



California's Prison System Can't Solve Prison Crisis Alone: Sentencing Reform Urgently Needed

By Joan Petersilia & Robert Weisberg

California's prison system is reeling. The corrections chief and his acting replacement have both quit in the last two months. Much blame is being tossed around—to the state Corrections managers for being ineffectual, to some legislators for imposing unrealistic expectations on them, and to the Governor for only fitfully backing reform. We think this political blaming grossly oversimplifies the complicated legal and economic vectors that have converged on California corrections.

We are also wary of taking what for many critics has been a path of least resistance: focusing on the economic self-interest and bargaining power of the California Correctional Peace Officers Association (CCPOA) as the core of the prison crisis. True, CCPOA members' salaries are twice as high as those for correctional officers nationally. But their contracts were negotiated fair and square with previous administrations, and their higher annual salaries are in part caused by staff shortages which require them to work significant overtime. Union leaders say they want officer safety first, and if safety were guaranteed, they would not oppose the work and education programs that reformers call for. Reasonable people are skeptical about the union's statements in this regard. But right now, corrections management and the union are not even talking to each other, so judging the level of commitment of the CCPOA is impossible anyway.

Our goal here is not to weigh in on these politics, but to take the troubling occasion of the recent resignations to identify what the discussion *should* be about.

If constructive reform is to overcome the conflicts that the resignations have underscored, all parties have to find some consensus on the nature of the crisis. The facts are there, if we only look.

Many view the crisis as one of over-incarceration, associated with huge expenditures on prison construction in recent decades and the over-imprisonment of non-violent offenders. But these notions misstate the facts. California may imprison too many people—but *it does not do so out of proportion to other American states*. California's rate of prison incarceration—the percentage of its resident population in prison on any one day—is 456 per 100,000 residents, as compared to 432 per 100,000 for the

nation generally. (The real outlier state is Texas, with about 22 million residents—13 million fewer than California—but virtually the same number of prisoners.) Certainly we do imprison too many people—but that is part of an *American* problem, not a California problem.

Similarly, we are not anomalously high in terms of the ratio of prisoners to our crime rate. The chances of a reported serious index crime in California producing a prison sentence are about 5%—about the national average. Similarly our rate of imposing prison sentences after felony conviction is not anomalous. And putting aside the special consequences of our 3-strikes law, we are not anomalous in the length of prison term we initially impose on felons.

Nor in fact, can we blame the size of our prison population substantially on the over-incarceration of nonviolent usually drug offenders. Our incarceration has shot up dramatically in the last decade, and of course large numbers of new inmates have come in for drug crimes. But if you look at who is in prison on any one day, the proportion of prisoners sitting in prison for drug crimes is actually lower, not higher, than it was in the mid-1990s. Indeed, recent figures show that two-thirds of the overall growth in the California prison population since 1994 was due to crimes against persons (especially robbery, assault, and homicide) whereas only 10% was due to drug crimes. This should not surprise, since it is the violent criminals who stay in prison much longer.

Nor is California's spending on prisons—about \$7.5 billion annually or 8% of the general fund - disproportionately higher than that of other states—though that proportion has been rising at an alarming rate nationally. California's relative prison population or prison budget might *become* anomalously high if the response to the current crisis is to go on another spending spree—even if the goal is the laudable one of building more beds to relieve overcrowding. But the only way to avoid that bad remedy is, again, to understand the facts underlying the crisis.

So what's the real crisis? It's this: More parolees return to prison in California than in any other state.

The Department of Corrections and Rehabilitation released data last week showing that recidivism rates

declined last year. But the figures were only for prisoners released the first time. When all parolees are considered, the picture is much bleaker. Of the approximately 115,000 inmates annually released, about 70% of them are back behind bars within 24 months - nearly twice the national average. Worse yet, about 10% of these prisoners will repeatedly return - six or more times over a seven-year period, according to one study. No other state reports such a high inmate-churn rate.

Prisoners call it “doing life on the installment plan.”

The result is that many dangerous prisoners on parole receive too little monitoring, are released from parole too early and commit serious new crimes, while many non-dangerous ex-convicts stay on parole too long, wasting the state’s resources, and are sent back to prison for trivial reasons.

So why is California’s return-to-prison rate so high? There are three principal reasons: The ill-conceived nature of our determinate sentencing laws; the rigid uniformity by which we release inmates on parole; and the inexcusable paucity of programs to assist prisoners before and after release.

