
North Carolina's Prison System: Is the Crisis Corrected?

by Mike McLaughlin

In 1987, North Carolina Insight devoted a theme issue to correction policy and the problem of prison overcrowding. Since then, the state has adopted a prison population cap, embarked on an ambitious construction program, and expanded programs that would punish offenders outside traditional prisons. Yet these are just the first steps toward the creation of an efficient and effective criminal justice system. What will it take to finally cure the crisis in correction?

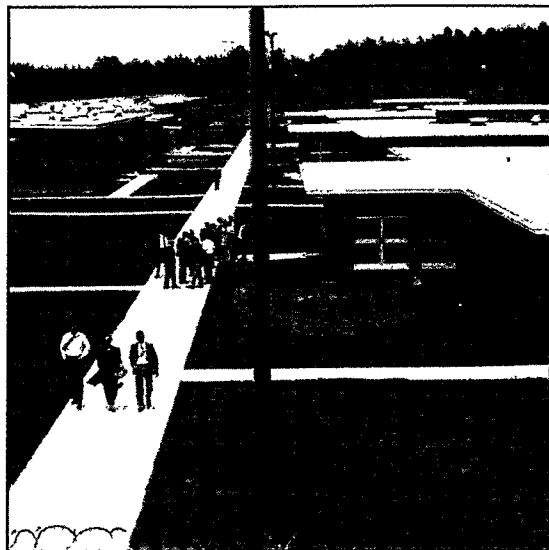
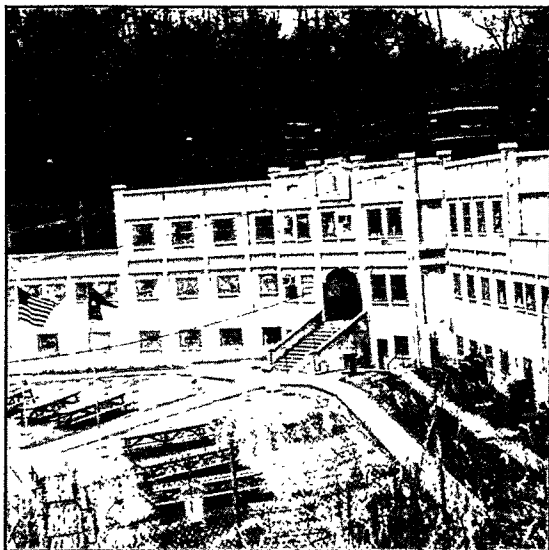
Gov. James G. Martin began to speak a little faster as he surveyed the storm clouds gathering above the ridgetops surrounding the brand new Craggy Prison, promising to finish his dedication speech before his audience got drenched. Martin's theme was that the transition from the old Craggy Prison in Buncombe County to the campus setting of the new Craggy Prison was symbolic of the state's commitment to creating a constitutionally defensible prison system. But the storm clouds were symbolic too. The prison system's problems are far from solved. There are clouds on the horizon, and experts say only the dogged pursuit of a solution that encompasses the entire criminal justice system will hold the storm at bay.

Although the threat of a federal takeover of the prison system has receded, the underlying causes of prison crowding remain. A real solution

will require several years of effort, hundreds of millions of dollars, and a new approach to criminal justice. This despite the millions of dollars already thrown at the problem and the lawsuit-fueled crisis atmosphere that pushed the correction system to the top of the agenda in the 1987 and 1989 General Assemblies.

As Deputy Correction Secretary Bill Crews describes the problem, the state's prisons are "full now and are going to be full for the foreseeable future." Crews uses the analogy of a hotel. "If the Holiday Inn is full and somebody shows up at the registration desk, the only way we can check them in is to check somebody else out," says Crews. "That's what we've been doing with the prison system. If you let somebody in the front door,

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Mike McLaughlin

Gov. James G. Martin says the transition from the old Craggy Prison to the new is symbolic of the state's effort to create a constitutionally defensible prison system.

you've got to let somebody else out the back door."

When Crews says the system is full, he means the state is housing so many inmates it is at or above a statutory ceiling that triggers emergency release measures to cap the inmate population at 18,000.¹ That trigger is set at 17,640, well above the current 15,071 capacity that would afford each inmate 50 square feet of cell space, the standard recommended by the American Correctional Association. The state agreed in an April 1989 settlement of the *Small v. Martin* lawsuit to meet the 50-square-foot standard by 1994 for the 49 prison units that were covered by the suit.² The state also expressed its intent to bring the entire 89-unit system up to that standard, says Deputy Attorney General Lucien "Skip" Capone, who handles prison litigation on behalf of the Department of Correction.

All told, the committee agreed that the state should spend \$800 million over eight years to attack the prison overcrowding problem, says Capone. But all that spending would not increase prison capacity by a single bed above the current 18,000-inmate limit.

For the foreseeable future, the Department of Correction will be "improving conditions of confinement," according to Crews, not expanding capacity. In the face of rapid population growth and an increasing crime rate, the state will be

dependent on alternatives to incarceration and the cap to control population.

