

# Causes and solutions to prison overcrowding



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## **Introduction**

The purpose of this paper is to look at the overcrowded prisons that are plaguing the U. S. The prison system that we have is constantly evolving, but seems to circulate through the same prison philosophies. An overcrowded prison does not lend itself to a productive environment for inmates. Many would not care about the environment that the inmates encounter as they feel the inmate has brought this upon himself through his deviant behavior, however not all inmates will stay in prison forever. We will examine some possible solution to curb the overcrowding that is prevalent in prisons today.

### Solutions to Prison Overcrowding

Prison overcrowding has been a problem that has plagued the U. S. prison system since its inception. The solution to this problem for many has been to build more prisons to house the additional prisoners that have been sentenced there. Those who advocate building additional prisons fail to look at what is behind the overcrowding in the first place. Research has found that crime rates are decreasing. It has also shown that prison populations are increasing. Much like the Kevin Costner movie Field of Dreams with the infamous quote, “ If you build it, they will come” that by building more prisons, we will only seek to put more prisoners into them.

To fully understand our current overcrowding issue, we must look at the history of the U. S. prison systems and the philosophies that drove them. Then we must look at the sentencing practices that have increased the number of inmates that are incarcerated. This will include the truth-in sentencing laws, the impact of the war on drugs and the enforcement and

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the increasing of the length of prison terms for certain offenses. We will also take a look at the cost of building a prison and the daily costs of housing an inmate. Then we will look at solutions for reducing prison populations which include rehabilitation and the release of aged offenders and inmates with minor offenses.

The U. S. derived many of its ideas about the prison system from England. In the Middle Ages, prisons were used for housing criminals as well as debtors. Juvenile delinquents also began to be housed in prisons. As prisons developed and emerged, the purpose of them changed as well. Drawing from the ideas presented in *Essays on Crimes and Punishment* by Cesare Beccaria in 1764 a move towards less physical punishment for crimes was made. Beccaria was also responsible for the idea that a punishment should be severe enough to deter crime, but not too extreme.

In 1557, England began the use of workhouses. Initially, they were to remove the homeless and vagrants from the streets during the day. During this time, many believed that most criminals were lazy and committed crimes as a result of that. This allowed inmates to work, however they did not learn any useful skills and were not kept in the workhouses overnight.

In 1790, the Quakers from Pennsylvania reformed the Walnut Street jail into a prison. The Quakers drew from their religious background and sought to use the prison as a place for an inmate to perform a penance and to make amends for their actions against society. Also, known as the Pennsylvania System, the prison layout allowed for solitary cells. The inmate was placed in the cell, so that they could think about their actions and gain remorse. Work

was completed in the cells as well, so the interaction with others was limited to an hour of exercise a day. Although the prison sought to reform the inmates through solitary work, some prisoners could not handle the solitary times and reform did not occur. There was also a high cost involved in maintaining this type of prison.

In an effort to improve the prisons, the Mass Prison Era was implemented in 1825. Also known as the Auburn system after the first facility in Auburn, NY, this prison featured areas where inmates worked in groups. However, prisoners still maintained solitary cells when they were not working. When in work groups, silence was enforced. This was done through corporal punishment to maintain order and obedience as well as a strong code of silence at all times.

The Auburn prison was also the first to experiment with solitary confinement as a punishment for not following the rules of the prison. One huge difference which produced negative results when compared with the Pennsylvania system is that inmates were not allowed any exercise and they were not given any work to complete. In this system, many inmates went insane, were suicidal and classified as unfit for re-entry into society.

Unhappy with their current prison system, The Reformatory Era was developed next. This was the first to introduce the concept of indeterminate prison sentences in the U. S.. This concept came from two European counterparts. The first leader who emerged during this time was Captain Alexander Maconochie who was a warden at Norfolk Island, a prison off the coast of Australia. Maconochie was alarmed at the condition of the prison

and sought to reform it. He developed a system where prisoners could earn an earlier freedom with good behavior. Ultimately, it placed the inmate's freedom in the hands of that inmate. This was the introduction of the concept of indeterminate sentencing.

