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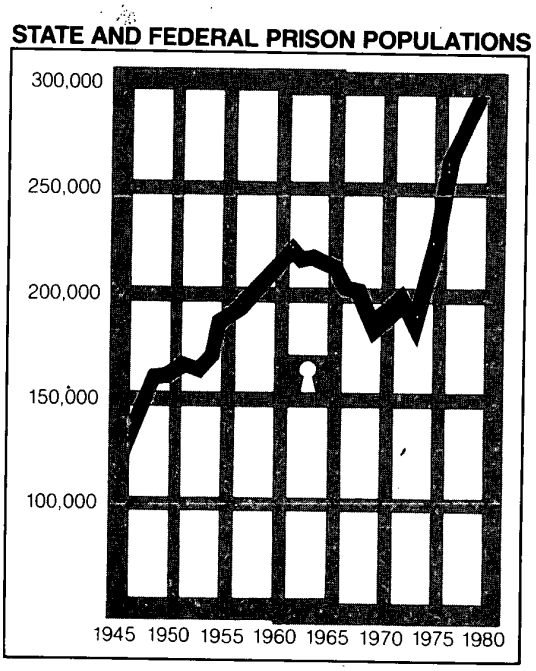
American Prisons and Jails

Volume I: Summary and Policy Implications of a National Survey



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OVERVIEW OF MATERIALS AVAILABLE FROM THE SURVEY OF AMERICAN PRISONS AND JAILS

On October 15, 1976, the *Crime Control Act of 1976* was enacted into law. The Act included the following mandate:

> "The Institute shall, before September 30, 1977, survey existing and future needs in correctional facilities in the Nation and the adequacy of federal, state and local programs to meet such needs. Such survey shall specifically determine the effect of anticipated sentencing reforms such as mandatory minimum sentences on such needs. In carrying out the provisions of this section, the Director of the Institute shall make maximum use of statistical and other related information of the Department of Labor, Department of Health, Education and Welfare, the General Accounting Office, federal, state and local criminal justice agencies and other appropriate public and private agencies."

The National Institute of Law Enforcement and Criminal Justice, within the Law Enforcement Assistance Administration, was assigned the responsibility for executing the study. In order to respond to the statutory requirement for a report to Congress no later than September 30, 1977, and to address the longer term research issues, a two-phased research project was developed, resulting in the following interim and final reports:

INTERIM REPORTS:

Prison Population and Policy Choices, Volume I: Preliminary Report to Congress and *Volume II: Technical Appendix,* September, 1977. These volumes document the first four months of project activity. The major analyses conducted during that period are also summarized in the final report volumes.

FINAL REPORTS:

American Prisons and Jails, Volume I: Summary Findings and Policy Implications of a National Survey, presents in summary form the major findings of the study and implications for corrections policy. This volume serves both as a self-contained document for the policymaker and a foundation for the more detailed presentation of results in Volumes II, III, IV and V.

American Prisons and Jails, Volume II: Population Trends and Projections, presents a history of the size and composition of inmate populations at the federal, state and local levels of government, defines the models used to project future populations, discusses the significant limitations of those models, and presents state-by-state projection results. The accuracy of these projections is tested for the years for which actual inmate counts have become available.

American Prisons and Jails, Volume III: Conditions and Costs of Confinement, discusses the physical conditions and costs of the institutions surveyed, including an important assessment of institutional capacities based on the application of standards promulgated by the Commission on Accreditation for Corrections, the Department of Justice and other prison and jail standard-setting groups.

American Prisons and Jails, Volume IV: Supplemental Report—Case Studies of New Legislation Governing Sentencing and Release, examines the impact of revisions in sentencing and release policies on inmate population flows. The case studies include investigations of two determinate sentencing statutes, a mandatory sentencing law, parole release guidelines, and a Community Corrections Law.

American Prisons and Jails, Volume V: Supplemental Report—Adult Pre-Release Facilities, discusses the physical conditions, staffing and costs of those institutions that house sentenced prisoners for less than 24 hours a day.

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AMERICAN PRISONS AND JAILS

Volume I:
Summary Findings and Policy Implications of a National Survey

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Chapter 1
SENTENCING AND IMPRISONMENT: THE RESEARCH CONTEXT

When the California legislature revised that state's sentencing code in 1976, the new determinate sentencing law was prefaced with the observation that rehabilitation was no longer among the legitimate purposes of imprisonment--at least in California.[1] In 1975, Corrections Magazine conducted a survey of correctional administrators and found that a third of them considered rehabilitation a rare, perhaps impossible, correctional outcome.[2] While no recent survey of the general public has been reported, there is evidence that this cynicism is shared as popular press obituaries of the rehabilitative ideal draw nearly univocal support. Across the country, one senses a building awareness of the areas in which imprisonment is considered to have failed; yet there is little evidence of any countervailing agreement on what it can, or even should, accomplish.

While debates on the purposes of imprisonment have persisted since the invention of the penitentiary, their contemporary logic provides a useful context for beginning this report on the supply and demand for prison and jail resources. This chapter views the current debate and its legislative consequences against recent trends in the use of incarceration among the states. The story is a familiar one: As the nation's prisons were denounced as massive failures and their rehabilitative purpose scorned, the early 1970s brought an unusually disruptive shift in federal and state prison populations. The result was an increasing number of persons confined in a rapidly deteriorating stock of prisons whose purpose was (and largely remains) uncertain. With the strain of crowded conditions have come demands for relief from the kept as well as their keepers. Tragic prison disorders have become relatively common events; judicial supervision of state prison facilities, a routine occurrence.

Remarkably, while concern has been aroused that further shifts in prison population may result from recent changes in the structure of sentencing codes, few policy-makers have gone on to debate their ability to control the size of prison populations. Confronting the crisis, states have adopted emergency housing plans; endorsed shifts in jurisdiction from state prisons to local facilities; appropriated funds for new construction; and called for studies to project the size and type of facilities

needed to house hypothetical numbers of future prisoners. This focus on the supply of prison space suggests that prison populations are natural, externally defined phenomena which can be tabulated and possibly anticipated, but not controlled.

If, as it is commonly supposed, rates of imprisonment are an inevitable consequence of crime rates and other exogenous variables, then the problem is correctly considered one of housing supply. There is, however, little evidence to support this view. Since the supply of offenders so far exceeds the resources of the system, substantial changes in criminal behavior appear to exert little influence in determining the actual number of offenders eventually incarcerated. A closer examination suggests instead that the links between crime and punishment are strongly conditioned by local normative policy. Consider for a moment the commonly acknowledged differences in legal culture between a Southern state and a Northern state; between one state and others in the same region; between one prosecutor or judge and others in the same jurisdiction. Offenses which can cause imprisonment in one state may be treated with fines or probation in another, and may not be criminal at all in a third. Even two offenders convicted of the same offense at the same time and place may be sentenced differently as a result of more or less effective plea negotiation or because they are sentenced by different judges. If these disparities are acknowledged, it should come as no surprise that state and local policy decisions determine the size and composition of prison populations.

These decisions only begin with legislative efforts to define and prescribe sanctions for criminal behavior. The full chain includes police decisions to arrest or ignore an offender, a prosecutor's choice of whether and how to charge, a judge's sentencing policy, and release decisions generally made by parole boards. At no stage in this chain is incarceration inevitable for any but a few offenders. For the vast majority of the remainder, the chances of imprisonment are influenced primarily by whether someone in the system believes they ought to be so punished. Rarely have these decisions reflected any explicit rationale for increasing or decreasing the number of prisoners; even more rarely have they been formulated with any systematic notion of the ends they might achieve.

1.1 The Question of Purpose

The notion that correctional institutions might be treatment facilities for prisoners was widely endorsed for much of this century. At the turn of the century, retribution had

been disavowed by many legal theorists as both unscientific and uncivilized. Roscoe Pound, writing in 1906, observed: "Revenge and the modern expression, punishment, belong to the past of legal history."[3]

By the 1930s, the indeterminate sentence characterized virtually every state sentencing code, providing testimony to the political force of the rehabilitation ideal. The amount of time served became as much determined by parole authorities' perception of rehabilitative progress as by the severity of the offenses for which the prisoners had been convicted. Legislatures often made explicit reference to the rehabilitative purpose of correctional facilities in language similar to that of Missouri: "In the correctional treatment applied to each inmate, reformation of the inmate, his reintegration into society, his moral improvement, and his rehabilitation toward useful, productive, and law-abiding citizenship should be guiding factors and aims."[4]

It was not until the late 1950s that the rehabilitative purpose of correctional facilities took on real vigor at the operational level. While much of what took place in prisons was very far from the medical model, the analogy with the hospital influenced many of the pioneers of correctional treatment. At its most extreme, this theme was expressed in terms of the prison as a therapeutic community, borrowing from the work of Maxwell Jones and others in psychiatric settings.[5] In 1967, the President's Commission recommended that correctional facilities be small, adjacent to urban centers, and based upon a collaborative regime between staff and prisoners.[6]

In the ensuing years, rehabilitation has come under considerable attack from groups that once included its strongest supporters. This new disillusionment with rehabilitation as a purpose of incarceration was partly the result of an accumulation of evaluation findings that were unable to substantiate the effectiveness of correctional treatment.[7] Much of the more rigorous research took place in California, and it was California, once the leading proponent of correctional treatment, that was also among the first states explicitly to reject the medical model. A growing history of violent prison disturbances also cast serious doubts on the fairness and equity of correctional treatment in general, and the indeterminate sentencing model in particular. Many scholars, legal practitioners and corrections administrators joined inmates in protesting the deleterious effects of release-date uncertainty; the questionable ethic of constructive coercion implied by a model of imprisonment that conditioned release on prospects for rehabilitation; and the unwarranted disparity among sentences received and time served by similar offenders for similar crimes.[8]

--Just Deserts

As the rehabilitative ideal has faded, support has mobilized around two new standards: "just deserts" and the "justice model," both of which have come to be expressed in the reduction of discretion at one or more points in the criminal justice system through determinate sentences and decision-making guidelines for sentencing judges and/or parole boards.[9]

Departing from the model where the time a prisoner served was only broadly specified by the sentencing judge ("five years to life") with most of the actual time-setting power in the hands of the parole authority, these proposals called for fixing terms more precisely at the point of sentencing or shortly after imprisonment. Terms would be selected from ranges established legislatively (determinate sentencing) or through administrative rule (guidelines systems) and ranges would be based on the severity of the offense and the offender's prior criminal history. By the end of 1979, the movement to restrict the term-setting power of parole agencies had gained momentum:

- Legislative efforts to control the terms of imprisonment were seen in a number of states that had adopted presumptive or determinate sentencing laws.[10] Broadly considered, the former category provided a legislatively fixed presumptive sentence for each offense category with varying degrees of freedom for aggravating or mitigating circumstances. The so-called determinate schemes asked for the selection of an exact term from various ranges of legislatively prescribed sanctions for each class of offense. Regardless of the degree of judicial latitude afforded by these proposals, in this discussion a sentencing law is considered definite only if the judicially-imposed term could not be significantly reduced by parole. This was the case in four states (Maine, Indiana, Illinois and California) where statutory revisions eliminated or severely restricted parole agency participation in the release decision.

- Administrative systems to regulate parole decision-making and reduce unwarranted variation in terms of imprisonment were first seen at the federal level with the Federal Parole Commission's adoption of parole guidelines in 1974. To mitigate the effects of an indeterminate sentence and make system policy more explicit, the guideline method

provided a structure for setting a definite parole release date shortly after imprisonment based on a matrix of offense and offender characteristics. In the context of the growing demand to reform parole release decision-making--and the emerging threat of legislative actions to abolish parole release entirely--variants of the federal strategy were adopted at the state level. Statewide systems in Florida and Oregon operated through the rule-making of a commission enabled by the legislature. In a number of local jurisdictions, guidelines were implemented by administrative decision.

- Other jurisdictions pre-empted--or at least forestalled--legislative action by expanding the guideline method to encompass all sanctions, thus producing a judicially-controlled method of determinate sentencing. While a 1977 proposal for the abolition of the Federal Parole Board and the creation of a Federal Commission on Sentencing failed to achieve congressional support, more than a dozen states reported plans for statewide sentencing guidelines activity.[12]

In giving priority to fixing sanctions according to the type and severity of the offense, the punishment debate had turned almost full circle, returning to the normative purpose of retribution, with punishment fitting the crime. It remained uncertain how these reforms would affect the use of imprisonment or other forms of punishment. Many believed that prisons were over-used and hoped that a determinate sentencing structure, by resolving perceived inequities in penal sanctioning, might decrease rather than increase the number of incarcerated persons. Other supporters of definite sentencing had quite contrary expectations, and statutes were enacted in states such as California by uneasy alliances.

No general rule could be offered for determining which of these predictions would be fulfilled. As observers were quick to point out, restricted parole discretion still left considerable room for exercise of discretion elsewhere in the system.[13] All of the legislative enactments afforded the sentencing judge discretion in deciding between probation and imprisonment for first offenders convicted on most charges. Each law exempted certain criminal offenses from the probationary option, but even where prison sentences were mandated, there was often substantial discretion available to the sentencing judge in selecting sentence length. In Indiana, for example, the

legislative terms were broad ranges within which the judge typically had discretion of a factor of three or more.[14] To the extent that judicial discretion was restrained, prosecutorial discretion could play a more decisive role in establishing the term of imprisonment since the charge at conviction (and arguments for aggravated terms) now determined the length of sentence. Finally, varying degrees of power formerly held by parole authorities reappeared in the hands of prison officials charged with administering the fine print of the new laws--specifically, the "good time" provisions that offered credits for good behavior that could amount to half of the legislative term. With these provisions, the discounting functions of the parole board persisted as a strategy for institutional discipline that was not necessarily liberated from the rehabilitative ideal. In California, the legislature rejected the principle of release conditioned on treatment progress but nonetheless offered good time contingent on participation in prison programs.[15]

In combination, these shifts in term-setting authority raised the possibility that the new sentencing structures might change the form but not the substance of incarceration policy. More fundamentally, it remained unclear that any new principles had been established to rationalize the use of imprisonment. Penalty levels were based on precedent (recalling precisely the judgements that the new laws presumed to discard) or equally arbitrary political choice. The facility with which terms could be changed by the legislature underscored their lack of "consensus or principle" and supported the concern that even a tactically sound legislative proposal might succumb to the political appeal of penal inflation.[16]

In contrast to proposals for legislatively fixed terms, the concept of sentencing guidelines has been viewed as a useful step toward the development of a common law of sentencing.[17] While these methods are conceptually similar to determinate sentencing laws and call for an analysis of past practices to establish the base position of guideline terms, a distinguishing feature is their explicit provision for some decisions to be made outside the general guidelines--provided that written reasons (subject to appellate court review) accompany such departures. To the extent that guideline methods thus yield an explicit, empirical description of system policy, it has been argued that they may begin to provide a foundation for more purposeful changes in sentencing criteria.[18]

Few statewide sentencing guideline systems have operated long enough to understand the practical consequences of this route to sentencing reform. To a large extent, the utility of the method as a tool for structuring sentencing discretion will

depend on the particular construction of guideline ranges, the extent to which sentences deviate from those ranges and the degree of rigor with which deviations are reviewed by the courts of appeal.[19] At a more basic level, the definition of parole authority will continue to determine the impact of sentencing on terms of imprisonment. Here, the range of variation is comparable to that found among proposals for statutory reform. Minnesota's sentencing guideline proposal eliminates parole release discretion for all offenders sentenced under the authority of the new Sentencing Commission. Utah has jointly developed sentencing and parole guidelines where the former will assist in the in/out decision and the latter will guide the actual length of stay. Other proposals have remained silent on the issue of parole authority or have discussed the joint operation of sentencing and parole guidelines where the latter may or may not include the judicially imposed term as one criterion to be considered in the parole release decision. In commenting on the proposed Federal Commission on Sentencing, one reviewer suggested the retention of a "parole safety net" to examine terms that exceed guideline ranges.[20]

The legislative response to guideline methods adds another dimension of practical uncertainty. As originally conceived, "the guidelines movement would spread as a voluntary association of judges who employed this method as a means to protect their independence."[21] A legislative mandate for statewide implementation raises different problems of participation and control by changing both the geographic boundaries of the original concept and its basis as a self-regulatory management tool. It remains to be seen whether state legislatures can abide the development of a common law of sentencing or whether the legislative process will move to codify guideline ranges, returning to statutory models of determinate sentencing.

--*Deterrence and Incapacitation*

Despite recent attention to "just deserts", much interest has remained in the traditional utilitarian purposes of punishment. In 1975, surveys by the American Institute of Public Opinion found 83 percent of the public agreeing that "the police and other law enforcement agencies should be tougher than they are now in dealing with crime and lawlessness." When asked, "What's behind the high crime rate?", 25 percent of respondents thought that "the laws were too lenient" or that "penalties were not stiff enough."[22] Reflecting these concerns, the goals of deterrence and incapacitation have become one of many rationales for determinate sentencing and the central motivation for mandatory sentencing--a model that has been described as "a wholly illusory path to rational sentencing."[23]

By restricting judicial discretion to suspend prison sentences, or by setting minimum terms (in the event of a prison sentence), mandatory sentencing provisions presume to provide the legislature with greater control over the severity of punishments for specific crimes. Paradoxically, under New York's highly publicized venture in mandatory sentencing for drug law offenders, sentences were both mandatory and indeterminate.[24] While a prison sentence was required for certain offenders, they might serve from one year to life at the exclusive discretion of the parole board.

The shifts in discretion noted in relation to the broader genus of fixed term proposals are equally pertinent in discussions of mandatory sentencing provisions. Again, the in/out decision may still be within the prerogatives of judicial discretion and the length of term may be decided within a broad statutory range. While plea negotiations may be constrained, the arrest decision and opportunities for charge bargaining are nonetheless available to mediate the loss. Studies of mandatory sentencing in New York (for drug law offenders) and Massachusetts (for gun law violators) have also documented the stronger incentives for defendants to demand and prolong trial and the cumulative results of unchanging or lower rates of conviction for the targeted offenses.[25] Finally, while the underlying notions of deterrence and incapacitation have gained vocal adherents, the empirical results have been equivocal, suggesting at best that some types of criminality might be affected by severity of sanction while for others, incapacitating one offender may simply produce a job opening for another.[26]

Despite these uncertainties, the political appeal of mandatory sentencing has been sustained in many jurisdictions by continued public support for the promise of greater certainty and severity in sentencing decisions. By early 1980, the Uniform Parole Reports listed 27 states with mandatory sentencing laws for armed, violent, drug or repeat offenses.[27]

--Facilitative Rehabilitation and Community-Based Corrections

While the goals of retribution, deterrence, and incapacitation have dominated scholarly and political debates, it is certainly premature to conclude that rehabilitation has ceased to be an important consideration in criminal justice decision-making. At the operational level, both in sentencing and other areas of the criminal justice process, there is considerable evidence that decisions continue to be made on rehabilitative grounds. There is also considerable support for the view that rehabilitative services should be freely available to those

incarcerated for reasons other than treatment. Thus, Morris says of his own attack on the legitimacy of rehabilitation as a purpose of incarceration,

> This does not mean that the various developed treatment programs within prisons need to be abandoned: quite the contrary, they need expansion. . . . There is a sharp distinction between the purposes of incarceration and the opportunities for training and assistance of prisoners that may be pursued within those purposes.[28]

At the same time, many observers have continued to question the rehabilitative value of any treatment regime administered within the confines of the conventional, closed institution. In 1931, when probation was still undeveloped in many jurisdictions, the Wickersham Commission urged that "No man should be sent to a penal institution unless it is definitely determined that he is not a fit subject for probation."[29] Thirty-six years later, the President's Crime Commission reiterated this position, adding encouragement for the development of community-based programs that would provide an intermediate sanction between probation and incarceration. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals made these alternatives a major policy recommendation:

> The Commission considers community-based corrections as the most promising means of accomplishing the changes in offender behavior that the public expects--and in fact now demands--of corrections . . . . From the standpoint of rehabilitation and reintegration, the major adult institutions operated by the states represent the least promising component of corrections. This report takes the position that more offenders should be diverted from such adult institutions, that much of their present populations should be transferred to community-based programs, and that the construction of new major institutions should be postponed until such diversions and transfers have been achieved and the need for additional institutions is clearly established.[30]

Coincidentally, as the Commission issued its finding that the use of imprisonment was neither necessary nor desirable for many offenders, federal and state prison populations entered a period of dramatic growth. Arguably, one might have expected these increases to exert substantial pressure on high-growth states to apply sanctions that stopped short of imprisonment in major adult

institutions. More plausibly, however, public sentiment for law and order and the abruptness of the population shifts, found many jurisdictions ill-prepared to consider intermediate sanctions.

Many programs nominally considered "community-based alternatives to incarceration," were themselves ill-equipped in scale or structure to affect the populations of major institutions. Broadly considered, community-based corrections encompasses any non-custodial sanction (including fines, suspended sentences) as well as custodial corrections facilities and programs that provide residents with opportunities for regular contact with the community. Among the options commonly discussed under the rubric of community-based supervision are pre-trial and pre-sentence diversion and treatment programs; non-residential programs of post-conviction supervision (including traditional forms of probation); residential alternatives to incarceration such as restitution and community corrections centers: pre-release programs and facilities; and parole supervision and related aftercare services.

As this list implies, the community corrections label describes a diverse set of ambitions that includes efforts to divert potential clients from the system; to substitute community supervision for custody: to confine offenders in community-related facilities in lieu of major institutions; or to allow the offender to progress along a continuum of supervision that would permit a graduated release to the community from major adult institutions.

Not all of these goals are consonant with the objective of reducing custodial corrections populations. To the contrary, many programs are vulnerable to the threat of expanding rather than containing the number of persons under correctional supervision.[31] At the point of court intake, there is some evidence that the pressures to select lesser offenders for alternative treatment has merely "widened the net of social control" by treating persons who might otherwise have avoided official attention. At the point of departure from major institutions, many of the same pressures to provide low-risk offenders with pre-release opportunities may also result in an unwarranted extension of supervisory control over those who might otherwise be released. Efforts to shift some of the responsibility for custodial corrections to community facilities may have the inadvertant consequence of providing an attractive placement option for those who might otherwise be granted probation. Conversely, while probation is commonly discussed as an alternative to state custodial supervision, there is more practical and empirical support for the notion that probation may substitute for a jail sentence and jail may be considered a more conventional alternative to state custodial supervision.

No one of these observations suggests that an immutable principle is at work to limit the ability of community corrections to influence prison populations. In one state, support for community corrections may reduce prison populations; in another, no effect may be felt at all. Just as the effects of determinate or mandatory sentencing policies may reflect the various discretionary responses of different participants in the sentencing decision, so also are the capabilities of community corrections programs determined by the extent to which relevant decision-makers choose to refer different classes of offenders to alternative treatment. For the most part, these decisions are unconstrained by legislative initiative. Judicial and prosecutorial discretion combine to produce candidates for pre-trial and pre-sentence diversion as well as non-custodial forms of post-conviction supervision. Institutional classification policies generally determine the assignment of prisoners to available community treatment facilities. While these decisions are frequently ad hoc or extra-legal, they nonetheless express the same community values that define the size and composition of the general population of prisoners. In the decade of the seventies, those values clearly seemed to reflect a dim view of alternative sanctions. As the next section will indicate, not only did prison populations reach unprecedented levels, but the largest share of growth appeared to be due to an increase in the number of prisoners sentenced for property and public order crime--precisely those groups repeatedly recommended for alternative treatment.

1.2 The Crisis of Resources

Popular support for fundamental change in sentencing and release policies came at a time when many jurisdictions were faced with the problems of housing a rapidly accelerating number of prisoners. In December 1978, there were close to 450,000 persons confined in federal, state, and local institutions.[32] Almost 60 percent of the total (268,189) were held at the state level; 34 percent were held at the local level (153,162); and the remaining six percent (26,391) were confined in federal facilities. These figures reflect the results of a period of dramatic and sudden growth in the number of persons held in federal and state facilities (Figure 1.1). Between 1972 and 1978, this number increased by over 98,000 persons, an increase of 50 percent that far exceeded the growth in the civilian population. The national rate of incarceration at all levels of government (state, federal, and local) increased from 164 to 207 persons per 100,000 civilian population, an increase of 26 percent.

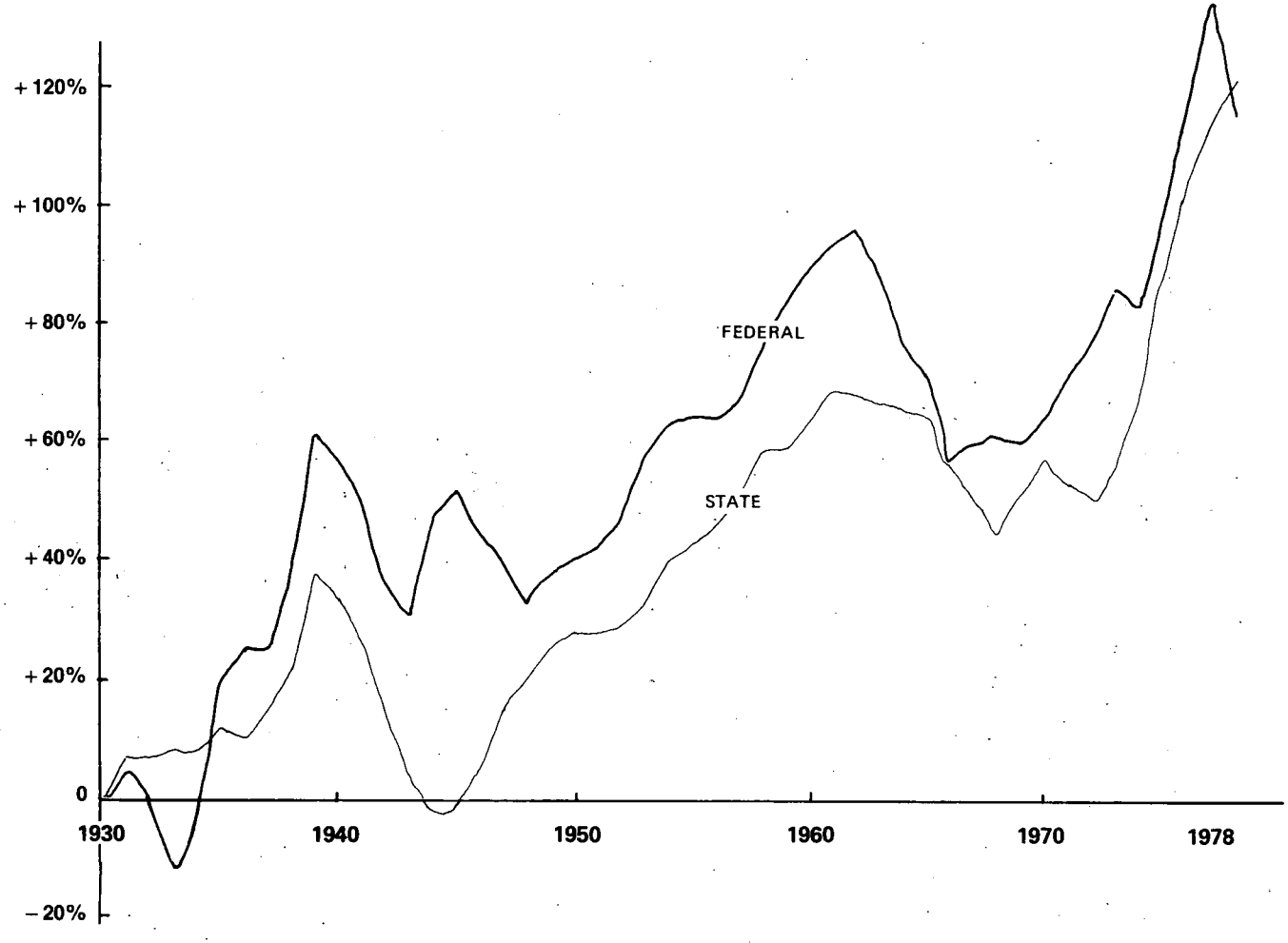
--State Prison Populations

The national trend in state prison population displays five distinct periods since 1930. As illustrated in Table 1.1, the years 1930 to 1968 were marked by slow but steady growth, interrupted by two short periods of decline. In 1968, this historical stability began to collapse. While the years between 1968 and 1972 were a period of relative constancy, in the following six years, the number of inmates in state prisons (sentenced for more than a year) rose from 174,470 to 268,189.

Such unprecedented change was largely unanticipated by the state government agencies responsible for housing the men and women remanded to state facilities. Partly because the increased demand caught planners by surprise, and partly because legislators were often reluctant to allocate funds to offender populations in an era of fiscal restraint, resources failed to meet the increased demand for prison space. In the five years from 1972 to 1977, new state prison construction or remodeling increased reported capacity by slightly under 23,000 beds or less than one-third of the net population growth of over 81,000. The result has been the transformation of prison systems functioning at or near their capacities to systems straining every resource.

With crowding have come dangers to health and safety which, in the words of a Louisiana federal court judge, "shock the conscience of any right thinking person." By 1978, twelve

Figure 1.1
Growth of Inmate Populations in Federal and State Institutions 1930–1978



Source: Data for state and federal prisoners for the years 1930 through 1970 in *Prisoners in State and Federal Institutions for Adult Felons* [see Table 1.1, note (a)]; data for the years 1971 through 1978 in *Prisoners in State and Federal Institutions on December 31* for the appropriate year [see Table 1.1, notes (b) through (g)].

Table 1.1
Net Change in State Prison Populations, 1930-1978

	NET CHANGE	AVERAGE ANNUAL CHANGE
Growth 1930-1939	+39%	+3.7%
Decline 1940-1944	−29%	−6.5%
Growth 1945-1961	+72%	+3.2%
Decline 1962-1968	−14%	−2.2%
Growth 1969-1978	+59%	+4.8%
• Slow 1969-1972	• +4%	+0.9%
• Rapid 1973-1978	• +54%	+7.4%

Sources:

(a) U.S. Department of Justice, Bureau of Prisons, *Prisoners in State and Federal Institutions for Adult Felons,* National Prisoner Statistics (NPS) Bulletin No. 47 (Washington, D.C.: U.S. Government Printing Office, April 1972).

(b) U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA), National Criminal Justice Information and Statistics Service (NCJISS), *Prisoners in State and Federal Institutions on December 31, 1971, 1972, and 1973,* National Prisoner Statistics (NPS) Bulletin No. SD-NPS-PSF-1 (Washington, D.C.: U.S. Government Printing Office, June 1975).

(c) U.S. Department of Justice, LEAA, NCJISS, *Prisoners in State and Federal Institutions on December 31, 1974,* NPS Bulletin No. SD-NPS-PSF-2 (Washington, D.C.: U.S. Government Printing Office, June 1976).

(d) U.S. Department of Justice, LEAA, NCJISS, *Prisoners in State and Federal Institutions on December 31, 1975,* NPS Bulletin No. SD-NPS-PSF-3 (Washington, D.C.: U.S. Government Printing Office, February 1977).

(e) U.S. Department of Justice, LEAA, NCJISS, *Prisoners in State and Federal Institutions on December 31, 1976,* NPS Bulletin No. SD-NPS-PSF-4 (Washington, D.C.: U.S. Government Printing Office, February 1978).

(f) U.S. Department of Justice, LEAA, NCJISS, *Prisoners in State and Federal Institutions on December 31, 1977,* NPS Bulletin No. SD-NPS-PSF-5 (Washington, D.C.: U.S. Government Printing Office, February 1979).

(g) U.S. Department of Justice, LEAA, NCJISS, *Prisoners in State and Federal Institutions on December 31, 1978,* Advance Report, NPS Bulletin No. SD-NPS-PSF-6A (Washington, D.C.: U.S. Government Printing Office, May 1979).

states had lost suits claiming that their entire correctional systems violated the Eighth Amendment, largely because the number of inmates housed so far exceeded institutional capacity that confinement itself was considered cruel beyond accepted standards. In the 1974 Louisiana case, for example, the court found that medical resources were inadequate for the number of inmates; shortages of guard staff left inmates at the mercy of other prisoners; violent and homosexual prisoners were not properly segregated; and overcrowding existed in work, recreational, educational and eating areas.

Not at all coincidentally, in 1974, the number of state prisoners in Louisiana was 18 percent higher than it had been the year before. Such growth, while abrupt, was not atypical. In the six years from December 1972 to December 1978, corrections administrators in all 50 states faced increasing prison populations. In many states the rate of increase could only be described as alarming. Florida nearly doubled its number of state prisoners; New York increased by 75 percent; Delaware added over 700 inmates to its 1972 population of 279 inmates (a 260 percent increase). Across the country, prison populations grew at an average rate of more than seven percent per year.

This rise in state prison population was different from any previous period of increase in two respects:

(1) Both in absolute numbers and in rate of incarceration per 100,000 members of the civilian population, no other period since the 1940s could be compared with the period between 1972 and 1978. The incarceration rate never exceeded 108 per 100,000 between 1941 and 1970, and its median was 98.6 per 100,000. Beginning in 1970, the prison incarceration rate grew by 43 percent nationally to a level of 124 persons per 100,000 in 1978.

(2) The regional distribution of prisoners began to shift in 1968 and the South emerged as the major contributor to the new population growth. Until 1956, no region varied in its percentage of the total prisoners by more than three or four percent. Some adjustments occurred thereafter, with a small decrease in the Northeast's share compensated by an increase in the West's proportion. By 1968, the South, which had previously held about 36 percent of the nation's state prisoners, began to increase its share.

> By 1978, this region held almost half (48 percent) of all state prisoners in the U.S., although it contained less than one-third of the U.S. population. While the remainder of the nation had increased its state prison population by 31 percent between 1970 and 1978, the South showed an increase of 84 percent. In the South, the number of persons per 100,000 in state prisons was more than twice as great as the number in the Northeast and 93 percent higher than the average for the other three regions. The number of prisoners in the South was not only disproportionate to its share of the civilian population but also to its share of serious (Part I) crime.

During the period from 1970 to 1978 the relative pattern of state incarceration rates remained relatively stable, although the absolute level was higher nearly everywhere. The (Spearman rank order) correlation between states' incarceration rates in 1970 and 1978 is .88, indicating that states with high incarceration rates at the beginning of the decade also had high rates at its end. About half this correlation is directly linked to regional patterns, dominated by the difference between the South and the rest of the country, which alone accounts for 37 percent of the total variance in state incarceration rates.

Table 1.2 shows the 1978 rates of incarceration in prisons and jails per 100,000 civilian residents in each state and region. (Similar tables for 1970 and 1972 are included in Appendix A.) Even within regions the table shows considerable variation among states. The rates in the Northeast range from 56 per 100,000 (Rhode Island) to 175 per 100,000 (New York). In the South the range is from 121 per 100,000 (West Virginia) to 382 per 100,000 (Georgia). This variability partly reflects differing social and demographic conditions among the states, and partly deliberate (or accidental) choices of sanctioning policy taken by state criminal justice systems.

Table 1.3 shows how the distribution of offense types changed during the five years of rapid population growth from 1973 to 1978. In every region, the percent of violent offenders went down. In fact, the total number of violent prisoners increased by only 13 percent. The decline was particularly evident in the Northeast where the proportion of violent prisoners dropped from 60 to 45 percent, reflecting an actual decrease in the absolute number of violent inmates. In the Northeast and Southern regions almost all of this decrease was

Table 1.2
State Prison and Local Jail Population and Incarceration Rates by State and Region, 1978
(Excludes Federal Prison Population of 26,391)

Region and State	Civilian Population (In Thousands)	TOTAL Number Incarcerated (% of Total)	TOTAL Number Incarcerated Per 100,000 Civilian Population	STATE Number of Prison Inmates (% of Total)	STATE Prison Inmates Per 100,000 Civilian Population	LOCAL Number of Jail Prisoners (% of Total)	LOCAL Jail Prisoners Per 100,000 Civilian Population
Total	216,600	421,351 (100%)	195	268,189 (100%)	124	153,162 (100%)	71
NORTHEAST	48,986	64,274 (15%)	132	40,425 (15%)	83	23,849 (16%)	49
Maine	1,081	902	83	577	53	325	30
New Hampshire	865	653	76	283	33	370	43
Vermont	487	337	69	337	69	–	–
Massachusetts	5,758	5,018	87	2,811	49	2,207	38
Rhode Island	928	524	56	524	56	–	–
Connecticut	3,101	2,163	70	2,163	70	–	–
New York	17,720	31,125	175	20,458	115	10,667	60
New Jersey	7,291	9,292	127	5,419	74	3,873	53
Pennsylvania	11,753	14,260	121	7,853	67	407	54
NORTH CENTRAL	58,110	88,654 (21%)	153	60,246 (22%)	104	28,408 (18%)	49
Ohio	10,720	18,822	176	13,357	125	5,465	51
Indiana	5,381	6,803	126	4,350	81	2,453	45
Illinois	11,201	16,211	145	10,430	93	5,781	52
Michigan	9,170	20,629	225	14,944	163	5,685	62
Wisconsin	4,681	5,359	114	3,433	73	1,926	41
Minnesota	4,021	3,394	85	1,877	47	1,517	38
Iowa	2,905	2,699	93	2,035	70	664	23
Missouri	4,827	8,486	176	5,637	117	2,849	59
No. Dakota	641	287	45	169	26	118	19
So. Dakota	684	782	114	506	74	276	40
Nebraska	1,557	1,895	122	1,219	78	676	44
Kansas	2,322	3,287	142	2,289	99	998	43
SOUTH	69,797	190,743 (45%)	273	128,108 (48%)	183	62,635 (41%)	90
Delaware	578	1,005	174	1,005	174	–	–
Maryland	4,105	11,125	271	7,952	194	3,173	77
D.C.	663	3,942	594	2,535	382	1,407	212
Virginia	5,023	12,114	241	7,882	157	4,232	84
West Virginia	1,861	2,259	121	1,193	64	1,066	57
No. Carolina	5,472	15,445	282	12,647	231	2,789	51
So. Carolina	2,836	8,628	304	6,990	246	1,638	58
Georgia	5,015	19,152	382	10,874	217	8,278	165
Florida	8,566	30,819	360	20,573	240	10,246	120
Kentucky	3,455	5,539	160	3,390	98	2,149	62
Tennessee	4,311	10,274	238	5,835	135	4,439	103
Alabama	3,705	9,083	245	5,376	145	3,707	100
Mississippi	2,388	4,106	172	2,679	112	1,427	60
Arkansas	2,157	3,863	179	2,529	117	1,334	62
Louisiana	3,946	11,451	290	7,409	188	4,042	102
Oklahoma	2,814	5,524	196	3,820	136	1,704	60
Texas	12,901	36,414	282	25,419	197	10,995	85
WEST	39,707	77,680 (18%)	195	39,410 (15%)	99	38,270 (25%)	96
Montana	775	996	129	672	87	324	42
Idaho	876	1,369	156	830	95	539	61
Wyoming	421	704	167	436	103	268	64
Colorado	2,662	4,148	156	2,467	93	1,681	63
New Mexico	1,198	2,187	182	1,393	116	794	66
Arizona	2,346	5,951	254	3,450	147	2,501	107
Utah	1,312	1,584	121	908	69	676	52
Nevada	657	2,269	345	1,357	206	912	139
Washington	3,741	6,930	185	4,477	120	2,453	65
Oregon	2,449	4,757	194	2,885	118	1,872	76
California	22,040	45,758	208	19,552	89	26,206	119
Alaska	387	534	138	490	127	44	11
Hawaii	844	493	58	493	58	–	–

Sources: Data on state prisoners refer to prisoners sentenced more than one year as reported in U.S. Department of Justice, LEAA, NCJISS, *Prisoners in State and Federal Institutions On December 31, 1978*, NPS Bulletin SD-SPS-PSF-6A, Advance Report (Washington, D.C.: U.S. Government Printing Office, May 1979).

Data on civilian populations refer to estimates on July 1, 1978 as reported in U.S. Department of Commerce, Bureau of the Census, Current Population Reports, *Population Estimates and Projections*, Series P-25, No. 878 (Washington, D.C.: U.S. Government Printing Office, March 1980).

Data on jail populations refer to prisoners present on February 15, 1978 as reported in U.S. Department of Justice, LEAA, NCJISS, *Census of Jails and Survey of Jail Inmates – 1978*, NPS Bulletin SD-NPS-J-6P (Washington, D.C.: U.S. Government Printing Office, February 1979) *less* 5,232 state prisoners housed in local jails (see NPS Bulletin SD-SPS-PSF-6A, Advance Report, listed above). The affected states include: Alabama (1,342), Florida (59), Louisiana (1,190), Maryland (380), Massachusetts (110), Michigan (44), Mississippi (1,000), New York (269), South Carolina (724), and Tennessee (114).

Table 1.3
Type of Crime Committed by Prisoners, Regions and U.S. Total, 1973 and 1978

	Northeast		North Central		South		West		U.S. TOTAL	
	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)
Violent Offenders										
1973	60	(16,193)	55	(19,250)	49	(40,022)	50	(15,025)	52	(90,440)
1978	45	(15,553)	52	(28,539)	44	(46,181)	48	(16,651)	47	(106,706)
Property Offenders										
1973	21	(5,514)	33	(11,745)	35	(28,519)	30	(8,991)	32	(54,769)
1978	37	(12,630)	34	(18,408)	41	(42,526)	28	(9,750)	37	(83,314)
Public Order and "Other" Offenders										
1973	19	(5,034)	12	(4,317)	15	(12,415)	20	(5,965)	16	(27,731)
1978	18	(6,030)	14	(7,525)	15	(15,705)	24	(8,298)	16	(37,558)

Sources: U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, Census of Prisoners in State Correctional Facilities, 1973, National Prisoner Statistics Special Report No. SD-NPS-SR-3 (Washington, D.C.: U.S. Government Printing Office, December 1976); and Survey of State and Federal Adult Correctional Facilities (PC-2), 1978. Totals will not equal totals used elsewhere in this report due to missing data.

offset by the increased imprisonment of property offenders, whose numbers doubled in the Northeast and increased by 44 percent in the South. In the North Central and Western regions, offenses classified as public order or "other" increased their share of the total prison population. The majority of the public order offenses involved drugs with the remainder being a miscellany with no obvious classification.

In addition to a rise in the fractions of nonviolent offenders imprisoned in state facilities, the 1970s brought a continuation of the comparatively large proportion of blacks in prison. Almost half (48 percent) of all 1978 state prisoners were black. While this disproportion mirrors ethnic distributions in sentencing, conviction, prosecution, arrest, crime and every other measure of social pathology, it is nonetheless a dominant fact of prison life.

--Federal Prison Population

Trends in the population of federal prisons were generally similar to those of the states, although change has generally been less abrupt. In the long period of growth in state prison populations lasting from 1944 to 1961, the year-end state inmate count rose by a net of 72 percent over 1944. During the same years, the federal prison population rose only 31 percent. From 1962 to 1968, federal prison populations decreased 18 percent and state populations by 14 percent. Thereafter, federal prison populations made up for this greater decline, increasing more rapidly than state prison populations until 1977, when they reached an all-time high of 28,650 or 46 percent more than they had been in 1967. In 1978, a slight abatement in the trend of federal prison growth occurred, with an eight percent decrease in the base number of prisoners with sentences over one year. During the entire period, between 1930 and 1978, the number of federal prisoners increased 117 percent, compared with an increase in state prisoners of 133 percent.

Predictably, federal offense distributions differed fairly markedly from those of the states. Crimes such as murder, burglary, and larceny/theft are usually prosecuted under state law, and may not involve a federal offense unless committed outside any state jurisdiction (in the District of Columbia, on the high seas, on government reservations or territories, or across state lines, e.g., transporting stolen autos). Federal law is also violated when ordinary crimes are directed against victims with a special federal status such as the postal service, bank or other federally insured credit institution. As a result

of these jurisdictional distinctions, in 1978 only 29 percent of federal prisoners were classified as "violent" offenders and 24 percent as property offenders (compared to 47 percent and 37 percent respectively for state inmates). The remaining 47 percent were found in the public order or "other" category, most of whom were charged with violations of federal drug laws.

Federal prisoners, like their state counterparts, were disproportionately drawn from minority groups. On March 31, 1978, 37 percent of federal prisoners were black, 17 percent Hispanic, and two percent American Indian. This represents a substantial increase in minority prisoners since 1975, when only 37.5 percent were minorities.

--*Jail Populations*

Until 1970, no national data of any kind were collected on jails or their inmates. Since then, the National Jail Census has conducted three surveys for the years 1970, 1972 and 1978.[33] These data reveal little dramatic change at the national level. Between 1970 and 1978, the national jail population decreased from 160,863 by less than two percent or roughly 2,400 prisoners. Although the national picture is one of stability, a small number of striking exceptions can be found at the state level. In six Southern states, quite dramatic growth occurred (Alabama, Mississippi, Georgia, Louisiana, Tennessee and Maryland) resulting in a net gain of close to 7,300 prisoners. The growth in these states, however, was more than offset by significant decreases in New York, South Carolina and the District of Columbia. Changes in the remaining states were distributed relatively evenly both in magnitude and size of change. As a result, their average change can be characterized as moderate growth.

Several factors account for trends in many of those states with large or "significant" changes. The 919-inmate reduction in South Carolina, for example, is the result of the state's assumption of control over the county prison system in 1973. In New York, the reduction from 17,399 to 10,936 may be the combined result of the closing of a major jail facility, the proliferation of Vera-sponsored pre-trial release programs, and use of prison rather than jail for some marginal classes of offenders. In all six of the states that showed gains in jail population, court orders to reduce state prison populations were effective or pending in 1978. Conversely, when orders have been directed at local jails, population reductions can be expected. This was the case in the District of Columbia jail where the court ordered the population reduced to match its "rated capacity" in 1976.

While the data show no major fluctuations in the remaining states, any count of jail inmates present on a single day fails to reveal the inherent instability of jail populations. While two or three years generally constitute the length of stay for a prison generation, jail populations may circulate through the system in two or three months, weeks, or even days. The turnover is so rapid that it is often difficult to obtain reliable data on average lengths of stay. Thus, jail populations are both socially and statistically much less stable than prison populations. For many jails, the change in population between Wednesday and Saturday is probably more significant than the change between 1970 and 1978.

Jails differ from prisons in another important respect which may also influence the growth (or stability) of their populations. For most defendants, prison is the most severe sentencing option available. If sentences become harsher and all defendants are shifted toward more severe punishments, the number of prison sentences must rise. Jails, however, occupy an intermediate position in the spectrum: when the distribution shifts toward harsher sanctions, some people move out of jail. Their places may be taken by others moving up from still lesser penalties, but whether the shift-in exceeds or falls short of the shift-out depends on the distribution of offenders and the nature of the change in sanctions.

Finally, the character of the jail as a residual institution affects the size and composition of its population. Jails frequently house persons who come in contact with the criminal or juvenile justice system simply because no suitable alternative exists. Functions performed by a social service agency in one jurisdiction may be provided by jails in another. Thus, depending on local custom, jails may hold runaway juveniles, public inebriates, material witnesses, persons in safekeeping, federal prisoners, and any number of other "residual" categories. This effect increases both the instability and flexibility of jail populations, since one of the solutions available in times of crowding is the diversion of one or several of these subpopulations to some other agency. In addition to these residual categories, the primary population of pre-trial detainees may also be affected by more or less rigorous efforts to provide such alternatives as citation release, ten percent bond, release on recognizance, and supervised release.