The General Assembly refined the so-called cap bill with its emergency actions during the early stages of the 1989 General Assembly. These changes included raising the expedited parole trigger by 180 inmates (from 17,460 to 17,640), broadening the Parole Commission's authority to parole misdemeanants, and disqualifying drug traffickers, sex offenders, and kidnappers from the process designed to turn inmates out fast when the prison population exceeds the ceiling.³ Sam Wilson III, Parole Commission chairman, says although the General Assembly's actions improved the cap law, he is still uncomfortable with a parole system that spews out inmates who have served only a fraction of their sentences. "I have a real concern about what we are doing, long term, to the reputation of the criminal justice system," says Wilson. "That reputation is going to continue to be undermined because sentences are losing their meaning."

Even before the cap went into effect, inmates had been serving as little as one-third of their actual sentences, according to research by Stevens H. Clarke of the Institute of Government at the University of North Carolina at Chapel Hill. That's because under the provisions of the 1981 Fair Sentencing Act, inmates could automatically earn "good time" and "gain time" for behaving

and attending classes or working.⁴ Much of the discretion of the Parole Commission was removed. The effect, Clarke found, was to make sentences both more predictable and shorter. But judges voiced the same complaints as Wilson—that the public was losing confidence in the criminal justice system because time served was so much shorter than the actual sentence.⁵ To compensate, judges began handing down longer sentences. After a dramatic drop in length of sentences imposed on felons during the first two years after the Fair Sentencing Act took effect, sentence lengths began to increase again. Then came implementation of the cap bill, accelerating the parole process to further shorten actual time served and raising new concerns among judges that they had lost control of sentencing. "It's important to retain the discretion of trial judges," says Guilford Superior Court Judge Tom Ross. "Right now, much of that discretion is with the Parole Commission."

Still, Correction officials have little choice but to depend on faster parole of nonviolent offenders to contain the prison population until the state can build to the 50-square-feet-per-inmate standard. But can conditions be improved while maintaining sentences that command the respect of criminals and the public? And what about alternative sentencing programs? Are there inmates who could or should be punished through alternatives to incarceration? How many people can these programs effectively serve? How can we encourage judges to use them? And can we really punish criminals without the iron bars? These are some of the questions yet to be resolved as policymakers wrestle with the long-running crisis in correction.

Searching for Answers

The legislature's Special Committee on Prisons, which has pondered the problems of the prison system for more than three years, is positioning itself to chart a course for the future. The committee commissioned a study by Mark Corrigan of the National Institute for Sentencing Alternatives at Brandeis University. Corrigan found that as many as 5,000 inmates in the state prison system have criminal histories that are very much like a large group of convicted criminals who are on probation.⁶ The report has important implications both for saving the state money and easing prison overcrowding. For each convicted criminal on probation, the state spends about \$1.29 a

day, or \$470 a year. The cost for incarcerating an inmate at a minimum security prison is nearly \$31, a day or \$11,300 a year. It runs more than twice that amount at the highest security levels.⁷ And to the extent that new construction can be avoided, the savings is even more dramatic. The most recent Department of Correction cost estimates range from \$24,896 a bed for additions at existing minimum security prisons to nearly \$94,000 a bed for construction of a new maximum security or close custody prison (see figure 1). "In the data, there is a strong suggestion that there is a

*"You can judge the degree of
civilization of a society by
entering its prisons."*

—Fyodor Dostoyevsky

pool of people of substantial size that could be punished in the community [rather than in prison]," says Corrigan. "Those are the people who steal. They keep stealing. Is it possible to be more consistent with crimes involving stealing?"

Corrigan says the differences between the offenders on probation and the offenders in prison are relatively minor: the probation group on average is a little older and has committed fewer offenses. He theorizes that there are two kinds of offenders: violent criminals who are a risk to public safety, and habitual thieves, who, although a public nuisance, represent virtually no physical threat. Corrigan says habitual thieves could be punished in the community cheaper and at little risk to public safety. A bonus would be the increased likelihood that the criminal could work and pay restitution to the victim, or repay society for his crimes through community service work.

With a clear-cut cost advantage, and with other apparent advantages such as the increased likelihood of restitution, what prevents a wholesale shift toward community sanctions for thieves and other criminals who do not represent a physical threat? One obstacle is the absence of a well-defined policy subscribed to by the executive, legislative, and judicial branches of state government that would channel these offenders into community-based sanctions and out of expensive prison beds. Symptomatic of this lack of guidance is what Corrigan calls the biggest weakness in the state's criminal justice system—"a failure to dis-

tinguish the goal of public protection from punishment.” The criminal justice system, Corrigan says, has acquiesced in the public’s belief that the system should be concerned with punishing people and that the strongest punishment is imprisonment. But Corrigan says that with escalating construction costs and high recidivism (inmates who return to prison after committing another offense), such a stance is no longer prudent.⁸ Prisons, he says, should be about “public protection through the management of risk.” In other words, expensive prison beds should be reserved for offenders who represent a threat to public safety. “Punishment of low-risk offenders should be through the community,” says Corrigan.

