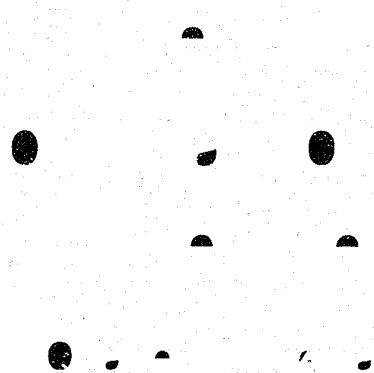


U.S. Department of Justice
National Institute of Corrections



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Corrections Quarterly Summary

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The *Corrections Quarterly Summary* is prepared by staff of L.I.S., Inc., for the U.S. Department of Justice, National Institute of Corrections. To submit questions or comments, please write to the NIC Information Center, 1790 30th Street, Suite 130, Boulder, Colorado, 80301, or call (303) 939-8877.

CAPACITY CHANGES

Twenty-six responding agencies reported changes in system capacity for the third quarter, 1989. All but two changes were net increases in bedspace.

Systems with Change		Reason for Change
California	+ 447	New construction.
Colorado	+ 200	Added halfway house beds.
Connecticut	+ 238	Double celling, new construction, and expansion involving five existing facilities.
Florida	+ 653	New construction and expansion.
Illinois	+ 379	Phased in new facility and added contractual beds.
Indiana	+ 317	(No explanation given.)
Iowa	+ 40	Expanded facilities and programs.
Kansas	+ 470	Expansion at three facilities.
Kentucky	+ 75	Expansion at Roederer Farm Center.
Louisiana	+ 159	Added beds at State Penitentiary, Angola.
Massachusetts	+ 540	Added modular units.
Michigan	+ 1,898	New construction.
Montana	+ 31	Temporary housing.
Nevada	+ 71	Completed renovation of state prison, increasing capacity by 81 to 739 total beds; lost space in dormitory closure; increased space at third facility.
New Jersey	+ 164	Expansion at existing facilities.
New Mexico	+ 48	Opened new 48-bed unit, consisting of 24 double-bunked cells; the facility is not double-celled.
New York	+ 761	Opened new facility at Lakeview; additional expansion at existing facilities.
North Carolina	+ 81	Expansion at existing sites.
Ohio	+ 666	Opened Warren Correctional Institution; the honor dorm of that facility opened last year.
Oregon	+ 73	Expanded Eastern Oregon Correctional Institution; continued to remodel former mental institution.
South Carolina	- 16	Court-ordered reduction in bedspace at women's facility.
Tennessee	+ 608	Opened Riverbend maximum security facility.
Texas	- 298	Redesignation of existing beds, court-ordered depopulation of certain units, and installation of privacy partitions in dormitories.
Virginia	+ 254	New construction.
Washington	+ 85	Opened new pre-release facility.
Wisconsin	+ 50	Opened women's minimum-security facility.
District of Columbia	+ 598	Double-bunking at youth center; converted Youth Center II to a medium-security adult facility.

LITIGATION

Cases Filed

Frivolous Litigation

In *Cofield v. Thigpen, et al.*, an Alabama case in federal court, the court ordered more than two dozen cases filed by the plaintiff to be dismissed. The court further barred the plaintiff's "in forma pauperis" activity and ordered any new cases filed by the plaintiff to be screened by the court before service. The judge cited recent U.S. Supreme Court and appellate decisions regarding frivolous filings by litigious inmates as a basis for dismissal.

Programming for Female Inmates

Klinger v. Lofgree, et al., is a class action lawsuit attacking conditions of confinement at the Nebraska Center for Women. The suit further contends that conditions violate the equal protection clause in that female inmates are provided inferior services and programs relative to male inmates. At issue are vocational, educational, employment, rehabilitative, recreational, legal, medical, dental, and psychological programs.

