South Carolina General Assembly

Legislative Audit Council

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The State of South Carolina
General Assembly
Legislative Audit Council
A Study and Review of
Prison Overcrowding
in South Carolina
September 14, 1982

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

A STUDY AND REVIEW OF PRISON OVERCROWDING IN SOUTH CAROLINA

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GLOSSARY OF TERMS AND ABBREVIATIONS

ABA - American Bar Association

ACA - American Correctional Association

ADP - Average Daily Population

Adaptive Reuse - renovation of a facility for another use

Capacity Limit - standards defining the minimum living space to be provided for each prisoner under State jurisdiction.

Court-Appointed Master - an individual appointed to monitor implementation of the intent of the court; in this case, to monitor ordered improvements in prison conditions.

Density (as a measure of prison crowding) - the number of square feet of floor space per inmate, derived by dividing the size of the confinement units by the number of inmates confined

Design Capacity - the planned capacity of the facility at the time of construction or acquisition, including subsequent modification; the optimal capacity

Earned Work Credits - credit towards time to be served; the amount based on productive work in positions at four levels of skill and responsibility

"Hands-Off" Doctrine - the reluctance of the Federal courts to interfere in the administration of State penal systems, prior to the 1970's

Incarceration Rate - a ratio reflecting the proportion of individuals incarcerated in a jurisdiction relative to the citizen population

Linear Extrapolation (as a method of prison population projection) - predicts future prison population on the basis of past trends

Maximum Operating Capacity - maximum safe operating capacity based on an overall average of 50 square feet of floor space per inmate

NCCD - National Council on Crime and Delinquency

NIC - National Institute of Corrections

NIJ - National Institute of Justice

Non-Custodial Programs - sanctions which do not involve institutional confinement

Occupancy (as a measure of prison crowding) - the number of inmates per confinement unit

Overincarceration - a relatively high level of incarceration based on a standard such as national or regional norms, for a group or type of offender(s)

Parole Adjustment Score - predicts an offender's likelihood of success on parole, based on probabilities of continued criminality

Parole Eligibility Date - the date at which an inmate will be reviewed for parole release by the Board.

Population-At-Risk - the percentage of the population at crime-prone ages

Population Projection - an estimation of the future growth or decline in population

Presumptive Parole - the assumption that an inmate will be released on parole at first eligibility date, unless there is an indication from a preponderance of the evidence that the inmate is a poor risk.

Presumption for Least Drastic Means - requires sentencing judges to consider a range of penalties and be charged with imposing the least restrictive sentencing alternative which would satisfy legitimate sentencing purpose.

Rated Capacity - same as Design Capacity

Recidivism - recommitment to an institution by a previously incarcerated offender

Restitution - a sanction requiring the offender to repay the victim in money or service for property stolen or damage caused by the commission of a crime.

Sentencing Disparity - unwarranted variation in sentencing

Sentencing Guidelines - recommendations for sentences or sentence ranges based on offender and offense characteristics

Supervised Furlough - a pre-parole release program to permit carefully screened and selected inmates to be placed under intensive supervision by the Department of Parole and Community Corrections.

Totality of Conditions - consideration of the constitutionality of a prison system, based on an aggregate evaluation of the many factors of the confinement environment which, standing alone, may or may not be violations.

Utilization Factor - the percentage of design capacity at which an institution or system is operating

Underincarceration - relatively low level of incarceration, based on a standard such as national or regional norms, for a group or type of offender(s)

INTRODUCTION

The Legislative Audit Council was requested by the Chairman of the State Reorganization Commission to study the problem of prison overcrowding in South Carolina, as background for, and preface to, their upcoming review of the implementation of the 1981 Parole and Community Corrections Act. This study was designed to identify the nature, causes, and implications of prison overcrowding, and to present a variety of recommendations for improvement.

The Audit Council wishes to thank SCDC Commissioner Leeke and his staff for the extraordinary help and cooperation received throughout the conduct of this study. Requests for information, numerous and often time-consuming to fulfill, were met promptly and courteously by SCDC staff in all divisions, from planning to community programs. The following invaluable assistance was provided for the inmate survey: computer programming and analytic support, inmate tracking and interviewing at facilities across the State, and assistance in data collection from computerized and paper files. The capacity survey was supervised by administrative staff for institutions and carried out by the wardens at each institution.

The Executive Summary to this report is available under separate cover from the Audit Council.

BACKGROUND - DEPARTMENT OF CORRECTIONS (SCDC)

In 1866, the General Assembly passed an act transferring control of convicted and sentenced felons from the counties to the State, and establishing the State Penitentiary. The Central Correctional Institution in Columbia was constructed at that time. Shortly after the act relieved the counties of responsibility for handling felons, the counties' demand for labor for building and maintaining roads prompted the reversal of this provision. By 1930, county supervisors were returned full authority to choose to retain convicts for road construction or transfer them to the State. During this period, the State developed a network of penal facilities throughout the State and began emphasizing treatment and rehabilitation. Thus, the State had a "dual" (state and county) prison system.

The Department of Corrections was established in 1960. The autonomy of the State and local systems remained, and the dual prison system continued. A number of problems with the dual prison system became evident during the 1960's. Among these problems were the absence of adequate planning and programming, inefficiency of resource utilization, and inequitable distribution of rehabilitative services. Another significant problem was the discretion of county supervisors in either retaining inmates or sending them to the State prison. The State tended to receive those inmates with the more difficult behavioral and medical problems, while the counties maintained the least problematic inmates. Many of these difficulties were documented in a 1973 study conducted by the Office of Criminal Justice Programs, which recommended the elimination of the dual system in favor of a consolidated

State system and regionalization of SCDC operations. This recommendation was accepted and implemented. Legislation, passed in 1974, gave the State Department of Corrections jurisdiction over all adult offenders with sentences exceeding three months, causing the transfer of some long-term prisoners to the State.

The transfer of county-held prisoners to the State was partially responsible for the large increase in the S.C. prison population between FY 73-74 and FY 75-76, which contributed to significant overcrowding. The average daily population under State jurisdiction increased more than 30% (3,542 to 4,618) from FY 73-74 to FY 74-75, the largest known increase in SCDC history. Yet, this increase was surpassed the next year (FY 75-76), when average daily population grew by 35.6% (4,618 to 6,264). The incarceration rate in South Carolina climbed from ninth highest in the nation in 1971 to number one in 1976 and since, has been highest or second highest in the country. South Carolina's prisons are among the most overcrowded in the country today, operating at approximately 134% of rated capacity.

Some counties continue to house State prisoners for use in public works; in FY 80-81 approximately 652 inmates under State control worked in 40 counties. Counties which choose to handle State prisoners do so without reimbursement from the State, saving the State over $3 million in operating costs a year.

Current Operations

The South Carolina Department of Corrections is the administrative agency of South Carolina State Government responsible for providing food, shelter, health care, security and rehabilitation services to all

adult offenders. (See SCDC organizational chart, Figure I.) As of June 30, 1981, SCDC had custody of 8,345 incarcerated adult inmates. Of this number, 873 were serving an indeterminate sentence under the Youthful Offender Act. This Act provides indeterminate sentences of up to six years for offenders between the ages of 17 and 24.

SCDC also provides parole and aftercare services to the Youthful Offender population. As of June 30, 1981, there were 938 Youthful Offenders under SCDC supervision in the community.

At the end of 1981, SCDC operated 24 facilities. Nine of these facilities housed minimum security inmates and seven housed medium or maximum security inmates. Of the remaining facilities, six were work release centers, one was a pre-release center and one was a pre-release/work center. Figure 2 presents the location and names of SCDC institutions in operation.

FIGURE 1

DEPARTMENT OF CORRECTIONS

ORGANIZATIONAL STRUCTURE

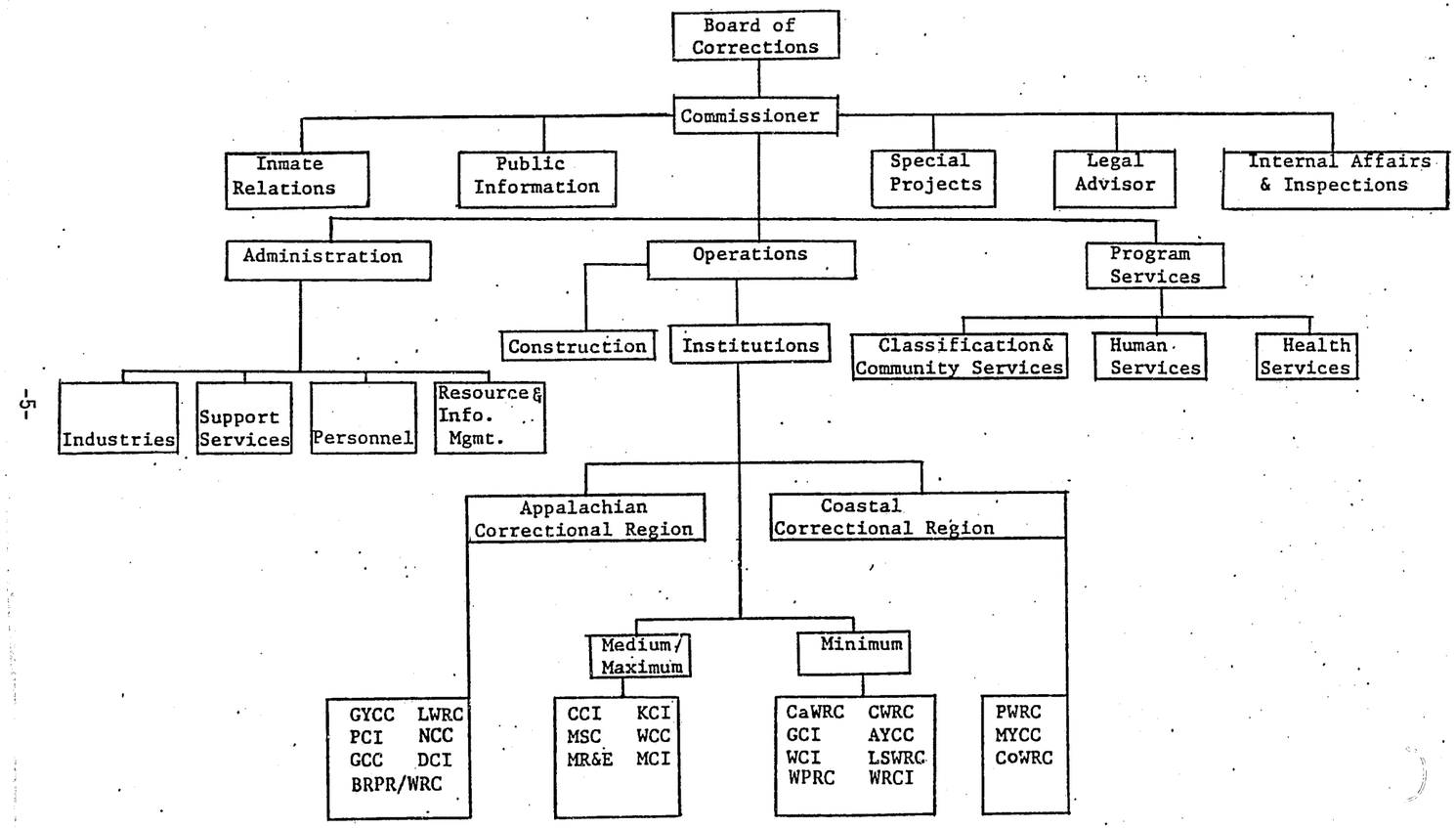
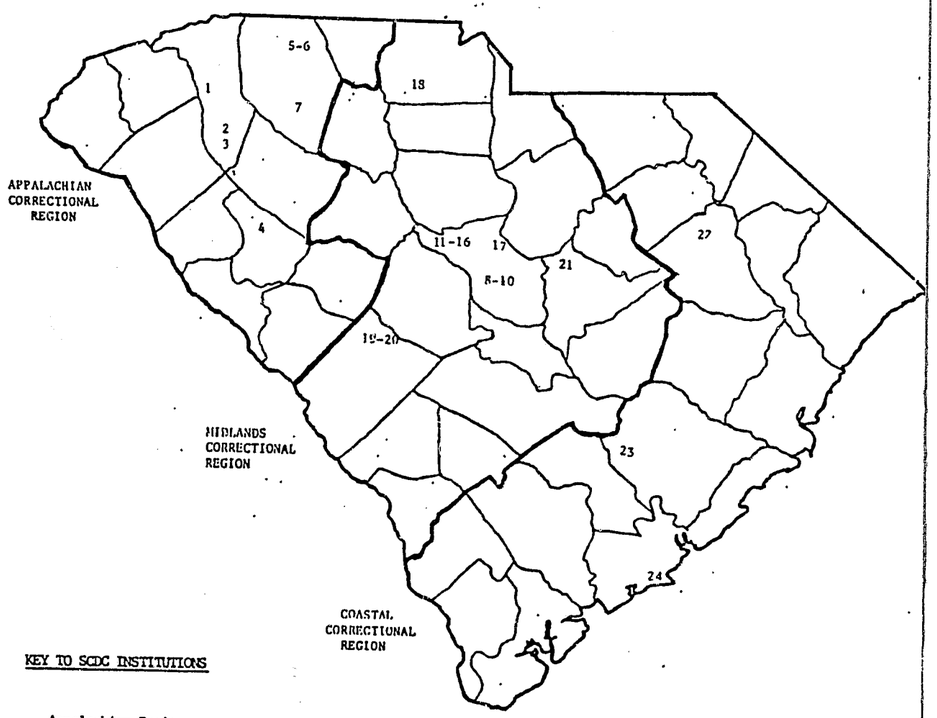


FIGURE 2

SCDC INSTITUTIONS



KEY TO SCDC INSTITUTIONS

Appalachian Region

1. BRPR/WRC - Blue Ridge Pre/Work Release Center
2. GYCC - Givens Youth Correction Center
3. PCI - Perry Correctional Institution
4. GCC - Greenwood Correctional Center
5. NCC - Northside Correctional Center
6. LWRC - Livesay Work Release Center
7. DCI - Ducchman Correctional Institution

Midlands Region

8. CCI - Central Correctional Institution
9. MSC - Maximum Security Center
10. MR&E - Midlands Reception-Evaluation
11. KCI - Kirkland Correctional Institution
12. WCC - Women's Correctional Center
13. CaWRC - Campbell Work Release Center
14. GCI - Goodman Correctional Institution
15. WCI - Walden Correctional Institution
16. WPRC - Watkins Pre-Release Center
17. MCI - Manning Correctional Institution
18. CWRC - Catawba Work Release Center
19. AYCC - Aiken Youth Correction Center
20. LSWRC - Lower Savannah Work Release Center
21. WRCI - Wateree River Correctional Institution

Coastal Region

22. PWRC - Palmer Work Release Center
23. MYCC - MacDougall Youth Correction Center
24. CoWRC - Coastal Work Release Center

Funding Description

SCDC expenditures were more than eight times higher last year than they were a decade ago; from approximately $5.5 million in FY 70-71 to $48.4 million in FY 80-81. Correctional services in South Carolina are funded through a variety of sources, most of which are State general fund appropriations. The State contribution to SCDC's budget has increased, from 81% in FY 75-76 to 90% in FY 81-82. Federal contributions represented 11% of the SCDC budget in FY 75-76; this fiscal year (FY 81-82), they are estimated to represent only 2.5% of the budget. The increase in internally-generated revenues has not kept up proportionately with the increase in the SCDC budget.

In FY 75-76, SCDC's appropriation represented 1.7% of the total State general fund appropriation. This percentage has increased to an estimated 2.7% in FY 82-83. The major reason for this increase is the opening of new prisons, and associated operating costs, for the implementation of the 1976 SCDC Capital Improvements Plan, Phases I-III.

The largest expenditure of correctional funds in FY 80-81 was for the housing, care, security, and supervision of the inmate population. Expenditures include funding for the operation of correctional institutions, inmate medical care, classification of inmates, and those functions performed under statutory requirements for those inmates sentenced under the Youthful Offender Act. Other programs in order of expenditures include employee benefits, internal administration and support, work and vocational activities, individual growth and motivation, and penal facility inspection services.

Based on State funds spent, annual per-inmate costs for FY 80-81 were $6,024. State per-inmate costs are calculated by computing the

ratio of total state-appropriated expenditures to total average daily populations in SCDC facilities excluding designated facilities. Annual per-inmate costs for FY 80-81, based upon all funds spent, were $6,522[1]. In 1981, South Carolina's per inmate expenditure was the fourth lowest in the United States. Table 1 shows SCDC expenditures by source and annual per-inmate costs for seven fiscal years. Expenditures for FY 81-82 based on State funds and all sources of funds averaged a 14% increase over that of FY 80-81. Per-inmate costs increased by 9%.

Table 2 shows facility, inmate population and employee strength information for seven fiscal years. Total design capacity for FY 81-82 increased by 11% over that of FY 80-81, and use of designated facilities decreased. The ratio of inmates to security personnel has not changed significantly since FY 75-76; there have been an average of seven inmates per security officer.

[1]This figure was derived by the Audit Council, and differs slightly from the SCDC-computed FY 80-81 annual per-inmate cost of $6,489 based on all funds spent. Analyses throughout this report used the SCDC-computed figure.

TABLE 1

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

STATEMENT OF EXPENDITURES BY SOURCE

Sources	FISCAL YEARS FY 75-76	FY 76-77	FY 77-78	FY 78-79	FY 79-80	FY 80-81	FY 81-82
State Appropriation	$18,923,006	$21,722,393	$27,598,803	$32,685,415	$35,981,643	$44,733,472	$50,316,644
Federal	2,580,767	3,037,403	3,079,135	2,990,429	2,612,507	2,086,045	1,509,594
Other	1,859,972	1,400,239	1,702,539	2,856,535	3,001,138	1,609,832	4,012,544
TOTAL EXPENDITURES	$23,363,745	$26,160,035	$32,380,477	$38,532,379	$41,595,288	$48,429,349	$55,838,782
Annual Per-Inmate Costs[a]							
Based on State Funds	3,322	3,384	4,114	4,730	5,006	6,024	6,465
Based on All Funds[b]	4,102	4,075	4,826	5,576	5,788	6,522	7,174

[a]Calculation of SCDC per-inmate costs is based on the average number of inmates in SCDC facilities and does not include State inmates held in designated facilities.

[b]Includes State general fund expenditures, Federal contributions, and internally-generated revenues.

Source: Budget and Control Board, S.C. State Budgets FY 75-76 - FY 80-81, and S.C.D.C. Annual Reports, FY 75-76 - FY 80-81.

TABLE 2
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FACILITY, POPULATION AND EMPLOYEE STRENGTH INFORMATION

	FISCAL YEARS						
	FY 75-76	FY 76-77	FY 77-78	FY 78-79	FY 79-80	FY 80-81	FY 81-82
Total Design Capacity	4,321	4,531	4,530	4,604	4,606	5,238	5,807[c]
Total Maximum Operating Capacity	6,394	7,121	5,539	5,398	5,387	5,846	6,264[c]
Total in SCDC Facilities	5,696	6,419	6,709	6,910	7,187	7,426	7,783
Total in Designated Facilities	568	748	738	713	682	652	614
Total under SCDC Jurisdiction	6,264	7,167	7,447	7,623	7,869	8,078	8,602[e]
Total Employees in Security[a]	863	871	932	1,014	1,015	1,127	1,216[d]
Ratio of Inmates to Security[b]	6.6	7.4	7.2	6.8	7.1	6.6	6.4
Total Employees (end of year)	1,525	1,735	1,730	1,910	1,944	2,111	2,153

[a] Calculation of Total Employees in security does not include any security personnel in designated facilities.
[b] Ratio determined by total inmate population in SCDC facilities / Total employees in security.
[c] As of March 31, 1982 Quarterly Capacities Report, SCDC.
[d] As of January 1982.
[e] There were 353 inmates in "all other categories," not reflected in the two categories above but which are included in this total.
Sources: Budget and Control Board, S.C. State Budgets FY 75-76 - FY 80-81, SCDC Annual Reports, FY 75-76 - FY 80-81; FY 81-82 figures from SCDC; SCDC Division of Personnel Administration and Training

CHAPTER I

OVERVIEW OF PRISON CROWDING IN SOUTH CAROLINA

The entire country has been affected by unprecedented rates of prison population growth since 1972, for which there was little planning in the way of prison resources. The national prison population grew 96% between 1972 and 1981, an increase of over 166,000 prisoners. (Prisoners refer to inmates sentenced as adult or youthful offenders, with a maximum sentence of more than one year.) During this same period, bedspace capacity is estimated to have grown by approximately 70,000 spaces.

On a regional level, the South has experienced the greatest overcrowding problems. Nearly fifty percent of the increase in State prison population between 1972 and 1981 occurred in the South. The South Carolina Department of Corrections' (SCDC) prison population has nearly tripled, and the costs of operating the system have gone from approximately $5.5 million to $48.4 million during the last decade.

South Carolina's Incarceration Rate

The percentage of population incarcerated in South Carolina has been highest or second highest in the country since 1976. The average incarceration rate for state prison systems as of December 1981 was 144 per 100,000 civilian population. (These statistics pertain to offenders incarcerated for more than a year, and are comparable, therefore, across states.) As of this same date, the South incarcerated 202 per 100,000 and South Carolina incarcerated 253 per 100,000, (as reflected

in Table 3 below). South Carolina, therefore, imprisoned 25% more than the average for the South, and 76% more than the average for all state prison systems.

TABLE 3

STATE PRISON POPULATION

AND RATE PER 100,000: TOP TEN STATES AND REGIONAL RATES

DECEMBER 1981

State	Number of Prisoners	Rate per 100,000	Rank
1. SOUTH CAROLINA	8,527	253	1
2. Nevada	2,141	253	1
3. North Carolina	15,791	250	3
4. Georgia	14,030	246	4
5. Florida	23,238	222	5
6. Louisiana	9,405	218	6
7. Delaware	1,716	214	7
8. Texas	31,502	214	7
9. Maryland	9,335	209	9
10. Alabama	7,441	186	10

Average Regional Incarceration Rates

South	202
West	120
North Central	121
Northeast	102
U.S. Average	154

Source: U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 1981

Over the last decade, the South Carolina incarceration rate has shown a dramatic increase relative to the U.S. average.

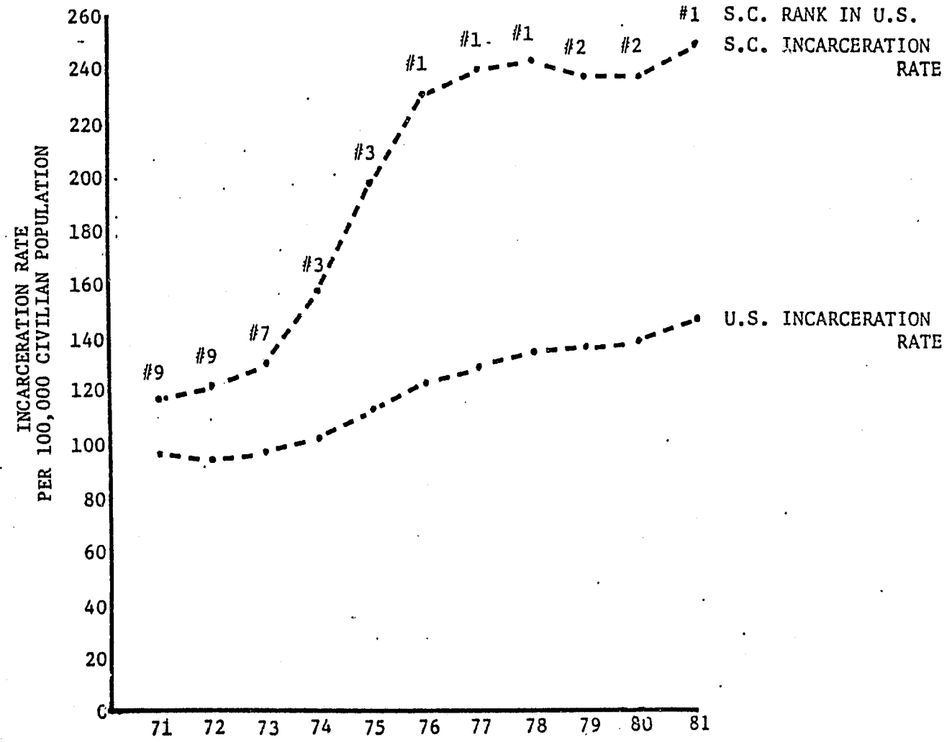
FIGURE 3

INCARCERATION RATES:

SOUTH CAROLINA AND UNITED STATES/

SOUTH CAROLINA RANK IN UNITED STATES

1971 - 1981



Source: U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics 1971-1981

Most South Carolina Inmates in Prison For Nonviolent Offenses

Most incarcerated offenders in South Carolina were serving time for nonviolent crimes (approximately two of three) in 1978. In FY 77-78, 78-79, and 79-80, approximately 65% of the SCDC admissions were convicted for offenses which were crimes against property and/or public order, (i.e., not violent crimes). In 1980, South Carolina had the sixth highest rate in the country for violent crime, and the thirty-first highest rate for nonviolent crime. A significant amount of expensive prison resources is spent on the nonviolent offender in South Carolina.

The Crime Rate in South Carolina

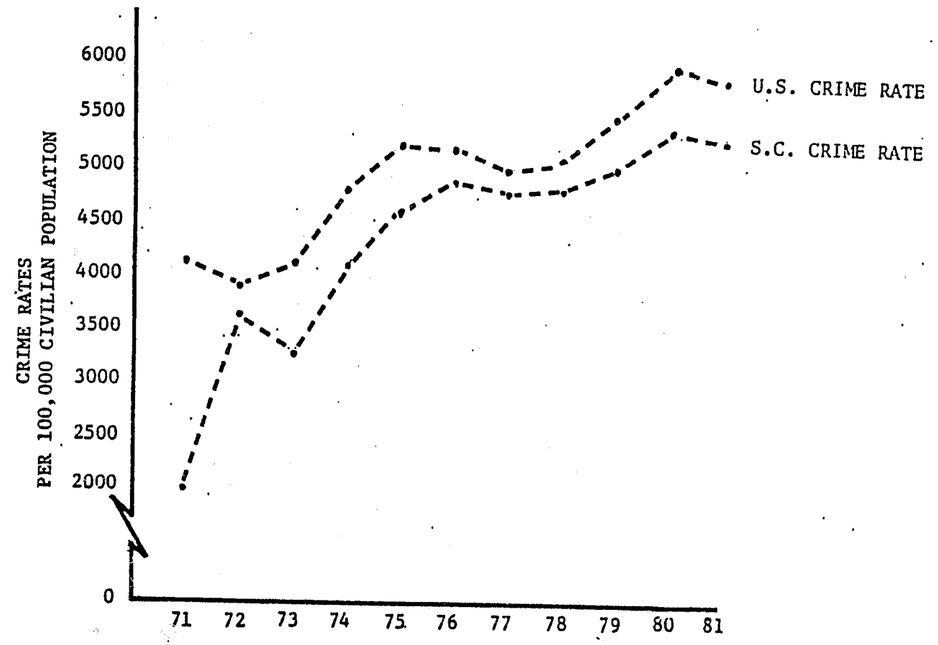
The South Carolina crime rate does not explain the use of incarceration in the State. The crime rate has been lower than the national average for the past decade. In addition, the largest yearly increase in crime during the last decade occurred in 1972, while the incarceration rate increased most dramatically from 1974 to 1976.

FIGURE 4

CRIME RATES:

UNITED STATES AND SOUTH CAROLINA

1971 - 1981



Source: Federal Bureau of Investigation, Uniform Crime Reports, 1971 - 1981.

The Relationship Between Crime and Incarceration

The crime rate in South Carolina remained below the national average during the 1970's, while the incarceration rate reached number one in the country in 1976 and has since remained highest or second highest. The relatively low rate of crime in South Carolina, however, cannot be related or attributed to the rate of incarceration. These factors operate independently of one another. Further, there is no evidence that incarcerating a relatively high proportion of the population is either controlling or reducing the crime rate.

