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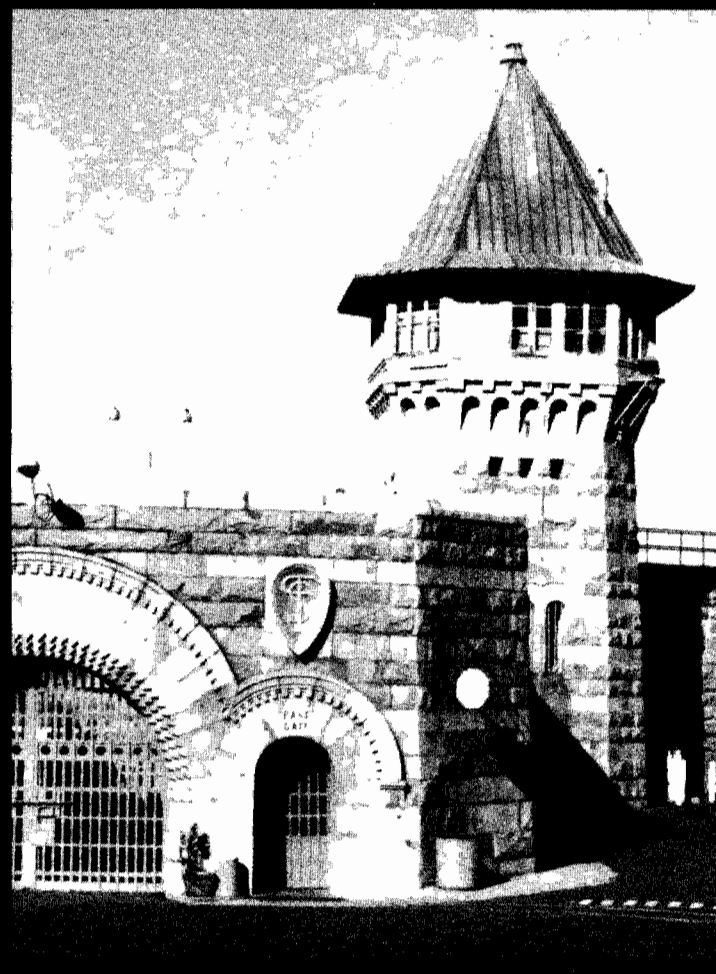

BEYOND BARS: CORRECTIONAL REFORMS *to* LOWER PRISON COSTS *and* REDUCE CRIME

January 1998

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January 14, 1998

The Honorable Pete Wilson
Governor of California

The Honorable Bill Lockyer
President Pro Tempore of the Senate
and members of the Senate

The Honorable Rob Hurtt
Senate Republican Leader

The Honorable Cruz M. Bustamante
Speaker of the Assembly
and members of the Assembly

The Honorable Bill Leonard
Assembly Republican Leader

Dear Governor and Members of the Legislature:

After more than a decade of investing in new county jails and state prisons, California faces an inmate overcrowding crisis that worsens each day. Over the last decade an increasing percentage of a growing population has been sentenced to state prison, and correctional officials see that trend continuing into the foreseeable future.

In the course of its review, the Little Hoover Commission was presented with compelling evidence that prison overcrowding is not just the product of tougher sentences enacted in recent years. Overcrowding is compounded by inappropriate sanctions for low-level property criminals and a policy of incarceration instead of treatment for drug users, who because of repeated failures end up in state prisons. In addition, two out of three paroled felons in California -- far more than in most other states -- fail to successfully reintegrate into society. Consequently, they are returned to prison, too often having committed another crime.

But if a multi-faceted correctional strategy were adopted fewer felons would graduate to state prison, fewer paroled felons would return to state prison -- and most importantly, fewer crimes would be committed.

That new correctional strategy should incorporate the significant progress in carefully targeting programs and inmates to decrease drug use and violence and increase sobriety and employability -- and as a result substantially reduce crimes inflicted on California communities by released felons.

This strategy also should capitalize on a maturing private correctional industry, which provides the opportunity to contract for prisons that can be less costly to operate in the short run and more effective in the long run at "correcting" criminals.

Milton Marks Commission on California State Government Organization and Economy ✦http://www.lhc.ca.gov/lhc.html

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The Commission's report, which is transmitted with this letter, makes recommendations that if correctly implemented could confidently be expected to result in an integrated system of criminal sanctions that would correct criminals and reduce crime, in addition to incapacitating the worst of the worst.

The recommendations would maximize the use of existing facilities by aggressively implementing the correctional tools proven to reduce recidivism. And the recommendations would accommodate the need for additional prison beds through a competitive process that ultimately compensates prison operators on two equally important outcomes -- managing safe prisons and reducing crimes by released felons.

Moreover, the recommendations seek to develop a common ground for resolving an issue that has engendered stalemate and divisiveness. Many of the underlying facts that define the problems and should ultimately define the solutions have been known to policy makers for some time. Today the State has more options for crafting a widely acceptable solution. But the intensity of the crisis and the price of the solutions have escalated. Time and intransigence remain the enemies of reasonable and affordable solutions.

California is at a crossroads: The State must do something to reduce the crime committed by previously convicted criminals, or be prepared to redouble the $5 billion investment it has made in constructing new prisons, or watch the tougher sentences enacted in recent years be eroded by the inability to incarcerate repeat felons.

The Little Hoover Commission stands ready work with the Legislature and the Governor to make these reforms a reality.

Sincerely

Richard R. Terzian
Chairman

Beyond Bars:

Correctional Reforms to Lower Prison Costs and Reduce Crime

January 1998

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Executive Summary

Executive Summary

Two dominant state objectives -- ensuring public safety and maintaining fiscal responsibility -- demand that state and local correctional policies are strengthened to control crime more effectively and efficiently.

The State must provide leadership and additional funding so that:

- Arrest warrants are served promptly.
- Punishment alternatives, including county jail, are available for misdemeanor violators speedily.
- Recidivism is drastically reduced.
- Serious felons receive adequate preparation for life on the outside prior to release from prison and adequate supervision after release.
- Drugs are not available to prisoners in state or county jails and drug treatment programs are expanded greatly.
- Adequate prisons beds are available to incarcerate the increasing population of state and local criminals.
- All inmates except the ill and the extremely dangerous must have available 40 hours of work or education per week.

During the Commission's study, these significant facts emerged:

- Approximately 90 percent of all state prisoners are eventually released, more than half of them within two years.

- Two-thirds of incoming inmates are parole violators.

- Twenty-four counties -- which collectively are responsible for 70 percent of jail inmates -- are subject to court-ordered population caps.

More than $3 billion has been spent doubling the capacity of county jails over the last decade. But jails still are so crowded that every day nearly 900 inmates are released to make room for higher priority prisoners. Another 2.6 million arrest warrants go unserved, largely because there is no place to put those who would be arrested.

The state prison system is equally strained. After a construction boom of historic proportions, the prisons are now more overcrowded than ever before. Preventing riots and escapes and making room for nearly 10,000 additional inmates each year have become the overriding focus.

So much so that adequate attention -- education, drug treatment, jobs skills -- is not given to the more than 50,000 inmates who complete their terms each year. One minute behind electric fences, the next minute at the bus depot. Most of them end up back in prison in a matter of months -- nearly half of them convicted of another crime.

The cost of failure is high. Under recently enacted laws, repeat felons receive longer terms. As a result of the longer sentences, they are considered dangerous and are restricted to costly, high-security prisons -- further committing the State to the most expensive tool in the corrections arsenal.

More importantly, the failure of parolees to reintegrate into society exacts another cost: more crimes and more victims, demonstrating that public safety is ill-served by a corrections strategy that only protects the public when the inmate is in custody and does not prepare the inmate to be a responsible citizen. The State cannot tolerate a system that results in two-thirds of parolees quickly being re-incarcerated.

The state prison crisis cannot be solved in isolation because counties are still responsible for administrating a majority of criminal sanctions. Similarly, construction of new facilities alone cannot solve this problem quickly enough, nor at a price the State can afford.

The Little Hoover Commission believes that reforms should occur in three areas:

- ***Create an Integrated System.*** California's correctional agencies must think, plan and act as a coordinated system -- county and state, youth and adult. The correctional system of the future must be constantly evaluating and expanding those strategies that work wherever they are best suited.

- ***Maximize Existing Facilities.*** Existing facilities could hold more serious felons if low-level offenders were more effectively sanctioned at the county level by local authorities and if more parolees were successfully reintegrated into society.

- ***Expand Facilities Through Competitive Procedures.*** Future facilities should be acquired through a competitive process that allows private and public agencies to submit proposals, and requires contractors to provide services known to reduce recidivism.

The 21 new prisons built in California over the last 15 years are models of physical efficiency -- by the measure of holding large numbers of inmates with few escapes. But fiscal prudence and public safety require that the next generation of prisons function in a way that also reduces crime among felons who are released.

The Commission's recommendations are intended to support Three Strikes and other sentencing enhancements enacted in recent years by ensuring there always is room in state prisons for the worst of the worst.

The best way to curb prison costs also is the best way to increase public safety -- by assertively using the most effective tools available with every inmate practical to prevent criminals from re-offending once released.

After 10 months of research and analysis, with the cooperation of the agencies involved and with the assistance of professional and academic experts from across the nation, the Commission has reached the following findings and recommendations:

Systematic Overcrowding

Finding 1: County jails and state prisons do not have adequate space to house inmates and adequate plans do not exist to deal with the crisis.

California has a bifurcated structure for administering criminal sanctions that does not allow the best combinations of punishments and rehabilitative tools to be used to prevent the escalation of crime and the recycling of inmates. Instead of an integrated strategy for effectively dealing with sentenced criminals, the State has a political patchwork quilt that too often results in nonviolent and non-serious criminals receiving by default the most expensive sanction -- state prison.

Recommendation 1: The Governor and the Legislature should enact legislation creating a venue and a process for developing, evaluating, refining and funding a statewide corrections strategy that protects the public in the most cost-effective way possible.

- **The strategy should be based on a master plan.** The plan should be developed by a permanent panel representing the array of societal interests. The panel's responsibilities would begin with the development of a master plan and continue with ongoing assessments and refinements. The plan should be developed by the Board of Corrections, provided the board's composition is modified to include appointments by the legislative leadership and representation from the judiciary, and from rural and urban counties.

- **The master plan should specify the roles of various agencies, identify desired outcomes and recommend funding priorities.** The master plan should serve as a guide to the Legislature and the Governor to the most cost-effective approaches to protecting public safety. It should review the entire correctional spectrum, beginning with the backlog of 2.6 million unserved warrants. In particular, the master plan should define the role and goals for community corrections, supervised releases and state prisons. The master plan should be presented to the Governor and the Legislature for enactment in statute and implementation through annual budget development.

- **The master planning agency should review existing sentencing strategies.** In order to implement the most cost-effective public safety solutions contained in the master plan it may be necessary to change individual sentencing statutes. The master planning agency should recommend those potential statutory changes to the Legislature.

Maximizing Existing Facilities

Finding 2: Intermediate sanctions are not being adequately considered for nonviolent drug and property offenders.

More than half of the offenders sent to state prison are sentenced for nonviolent crimes. Among these are inmates convicted of petty theft, forgery, fraud and other property offenses. About one-quarter of all incoming prisoners are sentenced for drug crimes. Two new considerations have revived interest in community-based sanctions: a growing prison population that has prompted experts to look at more cost-effective alternatives, and research that has more clearly defined which sanctions other than prison work more effectively with certain types of offenders.

Recommendation 2: The Governor and the Legislature should enact legislation funding community-based punishments that improve public safety over the long term by reducing recidivism and that minimize the short-term added risks to the public when compared with incarceration in state prison.

- **The State should establish a competitive mechanism to fund community-based punishment plans.** California has used Challenge Grants to fund local programs for dealing with juvenile offenders. The same competitive mechanism should be expanded to implement strategies known to reduce recidivism that were proposed by counties under the 1994 Community-based Punishment Act.

- **The State should expand drug courts.** The Governor should direct the California Judicial Council to take the lead in obtaining and allocating federal funds for drug courts, developing drug court standards and coordinating with local jurisdictions to establish drug courts. The State should fund courts that are not adequately funded with federal money.

- **The State should fund pilot probation subsidy programs.** The State's probation subsidy program of the 1970s was a source for cost-effective innovations. Restoring the project, if only by funding pilot programs, could help the State resolve some of the challenges that are not being adequately addressed by state agencies -- such as dealing with mentally retarded criminals who are often blended in with the regular prison population.

Finding 3: The State is not providing enough education, treatment and job training to prepare inmates to become responsible citizens once they return to the community.

Most inmates do not have jobs in prison that develop skills transferrable to the marketplace. Fewer inmates receive needed education. Fewer still receive effective drug treatment. Certain inmates will not respond to anything. But substantial evidence -- including some developed in California prisons -- shows that certain programs can significantly reduce recidivism. Expanded and improved, these programs could be confidently expected to reduce crime and the demand for additional prisons.

Recommendation 3: The Governor and the Legislature should enact legislation providing prison inmates and parolees with the programs and services, such as drug treatment and cognitive skills programs, that are known to reduce recidivism in a cost-effective manner.

- **Sentenced criminals should receive assessments, treatment and aftercare.** The state courts should order assessments to be conducted to determine what kinds of treatment and educational opportunities are likely to be effective with individual felons. The assessments should be used by the Department of Corrections and county correctional officials when making placement decisions.

- **Work programs should be expanded.** The State should expand work programs to involve all eligible inmates, and in particular those programs that increase prison self-sufficiency and give inmates the experience needed to increase their employability upon release.

- **The prison-based drug treatment should be greatly expanded.** Certain high-level offenders should be targeted for therapeutic community drug treatment in prison and aftercare programs following their release. Cognitive skills programs should be established for low-level and medium-level offenders. Because the greatest limiting factor will be the availability of trained staff, the State should fund staff training programs.

- **The State should create reintegration centers.** While CDC has specialized reception centers that transition inmates into prison, it has no similar facilities to prepare inmates for successful reintegration into society. The State could convert existing facilities, or contract for additional facilities that provide for up to six months of intensive pre-release preparation. Similarly, the State should expand the existing work furlough program.

examining all of the alternatives and developing the most cost-effective facility plan.

Recommendation 4: The Governor and the Legislature should require the modified Board of Corrections to develop plans for additional correctional facilities.

- **A modified Board of Corrections should be the planning body.** The responsibility should be placed with a panel comprised of gubernatorial and legislative appointments, one that represents a wide variety of interests. It should hold public meetings to gather information and consider alternative ways to incarcerate felons.

- **The board should develop plans for cost-effectively accommodating the entire projected state and local inmate population.** An initial step to developing a facilities plan should be a review of the classification system to ensure the State is not over classifying inmates and as a result building too many high-security prisons.

- **The facility plan should provide for competitive procurement of additional facilities.** The facility plan should whenever feasible provide for the acquisition of services -- including the construction and operation of prisons -- through competitive procedures that allow for proposals by the Department of Corrections, local government agencies, non-profit groups, for-profit companies, or partnerships among those organizations.

- **The plans should be submitted to the Governor and the Legislature for enactment and funding.**

- **The board should help to identify and resolve issues associated with siting correctional facilities.** Among the issues the panel should consider are the impacts on school systems and local infrastructure, as well as ways the staff and inmates of facilities can become greater assets to host communities.

Finding 5: The State does not have an adequate process for determining when to contract for correctional services, or for evaluating or compensating service providers based on performance.

Privatization is not by itself the solution to the State's growing prison-related costs or the ineffectiveness of its correctional policies. Private

- **The State should expand parolee assistance programs.** CDC recently demonstrated that job placement, counseling and other assistance for parolees can significantly reduce the number who violate their parole and return to prison. These programs are almost immediately cost-effective and should be expanded.

- **The State should develop a separate program for parolee failures.** The State should provide separate facilities with specialized programs for parolees who have shown they are least likely to respond to assistance and most likely to re-offend.

- **All programs should be rigorously and independently evaluated.** Innovation will be needed to implement the best methods for reducing recidivism. Even programs modeled after proven successes can fail. To establish public confidence and ensure cost-effectiveness, all educational, vocational and drug treatment programs should be independently evaluated.

- **The State should re-evaluate the organizational structure of parole supervision.** Through the master planning process, the State should explore the potential for providing parole services outside of CDC. Among the options would be contracting parole services to county probation departments or to private organizations to provide a full array of services.

- **The State should establish a zero tolerance policy of drugs in prison.** Prisoners and prison officials candidly concede that the prison drug trade is flourishing. While some efforts are being made to curtail drug use in prison, the State and counties should escalate this effort, including the use of surprise drug tests.

Performance-Based Expansion

Finding 4: The State lacks an adequate process for assessing the needs and options for housing, training and treating felons sentenced to state prison.

During the recent prison boom, the State developed a process for designing and constructing new facilities that leveraged the efficiencies of the private sector to construct large public facilities while providing for legislative oversight. Ironically, the process is now being dismantled because of the eroding political consensus for additional prisons. What the State lacks is an open process and an independent venue for

enterprises, however, do have the capacity to provide some services better and cheaper than public agencies alone. The State already does considerable contracting for correctional services, but there is significant criticism about some of its contracting procedures. National reviews of public contracting show that the most successful efforts rely upon independent agencies to identify public costs, oversee competitive procedures and evaluate service providers.

Recommendation 5: The Governor and the Legislature should enact legislation establishing a vehicle within the Youth and Adult Correctional Agency for soliciting proposals, negotiating contracts and evaluating the performance of contractors.

- **The Board of Corrections should be the procurement agent.** The entity should review and renegotiate existing contracts to require evaluations, establish minimum standards and link compensation to performance. Outcome measures should include as equal priorities the safety of the institution and the ability of released inmates to successfully reintegrate into society. The evaluations and outcome measures should be shared with the master planning entity and the Legislature to help inform policy debates about how to best increase public safety.

Finding 6: The State faces an immediate prison overcrowding crisis that cannot be resolved through the existing state process for developing and operating prisons.

The Department of Corrections estimates that in mid-2000 the State will run out of places for additional inmates in existing facilities. Furthermore, even if the Legislature were to authorize immediately the construction of a new prison, the department says the new prison could not be designed and constructed by that date. Earlier recommendations, such as an expansion of community-based and intermediate sanctions, might reduce the demand for additional prison beds. Still, additional beds will be needed. The needed beds could be provided quicker -- and likely for lower costs -- through a competitive process that allows for private companies, public agencies or partnerships among them. To reduce demand for prison space over time, those contracts should require that inmates receive the variety of services that are known to reduce recidivism.

Recommendation 6: After giving consideration to the treatment and reintegration programs advocated in previous recommendations, the Governor and the Legislature should

ensure there are enough state and county facilities to accommodate growth in the inmate population through the year 2003. The facilities should be acquired through a competitive process. To maximize public safety, contractors should be required to meet minimum operational standards and provide to all inmates the services that have been documented to help inmates successfully reintegrate into society.

- **The Board of Corrections should administer the contracts, which should require providers to assess the corrective needs of inmates and provide the vocational, educational and therapeutic services that have been shown to reduce recidivism.** As quickly as the State develops the expertise, the contracts should be amended to include financial incentives based on the safe operation of the facilities and the recidivism of released inmates.

- **The Board of Corrections should make an early release assessment.** The board should review the current prison population and recommend to the Governor and the Legislature a plan detailing which types of inmates should be released in the event that a population cap is imposed by the courts. The plan should seek to minimize the risk to public safety by identifying groups of inmates who are least likely to engage in violent or serious crimes if released. The plan should include ways those inmates could receive intensive supervision and services known to reduce the chances that they would commit another crime.

ATTACHMENTS: The following two charts, excerpted from the Background of this report, display the significant characteristics of California's overloaded correctional system.

- **Disposition of Adult Felony Arrests 1996.** Because of data collection methods, it is unknown precisely how many felony convictions result in sentences to state prison. Nevertheless, the chart displays the outcomes for those arrested and charged with felonies, including those resulting in a misdemeanor convictions.

- **California's Jails and Prisons: Millions Involved.** The second chart displays the numbers of people involved in various aspects of the local and state correctional system -- from the 2.6 million unserved warrants to the 60,000 parolees who are returned to prison each year.

Disposition of Adult Felony Arrests 1996

Adult Felony Arrests 285,038 (100%)

Law enforcement releases 10,488 (3.7%)

Complaints denied 37,521 (13.2%)

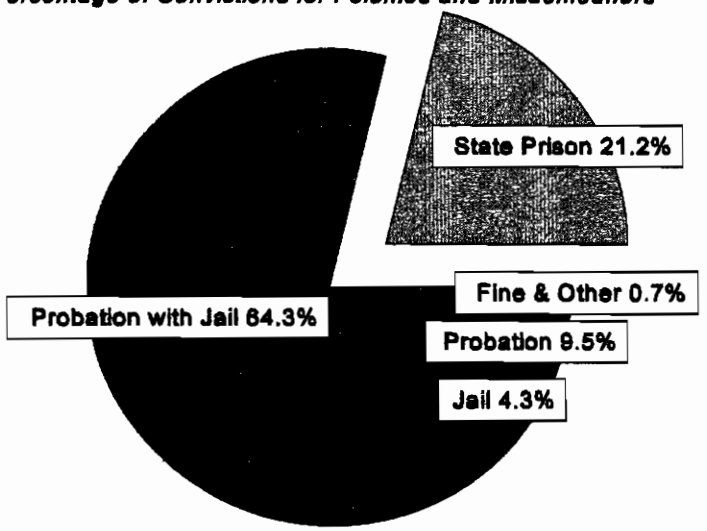
Complaints Filed 237,029 (83.1% of arrests)
Includes 89,516 complaints filed as misdemeanors

Not convicted 39,720 (13.9%)

Convictions 197,309 (69.2% of arrests)
Includes those convicted of misdemeanors

Disposition of those Convicted

Percentage of Convictions for Felonies and Misdemeanors



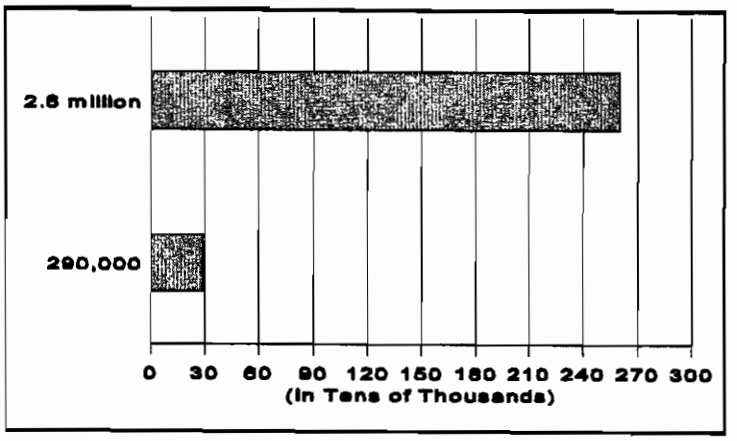
Source: DOJ

California's Jails and Prisons: Millions Involved

Booking and Probation

Number of outstanding arrest warrants, many of which go unserved for lack of jail space:

Number of criminals on county probation:

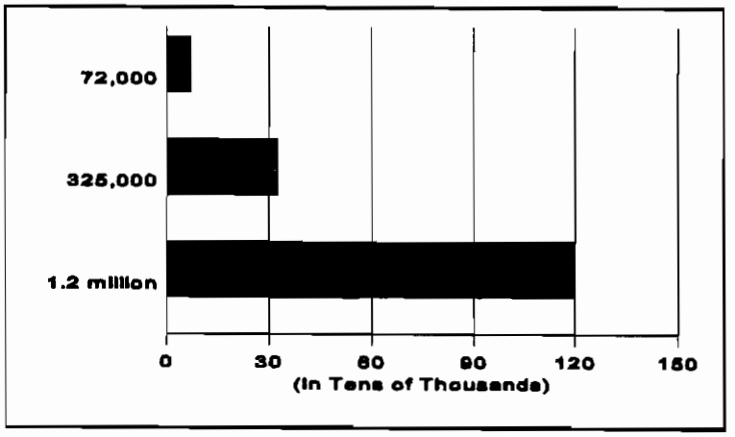


County Jail Population

Average daily population of county jails:

Number of county inmates released early each year because of overcrowding:

Number of annual bookings into county jails:



State Prison Population

Number of felons in state prison:

Number of inmates released annually on parole

Number of parolees returning annually to prison

Source: Board of Corrections, California Department of Corrections, Department of Justice

Introduction

Introduction

A fundamental purpose for government is to guard the public safety. "Establish justice, ensure domestic tranquility" were the words used by the nation's founders. The drafters of California's Constitution premised statehood on the protection of certain rights -- principal among them, "acquiring, possessing and protecting property and pursuing and obtaining safety."[1]

Generations later, the body of federal and state law fills entire libraries. But as the last decade attests, the breadth and scope of those laws are overshadowed by the public's unwavering concern with personal safety. The Berlin Wall fell, nuclear weapons were dismantled and the threat of a third world war slipped further into the realm of fiction -- but the rise in violent crime, the emergence of street gangs, and the very real War on Drugs challenged society's collective sense of security.

Crime has dominated headlines and captured political agendas. High-profile crimes produced high-profile policies.

Programs were funded to save young people from the clutches of criminality. More police were put on the beat. And a great deal more resources were spent to deal sternly with convicted criminals -- relying overwhelmingly on incarceration to punish the guilty and protect the innocent.

In the broader view, jails and prisons are at the end of a long social continuum. The steel walls, coils of razor wire and now electrified fences have come to represent in the minds of many the failure of

families, schools and social programs to develop in individuals the skills and character to abide by the social compact.

Impatience, frustration and fear have spawned dozens of bills over the last decade that "get tough" on criminals. While the State's sentencing laws are complex, one such reform characterizes, simply and universally, the public sentiment -- "Three Strikes." The law enacted by the vote of lawmakers and the people in 1994, requires that the sentences for individuals convicted of a prior felony be doubled and on the third felony that they be sentenced to a minimum of 25 years.

Three Strikes alone is not responsible for the dramatic growth in prisons and the inmate population. The precise reasons for the increasing prison population are actually debated among experts. But certainly tougher stands by prosecutors and judges, stiffer sentencing laws, more crimes, more arrests and just more people in general have contributed to the surge in incarceration.

California builds the biggest prisons in the nation. And California's prison population is growing at a pace that could fill two new prisons every year. Each prison costs $280 million to build and $80 million a year to operate. In the last 13 years the State has opened 21 new prisons, yet prisons are more crowded today than they were before the construction boom began. The California Department of Corrections (CDC) asserts that to safely house the increasing prison population, 17 new prisons are needed before 2001 -- which would require doubling the $5 billion investment the State has made in new prisons over the last 15 years.[2]

By Definition

Jail -- Jail refers to local facilities, usually operated by counties, that house inmates who are awaiting trial, awaiting transfer to other facilities, or have been sentenced to jail as a criminal punishment.

Prison -- Prison refers to state-run facilities that house criminals convicted of felonies and sentenced by the court to prison.

Probation -- Probation refers to county-operated supervision of convicted criminals who are not incarcerated. Probation is used as a criminal sanction in lieu of jail time or upon release from county jail.

Parole -- Parole refers to the conditional release of felons who have served time in state prison. Parole supervision is provided by the California Department of Corrections. Violating the conditions of parole often results in a return to prison.

Those facts, more than any others, have delivered California to a crossroads in how it can best deal with criminals.

The facts that policy makers should consider seriously when deciding which path to pursue are these:

- Approximately 90 percent of the inmates in state prison are eventually released back to the community.[4]

- More than half of the 154,000 inmates in prison today will be released within the next two years.[5]

- And while the State inadequately tracks individuals, it is known that within the next two years more than half of the released inmates will be convicted of new crimes.[6]

Policy makers face some difficult choices. The public still favors incarceration, but public support for funding new prisons has waned, especially when neighborhood schools and regional freeways are as overcrowded as prisons in the hinterlands. After approving five prison bond measures between 1981 and 1990, voters in November 1990 rejected a bond measure to finance new prisons.

