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## **Prison Overcrowding - California**

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### **❖ Introduction**

Managers of correctional facilities in the U.S. face a number of dilemmas. Mandated to incarcerate a seemingly ever-growing number of prisoners, they also must work in an era where state and local budgets are tight, any call for new taxes is quickly resisted, and the public is largely unsympathetic to any claim that more money is needed to adequately take care of prisoners.

State laws often require longer sentences for a variety of offenses, and “[three-strikes](#)” laws for repeat offenders, as well as incarceration of a massive number of offenders for drug offenses, give correctional facilities a growing number of lifetime inmates to house, feed, and provide with constitutionally adequate medical and mental health care. Health care costs are mushrooming generally, but the longer sentences many inmates are serving means that prisons contain a graying population of prisoners, with failing health and all the ailments of old age, such as heart disease, high blood pressure, diabetes, and impaired mobility.

Prison overcrowding is a major problem in many jurisdictions, with prisoners packed into old facilities well beyond their intended capacities. Yet, since the passage of the [Prison Litigation Reform Act](#), we are no longer in the era where federal courts routinely stepped in and attempted to micro-manage the running of a state's correctional institutions. That statute set forth a fairly high threshold that had to be met before the courts could step in

to issue injunctive orders to attempt to remedy prison overcrowding and its effects through population reduction orders.

A recent 5-4 decision of the U.S. Supreme Court has shown, however, that while that threshold is high, it can be met. The Court discussed in detail, for the first time since the passage of the Prison Litigation Reform Act, the legal standard for such court intervention. It upheld a controversial injunctive order that could potentially result in the release of thousands or even tens of thousands of California prisoners.

This article reviews that significant decision in some detail. It starts with an overview of the overcrowding problem in California's prison system, how it manifested itself, and what its resulting symptoms were. It continues with a summary of the Supreme Court's decision. An initial attempt is then made to draw some lessons from the California case for other states' correctional systems also experiencing overcrowding.

This article does not address the very complex question of how California is currently attempting to comply with the population reduction order.

At the end of the article, there is a brief listing of some relevant resources and references.

### ❖ **Overcrowding in California's Prisons**

The number of prisoners in California correctional facilities increased at an astonishing rate of 500% between 1982 and 2000. To attempt to cope with this, the state built 23 new prisons.

Despite the new facilities constructed, the space available failed to keep pace with those needed. As a result, California's prisons today attempt to cope with a prison population of 156,000, almost double the design capacity of just under 80,000 prisoners.

Overcrowding at this level, by this year, had continued for at least 11 years. In reviewing the conditions this resulted in, the U.S. Supreme Court in [\*Brown v. Plata\*](#), #09-1233, 2011 U.S. Lexis 4012, noted that as many as 54 prisoners in California prisons may share a single toilet, and as many as 200 prisoners may live in a gymnasium, supervised and monitored by as few as two or three correctional officers. The following facts are taken from the Court's summary of the conditions in the prisons.

Governor Arnold Schwarzenegger declared a state of emergency in the state's prison in 2006, after a review panel found that this overcrowding imperiled the safety of both inmates and correctional employees, which could lead to deaths. The Governor identified consequences of the overcrowding as including the increased substantial risk for transmission of infectious illness, and a suicide rate approaching an average of one per week. This suicide rate was nearly 80% higher than the national average for prison populations.

Because of a shortage of treatment beds, suicidal inmates were sometimes held for extended time periods in telephone booth sized cages without toilets. One psychiatric expert reported seeing a prisoner who had been held in one of these cages for almost 24 hours, "standing in a pool of his own urine, unresponsive and nearly catatonic."

Overpopulation resulted in many prisoners with serious mental illness not receiving even minimal, adequate care, and the wait time for mental health care ranging as high as 12 months.

"Severely deficient" care was also provided to prisoners suffering from physical illnesses. The prisons only have half the clinical space needed to treat the current prisoner population. In one prison, according to a correctional officer, up to 50 sick prisoners are sometimes held together in a 12- by 20-foot cage for up to five hours while awaiting treatment.

