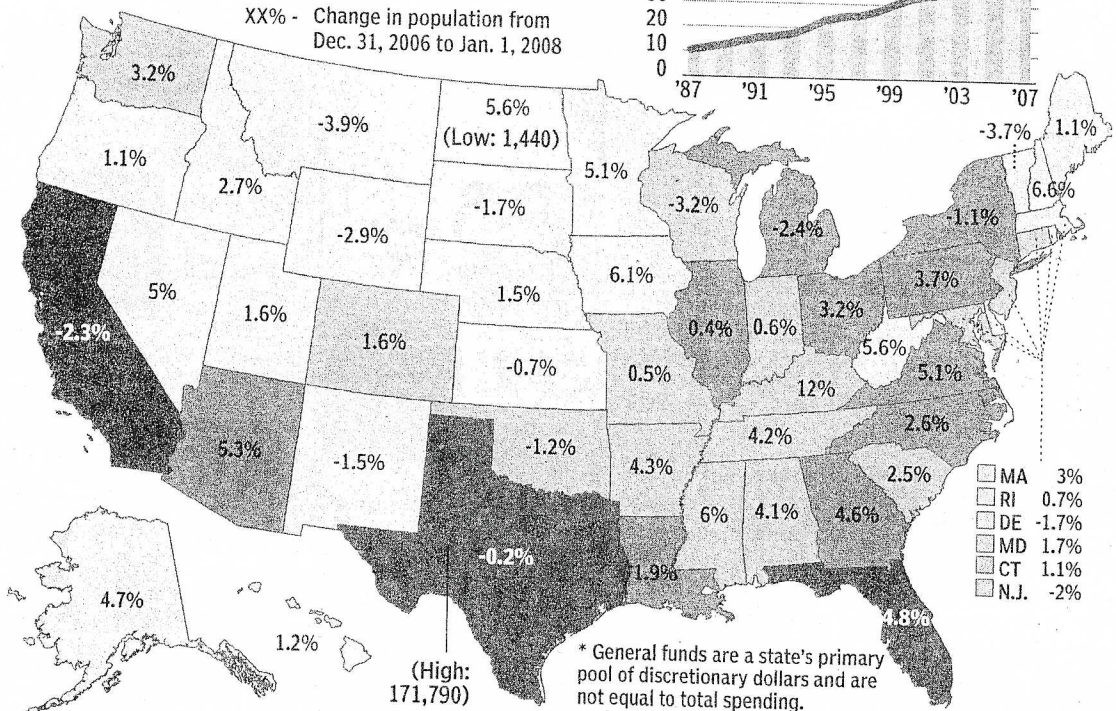


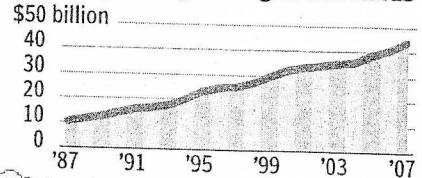
Record-high ratio of Americans in prison

For the first time in history, more than one in every 100 American adults is in jail or prison - the current population is 2,319,258.

Prisoner populations, Jan. 1, 2008



Prison spending from general funds*



SOURCE: The Pew Charitable Trusts

AP

More than 1 in 100 Americans behind bars

NEW YORK (AP) — For the first time in U.S. history, more than one of every 100 adults is in jail or prison, according to a new report documenting America's rank as the world's No. 1 incarcerator. It urges states to curtail corrections spending by placing fewer low-risk offenders behind bars.

Using state-by-state data, the report says 2,319,258 Americans were in jail or prison at the start of 2008 — one out of every 99.1 adults. Whether per capita or in raw numbers, it's more than any other nation.

The report, released Thursday by the Pew Center on the States, said the 50 states spent more than \$49 billion on corrections last year, up from less than \$11 billion 20 years earlier. The rate of increase for prison costs

was six times greater than for higher education spending, the report said.

The steadily growing inmate population "is saddling cash-strapped states with soaring costs they can ill afford and failing to have a clear impact either on recidivism or overall crime," the report said.

Susan Urahn, managing director of the Pew Center on the States, said budget woes are pressuring many states to consider new, cost-saving corrections policies that might have been shunned in the recent past for fear of appearing soft on crime.

"We're seeing more and more states being creative because of

tight budgets," she said in an interview. "They want to be tough on crime. They want to be a law-and-order state. But they also want to save money, and they want to be effective."

The report cited Kansas and Texas as states that have acted decisively to slow the growth of their inmate population. They are making greater use of community supervision for low-risk offenders and employing sanctions other than reimprisonment for offenders who commit technical violations of parole and probation rules.

According to the report, the inmate population increased last year in 36 states and the federal prison system.



Mandatory Sentences: Overcrowded Prisons

The Case

Although the Constitution protects the rights of the accused in court, what happens to the accused upon conviction can be uncertain. In 1972, for example, Judge Marvin E. Frankel concluded that:

A defendant who comes up for sentencing has no way of knowing or reliably predicting whether he will walk out of the courtroom on probation, or be locked up for a term of years that may consume the rest of his life, or something in between.