The Audit Council considered the nine states which had crime rates closest to that of South Carolina in 1971. Table 4 shows that the national rank in crime rate per 100,000 of these ten states ranged from number 35 (Alabama) to number 44 (Indiana), with South Carolina ranking 40th. The average crime rate of these ten states in 1971 was 2,074 per 100,000, well below the national average of 2,907 per 100,000. All ten states maintained crime rates below the national average over the next nine years.

If a policy of high incarceration controls crime, we would expect to find high incarceration rates in the states with relatively low crime rates similar to South Carolina's. However, the incarceration rates in these ten states varied widely, from South Carolina - which ranked eighth in 1971 and second in 1980, to Minnesota - which ranked 43rd in 1971 and 48th in 1980.

In these ten states, the crime rates over this period of time remained fairly consistent relative to the national average, independent of their incarceration policies. It appears that the other nine states controlled crime as effectively as did South Carolina over these years, despite the

fact that South Carolina incarcerated 238 per 100,000 in 1980, while the average rate for the other nine states was only 128 per 100,000.

TABLE 4
STATES CLOSEST TO SOUTH CAROLINA IN CRIME:
NATIONAL RANKING AND RATES IN CRIME AND INCARCERATION
1971 AND 1980

	RANK IN UNITED STATES			
	1971		1980	
	Crime Rate Rank	Incarceration Rate Rank	Crime Rate Rank	Incarceration Rate Rank
Alabama	35	10	32	15
Kentucky	36	13	46	25
North Carolina	37	1	39	1
Idaho	38	38	36	32
Tennessee	39	16	41	13
SOUTH CAROLINA	40	8	23	2
Oklahoma	41	3	28	14
Kansas	42	15	26	23
Minnesota	43	43	34	48
Indiana	44	20	33	20

	AVERAGE RATES PER 100,000			
	1971		1980	
	Crime Rate[a]	Incarceration Rate	Crime Rate[a]	Incarceration Rate
10 states studied	2,074	97	4,788.9	139
South Carolina	2,080	118	5,439.2	238
National-50 States	2,907	96.4	5,899.9	139

[a]It is considered likely that increased public reporting of crime, greater police efficiency, and better record-keeping procedures have contributed to the increase in crime rates over the 1970's.

Source: U. S. Department of Justice Prisoners in State and Federal Institutions, 1971 and 1980, and Federal Bureau of Investigation Uniform Crime Reports Crime In U.S. 1980.

Prison Crowding in South Carolina

South Carolina prisons are among the most overcrowded in the nation. In order to present a picture of the crowding problem in South Carolina prisons, the Audit Council conducted a survey of the 24 SCDC institutions. Designated facilities were not included in the survey. The survey was designed to develop a detailed description of crowding by measuring capacity, occupancy, and density. Information was requested from each institution regarding the number and types of confinement units, the square footage per unit, the occupancy of each unit, the average number of hours per day inmates are confined to the unit, the total inmate count and the total design capacity of the institution.

Fire safety areas, lock-up cells not normally included in the computation of design capacity for purposes of the Quarterly Capacities Report, and cells being used permanently for purposes other than housing inmates were not included in the survey. In addition, any other areas within the 24 SCDC institutions being used to accommodate overflow population that were not included in the computation of design capacity were listed and described. The reference date for occupancy and total inmate counts was September 15, 1981.

Capacity

One measure of overcrowding is the relationship between the design capacities of the State correctional institutions and the State's inmate population. A comparison of these factors illustrates the extent to which the actual inmate population falls below or exceeds the total design capacity. The SCDC Budget Presentation for FY 82-83 reported

that South Carolina had the greatest percent of inmate population exceeding design capacity in the country in 1981.

TABLE 5

PRISON POPULATION, DESIGN CAPACITIES AND PERCENT OVER DESIGN CAPACITY: TOP TEN STATES - 1981

State	Total Inmate Population +(Excess)[a]	Total Rated Capacity[b]	Percent Over Design Capacity
1. SOUTH CAROLINA	7,936 +(609)	5,387	47%
2. Indiana	6,709	4,595	46%
3. Massachusetts	3,249 +(128)	2,371	37%
4. Nevada	1,833	1,391	31%
5. Alabama	4,6[illegible] +(1,373)	3,768	23%
6. Washington	4,342	3,527	23%
7. Maryland	7,443 (282)	6,082	22%
8. Ohio	13,135	10,720	22%
9. Mississippi	3,391 (1,200)	2,819	20%
10. Kentucky	3,608	3,042	19%

[a] +(Excess): Refers to inmates housed in other than State facilities due to overcrowding, etc. (Designated Facilities).

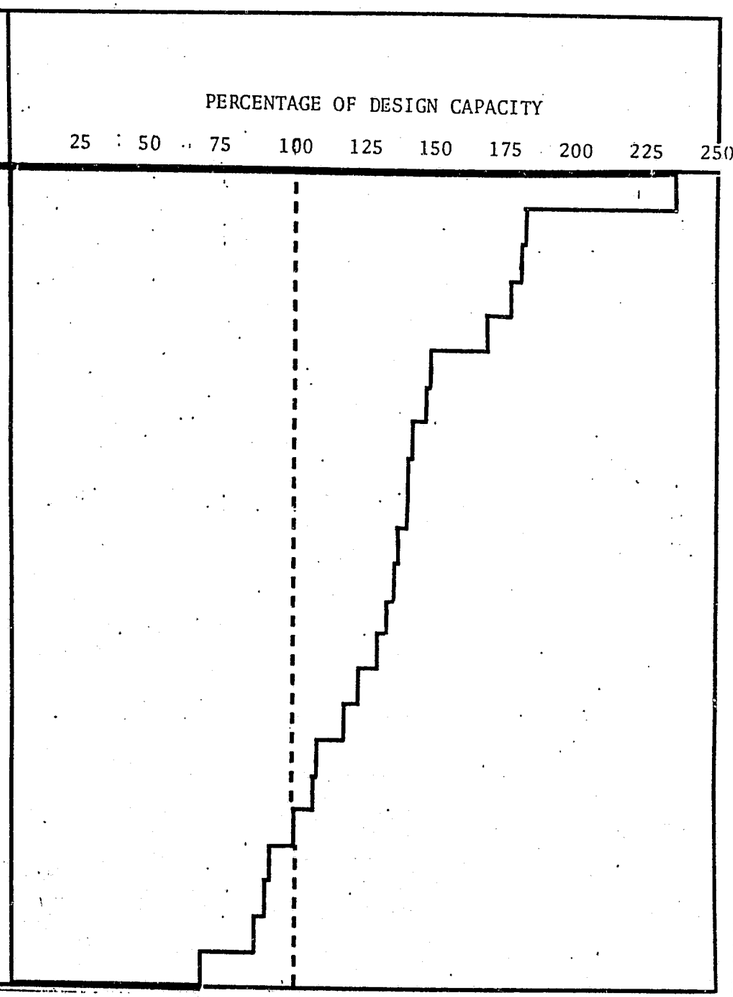
[b] Refers to the maximum number of inmates that each State's system is designed to hold as determined by the State corrections agency (criteria may vary).

Source: SCDC Budget Presentation for FY 82-83.

The results of the Audit Council survey indicate that on September 15, 1981, the South Carolina prison system was operating at 134.5% of design capacity. Seventy-nine percent, or 19, of the 24 institutions surveyed were operating at 100% of design capacity or above. Figure 5 illustrates the percent of design capacity at which individual SCDC facilities were operating on the reference date. As noted, the Midlands Reception and Evaluation Center was not included in the figure because the high turnover rate prevents the utilization factor from presenting an accurate picture.

FIGURE 5
PERCENTAGE OF DESIGN CAPACITY
AT WHICH INSTITUTIONS OPERATED[a]
September 15, 1981

INSTITUTION	SECURITY LEVEL	DESIGN CAPACITY[b]
Kirkland	m/m	448
MacDougall	min	240
Palmer	w/r	50
Givens	min	68
Walden	min	150
Perry	m/m	288[c]
Manning	med	310
Campbell	w/r	100
Women's	min	173
Goodman	min	187
Coastal	w/r	62
Aiken	min	144[c]
Greenwood	min	48
Watkins	p/r	129
MaxSecCtr	max	77
CCI	m/m	1200
Wateree	min	456
Northside	min	174
LowerSavn	w/r	45
Dutchman	min	528
Catawba	w/r	86
Piedmont	w/r	90
BlueRidge	p/r w/r	143



[a] Figure excludes Midlands Reception and Evaluation Center because high turnover prevents the utilization factor from providing an accurate picture.

[b] Does not include 142 inmates housed in areas used to accommodate overflow population not included in computation of design capacity.

[c] Design capacity does not include areas unoccupied due to construction or renovation. Design capacity with all units operational, currently: Perry - 576; Aiken - 239.

Occupancy and Density

Occupancy and density are two related concepts used to show how inmates are distributed in confinement units. Occupancy refers to the number of inmates per confinement unit. Density refers to the number of square feet of floor space per inmate, and is derived by dividing the size of the confinement units by the number of inmates confined. For purposes of this report, and as defined in American Prison and Jails (1980, National Institute of Justice), high, medium, and low density will be defined as follows:

1. High Density: Confinement units with less than 60 square feet of floor space per inmate.
2. Medium Density: Confinement units with 60-79 square feet of floor space per inmate.
3. Low Density: Confinement units with 80 or more square feet of floor space per inmate.

These definitions correspond to recommended standards of confinement space. Both the Commission on Accreditation for Corrections and the Department of Justice recommend single occupancy cells with a minimum of 60 square feet of floor space when inmates are confined less than 10 hours per day. When inmates are confined more than 10 hours per day, the standards recommend a minimum of 80 square feet of floor space. Where dormitory-type housing cannot be avoided, the Commission on Accreditation for Corrections recommends that no more than 50 inmates be housed in each unit with a minimum floor area of 50 square feet per occupant in the sleeping area. South Carolina has chosen to pursue accreditation of its institutions under the standards promulgated by the Commission on Accreditation for Corrections not only to improve

institutional conditions, but also in the event of court action, as evidence of a good faith effort to comply with accepted standards. (See Chapter III for a detailed discussion of these standards.)

By these standards, only Texas and North Carolina operated prisons with a greater percentage of crowded units in 1978. Table 6 illustrates that approximately 78% of the inmates in South Carolina were held in such units in 1978.

TABLE 6

PERCENTAGE OF INMATES HELD IN CROWDED CONFINEMENT UNITS

TOP TEN STATES - MARCH 31, 1978

STATE	PERCENTAGE	STATE	PERCENTAGE
1. Texas	90	6. New Mexico	68
2. North Carolina	84	7. Louisiana	65
3. Mississippi	78	8. Tennessee	65
4. SOUTH CAROLINA	78	9. Georgia	62
5. Florida	72	10. Illinois	61

Source: National Institute of Justice American Prisons and Jails 1980.

Table 7 shows the percentage of inmates nationally, held in crowded dormitory-type units. These are units which are occupied by more than 50 inmates. In 1978, South Carolina housed 18% of its inmates in such units and was ranked tenth in the country by this standard. The figures also show that most of such units are found in the South.

TABLE 7

PERCENTAGE OF INMATES HELD IN CROWDED

DORMITORY-TYPE UNITS

TOP TEN JURISDICTIONS - MARCH 31, 1978

STATE	PERCENTAGE	STATE	PERCENTAGE
1. Mississippi	73	6. Alabama	36
2. Arkansas	47	7. Florida	34
3. Louisiana	42	8. North Carolina	34
4. Georgia	41	9. Federal Government	22
5. New Mexico	40	10. SOUTH CAROLINA	18

Source: National Institute of Justice American Prisons and Jails 1980.

Although figures are not available to update this information for other states, the Audit Council survey updates this information for South Carolina. Table 8 provides figures representing occupancy or how inmates are distributed among confinement units within the State facilities.

TABLE 8

OCCUPANCY OF INMATES IN SCDC FACILITIES BY UNIT TYPE

Unit Type	Occupancy[a]	Number of Inmates	Percent[c]
Units Designed for Single Occupancy	Single Bunked	761	21.8%
	Double Bunked	2,086	59.9
	Triple Bunked	636	18.3
	Quadruple Bunked	0	-
		3,483	100.0%
Units Designed for Double Occupancy	Single Bunked	97	8.1
	Double Bunked	812	67.8
	Triple Bunked	96	8.0
	Quadruple Bunked	192	16.0
		1,197	99.9%
Units Designed for Multiple Occupancy	Less than 50	866	35.8
	More than 50	1,550	64.2
		2,416	100.0%
Other[b]	No set specification	142	d
	TOTAL	7,238	

[a]Number of inmates confined in each unit.

[b]Space being used to accommodate overflow population not included in computation of design capacity.

[c]Percent may vary due to rounding.

[d]Percentage not calculable.

Source: Audit Council survey of SCDC institutions, September 15, 1981.

This data provides a picture of the number of inmates confined to units compared to the number the units were originally designed to house.

Table 9 provides more detailed figures on the number of inmates held in crowded confinement units.

TABLE 9

INMATES HELD IN CROWDED CONFINEMENT UNITS

Unit Type	Actual Square Footage per inmate	Number of Inmates[a]	Percent
Units designed for single or double occupancy	Less than 60 sq. ft.	4,244	90.7%
	60 sq. ft. or more	436	9.3
		4,680	100.0%
Units designed for Multiple Occupancy	Less than 50 sq. ft.	2,121	87.8
	More than 50 sq. ft.	295	12.2
		2,416	100.0%
	TOTAL	7,096	

[a]Total number of inmates does not include 142 inmates housed in areas used to accommodate overflow population.

Source: Audit Council survey of SCDC institutions, September 15, 1981.

According to the recommended standards outlined above, South Carolina is presently housing 89.7% (6,365) of its inmates in crowded confinement units.

The density or number of square feet of floor space per inmate is shown in Table 10. Also shown is the number of hours per day that inmates are confined to that area.

TABLE 10

AVERAGE SQUARE FOOTAGE PER INMATE

Average Square Footage Per Inmate	Inmates Confined less than 10 hrs. Number	Percent	Inmates Confined 10 hrs. or More Per Day Number	Percent	Total Number	Percent[a]
21-30	1,233	24.3%	57	2.6%	1,290	17.8%
31-40	2,378	46.8	548	25.4	2,926	40.4
41-50	785	15.5	837	38.8	1,622	22.4
51-60	400	7.9	640	29.6	1,040	14.4
61-70	71	1.4	61	2.8	132	1.8
71-80	166	3.3	16	0.7	182	2.5
81-90	18	0.4	0	0.0	18	0.2
91-100	0	0.0	0	0.0	0	0.0
101-110	25	0.5	0	0.0	25	0.3
151-160	3	b	0	0.0	3	b
TOTAL	5,079	100.1%	2,159	99.9%	7,238	99.8%

[a]Percentages may vary due to rounding.

[b]Percentage less than 0.1 percent.

Source: Audit Council survey of SCDC institutions, September 15, 1981.

According to these figures, approximately 95% (6,878) of all 7,238 inmates in SCDC facilities on September 15, 1981 were confined in high density units. Of these, 30% (2,082) were confined to their living units more than 10 hours per day.

The data collected for the Audit Council survey is intended to provide a detailed view of the crowding problem in South Carolina prisons. It provides a picture of crowding based only on physical

measures of density and occupancy and does not examine a range of other variables, such as other physical conditions or psychological aspects of the environment.

Based on the institutional survey reported in this chapter, it is clear that inmates are living under highly crowded conditions throughout the State. The most comprehensive prison study to date, American Prisons and Jails (1980, National Institute of Justice) documented that the criminal justice policy and not the rate of crime in each state determines the size of the prison population. The next chapter presents results of an Audit Council survey of the FY 80-81 admissions to SCDC, and discusses the problems of underincarceration and overincarceration in the State.

CHAPTER II

OVERINCARCERATION AND UNDERINCARCERATION IN SOUTH CAROLINA

In the first section of this chapter, results from a survey of the inmates who entered the State prison system in FY 80-81 are presented to identify the proportion of offenders which might be safely and more economically handled in non-custodial programs. An assessment of the SCDC classification system was also conducted, and results are reported.

The second section of this chapter considers fiscal implications of the policy of incarcerating a relatively high proportion of short-term offenders. The low-risk group of offenders identified in the survey was matched case-by-case to offenders currently on probation, showing that this group of incarcerated offenders could have been placed on probation if sentenced by different judges in the State. The costs of their incarceration are compared to the costs of probation supervision. Over one-quarter of the FY 80-81 admissions committed larceny as their most serious crime. The costs of incarcerating this group are contrasted to the reported costs to the victims of their crimes, and to the cost of probation supervision.

The sections above consider the problem of "overincarceration" of less seriously criminal offenders in South Carolina. The third section examines the possibility of "underincarceration" of habitual and career offenders. The Habitual Offender Act, first enacted in 1955, is rarely used. The recently enacted revision, designed to update the Act and broaden eligibility for prosecution, is discussed, as well as results of a survey of currently incarcerated serious felony offenders.

SURVEY OF FY 80-81 ADMISSIONS TO SCDC

Introduction

A survey of prisoners admitted to SCDC in FY 80-81 was conducted to develop a description of their threat to public safety. Such a description may be used to determine the number and types of offenders which could be handled in community programs, thereby alleviating prison overcrowding without endangering public safety. The financial benefit of placing offenders on probation rather than in prison is great; the cost of incarceration outweighs the cost of intensive probation by approximately 9 to 1.

There were 5,511 offenders admitted to SCDC in FY 80-81; the survey sample is comprised of a representative group of 392, or 7% of the total number of admissions. Two assessments were made from the offender survey and are presented in this section, following descriptive information on the offenders admitted to SCDC in FY 80-81. The first assessment is the risk of recidivism, i.e., the risk that the offender will recommit crime(s) upon release. The second assessment evaluates the SCDC classification system, which assigns inmates to institutions and levels of custody. Prior to presentation of these assessments, the FY 80-81 SCDC admissions are described.

SCDC Inmate Profile, FY 80-81

The FY 80-81 SCDC Annual Report provides a profile of the group of admissions from which the Audit Council conducted its survey, as well as a profile of the total SCDC inmate population as of June 30, 1981. The profile includes the following descriptions:

	FY 80-81 Admissions (n = 5,511)	June 30, 1981 Population (n = 8,345)
1. Sex and Race		
(a) white male	44.1%	39.4%
(b) non-white male	50.8%	56.4%
(c) white female	2.5%	2.0%
(d) non-white female	2.6%	2.2%
2. Average age	27 yrs. 6 mos.	28 yrs. 8 mos.
3. Most common offense types (based on most serious admitting offense)		
(a) larceny	27.6%	21.8%
(b) burglary	8.9%	8.7%
(c) dangerous drugs	8.3%	5.3%
(d) traffic offenses	8.1%[a]	2.7%
(e) robbery	7.4%	18.4%
(f) assault	5.5%	6.5%
(g) homicide	5.5%[b]	15.8%
(h) sexual assault	0.6%	3.6%
4. Average sentence	5 yrs.	12 yrs. 1 mo.

[a] Includes "hit-and-run" - (7), "driving under the influence - liquor" - (327), "driving under suspension" - (31), and miscellaneous traffic violations - (80).

[b] Includes homicide/murder - (126), "voluntary manslaughter" - (121), "involuntary manslaughter" - (33), and "negligent manslaughter" - (24).

	FY 80-81 Admissions (n = 5,511)	June 30, 1981 Population (n =8,345)
5. Sentence distribution		
(a) Youthful Offender Act commitments[c]	17.6%	9.8%
(b) 1 year or less	29.1%	6.3%
(c) 1 year, 1 day - 2 years	11.0%	5.4%
(d) 2 years, 1 day - 3 years	9.7%	7.5%
(e) 3 years, 1 day - 4 years	3.3%	3.4%
(f) 4 years, 1 day - 5 years	6.0%	6.6%
(g) 5 years, 1 day - 10 years	11.3%	19.3%
(h) 10 years, 1 day - 20 years	6.8%	17.6%
(i) 20 years, 1 day - 30 years	2.2%	12.5%
(j) Over 30 Years	1.3%	3.3%
(k) Life	1.4%	7.9%
(l) Death	0.2%	0.2%

[c]The average time served by YOA's in FY 80-81 was approximately one year.

From the profile, it can be seen that the admissions group is less seriously criminal than the total population (as a group) as of June 1981. For example, the average sentence length for the June 1981 inmate population was nearly seven years longer than for the admissions group. The admissions group was surveyed by the Audit Council, as opposed to the total population, for several reasons. The composition

of the admissions group reflects recent criminal justice policy, particularly in terms of the types of offenders being sent to prison and sentence length. By contrast, the total prison population is comprised of offenders sentenced over many years of changes in law and administration. Secondly, policy-makers interviewed prior to this study suggested that incarceration of relatively minor offenders has been a major contributory factor in South Carolina prison overcrowding. As the profile illustrates, nearly half of all FY 80-81 admissions (and over 16% of the June 1981 population) will serve - or have served - one year or less. These offenders appear to be the most favorable candidates for non-custodial sentencing alternatives.

Assessment I:

Risk of Recidivism

The scale used to assess risk of recidivism combines twelve pieces of information about the offender and his/her crime, including criminal, employment, and family history. (Appendix C includes the scale used in this assessment.) Scores place offenders in "parole adjustment" categories, from very high to very low. A low parole adjustment score predicts a high risk to the community upon parole release, while a high parole adjustment score predicts a low risk to the community. The scale used to measure risk of recidivism was developed in California and has been validated extensively on prisoner populations throughout the country. The scale has more successfully predicted low risk offenders than high risk offenders. The identification of the least recidivistic offenders admitted to SCDC in FY 80-81 was a primary emphasis of this study, in order to determine the number and types of offenders most promising for placement in community programs and other alternatives to incarceration.

Recidivism rates from SCDC indicate that of all releases (5,117) in 1977, 20.3% or 1,041 inmates commited a crime for which they were reincarcerated in SCDC during the three year period 1977-1980. In other words, one of every five inmates released in 1977 was recommitted to SCDC within three years of release. A similar study conducted on released inmates in 1973 showed that one of every four inmates released (24.9%) was returned to SCDC within three years, suggesting an improvement in recidivism between 1973 and 1977.

Results of the Audit Council survey predicting potential for parole adjustment based on risk of recidivism of those offenders admitted in FY 80-81 are presented below.

TABLE 11

POTENTIAL FOR PAROLE ADJUSTMENT

BASED ON RISK OF RECIDIVISM

Predicted Success on Parole	Sample of FY 80-81 Admissions		Projection to FY 80-81 Admissions	
	Number	Percent	Number	Percent
Very High	0	0%	0	0%
High	66	16.8%	928	16.8%
Medium	223	56.9%	3,135	56.9%
Low	86	21.9%	1,209	21.9%
Very Low	17	4.3%	239	4.3%
TOTAL	392	100%	5,511	100%

Source: Audit Council survey of SCDC inmates, FY 80-81.

Approximately 74% of the FY 80-81 admissions are projected to have a high or medium potential for parole adjustment, and 26% are predicted to have a low or very low potential for parole adjustment. The 26% predicted to have low or very low parole adjustment potential are projected to be similar in characteristics to the 20.3% of 1977 releases which did, in fact, fail in the community.

Those with high parole adjustment potential did not differ significantly from those with low or medium parole adjustment on the basis of race or age. The average age for the entire sample was 26.8 years. The average sentence length was also similar for those in the high,

medium and low parole adjustment groups, (5.05 years). A major difference between groups was that of prior prison commitments. Only 11% of the high parole adjustment group had been in prison before, while 22% of the medium parole adjustment group, 54% of the low parole adjustment group, and 66% of the very low parole adjustment group had prior prison commitments. In addition, as the parole prognosis worsens, the number of prior commitments increases. Thus, the prospects for an offender's success in the community worsens with each additional incarceration. This observation is clearly one based in part on circular reasoning, since additional incarcerations are prima facie evidence of continued criminality and failure in the community.

One central question for policy makers is that of the first incarceration; at what point is a term in prison necessary and effective in deterring offenders from future criminality? In recommending alternatives to incarceration, criminologists cite the crime-producing nature of prisons: the association with and learning from hardened criminals, the loss of ties to family, friends and community, the labelling of the individual as a convict, and the brutalizing effects of the incarceration. A German study compared the reconviction rates of fined offenders to those of comparable incarcerated offenders. The past records of the offenders studied were also comparable. Only 16% of those offenders who were fined were later reconvicted, whereas 50% of those incarcerated were later reconvicted.

However, economists tend to view harsh sanctions as necessary, in order that the risks of criminality are perceived to outweigh the possible benefits. Chapter V of this report reviews alternatives to incarceration, some of which are punitive, exact retribution and if effectively implemented, can deter offenders without incarceration.

Assessment II:

The Classification System

The second assessment was that of the SCDC classification system, which assigns inmates to institutions and levels of custody. The goal of a classification system is to provide necessary security and public safety, while allowing as much constructive opportunity and mobility as possible.

The greater the level of security, the greater the expense, both in construction and operating costs, due to a higher guard to inmate ratio and more extensive security precautions and "hardware." Table 12 below reflects per-bed construction costs by level of security and type of labor, for recently constructed SCDC facilities. Medium security beds are shown to be nearly 40% more expensive to construct than minimum security beds, and twice to three times as expensive as beds in work release and pre-release centers.

TABLE 12

AVERAGE PER-BED COSTS FOR CORRECTIONAL FACILITIES CONSTRUCTED UNDER PHASES I, II, AND III BY LEVEL OF SECURITY AND TYPE OF LABOR, 1981 DOLLARS

	Type of Labor		
Security Level	Inmate Labor	Contract and Inmate Labor	Contract Labor
Medium	-	$24,637[a]	-
Minimum	-	17,731[a]	-
Work Release	$ 8,946	-	$11,904
Pre-Release	10,792[b]	-	-

[a]More than 90% of the labor cost on these projects was contract labor. Inmate labor was used for finishing interiors of buildings, painting and sidewalks.

[b]This figure represents an average per-bed cost of two pre-release centers with identical support facilities, constructed using inmate labor.

Source: Audit Council computation based on information from SCDC.

Many state systems overclassify inmates in order to reduce the risk of escape and management difficulties. The classification assessment involved the use of a nine-item Model Classification Scale developed by the National Institute of Corrections (NIC) (see Appendix D). Comparisons were made between initial classifications of all surveyed inmates, and classification recommendations based on the NIC scale. Results of this comparison follow an explanation of the SCDC classification system and grades.

All newly-admitted SCDC inmates enter one of the two Reception and Evaluation centers. One of these centers is located in Columbia; the other is part of the new Perry Correctional Institution near Greenville. At the reception and evaluation centers, inmates receive medical, psychological and vocational evaluation, as well as administrative processing. Classification personnel evaluate each inmate using five criteria in deciding which institution and custody level to assign inmates. The five criteria used for classification decisions are: (1) length of sentence, (2) past record, (3) age, (4) nature of offense, and (5) adjustment at the reception and evaluation center. There are four levels of custody to which inmates can be assigned: close, medium, "A" trusty, and "AA" trusty. There is no practical difference between close and medium custody, except that an assignment to close custody reflects pending charges, an escape history or a likelihood of escape. The trusty levels are both minimum custody levels. The "A" trusty level inmates cannot leave State property without supervision, but are minimally supervised within the institutions. The "AA" trusty level inmates are able to leave State property unsupervised, with authorization for specific assignments.

Inmates are not directly assigned to maximum custody, but will appear before a disciplinary board and be transferred to the Maximum Security Center on the basis of poor institutional adjustment, a proneness towards violence and/or escape. There is one Maximum Security Center, located next to CCI in Columbia.

One criterion of the classification system was modified in December 1980, due to a shortage of medium security bedspaces. Previously, offenders with sentences of ten years or more were assigned automatically to medium custody. Since the change, offenders with no prior incarcerations, sentences of up to 15 years, and conviction(s) for a nonviolent

offense can be placed in minimum security institutions. Offenders with one prior incarceration, conviction for a nonviolent offense and a sentence of up to twelve years can also be placed in minimum custody.

