

THE IMPACT OF CALIFORNIA BUDGET DEFICITS ON THE CRIMINAL JUSTICE SYSTEM: EVIDENCE AND RECOMMENDATIONS

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ABSTRACT

At the same time that the State of California faces crushing annual budget deficits, the Governor faces a mandate from the federal courts to significantly reduce prison overcrowding. California prisons were originally designed to hold fewer than 100,000 inmates. They are currently housing over 170,000 inmates. The problem facing California lawmakers is how to reconcile looming budget cuts, including those in the corrections system and the court system, with the mandate to reduce the number of prisoners. One suggested plan, to grant early release to approximately 27,000 inmates, has run into stiff opposition from police and prosecutor groups. They cite recent high profile abductions and murders committed by parolees who were released early to live in treatment centers and half-way houses. Criminal justice experts also predict that the early release of inmates will increase recidivism rates in a state that already has the nation's highest recidivism rate. This paper will explore and review the ongoing political and fiscal battles over the allocation of scarce public funds currently taking place in California, and the direct impact it will have on the criminal justice system in California and the rest of the United States.

INTRODUCTION

California is one of many states that face ongoing and difficult decisions about how to allocate scarce financial resources while suffering from projected multi-billion dollar budget deficits. And since the projected annual budget deficit is so large, it serves as an appropriate subject for the issues addressed in this paper. As the economy of the United States, and the economies of all 50 states, continue to suffer from one of the greatest recessions of modern times, our state governments are faced with the challenge of prudent fiscal planning for the future of their criminal justice systems. The competing interests of financing court systems, due process rights of the accused, legislative mandates such as “three-strikes laws,” and determinate sentencing have all contributed to an ongoing and growing strain on the budgets of government entities. Now, as if to add insult to injury, California is struggling under the weight of a Federal Court order to significantly reduce the prison population of the state prison system. With constricted state tax revenues leading to massive annual deficits, the Governor and the Legislature are faced with the overwhelming task of making deep and significant cuts to the state budget. The education and health care systems of the state are direct competitors with the criminal justice system which includes the corrections and court systems for these scarce dollars.

This paper will focus on the ballooning prison population in California. It will explain the issues and discuss some of the proposed solutions. The political divisions run deep over these matters, especially when the looming threat of early release of felons into our communities takes on a real and imminent threat. These difficult times of high unemployment and economic uncertainty are a breeding ground for the commission of new crimes. Adding a flood of early released felons into this environment is unsettling and problematic.

LITERATURE REVIEW

In the last ten years, California has suffered a severe economic crisis each year which has severely impacted the criminal justice system in the state. The Los Angeles Times (December 2009) reports that as recently as the 2007-2008 budget fiscal year, the criminal justice system spent over \$13 Billion. In the 2008-2009 budget fiscal year spending was reduced to \$12.7 Billion and the 2009-2010 budget fiscal year is estimated to come in at a little over \$9 Billion. This is a drop of almost \$4 Billion in spending for the criminal justice system of California in just the last 3 budget years. Due to this drastic drop in spending, all areas of the Criminal justice system have suffered. The loss of funds to the judicial system resulted in the closing of the courts for one day each month for the first time in history as well as dipping into trial court reserves. The courts will also furlough staff which risks delaying thousands of cases. The state has seriously reduced planned prison improvements as well as decreasing the number of programs that were aimed at reducing recidivism for inmates and parolees.

The Sacramento Bee (December 2009) reports that the State is contemplating a plan to release thousands of prisoners early in an attempt to reduce the prison population which was 167,000 in June in order to save the state approximately \$1 Billion.

The overcrowding in California's prisons, by far the worst in the country with only Georgia and Alabama coming close, has been the subject of lawsuits for years. The latest riot came just days after three federal judges, calling conditions "appalling," ordered California to prepare, within 45 days, a plan to bring its prison population down to 137% of capacity in order to approach constitutional standards of decency. Jerry Brown, California's attorney-general as well as a former governor and likely 2010 candidate for governor, has vowed to fight the order.

