

Crisis and Opportunity in California's Prison System

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INTRODUCTION

As California slides deeper and deeper into its budget nightmare—a “free fall into a fiscal Armageddon”¹ as Governor Schwarzenegger has called the forty-two-billion-dollar, eighteen-month hole in the state’s budget—every potential solution should be on the table. Legislators have already begun to fight about how much they will cut services and raise taxes and fees—major issues in a state where passing any new tax has been a gargantuan political feat.

This essay will show how California’s budget crisis presents an ideal opportunity to seriously reform the state’s correctional system. I begin by describing the context of the budget disaster now facing the state. Second, I turn to other states’ correctional reforms, examining their relevance to California’s problems. Finally, I outline some practical measures the state could take to both improve its budgetary problems and lay a foundation for a long-term, much-needed restructuring of California’s bloated and dangerous prison system.

I. THE BUDGET CONTEXT

The passage of any budget designed to deal with this problem will inevitably involve severe cuts to primary, secondary, and higher education, as well as to health programs, social services, transportation, and other essential government services. The political fight between the governor and the legislature, and between Democrats and Republicans, will be how much to cut, not whether to cut these services. The state will also push as much of its fiscal problems as possible onto counties by forcing them to pay for essential services that were previously state-funded, such as school aid and capital funding for infrastructure and transportation projects. However, the state ultimately

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1. Karl Vick, *Calif. Budget Crisis Has a Familiar Ring*, WASH. POST, Dec. 24, 2008, at A3.

balances its budget, the great majority of changes will negatively affect California residents. Classroom sizes will grow, teachers will be laid off, tuitions will increase, health and social service benefits will decrease, and taxes and fees will rise.

As California nearly buckles under the weight of its huge deficit, the legislature must immediately consider significant correctional reform.² Meaningful prison reform has eluded the state for decades, already resulting in a federal takeover of the state prison's medical system and a pending federal takeover of the rest of the system.³ Why the California correctional system has grown so fast and become so overcrowded and violent is the subject for another article. Suffice it to say that because the politics of crime in California are so difficult and involve so many powerful interest groups, including the state's district attorneys, the California Correctional Peace Officers Association, victims' rights groups, and police chiefs, along with a wide political split between Democratic and Republican legislators on matters of crime policy, achieving consensus on reform proposals has proven impossible. Add in all the public referenda toughening sentences over the last few years, and you end up with a toxic political mix, which has to date prevented any serious reform of this behemoth system. Ironically, if done properly and thoughtfully, correctional reform in California could result in a smaller system that is safer for staff and prisoners and reduce recidivism rates. California now has the highest recidivism rates in the country.⁴ Lowering those rates would mean less crime, fewer victims, and less cost to the state. Thus correctional reform, unlike many other potential responses to the state's budget crisis, could benefit California residents while partially alleviating the current fiscal mess.

In the next section, I will highlight some other states' attempts at correctional reform before explaining how the budget crisis could be a vehicle for reforms that downsize the system while increasing public safety.

II. OTHER STATES' REFORM EFFORTS

A. Texas

Perhaps of most relevance to California is the example of Texas. One of the most conservative states in its crime policy, Texas is the only state with a

2. In fact, in the Governor's proposed 2009-2010 budget, released in January, he recommends an almost \$600 million reduction to the prison budget based on increased prisoner credit earnings and eliminating parole supervision for non-serious, non-violent and non-sex offenders. While this is a laudable start, the proposal does not go nearly far enough in terms of an encompassing program of prison reform. CALIFORNIA DEP'T OF FINANCE, 2009-2010 Governor's Budget: General Fund Proposals 28 (2009), available at <http://www.ebudget.ca.gov> (last visited Feb. 2, 2009).

3. *Jammed by Neglect*, S.F. CHRONICLE, Dec. 15, 2008, at B4.

