# Table of Contents

## Volume One

- List of Contributors \textit{v}
- About the Editor \textit{vii}
- Foreword \textit{ix} \textit{Norval Morris}
- Foreword to the Original Edition \textit{xi} \textit{Morris E. Lasker}
- Preface \textit{xv}

## SECTION I

### An Overview of Prison Law

#### CHAPTER 1

**Introduction**

**Reflections of a Federal Judge**  \textit{Frank A. Kaufman}  1-3

**Notes**  1-8

**Resolving Prisoners’ Grievances Out of Court: 42 U.S.C. § 1997e**

\textit{Harvard Law Review}

**Introduction**  1-11

- Recommendations of the Federal Courts Study Committee  1-12
- Elements of a Fair and Effective Prisoner Grievance System  1-17
- Conclusion  1-21

**Notes**  1-22

**Appendix**  1-31

**The Prisoners’ Mail Box and the Evolution of Federal Inmate Rights**  \textit{Ira P. Robbins}

**Introduction**  1-33

- Federal Prisoners Before the Federal Prison System: 1789-1891  1-34

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xxvii
The Three Prisons Act and Its Immediate Aftermath 1-35
The Early Days of the Federal Prison System 1-36
Early Procedures for Prisoner Complaints 1-38
The Prisoners’ Mail Box and the Evolution of Inmate Rights 1-40
Expanding Scope/Expanding Concerns 1-45
Transition to the Future 1-53
Conclusion 1-54
Notes 1-56

The Trauma of the Incarceration Experience  Mika’il DeVeaux

Introduction 1-80
I. Psychological Effects of Incarceration 1-81
A. Trauma 1-84
B. A Concern Related to Public Safety 1-86
II. The Incarceration Experience 1-88
A. Sing Sing Prison 1-91
B. Clinton Dannamora 1-94
C. Special Housing Units 1-95
D. Happy Nap 1-97
III. Conclusion 1-99

CHAPTER 1A
Correctional Developments

The State of Corrections Today: A Triumph of Pluralistic Ignorance  Allen F. Breed

Introduction 1A-3
Public Attitudes Over Time 1A-4
The Emergence of Crime and Corrections as Major Issues 1A-6
The Politicization of Crime and Corrections 1A-8
The Public Attitude Today 1A-9
The Lessons Learned 1A-10

The Use of Incarceration in the United States: A Look at the Present and the Future  Lynn Sanders Branham

Preface and Summary of Recommendations 1A-13
General Recommendations 1A-14
Recommendations to State and Local Bar Associations 1A-16
Introduction 1A-16
The Use of Incarceration—Where We Are Today 1A-18
How Many People Are Incarcerated in Prisons and Jails? 1A-18
Who Is Incarcerated in Prisons and Jails? 1A-20
How Long Are People Incarcerated in Prisons and Jails? 1A-26
What Happens During Incarceration in Prison or Jail? 1A-29
Why Are So Many More People Incarcerated in Prisons and Jails? 1A-32
   More Prison and Jail Sentences 1A-36
   Longer Sentences 1A-37
   More Restrictive Parole and Other Release Policies 1A-37
   Increased Probation and Parole Revocations 1A-38
   Demographic Factors 1A-38
What Are the Costs, Benefits, and Efficacy of Present Incarceration Policies? 1A-39
   Financial Costs 1A-39
   Opportunity Costs 1A-40
   Other Costs of Incarceration 1A-41
   Crime-Control Benefits and Efficacy 1A-41
Recommendations for the Future 1A-46
The Role of State and Local Bar Associations in Sentencing and Corrections Reform 1A-66
   Corrections and Sentencing Committees in Each State Bar Association 1A-67
   Appointment of a Liaison to the American Bar Association Criminal Justice Section’s Corrections and Sentencing Committee 1A-67
   Working with Other Organizations 1A-67
   Training 1A-68
   Public Education 1A-69
   Monitoring 1A-70
Conclusion 1A-71
Notes 1A-72
Appendix: Model Adult Community Corrections Act 1A-82

The Return of the Chain Gang  Harvard Law Review
   Introduction 1A-101
   Problems with the Concept 1A-101
   Conclusion 1A-104
   Notes 1A-104

Designing a Prisoner Reentry System Hardwired to Manage Disputes  Harvard Law Review
   Introduction: The Reentry Problem 1A-110
   I. Three Principles for an Effective Reentry System 1A-111
   II. Past Solutions: Parole and the Rehabilitative Ideal 1A-113
      A. The Rehabilitative Ideal Failed to Follow Three Principles of DSD 1A-114
      B. Resulting Critiques of the Rehabilitative Ideal 1A-115
      C. The Fall of the Rehabilitative Ideal 1A-118

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III. The Status Quo: Supervised Release and the Rise of the Reentry Court Model 1A-120
   A. Supervised Release 1A-120
   B. The Rise of Reentry Courts 1A-121

IV. Improving on the Status Quo: Designing a Sustainable System to Manage Reentry Disputes 1A-124
   A. Involving Stakeholders in the Design and Implementation of the System 1A-124
   B. Timing: Approaching a Mutually Hurting Stalemate 1A-128
   C. Sustainability: Revisiting and Reevaluating the System 1A-130

Conclusion 1A-131

Second Looks & Second Chances Shon Hopwood

Introduction 1A-134

I. Second Looks Have a Long Historical Pedigree and are a Worthwhile Policy Goal 1A-139
   A. There is a Long History of Second Look Provisions in the Federal Justice System 1A-139
   B. Providing a Second Chance to Those Who are Deserving Comes with a Number of Benefits 1A-141

   A. The History of Second Look Compassionate Release and Its Expanding Development 1A-147
   B. Circumstances Presenting “Extraordinary and Compelling Reasons” for a Sentence Reduction 1A-155

III. Congress Should Create a True Second Look Provision, Requiring a Federal Judge to Reevaluate a Sentence after a Prisoner has Served Ten Years 1A-157

IV. U.S. Attorneys Can Dismiss Charges Under Holloway Relief for Deserving Prisoners who were Over-Sentenced 1A-158

V. The President Should Commute the Sentences of Those Who Were Unable to Seek Relief Through the Judicial System, But Who Have a Demonstrated Record of Rehabilitation and Who Have Been Sentenced Too Harshly 1A-161

Conclusion 1A-164

CHAPTER 1B
Overview of the Law of Prisoners’ Rights and Remedies


Introduction 1B-4
Prisoners’ Rights 1B-4
CHAPTER 2

Legal Developments

The Legacy of Wolfish and Chapman: Some Thoughts About "Big Prison Case" Litigation in the 1980s

David J. Gottlieb

Introduction 2-3
Conditions Litigation Prior to Wolfish 2-4
The Rise and Fall of the "Hands Off" Doctrine 2-4
Early Prison-Conditions Litigation 2-5
Early Jail-Conditions Litigation 2-6
The Road to Wolfish 2-8
Bell v. Wolfish 2-9
Post-Wolfish Litigation 2-11
Rhodes v. Chapman 2-15
Post-Chapman Litigation 2-17
Totality of Conditions vs. Core Conditions 2-17
Experts and Proof 2-19
Equitable Relief 2-21
Conclusion 2-24
Notes 2-25

Wilson v. Seiter: Less Than Meets the Eye

David J. Gottlieb

Introduction 2-33
Wilson v. Seiter 2-34
## Table of Contents

**Default in Successive Petition Cases** 2-95
**Default with Respect to Fact Development** 2-96
**Default in Death Penalty Cases** 2-99
**Previous State Court Judgments on the Merits** 2-99
**The Prison Litigation Reform Act** 2-102
**Restricting Institutional Litigation: The Statute** 2-103
  **Introduction** 2-103
  **General Considerations** 2-103
  **Prospective Relief Generally, Including Modification** 2-105
  **Modifying Decrees Now in Force** 2-109
**Limiting Frivolous Litigation** 2-111
**The AEDPA and the PLRA as Case Studies in Legislative and Judicial Process** 2-115
**Accounting for the Judicial Responses** 2-115
  **Two Positive Accounts** 2-115
  **Methods of Interpreting the Statutes as Stabilizers of the Law** 2-116
    **The “Constitutional” Lens** 2-116
    **The “Administrative” Lens** 2-116
    **The “Policy” Lens** 2-117
    **The “Realistic” Lens** 2-117
  **Instrumental, Expressive, and Symbolic Statutes** 2-117
    **First-Order Instrumental Statutes** 2-118
      **Direct Effects on Incentives** 2-118
      **Indirect Effects on Incentives: Reconstitutive Law** 2-119
    **Expressive or Second-Order Instrumental Statutes** 2-120
      **Searching for “Loopholes” in the Details** 2-121
      **Obscuring the Message Through the Details** 2-121
    **Symbolic Statutes** 2-122
  **Conclusion** 2-122
**Notes** 2-123

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**The PLRA and AEDPA: Implications for Federal District Judges**

*Harvard Law Review* 2-149

**Introduction** 2-149
**Historical Background** 2-150
  **The Warren Court** 2-150
  **The Expansion of Rights for Prisoners and Criminal Defendants** 2-151
  **The Rehnquist Court** 2-152
**The Statutes** 2-153
  **The Prison Litigation Reform Act** 2-153
    **Legislative History** 2-153
    **Provisions** 2-155
      **Prospective Relief Restrictions** 2-155

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Three-Judge Court Requirement for Population Caps 2-155
Termination of Prospective Relief 2-156
The Antiterrorism and Effective Death Penalty Act 2-157
Legislative History 2-157
Provisions 2-158
“Clearly established law” 2-158
Circuit Court Certification Requirement 2-159
The Importance of Federal District Judges 2-159
The Impact of the PLRA’s and AEDPA’s Procedural Changes on
Prisoners’ Rights 2-160
The Virtues of Federal, Rather Than State, Courts 2-160
The Virtues of Trial, Rather Than Appellate, Federal
Courts 2-160
Implications That Should Concern Even Those Who Do Not Support
Prisoners’ Rights 2-161
Conclusion 2-162
Notes 2-162

The Essential but Inherently Limited Role of the Courts in Prison
Reform Erwin Chemerinsky 2-173
Introduction 2-174
I. The Crisis 2-175
II. The Causes of the Crisis 2-176
III. The Courts’ Essential but Limited Role 2-178
Conclusion 2-183

Prisoners’ Rights Strategies for Preserving the Role of the Courts
Margo Schlanger 2-185
I. Introduction 2-186
II. Trends in Prisoner Litigation 2-188
III. Entry of Relief, Including Settlement 2-192
   A. What the PLRA Requires 2-192
   B. How Parties Continue to Settle Cases 2-194
      1. Acceptable Stipulations 2-194
      2. Conditional Dismissal 2-200
      3. State-Court Enforcement 2-205
IV. Termination of Prospective Relief 2-207
   A. What the PLRA Requires 2-207
   B. How the Prisoners’ Rights Bar has Responded, and Should
      Respond 2-209
         1. Lengthening the Remedial Period 2-210
         2. Gathering Information 2-212
V. Conclusion 2-216
Appendix 2-218
   A. Federal Court Filings (Table 1 & Figure A) 2-218
TABLE OF CONTENTS

B. Prison Population (Table 1 & Figure A) 2-219
C. Jail Population (Table 1 & Figure A) 2-220
D. Prison Censuses (Table 2) 2-222
E. Jail Censuses (Table 2) 2-222

“When Mercy Seasons Justice”: Interstate Recognition of Ex-Offender Rights Wayne A. Logan 2-225
Introduction 2-226
I. Restoration and Recognition 2-232
A. Restoration 2-233
B. Recognition 2-238
1. Statute or Regulation 2-238
2. Caselaw 2-240
II. Potential Constitutional Arguments 2-244
A. Full Faith and Credit 2-244
B. Privileges and Immunities 2-251
C. Right to Travel 2-255
D. Equal Protection 2-258
III. Legislative Options 2-262
A. States 2-262
1. The Case for Recognition 2-262
2. The Case Against Recognition 2-265
3. The Case for a More Conditional Approach 2-267
B. Congress 2-271
1. Interstate Compact 2-271
2. Spending Clause 2-273
3. Commerce Clause 2-275
4. Effects Clause 2-277

Wayne A. Logan 2-225
Conclusion 2-279

The Constitutional Law of Incarceration, Reconfigured  Margo Schlanger 2-281
Introduction 2-282
I. Constitutional Regulation of Jail and Prison Conditions: Doctrinal Developments 2-286
A. Stage 1: Before the 1970s 2-289
B. Stage 2: Estelle Through Rhodes, 1976-1981 2-293
D. The Problem with "Punishment" 2-309
II. The Normative Case for a Constitutional Ban on Objectively Unreasonable Force 2-312

© 2021 Thomson Reuters, 6/2021
A. Officers Sometimes Inflict Obvious Summary Corporal Punishment 2-313
B. Officers Sometimes Escalate a Situation that Could Reasonably Be Managed with Minor Force, to Cover Summary Corporal Punishment 2-316
C. Officers Sometimes Use Excessive Force to Accomplish Legitimate Purposes, Indifferent to the Pain or Injury the Force Inflicts 2-317
D. Officers Sometimes Use Force that Is Unreasonable Under the Circumstances 2-323

III. Kingsley v. Hendrickson 2-326
A. The Kingsley Majority 2-327
B. The Kingsley Dissent 2-333
C. Kingsley Requires an Objective Reasonableness Conditions-of-Confinement Standard, Too 2-334

IV. The Organizational Normative Case for a Constitutional Ban on Objectively Unreasonable Force or Conditions 2-341
A. Solving the Problem of Culpable Ignorance 2-342
B. Solving the Problem of a Cost Defense 2-346

V. The Eighth Amendment "Malicious and Sadistic" and Deliberate Indifference Standards are Wrong, Too 2-349

Conclusion 2-357

150% Wrong: The Prison Litigation Reform Act and Attorney’s Fees 2-361
Introduction 2-362
A. Attorney’s Fees in America 2-363

A. Legislative Purpose and History 2-366
B. The Text in Question: 42 U.S.C. § 1997e(d)—Attorney’s Fees 2-369

II. How 42 U.S.C. § 1997e(d) Has Been Interpreted 2-371
A. The Prevailing Interpretation 2-371
B. The Problem with the Prevailing Interpretation 2-374
   1. Fallacy of the Inverse 2-374
   2. Unnecessarily Absurd Results That Deter Meritorious Litigation 2-375
C. Why Such a Bad Interpretation Has Persisted 2-377
D. "The Reminder Theory" 2-380

III. How 42 U.S.C. § 1997e(d) Should Be Interpreted 2-381
A. Section 1988-Authorized Attorney’s Fees in Non-Prisoner Suits 2-381
B. Section 1988-Authorized Attorney’s Fees Under the PLRA: A Reasonable Interpretation 2-382
C. "Proportionately Related" 2-384

*University of Pennsylvania Law Review*

Introduction 2-396
I. *Woodford v. Ngo*: A Primer 2-397
   A. The Administrative Law Exhaustion Doctrine 2-397
   B. The PLRA: The End of Prisoner Litigation in Federal Court? 2-398
   C. *Woodford v. Ngo*: Parsing the Opinion 2-401
   D. Post-*Woodford* Developments 2-405
II. "Proper" Exhaustion and Prisoner Litigation: What Result? 2-405
   A. Methodology 2-406
   B. Summary: Key Findings 2-412
III. Analyzing Trends: *Woodford's* Failure to Block Prisoners' Unexhausted Civil Claims from Entering Federal Court 2-413
   A. Explaining the Outliers 2-413
   B. Outliers vs. The Median 2-417
   C. Knowledge Gaps: Setting Prisoners up to Fail 2-418
   D. Longer Sentences, More Time to File 2-420
   E. *Woodford's* Impact on the Courts and on Court Proceedings 2-421
IV. Recommendations 2-422
Conclusion 2-425
Appendix 2-426

SECTION II
Litigating and Enforcing the Rights of Prisoners

CHAPTER 3
The First Amendment

*Prisons as Censors*  
*Clair A. Cripe and Ira Kirschbaum*

Introduction 3-3
The Constitutional Context 3-4
The Need for Professional Decisionmaking Deference 3-6
Publications That Pose a Definite Threat 3-9
To Reject or Not to Reject Other Publications: It Depends on the Particular Situation 3-10
Sexually Explicit Material 3-13
What Process Is Due? 3-15

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Prisoners’ Religious Free Exercise Rights

Introduction 3-25
Background 3-26
Prisoners’ First Amendment Rights 3-26
Federal Appellate Court Decisions 3-29
Shabazz v. O’Lone: Facts and Procedural History 3-31
The District Court’s Analysis 3-31
The Third Circuit’s Analysis 3-32
The Supreme Court’s Analysis 3-32
Analysis 3-33
Conclusion 3-37
Notes 3-37

Restrictions on Prisoners’ Rights to Receive Publications

Introduction 3-59
Thornburgh v. Abbott 3-59
Analysis 3-62
Conclusion 3-65
Notes 3-65

In the Belly of the Whale: Religious Practice in Prison

Introduction 3-71
The Legal Standard for Inmate Religious Claims 3-72
Correctional Approaches to Religious Accommodation 3-73
Religious Accommodations in Practice 3-75
Classification 3-75
Worship and Pastoral Services 3-77
Diet 3-78
Grooming 3-80
Personal Property 3-81
Conclusion 3-82
Notes 3-83
The Religious Land Use and Institutionalized Persons Act of 2000
Harvard Law Review 3-95

Inmate Access to Print Media
Harvard Law Review 3-107

Gods Behind Bars: Prison Gangs, Due Process, and the First Amendment
Brooklyn Law Review

Introduction 3-120
I. Due Process: Prisoners’ Claims of Deprivation of Constitutional Rights 3-125
   A. The Turner Test 3-125
   B. Turner and Security Threat Group Designation 3-128
   C. Other Legal Approaches to STGs 3-130
II. First Amendment 3-132
   A. Five Percenters 3-132
      1. Background 3-132
      2. Legal Analysis 3-134
   B. Black Guerilla Family 3-139
      1. Background 3-139
      2. Legal Analysis 3-142
III. Consequences of STG Designation 3-145
   A. Lost Privileges 3-147
   B. Segregation 3-148
   C. Reporting to Local Law Enforcement on Release 3-150
   D. “Debriefing” 3-150
IV. Proposals for Change 3-152
   A. The Future of Turner 3-152
   B. Proposed Approaches 3-155
Conclusion 3-157

Ineffective Assistance of Library: The Failings and the Future of Prison Law Libraries
Jonathan Abel

Introduction 3-160
I. The History of Prison Law Libraries 3-166
   A. Prison Law Libraries: 1900 to 1960 3-166
      1. General-Interest Libraries in Prisons 3-166
      2. Law Libraries in Prisons: The Early History 3-168
      3. Propagating the Prison Law Library Myth 3-171
   B. Prison Law Libraries in the 1960s 3-172
      2. Prison Officials’ Views on Prison Law Libraries 3-174
II. The Wobbly Path to a Law Library Doctrine 3-178
A. Nonlibrary Access-to-Courts Cases: Ex Parte Hull and Johnson v. Avery 3-179
B. Younger v. Gilmore: The First Law Library Case 3-180
C. Bounds v. Smith: The Second Law Library Case 3-183
D. The Law Library Debate Flipped on its Head 3-185
   1. Inmate Advocates Opposed Law Libraries Insofar as Libraries Became an Impediment to a Postconviction Right to Counsel 3-185
   2. The States’ Noninterference Principle 3-190

III. The Internal Contradictions of the Law Library Doctrine 3-193
A. Lewis v. Casey: The Standing Paradox and the Absence of a Right to “Discover” Claims or to “Litigate Effectively” 3-193
B. The Mysterious Origins of the Constitutional Right 3-194
D. Circuit Split: Do Pretrial, Pro Se Inmates have a Law Library Right? 3-197

A Concluding Note: Technological Changes to the Prison Law Library 3-198

Nicole B. Godfrey

I. Introduction 3-204
II. Development of Damages Remedy Against Government Officials for Constitutional Violations 3-209
   B. Damages Against Federal Officials Under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics 3-211
   C. The Future of Bivens 3-218
III. Extending Bivens to Free Exercise Claims Brought by Federal Prisoners 3-226
   A. Is a Bivens Remedy for Free Exercise Claims Truly an Extension of Bivens? 3-227
   B. Do Special Factors Exist that Would Counsel Hesitation in Expanding the Availability of a Bivens Remedy for Free Exercise Claims Brought by Federal Prisoners? 3-231
   C. Has Congress Created an Adequate Alternative Remedy to Address the Violation of Federal Prisoners’ Free Exercise Rights? 3-235
IV. Importance of a Damages Remedy for Substantial Burdens on the Free Exercise of Religion in Prisons 3-244
   A. The Stanford Prison Experiment and the ”Lucifer Effect”: How Prisons Create an Environment Ripe for Abuse 3-245
B. The Importance of Religious Rights in Prison 3-248
C. The Historical Purpose of Punitive Damages 3-250
V. Conclusion 3-251

Reading the Prisoner’s Letter: Attorney-Client Confidentiality in Inmate Correspondence  Gregory Sisk, Michelle King, Joy Nissen Beitzel, Bridget Duffus, and Katherine Koehler

Introduction 3-258
I. Confidentiality in Attorney-Client Correspondence with Prisoners 3-262
A. Attorney-Client Confidentiality in General 3-263
B. Attorney-Client Confidentiality and the Inmate 3-265
   1. The Prisoner’s Need for Confidentiality in Legal Communications 3-265
   2. The Impact of Invasive Prison Legal Mail Rules on the Availability of Legal Counsel for Prisoners 3-269
C. The Vital Importance of Legal Mail to the Attorney-Client Relationship 3-271
II. A Survey of Prison Policies on Legal Mail 3-274
   A. Prison Regulations on Incoming Attorney Mail to Prisoners 3-275
   B. Prison Regulations on Outgoing Prisoner Mail to Attorneys 3-276
III. Constitutional Protection for Prisoner-Attorney Correspondence 3-277
   A. Prisoner Free Speech and Access to Court Rights to Confidentiality in Attorney Correspondence 3-280
      1. Supreme Court Precedent 3-280
      2. Circuit Precedent (Majority) 3-281
      3. Circuit Precedent (Minority) 3-283
      4. Whether Prison Intrusion Occurs Inside or Outside Presence of Prisoner as Being Irrelevant to Prohibition on Reading 3-284
   B. Prisoner Right to Assistance of Counsel in Criminal Matters and Confidentiality in Attorney Correspondence 3-286
   C. Protecting a Prison’s Legitimate Penological Interests 3-288
      1. Protecting Against Introduction of Contraband 3-289
      2. Interrupting Illegal Communications 3-290
      3. Upholding the Critical Need for Attorney-Client Confidentiality 3-292
   D. Reading Versus Inspection Versus Scanning 3-293
      1. Impermissibility of Reading Attorney-Client Letters 3-293
      2. The Danger of Allowing Even Limited Access to the Substantive Contents of Attorney-Client Mail 3-296
         a. Skimming of Legal Mail is a Form of Reading That Would Eviscerate Confidentiality 3-297

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b. The Rare Prospect of the Rogue Lawyer Engaging in Criminal Misconduct 3-298
c. Nordstrom v. Ryan: Rejecting Skimming and Highlighting Absence of Evidence of Lawyer Abuse of Legal Mail 3-301

IV. Procedures for Asserting Right to Confidentiality in Prisoner Legal Mail 3-306
A. Exhaustion of Administrative Remedies: The Prison Grievance Process and Legal Mail Cases 3-307
B. Liberal Construction of Pro Se Prisoner Complaints in Legal Mail Cases 3-311
C. Standing for Legal Mail Claims 3-313
   1. Proving a Practice or a Policy of Reading or Opening Attorney-Client Mail 3-313
   2. Standing for First Amendment Free Speech Claim 3-314
   3. Standing for Sixth Amendment Right to Counsel Claim 3-316
      a. Showing of Prejudice When Seeking Retrospective Relief 3-316
      b. No Need to Show Past Prejudice When Seeking Prospective Relief 3-318
      c. The Potential Problem of Mootness 3-320
   4. Standing for Right-of-Access-to-the-Courts Claim 3-322
D. Retrospective and Prospective Relief in Legal Mail Cases 3-324
E. Qualified Immunity for Prison Officers in Legal Mail Cases 3-327

Conclusion 3-329

CHAPTER 4
Fourth Amendment, Privacy, and Possessory Rights

Fourth Amendment, Privacy and Possessory Rights of Detainees and Prisoners: Recent Supreme Court Decisions

Introduction 4-3
Block v. Rutherford 4-3
Hudson v. Palmer 4-5
Analysis of the Decisions 4-7
Conclusion 4-10
Notes 4-10
CHAPTER 5

Procedural Due Process Rights

Prisoners and Due Process Litigation: An Invitation to the State Courts  Susan N. Herman
Introduction  5-3
Due Process Claims  5-4
Federal Due Process Claims  5-4
State Constitutions: The New Frontier  5-6
Perceived Flaws or Eccentricities in the Federal Doctrine  5-7
Institutional Differences Between State and Federal Courts  5-9
Distinctive State-Specific Factors  5-10
Alternative Approaches  5-11
Conclusion  5-12
Notes  5-13

The Supreme Court’s Due Process Cases of the 1985 Term  Harvard Law Review
Introduction  5-19
Daniels v. Williams and Davidson v. Cannon  5-19
Analysis of the Decisions  5-21
Conclusion  5-24
Notes  5-25

Procedural Due Process of Incarcerated Parents in Termination of Parental Rights Proceedings: A Fifty State Analysis  Philip M. Genty
Introduction  5-29
Constitutional Requirements in the Determination of Parental Fitness  5-33
When a Hearing Is Something Less: Streamlined Hearing Procedures  5-37
Physical Presence at Hearings  5-38
Disposition of Proceeding Through Summary Judgment  5-39
Right to Counsel  5-40
Conclusion  5-40
Termination of Parental Rights on the Basis of Past Unfitness:
“Backward-Looking” Statutes and Cases  5-41
Rehabilitation of Parents  5-42
Repeated Criminal Activity or Other Detrimental Conduct  5-43
Nature of the Parent’s Crime  5-44
Conclusions  5-46
Termination of Parental Rights on the Basis of Length of Prison Sentence:
“Forward-Looking” Statutes and Cases  5-47
Statutes  5-48
Cases  5-49
Conclusions  5-52
Protecting the Procedural Due Process Rights of Incarcerated Parents:
Toward a Constitutionally Acceptable Framework for Termination of
Parental Rights  5-53
Illustrative State Systems  5-54
Model for Termination of Parental Rights Proceedings Involving
Incarcerated Parents  5-61
Hearing Procedures  5-61
Duties of Childcare Agency  5-61
Requirements for Judicial Inquiry Into Parental Fitness  5-62
Conclusions  5-63
Notes  5-64

Due Process and Punishments Imposed by Administrative
Proceedings  *Harvard Law Review*
Introduction  5-109
*Sandin v. Conner*  5-110
Analysis  5-112
Conclusion  5-114
Notes  5-115

CHAPTER 6
Overcrowding

**Prison Overcrowding: The Threat of the 1980s**  *Robert B. McKay*
Introduction  6-3
Extent of Prison Overcrowding  6-5
Prison Population Trends from 1960 to 1983  6-6
Jail Inmates  6-6
Probation and Parole  6-7
Rates of Crime  6-7
Causes of Prison Overcrowding  6-9
Demographic Factors  6-9
Legislative Responsibility  6-9
Judicial Responsibility  6-9
Parole Officials’ Responsibility  6-10
Consequences of Prison Overcrowding  6-10
Remedies for Prison Overcrowding  6-12
New Construction or Conversion of Facilities  6-13
Decriminalization  6-14
Reducing Mandatory Sentences  6-14
Alternative Sanctions  6-15
Restitution  6-15
Fines  6-15
CHAPTER 7

The Eighth Amendment

The Defense Perspective on Prison-Conditions Cases

William C. Collins

Introduction 7-3
The Role of the Judiciary 7-4
The Status of the Totality-of-Conditions Standard 7-5
The Impact of Bell v. Wolfish and Rhodes v. Chapman 7-5
The Lower Federal Cases 7-6
Effects of the Chapman Trend 7-7
Relief as a Separate Issue 7-7
Development of the Law 7-7
The Relevance of Cost 7-9
The Precedents Reconsidered 7-10
Continuing Jurisdiction 7-11
Relief and the Contempt Power: An Old Idea Revisited 7-12
Conclusion 7-14
Notes 7-15

Excessive Force Against Prisoners

Harvard Law Review

Introduction 7-19
Hudson v. McMillian 7-19
Analysis 7-22
Conclusion 7-24
Notes 7-25

Secondhand Smoke Signals from Prison

Michigan Law Review

Introduction 7-29
The Serious Risk Posed By Secondhand Smoke 7-33
Secondhand Smoke and the Eighth Amendment 7-36
The Helling v. McKinney Standard 7-36
Societal Intolerance Toward Significant Exposure 7-38
The Deliberate Indifference Inquiry 7-42
Remedying the Eighth Amendment Violation 7-46
Conclusion 7-52

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Confronting the Helms Amendment  
Elizabeth R. Alexander

Introduction 7-73
The Helms Amendment Does Not Require Proof of Any Element Not Previously Required to Show an Eighth Amendment Violation Regarding Overcrowding 7-74
The Helms Amendment Should Not Be Construed as an Attempt to Alter the Eighth Amendment Standard Applicable to Overcrowding 7-76
The Helms Amendment Does Not Restrict the Equitable Discretion of the Federal Courts to Issue an Injunction Against Overcrowding 7-78
The Amendment Does Not Preclude Class Action Certification for Prison Overcrowding Cases 7-79
Section 2 Places No New Restrictions on Federal Court Remedial Powers in Overcrowding Cases 7-81
Section (b)(1) Does Not Interfere with the Ability of a Federal Court to Place a Ceiling on Overcrowding by Approving a Consent Decree 7-81
Application of the Helms Amendment to Require Modification of Existing Consent Decrees May Violate the Principles of Separation of Powers and Due Process 7-84
Section (c) of the Helms Amendment Does Not Change the Standard for Modification 7-85
Conclusion: What Was Congress Doing in Enacting the Helms Amendment? 7-85
Notes 7-86
Appendix 7-91

Restrictions on Prisoners’ Religious Freedom as Unconstitutional Conditions of Confinement: An Eighth Amendment Argument

Introduction 7-93
The Importance of Protecting the Religious Freedom of Prisoners 7-94
The Religious Freedom of Prisoners is Poorly Protected 7-95
The Eighth Amendment May Protect the Religious Freedom of Prisoners 7-96
Background 7-97
Applying the Wilson Test to Religious Deprivations 7-98
The Subjective Prong 7-98
The Objective Prong 7-98
Objections and Replies 7-102
Religious Freedom and (Physical?) Pain 7-102
Pain and the Eighth Amendment 7-102
The Prison Litigation Reform Act 7-103
Isn’t the First Amendment the Right Way to Protect Free Exercise? 7-104
Conclusion 7-104
Notes 7-105
Managed Health Care in Prisons as Cruel and Unusual Punishment
Ira P. Robbins

Introduction 7-117
Managed Health Care in Prisons 7-118
Managed Care 7-118
Managed Health Care in Prisons 7-119
The Different Companies 7-120
Contracts for Services 7-120
Accreditation Standards 7-120
The “Deliberate Indifference” Standard 7-121
History of the Standard 7-121
Liability of Institutional Defendants 7-123
Liability of Private Health Care Providers 7-123
Municipal Liability Based on Acquiescence in Acts of Private Health Care Providers 7-124
Financial Considerations as Deliberate Indifference 7-125
Institutional Liability of Private Health Care Providers 7-126
Challenges Under the Standard 7-126
Can the Use of Managed Care Constitute “Deliberate Indifference”? 7-128
Per Se Deliberate Indifference 7-129
Rebuttable Presumptions of Deliberate Indifference 7-129
Treatment-Based Controversies 7-131
Treatment Denied 7-132
Inefficacious Treatment 7-132
Treatment Delayed 7-132
Inadequate Staffing 7-133
Conclusion 7-134
Notes 7-134

Racial Segregation in Prisons Harvard Law Review 7-151

The Deaths in Custody Reporting Act: Status and Recommendations Ira P. Robbins

Introduction 7-163
The Unmet Goals of DICRA 7-165
The Effectiveness of Reporting Acts 7-167
The Utility and Limitations of Reporting Statutes Generally 7-167
California as a Microcosm: The Need for More than Data Collection 7-168
Why Congress Should Enact Additional Legislation to Supplement DICRA 7-170
Blueprint for Complementary DICRA Legislation 7-171

© 2021 Thomson Reuters, 6/2021
Lessons From Hurricane Katrina: Prison Emergency Preparedness as a Constitutional Imperative  
*Ira P. Robbins*

Introduction 7-200
I. Preparing for Hurricane Katrina 7-205
   A. “There was No Plan for this Situation” 7-205
   B. Point of Comparison: The Nebraska Emergency System 7-210
II. Emergency Preparation and Response in Prisons Generally 7-211
   A. Emergency Training 7-212
   B. Emergency Drills and Exercises 7-214
   C. Planning for Terrorism 7-216
III. Legal and Moral Issues in Prison Emergency Preparedness 7-218
   A. Emergency Preparedness and the Eighth Amendment 7-218
      1. The Components of an Eighth Amendment Claim 7-220
      2. Applying the Deliberate Indifference Standard to the Orleans Parish Prison 7-223
         a. Officials’ Awareness of Serious Risks to Inmates 7-226
         b. OPP Officials Were Deliberately Indifferent by Failing to Take Reasonable Steps to Abate the Risks to Prisoners 7-231
      3. The Defense of Qualified Immunity 7-236
   B. Emergency Preparedness and the Sixth Amendment 7-238
      1. The Rights to Speedy Trial and Counsel: Legal Background 7-239
      2. Hurricane Katrina, the Rights to Speedy Trial and Counsel, and Emergency Planning 7-243
         a. The Right to Speedy Trial 7-243
         b. The Right to Counsel 7-248
      3. What Could Have Been Done Differently? 7-249
   C. Emergency Preparedness and Human Rights Concerns 7-250
IV. Recommendations 7-255
   A. Reform Through Prisoners’ Rights Litigation 7-256
   B. Reform Through Legislation 7-258
   C. Comparing Litigation with Legislation 7-262
      1. Advantages of Litigation 7-262
      2. Advantages of Legislation 7-263
   D. Speedy Trial Recommendations 7-264
Conclusion 7-266
# TABLE OF CONTENTS

## Qualified Immunity: Order of Analysis
*Harvard Law Review*  7-269

## The Psychology of Cruelty Recognizing Grave Mental Harm in American Prisons
*Harvard Law Review*

- **Introduction**  7-282
- **I. Applying Psychological and Neuroscientific Research to the Eighth Amendment Inquiries**  7-285
  - A. Unconstitutional Punishments: The Proportionality Inquiry  7-285
  - B. Unconstitutional Conditions of Confinement  7-289
- **II. Using Psychological and Neuroscientific Research as a Basis for Recognizing Grave Mental Harm**  7-295
  - A. Juvenile Brain Research and the Proportionality Inquiry  7-296
  - B. Social Isolation Research and the Conditions of Confinement Inquiry  7-297
- **III. Justifying Judicial Action**  7-299
  - A. Overcoming Institutional Biases: Why the Courts are the Correct Entity to Identify Mental Needs  7-299
  - B. Why Courts are Capable of Identifying Grave Mental Harm  7-302
- **IV. Conclusion**  7-302

