MEASURES AGAINST OVERCROWDING IN URUGUAY'S JAILS, PRISONS AND REFORM CENTRES

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I. INTRODUCTION

The difficult situation that has prevailed in the Uruguay penitentiary system for several decades, demonstrating a progressive deterioration and reaching the present the actual numbers of imprisonment (which fall far short of international standards), has determined the generation of different initiatives that today appear with the purpose of contributing to the reduction of the number of inmates and better management of the penitentiary system, trying enhance community–based alternatives to incarceration.

In almost all the countries of Latin America the penitentiary systems are heavily overcrowded and the number of prisoners increases much more quickly than the construction of new jails. In the short term, this could become an untenable situation.

In Uruguay, by 2015, we could expect double the number of prisoners we have today, but the situation is probably similar in all of the countries of the region.

In our country the prison population has grown year by year, leading to overpopulation of the jails as mentioned above. Various factors are suggested as contributors to this phenomenon. We can mention the increase in social violence, due to the deterioration of moral values, and economic, educative and cultural factors. These are only some of most outstanding factors and the discussion of values, mainly morals relating to the causality of the crime and its increase, is a wide discussion as many arguments are subjective.

Our society is immersed in the consumption of an incredible amount and variety of drugs; the worst of them is coca paste. It would seem there are generations that already are lost, for whom it is impossible to establish a moderately coherent conversation. How to rehabilitate these people, and in this way, to contribute to public security, and therefore society?

The difficult reality is that released inmates sometimes spend just a few days enjoying their freedom before backsliding and committing other crimes. They return happily to the prisons, because their friends and relatives are in the jail and they will meet again.

Although it seems cruel, this is the reality, not for all but for the great majority, and we wonder ourselves where are we failing, because according to the statistics of other countries the situation is international, without regard for the budget, status of jails as private or public, or type of government.

Different Uruguayan governments, mainly from the end of the dictatorship in 1985, have voted a series of legal initiatives to avoid the growth of the prison population, gradually choosing alternatives to replace imprisonment as the main social punishment.

In the next pages we will transcribe the main legal norms of our jurisdictional procedures. In some cases we will see conjunctural laws that were passed to clear legal prisons and other decisions that led to the substitution of prison by other alternatives like reduction of punishments, domiciliary arrest, penalty fines, communitarian tasks, fulfillment of only a part of the sentence, enhancement of institutes like the National Patronage of Jailed and Released Inmates in order to reintegrate released offenders, productive activity in

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jails, etc., and the last alternative, the Law of Redemption of Penalty, will be outlined below.

Also, because the problem is dynamic and the procedures suggested are not yet sufficient we are designing new alternatives and voting on legal possibilities to continue to develop other types of ideas like the use of electronic bracelets, probation officials, half way houses, etc., which are at present in the study and development stage.

II. RELEVANT LAWS [1]

Uruguayan society has evolved over its two hundred year history and this applies also to the law and legal norms that govern the different aspects of the society, including the penitentiary system.

We must first address the Constitution of the Republic, the fundamental Law of Uruguay, which observes deeply the subject of this paper. Articles 26 and 27 give the primary framework from which the other laws outlined below are derived.

A. Constitutional Dispositions

"Article 26. - Capital punishment will not be applied to any person. In no case it will be allowed that the jails serve to torture; they are just to assure the indicted and condemned, trying for their reeducation, and developing the aptitude for the work and the prophylaxis of the crime."

"Article 27. - In any stage of the trial which judges preview and from which there can be no imprisonment, the judges will be able to free the inmate for appropriate bail according to the law."

B. Exceptional and Conjunctural Laws

1. Amnesty Law

In 1985, when Uruguay again became a democracy after a long period of dictatorship, the new government passed laws that tried to fit the national reality and among others, as we said in the Introduction, approved the "Law of Amnesty" where diverse benefits were granted, which, besides correcting illegal situations, led to the humanization of the system. This was so was approved law N º 15,737 of 1985. Included below are only some articles which begin to explain the legal evolution that has occurred from that time to the present time.

"Article 21. - The Supreme Court of Law will be able to give anticipated freedom to the condemned who are private of freedom in the following cases:

1º) If the sentence is more than two years of imprisonment and the person has fulfilled half of the imposed punishment.
2º) If the sentence imposed was prison or fines.
3º) If the convict has fulfilled two thirds of the punishment imposed by the Supreme Court of Law it will achieve the freedom anticipated. It will only be able to deny, by founded resolution, in the cases of manifest absence of signs of rehabilitation of the condemned."

According to this law more than 800 inmates were freed, and there was a temporary significant decrease in the prison population.

C. Law of Anticipated and Provisional Freedom

With the present government, another law of exceptional type was approved that also allowed the country to clear the different prisons transitorily. This law is Law Nº 17,897, "Anticipated and Provisional Freedom. Exceptional Regime." Article 2 of this law gave powers to the judge to grant anticipated freedom of the inmate where the inmate has fulfilled:

"a) Two thirds of the imposed punishment, and the same is superior to three years of penitentiary."

"b) When they have fulfilled half of the punishment imposed in the case that the imprisonment preview

[1] Please note that all translations are provided by the author.

was of up to three years of penitentiary."

D. Transitory Exits

This law establishes the possibility of transitory leave for an inmate who conserves his habits of work which will help in his social reintegration.

"Article 62. - For the concession of the transitory leave, it will be required to own good behaviour and it could be granted every time the inmate, personally or through his Defender, present a written request in the Direction of the Jail where the inmate is located."

In a term that will not exceed 20 days from the presentation of the request, the prison authority will formulate a report to the judge of the cause. If the prison report were opposed to the concession of the transitory leave, because the inmate does not have good behaviour or for another reason, the prison authority will inform the judge of the cause, who will solve, in founded form, the previous opinion of the prosecutor. If the report of the prison authority was favourable, they will have to establish, in precise form, the regime to be followed by the inmate:

(a) The place or maximum distance to that the inmate will be able to move.

(b) The norms of conduct that the inmate will have to observe during the leave, as well as the restrictions or prohibitions that are considered advisable.