In view of the constant and often compensatory shifts implied by these structural characteristics, a national, regional or even state-level aggregation of jail populations will inevitably mask the considerable range of variation that exists at the

local level. Thus, while some of the nation's 3,493 jails may have suffered only transient problems of crowding, others have faced persistent and severe problems depending on their relative success in adjusting to these fluctuations and the extent to which they have been forced to absorb the additional burden of prisoners awaiting transfer to state facilities.

1.3 The Congressional Mandate and a Summary Response

Speculation about the causes of the rapid surge in prison population in the early seventies provided explanations ranging from the maturing baby boom to the economic dislocations of inflation and unemployment. Sunbelt states pointed to the economic development of the 1970s with its attendant growth in population and infrastructure. Other regions cited higher unemployment, loss of legitimate job opportunities and dereliction of neighborhoods to explain their increase in prison population. Experienced observers pointed to tougher attitudes among criminal justice practitioners: Judges, they said, were handing out longer sentences and more of them; prosecutors were striking harder bargains; offenders were committing and being arrested for more serious crimes which carried higher penalties; parole boards were granting releases more cautiously and returning technical violators more quickly. As we have seen, there was further speculation that yet more forces would come into play with the emerging shifts in sanctioning power discussed at the outset of this chapter.

In this context, the U.S. Congress mandated the present survey of adult correctional facilities. The Congressional directive posed three central questions:

(1) Were the nation's federal, state, and local corrections facilities adequate to meet the needs of their expanding prisoner populations?

(2) What expectations could be formed about the size of the prison population in the near future?

(3) How might various proposals for more determinate sentencing structures affect the use of imprisonment and the need for additional correctional resources?

--The Adequacy of Existing Resources

The first question clearly reflected a growing national concern for the ability of the nation's corrections facilities to maintain decent standards of confinement for their existing prisoner populations. In choosing measures to address this question, we were confronted with a vast array of conflicting standards and court decisions governing the conditions of confinement. To provide the context for our selection of measures of adequacy, Chapter 2 provides a brief perspective on the role of judicial, executive and professional agencies in

developing standards of facility operations. Chapter 3 introduces our decision to focus on standards that would assist in quantifying the extent of crowding among the nation's corrections facilities. Although it describes only one dimension of the conditions of confinement, crowding has been a principal factor prompting judicial intervention in corrections policy and a central concern of corrections administrators faced with the increasingly difficult task of managing the prison environment. Previous studies have linked housing conditions or perceptions of crowding with illness complaints, disciplinary infractions, deaths, suicides, self-mutilation, psychiatric commitments and violent confrontations among inmates and between inmates and staff.[34] In considering the constitutionality of confinement in crowded conditions, the courts, in turn, have cited the destructive psychological effects, the infringements on privacy and personal dignity and the risks to the personal security and health of inmates.[35] Although there has been little agreement on the totality of conditions that constitute a crowded living space, several key physical dimensions that have repeatedly appeared in court decisions and professional standards, were used to guide our inquiry:

- the number of inmates per confinement unit (occupancy),
- the number of hours confined to quarters (freedom of movement), and
- the square feet of living space provided per inmate (density).

Applying these and associated measures required the most comprehensive survey of adult correctional institutions ever undertaken. Working in conjunction with the ongoing survey program of the Bureau of Justice Statistics, data were obtained from approximately 3,500 local correctional facilities, 521 state prisons, 38 federal prisons and 402 community-based pre-release facilities. Data on state and federal prisons and pre-release facilities were collected through a mail survey administered by the research staff with a reference date of March 31, 1978. The Bureau of the Census (through an interagency agreement with the Bureau of Justice Statistics) provided the staff with data on local correctional facilities collected as part of its February 15, 1978 National Jail Census. The specific instruments and survey procedures are described in detail in Volume III (for prisons and jails) and Volume V (for pre-release facilities).

The results of this survey provide the first consistent description of capacity for all adult correctional facilities in

the United States. As Chapter 3 will suggest, if professional standards and court decisions are used as guides, this description points to the need for significant changes in confinement policies in many states, at all levels of government.

--*Future Needs*

The second question--which asked about the future size of prisoner populations--proved substantially more difficult to address. Several plausible predictors--including crime and unemployment--failed to provide useful models. Attempts to simulate the decision process which establishes prison populations were similarly unable to produce credible projections. An examination of case study and aggregate data did reveal that changes in prison intake, rather than time served, were responsible for the major fluctuations in the number of prison inmates, that other parts of the criminal justice system tended to adjust to these fluctuations in ways which minimized or delayed their disruptive effects, but that when the limits of these adjustments were reached, the effects would be directly transmitted to the corrections system. Unfortunately, predicting these movements proved to be a difficult, if not fundamentally impossible, task. The decisions to put people in and take people out of prisons and jails involve scores of discretionary transactions among actors with independent goals, following policies which may or may not be uniformly defined and implemented. Compounding the uncertainty is the fact that the decision rules can and do change from time to time as various decision-makers respond in different ways to new legislation, the availability of sentencing alternatives and public pressure for harsher or more lenient sanctioning policies.

Facility capacity was one variable that appeared to exert a moderating influence on these decisions. Where policies have explicitly taken capacity limitations into account, it has generally been possible to control the degree of crowding. Our historical analysis suggests, however, that where new space has been added, it has, on the average, been followed two years later by population increases of nearly equal size. This finding does not conclusively prove that increased capacity drives population, but does suggest that it may diminish reliance on non-custodial dispositions and inhibit other mechanisms that regulate and control prison population.

From these findings we cannot construct a single, known future. A range of alternative paths are possible, and the one we follow will be determined by the collective choices of

individual actors throughout the criminal justice system and beyond. The projection models summarized in Chapter 4 attempt to describe the ways these actors now behave, and the future consequences for prisons and jails if they continue to follow the patterns established in the seventies. Because this decade was a period of unusual strain on prison resources, these patterns may well dissolve in future years. If the models do provide an accurate description of future incarceration policies, and the data on which they are based are correctly reported, the analyses indicate that some further increase in prison populations is likely, but that the period of most rapid growth seems to have passed, and that stable populations are a possibility for the future.

In many states the rate of prison intake began to decrease after 1976 or 1977. If the time these new inmates serve is no longer than that of prisoners admitted in the earlier years of the 1970s, the early 1980s will see a relative stabilization of prison populations as the largest cohorts complete their terms. However, our data also show plans in most states for at least some expansion of prison capacity in the early 1980s. As we have observed, historically, such expansion has been followed by matching population increases with significant statistical regularity. Unless this connection between space and prisoners can be broken, our projections indicate that we can expect the number of inmates to continue on its upward path, although not as rapidly as it did in the mid-1970s.

--The Impact of Sentencing Law and Practice

No general empirical rules could be formulated to describe the effects of broad substantive changes in sentencing and release policy. Not only have the characteristics of these changes differed in every state, but the discretionary latitude remaining in the system has offered vast opportunities for changing, even nullifying, legislative intent. Because no general purpose model was appropriate to the task, five case studies were developed to respond to this aspect of the Congressional mandate. Four of the case studies dealt with legislation which altered statutory provisions governing sentencing or release: Florida's mandatory sentencing provisions for gun law violators, the determinate sentencing statutes in Indiana and California, and the state-subsidized local corrections initiatives authorized by Minnesota's Community Corrections Act. The fifth case study involved legislation that mandated the application of parole release guidelines in Oregon. The case studies explored the degree to which these changes may have affected the size of prison and jail populations. The changes we examined were

all comparatively recent innovations. None of them had been in force long enough to accrue the kind of experience which would support confident statistical conclusions about their effects, and some were so new that we could only observe the initial transition period. The limited analyses performed (and summarized in Chapter 4) suggest that the dynamics of population flow may have been altered, but that average daily populations have not departed significantly from the trends observed prior to the statutory changes. While it is too early to deny categorically that such changes will ever influence prison population, it seems clear that the dramatic effects that some had predicted have failed to materialize and that the size of prison and jail populations is at most indirectly influenced by the mechanisms studied here.

--*Policy Implications*

In Chapter 5, we conclude this summary of the study's results by discussing some of the policy options commonly considered in federal, state and local efforts to ameliorate the crowded conditions that this report describes. In particular, we seriously question the value of adding correctional capacity--whether in the form of new construction or the development of alternatives--as a means of redressing the problems of prison and jail crowding. While there are substantial needs to renovate or replace existing facilities, our historical analysis of the relationship between population and capacity suggests that the construction of supplemental prison or jail capacity may, at best, provide short-lived reductions in crowding and, at worst, may result in absolute increases in the number of prisoners held in substandard conditions. Similarly, while the need for more alternatives to incarceration is indisputable, it is important that such programs be structured explicitly to avoid their use as supplemental sanctions. Since any increase in the range of criminal sanctions may simply increase the number of people who fall under correctional supervision, we caution that these programs may never fully achieve the status of "alternatives" unless the prison capacity they are designed to replace is actually closed.

Calling for legislatures to accept the responsibility for prison and jail population control, Chapter 5 suggests:

- legislative adoption of standards defining the minimum living space and associated conditions to be provided each prisoner--a measure that would define the costs of confinement and establish

implicit capacity limits for state and local institutions.

- explicit authorization of accelerated release procedures to be used when defined capacity limits are reached--in effect, routinizing actions that now occur largely as a matter of administrative convenience or court-ordered necessity.

- routine transmission of capacity and release information from executive agencies to the judiciary--a measure designed to promote a more rational allocation of space to prisoners by letting "the front door of corrections know how the back door is operating."

We can look at crowded prisons as meaning either "not enough space" or "too many people." We can also say that regions and states vary tremendously in their choices about how many prisoners they wish to hold, and that it is not clear that this variation has much justification beyond historical precedent. The rates of imprisonment and lengths of prison terms which happen to be used are difficult to justify on the grounds of their rehabilitative, deterrent or incapacitative effects because no one is sure that such effects exist, much less how they might be related to specific sentences. In this context, the physical constraints of space and related conditions and costs of confinement can be viewed as a reasonable factor to be considered in sentencing and release decisions. Indeed, by linking the costs of confinement to the decision to incarcerate, more rational incarceration policies might emerge through public discussion of the kinds of prison conditions that are tolerable to the community and the amount of resources the state is willing to divert from other public purposes to maintain an incarcerated population.

Chapter 1: NOTES

1. In Section 1170.1a of the California Penal Code, "The legislature finds and declares that the purpose of imprisonment for crime is punishment," Uniform Determinate Sentencing Act of 1976.

2. Michael S. Serrill, "Is Rehabilitation Dead?" Corrections Magazine (May/June 1975): 3-12, 21-32.

3. Roscoe Pound, "The Causes of Popular Dissatisfaction in the Administration of Justice," American Bar Association Reports, 29 (1906): 395.

4. Mo. Ann. Stat., 216.090.

5. Maxwell Jones, Social Psychiatry in Practice (London: Penguin, 1978).

6. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report on Corrections (Washington, D.C.: Government Printing Office, 1967), p. 47.

7. See, for example, Walter C. Bailey, "Correctional Outcomes: An Evaluation of 100 Reports," Journal of Criminal Law, Criminology and Police Science, 57 (1966): 153-160; Robert Martinson, "What Works? Questions and Answers About Penal Reform," The Public Interest, 35 (1974): 22-54; Douglas Lipton, Robert Martinson, Judith Wilks, The Effectiveness of Correctional Treatment, A Survey of Treatment Evaluation Studies (New York: Praeger Publishers, 1975).

8. See, for example, American Friends Service Committee, Struggle for Justice: A Report on Crime and Punishment in America (New York: Hill and Wang, 1971).

9. Andrew von Hirsch, Doing Justice: The Choice of Punishments (New York: Hill and Wang, 1975); Alan M. Dershowitz, Fair and Certain Punishment (New York: McGraw Hill, 1976); David Fogel, We are the Living Proof: The Justice Model for Corrections (Cincinnati: Anderson Publishing Co., 1975); Marvin E. Frankel, Criminal Sentences: Law Without Order (New York: Hill and Wang, 1973).

10. For a nationwide survey of legislative actions, see Michael Kannensohn, A National Survey of Parole-Related Legislation Enacted During the 1979 Legislative Session, Bureau of Justice Statistics, U.S. Department of Justice, December 1979.

11. Don M. Gottfredson, Leslie Wilkins and Peter S. Hoffman, Guidelines for Parole and Sentencing (Lexington: Lexington Books, 1978): William J. Genego, Peter D. Goldberger and Vicki C. Jackson, "Parole Release Decisionmaking and Sentencing Reform," Yale Law Review, 84 (1975): 810-902.

12. "Sentencing Guidelines in the United States, April 1, 1980," unpublished status report presented at the Maryland Sentencing Guidelines Advisory Committee Meeting, June 18, 1980.

13. Franklin Zimring, "A Consumer's Guide to Sentencing Reform," in Zimring and Frase (eds.) The Criminal Justice System (Boston: Little Brown and Company, 1980), p. 934.

14. Todd R. Clear, John D. Hewitt, and Robert M. Regoli, "Discretion and the Determinate Sentence: Its Distribution, Control and Effect on Time Served," Journal of Crime and Delinquency, 24 (October 1978): 428-445: see also Volume IV, Chapter 5 of the present study.

15. Sheldon L. Messinger and Phillip E. Johnson, "California's Determinate Sentencing Statute: History and Issues," in Zimring and Frase (eds.) The Criminal Justice System (Boston: Little Brown and Company, 1980), p. 984.

16. Franklin Zimring, "A Consumer's Guide to Sentencing Reform," supra note 13 at p. 938.

17. Norval Morris, "Punishment, Desert and Rehabilitation," in Zimring and Frase (eds.) The Criminal Justice System (Boston: Little Brown and Company, 1980), p. 739.

18. Jack Kress, Leslie Wilkins, and Don Gottfredson, "Is the End of Judicial Sentencing in Sight?" Judicature, 60 (1976): 294-299.

19. Franklin Zimring, remarks as Commentator on S. 1437, Developments in Judicial Administration, 80 F.R.D. 163-166 (1977).

20. Ibid., p. 1004.

Chapter 1 Notes (continued)

21. National Institute of Justice, U.S. Department of Justice, "The Principles of Guidelines for Sentencing: Methodological and Philosophical Issues in Their Development," by Leslie Wilkins (Washington, D.C.: Government Printing Office, in press).

22. Louis Harris, "The Harris Survey" as cited in Sourcebook of Criminal Justice Statistics, 1978, Bureau of Justice Statistics, U.S. Department of Justice (Washington, D.C., Government Printing Office), p. 322.

23. Norval Morris, "Punishment, Desert, and Rehabilitation," supra note 17 at p. 740.

24. National Institute of Justice, U.S. Department of Justice, The Nation's Toughest Drug Law: Evaluating the New York Experience, by Association of the Bar of the City of New York and the Drug Abuse Council Inc. (Washington, D.C., Government Printing Office, 1978).

25. National Institute of Justice, U.S. Department of Justice, Policy Brief: Mandatory Sentencing, by Kenneth Carlson, et al. (Washington, D.C.: Government Printing Office, in press).

26. Alfred Blumstein, Jacqueline Cohen and Daniel Nagin (eds.), Deterrence and Incapacitation: Estimating the Effect of Criminal Sanctions on Crime Rates, (Washington, D.C.: National Academy of Sciences, 1978).

27. Michael Kannensohn, A National Survey of Parole-Related Legislation, supra note 10.

28. Norval Morris, The Future of Imprisonment (Chicago: University of Chicago Press, 1974).

29. National Commission on Law Observance and Enforcement, Report No. 12: The Cost of Crimes, Washington, D.C., 1931. For a brief summary of this 657-page document, see "Real and Intangible Costs: Wickersham Report," Commonweal, 13 March 1931): 562-563.

30. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973), pp. 223, 349.

31. See, for example, Paul Lerman, Community Treatment and Social Control (Chicago: University of Chicago Press, 1975).

32. These data are based on estimates furnished by the National Prisoner Statistics program of the Bureau of Justice Statistics and will not correspond to the figures based on the surveys conducted for this report (which carried reference dates of February and March 1978).

33. U.S. Department of Justice, Bureau of Justice Statistics, NPS Bulletin Nos. SD-NPS-J-6P, SD-JA-4, and SC-1, Washington, D.C.: U.S. Government Printing Office.

34. Garvin McCain, Verne C. Cox, and Paul B. Paulus, "The Relationship Between Illness Complaints and Degree of Crowding in a Prison Environment," Environment and Behavior, 8 (June 1976); David D'Atri, "Psychophysiological Responses to Crowding," Environment and Behavior, 8 (June 1976); L. King and G. Geis, "Tuberculosis Transmission in a Large Urban Jail," Journal of the American Medical Association, 237 (February 21, 1978): 790-793; Bailus Walker and Theodore Gordon, "Health and High Density Confinement in Jails and Prisons," Federal Probation 44 (March 1980): 53-58; Edwin I. Megargee, "Population Density and Disruptive Behavior in a Prison Setting," in Albert Cohen, George Cole, and Robert Bailey, Prison Violence (Lexington, Ma: Heath Lexington Books, 1976); P.L. Nacci, J. Prather, H.E. Teitelbaum, "Population Density and Inmate Misconduct Rates in the Federal Prison System," Federal Probation, 41 (June 1977): 271-282; Garvin McCain, Verne C. Cox, and Paul B. Paulus, "The Effect of Prison Crowding on Inmate Behavior," Interim Report, LEAA Grant 78-N1-AX-0019; Paul Paulus, Verne Cox, Garvin McCain and Jane Chandler, "Some Effects of Crowding in a Prison Environment," Journal of Applied Social Psychology, 5 (1975): 86-91.

35. See Volume III, Appendix A of this study for references to specific decisions.

Chapter 2
SETTING INSTITUTIONAL STANDARDS

In addition to the shifts in sanctioning power discussed in the preceding chapter, the decade of the 70s brought dramatic shifts in control over the prison environment. In the absence of explicit or constitutionally acceptable state and local confinement policies, the question of what constitutes an adequate prison or jail has been addressed with increasing frequency by external dictation. The growing magnitude and visibility of prison disorders, more frequent inspections by public and private agencies, media investigations of prison conditions, and a judiciary increasingly willing to bring the conditions of confinement under the scope of Eighth Amendment review, have all contributed to the diminished autonomy of the corrections administrator. This Chapter considers the two types of standards that have emerged as measures of the adequacy of prison and jail conditions:

- The minimum standards of constitutional decency devised by the federal courts in decisions challenging the conditions of confinement; and

- The growing body of self-regulatory standards and accreditation procedures promulgated by professional and federal executive agencies to stimulate facility improvements through voluntary, administrative action.

While neither of these sources provides answers of unquestioned authority, in combination they provide a clear mandate for affirmative action at the state and local level.

2.1 The Role of the Courts

We have observed that 13 states operated their prisons under orders from the federal courts in 1977. This statistic scarcely reflects the volume of litigation challenging the conditions of confinement. In 1976, over 19,000 petitions for relief were filed in the federal courts, representing over 15 percent of the entire civil case filings.[1] Although fewer than 1,000 of these cases ever reached trial, there is no lack of opportunity for federal court intervention when a single case can

form the basis for orders affecting every prison in a state. In 1978, state and federal corrections agencies reported 8,168 pending cases filed by inmates; 30 states as well as the federal system reported one or more court orders governing facility conditions.[2] Conditions in the District of Columbia jail and innumerable city and county jails across the country had also been held unconstitutional.

The notion that courts could be involved in decisions affecting the operating conditions of correctional facilities is a comparatively recent one. Only a decade ago, federal courts were observing a "hands-off" doctrine, largely avoiding intervention in prison and jail administration. In 1954, a federal circuit court ruled, "courts are without power to supervise prison administration or to interfere with the ordinary prison rules or regulations."[3] The Attica tragedy of 1971 is generally credited with alerting the judiciary to the possibilities of cruel and unusual punishment in America's prisons and jails. Since then, no region in the country has been unaffected by federal and, occasionally, state court orders to eliminate substandard conditions of confinement. Among the 30 states reporting court orders effective in March 1978, the most frequently litigated issues included crowding, medical and health care services, staff practices, sanitation, food services, and due process protections including inmate access to the courts.[4]

The courts have repeatedly characterized crowding as the condition of confinement that exposes inmates to the most harmful physical and mental consequences. Table 2.1 lists 19 states that were under court order to remedy conditions that included crowding in one or more facilities, and 12 additional states that were facing similar court challenges in early 1980. From the many cases in which crowding has been held unconstitutional, there has emerged no clearly delineated set of standards for determining constitutionally acceptable population levels. In setting limits on the number of inmates who may be confined to an institution, judges have prohibited the practice of double-occupancy in cells ranging in size from 35 to 88 square feet;[5] limited the overall inmate population to the design or normal capacity of the facility;[6] or adopted expert testimony as to the minimum amount of square feet of sleeping space per inmate humanely permissible.[7] These latter estimates have produced a range from 48 square feet to 75 square feet.

While the specific standards have varied from case to case, in general, these decisions have established the doctrine that corrections standards cannot be considered in isolation, but must be viewed as a totality. In assessing the impact of crowding, the courts have considered such variables as the length of incarceration in the facility, the number of hours each day that inmates are confined to their quarters, and the adequacy of opportunities for physical exercise and recreation.

Table 2.1
Litigation Involving Prison Conditions and Crowding, April 1980

State	Affected Institution	Status	Case
Alabama	State System	Court order; Receiver appointed 466 F.Supp 628 (M.D. Ala. 1979).	*Pugh v. Locke,* 406 F.Supp 318 (M.D. Ala. 1976).
Arizona	State Penitentiary	Preliminary orders limiting prison population and reclassification.	*Harris v. Caldwell,* C.A. No. 75-185, PHX-CAM (D. Ariz.).
Arkansas	State System	Court order; Special Master appointed.	*Finney v. Mabry,* 458 F.Supp 720 (E.D. Ark. 1978).
Colorado	Maximum Security Penitentiary	Declared unconstitutional and ordered closed; partial stay issued pending appeal (10th Cir. 380).	*Ramos v. Lamm,* C.A. No. 77-K-1093 (D. Col. 12/20/79).
Delaware	State Penitentiary	Court order	*Anderson v. Redmon,* 429 F.Supp 1105 (D. Del. 1977).
Florida	State System	Court order	*Costello v. Wainwright,* 397 F.Supp 20 (M.D. Fla. 1975).
Georgia	State Penitentiary at Reidsville	Court order; Special Master appointed.	*Guthrie v. Evans,* C.A. No. 3068 (S.D. Ga.).
Illinois	State Penitentiary at Menard	Court order	*Lightfoot v. Walker,* C.A. No. 78-2095 (S.D. 111. 2/19/80).
Indiana	State Penitentiary at Pendleton	Pending	*French v. Owens*
	State Penitentiary at Michigan City	Pending	*Wellman v. Faulkner,* 1P79-37-C (S.D. Ind.).
Iowa	State Penitentiary	Pending	*Watson v. Ray,* C.A. No. 78-106-1, filed 12/28/79 (S.D. Ia).
Kentucky	State Penitentiary and Reformatory	Court order (by consent decree)	*Kendrick v. Carroll,* C76-0079 (W.O. Ky.) and *Thompson v. Bland,* (April 1980).
Louisiana	State Penitentiary	Court order	*Williams v. Edwards,* 547 F.2d 1206 (5th Cir. 1977).
Maine	State Penitentiary	Pending	*Lovell v. Brennan,* C.A. _____ (D. Me.).
Maryland	2 State Penitentiaries	Declared unconstitutional	*Johnson v. Levine,* 450 F.Supp 648 (D. Md. 1978), *Nelson v. Collins,* 455 F.Supp 727 (D. Md. 1978).
Massachusetts	Maximum Security Unit at Walpole	Pending	*Blake v. Hall,* C.A. 78-3051-T (D. Mass.).
Mississippi	State System	Court order	*Gates v. Collier,* 501 F.2d 1291 (5th Cir. 1974).
Missouri	State Penitentiary	Court order	*Burks v. Teasdale,* 603 F.2d 59 (8th Cir. 1979).
Nevada	2 State Penitentiaries	Pending	*Maginnis v. O'Callaghan,* C.A. No. 77-0221 (D. Nev.).
New Hampshire	State Penitentiary	Court order	*Laaman v. Helgemoe,* 437 F.Supp 269 (D. N.H. 1977).

State	Affected Institution	Status	Case
New Mexico	State Penitentiary	Pending	*Duran v. Apodaca,* C.A. No. 77-721-C (D. N.M.).
North Carolina	Central Prison at Raleigh	(NO INFORMATION AVAILABLE)	
	Women's Prison	Pending	*Batton v. State Gov't of North Carolina,* C.A. No. 80-143-CRIT-5 (E.D. N.C.), filed February 25, 1980.
Ohio	State Penitentiary at Lucasville	Court order	*Chapman v. Rhodes,* 434 F.Supp 1007 (S.D. Oh. 1977).
	State Prison at Columbus	Court order by Consent Decree; to close in 1983.	*Stewart v. Rhodes,* C.A. No. C-2-78-220 (S.D. Ohio) (12/79).
	State Prison at Mansfield	Pending	*Boyd v. Denton,* C.A. 78-1054A (N.D. Oh.).
Oklahoma	State System	Court order	*Battle v. Anderson,* 564 F.2d 388 (10th Cir. 1977).
Rhode Island	State System	Court order; Special Master appointed.	*Palmigiano v. Garrahy,* 433 F.Supp 956 (D. R.I. 1977).
South Carolina	State Penitentiary	Pending	*Mattison v. South Carolina Board of Corrections* C.A. No. 76-318.
Tennessee	State System	Declared unconstitutional; preliminary order closing one unit.	*Trigg v. Blanton,* C.A. No. A6047- Chancery Court, Nashville.
Texas	State System	Pending	*Ruiz v. Estelle,* trial ended summer, 1979.
Utah	State Penitentiary	Pending	*Nielson v. Matheson*
Washington	State Reformatory (Walla Walla)	Pending	*Collins v. Rhay,* C.A. No. C-7813-V (W.D. Wash).
Wyoming	State Penitentiary	Court order by consent decree	*Bustos v. Herschler,* C.A. No. C-76-143-B (D. Wyo.).

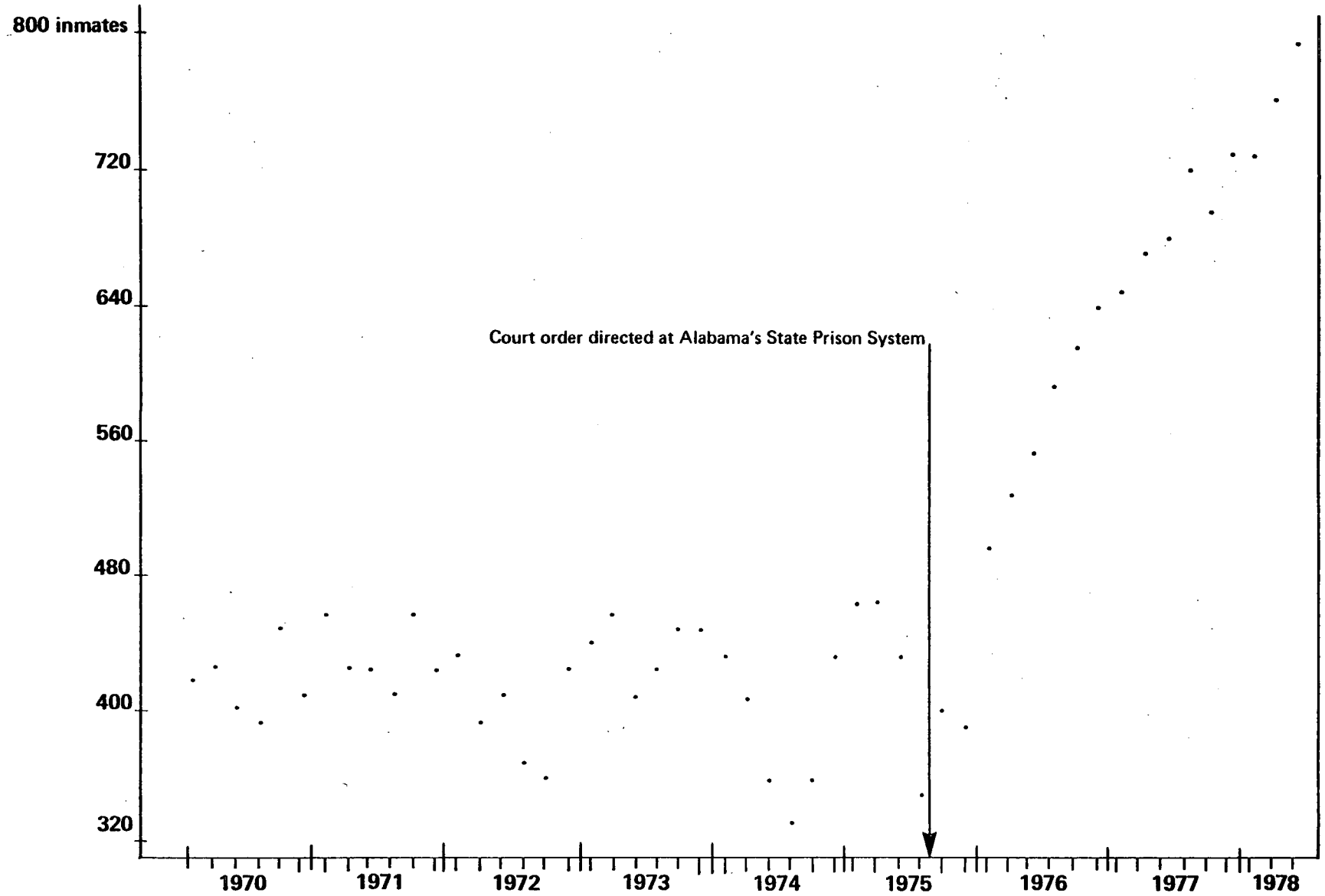
Source: National Prison Project of the American Civil Liberties Union Foundation, 1980.

The recent and only Supreme Court decision in this area clearly illustrates the absence of a set of absolute judicial standards for the kinds of confinement practices that will be proscribed by the courts. In the landmark case of Bell v. Wolfish (1979)[8] the Supreme Court failed to uphold the lower court's finding of unconstitutional confinement practices in the Metropolitan Correctional Center (MCC) in New York. While detainees were frequently double-bunked in 75 square foot cells, the court found compensatory value in the limited number of hours detainees were confined to their cells and their short terms of confinement in the facility itself. In its controversial opinion, written by Justice William Rehnquist, the court recalled earlier "hands off" policies by emphasizing that "the District Court and the Court of Appeals have trenched too cavalierly into areas that are properly the concern of MCC officials."[9] While some observers have viewed this ruling as the knell of judicial concern for the conditions of confinement, others have stressed the continued viability of the totality of conditions doctrine, pointing to the unique situation of the MCC facility--a federally operated institution constructed in 1975 primarily to house pre-trial detainees.

Just as standards of adequacy have varied among cases, so also have the courts' affirmative actions to remedy unlawful crowding. While some judges have chosen to enjoin corrections officials from receiving any new prisoners, to order individual facilities closed, or to mandate countermeasures such as bail reform for local facilities, others have been generally reluctant to dictate specific steps, preferring to outline a variety of options with timetables for compliance. Suggestions offered by the courts or considered by state legislatures in response to court-ordered population reductions have included accelerated release programs or reclassification and the transfer of minimum security inmates to alternative facilities such as community treatment centers, halfway houses and residential restitution centers. New construction has often figured prominently in state plans to achieve compliance--although judges have warned that construction should not be considered a panacea and attorneys have pointed to the inability of construction to keep pace with the population increases of the last decade.

In theory, until conditions that threaten inmates' constitutional rights are rectified, the state's ability to use imprisonment as a sanction can be significantly curtailed. In practice, however, it has often been the case that the prison crowding problem has shifted to county and city jails where state officials have housed thousands of prisoners awaiting transfer to state facilities. Figure 2.1 provides a graphic illustration of the dramatic increase in inmate population levels at Jefferson County Jail in Birmingham, Alabama after an injunction barring the admission of new state prisoners went into effect in late August 1975. As shown, the local jail population level was relatively constant from 1970 to

Figure 2.1
Daily Populations. Bimonthly, Jefferson County Jail (Birmingham, Alabama): 1970 to 1978



Source: Jefferson County Jail Records

1975. Following the court order affecting state facilities, the daily jail population jumped from 393 on December 15, 1975 to 793 on June 15, 1978, an increase of 102 percent. Across the state a total of 2,626 state prisoners were housed in local jails on December 31, 1977.[10] Alabama's situation was not unique. In May 1977, 458 state prisoners were being held in Mississippi's local jails: in Louisiana, there were about 210 state prisoners confined in Orleans Parish prison alone.[11] According to the National Jail Census, a total of 7,048 state prisoners were held locally on December 31, 1977.[12]

For many of those inmates backed up in local jails or transferred to other crowded facilities, conditions may not have changed as a result of a court order to reduce population. On balance, however, while the process of court litigation has been slow, the standards varied, and the results often mixed, by 1979 it was nonetheless clear that persistent judicial intervention (or even the threat of intervention) had served as an important stimulus for upgrading prison conditions.[13] After a tour of court-ordered improvements at the Mississippi state penitentiary, a state official was asked how much would have been accomplished in the absence of judicial intervention: His blunt reply, "none of it."[14]

2.2 Self-Regulatory Standards and Accreditation Procedures

Not surprisingly, the new judicial activism has added a sense of urgency to the development of increasingly specific self-regulatory standards by executive and professional organizations. In turn, the availability of these standards promises to introduce a new level of objectivity to litigation challenging the conditions of confinement.

In this century, several notable commissions have issued substantive recommendations for upgrading prison conditions. These have included:

- The National Commission on Law Observance and Enforcement (The "Wickersham" Commission, 1931);[15]
- The American Correctional Association (1946-1966);[16]
- The United Nations' Economic and Social Council (1957);[17]
- The American Law Institute (1962);[18]
- The National Council on Crime and Delinquency (1966);[19]

- The President's Commission on Law Enforcement and Administration of Justice (1967);[20]
- The American Bar Association's Project on Standards for Criminal Justice (1968-1973);[21]
- The Joint Commission on Corrections Manpower and Training (1969);[22]
- The National Sheriffs' Association (1970);[23]
- The President's Task Force on Prisoner Rehabilitation (1970);[24]
- The Advisory Commission on Intergovernmental Relations (1971);[25] and
- The National Advisory Commission on Criminal Justice Standards and Goals (1973).[26]

In many cases, the standards and recommendations that emerged from these efforts were cast as statements of general intent rather than precise guides for daily practice or policy determination. While many were extremely comprehensive in their descriptions of prison programs and facilities, the use of terms such as "appropriate," "as necessary" or "based on reasonable evidence" offered little guidance in measuring institutional compliance.[27] Enforcement mechanisms were also largely absent. While the 1956 revision of the American Correctional Association's Manual of Correctional Standards included a plan for applying those standards, the 1966 edition of the manual reported little progress toward the goal of testing and self-evaluation.[28] A survey of this nation's experience with the United Nations' "Standard Minimum Rules for the Treatment of Prisoners" also reported the absence of a substantial impact on prison laws and regulations.[29] Although several Departments of Correction adopted the Rules through executive or administrative order, the adopting language was often broadly stated to direct adherence to the Rules' "spirit and intent," asserting that Departmental policies already conformed in "philosophy and principle."[30]

In more recent years, the standards industry has grown in volume, specificity and intent, yielding a new generation of standards from the American Correctional Association's Commission on Accreditation for Corrections, draft federal corrections standards from the U.S. Department of Justice and specialized standards by such organizations as the American Bar Association and American Medical Association. With these standards have come voluntary accreditation procedures, federal funds to support compliance efforts, and the ever-present threat of more visible benchmarks to guide judicial intervention.

--*The Commission on Accreditation for Corrections*

The most comprehensive standards-setting exercise has emerged from the Commission on Accreditation for Corrections which was established by the American Correctional Association in 1974. Supported primarily by LEAA funds, the Commission in 1979 established its fiscal and administrative independence from the ACA (which now participates primarily in selecting Commission members and approving standards).

The Commission's goal has been the development of a uniform set of standards which, when used by the Commission's audit teams, would provide measurable criteria for assessing the safety and well-being of staff and inmates. Ten volumes of standards have been published covering both juvenile and adult corrections agencies responsible for institutional and community-based supervision as well as aftercare services.[31] Those pertaining to adult corrections facilities provide guidance in all aspects of institutional operations, including facility management, staff training, records, physical plant, security and control, inmate supervision, food services, sanitation, health care services, mail and visitation practices, reception and orientation, inmate money and property control, classification, inmate training, library services, religious services, release preparation and temporary release. Reflecting the universal concern for the provision of adequate physical space, the most costly and potentially controversial standard requires at least 60 square feet of floor space per inmate when confinement does not exceed 10 hours per day; when inmates are confined to quarters more than 10 hours a day, the standards require at least 70 square feet of floor space per inmate in jails and 80 square feet per inmate in prisons. These standards also urge that inmates be housed singly and that new prisons and jails be built with no confinement units designed for multiple occupancy.

The Commission uses these standards as the foundation for its voluntary accreditation process.[32] This process begins with a letter of intent from an interested corrections agency to the Commission's Executive Director. Following the submission and acceptance of a formal application, accreditation costs are determined and a contract is executed. At this point, the agency is granted "correspondent" status and undertakes a six-month period of self-evaluation. Upon submission of the self-evaluation report, which includes a plan for correcting known deficiencies, the agency is admitted to "candidate" status for a period not to exceed two years. A request for a standards compliance audit is submitted at any time that the agency believes it has met the required compliance levels. A Visiting Committee, composed of one or more consultant-examiners, is responsible for verifying compliance with the standards and making a recommendation to the Board of Commissioners about granting the agency "accreditation" status. To receive a three-year

accreditation, the agency must comply with 90 percent of all "essential" standards, 80 percent of all "important" standards and 70 percent of all "desirable" standards. (Notably, the standards that establish minimum square footage requirements per inmate have been accorded the status of "important" but not "essential" guidelines--a temporary classification reportedly designed to provide corrections agencies with time to consider major facility improvements.)[33]

By the end of 1979, contracts had been executed with five federal adult correctional institutions and 123 state institutions in a total of 17 states. In three of those states, a total of 11 local detention facilities had also entered the accreditation process.[34] Eleven of the 17 states received LEAA support for their accreditation activities through a discretionary grant program initiated in fiscal year 1978. Departing from its typical categorical or block grant initiatives, this support was intended to provide fiscal incentives for states to enter an otherwise voluntary process.[35] In fact, these states accounted for more than half of the facilities under contract with the Commission in 1979.

--*Related Professional Standards*

Concern for the legal status and physical well-being of the nation's prisoners has prompted a number of parallel efforts to produce detailed corrections standards. Between 1964 and 1973, the American Bar Association produced 17 volumes of Standards for Criminal Justice that focused primarily on due process issues and legal procedures. Largely as a consequence of the Attica uprising in 1971, the ABA has undertaken a number of initiatives in corrections, beginning its work on the legal status of prisoners in late 1971.[36] The ABA's Tentative Draft on the Legal Rights of Prisoners specifies the most detailed and stringent due process protections of any set of corrections standards. Concerned that these standards were excessively stringent and that they would unduly burden corrections agencies and detract from the efforts of the Commission, the ACA expressed extreme opposition to the ABA effort.[37]

Stimulated by mounting evidence of inadequacies in the medical and health care services in prisons and jails,[38] the American Medical Association's Standards for the Accreditation of Medical Care and Health Services in Jails[39] was published in 1978 following two years of deliberations. These standards provide the basis for an ongoing accreditation program which, by the end of 1978, involved six states in a process similar to that established by the Commission on Accreditation for Corrections. A companion effort by the American Public Health Association produced Standards for Health Services in Correctional Institutions.[40] Published two

years prior to the AMA standards, these recommendations accorded particular attention to the provision of health care to women offenders.

A number of other standard-setting and evaluation projects have emerged with the support of LEAA. One of the largest efforts has involved the University of Illinois in the development of a National Clearinghouse for Criminal Justice Planning and Architecture. In 1971, the Clearinghouse produced a 1,300-page Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.[41] These guidelines provided a series of architecturally oriented standards for assessing correctional facilities to be constructed or renovated with LEAA funds.

--*Department of Justice Standards*

Finally, in response to a directive from former Attorney General Griffin Bell to "undertake a comprehensive review of federal corrections policy and to develop standards that are responsive to the rights and needs of inmates as well as to the requirements of institutional security and management," the Justice Department issued its own draft Federal Standards for Corrections for review and comment in June 1978. The draft noted that the primary purpose of promulgating standards was not to mandate their imposition on state and locally operated facilities, but to "offer guidelines for the humane and safe operation of the nation's corrections and detention facilities."[42] As such, the standards would be used as a basis for evaluating the correctional programs and policies of the federal Bureau of Prisons; for shaping correctional and financial assistance programs within the Department of Justice; and, not incidentally, for assisting those divisions of the Department of Justice (e.g., the Civil Rights Division and the Criminal Division) engaged in litigation involving state and local correctional systems. The standards were explicitly derived from those developed by the Commission on Accreditation as well as related professional interest groups and the National Advisory Commission on Criminal Justice Standards and Goals. Once again, however, the emergence of this version of these standards added to the concern that the proliferation of guidelines might confuse rather than strengthen efforts to achieve a consensus on minimum standards of institutional operations.[43]

2.3 Implementation Issues

It remains to be seen whether the new generation of standards and accreditation procedures will shift the burden of reform from the judiciary to state executives and legislators. Prior to 1972, the corrections industry functioned with little influence

from any standard-setting body. In the ensuing years, many more standards have accumulated, but a widespread push for compliance, if there is to be one, has yet to appear. Arguably, many of the new standards continue to be exceedingly difficult to measure. For accreditation purposes, others can only be verified by the presence of written guidelines specifying institutional policies in conformance with the relevant standards.[44] The fact that common practice may frequently differ from written policy may not be readily observed by a consulting examiner--yet it is precisely these discrepancies that may be introduced in future court proceedings. In addition to the inherent difficulties of measurement and validation, both the probable costs of compliance and the voluntary nature of the accreditation process may further constrain the direct influence of these standards on corrections policy.

In the immediate future, then, the question is not whether the new standards will remove the burden of reform from the judiciary, but rather, to what extent these standards will receive the support of the judiciary in reviewing the conditions of confinement. In several cases, attorneys have cited professional standards in their arguments; judges have occasionally referenced standards in their decisions; and the draft standards of the Department of Justice have pointed to the utility of these guidelines to the Department's litigating divisions. Under these circumstances, it is not unreasonable to assume that the combination of executive or professional standards backed by the judiciary will continue to exert powerful pressure on states and localities to achieve compliance.

Chapter 2: NOTES

1. "Prison Reform: The Judicial Process," Criminal Law Reporter, August 2, 1978.

2. Survey of State and Federal Adult Corrections Agencies (PC-1), March 15, 1978.

3. Banning v. Looney, 213 F.2d 771, 348 U.S. 859 (1954).

4. Survey of State and Federal Adult Corrections Agencies (PC-1), March 15, 1978.

5.
   - 35-40 sq. ft. cells--Battle v. Anderson, 564 F.2d 388 (10th Cir. 1977).
   - 40 sq. ft. cells--Detainees v. Malcolm, 520 F.2d 392 (2d Cir. 1975); Johnson v. Levine, Civil Action No. H-77-113 (D. Md. May 7, 1978).
   - 44 sq. ft. cells--Nelson v. Collins, Civil Action No. B-77-116 (D. Md. May 17, 1978).
   - 48 sq. ft. cells--Campbell v. McGruder, 416 F.Supp. 196 (D.C. 1976), aff'd and remanded Civil Action No. 1462-71 (D.C. Cir. March 30, 1978).
   - 49 sq. ft. cells--Costello v. Wainwright, 397 F.Supp. 20 (M.D. Fla. 1975), aff'd 525 F.2d 1239 (5th Cir. 1976).
   - 60 sq. ft. isolation and segregation cells--Pugh v. Locke, 406 F.Supp. 318 (M.D. Ala. 1976), modified in other respects sub nom. Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).
   - 63 sq. ft. cells--Chapman v. Rhodes, 434 F.Supp. 10007 (S.D. Ohio 1977).
   - 75 sq. ft. cells--United States ex rel. Wolfish v. Levi, 428 F.Supp. 333 (S.D.N.Y. 1977), modified in other respects, 573 F.2d 118 (2d Cir. 1978).
   - 88 sq. ft. cells--Inmates of Suffolk County Jail v. Eisenstadt, 360 F.Supp. 676 (D. Mass. 1973), aff'd 494 F.2d 1196 (1st Cir. 1974).

6. Pugh v. Locke, supra; Costello v. Wainwright, supra; Hamilton v. Schiro, 338 F.Supp. 1016 (E.D. La. 1970), order entered sub nom Hamilton v. Landreiu, 351 F.Supp. 549 (E.D. La. 1972); Jones v. Wittenberg, 330 F. Supp. 707 (N.D.Ohio 1971), aff'd sub nom. Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972)..

7.
- 48 sq. ft.--Campbell v. McGruder, supra.
- 50 sq. ft.--Gates v. Collier, 423 F.Supp. 732 (N.D. Miss. 1976), aff'd 548 F.2d 1241 (5th Cir. 1977); Williams v. Edwards, 547 F.2d 1206 (5th Cir. 1977), proceedings on remand sub nom. Williams v. McKeitchen, Civil Action No. 71-98 (M.D. La., April 27, 1977).
- 70 sq. ft.--Martinez-Rodriguez v. Jiminez, 409 F.Supp. 582 (D.P.R. 1976), aff'd 537 F.2d 1 (1st Cir. 1977).
- 60 sq. ft. in cells
  75 sq. ft. in dormitories--Battle v. Anderson, supra.
- 75 sq. ft. in dormitories--Ambrose v. Malcolm, 414 F.Supp. 485 (S.D.N.Y. 1976).

See also United States ex rel. Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), remanded for reconsideration of the proper space allocation in dormitories.

8. Bell v. Wolfish, 47 U.S.L.W. 4507 (U.S. Supreme Court, May 14, 1979).

9. Ibid., p. 4516.

10. U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, Prisoners in State and Federal Institutions on December 31, 1977, National Prisoner Statistics (NPS) Bulletin SD-NPS-PSF-5, February 1979, p. 35.

11. Data derived from case study visits to Mississippi and Louisiana conducted in May 1977.

12. NPS Bulletin SD-NPS-PSF-5, February 1979, p. 3.

13. For a brief review of the early results of court intervention, see Appendix A, Volume III. See also Michael S. Feldberg, "Confronting the Conditions of Confinement: An Expanded Role for Courts in Prison Reform," Harvard Civil Rights Civil Liberties Law Review, 12 (Spring 1977): 367-404; M. Kay Harris and Dudley P. Spiller, Jr., After Decision: Implementation of Judicial Decrees in Correctional Settings, U.S. Department of Justice, Washington, D.C., October 1977.

14. Richard S. Allinson, "The Politics of Prison Standards," Corrections Magazine, March 1979.

15. National Commission on Law Observance and Enforcement, Report No. 12: The Cost of Crimes, Washington, D.C., 1921. For a

brief summary of this 657-page document, see "Real and Intangible Costs; Wickersham Report," Commonweal, 13 (March 25, 1931): 562-563.

16. American Correctional Association, Manual of Corrections Standards, Third Edition (College Park, MD: American Correctional Association, 1966).