Annual state budgeting is in some ways a zero-sum game and for the last decade building and operating prisons has taken on more and more of the small slice of the state budget that is discretionary.

In addition to the dichotomy of public opinion, policy makers in search of consensus have been frustrated by a lack of solid research and evaluation of existing programs. Sociology and criminology are not precise sciences. Research findings often deliver conflicting conclusions. At best there are gaps in the evidence. But more frequently the research is methodologically inadequate or advocacy is masqueraded as research. As a result, policy makers often are required to make decisions based on faith as well as fact.

As is typical in public policy, California's correctional challenges are larger in scale than those of any other state. But California can find some solace -- and even some hopeful opportunities in new correctional directions being chartered throughout the United States. Among them:

- ***Drug Treatment and Criminal Rehabilitation.*** Significant progress has been made in just the last five years in documenting the success of drug treatment programs in reducing recidivism. When conducted properly and linked with education, job skills and reintegration services, the treatment programs could significantly reduce the number of released felons who violate parole or commit new crimes.

- ***More Private Options.*** Nationally, a private corrections industry has matured, creating the potential to align the innovation and efficiencies inherent to competitive service delivery with the public interest of safely housing and reforming convicted felons.

- ***Re-examination of Local Options.*** Crowded prisons and jails in California and across the nation have forced local communities to reassess their options and obligations for dealing with low-level criminals. Not everything works, but evidence is growing that a variety of community administered sanctions that are more intensive than parole but less costly than incarceration can be used to deal safely with certain criminals.

Together, these elements have the potential to ease the immediate inmate population crisis and provide an affordable long-term approach to dealing with sentenced felons.

Under the current strategy, more than $500 million a year will have to be spent indefinitely to construct additional prisons. Those estimates renewed the Little Hoover Commission's interest into the State's correctional policies. But the Commission quickly realized that design and construction is just a small part of the prison price tag. And the Commission was encouraged by a number of stakeholders to take a broader perspective, reviewing the State's overall incarceration strategy.

This study, of course, is not the first to examine this issue. The Legislative Analyst routinely has encouraged a full examination of the State's options for housing prisoners. The Blue Ribbon Commission on Inmate Population Management provided policy makers with a road map for prison reform in 1990. And this Commission's 1994 study dealt with every issue from sentencing strategy to educational programs and medical parole for aged and infirmed inmates.

But some of the factors underlying the political debate of the last few years are changing. And the State has different options than it did at the dawn of this decade.

In conducting its study, the Commission empaneled an Advisory Committee and held sessions covering four general issue areas -- strategic planning, design and construction, alternative sanctions and privatization. The sessions were used to inform the Commission on the history, issues and potential reforms in those areas. A list of the Advisory Committee members is in **Appendix A**.

In addition, the Commission conducted three public hearings, in June, August and September of 1997. It heard from a variety of state

Previous Little Hoover Commission Studies

1994 -- ***Putting Violence Behind Bars: Redefining the Role of California's Prisons.*** The Commission reviewed the polices and procedures of the adult criminal justice system. The Commission recommended the State create a sentencing commission to produce a sentencing structure that meets the philosophical goals of the criminal justice system -- shifting all violent crimes under the indeterminate sentencing structure, reducing sentence reduction credit for violent offenders and enacting parole reform to increase the deterrence to renewed criminal activity.

1994 -- ***The Juvenile Crime Challenge: Making Prevention a Priority.*** The Commission reviewed the diverse roots of crime and the effectiveness of prevention and early intervention efforts. The Commission recommended consolidating all juvenile anti-crime efforts into a single high-level state agency. It also recommended that state and local agencies make intervention and prevention a priority and that the Legislature increase the ability of the California Youth Authority to provide needed treatment, training and education to juveniles.

1995 -- ***Boot Camps: An Evolving Alternative to Traditional Prisons.*** The study examined the potential effectiveness of boot camps and other work-intensive forms of incarceration. The Commission recommended the State create a comprehensive plan and standards, enact regulations that would encourage private-sector participation and stressed the importance of "aftercare" to the program's success.

officials, correctional practitioners and national experts. A list of the witnesses are in **Appendix B**.

Commissioners visited a number of prisons, spoke with prisoners, correctional officers and wardens. A list of the facilities visited is in **Appendix C**.

The Commission conducted extensive literature searches and interviews.

The Commission's conclusions are a product of this process and are documented in this report. Because of the urgency of this issue, the Commission has developed recommendations that it believes to be politically feasible and financially practical.

The report begins with a Transmittal letter, an Executive Summary and this Introduction. The following sections include a Background and six chapters that are divided into three sections: Systematic Overcrowding, Maximizing the Existing System, and Performance-Based System Expansion. The report closes with a Conclusion, Appendices and Endnotes.

Background

- ***Nearly 7 in 10 people arrested for felonies in California are convicted of a felony or a misdemeanor. Nearly 9 in 10 of those who are convicted serve time behind bars. Precise numbers are not kept, but nearly four in 10 felony convictions are estimated to result in a prison term.***

- ***CDC's inmate population increased from 23,511 in 1980 to 154,000 in 1997. The growth was accommodated by building 21 new prisons and by adding beds to some of the 12 previously existing prisons.***

- ***In fiscal year 1996-97, CDC admitted 132,581 inmates. Of those, nearly 49,000 were newly sentenced to prison by the court. The balance -- more than 82,000 -- were parolees returned to prison for violating the conditions of their release or having been convicted of a new crime.***

Background

More than ever before in history, the criminal justice system in America is defined by its jails and prisons. In this regard, California is again a trend setter.

In 15 short years, California's prison population has increased six-fold. The 21-prison construction program necessary to secure those inmates represents the largest of its kind in the nation's history -- a $5 billion investment, plus interest.

Despite the building program, however, the State's jails and prisons are more crowded than ever before. Most county jails long ago gave up trying to hold all of the pretrial inmates or low-level offenders who could be held under the law.

State prisons are so full that corrections officials openly anticipate prisoner riots or court-order releases, or both. Another 17 prisons over the next five years, they assert, are needed to put off that day of reckoning for another 10 years.

In short, a greater percentage of people are being incarcerated for longer terms. Still, approximately 90 percent of all prison inmates are eventually released back into the community -- most within a couple of years.[7]

Once released, however, most fail to successfully integrate into society and are returned to prison. Within two years of release, most felons have been convicted of yet another crime and are again back in prison.

The End of the Line

Hundreds of organizations in California play a role in the criminal justice system that is intended to protect public safety -- law enforcement and social service agencies, the courts, and at the end of the line, county jails and state prisons.

California has 57 county jail systems operated by locally elected sheriffs. (The 58th county, Alpine, contracts with El Dorado County for jail services.) County jails have four fundamental functions: to book suspects who are arrested, to house some defendants awaiting trail, to punish the convicted who are sentenced to local incarceration, and to hold inmates awaiting transfer to other facilities. For every offender in county jail, four offenders are on probation and also under county supervision. In addition, counties operate facilities and probation programs for juvenile offenders.[8]

The county systems are for the most part funded locally and operated independently. County jailers are required to comply with state standards for construction and operation of facilities and for staff training. Establishing standards and inspecting local facilities is the primary responsibility of the state Board of Corrections.

At the state level, the Youth and Adult Correctional Agency (YACA) is responsible for inmates who are sentenced by the courts to state prison terms. The bulk of the State's responsibility is carried out by the California Department of Corrections (CDC), which operates more than 100 facilities, including 33 prisons. CDC is the largest department in state government, with more than 43,000 employees -- 27,000 of them sworn peace officers. Also within YACA, the California Youth Authority operates 11 facilities for juvenile offenders, the Board of Prison Terms reviews parole applications for inmates serving indeterminate sentences and the Youthful Offender Parole Board determines the release date for Youth Authority inmates.[9]

Together, the state and local correctional agencies share responsibility for incarcerating offenders -- most of them felons -- as they move through the court process and serve their sentences.

As the crime rate has dropped through the 1990s, the total number of arrests also has declined gradually and steadily -- from 1.7 million in 1991 to 1.5 million in 1996. The number of felony arrests, however, has fluctuated from year to year, and overall is not trending downward.[10]

As displayed in the following chart, nearly 7 in 10 people arrested for felonies in California are convicted of a felony or a misdemeanor. Nearly 9 in 10 of those who are convicted serve time behind bars. While precise numbers are not kept, nearly four in 10 felony convictions are estimated to end with a prison term.[11]

Disposition of Adult Felony Arrests 1996

Adult Felony Arrests 285,038 (100%)

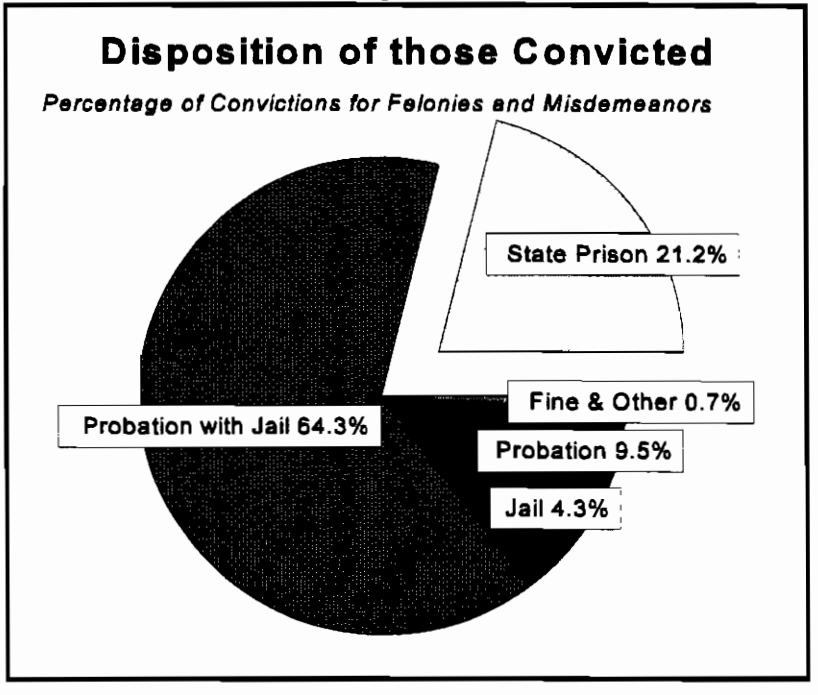
Law enforcement releases 10,488 (3.7%)

Complaints denied 37,521 (13.2%)

Complaints Filed 237,029 (83.1% of arrests)
Includes 89,516 complaints filed as misdemeanors

Not convicted 39,720 (13.9%)

Convictions 197,309 (69.2% of arrests)
Includes those convicted of misdemeanors



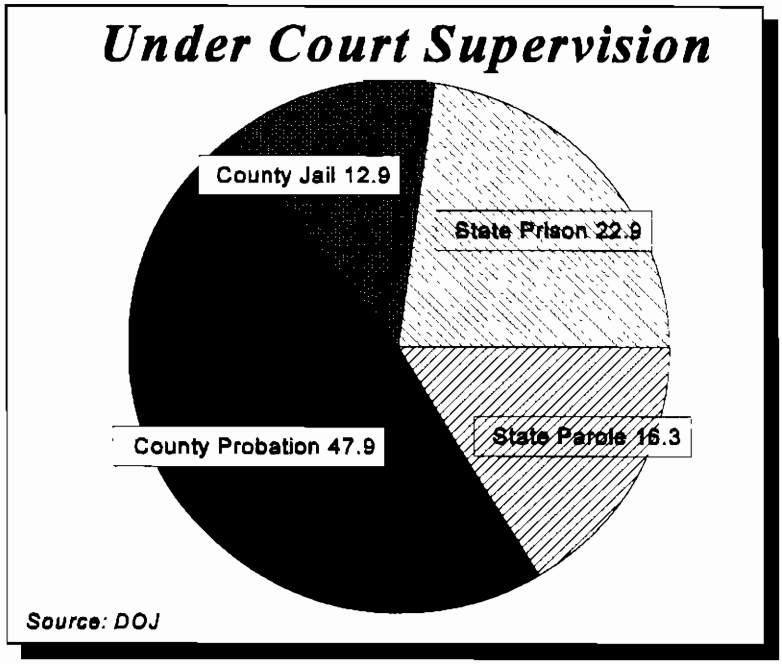
Source: DOJ

An Enormous Caseload

The population of defendants and sanctioned criminals that are in state and county custody is growing and changing. A greater percentage of criminals are being incarcerated, and as a result the State has taken on a larger role in administering punishments. The incarceration trend, however, also has challenged local authorities, who are housing more felony defendants fighting criminal charges in court.

The combined caseload is enormous. The counties and the State process well over 1 million suspects and convicted criminals each year. At any one time, the agencies have within their jurisdiction more than 600,000 people -- about one third of those behind bars and the rest on probation or parole.[12]

Historically, counties have had primary responsibility for administering sanctions. For every adult arrested for a felony, two are arrested for misdemeanors. More than one-third of those who are arrested for felonies are ultimately charged with misdemeanors. Of those charged with felonies, the conviction many times is for misdemeanors. And even among felony convictions, the sentence has often been county jail rather than state prison. Combined, these factors generate a larger caseload for county correctional agencies than their state counterparts.



Nearly 40 percent of inmates are in state jurisdiction.

The State once encouraged counties to punish felons locally. In the 1970s, California operated a nationally acclaimed "probation subsidy" program that compensated counties to locally incarcerate or rehabilitate felons who otherwise would go to state prison.

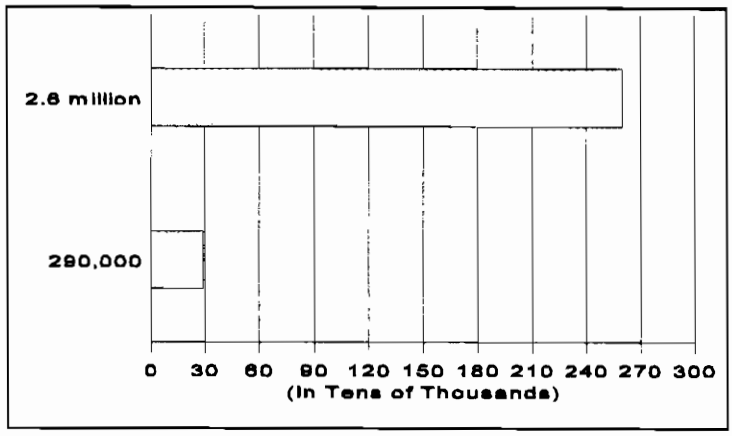
Legally, the roles of the state and county agencies have not changed much over time. But as resources and sentencing policies have moved from community-based correctional programs to state incarceration, the dynamics of the inmate population have changed considerably. As the chart above shows, about 60 percent of all adults under court supervision -- that is, in jail or prison, on probation or parole -- are within the jurisdiction of the county. The remaining 40 percent are within the State's jurisdiction.

California's Jails and Prisons: Millions Involved

Booking and Probation

Number of outstanding arrest warrants, many of which go unserved for lack of jail space:

Number of criminals on county probation:

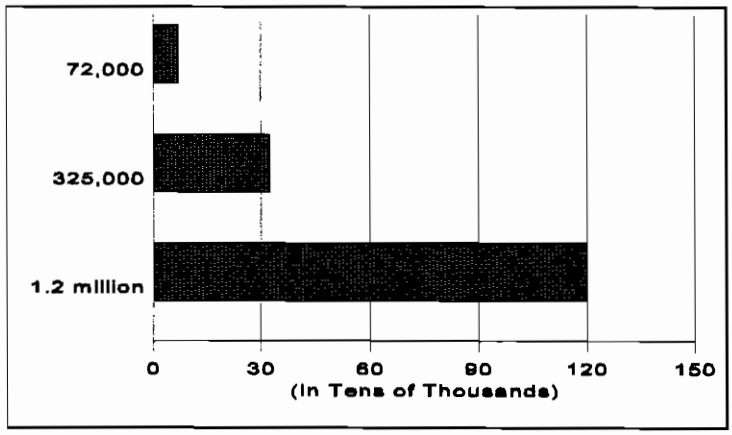


County Jail Population

Average daily population of county jails:

Number of county inmates released early each year because of overcrowding:

Number of annual bookings into county jails:



State Prison Population

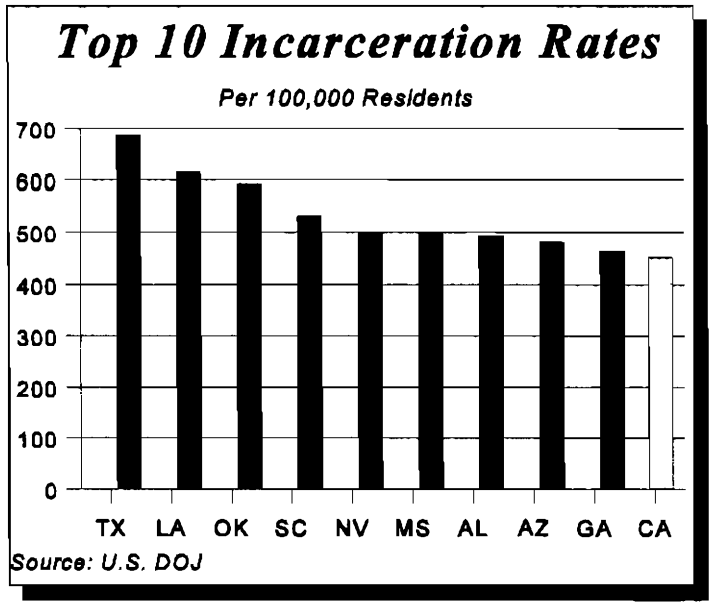
Number of felons in state prison:

Number of inmates released annually on parole

Number of parolees returning annually to prison

Source: Board of Corrections, CDC, Department of Justice

According to the state Department of Justice, from 1990 to 1995 the percentage of adults in California under court supervision was relatively flat -- increasing by just 1 percent. In other words, while more people had been convicted and sentenced for crimes, that increase generally kept pace with the State's overall population growth. But within that convicted population, significant changes have occurred.



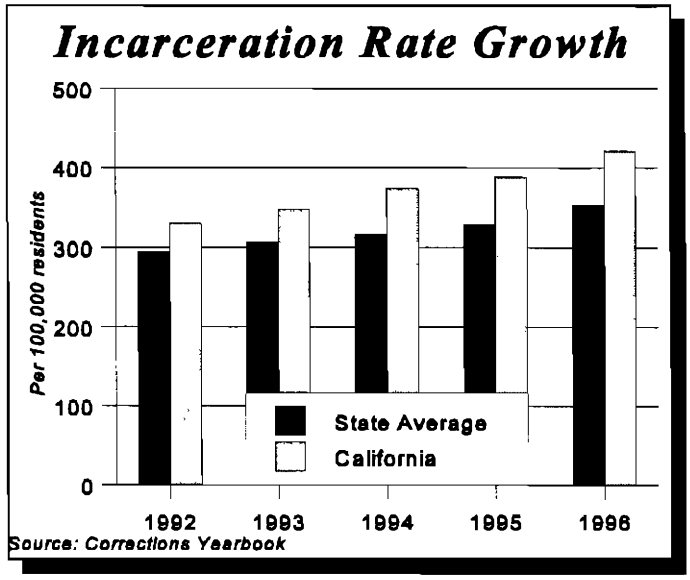
Nine states have higher incarceration rates.

The percentage of adults who were under county supervision dropped during those years by 10.7 percent -- primarily because fewer adults were serving time on probation. The rate of adults under state supervision, however, increased by 27.5 percent -- primarily because more felons were sentenced to prison. So while the percentage of the population under court supervision has stayed relatively the same, the percentage of the population that is incarcerated has increased steadily. And while the jail and prison populations have increased in real numbers, the State's share of the caseload has increased, as well.

California often is singled out for having the largest prison system in the nation. One out of every 13 persons in prison in America is in a California prison. And fluctuations in California's prison population are enough to sway the nation's statistics. The nation's prison population grew by 55,876 between 1995 and 1996. California was responsible for more than 12,000 of that increase.[13]

The incarcerate rate puts the prison population in the context of the overall residential population. The incarceration rate reveals that California's large prison population is partly due to the state's large residential population and partly due to a higher than average incarceration rate.

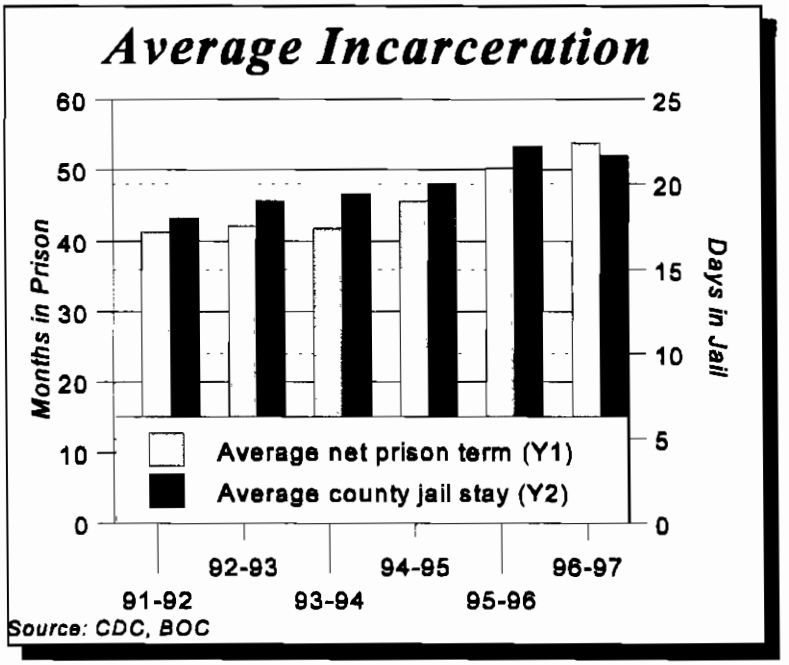
According to the U.S. Department of Justice, California has the 10th highest incarceration rate in the nation.[14] California's incarceration rate, however, has grown faster than the average incarceration rate among the states.[15]



California's incarceration rate has grown faster than the average among states.

This increased emphasis on incarceration has reshaped county and state operations for processing and holding suspects, defendants and sentenced convicts.

At any one time, the Board of Corrections reports that some 2.6 million arrest warrants are unserved -- most of them misdemeanors -- because there is no place for those who would be jailed. In 1996, county jails logged more than 1.2 million bookings. That number does not include the increasing but uncounted number of suspects who are booked at city facilities, yet may end up in county jails or state prisons.



Average stays of state and county inmates have increased.

Of the 57 county jail systems, 24 counties (collectively responsible for 70 percent of jail inmates) have court-ordered population caps on at least one of their facilities. In 1996, more than 325,000 county jail inmates -- nearly 900 a day -- were released before completing their sentence or were released prior to coming to trial because jailers needed to make room for more serious inmates.[16]

County jails are housing more felons, more suspects awaiting trial and more inmates for a longer time. The Board of Corrections reports that 70 percent of jail inmates are awaiting trial on felony charges or have been convicted of felonies. Two- and three-strike defendants account for 11.4 percent of the jail population. Three-strike defendants stay an average of 205 days, compared to 53 days for other felony pretrial inmates. Historical data is unavailable, but officials say misdemeanants who once inhabited jails have been crowded out by felons.

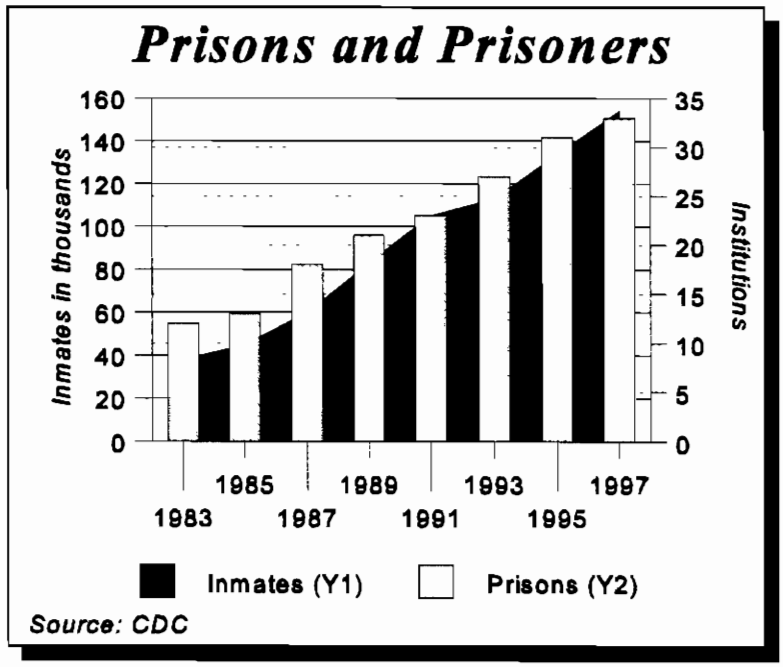
Correspondingly, the average length of stay for inmates in county jails has increased -- from 15 days in 1986 to 21 days in 1996. While that statistic captures the trend, the numbers are driven by inmates at the extreme who spend two hundred or more days in jail serving longer terms or fighting second or third strike charges that were once plea bargained. In 1986, 47 percent of county jail inmates were awaiting trial. In 1996, 59 percent of county jail inmates were awaiting trial.

Similarly prisons are housing more inmates for a longer period of time. The average sentence -- before good time credits, which can cut a term in half -- increased from 41 months in 1991 to 53 months in 1997.[17]

The Physical Facilities: Population Equals Capacity

Most county jails and state prisons are holding far more inmates than they were designed to hold. For the most part those jails that are not under court-ordered caps continue to add more inmates, as does the state prison system. As a result -- despite unprecedented expansion of the jail and prison system -- the actual capacity of the facilities is often the same as the number of people behind bars.

County jails have grown from 44,000 beds in 1989 to more than 72,000 beds in 1997. County jails have state-rated capacities that technically they are required to comply with. But the counties routinely operate above that limit. Nearly half of the counties, and nearly all of the large ones, have court-ordered population caps. In many of those instances the court limits are higher than the state standards, and so become the operating norms. The average daily population in the county jails in 1996 was 6,000 more than the the state-rated capacity. And that is the average population. The jails hit a one-day all-time high in 1996 of 77,163.[18]



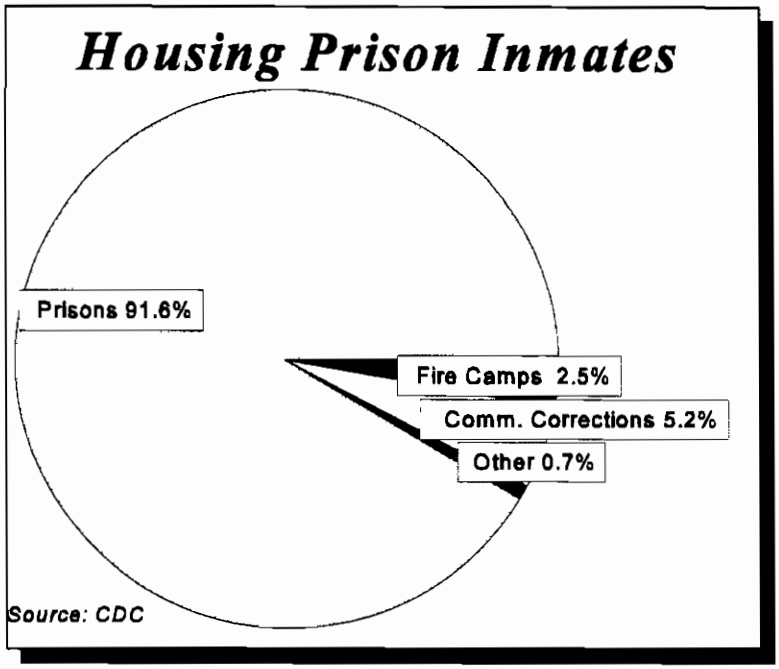
The numbers of prisons and inmates have increased steadily.

In addition to expanding in size, many counties have fortified jails that had been built for low-security inmates, but are now required to house high-security felony defendants awaiting trial.

