

# The State of Corrections

Tennessee's Prisons  
Before and After  
Court Intervention

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February 1998

# Table of Contents

Introduction .....	1
Methodology.....	1
Background.....	1
Chronology of <i>Grubbs</i> Case .....	2
Analysis and Conclusions .....	3
Overcrowding .....	5
Exhibit 1: Inmate Operating and Bed Capacity by year from 1982 to 1997 .....	7
Exhibit 2: State Felons vs. Number of State Prison Beds from 1986-1997 .....	9
Exhibit 3: TDOC Backup in Local Jails .....	10
Exhibit 4: TDOC Inmates Sentenced to Local Jails .....	12
Exhibit 5: TDOC Total Capacity and Population Projections from 1997 to 2005 .....	15
Classification.....	16
Exhibit 6: Number of Classifications Overridden .....	18
Exhibit 7: Percent of Classifications Overridden.....	18
Housing.....	19
Exhibit 8: Percent of TDOC Minimum Restricted and Medium Custody Inmates Double Celled in 1990, 1993, and 1997 .....	21
Environmental Conditions and Sanitation.....	21
Violence .....	24
Exhibit 9: Number of Violent Incidents per 100 TDOC Inmates from 1987-1996 .....	25
Exhibit 10: 1995 – Number of Escapes per 100 Inmates.....	26
Exhibit 11: TDOC Inmate Assaults from FY 1993-94 through FY 1995-96.....	27
Exhibit 12: 1995 – Number of Inmate on Inmate Assaults per 100 Inmates.....	27
Exhibit 13: 1995 – Number of Inmate on Staff Assaults per 100 Inmates.....	28
Exhibit 14: Percent of Inmates in Protective Custody, Jan. 1, 1996 .....	29
Idleness.....	29
Exhibit 15: TDOC Inmate Program Assignments for 1996 .....	30
Exhibit 16: Inmates in Job Industries (excluding farms) in 1996.....	32
Health Services .....	33
Exhibit 17: TDOC Health Care Staffing in 1996.....	38
Exhibit 18: Annual Health Care Costs and Cost Ranges from 1993-1996 .....	40
Security and Institutional Environment .....	41
Exhibit 19: 1997 – Correctional Officer Positions, Staffing Ratios, and Starting Salaries in 16 Southern States.....	42
Exhibit 20: 1997 Training Hours for Adult Correctional Officers .....	44

Management and Operations.....	44
Legislative Recommendations .....	47
Administrative Recommendations.....	48
Appendix A: List of Tennessee State Prisons and Corresponding Abbreviations .....	55
Appendix B: Individuals Interviewed.....	56
Appendix C: Letter from Tennessee Department of Correction.....	58

# Executive Summary

In 1982, the U.S. District Court in *Grubbs v. Bradley* ruled that specific Tennessee prison “conditions and practices amount to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 16 and 32 of the Tennessee Constitution.” The court appointed a special master to oversee Tennessee’s prisons and solicited special evaluators to review and observe problem areas and make recommendations for improvement. The result was a 13-year federal receivership<sup>1</sup> of the state’s prison system and more than 1,500 required improvements to Tennessee’s prisons. A few of the more noted improvements included: closing the Tennessee State Prison, developing a quality assurance program for health care, increasing the number of educational programs and jobs available for inmates, increasing staff, revamping the department’s classification system, and building new prisons. In 1994, Tennessee was released from the *Grubbs* court order.

Undoubtedly, the conditions of Tennessee’s prisons greatly improved because of *Grubbs*; however, these improvements came at a high cost to the state and with the loss of control of its prison system. Since the department’s release from *Grubbs* in 1994, legislators and others have expressed concern about departmental actions and policy decisions. They believe that recent decisions may cause the department to deteriorate from the high standards it achieved during *Grubbs*, putting the state at risk of another federal court intervention. The General Assembly’s concern intensified during the 1996 legislative session when it continued the Department of Correction for only three years, instead of the full eight. Senator Douglas Henry, chair of the Senate Finance Committee, asked the Office of the Comptroller of the Treasury to determine whether the department is at risk of another receivership and, if so, the cost of avoiding another federal receivership. Initial research led to a more substantive review of the Department of Correction. The report concludes:

## **Federal receivership of Tennessee’s prisons in the immediate future is unlikely.**

- **Tennessee prison conditions are better today than when *Grubbs* was initiated.** During *Grubbs*, Tennessee’s prisons were severely overcrowded. Violence was pervasive, inmate idleness was high, and facilities, health care, and living conditions were inadequate. Today, the department has new facilities, revised policies, better data analysis capabilities, a quality assurance program for the inmate health care system, and an annual prison inspection process—all of which have helped the department better manage its prisons. (See page 3.)

- **All of the state’s prisons, probation offices, the training academy, and the Department of Correction’s central office are accredited by the American Correctional Association (ACA) decreasing the state’s risk of receivership.**

According to ACA documents, one of the recognized benefits of the accreditation process is

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<sup>1</sup>For the purposes of this report the term “federal receivership” refers to general federal government intervention into a state’s prison system, as in the *Grubbs* case, not actual operation of the system by federal employees.

that it acts as “a defense against lawsuits through documentation” and serves as a “demonstration of a good faith effort to improve conditions of confinement.” Attorney General’s staff believe that meeting the applicable ACA standard(s) provides prison officials with an excellent defense to claims of constitutional violations. (See page 3.)

- **Federal laws have changed, making receivership less likely.**

In 1996 the Prison Litigation Reform Act was enacted, restricting both an inmate’s right to sue and the federal government’s authority to intervene in a state’s prison system. This law requires an inmate to exhaust all administrative remedies before suing. Also, an inmate may not sue if he/she has had three or more court actions found frivolous, malicious, or has failed to state a claim upon which relief may be granted. Under the new federal law, “prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs.” This law should limit the likelihood of a federal court requiring onerous and broad-based improvements, like the 1,500 improvement items called for in *Grubbs*. (See pages 3-4.)

- **Recent court cases make far-reaching *Grubbs*-type suits less likely.**

In 1991, the U.S. Supreme Court in *Wilson v. Seiter* limited how overall prison conditions could constitute cruel and unusual punishment in violation of the Eighth Amendment. Overall prison conditions can be used to determine cruel and unusual punishment only when conditions have the cumulative effect of depriving an inmate of a single, identifiable human need such as food, warmth, or exercise. To be guilty of cruel and unusual punishment it must be proven that prison officials acted deliberately indifferent. Relief is limited to remedy of the identified human need denied.

In 1995, the U.S. Supreme Court in *Sandin v. Conner* made it more difficult for an inmate to prove violation of due process rights under the Fourteenth Amendment. An action against an inmate must have been an “atypical and a significant hardship in relation to the ordinary incidents of prison life” to constitute a violation. (See pages 4-5.)

- **None of the individuals interviewed believe that the department is in immediate danger of federal receivership.**

Those interviewed said that Tennessee’s prisons would have to deteriorate significantly for the department to be placed under another federal receivership. Although receivership does not appear imminent, some interviewed indicated areas of concern. (See page 5.)

**In spite of significant improvements, the state has not corrected all conditions cited during the *Grubbs* case.**

**Overcrowding**

- **According to the statutory standard, Tennessee’s correctional system is still overcrowded.**

TCA 41-1-503 allows the Governor to declare a state of overcrowding emergency if the in-house population exceeds 95 percent of the relevant designated capacity. Since the department was released from *Grubbs* in 1994, the ratio of TDOC inmates to beds has ranged from 96 percent of bed capacity to 99 percent of the designated operating capacity.

Although these ratios are lower than in 1979 when the court took over the system (104 percent) they are higher than four of the 13 years of receivership. In 1996 if the state had moved all felons permanently to state facilities (except those locally sentenced), Tennessee's operating capacity would have increased to 113 percent.<sup>2</sup> Between July 1997 and the year 2000 the bed shortfall is estimated to range between zero and approximately 1,200 beds. After the year 2000 the department has not planned any building projects. As a result the bed shortfall is expected to reach 3,422 by 2005 unless additional beds are added to the state system. (See pages 7-8.)

- **The Department of Correction violates both state statute and court orders by failing to move felons from local jails to state prisons within the required 14 days.**

Because Tennessee's prisons are overcrowded, the state is unable to comply with TCA 41-8-106(g) and court orders from *Dalton Roberts et al. v. Tennessee Department of Correction, et al.* Both require the department to move TDOC inmates into its system from local jails within 14 days of receiving the courts' paperwork. Noncompliance results in local jail overcrowding and puts the state at risk of lawsuits by local governments. In addition, prisoners may not have access to programming available in state prisons. (See pages 12-13.)

- **The department does not track its level of compliance with statute and court orders requiring felons to be moved from local jails within 14 days.**

The department does not record the date it receives the court paperwork on a felon housed in a local jail and cannot determine compliance with state statute or court orders. Failure to track the number of felons beyond the 14-day limit hinders the department's ability to adequately plan for needed prison space. At the July 1997 meeting of the Select Oversight Committee on Corrections department planning and research staff reported that they have been working on a system to improve inmate tracking in local jails. The new system was intended to be operational by December 1997. (See page 14.)

### **Classification**

- **The implementation of TDOC policies has greatly improved the classification system since *Grubbs*, but inmates are held at reception centers beyond court recommended time limits.**

The Department of Correction implemented several policies to improve the classification process and redesigned its system according to standards of the National Council on Crime and Delinquency. Although department policy decreased the time for initial classification from eight to four weeks as recommended by court evaluators, inmates stay at reception centers after classification for excessive periods. In July 1996 ten percent of inmates spent more than 121 days at a reception center after classification, far beyond the court-evaluator recommended 30 days, apparently because prison beds were not available. (See pages 16-17.)

- **Classification overrides exceed court recommended levels.**

An override occurs when a warden decides to change an inmate's custody level. Overrides are significantly lower than when *Grubbs* began, but have increased steadily since 1992. In 1996 the percent of classifications overridden reached 18 percent, well above the court evaluator's recommendation of ten percent. High percentages of classification overrides may

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<sup>2</sup>State felons sentenced to serve time in local jails are not considered in this analysis.

indicate that inmates have not been classified appropriately according to risk, or that the department classifies inmates according to available bed space rather than appropriate custody level. Department officials primarily attribute the increase to a 1995 policy change that allows close custody inmates with non-threatening behaviors to be housed at the medium custody level. (See pages 17-18.)

### **Housing**

- **TDOC has improved housing conditions by adding cell space, beds, and programming space. With the improvements in housing conditions double ceiling has also increased.**

Under *Grubbs*, the court required that certain prison units end double ceiling. These housing units were not only too small, but had infrastructure problems, lacked inmate programs, and mixed custody levels inappropriately. Some facilities violated ACA and constitutional standards by double ceiling under these conditions. Both TDOC and Oversight Committee officials indicate that as infrastructure and programs improved, double ceiling was allowed to increase at the end of *Grubbs*. Since the department's release from *Grubbs*, double ceiling has increased throughout the prison system, particularly at the newer facilities. TDOC plans to continue adding more beds through increased double ceiling at existing facilities and recent department documents state that "all future construction for medium or lower custody levels will be designed to provide full double ceiling." (See pages 19-21.)

### **Environmental Conditions and Sanitation**

- **Although the serious problems during *Grubbs* no longer exist, inspection reports and interviews indicate room for improvement in the department's safety and food service programs.**

Many of the major environmental problems of exposed wiring, cross-connected plumbing, improper lighting, excessive noise, and unsanitary bedding that were pervasive during *Grubbs* have been corrected. The department's occupational health and safety plan, however, has not been updated since 1975 and Tennessee Occupational Safety and Health Administration (TOSHA) officials are concerned about a lack of diligence in the department's safety program. In 1997 the department named as Safety Director the current Director of Engineering, who will conduct safety duties in a part-time capacity. TOSHA rule 0800-1-5-.06 recommends that an agency the size of TDOC should have a full-time Safety Director. (See pages 21-24.)

### **Violence**

- **Because of changes in reporting methods, recent violent incidents cannot be readily compared to the *Grubbs* period. Since 1994 some measures of violence have increased while others have not.**

In 1993 recorded violent incidents increased dramatically when the department changed from manual to electronic reporting, making comparison to previous years invalid. Since 1994, violent incidents as a whole have increased, but the most serious violent incidents have remained steady. Compared to other states, Tennessee had fewer escapes and inmate assaults, but more assaults on staff and greater percentages of inmates in protective custody. (See pages 24-29.)

### **Idleness**

- **Since *Grubbs*, Tennessee has increased educational, vocational, and job programs. Despite improvements, targets for inmate participation in prison industries have not been met and education related positions were abolished in FY 1997-98.**

During *Grubbs* a lack of program assignments was a major problem resulting in inmate idleness. Since *Grubbs*, a larger percentage of inmates work or attend classes. The department improved the educational system during *Grubbs* by requiring the certification of teachers, pay comparable to surrounding counties, and a standard curriculum. However, the FY 1997-98 budget decreased the number of teacher positions and increased class sizes. In addition, the percent of inmates employed in industry jobs is below both goals set during *Grubbs* and those set by Tennessee Rehabilitative Initiative in Correction (TRICOR). Inmate participation in industry in Tennessee is below participation in several other states. Both the reduction of teachers and the failure to meet inmate employment goals in industry may increase inmate idleness. (See pages 29-33.)

### **Health Services**

- **The department has improved its health care system, but does not comply with some *Grubbs* recommendations.**

The department has reduced health care costs, created and maintained a systematic set of policies, developed a quality assurance program, and permits only certified or licensed health care staff to deliver care to inmates, all improvements since the beginning of *Grubbs*. To cut costs and standardize health care the department recently instituted a utilization review program, or managed care system. Despite improvements the department has not fulfilled other *Grubbs* recommendations including:

- 24-hour emergency medical care at every prison,
- adequate monitoring and enforcement of the quality assurance program, and
- increased central office control over health care. (See pages 33-41.)

### **Security and Institutional Environment**

- **TDOC has improved prison security since *Grubbs*. However, recent vacancies and high turnover in correctional officer positions cause concern.**

During *Grubbs*, there was no uniform system for key or tool control. Staff was inadequate and poorly trained, jeopardizing Tennessee's prison security. Since the department's release from *Grubbs*, TDOC uses a uniform system of key and tool control and has defined security levels. According to 1997 data, on average Tennessee has more inmates per correctional officer and requires less total training for new officers than other southern states.

Correctional officer vacancies and turnover, however, have risen. In 1996 some institutions had turnover as high as 72 percent. In August 1997, three institutions each had over 55 correctional officer positions vacant. That same month, TDOC had 215 correctional officer vacancies system-wide, along with 82 other security related vacancies. In response, the department asked current and retired employees to cover correctional officer shifts and required that correctional officers temporarily work a six-day week at the prison with the most vacancies. December 1997 data—the most recent available—provides information

about 14 of the state's prisons that shows that two institutions have security vacancy rates of 13 to 14 percent. Department officials indicate plans to request correctional officer salary increases in the FY 1998-99 budget along with increasing recruitment efforts. An inadequate number of correctional officers could destabilize prison security and jeopardize the improvements made during *Grubbs*. (See pages 41-44.)

### **Management and Operations**

- **The Department of Correction has implemented a number of management procedures and controls since *Grubbs*, but needs greater long-range strategic planning processes.**

The department has improved its management and operations by implementing policies, staffing standards, an annual prison inspection process, an annual planning document, and maintaining accreditation of all facilities. The department also completed its ten-year female felony plan in 1997, which had been in draft form since 1995. However, the department:

- has not released a comprehensive plan since 1985,
- has not completed its 1995-1998 *Three Year Strategic* which has been in draft form since 1995, and
- failed to consult with the Select Oversight Committee on Corrections or the General Assembly on some major policy decisions.

Adequate comprehensive planning could help the department meet the state's future needs for correctional facilities as well as enhance the efficient and effective use of resources. (See pages 44-47.)

## ***Recommendations***

The report contains several legislative and administrative recommendations that might improve the operations of Tennessee's correctional system. (See pages 47-54.)

### ***Legislative***

- The General Assembly may wish to consider whether the present overcrowding standard set forth in *TCA 41-1-503* is reasonable. By this standard, Tennessee has never reached a non-emergency status. If the statutory measure of overcrowding is determined reasonable, the General Assembly may want to consider alleviating prison overcrowding through increasing the number of state prison beds, reviewing sentence lengths, or expanding the amount of alternative sentencing options available.
- The General Assembly may wish to examine the 14-day standard established for removal of inmates from local jails in *TCA 41-8-106(g)*.
- The General Assembly may wish to statutorily require the development of strategic plans to be presented to the Select Oversight Committee on Corrections or other appropriate bodies.

### ***Administrative***

- The department should increase state prison space or work with the General Assembly to consider other ways to alleviate prison overcrowding.
- The department should comply with *TCA 41-8-106(g)* and the *Roberts* orders, by taking

inmates from the local jails within 14 days. The department should institute a tracking system to identify inmates held in local jails longer than 14 days.

- The department also should move inmates from the reception centers to other facilities in a shorter period of time.
- The department should closely monitor the number of custody overrides in its system and take steps to reduce them. The department should explore and develop ways to adjust the scoring on the Custody Assessment Form (CAF) to ensure that inmates are classified appropriately.
- The department should carefully monitor double celling to assure that it does not escalate to a level that a prison's infrastructure cannot support, rendering cell and program space inadequate, increasing violence, and expanding inmate idleness. The department should report monitoring results to the Select Oversight Committee on Corrections or other appropriate bodies.
- The department should update its TOSHA plan and consider making the Safety Director a full-time position. The department's TOSHA plan has not been updated since 1975. The newly named Safety Director also serves as the agency's Director of Engineering, conducting safety responsibilities on a part-time basis. TOSHA rule 0800-1-5-.06 states that an agency with over 2,000 employees should have a full-time Safety Director.
- Department staff should examine carefully the number of violent incidents in the prisons, specifically looking for patterns of disturbance.
- The Tennessee Rehabilitative Initiative in Corrections (TRICOR) should aggressively work toward increasing the number of industry jobs for inmates. Other state agencies, including TDOC, should assist TRICOR in these efforts.
- The department should monitor the effect on the prison's educational system caused by recent reductions in teaching staff. The department should report monitoring results to the Select Oversight Committee on Corrections or other appropriate bodies.
- The department should examine the level of 24-hour emergency care at every state prison, reinstate the statewide Continuous Quality Improvement Coordinator position, and consider moving more health care hiring and contracting responsibilities to its central office.
- TDOC should decrease the turnover and vacancy rates in correctional officer positions. Correctional officers have more contact with inmates than most other TDOC staff. When staff instability exists in this area, prison security could be compromised.
- The department should institute a departmental policy requiring long-range strategic planning that includes consultation with other entities including local governments, law enforcement officials, the Board of Paroles, and legislators.

The Department of Correction's responses to these recommendations as well as additional comments by the Office of Research may be found in pages 48-53.

# Introduction

As a result of comments by members of the Select Oversight Committee on Corrections, Senator Douglas Henry sent the Comptroller of the Treasury a letter on May 3, 1996, expressing concern that conditions in the Department of Correction may subject the state to another federal receivership. Senator Henry requested that staff from the Office the Comptroller of the Treasury answer the following questions:

- To what extent are the same events occurring now that previously resulted in the Federal Receivership of the Department of Correction?
- What is the possible cost to the state of making improvements, if found necessary, as opposed to the cost of another Federal Receivership?<sup>1</sup>

Research of these questions led to a more substantive review of the Department of Correction.

# Methodology

To respond to Senator Henry's request, Office of Research staff conducted interviews with Department of Correction staff, Oversight Committee staff, former officials of the Department of Correction, individuals involved in the federal receivership, and legislators concerned with corrections. Staff also visited prisons, discussed prison conditions and prison management with accreditors, reviewed legal materials, analyzed various data collected by the Department of Correction, reviewed the department's data collection methods as well as its policies and procedures. In addition staff reviewed prison evaluation reports produced by the Tennessee Department of Correction, the American Correctional Association, the Tennessee Department of Labor Division of Occupational Safety and Health, and the Tennessee Department of Health Division of Food and General Sanitation.

# Background

In the mid-1970s, several lawsuits were filed in state court against the Tennessee Department of Correction (TDOC). In 1978 the trial court ruled against TDOC and the cases were appealed to the Tennessee Court of Appeals and Tennessee Supreme Court. Subsequently the Tennessee Supreme Court abstained from deciding these cases pending federal resolution. The U. S. District court combined the cases on appeal into a class action suit on behalf of the inmates and appointed attorneys on their behalf because of "the seriousness and complexity of the issues raised." The resulting case was the *Grubbs* suit.<sup>2</sup>

In 1982, the U.S. District Court ruled in *Grubbs* that specific prison "conditions and practices amount to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 16 and 32 of the Tennessee Constitution." There were seven specific conditions and practices that the court determined amounted to cruel and unusual punishment:

1. Double celling of inmates at two prison facilities;

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<sup>1</sup>For the purposes of this report the term "federal receivership" refers to federal government intervention into a state's prison system, as in the *Grubbs* case. It does not refer to the legal connotation that involves the federal government sending its employees into the state's prison system to actually assume operations.

<sup>2</sup> *Scotty Grubbs, et al. v. Christine J. Bradley, et al.* The case did not originate with Christine Bradley as the named defendant; in such cases, the defendant's name changes to correspond with the commissioner at the time the case is being heard. Upon final disposition of the *Grubbs* case, Christine Bradley was the commissioner. *Grubbs v. Harold Bradley*, pp. 1055-1057.

2. Confining an inmate in a cell for more than one week without access to hot water;
3. Confining inmates in portions of two facilities that were “unfit for human habitation”;
4. Failing to maintain minimum sanitary conditions in food storage, preparation, and service areas at three institutions;
5. Failing to protect inmates at three institutions from violent attacks;
6. Failing to provide minimally adequate medical care for inmates at nine prisons; and
7. Confining female inmates in segregation with no opportunity to exercise.

The court ordered that the department could no longer deny the opportunity for physical exercise to female inmates in segregation; the parties would submit names for a special master; and that the Department of Correction would prepare plans to remedy the constitutional violations found by the court.<sup>3</sup> The department proposed the *Correction Plan for the Eighties* to correct the problems. When TDOC experienced difficulty implementing the plan, the judge directed the special master to appoint specialized evaluators to review and observe the problem areas of the state’s prison system and make recommendations for improvement.

The evaluators developed a list of more than 1,500 needed improvements for the Department of Correction. This list is referred to as the *Grubbs* matrix. In 1992, the evaluators reported back to court explaining that while many of the issues in the matrix had been resolved, some concerns remained, including the lack of a health care quality assurance program. TDOC remained under court control until 1993, when the judge returned control to TDOC with the requirement that the department monitor for one year its quality assurance program for health care. In 1994, Tennessee was completely released from the court order. The only permanent order required the closure of the Tennessee State Penitentiary. The chart below provides a detailed chronology of the *Grubbs* suit.