Three major steps remain, says Corrigan, if North Carolina is to establish a model of corrections efficiency, with resources allocated properly among offenders. The state must: 1) define the purpose of its correction system much more clearly; 2) develop broader and more precisely

defined types of sanctions; and 3) establish statutory controls to assure that judges use alternatives to incarceration for certain types of offenses.

But the Special Committee on Prisons may find even step one, developing a statement of purpose, to be a formidable task. It’s tough enough to reach agreement about a purpose for prisons within the committee, which, despite an influx of new members during the 1989 legislative session, has developed a relatively high level of expertise about the problems confronting the correction system. Next would come convincing the General Assembly, and then the general public. Elected officials, after all, must represent the public, and must be responsive to the wishes of their constituents if they want to remain elected officials. Sen. Fountain Odom (D-Mecklenburg) is among those committee members who are not convinced that the public will accept a broad movement toward community-based prison alternatives. Odom, a freshman lawmaker and a new-

Figure 1. 1988 Costs of Prison and Selected Alternatives

Budget Cost Per Day Per Inmate

- \$37.47 (Overall average)
- 30.94 (Minimum security)
- 40.99 (Medium security)
- 51.35 (Close security)
- 62.32 (Maximum security)

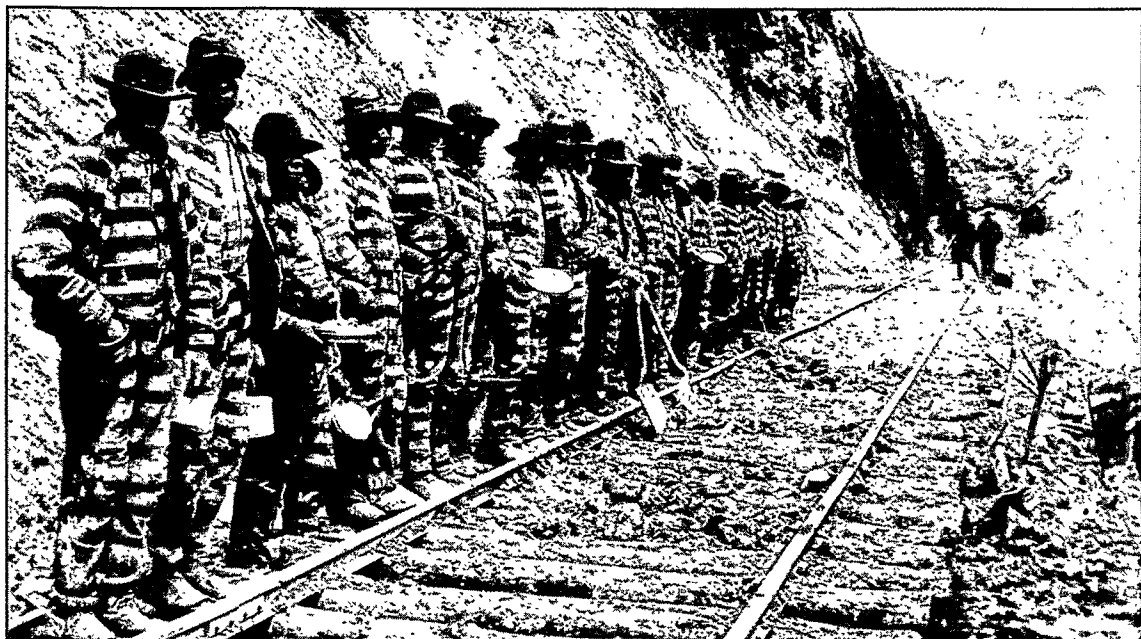
**Approximate Cost Per Day for Offender
in Various Alternative-to-Prison Programs**

- \$1.29 (Regular probation)
- 6.54 (Intensive probation)
- 5.27 (House arrest)

Cost Per Cell of New Prison Construction

- \$93,819 (New maximum or close security prison)
- 27,961 (Addition to existing medium security prison)
- 24,896 (Addition to existing minimum security prison)

Source: 1988 Annual Report of the Department of Correction, p. 12



N.C. Department of Cultural Resources

State prison labor often was contracted out to private industry around the turn of the century. These prisoners were working on a railroad in western North Carolina.

comer to the committee, made that point forcefully in an exchange with Corrigan during a committee meeting. Odom said the victim of a break-in *feels* violated even if there has been no physical assault. He said his constituents want hefty prison sentences and are willing to pay the cost of more prison construction to accommodate them.

Odom seemed skeptical when Corrigan suggested that the public could be educated to accept community-based sanctions for such non-violent offenders as habitual thieves. "I'd like to turn my Presbyterian Sunday school class over to you then, because after several sessions they still say, 'Build more prisons and I don't care what the cost is. We'll pay more because we want more prisons.'"

Wilson, the Parole Commission chairman, shares this concern about lenient treatment of people who steal. "We have become more harsh with the most serious offenders—drug traffickers, sex offenders, and kidnappers—but at the cost of providing miniscule punishment to thieves and housebreakers," says Wilson. "By failure to fully prosecute and incarcerate criminals who break into others' homes and steal, we are slowly destroying the public's hope for victims' justice, and the public's, the victim's, and especially the

criminal's respect for our criminal justice institutions."