Expansion of the state prison system has been even more dramatic. From 1965 to 1984, the State added little new capacity to its prison system. But beginning in the early 1980s, the State began a rapid construction program that over the last 15 years increased dramatically the number of cells. CDC's inmate population increased from 23,511 in June of 1980 to 154,000 in September of 1997. The growth was accommodated by building 21 new prisons -- most of them housing more than 4,000 inmates -- and by adding beds to some of the 12 previously existing prisons. Some 144,000 inmates are in these prisons.

In addition to traditional prisons, CDC houses inmates in several different kinds of facilities: Some 4,000 inmates are based at 38 fire camps, from which they are dispatched to fight wildland fires, construct conservation projects and assist in disaster response.

The department has contracts with county jails to house 800 inmates and 300 inmates are in mental hospitals.



The vast majority of CDC inmates are in traditional prisons.

Some 8,000 inmates are housed in 52 community correctional facilities -- everything from small work furlough programs to mini-prisons that house parole violators and other minimum security inmates. Some of the transitional facilities have long been part of the CDC inventory and have not been expanded as the prison population has increased. But most of the beds -- including some provided under contract with local government and some under contract with the nation's largest private prison companies -- have been added as part of the prison construction boom. Originally intended for parole violators, those community correctional facilities have increasingly been relied upon to house inmates who but for overcrowding would be in one of the department's prisons.

The community correctional programs, as anticipated in 1998 are as follows:

Community Correctional Beds

Program	Number of Beds
Re-entry Centers (Work furlough)	1,221 beds (31 private; 2 state facilities)
Prisoner Mother	94 beds (7 facilities)
Substance Abuse	45 beds (1 state-run facility)
Community Correctional Facilities	6,176 beds; 400 planned (private and public contracts, including those in construction)
Restitution	105 beds (1 state-run facility)
Boot camps	64 beds (being phased out)
Total	**8,105**

Despite this build up, California still has more criminals than beds. A long-standing controversy has been how full is full. In characterizing its capacity, CDC traditionally referred to the design capacity of the facilities, which assumes a single inmate in a cell and single bunking in dormitories. By that definition, most of the new prisons are at nearly 200 percent capacity the day they open. And critics complained that the design capacity definition underutilized prisons and exaggerated the demand for additional facilities.

As a result, in 1995 CDC adopted a different measure, the Housing Overcrowding Capacity (HOC) standard. The HOC assumes two inmates in most cells, double bunking in dormitories and the conversion of day rooms and gymnasiums to dormitories. Still, the department considers a prison "overcrowded" if it exceeds the historical design capacity. And even the HOC does not represent the upper limit. Since CDC established the HOC standard, it has housed at least 10,000 more inmates than the standard would allow.[19]

The de facto definition of capacity has become the number of people the department says it can house at the absolute maximum, including some triple bunking of dormitories and other "emergency beds." The department now places that number at 178,000, with nearly 170,000 of those in CDC prisons and camps and the balance in a variety of community correctional programs. The department believes the prison population will reach that level in early 2000.

The emergency bed program shows the elasticity of the system. Prison officials, however, say there are significant consequences of severe overcrowding, including the heightened potential for rioting by inmates, and the potential for a court ruling requiring the State to release inmates before they have served their sentences.

So far, the State has not released inmates early because of overcrowding -- in part because of the extensive facility construction program and in part because of a commitment to find room for all felons sent to prison.

Similarly, county jails have struggled to stretch defined capacity to accommodate operational realities. Data collected by the Board of Corrections in 1997 showed a decrease in early releases and a further increase in the jail population, which the board's staff believes is an indicator that jail operators are finding additional ways to house more inmates. At the same time, the board staff believes that with hundreds of thousands of inmates released early each year, traditional facility planning has continued to underestimate the need for jail beds.

In short, operating jails and prisons above capacity has become the routine in California. More importantly, the expectation is for still more inmates, many of them repeat offenders. The table on the following page displays CDC's 33 major institutions and their population as of December 1997, when combined those facilities held 149,999 inmates.

CDC Institutions	Location	Year Opened	Security Level	Population
San Quentin State Prison	San Quentin	1852	I, II	5,841
Folsom State Prison	Represa	1880	I, II	3,838
Calif. Correctional Institution	Tehachapi	1933	I, II, IV	5,846
Calif. Institution for Men	Chino	1941	I	6,191
Correctional Training Facility	Soledad	1946	I, II	7,022
Calif. Institution for Women	Corona	1952	I, II, III, IV	1,815
Deuel Vocational Institution	Tracy	1953	I, III	3,648
Calif. Men's Colony	SLO	1954	I, II, III	6,711
Calif. Medical Facility	Vacaville	1955	I, II, III	3,161
Calif. Rehabilitation Center	Norco	1962	II	4,979
Calif. Correctional Center	Susanville	1963	I, II, III	5,900
Sierra Conservation Center	Jamestown	1965	I, II, III	6,191
Calif. State Prison, Solano	Vacaville	1984	II, III	5,756
Calif. State Prison, Sacramento	Represa	1986	I, IV	3,163
Avenal State Prison	Avenal	1987	II	5,716
Mule Creek State Prison	Ione	1987	I, III, IV	3,616
R.. J. Donovan Correctional Facility	San Diego	1987	I, III	4,646
Northern Calif. Women's Facility	Stockton	1987	II, III	780
Calif. State Prison, Corcoran	Corcoran	1988	I, III, IV, SHU	5,275
Chuckawalla Valley State Prison	Blythe	1988	I, II	3,642
Pelican Bay State Prison	Crescent City	1989	I, IV, SHU	3,776
Central Calif. Women's Facility	Chowchilla	1990	I, II, III, IV	3,455
Wasco State Prison	Wasco	1991	I, III	5,915
Calipatria State Prison	Calipatria	1992	I, III, IV	3,963
Calif. State Prison, LA County	Lancaster	1993	I, III, IV	4,227
North Kern State Prison	Delano	1993	I, III	5,015
Centinela State Prison	Imperial	1993	I, III	4,612
Ironwood State Prison	Blythe	1994	I, III	4,543
Pleasant Valley State Prison	Coalinga	1994	I, III	4,576
Valley State Prison for Women	Chowchilla	1995	I, II, III, IV	3,318
High Desert State Prison	Standish	1995	I, III, IV	4,115
Salinas Valley State Prison	Soledad	1996	I, IV	4,129
Substance Abuse Treat. Facility	Corcoran	1997	II, III, IV	1,947

Over Time: More Inmates, More Coming Back

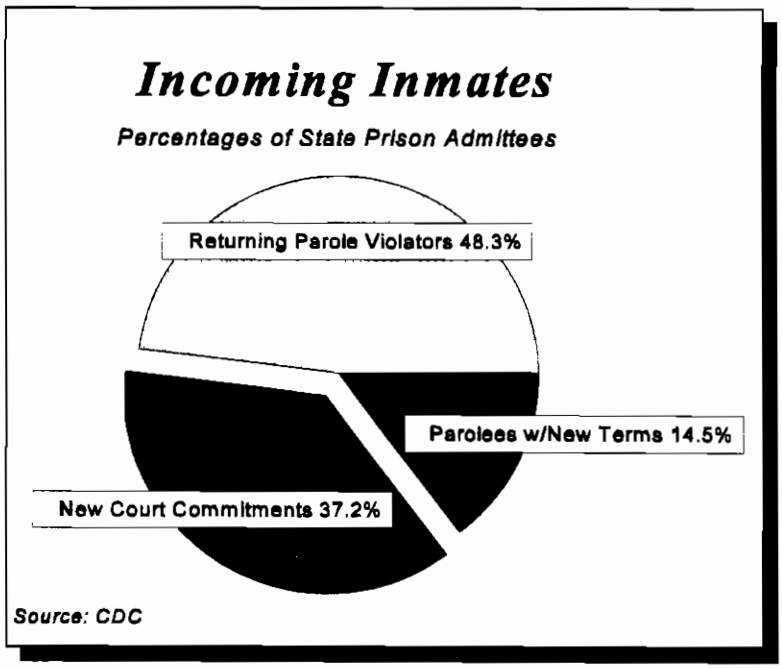
Despite the reams of statistics, it is difficult to know with precision how many people are in the criminal justice system. But whatever the number, it is significantly more than the number of beds behind bars.

The county jails at any one moment hold an average of 72,000 inmates, who stay on average 21 days. While many individuals undoubtedly see the inside of a cell more than once over the course of a year, the number of people who spend at least one night on a bunk is clearly in the hundreds of thousands.

The turnover in the state prison system is not as great -- but still substantial. In the aggregate, the prison population is about 154,000 -- and increasing by nearly 10,000 inmates a year.

But CDC also is constantly releasing inmates and admitting new ones. Many of the inmates who are released violate the conditions of parole and are returned to custody. As a result, the same individual can be admitted more than once during a year, and released more than once during a year.

In fiscal year 1996-97, CDC admitted 132,581 inmates. Of those, nearly 49,000 were newly sentenced to prison by the court. The balance -- more than 82,000 inmates -- were parolees being returned to prison for having violated the conditions of their release or having been convicted of a new crime.[20]



Nearly two-thirds of the incoming inmates are parole failures.

That same fiscal year, CDC released 121,084 inmates. Slightly more than half of those were inmates being released on parole for the first time. Most of the remainder were inmates who had been released on parole, had violated parole and had been returned to custody.

The high numbers of failed parolees is not a new problem -- but it is an increasing one. In 1980, 10 percent of all parolees were returned to prison before their parole was completed. By 1985, nearly 30 percent of parolees were being returned to prison. By 1990, parole failures had increased to nearly 50 percent. And in 1996, 62 percent of parolees were returned to prison. This trend has serious consequences for public safety and adds signficantly to the costs of operating prisons.

In 47 other states, new court commitments make up a majority of the inmates admitted to prison, and in most states by a wide margin. In California, nearly two-thirds of the incoming inmates are parole violators, who serve an average of four months before being released again.[21]

In fiscal year 1996-97, CDC admitted 132,581 inmates. Of those, nearly 49,000 were newly sentenced to prison by the court. The balance -- more than 82,000 -- were parolees who violated the conditions of their release or were convicted of a new crime.

The department has acknowledged that it has a "very rapidly revolving door." In a legislative briefing, the department asserted: "CDC increasingly functions like a county jail system, in addition to being a prison system."[22]

The high rate of parole violators raises two concerns:

- ***Housing Costs.*** The first concern is the cost of housing inmates who have already served their time -- and if they had made a successful transition into society would not be occupying a prison bed. At any one time, more than 26,000 of the inmates in state prison -- 17 percent of the population and enough to fill more than six of CDC's largest prisons -- are technical parole violators. Another 23 percent of the population -- nearly 37,000 inmates -- is comprised of parolees who were returned to prison for having committed a new crime.

- ***New Crimes.*** The second concern is that of the 80,000 parolees returned to prison in the 1996-97 fiscal year, nearly 20,000 had new prison terms, meaning they had been arrested and convicted for new crimes. It is safe to assume that some committed more than one crime, and some parolees committed crimes but were not arrested.

Of all of the inmates released from prison -- both those who completed parole and those who violated parole, were re-incarcerated and ultimately released -- 56 percent are arrested and convicted of another crime within two years.[23]

Comparisons with other states is complicated by differences in data collection methods. But based on the available data, other reviewers, including the Blue Ribbon Commission on Inmate Population Management, have concluded that California's recidivism rate is among the highest in the nation.

So the State can proudly point to its high incarceration rate and low escape rate as positively protecting public safety. But to the degree that inmates released from California's prison system are more likely to commit another crime than their peers in other states, public safety is compromised.

The Bottom Line

The growth in prisons has required a significant commitment of public resources and with inmate populations still increasing, staying the course will require still more public money.

The direct costs of correctional programs need to be viewed in terms of the capital costs of building and repairing facilities, including the financing of those projects, and the operational costs. Over time, the costs of operating prisons quickly surpasses the costs of construction.

For example, the construction costs associated with housing a Level IV, high-security inmate is $63,478. The annual operational costs of housing that same inmate is $25,000.[24]

First the capital costs:

Over the last 15 years the State has spent more than $3 billion to expand and modernize county jails. About half of that sum was provided by $1.5 billion in bond measures approved by voters in 1981, 1984, 1986 and 1988. The construction program added more than 41,000 jail beds, nearly doubling the capacity.

Over the last 15 years the State has spent $5.2 billion to modernize old prisons and construct new ones. About half of that money was financed with General Obligation bonds approved by voters in ballot measures in 1981, 1984, 1986, 1988 and 1990. In November of 1990 voters rejected another prison bond measure. The State then turned to lease-purchase revenue bonds, which can be issued without voter approval, to finance the balance of the construction tab.[25]

In 1994 and 1995, CDC proposed new lease-purchase revenue bond legislation to finance additional prisons, but the proposals were rejected by the Legislature. In 1996, the department proposed construction of six new prisons, and again no action was taken.

The CDC master plan released in June 1996 concluded that 17 new prisons will be needed by the year 2006, when an additional 74,000 inmates will be in the system bringing the prison population to 240,000 inmates.

Systemwide, the State and local agencies are looking for $9.16 billion over the next 10 years: CDC estimates that $6.1 billion will be needed to renovate and expand the state prison system. The California Youth Authority expects to need $674 million to expand and renovate facilities. The Board of Corrections estimates that counties will need $2.4 billion to expand local jails -- and that would be to sustain the current level of overcrowding and early releases.[26]

The $9.16 billion sought by correctional agencies is just part of the $80 billion in capital projects that the Department of Finance estimates are needed by education, transportation and environmental protection programs. After considering all of the possible funding sources, the Department of Finance calculates that the State can only afford $52 billion in capital outlay over the next 10 years. It's conclusion: "The State will likely have to live with some level of imbalance."[27]

One fiscal consequence of operating overcrowded facilities is that they require renovation sooner than planned. In addition to new construction, CDC's five-year maintenance plan calls for $387 million in improvements to existing facilities between 1998 and 2003.[28]

As new facilities come on line, operational costs also increase. Between 1989 and 1994, the costs of operating county jails increased from $800 million a year to $2 billion a year. During that same period, the annual budget for the Youth and Adult Correctional Agency increased from $2.2 billion to $4 billion.[29]

The state correctional costs also have grown as a percentage of state expenditures -- from 4 percent in the 1985-86 fiscal year to 6.4 percent in 1997-98.[30] And as a percentage of the State General Fund, corrections has increased even more -- from 3 percent of the General Fund a decade ago to 7.6 percent in 1997-98.

In the 1997-98 budget, the Youth and Adult Correctional Agency received the largest increase of any program in the budget -- 11 percent. Total state spending, by comparison, increased by 4 percent from the year before.

Summary

The dramatic expansion of the State's jails and prisons has not kept pace with a growing inmate population. Part of the prison population growth can be attributed to the State's overall population growth. But the State also is incarcerating an increasing percentage of convicted criminals for longer terms. In addition, an increasing percentage of felons, once paroled, are returning to prison having failed to successfully reintegrate into society. The State has two options: to rethink how it houses and deals with criminals, or to redouble its financial commitment to building and operating more jails and prisons.

The Findings and Recommendations in this report provide a mechanism for the State to rethink how it houses and deals with criminals. One goal is to ensure that parolees are successfully reintegrated into society and not returned to prison.

Systematic Overcrowding

- *If there is a middle ground it is being voiced by correctional professionals -- most of them from local governments -- who believe that the recent evolution of criminal justice policy has undermined the effectiveness of local programs.*

- *In 1997, state prisons held more than 13,000 felons whose most serious crime was drug possession; more than 6,700 were in prison for petty theft with a prior.*

- *CDC's population projection for the next five years is premised on ever- increasing incarceration rates. The current correctional strategy assumes that a greater and greater percentage of the population will be imprisoned.*

A Strategy

Finding 1: County jails and state prisons do not have adequate space to house inmates and adequate plans do not exist to deal with the crisis.

California has a bifurcated structure for administering criminal sanctions that does not allow the best combinations of punishments and other tools to be used to prevent the escalation of crime and the recycling of inmates.

Instead of an integrated strategy for effectively dealing with sentenced criminals, the State has a political patchwork quilt that too often results in nonviolent and non-serious criminals receiving by default the most expensive sanction -- prison.

Despite a dramatic drop in the crime rate, the State's prison officials anticipate a continuing rise in the inmate population. From 64,000 inmates a decade ago, to 154,000 inmates now, the California Department of Corrections anticipates 202,000 inmates by the year 2002.

The factors behind this steady rise in prisoners are complex and debated among the experts. But there is increasing evidence that the growing inmate population reflects a correctional system that is not using the most cost-effective strategies available. The consequences of this failure is a correctional system that demands an increasing share of public resources, forcing another generation of policy makers into the Hobson's Choice of building more prisons or more schools.

A Political Patchwork Quilt

Criminal justice has long involved all three branches of government. Lawmakers define crimes and sanctions, and allocate the resources to enforce laws and punish violators. The executive branch polices the streets and administers the sanctions. And the courts declare guilt and sentence the convicted.

The criminal justice system also extends through all three levels of government. Historically, ensuring public safety has been the primary responsibility of local governments. Increasingly in this century, however, the federal and state governments have taken on larger roles in funding and administering law enforcement and correctional programs.

This vertical expansion of criminal justice responsibilities has altered how policies are set, how programs are implemented and ultimately the successes and failures of individual policies and programs.

In one regard, the federal government is a system unto it own. Federal agencies enforce the law, adjudicate suspects and incarcerate those convicted of violating federal laws. Like the state systems the federal prisons have expanded dramatically during the last generation, filled largely with drug-related criminals. In 1971, 17 percent of federal inmates were drug offenders who served an average of 23 months. In 1995, 60 percent of all federal inmates were drug offenders serving an average of 69 months.[31]

But the federal government also is a conduit for resources and expertise -- a clearinghouse for research, technical assistance and grants. Those functions are intended to encourage local and state agencies to implement the best available crime controlling strategies.

The responsibility for enforcing, adjudicating and sanctioning those who violate state laws is shared between county and state agencies. Historically corrections was based on a principle of graduated sanctions administered primarily by the counties -- with low-level and first-time criminals receiving the incentive, the assistance and the opportunities to develop a crime-free life. The State's role focused on operating prisons for the most serious offenders -- often those who failed local programs and committed more serious crimes.

As described in the Background, the State of California in recent years has taken on a larger role in criminal justice. Some of this shift represents a deliberate emphasis on incarceration as the most expedient way to improve public safety. The shift represents frustration on the part of the public and policy makers with the prevalence of crime, and in particular, more violent crime. A steady stream of legislation -- 400 new laws, by one count -- have increased criminal punishments in recent years, and in particular expanded the types of crimes that resulted in state prison sentences, increased prison sentences and restricted the

ability of correctional agencies to reduce the actual time served by granting good conduct or work credits.

The president of the California Probation, Parole and Correctional Association characterized this policy shift as a "get tough" attitude on the part of legislators, judges, and law enforcement:

> *This attitude and the actions resulting from it have contributed to, among other things: tougher laws; more probation and parole violators going to prison; mandatory jail and prison sentences for offences formerly under the judiciary's discretion; increased remanding of youthful offenders to adult courts; and the approval of funds for the construction and operation of prisons, jails and juvenile facilities.*[32]

But the shift also is the unintended result of significant changes made in California's taxation structure -- most notably Proposition 13 of 1978 and its fiscal aftershocks -- that made counties more reliant on the State for revenue. Compared to 20 years ago, counties have fewer options for financing programs and less discretion in how to spend revenues.

In more recent years, counties have been forced to make disproportionate budget cuts as revenue was diverted from local governments to meet other State obligations. County jails and probation departments are just two of the programs that counties must fund from budgets that have not grown as fast as inflation or their population.

So as counties receive fewer resources for sustaining and expanding local correctional programs to serve growing communities, state laws are dictating that more of those criminals be sent to state prisons.

The State's correctional program is based in the Youth and Adult Correctional Agency, which is headed by a cabinet-level secretary. The California Department of Corrections operates the prison and parole program. The California Youth Authority operates similar programs for juvenile offenders. The Board of Prison Terms determines the release of the small percentage of adult inmates given indeterminate sentences and administers the parole revocation process. The Youthful Offender Parole Board determines the release of juvenile offenders.

The Youth and Adult Correctional Agency also houses the Board of Corrections. The 11-member panel of state and local correctional experts is appointed by the governor and is charged with a variety of responsibilities. Principally, it sets standards for construction and operation of county jails. But as the only correctional entity with a representative governing body, the board also has responsibility for reviewing competitive grant proposals, for allocating state funding for jail construction and for assessing the impacts of tougher sentencing laws on local jails. The following table summarizes the entities.

California's Correctional Bureaucracy		
Agency	**Composition**	**Mission**
Office of Criminal Justice Planning	The director reports directly to the Governor. Office has a staff of 123 and an annual budget, including grants, of $158 million.	Provides technical and financial help to state and local agencies. Develops and distributes the latest crime-fighting strategies.
Secretary of Youth and Adult Correctional Agency	Secretary appointed by the Governor and a staff of 11. The office has a budget of $1 million.	Governor's key advisor on public safety issues and oversees youth and adult detention departments.
Department of Corrections	The department has 42,400 employees and an annual operating budget of $3.8 billion.	Houses convicted felons at 33 prisons and 52 community correctional centers. Also supervises parolees.
Board of Corrections	The 11-person board includes state and local officials. The board has a staff of 52 employees and an annual budget, including grants, of $57 million.	Works with local officials to develop standards for building and operating jails, training and managing staff. Distributes training and crime fighting grants.
Board of Prison Terms	The Board is composed of nine gubernatorial appointees, has a staff of 120 and an annual budget of $13 million. The staff has grown by 30 percent in the last three years because of an increasing workload.	Considers parole releases for prisoners sentenced under indeterminate sentencing and for those serving life terms with a possibility of parole. Also revokes parole for convicts who violate their parole.
Youthful Offender Parole Board	Seven gubernatorial appointees with 30 staff and a $3.4-million budget.	Reviews cases of convicted youths and grants parole.
Department of Youth Authority	The department has 5,400 employees and an annual budget of $432 million.	Houses 9,425 youths at 11 institutions. The inmate population is growing slowly as more youths are sentenced to adult prisons.
California Council on Criminal Justice	The panel has 37 members appointed by the Governor, Legislature, Attorney General and the courts. It has no staff or budget.	Advises the Governor and the Legislature on criminal justice issues and policies, and oversees the allocation of some federal grants.

Independent of the Youth and Adult Correctional Agency, the State Office of Criminal Justice Planning, acts as a clearing house for grants targeted at state and local governments. And the California Highway Patrol and the Attorney General are the state's law enforcement entities.

As a result of the State's growing role in corrections, the responsibilities of the counties have changed. With more criminal suspects facing longer prison terms, more cases are being tried -- and more defendants housed for longer periods in county jails. County jail facilities have not grown as fast as state prisons, and as a result many offenders who previously were held in county jails are no longer incarcerated or are released early.

Indicators of Dysfunction

Many correctional officials assert that they are implementing a incarceration-based policy that is widely supported by the public and purposefully dictated in the statutes. The major limitation on its effectiveness, they believe, is the financial resources needed to build all of the needed prisons.

Academic criminologists on the other hand, overwhelmingly argue that the resources, responsibilities and strategies for punishing and converting criminals into law-abiding citizens are too focused on incarceration.

If there is a middle ground it is being voiced by an increasing number of correctional professionals -- most of them from local governments -- who believe that the recent evolution of criminal justice policy has undermined the effectiveness of local programs. A more systematic approach, they argue, could be expected to decrease the need for additional prisons while ensuring there are enough prison beds to house those criminals who continue to be a threat to society.

Blue Ribbon Commission on Inmate Population Management

In 1987, after nearly a decade of increasing prison population, the Legislature established a commission to study punishment options. The Commission reported to Governor and Legislature in 1990:

> *While crime and arrest rates ultimately affect prison populations, there are several other policy and legislative factors which have a more direct impact on the number of individuals who are incarcerated, including sentencing, average length of stay in the institution, and parole failures that result in a return to prison. Thus, the numbers incarcerated in our prisons today would appear to be as much or more the function of policies and practices in our criminal justice system as opposed to increases in crime and arrest rates.*

The most notable of these assessments was made by the Blue Ribbon Commission on Inmate Population Management. The Commission was dominated by law enforcement and correctional agencies. Its review was thorough and its conclusions were blunt:

> *The criminal justice system in California is out of balance and will remain so unless the entire state and local criminal justice system is addressed from prevention through discharge of jurisdiction."*[33]

That was in 1990. The chairman of Blue Ribbon Commission, the District Attorney for Riverside County, testified that while some marginal progress has been made, California seven years later is still not coordinating its efforts and doing all it can at the local level to reduce prison and jail overcrowding: "The original predominant conclusion by the commission has not changed."[34]

More specifically, the Blue Ribbon Commission said the state strategy was too focused on prisons, where not enough is done with inmates to prevent them from committing new crimes once released. Drug addicts are not treated; parolees do not receive assistance. County programs, meanwhile, where there is the opportunity to help low-level criminals straighten out and avoid future crimes and convictions that will lead to state prison, had been starved for resources. The Commission asserted:

> *State and local corrections must be viewed as a system in developing corrections policy. Prison overcrowding is contributed to by probation under-funding and jail overcrowding and under-funding. The corrections system is presently lacking sufficient integrated strategies to manage probation, jail and prison populations.*[35]

The chairman of the Blue Ribbon Commission said the same malady continues to plague corrections. The proliferation of legislated sentence enhancements has resulted in a "piecemeal" sentencing structure. Judges lack options, counties lack resources, and as a result more criminals end up on the road to overcrowded prisons. The system is so skewed, the chairman said, a fundamental examination and rethinking of the system must proceed before any effort can be successfully made to re-establish the local role in corrections.

> *California's 58 local and independent jail 'systems' are an integral part of any state strategic plan. Before any restructuring or 'realignment' of state-bound inmates into the local systems to solve the state's 'overcrowding' correction's crisis, there must be joint analysis of both our state and local correctional systems.*[36]

Frustrated by the lack of reforms resulting from the Blue Ribbon Commission report, the California Corrections Policy Development Project, comprised of correctional experts and professionals, issued a report in 1992 restating the need to take a systematic approach to corrections. The group's report, *Corrections 2000: Policies for the Future,* advocated a greater use of intermediate sanctions that are more intensive than probation and less costly than prison, and in particular more drug treatment. The group advocated for balanced funding between state and local agencies and a review of the sentencing

structure. The group's primary policy statement urged an alignment of disparate correctional efforts:

> *The effective provision of correctional services requires an integrated, balanced system of adult and juvenile, state and local activities and programs with a common mission, shared vision and values, and mutually understood roles and responsibilities.*[37]

In addition to the judgment of corrections professionals, there are indicators the system is out of balance, fiscally unsustainable and over the long term will not provide the desired public safety benefits. Among them:

- ***High recidivism.*** California has one of the highest recidivism rates in the nation despite spending an increasing percentage of resources on corrections. While more detailed information is needed to craft precise programs, officials know that nearly all felons in state prisons have convicted of prior crimes, and most inmates have been in prison before. The Blue Ribbon Commission concluded:

  The relationship between public safety, recidivism, and drug abuse is undeniable and significant. An important indicator of the system's ability to correct individuals is the parolee failure rate, which also is among the highest in the nation.

  Corrections 2000 also cited recidivism as evidence that the system is ineffective over the long term:

  Corrections' inability to consistently hold offenders accountable for their behavior contributes to the revolving door of crime. Arrest, incarceration, release and subsequent return to criminal activity.[38]

- ***Growing incarceration of nonviolent offenders.*** While the number of inmates convicted of violent crimes has increased, the number of inmates incarcerated for nonviolent crimes has increased much faster. Between 1980 and 1990 the inmate population increased by 350 percent. Felons convicted for property crimes, and theft in particular, grew by more than 600 percent. By comparison, felons serving time for murder grew by 200 percent.[39] In 1997, state prisons held more than 13,000 felons whose most serious crime was drug possession; more than 6,700 were in prison for petty theft with a prior.

