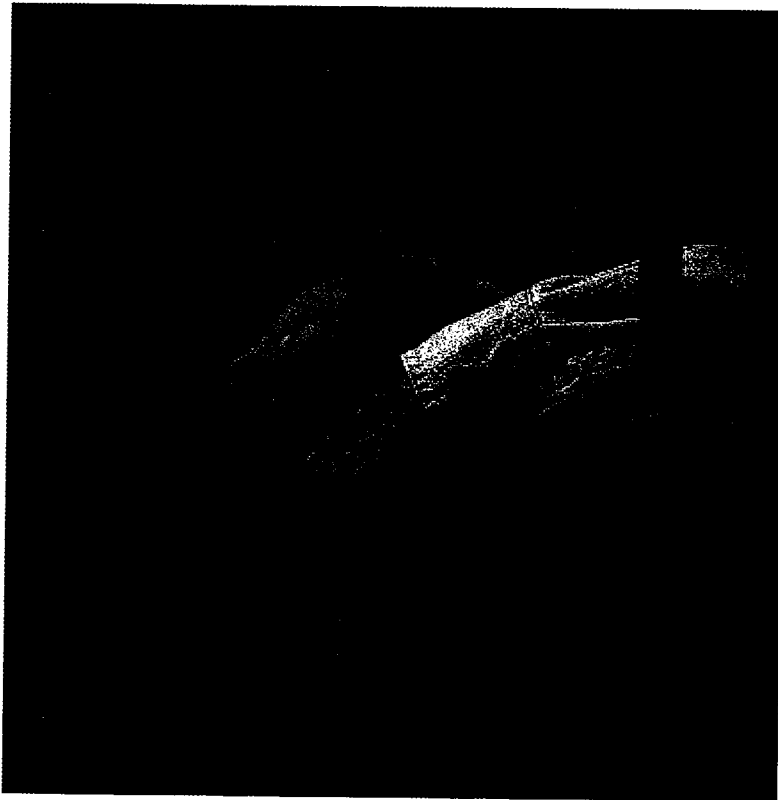


Overcrowded, unsanitary prisons and jails propogate outright indifference to the needs of our citizens behind bars

CRISIS

by Greg Belzley

Since the early 70s, Kentucky's population has grown around 40 percent. In that same period, the number of Kentuckians behind bars has increased by almost 700 percent. Because Kentucky's prisons are overcrowded, state inmates are pushed into overcrowded county jails that were never intended for long-term incarceration. To avoid a loss, cash-strapped counties try to cut daily inmate costs to a point below the per diem they are paid for housing state inmates in their jails. The results are abominable.



Last year, Professor Robert G. Lawson of the University of Kentucky School of Law published *Difficult Times in Kentucky Corrections—Aftershocks of a "Tough on Crime" Philosophy*, 93 Ky. L.J. 305 (2004-2005). It is a thoroughly researched and extensively footnoted indictment of how our hard-line attitudes toward convicted offenders—manifested by the war on drugs, mandatory sentencing, three-strikes laws, and reduced paroles—have overloaded our prisons and jails to the breaking point and institutionalized outright indifference to the needs of our citizens behind bars. Professor Lawson points out that while prison populations remained relatively stable from the 1920s to the 1970s, they have so increased over the last 25 years that the United States, having only five percent of the world's population, now has 25 percent of its prisoners. A figure approaching five percent of the adult population of the United States is now under the custody or control of the country's corrections systems at any one time.

Kentucky is notable in its rush to incarcerate. For example, in 2004, Kentucky was *fifth* in the nation in the percentage growth of its inmate population. A recent two-volume study of the

economics of Kentucky's county jails, *Report from the State Auditor: Kentucky Jails—A Financial Overview*, found that:

- In 2004, Kentucky was *second* in the nation in the number of state and federal inmates held in county jails.
- 53 of Kentucky's 73 full-service and regional jails are overcrowded. Given the demands of an inmate population, experts believe that jails are "at capacity" when 75 percent full. However, according to the auditor's report, only two jails in Kentucky average a population of less than 79 percent of the institution's design capacity. Most are well over 100 percent, and a dozen are at 150 percent or higher. In one instance, a jail built to hold 78 inmates had, *on average*, 159 inmates within its walls on any given day. Another, built to hold at most 264 inmates, instead averaged 414 inmates a day.
- Many of Kentucky's most overcrowded jails rank among the lowest in inmate expenditures.
- Despite the fact that the overcrowding of Kentucky's jails is attributable primarily to the practice of housing state inmates in county facilities, many counties believe they can reduce the financial pressures on their jails by *increasing* the number of state inmates.

The resulting conditions have very real consequences for the human beings behind bars in Kentucky's jails. Consider:

- A paralyzed inmate, over a two-week period, is dragged around a jail and left to lie in his own urine because the jail staff doesn't believe him when he says he can't walk.
- A female inmate experiencing severe alcohol and drug withdrawal dies after vomiting profusely for 48 hours. A jail officer testified in the case that it was his understanding he had no authority to take an inmate to the hospital unless she was bleeding profusely, unconscious, or dead.
- A diabetic inmate progressively loses his eyesight because the jail staff will not give him his insulin.
- A female inmate contracts pneumonia, receives no medication or medical attention at all, and eventually succumbs to multiple organ failure.
- Overcrowded jail conditions spawn an epidemic of penicillin-resistant flesh-eating bacteria that threatens the health of the surrounding community.
- Heart patients die and epileptics suffer grand mal seizures because jails deprive them of the medication they have been prescribed by their treating physicians.

- Mentally disturbed inmates are denied medication and counseling, and are simply locked away in solitary confinement.