## Cruel and Unusual Construction: The Eighth Amendment as a Limit on Building Prisons on Toxic Waste Sites
*University of Pennsylvania Law Review*

- **Introduction**  7-306
- **I. The Problem: Prisons in Unsafe Locations**  7-309
  - A. The State Correctional Institution at Fayette (SCI Fayette), LaBelle, Pennsylvania)  7-311
  - B. Forthcoming: United States Penitentiary Letcher (USP Letcher), (Roxana, Kentucky)  7-311
- **II. Cruel and Unusual Prison Conditions: The Case Law**  7-313
  - A. Development of the Objective and Subjective Requirements  7-315
  - B. Future Harm and Deliberate Indifference  7-318
    1. *Helling*: Exposure to Unsafe Conditions  7-318
    2. *Farmer*: Reconciling *Wilson* with *Hutto* and *Rhodes*  7-319
  - C. *Brown v. Plata*: System-Wide Violations  7-321
- **III. Applying the Legal Framework**  7-325
  - A. Objective Requirement: The Evidence  7-327
    1. SCI Fayette  7-327
    2. Letcher County  7-330
  - B. Subjective Test: Deliberately Indifferent Design  7-332
    1. SCI Fayette  7-332

© 2021 Thomson Reuters, 6/2021
2. Letcher County 7-333
3. Subjectivity and Prospective Relief: An Uneasy Fit 7-334

IV. Limitations and Solutions 7-336
A. Federal Courts: The PLRA and Justiciability 7-336
1. Standing and Ripeness: Limits on Entry 7-336
2. The PLRA: Limits on Remedies 7-340
B. State Courts: A Solution Through Subsidiarity 7-342
Conclusion 7-345

Promise Amid Peril: PREA’s Efforts to Regulate An End to Prison Rape  Brenda V. Smith
Introduction 7-348
Background 7-349
I. The Development of PREA Provided Greater Discover Tools for Prisoners and Their Counsel 7-352
A. Shining a Light on Agency Practices in the Standards Development Process 7-353
B. PREA Discovery in Litigation 7-354
C. Notice and Comment as Admissions 7-357
II. New Articulations for the Standard of Care in Preventing, Investigating, and Punishing Sexual Abuse in Custody 7-359
III. Lowering Barriers and Giving New Life to Existing Constitutional and State Law Claims 7-364
A. Exhaustion of Administrative Remedies 7-366
B. Frivolous Claims 7-367
C. Physical Injury 7-369
IV. Litigation Interpreting PREA 7-371
A. Cases Attempting to Use PREA as a Separate Cause of Action Have Not Succeeded 7-371
B. PREA’s Contribution to the Eighth Amendment Analysis 7-372
V. Extending Civil Rights and Services to Incarcerated Persons 7-374
A. Sexual Assault Services for People in Custody 7-374
B. Limits on Cross-Gender Supervision 7-377
C. Providing Protections for LGBTQI Persons in Custody 7-380
Conclusion 7-383

CHAPTER 8
Death-Row Conditions

Litigating Death-Row Conditions: The Case for Reform  Robert Johnson and John L. Carroll
Introduction 8-3
Death-Row Confinement Conditions 8-4
Nature of Conditions 8-4
CHAPTER 9

Supervisory Liability

Legal Liabilities and Responsibilities of Corrections Agency Supervisors  
Rolando v. del Carmen

Introduction  9-3
Supervisor Lawsuits Categorized  9-4
Direct Liability  9-5
To Clients  9-5
  State Law  9-5
  Federal Law  9-6
To Subordinates  9-6
  State Law  9-6
  Federal Law  9-8
Vicarious Liability  9-8
To Clients  9-9
  State Law  9-9
    Respondeat Superior  9-9
    Policy or Custom  9-9
    Negligence of Supervisors  9-10
  Federal Law  9-17
To Subordinates  9-20
Agency Representation and Liability for Acts of Supervisors  9-20
Conclusion  9-22
Notes  9-23
CHAPTER 9A
Overview of the Law of Probation, Supervised Release, Restitution, and Parole

Probation, Supervised Release, Restitution, and Parole
Georgetown Law Journal

Probation 9A-4
- Imposition of Probation 9A-5
- Duration of Probation 9A-9
- Conditions of Probation 9A-10
- Revocation 9A-15

Supervised Release 9A-24

Restitution 9A-32

Parole 9A-40
- Parole Release from Incarceration 9A-40
- Parole Revocation 9A-45

CHAPTER 10
Parole

The Rights of Parolees Oliver J. Keller, Jr.
- Introduction 10-3
- The Federal Parole System 10-4
- A Brief History of Parole 10-5
- Parole Becomes a Target 10-5
- Judicial Intervention 10-6
  - Morrissey v. Brewer: Revoking Parole 10-6
  - Gagnon v. Scarpelli: Legal Assistance 10-8
  - Moody v. Daggett: No Immediate Hearing Required for Parole Violators 10-8
  - Wolff v. McDonnell: Loss of Good Time Requires a Prison Hearing 10-10
  - Jago v. Van Curen: Rescission Proceedings 10-11
  - Greenholtz v. Nebraska Penal Inmates: No Constitutional Right to Parole 10-12
- Birth of Parole Guidelines 10-14
- Important Improvements to Presentence-Investigation Reports Under Rule 32 10-17
- Youth Corrections Act vs. Parole Commission and Reorganization Act 10-19
- The Guidelines and the Salient-Factor Score 10-20
- Criticisms of the Guidelines 10-21
- Nonadjudicated Offenses 10-22
The Fourth Amendment Exclusionary Rule in Parole Revocation Hearings

Introduction 10-45
Pennsylvania Board of Probation & Parole v. Scott 10-45
Analysis 10-48
Conclusion 10-49
Notes 10-51

CHAPTER 10A
Pardon and Clemency

The Quality of Mercy Strained: Wrestling the Pardoning Power from the King

Introduction 10A-3
Defining Clemency, and Its Relationship to Notions of Justice 10A-6
Early Origins of the Clemency Power 10A-10
The Development of the Clemency Power in England 10A-11
The Clemency Power in the United States 10A-13
Federal Clemency Power 10A-13
The Clemency Power in the States 10A-21
A Proposal for Bifurcation of the Clemency Power: Replacing Politics with Justice 10A-25
Limitations on the Exercise of Executive Clemency Power 10A-27
The Legislature 10A-27
The Judiciary 10A-27
The People 10A-31
The Executive 10A-31
Clemency and Presidential Administration of Criminal Law
Rachel E. Barkow

Introduction 10A-72
I. The Constitutional Pardon Power 10A-78
   A. The Use of the Clemency Power 10A-82
   B. Analyzing the Decline 10A-87
      1. Politics 10A-88
      2. Structural Bias at DOJ 10A-93
II. Clemency, the Unitary Executive, and Presidential Administration 10A-98
   A. Clemency’s Structural Function 10A-98
   B. Clemency’s Relationship to Unitary Executive and Presidential Administration Theories 10A-109
III. The Modern Relevance of Clemency 10A-120
   A. Fewer Mechanisms for Controlling Prosecutors 10A-120
   B. Increasing Danger of Overreach 10A-125
   C. The Need for Relief from Collateral Consequences 10A-135
Conclusion 10A-138
SECTION III
Procedural Aspects of Prisoner Litigation

CHAPTER 11
Magistrate Judges

The Role of the United States Magistrate Judge in Prisoner Litigation  Frederic N. Smalkin and Nancy K. Oliver

Introduction 11-3
The Office of United States Magistrate Judge  11-3
Jurisdiction of Magistrate Judges  11-4
Nonconsensual References  11-4
Consent Trials  11-8
Additional Duties  11-10
Conclusion  11-11
Notes  11-11

CHAPTER 11A
The Provision of Counsel

Rethinking Prisoner Civil Rights Cases and the Provision of Counsel  Howard B. Eisenberg

Introduction 11A-3
The History of Prisoner Civil Rights Litigation  11A-4

© 2021 Thomson Reuters, 6/2021
Stemming the Tide of Prisoner Litigation 11A-6
Medical Care 11A-7
Prisoner Overcrowding, Conditions of Confinement, and Protection of Inmates 11A-8
Failure to Protect 11A-9
First Amendment Rights 11A-10
Privacy and Fourth Amendment Rights 11A-11
Use of Force 11A-11
Right to Due Process 11A-11
The Issues to Be Litigated Under Present Prison Cases 11A-12
Volume and Frivolity—The Twin Devils of Prisoner Civil Rights Litigation 11A-12
Volume of Prisoner Cases 11A-12
Frivolity of Prisoner Cases 11A-13
Defining “Frivolous” 11A-14
The Therapeutic Value of Prisoner Litigation 11A-15
Prisoners’ Ability to Draft a Viable Complaint 11A-16
Frivolity and the “Jailhouse Lawyer” 11A-18
Remedies for High Volume and Perceived Frivolity 11A-19
The Provision of Counsel in Prisoner Civil Rights Cases 11A-19
Legal Authority for the Provision of Counsel in Prisoner Civil Rights Cases 11A-19
Constitutional Right 11A-19
Statutory Right 11A-20
Inherent Authority of the Court 11A-20
Criteria for Provision of Counsel in Prisoner Civil Rights Cases 11A-21
Factors Relating to the Nature of the Claim 11A-22
Factors Relating to the Nature of the Plaintiff 11A-22
Factors Relating to the Plaintiff’s Efforts to Obtain Counsel 11A-23
Providing Reasons for Denying the Appointment of Counsel 11A-23
Results of File Review in Three Federal Districts 11A-24
Who Provides Legal Representation to Prisoners in Civil Cases? 11A-26
Reducing the Volume of Prison Civil Rights Litigation 11A-30
Requiring Exhaustion of Administrative Remedies 11A-31
Expediting Department of Justice Certification of State Grievance Systems 11A-31
Requiring Partial Payment of Filing Fees 11A-32
Modification of Existing Form Complaints 11A-33
Mandatory Post-Filing Review 11A-33
Mandatory Document Submission 11A-34
Second Screening by the Court 11A-34
The Need for Counsel 11A-35
CHAPTER 11B

Pro Se Litigation

Ghostwriting: Filling in the Gaps of Pro Se Prisoners’ Access to the Courts

Ira P. Robbins

Introduction 11B-4

I. Background 11B-6
   A. The Need in Prisons 11B-8
   B. Trends in the Response to Ghostwriting 11B-16

II. The Important Role of Ghostwriting 11B-22

III. Do Attorneys Have an Ethical or Legal Duty to Disclose Drafting Assistance? 11B-27
   A. Ethical Duty to Disclose 11B-27
   B. Legal Duty to Disclose 11B-30

IV. Does Undisclosed Ghostwriting Implicate the Attorney’s Duty to Provide Competent Representation? 11B-34
   A. Competent Representation 11B-35
   B. Benevolent Reading 11B-38

V. Does Undisclosed Ghostwriting Encourage the Unauthorized Practice of Law? 11B-44
   A. Does Ghostwriting Constitute the “Practice of Law”? 11B-44
   B. Does Ghostwriting by Non-Lawyers Constitute the Unauthorized Practice of Law? 11B-46
   C. Should Non-Lawyer Ghostwriting be Authorized in Certain Circumstances? 11B-47

Conclusion 11B-51

© 2021 Thomson Reuters, 6/2021
CHAPTER 12
Obtaining Witnesses

Obtaining Witnesses in Prisoner Cases

Kent Sinclair, Jr. and Debra Ruth Wolin

Introduction 12-3
Attendance of Witnesses 12-3
Plaintiff’s Own Presence at Trial 12-3
Subpoena Power for Witnesses 12-5
Transportation 12-6
Use of Depositions 12-7
Waiver of Witness Fees 12-7
Relevant Caselaw 12-7
Statutory Analysis and Legislative History 12-11
Can the Government Be Required to Bear the Expense? 12-14
Conclusion 12-16
Notes 12-16

Appendix: Sample Orders Writ of Habeas Corpus Ad Testificandum 12-23
Order for Service of Subpoena, with Government to Advance Fees 12-24
Order for Service of Subpoena, Without Prepayment of Fees 12-25

CHAPTER 13
Challenges to the Duration of Confinement

Habeas Corpus and the Burger Court

Theodore McMillian

Introduction 13-3
Background 13-3
Recent Cases 13-4
Conclusion 13-6
Notes 13-7

The Habeas Corpus Certificate of Probable Cause

Ira P. Robbins

Introduction 13-9
The Stevens-Rehnquist Debate 13-10
Congressional Intent and the History of the Certificate 13-12
Problems with Certificate Practice 13-14
The Standard for Issuance of the Certificate 13-14
Limited Certificates 13-16
The State and the Certificate 13-18
Procedure 13-20
Current Legislative Reform of the Certificate Requirement 13-22
The Jurisprudence of Detention: An Analysis of the Politics of Federal Habeas Corpus Relitigation  Gary Peller

Introduction 13-43
The Classical Liberal Justification of the Substantive Criminal Law 13-44
The Instrumentalist and Process-Oriented Approaches to Legitimizing Detention 13-47
The Burger Court Restrictions 13-48
An Evaluation of the Restriction of Collateral Habeas Corpus Review 13-51
Interpretation of the Habeas Corpus Act of 1867: Reconsidering the Relevant History 13-52
Habeas Law Prior to the Habeas Corpus Act of 1867 13-52
Passage of the Habeas Corpus Act of 1867 13-54
Federal Habeas Corpus Review Prior to 1915 13-54
Federal Habeas Corpus Review Between 1867 and 1886 13-55
Supreme Court Habeas Cases Involving Due Process Claims: 1886–1915 13-56
Exhaustion and Habeas Review: 1886–1915 13-58
The Contraction and Expansion of Due Process Requirements Under the Fourteenth Amendment 13-60
Exhaustion, Relitigation, and the Adequacy of the State’s Corrective Process 13-61
Effect of the Denial of Certiorari Review 13-62
Summary 13-62
A Critique of Process Orientation in the Habeas Corpus Relitigation Debate 13-63
The External Critique 13-65
The Internal Critique 13-68
Conclusion 13-71
Notes 13-73

Whither (or Wither) Habeas Corpus?: Observations on the Supreme Court’s 1985 Term  Ira P. Robbins

Introduction 13-83
Statistics 13-84
Supreme Court Cases of the 1985 Term 13-84
Vasquez v. Hillery and Kuhlmann v. Wilson 13-84
Miller v. Fenton 13-87
TABLE OF CONTENTS

Habeas Corpus and *Miranda* Claims  *Harvard Law Review*

<table>
<thead>
<tr>
<th>Analysis</th>
<th>13-180</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conclusion</td>
<td>13-182</td>
</tr>
<tr>
<td>Notes</td>
<td>13-183</td>
</tr>
</tbody>
</table>

Harmless Error in Federal Habeas Corpus After *Brecht v. Abrahamson*  John H. Blume and Stephen P. Garvey

<table>
<thead>
<tr>
<th>Introduction</th>
<th>13-197</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Structure of the <em>Brecht-Kotteakos</em> Rule</td>
<td>13-198</td>
</tr>
<tr>
<td>Allocation of the Burden of Proof</td>
<td>13-199</td>
</tr>
<tr>
<td>Burden of Proof</td>
<td>13-200</td>
</tr>
<tr>
<td>Standard of Prejudice</td>
<td>13-201</td>
</tr>
<tr>
<td>Burden on the State</td>
<td>13-201</td>
</tr>
<tr>
<td>Burden on the Defendant</td>
<td>13-202</td>
</tr>
<tr>
<td>Approach of the Reviewing Court</td>
<td>13-204</td>
</tr>
<tr>
<td>Exceptions to the <em>Brecht-Kotteakos</em> Rule</td>
<td>13-206</td>
</tr>
<tr>
<td>The <em>Orndorff</em> Exception</td>
<td>13-207</td>
</tr>
<tr>
<td>Trial Error and Structural Error</td>
<td>13-208</td>
</tr>
<tr>
<td>Prosecutorial Misconduct and Cumulative Error</td>
<td>13-209</td>
</tr>
<tr>
<td>The <em>Richmond</em> Principle</td>
<td>13-210</td>
</tr>
<tr>
<td>Conclusion</td>
<td>13-213</td>
</tr>
<tr>
<td>Notes</td>
<td>13-214</td>
</tr>
</tbody>
</table>

Habeas Corpus, Death Penalty, and Actual Innocence Claims  *Harvard Law Review*

<table>
<thead>
<tr>
<th>Introduction</th>
<th>13-223</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Schlup v. Delo</em></td>
<td>13-223</td>
</tr>
<tr>
<td>Analysis</td>
<td>13-225</td>
</tr>
<tr>
<td>Conclusion</td>
<td>13-228</td>
</tr>
<tr>
<td>Notes</td>
<td>13-228</td>
</tr>
</tbody>
</table>

Habeas Corpus and Retroactivity: *Schriro v. Summerlin*  *Harvard Law Review*

<table>
<thead>
<tr>
<th>Introduction</th>
<th>13-235</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Schriro v. Summerlin</em></td>
<td>13-235</td>
</tr>
<tr>
<td>Analysis</td>
<td>13-238</td>
</tr>
<tr>
<td>Conclusion</td>
<td>13-240</td>
</tr>
<tr>
<td>Notes</td>
<td>13-240</td>
</tr>
</tbody>
</table>

© 2021 Thomson Reuters, 6/2021
Habeas Corpus and Military Detention: Alien Detainees  
Harvard Law Review

- Introduction 13-245
- Rasul v. Bush 13-245
- Analysis 13-248
- Conclusion 13-251
- Notes 13-251

Habeas Corpus and Military Detention: Enemy Combatants  
Harvard Law Review

- Introduction 13-257
- Hamdi v. Rumsfeld 13-257
- Analysis 13-261
- Conclusion 13-263
- Notes 13-264

Habeas Corpus Jurisdiction and Venue: Rumsfeld v. Padilla  
Harvard Law Review

- Introduction 13-269
- Rumsfeld v. Padilla 13-269
- Analysis 13-272
- Conclusion 13-274
- Notes 13-275

The Vienna Convention and Procedural Default  
Harvard Law Review

- Postconviction Access to DNA Evidence 13-291

Excuse of State Procedural Default: Martinez v. Ryan  
Harvard Law Review 13-303

Habeas Corpus Petitions in Federal and Tribal Court: A Search for Individualized Justice  
Carrie E. Garrow

- Introduction 13-316
- I. The Indian Civil Rights Act and Federal Indian Law's Limitations on Tribal Criminal Jurisdiction 13-320
- II. Habeas Corpus 13-324
- III. Federal Courts and ICRA Habeas Corpus Petitions 13-326
  - A. The Exhaustion Requirement 13-327
  - B. Non-Indian Defendants—No Exhaustion Required 13-329
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>C. Tribal Court Remedies Exhausted and Habeas Corpus Granted</td>
<td>13-332</td>
</tr>
<tr>
<td>D. Tribal Court Remedies Exhausted and Habeas Corpus Denied</td>
<td>13-336</td>
</tr>
<tr>
<td>E. Federal Habeas Petitions by State Detainees</td>
<td>13-337</td>
</tr>
<tr>
<td>F. Implications from the Survey</td>
<td>13-338</td>
</tr>
<tr>
<td>IV. Individualized Justice and a Case Study of the Navajo Nation Supreme Court and Habeas Corpus</td>
<td>13-339</td>
</tr>
<tr>
<td>A. Individualized Justice</td>
<td>13-339</td>
</tr>
<tr>
<td>B. The Navajo Nation Courts</td>
<td>13-341</td>
</tr>
<tr>
<td>C. The Navajo Nation Habeas Corpus Process</td>
<td>13-342</td>
</tr>
<tr>
<td>D. Individualized Justice—A Balancing of Rights</td>
<td>13-348</td>
</tr>
<tr>
<td>E. Exhaustion of Tribal Remedies</td>
<td>13-349</td>
</tr>
<tr>
<td>F. Navajo Due Process</td>
<td>13-350</td>
</tr>
<tr>
<td>G. Mr. Haungooah’s Quest for Individualized Justice</td>
<td>13-354</td>
</tr>
<tr>
<td>H. Implications from the Navajo Nation Case Study</td>
<td>13-356</td>
</tr>
<tr>
<td>Conclusion</td>
<td>13-357</td>
</tr>
</tbody>
</table>

**Habeas Corpus Retroactivity in Florida**

**Procedural Default: A Structural Approach to Adequacy Doctrine**

*Eve Brensike Primus*

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>13-371</td>
</tr>
<tr>
<td>I. State Procedural Rules as Obstacles to the Adjudication of Criminal Defendants’ Federal Claims</td>
<td>13-379</td>
</tr>
<tr>
<td>II. Structural Adequacy Doctrine as a Potential Solution</td>
<td>13-390</td>
</tr>
<tr>
<td>A. The Origin and Purpose of Procedural Adequacy Doctrine</td>
<td>13-391</td>
</tr>
<tr>
<td>B. A Structural Approach to Procedural Adequacy</td>
<td>13-398</td>
</tr>
<tr>
<td>III. Structural Adequacy Doctrine Falls Dormant: How the Federal Courts Shifted to a Cause and Prejudice Analysis</td>
<td>13-400</td>
</tr>
<tr>
<td>IV. Why Structural Adequacy is Better Than Cause and Prejudice</td>
<td>13-406</td>
</tr>
<tr>
<td>A. Different Orientations: The Prisoner Versus the System</td>
<td>13-406</td>
</tr>
<tr>
<td>B. Different Relief</td>
<td>13-407</td>
</tr>
<tr>
<td>C. Different Obstacles to Review</td>
<td>13-411</td>
</tr>
<tr>
<td>D. Doctrinal Coherence and Original Purposes</td>
<td>13-413</td>
</tr>
<tr>
<td>Conclusion</td>
<td>13-416</td>
</tr>
</tbody>
</table>

**Equitable Gateways: Toward Expanded Federal Habeas Corpus Review of State-Court Criminal Convictions**

*Eve Brensike Primus*

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>13-420</td>
</tr>
<tr>
<td>I. An Overview of the Obstacles to Federal Habeas Review</td>
<td>13-425</td>
</tr>
<tr>
<td>A. Procedural Obstacles to Review</td>
<td>13-426</td>
</tr>
</tbody>
</table>

© 2021 Thomson Reuters, 6/2021
CHAPTER 13A
Death Penalty Review

Toward a More Just and Effective System of Review in State Death Penalty Cases: Report and Recommendations of the American Bar Association Task Force on Death Penalty Habeas Corpus
Ira P. Robbins

Task Force Members 13A-5
Executive Summary 13A-6
Introduction 13A-11

The Provision of Competent Counsel 13A-15
Special Demands of Representation in a Capital Case 13A-16
The Problem at Trial and on Appeal 13A-16
Post-Conviction Representation 13A-19
The Causes of the Problem 13A-20
Compensation for Counsel and Other Services 13A-21
The Right to Post-Conviction Counsel 13A-22
Task Force Recommendations 13A-28
Commentary 13A-30
CHAPTER 13C

The Antiterrorism and Effective Death Penalty Act of 1996

Supreme Court Jurisdiction to Review Second or Successive Habeas Corpus Petitions  
 introduction 13C-3
 Felker v. Turpin 13C-4
 analysis 13C-6
 conclusion 13C-9
 notes 13C-9

 introduction 13C-15
 Federal Habeas Corpus Review Prior to the AEDPA 13C-16
 Standards of Review 13C-16
 Nonretroactivity and “New Law” 13C-16
 Interpretive Approaches to the Amendments to § 2254 13C-17
 Approaches to Review of Legal and Mixed Question Determinations 13C-18
 Approaches to Review of Factual Determinations 13C-19
 Policy, Precedent, and Their Implications for the Interpretation of the New § 2254 13C-20
 Consonance with the Objectives of Habeas and Deferential Review 13C-21
 Interaction with Pre-AEDPA Case Law 13C-24
 conclusion 13C-26
 notes 13C-27

Standard of Review for the Recall of Mandates by Courts of Appeals  
 introduction 13C-35
 Calderon v. Thompson 13C-35
 analysis 13C-38
 conclusion 13C-40
 notes 13C-41
Deference to State Court Determinations of Law

Williams v. Taylor

Analysis

Conclusion

Notes

Habeas Corpus and the Suspension Clause

INS v. St. Cyr

Analysis

Conclusion

Notes

Standard for Obtaining Certificates of Appealability

Miller-El v. Cockrell

Analysis

Conclusion

Notes

“Clearly Established Law” in Habeas Review

Actual Innocence Gateway: McQuiggin v. Perkins

The Demise of Habeas Corpus and the Rise of Qualified Immunity

Stephen R. Reinhardt

I. The Demise of Habeas Corpus
   A. The Evolution from Independent Review to Near-Total Deference to State Courts
   B. Respect for State Courts at the Expense of Constitutional Rights
   C. The Lack of “Clearly Established Federal Law”
   D. Pinholster and the Court’s Barriers to Establishing Factual Cause for Relief
   E. The Court’s Exceptional Treatment of Habeas Law
   F. How Far We Have Strayed

II. The Rise of Qualified Immunity

III. Particularly Unfortunate Consequences
Certificates of Appealability, Rule 60(b) Motions, and Race: Buck v. Davis
Harvard Law Review 13C-143

AEDPA as Forum Allocation: The Textual and Structural Case for Overruling Williams v. Taylor  Carlos M. Vázquez

I. The Historical Forum-Allocation Function of Habeas 13C-160
   A. The 1789-1916 Period 13C-161
   B. The 1916-1953 Period 13C-162
   C. The 1953-1996 Period 13C-164
II. Williams and the Standard of Review 13C-166
   A. The Williams Majority’s Basis for its Interpretation 13C-166
      1. AEDPA’s Text 13C-167
      2. AEDPA’s Purpose 13C-172
   B. Congress’s Actual Intent 13C-174
III. AEDPA’s Forum-Allocation Function 13C-184
   A. The Constitutionality of the Williams Construction of § 2254(d)(1) 13C-184
   B. The Dysfunctional Nature of AEDPA’s Allocation of Jurisdiction 13C-187
   C. Alternative Interpretations? 13C-191
   D. Implementing the Forum-Allocation Interpretation 13C-195
IV. Reconsidering Williams 13C-201
   A. The Court’s Freer Hand in Interpreting Jurisdictional Statutes 13C-202
      1. The Court’s Common Law Approach to the Interpretation of Jurisdictional Statutes 13C-202
      2. Supreme Court Resistance of Severe Misallocations of Jurisdiction 13C-206
         a. Martin v. Hunter’s Lessee 13C-207
         b. Murdock v. City of Memphis 13C-209
   B. In Defense of Resistance of Jurisdictional Misallocations 13C-212
      2. The Propriety of Resistance 13C-214
Conclusion 13C-216
SECTION IV
Special Issues and Problems

CHAPTER 14
The Rights of Gay Prisoners

Prisons Within Prisons: Gay Prisoners and Protective Custody
Joan W. Howarth

Introduction 14-3
Segregation in Prisons 14-4
Segregation: A Method of Control 14-4
Segregation of Gay Prisoners 14-5
The Judicial Response: Confused 14-8
Reform of Criteria and Procedures for Protective-Custody Assignment 14-11
Staying Out: Procedural Due Process 14-11
Staying Out: Substantive Due Process 14-14
Getting In: The Right to Reasonable Protection 14-14
Getting In: Procedural Due Process 14-15
Reform of Conditions in Protective Custody 14-16
Protective-Punitive Distinction 14-16
Nonwaiver of Constitutional Rights 14-17
Equal Protection 14-18
Cruel and Unusual Punishment 14-19
Penal-Policy Considerations 14-21
Conclusion 14-22
Notes 14-23

CHAPTER 14A
AIDS

AIDS in Prisons and Jails: Issues and Options
National Institute of Justice, United States Department of Justice

Introduction 14A-3
Cause and Transmission of AIDS 14A-4
AIDS in the Correctional Population 14A-5
Correctional Policy Issues and Options 14A-5
Education and Training 14A-6
HTLV-III Antibody Testing 14A-6
Correctional Policies on HTLV-III Antibody Testing 14A-6
Mass Screening: The Debate 14A-7
Implementation Issues 14A-9
Medical, Correctional Management, and Legal Issues 14A-9

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Opening the Bloodgates: The Blood Testing of Prisoners for the AIDS Virus  Lynn Sanders Branham

Introduction 14A-21
The Fourth Amendment: An Unreasonable Search or Seizure? 14A-22
The Reasonableness of AIDS-Virus Blood Testing 14A-28
The Intrusiveness of AIDS-Virus Blood Testing 14A-28
The Need for AIDS-Virus Blood Testing 14A-30
The Latency of AIDS 14A-31
Intravenous Drug Users and Sex in Prisons 14A-31
Lack of Behavior-Monitoring Resources 14A-32
Negative Effects of Intense Supervision 14A-32
Disadvantages of Increased Confinement of Prisoners in Cells 14A-33
Limits on the Efficaciousness of Education 14A-33
Seropositivity Rates in Prisons 14A-34
The Failure to Adopt Testing in “Other” Jurisdictions 14A-35
Protection of the Public 14A-36
Preservation of Life: A Fundamental Interest 14A-37
Case Law on the Constitutionality of Public Health Measures 14A-37
The Right to Privacy 14A-38
The Requirement of a Rational Relationship 14A-40
Other Means of Exercising the Right to Privacy 14A-41
Less Restrictive Means 14A-42
Adverse Effects of Accommodation 14A-42
Due Process 14A-43
Blood Testing of Prisoners for the AIDS Virus—Constitutionally Required? 14A-46
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requiring Blood Testing to Prevent the Spread of AIDS</td>
<td>14A-47</td>
</tr>
<tr>
<td>Due Process</td>
<td>14A-47</td>
</tr>
<tr>
<td>Cruel and Unusual Punishment</td>
<td>14A-48</td>
</tr>
<tr>
<td>Requiring Blood Testing for Medical Treatment Purposes</td>
<td>14A-50</td>
</tr>
<tr>
<td>Conclusion</td>
<td>14A-51</td>
</tr>
<tr>
<td>Notes</td>
<td>14A-52</td>
</tr>
</tbody>
</table>

## Update on AIDS in Prisons and Jails

National Institute of Justice, United States Department of Justice

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>14A-61</td>
</tr>
<tr>
<td>Essential Medical Information</td>
<td>14A-62</td>
</tr>
<tr>
<td>HIV Infection and AIDS in the Correctional Population</td>
<td>14A-63</td>
</tr>
<tr>
<td>Correctional Policy Issues and Options</td>
<td>14A-65</td>
</tr>
<tr>
<td>Education and Training</td>
<td>14A-65</td>
</tr>
<tr>
<td>HIV-Antibody Screening and Testing</td>
<td>14A-66</td>
</tr>
<tr>
<td>Correctional Policies on HIV-Antibody Testing</td>
<td>14A-67</td>
</tr>
<tr>
<td>Medical Care, Psychosocial Services, Housing, and Correctional Management Issues</td>
<td>14A-68</td>
</tr>
<tr>
<td>Medical Care</td>
<td>14A-68</td>
</tr>
<tr>
<td>Psychosocial Services</td>
<td>14A-68</td>
</tr>
<tr>
<td>Housing and Programming Policies</td>
<td>14A-69</td>
</tr>
<tr>
<td>Precautionary and Preventive Measures</td>
<td>14A-70</td>
</tr>
<tr>
<td>Legal Issues</td>
<td>14A-71</td>
</tr>
<tr>
<td>Notes</td>
<td>14A-79</td>
</tr>
</tbody>
</table>

## Prisons, Law and Public Health: The Case for a Coordinated Response to Epidemic Disease Behind Bars

Scott Burris

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>14A-81</td>
</tr>
<tr>
<td>Prisoners and Epidemic Disease</td>
<td>14A-83</td>
</tr>
<tr>
<td>The Demographics of HIV, TB, Drug Use, and Incarceration</td>
<td>14A-83</td>
</tr>
<tr>
<td>Who Is Ill?</td>
<td>14A-83</td>
</tr>
<tr>
<td>Who Is Ill in Prison?</td>
<td>14A-84</td>
</tr>
<tr>
<td>The Public Health Responses</td>
<td>14A-86</td>
</tr>
<tr>
<td>A Model Response</td>
<td>14A-87</td>
</tr>
<tr>
<td>HIV</td>
<td>14A-87</td>
</tr>
<tr>
<td>TB</td>
<td>14A-88</td>
</tr>
<tr>
<td>Prison Practices</td>
<td>14A-90</td>
</tr>
<tr>
<td>The Role of Litigation</td>
<td>14A-91</td>
</tr>
<tr>
<td>Court Decisions</td>
<td>14A-91</td>
</tr>
<tr>
<td>Basic Medical Care for HIV</td>
<td>14A-91</td>
</tr>
<tr>
<td>HIV Testing and Counseling</td>
<td>14A-91</td>
</tr>
<tr>
<td>Medical Care After Identification</td>
<td>14A-92</td>
</tr>
<tr>
<td>HIV Prevention Education</td>
<td>14A-94</td>
</tr>
<tr>
<td>Social Conditions for People with HIV</td>
<td>14A-95</td>
</tr>
</tbody>
</table>

© 2021 Thomson Reuters, 6/2021
TB Prevention and Treatment 14A-98
Barriers to Effective Litigation 14A-99
Poor Facts 14A-102
Poor Lawyering 14A-102
Wrong Parties, Wrong Place 14A-104
Prison Organization, Change, and the Courts 14A-104
The Coordinated Public Health Strategy 14A-106
Conclusion 14A-109
Notes 14A-110