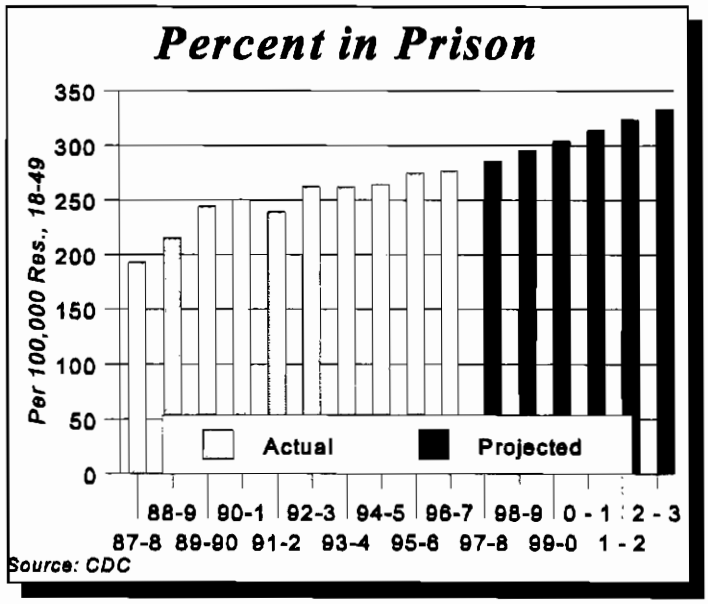
  Among those who believe that valuable prison space needs to be reserved for serious and violent felons is the California Correctional Peace Officers Association, which advocates the use of day reporting centers for some inmates now sent to prison:

Day reporting is one-tenth the cost of incarceration and would improve public safety by saving prison space for serious and dangerous offenders. Such a program for nonviolent, non-serious offenders with no prior prison records would eliminate the need for at least one new prison."[40]

- ***Ever-growing incarceration rates.*** Crime rates are going down and most professionals believe some of the credit goes to the incapacitation of more habitual criminals. Some professionals also assert that tough sentencing laws are proving to be a deterrent to criminals.

  But CDC officials maintain prison population is not correlated with crime rates. That is, that even as crime decreases, arrests and convictions can be expected to remain high, because arrests and convictions are the product of resources spent on police officers and prosecutors.

  Importantly, CDC's population projection for the next five years is premised on ever-increasing incarceration rates. The current correctional strategy assumes that a greater and greater percentage of the population will be imprisoned.[41]



CDC assumes an ever-increasing incarceration rate.

Obstacles to Integration

Policy analysts from a variety of perspectives acknowledge that one of the challenges that correctional agencies face is that criminal justice policy consumes even more of the public agenda than it does public budgets, and as a result policy often is driven by opinion polls and distilled into sound bites. It is academician's lament:

> *There are few areas where the conflict between rational policy analysis and political reality has been more intense than in crime policy. The public has translated it concern about crime into a demand for increased criminalization, longer sentences and harsher prison conditions. Policy analysts are virtually unanimous in their belief that these are often ineffective and excessively expensive measures, and that other strategies would achieve the agreed upon goal in a more effective manner.*[42]

As long as public safety is a high priority among citizens, debating and shaping criminal justice policy will be high on the agenda of elected leaders. The attention of elected leaders, however, is something that many public managers and reform advocates struggle to generate. The challenge is using that political muscle to craft a cost-effective strategy. Policy analysts and program managers have identified a number of shortcomings that must be corrected for this to happen:

- ***Sentencing policy is detached from funding.*** While lawmakers seldom turn down the opportunity to increase prison terms, each individual bill contributes to higher demand for prison space. Not only are sentencing bills not tied to appropriations for more prisons, but there is no direct or automatic mechanism for reconciling the tougher sanctions and the inadequate infrastructure. As one expert pointed out, this process never requires policy makers to set priorities on how to best use available prison space.[43]

- ***Ad-hoc decisions can undermine sentencing structure.*** Individual sentencing bills make administering correctional policies complex. They also can undermine fundamental correctional principles -- such as for graduated sanctions based on the seriousness of the crime. One criminologist points out that the punishment for burglary has nearly become the same for robbery -- even though robbery is a violent and more serious crime.[44]

- ***Resources are not allocated strategically.*** Funding for state-operated criminal justice programs is derived during the larger budget process, which provides for correctional spending to be weighed against other public programs. Funding for local criminal justice programs also are part of the state budget process -- but are often buried, unidentified in the allocation to local governments. As a result, there is no rational allocation of correctional resources between state and local programs. And local programs, in particular, are vulnerable to last-minute budget cutting.[45]

- ***The prison preference limits long-term options.*** It is understandable that the public had lost confidence in probation because huge caseloads had created unreal expectations that those under supervised release are actually supervised. But starving probation does nothing to increase its effectiveness and allows criminal patterns to perpetuate -- ultimately increasing incarceration costs.

- ***In some cases, prison is the default sentence.*** If the Legislature funds more prisons than jails, more people will end up on prison than jail -- because judges, even if they have discretion under the law, may not have practical or effective options. One criminologist asserts that county court judges have a fiscal incentive to send felons to prison:

To the counties it is a free lunch ... this is an unintended problem of having one level of government sentence people to prison and another level of government be responsible for providing the prisons.[46]

But some judges said they do not consider who will pay for the marginal cost of another felon. If county probation is overloaded and the county jail is under a court-ordered population cap, some judges feel their only real option is state prison.

- ***No room for research.*** With most of the large policy decisions established through sentencing bills and closed-door budget deals, there is little opportunity for academic research and deliberation of professionals to shape policy. One of the nation's premiere criminal justice researchers, a Californian, writes:

  Researchers have a responsibility to provide policy relevant information, but correctional leaders have the responsibility to derive policy prescriptions, based on research and other considerations. If each takes those responsibilities seriously, we will establish a cumulative body of information about what works. With such data we should again be able to inspire the confidence of policy makers and the public and ultimately return the development of policy back into the hands of correctional professionals -- where it clearly belongs.[47]

Creating an Integrated System

Existing state law recognizes the need for comprehensive planning. State law directs the Office of Criminal Justice Planning, in coordination with the Criminal Justice Council, to annually develop a comprehensive statewide plan for the improvement of criminal justice and delinquency prevention activity throughout the state. But the office has not prepared a statewide plan.[48]

Both the Blue Ribbon Commission and Corrections 2000 reports asserted that such a plan is essential to setting deliberate policy goals, aligning correctional programs to those goals, and ensuring that local and state agencies are working toward the same end.

Corrections 2000 said the agencies needed a common mission, a shared vision and values, and mutually understood roles and responsibilities:

The guiding premise of the California Corrections Policy Development Project is that corrections can function more effectively than it does now. What has emerged as the common thread is that if corrections is to be more effective it must become a more integrated system. Especially given the limited resources but seemingly limitless demands facing corrections

entities, corrections must become more balanced, more cooperative and more collaborative than it is today.

The chairman of the Blue Ribbon Commission said only small steps had been made toward the kind of systematic assessment recommended by the panel. Specifically, the Commission had recommended the establishment of a corrections coordinating council. The California Corrections Executive Council has been formed, but it does not have a staff to develop a plan. The Board of Corrections, he noted, has started an annual jail survey to provide data on local correctional populations and trends.

The Little Hoover Commission was advised that whichever venue were to be selected for the creation of a state corrections strategy, its goals should be multi-fold.

- ***Clarify agency roles.*** One of the consequences of the evolution of criminal justice policy toward incarceration has been to muddle the role of the counties and the role of the State. Corrections 2000 said California should fundamentally rethink the alignment of responsibilities. Among the options: consolidate correctional responsibility at the local level or the State, or make the State responsible for jails and prisons, and make the counties responsible for parole and probation services.

- ***Identify those criminals who respond to intervention.*** The policy making process needs to be informed continuously by criminal justice research and program evaluations, so new strategies can be implemented, failures can be modified and successes can be replicated. Research, for instance, makes it clear that not all criminals are the same threat to public safety and private property, yet the State increasingly treats all inmates the same. Research shows that with some criminals early intervention works, but the State is not doing the assessments needed to identify those people.

- ***Establish priorities.*** Assuming that resources will always be limited the State's correctional policy making process should include the opportunity to simultaneously consider all of the needs and establish priorities among them. One criminologist said: "The problem is that the system does not treat prison as a scarce resource."[49] The solution is a strategy that makes the best use of prisons, and as a result could result in broader political agreement over when additional prisons are needed.

- ***Local input in corrections strategy.*** One consequence of the budget problems faced by county supervisors has been a growing distrust of the State. The chairman of the Blue Ribbon Commission testified that recent plans to increase the role of counties in corrections has been greeted with skepticism by local

> officials because of the "credibility gap" between state and local government resulting from the inequality of resources.[50]
>
> While adequate funding of state programs is essential to restoring this trust, the Commission also was told that local participation in the policy development process is essential. The California State Association of Counties (CSAC) said the diversity of local officials is often not represented in the corrections debate:
>
> *CSAC strongly supports the formation of a panel of local government officials to help oversee statewide corrections policies. In addition, CSAC suggest that the formation of a panel of local government officials would ... help build broad political support for plans that may be developed.*[51]

In developing a more integrated correctional policy, State and local leaders can look among themselves for procedures that have shown promise. CDC's planning and design process has been lauded for its ability to constantly reassess its designs, review and test new technologies, and measure progress against verifiable benchmarks -- such as lifecycle costs per cell. The State needs the same capability for continuous improvement in crafting and implementing overall correctional policy. Similarly, some of the plans developed by counties under the Community-Punishment Act of 1994 were developed in collaborative procedures that brought together law enforcement, business leaders, judges, educators and counselors. In some cases, the product was a plan to assume a larger role in corrections that had broad community support and a commitment to make the plan successful.

The State, however, needs more than just a plan. The State needs a process and a venue for developing and continuously refining a balanced and collaborative correctional strategy. The development of a coordinated approach was advocated by the Blue Ribbon Commission on Inmate Population Management in 1990. The need remains unmet.

Summary

These systematic problems with California's correctional programs are the product of an ad hoc correctional policy that has evolved over time -- influenced more by high-profile and isolated crimes than by reason and analysis. Compromises are forced by crises and forged during budget negotiations, when several unrelated policy issues are on the table simultaneously. Holistic reforms -- such as the expansion of community corrections and intermediate sanctions -- have languished in the absence of a coordinated and comprehensive approach. Without a mechanism for coordinating the efforts of local and state authorities and strategically implementing the most cost-effective correctional tools available, the State can expect to spend a larger share of public resources to incarcerate a larger percentage of the population.

Recommendation 1: The Governor and the Legislature should enact legislation creating a venue and a process for developing, evaluating, refining and funding a statewide corrections strategy that protects the public in the most cost-effective way possible.

- **The strategy should be based on a master plan.** The plan should be developed by a permanent panel representing the array of societal interests. The panel's responsibilities would begin with the development of a master plan and continue with ongoing assessments and refinements. The plan should be developed by the Board of Corrections, provided the board's composition is modified to include appointments by the legislative leadership and representation from the judiciary, and from rural and urban counties.

- **The master plan should specify the roles of various agencies, identify desired outcomes and recommend funding priorities.** The master plan should serve as a guide to the Legislature and the Governor to the most cost-effective approaches to protecting public safety. It should review the entire correctional spectrum, beginning with the backlog of 2.6 million unserved warrants. In particular, the master plan should define the role and goals for community corrections, supervised releases and state prisons. The master plan should be presented to the Governor and the Legislature for enactment in statute and implementation through annual budget development.

- **The master planning agency should review existing sentencing strategies.** In order to implement the most cost-effective public safety solutions contained in the master plan it may be necessary to change individual sentencing statutes. The master planning agency should recommend those potential statutory changes to the Legislature.

Maximizing Existing Facilities

- ***Nearly all prison inmates end up back in their communities -- most of them within a couple of years and most of them no more prepared to live responsible lives than the day they were arrested.***

- ***Experts estimate that addict-offenders each commit 40 to 60 robberies a year, 70 to 100 burglaries and more than 4,000 drug transactions.***

- ***National evaluations of drug treatment programs like those at the State's Donovan and Corcoran facilities show that high-risk offenders who complete the program and the community-based residential "aftercare" have a 25 percent lower recidivism rate than control groups.***

Local Alternatives

Finding 2: Intermediate sanctions are not being adequately considered for nonviolent drug and property offenders.

Fifteen years ago, six out of every ten inmates in the State's 12 prisons were sent there for committing violent crimes. Fewer than six out of 100 inmates were sent to prison for drug crimes.[52] By 1997, the majority of inmates in California's 33 prisons were serving time for nonviolent crimes. And one in four inmates were serving time for drug-related crimes.[53] These trends reflect the nationwide criminal crackdown on drug abuse, the increased emphasis on incarceration as the punishment of choice for a broader range of crimes, and in particular the use of prison to incapacitate repeat offenders.

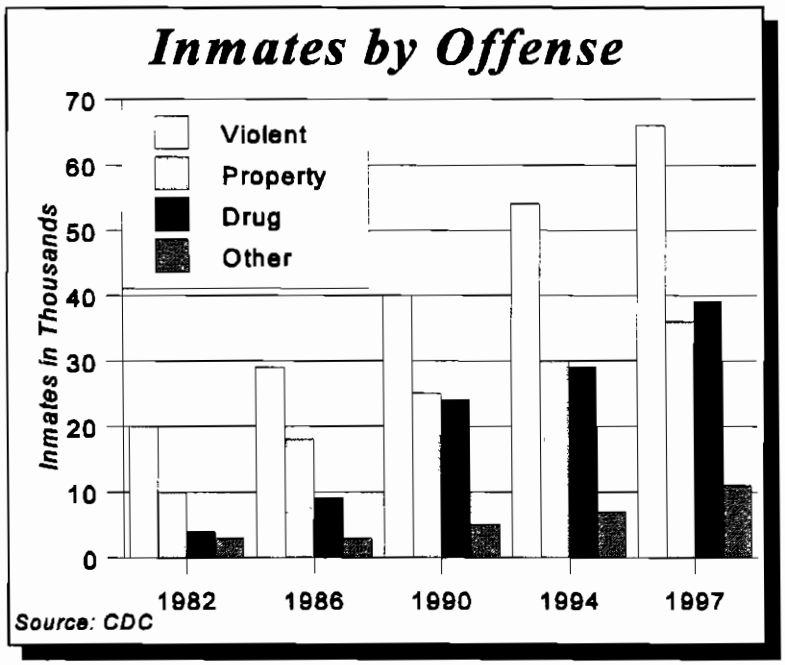
Many of those prisoners were sentenced for crimes that a generation ago were within the purview of local correctional programs. Those programs over time lost their funding and ultimately the public's confidence. As a result, in many of these cases, prison -- the State's most expensive punishment option -- has become the default sanction.

But on a felon-by-felon basis incarceration is a temporary solution. Nearly all prison inmates end up back in their communities -- most of them within a couple of years and most of them no more prepared to live responsible lives than the day they were arrested.

As inmates stretch the capacity of prisons, and as more sophisticated research documents show some of these criminals can be more cost effectively sanctioned and reformed locally, the interest in community-based alternatives to traditional prisons are being given renewed consideration.

Probation or Prison

As described in the Background and in Finding 1, the three primary methods of criminal sanctions in California are probation, county jail or state prison. All three programs are responsible for far more sentenced criminals than they can accommodate effectively and safely. And over the last 15 years, the function of prisons has been expanded to take on more of the convicted felons who previously would have received probation, jail or a combination of the two.



All categories of inmates have increased in numbers. But Inmates convicted of property and drug-related crimes now outnumber those convicted of violent crimes.

Over the last 15 years, the population of the State's prisons has grown faster than jail populations and probation caseloads. As the chart shows, while the numbers of inmates incarcerated for violent crimes has increased, the numbers of inmates convicted of nonviolent crimes, and drug crimes in particular, has increased even faster.[54] State prisons in 1996 held nearly 7,000 inmates who were convicted of petty theft with a prior. Another 3,000 were serving prison time for receiving stolen property and 1,500 were serving time for forgery. More than 14,000 inmates were convicted for drug possession.[55] Most criminals, however, are sanctioned by local correctional programs. Of those arrested for felonies and ultimately convicted of felonies or misdemeanors, eight in 10 are sentenced to jail, probation or both.[56]

In some ways, the county programs are even more overburdened than state prisons. Shrinking budgets have made it difficult to expand and operate larger jails dictated by growing communities and changes in state crime policies. The non-jail correctional programs, principally probation, are often second in line for funds, and have struggled even harder to maintain their effectiveness. The overcrowding and under-funding of local correctional programs is cited by professionals as one reason why more low-level criminals are being sent to state prison.

But prison is most often a temporary solution: Half of those inmates sent to prison are released back into the community within two years. And since California's prisons are not effective at reducing recidivism, most of those who come back will be convicted of another crime within another two years.

County Options

A 1996 study by the California Research Bureau found probation to be the most commonly used sentencing option in California -- and often used with reluctance.

Probation is intended to provide supervision for convicted offenders either in lieu of incarceration or following release from jail, and to direct offenders to services to help them become rehabilitated. Because of fiscal pressures, however, most offenders are not supervised at all. Many counties now divide probationers into "regular" and "banked" probation caseloads, with banked probationers -- those judged to be low risk -- required to have almost no contact with authorities.

The California Probation Officers Association recommends a caseload ratio of 25 to 50 offenders for each probation officer. But in "banked" cases the average caseload ratio is 629 probationers for every officer. In one county, the ratio was 3,000 to 1. The California Research Bureau reported:

The most common offender requirements for regular probation are periodic visits to the probation department office, and for banked probation, a post card to the same office. ...An offender on banked probation will probably not see nor hear from authorities while on probation. Some of the large urban probation departments surveyed occasionally send letters to probationers to find out their location.[57]

And over time, more probationers are banked. As recently as 1992 just over half of all offenders on probation were on regular

The Perspective From the Bench

A Sacramento Superior Court Judge described the needs of those who come before him for sentencing:

A lot of the people I see have given up. These kids say, I have no job and it looks like the system is organized to keep me down. They feel nothing good is ever going to happen to them. Most are at the 9th or 10th grade level and they don't have a prayer of fitting in.

Sixty percent of them are drug offenders. They see dealers with big cars, and they decide, I'm going to keep selling so I can get drugs and the system will never catch me. One person I sentenced recently had spent all of the last 20 years except for about nine months in prison. He came in on a third strike and he told me: "I can't get off this drug thing."

It takes a lot to get a person off drugs. You've got to build up a person's self-esteem and courage, show them they have a shot at a future and give them a reason to get off drugs. For that they need job skills.

We need a cross between jail time and a program that offers different kinds of services under the probation department, especially drug treatment and job training. And we need a tough probation department to do random drug tests with definite consequences -- a period of time served for every dirty test.

It would be nice if we had job training that's tied to a real job -- you learn a skill and it leads to a job at Hewlett Packard. And it has to be a job that has a chance of earning a living wage.

It may be that we can't save everybody. But we have to do something more than what we're doing now because what we're doing now doesn't work. For some people, state prison is no big deal. Once a person gets 25 to life, they don't care, but society is paying a good price for that -- people who give up hope like to hurt other people.

probation -- meaning they were supervised. But just two years later, the numbers had reversed. In 1994, 190,056 offenders in California were on banked or unsupervised probation -- a 33 percent increase over 1992 -- while the number of offenders on regular probation actually shrank 25 percent from 150,331 in 1992 to 112,537 in 1994.[58]

Because of huge caseloads, counties no longer routinely accept "courtesy probation" cases -- taking over supervision of offenders who have relocated from other counties. As a result, since probation supervision is in the county where the crime was committed, offenders who have been convicted in counties away from home may have to serve probation far from their job and support network of friends and family.

At one time I had enormous confidence in the probation department... Now, on close cases I'm leaning toward state prison. I have to consider: Do we have any county resources? And if we do, should I spend it on this person or save it for someone else and send this one on to the State?

-- Superior Court Judge Gary Ransom

In many counties, jail is not the option it once was either. Because of overcrowding, 24 counties have a court-ordered population cap on at least one of their facilities. In 1996, 325,203 jail inmates were released early to make room for more serious offenders; 106,482 were pretrial and 218,721 were sentenced inmates.[59] In many counties jails are so overcrowded that offenders sentenced to less than 90 days are automatically released without serving any time. One Superior Court judge described how those cutbacks influence his sentencing decisions:

> *At one time I had enormous confidence in the probation department. Now most people I put in probation don't have a real probation officer, or if they do have a probation officer they only see him once a month, so they know they can do drugs the next day. In the past I would have given some of them another chance. Now, on close cases I'm leaning toward state prison. I have to consider: Do we have any county resources? And if we do, should I spend it on this person or save it for someone else and send this one on to the State?*[60]

Intermediate Sanctions

The overcrowding of jails and prisons and the overwhelming of probation programs has prompted many states to explore alternative sanctions that lie in the correctional continuum between probation and traditional incarceration. These punishments are often described as "intermediate" sanctions and because they are most often administered by local authorities they often are considered "community-based" corrections or punishments. As the table on the following page shows, these sanctions can range from part-time custody facilities to intensively supervised release.

Intermediate Sanctions

- ***Community residential restitution centers*** are residential programs that provide 24-hour supervision of nonviolent offenders. The program may require that all earnings be paid to the center as restitution. Offenders may remain in the center for three months to a year. Some centers provide education, employment services, job training and substance abuse treatment. Community service may also be required.

- ***Intensive supervised probation*** provides close supervision of offenders through frequent contact with probation officers and requires offenders to participate in programs such as substance abuse, domestic violence, vocational training, community service and restitution payment. Electronic monitoring and random drug testing may be included. Offenders must contact the probation officer about four times a month. Caseloads average 30-40 per probation officer.

- ***Day reporting centers*** are non-residential programs that provide intensive supervision of offenders and provide services from a central location. Offenders are required to perform community service and to report daily activities and employment endeavors to a case manager. Analysts say day reporting centers can be among the most successful of intermediate sanctions because they can operate as multi-service centers offering a broad array of programs.

- ***Residential treatment centers*** provide supervision and treatment to offenders with substance abuse and mental problems. Offenders may be confined to the center for up to two years.

- ***Home confinement*** requires an offender to remain at home for specified periods. Offenders may be required to remain in the home at night (curfew), at all times except while working or attending school (home detention) or at all times (home incarceration). Electronic monitoring may be used and schedules outside the home must be approved by probation officials.

- ***Electronic monitoring*** provides monitoring of offenders through an electronic device attached to the offender's wrist or ankle and random calls to the offender's residence.

- ***Fines*** are often used in connection with probation to compensate victims or the community. "Day fines" levy a portion of an offender's daily wages.

- ***Community service*** requires offenders to contribute labor to the community to compensate for criminal activity.

- ***Work release programs*** require offenders to perform work in the community, usually under the direction of the sheriff.

Costs, Risks and Benefits

The cost of intermediate sanctions varies depending on the services provided, but nearly all are less expensive than state prison, which on average costs $21,800 a year per inmate. A county jail bed costs $19,700 per year; day reporting costs about $10,000 a year and electronic monitoring costs between $3,500 and $8,500 a year. Those figures do not include capital costs, which are highest for state prisons.[61]

Financially, the concept is similar to California's nationally recognized and now defunct "probation subsidy" program. Under that plan the State gave counties an amount equivalent to the cost of housing an inmate in state prison for one year -- then set at $4,000 -- for each offender retained at the county level in the previous year. But the program disintegrated when subsidies did not keep pace with county costs.

Researchers have estimated that diverting low-level offenders from state prison to community-based alternative sanctions could save a significant portion of the State's current prison costs. University of California criminologists calculate that diverting offenders convicted of using or possessing drugs to community-based programs would cut state prison costs by 17 percent. Including all of those convicted of drug crimes would boost the savings to 26 percent. And diverting offenders serving sentences shorter than nine months -- which takes in 44 percent of all prison inmates -- would also lower prison costs by about 25 percent.[62]

The Legislative Analyst's Office also has identified potential savings. In 1997 the LAO estimated that the demand for additional prisons over the next decade could be reduced by 30,000 beds if certain categories of offenders received state-funded and locally administered intermediate sanctions. The proposal estimated an annual state savings of $670 million plus $1.36 billion in one-time capital outlay savings. The ten nonviolent crimes the LAO suggested could be locally sanctioned are: petty theft with a prior, driving under the influence, perjury, bookmaking, bribery, drug possession, marijuana offenses, receiving stolen property, drug possession for sale, vehicle theft, grand theft, forgery and fraud.[63]

While the potential for direct savings is compelling, the issue is controversial because of the difficulties in estimating the indirect costs.

Some correctional officials assert that many offenders sentenced for nonviolent crimes are violent people, and that the most effective way to combat crime is incapacitation. Others argue that locking criminals up is the only way to make them "pay" for crimes and to express public condemnation of criminal acts. And because intermediate sanctions divert offenders into non-incarcerating programs, critics say public safety is compromised.

Proponents of intermediate sanctions concede that there is a marginal increase in the risk to public safety by using sanctions short of incarceration. But they also assert that community-based sanctions can be more effective at reducing recidivism -- some programs by as much as 30 percent. As a member of the Little Hoover Commission's advisory committee on prison issues noted: "Rehabilitation and just punishment are not incompatible."[64]

Fundamental to many community-based punishments is the concept of restorative justice -- that offenders should compensate the victim and community for their crime. The former governor of Delaware explained:

> *That alternative program stresses accountability -- accountability of the offender to the victim and the state and accountability of the corrections system to the public.*[65]

The challenge to advocates and ultimately policy makers is to determine if the short-term marginal increase in risk to public safety is worth the potential long-term benefits of lower crime and smaller prison budgets. A May 1997 report on intermediate sanctions by the National Institute of Justice said the added risk was worth the added benefit:

> *Intermediate sanctions can deliver much more intrusive and burdensome punishments than standard probation...can be much more punitive than probation and can be scaled in severity to the seriousness of the crime.... Intermediate sanctions with strong treatment components can improve treatment effectiveness and thereby reduce recidivism rates.*[66]

Those targeted for community corrections programs are offenders who have the potential to be deterred from committing more serious crimes if they receive needed services. Many of these offenders are drug addicts. A large percentage are high school drop-outs or those with limited job and academic skills who need help learning to function in society. The National Committee on Community Corrections outlines how a community corrections program can work to fulfill that role:

> *Community corrections sentences provide for the punishment, supervision, and rehabilitation of an offender through restricting movement, requiring restitution, and mandating attendance at educational or treatment programs. Community corrections can be a tool for keeping the ... non-threatening convicted offender from prison, and for providing a gradual reintegration of the imprisoned offender back into his or her community.*[67]

These alternative sanctions can also be more appropriate for special categories of offenders like the mentally retarded, who now make up about 4 percent of all state prison inmates. Research shows that mentally retarded offenders are more likely to be convicted and sent to prison and often serve longer prison terms than non-disabled offenders.[68]

In New York: Community Corrections at Work

A misdemeanor arraignment court located in mid-town Manhattan provides an example of community corrections in action. In that court justice is swift: offenders who plead guilty are sentenced and begin serving sanctions on the same day.

Aimed at low-level offenders, the court is designed to send a dual message: First, that there are consequences for criminal behavior and that offenders must repay the community for their crimes. Second, that there is help for these who need it.

Seventy-five to 80 percent of the offenders plead guilty. A few repeat offenders go to jail, but most are sentenced to community service. Along with the sanctions the court provides help for misdemeanants in the form of various social services. A court spokesperson said: "The idea behind placing the court in the community is to enable the court to focus on the specific criminal justice issues in that community."

The court program grew out of focus groups made up of police, residents and shopkeepers who identified the criminal activity of greatest concern: visible prostitution in Times Square that was spilling over into surrounding residential neighborhoods, illegal panhandling and vending, disorderly conduct, low-level drug use, subway turnstile jumping and shoplifting.

One floor of the court houses community-based services, including counseling for prostitutes, first-time shoplifters and substance abusers. Because the court found that many of the illegal vendors were from Senegal, an English as a second language class was added. High school equivalency classes are also offered, as is a four-day drug treatment readiness class to inform drug offenders about long-term treatment. The programs are run by independent providers.