A number of studies, however, indicate the public in fact may be receptive to punishment options that do not include traditional imprisonment. The Fall 1982 North Carolina Citizens Survey, conducted for the state by the Center for Urban Affairs and Community Services at North Carolina State University, found 88 percent of respondents would favor placing offenders convicted of non-violent crimes in supervised community group homes with restitution programs. Only 39 percent of respondents favored spending more tax money for building more prisons to relieve what was even then a looming crowding crisis.⁹

A 1986 poll commissioned by the North Carolina Center on Crime and Punishment initially found nearly half the respondents thought community punishments were a good idea for non-violent repeat offenders. But that number increased to 85 percent when respondents were given a set of facts about prison overcrowding and community punishments, including cost comparisons of prisons versus alternatives.¹⁰ This finding is similar to the conclusions of a Public Agenda Foundation study in Alabama—that participants



Triple bunks have spilled over into the dayroom at Central Prison's K Dorm.

would change their views "if they understood more about the issue."¹¹ In that study, participants were told of hypothetical crimes and asked to sentence 23 defendants either to prison or probation. The study participants then were given information about prison overcrowding and introduced to five new prison alternatives. In the first instance, participants sentenced 18 of the 23 defendants to prison. But after learning about alternatives, the participants sentenced only four of those same 23 defendants to prison.¹²

Corrigan says this shifting of opinion among study participants after they learn more about issues and programs provides an important cue for policymakers: the public can be educated to accept alternatives to prison. "In corrections, we are relying too much on raw public opinion to shape policy," says Corrigan. "We should be relying on informed public judgment."

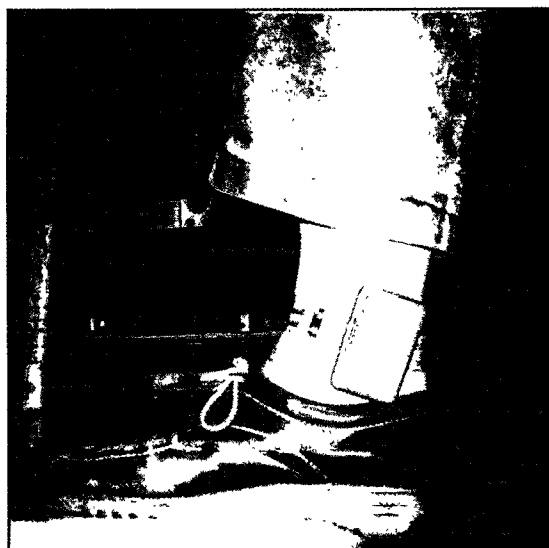
Despite such findings, some state lawmakers say their constituents demand tough sanctions against criminals, and they wonder whether alternatives are tough enough. "People are really concerned with crime and safety," says Rep. Frank J. Sizemore (R-Guilford), chairman of the House Judiciary Subcommittee on Corrections and a 1989 appointee to the Special Committee on Prisons. Sizemore says if community-based alternatives are to be expanded, criminals must know they are being punished. "If you lose respect for

law and the system of justice, we've done a disservice, not a service," says Sizemore. Prison alternatives must establish accountability and credibility with the public if they are to be broadly implemented as a relief valve for the crowded prisons, Sizemore says.

Corrigan agrees that accountability—measured by such standards as the number of inmates who complete a program of restitution to the victim without committing another crime, or who conquer substance abuse problems and rejoin productive society—is crucial to the public's acceptance of alternatives. "If these alternatives represent punishment, how do we make sure the payback occurs?" asks

Corrigan. "Unless we can be sure the agencies running programs are holding offenders accountable, they won't be widely accepted." Assuring accountability comes at a cost, Corrigan says. The General Assembly must allocate enough resources so that programs can handle heavy caseloads. "The programs themselves don't lack accountability," says Corrigan, "but in states where they are set up and don't have the re-

Anklet used in Electronic House Arrest Program.



sources, you can have that problem."

Still, Sen. David Parnell (D-Robeson), co-chairman of the Special Committee on Prisons, is among those who believe prison alternatives are a major piece of the answer to prison overcrowding. That's because a well-funded alternative program is still a bargain compared to building and operating a prison. "I don't think the average citizen realizes what it costs to keep an inmate in prison for a year," says Parnell. "I don't see why, in lieu of sentencing someone to prison who has not done any harm to anybody, who is not a danger to society, he could not serve in one of these alternative programs."

A Watershed Year?

Supporters of alternatives say the 1989 legislative session marked a watershed year. That's because the emergency legislation that was part of the settlement of the *Small v. Martin* lawsuit included a substantial appropriation for community-based sanctions.¹³ (For a full discussion of prison overcrowding and the potential role of alternatives in solving the problem, see Bill Finger, "Alternatives to Incarceration: Fledgling Programs Forced to Grow Up Fast," *North Carolina Insight*, March 1987, Vol. 9, No. 3, pp. 50-73.)

