

Commission on Safety and Abuse in America's

Prisons: Summary of Testimony

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1. **The Nature and Extent of the Prison Violence Problem:** Following a consistent theme in criminological research, the debate over the nature and extent of the prison violence problem is really a debate about the use (and interpretation) of official vs. unofficial (self-report, victimization) data by prison researchers.
 - a. **The Official Picture of Prison Violence:** Focusing first on official estimates of prison violence and disorder, researchers present analyses based on both the *rate* of violence and disorder and the total *number* of incidents reported in each category. A review of the official data on the extent of the prison violence problem (murder, rape, assault) suggests that the most serious forms of violence are rare in federal and state prisons and that the rate of violence in federal and state prisons is actually slightly on the decline, despite the doubling of our prison population in the last decade. However, an examination of these same official data focusing on the *number* (rather than the rate) of violent victimizations suggests that an examination of changes in *rates* of violence only tells “part” of the official story. For example, examination of data from the 2000 *Census of State and Federal Correctional Facilities* revealed that “the number of assaults,

including both physical and sexual assaults, was 32% higher [in 2000] than in a similar period preceding the 1995 census” (Stephan and Karberg, 2003: VI). In 2000, there were 34,000 inmate on inmate assaults reported. This increase in the *volume* of assaults has implications not only for traditional prison control strategies (i.e., the need to identify and sanction offenders using segregation and transfer, and to protect victims using protective custody, will strain existing resources even further) but also for the *community* control of a growing number of returning offenders, who experience violence directly (as offenders and/or victims) in prison, upon release from prison.

b. The Extent of Gang Involvement in Prison and Community Violence:

Although estimates of the extent of *gang involvement* in various forms of prison violence are not possible using official data, it can be argued that gang involvement in prison violence will likely mirror the patterns of gang involvement in violence found in the community (Thornberry, et al., 2003; Maxson, et al., 2005). According to a recent Bureau of Justice Statistics *Crime Data Brief* (Harrell, June, 2005), which included data from the National Crime Victimization Survey for the period 1998 through 2003, “victims perceived perpetrators to be gang members in about 6% of violent victimizations between 1998 and 2003. On average for each year, gang members committed about 373,000 of the 6.6 million violent victimizations. Nonfatal violent acts measured include rape/sexual assault, robbery, aggravated assault, and simple assault” (Harrell, 2005:1).

However, because victims of these crimes were unsure of gang affiliation in 37 percent of these incidents, it seems likely that the actual level of gang involvement is much higher.

In fact, most community-based gang intervention strategies are based on the assumption that “gangs” are responsible for a large proportion of all community violence, especially in high crime, urban areas. In Boston’s “Operation Ceasefire,” for example, researchers estimated that over 60 percent of the city’s homicides were gang-related. Although the recent replication of “Operation Ceasefire” in Los Angeles revealed that a much smaller percentage of all homicides (perhaps 30 percent) were actually gang-related in that area, these levels are still at least three times higher than official estimates of known gang involvement in homicides found in the FBI’s Supplementary Homicide Reports. A review of these data reveals that “...each year between 1993 and 2003, from 5% to 7% of all homicides and from 8% to 10% of homicides committed with a firearm were gang related” (Harrell,2005:2).

Obviously, the official picture of gang involvement in homicide and other forms of community violence suggests that the link between gangs and violence has been exaggerated. However, the detailed review of the gang-violence connection by researchers studying the impact of “Operation Ceasefire” in Boston and Los Angeles presents a more pessimistic view of the extent of the gang violence problem (Kennedy, et al.,2001; Tita, et al.,2005).