17. United Nations Department of Economic and Social Affairs, "Standard Minimum Rules for the Treatment of Prisoners" (approved by the Economic and Social Council in 1957), Report of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, New York, 1970.

18. American Law Institute, Model Penal Code, Part IV, Organization of Correction, Philadelphia, Pennsylvania, 1962.

19. National Council on Crime and Delinquency, Model Act for the Protection of Rights of Prisoners (1970); The Standard Act for State Correctional Services (1966), Hackensack, New Jersey.

20. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report on Corrections (Washington, D.C.: U.S. Government Printing Office, 1967).

21. Institute of Judicial Administration, American Bar Association, Standards for Criminal Justice, Approved Drafts, 1968-1973, Chicago, Illinois.

22. Joint Commission on Correctional Manpower and Training, A Time to Act (College Park, MD: American Correctional Association, 1969).

23. National Sheriffs' Association, Manual on Jail Administration, Washington, D.C., 1970.

24. President's Task Force on Prisoner Rehabilitation, The Criminal Offender--What Should Be Done? (Washington, D.C.: U.S. Government Printing Office, April 1970).

25. Advisory Commission on Intergovernmental Relations, Correctional Reform and State and Local Relations in the Criminal Justice System (Washington, D.C.: U.S. Government Printing Office, August 1971).

26. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: U.S. Government Printing Office, 1973).

27. Ernest G. Reimer and Dale K. Sechrest, "Writing Standards for Correctional Accreditation," Federal Probation, 43 (September 1979): 11.

28. Dale K. Sechrest, "The Accreditation Movement in Corrections," Federal Probation, 40 (December 1976): 16.

29. American Bar Association Corrections Commission, "The United Nations' Standard Minimum Rules for the Treatment of Prisoners," Criminal Law Bulletin, 11 (September-October 1975): 637.

30. Ibid.

31. The three volumes which most directly address the issues of concern to this study are the Manuals of Standards for Adult Correctional Institutions, Adult Local Detention Facilities, and Adult Community Residential Services (Rockville, MD: Commission on Accreditation for Corrections, 1977).

32. See, for example, Accreditation: Blueprint for Corrections (May 1979); Agency Manual of Accreditation Policy and Procedures: Adult Correctional Institutions, Second Edition (Rockville, MD: Commission on Accreditation for Corrections, February 1979).

33. Richard S. Allinson, "The Politics of Prison Standards," Corrections Magazine, March 1979, p. 62.

34. Commission on Accreditation for Corrections, "November/December Activity Report" (unpublished). Including juvenile agencies, adult probation and parole field offices, parole authorities and adult community residential facilities, a total of 396 agencies were under contract in 29 states, the federal system and Canada.

35. At the end of 1979, a total of 212 correctional agencies (including 69 adult prisons and six local detention facilities) in Arizona, Colorado, Connecticut, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, New Jersey, and Vermont, were participating in LEAA's Correctional Standards Accreditation Program. Unpublished Briefing Paper, National Institute of Justice, January 1980.

36. American Bar Association, Tentative Draft of Standards Relating to Legal Status of Prisoners, Chicago, Illinois, 1977.

37. National Council on Crime and Delinquency, "ACA Tries to Foil Proposed ABA Standards," Criminal Justice Newsletter, September 25, 1978, p. 6.

38. See, for example, U.S. Department of Justice, National Institute of Justice, Health Care in Correctional Institutions (Washington, D.C.: Government Printing Office, 1977.

39. American Medical Association, Standards for the Accreditation of Medical Care and Health Service in Jails, Washington, D.C., 1978.

40. American Public Health Association, Standards for Health Services in Correctional Institutions, Washington, D.C., 1976.

41. Fred D. Moyer et al., Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults, Department of Architecture, University of Illinois, Urbana, Illinois, 1971.

42. U.S. Department of Justice, Draft Federal Standards for Corrections, Washington, D.C., June, 1978.

43. National Council on Crime and Delinquency, "ACA Challenges Justice Department Standards," Criminal Justice Newsletter, September 25, 1978, p. 6.

44. The manual provided to consultant examiners to verify compliance includes a compliance checklist for each standard that notes compliance or noncompliance and specifies the basis for that decision through a "Documentation Code." Four codes are indicated in the manual:

    (1) "Written document, which also requires procedural documentation to support total compliance with the standard.

    (2) "Written document, which alone supports total compliance with the standard.

    (3) "Sight confirmation, which can readily be seen by the Visiting Committee.

    (4) "Verbal confirmation, with supporting written or visual documentation also available."

    Commission on Accreditation for Corrections, Agency Manual of Accreditation Policy and Procedure, supra note 32 at p. 30.

Chapter 3
MEASURING THE CONDITIONS OF CONFINEMENT: A PERSPECTIVE ON CROWDING

Measured against trends in the activity of the federal courts, the conditions of confinement in scores of institutions had reached intolerable levels by the mid-1970s. It was natural to ask whether these facilities were atypical or whether they harbored a crisis of national proportions: What kind of picture might emerge if standards commonly discussed by the courts and corrections professionals were applied to all institutions at all levels of government?

Congressional interest in this question was implied in its broad mandate for an assessment of "existing . . . needs in correctional facilities and the adequacy of federal, state and local efforts to meet those needs." In considering our response to this directive, it is important to recall that there is nothing resembling a consensus on what constitutes adequate prison or jail conditions. Despite the new vigor of the standards movement, the concept of adequacy has only relative value. While a warden might ask what is adequate to maintain order, a prisoner might ask what is adequate to guarantee his or her safety. Faced with the threat or reality of court intervention, a state corrections official might ask what is adequate to satisfy the local district court judge. Since the ranking of different dimensions of adequacy depends on one's choice of these perspectives, it is hardly surprising that no consensus exists.

Our choice of measures was influenced by practical constraints as well as the interests of policy. As a practical matter, many of the potentially relevant issues were simply beyond the reach of a national survey. The requirement for an assessment of all federal, state and local facilities restricted the study to a mail survey design and clearly called for measures that could be self-administered, quantified and compared across jurisdictions. (While this design was subsequently modified to permit a small number of on-site inspections, these were intended primarily to validate the mail survey responses.) More important than the research constraints were the questions of policy occasioned by the rapid rise in prison population. Many institutions had been declared unfit to satisfy their prisoners' fundamental needs for decent shelter. In this context, the issue of facility capacity presented an urgent concern that had yet to be addressed in any consistent fashion on a national basis.

In 1977, our Preliminary Report to Congress[1] revealed the critical need to develop a uniform measure of capacity that would

assist in defining the problem of prison and jail crowding by describing the space available to house the nation's prisoners. In the absence of that measure, our early report, like many of its predecessors, relied on information reported by corrections agencies on their "rated" or "design" capacities. Although a number of space standards based on square footage had been proposed, there was no reason to believe that measures of rated capacity conformed with any consistency to any of these standards. Consider, for example, the institution where cells originally designed or rated to hold a single inmate, constituted the facility's primary housing space. With no modifications in the physical plant, it was not uncommon to see increases in reported capacity that merely corresponded to the addition of beds to existing confinement units.

In addition to shifts in the number of inmates, definitions of rated capacity were also vulnerable to varying financial, legal and political exigencies. While overstatements might occur in response to the threat of litigation, understatements were equally likely to be used as a means of dramatizing the need for additional bedspace. In this context, the terms "over-crowding" or "under-utilization" were then (and remain) virtually meaningless.

To address this information gap, our survey asked for the floor space dimensions of all confinement units in federal, state, and local facilities together with information on the number of inmates held in each unit. These data were organized to permit comparisons between state and local confinement practices and the relevant minimum standards promulgated by the Commission on Accreditation for Corrections and largely reiterated in the "Draft Federal Standards for Corrections" (See Table 3.1). The results address the following central questions for all institutions surveyed:

- Capacity. Applying uniform standards based on square footage, to what extent does reported capacity understate or overstate the measured capacity of the nation's prisons and jails?

- Occupancy. How does the distribution of inmates among confinement units conform to standards that preclude confinement in multiple-occupancy cells or large dormitory units?

- Density. To what extent do federal, state, and local institutions meet or exceed minimum standards of square footage per inmate?

- Crowding. Combining density and occupancy standards, how crowded are the nation's prisons and jails?

Table 3.1
Comparison of Correctional Space Standards

	ACA Commission on Accreditation for Corrections		U.S. Department of Justice Draft
	MANUAL OF STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS[a]	MANUAL OF STANDARDS FOR ADULT LOCAL DETENTION FACILITIES[b]	"FEDERAL STANDARDS FOR CORRECTIONS"[c]
CELLS	**4142** There is one inmate per room or cell, which has a floor area of at least 60 square feet, provided inmates spend no more than 10 hours per day locked in, exclusive of counts; when confinement exceeds 10 hours per day, there are at least 80 square feet of floor space. (Important) DISCUSSION: The institution should provide humane care. Single cells provide privacy and enable inmates to personalize living space. Less personal living space is required for inmates who have programs and activities available to them throughout the institution.	**5102** All cells and detention rooms designed for single occupancy house only one inmate. (Detention – Essential, Holding – Essential) DISCUSSION: Single-cell occupancy provides privacy and protection for the inmate, and should be provided based on the designed capacity of the facility.	**002** All cells and detention rooms rated for single occupancy house only one inmate.
		5103 Single rooms or cells in *detention facilities* have at least 60 square feet of floor space, provided inmates spend no more than 10 hours per day locked in, exclusive of counts; when confinement exceeds 10 hours per day, there are at least 70 square feet of floor space. (Detention – Essential, Holding – Not Applicable) DISCUSSION: Rooms or cells of sufficient size enable inmates to personalize living space. Inmates who have access to programs and activities throughout the facility require less space in their rooms or cells because they do not spend as much time there.	**003** Single rooms or cells in *holding facilities* have, at a minimum, 50 square feet of floor space. **004** Single rooms or cells have at least 60 square feet of floor space. Where inmates spend more than 10 hours per day in the room or cell, there is at least 70 square feet of floor space in *detention facilities* and at least 80 square feet in *long-term institutions*.
DORMITORIES	**4144** Where used, dormitories house not more than 50 inmates each, and have: At least 10 cubic feet of fresh or purified and recirculated air per minute for each person occupying the dormitory; Access to hot and cold running water; Adequate toilet and shower facilities; Locker for each individual; Lighting of at least 20 footcandles; A minimum floor area of 60 square feet per inmate and a clearn floor-to-ceiling hight of eight feet; Noise levels low enough so as not to interfere with normal human activities; No double or triple bunking; and Clear observation supervision lines of sight for staff. (Important) DISCUSSION: Where dormitory housing cannot be avoided, the number of inmates per dormitory should be kept low. Living conditions may be enhanced by placing partitions between beds or by increasing the space between beds as much as possible. Chairs and desks should be provided for reading and writing.	**5106** Multiple-occupancy cells are designed to house no more than 16 inmates, with a minimum of 50 square feet of floor space per inmate in the sleeping area. (Detention – Essential, Holding – Not Applicable) DISCUSSION: The facility classification committee should carefully evaluate each inmate, before assigning him/her to a multiple-occupancy cell, for the purpose of ensuring the protection of the individual being assigned as well as the protection of the other inmate(s) already assigned to the cell. Only minimum security inmates should be assigned to multiple-occupancy cells.	**005** Multiple-occupancy cells house no more than *16 inmates*, with a minimum of 60 square feet of floor space per inmate in the sleeping area (excluding activity spaces). DISCUSSION: The facility classification committee should carefully evaluate each inmate before assigning him/her to a multiple-occupancy cell for the purpose of ensuring the protection of the individual being assigned as well as the protection of the other inmate(s) already assigned to the cell.
		5107 Dormitory living units are designed for a capacity of no more than 50 inmates, with a minimum of 50 square feet of floor space per inmate in the sleeping area. (Detention – Essential, Holding – Not Applicable) DISCUSSION: Dormitories are large multiple-occupancy rooms that can be used to house minimum security inmates who do not need to be segregated and who pose relatively little risk to the facility or other inmates. Living conditions may be enhanced by placed partitions between beds or by increasing the space between beds as much as possible.	**012** Dormitory living units house no more inmates than can be *safely and effectively supervised* in a dormitory setting with a minimum of 60 square feet of floor space per inmate (excluding activity spaces). DISCUSSION: Dormitories are large multiple-occupancy rooms that can be used to house *minimum security inmates* who do not need to be segregated and who pose relatively little risk to the facility or to other inmates. Insofar as possible, living conditions should be enhanced by placing privacy partitions between beds or by increasing the spaces between beds as much as possible.
		5108 There is a separate day room for each cell block or detention room cluster. (Detention – Essential, Holding – Not Applicable) DISCUSSION: Day rooms equivalent to a minimum of 35 square feet per inmate should be available to all inmates for reading, writing or table games. Tables should be provided, which may also be used for dining.	**006** There is a separate day room for each cell block or detention room cluster.

[a] Commission on Accreditation for Corrections, *Manual of Standards for Adult Correctional Institutions* (Rockville, Md.: American Correctional Association, August 1977), pp. 27, 28.

[b] Commission on Accreditation for Corrections, *Manual of Standards for Adult Local Detention Facilities*, (Rockville, Md.: American Correctional Association, December, 1977), pp. 21, 22.

[c] United States Department of Justice draft, "Federal Standards for Corrections," June, 1978, pp. 10, 12.

Note: Other standards address the minimum space necessary or desirable for persons incarcerated in prisons and jails. For example: the National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Washington, D.C.: U.S. Government Printing Office, 1973), p. 358, established 80 square feet as the minimum standard. The National Sheriffs' Association, *A Handbook on Jail Architecture* (Washington, D.C.: National Sheriffs' Association, 1975), p. 63, recommended 70 square feet of floor space for jails. The American Public Health Association, *Health Standards for Correctional Institutions* (Washington, D.C.: American Public Health Association, 1976) recommended a minimum of 60 square feet of floor space. The ABA Rights of Prisoners draft recommends one inmate per unit of adequate size and dorms designed for maximum privacy consistent with prisoner safety; The National Clearinghouse for Criminal Justice Planning and Architecture has recommended 70 square feet per inmate.

It is important to emphasize two limitations of our response to the latter question:

(1) Our definition of crowding is based only on the application of density and occupancy standards. A range of other variables that may influence perceptions of crowding--including other physical conditions as well as psychological aspects of the environment--are not considered and must be reserved for a future research agenda.[2]

(2) The minimum standard of density that is most often applied in our analyses is 60 square feet per inmate. While various standards have begun to converge around the 60 square foot measure, support can be found for both higher and lower values.[3] It is useful to recall that in the early 1820s, when one school of the penological art favored total solitary confinement, the cells at the Eastern State Penitentiary in Philadelphia were 96 square feet and each had its own outdoor recreation area, inside plumbing, and hot water heat.[4] This historical observation once again demonstrates the relative nature of the concept of adequacy.[5] Standards, whether developed by professional associations, executive agencies or the courts, are only one tool for assessing the conditions of confinement.

In the next three sections we consider, in turn, conventional federal and state prisons, federal and state pre-release facilities, and local jails. Each section begins with a brief description of the facilities surveyed, followed by a summary analysis of our capacity, occupancy, and density measures. For more detailed results, the reader is referred to Volume III (for prisons and jails) and Volume V (for pre-release facilities).

3.1 Federal and State Prisons

Our survey encompassed 38 federal prisons and 521 state prisons that housed a total of 278,987 inmates on March 31, 1978.[6] Consistent with the disproportionately high rate of incarceration in the South, the states in this region accounted for 284 (43 percent) of all state facilities. Table 3.2 presents a regional and state distribution of facilities by several characteristics that will be discussed in the next section as we describe the physical plant of the nation's adult prisons.

--Federal and State Facility Characteristics

Any discussion of the contemporary conditions of confinement in American prisons must begin by acknowledging the redoubtable

Table 3.2

Number of Federal and State Facilities by Age of Facility, Size of the Inmate Population, Facility Security Classification, Sex Designation, Region, and State, 1978

Region and State	Total Number of Facilities	Facility Security Classification			Size of Inmate Population			Age of Facility					Sex Designation of Facility	
		Maximum	Medium	Minimum	Less than 500	500-999	1000 or more	Before 1975	1875 — 1924	1925 — 1949	1950 — 1969	1970 — 1978	Female	Co-ed
United States	559	153	224	182	376	38	85	25	79	141	164	150	42	26
Federal Total	38	13	17	8	10	18	10	0	3	16	8	11	2	5
State Total	521	140	207	174	366	80	75	25	76	125	156	139	40	21
NORTHEAST	77	24	30	23	50	15	12	7	20	14	15	21	3	5
Maine	3	1	1	1	3	0	0	0	2	0	0	1	0	1
New Hampshire	1	1	0	0	1	0	0	0	1	0	0	0	0	0
Vermont	2	0	1	1	2	0	0	0	0	0	1	1	0	0
Massachusetts	13	5	2	6	11	2	0	0	3	1	3	6	0	1
Rhode Island	5	1	2	2	5	0	0	1	1	1	2	0	1	0
Connecticut	10	6	2	2	9	1	0	2	1	2	2	3	1	0
New York	27	6	13	8	15	5	7	3	5	6	4	9	1	1
New Jersey	8	2	5	1	2	4	2	1	3	2	1	1	0	1
Pennsylvania	8	2	4	2	2	3	3	0	4	2	2	0	0	1
NORTH CENTRAL	90	30	27	33	53	18	19	9	24	13	30	14	9	4
Ohio	11	2	6	3	3	1	7	1	3	3	3	1	1	0
Indiana	9	5	4	0	6	1	2	1	3	0	3	2	1	1
Illinois	10	5	4	1	4	2	4	2	3	2	1	2	1	0
Michigan	23	6	4	13	17	4	2	0	2	4	11	6	1	0
Wisconsin	8	2	3	3	5	2	1	1	3	0	3	1	1	0
Minnesota	5	2	0	3	3	2	0	0	3	0	2	0	1	0
Iowa	5	2	1	2	3	2	0	2	1	0	2	0	1	0
Missouri	8	2	2	4	5	1	2	1	0	3	3	1	0	1
North Dakota	2	1	0	1	2	0	0	0	1	1	0	0	0	1
South Dakota	1	0	1	0	0	1	0	0	1	0	0	0	0	1
Nebraska	2	0	2	0	1	0	1	0	2	0	0	0	1	0
Kansas	6	3	0	3	4	2	0	1	2	0	2	1	1	0
South	284	75	108	101	220	34	30	6	22	93	81	82	18	3
Delaware	5	0	4	1	4	1	0	0	0	1	0	4	1	0
Maryland	14	3	4	7	10	2	2	1	1	3	5	4	1	0
District of Columbia	5	1	3	1	4	0	1	0	0	2	2	1	0	0
Virginia	36	3	33	0	33	2	1	1	3	6	22	4	1	0
West Virginia	6	1	2	3	5	1	0	1	0	2	1	2	1	0
North Carolina	79	3	29	47	73	5	1	0	3	64	8	4	1	0
South Carolina	23	5	2	16	21	1	1	1	1	0	6	15	1	0
Georgia	17	14	3	0	13	1	3	0	0	1	9	7	1	0
Florida	35	19	13	3	22	7	6	0	1	3	16	15	2	0
Kentucky	11	1	2	8	9	0	2	0	1	2	1	7	1	1
Tennessee	7	2	5	0	4	2	1	1	0	1	1	4	1	0
Alabama	8	2	3	3	5	3	0	0	0	4	1	3	1	0
Mississippi	1	0	1	0	0	0	1	0	1	0	0	0	0	1
Arkansas	5	2	1	2	3	1	1	0	0	2	1	2	1	0
Louisiana	7	1	1	5	4	2	1	0	1	1	2	3	1	0
Oklahoma	10	4	1	5	9	0	1	0	2	0	2	6	2	1
Texas	15	14	1	0	1	6	8	1	8	1	4	1	2	0
WEST	70	11	42	17	43	13	14	3	10	5	30	22	10	9
Montana	2	0	1	1	1	1	0	0	0	0	1	1	0	0
Idaho	3	0	2	1	2	1	0	0	0	0	0	3	0	1
Wyoming	2	0	2	0	2	0	0	0	1	0	0	1	1	0
Colorado	8	1	3	4	5	3	0	1	1	0	5	1	1	0
New Mexico	4	0	1	3	3	0	1	0	1	1	2	0	1	1
Arizona	5	1	2	2	3	1	1	0	1	0	0	4	1	0
Utah	1	0	1	0	0	1	0	0	0	0	1	0	0	1
Nevada	5	1	4	0	4	1	0	1	0	0	2	2	1	0
Washington	9	3	2	4	6	2	1	0	2	0	3	4	1	0
Oregon	3	0	3	0	1	1	1	0	1	0	2	0	1	0
California	12	1	10	1	0	2	10	1	1	2	8	0	1	1
Alaska	9	3	5	1	9	0	0	0	0	1	5	3	1	4
Hawaii	7	1	6	0	7	0	0	0	2	1	1	3	1	1

Source: Survey of State and Federal Adult Correctional Institutions (PC-2), March 31, 1978.

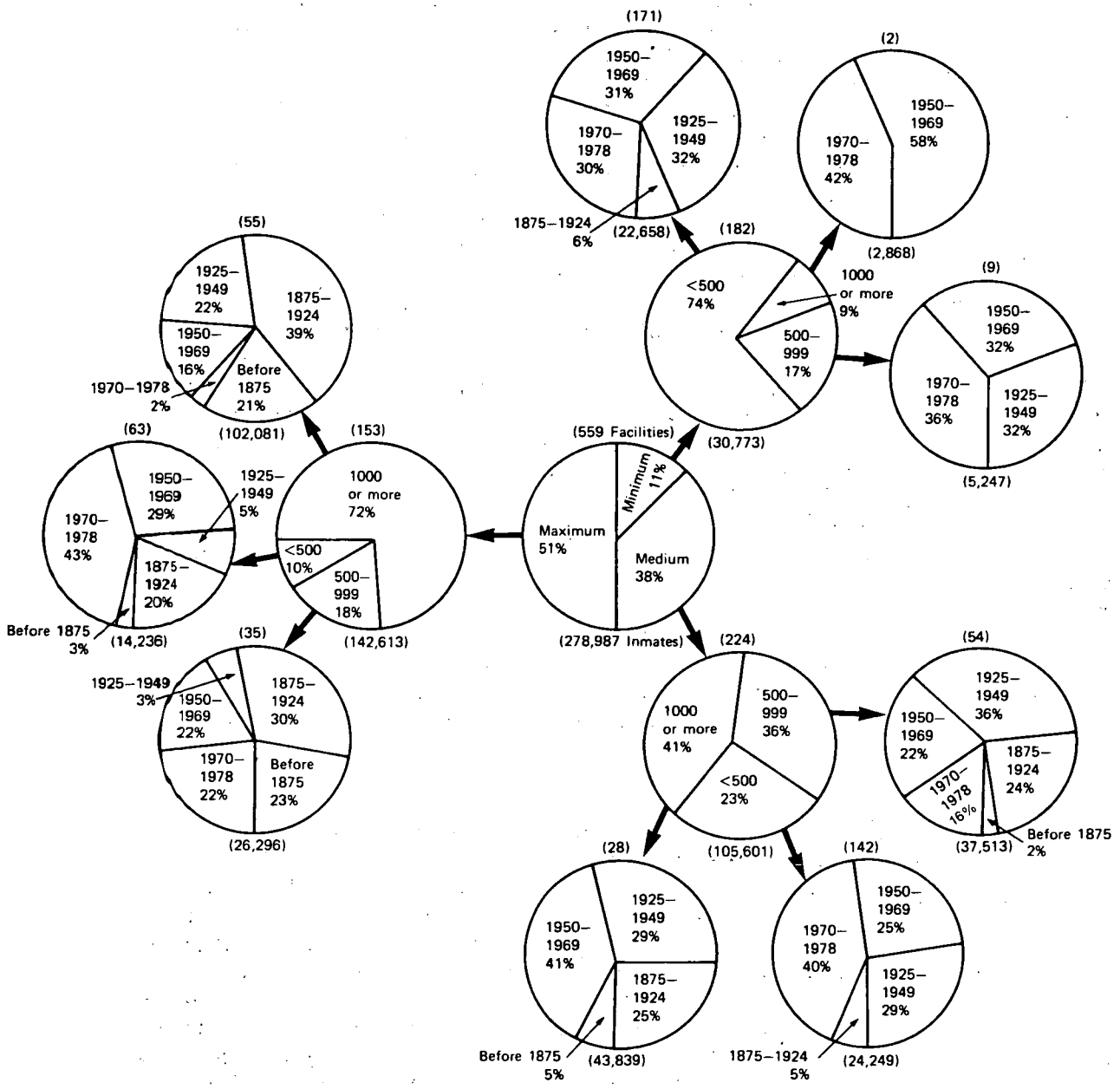
legacy of "fortress" prison construction in the nineteenth and early twentieth centuries. While it took no time at all for penologists to condemn the large, closed, high-rise, high security institution, these facilities have nonetheless outlived scores of reports, investigations, legislative debates, inmate riots and escalating maintenance problems. In 1969, the Joint Commission on Correctional Manpower and Training described the multi-purpose prison as "corrections' closest and strongest tie with the past and the main locus of the field's inertia."[7] Another ten years have passed since the Joint Commission's report, and, not surprisingly, these institutions have continued to demonstrate their capacity for survival. In 1978, over half of the nation's state and federal prisoners were housed in maximum custody institutions; almost three-quarters of these lived in facilities housing 1,000 or more inmates and the majority of those were confined in prisons built prior to 1925 (Figure 3.1). Expressed as a percent of the total state and federal prison population, over 20 percent of prisoners were confined in little better than one-sixteenth of the institutions and all of these facilities were large reminders of our "inglorious prison heritage."[8]

While our definition of the fortress prison included only the oldest facilities, construction of the large prison complex was not entirely restricted to the nineteenth and early twentieth centuries. Indeed, of the 85 facilities housing 1,000 or more inmates, almost half were constructed between 1925 and 1969. It was not until the decade of the 1970s that new prison construction began to emphasize smaller facilities. Of 150 facilities opened between 1970 and 1978, only two were designed to hold 1,000 or more inmates. Notably, however, these newer facilities were no less secure than their aging counterparts--despite more than a decade of oratory calling for more open, community-related facility design. In fact, roughly one-quarter of the facilities opened in the 1970s were designed to provide maximum custody housing; fully one-half of all maximum security facilities were opened between 1950 and 1978 (see Appendix Table B-2).

The most recent ACA standards (those of the Commission on Accreditation for Corrections) avoid suggesting any ideal distribution of inmates among facilities of various security levels. The 1966 ACA standards were somewhat bolder in expressing doubt "that real maximum security facilities are needed for more than 15 percent of an unselected prison population."[9] The same commentary suggested that one-half and one-third of all inmates could be maintained in medium and minimum security facilities, respectively. As Figure 3.1 indicates, there clearly remains a substantial disparity between these guidelines and the actual distribution of inmates in 1978. With the majority of prisoners confined in maximum security institutions, there remained little more than a third in medium custody and only 11 percent in more open, minimum security institutions.

Figure 3.1

Percentage Distribution of Inmates[a] in Federal and State Facilities[b] by Security Classification, Size of the Inmate Population on March 31, 1978 and the Age of the Facility



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978. Appendix Table B-1 provides supporting data for this figure; Appendix Table B-2 provides a comparable distribution of facilities by these attributes.

[a]Percentages within circles refer to inmates, the numbers of which are recorded at the foot of each circle. At the top of each circle, the number of relevant facilities is noted.

[b]Includes only facilities primarily holding inmates 24 hours per day.

Inmate custody classifications conformed in the predictable direction to those of the facilities (Appendix Tables B3-B4). While virtually all of the inmates housed in minimum security institutions were classified as minimum security risks, slightly less than two-thirds of those in maximum custody facilities were classified as high security risks. Across all institutions, 39 percent of inmates were accorded maximum custody status. Since these aggregate figures are a composite of classification decisions based on different criteria applied with varying degrees of rigor, they reveal little about the need for housing of various security levels. The experience in states that have been pressured by the courts to reconsider these designations suggests that there is no uniform interpretation of the "least restrictive" rule of classification recommended by the Commission on Accreditation.[10] Alabama is a case in point. Before a court-ordered reclassification, only nine percent of prisoners were classed as minimum security risks. After reclassification, this figure rose to 34 percent.[11]

In short, whether or not the choice reflected careful classification decisions, maximum security housing remained the most frequently used placement option in 1978. Moreover, while the majority of inmates housed in maximum security settings were found in the older facilities, fully half of all close security prisons were opened in the last thirty years. The unfortunate consequence of this continuing trend in facility design lies in the fact that maximum custody facilities are seldom suitable for multi-purpose use, and, if history is any guide, their life expectancy may far exceed the narrow purpose for which they were constructed. If there is a positive consequence, it can only be that smaller, newer, maximum custody facilities are available as alternatives to the aged fortress prison. Although the newer facilities only accounted for 28 percent of inmates held in maximum security settings, this represented roughly 15 percent of the total 1978 inmate population--precisely the fraction posited by the ACA in its hypothetical distribution of inmates. While this number is admittedly arbitrary, it expresses the long-standing premise that only a minority of offenders require the isolation and close supervision implied by a maximum custody setting.

--*Inside the Federal or State Prison*

Turning to the confinement units within a prison, it is important to make the distinction between cell and dormitory-style housing. In state facilities, 63 percent of the measured capacity was composed of cell space; in federal facilities, cells constituted 54 percent of the available living space. The balance was composed of dormitory units--a type of housing generally criticized by the Commission on Accreditation whose standards preclude any new dormitory construction for the confinement of mainline prison populations.[12]

Cell Confinement

The typical maximum or mixed custody prison of the inside cellblock type has two long rows of steel cells stacked back to back, three to five tiers high, sharing a common alleyway for maintenance access. At the far end of a tier, automatic devices can open all celldoors on that level or "pop" individual cell doors. Group movements (for meals, counts, work, or recreation) are made along narrow platforms on each floor, with as many as five tiers emptying into one stairwell descending to the ground level.

According to our data, many cell spaces nationwide failed to satisfy proposed minimum standards of 60 square feet of floor space. Among state institutions, only 45 percent of all cells met or exceeded the 60 square foot standard; in federal facilities, 61 percent of the cells satisfied this standard. Only when the standard is reduced to 45 square feet can we include virtually all federal cells and 87 percent of state cells. Across the nation, confinement units with less than 60 square feet of floor space were more likely to be found in those institutions repeatedly condemned as corrections' oldest, most visible failures--maximum security institutions built prior to 1875 housing more than 1,000 inmates in 1978.

In the quite typical 6 by 8 foot or 6 by 9 foot (48 to 54 square feet) cell, actual floor space must accommodate the usual wall-hung bed and some sort of open toilet and wash sink in combination or separately mounted. The bed reduces floor space by about 18 square feet, and the toilet facilities by an additional four square feet. Frequently one finds a chair, table, and shelves which reduce the square footage again by up to another ten square feet. This leaves 16-22 square feet of net movement space--including space between the table and toilet, table and bed, or cell door and bed, all of which are normally inaccessible, and, therefore, constructively unusable.

A prisoner who is 5 feet 5 inches tall, standing in the center of his cell (facing the entrance) can extend his arms, and with no effort, touch both walls over the bed and desk. A prisoner who is 6 feet tall or more will have to bend his arms at the elbows to accomplish the same task. It takes little imagination to understand the devastating effect of double celling. While current standards unambiguously require one inmate per room or cell, 19 percent of state cells and 11 percent of federal cells were occupied by two or more inmates in 1978. Although the majority of these represented double-bunked cells, three or more inmates were recorded in over 3,000 units. With cell dimensions that frequently failed the test of minimum standards and occupancy levels that clearly exceeded the one-man/one-cell rule, it was not surprising to find that over 70 percent of all celled inmates were accorded less than 60 square feet of floor space each.

Dormitory Confinement

Dormitory housing--defined for purposes of this study as a unit with 120 or more square feet of floor space--is the alternative to confinement in cells. Dormitories or several man cells are frequently found in medium, minimum and mixed security institutions, many of which were constructed for purposes other than prisoner housing. Former hospitals, mental facilities, juvenile institutions, military installations, trailer units and tents, are among the emergency or permanent facilities that have been adapted to accommodate the influx of prisoners in the 1970s. In some conventional institutions, hallways, recreation rooms and basements have been converted to dormitories. Dormitory housing is also prevalent in the work camp or farm complexes found predominantly among prison systems in the Southern and Western regions.

Dormitories can house well over 150 inmates in single-bed or double-bunked arrangements. There are no cells or partitions in most dorms; beds are a yard apart with personal property lockers beneath them. Many dorms incorporate a common area which serves as a dining hall, recreation area and meeting room. Not surprisingly, in a structure unencumbered by interior walls, the addition of beds is only constrained by the available floor and exterior wall space, often leaving common areas only to serve as passageways. Under the best of circumstances, privacy is simply unavailable; without stringent classification practices and unaffordably close supervision, the opportunities for violence and sexual abuse are largely uninhibited.

In a narrative that clearly pre-dates contemporary norms, the 1966 ACA standards acknowledged the financial incentives for dormitory construction and only discouraged congregate housing for women:

> Individual cells or rooms are always preferable to dormitories but since they are more expensive to design and construct, it has been found desirable and reasonably satisfactory to construct and operate a minimum security facility in which about 70 percent of the housing is of the dormitory type...In passing, it should be stated that dormitories are very unsatisfactory as housing in women's institutions. Traditionally, our society has provided a different standard of modesty and privacy for women.[13]

By 1977, the need to ensure the privacy and safety of all prisoners was tacitly acknowledged in standards of the Commission on Accreditation that precluded any further construction of dormitories for mainline population housing. For existing plants,

where dormitory housing cannot be avoided, the standards urge that the number of inmates per dormitory be kept low, housing no more than 50 inmates each. In practice, however, a substantial number of the existing dormitory units in state and federal facilities failed to meet the 50-person occupancy standard. Of all the federal prisoners confined in dorms, 62 percent shared their unit with more than 50 inmates; for state facilities; this figure dropped only slightly to 52 percent. Although dormitory inmates tended to have more space than those in cells, the percentages of inmates with less than 60 square feet were nonetheless high: 69 percent of federal prisoners and 56 percent of state prisoners confined in dorms lived with less than this minimum standard.

Confinement in Crowded Conditions

Combining cell and dormitory living spaces, we find that:

- Nearly two-thirds (65 percent) of state prisoners and over three-fifths (61 percent) of federal inmates were provided less than 60 square feet of floor space.

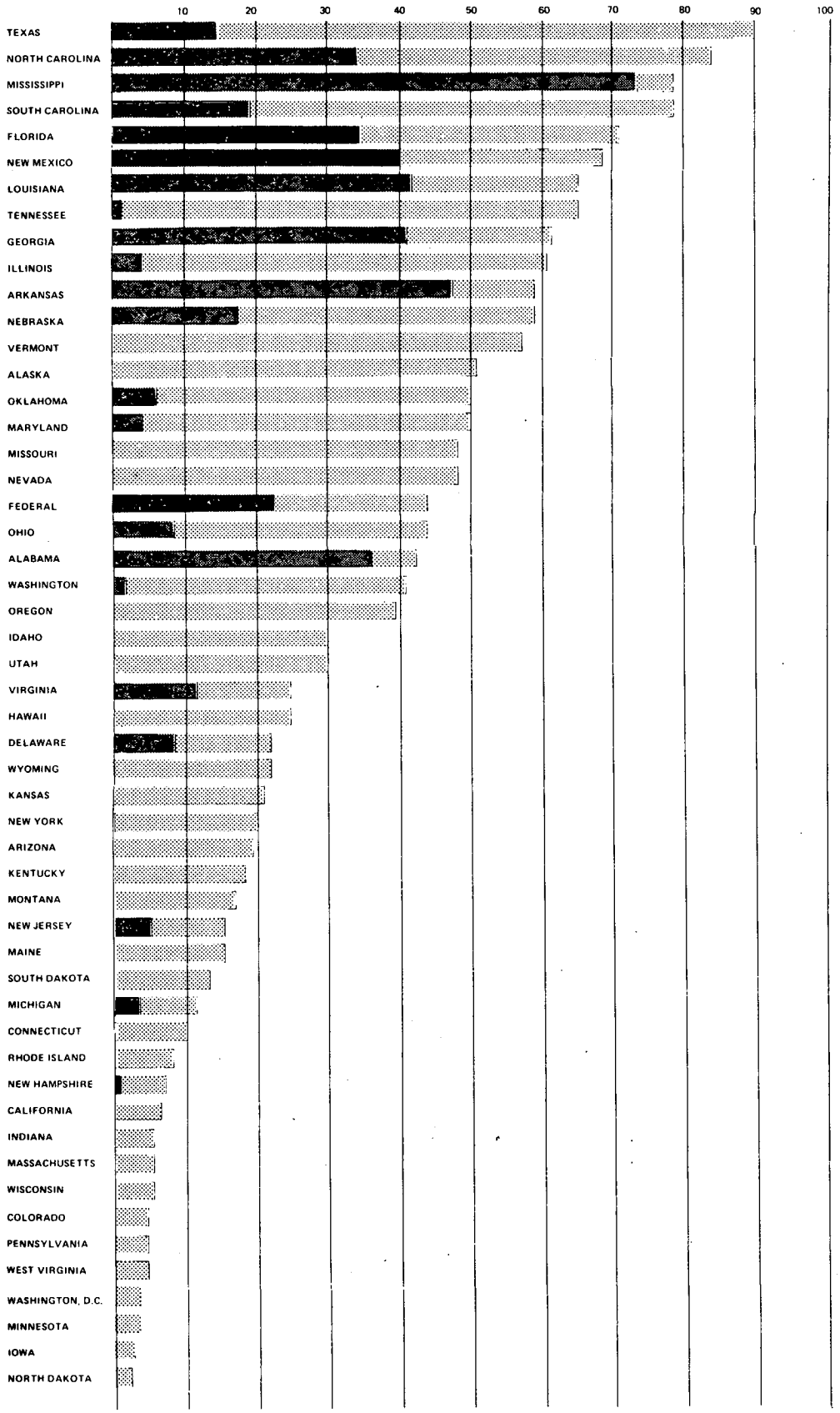
- 38 percent of those living with less than this minimum standard were in dormitories; the remaining 62 percent were living in cells.

- Although they had less than 60 square feet of floor space, 15 percent of federal inmates and 21 percent of state inmates were afforded the privacy of a single occupancy unit. (State-by-state distributions of inmates living in each of these high density conditions are presented in Appendix Tables B5-B6.)

Our definition of crowding asked not only that inmates have less than 60 square feet of floor space but also that they share their confinement unit with one or more other prisoners. Thus, Figure 3.2 arrays the states according to the percentage of inmates confined only in high density (less than 60 square feet of floor space), multiple occupancy conditions. For each state, the shaded portion of the bar reveals the fraction who shared their crowded confinement units with 50 or more inmates--a condition that can certainly be considered an extreme of crowding.

The results present a disturbing picture of crowding in the nation's prisons in 1978:

Figure 3.2
Percentage of Inmates Held in Crowded[a] Confinement Units In State and Federal Correctional Facilities by State March 31, 1978



Key:
- Percentage of Inmates Held in Units Occupied by More Than One with Less Than 60 sq. ft. of floor space per inmate.
- Percentage of Inmates Held in Crowded Units Occupied by More Than 50 Inmates.

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978

[a]A "crowded" confinement unit is a cell or dormitory with two or more inmates and less than 60 square feet of floor space per inmate.

- Across the nation, 46 percent of federal inmates and 44 percent of state inmates lived in high density, multiple occupancy units.

Once again, however, the results reflect considerable variation among the states:

- For over half the states (28) and the District of Columbia, a third or less of the inmates were confined in crowded quarters, and sharing of units with 50 or more inmates was relatively rare.

- Sixteen states and the federal system confined from one-third to two-thirds of their inmates in crowded quarters. For five of these states--Alabama, Arkansas, Georgia, Louisiana, and Nebraska--and the federal system, the number of inmates in crowded units shared by 50 or more was substantial, ranging from 19 to 46 percent of all inmates in those systems.

- In the remaining six states--Florida, Mississippi, New Mexico, North Carolina, South Carolina, and Texas--two-thirds or more of the inmates were confined in crowded units; Texas heads the list with 90 percent. Large numbers of these inmates also shared these units with 50 or more inmates; Mississippi, for instance, had 72 percent of its inmates so confined.

--*The Question of Capacity in Federal and State Prisons*

From this brief review of the confinement practices in state and federal facilities, we find a range of answers to the question, "How many inmates can be held in the existing stock of state and federal prisons?"

- The first answer is provided by state and federal corrections agencies themselves. In the aggregate, these agencies reported more than sufficient capacity to hold all inmates confined in 1978. We have seen, however, that the conditions of confinement implicit in this measure of capacity frequently failed to meet proposed minimum standards.

- If we apply a standard of 60 square feet of floor space per unit of capacity in dorms and one unit of capacity for any size room or cell, one-fourth

of the reported capacity is lost and both state and federal populations exceed the available space (operating at 114 percent and 118 percent of capacity, respectively).

- If we also subtract those rooms or cells that contain less than 60 square feet, reported capacity is reduced by more than half. According to this measure, state facilities were operating at 173 percent of capacity and federal facilities at 150 percent.

The latter two standards of measured capacity reveal two separate problems that are responsible--in varying combinations in different states--for the level of crowding observed in 1978. The first and most obvious is a matter of correctional practice: there were too many inmates for the available space. The second problem is a matter of architectural failure: regardless of the number of inmates, the space itself was composed of too many substandard confinement units.

The relative contributions of both factors are broadly illustrated in Table 3.3 which presents the regional distributions of our measures of capacity and utilization:

- In the state systems in the Northeast and Western regions, reported capacity and our first standard of measured capacity are roughly comparable--indicating some consistency between correctional practice and recommended standards. When we subtract cells with less than 60 square feet, however, capacity in both regions suffers a marked decline that is both large and disproportionate to that in other regions. Here, the influence of the old large maximum security institution is evident, reflecting the origins of the fortress prison in the Northeast and its slightly newer adaptations in the Western states.

- As we move to the North Central region, the gap between correctional practice and proposed standards begins to widen with a difference of roughly 20 percent between reported capacity and our first standard of measured capacity. While the influence of yesterday's architectural practices is still clearly evident, over 40 percent of the total loss in capacity reflects the tolerance of substandard conditions implicit in this region's reported capacity figures.

Table 3.3
Utilization of Federal and State Correctional Facilities Using Reported Capacity and Two Values of Measured Capacity by Region, 1978

	Total Number of Inmates	Reported Capacity[a]	Reported Utilization	Measured Capacity[b]	Measured Utilization	Physical Capacity[c]	Physical Utilization
Federal and State Total	257,300	268,300	96%	224,000	115%	150,900	171%
Federal	28,100	24,800	113	23,800	118	18,700	150
State	229,200	243,500	94	200,200	114	132,200	173
Northeast	30,400	34,800	87	33,700	90	17,800	171
North Central	56,700	66,000	86	52,900	107	37,200	152
South	107,200	103,400	104	77,500	138	56,900	188
West	34,900	39,300	89	36,100	97	20,300	172

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978

Note: Almost every state system had a few confinement units for which there were some missing values. Five of the states had over 500 inmates housed in confinement units not included in this table. Hence, the total measured capacity for state facilities provided in this table probably underestimates by 10,000 to 15,000 beds the figure that would have been obtained if there were no missing data.

Northeast:	Connecticut	850
	New York	5,000
South:	North Carolina	2,100
	Virginia	1,700
West:	California	750

[a]The capacity of individual confinement units as reported by the jurisdiction.

[b]Measured capacity defined as one inmate per room of any size or, for dormitories, the smaller of: (1) Number of square feet of floor space/60 or (2) The jurisdictionally reported capacity.

[c]Physical capacity defined as a minimum of 60 square feet of floor space per inmate.

- When we reach the South, the problem is even more readily attributed to correctional practices rather than substandard confinement units. In this region, more than half of the "lost" space is found in the difference between reported capacity and our first standard of measured capacity, indicating a uniquely high tolerance for accommodating more inmates than resources will permit under proposed minimum standards.

The problem of "too many inmates for the available resources" is illustrated in dollar terms in Table 3.4 which records the 1977 direct current expenditures per inmate in each state. A comparison between this figure and Figure 3.2 will show a clear correlation between lower per inmate expenditures and higher percentages of inmates held in crowded conditions.[14] Not surprisingly, crowding and lower expenditures were also associated with higher inmate/staff ratios (Appendix B-10 - B-11) and higher rates of incarceration per 100,000 population (Table 1.2). This picture of liberal imprisonment policies and fiscal conservatism expresses the same imbalance of interests found by the federal courts in decisions challenging the conditions of confinement. As the courts have implied, only by spending more or buying less can the imbalance be rectified.

To illustrate the second aspect of the capacity problem--the deficient physical plant--Table 3.5 provides a demonstration of the number and kinds of facilities that would be virtually emptied if a court order were to require a standard of 60 square feet of floor space for every unit of capacity. Assume for a moment that:

- In all dormitories, partitions or walls are constructed to provide as many 60 square foot units as the space will allow. One inmate is placed in each unit and the excess prisoners are removed from the institution.

- In cells, inmates are allowed to remain if their cells contain at least 60 square feet of floor space. If a cell fails this dimensional standard, the inmate(s) it holds are also removed from the institution. While we have constructed walls in dormitories, we do not tear down walls between cells under the assumption that many institutions would require such total renovation that inmates would be displaced for indefinite periods--if not permanently.

Applying these two sets of assumptions produces a total of 87 state and federal institutions that would be forced to displace

Table 3.4
Direct Current Expenditures Per Inmate in State Prisons by State – Fiscal Year 1977

Rank	State		Rank	State	
1	Texas	2241	26	West Virginia	6305
2	Georgia	2467	27	Indiana	6350
3	South Carolina	2475	28	Wisconsin	6366
4	Arkansas	3088	29	Utah	6990
5	Missouri	3326	30	Wyoming	7008
6	New Mexico	3606	31	Delaware	7221
7	South Dakota	3609	32	Vermont	7382
8	Alabama	3649	33	Colorado	7528
9	North Carolina	3767	34	Maine	7676
10	Oklahoma	3772	35	New Jersey	7443
11	Kentucky	3818	36	California	8173
12	Arizona	4011	37	Iowa	8305
13	Florida	4205	38	Connecticut	8962
14	Louisiana	4270	39	North Dakota	9032
15	Ohio	4585	40	Pennsylvania	9439
16	Oregon	4953	41	New York	9445
17	Michigan	4990	42	Washington	10,030
18	Idaho	5369	43	Montana	10,303
19	Virginia	5434	44	Rhode Island	11,194
20	Nevada	5651	45	Minnesota	11,852
21	Tennessee	5815	46	Kansas	12,153
22	Illinois	5841	47	Hawaii	13,943
23	Nebraska	5869	48	Alaska	14,071
24	Mississippi	6036	49	Massachusetts	14,442
25	Maryland	6208	50	New Hampshire	15,946

Sources: Expenditure and Employment Data for the Criminal Justice System: 1977. Washington, D.C.: Law Enforcement Assistance Administration, U.S. Department of Justice and U.S. Bureau of the Census, 1979. Total direct current expenditures for correctional institutions minus expenditures for juvenile institutions from Table 53. Prisoners in State and Federal Institutions on December 31, 1977, Washington, D.C. Law Enforcement Assistance Administration, U.S. Department of Justice, 1979. Total number of persons held in state institutions from Table 1.

