

A State of Emergency in Alabama: Prison Overcrowding

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Abstract

This study examines the Alabama Department of Corrections August 2009 Monthly Statistical Report and Fiscal Year 2008 Annual Report, recent articles to explain the serious public safety issue of prison overcrowding within the state of Alabama, lack of funding and correctional staff, and increasing violence among inmates. It is imperative that the stakeholders take a restorative justice approach to offenders who commit nonviolent crimes or otherwise be prepared to release substantial numbers of violent inmates due to federal court intervention, expanding parole, and other types of early release programs. Violent offenders will pose a greater threat to the community. Correctional workers continue to be exposed daily to the risk of injury or death caused by severe prison overcrowding. The state could experience additional financial hardship to rebuild a destroyed correctional facility in an event of a riot. The excessive use of incarceration for nonviolent offenders is one of the most important issues facing the state of Alabama this decade.

Keywords

prison overcrowding, restorative justice, correctional management, sentencing reform

Introduction

As of August 2009, the state inmate population reached 31,586 (August 2009 Monthly Report). There are a total of 29,152 males and 2,434 females within the jurisdictional population of the state (August 2009 Monthly Report). The jurisdictional population consists of all offenders with a court ordered sentence of incarceration in a state correctional facility (Fiscal Year, 2008). Alabama ranks 17th in the nation in the number of females serving a prison sentence according to a 2007 Department of Justice statistical report (Fiscal Year, 2008). The female population increased by more than 300 inmates since 2000 when Alabama was ranked 14th in the nation (Fiscal Year, 2008). In the same report, the male population ranked 15th nationwide as compared with 16th in 2000 (Fiscal Year, 2008). During that same period, the male inmate jurisdictional population increased by more than 2,500 (Fiscal Year, 2008). The state of Alabama operates under its current system of incarcerating large numbers of people and pushing them into prison facilities that are now operating at about 200% of their designed capacity.

The state follows a southern tradition of incarcerating a high number of its citizens for nonviolent crimes. Fifty-one percent (16,109) of Alabama's inmate population is serving time for nonviolent property and drug offenses (August 2009 Monthly Report). Compounding these issues is the fact that prisons are suffering from a lack of adequate funding and staffing.

Financial and Staff Problems

The 2010 fiscal year for the Alabama Department of Corrections (ADOC) began October 1, 2009. ADOC is experiencing financial problems approximately 2 months into the fiscal year. The commissioner of ADOC, Richard Allen, indicated on December 16, 2009, to the *Montgomery Advertiser*, that his department “needs \$15 million just to make it through the current fiscal year” (Kitchen, 2009). He further stated before the state legislators that the \$15 million shortfall could result in closing prisons or layoffs (Kitchen, 2009).

The ADOC was authorized to hire 5,423 personnel in fiscal year 2008 for all classification of inmates, but had on hand only 4,019, nearly 26% fewer than authorized at the end of the fiscal year (Fiscal Year, 2008). The number of authorized correctional staff was 3,915 with only 2,844 on hand, or a shortage of 1,071 (about 27%; Fiscal Year, 2008). In Alabama, the correctional officer to inmate ratio is 1:9; for surrounding states, it averages 1:6 (Fiscal Year, 2008). While 1:9 may seem adequate at face value, inmates must be supervised by a law enforcement certified correctional officer 24 hr per day, 7 days per week (Fiscal Year, 2008). On any

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given day, several hundred correctional officers are either on military duty, on sick leave, on annual leave, in a training mode, on duty for each hospitalized inmate 24 hr a day, providing security for inmates in transit, or fulfilling other important functions (Fiscal Year, 2008).

The correctional administrators must make critical decisions on a daily basis, such as whether to vacate a post within an institution or pay overtime to fill the void. As a result of this dilemma, it is not uncommon for a single correctional officer to supervise up to 250 to 300 medium to higher security inmates for an extended period of time (Fiscal Year, 2008).

Prisoner Violence Increases

Alabama's major prisons in recent years have grown more violent due to the severe inmate overcrowding. As it stands, Alabama prisons house almost twice as many inmates as they are designed to hold, and they have an 11-to-1 ratio of inmates to correctional officers (DeMonia, 2012a). Three inmates have been killed in Alabama prisons since the fiscal year began in October 2011, and there were 1,397 fights and nonsexual assaults, up from 1,000 the previous year (DeMonia, 2012a). In addition to an almost 40% increase in inmate-on-inmate violence, assaults leading to serious injury, doubled, rising from 47 to 95 (DeMonia, 2012a).