Double Celling

In *Humphries v. DeLane, et al.*, a Utah case in federal court, plaintiffs allege that cruel and unusual punishment would result from the department's plan to double-cell certain cell blocks. The blocks in question are located in an older section of the Utah State Prison. The inmate plaintiffs, with the support of the ACLU, allege that an increase in violence will result if D block is double-celled.

Access to Legal Material

The complaint in *Green v. Edmiston, et al.*, a New Jersey case in federal court, alleges that the inmate plaintiff's legal material is screened before it is photocopied for him, thereby denying him legal access.

Unlawful Detention

In *Richard Climie v. The Queen*, a case in the federal court of Canada, the plaintiff has issued a statement of claim for \$550,000, alleging that he has been improperly held past his release date for mandatory supervision.

Conditions of Confinement

Inmate plaintiffs in *Stokes, et al. v. Thompson, et al.*, argue that conditions at Wisconsin's Green Bay Correctional Institution violate the Eighth Amendment. The plaintiffs' allegations concern fire safety, double-celling, institutional violence, ventilation, medical care, noise, and nutrition, among other issues.

Smoke-Free Facilities

In *Sokol v. Reddish*, a case in Florida state court, and *Sokol v. Department of Corrections*, a federal case, inmate Sokol filed suit to require separate facilities for nonsmoking inmates, based on statutes defining the rights of persons using public facilities under Florida's Indoor Clean Air Act. In the state suit, the court found that the Florida prison system is not public to all citizens and thus inmates need not be provided smoke-free space. This decision will be appealed. The federal suit is based on the Eighth Amendment prohibition against cruel and unusual punishment.

Litigation, continued

Cross-Gender Pat Searches

Jordan v. Gardner is a federal court challenge to the Washington Department of Corrections' policy of cross-gender pat searches at its women's prison. This class action involving all inmates at the institution asserts a number of constitutional irregularities in the policy. It is one of the first cases in the country to address this issue.

Cases Settled

Drug Testing

In *Jones v. Thigpen, et al.*, the federal court in Alabama approved the Alabama Department of Corrections' policy of testing inmates for drug usage with the EMIT test.

Freedom of Speech and Religion

A New York case in federal court, *Montgomery, et al., v. Kelly*, challenged an Attica Correctional Facility rule that prohibited talking while in formation. The judge granted the state's motion for summary judgement. Inmate plaintiffs had alleged that the rule was an unconstitutional restriction of their rights to free speech and free exercise of religion, on the grounds that the rule interfered with the obligation of Muslim inmates to greet fellow Muslims in the customary religious manner. The court found that the rule was reasonably related to legitimate penological objectives.

Frivolous Litigation

The U.S. District Court for the Western District of New York has filed a proposed rule requiring all inmates in the district to pay a percentage of their income as a filing fee should they wish to file a lawsuit in federal court. It is anticipated that implementation of this rule will reduce frivolous litigation.

Liability for Parolees' Actions

O'Day v. State is a Kansas case addressing whether the state is liable for injuries to a citizen due to actions of a parolee. The court ruled that parole supervision is discretionary in nature and that the state is exempt from liability under the Tort Claims Act.

Employee Drug Testing

In *AFSCME v. Illinois State Labor Relations Board, Illinois Department of Corrections, and Illinois Department of Central Management Services*, the American Federation of State, County, and Municipal Employees (AFSCME) appealed a ruling by the Illinois State Labor Relations Board (ISLRB) regarding bargaining in matters of employee drug testing. The appellate court upheld the ISLRB's ruling that the Department of Central Management Services (DCMS) and the Department of Corrections (DOC) are not required to bargain with the union on implementing an employee drug testing policy. The ruling does, however, require the DCMS and DOC to bargain with the union on employee discipline resulting from the drug testing. The court ruled that the DOC's statutory duty to protect employees and inmates outweighed the employees' right to bargain. The court also stated that disciplinary actions stemming from the drug testing policy are conditions of employment and, as such, are mandatory subjects of bargaining.

