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Prison Overcrowding: A Comprehensive Evaluation Tool for Early Release

4/19/2015
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Abstract

Prison overcrowding has become a topic of national conversation over the last decade. Numerous court cases have come to fruition because of the poor living conditions experienced by inmates while incarcerated. Prior court cases, such as *Estelle v. Gamble (1976)* and *Brennan v. Farmer (1994)*, have ruled that inmates must be afforded the constitutional rights established under the Eighth Amendment while incarcerated. Recent court cases, including *Plata v. Brown (2011)*, have affirmed inmates' claims that current prison conditions are a violation of these constitutional rights. To correct these violations, prisons must reduce their populations below a court established maximum. This can be accomplished through a variety of ways. One of the most controversial is the early release of inmates, as the public views it as a public safety concern. There is no universal system established to determine who should be eligible for early release. This review of previous research and the current prison conditions aims to develop a comprehensive model to determine which inmates should be considered as most eligible for early release.

Introduction

Prison overcrowding is a phenomenon which is not new to the criminal justice system. It is well-known that many prisons, both state and federal, have been operating over capacity throughout the course of the last few decades (Baumer, 2006). However, as the national trends toward stricter punishments and the use of incarceration as the only form of punishment continue, prison populations are beginning to rise to levels which are far exceeding the intended and allowable capacity of the prison (Sullivan, 2013). As prison populations continue to grow higher than 100 percent capacity, the prison system is faced with the issue of upholding the constitutional rights of inmates and doing so using the scarce amount of resources available. Recent decisions at all levels of the judicial system have indicated that it is time for the criminal justice system to act on the issue of overcrowding. Examples include the Supreme Court decision in *Brown v. Plata (2011)* and various state Supreme Court decisions in Texas and Alabama which have placed court ordered capacities on prison populations. States have implemented various programs in an attempt to reduce the number of inmates in their prison system, ranging from out-of-state transfers to transfers to county jails. However, the use of early release programs continues to decrease (Austin, 2001). To address this issue, this paper will provide a comprehensive evaluation tool for prison officials to utilize to determine which inmates are suitable for early release.

Emergence of Overcrowding Issue

Prisons across the United States have been operating over capacity for decades, but it has not been until recently that prisons reached such a high population that overcrowding began to interfere with the constitutional rights of inmates. The recent surge in incarceration rates since the introduction of the “War on Drugs” in the 1980s has led to a rapid increase in prison and jail populations. This rapid increase can be seen in Figure 1. Terry Baumer and Kenneth Adams, in

a 2006 study, found that prison populations across the country had increased by 345% from 1980 to 2004 and jail populations had increased by 288% during the same time frame. Specifically in California, Specter (2010) found that its correctional system had approximately 155,500 males and females incarcerated within 33 prisons, averaging out to almost 5,000 inmates per prison. Prisons with this many inmates were operating at nearly 300% capacity. This issue is not specific to California, as multiple states across the country, such as Alabama, Pennsylvania and Texas to name a few, have received court mandates to lower prison populations due to violations of inmates' constitutional rights. Pitts, Griffin, and Johnson (2014) found that there were 33 states operating prisons at above 100% capacity, with 12 of these states' prisons being under complete control of the court system.