The details of the type of medical care available gave rise to horror stories:

"The number of staff is inadequate, and prisoners face significant delays in access to care. A prisoner with severe abdominal pain died after a 5-week delay in referral to a specialist; a prisoner with 'constant and extreme' chest pain died after an 8-hour delay in evaluation by a doctor; and a prisoner died of testicular cancer after a 'failure of MDs to work up for cancer in a young man with 17 months of testicular pain.'"

These conditions resulted in two major federal class action lawsuits: one addressing mental health conditions in California prisons, and one addressing general medical care there.

The federal trial court in the mental health class action appointed a special master to address such problems as chronic understaffing, lack of competent staff, and failure to implement necessary suicide prevention measures. 12 years after his appointment, in

2007, the Special Master in the mental health case filed a report that said that the state of mental health in California prisons was deteriorating because of overcrowding.

The second class action, involving prisoners with serious medical conditions, resulted in the state conceding that deficient prison medical care violated prisoners' Eighth Amendment rights, and stipulating to a remedial injunction.

Failure to comply with that injunction led to the 2005 appointment of a Receiver to oversee efforts to remedy prison medical care, because "the California prison medical care system is broken beyond repair," resulting in an "unconscionable degree of suffering and death." The court found: "[I]t is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the [California prisons'] medical delivery system."

Three years later, the Receiver reported that there were continued deficiencies due to overcrowding.

Ultimately, the plaintiffs in both class action lawsuits decided that no remedy for the unconstitutional mental health care and medical care was possible without reducing overcrowding. Judges in both cases granted motions for the appointment of a special three-judge court authorized under the Prison Litigation Reform Act to order reductions in the prison population.

That three-judge court, after hearing testimony, ordered California to reduce overcrowding to 137.5% of prisons' design capacity within two years. If capacity is not adequately increased through new construction, which seemed unlikely, the state would have to develop a plan to reduce the prison population by a range of 38,000 to 46,000 persons. [\*Coleman v. Schwarzenegger\*](#), #CIV S-90-0520, 2009 U.S. Dist. Lexis 67943 (E.D. Cal., three-judge court). That decision was appealed to the U.S. Supreme Court.

#### ❖ **Brown v. Plata - Supreme Court**

The U.S. Supreme Court upheld the order of a special three-judge court ordering that the California state prison system reduce its population from 156,000 prisoners, nearly double capacity, by approximately 46,000 prisoners, or 137.5% of design capacity within two years. Current overcrowding was found to have resulted in inadequate medical care and mental health treatment, constituting a violation of the [Eighth Amendment](#).

The Court found that the injunctive order complied with the stringent requirements of the [Prison Litigation Reform Act](#), and that the court below properly gave "substantial weight" to any potential adverse impact on public safety from the order. [Brown v. Plata](#), #09–1233, 2011 U.S. Lexis 4012.

The Court’s decision was adopted by a narrow vote of 5-4.

While the decision requires that California reduce substantially the number of prisoners in its state prisons, it does not necessarily require their release, and measures such as transfers to county detention facilities or out of state prisons are among the remedies that could be explored.

The Court ruled that the ordered population limit was necessary to remedy conditions depriving prisoners of adequate medical care.

Courts addressing such overcrowding must, under the standards outlined in the PLRA, consider applying a “range of options,” including the appointment of special masters or receivers, consent decrees, and orders limiting a prison’s population.

Under the PLRA, 18 [U.S.C. Sec. 3626\(a\)\(3\)](#), only a three-judge court is able to limit a prison population. Other, less intrusive relief must have been tried first, and have failed to remedy the constitutional problems after the correctional officials have been given a reasonable time to comply with prior orders.

The three-judge court, before ordering a reduction in the prisoner population, must find, by “clear and convincing” evidence that overcrowding is the “primary” cause of the violations at issue. It is not required that it be found that the overcrowding is the only cause of the problems, however.

The three-judge court must also find that “no other relief” besides a reduction in population will remedy the problem, and that the proposed population reduction order is “narrowly drawn, extends no further than necessary... , and is the least intrusive means necessary to correct the violation.”