Another leader during the Reform Era was Sir Walter Crofton who was aware of Maconochie's progress and adapted it to the Irish Prison system. Crofton was able to set up a four stage system. In the first stage, prisoners stayed at Mountjoy Prison in Dublin. They were restricted in their activities and movement. In the second stage, they were in Spike Island where they were to begin work. In the third stage, the prisoners were placed in the community on public-service projects. The fourth stage was called the "ticket of leave" where inmates were allowed to live and work in the community under mild supervision. The response to this was positive until there was an increase in crime which resulted in longer sentences. Crofton did not have the citizen's support and could not keep it up.

Back in the United States, the indeterminate sentence was introduced by Gaylord Hubbell who was impressed by the Irish Prison system. The indeterminate sentencing was started with approval from The New York Prison Association. Hubbell worked to implement the reformatory practice where prisoners who showed themselves as reformed could earn an earlier release. There were criteria that needed to be met in order to qualify for the indeterminate sentencing: the offender had to be between 16 and 30 years old and it had to be his first offense. Unfortunately, the reform prison era did not last too long as offenders would reoffend. Similar to Ireland, society was not willing to risk the higher crime rates and did not lend its support. It still

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was the basis for many of the ideas that we hold regarding parole, training and education today. As well as emphasizing the reform of a prisoner over the punishment of a prisoner.

In 1890, the Industrial Prison era was sparked. This era brought to light an option to profit from the increasing prison population. There were several systems that utilized inmate work to bring an income into the prison system. The inmate labor systems were: contract system, lease system, piece-price system, state-use system, public-account system and public works system. In contract system, labor was contracted out to private businesses through the prison. Work took place in the prisons, but supplies were provided by the private businesses. In lease system, inmates were taken out of the prison facility and leased out to a private contractor for the day. Piece-price system was similar to the contract system, but inmates produced products that were sold to private businesses. The state-use system had inmates producing products for state offices. The public-account system was a combination of contract, piece-price and state-use systems where inmates produced, managed and sold products in the free market that was fully run by the prison. Finally, the public-works system had inmates working on roads, highways, cleaning public areas like parks, and restoring other building in the community under the supervision of prison officials. During this time, inmates produced furniture, clothing, cleaning products and other items.

The Prison Industry Era was running quite smoothly and making a substantial profit until workers from society like mechanics complained that inmates were taking over their jobs and with cheaper labor. Workers could not compete with them and felt it was unfair. These protests lead to the Ashurst-

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Summers Act of 1935 where Federal legislation which specifically prohibited the interstate transportation and sale of prison goods where state laws forbade them.” (Schmallegger, 2007). This limited the sale of inmate produced products. In conjunction with the Depression, the once profitable Prison Industry ended.

The Prison Industries Era lasted for over 40 years and was followed by the Punitive Era. The focus moved back to an age of confinement where the prisoner was to be locked away for their crimes. During this time, larger maximum security facilities were built like Alcatraz. Prisoners who were released from these types of facilities did not receive any education, valuable skills or treatment. The rate of recidivism was high. Luckily, this type of prison systems only lasted about 10 years.

The Treatment Era began in 1945. This era relied on treating the inmates like patients versus inmates. Based on a medical model where “ a therapeutic perspective on correctional treatment that applies the diagnostic perspective of medical science to the handling of criminal offenders.” (Schmallegger, 2007) One-on-one therapy was introduced as well as group therapy helped to get an understanding of the emotional and psychological reasoning for crime. There were drawbacks of this era, too. Some inmates fought against being forced to participate in these programs. Prison guards were not properly trained in how the medical model functioned and were also not trained in how to handle the inmates.

In 1967, the Community-based Era arrived. In this era, prisons were again faced with overcrowding and coming off of the medical model with the

optimistic view that inmates could be rehabilitated. This time they would move them back into the communities where they had committed their crimes to serve their time. The belief was that inmates would not be able to fully rehabilitate in a prison setting. The halfway house was reintroduced and gave the inmates the opportunity to work and reside in the community while being watched at the same time. However, lack of programs caused the inmates to be returned to society the same as they were before committing their crimes.

