The Real Lethal Punishment: The Inadequacy of Prison Healthcare And How It Can Be Fixed

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I. Introduction

There are over two million people that are incarcerated around the country in local, state, and federal jails and prisons.¹ Although prisoners do not have the full slate of Constitutional rights as most American citizens, they do have some.² Prisoners have the right to due process, to be free from discrimination, access to parole, and freedom from cruel and unusual punishment.³ However, inmates also have one right that no other American citizen enjoys: the right to healthcare.⁴ It is therefore up to the Government to fund, staff, and administer health care for all incarcerated individuals. But most of the healthcare provided at correctional facilities can hardly be considered adequate.⁵ Many facilities are understaffed, poorly funded, and severely overcrowded.⁶ The question then becomes whether the healthcare being provided to prisoners is adequate and, if not, is the prisoner entitled to relief under the U.S. Constitution, particularly the 8th Amendment.⁷

³ Id.
⁵ Id.
⁶ Id.
⁷ The 8th Amendment states “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. amend. VIII.
However, all of the problems that plague the prison health care system can be improved without much intervention from the legislature. Physicians can be encouraged to work in prisons with more steady pay and flexible hours. Funding for prisons has been a perennial problem for many years. Privatization of healthcare can reduce costs while providing better healthcare to prisoners. Lastly, overcrowding has been a recent problem that has arisen due to a “crack down” on crime across the country. Governments can alleviate this problem without jeopardizing criminal enforcement by instituting various measures of sentencing reform.

This paper will focus on the quality of healthcare that is to be provided to prisoners and some of the reasons why the healthcare that is currently being provided is inadequate. Part II looks at the issue through an ethical lens. It summarizes Kantian ethics and how that theory shapes this issue. Part III will focus on exactly what quality of healthcare prisoners are entitled to and what their remedies are if the healthcare is found to be inadequate. Part IV will then focus on the three main reasons prison healthcare is seen as inadequate: understaffing, underfunding, and overcrowding. Each of these problems will be analyzed and possible solutions to the problem will be offered. Lastly, Part V will look at a particular population group of prisoners: the mentally ill. This focus will provide a more detailed outlook on a certain group of individuals in prison, how the inadequacies directly affect them, and what the Government has done to fix the inadequacies of their care provided to them in prison.
II. Why Should Inmates Receive Adequate Healthcare?

Although people in prison need to be punished for their wrongdoing, they still remain people in that they deserve respect as a living person. Immanuel Kant is famous for his “Categorical Imperative”, which placed moral demands on all persons to carry out.⁸ Kant also believed that all human beings possess dignity because of their rational autonomy and the following of various moral laws.⁹ Kant’s theory “demands equal respect for all persons and forbids the use of another person merely as a means to one’s own end.”¹⁰ Thus, no matter what a person looks like or has done in their past, they should be treated with the same respect and dignity as anyone else.

Kant’s theory serves as the basis on which most of this article is founded. Simply because someone has murdered or raped another individual does not waive their right to being treated and respected as a person. Richard Jaffe, a prominent criminal defense attorney in Birmingham, Alabama, wrote, “no one is as bad as his worst acts or as good as his best. We are all human being with relative coping skills, flaws and imperfect personalities.”¹¹ Providing medical care to inmates is something that sounds nominal, but in reality, is usually not carried out in a manner that promotes Kantian respect. Too often, judges, politicians, and other community leaders feel that the guilty should be punished by inhumane and barbaric treatment. More often than not, inmates have only made one mistake that cost them severely,

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⁹ Id.
¹⁰ Id.
yet are punished as if they are some kind of creature. Kantian ethics places someone who runs a red light on the way to work in the same category as a serial rapist, because in the end they are still both people who deserve the respect as such by all.

Rehabilitation and deterrence are the main foci of the prison system. People need to be punished but they also need to be rehabilitated so, in theory, they will not commit the same acts that led them to prison. Thus, inmates should not be afforded the same rights that they are entitled to on the outside. However, the list of deprived rights does not include respect and dignity. Those rights, as Kant believes, are unconditional.

III. Inmates’ Ability to Challenge Healthcare and the Standard They Must Meet

While the Eighth Amendment proscribes a broad standard of unjust punishment, 42 U.S.C. § 1983 allows a prisoner to challenge the treatment on a civil rights basis. The standard an inmate must meet to succeed on such a claim was not clear until an inmate’s guaranteed right to healthcare was first recognized in 1976 by the U.S. Supreme Court’s holding in *Estelle v. Gamble*. While the right was deemed fundamental, the extent as to the quality of care was largely left undecided. The progeny of *Estelle* has therefore had the difficult task of deciding what exactly prisoners are afforded when it comes to healthcare and what their remedy should be if there is a finding of inadequate care.

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A. How can a Prisoner Challenge the Healthcare Provided to Them?

Any American citizen, including incarcerated individuals, enjoys the right to be free from “cruel and unusual punishment”. In order to make a proper challenge to infringement on one’s Eight Amendment rights, a person should do so through 42 U.S.C. § 1983. A § 1983 petition is a civil action for the deprivation of rights. Section 1983 gives any citizen, including prisoners, the right to challenge anyone who has denied them any rights, privileges or immunities as set out by the U.S. Constitution. Should an individual succeed on a § 1983 petition, they are entitled to any remedy available at law that will adequately redress the harm. Before filing a § 1983 petition, the Prison Litigation Reform Act demands that the prisoner exhaust all other administrative remedies before filing such an action.

B. What Kind of Healthcare are Prisoners Afforded: The Deliberate Indifference Standard

Although there are not many accounts of prison conditions and healthcare prior to the late 1960s, the few accounts are barbaric. It wasn’t until the late 1960s when courts began taking notice of the deplorable healthcare being provided in American jails and prisons. While there had been a growing concern for

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13 U.S. CONST. amend VIII.
15 Id.
16 Id.
18 Westhoff, supra note 4, at 3. One such example came from Tucker Prison Farm in Arkansas. An inmate, who had not had any training in medicine, was providing the medical care at the facility. The inmate also sold illegal drugs and tortured other inmates by using a hand-cranked generator. For more examples of early healthcare in American prisons see Douglas C. McDonald, Medical Care in Prisons, 26 CRIME AND JUST. 426, 431-33 (1999).
19 Id. See also Holte v. Sarver, 300 F. Supp. 825 (1969) (where prisoners alleging failure to protect inmates from assaults from other inmates and failure to provide adequate medical care did not meet
prisoners’ rights, there had not been any action taken by the U.S. Supreme Court until 1976.20

1. **Estelle v. Gamble**

J.W. Gable brought a civil rights action under 42 U.S.C. § 1983 complaining about the medical care he received after he suffered a back injury while on a prison work assignment.21 For many weeks Mr. Gamble was repeatedly misdiagnosed and maltreated.22 Mr. Gamble was prescribed blood pressure medicine and was repeatedly mandated that he go back to work or he would be placed in “administrative segregation”.23 After refusing to return to work, Mr. Gamble was brought before the prison disciplinary committee where a correctional officer testified that he was in “first class medical condition”.24 The disciplinary committee placed Mr. Gamble in solitary confinement where he experienced black outs and severe chest pains for four days until he was finally cared for by a doctor.25

Mr. Gamble’s petition made it all the way to the United States Supreme Court where the Court acknowledged that the government had an “obligation to provide

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20Id. at 4.
21 *Estelle*, 429 U.S. at 98.
22 *Id.* at 99-100.
23 *Id.* at 100.
24 *Id.* at 101.
25 *Id.*
medical care for those whom it is punishing by incarceration”. The Court further held that where there is “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment” there is a cause for action. The Court also held that any “intentional denial of access to healthcare or interference with treatment by guards is also actionable under the Eight Amendment”.