4. Jim Herron Zamora, *Parolees in Revolving Door, California Has Highest Rate of Recidivism*, S.F. CHRONICLE, Dec. 23, 2002, at A1.

prison and parole system comparable in size to that of California. In 2007, Texas enacted bipartisan legislation designed to stem the seemingly immutable growth in its prison system, redirecting hundreds of millions of dollars away from prison expansion and into rehabilitative programming in prisons and in communities.⁵

This “justice reinvestment” policy flows from the premise that spending money on programming and treatment instead of prisons will result in more effective supervision of some people within the community and can potentially lower recidivism rates. According to the Council of State Governments (CSG), “many policy makers consider [justice reinvestment] to be the most extensive redirection in state corrections policy since the early 1990s.”⁶ Justice reinvestment is a huge step for any state to take, especially one with Texas’s reputation for being “tough on crime.” However, Texas’s legislature, unlike California’s, ultimately decided that the state could no longer afford to keep building prisons, and that effective community-based and prison programming could actually enhance public safety. If Texas can make these reforms, California can find a way as well.

B. Michigan

Michigan has one of the largest prison systems in the country, and fully one-third of state employees work for the Michigan Department of Corrections.⁷ The system takes up so much of the state budget that Michigan’s Democratic governor, Jennifer Granholm, recently commented that, “[o]ur efforts to grow Michigan’s economy and keep our state competitive are threatened by the rising costs in the Department of Corrections. We spend more on prisons than we do on higher education, and that has got to change.”⁸ Republican State Senator Alan Cropsy shared Granholm’s desire for change, saying that “[i]f Michigan is going to reduce its prison spending, the focus must change to actually producing results.”⁹ In 2007, the Michigan legislature passed bipartisan legislation allowing judges to sentence many of those with first- and second-time felony convictions into “Special Alternative Incarceration” programs.¹⁰ All those sentenced to these programs would also participate in Michigan’s highly regarded Michigan Prisoner Reentry Initiative

5. JUSTICE REINVESTMENT, STATE BRIEF: TEXAS 5 (2007), <http://justicereinvestment.org/states/texas/howpubmaps-tx/provide-tx>.

6. *Id.*

7. THE PEW CHARITABLE TRUSTS, PUBLIC SAFETY PERFORMANCE PROJECT, MICHIGAN STATE PROFILE I (2008), <http://www.pewcenteronthestates.org/uploadedFiles/Michigan%20State%20Profile.pdf>.

8. Gary Heinlein and Charlie Cain, *Prison Costs on Agenda*, DETROIT NEWS, May 2, 2008, at 1B.

9. PEW CHARITABLE TRUSTS, *supra* note 7, at 1.

10. Michigan Department of Corrections, Special Alternative Incarceration, http://www.michigan.gov/corrections/0,1607,7-119-1381_1383-5043--,00.html.

program, which prepares individual prisoner accountability plans and sends them to a variety of community-based programs.¹¹

C. Kansas

In 2007, the Kansas legislature passed laws designed to prevent prison expansion.¹² The legislation created financial incentives for counties to reduce probation revocations to prison, established a sixty-day earned-time credit for prisoners who successfully completed in-prison treatment programs, and restored earned-time credits for good behavior for prisoners convicted of non-violent crimes.¹³ As a result of this reform, the state should avoid building any new prison beds for a decade. Kansas also reinvested millions of dollars of these savings into prison and community-based treatment programs.¹⁴

These are not the only examples of states tackling correctional reform. Parole reforms include targeting resources to the highest-risk parolees and creating more appropriate, effective sanctions for parole and probation violators than simply sending everyone back to prison.¹⁵ Other states like Nebraska are beefing up their community corrections systems,¹⁶ while Arizona provides counties funding to allow them to handle probation violators locally without

11. See Michigan Prisoner ReEntry Initiative, <http://www.michpri.com/> (last visited Jan. 24, 2009).

12. See S.B. 14, 2007 Sess. (Kan. 2007) (codified as amended at KAN. STAT. ANN. §§ 21-4706, 21-4722, 22-3717, 75-5268, 75-5293 (2008)).