(c) The time of duration of the exit, the reason and the degree of security that is adopted.

(d) Any other requirement or condition if it is considered necessary for the best fulfillment of the regime.

The report will be presented by the prison authority to the judge with competency. The copy will be sealed and the day and hour of presentation are noted. The Actuary of the Court, under the most severe responsibility, will have to put the report to the office of the judge in immediate form, who, without further proceeding, will give view to the prosecutor, within a term of five working days. Upon return of the file, the judge, who will have equal term and under his or her more serious responsibility, will be sent notice of the proposed regime or the modifications pertinent to the case.

The decision is not appealable. If transitory leave is denied the inmate cannot present a new request for 90 days.

An inmate granted transitory leave who delays his or her return to the establishment, without justified cause, will receive an increased punishment at the rate of two days for every day of delay. The prison authority will have to inform the judge, within 10 days, of the moment at which the inmate returns the establishment.

To further the aims of the legislation, the prison authority will inform the Directors of the Penitentiary Establishments of the National Direction of Jails, Penitentiary and Departmental Headquarters and Equipment Rehabilitation Centers in its respective jurisdictions of the procedure.

E. Indicting Without Prison

Another law that has had remarkable influence on the present legal regime is "The Law of Indicting without Prison" from 1989. It qualifies judges in certain circumstances not imprison people who satisfy certain requirements and is still effective today. It is law N° 16,058:

"Article 1°. - the preventive imprisonment will not be applicable when concur, simultaneously, the following circumstances:

(a) If the offence committed will be presumable that will not have to have penitentiary punishment;

(b) If, according to the Magistrate, the records of the indicted, their personality, the nature of the imputed offense and the circumstances will presume that the person will not avoid the trial;

(c) If to criterion of the Judge, and the examination of the circumstances mentioned in the literal (b) it will be possible to be inferred that the indicted will not incur in new criminal conduct.

Despite the items (a), (b) and (c), the judge will decree preventive imprisonment, in all the cases, if the person has a background or previous cause in proceeding so requiring.

F. More Severe Sentences for Certain Types of Crimes

1. Law of Citizen Security

In 1995, the Law Nº 16,707, "Law of Citizen Security", was passed and relevant articles are included below.

"In the cases of indicting with prison, if the inmate registered one or more pending criminal causes, discharge the freedom of the inmate will have to be founded, including an evaluation on the danger of the agent and his or her possibilities of social reintegration."

This law created new criminal figures, increased the punishment in some cases and diminished it in others, according to the new social reality and criminal typology and began to restrict judges' power to give liberties, which increasing the incarceration rates since many crimes were transformed into non-dischargable offences and the judges do not have another option than to imprison the offender.

The motivation of the present law, among others, was a situation of social alarm caused by the increase of certain violent crimes and drug trafficking that demonstrated the quick deterioration of the moral basis of Uruguayan society.

G. Domiciliary Arrest

Another important step was the provision of Domiciliary Arrest in certain cases, such as those with serious illnesses or aged people.

"Article 8º. - (Provisional Safety for suspected and convicted offenders who are ill or in other special situations). If the suspect, the indicted, or the condemned during the fulfillment of his or her sentence are presumed to be in some of the states anticipated by Article 30 of the Penal Code (Madness), it will be possible to change the incarceration for his or her internment in a special establishment, subject to expert opinion.

If one person be in serious disease or special circumstances that makes his immediate internment in prison evidently detrimental, the continuity of the deprivation of freedom in a center of imprisonment in which one is, the Judge will be able, previous the expert works that he or she considers pertinent, to prepare the domiciliary prison or other insurer decision.

Equal criterion will be adopted with respect to the situation of the woman in the last three months of pregnancy, as well as during the three first months of maternal lactation. In such case, the judge will previously require an expert report from the Forensic Technical Institute about the convenience or necessity with respect to the adoption of another insurer decision.

The person indicted or punished with domiciliary arrest will be able solely to leave her house to carry out pertinent medical checkups on her state and condition. The breach of this disposition will imply the immediate revocation of the benefit.

Having stopped any one of the hypotheses contemplated in the present article, the processing or punished if so, will have to return to the prison where it fulfilled the measurement or the sentence precautionary."

"Article 9º. - (Domiciliary Prison). The Judge will be able to have the domiciliary prison indicted people or the condemned majors of 70 years, when it does not involve risks, considering especially the circumstances of the committed crime. This last disposition will not be applicable to the accused and the condemned who has committed the following crimes:

The crime of aggravated homicide;
Crimes of violation;

The crimes anticipated in the Statute of Rome of the International Penal Court (Law N° 17.510, of 27 June 2002)."

III. ALTERNATIVES TO IMPRISONMENT

In 2003, social dynamics and the governmental preoccupation with the prison situation motivated a new law, Nº 17,726, whereby alternative measures to imprisonment can be imposed as outlined below.

"Article 1º. - Preventive imprisonment will not be applicable in minor crimes or crimes sanctioned with fine, suspension or incapacitation."

"Article 2º. - A judge cannot decree preventive imprisonment of an indicted person when *prima facie* he or she understands that the behaviour studied is not punishable by imprisonment. In that case some of the measures in the following article will be able to replace preventive imprisonment. The substitution will not be decreed when the gravity of the facts or the damage caused by the crime deserves imprisonment. In all the cases the opinion of the Prosecutor will be required, that to such effect, the alternative measure will not increase the risk to the population."

A. Substitute for Preventive Prison

"(a) Periodic presentation in the Court or Police Station.

(b) Prohibition on driving vehicles for a term of up to two years, when found guilty, in occasion of the transit carrying, against the life, physical integrity or would have brought about important damage in the property to criterion of the Judge who will retain the license driver, and he or she will communicate to the local authorities his or her decision.

(c) Interdiction: the prohibition to concur to certain places, commerce or places, including the own one; or the obligation to remain within certain territorial limits.

(d) Medical or psychological attention of support or rehabilitation: the obligation to be under certain treatment by a maximum term of six months, if the treatment were ambulatory and of two months if it required internment.