The Community Penalties program, for example, got a \$1.3 million budget boost for the 1989-1991 biennium that will pay for expanding from 13 to 18 judicial districts and lay the groundwork for making this alternative to prison available statewide. Under the Community Penalties program, a sentencing plan is drawn up calling for a range of sanctions that stop short of prison and placing the offender under the supervision of a probation officer. The program is designed for otherwise prison-bound offenders, so it has a direct impact on the overcrowding problem. Intensive probation and electronic house arrest programs also got a significant budget boost. Intensive probation provides for a higher level of supervision than traditional probation, and thus may be appropriate for some offenders who might otherwise wind up in prison. Electronic house arrest, in which offenders wear electronic anklets so their movements can be monitored by computer, could be a less expensive alternative to prison if used for technical violators of parole.

The emergency package also initiated two new programs: a boot camp for first offenders that uses education and military-style discipline to steer these offenders back toward the straight and narrow; and a treatment facility for drug and alcohol abusers imprisoned for driving while impaired. The emergency package calls for spending \$29 million on alternatives to incarceration out of the \$79.1 million appropriated, or about 37 percent.

"It's far more dollars than have ever been put to alternatives—a much larger proportion of the total bill," says Elizabeth Crowley, assistant director of the North Carolina Center on Crime and Punishment. "For the first time, a serious attempt has been made in the form of money appropriated to balance prison construction with alternatives."

Despite that promising first step, Crowley is among those who believe the state must take a comprehensive approach if it is ever to solve the crowding problem. "Regardless of what happens, if we don't get a comprehensive correction policy,

Correction officers Jay Newsome, James Fullwood (standing left to right), Virgil Mallard, and Tim Moose (seated left to right) operate computer used in Wake County electronic house arrest program.



N.C. Department of Correction



Cluttered ward at the old Craggy Prison.

even if we do pass heroic bills, we are never likely to get to a true solution," Crowley says. "We need a comprehensive correction policy. Until we have that, we will continue to pour money into, maybe, a sinkhole. We need a sound policy, and a way of evaluating whether or not the legislature's efforts are doing any good."

Corrigan called for a statement of purpose, a broadening of sanctions so that community alternatives are available statewide, and statutory changes to assure that alternatives are used. A paper titled "A Corrections Policy for the '90s" that preceded the Corrigan report also advocates a comprehensive policy.¹⁴ The paper, co-authored by four advocates of alternatives to incarceration, suggests that such a policy be hammered out by the Special Committee on Prisons. A working panel with representatives from the executive, legislative, and judicial branches of government would decide how to put the policy into practice. The ultimate vehicle for instituting alternatives to incarceration statewide, the paper suggests, is the Fair Sentencing Act.¹⁵ Former Gov. James B. Hunt Jr. championed the Fair Sentencing Act in 1979 with the aim of making more predictable and uniform the amount of prison time actually served by offenders. This is accomplished through presumptive sentences that judges must hand down in the absence of aggravating or mitigating circumstances (although as Clarke's research indi-

cates, the act may need some adjustment to assure that the intended effects do not wear off over time).

Lao Rubert, a co-author of the paper and the director of the North Carolina Prisons and Jails Project, says the only way to assure that community-based sanctions are used is to make them presumptive sentences under the Fair Sentencing Act for certain nonviolent crimes. "It doesn't mean judges would become just like clerks," says Rubert, "but if the legislature is ever going to be a policymaking body on these kinds of issues, they've got to give some guidance."

But much groundwork remains before the legislature can tackle the kind of legisla-

tive reforms envisioned by proponents of alternatives to incarceration. Judges likely would resist any reforms that would tie their hands by sharply restricting the range of sanctions available in sentencing. "Any sentencing philosophy that ultimately takes discretion away from judges is a mistake," says Ross, the Superior Court judge from Guilford County. Ross says he would not object to the legislature's amending the Fair Sentencing Act to include alternatives to prison among a range of sentencing options for certain crimes. "I understand the need to tie available resources to any sentencing policy the state is going to have," says Ross.