Table 3.5
Custody Level, Average Size and Age of Institutions Where 90 Percent or More Inmates Would Be Displaced if a 60 Square Foot Standard Were Applied to All Confinement Units

	Maximum Security		Medium Security		Minimum Security		Total	
	No. Facilities	Ave. Size	No. Facilities	Ave. Size	No. Facilities	Ave. Size	No. Facilities	Ave. Size
1825-1924	15	1214	4	861	1	207	20	1093
1925-1969	13	1011	30	464	6	130	49	568
1970-1978	6	245	9	314	3	130	18	260
Total	34	965	43	469	10	138	87	

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978

90 percent or more of their inmate populations. From these institutions alone, over 54,000 inmates would be removed. As Table 3.5 illustrates, a substantial portion of the affected population is confined in 15 old, large, maximum security facilities and 13 slightly smaller and newer--but nonetheless obsolete--maximum custody institutions.

3.2 Community-Based Pre-Release Facilities

In contrast to the dominant position of the large, maximum custody institution, the community-based pre-release facility is barely visible as a component of adult custodial corrections. Included in our survey were a total of 402 publicly and privately operated community-based facilities that held a small fraction of sentenced prisoners under state or federal jurisdiction. Indeed, only four percent of federal and state prisoners were housed in these facilities at the time of our survey. While there was relatively little regional variation, individual states varied considerably, ranging from Montana and Nevada where no inmates were reported in pre-release facilities, to Vermont where 68 percent of all state prisoners were housed in community correctional centers.

In considering the apparent failures of the nation's major adult institutions, the movement toward community-based corrections gained substantial rhetorical momentum in the late sixties and early seventies. In 1967, the President's Commission on Law Enforcement and Criminal Justice pointed to the community facility as "an important means of coping with the mounting volume of offenders that will be pouring into corrections in the next decade." It is difficult to determine whether the use of these facilities changed materially in the years following this observation. While the term "community-based" found its way into the vocabulary of large numbers of corrections programs, definitional problems pervade the field and generally preclude comparisons from one survey to the next. Compounding the problems of tracking these facilities, the history of community corrections is marked by instability with facilities prospering and declining in response to shifts in community attitudes, correctional practices and the availability of funds. Thus, while the vast majority of the surveyed facilities were opened between 1970 and 1978 (with a rate of development that accelerated throughout the decade), the same years saw others close or change their clientele. Roughly 20 percent of the facilities identified by state and federal corrections agencies could not be located or had ceased to operate at the time of the survey.

The community facilities of interest to this survey were only those that held adults sentenced to custodial supervision

Table 3.6
Pre-Release Facilities, Residents, and Rated and Measured Capacity

Region and State	Facilities				Residents		Capacity	
	Total	State	Private	Other	Sentenced	Total	Rated [a]	Measured [b]
TOTAL	402	206	170	26	11,469	13,433	16,517	10,647
FEDERAL TOTAL	11	---	---	11	588	642	670	480
STATE TOTAL	391	206	---	15	10,881	12,791	15,847	10,167
NORTHEAST	64	35	25	4	1,445	1,776	2,234	1,461
Maine	5	2	0	3	58	58	69	49
New Hampshire	1	1	0	0	14	14	15	10
Vermont	4	4	0	0	266	308	344	163
Massachusetts	12	7	5	0	302	366	453	342
Rhode Island	2	1	1	0	35	39	65	48
Connecticut	11	0	11	0	79	246	380	209
New York	8	6	2	0	273	307	319	306
New Jersey	5	1	4	0	102	116	138	82
Pennsylvania	16	13	2	1	316	322	451	252
NORTH CENTRAL	110	52	52	6	2,243	3,003	3,786	2,666
Ohio	12	1	11	0	102	224	277	173
Indiana	12	4	8	0	238	313	480	299
Illinois	12	7	4	1	238	327	501	406
Michigan	23	17	5	1	695	919	994	873
Wisconsin	15	11	3	1	386	408	471	344
Minnesota	3	2	1	0	77	85	103	78
Iowa	9	4	2	3	127	166	273	131
Missouri	13	0	13	0	159	273	325	114
North Dakota	1	0	1	0	3	14	14	14
South Dakota	2	0	2	0	5	41	42	40
Nebraska	4	4	0	0	158	158	214	157
Kansas	4	2	2	0	55	75	92	37
SOUTH	142	89	51	2	5,905	6,307	7,714	4,872
Delaware	1	1	0	0	62	62	59	18
Maryland	9	3	5	1	356	360	541	390
District of Columbia	6	1	5	0	162	181	199	94
Virginia	8	5	3	0	325	333	394	268
West Virginia	3	3	0	0	37	40	84	24
North Carolina	4	0	4	0	27	29	45	36
South Carolina	15	10	5	0	909	945	1,058	658
Georgia	7	6	1	0	354	362	445	333
Florida	35	31	4	0	1,877	1,988	2,316	1,208
Kentucky	4	0	3	1	37	46	75	44
Tennessee	12	6	6	0	564	579	721	533
Alabama	13	13	0	0	546	574	750	479
Arkansas	2	1	1	0	18	29	42	36
Louisiana	2	0	2	0	35	39	43	12
Oklahoma	10	9	1	0	467	481	605	499
Texas	11	0	11	0	129	259	337	240
WEST	75	30	42	3	1,288	1,705	2,113	1,168
Idaho	1	0	1	0	2	15	15	5
Wyoming	5	4	1	0	18	28	25	17
Colorado	10	3	6	1	193	281	425	315
Arizona	6	3	3	0	93	173	270	142
Utah	4	2	2	0	62	106	140	79
Washington	16	5	10	1	358	409	423	195
Oregon	11	9	2	0	231	236	251	125
California	19	2	16	1	303	422	533	284
Hawaii	3	2	1	0	28	35	31	6

Source: Survey of Community-Based Pre-Release Facilities (PC-3) March 31, 1978.

[a] The capacity of individual confinement units as reported by the jurisdiction.

[b] The capacity defined as one inmate per room or, for dormitories, the smaller of, (1) Number of square feet of floor space/60 or (2) The jurisdictionally reported capacity.

under state or federal jurisdiction. Most of these facilities were located in the community (in converted residences, apartments or dormitories) but a small number were part of larger penal institutions. The federal Bureau of Prisons operated 11 facilities, state corrections agencies were responsible for 206 facilities and fully 42 percent or 170 facilities were operated by private organizations under contract to state or federal agencies. The term "community-based" reflected the fact that the majority of residents were under supervision less than 24 hours a day and had jobs or other opportunities for routine community contact. State and federal facilities that provided work release only for selected inmates were classified as conventional prisons as were facilities (such as road camps or farms) where work programs were supervised by institutional staff.

The difficulties of classification are clearly illustrated by comparing the results of the present survey to those of the 1974 Census of State Correctional Facilities which found a total of 8,975 inmates in 158 "community centers". Twenty-nine of these institutions and close to 3,000 inmates were reported in North Carolina alone where we report four facilities and only 29 residents in 1978. While the 1974 figure may over-represent the extent of participation in community corrections, it is equally likely that our figure underestimates the range of opportunities for community placement.

In separating pre-release or community centers from those serving the general population of prisoners, we were primarily interested in examining the capacity of these facilities to relieve crowding in major adult institutions. If, as previous surveys had suggested, community facilities contained surplus capacity, we could identify an obvious route toward reducing the population pressures that were so evident among the larger, more secure facilities. Thus, the same standards of measured capacity were applied to the floor space dimensions of all facilities included in the pre-release survey. The findings illustrated in Table 3.6 suggest that the vast majority of these centers could not accept more residents without violating present corrections standards:

- On the basis of "rated" or "design" capacity, the surveyed facilities reported a total of 16,517 bedspaces. Consistent with previous estimates that have relied on rated capacity, this figure exceeded both the total average daily population of those centers in 1977 (12,935) and the total number of residents reported for March 31, 1978 (13,433). Three-fourths of the facilities indicated that they had room for additional residents, as judged by rated capacity.

- Using the minimum standard of 60 square feet of floor space per resident, capacity was reduced to 10,647 bedspaces. By this measure, almost two-thirds of the facilities surveyed had a reported population in excess of capacity.

In view of these disparities, it was not surprising to find that 55 percent of all pre-release residents lived in units that failed both density (60 square feet of floor space per resident) and privacy standards (only one or two residents per residential unit).

3.3 Local Facilities

Despite the relative stability of the nation's jail population in the 1970s, crowding was particularly acute among many of the 3,493 local jails included in the survey. "The best I have," commented a Mississippi official, "is worse than the worst conditions at the state pen."[15]

In 1978, the average daily population of the facilities surveyed was roughly 158,000 persons. Considering the short and often repetitive terms of confinement of many jail prisoners, this figure is a poor expression of the volume of admissions processed each year. Asked to indicate the number of commitments in an average week, respondents to the National Jail Survey provided estimates ranging from fewer than six to more than 3,500, with an average of 35 weekly admissions. On a yearly basis, the result is a staggering 6.3 million commitments to the nation's jails. Not surprisingly, the rapid turnover reflected in this figure can quickly introduce substantial disparities between prisoners and space.

--Local Facility Characteristics

In contrast to their state and federal counterparts, local jails are generally smaller, newer and more diverse in location and jurisdiction. As a group, however, there is no typical local jail. Many are part of multi-purpose facilities that also serve as the county courthouse, the local sheriff's office or police station. Others are larger, self-contained county or city "prisons," detention centers or road camps.

With the authority to retain adults for 48 hours or longer, the local jail serves as a holding tank for pre-trial detainees as well as the primary place of confinement for persons sentenced to short terms--generally less than one year. On the reference date of the survey, about half of those confined in local jails were awaiting trial; slightly less than a third were serving less than

one year sentences. As state institutions have reached and exceeded the limits of their capacity, local jails have also become the repository for inmates awaiting transfer to state facilities. In many cases, the awaited transfer is not a matter of days or weeks but months or even years while prisoners remain in facilities barely adequate to accommodate their more transient populations of local prisoners and pre-trial detainees.

Even the broadest definition of local jurisdiction may also be inconsistent with local practice. In seven jurisdictions, for example, the state or federal city corrections agency is responsible for pre-trial detention facilities (Alaska, Connecticut, Delaware, Hawaii, Rhode Island, Vermont and Washington, D.C.). There are also many states where persons sentenced to one year or more need not fall under state jurisdiction, and others where the state assumes jurisdiction over those with shorter sentences. In South Carolina, for instance, jurisdictional changes effective in 1973 required the transfer of misdemeanant prisoners serving 90 days or more to state custody. In contrast, Pennsylvania prisoners sentenced up to 24 months can be held in local facilities.

Across the nation, two-thirds of all jail prisoners were held in Southern (43 percent) and Western (24 percent) regions, both of which supported jail incarceration rates of 95 prisoners per 100,000 population. The Northeast and North Central regions were about equally responsible for the balance and also held identical and substantially lower incarceration rates of 49 prisoners per 100,000.

Detailed data describing the characteristics of local jail populations are not yet available from the Survey of Jail Inmates conducted in 1978. Results from the 1978 National Jail Census permit a division of jail facilities along only two dimensions: (1) the year the facility was constructed; and (2) the average daily inmate population of each facility. According to these data:

- The majority (1,837) of the nation's 3,493 jails were opened between 1950 and 1978 and held over half (59 percent) of all jailed prisoners.

- While the "typical" jail is a small rural or suburban facility, the typical prisoner is housed in a relatively large, urban jail:

  -- 45 percent of prisoners were confined in less than four percent of the facilities--specifically, 130 large jails with an average daily population in excess of 250.

-- Another 51 percent of prisoners were confined in 52 percent of the jails surveyed--facilities which held an average of 10-249 prisoners on a daily basis.

-- The final four percent of the nation's jail prisoners were dispersed among 44 percent or 1,538 facilities with an average daily population of less than 10.

--*Inside the Local Jail*

In contrast to their state and federal counterparts, local jails contained the smallest amount of cell capacity (49 percent) with the balance composed of dormitory living quarters. Unlike the barracks-style dormitory housing often found at the state and federal level, local dormitory units generally resembled over-sized cells or holding tanks.

Cell Confinement

Application of the proposed minimum standard of 60 square feet per cell would clearly affect local facilities most severely. While 45 percent of state cells and 61 percent of federal cells met or exceeded this standard, only 39 percent of the cells in local facilities could satisfy this minimum requirement. Predictably, the older and larger the facility, the smaller the cells.

Single-person cells were also found less frequently at the local level: 58 percent of local cells were occupied by one inmate, compared to 83 percent at the federal level and 73 percent at the state level. This did not mean, however, that local cells more frequently contained two or more inmates. In fact, with 15 percent of cells occupied by two or more, local facilities were roughly comparable to those at the state and federal levels (with 19 and 11 percent respectively). Rather, the primary difference can be found in the proportion of local cells reported to be empty. While state and federal facilities reported vacancy rates of six and eight percent, 27 percent of local cells were reported to be empty.

It should be emphasized that empty cells do not necessarily mean that space is, in fact, underutilized. Some vacancies are required on any given day to accommodate the segregation of inmates, maintenance needs, and the possibility of more inmates the next day. The population sizes of small institutions tend to be significantly less predictable than those of large facilities,

much as estimates based on small samples are less precise than those based on large samples. The proportion of reserve vacancy required for small institutions is, therefore, generally higher than the proportion for large institutions. Figure 3.3 demonstrates this relationship for local facilities. There were on the average 1.5 empty cells for every occupied cell for the 961 facilities with average daily populations of less than five inmates. This ratio drops off rapidly as the size of the facility increases. The 131 facilities with an average daily population around 50 have approximately one empty cell for every ten occupied cells. Most of the facilities with average daily populations over 50 have less than 10 percent of their cells empty.

Compared to state and federal facilities, local jails contained the highest percentage of celled inmates living with less than 60 square feet of floor space. Fully 81 percent of all local prisoners confined in cells lived with less than this minimum standard.

Dormitory Confinement

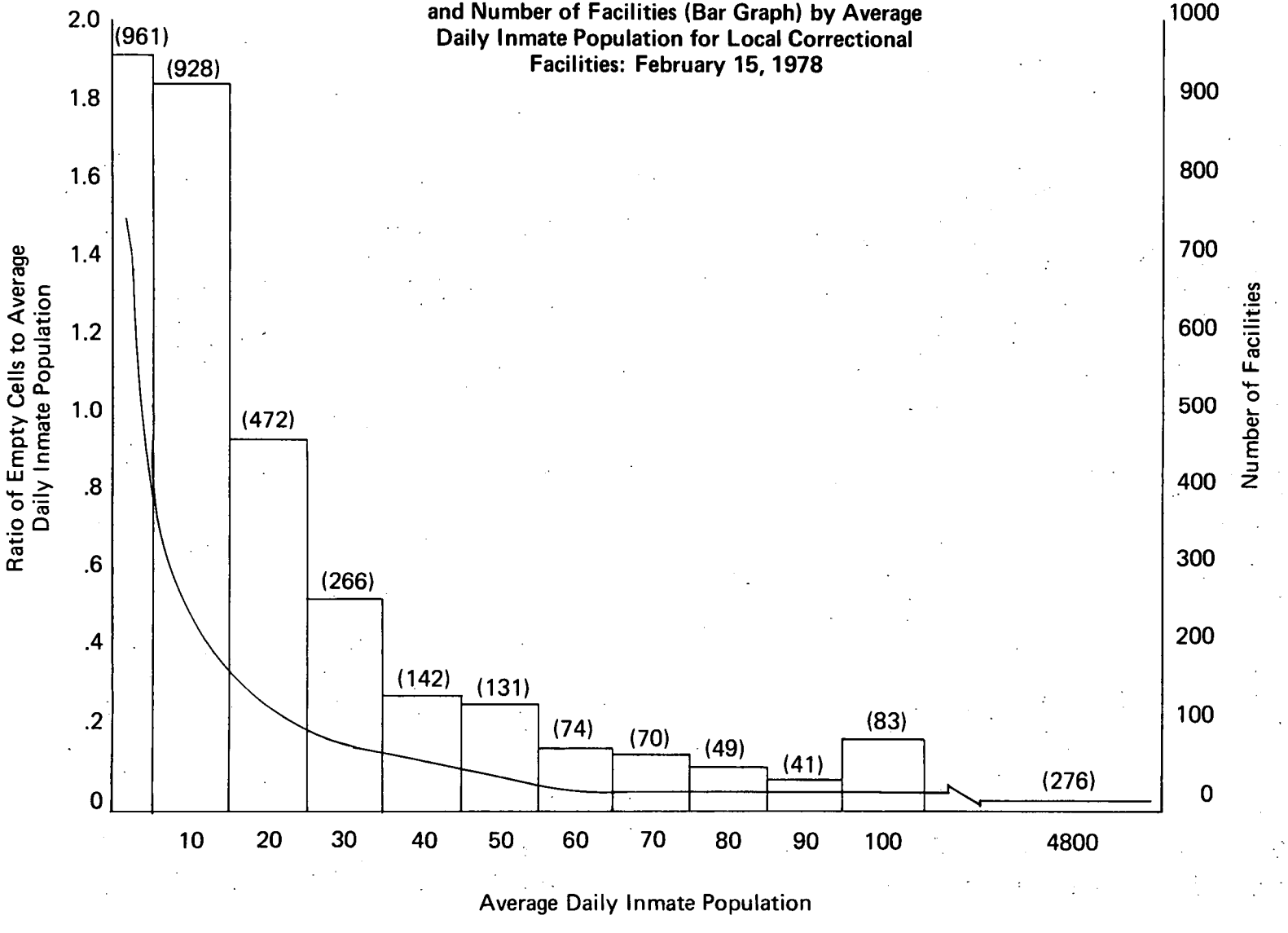
Consistent with the smaller size of most local facilities, only nine percent of local dormitory units housed more than 50 inmates; fully 47 percent housed between 11 and 50 prisoners. The majority of these latter units, however, clearly exceeded the standard of 16 inmates per dormitory recommended by the Commission on Accreditation for Corrections. Once again, a lower percentage of dormitory (as opposed to celled) inmates lived in high density conditions. In absolute terms, however, the percentage was nonetheless high: 57 percent of all dormitory residents lived with less than 60 square feet of floor space per prisoner.

Confinement in Crowded Conditions

Combining local jail cell and dormitory units, we find that:

- Over two-thirds (68 percent) of local prisoners lived with less than 60 square feet of floor space.
- Of those living in high density conditions, 57 percent were confined in cells and the remaining 43 percent in dormitory units.
- Half of all local prisoners were confined in high density, multiple occupancy units; 19 percent lived with less than 60 square feet of floor space but were confined in single occupancy units.

Figure 3.3
Ratio of Empty Cells to Average Daily Inmate Population and Number of Facilities (Bar Graph) by Average Daily Inmate Population for Local Correctional Facilities: February 15, 1978



Source: National Jail Census (CJ-3, CJ-4), 1978

Once again, Figure 3.4 removes all prisoners in singly occupied units and orders the states according to the percentage of local prisoners held in crowded confinement units--units that failed to meet both density and privacy standards. For the most part, the nation's prisons have experienced the greatest population increase in recent years, while inmate populations under local jurisdiction have remained fairly stable. However, where externally imposed limits on state prison capacity have occurred, crowding in local jails is also apparent. Several states that were among the first subject to court order to reduce crowding are also among those that had the highest percentages of jail inmates held in crowded confinement units: Maryland, 84 percent; Alabama, 80 percent; Florida, 65 percent; Tennessee, 64 percent; Louisiana, 60 percent; Nevada, 54 percent; and Mississippi, 47 percent. Local facilities in eight other states held more than 50 percent of their inmates in crowded units with both Texas (71 percent) and Georgia (67 percent) under pending court actions. Predictably, the two states that contained the most crowded local facilities confined the largest number of state inmates backed-up in local facilities: Alabama and Maryland with 2,600 and 921 locally confined state inmates, respectively.

-- *Local Jail Capacity*

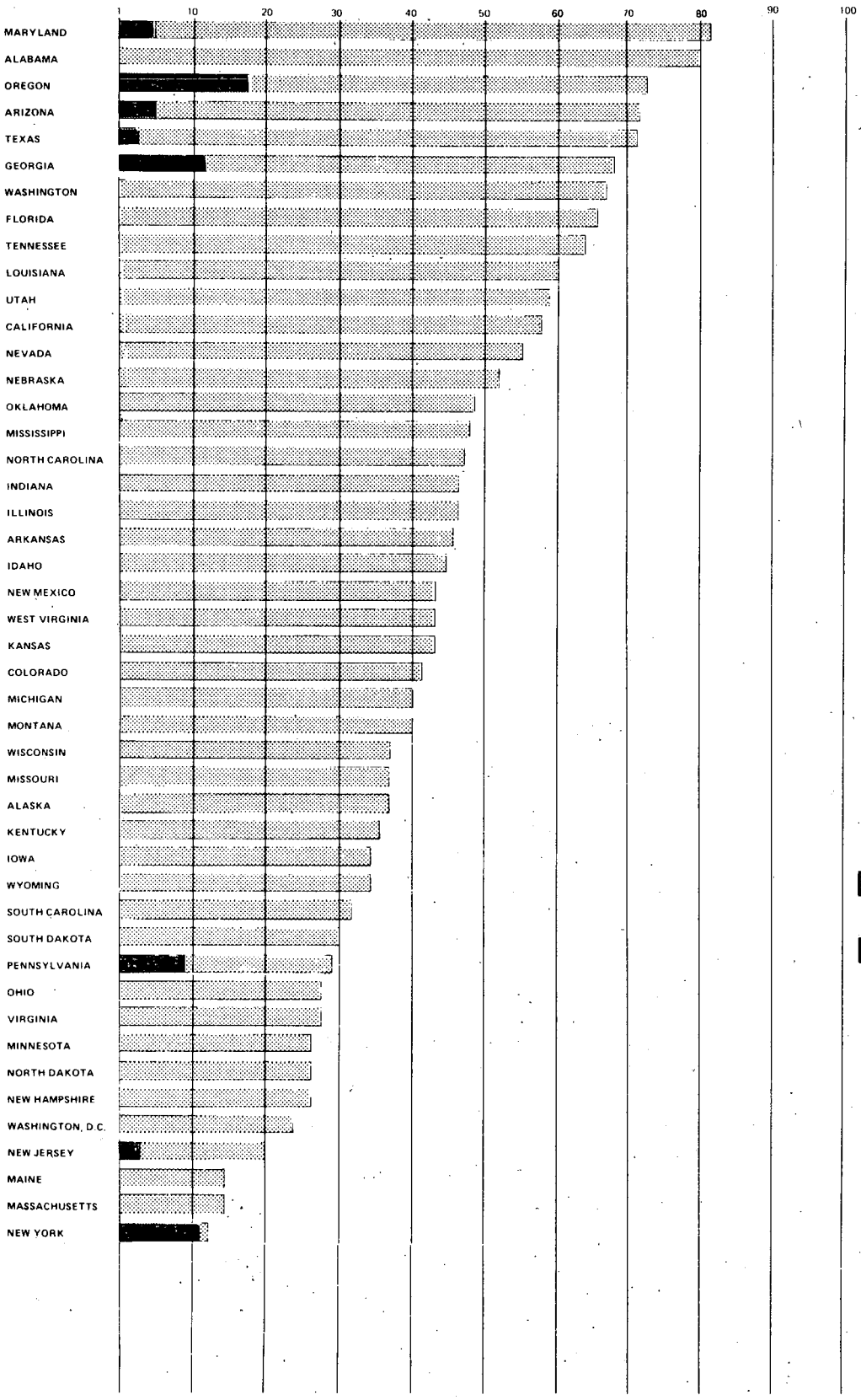
In considering the capacity of local jail facilities, it is important to recall the inherent instability of local jail populations and their distribution among a small number of larger urban jails and a large number of smaller rural facilities. Thus, while Table 3.7 shows that all regions reported more than sufficient capacity to hold their average daily populations in 1978, these regional figures clearly fail to reveal the chronic and situational crowding that exists among many urban jail facilities. Recall, too, that reported capacity has no uniform meaning and thus may encompass a variety of standards of living space that may bear no relation to recommended guidelines. As the late Hans Mattick observed, "'rated capacity' is not necessarily what a rational jail planner would prescribe, or even what the original design of a jail intended."[16]

Applying a uniform standard based on single occupancy cells and a minimum of 60 square feet per dormitory space begins to reveal population problems in the Southern and Western regions where population exceeded this standard of measured capacity by 12 and 19 percent respectively. In both regions, reported capacity is reduced by more than a third, indicating a substantial disparity between local standards of adequate space and recommended guidelines.

Figure 3.4

Percentage of Inmates Held in Crowded[a] Confinement Units In Local Correctional Facilities by State

February 15, 1978



Key:

Percentage of Inmates Held in Units Occupied by More Than One with Less Than 60 sq. ft. of floor space per inmate.

Percentage of Inmates Held in Crowded Units Occupied by More Than 50 Inmates.

Source: National Jail Census (CJ-3, CJ-4), 1978.

[a]A "crowded" confinement unit is a cell or dormitory with two or more inmates and less than 60 square feet of floor space per inmate.

[b]There are no local facilities in Connecticut, Delaware, Hawaii, Rhode Island, or Vermont.

Percentage of Inmates

Table 3.7
Utilization of Local Correctional Facilities Using Reported Capacity and Two Values of Measured Capacity by Region, 1978

	Total Number of Inmates	Reported Capacity[a]	Reported Utilization	Measured Capacity[b]	Measured Utilization	Physical Capacity[c]	Physical Utilization
Local Total	154,500	233,900	66%	151,000	102%	105,600	146%
Northeast	23,900	30,800	78	27,800	86	13,200	181
North Central	27,400	47,700	57	33,000	83	22,600	121
South	65,100	103,000	63	58,100	112	44,100	148
West	38,100	52,400	73	32,100	119	25,700	148

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978
National Jail Census (CJ-3/CJ-4), 1978

[a] The capacity of individual confinement units as reported by the jurisdiction.

[b] Measured capacity defined as one inmate per room of any size or, for dormitories, the smaller of: (1) Number of square feet of floor space/60 or (2) The jurisdictionally reported capacity.

[c] Physical capacity defined as a minimum of 60 square feet of floor space per inmate.

The next standard of measured capacity, which requires a minimum of 60 square feet of floor space per inmate in cells as well as dorms, reveals the crowding inherent in the physical plant of the nation's jails. Since jails along the eastern seaboard and the northeastern quadrant of the United States are the oldest in the nation, it is not surprising to find that this standard has a disproportionate effect on the facilities in these two regions. Across the nation, application of this standard reduces the reported capacity of local jails by over half or 128,300 units.

3.4 Summary

At the time of our surveys, many state, federal and local correctional institutions across the nation were clearly very near their limits by any standards. Several of the distributions of inmates and confinement units discussed in this chapter are summarized in the following six figures (selected regional distributions are presented in Appendix B).

Figure 3.5: Cell vs. Dormitory Living Space. While current standards preclude new dormitory construction for mainline prison populations, reliance on dormitories is unlikely to diminish in the near term future. In 1978, a substantial fraction of all prisoner housing space was composed of dormitory units: Almost half of the space in federal facilities, over a third of the space in state facilities and 51 percent of local confinement space was composed of dormitory units.

Figure 3.6: Cell Size. No standard-setting body has recommended less than 60 square feet of floor space per inmate. Only 61 percent of the cells in federal facilities, 45 percent of state prison cells and 39 percent of local jail cells met or exceeded this standard. Standards as high as 80 square feet have been proposed. Only nine percent of state cells and 19 percent of local jail cells met or exceeded this higher standard.

Figure 3.7: Cell Occupancy. While current standards unambiguously require single occupancy cells, 11 percent of federal cells, 19 percent of state cells and 15 percent of local cells were occupied by two or more inmates.[17]

Table 3.8: Dormitory Occupancy. Despite standards that discourage housing more than 50 inmates in a single dorm, over half of all federal and state inmates housed in dorms shared those units with more than 50 other prisoners.

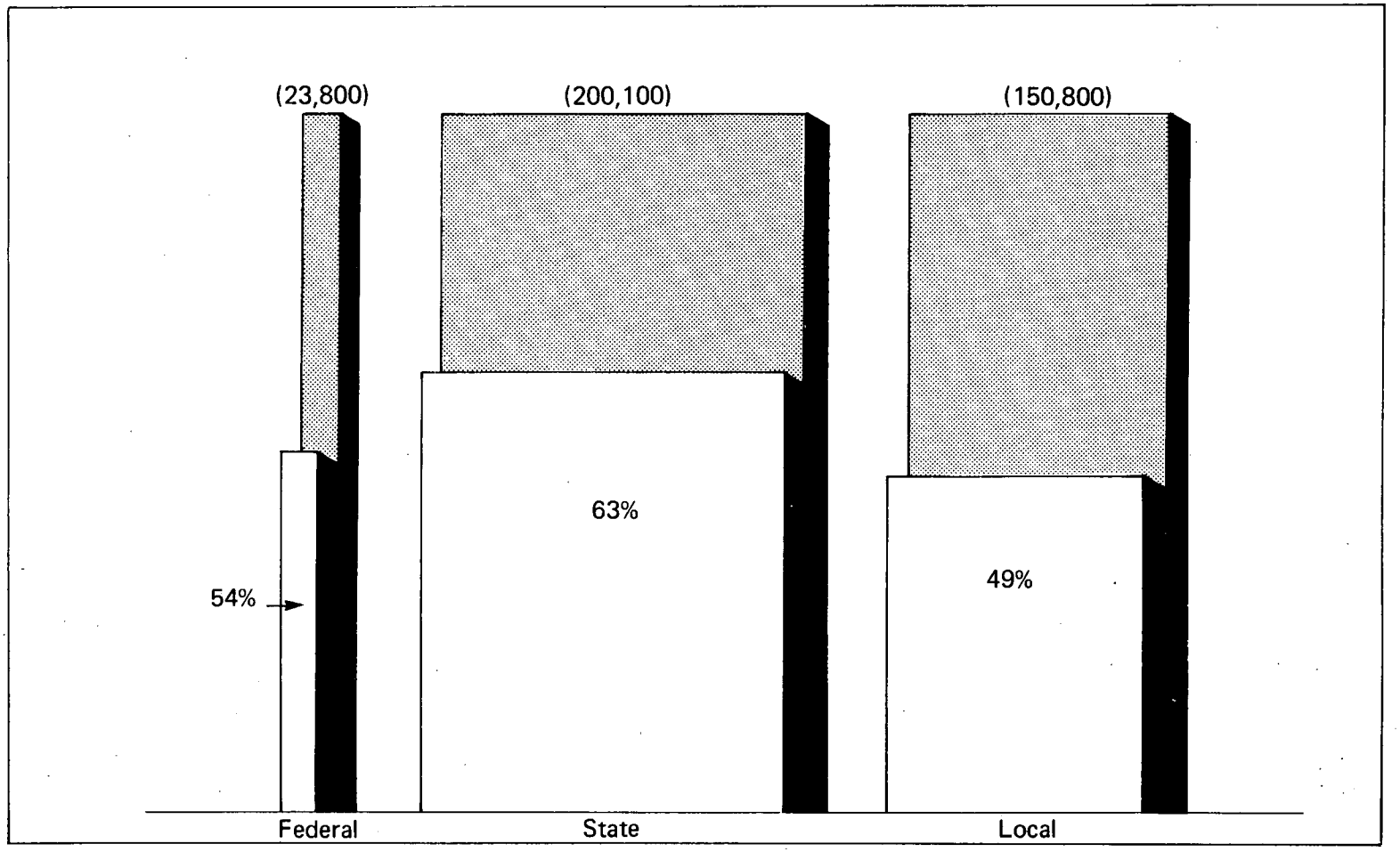
Table 3.9: Density in Cells and Dormitories. Two out of every three inmates in the United States lived with less than the minimum standard of 60 square feet of floor space. Over half of those confined in dormitories and almost three-quarters of those confined in cells lived with less than this minimum standard.

Figure 3.8: Crowding. Nearly half of all prisoners at all levels of government were confined in a cell or dormitory shared with one or more inmates with less than 60 square feet of floor space per inmate (the definition of crowding used in this report). Nationwide, jail crowding was more severe than that observed in state or federal institutions. Fifty percent of the inmates in local facilities occupied crowded confinement units compared with 46 percent and 44 percent of the inmates in federal and state facilities, respectively.

The implications of these data are clear--and not unlike those suggested or implied by the courts in response to litigation challenging the conditions of confinement. In many states and localities, even voluntary compliance with the floor space standards discussed in this chapter will require substantial increases in the budgets allocated to institutional corrections and/or fundamental changes in incarceration policies. Following an assessment of future population trends, Chapter 5 reviews some of the policy alternatives commonly considered in efforts to alleviate the crowded conditions described in this chapter.

Figure 3.5

Percentage of the Total Measured Capacity[a] Comprised of Cells[b] for Federal, State and Local Adult Correctional Facilities–1978[c]



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978; National Jail Census (CJ-3, CJ-4), 1978. See note provided with Table 3.3.

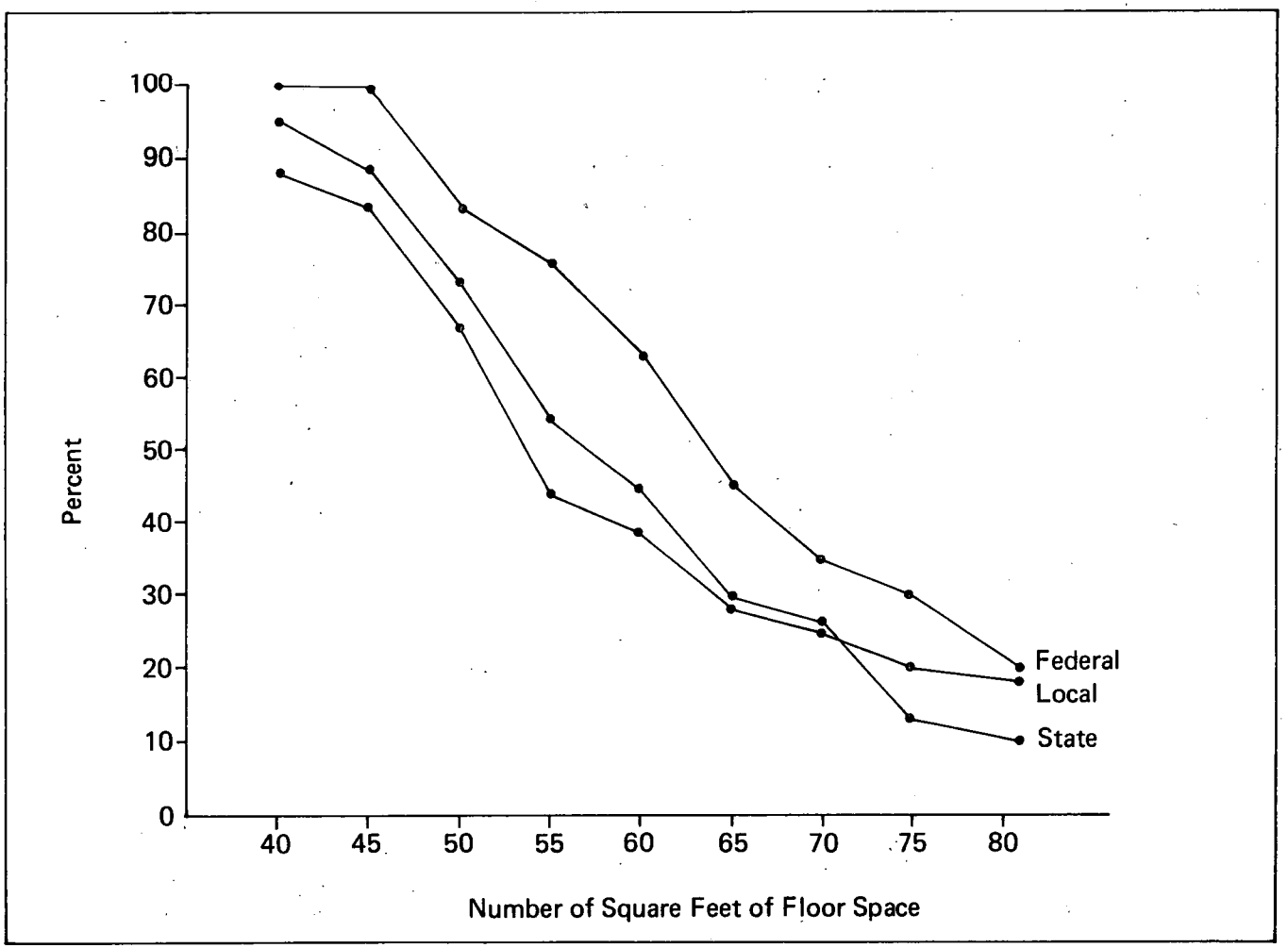
[a]Measured capacity is defined as one inmate per cell or for dormitories as the smaller of (1) Number of square feet of floor space/60 or (2) The jurisdictionally reported capacity.

[b]Confinement units with less than 120 square feet of floor space.

[c]The width of each bar has been drawn as a proportion of the total measured cell capacity.

Figure 3.6

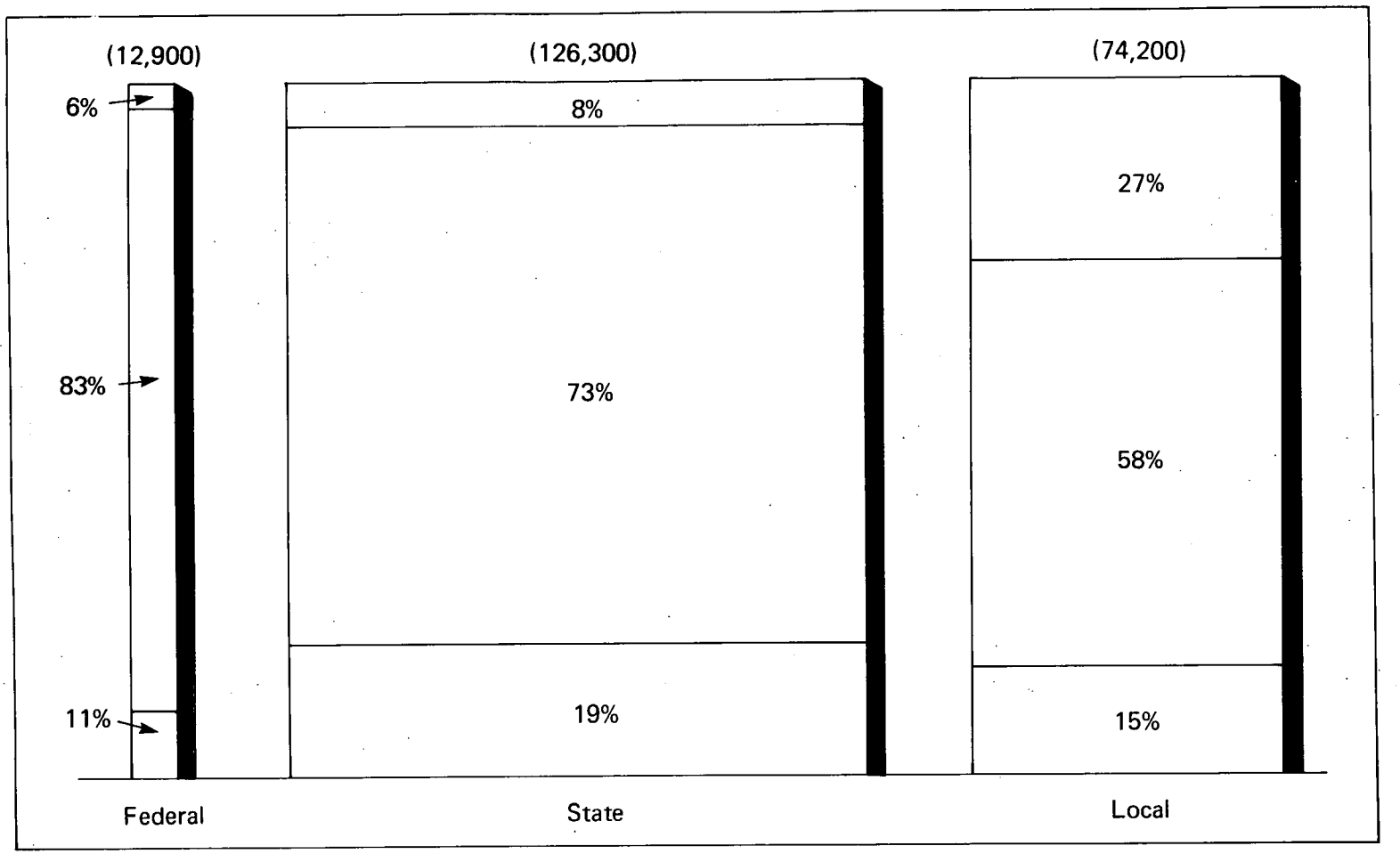
Percentage of Federal, State, and Local Cells[a] with Number of Square Feet of Floor Space Greater Than or Equal to Selected Values—1978



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978; National Jail Census (CJ-3, CJ-4), 1978.

[a] Confinement units with less than 120 square feet of floor space.

Figure 3.7
Occupancy[a] of Cells[b] in Federal, State, and Local Facilities—1978[c]



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978; National Jail Census (CJ-3, CJ-4), 1978. See note provided with Table 3.2.

[a]Number of inmates per confinement unit.

[b]Confinement units with less than 120 square feet of floor space.

[c]The width of each bar has been drawn as a proportion of the total measured cell capacity.

Table 3.8
Number and Percent of Inmates in Federal, State, and Local Dormitories by Occupancy, 1978

Occupancy	Total		Federal		State		Local	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	178,454	100%	14,544	100%	83,655	99%	80,245	99%
One inmate	5,482	3	30	-	1,841	2	3,611	4
2-10 inmates	43,714	24	2,703	19	9,462	11	31,549	39
11-50 inmates	69,051	39	2,732	19	28,500	34	37,819	47
More than 50 inmates	60,207	34	9,089	62	43,852	52	7,266	9

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978
National Jail Census (CJ-3, CJ-4), 1978

[a] Number of inmates in each confinement unit

Table 3.9
Percentage and Number of Inmates in Federal, State, and Local Cells and Dormitories by Density, 1978

	Total		Jurisdiction					
			Federal		State		Local	
	Percent	Number	Percent	Number	Percent	Number	Percent	Number
Total	100%	411,923	100%	28,124	100%	229,196	100%	154,603
High	66%	272,000	61%	17,224	65%	149,255	68%	105,521
Medium	19	77,929	29	8,210	22	50,294	13	19,425
Low	15	61,994	10	2,690	13	29,647	19	29,657
Cells	100%	233,469	100%	13,570	100%	145,541	100%	74,358
High	73%	169,662	52%	7,116	70%	102,525	81%	60,021
Medium	20	47,769	34	4,609	24	34,844	11	8,316
Low	7	16,038	14	1,845	6	8,172	8	6,021
Dormitories	100%	178,454	100%	14,554	100%	83,655	100%	80,245
High	57%	102,338	69%	10,108	56%	46,730	57%	45,500
Medium	17	30,160	25	3,601	18	15,450	14	11,109
Low	26	45,956	6	845	26	21,475	29	23,636

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978
National Jail Census (CJ-3/CJ-4), 1978

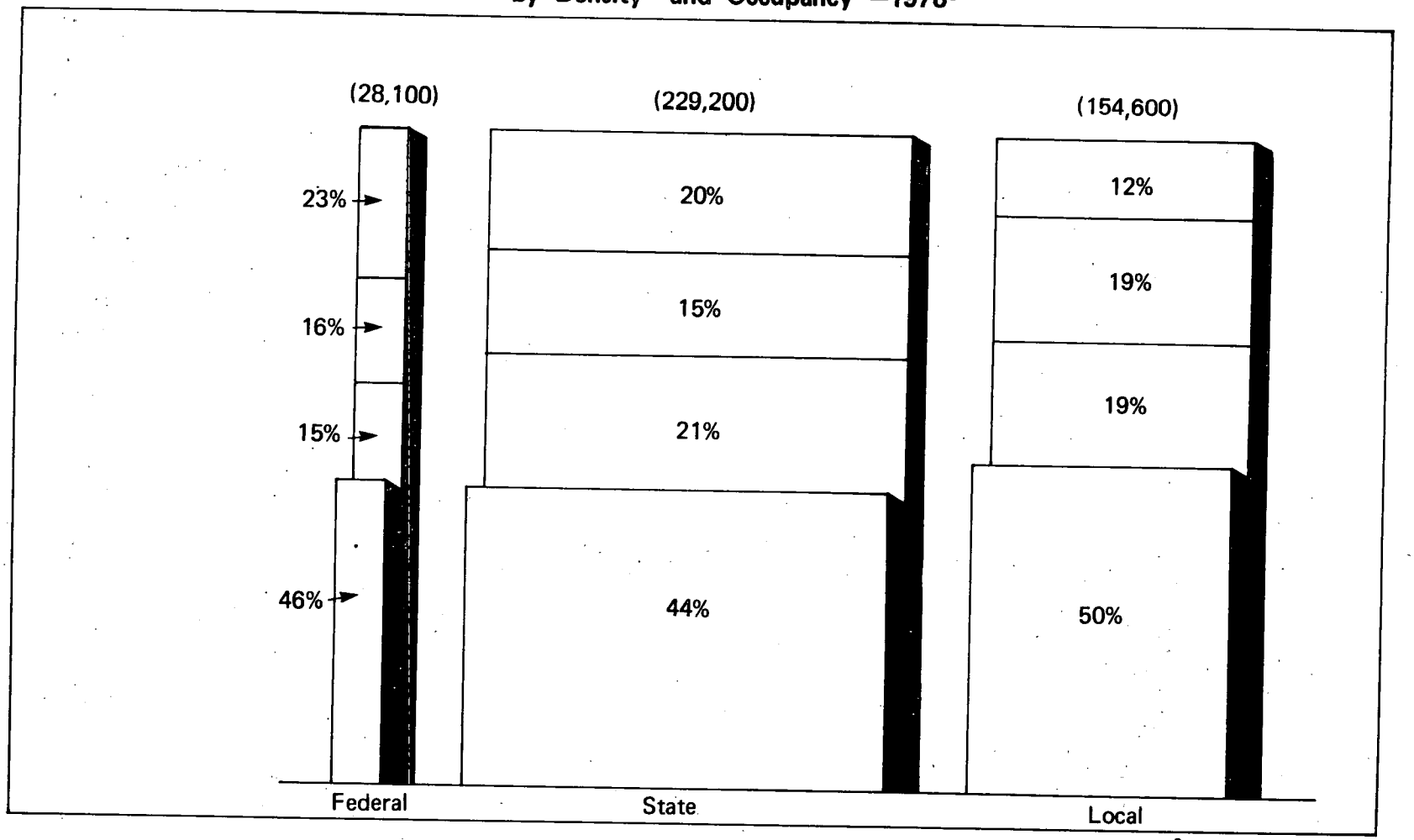
[a]Confinement units with less than 120 square feet of floor space.

[b]Confinement units with 120 or more square feet of floor space

[c]Number of square feet of floor space per inmate.

Figure 3.8

Percentages of Inmates in Federal, State, and Local Facilities by Density[a] and Occupancy[b]—1978[c]



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978; National Jail Census (CJ-3, CJ-4), 1978. See note provided with Table 3.3.

[a] Number of square feet of floor space per inmate.

[b] Number of inmates per confinement unit.

[c] The width of each bar has been drawn as a proportion of the total number of inmates.