(e) Voluntarism or communitarian services: the obligation to fulfill the tasks that are assigned to him or her, having in account its aptitude or suitability, public bodies or nongovernmental organizations, whose aims are of evident interest or social utility. These measures will not be able to exceed the two hours per day or twelve hours per week and its maximum term of duration will be of ten months."

The Supreme Court of Law will establish the general criteria that will have to fulfill the institutions to that it refers this literal one, with the object of determining the remunerations that will be pleased by the work fulfilled by the indicted and that will be deposited in a bank when the person finishes as his or her deal.

The judges will be able to also commit the fulfillment of this measurement to the National Patronage of Jailed and Released or to departmental commissions with similar assignments in the Republic.

"(f) Domiciliary arrest: the obligation to remain at home, without leaving its limits, for a maximum term of three months or to remain in it during certain days or hours by a maximum term of six months.

(g) Arrest in hours of rest: the obligation to remain the workable days during the hours of rest under arrest for a maximum term of six months. The arrest will have to be fulfilled in the Home of the Released in the charge of the National Patronage of Jailed and Released, or where it indicates it to the Judge.

(h) Arrest of weekend or weekly rest: the obligation to remain a continuous day and a half under arrest that will agree with the lapse of weekly rest of the indicted, that will be fulfilled in a Police station, for a maximum term of six months.

(i) Any other substitute obligation proposed by the indicted and accepted by the Judge, who fulfills the purposes of this law or supposes a suitable repair of the caused damage.

Article 4º. - It will be procured that the substitute measures do not damage or if it do could be as minimum possible in the labor or educative activities of the indicted.

Article 5º. - In case of impossibility of the fulfillment of the measurement by cause non imputable to the indicted, the same will replace or others without increasing its gravity on the other.

Article 6º. - The substitute measures do not come in the cases from recidivism.

Article 7º. - The measures of this law refers the article, will be only revoked in the serious cases of violation of the imposed duties.

Case will be considered burdens the existence of a later processing.

In this case the fulfilled measures will be computed with the object of the preventive one to suffer in the following way:

(a) Interdiction (literal b) and d)): a day of prison by every five days of the fulfilled measurement.

(b) In case of ambulatory treatment: a day of prison by the weekly treatment will be computed.

(c) Communitarian services: a day of prison by every day indeed worked.

(d) In case of Domiciliary Arrest with absolute prohibition to absent itself: a day of prison by every day of arrest; in case the arrest had been partial: a day of prison by every ten hours of continued arrest.

(e) Arrest in hours of resting: a day of prison by each day of arrest.

(f) In case of arrest of weekend or weekly rest: two days of prison by each opportunity of fulfillment of the measurement."

IV. FINES

"Article 9º (Substitute Punishments). - When the punishment be with prison (not penitentiary punishment-plus two years imprisonment expected) it can be replaced by some of the measures mentioned before.

Article 10 (Application). - When in the sentence was not solved the freedom can be changed by the substitute measure that corresponds whenever the punishment to fall does not surpass the three years of penitentiary. The punishment will not be applied for people with files or habitual. In such cases the Judge, when determining the punishment, will settle down the value of day-fines.

Article 11. - When sentence definitive imposes prison sentence put to the indicted it is possible the conditional suspension of the punishment (article 126 of Code Penal), whenever the person is a primary that has been processed without prison or with the substitute measures anticipated in this law it has fulfilled and them, except for the existence of serious cause properly founded. If the sentence will impose a punishment of up to three years of penitentiary the Judge will be able to grant the suspension conditional of the pain, taking care of the requirements of the previous interjection and previous report of the Forensic Technical Institute, basing its decision. In both cases the term of monitoring by the authority will be of a year.

Article 12 (Determination of day-fines). - The value of day-fines will be determined by the Judge between 0.10 UR (a tenth of a re-adjustable unit) and 5 UR (five re-adjustable units), considering the economic situation of the indicted, the goods that it owns, its income, their aptitude for the familiar work and his personal obligations.

Article 13. - ... the punishment will be eliminated at the rate of day-fines by every day of pain,

discounting the days of prison indeed undergone, or the fulfillment of the computed substitute measure.

Article 14. - … If the payment of a fine condemns, the indicted will be able to do it effective of the sums that had been deposited in guarantee of payment of day-fines, or to be paid until in eighteen monthly payments, those that will be able to be reduced, in agreement with the economic possibilities of the condemned. The Judge will be able, exceptionally, to reduce his amount when the condemned credits that he or she has gotten worse of fortune…[ ].

The control of the payment will be of account of the Office Actuary who, without needing the judicial mandate, will come to obligate to the condemned to the payment of the owed thing whenever the payment is late in more than one.

Article 15. - In the cases of conditional freedom, the term of monitoring of the authority will be of three years and could be reduced up to two by the Judge of execution, office or to order of the condemned.

Article 16. - The sums that are collected by the payment of punishment as well as by concept of day-fine, will be deposited for the State."

V. CAUTIONS (BAILS AND PAROLE)

"203.1. - When the Court has the cease the freedom deprivation, or establishes the cease of other limitations to the physical freedom of the imputed, he will have to require to him that he gives security interest in property or personal of the fulfillment of the imposed obligations.

203.2. - In order to determine the quality and the amount of the bail, the Court will make the estimation so that it constitutes an effective reason and it shows that the indicted abstains to infringe the imposed duties and appears every time it is required of him or her."

A. Bail

"204.1. - The Bail consists of the affectation of determined, movable or immovable goods that, in guarantee of the sum determined by the Court, it is realized by imputed or the another person. It will be able to constitute in the form of deposit in money or other quotable values or by means of granting of mortgage or pledges or any other form with guarantee that is effective and sufficient to criterion of the Court.

204.2. - When the bail consists of mortgage, the writing document will be granted by notary public proposed by the imputed. In order to authorize it, he will have ten days fixed as of the date of the decree of its designation. Passed this term, the Court will be able to designate to another notary public. The Registries Public will have to issue in urgent form asked for certificates."