The Equal Justice Initiative, a Montgomery nonprofit that represents prisoners, filed a complaint in May 2012 with the U.S. Justice Department to investigate reports that women inmates housed at the Tutwiler Prison for Women have been sexually assaulted and in some cases impregnated by male correctional officers (DeMonia, 2012b). In response to the complaint, State Senator Cam Ward, of the Joint Prison Oversight Committee, stated, "It's the overcrowding problem. With that many people in that small place, you're going to have violence" (DeMonia, 2012a).

The Commissioner of ADOC, Kim Thomas, acknowledged in a recent interview with *The Birmingham News*, "Violence is an ongoing challenge and one that is made more difficult by having too many inmates and too few officers" (DeMonia, 2012a). The department's budget for the coming year has been cut US\$16 million, which will further exacerbate the problem of violence in Alabama's prisons (Republic, 2012).

Strategy to Alleviate Overcrowding and Cost

The state of Alabama has used leased beds as a strategy to effectively manage the inmate population and reduce the strain of crowding (Fiscal Year, 2008). During fiscal year 2008, the following contract facilities were utilized: JB Evans in Louisiana (male inmates); Clay County Detention Center, Alabama (male inmates); and Perry County Detention

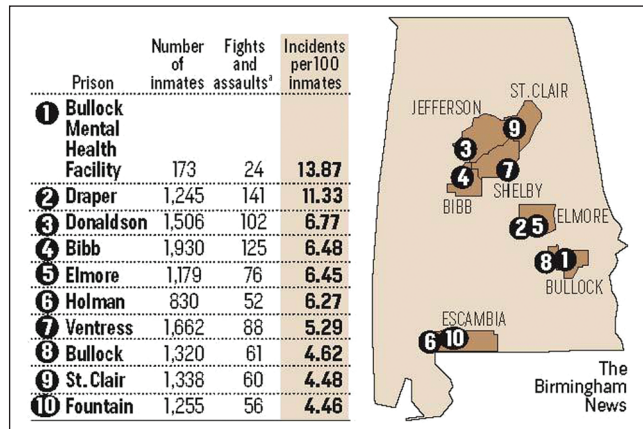


Figure 1. Prison violence: Top 10 Alabama prisons for inmate-on-inmate physical violence in fiscal 2011 (DeMonia, 2012a).

Source: Alabama Department of Corrections' monthly statistical reports.

^aExcluding sexual assaults.

Center, Alabama (male inmates; Fiscal Year, 2008). At the beginning of the fiscal year, a total of 317 inmates were housed with leased facilities (Fiscal Year, 2008). By year's end, only 50 inmates remained in Clay County (Fiscal Year, 2008). The Julia Tutwiler Prison for Women is operating under a federal court order stemming from a 2002 class action lawsuit and is required to keep a maximum inmate population of 700 at the largely non-air-conditioned facility (Davis, 2005). The state expanded alternate sentencing options such as adult drug court programs, community corrections programs, Supervised Reentry Program (SRP), and medical furlough program.

The adult drug court program is designed for nonviolent offenders who are addicted to drugs and/or alcohol and want to avoid jail time. The adult drug court program has been established in Montgomery, Shelby, Elmore, and other counties within the state (Fifteenth Judicial Circuit Montgomery County, Alabama Drug Court, n.d.). Participants in the Montgomery County Adult Drug Program are given every opportunity to succeed (Fifteenth Judicial Circuit Montgomery County, Alabama Drug Court, n.d.).

Each drug court participant must enroll in and complete treatment program prescribed by the court; maintain employment throughout the program; obtain a general educational development (GED) or other beneficial job training, unless a high school graduate; submit to random drug screening; perform community service; pay program fees; pay restitution, if applicable; and follow all program rules and comply with the directives of the court (Fifteenth Judicial Circuit Montgomery County, Alabama Drug Court, n.d.).