The U. S. watched as recidivism rates and prison populations soared as they entered into the Warehousing Era. Deterred by the crimes that were committed by those inmates who were on work-release or residing in a halfway house, the U. S. decided to limit the liberties that the inmates had once enjoyed. The Warehousing focused on imprisonment for inmates to remove them from society to avoid the possibility of further crimes being committed.

In 1970, a new treatment model emerged call the “ nothing works” doctrine which was popularized by Robert Martinson that correctional treatment programs have had little success in rehabilitating offenders.” (Schmallegger, 2007). This doctrine helped to implement the mandatory minimum sentencing provision and truth-in sentencing requirements. Calls for truth-in sentencing occurred when the average inmate was serving one third of their time that was handed out by the judge at sentencing. Victims and other citizens were dismayed to learn that the full sentence was not being fulfilled.



In the 1990's another popular law was developed called the "three strikes and you're out" in California and was soon adopted by many other states. The premise for the three strikes law is that if someone was to commit a felony three different times, then the only option was to sentence them to life in prison without the possibility of parole. This has also contributed to a dramatic increase in prison populations. According to the Bureau of Justice Statistics, in 1985 there were approximately 550,000 inmates in the U. S. prison and this figure jumped to 1,400,000 by 1995 (Bureau of Justice Statistics, 2011) Opponents of this law argue that this law costs too much with the increased number of inmates, that it unfairly targets minority offenders, does not help to decrease crime and that not all who were convicted under the three strikes law were convicted of serious, violent crimes.

Besides the sentencing guidelines, there was also a war on drugs that was taking place. Sentences for drug-related offenses became more severe and more of the sentence that was handed out by a judge was actually being served.

The current era that we are in is the Just Desserts Era which started in 1995. Prisons had now become essentially warehouses for inmates who were receiving longer sentences for the same crime. Rehabilitation was not working, so the inmates are essentially being held.

When we look at the past prison systems of the U. S., it is important to look at the goals that each of the systems advocated. Starting with the Penitentiary Era the focus was on rehabilitation and deterrence. The Quakers

utilized their religious belief that time alone would lead a person to become remorseful for their actions. The Mass Prison system focused on deterrence as well as incapacitation. The Reformatory Era was focused on rehabilitation. The Industrial Era reverted back to incapacitation and restoration. The philosophy of retribution was strong in the Punitive Era. Not surprisingly, the Treatment Era's philosophy was on rehabilitation. In addition to rehabilitation, the Community-based Era also looked at restoration. The Warehousing Era looked at incapacitation. Finally, the Just Desserts Era looks at retribution, incapacitation and deterrence. The task before us is to find the right balance for today's society of rehabilitation, retribution and deterrence to decrease our prison populations.

One strategy to reduce or stop the increase in our prison populations comes from the sentencing phase. It is important to know the different goals of sentencing. They are: incapacitation, retribution, deterrence, rehabilitation, vindication, and punishment. In incapacitation, the offender is sentenced to a prison with the goal of not allowing them to commit further crimes. In retribution, which was popular in the early ages of history, the goal is to seek revenge against the offender. An example of this is the eye for an eye mentality. Deterrence refers to stopping criminal behavior and there are two types: general and specific. General deterrence refers to the ability stop the criminal behavior by the public. An example, would be watching someone getting their hand cut off for stealing. The hope is that it serves a general deterrent to the public to not commit that crime as you have seen what happens to a person when they commit that crime. In specific deterrence refers to the offender specifically in order to stop them from committing that

crime again. Rehabilitation is means to change a person's behavior, so that they no longer commit criminal acts. Vindication refers to the making and enforcing of the law and punishment that goes along with a criminal act. Finally, punishment is the punishment of an offender fairly and equally. The consequences of the punishment for the offender are not taken into consideration.