### **Chronology of *Grubbs* Case**

<b>1980</b>	<b>Inmates’ cases against the Department of Correction consolidated into <i>Grubbs v. Bradley</i>.</b>
<b>1981</b>	<b>Bench trial of <i>Grubbs</i>.</b>
<b>1982</b>	<b>Federal Judge found the Department of Correction in violation of constitutional standards in certain specific areas.</b>
<b>1983</b>	<b>Federal court appointed a Special Master to oversee TDOC.</b>
<b>1984</b>	<b>TDOC agreed to evaluations in classification, education, inmate employment, health services, security, institutional environment, and management and operations by court appointed evaluators.</b>
<b>1985</b>	<b>Court ordered a cap on the number of inmates allowed in state prison system. Court ordered an end to double celling at the Tennessee State Penitentiary.</b>
<b>1985</b>	<b>Special Legislative Session on Corrections:</b> <ul style="list-style-type: none"> <li>• <b>Established Select Oversight Committee on Corrections.</b></li> <li>• <b>Initiated Community Corrections programs.</b></li> <li>• <b>Created Sentencing Commission.</b></li> </ul>
<b>1993</b>	<b>TDOC released from <i>Grubbs</i> suit with two restrictions:</b> <ul style="list-style-type: none"> <li>• <b>Department required to report on health services for one year.</b></li> <li>• <b>Tennessee State Penitentiary prohibited from ever housing inmates.</b></li> </ul>
<b>1994</b>	<b>Department of Correction completely released from <i>Grubbs</i>.</b>

*Information combined from Tennessee Department of Correction Annual Report, FY 1992-93 and FY 1993-94. Interview with Claire Drowota, Executive Director of the Select Oversight Committee on Corrections.*

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<sup>3</sup>*Grubbs*, p. 1132.

# Analysis and Conclusions

**Federal receivership of Tennessee’s prisons in the immediate future is unlikely. However, some of the conditions under *Grubbs* still exist and need improvement.**

Federal receivership of Tennessee’s correctional system is much less likely today because of the many changes within the state’s prison system and changes outside Tennessee, including new federal laws and rulings in recent inmate lawsuits. However, since predicting the results of litigation is difficult, it is important to evaluate the current conditions of Tennessee’s prisons determining where the most risk exists and how to improve. Although those interviewed did not believe that the state was in immediate danger some cited problems, warranting corrective action.

- **Tennessee prison conditions are better today than when *Grubbs* was initiated.**

The Tennessee Department of Correction has improved in many areas since the beginning of *Grubbs*. The following elements are present today and are improvements that resulted from the *Grubbs* suit:

- formalized policies,
- a computerized system for tracking inmate information (TOMIS),
- more accurate population projections,
- more inmates either working or in school,
- a quality assurance program for its health care system,
- an annual inspection process, and
- several new facilities.

- **Today, all of the state’s prisons, probation offices, the training academy, and the Department of Correction’s central office are accredited by the American Correctional Association (ACA), decreasing the state’s risk of receivership.**

The improvements made to Tennessee’s prisons during *Grubbs* have enabled the accreditation of every state prison by the American Correctional Association. According to ACA documents, one of the recognized benefits of the accreditation process is that it acts as “a defense against lawsuits through documentation” and serves as a “demonstration of a good faith effort to improve conditions of confinement.”<sup>4</sup> Attorneys from the Civil Rights and Claims Division of the Attorney General’s Office believe that meeting the applicable ACA standards provides prison officials with an excellent defense to claims of violation of inmates’ constitutional rights.

- **Federal laws have changed, which may make receivership less likely.**

In April 1996 President Clinton signed the Prison Litigation Reform Act into law. This law, which amended Titles 18, 28, and 42 of the *United States Code*, restricts both an inmate’s right to sue and the federal government’s authority to intervene in a state’s prison system. Under this act an inmate may sue only when all administrative remedies have been exhausted and only after paying or arranging a payment plan of a court’s filing fees. Section 1915, Title 28 of *U.S. Code*, prohibits an inmate from filing a civil action or appealing a judgment if he has initiated three or

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<sup>4</sup>Correspondence from the American Correctional Association to Bobby [sic] Halliburton, Assistant Commissioner of Field Services, Tennessee Department of Correction, August 28, 1996. p. 10.

more court actions that were found frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Also the act limits the changes, called prospective relief, the court can require of prison systems. Under the new federal law, relief extends “no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs.” The court may still issue temporary restraining orders against a prison system requiring preliminary injunctive relief, but the temporary order will expire after 90 days unless the court takes further action. Specifically, it appears that this act:

- Does not allow the courts to require the construction of prisons.
- Prohibits the courts from requiring an increase in taxes.
- Allows the early release of inmates in certain circumstances.
- Allows narrowly drawn temporary restraining orders of a court system or allows the court to issue an order of preliminary injunctive relief for a limited amount of time.
- Limits consent decrees only to correct a specific violation of a federal right of a particular plaintiff or plaintiffs.
- Allows the appointment of a special master, whose continuing need is reviewed every six months.<sup>5</sup>

According to *Governing* magazine, the new law “strips the federal courts of much of their power to improve prison conditions and imposes a term limit to open-ended prison consent decrees.”<sup>6</sup> The general counsel for the Department of Correction and the consultant to the Select Oversight Committee on Corrections agree that the new federal law severely limits the federal government’s ability to take over any state’s prison system and hinders the courts from requiring detailed prospective relief.

Attorneys with the Attorney General’s Civil Rights and Claims Division believe that this new act does not significantly change the standards for determining liability. In their opinion, prior case precedent limited federal court intervention in the operation of a state’s prison system. According to the Attorney General’s staff, this act differs from previous law by making it clear that Congress does not favor long lasting federal court oversight of state prison systems.<sup>7</sup> Many of the court challenges involving the Prison Litigation Reform Act have been limited to resolving existing court injunctions of state prison systems, not new cases. It is unknown whether part of the federal law will be limited or overturned, or the ultimate effect of this new act on future federal intervention. However, it is clear that federal intervention in state prisons has been limited.

- **Recent court cases make far-reaching *Grubbs*-type suits less likely.**

Since *Grubbs* two cases have set precedent making receivership less likely. In 1991, the U.S. Supreme Court in *Wilson v. Seiter* limited how overall prison conditions, or totality of circumstances, could constitute cruel and unusual punishment in violation of the Eighth Amendment. During *Grubbs*, an accumulation of several problems in Tennessee’s prisons led to the system’s unconstitutionality. Under *Wilson v. Seiter*, the use of overall prison conditions is

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<sup>5</sup>18 U.S. Code § 3626.

<sup>6</sup>“The Endless Court Order,” *Governing Magazine*, April 1997, p. 41.

<sup>7</sup>Interview with Kimberly Dean and Stephanie Reeves, Deputy and Assistant Deputy Attorney General, Civil Rights and Claims Division, Office of the Attorney General, April 2, 1997.

allowed to determine cruel and unusual punishment only when conditions have the cumulative effect of depriving an inmate of a single, identifiable human need such as food, warmth, or exercise. The case also determined that conditions of confinement could constitute cruel and unusual punishment only when prison officials are proven to have acted deliberately indifferent.<sup>8</sup>

In 1995 the U.S. Supreme Court in *Sandin v. Conner* made it more difficult for inmates to prove violation of their Fourteenth Amendment due process rights. Under *Sandin*, any action against an inmate must be “atypical and a significant hardship in relation to the ordinary incidents of prison life,” for an inmate’s due process rights to have been violated. This decision also makes it more difficult for an inmate to use agency policy to establish a liberty interest from which to sue for violation of due process rights. Prior to *Sandin*, inmates frequently used the mandatory language in state prison regulations to argue that they were entitled to certain privileges, establishing a liberty interest from which the inmate could sue. The court explained in *Sandin* that the wide interpretation of liberty interest for inmates led to “the involvement of federal courts in the day-to-day management of prisons.” *Sandin* limits an inmate’s ability to establish due process liberty interests through prison regulations.<sup>9</sup> Because *Grubbs* dealt with violations of both the Eighth and Fourteenth Amendments, the precedents established by the *Wilson* and *Sandin* cases make federal involvement in a state’s prison system regarding these two amendments less likely today than during *Grubbs*.

- **None of the individuals interviewed believed that the department was in immediate danger of federal receivership.**

None of the individuals interviewed, including current and former TDOC staff, Select Oversight Committee on Corrections staff and members, attorneys in the *Grubbs* suit, and American Correctional Association auditors, believed that the state was in immediate danger of federal receivership. One person indicated that warning signs are apparent and that court receivership may occur again, although not immediately. Others did not think legal threats to the Department of Correction were imminent, but did indicate areas of concern that may lead to lawsuits in specific areas.

Below is an analysis of the court’s main concerns during *Grubbs* and a comparison to conditions today. These concerns are divided into nine subject areas: overcrowding, classification, housing, environmental conditions and sanitation, violence, idleness, health care, security, and management and operations.

## **Overcrowding**

### Under *Grubbs*

A 1980 performance audit by the Division of State Audit found Tennessee prisons operating at 104 percent of designed capacity in December 1979. The auditors stated that “overcrowding is a problem because it negatively affects institutional services and programs, and the general welfare of inmates.” At the time of the audit, just prior to the *Grubbs* suit, TDOC was involved in another lawsuit, *Trigg v. Blanton*, involving overcrowding. The 1980 audit report identified specific problems determined in the *Trigg* case that overcrowding:

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<sup>8</sup>*Wilson v. Seiter*, 501 U.S. 294, 111 S.Ct. 2321. 1991.

<sup>9</sup>*Sandin v. Conner*, 115 S.Ct. 2293. 1995.

- decreases the effectiveness of the classification system by classifying inmates based on the types of beds available, rather than on individual prisoners' needs;
- increases violence because inmates are housed together;
- increases the spread of infectious disease among inmates;
- overtaxes the institution's support systems;
- outstrips job and program resources; and
- allows a prison subculture to grow, making the prison harder to control.<sup>10</sup>

The extent of overcrowding at Tennessee State Penitentiary (TSP) resulted in the court ordering its permanent closure. In addition, the court appointed evaluators to examine the overcrowding issue further. These evaluators recommended building two 500-bed prisons to accommodate inmates from TSP and more square footage per inmate.

By 1985 the court ordered an end to double celling at some of the institutions, placed caps on the number of inmates at each prison, and prohibited the admission of new inmates into the state's custody without the corresponding release of inmates. Unfortunately, TDOC efforts to address the overcrowded conditions were hampered by continued growth in the prison population. To accommodate the state's growing inmate population, the General Assembly passed legislation in 1985 that authorized the governor to take certain actions when prisons are determined overcrowded. *TCA 41-1-503* requires that the Commissioner of Correction notify the governor when the state's in-house inmate population exceeds or is expected to exceed 95 percent of capacity for a 30-day period. The governor may then declare a state of overcrowding emergency.

In that case, the governor must notify the Select Oversight Committee on Corrections and the Attorney General of the number of inmates the state has in custody above 90 percent capacity. *TCA 41-1-504* authorizes the governor to:

- direct the Parole Board to release inmates early, and/or
- direct the Department of Correction to notify all state judges and sheriffs that certain felons' sentences would be stayed until the state's in-house inmate population decreases to 90 percent of capacity for 60 days.

The 1992 *Report of the Special Master Regarding the Defendants' Compliance with the Court's Orders* states that overcrowding was a "major element in the creation of unconstitutional conditions in Tennessee prisons." The report commended TDOC for limiting the number of new entrants into the state system and for building new prisons. However, the report criticized the state for passing the state's overcrowding problems to local jails by allowing inmates to serve their sentences in local jails. The report concluded with concerns that inmate population growth would hinder the state's ability to "operate safe, humane, and constitutionally adequate prisons."<sup>11</sup> Despite the mixed review the court released the state from receivership with no population restrictions.

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<sup>10</sup>*Program Evaluation of the Department of Correction*, Division of State Audit, Comptroller of the Treasury, August 1980, pp. 59 and 62.

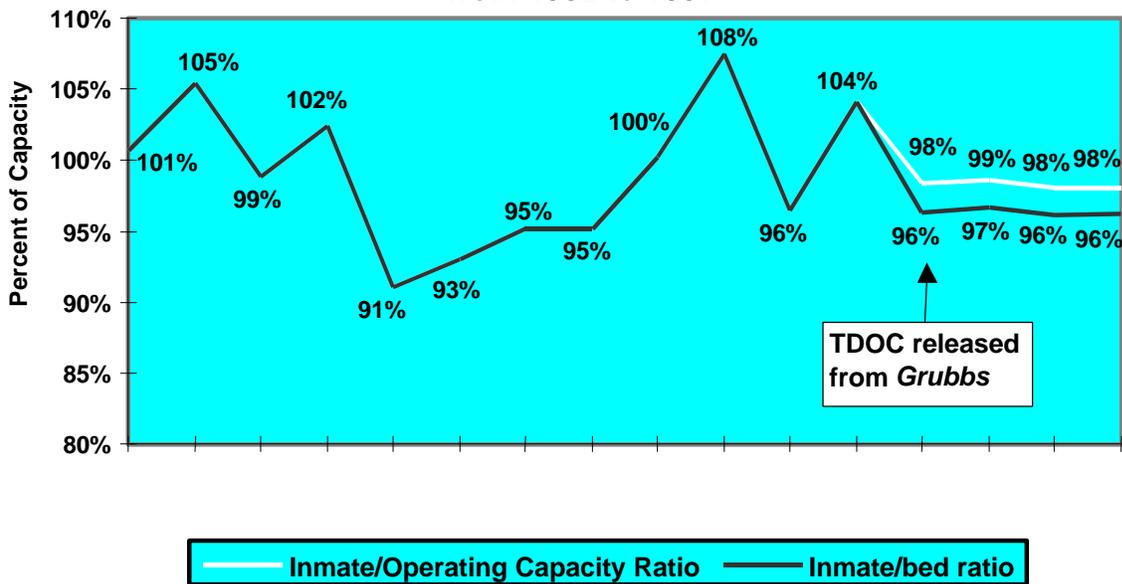
<sup>11</sup>*Report of the Special Master Regarding the Defendants' Compliance with the Court's Orders*, May 1992, pp. 20 and 21.

Current Condition

- According to the statutory standard, Tennessee’s correctional system is still overcrowded.

Determining whether Tennessee’s prisons are at a dangerous level of overcrowding is not a simple task. According to the standard in TCA 41-1-503, TDOC’s prison system is overcrowded when it is operating above 95 percent of capacity. According to the General Counsel for TDOC, an overcrowding emergency has been declared ever since the legislation passed and will not be removed unless the governor declares that the state is no longer in an overcrowding emergency.<sup>12</sup> The department’s draft *Three Year Strategic Plan* for 1995-1998 addressed the department’s overcrowding situation by referring to TDOC bed space as “considerably tight.”<sup>13</sup> The American Correctional Association in its 1996 re-accreditation audit of the department’s central office indicated that Tennessee’s prisons were overcrowded, but complimented the agency’s handling of the situation, stating that “the Agency has addressed overcrowding in prisons proactively and in a professional manner.”<sup>14</sup> TDOC is operating at a lower capacity today than just prior to *Grubbs*. From 1982 through 1997, the population increased 85 percent while the total number of inmate beds in the state system increased 93 percent. Exhibit 1 illustrates TDOC’s operating and bed capacity from 1982 through 1997.

**Inmate Operating & Bed Capacity by Year  
from 1982 to 1997**



**Exhibit 1**

Source: Information provided by the Department of Correction.

Note: The inmate/operating capacity is the ratio of inmates in the state prison system compared to the capacity limits set by the department. The capacity set for the prison system allows some vacant beds, increasing the flexibility in the prison system. Operating capacity will always be less than 100 percent. Inmate/bed capacity is the ratio of inmates to the number of actual beds in the state’s prison system. The ratios for inmate/operating capacity and inmate/bed capacity were the same until 1994 because the court determined the number of inmates allowed in each prison. After 1994, the department determined its operating capacity at 98 percent of beds filled. Department officials believe a bed vacancy of two percent provides the needed flexibility in the state’s prison system, allowing inmate movement within institutions, and from one institution to another when necessary.

<sup>12</sup>Interview with Debra Inglis, General Counsel, Tennessee Department of Correction, September 10, 1996.

<sup>13</sup>Draft *Three Year Strategic Plan*, 1995-1998, Tennessee Department of Correction, p. 61.

<sup>14</sup>Commission on Accreditation for Corrections, *Standards Re-accreditation Audit*, Tennessee Department of Correction Central Office, May 22-23, 1996, p.5.

In 1979, just prior to the initiation of the *Grubbs* suit, TDOC had 5,693 inmates and operated at 104 percent of designed capacity.<sup>15</sup> As Exhibit 1 illustrates, from 1982 through 1993 the ratio of inmates to both the number of beds and the court-stated capacity of the state's prisons varied greatly, ranging from a low of 91 percent in 1986 to a high of 108 percent in 1991. When the ratio exceeded 100 percent it meant that there were more inmates and beds than the court-stated capacity allowed during *Grubbs*. There were years, however, under court receivership when the prisons were not overcrowded according to the statutory standard.

Since release from the *Grubbs* suit, the ratio of inmates to number of beds has remained steady at about 96 percent. The ratio of inmates to the department's designated operating capacity of its prisons has held at approximately 98 percent. However, both the inmate-to-bed ratio and the inmate-to-operating ratio are above the 95 percent overcrowding designation specified by state statute. These ratios are lower than they were when the court took over the state's prison system, when the state's capacity was 104 percent, but are higher than in four years of the state's 13-year receivership. In 1994, when the state was released from the court order the Department of Correction developed its own method of determining the operating capacity of prisons. In general, the department has set its operating capacity at 98 percent of the beds filled system-wide. The department believes this two-percent bed vacancy provides the needed flexibility to move inmates when necessary.

It is important to understand that when percentages of bed and operating capacity are given they do not include state inmates who are either sentenced to local jails or are held in local jails awaiting transfer to state facilities. Both the inmates awaiting transfer to state facilities (called backup) and inmates who are locally sentenced are discussed separately in the overcrowding section of this report.

- **In 1996, Tennessee's prisons appeared less crowded than most other states. However, if state inmates in local jails had been housed in state facilities Tennessee's prisons would have been as crowded as other states, and severely overcrowded according to Tennessee's statutory standard.**

According to the U.S. Department of Justice, for 1996 state prisons on average operated between 114 percent and 126 percent of capacity. Tennessee was operating at 97 percent of its highest capacity and 99 percent of its lowest capacity, significantly lower than the national average for that year. However, in understanding how Tennessee compares to other states, it is important to note that more than half the states reporting in 1996 may have included both felons held in state and local facilities. Tennessee did not.<sup>16</sup> If Tennessee's locally sentenced felons and state inmates held in local jails had been included in the analysis, Tennessee would have operated at 138 percent of operating and bed capacity. If only inmates held in local jails were included along with state held inmates, excluding locally sentenced inmates, TDOC would have been at approximately 114 percent of operating and bed capacity.<sup>17</sup>

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<sup>15</sup>*Program Evaluation on the Department of Correction*, Division of State Audit, Comptroller of the Treasury, August 1980. p. 59.

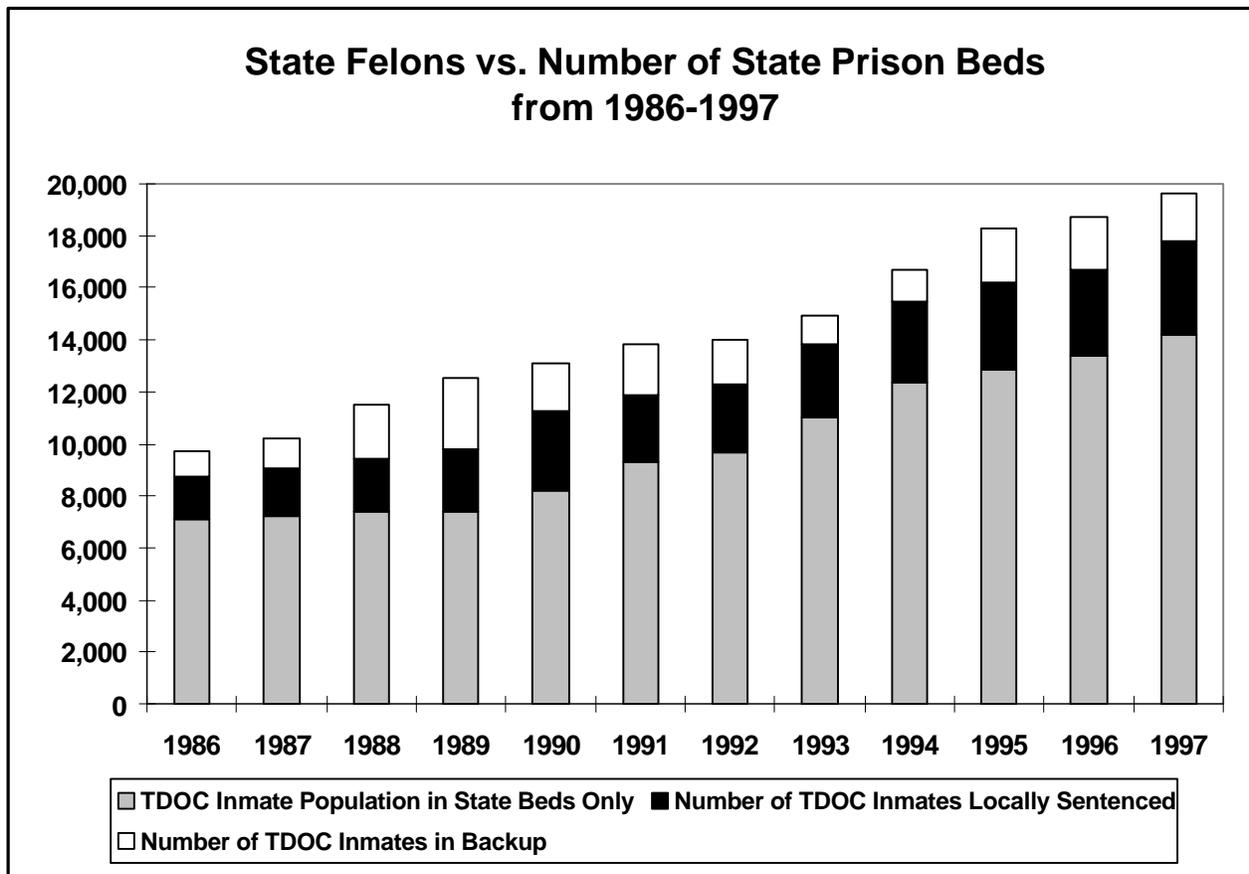
<sup>16</sup>*Prisoners in 1996*, Bureau of Justice Statistics, U.S. Department of Justice, June 1997, pp. 7 and 8.