As stated, there is a shortage of medium security bedspaces. As of September 1981, all medium/maximum security institutions in the State were operating above design capacity. By the end of the June 1982, 44% of SCDC bedspaces will be medium/maximum security. The turnover in medium/maximum security institutions is much slower than in minimum and release centers, since long sentences are one criterion for placement in medium/ maximum levels of custody. Until last year, medium/maximum institutions were located only in the Midlands region. Perry Correctional Institution was completed in January 1982 in the Appalachian Region, affording 576 medium/ maximum bedspaces, 96 of which are used for reception and evaluation. The Lieber Correctional Institution is a medium/maximum, 576-bed institution planned for the Coastal region. Funding for Lieber has been approved, but is currently frozen. (Chapter Four presents a detailed picture of the bedspace availability in each custody category, and correctional region.)

The lack of adequate medium/maximum bedspace is reflected in the classification decisions made by SCDC, compared to those based on the Model Classification Scale, for the inmates surveyed by the Audit Council. (Of the 392 inmates surveyed by the Audit Council, 9 could not be classified due to incomplete data. Classifications for 383 inmates are reflected in Table 13.) Actual initial SCDC classifications and classifications based on the Model Scale, are as follows:

TABLE 13

COMPARISON OF ACTUAL SCDC INITIAL CLASSIFICATIONS TO RECOMMENDATIONS BASED ON NIC MODEL SCALE

	SCDC Initial Classifications		Initial Classifications Based on NIC Scale	
	Number	Percent	Number	Percent
Maximum/Close[a]	81	21%	43	11%
Medium	31	8%	156	41%
Minimum/Trusty	271	71%	184	48%
Total	383	100%	383	100%

[a]For the purposes of this comparison, an initial assignment to close custody will be assumed equivalent to maximum custody, as identified by the Model Classification Scale.

Source: Audit Council survey of SCDC inmates, FY 80-81 and information from SCDC.

Table 13 shows that 29% of the sample of FY 80-81 SCDC admissions were initially assigned to medium/maximum institutions, although classifications based on the Model Scale recommended that 52% of the sample be initially assigned to medium/maximum institutions.

Not only were many inmates classified by the scale as appropriate for medium level custody designated by SCDC as trusties (minimum custody), but also some inmates classified by the scale as appropriate for maximum level custody were designated as trusties. Specifically, 33% of the inmates classified by the scale as appropriate for maximum security custody were initially classified by SCDC as trusties; 70% of the inmates classified by the scale as appropriate for medium security custody were initially classified as trusties.

Implications of Underclassification

The analysis evidenced significant underclassification of inmates through comparison of actual classification decisions to recommendations based on the National Institute of Corrections Model Classification Scale. One reason for underclassification is the lack of adequate medium-security bedspaces in the State.

Another contributing factor to the underclassification of inmates is the fact that SCDC classification personnel have incomplete information on two of the five criteria on which institutional assignments are made. As stated above, classification is based on an offender's past record, current offense, length of sentence, age, and adjustment at the reception and evaluation center. Information on the offender's past record and on the offense for which (s)he is committed is incomplete in most cases.

Complete and accurate criminal histories are deemed essential to the decision of whether to send an inmate to an open or closed institution. The FBI maintains the only complete information available and takes five to six weeks to respond to requests for criminal records. Due to heavy caseloads, inmates in South Carolina must be classified within a week to ten days. Criminal histories maintained in South Carolina frequently lack records of offenses committed out-of-state, as well as information on whether the inmate is wanted in other states for criminal charges.

Information on the crime committed is provided at the reception and evaluation center by the inmate; sometimes this is the only version of the crime provided to classification personnel. It is estimated that police reports are provided, or requested, in less than 10% of all cases. In the most serious cases (murder, manslaughter, criminal sexual conduct,

assault and battery, and arson), classification personnel locate the jurisdiction of arrest, call the arresting officer, and follow up with a formal request for a police report. In all other cases, unless the inmate seems very "suspect," the classification personnel depend on the inmate's description of his/her crime. Not only are police reports unavailable, but also the indictment papers may be unavailable. In this case, the only official reference to the crime committed is the commitment papers.

Underclassification of inmates may lead to a higher incidence of escapes due to inadequate security and supervision of inmates who should be held in more secure custody. A comparison between the 1980 South Carolina rate of escape of 2.9% to the 1978[1] rate for the United States of 2.7%, and to the rate for the South of 3.2%, indicates that South Carolina's rate is approximately average.

Classification procedures have been required by the courts, in part, to ensure inmate safety, and to separate non-violent inmates from the more predatory. Therefore, another problem which might be found in the case of significant underclassification is that of lessened inmate safety. As stated above, 33% of the inmates evaluated by the model scale as appropriate for maximum level custody were placed in minimum-custody institutions, suggesting placement of seriously criminal inmates with the less serious.

SCDC does not maintain summary statistics relative to the nature and amount of institutional violence. Narrative reports of serious

[1] 1978 is the most recent date for which national data is available.

altercations among inmates, or assaults on guards by inmates, are reviewed by SCDC administrative personnel on a daily basis. Altercations which do not result in serious injury are not reported to SCDC headquarters, but are maintained in report form locally.

Evaluation of the level of institutional violence by SCDC is thus a subjective or impressionistic process. There has been no comparison of the level of violence over time or by institution, or assessment of whether overcrowding and underclassification have contributed to the level of institutional violence.

INCARCERATING LOW RISK OFFENDERS: SOME FISCAL IMPLICATIONS

The results of two fiscal analyses are presented in this section. In the first, the 66 inmates who were identified by the risk of recidivism scale to present a low risk to the community are matched to offenders currently on probation. The costs of incarceration for the 66 low-risk offenders are compared to the costs of supervision for the comparable offenders on probation. The second analysis compares the cost of incarcerating larceny and burglary offenders to the cost to the victims of their crimes.

Low-Risk Inmates Comparable to Probationers

Approximately $10.4 million[1] could have been saved by placing low-risk offenders admitted in FY 80-81 on intensive probation, instead of in prison. There were 66 inmates (17%) in the sample of 392, who were assessed by the recidivism scale as constituting a low risk to the community, i.e., predicted to have high parole adjustment potential.

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[1] For this and all other analyses of potential savings, note that actual savings realized depend on factors such as whether institutions could be closed or new institutions were not needed; the average per-inmate cost of $6,489 includes indirect (administrative) costs. Also, it is assumed that vacated spaces would not be filled by offenders now receiving a non-custodial sanction and that sentences will not increase due to vacated space.

The potential savings discussed in this section are not mutually exclusive of those discussed on p. 49, in connection with the cost of incarcerating larceny offenders. Approximately 20% of the low-risk inmates described herein are larceny offenders; potential savings for this group appear in both analyses.

From the records of individuals on probation in December 1981, a "match" was found by the Audit Council for each of the 66 low-risk inmates. Inmates were matched to probationers on the basis of sex, race[2], most serious committing offense, and criminal history.[3] Projecting these results to the 5,511 FY 80-81 SCDC admissions, at least 17%, or 937 inmates, are predicted to be similar to offenders sentenced to probation. There is clearly a significant number of inmates who could have been considered for a non-custodial sentencing alternative, such as probation, restitution, or other community dispositions, rather than having received an imprisonment sentence.

The incarceration cost of low-risk inmates is estimated in Table 14, which compares the incarceration costs of low-risk inmates to the costs which would have been incurred if sentenced to intensive probation.

[2]The race of matched offenders was the same for 49 of the 66 cases in the sample. In 11 cases, white probationers were matched to black inmates, and in three cases, black probationers were matched to white inmates.

[3]In 52 of the 66 cases, criminal histories were comparable. In 11 cases, criminal histories of the probationers were slightly more serious than that of the inmates to which they were matched, and in the remaining three cases, the record of the inmates was slightly more serious than the probationers, to which they were matched.

TABLE 14

INCARCERATION COSTS OF LOW-RISK INMATES

COMPARED TO APPROXIMATE COST[a] OF INTENSIVE PROBATION

(1) Sample of FY 80-81 Admissions

	Number	Incarceration Cost (1981 $)	Cost of Intensive Probation	
TOTAL LOW-RISK INMATES IN SAMPLE OF 392	66	866,455	(3 yrs.)	132,660
Low-risk inmates sentenced to one year or less[b]	36	$157,726	(2½ yrs.)	$ 63,918

(2) Projection to FY 80-81 Admissions

	Number	Incarceration Cost (1981 $)	Cost of Intensive Probation	
TOTAL LOW-RISK INMATES IN ADMISSIONS GROUP OF 5,511	937	12,301,035	(3 yrs.)	1,883,370
Low-risk inmates sentenced to one year or less	515	$ 2,256,358	(2½ yrs.)	$ 914,382

[a]Probationers are seldom placed in intensive probation for more than six months before being placed in another supervision category. Because intensive supervision is the most costly form of probation supervision, this analysis is conservative, i.e., probation costs would probably be less than those presented. Three years is the average probation sentence of the 66 probationers matched to low-risk inmates; 2½ years is the average probation sentence of the 36 probationers matched to low-risk inmates with sentences of one year or less.

[b]Includes YOA's who served an average of one year in FY 80-81.

Source: Audit Council survey of SCDC inmates, FY 80-81 and computation based on information from SCDC and SCDPCC.

It is estimated that approximately $12.3 million is being spent to incarcerate a group of offenders who are comparable to offenders on probation. Had they been placed on probation rather than sentenced to prison, the savings potential would have been approximately $10.4 million[1]. The Audit Council also examined the incarceration costs of those low-risk inmates sentenced to less than one year. Comparable to offenders on probation, this group would seem to be comprised of the most appropriate candidates for a non-custodial sentence. The cost of incarcerating the estimated 515 offenders in this category is approximately $2.25 million, as opposed to the cost of a 2½-year term of intensive probation of approximately $900,000. Had this group been placed on probation, the savings potential would have been approximately $1.35 million.

Based on an Audit Council survey of probation sentences, it was found that either fines or restitution orders are conditions of over half of all probation sentences. Many of the low-risk incarcerated offenders not only could have been sentenced to probation, with substantial savings to the State, but could have contributed financially through payment to victims and/or the State. Less direct savings could have been realized through taxes and support of dependents.

This comparison between low-risk inmates and probationers illustrates the operation of sentencing disparity in South Carolina. These cases are "borderline" in that some judges commit these types of offenders to prison while others commit them to probation. In the interviews conducted with key criminal justice decision-makers prior to this study, some suggested that the reason for the incarceration of low-risk, short-term offenders was lack of confidence in probation supervision. Two major changes occurred which caused the Audit Council not to evaluate the effectiveness of probation and parole supervision, as a part of this study. The first involved changes mandated by the Parole and Community Corrections Act, reorganizing the Probation, Parole and Pardon Board and expanding its role in community corrections. The second is the planned implementation of a model classification and management system, with components for managing cost, clients, workload and information. This Model Classification System will be implemented over the next two years. In January 1984, the State Reorganization Commission will provide an evaluation on the implementation and effectiveness of this system in its report to the Governor.

The Cost of Incarcerating Larceny Offenders

It is estimated that over 1,000 larceny offenders, who have medium or high probabilities of parole adjustment, were admitted to SCDC in FY 80-81, with the most serious admitting offense loss of $2,000 or less. By placing these individuals on intensive probation rather than in prison, approximately $8.5 million[1] could have been saved.

The level of incarceration of offenders convicted of nonviolent offenses reflects in large part, State policy decisions, and the avail-

[1]See footnote 1, p. 45.

[1]See footnote, p. 45.

ability of alternatives such as restitution programs. The lack of direct relationship between the levels of crime and incarceration in different states is discussed in Chapter IV. It was also pointed out that South Carolina's crime rate has been below the national average for the past decade.

The 1980 National Institute of Justice study, American Prisons and Jails, reported that the percentage of inmates serving sentences for violent crimes in Federal and State correctional facilities, as of March 1978, varied widely - from 82% in Massachusetts to 24% in Montana. The composition of the inmate population in South Carolina was reported to be 36% offenders convicted of violent crimes and 64% convicted of nonviolent crimes. Only ten states incarcerated a greater percentage of criminals convicted of nonviolent offenses than did South Carolina. Conversely, the incarcerated population in 15 states and the District of Columbia was comprised of a greater proportion of violent offenders than nonviolent offenders.

In FY 80-81, approximately seven of every ten inmates admitted to SCDC were convicted, as their most serious crime, of nonviolent offenses. Larceny was the most common offense for which offenders were sentenced to SCDC; 27.6% of all admissions (or 1,523) had committed larceny as their most serious admitting offense. Larceny was also the most common offense of the total inmate population in FY 80-81; 21.9% (or 1,824) of the 8,345 inmates incarcerated had committed larceny as their most serious offense. From the Audit Council sample survey of this group of admissions, it is estimated that 88% of offenders convicted of larceny as their most serious offense had stolen $2,000 or less worth of property or money, and that 78% of this group were sentenced to less than 3 years.

The incarceration of property criminals is an expensive undertaking. Expected time served for this group of offenders was ascertained, based on time served by comparably sentenced inmates released in FY 80-81. Operating costs were derived based on per-inmate daily costs (based on all funds spent) in FY 80-81. For the 45 larceny offenders in the Audit Council sample with $2,000 or less stolen, operating costs for the duration of their time to be served (in 1981 non-inflated dollars) will amount to approximately $423,400. The total property loss, based on reported amount stolen or lost for this group, amounted to $21,458. Of this amount, it was reported that $8,940 was regained by the victims of these crimes prior to offender incarceration. Computing the monetary loss of these crimes does not account for the pain and suffering of the victims or the monetary amounts of other crimes which may have been committed by the offenders, for which they were not apprehended. It is clear, however, that the cost to society to incarcerate this group of property offenders is very great; the costs of incarceration appear to outweigh the costs to victims of the most serious admitting offenses by 20 to one.

The probability of parole adjustment was computed for this group of property offenders, with crimes of $2,000 or less in reported loss, as presented in Table 15. The operating costs of incarceration for this group is compared to costs of intensive probation. Projections are made to the group of SCDC FY 80-81 admissions, and are presented in Table 15.

TABLE 15
INCARCERATION COSTS[a] OF LARCENY OFFENDERS[b]
(WITH $2,000 OR LESS STOLEN)
COMPARED TO APPROXIMATE COST OF INTENSIVE PROBATION[c]

(1) Sample of FY 80-81 Admissions (392)

Predicted success on Parole	Number	Incarceration cost in 1981 dollars	Approx. cost of intensive probation
High	5 (11%)	$ 26,314	$ 10,050
Medium	29 (64%)	326,903	58,290
Low	9 (20%)	55,847	18,090
Very Low	2 (4%)	14,331	4,020
TOTAL	51 (100%)	$423,395	$116,580

(2) Projection to FY 80-81 Admissions (5,511)

Predicted success on Parole	Number	Incarceration cost in 1981 dollars	Approx. cost of intensive probation
High	149 (11%)	$ 784,169	$ 299,490
Medium	863 (64%)	9,728,185	1,734,630
Low	268 (20%)	1,662,999	538,680
Very Low	59 (4%)	422,042	118,590
TOTAL	1,339 (100%)	$12,597,395	$2,691,390

[a]Incarceration costs based on average sentence length for surveyed offenders in each category, the actual time served by sentence length for FY 80-81 SCDC releases, and the rate of $17.78 per day operating costs.

[b]Based on most serious admitting offense.

[c]Costs of intensive probation are computed using the average FY 80-81 probation sentence of three years and on the average FY 80-81 cost of $670 per year for intensive probation.

Source: Audit Council survey of SCDC inmates, FY 80-81, and computations based on information from SCDC and PCC.

Community alternatives, such as community service, restitution and intermittent confinement programs, combine retribution to society and punishment to the offender. For those offenders who do not pose a high risk to the community, implementation and/or increased use of punitive community alternatives would represent a substantial savings in incarceration costs. Based on the projections in Table 15 it is estimated that approximately 1,012 larceny offenders, with admitting offense loss of less than or equal to $2,000, have medium or high probabilities of parole adjustment. The cost of incarcerating these offenders (in 1981 dollars) is approximately $10.5 million, while the costs of intensive probation of this group would be approximately $2 million.

POLICY IMPLICATIONS FOR VIOLENT AND CAREER CRIMINALS

The utilization of State prison resources is most necessary in the case of violent and career criminals. The State has enacted laws which provide harsh penalties for violent and career criminals. These include the following statutes in the South Carolina Code:

(1) The "Habitual Offender" Statute: R438 provides that any offender convicted three times for serious crimes, including voluntary manslaughter, armed robbery, criminal sexual conduct (1st degree), assault and battery with intent to kill, safecracking and burglary, shall receive a sentence of life, at discretion of the Solicitor.

(2) Enhanced penalty for possession of a firearm during commission of certain crimes: Section 16-23-490 (1970) of the S.C. Code provides that in addition to punishment provided for certain serious crimes (such as assault, burglary, and rape) the sentence shall be enhanced by one year for first conviction, two years for second conviction and five years for third and subsequent convictions.

(3) Extended parole eligibility for armed robbery: S. C. Code Section 16-11-330(amended 1975 (59)743) provides that offenders convicted of armed robbery or attempted armed robbery will receive a sentence of at least ten years, and will not be eligible for parole until at least seven years have been served.[1]

(4) Extended parole eligibility for murder: S.C. Code §16-3-20 (1977, amended 1978) provides that the penalty for murder be death or life imprisonment, and that parole eligibility be extended from ten

to twenty years.[1] This statute also provides that there will be a separate sentencing proceeding to determine whether the sentence will be death or life imprisonment; a jury decision for death must be unanimous and based on at least one aggravating circumstance.

There is a considerable body of research supporting incapacitation of habitual and violent criminals through long-term incarceration.

A small group of criminals probably produce a large part of society's crime. A Swedish study, conducted in 1977, examined the incidence and distribution of crime. Scandinavia lends itself particularly well to this type of study, in that a central registry on the entire population is maintained, including information on criminality, adoptions, psychiatric incidences, and so forth. Based on a study of Swedish population data, the author estimated that, from a lifetime perspective, each career criminal may contribute from ten to twenty incidents of recorded, but not necessarily cleared, crime. Furthermore, each individual may be expected to have committed two to three times that number of crimes which were not recorded. The author further estimated that over 75% of all crime is committed by offenders known to the criminal justice system. He concludes that relatively few individuals probably produce a large part of society's crime.

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[1] Offenders convicted under this statute are now eligible for earned work credits, which may shorten the minimum period of eligibility for parole.

A landmark study with similar results was published in 1972. All individuals born in 1945 in Philadelphia were studied, to assess the nature and incidence of delinquency in this birth group. Six percent of the group were found to be "chronic offenders" - those with five or more offenses. Chronic offenders accounted for 53% of the violent crime and 52% of all delinquency committed by the entire group. Study of the progression of criminal acts in the group led to the conclusion that commission of a third offense was a good predictor of future chronic criminal behavior.

These studies document the existence of a small, "hard-core" group of criminals in our society, responsible for a disproportionately large amount of serious crime. One of the best predictors of future criminality is past criminality. Many sentencing studies have shown that one of the most important offender characteristics taken into account in sentencing by judges is the prior record. A criminal history which includes three acts of serious crime should function as a "red flag," in the identification and disposition of serious offenders.

<u>At least 20% of the prison population is probably chronically antisocial and is not deterred from crime by punishment</u>

Basic agreement exists among psychiatrists regarding behavioral characteristics of those who are chronically antisocial. Such individuals essentially lack conscience, control over impulses, a sense of responsibility, a moral sense, and do not learn from experience. There is no internal system to monitor behavior for morality, ethics, or law-abiding behavior.

A leading expert in this field estimates after 15 years of research that between 25 and 30% of the offender population is sociopathic or chronically antisocial. In one study, which compared 100 sociopathic offenders to 100 nonsociopathic offenders, it was found that the sociopaths were "more criminal" than the nonsociopaths. The sociopaths were more often convicted for crimes such as assaults, robberies and thefts, while the nonsociopaths were more likely to be convicted of crimes such as narcotics offenses. Despite this finding, the sociopathic offenders were more successful in obtaining parole than were the nonsociopathic offenders, lending support to the theory that sociopaths are successful "con men."

As a clinical entity, sociopathy begins early in life, is a relatively enduring condition, and declines with middle age. Perhaps the most important feature of the sociopath, from a policy perspective, is the inability to learn from experience, i.e., to be deterred from future criminality on the basis of punishment for past misdeeds. It is a central goal of an imprisonment sentence that offenders be deterred through the process of receiving punishment for their actions. In scientific experiments which test subjects for facility to avoid pain or punishment through aversive conditioning, sociopaths demonstrate defective avoidance learning. They do not learn to modify their behavior normally to avoid future punishment or to associate their behavior with associated consequences.

For the chronically antisocial career criminal in South Carolina there is no socially accepted treatment or method of protecting public safety other than incapacitation through an extended prison sentence or death. It should be noted that not all habitual offenders are sociopathic;

however, career criminality and chronic antisociality have the same policy implications. Incarceration of this group represents the best use of the State's secure and expensive prison resources, as these offenders are the failures of interventive efforts and are collectively responsible for the greatest damage to society.

South Carolina has No Effective Habitual Offender Policy

On May 6, 1982, a revision of the "Habitual Offender Act" was signed into law, repealing §17-25-40 of the South Carolina Code of Laws. The purpose of the Act revision was to broaden eligibility, and to provide harsher and more consistent treatment of career criminals. An Audit Council review of offender records shows that fewer criminals are now eligible for prosecution under the revision than were eligible under the former Act.

The former Habitual Offender Act, enacted in 1955 and amended in 1976, legislated that upon third conviction for any one of ten serious felonies, the offender would receive the maximum penalty prescribed for the current offense. Fourth conviction would result in a life sentence. The applicable crimes were murder, voluntary manslaughter, rape, armed robbery, highway robbery, assault with intent to ravish, bank robbery, arson, burglary and safecracking (or its intent). Prosecution under this Act was at the Solicitor's discretion.

The revision of the Act prescribes a life sentence for any person convicted a third time for any one of six serious felonies. The felonies are voluntary manslaughter, assault and battery with intent to kill, criminal sexual conduct (1st degree), burglary, armed robbery and safecracking. (The offense of murder was included in the former Act,

but is not included in the revision.) Prosecution under the Act is at the Solicitor's discretion.

The Audit Council surveyed a sample of records from the November-December 1981 SCDC inmate population, to assess the scope and application of the original Act and the revision. There was an average of 8,570 inmates in the system during these two months. It is estimated that 720 offenders, (8.4% of the inmate population) were convicted for one of the ten serious felonies designated under the original Act. Of these 720 serious felony offenders, an estimated 60 had committed at least two prior offenses designated by the Act and, therefore, could have been prosecuted under the Habitual Offender Act. No offender surveyed by the Council had actually been prosecuted under the Act.

Under the revised Act, the number of offenders which had committed one of the serious felonies designated is estimated to be 852 or 10% of the November-December 1981 inmate population. Of the 852, an estimated 42 offenders had committed two prior felonies designated by the revision. Thus, fewer offenders now meet the criteria for prosecution as a career criminal, or habitual offender, than did previously.

Although there has been a habitual offender statute in South Carolina since 1955, it is estimated that few, if any, of the inmates in the November-December 1981 inmate population were convicted under it. Two State Solicitors interviewed regarding the former Act stated that it was very restrictive, and applied to few individuals. The applicable crimes were considered to be quite serious, making it unusual for a defendant to have committed the requisite number and types of offenses in order to be eligible for prosecution under the Act. It has been shown, however, that the revision, signed into law in May 1982, narrows

rather than broadens the scope of the Act. The revision, therefore, does not address the need for an effective and consistent State policy regarding the career criminal in South Carolina[1].

[1]A policy which increases the average time served by habitual offenders will necessarily increase the demand for prison bedspace, thereby increasing incarceration costs.

CHAPTER III

PRISON STANDARDS AND LEGAL IMPLICATIONS

Introduction

Many judicial analysts agree that the most significant judicial movement, since the civil rights and criminal procedure decisions of the 1960's, has been the wave of prison litigation in the past half decade. In bringing these cases, inmates rely heavily on the Fourteenth Amendment and the Civil Rights Act of 1871, commonly referred to as 42 U.S.C. 1983.

The Fourteenth Amendment forbids a state to "deprive any person of life, liberty, or property, without due process of law." Section 42 U.S.C. 1983 prohibits any person, acting under color of law, from denying anyone the rights, privileges, and immunities guaranteed by the U.S. Constitution and the laws of the United States.

Section 42 U.S.C. 1983 is frequently used by inmates to bring lawsuits alleging violation of their constitutional rights in the Federal courts. In 1966, 218 "1983" actions were filed, but by 1978 that number had grown to 10,000 and is still rising. According to American Prisons and Jails (National Institute of Justice), a total of 82 court orders relating to prisons were in effect as of March 31, 1978. Consistent with the larger number of facilities in that region, the South accounted for the greatest proportion (35%) of court orders. In addition to these court orders, states reported a total of 8,186 pending cases filed by inmates. Six hundred of these concern Federal institutions. One out of every five cases filed in Federal courts today is by or on behalf of prisoners.

This chapter outlines the major trends in prison litigation. Although Federal courts historically have preferred to practice judicial restraint, conditions of confinement are increasingly subject to external dictation.

Basis for Judicial Intervention

Prior to the 1970's, Federal courts were reluctant to interfere in the day-to-day administration of state penal systems. Such judicial non-intervention in prison administration was the result of what is known as the "hands-off" doctrine. Under this doctrine Federal courts refrained from supervising prison administration or interfering with the ordinary prison rules or regulations. Even when prisoners alleged violations of their due process rights, the courts considered intervention in state prison systems beyond their jurisdiction.

The "hands-off" doctrine carried great influence until the late 1960's. At that time, the courts extended well-defined constitutional rights to prisoners stating that inmates retain all the rights of ordinary citizens except those expressly denied by law. Courts began to entertain challenges against such prison practices as those which restricted the right to practice religion, those which interfered with the right of access to court, or those which were racially discriminatory. The courts began limited intervention, based on the Eighth Amendment, into cases where particular conditions or specific acts violated the Constitution. This was, however, a restrictive application of constitutional doctrine and it left largely unexamined the overall environment or the "totality" of prison living conditions.

The "totality of conditions" approach was first adopted in a 1970 Arkansas case which declared the state's penal system unconstitutional on the grounds that living conditions were detrimental to the physical and mental well-being of inmates. The "totality" approach allows the courts to aggregate or combine conditions which, standing alone, may or may not be constitutional violations. Entire confinement environments may be found unconstitutional instead of limiting the determination of unconstitutionality to a specific condition or practice.

Standards of Eighth Amendment Analysis

In making the determination as to when "total conditions" are unconstitutional, the courts use the Eighth Amendment ban on cruel and unusual punishment. Courts use considerable discretion in making this determination because the Eighth Amendment historically has been interpreted and applied imprecisely in regards to the conditions of inmate confinement.

The Eighth Amendment cruel and unusual punishment standard has been expanded from early interpretations which prohibited only excessive physical abuse to present interpretations which include the nonphysical aspects of punishment as well. Such standards assess whether punishment is disproportionate to the precipitating offense, shocks or offends the court's conscience, or exceeds legitimate penological objectives. Courts apply these standards to determine not only the constitutionality of physical punishment of selected individuals, but also to determine the constitutionality of the general conditions which prevail at a particular institution.

Because application of these standards depends on a subjective analysis, there are still few specific guidelines by which state authorities can anticipate litigation and voluntarily conform to Federal constitutional standards that are binding on the states. Justice Burger's dissent in Furman v Georgia, 408 U.S. 238 (1972) describes the changing quality of Eighth Amendment application:

> Of all our fundamental guarantees, the ban on cruel and unusual punishments is one of the most difficult to translate into judicially manageable terms.