Currently, the determinate sentence law is used throughout the U. S. This started when the government and citizens gave up on the idea of rehabilitating prisoners. Its goals were to have a punishment in proportion to the crime and eliminate the disparity in the prison terms. There are three levels of a term that is ordered by a judge depending on the facts of the case. The terms are called: presumptive, aggravated and mitigated.

Presumptive terms are the middle of the road terms. In an aggravated term, there may things that occurred that made the crime a little more severe when compared with similar crimes. In a mitigated term, the offender may have had a limited role in the crime or the crime was not as severe. Another caveat in determinate sentence law is that there is typically not any parole. Once the inmate has served their time, they are released automatically.

Also, inmates may work to earn days off their sentence.

Prior to 1970, the indeterminate sentencing law was used. This law felt that rehabilitating inmates was the number one priority. Known for parole which released inmates into the community after part of their time was served in prison, indeterminate sentence law failed in the successful rehabilitation of the inmate. In indeterminate sentence law, judges were handing out a minimum and maximum time for a sentence. Then a parole board would

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complete an annual review of the inmate to determine if they were ready for release. The process was not consistent which caused many to become upset with the unfairness.

Another important factor to consider is what do we hope to achieve with those individuals who have proven that they are not able to follow the rules of society? If our goals come from retribution, then we are not looking at deterrence, reformation and economic considerations. We are only looking at public safety. If our goal is to rehabilitate, then will we risk public safety in releasing supposed rehabilitated inmates. While we have increased our prison capacity we have also increased our prison populations.

We have now learned that we cannot hold all these inmates as our prison are becoming overcrowded which is unsafe for the prison guards and staff who run them as well as to the inmates who reside in them.

One major contributor to the increasing population is the mandatory drug laws. It is not uncommon to find stories of inmates who received a mandatory minimum sentence for their minimal parts in drug offenses.

According to Family Against Mandatory Minimums, there are many stories those affected by the strict sentencing laws that were created during the war on drugs. Here is one of them:

Stephanie dated several men who were involved in selling drugs. At times, they would help Stephanie support her family. In exchange, she occasionally delivered and sold drugs and took messages for them. On October 26, 1993, police arrested Stephanie after she was found sitting on the front porch of a house next to a bag that contained cocaine residue. She confessed she had

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crack in her possession and surrendered it to the officers. She received probation. On November 10, several weeks after her arrest, police sent a confidential informant (CI) to make a controlled drug buy from Stephanie. On November 15, the CI purchased two crack rocks for \$120. On December 8, the CI bought \$40 worth of crack from Stephanie and several codefendants. After this final controlled buy, officers searched Stephanie's residence and found four pieces of crack cocaine and drug paraphernalia. Stephanie was fined and sentenced to nine months in jail.

Nearly three years later on August 16, 1996, police raided Stephanie's residence after a CI reported that he had seen crack in the house. Officers found 500 grams of powder cocaine and \$13, 710 in an attic safe belonging to Stephanie's former boyfriend, Michael. In the master bedroom, police found utensils that tested positive for drug residue. Michael had the key to the safe, along with \$797 in cash in his pants pocket. He confessed to police that the money, the cocaine and the paraphernalia belonged to him and that the \$797 was from 500 grams of crack he had already sold.

Later, Michael would testify that he paid Stephanie to let him reside and store crack at her house. At the time of her arrest, Stephanie had no cash, no bank account and owned no other property besides her car, valued at \$2, 500. She depended on food stamps and welfare to provide for her children.

Stephanie went to trial. She was held accountable for 500 grams of powder cocaine found in the attic safe as well as 500 grams of crack that Michael said he sold. Several of Stephanie's codefendants who dealt drugs with Michael testified against her. Because of their uncorroborated testimony, Stephanie was held accountable for an additional 290 grams of crack, for a

total of 1, 290 grams (about 2. 84 pounds). Stephanie received a sentence enhancement for obstruction of justice because she testified that she had no knowledge of and did not participate in Michael's drug activity. Because of her 1993 drug offenses, Stephanie was categorized as a career criminal, an enhancement which mandates a life sentence. Despite his objections, Judge Roger Vinson was forced to sentence 26-year-old Stephanie to life in prison without parole.