Professor Lawson is currently working on another article that deals extensively with the consequences of overcrowding in our jails. Most chilling is his description of the life of state inmates in county jails that were never intended to be long-term incarceration facilities. They lack the privacy, natural light, exercise, access to the outdoors and rehabilitative programs that are routinely available in state institutions. With little more personal space than the square footage of their bedding, inmates spend their days playing cards, watching TV, or lying on their mat—either in a bunk or on the floor.

At present, our jails and prisons are chronically overcrowded, unsanitary and underfunded. Jail officers are chronically overworked, underpaid and undertrained. Turnover is extraordinary. Inmates experience harsh treatment, deliberate indifference to their personal needs, and relentless inactivity and boredom. As the inmate population ages, and women compose an ever-higher proportion of our incarcerated citizens, these problems and pressures are only going to get worse.

Most inmates enter the system poorly educated, poorly trained, unhealthy (often with a history of substance abuse), and unemployed or underemployed. When they are released, they are no better prepared to confront the issues that resulted in their incarceration in the first place. In addition, they reenter society with a record, embittered by their treatment while behind bars, and in many instances, saddled with a bill for their incarceration they are unable to pay. We are missing our best opportunity for helping people dig themselves out of the socio-economic circumstances that led to their criminal activity, and are creating instead a permanent underclass of individuals who remain poor, uneducated, unhealthy, unable to find a job after their release, and convinced that the criminal justice system in Kentucky is out to *get* them, not *help* them.

Solutions to this problem are not going to be easy to come by. The federal courts in Kentucky have previously entered injunctive relief, enforced by contempt sanctions, to address overcrowding in Kentucky jails and

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prisons. See, e.g., *Kendrick v. Bland*, Case No. 76-0079-P (W.D.Ky. 1982) (Kentucky prisons) and *Tate v. Frey*, Case No. 83-0254-L(A) (W.D.Ky. 1983) (Jefferson County Jail). In 1988, Kentucky's Supreme Court ruled that "the state cannot pass penal statutes and create penalties that generate more prisoners than it is willing and prepared to provide for." *Campbell County v. Ky. Corrections Cabinet*, 762 S.W.2d 6, 14 (Ky. 1988). Yet, in 2002, when Governor Paul Patton acknowledged that the system had more inmates than it could afford and commuted the sentences of 895 felons, he was castigated unmercifully by law enforcement officials, political opponents and pundits for committing a political blunder that endangered the public.

It is unlikely we can "build" our way out of the problem. In 2003, Kentucky's total corrections budget already exceeded \$310 million. Prof. Lawson estimates that Kentucky will have to build a new prison at least every two years at a cost of \$100 million apiece just to house the *additional* inmates the state expects to have by 2010. Even that dire projection appears optimistic. Kentucky's inmate population increased by 800 souls in just the first five months of this year. At this rate, we will have added 2000 more inmates to the system by year's end without making any more room.

In *Difficult Times*, Professor Lawson made recommendations for addressing the problem that included alternatives to imprisonment, particularly for drug offenders, and

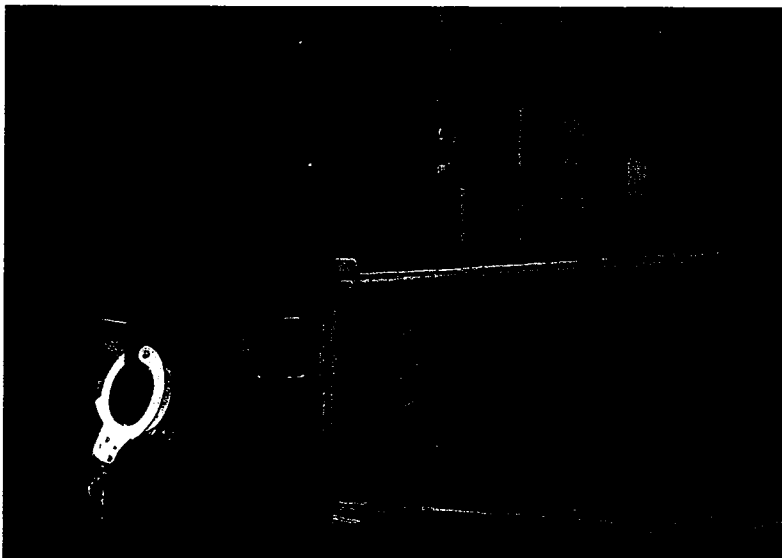
reforming mandatory sentencing and "three strikes" laws. A committee was appointed to study the recommendations, but its work was vigorously opposed, and it disbanded without accomplishing anything.

Our jails and prisons are *community* institutions that inevitably affect the health and welfare of everyone in this state, not just inmates. If we allow things to continue the way they are, all of us—our families, our friends, our colleagues, our neighbors—are going to pay a fearsome price.

This is not a problem reserved for the criminal bar. Whether we practice in the criminal field, the civil field, or both, we all took an oath to protect and defend our state and federal constitutions. We make more money, and have vastly more political power, than many Kentuckians. This is happening on our watch. This problem is—uniquely—*ours*.

The state auditor's report is available at http://www.auditor.ky.gov/Public/Audit_Reports/Archive/2006JailSurveyVolumeIFinal.pdf. If you would like a copy of Professor Lawson's article, let me know and I'll e-mail it to you. Familiarize yourself with the facts. Write letters, make calls, send e-mails, buttonhole your state legislator, file a lawsuit. If you are interested in joining Citizens for a Just Kentucky, which advocates comprehensive criminal justice reform, let me know and I'll get you involved.

The condition of Kentucky's jails and prisons is indefensible and growing worse every day. We must do something. Now.



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