Litigation, continued

Request to Film Execution

Halquist v. State, a case filed with the Washington State Supreme Court, asked whether an independent film maker should be allowed to videotape an execution at the state penitentiary, over the objection of state officials. The court denied Halquist's request for a writ allowing him to undertake the filming.

Polygraph Evidence

Lenea v. Lane successfully appealed a guilty finding that was primarily based on the results of a polygraph examination. An Illinois prison disciplinary board had found inmate Lenea guilty of aiding and abetting the escape of two other inmates from the Stateville Correctional Center. The district court ruled that the polygraph results were reliable but inconclusive, and because the balance of the evidence used against Lenea was found to be circumstantial, it was insufficient to support the finding of Lenea's guilt. On appeal, the Seventh Circuit Court upheld the district court's ruling. The court also agreed with the district court that, in this case, the polygraph results alone did not constitute "some evidence" of plaintiff's guilt, but it stressed that its decision does not mean that polygraph results alone never can provide such evidence.

Employee Compensation

Turner, et al., v. State, a case in Kansas district court, confirmed that the state must pay correctional officers for attending roll call during a five-year period from 1981-86. The fifteen-minute daily roll call period was in addition to the forty-hour work week. The court ruled that employees should be compensated at one and one-half times the regular rate. The case is now at a stage for determining damages, which could potentially have a \$2 to \$4 million impact on the state.

Privacy of Medical Records

In a New York case in federal court, *Rodriguez v. Coughlin, et al.*, the court found in favor of the plaintiff, who suffers from AIDS and who alleged that the defendants violated his constitutional right to privacy by disclosing his medical condition to other inmates at the Groveland Correctional Facility. The judge cited the 1988 case of *Doe v. Coughlin*, in which inmates who tested positive for AIDS maintained a class action on the basis of their constitutional right of privacy.

Employee Criminal History

In *Richie v. Coughlin, et al.*, a New York appellate court upheld the New York Department of Correctional Services' action in dismissing an employee who, on his employment application, denied that he had ever been convicted of a felony or misdemeanor. In fact, Richie had been convicted of possession of marijuana and hashish in North Carolina thirteen years earlier. The appellate court's action reversed a state supreme court decision that had ordered Richie reinstated.

State Liability for Deaths in Attica Uprising

In settling *West, Gray, and Prince v. State of New York*, the New York Court of Claims found the state liable for the deaths of three inmates in the 1971 Attica uprising. The court determined that the inmates were unresisting and did not participate in the uprising or resist the retaking. These decisions were the first involving payments to the estates of inmates who were killed when troopers and correction officers retook the prison.

LEGISLATION

AIDS

An Illinois law provides that consenting inmates with histories of intravenous drug use will be tested for AIDS prior to release. Pre- and posttest counseling will also be provided. Program implementation is on hold, pending appropriation of funds.

The New Mexico legislature passed a bill providing that an employer cannot require disclosure of HIV test results unless absence of HIV infection is a job qualification.

Inmate Industries

The Illinois legislature has authorized Illinois Correctional Industries to expand its operations by contracting with and selling goods to the private sector. The measure also requires the Department of Corrections to defray costs of incarceration by reducing inmate wages, by a percentage to be determined by the department.

Agency Structure

Effective September 1, 1989, the Texas Department of Corrections was made a component of the Texas Department of Criminal Justice. The new department will also incorporate the Board of Pardons and Paroles and the Adult Probation Commission.

The Wisconsin legislature removed the Division of Corrections from the Department of Health and Social Services, creating a cabinet-level Department of Corrections, effective January 1, 1990.

Eligibility for Boot Camp

Louisiana's IMPACT shock incarceration program is now open to certain second-time offenders who have not previously served time in a state prison.

The New York assembly authorized the inclusion of offenders between the ages of 26 to 30 years in the shock incarceration program, with certain additional restrictions.

Substance Abuse Programming

The New York legislature strengthened existing prison alcohol and substance abuse treatment (ASAT) programming and funded 2,150 beds in an innovative, intensive, incarceration-based ASAT program that includes aftercare upon parole release.