However, those who fail to comply with the treatment program will be subject to sanctions, including increased drug testing, upgraded levels of supervision, upgraded levels of treatment, additional court appearances, additional community service, and periods of incarceration and/or combination thereof (Fifteenth Judicial Circuit Montgomery County, Alabama Drug Court, n.d.). Successful completion

of drug court results is the offender having his or her charges dismissed (Fifteenth Judicial Circuit Montgomery County, Alabama Drug Court, n.d.).

The Shelby County Drug Court gives first-time offenders a chance at avoiding jail time while helping them with their recovery from addiction and substance abuse (Gresham, 2005). The court offers the offender two tracks to follow. Track 1 is for lesser drug crimes and people who are not suffering from addiction (Gresham, 2005). Track 2 is more intensive and is set up for people with a criminal history of substance abuse problems.

The Elmore County Drug Court program began on October 1, 2008 (Roney, 2008). It is available to nonviolent offenders who are addicted to drugs and alcohol (Roney, 2008). The participants must plead guilty and be sentenced, but the sentence will be stayed while they complete court-ordered treatment programs (Roney, 2008). The drug court programs are cost-effective ways of dealing with drug offenders and also serve as an effective treatment.

The Alabama Community Corrections (CCP), which was established by the Community Punishment and Corrections Act of 1991 (§§ 15-18-170) and amended in 2003, gives the judiciary the authority to sentence certain offenders meeting statutory criteria to community-based supervision (Fiscal Year, 2008).

CCP activities include supervision, community-based sanctions, and services directed at offenders who commit felony and misdemeanor offenses (Fiscal Year, 2008). CCP breakdown by offense type is as follows: drug—45%, property—38.1%, and all other—17% (Fiscal Year, 2008).

Currently, there are 34 CCPs covering 45 of the State's 67 counties (Fiscal Year, 2008). The average daily cost per offender in a CCP was US\$13.06—significantly less than the US\$37.43 daily rate for an ADOC minimum custody facility for fiscal year 2008 (Fiscal Year, 2008). ADOC provides participating CCPs a US\$15 per day reimbursement for eligible offenders for up to 2 years (Fiscal Year, 2008).

Alabama is similar to other jurisdictions in the United States trying to obtain extra funding from the newly enacted Second Chance Act of 2007 (Public Law 110-199). This federal first-of-its kind legislation authorized various grants to government and nonprofit groups to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, victims support, and other services that can help reduce reoffending and violations of probation and parole (Reentry Policy Council, n.d.). For fiscal year 2008, ADOC received US\$540,000 to facilitate inmates' successful reintegration into society from Second Chance Act funds (Fiscal Year, 2008).

The SRP in Alabama is a structured offender reentry initiative where an inmate is transferred from an ADOC institution to residential environment in the community, under the supervision of a sponsor and ADOC SRP Supervisor (Correctional Sergeant; Fiscal Year, 2008). The

inmates, while in SRP, are required to obtain employment, education, and/or training, and also pay monetary restitution including child support and other court-ordered payments (Fiscal Year, 2008). Rehabilitation, resocialization, and reintegration of an offender are the primary goals of SRP, allowing inmates to reenter society in a structured supervised manner (Fiscal Year, 2008). Since the first inmate placement in October 1, 2007, SRP has admitted an average of 96 new inmates per month, with the majority coming from medium and maximum security-level institutions (Fiscal Year, 2008).

In fiscal year 2008, SRP had 1,155 new placements into community supervision, while 775 program participants were released through parole or end of sentence (Fiscal Year, 2008).

According to the Associate Commissioner of Health Services for ADOC, Ruth Naglich, "An inmate with cancer might cost the state \$68,000 and an inmate who had a stroke and must use a wheelchair for the rest of his or her life could cost the state an extra \$45,000 to \$50,000 because of extra staff, equipment and nutritional needs" (Ricks, 2009, 4C).

She further stated "an inmate who receives dialysis three times a week and has other related illnesses costs the state between \$60,000 and \$65,000 a year" (Ricks, 2009). "The state has 170 inmates who are currently suffering from a debilitating or terminal illness, but there are 6,000 statewide who are in some kind of chronic care clinic according to Naglich" (Ricks, 2009). In an effort to save a little money, the state passed a law to provide a medical furlough for incapacitated or terminally ill inmates (Ricks, 2009). Since the passage of the medical furlough law approximately 1 year ago, a total of three inmates have been released (Ricks, 2009). One inmate died 30 hr after release, and the other two inmates are still on medical furlough (Ricks, 2009).

