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PRISON OVERCROWDING

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

SERIOUS OVERCROWDING IN OUR STATE PRISONS AND LOCAL JAILS,
AND THE APPROPRIATE RESPONSE OF THE FEDERAL GOVERNMENT
TO THIS CRISIS

DECEMBER 14, 1983

Serial No. J-98-86

ited for the use of the Committee on the Judiciary



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ACQUISITIONS

PRISON OVERCROWDING

WEDNESDAY, DECEMBER 14, 1983

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1:57 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter (member of the subcommittee) presiding.

Staff present: John F. Nash, Jr., chief counsel and staff director, Subcommittee on Criminal Law; and William J. Bowman, counsel, Subcommittee on Juvenile Justice.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Good afternoon, ladies and gentlemen.

I will now convene this hearing of the Criminal Law Subcommittee. Governor Thompson has been delayed, but he will be here shortly, I am told, and I have commitments to take off later this afternoon myself to New York. I would like to have the events of the day coterminus so that people hearing and the people speaking would be here at the same time, and we do have with us the distinguished Commissioner of the Department of Corrections of the State of New Jersey, Mr. William Fauver. So if you would step forward, Mr. Fauver, we will begin, and because of Governor Thompson's schedule, Mr. Fauver has kindly agreed to be interrupted.

This hearing of the Criminal Law Subcommittee, which is chaired by the Honorable Paul Laxalt, Senator from Nevada, who could not be with us today, is going to proceed with a hearing on the prison issue.

And without objection, my full statement will be included in the record, and space will be reserved for a statement from Senator Laxalt should he choose to have one inserted.

[The prepared statement of Senator Specter follows:]

PREPARED STATEMENT OF SENATOR ARLEN SPECTER

GOOD AFTERNOON. This hearing of the Subcommittee on Criminal Law will now begin. Today's topic is the serious overcrowding in our state prisons and local jails, and the appropriate response of the federal government to this crisis. We have a most distinguished group of witnesses today.

At the end of the first quarter of 1983, we had over 425,000 prisoners in the state and federal prison systems, up from 381,000 the previous year, according to the Bureau of Justice Statistics. Our prison population has more than doubled since 1970. Prisons everywhere are now bulging with far more people than their rated capacity. Recreation areas, tents, and trailers have all been pressed into service to meet the crunch. Even the federal prison system, long a model for the states, is 27 percent over its capacity.

Local jail populations have mushroomed dangerously as well. An estimated 210,000 persons were confined in this nation's local jails in 1982, a 33 percent increase from 1978, again according to the Bureau of Justice Statistics. A month ago, New York City was forced by overcrowding to release 600 pretrial detainees from its overcrowded jail in order to comply with a federal court order. One man was rearrested for a rape just a few days after his release.

Many states have embarked on ambitious construction programs to increase their capacity, since most prisoners are now housed in facilities built before 1925. By 1980, more than 60 institutions costing over \$700 million were under construction. In addition, most states have sought alternatives to incarceration for appropriate, nonviolent offenders. Indeed, almost four times as many persons are under some kind of community supervision (probation or parole) as are confined in prisons.

Despite these efforts, most states are losing ground, and losing ground rapidly. In the past few years, 37 states have passed mandatory sentencing laws, and nine states have adopted determinate sentencing. In 39 states, there are court orders or pending litigation on the issue of prison overcrowding.

This hearing will explore the possibility of limited federal assistance to aid our states, counties, and cities in grappling with the prison and jail crisis. Traditionally, the federal government has been

content to label this a purely state and local matter. Yet the federal government has provided substantial assistance to other areas of the criminal justice system. According to a recently-released Department of Justice study, the federal government now accounts for 22 percent of all prosecution-defense spending, 14.7 percent of all police spending, 10 percent of all courts spending, but only 6 percent of corrections spending. I have proposed several pieces of legislation to help the states meet the crisis. One bill, S.889, would provide spending one percent of the federal budget for our "domestic defense" in order to cut the violent crime rate in half. Another, S.53, would permit the federal prison system to house state habitual offenders. The Dole-Specter amendment to the Justice Assistance bill will provide \$25 million to the states for corrections.

We are privileged to have the Governor of Illinois, James R. Thompson, with us today. A career state and federal prosecutor who has served as governor since 1976, Governor Thompson has been a true national leader in the fight against violent crime. Governor Thompson served as chairman of the Attorney General's Task Force on Violent Crime in 1981. The Task Force recommended federal assistance of \$25 billion over 4 years to help the states meet their construction needs for corrections facilities.

More recently, the State of Illinois has undergone its own prison crisis. On July 12, 1983, the Illinois Supreme Court ruled that the State had been awarding many prisoners more "good time" than the law permitted. Awards of 90-day meritorious good time credits had been used to ease overcrowding in the state prison system. Governor Thompson, as a consequence, was forced to announce that the state might not be able to accept convicted prisoners from the local jails. The state's sheriffs announced that they were required by law to deliver these prisoners to the state. We shall be interested to learn how Illinois has adjusted to this overcrowding crisis and what the future population projections are.

In addition today, Mr. William H. Fauver, Commissioner of the New Jersey Department of Corrections, will testify. Like many states, New Jersey's prison and jail system is substantially overcrowded; both temporary and emergency housing has been pressed into service.

Welcome Governor Thompson and Commissioner Fauver, we look forward to your testimony.

Senator SPECTER. The central question that this hearing will concern itself with is what role the Federal Government should have in providing space for prisoners both as to Federal inmates and also in a leadership role for those convicted in the State system.

The statistics show that at the end of the first quarter of 1983, there were some 425,000 prisoners in State and Federal systems, which is a significant increase from 381,000 in the previous year. In the course of the past 12 or 13 years, since 1970, the prison population has doubled.

There is a major problem in detention centers, illustrated by the action taken in New York City 1 month ago in releasing some 600 pretrial detainees. What we are finding in this country is that the detention centers are bulging with people who are awaiting trial because the judicial system cannot handle them fast enough, and we are finding at the same time that the Federal and State prisons are becoming more heavily populated as a result of mandatory sentences. At the same time, there is a very high incidence of career criminals who are committing major crimes.

The number of career criminals at large is estimated at between 200,000 and 400,000 people in this country today, and there are those of us in the Congress who would like to see some 200,000 prison cells built by the Federal Government to find a way to take career criminals off the street. At a cost of some \$50,000 a cell, that would be an investment over a number of years of some \$10 billion, and one which I personally think would be well worth the investment, because violent crime in this country costs out-of-pocket in the range of \$100 billion a year, and by the time you add the intangible costs, in excess of \$500 billion a year.

The career criminals commit a tremendous portion of the violent crimes in this country. The facts show that career criminals will commit a burglary or two a night and a robbery or two a day, so that some individuals rack up 500, 600, 700 major crimes, and a small group of career criminals commit more than 70 percent of the violent crimes in this country.

So that if we look toward a target of taking some 200,000 career criminals off the street, I believe it is realistic to think in terms of reducing violent crime in this country by 50 percent.

There are a number of legislative proposals which have been submitted over the years by Senator Dole, by Senator Laxalt, and by some of the rest of us. One bill would permit Federal prisons to take over the incarceration of those convicted under habitual offender statutes in the States, to give the States motivation to sentence under habitual offender statutes. But the most severe limiting factor on dealing with violent crime today is the limited number of cells we have and a related problem to that is the problem of rehabilitation. It is no surprise that functional illiterates without a trade or a skill move back into the community and commit repeat offenses.

It may be that we are going to have to deal with this prison issue on both ends for realistic rehabilitation starting with the juveniles with emphasis on the drug offenders, for first and second offenders, and once they graduate into the career criminal class of three or more offenders, to have minimum mandatories of 15 years to life.

At this point in the record, without objection, we will place in the statements of two witnesses who could not be here today. William R. Hunt, Allegheny County Pennsylvania commissioner and Jon P. Galley, commissioner, Maryland Division of Correction.

[The following were received for the record:]



WILLIAM R. HUNT, M.D.
COMMISSIONER

OFFICE OF THE COMMISSIONERS

County of Allegheny

119 COURTHOUSE • PITTSBURGH, PA 15219

STATEMENT

BY

WILLIAM R. HUNT, M.D.

ALLEGHENY COUNTY COMMISSIONER

FOR THE

CRIMINAL LAW SUBCOMMITTEE

OF THE

U.S. SENATE COMMITTEE ON THE JUDICIARY

I AM DR. WILLIAM R. HUNT. I AM COMPLETING MY THIRD FOUR-YEAR TERM AS COMMISSIONER OF ALLEGHENY COUNTY. BEFORE THAT I SERVED AS COUNTY CORONER, FOLLOWING SEVERAL YEARS OF MEDICAL PRACTICE IN THE FIELDS OF SURGERY AND HOSPITAL ADMINISTRATION.

MY EXPERIENCE AS AN ELECTED OFFICIAL HAS SHOWN ME THAT THERE ARE MANY REASONS FOR THE INCREASED NEED FOR RESIDENTIAL HANDLING OR INCARCERATION OF LARGE NUMBERS OF OUR POPULATION, AND THAT A COMPLETE UNDERSTANDING OF THE REASONS FOR THE INCREASED NUMBER OF PEOPLE IN OUR JAILS HAS TO BE OBTAINED BEFORE WE CAN TREAT THE CAUSE.

FOR EXAMPLE, ALLEGHENY COUNTY HAS A JAIL WITH A CAPACITY OF 550, BUT RECENTLY WE HAVE HAD DAYS WITH 750 PRISONERS IN OUR CUSTODY. THIS OCCURED FOR A VARIETY OF REASONS, NO ONE OF WHICH IS ENTIRELY RESPONSIBLE FOR THE INCREASED NUMBER.

MANDATORY SENTENCING, SPECIFYING PRISON TERMS FOR VARIOUS CRIMES, HAS CERTAINLY CAUSED AN INCREASE IN INCARCERATION. STATE

LEGISLATIVE ACTIONS HAVE BEEN MOVING IN THE DIRECTION THAT CERTAIN CRIMES MUST BE PUNISHED BY A JAIL TERM. AT THE OTHER EXTREME, MANY DISTRICT ATTORNEYS HAVE IMPOSED ADMINISTRATIVE REGULATIONS WHICH PRECLUDE NEGOTIATING PUNISHMENT FOR SECOND OFFENDERS. IN EACH OF THESE CASES, THE CHARGED INDIVIDUAL HAS NO CHOICE BUT TO GO TO A JURY TRAIL. THIS PROLONGS THE JUDICIAL EXPERIENCE AND, OF COURSE, THE TERM IN JAIL. SINCE MOST OF THESE CASES ARE ADJUDICATED GUILTY AND ARE SUBQUENTLY APPEALED, IT IS MANDATORY, IN MOST CASES, THAT THESE INDIVIDUALS BE INCARCERATED DURING THE TERM OF THEIR APPEAL, ESPECIALLY IF THE CRIME IS ONE THAT IS NOT BONDABLE.

ONE OF THE MAJOR CAUSES OF OVERCROWDING IN OUR COUNTY JAIL IS THE NECESSITY TO INCARCERATE THOSE INDIVIDUALS DURING THE TIME THAT THEIR APPEAL IS PROCESSED AND WHILE PROCEEDINGS ARE HELD BY THE APPELLATE COURT. ONE THING IS OBVIOUS: THE APPELLATE PROCESS TAKES TOO LONG UNDER OUR SYSTEM OF LAW.

ANOTHER SUBJECT THAT SHOULD BE ADDRESSED IS THAT THE ADMINISTRATION OF JAILS IS MADE DOUBLY DIFFICULT BECAUSE THE FEDERAL COURTS (IN OUR CASE) HAVE TAKEN OVER THE RUNNING OF THE JAILS. CERTAINLY THE COUNTY JAILS IN THE COMMONWEALTH OF PENNSYLVANIA ARE CAREFULLY INSPECTED--FOR COMPETENT ADMINISTRATION, FOR STRUCTURAL INTEGRITY, AND SO FORTH. BUT IN OUR COUNTY, WHEN A GROUP OF PRISONERS HIRED THE NEIGHBORHOOD LEGAL SERVICES TO MAKE AN APPEAL INDICATING THAT WE DID NOT PROVIDE ADEQUATE FACILITIES, OUR JAIL WAS PLACED UNDER THE JURISDICTION OF A FEDERAL JUDGE.

AS ONE EXAMPLE OF REGULATIONS BROUGHT ABOUT BY COURT ORDERS AND EDICTS, WE NOW HAVE A STAFF PSYCHIATRIST ON DUTY 24 HOURS A DAY, EXAMINING ALL PRISONERS AS THEY ARE ADMITTED. HE WINDS UP EXAMINING THE SAME DRUNKS EVERY WEEKEND. THE INCIDENCE OF SUICIDES HAS NOT BEEN REDUCED. WE ARE DIAGNOSING THE SAME NUMBER OF EMOTIONALLY DISTURBED INDIVIDUALS AS WE DID BEFORE THE COURT ORDERS. WE HAVE NOT CHANGED THE EXISTENCE OF THE EMOTIONALLY

DISTURBED IN OUR COMMUNITY AT ALL, BUT IT HAS COST US NEARLY \$400,000 A YEAR IN ADDITIONAL EXPENSES TO PROCESS THEM AT THE JAIL FACILITY.

I SUBMIT THAT THE ADMINISTRATION OF ANY PLACE OF INCARCERATION WHERE THE CENSUS RUNS BETWEEN 500 AND 600 PRISONERS PER DAY IS A VERY DIFFICULT JOB INDEED. THE HANDLING OF THIS NUMBER OF PEOPLE WHO HAVE BROKEN THE LAWS OF OUR SOCIETY IS EXTREMELY COMPLICATED AND EXPENSIVE. WE SPEND HUNDREDS OF THOUSANDS OF DOLLARS IN SEEKING PROFESSIONAL HELP TO DO THIS PROPERLY. THUS IT WOULD SEEM TO BE THE HEIGHT OF NONSENSE TO ALLOW A FEDERAL JUDGE, OR A LOCAL JUDGE, TO TAKE OVER THE ADMINISTRATION OF THIS MOST SPECIALIZED JOB, WHEN THAT JUDGE HAS HAD NO ACTUAL TRAINING IN THE FIELD OF HANDLING THOSE INDIVIDUALS WHO MUST BE TEMPORARILY TAKEN OUT OF OUR SOCIETY.

THE INCREASED INCIDENCES OF JUDGES ASSUMING THE ADMINISTRATIVE FUNCTIONS OF GOVERNMENT IN MANY AREAS IS VERY DISTURBING. SUCH ACTIONS IN MY REGION RANGE FROM TAKING OVER THE ADMINISTRATION OF A TWO-HUNDRED-MILLION-DOLLAR TRANSIT SYSTEM TO THE ADJUDICATION OF ALMOST EVERY LABOR GRIEVANCE THAT COMES ALONG. MAJOR CORPORATIONS AND PUBLIC AGENCIES (SUCH AS SCHOOL BOARDS) HIRE PROFESSIONAL LABOR NEGOTIATORS TO RESOLVE THE DIFFERENCES WHICH COMES ABOUT WITH LABOR NEGOTIATIONS, ONLY TO FIND THE LOCAL COMMON PLEAS JUDGE TAKING OVER THE JOB AS AN ARBITRATOR--A JOB FOR WHICH HE IS NOT TRAINED, IN MOST CASES. RATHER THAN EITHER REFUSING OR GRANTING AN INJUNCTION, MOST OF THE JUDGES WANT TO ARBITRATE THE DIFFERENCES.

IT IS IMPERATIVE THAT THOSE IN CHARGE UNDERSTAND THAT THE ADMINISTRATION OF A LOCAL JAIL SHOULD BE LIMITED TO THE OBLIGATION OF SERVING AS A HOLDING AREA, UNTIL THE PROCESS OF CRIMINAL EXAMINATION AND ADJUDICATIONS IS CARRIED OUT; ESPECIALLY IT MUST BE UNDERSTOOD THAT SUCH INSTITUTIONS ARE NOT TREATMENT OR REHABILITATION FACILITIES.

IF THERE IS ONE THING THAT WE HAVE DISCOVERED WITH REGARD TO THE OVERALL PROBLEM, IT IS THAT IMPROVEMENT COMES ABOUT ONLY WHEN THERE IS AN UNDERSTANDING OF THE SITUATION. WE HAVE FOUND THAT IT IS EXTREMELY IMPORTANT THAT INFORMATION IS SHARED BY ALL EXECUTIVE, LEGISLATIVE AND JUDICIAL ELEMENTS; AND THAT WHEN THE NEWS MEDIA AND THE GENERAL PUBLIC ALSO HAVE ADEQUATE INFORMATION, THERE IS A BETTER CHANCE THAT WE CAN ACCOMPLISH SOME OF OUR GOALS.