Privatization

The Louisiana Corrections Private Management Act became law, allowing the Department of Public Safety and Corrections to contract for construction and/or management of state prisons.

Community Corrections

Michigan passed legislation that establishes fees for supervision; parolees and probationers will pay \$30 per month.

The Rhode Island governor signed into law the Community Confinement Act, which allows offenders who are previously adjudged, sentenced, or awaiting trial and who meet specified criteria to be placed under house arrest.

QUARTERLY SURVEY: Inmates as Firefighters

At the suggestion of Ms. Joyce E. Madrid-Bustos of the New Mexico Department of Corrections, the survey this quarter requested information on agency policies related to using prison inmates to fight forest fires. Table 1, page 7, summarizes the agencies' responses with respect to:

- whether states use prison inmates to fight forest fires;
- the security classification of inmates eligible for fire fighting; and
- whether states train the inmates for their fire fighting duties.

Nineteen of the responding agencies do use prison inmates to fight forest fires. In addition, inmates in West Virginia have fought fires on occasion, although they do not usually do so. In Minnesota, inmates are also used only rarely, usually in small communities.

In California, inmates in thirty-six conservation camps play an important role in controlling forest fires. The Department of Corrections estimates that the fire fighting efforts of the conservation camp inmates saved the taxpayers \$14 million in 1987. The camps program is a combined effort of the Department of Corrections, the California Department of Forestry and Fire Protection, and the Los Angeles County Fire Department.

Massachusetts, too, has two forestry camps, which are rated at the minimum/pre-release security level.

Security Classifications

In all of the agencies, except Canada, inmates' eligibility to participate is based on their security classifications. As noted in the table, twelve of the nineteen states require these inmates to be classified

minimum security, and three states allow both minimum security inmates and trusties to participate. The other three states allow inmates from two or more security levels to fight fires: minimum security or pre-release (Massachusetts), medium or minimum security (New York), and medium or minimum security or pre-release (Maine).

Although the survey did not address eligibility requirements other than security classification, Tennessee noted that inmates must also pass a physical examination to qualify as fire fighters.

A variety of arrangements is used for supervising inmates when they are fighting fires. Inmates are supervised by both fire-fighting and correction agency representatives in nine states, by corrections agency officials only in five states and in Canada, and by fire-fighting officers only in four states. In Maine, for example, the Department of Corrections sends a crew boss with each group of inmates, and the entire fire-fighting team is supervised by the Forest Service.

Training

In eighteen of the nineteen agencies, inmates receive at least some training in fire fighting; Kansas does not provide training.

In response to the survey's request for contacts who provide training, fourteen agencies listed forestry officials, usually from state agencies, and four agencies listed state fire prevention or fire control agencies or fire academies. Corrections officials provide or assist with training in three states and in Canada.

The NIC Information Center has compiled a list of all the training contacts that were submitted. Please contact the Center if you would like further information.