B. Personal Warranty

"205.1. - The personal guaranty consists of the obligation that jointly with the imputed assumes one or more people proposed by the person as warranty with they goods to pay the sum that the Court fixes.

205.2. - It can be constituted in bondsman who has capacity to contract and is, in addition, honest person and with economic solvent, verifying this topic by formal document exhibition, that the secretary or actuary will describe as the Court."

C. Parole

"Article 206 (Parole). - When the imputed is well-known poor or destitute, instead of the other items the Judge can ask him his Parole, that will consist of its promise to faithfully meet the conditions imposed by the Court."

VI. PUNISHMENT REDEMPTION

In the same law that established the Regime of Transitory Exits also approved the "Regime of Redemption of Punishment", which allows inmates to redeem punishment in the following way:

A. Work

A day of imprisonment is equal to two days of Work. They are not computed at more than eight hours daily.

B. Study

A day of imprisonment is equal to two days of study. A day of study is equivalent to six hours weekly.

This area is very important and it is applied widely. An Office has been established with the rank of Direction that exclusively promotes, controls and informs judges of the dispositions above-mentioned. The relevant article from the Law Nº 17,897 of 14 September 2005 is outlined below and establishes:

"Article 13 (Redemption of Punishment by work or study). – The Judge will grant the redemption of punishment by work to the inmate without freedom. To the accused and the condemned a day of imprisonment by two days of work will be exchanged to them. For these effects they will not be possible to be computed more than eight hours daily of work.

The prison authority will determine the works that must be organized in each penitentiary center, those that along with the works carried out during the transitory exits authorized by the competent Judge, will be unique the valid ones to redeem punishment.

Also the prison authority will promote the creation of sources of work, industrialists, farming or handicrafts skills according to the budgetary circumstances and possibilities.

For the effects of the evaluation of the work in each center of imprisonment there will be a Advised Council constituted by personnel designated by the prison authority. The Judge will grant the Redemption of punishment by study to the condemned with jail.

To the indicted and the condemned a day of imprisonment by two days of study will be paid to them.

It will be computed as a day of study the dedication to this activity during six hours weekly, thus is in different days. For those effects, they will not be possible to be computed more than six hours daily of study."

"Article 14 (Labor Insertion of released people). - It would include in all bids on public works and public services. Is mandatory for the contracting industrialists, to register in the work lists a minimum equivalent to 5% (five percent) of the affected personnel to tasks of laborers or similar, to released people who are registered stock-market of Jailed and Released Work of the National Patronage. Also, the Executive authority will be able to establish a system of advantages for those companies that register released registered in stock-market of Work referred, over 5% (five percent) stipulated. The Executive authority, through National Patronage of Jailed and Released, will promote agreements with the Departmental Governments to establish similar regimes with respect to works and services departmental public."

LABOR AND EDUCATIONAL ACTIVITY IN URUGUAY'S JAILS							
	MARCH 2008						
	MEN	WOMEN	TOTAL INMATES OF THE COUNTRY	WORKING	STUDYING	WITHOUT WORK OR STUDYING	TEACHERS
TOTAL	6981	531	7512	1991	1230	4291	122

VII. CREATION OF THE PARLIAMENTARY COMMISSIONER (OMBUDSMAN)

With the battery of measures destined to improve the national prison system in 2003 the parliament approved for the first time a law that instituted the figure of the denominated Parliamentary Commissioner whose main function is to ensure that the human rights of inmates are respected, giving him ample powers to exert that function while at the same time exclusively informing the Legislative Power of his activities

and the irregularities found.

I think it is better to illustrate the text of the Law:

"Article 1°. - The Parliamentary Commissioner's main assignment is to advise the Legislative Power in his function of the control of the fulfillment of constitutional, legal and prescribed the norm effective, and of the international treaties ratified by the Republic, referred to the situation of the deprived people of freedom by judicial process. Also the supervision of the activities of the organizations in charge of the administration of the prison establishments and the social of inmate will be incumbent on to him or released reintegration.

Article 2°. - For the fulfillment of his functions, the Parliamentary Commissioner will have the following attributions:

(a) To promote the respect of the human rights of all the people submissive a judicial procedure that derives its deprivation from freedom.

(b) To ask for information to the prison authorities in the matter to the conditions of life of the inmates and, in particular, the adopted measures that can affect their rights.

(c) To formulate recommendations to the prison authorities so that they modify or they lapse measured adopted or incorporate other that tend to the fulfillment of effective the constitutional and legal norms.

(d) To receive denunciations on violations of the rights of the inmates, in agreement with the procedure that settles down. In such case, it will have to hear the authority explanation before formulating the recommendations that it considers advisable in order to correct the procedures and to restore the limited rights.

(e) To make inspection of general character to the prison establishments, having to not less than announce its visit to the corresponding authority with twenty-four hours of anticipation. When his control into the jails are for verify a concrete denunciation can do an inspection, to that only effect, without previous warning.

(f) To prepare and to promote the studies and information that consider advisable for the best performance of their functions.

(g) To request information to organisms public, offices, defense counsels, organizations of attendance and other analogous ones, with aims of advising and promotion. All report regarding matter or competition of jurisdictional character is excluded from this attribution.

(h) To annually render a report to the General assembly, in which the management fulfilled express mention of the recommendations and suggestions formulated to the administrative authorities will be analysed. The report will be able to contain, also, recommendations of general character.

When the advises were urgent he will be able to offer an extraordinary report.

The information will not include personal data that allow the identification of the interested in the investigating procedure and will be published in the Official Newspaper.

(i) To interpose the resources of "habeas corpus" or asylum.

(j) To do the corresponding penal denunciation when it considers that crimes exist.

(k) To cooperate with the organisms or National and International Organizations who promote the respect of the human rights and attend and defend the rights of the indicted or condemned.

Article 3°. - The Parliamentary Commissioner will not be able to either annul the acts and resolutions of the Administration, nor to impose penalties nor to grant indemnifications.

It will be able, nevertheless, to suggest the modification of the criteria used for the production of acts and resolutions.