AND IF THERE IS ONE RECOMMENDATION THAT I CAN MAKE TO YOU WITH ASSURANCE, IT IS THAT PUBLIC HEARINGS ON THE LOCAL LEVEL COMPRISE THE BEST INVESTMENT OF TIME FOR THOSE OF US WHO ARE CONCERNED ABOUT PRISON OVERCROWDING AND THE GENERAL PROBLEMS OF THE CRIMINAL JUSTICE SYSTEM.

TO THIS END, I AM PRESENTING WITH MY TESTIMONY TODAY AN EXHIBIT OF SOME PRINTED MATERIAL WHICH REPRESENTS THE MAJOR PORTION OF A SPECIAL PENNSYLVANIA SENATE PUBLIC HEARING WHICH I CO-COVENED WITH STATE SENATOR MIKE FISHER LAST YEAR. I BELIEVE THAT THIS DOCUMENTATION IS A FAIR DEMONSTRATION OF THE IMPORTANCE OF ALLOWING PUBLIC DISCUSSION OF THE MANY AND VARIED ELEMENTS IN THIS COMPLICATED SUBJECT WHICH IS OF SUCH CONCERN TO ALL OF US. I AM GRATEFUL FOR THE OPPORTUNITY TO PRESENT MY VIEWS.

EXHIBIT

SENATE OF PENNSYLVANIA
JUDICIARY SUBCOMMITTEE
PUBLIC HEARING

TO STUDY OVERCROWDING IN THE
ALLEGHENY COUNTY JAIL
AND RELATED MATTERS OF THE
CRIMINAL JUSTICE SYSTEM

NOVEMBER 5, 1982
GOLD ROOM, ALLEGHENY COUNTY COURTHOUSE

CONVENED BY
HONORABLE D. MICHAEL FISHER
STATE SENATOR, 37TH DISTRICT
AND
HONORABLE WILLIAM R. HUNT, M.D.
ALLEGHENY COUNTY COMMISSIONER

(ADDENDUM TO TESTIMONY PRESENTED IN WASHINGTON, D.C.
BY DR. HUNT FOR THE CRIMINAL LAW SUBCOMMITTEE OF THE
U.S. SENATE COMMITTEE ON THE JUDICIARY.)

PREPARED STATEMENT OF JON P. GALLEY, COMMISSIONER,
MARYLAND DIVISION OF CORRECTION

Mr. Chairman, Members of the Committee—thank you for this opportunity to testify before you on the matter of Senate Bill 58 and prison overcrowding. Prison overcrowding is undoubtedly the biggest single issue facing certainly the Maryland Division of Correction specifically and Corrections generally across the country. Some 38 states are either currently under court order or engaged in active overcrowding litigation. Maryland is among those under litigation.

The growth of Maryland's prison population over the last two years has been unparalleled. During the 24 month period from October 1, 1981, to September 30, 1983, our population grew from 8,856 to 11,821 which represents a 33.5% increase. While we added 1,550 beds (from 6,456 to 8,006) during the same period, they have been far fewer than the number needed to keep pace with the rapid population growth. Throughout FY 1982 (July 1, 1981 to June 30, 1982) the prison population grew at a rate of approximately 150/month. The growth rate for FY 1983 (July 1, 1982 to June 30, 1983) slowed somewhat, averaging approximately 100/month where it continues to the present time. Our Departmental projections for the future indicate that by 1990 we can expect a prison population of 13,900.

To accommodate this projected population, Maryland, like many other states, has launched the most ambitious prison construction program in its history. We currently have under construction, in one phase or another, 2,920 prison beds. That number breaks down into 450 beds in pre-engineered buildings for temporary housing which have been added to an existing facility, a 250-bed minimum security facility, a 720-bed institution, and two 750-bed institutions. The number—2,920 beds—at first blush sounds like a large number of additional beds, as well it is. However, we currently have approximately 1,000 inmates housed in various areas within all our institutions which were never intended as housing areas. We have taken storage areas and converted them into large dormitories, vocational training areas have been converted to housing, gymnasiums for recreational purposes have been converted to housing, and pre-fabricated

facilities have been added to existing facilities. All of this activity has just barely kept pace with the population growth.

The future, unfortunately, appears just as bleak. If I might, I'll return to the number of 2,920 additional beds under construction. I've previously indicated that approximately 1,000 inmates are currently housed in areas never intended for housing and which need to be closed as soon as possible. The closing of these areas leaves a remainder of 1,920 beds and of that number 1,500 will not be available until January, 1987. That leaves a remainder of 420 new beds to carry a system growing at the rate of 100/month. It doesn't take much calculation to see that we're still in trouble. You'll perhaps notice I've said nothing yet about double celling. The closing of the various housing areas making up 1,000 beds does nothing to address the level of double celling co-laterally existent in all my facilities. Some are double celled nearly 100% over capacity with 50% being typical.

I have included various tables and charts in an appendix which show bed capacities, operating capacities, growth rates, etc. for your edification. Needless to say, these figures portend a fair amount of gloom for our system well into the future. As if, however, that isn't enough gloom, I'm afraid, as a correctional practitioner, that is barely the tip of the iceberg.

Overcrowding has far-reaching effects on any institution and system. It is these effects which I'd now like to briefly discuss.

All too often corrections systems, for a variety of reasons, not the least of which is money availability, react to overcrowding by acquiring more beds and more correctional officers for security. Not often is the full impact of overcrowding considered in its totality for additional resources.

A corrections system and institution is a closed but complete community. To name but a few it has food services, health care services, educational facilities, industrial work programming, financial accounting services, recreational services, records and case monitoring services, counseling services, religious services, movies, commissary/canteens, and

clothing needs. As a facility becomes overcrowded, all of these services are impacted. The time necessary for feeding the population expands. As the time to feed expands it interferes with work and educational routines. Gymnasiums which once accommodated the rated population can no longer do so without a reduction in the amount of leisure activities. Visiting room space no longer can accommodate all the visitors, consequently the frequency of visits for inmate families has to be limited. Records and commitment offices experience difficulty in keeping pace with posting time credits against individual sentences. Counseling services diminish to the point where counselors are relegated to purely administrative tasks. The ability to maintain appropriate security and control measures are impacted by sheer numbers.

The point is that nothing within an institution exists in a vacuum. Adding "a few more" is not as easy as it appears at first blush. The impact of the effect is readily apparent. Frustration levels of staff and inmates build, incidences of violence increase, physical and operational resources are overtaxed to the point where all the negative consequences we commonly read about applicable to prisons result.

All of the operational problems caused by overcrowding are only exacerbated by Maryland's habitual offender statute (Art. 27, §643B, Annotated Code of Maryland). This law provides that, depending on specific conditions, a habitual offender receive a sentence of between 25 years and Life without the possibility of parole.

As of November 28, 1983, 42 Maryland inmates had been sentenced as habitual offenders. While they represent a very small proportion of our total inmate population, they represent a disproportionate number of "bed years."

Let me explain this. Right now, the average length of an inmate's stay in our custody is 26 months. While some actually stay much longer and others much shorter, we know that, on an average, our population turns over every 26 months. Without the possibility of parole, we expect that average length of stay for habitual offenders will range from 18 to 46 years. We haven't lived with the statute long enough to experience its

real impact, but we have every reason to believe that habitual offenders are going to be remaining in our custody from 9 to 21 times longer than other inmates. A relatively small proportion of inmates, then, will be absorbing an entirely disproportionate amount of staff time, money, and resources.

What's more, we have no reason to assume that the number of habitual offenders in our custody will remain small. In 1979 we received three inmates sentenced as habitual offenders. Three more were received in 1980; five in 1981, 16 in 1982, and, in just the first ten months of 1983, another 15. With the focusing of public attention and corresponding emphasis by prosecutors and courts on dealing with habitual offenders, we can reasonably expect this trend will accelerate. Since June 1, 1983, 74% of all inmates received by the Maryland Division of Correction were experiencing their 3rd or more incarceration; 15.7% were experiencing their 2nd incarceration; only 10.3% had never been incarcerated before. What this means is that many of the inmates whom we received under normal sentencing procedure could, in fact, have been prosecuted as habitual offenders. If this mix changes significantly in the future we very well may find ourselves at the point where, because habitual offenders stay with us for so long, only a very few spaces in our prisons are available for other inmates.

In summary, I have no argument with the concept of habitual offender statutes—I, too, believe that persons whose behavior demonstrates that they present a continued threat to public safety ought to face the consequences of long sentences. What I do have a problem with is the operational impact that housing these offenders causes. In good conscience I, as Commissioner of the Maryland Division of Correction, have a responsibility to speak out. Maryland needs the kind of relief that the enactment of SB 58 would provide.

Art. 27, § 643B

ANNOTATED CODE OF MARYLAND

answer the charges of violation of conditions of probation or suspension of sentence, and to fix a date for the hearing of the charge or violation of the conditions, and pending the hearing or determination of the charge, to remand the probationer or person accused to jail or to release him, with or without bail, and if at a hearing the person accused be found to have violated any of the terms of the conditions of probation, to revoke the probation granted or suspension of sentence, and to impose any sentence, to take effect from its date, which might have originally been imposed for the crime of which the probationer or person accused was either convicted or to which he pleaded guilty, or nolo contendere, or if neither conviction nor plea of guilty or nolo contendere was had, to try the person accused on the charge. (1983, ch. 8.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "or," for "or" preceding "during" and "oath, or on" for "oath or" following "under" near the beginning of subsection (c).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 2, ch. 8, Acts 1983, provides that "the provisions of this act are

intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

University of Baltimore Law Review. — For comment, "Rights of the Maryland Probationer: A Primer for the Practitioner," see 11 U. Balt. L. Rev. 272 (1982).

§ 643B. Mandatory sentences for crimes of violence.

(a) "*Crime of violence*". — As used in this section, the term "crime of violence" means abduction; arson; burglary; daytime housebreaking under § 30 (b) of this article; kidnapping; manslaughter, except involuntary manslaughter; mayhem and maiming under §§ 384, 385, and 386 of this article; murder; rape; robbery; robbery with a deadly weapon; sexual offense in the first degree; sexual offense in the second degree; use of a handgun in the commission of a felony or other crime of violence; an attempt to commit any of the aforesaid offenses; assault with intent to murder; and assault with intent to rape.

The term "correctional institution" includes Patuxent Institution and a local or regional jail or detention center.

(b) *Mandatory life sentence.* — Any person who has served three separate terms of confinement in a correctional institution as a result of three separate convictions of any crime of violence shall be sentenced, on being convicted a fourth time of a crime of violence, to life imprisonment without the possibility of parole. Regardless of any other law to the contrary, the provisions of this section are mandatory.

(c) *Third conviction of crime of violence.* — Any person who (1) has been convicted on two separate occasions of a crime of violence where the convictions do not arise from a single incident, and (2) has served at least one term of confinement in a correctional institution as a result of a conviction of a crime of violence, shall be sentenced, on being convicted a third time of a crime of violence, to imprisonment for the term allowed by law, but, in any event, not less than 25 years. Neither the sentence nor any part of it may be suspended, and the person shall not be eligible for parole except in accordance with the

provisions of Article 31B, § 11. A separate occasion shall be considered one in which the second or succeeding offense is committed after there has been a charging document filed for the preceding occasion.

(d) *Compliance with Maryland Rules.* — If the State intends to proceed against a person as a subsequent offender under this section, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender. (1975, ch. 253; 1976, ch. 611, § 1; 1977, ch. 290, § 1; ch. 678, § 1; 1978, ch. 725; 1981, ch. 353; 1982, ch. 479; 1983, ch. 202.)

Effect of amendments.
The 1982 amendment, effective July 1, 1982, inserted "burglary; daytime housebreaking under § 30 (b) of this article" following "arson" in subsection (a) and added the last sentence in subsection (c).
The 1983 amendment, effective July 1, 1983, inserted "and maiming under §§ 384, 385, and 386 of this article" in the first paragraph in subsection (a).
University of Baltimore Law Review. — For comment, "Rights of the Maryland Probationer: A Primer for the Practitioner," see 11 U. Balt. L. Rev. 272 (1982).
Section limited to repeat offenders whose crimes involve force or violence. — The language used by the General Assembly shows an intent to limit the application of this section to repeat offenders of crimes actually involving force or violence. *Temoney v. State*, 290 Md. 251, 429 A.2d 1018 (1981).
Subsection (c) of this section is mandatory and the trial judge must consider it when imposing sentence. *State v. Loveday*, 48 Md. App. 478, 427 A.2d 1087 (1981).
Term "two separate occasions" in subsection (c) has a plain meaning and is not fairly susceptible of an interpretation other than that of two unconnected, distinct, or unique times. *Lett v. State*, 51 Md. App. 668, 445 A.2d 1050 (1982).
Where State relies upon prior convictions in another jurisdiction as the basis for the imposition of a mandatory sentence, the State must introduce evidence showing the convictions were for crimes of violence within the meaning of this section. *Temoney v. State*, 290 Md. 251, 429 A.2d 1018 (1981).
Enhanced sentencing under subsection (c) of this section may not be imposed unless the State has demonstrated that prior convictions in another jurisdiction were in fact based on

crimes of violence. *Myers v. State*, 48 Md. App. 420, 427 A.2d 1061 (1981).
Effect of constitutional flaw subsequently discovered in general process by which conviction obtained. — The fact that the general process by which a conviction was obtained is later, in another case, found to be constitutionally flawed does not necessarily taint the otherwise valid conviction. Whether the conviction is tainted depends on the nature of the defect, primarily whether that defect touches the integrity of the factfinding process that led to the conviction. *Raiford v. State*, 52 Md. App. 163, 447 A.2d 496 (1982).
Effect of conviction under statute later held unconstitutional. — Convictions, valid when entered, that are not subject to expungement, do subject the defendant to legal disabilities as a result of them, and may be used for impeachment purposes, may be regarded as valid and viable convictions for purposes of the mandatory sentence provisions of this section even though defendant was tried for the convictions as an adult under a statute that was later found to be unconstitutional. *Raiford v. State*, 52 Md. App. 163, 447 A.2d 496 (1982).
Prior conviction set aside under Federal Youth Corrections Act. — A conviction under the Federal Youth Corrections Act, 18 U.S.C. § 5010, which has been set aside pursuant to its provisions, may not be considered for purposes of enhanced punishment under this section. *Smith v. State*, 50 Md. App. 638, 440 A.2d 406 (1982).
Due process does not require prosecutor, during plea negotiations, to disclose his intent to invoke this section if the plea negotiating failed and the defendant is convicted by the jury. *State v. Loveday*, 48 Md. App. 478, 427 A.2d 1087 (1981).
Cited in *State v. Calhoun*, 290 Md. 1, 425 A.2d 1361 (1981).

Bed Capacity - Rated and Actual Operating, Males

Males	Present	
	Rated	Operating
MRDCC	400	744
MP	1053	1628
MHC	1406	1647
MHC Trailers	112	112
MCI-J	512	1027
MCI-H	748	1667
MCTC	1702	2511
MCTC EHU	128	128
BCF	512	570
JPRU	296	346
CLF	192	240
EPRU	135	140
BPRU	166	185
PHPRU	135	140
SMPRU	135	140
	7632	11,225
Contractual PRU		
Dismas-East and West	86	87
Montgomery County PRC	11	7
Threshold	26	29
	123	123

	Rated	Operating
Contractual Local Jails		
Allegany	10	10
Caroline	15	15
Garrett	<u>10</u>	<u>10</u>
	35	35
Local Jail Back Up		
Various Counties	100	100
Federal Contractual/ Count-Out	150	150
Patuxent	<u>180</u>	<u>180</u>
	8,220	11,813

Future Bed Capacity - Rated and Actual Operating

	Rated	Operating
450 Pre-Engineered MCI-H	450	450
BCCC	250	375
RCI	720	1080
Somerset	<u>1500</u>	<u>2250</u>
	2,920	4,155
Total	<u><u>11,140</u></u>	<u><u>15,968</u></u>

FOR: November 28, 1983

MARYLAND DIVISION OF CORRECTION

DAILY POPULATION CAPACITIES

PREPARED BY: Cheryl Mitchell

INSTITUTION, MALES:	OFFIC. RATED CAPAC.	ACTUAL OPER.	RESIDENT POPU.	D.O.C.	COUNT-OUT FED	TOTAL	TOTAL POPU.	AVAIL. BEDS	SPEC CONF POPU.	P/C	MINIMUM SECU.	PRS UNITS
MPEN	1053	1628	1649	13	43	56	1705	0	308	79	0	
MRDCC	400	774	772	3	12	15	787	0	38	16	7	
MHC	1406	1647	1658	9	2	11	1669	0	111	79	64	
MCI-J	512	998	984	11	1	12	996	2	46	27	7	
MCI-H	748	1667	1655	6	6	12	1667	0	441	85	8	0
MCTC	1702	2511	2506	4	9	13	2519	0	87	32	161	18
ROXBURY	124	124	124	0	0	0	124	0	0	0	14	0
BROCKBRIDGE	512	570	545	0	0	0	545	25	13	1	311	12
MCPRS	1107	1193	1164	2	1	3	1167	26			508	659
CONTRACTUAL PRU	123	122	122	0	0	0	122	0				122
SUB-TOTAL MALE INST.	7687	11234	11179	48	74	122	11301	53	1044	319	1080	811
FEMALES: MCI-W	258	398	383	1	0	1	384	14	4	3	30	0
Pre-Release/Women	32	32	18	0	5	5	23	9				23
CONTRACTUAL LOCAL JAILS	29	29	29				29					
TOTAL INST. COUNT	8006	11693	11609	49	79	128	11737	76	1048	322	1110	834
MALES and FEMALES LOCAL JAIL BACK-UP			72				72					
PATUXENT ANNEX*			168				168					
TOTAL D.O.C. COUNT MALES and FEMALES	8006	11693	11849	49	79	128	11977	76	1048	322	1110	834

Resident Population — Inmates who are physically present in the inst. regardless where located.