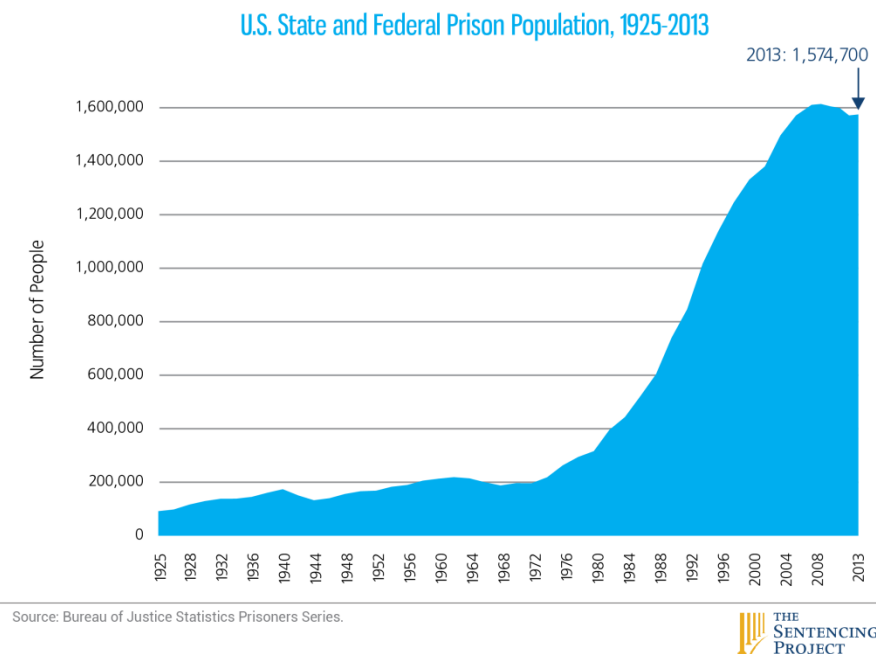


Figure 1 (<http://www.sentencingproject.org/template/page.cfm?id=107>)

When addressing prison overcrowding statistics and searching for ways to alleviate the issue, it is important to understand why the issue came about. The years leading up to the 1980s saw an increase in the sale and consumption of narcotics on US streets. As law enforcement was

cracking down on Miami as a main trafficking route for narcotics, South American cartels found new routes that spread drugs throughout the country faster and more efficiently (Snyder & Duran-Martinez, 2009). To counter this, the United States government waged a “War on Drugs,” commanding law enforcement personnel at all levels to focus on the sale and use of illegal drugs. The government also allocated some of its military resources to finding and seizing illegal drugs (Zirnite, 1997). This led to a higher amount of arrests for small drug offenses, and consequently a higher amount of incarcerated individuals.

At the same time that the War on Drugs was becoming the main focus of law enforcement agencies across the country, politicians and legislators were also shifting their platforms regarding crime and punishment. Gangs and violent crime were beginning to become a major problem in many of the nation’s largest cities, with homicide and assault rates rising. Citizens began to look to legislators and politicians for change. Therefore, the 1980s and 1990s resulted in both political parties taking a stand against crime. Politicians from both sides began to campaign for office using a “tough on crime” platform (Sullivan 2013). The division between the beliefs held by members of opposing political parties allows for debate on issues, but because both political parties agreed that tougher punishments were necessary, increased prison populations was the inevitable outcome.

The political agreement regarding the “tough on crime” mindset ultimately resulted in legislation which impacted incarceration rates and what the courts could do to curb overcrowding. The first direct legislation which had such an impact was in 1994 in the state of California, with other states later enacting similar legislation. In this year, California citizens passed the Sentencing Enhancement Repeat Offenders initiative, commonly known as the Three Strikes Law (Sullivan 2013). This legislation was aimed at reducing recidivism rates by

implementing harsher punishments for repeat offenders, with conviction for the third serious offense resulting in a sentence of 25 years-life in prison. What resulted was mass incarceration of individuals who may have previously been convicted of more minor offenses, such as shoplifting or minor drug possession, and were then convicted of a similar offense for the third time.

The second piece of legislation which affected prison overcrowding was the Prison Litigation Reform Act (PLRA) of 1996. The Prison Litigation Reform Act was passed after the Supreme Court found that there was an increase in minor lawsuits filed by inmates against prisons (Sullivan, 2013). However, the PLRA was written in a manner that made it difficult for serious lawsuits to make it into the court process. The PLRA has given prisons a sense of constitutional immunity because they know that few, if any, lawsuits will be heard by the courts (Schlanger & Shay, 2008). What the PLRA does allow is judicial action if a case does make it through the system. The Act granted judicial authority to place a maximum capacity on a prison population if no other possible solutions to reduce overcrowding were available (Schlanger & Shay, 2008).

