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"The Relationship of Jail Capacity to Jail Overcrowding"

by Lynne Smith*

Fifty percent of jail inmates are housed in crowded quarters, according to a recent study by the National Institute of Justice. But, in this time of economic hardship and the "new federalism," most counties cannot afford to build new jails. Even if they can pay the staggering cost, persuasive evidence suggests that BUILDING MORE JAIL AND PRISON SPACE MAY NOT SOLVE THE PROBLEM OF OVERCROWDING.

At first glance this proposition seems ridiculous. If there is more space, of course, there will be less crowding. But, credible evidence is beginning to show that the slogan, "The More You Build, the More You Fill," is not just jargon. It is demonstrable fact. A clear relationship has been found between corrections capacity and the number of offenders who are sentenced to incarceration.

This relationship was one of the factors in jail overcrowding examined in American Prisons and Jails, a 1980 study by the National Institute of Justice. The NIJ report was in response to a Congressional mandate to explore several aspects of the nation's federal, state, and local corrections facilities.

Elements which are commonly believed to influence incarceration rates were tested. The makeup of the general population, the crime rate, the unemployment rate and the capacity of correctional institutions in a sample number of communities were analyzed with respect to the number of offenders incarcerated. Of these, capacity was the only statistically significant indicator of current or future population levels which could be identified.

Capacity was found to have a consistent relationship to the incarceration level. Through analysis of capacity changes in every state in every year from 1955 to 1976, the researchers discovered that, historically, additional correc-

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tions space was filled to capacity within two years and was thirty percent over capacity within five years after construction. This does not mean that new corrections space inevitably leads to overcrowding but it does suggest that such overcrowding is likely in the absence of major checks on the sentencing and release process.

To determine the factors within the criminal justice system which resulted in the strong influence of capacity on population, each step from the commission of a crime through to the conclusion of that offender's involvement with the criminal justice process was examined by the NIJ researchers. They concluded that the decision to incarcerate or release an offender is the result of a series of discretionary actions by individual criminal justice officials in the absence of a clear overall correctional policy.

According to the NIJ report, "The full chain includes police decisions to arrest or ignore an offender, a prosecutor's choice of whether and how to charge, a judge's sentencing policy, and release decisions generally made by parole boards. At no stage in this chain is incarceration inevitable for any but a few offenders."

The report also notes that, "... regions of the country vary tremendously in their choice about how many prisoners they wish to hold, and that it is not clear that this regional variation has much justification beyond historical precedent." This suggests that the incarceration level results from a series of policy decisions not from uncontrollable circumstances.

Although these individual decisions rarely are coordinated by a stated policy, the overall effect tends to be for the incarceration rate to increase until a facility is crowded, then to level off and remain at the overcrowded level. In other words, if criminal justice officials know that their correctional facility is crowded, each of them tends to restrict the number of offenders for

whom they promote incarceration. To do this, for example, they might channel offenders into existing alternative programs. Consequently, the incarceration rate levels off, and the population is maintained at the crowded level.

If additional corrections space is built, individual criminal justice officials know that space is available, so they tend to relax their restrictions: they more freely advance offenders in the process towards incarceration. The incarceration rate increases, and, historically, the facility is filled within two years and to thirty percent over capacity within five years. Since the supply of potential inmates far exceeds any practical correctional system's capacity (potentially, most offenders could be jailed), the corrections system population is limited only by its capacity.

Why does this process result in a facility becoming overcrowded instead of simply filling to capacity? Overcrowding seems to occur because of the uncertain definition of a facility's population capacity. At first glance, a facility's capacity would appear to be defined as its rated capacity: the number of inmates which the facility can house without violating applicable standards. But, uniform space standards often do not exist within a state, so the capacity (which should be calculated from an express standard for minimum living space) is unclear. Because the definition of capacity has not been clearly stated and accepted throughout the state, in most jurisdictions corrections authorities accept prisoners until their facility is overcrowded and more prisoners cannot be accepted.

The NIJ researchers found that at this time, participants in the sentencing process receive the message that the facility is "full," and they accordingly make individual choices which result in a decreased incarceration rate. For example, a police officer might increasingly serve nonviolent offenders with citations instead of arresting them, or a judge might sentence first offenders

to probation instead of jail terms. These are policy decisions which determine the incarceration level. Yet, building more jail space is not likely to solve the crowding problem because the capacity increase will result in a relaxation of efforts to limit incarceration, and the new space will be crowded in a relatively short amount of time.

In light of the evidence that new capacity will not long relieve the crowding problem, the monetary cost of a new jail becomes increasingly important. The total price includes the cost of new construction, financing, and operating costs. Inflation, expensive new standards, and the added costs for the larger population must also be considered.

How much money must be spent on a new jail which appears to be, at best, a temporary solution? This question was examined in a recent study by the Center for Justice Planning, "Costs of a New County Jail: Pay Now and Pay Later." The center found that the average per bed cost of a new county jail is \$36,000. That \$36,000 covers construction only; additional funds are required to pay the cost of land, site preparation charges, and any professional fees of the architect or engineer.