Simply put, we are probably releasing the wrong prisoners at the wrong time and in the wrong way. And the tools to solve this problem lie only partly in the hands of the department of corrections.

Although California’s uniquely high recidivism rate gets hotly debated as a failure of our prison system, a major cause of our parlous condition is a *sentencing*, not a corrections factor—that is, a flaw in the *legislation* that determines length of sentences and prison release policies.

Judges in California uses to decide which sentences to impose on defendants, and the parole board had near-absolute discretion to decide when inmates were released. This system pleased neither liberals (it was too capricious) nor conservatives (it wasn’t tough enough). So, in the 1970s, the California Legislature—along with 16 other states—adopted determinate sentencing. For most crimes (not murder and a few other especially aggravated crimes), discretionary parole release disappeared.

Today, judges hand out prison terms according to a fixed formula tied to the crime. For example, a robbery convictions translates into two, three or four years in prison. Inmates no longer have to earn their release because they are automatically freed once their set time is up. This is remarkable: Even if the prison offers inmates programs to help reduce their recidivism, the possibility of early release is no longer an incentive for inmates to enter these programs, because parole release will occur on a fixed formula anyway.

But the California Legislature only abolished the discretionary system for deciding the *date of prison release* to parole. It did not abolish the old scheme of *post-prison parole supervision*. The need to adapt post-prison supervision to the new determinate sentencing was never even mentioned in the political and legislative debates.

Virtually all prisoners are on parole after imprisonment—both those who, for reasons of public safety, need to be kept on parole and those who do not. Parole for ex-cons usually runs three years, and nearly everyone is on it for the same length of time regardless of risk to society. Almost everyone is also supervised under fairly fixed, uniform conditions.

The problem with that is that ever-rising parolee-related spending - about \$4,100 annually per parolee - has little connection to recidivism risk. Moreover, the fact that our parole population is increasing with the expanding prison population means that even the most dangerous are not supervised very closely. “High Control” parolees—gang members, sex offenders, and those convicted of the most serious violent felonies—are seen just twice a month by their parole officer.

Other states made different choices. By contrast, in Florida, North Carolina, and Ohio, nearly half of all released prisoners receive no parole supervision after prison, which allows these states to concentrate their scarce parole dollars on high-risk ex-cons.

We are not suggesting that vast numbers of prisoners should be released without supervision, nor are we denying that determinate sentencing itself solved some of the grievous flaws of the old indeterminate structure. We are, however, suggesting that to some extent, our recidivism rate is caused by the way we run parole. The public must understand this simple maxim: You can’t violate someone who is not on parole. When our Legislature decided to require that virtually all prisoners go to parole supervision, it formed the predicate condition for the very high parolee “return-to-prison” rates we see today. There is one clear lesson from the research literature: if you supervise parolees more closely, and enforce their parole conditions, without a system of community-based graduated sanctions, you will send more people back to prison.

Nearly two-thirds of our prison returns result from an administrative finding of a parole violation—not a court conviction for a new crime. And our rate of parole violations, while surely due sometimes to serious new criminal behavior, is often an artifact of the way we run parole.

Parole violations very frequently involve drug use. California orders nearly universal drug testing for parolees, and cheap urinalysis testing means that parolees are getting tested repeatedly. The result: Since two-thirds of parolees have substance abuse histories, and since the majority of them will not have received substance abuse treatment while in prison, testing them means they invariably fail, and the return to prison is almost guaranteed.

This is where California is unique and where we must focus our attention. It is a problem that cannot be fixed by the Secretary of Corrections—no matter how proficient—alone. The “fixes” are complicated and require both sentencing and corrections reform - the Legislature and Corrections working together.

The very questionable practices of determinate release and overly uniform terms and conditions of parole can be laid at the hands of the Legislature. It is the Legislature that determines length of stay and prison release rules. Although the Parole Board (appointed by the Governor) can to some extent control the criteria for technical violations, it is still the Legislature that sets the basic rules by which parolees get released and returned to prison.

Some states have decided not to use expensive prison beds to house technical violators. Colorado recently passed legislation limiting incarceration for technical violations to a maximum of 180 days, and most Colorado violators are housed in private community corrections centers. Colorado officials estimate that the new legislation has resulted in nearly \$30 million in savings since it was passed in 2003. Several other states have also recently passed legislation restricting the use of prison for technical parole violators. Only our own legislature can choose to emulate this wise model; the CDCR can only wish for it to happen.