Recent cases suggest a further expansion of Eighth Amendment analysis. An example of this is the view that penal systems may not be operated in such a manner that they impede an inmate's ability to attempt rehabilitation or to avoid physical, mental, or social deterioration. This expansion was further evidenced in a 1977 New Hampshire case where the court stated that although inmates were "adequately warehoused, the Constitution demands more than cold storage of human beings .... Eighth Amendment protections extend to the whole person as a human being." The court examined not only individual conditions for constitutional violations but also applied a "totality" test to determine whether conditions produce unhealthy psychological effects in prisoners for which there is no penological justification. The court's "totality" analysis is described as follows:

> Where the cumulative impact of conditions of incarceration threatens the physical, mental, and emotional health and well-being of the inmates and/or creates a probability of recidivism and further incarceration, a federal court must conclude that imprisonment under such conditions does violence to our societal notions of intrinsic worth and dignity of human beings and, therefore, contravenes the eighth amendment's proscription against cruel and unusual punishment.

The most recent case involving the "totality of conditions" approach, Rhodes v Chapman, 69 L Ed 2d 59, was handed down by the U.S. Supreme Court on June 15, 1981. The question presented was whether the housing of two inmates in a single cell at the Southern Ohio Correctional Facility (SOCF) constituted cruel and unusual punishment. Although the Court reversed the finding of unconstitutionality of two lower courts, the Justices in the decision formally adopted the "totality of conditions" test for cruel and unusual punishment. In doing so, they reaffirmed the last decade of judicial intervention in cases concerning the constitutionality of prison conditions.

In considering principles relevant to assessing the constitutionality of conditions, the Rhodes court pointed out that due to the very nature of the Eighth Amendment, there can be no static test by which courts can determine whether conditions of confinement are cruel and unusual. The Court stated that conditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crimes warranting imprisonment. Included is punishment which is totally without penological justification.

Factors to be considered in judicial review of prison conditions are: (1) scrutiny of the "totality of circumstances" under challenge; (2) application of realistic yet humane standards to conditions as observed; and (3) the effect of the prison conditions upon the imprisoned. Although the conditions challenged in the immediate case were not unconstitutional under the above standards, the Justices were quick to emphasize that the decision "should in no way be construed as a retreat from careful judicial scrutiny of prison conditions."

The foregoing examples illustrate a reaffirmation and expansion of Eighth Amendment application and also a willingness on the part of Federal courts to become increasingly involved in areas once considered solely within State discretion.

Remedies

Once a constitutional violation has been found, the court must develop a remedy. The court's remedial power is commensurate with the severity of the constitutional violation.

In fashioning remedies, courts have used different methods. Some have taken a more limited approach by ordering prison officials to submit proposals to correct conditions which have been declared unconstitutional. Other courts have become more actively involved by establishing minimum constitutional standards for such conditions, ordering implementation, and retaining jurisdiction to ensure compliance.

When a more active role is taken, a court's order may affect many areas of prison operations. To help relieve overcrowding problems, the courts in various cases have imposed maximum limits on prison population and minimum limits on living space per prisoner. Courts have also ordered prison systems to develop educational and vocational programs, as well as recreation programs and other work programs.

Prison conditions such as heating and ventilation, cell furnishings, sanitation, and food service have been the focus of remedies requiring alterations in the physical plant of prison systems. Prisoner classification procedures have been ordered to ensure inmate safety and overall effectiveness of the remedies imposed. In a 1978 Mississippi case, the

court ordered two state penitentiary camps closed due to conditions which the court felt were irreparable.

Another remedy used by the courts is the actual release or threat of release of prisoners. This remedy allows the state to make a practical choice between providing constitutionally acceptable conditions for prisoners or resigning itself to the release of the convicted. The case of Holt v. Sarver, 309 F. Supp. 362, used the threat of release to discourage unconstitutional prison conditions. After an initial finding that elements of the Arkansas system were unconstitutional, the court ordered that a "substantial start toward alleviating the conditions" be made. When no action was taken by the state, the court ruled that if the conditions could not be eliminated, the farms could no longer be used to confine convicts. This threatened release of prisoners resulted in substantial money for improvements from both the State and Federal governments.

In a more recent case, the court ordered the actual release of prisoners. On July 15, 1981, Judge Robert Varner, Middle District of Alabama, handed down a court order directing the immediate release of 400 prisoners from the Alabama prison system. In addition, the court ordered acceleration, by six months, of parole eligibility dates of 50 more inmates.

This court-ordered release was the culmination of nine years of noncompliance by the State of Alabama, with standards established by the court in the cases of Newman v. Alabama, 503 F. 2d 1320 and Pugh v. Locke, 406 F. Supp. 318. In addition to noncompliance, the Court noted that plans for expansion were insufficient to relieve the severe overcrowding condition. The court stated that because those

empowered to fund needed construction had failed to do so, the court itself had a duty to fashion a remedy to protect the constitutional rights of citizens.

Federal intervention inevitably has an impact on state budgets, but courts will not consider inadequate funds as a legitimate excuse for noncompliance with Eighth Amendment standards. Although Federal Courts will not directly require allocation of additional funds, they will impose broad remedial orders despite the fact that compliance might force a state legislature to appropriate such funds. This was the case in Louisiana in 1977. In order to bring the prison system into compliance with basic constitutional standards, a supplemental appropriation of $18.4 million for a single year's operating expenditures and $105.6 million for capital outlays were required. The court's rationale in such cases is based on the fact that the decision to operate a prison lies with the state, and once one is established, it must be run constitutionally.

The Supreme Court has yet to address the scope of federal power in state prison systems, but it has declared that when constitutional violations are found, less deference will be given to prison administrators' discretionary prerogatives. Courts have taken a case by case approach in determining the appropriateness of each court order. In some cases the entire court order will be upheld and in others, parts of the order may be reversed while the other sections will be upheld. For the most part, however, concern over permissible scope of federal judicial intervention into state prison administration has not deterred judicial activism.

Accreditation Standards

The expanded role of the judiciary in the field of corrections has highlighted the need to develop more specific self regulatory standards. The American Correctional Association (ACA), the American Bar Association (ABA), and the U.S. Department of Justice have emerged as major influences in the correctional standards field. As pointed out in the March 1979 issue of Corrections Magazine, the ACA appears to be establishing itself as the leader in this field.

The Commission on Accreditation for Corrections, (the Commission) was established by the American Correctional Association (ACA) in 1974. In 1979 the Commission established its fiscal and administrative independence from the ACA, which now participates primarily in selecting Commission members and approving standards.

The Commission has developed a ten-volume set of standards which provides measurable criteria for assessing the safety and well-being of staff and inmates. These standards cover both juvenile and adult correction agencies responsible for institutional and community-based supervision, as well as aftercare services.

The Commission uses these standards as the basis for its voluntary accreditation process. Voluntary accreditation has been pursued by many states not only to improve institutional conditions and management, but also in the event of court action, it might be considered as evidence of a good faith effort to comply with acceptable standards.

The South Carolina Department of Corrections (SCDC) has chosen to pursue accreditation under ACA standards. In December 1981, the Youthful Offender Branch, Field Services Operation successfully underwent an on-site field audit by ACA accreditation auditors. Action to

confer accreditation was taken by the Commission in the Spring of 1982. As to accreditation of its entire system, South Carolina has taken a more cautious approach due to lack of resources. The approximate cost per institution to apply for accreditation is $6,700. This pays for contracting with the ACA and the cost of the on-site visit. It does not include costs an institution may incur for improvements to meet ACA standards. For this reason, SCDC plans to attempt accreditation at three institutions per year, and then only if SCDC has determined that existing deficiencies can be corrected to meet required standards.

Although the accreditation process requires considerable organizational and fiscal resources, its use by correctional institutions as a guideline for self-improvement and as a stimulus for change at the legislative, executive, and judicial levels of government should be recognized.

CHAPTER IV

THE SCDC PRISON POPULATION PROJECTIONS AND CAPITAL IMPROVEMENTS PLAN

South Carolina's prison system is the most overcrowded in the country. SCDC estimates that the prison population will almost double over the next decade. Such an increase would require nearly half a billion dollars in capital construction prior to 1990 to adequately house all inmates. Moreover, the long-term financial commitments for operating costs are far greater, and necessitate careful analysis of not only the present, but also future need.

Future need for prison bedspace is assessed by developing projections of prison populations, usually for the ensuing decade. As in any long-term prediction of the future, accuracy is difficult. This chapter reviews the methods used and factors considered in deriving prison population projections. Also presented is an analysis of past and present prison construction in South Carolina, and requests for further increasing bedspace. SCDC projections are compared to bedspace availability over the next ten years; the financial impact of increasing prison bedspace to accommodate the projected increase is estimated.

Projections: Introduction

Projections of prison populations estimate future growth or decline based on current trends. Prison population projections usually predict change over a ten-year period, and are one important tool in planning for future system needs. Deriving predictions is an inexact science,

due to the difficulty in identifying the important factors, and estimating the effect such factors will have on future prison populations. The 43% growth in the U. S. prison population during the mid-'70's (1972-1977) was not predicted by planners, and therefore, contributed to the extreme shortfall of bedspaces. The overcrowding now experienced through most of the country is the result of the shortfall of bedspaces, in light of rapid and unpredicted growth.

There are three basic methods of making such predictions: (1) leading indicators, (2) extrapolation, and (3) simulation of intake and release. These methods are discussed below.

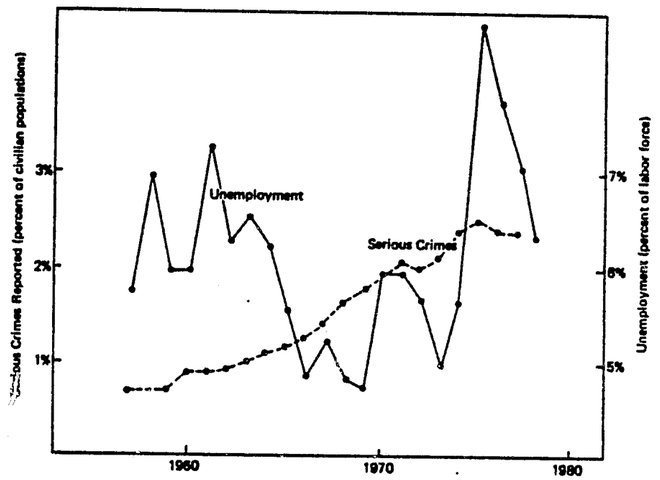
1. Leading Indicators

Projections of prison population can be based on one indicator such as crime rate, or on a combination of indicators, such as unemployment rates, population at risk, and available prison capacity. As previously illustrated the crime rate has not been directly related to the imprisonment rate in South Carolina (or in the U. S. as a whole); the increase in incarceration over the decade accelerated at a much faster rate than did crime. Additionally, the moderate increase in crime may be due, in part, to better reporting and law enforcement during the 1970's because of LEAA funding. It is also a popular notion that unemployment causes escalation in crime, leading to greater utilization of prison resources. Figure 6 illustrates the lack of a direct relationship between the increasing rate of serious crime and the level of unemployment.

FIGURE 6

RATES OF SERIOUS CRIME AND UNEMPLOYMENT

1957 - 1978



Source: National Institute of Justice, American Prisons and Jails, 1980, Volume 2, Figure 3.1, p. 49. Based on U.S. Bureau of the Census data.

The population-at-risk indicator refers to the percentage of the population at crime-prone ages, i.e., males from mid-adolescence to their late 30's. One prominent theory based on this indicator suggests that prison populations will decline after the 1980's. The major reason this theory predicts a decline is the maturation out of crime-prone years of the "baby boom" generation which occurred after the Second World War. Many of the elementary schools built during the 1950's for the "baby boom" children now stand empty

or serve other purposes. Colleges and universities have experienced declining enrollments, in part due to this same phenomenon. Although some tests have not supported the importance of this indicator, it seems reasonable to project some effect of this excess population passing the crime-prone years. This concept is important when one considers the fact that five years are likely to pass between the decision to construct a prison and its opening. Prisons built now, in order to address the overcrowding problem, may be completed at a time when they are no longer needed. There is, however, some support for the leading indicator, prison capacity.

"Capacity theorists" argue that new prison construction will not alleviate overcrowding in our prisons. Rather, new facilities will soon create new overcrowding problems. A major national survey of American prisons and jails, (1980, National Institute of Justice), suggested that within two years, the occupancy of a new facility reaches rated capacity, and within five years, new facilities are typically overcrowded. Of all the leading indicators analyzed, only changes in prison capacity were found to be significantly related to changes in prison population.

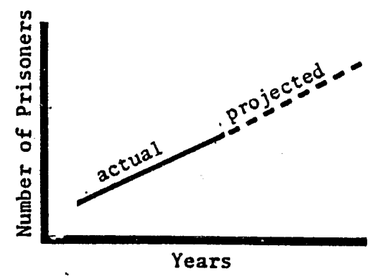
2. Linear Extrapolation

This method of projecting prison population is essentially a special case of the leading indicator approach, where the leading indicator is the trend based on past populations. Predicting future prison populations on the basis of past populations involves

plotting population for past years on a graph. The line connecting the population of each year is "extrapolated" or statistically extended into the future. This method has greater accuracy in developing short-term predictions than long-term, and is not useful in predicting change in growth, or the magnitude of such change.

FIGURE 7

EXAMPLE OF LINEAR EXTRAPOLATION



3. Simulation of Intake and Release

This approach to prison population projection involves the construction of a model of the inflow and outflow of prisoners, incorporating those facts or assumptions about the system which are deemed relevant by the model-builder. Predictive accuracy depends on the accuracy of the assumptions built into the model. These include factors such as the rate of inflow and outflow, as well as changes due to such factors as new community programs, new or increased use of early release mechanisms, mandatory

sentencing laws, etc. This method of projection was evaluated in the 1980 National Institute of Justice study and found to be the least biased and most accurate of any technique used by states in projecting prison populations between 1972 and 1976.

SCDC Prison Population Projections

South Carolina Department of Corrections projections are developed based on forecasted or current changes in intake and release policy, as well as on leading indicators such as the population-at-risk. New projections are developed by the Department yearly or biyearly, and are revised in light of changes in policy and in other relevant factors. It should be noted that the projection techniques used by SCDC are those found by the National Institute of Justice prison study to provide the most accurate projections. Changes in legislation concerning intake, length of stay, or outflow of prisoners all impact on the size of future prison population. For example, in the 1976 Ten Year Capital Improvements Plan, the prison population was projected to increase to 12,500 by 1986 from the 1976 level of 6,264. This estimate was revised downward by the SCDC Division of Resource and Information Management in 1980 to 8,261 prisoners under SCDC jurisdiction by 1986, due to the Earned Work Credit (EWC) program, part of the Litter Control Act of 1978. The financial impact of such a decrease is significant. In FY 80-81, 59% or 2,660, of those inmates released had their time reduced as a result of the EWC program. This reduction in time served generated a saving (or reduced need) of over $4 million in operating costs in FY 80-81.

In 1981, the Division of Resource and Information Management released a set of projections which estimated the potential of the Parole and Community Corrections Act, 1981. (The provisions of this Act are detailed in Chapter Five). Major provisions expected to decrease SCDC average daily population were (1) §9, reducing parole eligibility of inmates from one-third to one-fourth of their sentence, except for those convicted of certain violent crimes; (this change will be effective on January 1, 1984, given implementation of other sections of the Act); (2) §11, extending the benefit of earned work credits toward parole to all inmates, (previously denied to those sentences of life or the mandatory minimum for armed robbery;) and (3) §16 and §20, providing automatic screening of all inmates convicted of nonviolent offenses with sentences of five years or less for possible placement on work release or supervised furlough, and implementation of a supervised furlough program. SCDC projected that with no change in sentencing pattern or major economic/demographic changes, the Community Corrections Act could have potentially reduced average population by 1,084 inmates in 1991.

However, the most recent population projections, released by SCDC in May 1982, significantly increase the estimated growth in the prison population over the next decade. Major factors contributing to the projected increase are cited by SCDC as: (1) worsening economic trends and escalating unemployment, (2) an increase in the "at-risk" population, (3) longer sentences and expected time served, (4) the increasing SCDC "core" inmate population due to mandatory minimum sentencing laws, and (5) a revised (lowered) parole success rate. Table 16 presents the 1980, 1981, and 1982 projections.

TABLE 16

SCDC PRISON POPULATION PROJECTIONS

FOR AVERAGE DAILY POPULATION:

1980, 1981, AND 1982

Fiscal Year	1980	1981[a]	1982[b]
81-82	8,411	7,804	8,501
82-83	8,631	8,189	9,437
83-84	8,776	8,257	10,742
84-85	8,922	8,334	11,569
85-86	9,080	8,426	12,172
86-87	9,221	8,487	12,713
87-88	9,348	8,484	13,243
88-89	9,473	8,544	13,816
89-90	9,603	8,672	14,443
90-91	9,735	8,651	14,921
91-92	-	-	14,965
92-93	-	-	14,849

[a]This set of projections was provided to the Budget and Control Board in August 1981, in response to the Board's request for an estimate of the potential impact of the 1981 Community Corrections Act. The potential drop in average daily population, was dependent upon successful implementation of the Act, and on no change in sentencing patterns or major economic/demographic changes.

[b]This set of projections is based on the assumption that §9 of the 1981 Community Corrections Act, reducing parole eligibility of nonviolent offenders from one-third to one-fourth of sentence, will be implemented in 1984, and assumes no impact of the supervised furlough program.

Source: SCDC Division of Resource and Information Management.

The Ten-Year Capital Improvements Plan

In 1976, SCDC contracted with the consulting firm of Stephen Carter and Associates to develop a Ten-Year Capital Improvements Plan for the Department. This plan has been revised annually by SCDC; the last revision was released on December 22, 1980 and planned for the ten-year period FY 81-82 through FY 90-91. Seven phases of capital construction improvements were proposed to accommodate projected prison population increases and to phase out antiquated facilities. To date, over $68 million has been approved by the General Assembly for the implementation of Phases I-IV projects. The first three phases included construction of four large prisons, one pre-release center, one work release center, and additions to four institutions. Only $2 million of the $87 million Phase IV request was approved in FY 81-82 by the General Assembly. Approximately $1.5 of the $2 million will be used to construct a 96-bed psychiatric unit, to be located at Kirkland Correctional Institution.

Tables 17-19 provide an accounting of SCDC bedspace through Phase IV. The first reflects bedspace in institutions built prior to the Ten-Year Capital Construction Plan. (Some of these facilities have been improved and/or the bedspace increased as a result of Phases I-III construction).

CONTINUED

1 OF 3

TABLE 17

SCDC BEDSPACE IN INSTITUTIONS BUILT PRIOR TO TEN-YEAR CAPITAL IMPROVEMENTS PROGRAM

AS OF MARCH 31, 1982

	Design Capacity	Average Daily Population FY 80-81
APPALACHIAN REGION		
Minimum		
Givens Youth Correction Center	68	136[d]
Northside Correctional Center	174[a]	116[d]
Greenwood Correctional Center	48	87
Work/Pre-Release		
Blue Ridge Work/Pre-Release Center	143	188
MIDLANDS REGION		
Medium/Maximum		
Kirkland Correctional Institution	448	1,102
Manning Correctional Institution	346	460
Women's Correctional Center	29	c
Central Correctional Institution	1,200	1,522
Maximum Security Center	77	98
Midlands Reception & Evaluation Center	112	181
R&E Annex	80	
Minimum		
Aiken Youth Correction Center	239	223[d]
Goodman Correctional Institution	88	99
Walden Correctional Institution	150	248[d]
Wateree River Correctional Institution	456[b]	482[d]
Women's Correctional Center	144	262
Work/Pre-Release		
Watkin's Pre-release Center	129	193
Campbell Work Release Center	100	155
Catawba Work Release Center	86	79
Employment Program, Goodman Corr. Inst.	50	83
Lower Savannah Work Release Center	45	58
Women's Work Release, Goodman Corr. Inst.	49	65

(continued to next page)

TABLE 17 (CONTINUED)

COASTAL		
Minimum		
MacDougall Youth Correction Center	240	426
Work Release		
Coastal Work Release Center	62	92
Palmer Work Release Center	50	102
TOTAL	4,613	

[a]This number includes a 144-bed addition, Phase II.

[b]This number includes two 96-bed additions, Phases I and II.

[c]ADP is included in WCC minimum security category.

[d]These institutions were not fully operational during FY 80-81.

Source: Audit Council computations based on information from SCDC.

Table 18 lists Phases I-IV capital construction projects which increase(d) or replace(d) SCDC bedspaces, their costs, and actual or projected completion dates.

TABLE 18

CAPITAL CONSTRUCTION IMPROVEMENTS, PHASES I-IV

	Design Capacity	Average Daily Population FY 80-81	Phase	Cost	Actual or Projected Completion Date
OPERATIONAL OR UNDER CONSTRUCTION					
Medium/Maximum					
Perry Corr. Center (includes R&E)	576	153	I	$14,073,831[a]	12/81
Minimum					
Dutchman Corr. Inst.	528	375	I	9,363,535[a]	12/81
Wateree Addition	(96)[b]		I	623,163	3/81
Wateree Addition	(96)[b]		II	623,071	4/81
Cross-Anchor Corr. Inst.	528	n/a	II	10,419,047	12/82
Work/Pre-Release					
Northside Addition	(144)[b]		II	1,449,009	12/81
Livesay Work Release Ctr.	96	n/a	II	981,152	4/82
Coastal Work Rel. Addition	96	n/a	II	1,157,282	9/82
Midlands Pre-Release Ctr.	144	n/a	III	1,722,825	5/82
APPROVED CONSTRUCTION, WAITING FUNDING					
Medium/Maximum					
Women's CC, Addition	96		III	810,289	c
Lieber Corr. Inst.	576		III	17,469,900	c
Psychiatric Unit Co-located at Kirkland C.I.	96	n/a	IV	1,552,000	c
TOTAL	2,736				

[a]Includes multipurpose buildings to be completed October 1982.

[b]These three additions increased bedspace in institutions built prior to the Ten-Year Capital Improvements Program, and are reflected in Table 17.

[c]The funds for these projects were approved, but have been frozen. These projects wait release of authorized funds.

Source: Audit Council computations based on information from SCDC.

The following table summarizes all approved bedspace by level of custody for constructed and approved projects through Phase IV.

TABLE 19

SCDC DESIGN CAPACITY - THROUGH PHASE IV

	Design Capacity Excluding Phase III/IV Projects Waiting Release of Authorized Funds[b]	Design Capacity Including Phase III/IV Projects Waiting Release of Authorized Funds[b]
Medium/Maximum	2,868	3,540
Minimum	2,663[a]	2,663[a]
Work Release	634	634
Pre-Release	273[a]	273[a]
Work & Pre-Release	143	143
Psychiatric Unit	-	96
TOTAL BEDSPACE IN SCDC FACILITIES	6,581	7,349
Total, including 869 bedspaces in designated facilities and other non-SCDC locations	7,450	8,218

[a]Watkins Pre-Release Center will be converted to minimum security, following the opening of the Midlands 144-bed Pre-Release Center. The bedspace in minimum security will change to 2,792 and in pre-release will change to 288.

[b]Projects Waiting Release of Authorized Funds include a 96-bed addition to the Women's Correctional Center, the 576-bed medium/maximum Lieber Correctional Institution, and a 96-bed Psychiatric Unit located at Kirkland Correctional Institution.

Source: Audit Council computations based on information from SCDC.

A comparison between SCDC design capacity (Table 19) and the most recent projection of the growth in prison population shows a

potential shortfall of approximately 6,631 bedspaces by FY 92-93. This shortfall is expected by SCDC to be compounded by the closure over the decade of antiquated, cost-ineffective facilities. Table 20 lists closures anticipated by SCDC and resulting bedspace loss.

TABLE 20

SCDC PLANNED FACILITY CLOSURES

Institution	Design Capacity
Central Correctional Institution	1,200
Midlands Reception and Evaluation Center	192
Maximum Security Center	77
Greenwood Correctional Center	48
TOTAL	1,517

Source: SCDC Division of Resource and Information Management.

Most of the bedspace loss identified in Table 20 is associated with the closure of the CCI complex. Of all SCDC facilities, CCI (Central Correctional Institution) in Columbia is the oldest, largest and most in need of replacement. CCI is a fortress-like facility, the oldest parts of which were constructed in the 1860's. The optimal size of prisons from a management and cost-efficiency point of view, and the size recommended in ACA standards, affords approximately 500 bedspaces. CCI has a design capacity of 1,200. Not only is CCI difficult to manage and costly to maintain, but also the complex was recommended for closure in the Doxiadas Study for the future urban development of Columbia.

The CCI complex is located on a downtown Columbia riverbank site, and is considered central to the redevelopment of the riverfront.

The prospects for either redeveloping this area through the demolition of CCI, or of renovating and converting the CCI facility for "adaptive reuse" are unclear. Stephen Carter, author of the 1976 Ten-Year Plan, stated that it would be difficult for either the private sector or the public sector to financially bear the cost of the CCI conversion at present. It is his opinion that this will be the case through the 1980's, due to high interest rates and an uncertain economy. Mr. Carter estimates that the cost of total demolition of CCI and new construction would be $62 million, and that the cost of renovation and "adaptive reuse" would be $30 million. The second option, renovation, is possible but the facility does not readily lend itself to another use, in Mr. Carter's opinion. From an architectural point of view, the "highest and best use" for CCI is that of a prison. Additionally, the site has been accepted by the community; it is very difficult to locate sites in urban areas for prisons. It is, therefore, Mr. Carter's opinion that CCI will remain as some type of State institution at least through the 1980's.

SCDC Capital Improvement Requests: 1980's

Given the expected near-doubling of the prison population over the 1980's and the possible closure of the CCI complex, SCDC foresees capital construction requests totalling nearly half a billion dollars prior to 1990. A summary of anticipated requests are presented in Table 21.

TABLE 21

SUMMARY OF EXPECTED REQUESTS[a] FOR INCREASING

SCDC BEDSPACE: FY 82-83 THROUGH FY 88-89

Fiscal Year	Facility Type	Bedspace	Inflated Construction Costs (Approximate)
1982-83	(3) Medium Security Prisons (528 ea.)	1,584	$ 73,800,000
	(1) Medium/Maximum Prison	576	26,800,000
	(1) Minimum Security Addition	96	1,200,000
	(1) Work-Release Center	144	2,600,000
	(1) Work-Release Addition	48	410,700
1984-85	(4) Medium Security Prisons (528 ea.)	2,112	117,200,000
	(1) Minimum Security Addition	96	1,400,000
	(1) Pre-Release Center	96	2,900,000
	(1) Work-Release Center Addition	48	487,900
1986-87	(3) Medium Security Prisons (528 ea.)	1,584	104,400,000
	(1) Work-Release Center	96	3,200,000
1988-89	(3) Medium Security Prisons (528 ea.)	1,584	123,900,000
	(1) Work-Release Addition	48	688,700
TOTAL		8,112	$458,987,300

[a]Based on the assumption that CCI complex will close during the decade.

Source: SCDC Division of Resource and Information Management. Cost figures are Audit Council computations.

Cost Implications of Building New Prisons

The cost implications of creating new prison bedspace are great. The prison architecture and planning firm of Moyer, Associates, Inc. has estimated that over a thirty-year period, construction costs and architectural fees represent only 6½% of the total correctional expenditure necessary (exclusive of bond interest) when creating additional bedspace. The total correctional expenditure over the ensuing three decades, for only one of the four prisons expected to be requested in FY 82-83, would amount to approximately $410 million. This calculation,

presented in Table 22, is based on the assumption that new bedspace will be created (rather than replaced), and that the cost of construction for the 528-bed facility will be $24.6 million in FY 82-83.

TABLE 22

ESTIMATED 30-YEAR LIFE CYCLE COST

OF A 528-BED PRISON CONSTRUCTED IN FY 82-83

Type of Expenditure	Percent of Total	Cost
Construction	6%	$ 24,600,000
Architectural Fees	½ of 1%	2,050,000
Furnishing & Equipment	1½%	6,150,000
Maintenance & Supply	3%	12,300,000
Food	5%	20,500,000
Utilities	6%	24,600,000
Civilian Salaries	24%	98,400,000
Guard Salaries	54%	221,400,000
	100%	$410,000,000

Source: Moyer and Associates, Inc. Cost figures are Audit Council computations.