2. What Must a Prisoner Prove to Succeed on a § 1983 Claim?

Although the Court in Estelle established the “deliberate indifference” standard, there was not a great deal of clarity to what that standard encompassed. It took until the 1980s and 1990s for courts to shed some light on the difficult burden a prisoner bears to succeed on a § 1983 claim.

The “deliberate indifference” standard has both an objective and subjective prong. To meet the objective prong, the prisoner must show that the deprivation of medical treatment was “sufficiently serious”. An inmate’s injuries must significantly decrease their quality of life or cause a situation where death, permanent injury, or extreme pain would likely have resulted. Also, any wanton

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26 Id. at 103.
28 Id.
29 Estelle, 429 U.S. at 105.
30 Westhoff, supra 4, at 6.
31 Hathaway v. Coughlin, 37 F.3d 63, 66 (2nd Cir. 1994).
33 Nance v. Kelly, 912 F.2d 605, 607 (2nd Cir. 1990) (Pratt, J., dissenting). See also Westhoff, supra note 4, at 5-6 (clearly inferring that an inmate’s condition must be an urgent one).
and unnecessary infliction of pain will be found to be in violation of the inmate’s constitutional rights.\(^{33}\)

To succeed on the subjective prong, a prisoner must show that the prison official responsible for the harm acted with a culpable state of mind.\(^{34}\) The U.S. Supreme Court has more clearly defined this subjective prong by holding that the conduct must involve “more than lack of due care for the prisoner’s interests or safety…it is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishment Clause....”\(^{35}\) Thus, an inmate bears a heavy burden when trying to prove that the acting official acted in a culpable state of mind by proving that the official “[knew] of and disregard[ed] an excessive risk to inmate health or safety” when they were punishing the inmate.\(^{36}\)

3. Likelihood of Success

Both Federal and State courts have acknowledged the extreme burden a prisoner bears when challenging the healthcare they have received at a correctional institution.\(^{37}\) *Estelle* and its progeny have established that as long as the prison official provides some sort of medical attention to the prisoner, the claim is unlikely to result in any kind of relief or remedy for the prisoner.\(^{38}\) It has long been established that prisons are not meant to be comfortable and courts continue to


\(^{34}\) Wilson, 501 U.S. at 298-299.

\(^{35}\) Rhodes, 452 U.S. at 319.


\(^{38}\) Id. at 7.
refer to the Framers’ of the Constitution’s intent for the Eight Amendment was to prevent barbarous or tortuous punishments.\textsuperscript{39} Courts are reluctant to provide relief because prisons are meant to punish and amenities that are available to regular citizens are not to be afforded to those who are incarcerated.\textsuperscript{40}

**IV. Why is Medical Care Inadequate in Prisons? Some Problems and Possible Solutions**

It is no secret that many of America’s jails and prisons provide inadequate care to their prisoners.\textsuperscript{41} Even though considerable attention has been given to improving corrections and its services, little, if any, progress has been made. The majority of all prisoner complaints involve inadequate health care.\textsuperscript{42} Three problems lead to inadequate health care in prisons: (1) Poor quality and an insufficient supply of physicians, (2) insufficient funding, and (3) overcrowding. All three of these problems can be improved with a little involvement from legislators and without requiring additional large sums of money.

**A. Poor Quality and Insufficient Supply of Physicians**

Upon graduating from medical school, the thought of a physician using his expertise to provide healthcare in one of America’s prisons is not a very attractive thought. Some of the main reasons why working as a prison physician is not an attractive option are: safety concerns, lack of career advancements, and an

\textsuperscript{39} Estelle, 429 U.S. at 102; Rhodes, 452 U.S. at 347; Westhoff, supra note 4, at 7.

\textsuperscript{40} Westhoff, supra note 4, at 7.

\textsuperscript{41} See Joel H. Thompson, Today’s Deliberate Indifference: Providing Attention Without Providing Treatment to Prisoners With Serious Medical Needs, 45 Harv. C.R.-C.L.L. Rev. 635, 636 (2010).

\textsuperscript{42} Id. at 636.
undesirable working environment. As a result of this seemingly unattractive job, numbers of physicians in prisons are low and the quality is poor.

1. Poor Quality of Doctors

The unattractiveness of being a prison doctor leads to institutions reverting to doctors who are not capable of providing adequate care to prisoners. In 2009, the California Corrections Crisis Conference sent four experts into California prisons to look at the quality of medical care that was being provided to prisoners. Some of the experts’ findings about the quality of doctors in the institutions were horrifying. The experts found that “many of the prison physicians have prior criminal charges, have had privileges revoked from hospitals, or have mental health related problems.” As a result of under-qualified doctors, the experts also found that the medical care being provided and review of prisoner deaths “show[ed] repeated gross departures for even minimal standards of care.” The experts went on to say that the medical care provided “too often sinks below gross negligence to outright cruelty.”

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44 Aaron Rappaport, Litigation Over Prison Medical Services, 7 HASTINGS RACE & POVERTY L. J. 261, 262 (2010).
45 Id. at 263.
46 Id.
47 Id.
A study was done in 1979 that took a look at the demographics of the physicians that were providing healthcare in American prisons. A total of 558 questionnaires were issued with 382 responses, which represented about 65% of physicians who were working in Federal and State prisons. A total of 382 responses, which represented about 65% of physicians who were working in Federal and State prisons.

Seventy-seven percent of the doctors that responded had graduated from an American medical school, which leaves 23% of the responding doctors graduating from foreign medical schools. Only 37% of prison doctors were board certified for a specialty, which is a sharp contrast from the nearly 50% of doctors outside the prison system that are board licensed for at least one kind of specialty. Full-time, board certified physicians were receiving about $23 per hour for their work and were working an average of 42 hours per week.