Count-Out Population — Inmates who are in custody of a Non-D.O.C. Agency (Non-D.O.C. — Hospitals,

Total Population — Total Institutional Count

Spec. Conf. — Special Confinement Population

P/C — Protective Custody population

	<u>PROJECTION 1</u> 26 Month LOS <u>512/Month Intake ..</u>	<u>PROJECTION 2</u> 27 Month LOS <u>512/Month Intake</u>	<u>PROJECTION 3</u> 28 Month LOS <u>512/Month Intake</u>
Actual ADP			
*July 1983	11,685	11,685	11,685
*Aug.	11,709	11,709	11,709
*Sept.	11,747	11,747	11,747
*Oct.	11,856	11,856	11,856
Nov.	11,911	11,928	11,943
Dec.	11,964	11,997	12,027
Jan. 1984	12,015	12,063	12,108
Feb.	12,064	12,127	12,186
Mar.	12,111	12,189	12,262
Apr.	12,156	12,248	12,334
May	12,200	12,305	12,405
June	12,242	12,361	12,472
July 1984	12,282	12,414	12,538
Aug.	12,321	12,465	12,601
Sept.	12,358	12,515	12,662
Oct.	12,394	12,562	12,720
Nov.	12,429	12,608	12,777
Dec.	12,462	12,652	12,832
Jan. 1985	12,494	12,695	12,885
Feb.	12,525	12,736	12,935
Mar.	12,555	12,775	12,985
Apr.	12,583	12,814	13,032
May	12,611	12,850	13,078
June	12,637	12,886	13,122
July 1985	12,663	12,920	13,165
Aug.	12,687	12,953	13,206
Sept.	12,711	12,984	13,245
Oct.	12,734	13,015	13,284
Nov.	12,755	13,044	13,320
Dec.	12,776	13,073	13,356
Jan. 1986	12,797	13,100	13,390
Feb.	12,816	13,126	13,424
Mar.	12,835	13,152	13,456
Apr.	12,853	13,176	13,487
May	12,870	13,200	13,516
June	12,887	13,222	13,545
July 1986	12,903	13,244	13,573
Aug.	12,918	13,265	13,600
Sept.	12,933	13,286	13,625
Oct.	12,947	13,305	13,650
Nov.	12,961	13,324	13,674
Dec.	12,974	13,342	13,698
Jan. 1987	12,987	13,360	13,720
Feb.	12,999	13,377	13,742
Mar.	13,011	13,393	13,763
Apr.	13,023	13,409	13,783
May	13,033	13,424	13,802
June	13,044	13,438	13,821
FY 84 Avg.	11,972	12,018	12,061
FY 85 Avg.	12,471	12,664	12,847
FY 86 Avg.	12,782	13,080	13,366
FY 87 Avg.	12,978	13,347	13,704

MONTHLY AVERAGE DAILY TOTAL POPULATION AND DOC SENTENCED INMATES IN LOCAL JAILS BY YEAR*

FY 1977, 1978, 1979, 1980, 1981, 1982, 1983

	<u>1977**</u>	<u>1978**</u>	<u>1979**</u>	<u>1980***</u>	<u>1981***</u>	<u>1982***</u>	<u>1983***</u>
July	7790 (1048)	8512 (1108)	8036 (371)	7929 (346)	7688 (353)	8445 (163)	10449 (64)
August	7837 (1017)	8596 (1163)	8027 (327)	7719 (305)	7640 (289)	8600 (158)	10585 (68)
September	7910 (1089)	8573 (1130)	7996 (368)	7780 (323)	7624 (243)	8730 (143)	10676 (73)
October	7985 (1079)	8534 (1098)	8022 (358)	7895 (395)	7677 (288)	8944 (124)	10800 (78)
November	8046 (1114)	8537 (1101)	8125 (412)	7970 (396)	7785 (298)	9134 (102)	10901 (86)
December	8044 (1118)	8429 (1077)	8103 (432)	7987 (415)	7841 (301)	9295 (86)	10990 (73)
January	7953 (1111)	8122 (906)	8045 (386)	7926 (370)	7801 (285)	9415 (91)	11037 (79)
February	8086 (1172)	8107 (798)	8131 (377)	8002 (372)	7854 (260)	9565 (102)	11090 (77)
March	8184 (1157)	8124 (780)	8149 (382)	8048 (368)	7904 (229)	9718 (104)	11190 (75)
April	8294 (1179)	8024 (644)	8086 (378)	8031 (365)	7966 (241)	9939 (105)	11354 (89)
May	8236 (1064)	8129 (604)	8060 (393)	8042 (370)	8117 (248)	10128 (114)	11493 (77)
June	8396 (1098)	8165 (604)	8107 (457)	7779 (351)	8284 (191)	10290 (85)	11624 (91)
Average	8076 (1104)	8322 (918)	8073 (387)	7923 (365)	7856 (269)	9350 (117)	11017 (77)

*DOC sentenced inmates in local jails are indicated by parens and includes both males and females when applicable.

**Averages from July 1976 until June of 1978 were calculated by adding the populations on the 1st, 10th and 20th of the respective month and dividing by 3.

***Averages since June of 1978 are based on the total number of days in the respective month for which a population report is received.

Senator SPECTER. With that introduction, I want to welcome Commissioner Fauver, who is the head of the Department of Corrections of the State of New Jersey. We thank you for joining us today, Commissioner Fauver, and we look forward to your testimony.

**STATEMENT OF WILLIAM H. FAUVER, COMMISSIONER,
DEPARTMENT OF CORRECTIONS, STATE OF NEW JERSEY**

Commissioner FAUVER. Thank you, Senator.

I am glad to be here. I think the recognition of the overcrowding problem in all of the States as well as in the Federal system is something that has taken awhile in coming, except for a few people, and I think you read my testimony because they are appropos to what I was going to say.

Senator SPECTER. Well, of course, I read your testimony, but I have not preempted it. [Laughter.]

Commissioner FAUVER. I would just like to paraphrase from it since it is entered into the record and then just have a kind of general dialog with you on some of these issues.

I think that New Jersey is reflective of many of the States, particularly the urban populous States. The reflection of the doubling of the prison population in the country is reflected within our State. Within 2 years, prison population went from roughly 5,600 to about 9,200, 9,300, a tremendous increase with no facilities or not the numbers of facilities to appropriately take care of that.

The reasons for this were several. It was, I believe, the general attitude in the country toward crime which was reflected by the legislators voting in tougher sentences. We have now in the State probably almost 50 percent of every adult male criminal coming in receiving a mandatory minimum sentence which makes a definite parole ineligibility.

I think that it is doing what it was intended to do, which was to get the type of person you are talking about, the career criminal or the person committing serious offenses, off the street, but in doing so, what was not taken into account originally was the need for space to do this.

There had been traditional parole rates. The rate has dropped, not because of the parole board but because of the type of sentence people are receiving.

Also entered into the material submitted, Senator, was Governor Kean's overcrowding plan, which if it can be followed through, we pretty much are on target with that. We have added literally thousands of bed spaces within a short period of time, and I think one of the things is in conjunction with Federal Government.

Senator SPECTER. If I may interrupt, how have you added those additional bed spaces within a short period of time?

Commissioner FAUVER. We reached a contract with the Federal Government for the use of the military stockade at Fort Dix, which was a 3-year lease, and we are leasing it, which enables us to house 500 inmates.

Senator SPECTER. What is the level of the security there, Commissioner?

Commissioner FAUVER. The security is medium security, which is our greatest need. In our system, we only have one really maximum security prison at Trenton, and that is, I think, appropriate, about what we need. The others are medium. They are not people that can be placed in camps or in work camps or on farms or in group homes or anything like that, but they do not need the intense security that they have at a maximum security prison.

Now, the difference may be minimal to the naked eye.

Senator SPECTER. On medium security, is there a wall around the compound?

Commissioner FAUVER. There is at least a fence around the compound with towers that are manned 24-hours a day.

The difference basically is there is more freedom of movement for the inmate inside of this secure perimeter than there is in a maximum security prison. Most maximum security prisons, the movements of the inmates are much more restricted. They are chopped up into smaller segments that they can move in and are more controlled.

Medium security to us would be many inmates doing under 20 years, any under a 20-year sentence as opposed to somebody 20 and up needing maximum security or because of their crime, because of the type of violence exhibited in the crime.

Senator SPECTER. And you have 500 beds at Fort Dix?

Commissioner FAUVER. That is correct.

Senator SPECTER. Are those dormitory style?

Commissioner FAUVER. Most of them are dormitory. There are about 100 cells. The rest are dormitory. They are dormitories of about 30 to 40 inmates in a dormitory.

Senator SPECTER. What kind of buildings were they when you took them over?

Commissioner FAUVER. This was built as a stockade. It was closed down when some operations were phased out of Fort Dix. So it's a relatively new building. It was built in the 1970's.

Senator SPECTER. So it was built as a prison?

Commissioner FAUVER. It was built as a stockade and was a holding area, yes, for the Army.

Senator SPECTER. Stockade is just a military term for prison.

Commissioner FAUVER. Military term for prison.

Now, we added security. It did not have the perimeter security that we have with the towers and the fencing because it was more a holding area than for sentencing. It was for shipment of Army prisoners to other facilities.

That gave us an immediate boost of 500 beds after we were able to do some maintenance work and improve the security.

Probably what I believe to be the most innovative of the ways we have dealt with it and I want to talk about how we dealt with it with construction, but I think also some of the programs where you do not need incarceration and there are the alternatives, because I do not think at any point the States collectively or the Federal Government can afford the cost of just building, only building prison space.

We went into modular prisons which are really kind of elaborate trailers put together. We have opened one and the plus with it is it

was able to go from the ground zero to completion and occupancy within 6 months.

So we have a 450-bed unit which we labeled "Southern State." We built it on the grounds of an existing facility, but it is free standing. Again, it is medium security, the security being provided by the double fencing with razor wire and manned towers.

Internally, it has all of the things that are necessary in the way of infirmary areas, visit areas, hospital areas, recreational, but the housing units themselves are dormitory, small dormitory units, 8 men to a unit making up a larger unit of 48.

Senator SPECTER. These are the new modular prisons you are talking about?

Commissioner FAUVER. That is correct.

Senator SPECTER. And how many beds have you added through that device?

Commissioner FAUVER. We have 450 on line right now, and we will have another 450 in February.

Senator SPECTER. What kind of a compound are they in? Is there a fence around them?

Commissioner FAUVER. Yes. That is a double fence with razor wiring between, and it is secure. The perimeter is secure with armed towers.

Senator SPECTER. How do you classify that, as medium security?

Commissioner FAUVER. Medium, yes.

Senator SPECTER. Where have you put those modular type?

Commissioner FAUVER. Those are on the grounds of our prison at Leesburg. We had over 1,000 acres on that site. We already had an existing 500 man, permanently constructed prison there as well as a prison farm.

Senator SPECTER. Do you face any zoning problems when you seek to expand the unit in that way?

Commissioner FAUVER. No, we have not faced real zoning problems. We have had some problems there which we have overcome because it is near the pinelands area and the preservation area and things like that. Zoning has not been a problem.

Senator SPECTER. Zoning is not a problem because the sovereign does not have to ask local governmental units what use it will make of the ground?

Commissioner FAUVER. I am not sure they have to in this case as far as the zoning laws. I would think that would have been addressed with the construction of the prison there in the first place, because the medium security prison at Leesburg, the permanent one, is only about 15 years old.

Senator SPECTER. Where is Leesburg, Commissioner?

Commissioner FAUVER. It is in Cumberland County, around Bridgeton, below Bridgeton or Vineland-Millville, on the way to the shore, only about 20 to 30 miles from the shore.

We have had to check through our own DEP on any environmental impact the construction would cause like additional sewage treatment into the system, things like that, drain on existing water supplies.

The opposition to the prisons, though, has basically been political opposition in the sense of a fear of a prison in a neighborhood rather than on the other grounds.

Senator SPECTER. How expensive are the modular units?

Commissioner FAUVER. The modular units are cheaper than the permanent construction. They run probably about \$18,000 per bed as opposed to the figures you quoted earlier of the \$50,000 and up in many cases.

The biggest advantage to us, though, on them, Senator, was the time frame. We started construction on the first unit last January, and by this February, we will have added 1,000 beds, which has been a Godsend to us.

Senator SPECTER. Are you overcrowded at the present time?

Commissioner FAUVER. Yes, we are overcrowded, and we have probably close to 800 inmates backed up in the county jails waiting to come into the State system.

Senator SPECTER. They have received sentences which ought to place them in State institutions?

Commissioner FAUVER. That is correct. They are under State sentence.

Senator SPECTER. And what plans are you making for additional bed space?

Commissioner FAUVER. We have currently underway the construction of about a 425-bed medium security prison in Camden, and we have on the planning boards—

Senator SPECTER. Where are you going to put that?

Commissioner FAUVER. It is right on the river. It is going to be just north of the Ben Franklin Bridge.

Senator SPECTER. Has Pennsylvania consented to that?

Commissioner FAUVER. No. [Laughter.] But if they escape they can go across the river. We will encourage them to go there. [Laughter.] But the other will be in Newark. We are planning to add 1,000 beds. We now are in the process of acquiring a 40-acre site, and we intend to build a 1,000-bed prison in the city of Newark.

So we think following through with that construction, the modular, some initiatives in intense supervision by increasing almost the daily supervision for people that before would have been sentenced, that we can address the problem.

Senator SPECTER. What kind of an increase, if any, has there been in the New Jersey criminal population over the course of the past decade, say?

Commissioner FAUVER. Well, it is close to doubling from 5,500, 5,200 to 9,000 something, 9,200.

Senator SPECTER. Over the past decade?

Commissioner FAUVER. Less than that. Over the past decade, it has been even more. But that has been within about 3 years.

Senator SPECTER. I see the figure 5,635 in January 1981 to 9,280 on October 31, 1983.

Commissioner FAUVER. Yes.

Senator SPECTER. How do you account for such an enormous statistical increase?

Commissioner FAUVER. Well, I think basically the get-tough policy of the passage of laws which carry mandatory minimum sentences where before probably our adult male population was split into two groups, one that received determinant sentences but very few mandatory minimums, and the others were a large group that

received indeterminant sentences which basically means that if you got a 5-year indeterminant sentence, you could be released from day one up to 5 years at the discretion of the parole board or at time determined by the boards of managers of the individual institutions.

Under the new laws, there is much more discretion on the part of the courts as to how they can sentence, and we find that more are sentenced with determinant sentences and with mandatory sentences.

So because they have the mandatory, they are ineligible for parole, and the bed space does not turn over as fast as it did previously. I think it is having an effect. The crime rate statistically is down. I think it is too early to say that it is because of the new laws and that we are keeping the people in.

Senator SPECTER. What is the reduction of the New Jersey crime rate?

Commissioner FAUVER. I am not sure of the percentages, but I saw the most recent State police report, and I know that it has decreased, and I would have to think that part of that is because of some of these people who are career people are staying in longer, and I think appropriately so.

I would like to mention one thing that I think is innovative and it's a way the State has dealt and helped the counties, and I think that it could be a model that the Federal Government could use in helping the States.

Most of our county jails were antiquated or at least not built to take the kinds of inmates—they are really just holding areas in many cases—that are now coming in, even on county sentences.

So through a prison bond issue a few years ago, we were able to get roughly \$36 million set aside to help the counties with their prison construction. As a payback for that county aid—well, which is really a grant more than aid—the counties agreed to house so many State inmates on kind of a pro ratio formula as to the size of the county and the number of commitments from that county.

This did a couple of things. One, it enabled us to pick up, over a period of year, 600 and some spaces in the counties. It has helped the counties because it has given them direct dollar figures to build with. It has given them capital construction money, including the added space they are putting in for the State inmates.