The costs of incarceration include not only construction but also operation of new prisons in future years. The annual operating costs saved in not providing $24.6 million for the construction of new prison bedspace could amount to approximately $383.3 million over the next thirty years, according to estimates in Table 22. In addition, since prisons compete with other recipients of public funds, incarceration may be considered as an "exchangeable commodity." A decision to spend $24.6 million to create new prison bedspace prevents the use of these funds for other purposes. The cost to construct new prisons can be

measured in terms of the lost opportunities to provide funds for other state programs. The decision to expend funds for new prisons may preclude the construction of such facilities as university instructional buildings, long-term care facilities for the mentally ill, or community-based facilities for offenders. For example, at current construction costs, the Department of Mental Health could build a new 328-bed psychiatric hospital, including all support facilities, or replace 630 beds on the site of an existing facility for approximately $24.6 million. While new prison bedspace may be needed in the future, the total correctional expenditure necessary when creating additional bedspace should be considered in policy-making decisions, together with the alternative uses that might be made of the funds.

Without significant changes in criminal justice policies in South Carolina, the burden to support prison construction and operation on taxpayers in the State may be expected to increase dramatically. Approval of the $458 million in capital construction requests over the 1980's would provide an additional 8,112 bedspaces. The long-term (30-year) additional operating costs to the State to support the $458 million in prison bedspace would amount to over $7 billion[1]. (These long-term costs relate only to the operation of new facilities, and not to the future costs of the present SCDC system.)

[1]If CCI does not close during the decade, capital construction requests could be expected to be closer to $350 million rather than $450 million. Operating expenses over a 30-year period for $350 million in new construction would be approximately $6 billion.

Creating New SCDC Bedspace Could be Unnecessary

It has been pointed out that there may be a "self-fulfilling prophecy" involved in prison construction in that creating new bedspace may further, rather than alleviate, prison overcrowding problems (without safeguards such as capacity limits). Prisons are a scarce and expensive State resource. The use of prisons can and should be guided by coordinated policy considerations based on need, cost-effectiveness and conformity to national standards if the State budget is not to be depleted.

The impact of the Parole and Community Corrections Act is uncertain. Implementation of sentencing guidelines may serve to lessen the average sentence length of incoming inmates. Additionally, Chapter V of this report describes legislative options to reduce prison crowding. The increased use of punitive community alternatives to incarceration may further reduce the need for prison bedspace. Thus, the impact of various programs to reduce overcrowding, should be assessed, and decisions regarding the desired and necessary level of incarceration in the State should be reached prior to the approval of construction to increase SCDC bedspace.

CHAPTER V

LEGISLATIVE OPTIONS TO REDUCE PRISON OVERCROWDING

Introduction

The problem of prison overcrowding is one which legislatures are facing throughout the country. In the past few years, many alternatives to reduce overcrowding have been tried with varying levels of success. Some alternatives have significant impact by addressing the capacity of the system directly; others have a more limited impact through the design of programs for specific types of offenders.

The National Council on Crime and Delinquency (NCCD) identified alternatives by which legislatures could reduce prison crowding. These alternatives are organized by (1) changes affecting who goes to prison, (2) changes affecting the length of time people spend in prison, and (3) changes aimed at altering system capacity. In this chapter, legislative options for reducing prison overcrowding (most of which are drawn from the NCCD publication) are identified and explained. A report on the status of progress and/or feasibility of each alternative in South Carolina is provided.

Table 23 presents an outline of the options discussed in this chapter, with a reference to the page number of each option.

TABLE 23

LEGISLATIVE OPTIONS TO REDUCE

PRISON OVERCROWDING

Options That Affect Who Goes to Prison	Options That Affect Length of Stay in Prison	Options That Affect System Capacity
Provide alternatives to custodial sentencing (p. 92) 1. Special probation conditions (p. 92) 2. Restitution (p. 96) 3. Community service orders (p. 101) 4. Financial options (p. 103) 5. Intensive supervision (p. 106) 6. Direct sentence to community-based facilities (p. 108) 7. Placement of DUI offenders (p. 110) 8. Intermittent confinement (p. 113) 9. Adopt presumption for least drastic means (p. 115) 10. Create sentencing commission to set guidelines (p. 117) Restructure State/local responsibility for offenders (p. 119) 11. Provide incentives for communities to retain offenders (p. 119) 12. Redefine local responsibility for lesser offenders (p. 122) 13. Adopt comprehensive community corrections law (p. 131)	14. Revise Penal Code (p. 133) 15. Reduce sentence lengths (p. 136) 16. Adopt presumptive parole on first eligibility (p. 137) 17. Revise "good time" credits (p. 140)	18. Expand placement options for SCDC: Immediate screening for community placement (p. 142) 19. Establish standards and capacity limits for facilities (p. 144) 20. Adopt emergency overcrowding measures (p. 145)

OPTIONS THAT AFFECT WHO GOES TO PRISON

Provide Alternatives To Custodial Sentencing

1. Special Probation Conditions

Probation is one of the most widely used and least costly alternatives to incarceration. The codes of law in some states now give judges the statutory authority to utilize a variety of special probation conditions along with standard probation supervision. The authority to use special probation conditions enables judges to impose a more punitive sanction than standard probation supervision. The use of special conditions with probation also allows judges to create sentencing which fits the crime. For example, community service orders with probation can be imposed as a way of requiring retribution for a crime while avoiding incarceration. Some special conditions of probation frequently used include requirements to make financial restitution to victims, pay a fine or refrain from specified activities.

The South Carolina Code of Laws (Section 24-21-430) enables judges to impose conditions of probation which may include the following conditions, and any other conditions the judge may choose. The probationers shall:

1) Refrain from the violation of any State or Federal laws;
2) Avoid injurious or vicious habits;
3) Avoid persons or places of disreputable or harmful character;

4) Permit the probation officer to visit at his home or elsewhere;

5) Work at suitable employment as far as possible;

6) Pay a fine in one or several sums as directed by the court;

7) Support his dependents; and

8) Follow the probation officers' instructions and advice regarding recreational and social activities.

Section 17-25-125 of the South Carolina Code of Laws further enables the judge, who sentences a person to less than the maximum sentence prescribed by law for a crime involving the unlawful taking or receiving of, or malicious injury to another's property, to suspend a portion of the sentence and place the defendant on probation if he makes restitution to the victim. This provision does not preclude a judge from prescribing other conditions of probation.

In South Carolina, judges have used the authority given them to impose a variety of conditions of probation. The Audit Council conducted a survey of a representative random sample of 137 probation sentences to determine the special probation conditions imposed by judges. The sample of sentences was drawn from 19,053 probationers under supervision of the Department of Parole and Community Corrections, as of November 3, 1981. The survey revealed that 65% of probationers had special conditions of probation imposed by the judge. These special conditions included the requirements to pay restitution, to serve a split sentence and to receive treatment for alcohol and drug-related problems. Thirteen

percent (13%) of probationers surveyed were required to complete two or more of these probation conditions.

The Council found that approximately 20% of probationers were required to pay restitution for their crimes. The amount of restitution paid ranged from $99 to $3,749, and in most cases was paid to the victim of the offense or the victim's insurance company. Although officials at the Department of Parole and Community Corrections stated that some judges impose community service work as a condition of probation, the Council found that none of those surveyed were required to work in the community. This indicates that community service work as a condition of probation is seldom used.

The Council's survey revealed that another special probation condition frequently imposed is that of split sentences. A split sentence allows the judge to impose a short prison sentence followed by probation for the offender. The Council found that 34% of surveyed probationers were serving a split sentence, ranging from 60 days in jail and two years on probation, to six years in prison and five years on probation. The survey also revealed that some probationers were given the option to serve a prison term or pay a fine and then be placed on probation. All offenders surveyed who were given this option (18%), paid the prescribed fine and did not serve a jail or prison term. An additional 17.5% of probationers were required to pay a fine as a condition of probation. Thus, it is projected that over one-half (50.4%) of all probationers were required to pay either a fine or restitution.

Finally, the Council's survey revealed that many probationers are required to receive treatment for alcohol and drug-related problems as a condition of probation. Judges required 24% of the surveyed probationers to attend and complete an Alcohol Safety Action Program (ASAP) or other alcohol and drug treatment programs.

Special conditions of probation are monitored by probation agents of the Department of Parole and Community Corrections. The cost of supervising probation clients and monitoring compliance with probation conditions varies with the level of supervision required by the probation client. An Audit Council survey of 10 county probation offices revealed that during FY 80-81, the average cost of supervising a probation client under minimum supervision was approximately $105; under medium supervision approximately $255; under maximum supervision approximately $242; and, under intensive supervision approximately $670. The cost for supervising the maximum and medium levels are similar because the services provided for, and the amount of time spent with clients at these levels are comparable. The figures for the cost of probation supervision can be contrasted to the SCDC average per-inmate cost in FY 80-81 of $6,489 a year, (based on all funds spent).

Each probation and parole client is required by Section 24-21-80 of the South Carolina Code of Laws to pay a fee of $120 a year to offset the cost of his supervision. This helps to reduce the cost to the State. A probationer or parolee may be exempted from payment of all or part of the fee if it is determined by the court or the Parole and Community Corrections Board that payment would cause severe hardship for the client. In FY 80-81,

probation and parole clients paid $749,507 of the cost of their supervision.

2. Restitution

Restitution is a sanction which requires the offender to repay the victim in money or service for property stolen or damage caused by the commission of a crime. Restitution is most frequently used as a penalty for nonviolent property offenders and provides a less costly alternative to incarceration.

Statutory authorization has facilitated the establishment of many restitution programs around the country. For example, the 1968 Georgia Probation Act provided authority for the establishment of restitution programs in the state. The Georgia Department of Offender Rehabilitation now operates twelve community-based restitution and diversion centers around the state with programs which combine restitution to victims with 24 hour-a-day supervision for nonviolent property offenders. During FY 80-81, the restitution and diversion centers served 1,555 residents at an average cost of $2,114 per resident. In this year, residents paid $645,262 of the cost to operate the centers in room and board assessments, and $412,411 in fines and victim restitution.

Another well-known restitution project is the Win-onus program in Winona County, Minnesota, which is offered to nonviolent adult misdemeanants. If the offender is eligible and agrees to pay restitution, the Court Service Department monitors compliance with the restitution order. An estimated 10% of the county's misdemeanor and traffic offenders have been diverted from jail terms and probation

as a result of the program. The incidence of repeat offenders in the program is 2.7% compared with a recidivism rate of 27% in the county jail for offenders who committed similar crimes.

By South Carolina law, restitution may be required at one of several intervention points in the criminal justice process. These intervention points include (1) pretrial intervention, (2) incarceration and (3) probation and parole.

(1) In 1980 the General Assembly passed the Pretrial Intervention Act which authorized each circuit solicitor to establish a pretrial intervention program. The purpose of the program is to divert first offenders of nonviolent crimes from the courts in order to assist the offenders in achieving rehabilitation and to ease the financial burden on the State. Statewide implementation of the program began on July 1, 1981.

An offender who enters the intervention program waives his right to a speedy trial, agrees to all conditions of the program established by the solicitor and agrees to pay restitution to the victim, if any, in an amount determined by the solicitor. If the offender meets the agreed-upon conditions for participation in the program, the solicitor will recommend that the charge(s) be dropped. However, if the offender violates the conditions or chooses not to complete the program, the case is returned to the court for full prosecution.

Pretrial Intervention Programs were operated in five judicial circuits in the state for at least one year prior to statewide implementation of the program. Each program

required participants to pay restitution to the victims of their offenses. The Greenville County Pre-Trial Diversion Program, for example, had 261 active participants in the program during FY 80-81. Of those, 125 clients paid restitution to their victims in the amount of $46,396.

(2) Restitution may also be paid by an inmate while incarcerated in an SCDC facility. Section 24-3-20 of the South Carolina Code of Laws authorizes the Department of Corrections to establish a Restitution Program to allow persons convicted of nonviolent offenses who are sentenced to the Department to reimburse the victim for the value of property stolen or damage caused by the offense. The Department of Corrections Restitution Program accepted its first participants in January 1981. Eligibility criteria for placement in the program include the following: (1) The crimes committed by the inmate must be classified as nonviolent; (2) The inmate must be either a first or second offender; (3) The sentence cannot exceed seven years; and (4) Participation will be limited to those inmates who desire and agree to pay restitution. The inmate benefits from participation by receiving earned work credits, thereby reducing his time to serve.

Under the Restitution Program, the eligible offender is placed directly into a work-release center from the R&E Center without being transferred to a minimum security institution. After the offender has been placed in a work-release center, a letter is sent to the victim asking if he wishes to

participate in the program. If the victim agrees to participate, the Community Services Branch of the Department of Corrections will develop a restitution plan for the offender to use in making reparations to the victim, based on a determination of the victim's loss. If the victim does not wish to participate, the offender may be carried on as a regular work-release participant.

Inmates convicted of nonviolent, victimless crimes where loss of or damage to property has not occurred may also be considered for the Restitution Program. Instead of paying restitution to victims, these inmates contribute to a fund used for the administration of the Restitution Program. The amount contributed to the fund is determined by the Community Services Branch and may range from $50 for liquor law violations to $25,000 for second or third drug law violations.

The Restitution Program is designed to allow selected inmates to gain employment, while incarcerated, so that they may support dependents and pay for their maintenance in addition to paying victim restitution. The Department of Corrections is authorized to withhold from the inmate's wages such costs for his confinement as the Department determines are reasonable and appropriate. Currently, inmates in the Restitution Program pay a maintenance fee of $42 a week. This reduces the cost to the State for the inmate's incarceration. All inmates participating in the Restitution Program receive Earned Work Credit on the basis of one day for two days worked, once employed. This will reduce significantly

the inmate's time to serve and, therefore, reduce the cost to the State.

Since the program began in January 1981, 38 inmates have participated in the SCDC Restitution Program. These inmates paid $935 in restitution to the victims of their crimes from January 1 through September 30, 1981. Furthermore, the participants paid $3,699 during the same period to SCDC for administration of the program and maintenance, thereby reducing the cost to the State.

(3) Other offenders may be required to pay restitution with a probation sentence or while on parole. The court is authorized by Section 24-21-430 of the South Carolina Code of Laws to impose probation conditions specified by the statute and any other conditions. The Parole and Community Corrections Board is authorized by Section 24-21-650 of the Code of Laws to determine the terms and conditions of parole to provide for an inmate's release from custody. The courts and the Board have required that restitution be paid as a condition of probation and parole.

An Audit Council survey of 137 probation sentences indicated that approximately 20% of probation clients are required to pay restitution. During FY 80-81, the Department of Parole and Community Corrections collected $620,016 in restitution payments from probation and parole clients.

Finally, the Parole and Community Corrections Act of 1981 added Section 24-23-110 to the Code of Laws to allow judges

of the Court of General Sessions to suspend the imposition or execution of a sentence and to impose a fine and restitution without requiring probation. The Parole and Community Corrections Board is required to implement the necessary policies and procedures to ensure the payment of such fines and restitution. The Board is currently in the process of developing policies and procedures for a statewide system for the collection of restitution and fines when required without probation.

3. Community Service Orders

The use of community service orders as a criminal sanction originated in Britain and is being used as a sentencing option in some states in an effort to reduce prison populations. State Legislatures can revise sentencing codes to allow sentences requiring unpaid service for private, non-profit or public agencies for specified periods of time.

The use of community service orders allows judges to order sentences which fit the crimes committed, benefit the community, and do not incur jail or prison operating costs. For example, in Maryland, a drunk driver accused of manslaughter was ordered to attend Alcoholics Anonymous meetings and work in a hospital emergency room once a week for three years to experience, and aid in repairing, the damage caused by other drunk drivers. A gang in Massachusetts was ordered to replace ten times the number of windows broken on a vandalism spree in order to pay back the community for damage caused by its offense.

A number of jurisdictions have developed programs using community service orders as a sanction to reduce prison populations. An Indiana community corrections organization, PACT, Inc. (Prisoner and Community Together), has developed a Community Service Restitution Program (CSR) which is designed as an alternative to a jail or prison term for the most serious misdemeanor and least serious felony offenders. Under the program, offenders are first sentenced to jail and then given the choice of entering the program as an alternative to jail. For every day that would have been spent in jail, offenders are required to perform six hours of free community service work for a non-profit, governmental, or private agency or organization. This work might include maintenance, cleaning, moving, mailings, lawn work, flyer distribution and general office work. During FY 79-80, the cost per participant in the Indiana Community Service Restitution Program was approximately $185. Over the life of one county CSR program, 3% of all participants were either re-arrested or convicted while in the program. Statewide recidivism statistics showed that between 11% and 15% of participants were re-convicted of a new offense following completion of their community service restitution sentence.

South Carolina statutes authorize family courts to impose participation in supervised work or community service as a condition of probation for juveniles. However, specific authorization for the courts to impose community service work as a sole sanction or as a condition of probation or parole for adults is limited. Any municipal judge may suspend a sentence imposed by him on the terms and conditions he deems proper, including paying restitution or engaging

in public service employment. This is limited, however, to work on public property, such as cleaning and picking up trash, and does not apply to work for community non-profit agencies. The courts are authorized by Section 24-21-430 of the South Carolina Code of Law to prescribe conditions of probation, including any of those set forth by the statute and any other conditions. Officials at the Department of Parole and Community Corrections stated that some judges have required offenders to perform community service work as a condition of probation. However, an Audit Council survey of a sample of probation sentences revealed that none of the probationers were required to perform community service work. This indicates that community service work as a condition of probation is rarely used.

4. Financial Options

Monetary fines for criminal offenses are used extensively in Europe, Scandinavia, and Australia. In fact, in Australia, New Zealand, Denmark, England, Wales, the Netherlands and Sweden, the fine is the most commonly imposed criminal sanction; (this is the case even when traffic offenses are not included). Incarceration is seen as expensive, and ineffective in rehabilitating prisoners. The assessment of fines allows retention of employment and continuation of support for dependents, and prevents the disruption of an offender's family and social life. The harmful effects of institutionalization, such as association with career criminals, and psychological and physical brutalization are avoided. There is considerable economic benefit to the use of fines. The cost of incarcerating an

inmate for a year in South Carolina in FY 80-81 was $6,489, (based on all funds spent). The cost of intensive probation is now approximately $670 a year. Intensive probation could provide surveillance for the more serious, nonincarcerated offender, and serve as an adequate collection method for fines and/or restitution.

A study conducted in Germany compared the re-conviction rates of fined offenders to those of comparable incarcerated offenders. The past records of the offenders studied were also comparable. Only 16% of those offenders who were fined were later re-convicted, whereas 50% of those incarcerated were later re-convicted. One explanation for the difference in these re-conviction rates is the crime-producing nature of incarceration. Prisons may "cause" crime by exposing offenders to habitual criminals who teach methods of committing crime. Furthermore, ties with family and community are broken, and the offender is stigmatized as a convict. The establishment of ties and the development of identification with other criminals help to further a criminal identity or self-concept.

The use of fines in Germany is limited to crimes punishable by less than one year in prison; 1,607, or approximately 29% of South Carolina offenders admitted in FY 80-81 will be incarcerated for less than one year. Youthful offenders (YOA's) serve an average of 12 months. If this group of YOA's is included, nearly half the FY 80-81 admissions will serve an average of less than one year. There appears to be a significant number of short-term, property offenders imprisoned in S.C. for whom fines may be a reasonable alternative. In general, offenders in Germany with

long criminal records were the most likely to be re-convicted regardless of whether they were fined or incarcerated.

A frequently cited problem with the use of fines is that of inequity, due to the varying abilities of offenders to pay. This problem has been addressed in many countries by individualizing fines on the basis of the offender's rate of pay per day. Fines are assessed in terms of days of work; the offender pays the prescribed number of "day fines" at his or her own rate of pay.

Another important problem is that of administration and enforcement of fines. The usual alternative to the payment of fines is imprisonment. In Germany, only 4% of those fined actually serve substitute imprisonment. England uses direct payroll deduction and seizure of property before incarcerating offenders for default on payment of fines. In the Netherlands, where 90% of all sanctions are in the form of fines, between 90 and 95% of all fines are collected within seven months of sentencing. Canada has developed a Fine Option Program for those who are unwilling or unable to pay their fines. Offenders may pay their debt to society in the form of community service work.

The pre-incarceration employment stability and salary of those offenders predicted to have a low risk to the community was determined from an Audit Council survey of a representative sample of FY 80-81 SCDC admissions. Seventeen percent (17%) of the total sample were assessed by a recidivism scale to have high probability of success on parole, and to constitute a low risk to the community. Most of this low-risk group (76%) showed employment stability, i.e., were employed at arrest and had spent six months or more in

a job. In addition, most (83%) reported incomes of over $100 a week, and over one-fourth of this group reported incomes of over $200 a week. Seventy percent of this low-risk group received sentences of three years or less.

Applying these results to all FY 80-81 admissions to SCDC, approximately 937 of the 5,511 admissions are projected to constitute a low risk to the community, in that their probability of success on parole is high. Between 70-80% of this group are predicted to have had stable employment histories, salaries of over $100/week, and sentences of three years or less, making them potential candidates for a fine or restitution program.

Fines or restitution programs represent an option which is punitive to the offender, and beneficial to the State, both in terms of fine collection and savings of per-inmate operating costs. Increased use of these programs should be considered.

5. Intensive Supervision

Many judges have stated that they do not place more individuals on probation because of the agents' large caseloads which allow little time for close supervision of any client. A number of jurisdictions have implemented intensive supervision programs for "borderline" cases who require more supervision than is traditionally provided with probation. With intensive supervision programs, judges will more likely sentence appropriate offenders to probation than to prison, thereby alleviating prison overcrowding. The intensive supervision program of the Lucas County, Ohio, Adult Probation Department, for example, has been credited with reducing the

county's commitments to State prison by 20%. This has resulted in a $410,000 savings in incarceration costs. The State of Washington uses intensive supervision for marginal offenders and probation and parole violators who pose little risk to the community. The average annual cost for one offender on intensive supervision is $1,652. Institutionalization for these offenders would be nearly 15 times as costly as supervision in Washington.

The South Carolina Department of Parole and Community Corrections has four levels of supervision into which a client may be placed: minimum, medium, maximum and intensive supervision. All new probation and parole cases are placed in the maximum level of supervision, unless specifically stated otherwise by the court or the Parole and Community Corrections Board. Any recommendation by an agent for a change in the clients' level of supervision must be reviewed and approved by the Agent in Charge. A change may be made from maximum to intensive supervision when an agent feels the client requires more supervision than the maximum level indicates. As of July 1, 1981, 9% of probation and parole clients in the State were assigned to intensive supervision at an annual cost of approximately $670 per client.

As a result of the passage of the Parole and Community Corrections Act in 1981, the Department of Parole and Community Corrections has begun to implement a new intensive supervision program for probationers and parolees who require more than average supervision. Under the new program some agents will carry a caseload of approximately 25 clients each, restricted to intensive supervision cases only. Inmates from SCDC institutions

who are released on supervised furlough will also be supervised under the new program. Intensive supervision will provide for more face-to-face contacts between the agent and client in conjunction with a variety of rehabilitative services for the client.

The annual cost to supervise one client under the new intensive supervision program in South Carolina has not been determined. New York has a similar intensive supervision program for probationers under which the probation agent carries an active caseload of 25 clients, restricted to intensive supervision cases only. The annual cost per client in New York depends on the number of clients supervised under the program at any given time and the rate of client transfer into and out of intensive supervision. The cost per client in FY 80-81 under the New York Intensive Supervision Program was $750-$1050. This cost includes only personnel, fringe benefits and travel and does not include rehabilitative or treatment services.

6. Direct Sentence to Community-Based Facilities

Community-based facilities refer to a wide range of residential community programs usually designed with a purpose other than punishment and incapacitation. Examples are halfway houses and work-release centers for recently-released inmates, therapeutic communities and halfway houses for drug or alcohol abusers, and restitution centers. The most common use of community-based facilities nationally and in South Carolina is that of transition between prison and release. Some states, such as Colorado and

Georgia, do provide for direct sentence and commitment to community-based facilities as an alternative to incarceration. Development of community-based facilities for direct commitment has the potential to alleviate prison overcrowding.

In South Carolina, SCDC administered eight work release programs, one pre-release center, and one combination facility, as of September 1981. The aggregate rated capacity of these programs was 804 on September 15, 1981 and the population was 962. Thus, these programs operated at 120% of design capacity. Approximately 13% of the inmate population in SCDC facilities were housed in work release or pre-release programs. A major problem cited by SCDC regarding the work release program is the difficulty in finding work for inmates, due to worsening economic trends. As of February 1982, 25.8% (191) of the 739 inmates in work release centers were unemployed.

In work release centers inmates live under supervision and work in the community, after serving some part of their sentence in prison. Typically, inmates are reviewed for this program when they have 90 days remaining prior to eligibility for work release. The maximum length of time which may be spent in work release is one year. The only inmates who enter work release directly after SCDC reception and evaluation are those in the restitution program and, if there is space, those with sentences of less than six months. The pre-release centers provide most offenders with a 30-day program, designed to reintegrate the offender by assisting offenders to find jobs, housing, and to understand the requirements of parole.

The Alston Wilkes Society operates the only other community based facilities specifically for adult male offenders in South Carolina, without a health problem such as drug abuse. There are two Alston Wilkes halfway houses - one in Columbia, and one in Greenville, each housing 18 offenders. Approximately 90% of the clients are on parole or pre-release status from SCDC. The remaining 10% may be on probation or on pre-trial release. The average length of stay is 45 to 90 days, during which offenders are assisted in establishing appropriate employment, job skills and attitudes, and a place to live upon release. Residents must be gainfully employed, and pay up to $42 a week for room and board. The cost of the program is currently $18 a day, or $6,570 a year. (This can be contrasted to SCDC average per-inmate costs in FY 80-81 of $17.78 a day, or $6,489 a year, based on all funds spent).

According to an Alston Wilkes official, the new Parole and Community Corrections Act could result in up to nine additional halfway house programs for adult offenders, helping to alleviate prison overcrowding. Very few offenders in South Carolina currently reside in community-based facilities as a result of direct commitment.

7. Placement of DUI Offenders

One major public policy problem in addressing prison overcrowding is that of the multiple DUI offender and the difficulties in addressing the offender's needs as well as the public safety. Incarcerating the DUI offender eliminates, for the short term, the threat to public safety, but does not address the long-term problem that many multiple offenders are ill and do not belong in prison.

DUI offenders pose a dilemma in South Carolina. Merely suspending the license of a problem drinker does not prevent that person from driving. Although incarceration prevents driving under suspension and eliminates the threat to public safety, it does not address the offender's drinking problem. More importantly, incarcerating multiple offender DUI's contributes to the already overcrowded conditions in South Carolina prisons. According to data provided by the South Carolina Commission on Alcohol and Drug Abuse (SCCADA), there was a daily average of 271 DUI (alcohol) offenders housed in the State correctional system during FY 80-81. At a per-inmate cost of $6,489 per year, this amounted to an expenditure of $1.7 million to incarcerate DUI's. These figures do not include DUI's whose actions have resulted in death or personal injury to others. These offenders are admitted to SCDC under other convictions such as assault and battery or manslaughter.

SCCADA provides services to first-time and multiple-offender DUI's through its Alcohol Safety Action Project (ASAP). The Alcohol and Drug Traffic Safety School (ADTSS) is part of ASAP, which is designed to reduce the number of intoxicated drivers in South Carolina. The program's objective is to provide a constructive alternative to incarceration, and to impose fines for persons charged with first or multiple offense DUI's. ASAP includes: (1) identification, through the arrest; (2) intervention, through a screening and diagnostic process; (3) treatment, which at a minimum means attending ADTSS and may also include group or individual counseling; and (4) when necessary, referral to appropriate treatment,

educational, or social service agencies. For first offense DUI's, a provisional driver's license may be earned upon successful completion of ADTSS.