2. Insufficient Supply

The American Corrections Association (ACA) requires that a sufficient number of doctors and professional staff are available to provide “24-hour care for chronic and convalescent cases and emergency situations and other services on a level comparable to those available to the general public.” Every prison that was reviewed by the General Accounting Office was found to be inadequate in both of the areas specified by the ACA. The reasons why the institutions had an insufficient supply of doctors and staff were all the same: a persistent inability to

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50 Id. at 591.
51 Id.
52 Id.
53 COMPTROLLER, supra note 43, at 32.
54 Id.
attract and retain the necessary number of doctors and staff.\textsuperscript{55} The listed reasons for why facilities were having a hard time attracting capable physicians and staff were “low salaries, antiquated facilities, lack of assured malpractice liability protection, and low job status.”\textsuperscript{56}

The problem is not limited to state and federal prisons. In a detailed study of medical care in jails, experts found that only 38\% of jails had one or more doctors on hand.\textsuperscript{57} A dismal 18\% provided nursing care.\textsuperscript{58} Less than half of the responding jails provided dental services, which primarily were provided elsewhere in the community.\textsuperscript{59}

3. Possible Solutions

In today’s economic recession, attracting people to usually unattractive jobs is relatively easier than when the economy is running on all cylinders. However, despite some unattractive qualities, providing health care in prisons and jails does have some attractive qualities. Most states offer a steady and competitive salary, flexible hours, retirement benefits, and, most importantly, no malpractice liability.\textsuperscript{60} A typical physician’s salary, with normal working hours, averages at $180,870.\textsuperscript{61}

\begin{thebibliography}{99}
\item Id.\textsuperscript{55}
\item Id.\textsuperscript{56}
\item Id. at 34.\textsuperscript{57}
\item Id.\textsuperscript{58}
\item Id.\textsuperscript{59}
\item Michael Marois, \textit{For California Doctors It Pays to Be In Prison}, BUSINESSWEEK, Sept. 8, 2011, http://www.businessweek.com/magazine/for-california-doctors-it-pays-to-be-in-prison-09082011.html\textsuperscript{61}
\end{thebibliography}
Some doctors, that have chosen prison healthcare rather than private practice, have seen an increase in their income since changing clients.\(^6\)

Being a prison doctor has had a serious negative stigma attached to it for a long time. With a recessing economy, filling jobs should not be a problem. Bringing more positive attention to the field will promote more willingness to accept the position. At Massachusetts Medical School, 22 students chose to do a clerkship at correctional facilities, which is more than double of any other year.\(^6\) By getting more students involved, eventually the negative stigma may subside and working as a prison doctor may not sound as bad as it has in the past. By promoting the field to newly commissioned doctors, it provides them a steady income with no additional costs for malpractice insurance. For many new doctors, the amount of student loans is daunting. If a new doctor accepts a position at a correctional facility, they can concentrate on paying off some of their loans while not incurring any other debt.

In a continuing effort to build numbers of physicians at prisons as well as quality, some states have started offering an “as-needed” contract to doctors and nurses in the community.\(^6\) This allows both doctors and nurses to earn the majority of their incomes in private practice while supplementing their income with additional income for providing correctional care when they are needed.\(^6\) This maintains the doctors’ and nurses’ professional standing in the community while

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\(^6\) Kavilanz, *supra* note 60. One doctor reported an increase of 20% when he left private practice and went to work for the prison system.

\(^6\) *Id.*

\(^6\) *COMPTROLLER, supra* note 43, at 32-33.

\(^6\) *Id.*
also providing some community service in the communities’ prisons and jails.\textsuperscript{66} National and local medical boards as well as legislatures could further encourage this practice by instituting a requirement of \textit{pro bono} for doctors to fulfill each year in order to maintain their license. If the entire medical community volunteered their time, as a requirement to maintain their license, the quality and quantity of prison and jail physicians would dramatically increase.

B. Insufficient Funding

In 2008, it was estimated that the operation costs of America’s prisons were in excess of $50 billion.\textsuperscript{67} As a result of the recent fiscal crisis, state and federal governments have been forced to reduce funding for prisons and jails.\textsuperscript{68} Since health care costs account for about 10% ($3.7 billion annually) of the budget for corrections, substantial cuts have been made for prison health care funding.\textsuperscript{69} At least nine states reported that funding was substantially decreased for health services at prisons.\textsuperscript{70} There are a variety of reasons that cost of health care at prisons has risen. However, there are significant efforts now being made to ensure quality health care without driving up costs.

1. Why are costs increasing?

\textsuperscript{66} Id.
\textsuperscript{68} Id. at 3.
\textsuperscript{70} Scott-Hayward, \textit{supra} note 67, at 5.
Numerous factors have contributed to the increase of prison healthcare costs. Perhaps the most significant factor increasing costs has been the rise in prison population. From 1998-2001, state prison population increased approximately 2% every year. During those same years, operation costs for those facilities increased an average of 8% every year. Health care costs accounted for 10% of that increase. In 2000, a survey was done to determine the daily cost of providing healthcare to a prisoner. Not surprisingly, some of the lowest per prisoner costs were in the South. Alabama had the lowest per diem health care cost of $2.74 with Mississippi and Kentucky within close range. Other studies have suggested that the average cost of providing health care to prisoner for a year is $2,300-$3,500. Multiplying these figures by the thousands of inmates under a particular state’s control, it is easy to see that prison health care expenditures are soaring as a result of an increased inmate population.

Another contributing factor to rising prisoner health care costs is the rise in sexually transmitted diseases (STDs). Diseases such as syphilis, gonorrhea, HIV/AIDS, and Chlamydia run rampant through jails and prisons. Experts have estimated that the number of confirmed HIV/AIDS cases in jails and prisons is about six times higher than that in the general population of the United States because of poor maintenance of hygiene areas in prisons as well as poor diagnosis and attention.

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71 Kinsella, supra note 69, at 9.
72 Id. at 10.
73 Id.
74 Id.
75 Id. at 10-11.
76 Id. at 11.
77 McDonald, supra note 18, at 451-452.
78 Kinsella, supra note 69, at 11.
to diseased inmates. In 1997, it was estimated that approximately 200,000 inmates had some form of an STD. In order to effectively treat all of the cases of STDs, it is estimated that it costs upwards of $475 million per year. The spread of other communicable diseases such as Hepatitis B/C also contribute to higher per annum inmate health costs. The number of inmates with some version of Hepatitis has exponentially grown as the number of inmates has increased. Because of its ease of transmission and infection, estimates range from 20-60% of inmates that have some version of Hepatitis. The cost to treat an inmate for Hepatitis ranges anywhere from $24,000-$30,000.

Lastly, another factor that has increased the cost of inmate medical care is the large population of inmates that have mental illnesses. In 1999, roughly 16% or all inmates in the United States suffered from some degree of a mental illness. With the increase of inmate population, this number has only continued to increase. The expenditures used to treat mentally ill inmates are astronomical. In 1999, it cost taxpayers approximately $15 billion to treat inmates with mental diseases.

79 McDonald, supra note 14, at 449.  
80 Kinsella, supra note 69, at 11.  
81 Id. at 12.  
82 Id. at 13.  
83 Kinsella argues that inmates are particularly susceptible to Hepatitis because of the high frequency at which they engage in unprotected sex, fighting, and sharing personal hygiene instruments.  
84 Id.  
85 Id.  
86 The mentally ill inmate population will be discussed in greater detail later in this article. See Section V.  
87 There are a vast number of mental illnesses. Some of which include depression, bipolar, schizophrenia among many others.  
88 Kinsella, supra note 69, at 16-17.  
89 See id. In 2000, at least one out of every 8 inmates was receiving some sort of treatment for mental illness. That number is expected to grow as more and more prisoners are shuffled through the system.
With the prisoner population continuing to grow, this figure is only going to increase.