<sup>17</sup>Capacity, backup, and local sentencing data provided by the Tennessee Department of Correction.

Since the *Grubbs* lawsuit the state has built six new prisons and added a total of 6,842 new beds at a total cost of \$245 million. In addition to adding new beds to the state system, the department increased the number of inmates it housed outside of TDOC prisons. Tennessee houses two types of inmates in local jails. The first are felons held after trial, or “backed up” temporarily in local jails awaiting transfer to state facilities. In 1997, 1,817 inmates were backed up in local jails.

Felons can also be sentenced to local jails. In 1981, *TCA 41-8-101* was enacted, called the County Correctional Incentives Act. It allows counties to contract for state felons to be sentenced to serve their time in local jails instead of a state prison. Judges may sentence felons with less than six-year sentences to serve their time in local jails rather than state facilities. The purpose of sentencing felons to local facilities is to keep less violent offenders out of the state prison system, take pressure off the state’s need for beds, and give local governments additional revenue. In 1997, there were 3,571 state inmates who were sentenced to local jails.

**Exhibit 2**



*Source: Information provided by the Tennessee Department of Correction.*

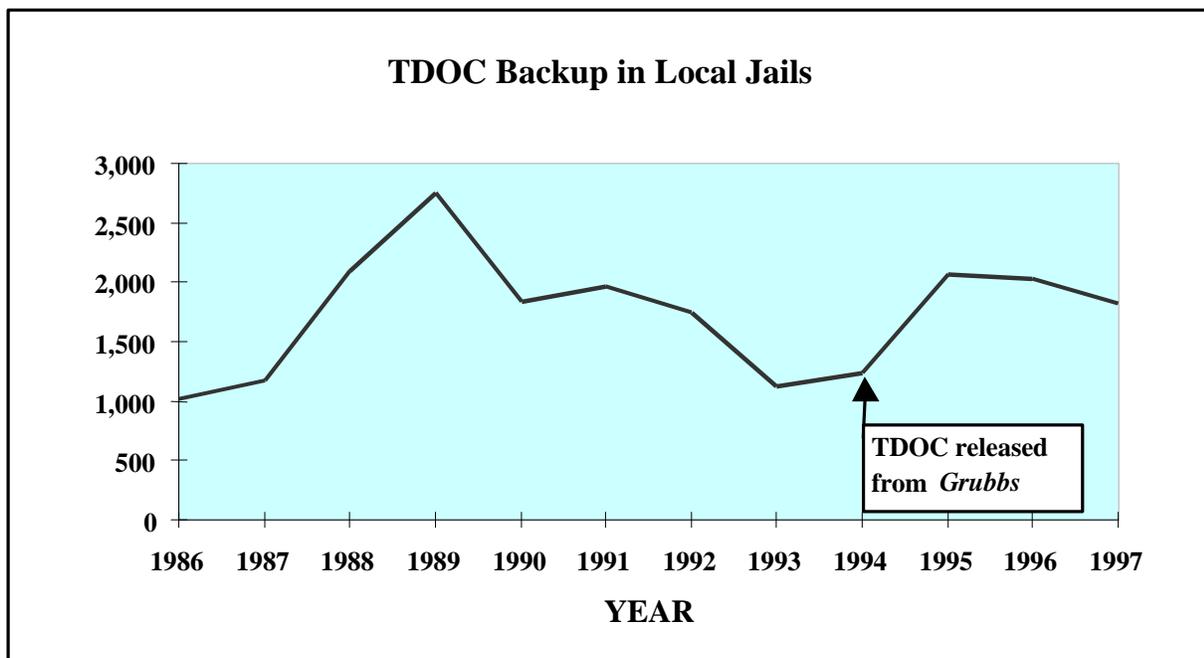
- **Since the department's release from *Grubbs*, Tennessee has relied increasingly on local jails to house state inmates.**

From 1986 through 1997 there was a 104 percent increase in the number of TDOC inmates either sentenced to local jails or housed in local jails awaiting transfer to a TDOC facility.

From 1994 through 1997 the system experienced a:

- 15 percent increase in felons locally sentenced; and
- 15 percent growth in felons held at TDOC facilities.
- 46 percent growth in the number of incarcerated felons in local jails awaiting transfer to state facilities.<sup>18</sup>

For FY 1997-98, \$71.2 million was allocated to local jails for housing state inmates. These state funds support local jails for incarcerating state felons who are sentenced to serve time locally and to hold inmates prior to transfer to state prisons. The amount is less than in FY 1996-97, which totaled approximately \$97.9 million. The decrease in spending reflects the department's plan to transfer more state felons in local jails to state prisons as new state beds become available.



**Exhibit 3**

*Source: Information provided by the Department of Correction.*

- **Since the state was released from the *Grubbs* suit the number and percent of TDOC inmates held in local jails has increased.**

In 1994 there were 1,246 inmates backed up in local jails, seven percent of all TDOC inmates. By 1996 the number of inmates increased to 2,029, or 11 percent of TDOC inmates. In 1997 the number of inmates in backup decreased to 1,817 or nine percent of TDOC inmates. This amounts to a 46 percent increase in three years. Although the number and percentage of TDOC inmates in backup has increased in recent years, the number has not reached its 1989 high of 2,758, or 22 percent of TDOC inmates.

<sup>18</sup>*Felony Population Projections*, Tennessee Department of Correction, December 1996, p.5 and *Felony Population Projections*, December 1997, Exhibit 1.

The Department recognizes the burden state inmates place on local jails, as evidenced in the draft *Three Year Strategic Plan, 1995-1998*:

“While there have been times when there has been a greater backup of TDOC felons in the county jail system, there has not been a larger overall jail population for the counties to maintain even during 1985 when the courts took over the prison system for overcrowding among other issues. The local jails around the State are severely over capacity and are demanding relief.”

The draft plan further explained that local jails have little flexibility in their system partially caused by the state’s use of so many local beds. The draft plan stated that the department should remove all TDOC felons in backup, except those who are locally sentenced, and add beds to the state prison system to accommodate the transfer by June 1998.<sup>19</sup> As of October 1997, nearly 30 percent of local beds were used by state felons, including those sentenced locally and those in backup.<sup>20</sup>

- **Compared to other states, Tennessee has a large percentage of its inmates in local jails.**

As of January 1, 1996, 23 of the 50 states reported housing inmates in local jails. Tennessee reported the second highest percentage of state inmates in local jails at 28.2 percent, second to Louisiana’s 33.3 percent.<sup>21</sup> This figure included both locally sentenced inmates and inmates in backup. In 1996, the average percent of inmates in local jails for all 23 states was 7.7 percent.

According to information from the Bureau of Justice Statistics, in 1995 Tennessee was one of 26 states that reported holding state prisoners in local jails because of prison crowding. In 1995, 13.5 percent of Tennessee’s state inmates were held in local jails, significantly above the U.S. average of 2.9 percent, ranking Tennessee the fifth highest among the reporting states. In 1993 and 1994 Tennessee far exceeded the average percentage of state inmates in local jails, ranking it the sixth highest for all reporting states.<sup>22</sup>

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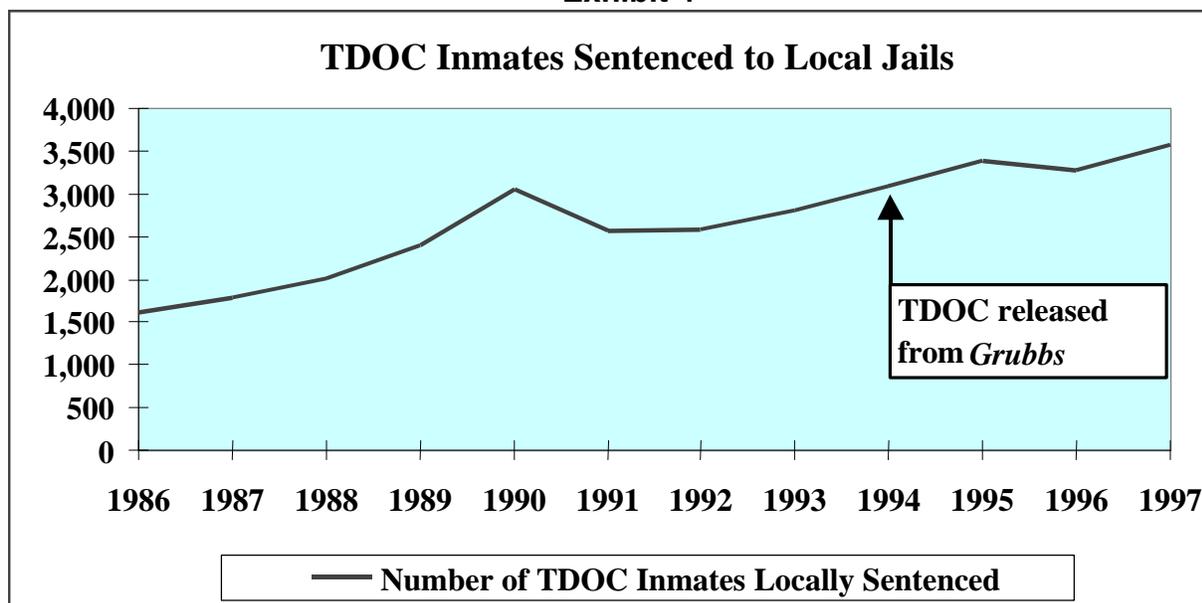
<sup>19</sup>Draft *Three Year Strategic Plan, 1995-1998*, Tennessee Department of Correction, pp. 64 and 65.

<sup>20</sup>Figures include both TDOC inmates backed up in local jails and those locally sentenced. October 17, 1997, *Jails Summary Report* included in TDOC’s December 1997 Response to the Select Oversight Committee on Corrections.

<sup>21</sup>*The Corrections Yearbook*, 1996, Criminal Justice Institute, pp. 2 and 3.

<sup>22</sup>*Prison and Jail Inmates, 1995*, Bureau of Justice Statistics, August 1996 Bulletin, p. 6. *Prisoners in 1994*, Bureau of Justice Statistics, August 1995 Bulletin, p.6.

Exhibit 4



Source: Information provided by the Department of Correction.

- **The number of state felons sentenced to local jails has increased since *Grubbs*.** According to information supplied by the Department of Correction the highest number of inmates locally sentenced during receivership was 3,048 in 1990. By 1997 the number of TDOC felons that judges sentenced to serve their time locally rose to 3,571. Since its release from *Grubbs*, the state has relied increasingly on local jails to manage the increasing felon population.
- **The Tennessee Department of Correction is not complying with TCA 41-8-106(g), which requires the state to take convicted felons who are not locally sentenced into state custody within 14 days.**

According to TCA 41-8-106(g),

After July 1, 1992, the department shall take into its custody all convicted felons from any county that had not contracted with the state as authorized by subsection (b). The department shall not be required to take actual physical custody of any such felons until fourteen (14) days after the department has received all certified sentencing documents from the clerk of the sentencing court.

The department recognizes this statutory obligation in its draft *Three Year Strategic Plan, 1995-1998*, stating: “TDOC *must* have the capacity to intake offenders within 14 days of receipt of the final judgment documents....TDOC, in compliance with State statute, should be removing convicted felons from the jails within 14 days after judgment documents have been received...”<sup>23</sup> (Emphasis added.) The Deputy Commissioner estimates 600 to 800 state inmates in local jails are beyond the 14-day limit.<sup>24</sup> She indicated that local officials have called the department threatening

<sup>23</sup>Draft *Three Year Strategic Plan, 1995-1998*, Tennessee Department of Correction, pp. 64-65.

<sup>24</sup>Interview with Linda Dodson, Deputy Commissioner, Tennessee Department of Correction, February 28, 1997.

to sue the state if it does not pick up state inmates. However, according to officials with the Attorney General's Office, no such lawsuits have been filed in the last two years.

One local official expressed concern that the Department of Correction was leaving inmates in local jails, perhaps with no intention of ever taking them into state facilities. He said that the problem has been worse in the last two years. Many times when he has called about the transfer of a disruptive inmate, he has been told that there is no room in a state facility. This official explained that some TDOC inmates had been held in this local facility for over two years, although he acknowledged that the lengthy stay might result from local decisions. For example, local officials may choose to transfer a more disruptive inmate who has not been in the facility as long. At the time of the interview, the local facility had just experienced a riot, which the superintendent attributed to more violent state inmates. After the riot, TDOC transferred most of the instigators into state facilities. Department officials cite a process for sending felons from local jails to state facilities for safekeeping in specifically defined cases. Beyond these specific situations, they indicate that TDOC's classification staff always attempt to assist the local jails when a state sentenced felon is problematic and needs to be moved into the state system.

- **The Tennessee Department of Correction is not complying with the *Roberts* orders, which require the department to take inmates within 14 days in four counties.**

In the 1980s several jail inmates sued local governments for overcrowding and conditions of confinement. In 1989 the suits were consolidated and the state was brought in as a third party in the case. The consolidated case, *Dalton Roberts et al. v. Tennessee Department of Correction et al.*, set population limits for county jails and workhouses involved in the suit and required the state to take TDOC inmates held in local jails within 14 days of receiving the felon's sentencing papers and pre-sentencing reports. According to the Department of Correction's General Counsel, the state is still obligated under orders issued in the *Roberts* suit to take inmates in Davidson, Hamilton, Knox, and Madison counties within 14 days. This is no different than the state's obligations under TCA 41-8-106 (g); it is simply that a court has ordered compliance with the statute in the *Roberts* counties. Local officials involved in the *Roberts* suit indicate that TDOC may not be complying with the court orders.

One county official said that the 14-day rule had not been followed by the state since 1983. An official from another *Roberts* county explained that most non-compliance was related to female inmates, caused by a lack of state beds designated for females. Although some local officials express concern about the state's failure to comply with 14-day *Roberts* orders, officials in the Attorney General's office are not aware of any lawsuits that have been filed by *Roberts* counties in the last two years against TDOC for noncompliance of the orders.<sup>25</sup>

In July 1997 TDOC documents to the Oversight Committee state that transfers of state felons from county jails to state prisons have increased in recent months with the addition of available beds to the state's prison capacity. As stated in the document, "The department's intent is to first remove sentenced felons (excluding locally sentenced inmates) from the counties of Davidson, Hamilton, Knox, and Madison." According to department comments, as of December 1997 it has

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<sup>25</sup>Interview with Kimberly Dean and Stephanie Reeves, Deputy and Assistant Deputy Attorney General, Civil Rights and Claims Division, Office of the Attorney General, April 2, 1997.

complied with the 14-day order for male inmates in Davidson and Knox counties. However, no projected date was given for full compliance with the *Roberts* orders.

- **TDOC is not tracking compliance with TCA 41-8-106(g) requiring the state to take inmates held in local jails in 14 days, nor is TDOC monitoring compliance with the Roberts order.**

According to the statute, the 14-day period begins when the state receives an inmate's paperwork from the courts. TDOC's Deputy Commissioner believes the department does not record the date it receives information from the courts, so the department cannot determine when the 14-day period begins. TDOC cannot comply with its statutory or court requirements unless it records the length of time state inmates are held in local jails. In the July 1997 Oversight Committee meeting, TDOC reported that Planning and Research staff were developing an improved method of accounting for state felons in local jails scheduled for implementation in December 1997. This change may improve compliance with state statutes and court orders.

- **National data for 1992, 1994, and 1995 indicate that Tennessee's average length of sentence and average time served was higher than many states.**

Tennessee inmates released in 1995 served an average of 38.7 months, compared to 28.5 months for all 42 states reporting, ranking Tennessee ninth of 42 states. In 1994 of the 45 states reporting, the average length of sentence was 75.9 months while the actual time served averaged 27 months. For the same year, Tennessee's average sentence time was 81.6 months, and average time served was 34.1 months.<sup>26</sup> Data from 1992 comparing the estimated time served for violent crimes in 27 states showed that inmates in Tennessee served more time than violent criminals in other states. In seven of nine violent crimes analyzed, Tennessee's time served was longer than other states. For some crimes, such as murder, Tennessee's estimated time served was almost twice the average.<sup>27</sup>

TCA 9-6-119 requires that the operating cost of sentence increases adopted since 1985 be estimated and funded separately in TDOC's budget. If not funded, the sentence increase does not take effect. Since 1985, legislative changes to sentences have increased time served in prison at an additional estimated cost of \$22 million for FY 1997-98.<sup>28</sup> This amount includes the operating cost of increased sentences, but not capital costs. Funds from this appropriation are used for either the cancellation of bonds authorized but not yet sold or for capital outlay for the Department of Correction. In implementing TCA 9-6-119 the General Assembly recognized the fiscal significance of increasing sentences. Unless prison beds are added correspondingly, sentencing increases can contribute to a lack of state prison space causing overcrowding.

- **TDOC estimates a shortfall of 3,422 state prison beds by April 2005.**

According to TDOC's July 1997 felony projections, between July 1997 and June 2005 the entire incarcerated felon population is expected to grow 34.4 percent to total 26,270 inmates. During the same period the bed capacity is estimated to expand by 28 percent, leaving a deficit of 3,422

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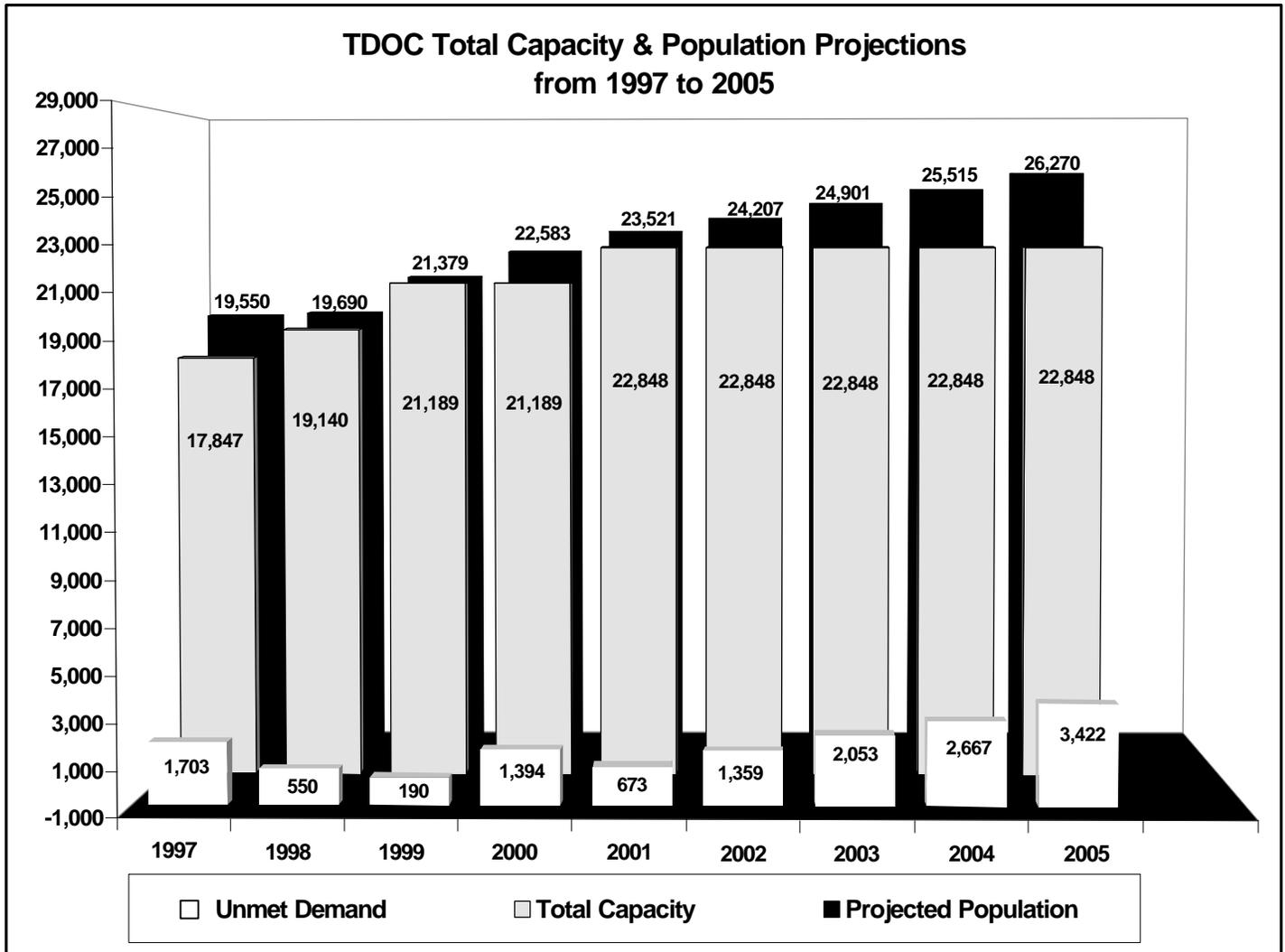
<sup>26</sup> *The Corrections Yearbook*, 1996, pp. 44 and 45, and 1995 edition, p. 16.

<sup>27</sup> "Felony Sentences in State Courts, 1992." Data from the National Corrections Reporting Program, aggregately published in Bureau of Justice Statistics January 1995 Bulletin, p. 4.

<sup>28</sup> State of Tennessee, *The Budget*, Fiscal Year 1997-98, p. B-179.

beds. Population growth projections are lower than in December 1996 because of the increased parole grant rate and the planned addition of new beds to the state's prison system.<sup>29</sup>

Exhibit 5



Source: TDOC July 1997 Felony Projections. Capacity projections do not include 1,000 beds for state inmates retained in local jails awaiting transfer to state facilities. Prior to the 1996 population projections, the department included 1,000 local beds in TDOC's total bed capacity<sup>30</sup>.

The department has no expansion or building projects planned beyond the year 2000. Department officials say they will request additional beds at the appropriate time. The capacity and unmet demand figures illustrated in Exhibit 5 do not include the department's recent decision to close the Chattanooga and Knoxville Community Service Centers. Closure of these two institutions will decrease the state's bed capacity and may increase the department's unmet

<sup>29</sup>Felony Population Projections, Tennessee Department of Correction, July 1997.

<sup>30</sup> This change raised concern with some members and staff of the Select Oversight Committee on Corrections. Some disagree with TDOC's decision not to include 1,000 beds from local jails in projections because the state intends to move all backed up inmates into state prison. A few Oversight Committee members and staff believe that when the 1,000 beds become empty, local judges may fill them again with state felons.

demand if beds are not added.

From 1997 to 2005, the department plans to add 5,629 beds to the state's operating capacity. No expansion or building projects are planned beyond the year 2000. This increase in operating capacity includes the loss of 297 beds through the closing of the Tennessee Correctional Work Center. Expansion of existing facilities accounts for 961 beds, while the other added operational beds are from new prisons. Hardeman County prison, operated by Corrections Corporation of America, has added 1,489 beds; Lauderdale County prison will add 1,521 beds; and a new prison scheduled for completion in the year 2000 will add 1,659 beds.