Now, in the counties, it is a small number. It may go from 10 beds in a small county to 50 in a large county as a way of getting State aid. So the State aid was given.

Also, it meets a lot of the more recent thinking among penologists that it is better to incarcerate closer to home so that family contacts can be maintained, and if there are some work release opportunities, the job will be one that the person can get and stay in their own particular area.

I would think the same type of thing could be applicable with the Federal Government in helping the States with construction money, and at the same time, being able to house inmates that may be from that State or at least closer to home than where they would be in a Federal system.

That, I think, is touched on in some of these bills, not in that kind of wording, but in some of the bills including some of those

that are yours, Senator, with the aid for construction and renovations. I think that is needed, but I think it also cannot be overlooked that the fact we have to provide some opportunities.

Your point before was well taken that you cannot just send, you know, someone that is illiterate, with no skills into jail and do nothing for him and expect him or her to come out and be a productive citizen.

So I think we have to have space in the institutions and money to provide for treatment programs to try to turn this around.

Senator SPECTER. What programs do you have, if any, under your system at the present time, Commissioner?

Commissioner FAUVER. Well, we have quite a few programs. Actually, we have literacy training programs through college programs as far as academic education, and we have voc-ed programs in more or less traditional fields such as auto body mechanics and some of the newer things, some computer work, TV repair, that type of thing.

We still have the standard kinds of prison industries that produce the standards for prisons such as license plates which are not produced anywhere else, but we do have voc-ed programs.

We do not basically have the space. Because of the overcrowding, we have had to utilize what was program space. We have inmates housed in dormitories. We have them housed in gymnasiums, chapels, places like that, and in doing this, it is a very risky gamble because you are now taking away areas where inmates could let off steam or where they could get education or could be helped more.

It is a catch-22 situation. The priority has had to be in the last few years on bed space, but I think it is important that as the bed space gets added that the concurrent space or living space for programs, et cetera, be there, and I think that this is another area that the Federal Government could help in with some moneys for treatment programs.

Senator SPECTER. What is your sense about the realistic possibilities of rehabilitation? Criminologists and penologists have abandoned rehabilitation in very significant numbers in the immediate past. Twenty-five years ago, the talk was all rehabilitation. In more recent times, many of those penologists, correctional officials have given up on rehabilitation.

What do you think the realities are, say, in dealing with the drug offender, a juvenile first or even second offender, if you give them a trade or a skill and teach literacy to have them shed the crime cycle when they are released from prison?

Commissioner FAUVER. Well, first I would like to say that I am not one that has given up on it. I think it is possible, and I have seen some success stories over the years that I have been in the prison system, but I think that one of the things that is unfairly expected of the prisons is that the prison systems should suddenly kind of make up for all the failures on the outside of the institutions in society, whether it is the family, the school, church, whatever, and suddenly turn the person that is incarcerated around.

I do not think that you can rehabilitate someone—I use the word; I am not even sure what it means—in a way if they do not want to help themselves.

I think that it is our responsibility as the administrators to try to provide the opportunities for them to do so if they wish to do so, so that if there is a program in drug treatment, it should be offered and not force people to go to it.

I think the mistake of the rehabilitation programs in the past is that we were not, at that point, willing to write anyone off. We tried to provide a program for everybody, and I do not think that can be done.

I think if you provide programs where there are work opportunities, things like that and you try to sell them to the inmates so that they will see that there is an end result to this.

Educationally, though, I think that we should try to make the academic education such that the person can at least read and write and know how to fill out a job application or go for a job interview, which is not always the case.

Senator SPECTER. Are you suggesting that some realistically have to be written off as prospects for rehabilitation, Commissioner?

Commissioner FAUVER. Yes; I am. I think so.

Senator SPECTER. How would you categorize those who have to be written off?

Commissioner FAUVER. Well, I think some by the length of their sentence. Not that they should be mistreated or anything. I think they should be afforded opportunities, but I do not think they should be given a priority. I mean, it is rather ridiculous to put an inmate who is doing three 30-year consecutive sentences and is facing actual flat sentences of 90 years before parole into a computer training program to get him ready to go out.

He would have been a blacksmith when he came in if he came in 90 years ago and would be getting out now. I think that we have to try to address the first and second, at least the first offenders, and try to make the opportunities available there.

I think there should be a greater emphasis, including in our own State we have been backward on this, with the juvenile offenders, of offering more toward the juveniles. I think one of the reasons we have not is from the early 1970's on, from the Attica down through all the other disturbances it was again the squeaky wheel getting the grease, and that was the adult system and the adult people.

The juvenile inmates do not know how to file lawsuits, for example. The adults do. I know everyday I get sued on something about prison conditions, and I think that a lot of our attention gets diverted to that because I have to be responsive to that to keep my job, for one thing, but the other is that it is really a fact that the juveniles really have no great advocacy group. Many of these younger boys and girls are not from any kind of stable families and there is no great push to help them.

I think that the more we can reach at that age, and I am talking about under 18 here, that I think that is going to be a person hopefully diverted from the adult system and will, if nothing else, save us money and a bed space at that point.

Senator SPECTER. Commissioner, do you have a judgment on the ability of the system to reduce violent crime if, in fact, we separate the career criminal from society with long sentences? Do you think there could be a serious reduction of violent crime if we followed that course?

Commissioner FAUVER. I think there could be. I mean, that may sound like a very simplistic answer to it but I will give you a couple of reasons why I feel that way. We have felt over the years that, and I have worked through the systems. I have been at it at different levels, and we have felt that there is really only a fairly small percentage of prison inmates who cause problems within the prison, I mean problems in the sense of riots and disturbances, not problems that they speak up for their rights or something.

That probably ranges from 10 to 20 percent. We have found that by setting up, and different States have done the same thing as has the Federal Government, what have been labeled in some places management control units, some kind of administrative segregation, whatever you would want to call it, separating those people out from the rest of the population and keeping them together but apart from the rest has cut down on the violence in the prison.

I also believe there are also such things as deterrents, and I think that the inmates know they are going to go into this kind of status. They really do not want to go into that kind of status. They lose a lot of privileges, and the fact that that is there as kind of a hammer hanging over them, I believe has helped the administration and the management of the system.

I think if those people are sentenced, are brought off the street, I think the same kind of thing will happen. I believe in New Jersey, one of the reasons for the increase in crime is that the word has not gotten out in general to the would-be inmates, and particularly the recidivists, that—

Senator SPECTER. When you talk about an increase, you have had some decrease you say recently.

Commissioner FAUVER. In crime, but not in commitments, I meant in the actual commitments into the prison system, the numbers are greater. And I would think that one of the reasons for that is that it still just generally is not known what the sentences are. The people that are committing a lot of the violent crime are not the people reading this in the paper, following laws that are passed, watching the evening news. The only way they know it is when they become involved with it, and we see that from inmates who come in, who say, "How did I get this kind of a sentence? The last time I was sentenced there was not this kind of a law. I am only supposed to get * * *"

Senator SPECTER. So you think that will produce some deterrence?

Commissioner FAUVER. Well, I think it would because I think if they can tell you that, it tells you that they have calculated that I will try this because the punishment is only X and if I get away with it, it may be worth it.

So I think to answer your original question on this, I think it would be effective in cutting down the violent crime. Even if it does not deter anybody else, it is certainly going to deter that person who is now put away for a longer period of time.

Senator SPECTER. Mr. Fauver, we very much appreciate your joining us today. As I had said to you in jest, you commented you used to be in Camden while I was district attorney of Philadelphia. We used to export some of our burglars and robbers. We were a little tougher on the west side of the Delaware than you perhaps

were on the east, and I do not want you to reciprocate with the construction of the prison on the Delaware by recycling them back to Pennsylvania. [Laughter.]

Thank you very much for coming.

Commissioner FAUVER. Thank you, Senator.

[The prepared statement of Mr. Fauver and additional material follow:]

PREPARED STATEMENT OF WILLIAM H. FAUVER

Good Afternoon:

I appreciate the opportunity to testify before you today on the subject of prison overcrowding.

The situation in New Jersey is not unlike that in many other states. Our correctional facilities, particularly our medium and maximum security institutions, are overcrowded. In the State of New Jersey the adult resident population in the State Correctional system has risen from 5,635 in January 1981 to 9,280 on October 31, 1983, with 840 State sentenced inmates being held in county jails because we simply have no room for them. We also have approximately 1,000 juvenile offenders committed to us; bringing our total jurisdictional count to over 11,000 offenders.

How have we dealt with this staggering population increase? In April, 1982 Governor Thomas H. Kean issued Prison Overcrowding, Plan of Action, copies of which have been provided for you. His plan was a two pronged attack; new construction and legislative and administrative initiatives. One significant change in the Governor's plan is the construction of one 1,000 bed facility instead of two 500 bed facilities. The design for this institution, to be located in Newark, has been awarded and we expect occupancy by August of 1986.

In all, Governor Kean's plan calls for the addition of 5,200 bedspaces by the end of 1986. These bedspaces will include additions to existing state and county facilities, new construction, both of a conventional as well as prefabricated nature, and the use of the stockade at Fort Dix under a three year lease agreement with the federal government. (We are currently housing 500 inmates in this renovated facility and will experience a severe logistics problem should this lease not be extended). To

date, including the aforementioned 500 inmates housed at Mid-State Correctional Facility (Ft. Dix), almost 3,000 bedspaces have been added to the New Jersey System. Notable among these is the 448 bed prefabricated facility opened in July of 1983. Southern State I is the nation's largest prefabricated modular prison built at a cost of 12 million dollars in six months time. Work is progressing on Southern State II and that 480 bed prefabricated facility should open by the end of February 1984. Other beds have come about through renovations at existing state facilities as well as, unfortunately, through the conversion of program space in those same facilities.

We have also contracted for 692 bedspaces in fourteen county jails under an innovative County Assistance Program. In exchange for housing state sentenced inmates, those counties choosing to participate in the program receive state money toward the construction or renovation of their county facility. In all, by the end of 1986 New Jersey should have available 12,300 bedspaces. However, our projected prison population for that time is over 13,500.

As I mentioned, along with Governor Kean's building plans were legislative and administrative initiatives, some of which have been passed by the legislature and signed into law, others still pending. I would like to bring the intensive supervision program, which is operational, to your attention. This program serves as an alternative to incarceration for persons convicted of non-violent crimes with no mandatory minimum sentence.

Those inmates selected to participate undergo an intense probation period for from one to five years. They must have daily contact with a probation officer, maintain a job and meet whatever other conditions are set by the sentencing judge. We estimate this program to cost approximately \$5,000 per participant as opposed to the \$15,000 per inmate we spend for incarceration. The Criminal

Disposition Commission, a body established through statute, is currently studying other alternatives to incarceration.

Even with the intense interest and high priority placed on the Department of Corrections by Governor Kean our overcrowding will not go away. Indeed each day brings more inmates; inmates who have committed more violent and more heinous crimes than previously seen. They are receiving longer sentences, many with parole ineligibilities, and they are becoming an increasingly difficult population to handle. In New Jersey and other States the overcrowding is causing law suits, federal sanctions and the early release of offenders. Some States are housing inmates in tents and buses. Currently there is no end in sight.

Clearly some of the legislation being proposed at the federal level could be beneficial to States struggling to cope with escalating populations and antiquated facilities. I refer specifically to the funding bills. Senator Spector's proposal to appropriate one percent of the annual Federal Budget toward programs aimed at cutting the nation's violent crime rate in half, includes provisions for millions of dollars for construction of prisons and jails. It also provides monies for inmate jobs and literacy training, and prison industry. Certainly inmate idleness, often a factor in inmate disturbances, is exacerbated by the increased populations and the need to convert program areas into bedspaces.

The Justice Assistance Act as released by the Senate Judiciary Committee contains a \$25 million dollar amendment to provide Federal Assistance for prison and jail construction and renovation. The money provided for State and local use would be welcomed.

Also of interest to us is Senate Bill 58 which authorizes incarceration in Federal prison for convicts sentenced to at least 15 years under the habitual criminal statute of a State. New Jersey's Criminal Justice Code

provides for extended sentences if a defendant is found by definition to be a persistent offender, and the prosecuting attorney has made application to, and been granted, such extended sentence by the court. The length of the extended term is controlled by the degree of the crime for which the defendant is currently being sentenced. Under our criminal code there are extended terms in excess of 15 years which can be imposed thereby qualifying us for consideration under this legislation. However, a question comes to mind;

Is the 15 years actual time in custody or can the 15 years be reduced by credits?

Also under S-58 the Attorney General would have to review the existing capacities of State's seeking transfer of inmates to the Federal system. Will a priority system be established and if so what standards will be employed to ascertain which States are most in need of the relief offered under this bill? If the Federal Bureau of Prisons had sufficient resources to expand its capacity to accommodate all eligible State prisoners, this question would be moot. However, since that seems unlikely, some fair and equitable means must be found to assure that no one State receives a disproportionate share of this new but limited resource.

I cannot cite a specific number of New Jersey inmates who would qualify for this program. Data from several years ago indicates that approximately 8% of our State prison population has been sentenced to State Prison on two or more prior occasions. Applying this percentage to our current population would yield a potential pool of approximately 500 inmates who could have been sentenced to extended terms as persistent offenders. The 15 year provision in S-58 along with judicial and prosecutorial discretion would reduce that pool of eligibles.

If we assume that the number of inmates eligible for transfer is as low as 20, at \$15,000 per year per inmate, a \$300,000 savings could be realized. In addition the 20 bedspaces provided by their transfer would be helpful.

Without being immodest, I believe we in New Jersey are doing a good job. Two of our main adult institutions are over 100 years old. We house inmates in excess of the designed and operational rated capacities. We are still able to provide educational and vocational programs. We have established law libraries in each of our institutions. Contact visits although getting more difficult to manage are ongoing. How much longer we will be able to continue these programs remains to be seen. Every gym converted to a dormitory increases tension. Every inmate not meaningfully occupied poses a threat to officers as well as to other inmates.

We will continue maintaining our correctional system with those programs and methods found to be effective while continuing to look about for new ideas and solutions. Ours is not an isolated problem and I believe the States and Federal Governments should be working together to solve it.

Thank you.

NOVEMBER 1983
ADULT INSTITUTIONS
OPERATIONAL CAPACITIES AND END OF THE MONTH COUNTS

INSTITUTION	OPERATIONAL CAPACITY	END OF MONTH COUNT	% + OR - CAPACITY
MID-STATE	500	489	- 2%
TRENTON	2078	1862	-10%
RAHWAY	1388	1474	+ 6%
LEESBURG	1103	1277	+16%
YARDVILLE	968	953	- 2%
BORDENTOWN	820	906	+10%
ANNANDALE	1036	1021	- 1%
ADTC	180	276	+53%
CLINTON	336	365	+ 8%
SOUTHERN STATE	448	435	- 3%
	8857	9058	+ 2%
PRE-RELEASE		142	
SUSSEX		27	
MERCER		52	
CAPE MAY		2	
		223	
GRAND TOTAL:		9281	

AS OF
7-29-83

N. J. DEPARTMENT OF CORRECTIONS
ADULT INSTITUTIONS
TYPES OF BEDS ADDED SINCE 1975

	PERMANENT BEDS ADDED	SEMI-PERM. BEDS ADDED	PERM. + SEMI-PERM. TOTAL	EMERGENCY BEDS ADDED	TOTAL ALL BEDS ADDED
TRENTON	868	---	868	---	868
RAHWAY	* 69	218	287	---	287
LEESBURG	---	201	201	90	291
C.I.W.	---	23	23	---	23
ADTC	---	---	---	78	78
YARDVILLE	---	48	48	60	108
BORDENTOWN	33	172	205	60	265
ANNANDALE	48	331	379	124	503
MID-STATE	---	**500	500	---	500
SOUTHERN STATE	---	***448	448	---	448
TOTALS	1,018	1,941	2,959	412	3,371

* At Rahway Camp, the 120-bed new construction replaced the old 51-bed camp for a net permanent gain of 69.

** Mid-State is being leased from the Army for three years with the lease expiring in 1985. On this basis, all beds are considered semi-permanent. Terms of the lease preclude the ability to exceed 500 inmates at any one time.