2. Insufficient Funding Leads to Eighth Amendment Violations

While it is clear that prison health care accounts for a serious amount of corrections’ expenditures, the insufficiency of funding has lead, and will continue to lead, to Eighth Amendment violations against prisoners in need of such care. The fiscal crisis presents quite the quandary. On one hand prisoners need to be punished and, hopefully, rehabilitated. On the other hand there is a severe fiscal crisis that has affected just about the entire country, which has forced state and federal governments to make budget cuts in places that are considered less of a priority.\(^{90}\)

However, just because states are in dire financial straits, it does not mean that they can refuse to treat and care for inmates that have come under their control.\(^{91}\) Courts have recently intervened to suggest that governments will be penalized if a “we can’t afford it” approach is taken.\(^{92}\) California federal courts have taken a stand against the awful state corrections system. Although the main issue for California corrections was overcrowding, the district court noted in two merged cases\(^{93}\) that the medical care given to prisoners falls well below the necessary standard.\(^{94}\) As a result of the severe problem in California prisons, an order of a

\(^{90}\) See Scott-Hayward, supra note 67, at 3 (discussing the number of states that have been met with a continuing mass-shortage, which has lead some of these states to start reducing, or even cutting off, funds for corrections).


\(^{92}\) Id. at 132.


\(^{94}\) Vanheuverzwyn, supra note 91, at 132.
release of approximately 50,000 prisoners. This is cause for great concern. Releasing prisoners back into the general public who have not been cared for properly is a serious danger to the community at-large. Experts estimate that roughly 1.4 million prisoners are released from custody every year that carry serious, life-threatening diseases. If courts are willing to take drastic measures, such as prisoner release, to improve prison conditions, it presents a significant problem to the community at-large. Not only are prisoners, who have not served their complete sentence, being released, but they are also carrying with them potentially deadly diseases as a result of not receiving adequate care while they were in prison. Change is a necessity.

3. Possible Solutions

With the cost of prison health care at an all time high, and at a time where money is tight, the need for change in the way prison health care is funded is great. State and Federal governments will likely never lose their responsibility to care for the individuals they have made wards of the state, thus expenditures for providing health care will always be an issue for governments when they are trying to meet a certain budget. Two solutions have been proposed that can alleviate some of the stress on governments to provide increasingly costly medical care. Those possible solutions are privatization and prisoner co-payment systems.

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95 Coleman, 2007 WL 2122657 at *35.
96 Vanheuverzyn, supra note 91, at 134.
a. Privatization

Privatizing prison health care has been around since the 1980s.\footnote{McDonald, \textit{supra} note 18, at 470.} The idea is that a government contracts with an outside firm for them to provide all of the medical services inside their institutions.\footnote{\textit{Id.} at 456.} The outside vendors provide their own doctors, nurses, equipment, and services.\footnote{\textit{Id.}} Perhaps one of the greatest benefits of hiring private companies to administer health care inside prisons is that they can work on a fixed budget.\footnote{\textit{Id.} at 470.} Thus, the state can fix the amount of money they wish to spend on health care and the private company will work within that budget and would be responsible for any overage costs that result from their care.\footnote{\textit{Id.}} Many state contracts with outside vendors provide established performance objectives, which require the vendor to achieve certain performance standards or risk losing the contract.\footnote{\textit{Id.}} This allows a government to keep a tighter hold of their expenditures for corrections on one hand while not jeopardizing the quality of healthcare being provided to prisoners on the other.

The privatization of prison health care has been implemented across the country. In 2000, at least 34 states had some form of privatized health care, while 24 states had completely outsourced all of their institutions to private companies.\footnote{Kinsella, \textit{supra} note 69, at 22-23} Prison Health Services, one of the largest contracting companies in the United
States, boasts that they provide healthcare to over 400 institutions in 31 states.\textsuperscript{105} The company also claims to service over 400,000 inmates across the country.\textsuperscript{106} Success has been widespread with the incorporation of private vendors. For example, Illinois began outsourcing their prison health care in 1991, and now has one of the lowest per inmate costs in the country.\textsuperscript{107} Other studies suggest that the outsourcing of prison health care can save a state 10-20\% on their annual budgets.\textsuperscript{108} With the ability to custom-tailor a contract with a private vendor and reduce overall costs at the same time, privatization of health care is an excellent solution to a government’s fiscal crisis in providing adequate health care to inmates.

Contracting out for prison healthcare has been met with some adversity. Most opponents of private prison healthcare argue that the private company has no incentive to provide quality healthcare.\textsuperscript{109} It is alleged that doctors and professional staff come into the prisons, provide basic and routine care, not paying attention to larger concerns, and then leave without taking any interest in providing adequate care.\textsuperscript{110} Other opponents argue that there has been no increase in the quality of care being provided to inmates through private healthcare companies.\textsuperscript{111} In a study done at UC Santa Barbara, figures showed no decrease in inmate mortality rate when private companies provided healthcare.\textsuperscript{112} While costs are being reduced through

\begin{flushleft}
\begin{footnotesize}
\textsuperscript{106} Id.
\textsuperscript{107} Kinsella, \textit{supra} note 69, at 23.
\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
\textsuperscript{112} Id.
\end{footnotesize}
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private prison healthcare, the quality of healthcare being provided continues to suffer.\textsuperscript{113} As Kinsella notes, this seems to be “an exception to the rule.”\textsuperscript{114} Most state contracts now require companies to be accredited through various prominent national medical organizations as well as implementing and maintaining performance objectives.\textsuperscript{115} Courts have even directed states, which are consistently providing inadequate care, to temporarily contract the services out until conditions could be improved and maintained.\textsuperscript{116}

\textbf{b. Inmate Co-Payment Systems}

Most Americans go to a doctor, receive treatment, and pay some sort of co-payment that has been set by their insurance company or the service provider in lieu of paying for the entire bill. Nevada was the first state to enact a bill that allowed for a prison health care co-payment system in 1981.\textsuperscript{117} The problem that faced Nevada, and probably faces just about every corrections institution in the country, is that inmates would make numerous unnecessary trips to the prisoner hospital with no health problems whatsoever.\textsuperscript{118} In an effort to slow this practice, Nevada instituted a $4 payment for routine medical services, such as dentistry, optometrists, and psychiatrists.\textsuperscript{119} If the health issue were an emergency or a follow-up visit, then the fee would be waived.\textsuperscript{120} Nevada saw a 50% decline in