The court must also, in deciding whether to issue such an order, “give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.”

Applying these tests to the California case, the Supreme Court's majority found that they had all been met. California had been given a reasonable time to comply with orders to remedy the problems with inadequate medical and mental health care, and was not entitled to more time to attempt to do so.

The Court also ruled that the three-judge court did not act erroneously in finding that overcrowding was the primary cause of the constitutional violations.

The evidence of deficiencies in medical and mental health care, and that it was primarily caused by overcrowding, was adequately supported by expert witness testimony. The Court also found that this evidence supported the conclusion that nothing other than a population reduction order would remedy the problem.

The Court noted that California's claim that the out of state transfers of some prisoners could provide a "less restrictive alternative" to a population order was rejected, because the PLRA classifies requiring such transfers as a population limit. Further, the three-judge court found that there was "no realistic possibility" that such transfers could take place in numbers sufficient to relieve overcrowding.

Given California's fiscal problems, there was also no realistic possibility that the state could engage in sufficient prison construction to adequately relieve the overcrowding.

The three-judge court also properly rejected a proposed alternative remedy of additional hiring of medical personnel. The state's prisons were "chronically" understaffed as to medical personnel, and, even if adequate personnel were hired, there would be inadequate space for them to work.

The Court found that the population reduction order was narrowly drawn, went no further than necessary to correct the problem, and was the least intrusive means needed to do so.

The Court noted that the injunctive order gave the state flexibility to decide who should be released, as well as the flexibility to decide which facilities they should be released from. Because the order applied to the entire state prison system, it was possible that some facilities could continue to exceed the 137.5% of capacity limit, so long as the state system overall was in compliance.

While the three-judge court did give “substantial weight” to the possible negative impact its order might have on public safety, it was not required to certify that there would be “no possible impact” on the public. There was statistical evidence, the Court stated, that the prison population had been lowered in some California counties, several states, and in Canada, without “adversely” affecting public safety.

A dissent by Justice Scalia, joined by Justice Thomas, characterized the injunctive order as the “most radical” in the history of the U.S., possibly resulting in the release of a “staggering number” of convicted criminals,” and an outrageous result. He believed that the Court had disregarded the “stringently drawn” requirements of the PLRA, and that the proceedings that led to this result were a “travesty.”

Dissenting Justice Alito, joined by Chief Justice Roberts, stated that the three-judge court exceeded its authority under the Constitution, and that the order in the case was a “perfect example of what the Prison Litigation Reform Act (PLRA) was enacted to prevent,” the release of a number of criminals “the equivalent of three Army divisions.”

### ❖ **Some Possible Lessons**

While the conditions resulting from overcrowding in the California prison system may be extreme, overcrowding clearly takes place in a number of other jurisdictions. Increasingly limited budgets in many states limit new prison construction, the hiring of adequate medical and mental health personnel, and other measures necessary to provide the level of care to incarcerated persons that the courts have said is constitutionally required.

The management of many correctional facilities faces the quandary of being mandated to provide prisoners with a certain quality of care, yet often being denied the resources reasonably required to do so.

There is no easy solution to this problem. The Supreme Court’s decision indicates that, while the legal standard to meet under the PLRA before a population reduction order is issued is stringent, the patience of the courts as to remedying the impact of overcrowding is not infinite. In California, the severe overcrowding problem festered and arguably worsened for over a decade.

What can correctional officials do about this? The overcrowding crisis in the nation’s prisons requires a multi-faceted approach, combining good management techniques to try to best utilize the resources already at hand with methods of shifting some burdens

elsewhere, as well as bold and honest communication about the reality and nature of the problem to politicians and the general public.