Another cause of the prison overcrowding issue is the lack of available space to place inmates. Constructing new prisons is a lengthy and expensive process, and is not financially feasible for many states. Many communities do not wish to have a prison constructed in their city or region, making it difficult for the government to receive support for raising taxes to fund prison construction. On top of the high cost of constructing new prison facilities is the cost of daily operations. In a 2008 study, Schmitt, Warner, and Gupta found that on average, a single inmate costs approximately \$26,000 dollars per year. These costs come from health care, clothing, food, and supervision, and are higher than the cost of one year's enrollment at most

public universities. Because of the rising number of inmates housed in prison and the subsequent increase in prison expenses, many public prisons have had to close their doors. So while governments are attempting to find the money to construct new facilities to alleviate the overcrowding issue, currently operational prisons are closing because they do not have the resources necessary to remain open, which further exacerbates the overcrowding problem (Ball, 1997).

As the statistics have shown, prison overcrowding is at an all-time high and the causes that have led to this epidemic do not seem to offer any reasonable solution within the near future. It is important to address the variety of issues which are arising within prisons due to the widespread overcrowding. The United States Constitution affords all persons basic, unalienable rights. When they become incarcerated, inmates lose a degree of their basic constitutional rights, but still maintain a large majority of these rights, such as the protection from cruel and unusual punishment. Currently, the overcrowding issue is severely limiting or violating two main rights of inmates, both of which stem from the 8th Amendment's protection against cruel and unusual punishment: safety and access to adequate healthcare.

The first violation to be discussed has received much less public attention than the other violation, and that is the right to safety while incarcerated. In 1994, the Supreme Court decided in the case *Farmer v. Brennan* that all inmates have the basic right to adequate safety throughout their period of incarceration. However, prison officials have become deliberately indifferent to the safety of inmates due to high populations, which is an Eighth Amendment violation. While the number of inmates in a prison is increasing exponentially, the number of prison guards and other staff has remained the same, mostly due to funding restrictions. The inmate to guard ratio has become so uneven that it is not feasible for staff to oversee all inmates, and overcrowding

has eliminated space that was once available to separate aggressive inmates (May, 1976).

Forcing inmates to live in close quarters with multiple other inmates is not only a physical safety concern, but also increases the likelihood of transmission of diseases.

The second violation is the ultimate issue which has resulted in multiple court rulings declaring that overcrowding is a violation of the 8th Amendment, and that is the right of inmates to be provided adequate healthcare in a timely manner. Some might consider that the protection against cruel and unusual punishment involves the severity of the sentencing or mode of punishment, but the Eighth Amendment's protections are applied to the conditions of incarceration. The notion that inmates should be afforded the access to healthcare first emerged in 1976 in the case of *Estelle v. Gamble*. In this case, the Court declared that prisons are not allowed to be deliberately indifferent to the prisoner's serious medical needs because inmates do not have the resources to arrange for their own health care (Thompson, 2010). This was an instance in which the Court ruled that the government must provide an affirmative right, which is a right held by citizens requiring additional action to be taken by the government, as opposed to negative liberties which limit what the government can do. What the Court was not able to predict when it offered this ruling was the War on Drugs which would begin in a few short years and the subsequent increase in national incarceration rates. Affirmative rights, because they require the government to provide a service, also require the necessary funding and resources to do so. However, the *Estelle* ruling merely required that states provide adequate health care to inmates and did not establish any guidelines or resources for doing so. Declaring an affirmative right without establishing a means of funding is vulnerable to the unfulfilled realization of such rights (Chemerinksky, 2013). Therefore, prisons were not able to accommodate the rapid increase in prison populations which began shortly after the *Estelle* ruling. What has resulted is

the current situation faced by prisons in which they are not able to provide adequate and timely health care to inmates and are therefore in violation of the 8th Amendment.