13. See KAN. DEP'T OF CORRECTIONS, THE SENATE BILL 14 RISK REDUCTION INITIATIVE (2008), available at <http://www.dc.state.ks.us/publications/the-senate-bill-14-risk-reduction-initiative> (last visited Jan. 26, 2009); KAN. DEP'T OF CORRECTIONS, HOUSE SUBSTITUTE FOR SENATE BILL 14 ANNUAL REPORT (Jan. 14, 2008), available at <http://www.dc.state.ks.us/community-corrections/risk-reduction-initiative/SB14%20Annual%20Report%201-14-08.pdf> (last visited Jan. 26, 2009).

14. COUNCIL OF STATE GOV'TS JUSTICE CENTER, JUSTICE REINVESTMENT, STATE BRIEF: KANSAS I (2007), <http://justicereinvestment.org/states/kansas/pubmaps-ks>.

15. See, e.g., SARAH HART, PENNSYLVANIA COMM'N ON CRIME & DELINQUENCY, CORRECTIONS REFORM COMPREHENSIVE SUMMARY (2008) (describing corrections reforms signed by Pennsylvania Governor Ed Rendell on Sept. 28, 2008), available at <http://www.pccd.state.pa.us/pccd/cwp/view.asp?a=1430&q=577475> (last visited Jan. 22, 2009). See also, e.g., DANNY HUNTER & BETH OXFORD, GEORGIA STATE BD. OF PARDONS & PAROLES, PROBATION & PAROLE IN THE YEAR 2020 (2008) (describing how Georgia's implementation of performance and accountability reform in its parole system saved over twenty million dollars in three years.), available at <http://www.nga.org/Files/pdf/0812PUBLICSAFETYGA.PDF> (last visited Jan. 20, 2009).

16. See, e.g., NEBRASKA DEP'T OF CORRECTIONAL SERVICES, COMMUNITY CORRECTIONS CTR.—OMAHA (describing programming at Omaha Corrections Center), available at <http://www.corrections.state.ne.us/institutions/ccco.html> (last visited Jan. 20, 2009); PEW CTR. ON THE STATES, PUBLIC SAFETY PERFORMANCE PROJECT, WORK IN THE STATES: NEBRASKA, available at <http://www.pewcenteronthestates.org/uploadedFiles/Nebraska.pdf> (last visited Jan. 24, 2009).

sending them back to state prison.¹⁷

A tremendous amount of correctional reform is fermenting in states large and small, even in traditionally conservative states like Texas, Arizona, Alabama and Kansas.¹⁸ These reforms have the potential to change the way these state systems operate, reduce the systems' size and cost, and increase public safety through effective programming. Improvements are happening everywhere the country, but not in California—the very state that, in most correction experts' opinions, most badly needs reform.¹⁹

III. WHAT CAN BE DONE?

Fortunately, California already has a blueprint for reforming its correctional system. In 2007, the state legislature asked a panel of correctional experts (including myself) to examine California's prison system, focusing on its capacity to provide effective programming to prisoners.²⁰ But the report that the panel produced and released in July 2007 (herein "Expert Panel report") went beyond simply examining correctional programming: it also recommended various ways to shrink the size of the California prison system.²¹ The panel also recommended a justice reinvestment strategy for redirecting correctional spending back in to prison and community-based programming that would, in turn, even further reduce the system's size while reducing recidivism.²²

According to the report, California's prison system could be reduced by forty-two to forty-eight thousand beds over the next several years.²³ This reduction would also allow meaningful programming to take place in a system

17. See, e.g., ARIZONA SUPREME CT., ADULT PROBATION DIVISION GRANT FUND DESCRIPTIONS, available at <http://www.supreme.state.az.us/apsd/programs.htm> (last visited Jan. 24, 2009).

18. See, e.g., *supra* Sections II.A-C (overviewing Texas, Arizona, and Kansas's reforms); see also PEW CTR. ON THE STATES, PUBLIC SAFETY PERFORMANCE PROJECT, WORK IN THE STATES: ALABAMA, available at <http://www.pewcenteronthestates.org> (last visited Jan. 24, 2009).