In the past three decades, California's penal system "has gone from one of the best to one of the worst in the world", says Joan Petersilia, an expert on prisons at Stanford Law School. In the 1960s and 1970s, California was a model for its success in rehabilitating criminals. But in 1976, California decided to switch from "indeterminate" to "determinate" sentencing. The first system, emphasizing rehabilitation, gives a lot of discretion to parole boards, who can reward good behavior and also help with overcrowding by reducing inmates' prison time. Determinate sentencing on the other hand, reflects a philosophy of deterrence and means that prison time is relatively fixed, whether an inmate behaves well or badly.

Since the switch to determinate sentencing, California has passed approximately one thousand laws mandating tougher sentencing. Many have gone through the legislature, where politicians of both parties compete to be "toughest on crime". Others have come directly from voters, who often bring a "crime-of-the-week mentality" to the ballot box, says Barry Krisberg, the president of the National Council on Crime and Delinquency, a think-tank in Oakland.

The result is a disaster, says Ms Petersilia. California spends \$49,000 a year, the annual cost to house each prisoner, almost twice the national average. Yet California still has the country's worst rate of recidivism, with 70% of people who leave prison ending up back in it, compared with a recidivism rate of 40% for the rest of the country.

The new prisons built in the 1990s to help accommodate the prisoners serving these tougher sentences have also helped contribute to the state's fiscal crisis. A desperate deal between the governor and the legislature to balance the budget includes cuts of \$1.2 billion from prisons, which also includes a provision to early release approximately 27,000 prisoners. However, many Republican legislators are objecting to the possibility that 27,000 prisoners will have to be released to capture this savings. For the time being, California's prisoners remain crammed together with predictable results.

BACKGROUND ON THE CALIFORNIA BUDGET CRISIS

California’s fiscal year starts July 1. The Governor is required to present the Legislature with a proposed budget by January 10 and the Legislature to pass a budget by June 15. A two-thirds majority is required to pass the budget in the Legislature. The California Legislature went well past the June 15th deadline into late July of 2009. Over the past 10 years state spending from state sources has more than doubled in nominal terms. The California controller delayed payments in February 2009 and issued IOUs in July and August 2009. The February and July budget packages were not enacted early enough to prevent the Controller from: (1) delaying over \$3 billion of scheduled payments (mainly tax refunds) in February 2009 and (2) issuing 449,000 registered warrants (also known as IOUs) for a total of \$2.6 billion of payments in July and August 2009. The February 2009 delayed payments generally were paid in March 2009, and the IOUs were able to be redeemed by recipients beginning on September 4, 2009. This was only the second time since the Depression that the state issued IOUs for some of its budgeted payments. In effect, the IOUs forced recipients (such as state vendors and local governments) to provide the state with a loan involuntarily. The IOUs were redeemable with interest, paid at a 3.75 percent annual rate. Priority payments including school, payroll, and debt service payments were not subject to IOUs. Over the past 10 years state spending from state sources has more than doubled in nominal terms (not adjusted for inflation), and during the current governor's tenure state spending from state sources has risen almost 40 percent. Revenue is estimated each year to cover spending. The unexpected loss of revenue due to the worst recession since the great depression has resulted in the current fiscal crisis.

Table 1: California Spending, Years in Comparison

	FY 1997-1998	FY 2003-2004	FY 2007-2008
State spending	\$68.5 billion	\$104.2 billion	\$144.8 billion
Federal money	\$31.6 billion	\$52.5 billion	\$59.5 billion

Table 2: General Fund Spending by Major Program Area (In Millions)

Programs	Actual 2007-08	Estimated 2008-09	Enacted 2009-10
K-12 Education	\$39,825	\$32,356	\$33,745
Higher Education	11,823	10,138	10,495
Health	19,906	18,794	16,077
Social Services	9,432	10,009	8,876
Criminal Justice	13,059	12,778	9,032
All Other	8,954	7,472	6,358
Totals	\$103,000	\$91,547	\$84,583

Recent Lawmaker Maneuvering

California lawmakers' clash over reducing the state's prison population threatens to become another Sacramento stalemate. To fulfill part of its July budget deal, the state Assembly passed a bill in August that would reduce California's prison population of 160,000 by a total of 17,000 in the next 10 months. Democrats passed the bill with a bare majority of 41 votes in the 80-member Assembly, without any Republican support.

