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## Slammer time

### Why rush to build more prisons when other options cost less?

**By Joan Petersilia and Robert Weisberg -- Special to The Bee**  
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Gov. Arnold Schwarzenegger has usefully acknowledged the catastrophic problem of prison crowding and has called the Legislature into a special session Aug. 7 to deal with it. No one questions that our prisons -- now housing more than 170,000 inmates and operating at 200 percent of capacity -- threaten both inmates and staff. But the governor's main proposal to solve this problem -- an expensive scheme of prison construction -- exhibits a simplistic logic. Very simplistic.

The state has no choice but to resolve the crowding problem. The Eighth Amendment to the U.S. Constitution forbids prison conditions that constitute "cruel and unusual punishment," and courts can use their injunctive powers to take over institutions that violate that standard. Right now, the state's prison health-care system and its major high-security prison are being run not by the state but by a federal judge. The last big step, a federal-court takeover of the whole adult prison system, remains a looming possibility.

So if the state can't find the political will to solve the crowding problem, an official who by his legal authority is indifferent to the political self-interest of California officials or to the California electorate's budgeting preferences will do so for us.

The cost of Schwarzenegger's proposed two major new prisons and expansion of others would be several billion dollars. As usual, the cost would be handled by floating bond issues -- borrowing money from investors to be paid back with interest. This would be justified only if the building plan was the best way to solve the problem. But it isn't even close.

California voters should reject the platitudes they are now getting from Sacramento and demand that the Legislature's special session lead to deliberate analysis of the crowding problem before we go billions further into debt.

We really don't know how our prison expenditures are working to achieve public safety in the first place. Our dysfunctional system has no coherent plan for translating expenditures into the proper incapacitation of truly dangerous inmates, the realistic rehabilitation of potentially nondangerous inmates and the release, at least from state prisons, of prisoners who exhibit no risk of harm to public safety whatsoever.

The problem has many sources, but here are the key ones.

Before 1970, California had a pretty extreme version of the old, unstructured and indeterminate sentencing system. California responded to this unsatisfactory system in 1976 with the aptly-named Determinate Sentencing Law -- indeed, one of the most extremely determinate sentencing systems in the country. For more than three decades now, state judges have been required to impose fairly high and rigid sentences regardless of the facts of individual offenders' backgrounds and proclivities, according to a complex array of formulaic sentencing factors set by the Legislature.

For the great majority of crimes, old-style parole was abolished -- well, sort of. Now, anyone completing a term in state prison is automatically placed on parole, most for a term of one to three years based again on a fairly fixed formula.

The result of this new structure has been a tragic misuse of state prisons. The state prisons are supposed to house the more dangerous prisoners who require longer-term incarceration, while county jails or alternative facilities handle the lesser threats. But the prisons are overstuffed with the wrong people.

For one thing, a shortage of beds at the county jail level has forced prisons to take on inmates who are sentenced to less than the traditional one-year threshold for state imprisonment. For another, the severity of California's sentences probably puts a lot of nonviolent people into state prison for a long and costly time, especially drug offenders.

In this regard, California is a lot like other states. But it's another factor that makes California unique among the states: its recidivism rate. To understand that we have to return to the parole system.

Virtually every California prisoner is released to parole. Few get very much help in their last months in prison in preparing for the challenges of parole, because re-entry, educational and drug-rehabilitation programs in state prisons are scandalously underfunded or nonexistent.

But the sentencing law dictates that most everyone gets out, ready or not. And the local re-entry programs for parolees also are drastically underfunded at best, and miserably uncoordinated with each other and with the state system. So large numbers of parolees are doomed to get in trouble again and return.

Of the approximately 115,000 inmates released annually, about 70 percent of them are back behind bars within 36 months -- nearly twice the national average. Worse yet, about 10 percent of these prisoners will return six or more times over a seven-year period, according to one study. No other state reports such a "churn" rate.