1998 AIDS in Prison Bibliography
National Prison Project

Preface 14A-121
Introduction 14A-121
Legal Articles 14A-122
Law Review Articles 14A-122
Clinical Trials 14A-122
Confidentiality 14A-122
Conjugal Vists 14A-122
HIV/AIDS Policy 14A-122
Segregation 14A-124
Sentencing 14A-124
HIV Seroprevalence Rates & HIV Testing 14A-124
Transmission in Prison 14A-125
Women Prisoners 14A-125
Legal News Articles 14A-125
Compassionate Release 14A-125
Confidentiality 14A-126
HIV/AIDS Policy 14A-126
HIV Seroprevalence Rates & HIV Testing 14A-128
HIV Transmission in Prison 14A-129
Legislation & Jurisprudence 14A-130
Segregation 14A-130
Sentencing 14A-130
Articles and Abstracts on AIDS/HIV in Corrections 14A-130
Criminal Justice Articles 14A-130
Articles 14A-130
Clinical Trials 14A-130
Conjugal Visits 14A-130
HIV/AIDS Education & Prevention 14A-131
HIV/AIDS Epidemiology & Medical Care 14A-132
HIV/AIDS Policy 14A-133
HIV Seroprevalence Rates & HIV Testing 14A-136
Legislation & Jurisprudence 14A-136
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation &amp; Parole</td>
<td>14A-138</td>
</tr>
<tr>
<td>Substance Abuse Prevention &amp; Control</td>
<td>14A-138</td>
</tr>
<tr>
<td>Women Prisoners</td>
<td>14A-138</td>
</tr>
<tr>
<td>Reports &amp; Books</td>
<td>14A-139</td>
</tr>
<tr>
<td>Surveys on HIV/AIDS in Prisons and Jails</td>
<td>14A-139</td>
</tr>
<tr>
<td>Books on HIV/AIDS in Prisons and Jails</td>
<td>14A-140</td>
</tr>
<tr>
<td>Manuals &amp; Handbooks</td>
<td>14A-140</td>
</tr>
<tr>
<td>Training Manuals &amp; Guidelines for Correctional &amp; Probation Staff</td>
<td>14A-140</td>
</tr>
<tr>
<td>Training Manuals &amp; Guidelines for Criminal Justice Staff</td>
<td>14A-141</td>
</tr>
<tr>
<td>HIV/AIDS Policies in Corrections</td>
<td>14A-141</td>
</tr>
<tr>
<td>HIV/AIDS Policies in Criminal Justice Agencies</td>
<td>14A-142</td>
</tr>
<tr>
<td>International Conference on HIV/AIDS Abstracts</td>
<td>14A-142</td>
</tr>
<tr>
<td>Clinical Trials</td>
<td>14A-142</td>
</tr>
<tr>
<td>Compassionate Release</td>
<td>14A-143</td>
</tr>
<tr>
<td>Discharge Planning</td>
<td>14A-143</td>
</tr>
<tr>
<td>Incarcerated Youth</td>
<td>14A-143</td>
</tr>
<tr>
<td>HIV/AIDS Education &amp; Prevention</td>
<td>14A-144</td>
</tr>
<tr>
<td>HIV/AIDS Epidemiology &amp; Medical Care</td>
<td>14A-148</td>
</tr>
<tr>
<td>HIV/AIDS Policy &amp; Legal Issues</td>
<td>14A-149</td>
</tr>
<tr>
<td>HIV/AIDS Preventive Measures</td>
<td>14A-151</td>
</tr>
<tr>
<td>HIV/AIDS Psychology</td>
<td>14A-151</td>
</tr>
<tr>
<td>HIV Seroprevalence Rates &amp; HIV Testing</td>
<td>14A-152</td>
</tr>
<tr>
<td>HIV Transmission in Prison</td>
<td>14A-154</td>
</tr>
<tr>
<td>Substance Abuse Prevention &amp; Control</td>
<td>14A-155</td>
</tr>
<tr>
<td>Tuberculosis Epidemiology</td>
<td>14A-156</td>
</tr>
<tr>
<td>Women Prisoners</td>
<td>14A-157</td>
</tr>
<tr>
<td>Medical Articles</td>
<td>14A-158</td>
</tr>
<tr>
<td>Clinical Trials</td>
<td>14A-158</td>
</tr>
<tr>
<td>Discharge Planning</td>
<td>14A-158</td>
</tr>
<tr>
<td>Incarcerated Youth</td>
<td>14A-158</td>
</tr>
<tr>
<td>HIV/AIDS Education &amp; Prevention</td>
<td>14A-160</td>
</tr>
<tr>
<td>HIV/AIDS Epidemiology &amp; Medical Care</td>
<td>14A-162</td>
</tr>
<tr>
<td>HIV/AIDS Psychology</td>
<td>14A-164</td>
</tr>
<tr>
<td>HIV/AIDS Policy</td>
<td>14A-166</td>
</tr>
<tr>
<td>HIV Seroprevalence Rates &amp; HIV Testing</td>
<td>14A-168</td>
</tr>
<tr>
<td>HIV Transmission in Prison</td>
<td>14A-173</td>
</tr>
<tr>
<td>Substance Abuse Prevention &amp; Control</td>
<td>14A-175</td>
</tr>
<tr>
<td>Tuberculosis Epidemiology</td>
<td>14A-177</td>
</tr>
<tr>
<td>Women Prisoners</td>
<td>14A-179</td>
</tr>
<tr>
<td>National Prison Project Journal Articles</td>
<td>14A-180</td>
</tr>
<tr>
<td>Policies on AIDS/HIV &amp; Corrections</td>
<td>14A-183</td>
</tr>
<tr>
<td>Federal Policies</td>
<td>14A-183</td>
</tr>
<tr>
<td>Federal Bureau of Prisons</td>
<td>14A-183</td>
</tr>
</tbody>
</table>

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CHAPTER 14B

Compassionate Release

Compassionate Release of Terminally Ill Prisoners

Introduction 14B-3
Justifications and Compatibility with Sentencing Laws 14B-5
An Overview of Compassionate Release Programs 14B-7
Types of Programs 14B-8
Eligibility and Release Criteria 14B-8
Application Process and Review 14B-9
Release Conditions; Revocation 14B-10
Data on Compassionate Release 14B-11
Issues in Implementing Compassionate Release 14B-11
Eligibility and Standard for Release 14B-11
Release Procedure 14B-13
A Special Mechanism for Terminally Ill Prisoners? 14B-13
Quelling the Silver Tsunami: Compassionate Release of Elderly Offenders  Jalila Jefferson-Bullock

I. Introduction  14B-30
II. Which Elderly Offenders Should Be Compassionately Released?  14B-35
III. Aging in America  14B-39
   A. Physical Deterioration of the Elderly  14B-40
   B. Mental Decline of the Elderly  14B-42
   C. The Elderly Population Requires "Tender Loving Care"  14B-45
IV. The Undignified Prisoner  14B-46
   A. Prison Life, Generally  14B-50
   B. Prison Life for the Elderly  14B-53
V. The Problem with Compassionate Release  14B-59
VI. Incarceration of Category Four Elderly Offenders Does Not Fulfill Any Goal of Criminal Punishment  14B-63
   A. The Problem with Deterrence  14B-63
   B. Aging Out of Crime  14B-64
   C. The Problem with Retribution  14B-67
   D. Retribution and Quantitative Proportionality  14B-69
   E. Retribution, the Eighth Amendment, and Qualitative Proportionality  14B-70

© 2021 Thomson Reuters, 6/2021
VII. Incarceration of the Elderly is Cost-Prohibitive 14B-72
VIII. Remedies 14B-74
  A. Compassionate Release Procedures Must Clearly Define and Reform Eligibility Criteria 14B-78
  B. Eligibility Determination Should Be Placed Squarely in the Hands of Judges 14B-79
IX. Conclusion 14B-80

CHAPTER 15
Prison Riots

Legal Aspects of Prison Riots  Ira P. Robbins
  Introduction 15-3
  Prison Riots and the Attorney 15-4
    Practical Limitations on the Attorney’s Involvement in a Prison Riot 15-5
    Ethical and Legal Limitations on the Attorney’s Involvement in a Prison Riot 15-6
    Illegal or Improper Conduct 15-6
    Withdrawal of the Attorney-Client Privilege and the Duty to Disclose 15-7
    Potential Conflicts of Interest 15-8
  Summary 15-9
  Prison Riots and the Inmates 15-9
    Tort Recovery 15-10
      State Law 15-10
      Federal Law 15-12
    Constitutional Causes of Action 15-13
    Criminal Sanctions for Prison Riots 15-15
      Federal Law 15-15
      State Law 15-16
      Issues Common to Federal and State Criminal Cases 15-16
    Amnesty and Negotiations 15-17
    First Amendment Implications 15-19
  Prison Riots and the Guards 15-21
    Recovery Under Federal Law 15-21
    Recovery Under State Law 15-22
  Conclusion 15-22
  Notes 15-23

How Can We Sleep When the Beds Are Burning? The Tumultuous Prison Culture of Attica Flourishes in American Prisons Twenty-Five Years Later Justin Brooks
  Introduction 15-35
### TABLE OF CONTENTS

The Cultures of Attica and Lucasville 15-38  
Attica: The Punitive Culture 15-38  
Lucasville: The Custodial Culture 15-40  
Reforming Prison Cultures Over the Last Twenty-Five Years 15-41  
Shortcomings of Reforming Prison Cultures Through Litigation 15-41  
Reforming Prison Cultures Has Been Contrary to Political Agendas 15-43  
Other Factors Aggravating Cultural Reform 15-45  
Overcrowding 15-45  
Health Issues 15-46  
The Changing Characteristics of Inmates 15-47  
How Do We Change Prison Cultures? 15-47  
Alter Our Correctional Philosophy 15-47  
Change the Relationship Between Staff and Inmates 15-48  
Break Down Total Institutions 15-48  
Decrease the Number of Prisoners 15-49  
Improve Prisoner Health Care 15-50  
Conclusion 15-50  
Notes 15-51

### CHAPTER 16

**Inmate Welfare Funds**

**Inmate Welfare Funds: Reassessing Prisoner Assessments**  
*Eric Neisser*

Introduction 16-3  
Nature and Operation of Inmate Welfare Funds 16-6  
Overview 16-6  
California 16-6  
Survey of Other States 16-10  
Legal Authority 16-10  
Administration 16-10  
Methods of Assessment 16-11  
Expenditures 16-11  
Constitutional Limitations on Financial Assessments of Inmates 16-12  
The Constitutional Framework for Punishment 16-12  
Involuntary Servitude 16-13  
Fines 16-14  
Liberty vs. Property Punishments 16-17  
Other Sources and Limits 16-17  
The Eighth Amendment Perspective 16-18  
The Fiscal Implications of Constitutional Imperatives 16-19  
The Meaning of Cruel and Unusual Punishment 16-20

© 2021 Thomson Reuters, 6/2021
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damages</td>
<td>17-13</td>
</tr>
<tr>
<td>Preliminary Relief</td>
<td>17-15</td>
</tr>
<tr>
<td>Naming the Proper Defendants</td>
<td>17-17</td>
</tr>
<tr>
<td>Respondeat Superior vs. Personal Responsibility</td>
<td>17-17</td>
</tr>
<tr>
<td>Monell Actions: Direct Liability of Local Government</td>
<td>17-18</td>
</tr>
<tr>
<td>Individual and Official Capacity</td>
<td>17-18</td>
</tr>
<tr>
<td>Non-Jail Defendants</td>
<td>17-19</td>
</tr>
<tr>
<td>Preliminary Planning and Research</td>
<td>17-20</td>
</tr>
<tr>
<td>Initial Contact with Plaintiffs</td>
<td>17-20</td>
</tr>
<tr>
<td>Gathering Documents</td>
<td>17-21</td>
</tr>
<tr>
<td>Other Sources of Information and Assistance</td>
<td>17-21</td>
</tr>
<tr>
<td>Preliminary Tour</td>
<td>17-21</td>
</tr>
<tr>
<td>Resources and Money</td>
<td>17-22</td>
</tr>
<tr>
<td>Experts</td>
<td>17-23</td>
</tr>
<tr>
<td>Types of Experts</td>
<td>17-23</td>
</tr>
<tr>
<td>Corrections and Security</td>
<td>17-23</td>
</tr>
<tr>
<td>Medical Care</td>
<td>17-23</td>
</tr>
<tr>
<td>Mental Health</td>
<td>17-23</td>
</tr>
<tr>
<td>Environmental Health</td>
<td>17-24</td>
</tr>
<tr>
<td>Structure</td>
<td>17-24</td>
</tr>
<tr>
<td>Use of Experts</td>
<td>17-24</td>
</tr>
<tr>
<td>Legal Limitations</td>
<td>17-24</td>
</tr>
<tr>
<td>What to Do with Your Expert</td>
<td>17-25</td>
</tr>
<tr>
<td>The Expert Tour</td>
<td>17-25</td>
</tr>
<tr>
<td>Finding and Selecting Experts</td>
<td>17-26</td>
</tr>
<tr>
<td>Drafting the Complaint</td>
<td>17-27</td>
</tr>
<tr>
<td>Class Actions</td>
<td>17-28</td>
</tr>
<tr>
<td>Preparation for Filing</td>
<td>17-29</td>
</tr>
<tr>
<td>Requirements for Certification</td>
<td>17-29</td>
</tr>
<tr>
<td>Numerosity and Impracticibility of Joinder</td>
<td>17-30</td>
</tr>
<tr>
<td>Commonality</td>
<td>17-30</td>
</tr>
<tr>
<td>Typicality</td>
<td>17-31</td>
</tr>
<tr>
<td>Adequate Representation</td>
<td>17-32</td>
</tr>
<tr>
<td>Injunctive Relief</td>
<td>17-32</td>
</tr>
<tr>
<td>The “Lack of Necessity” Argument</td>
<td>17-33</td>
</tr>
<tr>
<td>If Certification Is Denied</td>
<td>17-33</td>
</tr>
<tr>
<td>Notice</td>
<td>17-35</td>
</tr>
<tr>
<td>Settlement or Dismissal</td>
<td>17-36</td>
</tr>
<tr>
<td>Discovery</td>
<td>17-37</td>
</tr>
<tr>
<td>Defenses in Jail Cases</td>
<td>17-40</td>
</tr>
<tr>
<td>Lack-of-Funding Defense</td>
<td>17-41</td>
</tr>
<tr>
<td>Improved-Conditions Defense</td>
<td>17-41</td>
</tr>
<tr>
<td>Future-Improvements Defense</td>
<td>17-41</td>
</tr>
<tr>
<td>Damage-Case Defenses</td>
<td>17-43</td>
</tr>
<tr>
<td>Proving the Case</td>
<td>17-44</td>
</tr>
</tbody>
</table>
Disenfranchisement

The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and “The Purity of the Ballot Box”  

Introduction 17A-3
Policy Justifications 17A-4
Theoretical Justification 17A-5
The Social Contract 17A-5
Moral Competence 17A-7
Building Fences 17A-8
Disenfranchisement as Symbolic Action 17A-8
Building an Inclusive Community 17A-11
CHAPTER 17B
The Rights of Deaf Prisoners

Deaf Prison Inmates: Time to Be Heard  Bonnie P. Tucker
Introduction  17B-3
Anti-Discrimination and Equal Protection Principles  17B-10
Section 504 of the Rehabilitation Act  17B-12
  Requirement That the Prison Be a Recipient of Federal Financial Assistance  17B-12
  Requirement That the Deaf Prisoner Be an Otherwise Qualified Handicapped Individual  17B-14
  The “Program or Activity” Requirement  17B-14
Discrimination Under Section 504  17B-18
Reasonable Accommodations  17B-19
Constitutional Rights  17B-20
  Equal Protection  17B-21
The Eighth Amendment  17B-26
  Rights of Convicted Deaf Prisoners  17B-26
  Due Process Rights of Pretrial Detainees  17B-31
Summary  17B-33
Broadening State Interpreter Statutes: A Partial Solution  17B-33
Conclusion  17B-36
Appendix  17B-37
Notes  17B-42
Table of Contents

Volume Three

CHAPTER 17C
The Rights of Women Prisoners

Pregnant Prisoners  Ellen M. Barry
Preface  17C-3
Pregnant Prisoners: The Overall Picture  17C-3
The Development of an Adequate Medical Care Standard in Correctional Institutions  17C-4
Pregnancy Medical Care Litigation in California State Prisons and County Jails  17C-6
   Harris v. McCarthy  17C-6
   Jones v. Dyer  17C-8
   Yeager v. Smith  17C-9
Analysis of Litigation for Pregnant Prisoners  17C-9
Conclusion  17C-11
Notes  17C-12

Women in Prison Bibliography
Introduction  17C-17
Amnesty International/International Human Rights  17C-17
Battered Women: Abuse, Domestic Violence, and Crime  17C-19
Bibliographies About Women in the Criminal Justice System  17C-21
Book Reviews/Book Notes  17C-22
Capital Punishment  17C-24
Education/Programs/Training  17C-28
Employment/Labor  17C-29

© 2021 Thomson Reuters, 6/2021 xiii
Gender and Sexuality in the ABA Standards on the Treatment of
Prisoners  Margaret Colgate Love and Giovanna Shay
I. Development of the ABA Standards on the Treatment of
  Prisoners  17C-76
II. Updated Provisions Affecting Women Prisoners  17C-80
   A. Screening and Classification  17C-81
   B. Pregnancy and Childbirth  17C-83
   C. Co-Corrections and Equal Protection  17C-85
III. New Provisions Addressing Sexual Abuse, Privacy, and LGBT
    Prisoners  17C-86
   A. Custodial Sexual Abuse and Prison Sexual Violence  17C-86
   B. Searches and Cross-Gender Supervision  17C-88
   C. Lesbian, Gay, and Bisexual Prisoners  17C-92
   D. Provisions Affecting Transgender Prisoners  17C-94
IV. Conclusion  17C-97

Parental Prisoners: The Incarcerated Mother’s Constitutional Right
to Parent  Journal of Criminal Law and Criminology
Introduction  17C-100
I. Why and How Women End Up Incarcerated  17C-106
II. Existing Programs  17C-109
   A. Prison Nurseries  17C-109
   B. Community-Based Residential Parenting Programs  17C-110
III. Parental Rights Upon Incarceration  17C-111
IV. Fourteenth Amendment Right to Parent  17C-113
V. The Logic of Turner Grants Incarcerated Mothers the Right to
   Parent  17C-117
VI. Policy Justifications  17C-121
   A. Well-Being of the Children  17C-121
CHAPTER 17G

Children of Incarcerated Parents

Children of Incarcerated Parents: The Child’s Constitutional Right to the Family Relationship  Chesa Boudin

I. Introduction  17G-4
II. The Population Impacted by Parental Incarceration and the Issues at Stake  17G-8
III. The Rights of the Child: Lessons from International Law  17G-10
   A. The Convention on the Rights of the Child  17G-10
   C. European Law  17G-15
   D. Other International Law  17G-17
IV. Sentencing and Visiting: Is There a Role for the Child?  17G-18
   A. Sentencing Procedures Fail to Recognize Children’s Rights  17G-19
   B. Visitation Policies and Children with Incarcerated Parents  17G-25
V. Constitutional Rights of Children with Incarcerated Parents  17G-31
   A. First Amendment  17G-32
   B. Due Process  17G-36
   C. Engaging Counter-Arguments  17G-39
   D. Prudential Considerations  17G-41
VI. Conclusion  17G-44

CHAPTER 17H

Prison Visitation

Prison Visitation Policies: A Fifty-State Survey  Chesa Boudin, Trevor Stutz, and Aaron Littman

Introduction  17H-4
I. Methodology  17H-10
   A. Background  17H-10
   B. Sources of Data  17H-11
II. Key Findings  17H-14
   A. Overview of Key Findings  17H-14
      1. Institutional Authority over Visitation  17H-14
      2. Number and Duration of Visits  17H-14
      3. Inmate Eligibility for Visits  17H-15
      4. Approval of Visitors  17H-17

© 2021 Thomson Reuters, 6/2021
CHAPTER 18

The Accreditation Debate

The Case Against Correctional Accreditation    David L. Bazelon

Introduction 18-3
The Promise of Accreditation 18-4
The Reality of the Accreditation Process 18-5
The Commission Has Repeatedly Refused to Open Up the Accreditation Process to Public Scrutiny and Participation 18-5
The Commission’s Audit Techniques and Deliberative Procedures Are Inherently Unreliable 18-8
The Commission Is Unwilling to Accommodate Constructive Criticism and the Possibility of Meaningful Change 18-10
The Commission’s Priorities Are Fundamentally Flawed 18-10
The Commission Has Pervasive Conflicts of Interest with the Facilities It Is Charged with Monitoring 18-11
The Commission Has Permitted the Accreditation Movement to Be Transformed into a Propaganda Vehicle for Corrections Authorities 18-12
Conclusion 18-13
Notes 18-13

The Case for Correctional Accreditation    B. James George, Jr.

Introduction 18-19
Standards Development 18-20
Accreditation Procedures 18-21
Statistics on Accreditation 18-21
Correspondent Status 18-21
Candidate Status 18-22
Accreditation Hearing 18-23
Accredited Status 18-24
Accreditation: Making a Good Process Better

Lynn Sanders Branham

Introduction 18-41
Ensuring That Accredited Facilities Meet Constitutional Standards 18-42
Ensuring That the Information Provided by the Auditors to the Commission Is Accurate and Complete 18-46
Ensuring That the Decisions of the Commission Are Accurate and Reliable 18-48
Establishing a Multitiered Accreditation System 18-50
Conclusion 18-50
Notes 18-51

CHAPTER 19

The Future of Prisons

Let's Nationalize the State Prisons  David Fogel 19-3
Notes 19-7

CHAPTER 20

Restitution

A Proposal for a New Correctional System: Correction by Restitution  Don J. Young
Prologue 20-3
Introduction 20-4
The Proposal 20-5
Problems to be Considered 20-5
How This Proposal Would Work in Practice 20-7
The Mechanics of Translating the Program into Reality 20-9
The First Stage 20-9
The Second Stage 20-10
Conclusion 20-10
Epilogue 20-10
Notes 20-13

© 2021 Thomson Reuters, 6/2021
CHAPTER 21
Prison Industries


Notes  21-8

Freeing Prisoners’ Labor  Stephen P. Garvey  21-9

Introduction  21-9
Closing the Market  21-11
Organizational Forms of Prison Labor  21-11
The Rise of Prison Labor, 1790–1870  21-12
Prison Labor in the North  21-12
Labor in the “Cradle of the Penitentiary”  21-12
Labor in the Auburn-Cherry Hill Rivalry  21-13
Prison Labor in the South  21-15
The Fall of Prison Labor, 1870–1935  21-17
The Fall of the Contract  21-17
The Fall of the Lease  21-20
Federal Intervention  21-22
Prison Labor Today  21-24
Reopening the Market  21-26
The Morality of the Market  21-27
Potential Benefits  21-27
Social Welfare  21-27
Prison Order  21-28
Inmate Reform and Rehabilitation  21-29
Risks  21-31
Abuse, Coercion, and Exploitation  21-31
Racial Stereotyping  21-33
Less Eligibility  21-34
The Politics of the Market  21-35
Three Ways to Open the Market  21-36
Unions  21-36
The State  21-36
Victims  21-37
Punishment and Profit  21-38
Conclusion  21-40
Notes  21-40
### Privatization of Corrections: Defining the Issues

**Introduction** 22-3

**Advantages and Criticisms** 22-4

**Constitutional Issues** 22-6

- **State Action** 22-6
  - **Public-Function Test** 22-7
  - **Close-Nexus Test** 22-8
  - **State-Compulsion Test** 22-9
- **Delegation** 22-10

**Other Important Questions** 22-11

**Symbolism: The Hidden Issue** 22-12

**Conclusion** 22-13

**Notes** 22-13

---

### Contracting for the Operation of Prisons and Jails

**Introduction** 22-17

**Legal Issues** 22-18

- **Labor Relations** 22-18
- **Liability** 22-19
- **Use of Force** 22-19
- **Inmate Rights** 22-19

**Before Deciding to Contract** 22-20

- **Public Relations** 22-20
- **What Kind of Facility?** 22-20
- **Selection of Inmates** 22-20
- **Inmate Discipline** 22-21

**RFP and Contract Issues** 22-21

- **Appraisal Criteria** 22-21
- **Contract Pricing** 22-22
- **Interruptions in Service** 22-23
- **Performance Standards** 22-23
- **Duration and Renewal** 22-23
- **Provisions for Monitoring** 22-23
- **Present Employees** 22-24

**Monitoring and Evaluation** 22-24

- **How to Monitor and How Much** 22-24
The Legal Dimensions of Private Incarceration

Ira P. Robbins

Preface 22-36
Advisory Board 22-39
Executive Summary 22-40
I. Introduction 22-40
II. Constitutional Dimensions 22-43
A. The Delegation Doctrine 22-43
1. Introduction 22-43
2. Federal Delegation 22-44
   a. Brief History 22-44
      (1) Delegation to Public Bodies 22-45
      (2) Delegation to Private Parties 22-46
   b. Current Federal Law 22-47
      (1) The Todd Test 22-48
      (2) Possible Inapplicability of the Todd Test 22-49
   c. Possible Trend to Revive the Delegation Doctrine 22-49
3. State Delegation 22-51
   a. Delegation of Management Functions 22-52
   b. Delegation of Rule-Making Authority 22-54
   c. Delegation of Adjudicative Powers 22-57
   d. Application of State Law to Private Incarceration 22-60
4. Conclusion 22-60
1. Introduction 22-62
2. Overview of State-Action Doctrine 22-63
   a. Historical Approaches to State Action: Four Traditional Tests 22-64
   b. The 1982 Trilogy: An Attempt at Clarification 22-64
3. Development of the State-Action Doctrine: The Application to Prison and Jail Privatization 22-65
**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Public-Function Test</td>
<td>22-65</td>
</tr>
<tr>
<td>b. Close-Nexus Test</td>
<td>22-69</td>
</tr>
<tr>
<td>c. State-Compulsion Test</td>
<td>22-72</td>
</tr>
<tr>
<td>d. Multi-Characterization Analysis</td>
<td>22-73</td>
</tr>
<tr>
<td>4. The Latest Word: <em>West v. Atkins</em></td>
<td>22-75</td>
</tr>
<tr>
<td>5. Conclusion</td>
<td>22-76</td>
</tr>
<tr>
<td>C. The Thirteenth Amendment</td>
<td>22-77</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>22-77</td>
</tr>
<tr>
<td>2. Analysis</td>
<td>22-77</td>
</tr>
<tr>
<td>3. Conclusion</td>
<td>22-79</td>
</tr>
<tr>
<td>III. Contractual Dimensions</td>
<td>22-80</td>
</tr>
<tr>
<td>A. Model Contract and Commentary</td>
<td>22-82</td>
</tr>
<tr>
<td>Section 1: Policy Statement—Goals and Responsibilities of the Parties</td>
<td>22-82</td>
</tr>
<tr>
<td>Section 2: Private Financing and Physical Plant</td>
<td>22-86</td>
</tr>
<tr>
<td>Section 2(A): Private Financing</td>
<td>22-86</td>
</tr>
<tr>
<td>(1) Private Financing Generally</td>
<td>22-86</td>
</tr>
<tr>
<td>(a) Advantages and Disadvantages</td>
<td>22-86</td>
</tr>
<tr>
<td>(b) Tax Aspects</td>
<td>22-87</td>
</tr>
<tr>
<td>(2) Types of Private Financing</td>
<td>22-87</td>
</tr>
<tr>
<td>(a) Straight Lease</td>
<td>22-88</td>
</tr>
<tr>
<td>(b) Leasing as Part of Contract for Operation and Management of a</td>
<td>22-89</td>
</tr>
<tr>
<td>Correction or Detention Facility</td>
<td>22-89</td>
</tr>
<tr>
<td>(c) Sale/Leaseback</td>
<td>22-90</td>
</tr>
<tr>
<td>(3) Other Types of Financing for Incarceration Facilities</td>
<td>22-91</td>
</tr>
<tr>
<td>(4) Conclusion</td>
<td>22-93</td>
</tr>
<tr>
<td>Section 2(B): Physical Plant</td>
<td>22-94</td>
</tr>
<tr>
<td>Section 3: General Contract Terms</td>
<td>22-95</td>
</tr>
<tr>
<td>Section 3(A): Term</td>
<td>22-95</td>
</tr>
<tr>
<td>Section 3(B): Renewal</td>
<td>22-97</td>
</tr>
<tr>
<td>Section 3(C): Compensation</td>
<td>22-99</td>
</tr>
<tr>
<td>Section 3(D): Performance Bond</td>
<td>22-101</td>
</tr>
<tr>
<td>Section 3(E): Indemnification, Immunity, and Insurance</td>
<td>22-102</td>
</tr>
<tr>
<td>(1) Indemnification and Immunity</td>
<td>22-102</td>
</tr>
<tr>
<td>(a) The Eleventh Amendment, Sovereign Immunity, and Federal/State</td>
<td>22-103</td>
</tr>
<tr>
<td>Tort-Claims Acts</td>
<td>22-103</td>
</tr>
<tr>
<td>(b) 42 U.S.C. § 1983</td>
<td>22-104</td>
</tr>
<tr>
<td>(c) Available Immunities</td>
<td>22-105</td>
</tr>
<tr>
<td>(d) Immunity for Private-Incarceration Contractors</td>
<td>22-105</td>
</tr>
<tr>
<td>(2) Insurance</td>
<td>22-112</td>
</tr>
<tr>
<td>Section 3(F): Operating Standards and Accreditation</td>
<td>22-119</td>
</tr>
<tr>
<td>(1) Operating Standards</td>
<td>22-119</td>
</tr>
<tr>
<td>(2) Accreditation</td>
<td>22-121</td>
</tr>
</tbody>
</table>

© 2021 Thomson Reuters, 6/2021
Section 3(G): Subcontracts and Assignments 22-122
Section 3(H): Independent-Contractor Status 22-124
Section 4: Employee Issues 22-124
Section 4(A): Hiring Criteria 22-124
(1) Employment Discrimination 22-124
(2) Employment Options for Correctional and Detention Employees at Existing Facilities 22-126
(3) Employee Background Investigations 22-127
Section 4(B): Employee Training Requirements 22-128
Section 4(C): Personnel Policy 22-130
Section 4(D): Staff Ratio 22-131
Section 4(E): Labor Disputes/Right to Strike 22-132
(1) Federal Facilities 22-132
(2) State Facilities 22-133
(3) Private Facilities 22-134
(a) The National Labor Relations Act 22-134
(b) The Applicability of the National Labor Relations Act to Private Prison and Jail Employees 22-134
(4) Recommendations 22-137
Section 5: Inmate Issues 22-138
Section 5(A): Inmate Management 22-138
(1) Classification 22-138
(2) Transfer 22-139
(3) Discipline 22-139
(4) Parole 22-141
Section 5(B): Use of Force 22-142
Section 5(C): Inmate Transportation 22-145
Section 5(D): Inmate Labor 22-146
Section 6: Monitoring 22-147
Section 7: Termination 22-150
Section 8: Miscellaneous Provisions 22-154
Section 8(A): Entire Agreement 22-154
Section 8(B): Amendment 22-154
Section 8(C): Severability 22-155
Section 8(D): Venue and Choice of Law 22-155
Section 8(E): Alternative Dispute Resolution 22-156
B. Summary of Model Contract Provisions 22-157
IV. Statutory Dimensions 22-176
A. Federal Statutory Authorization to Designate Privately Operated Places of Confinement 22-176
1. Introduction 22-176
2. 18 U.S.C. § 4082(b) 22-177
   a. Legislative Intent of 18 U.S.C. § 4082(b) 22-178
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>c. 1965 Amendment to Section 4082(b) Expanding Scope of Attorney General’s Authority to Designate Places of Confinement</td>
<td>22-180</td>
</tr>
<tr>
<td>3. Conclusion</td>
<td>22-180</td>
</tr>
<tr>
<td>B. Model Statute and Commentary</td>
<td>22-181</td>
</tr>
<tr>
<td>Section 1: Enabling Legislation</td>
<td>22-183</td>
</tr>
<tr>
<td>Section 2: Site Selection</td>
<td>22-185</td>
</tr>
<tr>
<td>Section 3: Contract Term and Renewal</td>
<td>22-187</td>
</tr>
<tr>
<td>Section 4: Standards of Operation</td>
<td>22-188</td>
</tr>
<tr>
<td>Section 5: Use of Force</td>
<td>22-189</td>
</tr>
<tr>
<td>Section 6: Employee Training Requirements</td>
<td>22-190</td>
</tr>
<tr>
<td>Section 7: Monitoring</td>
<td>22-191</td>
</tr>
<tr>
<td>Section 8: Liability and Sovereign Immunity</td>
<td>22-192</td>
</tr>
<tr>
<td>Section 9: Insurance</td>
<td>22-193</td>
</tr>
<tr>
<td>Section 10: Termination of Contract and Resumption of Government Control</td>
<td>22-194</td>
</tr>
<tr>
<td>Section 11: Nondelegability of Contracting Agency’s Authority</td>
<td>22-195</td>
</tr>
<tr>
<td>Section 12: Conflict of Interest</td>
<td>22-195</td>
</tr>
<tr>
<td>C. Summary of Model Statutory Provisions</td>
<td>22-197</td>
</tr>
<tr>
<td>V. Conclusion</td>
<td>22-202</td>
</tr>
<tr>
<td>VI. Notes</td>
<td>22-203</td>
</tr>
<tr>
<td>VII. Selected Bibliography</td>
<td>22-282</td>
</tr>
</tbody>
</table>

No Qualified Immunity for Private Prison Guards
*Harvard Law Review*

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>22-335</td>
</tr>
<tr>
<td>Richardson v. McKnight</td>
<td>22-336</td>
</tr>
<tr>
<td>Analysis</td>
<td>22-338</td>
</tr>
<tr>
<td>Conclusion</td>
<td>22-340</td>
</tr>
<tr>
<td>Notes</td>
<td>22-341</td>
</tr>
</tbody>
</table>

Prison Accountability and Performance Measures
*Alexander Volokh*

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>22-349</td>
</tr>
<tr>
<td>I. The Failure of Comparative Effectiveness Studies</td>
<td>22-354</td>
</tr>
<tr>
<td>A. Which Sector Costs Less?</td>
<td>22-354</td>
</tr>
<tr>
<td>1. Difficulties in Calculating Costs</td>
<td>22-354</td>
</tr>
<tr>
<td>2. Competing Cost Estimates</td>
<td>22-357</td>
</tr>
<tr>
<td>a. Texas</td>
<td>22-357</td>
</tr>
<tr>
<td>b. Florida</td>
<td>22-358</td>
</tr>
<tr>
<td>c. Taft</td>
<td>22-358</td>
</tr>
<tr>
<td>B. Which Sector Provides Higher Quality?</td>
<td>22-360</td>
</tr>
<tr>
<td>1. Difficulties in Figuring Out Quality</td>
<td>22-360</td>
</tr>
<tr>
<td>2. Which Sector Leads to Less Recidivism?</td>
<td>22-364</td>
</tr>
</tbody>
</table>

© 2021 Thomson Reuters, 6/2021
C. The Limits of Comparative Effectiveness 22-368

II. Why Use Performance Measures? 22-371
A. The Puzzle of Prisons? 22-371
B. Accountability, Neutrality, and Goal Setting 22-376
1. To Know What Works 22-376
2. To Implement Competitive Neutrality 22-377
3. To Express What We Want 22-380
C. For Performance-Based Contracting 22-380
1. Limited Current Efforts 22-380
2. The Range of Possible Contracts 22-382
   a. General Considerations 22-382
   b. Rewards or Penalties 22-384
   c. Controlling for Baselines 22-385
   d. Discrete vs. Continuous Measures 22-389
3. The Feasibility of Merit Pay in the Public Sector 22-391
D. What Measures to Choose 22-392

III. Concerns and Critiques 22-400
A. What Prices to Set 22-400
B. Effects on Market Structure 22-403
1. Public-Interestedness 22-403
2. Risk and Capital Requirements 22-404
   a. The Risk Is in the Slope 22-404
   b. Financing Nonprofits: Social Impact Bonds 22-408
C. Undesirable Strategic Behavior 22-410
1. Manipulating the Goals 22-410
2. Distortion Across Dimensions of Performance 22-413
3. Distortion Across Types of Inmates 22-417
4. Falsifying Performance Measures 22-419
Conclusion 22-422

APPENDIX A

Prisoners’ Assistance Directory

Introduction  App. A-3
National and Regional Organizations  App. A-4
   Corrections/Criminal Justice/Legal  App. A-4
   AIDS/Hepatitis  App. A-13
Book Programs/Pen Pals  App. A-15
Death Penalty  App. A-17
Drug Law Reform  App. A-18
Families/Visitation  App. A-18
Gays/Lesbians  App. A-21
Immigrants Rights  App. A-23
Juveniles  App. A-23
Mental Health  App. A-24
APPENDIX B

American Bar Association Criminal Justice Standards

ABA Criminal Justice Standards on the Treatment of Prisoners
(Approved by the ABA House of Delegates, February 2010)

Definitions App. B-7
General Principles App. B-9
Intake and Classification App. B-11
Conditions of Confinement App. B-18
Rules of Conduct and Discipline App. B-24
Personal Security App. B-27
Health Care App. B-36
Personal Dignity App. B-46
Rehabilitation and Reintegration App. B-54
Grievances and Access to Courts App. B-62
Administration and Staffing App. B-68
Accountability and Oversight App. B-73