### **Classification**

The purpose of the classification system is to determine the most appropriate placement for an inmate. Criteria for classification, including an inmate's past criminal history, education level, history of violence, emotional stability, and past prison or jail behavior, are used to predict the type of behavior an inmate may demonstrate. Once these measures have been evaluated, an inmate's classification determines his/her custody and security level, housing, and eligibility for program participation. An inmate's custody level determines the supervision required and day and night movement allowed. An inmate's security level refers to the physical design of the institutions used to hold the inmate.

#### Under *Grubbs*:

Under *Grubbs*, the prison system's classification system was determined inadequate because there was no systematic policy for classification. During *Grubbs*, the department used rating sheets to classify incoming inmates, but the rating information had an error rate of 30-35 percent. As a result of inadequate information and prison overcrowding, inmates were housed wherever vacant beds were located regardless of their classification. Furthermore, inmates spent lengthy periods in reception centers mixed with inmates of different security levels. There were also excessive classification overrides, which occur when a warden makes an administrative decision to decrease or increase the custody level of an inmate. A study prepared by the National Council on Crime and Delinquency (NCCD) reported that during *Grubbs* 85 to 87 percent of initial classifications were overridden. All of these factors resulted in violent and non-violent inmates being housed together, contributing to the unsafe environment in the prisons and violating constitutional standards.<sup>31</sup>

The court-appointed evaluator in *Grubbs* reviewed the classification system and recommended that the department entirely restructure its classification system. The evaluator emphasized specific areas needing revision:

- pre-sentence investigation reports (investigation of inmates' prior conduct)
- custody levels (degree of supervision for inmates)
- overrides (changes in custody level)
- double celling (multiple inmates housed in a cell)
- length of stay at reception centers (amount of time spent in classification and waiting for housing)
- interview process (discussion with the inmate to gather information for classification)

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<sup>31</sup> Evaluation of the Tennessee Department of Correction Classification System, National Council on Crime and Delinquency, 1984, pp. 10, 52, 60, 65, 68, 77, and 78.

- staffing at the reception centers (staff per inmate ratio)<sup>32</sup>

Current Conditions:

- **The implementation of TDOC policies has greatly improved the classification system since *Grubbs*, but the system still needs improvement in specific areas.**

According to the 1996 reaccreditation audit of the TDOC central office, “inmate classification procedures are still surprisingly intact despite overcrowding throughout the Tennessee prison system.”<sup>33</sup> As a result of *Grubbs*, the department reorganized its classification process according to NCCD standards. The *Classification User’s Guide* and a set of departmental policies that guide the classification process resulted from the reorganization. The manual and policies specify:

- when classification will be completed,
- what information and forms will be used to determine classification,
- who is responsible for classification,
- when classifications can be overridden, and
- what types of inmates can be double celled.

The department’s standardized classification process was designed to reduce the number of violent offenders housed with non-violent offenders, the factor putting the state at the greatest risk of violating constitutional standards. The reorganization of the classification system alleviated most of the *Grubbs*’ evaluator’s concerns except in three areas: overrides, double celling, and the length of time at reception centers. *Double celling is discussed in the Housing section of the report.*

- **The percent of overrides has dropped since the early 1980s but exceeds evaluators’ recommendations.**

An override occurs when an inmate’s score on the Custody Assessment Form (CAF) differs from his/her perceived supervision needs. When the CAF does not accurately reflect an inmate’s supervision needs, the custody level may be increased or decreased.<sup>34</sup> The *Classification User’s Guide* for TDOC specifies that an override is “only used to ensure the most appropriate custody level and never to satisfy bed space requirements.”<sup>35</sup> According to the user’s guide, the warden may override an inmate’s classification only for specific reasons.

In 1996, 18 percent of all classifications were overridden. The court evaluator during the *Grubbs* suit recommended that overrides account for no more than 10 percent of classifications. A high percentage of overrides indicates that the current classification system is unreliable, which can destabilize the prison system. A 1984 study conducted by the National Council on Crime and Delinquency showed the percent of overrides during *Grubbs* was between 85 - 87 percent for initial classifications. Although the current percentage of overrides is significantly lower than during *Grubbs*, the number of overrides more than doubled between 1992 and 1996. Some of this increase may be attributed to growth in the prison population. As shown in Exhibits 6 and 7, classification overrides went from 1,211 in 1992 to 2,433 in 1996.

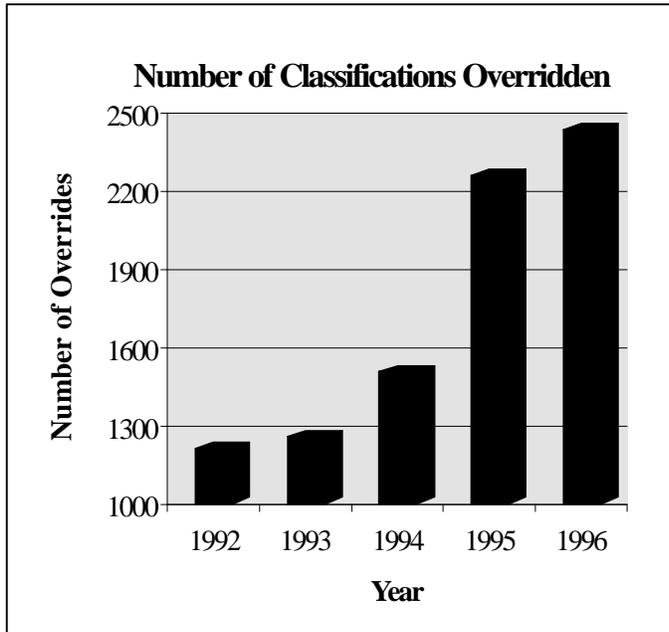
<sup>32</sup>Tennessee Department of Correction, *Fiscal Year 1993-94 Annual Report*, p. 31.

<sup>33</sup>Commission on Accreditation for Corrections, *Standards Re-accreditation Audit*, Tennessee Department of Correction Central Office, May 22-23, 1996, p.5.

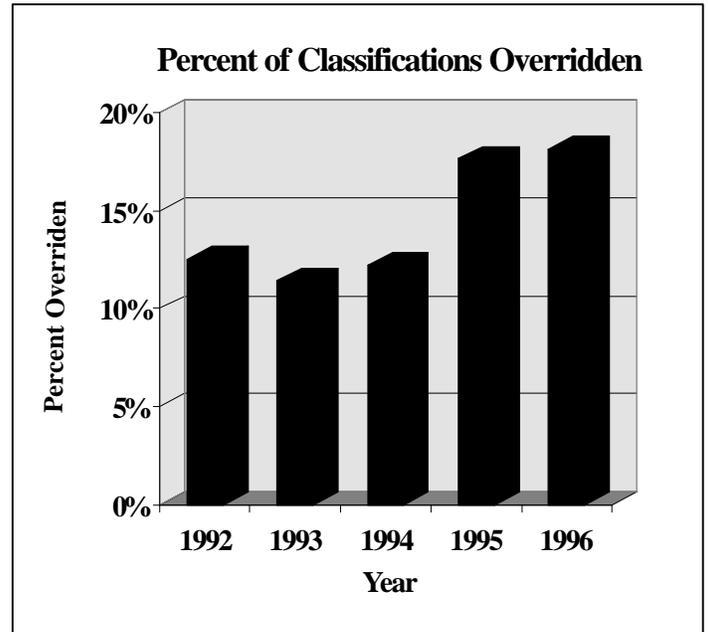
<sup>34</sup>TDOC policy 401.06 and TDOC comments to Comptroller’s draft report, December 5, 1997.

<sup>35</sup>*Classification Programs User’s Guide*. Tennessee Department of Correction, Adult Services Division, p. F-1.

**Exhibit 6**



**Exhibit 7**



*Source: Data provided by the Department of Correction*

The increase in the number of overrides is most likely the result of a policy change in 1995 which allows the override of close custody inmates with non-assaultive, non-threatening behaviors to medium custody. Other possible contributing factors include the custody override of inmates assigned by the Board of Pardons to the Tennessee Correctional Work Center (TCWC). Some inmates who are assigned to TCWC are not minimum custody, but are overridden to minimum custody because TCWC is a minimum security facility.

The increase in parole grant rates may also have increased overrides. When parole grant rates increase, inmates move more quickly through the prison system. An inmate's participation in a pre-release program serves as part of the transition from imprisonment to parole. Because participation in pre-release programs are limited to minimum custody inmates, some inmates that would normally qualify for participation on all other factors have not qualified based on custody level. In these situations, an inmate's classification has been overridden to allow for participation in pre-release programs. According to the Department of Correction, overrides can occur to enable inmates to participate in boot camp, the parole technical violator program, or to allow inmates to remain in minimum placements when policy changes have restricted the minimum custody eligibility criteria.

Override increases may indicate a need to revise the classification scoring system. The CAF form may not accurately reflect the appropriate custody level of inmates. As a result, wardens must adjust the scoring, overriding the classification. The department should monitor the cause and effects of increased overrides.

- **For most inmates the time spent on initial classification has been reduced by half from eight weeks to four, but the length of stay at reception centers is still longer than the four weeks recommended by the court evaluator.**

Data provided by TDOC for male offenders in July 1996 shows that 93 percent of male inmates initially classified were processed within four weeks after intake, as recommended by the court evaluator. However, the total length of stay at reception centers has not improved since *Grubbs*, most frequently because of a shortage of bed space at TDOC facilities. Transfer might be delayed because the court ordered an inmate held or because an inmate is waiting for a parole or revocation hearing. After classification, 61 percent of inmates were held at reception centers for eight weeks or less before transfer to a permanent institution. Most inmates were held between 6.5 to 8.5 weeks statewide. If the most common length of time for classification (two to four weeks) is added to the average length of time before transfer after classification (6.5 to 8.5 weeks), most inmates stay 8.5 to 12.5 weeks at reception centers. Although most inmates were transferred within 8.5 and 12.5 weeks, some waited longer. Some inmates at Brushy Mountain State Prison and Middle Tennessee Reception Center stayed up to 17 weeks after classification before transfer to permanent institutions. Both the average and longest length of an inmate's stay at reception centers extend far beyond the court evaluator's recommendation. Today, lack of bed space is the most common reason for delay in transferring inmates to permanent prison facilities.

## ***Housing***

### Under *Grubbs*:

Inadequate housing was a paramount concern in the *Grubbs* case because conditions at a few of the facilities were found to constitute cruel and unusual punishment. Although the court found most of the housing facilities adequate it found some units excessively overcrowded. During *Grubbs* inmates were double celled in areas as small as 23 square feet, and at Tennessee State Prison (TSP) more than 1,400 inmates were housed two to a cell approximately the size of a Ping-Pong table. The court found that double celling at two institutions constituted cruel and unusual punishment.<sup>36</sup> In the initial years of *Grubbs*, the court banned increased prison capacities and disallowed double celling entirely at the Tennessee State Prison. Officials from TDOC and the Oversight Committee on Corrections explained that the court allowed the state to increase its capacities and double celling toward the end of *Grubbs* as improved facilities with increased staff were opened.

### Current Conditions:

- **TDOC has improved housing conditions by adding cell space, beds, and programming space.**

Currently, almost all housing units in Tennessee's prisons meet American Correctional Association (ACA) accreditation standards. These standards require 35 square feet of unencumbered space per inmate and 80 square feet of total floor space per inmate for those confined more than ten hours a day.<sup>37</sup> According to data provided by the department for 1995, the smallest amount of cell space per inmate was 34.5 square feet for minimum custody, just below the ACA requirements. For maximum custody inmates, the least amount of space provided was 79 square feet, also slightly less than the ACA standard. Though these square footages are slightly below the standard, the ACA inspections reviewed did not indicate

<sup>36</sup> *Grubbs*, pp. 1072, 1125, 1126, 1131, and 1132.

<sup>37</sup> *Standards for Adult Correctional Institutions*, American Correctional Association. Section C, p. 43. 1990.

violations of housing standards. In addition to adding cell space, the department added programming space. Old facilities, like the Tennessee State Prison, were replaced with newer facilities, all of which helped alleviate many of the housing problems during *Grubbs*.

- **TDOC has increased double celling in recent years.**

TDOC policy 506.14.1 states that all inmates below maximum custody may be double celled selectively. The exception to this policy are new entry inmates that have not been classified, inmates returning from parole or escape, death row inmates, and administratively segregated inmates, all of whom must be single celled. According to 1990 TDOC data, 58 percent of medium custody and minimum restricted inmates were double celled. Double celling began to increase greatly in 1995.<sup>38</sup> For 1995 and 1996 the number of medium and minimum custody inmates double celled increased by more than 650 system-wide for the two-year period, by far the largest increase in recent years. As of 1997, 61.1 percent of TDOC's medium custody and minimum restricted inmates were double celled. Although the percentage increase over seven years seems small, it has changed specific prisons significantly.

Since 1990 two institutions increased double celling of medium and minimum security inmates by over 40 percent: Middle Tennessee Reception Center and West Tennessee High Security Facility. Though some institutions have increased double celling significantly, five institutions have slightly decreased double celling from 1990 to 1997. (See Exhibit 8). Department officials indicate that some increases in double celling over the last few years resulted from program changes, not just the need to expand capacity.

It is also important to note that beyond the numbers for double celling given in Exhibit 8, other inmates in the state prison system are also housed together, but are in dormitory-style cells. Generally, minimum custody inmates are held in dormitory style cells that may have as many as 60 inmates at community service centers and the state's boot camp. TDOC plans to continue adding more beds through increased double celling at existing facilities. Recent department documents state that "all future construction for medium or lower custody levels will be designed to provide full double celling."

According to former TDOC Commissioner Jeff Reynolds, double celling is not inherently wrong as long as the right level of inmates are double celled and staff is adequate. Both the federal courts and ACA have indicated that double celling is allowable. However, problems with double celling occur when prison infrastructure is inadequate. TDOC officials believe that staff and infrastructure are sufficient to support past and planned double celling. TDOC has increased the size of the cells in accordance with ACA standards. During *Grubbs*, at Tennessee State Prison two inmates shared a 45 foot cell.<sup>39</sup> Today, inmates are housed together in cells measuring from 69 to 264 square feet. It is not clear, however, whether current prison infrastructure can support future increases in double celling. If program space is sufficient to prevent inmates from being locked inside small cells for lengthy periods of time, smaller cell sizes may be allowed. If, however, there are not enough programs to get inmates out of their cells, double celling in small

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<sup>38</sup> *Annual Report*, FY 94-95, Tennessee Department of Correction, p. 3.

<sup>39</sup> *Grubbs*, p. 1072.

cells can increase violence, idleness, and the risk of court intervention. Monitoring is needed to ensure that the proper infrastructure is available to support double celling.

### Exhibit 8

#### Percent of TDOC Minimum Restricted and Medium Custody Inmates Double Celled in 1990, 1993, and 1997

Prison	1990-Percent of Minimum Restricted and Medium Custody Inmates in Double Cells	1993-Percent of Minimum Restricted and Medium Custody Inmates in Double Cells	1997-Percent of Minimum Restricted and Medium Custody Inmates in Double Cells	Increase in Double Celling from 1990-1997*
BMSP**	40.7%	43.9%	50.0%	+9.0%
CCCF	98.0%	96.5%	96.5%	-2.0%
DSNF***	Under construction	6.9%	6.9%	0%
LCRCF	97.8%	96.4%	96.4%	-1.0%
MCRCF**	84.8%	84.0%	83.0%	-2.0%
MLRC**	28.4%	46.8%	49.2%	+21.0%
MTRC	44.5%	80.1%	84.3%	+40.0%
NECC*	Under construction	65.9%	65.9%	0%
NWCC*	Under construction	65.9%	81.0%	+15.0%
RMSI	0%	10.0%	33.0%	+33.0%
SCCC*	Under construction	65.9%	81.0%	+15.0%
STSRCF**	83.0%	82.0%	81.0%	-2.0%
TCIPF**	50.0%	50.0%	48.0%	-2.0%
TPW**	50.0%	50.0%	50.0%	0.0%
WTHSF	0%	17.0%	45.0%	+45.0%
<b>TOTAL</b>	<b>58.0%</b>	<b>Information not given</b>	<b>61.0%</b>	<b>+3.0%</b>

Source: *TDOC Double Celling History (1990-1997)*, and *Institutional Housing Capacities*, March 20, 1995.

\*For institutions not yet built in 1990 the percentage difference in double celling ranges from 1993-1997, instead of from 1990-1997.

\*\*Institutions also have some housing that is multiple celled, meaning more than two to a cell.

\*\*\*Institution not built in 1990 and has some multiple celling.

Institutions with all dormitory housing, meaning several inmates in one large dorm-type area were not listed. Institutions with dorm-style housing include: CCSC, CCWC, KCSC, NCSC, and WCBC. See Appendix A for explanation of abbreviations.

*Department comment: TDOC works with Capital Projects to ensure the infrastructure is in place to support double celling.*

### **Environmental Conditions and Sanitation**

#### Under Grubbs:

Under *Grubbs* the court identified serious environmental problems at a few institutions. The court divided the environmental conditions and sanitation into four areas of concern—(1) general maintenance; (2) lighting, ventilation, and noise; (3) sanitation; and (4) personal hygiene and facilities.

Under general maintenance the court found exposed wiring and sewage problems, and cross-connections between drinking water and sewage lines at specific institutions. The court described the plumbing and electrical work at one facility as “dangerously outdated.” The court also noted that some institutions lacked adequate light for reading and writing, and had intolerable noise levels. The court criticized one facility for a ventilation system that caused temperatures in the housing units to exceed 95 degrees.

In examining sanitation, the court found that living conditions at one facility were frequently unclean, heavily littered, had evidence of cockroach infestation, and uncleanable toilets. There were also sanitation problems in the food service area. One kitchen facility was described “an unsanitary disaster area,” while another was labeled “appalling.” The court determined that some of these unsanitary conditions were “serious enough and common enough to pose substantial health risks to the health of inmates.” The court found that at more than one facility there was no routine for sanitizing bedding prior to its reuse by other inmates. The court also found the showers and toilets in disrepair at several facilities, and too few showers to meet inmates’ needs.

#### Current Conditions:

- **Although the serious problems during *Grubbs* no longer exist, inspection reports and interviews indicate room for improvement in the department’s safety and food service programs.**

In order to determine the current sanitation of TDOC facilities, staff reviewed recent inspections by the Departments of Correction, Health, and the Tennessee Occupational Safety and Health Administration (TOSHA). These documents indicate that many of the most serious problems have been corrected. In addition many of the recent TDOC annual inspections describe the prison facilities’ cleanliness as “outstanding” and “excellent.”<sup>40</sup> In fact, the 1996 reaccreditation audit of TDOC’s central office reported that “Tennessee operates clean facilities.”<sup>41</sup> Despite improvements in the prisons’ environmental conditions and safety since *Grubbs*, improvements could be made in two areas.

#### Safety

TOSHA officials expressed concern about the department’s lack of diligence in its safety program evidenced by its failure to update its TOSHA Program Plan since 1975 and recurrent violations throughout the system. In 1997 TDOC named the Director of Engineering as its part-time Safety Director. TOSHA rule 0800-1-5-.06, says that each public sector employer shall provide the Commissioner of Labor with the designated Safety and Health Official’s name and recommends that an agency with over 2,000 employees, such as TDOC, should have a full-time employee in charge of worker safety. TDOC has fulfilled part of the TOSHA rule by naming a Safety Director, but has not fulfilled the portion requiring a full-time safety director. This concerns TOSHA officials since TDOC has more potential hazards than other agencies because of inmate employment in industry and because TDOC recently discontinued its request for annual TOSHA consultation inspections of each prison.

Of the 15 TOSHA prison inspection reports provided to staff from December 1994 to January 1996, all facilities were cited for at least one violation. Some facilities were found to have up to six violations, most of which were classified as serious. Certain violations occurred repeatedly in several of the institutions. A TOSHA official said that when the same violations continue to occur throughout a system it indicates two things—either safety information is not being disseminated by the Safety Director or the director is not given the authority to make needed improvements. Although correspondence between TDOC officials and TOSHA show that most

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<sup>40</sup>Commission on Accreditation for Corrections, *Standards Compliance Audit*, Knoxville Community Service Center. May 6-7, 1996, pp. 3, 9.

<sup>41</sup>Commission on Accreditation for Corrections, *Standards Re-accreditation Audit*, Tennessee Department of Correction Central Office. May 22-23, 1996, p. 5.

causes of violations were corrected, TOSHA officials indicate that TDOC has been slow to respond.

The department's TOSHA plan has not been updated since 1975. An agency's TOSHA plan is supposed to reflect the focus of its safety program and should incorporate any changes made to that program. Changes have been made to TDOC's safety program that are not reflected in the 1975 plan. For example, the department discontinued its request for annual TOSHA consultation inspections of each prison in December 1996. Instead, TDOC will examine compliance with TOSHA standards internally in the department's annual prison inspection process. By TOSHA rule 0800-1-5-.08, TOSHA is required to perform only two inspections every two years. TDOC's policy change decreased the number of TOSHA-conducted inspections from a minimum of 42 inspections to two inspections every two years. TDOC officials indicate that during *Grubbs* the department requested that TOSHA inspect each institution annually. As the areas of concern noted in the TOSHA inspections decreased and as TOSHA indicated that it could not incur the cost of inspections every year for each prison, TDOC decided to decrease its request for inspections.

For FY 1997-98, TDOC eliminated the agency's Safety Director position and some safety officer positions. These changes are also not reflected in the 1975 plan. TOSHA officials are concerned that these changes will decrease the amount of attention given to the department's safety program. They recommend that TDOC:

- update its 1975 TOSHA plan;
- make the TDOC's Safety Director a full time position;
- require the Safety Director (now the Director of Engineering), to report to the Deputy Commissioner; and
- give the director the authority to enforce TOSHA rules.

*Department comment: The Department of Correction agrees to update its TOSHA Program Plan as appropriate. Regarding the other concerns of TOSHA, TDOC believes that although the department's Director of Engineering has been appointed the Safety Director on a part time basis, the presence of 14 Fire Safety Officers throughout the institutions who receive both TOSHA and State Fire Marshal training adequately fulfills the department's safety needs. TDOC's interpretation of recent TOSHA inspections is that there have been few significant findings; certainly not enough to warrant expanded staffing in this area.*

### Food Service

In the area of food service, several violations were identified in both the TDOC annual inspections and in the Department of Health's kitchen inspections. The TDOC annual inspections for fiscal year 1995-96 identified 46 violations in the food service area for 19 inspections reviewed during that fiscal year. Although many institutions had few or no violations, one institution, Cold Creek, had 27 of the 46 food service violations. Because one institution had the bulk of the violations it may seem that problems with food service are isolated. However, when examining TDOC annual prison inspections from 1991 through 1996, the number of compulsory violations in the area of food service was either the highest or second highest of any inspection category. Semiannually, the Tennessee Department of Health inspects

prison kitchen facilities. In 1996 the kitchen scores ranged from 61 to 100 out of a possible 100; a score of 70 is considered failing. Two of the 21 institutions failed in 1996.