The bill would allow certain inmates to be released early by completing rehabilitation programs, eliminate parole supervision for some nonviolent convicts and allow probation violators to be housed in local jails. The legislation faces an uncertain fate in the state Senate.

"It still has elements that are still not acceptable," said Republican state Sen. George Runner. He said Republicans are livid over two major components of the plan: a "good-time credit," which would make it easier for inmates to be released earlier for good behavior; and the parole overhaul, which would reduce the number of parolees who return to jail for technical violations, such as missing appointments with an officer.

Democratic Senate President Darrell Steinberg, on the other hand, is pushing for deeper cuts in the inmate population and more structural overhauls. "I'm in no hurry to take up what [the Assembly] passed," he said at a press conference. Mr. Steinberg vowed to restore elements of a plan, passed by Democratic state senators and supported by Republican Gov. Arnold Schwarzenegger, which would have reduced the inmate population by 27,000 and saved more money.

Mr. Runner said that if Senate Democrats try to pass a bill with even deeper prison cuts, the legislature would face another lengthy stalemate that would last beyond its scheduled adjournment date. Republican Assembly members in a recent debate used Phillip Garrido -- the California parolee accused of abducting 11-year-old Jaycee Dugard and holding her captive for 18 years-- as an example of why the state shouldn't ease penal sentencing. Democrats countered that the prison plan affects only inmates who did not commit violent or sex-related crimes.

The standoff is just the latest for a statehouse that has come to represent the epitome of political dysfunction. Lawmakers bickered for 15 weeks before closing most of a \$42 billion budget deficit in February. Facing an additional \$24 billion shortfall this summer, they then engaged in a two-month stalemate that forced the state to issue IOUs.

As part of the deal to close the \$24 billion gap in late July, state legislators agreed to slash penal spending by \$1.2 billion. But they have clashed over the details of the cuts. Legislators would have to make spending cuts in other programs if they couldn't agree to a prison plan. The stakes are high for the state, which warehouses the nation's largest inmate population. California's prisons hold more than double the designed capacity, and are so overcrowded that a federal court ordered the state to reduce the population by more than 40,000 in the next two years. A three-judge panel gave the state until late September to develop a plan to carry out its order, which caps the inmate population at 110,000.

Gov. Schwarzenegger asked for a delay of the order, but was denied. He filed a formal appeal to the U.S. Supreme Court. An 11-hour riot at a prison in Chino, outside Los Angeles, is indicative of the system's problems. In early August, fighting among 1,300 inmates touched off a riot that burned down a dormitory at the unit. The prison housed nearly 6,000 prisoners, twice the number for which it was designed.

IMPACT ON THE CRIMINAL JUSTICE SYSTEM

California lawmakers signed off on deep cuts to education, healthcare and welfare that many said they could scarcely have imagined in years past. But when it came time last week to address the state's overcrowded prison system, an area where the Democrats who control the Legislature have long pushed for change, they froze.

State prisons, criticized as unwieldy and inefficient by experts in California and across the country, have in recent years become the most sacred area of state government, seemingly impervious to transformation because of politics, fear and mistrust.

"You have an absolute hysteria," Assembly Speaker Karen Bass (D-Los Angeles) said. Crime and corrections, she said, are "a visceral issue."

Legislators listened to attack lines from Republicans: "Mayhem on the streets," Sen. Jeff Denham (R-Atwater) predicted. And Senate GOP leader Dennis Hollingsworth of Murrieta said the changes would let "bad people" take away Californians' life, liberty and property.