Recent Court Cases and Solutions

The landmark case which has led the United States to attempt to decrease prison populations is the case of *Brown v. Plata*, decided by the United States Supreme Court in 2011. However, the rulings affirmed in this case were first decided in the United States District Court for the state of California in 2009 during the case of *Coleman v. Schwarzenegger*. In this case, the district court upheld that conditions within state prisons were unconstitutional and declared that prison populations must be reduced to 137.5% of the allowable capacity within a two year period. To reduce population to this level, the court also offered multiple possible solutions after considering testimony from countless experts. Though the state of California was allowed to reduce population using its own desired method, the suggestions offered in the *Coleman* case laid the groundwork for the plan to be implemented.

California was not able to reach the mandated cap within the two year period, but in early 2014 they were granted a two year extension (Horne and Newman, 2015). However, California's prison reduction from 2011-2012 was large enough to reduce the national prison population by an overall 1.7% (Petersilia, 2014). To accomplish this, prison officials, under government supervision, focused on three primary tactics: sentencing reform, out-of-state transfers, and reliance on local and county jails. The first tactic relied heavily on decreasing the severity of punishments handed down to technical parole violators, who the district court found to account for over half of current inmates. These were individuals whom were not incarcerated but under the supervision of the criminal justice and violated a condition of their release, whether the violation was a crime or not. The second tactic allowed for continued incarceration of inmates,

but transferred inmates to the supervision of both private and out-of-state prisons. The third tactic aimed at realigning the correctional system and is the most similar to early release. Using this tactic, inmates were transferred back to the custody of local and county jails. This sent prisoners back to their hometown areas where they became more accessible to family members and community connections. The state transferred inmates who the deemed to be non-serious and non-violent, however these terms were not defined. The local and county officials also became responsible for post-release supervision of inmates. Petersilia (2014) also stressed that this tactic created a think tank of 58 organizations, as each county was able to create their own system.

What California failed to focus on when reducing inmate population was the court's suggestion to expand the use of the already established "good-time credits" for early release (*Coleman v. Schwarzenegger* 2009). Horne and Newman (2015) suggest that the state and the court were both aware that increasing the number of good-credit releases could greatly reduce population, and public safety would not be a concern due to the nationally accepted use of the good-time credit system. California has successfully decreased their prison population drastically, but increasing the use of good-time credit releases, as well as a reformed early parole release program, could have allowed the state to reach their target population within the allotted time frame. It can be argued that California did not utilize an early release program because there is no universally accepted method for determining which inmates should be considered eligible for release and the other alternatives allowed the state to move inmates out of their custody with little work.

California serves as an example in which a cap was placed on prison populations, but there was not a need for a mass release of inmates. This was not the case in Philadelphia, PA in the early 1990s. During this time, prisons in the city were severely overcrowded and courts

began to take action, declaring that prison populations must be capped. In order to bring populations below the cap, the mayor of Philadelphia declared that thousands of non-violent offenders would be released (Sullivan, 2013). The city viewed the mass release as a quick and efficient means of reaching the cap, but the resulting unanticipated consequences had the opposite effect. Of those who were released, almost 10,000 offenders were re-arrested, committing crimes ranging from drug possession to murder, arson, and rape. In the end, the recidivism rates rose to almost 20%, or double the rate under the previously used bail and parole method (Sullivan, 2013). What the city hoped to gain in budgetary costs, they gave up in public safety costs. The mass release ended up having the exact opposite effect than was intended. Because they knew that there was nowhere for them to be put if arrested, more criminals came to the city to commit their crimes. Ultimately, crimes rates soared and the city had to resort to tough on crime policies and the use of incarceration as the only means of punishment. This provides a clear example of a method used to reduce prison populations in which proper screening was not performed on the inmates being released. A universal method to determine if an inmate should be eligible for early release would have allowed Philadelphia prison officials to screen those who were being released, ultimately reducing the recidivism rate by releasing inmates who were proven to have a low likelihood of reoffending.