Walter Nannie, Department of Health Quality Improvement Manager, oversees the health inspectors. After a cursory review of the Department of Health's 1996 inspections of the Department of Correction, Mr. Nannie believes that overall the TDOC prison kitchens were well-operated. He found the scores to be acceptable; the department was correcting identified problems; and there was no visible pattern of recurring violations. In the two prisons with kitchen inspection scores below 70 for 1996, Mr. Nannie suggests increased staff training and a redoubling of efforts devoted to improving these facilities.

On the whole, prison conditions and sanitation seem to be much improved today compared to *Grubbs*. However, there is a need for the department to focus its efforts on improving both prisons' worker safety system-wide and food services at specific institutions.

## ***Violence***

### Under *Grubbs*

During the *Grubbs* period, violence was common in many Tennessee prisons. Murders and robberies frequently occurred, and there were many episodes of assault upon cellmates. The court found that "violence and terror reigned" at the Tennessee State Penitentiary, Fort Pillow, and Brushy Mountain Penitentiary. This inability to control violent episodes by inmates against other inmates was determined to be cruel and unusual punishment.<sup>42</sup>

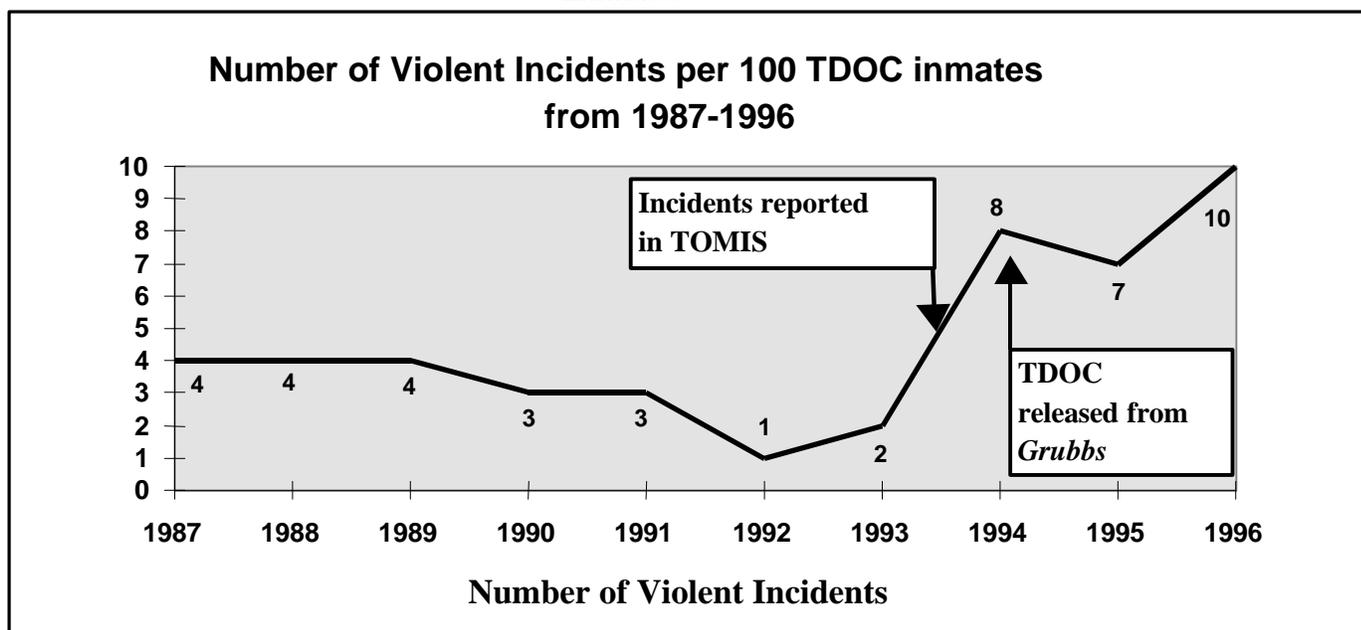
### Current Conditions:

- **Because of changes in reporting methods, it is difficult to measure and compare the violence in the state prisons today to violence during the *Grubbs* case. Since the release from *Grubbs* some measures of violence have increased. Compared to other states, Tennessee fares better and worse than average on certain measures of violence.**
  - From 1994 through 1996 both the number and percent of inmates participating in violent incidents has increased.
  - From 1993 through 1996 the number of serious violent incidents stayed fairly steady.
  - In 1994 and 1995, compared to all states reporting, Tennessee reported a lower than average ratio of escapes to average daily population.
  - For 1994 and 1995, the percent of inmates assaulting inmates was slightly lower than the average for all reporting states.
  - For 1994 and 1995 the percent of Tennessee inmates assaulting TDOC staff was much higher than the average for all states.
  - In early 1996, Tennessee had a higher percentage of its inmate population in protective custody than most states.

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<sup>42</sup> *Grubbs*, pp. 1126 and 1128.

Exhibit 9



Source: Number of violent incidents per 100 offenders and population figures provided by the Department of Correction. To calculate the number of incidents annually the number of incidents per 100 offenders was multiplied by the total population.<sup>43</sup> In June 1993 TDOC policy required the reporting of all violent incidents in the TOMIS computer system.

Exhibit 9 shows the number of recorded violent incidents per 100 inmates from 1987 through 1996. After 1993 the graph indicates a sharp increase in the number of violent incidents, peaking in 1996. While such a sharp increase would seem to indicate that prisons today are more violent than during *Grubbs*, a change in data recording methods may partly explain the increase.

According to the department's Assistant to the Commissioner for Planning and Research, prior to FY 1993-94, violent incidents were usually recorded in writing rather than entered into a central database. Since FY 1993-94 TDOC policy has required the recording of violent incidents in the Tennessee Offender Management Information System (TOMIS) computer database. In addition, the method used to count incidents has also changed. Before FY 1993-94 a disturbance involving five inmates was reported as one incident. After FY 1993-94 the incident was reported as five incidents. Department officials believe that the substantial increase is largely attributable to the change in the method of reporting rather than an actual jump in the number of violent incidents.

- **From 1994 through 1996 both the number and percent of inmates participating in violent incidents have increased.**

If the years before 1994 are excluded from the analysis, the data still indicate an increase in violence between 1994 and 1996. In 1994, eight percent of the inmates in TDOC participated in a recorded violent incident. In 1996, this figure increased to 10 percent, and the total number of violent offenses increased from 991 to 1,341. In particular, four institutions—DeBerry Special Needs Facility, South Central Correctional Center (the facility operated by Corrections Corporation of America), Riverbend Maximum Security Prison, and the Tennessee Prison for

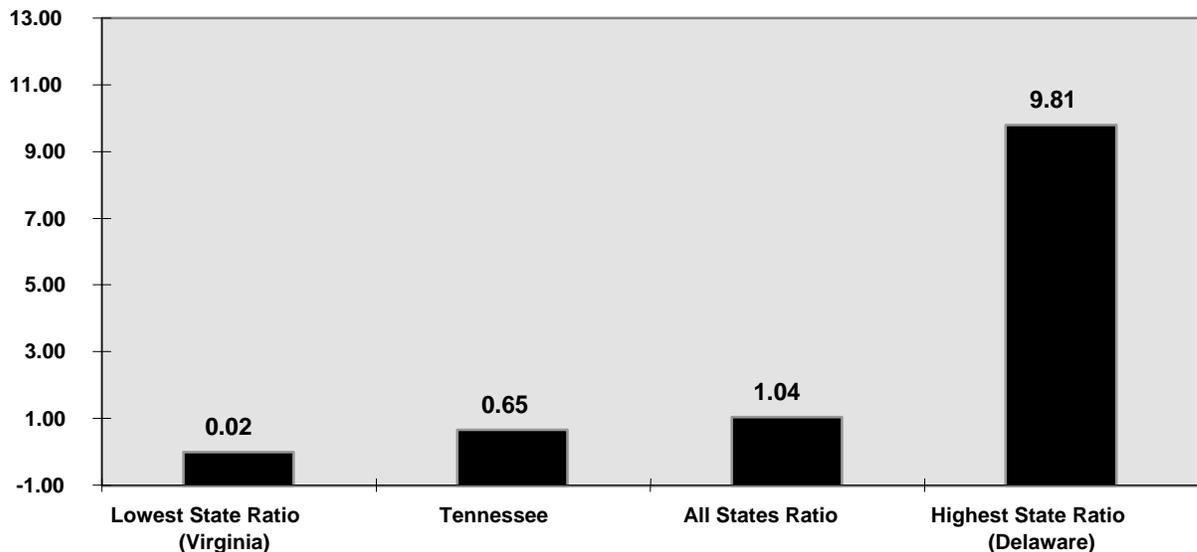
<sup>43</sup>The term "violent incidents" was defined by the Tennessee Department of Correction as arson, assaults, homicides, escapes with violence, attempted escapes with violence, self-inflicted injury, riots, hostage takings, suicides, and suicide attempts.

Women—have incident rates that are well above the average for the system according to recent data.<sup>44</sup> Monitoring is needed to determine the extent and cause(s) of the upward climb in violent incidents, particularly at these four institutions.

- **From 1993 through 1996 the number of serious violent incidents stayed fairly steady.** Violent incidents are defined as homicides, suicides, escapes, riots, and hostage takings. In all five measures the number of serious violent incidents has remained fairly constant since the department’s release from *Grubbs*. One interpretation of this data may indicate that the department has performed well since the number of serious violent incidents has not increased with the corresponding increase in population. In the measure of inmate escapes, Tennessee reported a lower than average ratio of escapes per inmate compared to other states in 1994 and 1995. The chart below illustrates how Tennessee compared to other states.

**Exhibit 10**

**1995-Number of Escapes per 100 inmates**



*Source: The Corrections Yearbook, 1996, Criminal Justice Institute, pp. 16, 44, and 45.*

<sup>44</sup> DeBerry and the Tennessee Prison for Women are unique and cannot be easily compared to other Institutions. However, comparisons are possible using data from Riverbend and South Central. In FY 95-96 and the first three quarters of FY 96-97, Riverbend’s violence incident rate was higher than West Tennessee High Security Facility in all seven quarters. South Central also had a higher violence incident rate in all seven quarters compared to Northeast and Northwest, which are institutions of similar design and population. In fact, in some quarters South Central’s incident rate was twice the rate of the other two institutions.

Other measures of specific types of violent incidents may also be useful in determining how prevalent violence is in today's state prisons. The number of inmate assaults against other inmates and against prison staff is one such comparison. The data show that the number of inmate assaults on other inmates has not increased, but the number of inmate assaults on staff has increased. (Again, because data have not been recorded consistently, data was analyzed only for FY 1993-94 through FY 1995-96.) (See Exhibit 11).

Compared to other reporting states for 1994 and 1995, Tennessee was slightly better than the average in the ratio of inmates assaulting inmates, but was significantly worse than the average in the ratio of inmates assaulting staff. (See Exhibits 12 and 13).

**Exhibit 11**  
**TDOC Inmate Assaults from FY 1993-94 through FY 1995-96**

Fiscal Year	Number of Inmate on Inmate Assaults	Percent change Inmate on Inmate Assaults	Inmate on Inmate Assaults, Minor Assaults not counted	Percent change Inmate on Inmate Assaults, Minor Assaults not counted	Number of Inmate on Staff Assaults	Percent change Inmate on Staff Assaults	Inmate on Staff Assaults, Minor Assaults not counted	Percent change Inmate on Staff Assaults, Minor Assaults not counted
1993-94	365	NA	162	NA	376	NA	80	NA
1994-95	359	-2%	154	-5%	355	-6%	52	-35%
1995-96	368	3%	148	-4%	652	84%	87	68%

*Source: Information from TDOC Annual Reports 1993-1995 and the TDOC FY 95-96 Incident Report.*

**Exhibit 12**  
**1995-Number of Inmate on Inmate Assaults per 100 Inmates**

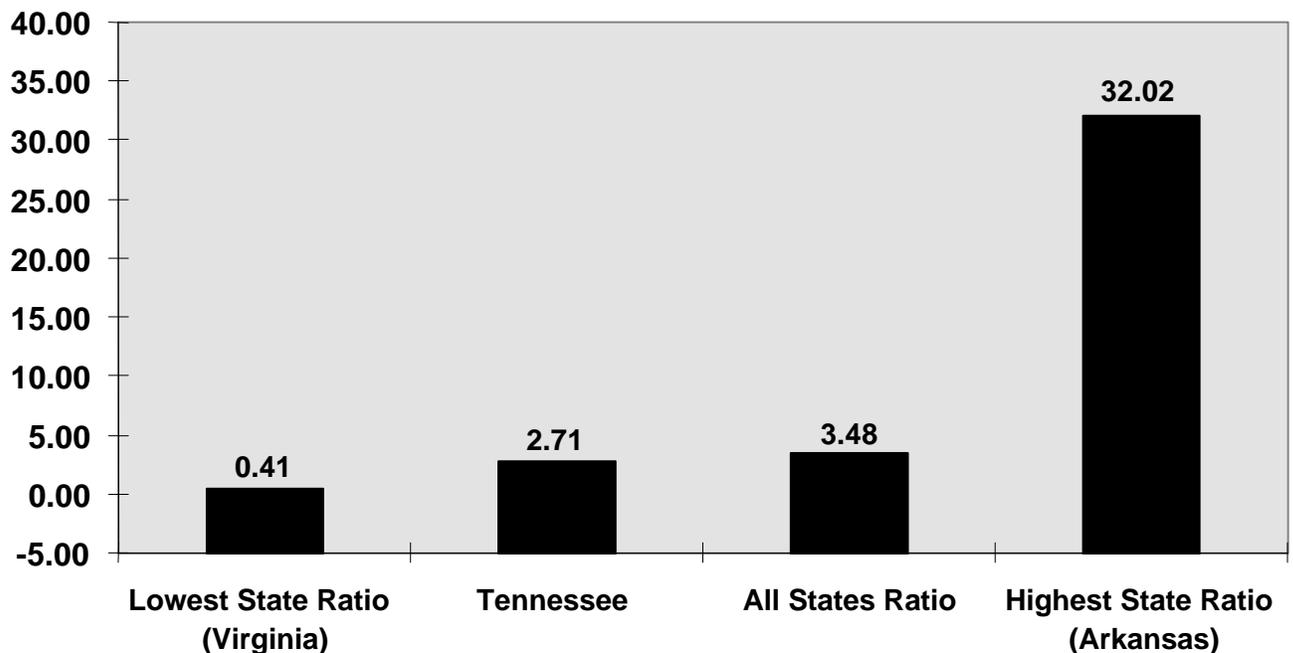
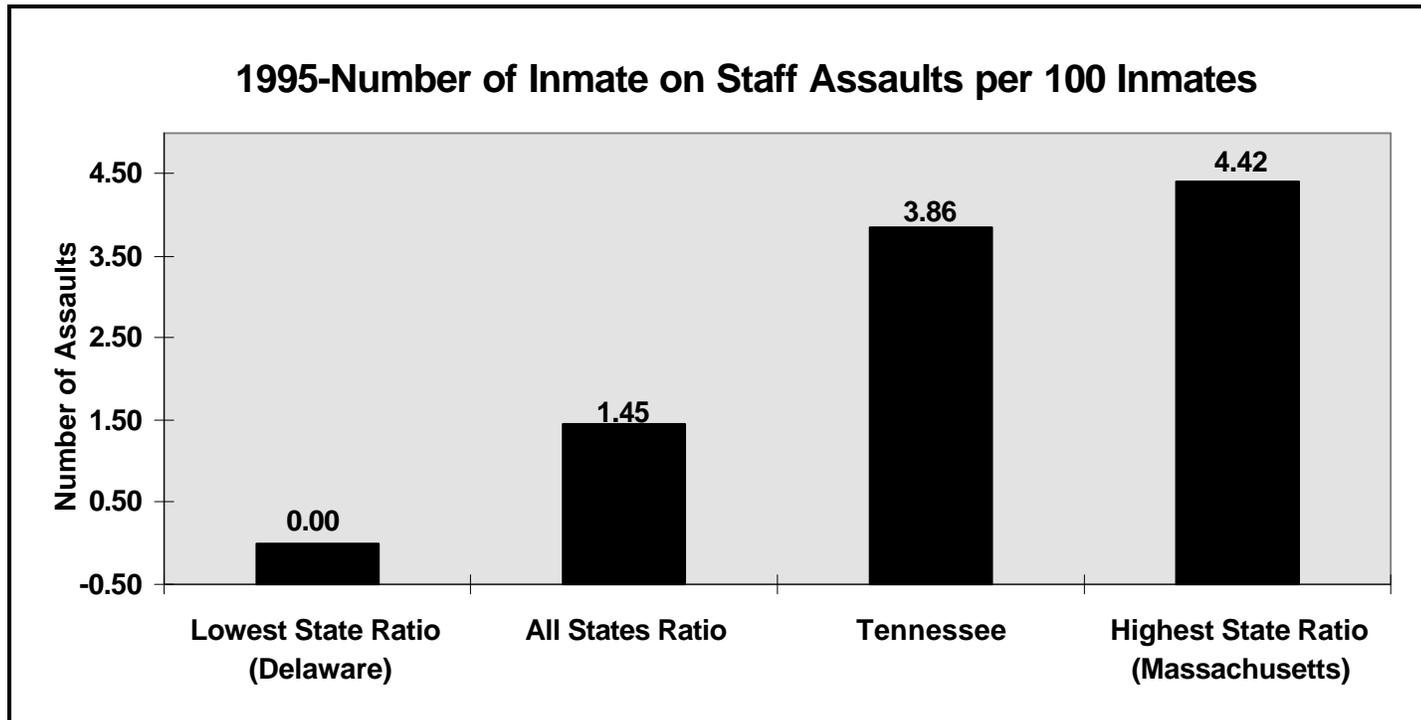


Exhibit 13



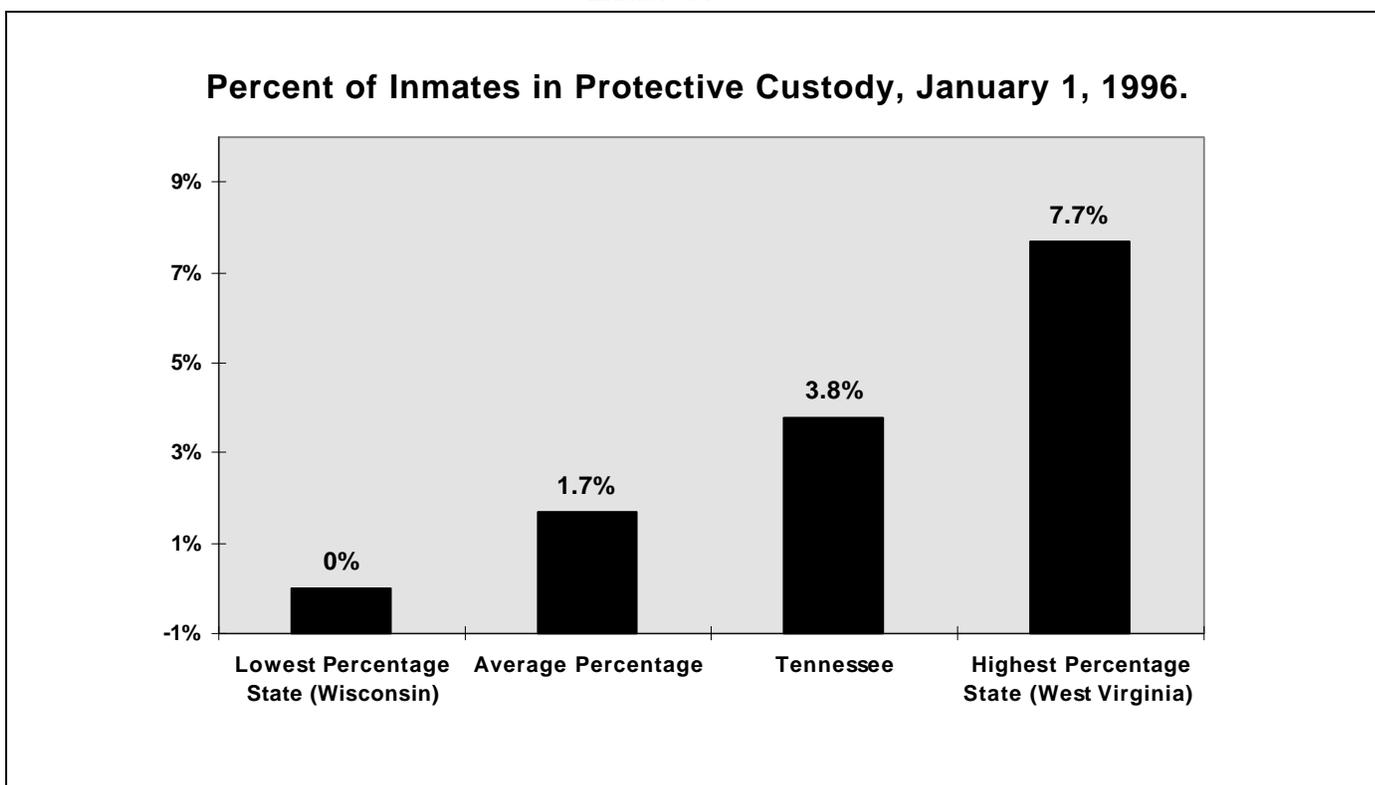
Source for Exhibits 12 and 13: *The Corrections Yearbook, 1996, Criminal Justice Institute, pp. 34, 44, and 45.*<sup>45</sup>

- **In early 1996, Tennessee had a higher percentage of its inmate population in protective custody than most states.**

Several individuals interviewed for this report suggested that examining the number of TDOC inmates who had either requested protective custody or were placed in protective custody would provide good measures of prison violence. TDOC monitors the number of inmates placed in protective custody, but does not record the number of inmates that request protective custody and are denied. Inmates can request placement in protective custody if they fear for their lives. If protective custody is granted, the inmate is separated from other inmates, much like a maximum security inmate. *The Corrections Yearbook* reports that Tennessee had a higher percentage of its inmates in protective custody on January 1, 1996, than most states. In 1996, of the 40 states reporting, Tennessee had the seventh highest percentage of state inmates in protective custody, at 3.8 percent. This figure is well above the national average percentage of state inmates in protective custody for that year. (See Exhibit 14).

<sup>45</sup> Note: Department of Correction officials indicate that caution should be used when analyzing aggregate data because information may be defined and recorded differently.