Assemblyman Ted Lieu (D-Torrance), who is running for attorney general against fellow Assemblymen Alberto Torrico (D-Newark) and Pedro Nava (D-Santa Barbara), opposed the measures. He described as "early release" a provision that would allow some inmates to serve the last year of their term on home detention with electronic monitoring. In an interview, Lieu said his bid to become the state's chief law enforcer had nothing to do with his stance on the plan.

"Forget about healthcare, environment or education policy," Lieu said. "If people are not safe or don't feel safe, then government has failed."

Assemblyman Warren Furutani (D-Gardena) said that problems in prisons are important "institutional issues" but that they pale beside the public safety implications of releasing criminals into neighborhoods, "where the rubber meets the road."

Many experts say less serious offenders belong in county jails or on probation, where they may have family support systems nearby and a better chance to turn their lives around. County and city law enforcement officials have expressed willingness to take those prisoners, but they don't believe the state would provide funding for the added burden.

"The lack of trust about money is really interfering with a great criminal justice policy in the state," said Jeanne Woodford, a former San Quentin State Prison warden and a corrections secretary under Governor Schwarzenegger.

At least one local law enforcement group, the California State Sheriffs' Assn., does not oppose putting some state prisoners on home detention, an "alternative custody" approach that counties use with their own inmates. But in a letter, the association asked that state leaders reconsider proposals that would reduce penalties for some crimes and send those offenders to county jails instead of prison. County lockups "are facing their own overcrowding crisis," the letter said.

Across The United States

Sentencing reform, prevention efforts and investments in evidence-based treatments and programs will result in greater savings and dividends than internal cost-cutting measures that will likely be reclaimed when the economy improves.

Recession and the subsequent revenue declines are having significant effects on corrections. Across the U.S., correctional departments are closing facilities, placing beds in nontraditional space, reducing and/or eliminating programs, cutting operating costs, exploring early offender release options, enacting reduction-in-force policies, and offering employee buyouts.

Most correctional agencies' budgets are at least 51 percent payroll, which is all inclusive of benefits and salaries; therefore with major budget reductions looming, it is inevitable that payroll will require reductions. It is inevitable, that is, unless a true action-oriented understanding of where data-driven, outcome-based savings can occur. External correctional savings will have a superior benefit over reductions internally. Sentencing reform, prevention efforts and investments in evidence-based treatments

and programs will result in greater savings and dividends than internal cost-cutting measures that will likely be reclaimed when the economy improves. Enacting external changes that can save costs without comprising public safety is difficult at best. This is not because such changes are lacking in research driven outcomes, but because they require collaboration, cooperation and partnerships that transcend the usual criminal justice stakeholders. Politicians will be the key, but it will require being smart on crime as opposed to just wishing to appear tough on crime.

Get Out of Prison Free

A proposal currently before the California State Assembly would reduce a number of serious crimes to misdemeanors, release inmates who have committed serious crimes early, and open the door to reduced sentences for sex offenders.

The proposal converts the following crimes from felonies to misdemeanors: receiving stolen property, writing bad checks, commercial burglary and petty theft with a prior. A sentence of years in state prison would be replaced by a mandated sentence of no more than a year in county jail for those crimes, leading to what prosecutors call a “get out of prison free” card.

Some examples of this proposed policy are: a repeat felon who is caught writing tens of thousands of dollars in bad checks would receive virtually no punishment; a chop-shop operator with hundreds of thousands of dollars worth of stolen cars in his possession would get no more than a few months in jail; someone who fences expensive jewelry, computers, and other valuable stolen from someone’s residence won’t be going to prison at all. Perhaps worst of all, these changes would be permanent, even after the budget crisis is over.

RECOMMENDATIONS

Releasing dangerous prisoners back into the general population is not a viable option. The public demands and expects the state to provide them with protection from these violent predators. Spending more tax dollars building more prisons is also not an option when the state is already broke. The years of the state legislature overspending on non critical needs of society have caught up. So long as the legislature continues to use crime as a political football, the problem will remain. It is time to take the politics out of crime and do what is necessary to provide the public with the security the state is obligated to do.