[d] Confinement units with 60 or more square feet of floor space per inmate.

[e] Confinement units with less than 60 square feet of floor space per inmate.

[f] Confinement units occupied by one inmate.

[g] Confinement units occupied by two or more inmates.

Chapter 3: NOTES

1. National Institute of Justice, U.S. Department of Justice, Prison Population and Policy Choices, Volume I: Preliminary Report to Congress; Volume 2: Technical Appendix, by Andrew Rutherford et al. (Washington, D.C.: Government Printing Office, 1977).

2. See, for example, Chalsa Loo, "The Psychological Study of Crowding," American Behavioral Scientist, 18 (July/August 1975): 832; John R. Aiello, et al., "Crowding and the Role of Interpersonal Distance Preference," Sociometry, 40 (September 1977): 271-282; Daniel Stokols, "On the Distinction Between Density and Crowding," Psychological Review, 79 (1972): 275; D. Glass and J. Singer, Urban Stress: Experiments on Noise and Social Stressors (New York: Academic Press, 1972); Edwin I. Megargee, "The Association of Population Density, Reduced Space, and Uncomfortable Temperatures with Misconduct in a Prison Community," American Journal of Community Psychology, 5 (September 1977): 289-298; P.L. Nacci, et al., "Population Density and Inmate Misconduct Rates in the Federal Prison System," Federal Probation, 41 (June 1977); J. L. Freedman, A. S. Levy, R. W. Buchanan and J. Price, "Crowding and Human Aggressiveness," Journal of Experimental Social Psychology, 8 (1972): 502-517; Drury R. Sherrod, "Crowding, Perceived Control and Behavioral After-effects," Journal of Applied Social Psychology, 4 (June 1974): 171-186; S. Zlutnick and I. Altman, "Crowding and Human Behavior," in J. Wohlwill and D. Carson (eds.), Environment and the Social Sciences: Perspectives and Applications (Washington, D.C.: American Psychological Association); H. Proshansky, W. Ittleson, and L. Rivlin, "Freedom of Choice and Behavior in a Physical Setting," in H. Proshansky, W. Ittleson, and L. Rivlin (eds.), Environment Psychology: Man and His Physical Setting (New York: Holt, Rinehart and Winston, 1970).

3. For example, the following measures were listed in our Preliminary Report to Congress:

National Advisory Commission on Criminal Justice Standards and Goals:	80 sq. ft./inmate
Federal Bureau of Prisons:	75 sq. ft./inmate
National Clearinghouse for Criminal Justice Planning and Architecture:	70 sq. ft./inmate
United Nations Minimum Standards:	65 sq. ft./inmate
Gates v. Collier, 390 F. Supp. 482 (1975):	50 sq. ft./inmate

4. As William Nagel notes, although the so-called "Eastern State" model attracted much attention, most systems preferred the "Auburn" model. The cells at Auburn (N.Y.) were intended for sleeping only and contained 28 square feet. Nagel comments: "In the battle for penal supremacy, Auburn, at least in the United States, was the row of cages stacked tier on tier atop each other." William G. Nagel, The New Red Barn: A Critical Look at the Modern American Prison (New York: Walker, 1973), pp. 63-64.

5. See Norman Johnston, The Human Cage: A Brief History of Prison Architecture (New York: Walker, 1973), pp. 28-41.

6. Survey of State and Federal Adult Correctional Systems (PC-2), March 31, 1978.

7. John J. Galvin and Loren Karacki, Manpower and Training in Correctional Institutions, Joint Commission on Correctional Manpower and Training, Washington, D.C., December, 1969, p. 16.

8. David Fogel, We Are the Living Proof: The Justice Model for Corrections (Cincinnati: Anderson, 1976), p. 1.

9. American Correctional Association, Manual of Correctional Standards, Third Edition (College Park, MD: American Correctional Association, 1966), pp. 332-333.

10. Commission on Accreditation for Corrections, Manual of Standards for Adult Correctional Institutions (Standard 4193) (Rockville, MD: 1977), p. 37.

11. Becki Ney, William Nagel, et al., Release Procedures (Philadelphia, Pa.: The American Foundation Inc., May 1980).

12. Commission on Accreditation for Corrections, supra note 10 (Standard 4148), p. 28.

13. American Correctional Association, supra note 9 at p. 332.

14. The correlation between inmate-to-service staff ratios and levels of crowding was .35; a similar analysis of custodial staff ratios produced a correlation of .45. Correlations between crowding, costs per inmate and incarceration ratios were also in the range of .35 to .40.

15. Philip B. Taft, Jr., "Backed Up in Jail," Corrections Magazine (June 1979), p. 28.

16. Hans W. Matlick, "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice," in Daniel Glazer (ed.), Handbook of Criminology (Chicago: Rand McNally College Publishing Company, 1974).

17. See Section 4142 in the Manual of Standards for Adult Correctional Institutions and Section 5102 in the Manual of Standards for Adult Local Detention Facilities, both published by the Commission on Accreditation for Corrections, supra note 10. See also Section 002 on page 10 of the Department of Justice draft, "Federal Standards for Corrections." The language of these standards is worth noting. For Adult Correctional Institutions, the standard unambiguously reads, "There is one inmate per room or cell." For Local Detention Facilities, it reads, "All cells and detention rooms designed for single occupancy house only one inmate." This is not a rigorous standard because many, if not most local cells and detention rooms with less than 120 square feet of floorspace, were originally designed to hold more than one inmate. Less rigorous still is the standard from "Federal Standards for Corrections" which reads, "All cells and detention rooms rated for single occupancy house only one inmate." Indeed, this standard does not even specify that cells should be rated to hold only one inmate.

Chapter 4
PROJECTING THE DEMAND FOR CORRECTIONS RESOURCES

Confronted with the combination of increasing populations and more rigidly articulated and enforced standards of confinement, corrections administrators have faced an increasingly painful dilemma. Authority to control the arrival and departure of inmates resides primarily outside the corrections system, in the hands of courts, prosecutors, and parole boards. Prison officials have some control over length of stay (through computation of time off for good behavior), but generally lack the power of primary gatekeepers, regulating the intake of prisoners. The conditions of confinement are also partly beyond corrections control: state legislatures have often been slow to appropriate funds for raising the standard of living and even where funds have been authorized, several years may elapse between the appropriation and the availability of new programs and facilities.

In this context, it is altogether natural for planners to seek statistical techniques which might reveal the future course of prison populations. As long as those populations are viewed as a natural phenomenon, subject to quantifiable natural laws, the task of correctional planning can be reduced to the difficult but largely mechanical problem of discovering those laws, applying them to future years, and projecting the number of prisoners for whom housing will be needed. Such was the interest of Congress in the portion of this study's mandate that called for an assessment of the future needs of the nation's correctional facilities.

In responding to the Congressional mandate, Volume II has demonstrated at length that accurate projections of correctional populations, even for the short term, are exceedingly hard to formulate. The size and composition of these populations are determined by a very large number of decisions to be made under conditions which are themselves impossible to specify completely. It is not too much to say that if a projection turned out to be very accurate, it would probably be by accident: too many of the basic causal links among decisions--for example, the relation between the decision to create new prison capacity and the decision to sentence offenders to prison--are imperfectly understood.

We dwell on the point because it is central to an understanding of the potential dangers and benefits in projections as part of the policy and planning process. Although the dangers are related,

two may be distinguished: the danger of false confidence and the danger of self-fulfilling prophecy. In the first case, an imperfect understanding of the uncertainties in population projections may create either too much activity or not enough. If a high projection is given too much weight, it may lead to the creation of too much new capacity--more than the demand actually proves to require--and thus to unnecessary expenditures; on the other hand, if a low projection is given too much weight, it may lead to an overly relaxed attitude, a failure to monitor indicators such as intake rates on a continuing basis, and thus a vulnerability to being taken badly by surprise as happened to most corrections departments in the mid-1970s.

All of this would be difficult enough if it were not for the possibility, indeed the likelihood, that the false confidence may become the self-fulfilling prophecy. As described in this chapter, there is evidence in at least some jurisdictions that the supply of prison space is among the factors that influence the demand for that space. Where his is the case, an unwarranted confidence in high population projections can prove accurate merely because there are enough potential prisoners waiting in the wing that any newly created capacity is "automatically" used. On the other hand, excessive confidence in low population projections may create a different problem in such jurisdictions; in periods of sharply rising crime rates it may mean that society's desire to respond with proportionately more stringent incarceration will be thwarted in the absence of sufficient prison capacity.

All of this is not to deny, however, that population projections do have their utility. When used sensibly, they can make at least three types of contribution. First, they can help the policymaker gain a fuller appreciation of the forces which determine correctional populations, as well as an understanding of the points at which those forces are exerted. The analysis of projections in our preliminary report, for example, indicated the potential importance in many jurisdictions of the parole board as a population-control mechanism. It alerted the policymaker to the possibility that although certain forms of determinacy might serve some standards of justice and make correctional populations more predictable, they also might make the size of those populations harder to control.

A secondary contribution of population projections is to give the policymaker a better sense of the likely ranges within which the populations can be expected to move. Projections can demonstrate to officials the plausible consequences of continuing to make the kinds of decisions in the future which they have been making in the past, as well as potential effects of significant innovations. Finally, projections can indicate the organizing

principles for the data which policymakers should monitor as a kind of warning system, alerting them to fluctuations in the correctional population.

Our Preliminary Report to Congress provided a set of projections of state prison populations through 1982. This chapter summarizes our subsequent efforts to subject the logic of projections to more careful scrutiny, to test the validity of a number of the assumptions necessary to compute projected populations and to extend the projections reported earlier through 1983. While the projections summarized here (and presented at the state level in Volume II) suggest some possible effects of the continuation of historical trends, they shed little light on the consequences of changes in criminal justice policy. Thus, we also include a brief summary of five case studies intended to address the effects of changes in sanctioning structures (such as mandatory minima) on the use of incarceration.

4.1 Projection Methods

The projections reported in this Chapter are based on a range of assumptions about which past trends will continue through 1983 and the ways in which prison populations will respond to these trends. They are drawn from three broad classes of projection methods which have been used with varying degrees of success in criminal justice planning.[1] The first class of methods requires the identification of a variable believed to be a leading indicator of prison population, projecting that variable, and using the projection of the indicator to project prison populations. The second major class of methods treats the projection largely as a black box, applying some mathematical function--often a straight line--to the series of past prison populations and extrapolating to the future. The third class attempts to simulate the stochastic process producing the movements of inmates in and out of the system, and thereby to generate a model of future prison populations.

--Leading Indicators

Examples of leading indicators include unemployment, population, crime or arrest, indictments, convictions or any one or more external variables whose past values are believed to have some relationship to prison population. There are two major problems with the leading indicator approach. First, many indicators cannot be tested because data are unavailable or available only in isolated and incomparable forms. State records on indictments, for instance, are erratic and each reflects different charging and record-keeping practices. Therefore, the pooling of states that would be necessary for vigorous testing, is also logically questionable. Second, the

method is constrained by the ability to project changes in the leading indicator. The commonly used indicators of crime and unemployment illustrate this limitation. Neither has compiled a very impressive track record of predictability. Moreover, the relationship of these variables to prison population has varied from time to time and place to place in ways which cast doubt on their utility as the basis for projection.[2]

Our examination of the literature led us instead to another leading indicator drawn from within the corrections system--additions to prison capacity. For this variable, our survey provided us with a reliable source of data on state construction plans which could be used to prepare the projections. To test the historical relationship between population and capacity, data were also gathered on capacity changes in every state in every year from 1955 to 1976. We found this variable to be significantly and strongly related to changes in prison population. While this much was generally known before our study began, a new temporal relationship was found. We can say with 99 percent confidence that building to house existing populations represents less than one additional space for every 30 inmates. We also found no relationship between capacity change and population change in the same year or with a one year lag. However, the picture changed abruptly at the lags of two or more years, where the results showed a significant and substantial effect of past capacity changes on future populations. Our results indicated that on the average:

- capacities do not appear to be changed more often in crowded conditions than at other times;
- additions are filled to rated capacity by the second year after opening additional space;
- within five years, the occupancy of the new space averages 130 percent of rated capacity.

Like other conclusions drawn from historical analysis, these results describe the average results of past behavior. There is no proof that the relationship they describe is an inevitable one, or that it works with equal effect in every time and place. Nor do we understand the precise mechanisms by which capacity and population are related. Since any number of circumstances may influence both decisions to build and decisions to incarcerate, we cannot suggest that new space will always find new occupants independent of these circumstances. We can, however, identify specific efforts to reduce intake or accelerate release in crowded situations. When crowding is ameliorated by new construction, these efforts may be relaxed, permitting some increase in prison populations. The observed effects can thus occur even in the absence of any overt action by judges or parole boards in response

to empty space. As long as the potential inmate population continues to exceed the available bedspace, we should not be surprised to find that existing capacities are a limiting factor on the use of incarceration.

The capacity model which followed from our analysis estimated the change in a state's prison population as 1.0 times its change in capacity two years earlier, plus 0.3 times its capacity change three years earlier. The sum of future populations projected by this model is shown in section 4.2, where we present the results of all three projection techniques.

--*Extrapolation*

As the name implies, extrapolation is equivalent to graphing data on prison populations against time and projecting present trends into the future. Two major assumptions are required in selecting an extrapolation model: the form of the function (in this case, linear) and the data base on which to estimate future trends. The latter is particularly important since we know the properties of the system change from time to time in response to statute, policy or social climate. Our model tried to locate the last point at which such a major change had occurred, and to use only subsequent data to estimate future population. (If there was no trend change, all years since 1970 were used.) From this point through 1983, the model assumed that growth (or decline) in population would continue at a uniform rate. This assumption is equivalent to assuming that intake continues to grow at the rate experienced since the change, while time served remains constant.

The theoretical justification for this projection is considerably weaker than that behind either of the other two projections presented. In particular, since elapsed time is not the real cause of change, we can be confident that sooner or later linear extrapolations will produce absurdities. Despite its lack of theoretical justification, extrapolation is more widely used than any other model, and may provide acceptable results over short periods of time. It is included here more as a benchmark for comparison than because of any claim of validity.

--*Simulation*

The most complex models of the system involve attempts to consider all the functional components of the corrections system and to describe the relationships among them in mathematical form. The initial phase of our project began with an attempt to construct such a model, but it soon became evident that any projections which might result would owe their content more to the way the model was constructed than to any facts about the actual behavior of the criminal justice system. The initial unknowns of a simulation

model are the number of prisoners arriving and departing in each interval of time. If these variables could be projected, estimates of the changes in prison populations would follow immediately. An equivalent formulation of the problem involves projecting the number of arrivals and the distribution of time served by each incoming cohort. Applying this distribution to all cohorts of new arrivals then generates an estimated number of releases in each period. In an elaborate theoretical model, both intake and time served may be influenced by any number of factors in the criminal justice system and the broader social environment. For the projections reported here, a highly simplified simulation model was employed, which assumed: (1) that intake would continue at the level observed in the most recent year, and (2) that prisoners would be released a fixed number of years after their intake, with the delay being equal to that experienced in recent years. Over the immediate past this model appears to correspond reasonably well to the experience of most states, where intake appears to have stopped increasing and the lag between intake and release has been two years or less.

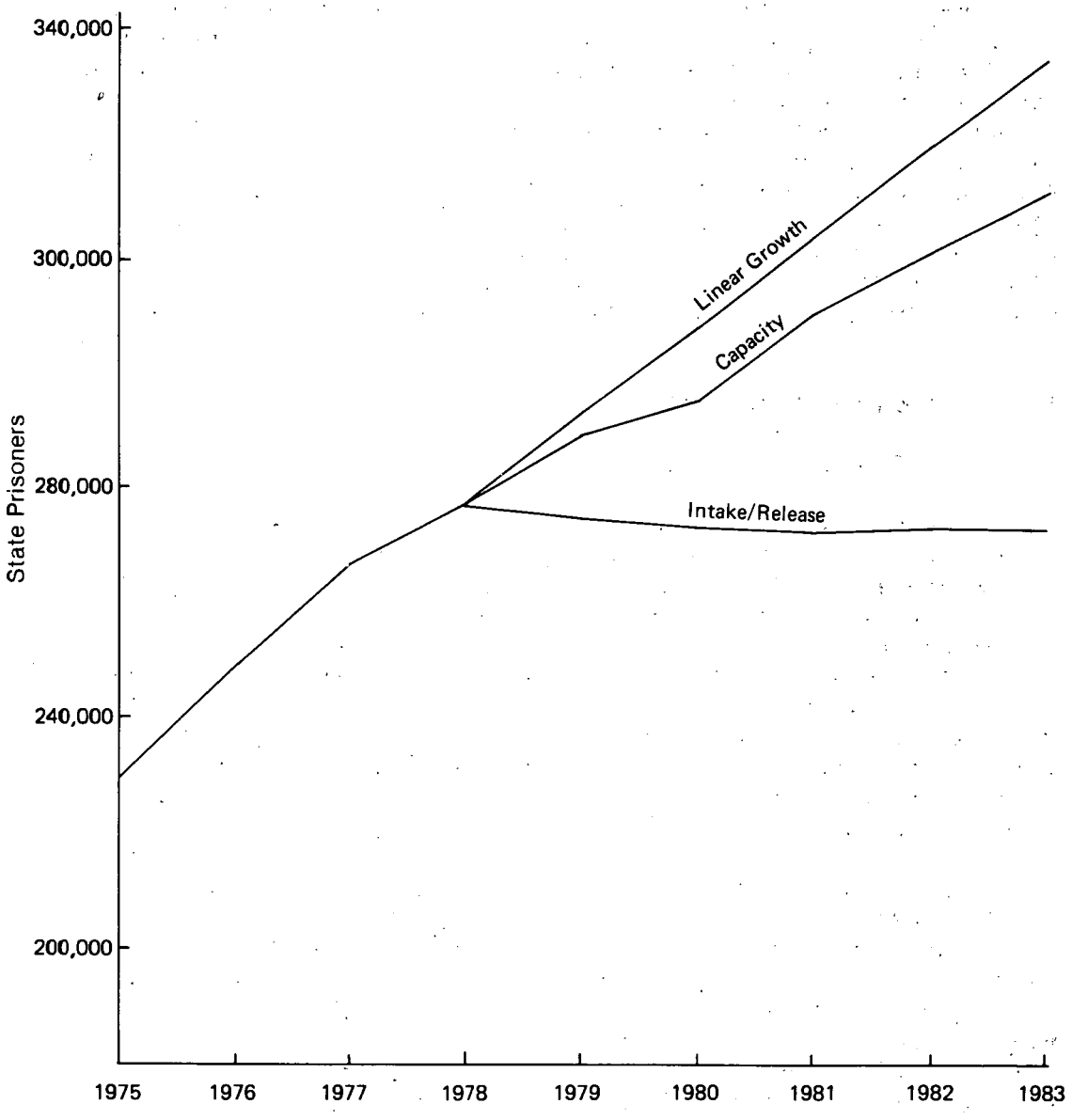
4.2 Projection Results: 1979-1983

--State Prison Populations

Although all prison population projections anticipate some further growth in the number of inmates in state custody, none call for continuation of the historically high rate of the mid-1970s. Projections I (capacity) and II (linear growth) are in near agreement over the five years from December 31, 1979 to December 31, 1983. Figure 4.1 shows the numbers of inmates expected if the assumptions of the three projection methods hold. Over the five-year period, Projection I estimates annual growth slightly under four percent based on planned new construction during the period 1976-1981. Projection II, which extrapolates past growth in state inmate populations, is slightly faster, at five percent per year.

Regional patterns of Projections I and II show nearly identical median growth rates for the two methods (Table 4.1). The Northeast shows the lowest median growth rate (3.5 percent per annum) in both projections. The South is slightly higher (4.25 percent in Projection I, 4.75 percent in Projection II). The Western rate of 5.5 percent per year makes it the fastest growing component of Projection I, although this is slightly exceeded by the six percent annual rate given by Projection II for the North Central states. The projection based on capacity, however, shows a bimodal distribution in each region, with states splitting into a class of builders (roughly characterized by the upper quartile points) and non-builders (lower quartile points). The differences in projected growth between these two groups are extreme, with the lower quartile points under two percent per year in each region, and the upper points ranging from 4.5 percent to 14.5 percent per year.

Figure 4.1
Projected State Prison Populations
December 31, 1979—December 31, 1983



Sources: *Prisoners in State and Federal Institutions on December 31* for the years 1975 through 1978 [see Table 1.1, notes (d) through (g)]; 1979 through 1983 data taken from Appendix B.

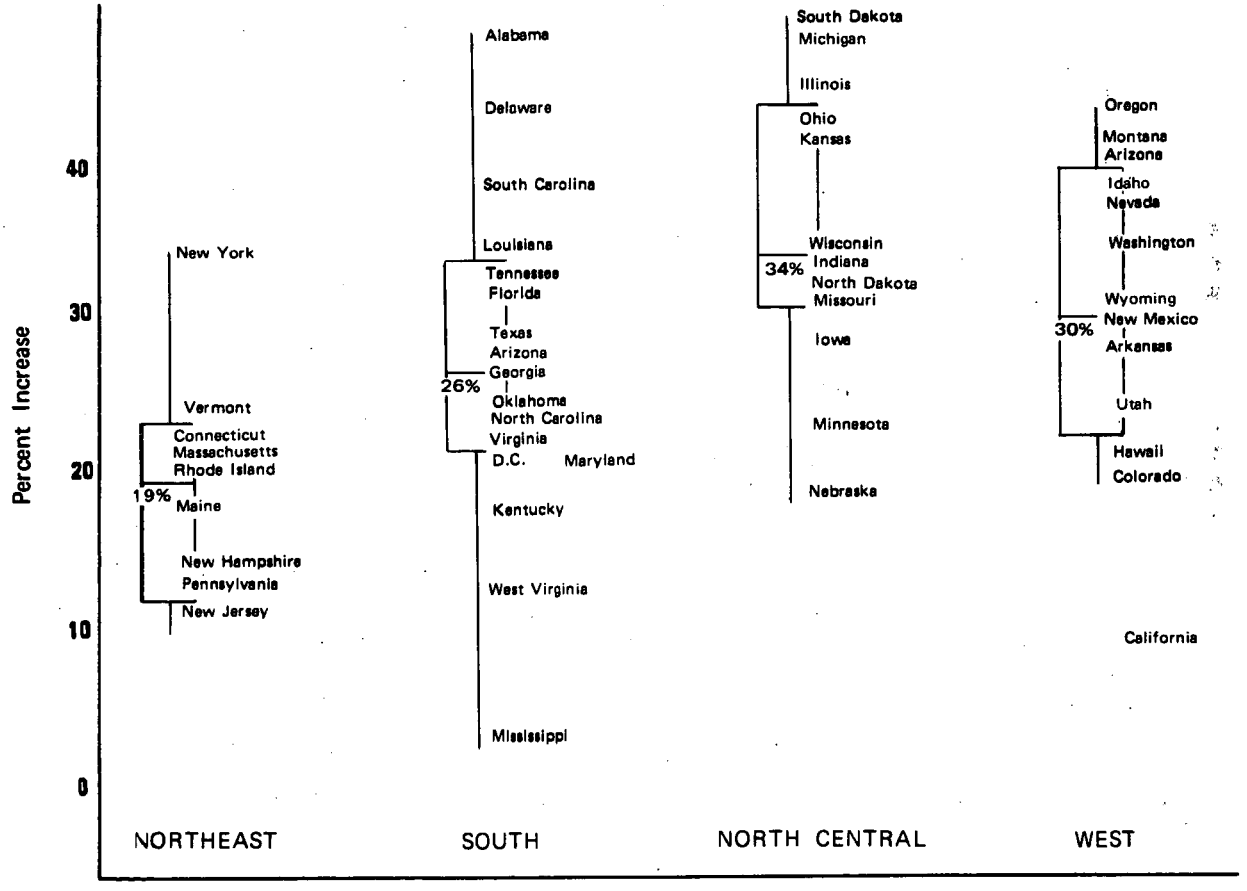
Table 4.1
Median Projected Five-Year Growth Rates for States by Region: 1978-1983

	Projection I (capacity)	Projection II (linear growth)	Projection III (intake/release)
Northeast	18%	19%	0
South	23%	26%	0
North Central	22.5%	34%	-1%
West	31%	30%	0

Figure 4.2 shows the complete distribution of projected five-year growth for each region according to Projection II. While regional differences are apparent, it is also clear differences among regions are not so great as the differences among states within a single region. New York and California are shown in this display to be the outliers of their respective regions. New York's growth rate is 80 percent higher than the median for Northeastern states, while California is the only state in the West (or in the U.S.) for which Projection II shows a decrease in population. Projection I shows confirmatory results in both states. (New York: I = 4.3 percent per annum, II = 6 percent; California: I = .02 percent, II = .2 percent).

The highest projected rates of growth in Figure 4.2 are those for Michigan, Illinois, Alabama, and South Dakota. Of these, South Dakota's should be considered least reliable. Because of that state's small size, random fluctuations play a disproportionately large role in the variance of prison populations, and Projection II may be simply extrapolating this randomness. Alabama's situation is also uncertain. The outcome in that case depends on actions taken as a result of the judgment against the state prison system of Eighth Amendment violations. In 1979, over a thousand Alabama prisoners were being held in local jails because of judicially imposed limits on state prison capacity. That situation is unlikely to persist through 1983, although the direction of resolution is unclear. The two midwestern states have no such special circumstances to cast doubt on their projections. Both have experienced large and sustained growth in their prison populations over the last several years, and the assumptions of Projection II extrapolate this growth over the early part of the next decade.

Figure 4.2
Projected Five-Year Growth Rates in Year End Population for States by Region, 1978–1983 (Model II)



Source: Volume II, *American Prisons and Jails*, p. 81.

According to the assumptions of Projection III there will be very little net growth, and perhaps even a slight decrease in total state prison populations over the next five years. In most states, peaks in intake rates appear to have occurred two or three years ago, and as these peak cohorts complete their terms and become eligible for release, we may expect to see absolute reductions in the levels of the prison population. More than half the states are projected to experience stable or declining populations on the basis of their current intake trends.

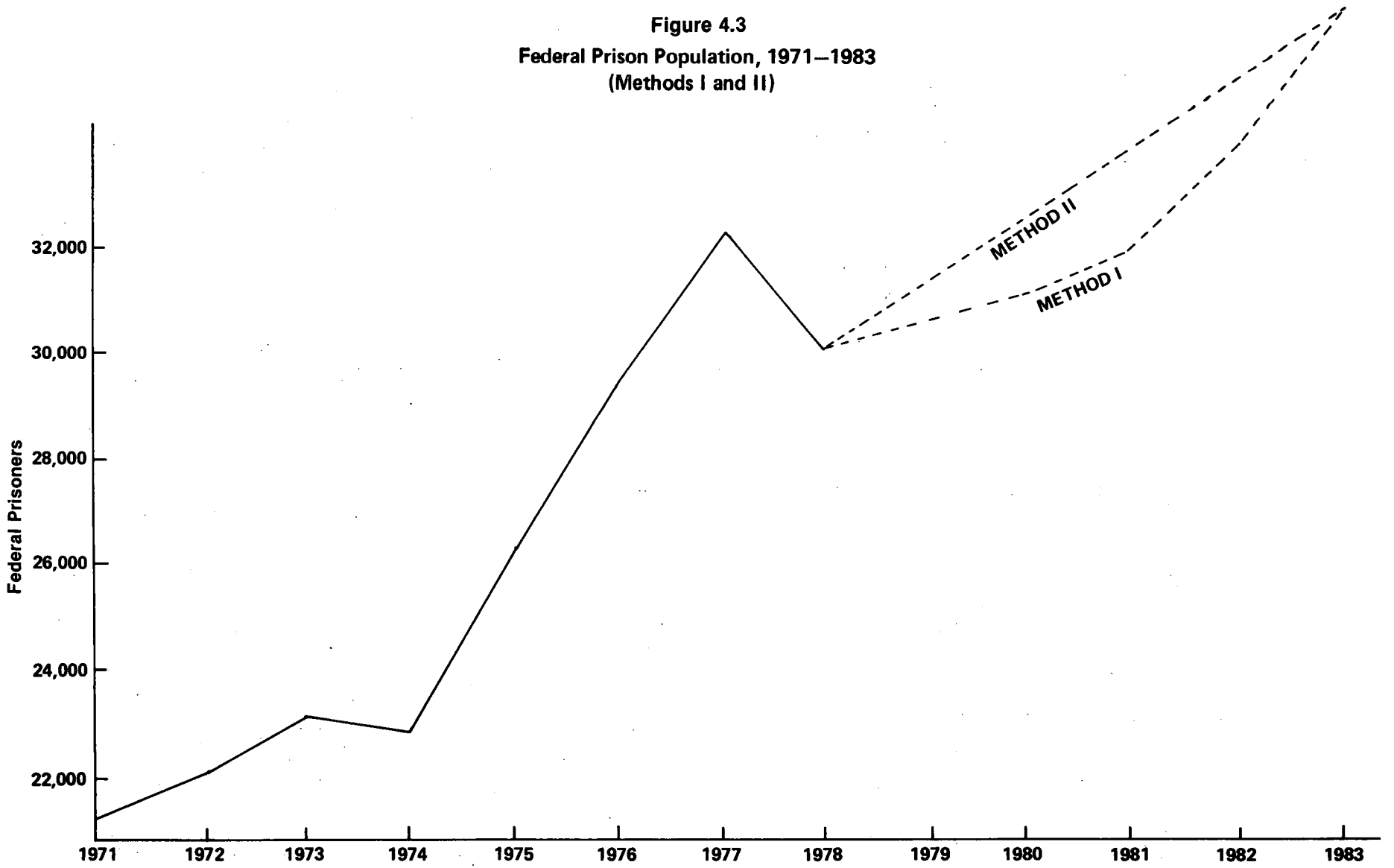
--*Federal Bureau of Prisons*

The federal Bureau of Prisons reports plans to open five thousand units of capacity in fiscal years 1978-1981. Combined with the 962 units of rated capacity added in 1976-1977, this adds 20 percent above the actual inmate count of December 31, 1978. Projection Method I, which is based on the observed correlation between changes in capacity and change in population, accordingly projects an annual increase of approximately four percent in federal inmate populations between 1979 and 1983. Projection II, which simply extrapolates historical population growth levels, yields a virtually identical projected growth rate. Since future prison construction plans may reflect just such an extrapolation, the agreement of the two results may not be wholly coincidental.

Projection III relies on past intake statistics to estimate future releases. For the period preceding 1977, the federal Bureau of Prisons was unable to supply movement data consistent with National Prisoner Statistics (NPS) definitions. Data for 1977 and 1978 are compatible with the definitions, but not with prior years' figures. The numerical results of Projection III are dominated by this change in reporting basis, and convey no useful information about actual population levels. Because no defensible correction for this effect appears available, only Projections I and II are reported in Figure 4.3.

Following several years (1964-1972) of relatively modest capacity increases, the United States Bureau of Prisons began an active construction and acquisition program which introduced 10 new federal institutions in five years. At the time of our survey in March 1978, these institutions held 5,160 inmates. The peak of the building activity came in 1974 when three institutions, housing 2,146 inmates, were opened. The rate of increase in the federal prison population reached its highest level two years later, in 1976, when 2,668 inmates were added. In 1977, the population continued to grow, but more slowly, and by 1978 the population had begun to decrease. Whether this relationship will be repeated in the face of new construction (as our projections suggest) remains a matter of speculation. Thus far, NPS data for 1979 show a continued

Figure 4.3
Federal Prison Population, 1971–1983
(Methods I and II)



Sources: *Prisoners in State and Federal Institutions on December 31* for the years 1971 through 1978 [see Table 1.1, notes (b) through (g)].

decrease in federal population which may signal the beginning of a declining trend that would break the apparent connection between capacity and population.

--Local Correctional Facilities

The historical data presented in Chapter 1 of this volume indicate no trends of either increase or decrease in the number of jail inmates in most states. In every exception, a direct transfer between state and local systems can be identified, most commonly triggered by Eighth Amendment violations by the state department of corrections. Statistical projection methods offer little to the detection of such major transfers. Accordingly, the only projection of jail populations which the data appear to justify is that levels will fluctuate randomly around today's value.

Superimposed on the random fluctuation of jail populations is a systematic surge of about ten percent every weekend caused by increased arrests and (in some jurisdictions) the unavailability of judges. Jail capacities must be large enough to house not the average populations, but the peak populations. Unfortunately, there are no general historical data about the size of peak jail populations, and even the most recent jail census yields information only about the "average" weekday and weekend populations, so that we have no numerical basis for a discussion of these fluctuations.

4.3 Comparison of Projections with Actual Data

In testing the accuracy of our projections, two principal measures were considered: (1) the percentage discrepancy between a particular state's projected and actual 1978 year-end population, and (2) measures of the total aggregate error summed over all states. It should be noted, however, that these comparisons give far less than a complete picture of the performance of any of the projection methods. The most glaring omission is one which cannot be remedied. Performance over one year may be a very poor indicator of accuracy over the entire period of interest. Over the short-term, the fact that people who go to prison can be expected to stay there places a premium on estimates based on the most recent population and intake data. About half the inmates counted in our 1978 projections were physically present in the 1977 data. By the end of five years, however, only about 10 percent of today's inmates will still be imprisoned (on their current charge; recidivism or revocation is another matter). Thus over the long term, trends--if there are any--become relatively more important, and today's data relatively less so.

Figure 4.4 displays the errors associated with each of the three projection methods in projecting state prison populations for December 31, 1978. None of the three methods stands out as clearly superior. Both systematic and random errors appear nearly equal for all methods. Of the random error, about 40 percent is explicable by discrepancies in the 1977 counts reported to NPS by the states and later corrected. Some of the remaining 60 percent, as measured by analysis of variance of the errors, reflects the essential stochastic day-to-day variation of prison populations caused by random arrivals and departures. While we cannot distinguish this irreducible random component from pure modeling error by purely statistical means, a conservative estimate of the random fluctuation would be at least one percent of the total prison population. If this is so, then the models are sufficiently precise that in approximately half the states the modeling errors are no greater than the random variations and measurement errors in the data.

Figure 4.5 displays a comparison of actual prison populations on December 31, 1978 (vertical scale) and the same variable as projected by Model III. The chart shows no correlation between error and the size of the state. A more detailed analysis of variance indicates no systematic relationship for any of the three projection methods between errors and either the size of the state or its geographic location. In sum, analysis of these errors does not indicate further minor adjustments or refinements in the methods which would increase their precision over one-year intervals.

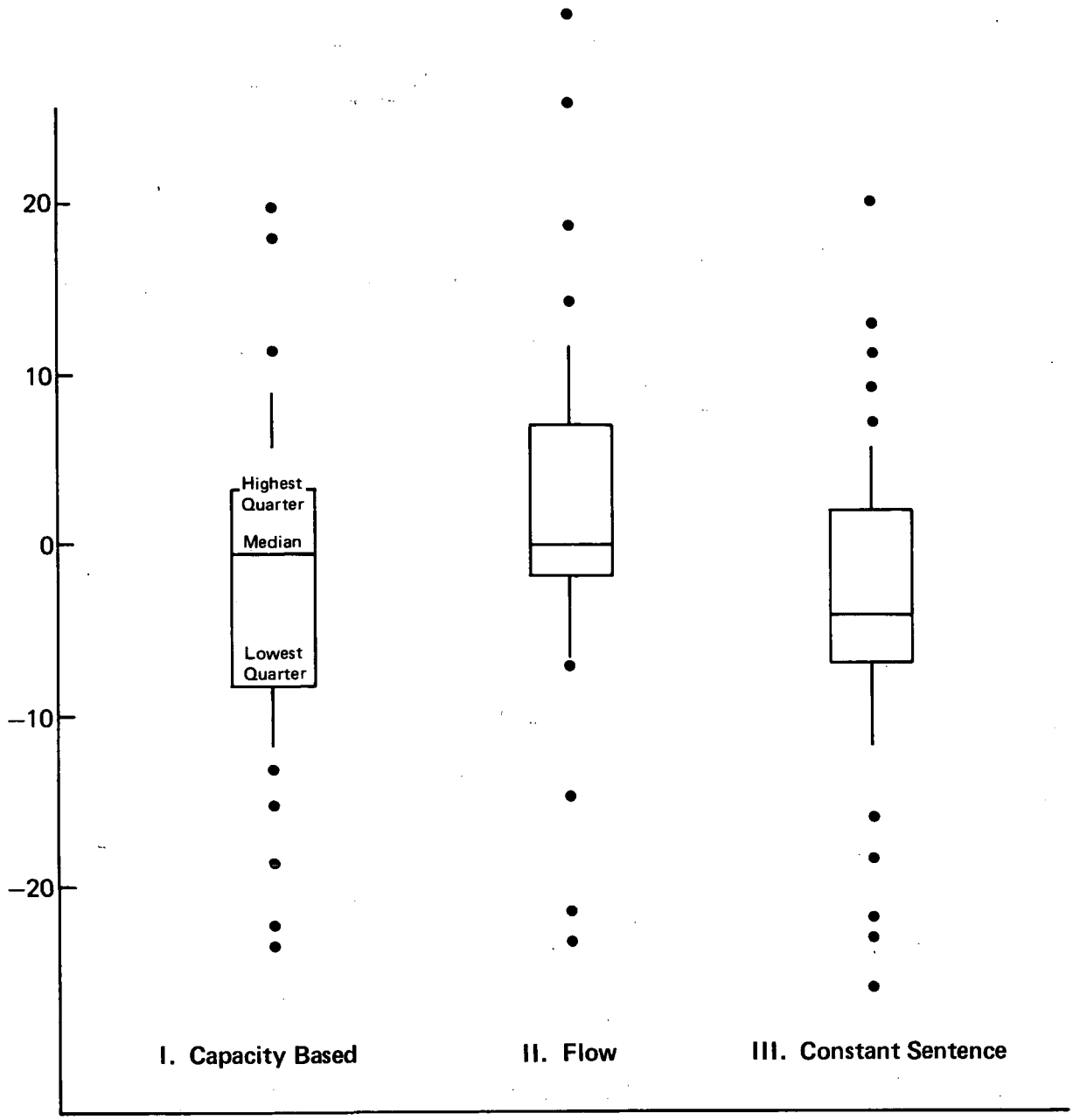
Recall, however, that our projections can only be viewed as statements about the past and about sets of assumptions relating past and future. The fact that they can be invalidated at any time by a shift in criminal justice policy is clearly illustrated by the most recent reported change in federal prison populations. In 1977, the Attorney General announced that the Department of Justice would concentrate its resources on the investigation and prosecution of white collar crime, narcotics violations, organized crime and official corruption. According to the Administrative Office of the United States Courts, this policy change has contributed to a substantial decline in the criminal caseload through the deferral of non-priority cases to state and local authorities and more concentrated efforts to reach the main manufacturer and distributor of illicit drugs with somewhat less emphasis on the small street operator.[3] By 1979, declining arrests and cases filed appear to have been transmitted to the corrections system, as federal prison populations declined by 12 percent from 29,803 to 26,233.[4]

4.4 The Impact of Statutory Provisions Governing Sentencing and Release

The change in federal prosecutorial priorities noted above is only one example of the kinds of decisions that can take the

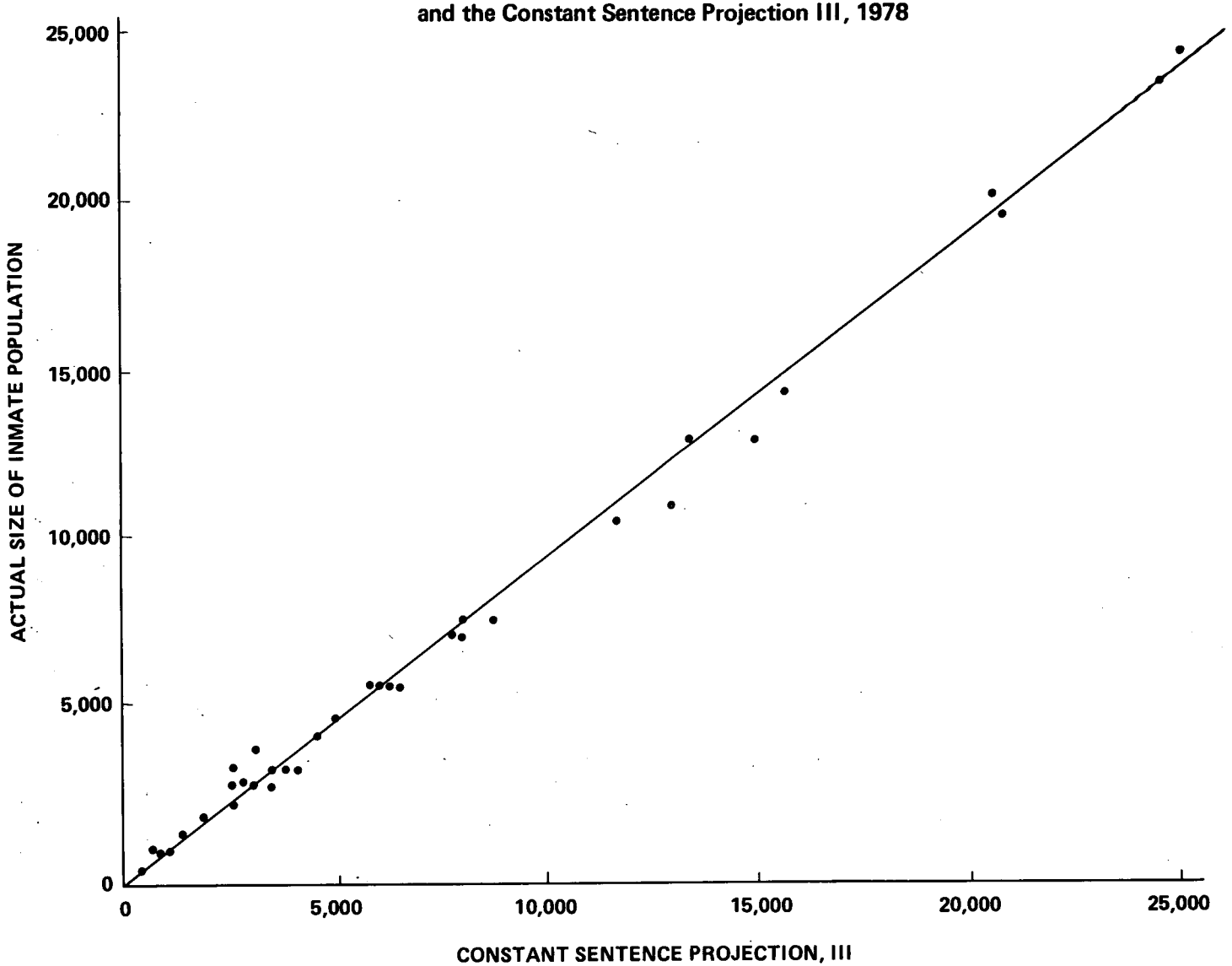
Figure 4.4

Relative Errors of the 1978 Projected Prison Populations



Source: U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, *Prison Population and Policy Choices, Volume 2: Technical Appendix*, by Andrew Rutherford et al. (Washington, D.C.: U.S. Government Printing Office, September 1977).

Figure 4.5
Comparison of Actual Size of State Inmate Populations and the Constant Sentence Projection III, 1978



Source: U.S. Department of Justice, LEAA, NCJISS, *Prisoners in State and Federal Institutions on December 31, 1978*, Advance Report, NPS Bulletin No. SD-NPS-PSF-6A (Washington, D.C.: U.S. Government Printing Office, May 1979).
Note that more than one state can be represented by a single point.

future of a prison or jail population entirely beyond the realm of the kind of statistical analysis reported in this Chapter. In principle, such a change could come from any point in the criminal justice system: a change in the criminal code, changes in prosecution or plea negotiations, the introduction of sentencing alternatives, or shifts in sentencing or release policy. In its mandate for this study, Congress expressed particular interest in the probable effects of broad substantive changes in sentencing policy on the future needs of the nation's corrections facilities. To address this interest, five case studies were conducted in states where procedures relating to sentencing or release had changed. None of the changes stated increased or decreased incarceration as its primary purpose, but all were potentially capable of influencing either the numbers of offenders sentenced to jail or prison, or the length of time served. Some of the changes were explicitly intended to have a neutral effect on populations, while others were enacted with predictions that they might dramatically increase the number of inmates.

Four of the five states included in this portion of the study changed the structure or locus of discretion in determining the length of prison terms. The fifth encouraged the use of community corrections in lieu of state commitments. In Oregon, as a result of legislative authorization of a parole guidelines system, parole release decisions were to be made in accordance with a set of guidelines which based the length of time served on the gravity of the offense and the prior record (and other characteristics) of the offender. Thus, at least in principle, release dates for most offenders could be accurately estimated at the beginning of their prison terms. With the abolition of parole release authority, Indiana's determinate sentencing law also allowed specification of time served at the beginning of incarceration, but here the time was fixed by the sentencing judge, with very little guidance from statutes. (Under the Indiana law, for example, when an offender has two felony convictions, a judge could select a determinate sentence between one and 17 years for unarmed robbery, burglary, and auto theft; between 2.5 and 19 years for armed robbery; and between one and 19 years for battery with a deadly weapon.) California's determinate law, like that of Indiana, eliminated parole release discretion and allowed judges to fix the penalties, but required that the length of sentence be almost entirely determined by the offense at conviction, so that actual time-served decisions were effectively made by prosecutors in selecting the charges to press. While the change in Florida providing mandatory penalties for gun law violators was much narrower in scope, it too implied a shift in control that emphasized the power of the prosecutor.

It is still too early to say whether these changes either achieved their stated purposes or produced side effects on the size

of state prison populations. Oregon's legislation appears to have been largely a formalization of practices already used by the parole board, and thus to have been as much an effect of procedural change as a cause of it. In California and Indiana, the details of time served for specific offenses may have changed, but overall mean sentence lengths appear to have neither increased nor decreased in the first year of the new systems.[5] California's prison population showed a sharp initial decrease because the law was used retroactively to release inmates who had already served more than the newly specified terms, but was not used to re-incarcerate those paroled after serving less than the specified time. In both states it appears that while the legislated changes did influence sentencing, (a) the effects were not those which would have been predicted from a literal reading of the law, and (b) effects on aggregate prison populations have been small compared to yearly fluctuations from other sources.

The Florida legislature required a minimum sentence of three years in prison for conviction of certain felonies involving firearms. Since persons convicted of most of these offenses had ordinarily been sentenced to prison even before the new legislation, our study found no effect on the rate of prison intake. At the time the data were collected (1978), there was also no evidence that time-served had increased enough to influence the total prison population, although it is possible that such a change may eventually occur.

Finally, Minnesota's Community Corrections Act offered financial incentives to counties for keeping adults convicted of less serious felonies and all juveniles under community custody or supervision in lieu of state commitment. Sentences to prison did, indeed, decrease in participating counties, but they also decreased in comparison counties which did not participate in the Community Corrections Act. Moreover, in both groups of counties the decrease in imprisonment was greatest in the year before the Act became effective. In the counties which elected to participate in the Act, however, the decrease in use of prison appears to have continued for one year longer than it did in counties choosing not to participate. It is possible that this continued decrease is due to the incentives provided by the Act. It is also possible counties choosing to participate intended to decrease their use of incarceration, and so chose the Act on that basis.