At sentencing, Judge Vinson said to prosecutors: " There's no question that Ms. George deserved to be punished. The only question is whether it should be a mandatory life sentence ... I wish I had another alternative." He told Stephanie, " Even though you have been involved in drugs and drug dealing for a number of years ... your role has basically been as a girlfriend and bag holder and money holder. So certainly, in my judgment, it doesn't warrant a life sentence."

Stephanie received the longest sentence of any of her five codefendants. Over a decade ago, the young mother of three was led out of the courtroom quietly crying. She has now been incarcerated for over 14 years. Her children have grown up without her and her older relatives have aged and passed away. Stephanie has been a model prisoner, actively participating in vocational and educational training and working hard at her prison job. She has completed drug treatment and is sober. Unfortunately, the mandatory minimum life sentence prevents Stephanie from ever having another chance (Families Against Mandatory Minimums, 2011).

Stories like Stephanie's are not uncommon. Like the judge stated Stephanie needed to be punished for her actions, however it seemed extreme to be

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sentenced to life in prison for such a minimal role. In many of these cases, the person who was more invested in the illegal activities seems to get away with less time in prison as they were able to make deals with the prosecution. The reason that this occurs is that the person with the most information is in a better position to help prosecutors out and may bargain smaller time in prison for themselves while the person who may have had the smaller role is left holding the bag.

According to the Bureau of Justice Statistics from a report in 2009, crime rates have remained the same or decreased since 1994 in areas of rape, burglary, property crimes, robbery, motor vehicle theft, and homicide (Bureau of Justice Statistics, 2011) In contrast, the number of inmates in the corrections system which include probation, prison, jail or parole, has increased. The trend remains that prison populations are slowly increasing as well. In 2009, the FBI's Uniform Crime Report (UCR) reported a 1.9 percent decline in violent crimes and a 0.8 percent decline in property crimes reported in 2008. This drop in crime came at a time when the prison and jail growth rates fell from previous years (2008). This data shows that while crime rates were decreasing in contrast the incarceration rates had increased.

There should also be guidelines when determining who should be sentenced to prison instead of community service orders. A person should be sentenced to prison or jail if any lesser punishment would depreciate the seriousness of the crime that was committed, imprisonment is needed in order to deter them from crime, and if the person has had other sanctions applied to them.

The cost of building a new prison is rather staggering. The estimated cost to build a new prison is \$250 million and another \$45 million a year to run it. In today's economy, it would be unwise to not consider economical factors when debating the construction of new prisons. It is not a mystery that a majority of inmates that were sentenced to prison will one day be released back into society. It is important to remember that once a person has spent time in prison, the chances that he will return are quite high. In a two year time frame, it was found that 70% of inmates committed another offense and were returned to prison.

Since we know that many of these offenders will be returning to society (some for a shorter amount of time than others), it is important to ensure that are prisons provide inmates with opportunities. One opportunity that is a win-win situation for all is prison industries. Federal Prison Industries (FPI) emerged during the Prison Industries Era, but was limited by the Ashurst Sanders Act. Today prison industries are in place making license plates, office furniture and other items. However, they are limited as to who they may sell things to. This seems to be a resource that is not fully appreciated. If we were to implement additional trades to provide inmates with some skill upon leaving the prison system, then they would be better able to make the transition into society.

Many inmates have an 8th grade education. If they were appropriately trained, they would be able to pay compensation to the victim of their crime, assist in supporting their family while in prison and build confidence in knowing that they have a skill that would allow them to work on the outside. Some examples of valuable skills would be to teach welding skills,



automotive skills, electrical skills, farming techniques and other technical skills. Also, the profit that the prison industry makes could go to costs of running the prison facilities, provide education to the inmates, and other rehabilitative programs.

There are those that against the prison industries who say that the inmates are being paid unfair wages, however the inmate is currently being housed, fed and clothed which are huge expenditures by a citizen out in society. It appears to balance out. There are others who don't think that the skills being taught are not useful; however it is a skill that they did not have prior to arriving at prison. It also gives the inmate something to do while incarcerated. Boredom in a prison is not a good thing; it could lead to violence and riots.