APPENDIX C

Prisoner Statistics

Time Served in Prison and on Parole 1984
United States Department of Justice
Introduction App. C-87
Prison Releases, 1984 App. C-88
Offender Characteristics App. C-88
Type of Prison Release App. C-89
Time Served in Prison App. C-89
Time Served in Local Jails App. C-90

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Sex App. C-90
Race App. C-91
Prior Felony Incarceration App. C-91
Minimum Time to Be Served App. C-92
Parolees Discharged in 1984 App. C-92
Total Time Under Supervision App. C-93
Time to Failure App. C-93
Methodology App. C-94
Reporting Criteria App. C-94
Offenses App. C-94
Sentences App. C-95
Time Served App. C-95
Median and Mean App. C-96
Year-to-Year Comparisons App. C-96

Historical Statistics on Prisoners in State and Federal Institutions,
Yearend 1925-86 Bureau of Justice Statistics, United States Department of
Justice
Introduction App. C-153
National Trends, 1925-86 App. C-154
Record High Number of Prisoners App. C-154
Record Year-to-Year Numerical Increase App. C-154
Record Year-to-Year Percentage Increase App. C-154
Record Year-to-Year Percentage Decrease App. C-154
Regional Trends, 1925-86 App. C-154
Record Year-to-Year Percentage Increase App. C-154
Individual State Trends, 1925-86 App. C-155
Record Year-to-Year Percentage Increase App. C-155
Trends in the Size of the Federal Prison Population as a Percentage of the
Total Prison Population App. C-156
Record High Percentage of Federal Prisoners App. C-156
Record Low Percentage of Federal Prisoners App. C-156
Methodology App. C-156
Tables App. C-157
Sources App. C-170

Prison Rule Violators Bureau of Justice Statistics, United States Department of
Justice
Introduction App. C-175
Rule Violators: Definition, Classification, and Disposition App. C-176
Rule Violations in State Prisons App. C-177
Demographic Characteristics of Rule Violators App. C-177
Drug-Use History of Rule Violators App. C-178
Frequency of Violations App. C-178
Average Annual Number of Violations App. C-179
Methodology  
Estimation Procedures  
Missing States, 1926  
Missing States, 1986  
Missing Records, 1926 and 1986  
Incomplete Records, 1926 and 1986  
Tables  
Appendix: Sources on Table 1  
Sources for Total Admissions from Courts  
Sources for State and Federal Prison Admissions  
Notes  

Drug Enforcement and Treatment in Prisons, 1990  Bureau of Justice Statistics, United States Department of Justice  
Overview  
Introduction  
Interdiction Activities  
Most Prison Facilities Patted Down Inmates and Required Them to Exchange Clothes upon Admission or Any Reentry  
Most Facilities Searched the Belongings of Visitors  
Staff Were Also Subject to Drug Interdiction Activities  
Maximum Security Facilities Took More Stringent Drug Interdiction Measures Than Other Facilities  
Testing Urine for Drug Use  
Most Correctional Facilities Tested Some Inmates for Illegal Drug Use  
Most Large State Confinement Facilities Tested for Drugs  
Almost All Work Release Facilities Tested for Drugs  
For All Inmates Tested, State Prisons Reported Higher Positive Rates Than Federal Prisons  
Same Percentage of State and Federal Facilities Reported Positive Drug Tests  
Community-Based Facilities Found Higher Rates of Drug Use Than Confinement Facilities  
Among State Confinement Facilities, Positive Test Results Were Highest in Those Testing on Suspicion Only  
The Percentages of Positive Tests Were Higher in Large Facilities  
Positive Results from Drug Tests Varied Among Facilities Performing Different Functions  
Positive Drug Tests Were Linked to Interdiction Activities  
Drug Testing of Staff Was Highest in Federal Facilities
A Positive Test Was Grounds for Dismissal in over a Third of Facilities That Tested Staff for Drugs  
Drug Treatment/Intervention on June 29, 1990  
Prisons Could Treat an Estimated 131,900 Inmates for Drug Addiction  
Prisons Were Treating Approximately 100,000 Inmates  
Enrollment in Drug Treatment Was Below Capacity  
Prisons Offered a Variety of Programs  
Interpreting Measures of Drug Testing

Methodology  
Census Universe  
Questionnaire Administration  
Definitions of Community-Based and Confinement Facilities  
Drug Addendum  
Estimation Procedures

Notes

**HIV in U.S. Prisons and Jails**  
Bureau of Justice Statistics, United States Department of Justice

Introduction  
Data Sources  
Prevalence of HIV Infection in U.S. Prisons  
Prison Policies for Testing for HIV  
Deaths in Prison  
AIDS-Related Deaths  
Extent of HIV Testing of State Prison Inmates  
HIV Test Results, By Inmate Characteristics  
HIV Test Results, By Drug and Needle Use  
HIV Test Results, By Type of Prison  
HIV Testing Policies in the Largest Jail Jurisdictions  
Deaths in 503 Large Jail Jurisdictions  
Methodology  
Data Sources  
Accuracy of the Estimates

**Women in Prison, 1994**  
Bureau of Justice Statistics, United States Department of Justice

Introduction  
Current Offenses  
Criminal Histories  
Victims of Violent Inmates  
Family Characteristics  
Drug and Alcohol Use

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Survey of Inmates of State Correctional Facilities, 1991  
Increase in Number of Women in Prison  
Characteristics of Women in Prison  
Current Offense  
Violent Female Inmates and Their Victims  
Criminal History  
Sentence Length  
Family Background  
Physical and Sexual Abuse of Prisoners  
Mothers in Prison  
Drug Use History  
HIV and AIDS  
Alcohol Use  
Prison Health Care for Women  
Methodology  
Sample Design  
Accuracy of the Estimates

Foreword  
Summary  
Current Offense  
Sentence Length and Time to Be Served  
Criminal History  
Drug and Alcohol Use  
Weapons  
Personal and Family Characteristics  
HIV  
Activities Since Admission  
Inmate Characteristics  
The Data  
Characteristics of Sentenced Federal and State Prison Inmates  
Current Offenses  
Current Offenses of Men and Women  
Current Offenses of Whites, Blacks, and Hispanics  
Current Offenses of Citizens and Noncitizens  
Sentence Length and Time to Be Served  
Recidivism  
Prior Sentences to Probation and Incarceration  
Criminal Histories  
Characteristics of Prior Sentences  
Criminal Histories of Men and Women
TABLE OF CONTENTS

Criminal Histories of White, Black, and Hispanic Inmates
  App. C-471
Criminal History and Current Offense    App. C-472
Drug Use    App. C-472
  Drug Use of Men and Women    App. C-473
  Drug Use of White, Black, and Hispanic Inmates  App. C-473
  Drug Use of Age Groups    App. C-473
  Drug Use of Citizens and Noncitizens  App. C-474
  Drug Use, by Current Offense  App. C-474
Drug Treatment Programs    App. C-474
  Type of Drug Treatment Program  App. C-474
  Status of Drug Treatment  App. C-475
  Characteristics of Drug Treatment Participants  App. C-475
Alcohol and Drug Use at the Time of the Offense  App. C-475
Federal Inmates Serving Time for a Drug Offense—Other Than
  Possession Only—Organizations and Activities  App. C-476
Amount of Drugs Involved in the Current Offense for Federal
  Inmates  App. C-477
Firearms    App. C-478
  Firearm Use by Violent and Nonviolent Offenders  App. C-478
  Type of Firearm  App. C-479
  Firearm Use, by Offense  App. C-479
  Stealing and Selling Firearms  App. C-479
Family Background    App. C-479
  Parental Drug and Alcohol Abuse  App. C-480
  Family Members Incarcerated  App. C-480
  Physical or Sexual Abuse  App. C-480
  Prisoners with Children  App. C-481
Women in Federal and State Prisons  App. C-481
  Highlighting Women in Federal and State Prisons: An Index to
    Tables  App. C-482
Activities in Prison  App. C-483
Furloughs    App. C-483
HIV Infection    App. C-484
  Conditions of Confinement in Federal Prisons  App. C-486
  Federal Inmates’ Opinions of Confinement Conditions  App. C-486
Methodology    App. C-487
  Sample Design  App. C-487
  Accuracy of the Estimates  App. C-488

Lifetime Likelihood of Going to State or Federal Prison
  Bureau of
  Justice Statistics, United States Department of Justice
Introduction  App. C-659
Highlights  App. C-659

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The Chances of Going to Prison, by Sex, Race, and Hispanic Origin
   App. C-660
The Likelihood of Going to Prison, by Age   App. C-661
The Chances of Going to Prison Decline with Advancing Age
   App. C-661
The Number of First Admissions by Age, Sex, Race, and Hispanic
   Origin   App. C-662
Characteristics of First Admissions   App. C-663
Steady Chances of Going to Prison Since 1991   App. C-664
Comparing Lifetime Rates to Other Types of Incarceration Rates
   App. C-665
Methodology   App. C-666
   Life Table Techniques   App. C-666
   Age-Specific Mortality Rates   App. C-667
   Estimating the Number of Persons at Risk to First Incarceration
   App. C-667
   Estimating the Number of First Admissions to Prison   App. C-667
   Calculating the Lifetime Chances of Going to Prison   App. C-669
   Limitations of the Life Table Estimates   App. C-670

**Prisoner Petitions in the Federal Courts, 1980-96**   Bureau of Justice

**Statistics. United States Department of Justice**

**Highlights**   App. C-741
   Petitions by State Inmates   App. C-741
   Petitions by Federal Inmates   App. C-741
**Introduction**   App. C-742
**Overview**   App. C-742
   Tracking Prisoner Petitions Through the Federal Courts
   App. C-742
   Petitions Dismissed   App. C-743
   Petitions Adjudicated   App. C-743
   Petitions Pending   App. C-743
   Legal Representation of Federal and State Inmates   App. C-743
**Prisoner Petitions in U.S. District Courts**   App. C-744
   Prisoner Petitions Filed   App. C-744
   Trends in Prisoner Petitions Filed   App. C-745
   Cases Filed   App. C-745
   Filing Rate   App. C-746
   Prisoner Petitions Adjudicated in U.S. District Court   App. C-747
   Mode of Disposition   App. C-747
   Disposition   App. C-747
   Case Processing Time   App. C-748
   Habeas Corpus Petitions by Death Row Inmates in State Prisons
   App. C-749
   Mode of Adjudication   App. C-750
Truth in Sentencing in State Prisons  Bureau of Justice Statistics, United States Department of Justice

Introduction  App. C-859

Highlights  App. C-860

Three Decades of Sentencing Reform—1970’s Through 1990’s  App. C-860

Discrepancy Between Sentence and Time Served  App. C-860

Data Were Compiled From Multiple Sources  App. C-860

Sentencing Reforms Parallel “Get Tough on Crime” Attitude  App. C-861


Most Truth-in-Sentencing States Require Offenders to Serve 85% of the Prison Sentence  App. C-862

14 States Have Abolished Parole Board Release for All Offenders  App. C-863

Between 1990 and 1997 the Number of Offenders in State Prison Increased 7% Annually  App. C-864

State Prison Admission Rates Have Dropped  App. C-864

Over a Third of Prison Admissions in 1997 Were Parole Violators  App. C-864

The Commitment Rate for Murder Rose From 460 per 1,000 Arrests in 1990 to 613 per 1,000 in 1996  App. C-866

Nearly 40% of All Female, Black, and Hispanic Prison Admissions Were Drug Offenders  App. C-867

Nearly 7 in 10 Violent Offenders Are in a State that Requires 85% of the Sentence Be Served  App. C-868

Offenders Admitted to Prison in 1996 for Robbery Were Expected to Serve 7 Months Longer Than in 1990  App. C-869

Violent Offenders Admitted to Prison in 1996 Were Expected to Serve About Half of Their Sentence  App. C-870
Truth-in-Sentencing Laws Would Increase the Minimum Prison Term by 15 Months for Violent Offenders  

Violent Offenders Would Serve About 10 Months Less Under a 75%-Requirement Than an 85%-Requirement

For Releases, Average Time Served in Prison Increased From 22 Months in 1990 to 25 Months in 1996

Time Served by Released Part 1 Violent Offenders Increased in 38 States Between 1993 and 1997

Part 1 Violent Offenders Released in 1997 Served Between 25% and 87% of Their Sentence

Black Offenders Released in 1996 Served 2 Months Longer Than White Offenders

Prisoners Released in 4 States Served Over 70% of the Sentence

Nearly 18% of Released Offenders Served Their Entire Prison Sentence

Time Served Increased for Parole Board Releases Between 1990 and 1996

Violent Offenders Released by Parole Boards Served 4 Months Longer Than Other Conditional Releases

Parole Board Releases Served 29% of the Sentence, and Other Conditional Releases, 47%

Prisoners Are Serving More Time Than Release Data Indicate

State Prison Population Growth Is Linked to Increasing Time Served

The Sentences of Released Offenders Decreased Between 1990 and 1996

The Release Rate for Rape Offenders Dropped From 24 per 100 to 15 per 100 State Prison Inmates

Few Offenders Admitted Under Truth-in-Sentencing Laws Are Being Released From Prison

Six States Projected an Average 10-Year Prison Term Under Truth in Sentencing

Seven States Reported an Average Percent of Sentence Served Above 85%

Methodology

NCRP Participating States

Estimating the Admission and Release Rates by Offense

Truth-in-Sentencing Reform

Prior Abuse Reported by Inmates and Probationers  

Bureau of Justice Statistics, United States Department of Justice

Introduction

Highlights
For Women, Abuse as Children More Likely in Correctional Than General Population  

Abused Males Reported Being Mistreated as Children, But Females, as Both Children and Adults  

Abuse of Men Was by Family Members, But Abuse of Women by Family Members and Intimates  

Prisoners’ Prior Abuse Related to Their Family Background  

Reported Past Abuse Associated With Violent Crime  

The Reported Use of Illegal Drugs and Alcohol Higher Among Abused Inmates and Probationers Answered Surveys About Their Abuse  

Question Wording and Respondent Sensitivity Affect Level of Reported Abuse  

Substance Abuse and Treatment, State and Federal Prisoners, 1997  

Introduction  

Half of State Inmates and a Third of Federal Prisoners Reported Committing Their Current Offense Under the Influence of Alcohol or Drugs  

Since Admission 1 in 8 State Prisoners Were Treated for Substance Abuse, and 1 in 4 Had Participated in Other Alcohol or Drug Abuse Programs  

Drug Offenders Accounted for Over 250,000 Prisoners; 21% of State, Over 60% of Federal Prisoners in 1997  

Half of All Prisoners Were Under the Influence of Alcohol or Drugs at the Time of Their Offense  

Assault, Murder, and Sexual Assault Most Closely Tied to Alcohol Use at the Time of Offense  

A Third of State and a Fifth of Federal Prisoners Said They Used Drugs at the Time of Offense  

Prior Drug Use by State Prisoners Remained Stable Since 1991, Except for Marijuana Use  

Nearly Three-Quarters of Federal Prisoners Had Used Drugs in the Past—Up From 60% in 1991  

Over 40% of Federal Prisoners Used Drugs in the Month Before the Offense; 20% Used Cocaine or Crack  

Past Experiences of Alcohol Abuse, by Number of Positive CAGE Responses of State Prisoners, 1997  

About 1 in 6 Prisoners Said They Committed Their Offense to Get Money for Drugs  

Responses From a Quarter of State, a Sixth of Federal Prisoners Indicated Past Alcohol Abuse or Dependence  

TABLE OF CONTENTS xxxvii  

© 2021 Thomson Reuters, 6/2021
Over 60% of All Prisoners Had Driven While Under the Influence of Alcohol or Drugs  

App. C-916

Prisoners Were as Likely to Experience Problems With Alcohol as With Drugs  

App. C-916

Female State Prisoners Reported Higher Levels of Past Drug Use; Levels Higher for Male Federal Prisoners  

App. C-916

Prior Drug Use of State Prisoners Varies Little by Race; Hispanics Report Lowest Levels in Federal Prisons  

App. C-917

Prisoners Aged 44 and Younger Report More Prior Drug Abuse Than Older Prisoners  

App. C-917

Alcohol Abuse More Prevalent Among Whites, Male Prisoners  

App. C-917

Three-Quarters of All Prisoners Can Be Characterized as Alcohol- or Drug-Involved Offenders  

App. C-918

A Third of State, a Quarter of Federal Prisoners Said They Had Ever Been Treated for Substance Abuse  

App. C-919

Treatment Tied to Past Use, Time Remaining Until Expected Release  

App. C-919

Prisoners’ Participation in Drug Treatment Dropped Since 1991; Other Drug Programs Grew  

App. C-920

1 in 4 Prisoners Participated in Either Drug Treatment or Other Drug Abuse Programs Since Admission  

App. C-921

Among Prisoners With Past Drug Abuse, Treatment Provided Less Commonly Than Other Programs  

App. C-921

A Quarter of State and a Fifth of Federal Prisoners Received Alcohol Treatment Since Admission  

App. C-922

Less Than a Fifth of Alcohol-Abusing Prisoners Received Treatment; About a Third Enrolled in Other Programs  

App. C-923

Women, Whites More Likely to Receive Substance Abuse Treatment Since Admission to State Prison  

App. C-923

Substance Abuse Treatment of Federal Prisoners Shows Little Variation by Sex or Age  

App. C-924

Methodology  

App. C-924

Sample Design  

App. C-924

Estimates of Prisoner Counts  

App. C-926

Accuracy of the Estimates  

App. C-926

---

**Time Served in Prison by Federal Offenders, 1986-97**

Bureau of Justice Statistics, United States Department of Justice

Introduction  

App. C-947

Highlights  

App. C-948

Sentences Imposed  

App. C-948

Time to Be Served, 1986 and 1997  

App. C-948

Time Served to First Release  

App. C-949

Differences Between Entry and Release Cohorts  

App. C-949

Measuring Length of Stay for Entering Cohorts of Federal Prisoners  

App. C-950
### Mental Health and Treatment of Inmates and Probationers

*Bureau of Justice Statistics, United States Department of Justice*

**Introduction**  
App. C-1017

**Highlights**  
App. C-1018

- Over a Quarter Million Mentally Ill Incarcerated in Prison or Jail  
  App. C-1018
- Mentally Ill Inmates Were More Likely Than Others to Be in Prison for a Violent Offense  
  App. C-1018
- Nearly 6 in 10 Mentally Ill Offenders Reported They Were Under the Influence of Alcohol or Drugs at the Time of Their Current Offense  
  App. C-1019

**Prevalence of Mental Illness Among Correctional Populations Based on Offender Self Reports**  
App. C-1019

- 16% of State Prisoners Identified As Mentally Ill  
  App. C-1020
- 283,800 Mentally Ill in Prison or Jail; 547,800 on Probation  
  App. C-1020

**White Inmates More Likely Than Blacks or Hispanics to Report a Mental Illness**  
App. C-1021

**Offender Mental Illness Highest Among the Middle-Aged**  
App. C-1021

**Mentally Ill More Likely Than Other Offenders to Have Committed a Violent Offense**  
App. C-1022

- 6 in 10 Violent Mentally Ill State Prisoners Knew Their Victim  
  App. C-1022

**Half of Mentally Ill Inmates Reported 3 or More Prior Sentences**  
App. C-1023

**Mentally Ill More Likely Than Other Inmates to Be Violent Recidivists**  
App. C-1024

**Homelessness More Prevalent Among Mentally Ill Offenders**  
App. C-1024

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About 4 in 10 Inmates with a Mental Condition Unemployed Before Arrest  
App. C-1025

Family History of Incarceration and Alcohol or Drug Use Prevalent Among Mentally Ill  
App. C-1025

Mentally Ill Report High Rates of Past Physical and Sexual Abuse  
App. C-1026

6 in 10 Mentally Ill State Inmates Under the Influence of Alcohol or Drugs at Time of Offense  
App. C-1026

A Third of Mentally Ill Offenders Alcohol Dependent  
App. C-1027

Mentally Ill Offenders Report Negative Life Experiences Related to Drinking  
App. C-1027

Mentally Ill Expected to Serve 15 Months Longer Than Other Inmates in Prison  
App. C-1028

Disciplinary Problems Common Among Mentally Ill Inmates  
App. C-1028

6 in 10 Mentally Ill Received Treatment While Incarcerated  
App. C-1029

Female Mentally Ill More Likely Than Males to Report Treatment  
App. C-1029

Methodology  
App. C-1030

Accuracy of the Estimates  
App. C-1031

Estimating the Number of Mentally Ill Offenders Under Correctional Supervision  
App. C-1031

**Women Offenders**  
*Bureau of Justice Statistics, United States Department of Justice*

Introduction  
App. C-1073

Highlights  
App. C-1074

Violent Victimizers  
App. C-1075

Characteristics of Violent Female Offenders  
App. C-1075

Characteristics of Victims of Female Violent Offenders  
App. C-1076

Where Offenders Committed Violence and Use of Drugs or Alcohol  
App. C-1076

Consequences of Female Violence  
App. C-1077

Women Who Murder  
App. C-1077

Parents Who Kill  
App. C-1079

Arrests  
App. C-1079

Female Defendants in State Courts  
App. C-1080

Female Corrections Populations  
App. C-1081

Characteristics of Women Serving a Sentence  
App. C-1081

Race and Hispanic Origin  
App. C-1081

Age  
App. C-1082

Marital Status  
App. C-1082

Education  
App. C-1082

Inmates’ Children  
App. C-1082

Economic Circumstances  
App. C-1083
Profile of State Prisoners Under Age 18, 1985-97

Bureau of Justice Statistics, United States Department of Justice

Introduction  App. C-1139
Highlights  App. C-1140
States Utilize Three General Types of Transfer Mechanisms  App. C-1141
States Using Blended Sentences Link Adult and Juvenile Systems  App. C-1142
States Vary in Their Correctional Responses for Persons Under 18 Sentenced as Adults  App. C-1142
Half of 1% of State Inmates Were Under Age 18 at Yearend 1997  App. C-1142
Prison Admissions Rose 7% Per Year Among Persons Under Age 18  App. C-1143
The Number of Persons Under Age 18 Admitted for Violent Offenses Nearly Tripled in 13 Years  App. C-1143
State Prison Admissions Grew Faster Than Arrests  App. C-1144
Prison Admissions More Than Doubled Among Male Offenders Under Age 18  App. C-1145
Nearly 6 Out of 10 Offenders Admitted to State Prison Under Age 18 Were Black  App. C-1145
Maximum Sentences for Violent Offenders Under Age 18 Were Shorter on Average in 1997  App. C-1146

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A Growing Number of Inmates Released From Prison Had Been Admitted Under Age 18  

Among Persons Admitted Under 18, An Increasing Percentage Are Released From Prison Unconditionally  

Nearly Half of Prisoners Released in 1997 Were Sentenced to Prison for a Violent Crime  

Released Violent Offenders Admitted Under 18 Had Served 53% of Their Sentences in 1997 and 46% in 1985  

Methodology  

Data Sources  

National Corrections Reporting Program  
National Prisoner Statistics  
Survey of Inmates in State Correctional Facilities  
Annual Survey of Jails  
National Judicial Reporting Program  

Estimation Procedures  

Veterans in Prison or Jail  

Introduction  

Highlights  

Nearly 60% of Incarcerated Veterans Had Served in the Army  

1 in 5 Incarcerated Veterans Saw Combat Duty During Their Service  

A Majority of Veterans in State Prison, But Less Than a Third of Nonveteran Inmates, Were White  

Among State Prisoners, the Median Age of Veterans Was 10 Years Higher Than That of Nonveterans  

Veteran Inmates Were More Likely to be Violent Offenders, Less Likely to be Drug Offenders  

Among Violent State Prisoners, Over Two-Thirds of Veterans Knew Their Victims  

Combat Veterans in Prison Were No More Likely to be Violent Offenders Than Other Veterans  

Among State Prisoners, Veterans Had Less Extensive Criminal Histories Than Nonveterans  

Criminal Histories of Combat Veterans Were Less Serious Than Other Veterans in Prison  

Veterans’ Sentences Averaged 3 Years Longer Than Other State Prisoners
Veterans Were Less Likely Than Other Inmates to Report Using Drugs in the Month Before Their Current Offense  
Less Than a Third of Incarcerated Combat Veterans Used Drugs in the Month Before Their Offense  
Reports of Prior Alcohol Abuse and Dependence Were Higher Among Veteran Inmates  
Incarcerated Veterans and Nonveterans Reported Equal Participation in Substance Abuse Treatment  
Incarcerated Veterans Were More Likely to Report a Mental Illness  
Reported Levels of Employment and Income Were Higher Among Veteran Inmates  
Incarcerated Veterans Were as Likely as Nonveterans to Have Been Homeless When Arrested  
Methodology  
Accuracy of the Estimates  
Estimates of the Veteran Population 
Historical Statistics on Active Duty Military Personnel 
Military Prison Statistics 
CAGE Diagnostic Instrument for Alcohol Dependence
APPENDIX C

Prisoner Statistics (continued)

Offenders Returning to Federal Prison, 1986-97

Introduction App. C-1247
Highlights App. C-1248
Violent Offenders Returned to Federal Prison at Higher Rates Than Other Offenders App. C-1249
Men, Blacks, and Younger Adults Returned to Federal Prison at Higher Rates Than Other Offenders; Hispanics at Lower Rates App. C-1249
Noncitizens, More Than a Third of Offenders Released From Federal Prison, Returned to Prison at a Lower Rate Than Citizens App. C-1250
Several Factors Account for Noncitizens’ Lower Rate of Return App. C-1250
As Length of Time Served in Prison Increased, So Did the Rate of Return to Prison App. C-1251
Offenders Released to Supervision Remained Free Longer Than Other Offenders App. C-1252
Offenders Returning to Prison Following Revocation Served an Additional 16 Months in Federal Prison App. C-1252
Methodology App. C-1254
Data Sources App. C-1254
Scope of the Analysis App. C-1254

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Incarcerated Parents and Their Children  Bureau of Justice Statistics, United States Department of Justice

Introduction  App. C-1271
Highlights  App. C-1272

In 1999 an Estimated 721,500 State and Federal Prisoners Were Parents to 1,498,800 Children Under Age 18  App. C-1272
Prior to Admission, Less Than Half of the Parents in State Prison Reported Living With Their Children—44% of Fathers, 64% of Mothers  App. C-1272
Nearly 2 in 3 State Prisoners Reported at Least Monthly Contact With Their Children by Phone, Mail, or Personal Visits  App. C-1273
Over Half of Both State and Federal Prisoners Reported Having a Child Under Age 18  App. C-1273
1.5 Million Children in the U.S. Had a Parent in Prison in 1999—Up by More than 500,000 Since 1991  App. C-1274
Nearly Half of All Imprisoned Parents Were Black; About a Quarter Were White  App. C-1275
Half of the Parents in State Prison Were Never Married  App. C-1276
Fewer Than Half of the Parents in State Prison Lived With Their Minor Children Prior to Incarceration  App. C-1276
Fathers Cite Child’s Mother as the Current Caregiver; Mothers Cite Child’s Grandparents, Other Relatives  App. C-1277
One-Third of Mothers in Prison Had Been Living Alone With Their Children in the Month Before Arrest  App. C-1278
40% of Fathers and 60% of Mothers in State Prison Had at Least Weekly Contact With Their Children  App. C-1278
Over 60% of Parents in State Prison Were Held More Than 100 Miles From Their Last Place of Residence  App. C-1279
A Majority of Parents in Prison Were Violent Offenders or Drug Traffickers  App. C-1279
On Average, Parents Expected to Serve 80 Months in State Prison and 103 Months in Federal Prison  App. C-1280
Over 75% of Parents in State Prison Reported a Prior Conviction; 56% Had Been Incarcerated  App. C-1281
A Majority of Parents in State Prison Used Drugs in the Month Before Their Offense  App. C-1282
1 in 3 Mothers in State Prison Committed Their Crime to Get Drugs or Money for Drugs  App. C-1282
Over a Third of Parents in State Prison Committed Their Offense While Under the Influence of Alcohol  
App. C-1283
About 1 in 7 Parents in State Prison Reported Indications of a Mental Illness  
App. C-1284
Nearly 20% of Mothers in State Prison Had Been Homeless in the Year Prior to Admission  
App. C-1284
Methodology  
App. C-1285
Accuracy of the Estimates  
App. C-1285
CAGE Diagnostic Instrument for Alcohol Dependence  
App. C-1286

Medical Problems of Inmates, 1997  
Bureau of Justice Statistics, United States Department of Justice

Introduction  
App. C-1333
Highlights  
App. C-1334
Nearly a Third of State Inmates and a Quarter of Federal Inmates Reported Having Some Physical Impairment or Mental Condition  
App. C-1334
More Than 1 in 4 State and Federal Inmates Had Been Injured After Admission to Prison  
App. C-1334
Injuries and Other Medical Problems Increase With Time in Prison  
App. C-1335
Medical Problems and Other Conditions More Common Among Older Inmates  
App. C-1335
State and Federal Inmates Asked to Report on Physical Impairments, Injuries, and Other Medical Problems  
App. C-1335
Nearly a Third of State Inmates and a Quarter of Federal Inmates Reported a Physical Impairment or Mental Condition  
App. C-1336
Rates of Speech and Vision Impairment Higher Among Inmates Than in the General Population  
App. C-1337
Older Inmates More Likely to Report Physical Impairments or a Mental Condition  
App. C-1338
More Than 1 in 10 State Inmates Reported Multiple Impairments  
App. C-1338
Over a Quarter of State and Federal Inmates Reported Being Injured Since Admission to Prison  
App. C-1339
Likelihood of Injury Increases With Time Served in Prison  
App. C-1339
Inmates With a Physical Impairment or Mental Condition Were Also More Likely to Report an Injury  
App. C-1340
Violent Offenders More Commonly Reported Being Injured in a Fight Since Admission  
App. C-1341
About 22% of State Inmates Will Be Injured While in Prison  
App. C-1341
More Than 1 in 5 Inmates in State and Federal Prisons Reported a Medical Problem Excluding Injury Since Admission  
App. C-1342
Reported Medical Problems Highest Among Older, Female Inmates

App. C-1343

About 1 in 6 State and Federal Inmates Reported a Medical Problem Other Than a Cold, Injury, or Surgery  

App. C-1343

Medical Problems More Prevalent Among Inmates Who Had Been Homeless or Unemployed  

App. C-1344

Medical Problems More Common Among Inmates Who Had Used a Needle to Inject Drugs and Those Who Were Alcohol Dependent  

App. C-1344

Methodology  

App. C-1345


App. C-1345

Accuracy of the survey estimates  

App. C-1345

National Adult Literacy Survey, 1992  

App. C-1346

National Health Interview Survey, 1996  

App. C-1346

Estimating the Likelihood That an Inmate Will Be Injured or Will Require Surgery at Some Time While in Prison  

App. C-1347

Prisoners in 2000  

Bureau of Justice Statistics, United States Department of Justice

Introduction  

App. C-1369

More Than 1.9 Million in Prisons and Local Jails  

App. C-1370

U.S. Prison Population Rose 1.3% During 2000—The Smallest Annual Growth Rate Since 1972  

App. C-1370

In the Last 6 Months of 2000, the State Prison Population Declined About 6,200 Inmates  

App. C-1370

Sentenced Federal Inmate Population Rose 9.4% During the Last 12 Months  

App. C-1371

Prison Incarceration Rates Have Risen Sharply Since 1990  

App. C-1371

Five States Reported Increases of at Least 10% During 2000; 13 States Reported Decreases  

App. C-1372

Among States, Louisiana had the Highest Incarceration Rate; Minnesota, the Lowest  

App. C-1372

Female Prisoner Population More Than Doubled Since 1990  

App. C-1372

Privately Operated Prisons Held Over 87,000 State and Federal Inmates in 2000  

App. C-1373

Local Jails Held More Than 63,000 State Prisoners  

App. C-1374

Prison Capacity Measures Vary  

App. C-1374

Twenty-Two States and Federal System Operating at or Above Capacity  

App. C-1375

States Added 351 Adult Correctional Facilities and More Than 528,000 Prison Beds During the Decade  

App. C-1375

At Yearend 2000 U.S. Military Authorities Held 2,420 Prisoners in 62 Facilities  

App. C-1376
U.S. Territories Held 16,130 Inmates in 2000  
More Black Males Than White Males Among State and Federal Inmates at Yearend 2000
Nearly 10% of Black Males, Age 25-29, in Prison in 2000
Growth Linked to Increasing Number of Inmates in State Prison for Violent and Drug Offenses
Sources of Growth Differ Among Men and Women and Among White, Black, and Hispanic Inmates
Changing Federal Prison Population Related to Drugs, Weapons, and Immigration Violations
Methodology
National Prisoner Statistics
2000 Census of State and Federal Adult Correctional Facilities
Military Corrections Statistics
Estimating Age-Specific Incarceration Rates
NPS Jurisdiction Notes

**Mental Health Treatment in State Prisons, 2000**  
*Bureau of Justice Statistics, United States Department of Justice*

Introduction
Inmates Screened at Admission and Placed in General Confinement or Specialized Facilities
Mental Health Services Most Commonly Provided in Maximum/High-Security Confinement Facilities
Based on Inmate Self-Reports, at Midyear 2000 State Prisons Held 191,000 Mentally Ill Inmates
13% of State Inmates Were Receiving Mental Health Therapy; 10% Were Receiving Psychotropic Medications
General Confinement Facilities Provided Most Mental Health Treatment
In 5 States Nearly 20% of Inmates Receiving Psychotropic Medications
Methodology

**HIV in Prisons and Jails, 1999**  
*Bureau of Justice Statistics, United States Department of Justice*

Introduction
Number of HIV-Infected Prison Inmates Up Slightly From 1997 to 1999
Inmates in the Northeast Had the Highest Rates of HIV Infection
The Number of Confirmed AIDS Cases in U.S. Prisons Has Increased Every Year Since 1995

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Rate of Confirmed AIDS Higher Among Prison Inmates Than in U.S. General Population

A Greater Percent of Females Than Males Known to Have HIV Infection

AIDS-Related Deaths in State Prisons Have Dropped by More Than 75% Since 1995

AIDS-Related Deaths Accounted for About 11% of All Deaths in State Prisons and 6% in Federal Prisons in 1999

AIDS Deaths as a Percent of All Deaths in State Prison More Than Twice That in the General Population

19 States Test All Inmates Either at Admission or While in Prison for HIV

More Than 8,500 Jail Inmates HIV Positive

Nearly Half of All Jail Inmates Known to Be HIV Positive Were Housed in 43 of the 50 Largest Jurisdictions

1 in 12 Deaths Among Jail Inmates Attributable to AIDS

Methodology

National Prisoner Statistics
Census of Jails
AIDS in the U.S. Resident Population
AIDS-Related Deaths in the United States

Firearm Use by Offenders

Introduction

Almost a Fifth of Prison Inmates Carried a Gun During Their Crime

Less Than 2% of Prison Inmates Reported Carrying an Assault Gun

Of Inmates Who Carried a Firearm During Their Offense, 8 in 10 Had a Handgun

Firearm Use During Crimes Increased From 1991 to 1997

8% of Drug Offenders and 3% of Property Offenders Armed While Committing Their Crimes

Male Inmates and Young Inmates Carried Firearms

Background Characteristics Account for Relatively Small Differences in Firearm Use