## Exhibit 14



*Source: The Corrections Yearbook, 1996. p. 20.*

According to the April 1, 1996, *Staff Report To The Select Oversight Committee on Corrections On the Performance Review of the Department of Correction*, the percentage of TDOC inmates in protective custody has risen substantially since 1995. From 1991 through 1994, on average 2.5 percent of inmates were in protective custody. For 1995 and 1996, the percent rose to 3.7. From 1991 through 1995 the prison population increased approximately 58 percent, while the percent of inmates classified under protective custody increased more than 96 percent. Committee staff reported that this increase might be a symptom of operational problems. If prison violence is not controlled or non-violent inmates are not separated from violent ones, certain inmates become “predators” of others, causing protective custody requests to increase.

### ***Idleness***

#### ***Under Grubbs***

Inmate idleness was a problem during *Grubbs*, attributable to insufficient educational, vocational, and employment inmate programs. As a result, inmates either spent too much time in their cells or were put in jobs where they were not needed, a procedure known as “featherbedding.”<sup>46</sup> When inmates remain idle, violence can increase in a prison. During *Grubbs*, most available jobs were in support services, including dishwashing, laundry, mopping, sweeping, and cleaning the yards. Frequently prisons had a greater supply of inmates than available jobs.

<sup>46</sup>Featherbedding is the process of using several inmates to complete jobs requiring only a few.

Prisons' educational programs had too few teachers and many teachers lacked adequate training. In addition, the department lacked a system-wide curriculum. Education programs were especially critical as a tool to prevent or diminish inmate idleness. The court-appointed evaluators recommended that TDOC implement several educational policies: train teachers better, develop a system-wide curriculum, increase educational programs, increase staff for education, and provide incentives to encourage inmates to enter the programs. Also, the court-appointed evaluators recommended developing vocational training and increasing job opportunities.

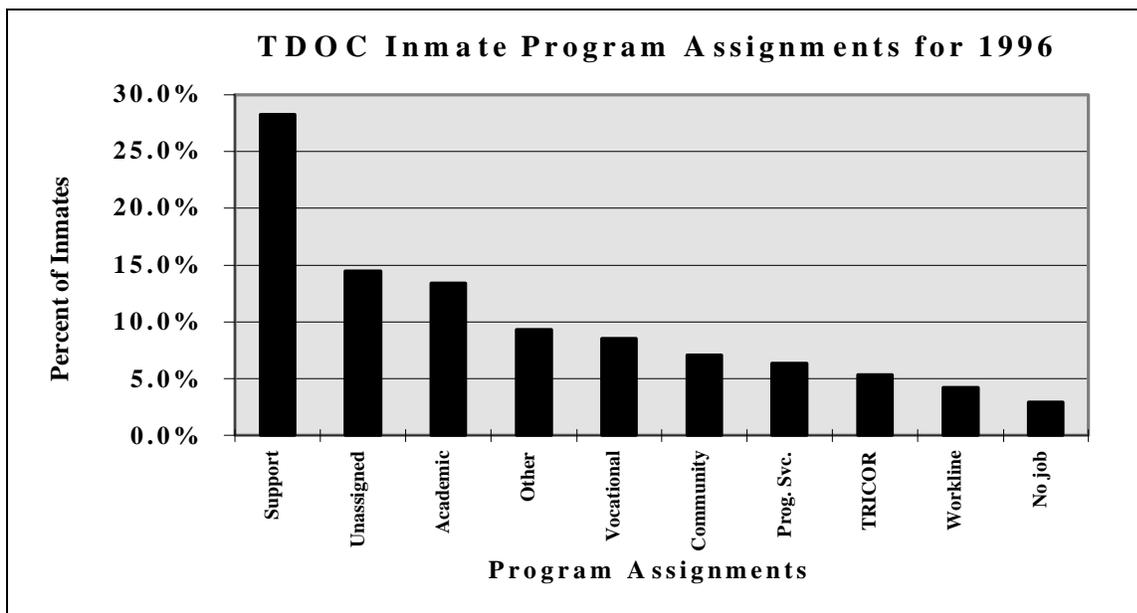
Current Conditions:

- **Since *Grubbs*, Tennessee has worked to diminish the idleness of its prison population by increasing educational, vocational, and job programs. Despite improvements made, the number of available industry jobs do not meet goals, and cuts in educational staff in FY 1997-98 cause concern.**

The prison population in 1996 was approximately 13,000. That year 82.6 percent of TDOC's inmate population was assigned to a program; 14.5 percent were unassigned because of medical conditions, classification, segregation, or unwillingness to work; and 2.9 percent were unassigned because of job unavailability.

The 1992 *Tennessee Department of Correction Compliance Report to the Special Master* stated that it is legitimate for approximately 15 percent of inmates to be unavailable to work.<sup>47</sup> According to TDOC data, in 1996 only three percent of inmates willing to work did not have jobs because jobs were unavailable, well below the seven percent figure provided in the 1992 report as reasonable. Exhibit 15 shows how TDOC assigned inmates to programs in 1996.

**Exhibit 15**



*Source: An Evaluation of Inmate Employment Opportunities in TDOC-Prepared by the Institute for Economic and Policy Studies, Inc. Provided by the Department of Correction.*

<sup>47</sup> Tennessee Department of Correction, *Compliance Report to the Special Master*, Inmate Employment Section, 1992, p.4.

TDOC data indicate that the highest percentage of inmates are employed in support jobs. This number is significant because it may indicate inmate idleness. In 1996 over 28 percent of prison employment was in support jobs. According to TDOC's 1992 report to the special master the department had a guideline limiting support jobs to 25 percent of the population in time building facilities.<sup>48</sup>

Department staff indicates that 25 percent is a goal, not a policy. Over the past five years, the number of support jobs has been almost static. The lowest percentage of inmates in support jobs was in 1994 at 27.1 percent, and in 1993 the level was at 29.5 percent.

In the 1992 *Report of the Special Master Regarding the Defendants' Compliance with the Court's Orders*, the department set a goal that at least 20 percent of the inmate population should participate in either educational or vocational programs. In 1996 almost 3,000 (22 percent of TDOC population) were assigned to educational or vocational training.

The inmates classified under the "other" category are assigned to mental health programs, boot camp, pre-release programs, medical credit incentive, and miscellaneous jobs. Inmates may work for governmental agencies, private entities, or community service work crews, or may participate in a community work release program. Inmates placed in the program services category participate in extracurricular activities, programs, and services available to inmates, including: teachers' aides, library positions, and recreational assignments. Inmates on a workline may work outside the secure fence on prison grounds primarily performing manual labor like mowing grass, cutting firewood, and clearing brush.

- **In 1996, the percentage of inmates participating in TRICOR was less than the 1992 goal reported to the court's special master in the *Grubbs* case.**

The Tennessee Rehabilitative Initiative in Correction (TRICOR) provides additional work opportunities for state felons. Statutorily TDOC is responsible for providing the following services to inmates—education, special needs programming, jobs that support prison operation, and community service jobs. TRICOR provides alternative employment for inmates, including work on the state farm and prison industries. TCA 41-22-403 states TRICOR's mission:

- To work inmates in manufacturing, business services, or agricultural jobs;
- To offset the costs of incarceration by generating revenue through the sale of products and/or business services;
- To develop work opportunities that minimize the impact on free-world jobs;
- To integrate work opportunities with education and vocational training;
- To develop good work habits and marketable skills; and
- To develop and operate a post-release placement system.

According to the 1992 *Report of the Special Master Regarding the Defendants' Compliance with the Court's Orders*, Correctional Enterprises of Tennessee (CET), the precursor to TRICOR, had a goal to employ 20 percent of inmates. According to TRICOR's Executive Director, CET's goal of 20 percent inmate employment in industry was reduced to ten percent in the latter years of the *Grubbs* suit. When TRICOR replaced CET it assumed a goal for inmate employment at ten percent of TDOC's population. In FY 1995-96 a total of 761 inmates were employed by

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<sup>48</sup>Ibid., p.8.

TRICOR in industry and farms, totaling 5.7 percent of TDOC's population.<sup>49</sup> Thus, neither the goals identified during *Grubbs* nor the goal set by TRICOR are currently being met. Staff indicates that the agency has been unable to meet goals for two reasons. First, the market for inmate products has not expanded at the rate the inmate population has increased. Second, not every prison has industry space, making industry employment unavailable. In order to meet goals, would like to encourage greater participation by state agencies.

- **Tennessee has a smaller percentage of inmates in industry jobs than most other states.**

In 1996, Tennessee ranked 31st among the 47 states reporting, employing 4.9 percent of its population in industry. Minnesota was the highest ranking state with 22 percent of its inmate population in industry jobs, while Arkansas was the lowest at 2.5 percent. The national average for 1996 was 6.8 percent of all inmates in industry jobs.<sup>50</sup>

**Exhibit 16**  
**Inmates in Job Industries (excluding farms) in 1996**

State	1996 Correctional Population	1996 Total Number Employed in Correctional Industries	1996 Percent Employed in Correctional Industries
Tennessee	13,033	636	4.9%
Arkansas (lowest percent employed)	8,832	217	2.5%
Minnesota (highest percent employed)	4,651	1,027	22.1%
National (includes the District of Columbia and federal prisons)	1,019,905	68,953	6.8%

Source: 1996 Corrections Yearbook, pp. 2, 3, and 72.

Note: Information does not include Montana, New Jersey, or Virginia. Information reported as of January 1, 1996.

Prison industry jobs tend to give inmates more technical and transferable experience, and pay better than other prison jobs. In addition, while Tennessee's prison industries have either lost money or broken even, some state prison industries have profited. In Tennessee some industrial prison spaces are not completely used or remain empty due to a lack of private industry programs or governmental participation. This empty, available space could be used for inmate work in private industry. TDOC should work with TRICOR to secure more private industry involvement in inmate work.

<sup>49</sup> *Progress Report & Status Update*, TRICOR, October 8, 1996, pp. 4 and 5.

<sup>50</sup> National average includes data from the federal government and the District of Columbia, along with 47 states.

- **TDOC reductions in teachers and education related positions in 1997 may have detrimental effects on the department's educational program.**

In 1997 the Department of Correction abolished 41 education related positions and reclassified 37 positions for FY 1997-98. With the reduction in educational staff, academic class sizes were increased from 25 to 35 inmates per teacher and from 15 to a maximum of 23 inmates per teacher for vocational classes, closer to Tennessee's public school requirement. With larger classes and fewer teachers the department added Correctional Clerical Officers to assist teachers with administrative duties and help maintain security in the larger classes. In July 1997, TDOC's commissioner explained that some classrooms needed renovations to accommodate larger class sizes. As a result of building renovation and staff cuts, TDOC instituted "split scheduling" limiting an inmate's education to half-day programs. Commissioner Campbell states that split scheduling is a temporary measure to manage transition. The Director of Education for TDOC said in November of 1997 that he has not seen large increases in the number of inmates in part-time education or split scheduling. However, some class room renovations have not begun and split scheduling may be used when those projects begin. Members of the Select Oversight Committee on Corrections have expressed concern about the effects that staff cuts, larger classes, and split scheduling will have on the educational system. The long-term effects of these educational changes are not known and warrant study.

*Department comment: The reduction of teachers during the FY 1997-98 budget cycle does increase the class size to that recommended by the Department of Education for public schools. These changes were not intended to decrease the total number of inmates participating in these programs. The actual percent of participation does not change as a result of the increase in class size with the reduction in the number of teachers. Inmate participation in academic programs system-wide remains constant at 13 percent, and vocational participation remains at nine percent.*

## **Health Services**

### Under Grubbs:

Just before the *Grubbs* trial, TDOC was involved in *Trigg v. Blanton*. In *Trigg* the court found the level of medical services in the TDOC system "inadequate to protect life and limb...[causing] needless human suffering." The *Grubbs* case determined that although some improvements had been made in TDOC's health care system since the *Trigg* case, "deficiencies clearly remain."<sup>51</sup> In *Grubbs* the court determined that constitutional standards had been violated through "deliberate indifference to the serious medical needs of prisoners." Violations occurred in the following areas:

- Insufficient numbers and qualifications of health care staff, causing staff to perform duties beyond their training and skill;
  - Inmates, many of whom had no medical training, providing health care services to other inmates;
  - Lack of available 24-hour emergency medical care by qualified personnel.
- The court concluded that "without adequately trained and qualified personnel, the consistent delivery of adequate medical care is impossible, and needless human suffering is the inevitable result. The failure of TDOC to employ sufficient qualified personnel in the face of

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<sup>51</sup>*Grubbs*, p. 1065.

repeated admonitions and recommendations from both inside and outside the department demonstrates such deliberate indifference to and wanton disregard of the serious medical needs of inmates as to amount to cruel and inhuman punishment.”<sup>52</sup>

The court identified other concerns with TDOC’s health care system. The court explained that each warden controlled the health care system at his/her prison, and that the director of health services merely acted in an advisory role. Lack of centralized control of the health care system resulted in several problems including:

- widely varying health care costs from prison to prison;
- lack of follow-up treatment for inmates, particularly transferred inmates;
- no system of quality control;
- inadequate safeguards against an outbreak of communicable disease;
- poorly organized pharmacy services;
- lack of coordination among facilities and widely variable levels of care; and
- lack of coordination of mental health services.<sup>53</sup>

After making these determinations, the court assigned four consultants to evaluate the health care system and develop recommendations. All four determined a need for centralized oversight through a quality assurance program. The evaluators believed that the only way to assure adequate health care throughout the entire TDOC system was to have a quality assurance program that established uniformity in standards, procedures, and reporting.<sup>54</sup>

The health care services portion of the court’s matrix required TDOC to establish a health care quality assurance program, improve the recruitment of health care and mental health staff, develop health care staffing patterns, and create and implement health care action plans on a five-year basis.<sup>55</sup> In the 1992 *Report of the Special Master Regarding the Defendants’ Compliance with the Court’s Orders* the health care evaluator health care recommended completing a comprehensive quality assurance program that included mental health by July 1992. The evaluator also recommended a strengthened role of the central office in health care.<sup>56</sup> TDOC developed a quality assurance program and opened the DeBerry Special Needs facility. These actions allowed the release of TDOC from court supervision in 1994, after it monitored its quality assurance program for one year.

#### Current Conditions:

- **Since *Grubbs*, the department has improved its health care system, but is not in compliance with some of the court’s recommendations.**

The department has created and maintained a systematic set of policies for health care, developed a quality assurance program, and according to policy and TDOC staff, permits only certified or licensed health care staff to deliver care to inmates. In addition, the department has recently instituted a utilization review program intended to serve as a gatekeeper for outside

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<sup>52</sup>*Grubbs*, p.1129.

<sup>53</sup>*Ibid.*, pp.1066-1069.

<sup>54</sup>*Report of the Special Master Regarding the Defendants’ Compliance with the Court’s Orders*, Appendix A-Letter from Dr. Spencer to Patrick McManus, April 19, 1992. p.2.

<sup>55</sup>*Grubbs* Matrix, Health Services, February 17, 1991.

<sup>56</sup>*Report of the Special Master Regarding the Defendants’ Compliance with the Court’s Orders*, Appendix A-Letter from Dr. Spencer to Patrick McManus, April 19, 1992.

medical services. The expected results are decreased costs and more standardized health care. Although many of the improvements made during *Grubbs* have been maintained, others have not. Today, not all institutions have 24-hour health care; health care staff vary from prison to prison; and the health care system has not been centralized to the greatest extent possible. Specifically, personnel cuts in TDOC's central office health care staff have diminished the quality assurance program, decreasing field staff training and data collection. As a result, some institutional information has not been reported to the central office and institutional staff have made critical errors. For example, the 1994 Continuous Quality Improvement reports indicated that some institutions failed to properly distribute controlled substances.

- **TDOC's quality control system is still intact today; however, central office analysis and enforcement of the system are not adequate.**

In December 1992, TDOC established Policy 113.09 guiding the system's quality control program. In April 1995, the policy was revised to define the prison health care system's quality control structure as threefold. The first element is Continuous Quality Improvement (CQI) defined as "the ongoing process by which the health care delivery system is objectively and systematically monitored and evaluated to assess the quality and appropriateness of care, to ensure that opportunities are pursued to improve patient care." Each institution is required to have a registered nurse serve as the Continuous Quality Improvement coordinator, responsible for maintaining the structure of the CQI program as determined primarily by the Director of Health Services. In addition to each institution having a CQI coordinator, each also has its own CQI committee organized by the institution's health administrator.<sup>57</sup>

The second element of TDOC's quality control system is the Treatment Review Committee (TRC), defined as "a committee of licensed mental health professionals appointed by the Director of Health Services to review the appropriateness of psychiatric treatment on a case-by-case basis."<sup>58</sup>

The third element is the Pharmacy and Therapeutics Committee (PTC). The committee is defined as "a committee of health providers from various disciplines appointed by the Director of Health Services to determine what medications should be on the TDOC formulary and to review and approve non-formulary requests." The PTC reviews medications on the formulary to determine effectiveness and appropriate substitutions.<sup>59</sup>

In addition to department policy defining the CQI, the *Continuous Quality Improvement Manual Activities/Guidelines for Fiscal Year 1995-96* identifies information and forms required to capture information for the quality assurance program. Standard information is required each month, such as the number of positive tuberculosis tests and a list of required periodic health appraisals. System-wide specialized studies are also required. For each required study the central office has set a performance standard. According to the department's Nurse Consultant, the elements of the CQI program have remained the same since the program's creation except for a few recent additions.

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<sup>57</sup>Department of Correction, Health Services Continuous Quality Improvement Policy 113.09, effective April 15, 1995, pp. 1-7.

<sup>58</sup>Ibid., pp. 1-3 and 7.

<sup>59</sup>Department of Correction Policy 113.09, pp. 1, 2, and 7.

- **TDOC annual inspections indicate some deficiencies in health care quality at state prisons.**

Comptroller's staff reviewed TDOC annual prison inspection reports for the years 1991 through 1997. Health care violations were some of the most frequent violations. The most violations were noted in 1993 with 59 health service violations among 23 facilities. In 1997 the health service category had 25 violations. DeBerry Special Needs facility had 12 of the 25 violations. Increased attention may be needed to improve the quality of health care, particularly at institutions with a disproportionate number of health care violations. Department officials indicate that the inspection instruments for health services are extensive, and that the number of violations alone may not indicate the severity of any problem in health care.

- **Although staff of the department's Health Services Division believe that the quality improvement system is a good measure of health care quality, they are concerned that the division may have inadequate staff.**

In July 1995, the statewide CQI coordinator position was eliminated. That person had been responsible for monitoring and evaluating the quality of the health care system based on data the institutions provided. Statewide CQI responsibilities have been added now to the Nursing Consultant's duties. The consultant admits that she has not had the time to analyze data supplied by the institutions nor to meet with the institutional CQI coordinators. She also indicates that coordination is essential to ensure that monthly data is gathered and analyzed consistently. Because of the lack of time, she says it is difficult to judge the quality of the health care system today. The department has eliminated other Health Care Services' positions in the last few years. According to the Deputy Commissioner, the division once had seven employees. Today, three remain: a director, a nursing consultant, and a secretary. As a result, no semi-annual reports that evaluate the CQI program have been done since 1994. Department comments to this report state that TDOC plans to reestablish the central office position for monitoring the quality assurance. In addition, TDOC plans to add an Assistant Director of Health Services position to the central office staff. These two positions will provide support for the health and mental health services sections of central office.

- **Tennessee has better qualified health care staff today.**

Although central office staff may not be fully adequate to meet the department's needs, institutional health care staff are more qualified than during *Grubbs*. TDOC was found in violation of constitutional standards during *Grubbs* because it had neither qualified nor sufficient health care staff. According to the Nurse Consultant, during *Grubbs* the department frequently hired unlicensed physicians and health care professionals, which is no longer permitted. Contracted providers must submit current licenses of employees during the bid process. Each facility must make sure that all health care professionals are licensed and/or certified. The central office checks certification and licenses only as part of the TDOC annual inspections. To ensure 100 percent licensing, certification, and to standardize staffing the Director of Health Services suggested requiring that central office check employee licenses and certification and exercise more control over hiring key health care staff. However, such a change may not be necessary, since there have been very few licensing violations in recent years.

TDOC has also improved the quality of its health care staff by not allowing inmates to deliver health care to other inmates. Under *Grubbs*, the court determined that TDOC violated constitutional standards by allowing inmates without medical training to provide medical care to

other inmates. Today, according to the Director of Health Services and the Nurse Consultant, inmates may perform only maintenance and cleaning in prison health care facilities. Neither TDOC annual inspections nor American Correctional Association accreditation visits indicate that inmates are treating other inmates.

Under *Grubbs* the court determined that staff members were delivering care above their qualifications and training. Although there are still violations in this area, the problem does not seem pervasive. During one recent institutional inspection, nurses instead of doctors were ordering psychotropic medications and inmates were in restraints or seclusion without orders from a psychiatrist as required. Another inspection identified non-licensed interns conducting exams and nurses signing paperwork required to be completed by at least a mid-level professional or a medical doctor. Today, to combat staff from acting outside their scope of duty, each institution is required to have functional job descriptions that specify duties at qualification levels. These job descriptions are checked annually during inspections. The creation and adherence to job descriptions should continue to help curb TDOC health care employees from acting beyond their level of training. Although violations seem isolated, more monitoring may be needed as long as any violations occur. The Nurse Consultant does not believe that health care professionals frequent act beyond their level of training because the current legal environment discourages such action.

- **Health care staff vary from prison to prison.**

For 1996 staff to inmate ratios varied greatly from one institution to another. Even institutions of similar type have varying health care staffing ratios. For example, Northeast, one of the three prototype prisons—all of similar design and population size—had a higher ratio for both mental and physical health care staff than the statewide average. The other two facilities, Northwest and South Central, had a lower staff ratio than average. South Central has more inmates per staff person for both physical and mental health care than any of the 19 prisons represented in Exhibit 17. TDOC Health Services personnel indicate there are no widely accepted or available health care staffing ratios for prisons. Accepted ratios for hospital staff, according to the Director of Health Services, are not appropriate comparisons for the prison setting. Office of Research staff also examined the accreditation standards for the American Correctional Association and were unable to find health care staffing standards. Exhibit 17 provides the number of full-time health care staff and staff-to-inmate ratios.