Quarterly Survey, continued

Table 1: Agency Practices Regarding Use of Prison Inmates to Fight Forest Fires

	Inmates Used		Eligible Security Status(es)	Agency that Supervises:		Agency that Trains:	
	No	Yes		Corrections	Firefighting	Corrections	Firefighting
Alabama (N/A)							
Alaska	X						
Arizona (N/A)							
Arkansas	X						
California		X	Min	(both)		(both)	
Colorado	X						
Connecticut	X						
Delaware	X						
Florida	X						
Georgia		X	Min, trusty	(both)		(both)	
Hawaii	X						
Idaho		X	Min	X			X
Illinois	X						
Indiana	X						
Iowa	X						
Kansas		X	Min	X		(no training provided)	
Kentucky		X	Min	(both)			X
Louisiana	X						
Maine		X	Min, med, pre-release	(both)			X
Maryland (N/A)							
Massachusetts		X	Min, pre-release	(both)		(both)	
Michigan	X						
Minnesota		X	Min	X			X
Mississippi		X	Min, trusty	X			X
Missouri	X						
Montana		X	Min	X			X
Nebraska	X						
Nevada		X	Min		X		X
New Hampshire	X						
New Jersey	X						
New Mexico	X						
New York		X	Min, med	(both)			X
North Carolina		X	Min		X	X	
North Dakota	X						
Ohio	X						
Oklahoma	X						
Oregon		X	Min		X		X
Pennsylvania	X						
Rhode Island	X						
South Carolina	X						
South Dakota	X						
Tennessee		X	Min, trusty		X		X
Texas	X						
Utah		X	Min	(both)			X
Vermont	X						
Virginia	X						
Washington		X	Min	(both)			X
West Virginia	X						
Wisconsin		X	Min	(both)			X
Wyoming (N/A)							
District of Columbia	X						
Federal Bureau of Prisons (N/A)							
Canada		X	(not specified)	X			X

COMMISSIONER CHANGES

Indiana James E. Aiken, Commissioner, Indiana Department of Correction; formerly Deputy Administrator, Midland Region, South Carolina Department of Corrections.

Illinois Kenneth McGinnis, Director, Illinois Department of Corrections; formerly Warden, Jacksonville Correctional Center.

Georgia Bobby K. Whitworth, Commissioner, Georgia Department of Corrections; formerly Deputy Commissioner, Executive Operations.

Massachusetts George A. Vose, Commissioner, Massachusetts Department of Correction; formerly Deputy Commissioner.

Texas James A. Lynaugh, Acting Director, Department of Criminal Justice; formerly Executive Director, Texas Department of Corrections.

ADDITIONAL HIGHLIGHTS

The **Indiana** Department of Correction has begun an audit of its security and classification system and also has created a position of victim/witness counsel. Services include a confidential computerized program for storing victim information and a toll-free hotline for direct contact from anywhere in the state.

Agency Response to Crowding

Indiana declared a five-day moratorium on admissions in July 1989. Admissions now are being accepted only as beds become available. Over 460 adult offenders are housed in county jails; the state is reimbursing per diem and medical costs. Meanwhile, the agency is screening proposals for a maximum-security prison site and reviewing other housing alternatives, including military facilities.

Georgia opened space for 1,600 inmates constructed under a specially funded "fast track" program. The

bedspace was built in 200-bed units at several existing institutions. Under the program, many routine bidding and construction regulations were streamlined or put directly under departmental control.

A contempt action filed by five **Colorado** counties has forced the Colorado Department of Corrections to contract for housing 450 inmates at the Western Missouri Correctional Center in Cameron.

The **New York** legislature authorized 6,000 new prison beds and funded temporary structures for the emergency housing of 3,000 inmates.

Texas implemented court-ordered depopulation by opening several new facilities, including three 500-bed, privately operated prerelease centers, a 1,000-bed regional center, and four 200-bed trusty camps. The state received forty-six proposals for donated sites for 1,000-bed and 2,250-bed units.

AIDS INFORMATION

Florida has implemented a staff AIDS training program, which is included in continuing education for correctional officers and all office personnel. In addition, the state's serologic test counseling and partner notification program is being revised; testing will be voluntary after January 1, 1990.

The Indiana Department of Correction is participating in an AIDS working group with the state Board of Health. Current training of medical and AIDS education staff by the Midwest AIDS Training and Education Center will continue while the working group develops a departmental AIDS response plan.

Washington has implemented a tracking system that will permit centralized monitoring of the status of HIV-infected inmates, including use of treatment modalities. The department is in the process of revising its AIDS policy, which provides specific guidelines concerning treatment, including the use of AZT and Pentamidine.

The Wisconsin Bureau of Program Services, Division of Corrections, offers staff and inmates training and/or counseling on HIV and AIDS. In addition, the Bureau monitors infectious control compliance and conducts quality assurance surveys at each correctional facility. A central inventory is planned that will record all AIDS information and education resources available at each site.

