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South Carolina House of Representatives

# Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

Vol. 1

February 7, 1984

No. 5

## CONTENTS

LEGISLATIVE UPDATE.....1-2  
 Proposed settlement of S.C. Prison Lawsuit,  
 Nelson v. Leeke, et.a.....1-2

Candidates for Citadel Board of Visitors  
 (Reprinted from Update Number 4).....1-5

RESEARCH REPORT.....2-1  
 Prison Overcrowding: A Background.....2-1

AROUND THE HOUSE.....3-1  
 Rep. Tobias Gadson.....3-1

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JUN 7 1984  
STATE DOCUMENTS

Proposed settlement of S.C. Prison Lawsuit  
(Nelson v. Leeke, et. al.)

Background

Inmates in the S.C. Correctional system brought suit in 1982 (Nelson v. Leeke, et. al.) protesting conditions in the State's Correctional facilities. Plaintiffs contended that unconstitutional conditions existed statewide, affecting all prisoners and every aspect of prison life.

The Attorney General's Office is conducting the case for the State. Negotiations are close to agreement between the two parties. The major points and costs are explained below. The Attorney General's lawyers feel these negotiations are favorable to the State for four reasons:

1. The State would retain control of the Correctional System--not have it placed under federal courts, as has happened in other states.

2. Many of the proposed elements of the settlement are included in existing plans for upgrading the corrections system anyway.

3. The five-year phase-in schedule is practical--courts have set much quicker deadlines for other states.

4. The State's case is somewhat compromised--especially regarding overcrowding, since the inmate population is already over the State-set figure for "safe and reasonable."

The 8th Amendment and the Power of the Courts

The Eight Amendment forbids "cruel and unusual punishment." Courts have consistently held that this requires states to provide inmates with adequate food, shelter and medical care, and not place inmates in prisons that are so over-crowded that the situation produces violence.

The courts have also consistently maintained the general principle that they have the power--and the responsibility--to command states take remedial actions to correct substandard prison conditions. The courts have not hesitated to enforce their decisions through strict actions if these remedial steps are not taken. They can hold officials in contempt of court and even taken over entire prison systems when the remedial actions were not taken promptly.

Remedial Actions in S.C.: The Overall Costs

At this date (2-6-84) negotiations are still in progress. The figures below will likely change. However, most issues seem settled, and these figures are accurate enough to estimate probable costs.

Remedial actions would be phased in over a multi-year period. The figures below give the estimated costs. These funds are in addition to present funds for the Correctional system, and they would become part of future funding for the Department of Corrections.

Legislative Update, February 7, 1984

Expenditures are in two categories: appropriations (A), for on-going expenses such as staff, supplies, etc.; capital expenses (C), for new facilities. The costs shown in each column are cumulative (i.e., the first year column must be added to the base already appropriated; the second year would be added to the current base plus the first year costs, and so on. The "total" column reflects the total increase on a continuing basis after the settlement is fully implemented.

<u>ISSUE</u>		<u>FIRST YEAR COST</u>	<u>SECOND</u>	<u>THIRD</u>	<u>TOTAL</u>
Housing	A	68,000	2.8 million	5 million	7.9 million
	C	5.9 million	32 million	7 million	45 million
Staff	A	6.1 million			6.1 million
Environ- ment	A	210,000			210,000
	C		526,000		526,000
Programs	A	40,000			40,000
Fire/life safety	A	30,000			30,000
	C	996,000	2.3 million	9.5 million	12.8 million
Clas- sification	A	379,000	350,000	350,000	1 million
Women's Inst.	A	72,000			72,000
Food Services	A	547,000			547,000
Health	A	52,000			52,000
Com- pliance	A	88,000			88,000
Attorney Fees	A	100,000			100,000
TOTALS	A	7.7 million	3.2 million	12.3 million	16.2 million
	C	6.9 million	34.8 million	9.5 million	58.3 million
TOTAL A + C		14.6 million	38 million	21.8 million	74.5 million

It is essential to note that these expenditures will bring the S.C. system up to a minimum standard required by the courts. By the time the full plan is implemented, S.C. will be able to care adequately for its present inmate population. These cost estimates do not include funding required to build and operate prisons needed to meet future increases in inmate population.

Legislative Update, February 7, 1984

In other words the actions to be taken and the money to be spent are remedial only. Spending this money will not fix the correctional system "once and for all." Simply put, more prisoners will mean more money for prisons and prison operations.

Remedial Actions: What do they want, what will S.C. do?