Those sentenced to community service work at a variety of projects, including tree maintenance, painting and bulk mailing for nonprofit organizations.

Depending on the offense, misdemeanants may be sentenced to participate in social service programs or may take part voluntarily. Those with serious drug problems are sentenced to long-term drug treatment and are escorted to the social services floor immediately after sentencing to meet with a counselor. A court-based social worker keeps track of the person on a daily basis. Offenders appear before the judge every two or three weeks where a case manager reports to the court on the person's progress.

Court staff say assigning sanctions immediately after sentencing has greatly improved compliance with community service punishments. The court also has solved another problem: before the court was set up offenders had typically already served time in jail equivalent to the sentence they would receive before they ever came before the judge, making the process the punishment. Now the punishment follows, instead of precedes the determination of guilt.

The results? In the first three years of the court, 15,300 offenders completed community service and arrest rates dropped dramatically. In the first 18 months, illegal vending arrests dropped 24 percent and prostitution arrests dropped 63 percent. In three years offenders completed $500,000 worth of community service labor, including 400 walls painted and 2 million pieces of bulk mail processed for nonprofits.

The cost of the court is about $1.2 million a year above the normal cost of running an arraignment court. Updated information about the program can be found on the court's web site: **www.communitycourts.org**

Growing Support

The idea that the State should increase sentencing options at the community level for nonviolent offenders has been endorsed by a range of correctional professionals. In 1990 the Blue Ribbon Commission on Inmate Population Management -- a task-force appointed by the Governor to examine the State's correctional policies -- concluded:

> *In sentencing decisions judges lack sufficient intermediate sanctions between routine probation and local or state incarceration. The Commission has determined that insufficient prevention efforts, intermediate sanctions and programs for those incarcerated exist; and as a result there are offenders incarcerated and on probation who judges ... would and should manage differently if these additional sanctions were available.*[69]

The panel recommended that the Legislature adopt a Community Corrections Act to provide state funds to local government to significantly expand community-based intermediate sanctions or punishment options.

More recently both administration officials and the unions representing prison guards have joined the call for handling low-level offenders at the local level. The Secretary of the Youth and Adult Corrections Agency told the Commission:

> *California will get a better bang for the buck if resources are directed toward the 70 percent who stay in the community. Any county sheriff would say there is little difference between a low-level state prison inmate and a county jail inmate. Prisons should be for those who represent the most risk to society.*[70]

The California Correctional Peace Officers Association noted:

> *New sanctions are needed to ensure that prison space is used to protect the public against serious, violent and habitual felons -- not taken up by nonviolent, non-serious offenders. ... This can be accomplished with "day reporting" and similar sanctions, which could cut the cost of incarceration by up to 90 percent.*[71]

A number of recent developments offer a structure for reform:

- ***The Community-Based Punishment Act.*** In 1994 the Legislature laid the groundwork for a statewide community-based corrections program by enacting the Community-Based Punishment Act. In 1995-96 lawmakers followed by providing $2 million to counties to develop community-based punishment plans containing a range of alternative punishment options for nonviolent offenders. The grants were allocated by the State Board of Corrections and

designed to reduce the number of state prison inmates as well as the number of juveniles sent to the California Youth Authority. Most counties submitted plans. San Diego County's plan, widely regarded as a model, estimated that 900 adult offenders sentenced to state prison from San Diego County could be handled safety and effectively in the county and that 1,573 sentenced adults housed in the county jail could be handled in less secure residential or non-residential community programs. While the State provided "challenge grants" to a few counties for juvenile programs, no adult programs have been funded. Nevertheless, the county programs provide a framework for future implementation.

- ***Drug courts.*** Drug courts offer another promising mechanism for reducing the number of offenders sent to state prison and for breaking the recidivism cycle. Aimed at the large numbers of offenders convicted of drug crimes who would otherwise be sent to state prison, drug courts divert offenders by staying either prosecution or sentencing while the person completes a year-long drug treatment program closely monitored by the judge. (The box on the following page provides additional details.)

- ***Better treatments.*** The idea that criminals can be rehabilitated was set back in the 1970s with research that was widely interpreted to mean that no treatment could rehabilitate criminals. Today, however, the picture is different. An immense body of research shows not only that treatment works, but what kind of treatment works, and for whom. One mega-analysis of treatment programs for offenders found that the best programs can reduce recidivism by about 30 percent. Researchers also have been able to identify the program components that are most effective.

- ***Risk-needs assessment.*** New risk-needs assessment tools now available can help satisfy public safety worries about sending offenders to alternative programs. The "risk" part of the assessment predicts which offenders are likely to abscond and which are amenable to treatment, and the "needs" assessment identifies which programs are best for treating particular offenders, making it possible to match offenders with services. Research shows that inmates matched to treatment are significantly more motivated to stay in treatment and have more positive results than those randomly assigned to programs.

- ***Federal money for alternative sanctions.*** The federal government also is making funds available for more broad-based punishment programs. The Crime Control Act of 1994 authorizes $150 million from 1995 through 2000 to help states and communities establish alternatives to prison, including restitution programs and job training projects.

The Drug Court Choice: Go Straight or Go Straight to Prison

Drug court proponents say the success of the strategy can be attributed to the threat of a state prison sentence, the individualized attention, the frequent monitoring and the ability of the judge to tailor the treatment program to the particular offender. San Bernardino Superior Court Judge Patrick Morris, chair of the California Drug Court Project, testified:

> *Drug court works better than voluntary clinics because the clinics don't have the incentives available and the person has the same old habits and the same old friends. We've always known that treatment works probably 7-1 over law enforcement, but the problem has been keeping the offender pinned to treatment. In drug court they go to the program just to avoid a prison term, but the program finally makes them look at themselves and by the mid-point they are moving on their own.*

A national study bears out the claim that drug courts do a better job of preventing recidivism among drug offenders than traditional approaches. The federally funded *Summary Assessment of the Drug Court Experience* by American University found that recidivism among drug court participants ranges from 5 percent to 28 percent and drops below 4 percent for drug court graduates. That success record compares to a 45 percent recidivism rate among drug offenders who do not receive treatment.

The average cost of the treatment component of a drug court program, depending on the services provided, ranges from $900 to $2,200 per offender, compared to $19,000 for a year in county jail or $21,000 a year for a state prison bed. But the benefit to the public is even more significant. U.S. Department of Justice studies estimate that drug addicts commit an average of 500 crimes a year.

Drug courts have quickly gained acceptance nationwide. Between 1989 and 1994, 42 drug court programs were established across the country and by late 1997 the total neared 200. California has led the nation in the drug court movement, with more than 50 drug courts, more than 3,200 graduates and 5,150 drug offenders participating.

The limiting factor has been funding. Most of California's drug courts have been established through the initiative of individual judges. One superior court judge noted that to start the drug court in his county he "twisted arms in the local county drug program office and the Kiwanis and the Rotary Clubs and got grants from non-profits."

In 1996, however, the U.S. Department of Justice provided $16 million to states to develop drug courts, with $4 million of that targeted for California. In 1998 more federal drug court funding is expected.

California lawmakers have provided limited financial support for drug courts. In 1996 the State provided $500,000 for drug court treatment, which was distributed to 28 drug courts in $17,500-grant packages. Another $1 million was allocated by the State to drug court treatment in 1997-98.

Remaining Obstacles

Despite the prison housing crises, the immediate fiscal benefits and the growing evidence that intermediate sanctions can reduce crime, community-based alternative punishment programs still face a number of barriers:

- ***Local funding.*** Chief among the obstacles is that counties bear all the cost of handling offenders at the local level, but none of the cost when judges send offenders to state prison. That provides a fiscal disincentive for counties to independently develop alternative punishments. Persistent budget cuts starved local programs and made local officials skeptical about taking responsibilities now shouldered by the State.

- ***Public perception.*** An equally significant barrier to community-based sanctions are public tough-on-crime attitudes that make it politically difficult for policy makers and judges to endorse sentencing alternatives that might be seen as coddling criminals or as increasing risks to public safety over the short-term even when long-term benefits may be clear.

- ***Sentencing mandates.*** Strict sentencing laws mandating state prison terms for an increasing number of crimes restrict the ability of judges to use alternative punishments when they are available. Even if the programs and funds are available, one criminal court judge said in many cases because of mandated state prison terms, "we can't get to the options."[72]

Summary

Sending nonviolent offenders to state prison as a way to temporarily prevent them from committing new crimes is a costly proposition. But local jails and probation departments are overloaded, making them ineffective options. Over recent years, correctional officials nationwide have begun to expand community-based programs that combine punishment -- including some types of incarceration -- with treatment programs. These programs provide immediate fiscal benefits and hold significant potential to substantially decrease the large numbers of new crimes that parolees of state prisons inflict on the communities they return to. While some intermediate sanctions -- such as drug courts -- have been initiated in California, comprehensive plans to better manage the convicted population have not been funded.

Recommendation 2: The Governor and the Legislature should enact legislation funding community-based punishments that improve public safety over the long term by reducing recidivism and that minimize the short-term added risks to the public when compared with incarceration in state prison.

- **The State should establish a competitive mechanism to fund community-based punishment plans.** California has used Challenge Grants to fund local programs for dealing with juvenile offenders. The same competitive mechanism should be expanded to implement strategies known to reduce recidivism that were proposed by counties under the 1994 Community-based Punishment Act.

- **The State should expand drug courts.** The Governor should direct the California Judicial Council to take the lead in obtaining and allocating federal funds for drug courts, developing drug court standards and coordinating with local jurisdictions to establish drug courts. The State should fund courts that are not adequately funded with federal money.

- **The State should fund pilot probation subsidy programs.** The State's probation subsidy program of the 1970s was a source for cost-effective innovations. Restoring the project, if only by funding pilot programs, could help the State resolve some of the challenges that are not being adequately addressed by state agencies -- such as dealing with mentally retarded criminals who are often blended in with the regular prison population.

Prison and Parole

Finding 3: The State is not providing enough education, treatment and job training to prepare inmates to become responsible citizens once they return to the community.

Popular wisdom holds that the way to protect the public from crime is to send criminals to prison. But that idea is undermined by the reality that nine out of 10 prisoners are released back into the community. With a median prison term of 21 months, half the inmates in California prisons today will be back on the streets within two years.

The statistics illustrate that locking up criminals is only half the job of protecting public safety. The other half is taking advantage of the time offenders spend in state custody -- in prison and on parole -- to prepare them to function as responsible citizens, prevent them from committing future crimes and cycling back into prison.

By all of the evidence, California is not succeeding in that mission. Two-thirds of the inmates in state prison have served time before and were out on the street for less than a year before returning to prison. The reasons are not a mystery. A quarter of all inmates are in prison for drug crimes, and experts say that drug abuse drives criminal activity in 80 percent of all offenders. Many inmates cannot read or write. Many lack basic living skills, not to mention the education and training needed to get and keep a job.

Recognizing the influence of drugs on crime, CDC has begun to expand its drug abuse treatment programs. But drug treatment remains available to only a small percentage of inmates. And few prisoners and parolees have access to effective education, counseling and job training.

Reducing Future Crime

For decades in California, rehabilitation was a central function of both prison and parole. Those efforts were girded by the State's indeterminate sentencing law, under which offenders were sentenced to a prison term that spanned a range of years -- such as five years to life -- and were released only when they were deemed by the Adult Authority to be able to responsibly participate in society. Parolees could be on parole for 15 years or more. And if they lapsed, the parole agent had the authority to send them back to prison for the remainder of the indeterminate sentence, which could be life.

Because determinate sentencing defines the precise term an offender will serve ... inmates and parolees have little incentive to cooperate in programs that might reduce their criminal behavior.

Determinate sentencing changed all that. In the mid-1970s, the indeterminate sentencing system came under attack because offenders convicted of similar crimes were serving widely varying prison terms. About the same time the idea that criminals could be rehabilitated became discredited with the publication of a study that was interpreted to mean that none of the treatments then available were effective at changing criminal behavior. That study, titled "What Works?" came to be known as the "Nothing Works" study.[73]

In 1977, indeterminate sentencing, which had been in effect in California since 1918, was replaced for most crimes by determinate sentencing. The Determinate Sentencing Act also specifically abandoned rehabilitation as a purpose of prison and established punishment as the goal. Except for those convicted of specified serious offenses, determinate sentencing remains in effect today.

Because determinate sentencing defines the precise term an offender will serve, inmates now know early in their term when they likely will be released, whether or not they make any effort to become responsible citizens. The determinate sentencing law also limits parole to a four-year period and decreases the time that parole violators can be returned to prison to no more than one year. As a result, today inmates and parolees have little incentive to cooperate in programs that might reduce their criminal behavior.

Recently lawmakers have moved toward restoring rehabilitation as a purpose of imprisonment. In 1995 the Legislature enacted a bill that encouraged CDC to develop policies and programs to educate and rehabilitate nonviolent first-time felony offenders.[74] And some lawmakers, with an eye on recidivism rates and high prison construction costs, have pushed unsuccessfully for a significant increase in drug treatment beds in state prisons.[75]

Education and Job Training

In addition to the 1995 law directed toward nonviolent first offenders, the Department of Corrections is bound by four other requirements relating to education and job training for prison inmates:

- ***The Prison Literacy Act:*** The 1987 law requires the Department of Corrections to offer a reading program to ensure that all inmates achieve a ninth-grade reading level by the time they are released. The law required CDC to make the program available to at least 60 percent of eligible inmates by January 1, 1996.[76]

- ***Prison Industry Authority:*** The PIA was established in 1983 with a two-fold purpose: to reduce the cost of prison operations and to help rehabilitate inmates by putting them to work. The PIA operates about 31 industrial, agricultural and services industries in 23 prisons. Under PIA, inmates produce clothing, shoes, mattresses and furniture used in the prison, operate the laundry, and provide printing, lens grinding and other services. The PIA also sells furniture and office supplies to other state agencies.

- ***Joint Venture Program:*** The Joint Venture Program was established in 1990 by a ballot initiative -- Proposition 139 -- to allow private industry to operate on prison grounds using inmate labor. Inmates earn wages prevailing in similar industries.

- ***Work-time credits:*** Statutes provide an incentive for inmates to participate in programs by allowing them to earn a day off their term for every day spent working, in the classroom or in job training. Each year, they can earn up to six months off their sentence. Inmates also can earn credits if they are in a reception center or on a waiting list for a program; credit is awarded at a rate of one day off for every two days on a waiting list. Inmates sentenced under the Three Strikes law can only reduce their sentence by 20 percent and inmates convicted of a violent felony can earn no more than a 15-percent reduction in their sentence.[77]

Despite these requirements, the programs and services provided to inmates are minimal and a large percentage of inmates do little more than serve time before they are released. CDC statistics show barely half of all prison inmates participating in programs at any given time and less than a quarter receiving the kind of education and vocational training that might enable them to get a job and integrate into the community.

Prison Programs

Many of the programs available to inmates are provided by organizations like Alcoholics Anonymous and Narcotics Anonymous, which send volunteers into the prisons, and by private companies and non-profit organizations under contract to CDC, which furnish both in-prison and

post-release services. The programs vary from institution to institution, but may include remedial education, literacy classes, stress and anger management, job training, re-entry classes and a small number of work furlough opportunities. Most of the programs are voluntary for inmates, although prisoners earn work-time credits for participation.

According to CDC, as of October 1997, 56.8 percent of the prison population -- 83,688 inmates -- were participating in education, vocational or work programs.[78] That proportion has remained constant in recent years, but represents a drop since July 1993 when the department reported 62.5 percent of the prison population participating in programs. The department's definition of "programs," however, is significant:

- ***Prison jobs.*** By far the largest share of inmates in the 56 percent of "programmed" prisoners -- about 46,000 inmates, or a full 30 percent of all inmates -- are working in prison-support jobs: cooking, cleaning, working in the laundry and groundskeeping for five or six hours a day. As a member of the Commission's Prison Advisory Committee noted, "They consider sweeping a tier 'programming.'"

- ***Academic and job training.*** The proportion of inmates in academic and vocational programs is much smaller: Some 8 percent of the prison population -- 12,423 inmates -- are in academic programs; 9 percent of inmates -- 13,674 -- are engaged in vocational training.

  The number of inmates in the Prison Industry Authority and Joint Venture programs are smaller still: PIA participants number 6,324 -- 4 percent of the prison population -- and those in the Joint Venture Program total 223 -- .14 percent.[79]

  Despite the statutory requirement that CDC offer literacy training to 60 percent of eligible inmates by January 1, 1996 -- with the goal that eventually all prisoners achieve ninth grade literacy -- the department reported in 1997 that only 35 to 40 percent of eligible inmates had access to literacy programs. A 1997 study by California State University, Sacramento put the median reading level of state prison inmates at between the sixth and seventh grades and reported that two-thirds of inmates were reading below the ninth-grade level.[80]

- ***Those ineligible for programs.*** According to CDC, about 30 percent of all prisoners are ineligible for assignment to a program. More than 26,000 of them are ineligible because they are either marking time at a reception center or had just arrived at an institution and had not yet received a program assignment. Another 13 percent --19,461 inmates -- are on waiting lists to get into a program. About 12 percent are judged unsuitable for programs because of mental deficiencies or violent behavior.[81]

- ***Drug treatment***. Among CDC programs, drug treatment stands out as a success, but availability is limited to a tiny percentage of inmates. Until 1997 the department operated just 400 drug treatment beds in the entire state prison system. Those beds consisted of 120 treatment slots at the California Institution for Women at Frontera, 80 beds at the California Rehabilitation Center at Norco and 200 beds at the Richard J. Donovan prison near San Diego. With the opening of the 1,478-bed California Substance Abuse Treatment Facility in Corcoran in autumn 1997, in-prison treatment slots throughout the prison system total 1,878.[82] The drug treatment programs are provided through contracts with private treatment providers. In addition, the State contracts with 200 private firms statewide to provide various drug treatment services for inmates after release from prison.

Deficiencies in the System

A number of factors account for the small percentage of inmates participating in programs. Foremost among these is the fundamental belief of the State's correctional officials that the behavior of most prison inmates cannot be changed. The Secretary of the Youth and Adult Corrections Agency told the Commission:

> *Corrections gets only the worst of the worst -- those who have failed numerous times before. Seventy-five percent have at least one prior (conviction) and the average is five priors. The task of rehabilitation is not easy.*[83]

Because of that view the Department of Corrections assigns education and treatment a low priority, maintaining that its purpose is simply to keep inmates locked up:

> *The Department of Corrections' mission is to house the felons who are convicted and sent to prison. The mission is not to "correct" them. Our mission is to provide the sanction that the courts imposed. There are some aspects for low-level first-time offenders where we do try to provide some help to get them to refocus their efforts away from crime and away from victimization toward living as an appropriate citizen in society. But corrections is really derived from the principle of correcting the conduct by taking them out of law-abiding society.*[84]

For those reasons, and because the department is preoccupied by the crush of inmates flowing into the prison system, CDC has not put much effort into developing programs or encouraging outside providers to furnish services. As a result, even for inmates motivated on their own to take classes or learn a trade, opportunities are a catch-as-catch-can-proposition. Often classes are full and have long waiting lists. Inmates may spend an entire sentence on a waiting list and be released before a spot opens up.

Policy analysts, service providers and academic experts identified a number of specific shortcomings in the State's programs that limits their potential to reduce future crimes and long-term prison costs:

- ***No program planning for inmates.*** Inmates are not assessed to determine which programs -- education, job training, counseling, drug treatment -- could be expected to help them not return to prison. Under the old indeterminate sentencing system prison sentences were guided by a diagnosis performed at the beginning of the term and the inmate's release depended upon the inmate's continued progress. Today inmates begin a sentence at one of the State's reception centers where they undergo evaluation devoted mostly to determining security risk rather than program needs.

- ***Reliance on inmate labor.*** Because CDC depends on inmates to perform prison support tasks, the department gives institutional needs precedence over the need for inmates to receive meaningful job training or attend classes. If an inmate is needed in the laundry, he may not receive other job training and educational opportunities. As the acting supervisor of correctional education programs at North Kern State Prison said: "We can't offer educational services to everyone because they have to work to run the institution. If we took 100 percent of them our food's not going to get cooked."[85]

- ***Lack of pre-release planning.*** Under determinate sentencing inmates are released whether or not they are prepared to return to the community. Although some pre-release courses are offered, they are not required and inmates have little incentive to participate. The department has not expanded re-entry programs designed to give inmates intensive counseling, job experience and help finding a place to live and work after they are released. The department has the same number of work furlough beds (which have recently been renamed "re-entry centers") that it had a decade ago -- about 1,350 -- even though the prison population has more than tripled in that time.[86]

- ***Limiting programs to low-level offenders.*** CDC restricts participation in re-entry programs to low-level offenders because work furlough and other re-entry programs require moving inmates to halfway houses for the last few weeks of the prison term. CDC officials say they are reluctant to take the chance that a prisoner might not be suited to a halfway house, but the policy has an ironic result: nonviolent offenders may receive help making the transition to society, while those considered too dangerous for such programs are released directly from high-security prisons to the streets.

- ***Delivering inmates to re-entry programs late.*** Under current law, most inmates can be transferred to re-entry work furlough

> programs, which offer education, job placement and other services to inmates when they are within 120 days of release. But providers who run the programs say inmates on average arrive 55 days before the release date and as a result there is less of a chance that the services will be effective.

Moreover, the in-prison programs suffer from a problem that plagues most aspects of the correctional system: a lack of rigorous independent evaluation that could provide policy makers and program managers with the ability to cost-effectively refine the corrections strategy to reduce future crimes and as a result the need for additional prisons. This issue is described in greater detail in Finding 5, which reviews contracting procedures. But evaluations are essential in government-run, as well as contracted programs.

Drug Treatment Works

With more than 40,000 prison inmates serving terms for drug crimes, and as many as 80 percent of all inmates affected by substance abuse, the State's paucity of in-prison treatment beds means that only 1 to 5 percent of those who might benefit from treatment have a chance of receiving it. That represents a significant lost opportunity for the State to break the cycle of drug-addicted offenders who prey on the public after they are released -- and are ultimately returned to prison again and again for committing new crimes. One of the nation's leading drug treatment experts told the Commission:

> *The incarceration of persons found guilty of various crimes who are also chronic substance abusers presents a propitious opportunity for treatment. It is propitious because these persons would be unlikely to seek treatment on their own, without treatment they are extremely likely to continue their drug use and criminality after release, and we now have cost-effective technologies to effectively treat them while in custody and thus alter their lifestyles.* [87]

Research over the past five years has proven that intensive treatment programs now available are highly successful at reducing recidivism among drug-addicted felons -- especially high risk offenders -- chronic heroin and cocaine users with long histories of predatory crime. Experts estimate these addict-offenders each commit 40 to 60 robberies a year, 70 to 100 burglaries and more than 4,000 drug transactions.[88]

National evaluations of "therapeutic community" drug treatment programs like those at the State's Donovan and Corcoran facilities, some based on nine years of follow-up data, show that high-risk offenders who complete both the treatment program and the community-based residential "aftercare" have a 25 percent lower recidivism rate than control groups, as measured in parole violations, arrests, convictions and re-incarceration. As the drug abuse expert cited above told the

Commission: "I want to convey to you our conviction that *this kind of program works.*"[89]

The drug treatment program at Donovan provides an example. That program, which is operated by Amity Foundation of California, began in 1989. Participants are hard-core felons with extensive criminal histories who have committed an average of 321 offenses over a lifetime. More than 70 percent have committed a violent crime, including assault, kidnaping, manslaughter and rape. Fifteen percent admit to having committed murder. The average participant in the program has spent more than half of his adult life in prison.

At the insistence of the Donovan warden, the Amity program was purposely designed to subject participants to the same kind of temptations to use drugs they are apt to confront when they leave prison. The 200 inmates in the drug treatment program therefore are not isolated from other prisoners.

They eat, work and share a yard with the general prison population, which consists of 800 other Level III inmates. Program participants take part in year-long intensive drug treatment activities for a minimum of twenty hours a week, often at night and on weekends in addition to their regular 36-hour-a week work assignments. After release from prison participants are offered the chance to continue treatment in a community residential facility in Vista, California. About 35 percent participate in the aftercare program.

A rigorous evaluation of the Amity-Donovan program funded by the National Institute on Drug Abuse found the program to have

Drugs in Prison

CDC acknowledges that illicit drugs are available in prisons, and have asserted it would be impossible to halt the drug flow without putting prisons "under glass" -- allowing inmates no contact with anyone from outside the prison walls. A number of other states, however, have successfully adopted "no tolerance" policies toward drugs in prison.

Correctional experts across the country say drugs enter prison two ways: from outsiders who smuggle drugs to prisoners and from prison guards who deal drugs to inmates. Several states conduct regular drug tests of both guards and inmates and impose sanctions on those who test positive.

Alabama, for example, tests 10 percent of the prison population and randomly tests prison staff, including wardens. Inmates who test positive are sent to substance abuse programs or to a higher level of custody; staff who test positive are automatically dismissed. State correctional officials report that between 1 and 4 percent of the drug tests come up positive. Ohio, Massachusetts, New Hampshire and North Carolina also have no tolerance drug testing policies in place.

The federal government also is encouraging states to develop comprehensive drug testing, sanctioning and treatment programs for prison inmates. Under the Violent Offender Incarceration and Truth in Sentencing Program, states are required to implement inmate drug testing policies by September 1,1998 or lose federal prison construction grant funds -- which in the case of California amounted to $79.4 million in 1997.

Federal transportation law also requires prison bus drivers to be tested for drug use, but the state Department of Personnel Administration said CDC is not in compliance. Under a tentative collective bargaining agreement crafted in late 1997, the department will randomly test cadets at the department's training academy. Administration officials hope to expand drug testing to management and correctional officers through subsequent agreements.

impressive results. One year after release from prison only 17 percent of those who completed both the in-prison program and the community-based aftercare component were re-incarcerated, compared to 66 percent of a control group who received no treatment. Among those who went through the in-prison program but did not complete aftercare, 35 percent were re-incarcerated.[90]

The warden at Donovan, initially skeptical of the program, reported his surprise over the results when he ordered an unannounced urine test for Amity participants:

> *I knew that I had two hundred guys with serious drug problems all living together, and not isolated from the main yard. We were busting guys on the yard for drugs, so I knew that if the guys in Amity wanted to get drugs, they could. I assumed that 25 percent of the people in the Amity program would turn up "dirty."*[91]

Instead, only one Amity participant tested positive for drugs in that test. A second surprise urine screening in Fall 1996 found not a single positive test among the 214 Amity inmates. Drug testing of those participating in the Vista program after release from prison has yielded similar results.

Potential Savings from Drug Treatment

The Legislative Analyst's Office has estimated that modest expansions of the drug treatment program could save the State millions of dollars a year. The LAO calculated in May 1997 that extending substance abuse treatment to an additional 5,000 inmates could save $40 million a year in prison operating costs and $110 million in one-time capital outlay expenses by reducing the need for prison beds. Extending treatment to serve an additional 10,000 inmates over those served today would increase the savings to $80 million in annual operating costs and $210 million in one-time capital outlay.[92]

Those figures take into account only prison costs. Even more significant are the economic and social savings that could be captured from these offenders abandoning criminal behavior. An economist who analyzed the Amity program using National Institute of Justice data estimated that in the year before the last incarceration participants were on average each responsible for $93,000 in emergency room visits, jail costs, welfare payments for children, court expenses and other costs.

Calculated over a criminal career, unless reformed those felons could be expected to cost society more than $1.5 million. With many of those offenders third-strike candidates, the cost of the next incarceration alone could directly cost the State more than $500,000 per offender.[93]

Targeting the most intensive drug treatment programs such as the therapeutic community model to the most severe offenders promises to

yield the most benefit. These chronic heroin and cocaine users, who represent between 3 and 10 percent of all offenders, not only are responsible for high levels of serious and violent crime, but are also highly likely to recidivate. The Commission was told:

> *Without intervention this group will return to crime and drug use nine times out of ten after release, and will be back in custody within three years. With appropriate intervention applied for a sufficient duration, more than three out of four will succeed, i.e., reenter the community and subsequently lead a socially acceptable life.*[94]

For less severe drug offenders and for non-drug offenders, relatively low-cost "cognitive skills" programs can make an even more dramatic difference. These programs, which incorporate a range of social, vocational and literacy training components along with treatment of psychological and psychiatric problems, have been shown to reduce recidivism by 40 to 50 percent. One of the most respected of these program models, "reasoning and rehabilitation" can be provided for $400 a year per inmate, not including the cost of training staff. The program consists of 50 sessions completed over 25-40 weeks and can be accomplished in prison or in a community-based day reporting center or other facility.[95]

"Without intervention this group will return to crime and drug use nine times out of ten after release, and will be back in custody within three years. With appropriate intervention applied for a sufficient duration, more than three out of four will succeed.