Despite the ongoing debate on the nature and extent of gang involvement in violence, it would be a mistake to ignore the potential influence of gang culture in both institutional and community settings. Researchers studying community level violence have consistently found that gang influence appears to be strongest in areas where informal social controls are weakest. I would argue that you will find a similar relationship in prison communities. Reidel and Welsh (2002:148) have stated the problem succinctly: *“The gang’s most important role is to provide a source of identity for young males and ,to a lesser extent, females. Trapped in high-crime neighborhoods, attending poor schools, victims of racial and ethnic discrimination, gangs provide a source of identity and pride to young people who believe they have few other alternatives.”*

- c. **Unofficial Estimates of Prison Violence and Disorder:** Unofficial estimates of prison violence and disorder offer a much more disturbing view of the problem than official estimates. Although some have argued that the homicide rates are actually *lower* in state prisons and jails than in the general population (e.g., the resident population had a 9 times greater rate of homicide than the rate in state prisons in 2002, according to a Bureau of Justice Statistics (BJS) Special Report, Aug. 2005), that all depends on whether an inmate death is classified as a homicide. In 2000, there were 56 deaths classified as homicides in our federal (3), state (51) and private (2) prisons, along with 198 known suicides, and 217 deaths

from other means, such as drug overdoses, accidents, and executions of death row inmates (Stephan and Karberg, 2003). We have no way of knowing how many of these 471 deaths were actually homicides, but it seems safe to assume that the “official” number underreports homicide as a cause of death in prison.

We have better data on the extent of the underreporting of various forms of assault in prison (both physical and sexual), with most studies (using self-report data) revealing levels of assault victimization at least 10 times greater than the official estimates provided by BJS; if correct, the number of assault victims (each year) is *not* the 34,000 officially reported in 2000; the actual number of assault victims was (conservatively) in the 300,000 range for that year. The implications of these estimates for both prison and community control should be considered carefully. The vast majority of offenders in prison will return to the community at some point. Their experiences in prison may actually *reinforce* the notion that “violence” (or the threat of violence) is an effective strategy to maintain order in both prison *and* community settings (Edgar, O’Donnell, and Martin, 2003; Bottoms, 1999). When viewed from this perspective, it appears that a prison “culture” that supports the situational use of violence to maintain order may reinforce the community “culture” that offenders experience both *before* going to prison and *after* release from prison.

Focusing for a moment on the problem of prison rape, it is important to understand *why* there are such large discrepancies in the available estimates of the extent of the prison rape problem, not only in official estimates, but also in the

unofficial estimates derived from personal interviews and anonymous surveys. Beck, Hughes, and Harrison (2004:1) have isolated the source of this variation: method of data collection.

“Personal interviews of inmates generally yielded low response rates (below 1%). More recent studies [utilizing] self-administered questionnaires...yielded higher prevalence rates (around 20% with a broad definition of assault).”

If we relied only on data from either official reports or personal interviews, we would erroneously assume that prison rape was a rare event or even a myth (Krienert and Fleisher, 2005) .

Based on my review of the existing research, it appears that official records of assault (both physical and sexual) only capture about 10 to 20 percent of all assaults that occur in prison (estimates vary by how assault is defined, survey design, etc.). A similar pattern of underreporting is likely for other forms of prison violence (with the exception of homicide) and disorder as well. This certainly presents a different picture of the problem of violence (and disorder) in U.S. prisons than found in both official statistics and at least one recent study based on personal interviews (Krienert and Fleisher, 2005). These studies present a starkly different view, that “*violence - and the threat of violence - is a routine way of life [in prison]*” (Edgar, O’Donnell, and Martin, 2003:6).

2. **Current Responses to the Problem of Prison Violence and Disorder:** There are three broad categories of responses to the prison violence and disorder problem: (1) *inmate*-focused strategies designed to resolve the ongoing conflicts

among inmates using restorative justice and conflict resolution techniques; (2) *staff*-focused strategies designed to change the “negative” staff culture that exists in many U.S. prisons today; and (3) *management*-focused strategies designed to change the “situational context” of prisons (e.g., daily routines, access to programs, staffing patterns, crowding reduction) in order to reduce violence and disorder in these facilities. Although the empirical research evaluating the effectiveness of these strategies is limited, there appears to be an emerging recognition of the need for an “evidence-based” review of “what works” in this critical area of correctional policy and practice (see Byrne, Taxman, and Hummer, 2004, for a discussion).