*** Southern State Correctional Facility opened in July 1983.

NEW JERSEY DEPARTMENT OF CORRECTIONS
WILLIAM H. FAUVER, COMMISSIONER
RESIDENT POPULATION COUNTS BY QUARTERS

MAJOR CORRECTIONAL INSTITUTIONS	RESIDENT LAST DAY POPULATION COUNTS BY QUARTERS ENDING:																				
	DEC 1978	MAR 1979	JUNE 1979	SEPT 1979	DEC 1979	MAR 1980	JUNE 1980	SEPT 1980	DEC 1980	MAR 1981	JUNE 1981	SEPT 1981	DEC 1981	MAR 1982	JUNE 1982	SEPT 1982	DEC 1982	MAR 1983	JUNE 1983	SEPT 1983	NOV 1983
TOTAL JURISDICTION	6410	6570	6643	6517	6490	6746	6666	6199	6542	7084	7940	8299	8722	9230	9942	9985	10737	10869	10872	11084	11070
COUNTY JAIL WAITING LIST	70	105	93	40	31	100	150	75	200	360	470	650	945	1232	1174	1234	1584	1316	1138	887	797
JUVENILE WAITING LIST	-	-	-	-	-	-	-	-	-	-	-	-	-	-	136	110	83	77	87	13	55
COUNTY JAIL TRANSFERS	-	-	-	-	-	-	-	-	-	-	-	48	50	60	72	80	111	129	119	79	81
TOTAL RESIDENT	6340	6455	6550	6477	6459	6646	6516	6124	6324	6724	7470	7601	7727	7938	8560	8561	8959	9347	9528	10105	10137
PRISON COMPLEX	3787	3787	3820	3755	3793	3833	3722	3450	3585	3827	4155	4259	4351	4427	5006	5098	5384	5609	5752	6260	6308
YOUTH ADULT CORR. COMPLEX	2082	2096	2084	2075	2058	2121	2118	2014	2101	2197	2528	2536	2557	2672	2692	2671	2761	2851	2861	2941	2894
JUV. TRNG SCHOOLS RESID/TRMNT CNTRS	471	582	646	647	608	692	676	660	656	701	787	806	819	839	862	792	814	887	915	904	935

COMPARED TO INSTITUTIONAL COUNTS ON SEPTEMBER 30, 1980 RESIDENT COUNTS ON NOVEMBER 30, 1983 INCREASED BY 4013 OR 66% FROM 6124 TO 10,137. THE COUNT IN THE PRISON COMPLEX INCREASED BY 2858 OR 83% FROM 3450 TO 6308. THE YOUTH COMPLEX EXPERIENCED A 44% INCREASE OR 880 OFFENDERS FROM 2014 TO 2894. THE COUNTY JAIL WAITING LIST INCREASED FROM 75 ON SEPTEMBER 30, 1980 TO 797 ON NOVEMBER 30, 1983.

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PRISON OVERCROWDING: A PLAN OF ACTION

GOVERNOR THOMAS H. KEAN, APRIL 1982

One of the most urgent problems facing my Administration is the problem of prison overcrowding.

This problem is not unique to the State of New Jersey. As a result of the tremendous increase in crime rates throughout the country, many states are experiencing significant difficulties in managing a rapidly expanding prison population. In fact, a recent count indicates that some 28 states are presently under the jurisdiction of orders imposed by federal courts mandating relief of overcrowded conditions in state prisons. To date, no such order has been entered by any federal court in New Jersey although litigation is presently pending before Judge Ackerman concerning overcrowded conditions in the Union County jail.

This problem had already risen to a serious level at the time I assumed office. At the time of my inauguration, over 1,000 state prisoners were incarcerated in county jails, in many cases under very difficult conditions which I have personally observed. In addition, our state prison facilities were operating at a capacity far in excess of what they were designed to accommodate, particularly in those institutions holding maximum and medium security inmates. The number of inmates that should be in state prisons but are being held in county jails has increased since the beginning of the year to a figure of 1,278 as of April 20, 1982.

The existence of the prison overcrowding problem was recognized by Governor Byrne who appointed a Task Force on Prison Overcrowding that submitted its report on December 3, 1981. Previously, Governor Byrne had signed Executive Order No. 106 declaring the existence of an emergency and conferring upon the Department of Corrections the power to use county correctional institutions for the housing of state prisoners.

The Task Force appointed by Governor Byrne made a number of findings and projections including the following:

- a. That the Department of Corrections resident population count had increased from 5,539 on September 30, 1980 to 7,816 on November 30, 1981.
- b. That 18 out of the 26 county jails were operating at over 100 percent operational capacity as of November 1981, and that 960 state prisoners were at that time being held in county jails.
- c. That the projections of prison population for this decade indicated an increase in population to a total of 14,400 by January 1, 1990.

Governor Byrne's Task Force which was appointed in October 1981 had of necessity a very short period in which to make its study and limited its recommen-

dations to short-term space alternatives, recommending that the long-term problem be addressed by the next Administration.

Immediately following my inauguration, I assigned to my Office of Policy and Planning the responsibility for developing a long-range solution to the prison overcrowding. I addressed this problem in my Budget Message to the Legislature and the budget which I submitted called for an appropriation of \$20 million in capital funds for the Department of Corrections in order to permit that Department to begin to deal with this most critical situation.

In accordance with my direction, the Office of Policy and Planning has coordinated an intensive study of the overcrowding problem. Involved in that study have been the Department of Corrections, the Parole Board, the Division of Criminal Justice in the Office of the Attorney General, the Administrative Office of the Courts, the Division of Building and Construction of the Department of Treasury and other State agencies and officials. Consultation has included representatives of the county sheriffs, the Criminal Disposition Commission appointed by the Legislature, and judges experienced in criminal sentencing.

The result of that coordinated effort is this special message to the Legislature which contains a plan of action to deal with prison overcrowding during the next decade.

The focal point of this plan is the commitment by my Administration to construct adequate facilities so that every person who violates the laws of the State of New Jersey and is sentenced to State prison can receive the punishment mandated by our courts. This is a simple but fundamental precept of our program. The State of New Jersey will have adequate prison capacity to confine every person sentenced to State Prison for violating the law.

Before describing the recommendations which I will make concerning construction of additional prison facilities, it is important to set forth the revised prison population projections which have been generated by personnel from the Administrative Office of the Courts, the Attorney General's Office, the Department of Corrections and the Parole Board. These population projections, although necessarily imprecise, constitute the best available information upon which to plan for the next decade. These projections were developed by experienced staff members who have studied the trends in sentencing before and after the enactment of the New Jersey Code of Criminal Justice which took effect on September 1, 1979.

Another prerequisite to the establishment of a construction plan for new facilities is an evaluation of modifications which need to be made in our criminal justice system in order to deal with the enormous increase in the number of prisoners sentenced and the length of prison terms resulting from the new criminal code. Accordingly, a part of my plan of action will involve a series of legislative and administrative initiatives which will better enable the state to deal with the prison overcrowding problem during the next decade.

The third element of the plan is the construction of new prisons. Two aspects of the construction program are particularly significant: first, the construction plan has been designed to mesh with the explosive increase in prison population, the bulk of which is expected to occur within the next two to three years. Therefore, a schedule of construction set forth in the plan is designed to match the growth in prison population as it has been projected over the next decade. Second, the plan includes utilization of the modern pre-fabricated construction techniques which have been developed in response to prison overcrowding problems. Both the cost of new facilities constructed in the traditional manner and the limited time frame available make it necessary to utilize pre-fabricated facilities to some extent, but our conclusion is that the facilities under consideration will provide the state with adequate and functional prison facilities which will be suitable for specific categories of inmates for whom maximum security facilities are not needed.

A. Population Projections

As of April 20, 1982 the total number of bed spaces available in State prison institutions for male adult inmates was 7,100 and the number required as of the same date was 8,378 or a deficit of 1,278. This deficit is temporarily being resolved by utilizing county jails throughout the State to hold 1,278 inmates.

From that starting point, we asked our staff experts to develop a projection of bed spaces required through January 1, 1988. It was our best judgment that the plan being implemented today should not extend beyond January 1, 1988 since to do so would require an inordinate amount of speculation about sentencing, parole, demographics and other variables too difficult to control.

The following chart which was developed by the various agencies projects bed spaces required as of January 1 of each year from 1983 to 1988 with a breakdown reflecting determinate and indeterminate sentences.

DATE	DETERMINATE ADULT	INDETERMINATE ADULT	TOTAL
January 1, 1981	4,485	1,150	5,635
March 23, 1982	6,071	1,707	8,265
January 1, 1983	8,086	2,262	10,348
January 1, 1984	10,157	2,771	12,928
January 1, 1985	10,920	2,300	13,220
January 1, 1986	11,770	2,180	13,950
January 1, 1987	12,360	2,140	14,500
January 1, 1988	12,880	2,110	14,990

It is clear from this table that our best projection of required bed spaces as of January 1, 1988 is 14,990, an incredible increase of almost 8,000 additional beds over the State correctional system capacity today. It should also be noted that the projected bed space requirement for January 1, 1984 is 12,928 beds, an indication that almost 6,000 of the 8,000 bed increase in the next six years is anticipated to occur by January 1984.

To put the problem in perspective, the plans for the new medium security prison in Camden call for a capacity in that prison of 400 beds at a construction cost of \$30 million. It is a matter of simple mathematics to verify that the State could not conceivably meet the demand anticipated to occur between now and January 1988 entirely by the construction of medium security prison facilities such as that contemplated in Camden.

The causes of this explosive increase in prison population are well known but should be restated. The new code of criminal justice has provided for a number of changes in criminal sentencing procedures. Presumptive sentences were established which serve as a guideline for the courts to indicate appropriate sentences for the various crimes resulting in longer sentences to State prisons. The code authorized for the first time the imposition of parole ineligibility (mandatory minimum) terms. It should be noted that approximately 30 percent of the sentences now being imposed by our criminal judges contain mandatory minimum sentences.

In addition, the amendment to the Code of Criminal Justice adopted in 1981 permits mandatory minimum sentences to be imposed for any crime and requires the imposition of a mandatory minimum sentence of not less than three years whenever a firearm was utilized in connection with a crime. The only exception is that in cases of fourth degree crimes the minimum mandatory term must be eighteen months. For second offenders the 1981 amendment requires extended term sentences which are approximately double the conventional sentence.

The impact of the presumptive sentences, discretionary parole ineligibility terms, mandatory/minimum terms, and extended sentences have resulted in an

enormous increase in sentencing terms and a correlative increase in real time served and a decrease in the number of inmates released by parole by virtue of the large number of parole ineligibility terms.

In addition, the Speedy Trial program which has been implemented by the Administrative Office of the Courts has resulted in a substantial increase in the number of criminal trials and in the number of persons being sentenced each year as illustrated by an increase from approximately 14,000 sentences in 1980 to 18,000 in 1981.

Because of the staggering impact of these projections on the capacity of the corrections system, it is our recommendation that a number of legislative and administrative initiatives must be implemented to provide the correctional system with greater flexibility than it now possesses to deal with this exploding population. The initiatives which we are recommending will not solve the population problem by any means. But they will serve to assist the courts and the Department of Corrections in dealing with the increased number of inmates and will introduce additional flexibility to the criminal law. These initiatives will also result in a moderate reduction in the projection of inmates anticipated to come into this system during the next decade. In no case do the initiatives which I am proposing conflict with the philosophy of the new criminal code and its intent to provide more severe and certain punishment to criminals.

B. The legislative and administrative initiatives which I propose are as follows:

1. An amendment to the law which would make the parole system realistically applicable to the prisoners in county jails. Although technically the parole law applies to county jail prisoners, as a practical matter it does not for the reason that the law now mandates that no prisoner in a county jail is eligible for parole until nine months of the sentence has been served. This results in anomalous and unfair sentencing. A prisoner in a State correctional institution with a sentence of three to four years could be eligible for parole in about nine months, whereas a prisoner sentenced to nine months in a county jail would have to serve an amount of time equal to a state prisoner sentenced to a three or four year term. Both the Commissioner of Corrections and the Chairman of the Parole Board support this change in the law and my discussions with the county sheriffs indicate that most of them would be supportive as well. There would be a minimum 60-day period in the legislation which we propose during which county prisoners would be ineligible for parole and a somewhat modified parole

procedure for county prisoners as compared with that which applies to State prisoners. The intent of this amendment, however, is to create an equitable parole eligibility rule with respect to both State and county prisoners and a result of such an amendment would be to decrease the sentenced population in county jails which amounts to approximately one-third of the total county jail population.

2. An increase in the maximum sentence that can be imposed as a condition of probation. The law now in effect restricts a criminal court judge who desires to impose probation, and a custodial sentence as a condition thereof, to a very limited choice. The longest custodial sentence which can now be imposed as a condition of probation is a sentence of 180 days in a county jail. If the sentencing judge feels that custodial sentence is inadequate he must then impose a sentence of the minimum term of State prison confinement which would be three years. This results in less flexibility for sentencing judges and a disproportionate number of prisoners being sentenced to State prisons compared to prior practice. The amendment which we propose would increase the maximum sentence as a condition of probation to 364 days and would also make the parole law which is to be applied to county jail prisoners applicable to persons sentenced to county jail as a condition of probation. It is our belief that this amendment will introduce greater flexibility into the law and will probably result in a decline in State prison sentences and a corresponding increase in county jail sentences. However, any such increase in county jail sentences should be offset by the application of the parole law to county inmates.

3. Emergency early parole release. I am proposing that the Legislature authorize, as recommended by the Task Force appointed by Governor Byrne, an emergency mechanism that would permit the acceleration of parole release dates for non-violent prisoners whose parole eligibility has already been established by the Parole Board and whose parole dates have already been fixed. The authority to be conferred by such legislation would require authorization by the Governor and the Commissioner of Corrections and would be designed to deal with an emergency overcrowding situation similar to the situation with which we are presently confronted. Under such circumstances, the Parole Board would be requested to identify non-violent prisoners whom they have already investigated and determined to be eligible for parole and whose parole eligibility dates have already been established. The legislation would authorize an acceleration of these parole release dates by not more than 90 days. It is my belief that such statutory

authorization may be an indispensable mechanism to be utilized in an emergency, but only in an emergency. It is similar to a statute which has been passed in the State of Michigan and implemented there on one occasion.

4. Adoption of a permanent authorization allowing the Department of Corrections to utilize all state and county facilities for the housing of state prisoners. This authority is now conferred by an Executive Order which will expire in May. It is clear that the Department of Corrections should have the authority conferred upon it by the Executive Order on a permanent basis. Our program to deal with the prison overcrowding situation requires a significant construction effort in a very short time framework and because of the extraordinary population increases and the impossibility of predicting precise construction completion dates, it may be necessary from time to time for the Department of Corrections to utilize again some space in county jails in order to deal with a short-term prison overcrowding situation. In no event do we contemplate that the prison overcrowding problem is to be solved on the backs of the county jails and officials, but it is clear that this flexibility must be provided by statute in order that the Department of Corrections has the necessary flexibility during the difficult months ahead.

5. Intensive probation. I am proposing that an intensive probation system be implemented to serve as an alternative to the service of State prison time for certain prisoners whose sentences were not for violent crimes and did not involve mandatory minimum sentences. This program would require a State level unit of approximately 25 carefully selected probation officers who would furnish intense probation supervision to a select group of 15-20 probationers each. The offenders to be included in the program would be selected after having received a sentence to State prison. Recommendations for resentencing to this intensive supervision program would be made, upon notice to the prosecutor, Commissioner of Corrections, and the sentencing Judge, to a three-person screening panel, with the final authority for resentencing to be with the sentencing Judge.

The central condition of this intensive supervision program will be employment. The prisoners would be required to maintain a job and also would be required to pay some of the cost of the program. Daily contact with the Probation Officer by telephone and regular personal contact several times each week would be required. Other conditions would include restitution, periods of community service, and participation in other programs such as alcohol rehabilitation, drug rehabilitation, or counseling as determined by the sentencing Judge. It is anticipated that the probation period would continue for at least one year and not more than five years.

It is estimated that this program could be run at a cost of approximately \$5,000 per participant as compared with a cost of \$15,000 to care for a State prisoner. The program would be funded by the State and would be commenced within the authorization now permitted by the rules of Criminal Justice. It is estimated that approximately 400 State prison inmates could be serviced by such a program each year.

6. Institution of residential treatment programs for prisoners with alcohol and drug abuse problems. A review of the operation of the New Jersey State Parole Board, and particularly the young adult panel which has responsibility for parole release decisions for young adults with indeterminate terms, indicates that a significant number of inmates in this category have alcohol and drug related problems. Discussions with members of this panel indicates that alcohol and drug abuse are common factors in the behavior patterns of large numbers of inmates who are incarcerated for non-violent crimes and for indeterminate sentences.

We have also been advised that the existence of residential treatment facilities offering alcoholic and drug abuse counseling programs specifically designed for correctional inmates would significantly affect the parole eligibility dates that could be assigned to large numbers of incarcerated young adults.

Accordingly, we have initiated through the New Jersey State Department of Health's Division of Alcoholism and Division of Narcotic and Drug Abuse Control the establishment of residential programs in existing State facilities which could serve this segment of the prison population. We are in the process of identifying facilities with sufficient capacity to treat offenders with alcohol and drug related dependencies.

The availability of such facilities would make it possible for parole release dates for young adults with indeterminate sentences for non-violent crimes to be accelerated, thereby affording some relief of the overcrowding conditions in these institutions and at the same time making available to such inmates programs specifically designed to facilitate their return to private life. The procedure that would be contemplated would be a conditional parole release, the condition of such release being the transfer of the inmate to a residential treatment facility and the successful completion by the inmate of the program at that facility. The selection of inmates to be admitted into such programs would be done by the young adult panel of the parole board, in cooperation with the classification committees now in existence at the various institutions.