-- Douglas Lipton, National Development and Reserach Institues

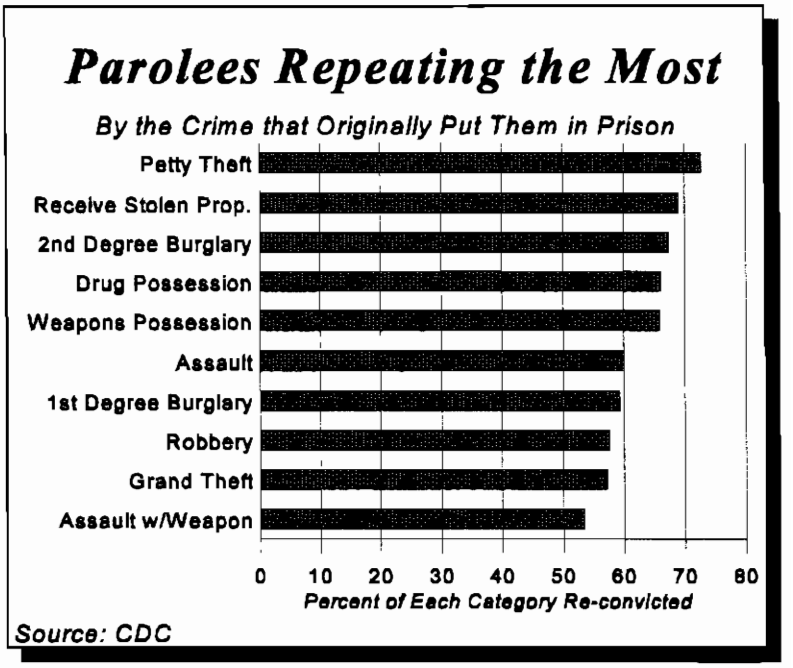
CDC's acting director told the Commission that the department "has steadfastly supported substance abuse treatment for offenders."[96] But the department has been slow to put treatment beds in place. While the department added the Corcoran facility in the 1997-98 budget, it also opposed a bill introduced in 1997 that would have added 8,000 new therapeutic community drug abuse treatment beds over the next five years. In explaining its opposition the department declared:

> *It would not be programmatically or fiscally prudent to rapidly expand this program prior to an evaluation to ensure that the treatment model, when operated in this larger scale, continues to result in lower parole revocation rates.*[97]

One other state, Texas, has implemented prison-based drug treatment on a grand scale. Expansion of in-prison drug treatment, however is constrained by a shortage nationally of professional staff trained in effective drug treatment techniques.

The Perils and Opportunities of Parole

Deficiencies in the State's prison system carry over to parole. Because inmates receive little in the way of education, job training and other preparation for release, parolees arrive on the street with little hope of integrating into the community. According to CDC, 70 to 80 percent of parolees are unemployed, 85 percent are substance abusers, 50 percent are illiterate, 10 percent are homeless, and 60 to 90 percent lack basic survival skills.[98] Yet the parole system, overwhelmed with the number of offenders coming out of prison, has few services to offer.

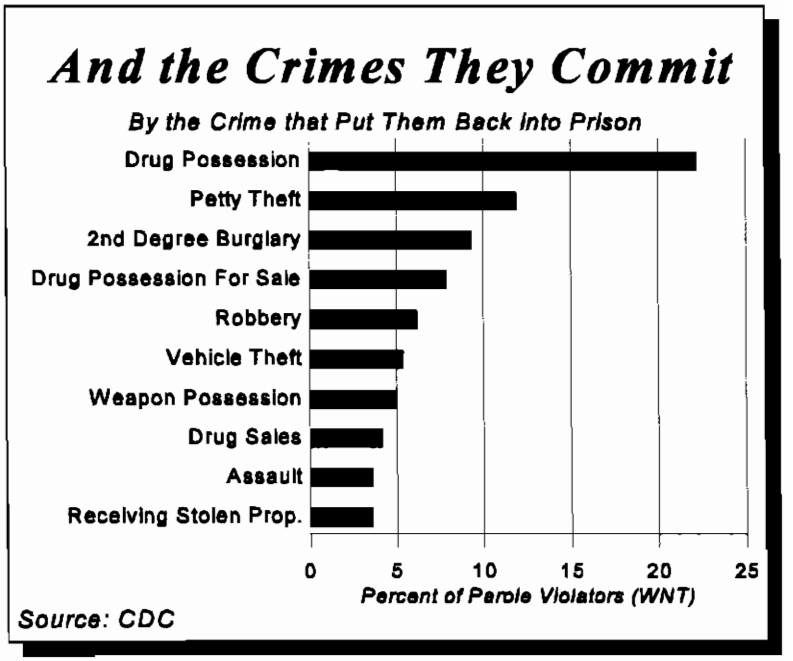


In 1996, more than 17,000 parolees were convicted of another crime and returned to prison. The chart above displays the parolees, described by original offense, who are most often convicted of new crimes and returned to prison within two years. The chart below displays the 10 crimes most frequently committed by parolees returning with new convictions in 1996. Combined, these parolees account for 80 percent of those returning to prison with new terms.

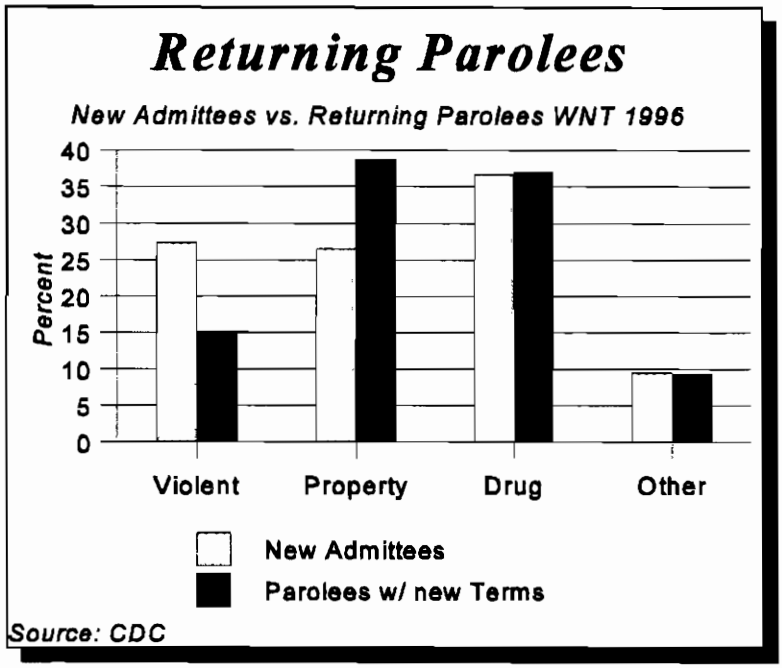
As a result, California's record of parolee success is dismal. Two out of three of the State's parolees fail parole and return to prison within two years. Parole violators make up a far greater percentage of prison admittees in California than in any other state.

In 1995, 60 percent of those admitted to the State's prisons were parole violators. By comparison, in New York the figure is 22 percent. In Texas, the state most comparable in prison population to California, the figure is 29 percent.[99]

The cost of re-incarcerating parole violators is substantial. The department estimates the costs of returning a parolee to prison for violating the conditions of release at $3,400. Those are only direct CDC costs, and assume that the inmate is housed in an over-crowded, low-security facility for 4.3 months.



But as the system reaches capacity, those inexpensive beds disappear, raising the costs of housing short-term low-security inmates. The Legislative Analyst, for instance, estimates the costs of holding a low-security inmate for four months to be closer to $9,000.[100] If the parole violator is sent to one of the private prisons already under contract, the typical per diem is $39 a day -- or more than $5,000 for a 129-day stay. And that bill does not include many other direct costs to the State, such as transportation and processing.



The chart compares the new admittees broken down by type of offense and parolees returning to prison with a new term, broken down by offense. A smaller percentage of parolees are returned for violent crimes than for property or drug crimes. "Other" crimes are a category comprised mostly of drunken drivers and weapon possession offenders.

And given the large numbers of technical parole violators, the aggregate cost is substantial. Assuming CDC's average per inmate incarceration cost and assuming that technical parole violators comprise 26 percent of the population, the annual costs of housing parolees who were returned to custody tops $500 million.

It is possible that California does a better job of catching parole violators than other states, but indications are that the State's high parolee return rate stems not from efficient supervision but from a combination of program deficiency in prisons and a failure to provide parolees with needed services once they are released.

How Parole Works

Inmates sentenced under the State's determinate sentencing law are automatically released on parole when they have served the time specified in the original sentence, minus work-time credits. Parole terms are shorter than they were under indeterminate sentencing -- parolees serve no more than four years, with most serving one to three years.

Those who fail parole can only be re-incarcerated for up to one year. Parole violators -- those who have not committed a new crime, but who are guilty of not abiding by parole conditions -- can only be returned to custody for four months.

Within CDC, the Institutions Division is responsible for operating the 33 prisons. Supervising inmates when they are released falls to the Parole

and Community Services Division, which consists of 118 parole offices in 64 locations throughout California, divided into four regions.

As of March 1997 parolees under supervision in California numbered 101,910. The State has approximately 1,200 parole agents to handle that caseload -- about one agent for every 85 parolees.[101] That compares to a national average of one agent for every 70 parolees. The number of parolees is expected to grow by 5,000 a year over the next five years.

Because parole offices cannot closely monitor such large numbers of parolees, CDC has developed a triage process that divides parolees into three supervision categories, depending on perceived risk:

- ***High control cases*** (8 - 10 percent of parolees). These parolees must report to the agent at least twice a month, with the agent visiting the home once and the parolee reporting to the parole office once.

- ***Control service cases*** (60 percent of parolees). These parolees, most of them nonviolent property offenders, must report to the agent at least twice a quarter.

- ***Minimum supervision cases*** (25 and 30 percent of parolees). These parolees must report to the parole agent at least twice a year.[102]

Preparation for release in most cases is minimal to non-existent. According to CDC regulations, at least three months before release, an inmate's options for housing and employment must be assessed and compiled into a "field file." CDC claims these files are prepared on time in 95 percent of all cases.

Based on that information and a risk assessment, a parole agent recommends the conditions of parole to be set and determines what level of supervision the parolee will receive. The parole office unit supervisor reviews the agent's recommendations and sets the parole conditions. A copy is furnished to the inmate before release.

All parolees must comply with a list of standard conditions, which are shown in the box to the right. In addition to the standard conditions, the parole agent and unit supervisor can impose special parole conditions, depending on the individual case. Special conditions for substance abusers, for example, usually include periodic drug testing.

Conditions of Parole

All parolees are required to comply with the standards conditions of release. Violating the conditions can result in a return to prison:

- Report to the parole agent within 24 hours of release.
- Not carry weapons.
- Report changes of address and employment.
- Not travel more than 50 miles from home or leave the county for more than 48 hours without prior approval from the parole agent.
- Obey all parole agent instructions.
- Not commit crimes.

The most common reason for failing parole and being returned to custody is for drug use, and parole officials believe that drug abuse is a contributing factor in many other revocations.

The Purpose of Parole

The Legislature in 1976, declared a broad and important purpose for parole:

> *The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocation, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge.*[103]

Despite legislative intentions, however, the State's commitment to providing supervision and services for parolees falls short. The Department of Corrections has concentrated $34 million in budget cutbacks in its parole services in recent years, making for fewer parole agents to handle increasing caseloads. And with repeat offenders feeding the number of parolees in the system, CDC is hard-pressed to provide services. As one department spokesperson told the Commission, "We're drowning in parolees."[104]

When inmates leave prison they are given $200 and a bus ticket back to the county where they were convicted. They also are taken to the bus depot, where a corrections officer waits until they get on the bus. What additional help they receive depends on individual need and on the services available at the particular parole office.

Parole agents hand out vouchers for food and for used clothing. But for most services CDC refers parolees to outside providers and to community service agencies for emergency relief, such as short-term room and board or community health clinics. In rural

The Preventing Parolee Failure Program

The department has shown that providing more services to parolees can produce significant savings. In 1992, at the behest of the Legislature, CDC initiated the Preventing Parolee Failure Program -- a pilot project aimed at increasing services to parolees.

Over a five-year period the program provided services to 4,900 parolees through 37 residential multi-service centers and learning centers throughout California. The services included computer-assisted education in reading, spelling, grammar, mathematics, life skills, and job search techniques, physical and mental health services and substance abuse treatment.

An evaluation showed that the savings achieved by reducing the number of parolees who violated the terms of their parole and were returned to prison were far greater than the cost of providing services.

The evaluation -- which did not include the social costs of reduced crime -- calculated the net benefits at $74 million. In 1996 alone the program prevented an estimated 6,282 parolees from returning to prison.

Despite its success, CDC has not expanded the program.

areas such services may be few and in urban areas, city and county agencies often compete with parole services for beds. The department also maintains a few contracts with counties and nonprofit organizations to provide re-entry services to parolees -- counseling, drug abuse treatment, detoxification, emergency lodging, and other services to parolees.

The Department does not keep records of the number of parolees who receive services each year or which services are provided. But observers estimate that of the 110,000 parolees released in 1996-97, fewer than 10,000 received help finding a job. Fewer than 10 percent receive pre-release services to help them prepare for re-entry.[105]

An example of these services is the Jobs Plus program. The program combines social services with job placement, serving parolees through six community-based subcontractors in 18 parole offices and 23 institutions throughout California. Services provided include pre-employment training and placement assistance, clean and sober workshops, work clothing and tools, transportation, meals and housing.

The program is outcome-based: Providers receive $500 for every parolee they help find a job. In 1996-97, the program placed 947 parolees in jobs and reports that recidivism for the program's employed participants is only 3.5 percent. Yet, despite its success -- and even though officials say the program could serve three times more parolees without changing its structure -- CDC continues to fund the program to serve only 1,000 inmates a year.[106]

Opportunities for Improvement

Research at the national level in just the past five years has proven that treatments work in reducing recidivism and has identified which components are needed in effective programs. That research provides the framework for program design. Program components important to success include:

- ***Risk assessment tools.*** Risk assessment tools provide a means of allocating scarce resources by determining which offenders are most amenable to treatment and what kind of treatment is most effective for an individual offender. Assessments examine an array of factors, including criminal history, education, emotional problems, alcohol and drug abuse dependency, and attitudinal elements.

- ***Aftercare.*** Experts say providing a continuum of treatment through services provided after inmates are released from prison -- like those provided by the Vista program for Donovan graduates -- is critical to program design for drug offenders.

- ***Phased re-entry for drug offenders.*** Research shows that the most effective treatments for drug offenders employ a "step-down" approach -- providing for offenders to transition gradually based on treatment progress. For example, offenders may move from a three- to six-month preparation period in prison, to a six- to 24-month stay in a residential community-based facility, to an outpatient program with several group and individual meetings a week, to an alumni group meeting once a month.

- ***Multi-service programs.*** Drug treatment experts emphasize that a successful drug treatment program must treat more than the drug addiction. Prison inmates, many of them from extremely low-income minority backgrounds, often lack social, academic and vocational skills and may suffer from a variety of psychological and psychiatric problems. Unless these problems are addressed along with the drug addiction, offenders may not respond well. Evaluation of the otherwise successful Stay 'N Out program in Brooklyn, for example, found that inmates who failed the treatment program did so not because of drug addiction, but because they needed vocational help that the program lacked.

- ***Evaluation.*** Rigorous evaluation and inmate tracking is needed to help determine what works best with different kinds of offenders and to enable programs to be continually refined.

The sheer weight of prison population numbers has produced near-unanimous agreement that more should be done to keep offenders from committing new crimes. The Legislative Analyst's Office, the Governor's Blue Ribbon Commission on Inmate Population Management, and the State Controller's Office have all called for improved programs and services to reduce the State's high recidivism rates. The California Correctional Peace Officers Association, in its report, *Meeting the Challenge of Affordable Prisons*, joined that chorus:

> *California has one of the nation's worst records when it comes to parolees being returned to prison for new offenses. This number could be dramatically reduced -- and significant tax money could be saved -- if a better job were done helping paroled inmates return to society.... Improved reentry programs should ...be used to smooth the transition from prison by helping inmates obtain Social Security cards and drivers' licenses, and by identifying prospective employers, housing and vocational training opportunities.*[107]

Summary

Officials from CDC have been so preoccupied with burgeoning prison populations that the prison system has not adequately implemented efforts that could decrease that population growth by reducing ex-cons from committing additional crimes once released. With documented

treatment tools available, a proven track record with a state prison, and solidifying political will the time is right to complete the job of protecting public safety by keeping criminals who have served prison terms from committing new crimes against the community.

Recommendation 3: The Governor and the Legislature should enact legislation providing prison inmates and parolees with the programs and services, such as drug treatment and cognitive skills programs, that are known to reduce recidivism in a cost-effective manner.

- **Sentenced criminals should receive assessments, treatment and aftercare.** The state courts should order assessments to be conducted to determine what kinds of treatment and educational opportunities are likely to be effective with individual felons. The assessments should be used by the Department of Corrections and county correctional officials when making placement decisions.

- **Work programs should be expanded.** The State should expand work programs to involve all eligible inmates, and in particular those programs that increase prison self-sufficiency and give inmates the experience needed to increase their employability upon release.

- **The prison-based drug treatment should be greatly expanded.** Certain high-level offenders should be targeted for therapeutic community drug treatment in prison and aftercare programs following their release. Cognitive skills programs should be established for low-level and medium-level offenders. Because the greatest limiting factor will be the availability of trained staff, the State should fund staff training programs.

- **The State should create reintegration centers.** While CDC has specialized reception centers that transition inmates into prison, it has no similar facilities to prepare inmates for successful reintegration into society. The State could convert existing facilities, or contract for additional facilities that provide for up to six months of intensive pre-release preparation. Similarly, the State should expand the existing work furlough program.

- **The State should expand parolee assistance programs.** CDC recently demonstrated that job placement, counseling and other assistance for parolees can significantly reduce the number who violate their parole and return to prison. These programs are almost immediately cost-effective and should be expanded.

- **The State should develop a separate program for parolee failures.** The State should provide separate facilities with specialized programs for parolees who have shown they are least likely to respond to assistance and most likely to re-offend.

- **All programs should be rigorously and independently evaluated.** Innovation will be needed to implement the best methods for reducing recidivism. Even programs modeled after proven successes can fail. To establish public confidence and ensure cost-effectiveness, all educational, vocational and drug treatment programs should be independently evaluated.

- **The State should re-evaluate the organizational structure of parole supervision.** Through the master planning process, the State should explore the potential for providing parole services outside of CDC. Among the options would be contracting parole services to county probation departments or to private organizations to provide a full array of services.

- **The State should establish a zero tolerance policy of drugs in prison.** Prisoners and prison officials candidly concede that the prison drug trade is flourishing. While some efforts are being made to curtail drug use in prison, the State and counties should escalate this effort, including the use of surprise drug tests.

Performance-Based Expansion

- ***Under the current planning process, even if the Legislature were to agree to authorize and fund CDC's entire proposal, the State's prisons would become increasingly crowded.***

- ***The Department of Corrections estimates that in mid-2000 the State will run out of places for additional inmates in existing facilities. Even if the Legislature were to agree immediately to build a traditional prison, CDC maintains that it could not design and construct a new prison by that date.***

Facility Planning

Finding 4: The State lacks an adequate process for assessing the needs and options for housing, training and treating felons sentenced to state prison.

During the prison construction boom, the California Department of Corrections developed a process for designing and constructing new facilities that leveraged the efficiencies of the private sector to construct large public facilities while providing for legislative oversight. Unfortunately, as the political consensus for additional prisons has eroded, the experienced team that developed and refined this process has been idled and is being dismantled.

CDC has another process that comes before design and construction -- a facility planning process used to develop proposals for new prisons. Briefly, the department forecasts the future prison population and proposes to build what it believes to be the politically acceptable number of high-security prisons.

The process has a number of shortcomings that at the very least has contributed to the inability of divergent interests to agree on what kind of prisons should be built when. The current process does not allow for an open discussion of the major assumptions underlying the need for new prisons, or the opportunities for the State to chart a different course. Similarly, the process does not allow for an open discussion or analysis of the alternatives for housing prisoners. And perhaps most importantly, the process never results in a plan for housing all of the inmates that are expected to reach state prison -- so even if disagreements were resolved and the proposals were implemented, the prisons would become increasingly crowded.

The Current System

The California Department of Corrections periodically develops a five-year facility plan that shapes the department's legislative proposals for constructing new facilities.

CDC's facility plan begins with the department's inmate population projections. The department estimates population needs twice a year -- in the spring and the fall. The estimates are based on certain assumptions -- but primarily that the immediate future will closely resemble the immediate past. A computer model then estimates the number of new felons that could be expected to be sentenced to prison, when they will be released on parole -- and for a majority of the parolees -- when they will be returned to prison and released again.[108]

The department believes that its population projections are as accurate as possible. Understandably, the forecasts almost always under-project or over-project the incoming population. Also as can be expected, the projections are more accurate in the near-term than at the end of the five-year projection horizon.

In the 1995-96 time frame, the projections tended to overestimate the effects of Three-Strikes sentencing, and as a result, overestimate the inmate population. The department attributes this to its assumption that judges would adhere strictly to the law. Because judges found room to disregard some previous felonies in sentencing repeat offenders, CDC believes that not all of those who qualified for the longer sentences under the law received them.

More recently, in 1997 the department underestimated the number of parolees who would violate the terms of their release and return to prison -- further demonstrating the difficulty of predicting the future.[109]

Because of the biannual adjustments, the short-term inaccuracies are more important to day-to-day operations of the prisons than the longer-term task of planning and constructing new facilities. And because the opening of new prisons routinely lags behind the increasing inmate population, the department is continually planning for new facilities.

Another important element of the population projections is the estimate concerning the kind of inmates that can be expected. All state prison systems classify inmates in order to place them in appropriate housing. Inmates who are dangerous or likely to attempt escape are placed in the most secure cells; inmates who are not dangerous can be housed in less-restrictive and less-costly facilities, such as dormitories.

The classification system used in California was established in 1986 and places inmates in one of four categories -- Level I through Level IV, with Level IV the most restrictive.

The department's classification system employs more than 20 variables, including gang affiliation and behavior during previous incarcerations. The length of sentence, however, dominates the score, and as a result, most inmates with sentences exceeding 10 years are classified as levels III and IV and so are confined initially to cells. Because the "length of sentence" variable is heavily weighted in the calculation, inmates receiving long sentences as a result of the Three Strikes Law or other sentencing enhancements are more likely to be classified at Level III and Level IV than in the past. The result is an even higher demand for the most expensive, high-security housing.

As the table below shows, the construction costs for facilities varies considerably depending on the facility's level of security. The figures in the chart are based on the construction costs of the recently completed Corcoran II prison. The figures are based on the "high-occupancy" use of the facility. If it were to hold the population originally intended for that prison design, the capital costs per inmate would double.

California's Inmate Classification System

Classification	Type of Security	Construction costs per inmate
Level I	Camps and dormitories with low security level	$35,160
Level II	Open dormitories with secure perimeter, armed coverage possible	$51,302
Level III	Secure perimeter, armed coverage, cells adjacent to exterior walls	$54,478
Level IV	Secure perimeter, internal and external armed coverage, cells not adjacent to exterior walls.	$63,479

Source: Department of Finance

The table below shows CDC's anticipated growth in male felons, which make up more than 90 percent of the prison population, broken down by security level.[110]

Projected Increase in Male Felon Prison Population

	Reception	Level I	Level II	Level III	Level IV
Dec. 31, 1997	19,390	34,294	29,060	35,875	21,885
June 30, 2003	25,350	46,746	39,480	50,713	31,197
Numerical change	5,960	12,452	10,420	14,838	9,312
Percent change	30.7	36.3	35.8	41.3	42.5

In recent years, CDC's classification system has come under increasing criticism. The concern is that the classification system "over-classifies" inmates -- committing the State to build more expensive high-security facilities where inmates are less likely to receive work or educational opportunities.

A Department of Finance analysis of the classification system in 1996 found the CDC may be giving too much weight to the length of an inmate's sentence and not enough weight to the inmate's behavior during previous prison terms and to the inmate's age. The Department of Finance also found that Level III inmates were not involved in more incidents in prison than Level II inmates. And Department of Finance investigators found that inmates older than 35 -- no matter what their classification -- were involved in fewer incidents than Level II inmates.[111]

CDC maintains that length of sentence is an important predictor of an inmate's propensity toward violence and escape. But the Department of Finance argued that research does not support that conclusion.

Also in 1996, the California Correctional Peace Officers recommended that the State alter its classification system. In its assessment of the prison housing crisis, the union argued that many inmates are placed in medium security Level III prisons because they are judged to be escape risks, not because they are violent. The union pointed out that a secure perimeter -- such as the lethal electrified fences around medium and maximum security prisons -- could be used to surround dormitory-based facilities.

CDC responded by hiring two consultants -- one to analyze the system and one to interpret the analysis. The results, described in more detail on the following page, did not resolve the debate. At a minimum, the analysis shows that the department needs to begin collecting information that will allow for the classification system to be refined in the future with greater confidence that it will improve and not disrupt prison operations.

The controversy underscores the importance of the basic assumptions in CDC's facility planning process and the need to reach agreement on the assumptions before agreement can be expected on the proposal the process produces.

Historically, CDC's Planning and Construction Division uses the population projections, broken down by security levels, to estimate the number of new prisons that will be needed.

In preparing the plan, department officials say they internally consider options for housing inmates, including the potential for expanding re-entry work furlough centers. The only alternative proposed by the department was maximum security cells.

Refining Classification

A fundamental assumptions in planning, construction and operation of CDC facilities is the classification system. As one CDC official put it: "classification is how we do business."

But the more people outside of CDC look at the classification system, the more concern there is that some inmates may be over-classified and placed in higher security and more costly facilities than is warranted. As a result in 1997 the department hired two consultants to help it review the system.

The analysis concluded: "The current classification system seems to be working roughly as its designers hoped... At the same time, there is clearly room for improvement."

CDC reads the report as a validation of the system. Others, including the Legislative Analyst, have focused on the "clearly room for improvement." The LAO, for instance, noted that even small changes to the classification system can save substantial capital costs. It also noted that the perimeters of CDC's new prisons are so secure, escape risks can be housed in dormitories rather than cells without significantly reducing public safety.

One concern is the initial classification of inmates. The consultant concluded that the behavior of the inmate during previous incarcerations is important in judging behavior for a new term. But CDC puts greater weight on the length of the new prison term -- asserting that inmates with a long time to serve will be abusive to staff and prone to escape, even if they were well-behaved during previous incarcerations. One indicator that the initial classification is too restrictive is that in most cases inmate classifications scores go down over time, as their actual behavior is given more credence.

The consultant also discovered that statistically there was little difference in the behavior between inmates who are "high IIs" and those who are "low IIIs." There is, however, a significant difference in the cost of building and operating a Level II and a Level III facility. In the 1997-98 budget, CDC was directed to analyze the behavior of those Level III inmates who nearly qualified as Level II inmates to determine if they could safely be housed in lower-security and lower-cost facilities.

But the consultant went further still -- suggesting a more accurate system could be built by reducing the emphasis on length of sentence: "One could imagine building these notions into single system. Inmates with no prior CDC experience would be scored according to three variables: age, offense and prior record. For inmates CDC has seen before the classification score based on age offense and prior record would be subject to modification through certain profiles of inmates" such as previous escape attempts. "Finally, as early as feasible in an inmate's incarceration, re-evaluation would be undertaken and based primarily or even solely on behavior in the months immediately before the new score would be computed."