According to SCCADA figures during FY 80-81, there were 9,433 first offender DUI and 5,496 multiple-offender DUI convictions out of a total of 18,446 cases adjudicated in South Carolina. Of these, 56% (5,300) of the first offenders entered ASAP to receive a provisional license. Approximately 36% (2,000) of the multiple-offenders participated in ASAP as a condition of probation. During FY 80-81, there were 317 SCDC inmates with DUI (alcohol) as their most serious offense. According to information provided by SCCADA, during the same period, only 84 incarcerated DUI's participated in ASAP. Fifteen of these were first offenders and sixty-nine were multiple-offenders.

A SCCADA study, testing the effectiveness of the ASAP, revealed that multiple-offenders who successfully completed ASAP had approximately 50% fewer subsequent DUI arrests, after two years, than those who did not enter the program. The study also showed that although first-offenders who participated in ASAP had 22% fewer rearrests in the first year than first offenders who did not enter the program, after the second year they had 10% more arrests. In order to explain the poorer performance after two years of first offenders compared to multiple offenders, SCCADA examined the services and diagnoses received by both groups. It was found that multiple offenders received services based on the severity of their problem. Virtually all were diagnosed as problem drinkers. Further, it was found that first offenders received only

ADTSS, all that is allowed under the provisional license law. Of these first offenders, about half were problem drinkers.

SCCADA concluded that all offenders, first or multiple, should receive services according to the severity of their problem. By doing so, SCCADA expects a 25% reduction in re-arrests for first offenders after two years.

The South Carolina Legislature has taken a positive step towards addressing the DUI problem by giving final approval to a bill requiring all motorists convicted of driving under the influence of alcohol or drugs to attend rehabilitation classes. This required participation in ASAP for all DUI offenders, and its increased use as an alternative to incarceration for multiple-offender DUI's may have an impact on the number of habitual offenders, help to alleviate prison overcrowding, and lessen the financial burden on the State.

8. Intermittent Confinement

This option involves use of local facilities and lock-ups for offender confinement on weekends, evenings or vacations. Thirty states currently authorize this alternative by statute. Although intermittent confinement is not specifically authorized by statute in South Carolina, Code §24-13-40 gives judges the power to designate when a sentence will be served. Offenders who serve intermittent confinement in local facilities usually do so under probation supervision. The advantages to intermittent confinement include the opportunity to maximize use of bedspaces on the local level and to reduce State prison overcrowding, as well as the lessened disruption of the offender's employment, support of family, and ties with

family and friends. The punitive and deterrent benefit of incarceration is retained, as well.

In South Carolina, there were 66 local jails with facilities for over ten persons, and 75 with facilities for ten persons or less according to 1980/1981 jail inspection reports. The total rated capacity of local facilities was 3,642 while the average daily population was approximately 2,795. In most local facilities, there is a jump in population during the weekends caused by increased traffic offenses, drunkenness and other types of weekend crime.

The Audit Council conducted a sample survey of 21 local facilities with bedspace for over ten persons, to determine the available bedspace during the week and on weekends. Thirteen of the sampled facilities were SCDC "designated facilities;" i.e., facilities which hold inmates under SCDC jurisdiction, as well as functioning as local lock-ups and detention facilities. The remaining eight sampled facilities, "nondesignated facilities," hold only local prisoners. Fifteen of the 21 surveyed facilities had bedspace available on weekends, and 17 of the 21 had bedspace available during the weekdays, based on the rated capacities of each facility compared to average weekend and weekday populations. There was not a significant difference between designated and nondesignated facilities in terms of available bedspace. Based on reported available bedspace in the 21 surveyed facilities, it is projected that approximately 180 of the 3,642 local bedspaces are available on weekends, and approximately 760 bedspaces are available on weekdays. Therefore, increased use of intermittent confinement during the weekday evenings may be a feasible alternative to straight incarceration.

Should the State implement policies which would increase the use of local facilities, it should be recognized that there is considerable variation among these facilities. Some local facilities are very overcrowded presently. The 19-24 percent of institutions operating above rated capacity in the Council's survey were housing an average of 12 inmates over capacity on weekdays, and 20 over capacity on weekends. Despite the implementation of mandatory standards, the quality of these facilities still varies, and would need to be evaluated in terms of increased use - regardless of available bedspace. It should also be noted that an increased use of intermittent confinement would place an additional administrative burden on security personnel, and an additional financial responsibility on localities.

9. Adopt Presumption for Least Drastic Means

In 1979, the American Bar Association (ABA) adopted new policies to reiterate its support for alternatives to incarceration. The new ABA policy outlined seven sentencing alternatives ranging from the least restrictive alternative of probation, to intermediate sanctions such as intermittent confinement and required community service work, to the most restrictive alternative of total confinement. The ABA recommends that, in every case, sentencing judges be required to consider a range of penalties and be charged with imposing the least restrictive sentencing alternative which would satisfy legitimate sentencing purposes. This "least restrictive alternative" approach is based on the belief that the individual's freedom should be restrained only to the minimum degree necessary to achieve the essential needs of society.

This approach could be integrated into the sentencing guidelines presently being drawn up by the Sentencing Guideline Commission in South Carolina. The proposed sentence ranges are to include both duration of commitment to prison and offender eligibility for some alternative to incarceration. By recommending that judges impose the least severe penalty that is consistent with the gravity of the crime and with the protection of the public, the use of various alternatives to incarceration may be increased.

In addition, the adoption of presumption for the least drastic means is a mechanism which may prevent "net-widening" of criminal justice sanctions. "Net-widening" refers to the broadening of social control through the misuse of diversion programs designed to alleviate prison overcrowding. Such diversion programs have been criticized for involving offenders who would otherwise have received probation, or another noninstitutional sanction, rather than diverting institution-bound inmates. Without preventive mechanisms, offenders who would ordinarily not have gone to prison may be committed to a halfway house, restitution center or other alternative program. Another mechanism for preventing "net-widening," aside from adopting a presumption for the least drastic means, is to screen only those offenders for diversion programs who have been sentenced to prison. In this manner, only institution-bound inmates would be eligible for alternatives specifically designed to alleviate overcrowding.

10. Create Sentencing Commission to Set Guidelines

Sentencing guidelines are one method used to structure judicial decision-making and to reduce sentencing disparity. Sentencing guidelines provide a recommended sentence or sentence range, based on characteristics of the offender (such as prior record) and of the commitment offense, (i.e., severity, mitigating or aggravating circumstances, etc.). Sentencing is considered as a two part decision-making process - the "in-out" imprisonment decision and the length of sentence. In most states which implement guidelines, judges are allowed to go outside the recommended sentence range with a written explanation. The legislatures in Minnesota and Pennsylvania have established commissions to develop sentencing standards and policies for incorporation into guidelines. The Minnesota Commission established guidelines designed not only to reduce disparity but also to prevent the prison population from exceeding existing resources.

In January 1982, Governor Riley issued an Executive Order establishing a Sentencing Guidelines Commission, under the leadership of a State Supreme Court Justice. The initial work of the Commission will emphasize criminal code and penalty revision, and criminal severity classification - key elements in the development of guidelines. Once established, the guidelines will provide sentencing ranges for various categories of crimes and types of offenders, based on offense severity and offender characteristics.

Sentencing under these guidelines will be voluntary. Should the judge go outside the suggested sentence range, that sentence will be justified in the record by the judge. The guidelines also

provide for appellate review of any sentences outside the ranges. At this point, there is no mechanism built into the guidelines which would take into consideration prison capacity, and thereby directly affect the overcrowding problem. The Commission, however, has acknowledged that prison capacity must be taken into account in formulation of the guidelines.

The Commission's goal is to introduce enabling legislation to form a permanent Sentencing Commission which will present guidelines and reclassification recommendations to the General Assembly by July 1, 1983.

11. The Provision of Incentives for Communities to Retain Offenders

This option for reducing prison overcrowding involves providing financial remuneration to localities for the retention of convicted offenders who are bound for State prisons. The model for this option is the California probation subsidy program, formulated in the 1960's, which provided money to counties for reducing their commitments to State prison from a base level of commitments. The State of Virginia recently implemented a similar program, in which participating localities receive remuneration for each offender committed to the State prison who is retained locally.

Each year, beginning in FY 75-76, localities in South Carolina have retained an average of 683 inmates under State jurisdiction for use in public work projects. The savings to the State, in operating costs have been considerable - approximately $3.4 million in FY 79-80 and $3.9 million in FY 80-81. The retention by localities of convicted inmates is voluntary, based on the needs of each community.

An incentive could be provided to localities to retain State prison-bound inmates, above the base level of SCDC prisoners retained by each locality. A suggested base level for each county has been established by the Audit Council, averaging the number of offenders retained by each jurisdiction over the last two years, as presented in Table 24.

TABLE 24

BASE LEVEL OF AVERAGE DAILY POPULATION IN DESIGNATED FACILITIES

FY 79-80 AND FY 80-81

Designated Facility	Suggested Base Level FY 79-80/FY 80-81	Average Daily Population Monthly Average FY 79-80	FY 80-81
Abbeville	14	14.0	14.2
Aiken	5	5.5	4.5
Anderson	97	92.7	101.8
Bamberg	10	11.2	9.8
Barnwell	16	14.6	18.2
Beaufort	7	7.6	7.3
Berkeley	6	7.9	5.2
Charleston	4	4.8	2.3
Cherokee	2	1.9	1.6
Chester	12	10.4	14.8
Chesterfield	7	6.6	8.6
Clarendon	4	3.7	4.6
Clinton City	2	2.6	2.0
Colleton	8	8.8	8.2
Darlington	28	27.3	29.6
Dillon	31	34.1	28.5
Dorchester	11	10.6	10.5
Easley City	1	1.0	1.1
Fairfield	8	8.5	8.5
Georgetown	20	21.7	18.0
Greenville	22	22.8	22.3
Greenwood	3	3.3	3.7

TABLE 24 (CONTINUED)

Designated Facility	Suggested Base Level FY 79-80/FY 80-81	Average Daily Population Monthly Average FY 79-80	FY 80-81
Hampton	9	9.2	8.6
Hartsville City	1	-	1.0
Horry	45	49.4	40.5
Jasper	3	3.2	2.6
Lancaster	7	10.9	4.2
Laurens	2	2.4	2.0
Laurens City	1	1.0	0.9
Lee	2	1.9	2.8
Lexington	5	5.2	5.9
Marion	27	27.8	26.8
Marlboro	10	10.0	10.0
Newberry	14	16.4	11.8
N. Myrtle Beach	1	1.0	1.0
Oconee	35	32.6	37.2
Orangeburg	17	21.3	12.5
Pickens	74	71.8	77.1
Richland	26	27.1	25.2
Spartanburg	5	4.3	5.7
Sumter	3	3.6	2.6
Union	8	9.8	6.1
Williamsburg	5	4.5	4.8
York	29	34.8	22.5
Youth Services	9	7.3	11.8

Source: SCDC Division of Resource and Information Management, September 1981.

This report has documented the considerable number of short-term and low-risk offenders incarcerated in State facilities. For example, approximately 29% (1,607) of the inmates admitted to SCDC during FY 80-81 were sentenced to a year or less. With good time and earned work credits, and parole eligibility consideration after service of one-third of the sentence, the majority of these offenders will serve less than six months in SCDC facilities. An additional 17.6% (973) were sentenced as Youthful Offenders, who serve an average of one year. Most of these offenders receive the same services as the longer-term inmate - vocational and psychological evaluation, assignment to treatment programs and work details, transportation to State facilities, and so on. The provision of a financial incentive to localities for retention, intermittent confinement, or diversion of appropriate short-term offenders above a base level may help to alleviate State prison overcrowding and retain correctional resources for necessary cases.

12. Redefinition of Local Responsibility for Lesser Offenders

This option to reduce prison crowding proposes that local responsibility for lesser offenders be redefined (i.e., broadened) through a change in jurisdictional authority. It is recommended that localities then be charged a disincentive, or a per diem, for lesser offenders sent to State prison. There is considerable variation across states, in terms of local vs. State jurisdicton of sentenced offenders, ranging in most states from 90 days to one year. Many states distinguish between offenders maintained locally and those sent to State facilities on the basis of offense classification

as a misdemeanor or a felony. The rationale for this distinction is that lesser offenders who are serving short sentences can be most efficiently incarcerated locally, while serious offenders with long sentences should be afforded facilities designed for longer periods of incarceration.

1974 Jurisdictional Change

South Carolina Code of Laws §24-3-30 assigns localities the responsibility for incarceration of all offenders sentenced to three months or less and the State responsibility for incarceration of offenders sentenced to more than three months. This represents one of the shortest local jurisdictions in the country and is considered an exception. The most common term of local jurisdiction is a year and is generally applicable to offenders convicted of misdemeanors.

The State assumed jurisdiction of all convicted offenders sentenced to more than three months in 1974. Prior to 1974, there existed a dual, State/county, prison system (see Background, p. 2), which allowed county supervisors to retain sentenced felons for local work, or to transfer them to the State. The change in jurisdiction resulted from a 1973 study conducted by the Office of Criminal Justice Programs in the Governor's Office, which reported many deficiencies in the standard of custody in local facilities. Conditions in many local jails and road camps were deemed unacceptable for any but the shortest term offender, and as a result, South Carolina established one of the shortest local jurisdictions of convicted offenders in the country.

The situation at the local level has changed since release of the OCJP-Governor's Office 1973 report. Sixty-one of the 134 local detention facilities, lock-ups and jails now in operation have been built in the last ten years. Forty-five of the 61 new facilities were built in the eight years since release of the OCJP report, and an additional 42 facilities have been remodeled. Moreover, §24-9-10 through §24-9-35 of the SC Code of Laws requires compliance with a comprehensive set of 102 standards, some of which were based on model standards recommended by the American Correctional Association. Standards first went into effect in 1968; enforcement powers were added to the enabling act in 1970. The requirements were completely rewritten in 1979, to conform more closely to ACA standards.

There have been three phases of standards implemented over the last three years (1979-1981). Compliance with all three phases of jail standards is mandatory, and failure to comply can result in closure. Inspections are conducted once a year by the Department of Corrections. The most recent set of inspections (1981) showed 58% of all jails out of compliance with critical life and safety standards. They also showed improvement in 84 facilities since the 1980 inspection. In evaluating the results of this inspection, an SCDC Jail Inspection official noted that the standards are relatively new and that Phase III standards involve greater expenditures than did the earlier phases. All facilities are required to comply with the standards; full compliance by most facilities is anticipated by SCDC by July 1, 1982.

State Incarceration of Short-term Offenders

Processing, vocational and psychological assessment, medical examination, transportation and all other incarceration services designed for long-term incarceration are provided to inmates serving short terms of incarceration. In FY 80-81, 5,511 offenders were admitted to SCDC. Approximately twenty-nine percent (29%), or 1,607 offenders, were sentenced to one year or less. Looking at the 4,480 releases in this same fiscal year, FY 80-81, 47% of all releases, or 2,122 offenders were sentenced to and served one year or less (including YOA's), and 53% of all releases, or 2,359 offenders, served less than a year - regardless of sentence. Table 25 reports the amount of time served by the 1,156 offenders released in FY 80-81 who were sentenced to one year or less (excluding YOA's).

TABLE 25

SENTENCE AND TIME SERVED BY OFFENDERS RELEASED BY SCDC IN FY 80-81 WITH SENTENCES OF ONE YEAR OR LESS

Sentence	Average Time Served	Number of Inmates
30 - 89 days	39 days	177
3 months	50 days	59
91 - 179 days	82 days	181
6 months	105 days	263
181 - 269 days	163 days	42
9 months	157 days	108
271 - 364 days	161 days	74
1 year	201 days	252

Source: SCDC Division of Resource and Information Management, October 1981.

Thus, over half (680) of the inmates released in FY 80-81 with sentences of a year or less served less than six months in prison, and 20% (236) served three months or less.

Table 25 also shows that 236 offenders released by SCDC in FY 80-81, were sentenced to three months or less, despite State Law Section 24-3-30 requiring localities to hold such offenders. The exception to this law is found where counties do not have facilities suitable for confinement. When the State and local jurisdictions of prisoners changed in 1974, eight counties leased or deeded county prisons to SCDC under contractual arrangements. These arrangements allowed the counties to transfer offenders to

SCDC with sentences of between 30-90 days, in exchange for the State use of local facilities. State use of these local facilities was necessary due to increased demand on State bedspace, as a result of the jurisdictional change.

In all eight counties, new detention facilities have been built and/or the original county facilities have reverted back to county jurisdiction, since 1974. Despite the fact that Greenville County built a 213-bed local detention center in 1976, SCDC still handles Greenville's 30-90 day offenders at the Perry Correctional Institution. An average of 23 offenders a month with sentences of less than 90 days (based on intake between August and November 1981) were processed and incarcerated at Perry under this contractual arrangement. According to an SCDC official at the Perry facility, the same local offenders are often reprocessed over and over again, and are primarily nuisance-type offenders such as public drunks. At the same time that the State is processing and incarcerating Greenville's 30-90 day offenders, the local facility in Greenville housed 24 SCDC inmates, as of December 1981, due to its role as an SCDC "designated facility." The fact that Greenville detention center does have room to house SCDC inmates brings into question local use of the Perry facility, since the only exception to Section 24-3-30 is where counties do not have facilities suitable for confinement of offenders with sentences of three months or less. This arrangement is certainly beneficial to Greenville, in that their nuisance cases are handled by Perry, and in exchange, they have the use of a group of trusty-level SCDC inmates with longer sentences to work in maintenance and upkeep, (i.e., a

stable and low-risk work force). This contractual arrangement, negotiated in 1974, should be reviewed in light of changed circumstances.

Considerations for a Change in Jurisdiction

A change in SCDC jurisdiction by increasing local responsibility for short-term offenders, coupled with a disincentive for the use of State facilities for lesser offenders, is likely not to be beneficial to the State until local bedspace availability increases. The expanded use of intermittent confinement is supported by the current bedspace availability figures cited earlier.

Due to the variation among local facilities and the types of SCDC inmates held locally, more detailed feasibility studies are recommended. An SCDC feasibility study conducted in 1976 found that of the 686 SCDC inmates held locally, 611 were serving sentences of more than one year. If counties were required to house all inmates with a sentence of less than a year, a "quid pro quo" situation was expected. Counties would have returned to SCDC the 611 inmates serving more than a year, and received the 472 inmates with sentences of one year or less.

Despite the fact that 1,607 inmates were admitted to SCDC in FY 80-81 with sentences of one year or less, the impact on prison bedspace was not great. On June 30, 1981, of 8,345 inmates under SCDC jurisdiction, 523 or 6% were sentenced to a year or less. It is still the case that the majority of SCDC inmates held in designated facilities are serving longer-term sentences; as of November 30, 1981, 95% of the 606 SCDC inmates in designated

facilities were serving sentences of a year or longer. Excess local bedspace was revealed by an Audit Council study to be very limited. A change in local jurisdiction to one year or less in 1981 would have likely resulted in localities returning approximately 552 inmates to SCDC, and receiving approximately 469 inmates from SCDC. Thus, such a change could still be expected to result in a "quid pro quo" situation.

There are, however, complex considerations involved in a change in jurisdictional responsibility that go beyond bedspace availability. One advantage to extending local jurisdictional responsibility is appropriateness and uniformity of service. As pointed out, most states have jurisdiction of felons sentenced to one year or more. The severity of offense would become more consistent with jurisdictional responsibility, with localities responsible for lesser offenders. Offenders with short-term sentences placed locally would be, in most cases, closer to family and friends, with greater access to community programs. In addition, State resources would not be tied up with the "revolving-door," nuisance-type offender.

SCDC officials believe that centralized, State control of all but the shortest-term offenders helps to coordinate information and services, and to prevent abuses or to quickly correct abuses. It is difficult to know whether the concern of abuse is still a realistic one; conditions in local facilities have improved and mandatory standards have been implemented. Discontinuing the policy of housing long-term SCDC inmates in local designated facilities would result in such inmates receiving State services designed for longer

periods of incarceration. The disadvantage to the locality, however, is the loss of trained and experienced work crews. Sixty percent of locally held inmates are serving sentences of five years and longer. Furthermore, all locally-held SCDC inmates have agreed to their placements and presumably prefer local to State incarceration. Thus, the present arrangement is not only saving the State money, but is apparently preferable to both the inmates and localities involved.

It is also unclear whether a financial saving would be realized by the State, should jurisdiction change. Despite the greater number and quality of programs and services offered by the State, per-inmate daily costs are similar to local costs, based on an Audit Council survey of a sample of local facilities.

The implementation and/or expansion of community alternatives for lesser offenders, such as pre-trial intervention and restitution programs, may increase bedspace availability in the future and make a change in local responsibility more clearly beneficial. In addition, the systemic impact of the Parole and Community Corrections Act, and the implementation of sentencing guidelines, is as yet unknown. Incentives for an increase in locally-held SCDC inmates is an approach which could be implemented immediately, in order to maximize bedspace utilization locally and to help alleviate State overcrowding. An incremental approach to a change in jurisdictional responsibility is another possibility for the future, extending local responsibility from 90 days to 180 days or 270 days - as bedspace becomes available.

13. Adopt Comprehensive Community Corrections Law

The adoption of a comprehensive approach to restructuring State and local responsibility for offenders is recommended by NCCD. A number of states including Minnesota, Kansas, and Oregon have enacted such legislation. The Minnesota Community Corrections Act of 1973 includes (1) a financial incentive to counties to develop local correctional programs, (2) a financial disincentive to committing nonviolent adults or juveniles to State institutions, and (3) a local planning process to develop a comprehensive plan for delivery of correctional services, coordinated with State criminal justice agencies.

In June 1981, South Carolina enacted the Parole and Community Corrections Act. This Act did not address the issue of increasing local responsibility for offenders, but rather enacted legislation to restructure the parole board and agency, to help alleviate prison overcrowding and to expand the availability of community correctional alternatives. The provisions of the Act (1) restructure the State Probation, Parole and Pardon Board, changing its name to the Parole and Community Corrections Board and of the agency to the Department of Parole and Community Corrections, (2) permit the seven-member board to hear parole cases in three-member panels, (3) provide for reducing parole eligibility from one-third to one-fourth of their sentence, effective January 1, 1984, (excluding offenders convicted of specified violent offenses), (4) allow that inmates may be reviewed for parole up to ninety days prior to their parole eligibility date, (5) provide that all inmates be given the benefit of earned work credits toward parole,

(6) provide for the imposition of monetary assessments on offenders, one-half of which are to be used for the development and operation of community corrections programs, (7) provide for the implementation of a supervised furlough program for carefully screened and selected inmates, allowing appropriate inmates supervised furlough after six months of incarceration, (8) broaden the eligibility criteria for extended work release, (9) require SCDC to develop a feasibility plan for the establishment of additional work release centers by January 1982, and (10) require SCDC to automatically screen offenders committed for nonviolent offenses with sentences of five years or less for possible placement on work release or supervised furlough.

As has been pointed out, NCCD recommendations for community corrections legislation include restructuring state and local responsibility for offenders. Local jurisdictions have far less responsibility for offenders than do localities in other states, and thus, have far greater access to expensive and scarce state prison resources than may be cost-effective or necessary for the protection of public safety. The issue of increasing local responsibility was not addressed by the South Carolina Parole and Community Corrections Act although the implications of this jurisdictional question are great in terms of the cost-effectiveness of the entire State correctional system.

OPTIONS THAT AFFECT

LENGTH OF STAY IN PRISON

14. Revise The Penal Code

The South Carolina Criminal Code has been recodified several times, but there has not been a systematic revision process in many years. As a result, the Criminal Code contains inconsistencies, examples of which follow.

In most states lesser offenses are classified as misdemeanors, punishable by sentences of less than a year. More serious crimes are classified as felonies and are punishable by sentences greater than a year. In South Carolina, classification of a crime as a felony or a misdemeanor is not based on the gravity of the offense or the severity of sentence. A crime is classified as a felony if it is included under Code Section 16-1-10. All other crimes, not included under Section 16-1-10 are misdemeanors. Under this classification, assault and battery with intent to kill is a felony listed under Section 16-1-10. Assault and battery of a high and aggravated nature, however, is considered a misdemeanor punishable by up to 10 years imprisonment. Another illustration of the inconsistent felony/misdemeanor classification is the distinction

between arson and burning other kinds of buildings. Arson is a felony, defined under Code Section 16-11-110 as the "... willful and malicious setting fire to or burning of ... any dwelling house ...", the penalty for which is not less than two nor more than twenty years imprisonment. However, burning other buildings, defined in Code Section 16-11-120 as "... the willful and malicious setting fire to or burning of any barn, stable, ... shop, warehouse, factory, ... church, courthouse, school, jail or other public building or public bridge ..." is classified as a misdemeanor punishable by not less than one year nor more than ten years imprisonment. Under this distinction, it is conceivable that one offender, convicted under 16-1-110, might serve twenty years for burning down his barn, while another offender, convicted under 16-11-120, might serve only ten years for burning down a school or office building.

Under South Carolina law, eavesdropping or peeping, Section 16-17-470, is a felony punishable by a fine of up to $500 or up to three years imprisonment or both. On the other hand, discharging firearms at or into dwellings, Section 16-23-440, is considered only a misdemeanor, but is punishable by a fine or a prison term of up to ten years or both.

Inconsistency in the penalties attached to various offenses is illustrated by comparing Code Sections 16-11-330 and 16-11-370. Under Section 16-11-330, any person convicted for robbery while armed with a deadly weapon will be punished by imprisonment for not less than ten nor more than twenty-five years. No part of this sentence can be suspended and there is no parole eligibility until the offender has served at least seven years of the sentence

imposed. Under Section 16-11-370, describing robbery of operators of motor vehicles for hire, however, there is no provision prohibiting suspension of any part of the sentence and no requirement that at least seven years be served prior to parole eligibility, even though the offender may be armed with a deadly weapon. Another example of inconsistent penalties is the mandatory prison term upon conviction of a third offense for driving under a suspended or revoked license, Code Section 56-1-460. There is no mandatory prison term or license suspension for repeated violations of Section 56-5-2930, driving under the influence.

Another example of the need to revise the criminal statutes is the fact that there are eight different types of burglary referred to in the South Carolina Code. Factors which determine which offense was committed include (1) whether or not the building is a dwelling, (2) how far from the dwelling out-buildings are, (3) whether force was used to enter, (4) whether or not something was taken and if not, whether there was intent to do so, and (5) whether or not the act was committed during the day or during the night, and then how close to sunrise or sunset. In an attempt to punish some acts of burglary more severely than others, the opportunity for inconsistent implementation has been increased and the procedural aspects of prosecuting the crime have become more complex and tedious.

South Carolina is no different from other states whose criminal codes have not undergone review to eliminate inconsistencies in penalties and obsolete offenses. However, examples as those cited above contribute to sentencing disparity, and undermine the rationality of the system.

15. Reduce Sentence Lengths

Many prison sentences now authorized statutorily are significantly higher in the vast majority of cases than are needed in order to adequately protect the interests of the public. According to the American Bar Association (ABA) Standards for Criminal Justice, the maximum prison term authorized for most offenses ought not to exceed ten years and normally should not exceed five years. Longer sentences should be reserved for particular serious offenses committed by dangerous offenders. These longer sentences, according to ABA standards, should be authorized or imposed only in accordance with specific criteria established by a sentencing guideline committee. Imposition of longer sentences should require a specific finding of the danger presented by the offender based on repetitive criminality.

By reducing sentence length for nondangerous offenders and by passing special statutory provisions to deal with the dangerous offenders who require incarceration, a dramatic impact on the size of prison population and amount of correctional expenditures can be realized. In the 1981 legislative session, North Carolina moved in this direction by reducing the presumptive sentences established in its Fair Sentencing Act by 25% in a number of offense categories.

As already discussed, South Carolina is in the process of establishing sentencing guidelines which will provide sentencing ranges for various categories of crimes and types of offenders. These sentence ranges, however, are based on already existing statutory sentences and are intended primarily to reduce sentencing disparity. As yet, South Carolina has made no move

towards reducing sentence lengths in an effort to reduce prison population.