7. Work Programs. It is my conviction that inmates in our state prisons should have opportunities and responsibilities for daily work to the greatest extent possible. Idleness in prisons is a cause of unrest and disruption, and is plainly destructive and inhibiting to any program of rehabilitation. Therefore, I have instructed the Commissioner of Corrections to expand to the greatest extent possible the work opportunities for state prison inmates. A pilot program with the Department of Transportation is to be commenced shortly with inmates from several institutions and it is anticipated that this pilot program will be expanded by the Department of Transportation to include increased numbers of prisoners. Similar programs will be initiated with the Department of Environmental Protection and other state departments. I am determined that inmates of state prisons have their days filled with work opportunities to the maximum possible extent. I have requested the Attorney General's Office to determine whether or not any legislative authorization will be required to implement this increased work program and will promptly submit such authorization for consideration by the Legislature in the event I deem it necessary.

These legislative and administrative initiatives taken together do not alleviate the prison overcrowding problem but they have the effect of reducing, by way of example, the projected prison population by approximately 1,400 beds as of January 1, 1988. Obviously, it is for the Legislature to determine whether or not to adopt these initiatives but it is clear that the alternative to such initiatives is a program requiring even greater construction of facilities than the one I propose here. These proposals are put forward in the belief that they are sound, reasonable and necessary without regard to the prison overcrowding situation, but they are particularly timely in view of it. I would also point out that our projections of population and construction have taken into account the benefits derived from these initiatives so I am urging the Legislature to consider this entire package of initiatives immediately and hope for speedy passage.

C. Construction Program

The construction program which we are proposing calls for the completion of additional facilities within the state prison complex as follows.

1. By January 1, 1983, 2,240 additional beds; of these 2,240 beds, 832 will be provided by newly constructed prefabricated modules and 1,400 will be provided by renovation or conversion of existing facilities, including 500 beds to be gained from the agreement with the federal government with respect to Fort Dix.*

*It should be noted that the lease with the Federal government for Fort Dix is for a three-year period and there is no assurance at this time that the lease will be extended.

2. By January 1, 1984, 1,597 additional beds will be provided including 605 from the renovation or conversion of existing facilities (including beds made available by Phase I of the County Assistance Program), 544 prefabricated modules and 448 prefabricated modules to be provided to the counties pursuant to Stage 2 of the county assistance program.

3. By January 1, 1985, 400 beds from the new Camden prison facility;

4. By January 1, 1986, 500 beds from a new medium security prison on a site to be determined;

5. By January 1, 1987, 500 beds from a new medium security prison on a site to be determined.

This program calls for a total of 5,237 beds, of which 1,400 will be new conventional medium security facilities, 1,824 will be prefabricated facilities, and 2,013 will be made available by the renovation or conversion of existing facilities. The detailed plans, sites and cost data for this program have been generated by the Department of Corrections, except for the sites for the two new medium security prisons which are still under discussion.

It should be noted that the program which we propose, after enactment of all the legislative initiatives and implementation of the proposed construction, will result in an annual deficit in available bed spaces of approximately 5 percent of projected population. This was done deliberately so that we should not under any circumstances overbuild correctional facilities and in order that we should make some allowance for the possibility that sentencing rates could be slightly lower than the rates projected by our staff.

In any event, the Department of Corrections has assured me that the projected 5 percent deficit is within their ability to manage and is preferable to a construction program that develops more facilities than are needed.

I must also emphasize the financial aspects of this program. My budget message to the legislature contains a \$20 million capital appropriation for Corrections which is absolutely imperative. If we are to meet the projected population of ten thousand state prison inmates by January 1, 1983, the Corrections Department must begin immediately after July 1 to prepare for the construction of the 2,240 additional beds planned for occupancy in early 1983. The funds for this construction will come almost exclusively from the capital appropriation contained in my budget message. It deserves and requires the approval of the Legislature. The operational requirements for these additional bed spaces will also necessitate an increase in the appropriations request for the

Department of Corrections in fiscal year 1983. In addition, the balance of the program which I propose will require the approval this November of a bond issue of \$160 million to finance the construction of the two new medium security prisons, phase 2 of the county assistance program and the renovations and modifications required to convert existing facilities within the Department of Corrections to meet the needs that we have forecast. I urge the Legislature to give this construction -- and the financial cost associated with it -- its most careful and speedy attention.

For the assistance of the Legislature I have annexed hereto as exhibit A to this special message data which includes our projections of adult state correctional inmates through 1988 together with a table showing the anticipated deficit in bed spaces that would exist if no legislative initiatives are approved by the Legislature as compared with the deficit which would exist if the proposals which I have outlined in this message are adopted by the Legislature. The exhibit also includes a construction schedule setting forth the proposed construction of bed spaces, their proposed location and a funding source analysis to illustrate the source of the funds for the construction initiatives which I am recommending.

The matter of prison overcrowding is a governmental responsibility of the highest priority. We cannot insist upon strict enforcement of the criminal law and strict sentences for criminals without providing the facilities in which sentenced prisoners can serve these sentences. The initiatives which I propose are long overdue; they should have been commenced at least 18 months ago. There is absolutely no time for delay and I have spared no effort in mobilizing the required information, and assembling a plan to put before you at the earliest possible date during my Administration. I am asking for your prompt and responsive attention to this most serious matter. The safety of our citizens and the enforcement of our criminal laws requires us to provide prison facilities sufficient so that every person sentenced to State prison can be accommodated and punished as required by law.

ACTUAL/PROJECTED NUMBER OF ADULT STATE CORRECTIONAL INMATES (BY YEARS) 1979 - 1988	
JANUARY 1, 1979	5,659
JANUARY 1, 1980	5,610
JANUARY 1, 1981	5,635
JANUARY 1, 1982	7,778
MARCH 31, 1982	8,265
JANUARY 1, 1983	10,348
JANUARY 1, 1984	12,928
JANUARY 1, 1985	13,220
JANUARY 1, 1986	13,950
JANUARY 1, 1987	14,500
JANUARY 1, 1988	14,990

PROJECTED NUMBER OF STATE CORRECTIONAL ADULT INMATES AND PROJECTED NUMBER OF
ADULT BEDSPACES (BY YEARS) 1982 - 1988

	WITHOUT POLICY OPTION REDUCTIONS			WITH POLICY OPTION REDUCTIONS		
	PROJECTED POPULATION	PROJECTED BEDS AVAILABLE	PROJECTED BEDSPACE DEFICIT	PROJECTED POPULATION	PROJECTED BEDS AVAILABLE	PROJECTED BEDSPACE DEFICIT
March 31, 1982	8265	7100 ¹	1165 ²	8265	7100	1165 ²
Jan. 1, 1983	10348	9340	1008	9848	9340	508
Jan. 1, 1984	12928	10917	1991	11528	10937	591
Jan. 1, 1985	13220	11337	1883	11820	11337	401
Jan. 1, 1986	13950	11837	2113	12550	11837	713
Jan. 1, 1987	14500	12337	2163	13100	12337	763
Jan. 1, 1988	14990	12337	2653	13590	12337	1253 ³

¹ This data reflects actual adult population counts on March 31, 1982 and not rated capacities. Also, these figures do not include approximately 920 juvenile offenders housed in state institutions or residential group centers and community treatment centers.

² State sentenced offenders backed up in the county jails.

³ The need for an additional 500 bed medium security facility by January 1, 1988 will be determined by November 1984 based upon then existing conditions and population projections.

PROJECTED NUMBER OF ADDITIONAL BEDSPACES BY TYPE OF CONSTRUCTION
1983 - 1988

	TOTAL BEDS	RENOVATION/CONVERSION OF EXISTING STATE OR FEDERAL FACILITIES	PREFABRICATED MODULES	CONVENTIONAL CONSTRUCTION
Jan 1, 1983	2240	1408	832	
Jan. 1, 1984	1597	605 (Including County Assistance Phase I)	992 (Including County Assistance Phase II)	
Jan. 1, 1985	400			Camden Prison (400)
Jan. 1, 1986	500			500 bed medium prison (site to be determined)
Jan. 1, 1987	500			500 bed medium prison (site to be determined)
Jan. 1, 1988	-			
TOTAL	5237	2013	1824	1400

Proposed Correctional Bedspaces to be added during Calendar 1982
(by January 1, 1983)

<u>Medium/Maximum</u>		<u>Minimum</u>	
<u>Location</u>	<u>Number</u>	<u>Location</u>	<u>Number</u>
1) Yepsen Unit, Johnstone Training Center	128	1) Wharton Tract (Prefab Unit)	48
2) Vroom Building, Wards 7, 8, 9 and 10	80	2) New Lisbon (Prefab Unit)	48
3) Prison Prefabricated Housing Complex (Corrections Property)	448	3) YRCC - Yardville (Prefab Unit)	80
4) Relocation of Juvenile Reception from YRCC to Jamesburg	29	4) YCI-Annandale (Prefab Unit)	48
5) Leesburg (Prefab Unit)	80	5) Willow Hall, Ancora Psych Hosp. (Renovations)	100
6) Mid-State Correctional Facility	500	6) YCI-Bordentown (Prefab Unit)	80
7) Trenton State Prison, Wings 1 and 7	226	Total Medium/Maximum	1,836
8) Trenton (Renovate Drill Hall and Hospital)	105	Total Minimum	404
9) Rahway (Renovate Textile and Storage Building	240	Total Bedspaces	2,240

Construction Type

Renovations/Conversion of Existing Facilities

Prefab Units

<u>Location</u>	<u>Beds</u>	<u>Location</u>	<u>Beds</u>
Yepsen	128	Prison Complex	448
Vroom	80	Leesburg	80
Relocation of Juveniles	29	Wharton	48
Mid-State	500	New Lisbon	48
TSP, Wings 1&7	226	YRCC - Yardville	80
SPR, Textile/Storage	240	YCI - Annandale	48
TSP Drill Hall & Hospital	105	YCI - Bordentown	80
Willow Hall	100		
Sub Total	1,408		832 = 2,240

Proposed Correctional Bedspaces to be added during Calendar 1983
(by January 1, 1984)

<u>Medium/Maximum</u>		<u>Minimum</u>	
<u>Location</u>	<u>Number</u>	<u>Location</u>	<u>Number</u>
1) Prison Prefabricated Housing Complex Corrections Property	448	1) High Point (Prefab Unit)	48
2) McCray Building Trenton Psychiatric Hospital (Renovations)	200	2) Arney Town (Prefab Unit)	48
3) County Jail Assistance Phase I	270	3) Rahway Camp (Renovate Existing Camp)	80
4) County Jail Assistance Phase II Prefab Units	448	4) YCI-Annandale (Prefab - Units Seg)	55
Sub Total Medium/Maximum	1366		
Sub Total Minimum	231		
Total	1597		

<u>Renovations/Conversion of Existing Facilities</u>		<u>Construction Type</u>	
		<u>Prefab Units</u>	
McCray Bldg	200	Prison Complex	448
Rahway Camp	80	High Point	48
YCIA (Seg Units)	55	Arney Town	48
County Assistance Phase I	270	Total	544
		County Assistance Phase II	448
Sub Total	605	Sub Total	992 = 1597

Proposed Correctional Bedspaces to be Added During Calendar 1984
(by January 1, 1985)

<u>Medium/Maximum</u>	
1) Camden Prison	400 (Conventional Construction)
	400

IV. Proposed Correctional Bedspaces to be Added During Calendar 1985
(by January 1, 1986)

<u>Medium/Maximum</u>	
1) New Medium Security Prison	500 (conventional construction) site to be determined

V. Proposed Correctional Bedspaces to be Added During Calendar 1986
(by January 1, 1987)

<u>Medium/Maximum</u>	
1) New medium security prison	500 (conventional construction) site to be determined

BEDSPACES COMPLETED BY:	C O S T / F U N D I N G S O U R C E				NO. OF BEDS
	EXISTING RESOURCES ¹	FY83 CAPITAL APPROPRIATION ²	1980 BOND ISSUE	1982 BOND ISSUE	
January 1983	\$ 6,211,000	\$ 13,004,000		\$8,560,000 ³	2,240
January 1984	---	---	\$30,000,000	51,440,000	1,597
January 1985	---	---	30,000,000		400
January 1986	---	---	---	50,000,000	500
January 1987	---	---	---	50,000,000	500
January 1988	---	---	---	---	
TOTAL	\$6,211,000	\$13,004,000	\$60,000,000	\$160,000,000	5,237

1 - Funds are available through the deferment of projects approved in prior capital appropriations and Bond Issues.

2 - Remaining funds of approximately \$7 million will be spent on projects deferred in prior years such as replacement of roofs, windows and other renovations at Annandale; replacement of water supply at Bordentown; reroofing at Yardville; roof replacement at Skillman; and gym roof replacement at Bordentown.

3 - Work will be completed by April 1983.

PROPOSED BEDSPACES IN PROGRESS TO BE ADDED BY JANUARY 1, 1983

EXISTING RESOURCES BEING UTILIZED

<u>LOCATION</u>	<u>NUMBER OF BEDS</u>	<u>COST</u>
1. Leesburg (Prefab)	80	\$ 775,000
2. Mid-State Correctional Facility	500	4,625,000
3. Relocation of Juvenile Reception from YRCC to Jamesburg	29	450,000
4. YCI Annandale (Prefab)	48	361,000
TOTAL	657	\$ 6,211,000

PROPOSED BEDSPACES TO BE ADDED BY JANUARY 1, 1983

FY83 CAPITAL APPROPRIATION (Available July 1, 1982)

<u>LOCATION</u>	<u>NUMBER OF BEDS</u>	<u>COST</u>
1. Yepsen Unit, Johnstone Training Center	128	\$ 1,564,000 *
2. Vroom Building, Wards 7, 8, 9, 10	80	440,000
3. Prison Prefabricated Housing Complex	448	10,000,000
4. Wharton Tract (Prefab Wood)	48	500,000
5. New Lisbon (Prefab Wood)	48	500,000
	752	\$ 13,004,000

* Includes funds necessary to renovate buildings at Jamesburg for Yepsen Unit patients

PROPOSED BEDSPACES TO BE ADDED BY JANUARY 1, 1983 TO APRIL 1, 1983NOVEMBER 1982 BOND ISSUE REQUEST (PHASE I)

<u>LOCATION</u>	<u>NUMBER OF BEDS</u>	<u>COST</u>
1. Wings 1 & 7, Trenton State Prison	226	\$ 3,000,000
2. Rahway (Renovate Textile/Storage Building)	240	2,220,000
3. Trenton (Renovate Drill Hall & Hospital)	105	1,000,000
4. RCC Yardville (Prefab)	80	775,000
5. Willow Hall (Renovations)	100	790,000
6. YCI Bordentown (Prefab)	80	775,000
Subtotal	831	\$ 8,560,000

PROPOSED CORRECTIONAL BEDSPACES TO BE ADDED BY JANUARY 1, 1984NOVEMBER 1982 BOND ISSUE REQUEST (PHASE II)

<u>LOCATION</u>	<u>NUMBER OF BEDS</u>	<u>COST</u>
1. Prison Prefabricated Housing Complex	448	\$12,600,000
2. McCray Building Trenton Psychiatric Hospital (Renovations)	200	3,200,000
3. County Jail Assistance Phase II	448	32,000,000
4. High Point (Prefab)	48	1,020,000
5. Arneytown (Prefab)	48	920,000
6. Rahway Camp (Renovate Existing Camp)	80	500,000
7. YCI Annandale (Prefab -- Seg Units)	55	1,200,000
Subtotal	1,327	\$ 51,440,000

PROPOSED BEDSPACES TO BE ADDED BY JANUARY 1, 1984EXISTING RESOURCES (1980 BOND ISSUE)

<u>LOCATION</u>	<u>NUMBER OF BEDS</u>	<u>COST</u>
1. County Jail Assistance Phase I	270	\$ 30,000,000

PROPOSED BEDSPACES TO BE ADDED BY JANUARY 1, 1985EXISTING RESOURCES (1980 BOND ISSUE)

<u>LOCATION</u>	<u>NUMBER OF BEDS</u>	<u>COST</u>
1. Camden State Prison	400	\$ 30,000,000

PROPOSED BEDSPACES TO BE ADDED BY JANUARY 1, 1986NOVEMBER 1982 BOND ISSUE REQUEST (PHASE III)

<u>LOCATION</u>	<u>NUMBER OF BEDS</u>	<u>COST</u>
1. New Medium-Security Prison (Conventional Construction) Site A	500	\$ 50,000,000

PROPOSED BEDSPACES TO BE ADDED BY JANUARY 1, 1987NOVEMBER 1982 BOND ISSUE REQUEST (PHASE IV)

1. New Medium-Security Prison (Conventional Construction) Site B	500	\$ 50,000,000
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Senator SPECTER. Governor Thompson is here now. We will proceed with him at this time.