Similarly, the facility plan also does not explicitly discuss the role or potential role of the community correctional facilities that are under contract with the department. Those facilities, even though they house low- and medium-security inmates, are monitored by the Parole and Community Services Division. They are not planned by the Design and Construction Division and not managed by the Institutions Division.

Recent facility plans reach one conclusion and make one recommendation: The conclusion is how many prisons are needed to meet the entire anticipated inmate population. The recommendation is how many prisons should be built. The most recently completed plan, dated June 1996, anticipates that 17 new prisons will be needed by 2001. The plan, however, only proposes to build six new prisons. While conceivably the remainder of the prisons could be authorized in future years, the plan itself makes no provision for accommodating the needs even five years out.

The proposal generated by the plan is then included in the Governor's budget. In recent years, since the public rejected a general obligation prison bond measure in 1990, construction has been financed with revenue bonds. No matter which financing mechanism is used, legislative approval is needed before additional prisons can be built.

The facility plan does describe the department's refined process for actually designing and constructing prisons once they are authorized. The process has been lauded by some reviewers and even critical reviewers have suggested modest improvements. Among its attributes: CDC has emphasized standardized designs to minimize design costs and reduce errors. At the same time, it has institutionalized learning by constantly evaluating facilities that are in operation and refining the standardized design. The department also has emphasized life-cycle costs to make sure that a dime saved in construction does not cost the State a dollar in additional operational costs or avoidable maintenance.

Political Stalemate

The current planning process produces a proposal that is presented in whole or in part in the Governor's budget. In recent years, however, the proposals have resulted in political stalemate:[112]

- For the 1995-96 fiscal year, the Governor's budget proposed $2 billion in lease-revenue bonds to build six new prisons. The Legislature did not authorize the bonds or the prisons.

- For the 1996-97 fiscal year, the Governor's budget proposed a Public Safety Bond Act for the 1996 ballot that would seek voter approval for $1.9 billion in general obligation bonds. The bonds would be to build six of 13 new prisons that CDC then said would be needed by 2001.

- For the 1997-198 fiscal year, the Governor's budget proposed using $265 million in federal grants to design three new prisons, and $249 million in lease-revenue bonds to finance construction of one of the three, in anticipation of additional federal funds to cover much of the construction costs. Environmental reviews also would have begun for three additional prisons.

The budget proposals have run into legislative opposition by some lawmakers who believe that budget for the Department of Corrections is expanding too quickly, that more felons should be held in county facilities and that intermediate sanctions between probation and prison should be expanded.

In 1994, the Legislature passed and the Governor signed the Community-Based Punishment Act, which solicited from counties proposals to house and supervise more inmates at the county levels. While many of the community plans outlined the potential for intermediate sanctions, most counties also proposed additional jail construction. In addition, some local officials, leery of two decades of budget crunching, were suspicious about plans to shift responsibility from state prisons to county correctional agencies without assurance of the needed revenues.

Just as no new prisons have been funded, none of the community punishment plans have received state funding.

In addition, the Legislature has proactively entered the facility planning process. During the prison construction boom legislation was passed directing CDC to contract with local governments and private companies willing to build and operate low-security facilities, primarily to house parole violators. More recently, the Legislature has considered and rejected proposals to expand the use of privatized prisons.

Meanwhile, the last new prison authorized by the Legislature, Corcoran II, opened in the autumn of 1997.

Inadequate Planning

There are two indicators that the State's process of planning for additional correctional facilities is inadequate. The first is that even if the proposals were enacted completely, the system would get increasingly crowded. And secondly, the process always produces the same answer -- more state-run maximum security prisons.

Progressively Overcrowded

With no additional facilities authorized, the State's 33 prisons are expected to become increasingly crowded. With no politically acceptable solution in sight, that trend takes on an urgency. But it also is important to recognize that even when the wave of new prison construction was

cresting -- and political support was united -- prisons were becoming more crowded.

Under the current planning process, even if the Legislature were to agree to authorize and fund CDC's entire proposal, the State's prisons would become increasingly crowded.

Between 1985 and 1995 the State opened 18 new prisons. During that same time, the prison system went from 150 percent of design capacity to 180 percent of design capacity. The department in recent years has acknowledged that the system can function well far above the design capacity. Nevertheless, that standard provides a benchmark for the State's ability to accommodate the inmate population -- given changes in sentencing laws and parole revocations procedures, and the ineffectiveness of the correctional programs as currently implemented to reduce recidivism.

As discussed in Finding 3, the department believes the purpose of prisons is incapacitation, not rehabilitation. From a facility standpoint, that perspective will require ever increasing prison facilities -- a fact not fully reconciled by the department's planning process or political leaders.

More Maximum Security

A final indicator that the current planning process is inadequate is that despite a diversity of inmates and a changing inmate population, the facility plan has for the most part only produced a single housing solution -- one based on high-security prisons with low-security support facilities.

The department's view is that it is only planning for the anticipated demand and the department maintains that few inmates are in facilities higher than their classifications. But they also feel compelled to build higher security facilities -- in part because they know that the demand will always exceed supply. In a crisis, it is more acceptable to put a low-risk inmate in a medium- or high-security prison than it is to put a high security inmate in a low-security prison. Because the department proposes to meet only a portion of the housing needs, its feels compelled to build only high-security facilities.

The planners also assert that many of the factors that outsiders believe should be considered for expansion in the planning process -- such as intermediate sanctions, expanding halfway houses, or expanding programs known to reduce the demand for prison space -- are fixed in policy or statute. Those issues are simply not on the table. One division head told the Commission's advisory committee that in a "brainstorming" session on the facility crisis, it was suggested that the department propose a greater use of alternative sanctions. The suggestion was summarily dismissed as beyond the realm of possible solutions.

Where the Process Falls Short

The three main shortcomings of the existing planning process can be traced to a number of places where the planning process excludes the public examination of issues and options that could produce a more cost-effective plan that might garner more political support:

- ***Policy makers never confront the entire need.*** As stated above, one indicator that the process needs improvement is that prisons are getting more crowded. Planners maintain that the department's ultimate proposal cannot be dictated by meeting all of the department's needs, but rather must consider all of the other capital outlay projects supported by the administration. Putting the need for prisons in context of other public needs is important.

  But it also is important for the State to understand and plan for anticipated local jail and state prison populations. Those needs cannot be met unless policy makers are required to reconcile increased sentencing legislation with the infrastructure needed to implement them. Without a realistic proposal, the actual cost of the State's correctional policies are pushed into future budgets, and policy makers are not required to consider the cost-effectiveness of existing policies. Meanwhile, the department is in the awkward position of habitually "under planning."

- ***Housing alternatives are not explored openly.*** CDC's plans do not contain any discussion of alternatives, and as a result the alternatives are never openly or collaboratively considered. The master plan assumes that community correctional facilities will continue to exist, but does not consider or propose their expansion. Work furlough or re-entry programs for soon-to-be-released felons could be expanded -- but have not been and are not discussed as a way of reducing the in-prison population.

  Similarly, the department's Preventing Parole Failure Program has been shown to more than pay for itself -- just in terms of the reduced demand for housing parole failures. But expanding that program is not considered as part of the facility plan as a way to meet growing inmate populations.

- ***Assumptions are not discussed openly.*** The facilities plans are built on a number of important assumptions. As discussed in Finding 1, CDC assumes that incarceration rates will continue to increase. While this assumption is rooted in the department's computer program, which bases future trends on historic trends, that assumption is the bedrock for a multi-billion prison construction proposal.

The classification system also shapes significantly the kinds of facilities the department will need, but refining the classification system is detached from facility planning and is only raised as an issue by policy analysts outside of the department. The California Correctional Peace Officers Association, the Legislative Analyst's Office and the Department of Finance have all suggested that a reassessment of these assumptions could lead to more inmates being housed in lower security and less costly facilities.

- ***The plan does not consider alternatives for implementation***. CDC has a number of contracts with for-profit, non-profit and governmental organizations to house inmates and provide services. This aspect is discussed in greater detail in Finding 5. But it is important to note that the facility plan does not consider the State's options for operating any additional facilities that the department will construct.

  The plan only relies on one model for procuring and operating prison space. While there have been contracts with public agencies and private companies to provide some beds, those contracts were never considered part of the department's plans to house inmates, based on analysis of the best alternatives, or even implemented by the department's Institutions Division. Instead, they were agreed to without analysis and implemented by the Parole and Community Services Division, which had little expertise in large contracts or with operating institutions.

The department's view of its facility planning process is clearly more limited than would be commonly expected. Department officials believe the legislative forum is the appropriate venue for debating assumptions and alternatives. CDC officials maintain that their planning process is not intended to publicly explore options or to result in a proposal to change programs or the State's responsibilities for housing inmates. That narrow focus is similar to the narrow focus in CDC's lauded design and construction process.

But another attribute of the design and construction process is the institutionalized learning that requires constant re-evaluation of the product and an exploration of alternatives, with progress measured on verifiable outcomes. The design and construction process also has been successful for using life-cycle analysis, which views expenditures as investments and seeks to minimize costs and maximize benefits.

A facility planning process that was similarly based on an evaluation of the use of existing facilities and an exploration of the alternatives could be expected to produce different results. A facility planning process that accounted for the life-cycle costs of recycling inmates could also be expected to produce different results. And if different results did not build support for the ultimate proposal, a more open planning process might.

Summary

The existing facility planning process does not give the State the best opportunity to examine what is needed in the way of new prisons and how that need can be met. With no process for collaboratively exploring the assumptions underlying the demand for additional prisons, and for exploring the options for meeting those prisons, the department proposals are placed in the often adversarial legislative process. An open process conducted by a panel of correctional officials could be expected to deliver the State a better plan for housing more inmates.

Recommendation 4: The Governor and the Legislature should require the modified Board of Corrections to develop plans for additional correctional facilities.

- **A modified Board of Corrections should be the planning body.** The responsibility should be placed with a panel comprised of gubernatorial and legislative appointments, one that represents a wide variety of interests. It should hold public meetings to gather information and consider alternative ways to incarcerate felons.

- **The board should develop plans for cost-effectively accommodating the entire projected state and local inmate population.** An initial step to developing a facilities plan should be a review of the classification system to ensure the State is not over classifying inmates and as a result building too many high-security prisons.

- **The facility plan should provide for competitive procurement of additional facilities.** The facility plan should whenever feasible provide for the acquisition of services -- including the construction and operation of prisons -- through competitive procedures that allow for proposals by the Department of Corrections, local government agencies, non-profit groups, for-profit companies, or partnerships among those organizations.

- **The plans should be submitted to the Governor and the Legislature for enactment and funding.**

- **The board should help to identify and resolve issues associated with siting correctional facilities.** Among the issues the panel should consider are the impacts on school systems and local infrastructure, as well as ways the staff and inmates of facilities can become greater assets to host communities.

Private Options

Finding 5: The State does not have an adequate process for determining when to contract for correctional services, or for evaluating or compensating service providers based on performance.

Privatization is not by itself the solution to the State's growing prison-related costs or the ineffectiveness of its correctional policies. Private enterprises, however, do have the capacity to provide some services better and cheaper than public agencies alone.

The California Department of Corrections already makes significant use of private sector expertise. The department's prison construction program, in particular, has relied heavily on both the services available in the marketplace and the benefits of competition to build 21 prisons in 13 years. The department also has contracted with other government agencies and the private sector to build and operate facilities that hold low-security inmates.

Two challenges face policy makers and program managers: The first is to ensure that the existing contracting process is efficient. The second is whether to expand the use of facilities operated by private agencies or other governmental organizations.

National reviews of contracting by public agencies show that the most successful efforts rely upon independent agencies to identify public costs, oversee competitive procedures and evaluate service providers. California, however, does little program evaluation, and as a result policy makers do not know which ones to discontinue or which ones to expand.

The Current Process

In recent years, CDC has made considerable use of the private sector to expand the state prison system. When it became clear in the early 1980s that a large number of prisons would have to be erected in a short amount of time, the Legislature shifted the construction responsibility from the Department of General Services to the Department of Corrections.

Faced with a large challenge and without an established program or experienced workforce, the Department of Corrections' Planning and Construction Division created a process for contracting out nearly all aspects of prison development -- from design through construction. It even contracted out the job of overseeing the contracts. The department's director testified:

> *Ninety-five percent of a prison project budget is contracted to the private sector. These contracts include architectural and engineer services construction and program management services, construction services and telecommunications services.*[113]

The department started by developing a partnership with a private consulting firm that was familiar with large construction projects in which numerous contractors were involved. While department officials maintain decision-making control, they rely on the consultant to research options, provide advice and execute the contracts associated with designing and building a prison.

Over time, the department developed a process in which engineers and architects are selected for a project through interviews to determine which applicant is most qualified, and then by negotiating a price for their services. (This process is only allowed under state law for securing professional services.)

Once designed, a project goes out to bid, and contracts are awarded to the lowest bidders. A typical prison will have 10 bid packages -- some of them are small, such as grading and drainage, and some of them large, such as building the housing units and guard towers. The department breaks down the job into bid packages to encourage competition. The department has maintained that if the entire project were put out for a single bid, only a few companies would have the ability to fulfill the contract, and as a result competition would be limited and the bids inflated. The bid packages, in addition to allowing small- and medium-sized companies to compete, has the additional benefit of giving local firms the opportunity to participate -- building goodwill in the host community.

This process has been reviewed by the Bureau of State Audits, by engineering and architectural experts from the University of California, and the Department of Finance. Each found room for criticism, and each

suggested ways that the process might work more efficiently. But the most critical reviews could identify only modest potential savings, and the University experts were amazed by the ability of the process to deliver high quality products for relatively low costs.[114]

The most significant potential improvement suggested was to award a contract for an entire prison project. That process, known as design-build, would make the winning bidder responsible for delivering a completed project -- from site-specific design to testing the cell door locks. The potential savings would accrue to the State by reducing the costs of change orders -- essentially exporting the risk of errors and omissions to the contractor.

But the success of the program also would hinge on a sufficient number of capable companies bidding on the project to ensure that competition drove the price down. Even with competition, design-build procedures encourage bidders to build cushion into their prices to absorb the unanticipated expenditures that currently the State only pays for when and if the costs actually are incurred.

As prisons became more full, the State also looked outside the department to other governmental agencies and the private sector to build and operate facilities for low-level offenders.

One such program was created by SB 1591, which resulted in the department contracting with seven public agencies, all of them small cities, to build and operate small prisons.

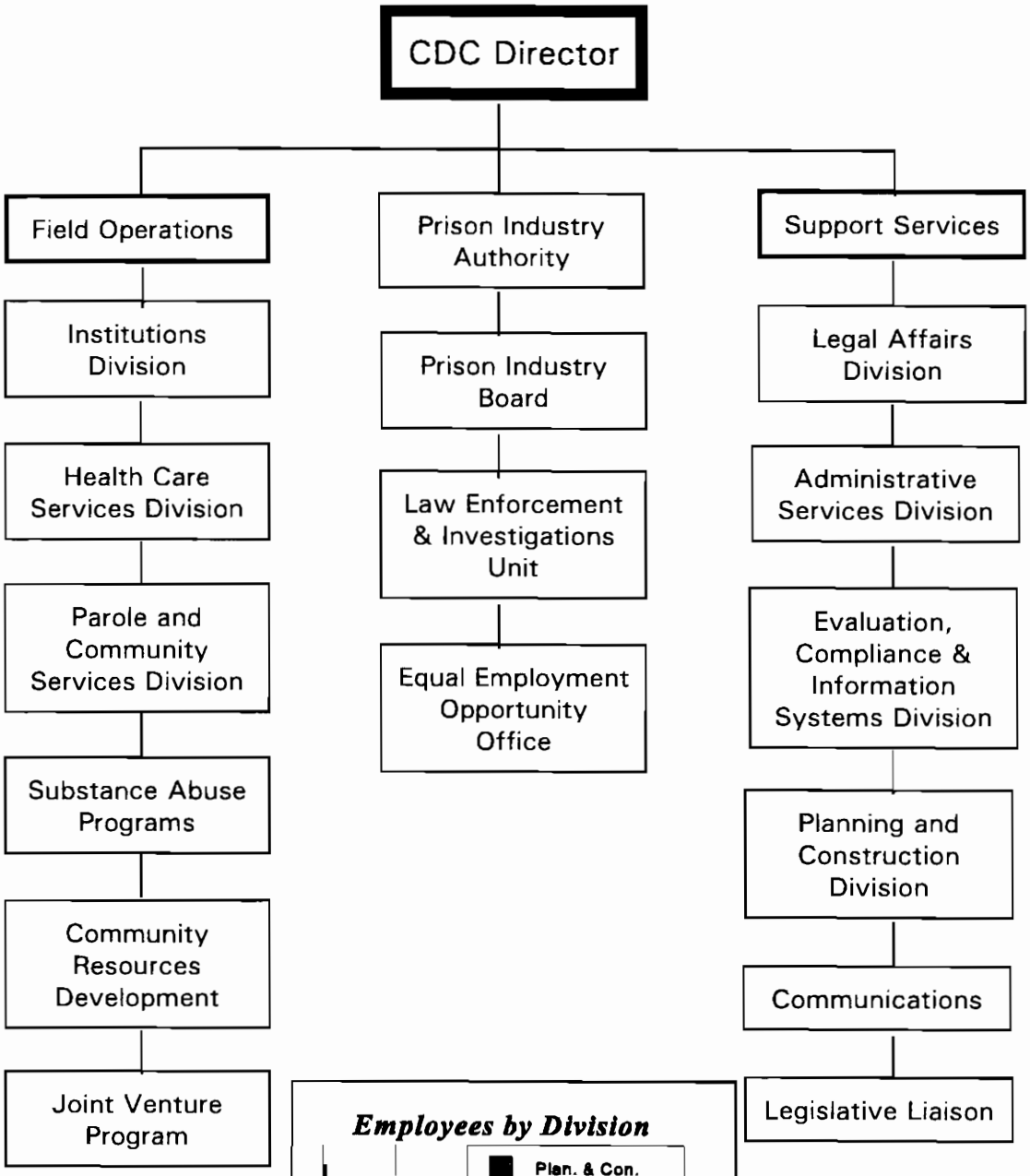
The Legislature also authorized five private low-security prisons. Both the private and public facilities were intended to hold parole violators, but as the prison population has expanded some new admittees have been sent to those facilities.

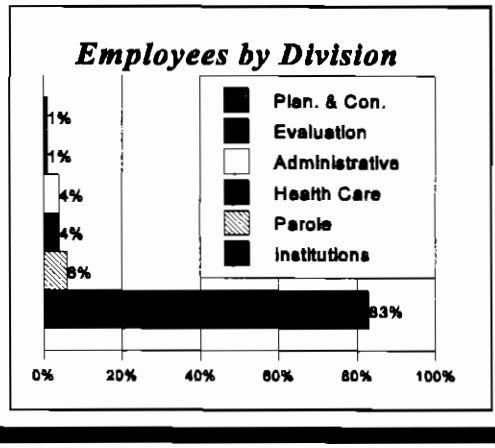
The responsibility for the contracts were placed within CDC's Division of Community and Parole Services. That division is responsible for inmates after they are released from prison but remain within the department's jurisdiction for the length of their parole.

Parole and Community Services was given responsibility for the contracts because the facilities were expected to hold parole violators. The division already had a number of small contracts with work furlough and other service providers. But contracting is not the division's core expertise, as was developed in the Planning and Construction Division, and operating prisons is not its core expertise, as is CDC's Institutions Division. Contractors, legislative oversight staff, policy analysts and academic criminologists all have identified shortcomings in the contracting procedures used by the division to acquire prisons services.

The chart on the following page displays CDC's organizational structure.

California Department of Corrections





Criticisms of Contracting Procedures

Contractors and policy analysts have identified a number of ways that the CDC's contracting procedures discourage competition and innovation, which if reformed could yield better services at lower costs.

- ***Inadequate assessment of contracting options.*** Prior to the contracting with either local governments or private companies to provide housing for low-security inmates, CDC officials said they did not conduct any analysis to determine the complete costs for the department to provide a similar service. As a result, the department did not have a basis for determining whether those acquired services were costing the State more or less than if the department built and operate those facilities itself. CDC officials could not even recount how the decision was made to contract out those facilities.[115]

- ***Inadequate evaluation of program effectiveness.*** The State does not routinely evaluate the performance of contractors whose purpose is explicitly or implicitly to help parolees successfully transition back into society. Many service providers said they have requested the department to conduct outcome oriented evaluations because they believe their services are effective at reducing crime committed by ex-convicts. Others have asked for outcome evaluations because they believed the positive, cost-effective results would justify expanding the programs as a way to reduce crime and reduce the demand for additional prison beds. In both situations, the providers said the department has refused to conduct the analysis. Similarly, the department has not added independent program evaluations, such as those required under federal regulations for federally funded service providers. As a result, policy makers and program managers have no basis for determining whether to continue, expand or discontinue those services.

- ***Fiscal disincentives to effectiveness.*** One contract, with Jobs Plus, which provides some schooling inside prisons and parole assistance outside of prisons, is actually based on performance. The nonprofit group is compensated primarily on how many inmates it helps to find and keep jobs. But most of the other contracts are based on a modified version of cost-plus; contractors are essentially given a per diem allowance, with the State routinely analyzing expenditures in an effort to lower the per diem or hold them steady against the creep of inflation. Service providers said this process creates a disincentive for efficiency, because any savings generated by the service provider are not shared between the State and the provider. It also discourages innovation in programming, service providers said, as the State is more interested in how much is spent on toilet paper than how many parole violators acquired a new job skill.

- ***Flawed competitions for contracts.*** A number of contractors complained that the request for proposals that precedes new contracts has the effect of discouraging competition. One contractor said that the requests contained technical mistakes. Another said that they favored large companies over small ones.

  The vice president of Cornell Corrections, which has seven major prison contracts in three states, testified that the RFP process was "designed to fail" by capping contracts, not giving cost of living allowances and increasing requirements:

  While the motivation may be righteous -- to put intensive pressure on contractors to provide low-cost service -- the effect of that process is to discourage competition and to focus all attention on cutting costs rather than increasing outcomes. A cap might be appropriate if it is benchmarked at some known level below what it would cost CDC to provide the same service.[116]

  Unfortunately, that cost has not been derived, and the Cornell official believes that will eventually encourage the most qualified contractors to stop bidding on California prison projects.

Moreover, service providers said the limitations prevented the contracting process from becoming what it really could be -- a cheaper and better way to provide correctional services that lowered the crime rate even after inmates were released. The Cornell official said: "The more appropriate method would be to make sure the competition is vigorous by a simple but rigorous process, and then require performance and reward with incentives."

The department has experienced similar frustrations with its contracts with public agencies. Academic reviewers concluded the contracting process was "apparently flawed":

> *The contracts were "co-written" based on negotiations done "in good faith" with the jurisdictions involved. An "estimated cost" of operations was arrived at with the understanding that these costs would be audited to determine "actual costs."... They did not use a straight per diem because they needed some way to manage the risk... The State tried to protect itself with the audit mechanism, which would determine actual costs.*[117]

As could expect, the auditors found disallowable costs, but the public agencies were unwilling to pay back revenue for services rendered. Now CDC officials say that the contracts should all be based on a per diem basis. The table on the next page displays the CDC's private contracts.

Private Correctional Facilities in California

Facility	Company	Location	Contracting Agency	Size	Security level
Mesa Verde Community Correctional Facility	Alternative Programs, Inc.	Bakersfield	Department of Corrections	340	Minimum
Leo Chesney Community Correctional Facility	Cornell Corrections	Live Oak	Department of Corrections	270	Minimum
Baker Community Correctional Facility	Cornell Corrections	Baker	Department of Corrections	288	Minimum
Montebello City Jail	Correctional Systems, Inc	Montebello	City of Montabello	24	Pre-arraign.
Baldwin Park City Jail	Correctional Systems, Inc	Baldwin Park	City of Baldwin Park	20	Pre-arraign.
Eagle Mountain Community Correctional Facility	Management and Training Corp.	Desert Center	Department of Corrections	424	Minimum
Victor Valley Community Correctional Facility	Maranatha Production Company	Adelanto	Department of Corrections	500	Minimum/ Medium
McFarland Community Correctional Facility	Wackenhut Corrections Corporation	McFarland	Department of Corrections	224	Minimum
Seal Beach Detention Facility	Correctional Systems Inc.	Seal Beach	City of Seal Beach	38	Pre-arraign.
San Diego City Jail	Wackenhut Corrections Corporation	San Diego	City of San Diego	200	Minimum
Desert View Community Correctional Facility	Wackenhut Corrections Corporation	Adelanto	Department of Corrections	550	Minimum (March 98)
Central Valley Community Correctional Facility	Wackenhut Corrections Corporation	McFarland	Department of Corrections	550	Minimum (March 98)
Golden State Community Correctional Facility	Wackenhut Corrections Corporation	McFarland	Department of Corrections	550	Minimum (March 98)

Lessons Learned Elsewhere

Government's collective experience in contracting out is growing, and with it the benefit of experience that can guide policy makers and program managers regardless of the service being sought. These reviews show that there are two important issues that can make or break the cost effectiveness of contracting: How the contracting is done and whether the process is competitive.

How Matters

As in most areas of public administration, policy analysts have concluded that one of the not-so-secret elements of success is effective management. One analyst has concluded:

"Without effective public management the promises of privatization can never be fulfilled."[118]

The U.S. General Accounting Office surveyed six successful contracting programs throughout the nation and determined that they had a number of elements in common. Among them, each had an organizational structure that provided the expertise and independence to gather cost figures, conduct competitive procurement procedures and execute contracts. The independence of that agency was particularly important in places where government agencies are invited to participate in the competition to provide services. The box to the right lists the major lessons learned.[119]

Lessons Identified by the GAO

The U.S. General Accounting Office reviewed privatization efforts across the nation and identified five key elements of successful program.

1. **Need a political champion.** The GAO found that political leadership was essential to establishing and sustaining effective contracting programs.

2. **Need Organizational and Analytical Structure.** Some agencies have established governmentwide privatization commissions that have the expertise to do the cost analysis and the contracting.

3. **Funding may need to be reduced.** Some governments cut funds or staffing to encourage agencies to heartily pursue contracting.

4. **Need reliable and complete costs.** To assess the performance of activities targeted for privatization, to make informed contracting decisions and to justify the contracting, complete and reliable cost figures are needed.

5. **Need strategies for involving workforce.** In some instances this mean plans for retraining or reassigning workers. In many instances it involves allowing employee groups to compete in the bid process.

Similarly, another expert said a chief lesson learned so far from privatization is that *how* the policy is implemented -- rather than some inherent efficiency with private suppliers -- will determine whether the public gets a better deal by turning to the marketplace for meet public needs. In order to contract effectively, government needs to know what it wants to buy and government needs to know what they have bought: "The two ends

of the contracting-out chain -- defining the service and measuring the results -- are the critical links."[120]

To determine what government wants to buy, it needs to know what public agencies are providing and the true costs of those services. A number of analysts indicate that a full and complete auditing of public costs is an essential ingredient that is often overlooked by agencies. Part of the problem is that it is difficult to determine the complete costs, as most public programs rely on the assistance of a number of departments to procure supplies and personnel services, to acquire and maintain facilities and equipment.

Determining what government has bought requires detailed evaluations to ensure that service providers did everything they were required to by the contract, as well as specified in the contract. The evaluations have to be prompt so immediate action can be taken to correct deficiencies.