Let's look at some other solutions or alternatives to building additional prisons. It is clear that in order to avoid building new prisons, the inmate population will need to either decrease or remain the same.

An alternative to imprisonment would be day fines. Day fines are successfully being collected in both Germany and Sweden. The day fine process has two steps. First, you need to consider the severity of the crime. For example, the more serious the crime the higher the fine will be. Second, you need to look at the income of the offender. Currently, in the U. S. day fines have not completely caught on. Many times, day fines are not enforced or collected. This is the result of fines handed out that a lower income person could not afford, so they don't put utilize resources in collecting them. The day fine could be used as a better deterrent for someone who is rich as they

would feel it the same as a person who does not make as much. For example, if you get a \$500 speeding ticket and you are someone like Paris Hilton that will not really deter you from speeding again. Now if the fine was raised to \$50, 000, it could deter you from speeding in the future.

An idea that stirs up great controversy is the release of inmates prior to the term deemed by a judge. However, we should remember the war on drugs and many of the sentences set forth by the judge were mandated to the judge. There are many cases where judges at the sentencing stated their unhappiness with being bound to the sentence. Discretion should be given to judge when making sentences, so that the punishment is fitting to the crime. The judge is present at the trial and has access to the pre-sentence report. Having seen the full picture, the judge should be able to hand out the best sentence for the offender. The mandatory minimum sentence law should be replaced with flexible guidelines.

We should also look at the idea that not all who are convicted of a crime should go to prison. There are other alternative besides sending someone to prison for committing crimes. These are often cheaper when compared with housing an inmate in a correctional facility. According to the state of Georgia, it costs \$28, 936 a year for a minimum security prison to house an inmate compared with \$1, 434 for an offender with intensive probation (FY2009 Costs of Adult Offender Sanctions, 2008). Community corrections is the when punishment involves more community supervision and activities and less confinement. Probation is one of the most commonly used sentences that are applied. There are two types: general and specific. General probation is just that, these are the rules that many offenders must

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abide by. They direct that the offender must obey all laws, stay within the jurisdiction of the courts, stay employed, allow access to their homes by a probation officer or police officer and not be in the possession of a firearm. In specific probation, the judge may add specific limitations and rules that pertain specifically to that offender. For example, if the offense was drug-related perhaps mandate drug tests and rehabilitation programs in addition to the general probation guidelines.

Intermediate sanctions or alternative sentencing strategies are sentencing alternatives that cover a variety of options. Split sentencing is usually completed in a jail versus a prison. Then there is shock probation where the offender is sentenced to prison, but serves only a short amount of time, they are then released with probation. The goal of this is to surprise the inmate with a shorter prison term. Shock incarceration has the offender in a boot camp like setting for about 90-180 days to shock the inmate into better behavior. It is more commonly used for young offenders and first time offenders. Community service is a common punishment where the offender must dedicate some of their time to a community organization. Some pick up trash on the side of the road or volunteer in soup kitchens; this is usually reserved for minor offenses.

Home confinement is another alternative to prisons. This is beneficial as it allows the offender to remain in his community, has the ability to keep his employment, and with his family. They utilize an ankle bracelet which is equipped with GPS to know the location of the offender. This is easily monitored 24 hours a day. Some monitoring devices are able to detect alcohol in the offender's system which would be useful in settings where

alcohol or drug use was forbidden. Today satellites assist with detecting the location of the offender. This technology is constantly evolving and is sure to develop some other useful tools in monitoring large amounts of offenders. These are also done at a lower cost compared with incarceration.

The Irish System that was created by Sir Walter Crofton is a good basis for the parole system. Under this system, inmates would be able to demonstrate that they have changed their behavior and are ready to enter back into society. It would be a system where they would have to work to be able to move into the next level and are rewarded with additional freedoms. Communities would benefit from the free labor that they receive from inmates through their trash pick-up and the fixing of buildings that are in disrepair. The “ ticket of leave” inmates could be monitored with a