Granted that these findings are based on limited empirical evidence, they should suggest caution to those who would take action on the basis of the literal provisions of sentencing statutes. They should also be viewed in light of the time required for any system to re-establish equilibrium following a change in policy or law. Until the adaptation is complete, it is virtually impossible to evaluate the full impact of the change. Even legislative changes for which delayed effects can be anticipated, may be

modified before their original outcomes are fully understood. Under these circumstances, any claims to knowledge about the true consequences of legislative acts are highly speculative.

In view of these limitations, we can only suggest that legislative moves toward determinacy offer no certain cause or cure for rising prison populations. As Chapter 1 has suggested, legislative mandates are only one part of a complex array of decisions that produce a sentence to prison. Moreover, whether or not the influence of these decisions is considered seriously before the fact, it is clear that some of them may actually conflict with legislative intent. In cases where more severe sanctions are introduced, defense tactics may shift toward greater delay and prosecutors' charging decisions may continue to reflect business as usual. In Florida, for example, state's attorneys could circumvent the mandatory minimum law by simply not filing that specific charge in cases where they felt the circumstances did not warrant a three-year prison term. In Oregon, district attorneys devised strategies for dealing with cases for which parole release guideline terms were believed to be inappropriately short.

If generalization is warranted, these examples suggest that when any system is confronted with legislative changes in procedure, capability or sanction, the behavior of key actors probably changes as little as necessary to comply and as much as possible to mediate the perceived disruption of the change. They also confirm the premise that the task of articulating system policies consonant with perceived community values is not the exclusive province of the legislature. The fact that legislative acts such as mandatory minima may not produce the outcomes which might be predicted, does not imply that prison populations cannot be influenced by the same forces that have precipitated legislative action. Public calls for law and order, for example, may affect decisions to imprison or release long before legislative debate has produced a statutory change. Prosecutors, judges, and parole officials operate in a highly political environment, sensitive to the criticism that may follow even one well-publicized criminal incident. Under these circumstances, new laws (or even administrative procedures such as "Career Criminal" prosecutorial programs) may simply formalize procedures or sanctions already in force. In addition to policies and practices within and among criminal justice agencies, caseload pressures or the availability of resources are other potentially confounding factors. In California, for instance, Proposition 13 may drive up state commitments for lack of resources to deal with offenders at the local level.

These systemic uncertainties clearly raise serious questions about the predictability of prison population as a function of legislative acts. Under the unusual circumstance, one might see a change sufficiently large or immediate to permit direct attribution.

In the more usual case, however, the influence, if any, may be delayed, indirect, confounded with other changes and perhaps even counter to legislative intent.

4.5 Implications for State and Local Projections

A conclusion which clearly follows from the role of the changes in policy described in our case studies is that the correctional system is the wrong place to look for advance indicators of trends in incarceration. The chain of events which culminates in incarceration is long and passes through the hands of many actors, whose discretion plays a role in determining who is incarcerated, where, and for how long. A comprehensive monitoring system would cluster indicators at each discretionary point in the hope that at least some of them would provide advance warning of changes in policy before they reached the corrections system.

Crime. We somewhat arbitrarily begin our cluster of candidates with offenses reported to the police. A more ambitious project might seek the social, cultural, and economic antecedents of actual criminal behavior. Understanding the sources of crime has drawn the attention of highly competent researchers for several decades, without producing consensus on which variables play what role in the structure. If the development of a set of indicators for prison population were forced to wait until theoretical agreement could be reached on the causes of crime, the project might never begin. At present, it appears that information on the subsequent parts of the system may have more saliency and immediacy than etiologic indicators.

As a practical matter the indicators of crime incidence have been largely predetermined by the precedent of the Uniform Crime Reports. The standard definitions for Part I crimes correspond to the violent and property offenses which make up the bulk of the state prison population. They are less useful for public order offenses, federal crimes, and the lesser offenses for which jails are used. The number of drug sales, for instance, probably has little to do with the number of drug salesmen imprisoned, since official response to victimless crime depends primarily on the vigor of enforcement.

The comprehensiveness of this cluster of measures might be enhanced by attempts to distinguish the characteristics of specific offenses which make it most probable that the offender will be apprehended and imprisoned (e.g., the severity of the offense). An attempt to quantify the aspects of victimless crime which lead to incarceration might also prove valuable. Because these indicators have never been systematically collected, no empirical test of their usefulness has been made. Until they are studied, we will not know whether they are useful.

Police Practice. The offender first experiences the discretionary power of the criminal justice system at the point of arrest. Clearance rates range from approximately 16 percent for burglary to 75 percent for homicide.[6] Any change in the clearance rate could send an increased volume of defendants into the court system, who might then, in turn, increase the volumes of conviction of crime and sentence. Clearance rates for major types of crime thus form one of the key indicators for this indicator cluster.

A second important measure of police activity is the number of arrests for public order crimes and other misdemeanors. As noted above, police policy can substantially influence the case volume flowing into the system by a more or less vigorous attack on drug dealing and other victimless crime. Knowing the timing of such changes may help anticipate their effect. For these indicators there is reason to believe that the level of detail is especially important for meaningful interpretation. The easy way to increase the quantity of arrests is to decrease their quality, picking up lesser offenders or others for whom no valid case can be prepared. Thus, a simple increase in the number of arrests may have a diluted impact further down the stream as prosecutors and judges screen out the marginal cases.

Prosecution. Given the role of the prosecutor in screening charges brought in by law enforcement agents, the group of indicators which describes the decision of whether to prosecute, and on what charges, is central to the construction of a comprehensive monitoring study. If a pilot effort were to look at only one transition in an attempt to test the feasibility of developing a set of indicators, the prosecution function would probably be the place to start.

A particularly important question to ask is whether prosecutors simply transmit the effects of changes in crime and arrest rates, or whether they moderate their influence by reducing the rate of prosecution when the volume of cases goes up (and conversely increase prosecutions during times of low volume). Thus, the kinds of indicators one would monitor are the ratios of burglary (robbery, drugs, etc.) prosecutions to felony arrests for the same crimes. Secondarily, indicators which monitored plea negotiation practices, such as percent of convictions within zero, one and two degrees of the original charge might be informative where available.

In interpreting these changes it is important to remember that qualitative indicators can provide information which may be as important as the more traditional numerical measures. Construing a change in the plea negotiation rate as reflecting prosecutorial policy is much sounder if prosecutors or other observers also interpret it as such. Conversely, however, one should be wary of treating reported policy shifts as literal truth if they are not confirmed by data.

Courts. The indicator groups named so far have not only followed a chronological path through the criminal justice system, but also reflect increasing levels of complexity. Crimes can only be counted and classified. When we move to the next stage (arrest) we begin to look at ratios of arrests to offenses reported. For prosecutors we move one step further by examining the functional relationship between ratios (prosecution rates) and cases (workload). For courts yet another factor becomes important: delay between prosecution and adjudication. Attempts to reduce delay may lead to a temporary increase in the number of sentenced offenders as backlogs are cleared by increased court activity. They might alternatively reduce the flow of offenders if cases are dismissed because of speedy trial provisions.

Backlogs are partly due to cases awaiting access to limited court resources, partly to the time litigants require to prepare their cases, complete discovery, file and respond to motions and develop evidence, and partly to the efforts of some defenders to keep their clients out of court as long as possible. Where court capacity limits the processing of cases, the effect of an influx of defendants may initially be only to increase the length of court delays without affecting the rate at which prisons receive additional prisoners. Thus the kinds of indicators which may appropriately be monitored include the distribution of time to trial (for different offenses) along with the usual transition ratios of probability of conviction given offense charged, and probability of prison or jail sentence given conviction offense. Moreover, the effect of court delays on jail population levels should be monitored, since longer waits for pre-trial detainees may mean more of them in jail on any given day. Statistics on the handling of probation and parole violators may also be collected as part of this group of indicators.

Corrections. The population measures already collected by the National Prisoner Statistics provide about as much aggregate information as is likely to be available or useful on the national level. A fundamental thesis of this report is that the important gate-keepers and controllers of institutional populations are outside the corrections system, rather than within it. Populations are regulated by the number of people who arrive, and the length of time they stay before being released. In most states corrections administrators have little more than indirect influence over either of these processes. Such control as they may be able to wield through granting time off for good behavior or transmitting recommendations to release authorities is not susceptible to easy monitoring. Nor is it clear that attempts to monitor this stage of the process would be the most effective place to begin to augment policy information. What has not been adequately monitored is the effect of the physical conditions of confinement. This interacts most dramatically with populations when courts find corrections

departments to be running institutions in violation of the Eighth Amendment, and order wholesale removal of inmates from inadequate facilities. Standards of decent confinement are becoming sufficiently well documented, through litigation and accreditation, that identification of likely court-order candidates may be possible through the collection of facility data of the kind reported in Chapter 3. Because capacity, whether judicially or physically defined, may limit the growth of population, it is also important to continue to monitor construction plans.

Parole. In discussing courts we specifically did not suggest that length of sentence be monitored. Although a movement toward early time-fixing is clearly evident, the fact remains that in most states, and for most offenders, judges do not set time-served: parole boards do. They may or may not consider the judicially imposed sentence, but they are bound by it only within broad limits. Thus, in monitoring trends at the release juncture the important questions are:

- Who exercises discretion over release?
- On what basis are decisions made? (For example, is the type of offense a factor?)
- How much flexibility is available in setting the lengths of prison terms? and
- What changes are occurring in the distributions of prison terms by offense?

Recidivism. Defendants who have already been to prison once are likely to get special attention from sentencing judges. As the current population of inmates is released, the number of ex-offenders in the general population, and in the subgroup of criminal defendants, will increase. It is conceivable that such a change could lead to an echo of the 1970s as current prisoners come up for the second time around. Analysts might accordingly wish to monitor the size, behavior and treatment of the ex-offender population for its potential effects on future numbers of inmates.

Discovering a shift of these transition ratios might tempt one to propagate the new ratio through the system and project a change in prison intake (or population) proportional to the change in the intermediate indicator. For example, if drug felony indictments fall from 20 percent of drug felony arrests to 10 percent, one might conjecture that prison intake for these offenses would be halved. In general, however, we can be very confident that if a prosecutor increases or reduces the rate at which charges are filed, the marginal cases added or removed will not look like a random sample of all cases, and will not have the same probabilities

of conviction or incarceration as would "average" cases. It may be possible to decide the direction of the difference (higher or lower) but it is highly unlikely that the amount can be specified with any empirical basis. Moreover, although one might hope to improve the accuracy of a numerical estimate by stratifying the case sample to select instances most nearly resembling the marginal cases, as a practical matter appropriate stratifiers are unlikely to be available. Subjective considerations of evidence quality, the personality of the defendant, and community sentiment are likely to contribute to prosecutorial decisions. Stratification on alleged offense is unlikely to capture much of the variance due to these factors.

Changes in transition ratios may also influence the behavior of actors downstream in the system, who may respond to both workload volume and case quality by changing their own transition probabilities. A court which can only process 70 cases per week per judge will continue to process about 70 cases even if filings double until either (a) more judges are added or (b) dispositions are made easier by an increase in negotiated pleas. Thus, identifying one discontinuity in a time series of transition probabilities is only a first step in understanding the nature and effects of a policy change. The analyst must return to the data to determine whether this change is neutralized, amplified, or simply transmitted through the next stage of the system.

These cautionary notes do not imply that the situation is completely hopeless. To the contrary, a study of the movement of cases through the system can help to quantify the range within which changes may be expected to occur, and may provide one or two years' advance warning of the possible direction of major shifts. Moreover, one way both to anticipate future shifts and to mitigate their adverse effects is to establish mechanisms whereby criminal justice policies can be monitored and information on their possible effects can be fed back to the decision-makers themselves and to other agencies bearing the consequences of the decisions. Our notes of caution should serve, however, to limit the range of generalization to which projection models are subjected, and to highlight the uncertainty which properly attends any attempt to project the future behavior of sensitive decision-makers.

Chapter 4: NOTES

1. A review of state experience in the use of projection models is included in Volume II, Chapter 3.

2. A full discussion of our analysis of unemployment, crime and imprisonment is included in Volume II, Chapter 3.

3. Administrative Office of the United States Courts, 1979 Annual Report of the Director, Washington, D.C.

4. U.S. Department of Justice and Bureau of the Census, Prisoners in State and Federal Institutions on December 31, 1979, Advance Report SD-NPS-SF-7A, May 1980.

5. In both states, projections of time to be served under determinate sentencing assume liberal application of good time provisions.

6. U.S. Department of Justice, Crime in the United States, 1977, p. 161.

Chapter 5
CONCLUSIONS AND POLICY IMPLICATIONS

This report has reviewed the troubled state of custodial corrections in the 1970s, documenting the unpleasant fact that the living space available to the majority of the nation's prisoners in 1978 failed to meet minimum standards of adequacy. While our projections suggest that the near future will bring a decline in the rate of prison population growth, in view of the enormous imbalance between capacity and prisoners in many jurisdictions, the problems of achieving decent conditions of confinement are likely to persist well into the decade of the 1980s and perhaps beyond. Figures 5.1 - 5.6 compare the range of projected prison population levels with the reported and measured capacities of the federal and state prison systems. Although these figures mask considerable variation among individual states, they provide a useful illustration of the divergence among regions, emphasizing the uniquely large disparity between capacity and the number of current or projected prisoners in the South. Similar comparisons may be developed at the state level using the data and projections reported in Volumes II and III.

Again, our projections only depict the consequences of past policies as seen in historical data. To the extent that they portray a threatening future when compared to the limits of prison capacity, they may play some role in changing policies and thus lead to their own falsification. No other outcome could so highly reward our efforts in preparing these estimates.

Three broad paths of corrective action have been considered by planners confronted with a judicial mandate to reduce crowding or an executive order to "find the solution" to the problems of prisoner housing:

(1) expanding the supply of prison capacity through new construction;

(2) reducing the demand for prison capacity by diverting a portion of this demand to a different market, namely that of community corrections; and

(3) regulating the demand for prisoner capacity through actions to control prisoner intake and release.

To conclude our report, this chapter reviews the capabilities and limitations of each of these policy alternatives. At the outset, it is important to emphasize that just as there is no national level model to predict the course of future populations, there is no

Figure 5.1

Future Prison Capacity and Two Projections of Federal Prison Population

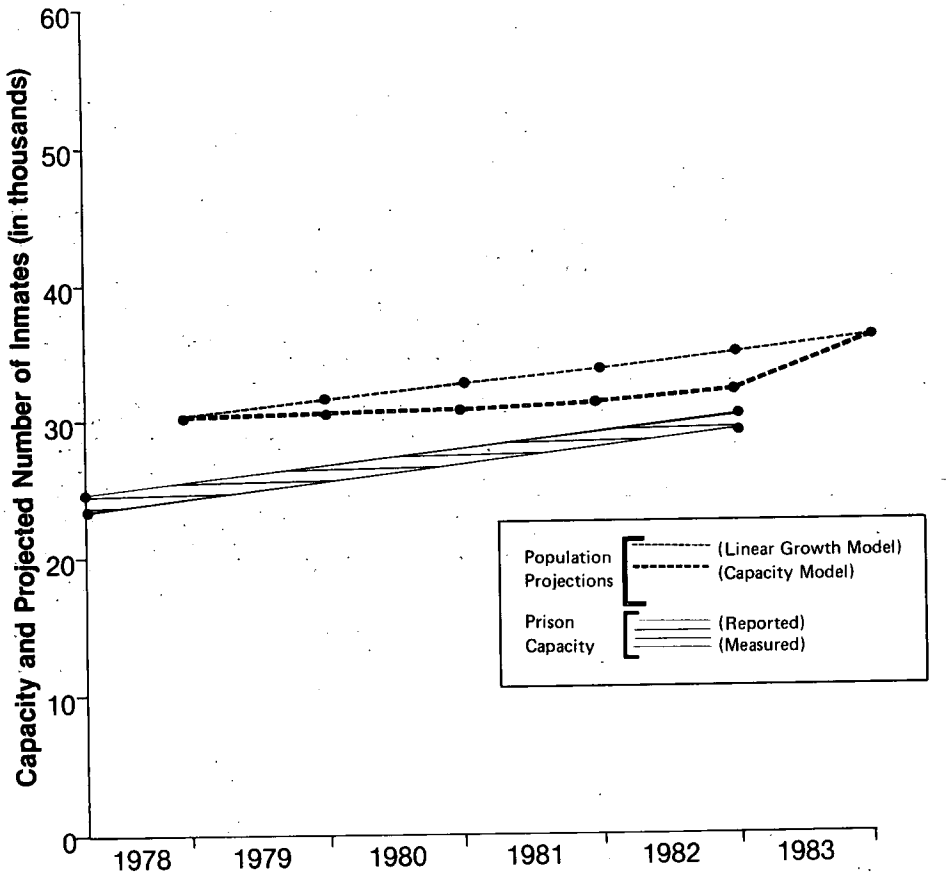
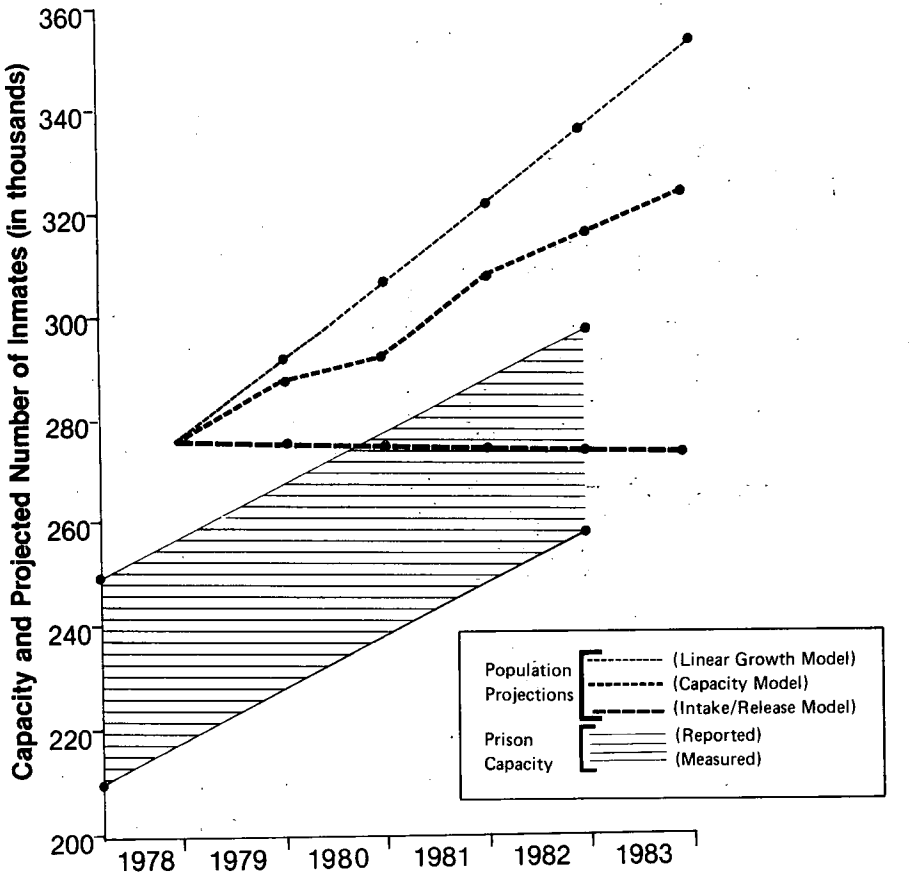


Figure 5.2

Future Prison Capacity and Three Projections of State Prison Populations



Sources: The assumptions used to develop the projections are discussed in the preceding Chapter (Section 4.1). Estimates of reported capacity begin with the figures reported by each jurisdiction as of March 31, 1978 (PC-2) and extend to include reported capacity additions planned through December 31, 1982 (PC-2). Assuming this additional capacity will meet minimum standards, the same number was used to extend measured capacity from the number computed as of March 31, 1978.

Figure 5.3

Future Prison Capacity and Three Projections of Northeast State Prison Populations

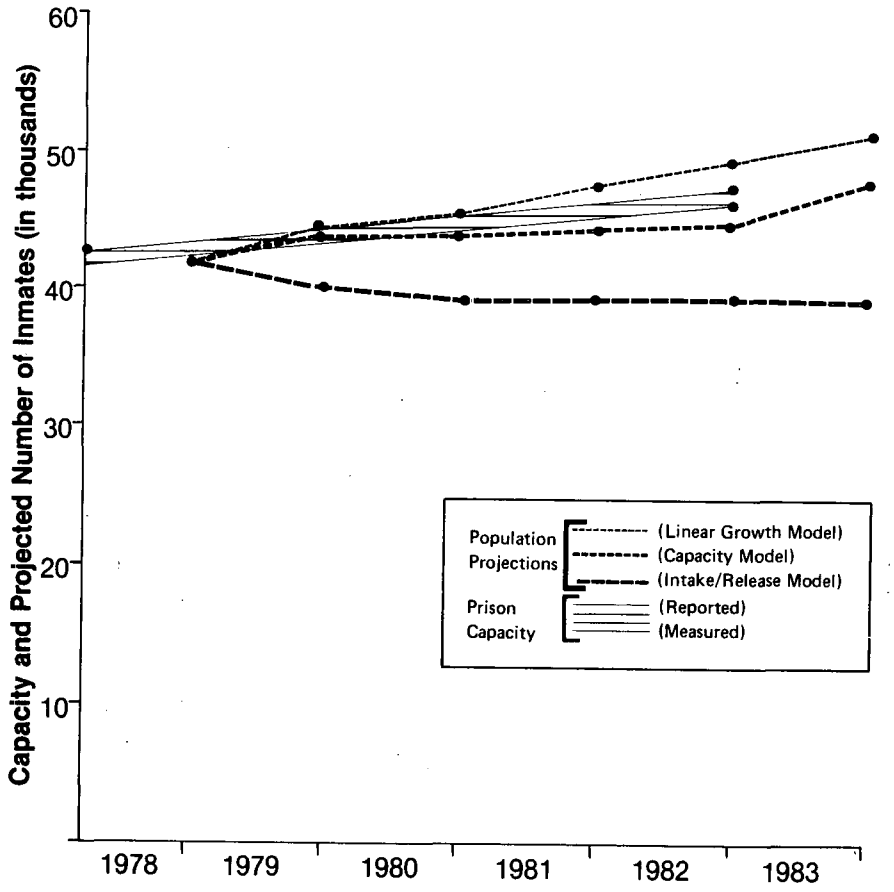
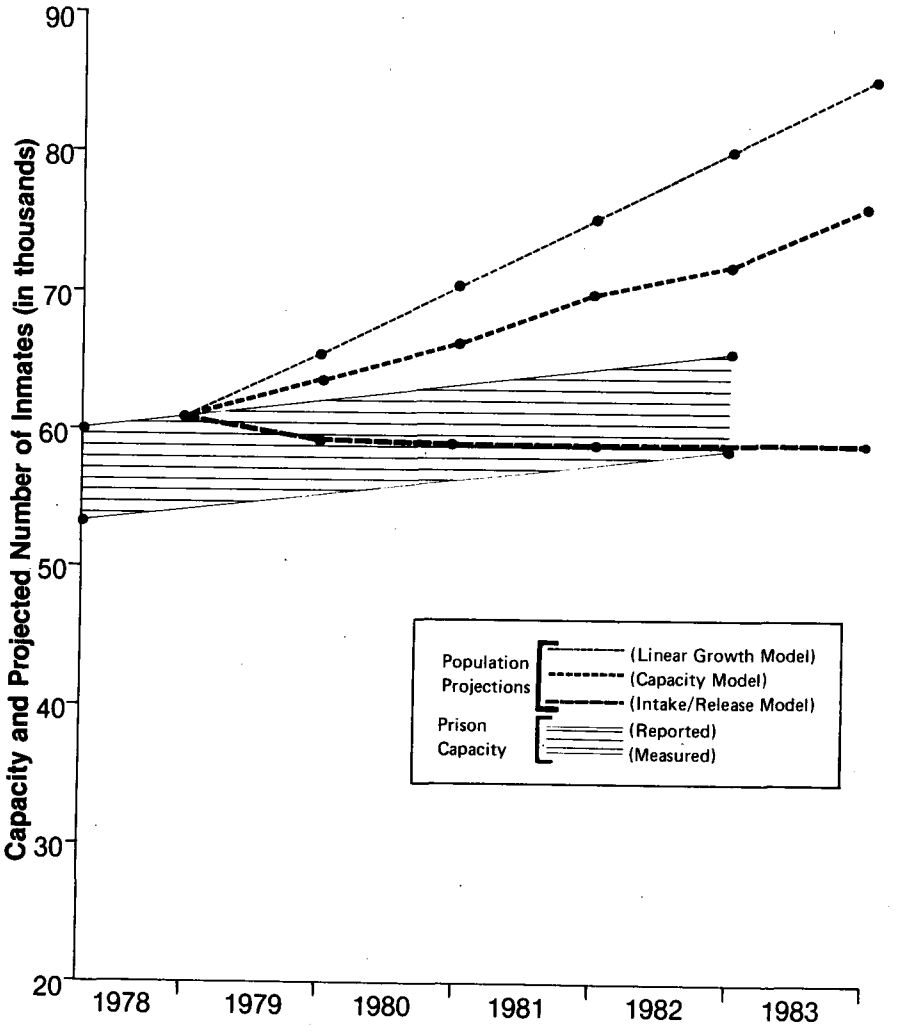


Figure 5.4

Future Prison Capacity and Three Projections of North Central State Prison Populations



Sources: The assumptions used to develop the projections are discussed in the preceding Chapter (Section 4.1). Estimates of reported capacity begin with the figures reported by each jurisdiction as of March 31, 1978 (PC-2) and extend to include reported capacity additions planned through December 31, 1982 (PC-2). Assuming this additional capacity will meet minimum standards, the same number was used to extend measured capacity from the number computed as of March 31, 1978.

Figure 5.5

Future Prison Capacity and Three Projections of Southern State Prison Populations

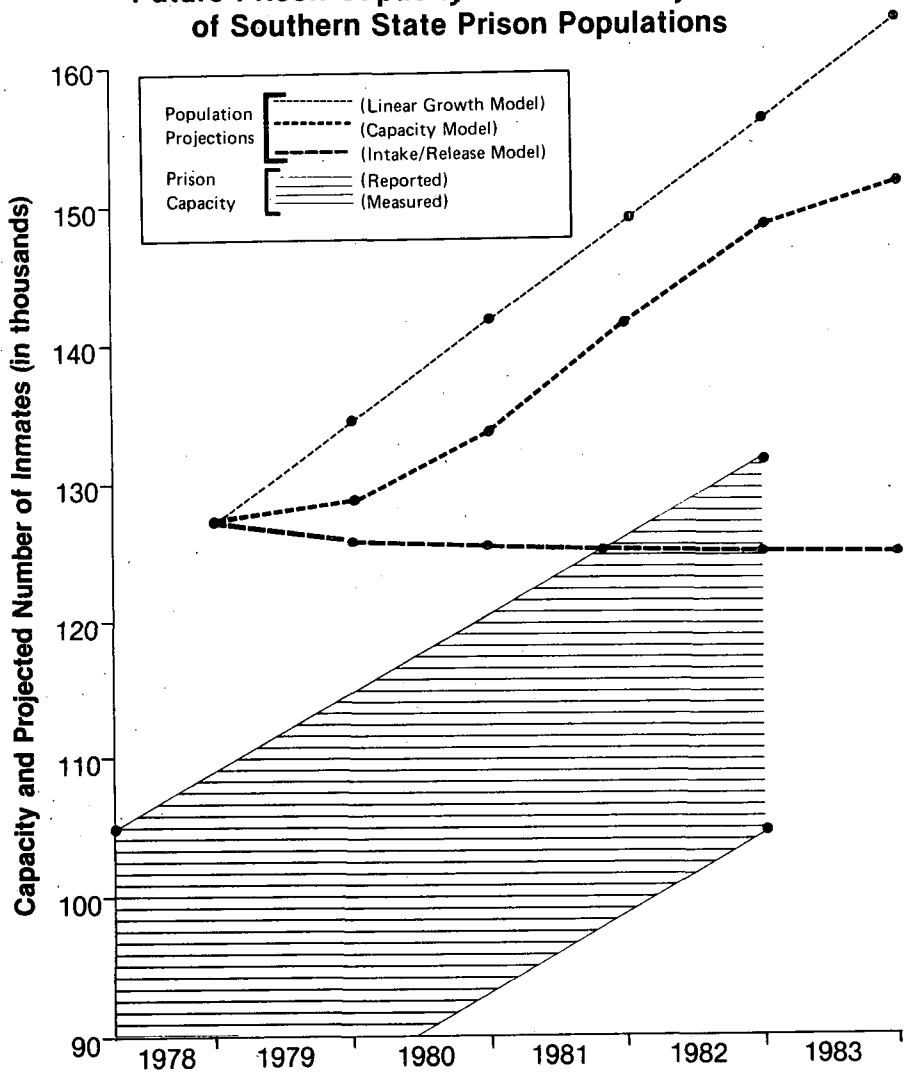
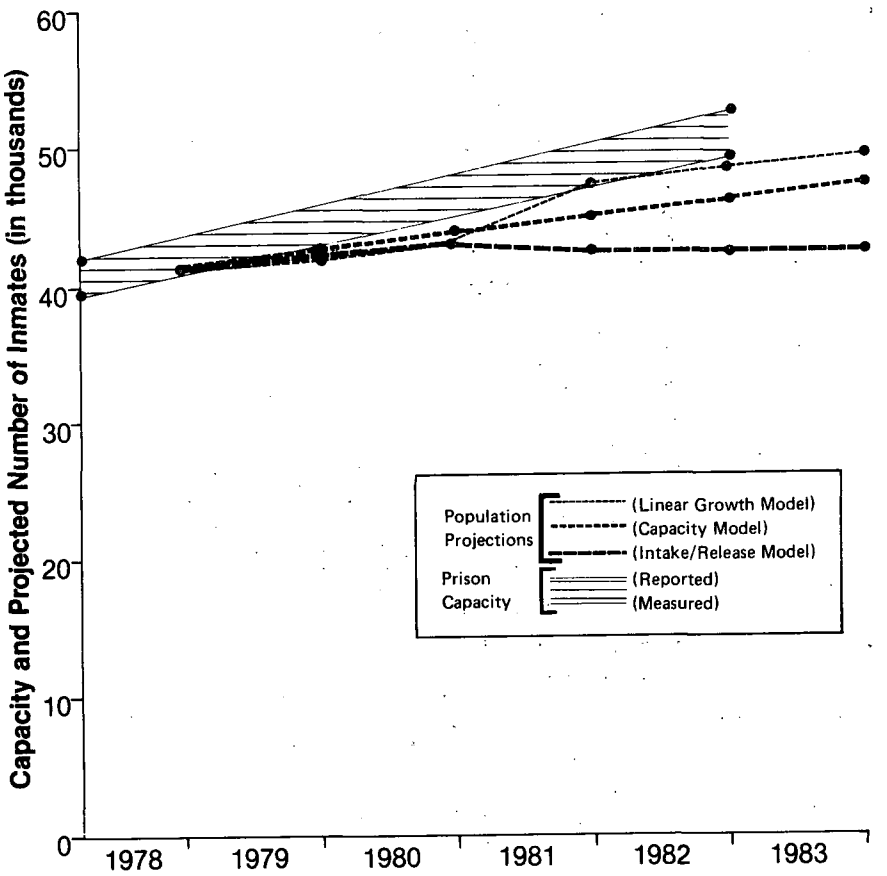


Figure 5.6

Future Prison Capacity and Three Projections of Western State Prison Populations



Sources: The assumptions used to develop the projections are discussed in the preceding Chapter (Section 4.1). Estimates of reported capacity begin with the figures reported by each jurisdiction as of March 31, 1978 (PC-2) and extend to include reported capacity additions planned through December 31, 1982 (PC-2). Assuming this additional capacity will meet minimum standards, the same number was used to extend measured capacity from the number computed as of March 31, 1978.

single national solution to the problems of prisoner crowding described in this report. There is, however, a persuasive need to establish a framework for the development of explicit policies governing the use and conditions of confinement. Following our review of the conventional responses to the crowding problem, we discuss one possible means of future policy development and outline several areas that might usefully appear on a continuing policy research agenda.

5.1 Policy Alternatives

--*Construction*

While new facility construction is often considered the most direct response to prison population pressures, the findings of this study suggest that this option alone is probably unaffordable and may do little to alleviate crowded conditions.

- First, based on the estimates provided in Volume III, the costs are likely to go well beyond the financial capabilities of many jurisdictions. Assuming new construction costs between $32,000 and $40,000 per bedspace, expenditures on the order of eight to ten billion dollars could be anticipated merely to resolve the deficit between reported capacity and a measure based on 60 square feet per inmate. Increased capacity may also require disproportionate increases in operating costs in order to maintain adequate conditions of confinement. As one federal judge in Ohio observed:

  > The popular and simplistic idea is that the important source of the problems is the purely physical one . . . . but the evidence clearly demonstrates that if a beautiful brand new jail were built and operated the way the present jail is operated, there would be little improvement in the differences at first, and what improvement there was would very rapidly disappear.

- Second, our search for leading indicators of prison population has cast substantial doubt on the logic of custodial expansion as a means of reducing population pressures. Six years ago, William Nagel, with other opponents of prison

> construction, called for a moratorium on facility expansion, suggesting that the availability of additional space was responsible for increasing the number of persons confined, with no clear evidence of any deterrent or rehabilitative effect.[2] If the capacity theorists are right, responding to crowding by increased capital expenditures for new institutional space can provide at best a temporary alleviation of the crowding problem, and will ultimately result in a new equilibrium of more prisons, more prisoners, and the same crowded conditions as before. Whether this new equilibrium is desirable is a value question beyond the scope of our research. We can say that there appears to be new evidence that decisions to build more prisons may carry with them hidden decisions to increase the number of persons under custodial supervision. Under these circumstances even a massive construction program might fail to keep pace with the potential demand for prisoner housing.

While our analysis falls far short of a definitive proof that capacity changes cause population changes, it is suggestive. Corrections planners must at least consider that provision of new funds for increased capacity will not relieve crowding in the long term unless this problem is separately and explicitly addressed. It is, however, impossible to overlook the need to improve much of the nation's existing prison and jail space. In particular, the findings of this study have added to the litany of failures associated with the aged fortress prison. Old, large maximum security facilities were significantly more likely than their smaller, newer counterparts to fail the test of minimum standards. Many of the cells in these facilities were not constructed at the outset to provide 60 square feet of floor space and thus have a capacity of zero under the proposed minimum standards. Many of the facilities themselves have so many substandard units that closing may be the only practical improvement. As the main or only facility in many states, these institutions have borne a disproportionate share of the growth in prisoner populations, making it undeniably difficult for states to consider closing plans. Nevertheless, while the preference for smaller, more community-oriented facilities is much harder to implement in a world of rising prison populations, the federal courts have shown little sympathy toward administrative arguments for tolerating substandard prisoner housing. Thus, the price of continued failure to develop closing plans may be the larger burden of implementing more drastic, immediate measures to achieve compliance with court-ordered restraints on the use of these facilities.

--*Diversion to Alternative Facilities and Programs*

A second strategy widely discussed as a means of prison population control involves the expansion of community-based corrections. Included in this term are minimum security work release, pre-release and restitution centers as well as non-custodial placement options. Among these latter options, attention has turned toward sanctions which involve restitution or community service--conditions which are considered more salient to the offender than probation but less costly to the state than imprisonment.

In considering the role of these facilities and programs in prison population control, it is important to recall the varied goals of community treatment enumerated in Chapter 1. Most of the community facilities represented in our survey, for instance, serve as the point of re-entry for the offender returning to the community from confinement in conventional institutions. As such, they provide alternatives to major institutions during the period prior to release for selected offenders considered suitable for community custody. While this transfer provides a useful means of reducing the demands for bedspace in major institutions, it is not necessarily a mechanism for overall custodial population control. The process of easing the offender's transition to the community is only consonant with the goal of reduced custodial corrections populations if it reduces the length of supervision or avoids re-commitments that would otherwise occur without the opportunity for a period of pre-release adjustment. Neither of these questions could be addressed within the scope of the present inquiry. From our survey, we know only that the duration of stay ranged from three to 600 days and the vast majority of residents left within 200 days. It remains unclear whether the cumulative terms of participating residents represented more, less, or about the same time that would have been served without the pre-release opportunity, or whether participation has measurably changed rates of prison re-commitment. Recall, too, that the development of new community facilities--whether for pre-releasees or newly sentenced offenders--represents an expansion of capacity and thus poses the same dilemma associated with any construction policy: An exclusive concentration on adding capacity may simply perpetuate crowding at higher levels of population.

Neither of these uncertainties is intended to diminish the continuing need to expand the use of community facilities as alternatives to confinement in major institutions. Where under-used minimum security or pre-release facilities exist, a policy of aggressive inmate re-classification to permit transfers to these facilities represents one low-cost, if limited, strategy for correctional administrators. Moreover, the case for replacing the huge walled prison with smaller, community-oriented facilities is well-established. Thus, as re-classification produces higher levels of

demand for community facilities, expanding the capacity of these alternatives is clearly warranted. Once again, however, it is important to distinguish added capacity from replacement capacity. Regardless of their security level or community orientation, unless new facilities are specifically designed to replace bedspace capacity in major adult institutions (and actually result in the elimination of more secure beds), they may simply "lead" a replacement population.

Finally, similar caution must be observed in considering the ability of non-custodial sanctions to relieve crowding in major institutions. Few would deny that more alternatives to incarceration need to be developed. If we are to move toward a more comprehensive approach to corrections, every jurisdiction must have and exercise a graded series of options where incarceration is only the last resort for cases where it can be clearly justified, and never a residual disposition which is used simply because nothing else is available. However, in placing incarceration at one end of a spectrum of sentencing options, we must be mindful of the danger that a capacity effect may apply to non-incarcerative sanctions as well as prisons--that every added program creates the possibility of enlarging rather than containing the number of persons under correctional supervision.

In theory, the maintenance of deliberate, stringent control over the criteria for placement in community-based programs can help to reserve these options for those who might have no other opportunity to avoid incarceration. In practice, even the most deliberate specification is subject to discretionary interpretation by police, prosecutors, sentencing judges, probation officers or other participants in the placement decision--any one of whom may respond to the availability of an alternative by referring "alternative offenders" who would not otherwise be imprisoned or jailed. In this context, these programs may never fully achieve the status of "alternatives to imprisonment" unless the prison capacity they are intended to replace is actually closed.

--Regulation of Intake and Release Decisions

In the category of regulatory action, we find a number of informal, discretionary measures invoked to relieve prison and jail crowding. At the state and federal levels, adjustment of release policy through accelerated parole has been widely used throughout the history of American corrections as a population-regulating mechanism. In most systems, the actual time served by most prisoners is set by a parole board, and is a variable fraction of the inmate's maximum sentence. While the explicit criteria for parole release are cast in terms of individual rehabilitation and community safety, the discretionary authority to parole is frequently used as a mechanism to control population by reducing time served when crowding occurs or when other administrative goals would be served by early

release.[3] The experience in California in the early 1970s is one case in point. As a result of explicit directions to the state's parole authorities, prison population was lowered to reduce correctional expenditures.[4] In other states, parole boards have been responsive to correctional officials' desires to avoid crowding. In 1977, local observers in Iowa attributed the population decline between 1970 and 1972 to a number of factors including the desire of the Director of the Department of Corrections to lower the population and the willing response of the Parole Board to this pressure.[5] Elsewhere, parole authorities have been less responsive and higher levels of crowding have been tolerated to the point of judicial intervention. In Mississippi the legislature chose to authorize "early parole" and "supervised earned release" only after a court-ordered population reduction.[6] In Maryland, the Department of Probation and Parole revised its release policies to permit virtually immediate parole eligibility for non-violent offenders.[7]

In Chapter 1, we reviewed the sustained and partly successful attack that has been launched against parole power and its rationale. In response, a series of reform proposals ranging from early parole decision-making and parole guidelines to the abolition of parole through a system of fixed or determinate sentences, have been proposed in many states and passed into law in several. Whatever the merits of this range of structural changes, many of the proposals to contain parole power also restrict the ability of a centralized release authority to use parole as a population management tool. It is too early to know whether those states which have curtailed parole power will need to find substitute methods of population control. In the debates over curtailment of parole power, there has been little recognition of the problems in population management that such curtailment might involve, and few explicit linkages between such proposals and alternative methods of finetuning release policy to prison capacity. While this may reflect an unwillingness to acknowledge resource constraints as an explicit element in the release decision, the fact that parole decisions accommodate this variable from time to time remains indisputable.

Executive clemency, widely available but infrequently used, represents one alternative means of regulating prison population. Shortly after Indiana abolished parole, it established a systematic procedure for administering commutations through the development of a Clemency Commission which meets monthly and functions much like a parole board.[8] Expansion of good-time credits offers another mechanism for adjusting the supply and demand for prison space. While straight good-time may be legislatively fixed, work credits and/or meritorious good-time have been used in some jurisdictions to accelerate release.[9] At the local level, where the problem is not constraints on release procedures but their infrequent use, a more liberal use of county parole might go far toward reducing the number

of sentenced prisoners among the nation's jail population while release-on-recognizance might do the same for pre-trial detainees.

Because of the widespread use of parole as a centralized method of determining time served, the direct power of state government to manage population through a release policy has been much greater than the power to influence the volume of new prison admissions. At the most basic level, of course, state governments have influence in passing the penal code which provides for imprisonment as a legal punishment. But, as the case studies have shown, the points of decision from there on are so diffuse and the discretion over their exercise is so great, that legislative control over the arrest-to-sentencing process is extremely diluted. If it is impossible to say that mandatory sentencing arrangements will inevitably expand prison population, it is equally unwise to suggest that simple reductions in maximum sentences will necessarily assist in population control.

There are, on the other hand, examples of informal--but nonetheless direct--attempts to influence intake decisions. At the local level, our examination of several jurisdictions produced examples of jail officials taking new arrivals back to court for new bail hearings; occasional, concerted efforts to reduce court backlogs; and sheriffs notifying judges on a daily or regular basis of jail population in the hope that the judiciary would cooperate. At the state level, there are comparable examples of explicit efforts to persuade the judiciary to consider crowding in sentencing decisions as well as examples of public judicial refusals to sentence offenders to crowded institutions.[10] For the most part, however, these limiting mechanisms are even more informal and erratic than those applied at the release juncture. In theory, one might argue that the conditions of confinement are properly considered by all sentencing judges; that the traditional balance of executive and judicial interests is reasonably altered when the conditions of incarceration may be judged in violation of inmates' basic constitutional guarantees. In practice, consensus on this point is inhibited by the absence of universally accepted standards of adequacy and by the informality of the information flow from executive agencies to the judiciary. As long as the physical limits of capacity are variably and vaguely defined, tolerance of crowded conditions may be expected to persist in sentencing decisions and at every other point in the spectrum of decisions regulating intake and release.

5.2 A Mechanism for Prison Policy Development

In the preceding discussion, we have suggested that capacity now limits population in most states, but that capacity is only vaguely defined and the limiting mechanisms are mostly informal, generally erratic, and too frequently tolerate levels of crowding that have been found to constitute cruel and unusual punishment. This suggests, in turn, that more explicit description, analysis and formalization of these mechanisms might provide a fairer, more rational means of population management. Outlined below is one means of formalization that calls for legislative action to define the limits of capacity, combined with an information system that will make explicit the trade-offs in sentencing and release that now occur largely in the form of emergency, ad hoc adjustments. Whatever its practical merits, this proposal illustrates the need for more explicit statements of system policy that will move questions regarding the use and conditions of confinement into the arena of public policy debate.

In our Preliminary Report to Congress, the first question raised was, "What is an appropriate prison population size for any jurisdiction?" This was not intended to imply that such a calculation could be made in the abstract. It was intended merely to identify the central role in rational policymaking of asking some basic questions about the goals of imprisonment, and about which norms should determine whom to incarcerate. Population trends cannot be considered in a vacuum, or even in a purely historical perspective. By itself, the fact that today's prison population is more or less than at some other time (or larger in one region than another) indicates nothing about the proper direction of policy. The significance of such trends depends on their physical, administrative or ideological contexts.

Thus, while we have cautioned that added capacity is unlikely to resolve the crowding described in this report and may simply imply a decision to add more prisoners, it does not necessarily follow that we recommend a moratorium on construction in order to avoid the higher levels of population suggested by our analysis. We do infer a need to develop mechanisms that will link decisions to add or subtract capacity to an explicit public process for determining, "Just how heavily crimes should be punished in view of prevailing moral standards and how heavily they can be punished in view of prevailing demands on the public budget."[11]

The latter question takes on a special significance in the context of the crowding described in this report. At its most fundamental level, the problems of substandard confinement practices reflect a situation where the resources devoted to correctional

supervision have failed to keep pace with policies that have dictated expanded reliance on the use of imprisonment. At a time when California's Proposition 13 has been widely read as a mandate for reduced services at all levels of government, expenditures to improve the conditions of confinement have often failed to meet with much public or political support. The obvious dilemma arises when public calls for law and order are implemented without corresponding commitments of public funds. The only way in which increased use of imprisonment and stable or reduced expenditures can be simultaneously obtained is by a general deterioration in the quality of prison life for both inmates and staff.

Our scenario for addressing this imbalance of interests has two central elements: First, legislative adoption of standards with specific emphasis on defining the minimum living space to be provided for each inmate, thus, establishing de facto the capacity of state and local custodial corrections systems; second, authorization of accelerated release procedures to be used when the limits of capacity are reached, together with a system of information exchange that will make explicit the trade-offs involved in sentencing and release decisions.

There is ample precedent for the notion of defining the limits of prison and jail capacity--although, for the most part, the initiative to date has come from the judiciary.[12] To say that the developing pattern of federal court intervention constitutes a revolution in American corrections is hardly an exaggeration. Although it has been popular to regard this intervention as a willful expansion of judicial territory, a second and more pertinent view suggests that the judiciary has been drawn into the corrections arena, unfamiliar and complex, by the default of the other branches to ensure even the most minimal standards of human rights guaranteed by the Constitution.[13] Once having entered, the court has been forced to devise its own guidelines as to the proper nature and scope of its role. While it is not obvious that the quality of policy would be any higher if legislatures made it more directly, there is no doubt that they bear the primary responsibility for doing so. Commenting on the judicial role in handing down decrees with "all the qualities of social legislation," former Solicitor General Archibald Cox has explicitly supported the substance of the policies and legislation "passed" by activist judges, but suggests that the "court cannot go it alone"--that these quasi-legislative decrees cannot be said, like true legislation, to have the legitimacy which flows from the processes of democratic self-government.[14]

In Chapter 2 we discussed the emergence of professional standards and accreditation procedures that have promised to lend a new point of reference to litigation challenging the conditions of

confinement. We suggested that the threat of intervention is now sufficiently pervasive that the emerging trend may be one of judicial back-up for standards promulgated by the executive branch. Here we suggest legislative codification of those standards--not necessarily to alter the prospects of judicial enforcement--but to reaffirm legislative responsibility for determining what kind of housing should be provided for how many prisoners.

--What Kind of Housing?

While it may be unreasonable (and perhaps undesirable) to expect that legislatures will undertake "on the floor" to formulate detailed corrections standards, delegation of this task to the executive branch is a reasonable expectation. Since some consensus appears to be forming around the guidelines promulgated by the American Correctional Association, these might provide a suitable framework for the development of statewide standards. In this proposal, however, the levels at which standards are set assume less importance than the fact of legislative enactment. Thus it is largely irrelevant whether one adopts a liberal or conservative concern for the amenities of imprisonment. What is important to this proposal is the development of a statement of public policy that specifically establishes the minimum living space and associated conditions of confinement to be afforded each prisoner. With such a statement, the legislative process may begin to address the second and larger question:

--How Many Prisoners?