One method always touted by politicians is to release all of the non-violent minor marijuana drug offenders who clog up the prison system. This perception of prisons being filled with non-violent marijuana drug offenders is simply not true. The perception is based on the political squabbling of politicians trying to demonstrate to the public that they are trying to do something about the problem. This makes for good debates between politicians but does nothing to eliminate the prison overcrowding. According to the Department of Justice statistics, less the 1.6% of the prison population is made up of prisoners with the only conviction being a non-violent minor marijuana drug offense (Office of National Drug Control Policy 2001). There simply are no non-violent minor marijuana drug offenders to release. One consideration is to look at the type of prisoners housed in California’s prisons. Many of the felons in the state prison system are non-violent offenders (Prisons - Who's In Prison? 2010). Countless white collar crimes such as embezzlement, fraud, forgery, identity theft, money laundering, computer crimes, grand theft, car theft, and gambling are non-violent crimes (Gardner & Anderson, 2010). These types of offenders are not a threat to the public safety and do not need to take up precious prison space. They can be incarcerated in low cost community half-way houses where they would still be punished, but also hold down a job and continue to contribute to society. Instead of costing the state precious funds it doesn’t have, they would be contributing to the state’s budget through the taxes they would be paying. These

offenders can still be monitored through electronic devices and GPS systems to insure that they are meeting the requirements of their sentence.

At a recent (ASIS) meeting, San Diego County Sheriff William Gore spoke of the financial problems the state is facing with the court ordered release of prisoners. He pointed out that one of the solutions the legislature is contemplating is to enact a law that convicted felons only be sentenced to prison for 2 or more years rather than the existing law of a felon being sentenced to prison for a year or more. This would only bring the financial problems to the local economy, and is really a non-solution. Instead, he suggested the legislature consider contracting with other states to house California prisoners. This could have an immediate reduction on the cost of prisoner housing and at the same time comply with the court order of reducing the prisoner population (William Gore, 2010). California currently spends approximately \$50,000.00 a year to house a prisoner in the state prison system (Save California.com, 2010). Many other states spend half that amount. Florida spends \$20,000.00 per prisoner and Oklahoma spends \$17,000.00 per prisoner (Save California.com, 2010). This is a win-win solution as other states economies would benefit by housing California prisoners and California's economy would benefit by reducing the current cost of housing their prisoners. This also would alleviate the public's concern of having dangerous felons released back into their neighborhoods.

One suggestion currently being considered is to create a national commission to look at every aspect of our criminal justice system with an eye toward reshaping the process from top to bottom. We should bring together the best minds in America to confer, report, and make specific recommendations about how we can reform the process. This commission will be tasked with giving us clear answers to hard questions, including:

Why are so many Americans currently in prison compared with other countries?

Why are our policies so costly to our nation, both in tax dollars and in lost opportunities?

How can we reshape our nation's drug policies?

How can we better diagnose and treat mental illness?

How can we end violence within prisons and increase the quality of prison administrators?

How can we build workable re-entry programs so that our communities can assimilate former offenders and encourage them to become productive citizens?

How can we defend ourselves against the growing scourge of violent, internationally based gang activity?

CONCLUSION

The California state legislature has proven time and again that they will not fix the problem on their own initiative. It is time for the people to become involved and demand of their representatives that they fix a problem that can be fixed, even during a budget crisis. The legislature has a duty to represent the people and not their own political agendas or special interest groups. They need to take action now and save the state from bankruptcy.

In short, we are not protecting citizens from the increasing danger of criminals who perpetrate violence and intimidation as a way of life, while we are locking up too many people who should not be incarcerated. It is incumbent on our state and national leadership to create realistic ways to "fix" our broken prison systems.

Today, one out of every 31 adults in the U.S. is in prison, in jail, or on supervised release. This all comes at a very high price to taxpayers. All told, corrections spending totals about \$68 billion a year. In these tough economic times, leadership must come together and change the laws to solve the looming crisis of the operations of our criminal justice systems.

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