Article 4°. - The recommendations formulated by the Parliamentary Commissioner will not have obligatory character, but the administrative authority to which it goes will have, within the thirty days of notified of them, to give answer in writing, particularly of the reasons that attend to him not to follow them. If the Parliamentary Commissioner will not be satisfied to them or he does not receive acceptable information, he will send backgrounds to the person in top charge of the institution.

If within the next sixty days he does not have a suitable explanation, it will include the subject in his report to the General Assembly, with mention of the authorities or civil servants who have adopted such attitude, the formulated recommendations and the reasons of the Administration, there will be if them.

Article 5°. - The administrative services in charge of the imprisonment establishments are forced to help and to collaborate with the Parliamentary Commissioner in their investigations, inspection or orders of report.

Article 6°. - If in the fulfillment of his functions, the Parliamentary Commissioner reaches the conclusion that a crime has been committed, will have to let know it to the chief corresponding for the purposes of that it he adopt the pertinent measures, notwithstanding had in the literal (I) in article 2°.

Article 7°. - The activities that the Parliamentary Commissioner could make will have reserved character and confidential, as much with respect to the individuals as of the agents, involved offices and organisms.

Article 8°. - All complaint directed to the Parliamentary Commissioner will appear in writing founded, signed by interested or its defender, with indication of the name and address of the signer, within the counted term of six months as of the moment at which anyone of them had knowledge of the facts object of the denunciation. Of all complaint receipt with indication of the date of its presentation will be accused.

The proceeding will be free and it will not require learned attendance.

Article 9°. - It is prohibited the registry, examination, interception or censures of the correspondence, telegraphic or of any other species directed to the Parliamentary Commissioner, including that one sent from any center.

They could not either be object of listening or interference the personals conversation, telephone, radial or any other type, between the Parliamentary Commissioner and the people, including those prisoners, boarding schools or put under safekeeping.

Article 10°. - The Parliamentary Commissioner will have to take to a registry of all the complaints that are formulated to him; those that will be able to transact or to reject. In this last case it will have to do it in writing founded that will notify the interested one, on which will be able to indicate the normal routes or procedures that this one has to its disposition.

The anonymous complaints will be rejected, those that denote bad faith, well-known lack of foundation or trivial being this one or trivial one, having to found the rejection.

When the problem were is the same that is put under judicial decision or of the contentious office staff, it will have to interrupt his action in the tactical mission, but it will not prevent that the investigation continues with a view to solve the involved general problems in the procedure.

Article 11°. - The presentation of a complaint before the Parliamentary Commissioner is notwithstanding the rights that can have the interested to resort by the administrative or judicial route, in agreement with the regime of resources or actions anticipated by the law.

Article 12°. - Admitted the complaint it will be come to make an informal investigation, indicts and reserved, destined to clarify the facts.

In all the cases they will notify to the organism or involved administrative dependency will occur, through its maximum authority, asking for a report to him in writing within fifteen days. This term can be prorogued if therefore it will be asked for in founded writing and it is considered necessary.

Article 13°. - The refusal of the civil servants or its superiors to send the information that ask for or the lack of collaboration in the attendance or aid to them asked for in form, could be considered obstruct attitudes in the normal operation of the assignments of the Parliamentary Commissioner.

In this case the Parliamentary Commissioner will notify under warning the competent maximum authority that of not acceding itself to the petition within fifteen days will be able to raise the reserve of the activities.

Article 14°. - The civil servant who will prevent the investigation by means of the refusal to answer the information or would not facilitate the access to files or necessary administrative documentation for the investigation, will incur in crime.

Article 15°. - The Parliamentary Commissioner will be designated by the General Assembly, in joint meeting of both Cameras, requiring itself in agreement vote of the three fifth of his components and before the same he will take possession from his position, having rendered oath to carry out to him properly.

Its grant will be determined by the General Assembly to the opportunity to designate to him.

Article 16°. - The duration of the mandate of the Parliamentary Commissioner will be of five years, being able to be re elected by a single time.

Article 17°. - Its position will stop in the following circumstances:

(a) By death.

(b) By resignation.

(c) By destitution by well-known negligence, serious irregularity in the performance of its functions or loss of the demanded conditions of morale, being able to be stopped early in these cases by the General Assembly with the same majorities required for its designation and in public session in which the imputed will be able to exert its defense.

Article 18°. - The Parliamentary Commissioner may choose any person with the following qualities:

(a) Uruguayan citizen, natural or legal. In this last case he must have a minimum of ten years of citizenship.

(b) To have reached the age of thirty five years.

(c) To be a person with recognized specialization in human rights and specifically in the tie rights the people, civil servants and places where they lodge that are private of freedom.

Article 19°. - The General Assembly within the sixty days of promulgating the present law, will integrate a Special Commission of nine members conformed by all the Political Parties to representation in that one, with the assignment to formulate the proposals of candidates, according to the following procedure:

(a) Within the fifteen days following the constitution of the Commission, the members of the General Assembly will be able to propose in founded form, candidates who adjust to the qualities described in article 18.

(b) Within the following thirty days, the Commission will be able to invite and to receive to particular citizens or social organizations to listen to proposals or to successfully obtain opinions on the candidates. These sessions and the received information strictly will be reserved.

(c) In the term of the following thirty days, the Commission will come to elevate to decision of the General Assembly the proposal of the candidate, resolution that in the Commission will have to be adopted by 3/5 (three fifths) of its members.

Article 20°. - The Parliamentary Commissioner will not be subject to imperative mandate, nor will receive instructions of any authority having had to perform his functions with total autonomy, according to his criterion and under its responsibility.

Article 21°. - The activity of the Parliamentary Commissioner will not be interrupted by the inactivity of the Cameras, nor by its dissolution according to the mechanism anticipated in Section VIII of the Constitution of the Republic. In such cases, the relation of the Parliamentary Commissioner with the Legislative Power will be done through the Permanent Commission.

It will not either interrupt his activity in the cases of suspension of the individual security (article 31 of the Constitution of the Republic) or of adoption of quick measures of security (number 17 of article 168 of the same).

Article 22°. - The position of Parliamentary Commissioner is incompatible with another remunerated, public or deprived activity, except for the exercise of teaching.