In many cases, the parole violations are serious crimes that merit new convictions, but the system finds it cheaper and easier to characterize them as parole violations. The maximum sentence for a parole violation, even if it involves a very serious crime, is 12 months, with an average sentence served of three to four months.

On the other hand, some parole violations are very technical violations of somewhat arbitrary parole conditions. A flunked drug test or a series of absences at a required program might be cause for greater supervision or discipline, but too often under the current system it becomes a violation calling for reincarceration. These nonserious technical violators -- about 20,000 returnees each year -- are ideal candidates for locally based programs, and sending them back to big, remote state prisons uselessly exacerbates prison crowding.

Other states have learned how to rationally sort inmates, placing as few as 40 percent of their released inmates on parole without incurring any increase in serious crime recidivism.

Unless we have some nonpolitical, rational governmental mechanisms for figuring out which prisoners need to go where -- and to make rational demographic projections about future crime rates -- it's useless to just declare that somewhere in the state we should have X thousand new beds. We are likely to end up building prisons of the wrong size and the wrong kind, in the wrong places, and to send the wrong prisoners to them. Moreover, it would be many years before beds in new prisons would be available, so floating the bond issues would do nothing about current crowding.

Besides new prisons, Schwarzenegger also proposes to shift 4,500 female prisoners to alternative facilities. This is a fine idea, but the number of women affected is too small to make a big difference in crowding. If low-risk women are good candidates for nonprison punishment, then the logic extends to other groups -- the elderly and even younger men if they pose little risk of future crime.

The governor also suggests new local re-entry centers to help disperse inmates out of prison. These are clearly necessary, but must be sensibly designed and operated -- small and close to prisoners' homes, with job training, family unification and other forms of re-entry planning. They need to be transitional "decompression chambers," especially for those who have served longer than five years.

Good re-entry facilities require a smart matching of subgroups of prisoners to specific re-entry goals

and functions. But nothing in the governor's vague proposals suggests any planning of this sort. We fear that his proposed new centers might become localized versions of state prisons under state-prison-like control.

Our leaders must find the political will and wisdom to do several things:

- Reappraise our determinate sentencing laws to see if some midcourse corrections, such as some additional flexibility at trial sentencing, are necessary.
- Devise a rational set of parole term laws and flexible parole condition guidelines by which we would reallocate the resources of our parole officers and re-entry facilities to avoid wasting them on clearly nondangerous parolees and concentrating supervision on the truly risky ones.
- Create some way to base future prison construction decisions on solid criminological data about crime and population rates and objective projections of state budgetary resources.

Other states have done this remarkably well -- indeed, states many Californians would be embarrassed to acknowledge as more enlightened on criminal justice issues than we are.

Virginia and North Carolina have proved exemplary in recent years in creating sentencing commissions, composed of representatives of the different parts of state government and criminological experts, to devise more rational sentencing and parole guidelines, tempered by budgetary realism. They have done so while enjoying at least as great a crime rate drop as the rest of the United States in the past decade.

These states have succeeded because somehow their politicians have found a way to avoid the nuclear-arms-race-like ratcheting up of sentences to appear tough on crime to the voters. But the officials in these states also have managed to make the economics of criminal justice part of the civic discourse among officials, the media and voters.

None of this is happening in California. After a promising start two years ago, the governor, weakening under incessant attack from the Legislature and the prison guards' union, seems to have lost the will to subject the corrections system to rational policy analysis. And the response to his new proposal from his new Democratic rival, Phil Angelides, has been loud but amounts to vacuous hot air.

It's now a cliché that modern politicians are terrified of appearing soft on crime. But we've reached the point where politicians are too bizarrely worried about the soft-on-crime label even to suggest that some reform in the corrections system -- or even rational analysis of it -- is necessary. Apparently they fear that any suggestion that some criminals might be imprisoned unnecessarily or for too long risks political attack, even when the suggestion is part of a plan to increase the sentences for the truly dangerous inmates who threaten public safety.

So as we approach this special session, the public should demand that in the area of criminal justice and corrections, "rational policymaking in California" must cease to be an oxymoron.

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