16. Adopt Presumptive Parole on First Eligibility

The procedures prescribed by law for paroling inmates affect the populations of state prisons. Presumptive parole can be used to reduce prison populations by facilitating the parole of some inmates at the first parole eligibility date. In 1979, the New Jersey Legislature enacted a new parole law that assumes that a prisoner will be released on parole at his first parole eligibility date, unless there is an indication from a preponderance of the evidence that the inmate is likely to commit a crime if released on parole at such time. The use of presumptive parole shifts the burden from the prisoner, who previously had to show why he or she should be released, to the parole board, which now has to show why the prisoner should not be released.

The parole laws in South Carolina (Sections 24-21-610 through 700 of the South Carolina Code of Laws) enable the Parole and Community Corrections Board to parole inmates convicted of felonies and imprisoned in the state prisons, jails or upon the public works of any county. An inmate is eligible for parole by law when, if sentenced to not more than thirty years, he has served at least one-third of the term; when, if sentenced to life imprisonment or for a period exceeding thirty years, he has served at least ten years, or a minimum of twenty for murder.

Once an inmate's initial parole eligibility date has been established, based on the above guidelines, the amount of time served

may be reduced by earned work credits accrued through a productive work assignment. The amount of credit earned for each duty assignment is determined by the Commissioner of the Department of Corrections and cannot exceed 180 days a year.

The Parole and Community Corrections Board (hereinafter, the Parole Board) holds a hearing within 90 days prior to the parole eligibility date to consider the record of the prisoner before and after imprisonment. According to Section 24-21-640 of the South Carolina Code of Laws:

> ... no such prisoner shall be paroled until it shall appear to the satisfaction of the Board: that the prisoner has shown a disposition to reform; that, in the future he will obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interests of society will not be impaired thereby; and that suitable employment has been secured for him.

In conjunction with the above criteria, the Parole Board has established guidelines for denying parole. The guidelines are presented to all prisoners at the time of their incarceration. During FY 80-81 the Parole Board reviewed 2,908 cases for possible parole and granted parole to 51.5% or 1,498 inmates.

Presumptive parole is not used by the Parole Board as a method of paroling adult offenders because the offender must show that he merits parole. The Department of Corrections procedures for paroling youthful offenders compare more closely with presumptive parole, but do not assume that all youthful offenders will be paroled at the first eligibility date if available evidence does not show the likelihood of the offender to commit a crime. Youthful offenders are paroled at first eligibility provided institutional progress and adjustment are satisfactory.

The South Carolina Department of Corrections, Youthful Offender Branch, has the authority for the parole and aftercare of all offenders sentenced under the Youthful Offender Act. The Youthful Offender Parole Review Board, composed of officials of the Department of Corrections, determines the release dates for all youthful offenders. By law youthful offenders committed for armed robbery must serve a minimum sentence of three years. The Department has established guidelines to be used in considering other youthful offenders for parole release. The tentative release date is based on the type of crime and the number of offenses committed. The Youthful Offender Parole Review Board reviews the youthful offender's record, including institutional progress and adjustment reports, in considering if parole will be granted at the tentative release date. During FY 80-81, the Youthful Offender Parole Review Board denied release at the tentative parole eligibility date to 28% of eligible offenders. During the same period of time, parole was granted to 1,015 youthful offenders.

Presumptive parole may facilitate the release from prison of some inmates, and therefore, aid in reducing prison populations. Presumptive parole may be particularly desirable for use in paroling nonviolent offenders. At the same time, the costs to the State can be reduced. Parole cases are placed in the grade of maximum supervision by the Department of Parole and Community Corrections upon their release from custody. In FY 80-81 the average cost to supervise one client under maximum supervision was $242. During the same period of time, the average cost to supervise a youthful offender on parole was $266. These costs can be contrasted to the

SCDC average annual per inmate costs in FY 80-81 of $6,489 (based on all funds spent). Furthermore, parole clients under the supervision of the Department of Parole and Community Corrections and the Department of Corrections pay an annual supervision fee of $120, to offset the cost of their supervision.

17. Revise "Good Time" Credits

Most states statutorily provide for the reduction of prison sentences as a reward for "good time" (i.e., the avoidance of disciplinary infractions) and/or for participating in work or study. This option for reducing prison overcrowding, recommended by NCCD, has already been implemented by the State of South Carolina and is saving money, rewarding productive endeavor, and alleviating overcrowding.

The good time credit provision in South Carolina (Section 24-13-210 of the 1976 Code, as amended) provides inmates with a sentence of one year or more the ability to earn 20 days credit for each month of incarceration with good behavior. Inmates with less than a one-year sentence may accrue good time at the rate of 15 days credit a month. Ineligible inmates are those with sentences of 30 days or less and those sentenced by the Family Court for nonsupport. The initial computation of an inmate's projected release date takes good time into account; disciplinary infractions result in a loss of good time and a delay in the projected release date.

The Earned Work Credit Program was authorized as part of the Litter Contol Act of 1978. In addition to providing for the use

of inmates for litter control, the Act amending Section 24-13-230 of the 1976 Code authorized reduction in time to be served for productive work. The Act provides earned work credits based on the level of skill and responsibility involved in positions at each of four levels; level 2 provides one earned work credit for each two days worked, level 3 provides one credit for each three days worked, level 5 provides one credit for each five days worked, and level 7 provides one credit for each seven days worked.

Although this Act has only been operational since 1978, the program has had a significant impact on SCDC population level and operational costs through reduction in time served by inmates.

Fifty-nine percent of inmates released in FY 79-80 (2,772), and in FY 80-81 (2,660), had their time served reduced under the provisions of the Litter Control Act. The average decrease in bedspace needs was 509 in FY 79-80, and 673 in FY 80-81. The savings to the State as a result of this program was over $2.5 million in FY 79-80, and over $4 million in FY 80-81. The cumulative savings as of September 1981, since inception of the program, is over $8.2 million to the State and over $8.8 million in total funds. During FY 80-81, 72% (or 5,827) of the SCDC average daily population were working and earning credits toward their time to serve. An additional 1,002 inmates worked on jobs during this period who were ineligible for the program due to their offense categories.

OPTIONS THAT AFFECT SYSTEM CAPACITY

18. Expand Placement Options for Department of Corrections: Immediate Screening for Community Placement

This option recommends the expansion of authority of correctional agencies to utilize community placement options, as another method for avoiding prison crowding. In cases where correctional officials determine that individuals with prison sentences may not require the level of custody afforded by prison, placement options in community programs exercised by the Department of Corrections would help in appropriate placement and in alleviating prison crowding.

This option has been expanded in South Carolina, as part of the recently legislated Parole and Community Corrections Act. Section 20 of the new Act requires that SCDC automatically screen all offenders committed to its agency for nonviolent offenses, with sentences of five years or less, for possible placement on work release or supervised furlough. Section 16, a complement to

Section 20, provides for the implementation of a supervised furlough program by SCDC and the Parole and Community Corrections Board, for carefully screened and selected inmates.

The supervised furlough program involves inmate release to the Department of Parole and Community Corrections, following a two-stage screening process and at least six months of incarceration with a clear disciplinary record. The inmate on supervised furlough will be supervised by parole agents until his/her parole eligibility date, at which time he/she will be considered for parole. The South Carolina Department of Corrections has identified criteria for first-stage screening for the program, including (1) no outstanding wanteds or detainers, (2) nonviolent offenders, (3) S. C. resident, (4) not a youthful offender, (5) no previous commitments to prison, (6) not a parole violator, (7) six months clear disciplinary record, (8) no contempt of court, and (9) current sentence is less than five years. The Department of Parole and Community Corrections will conduct the second stage of screening for the program, as an abbreviated parole screening procedure.

Section 20 shifts the burden of work release consideration from the eligible inmate to SCDC. Prior to the Act, most inmates were required to apply for review for work release. Under the Act, all inmates meeting criteria will be selected by computer to receive consideration for work release.

Sections 16 and 20 are projected to have the greatest impact of the Act by FY 84-85, in terms of overcrowding relief. The projected effect of all Sections of the Act by FY 84-85 is to lessen average daily population by 660 inmates, 538 of which are projected

to be supervised furlough participants. (The reduction in parole eligibility will not become operational until January 1984.)

19. Establish Standards and Capacity Limits for Facilities

The 1980 National Institute of Justice study, American Prisons and Jails, recommended the adoption of standards defining the minimum living space to be provided for each prisoner under State jurisdiction. The capacity of the prison system would be established based on such standards, thereby controlling crowding. This recommendation was based on a number of findings, following extensive study of State and Federal prisons throughout the country (American Prisons and Jails, Vol. I, pp. 125-131).

(1) In most states, capacity limits prison population. However, such limiting mechanisms are often informal, erratic and may tolerate severe crowding. Formalization of prison capacity standards would provide the basis for more effective population and facility management.

(2) The continued course of uncontrolled growth and overcrowding is largely constrained by the threat of Federal court intervention. More than 30 states now face Federal suits on overcrowding. There have been 18 comprehensive prison suits upheld in Federal courts; 13 resolved by consent decree, and the remaining five by court order.

(3) In the absence of capacity limits, it is unlikely that new prison construction can keep abreast of the demand for prison bedspace, without placing impossible demands on the State budget.

Without an explicit policy defining appropriate use of scarce and costly State correctional facilities, there is no indication that demand will lessen. The National Institute of Justice study lent support to the "self-fulfilling prophecy" of new prison construction. New prisons may further, rather than alleviate, overcrowding problems. Moreover, the level of future demand is difficult to assess. There are conflicting views on the need for creating new bedspace at this point, (see Chapter IV on Prison Population Projections). It is known that, on the average, a period of five years generally passes between approval of a new prison and its opening, making the creation of new bedspace a costly and unpredictable response to current problems.

The objective of the establishment of prison capacity limits is the maintenance of an appropriate level of incarceration in the State, based on efficiency, need and conformity to national standards. Establishment of an explicit prison population capacity does not preclude expansion of the prison population. Rather, it suggests that the State formalize policy regarding the use of this expensive and scarce State resource, and regulate its use. Should demand exceed supply, and the demand be evaluated as necessary, the supply of bedspaces can then be expanded.

20. Adopt Emergency Overcrowding Measures

The implementation of emergency overcrowding measures are necessary when correctional facilities reach or exceed capacity limits. Oklahoma, Michigan, Connecticut and Georgia have adopted methods of reducing prison populations in such circumstances. In

Michigan, the Prison Overcrowding Emergency Powers Act accelerates release of certain eligible inmates nearing their release dates when population has exceeded capacity. The Connecticut Commissioner of Corrections is authorized to petition the superior court for sentence modification of any inmate, in order to maintain the population at acceptable standards.

Similar legislation in South Carolina, "The Prison Overcrowding Emergency Powers Bill," was presented to the General Assembly for consideration during the 1981-1982 session. This Bill authorizes the Governor to declare a prison overcrowding state of emergency whenever the prison population exceeds 100% design capacity for 30 consecutive days. The Bill provides that if such a prison overcrowding state of emergency is declared, the release date of all nonviolent offenders would be advanced by 90 days by the Commissioner of the Department of Corrections. Under such a state of emergency, when the population of the prison system is reduced to 100% of design capacity the Board will then request the Governor to rescind the state of emergency.

An impact analysis of this Bill was conducted by SCDC in January 1982. In order to bring the population in SCDC facilities to 100% of design capacity, it was estimated that six "roll-backs" would be necessary between July and February 1983. A roll-back entails early release (i.e., 90-day advancement of release date) for inmates committed for nonviolent offenses. The first projected roll-back would take place in July, and would advance by 90 days the release of 458 inmates. Subsequent roll-backs would occur 45 days apart, and involve declining numbers of inmates until the

goal of 100% of design capacity is reached. There are questions yet unanswered regarding implementation of this Bill, including criteria for eligibility, and the number of roll-backs considered feasible and/or allowable. The systemic impact of this Bill would be far-reaching, particularly on the work-release and supervised furlough programs, and is still under SCDC evaluation.

APPENDICES

APPENDIX A

south carolina department of corrections

P.O.BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787
TELEPHONE [803] 758-6444
WILLIAM D. LEEKE, Commissioner

September 7, 1982

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

Dear Mr. Schroeder:

Members of my staff and I have reviewed the draft of your report on the Overcrowded Prison Problem in South Carolina. We consider it to be thorough and professional, and we would like to express our general concurrence with its findings. At the same time, we find it necessary to identify some points which we feel need further elaboration. Those areas of concern are discussed below. We request that these comments be attached both to the summary and to the complete report when they are published.

In your introduction, it is stated, "The SCDC system of inmate classification is evaluated..." Chapter II, Sub-Heading (3), concludes that, "SCDC underclassifies inmates in assignments to institutions and custody levels..." Actually your report does not evaluate our system of inmate classification or that of any other state. Instead, our inmate assignments are compared to a hypothetical model developed for the National Institute of Corrections. It could easily be incorrectly inferred that we are permitting high risk inmates to be inadequately supervised at the expense of public safety and/or that more aggressive inmates are being inappropriately placed with less serious offenders. Yet there is no evidence to bear this out. On the contrary, your own findings indicate that our escape rate is lower than that of the other Southern states.

We are limited in our flexibility to assign inmates to more restrictive levels of confinement by lack of bedspace. Your study noted that, "Medium security beds are shown to be nearly 40% more expensive to construct than minimum security beds, and twice to three times as expensive as beds in work release and pre-release centers." It is also necessary to utilize a higher employee to inmate ratio in medium security prisons, thereby increasing personnel costs. In short, it would be tremendously expensive for South Carolina to adopt an inmate classification system based on the one your report used as a model. Prior to recommending such a course of action, it would be well to determine whether in fact there is any reason to label our present inmate classification system as unsatisfactory and what the fiscal implications would be both in construction and personnel costs.

Related to the issue of classification, your report stated that, "SCDC does not maintain summary statistics relative to institutional violence and has not assessed whether overcrowding and underclassification have affected the level of violence." While we have not had adequate personnel or resources to gather and analyze detailed statistical information, we do have narrative reports on all serious incidents, including acts of violence. These were made available to your staff to examine and could have been evaluated for whatever statistical information you wished to capture. Although your report is technically accurate in stating that, "Evaluation of the level of institutional violence by SCDC is thus a subjective or impressionistic process...", it should be made clear that all violence is reported and monitored closely at all agency levels. Additionally, the regional administrators and division directors who supervise the wardens monitor even minor incidents on a daily basis. Any known act of violence is immediately responded to by institutional personnel. It should be noted that most of the violence occurs at medium and maximum security institutions. This has further significance if it is being suggested that more of our minimum security inmate population should be housed in medium security facilities. It is our opinion that a classification system based on the one your report used as a model would certainly not decrease the level of violence in institutions. However, it seems logical that ameliorating the overcrowded conditions would very likely lessen the propensity to violence among inmates.

While it is acknowledged that the Habitual Offender Act has not thus far been widely used, we feel your report does not go far enough in emphasizing that increased use of this Act would exacerbate the overcrowded conditions. Any proposal to expand the application of the Habitual Offender Act must be costed out prior to implementation. It would be irresponsible state policy to accelerate the prison population further without making provisions to house, care for, and control the larger numbers which would result.

Finally, we must take issue with your conclusion that, "Creating New SCDC Bedspace Could be Unnecessary." It is our assumption that your intent is to have the General Assembly and the Governor determine "...the appropriate level of incarceration in the State..." and that all other considerations would then be secondary. We have no disagreement with such a philosophy. We must state strongly, however, that we cannot wait for additional study prior to approval of adequate bedspace, personnel, and other resources needed to manage the present and immediately projected inmate population. Capital improvement projects which have already been approved and tentatively approved must go forward on schedule. Previous delays have resulted in bedspace supply lagging further behind demand while inflation has caused the Department of Corrections not to be able to complete facilities with funds allocated for this purpose.

It would be unthinkable to ignore the crisis situation in which we currently find ourselves. We certainly do not advocate building more institutions than are needed, and we do not argue against the so-called "self-fulfilling prophecy." Nevertheless, we cannot reiterate strongly enough the desperate need for more immediate relief which will come only after facilities which have been approved or requested are constructed.

Again, we commend you and your staff on the thoroughness and professionalism of your study on the Overcrowded Prison Problem in South Carolina. With the amplification of those points discussed above, we believe this report will be an invaluable tool for the policy makers of South Carolina to use in facing this critical issue within the criminal justice system.

Sincerely,

William D. Leeke

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APPENDIX A (CONTINUED)

South Carolina Department of Parole and Community Corrections

September 8, 1982

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

This letter is intended as our comments concerning your review of the state's system of corrections, probation, parole, and other related aspects of the criminal justice system. I would like to commend you and your staff for your excellent work in this endeavor and the accurate way you have presented your findings as a result of the study.

A number of concerns were reported to your staff at the time these documents were reviewed, and changes have already been made concerning these concerns; therefore, we will not elaborate on them any further. However, we still have a few concerns with this report, and we will endeavor to point them out at this time for your consideration. We realize that some of these are only semantics; however, we feel strongly about them and feel it our duty to raise these points.

Summary:

We found that there is a cross use of the words "probation and parole". As you are aware, these are two distinct functions within the criminal justice system, and we feel, in a report of this nature, they should be correctly used. It was also noted that the records of Larceny offenders were used in some comparisons; however, there was no indication whether a check was made concerning any prior record these offenders might have. It is one thing to say individuals are committed to the Department of Corrections in large numbers for the offense of Larceny; however, that only tells part of the story with repeat offenders.

APPENDIX A (CONTINUED)

Report:

Page 14 - On this page, you talk about non-violent offenders, as related above with regard to Larceny; and there is no indication to prior records of these individuals, which again plays an important part in their selection in one program as opposed to another.

Page 51 - Last paragraph, you are using parole adjustment as a result of a scoring instrument which is understood; however, we feel it would be better that you would use "community adjustment" since you are really referring to the pre-sentencing stage of an offender's sentencing process according to the scoring instrument of adjustment.

Page 95 - You indicate that the $120.00 per year is paid by the offender for the cost of supervision; however, you do not indicate that these funds go directly to the General Fund and do not come directly to us.

Page 110 - It is indicated that nine halfway houses might be utilized in our implementing parts of the Community Corrections Act. It should not be indicated or implied that we necessarily intend to, as a part of the Community Corrections Act, construct a network of halfway houses to be operated by this agency. At the present time, we intend to utilize these types of facilities already in operation by the public and private sector if at all possible.

Page 118 - The California Probation Subsidy Program is mentioned as an alternative. However, it is our understanding that this program in California is not succeeding in the manner earlier indicated.

Page 134 - You have the offense of Burglary listed, and we understand why it is listed in this fashion. We feel that, since this is a South Carolina report, that the legislature, criminal justice agencies, and the general public would better understand this if it were listed as Housebreaking or some notation be made concerning this difference. Burglary, as used in your report, is taken from the offense category of NCIC and will mean a different thing to the people of this state.

As previously stated, our compliments to you and your staff concerning this endeavor and report. We sincerely hope that this will be of great use to you in dealing with these problems.

Sincerely,

J. P. Pratt, II, Executive Director

Grady A. Wallace, Commissioner

JPP,II:sfb

APPENDIX B

OFFENDER SURVEY - METHODOLOGY

A survey of the SCDC FY 80-81 admissions was conducted, in order to develop a description of offender characteristics and State incarceration policies. There were three major assessments made from the survey: (1) risk of recidivism, (2) security classification, and (3) pre-incarceration employment status. (The instruments used for the first two assessments are included in appendices C and D, respectively).

The number of offenders admitted to SCDC in FY 80-81 was 5,511. A sample of these offenders was drawn of 444, or 8%. A sample of 357 cases was necessary to meet requirements for statistical representativeness for a population of 5,511, (at a 95% confidence level, with a range of variation of 10% ± 3%). Although most desirable, it was not possible to draw a random sample of offenders from the study period, FY 80-81 (7/80-6/81). The survey required an interview, as well as collection of data from records. The SCDC has jurisdiction over adult offenders sentenced to over 90 days. When good time allowances, earned work credits, and pre-trial time served are taken into account, turnover was assessed to be too rapid to allow interviews with a sample comprised of any but recently incarcerated offenders.

The survey was conducted from July to November, 1981. Due to the necessity of interviewing recently-admitted offenders, intake during the summer and September was assessed as most preferable. It appeared, however, that a bias may have been introduced by sampling intake from June through September. The number of offenders entering the Midlands Reception and Evaluation Center averaged 318 a month between September

and June (1977-1981) while intake in July and August (1977-1981) averaged approximately two-thirds as many. The court schedule is reportedly irregular during the summer, due to vacations of judges and solicitors. This is especially important in smaller circuits with fewer judicial resources. It is also more difficult to assemble witnesses at this time. Some solicitors may hold more serious cases until the fall, as specially-appointed individuals substitute during summer vacations of judges. The bias may have been one of under-representation of such cases in September.

The offender sample, therefore, was comprised of half of the offenders admitted to SCDC in April and May 1981. (There were 886 intakes during these two months, and 444 in the sample). Of the 444 offenders, 54 or 12% had either been released or had left the system before an interview could take place. Based on important characteristics (offense, prior record age, sex, and race) of these 54 offenders, comparable offenders admitted between July and October were substituted, on a case-by-case basis.

Thus, there were two groups of inmates in the sample - 390 from the original April/May sample, and 54 substituted for those in the original sample who had already left the system prior to the beginning of the survey. Of the 390, interviews and data collection were completed for 361. Of the 54 substitutes, interviews and data collection were completed for 31. The total response rate, therefore, was 88% (392/444).

Comparisons were conducted between the 392 "respondents" and the 57 "nonrespondents" to assess the possibility of "nonresponse bias". In other words, if the respondents are different from the nonrespondents on one or more important characteristic(s), the sample may not be

representative of the population. The racial and sexual compositions of the respondents and nonrespondents were very similar. Two offense categories were over-represented in the nonresponse group: family offenses (16%), and drunkenness (20%), and larceny was underrepresented (16%). These two offenses carry relatively short sentences; and because the turnover is high, it was difficult to contact these inmates for interviews before they left the system. Despite the over-representation of these three offense types in the nonresponse group, only nonresponse for drunkenness affects representativeness of the sample. In Table 28, it can be seen that drunkenness is under-represented, (.5% v. 2.2%), while larceny (28.6% v. 27.6%) and family offenses (3.1% v. 3.7%) are not.

A comparison was conducted between group characteristics of the 392 inmates in the sample, the 5,511 FY 80-81 admissions, in order to assess representativeness of the sample. If the groups are dissimilar, then projections from the sample to the population would not be valid. Comparisons between the sample and the admissions group are presented in Table 26.

TABLE 26

DEMOGRAPHIC CHARACTERISTICS

	Audit Council Survey Sample (n=392)	FY 80-81 SCDC Admissions (n=5,511)
(1) Average Age	26 years 7 months	27 years 6 months
(2) Race/Sex	42.5% white male 52.0% non-white male 4.0% white female 1.5% non-white female	44% white male 51% non-white male 2% white female 3% non-white female
(3) Committing Regions	36% Appalachian Region 33% Midlands Region 31% Coastal Region	40% Appalachian Region 32% Midlands Region 28% Coastal Region

TABLE 27

SENTENCE DISTRIBUTION

Sentence	Audit Council Survey Sample (n=392) Percent	FY 80-81 SCDC Admissions (n=5,511) Percent
YOA	20.9	17.6
3 months or less	1.5	4.4
3 months 1 day-1 year	12.0	16.4
1 year	11.7	8.3
1 year day-2 years	8.9	11.0
2 years 1 day-3 years	9.1	9.7
3 years 1 day-4 years	3.6	3.3
4 years 1 day-5 years	5.9	6.0
5 years 1 day-6 years	4.6	3.5
6 years 1 day-7 years	1.3	1.6
7 years 1 day-8 years	0.8	1.2
8 years 1 day-9 years	1.8	1.7
9 years 1 day-10 years	3.3	3.3
10 years 1 day-20 years	7.9	6.8
20 years 1 day-30 years	4.3	3.0
Over 30 years	0.3	0.5
Life	2.0	1.4
Death	0.0	0.2

TABLE 28

MOST SERIOUS ADMITTING OFFENSE

Offense Classification	Audit Council Survey Sample (n=392) Percent	FY 80-81 SCDC Admissions (n=5,511) Percent
Homicide	5.1	5.5
Kidnapping	0.3	0.2
Robbery	6.9	7.4
Assault	6.4	5.5
Arson	1.0	0.6
Burglary	11.7	8.9
Larceny	28.6	27.6
Stolen Vehicle	3.3	2.9
Forgery/Counterfeiting	3.1	3.6
Fraudulent Activity	1.8	2.8
Stolen Property	3.1	2.9
Damaged Property	0.5	1.2
Dangerous Drugs	11.0	8.3
Sex Offenses	2.6	2.2
Obscene Material	0.3	0.1
Family Offense	3.1	3.7
Drunkenness	0.5	2.2
Obstructing Police	2.0	1.7
Flight/Escape	1.0	0.4
Weapon Offense	2.0	1.3
Traffic Offense	5.1	8.1
Moral Decency	0.3	0.0
Public Order	0.5	0.6
Other	0.0	2.0[1]

[1]Included are: sexual assault (.6), extortion (.2), liquor (.1), obstructing justice (.4), bribery (.1), public peace (.4), invasion of privacy (.1), and property crimes (.1). These offenses were not represented in the Audit Council survey sample.

The Audit Council survey sample appears to be reasonably representative of the FY 80-81 SCDC admissions. In terms of demographic characteristics, average age was a year lower in the sample, race and sex were similar, and the Coastal Region was slightly over-represented and Appalachian under-represented as committing regions. The sentence distribution shows short sentences (less than one year) under-represented

in the survey sample, due to the reasons discussed previously. Therefore, a bias may exist in that the sample may be comprised of more serious offenders than the year's admissions as a whole. Comparison of most serious admitting offenses for 28 offense categories shows similarities between the sample and the year's admissions. However, burglary and dangerous drugs are slightly over-represented in the sample, while drunkenness and traffic offenses are slightly under-represented.

APPENDIX C - RISK OF RECIDIVISM
BASE EXPECTANCY RAW SCORE CALCULATION (Form CDC-BE 61A)

SCORING INSTRUCTIONS.

Raw scores may be readily calculated on CDC-BE 61A shown in Figure 6 below. The box at the top includes all information needed for calculation of raw scores. The box at the bottom provides for collection of information needed for research purposes but not needed for CDC-BE 61A scores. The two sets of items are shown on one form and discussed together here in order to put all instructions in one place.

CDC-BE 61A

Last name _____ First name _____ Serial number _____

TO OBTAIN RAW SCORES:

	IF:	ADD	
A.	Arrest-free period of five or more years.	12	_____
B.	No history of any opiate use.	9	_____
C.	Few jail commitments (none, one, or two).	8	_____
D.	Not checks or burglary (present commitment)	7	_____
E.	No family criminal record	6	_____
F.	No alcohol involvement.	6	_____
G.	Not first arrested for auto theft	5	_____
H.	Six months or more in any one job	5	_____
I.	No aliases.	5	_____
J.	Original commitment	5	_____
K.	Favorable living arrangement.	4	_____
L.	Few prior arrests (none, one, or two)	4	_____
M.	Total score		[ ]

N. Age at commitment [ ]

O. Number of prior incarcerations [ ]

P. Number of aliases [ ]

Q. Last address

No. _____ Street _____

City _____ State _____

R. Potential for parole adjustment (circle number)

0 5 15 25 35 45 55 65 75 85 95 100

Very Low Low Average High Very High

S. Comments:

Signed _____ Clinician

Figure 6. Calculation of Base Expectancy Raw Scores, Form CDC-BE 61A.

APPENDIX D

(NATIONAL INSTITUTE OF CORRECTIONS)

INITIAL INMATE CLASSIFICATION

NAME _____ NUMBER _____
Last First MI

CLASSIFICATION CASEWORKER _____ DATE ___/___/___

1. HISTORY OF INSTITUTIONAL VIOLENCE
(Within three years - based on incarceration period only)

None	6
Assault on another inmate, not involving use of a weapon or resulting in serious injury . . .	3
Assault involving use of a weapon, and/or resulting in serious injury or death or any assault on staff	0

_____ score

2. SEVERITY OF CURRENT OFFENSE
Refer to the severity of Current Offense scale for a list of the offenses in each of the following categories. Score the most serious offense if there are multiple convictions.