Article 23°. - The Senate of the Republic, to request of the Parliamentary Commissioner, and in consultation with the House of Representatives will designate, among the civil servants of the organisms of Legislative, advisory and personal the Power necessary for the exercise of the functions that is entrusted to him to the mentioned one.

In no case this personnel could be of more than ten civil servants.

Article 24°. - The advisers will stop automatically at the moment at which he assumes the new Parliamentary Commissioner designated by the General Assembly."

VIII. NATIONAL PATRONAGE OF JAILED AND RELEASED

The National Patronage of Jailed and Released and the Departmental Patronages are in the fortification process. The government impels a policy of reintegration for people who recover their freedom, and in such sense the Patronage plays a fundamental role in the objective to reduce recidivism.

Created by decree in 1934, their attributions were set down thirty years later in Article 94 of Law 13,318 of 1964. Decree 417/985 regulates each article and establishes the integration of the Patronage, its administrative organization and operation.

In 2005, the new government favoured the institutional fortification of the Patronage with defined measures. The objective was to reinforce its budget, ensure the incorporation of more suitable professionals, and to celebrate new agreements with public institutions like the University of the Republic and City Hall of Montevideo. In addition, Law 17,897, Humanization and Modernization of the Prison System, was approved by the Parliament and allows commissions of government officials with suitable profiles to execute the task.

At present, they are orchestrating details with the Ministry of Social Development and with the Municipality for the entrance of 75 inmates released to the group of "Work by Uruguay", to fulfill tasks of cutting tree roots and preparing sidewalks in the capital city.

The attention of the Patronage to the released, deprived of freedom and their relationships with their families is fundamental for the rehabilitation and inclusion of those who at some time committed a crime. The mechanisms of social reintegration are for the present administration the key to reducing the rates of violence and criminality.

The Patronage mainly offers social, legal and psychological attention to the people released or soon-to-be released inmates or their families, who so request it.

Released by the Law of Humanization and the Modernization of the Prison System, they are required to go to the Patronage, and to fulfill an individualized plan of reintegration established in agreement with its referring technicians, according to the capacities or limitations of each released inmate.

In its different areas, the Patronage offers the following attention to attendees.

A. Health

- Free management of the identity card;
- Free management of the membership card of attendance for the services of health publications;
- Co-ordination with centres specialized in cases of drug addiction, alcoholism, AIDS, the handicapped, birth control, etc;
- Free medicine delivery when these are not available in the pharmacies of the different State health centres;
- Psychological attendance and derivation to specialized centers;
- Feeding;
- Delivery of membership cards for the National Institute for Feeding the Population and in special cases, supplies of emergency aid.

B. Houses

- Loans on extremely advantageous grounds for improvement and/or construction of houses (in the cases involving minors and the attendee is a proprietor of land or is properly authorized by the municipality to build a property in a municipal estate or that of a relative).
- Co-ordination with the Ministry of Homes and the Bank of Materials of the Municipality.

C. Education

- Co-ordination with the different educative centres, schools, grammar schools, day-care centres, etc;
- Support for the schooling ofe minors by means of the subsidized sale of uniforms, sports footwear, equipment, and the donation of scholastic equipment against the presentation of a certainty of inscription at the beginning of the scholastic year;
- Support and stimulus for reintegration in centres of formal education of the young deserters of the same, and support with equipment, footwear, tickets, etc.

D. Work

The labour market takes a registry of attendees that ask for work, and receives requests for personnel on the part of companies.

Weekly, personnel evaluate the candidates and offer help through media ads:

- Loans for the acquisition of tools of work and/or articles for the sale;
- Presentation before companies that ask for personnel through the press;
- Agreements with public organizations for those who lack work sources and psychological support for these people.

E. Training

To increase the possibilities of its use, the Patronage has signed agreements with the Ministry of Education and Culture (CECAP) and the Ministry of Work for the labour training qualification of attendees.

It also has a factory of educative-labour leading to qualifications for the search and obtaining of work.

For the ladies shelter and the sewing factory, informative factories on themes of interest to the attendees are organized (domestic violence, health, HIV/AIDS, etc.).

F. Alternative Punishment

Persons indicted or condemned by the Penal Magistrates with a Personal recognizance are often given an alternative punishment with a measure of communitarian tasks. In order to make possible its fulfillment, the National Patronage of Jailed and Released has signed agreements with the Ministry of Public Health and diverse schools that offer work places. The subject persons receive psycho-social support throughout the

process, support that can extended if they so request, after the fulfillments of the court-mandated treatment.

The statistical results of recidivism in the cases of people indicted without prison and with alternative punishment are noticeably lower than that of persons released from imprisonment centres.

G. Shelters

Board and lodging is provided for released or secluded women with small children who may be vulnerable to homelessness. Psycho-social support is also available, as is multidisciplinary equipment for the sport and recreation of the children of inmates of women's jails who request it.

H. Place for the Expression of Children

Smaller children of the female inmates of women's prisons and shelters, who are experiencing difficulties of a psychological nature, are taken care of by two psychologists.

I. Sewing Factory

Qualifications for women of more than 14 years, with the possibility of obtaining at the end of the course a corresponding diploma.

Production of sheets, uniforms, sets and work clothes.

J. Economic Sale

Sale of beds, mattresses, sheets, blankets, clothes, footwear and clothes for babies; all subsidized elements for which the attended pay a third of the cost.

IX. FUTURE MEASURES TO DIMINISH THE NUMBER OF PEOPLE IN PRISON

As we said at the outset we have seen meticulous laws, regulations, measures, institutions, etc., that during last the decade have been designed to improve the situation of jailed citizens, to facilitate their social reintegration or to diminish their permanence in the jails, but even so the reality and the statistics show that an exponential increase in the amount of incarcerated citizens is continuing. The government, along with the involved organizations, including the National Bureau of Jails, is in the process of measuring efforts to achieve the above-mentioned. It is for that reason that at this moment, besides the importance that it has acquired, the Redemption of Punishment explained above and the other enunciated measures including the following procedures are being implemented.