Violent Recidivists Were as Likely as First Time Violent Offenders to Have Carried a Gun

Inmates’ Retail Purchase of Firearms Fell Between 1991 and 1997

Recidivists Less Likely Than First Timers to Buy Their Gun From a Retail Establishment

1 in 5 Assault Guns Bought From Retail Store
Young Offenders Less Likely Than Older Ones to Have Bought a Firearm From a Retail Source  
Federal Law May Have Disqualified Over 8 in 10 Inmates From Buying a Firearm  
9% of All State Prison Inmates and 2% of All Federal Inmates Shot a Gun While Committing Their Current Offense  
About Half of Inmates Carrying a Gun During Their Offense Fired it and Half of Those Injured or Killed Someone  
Possession of a Firearm During an Offense Increased Sentences and Expected Time Served of Inmates

Methodology  
Sample Design
Estimates of Prisoner Counts
Accuracy of the Estimates
Definitions

Introduction
Petitions Filed During 2000
Petitions by State Inmates
Petitions by Federal Inmates
Legislative Initiatives to Reduce Prisoner Litigation
Civil Rights Petitions
Habeas Corpus Petitions
Measuring the Impact of Legislation
Civil Rights Petitions
Habeas Corpus Petitions
Methodology
Data Sources

HIV in Prisons, 2000
Introduction
Number of HIV-Infected Prison Inmates at Yearend 2000 Down From 1999
Inmates in the Northeast Had the Highest Rates of HIV Infection
A Greater Percent of Females Than Males With HIV Infection
Number of HIV-Positive Female Inmates Rose During 2000
The Number of Confirmed AIDS Cases in U.S. Prisons Decreased During 2000
Rate of Confirmed AIDS Higher Among Prison Inmates Than U.S. General Population

© 2021 Thomson Reuters, 6/2021
About a Third of Prisoners With Confirmed AIDS Were Held in 25 Facilities  
App. C-1584
Nearly a Quarter of HIV-Positive Prisoners Were Housed in Medical Treatment Facilities  
App. C-1584
AIDS-Related Deaths in State Prisons Have Dropped by More Than 80% Since 1995  
App. C-1585
Fewer Deaths Reported in All Jurisdictions in 2000 Compared to 1995  
App. C-1586
AIDS Deaths as a Percent of All Deaths in State Prison More Than Two and a Half That in the General Population  
App. C-1586
AIDS Death Rate Lower for State Prisoners Than for Comparable General Population  
App. C-1587
20 States and the Federal Bureau of Prisons Test All Inmates for HIV at Admission or While in Prison  
App. C-1587
Methodology  
App. C-1588
National Prisoner Statistics  
App. C-1588
Census of State and Federal Adult Correctional Facilities  
App. C-1588
AIDS in the U.S. Resident Population  
App. C-1589
AIDS-Related Deaths in the United States  
App. C-1589

Recidivism of Prisoners Released in 1994  
Bureau of Justice Statistics, United States Department of Justice
Introduction  
App. C-1603
Characteristics of the 272,111 Released Prisoners  
App. C-1604
Recidivism Rates at Different Lengths of Time After Release  
App. C-1605
The Number of Crimes Committed by the 272,111 Released Prisoners  
App. C-1605
New Arrest Charges Following Release From Prison  
App. C-1606
Old Arrest Charges Prior to Their Release From Prison  
App. C-1606
Combining New and Old Arrest Charges  
App. C-1606
How Many of the 272,111 Were Ever Arrested for Violence  
App. C-1607
The Fraction of All Crimes That Released Prisoners Accounted For  
App. C-1607
Released Prisoners Who Crossed State Lines to Commit New Crimes  
App. C-1608
Overall Recidivism Rate for the 272,111  
App. C-1609
Recidivism Rate According to Demographic Characteristics  
App. C-1609
Gender  
App. C-1609
Race  
App. C-1609
Hispanic Origin  
App. C-1610
Age  
App. C-1610
What They Were in Prison For  
App. C-1610
What Prisoners Were Rearrested For  
Specialists  
Number of Prior Arrests  
Prior Prison Sentence  
Time Served in Prison  

Methodology  
Step 1: Draw the Sample  
Step 2: Obtain Criminal History Records From States That Released Prisoners  
Step 3: Obtain Criminal History Records From FBI  
Step 4: Create the Study Database  
Adding North Carolina Arrests to the Database  
Adding Information to the Database to Identify Technical Violators  
Step 5: Data Analysis  
Note on Missing Court Dates in FBI RAP Sheets  
Definition of 3-Year Follow-Up Period  
Comparing Recidivism Rates  
Offense Definitions  

Immigration Offenders in the Federal Criminal Justice System, 2000  
Introduction  
Nationality of Persons Investigated  
Geographical Distribution of Immigration Suspects  
Suspects in Matters Concluded by U.S. Attorneys  
Characteristics of Defendants Charged  
Demographic Characteristics  
Criminal History  
Trends in Prosecution of Immigration Offenses, 1985-2000  
Defendants Adjudicated in the Federal Courts  
Defendants Under Federal Correctional Supervision  
Incarcerated  
Community Supervision  
Immigration Offenders Returning to Federal Prison  

Education and Correctional Populations  
Introduction  
Correctional Populations Less Educated Than the General Population  
Numbers of Prison Inmates Without a High School Education Increased From 1991 to 1997  

© 2021 Thomson Reuters, 6/2021
Three-Quarters of State Prison Inmates Did Not Earn a High School Diploma App. C-1715

Jail Inmates and the General Population Reported Why They Dropped Out of School App. C-1715

9 in 10 State Prisons Offer Educational Programs App. C-1716

Over Half of Inmates Reported Taking an Educational Program Since Their Most Recent Prison Admission App. C-1717

State Prisoners Without a High School Diploma Were More Likely to Have Taken Classes Since Admission App. C-1717

Women in State Prison Were Better Educated Than Men App. C-1718

Minority State Prison Inmates Were Less Likely Than Whites to Have a High School Diploma or GED App. C-1718

Young Inmates Were Less Well Educated Than Older Inmates App. C-1718

Inmates With Military Service Were Better Educated Than Those Who Had Not Served App. C-1719

61% of Noncitizens Had Not Completed High School or a GED App. C-1719

Inmates Raised Without Two Parents Less Likely to Have a High School Diploma or a GED App. C-1720

66% of State Prison Inmates With Learning Disabilities Did Not Complete High School or a GED App. C-1720

47% of Drug Offenders Did Not Have a High School Diploma or a GED App. C-1721

Inmate Unemployment Before Admission Varied With Education App. C-1721

Less Educated Inmates More Likely Than More Educated to Be Recidivists App. C-1721

Methodology App. C-1723

Bureau of Justice Statistics Surveys App. C-1723

Prevalence of Imprisonment in the U.S. Population, 1974-2001

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-1777

4.3 Million U.S. Residents in 2001 Were Former Prisoners App. C-1778

More Than Two-Thirds of Former Prisoners No Longer Under Correctional Supervision App. C-1778

1 in 37 Adult U.S. Residents in 2001 Had Ever Served Time in Prison App. C-1779

Two-Thirds of the Increase in Number Ever Incarcerated Due to Rise in First Incarceration Rates App. C-1779

In 2001, 3 Out of 10 Adults Ever Incarcerated Were Age 35 to 44 App. C-1780

Prevalence Rates Up Sharply Among Persons Under Age 50 App. C-1780
More Males Than Females and More Blacks and Hispanics Than Whites
Had Ever Served Time in Prison App. C-1781
Nearly 17% of Adult Black Males Had Ever Served Time in Prison
App. C-1781
Regardless of Gender, Race or Hispanic Origin, Prevalence Rates Highest
Among Persons Age 35 to 44 App. C-1782
Impact of Rising First Incarceration Rate Varies by Birth Cohort
App. C-1782
3.4% of Adults Projected to Have Served Time in Prison by 2010
App. C-1783
6.6% of Persons Born in 2001 Will Go to Prison, If Current Rates of First
Incarceration Remain Unchanged App. C-1784
6 Times Higher Lifetime Chance of Going to Prison in 2001 for Men Than
for Women App. C-1784
Methodology App. C-1785
Life Table Techniques App. C-1785
Estimating Prevalence of Imprisonment in the United States
App. C-1786
Limitations App. C-1787

Hepatitis Testing and Treatment in State Prisons Bureau of Justice
Statistics, United States Department of Justice
Introduction App. C-1861
Nearly 8 in 10 State Prison Facilities Reported Testing Inmates for Hepatitis
C App. C-1861
Nearly a Third of Hepatitis C Tests Confirmed Positive App. C-1862
Hepatitis C Tests Concentrated in 23 States App. C-1862
More Than 6,000 Inmates in State Prisons Treated for Hepatitis C in the
12-Month Period Before the Census App. C-1863
Two-Thirds of Facilities Had a Policy to Vaccinate Inmates for Hepatitis
B App. C-1863
In the 12 Months Before the Census, 13,655 Inmates Completed a 3-Dose
Series Vaccination for Hepatitis B App. C-1863
Methodology App. C-1864

Profile of Nonviolent Offenders Exiting State Prisons Bureau of Justice
Statistics, United States Department of Justice
Introduction App. C-1901
Offense Characteristics of Nonviolent Prison Releasees App. C-1901
Demographic Characteristics of Nonviolent Prison Releasees
App. C-1902
Criminal History Characteristics of Nonviolent Prison Releasees
App. C-1902
Recidivism of Nonviolent Prison Releasees App. C-1903

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Suicide and Homicide in State Prisons and Local Jails

Introduction

Nationwide, 337 State Prisoners Committed Suicide During 2001-02

87 State Prisoners Became Victims of Homicide Over 2 Years

Suicide Rate in the Nation’s 50 Largest Jail Jurisdictions Half That of All Other Jails

During 2002 The Nation’s Smallest Jails Had a Suicide Rate 5 Times That of the Largest Jails

Jail Suicide Rates Drop by Over 90% When Based on “At-Risk” Population

Males and White Inmates Had the Highest Rates of Suicide in Jails

White Jail Inmates 6 Times More Likely to Commit Suicide Than Black Inmates and 3 Times More Likely Than Hispanic Inmates

State Prisoners Age 45 or Older Made Up 17% of Inmates but 66% of Deaths

Black Inmates Had the Lowest Suicide and Homicide Rates in State Prisons

Violent Offenders Committed Suicide At Nearly Triple the Rate of Nonviolent Offenders in Jails

Local Jails Had An Average of Fewer Than 20 Inmate Homicides Each Year

Drug Offenders Had the Lowest Suicide and Homicide Rates of All State Prisoners

Nearly Half of Jail Suicides Occurred in the First Week of Custody

7% of State Prison Suicides Took Place During the First Month

At Least 80% of Suicides in Prison and Jail Occurred in the Inmate’s Cell; Time of Day Not a Factor

Most Jail Homicides Occurred At Least 2 Weeks After Admission

Two-Thirds of Homicide Victims in State Prison Had Served At Least 2 Years in Prison; Nearly 40% Had Served 5 Years or More

Homicide Rate of U.S. Residents, When Standardized, 10 Times the Rate of Jail Inmates in 2002

Methodology

Standardized U.S. Resident Death Rates

Population Bases for Mortality Rates
Sexual Violence Reported by Correctional Authorities, 2004
Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2053
BJS Conducts the First Annual Administrative Records Collection App. C-2053
Survey Covers More Than 2,700 Adult and Juvenile Correctional Facilities App. C-2054
Two-Thirds or More of Systems and Facilities Able to Fully Report the Most Serious Forms of Sexual Violence App. C-2055
Caution Needed When Interpreting the 2004 Survey Results App. C-2056
More Than 5,500 Allegations of Sexual Violence Reported In Survey App. C-2056
Juvenile Facilities Reported the Highest Rates of Alleged Sexual Violence App. C-2057
External Authorities Often Involved in Investigating Allegations App. C-2058
In State Prisons Fewer Than 20% of Allegations Of Nonconsensual Sexual Acts Were Substantiated App. C-2058
In Juvenile Facilities a Third of the Alleged Nonconsensual Sexual Acts Were Substantiated App. C-2059
During 2004 Correctional Authorities Substantiated Nearly 2,100 Incidents of Sexual Violence App. C-2059
Males Comprised 90% of Victims and Perpetrators of Nonconsensual Sexual Acts in Prison And Jail App. C-2060
Female Staff Implicated in Staff Sexual Misconduct in Prisons; Male Staff in Local Jails App. C-2061
Most Prisons and Jails Imposed Legal Sanctions on Perpetrators of Inmate-on-Inmate Sexual Violence App. C-2061
90% of Perpetrators of Staff Sexual Misconduct Discharged or Referred for Prosecution App. C-2062
Methodology App. C-2062
Sampling Design App. C-2062
Comparing Systems and Facilities App. C-2064

Mental Health Problems of Prison and Jail Inmates Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2167
A Quarter of State Prisoners had a History of Mental Health Problems App. C-2168
Symptoms of Mental Disorder Highest Among Jail Inmates App. C-2168
High Proportion of Inmates had Symptoms of a Mental Health Disorder Without a History App. C-2169
Mental Health Problems More Common Among Female, White, and Young Inmates App. C-2169

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Homelessness, Foster Care More Common Among Inmates Who had Mental Health Problems
App. C-2170
Low Rates of Employment, High Rates of Illegal Income Among Inmates Who had Mental Problems
App. C-2170
Past Physical or Sexual Abuse More Prevalent Among Inmates Who had Mental Health Problems
App. C-2171
Family Members of Inmates with Mental Problems had High Rates of Substance Use and Incarceration
App. C-2171
Inmates Who had Mental Health Problems had High Rates of Substance Dependence or Abuse
App. C-2172
Over a Third of Inmates Who had Mental Health Problems had Used Drugs at the Time of the Offense
App. C-2173
Binge Drinking Prevalent Among Inmates Who had Mental Problems
App. C-2173
Violent Offenses Common Among State Prisoners Who had a Mental Health Problem
App. C-2173
Use of a Weapon Did Not Vary by Mental Health Status
App. C-2174
Violent Criminal Record More Prevalent Among Inmates Who had a Mental Health Problem
App. C-2174
State Prisoners Who had Mental Health Problems had Longer Sentences Than Prisoners Without
App. C-2175
State Prisoners Who had a Mental Health Problem Expected to Serve 4 Months Longer Than Those Without
App. C-2175
A Third of State Prisoners Who had Mental Health Problems had Received Treatment Since Admission
App. C-2176
Use of Medication for a Mental Health Problem By State Prisoners Rose Between 1997 and 2004
App. C-2176
Rule Violations and Injuries from a Fight More Common Among Inmates Who had a Mental Health Problem
App. C-2177
Methodology
App. C-2178
Survey of Inmates in State and Federal Correctional Facilities, 2004
App. C-2178
Survey of Inmates in Local Jails, 2002
App. C-2178
Accuracy of Survey Estimates
App. C-2178
Measures of Mental Health Problems in the General Population
App. C-2179

**Drug Use and Dependence, State and Federal Prisoners, 2004**
*Bureau of Justice Statistics, United States Department of Justice*

Introduction
App. C-2201
Overall Drug Use By State Prisoners Unchanged from 1997;
Methamphetamine Use Rose
App. C-2201
Overall Drug Use By Federal Prisoners Rose; Cocaine/Crack Use Declined
App. C-2202
Women in Federal Prison Report Sharp Increase in Prior Drug Use
App. C-2202
Prior Drug Use Grew Most Quickly Among Middle-Aged Inmates

App. C-2203

1 in 4 Violent Offenders in Prison Committed Their Offenses Under the Influence of Drugs

App. C-2203

1 in 3 Property Offenders in State Prisons Report Drug Money As a Motive in Their Crimes

App. C-2204

53% of State and 45% of Federal Prisoners Met Criteria for Drug Dependence or Abuse

App. C-2205

In State Prisons, Violent Offenders were Least Likely to Meet Criteria for Drug Dependence or Abuse

App. C-2205

Half of Drug Dependent or Abusing Inmates in State Prisons Reported Three or More Prior Sentences

App. C-2206

1 in 7 Drug Dependent or Abusing Inmates in State Prison Were Homeless in Year Before Admission

App. C-2206

Participation in Drug Abuse Programs Rose in Both State and Federal Prison Since 1997

App. C-2207

Number of Federal Prisoners Taking Part in Drug Abuse Programs Up 90% Between 1997 and 2004

App. C-2207

Over 250,000 Dependent/Abusing State Inmates Took Part in Drug Abuse Programs Since Admission

App. C-2208

Methodology

App. C-2208

Survey of Inmates in State and Federal Correctional Facilities, 2004

App. C-2209

Accuracy of Survey Estimates

App. C-2209

Measures of Drug Dependence and Abuse in the General Population

App. C-2210

Sexual Violence Reported by Correctional Authorities, 2005

Bureau of Justice Statistics, United States Department of Justice

Introduction

App. C-2229

Second Administrative Records Collection Conducted for 2005

App. C-2229

2005 Survey Covered 1,866 Adult Correctional Facilities

App. C-2230

State Prison Reporting Capabilities Improve During 2005

App. C-2231

Sexual Violence Allegations Increased

App. C-2232

Approximately 15% of Allegations of Nonconsensual Sexual Acts in 2005 were Substantiated

App. C-2233

During 2005 Correctional Authorities Substantiated 885 Incidents of Sexual Violence

App. C-2234

Correctional Authorities Provided Detail on 82% of Substantiated Incidents

App. C-2234

Physical Force or Threat of Force was Used in 51% of Inmate-On-Inmate Sexual Violence

App. C-2235

Victims Received Physical Injuries in 15% of Substantiated Incidents of Inmate-On-Inmate Sexual Violence

App. C-2236
Half of Victims of Nonconsensual Sexual Acts were Placed in Protective Custody or Administrative Segregation  
Most Inmate Perpetrators Received Legal Sanctions or Solitary Confinement

Two-Thirds of Incidents of Staff Sexual Misconduct with Inmates were Reported to Be Romantic

Female Staff Implicated in Staff Sexual Misconduct in Prisons; Males in Local Jails

Over Two-Thirds of Perpetrators of Staff Sexual Misconduct or Harassment were Correctional Officers

Inmates Involved in Staff Sexual Misconduct Often Transferred or Placed in Segregation

Nearly 90% of Perpetrators of Staff Misconduct Arrested, Referred for Prosecution, or Discharged

Methodology

Prisoners in 2005  
Introduction

Nearly 2.2 Million Persons in Prison or Jail at Yearend 2005

U.S. Prison Population Rose 1.9% During 2005

14 States Reported Increases of at Least 5% During 2005; 11 States Had Decreases

Prison Incarceration Rate Reached 491 Per 100,000 Residents in 2005, Up from 411 in 1995

Female Prisoners Increased 2.6% During 2005; Male Prisoners, 1.9%

Over a Third of Female Prisoners Held in the 3 Largest Jurisdictions

Privately Operated Prisons Held 7.0% of State and Federal Inmates in 2005

In 2005 Local Jails Held almost 5% of State and Federal Prisoners

23 States and the Federal System Operated at or Above Highest Capacity

60% of State and Federal Inmates Black or Hispanic at Yearend 2005

An Estimated 8% of Black Males, Age 25 to 29 in Prison in 2005

Half of State Prisoners Were Violent Offenders

Offenses of State Prisoners Varied by Gender, Race, and Hispanic Origin

Changing Federal Prison Population Related to Drug and Immigration Offenses

Methodology
Medical Causes of Death in State Prisons, 2001-2004

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2309
Heart Diseases and Cancer Accounted for Half of All State Prison Deaths App. C-2310
Death Rates Higher Among Men Than Women in 9 of the 10 Leading Causes of Death App. C-2310
Black and Hispanic Inmate Mortality Rates Identical; White Inmates 67% Higher App. C-2310
Two-Thirds of State Prison Deaths Involved Inmates Age 45 or Older App. C-2310
Among Deaths of Elderly State Prisoners, 85% Were 45 or Older When Admitted App. C-2311
Death from Illness Increased with Time Served in Prison App. C-2311
Time Served in Prison Played Little Role in the Death Rate Due to Communicable Diseases App. C-2312
Two-Thirds of Illness Deaths Resulted from Pre-Existing Conditions—including 94% of AIDS Deaths App. C-2312
In 93% of Deaths from Illness, Medical Staff Had Provided Medications for the Fatal Condition App. C-2312
Over 40% of Prisoner Deaths Took Place in 5 States; Mortality Rates Varied Widely Across States App. C-2313
Mortality Rate in State Prisons Nearly 20% Lower Than in U.S. Resident Population App. C-2313
Methodology App. C-2313

Veterans in State and Federal Prison, 2004

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2331
After Rising for Two Decades, Number of Veterans Dropped Since 2000 App. C-2332
Male Veterans Were Half as Likely as Other Men to be Held in Prison; the Gap Increasing Since the 1980s App. C-2333
U.S. Army Accounted for 46% of Veterans Living in the U.S., But 56% of Veterans in State Prison in 2004 App. C-2334
Half of Incarcerated Veterans Performed Wartime Military Service; 1 in 5 Reported Combat Duty App. C-2334
Veterans Were Older, Better Educated Than Other State and Federal Prison Inmates App. C-2335

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Nearly 1 in 4 Veterans in State Prison Were Sex Offenders, Compared to 1 in 10 Nonveterans  
App. C-2335
Veterans Were More Likely Than Other Violent Offenders in State Prison to Have Victimized Females and Minors  
App. C-2336
Veterans Had Shorter Criminal Histories Than Nonveterans In State Prison  
App. C-2336
More Than a Third of Veterans in State Prison Had Maximum Sentences of at Least 20 Years, Life, or Death  
App. C-2337
Veterans Reported Longer Average Sentences Than Nonveterans, Regardless of Offense Type  
App. C-2337
Veterans Were Less Likely Than Nonveteran Prisoners to Have Used Drugs  
App. C-2338
No Relationship Between Veteran Status and Alcohol Dependence or Abuse  
App. C-2338
Veteran Status Unrelated to Inmate Reports of Mental Health Problems  
App. C-2339
Combat Service Not Related to Prevalence of Recent Mental Health Problems  
App. C-2339
Methodology  
App. C-2340
Estimates of the Veteran Population in the United States  
App. C-2340
Military Prison Statistics  
App. C-2341

HIV in Prisons, 2005  Bureau of Justice Statistics, United States Department of Justice
Introduction  
App. C-2407
HIV/AIDS Cases in State and Federal Prisons Steadily Declining Since 1999  
App. C-2408
App. C-2408
Number of Confirmed AIDS Cases Fluctuated Between 1999 and 2005  
App. C-2409
Difference Between the Rate of Confirmed AIDS Cases in Prisons and the General Population Shrinking  
App. C-2409
HIV/AIDS Cases Among Both Male and Female State Inmates Declining, But at a Faster Rate for Females  
App. C-2409
Number of AIDS-Related Deaths Declined Dramatically Between 1995 and 2000  
App. C-2410
Almost All of the Decrease in AIDS-Related Deaths Attributed to Male Inmates  
App. C-2410
AIDS-Related Deaths As a Percent of All Deaths Decreasing More Rapidly in State Prison Than in the General Population  
App. C-2411
Rate of AIDS-Related Deaths Declining in Prisons, Stabilizing in the General Population  
App. C-2411
Older Persons in State Prisons Had a Higher Rate of AIDS-Related Deaths Than Those in the General Population  
App. C-2411
Sexual Violence Reported by Correctional Authorities, 2006
Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2435
Allegations of Sexual Violence Rose During 2006 App. C-2436
Upon Investigation, Most Allegations Were Unsubstantiated or Unfounded App. C-2437
Surveys Reveal Consistent Patterns of Sexual Violence in Correctional Facilities App. C-2438
Most Incidents of Sexual Violence Among Inmates Involve Force or Threat of Force and Occur in the Victim’s Cell, in the Evening App. C-2439
Most Victims Experienced a Change in Their Housing; Most Inmate Perpetrators Received Solitary Confinement App. C-2439
The Sexual Relationship “Appeared to Be Willing” in 57% of Incidents of Staff Sexual Misconduct and Harassment App. C-2440
Female Staff More Frequently Implicated in Sexual Misconduct in Prisons; Male Staff in Local Jails App. C-2441
Three-Quarters of Staff Perpetrators in 2006 Lost Their Jobs; 56% Were Arrested or Referred for Prosecution App. C-2442
Half of Inmates Involved in Staff Sexual Misconduct Were Transferred or Placed in Segregation App. C-2442
Methodology App. C-2443
Measures of Sexual Violence App. C-2443
Sampling Procedures App. C-2444
National Estimates and Accuracy App. C-2445
Detail on Substantiated Incidents App. C-2446

Prisoners in 2006 Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2489
Growth Rates Accelerated in States With the Largest Prison Populations App. C-2490
Number of Female Prisoners Under Jurisdiction Rose Faster During 2006 Than Over the Previous 5 Years App. C-2491
States Increased the Use of Privately Operated Facilities By More Than 6%
During 2006  \textit{App. C-2491}
Number of Prisoners Held in Local Jails Increased By 6.6%
\textit{App. C-2492}
States Expanded Prison Capacity During 2006  \textit{App. C-2493}
Prison Incarceration Rate for Sentenced Prisoners Reached 501 Per 100,000
Residents in 2006  \textit{App. C-2493}
White Women Made Up Almost Half of Sentenced Female Prisoners in
2006; Number of Black Women Has Decreased  \textit{App. C-2494}
Number of Black Men Among Sentenced Male Prisoners Declined Slightly
Since 2000  \textit{App. C-2494}
Declining Percentage of Blacks Among Sentenced Prisoners
\textit{App. C-2495}
The Rate of Incarceration Increased for White Women, Declined for Black
Women  \textit{App. C-2495}
Black Males Ages 30 to 34 Incarcerated at the Highest Rate
\textit{App. C-2495}
Violent Offenders Made Up More Than Half of All Sentenced Inmates in
State Prisons at Yearend 2004  \textit{App. C-2496}
Drug, Weapons Offenders Accounted for Nearly Three-Quarters of the
Increase in Federal Prisoner Since 2000  \textit{App. C-2496}
Methodology  \textit{App. C-2497}
National Prisoner Statistics  \textit{App. C-2497}
Military Corrections Statistics  \textit{App. C-2497}
Other Inmate Counts  \textit{App. C-2498}
Estimating Age-Specific Incarceration Rates  \textit{App. C-2498}
NPS Jurisdiction Notes  \textit{App. C-2499}

\textbf{Sexual Victimization in State and Federal Prisoners Reported by Inmates, 2007}
\textit{Bureau of Justice Statistics, United States Department of Justice}
Introduction  \textit{App. C-2537}
Inmate Self-Reports Provide a Basis for Comparing and Ranking
Facilities  \textit{App. C-2538}
An Estimated 60,500 Inmates Experienced One or More Incidents of Sexual
Victimization  \textit{App. C-2538}
10 Facilities Had Prevalence Rates of 9.3% or Greater; 6 Facilities Had No
Reported Incidents  \textit{App. C-2539}
Identification of the 3 Facilities With the Highest Rates of Sexual
Victimization Depends on Non-Statistical Judgments  \textit{App. C-2540}
Inmates Reported an Estimated 165,400 Incidents of Nonconsensual Sexual
Acts With Other Inmates or Staff  \textit{App. C-2541}
11 Facilities had Nonconsensual Sex Rates of 300 or More Incidents Per
1,000 Inmates  \textit{App. C-2542}
Further Analyses of Sexual Victimization and Facility Variations
Underway  \textit{App. C-2542}
Methodology  \textit{App. C-2543}
Prison Inmates at Midyear 2007  

Bureau of Justice Statistics, United States Department of Justice

Introduction  App. C-2595
Growth in the Prison Population Slowed Slightly During the First Six Months of 2007  App. C-2595
Growth During the First Half of the Year Generally Outpaced Growth During the Second Half  App. C-2596
Growth During the First Half of 2007 Slowed in States With the Largest Prison Populations  App. C-2596
Six-Month Growth Rates in States Ranged From Increases of More Than 8% to Decreases of 3%  App. C-2597
Growth in Sentenced Prisoners Mirrored Growth in All Prisoners Under Jurisdiction  App. C-2597
Prison Admissions Growth Outpaced Growth in Releases  App. C-2598
State Admissions for Parole Violations Grew More Rapidly Than New Court Commitments  App. C-2598
Use of Private Facilities and Local Jails By Federal Correctional Authorities Increased 12%  App. C-2598
Inmates Held in State or Federal Prison or in Local Jails Increased to Nearly 2.3 Million  App. C-2599
Black Males Ages 30 to 34 Had the Highest Custody Incarceration Rate of Any Race, Age, or Gender Group  App. C-2599
Hispanic and White Men Accounted for More Than Half of the Increase to the Custody Population  App. C-2600
Estimated Number of Non-U.S. Citizens and Juveniles in State Custody Increased  App. C-2601
Methodology  App. C-2601
National Prisoner Statistics  App. C-2601
Other Inmate Counts  App. C-2602
Estimating Age-Specific Incarceration Rates  App. C-2603
NPS Jurisdiction Notes  App. C-2604

Parents in Prison and Their Children  

Bureau of Justice Statistics, United States Department of Justice

Introduction  App. C-2637
Parents of Minor Children Held in the Nation’s Prisons Increased by 79% Between 1991 and Midyear 2007  App. C-2638
The Number of Children Under Age 18 with a Mother in Prison More Than Doubled Since 1991

More Than 4 in 10 Fathers in State or Federal Prisons Were Black; Almost 5 in 10 Mothers Were White

The Majority of Prisoners Reported Having a Minor Child, a Quarter of Which Were Age 4 or Younger

More Than a Third of Minor Children Will Reach Age 18 While Their Parent is Incarcerated

Incarcerated Parents of Minor Children Most Likely to be Age 25 to 34

Drug and Public-Order Offenders in State and Federal Prisons Were More Likely Than Violent Offenders to Have Children

Inmates in State and Federal Prisons With a Criminal History Were More Likely to be Parents of Minor Children Than Those With No Criminal History

Fewer Than Half of Parents in State Prison Lived With Their Minor Children Either in the Month Before Arrest or Just Prior to Incarceration

More Than 4 in 10 Mothers in State Prison Who Had Minor Children Were Living in Single-Parent Households in the Month Before Arrest

 Fathers Living With Their Minor Child Relied Heavily on Someone to Provide Daily Care

Fathers Most Commonly Reported the Child’s Mother as Current Caregiver of Their Children, While Mothers Most Commonly Reported the Child’s Grandparents

About Half of Parents in State Prison Provided the Primary Financial Support for Their Minor Children

More Than Three-Quarters of State Prison Inmates Who Were Parents of Minor Children Reported That They Had Some Contact With Their Children Since Admission

Half of Parents in State Prison Reported That They Had a Family Member Who Had Been Incarcerated

Mothers in State Prison More Likely Than Fathers to Report Homelessness, Past Physical or Sexual Abuse, and Medical and Mental Health Problems

More Than 4 in 10 Parents in the Nation’s Prisons Who Met the Criteria for Substance Dependence or Abuse Had Received Treatment Since Admission

Among Parents in State Prison, Two-Thirds Reported They Had a Work Assignment; Over Half Had Attended Self-Help or Improvement Classes Since Admissions

Mothers in Prison Had Served Less Time at Time of Interview and Expected to Be Released in a Shorter Amount of Time Than Fathers

Methodology

Survey of Inmates in State and Federal Correctional Facilities
Prisoners in 2007

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2687
Rate of Growth in Admissions and Releases Slowed During 2007 App. C-2688
1 in Every 198 U.S. Residents was Serving a Sentence in State or Federal Prison in 2007 App. C-2689
Black Imprisonment Rates Have Decreased Since 2000 App. C-2689
Number of Inmates in Custody Reached Nearly 2.3 Million App. C-2690
States Increased Prison Capacity During 2007 App. C-2690
The Total Incarcerated Population Reached 2.4 Million App. C-2691
Methodology App. C-2692
   National Prisoner Statistics App. C-2692
   Military Corrections Statistics App. C-2692
   Other Inmate Counts App. C-2693
   Estimating Age-Specific Imprisonment Rates App. C-2693
NPS Jurisdiction Notes App. C-2694

Prison Inmates at Midyear 2008

Bureau of Justice Statistics, United States Department of Justice

Methodology App. C-2729
   National Prisoner Statistics App. C-2729
   Other Inmate Counts App. C-2730
   Estimating Age-Specific Incarceration Rates App. C-2730
NPS Jurisdiction Notes App. C-2731

HIV in Prisons, 2007–08

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2757
HIV Infection by Region and State App. C-2757
HIV Infection by Gender App. C-2758
Confirmed Aids Cases App. C-2758
AIDS-Related Deaths App. C-2759
HIV Testing in Prisons App. C-2760
Methodology App. C-2760
   National Prisoner Statistics App. C-2760
   Deaths in Custody Reporting Program App. C-2760

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Estimation of HIV and Confirmed AIDS Cases in New York State

AIDS in the U.S. Resident Population

AIDS-Related Deaths in the United States

Prisoners in 2008

Bureau of Justice Statistics, United States Department of Justice

Introduction

Slower Growth in the State Prison Population Associated with Fewer New Court Commitments

Number and Rate of Prison Releases Increased in 2008

Slower Growth in the Prison Population Since 2000 was Associated with a Decline in the Number of Sentenced Black Prisoners

Fewer Blacks Imprisoned for Drug Offenses Accounted for Most of the Decline in the Number of Sentenced Blacks in State Prison

The US. Imprisonment Rate Decreased for the Second Time Since Yearend 2000

Men Ages 30 to 34 and Women Ages 35 to 39 Had the Highest Imprisonment Rates

State Prison Capacities were Higher in 2008 than in 2000; Percent of Capacity Occupied Decreased in 2008

Trends in the Ice Population

Methodology

National Prisoner Statistics

Military Corrections Statistics

Other Inmate Counts

Estimating Changes in Admissions and Releases

Estimating Age–Specific Incarceration Rates

Definitions

NPS Jurisdiction Notes

Prison Inmates at Midyear 2009

Bureau of Justice Statistics, United States Department of Justice

Highlights

Selected Characteristics of Prisoners Under State or Federal Jurisdiction

Selected Characteristics of Inmates Held in Custody in State or Federal Prisons or in Local Jails

Methodology

National Prisoner Statistics

Other Inmate Counts

Estimating Age–Specific Incarceration Rates

Definitions

NPS Jurisdiction Notes
Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-2879

Incidents of Sexual Victimization App. C-2880
4.4% of Prison Inmates and 3.1% of Jail Inmates Reported One or More
Incidents of Sexual Victimization App. C-2880

Facility Level Rates App. C-2881
NIS-2 Provides a Basis for Identifying High Rate and Low Rate
Facilities App. C-2881
Eight Male Prisons, 2 Female Prisons, and 6 Jails Were Identified as
Having High Rates of Inmate-On-Inmate Sexual Victimization
App. C-2882
Four Male Prisons, 2 Female Prisons, and 5 Jails Were Identified as
Having High Rates of Staff Sexual Misconduct App. C-2883
Seven Male Prisons, 4 Female Prisons, and 9 Jails Were Identified as “Low
Rate” for Sexual Victimization Overall App. C-2883
Low Rates of Sexual Victimization Were Reported in Military, Indian
Country, and ICE Facilities App. C-2884

Demographic Characteristics App. C-2885
Rates of Reported Sexual Victimization Varied Across Demographic
Categories of Prison and Jail Inmates App. C-2885

Sexual History and Orientation App. C-2886
Large Differences in Sexual Victimization Were Found Among Inmates
Based on Their Sexual Orientation and Past Sexual Experiences
App. C-2886

Criminal Justice Status App. C-2887
Inmates Held for a Violent Sexual Offense Reported Higher Rates of
Inmate-On-Inmate Sexual Victimization Than Inmates Held for Other
Offenses App. C-2887
Rates of Staff Sexual Misconduct Also Varied Among Inmates Based on
Their Criminal Justice Status and History App. C-2887

Predicted Victimization Rates App. C-2888
Sexual Victimization Among High Rate Facilities Only Partially
Explained by Variations in Risk Among Inmates Held
App. C-2888

Inmate-On-Inmate Victimization App. C-2890
Reports of Inmate-On-Inmate Sexual Victimization Differed Among
Males and Females by Type of Facility App. C-2890
Inmate-On-Inmate Victimization Occurred Most Often in the Victim’s
Cell Between 6 pm and Midnight App. C-2890

Staff Sexual Misconduct App. C-2891
Most Victims of Staff Sexual Misconduct in Prisons and Jails Reported at
Least One Incident That Involved Pressure, Force, or Threat of
Force App. C-2891
Most Victims and Perpetrators of Staff Sexual Misconduct Were of the
Opposite Sex App. C-2892

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Reports of Staff Sexual Misconduct Were Linked to Strip Searches and Pat Downs  
Methodology  
Selection of State and Federal Prisons  
Selection of Inmates Within Prisons  
Selection of Jail Facilities  
Selection of Inmates Within Jails  
Selection of Special Confinement Facilities  
Selection of Inmates in Special Confinement Facilities  
Weighting and Non-Response Adjustments  
Standard Errors and Tests of Significance  
Exposure Period  
Measurement of Sexual Victimization  
Interviews Checked for Inconsistent Response Patterns  
Definition of Terms  
Logistic Regression Models  
Predicting Facility-Level Rates of Sexual Victimization

Prisoners in 2009  
Introduction  
The Imprisonment Rate Declined Between Yearend 2008 and 2009  
Prison Admissions and Releases Converged in Recent Years  
Decline in State Prison Admissions was led by a Decrease in Parole Violators Admitted in California  
Decrease in State Prison Releases led by the Decline in the Number of Prisoners Released Unconditionally  
Release Rates Increased  
Violent Offenders Accounted for 60% Of the Growth in the Size of the State Prison Population from 2000 through 2008  
Decline in Admissions During 2009 led to the Decline in State Prison Population Size  
Selected Characteristics of Prisoners Under State or Federal Jurisdiction  
Methodology  
Definitions  
NPS Jurisdiction Notes

Sexual Victimization Reported by Adult Correctional Authorities, 2007-2008  
Introduction  
Detail on Substantiated Incidents
Allegations of Sexual Victimization

The Rate of Sexual Victimization Reported by Correctional Administrators Increased from 3.33 Incidents Per 1,000 Inmates in 2005 to 3.82 in 2008. Allegations of Inmate-on-Inmate Abusive Sexual Contacts Account for Two-Thirds of the Total Increase in Reported Allegations of Sexual Victimization Between 2005 and 2008.