We have observed that the adoption of standards governing living space and collateral conditions of confinement establishes de facto the capacity of state and local corrections systems. The number of prisoners who can be housed is now equivalent to the number of statutorily defined spaces that are available within existing facilities or will be available through new facility construction.[15] This is clearly an arbitrary number that may bear little relation to the number of offenders who "should" be imprisoned. It has the virtue, however, of explicitly specifying the number who can be accommodated within present budget constraints and exposing the economics of expansion to continuing debate.

By defining the amount of prison space to which a judge may lawfully sentence a convicted offender, the legislature must also provide a safety valve (be it parole, executive commutation or good-time administration) to be used when the limits of capacity are reached. In turn, if this mechanism is to be distinguished from measures intended merely to offer emergency relief, a purposeful relation must be established between incoming and exiting offenders.

Sentencing judges must be able to consider whether and what types of offenders must be released in order to provide space for new admissions. This requires, in effect, that release authorities routinely report the extent of available space and the characteristics of the offenders whose release would be accelerated to accommodate newly sentenced offenders. (At a minimum, this information would include crime, sentence, presumptive release date, adjusted release date, and summary statistics that reveal the gap between the presumptive and adjusted dates.) When space is at a premium, sentencing judges may now compare incoming and exiting offenders in choosing an appropriate sanction. The choice is obviously to reduce the time served of current prisoners or to reconsider the need to place the incoming offender under custodial supervision.

Needless to say, it is both unwise and impractical to consider any rigid mechanism to impose this choice on the judiciary. As the history of sentencing reform has shown, "attempts to impose solutions by fiat rarely work."[16] Moreover, the practical problems of imposing meaningful case-by-case choices are virtually insurmountable. It is, however, reasonable to trust the intelligence, morality and sense of efficiency of the sentencing judge presented with routine information on release practices. A lawful standard of incarceration has been defined and sentencing judges now have common access to information that reveals the actions taken by executive agencies to comply with this standard. Over time and many cases, the result may be a more considered allocation of space to prisoners as local decision-makers begin to recognize the finite nature of prison and jail space and gradually re-define the "gray area" surrounding the in/out decision.

Central forums for discussing appropriate actions would be essential if individual decisions are to move toward the formation of broader system policies. Prosecutors might be encouraged by a state attorney general to use the capacity and release information to "reason together" on the types of penalties sought. A judicial council, sentencing guidelines commission or other centralized judicial body might reasonably incorporate this information in its deliberations on sentencing policy.[17] The legislature, of course, remains the final arbiter of these deliberations. If the perceived needs for prison capacity appear persistently to exceed the available resources, the choices of the legislature are to demand (and enforce) adherence to regulatory procedures; to change the standard of prison living; or to authorize the development of additional capacity. While these are the same paths considered now when crisis conditions develop, there are at least two important distinctions. First, as local decision-makers are encouraged to view incarceration as a limited resource and begin to adjust admission policies to reflect this view, the need for sudden and substantial remedial action

should diminish. (Recall, too, that if admission policies fail to adjust uniformly--if at all--the state retains centralized control through its releasing authority.) Second, the information on release actions will be available to inform the choices of the legislature as well as those of local decision-makers. In this respect, the rationale for this approach is not unlike one of the central justifications for sentencing guideline methods:

> With an explicit description of what has been done in the past, decisionmakers can more clearly focus on what they should do in the future . . . the moral issues can be debated more clearly; the effectiveness issues can be tested more cogently.[18]

Perhaps most important, the development of an explicit relationship between population and capacity quite visibly introduces questions of economics to the moral, ethical, and scientific debate.

Just as additions to capacity may be funded in response to pressures to expand prison populations, reductions in capacity may occur in response to changing perceptions of need and/or competing pressures for public funds. Under circumstances of excess capacity, the legislature faces the pleasant obligation of raising the lawful standard of prison living or taking capacity "off line." Planned reductions in capacity may, in fact, exert useful pressure for a more considered allocation of resources throughout the system by imposing new demands on the available alternatives. In particular, the nature of offenders under community supervision may be expected to change if non-custodial sanctions are used with increasing frequency as true alternatives to confinement. If community opposition to this change is to be minimized, the development of new forms of community-based supervision is virtually mandated to combat perceptions that a non-custodial sanction is counter to the public interest in punishment and community safety. In this context, programs that emphasize work and restitution may be far more persuasive than the traditional forms of probation supervision typically reserved for the lesser offender.

--*Summary*

Throughout this volume, we have observed that the rate of prison and jail intake is controlled by a decentralized network of local prosecutors and judges. We have also noted that shifts in the rate of intake (as opposed to time served) were primarily responsible for the prison population increase of the seventies. Clearly, how to influence the decentralized "front end" of the system, as distinct from the centralized "tail end" of corrections, remains a crucial question for the corrections policymaker.

In most systems, there are few incentives for local judges or prosecutors to view prison or jail capacity as a limited resource. Since standards of prison and jail living are variably and vaguely defined, the population limits they might imply are also vague and there is generally no reliable channel to inform local officials when these elastic limits are transgressed. Even with knowledge of crowded conditions, in the absence of a mandate with the force of law, the judicial branch may be reluctant to consider executive constraints on the use of incarceration. Confounding the problem at the state level is the fact that local decision-makers are not directly accountable for the cost consequences of their state commitment decisions and frequently operate with little knowledge of the accelerated release actions that may be taken by state executive agencies to control prison populations or costs.

In the preceding section we have proposed one means of addressing these issues through the imposition of de facto limits on the capacity of prison and jails, together with improvements in the flow of information between intake and release authorities. The concept of defining the number of persons who can be lawfully incarcerated within a given capacity--and enforcing that standard of living through release actions--is no more or less than a legislative mandate that makes explicit procedures already widely practiced as a matter of judicial prerogative, administrative convenience or court-ordered necessity. The addition of a reinforcing mechanism, in the form of routine information on accelerated release practices, is founded on the simple assumption that admission decisions can be influenced when responsible decision-makers at the front door of corrections share information on how the back door is operating.

There is, of course, no single solution to the complex problem of controlling prison and jail admission decisions. As a means of influencing local decisions to incarcerate, this proposal clearly relies on the response of local decision-makers to informational incentives. Arguably, more tangible incentives (such as fiscal incentives to localities in the form of probation subsidies or other state or federally supported local corrections initiatives) offer more pertinent rewards for limiting state prison commitments. As we note in the next section, however, much remains to be learned about the effects of such a strategy on the number or distribution of persons under correctional supervision. For the present, then, we ask only that the gate-keepers of corrections understand the physical constraints on the use of incarceration as well as the release actions taken to resolve any disparities between space and prisoners. While the consequences of ignoring those constraints are not necessarily borne at the local level, it is nonetheless reasonable to trust the response of local officials to explicit statements of system policy.

Whether the policies outlined in this section will ultimately result in an increase, a decrease, or merely a re-distribution of offenders and correctional expenditures, cannot be anticipated here. The use of prisons and jails depends on each jurisdiction's beliefs about the purposes they are intended to serve, their perceived ability to achieve these goals, and the availability of alternative means to reach the same ends. We can perhaps anticipate more considered decisions to increase or decrease the use of incarceration as state governments begin to determine the number of prisoners who can be supported within a decent standard of prison living.

In principle, any mechanism that would begin to establish purposeful criteria for funding and allocating prison space would do as well as the regulatory policy outlined here. In practice, there is unlikely to be a rush of legislative enthusiasm for any proposal that brings "home" the responsibility for prison policy development. Already, however, the option of continued crowding is largely constrained by the threat of judicial intervention. While it is impossible to predict the interests of the federal courts, high risks are clearly associated with any continued failure to establish state and local confinement policies. Perhaps more persuasive than the prospect of judicial intervention are the costs of continued inattention to the issues of incarceration policy. Expanding the supply of housing--without examining the decisions which have created the demand--may well be an affordable response in the short term. Over time, however, as long as the supply of offenders continues to exceed the available prison and jail resources, this option promises only to bring a succession of increasingly impossible demands on the budgetary resources of the community. The effects of a "standing order" for new facility construction may not be felt for one or two elections into the future, but they will surely be unaffordable in the long term.

5.3 Local Participation

Although the discussion thus far has pertained to both state and local confinement practices, it is important to reiterate the need to extend any state legislative action to the local corrections arena. Unlike the prison population, the national jail population has not increased significantly since 1970. In those states where sharp increases have occurred, the problem has usually been associated with problems of state prison crowding, especially in the South. In particular, the only six states whose jail populations showed extreme increases between 1970 and 1978 were each respondents in civil actions to redress state prison conditions. At the same time, the confinement units in local facilities were more likely than those in state prisons to fail minimum standards of adequacy. Thus, many locally-confined state prisoners have confronted the irony of confinement in conditions far worse than those declared unconstitutional at the state level.

As state institutions experience the de facto limits on their capacities proposed in the preceding section, we may anticipate further exchanges between the state and local levels--exchanges that may simply perpetuate the problems of substandard jail confinement unless relevant standards of living are also imposed on local facilities. In turn, if those standards are to have any meaning at the local level, centralized monitoring and enforcement procedures are crucial. Mechanisms for state monitoring of local jails are already in place in six states where the state department of corrections has statutory responsibility for overseeing the management of local facilities. In the remaining states, however, the responsibility for local facilities is decentralized among independent city and county governments. In these jurisdictions, state assumption of a greater degree of supervisory control over the local corrections function may be a pre-condition for local compliance with state legislated standards.

Practice seems to indicate that such powers are more widely granted than used.[19] Under the present arrangement, states lack the research and administrative capability to identify local problems, and the political or financial power to rectify them. If this proposal is to have genuine effect on conditions in local jails, it must be accompanied by significant increases in state administrative capabilities to allow implementation of the new mandate. In many jurisdictions, the demand for expanded resources will go beyond the need to strengthen the state's monitoring capabilities. Inevitably, many local units of government will be unable to assume the financial burden of compliance with statewide standards. Since failure to meet

legislated standards will have the effect of reducing local capacity, many states--particularly those where prisoners under state jurisdiction make up a sizeable fraction of the jail population--will have a higher stake in the operation of local jails than ever before. Under these circumstances, a compelling case might be made for state grants to aid affected counties. A similar argument might be made for federal assistance to localities housing prisoners under federal jurisdiction.

Arguably, even where local prisoners do not fall under the nominal jurisdiction of the state, the state has a compelling interest in the sentenced population of local jails. To the extent that jail terms, split sentences (jail with probation) or other forms of local supervision are used in lieu of confinement in state facilities, part of the state's burden is clearly shifted to the local level. At present, however,[20] there are few incentives for localities to consider such a shift. While local authorities make decisions to imprison, they typically lack the resources for local supervision and need not pay the price for their contribution to state prison populations. In theory, then, the availability of financial incentives may be a useful strategy for discouraging local authorities from sending offenders to state institutions. In practice, however, much remains to be learned about the actual effects and consequences of this approach.

The Minnesota Community Corrections Act is a leading example of an attempt to use fiscal incentives to shift custodial responsibilities from the state to the local level. To address the related problems of high state institutional costs, limited local corrections alternatives, overlapping correctional jurisdictions, and inconsistent service delivery standards, the Act provided counties with financial incentives for keeping all juveniles and adults convicted of less serious felonies under community custody or supervision in lieu of state commitment. While prison population control was not a stated purpose of the Act, all else being equal, one would expect to see prison population declines. At best, however, our case study results dramatized the uncertain effects of such an effort when pursued as a partial strategy. Even with fiscal incentives to local governments, the state has not succeeded in reducing its own population. Moreover, a preliminary study by the Department of Corrections found a large number of placements in residential community corrections centers who might otherwise have been placed on probation in lieu of commitment to a state institution. A possible inference is that a burden-shifting approach, unless it is accompanied by a stabilization or reduction in the capacity of state facilities, may disappoint many of its advocates.

5.4 Federal Participation

Just as state governments are asked to regulate the flow of state prisoners and to facilitate local action, the federal government can both initiate the regulation of prisoners under federal jurisdiction and provide incentives for state regulatory action. In its former capacity the federal role would include Congressional delegation of standards formulation to the U.S. Bureau of Prisons and the enactment of those standards to govern the confinement of prisoners in federal facilities. Capacity and release information would be provided by the U.S. Parole Commission to all federal district courts, as outlined in Section 5.2. While the federal system differs in structure and clientele from that of the states, there is no reason to assume that this same transfer of information would not exert a useful influence on prosecutorial and judicial decision-making.

The federal role in influencing state regulatory action lies primarily in the development of direct ties between state policy and the availability of funds for upgrading correctional programs and services. (Again, bearing in mind our earlier discussion of the dangers that inhere in funding additions to capacity, we refer here only to funds for improving existing facilities and programs.) Traditional schemes for the selection of federal funding recipients pose the obvious dilemma. To the extent that funds are allocated in proportion to conventional measures of need (volume of beds, extent of confinement in substandard conditions), federal support may inappropriately reward state and local inaction. Conversely, by penalizing states with higher incarceration rates or higher levels of confinement in substandard conditions, penalties are also imposed on precisely those prisoners who may have the greatest needs for assistance. More fundamentally, any attempt to reward or penalize higher or lower incarceration rate states suffers the presumption that some larger or smaller prisoner population is inherently desirable.

It may be possible to preserve the intent of incentive funding by requiring state legislative adoption of standards, including minimum living space requirements, as a first condition of federal aid to be allocated according to conventional measures of need. Such a posture does not presume to judge whether incarceration is overused or underused, but merely asks that states and localities confront the obligations associated with more or less expansive imprisonment policies. Once again, the specific levels at which standards are set also assumes less importance than the fact that confinement policies are unambiguously defined by state legislatures. While legislative action alone does not ensure compliance, at the very least it may provide a concrete basis for new litigation challenging the conditions of confinement.

5.5 Key Areas for Future Policy Research

Projecting and controlling institutional populations are not mechanical tasks. Even as we conclude this study, the central question of why prison populations fluctuated as they did in the 1970s is largely unexplained. It is clear, however, that more sustained attention must be paid to incarceration as a policy process. More specifically, the study has identified several important topic areas requiring extensive investigation that have not been included in conventional policy research agendas.

--*The Opportunity Costs of Incarceration*

Debate on sentencing policy often proceeds as though incarceration were a free service, or as though the only costs incurred were those paid by the state for room, board, and custody. There are, however, alternative views of the use of incarceration. As we have suggested, one is to think of prison or jail days as a limited, scarce resource which is to be rationally allocated among offenders. Just as communities choose a fixed number of fire stations which are distributed among neighborhoods, so they might choose to allocate a predetermined supply of custody days among their citizens. For such an allocation to be rational, the community must establish a mechanism for rank ordering the degree to which each person "needs" incarceration, so that "less deserving" inmates could be released when "more deserving" ones were found. In the preceding section we outlined one internal mechanism for making these trade-offs more explicit. In allocating municipal services, a combination of political, economic, and ethical factors are used. Prison and jail spaces are now allocated according to decision rules which also combine all those elements, although in a less explicit way. Persons who commit similar crimes vary greatly in the kinds of sentences they serve. No systematic mechanism now exists for making this variation responsive to "need" for custody.

The alternative to this approach is to think of incarceration as an exchangeable commodity. In this view, prison and jail compete with other recipients of public funds. For every person who goes to prison, two people don't go to college. For every day a person stays in jail, twenty children eat starch instead of protein. Once again, merely posing the problem in this way highlights the need for a more rational way of making social decisions. Our current system is conveniently vague about what incarceration really costs, and what alternative use might be made of the money. Research which developed and disseminated information about the social prices paid for keeping people in prisons and jails, and the implicit social decisions which allow us to keep on paying those prices might serve

as a first step in establishing the need for a more thoughtful policy in determining how much imprisonment we really want.

--*Public Safety Effects of Limited Incarceration*

The doctrine that inmates ought not to be held in cruel and unusual conditions forces state and local governments to choose between improving their prisons and jails, and reducing the number of persons confined. The immediate cost of the construction option is relatively straight-forward to calculate (although the calculations may be inaccurate for any number of reasons). The cost of setting a prisoner free is more ambiguous. The fact that he or she is now confined reflects an implicit claim that the confinement contributes more to public safety than is lost through the cost of guarding and maintaining the inmate. Recent empirical attempts to substantiate this claim have produced ambiguous results, however, and there is now genuine uncertainty about whether increased use of prison would raise, lower or leave crime rates unchanged.

In 1978 the National Academy of Sciences published a synthesis of the extant research on deterrence and incapacitation. Summarizing the panel's findings on deterrence, the panel reported:

> In summary, therefore, we cannot yet assert that the evidence warrants an affirmative conclusion regarding deterrence. We believe scientific caution must be exercised in interpreting the limited validity of the available evidence and the number of competing explanations for the results. Our reluctance to draw stronger conclusions does not imply support for a position that deterrence does not exist, since the evidence certainly favors a proposition supporting deterrence more than it favors one asserting that deterrence is absent. The major challenge for future research is to estimate the magnitude of the effects of different sanctions on various crime types, an issue on which none of the evidence available thus far provides very useful guidance.[21]

The panel's conclusions on incapacitation are only slightly more optimistic.

> There are fewer problems in inferring the existence of effects from incapacitation than there are in establishing the existence of a deterrent effect. As long as there is a reasonable presumption that offenders who are imprisoned would have continued to

> commit crimes if they had remained free, there is unquestionably a direct incapacitative effect.
>
> Models exist for estimating the incapacitative effect, but they rest on a number of important, and as yet untested assumptions. Using the models requires adequate estimates of critical, but largely unknown, parameters that characterize individual criminal careers.[22]

They might have added that for many types of crime, the criminal careers of entire groups of offenders may be relevant. Imprisoning one member of an organized crime syndicate may only incapacitate the group for as long as it takes to recruit a replacement. Moreover, the experience of confinement may only exacerbate the post-release criminal careers of many offenders.

Since the publication of the panel's report, a number of further studies of the effects of sanctions on crime rates have been initiated as part of the National Institute of Justice program of research on crime control effects. These studies are still at a preliminary stage, and it would be fair to say that the uncertainty voiced by the National Academy of Sciences continues to dominate the discussion of the effects of incarceration on public safety.

The implications of this line of research for future incarceration policy are fundamental. Data in this report indicate that states vary greatly in the severity of sanctions imposed. Part of that variance may simply reflect uncertainty about how much imprisonment is required to achieve a given degree of public safety. In the absence of empirical facts about effects of sanctions, the debate between the advocates of harshness and leniency turns more on personal preference and rhetorical skill than on any real understanding of the effects of incarceration. As the research on deterrence and incapacitation begins to introduce actual evidence on whether crimes are reduced, and by how much, it may force a substantial re-evaluation of the entire basis of imprisonment policies, and may ultimately form the basis for a more rational determination of the need for confinement capacity.

--*The Social Control System and Incarceration Policy*

Prisons and jails are only a part of a larger societal effort to deal with deviant behavior. Within the criminal justice system, these institutions are used in only a minority of all cases. Outside the criminal justice system, public programs dealing with mental health, education, the military, troubled and troublesome

young people and other defined problem groups are also important agencies of social control. Surprisingly little is known about the relationship between prisons and jails and changes in related social control systems. Within the criminal justice system, there are a wide variety of programs intended as alternatives to incarceration that have been put in place without systematic knowledge of whether and to what extent such efforts affect prison and jail populations. Jails and prisons are used as alternatives each to the other. Both are used as alternatives to other criminal sanctions, and criminal sanctions in turn are used as alternatives to civil remedies, ranging from recovery of money damages in white collar crime to mental health or drug treatment commitments for other classes of offenders. While prison populations have risen, changes in public law and medical policy have produced dramatic declines in the residential population of state hospitals and may also have altered the complex relationships between the criminal law and civil law confinement in the management of social deviants. A deeper understanding of prisons and jails in the context of the total social control system is thus a necessary component of a balanced incarceration policy research agenda.

--*The Population-Capacity Relation*

As a matter of history, this study has found that state prison populations were more likely to increase in years immediately following construction than at any other time, and that the increases in the numbers of inmates closely approximate the changes in capacity. Our study has not attempted to explore the mechanisms which produced this relationship, or the specific conditions under which it might be more or less applicable. Any of several factors may influence legislative deliberations over a new prison: desire to alleviate crowding, symbolic support for law and order, statistical projections of prison populations, recession in the construction industry, and so on. External circumstances such as these may influence both the decision to build and the decision to incarcerate. Whether new space finds its own occupants may depend on the circumstances motivating the construction and on the political climate of the times.

Specifically, we need more information to resolve the dilemma posed by substandard and crowded institutions: is it possible to avoid population increases when the old prisons are replaced? What safeguards are required so that crowding is permanently alleviated, and not just postponed by building? The present findings suggest that preferences for more or fewer prisoners should play a part in the construction decision, but it is not yet clear what that part should be. This is an appropriate time to replace the heated debate about the relationship between prison

capacity and prison population with a series of empirical examinations, over time, across the states and cross-nationally that explore the dynamics of correctional capacity and rates of incarceration in different policy contexts.

The results summarized in Chapter 4 represent only one more step in attempting to be precise about the implications of prison construction. They build on arguments advanced earlier by William Nagel and Daniel Nagin,[23] both of whom presented data consistent with the capacity-population hypothesis. These data are suggestive, not conclusive, but they mandate further research on this central question. If a state-level disaggregation were to support the broad impression even for some jurisdictions, policymakers at least in those jurisdictions might take a very different attitude to expansionist construction policies.

--*The Elements and Consequences of Crowding*

Crowding is a feeling (usually experienced as distress), rather than a physical condition. Whether a particular environment is perceived as crowded depends on the occupants' culture, personalities, and behavior patterns. It also depends on the degree to which the environment provides such amenities as light, air, privacy, security, and opportunities for exercise. If one's cellmate has assaultive tendencies, the ability to maintain a respectful distance becomes very important indeed. Similarly, confined sleeping conditions may be more tolerable if one's waking hours can be spent in the presence of positive stimuli.

Perhaps because the crowding phenomenon cannot be directly measured, it has been insufficiently studied. For purposes of this report, physical space has been used as a proxy for the experience of crowding. (An inmate was assumed to experience crowding if confined with others and with less than 60 square feet of floor space per inmate.) Since this is a greatly oversimplified model, future research might attempt to refine this measure of crowding by considering how the perception of crowding varies as a function of other physical, social, personal and institutional factors.

The American Corrections Association adopted a standard of 60 square feet per person on the basis of a vote by prison administrators. Administrators' preferences for institutional living conditions are certainly significant and influential, but they may not reflect the experiences of most inmates. No one has yet taken the time to ask prisoners which aspects of

the physical environment are most important to them. Since feeling crowded depends on the context in which the crowding is experienced, such a survey may well indicate the availability of much less costly ways of decreasing tension among inmates.

--*Systemic Consequences of Legislative Change*

This report has emphasized the diversity of decision-makers involved in sentencing offenders to prison or jail. Local police, prosecutors, and judges act as gate-keepers to both the local jail system and the state prisons. While these officials may respond to amendments in state statute, the response may differ from the legislature's intentions, and, as we have seen in the case studies, may approximately restore the situation which preceded the new law. If legislatures wish to anticipate the consequences of new laws, it is clear that we must know more about the abilities and motivations of local officials.

There is thus far little experience from which to estimate the effects of legislation specifically intended to limit or reduce inmate populations. As we have suggested in this chapter, two broad strategies are available to a legislature wishing to take such steps. It may mandate a maximum directly, authorizing a state agency (such as the parole board) to release the excess, or it may attempt to provide indirect incentives to discourage local units of government from sending prisoners to state institutions. The effectiveness of the latter strategy depends on a complex of actions by multiple agencies many of whose characteristics are unknown.

What motivates their actions? Bureaucratic politics? Ideology? Public opinion? Until we know more about these questions, centralized efforts to influence the decentralized system will be conducted in the dark. It has become commonplace to note that one cannot study attempts to change one subsystem in criminal justice without considering the reactions of other related subsystems. While the insight is far from new, the point carries particular force in relation to legislative efforts to alter incarceration rates and priorities.

--*Legislative Change Process in Criminal Justice Reform*

Most analyses of legislative change in criminal justice focus on the substance of such change and on its intended and unintended effects. It is also important, however, to examine criminal justice reform legislation as a process involving a mix of

motives, key actors, and distributions of power that may affect both the shape of legislation and the impact of legislative change on the system. It is by now well-known that the process of policymaking can influence its substance; yet research addressing incarceration policy has yet to address the variations in policy process that may have profound impact on the nature of legislative change and its implementation. At a time when a majority of states are actively considering redistributions of power in criminal sentencing, detailed case studies of the legislative history of recent sentencing reforms can yield important insights about the relation between how legislation is produced and its impact on the system. The case studies reported in Volume IV are pilot efforts to demonstrate the importance and utility of this approach. More sustained and systematic research into the political science of punishment policy is also needed.

--*Public Opinion and Criminal Justice Policy*

Insufficient attention has been paid to the impact of changes in public opinion on criminal justice policy. It is sometimes argued that shifts in public opinion produce legislative changes which in turn generate planned and predictable changes in incarceration policies, rates and conditions. But this model does not explain movements in prison population over the last two decades, and it is unlikely to predict the course of the next five years. It is more likely that the link between general opinion and incarceration policy is both more subtle and more diffuse. The study found that localized decision-making was a key element in the upward movement of prison populations, and it may have been these localized decision-makers who have been most affected by these broad shifts in political climate. Although fragmentary poll data exist, they are virtually impossible to translate into clear preferences on incarceration policy. Survey questions are not repeated from year to year, making time-series inferences dubious. Transitions are tenuous: If attitude surveys show disenchantment with court disposition of offenders, what does that imply for alternative punishments? Until more research is done, skepticism is the appropriate reaction to statements about "what the American people want" in correctional policy.

5.6 Conclusion

There is some novelty in discussing a broad-gauge policy research agenda on American incarceration policy. The purposes of imprisonment have long been the subject of abstract and energetic debate, but this dialogue has been quite distant from the issues and institutions that decide whether and how prisons are built, how they should be administered, and the size and character of inmate populations. Intense public and political scrutiny has been reserved for prison riots and escapes while major changes in rates of imprisonment and prison conditions have gone largely without public notice. Sentencing policy has remained decentralized, a function of prosecutorial and judicial discretion. The administrative responsibility for state and federal prisons remain with low visibility central administrative agencies; the American jail is locally administered far from public view.

There are indications that this "era of low visibility" has come to an end. Over the past decade, increased sensitivity to minimally adequate prison facilities and sharp increases in prison population have together produced a setting where responsible public officials must confront the major fiscal and social consequences of alternative incarceration policies. Prisons and jails will continue to be a difficult area for effective public administration. Their purposes are uncertain, power is fragmented, and the proper tactics for achieving even consensus objectives are far from obvious. It is unlikely that easy answers will emerge over the next few years to the complex problems addressed by this study. It is also unlikely that the political and legal climate of the 1980s will permit a legacy of inattention to continue.

Chapter 5: NOTES

1. Jones v. Wittenberg, 330 F.Supp. 707, 712 (1971).

2. William G. Nagel, The New Red Barn: A Critical Look at the Modern American Prison (New York: Walker and Co., 1973).

3. Andrew von Hirsch and Kathleen J. Hanrahan, Abolish Parole? National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, September 1978.

4. National Institute of Justice, U.S. Department of Justice, Prison Population and Policy Choices, Volume I, Preliminary Report to Congress, by Andrew Rutherford et al. (Washington, D.C.: Government Printing Office, 1978).

5. Ibid., p. 185.

6. See Volume III, Appendix A for a brief review of executive responses to court-ordered population reductions.

7. Department of Public Safety and Correctional Services, "Review of Maryland's Prison Overcrowding Compliance Efforts," unpublished memorandum, Maryland, October 1980.

8. Becki Ney, William Nagel, et al., Release Procedures (Philadelphia: The American Foundation, Inc., May 1980), p. 5.

9. Ibid.

10. In 1975, for instance, the Chief Justice of the Massachusetts Superior Court declared a moratorium on sentencing to Massachusetts Correctional Institution at Concord due to overcrowding. WCVB-TV Editorial, March 14, 1975.

11. Sheldon L. Messinger and Philip E. Johnson, "California's Determinate Sentencing Statute: History and Issues," in Zimring and Frase, (eds.) The Criminal Justice System (Boston: Little Brown and Company, 1980), p. 983.

12. Table 2.1 in Chapter 2 of this volume lists 19 states that were under court order to remedy conditions that included crowding in one or more facilities in early 1980. In the realm of legislative initiative, Connecticut's Public Act No. 80-442, Section 25(a) provides that "If the commissioner of correction

determines that the number of sentenced inmates in all the correctional institutions of this state exceeds the maximum number permissible to preserve the health, safety and welfare of such inmates, he may petition the superior court for modification of any inmate's sentence." (February 1980) In Oklahoma, the legislature passed a joint resolution that defines the maximum capacity of the state's prison system, providing accelerated parole release for non-violent offenders when maximum capacity is reached. (Joint Resolution No. 1064, April 3, 1980.) The Minnesota Sentencing Commission has interpreted its legislative mandate to take correctional resources into substantial consideration, to mean developing sentencing guidelines which would result in prison populations which did not exceed the state prison capacity of 2,072 beds (see Note 17). More indirectly, the legislature in Louisiana passed a resolution (without the force of law) supporting the development and adoption of standards by the Department of Corrections. The recent Report to the Joint Rules Committee of the California State Legislature prepared by the National Council on Crime and Delinquency proposed as its first long-term recommendation that the legislature "Establish a statutory ceiling on the number of available medium, close, and maximum security beds within California's Department of Corrections."

13. See, for example, Lino A. Graglia, Disaster by Decree: The Supreme Court Decisions on Race and the Schools (Ithaca, N.Y.: Cornell University Press, 1976); Raoul Berger, Government by Judiciary: The Transformation of the Fourteenth Amendment (Cambridge, Ma.: Harvard University Press, 1977); Nathan Glazer, "Towards an Imperial Judiciary?" The Public Interest, 41 (Fall 1975): 104-123.

14. Archibald Cox, The Role of the Supreme Court in American Government (London: Oxford University Press, 1976) pp. 102, 103.

15. Although our discussion focuses on living space standards, the importance of considering associated conditions of confinement cannot be over-emphasized. Establishing whether an inmate must be confined alone, and the amount of living space to be afforded each inmate, will unambiguously establish the maximum de facto capacity of state and local facilities. However, this maximum bedspace capacity must then be reduced in the event of failure to meet other minimum conditions of adequate confinement--e.g., inoperative plumbing, ventilation, lighting or locks; fire and

life safety standards; or inability to maintain inmate and staff safety. The development of a list of every potential bedspace together with a formal procedure for routinely assessing compliance with all minimum standards is essential to this proposal.

16. Leslie Wilkins, Jack Kress, et al. Sentencing Guidelines: Structuring Judicial Discretion, National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice (Washington, D.C.: Government Printing Office, 1978.

17. Precedent for incorporating capacity considerations in guideline systems may be found in the legislative mandate of the Minnesota Sentencing Guidelines Commission which consists of nine members representing the criminal justice system and the public, including a Justice of the Supreme Court, two trial judges, a prosecutor, a defender, the Commissioner of Corrections, the Chairman of the Minnesota Corrections (Parole) Board and two citizens. The Minnesota Legislature instructed the Commission to ". . . take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities." Although the Commission's attempt to control the size of Minnesota's local and state correctional populations at intake through the use of sentencing guidelines may prove to be too imprecise and sluggish to respond to variable demands for incarceration, it provides a useful example of the kind of central forum that might assist in aligning intake and capacity. A centralized statewide body with guideline enforcement powers (to adjust terms that exceed guideline ranges) is another mechanism that might provide a measure of state control over the intake decision.

18. Leslie Wilkins et al., Sentencing Guidelines, supra note 16.

19. For example, the Council of State Governments drafted a model statute on jails that has been adopted by the legislatures of 38 states. The statute directs the state commissioner of corrections to promulgate the minimum standards for jail conditions and to inspect all jails in the state for compliance.

20. Only where court orders to limit the population of state facilities have occurred is there some anecdotal evidence that judges have begun to rely on jail or split sentences in lieu of state confinement. See, for example, Phillip B. Taft, Jr., "Back Up in Jail," Corrections Magazine (June 1979), p. 9.

21. Alfred Blumstein, Jacqueline Cohen and Daniel Nagin (eds.), Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (Washington, D.C.: National Academy of Sciences, 1978), p. 7.

22. Ibid., p. 9.

23. William G. Nagel, The New Red Barn, supra note 2; Daniel Nagin, "Crime Rates, Sanction Levels and Constraints on Prison Population," unpublished paper, Duke University, 1977.

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Appendices

Appendix A

Supporting Data, Chapter 1

A-1: State Prison and Local Jail Populations and Incarceration Rates by State and Region, 1970

A-2: State Prison and Local Jail Populations and Incarceration Rates by State and Region, 1972

Appendix A-1

State Prison and Local Jail Populations and Incarceration Rates by State and Region, 1970 (Excludes Federal Prison Population of 20,038)

Region and State	Civilian Population (in thousands)	TOTAL Number Incarcerated (% of Total)	TOTAL Number Incarcerated Per 100,000 Civilian Population	STATE Number of Prison Inmates (% of Total)	STATE Prison Inmates Per 100,000 Civilian Population	LOCAL Number of Jail Prisoners (% of Total)	LOCAL Jail Prisoners Per 100,000 Civilian Population
Total	201,723	337,266 (100%)	167	176,403 (100%)	87	160,863 (100%)	80
NORTHEAST	48,930	60,053 (18%)	123	28,595 (16%)	59	31,458 (20%)	64
Maine	986	758	77	516	52	242	25
New Hampshire	738	577	78	244	33	333	45
Vermont	446	184	41	162	36	22	5
Massachusetts	5,672	4,179	74	2,053	36	2,126	38
Rhode Island	917	—	—	—	—	—	—
Connecticut	3,022	1,568	52	1,568	52	—	—
New York	18,228	29,458	162	12,059	66	17,399	95
New Jersey	7,128	10,140	142	5,704	80	4,436	62
Pennsylvania	11,793	13,189	112	6,289	53	6,900	59
NORTH CENTRAL	56,452	71,150 (21%)	126	41,941 (24%)	74	29,209 (18%)	52
Ohio	10,646	15,105	142	9,185	86	5,920	56
Indiana	5,195	6,822	131	4,137	79	2,685	52
Illinois	11,067	11,705	106	6,381	58	5,324	48
Michigan	8,880	14,868	167	9,079	102	5,789	65
Wisconsin	4,424	4,951	112	2,973	67	1,978	45
Minnesota	3,810	3,061	80	1,585	41	1,476	39
Iowa	2,828	2,438	86	1,747	62	691	24
Missouri	4,646	6,371	137	3,413	73	2,958	64
North Dakota	607	305	50	147	24	158	26
South Dakota	661	698	105	391	59	307	46
Nebraska	1,477	1,824	124	1,001	68	823	56
Kansas	2,211	3,002	136	1,902	86	1,100	50
SOUTH	62,024	131,245 (39%)	211	69,590 (39%)	112	61,655 (38%)	99
Delaware	545	596	109	596	109	—	—
Maryland	3,872	7,944	205	5,186	134	2,758	71
Dist. of Columbia	739	4,645	629	1,423	193	3,222	436
Virginia	4,484	8,064	180	4,648	104	3,416	76
West Virginia	1,747	2,032	116	938	54	1,094	62
North Carolina	4,984	8,549	172	5,969	120	2,580	52
South Carolina	2,526	6,007	238	2,726	108	3,281	130
Georgia	4,523	11,839	262	5,113	113	6,726	149
Florida	6,749	18,599	275	9,187	136	9,412	139
Kentucky	3,189	5,542	174	2,849	89	2,693	85
Tennessee	3,913	6,890	176	3,268	84	3,622	92
Alabama	3,418	6,808	199	3,790	111	3,018	88
Mississippi	2,203	3,366	153	1,730	79	1,636	74
Arkansas	1,921	1,224	—	—	—	1,224	64
Louisiana	3,611	8,235	228	4,196	116	4,039	112
Oklahoma	2,531	5,854	231	3,640	144	2,214	87
Texas	11,069	25,051	226	14,331	129	10,720	97
WEST	34,317	74,818 (22%)	218	36,277 (21%)	106	38,541 (24%)	112
Montana	691	627	91	260	38	367	53
Idaho	712	847	119	411	58	436	61
Wyoming	330	404	122	231	70	173	52
Colorado	2,177	3,547	163	2,066	95	1,481	68
New Mexico	1,006	1,703	169	742	74	961	95
Arizona	1,768	3,603	204	1,461	83	2,142	121
Utah	1,062	1,013	95	491	46	522	49
Nevada	484	1,445	299	690	143	755	156
Washington	3,343	5,141	154	2,864	86	2,277	68
Oregon	2,097	3,287	157	1,800	86	1,487	71
California	19,652	52,705	268	25,033	127	27,672	141
Alaska	274	171	—	—	—	171	62
Hawaii	721	325	45	228	32	97	13

Sources: Civilian population figures represent estimates for July 1, 1970 from U.S. Department of Commerce, Bureau of the Census, Current Population Reports, *Population Estimates and Projections*, Series P-25, No. 878 (Washington, D.C.: U.S. Government Printing Office, March 1980).

State prison population figures refer to prisoners sentenced more than a year as reported in U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA), National Criminal Justice Information and Statistics Service (NCJISS), *Prisoners in State and Federal Institutions for Adult Felons*, National Prisoner Statistics (NPS) Bulletin, Number 47 (Washington, D.C.: U.S. Government Printing Office, April 1972), pp. 10-11.

Local jail population figures from U.S. Department of Justice, LEAA, NCJISS, *1970 National Jail Census*, Statistics Center Report SC-1 (Washington, D.C.: U.S. Government Printing Office, February 1971), pp. 2, 10.

Appendix A-2

State Prison and Local Jail Populations and Incarceration Rates by State and Region, 1972 (Excludes Federal Prison Population of 21,713)

Region and State	Civilian Population (in thousands)	TOTAL Number Incarcerated (% of Total)	TOTAL Number Incarcerated Per 100,000 Civilian Population	STATE Number of Prison Inmates (% of Total)	STATE Prison Inmates Per 100,000 Civilian Population	LOCAL Number of Jail Prisoners (% of Total)	LOCAL Jail Prisoners Per 100,000 Civilian Population
Total	206,461	316,058 (100%)	153	174,470 (100%)	84	141,588 (100%)	69
NORTHEAST	49,449	55,536 (18%)	112	28,174 (16%)	57	27,362 (19%)	55
Maine	1,017	720	71	473	46	247	24
New Hampshire	771	523	68	240	31	283	37
Vermont	460	234	51	230	50	4	1
Massachusetts	5,745	3,703	64	1,856	32	1,847	32
Rhode Island	941	340	36	340	36	—	—
Connecticut	3,059	1,818	59	1,818	59	—	—
New York	18,321	26,883	147	11,693	64	15,190	83
New Jersey	7,276	8,796	121	5,279	73	3,517	48
Pennsylvania	11,859	12,519	106	6,245	53	6,274	53
NORTH CENTRAL	57,109	61,070 (19%)	107	37,554 (22%)	66	23,516 (17%)	41
Ohio	10,710	13,080	122	8,276	77	4,804	45
Indiana	5,270	5,864	111	3,847	73	2,017	38
Illinois	11,160	10,524	94	5,630	50	4,894	44
Michigan	9,000	12,619	140	8,471	94	4,148	46
Wisconsin	4,508	3,803	84	2,036	45	1,767	39
Minnesota	3,867	2,408	62	1,337	35	1,071	28
Iowa	2,855	1,843	65	1,306	46	537	19
Missouri	4,715	5,779	123	3,533	75	2,246	48
North Dakota	619	304	49	179	29	125	20
South Dakota	671	639	95	344	51	295	44
Nebraska	1,508	1,695	112	953	63	742	49
Kansas	2,226	2,512	113	1,642	74	870	39
SOUTH	64,353	136,086 (43%)	211	80,625 (46%)	125	55,461 (39%)	86
Delaware	564	279	49	279	49	—	—
Maryland	4,004	7,796	194	5,578	139	2,218	55
Dist. of Columbia	734	6,715	915	2,500	341	4,215	574
Virginia	4,646	8,065	173	4,946	106	3,119	67
West Virginia	1,780	2,112	118	1,058	59	1,054	59
No. Carolina	5,157	10,718	208	8,263	160	2,455	48
So. Carolina	2,609	5,621	215	3,197	122	2,424	93
Georgia	4,694	14,468	308	8,225	175	6,243	133
Florida	7,315	18,486	253	10,382	142	8,104	111
Kentucky	3,271	4,837	148	2,941	90	1,896	58
Tennessee	4,036	6,701	166	3,329	82	3,372	84
Alabama	3,487	6,604	189	3,632	104	2,972	85
Mississippi	2,263	3,377	149	1,879	83	1,498	66
Arkansas	1,989	2,560	128	1,619	81	941	47
Louisiana	3,705	6,761	182	3,421	92	3,340	90
Oklahoma	2,613	5,475	209	3,667	140	1,808	69
Texas	11,486	25,511	222	15,709	137	9,802	85
WEST	35,550	63,366 (20%)	178	28,117 (16%)	79	35,249 (25%)	99
Montana	712	564	79	283	40	281	39
Idaho	751	788	105	377	50	411	55
Wyoming	342	454	133	262	77	192	56
Colorado	2,343	3,352	143	1,925	82	1,427	61
New Mexico	1,056	1,496	142	597	57	899	85
Arizona	1,946	3,283	169	1,529	79	1,754	90
Utah	1,118	1,056	94	581	52	475	42
Nevada	525	1,302	248	646	123	656	125
Washington	3,382	5,018	148	2,608	77	2,410	71
Oregon	2,178	3,041	139	1,856	85	1,185	54
California	20,131	42,318	210	16,970	84	25,348	126
Alaska	297	270	91	183	62	87	29
Hawaii	769	424	55	300	39	124	16

Sources: Civilian population figures represent estimates for July 1, 1972 from U.S. Department of Commerce, Bureau of the Census, Current Population Reports, *Population Estimates and Projections*, Series P-25, No. 878 (Washington, D.C.: U.S. Government Printing Office, March 1980).

State prison population figures refer to prisoners sentenced more than a year as reported in U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA), National Criminal Justice Information and Statistics Service (NCJISS), *Prisoners in State and Federal Institutions on December 31, 1971, 1972, 1973*, National Prisoner Statistics (NPS) Bulletin SD-NPS-PSF-1 (Washington, D.C.: U.S. Government Printing Office, April 1972), pp. 10-11).

Local jail population figures from U.S. Department of Justice, LEAA, NCJISS, *The Nation's Jails*, A report on the census of jails from the 1972 Survey of Inmates of Local Jails, Report Number SD-JA-4 (Washington, D.C.: U.S. Government Printing Office, May 1975), pp. 1, 23-24.

Appendix B

Supporting Data, Chapter 2

B-1: Percentage Distribution of Inmates in Federal and State Facilities by Age of the Facility, Size of the Inmate Population on March 31, 1978, and Facility Security Classification

B-2: Percentage Distribution of Federal and State Facilities by Age of the Facility, Size of the Inmate Population on March 31, 1978, and Facility Security Classification

B-3: Percentage Distribution of Inmates in Local Facilities by Age of the Facility, Size of the Average Daily 1978 Inmate Population, and Region

B-4: Regional and State Distribution of Local Facilities by Age of Facility and Size of the Average Daily 1978 Inmate Population

B-5: Percentage Distribution and Number of Males in Federal and State Adult Correctional Facilities for the Security Designation of Inmates, Race/Ethnicity of Inmates, Age of Inmates, and Type of Crime for Which Inmates Were Serving Time by Security Classification of Facility—March 31, 1978

B-6: Percentage Distribution and Number of Females in Federal and State Adult Correctional Facilities for the Security Designation of Inmates, Race/Ethnicity of Inmates, Age of Inmates, and Type of Crime for Which Inmates Were Serving Time by Security Classification of Facility—March 31, 1978

B-7: Percentage of Prison Inmates Living in High Density Cells or Dormitories

B-8: Percentage of Jail Inmates Living in High Density Cells or Dormitories

B-9: Percentage of the Total Measured Capacity Comprised of Cells for State and Local Adult Correctional Facilities by Region—1978

B-10: Occupancy of Cells in State and Local Facilities by Region—1978

B-11: Percentages of Inmates in Federal, State, and Local Facilities by Density, Occupancy, and Region—1978

B-12: Distributions of the Number of Inmates Per Service Staff for Federal and State Adult Correctional Facilities by Region—1978

B-13: Distributions of the Number of Inmates Per Custodial Staff for Federal and State Adult Correctional Facilities by Region—1978

Appendix B-1
Percentage Distribution of Inmates in Federal and State Facilities[a] by Age of the Facility, Size of the Inmate Population on March 31, 1978 and Facility Security Classification

Size and Age of Facility	Total		Maximum		Medium		Minimum	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	278,987	100	142,613	101	105,601	100	30,773	100
Before 1875	31,361	11	28,341	20	2,939	3	81	-
1875-1924	73,575	26	50,843	36	21,266	20	1,466	5
1925-1949	66,257	24	23,681	17	33,579	32	8,997	29
1950-1969	68,272	25	25,785	18	32,046	30	10,441	34
1970-1978	39,522	14	13,963	10	15,771	15	9,788	32
1,000 or more	148,788	99	102,081	100	43,839	100	2,868	100
Before 1875	24,167	16	21,971	21	2,196	5	0	0
1875-1924	50,933	34	40,031	39	10,902	25	0	0
1925-1949	34,914	23	22,119	22	12,795	29	0	0
1950-1969	35,523	24	15,899	16	17,946	41	1,678	58
1970-1978	3,251	2	2,061	2	0		1,190	42
500-999	69,056	101	26,296	100	37,513	100	5,247	100
Before 1875	6,620	10	5,917	23	703	2	0	0
1875-1924	17,000	25	7,956	30	9,044	24	0	0
1925-1949	16,153	23	802	3	13,686	36	1,665	32
1950-1969	15,618	23	5,819	22	8,110	22	1,689	32
1970-1978	13,665	20	5,802	22	5,970	16	1,893	36
Less than 500	61,143	100	14,236	100	24,249	99	22,658	99
Before 1875	574	1	453	3	40	-	81	-
1875-1924	5,642	9	2,856	20	1,320	5	1,466	6
1925-1949	15,190	25	760	5	7,098	29	7,332	32
1950-1969	17,131	28	4,067	29	5,990	25	7,074	31
1970-1978	22,606	37	6,100	43	9,801	40	6,705	30

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978.

[a]Includes only facilities primarily holding inmates 24 hours per day.