But the correctional system still has to take a large share of responsibility, and here we have to get to the problem of programming, of helping prisoners to prepare for, and parolees to “make it” on, release. One doesn’t have to be an anachronistic, 1960’s liberal rehabilitation devotee to believe that some rehabilitative (or preventive) measures work.

No serious criminologist doubts that for some prisoners, drug or alcohol treatment or education or job training will substantially reduce the chances of future crime and increase the chances of a productive employment.

But California is unquestionably anomalously bad at delivering these programs. The latest figures from California show that nearly two-thirds of California prisoners have a serious need for drug treatment – that is, they are confirmed addicts, and their addiction is related to their criminal behavior. Yet, just 2% of these inmates will participate in professionally run treatment while in California prisons. They do not get treatment before release, and their chances of treatment after release will be reduced by the grim realities of long lines waiting for poorly funded programs.

So why does our system lack these programs? Is this part of the problem “owned” by Corrections? The answer is a partial yes.

To be fair to the correctional managers, even if they display a renewed commitment of imagination and resources to reentry preparation programs, they will encounter another obstacle not their own making: limited resources. But as we turn to resources, focusing just on the money is misleading. A more useful focus is overcrowding, and we do not simply mean the numbers of prisoners per dollar available. Rather we mean overcrowding more literally: With twice the population they

are designed for, prisons have no internal real estate available for treatment programs. The actual rooms in which treatment might take place are now cells. Inmates are sleeping in hallways, cafeterias, and in formerly-used classrooms and work training facilities. The sheer logistical challenge of finding decent programming space in a prison system operating at 200% of capacity is overwhelming.

But space constraints are not absolute. CDCR has failed to use reliable classification procedures to ensure that inmates wishing and able to enroll in programs are housed together. Merely a better data system to identify those willing and able inmates would make a big, and fairly inexpensive, difference. To some extent, successful programming depends on the training and commitment of correctional officers who will operate these programs or at least steer prisoners to them. The hostile relationship that now exists between management and line staff guarantees that even if job training and substance abuse programs were designed and implemented, the prison system would remain focused on custodial rather than rehabilitative aims.

CDCR must also do better to mitigate, if it cannot solve, the problem of gangs. Of course, CDCR cannot prevent urban gangs from re-germinating in prisons or gang-leaders from discouraging inmates from joining programs. But the gang problem is exacerbated by poor data-keeping and data interpretation that determines who is viewed as a gang member or leader, and faulty practices for classifying, segregating, or transferring key leaders.

CDCR surely can do better in helping prisoners prepare for release. Some things are should be uncontroversial: ensuring that parolees have their medications, some useful identification (since their driver’s licenses get taken and shredded when they are processed into prison), and proof of eligibility for social security benefits—these simple and mundane things make a big difference to reentry success.

More ambitiously, but still realistically, CDCR should try harder to ensure that inmates who have been incarcerated a long time (say, more than five years) enjoy a smoother landing—as by spending some transitional time in a halfway house or in contact with a day reporting center. California closed most of its halfway houses in the past decade, and there now exist few facilities for prisoners to make the transition away from prison life in a gradual, closely supervised process.

CDCR might find some room within the current statutory structure to implement at least a modest type of “earned discharge” from parole. This could mean work, education, treatment, and victim-restitution programs enabling parolees to earn time off at the end of their parole terms. This limited plan of earned discharge also might also redirect parole officers to focus on the parolee’s positive accomplishments, in contrast to the prevalent surveillance-arrest system of enforcing compliance with conditions of parole.

Finally, a word about victims: CDCR should act on its

authority (and in light of its recent mandate) to notify victims when the prisoners who victimized them are released. Though the area of victims' rights is often fraught with controversy, this one thing should not be. For one thing, the victim is often well-positioned to keep authorities informed about the parolee's whereabouts. For another, if this step reduces a victim's fear, it will help ease the public's mind about other parole reforms.

Given the inefficiencies of how we sentence and imprison our criminals, the wonder is that our inmate population and prison costs aren't greater. But there's no denying that our high recidivism rate wastes human opportunity and disrupts family life in deep, unquantifiable ways. New leadership in CDCR will help some. Reforming the state's determinate sentencing law will do even more.

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