In terms of *inmate* focused strategies, recent research on the application of (restorative justice-driven) conflict resolution strategies to the prison violence problem in England by Edgar, et al. (2003, 2005) appear particularly promising, although they have yet to be rigorously evaluated. According to Edgar (2005), “social order” in prisons can be promoted by the following: (1) fulfilling prisoners’ basic human needs, (2) working to ensure personal safety, (3) providing opportunities to exercise personal autonomy, and (4) building in mechanisms (e.g., restorative justice panels) to resolve conflicts. The results of ongoing research on the impact of this conflict-centered approach on prison violence and disorder should be available soon.

In the United States, the National Institute of Corrections (NIC) has developed a *staff*- (and *management*-) centered institutional culture change initiative to address a myriad of prison problems related to offenders, staff, and

management in state prisons. Along with my colleagues Faye Taxman (Virginia Commonwealth University) and Don Hummer (Penn State, Harrisburg), I have conducted a multisite evaluation (9 prisons) of the impact of the NIC culture change initiative on prison violence and disorder. NIC program developers focused much of their attention on assessing (and changing) staff culture, based on the assumption that “if you change staff culture, inmate culture will follow.” However, they also developed strategies to work directly with prison management on both “strategic planning” and “leading and sustaining change” initiatives. Our preliminary analyses of the impact of the four-part NIC initiative (assessment, promoting a positive corrections culture, strategic planning, and leading and sustaining change) revealed that although the level of violent incidents did not change at intervention sites, a short-term “announcement effect” on the overall level of incidents was identified. Given the modest scale of the NIC effort, it is certainly possible that a more intensive culture change strategy would yield more positive results, particularly if it was combined with the inmate-centered strategies discussed earlier.

Finally, Wortly (2002) recently completed a detailed review of the research on *management*-centered strategies aimed at reducing the level of violence and disorder in prison, focusing in particular on a number of promising situational prison control strategies (e.g., changes in physical environment, size of prison, crowding level, staffing levels and staffing characteristics, sanctioning practices, protection of vulnerable prisoners, program/treatment availability, etc.). Similarly, my own review of this body of research (see Byrne, Taxman, and

Hummer, 2005) has linked higher levels of prison violence and disorder with the following factors: (1) prison crowding, (2) staffing levels (and quality/experience), (3) inadequate programming in prisons (access quality), (4) ineffective classification/placement practices, (5) a variety of poor management practices, (6) inadequate facility design, (7) situational context (daily routines, prisoner autonomy) and (8) prison-specific offender profiles (e.g., the number of violent and/or mentally ill offenders; age and racial composition). Perhaps not surprisingly, existing prison research (although limited in scope and quality) on the causes of violence and disorder in prisons is *consistent* with a much larger body of research on the causes of violence and disorder in our communities (see, for example, Sampson, et al., 2005, or Pattavina, et al., 2006, for an overview), which emphasizes the importance of person-environment interactions and the breakdown of informal social controls.

While there is some evidence that the inmate, staff, and management-centered strategies just described can reduce prison violence and disorder, it appears that further research on each of these three broad approaches to the prison violence problem is needed before we can assess “what works” in this area. However, we do have a mounting body of evidence that in prisons – as in our communities – informal social control mechanisms are more effective than formal social control mechanisms in reducing levels of violence and disorder. The commission needs to consider strategies for strengthening these informal control mechanisms, while simultaneously reducing our reliance on formal control technology. The key is to identify the optimal “tipping point” in violence

prevention and control strategies that attempt to utilize both formal and informal social control mechanisms in prison settings.