A Comprehensive Model for Early Release

It can be seen through the previous discussion that, across the country, the criminal justice system is working at all levels to alleviate the prevalent overcrowding issue. Through sentencing reform, transfers to private prison systems, a wide range of diversion programs, and reformed probation and parole systems, the system is experimenting with numerous ways to remove inmates from prison. However, release of inmates currently incarcerated remains a

controversial topic, as public opinion views a large-scale release of inmates as a threat to public safety. For those states which utilize it, a parole system allows for an inmate to be released from prison while still remaining under the supervision of the criminal justice system. However, the “tough on crime” mentality which has become common among law enforcement and the judicial system has also spread to the correctional system and parole boards, resulting in fewer inmates being granted parole when they are eligible. Austin (2001) shows this through his work in which he found that within a 10 year period in Texas prisons, the approval rate for inmate parole dropped from 79% to 18%, which is a trend that is happening across the nation. In order for the correctional system to ensure that there will not be another need for court intervention to reduce populations to an acceptable level, a comprehensive program needs to be created which allows prisons and parole boards to determine which inmates are best fit for early release. An example of such program will be explained below, with rationale accompanying each factor which must be considered. This program will take into account the following factors to determine the eligibility of an inmate for early release: age, education, criminal history, current offense, connections to the outside community (positive and negative), health status, length of time served, and length of sentence remaining. These factors will be used to develop a score sheet to be used when evaluating an inmate for early release.

Age has historically been one of the main factors considered when studying crime rates and likeliness to reoffend. Previous research performed on the connection between age and crime has resulted in the development of the “age-crime curve,” which is widely used across the criminal justice field, such as Richards’ (2011) work discussing why juvenile offenders are different from adult offenders. This “age-crime curve” takes the shape of a traditional bell curve. As people approach the early adolescent years (ages 12-14) the probability of committing crime

increases (Richards, 2011). The peak of the curve occurs around the late adolescent years, or ages 16-19, but after approximately age 20, the likelihood of committing a crime decreases significantly (Shulman, Steinberg, and Piquero, 2013). This trend can be seen in Figure 2 below.

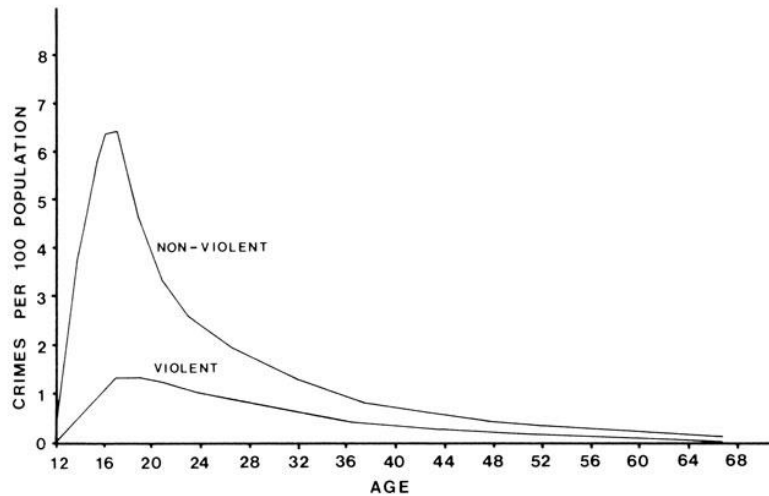


Figure 2: Age-Crime Curve (<http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi409.html>)

The “age-crime curve” shows that older inmates are better fit for participation in an early release system than adolescent and young adult offenders. Because younger offenders have not fully developed cognitively, they are less likely to understand the difference between right and wrong, less likely to understand the reasoning for their punishment, and will be less able to control the impulse to reoffend (Richards, 2011). However, the curve also shows that older adults also commit crimes, albeit at a much lower rate. Because of this, age alone cannot be the only factor used to determine an inmate’s readiness for early release; the factors discussed in the rest of this section must also be taken into consideration.