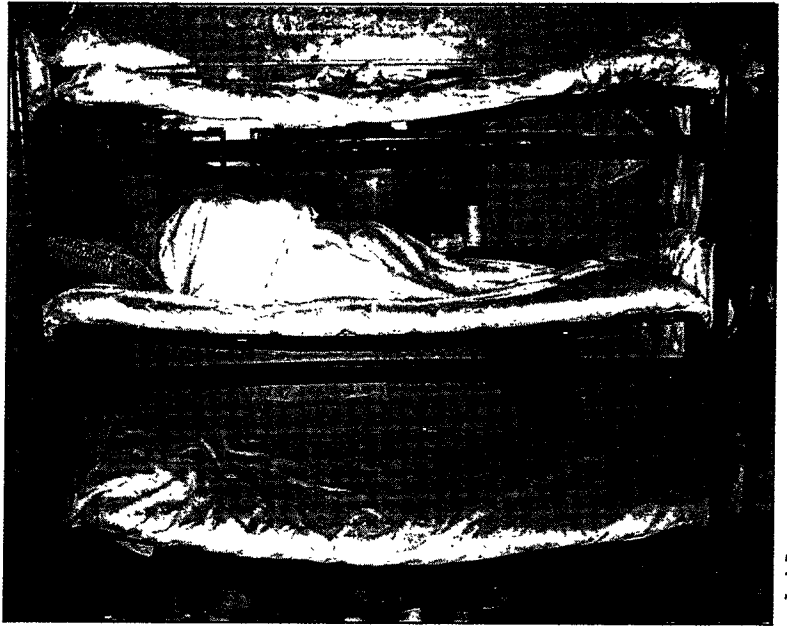
Rep. Anne Barnes (D-Orange), co-chairman of the legislature's Special Committee on Prisons, says she anticipates the committee will work for perhaps a year developing a range of policy options to present to the 1990 General Assembly. The legislature, Barnes says, must approach the correction system like a puzzle and determine how it wants the pieces to fit together. "It's important for us to determine what we want to accomplish," says Barnes. When, for example, is prison appropriate, and when should probation be tried? How do rehabilitation and treatment for substance abuse problems fit into the picture? Are there times when prisons should be used purely for punishment? If so, when? "And where does public safety figure in?" asks Barnes. "Are we

putting people in prison for public safety, and if so, why are we putting people in prison who write bad checks?"

These tough questions ultimately must be addressed in the legislative arena, says Barnes. Once the General Assembly decides on a direction, she says, a panel representative of the three branches of government would need to consider how best to implement the policy. "There's a lot of value in having people other than legislators on that panel," says Barnes.

Such a long-range planning approach, if successful, would put the state's criminal justice system on a sound course for the future. Correction officials, however, must worry about the present. Some trouble spots, such as Craggy Prison, have been brought up to standard. Inmates once slept in bunk beds stacked three high within the pea-green walls of a damp, dark fortress along the banks of the French Broad River in Buncombe County. Now those old bunks are piled in a rusting heap below the old Craggy's recreation field. The inmates have been transferred five miles down the highway to an airy and relatively spacious new prison that provides 50 square feet of dorm space per inmate.

But problems remain throughout the correction system. Probation and parole programs arguably are as crowded as the prison system. Community service programs are swamped with participants. And then there are the prisons that are not subject to the terms of now-settled lawsuits. Correction officials, in releasing their 1988 annual report, publicized conditions at Central Prison in Raleigh by conducting a tour of the prison's older dorms. Triple bunks are still used in Central's crowded K Dorm, an intake facility where prisoners are housed until they can be assigned to prison units at which they will serve their sentences. Even the inmates' day room is jammed with bunks, so that the common area is reduced to a small space for tables and a television. The dorm, designed for 37, was housing 117 inmates on the day of the tour, about 13 square feet per inmate.



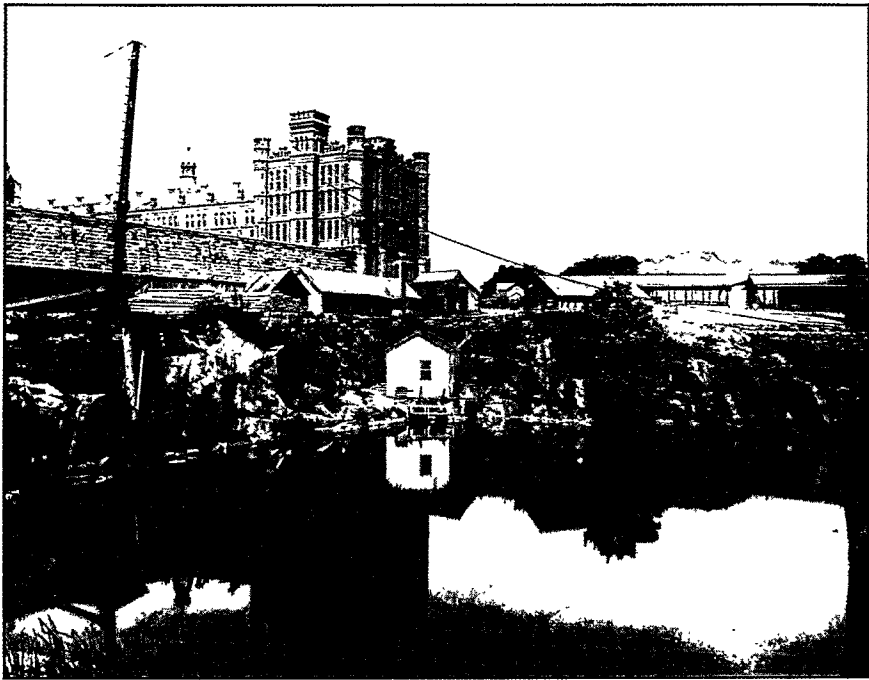
Jack Betts

Inmate sleeps the morning away in Central Prison's K Dorm.