Conclusion

The state of California and other states, such as Michigan, Oregon, Colorado, and Illinois have tinkered with parole, early release programs, and the sentencing laws due to prison overcrowding (Davey, 2010). California is on the brink of federal court intervention because its 33 state prisons house 154,649 prisoners in facilities designed to hold just 84,271 prisoners (Stateman, 2009). Throughout the history of corrections in America, prison riots have been used as a means by inmates to correct problems within the institutions. Prison insurgencies can be tied to a wide range of causes, including racial tension, gang rivalries, individual feuds, and general grievances against guards and prison administrators (James, 2009). The first prison riot occurred at Connecticut's Newgate prison in 1774 (James, 2009). The nation's deadliest uprising took place 4 days at upstate New York's Attica Correctional Facility in 1971 (James, 2009). The violence killed 32 inmates and 11 guards (James, 2009). Other infamous prison disturbances include a particularly

gruesome 1980 uprising in New Mexico that claimed 33 inmates' lives (some of the prisoners were mutilated with blowtorches) and an 11-day siege in 1993 at a maximum-security prison in Lucasville, Ohio, in which a guard was killed (James, 2009). On August 8, 2009, a riot erupted at the Chino prison located approximately 35 miles east of Los Angeles (Castillo, 2009). Officials are still investigating, but a major cause is already clear: 5,900 men were being held in a facility designed for 3,000 (The Chino Prison Riot, 2009).

Recently, Federal Bureau of Prisons head Harry Lappin warned Congress that "crowded prisons result in greater tension, frustration and anger among the inmate population, which leads to conflicts and violence" (James, 2009).

Since 1941, in the case of *Ex Parte Hull*, 312 U.S. 546, the federal courts have no longer taken a hands-off approach to postconviction litigation filed by prisoners in state custody (Carlson & Garrett, 2008). State prisoners may bring legal action through torts, habeas corpus actions, and the federal Civil Rights Act, U.S.C. Title 42, Section 1983, to challenge the constitutionality of their confinement due to the conditions inside state and federal prisons (Carlson & Garrett, 2008). In an effort to curb the amount of postconviction litigation, Congress passed the Prison Litigation Reform Act of 1995 (Stateman, 2009). However, a federal three-judge panel recently ordered California to come up with a plan to reduce the inmate population by nearly 43,000 prisoners (Stateman, 2009). Michigan released 13,541 inmates on parole in 2009, and Colorado's early release program only released 264 inmates in 5 months, although the program was designed to shrink the prison population by 2,600 over 2 years (Davey, 2010). In Illinois, the governor described the early release program as a "big mistake" because some convicts who committed violent crimes were sent home within a matter of weeks (Davey, 2010). Of more than 1,700 prisoners released over 3 months, more than 50 were soon accused of new violations (Davey, 2010).

The state of Alabama can no longer afford to continue to incarcerate its citizenry at the current rate for nonviolent crimes unless additional revenue is generated. Raising taxes is not something Alabamians would view favorably at the election polls. Alabama has a long history of some of the lowest property taxes in our nation.

The state must take a restorative justice approach to nonviolent crimes. This balanced approach looks at the needs of the community, victim, and the offender to determine an appropriate intermediate sanction. These sanctions include drug courts, mental health courts, intensive supervised probation, community corrections programs, restitution programs, and other community programs, such as day reporting centers, community service, house arrest, fines and day fines, global positioning systems, and electronic monitoring.

The state must allow the nonviolent offender to remain in the community to preserve the limited prison bed space for

offenders who pose a serious threat to the community. There must be a shift in the punishment ideology of locking everyone up regardless of the seriousness of the crime.

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Bio

Larry Edward Spencer has more than 30 years of combined work and teaching experience in the field of corrections. He retired from the Federal Bureau of Prisons after 26 years of

service in 2006 and held various positions of responsibility, such as correctional officer, captain's clerk, case manager, community corrections specialist, discipline hearing officer and EEO investigator (collateral duties), and community corrections manager. He taught corrections at Alabama State University as an adjunct professor since 1992 and as a full-time assistant professor since 2006. His educational background consists of BS in criminal justice from Kentucky State University, MS in justice and public safety from Auburn University at Montgomery, and JD from Thomas Jones Goode School of Law.