19. See, e.g., California Annual Review Summaries, *California Corrections: Confronting Institutional Crisis, Lethal Injection, and Sentencing Reform in 2007*, 13 BERKELEY J. CRIM. L. 117, 117–34 (2008) (describing California's prison crisis with respect to its various elements, institutional forces, and reform attempts); David Muradyan, *California's Response to Its Prison Overcrowding Crisis*, 39 MCGEORGE L. REV. 482, 483–88 (2008) (describing California's prison crisis and the state's response to federal court intervention); Cal. Little Hoover Commission, *Solving California's Corrections Crisis*, 19 FED. SENT'G. REP. 261 (2007) (describing the crisis and proposed reform steps).

20. Press Release, California Dep't of Corrections & Rehabilitation, *Expert Panel on Corrections Reform Offers California a Roadmap for Reducing Recidivism and Overcrowding*, (June 29, 2007), available at http://www.cdcr.ca.gov/News/2007_Press_Releases/Press20070629.html.

21. CALIFORNIA DEP'T OF CORRECTIONS & REHABILITATION, A ROADMAP FOR EFFECTIVE OFFENDER PROGRAMMING IN CALIFORNIA (2007).

22. *Id.* at 50.

23. *Id.* at 53.

that is otherwise too crowded for this to occur for the majority of the population.²⁴ Briefly, the report recommends that California immediately adopt the following measures:

- (1) Award good-time credits against the remaining sentence of any prisoner who successfully completes an in-prison rehabilitation or treatment program.²⁵
- (2) Implement an earned early discharge parole supervision strategy for all non-serious or violent prisoners.²⁶
- (3) Release all low risk, non-violent, and non-sex offender registrants from prison at the ends of their sentences without placing them on parole supervision;²⁷
- (4) Restrict the use of prison as a sanction for parole violations to only certain high-risk violators,²⁸ and
- (5) Select and deliver in both prisons and communities a core set of programs that cover six major areas challenging many offenders.²⁹

The report estimated that the aggregate effect of all these recommendations would be a system reduced by between forty-two to forty-eight thousand inmates and which, through increased programming, could achieve a five to ten percent reduction in new felonies committed by parolees.³⁰ Thus, the state would save a total of almost \$1 billion annually, or a net of about \$560 to \$680 million annually after the state reinvests a portion of the savings into essential prison and community-based programs.³¹

Ironically, these recommendations were released at almost exactly the same time as Governor Schwarzenegger signed AB 900, which provided about seven billion dollars to build over fifty thousand prison and jail beds to handle California's overcrowding and expected prison growth over the next several years.³² This bill—surely one of the most ill-conceived, ineffective, and expensive ways imaginable to “reform” a correctional system—was dead on arrival even when passed. It required too much money to be feasible, did not include any ongoing operating costs in the appropriations, grossly

24. *Id.* at 10–11.

25. *Id.* at 12.

26. *Id.* at 13.

27. *Id.* at 41. Critically, the report recommended that the state measure parolees' risk of recidivism with a statistically validated risk-assessment method, rather than focus purely on parolees' committing offenses.

28. *Id.* at 47–49.

29. These areas include (1) academic, vocational, and financial issues; (2) alcohol and other drugs; (3) aggression, hostility, anger, and violence; (4) criminal thinking, behaviors, and associations; (5) family, marital, and relationships; and (6) sex offending. *Id.* at 29–30.

30. *Id.* at 97.

31. *Id.* at 99.

32. Editorial, *Blundering Toward Parole Reform*, SAN JOSE MERCURY NEWS, July 18, 2007, at 18A; A.B. 900, 2007 Leg., Reg. Sess. (Cal. 2007).

underestimated construction costs, and ignored the practical difficulty of building so many prison and jail beds in a short period of time.

Aside from the political and fiscal gimmickry in the bill itself, the notion that a state can reform its correctional system by simply expanding its size by almost thirty percent is completely absurd. If the history of the last thirty years has taught us anything, it is the sheer impossibility of a state's building its way out of prison overcrowding. AB 900 aspired to grow the prison system by almost the same amount that the Expert Panel report proposed to shrink it, costing billions instead of saving at least half a billion dollars annually.³³ Given California's current budget situation, I predict that this particular piece of legislative "reform" will be rightfully consigned, in Trotsky's words, to the dustbin of history.