The next factor to be considered in determining whether an individual will be successful in an early release program is the individual’s education level. In much the same way as a lower age indicated higher crime rates, lower educational achievement results in higher crime rates. It is well known across the criminal justice system that many incarcerated individuals did not

receive a high level of education before becoming incarcerated. However, when looking at education as a factor for early release, it is more important to focus on whether or not an individual participated in educational programming while incarcerated. Once prison officials began to realize that many inmates were uneducated, there was a national push for incorporation of post-secondary education programs into prison systems. This, as we have seen in many other aspects of corrections, requires a great deal of funding and the number and quality of these programs have fluctuated over time. However, many studies have come up with conclusive evidence that participation in prison education programs leads to lower rates of recidivism. One of these studies was performed in 2012 by Nally et al. In their study, over 2,000 inmates were divided between the control and test groups and were monitored for an extended period of time. At the end of the conclusion, they found that those who had not enrolled in some form of educational programming were almost four times more likely to recidivate than those who had completed correctional education programs. Specifically, they found that the recidivism rate among inmates who attended various educational programs was 29.7 percent, while the rate of recidivism among those who had not completed such classes was 67.8 percent (Nally et al., 2012). This shows that though they may be occurring less due to budgetary restrictions, correctional education programs have a positive impact on those who choose to partake in them. Receiving an education allows the inmate to more easily find employment upon release, which ultimately results in the feeling of having a purpose in life. Therefore, when reviewing an inmate for potential early release, successful completion of available correctional education programs should make the inmate more suitable to be released without fear of recidivism.

The next two factors are quite similar and pertain to whether an inmate considered for early release poses a potential harm to society. These two factors are the crime currently

incarcerated for and the criminal history of the individual. Public safety is one of the greatest concerns associated with early release of inmates, making these two factors highly important in determining if an inmate is fit for release. When looking at the criminal history of an individual, it is important to locate any trends in behavior which indicate that an individual is likely to reoffend. When examining the criminal history, the previously discussed factors of age and education do not necessarily apply, as individuals with a long history of offending may fall outside of the age-crime curve or even possess a higher level of education. Individuals who have shown that, even considering all other factors, they have a high likelihood to reoffend should not be deemed suitable for early release. Also along these lines is consideration of the current offense for which the individual is incarcerated. Austin (2001) discusses how a majority of inmates, especially those housed in minimum security facilities, are serving time for nonviolent offenses and should not be considered to pose a public safety threat if released. Persons serving time for crimes which were committed against another person or using force or threats of force to carry out their crimes should not be determined suitable for release. However the reality is that many inmates are serving time for victimless crimes such as minor drug possession or traffic offenses. These inmates do not pose a threat to public safety and should be deemed suitable for early release.

Social and economic connections that an inmate has with the outside world should also be considered in the evaluation of an inmate. However, these factors are rarely considered by prison officials because they resources are not available for officials to perform this type of research for each inmate. Because there are so many various connections that an inmate may have outside of prison, it is hard for researchers to determine what type of effect the various relationships have on recidivism. However, these connections are very important to understand,

especially when comparing the presence of positive connections of negative connections.

Positive connections are those which are going to keep an inmate from reoffending. Examples include established employment, a positive family life (especially children), and close relationships with co-workers or other friend groups. On the other hand are negative connections, which are more likely to persuade an individual to reoffend. Examples may include drug or alcohol addiction, gang affiliation, a broken home life, and unstable or temporary employment. It is important that prison officials understand the type of environment that they are releasing an inmate back into, as they should capitalize on the opportunity to send an individual back into a positive environment while shying away from releasing an individual back into an unstable environment.

Health status of an inmate is also becoming a highly debated factor in determining which inmates should be released before the end of their sentence. The general United States population is aging due to advances in medical care and treatment, which results in an aging prison population. As inmates become older, they experience the need for a wider variety of healthcare, which comes at an extreme cost to prisons. Ahalt et al (2013) state that the population of older inmates, classified as those who are above age 55, has increased by approximately 500 percent since 1990 and these inmates now make up over 10 percent of the general population of prisons. Ahalt et al also go on to state that inmates in California who are serving sentences under the Three Strikes Law are estimated to cost \$7.5 billion in healthcare costs over the course of their sentence, with a majority of these costs coming from older inmates. Many of these conditions that older inmates are being treated for are also able to be better treated outside of prisons, where more expert care can be given. Because of this, prison officials should look to give precedence

for early release to older inmates who are suffering some type of serious illness, as this is more humane for the inmate and also saves the prison a large amount of expenses.