*Department comment: Staff to inmate ratios do vary greatly from one institution to another; however, in most cases, this is appropriate due to institutional missions and/or specialized programming. In some instances, particularly at small facilities, one position may provide dual administrative duties. For example, at some institutions a registered nurse may also function as the institution's health administrator.*

**Exhibit 17**  
**TDOC Health Care Staffing in 1996**

<b>Position</b>	<b>Number of Full Time Equivalent (FTE) Health Care Employees</b>	<b>Total TDOC Staff FTE:Inmate Ratio</b>	<b>Most Inmates per Staff FTE:Inmate Ratio (initials of institution)</b>	<b>Least Inmates per Staff FTE:Inmate Ratio (initials of institution)</b>
Health Administrator	15.5	1:900	1:1,656 (CCF & WTHSF)	1:240 (CCSC)
Medical Director	7.0	1:1986	1:3,297 (MCRCF)	1:724 (TPW)
Physicians Assistant/Nurse Practitioner	12.3	1:1139	1:1,781(LCRCF & NWCC)	1:360 (MTRC)
Director of Nursing	12.0	1:1163	1:1,656 (CCF & WTHSF)	1:362 (TPW)
Registered Nurse	72.1	1:194	1:330 (MCRCF)	1:80 (CCSC)
Licensed Practical Nurse	128.1	1:109	1:210 (CCWC)	1:55 (TPW)
Dentist	12.0	1:1163	1:1,506 (SCCC)	1:488 (MLRC)
Dental Assistant	12.0	1:1163	1:1,506 (SCCC)	1:488 (MLRC)
Dental Hygienist	4.0	1:3488	1:2,672 (LCRCF & NWCC)	1:1000 (TCIP)
Secretary/Medical Records/Clerical	30.0	1:465	1:989 (MCRCF)	1:181 (TPW)
Optometrist	.59	1:23,646	1:35,100 (RMSI)	1:6,024 (SCCC)
Psychiatrist	3.4	1:4079	1:9,890 (MCRCF)	1:905 (TPW)
Psychologist	3.4	1:4140	1:14,129 (MCRCF)	1:1,207 (TPW)
Psychological Examiner	16.5	1:846	1:1656 (WTHSF)	1:240 (MTRC)
Mental Health PS*	27.0	1:517	1:1,000 (TCIP)	1:120 (CCSC)
<b>Total Health Care Staff</b>	<b>355.9</b>	<b>1:39.2</b>	<b>1:62.99 (SCCC)</b>	<b>1:16.99 (TPW)</b>

*Source: Information provided by the Department of Correction, Staffing Comparison, working document. Information not audited by OREA staff. DeBerry Special Needs Facility excluded from chart. See Exhibit B for list of state prisons and corresponding abbreviations. \* “Mental Health PS” refers to Mental Health Program Specialist.*

- **Not all institutions have 24-hour health care.**

Under *Grubbs*, failure to provide 24-hour emergency medical care by qualified personnel was deemed a “deliberately indifferent” action, violating constitutional standards related to the care for inmates. In 1997 some prisons do not have 24-hour emergency medical care. According to a TDOC health care official, all larger prisons have 24-hour emergency medical care on site, but the smaller facilities do not. In an emergency, smaller facilities take inmates to the nearest hospital. Another official explained that most of the community service centers do not have 24-hour care and that even the larger facilities may be staffed by a licensed practical nurse (LPN), not a registered nurse (RN). According to TDOC, not every institution needs 24-hour emergency medical care. The smaller institutions may find it more financially practical to take inmates to the nearest hospital for emergency care.

*Department comment: With the closure of the Tennessee Correctional Work Center, the Knoxville Community Service Center, and the Chattanooga Community Service Center, only two small units will have less than 24 hour medical coverage on site. Each of these units is part of a larger facility and have CPR/First Aid certified staff on duty at all times, as well as ambulance*

*and emergency room access through community resources. Even during Grubbs oversight, these facilities never had 24 hour medical coverage. All larger institutions have had and currently have 24 hour coverage.*

- **Health care costs vary from prison to prison, but the range of costs has remained consistent since 1993.**

During *Grubbs* the evaluators criticized the department for health care costs that varied from prison to prison. The annual health and mental health care costs per inmate still varies among prisons, but the cost variance seems to be consistent from 1994 through 1996. (The health care cost variance for 1993 is higher than the other years.) From 1993 to 1996 health care costs ranged from \$577 to \$4,436 annually per inmate, excluding DeBerry Special Needs Facility. When DeBerry is included the range increased to \$577 to \$22,934 for the same time period. (See Exhibit 18.)

*Department comment: Costs for health care will vary from institution to institution when different groups of inmates and/or specific programs are provided at some locations. For example, because female health care costs are higher, prisons holding females will have higher costs. Institutions that have special mental health programs will also have higher costs as well as the reception centers because of intake requirements.*

In June 1996, the legislature and the press criticized the Department of Correction for having higher inmate health care costs than for TennCare recipients. According to a June 1996 TDOC *Status Report on Inmate Health Care Services*, the department spent \$41 million for 13,566 inmates in 1996, or \$3,022 per inmate.<sup>60</sup> In June 1996, newspapers reported that for fiscal year 1995-96 the state spent \$2,646 per inmate, while the TennCare cost totaled \$1,354 per recipient.<sup>61</sup> The department attributes excess health care costs to a lack of control over referrals, procedures, and lengthy hospital stays.<sup>62</sup> The department estimates that for fiscal year 1997-98 the total health care costs per inmate are \$2,263. Mental health estimated costs for the same period are \$619 per inmate.<sup>63</sup>

To determine whether Tennessee's inmate health care cost is excessive, staff compared the state's inmate health care cost to other states. In 1995, Tennessee reported spending \$7.25 per day per inmate on medical care, above the average cost of \$6.53 for 45 states, the District of Columbia, and the federal prison system. Of the 45 states reporting, Tennessee ranked 18th. In 1994, of the 45 states reporting average per day inmate health care costs, only Florida's cost exceeded Tennessee's and that by only a penny. The average daily health care cost for that year for the 45 states, District of Columbia, and the federal system was \$6.07 per inmate, while Tennessee's was \$9.12.<sup>64</sup>

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<sup>60</sup>Note: The average health and mental health care cost in Exhibit 21 is slightly lower than this figure.

<sup>61</sup>"Want better state health care? Go to jail," Nashville Banner, June 12, 1996, A1.; "Inmates get cured while TennCare hurts," Chattanooga Times, June 14, 1996; "Inmates get better health care," Jackson Sun, June 14, 1996.

<sup>62</sup>"Status Report: Inmate Health Care Services," Tennessee Department of Correction, June 11, 1996, p. 14.

<sup>63</sup>Response to the Fiscal Review Committee, Tennessee Department of Correction, October 23, 1997.

<sup>64</sup>*The Corrections Yearbook*, 1996, Criminal Justice Institute, pp. 68 and 69, 1995 Edition, p. 51.

**Exhibit 18**  
**Annual Health Care Costs and Cost Ranges from 1993-1996**

	Fiscal Year 1993	Fiscal Year 1994	Fiscal Year 1995	Fiscal Year 1996
Average annual health care costs per inmate	\$2,692	\$2,699	\$2,697	\$2,528
Range between highest and lowest annual Health Care costs per inmate	\$748-\$21,854	\$890-\$21,388	\$928-\$22,378	\$577-\$22,934
Range between highest and lowest annual Health Care costs per inmate (Excluding DeBerry Special Needs Facility)	\$748-\$4,200	\$890-\$4,339	\$928-\$4,436	\$577-\$3,619
Average annual mental health care costs per inmate	\$788	\$758	\$733	\$615
Range between highest and lowest annual Mental Health care costs per inmate	\$97-\$10,510	\$89-9,192	\$8-9,153	\$6-\$8,504
Range between highest and lowest annual Mental Health Care costs per inmate (Excluding DeBerry Special Needs Facility)	\$97-\$424	\$89-\$507	\$8-\$497	\$6-\$384

*Information provided by the Department of Correction. The annual cost difference was calculated by subtracting the institution with the lowest annual health care costs per inmate from the institution with the highest cost. Costs include all health care staff salaries, both TDOC and contracted staff. Data for CCA operated South Central Prison not included in information supplied by department.*

- **TDOC has made recent changes to its Health Care System in an effort to save costs.**

Since 1996, TDOC has initiated four distinct efforts to decrease costs:

- 1. \$3 inmate co-payment for health care services.**

In January 1996, the department instituted a \$3 co-payment that inmates must pay when initiating a health care visit. Information provided to the Select Oversight Committee on Corrections in September 1997 indicates that in the 18 months since implementation of the co-payment the number of total health encounters has decreased by 48 percent.

- 2. Health care utilization review program.**

A utilization review program incorporates managed care into the prison health services. It requires that a utilization review board approve referrals to DeBerry Special Needs Facility and to medical specialists and facilities outside the prison system. The review program's goal is to reduce health care costs and provide additional data allowing better analysis on quality of care. The utilization review contract started in January 1997. TDOC documents supplied to the Oversight Committee in September 1997 report that since the implementation of the utilization review program, the length of hospital stays, number of emergency visits, the number of specialty visits to DeBerry Special Needs Facility's clinics, and secondary levels of care have all decreased.

- 3. Central contract for mental health services.**

In July 1997 the Department of Correction centrally contracted for doctoral level mental health professionals. Previously each institution contracted separately for mental health staff. Central contracts for health care personnel should increase cost-effectiveness and ease monitoring the quality of care.<sup>65</sup>

<sup>65</sup>“Status Report: Inmate Health Care Services,” Tennessee Department of Correction, June 11, 1996, pp. 10 and 13.

#### **4. New computer system for pharmacy services.**

Since *Grubbs*, the semiannual reports for the Continuous Quality Improvement program have included the number of pharmacy mistakes that occur monthly. For 1994, the number of pharmaceutical mistakes was less than one percent of the prescriptions filled, lower than the community standard.<sup>66</sup> The department also recently added an integrated computer system for the TDOC Pharmacy at an estimated cost of \$53,000. The new system is supposed to produce meaningful management data, reduce the amount of time required to fill prescriptions, and identify pharmaceutical providers who either vary from the formulary or prescribe excessive medications.<sup>67</sup> Although there is no quantitative information comparing the organization of the pharmacy services, one can assume that tracking pharmaceutical information and upgrading the computer system has resulted in some improvements.

### ***Security and Institutional Environment***

#### Under *Grubbs*:

Insufficient security controls made the institutional environment dangerous during *Grubbs*. Inmates were frequently victims of other inmates and security officers faced dangerous conditions. Prison overcrowding coupled with inmate idleness created a ripe environment for hostility, confrontation, and agitation. Moreover, the physical conditions of the institutions did not lend themselves to a secure environment. The facilities were understaffed and overcrowded with inmates, keys were left in locks or could not be found when needed, and staff were not trained sufficiently.

#### Current Conditions:

- **TDOC has maintained improvements to its security system made during *Grubbs*. However, recent high correctional officer turnover and vacancy rates cause concern.** TDOC met the court-appointed evaluators' security recommendations for required construction and other physical modifications. Closed circuit television, a key and tool control system, metal detectors, and a fence detection security system were all improvements made to TDOC's overall security system that have been maintained since *Grubbs*.

According to 1995 data, Tennessee has a better security officer-to-inmate ratio than many states. Data also indicate that Tennessee's officers receive as much training as officers in other states. In addition, TDOC has improved the security of its prison environment by designating different security levels for its institutions.

- **Compared to 15 southern states in 1997, Tennessee had a higher number of inmates compared to the number of filled correctional officer positions than most states. In addition, Tennessee's correctional officer starting salary was lower than most southern states.**

Security officer staffing at institutions contributes to the security and stability of a prison. According to information from the *Adult Correctional Systems Report*, for the southern states reporting there were on average five inmates per filled security officer position in 1997, while

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<sup>66</sup>Semi-Annual Reports of Continuous Quality Improvement Program, 1994, Tennessee Department of Correction.

<sup>67</sup>"Status Report: Inmate Health Care Services," Tennessee Department of Correction, June 11, 1996, pp. 10 and 12.

Tennessee had 6.9 correctional officers per inmate.<sup>68</sup> In the same year, Tennessee had positions for 2,219 correction officers and filled 2,043 (92.1 percent).

Only two southern states had a higher ratio of inmates to filled correctional officers than Tennessee. Alabama had the highest correctional officer to inmate ratio at 9.4. North Carolina had the lowest correctional officer to inmate ratio at 3.0. Tennessee’s inmate/security staff ratio has increased compared to the 1995 report. Tennessee’s 1995 ratio was 5.8 inmates per staff person compared to 6.8 inmates per staff for 1997. The southern state average has increased since 1995, but at a slower rate than Tennessee.

According to the report, in 1997 Tennessee’s starting salary for correctional officers, at \$15,972, was the third lowest salary among the southern states. The average for the southern states was \$18,007. Maryland had the highest starting salary at \$22,004. Exhibit 19 shows how Tennessee compared to other southern states in 1997.

**Exhibit 19**  
**1997-Correctional Officer Positions, Staffing Ratios, and Starting Salaries**  
**in 16 Southern States**

State	Correctional Officer Positions Established	Correctional Officer Positions Filled	Percent of Positions Filled	Inmate Population 1995	Ratio of Inmates to filled Security Positions	Starting Salaries
Tennessee	2,219	2,034	92.1	14,123	6.9	\$15,972
Alabama (highest ratio of inmates to staff)	2,513	2,179	86.7	20,422	9.4	\$17,823
North Carolina (lowest ratio of inmates to staff)	10,876	10,178	93.6	30,737	3.0	\$20,136
Average ratio	94,959	92,573	97.5	464,593	5.0	\$18,007

*Source: Adult Correctional Systems Report, Southern Legislative Conference, Council of State Governments, 1997, p.20. States included Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.*

- **Recent data show that specific TDOC facilities have significant correctional officer turnover and vacancy rates.**

TDOC reports that for calendar year 1996 there were 728 separations in correctional officer positions, or a 32 percent turnover rate for the year. At some TDOC facilities turnover was as high as 72 percent. Vacancy rates were also high. In August 1997 three institutions each had over 55 correctional security positions vacant, ranging from 14 to 24 percent total security positions vacant. In that same month, TDOC had 215 correctional officer vacancies system-wide, along with 82 other security related vacancies. In December 1997, two institutions had security vacancy rates of 13 to 14 percent. TDOC documents suggested that several issues contribute to the current high vacancy rates—discussions of prison privatization, low unemployment rates in counties where prisons are located, the decreasing attraction of state salaries and benefits, and a

<sup>68</sup>Adult Correctional Systems, Southern Legislative Conference, Council of State Governments, p. 20, 1997.

slow state hiring process. To maintain the security improvements made during *Grubbs*, vacancy rates should be decreased, particularly at institutions with the highest turnover.<sup>69</sup>

TDOC has responded to the lack of security staff by asking retired TDOC officers to volunteer at state prisons with the worst problems. For a limited time, the department allowed security officers at other prisons to work overtime at the institution with the most vacancy problems. From September to November 1997 TDOC instituted a mandatory six-day work week for correctional officers at the institution with the worst problem. Commissioner Campbell said at the September 1997 meeting of the Select Oversight Committee on Corrections that the department would ask for an increase in correctional officer salaries for FY 1998-99, hoping that a salary increase will help recruit and retain correctional officers. In December 1997 TDOC's Deputy Commissioner listed several actions the department plans to make to help address the high turnover problem. These actions include: increasing advertisement of job vacancies; attending job fairs; and considering the hiring of a TDOC recruiter. Because correctional officers have more contact with inmates than most other TDOC staff, problems in this area warrant departmental priority. If problems are not resolved, prison security could be compromised.

*Department comment: It should be noted that not all location/areas of the state have significant turnover/vacancy problems, nor are these specific to TDOC. The extremely low unemployment rate in certain areas definitely contributes to the problem, which exists at most private companies in Tennessee. The Nashville Chamber of Commerce just sponsored a workshop addressing these issues. More on-site applications and testing, as well as stronger efforts in recruitment across the state, are being initiated by the department. The department has also overlapped some positions to provide readily trained staff as vacancies occur.*

- **Compared to other southern states for 1997, Tennessee required less correctional officer training for new employees.**

Another critical area of security discussed during *Grubbs* was the amount of training correctional officers received. According to information from the *Adult Correctional Systems Report*, the average training requirement for the 16 reporting southern states in 1997 was 206 hours of classroom work the first year plus 34 hours of on-the-job training. In addition to the initial training correctional officers receive, all of the reporting states required annual in-service training, ranging from 16 to 40 hours. According to the *1997 Adult Correctional Systems Report* and TDOC policy, Tennessee required fewer total training or classroom hours for new employees than any of the reporting southern states. However, TDOC policy requires slightly more on-the-job training for first year officers and more annual in service training than the southern state average.

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<sup>69</sup> TDOC documents supplied to the Select Oversight Committee on Corrections, September 9-10, 1997.

**Exhibit 20**  
**1997 Training Hours for Adult Correctional Officers**

State	Classroom	First Year On-the-Job Training	Total Hours of Training Required	Annual In Service Training
Tennessee's Policy (least training required for new correctional officers)	120	40	160	40
Alabama (most training required for new correctional officers)	360	80	400	16
Southern State Average	206	34	239	31

Source: *Adult Correctional Systems Report*, Southern Legislative Conference, Council of State Governments, p. 22, 1997 and TDOC Policy 305.06.

### ***Management and Operations***

#### Under Grubbs:

In the 1980 performance audit of TDOC the auditors determined that “department research, planning, and program evaluation activities are inadequate.” At that time the department was faulted for not having a systematic research, evaluation, and planning process; for lacking planning staff; and for not consulting with external groups in planning. The department was also cited for lacking an established development, revision, or monitoring process for department policies. In addition, the auditors found that the department lacked the information and time to adequately review and assign priorities to the department’s budget.<sup>70</sup>

During *Grubbs* the court did not determine any constitutional violations related to the management and operations of the department. However, in 1985 the court assigned the Wharton School at the University of Pennsylvania to review the organization and management of TDOC. Like the 1980 performance audit, the Wharton report faulted the department for failing to plan adequately. It determined that the formal planning process was not taken seriously; management did not strongly support or understand planning; and the planning process was not strongly linked to the department’s budgeting process.<sup>71</sup>

#### Current Conditions:

- **The Department of Correction has implemented a number of management procedures and controls, but needs greater long-range strategic planning processes.**

Overall, the American Correctional Association (ACA) has been pleased with the recent management and operations of Tennessee’s prisons. All of the state’s prisons, the training academy, probation and community correctional programs, and the central office are accredited by the ACA. The 1996 ACA inspection of the central office found that policies were current and well written; internal audit mechanisms were deemed excellent; and the management

<sup>70</sup>Comptroller of the Treasury, Division of State Audit, *Program Evaluation on the Department of Correction*, August 1980, pp. ii, iii, and iv.

<sup>71</sup>Management and Behavioral Science Center, the Wharton School, University of Pennsylvania *Organizational and Management Diagnosis and Recommendations for the Tennessee Department of Correction*, February, 1985, pp. 22 and 23.

information systems and all records reviewed were also in excellent condition.<sup>72</sup> All of the auditors' comments speak well for the department and indicate that the improvements made in management and operations under *Grubbs* have been maintained.

As required by *Grubbs*, the department still has pre-release programs, monitors the data on county jail populations, and utilizes community correction programs as a means of keeping nonviolent offenders out of prison. In fact, department staff explained that data collection for community corrections and probation projections had recently been added. The 1996 ACA audit of community corrections and probation complimented the division for its partnership with the community in developing community service work projects, for having an excellent relationship with law enforcement agencies, and for holding the caseloads of probation officers to manageable levels. The ACA auditors congratulated TDOC for being one of only 19 agencies that accredited its community corrections using adult probation and parole field service standards.<sup>73</sup>

During *Grubbs*, the matrix required that the central office consolidate and centralize functions by integrating planning, budgeting, and legislative functions. The department has taken steps to integrate these functions by requiring that each department head annually submit a one-year and three-year plan of goals and objectives to the Planning and Research Section. The Planning and Research Section then combines the goals and objectives into the annual planning document. The budget section then reviews this annual planning document, and in consultation with the Planning and Research Section, combines it into the department's budget. This process has been in place for three years and was revised in December 1995. The Assistant to the Commissioner for Planning and Research attributes the planning process improvements to better data collection and population projection methods, which have enabled easier and more accurate planning. Also, department staff better understand the planning process. The Planning and Research section has not determined if division goals and objectives have been met, but plan to begin such analysis. Performance measurement will help the department review and assign priorities to its budget; something the department was lacking in the 1980 performance audit of the department.

In spite of these improvements, the department has not produced a comprehensive plan since 1985. At the administration's request, the department developed a draft *Three Year Strategic Plan* in July 1995 to cover the period from 1995 through 1998 and created a draft ten-year plan for female felons. At the July 1996 meeting of the Oversight Committee department officials stated that they were developing a comprehensive long-range plan, scheduled for completion in December 1996. However, as of December 1997, the plan had not been completed. The female felony plan was eventually completed in September 1997 and approved by the Select Oversight Committee on Corrections. Failure to produce long-range plans causes the department to appear disorganized, undermines its credibility, and decreases support for department-initiated changes.

In addition to not completing the *Three Year Strategic Plan*, department officials did not share the draft plan with most staff and never mentioned the plan to Select Oversight Committee on Corrections staff or members. Implementation may proceed more easily if stakeholders are

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<sup>72</sup>Commission on Accreditation for Corrections, *Standards Reaccreditation Audit*, Tennessee Department of Correction Central Office, May 22-23, 1996.

<sup>73</sup>Visiting Committee Report and Hearing Minutes, Commission on Accreditation for Corrections, *Standards Re-accreditation Compliance Audit*, Tennessee Department of Correction Division of Field Services, August 28, 1996. pp. 6, 7, and 8.

included in the process. The department has instituted the following items included in the draft *Three Year Strategic Plan*:

- inmate health care co-payment,
- health care utilization review program,
- comprehensive food service program,
- construction of a new prison through privatization,
- construction of a prison that differs from the prototype design, and
- increased double celling of medium security cells.

The draft plan, including the department's reasoning, might have facilitated the committee's discussion on:

- sending state inmates to Texas,
- contracting with Corrections Corporation of America for another prison,
- eliminating the backup beds in the state's capacity projections, and
- building prisons that do not follow the state's prototype design.

Committee staff and members continue to express concern about the apparent lack of departmental analysis and planning. In April 1996 the committee recommended to the General Assembly that the department plan strategically and that the agency be renewed for only two years.

One exception to the inadequate planning efforts made by TDOC was the completion of the female felony plan in September 1997, which had been in draft form since 1995. Members of the Select Oversight Committee on Corrections complimented the department on its comprehensive approach to the plan. One legislator commented that he had not seen this level of quality in TDOC planning since the late 1980s.

On the whole, the Department of Correction supplies information to the Select Oversight Committee on Corrections and makes committee staff aware of policy changes that the department is considering. When the Department of Correction cut employees in the early 1990s, Oversight Committee members and staff were involved in determining new appropriate staffing standards for the department.

However, the department sometimes fails to inform the committee of changes and decisions. For example, the department did not consult with Oversight Committee staff regarding: sending TDOC inmates to Texas, expanding the number of beds built at the Hardeman County Prison, consolidating the administration of several prisons, or eliminating positions for fiscal year 1997-98.<sup>74</sup> At times, staff and members of the Oversight Committee have discovered the department's plans only through rumors or newspaper articles. Similarly, during the most recent budget cycle for fiscal year 1997-98, the department is again revising its staffing standards, but without assistance from Oversight.