A Powder Keg Waiting to Explode

Correction officials say the crowded dorm is partly the product of successful lawsuits against the prison system. Because two other intake facilities are under consent agreements that control crowding¹⁶ and Central is not under suit, more inmates are channeled into Central for processing. And because the system is essentially full, these inmates must be held at Central until bed space opens up in other units at the appropriate security level. This typically takes four to six weeks but can take months. "You've got to match a body with a bed," says Joseph Hamilton, director of the Division of Prisons. "We call it gridlock at times. It's the backing up of inmates in diagnostic centers because the right kind of beds aren't available."

Crowding at the level represented by K Dorm is a powder keg waiting to explode, say inmates who are housed there. "There is nothing to do but lay in bed," says Bobby Odell Stephens, 30, of Wilmington, who is serving a 30-year sentence for robbery with a firearm. "You get up and walk in a circle and go back to bed. With triple high bunks you can't sit in your bed." The dorm has four toilets and one urinal for the more than 100 inmates, most of whom try to crowd into these facilities in the few minutes before mealtime in the mornings. The result, says inmate Joe F.



N.C. Department of Cultural Resources

The old Central Prison and rock quarry, pictured here in 1890, was razed for a more modern facility in 1980.

Smith, 29, of Lillington, is a lot of jostling and tension and the potential for fistfights and even stabbings. "You can't live in there," says Smith, who is serving two life terms plus 28 years for a string of offenses, including first degree rape. "It's a death trap."

Correction officials say over the next several years they will try to expand to the 50-square-foot standard for 18,000 inmates, roughly the number now housed in the state prison system. Using that standard, the prisons now have a capacity of 15,071. The General Assembly has authorized construction to expand capacity to 16,395, and the Department of Correction is seeking funding during the 1989-1990 biennium to expand to 17,539. "There is still a gap," says Crews, the deputy secretary. "It will be the next biennium before we ask for the money to get to 18,000. For the next four to six years, the state will have to continue to stabilize at the current levels."

That means continued reliance on the cap as a pressure valve to relieve overcrowding. It also means the clock is ticking on serious policy reforms that would obviate the need for another round of expensive prison construction. Crews says the hope for holding the prison population at about 18,000 depends upon the aggressive im-

plementation of alternatives to incarceration. "As long as we have a broad enough base of alternatives, we can handle it," says Crews. "We can stabilize at 18,000."

A More Permanent Solution

But the state must do more than just hope that judges will use alternatives to incarceration. A number of trends are putting upward pressure on the state's prison population, and affirmative steps must be taken to assure that substantial numbers of offenders are diverted. Although there is disagreement over whether the crime rate is actually increasing, citizens are reporting more crimes and law officers are apprehending more suspects.¹⁷ That means more inmates are being channeled into the state's prisons and jails. Meanwhile lawmakers keep toughening sanctions for everything from driving while impaired to child abuse.

The prison population cap currently keeps the prison population in check, but the cap is at best a temporary measure. What must the state do to implement a more permanent solution? It must get used to the idea of viewing criminal justice as a system. Gone are the days when state lawmakers can pass a law mandating tough new prison

sanctions without giving a thought to whether there will be prison space to hold the offenders. The systems approach demands that the executive, legislative, and judicial branch of state government work together to assure that sanctions match available resources.

To work more cooperatively, the three branches of government must come to a consensus about what the aims of that system should be, which sanctions would be most appropriate to accomplish those aims, and how to assure that those sanctions are used appropriately. This will require statutory changes, and to implement those changes will require broad-based support.

To help achieve such a consensus, and to translate that consensus into action that will put the state's criminal justice system on a sound course for the future, the North Carolina Center for Public Policy Research recommends:

(1) That the General Assembly enact legislation to establish a permanent Correction and Sentencing Policy Commission, with members drawn from the public and the executive, legislative, and judicial branches of government, to examine which offenders should be punished through imprisonment and which should be punished through alternatives to incarceration. The commission could start by developing broad offender profiles from which the state's prison population should be drawn. The number of prior offenses, seriousness of the current offense, and whether the offender has a history of violence should be among the factors considered in determining who should go to prison.

(2) Once the commission reaches a broad consensus on who should be in prison, it should examine the Fair Sentencing Act with the aim of translating that consensus into guidance for the judicial branch. Amending the Fair Sentencing Act so that alternatives to prison are the presumptive sentence for some offenders would be a step toward providing this kind of guidance. The goal would be to provide a balance between expensive prison space and alternatives to incarceration. A more comprehensive approach would include adjusting the length of presumptive sentences for all crimes to provide a closer fit between admissions and available bed space. This approach would require constant monitoring and fine tuning to assure that sentencing and prison space remain in sync.

(3) To aid in the task, the legislature should require, as Tennessee has done, a prison impact statement on any bill that would change

sentencing or create new mandatory prison sentences for a given crime.¹⁸ The new correction and sentencing commission would be assigned the task of preparing these prison impact statements. Such statements should include not only the projected effect on prison population and the cost of any construction required to accommodate new prisoners, but an opinion on how the revised penalties would fit with the state's overall sentencing structure—whether the punishment would really fit the crime. This would assure that state lawmakers consider the fiscal ramifications of any politically popular effort to crack down on crime by sending more offenders to prison.

