population was ineligible for intensive probation.

In Connecticut Public Act 84-505 the General Assembly has apparently constructed an effective device for solving short term prison overcrowding problems. Michigan has experienced positive results with its analogous statute. The act's potential to alleviate overcrowding problems in the long run, however, is limited. The act focuses entirely upon the early release of prisoners, totally failing to address the issue of the recent radical increase of prison population. Dealing with the source of the problem would be more efficient than devising techniques to alleviate the negative effects of the penal system.

52. See supra note 36.
53. General disillusionment exists as to whether the prison system provides either a deterrent or rehabilitative function. Jacobs, supra note 1, at 240.
CONCLUSION

The Connecticut legislature created Public Act 84-505 in an effort to avoid having the federal courts dictate a solution to the prison overcrowding problem. The act satisfies the eighth amendment and, therefore, allows the state exclusive control of its penal system. The absence of cruel and unusual punishment prevents federal judicial intrusion. The act redefines the power structure within the state’s penal system by concentrating enormous power in the office of the Commissioner of Correction and by creating an intensive probation program. The success of the act depends primarily on responsible behavior of the Commissioner of Correction and the availability of necessary funding.

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