Because negotiations are still in progress, a detailed summary of plaintiff demands and State replies is not presented here, only a brief outline of the major points.

Under housing the plaintiffs want an end to overcrowded conditions. The agreement will provide this, and will give the State a reasonable period of time for implementation. In a related area, staffing will be increased so it is appropriate for the size of the inmate population. The environment of facilities will be improved. In particular, fire/life safety systems will be fully modernized.

Programs for prisoners include educational courses, exercise privileges, and use of the library. Under the agreement the State will provide programs that are not as costly as those imposed by courts on other states. Little increase over existing program levels is anticipated.

Classification of prisoners will separate violent from non-violent inmates, and provide for fair and equitable internal operations.

Women's Correctional Institutions will have the same opportunities as those for men. Currently women serving time for less serious offenses do not have the same opportunities for freedom of movement, etc., as do men. The reason is that there are so few women in the system there is only one institution for them--and it has been geared to handle the more serious offenders.

Food Services and Health Services will meet accepted standards. Health service standards are still under discussion, because the plaintiffs want stiffer, more expensive standards to be adopted.

Compliance with the agreement will require monitoring, and this will require additional staff and operating costs. Attorney fees for the plaintiffs will be paid by the State under the agreement. Payment of these fees would be required under federal law, should the plaintiffs prevail as to any part of their case.

Conclusion

The proposed settlement will cost South Carolina in the neighborhood of \$75 million over a three year period. That is less than would possibly be awarded by a court if the State fought the issue to a decision and lost. Most of the actions outlined here would have to be taken in any event.

Legislative Update, February 7, 1984

It must be emphasized once again that these costs are in addition to money already planned for the Department of Corrections. It must also be noted that these funds will bring our prisons up to minimum standards. This money is not a permanent solution to problems facing our prison system. By accepting this agreement the state of South Carolina is pledging to maintain certain basic standards in its prisons. These standards can be maintained only by spending money.

NOTE: For additional information on this subject please see the Research Report "Prison Overcrowding: A Background" in the yellow pages of this Update.

Candidates for Citadel Board of Visitors

On February 15, 1984, the Legislature will elect two members of the Board of Visitors to the Citadel. There are three candidates for the positions:

Leonard C. Fulghum, President of Ferguson-Fulghum, Inc., a paint company. He lives in Mount Pleasant. Mr. Fulghum has served on the Board of Visitors as a representative of the Citadel Alumni.

William C. Mills, a Security Investments Consultant, lives in Charleston. Mr. Mills has no previous service on the Board of Visitors.

Charles L. "Buddy" Terry, a Life Insurance Agent, lives in Columbia. He is currently a member of the Board of Visitors.

# Prison Overcrowding: The Background

## Summary

During the past decade the prison population in the State's correctional facilities has tripled; there are now 8,079 inmates in South Carolina, and the cost of running the correctional system has risen from \$5.5 million to \$48.4 million. Yet, despite this boost in the budget (which must take inflation into account), our prisons are desperately overcrowded--in fact, they are currently operating at 131% of capacity.

Not only does this situation make it difficult and dangerous to operate the correctional system, it raises the real possibility that inmates might bring the state to court, as has been done in similar situations in other states.

This Report reviews the national situation, how S.C. got into this particular quandary, and examines the possible solutions: more facilities, alternative forms of serving time, and new ways of approaching corrections.

## Background

Under British and American colonial law, spending time in a jail or prison was not itself a punishment--it was simply where the authorities held you until they got around to your real fate, whether it was hanging, branding with a hot iron, public whipping or what-have-you. After the Revolution, however, there came to be greater acceptance of time in prison as a form of punishment.

Although judges have always held discretionary powers, sentencing until the 1870's tended to be determinate: that is, if the law said ten years for horse theft, and you were found with Farmer Smith's grey mare in your barn, then you could count on serving ten years.

There were no parole boards, only the chance of a Governor's pardon. The pardon was sometimes used as a method of easing overcrowding, and in such cases was usually awarded on the basis of seniority. Of course, there were infrequent instances where pardons were obtained through dubious methods, and perhaps even an occasional instance where money changed hands.

During the late 1860's and into the 1870's and 80's a prison reform movement advocated changes that included indeterminate sentences and parole. The movement was based on reformation of prisoners, not punishment of prisoners. Sentences should be given and reviewed on the basis of the criminal, rather than the crime. A person who has been rehabilitated need not serve the full maximum time--what good would it do? The parole board could release an inmate after a certain period. Add to this the possibility of extra time off for good behavior (or more time for the opposite) and you begin to see how the length of stay in prison would fluctuate among prisoners.