3. *Solving the Prison Violence Problem: Three Strategies to Consider*

- ***Strategy 1: Demand Transparency*** - One basic tenet underlying the institutional control of “disruptive” members of our community is “out of sight; out of mind.” As a growing number of prisoners reenter the community after experiencing prison violence (as both offenders and victims), we are beginning to understand that these prison “experiences” have negative consequences for both offenders and communities. For this reason, it is critical to develop a system of “oversight” that includes an external review of what happens in prison, and a mechanism for informing the “public” about the level of violence and disorder in prison. One possible approach would be to implement the national performance measurement system recommended by the Association of State Correctional Administrators (ASCA), which is highlighted in Appendix A (Wright, 2005). The underlying assumption of this strategy is simple to articulate: “*what gets measured gets done.*” Corrections administrators will know that the performance of their prison will be assessed based on these “outcome measures” and they will respond to this public performance review by developing strategies to address problem areas in their prison’s performance review (see Gaes, et al., 2004, for a detailed discussion).
- ***Strategy 2: Require Evidence-Based Practice*** - The institutional corrections system lags far behind community corrections in the application of “best

practices” to the problem of prison violence and disorder. We need to design a national prison violence reduction initiative that (1) conducts systematic, evidence-based reviews of specific prison problems, (2) field tests various strategies designed based on these reviews, and (3) evaluates these strategies using rigorous evaluation designs (experiments and quasi-experiments).

- ***Strategy 3: Measure the Moral Performance of Prisons*** - In addition to monitoring prison performance based on traditional measures of violence and disorder (interpersonal, intrapersonal, institutional and collective violence/disorder), a new set of outcome measures needs to be introduced, which recognizes the importance of changing the “culture” of prisons (inmate, staff, and management culture) and improving the “quality of life” for both inmates and staff in prison. These outcome measures would focus on the “moral performance” of prisons in a variety of areas (inmate-staff relations, daily routines, procedural justice, access to treatment, etc.), based on the assumption that improvements in the moral performance of prisons will ultimately effect the “moral performance” of prisoners when they return to the community (see Appendix B for a listing of “moral performance” measures developed by Liebling, 2005).

**APPENDIX A: KEY FINDINGS FROM WRIGHT, BRISBEE AND
HARDYMAN'S 2003 NATIONAL SURVEY OF STATE DEPARTMENT OF
CORRECTIONS' PERFORMANCE MEASUREMENT SYSTEM**

STANDARD I: PUBLIC SAFETY

Key Indicator: Escapes

- Most states keep automated records of escapes.
- Some states have difficulty distinguishing within their database whether the escape was from within or without.
- Some systems use a legal definition of escape and cannot differentiate between an attempt and a successful escape.
- Almost all departments could begin to report this information as specified with minor code writing.
- Overall about 21 percent of the agencies do not have automated information on escapes.

Key Indicator: Escapes from private facilities

- States that place prisoners in private facilities have this information.
- Often the data is not automated (25 percent of these agencies are not automated).

Key Indicator: Return to prison

- Considerable variation among responding systems, some systems already routinely report this data, for other states would pose major undertaking.
- The unified systems would have difficulty distinguishing among readmission type.
- Overall about 25 percent of the agencies have no automated information on returns to prison for a new conviction.

STANDARD II: INSTITUTIONAL SAFETY

Key Indicator: Prisoner-on-prisoner assaults and victims

- Most departments maintain incident-based records of prisoner assaults. Because the database identifies incidents rather than individuals, some systems would have trouble counting the number of assailants. Furthermore, most incident based systems do not include information on the victim, the extent of injury.
- A few systems could access other records, medical, for example, to identify the number of victims.
- Information regarding the type of weapon used is frequently not automated but is contained in the written record.

- Few systems link their incident record system with their disciplinary hearing record system, thus making it impossible to comply with the counting rule that specifies that the assault be substantiated.
- Incident based records seldom contain follow-up information but rather record point-in-time information.
- Overall, about half of the departments do not have automated data.