Lowest	6
Low Moderate	5
Moderate	3
High	1
Highest	0

_____ score

3. HISTORY OF VIOLENCE (NON INSTITUTIONAL)
Code the most severe instance in inmate's history.

No conviction for assaultive crime within past 5 years	6
Misdemeanor conviction for assaultive crime more than 5 years before present conviction	4
Misdemeanor conviction for assaultive crime within past 5 years	2
Felony conviction for assaultive crime more than 5 years before present conviction	1
Felony conviction for assaultive crime within past 5 years	0

_____ score

4. PSYCHOLOGICAL DISTURBANCE
Based on psychologist/psychiatrist consultation (within last year)

No diagnosis of disturbance	5
Minor problems, not requiring medication or commitment	2
Moderate distrubance which impairs normal functioning and may require medication or commitment	1
Major psychotic disturbance requiring medication or commitment, & characterized by acute episodes	0

_____ score

MAXIMUM CUSTODY SCORE (Add items 1 - 4)

_____ score

5. ALCOHOL/DRUG ABUSE

No use of either type of substance within past 5 years which resulted in any emotional or legal problems	3
Occasional emotional problems resulting from drug or alcohol abuse at time of present offense or later	2
Abuse (of any severity) prior to time of present offense	1
Serious emotional or legal problems resulting from drug or alcohol abuse	0

_____ score

6. SOCIETAL ADJUSTMENT FACTORS
Check all appropriate and add to obtain score

☐ Age 26 or over at time of arrest	3
☐ High school diploma or GED received before conviction	3
☐ Employed (full or part time) at time of arrest	3

_____ score

7. ESCAPE HISTORY

No escapes or attempts (or no prior incarcerations	6
An escape or attempt over 3 years ago, from open institution or program, no actual or threatened violence	5
An escape or attempt within past 3 years from open institution or program, no actual or threatened violence	3
An escape or attempt over 3 years ago, from Medium or above confinement, with or without actual threatened violence, or escape from open facility with actual or threatened violence	1
An escape or attempt within past 3 years, from Medium or above confinement, with or without actual or threatened violence, or escape from open facility with actual or threatened violence	0

_____ score

8. CURRENT DETAINER

None	5
Non-assaultive Felony	3
Assaultive Felony	0

_____ score

9. PRIOR PRISON COMMITMENTS

None	4
One	2
Two or more	0

_____ score

MEDIUM/MINIMUM SCORE (Add Items 5-9)

_____

MAXIMUM CUSTODY SCALE (Items 1 - 4)

0 - 10 . . . . . Maximum
11 - 14 . . . . . Medium In
15 or more points, use Medium/Minimum Scale

MEDIUM/MINIMUM SCALE (Items 5 - 9)

8 or Less . . . . . Medium In
9 - 17 . . . . . Medium Out
18 or More . . . . . Minimum

South Carolina General Assembly

Legislative Audit Council

The State of South Carolina
General Assembly
Legislative Audit Council
Report Summary of the
Study and Review of
Prison Overcrowding
in South Carolina
September 14, 1982

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

REPORT SUMMARY OF THE

STUDY AND REVIEW OF

PRISON OVERCROWDING

IN SOUTH CAROLINA

REPORT SUMMARY

Introduction

The Legislative Audit Council was requested by the Chairman of the State Reorganization Commission to conduct a study of the State criminal justice system, specifically as it relates to problems of prison overcrowding, staff overload, and cost-effectiveness. The study was requested because of the serious and unabated crowding problem in South Carolina's prisons since the mid 1970's.

This study was designed to identify the nature, causes and implications of prison overcrowding and to develop recommendations for improvement without compromising public safety and without creating an additional financial burden to the State. To develop an understanding of these problems and a plan for study, interviews were conducted with various agency heads, or their appointed representatives. The agencies involved in these discussions were the Departments of Corrections, Parole and Community Corrections, Juvenile Placement and Aftercare, Youth Services, and the Offices of the Governor, the Attorney General and the Court Administrator. Also interviewed were the Chief Justice of the Supreme Court and the Executive Director of the S.C. Alston Wilkes Society.

The Audit Council wishes to thank SCDC Commissioner Leeke and his staff for the extraordinary help and cooperation received throughout the conduct of this study. Requests for information, numerous and often time-consuming to fulfill, were met promptly and courteously by SCDC staff in all divisions, from planning to community programs. The following invaluable assistance was provided for the inmate survey:

computer programming and analytic support, inmate tracking and interviewing at facilities across the State, and assistance in data collection from computerized and paper files. The capacity survey was supervised by administrative staff for institutions and carried out by the wardens at each institution.

The report contains a background section and five chapters, and is available under separate cover from the Audit Council. The first chapter provides an examination of prison overcrowding in South Carolina as compared to the rest of the country. Incarceration rates are presented and the relationship between crime and incarceration is discussed. Results of a survey of all Department of Corrections' (SCDC) institutions, which describe the nature and extent of overcrowding in the State, are reported. The second chapter reports the results of an Audit Council survey of the offender population. This study was designed to present a profile of FY 80-81 SCDC admissions, in terms of risk to the community. The SCDC system of inmate classification is evaluated, and the costs of incarcerating low risk and property offenders are shown. In Chapter III, a discussion of standards and litigation pertaining to prison overcrowding in South Carolina and the nation is presented. The S.C. Department of Corrections prison population projections, plans for capital construction and an analysis of fiscal implications are discussed in Chapter IV. Chapter V reviews legislative options and recommendations for reducing prison overcrowding. Major issues found in each chapter are summarized below.

CHAPTER I

OVERVIEW OF PRISON CROWDING IN SOUTH CAROLINA

(1) In the last decade, the SCDC prison population has nearly tripled (p. 11). Between FY 70-71 and FY 80-81, the number of prisoners under South Carolina Department of Corrections' jurisdiction increased from 2,859 to 8,078. The costs of operating the system rose from approximately $5.5 million to $48.4 million over the decade. Since resources failed to keep pace with this rapid growth, overcrowding has become a major problem.

(2) The incarceration rate in South Carolina has been the highest (or second highest) in the country since 1976 (p. 11). The rate of incarceration climbed from 118 per 100,000 in 1971 (ninth highest in the country) to 230 per 100,000 in 1976 (highest in the country). By December 1981, the rate was 253 per 100,000, (tied for number one with Nevada). The proportion of South Carolina citizens in prison relative to its population is 76% higher than the national average, and 25% higher than the average for the South.

(3) There is no evidence that South Carolina's high incarceration rate is either controlling or reducing the crime rate (p. 16). The Audit Council studied the nine states with crime rates closest to South Carolina's in 1971. All ten states maintained crime rates below the national average from 1971 to 1980. If a policy of high incarceration controls crime, we would expect to find high incarceration rates in these states with low crime rates. Yet, the incarceration rates varied widely with North Carolina ranking number one in 1980 and South Carolina number two, to Minnesota, which ranked 48th nationally. Independent of incarceration

policies, the crime rates of these ten states remained fairly stable relative to the national average.

(4) South Carolina prisons are the most overcrowded in the country (p. 18). In 1980, South Carolina had a greater percentage of inmate population exceeding capacity of the system than any other state. An Audit Council survey of the 24 SCDC institutions on September 15, 1981, revealed the following: (1) SCDC institutions were operating at 134.4% of design capacity; (2) 95% of the inmate population were confined in "high density units" and over 50% were housed in units with less than 40 square feet of floor space per inmate; and (3) 90% of the inmates were housed in "crowded confinement units." For example, of the 3,483 inmates housed in units designed for one, 18% were triple-bunked and 60% double-bunked. Of the 2,416 inmates housed in multiple occupancy units, 64% were housed in crowded units with over 50 inmates.

CHAPTER II

OVERINCARCERATION AND UNDERINCARCERATION IN SOUTH CAROLINA

Prisoners admitted to SCDC in FY 80-81 were assessed based on the likelihood that they will recommit crime upon release, and on classification assignments to institutions and levels of custody. Inmates posing a low risk to the community were found to be comparable to offenders on probation, suggesting that the State "overincarcerates" less seriously criminal offenders. The costs of incarcerating low-risk and property offenders were compared to costs of intensive probation. The possibility of "underincarceration" of career and violent criminals

was assessed also, due to the fact that the Habitual Offender Act is seldom, if ever, used to prosecute such criminals.

(1) A savings of $10.4 million[1] could have been realized by placing low-risk incarcerated inmates admitted in FY 80-81 on intensive probation (p. 45). Approximately 17% of the 5,511 FY 80-81 admissions to SCDC, or 937 offenders, are projected to present a low risk to the community and to have a high potential for parole adjustment. Each of the low risk inmates in a sample of FY 80-81 admissions was "matched" to probationers on the basis of race, sex, criminal offense and history, suggesting that the low risk inmate group is comparable to individuals on probation. Not only could operating costs have been saved by placing this group on probation, but also payments could have been made to victims and/or the State, and less direct savings realized through taxes and support of dependents. Some criminal justice administrators suggested that a lack of confidence in probation supervision has contributed to the incarceration of minor offenders in the State. The effectiveness of probation supervision was not evaluated, due to the recent reorganization of the Department of Parole and Community Corrections, and the planned implementation of a model management system, with components for cost, clients, workload and information.

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1 Actual savings realized would depend on factors such as whether institutions could be closed or new institutions not needed; the average per-inmate cost of $6,489 in FY 80-81 includes indirect (administrative) costs.

These potential savings are not mutually exclusive of those connected with the cost of incarcerating larceny offenders, (p. 6). Approximately 20% of the low-risk inmates discussed above are larceny offenders; potential savings for this group appear in both analyses.

CONTINUED

2 OF 3

(2) The cost of incarcerating larceny offenders convicted of stealing $2,000 or less, in money or property, as their most serious offense outweighs the loss to victims 20 to one (p. 49). The cost of incarcerating the 1,340 larceny offenders admitted in FY 80-81 with victim loss of $2,000 or less is estimated to be approximately $12.5 million. Intensive probation costs for this group would have been approximately $2.7 million. Approximately 75% of these offenders are estimated to have a medium or high probability of parole adjustment; savings of $8.5 million[2] could have been realized by placing this group on intensive probation, rather than in prison.

(3) SCDC underclassifies inmates in assignments to institutions and custody levels (p. 37). The Audit Council compared initial classification decisions made by SCDC to recommendations based on a model assessment. SCDC assigned to minimum level custody 33% of the model's assessed maximum custody and 70% of its medium custody inmates. This suggests placement of seriously criminal inmates with the less serious. Courts have required classification procedures, in part to ensure inmate safety and separation of non-violent inmates from the more predatory. SCDC does not maintain summary statistics relative to institutional violence, and has not assessed whether overcrowding and underclassification have affected the level of violence. Two factors appear to have contributed to underclassification: the shortage of medium-security bedspaces, and the lack of complete and accurate information upon which classification decisions are made.

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[2]See footnote, p. 5.

(4) South Carolina has no effective habitual offender policy[3] (p. 58). The use of State prison resources is most necessary in the case of habitual criminals, yet the statute §17-25-40 (repealed in May 1982) designed to ensure long-term incarceration for this type of offender was seldom, if ever, used. The Audit Council estimates that although approximately 60 or 8.4% of the 720 serious felony offenders incarcerated in November 1981, had qualified, none were actually prosecuted under the Act. The purpose of the Act revision (R438), passed in May 1982, was to broaden applicability and to provide harsher and more consistent penalties for habitual offenders. The revision, however, further narrows the scope of the Act. The estimated number of eligible offenders incarcerated in November-December 1981 dropped from 60 under §17-25-40 to 42 under the revision (R 438). The need for an effective and consistent State policy regarding career criminals has not been addressed.

CHAPTER III

PRISON STANDARDS AND LEGAL IMPLICATIONS

The most significant judicial movement since the civil rights and criminal procedure decisions of the 1960's has been the wave of prison litigation in the past half decade. Inmates rely heavily on the Fourteenth Amendment and the Civil Rights Act of 1871 in bringing suits in Federal court which allege violation of their constitutional rights. One out of

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[3]A policy which increases the average time served by habitual offenders will necessarily increase the demand for prison bedspace, thereby increasing incarceration costs.

every five cases filed in Federal courts today is by or on behalf of prisoners.

(1) No longer restricted by the "hands-off" doctrine, Federal courts will review and rule on operations of state penal systems (p. 62). Prior to the 1970's, Federal courts were reluctant to interfere in the daily administration of state penal systems. In the late 1960's, this "hands-off" doctrine began to give way to the view that inmates retain all the rights of ordinary citizens except those expressly denied by law. The courts began limited intervention in cases where particular conditions violated the Constitution.

A 1970 case first espoused the "totality of conditions" approach, allowing the courts to aggregate conditions which, standing alone, may or may not be constitutional violations. The courts use the Eighth Amendment ban on cruel and unusual punishment to hold entire prisons, rather than specific conditions, unconstitutional.

The Eighth Amendment definition of cruel and unusual punishment has been expanded from early interpretations, which prohibited only excessive physical abuse, to include an examination of the nonphysical aspects of punishment as well as the general conditions existing at an institution. By requiring more than "cold storage" of inmates and by including such considerations as an inmate's ability to attempt rehabilitation or to avoid physical, mental, or social deterioration, Federal courts have become involved in areas once considered solely within state discretion.

(2) Compliance with broad remedial orders might force appropriation of additional funds or release of the convicted (p. 66). Some courts have taken a limited remedial approach by ordering prison officials to submit

proposals to correct unconstitutional conditions. However, others have taken a more active role by establishing minimum standards, ordering implementation, and retaining jurisdiction to ensure compliance. For example, a supplemental appropriation of $105.6 million in capital outlay and $18.4 million for one year's operational expenses was required to bring the Louisiana prison system into compliance in 1977. Courts have also used the threat of release or the actual release of inmates to ensure the legal quality of prison conditions. In doing so, the state is allowed to make a practical choice between providing constitutionally acceptable conditions or resigning itself to mass release of inmates.

(3) Pursuing accreditation based on recognized standards may aid penal systems in meeting constitutional requirements (p. 69). The expanded role of the judiciary in the field of corrections has highlighted the need to develop specific self-regulatory standards. The ACA Commission on Accreditation for Corrections has developed a set of standards as the basis for its voluntary accreditation process, which provides criteria for assessing the safety and well-being of staff and inmates. Voluntary accreditation has been pursued by many states not only to improve institutional conditions, but also in the event of court action, as evidence of a good faith effort to comply with acceptable standards. South Carolina has chosen to pursue accreditation under these ACA standards, on a limited basis.

CHAPTER IV

THE SCDC PRISON POPULATION PROJECTIONS AND CAPITAL IMPROVEMENTS PLAN

South Carolina's prison system is the most overcrowded in the country. SCDC estimates that without significant policy changes, the prison population will almost double by FY 92-93. Such an increase would require nearly half a billion dollars in capital construction prior to 1990, including fourteen new prisons, to adequately house all inmates. Moreover, the long-term financial commitments associated with prison construction are far greater. One new medium security prison (528 beds) built in FY 82-83 would cost approximately $24.6 million to construct, and approximately $383.3 million to operate over 30 years. The long-term (30-year) operating costs to support $458 million in new prison construction would amount to over $7 billion. Prisons, then, are a scarce and costly State resource.

Creating new prison bedspace could be unnecessary (p. 89). The assessment of future prison bedspace needs must be made very carefully, since: (1) the average time lag between approval of a new prison and its opening is five years; (2) a decline is predicted in prison populations after the 1980's, due to the maturation out of crime-prone years of the "baby-boom" generation; (3) studies have suggested that new construction is likely to further, rather than alleviate, overcrowding problems; and (4) the long-term burden on the taxpayer is so great. The impact of the 1981 Parole and Community Corrections Act and of implementation of sentencing guidelines on the future prison population is, as yet, unknown. Proposals for increased use of punitive community sanctions as

alternatives to incarceration may also be implemented, reducing the need for prison bedspace. The appropriate level of incarceration in the State, based on considerations of need, cost-effectiveness and conformity to national standards, should be determined prior to approval of construction to increase SCDC bedspace.

CHAPTER V

LEGISLATIVE OPTIONS TO REDUCE PRISON OVERCROWDING

A variety of mechanisms and approaches to the problem of prison overcrowding is being considered and tried throughout the country, with varying levels of success. Twenty legislative options for reducing prison overcrowding are reviewed in this chapter. Each alternative is explained and a report provided on the status and feasibility of implementation in South Carolina.

(1) Options That Affect Who Goes To Prison (p. 92)

Three major approaches to reducing the number of offenders who go to prison include (a) providing alternative sanctions to incarceration, (b) implementing sentencing guidelines and (c) restructuring State/local responsibility, such that the jurisdictional responsibility of localities for lesser offenders is increased.

(a) Alternative Sanctions: The use of alternative sanctions could be increased, due to the high number of lesser offenders incarcerated, at a significant savings to the State (p. 92). Such sanctions include intensive probation supervision coupled with requirements to pay fines or restitution, to provide community service work, or to serve time in local jails "intermittently," i.e., on weekends,

evenings or vacations. Also included are commitment to residential community facilities, allowing offenders to gain and/or maintain employment, and to pay for room and board, fines and/or restitution. All of these alternatives are used in South Carolina, but to a very limited extent.

(b) Sentencing Guidelines: To reduce overcrowding, sentences must prescribe community alternatives for a greater proportion of offenders, and/or be reduced in length (p. 116). Sentencing guidelines provide a recommended sentence or range to the judge, based upon offender and offense characteristics, and are designed to reduce sentencing disparity. Efforts by the recently-appointed Sentencing Guidelines Commission to develop guidelines in South Carolina are underway, and are planned for review in July 1983 by the General Assembly. The effect they will have on prison admissions is unknown; although there is no mechanism built into the guidelines to consider prison capacity, as has been done in states such as Minnesota, the Commission has formally recognized the importance of prison capacity as a factor in the development of guidelines.

(c) Restructure State/local jurisdiction: It is unlikely that an increase in local jurisdiction from three months to one year would alleviate State prison overcrowding (p. 118). Localities in South Carolina have one of the shortest jurisdictions over lesser offenders in the country - three months or less. Most states assign localities responsibility for offenders with sentences of one year or less, thereby allocating more extensive State correctional resources to offenders with longer terms. Localities are housing over 550 SCDC

inmates with sentences of over one year in "designated facilities." These inmates are held at no cost to the State, for use in local work projects. Excess local bedspace is very limited. Such a jurisdictional change can be expected to result in a "quid pro quo" situation in which localities would return inmates in designated facilities with sentences of over a year to SCDC, in exchange for a comparable number of inmates, currently housed by SCDC, with sentences of a year or less. With the projected increase in diversion programs, more local bedspace may become available, permitting an increase in local jurisdiction. The provision of incentives to localities to house an increased number of SCDC inmates is recommended, in the interim.

(2) Options that Affect Length of Stay in Prison (p. 132)

Recommendations based on review of alternatives to reduce length of stay in prison follow:

(a) Revise the Penal Code (p. 132) to eliminate obsolete penalties, reconcile inconsistent penalties, and decrease opportunities for arbitrary action.

(b) Review sentence lengths (p. 135) in accordance with standards proposed by the American Bar Association.

(c) Consider the adoption of "presumptive parole" (p. 136), i.e., shifting the burden of proof from the inmate to show cause for parole release, to the State to show cause for denying parole on first eligibility, (particularly for non-violent offenders).

(3) Options That Affect System Capacity (p. 141)

The most direct method of controlling prison crowding involves two of the three options reviewed in this section. These are the estab-

lishment of standards and capacity limits for facilities, and the adoption of emergency overcrowding measures.

(a) Capacity limits allow maintenance of a desired level of incarceration based on efficiency, need and conformity to national standards (p. 143). Limits could be established based on the design capacity of each institution or on the allocation of a minimum amount of living space per inmate. Among the findings supporting establishment of such limits is the "self-fulfilling prophecy" of prison construction - building new prisons may perpetuate overcrowding problems. Enforced limits would control this process.

(b) The implementation of emergency overcrowding measures is necessary when correctional facilities reach or exceed capacity limits (p. 144). Proposed legislation in South Carolina would authorize the Governor to declare a prison overcrowding state of emergency, when population exceeds capacity limits for more than 30 days. In such a situation, the release date of nonviolent offenders would be advanced by 90 days, until population is reduced to 100% of design capacity.

Adoption of these two measures does not preclude expansion of the prison population since the supply of bedspaces can be increased in light of need. They do allow the State to formalize policy regarding use of this expensive and scarce resource.

APPENDIX A

south carolina department of corrections

P.O.BOX 21787/4444 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29221-1787
TELEPHONE (803) 758-6444
WILLIAM D. LEEKE, Commissioner

September 7, 1982

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

Dear Mr. Schroeder:

Members of my staff and I have reviewed the draft of your report on the Overcrowded Prison Problem in South Carolina. We consider it to be thorough and professional, and we would like to express our general concurrence with its findings. At the same time, we find it necessary to identify some points which we feel need further elaboration. Those areas of concern are discussed below. We request that these comments be attached both to the summary and to the complete report when they are published.

In your introduction, it is stated, "The SCDC system of inmate classification is evaluated..." Chapter II, Sub-Heading (3), concludes that, "SCDC underclassifies inmates in assignments to institutions and custody levels..." Actually your report does not evaluate our system of inmate classification or that of any other state. Instead, our inmate assignments are compared to a hypothetical model developed for the National Institute of Corrections. It could easily be incorrectly inferred that we are permitting high risk inmates to be inadequately supervised at the expense of public safety and/or that more aggressive inmates are being inappropriately placed with less serious offenders. Yet there is no evidence to bear this out. On the contrary, your own findings indicate that our escape rate is lower than that of the other Southern states.

We are limited in our flexibility to assign inmates to more restrictive levels of confinement by lack of bedspace. Your study noted that, "Medium security beds are shown to be nearly 40% more expensive to construct than minimum security beds, and twice to three times as expensive as beds in work release and pre-release centers." It is also necessary to utilize a higher employee to inmate ratio in medium security prisons, thereby increasing personnel costs. In short, it would be tremendously expensive for South Carolina to adopt an inmate classification system based on the one your report used as a model. Prior to recommending such a course of action, it would be well to determine whether in fact there is any reason to label our present inmate classification system as unsatisfactory and what the fiscal implications would be both in construction and personnel costs.

Related to the issue of classification, your report stated that, "SCDC does not maintain summary statistics relative to institutional violence and has not assessed whether overcrowding and underclassification have affected the level of violence." While we have not had adequate personnel or resources to gather and analyze detailed statistical information, we do have narrative reports on all serious incidents, including acts of violence. These were made available to your staff to examine and could have been evaluated for whatever statistical information you wished to capture. Although your report is technically accurate in stating that, "Evaluation of the level of institutional violence by SCDC is thus a subjective or impressionistic process...", it should be made clear that all violence is reported and monitored closely at all agency levels. Additionally, the regional administrators and division directors who supervise the wardens monitor even minor incidents on a daily basis. Any known act of violence is immediately responded to by institutional personnel. It should be noted that most of the violence occurs at medium and maximum security institutions. This has further significance if it is being suggested that more of our minimum security inmate population should be housed in medium security facilities. It is our opinion that a classification system based on the one your report used as a model would certainly not decrease the level of violence in institutions. However, it seems logical that ameliorating the overcrowded conditions would very likely lessen the propensity to violence among inmates.

While it is acknowledged that the Habitual Offender Act has not thus far been widely used, we feel your report does not go far enough in emphasizing that increased use of this Act would exacerbate the overcrowded conditions. Any proposal to expand the application of the Habitual Offender Act must be costed out prior to implementation. It would be irresponsible state policy to accelerate the prison population further without making provisions to house, care for, and control the larger numbers which would result.

Finally, we must take issue with your conclusion that, "Creating New SCDC Bedspace Could be Unnecessary." It is our assumption that your intent is to have the General Assembly and the Governor determine "...the appropriate level of incarceration in the State..." and that all other considerations would then be secondary. We have no disagreement with such a philosophy. We must state strongly, however, that we cannot wait for additional study prior to approval of adequate bedspace, personnel, and other resources needed to manage the present and immediately projected inmate population. Capital improvement projects which have already been approved and tentatively approved must go forward on schedule. Previous delays have resulted in bedspace supply lagging further behind demand while inflation has caused the Department of Corrections not to be able to complete facilities with funds allocated for this purpose.

It would be unthinkable to ignore the crisis situation in which we currently find ourselves. We certainly do not advocate building more institutions than are needed, and we do not argue against the so-called "self-fulfilling prophecy." Nevertheless, we cannot reiterate strongly enough the desperate need for more immediate relief which will come only after facilities which have been approved or requested are constructed.

Again, we commend you and your staff on the thoroughness and professionalism of your study on the Overcrowded Prison Problem in South Carolina. With the amplification of those points discussed above, we believe this report will be an invaluable tool for the policy makers of South Carolina to use in facing this critical issue within the criminal justice system.

Sincerely,

William D. Leeke

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APPENDIX A (CONTINUED)

South Carolina Department of Parole and Community Corrections

ADDRESS: 2221 DEVINE ST.
6TH FLOOR
P.O. BOX 50666
COLUMBIA, S.C. 29250

September 8, 1982

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

This letter is intended as our comments concerning your review of the state's system of corrections, probation, parole, and other related aspects of the criminal justice system. I would like to commend you and your staff for your excellent work in this endeavor and the accurate way you have presented your findings as a result of the study.

A number of concerns were reported to your staff at the time these documents were reviewed, and changes have already been made concerning these concerns; therefore, we will not elaborate on them any further. However, we still have a few concerns with this report, and we will endeavor to point them out at this time for your consideration. We realize that some of these are only semantics; however, we feel strongly about them and feel it our duty to raise these points.

Summary:

We found that there is a cross use of the words "probation and parole". As you are aware, these are two distinct functions within the criminal justice system, and we feel, in a report of this nature, they should be correctly used. It was also noted that the records of Larceny offenders were used in some comparisons; however, there was no indication whether a check was made concerning any prior record these offenders might have. It is one thing to say individuals are committed to the Department of Corrections in large numbers for the offense of Larceny; however, that only tells part of the story with repeat offenders.

APPENDIX A (CONTINUED)

Report:

Page 14 - On this page, you talk about non-violent offenders, as related above with regard to Larceny; and there is no indication to prior records of these individuals, which again plays an important part in their selection in one program as opposed to another.

Page 51 - Last paragraph, you are using parole adjustment as a result of a scoring instrument which is understood; however, we feel it would be better that you would use "community adjustment" since you are really referring to the pre-sentencing stage of an offender's sentencing process according to the scoring instrument of adjustment.

Page 95 - You indicate that the $120.00 per year is paid by the offender for the cost of supervision; however, you do not indicate that these funds go directly to the General Fund and do not come directly to us.

Page 110 - It is indicated that nine halfway houses might be utilized in our implementing parts of the Community Corrections Act. It should not be indicated or implied that we necessarily intend to, as a part of the Community Corrections Act, construct a network of halfway houses to be operated by this agency. At the present time, we intend to utilize these types of facilities already in operation by the public and private sector if at all possible.

Page 118 - The California Probation Subsidy Program is mentioned as an alternative. However, it is our understanding that this program in California is not succeeding in the manner earlier indicated.

Page 134 - You have the offense of Burglary listed, and we understand why it is listed in this fashion. We feel that, since this is a South Carolina report, that the legislature, criminal justice agencies, and the general public would better understand this if it were listed as Housebreaking or some notation be made concerning this difference. Burglary, as used in your report, is taken from the offense category of NCIC and will mean a different thing to the people of this state.

As previously stated, our compliments to you and your staff concerning this endeavor and report. We sincerely hope that this will be of great use to you in dealing with these problems.

Sincerely,

J. P. Pratt, II, Executive Director

Grady A. Wallace, Commissioner

JPP,II:sfb

END