Prison populations are on the rise across the United States. South Carolina, although very hard hit, is not alone. According to State Policy Reports state governments are currently spending \$5 billion on corrections. Unfortunately, they seem to be falling further behind every day.

Corrections Magazine notes that in 1982 there was an 11.6% increase in prison population--and the largest increase in number of inmates in U.S. correctional history. The systems of 37 states are or have been under some federal control, court order, or at least lawsuits because of their conditions.

At this date, 11 of the 15 southern states are under direct Court Order or have signed some form of Consent Decree to correct conditions in their prison system.

At the same time that more inmates are coming into prisons, fewer are leaving. Paroles are down in Nevada, Massachusetts and Ohio; Maine has abolished parole completely.

The states realize that steps must be taken. Massachusetts is putting \$116 million into construction and expansion; Texas is also putting money into new facilities; Pennsylvania is spending \$102 million in a five year program, while Missouri is planning to convert former mental health and youth facilities to correctional use. The Arizona legislature has recently approved an \$81 million prison construction program (but have not authorized funds) for 2,237 additional inmates.

Other remedies are being proposed: 19 states are considering placing a ceiling on the number of inmates that can be housed in facilities. When the capacity ceiling, or cap, is reached, various measures will be triggered--much the same as in South Carolina, where emergency release procedures were authorized by the General Assembly in June, 1983.

In October, 1983, the Government Operations Committee of the Southern Legislative Conference of the Council of State Governments issued a report on adult correctional systems in fifteen southern states. The Committee's findings were that all systems were experiencing overcrowding, and that conditions were likely to get worse.

The report stated that "adult inmate population growth ... is accelerating," and that the "overall population increase between FY 75-76 and 83-84 has been drastic." The report noted that the rate of increase is accelerating each year, bringing with it increases in budgets for the prisons.

South Carolina ranks near the middle of states in growth of inmate population: North Carolina had the smallest percentage increase, 26.4%, while Tennessee had the largest, 130.8%. South Carolina had 82.4% (time period: 1975-1983). The rate of incarceration in South Carolina is 313 to every 100,000 of population, according to the Southern Legislative Conference of the Council of State Governments.

For the projected inmate population, South Carolina expects to have 13,243 adults behind bars in 1988, and 14,849 in prison by 1993. These figures represent a percentage increase over 1983 figures by 44.3% and 61.8% respectively. Arkansas expects to increase its inmate population by 334.5% in 1993--a total of 16,471 persons. On the low side of the scale, Maryland will increase its inmate population by only 5.6% in 1993, bringing it to an estimated 12,921 prisoners.

#### The Situation in South Carolina

In 1866 the General Assembly passed an act which gave control of convicted and sentenced felons to the State; it also established the State Penitentiary. The purpose was to provide a fair, uniform system of punishment, and replace the county-by-county prison system. It did not happen.

For a number of reasons--chiefly demands for labor and roadwork--the counties kept control of their criminals. By 1930 the county supervisors had full authority to decide which convicts they would keep for road construction and which they would turn over to the State.

In 1960 the South Carolina Department of Corrections (SCDC) was created--but the dual prison system continued. It was not until June, 1974, that the State assumed jurisdiction over all adult offenders with sentences longer than three months. The counties were finally required to turn over their prisoners--but it took them two years to complete the task.

The result was a flood of prisoners. In 1974 the SCDC had 3,658 inmates; in 1975 it had 5,659--an increase of 53%. More importantly, the daily average (those inmates actually under lock and key) rose 30%. In 1976 the daily average rose even more: by 35.6%.

In addition to the prisoners coming in from the counties, new inmates were arriving every day. South Carolina now has the highest offender commitment rate in the country; during this transition period it was only the third highest in the nation.