Substantiated Incidents of Sexual Victimization


Incident-Level Findings

Females were Disproportionately Victimized by Inmates in State and Federal Prisons and Local Jails. Victims and Perpetrators of Nonconsensual Acts were More Likely to be Younger than 25, Compared to Victims and Perpetrators of Abusive Sexual Contacts. About 1 in 9 Substantiated Incidents of Inmate-on-Inmate Sexual Victimization were Committed by More than one Perpetrator. About 1 in 5 Incidents of Inmate-on-Inmate Sexual Victimization Resulted in a Victim Injury. Nonconsensual Sexual Acts were More Likely than Abusive Sexual Contacts to Occur in the Early Morning Hours (Midnight to 6 A.M.). Abusive Sexual Contacts Occurred More Often During the Day (6 A.M. to 6 P.M.) than Nonconsensual Sexual Acts. Solitary Confinement was Used Most Often as a Sanction Against Perpetrators of Inmate-on-Inmate Sexual Victimization. Sanctions were More Severe for Nonconsensual Sexual Acts than for Abusive Sexual Contacts.

Staff-on-Inmate Sexual Victimization

Females were Disproportionately Victimized by Staff in State and Federal Prisons and Local Jails. Females Perpetrated the Majority of Incidents of Staff Sexual Misconduct, While Males Perpetrated the Majority of Incidents of Staff Sexual Harassment. Over Half of Incidents of Staff Sexual Harassment were Reported by the Victim.
About 2 in 5 Incidents of Staff-on-Inmate Sexual Victimization Occurred in a Program Service Area.  
App. C-3051
More Incidents of Staff Sexual Victimization Occurred During Daytime Hours (6 A.M. to 6 P.M.) in Federal and State Prisons than in Jails.  
App. C-3052
Methodology  
App. C-3052

Correctional Populations in the United States, 2009  
Bureau of Justice Statistics, United States Department of Justice
Introduction  
App. C-3121
Decreases in the Probation, Parole, and Jail Populations During 2009 Contributed to the Decline Observed in the Total Correctional Population  
App. C-3122
Men Under Correctional Supervision Were More Likely than Women to be Incarcerated; Women Were More Likely to be Supervised in the Community  
App. C-3122
Methodology  
App. C-3123

Prisoners in 2010  
Bureau of Justice Statistics, United States Department of Justice
Introduction  
App. C-3137
The Imprisonment Rate Declined in 2010  
App. C-3138
Releases from Prison Exceeded Admissions; However, Both Declined During 2010  
App. C-3139
Decline in State Prison Admissions was led by a Decrease in Parole Violators Admitted in California  
App. C-3139
The Decrease in Releases from State Prisons was Divided Between Conditional and Unconditional Releases  
App. C-3140
Decline in Admissions Accounted for Decrease in State Prison Population, as Time Served by State Prisoners Remained Relatively Unchanged  
App. C-3140
Other Selected Findings  
App. C-3141
Methodology  
App. C-3142
Definition of Terms  
App. C-3145
NPS Jurisdiction Notes  
App. C-3147

Correctional Populations in the United States, 2010  
Bureau of Justice Statistics, United States Department of Justice
Introduction  
App. C-3193
Community Supervision and Incarcerated Populations Declined for the Second Consecutive Year  
App. C-3194
Probation Population Accounted for Three-Quarters of the Decline in the Correctional Population During 2010  
App. C-3194
Methodology  
App. C-3194
Prison and Jail Deaths in Custody, 2000-2009

Bureau of Justice Statistics, United States Department of Justice

Introduction

Summary Findings: Jails

Cause of Death

Decedent Characteristics

State-Level Jail Populations

Cause of Death by Decedent Characteristics

Summary Findings: Prisons

Cause of Death

Decedent Characteristics

State-Level Prison Populations

Cause of Death by Decedent Characteristics

Methodology

Sexual Victimization Reported by Former State Prisoners, 2008

Bureau of Justice Statistics, United States Department of Justice

Introduction

Highlights

Prevalence of Sexual Victimization

Coercion and Physical Injury

Individual Risk Factors

Facility Characteristics

Sexual Victimization and Its Consequences

Incidents of Sexual Victimization

9.6% of Former State Prisoners Reported One or More Incidents of Sexual Victimization During the Most Recent Period of Incarceration in Jail, Prison, or a Post-Release Community-Treatment Facility

5.4% of Former Inmates Reported an Incident with Another Inmate;

5.3% Reported an Incident with Staff

Few Former Inmates Reported Experiencing Sexual Victimization While in a Community-Based Correctional Facility

Sexual Victimization Rates Differed from Those Previously Reported in the NIS-1 and NIS-2

Criminal History and Supervision Profile of Former Inmates

Type of Coercion and Physical Injury

Among Victims of Inmate-on-Inmate Sexual Violence, a Quarter Had Been Physically Held Down or Restrained and a Quarter Had Been Physically Harmed or Injured

Half of Victims of Staff Sexual Misconduct Said They Had Been Offered Favors or Special Privileges; A Third Had Been Persuaded or Talked Into It; A Quarter Had Been Bribed or Blackmailed

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Four Percent of Victims of Staff Sexual Misconduct Reported that They Were Physically Injured.  

Circumstances Surrounding Victimization  
- Inmate-on-Inmate Victimization Occurred Most Often in the Victim’s Cell; Staff-on-Inmate Victimization Occurred Most Often in a Closet, Office, or Other Locked Room.  
- Most Victims (86%) of Staff Sexual Misconduct Reported More than One Incident; 47% Reported More than One Perpetrator.  

Variations by Sex of Former Inmates  
- The Rate of Inmate-on-Inmate Sexual Victimization Among Former State Prisoners Was 3 Times Higher Among Females (13.7%) than Males (4.2%).  
- The Rate of “Willing” Sexual Activity with Staff Was Higher Among Males (4.8%) than Females (2.6%), and the Rate of Unwilling Sexual Activity Was Higher Among Females (2.5%) than Males (1.1%).  

Variations by Other Individual-Level Characteristics  
- Large Differences in Sexual Victimization Were Found Among Former Inmates Based on Their Sexual Orientation.  
- Violent, Male Sex Offenders Reported High Rates of Inmate-on-Inmate Sexual Victimization (13.7%).  
- Rates of Sexual Victimization Increased with the Length of Time that Former Inmates Had Served.  
- Former State Prisoners Who Had Served Time in 5 or More Facilities During Their Most Recent Confinement Reported the Highest Rates of Staff Sexual Misconduct.  

Difference in Findings After BJS Performed Multivariate Logistic Regressions  

Variations By Selected Facility-Level Characteristics  
- Three-Quarters of Former Inmates Had Served Time in More than One Prison Facility; Nearly 1 in 8 Had Served Time in 5 or More Prison Facilities Before Their Release.  
- Nearly 44% of Male Victims and 74% of Female Victims Reported that Sexual Victimization Had Occurred in the First Prison Facility They Had Entered.  
- Reports of Sexual Violence Did Not Vary by Size of Facility, Facility Age, Crowding, Inmate-to-Staff Ratios, or Sex Composition of Staff.  

Sexual Victimization Rates Varied by Type and Primary Function of the Facility and by Indicators of Facility Disorder.  

Prison Placements and Individual-Level Risk Factors  
- An Incident of Sexual Victimization Was Reported in 4.0% of Prison Placements.  

Independent Contributions of Individual-Level and Facility-Level Factors to Victimization  

Variations in Sexual Victimization Rates Were Strongly Related to Sexual Orientation After Controlling for Other Factors.
Facility-Level Factors Remained Significant After Controlling for Inmate Characteristics  

Reporting Of Sexual Victimization  
Two-Thirds of Victims of Inmate-on-Inmate Sexual Victimization Said They Reported at least One Incident to Facility Staff or Someone Else  

22% of Unwilling Victims of Sexual Activity with Staff, Compared to 3% of “Willing” Victims, Said They Had Reported an Incident to Facility Staff or Someone Else  

Most Common Reasons for Not Reporting Sexual Victimization by Other Inmates Linked to Embarrassment, Shame, and Not Wanting Others to Know  

37% of Victims Who Reported Being Victimized by Other Inmates Said Facility Staff Did Not Respond  

Post-Release Responses To Victimization  
HIV Testing and Results  
Current Employment, Housing, and Living Arrangements of Former Inmates  
Following Their Release from Prison, Victims and Nonvictims Did Not Differ in Their Employment and Housing Arrangements, but Victims Were More Likely than Nonvictims to Be Living Alone  

Methodology  

HIV in Prisons, 2001-2010  

Rates of HIV/AIDS and AIDS-Related Deaths in Prisons have Declined Steadily Since 2001  

Rates of HIV/AIDS Cases and AIDS-Related Deaths Declined Across all Sizes of Prison Populations  

The Rate of AIDS-Related Deaths for State Prison Inmates Dropped Below the Rate for the U.S. General Population  

Methodology  

Correctional Populations in the United States, 2011  

Community Supervision and Incarcerated Populations Decreased at About the Same Rate During 2011  

Fewer Probationers During 2011 Accounted for Most of the Decline in the Correctional Population  

Methodology  

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Prisoners in 2011  
*Introduction*  
The Decline of Prisoners in California Contributed to the Overall Prison Population Decline  
*Imprisonment Rates Declined to Levels Last Seen in 2005*  
*Black and Hispanic Prisoners Were Generally Younger and Imprisoned at Higher Rates Than White Prisoners*  
*Violent Offenders Accounted for the Majority of Sentenced Prisoners in State Prison*  
*Violent Offenders Increased in State Prison Over the Past Decade, While Drug Offenders Decreased*  
*Drug and Public-Order Offenses Increased in Federal Prison*  
*Admissions and Releases Continued to Decline in 2011*  
*Other Selected Findings*  
*Methodology*  
*Definition of Terms*  
*NPS Jurisdiction Notes*

Mortality in Local Jails and State Prisons, 2000-2010  
*Introduction*  
*Mortality in Local Jails*  
*Cause of Death*  
*Decedent Characteristics*  
*State-Level Jail Populations*  
*Cause of Death by Decedent Characteristics, 2000 to 2010 Average Annual Trends*  
*Mortality in State Prisons*  
*Cause of Death*  
*Decedent Characteristics*  
*State-Level Prison Populations*  
*Cause of Death by Decedent Characteristics*  
*Cause of Death by State*  
*Methodology*

Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12  
*Introduction*  
*Highlights*  
*Prevalence of Sexual Victimization*  
*Facility Rankings*  
*Variations in Victimization Rates*
In 2011-12, 4.0% of Prison Inmates and 3.2% of Jail Inmates Reported Experiencing One or More Incidents of Sexual Victimization

Facility-Level Rates
The NIS-3 Provides a Basis for Identifying High Rate and Low Rate Facilities
11 Male Prisons, 1 Female Prison, and 9 Jails Were Identified as Having High Rates of Inmate-on-Inmate Sexual Victimization in 2011-12
8 Male Prisons, 4 Female Prisons, and 12 Jails Were Identified as Having High Rates of Staff Sexual Misconduct
7 Male Prisons, 6 Female Prisons, and 4 Jails Were Identified as Low-Rate Facilities for Sexual Victimization Overall

In 2011-12, Two Military Facilities and One Indian Country Jail Had High Rates of Staff Sexual Misconduct

Demographic and Other Characteristics
Overweight and Obese Prison Inmates Had Lower Rates of Inmate-on-Inmate Sexual Victimization and Staff Misconduct Than Inmates Who Were at or Below a Normal Weight
Large Differences in Sexual Victimization Were Found Among Inmates Based on Their Sexual Orientation and Past Sexual Experiences
In 2011-12, Inmates Held for a Violent Sexual Offense Reported Higher Rates of Inmate-on-Inmate Sexual Victimization Than Inmates Held for Other Offenses
Rates of Staff Sexual Misconduct Varied Among Inmates Based on Their Criminal Justice Status and History

Special Inmate Populations—Inmates Ages 16 to 17
In 2011-12, Juvenile Inmates Ages 16 to 17 Held in Adult Facilities Reported Rates of Sexual Victimization Similar to Those of Adult Inmates
Among Juveniles and Young Adult Inmates in 2011-12, Patterns of Sexual Victimization Across Demographic Subgroups Showed Little Variation
Among Juveniles Victimized by Other Inmates in 2011-12, More Than Three-Quarters Experienced Force or Threat of Force, and a Quarter Were Injured

Special Inmate Populations—Inmates with Mental Health Problems
A High Percentage of Inmates Had a History of Problems with Their Emotions, Nerves, or Mental Health
Inmates with a History of Mental Health Problems Had Higher Rates of Sexual Victimization Than Other Inmates
In 2011-12, Nearly 15% of State and Federal Prisoners and 26% of Jail Inmates Had Symptoms of Serious Psychological Distress
Inmates with SPD or Anxiety-Mood Disorders Reported High Overall Rates of Sexual Victimization in 2011-12 App. C-3472
Inmates with Mental Illness Reported Higher Rates of Sexual Victimization Than Inmates Without Mental Health Problems Across Subgroups App. C-3473
Reports of Sexual Victimization Differed Among Inmates with SPD and Other Inmates App. C-3473
Special Inmate Populations—Inmates with a Non-Heterosexual Sexual Orientation App. C-3474
Across Subgroups, Inmate-on-Inmate Victimization Rates Were Higher for Non-Heterosexual Inmates Than Heterosexual Inmates App. C-3474
Methodology App. C-3475
Table of Contents

Volume Five

APPENDIX C
Prisoner Statistics (continued)

Mortality in Local Jails and State Prisons, 2000-2011
Bureau of Justice Statistics, United States Department of Justice
Introduction App. C-3591
Mortality in Local Jails App. C-3592
Cause of Death App. C-3592
Decedent Characteristics App. C-3593
Facility Characteristics App. C-3593
Moving Averages App. C-3593
Mortality in State Prisons App. C-3594
Cause of Death App. C-3594
Decedent Characteristics App. C-3594
Cause of Death by Decedent Characteristics App. C-3595
Deaths by Jurisdiction App. C-3595
Cause of Death by State App. C-3595
Moving Averages App. C-3596
Methodology App. C-3596

Bureau of Justice Statistics, United States Department of Justice
Introduction App. C-3647
The Drop in State Prison Admissions Drove the Overall Decline in U.S. Prison Admissions in 2012 App. C-3648
Releases from State Prison in 2012 Exceeded Admissions for the Fourth Consecutive Year, Contributing to the Decline in the Total Prison Population  

Violent Offenders Accounted for a Larger Proportion of the State Prison Population Between 1991 and 2011  

Between 1991 and 2011, Changes in State Prison Admission Types Were Associated with Changes in the Offense Distributions  

The Number of Females Admitted on New Court Commitments for Violent Offenses in 2011 Increased by 2% from 2006 and by 83% from 1991  

Among New Court Commitments to State Prison, More than a Third Each of Black and Hispanic Offenders, and a Quarter of White Offenders Were Convicted of a Violent Offense  

Since 1991, the Proportion of Newly Admitted Violent Offenders Receiving Prison Sentences of Less than 5 Years has Increased  

Violent Offenders’ Longer Sentences Contribute to Their Increased Proportion in the Yearend Prison Population  

State Prisons Released Almost 24,900 More Inmates than They Admitted in 2011  

The 2012 Yearend U.S. Sentenced Prison Population Declined 1.8%, Driven by a Decrease in the Number of State Prisoners  

Imprisonment Rates Continued to Decline for Most Race, Ethnicity, Sex, and Age Groups  

Other Select Findings  

National Prisoner Statistics Program Jurisdiction Notes  

Terms and Definitions  

Methodology  

Correctional Populations in the United States, 2012  

Bureau of Justice Statistics, United States Department of Justice  

Introduction  

By Yearend 2012, the Rate of Offenders Under Correctional Supervision Dropped Below the 2000 Level  

During 2012, the Community Supervision and Incarcerated Populations had the Smallest Decreases Since 2009  

Decreases in Probation and Prison Populations Accounted for Nearly All of the Decline in the Total Correctional Population During 2012  

Methodology  

Sexual Victimization Reported by Adult Correctional Authorities, 2011-12  

Bureau of Justice Statistics, United States Department of Justice  

Introduction  

Summary-Level Findings  

Allegations of Sexual Victimization  

Methodology
TABLE OF CONTENTS

Allegations of Sexual Victimization Increased Every Year Between 2005 and 2011  
App. C-3735  
Inmate-on-Inmate Victimization Accounted for Two-Thirds of the Total Increase in Allegations of Sexual Victimization Between 2005 and 2011  
App. C-3735  
Upon Investigation, Most Allegations Were Unsubstantiated  
App. C-3736  
Substantiated Incidents of Sexual Victimization  
App. C-3736  
The Total Number of Substantiated Incidents Did Not Change Significantly Between 2005 and 2011  
App. C-3736  
Substantiated Incidents of Inmate-on-Inmate Abusive Sexual Contact and Staff Sexual Harassment Increased Between 2005 and 2011  
App. C-3737  
Incident-Level Findings  
App. C-3737  
Inmate-on-Inmate Sexual Victimization  
App. C-3737  
Force was Used in About Two-Thirds of Substantiated Incidents of Nonconsensual Sexual Acts  
App. C-3738  
Female Inmates Were Disproportionately Victimized by Other Inmates  
App. C-3738  
Victims and Perpetrators of Inmate-on-Inmate Sexual Victimization in Jails Were Younger than Those in Prisons  
App. C-3738  
Fewer than 1 in 5 Substantiated Incidents of Inmate-on-Inmate Sexual Victimization Resulted in an Injury  
App. C-3739  
About Two-Thirds of Victims of Nonconsensual Sexual Acts Were Given a Medical Examination; a Third Were Administered a Rape Kit  
App. C-3739  
Most Victims Experienced a Change in Their Housing  
App. C-3740  
Most Inmate Perpetrators Were Placed in Solitary Confinement  
App. C-3740  
Sanctions Were More Severe for Nonconsensual Sexual Acts than for Abusive Sexual Contacts  
App. C-3740  
Staff-on-Inmate Sexual Victimization  
App. C-3740  
Females Were Disproportionately Victimized by Staff in State and Federal Prisons and Local Jails  
App. C-3741  
Female Staff Were More Frequently Implicated in Sexual Misconduct in Prisons; Male Staff in Local Jails  
App. C-3741  
Staff Members Involved in Sexual Misconduct Were Younger than Those Involved in Sexual Harassment  
App. C-3741  
Correctional Officers Were Implicated in Two-Thirds of Substantiated Incidents  
App. C-3741  
The Sexual Relationship “Appeared to be Willing” in Nearly Three-Quarters of Incidents of Staff Sexual Misconduct  
App. C-3742  
More than a Third of Incidents of Staff-on-Inmate Victimization Occurred in a Program Service Area  
App. C-3742

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More Incidents of Staff Sexual Misconduct Occurred During the
Daytime Hours (6 a.m. to 6 p.m.) in Prisons than in Jails
*App. C-3742*

When Reported, Staff Sexual Victimization was Typically Reported
by the Victim or Another Inmate, Not by a Correctional Officer
or Other Staff *App. C-3743*

Nearly a Quarter of Victims of Staff Sexual Misconduct Were
Given Counseling or Mental Health Treatment
*App. C-3743*

About 46% of Inmates Involved in Staff Sexual Misconduct Were
Transferred or Placed in Segregation *App. C-3743*

Overall, 78% of Staff Perpetrators Lost Their Jobs; 45% Were
Arrested or Referred for Prosecution *App. C-3744*

Incidents of Sexual Victimization Differed by the Sex of Staff
Involved *App. C-3744*

**Methodology** *App. C-3745*

---

**Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010**

_Bureau of Justice Statistics, United States Department of Justice_

**Introduction** *App. C-3787*

Criminal History and Prison Records Were Used to Document Recidivism
Patterns *App. C-3787*

1 in 10 State Prisoners had an Out-of-State Arrest Within 5 Years of
Release *App. C-3789*

3 in 4 State Prisoners Were Arrested Within 5 Years of Release
*App. C-3789*

Prisoners Released After Serving Time for a Property Offense Were the Most
Likely to be Arrested *App. C-3790*

Inmate Recidivism Increased with Criminal History *App. C-3791*

Male Inmates Were Arrested at Higher Rates than Female Inmates Following
Release *App. C-3791*

Younger Released Inmates Were Arrested at Higher Rates than Older
Inmates Following Release *App. C-3792*

By the End of the Fifth Year After Release, Black Inmates had the Highest
Recidivism Rate Among All Racial or Ethnic Groups *App. C-3792*

**Methodology** *App. C-3793*

---

**Correctional Populations in the United States, 2013**

_Bureau of Justice Statistics, United States Department of Justice_

**Introduction** *App. C-3951*

During 2013, the Community Supervision and Incarcerated Populations
Declined by Less than 1% *App. C-3951*

Correctional Supervision Rate Dropped During 2013, Continuing a 6-Year
Trend *App. C-3952*

Decreases in the Probation and Jail Populations Accounted for the Decline in
the Correctional Population During 2013 *App. C-3953*
Since 2000, the Proportion of Females on Probation and in Jail Increased; the Proportion of Females in Prison and on Parole Remained Stable  
App. C-3954

Female Jail, Prison, and Probation Populations Grew at a Faster Rate than the Male Populations Between 2000 and 2010  
App. C-3954

Since 2010, Female Jail Inmates Increased 11% and Male Parolees Increased 2%; All Other Correctional Populations Declined  
App. C-3955

Methodology  
App. C-3955

Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12  
Bureau of Justice Statistics, United States Department of Justice

Introduction  
App. C-3979

Prisoners and Jail Inmates were More Likely than the General Population to Report Ever Having a Chronic Condition or an Infectious Disease  
App. C-3980

High Blood Pressure was the Most Commonly Reported Chronic Condition Among Prisoners and Jail Inmates  
App. C-3980

Chronic Conditions were more Commonly Reported by Female Inmates Both in Prisons and Jails  
App. C-3981

Older Prisoners were About 3 Times more Likely than Younger Persons to Report Ever Having a Chronic Condition or Infectious Disease  
App. C-3981

24% of Prisoners and Jail Inmates Reported at Least Two Chronic Conditions  
App. C-3981

Most Prisoners and Jail Inmates Received Medical Assessments or Exams Since Admission  
App. C-3982

Among Prisoners and Jail Inmates Who Reported Ever Having a Chronic Condition, About Three-Quarters Reported Having a Chronic Condition at Admission  
App. C-3982

66% of Prisoners and 40% of Jail Inmates with a Current Chronic Condition Reported Taking Prescription Medication  
App. C-3983

More than Half of Prisoners and Jail Inmates Reported Being Somewhat or Very Satisfied with Health Care Services Received Since Admission  
App. C-3983

Methodology  
App. C-3984

Multistate Criminal History Patterns of Prisoners Released in 30 States  
Bureau of Justice Statistics, United States Department of Justice

Introduction  
App. C-4129

Older Inmates Were More Likely Than Younger Inmates to Have Prior Out-of-State Arrests  
App. C-4130

Prior to Release, the Majority of Multistate Offenders Had Arrest Records in Two States  
App. C-4131

Inmates with Prior Out-of-State Arrests Were More Likely Than Other Inmates to Have an Out-of-State Arrest Following Release  
App. C-4131

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Recidivism Patterns Based on National Criminal History Records Differed from Those Limited to Criminal History Records Within the State of Release  

App. C-4132

For Most States, Their Released Prisoners Had Arrest Histories in About 50 States  

App. C-4133

Methodology  

App. C-4134

Use of Restrictive Housing in U.S. Prisons and Jails, 2011-12  

Bureau of Justice Statistics, United States Department of Justice  

Introduction  

App. C-4163

Individual-Level Rates  

App. C-4164

On an Average Day in 2011-12, Up to 4.4% of State and Federal Prisoners and 2.7% of Jail Inmates Were Held in Administrative Segregation or Solitary Confinement  

App. C-4164

Nearly 20% of Prison Inmates and 18% of Jail Inmates Had Spent Time in Restrictive Housing in the Past 12 Months or Since Coming to the Facility, If Shorter  

App. C-4164

Time in Restrictive Housing Varied Among Inmate Demographic Groups  

App. C-4165

Time in Restrictive Housing Units Linked to Current Offense and Past Criminal Justice Contacts  

App. C-4166

Use of Restrictive Housing Linked to Inmate Mental Health Problems  

App. C-4166

A High Percentage of Inmates with Current Symptoms of Serious Psychological Distress Had Spent Time in Restrictive Housing Units  

App. C-4167

More than Three-Quarters of Inmates Written Up for Assaulting Other Inmates or Staff Had Spent Time in Restrictive Housing  

App. C-4168

Facility-Level Rates  

App. C-4169

Use of Restrictive Housing Associated with Indicators of Facility Disorder  

App. C-4169

Facility-Level Rates of Restrictive Housing Associated with Characteristics of Inmates Housed  

App. C-4170

Lack of Inmate Trust and Confidence in Staff Linked to Greater Use of Restrictive Housing  

App. C-4171

Methodology  

App. C-4173

Veterans in Prison and Jail, 2011-12  

Bureau of Justice Statistics, United States Department of Justice  

Introduction  

App. C-4201

Veterans in Prison and Jail Have Decreased Since 1998  

App. C-4202

On Average, Veterans in Prison and Jail Were Older Than Nonveterans  

App. C-4202

Incarcerated Veterans Were More Likely to be Convicted On a Violent Sexual Offense and Have Fewer Priors Than Nonveterans  

App. C-4203
The Majority of Incarcerated Veterans Did Not Experience Combat During Their Military Service

Veterans in Prison and Jail Were Likely to Report Having Been Told They Had Post-Traumatic Stress Disorder

Veterans in Prison and Jail Were More Likely Than Nonveterans to Report a Hearing or Vision Disability

Methodology

Correctional Populations in the United States, 2014

Bureau of Justice Statistics, United States Department of Justice

Introduction

The Community Supervision Population Declined During 2014, Accounting for all of the Decrease in the Correctional Population

During 2014, the Correctional Supervision Rate Fell for the Seventh Consecutive Year

Since 2007, Compositional Changes in the Correctional Population were Small Despite the Decrease of 488,900 Offenders

The Decline in the Probation Population from 2007 to 2014 Accounted for 88% of the Decrease in the Correctional Population

Seven Jurisdictions Accounted for Almost Half of the U.S. Correctional Population at Yearend 2014

At Yearend 2014, Almost All Jurisdictions had a Larger Portion of Their Correctional Population Supervised in the Community than Incarcerated

Terms and Definitions

Methodology

Disabilities Among Prison and Jail Inmates, 2011-12

Bureau of Justice Statistics, United States Department of Justice

Introduction

Inmates Were More Likely than Persons in the General Population to Report Having a Disability

Cognitive Disability was the Most Commonly Reported Disability Among Inmates

About 13% of Prisoners and 16% of Jail Inmates Reported Having Multiple Disabilities

Female Inmates Were More Likely than Male Inmates to Report Having a Disability

Non-Hispanic Black and Hispanic Inmates Were Less Likely than Non-Hispanic Whites to Report a Disability

Older Inmates Were More Likely to Report

More than Half of Inmates with a Disability Reported a Chronic Condition

Methodology

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Prisoners in 2015

Introduction App. C-4291
Total Prison Population App. C-4291
Sentenced Prison Population App. C-4292
State and Federal Prisoners Sentenced to More than 1 Year Declined for the Second Consecutive Year App. C-4293
Blacks and Hispanics Sentenced to More than 1 Year in State or Federal Prison Declined in 2015 App. C-4293
Imprisonment Rate App. C-4293
At Yearend 2015, the Imprisonment Rate for Sentenced Prisoners of All Ages Was the Lowest Since 1997 App. C-4293
The Imprisonment Rates Decreased for All Races from 2014 to 2015 App. C-4294
Prison Admissions And Releases App. C-4294
State and Federal Correctional Authorities Admitted 17,800 Fewer Prisoners in 2015 than in 2014 App. C-4294
Demographic and Offense Characteristics of State and Federal Prisoners App. C-4295
A Tenth (11%) of Prisoners Sentenced to More than 1 Year in State or Federal Prison at Yearend 2015 Were Age 55 or Older App. C-4295
Fifty-Three Percent of State Prisoners Were Serving Time for Violent Offenses App. C-4296
Other Selected Findings App. C-4297
Prison Capacity App. C-4297
Private Prisons App. C-4297
Prisoners Held in Local Jails App. C-4297
U.S. Military and Territories App. C-4298
Methodology App. C-4298
National Prisoner Statistics (NPS) Program Jurisdiction Notes App. C-4302

Correctional Populations in the United States, 2015

Introduction App. C-4341
Community Supervision and Incarcerated Populations Declined to Lowest Levels in More than a Decade App. C-4341
Drop in the Number of Probationers Accounted for Most of the Decrease in the Correctional Population During 2015 App. C-4342
By Yearend 2015, the Correctional Supervision Rate Dropped to the Lowest Rate Since 1994 App. C-4343
Aging of the State Prison Population, 1993-2013

Introduction

The Number of State Prisoners Age 55 or Older Doubled Each Decade Between 1993 and 2013

Persons Age 55 or Older Made Up a Larger Percentage of the U.S. Resident Population than the State Prison Population

Characteristics of the Aging State Prison Population

Between 1993 and 2003, Both Males and Females Ages 40 to 54 Increased by More than 100%

Black State Prisoners Age 55 or Older Increased More than 150% Between 2003 and 2013

State Prison Inmates Age 55 or Older Had a Higher Percentage of Violent Offenders than All Other Age Groups

Sources of Growth in the Older Prison Population

Admissions of State Prisoners Increased Most Among 45 to 49 Years Old Between 1993 and 2003, and Among Ages 55 or Older After 2003

Type of admission

Rate of admission

Admitting offense

Likelihood of admission to prison after an arrest

Inmates Age 55 or Older Admitted to State Prison Were Sentenced to—and Were Expected to Serve—More Time on Average than Younger Inmates

Sentence length

Time served in prison

The Percentage of Older Prisoners Released After Serving at Least 10 Years More than Doubled Between 1993 and 2013

By 2013, 40% of Persons Age 55 or Older in Prison at Yearend Had Served 10 Years or More, Compared to 9% in 1993

Over Time, Admissions Contributed a Smaller Proportion of State Prison Inmates Age 55 or Older Relative to Prisoners Who Turned 55 While in Prison

Conclusion

Longer Sentences, More Time Served, and Increased Admissions Among Older Offenders Led to Aging in the State Prison Population

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Methodology

**HIV in Prisons, 2015**

_Bureau of Justice Statistics, United States Department of Justice_

- Introduction
- HIV Among State and Federal Prisoners
- HIV Among State and Federal Prisoners by Sex
- AIDS-Related Deaths Among State and Federal Prisoners
- AIDS-Related Deaths of State Prisoners by Sex, Race, Hispanic Origin, and Age
  - During Intake Process
  - While in Custody
  - During Discharge Process

Methodology

**Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12**

_Bureau of Justice Statistics, United States Department of Justice_

- Introduction
- Prisoners and Jail Inmates Were More Likely to Have Ever Been Told They Had a Major Depressive Disorder than Other Mental Disorders
- Prisoners and Jail Inmates Were Three to Five Times as Likely to Have Met the Threshold for SPD as Adults in the General U.S. Population
- Female Prisoners and Jail Inmates Were More Likely to Have Met the Threshold for SPD than Males
- Prisoners Age 65 or Older Were Less Likely to Have a Mental Health Indicator, Compared to Other Age Groups
- Prisoners Who Were Married Were Less Likely to Have Met the Threshold for SPD than Prisoners with Other Marital Statuses
- Prisoners and Jail Inmates with a College Degree Were More Likely than High School Graduates to Have a History of a Mental Health Problem
- The Percentage of Prisoners Incarcerated for a Violent Offense Who Met the Threshold for SPD was Similar to Those Incarcerated for a Property Offense Who Met the Threshold for SPD
- The Percentage of Prisoners Who Met the Threshold for SPD Did Not Differ by Sentence Length
- The Percentage of Inmates Who Had Ever Been Told They Had a Mental
Disorder Did Not Differ by Time Served Since Admission  
*App. C-4503*

A Larger Percentage of Prisoners and Jail Inmates with More than One Arrest than Those with One Arrest Had Been Told They Had a Mental Disorder  
*App. C-4504*

Prisoners Who Spent 5 Years or More Previously Incarcerated Were More Likely to Have Met the Threshold for SPD than Those with No Prior Time Served  
*App. C-4504*