In concert with Health and Welfare, Canada, the Correctional Service of Canada is preparing an AIDS staff education package. The Service recently implemented a policy on staff with HIV or AIDS.

Nevada has revised and instituted a protocol for tracking HIV-positive inmates; an HIV support group will be implemented in all facilities. The Department provides AZT and Pentamidine to inmates meeting FDA criteria.

The North Carolina legislature funded an HIV testing program for all inmates admitted to the Division of Prisons between November 1, 1989, and April 30, 1990. Testing will be anonymous and will enable planning for the detection, prevention, and treatment of AIDS in the prison population.

Results of AIDS Testing

- As of September 30, 1989, Missouri had tested 29,875 inmates, of whom 132 (0.4 percent) were seropositive. From among the seropositives, there have been nine actual AIDS cases; there are presently sixty-nine HIV-positive inmates in the Missouri prison system.
- Between July 1, 1984, and July 1, 1989, the Georgia Department of Corrections diagnosed 770 inmates with varying levels of HIV infection, including AIDS, ARC, and asymptomatic HIV infection. Seventy percent of these inmates are currently housed in state institutions, 25 percent have been released, and 5 percent have died. The HIV infection rate for the population entering Georgia institutions is 3.3 percent, whereas it is less than 1 percent for the general population.
- Tennessee reported the results of a blind survey for HIV infection of new prisoners and parole violators conducted between July 1, 1988, and August 1, 1989. Of the 2,078 tested, nineteen (0.9 percent) tested positive. All are male; eleven are white, and eight are black.
- An anonymous HIV survey conducted last summer of new inmates and parole violators in Virginia revealed 2.5 percent HIV positive infections.

RECOMMENDED READING

"The Effectiveness of the New Intensive Supervision Programs." *Research in Corrections* Volume 2, Issue 2. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 1989.

Intensive supervision programs have proliferated in recent years as a way to conserve correctional resources while still protecting the public. This fifth monograph in the *Research in Corrections* series reviews the history and implementation of the intensive supervision movement and summarizes current research on program effectiveness. The central article focuses on programs that function either as front-end intermediate sanctions or as back-end early release mechanisms, and also highlights research on the effectiveness of house arrest, electronic monitoring, split sentencing, and residential community corrections programs.

The central essay concerns primarily intensive probation supervision (IPS), which is used to some extent in forty-five states, and it summarizes evaluations of IPS programs in Georgia, New Jersey, and Massachusetts. While acknowledging that these research results provide insufficient information about the value of IPS, the authors suggest issues for further research.

In addition, three correctional administrators comment on issues raised by the essay and add their assessment of intensive supervision programs. Their comments address victims' perceptions, marketing strategies, implementation difficulties, and their views of the movement's future.

Both the central essay and the practitioner responses stress that intermediate sanctions will not, in themselves, eliminate prison and jail crowding. The authors recommend that increased use of intensive supervision programs should be encouraged only in the context of overall policies regarding punishment, risk control, rehabilitation, and resource use.

Programming for Mentally Retarded and Learning Disabled Inmates: A Guide for Correctional Administrators. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections, 1989.

This publication is a result of a Congressional initiative to support correctional education in state prisons, in response to public concerns about crime, continued high recidivism rates, and low employability of ex-offenders.

The guide is intended to "assist correctional agencies in developing or upgrading education services to better meet the needs of adult inmates with retardation or learning disabilities." It is organized into ten sections, covering the full scope of issues related to program development for these special offender populations. Topics of these sections include:

- definitions, incidence, and program needs of mentally retarded and learning disabled adult offenders;
- a legal analysis of special education in correctional facilities;
- model programs for serving mentally retarded adult offenders;
- standards for educational and related service delivery to adults with learning disabilities; and
- guides to resources and federal funding.

Availability: Individual copies of these titles may be obtained by calling the NIC Information Center at (303) 939-8877 or sending your request to 1790 30th Street, Suite 130, Boulder, Colorado, 80301.