Our next witness is the Governor of Illinois, the Honorable Jim Thompson. I note from this biographical résumé that he became an assistant States attorney in 1959 which was a vintage year for assistant States attorney. I joined the ranks at the same time. He has progressed, I guess you would say, to the Governor's chair, although from the various positions that I have had the opportunity to hold, there is none that I have enjoyed quite as much as being an assistant prosecutor. The firing line and the pit and the challenges are extremely interesting there, and some of the administrative responsibilities are not quite as extensive.

If you take a group of files into a courtroom and do a little justice, it is a very interesting line. But Governor Thompson then was professor at Northwestern University Law School, became the chief of the Department of Law Enforcement and Public Protection in the attorney general's office, moved up to the first assistant U.S. attorney in 1970, and then U.S. attorney for the Northern District of Illinois from 1971 to 1975. He distinguished himself in his office with some of the most important prosecutions involving many very important corruption convictions and after that was twice elected Governor of Illinois, recently reelected in 1982. He is a man who understands the problems of law enforcement in the various aspects and various dimensions as a prosecutor and he now has the responsibility for the State's correctional and prison system.

I note that Illinois has a very substantial inmate population of some 14,000, and that number is expected to rise. We very much appreciate your taking time, Governor, to come today and to share your insights with the Criminal Law subcommittee and the Judiciary Committee, and we very much look forward to your testimony.

**STATEMENT OF THE HONORABLE JAMES R. THOMPSON,
GOVERNOR, STATE OF ILLINOIS**

Governor THOMPSON. Mr. Chairman, thank you very much, and I appreciate very much the honor and the privilege of appearing before this subcommittee to discuss legislation which its chairman has introduced. I join in the chairman's remarks.

My first position in public life as an assistant State's attorney in Cook County probably taught me more than any other public position which I have held in 25 years, but the best job I ever had was being the U.S. attorney for the Northern District of Illinois, to be the U.S. attorney in that extraordinary district and to not only help teach young lawyers, two of whom have followed me into that post from the ranks but occasionally to get back into the pit myself and try a case. I look back on those days now as we wrestle with budget deficits and Federal/State relations, nuclear safety and all the other myriad things that come across a Governor's desk and across a Senator's desk, and I sometimes look longingly back to the time when we had 12 grand juries sitting at one time and everybody was in favor of what I was doing, 100 percent, a great day.

I welcome the opportunity to testify today in support of legislation which you, Mr. Chairman, have introduced to assist States in grappling with the problems of corrections, most specifically prison

overcrowding, and at the same time, to devote substantial Federal efforts, both substantive and in terms of resources, toward targeting the career criminal, the career violent criminal, incarcerating them.

You and I and many of our colleagues know firsthand the necessity of catching and prosecuting violent criminals, particularly those career criminals who commit most of the crime and prey on our society.

Our crime rate is much too high, and our people suffer as a result, and they want action. In election after election, in poll after poll, which I have seen and taken in my day-to-day work, the people of Illinois, my work with the National Governors' Association, the response of people is uniform. They view crime as the No. 1 problem in America except during periods of extreme economic distress such as those from which we are now emerging when unemployment goes to the top. When economic distress subsides crime goes right back up there.

And it is not just the actual experience with crime but the fear of crime and how it alters the lifestyle.

Your legislation, Mr. Chairman, targets the violent criminals for attack by society. It recognizes that such a program will cost money, and in fact, targets a goal, 1 percent of the Federal budget to combat crime in our society.

The measurable cost of crime to society is in the billions of dollars. I do not believe that we can much longer afford to delay our efforts even in these tight budget times.

It is not necessary to recite the litany of damages which criminal acts do to our Nation, its people, its institutions. They are reported daily across the land. Reports traumatize us. I would like to stress a need which is almost universal at the State level. It is dollars to provide prison cells for the criminals that we are already apprehending, convicting and sentencing.

The story is, in fact, not a new one. It sometimes approaches the stage of a broken record. In November of 1981, for example, a little over 2 years ago, I appeared before another distinguished subcommittee of the U.S. Senate Judiciary Committee in support of a bill by Senator Dole which was directed at providing Federal dollars for State assistance in constructing badly needed prison cells.

Between 1981 and 1983, I served as a cochair of the Attorney General's Commission on Violent Crime. Of course, as you know, Mr. Chairman, one of the recommendations of that Commission was for substantial Federal efforts to assist States in this problem.

The whole Nation has experienced monumental prison population growth and it continues unabated. In 1981 and 1982, the State/Federal prisoner population grew by 12 percent in each year. For the first 6 months of 1983, the growth was reported as 4 percent.

The cost of providing added space in our prisons has risen as well. It is, indeed, difficult to find a State in this land which is not grappling with the financial burden of prison cell expansion against several financial constraints.

Mr. Chairman, everyone has run out of room. The recent national convention of the American Corrections Congress was held in Chicago, Ill. just several months ago, and so we had gathered in

our State corrections officials from every State of the Nation. They spent nearly a week there discussing common problems.

Because we were experiencing prison overcrowding at the time and because we thought that perhaps contracting for space in other State correctional facilities might be at least an answer, we surveyed all 50 States' corrections directors who were present at the meeting. In all of the 50 States, we could find but 20 empty beds, which we immediately purchased from the State of Nevada and shipped 20 prisoners there.

It is just a tiny drop in the bucket compared to our problem but we were determined to let no solution go, even if it approached only the symbolic, but what taught us was that the whole country is experiencing population up against capacity to the limit.

In fact, I suspect that at the end of this contract, Nevada will find their own use for those cells and those prisoners, and those prisoners will come back.

Senator Dole's proposal has not become a reality that I testified for in 1981. In fact, there are no Federal programs which provide States with the substantive financial support they need to meet the demands of the prosecutorial successes we have already achieved in our battle against violent crimes. So I am here again.

Let me relate for you the Illinois experience. It is, I believe, a carbon copy of the situation being addressed by nearly every State. I became Governor in 1977, January of that year. No new prison bed space had been built in the State of Illinois for perhaps decades.

Even before I took office, the outgoing Governor told me that the most serious problem facing me was the lack of adequate prison bed space for a rising prison population. I immediately attacked the problem, and by the end of the year, we had a new prison on line. That was fast action. It was not enough.

Since 1977, we have added nearly 4,100 beds to our adult prison system. In the next 2 years, we will add more than that. We are overcrowded, and despite our cell space additions in every conceivable form, we are becoming more overcrowded.

We have looked in Illinois from bottom to top for answers to space needs including the register of Federal surplus properties, school houses, State institutions that we have sometimes closed to bring other program costs under control. But these efforts have not been sufficient.

We are now in the midst of a capital program in Illinois in which the demands of our prison system account for 50 percent of all the capital spending of the State. Fifty percent of all of our capital spending this year is being devoted to corrections which means that education, mental health, aging, and all the other capital needs of the State must share the remaining 50 percent. We see no relief from that in the coming years.

In fact, in the present fiscal year and the fiscal year ahead, we see a total of \$150 million. Today our State adult prison capacity is 15,133 beds. By the end of June 1986 our projections indicate that we must have 21,000 beds.

In addition to the beds we have now, we have begun construction of prisons at all points of the compass including two new 900-bed medium security institutions in southern and eastern Illinois, con-

verting a closed mental health institution for use as a 1,200-bed prison and hospital in the northern part of the State, just announced the construction of two 500-bed minimum to medium security prison facilities in central Illinois which will serve as prerelease centers for those with just a few months to go on their sentence, designing still another 750-bed medium security prison for western Illinois, and we're seeking new sites for prerelease centers in the city of Chicago which has no State correctional facilities.

Illinois is a State that has wrestled with the long-term costs of prison construction. We have toiled mightily to respond to the demands that the criminal justice system makes upon us. The price of meeting these needs is extremely heavy and requires sacrifices in other areas.

But the people demand that we, and therefore, they, pay the price, and we are moving full speed ahead.

In addition to the capital costs, it cannot be overemphasized that the operating obligations placed on States such as Illinois, all of which have limited financial resources in this day of painfully precious tax dollars, are staggering.

The cost of operating the State's correctional facilities has literally tripped since I became Governor. This year's fiscal budget for the operations of the Department of Corrections is \$260 million.

In Illinois terms, for example, our highest expenditures are on education, a little over \$3 billion; public assistance, a little over \$2 billion; mental health, at around \$530 million; and then corrections is the number four spender in the State budget just for operations at \$260 million this year which will grow perhaps by another \$25- to \$30 million for fiscal 1985.

But we have not just constructed new prison bed space or modified old. We have looked for other answers within the criminal justice system, some of which are in the early stages. This fall session of the Illinois General Assembly, the legislature approved at my urging a package of State probation system changes which will, across several years, move our State to a uniform statewide probation service, operating under the control of the Illinois court system with ultimate guidance by the State supreme court.

This probation reform package which, of course, will include greater State subsidy of what had been essentially local probation services will include an intensive supervision segment designed to provide judges with an alternative to incarceration for nonviolent offenders.

When this new uniform statewide probation system is fully implemented in the next several years, the increased cost to the State in terms of providing new State resources will be \$60 million a year. When that is added to the increasing cost of operating the State's correctional system, you have a price tag for justice in my State which is quite high indeed.

We believe that uniform statewide probation services professionally run can be an answer, although only partially an answer, for the whole system of criminal justice, and we have high hopes for intensive supervisions which would move us from a system where a parole agent or a probation agent might now have 100 to 150 cases under his control, almost literally impossible to supervise, to a

system in which two agents would supervise 25 cases intensively as an alternative to incarceration.

At this fall session the general assembly, also at my request, repealed the State's 50-square-foot requirement for prison cells. We had a State law that required that in all new or remodeled facilities prisoners were entitled to 50 square feet of space, essentially mandating single-celling in our new institutions.

Though some people inside the political process sometimes resort to criticism of single-celling as an unwanted and unneeded luxury for those who have committed crimes, telling stories about college students in dormitories having less space than criminals or those who served in the Armed Forces in World War II having less space than criminals, the plain fact is that for a well-run, humane, and secure corrections system, almost any corrections director in the Nation would tell you that a good system must be able to offer some single-celling as an incentive for appropriate behavior behind the wall.

Sometimes I think the public and the press forget that there are more behind the walls than just convicted criminals whose rights and, indeed, whose lives it is often too easy just to wave off with, well, they deserve what they get; they committed crimes; that is why they are there.

Behind the prison walls in every State and in the Federal system there are wardens, administrative officers, corrections officers, doctors, nurses, teachers, clerks, families, visitors, including sometimes visiting legislators and members of the press. The corrections system has an obligation to be as safe as well as a humane place. It does not mean we have country club facilities. You must offer some incentive to appropriate behavior or a corrections director risks losing control to the gangs inside, especially is that true when we see a growing gang component as part of our corrections population.

Twenty to thirty years ago there was no such phenomenon. Today it is a common phenomenon. The gang structure moves from the streets to penitentiaries as members are convicted and they reform inside. To counter that, you have to put them literally on the road. Letting a gang leader who has been convicted stay in penitentiary A for 6 months and then moving them overnight to penitentiary B and on the road again, and it is difficult at times to cope with the gang structure behind the walls.

To meet demands for prison space in Illinois in addition to repealing the single-celling rule for our new facilities, in the interim, we have slept prisoners on the floors of gymnasiums and chapels and laundry rooms. Several recent national news publications carried pictures of mattresses lined up on the floors of our newer institutions as we waited for the repeal of the single-cell rule in the legislative session.

I believe the situation is critical and not just in Illinois. Our maximum security adult institutions at Stateville, Menard, and Pontiac have been double-celled for years, a practice which is under almost constant attack in the courts of the Federal system.

Just one word about the impact of Federal court rulings in this area, though I know that is not the precise nature of the legislation we are considering today. We must pay the attorney's fees in

inmate-brought cases in which the inmate prevails, and so there is sometimes an incentive to bring litigation.

Present pending cases carry potential legal costs for Illinois which total in the hundreds of thousands of dollars. At any given time, the State of Illinois must deal with an average of 800 inmate-brought court suits which challenge our operation of every penal institution.

Some cases are substantive. Others are trivial. My point is that none may be ignored, and all carry attendant costs for the State. They strain our ability to pay and the costs that they force upon us when they are successful are often painful and debilitating and frustrating to a corrections system which must deal with each in turn.

Corrections directors these days across the land sometimes feel as though they spend as much time in court testifying as they do in their institutions supervising.

In some instances, Federal court edicts in recent years have mandated staff to inmate ratios which we regard as unrealistic. They have required such things as law libraries which must seat 100 inmates as well as the number of hours the libraries must remain open. They have included suits on every aspect of confinement.

As a result of the forced availability of legal reference materials, the libraries, we must defend ourselves in actions that sometimes appear laughable but are not to people who are working zealously to run decent corrections systems.

One inmate sued us after he stomped his foot into a toilet, broke the toilet and cut his foot, and blamed us for the cut foot.

Senator SPECTER. Did he lose?

Governor THOMPSON. He lost after we spent time in court, filed pleadings, paid lawyers. Another suit finally dismissed by the court, one which penalized us in time and effort, called the State to task because an inmate claimed a bird had been allowed to fly into his cell while he was in prayer, stole a peanut butter sandwich, and thereby deprived him of his rights.

My point is not that prisoners should not have access to the legal system, but the Federal courts are heavy participants in the drama of prison demands today, and their edicts are sometimes expensive and seemingly never ending.

As I said, in 1981 when I last appeared in this role, I served as cochairman of Attorney General William French Smith's task force on violent crime. One of the recommendations of that body was that the sum of \$2 billion be allocated by the Congress over 4 years to aid States in the construction of correctional facilities.

The recommended criteria for such a program included demonstrated need for construction, 25-percent match by the States, and assurance that operational funding would be available for facilities built with those funds.

Here I am again, and our need is greater. I leave you with this thought. Incarceration of violent criminals is not a problem which the States should be asked to solve without Federal help. It is a national problem with a nationwide impact as your legislation, Mr. Chairman, recognizes, both in terms of the general welfare of our people and in terms of the burden of violent crime on interstate

commerce. I think there is a readily apparent basis for national action and action by the Congress.

You have such a vehicle before you in S. 899. I urge you and members of this committee to keep it on the front burner until it can be placed in such a shape to command the necessary support in Congress and the administration.

Both as the Governor of Illinois and the chairman of the National Governors' Association I pledge to you my support and our support, whatever it takes, in producing the proper vehicle to address the problem in our criminal justice system which we have long ago identified but which nevertheless remains a problem today and continues to escalate.

Thank you, again, Mr. Chairman, for the opportunity to testify, and I would be pleased to answer any questions you might have.

[The prepared statement of Governor Thompson follows:]

PREPARED STATEMENT OF GOVERNOR JAMES R. THOMPSON

Mr. Chairman and members of the committee. I welcome the opportunity to appear here today to support legislation which is aimed at placing violent criminals in prison--a goal worthy of the support of every state in the nation. Its sponsor, Senator Arlen Specter of Pennsylvania, who chairs this hearing, has been a prosecutor like myself. We know firsthand the necessity of catching and prosecuting violent criminals, particularly those career criminals who prey upon our society. The pattern of crime in this nation is all too clear. Our crime rate is too high and our people, who suffer as a result, want a reversal of this costly phenomenon.

Senator Specter's legislation targets the violent criminal for attack. Such a program will cost money. As the sponsor conceives it, we should be spending one per cent of the Federal budget to combat crime in our society. With the measurable cost of crime in the billions of dollars, we cannot afford to delay our efforts.

It is not necessary to recite the litany of damages which criminal acts do to our nation, its people, its institutions. These are reported daily across our land. The reports traumatize us. I want to stress a need which is almost universal at the state level--the dollars to provide prison cells for the criminals we already are apprehending, convicting and sentencing to our prisons.

The story is not a new one. It repeats itself like a broken record.

In November 1981 I appeared before another distinguished subcommittee of the United States Senate Judiciary Committee in support of a bill by Senator Robert Dole of Kansas which was directed at providing federal dollars for state assistance in constructing badly needed prison cells. The nation has experienced monumental prison growth and it continues. In 1981 and 1982 the state-federal prisoner population grew by 12 per cent each year. In the first six months of 1983 the growth was reported as 4 per cent. The costs of providing added space in our prisons has risen as well. It is difficult to find a state in this land which is not grappling with the financial burden of prison cell expansion against severe financial restraints.

Senator Dole's proposal has not become a reality. There are, in fact, no Federal programs which provide states with the substantive financial support they need to meet the demands of the prosecutorial successes we have already achieved in our battle against violent criminals. I am here again on the same topic.

Let me relate the Illinois experience. It is a carbon copy of the situation being addressed by nearly every state.