To illustrate with an example, construction of a 100-bed facility would cost \$3.6 million. This is only the beginning of the total spending. Jails average \$40 in operating costs for each prisoner day, which works out to almost \$15,000 per person every year. So, operation of the 100-bed jail would cost \$1,460,000 a year, with a thirty year total of \$36 million. This cost is higher than many officials estimate because the Center for Justice Planning included in its calculation the costs of utilities, maintenance, depreciation, and articles such as vehicles or telephone which may be shared with other departments.

Over the thirty year period, operating costs are ten times the construction cost of a jail. This rule holds true for most facilities. To the construction and operating costs, add the impact of inflation and financing at record high

interest rates. The actual cost of the new jail becomes staggering. For the 100-bed facility, it would be over \$40 million for the first 30 years.

Still, there is more to consider. One can expect that after about five years the facility will be overcrowded. More money will be required, not only to support this "unexpected" increase in the number of inmates, but also to deal with the new overcrowding problem. Building additional jail space not only fails to solve the overcrowding problem, but also results in tremendous long term financial liability.

Undeniably, renovation or new construction may be required. But, expensive construction should occur only after serious effort has been given to reducing the overall jail population by maximizing the use of community alternatives. Jail space is a limited resource which should be allocated wisely, as part of a comprehensive planning process. NACo recently testified before the U.S. Senate that the findings of the American Prisons and Jails study, when considered with the high cost of construction, "...at the very least suggest that we should pursue alternatives to incarceration together with necessary renovation and construction in a comprehensive effort to solve the corrections crisis in our nation."

Something must be done to put a stop to the seemingly endless cycle of crowding-construction-crowding. Several states and communities have developed innovative solutions. Minnesota, for example, based on a combination of offense and offender characteristics has adopted sentencing guidelines for felony populations which advise judges on whom to incarcerate, as well as for how long. The guidelines are tied to a predetermined prison capacity set by the legislature with the intention that the population could be decreased and crowding eliminated. After one year, commitments to prison have decreased by 25 percent. There are plans to extend the guidelines to cover serious misdemeanants and felons now held in county jails.

Mulnomah County, Oregon has also enacted a clear corrections policy on incarceration. The jail has adopted a population management plan with an absolute cap on its population. An evaluation of the LEAA project which sponsored Multnomah County's plan reported that, "A county ordinance established a ceiling of 555 prisoners, and the population is now 519. The population had fluctuated between 800 and 900 inmates." Clearly, jail population levels can be controlled through effective management.

The LEAA Jail Overcrowding Project (JOP), administered by the American Institute of Justice, helped a number of jurisdictions including Multnomah County facility crowding problems by means of planning and analysis, and then adoption of alternatives to arrest and incarceration. The LEAA concluded from the project that tools for population management are available, and can be utilized by a community strongly committed to this goal.

Steps towards the control of incarceration levels were outlined in the American Prisons and Jails study. The report recommends that a community should first determine the capacity of its correctional institutions. This should be accomplished through legislative adoption of standards which specify minimum living space and associated conditions. Thus, the existing capacity will be clearly defined with regard to the standards.

Next, to allow a reduction in population when the facility nears capacity, procedures for accelerated release should be adopted in conjunction with a reliable means of communication between the judiciary and the jail executive agency, the NIP report recommends. This would simply formalize and standardize the arbitrary adjustments which now occur.

There are several means by which to regulate the incarceration rate. Demand for jail or prison space can be reduced by the diversion of offenders to alternative programs. Programs which keep offenders from entering a corrections facility include an initial screening process to determine who might safely be released.

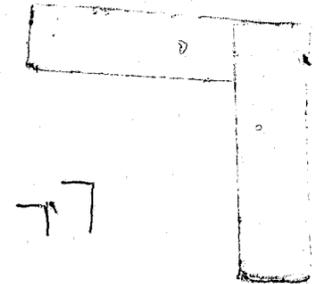
In addition, pre- and post-trial alternatives such as the use of a citation instead of arrest, supervised release, release on recognizance, work release, community service, detoxification treatment and restitution programs provide criminal justice authorities with options other than incarceration.

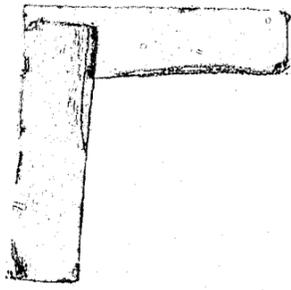
Just as jail capacity must be carefully managed, so must alternative programs be tied to jail population reductions. Studies have shown that the addition of alternative program in the absence of controls can "widen the net" instead of reducing jail populations.

To decrease jail populations, the programs must be used as replacement capacity. In other words, offenders must be sentenced to a program instead of to jail, not in addition to incarceration. Strict capacity limits for each program are also necessary to ensure that it is not filled with offenders who would have been released in the absence of the program.

The two most important components of the population control system are the initial screening process and the regular review of inmate characteristics. Clear information about the types of offenders and inmates in the local corrections system is essential to effective program management. Better allocation of jail and program space can be achieved when the characteristics and needs of a population are regularly recorded for the information of policy-makers.

Overcrowding can be eliminated through use of a clear corrections policy coupled with a population management plan. The incarceration level becomes a rational choice, rather than the inadvertent result of fragmented decisions by individual criminal justice system officials. The number of people which a community incarcerates is a policy choice. A community can choose not to crowd its correction facility by defining capacity and then implementing a formal process to maintain a population level which is within capacity.





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