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<sup>74</sup>The Select Oversight Committee on Corrections did approve the Hardeman County expansion, but was not involved in the initial decision making process or negotiations with CCA and Hardeman County.

While the department's management and operations have improved since *Grubbs*, planning needs improvement. Placing importance on strategic planning not only helps agencies avoid *Grubbs*-type lawsuits, but aids in monitoring quality and making the most efficient use of state resources.

## Legislative Recommendations

### ***Prison Overcrowding***

**The General Assembly may wish to consider amending TCA 41-1-503 to increase the capacity percentage required for an overcrowding emergency.**

TCA 41-1-503 establishes that state prisons are in an overcrowding emergency when they are operating above 95 percent of capacity. Under that standard, Tennessee has been in an overcrowding emergency since the statute was enacted in 1985. Despite instituted pre-release programs, housing inmates in local jails, allowing inmates to serve sentences in boot camps and community corrections, Tennessee prisons continue to operate above the statutory limit. This seems to indicate that either the statutory capacity is set too low, or Tennessee needs to take more drastic action to decrease overcrowding. If officials believe that the statutory measure of overcrowding is set too low, the General Assembly may want to consider increasing the allowed capacity before declaring an overcrowding emergency. If officials believe that the statutory measure of overcrowding is not set too low, the General Assembly may want to increase the number of prison beds, review sentence lengths, or expand the amount of alternative sentencing options available.

**The General Assembly may wish to require the Department of Correction to comply with TCA 41-8-106(g) or consider changing the statute.**

TCA 41-8-106(g) requires the transfer of inmates temporarily held in local jails to state prisons within 14 days of receiving an inmate's court paperwork. The state is not complying with this statute and is leaving inmates in local jails beyond the 14 days because of a lack of available state prison beds. The General Assembly may want to require the department to report the number of inmates held beyond the 14-day limit. The General Assembly may also want to consider establishing sanctions against the department for noncompliance, or may want to change the requirement if legislative and correction officials believe that the 14-day requirement is not appropriate.

### ***Management and Operations***

**The General Assembly may wish to statutorily require the development of strategic plans for corrections to be presented to the Select Oversight Committee on Corrections or other appropriate legislative committees.**

The Department of Correction has not placed priority on planning in the past; has had trouble agreeing on department priorities in the area of capital projects; and has failed to consult or inform the Select Oversight Committee on Corrections on certain planning and policy issues. In addition, the department has not released a comprehensive plan for the agency in 12 years. Because corrections is an area where there is a growing need for resources, it is imperative that the department in conjunction with the General Assembly set priorities for the future.

# Administrative Recommendations

## ***Prison Overcrowding***

**The department should increase state prison space or work with the General Assembly to consider other ways to alleviate prison overcrowding.**

According to TCA 41-1-503 the state's prison system is overcrowded because it operates above 95 percent of capacity. According to this standard, Tennessee has been overcrowded since 1985, when the statute was created. July 1997 population projections estimate a 3,422 bed shortfall in the state prison system by 2005. New prisons or expansions of current prisons are needed to meet statutory requirements and population growth.

*Department comment: The DOC sends a monthly report to the governor which is quite stringent, and annually projects capacity needs and recommends needed bed space. The General Assembly has funded requested space. Revised population projections and capacity levels are presented to SOCC annually, and updated semi-annually. They serve as the basis for proposed new bed needs.*

**The department should comply with TCA 41-8-106(g) and the Roberts orders by taking inmates from the local jails within 14 days.**

The Department of Correction is violating the continuing orders of the Roberts suit by not complying with TCA 41-8-106(g) for the counties involved in the suit. The Department of Correction has not taken inmates held in local jails into the state system in the required 14 days of receiving court paperwork. This may mean taking the inmates in backup into the newest prisons, like Hardeman and Lauderdale, upon completion. It may also mean planning another new prison earlier than current capital plans. The department could also encourage more local governments to contract with the state for inmates.

*Department comment: The TDOC, based on annual population projections, has for many years planned for increased bed space based on the unmet demand. Increased capacity via existing space utilization and new construction has been ongoing. Current planned bed capacity will exceed demand with the opening of Lauderdale County.*

*Office of Research response: The department has increased its capacity since Grubbs in order to compensate for the growing inmate population. However, even with increased space the state is still operating at an emergency level, beyond 95 percent of capacity, according to the state statute. By statute the state must declare its prison system overcrowded to contract with local governments to house state inmates and for the state to contract with a private company to house state felons. The state has done both and has operated above the 95 percent capacity limit since the statute was created in 1985. In addition, the state is violating court orders in five counties that require Tennessee to take state felons from these counties into the state's prison system within 14 days.*

**The department should institute a tracking system to determine the number of inmates who are backed up in local jails beyond the 14-day requirement.**

Because the department does not keep records on inmates who stay in local jails beyond the 14-day requirement, it cannot monitor compliance with TCA 41-8-106(g) or the Roberts orders. Some local government officials track this information and believe it is important for managing

prison space. TDOC documents to the Oversight Committee in July 1997 reported that department planning staff were improving the tracking system for state inmates in local jails. This improved system was scheduled for implementation by December 1997, but has not yet been created.

### **Classification**

**The department should work to move inmates from the reception centers in a shorter period of time.**

During *Grubbs*, court evaluators were concerned about the length of time inmates spent at reception centers. The lengthy stay at reception centers was attributed to a delay in the initial classification. Initial classification was taking eight weeks and inmates remained at reception centers long after the classification was completed. The court-appointed evaluators recommended cutting classification time in half. Today, TDOC data indicate that initial classification has been cut to four weeks, but inmates are still waiting up to eight weeks to transfer to time-building institutions because beds are not available. Therefore, the length of time inmates spend at reception centers has not decreased as recommended by *Grubbs* evaluators.

Since inmates continue to spend more time at the reception centers than evaluators recommended, the department should look at alternatives to moving the inmates to time building facilities sooner. If insufficient bed space is the problem, as the department suggests, then this is a strong indicator of future problems that may arise related to overcrowding. The department should look into this area before such problems occur.

*Department comment: Intake at reception centers has been gauged to allow the TDOC to maintain occupancy of approximately 98 percent of the operating capacity at any given time.*

*Office of Research response: Given the current operational capacity, it is wise to limit the number of inmates taken into the state's reception centers. However, once inmates are in the reception centers they are waiting for extended periods, beyond the evaluators recommendations during Grubbs. Keeping inmates in reception centers beyond recommended periods suggests that overcrowding may be a problem in Tennessee's prisons. Reception centers are intended as classification facilities. Work, education, and treatment opportunities are less available.*

**The department should closely monitor the number of custody overrides in its system and take steps to reduce overrides to evaluator recommended levels.**

An evaluation of TDOC's classification system during *Grubbs* said that "if the override rates exceed 10 percent central office should intervene to increase compliance with the classification policies." If the department works toward meeting the evaluator recommended 10 percent maximum overrides per year, it would force improvement of the initial classification process. Although the department has decreased the number of overrides compared to *Grubbs*, the number and percent of overrides have increased to 18 percent in 1996.

*Department comment: Grubbs' evaluators indicated that 10 percent was the target and 15 percent should be the highest level. As noted earlier, the majority of overrides in TDOC are actually to reduce custody levels for programs such as boot camp, pre-release, and parole violator programs (not impacting the violence/risk levels). Based on these type of overrides, the 18 percent becomes less significant.*

*Office of Research response: Whether the correct goal or upper limit is 10 or 15 percent the department's override rate is above both measures. It raises concern that an inmate's custody level is routinely decreased to allow him/her to participate in programs designed for lower custody level inmates. During Grubbs, the state was criticized for classifying and housing inmates according to available beds, rather than the most appropriate level for the inmate. Today, TDOC policy clearly states that Tennessee does not classify or house inmates according to available beds. The practice of changing the classification of inmates to allow participation in programs appears to indicate either the program requirements for the programs in question need revision or the state is beginning to classify inmates according to available space.*

**In order to decrease the number of classification overrides, the department may want to continue to evaluate and restructure the Custody Assessment Form (CAF). This will ensure the most appropriate custody level assignment during classification, decreasing the need to override classifications.**

The increasing percentage of overrides may indicate a need to refine the CAF to improve initial classification. Although overrides are not as high today as during *Grubbs*, they have increased in the last two years. By continuing to improve the scoring system used on the CAF, the department can diminish the number of overrides and eliminate the recurring problem of misclassification.

### ***Housing***

**The department should carefully monitor double ceiling to ensure it does not increase beyond the level that prison infrastructure can support. The department should report monitoring results to the Select Oversight Committee on Corrections or other appropriate bodies.**

Double ceiling has always been used in TDOC facilities and its use continues today. Currently, the department does not have a problem with double ceiling because the infrastructure can support it. Nevertheless, the department should keep a close watch on the number of cells it doubles. The department should continue to make sure infrastructure can support the inmate population that is increased through double ceiling. In addition, the department should consider exploring the reasons behind the need to increase double ceiling. Any underlying reasons may indicate significant concerns that need attention.

*Department comment: The issue of double ceiling and how it relates to infrastructure, program space, and violence are constantly being reviewed by the department. The department works closely with Capital Project Management to ensure that double ceiling will not create structural damage or loss/lack of program space. Matters of adequate program space, etc., are reviewed by the Select Oversight Committee on Corrections and the TDOC. Inmate population does not exceed the infrastructure capability at any institution.*

### ***Sanitation and Environmental Conditions***

**The department should update its TOSHA plan, consider making the Safety Director a full-time position, and should meet with TOSHA staff to resolve conflict about TDOC's safety program.**

The department's TOSHA plan has not been updated since 1975. A TOSHA plan is supposed to reflect the focus of an agency's safety program and should incorporate any changes made to that program. Changes have been made to TDOC's safety program that are not reflected in the 1975

plan. TOSHA rule 0800-1-5-.06 recommends any state agency with over 2,000 employees to have a full-time employee responsible for safety. In 1997 the Department of Correction named the Director of Engineering as the agency's Safety Director in addition to his other duties. TOSHA officials are concerned about the integrity of the department's safety program and recommend that the Safety Director be a full-time position with the full authority to enforce TOSHA rules.

*Department comment: The department will update its TOSHA Program Plan as appropriate.*

### **Violence**

**The department needs to examine carefully the number of violent incidents in the prisons, specifically looking for patterns of disturbance.**

Prior to 1993, violent incidents were recorded by hand. Since 1994 when the department computerized the recording of these incidences, the amount of recorded violence increased dramatically. Compared to other states, the department fared worse in the number of inmate assaults against TDOC staff and the percent of inmates in protective custody. Although it is not known if violence is a significant problem in Tennessee's prisons today, violence in some areas is increasing and warrants study before it affects the prison system detrimentally.

*Department comment: The TDOC does review all incidents, including violent incidents, on a regular basis.*

*Office of Research response: The department reports incidents on a monthly basis. However, violence has increased in Tennessee's prisons in the last three years, since its release from Grubbs. Recent testimony before the Select Oversight Committee on Corrections showed that at least one institution is recording incident data differently than others. The department's monitoring has neither stopped violence from increasing in Tennessee's prison, nor ensured the standardization of record keeping. The department should increase its efforts to standardize reporting and determine how to combat violence, particularly at institutions with the worst problems.*

### **Inmate Jobs**

**TRICOR should aggressively work toward increasing the number of industry jobs for inmates. Other state agencies, including TDOC, should make concerted efforts to support TRICOR.**

Compared to many states, Tennessee has fewer inmates in industry jobs. These jobs tend to give inmates more technical and transferable experience, and pay better than other prison jobs. In addition, some states have made prison industries profitable. The department is not meeting TRICOR's goal of inmate employment in industry and farms, set at ten percent of TDOC's population. Current figures indicate that approximately six percent of the inmate population is employed through TRICOR. In Tennessee some industrial prison spaces are either not completely in use or remain empty due to a lack of private industry programs or governmental participation. This empty, available space could be used for inmate work in private industry. State agencies should work with TRICOR to find ways to expand the use of inmate labor, buy inmate products, and assist TRICOR in securing more private industry involvement.

**The Department of Correction should monitor the effect of decreasing the number of teachers on the quality of its educational system and inmate idleness. TDOC officials should also study the effects of larger class sizes and the addition of correctional clerical officers to the classroom. The department should report monitoring results to the Select Oversight Committee on Corrections or other appropriate bodies.**

Since *Grubbs* the Department of Correction has put much effort into reducing idleness through an improved educational system—requiring certification of teachers, making teacher pay commensurate with teachers in surrounding counties, and standardizing curriculum. The FY 1997-98 department budget cut the number of teachers, added correctional clerical officers to aid teachers, and increased class sizes to mirror public school requirements. Monitoring of this policy change is needed to determine the overall effects on not only the educational system, but on other issues, such as inmate idleness and violence.

*Department comment: The reduction of teachers during the FY 1997-98 budget cycle does increase the class size to that recommended by the Department of Education for public schools. These changes were not intended to decrease the total number of inmates participating in these programs. The actual percent of participation does not change as a result of the increase in class size with the reduction in the number of teachers.*

### **Health Care**

**TDOC should examine the level of 24-hour emergency care provided at every state prison.**

Today, some prisons do not provide 24-hour emergency medical care. According to the Director of Health Services, most of the larger prisons have 24-hour emergency medical care on site, but the smaller facilities do not. In an emergency, smaller facilities take inmates to the nearest hospital. Under *Grubbs*, not providing inmates 24-hour emergency medical care by qualified personnel was deemed a “deliberately indifferent” action by TDOC, violating constitutional standards of care for inmates. TDOC should study the level of 24-hour emergency care at each institution. For those institutions with inadequate emergency care, TDOC should determine how it reasonably could be provided.

*Department comment: The department, while still under supervision in Grubbs, did review the 24 hour emergency care requirement. All institutions, except the small minimum security institutions, have had on-site nursing care on a 24 hour basis. No changes have been made since Grubbs ended. TDOC provides first aid and CPR training to all employees. During their period of operation, the community service centers have always had local community hospital emergency rooms and ambulance/paramedic response capabilities, with no risk in transporting due to the minimum custody inmates involved. After department plans to close three smaller institutions are implemented, only two units within the state’s prison system will not have 24 hour medical care on site.*

**The department should reinstate and fill the statewide Continuous Quality Improvement Coordinator position.**

The Continuous Quality Improvement program is not monitored or enforced adequately. Establishing a credible quality assurance program was the last issue the court was willing to dismiss. Clearly, the maintenance of such a program was important to the courts and should be maintained. In addition, with the department contracting for a Utilization Review program it is

important to have a strong quality control system to ensure that quality is not forsaken for the goal of cutting costs. TDOC staff reported to the Oversight Committee in September 1997 that the department plans to reinstate this position. The department has also stated that it plans to establish an Assistant Director of Health Services position. These positions will provide support for the health and mental health services sections of central office.

**The department should examine the option of moving more of the hiring and contracting responsibilities in health care services to TDOC's central office.**

Currently, each warden is responsible for hiring or contracting for health care staff, resulting in different contractual and staffing arrangements throughout the state's prison system. In essence, by giving wardens responsibility for health care at their respective institutions, non-health care professionals are making health care decisions. *Grubbs* evaluators recommended stronger central office control over health care. Moving some of these responsibilities to the central office should improve the control and consistency in health care services.

*Department comment: Directors review all requests for proposals (RFPs) and contracts for health services, and have done so for over four years.*

*Office of Research response: Director review of contracts does not seem to alleviate all problems. DeBerry Special Needs Facility has had expired nursing contracts since June 1996. Either the central office did not notice the error or failed to renew the contracts. The central office should be more involved in the initial stages of hiring and contracting. This means setting up health care staffing standards for each type of facility, establishing "triggers" that indicate when contracts are up for renewal, and contributing to the selection of high level health care staff, such as each prison's health care administrator.*

## **Security**

**TDOC should decrease the turnover and vacancy rates in correctional officer positions.**

In 1996, the turnover rate for correctional officers was 32 percent. At some institutions turnover was as high as 72 percent. In addition to high correctional officer turnover rates, vacancy rates were high. In August 1997, three institutions each had over 55 correctional security positions vacant. In that same month, TDOC had 215 correctional officer vacancies system-wide, along with 82 other security related vacancies. In response, TDOC asked current and retired employees to volunteer to cover correctional officer shifts at some prisons; instituted a mandatory six-day work week for correctional officers; and plans to request a salary increase for correctional officers in its FY 1998-99 budget. Because correctional officers have more contact with inmates than most other TDOC staff, problems in this area should warrant departmental priority. If problems are not resolved, prison security could be compromised.

*Department comment: It should be noted that not all locations/areas of the state have significant turnover/vacancy problems, nor are these specific to TDOC. The extremely low unemployment rate in certain areas definitely contributes to the problem, which exists at most private companies in Tennessee. The Nashville Chamber of Commerce just sponsored a workshop addressing these issues. More on-site applications and testing, as well as stronger efforts in recruitment across the state, are being initiated by the department. The department has also overlapped some positions to provide readily trained staff as vacancies occur.*

### ***Management and Operations***

**The Department of Correction should institute a departmental policy requiring long-range strategic planning that includes consultation with prison constituencies and specifically the Select Oversight Committee on Corrections.**

The department has not created a comprehensive plan in 12 years. Although department staff reported to the Select Oversight Committee on Corrections that it would complete a five-year, long-range plan by December 1996, the plan has not been completed. In addition, department staff has not consulted with Oversight Committee staff or members regarding the creation of the department's long-range plan or its budget cutting proposals. Planning and establishing agreed goals and priorities in corrections is crucially important, particularly when state prison space is in great demand and current state funding is uncertain.

## **Appendix A**

### **List of Tennessee State Prisons and Corresponding Abbreviations**

BMSP-Brushy Mountain State Penitentiary  
CCCF-Cold Creek Correctional Facility  
CCSC-Chattanooga Community Service Center  
CCWC-Carter County Work Camp  
DSNF-DeBerry Special Needs Facility  
KCSC-Knoxville Community Service Center  
LCRC-Lake County Regional Correctional Facility  
MCRC-Morgan County Regional Correctional Facility  
MLRC-Mark Luttrell Reception Center  
MTRC-Middle Tennessee Reception Center  
NCSC-Nashville Community Service Center  
NECC-Northeast Correctional Center  
NWCC-Northwest Correctional Center  
RMSI-Riverbend Maximum Security Institution  
SCCC-South Central Correctional Center  
STSRCF- Southeastern Tennessee State Regional Correctional Facility  
TCIP-Turney Center Industrial Prison and Farm  
TCWC-Tennessee Correctional Work Center  
TPFW-Tennessee Prison for Women  
WCBC-Wayne County Boot Camp  
WTHS-West Tennessee High Security Facility

## **Appendix B Individuals Interviewed**

### **American Correctional Association**

Dave Bachman, American Correctional Association Auditor  
Lowell Hewitt, American Correctional Association Auditor  
Norm Hills, American Correctional Association Auditor

### **Department of Correction Staff**

Robert Bradford, Director of Health Services  
Donal Campbell, Commissioner of Correction  
Roland Colson, Director of Management Information Services  
Joan Crowell, Nurse Consultant  
Linda Dodson, Deputy Commissioner  
Tom Giese, Director of Engineering  
Debra Inglis, General Counsel  
Lenny Lococco, Director of Mental Health  
Gary Lukowski, Assistant to the Commissioner for Planning and Research  
J.R. Miller, Director of Accreditation  
Theresa Schweizer, Assistant Director of Classification  
Dan Spencer, Director of Personnel

### **Northeast Correctional Center Staff and Inmates**

Jan Buchanan, Correctional Classification Coordinator  
Shannon Boudle, Corporal & Head Prison Grievance Board  
Harold Carlton, Warden  
Malcolm Gray, Inmate  
Jack McComb, Inmate Jobs Coordinator  
Earnest Tidwell, Captain

### **Select Oversight Committee on Corrections**

Claire Drowota, Executive Director Corrections Oversight Committee  
Senator Jim Kyle, Chairman of Corrections Oversight  
Senator Bob Rochelle, Member of Corrections Oversight  
Don Stoughton, Consultant to Select Oversight Committee on Corrections

### **Other**

Donna Blackburn, Criminal Justice Coordinator, Davidson County Metro Government  
Gordon Bonnyman, Attorney for inmates in the *Grubbs* lawsuit  
Kimberly Dean, Deputy Attorney General, Civil Rights and Claims Division, Office of the Attorney General  
Windell Little, Chief of Public Sector Inspections, Tennessee Occupational Safety and Health Administration  
James Murphy, Director of Law, Davidson County Metro Government  
Walter Nannie, Quality Improvement Manager, Department of Health  
Buddy Oliver, Superintendent, Rutherford County Workhouse

James Rambo, Administrative Officer, Jail Records, Hamilton County Sherriff's Department  
Stephanie Reevers, Assistant Deputy Attorney General, Civil Rights and Claims Division, Office  
of the Attorney General  
Jeff Reynolds, Former Commissioner of Correction  
Pat Weiland, Executive Director of TRICOR  
Thomas Wilson, Occupational Safety Specialist, Tennessee Occupational Safety and Health  
Administration

# Appendix C

## Letter from Tennessee Department of Correction

DON SUNDQUIST  
GOVERNOR



DONAL CAMPBELL  
COMMISSIONER

STATE OF TENNESSEE  
DEPARTMENT OF CORRECTION  
FOURTH FLOOR, RACHEL JACKSON BUILDING  
NASHVILLE, TENNESSEE 37243-0465  
(615) 741-2071 Office (615) 532-8281 Fax

### MEMORANDUM

TO: Ethel Detch, Director  
Office of Research, Comptroller's Office

FROM:  Donal Campbell

DATE: December 5, 1997

SUBJECT: Draft Report

My staff and I have reviewed the draft of the report prepared by your staff for Senator Henry in response to his questions regarding the potential for TDOC to go into federal receivership again. I am aware that a great deal of time and effort went into its composition, and am pleased to note the numerous acknowledgments throughout the report regarding TDOC's many accomplishments. The maintenance of system wide accreditation is very significant, and the report appears to recognize this.

As so much information was requested and received by your staff in preparing the report, it is easy to see why an in-depth analysis of all the aspects involved was not feasible. Even the analysis that was performed was subject to various interpretations, due to the amount of data and potential resultant perspectives.

While I do not agree with some of the more negative connotations placed on the information, I do respect the author's right to present it in this form. However, there are some comments regarding various sections of the report which need to be made by TDOC and considered by your staff before the report is finalized.

I appreciate having the opportunity to review and comment on the report before its finalization, and look forward to reviewing the final report.

DC:SKP:PJ  
Attachment

pc: Linda Dodson  
Brian Ferrell

Assistant Commissioners  
Gary Lukowski