—JUDGE MARVIN E. FRANKEL, *CRIMINAL SENTENCES*, 1972

Judge Frankel was referring to indeterminate sentencing. This system of sentencing left to “the sentencing judge a range of choice [of a sentence] that should be unthinkable in a ‘government of laws, not of men.’”

The public called for stricter law enforcement, tougher sentences, and less judicial leniency; the states and the federal government made changes. Determinate sentences imposing mandatory minimum and maximum sentences for certain crimes began to replace indeterminate sentences. Trial judges still had some leeway to fit the punishment to the circumstances of the crime, but the call for certain sentences remained constant.

Background

In the 1960s and early 1970s, studies showed that sentences for similar crimes differed from judge to judge, city to city, state to state, and from one federal district court to another. A Federal Sentencing Institute study recounted a possibly amusing but certainly dismaying story:

A visitor to a [state] court . . . was amazed to hear the judge impose a suspended sentence where a man had pleaded guilty to manslaughter. A few minutes later the same judge sentenced a man who pleaded guilty to stealing a horse and gave him life imprisonment. When the judge was asked by the visitor about the disparity of the two sentences, he replied, “Well, down here there is some men that need killin’, but there ain’t no horses that need stealin’.”

—JUDGE EDWARD LOMBARD, 1965

Criminal Prosecutions
In all prosecutions the accused shall enjoy the right to a speedy and public trial . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him . . . and to have assistance of counsel for his defense.

—Eighth Amendment

. . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws.

—Fourteenth Amendment

More About the Case

In the federal courts and the court systems of 33 states, natural life—life imprisonment without hope of parole—is a determinate sentence option for such crimes as murder, kidnapping, armed robbery, and drug trafficking. Many law enforcement officials favor this sentence, because of its value as a deterrent. It also is popular with the many Americans

who have expressed shock and outrage at the increase in violent crime. Many government officials, however, have begun to express concern about the impact such sentences will have on state penal systems.

Between 1986 and 1991, the number of prisoners in federal and state penitentiaries serving natu-

The effect of the judge's attitude toward the defendant also was a factor in deciding sentences. In one case the judge had decided upon a four-year sentence and then asked the defendant if he had anything to say before the judge announced his sentence. After the defendant criticized the judge and the court in relatively strong terms, the judge decided that a five-year sentence was more appropriate. In essence, the defendant received a one-year sentence for speaking his mind.

Inconsistencies in sentencing also existed in federal courts. A former Director of the Federal Bureau of Prisons spoke of the various inmates then in federal prisons.

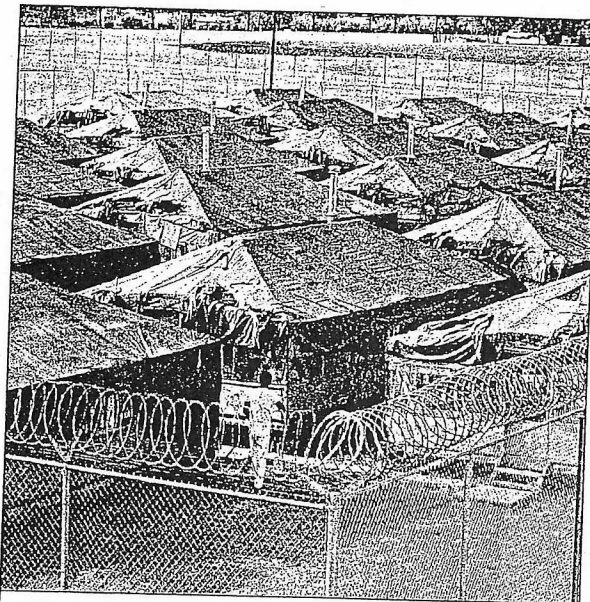
That some judges are arbitrary and even sadistic in their sentencing practices is notoriously a matter of record. . . .

In one of our institutions a middle-aged . . . treasurer is serving 117 days for embezzling \$24,000 in order to cover his gambling debts. On the other hand, another middle-aged embezzler with a fine past record and a fine family is serving 20 years, with 5 years probation to follow. At the same institution is a war veteran, a 39-year-old attorney who has never been in trouble before, serving 11 years for illegally importing parrots into this country.

—JAMES V. BENNETT, 1964

In the mid-1970s, states began to turn to determinate sentences, coupled with severe limits on the right of parole boards to release prisoners. The number of repeat offenders convinced many people that many convicted felons could not be rehabilitated. Instead, the idea of rehabilitation was replaced with the idea of taking offenders off the street and keeping them in prison, thus limiting the number of crimes they might commit. At the same time, other critics of indeterminate sentencing pointed out that equal justice was seldom served when studies showed that such things as racial prejudice and even geography influenced sentences. In Pittsburgh, for example, a first-time convicted felon was far more likely to be placed on probation than was one in Minneapolis.