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\textsuperscript{113} Id. \\
\textsuperscript{114} Kinsella, supra note 69, at 23. \\
\textsuperscript{115} Id. \\
\textsuperscript{116} Id. \\
\textsuperscript{117} McDonald, supra note 18, at 468. \\
\textsuperscript{118} Id. \\
\textsuperscript{119} Id. \\
\textsuperscript{120} Id.
\end{flushleft}
annual inmate visits for the entire state’s correctional program.\textsuperscript{121} As a result 37 states implemented a co-payment system by 1998, requiring inmates to pay a nominal fee for visits to a doctor.\textsuperscript{122} Compelling an inmate to pay a small fee for medical services is certainly not going to fix the severe fiscal crunch, but it reduces the amount of doctor hours, supplies, and visits to an already overloaded service provider since co-payment systems serve as a rationing device. If an inmate has to use his personal money for medical services, it will surely make them think twice before running to the doctor just so they can get out of their work duty for the day.\textsuperscript{123}

\textbf{C. Overcrowding}

Since 2000, the prison population in the United States has increased at a rate of 15\% while the general population for the country has increased 6.4\% during that same time.\textsuperscript{124} In the 1980s, most American states began cracking down on crime, which ultimately lead to an increase of 300\% in prison population from 1985 to

\begin{footnotesize}
\begin{enumerate}
\item Id.\textsuperscript{121}
\item Kinsella, supra note 69, at 21.\textsuperscript{122}
\item Id. at 21-22.\textsuperscript{123}
\item Stacy L. Gavin, \textit{What Happens to the Correctional System When a Right to Health Care Meets Sentencing Reform}, 7 NAT’L ACAD. ELDER L. J. 249, 252 (2011).\textsuperscript{124}
\end{enumerate}
\end{footnotesize}
In 2000, 21 states and the Federal prison system reported operation capacities at 100% or greater. As a result of severe overcrowding in America’s prisons, the health care provided to inmates has suffered dramatically. Most notably, in California, severely overcrowded prisons lead to a release of prisoners. Like the other problems mentioned in this article, overcrowding in American prisons can be fixed.

1. Factors Leading to Overcrowding

When America decided to take a tougher stance on crime, the population of the country’s prison grew exponentially. The kind of sentencing reform that was introduced was referred to as “truth-in-sentencing acts.” The goals of these acts were to provide for stricter penalties for felons as well further punishing for repeat felons with substantially longer prison terms and more life sentences. The sentencing reform resulted in an average increase of 15 months in sentences that were imposed by the courts. In 2003, one out every eleven inmates was serving a life sentence. It is estimated that imposing a life sentence on a defendant will cost American taxpayers approximately $1 million. Many experts believe that the rise

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126 Id. at 32. Among the worst in country were California (194%), Illinois (161%), and Florida (120%).
127 Gavin, supra note 124, at 251.
128 Id.
129 Id.
130 Id. at 252.
132 Id.
in the prison population is a direct result of stricter laws and policies and is not a result of an increased crime rate.\textsuperscript{133}

As a result of longer prison terms, fewer inmates are being released and the costs to maintain them as they age are also increasing.\textsuperscript{134} The “baby boomer” generation represents the largest population group in American prisons.\textsuperscript{135} In 2007, there were approximately 74,000 “baby boomers” incarcerated.\textsuperscript{136} Since many of these inmates grew up in poverty and did not have access to adequate health care during their pre-prison lives, many of these inmates age quicker.\textsuperscript{137} Since many of these “baby boomers” are serving longer sentences, governments are forced to bear the costs of their health care, which has a taxing effect on the institution’s resources.\textsuperscript{138}

2. Overcrowding Leads to Eighth Amendment Violations

Overcrowding has many effects on prisoner health care. In particular, overcrowding reduces the amount of resources that are available to an inmate, which includes access to medical supplies and care.\textsuperscript{139} Overcrowding also limits an inmate’s access to hygiene areas, such as showers.\textsuperscript{140} With higher traffic in these

\textsuperscript{133} Id.  See also Gavin, supra note 124, at 251.
\textsuperscript{134} Gavin, supra note 124, at 251.
\textsuperscript{135} Id. at 253.
\textsuperscript{136} Id.
\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{139} Baker, supra note 125, at 33.
\textsuperscript{140} Id. at 34.
areas, disease spreads uncontrollably, which leads to an increase in the need and use of medical care.\textsuperscript{141}

The most dramatic display of how overcrowding results in Eighth Amendment violations occurred in California. In 2006, Governor Arnold Schwarzenegger issued the Prison Overcrowding State of Emergency Proclamation, which declared that the state’s prison system was in a state of emergency.\textsuperscript{142} At the time of this proclamation, all 33 of the state’s prisons were over capacity and 29 of those institutions were found to be extremely dangerous to the health and safety of the prisoners.\textsuperscript{143} Two cases\textsuperscript{144} challenged the prison conditions in California as a result of overcrowding.\textsuperscript{145} \textit{Coleman}, originally filed in 1990, was brought by mentally ill inmates, who challenged the medical care they were receiving as inadequate and in violation of the 8th Amendment rights.\textsuperscript{146} \textit{Plata}, originally filed in 2001, alleged that all medical care in California state prisons was “constitutionally inadequate.”\textsuperscript{147} In response to the original filing in \textit{Plata}, the court mandated that the state undergo “fundamental reform” in order to come into compliance with prison medical conditions and the minimum standards set out by the Eighth Amendment.\textsuperscript{148} By 2006, the state had failed to implement any new procedures and

\begin{itemize}
  \item \textsuperscript{141} Id.
  \item \textsuperscript{143} Id.
  \item \textsuperscript{145} Jester, \textit{supra} note 142, at 546.
  \item \textsuperscript{146} \textit{Coleman} at *1.
  \item \textsuperscript{147} \textit{Plata} at *2.
  \item \textsuperscript{148} Id.
\end{itemize}
both of the plaintiffs in *Coleman* and *Plata* filed a motion to convene a three-judge panel to consider the release of prisoners.\(^{149}\)

On August 4, 2009, a three-judge panel ordered the state to reduce their capacity in its prisons to 137% within two years, which equated to a reduction of approximately 50,000 prisoners.\(^{150}\) The three-judge panel found that overcrowding was the main cause of the prison systems inability to provide adequate medical care.\(^{151}\) Most horrifying to the panel was the health care treatment space.\(^{152}\) The panel stated that the problem of adequate treatment space is “endemic” to the prison system and the space that does exist is “woefully inadequate.”\(^{153}\) Due to the extreme level of overcrowding, the court stated that it was “impossible to provide adequate medical and mental health services to inmates.”\(^{154}\) The court then considered whether there were any other alternatives to a prison release.\(^{155}\) The panel determined that the release of prisoners was the least intrusive remedy available and decided that reducing the capacity to 137% was narrowly tailored where the state could reasonably be expected to provide adequate medical care.\(^{156}\) Although the California state prison system is the most extreme example to date, the state was forced to release prisoners in order to comply with 8th Amendment standards. It caused great concern for the members of the community, but was the only

\(^{149}\) *Id.* at *6; *Coleman* at *8.
\(^{151}\) *Id.* at *34.
\(^{152}\) *Id.*
\(^{153}\) *Id.* at *48.
\(^{154}\) *Id.* at *35.
\(^{155}\) *Id.* *63*. The court considered the construction of new prisons but decided this was not an option since the state had not planned to build any additional facilities. The court also considered leaving the Special Master and Receiverships in place but decided that since nothing had improved in 14 years, this was not a viable option.
\(^{156}\) *Id.* at *83.
alternative the court had to prevent cruel and unusual punishment as a result of overcrowding.

