

Testimony by Lee Johnson
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Joint Committee on Corrections
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On June 29, 1980, Judge Burns issued his opinion that the Oregon State Penitentiary, the Annex and the Oregon Correctional Institution were overcrowded, and that such overcrowding constituted cruel and unusual punishment in violation of the U. S. Constitution. We fully agree that the crowded conditions at the institutions are not desirable and began actions to relieve those conditions several months ago.

We vigorously disagree with the judge's conclusions that such overcrowding constitutes cruel and unusual punishment. It is our opinion that the Oregon Legislature and the people of Oregon can take pride that our correctional system is probably the best in the nation. That opinion is shared by most professionals throughout the United States.

In any event, in his order the judge states that, "I request the state submit a plan for the expeditious reduction of the population at OSP, its Annex and OCI to the design capacity of the facilities." It is not clear from the court's opinion as to what Judge Burns means by "expeditious" or that he intends to specifically order that to meet constitutional standards we must reduce the inmate population to the "design capacity." We find it difficult to conceive that constitutional requirements would be premised on such an artificiality. Although we do not know what Judge Burns intends, the Governor directed that we submit to the court our best effort.

You have before you an outline of the plan we intend to submit to the court. The table at the top shows that the three institutions presently have a population which exceeds their original design capacity by 600. I think a brief history of the matters contained in the outline may be useful to you.

In his opinion, Judge Burns mostly focused on the fact that many inmates are double-celled in the three institutions. He did, however, allude to the idleness that exists in the Oregon State Penitentiary. This was a condition that the 1979 Legislature was aware of and you appropriated \$776,000 to provide major additions to the vocational training shops and the prison industries. That construction is expected to be completed in January, 1981, and will provide virtually full employment for the inmate population at OSP.

In addition, in March of 1980, in response to a request from the Corrections Division and the Governor's office, the Emergency Board authorized 69 new positions to improve security, psychiatric, probation and parole services.

In January and February of this year the Board of Parole, at the Governor's request, reduced the matrix for determining the release date of prisoners anywhere from 30 to 60 days, depending upon the severity of the crime and risk history score. This freed up 224 beds.

Following this action, the Board of Parole began to review the records of 1,700 inmates in order to retroactively apply the new matrix. It appears that 900 of those 1,700 qualified. The net result of this action is that an additional 150 beds will be vacated during the next three months.

The Corrections Division has, since March 1979, been accepting alleged parole violators who are being held prior to hearing on whether their parole should be revoked. The Division has determined, upon the advice of the Attorney General, that it is not necessary for it to take custody of these individuals and, thus, intends to cease doing so. This will reduce the population by 120. I should point out that, in taking this action, it does not mean these persons will be released. Rather, it means they will probably be held in county jails.

We also plan to reactivate vacant cabins at the forest camp and this will provide an additional 20 beds. Finally, the Corrections Division has determined that 25 women inmates at Prigg Cottage can be moved to another location and this will make 75 beds available for male inmates.

The net effect of these administrative actions by the Corrections Division and the Parole Board is to reduce the population by 365. I should emphasize, however, that you cannot determine from this figure what the precise population status will be in the three institutions when all these actions are completed by December, 1980. Some of the reductions, such as retroactive application of the new matrix, are merely temporary. None of these actions will reduce or control the incoming population. The only way to reduce the incoming population would be one of the following:

1. Amend the criminal laws of the state in order to eliminate felony offenses and reduce sentences.
2. Increase reliance on probation by the trial courts.
3. Further reduction of the matrix by the Parole Board.

We do not believe that a substantive re-evaluation of the criminal laws is appropriate for this special session of the Legislature. The Governor believes the maximum sentences under Oregon statutes are generally reasonable, with some possible exceptions, and he does not believe there would be public or legislative acceptance of such a concept. Likewise, he does not believe that it is realistic to expect that trial judges will increase reliance on probation. Present statistics indicate that probation is being utilized in 80 percent of the felony convictions today. It is unrealistic to believe that a greater percentage would be consistent with the public interest and safety. Similarly, the Governor does not intend to recommend to the Board of Parole any further reduction in the matrix. The average stay in the institutions today is 24 months. It is doubtful that any shortening of that stay would be consistent with the basic concepts underlying the Oregon Criminal Code.

I would also like to emphasize that all of these short-term measures are actions which were underway before this lawsuit was filed.

We are proposing one additional short-term measure at this time for legislative consideration at the special session. The Governor had approved this bill several months ago for introduction in the 1981 legislative session. We are asking that it be introduced at this special session because it will produce another 125 beds at the institutions.