The Score Sheet

A score sheet, comprised of the previously discussed factors, will allow prison officials to perform an evaluation of each inmate before determining eligibility for early release. The score sheet utilizes a point system, with inmates receiving positive or negative points depending on which criteria they meet. Point values were assigned to criteria based on the importance that each factor should have in determining eligibility for early release. Point values are positive, negative, and zero. Positive points indicate that the inmate meets criteria deeming them less likely to reoffend and negative points indicate that an inmate meets criteria deeming them more likely to reoffend. An inmate may score positively in one category, but negatively in another. The score sheet has seven sections and a total of 27 possible points. An overall minimum score has been established to ensure that an inmate meets all necessary requirements for early release. Those inmates who score higher than 18/27 (66%) should be deemed to pose a minimal public safety threat if released. Inmates scoring 18 or below should remain incarcerated until a reevaluation at the discretion of the prison officials. The score sheet can be seen in Appendix A.

Conclusion

Prison overcrowding has become such a prominent issue that it is negatively affecting the constitutional rights of those who are incarcerated. Austin (2001) found that at the time of his research, there were approximately 600,000 inmates released from prison each year, but just as many people were entering prisons. The use of early release programs has declined during the “tough on crime” era, resulting in more incarcerations than releases. Public opinion also looks negatively on early release, as recidivism rates are high and there is a concern that released

inmates pose a public safety threat. However, the use of a universal evaluation method to determine which inmates are suitable for early release will allow prison officials to ensure that only those non-violent inmates who are unlikely to recidivate will be released. Though every inmate is unique and it is nearly impossible to identify if an inmate will recidivate, the proposed score sheet utilizes previous research to create a tool which considers the primary factors used to identify the likeliness of an individual to commit a crime. By utilizing this tool, prisons can reduce population by releasing more inmates than they are receiving.

Appendix A: Inmate Score Sheet

Age:

- + 2 Under 18
- + 0 18 to 30
- + 1 30 to 45
- + 3 Over 45

Age Points: ___/ 3

Criminal History:

- + 3 No prior convictions
- + 1 One prior misdemeanor
- + 0 Two+ prior misdemeanors
- 1 One prior felony
- 2 Two+ prior felonies

Criminal History Points: ___/ 3

Outside Connections: score all the apply

- + 2 Dependent Children
- + 2 Available housing with immediate family
- + 1 Treatment/Counseling available
- + 1 Strong Employment History
- 2 Drug/Alcohol Addiction
- 3 Gang Affiliation/Involvement

Outside Connection Points: ___/ 6

Health Status:

- + 3 Terminal Disease/Illness
- + 2 Requires specialized treatment (i.e. dialysis)
- + 2 Diagnosed mental illness

Health Status Points: ___/ 3

Education:

- + 4 College Degree
- + 3 Some College Education
- + 2 High School Diploma/GED
- 1 High School Dropout
- 2 Middle School Dropout
- Add +1 for completion of prison educational programming

Education Points: ___/ 5

Current Offense:

- + 3 Victimless Misdemeanor Crime (drugs, traffic, etc)
- + 2 Misdemeanor (no force or threat of force)
- + 0 Felony with no force/threat of force
- 2 Weapon or Threat of Force used
- 3 Victim Injured/Killed

Current Offense Points: ___/ 3

Current Sentence Served/Remaining:

- + 4 Served over 80% of sentence
- + 3 Served over 60% of sentence
- + 1 Served over 45% of sentence
- + 2 Served 30+ years of life sentence
- + 3 Served 40+ years of life sentence

Time Served Points: ___/ 4

Total Score: ___/ 27

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