(4) More immediately, the state should move ahead aggressively in developing a state-wide network of alternatives to incarceration. Even if the legislature chooses not to institutionalize alternatives through the Fair Sentencing Act, judges should have a broad range of options to choose among when deciding how to sentence an offender. In some parts of the state, the only choices are prison or probation, neither of which has proven particularly effective in deterring crime.

Alternatives to incarceration for non-violent offenders *must* take on a larger role in the state's correction system. The other options are continued reliance on exorbitantly expensive prison construction, or the back-door approach of relieving overcrowding by speeding up parole through an emergency cap on the prison population. At some point, the resultant erosion of respect for the state's criminal justice system through continued dependence on emergency parole procedures would cross the line from dangerous to disastrous. The more prudent approach is to turn some of these offenders away at the prison gate and, where possible, to channel them into more productive lives.

But a standing Correction and Sentencing Policy Commission—fully staffed and funded—ultimately will be required to see that the criminal justice system gets on track and stays on track with its effort to match appropriate offenders with available prison space. Such an approach seems to be working in Minnesota and is being tried in Louisiana, New Mexico, Oregon, Tennessee, and the District of Columbia.¹⁹ With responsibilities for examining who should be in prison, overhauling the Fair Sentencing Act, and gauging the impact on the prison system of proposed sentencing changes, the commission would have an abundance of work to do.



Mike McLaughlin

Inmate watches television in a ward at the old Craggy Prison.

By creating such a commission, the legislature would be building in a mechanism through which the criminal justice system could address its problems before they reached a crisis. And with the state facing a \$600 million bill merely to accommodate the current prison population in a constitutionally defensible fashion, any investment that would help plot a fiscally sound course for the future should be embraced wholeheartedly. Only by allocating expensive prison space among the most appropriate offenders, and continually monitoring the criminal justice system to assure that it remains in balance, can the state finally hope to move beyond the crisis in correction. □

FOOTNOTES

¹G.S. 148-4.1.

²*Small v. Martin*, No. 85-987-CRT, and *Thorne v. Martin*, No. 87-446-CRT, U.S. District Court, Eastern District of North Carolina, Raleigh Division, Dec. 20, 1988.

³Chapter 1 (SB 40) of the 1989 Session Laws.

⁴Stevens H. Clarke, "Felony Sentencing in North Carolina 1976-1986, Effects of Presumptive Sentencing Legislation," Institute of Government, University of North Carolina at Chapel Hill, May 1987, pp. 10-11.

⁵Dee Reid, "The Fair Sentencing Act: Setting the Record Straight," *North Carolina Insight*, Vol. 9, No. 3, March 1987, pp. 42-49.

⁶Mark Corrigan et al., "Phase I Consultant Report to the Special Committee on Prisons," March 1989, p. 1.

⁷"1988 Annual Report of the Department of Correction," Public Information Office, Department of Correction,

May 1, 1989, p. 12.

⁸Kenneth L. Parker, manager of research and planning for the North Carolina Department of Correction, says DOC figures show 33 percent of all inmates released from the state prison system are returned to prison within three years. See also Corrigan, p. 29, which shows that 48 percent of the state's inmate population in June 1988 had been in prison before for another offense.

⁹"North Carolina Citizens Survey Highlights, Fall 1982," survey conducted by the Center for Urban Affairs and Community Services at North Carolina State University for the Office of State Budget and Management, Fall 1982, p. 6.

¹⁰"Summary of Findings, Public Opinion Survey on Issues of Crime and Punishment," survey conducted by Hickman-Maslin Research for the North Carolina Center on Crime and Punishment, Raleigh, N.C., May 16, 1986, p. 3.

¹¹John Doble and Josh Klein, "Prison Overcrowding and Alternative Sentences: The Views of the People of Alabama," The Public Agenda Foundation, February 1989, p. i.

¹²*Ibid.* at pp. 29-50.

¹³Chapter 8 (SB 38) of the 1989 Session Laws.

¹⁴Stephanie Bass et al., "A Corrections Policy for the '90s, A Comprehensive Approach," Winter 1988, pp. 11-13.

¹⁵*Ibid.* at pp. 20-23.

¹⁶Department of Correction officials say intake facilities at Piedmont and Guilford Correctional centers are under consent agreements that control crowding. There are four other intake facilities in the prison system, but of those four, only Central accepts felons sentenced to 20 or more years in prison. The Piedmont unit was included in *Hubert v. Ward et al.*, No. 85-987-CRT (E.D.N.C.). *Small v. Martin*, No. 85-987-CRT (E.D.N.C.) and No. 87-446-CRT (E.D.N.C.) covered the Guilford facility.

¹⁷Kenneth L. Parker, "History and Future of the Prison Population in North Carolina," North Carolina Department of Correction, January 1989, pp. 5-6.

¹⁸Fred Strasser, "Making the Punishment Fit the Crime ... and the Prison Budget," *Governing*, January 1989, p. 49.

¹⁹*Ibid.* at pp. 36-41. See also Clarke, pp. 28-30.