The bill modifies ORS 421.165 to permit temporary leave to be granted for periods up to 90 days immediately prior to parole release. The purpose of this bill is to improve the work release program. Presently there is a pool at any given time of about 225 inmates who are due for parole and could be eligible for immediate work release. Unfortunately, however, we only have residential work release centers with a capacity of 100. The place of employment for many of those eligible for work release is not in a location where the residential work release centers are.

The Corrections Division has evaluated the residential work release program and determined that it is not necessary that an individual who is in that program be retained in a residential center. Rather, he can be returned to his home, provided there is close supervision. Therefore, if the bill passes, the Corrections Division intends to close the existing residential centers, use work release for the estimated 250 eligibles and use the staff at the existing centers for supervision. The net impact of this measure will be to free up another 125 beds.

In addition to these short-term measures, we made the decision some time ago that it would be imperative to present to the next legislature a long-term construction program and a means for financing that program. The Governor's Task Force on Corrections was appointed for this purpose and has submitted its recommendations to the Governor. Likewise we have had an ad hoc task force consisting of representatives from the Corrections Division, the Department of Human Resources and the Governor's office examining other alternatives. The Oregon Senate had also established a task force which is looking at options.

There is unanimity of opinion, at least in the Executive branch, that it will be necessary to construct new facilities to house somewhere between 500 and 1,400 inmates. There is also unanimity of opinion that the county jail system is over-taxed and needs improvement.

We have not formulated for the Legislature a recommendation of specific types of facilities which should be constructed. We have considered a host of options and rejected many. Those rejected are set forth in the material supplied to you. We will be happy to explain our reasoning.

This has permitted us to boil down what we believe are the viable choices. Those choices, their approximate costs and the approximate dates of completion are set forth in our plan. They include forest or work camps, additions to county jails and the construction of regional facilities in the metropolitan and mid-Willamette Valley areas.

We are presently analyzing the profiles and projected profiles of the inmate population to determine which is preferable -- a medium security type institution, the forest or work camp model or a mix of these. We expect to be able to make a recommendation in the next few months as part of our proposed budget to the 1981 Legislature. For the very reason we are having difficulty in making a final recommendation, we think it would be inappropriate for the Legislature to attempt to make this determination in the short time allowed for a special session. These are major policy decisions which should be made in a more deliberate setting than a special session permits.

In considering these options we must also take into account what financing alternatives we have available.

It is the opinion of the Governor's office that capital construction of this nature is appropriate for long-term financing through bonding. We believe the public is aware of the need for adequate correctional facilities and will support a reasonable level of bonded indebtedness. We made the decision several months ago to submit to the next Legislature a joint resolution for this purpose. Because the Legislature is in special session, we now believe that this is an appropriate time for the Legislature to go ahead with a joint resolution so it could be submitted to the voters on the next November ballot. If the ballot measure is adopted, we know we have this financing alternative available. If it is rejected, we will have to use current revenues.

The measure proposes authorization of bonded indebtedness not to exceed one-sixth of one percent of the state's true cash value. Based upon present estimates this would be a total of \$120 million. The authorization is broad in that the bonding authority could be used for construction or improvement of state, regional or local facilities. It does require, however, that the Legislature set matching requirements for regional or local facilities.

We are not recommending at this time that the Legislature authorize any specific level of bonding or that it endorse any specific construction. Our intent here is merely to provide a permanent source of financing for the construction of correctional facilities. We feel the amount is adequate to accomplish that objective and the amount will not endanger the state's credit.

In addition to the construction options, we are looking at some changes in the substantive criminal law to determine whether any changes are desirable. We are examining the question of imposing felony convictions upon serious traffic offenders, although our present thinking is that the law should remain as it is. We are also examining the possibility of elimination of parole. The adoption of the matrix was certainly premised on the concept that eventually the parole system as we know it today would phase out. This is a policy decision which we intend to give very close consideration and we hope your committee will also during the coming months.

We believe the plan we are proposing is responsive to Judge Burns' request.

However, if the court decides that this is not a sufficiently speedy solution to the problem that he perceives, then we see as the only viable option the early release of inmates and the reduction of future sentences. We have already examined the possibility of attempting to undertake construction in the next year. We do not believe the state is in a position to undertake such construction, particularly in light of the financial crisis we now confront. Furthermore, we do not want to undertake hasty construction to simply provide bedspace without full consideration of its impact on the entire correctional program. The Governor vigorously opposes any concept of any further release or reduction of sentences at this time. However, if the court orders the state to do this, we may have to comply.

I want to thank the committee for giving me this opportunity to present the Governor's plan.