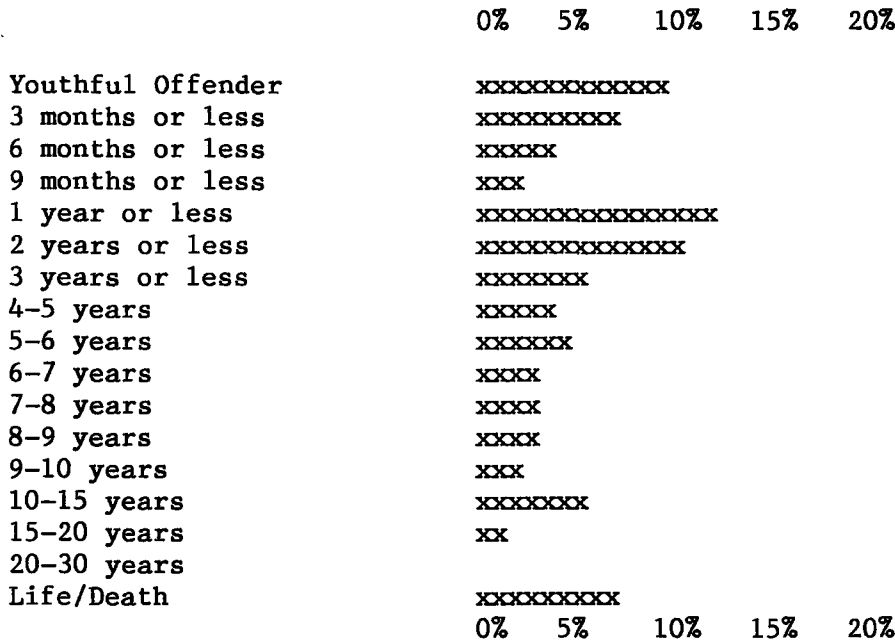
When you get on a plane, you accept the fact that there is a limit on the number of people it can hold. Why can't people accept that with respect to prisons?

Facilities can be converted. Although the costs of conversion may be lower than those of construction, you still have costs. And people still don't want a correction facility in their neighborhood.

2) Sentencing guidelines. Guidelines could help in two possible ways. First, you could reduce or eliminate prison terms for many crimes, thus easing overcrowded situations.

Second, under our present sentencing system the same crime can bring widely different prison terms because of the discretionary power of judges and parole boards. This makes it hard for correctional officials to make long-range plans. (This issue will be addressed in a forthcoming "Research Report" on sentencing guidelines.) Graph 2 shows the length of time left to serve by inmates in the S.C. correctional system. Note that the longer people are in prison, the greater the buildup.

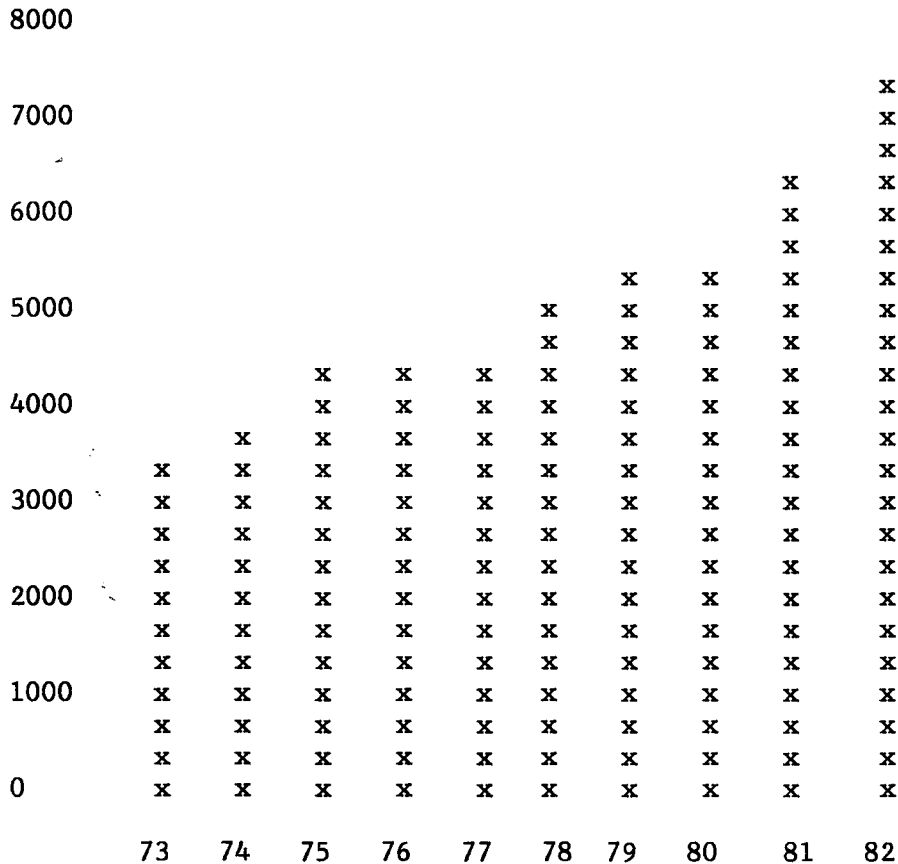
Graph 2  
 Remaining Time to Serve of SCDC  
 Total Inmate Population  
 As of 6/30/82



3) Alternative sanctions. In its 1982 report on prison overcrowding, the Legislative Audit Council offered the possibility of other forms of punishment than incarceration. Community service work and victim restitution are two possible "sentences" that could be handed down for non-violent crimes. The report makes the point that a criminal who steals property worth \$2,000 can be sent to prison--where he will cost the State more than \$6,700 a year. And, in many cases the injured party never receives restitution. Alternative sanctions could help the punishment fit the crime; help repay the victim; save the State much money. (See graph 3 for the rise in yearly costs of jailing prisoners.)