3. Solutions

Overcrowding has been a problem for many years and the problem does not seem to be going anywhere. With the country remaining tough on crime, the overcrowding in America’s prisons is only going to get worse. There have been many possible solutions that have been pitched to legislators, but nothing seems to be gaining much ground. If much of the country is going to continue to crack down on crime, then some sort of sentencing reform needs to take place in order to alleviate the severe overcrowding in America’s prison institutions. Two possible forms of sentencing reform are (1) reducing the overall amount of prison time and/or (2) more alternative programs.

a. Reducing Sentences

Since much of the 1980s and 90s were spent increasing sentences and heavily penalizing criminal offenders, the latter half of the twentieth century has focused on reducing spending and inmate populations by shortening sentences. Many states have enacted many different strategies, which focus on reducing the overall amount

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of prison time that an inmate will serve. Reducing sentences can be found in a variety of forms such as acceleration of time served, removing statutory minimum sentences, and reducing sentences overall.

By 2010, at least 8 states had lifted or significantly decreased the mandatory minimum sentence for many of its offenses. For example, in Minnesota and Rhode Island, new laws allowed the sentencing court to have complete discretion for “low-level” drug convictions. A few other states, including Indiana and Delaware, reformed their statutory minimum sentences to give petty drug defendants a little bit of a break, while concentrating on the defendants who were engaged in trafficking. In 2003, Michigan saved approximately $41 million while allowing for about 7,000 inmates to immediately become eligible for parole or release by loosening their statutory minimum sentences.

A major concern for reducing sentences is the risk of recidivism and the lack of deterrence that is supposed to stem directly from the sentence imposed. However, studies suggest that inmates who entered prison on a life sentence have a lower recidivism rate than the rest of the prison population. Additionally, individuals who were released on parole when serving a life sentence, studies show that those individuals are less likely to commit a violent offense as opposed to a

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158 Id. at 12.
159 Id.
160 Id. at 12-14.
161 Id. at 12.
162 Id. at 13.
163 Id.
164 Mauer, supra note 131, at 26.
165 Id. at 27. The “re-arrest” rate for released “lifers” is approximately 20% while the “re-arrest” rate for the entire prison population is approximately 67%.
property or drug offense. While it is important to deter crime through corrections, longer sentences for more defendants equates to overcrowded prisons. In no way does this article suggest that petty drug and theft offenses should go unpunished. A slight tinker with the system, however, will allow for habitual and violent criminals to be punished more severely while more effectively deterring and rehabilitating petty criminals, thus allowing the government to reduce the overall population in prisons.

b. Providing More (and better) Alternatives to Prison

In order to assure that individuals who are released back into the community do not return, there needs to be an emphasis on preparing them for a life other than one in crime. Alternatives such as drug court, educational programs in prison, and alternative facilities are just a few of the initiatives that have been tested by many states throughout the country. The most important function of corrections is ensuring that the inmate does not return and is adequately prepared to be a positive member of society. Providing inmates educational opportunities and skills training has had a great affect on reducing recidivism. A study in 2001, showed that by offering alternative-prison-programs to inmates, recidivism rates dropped anywhere from 10-30%. Although successful, prison rehabilitative programs have decreased since institutions can no

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166 Id.
167 Austin, supra note 157, at 8.
168 Mauer, supra note 131, at 28.
169 Id. at 29.
longer afford the programs due to the increase in prison population. Criminal-minded individuals need additional guidance to show them that they can be functioning members of society without committing crimes. One way to teach them necessary skills is to provide them those opportunities in prison. Education programs have shown to prepare an inmate for release in hopes that they will not return, therefore, more focus should be put into providing more (and better) educational and technical classes for inmates.

Another alternative to prison is drug courts. Drug court provides an alternative to prison by acting as a rehabilitation facility. Instead of being sent to prison, the individual enters the drug court program and focuses on curing their addiction. In 2003, Kansas enacted a law that mandated all non-violent drug offenders enter a drug rehab facility. It is estimated that about 475 individuals successfully completed the program, which otherwise would have gone to prison. Drug rehabilitation programs provide an alternative to prison for many offenders while also providing them with an education about their addiction and how to overcome it.

V. The Mentally Ill in Prison: A Look at How a Little Intervention Might Help

Mental illness is becoming more and more prevalent in today’s society. There is better research, better diagnosis, and better treatment than ever before. As a

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170 Id. at 33.
171 Austin, supra note 157, at 8.
172 Id.
173 Id.
result, more inmates have mental illnesses that do not warrant them to go to a mental hospital. Health care of mentally ill inmates is essential to assuring that they are safe and not a threat to other inmates and prison staff. While care for mentally ill inmates is not superb, great strides have been made to provide better treatment of mentally ill inmates through the passage of the Mentally Ill Offender Treatment and Crime Reduction Act of 2004. Although Congress finally responded in 2004 by dumping millions of dollars into correctional institutions, some of the problems could have been alleviated with intervening steps along the way without spending much money.

A. Quality of Care Provided to Mentally Ill Prisoners

There are roughly 200,000 to 300,000 mentally ill inmates in the American prison system.\textsuperscript{174} Types of mental illnesses among prisoners include schizophrenia, bipolar disorder, and severe depression.\textsuperscript{175} The Fourth Circuit extended the holding in \textit{Estelle} to include the right of mentally ill inmates to be treated for their diseases


\textsuperscript{175} \textit{Id.}
while they are incarcerated.\textsuperscript{176} While there are so many mentally ill inmates, only about 1/3 of them receive care for their illness while they are incarcerated.\textsuperscript{177} Since many of these inmates’ conditions go untreated, it provides for a higher recidivism rate among them.\textsuperscript{178} Most mentally ill inmates are never properly diagnosed or are treated with normal inmates.\textsuperscript{179} However, inmates that are properly diagnosed often do not receive the treatment that they need while in prison. While many mentally ill inmates desire to go to other facilities where better care can be provided to them, there are many procedural safeguards that the inmate must hurdle to receive a transfer.\textsuperscript{180} There are a multitude of reasons why mentally ill are not properly treated while they are incarcerated. These reasons include a lack of resources, lack of properly trained doctors and nurses, and a lack of coordination among the prison administration.\textsuperscript{181}

\section*{1. Effects of Improperly Trained and Insufficient Staff on the Mentally Ill}

Although the goal of prison health mental services is to assist in the recovery of the inmate and provide opportunities for a better life outside of prison, the mental healthcare provided in prison focuses on preventing crises and administering

\begin{footnotesize}
\textsuperscript{176} Bowring v. Godwin, 551 F.2d 44 (4th Cir. 1977). The right to provide psychological treatment to inmates has history dating back to as early as 1980. See Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980).

\textsuperscript{177} Turner, \textit{supra} note 174, at 417.