Key Indicator: Staff injuries resulting from assaults

- Again, most departments have a critical incident database in which incidents where staff are attacked by prisoners are tracked.
- Since these records tend to be “point-in-time” records, whether injury was sustained and the extent of injury is seldom available.
- Many systems would have difficulty specifying how many staff were attacked in a single incident.

Key Indicator: Prisoner-on-prisoner sexual assaults

- This information is also contained in incident based data records.
- Some states would have difficulty identifying when there is more than one victim.
- Some systems cannot differentiate types of assaults – sexual from solely physical.
- Most data systems lack substantiation.

Key Indicator: Sexual misconduct by staff-on-prisoners

- In most departments staff misconduct information is not maintained in the primary IT database, which is a prisoner database. Rather it is contained in records maintained by the internal affairs office, human resources or the legal department. In almost all cases, this information is not automated and, if it is, detailed information is lacking.
- Identifying the gender of both the staff member and the prisoners, particularly the staff member, would be difficult for most systems.

Key Indicator: Prisoner homicides

- Some departments collect information on homicides as part of their information systems.
- However, because prisoner-on-prisoner and prisoner-on-staff homicides are such rare occurrences many states do not have a data field for these events. Most of these states indicated that they could easily produce the information.

Key Indicator: Prisoner suicides

- This is the one indicator that all departments can readily produce.
- The only caveat is that some departments have difficulty distinguishing suicides from over-doses since their data lack follow-up information.

Key Indicator: Positive drug tests

- Most departments can also produce these data in automated format.
- The only difficulty may be whether the department uses the specified threshold level.

Key Indicator: Disturbances

- For most departments reporting major disturbances would be much less difficult than reporting minor disturbances.
- Most departments record information regarding disturbances in critical incident reports. Most systems do not automate this information. Of those who automate it, most lack the detail required to report this information as specified. Consequently, most states would face a major undertaking to begin to report this information.

STANDARD III: SUBSTANCE ABUSE AND MENTAL HEALTH**Key Indicator: Staff hours of assessment and treatment**

- Most departments do not collect this information. The only departments that may be able to provide these data are those who have a contract with private providers.
- Most respondents indicated that their health departments maintain information regarding assessment and treatment of substance abuse and mental health. These data are seldom automated and are generally contained within traditional hospital jackets. Implementing a data collection system regarding these topics would be a major undertaking.

Key Indicator: Psychiatric beds

- Most states can determine how many psychiatric beds are filled on a particular day. However, these data are not always automated.

STANDARD IV: OFFENDER PROFILE**Context Indicator: Commitment type**

- Most departments can provide information regarding commitment type.
- Some departments have difficulty differentiating the two categories of offenders returned for a violation.
- Reporting this information is much more difficult for the unified systems.

Context Indicator: Offense type

- Most departments collect offense information but some would have to recode their data to reflect the categories specified in the counting rules.
- Many systems record information according to controlling offense rather than longest sentence.

Context Indicator: Demographics

- Departments can provide information regarding prisoner's age and gender.
- Some systems can provide information about whether prisoners are black or white but cannot separate out Latino/Hispanic prisoners.

Context Indicator: Sentence length

- Departments can provide this information with only minor recoding necessary.

Context Indicator: Time served

- Most departments can provide this information.
- For some departments, separating prisoner groups by admission type will be difficult.

Source: Table 7, pp 58-60 in *Defining and Measuring Performance*, final report Wright, K. with Brisbee, J. and Hardyman, P. (Washington, D.C.: U.S. Department of Justice).

Appendix B: Defining The Moral Performance of Prisons

Relationships :

- Respect
- Humanity
- Relationships
- Trust
- Support

Social Structure:

- Power/authority
- Social relations

Regime:

- Fairness
- Order
- Safety
- Well-being
- Personal Development
- Family Contact
- Decency

Other:

- Meaning
- Quality of life

Adapted from Liebling (2005). Keynote presentation at the 14th World Congress of Criminology, Philadelphia, PA, August, 2005.

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