IV. BACK TO THE BUDGET CRISIS

California residents are currently facing service cuts and tax hikes of historic proportions. In addition, the prison system faces a complete takeover by the federal courts—an embarrassment to all the elected officials in the state who could not muster the political will to solve this problem themselves. Given this fiscal and political context, California lawmakers should immediately incorporate the Expert Panel's recommendations into legislation and the Governor should sign it. This would be one of the few things slated to happen in the next budget that will actually save money while producing good outcomes in the form of reduced recidivism.

Though the same groups that oppose these types of reforms will continue to oppose them, interest groups all over the state will rail against cuts to crucial educational, health, senior citizen, and social service programs. Budget crises can be vehicles for changes that would not otherwise be politically possible. Here, correction reform is a stellar example of a good reform that could not otherwise happen except in the context of an unpopular budget in the State of California. Policy makers should at least make every attempt in this situation to do as much of the right thing as humanly possible, and this is the right thing at the right moment for the state.

Even if the state were to enact the changes I propose, a great deal of work would remain to more fundamentally reform California's correctional system. The state has too many mandatory minimum sentences, and California's draconian and ineffective two and three strikes laws need to be altered. Judges need far more discretion and the entire penal code likely needs reexamination, ideally by an expert sentencing commission. However, acknowledging this need for more radical structural and legal reforms does not make it any less important to take the first steps outlined above. It is important to show policy makers and the public that meaningful reforms can be made to the prison

33. Editorial, *supra* note 32.

system that will work, save taxpayers money, and keep people safer than they are now. If this happens, further structural reforms are far likelier to happen down the road.

In this regard, it is useful to compare New York with California. From 1996 to 2006, the New York State prison system actually *shrank* by ten percent;³⁴ during that same time, violent crime declined by thirty-six percent.³⁵ In contrast, between 1996 and 2006, California's prison system *grew* by twenty percent;³⁶ crime declined by thirty percent.³⁷ Thus, New York managed to achieve a much larger crime decline than California while simultaneously shrinking its prison population. The useful part of this comparison is simply to illustrate that crime can continue to decrease even as prison population goes in the same direction. It is a helpful lesson for groups in California who contend that only by locking up ever greater numbers of people can we protect the public.

We know so much more now than a decade ago about what works in corrections and the ineffectiveness of expanding prison populations. The reason AB 900 is such a miserable piece of public policy is that it turns a blind eye to what we know does and does not work. The Expert Panel's recommendations are far more sound and evidence-based than anything contained in AB 900. They should have been implemented when they came out a year and a half ago. Given the wave of significant and unpopular cuts to essential government services destined to occur in California, it would be unconscionable if the state's elected officials failed find the same bipartisan political will as was manifested in Texas, in far less exigent circumstances. Now is the time to begin reform of the California prison system.

34. Compare WILLIAM J. SABOL, ET AL., BUREAU OF JUSTICE STATISTICS BULLETIN: PRISONERS IN 2006 2 (2007), available at <http://ojp.usdoj.gov/bjs/abstract/p06.htm> (last visited Jan. 22, 2009), and CHRISTOPHER J. MUMOLA & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS BULLETIN: PRISONERS IN 1996 3 (1997), available at <http://ojp.usdoj.gov/bjs/abstract/p96.htm> (last visited Jan. 22, 2009).

35. See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, STATE-LEVEL CRIME TRENDS DATABASE, REPORTED CRIME IN NEW YORK, available at <http://bjsdata.ojp.usdoj.gov/dataonline> (last visited Jan. 22, 2009).

36. Compare SABOL, ET AL., *supra* note 34, and MUMOLA & BECK, *supra* note 34.

37. See U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, STATE-LEVEL CRIME TRENDS DATABASE, REPORTED CRIME IN CALIFORNIA, available at <http://bjsdata.ojp.usdoj.gov/dataonline> (last visited Jan. 22, 2009).