\textsuperscript{178} Id.

\textsuperscript{179} Id.

\textsuperscript{180} Id. These procedural safeguards were put into place by the Supreme Court in Vitek v. Jones, 445 U.S. 480, 493-495. The procedure for transfer of a mentally ill inmate is there must firm be written notice to be transferred. A hearing is then conducted where both sides present evidence. A neutral decision maker then decides, through a written order, whether the inmate should be transferred to a facility in order to receive better mental health care.

\end{footnotesize}
The need for adequate and continual care for mentally ill offenders is of the utmost importance. Mentally ill patients require a multitude of health professionals to ensure they are being properly treated. Types of professional needed are: psychiatrists, psychologists, counselors, nurses, and recreational/occupational therapists. Numerous experts have found that providing individualized care to mentally ill inmates is most important even though nearly every correctional institution cannot provide the treatment because they are so severely understaffed. Numerous jurisdictions are so severely understaffed to provide mental health treatment because of the inability to attract and retain quality professionals. Officials cite the unattractiveness of working in a prison, safety concerns, and low pay as reasons for a low volume and high-turnover rate among mental health care professionals in the prison system. Does this sound familiar?

Coupled with an insufficient supply, there is also a great need for properly trained professionals to provide mental health treatment to prisoners. In 2001, a study published in the Correctional Yearbook found that nearly 60% of the mental health staff in America’s prisons had received no mental health training or

181 Id. at 103.
183 Id. at 103.
184 Id. In a 2000 report by the American Psychotic Association the minimum amount of mentally inmates on medication should be no more than 150 per psychiatrist.
185 Id.
186 It is estimated that psychiatric professionals receive about $20,000 less than they would in the regular community. Id. at 105.
187 Id. at 103-104.
188 See Section IV(A)(2) above.
Numerous correctional institutions were found to have unlicensed psychologists who were not being properly supervised by their superiors. A mentally ill inmate has the most contact with the correctional staff, instead of a properly trained doctor, because many institutions have a small number of doctors that can provide treatment to the inmate and most of those doctors only work during the day and are unavailable during the evenings and weekends, which results in an untrained correctional officer having to make decisions in regard to the inmate’s needs.

As a result of improperly trained and an insufficient supply of mental health professionals, many mentally ill inmates are not treated properly or go untreated. Unqualified personnel are forced to make serious diagnoses and authorize serious medication prescriptions. Mentally ill patients, whether incarcerated or not, need much more treatment and continual attention than those without mental problems. This constant contact includes providing the appropriate medication, therapeutic group and individual sessions, and implementation of individually developed treatment plans. With correctional institutions are already having an extreme shortage of medical personnel to cater to the general populations needs, it is easy to see that mentally ill inmates do not receive the proper care while they are incarcerated.

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189 Human Rights Watch, supra note 182, at 103.
190 Id. at 107. Additional problems include non-English speaking psychiatrists and professionals who have had their licenses revoked.
191 James, supra note 174, at 143.
192 Human Rights Watch, supra note 182, at 108.
193 Id.
194 James, supra note 174, at 142.
2. Effects of Insufficient Funding on the Mentally Ill

Since mentally ill patients require constant attention and continual treatment, the costs associated with these services are expensive. Inmates who have mental illnesses incur the same expenses, which make providing health care to them a costly endeavor for the government to shoulder. If an inmate has a mental illness, it is estimated that the cost to properly treat them will add about $60 per day to the cost it takes to treat inmates.\textsuperscript{195} As a result of increased costs and a countrywide fiscal crisis, resources for inmate mental health care have rapidly declined, which puts these inmates and everyone associated with at risk.\textsuperscript{196}

The main cutback that states are making is in the amount of professional personnel that are specifically providing mental health care to inmates. In 2002, Michigan cut fifty “mental health service positions” for prison mental health services as well as $5 million from the operating budget.\textsuperscript{197} Similarly, Florida drastically shaved its mental health budget so much that an investigative committee found that the correctional institutions only had two treatment drugs on hand and had completely eliminated common “psychotropic medications.”\textsuperscript{198}

By cutting budgets and positions, inmates do not receive the treatment that they so desperately need while in prison. All of the cutbacks present both a medical and a safety risk to other inmates and corrections personnel while they are incarcerated.\textsuperscript{199} However, the primary concerns for mentally ill inmates that go

\textsuperscript{195} Human Rights Watch, \textit{supra} note 182, at 57.
\textsuperscript{196} \textit{Id.} at 58.
\textsuperscript{197} \textit{Id.}
\textsuperscript{198} \textit{Id.} The study cites many other cutbacks that are being made by states.
\textsuperscript{199} \textit{Id.}
untreated in prison is their release back into the community. Often times, mentally ill inmates, who receive smaller sentences, are released back into the community after not receiving any treatment for their mental illness. The inmate has not received the proper medication for his condition, which puts the community and the inmate’s safety in jeopardy.

3. Effects of Overcrowding on Mentally Ill

Although there are a few penal institutions for the mentally ill, most mentally ill inmates are forced to live among the general population during their incarceration. As a result, there is a serious threat of psychological harm to the inmate. The overcrowdedness of institutions caused one expert to exclaim that “all [mentally ill] prisoners struggle to maintain their self-respect and emotional equilibrium despite omnipresent violence, exploitation, and extortion; despite an utter lack of privacy; stark limitations on family and community contacts; and the paucity of opportunities for education, meaningful work, or other productive, purposeful activities.” Mentally ill inmates are also forced to accept responsibility for their actions if they become disruptive and break prison rules, even though the outburst may have been a result of not being properly treated for their condition.

Overcrowded prisons force mentally ill inmates to find other means in which to accommodate their conditions. In Mississippi, mentally ill inmates, who become

200 Rivera, supra note 181, at 131.
201 Id.
202 Id.
203 Human Rights Watch, supra note 182, at 61-62.
204 Id. at 61.
205 Id.
thirsty because they are on psychotropic medications, are forced to drink water from their toilet bowls during the summer because the cells become so hot from the outside heat and there is a shortage for drinking water.\textsuperscript{206} All of the toilets are referred to as “ping-pong” toilets because the excrement flushed from an adjoining cell is pushed into the other toilets creating a strong stench and undrinkable water.\textsuperscript{207}

Another concern for mentally ill inmates is the inability to cope with their surroundings due to overcrowding. One expert found that the receiving unit at Alabama’s Holman Prison would “make some men mad and mad men madder.”\textsuperscript{208} These conditions cause mentally ill inmates to become disruptive and show aggression to other inmates or to themselves through self-mutilation.\textsuperscript{209} Studies have shown that by improperly caring for mentally ill inmates while they are incarcerated increases their already high recidivism rate.\textsuperscript{210} In many cases, once the inmate is properly diagnosed and continually given the proper medication, their criminal and disruptive tendencies are not as strong.\textsuperscript{211} Overcrowding has a deteriorating effect on mentally inmates because it requires them to coexist with other inmates and does not allow them ample accessibility to necessary resources, which leads to a higher recidivism rate.