These views, combined with the rising crime rate led to a strong movement for tougher laws and sterner determinate sentences. State legislatures responded with tough anti-crime bills and Congress followed



Overcrowded Prisons Declared Unconstitutional
Tougher law enforcement and sentencing has led to overburdened prisons, a problem that states with insufficient funds have been unable to remedy fully.

suit. In 1984 Congress created the United States Sentencing Commission. After review of about 50,000 sentences, the Commission issued a determinate system of sentencing for federal judges. The system, to be used for all crimes committed after November 1, 1987, set up stringent sentencing guidelines for more than 40 types of federal crimes. At the same time, the Commission abolished federal paroles and limited reductions in sentences for good behavior. The use of probation also was restricted.

The new federal guidelines quickly created confusion. Nearly 160 judges declared the guidelines unconstitutional; another 116 judges ruled them constitutional. Faced with this widespread confusion, the Supreme Court reacted swiftly. In January 1989, by an 8 to 1 vote, the Court ruled the Sentencing Commission's actions and the guidelines constitutional. The chairman of the American Bar Association immediately predicted, "We're going to see dramatic increases in prison terms and prison overcrowding."

The Results In 1991 *TIME* magazine asked the question, "What nation locks up the highest percentage of its population?" The answer was that the Unit-

ral life sentences increased some 70 percent to 12,000. As these prisoners grow older, the cost of keeping them behind bars will rise. For example, medical-care costs for inmates more than 55 years old are as much as 3 times those for inmates under age 30. Most experts believe that in the future state judicial systems will balance their budgets by sen-

tencing young violent offenders to shorter prison terms. Such offenders, statistics show, are much more likely than older prisoners to commit crimes after their release. Mandatory sentences like natural life, then, may create as many problems as they were designed to solve.

ed States was sending 426 per 100,000 people to jail, the highest rate in the world. Most observers concluded that the high rate was a result of the mandatory sentencing and stronger antidrug enforcement. As a result, by 1989 approximately 771,000 inmates in state prisons, an increase of 59,000 in just 1 year, crowded into American jails. To keep pace with this increase analysts estimated that a 1,000-bed prison would have to be built every 6 days.

Federal courts have declared more than 60 percent of the state prisons unconstitutionally overcrowded. With the demand for other state services and the nation's economic downturn that began in 1989, state revenues proved insufficient to meet the growing needs. A newspaper column reported,

The latest state expenditure report . . . showed double-digit spending increases in three-fourths of the states for corrections and Medicaid—keeping prisoners out of the way and paying medical bills for the poor.

Those fastest-growing elements of state spending are squeezing out programs the middle class really values. . . . The share of state spending going to elementary and secondary schools has sunk to its lowest level in five years.

—DAVID BRODER,
WASHINGTON POST WRITERS GROUP, 1991

Analysts estimate that governments spend about \$10 million a day to build prisons, but even this expenditure is too little to end prison overcrowding. As a result, states have been forced to adopt early release programs.

Significance

The realities of mandatory, and in some cases harsher, sentences have alerted all levels of government to the problems facing the nation's criminal-justice system. With the public calling for authorities to get tough on crime, financing the country's penal system has become a major issue.

Among the proposed remedies is for states to adopt a system similar to that now being used in Minnesota. In that state, sentencing guidelines are based on the state's existing or planned prison resources.

The Washington bureau chief of the National Law Journal summed up the difficulty of adopting this type of guideline:

A sentencing system driven largely by prison capacity may seem radical in the moral laden arena of crime and punishment, and it may well be less than ideal. But it is like any other mechanism . . . that governments use to impose self-discipline and to depoliticize tough and controversial decisions.

—FRED STRASSER, JANUARY 1989

Other recommendations to alleviate overcrowding in the prison system include residential confinement, fines, restitution to victims, community service, and work-release programs. Other critics are calling for more far-reaching solutions. The Milton S. Eisenhower Foundation called for the "reconstruction of urban life." They estimated the cost would run about \$10 billion a year for 10 years. It would include funds for preschool children, job-training programs, and drug counseling. The Foundation added that additional funds also would be needed for better housing and for improving schools, all of which it said would improve society and reduce crime.

Currently, lawyers, judges, political scientists, and legislators are continuing to study and debate the sentencing issue. At the same time, additional anti-crime bills continue to be introduced to appease a public that demands curbs on violent crimes.

Examining the Case

Reviewing Facts

1. Explain the difference between indeterminate and determinate sentences.
2. Identify the effects the system of determinate sentences has had on the nation's prison system.

Critical Thinking Skills

3. Predicting Consequences What do you think will happen if the nation continues to follow a get-tough-on-crime policy and determinate sentencing?
4. Recognizing Ideologies Do you think societal reform rather than severe punishments for crimes will be supported by conservatives or liberals? Explain your answer.