Almost Three-Quarters of Inmates Who Met the Threshold for SPD Had Received Mental Health Treatment in Their Lifetime  
*App. C-4505*

Prisoners Who Had a Mental Health Indicator Were More Likely than Similar Jail Inmates to Have Received Treatment Since Admission to Their Current Facility  
*App. C-4505*

About a Third of Inmates With a Mental Health Indicator Were Currently Receiving Treatment  
*App. C-4505*

Prisoners and Jail Inmates Who Met the Threshold for SPD Were More Likely than Those Without SPD to be Written Up or Charged with an Assault While Incarcerated  
*App. C-4506*

Methodology  
*App. C-4506*

**Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009**

*Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*  
*Bureau of Justice Statistics, United States Department of Justice*

**Introduction**  
*App. C-4535*

**Drug Dependence and Abuse**  
*App. C-4536*

During 2007-09, More than Half of State Prisoners and Two-Thirds of Sentenced Jail Inmates Met the DSM-IV Criteria for Drug Dependence or Abuse  
*App. C-4536*

Female Inmates Were More Likely than Male Inmates to Have Met the DSM-IV Criteria for Drug Dependence or Abuse  
*App. C-4536*

Inmates Incarcerated for a Property Offense Were More Likely to Have Met the Criteria for Dependence or Abuse than Inmates Incarcerated for Other Offenses  
*App. C-4536*

State Prisoners Were 12 Times More Likely than Adults in the General Population to Have Met the Criteria for Dependence or Abuse  
*App. C-4537*

Jail Inmates Were More Likely to Have Met the Criteria for Dependence or Abuse than Those in the General Population Who Had Been Arrested  
*App. C-4537*

**Trends in Lifetime and Regular Use of Drugs by State Prisoners and Jail Inmates**  
*App. C-4538*

Overall Drug Use Reported by Inmates was Unchanged from Past Surveys  
*App. C-4538*

More State Prisoners and Jail Inmates Reported They Had Ever Used Marijuana/Hashish than Any Other Drug  
*App. C-4538*

Patterns of Drug Use at Time of the Offense  
*App. C-4539*

4 in 10 Prisoners and Jail Inmates Used Drugs at the Time of the Offense for Which They Were Currently Incarcerated  
*App. C-4539*

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About 4 in 10 State Prisoners and Sentenced Jail Inmates Who Were Incarcerated for Property Offenses Committed the Crime to Get Money for Drugs or to Obtain Drugs  

Drug Use by Demographics and Offense  

Among State Prisoners, Females, Whites, and Those Age 54 or Younger Were More Likely than Other Persons to Have Used Drugs in the Month Before the Offense  

State Prisoners Incarcerated for Property or Drug Offenses Were More Likely to Have Used Drugs than Those Who Committed Violent Offenses  

Female Jail Inmates Were More Likely than Male Inmates to Have Used Drugs in the Month Before the Offense or at the Time of the Offense  

More than Half of Sentenced Jail Inmates Incarcerated for a Drug Crime Used Drugs at the Time of the Offense  

Regular Use of Cocaine/Crack, Methamphetamine, or Heroin/Opiates by Demographics  

Cocaine/Crack  

During 2007-09, Regular Use of Cocaine/Crack was Highest Among Females, Whites, Inmates Ages 35 to 44, and Property Offenders  

Methamphetamine  

Female Inmates Were More Likely than Male Inmates to Have Regularly Used Methamphetamine During 2007-09  

Heroin/Opiates  

Regular Use of Heroin/Opiates was Lowest Among Black Prisoners and Jail Inmates During 2007-09  

Estimates of Lifetime and Regular Use of Drugs Among Adults in the General Population  

Little to No Change Occurred in the Percentage of Adults in the General Population Who Had Ever Used or Regularly Used Drugs Between 2002-04 and 2007-09  

Month-Before Drug Use Among Prisoners was Three Times Higher than the General Population  

Among Prisoners and Adults in the General Population, Marijuana/Hashish was Reported as the Most Used Drug in the Month Before the Arrest or Interview  

Sentenced Jail Inmates Were More Likely than the General Population to Have Used Drugs in the Prior Month  

Participation in Drug Treatment Programs  

Fewer than a Third of Inmates Who Met the Criteria for Drug Dependence or Abuse Received Drug Treatment or Participated in a Program  

Prisoner and Jail Inmate Participation in a Drug Treatment Program Did Not Differ by Time Since Arrival to the Current Facility or Time Until Release
Correctional Populations in the United States, 2016

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-4653
Community Supervision and Incarcerated Populations Continued a Steady Decline App. C-4653
Probation and Prison Populations Decreased, While Parole Population Increased App. C-4654
Correctional Supervision Rate Decreased for the Ninth Consecutive Year App. C-4655
Terms and Definitions App. C-4655
Methodology App. C-4657

2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014)

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-4675
About 1 in 4 State Prisoners Released in the 30 States in 2005 Were in Prison for a Violent Offense App. C-4676
Extending the Follow-up Period from 3 to 9 Years Increased Recidivism of Prisoners by 15 Percentage Points App. C-4676
Longer Follow-up Periods Show Substantial Declines in Apparent Desistance App. C-4677
After Year-1 the Annual Percentages of Males and Females Arrested for the First Time were Similar App. C-4677
Prisoners Released in 30 States in 2005 were Arrested Nearly 2 Million Times During the 9 Years Following Release App. C-4678
Male and Younger Prisoners were More Likely to be Arrested Each Year than Female and Older Prisoners App. C-4678
During the 9 Years After Release, Prisoners Released for a Property Offense were Most Likely to be Arrested App. C-4678
By the Sixth Year After Release, Prisoners Released for a Violent or Property Crime were Similarly Likely to be Arrested for a Violent Crime App. C-4679
Among Prisoners Arrested Following Release, the Percentage of Arrests in Another State Increased Each Year After Release App. C-4679
Five Percent of Prisoners Were Arrested During Year-1 Following Release and Not Arrested Again During Years 2 Through 9 App. C-4680
Forty-Four Percent of Released Prisoners were Not Arrested After Year-5 App. C-4680
Methodology App. C-4680

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Sexual Victimization Reported by Adult Correctional Authorities, 2012-15

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-4721
Allegations of Sexual Victimization App. C-4722
Allegations of Sexual Victimization Increased in Both Prisons and Jails App. C-4722
Staff-on-Inmate Victimization Accounted for 63% of the Increase in Allegations from 2011 to 2015 App. C-4723
Outcomes of Sexual Victimization Investigations App. C-4723
Overall, 8% of Completed Investigations Were Substantiated from 2012-15 App. C-4723
The Annual Number of Substantiated Incidents of Sexual Victimization Increased by 63% from 2011 to 2015 App. C-4723
From 2014 to 2015, the Number of Substantiated Incidents Did Not Change Significantly App. C-4724
Methodology App. C-4724

Time Served in State Prison, 2016

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-4757
Violent Offenders Served 4.7 Years in State Prison on Average, Compared to Less than 2 Years for Other Offenders App. C-4758
More than 7 in 10 Violent Offenders Released in 2016 Served Less than Five Years in State Prison App. C-4758
Persons Released After Serving Time for Rape or Sexual Assault (62%) Served the Highest Percentage of Their Sentence App. C-4758
Persons Sentenced for Murder or Rape/SexualAssault Made Up About Half (49%) of All Deaths in State Prisons in 2016 App. C-4759
Methodology App. C-4759

Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-4827
Controlling-Offense Characteristics App. C-4828
Extent of Firearm Use Among Prisoners During the Crime App. C-4828
Type of Firearm Possessed By Prisoners During Offense App. C-4829
Demographic Characteristics App. C-4829
Method, Source, and Process Used to Obtain the Firearm App. C-4830
Use and Source of Firearms Among All State and Federal Prisoners App. C-4830
Methodology App. C-4830
Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14)

Bureau of Justice Statistics, United States Department of Justice

Introduction App. C-4855
Sex Offenders were more Likely than Other Released Prisoners to Receive Longer Sentences and to be Granted Unconditional Releases App. C-4856
The Median Age at Release for Sex Offenders was 38 App. C-4857
About Half of Sex Offenders had 5 or more Prior Arrests and about a Third had at Least 1 Prior Drug Arrest App. C-4857
Sex Offenders were Less Likely than Other Released Prisoners to be Arrested During the 9 Years Following Release App. C-4857
Sex Offenders were Three Times as Likely as Other Offenders to be Arrested for Rape or Sexual Assault During the 9 Years Following Release App. C-4858
18% of Sex Offenders were Arrested for the First Time During Years 4 Through 9 After Release App. C-4858
Half of Prisoners Released After Serving Time for Rape or Sexual Assault had an Arrest Within 9 Years that Led to a Conviction App. C-4859
Younger Sex Offenders were more Likely than Older Sex Offenders to be Arrested for Another Sex Offense Post-Release App. C-4859
11% of Prisoners Released After Serving Time for Rape or Sexual Assault were Arrested at Least Once Outside the State that Released Them App. C-4860
Annual Arrest Percentages Among Sex Offenders Declined During the 9 Years Following Their Release App. C-4860
Prisoners Released after Serving Time for Rape or Sexual Assault Accounted for 16% of Arrests for Rape or Sexual Assault During the Follow-Up Period App. C-4861
Almost 6% of Male Prisoners Released in 30 States in 2005 were Serving Time for Rape or Sexual Assault App. C-4861
Fewer than 1% of Female Prisoners Released in 30 States in 2005 were Serving Time for Rape or Sexual Assault App. C-4862
67% of Male Prisoners Released After Serving Time for Rape or Sexual Assault were Arrested Within 9 Years App. C-4862

Methodology App. C-4862

Prisoners in 2018 Bureau of Justice Statistics, United States Department of Justice
Introduction App. C-4917
Total Prison Population App. C-4917
Population of Sentenced Prisoners App. C-4918
The Number of Prisoners Sentenced to More than One Year Declined Almost 2% App. C-4918
The Number of Sentenced Black Prisoners Fell More from 2017 to 2018 than the Number of Sentenced White or Hispanic Prisoners App. C-4919
Imprisonment Rates
431 Persons Per 100,000 U.S. Residents of All Ages Were Imprisoned at Year-End 2018

Prison Admissions and Releases
Federal and State Correctional Authorities Admitted 10,200 Fewer Prisoners in 2018 than in 2017
Releases from Federal Prison Declined Almost 5% in 2018

Other Selected Findings
Demographic Characteristics Among Sentenced Prisoners
- Non-U.S. Citizens
- Prisoners Age 17 or Younger
- Offense Characteristics of State Prisoners
- Offense Characteristics of Federal Prisoners
- Prison Capacity
- Private Prisons
- Prisoners Held in Local Jails
- U.S. Military and Territories
- Methodology

Mortality in State and Federal Prisons, 2001-2016

Data Collected Under the First Step Act, 2019

Prisoners in 2019
The Number of Jail Deaths Relative to Releases Was Unchanged from 1983  
App. D-61

The Number of Facilities Decreased Slightly  
Most Jails Were Small  
A Majority of Inmates Were Held in Medium or Large Capacity Jails  
Nearly Two of Every Five Bed Spaces Were Added Between 1978 and 1988  
Occupancy Exceeded Rated Capacity  
One in Every Eight Inmates Were Being Held for Other Correctional Authorities  
Most Jails Charged Fees to Hold Inmates for Other Authorities  
Courts Had Ordered One of Every Eight Jails to Limit Population or Improve Conditions  
Staff Growth Kept Pace with Inmate Increase  
Sex and Race/Ethnicity Representation of Staff Differed from That of Inmates  
Inmate-to-Staff Ratio Rose Among All Occupational Groups Except Correctional Officers  
Annual Jail Spending Exceeded $4.5 Billion in 1988  
Methodology  
Notes  

Population Density in Local Jails, 1988  
Bureau of Justice Statistics, United States Department of Justice  
Introduction  
The 1988 Census of Local Jails  
Inmates, Housing, and Staff in Local Jails  
Population Density in Local Jails  
Spatial and Social Density in Local Jails  
Spatial Density Categories  
Social Density Categories  
Jail Size and Density Measures  
Spatial Density and Occupancy  
Jail Suicides and Population Density  
Spatial Density and Jail Size  
Social Density and Jail Size  
Methodology  
Notes  

Profile of Jail Inmates, 1989  
Bureau of Justice Statistics, United States Department of Justice  
Introduction  
Local Jails  

xxx PRISONERS AND THE LAW
Parental Abuse of Drugs and Alcohol  App. D-171
First Use of Drugs and First Arrest  App. D-171
Drug Use and Family Background  App. D-172
Drug Use by Inmates Who Had Been Physically or Sexually Abused  App. D-172
Drug-Related Crime  App. D-172
Drug Use at the Time of the Offense  App. D-173
Alcohol and Drugs  App. D-173
Current Offense and Drug Use  App. D-173
Participation in Drug Treatment Programs  App. D-174
Jail Inmates Who Had Used Cocaine or Crack, 1989  App. D-174
How Many Jail Inmates Used Cocaine or Crack in the Month Before Their Arrest?  App. D-174
What Are the Characteristics of Inmates Who Used Cocaine or Crack in the Month Before Their Offense?  App. D-175
Methodology  App. D-177
Sample Design  App. D-177
Accuracy of the Estimates  App. D-177
Self-Reported Information  App. D-178
Notes  App. D-193

Women in Jail 1989  Bureau of Justice Statistics, United States Department of Justice

Introduction  App. D-211
Growth in the Female Jail Population  App. D-212
Characteristics of Female Inmates  App. D-213
Current Offense  App. D-214
Detention Status  App. D-215
Sentence Length  App. D-215
Criminal Justice Status at Arrest  App. D-216
Criminal History  App. D-216
Violent Female Inmates and Their Victims  App. D-217
Drug Use  App. D-217
Alcohol Abuse and Treatment  App. D-218
Mothers in Jail  App. D-219
Family Background  App. D-219
Physical and Sexual Abuse  App. D-220
Characteristics of Jails Holding Female Inmates, 1988 Census of Local Jails  App. D-222
Methodology  App. D-224
Sample Design  App. D-225
Accuracy of the Estimates  App. D-225
Self-Reported Information  App. D-226
Profile of Jail Inmates 1996

Bureau of Justice Statistics, United States

Department of Justice

Introduction App. D-305

Highlights App. D-305


Two-Thirds of Jail Inmates Were Convicted on Their Arrest Offense or Still Serving a Prior Sentence App. D-307

Jails Held 12% of Inmates for Other Authorities App. D-307

An Increasing Percentage of the Jail Population Was Female App. D-307

6 in 10 Jail Inmates Were Racial or Ethnic Minorities App. D-307

Middle-Aged Inmates Comprised a Growing Part of the Jail Population App. D-307

1 in 3 Jail Inmates Were Not Working Before Their Arrest App. D-308

1 in 5 Jail Inmates Received Government Payments App. D-309

Unchanged From 1989, 22% Were in Jail for Drug Offense App. D-309

Unconvicted Inmates Were More Likely Than Convicted Inmates to be in Jail for Serious Offenses App. D-310

Offenses Vary Among Men and Women; Blacks, Whites, and Hispanics; and by Age Group App. D-310

54% of Jail Inmates Already Had a Criminal Justice Status When Arrested App. D-311

Three-Quarters of Jail Inmates Had Served Prior Sentences App. D-311

44% of Inmates Had Current or Past Violent Offenses; 14% Had Only Drug Offenses App. D-312

Criminal Histories Differ Among Inmate Groups App. D-312

Among Sentenced Jail Inmates—Half Would Serve Less Than 6 Months from Admission App. D-313


62% of Convicted Jail Inmates Reported They Consumed Alcohol Regularly App. D-314

6 in 10 Convicted Jail Inmates Were Using Alcohol or Drugs at the Time of the Offense App. D-315

Nearly Two-Thirds of Jail Inmates Said They Had Driven After Consuming Alcohol or Drugs App. D-316

After Entering Jail, 1 in 6 of the Active Drug Users Had Participated in Treatment or Self-Help Program App. D-316

6 in 10 Inmates Grew Up Living in Homes Without Both Parents App. D-317

Nearly Half of all Female Inmates Reported Past Physical or Sexual Abuse App. D-317

Over a Third of Jail Inmates Reported a Physical or Mental Disability App. D-318

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Almost Half of Jail Inmates Had Received a Medical Examination After
Admission App. D-318
A Quarter of Inmates Had Received Treatment for a Mental or Emotional
Problem App. D-318
1 in 4 Jail Inmates Had a Work Assignment App. D-319
14% of Inmates Had Been in a Fight, Hit, or Punched Since Entering
Jail App. D-319
Methodology App. D-319
Sample Design App. D-320
Accuracy of the Survey Estimates App. D-320
Information From Inmate Interviews App. D-321
Measurement App. D-322
Blood Alcohol Concentration App. D-322

Federal Pretrial Release and Detention, 1996 Bureau of Justice
Statistics, United States Department of Justice
Highlights App. D-347
Introduction App. D-348
Recommendations to the Court App. D-348
Decisions to Release or Detain Pending Trial App. D-349
Characteristics of Defendants Detained Following a Federal Detention
Hearing App. D-350
Statutorily Prescribed Factors App. D-351
Offense Charged App. D-351
Defendant Characteristics App. D-352
Criminal History App. D-352
History of Pretrial Misconduct App. D-353
Community Ties App. D-353
Threat to the Community App. D-354
Demographic Characteristics App. D-355
Methodology App. D-356
Data Sources App. D-356
Notes App. D-357

DWI Offenders Under Correctional Supervision Bureau of Justice
Statistics, United States Department of Justice
Introduction App. D-385
Highlights App. D-386
Arrests for Driving Under the Influence of Alcohol or Drugs (DUI) Have
Been Generally Declining Since 1986 App. D-387
Most States Report a Decline in DUI Arrest Rates App. D-388
Average DUI Arrest Rate Higher in States with a .08 g/dl Legal Blood
Alcohol Concentration (BAC) Limit Than in States with a .10 g/dl Limit  

The Number of DWI Offenders Under Correctional Supervision Nearly Doubled Between 1986 and 1997  

DWI Offenders Serving Time in Jail Had an Average Sentence of 11 Months  

Nearly a Third of DWI Offenders on Probation Had Served Time in Jail or in Prison for Their Current DWI Offense  

All DWI Offenders on Probation Had at Least One Condition to Their Sentence  

A Third of DWI Offenders on Probation and Nearly Two-Thirds of Those Incarcerated Reported Prior DWI Sentences  

Over Half of DWI Offenders in Jail Were on Probation, Parole, or Pretrial Release at Time of New Offense  

DWI Offenders Were Older, Better Educated, and More Commonly White and Male  

Females Account for a Growing Number of DWI Offenders in Jails  

Over a Third of Convicted DWI Offenders in Jail Consumed 7 or More Ounces of Ethanol Prior to Their Arrest  

About Half of the DWI Offenders Who Reported Drinking Prior to Arrest Consumed Beer Only  

DWI Offenders on Probation Drank for Fewer Hours and Consumed Less Ethanol Than Those in Jail  

BAC Levels Were Higher Among DWI Offenders in Jail Than Among Those on Probation  

Nearly 1 in 3 DWI Offenders on Probation and 2 in 5 in Jail Reported Drinking Daily  

Over a Third of DWI Offenders on Probation and Nearly Half in Jail Exhibited Signs of Past Alcohol Dependence  

DWI Offenders Reported More Alcohol-Related Troubles Than Other Offenders  

DWI Offenders Who Exhibited the Greatest Need More Frequently Reported Receiving Treatment  

High Levels of Past Drug Use Reported by DWI Offenders  

About Two-Thirds of DWI Probationers and Jail Inmates Had Ever Received Any Alcohol/Drug Treatment  

DWI Offenders Who Exhibited the Greatest Need More Frequently Reported Receiving Treatment  

About 1 in 7 DWI Offenders on Probation and 1 in 5 in Jail Reported Ever Receiving Mental Health Treatment  

Methodology  

Data Sources  

Accuracy of the Estimates  

Estimating the Number of DWI Offenders Under Correctional Supervision  

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Drug Use, Testing and Treatment in Jails

Bureau of Justice Statistics, United States Department of Justice

Introduction App. D-429
Highlights App. D-431
Jail Inmates Reported High Levels of Drug Involvement App. D-432
Actively Drug-Involved Jail Inmates Younger and More Likely to Be Black Than Other Inmates App. D-432
Jails Emphasized Testing to Control Drug Use App. D-433
Half of All Inmates Were in Jails That Tested for Drug Use App. D-433
69% of Jurisdictions Test Inmates Mainly on Indication of Use App. D-434
Over Two-Thirds of the Jails That Tested Inmates Had at Least One Positive Test App. D-434
10% of Tests Conducted in June 1998 Were Positive for One or More Drugs App. D-434
Most Jurisdictions Take Away Inmate Privileges for a Positive Test Result App. D-435
70% of Jail Jurisdictions Tested All Staff; 20%, New Employees Only App. D-436
Most Jail Employees Are Tested at Random App. D-437
In 7 in 10 Jail Jurisdictions a Positive Test Was Grounds for Dismissal App. D-437
Self-Help Programs Like Alcoholics Anonymous or Narcotics Anonymous Common in Jails App. D-438
Large Jails Had Three-Quarters of the Total Capacity for Substance Abuse Treatment App. D-438
92,600 Inmates Participated in Drug or Alcohol Programs or Treatment App. D-438
61% of Inmates Who Had Used Drugs at the Time of the Offense Had Received Treatment in the Past App. D-439
Methodology App. D-439
Survey of Inmates in Local Jails App. D-439
Annual Survey of Jails App. D-440

Jails in Indian Country, 2000

Bureau of Justice Statistics, United States Department of Justice

Introduction App. D-483
Tribes Retain Jurisdiction Over Many Crimes by American Indians and Alaska Natives in Indian Country App. D-483
Juveniles Accounted for Nearly 16% of Inmates in Custody

90% of Confined Inmates Held For Misdemeanors; 15% for DWI/DUI

From 1999 to 2000, Admissions Declined 12%, and Discharges, 7%

On June 30, 2000, 24 Persons Under Community Supervision, Down From 72 the Previous Year

The 10 Largest Jails Housed 45% of Inmates in Indian Country

Indian Country Jails Operated at 118% of Capacity on Peak Day in June 2000, Up From 111% in 1999

Medium-Sized Facilities Reported the Highest Occupancy Rates on Their Peak Day in June 2000

11 Jail Facilities in Indian Country Under a Court Order or Consent Decree on June 30, 2000

Methodology

Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002

Introduction

68% of Jail Inmates Met Substance Dependence or Abuse Criteria

Over Half of All Female Jail Inmates Reported Substance Dependence

White and Middle Age Inmates Had Relatively Higher Rates of Substance Dependence or Abuse

Substance Dependence or Abuse More Prevalent Among Drug or Property Offenders

Half of Inmates Who Met Criteria of Dependence or Abuse Had a Family Member Who Had Served Time

Prior Criminal Record Linked to Substance Dependence or Abuse

Alcohol Use at Offense Declined Between 1996 and 2002

Regular Drug Use Rose Between 1996 and 2002; Use at Offense Declined

Women and White Inmates More Likely to Have Used Drugs at Offense

Younger Inmates Had Higher Rates of Dependence or Abuse of Drugs; Middle-Age Inmates, of Alcohol

Over Half of Inmates Convicted of Robbery, Burglary, or Drug Offenses Were Under the Influence At Offense

16% of Convicted Jail Inmates Committed the Offense to Get Money for Drugs

Three-Quarters of Inmates in Jail For Drug Or Property Offenses Met Dependence or Abuse Criteria

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6 in 10 Substance Dependent or Abusing Inmates Had Participated in Substance Treatment or Programs  
Participation in Substance Treatment or Programs Linked to Dependence  
Participation in Treatment or Other Programs While Under Correctional Supervision Rose Between 1996 and 2002  
1 in 6 Inmates Using Alcohol at the Time of the Offense Participated in Treatment/Programs After Admission  
1 in 5 Inmates Who Used Drugs at Time of the Offense Participated in Treatment or Programs After Admission  
Substance Dependent or Abusing Women, Whites More Likely to Participate in Treatment or Programs  
Methodology

Medical Problems of Jail Inmates

Medical Problems of Jail Inmates  Bureau of Justice Statistics, United States Department of Justice

Introduction  
22% of Jail Inmates Reported One Medical Problem; 14%, Two or More  
Medical Problems were Highest Among Female and Older Inmates

About 1 in 8 Jail Inmates Reported Currently Having Arthritis

Women Most Likely to Report Cervical Cancer, Men Skin Cancer

Heart Valve Damage was the Most Commonly Reported Heart Problem

Prevalence of a Medical Problem Did Not Change with Time Served

More Than a Third of Jail Inmates Reported an Impairment

Females Most Likely to Report a Physical or Mental Impairment, Males a Learning Impairment

More Than 40% of Inmates Age 45 or Older Reported an Impairment

15% of Jail Inmates had 2 or More Impairments

Around 1 in 8 Jail Inmates Reported Being Injured Since Admission to Jail

Injuries Highest Among Male and Younger Inmates

Violent Offenders had Higher Rates of Fight-Related Injuries

Inmates with an Impairment had Higher Rates of Injuries

Likelihood of Injury Increased with Time Served in Jail

Health-Related Problems More Common Among Homeless or Unemployed Inmates

Medical Problems Common Among Inmates with a History of Drug Use or Dependence
**Methodology**  
*App. D-625*

### Jails in Indian Country, 2007

*Bureau of Justice Statistics, United States*

**Department of Justice**

**Introduction**  
*App. D-717*

- The Number of Jails in Indian Country Increased  
  *App. D-717*
- Bed Space for Inmates Grew Faster than the Confined Population in Indian Country Since 2004  
  *App. D-718*
- Most Inmates were Confined in the Larger Indian Country Jail Facilities Rated to Hold 25 or More Inmates  
  *App. D-718*
- The Smallest and Largest Jails in Indian Country used Less Bed Space for Confined Inmates  
  *App. D-718*
- 18 Jails Were Operating at More than 50% Over Capacity on Their Most Crowded Day in June 2007  
  *App. D-719*
- High Volume of Inmates Were Processed Through Indian Country Jails  
  *App. D-720*
- Average Length of Stay was 4.5 Days for Indian Country Jail Inmates in June 2007  
  *App. D-720*
- Inmate Characteristics Remain Relatively Unchanged  
  *App. D-720*
- Jail Operations Staff Accounted for the Majority of Persons Employed by Indian County Jails  
  *App. D-721*
- Nearly All Indian Country Jails Provided Medical and Mental Health Services to Inmates; Most Jails Tested for Infectious Diseases  
  *App. D-721*
- Over Half of Facilities in Indian Country Offered GED Classes to Inmates in 2007  
  *App. D-722*
- More Than 60% of Facilities in Indian Country Provided Work Assignments for Inmates in 2007  
  *App. D-723*

**Methodology**  
*App. D-723*

- Average Length of Stay  
  *App. D-723*

### Jails in Indian Country, 2008

*Bureau of Justice Statistics, United States*

**Department of Justice**

**Introduction**  
*App. D-799*

- The Number of Jails in Indian Country has Increased  
  *App. D-799*
- Bed Space for Inmates Continues to Grow Faster than the Confined Population in Indian Country  
  *App. D-800*
- Most Inmates Were Confined in the Larger Indian Country Jail Facilities Rated to Hold 25 or More Inmates  
  *App. D-800*
- The Smallest and Largest Jails in Indian Country used Less Bed Space for Confined Inmates  
  *App. D-800*
- 18 Jails Were Operating at More Than 50% Over Capacity on Their Most Crowded Day in June 2008  
  *App. D-801*
- High Volumes of Inmates Were Processed Through Indian Country Jails  
  *App. D-802*

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Expected Length of Stay was 5.1 Days for Indian Country Jail Inmates in June 2008 App. D-802
Inmate Characteristics Remain Relatively Unchanged App. D-802
Jail Operations Staff Accounted for the Majority of Persons Employed by Indian Country Jails App. D-803
Methodology App. D-803
Expected Length of Stay App. D-804
Table of Contents

Volume Six

APPENDIX D

Jail Inmate Statistics (continued)

Jail Inmates at Midyear 2010  Bureau of Justice Statistics, United States
Department of Justice
Introduction  App. D-915
Population Decline was Mostly Concentrated in Large Jails  App. D-915
Capacity to Hold Inmates Continues to Increase at Slower Rate  App. D-916
Local Jails Admitted Almost 13 Million Persons During the 12 Months Ending June 30, 2010  App. D-917
Methodology  App. D-917

Jails in Indian Country, 2010  Bureau of Justice Statistics, United States
Department of Justice
Introduction  App. D-937
The Number of Operating Jails in Indian Country Increased Between 2004 and 2010  App. D-937
On an Average Day in June, the Percentage of Occupied Bed Space Decreased from 71% to 67%  App. D-938
Fourteen Jails Held More than Half of all Inmates  App. D-938
Fifteen Jails were Operating at More than 50% Over Capacity on Their Most Crowded Day in June 2010  

Jail Admissions Increased in Indian Country Jails  

Attempted Suicides in Indian Country Jails Declined  

The Share of Inmates Held for a Violent Offense Declined  

The Number of Jail Operations Staff Increased  

Methodology  

Jails in Indian Country, 2015  

Introduction  

Jails Operating in Indian Country Increased from 68 Facilities in 2004 to 76 in 2015  

Occupied Bed Space Declined from 86% of Rated Capacity in 2000 to 66% in 2015  

The Largest Jails Accounted for 26% of All Facilities and Held Nearly 60% of All Inmates in Indian Country Jails  

The Expected Average Length of Stay in Indian Country Jails Increased By a Day  

An Estimated 30% of Inmates Were Held for a Violent Offense Each Year in the Previous 5 Years  

The Number of Correctional Staff Increased Since 2010  

Two Reported Deaths Occurred in Indian Country Jails in the 12-Month Period Ending June 30, 2015  

Methodology  

Jail Inmates in 2015  

Introduction  

Juvenile Population in Adult Jails Continued to Decline  

Nearly 7 in 10 Inmates Were Held in Jail for a Felony Offense  

Jail Jurisdictions with 2,500 or more Inmates Held 21% of the Population in 2015, Down from 25% in 2014  

Bed Space Increased Between 2008 and 2015, While Jail Population Decreased  

The Smallest Jail Jurisdictions Turn Over Inmates Three Times Faster Than the Largest Jails  

Jail Staff Supervised an Additional 57,100 Persons in Various Community Programs Outside of Jail  

Methodology  

American Indian and Alaska Natives in Local Jails, 1999-2014  

Introduction  

The Number of AIANs Held in Local Jails Nearly Doubled from 1999 to 2014
The Majority of AIAN Jail Inmates Were Held in the Midwest and West

About 22% of Jails Held at Least One AIAN Inmate

A Small Number of Inmates Were Held for Tribal Authorities

The AIAN Jail Incarceration Rate Continued to Increase

An Estimated 71% of Adult AIAN Jail Inmates Were Age 39 or Younger in 2011

The Number of Jail Inmates Reporting Partial AIAN Race was Six Times Greater than Persons Reporting Sole AIAN Race

Methodology

Jail Inmates in 2018

Introduction

The Jail Incarceration Rate for Black U.S. Residents Fell Below 600 Per 100,000 Black Residents for the First Time Since 1990

The Black Jail Population Dropped By 21% from 2008 to 2018

The Juvenile Jail Population Dropped By 56% from 2008 to 2018

More than Two-Thirds of Jail Inmates Were Held for Felony Charges

Four Jail Jurisdictions Drove the Decline in Jail Beds from 2017 to 2018

Inmates Spent an Average of 25 Days in Jail in 2018

57,900 Persons Were Supervised Outside of Jail

Methodology

Mortality in Local Jails, 2000-2016

Introduction

Methodology

Jails in Indian Country, 2017-2018

Introduction

Jails Operating in Indian Country Increased from 68 Facilities in 2000 to 84 in 2018

Occupied Bed Space Declined from 86% of Rated Capacity at Midyear 2000 to 67% at Midyear 2018

The 12 Largest Jails Held Half of All Inmates in Jails in Indian Country

Admissions to Jails in Indian Decreased in 2018

Methodology
Nearly 30% of Inmates Were Held for a Violent Offense Each Year From Midyear 2010 to Midyear 2018  

The Number of Correctional Staff in Jails in Indian Country Increased from Midyear 2010 to Midyear 2018  

Two Deaths Were Reported in Indian Country During the 12-Month Period Ending June 30, 2018  

Methodology  

APPENDIX E  
Probation and Parole Statistics  

Probation and Parole 1985  
Department of Justice  
Bureau of Justice Statistics, United States  
Introduction  
Probation  
Parole  
Adults Under Correctional Supervision  
Probation Notes  
Parole Notes  

Recidivism of Felons on Probation, 1986-89  
Bureau of Justice Statistics, United States Department of Justice  
Preface  
Introduction  
Probation Defined  
Types of Probation Sentences  
Eligibility for Probation  
State Probation Sentences Nationwide, 1986  
The Probation Department’s Role in Deciding Who Gets Probation  
Probation Conditions Imposed  
Financial Penalties Imposed  
Felony Arrests and Disciplinary Hearings for Probationers  
Felony Arrest Offenses  
Compliance with the Conditions of Supervision  
The Effect of Drug Testing and Treatment in Reducing New Arrests  
The Effect of Intensive Supervision in Reducing New Arrests  
What Happened to Probationers After Felony Arrest  
Probation Status 3 Years Later  
Methodology  
Data Sources  
Sampling Design
Women and Non-Hispanic Whites Make Up Comparatively High
Percentages of Adult Probationers App. E-147
Types of Offenses Vary Among Men and Women and Blacks, Whites, and
Hispanics on Probation App. E-147
DWI Accounts for More Than a Quarter of Probationers Over Age 44
App. E-148
Half of All Probationers Have at Least One Prior Sentence App. E-148
Violent Offenders On Probation the Least Likely To Have a Prior
Sentence App. E-148
Presentence Investigations Focus on the Most Serious Offenders
App. E-149
4 Out of 5 Probationers with a PSI Recommended for Probation
App. E-149
Half of Sentences Split Between Incarceration and Supervision
App. E-149
Repeat Offenders More Likely To Be Incarcerated App. E-150
More Than a Third of Probationers Also Serve Jail or Prison Time
App. E-150
82% of Probationers Given 3 or More Conditions on Sentence
App. E-151
Majority Pay Supervision Fees App. E-151
More Than 2 of 5 Adults on Probation Required To Receive Treatment for
Alcohol or Drug Abuse App. E-151
Nearly Three-Quarters Contacted by a Probation Officer in Last 30
Days App. E-152
More Than a Third of Probationers in Alcohol/Drug Treatment
Program App. E-152
18% Faced a Disciplinary Hearing After Entering Probation
App. E-153
Disciplinary Hearings More Common Among Unemployed and Those With
Prior sentences App. E-154
Failure To Maintain Contact the Most Frequent Reason for Hearing
App. E-155
Over 40% Receive New Conditions of Supervision; 29% Incarcerated
App. E-155
Methodology App. E-156
Sample Design App. E-156
Accuracy of the Estimates App. E-157
Data on Prior Sentences App. E-157
Sentence Lengths App. E-159

Substances Abuse and Treatment of Adults on Probation, 1995
Bureau of Justice Statistics, United States Department of Justice
Introduction App. E-177
Highlights App. E-178
Half of Probationers Were Under the Influence of Alcohol or Drugs at the
Time of the Offense for Which They Were Convicted