A. Official of Probation

1. Background

In March 2006, an international nongovernmental organization, Companions of the Americas Uruguay Minnesota, began a project named "Fortification of the System of Justice and Penitentiary System of Uruguay", that was declared of interest by the Supreme Court of Justice and Ministry of Interior.

2. First Stage of the Project

This included a visit of a group of experts of the State of Minnesota, USA for ten days. They met with legislators, members of the Supreme Court of Law, the Association of Magistrates, the Parliamentary Commissioner, the Minister of the Interior, and developed activities of qualification and gave advice regarding the penitentiary system and the justice system.

3. The Second Phase

This allowed the visit of four officials of the penitentiary system of Uruguay to the State of Minnesota, with aims of information interchange and qualification in the general operation of the justice system and the penitentiary system, with special emphasis in the Institute of Probation.

4. The Third Phase

One US expert in the systems of probation and the judiciary visited, concentrating on activities in the diffusion, information and qualification of the systems of probation at all levels. An event of national reach was developed which was attended by more than 120 people involved in the subject.

5. The Fourth Phase

It determined a new visit to the State of Minnesota for a Judge Penal and an official of the penitentiary system, with the purpose of acquiring a deep knowledge in the system of probation, "a pilot experience in probation in Uruguay", since we already counted on the offer of three Penal Courts for its development in the city of Montevideo and the modification of the present legal system not being necessary for its implementation.

6. The Fifth Phase

The fifth stage will:

- Define the institutional insertion of the Office of Probation;
- Define the profile, to select and to enable personnel for the Supervision of Probation;
- Choose the courts that will develop the pilot experience.

Because of this and with the intention to continue searching for solutions that allow us to diminish the number of persons incarcerated, the alternative of supervision in freedom sets out that it controls, it orients, and it guards by the fulfillment of parallel alternative punishment, at the same time as it promotes the communitarian participation of social reintegration.

It is of order to emphasize the importance of advancing in the instrumentation of projects which are generated at present and that try alternative measures to imprisonment which offer a solution for the overcrowding situation in our penitentiary system and we know that this institution is good penitentiary practice in other countries.

B. Electronic Bracelets

1. "System of Electronic Monitoring" Institutional Advantages

The incorporation of technology is a clear advantage of the proposed system:

- It is an innovating product for the prison regime;
- It would contribute reducing overcrowding of our jails;
- It would allow us to try other modalities at different stages of penitentiary treatment, for example, extra-mural work.

2. Advantages for the Inmate

It is another motivating alternative with short term rehabilitation goals, which help to avoid the decline in motivation which occurs over longer periods.

3. Advantages for the Penitentiary Security

It harmonizes with the principle of progressiveness, so that security in this case is a dynamic and flexible concept.

It allows the authorities to rationalize human resources.

It is a fast control response, before the possible transgression of the offender.

It is easy to use, and operators of the equipment have prior qualifications.

In the case of transitory exits, domiciliary and/or labour, it would be easy to control, which at present it is not, because of personnel and logistical deficiencies.

4. Disadvantages

- The operational range is not clear;
- There are no legal norms that rule their use;
- It would be necessary to clearly determine the cost of the equipment;
- Detailed technical information on the operation of the equipment is lacking;
- Further information on the system is required;
- It would be useful to know data on his application and results in compared systems;
- Lack information with respect to service or maintenance of the equipment.

5. Conclusions
   - It is necessary to establish the relative cost-benefit, integrating the cost that an inmate generates in detention;
   - It would enhance the development of the rehabilitation policy;
   - Its implementation harmonizes with the principle of progressiveness;
   - It is considered highly beneficial to fulfill labour and educative application programmes;
   - It contributes to diminish the tensions of prison life;
   - Within the framework of the Progressive Regime of Imprisonment, it would be useful to co-ordinate an offender's application for another alternative, to shorten terms of the granting of the anticipated freedom;
   - It could be useful in the application of the Parole and anticipated freedom.

(i) Recommendation

To orchestrate a Pilot Plan, which allows additions to the innovations in execution, a new alternative, which contributes to reinforce the principle of self responsibility, contemplated in Article 60 of Penitentiary Law Nº 14,470/75; the Book of Good Penitentiary Practice, published by Penitentiary Reform International (Section K, Literal 3, Page 101); the Minimum Rules for the Treatment of the Inmates (Rule 61, and that is complemented by the Minimum Rules of the United Nations on non-incarceration measures (Tokyo Rules. No. 2).

(ii) Other Advantages

- It is an innovating product for the Prison Regime;
- It would contribute to reducing overcrowding of jails;
- It would allow other modalities at different stages of penitentiary treatment, like for example extra-mural labour;
- It would allow better rationalization of the human and material resources;
- It allows fast responses, before the possible transgression of the covered area, mainly for those released on Transitory Exits, since today it is not counted on any type of control or affected by serious deficiency of resources;
- It is of easy handling, and the operators have previous qualifications;
- It contributes to diminishing the tensions of prison life;
- It allows to the offender the possibility of maintaining relationships and to possibly work, influencing directly his or her recovery and the indices of recidivism of the crime;
- It avoids the contagion produced when jailing minor violators of the Penal Law in the same institution as dangerous delinquents or those jailed for serious crimes;
- It could be integrated into the punitive system as an alternative to prison;
- In similar experiences in other countries (the United States, New Zealand, Australia, Spain, Italy, and Argentina - this one last one in the test stage), the rate of recidivism of offenders subject to electronic monitoring or house arrest as a percentage has been lower than those released under the traditional system.

(iii) Recommendations

Uruguay should increase the use of the measure, especially since the legal framework for its implementation is already in place. We understand that would be a great advance from the penological view to include this type of substitute measure as one more form of social control and not to continue relying on incarceration. The alternatives can be used to fight the complex and many-sided problem of crime, especially when our penitentiary system is facing a humanitarian emergency.