\section*{B. A Possible Solution Implemented: MIOCTCRA}

\textsuperscript{206} \textit{Id.} at 62.
\textsuperscript{207} \textit{Id.}
\textsuperscript{208} \textit{Id.}
\textsuperscript{209} \textit{Id.} at 61.
\textsuperscript{210} Rivera, \textit{supra} note 181, at 131-132. One study suggests a 70\% recidivism rate for mentally ill inmates, while another suggests a 90\% rate.
\textsuperscript{211} \textit{Id.} at 133.
With mounting concerns for the large population of mentally ill individuals in America’s prison system, Congress enacted the Mentally Ill Offender Treatment and Crime Reduction Act in 2004 (MIOCTCRA). The statute sought to “provide grant funding to state and local government agencies to implement programs and strategies aimed at solving the modern problems that such agencies deal with concerning criminals, mental health illnesses, and substance abuse problems.” Congress found that approximately 16% of all inmates has a mental illness, most of which will, if properly treated, never return to prison. A major focus of the statute was for juvenile offenders. Congress recognized that about 20% of juveniles who have found their way into corrections programs have a severe mental illness. The statute aimed to provide juveniles with the necessary mental health treatment and substance abuse treatment with the hopes of setting the juvenile back on the right path and away from correctional institutions. Although legislators have finally recognized a great need for reform for mental health inmates, some critics are wondering if the statute will provide enough. Though it may not be enough, it is something. Congress and other state-level legislators finally recognized the need for reform and provided some effort in hopes helping a growing problem. Both federal and state corrections departments can now have a grant to be solely for the mental health treatment of its inmates: a possible solution implemented with a little bit of legislative intervention.

213 Rivera, supra note 181, at 133.
214 Id.
215 Id. at 134.
216 Id. at 133.
217 Id. The grant provides for a maximum amount of $75,000 per jurisdiction.
By enacting of MIOCTCRA, it appeared that Congress was tired of the conditions that the mentally were being forced to live with while they were in prison.\textsuperscript{218} However, does it take atrocious and barbaric conditions to come about before Congress will do something about? Were there not any intervening measures that could’ve been taken in order to prevent astounding spending to clean up a mess that might not be capable of cleaning up?\textsuperscript{219} The large population of mentally ill inmates did not miraculously appear one day, forcing legislatures to go on extraordinary spending sprees. The duty to provide mental health treatment to prisoners has been around since the early 1980s.\textsuperscript{220} It took numerous inmate petitions and lawsuits for a remedy to finally be given. It is the hope that Congressional reform will not be needed for prison medical care if intervening measures, such as the ones mentioned in this article, are implemented in an effort to alleviate some of the problems that face the system.

\section*{VI. Conclusion}

Prisons and jails are meant to punish, deter, and rehabilitate. They are not meant to dehumanize them. Prisons and jails house people. The same people that once had the same right as any other person roaming the streets. Though inmates have lost many of their rights, they gained one that is not to be discarded and set to the side. Prisoners and jailbirds have a right that people on the outside do not.

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\textsuperscript{218} See generally Mentally Ill Offender Treatment and Crime Reduction Act of 2003: Hearing on S.1174 Before the Comm. on Senate Judiciary, 108th Cong. (2004). Numerous Representatives expressed their displeasure with the way mentally ill inmates were being treated.
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\textsuperscript{219} See \textit{id.}. Congress approved an initial spending $100 million within the first two years of the bill and an additional cost of $172 million to implement the bill over a 4-year period.
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\textsuperscript{220} Rivera, \textit{supra} note 181, at 120.
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Inmates have the absolute and fundamental right to healthcare. They are provided this right through the Eighth Amendment, which protects all individuals from “cruel and unusual punishment.” However, governments do not always meet this right. Medical care for inmates seems to have taken the back seat to punishment and deterrence. However, as Kant expressed, everyone is entitled to respect, no matter what their past wrongs are. Thus, prisoners, as people, should be respected and given adequate medical care while they are incarcerated.

This article offered three reasons why prison health care is inadequate, violating an inmate’s Constitutional right proscribed by the Eight Amendment. Those three factors were understaffed and poorly trained medical staffs, insufficient funding, and overcrowding. This article also provided remedies, involving some, but not much, intervention from the legislative body.

Correctional institutions should have the same kind of staff that an ordinary hospital or clinic would have. Additionally, the doctors should be adequately trained. Efforts need to be made to attract and retain quality physicians and nurses. In today’s struggling economy, jobs are coveted. Providing healthcare for a prison offers flexible hours and decent compensation. Physicians also do not have to pay for malpractice insurance. Attracting quality physicians and nurses can be made at the university level. Thousands of new doctors enter the job market every year. Working for a prison can provide them a chance to gain experience while also receiving adequate compensation. It does not have to be a career, merely a stepping-stone to private practice.
In a deflated economy, money is a depleted resource. This deficiency has found its way over to corrections. Many states are struggling to meet their budgets and, as a result, have appropriated money away from corrections. Providing health care to inmates is extremely costly: one of the most costly expenditures correctional institutions have. Two solutions were offered to alleviate this problem: privatization and inmate co-payment systems. Privatizing correctional health care has had great success around the country. It reduces costs by fixing a budget and also supplies doctors and nurses who are working to meet high standards. Additionally, inmate co-payment systems allow for inmates to pay for their routine doctor visits. This not only deters excessive use of facilities and resources, but also allows for more care to be focused on those inmates with emergency and critical health care concerns.

The last of the contributing problems was overcrowded prisons. Overcrowded prisons create great concerns for prison health care. It’s simple: the more people, the more health care is needed and the more resources are strained. The extreme example of what happened in California should have been an eye-opener for governments across the country. An inmate being released, before their schedule release date, because the medical care that was being provided (or not) was deplorable is not what communities need. Sentencing reform can help alleviate this problem. While this will take some intervention from legislators, some discretion is still left to the judiciary. Reducing sentences for petty offenders and reducing the amount of life-sentences can help fix the overcrowding problem. Additionally, preparing inmates for their release by educating them and providing them with
technical skills can help reduce the recidivism rate, driving down the prison populations.

Finally, a look into the mentally ill population of America’s prisons was provided. More and more inmates have some form of mental illness, but are not being properly treated while they are incarcerated. The same problems that face the general prison population also face the mentally ill. A lack of qualified professional personnel, underfunding, and overcrowding plague correctional institutions and prevent them from providing the necessary and adequate care. Miraculously, Congress recognized this and did something about it. MIOTCRA provided a Federal grant to jurisdictions to be specifically used for health care of the mentally ill as well as substance abuse. Although the bill will provide some relief, certainly there were steps that could have been taken along the way to prevent large amounts of legislature spending.

State and local governments don’t have to wait on the federal government to act. Some of the solutions offered in this article do not require legislative action; they just require action. Providing adequate health care to inmates is not only a constitutional right, it supports a healthier society. Inmates being released with harmful and lethal communicable diseases does not provide for the general welfare of society. Convicts should be punished, but also, adequately treated and while in prison.