Appendix B-2
Percentage Distribution of Federal and State Facilities[a] by Age of the Facility, Size of the Inmate Population on March 31, 1978 and Facility Security Classification

Size and Age of Facility	Total		Maximum		Medium		Minimum	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	559	99	153	101	224	100	182	100
Before 1875	25	4	21	14	3	1	1	1
1875-1924	79	14	41	27	27	12	11	6
1925-1949	141	25	15	10	69	31	57	31
1950-1969	164	29	40	26	69	31	55	30
1970-1978	150	27	36	24	56	25	58	32
1,000 or more	85	99	55	100	28	101	2	100
Before 1875	13	15	12	22	1	4	0	0
1875-1924	29	34	22	40	7	25	0	0
1925-1949	19	22	11	20	8	29	0	0
1950-1969	22	26	9	16	12	43	1	50
1970-1978	2	2	1	2	0	0	1	50
500-999	98	99	35	101	54	100	9	99
Before 1875	8	8	7	20	1	2	0	0
1875-1924	22	22	10	29	12	22	0	5
1925-1949	24	24	1	3	20	37	3	33
1950-1969	23	24	8	23	12	22	3	33
1970-1978	21	21	9	26	9	17	3	33
Less than 500	376	100	63	99	142	101	171	101
Before 1875	4	1	2	3	1	1	1	1
1875-1924	28	7	9	14	8	6	11	6
1925-1949	98	26	3	5	41	29	54	32
1950-1969	119	32	23	36	45	32	51	30
1970-1978	127	34	26	41	47	33	54	32

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978.

[a]Includes only facilities primarily holding inmates 24 hours per day.

Appendix B-3
Percentage Distribution of Inmates in Local Facilities by Age of the Facility, Size of the Average Daily 1978 Inmate Population and Region

	TOTAL		Northeast		North Central		South		West	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	161,926	100	24,094	100	29,445	101	68,939	100	39,448	100
Before 1875	4,356	3	2,738	11	1,081	4	537	1	0	0
1875-1924	22,136	14	5,652	24	4,675	16	8,744	13	3,065	8
1925-1949	38,808	24	5,271	22	6,739	23	16,363	24	10,435	26
1950-1969	69,923	43	7,218	30	10,798	37	30,614	44	21,293	54
1970-1978	26,703	16	3,215	13	6,152	21	12,681	18	4,655	12
250 or more	72,825	100	13,221	99	11,290	101	24,373	101	23,941	100
Before 1875	464	1	0	0	464	4	0	0	0	0
1875-1924	8,004	11	2,572	19	763	8	3,315	14	1,354	6
1925-1949	19,279	26	3,453	26	3,898	34	4,789	20	7,139	30
1950-1969	35,355	49	5,216	39	3,358	30	12,887	53	13,894	58
1970-1978	9,723	13	1,980	15	2,807	25	3,382	14	1,554	6
10-249	82,646	100	10,775	100	15,968	99	41,504	100	14,399	100
Before 1875	3,654	4	2,691	25	486	3	477	1	0	0
1875-1924	12,560	15	3,036	28	3,230	20	4,818	12	1,476	10
1925-1949	18,135	22	1,818	17	2,465	15	10,755	26	3,097	22
1950-1969	32,632	40	2,002	19	6,868	43	16,698	40	7,064	49
1970-1978	15,665	19	1,228	11	2,919	18	8,756	21	2,762	19
Less than 10	6,455	100	98	100	2,187	100	3,062	101	1,108	100
Before 1875	238	4	47	48	131	6	60	2	0	0
1875-1924	1,572	24	44	45	682	31	611	20	235	21
1925-1949	1,394	22	0	0	376	17	819	27	199	18
1950-1969	1,936	30	0	0	572	26	1,029	34	335	30
1970-1978	1,315	20	7	7	426	20	543	18	339	31

Source: *National Jail Census* (CJ-3 and CJ-4), 1978.

Note: The average daily 1978 inmate population is slightly higher than the inmate population of 158,394 reported on February 15, 1978.

Appendix B-4
Regional and State Distribution of Local Facilities by Age of Facility and Size of the Average Daily 1978 Inmate Population

Region and State	Total Number of Facilities	Size of Inmate Population			Age of Facility				
		Less than 10	10–249	250 or More	Before 1875	1875–1924	1925–1949	1950–1969	1970–1978
United States, Total	3,493	1,538	1,825	130	156	732	768	1,182	655
NORTHEAST	207	21	163	23	50	75	29	32	21
New England	39	4	33	2	16	15	4	1	3
Maine	13	3	10	0	5	6	0	1	1
New Hampshire	11	0	11	0	2	6	2	0	1
Vermont	-	-	-	-	-	-	-	-	-
Massachusetts	15	1	12	2	9	3	2	0	1
Rhode Island	-	-	-	-	-	-	-	-	-
Connecticut	-	-	-	-	-	-	-	-	-
Mid Atlantic	168	17	130	21	34	60	25	31	18
New York	72	4	57	11	4	25	16	20	7
New Jersey	28	0	23	5	0	12	5	6	5
Pennsylvania	68	13	50	5	30	23	4	5	6
NORTH CENTRAL	1,042	590	432	20	63	289	179	318	193
East N. Central	503	198	287	18	43	128	55	182	94
Ohio	150	63	82	5	13	49	16	41	31
Indiana	90	33	55	2	11	31	8	26	14
Illinois	100	47	50	3	16	28	14	17	25
Michigan	93	26	61	6	1	3	9	65	15
Wisconsin	70	29	39	2	1	17	8	34	9
West N. Central	539	392	145	2	20	161	124	135	99
Minnesota	65	31	34	0	0	28	4	16	17
Iowa	91	72	19	0	3	37	23	15	13
Missouri	137	92	43	2	11	37	37	30	22
North Dakota	39	35	4	0	0	16	9	9	5
South Dakota	44	36	8	0	1	11	9	12	11
Nebraska	77	60	17	0	4	21	19	19	14
Kansas	86	66	20	0	1	11	23	34	17
SOUTH	1,678	654	975	49	43	270	435	617	313
South Atlantic	671	217	428	26	14	129	153	246	129
Delaware	-	-	-	-	-	-	-	-	-
Maryland	25	1	20	4	0	14	3	5	3
District of Columbia	2	0	0	2	0	1	0	0	1
Virginia	92	19	71	2	2	16	20	41	13
West Virginia	54	23	31	0	4	22	16	8	4
North Carolina	95	29	66	0	2	22	18	24	29
South Carolina	68	19	49	0	3	6	13	22	24
Georgia	223	96	123	4	3	44	65	76	35
Florida	112	30	68	14	0	4	18	70	20
East S. Central	424	130	286	8	21	54	105	162	82
Kentucky	111	45	64	2	11	29	22	21	28
Tennessee	111	25	83	3	5	8	28	45	25
Alabama	108	28	77	3	3	7	30	60	8
Mississippi	94	32	62	0	2	10	25	36	21
West S. Central	583	307	261	15	8	87	177	209	102
Arkansas	92	57	35	0	2	8	36	25	21
Louisiana	93	23	64	6	0	5	21	45	22
Oklahoma	102	52	49	1	1	20	41	26	14
Texas	296	175	113	8	5	54	79	113	45
WEST	566	273	255	38	0	98	125	215	128
Mountain	318	202	109	7	0	73	69	92	84
Montana	58	48	10	0	0	26	13	6	13
Idaho	45	34	11	0	0	14	9	7	15
Wyoming	31	22	9	0	0	6	10	9	6
Colorado	61	40	20	1	0	13	11	24	13
New Mexico	38	15	23	0	0	3	13	13	9
Arizona	39	19	16	4	0	4	7	18	10
Utah	24	15	8	1	0	3	3	10	8
Nevada	22	9	12	1	0	4	3	5	10
Pacific	248	71	146	31	0	25	56	123	44
Washington	59	31	26	2	0	11	17	18	13
Oregon	48	18	29	1	0	7	9	24	8
California	135	17	90	28	0	7	30	79	19
Alaska	6	5	1	0	0	0	0	2	4
Hawaii	-	-	-	-	-	-	-	-	-

Source: *National Jail Census* (CJ-3 and CJ-4), 1978.

Appendix B-5

Percentage Distribution and Number of Males in Federal and State Adult Correctional Facilities for the Security Designation of Inmates, Race/Ethnicity of Inmates, Age of Inmates, and Type of Crime for Which Inmates Were Serving Time by Security Classification of Facility – March 31, 1978

	Total		Security Classification of Facility					
			Maximum		Medium		Minimum	
	Percent	Number	Percent	Number	Percent	Number	Percent	Number
Security Designation of Inmates								
Total	100	255,478	100	134,247	100	93,075	101	28,156
Maximum	39	99,619	64	86,155	14	13,022	2	442
Medium	35	89,837	22	29,475	64	59,837	2	525
Minimum	22	55,941	9	12,322	19	17,446	93	26,173
Other	4	10,081	5	6,295	3	2,770	4	1,016
Race/Ethnicity of Inmates								
Total	100	261,562	100	138,704	100	94,871	99	27,987
White	45	116,732	41	56,277	50	47,179	47	13,276
Black	47	122,503	49	68,044	44	41,451	46	13,008
American Indian	1	2,781	1	1,308	1	1,120	1	353
Asian	0	590	0	295	0	267	0	28
Hispanic	7	18,956	9	12,780	5	4,854	5	1,322
Age of Inmates								
Total	100	245,981	100	127,832	101	91,006	99	27,143
Under 18	3	6,469	2	3,037	3	2,504	3	928
18-24	37	90,582	34	42,879	42	37,825	36	9,878
25-34	38	94,622	39	50,384	38	34,310	36	9,928
35-44	14	34,031	16	19,845	11	10,396	14	3,790
Over 44	8	20,277	9	11,687	7	5,971	10	2,619
Type of Crime								
Total	100	245,106	100	130,166	100	87,976	100	26,964
Violent Crime	45	110,245	50	65,108	43	37,994	26	7,143
Property Crime	35	85,686	32	42,151	36	31,981	43	11,554
Other Crimes	19	46,376	16	20,798	20	17,341	31	8,237
Unsentenced Inmates	1	2,799	2	2,109	1	660	0	30

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978.

Appendix B-6
Percentage Distribution and Number of Females in Federal and State Adult Correctional Facilities for the Security Designation of Inmates, Race/Ethnicity of Inmates, Age of Inmates, and Type of Crime for Which Inmates Were Serving Time by Security Classification of Facility – March 31, 1978

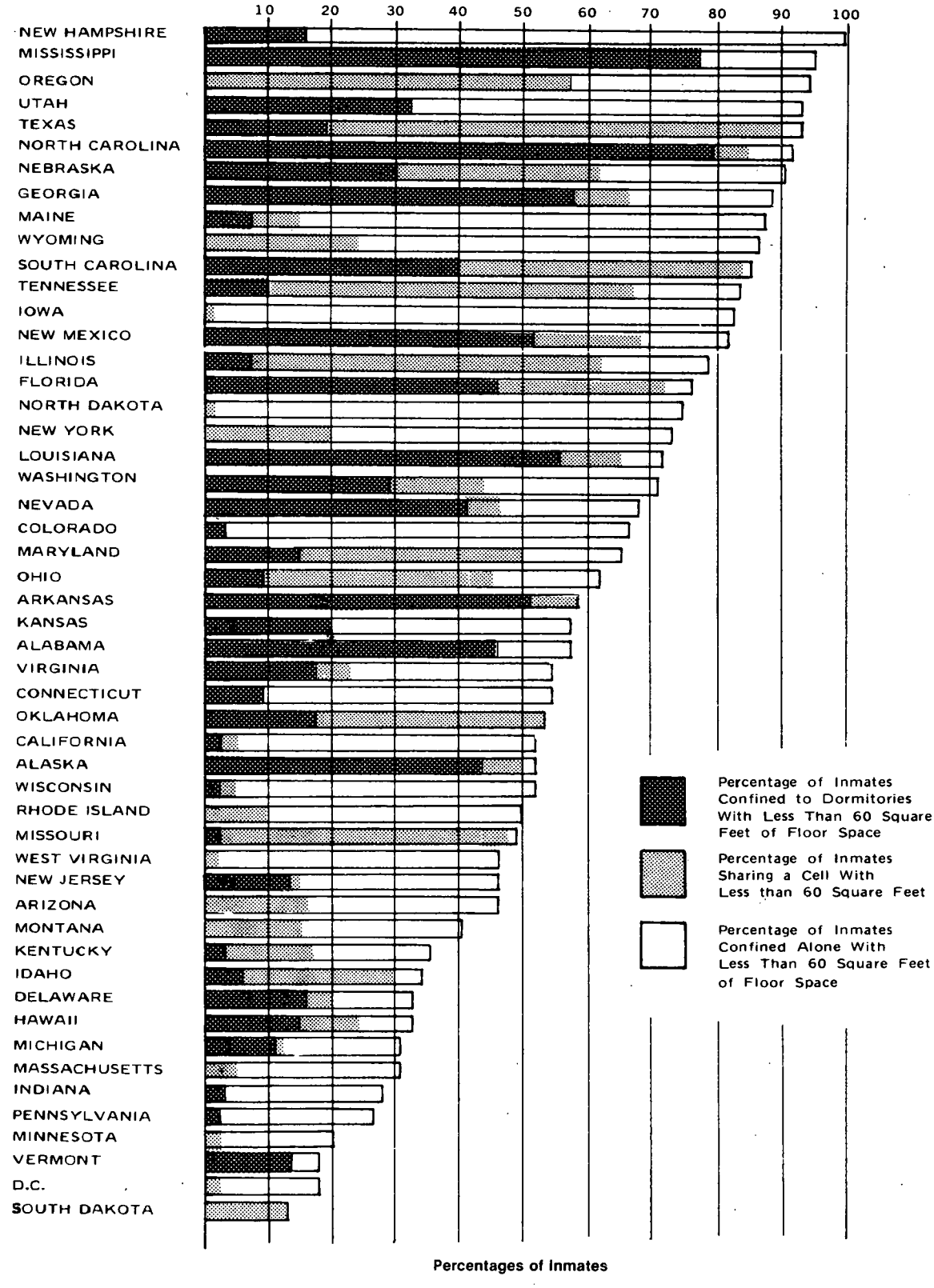
	Total		Security Classification of Facility					
			Maximum		Medium		Minimum	
	Percent	Number	Percent	Number	Percent	Number	Percent	Number
Security Designation of Inmates								
Total	100	10,297	100	1,971	99	6,257	100	2,069
Maximum	22	2,227	72	1,417	11	708	5	102
Medium	39	4,017	19	367	54	3,409	12	241
Minimum	30	3,118	8	163	26	1,626	64	1,329
Other	9	935	1	24	8	514	19	397
Race/Ethnicity of Inmates								
Total	100	11,416	99	1,993	100	6,991	100	2,432
White	40	4,563	36	714	39	2,745	45	1,104
Black	53	6,051	52	1,044	54	3,766	51	1,241
American Indian	1	160	0	8	2	129	1	23
Asian	1	76	0	0	1	75	0	1
Hispanic	5	566	11	227	4	276	3	63
Age of Inmates								
Total	100	10,606	101	1,968	100	6,323	100	2,315
Under 18	1	88	1	13	1	55	1	20
18-24	34	3,590	37	720	32	2,031	36	839
25-34	43	4,549	41	802	43	2,725	44	1,022
35-44	14	1,511	15	286	15	920	13	305
Over 44	8	868	7	147	9	592	6	129
Type of Crime								
Total	100	10,957	101	1,971	99	6,743	99	2,243
Violent Crimes	36	3,923	39	764	39	2,660	22	499
Property Crimes	34	3,698	36	704	35	2,384	27	610
Other Crimes	29	3,202	22	424	24	1,652	50	1,126
Unsentenced Inmates	1	134	4	79	1	47	0	8

Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978.

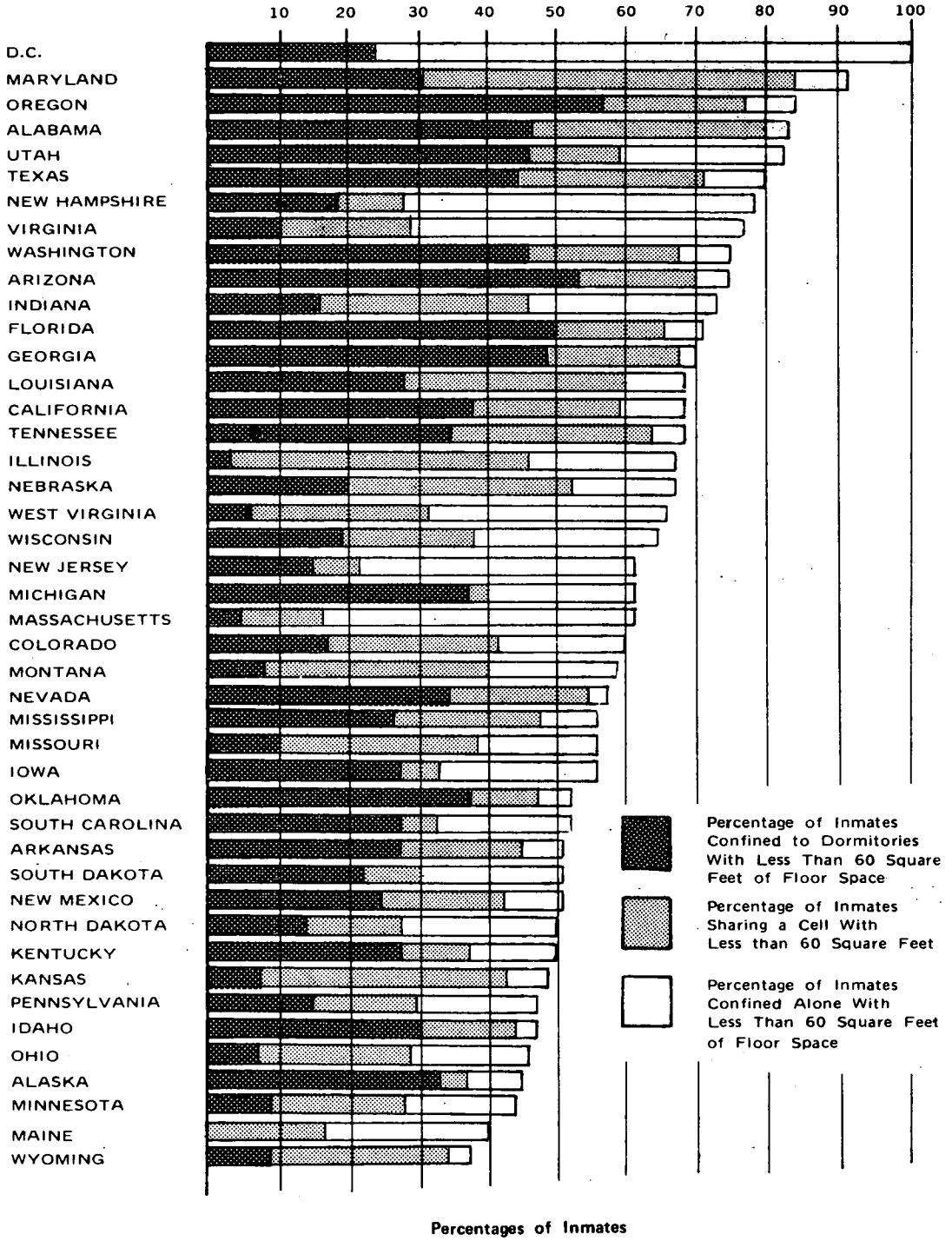
Appendix B-7

Percentage of Prison Inmates Living in High Density Cells or Dormitories

(less than 60 square feet of floor space per inmate)

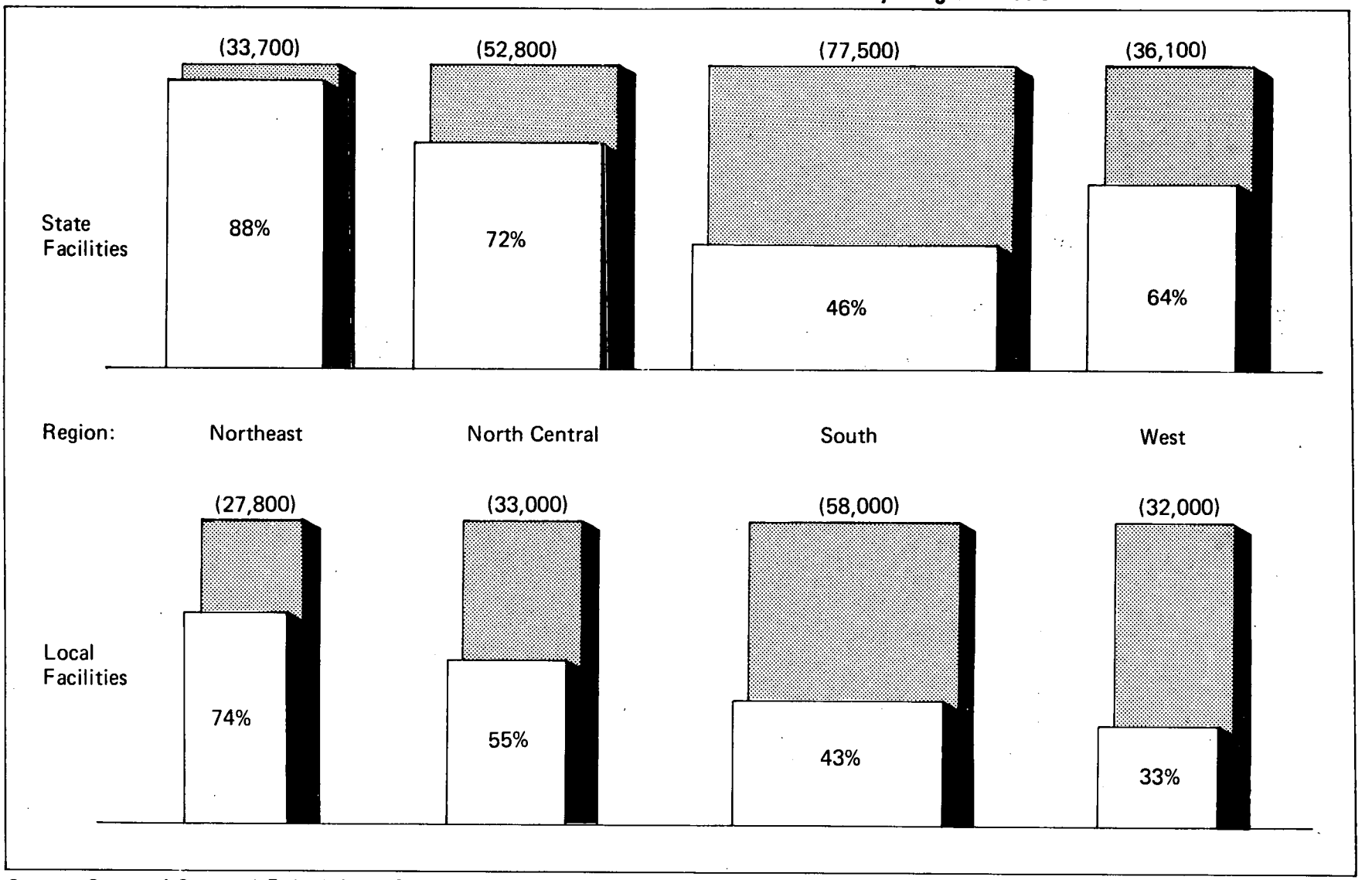


Appendix B-8
Percentage of Jail Inmates Living in High Density Cells or Dormitories
(less than 60 square feet of floor space per inmate)



Appendix B-9

Percentage of the Total Measured Capacity[a] Comprised of Cells[b] for State and Local Adult Correctional Facilities by Region—1978[c]



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978; National Jail Census (CJ-3, CJ-4), 1978. See note provided with Table 3.3.

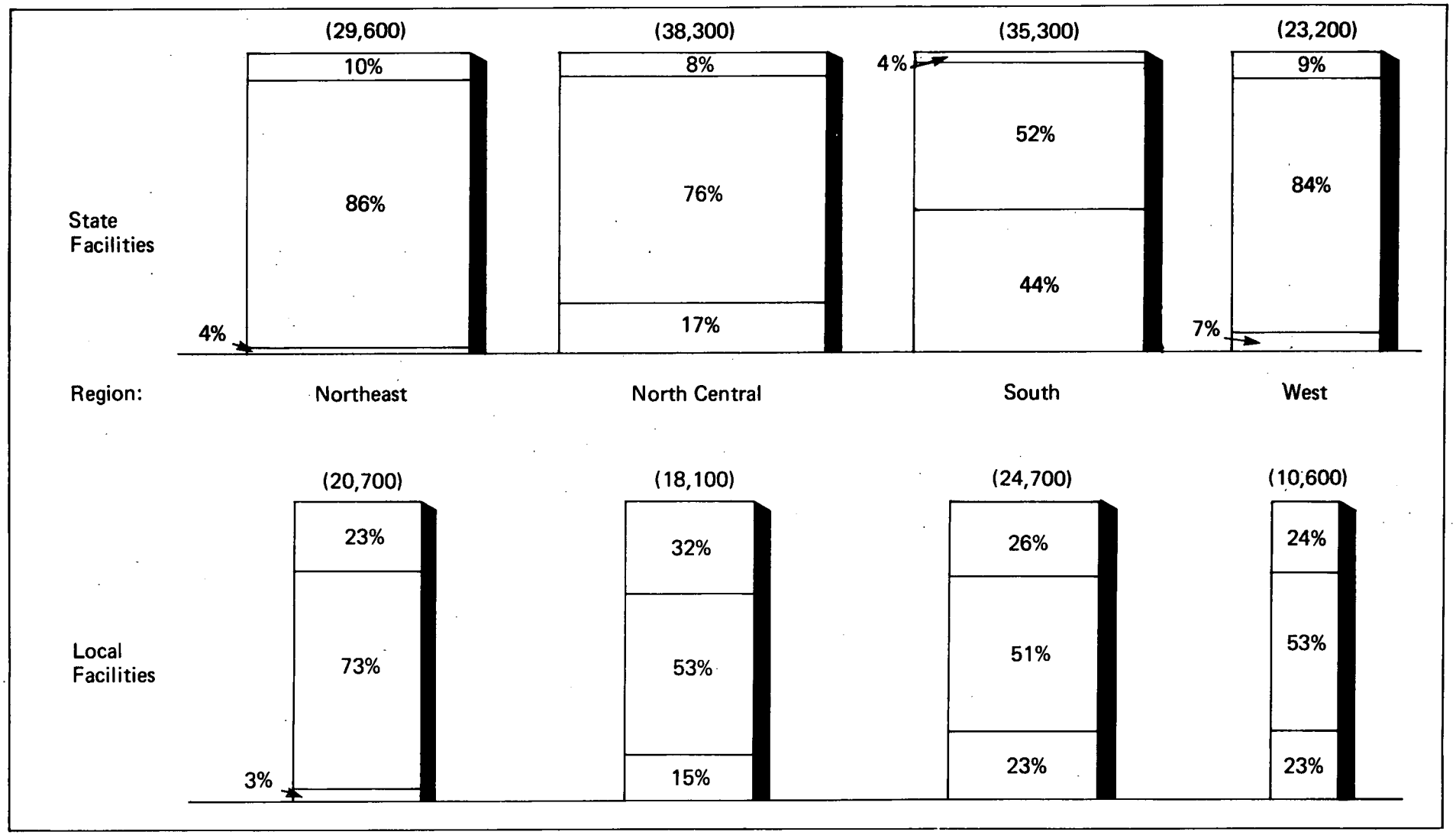
[a]Measured capacity is defined as one inmate per cell or for dormitories as the smaller of (1) Number of square feet of floor space/60 or (2) The jurisdictionally reported capacity.

[b]Confinement units with less than 120 square feet of floor space.

[c]The width of each bar has been drawn as a proportion of the total measured cell capacity.

Appendix B-10

Occupancy[a] of Cells[b] in State and Local Facilities by Region—1978[c]



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978; National Jail Census (CJ-3, CJ-4), 1978. See note provided with Table 3.3.

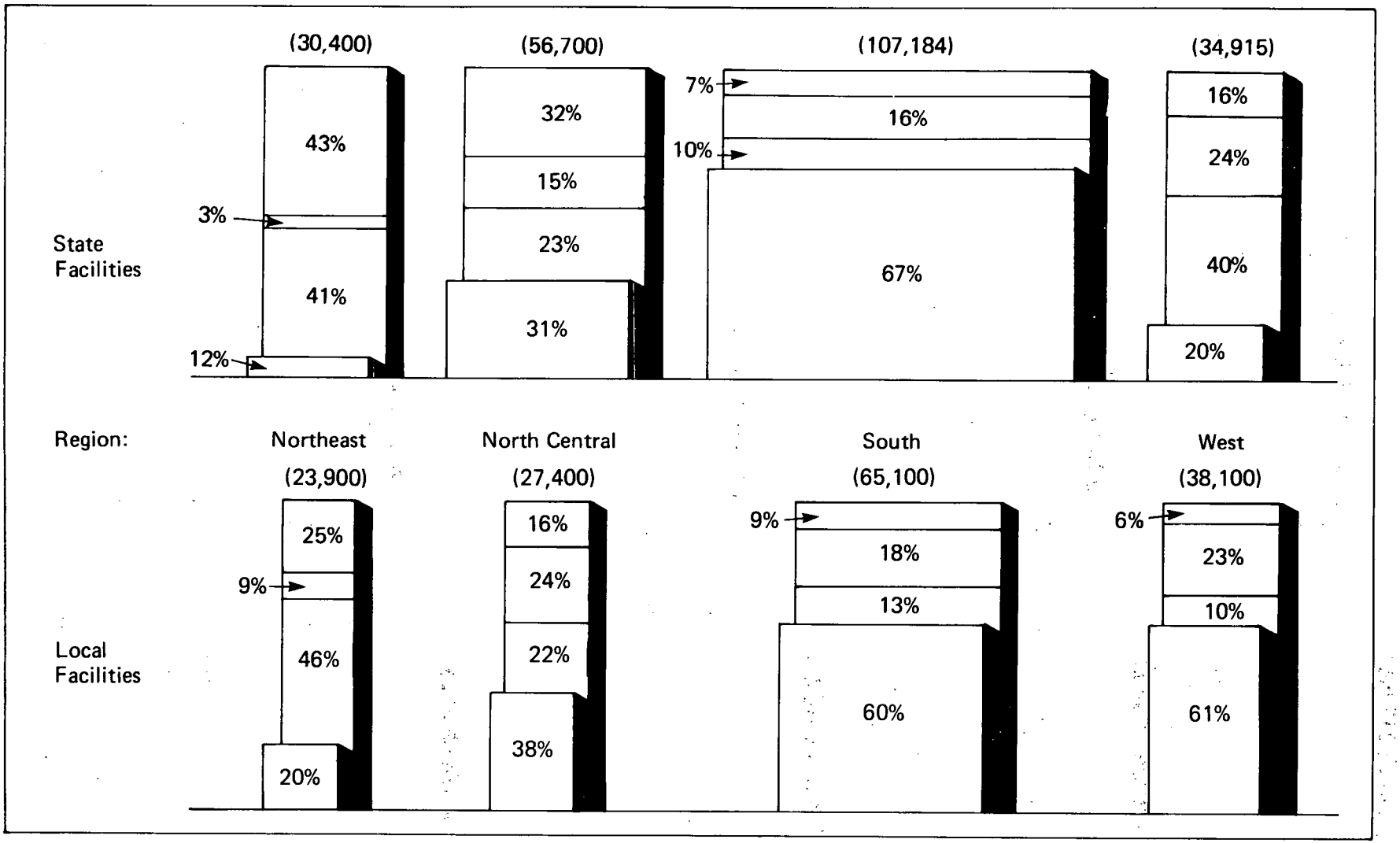
[a]Number of inmates per confinement unit.

[b]Confinement units with less than 120 square feet of floor space.

[c]The width of each bar has been drawn as a proportion of the total measured cell capacity.

Appendix B-11

Percentages of Inmates in Federal, State, and Local Facilities by Density[a], Occupancy[b] and Region—1978[c]



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978; National Jail Census (CJ-3, CJ-4), 1978. See note provided with Table 3.3.

[a] Number of square feet of floor space per inmate.

[b] Number of inmates per confinement unit.

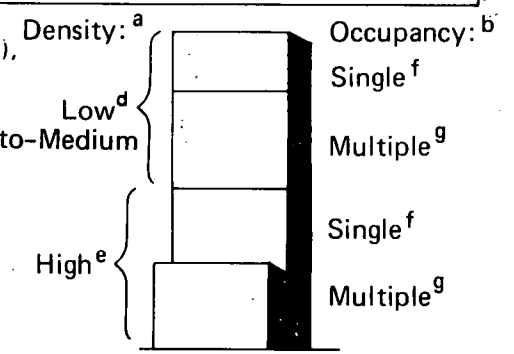
[c] The width of each bar has been drawn as a proportion of the total number of inmates.

[d] Confinement units with 60 or more square feet of floor space per inmate.

[e] Confinement units with less than 60 square feet of floor space per inmate.

[f] Confinement units occupied by one inmate.

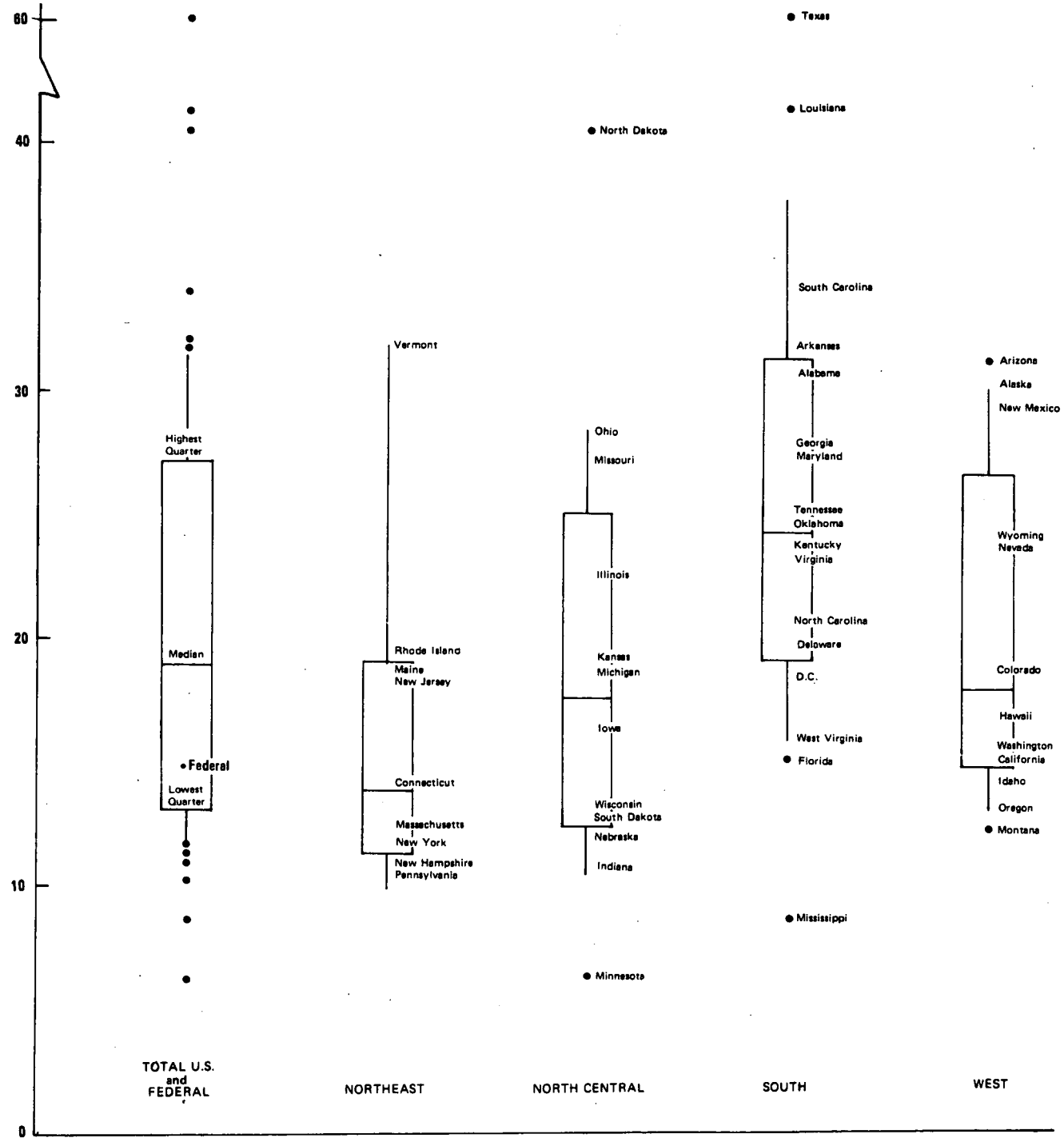
[g] Confinement units occupied by two or more inmates.



Appendix B-12

Distributions of the Number of Inmates Per Service Staff for Federal and State Adult Correctional Facilities by Region

1978

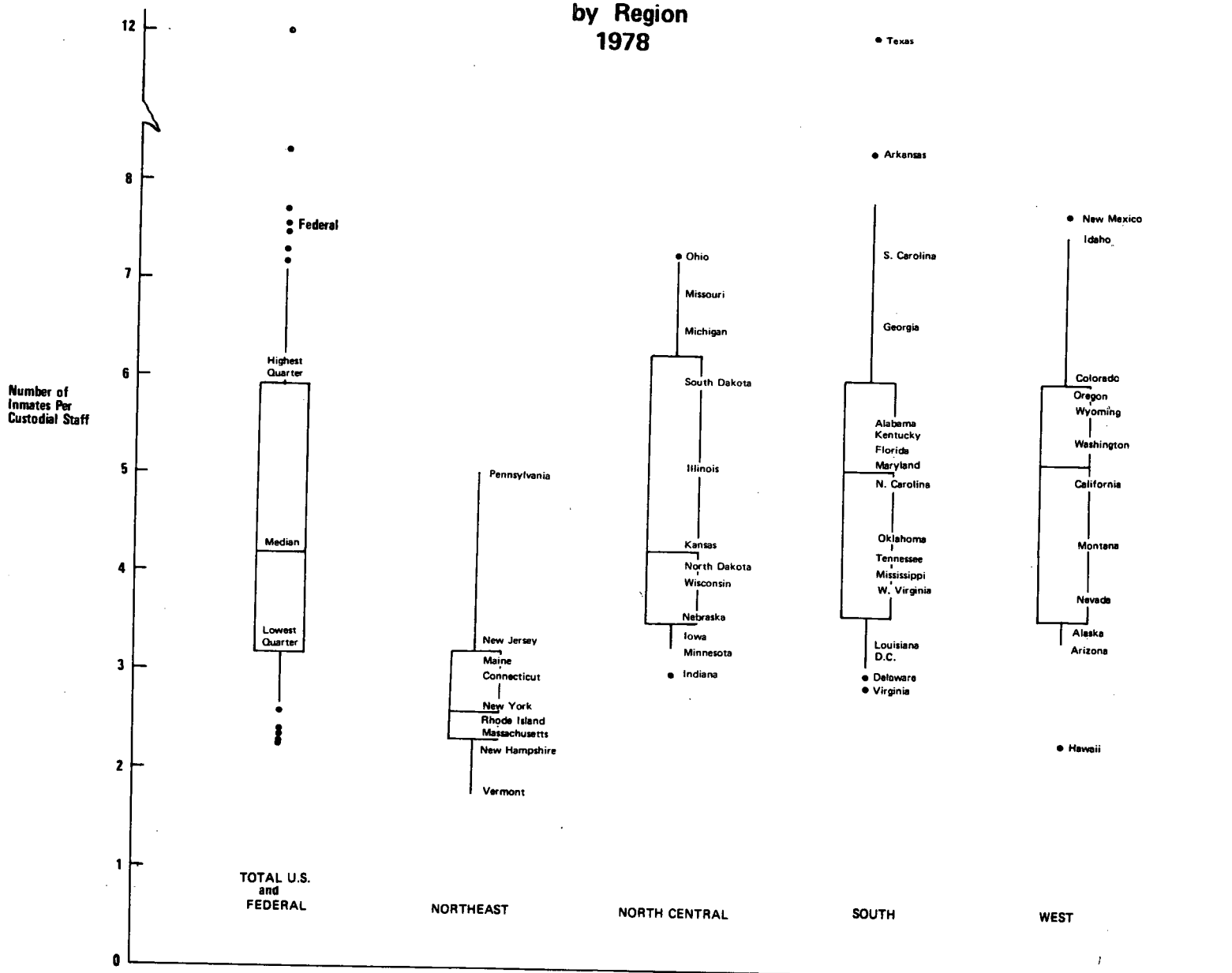


Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978.

Note: N = 549. Utah was excluded because it classifies personnel with custodial functions as service personnel. With only 10 custodial and 175 service personnel, the staff/inmate ratios would not have been comparable with the other states. Additionally, there were missing data from one facility each in Michigan, Maryland, Idaho, and California; two facilities in New York; and three facilities in Oklahoma.

Appendix B-13

Distributions of the Number of Inmates per Custodial Staff for Federal and State Adult Correctional Facilities by Region 1978



Source: Survey of State and Federal Adult Correctional Facilities (PC-2), 1978.

Note: N = 549. Utah was excluded because it classifies personnel with custodial functions as service personnel. With only 10 custodial and 175 service personnel, the staff/inmate ratios would not have been comparable with the other states. Additionally, there were missing data from one facility each in Michigan, Maryland, Idaho, and California; two facilities in New York; and three facilities in Oklahoma.

Appendix C

Supporting Data, Chapter 5

C-1: Estimated Changes in Bedspace Resulting from Federal and State Facility Construction, Renovation, Acquisition, or Closing Plans by Security Classification, Region, and State—March 31, 1978 to December 31, 1982

C-2: Estimated Number of New Jails and Beds to Be Built or Acquired Before December 31, 1982 for Which Funds Have Been Committed by Region and State—February 15, 1978

Appendix C-1
Estimated Changes in Bedspace Resulting from Federal and State Facility Construction, Renovation, Acquisition, or Closing Plans by Security Classification, Region and State[a] — March 31, 1978 to December 31, 1982

Region and State	Security Classification					
	Maximum	Medium	Minimum	Community-based Pre-Release	Other[b]	Net Change
UNITED STATES	+8,425	+31,700	+8,682	+2,755	+1,281	52,843
FEDERAL TOTAL	-550	+4,946	+1,256	0	0	5,652
STATES TOTAL	+8,975	+26,754	+7,426	+2,755	+1,281	47,191
NORTHEAST	+3,363	+1,066	+358	+475	+180	5,442
Maine	-100	+30	+70	0	0	0
New Hampshire	0	+32	+64	+9	0	105
Vermont	+24	+45	+20	0	0	89
Massachusetts	+346	+286	-26	+24	0	630
Rhode Island	-364	+81	+50	+20	+180	-33
Connecticut	-64	0	0	+72	0	8
New York	+4,031	+192	0	0	0	4,223
New Jersey	-510	+400	0	+350	0	240
Pennsylvania	0	0	+180	0	0	180
NORTH CENTRAL	+403	+4,265	+779	+540	0	5,987
Ohio	0	0	0	0	0	0
Indiana	+470	-100	+325	+75	0	770
Illinois	+250	+1,550	0	0	0	1,800
Michigan	-1,268	+1,044	+174	+300	0	250
Wisconsin	+766	+491	0	+90	0	1,347
Minnesota	-200	+544	+95	0	0	439
Iowa	+75	+100	0	0	0	175
Missouri	+50	+600	+300	0	0	950
North Dakota	0	0	0	0	0	0
South Dakota	0	0	0	0	0	0
Nebraska	+260	+36	-115	+75	0	256
Kansas	0	0	0	0	0	0
SOUTH	+3,728	+15,564	+5,312	+1,410	+890	26,904
Delaware	+64	+91	+42	-61	+21	157
Maryland	+400	+2,008	-166	+547	0	2,789
Dist. of Columbia	0	+1,100	0	0	0	1,100
Virginia	+400	+1,222	0	0	+248	1,870
West Virginia[c]	—	—	—	—	—	—
North Carolina	+968	+364	+1,128	0	+172	2,632
South Carolina	-138	+610	+1,326	+354	+240	2,392
Georgia	0	+3,030	0	+100	+209	3,339
Florida	+848	+3,128	+60	0	0	4,036
Kentucky	+334	+332	+180	0	0	846
Tennessee	+119	+1,632	0	0	0	1,751
Alabama	+516	0	+1,600	+145	0	2,261
Mississippi	+60	+692	+192	+200	0	1,144
Arkansas	0	0	0	0	0	0
Louisiana	+96	+650	+750	0	0	1,496
Oklahoma	+61	+705	+200	+125	0	1,091
Texas[c]	—	—	—	—	—	—
WEST	+1,481	+5,859	+977	+330	+211	8,858
Montana	0	+192	0	0	0	192
Idaho	0	0	0	0	+96	96
Wyoming	+248	+225	+141	+28	0	642
Colorado	-80	0	+70	0	0	-10
New Mexico	0	+200	+390	0	0	590
Arizona	+615	+1,832	+22	0	0	2,469
Utah	+40	+115	0	+150	0	305
Nevada	-12	+644	0	0	0	632
Washington	+198	+200	+354	+152	0	904
Oregon	0	+130	0	0	0	130
California	+400	+2,000	0	0	0	2,400
Alaska	0	+23	0	0	+115	138
Hawaii	+72	+298	0	0	0	370

Source: Survey of State and Federal Adult Correctional Systems (PC-2), 1978.

[a] These data are collapsed across sex of inmates. A minus sign indicates a planned decrease in bedspace; a plus sign indicates a planned increase in bedspace. Whenever a range was given, the mean was used.

[b] Alaska: pretrial facility; Delaware: not specified; Georgia: diversion centers; Idaho: not specified; North Carolina: mixed security facilities; Rhode Island: new intake facility; South Carolina: intake services; Virginia: dorm conversion (-188), youth offenders (+200), reception and classification areas (+236).

[c] Missing information from Texas and West Virginia.

Appendix C-2
Estimated Number of New Jails and Beds to Be Built or Acquired Before December 31, 1982 for Which Funds Have Been Committed by Region and State: February 15, 1978[a]

	Number of New Jails	Number of New Beds
STATES TOTAL	207	66,237
NORTHEAST	17	5,663
Maine	2	64
New Hampshire	2	150
Vermont	-	-
Massachusetts	2	346
Rhode Island	-	-
Connecticut	-	-
New York	1	40
New Jersey	5	2,573
Pennsylvania	5	2,490
SOUTH	96	28,574
Delaware	-	-
Maryland	7	6,602
District of Columbia	0	0
Virginia	5	2,522
West Virginia	4	2,097
North Carolina	9	668
South Carolina	1	26
Georgia	6	1,248
Florida	5	1,746
Kentucky	3	164
Tennessee	11	2,223
Alabama	3	198
Mississippi	7	4,111
Arkansas	8	2,254
Louisiana	1	75
Oklahoma	1	40
Texas	25	4,599
NORTH CENTRAL	54	18,759
Ohio	6	4,240
Indiana	6	2,422
Illinois	7	2,387
Michigan	5	2,543
Wisconsin	5	281
Minnesota	4	231
Iowa	2	2,052
Missouri	9	4,175
North Dakota	0	0
South Dakota	0	0
Nebraska	7	361
Kansas	3	67
WEST	40	13,241
Montana	5	2,070
Idaho	0	0
Wyoming	3	2,108
Colorado	3	194
New Mexico	3	315
Arizona	3	205
Utah	0	0
Nevada	0	0
Washington	5	532
Oregon	4	252
California	13	7,565
Alaska	-	-
Hawaii	-	-

Source: National Jail Census, 1978.

[a]Approximately 3300 beds will be added through renovation or addition and approximately 3300 beds will be removed through renovation or by closing all or part of existing facilities.

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