X. HISTORY OF THE NATIONAL BUREAU OF JAILS, PENITENTIARIES AND REHABILITATION CENTERS

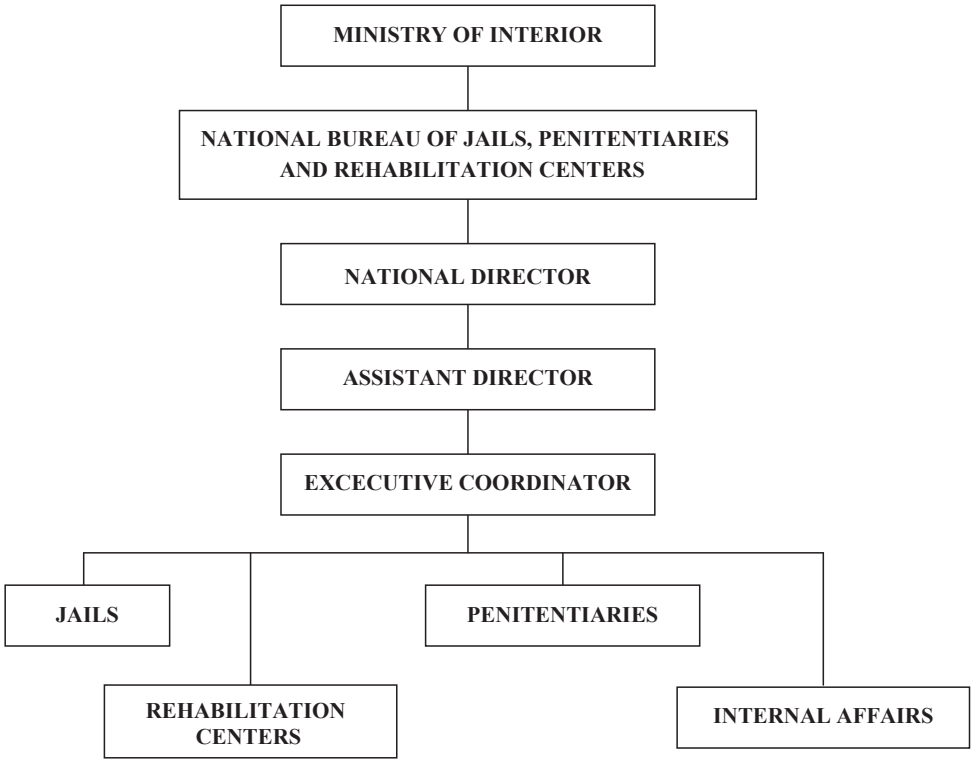
The Council of Patronage of Delinquents and Minors was created by laws of 4 April 1891 and 8 April 1915.

The Main Directorate of Penal Institutes was created on 19 October 1933, and was sanctioned in the statutory law of 16 November 1933, the Ministry of Instruction (today Education and Culture), having jurisdiction.

Through the Decree of the Executive Authority Nº 27/971 of 20 January 1971, the Ministry of the

Interior took jurisdiction and the name of the council became the National Bureau of Penal Institutes, acquiring its present denomination in the mid 1980s.

FLOWCHART



XI. PENITENTIARY LAW Nº 14,470

The Penitentiary Law Nº 14,470/70 consecrates a progressive regime. The progressive system has the main idea of a dynamic interaction between the treatment and the answer, which allows that the inmate is not an object submissive to invariable rules, but a human being who with his or her conduct is conquering new forms of life within the prison.

The start point of the system begins with the criminological opinion (diagnosis and prognosis) of an interdisciplinary team of technicians who consider the personality, age, crime committed, work situation, etc., and consequently pronounce on the danger of the inmate and his or her presumed degree of adaptability, classifying it and assigning him or her to a penitentiary for treatment and a location within the components of the prison complex.

A. Classification

1. Penological Criteria
   1) Adults of 18 to 25 years;
   2) Adults of more than 25 years;
   3) Special, that is, defined as non-adapted to any type of collective programme.

2. Legal Criteria
   1. Primary Penological and
   2. Relapsing.

We consider a "primary legal" a person who has had contact with justice and minors with file in this category are considered "relapsed". They are subdivided into

(i) Indicted; and
(ii) Condemned.

3. Criterion Type of Offence
   1. Property;
   2. People;
   3. Economic;
   4. Others, etc.

4. Special Criteria
   1. Homosexuals;
   2. Diverse professionals;
   3. Members of the Army and Police;
   4. Others.

Penitentiary treatment can begin in a unit of medium security, or of minimum security if criminological opinion so advises. The Pavilion of Admission is important in this regard.

The technicians who conduct the biosocial study will continue supervising the execution of the treatment, including the personnel of the Complex in charge of the work, education and security of the inmate.

The information will allow the evaluation of the treatment and the change of the same in a positive or negative sense. To such aims, a meeting of treatment in each Unit would work.

APPENDIX A

STATISTICS

PRISON POPULATION PER 100000 INHABITANTS			
Inmates and Population of the Country divided for States in Uruguay. Date: 31 July 2008			
STATES	**INHABITANTS**	**INMATES**	**RATE x 100000 INH.**
ARTIGAS	79297	119	150,07
CANELONES	514616	956	185,77
CERRO LARGO	89871	108	120,17
COLONIA	120842	102	84,41
DURAZNO	61321	92	150,03
FLORES	25648	37	144,26
FLORIDA	70235	87	123,87
LAVALLEJA	61910	123	198,68
MALDONADO	149071	409	274,37
MONTEVIDEO	1340273	4593	342,69
PAYSANDÚ	115854	149	128,61
RIO NEGRO	55934	91	162,69
RIVERA	110180	249	225,99
ROCHA	70515	92	130,47
SALTO	127345	165	129,57
SAN JOSÉ	108649	99	91,12
SORIANO	87508	128	146,27
TACUAREMBÓ	95313	120	125,90
TREINTA Y TRES	49670	61	122,81
TOTAL	**3334052**	**7780**	**233,35**

The jails in Uruguay, like those of almost all the Latin American countries, are over-crowded. In Uruguay the incarcerated population (about 7,780 prisoners approximately) represents 0.2% of the total population of the country. This implies a rate of 233 imprisoned people per 100,000 inhabitants, similar to Chile.