Graph 3  
Annual Per Inmate Costs of SCDC  
Fiscal Years 1973-82

Dollars per inmate



The State of Washington already has "restitution centers," also known as "work training centers," according to the publication From the State Capitals. A recent issue notes that the centers have been so successful that participating inmates have paid \$41,238 to their victims in the past two years. Washington has 6,059 inmates and a budget of \$94.5 million. The Washington system is also troubled by overcrowding and plans to expand community-based corrections programs, adjust sentencing guidelines, and continue intensive parole supervision.

4) Intensive supervision. It is possible to punish a criminal without locking a cell door on a permanent basis. Under the community service plan, for example, intensive supervision would be required to ensure that the work was done. Other prisoners, who might be paroled early, would also require supervision. Those who might be sentenced to serve on weekends would need supervision. The point is that any form of alternative sentencing will likely require more intense supervision of the individual criminal. There might be additional costs in hiring more correctional staff--but less costs than building new facilities, and probably better results.

5) Restructure state/local responsibilities. Although abuses on the county level led to the creation of SCDC in the first place, more cooperation between the two levels of government could save money and reduce prison crowding. Inmates sentenced to serve on weekends, for example, could do their time in the county jail rather than a SCDC facility. Counties could resume responsibility for inmates serving more than 3 months--say, up to 6 months. Counties will tell you they don't have the money to do these things. They're probably right.

6) Presumptive parole. Under the present system inmates must prove they are ready for parole; in 1982 only 38% of those who applied for parole proved their case. Under presumptive parole the state would have to make the case why inmates should not receive parole. In other words, unless the state can establish why it wants you kept in prison, you are automatically paroled at a certain date.

7) Review mandatory sentences. Mark W. Cannon, Administrative Assistant to the Chief Justice of the U.S. Supreme Court has stated: "Given overcrowding and a limited prison capacity, mandatory prison sentences can exacerbate our problems." Whatever the stands for and against mandatory sentencing we need to remember one fact: the more people we send to prison, the more prison space we will need. (And the more money we will spend.)

8) More use of the Extended Work Release Option. This has been in effect since 1977, but with rather limited use. In 1982 a total of 309 inmates successfully completed the program, and were released or paroled by SCDC. The program puts inmates in communities where they do real work. Careful but more active use of the program could reduce the number of prisoners actually housed in SCDC facilities and speed their permanent release.

9) Parole board guidelines. Guidelines could be revised to make it easier for non-violent offenders to be released early, especially those who are unlikely to repeat their crimes.

Conclusion

The South Carolina prison system is now dangerously overcrowded. Emergency release mechanisms have already been triggered; it is highly possible that they may have to be used again. This overcrowding is dangerous, both to inmates and SCDC personnel. It makes prisons less effective for either punishment or rehabilitation. Courts have decided that prison overcrowding violates basic constitutional rights.

While a number of possible solutions have been named, they fall into three basic categories:

- 1) obtain more facilities (build or renovate)
- 2) send fewer people to prison
- 3) send people to prison for less time

Any of these options will require funds, personnel, and careful administration by SCDC. The choice of options is one which rests, finally, with the Legislature.

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Graphs taken from the Annual Report of the Board of Corrections and the Commissioner of the South Carolina Board of Corrections for the Period July 1, 1981 to June 30, 1982  
(Printed under the direction of the State Budget and Control Board).

## Around the House

### Prayers and Best Wishes For Rep. Tobias Gadson

Rep. Tobias Gadson was admitted into a Charleston hospital last week where he underwent a lengthy operation. Complications developed following the surgery, and a second operation was required. At the time this Update & Reports went to press, Rep. Gadson was still in the intensive care unit of Roper Hospital.

Rep. Gadson cannot receive flowers, but cards can be sent to:

Rep. Tobias Gadson  
Intensive Care Unit  
700 Roper Hospital  
Charleston, S.C. 29401