- ***Good management techniques*** include prioritizing providing truly essential care and services over desirable but less important ones. Aspects of medical and mental health care that may, if not adequately provided, lead to death or serious illness or injury, have to be emphasized. In particular, suicide prevention, and mental health treatment must be paid particular attention. The specifics of what other services may need to be deemphasized or cut to accomplish this will vary from state to state, and must be determined on the basis of careful study. Liability for violations of the Eighth Amendment is based on deliberate indifference to ***serious*** medical needs, and such serious needs must take priority.
- ***Shifting some burdens elsewhere*** may include determining whether some prisoners, based on mental illness or serious physical illness, need to be sent to outside medical facilities, such as mental health asylums, hospitals, or hospices because they cannot be properly cared for at the prison. It makes no sense to try to provide medical or mental health care for the most serious problems in institutions that are not now, and never will be, properly equipped to do so.
- ***Honest communication about the problem*** means that those in charge of providing leadership for correctional systems must, indeed, bite the bullet and truly lead. Politicians and the general public must boldly be made aware, in plain, direct, frank language of the nature of the problem and some unpleasant and unpopular facts. State legislatures that mandate longer sentences for various offenses must be told that if they want such legal consequences, they must adequately fund the agencies charged with custody of the prisoners. “Tough on crime” measures like “three strikes” sentencing laws may appeal to the public that understandably does not want dangerous criminals on the street. But keeping 60 or 70-year-old prisoners with failing health or limited mobility locked up means taking on the expensive around-the-clock burden of their care. And it is questionable whether their release would actually negatively impact public safety when the majority of crimes, particularly violent crimes, are committed by younger, more agile criminals. Similarly, many drug offenders incarcerated for simple possession offenses might better benefit from drug treatment programs. The expanded use of electronic monitoring and halfway houses may also be helpful.



The alternative to addressing the problem in this manner may, as the California example shows, be far more drastic. One thing is certain, left to itself, the problem of prison overcrowding is likely to worsen, and will not solve itself.

#### ❖ Resources

- ABA [Amicus brief](#) in Brown v. Plata
- ABA [Treatment of Prisoners Standards](#)
- [Brown v. Plata](#), Wikipedia article.
- [Documents and history](#) in California overcrowding litigation.
- [Overcrowding](#). Summaries of cases reported in AELE publications.
- [Prison & Jail Conditions: General](#). Summaries of cases reported in AELE publications.
- [Prisons in California](#). Wikipedia article.

#### ❖ Prior Relevant Monthly Law Journal Articles

- [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.
- [Civil Liability for Inadequate Prisoner Dental Care](#), 2009 (9) AELE Mo. L. J. 301.
- [Civil Liability for Prisoner Suicide](#), 2007 (2) AELE Mo. L.J. 301.
- [Mental Health Care of Prisoners](#), 2009 (11) AELE Mo. L. J. 301.

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- “[Brown v. Plata](#),” by Melissa Riess, Hastings Law Journal (June 17, 2011).
- “[Show, Don’t Tell. Do photographs of California’s overcrowded prisons belong in a Supreme Court decision about those prisons?](#)” by Dahlia Lithwick, Slate (May 23, 2011).
- “Litigation Over Prison Medical Services,” by Aaron Rappaport, 7 Hastings Race & Poverty Law Journal 261 (Winter 2010). [Abstract](#). Full text available for purchase at link.
- [One in 100: Behind Bars in America, 2008](#), by The Pew Center on the States, Pew Charitable Trusts. March 2008.
- “[Increasing Public Safety and Generating Savings: Options for Pennsylvania Policymakers](#).” Source(s) Council of State Governments. Justice Center (New

York, NY) Sponsor(s) U.S. Bureau of Justice Assistance (Washington, DC) Pew Charitable Trusts (Philadelphia, PA) Details Published 2007.

- [Controlling Inmate Population Size: A Case Study of 20 Years of Success](#), by Marilyn Chandler Ford. Source(s) LIS, Inc. (Longmont, CO) National Institute of Corrections Information Center (Aurora, CO) Sponsor(s) National Institute of Corrections (Washington, DC) 2007.
- Alabama [Prison Commissions Task Force Report on Prison Crowding](#). (2005).
- [Michigan Task Force on Jail and Prison Overcrowding: Final Report](#) (National Institute of Corrections 2005)

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