Since 1977, the State of Illinois has added 4,100 beds to its adult prison system. We are overcrowded. And despite our cellspace additions, we are becoming more overcrowded. We have looked in Illinois from bottom to top for answers to space needs, including the register of Federal surplus properties and the schoolhouses and state institutions we have sometimes closed to bring our program costs under control. But these efforts have not been sufficient. We are in a capital program now in Illinois in which the demands of our prison system account for 50 per cent of all capital spending in the past fiscal year, the present fiscal year and in the fiscal year ahead. A total of \$150 million.

Our state adult prison capacity is 15,133 beds today. By the end of June 1986, our projections indicate we must have 21,000 beds ready for criminals who will be under sentence to our penal institutions. In addition to the beds we have now, we have begun construction of prisons at all points of the compass, including two new 900-bed medium security institutions in Southern and eastern Illinois. We are converting a closed mental health institution for use as a 1,200-bed prison in the northern part of the state. We have

announced the construction of two 500-bed minimum-to-medium-security prison facilities in central Illinois. And we are designing still another 750-bed medium security prison for western Illinois. And we are seeking new sites for pre-release centers in Chicago.

Illinois is a state that has wrestled with the long-term costs of prison construction. We have toiled mightily to meet the demands our criminal justice system makes upon us. Though the price of meeting these needs is heavy, we are moving at full speed to meet them.

In addition to the capital costs, the operating obligations placed on states, such as Illinois, all of which have limited financial resources in this day of painfully precious tax dollars, are staggering. Expenditures for day-to-day operations of our Illinois prison system have tripled during my term.

Also this fall, the Illinois legislature approved, at my urging, a package of state probation system changes, which will across several years move our state to a uniform probation service, operating under the control of the Illinois court system. The package will include an intensive supervision segment designed to provide judges with an alternative to incarceration for non-violent offenders. When fully implemented, the price tag will be \$60 million a year.

The Illinois legislature in November repealed the state's 50-square-foot requirement for prison cells at my request. To meet demands for prison space in Illinois we have slept inmates in prison gymnasiums, in the chapels and at one institution we found space in laundry rooms. The situation is critical. Our maximum security adult institutions at Stateville, Menard and Pontiac have been double-celled for years, a practice which is under constant attack in the courts at the federal level.

Just a word about the impact of Federal Court rulings on us. We must pay the attorney fees in inmate-brought cases in which the inmate prevails. At present, pending cases carry potential legal costs for Illinois which total in the hundreds of thousands of dollars. I underscore that these are Federal cases.

Further, at any given time the State of Illinois must deal with an average of 800 inmate-brought court suits which challenge our operation of every penal institution. Some cases are substantive; others are trivial. My point is that none may be ignored and all carry attendant costs for the state. However, I must stress that the impact of such cases always is costly. They strain our ability to pay for them and the costs that they force upon us when they are successful are painful and often debilitating and frustrating to a corrections system which must deal with each in turn. Federal court edicts in recent years have mandated staff-to-inmate ratios which we regard as unrealistic; they have required such things as law libraries which must seat 100 inmates, as well as the number of hours the libraries must remain open; they have included suits on every aspect of confinement.

As a result of the forced availability of legal reference materials, we must defend ourselves in actions that are sometimes laughable. One inmate sued us after he stomped his foot into a toilet, broke the toilet and cut his foot. He blamed us for his cut foot. Another suit, dismissed by the court, but one which penalized us in time and effort, called the state to task because an inmate claimed a bird flew into his cell while he was at prayer, purloined a peanut butter sandwich and thereby deprived him of his rights. My point is not that prisoners shouldn't have access to the legal system but that the Federal courts are heavy participants in the drama of prison demands today. Their edicts are expensive. And seemingly never-ending.

In 1981, before I last appeared before members of the Senate Judiciary Committee, I served as co-chairman of Attorney General William French Smith's Task Force on Violent Crime. One of the recommendations of that body was that the sum of \$2 billion dollars be allocated by the Congress over four years to aid states in the construction of correctional facilities.

Recommended criteria for such a program include:

*Demonstrated need for construction.

*A 25 per cent match by states.

*Assurance that the operational funding would be available for facilities built with the funds.

It was suggested that funds should be allocated through a formula measuring a state's need for prison construction relative to all states.

Again, it is important that our continued response to violent criminals be balanced in approach. It would not serve this body well, nor the states which all of you represent, to penalize states, like Illinois, for their efforts and accomplishments to date. That would be a somewhat cynical response to a problem which genuinely threatens to financially overwhelm us.

We are here again and our need is the same.

I leave you with this thought. The incarceration of violent criminals is not a problem which the states should be asked to solve without Federal help. It is a national problem, with a nationwide impact. It is a problem exacerbated to a degree by actions of the Federal courts. And it is a problem I hope you will deal with in the traditional spirit of federal-state cooperation.

You have a vehicle before you in S. 889. I urge you to keep it on the front burner until you get it into the proper shape to do the job I think we all know must be done. I pledge to you my support, whatever it takes, in producing the proper vehicle to address the problems in our criminal justice system we have long ago identified, problems which, nonetheless, remain.

Senator SPECTER. Thank you very much, Governor Thompson, for a very thoughtful statement. I am very pleased to hear your support for S. 889, because you have the background to understand the problem thoroughly from many directions.

As you have noted from the text of the legislation, its principal thrust is to allocate 1 percent of the national budget to the fight against crime which would be something in the neighborhood of \$8.5 billion in fiscal year 1984, and over a 10-year period, to direct something in the nature of \$100 billion in the fight against violent crime with a number of focuses of attention, the prosecution system, the rehabilitation system, and the incarceration system.

A thrust is to rehabilitate those who can be rehabilitated with emphasis on juveniles and drug addicts, first offenders, perhaps second offenders, but once you get to career criminals to really throw the book at them with mandatory minimum sentences in the nature of 15 years to life.

My question to you, Governor Thompson, with your perspective, knowing the will of the people in one of the Nation's biggest States, What do you think the willingness of the people would be to pay \$100 billion over 10 years if we really constructed a criminal justice system which worked?

Governor THOMPSON. I think they would gladly pay it. We had a miniversion of that in Illinois just this fall. To avoid continuation of the early release program which Illinois and a number of States had adopted in desperation, attempting to match prison capacity with prison population, my legislature this fall committed almost

\$60 million precious dollars both to prison construction needs and to probation needs, and that does not take into account the exceedingly costly and increasing costs of other participation in the criminal justice system through the State's Department of Law Enforcement and grants to local law enforcement agencies.

I think in the scheme of things the American people would be willing to pay a substantial sum if they could see substantial results in the eradication of violent crime with particular focus on the career criminal.

There is increasing interesting evidence to come out. I read one news story this week on a recent project sponsored by the VERA Foundation that had its genesis in New York of identifying street crime and how it grew and at what ages of the criminal and where you could intervene most successfully to solve the problem.

But I think the mood of the American people is that we ought to be spending our money on domestic defense, as you noted in your remarks in the introduction of S. 889, because that is as fully important to this Nation as our external defense.

Senator SPECTER. In Pennsylvania, Governor Thornberg, who also has a distinguished record as a prosecutor and now as a Governor has led a fight for prison construction and mandatory sentences, and California, the source of proposition 13 and tax cuts, has passed two referendum on the subject. But I note at the same time the actions in Michigan with the recall of legislators who have raised taxes.

I just wonder if there is any contradictory lesson from California, Illinois, and Pennsylvania as opposed to, say, Michigan or perhaps the Michigan experience does not really bear on spending money for fighting crime.

Governor THOMPSON. I think the Michigan experience is not a relevant one to the Nation. I know it has bothered exceedingly individual members of State legislatures.

Senator SPECTER. Is the Governor of Illinois subject to recall? The U.S. Senate is not.

Governor THOMPSON. No. We wisely do not have such a provision in our constitution. [Laughter.] My State passed a billion-dollar-plus tax increase this year, a temporary surcharge on the State income tax and a 1 penny increase in the State sales tax, which goes into effect on January 1.

The public reaction was, I think, on the whole, while they were not thrilled, it was the first tax increase in 14 years in our State. I think if you could go to the citizens of any State and say, "Hey, we are only going to raise your taxes once every 14 years," the voters would say, "Done" in a moment.

I think the Michigan experience is different. Their taxes were already quite high, and they increased again, and I think that accounts for the recall. In opposition to what happened in Michigan, the voters of Ohio which was essentially a low to medium tax state, which just received a 90-percent increase in its income tax, had the opportunity to repeal the tax increase that had just been enacted by the legislation and to require a three-fifths vote of the general assembly for any future tax increase, and in that statewide referendum, the recall of the taxes themselves was defeated by a vote of almost 2 to 1.

Most every State in the Nation has had to raise taxes in the last several years. Some are still in the process. The Arkansas Legislature just increased the sales tax by 33 percent. The newly elected Governor of Louisiana has indicated he intends to ask for substantial tax increases this spring. Other legislatures will undoubtedly do it. Indiana, a very conservative midwestern neighbor to Illinois, raised both its sales tax and its income tax in special session last year.

So I do not think we should take Michigan's recall problems as any kind of anecdotal evidence that the public would not support increasing taxes to fight crime. To the contrary, every poll and survey that I see indicates strong support even for higher taxes if the higher taxes are tied to something that the people want and which they can see demonstrably happening, whether it is education or the fight against crime.

Senator SPECTER. Governor, I would like to ask you about a couple of the specific bills. I will describe them for you briefly because I know that you have not had a chance to examine all the portfolio of pending legislation.

One of them is S. 58 which would provide for the Federal Government to pay for incarceration of criminals convicted under State habitual offender statutes. Some 40 States have statutes providing for life in prisonment or long minimums for habitual or career criminals, and the thrust behind this legislation is to recognize the career criminal as a person who moves in interstate commerce, and frankly, to give the State judge some motivation to use the habitual offender statute.

What would your thinking be on such a proposal?

Governor THOMPSON. Senator, I did have a chance to read S. 58, and I find myself in agreement with it. We have tough sentencing laws in the State of Illinois. We have class X sentencing laws which provide for minimum mandatory terms of 4 years, a top term of 30 years for a first offense class X offense, and we have a three-time loser bill in the State of Illinois with life without parole as the penalty, and I would enthusiastically support and so would our judges, I believe, S. 58.

Senator SPECTER. Do you think it would induce judges to use the habitual offender statutes more if they knew there was adequate space provided by the Federal Government?

Governor THOMPSON. I think so, although I must say that in Illinois the record of our judges for giving tough sentences has dramatically increased over the last several years which is one of the factors leading toward our expanding prison population.

Senator SPECTER. S. 59 is a bill which encourages the States not to release functional illiterates without a trade or a skill and does not mandate it because of the Federal-State balance, our thought being that there cannot be that kind of a requirement. We are also very much aware of the difficulties of providing that kind of rehabilitation service.

But my question to you is what is the prospect for a State like Illinois being able to structure a rehabilitation system which would eliminate or seek to eliminate the release of functional illiterates without a trade or a skill who, at no surprise to anyone, return to the crime cycle.

Governor THOMPSON. Mr. Chairman, I must say I approach S. 59 with a little more trepidation, not only as the Governor of the State but as the chairman of the National Governors' Association because, as you can well imagine, we try to jealously guard our prerogatives as States and we do not cotton to much to the Federal Government telling us when we must do something, and with all respect, the provision which says you will take away our Federal funding in some unrelated area sounds like a mandate to us.

I think the goal is an admirable one, and it is a goal which no State should have to be prodded into by the Congress or the Federal Government. It literally makes no sense to structure a State correction system which returns people to the streets in the same fashion as they went in, perhaps skilled only in the ways of crime.

In 1977, when I became Governor, I found that the previous administration had closed down all prison industries as an economy move. I did not think it was a good economy move, and I ordered them opened. That took some upfront money to invest in machines and in training programs, and today the Illinois prison industries are going strong. They are not as sophisticated nor as large, for example, as those of the State of Texas which literally manufacturers almost all of its internal needs but they are much better than they were.

Inmates have a chance in Illinois to gain literacy and to gain credits in high school and in college. In fact, part of my job as Governor is to go through that stack of blue-backed petitions for executive clemency, and most of those who appeal for executive clemency for release before they ordinarily would be considered for release cite educational accomplishments they have been able to meet in their time in prison.

Now, I think in the long haul, we are going to get there, because that kind of situation is analogous to try to prevent ultimate societal and personal costs by not intervening earlier in analogous fields, either with senior citizens in their health care needs or abusing neglected children or in educational fields, the States may find themselves coming up short for the moment because the primary emphasis now is on putting your money into getting the raw bed space, and sometimes we have to skimp on what would be regarded as luxuries while you are trying to find a bed for a person, you are not worrying as much about his college credit course at the moment. But when the prison overcrowding problem is eased somewhat in some fashion, States will put, I think, full steam behind those, at least the States who are thinking long haul will, and we have in Illinois.

Senator SPECTER. Governor, I have just been handed a note that you have another commitment. I wonder if you would answer about one other bill which I would like to ask about.

Governor THOMPSON. Surely.

Senator SPECTER. And it is S. 52 which is a career criminal bill which was passed by both Houses of Congress last year and was part of the package vetoed by the President because he did not like one of the bills.

The essence of S. 52 is to provide that when a person has been convicted of two or more robberies or burglaries in the State system and is charged with a subsequent robbery or burglary with

a firearm, he would be subject to prosecution in the Federal court as a career criminal providing the State prosecutor agreed to have him tried there.

The thrust of the bill comes out of work which I did as district attorney and what I have heard on this Judiciary Committee where, for example, I would have 500 career criminals and I would try to prosecute them and they would judge-shop and get continuances, and I would have relished the day when I could have sent five of them to the Federal prosecutor and he has the individual judge calendar and speedy trial rules, a mandatory 15-year sentence. I concluded that if I could have sent five to the Federal prosecutor, the other 495 would have stood trial or pleaded.

They would not have gotten 15 years in our State system, but they might have gotten 5 to 10. My question to you is: What would you think about an approach where there would be that jurisdiction on a projection of limited use of that jurisdiction worked out by OMB for 500 cases in the first year? Would you think that to be a useful tool and would you see the Federal prosecutor using it judiciously when it would help the State prosecutor as opposed to stealing the big cases?

Governor THOMPSON. I think, Mr. Chairman, first generically that everybody in America would be better off if we approached the problem on a couple of tracks. The first track being that if we found judges who were giving inappropriate dispositions of State criminal cases and were being lenient on criminals who belonged behind bars, we ought to devise a system to get rid of those judges.

In Illinois, we have. Judges must run against their record in Illinois, and they must attain a 60-percent vote to be retained. When that provision was first enacted into our constitution, it was thought that that was a guarantee of lifetime tenure for judges. Now, 60 percent is sometimes a very hard margin to attain for any political candidate, and when a campaign is mounted against judges who are notoriously lenient, we have had some go from the bench.

I think that would be a good bill. I have seen in the 25 years that I have been in law enforcement now much greater cooperation between State and Federal prosecutors, much less of the glory grabbing that we used to see between prosecutors who had sometimes concurrent jurisdiction over offenses.

In Illinois, for example, U.S. attorneys and State's attorneys and assistant attorney generals work very closely together.

Senator SPECTER. There is not much glory really, is there, in prosecuting a career criminal by and large? I have never seen it.

Governor THOMPSON. Well, I think there could be considerable notoriety to a concerted campaign by a prosecutor to tell the community that he was going to rid them of one of the most undesirable elements, but I do not see prosecutors being jealous like that any more. I see them working together.

So I think the program in practice would work. The only caveat I would add is that the U.S. attorney, to do a good job, even on a selective sample of cases that were given to him by the local prosecutor obviously would have to have within his office the resources assigned to that.

Too often there is the tendency to assume that U.S. attorneys can be given additional responsibilities ad infinitum but if you do not have the young AUSA's and if you do not have the additional assistance from the FBI and if you do not have the clerk typists to back you up you cannot get the job done, and OMB would have to understand that this was a priority and increase the resources that they would allow the President to ask from the Congress for the Department of Justice.

Senator SPECTER. Governor Thompson, we appreciate your being here. We thank you for being generous with your time. I shall share your comments verbally with Senator Laxalt and Senator Dole and Senator Thurmond as an effective way of communicating, and of course, the record will be made available but we appreciate your being here, because you have contributed substantially.

Thank you.

Governor THOMPSON. Thank you, Mr. Chairman.

I have been given a note by one of my assistants that answers with a little greater clarity your question on the case of the foot stomper who sued us. After he sued us, he wanted to settle for \$300. We said no. Then said he would settle for \$50. We said no. The case went to trial, and we won. We had to go to trial to win.

Thank you, Mr. Chairman.

Senator SPECTER. Congratulations.

[Whereupon, at 3:15 p.m., the subcommittee adjourned and to reconvene at the call of the Chair.]



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