App. E-178

While on Probation, 32% Were Treated for Alcohol, 17% for Drugs

App. E-178

Probationers Over Half of the Nation’s Correctional Population

App. E-178

The Survey of Adults on Probation, 1995, the First of Its Kind

App. E-179

Almost Half of Probationers Were Under the Influence of Alcohol or Drugs at the Time of Their Offense

App. E-180

Over Two-Thirds of Probationers Said They Used Drugs in the Past

App. E-181

Responses From a Quarter of Adults on Probation Indicated Past Alcohol Abuse or Dependence

App. E-182

Nearly Two-Thirds of Probationers Said They Had Driven While Under the Influence of Drugs or Alcohol

App. E-182

Hispanic Probationers Reported the Lowest Levels of Prior Drug Use

App. E-183

Prior Drug Use Dropped Dramatically Among Probationers Over Age 45

App. E-183

Over 80% of Probationers with a GED Reported Past Drug Use

App. E-184

Two-Thirds of Probationers Can Be Characterized as Alcohol- or Drug-Involved Offenders

App. E-184

While on Probation, Half of Probationers Tested—But Less Than a Fifth Treated—for Drug Abuse

App. E-185

Types of Drug Treatment Varied Little Among Probationers with Differing Severity of Past Drug Use

App. E-186

A Third of All Probationers Received Alcohol Treatment During Probation

App. E-187

Over 80% of Current Drug Users Had Personal Contact with Their Probation Officer in the Past 30 Days

App. E-188

Fewer Than 1 in 7 Current Drug Users on Probation Reported a Prior Drug Offense Sentence

App. E-188

Half of Alcohol- or Drug-Involved Probationers Received Treatment on Their Current Probation Sentence

App. E-189

Methodology

App. E-189

Federal Offenders Under Community Supervision, 1987-96

Bureau of Justice Statistics, United States Department of Justice

Introduction

App. E-215

Highlights

App. E-216

Offenders Supervised

App. E-216

Probation

App. E-217

Post-Incarceration Supervision

App. E-218

Parole

App. E-218

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Introduction
States Have Reduced the Discretion of Parole Boards in Determining Prison Release
Four States Accounted for Nearly Two-Thirds of the Growth in Parole During the 1990’s
Since 1990 Discretionary Releases Have Declined; Mandatory Parole and Expiration of Sentence Releases Have Increased
Growth in Prison Releases Linked to Drug Offenders
Prison Releases Have Served More Time and a Greater Portion of Their Sentence Before Release
Time Served by Released Part 1 Violent Offenders Increased in 33 States Between 1993 and 1999
Inmates Released by Parole Boards Served Longer Than Those Released by Mandatory Parole
Among Discretionary and Mandatory Parole Releases, Black Offenders Served Longer Than Whites
Over Half of Prison Releases had a Prior Incarceration; More than a Quarter Were Parole Violators
State Parole Entries and Discharges Rose During the 1990’s
Re- Releases an Increasing Portion of State Parole Entries
State Parole Entries Older in 1999 Than in 1990
Female Entries to Parole Increased During the 1990’s
Parole Success Rates Unchanged Since 1990
Success Rates Highest Among First Releases and Discretionary Parole Releases
Among Parole Discharges, Success Rates Rose for Blacks and Hispanics; Dropped for Whites

Bureau of Justice Statistics, United States Department of Justice
Success Rates Highest Among First Releases Serving Less Than 12 Months in Prison  
App. E-267

In 1999 Parole Discharges Served an Average of 26 Months Under Supervision, Up From 23 Months in 1990  
App. E-267

Number of Parole Violators Returned to Prison Continued to Rise During the 1990’s  
App. E-267

Nearly a Quarter of State Prisoners in 1997 Were Parole Violators  
App. E-268

70% of Parole Violators in Prison in 1997 Returned for a New Offense  
App. E-268

Half of Parole Violators Incarcerated in 3 States  
App. E-269

Characteristics of Parole Violators Varied Among the 3 Largest States  
App. E-269

Methodology  
App. E-269

National Corrections Reporting Program  
App. E-269

Annual Parole Survey  
App. E-270

National Prisoners Statistics  
App. E-270

App. E-271

Probation and Parole in the United States, 2000  
Statistics, United States Department of Justice  
Bureau of Justice
Summary  
App. E-301

National Correctional Population Reaches New High—Grows by 126,400 During 2000 to Total 6.5 Million Adults  
App. E-301

Probation and Parole in the United States, 2005  
Statistics, United States Department of Justice  
Bureau of Justice
Introduction  
App. E-391

Nearly 5 Million Persons on Probation or Parole  
App. E-391

Probationers Accounted for Half the Growth in the Correctional Population Since 1990  
App. E-392

Community Supervision Declined as a Percentage of the Correctional Population  
App. E-392

Correctional Supervision Rate Rose Sharply from 1980 to 2005  
App. E-393

6 of the 10 States with Largest Probation Populations Also Had Large Parole Populations  
App. E-393

9 States Reported an Increase of 5% or More in Their Probation Population  
App. E-394

19,070 Probationers Added in 2005  
App. E-394

Small Growth in Probation Population During 2005  
App. E-394

Growth in Probation Since 1990 Linked to Entries  
App. E-395

5 States Accounted for Nearly a Third of the Growth in Probation from 1995 to 2005  
App. E-395

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At Yearend 2005 Almost 1 in 4 Probationers Were Female; More Than 1 in 2 Were White  
Half of All Probationers Convicted of a Felony  
Success Rates Have Remained Stable Since 1995  
Parole Populations Increased in 33 States  
State Parole Population Increasing After Stability During the 1990s  
Growth in State Parole Linked to Entries  
Discretionary Releases to Parole Supervision Continued to Decline  
Proportion of Females on Parole Increased Between 1995 and 2005  
More Than 8 in 10 Parolees Were Under Active Supervision  
About 4 in 10 Parolees Served a Sentence for a Drug Offense  
Rates of Success for Parolees Have Remained Stable Since 1995  
Methodology

Characteristics of State Parole Supervising Agencies, 2006

Overview

Combined Parole and Probation Agencies Supervised 4 Times as Many Offenders on Probation as on Parole

Five Agencies Supervised Half of the Parole Population

State Parole Supervising Agencies Employed Nearly 65,000 Full-Time and 2,900 Part-Time Workers

Average Caseload Was 38 Active Parolees for Each FTE Devoted to Supervision

Two-Thirds of Paroled Offenders Were Required to Meet With a Parole Officer at Least Once a Month

Half of Parole Supervising Agencies Had a Role in Releasing Prisoners to Parole, Setting the Conditions of Supervision, or Conducting Revocation Hearings

Up to 16% of At-Risk Parolees in Some Agencies Were Re-Incarcerated for a Failed Drug Test

Nearly All Agencies Report Use of Drug, Sex Offender, or Mental Health Treatment Programs

2 in 5 Parole Supervising Agencies Operated or Contracted a Housing Service For Paroled Offenders

Half of Parole Supervising Agencies Offered Some Type of Formal Employment Assistance
Probation and Parole in the United States, 2010

Introduction
Community Supervision Population Dropped to the 2004 Level
Rate of Offenders Under Community Supervision at Yearend 2010 Dropped Below the 2000 Level
Five States Accounted for more than Half of the Decline in the Probation Population
Entries onto Probation Were Down for the Third Consecutive Year; Exits Declined for the First Time Since 2006
Offenders on Probation Completed Their Supervision Terms at About the Same Rate in 2010 as in 2009
Rate of Incarceration Among Probationers Remained Steady During the Last Year
Most Characteristics of Probationers Were Unchanged During 2010
U.S. Parole Population Rose During 2010; State Parole Population Dropped for the Second Consecutive Year
Entries to Parole Exceeded Exits During 2010 as Exits Dropped at a Greater Rate Than Entries
Mandatory Releases from Prison Were a Smaller Portion of Entries to Parole in 2010 Compared to 2009
Parole Completion Rate Increased During 2010, Continuing a Trend Observed Since 2006
Rate of Reincarceration Among Parolees Declined During 2010
Most Characteristics of Parolees Were Unchanged During 2010
Methodology
Probation: Explanatory Notes
Parole: Explanatory Notes

Probation and Parole in the United States, 2015

Introduction
The Decline in Community Supervision was Primarily Due to a Decline in the Probation Population
The Rate of Adults Under Community Supervision Fell to 1,886 Per 100,000 U.S. Adult Residents
Probation Entries and Exits Each Decreased by More Than 4% in 2015
The Exit Rate for Probationers was Consistent with Rates Observed in 2005

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Probation Population Characteristics Remained Relatively Unchanged During the Last Decade  
U.S. Parole Population Increased 1.5% in 2015  
The Parole Exit Rate Increased After Five Consecutive Annual Decreases  
Parolees Being Supervised for Drug Offenses Decreased 6 Percentage Points Since 2005  
Methodology  
Probation: Explanatory Notes  
Parole: Explanatory Notes  

**Probation and Parole in the United States, 2017-2018**  
Introduction  
The Decrease in Probationers Drove the Overall Decline in Adults Under Community Supervision  
The Rate of Adults Supplied in the Community Fell to 1,726 Per 100,000 U.S. Adult Residents in 2018  
Exits from Probation Outnumbered Entries by more than 65,000 in 2018  
Parole Entries Increased for the First Time Since 2015  
Methodology  
Probation: Explanatory Notes for 2018  
Parole: Explanatory Notes for 2018  
Probation: Explanatory Notes for 2017  
Parole: Explanatory Notes for 2017  

**APPENDIX F**  
**Correctional and Detention Facility Statistics**  

**1984 Census of State Adult Correctional Facilities**  
Preface  
Overview  
Confinement Facilities (Prisons)  
Security Level  
Size of Facility  
Sex of Inmates Housed  
Facilities and Inmates by Region and State  
Occupancy  
Court Orders or Consent Decrees  
Years Since Original Construction  
Inmates  
Employees
<table>
<thead>
<tr>
<th>TABLE OF CONTENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditures      App. F-8</td>
</tr>
<tr>
<td>Methodology       App. F-8</td>
</tr>
<tr>
<td>Tables            App. F-9</td>
</tr>
<tr>
<td><strong>Census of Local Jails, 1983</strong> Bureau of Justice Statistics, United States</td>
</tr>
<tr>
<td>Department of Justice</td>
</tr>
<tr>
<td>Preface           App. F-63</td>
</tr>
<tr>
<td>Selected Findings App. F-64</td>
</tr>
<tr>
<td>Number of Jails and Number of Jail Inmates App. F-64</td>
</tr>
<tr>
<td>Jails Under Court Order App. F-64</td>
</tr>
<tr>
<td>Inmate Deaths     App. F-65</td>
</tr>
<tr>
<td>Confinement Unit Use App. F-65</td>
</tr>
<tr>
<td>Planned Changes in Jails App. F-65</td>
</tr>
<tr>
<td>Expenditures      App. F-66</td>
</tr>
<tr>
<td>Jail Employees    App. F-66</td>
</tr>
<tr>
<td>Inmate Programs   App. F-66</td>
</tr>
<tr>
<td>Juveniles         App. F-67</td>
</tr>
<tr>
<td>Methodology       App. F-67</td>
</tr>
<tr>
<td>Text Tables       App. F-68</td>
</tr>
<tr>
<td>Summary Tables by Region and State App. F-68</td>
</tr>
<tr>
<td>Text Tables       App. F-70</td>
</tr>
<tr>
<td>Summary Tables    App. F-76</td>
</tr>
<tr>
<td><strong>Census of Local Jails, 1988</strong> Bureau of Justice Statistics, United States</td>
</tr>
<tr>
<td>Department of Justice</td>
</tr>
<tr>
<td>Preface           App. F-115</td>
</tr>
<tr>
<td>Selected Findings App. F-116</td>
</tr>
<tr>
<td>Number of Jails and Jail Inmates App. F-116</td>
</tr>
<tr>
<td>Jail Capacity and Court Orders App. F-117</td>
</tr>
<tr>
<td>Inmate Deaths     App. F-118</td>
</tr>
<tr>
<td>Confinement Unit Use App. F-118</td>
</tr>
<tr>
<td>Planned Changes in Jails App. F-119</td>
</tr>
<tr>
<td>Expenditures      App. F-119</td>
</tr>
<tr>
<td>Jail Employees    App. F-120</td>
</tr>
<tr>
<td>Inmate Programs   App. F-120</td>
</tr>
<tr>
<td>Juveniles         App. F-121</td>
</tr>
<tr>
<td>Methodology       App. F-121</td>
</tr>
<tr>
<td>Contents of Text Tables App. F-122</td>
</tr>
<tr>
<td>Contents of Summary Tables App. F-123</td>
</tr>
<tr>
<td>Text Tables       App. F-125</td>
</tr>
<tr>
<td>Summary Tables    App. F-132</td>
</tr>
<tr>
<td><strong>Census of State and Federal Correctional Facilities, 1990</strong> Bureau of Justice Statistics, United States Department of Justice</td>
</tr>
<tr>
<td>Foreword          App. F-163</td>
</tr>
<tr>
<td>Overview          App. F-164</td>
</tr>
</tbody>
</table>

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Number of State Inmates Rose 67% and Number of Facilities Rose 34% Between 1984 and 1990  
Average Daily State Inmate Population Increased 63% in 6 Years  
Most Inmate Deaths Resulted from Illness  
Approximately 5% of State and Federal Prisoners Received Furloughs  
Less Than 1% of Inmates Were Under Age 18  
Most Inmate Violations Involved Contraband  
Two-Thirds of Inmates Were Housed in Medium- or Large-Capacity Facilities  
The Nation’s Correctional Facilities Were 23% Above Design Capacity  
More Than 1 in Every 4 State Facilities Were Under Court Order or Consent Decree  
Most Facilities Provided General Adult Confinement in Medium or Minimum Security Environment  
Most Facilities Were Between 20 and 99 Years Old  
State Facilities Provided an Average 56 Square Feet Per Inmate and Federal Facilities, 44 Square Feet Per Inmate  
Relatively More State Than Federal Prisoners Were Assigned to Multiple Occupancy Units  
Average Amount of Space Per Inmate Was About 1 Square Foot Less in 1990 Than in 1984  
A Majority of Facilities Operated Academic Programs, but Many Inmates Did Not Participate  
About 2 Out of Every 3 Inmates Had Work Assignments  
About 1 in Every 4 Inmates Were Idle  
Approximately 1 in Every 9 Inmates Were Enrolled in Drug Counseling Programs  
Programs Identified As Boot Camps Were Operating in 18 States  
Growth in Correctional Staff Kept Pace with Number of Inmates  
Annual Spending in State and Federal Correctional Facilities Reached $11.4 Billion in 1990  
Methodology  
Contents of Text Tables  
Contents of Appendix Tables  
Text Tables  
Appendix Tables  
Notes  

Census of State and Federal Correctional Facilities, 1995  
Bureau of Justice Statistics, United States Department of Justice  
Highlights
The 1995 Census of State and Federal Adult Correctional Facilities Identified 1,500 Facilities in Operation at Midyear

State Prison Authorities Operated More Than Four-Fifths of the Nation’s Correctional Facilities

The SouthAccounted for Nearly 50% of State Correctional Facilities and More Than 40% of State Prisoners at Midyear 1995

State and Federal Correctional Facilities Had an Average Daily Population of 990,616 For July 1, 1994-June 30, 1995

More Than 6 in Every 10 Persons Held in Correctional Facilities Were Black or Hispanic

From 1990 to 1995 the Number of Inmates Increased Slightly More Than Facility Capacity, Making Occupancy Rise from 103% to 105% of Rated Capacity

Most Facilities in 1995 Were Comparatively Small, Holding Fewer Than 500 Inmates


As States and the Federal Prison System Opened New Institutions or Replaced Old Ones, the Overall Age of the Facilities Fell Sharply: In 1995, 51% of the Facilities Were Less Than 20 Years Old, Compared to 37% in 1990

Despite the Addition of Facilities or the Replacement of Old Ones After 1990, the Mix of Facilities with Maximum, Medium, or Minimum Security Levels Remained About the Same in 1995

9 Out of 10 Confirmed Inmates Were in Male-Only Facilities in 1995

The Percentage of Inmates Held in Maximum Security Facilities Remained Stable Between 1990 and 1995


From 1990 to 1995 the Number of Prisoner Deaths Almost Doubled and the Number of Noncitizen Inmates More Than Doubled

In Both 1990 and 1995 Over a Quarter of State Correctional Facilities Operated Under a Court Order or Consent Decree

The Rates of Inmate Assaults on Other Inmates and on Staff Declined from 1990 to 1995

Almost All State and Federal Correctional Facilities Offered Inmate Counseling and Work Programs

Between 1990 and 1995 the Number of Prisoners Participating in Prison Boot Camp Programs Tripled

The Number of State or Federal Employees Staffing Prisons Increased About a Third, from 264,201 in 1990 to 347,320 in 1995

The Pattern of Correctional Job Categories Varied Greatly Between the State and Federal Prison Systems
Over 300,000 Employees Worked in Facilities Holding Men Only, Over 20,000 Worked in Facilities for Women Alone, and Over 24,000 Worked in Facilities Housing Both Sexes

Women and Whites Accounted for Higher Proportions of Correctional Staff Than of Inmates

The Number of Inmates Per Employee Was Lowest in State Confinement Facilities and Highest in Federal Community-Based Facilities

Correctional Facilities Held More Prisoners Per Employee in 1995 Than in 1990

The Number of Private Correctional Facilities and Inmates in Them Increased From 1990 to 1995

A Half of 1% of All State Prisoners in 1995 Were Under Age 18

**Methodology**

**State Prison Expenditures, 1996**

- **Bureau of Justice Statistics, United States Department of Justice**

- **Highlights**

- **Introduction**

- **Total Expenditure, 1985-96**

- State Correctional Costs More Than Doubled Between 1985 and 1996

- State Costs Per Resident for Corrections Increased Faster Than Costs for Education, Health, and Natural Resources

- **Expenditures, Fiscal Year 1996**

- States Spent $22.0 Billion on Prisons in FY 1996

- States Spent Approximately $94 of Every $100 on Current Operations

- **Capital Expenditures**

- Most States Spent About $6 Out of Every $100 on Prison Capital Projects

- **Operating Expenditures**

- About Two-Thirds of Operating Costs Went for Prison Employee Salaries, Wages, and Benefits

- **Five Core Expenditures**

- Five Core Expenditures Provide a Prison Cost Profile

- **Medical Care**

- **Food Service**

- **Inmate Programs**

- **Utilities**

- **Transportation**

- **Differences in Prison Costs**

- Numerous Factors Associated With State-by-State Differences in Prison Costs

- Inmate-to-Staff Ratios
Average Number of Inmates Per Facility  App. F-270
Transfer Payments  App. F-271
Facility Security Level  App. F-272
Community Corrections  App. F-272
Methodology  App. F-273
Data Limitations  App. F-274
Adjusting for Inflation  App. F-274
Underreporting  App. F-275
U.S. Resident Population  App. F-275

Census of Jails, 1999  Bureau of Justice Statistics, United States Department of Justice
Highlights  App. F-293
At Midyear 1999 the Nation’s Jails Held 605,943 Inmates, Up 32% Since the Last Census in 1993  App. F-293
Jail Population Growth Slowed in the Late 1990’s  App. F-295
A Few States Housed a Majority of Inmates  App. F-295
In 5 States the Jail Population Rose More Than 75% Between Censuses  App. F-295
Nearly Half of All Inmates Were Held in Jails With an Average Daily Population of 1,000 or More  App. F-296
Characteristics of Jail Inmates Slowly Changing  App. F-296
Compared to 1993, a Higher Percentage of Inmates in 1999 Were Awaiting Trial Rather Than Serving a Sentence  App. F-296
Facility Capacity Kept Pace With Growth in Jail Population  App. F-296
About 219,000 Persons Were Admitted to Jail During the Week Before the 1999 Census  App. F-298
The Number of Jail Jurisdictions Under Court Order or Consent Decree Declined From 1993 to 1999  App. F-299
Approximately 1 in Every 8 Persons Under Jail Supervision Was Supervised Outside of a Jail Facility  App. F-299
The Number of Privately Operated Jails and Inmates in Them Increased During the 1990’s  App. F-300
Most Jails Charged Fees to House Inmates for Other Correctional Authorities  App. F-301
5% of the Nation’s Jail Inmates Not U.S. Citizens  App. F-301
About a Third of Jail Jurisdictions Reported Inmate Assaults on Staff  App. F-302
In the 12 Months Prior to the Census, 919 Inmates Died in Local Jails, Up From 647 Prior to the 1993 Census  App. F-303
About 7 in Every 10 Jail Employees Supervised Inmates or Provided Facility Security  App. F-304
Women Comprised a Third of All Jail Employees; a Quarter of Correctional Officers  App. F-305

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Minorities Accounted for an Increasing Percentage of Jail Staff

The Number of Jail Employees Grew Faster Than the Number of Inmates Between 1983 and 1999

Most Jails Had Policies or Programs for Inmate Education, Counseling, and Health Services

Methodology

Census of Jails

Estimation Procedures

Juveniles

Census of State and Federal Correctional Facilities, 2000

HIGHLIGHTS

Number of Facilities

Capacity

Facility Characteristics

Characteristics of Inmates

Number of Correctional Employees

Characteristics of Correctional Staff

Prisoner Assaults

The 2000 Census of State and Federal Correctional Facilities Counted 1,668 Facilities in Operation on June 30, 2000

Number of Facilities

Population

Type of Facility

More Than Three-Quarters of Facilities Operated by State Authorities

Facilities

Prisoners

Facility and Inmate Growth Highest Among Private Facilities

Jurisdictions

Regions

Black and Hispanic Inmates in the Majority

Federal

State

Private

Average Daily Population in Prison Reached Nearly 1.3 Million—Up 30% From 5 Years Earlier

Jurisdiction

Region

Prison Facilities Operated at 2% Above Rated Capacity in 2000

Federal Facilities
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Facilities</td>
<td>F-369</td>
</tr>
<tr>
<td>Private Facilities</td>
<td>F-369</td>
</tr>
<tr>
<td>A Quarter of All Prison Facilities Held Between 750 and 1,499 Inmates</td>
<td>F-369</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>F-370</td>
</tr>
<tr>
<td>Region</td>
<td>F-370</td>
</tr>
<tr>
<td>Confinement Facilities</td>
<td>F-370</td>
</tr>
<tr>
<td>Community-Based Facilities</td>
<td>F-370</td>
</tr>
<tr>
<td>More Than a Quarter of Correctional Facilities Less Than 10 Years Old</td>
<td>F-371</td>
</tr>
<tr>
<td>Facilities</td>
<td>F-371</td>
</tr>
<tr>
<td>Inmates</td>
<td>F-371</td>
</tr>
<tr>
<td>More Than a Quarter of All Confinement Facilities Maximum Security</td>
<td>F-371</td>
</tr>
<tr>
<td>Prisons</td>
<td>F-371</td>
</tr>
<tr>
<td>Gender of Inmates Housed</td>
<td>F-371</td>
</tr>
<tr>
<td>Function</td>
<td>F-371</td>
</tr>
<tr>
<td>Age</td>
<td>F-372</td>
</tr>
<tr>
<td>Size</td>
<td>F-372</td>
</tr>
<tr>
<td>More Than a Third of Confined Inmates in Maximum Security Facilities</td>
<td>F-372</td>
</tr>
<tr>
<td>Gender of Inmates Housed</td>
<td>F-372</td>
</tr>
<tr>
<td>Age of Facility</td>
<td>F-372</td>
</tr>
<tr>
<td>Size of Facility</td>
<td>F-372</td>
</tr>
<tr>
<td>State Inmates Nearly Twice as Likely as Federal Inmates to Be Rated at the Maximum Custody Level</td>
<td>F-372</td>
</tr>
<tr>
<td>Confinement</td>
<td>F-373</td>
</tr>
<tr>
<td>Community</td>
<td>F-373</td>
</tr>
<tr>
<td>3,175 Inmates Died in Federal, State, and Private Prisons Between July 1, 1999, and June 30, 2000</td>
<td>F-373</td>
</tr>
<tr>
<td>The Number of Noncitizen Inmates Nearly Doubled From 1995 to 2000</td>
<td>F-373</td>
</tr>
<tr>
<td>4,095 Prisoners Under Age 18 in 2000, Down From 5,309 in 1995</td>
<td>F-374</td>
</tr>
<tr>
<td>About 1 in 5 Correctional Facilities Operated Under a Court Order or Consent Decree</td>
<td>F-374</td>
</tr>
<tr>
<td>State</td>
<td>F-374</td>
</tr>
<tr>
<td>Private</td>
<td>F-374</td>
</tr>
<tr>
<td>More Inmate Assaults on Other Inmates and Staff in 2000 Than in 1995</td>
<td>F-375</td>
</tr>
<tr>
<td>More Than 90% of Facilities Had Work Programs</td>
<td>F-375</td>
</tr>
<tr>
<td>Work Programs</td>
<td>F-375</td>
</tr>
<tr>
<td>Education Programs</td>
<td>F-376</td>
</tr>
<tr>
<td>Counseling</td>
<td>F-376</td>
</tr>
<tr>
<td>Work Release Programs</td>
<td>F-376</td>
</tr>
<tr>
<td>95 Facilities Operated Boot Camps in 2000, Up From 65 in 1995</td>
<td>F-377</td>
</tr>
</tbody>
</table>

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Correctional Staff Exceeded 430,000 in 2000, an Increase of 24% Since 1995  
Correctional Officers Comprised 63% of Facility Employees in 2000  
Growing Percentages of Facility Staff Female, Black, or Hispanic  
Community-Based Facilities Had the Highest Number of Inmates Per Employee in 2000  
The Number of Inmates Per Employee Highest in Private Confinement Facilities  
Private Facilities Increased in Number and in Size of Their Inmate Population During the 1990’s  
Less Than Half of 1% of Inmates in State and Private Facilities Under Age 18  
Rated Capacity of Prisons Operating Under State Authority Expanded Nearly 84% From 1990 to 2000  

State Prison Expenditures, 2001  
Introduction  
The Increase in Cost of Corrections Outpaced the Cost of Health, Education, or Natural Resources  
States Spent $29.5 Billion on Prisons in Fiscal 2001  
Operating Costs Averaged $22,650 Per Inmate in Fiscal Year 2001  
Compared to 1996, Prison Spending in 2001 Revealed a Greater Emphasis on Facility Operation  
A Majority of States Spent 4% or Less of Prison Expenditures on Capital Projects  
Spending on State Prison Capital Projects Decreased 25% From 1996 to 2001  
Over a Quarter of Prison Operating Costs for Basic Living Expenses  
40 State Correctional Systems Paid Others to House Some Prisoners  
Methodology

Census of State and Federal Correctional Facilities, 2005  
Introduction
Selected Findings from the Census of State and Federal Correctional Facilities, 2005  
Facility Characteristics  
Facility Size and Rated Capacity  
Facility Security Level  
Court Orders and Consent Decrees  
Private Facilities  
Inmates  
Inmate-To-Staff Ratios  
Facility Programs  
Institutional Work Programs and Work Release  
Educational Programs  
Counseling Programs  
Methodology  
Scope  
Data Reporting and Estimation  
Definitions

TABLE OF CONTENTS

Census of Jail Facilities, 2006  
Department of Justice

Introduction  
Highlights  
Jail Organization  
Jail Jurisdictions and Facilities  
Decline in the Number of Jails  
The Number of Jail Jurisdictions and the Number of Jail Facilities Decreased, While the Confined Jail Population Increased Between 1999 and 2006  
The Number of Jail Jurisdictions Declined by 5%, and the Number of Jail Facilities Decreased by 3% Between 1999 and 2006  
Jail Functions  
General Population Confinement and Return to Custody Confinement Were the Most Common Jail Functions  
The Proportion of Jails Offering Work Release or Prerelease, Hospitalization or Medical Treatment, and Alcohol or Drug Treatment Functions Varied by State  
Sex of Inmate Authorized to House  
More than 4 in 5 Jails Were Authorized to House Both Male and Female Inmates  
Contract or Publicly Operated Jail Jurisdictions  
Public Authorities Operated Nearly All Jail Facilities in 2006  
Texas Had the Largest Number of Contract-Operated Jails in 2006

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Judicial Sanctions  
About 9% of All Local Jail Jurisdictions Had One or More Jail Facilities Under Court Order or Consent Decree in 2006  
About 1 in 17 (6%) of Jail Jurisdictions Reported One or More Facilities Under Judicial Sanction for Specific Conditions of Confinement in 2006

Size Of Jurisdiction
Nearly 40% of All Jail Jurisdictions Held Fewer than 50 Inmates

Jail Population
The Number of Confined Jail Inmates Rose 23% Between 1999 and 2006
The Size of the Jail Population Declined in Two States Between 1999 and 2006
The Proportions of Jail Inmates Confined in Facilities Operated Directly by Jail Jurisdictions and Confined in Facilities Operated Under Contract to Jail Jurisdictions Were the Same in 1999 and 2006

Jail Population by Size of Jurisdiction
Nearly Half of All Local Jail Inmates Were Confined in Jurisdictions Holding 1,000 or More Inmates in 2006
The Proportion of Inmates Held in Different Size Jurisdictions Varied by Region and State

Rate of Confinement
Jail Confinement Rates Increased in Most States Between 1999 and 2006

Jail Staff
Approximately 234,000 Employees Worked in the Nation’s Jails
The Number of Employees Increased in Local Jail Jurisdictions and Declined in the Federal Jurisdiction Between 1999 and 2006

Inmate-to-Staff Ratio
The Number of Inmates Per Jail Employee Rose Between 1999 and 2006

Methodology

State Corrections Expenditures, FY 1982-2010  
Introduction
States Spent About Three-Quarters of the Corrections Budget on Correctional Institutions
Direct Expenditures on Institutions Were Divided Between Capital Outlay and Operations
Operational Expenditures, as a Share of Total Expenditures, Grew From 1982 to 2010
Local Government Corrections Expenditures, FY 2005-2011

Bureau of Justice Statistics, United States Department of Justice

Introduction App. F-519
Local Governments Spent 1.6% of Total Expenditures on Corrections App. F-519
Local Governments Spent More than 80% of Total Corrections App. F-520
Methodology App. F-520

Census of Jails: Population Changes, 1999-2013

Bureau of Justice Statistics, United States Department of Justice

Introduction App. F-533
Montana Had the Largest Percentage Increase in Jail Inmates; the District of Columbia Had the Largest Decline App. F-534
Adult Jail Incarceration Rates Increased Between 1999 and 2013 App. F-534
Nearly Half of All Local Jail Inmates Were Confined in Jurisdictions Holding 1,000 or More Inmates in 2013 App. F-535
The Female and White Inmate Populations Increased at a Faster Rate Than the Male and Black Inmate Populations App. F-535
The Juvenile Population Held in Adult Facilities Decreased Significantly Since Its Peak in 1999 App. F-536
Jails Admitted Nearly 12 Million Persons During the 12-Month Period Ending December 31, 2013 App. F-536
Expected Length of Stay in Local Jails Was Less Than a Month App. F-536
Facility Bed Capacity Outpaced Growth in the Jail Population App. F-537
Increase in Correctional Officers in the South Outpaced Growth in the Inmate Population App. F-537
Methodology App. F-538

APPENDIX G

International Statistics

Imprisonment in Four Countries

Bureau of Justice Statistics, United States Department of Justice

Introduction App. G-3
Findings App. G-3

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Profile of Inmates in the United States and in England and Wales, 1991

Bureau of Justice Statistics, United States Department of Justice

Overview

The United States and England and Wales Administer Corrections in Distinctive Types of Systems

In Both the United States and England and Wales About Four-Fifths of the Inmates Were Serving a Sentence

For Certain Offense Categories, the Distributions of Inmates in the Two Countries Were Similar

A Majority of Convicted Inmates in Both Populations Had Served a Prior Sentence to Adult Custody

About 1 in 3 Convicted Inmates in Both Countries Had Family Members Who Had Also Served a Sentence to Incarceration

U.S. Inmates, on Average, Received Longer Sentences for Comparable Offenses Than Inmates in England and Wales

Inmates in England and Wales and in the United States Differ from Their General Population

Men Formed the Overwhelming Majority of Inmates in Both Systems

Inmates on the Whole in England and Wales Were Younger Than Those in the United States

Racial or Ethnic Minorities Were Overrepresented in the Incarcerated Populations in Both Countries

A Larger Percentage of U.S. Inmates, Compared to Their British Counterparts, Had Married at Some Time

From a Third to a Half of Inmates, Depending on the Country, Were Unemployed Around the Time of Their Arrest

About the Same Proportion of Inmates in Both Systems Reported Having Prison Jobs

The Educational Level of Inmates in Each Country Was Generally Lower Than That of the Respective General Adult Population

In Both Countries About a Third of the Inmates Were Living with Dependent Children Before Incarceration

Growing Up in a One-Parent Family Was More Than Twice As Likely for U.S. as for British Inmates

Methodology
<table>
<thead>
<tr>
<th>Table of Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample Design</td>
<td>App. G-25</td>
</tr>
<tr>
<td>Comparability of Survey Methods</td>
<td>App. G-27</td>
</tr>
<tr>
<td>Accuracy of the Estimates</td>
<td>App. G-27</td>
</tr>
<tr>
<td>Comparability Issues</td>
<td>App. G-28</td>
</tr>
<tr>
<td>Appendix</td>
<td>App. G-29</td>
</tr>
<tr>
<td>Notes</td>
<td>App. G-48</td>
</tr>
<tr>
<td><strong>World Prison Population List</strong></td>
<td>International Centre For Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-49</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-50</td>
</tr>
<tr>
<td><strong>World Female Imprisonment List</strong></td>
<td>International Centre For Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-57</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-58</td>
</tr>
<tr>
<td><strong>World Prison Population List</strong></td>
<td>International Centre for Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-65</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-66</td>
</tr>
<tr>
<td><strong>World Pre-Trial Remand Imprisonment List</strong></td>
<td>International Centre For Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-73</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-74</td>
</tr>
<tr>
<td><strong>World Prison Population List</strong></td>
<td>International Centre for Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-81</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-82</td>
</tr>
<tr>
<td><strong>World Prison Population List</strong></td>
<td>International Centre for Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-89</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-90</td>
</tr>
<tr>
<td><strong>World Female Imprisonment List</strong></td>
<td>International Centre for Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-97</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-98</td>
</tr>
<tr>
<td><strong>World Prison Population List</strong></td>
<td>International Centre for Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-105</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-106</td>
</tr>
<tr>
<td><strong>World Pre-Trial Remand Imprisonment List</strong></td>
<td>International Centre For Prison Studies</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-113</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-114</td>
</tr>
</tbody>
</table>

© 2021 Thomson Reuters, 6/2021
<table>
<thead>
<tr>
<th>List</th>
<th>Institute for Criminal Policy Research</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>World Female Imprisonment List</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-121</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-122</td>
</tr>
<tr>
<td><strong>World Prison Population List</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-135</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-136</td>
</tr>
<tr>
<td><strong>World Female Imprisonment List</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-151</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-152</td>
</tr>
<tr>
<td><strong>World Pre-trial/Remand Imprisonment List</strong></td>
<td>Institute for Criminal Policy Research</td>
</tr>
<tr>
<td>Introduction</td>
<td>App. G-167</td>
</tr>
<tr>
<td>Key Points</td>
<td>App. G-168</td>
</tr>
<tr>
<td><strong>Index</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ind.-1</td>
</tr>
</tbody>
</table>