Many of these lessons are immediately transferable to the procurement of correctional services. One academic expert on the subject testified:

> *It seems self-evident that the key to becoming a smart buyer in the field of corrections or elsewhere is in the formulation of sophisticated requests for proposals and equally sophisticated methods for evaluating submissions by competing firms. ... The hard reality is that there is no language one can inject into contracts or techniques one can incorporate into contract monitoring strategies that can compensate for poorly crafted procurement documents or weak evaluations of submissions.*[121]

Competition is the Goal

Experience also shows that it is less important who performs the service -- private for-profit, private nonprofit or governmental agency. It is more important that contracts are awarded through competitive procedures, because it is competition that drives efficiency and innovation. As one analyst put it: "Public versus private matters, but competitive versus noncompetitive usually matters more."[122]

Most important, concludes yet another analyst, "privatization does not so much reduce government as transform it -- it leads to a sharing instead of a division of responsibilities."[123]

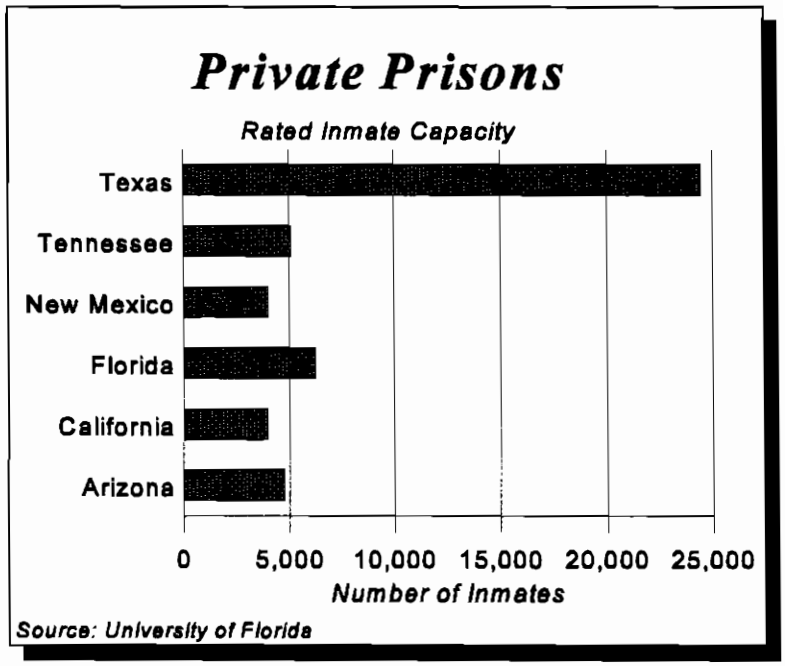
Competition also has been known to encourage efficiencies among public programs -- even if they are not directly subjected to competitive pressures. One expert testified:

> *Bits and pieces of evidence in the research literature strongly suggest that the long-term and most significant cost savings associated with privatization may come more from the improved performance of public agencies in those jurisdictions which have*

privatized than from the efforts of private corrections management firms. My judgment is that the volume and quality of evidence of this type is likely to grow rather swiftly. This is as I believe it should be... The injection via privatization of a bit of competition between alternative providers of similar services might well produce a healthy modicum of encouragement for public employees to become more efficient and more effective.[124]

The Private Prison Experience

Privatization of public services is almost always controversial -- because of the potential to displace civil servants (or in California, limit the growth of civil servants), because private companies often provide savings to government through lower wages and benefits, because of suspicions over the fairness of contracting provisions and concerns that private companies will try to cheat the government.



Following the lead of Texas, a number of states including California have added several thousand private prison beds.

Private correctional efforts have the added burdens of convincing policy makers that it is ethically appropriate for private companies to operate prisons and that private companies are equipped to quell prison riots and prevent escapes.

In some cases, the debates are louder than the issues are relevant. Clearly, the mistreatment of inmates at the hands of guards is unacceptable whether that person is on a public payroll or a private one. And just because inmates in a private jail have been abused does not mean the State should not rule out private prisons, any more than abuses of inmates in public prisons have ruled out incarceration overall. Despite these hurdles the private prison industry is growing rapidly through the western world and particularly in the United States. As the chart above shows, California is one of several states venturing into the marketplace.

In little more than a decade, private prisons have evolved from a topic of theoretical debate to an industry with estimated annual revenues of $500 million. In 1987, private firms had 3,122 inmates in their charge. In 1996, private prisons in America held nearly 78,000 inmates. More than half of the states have some kind of private facility under contract.[125]

The growth was spurred by several factors -- rapidly increasing prison populations, tight public budgets and a growing willingness on the part of policy makers to contract with private firms to perform work traditionally delegated only to civil servants. While private prisons have emerged quickly, they still house only 2.6 percent of the nation's inmate population.

California also has a hurdle that some other states do not have -- a constitutional requirement that work performed by civil servants must continue to be performed by civil servants. While recent court decisions have affirmed the State's inability to replace civil servants by contracting out for services, a legal review of the law and recent court decisions has advised the Legislature that the provision would not block an expansion of the prison system using private companies. Indeed, as discussed, the State in recent years has done just that.[126]

Particular to Corrections

As in most policy debates, the public debate over privatized prisons is muddled by dueling studies: Studies that document savings. Studies that document no savings. Studies that review the studies and tally the score. The study duel over private prisons reached a high point in 1996 when the U.S. General Accounting Office released a study that concluded the studies had not proven one way or the other that privatized prisons were cheaper than public prisons. The GAO study was chastised by some and hailed by others.[127]

For policy makers, however, the threshold is not whether privatized prisons are always cheaper, usually cheaper or seldom cheaper. At this point, it is clear that privatized prisons can save government money. The question is whether privatized prisons, implemented in a way that incorporates the lessons learned elsewhere, will be cheaper in California. The question can only be answered with confidence by an independent agency assigned to calculate public costs and conduct requests for proposals.

One study stands out as showing through a rigorous methodology that

A Tale of Three Prisons

In 1996, two Louisiana State University professors compared two prisons operated by private companies under contract with the State of Louisiana with one operated by the Louisiana Department of Public Safety and Corrections.

The study concluded that the two private prisons were safer and more cost-effective on most measures than the state-operated prison.

The state prison experienced significantly more violence among inmates, significantly more shots fired by guards and more assaults by inmates on staff that resulted in serious injury.

The State prison, however, reported fewer aggravated sexual assaults and had no escapes. The private prisons each had escapes, but researchers found all three prisons to be "very safe" in regard to guarding public safety.

The private prisons cost between 11.69 and 13.8 percent less to operate than the public prison. The authors attributed the cost savings to "dynamic competition" among the three prisons and recommended that the state not completely privatize its prison system or contract with any single vendor because to do so would eliminate that competition.

there is enough evidence supporting the efficiencies of private prisons to warrant California moving to the next step of actually counting public costs and requesting proposals. The case study came out of Louisiana, where lawmakers authorized three identical prisons to be built at the same time -- one public and two private. The study, discussed in the box on the previuos page, showed that private prisons were a serious option for meeting correctional needs, and at the vary least in providing competition for the existing public provider.[128]

Two states have had significant experience with private prisons, and their approaches are potential models for California:

- ***Texas.*** The Texas Legislature started by authorizing four 500-bed private facilities -- requiring that they be of equal or better quality than public facilities and that they save the state at least 10 percent off what it would cost the state to operate comparable prisons. The Texas Sunset Advisory Commission concluded the private prisons had exceeded the 10 percent goal, had paid $400,000 in taxes and had been accredited by the American Correctional Association. The analysis concluded the private prisons, however, needed to improve their educational programs. By 1996, 39 private facilities were operating in Texas under contracts with local, state and federal agencies.

- ***Florida.*** The Florida Legislature in the 1980s gave the Florida Department of Corrections authority to contract prison management with private firms. After lawmakers became convinced that the department would not contract out its core mission, the Legislature created the Florida Correctional Privatization Commission. The new agency -- five part-time and uncompensated appointees with a small staff -- was charged with assessing proposals and awarding contracts to private companies to design, build and operate prisons. The Legislature originally authorized the Commission to contract for two prisons, provided the facilities could be operated at least 7 percent below the costs of a comparable state-run prison. The Legislature assigned the state's auditor general the task of making the comparison, given the complexity of uncovering the out-of-sight support costs associated with any large governmental project. The auditor general estimated the savings from the projects to be nearly 10 percent. Florida now has more than 10,000 prisoners in 10 privately operated prisons.

Both states relied upon agencies independent of the state prison system to calculate costs. This is important because both proponents and opponents of private prisons argue that hidden costs can tilt the economics in their favor.

Public prisons have costs hidden in the budgets of other departments that provide a myriad of internal services, from contract negotiations to procurement. But private contractors often do not provide all of the

services that public prisons do, such as medical care. One pair of analysts point out that private prisons incur the costs of "dual administrations," the private company managers and the government monitors. The experience is that these numbers can be counted, but the task needs to be left to accountants independent of the prison system.

Once costs are accounted for, the State needs to ensure that it purchases a quality product. The president of Wackenhut Corrections, the nation's second largest private prison company, said California should rely on seven factors to help ensure a quality private prison program: The terms of the contract, a facility based monitor, annual government audits, in-house corporate auditing, accreditation systems, competition among private operators and media scrutiny. The president said some states tie performance to payment based on pre-established outcome indicators.

CDC's Recommendations

CDC officials are reluctant to embrace medium-security private prisons. But the department's acting director said if any private prisons contracts were signed, they should be done with care. Specifically:

- Contracts should require State certified training qualifications for all custody staff.
- Contracts should only be signed with corporations that have proven track records of safe operations.
- The State should maintain jurisdiction over calculation of work credits, inmate discipline procedures and inmate classification procedures.

Similarly, a competitive process for providing prison services for California could link compensation with performance. Until now, the economic debate over private prisons has been whether the daily or annual operational costs could be reduced by 5 percent or 10 percent. With California's growing correctional budget, marginal savings can quickly add up to millions of dollars. But if the innovation and efficiency provided through competitive procedures could be used to improve the quality of programs in prisons and reduce the crimes committed by inmates when they are released, then the potential economic benefits are even greater.

Summary

Over the last decade, California has gradually and haphazardly expanded its use of contracts with private and public agencies to procure needed prison beds. Existing service providers and outside reviewers believe that contracting process could be significantly improved to use competition rather than oversight to hold down prices and to provide incentives to contractors to improve their services. Moreover, if the State is to truly capture the benefits of competitively derived correctional services, the State will need to develop the independent expertise to evaluate costs, request proposals and award and monitor contracts.

Recommendation 5: The Governor and the Legislature should enact legislation establishing a vehicle within the Youth and Adult Correctional Agency for soliciting proposals, negotiating contracts and evaluating the performance of contractors.

- **The Board of Corrections should be the procurement agent.** The entity should review and renegotiate existing contracts to require evaluations, establish minimum standards and link compensation to performance. Outcome measures should include as equal priorities the safety of the institution and the ability of released inmates to successfully reintegrate into society. The evaluations and outcome measures should be shared with the master planning entity and the Legislature to help inform policy debates about how to best increase public safety.

The Immediate Need

Finding 6: The State faces an immediate prison overcrowding crisis that cannot be resolved through the existing state process for developing and operating prisons.

In previous Findings and Recommendations, a path has been charted that if implemented correctly could be expected to begin reducing the demand for new prisons shortly after the turn of the century. Over time that demand could be reduced significantly.

But the State faces a more immediate crisis.

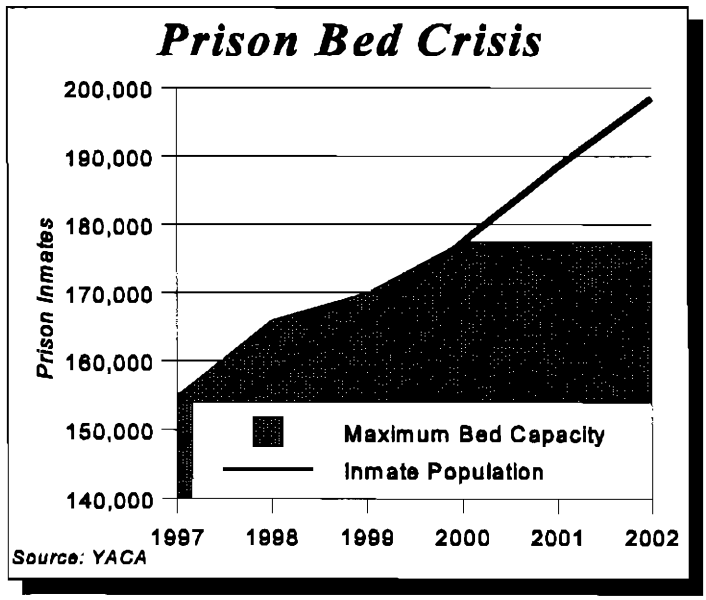
The Department of Corrections estimates that in mid-2000 the State will run out of places for additional inmates in existing facilities. Even if the Legislature were to agree immediately to build a traditional prison, CDC maintains that it could not design and construct a new prison by that date.

Similarly, some of the reforms advocated earlier in this report -- such as community-based sanctions, drug treatment and parolee assistance programs -- would ease prison populations. But that relief would not be large enough and quick enough to resolve the immediate crisis.

The State, however, does have the capacity in a relatively short time period to seek proposals from all potential qualified bidders to build and operate facilities to meet the immediate need. The facilities also could be required to implement programs known reduce recidivism among released felons, suppressing future demand for facilities.

The Current Crisis

For years, prison officials have described a pressing need for additional prisons. Even as the State has spent billions constructing new prisons, the anxiety has increased. CDC is most proud of how it has expanded the prison system while maintaining a low escape rate. But it has displayed some of it greatest creativity in finding new ways to house more inmates inside its prototypical prisons. The chart to the right display's CDC's projection for the inmate population to exceed prison capacity in three short years.



Correctional officials expect the State to completely run out space for additional inmates by early 2000.

The director of the department testified: "The housing gap and crisis is real. It is not made up. It is an attempt to respond to our primary mission, to house the inmates sentenced by superior court."[129]

But CDC officials also maintain that there is another maximum capacity: a limit defined not by architects, engineers, wardens or legislators -- but by rioting inmates or a persuaded judge.

The department has adamantly argued that state policy makers should not allow the operations of prisons to be dictated by the courts, and out of state observers who participated in the Little Hoover Commission's advisory committee were aghast that a state would accept any realistic risk of experiencing a prison riot like the one that killed dozens of inmates in New Mexico.

Yet the department, in its plea for more facilities, makes both arguments:

> *It is incumbent that the State not allow the commitment to public safety to be undermined by court intervention and court order early releases of felons due to the increasing overcrowding in California's prison and the lack of housing capacity. Equally important we must be committed to taking every possible step to address the increasing danger to which the men and women that work in CDC's institutions are exposed. We must ensure public safety and safety of our staff and ensure that felons serve their full sentences as prescribed by law.*[130]

When the department took that position in 1996, it could conceivably plan, design and construct additional prisons before reaching what it now defines as its absolute capacity. But given the three years that it takes

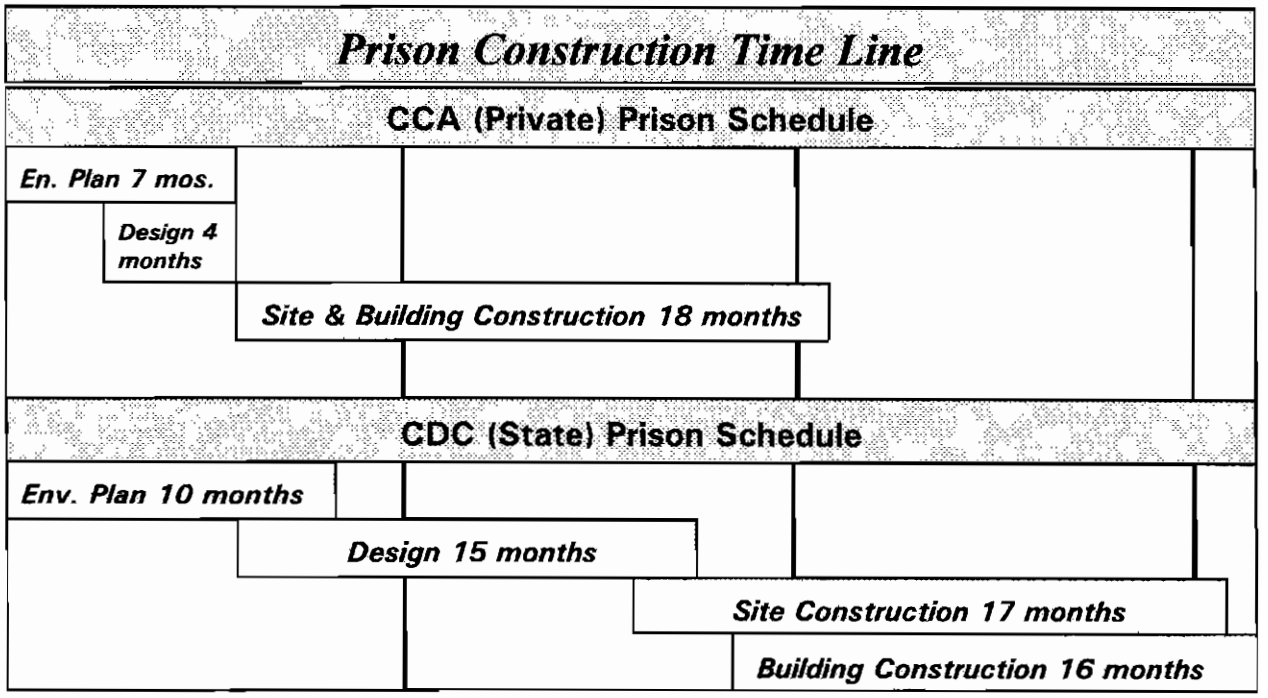
to go from a prison authorization to operation, the State now finds itself in an unprecedented position.

Over the last couple of years, the wild card option considered by the Legislature has been to contract with private companies to build and operate additional facilities -- potentially lowering the cost to the State, while accelerating the construction process.

Defined merely as an alternative to a state-run prison, those legislative proposals have not gone much further than CDC's proposals. And in some ways they have complicated the debate by adding new elements to already controversial correctional policy: Can the State ethically assign the job of "denying freedom" to a private firm? Can the State trust private firms to control a dangerous inmate population?

To up the ante, Corrections Corporation of America (CCA), the nation's largest private prison company, has announced plans to build a speculative prison in Kern County's California City, where CDC would like to build a prison of its own.

The chart below displays the anticipated time frame for planning and construction of the CCA prison near California City and a typical California Department of Corrections' prison. The CCA prison will be designed to hold 2,000 inmates. Planning began in September 1997 and the company anticipates completion in October 1999. CDC prisons are designed for 2,000 inmates, but modified from the beginning to hold 4,000 inmates. From the time of legislative authorization, it takes more than three years to bring a state-owned prison on line.



If the CCA prison is built, and the State has few options for housing its expanding population, the ethical decisions about privatizing medium-security prisons may be moot. But perhaps more importantly, the State will have lost an opportunity to expand its experience with contracted prisons in a way that has the greatest potential to hold down prison operating costs in the short term and crime and overall correctional expenses in the long term.

The Commission was warned by CCA's greatest competitor that "spec" private prisons developed in other states have not provided the same price benefits as private prisons contracted for as part of a competitive bidding process. More important in the long run, the State's only real concern will be to buy time.

In the context of the current debate, the goal is short-term: to avoid riots and court releases. By limiting the debate to private or state prisons, the the State will continue to face the dilemma of the last 15 years -- spending billions of dollars to construct prisons that cost even more to operate in order to house a growing prison population comprised largely of inmates sentenced to longer terms for repeating the same crime.

The Immediate Opportunity

As described in Finding 5, the real benefit of contracting out government services is not the organizational structure of the private service provider. The real gains, in both cost savings and improved programs, have come through competition in which capable providers -- public, private or partnerships involving both -- compete to provide services.

In this context, the solution to the State's immediate crisis should meet four criteria:

- ***Accommodate the demand.*** The State estimates that its inmate population will swell by nearly 10,000 additional inmates a year over the next five years. As described in Finding 2 and Finding 3, this demand could be curbed quickly by expanding community-based punishments and parole services. But still, the State will need to expand its capacity, and the greatest demands will be in Level II and Level III security inmates.

- ***Quick implementation.*** Private operators -- partly because they build smaller facilities and partly because they are private companies -- have shown that they can build facilities quicker than the State's already accelerated three-year planning and construction schedule.

- ***Costs less.*** The common ground in the divisive debate over additional prisons is that the State needs to find mechanisms that

place constant downward pressure on operational costs. The best known devise is competition among providers.

- ***Better results.*** Increasingly, the State's prison population crisis is the result of felons who serve their time, are released and fail to reintegrate into society. They violate parole or they commit new crimes and receive longer sentences. The only way to fundamentally reduce prison costs without eroding the tough sentencing policies enacted over the last 15 years is to do more with felons who are incarcerated to improve the chances they will not commit additional crimes and be returned to prison.

One model for achieving all four goals is a competitive process. It provides the opportunity to harness the efficiencies derived through competition to move toward the public goals of safe prisons and safer streets.

The president of Wackenhut described why he believed private prison operators can improve public programs:

> *Despite the best efforts of governments around the world to emulate private sector methods through a variety of means, more than marginal savings frequently seem unobtainable or unsustainable. I suspect this is due to the lack of a profit-based structure. In short, no one has yet devised a better pencil sharpener than the private sector in open competition.*[131]

The potential benefits of prison services derived through competition extend beyond secure prisons, where public safety does not begin and end at the prison gate.

Correctional officials are right: Prison inmates are troubled people. One private prison professional described the traits of inmates in both private and public prisons:

> *Studies show that while the incidence of anti-social personality disorder is less than 4 percent in the general population, the incidence is as high as 80 percent in the prison population. These individuals come to re-entry programs manipulative, selfish, callous, impulsive, blaming others for their problems and irresponsibility and full of excuses. Nearly 90 percent abuse alcohol and drugs and 85 percent have problems holding a job and 79 percent are financially dependent on others.*[132]

But the manager went on to say that rather than releasing those inmates at the end of the term unchanged, cognitive therapy as described in Finding 3 can reduce recidivism by 33 percent.

Those programs can be administered by public and private organizations. Some private companies have been among the leaders in developing and

refining those programs, inspired either by a desire to change lives or to improve the service they provide. "We have to do this," one provider said, "to show that we are doing more than trying to make money." He described his program:

> *Operating within a restorative justice model, re-entry staff teach that merely serving time does not relieve offenders of the obligation to repay their victims or to perform community service to compensate for the societal impact of their crimes. Too often lawbreakers learn to take the punishment without taking responsibility for the offense. In sharp contrast, Cornell Corrections staff teach offenders to be accountable to the victims they have harmed and the communities they have disrupted by calling on these offenders to acknowledge their guilt and to make amends.*[133]

And finally, a correctional system that relies on competitive procedures to award contracts and compensate service providers based on outcomes, creates a system embedded with the accountability often sought by policy makers.

California, like most states, does not track inmates when they are released from prison. As a result, there is no data to determine what effects -- good or bad -- that the correctional system is having on people who serve time behind bars.

The Department of Corrections has recognized the need for this kind of accountability. As part of its 1997 strategy plan, the CDC's top goal is: "Improve the department's ability to protect the public from harm by inmates and parolees." The performance measures are: "Ratio per capita of inmate escapes. Recapture rate of escaped inmates. Percentages of PALs (parolees at large) returned to custody/supervision. Number of law enforcement agencies using parolee information."

The outcome measure that would have the greatest impact on both crime and prison costs is recidivism by released felons. Through a competitive process, the State could establish that benchmark for service providers. With reducing crime as a goal and recidivism as a measurable benchmark, the motivations of all agencies involved in administering the State's correctional policy would change fundamentally from housing inmates to correcting criminals.

And finally, even if the State were to chart an aggressive path to provide additional housing space, it is possible that events beyond its control will require releasing inmates before their terms are complete, or diverting some felons to punishments other than prison. The State should prepare for that possibility so that it can control how those mandates are implemented. A number of local correctional authorities have had to make similar tough decisions. Through the Board of Corrections, which represents those local authorities, the State could develop an informed strategy for pro-actively dealing with an unfortunate possibility.

Summary

An alternative that combines much of what we have learned in recent years would be to award through a competitive process contracts with prison providers who would be obligated as part of their contract to provide services that are known to reduce recidivism. The contracts should be outcome-based, requiring providers to show over time that their programs are reducing recidivism.

Recommendation 6: After giving consideration to the treatment and reintegration programs advocated in previous recommendations, the Governor and the Legislature should ensure there are enough state and county facilities to accommodate growth in the inmate population through the year 2003. The facilities should be acquired through a competitive process. To maximize public safety, contractors should be required to meet minimum operational standards and provide to all inmates the services that have been documented to help inmates successfully reintegrate into society.

- **The Board of Corrections should administer the contracts, which should require providers to assess the corrective needs of inmates and provide the vocational, educational and therapeutic services that have been shown to reduce recidivism.** As quickly as the State develops the expertise, the contracts should be amended to include financial incentives based on the safe operation of the facilities and the recidivism of released inmates.

- **The Board of Corrections should make an early release assessment.** The board should review the current prison population and recommend to the Governor and the Legislature a plan detailing which types of inmates should be released in the event that a population cap is imposed by the courts. The plan should seek to minimize the risk to public safety by identifying groups of inmates who are least likely to engage in violent or serious crimes if released. The plan should include ways those inmates could receive intensive supervision and services known to reduce the chances that they would commit another crime.

Conclusion

Conclusion

Analysts have looked at the State's prison system before -- The Blue Ribbon Commission on Inmate Population Management in 1990 and the Little Hoover Commission in 1994. The Legislative Analyst's Office routinely suggests potential improvements. But indecision has created an overcrowding crisis that demands action and recent developments provide the opportunities for creative compromise. Among those developments:

- In the last five years the Three Strikes Law and other sentence enhancements have been put on the books -- sending more felons to prison and keeping them there longer.

- In the last decade a private correctional industry has emerged, providing the State with more options for housing and treating felons.

- In the past five years assessment and treatment techniques have been refined and documented to significantly reduce criminal behavior.

- Research and renewed interest in community-based corrections has laid the groundwork for expanding and refining intermediate sanctions, some involving local or part-time incarceration, as an alternative to state prison.

Today, the benchmark for all of the State's correctional efforts should be recidivism. And the goal should be to reduce recidivism in order to reduce prison costs and crime in the streets.

After extensive review, the Commission believes that California's correctional policy should be reformed in three fundamental ways: First, an integrated system involving both local and state correctional agencies needs to be forged. Second, the use of the existing prison infrastructure needs to be maximized by aggressively implementing programs proven to reduce recidivism. And third, the additional prisons should be added through a competitive process that compensate providers based on the most important outcomes -- safe operation and reduced crime among released felons.

These reforms would collectively realign the State's correctional system -- ensuring that there was always room in prison for the worst of the worst, while using every correctional tool available to make sure that the vast majority of inmates who are released back to the community will not commit new crimes and end up back in prison.

Appendices

APPENDIX A

Little Hoover Commission Prison Issues Advisory Committee

The following people served on the advisory committee for the prison issues study. Under the Little Hoover Commission's process, advisory committee members provide expertise and information but do not vote on the final product.

Richard Abbate, President
Correctional Peace Officers Assn. of Santa Clara Co.

Francisco J. Alarcon
Director, California Youth Authority

Troy Armstrong
Professor of Anthropology
California State University, Sacramento

Mark A. Arnold
President
California Public Defenders Association

Senator Ruben Ayala
Chair, Select Committee on Prison Management

Stephen Birdlebough
Friends Committee on Legislation

Mary Broderick
Executive Director
California Attorneys for Criminal Justice

Larry Brown
Executive Director
California District Attorneys Assn.

Gwynnae Byrd
Joint Legislative Committee on Prison Construction

Senator Charles M. Calderon

Doug Carlile
Chief of Facilities Planning Division
California Youth Authority

Anne Cathcart
Office of the Nevada Attorney General

Sue Cullen
State President
California Probation, Parole and Correctional Association

Elliott Currie
Professor
Legal Studies Department
University of California, Berkeley

Frankie Sue Del Papa
Office of the Attorney General

Joe Di Leo, Consultant
David Esparza Consulting

Cynthia Edmunton
Prisoners Rights Union

John P. Erickson
Office of Substance Abuse Prevention
Department of Corrections

Assemblywoman Martha Escutia
Chair, Assembly Judiciary Committee

Louise Fyock
Community Connection
Resource Center

Mike Gallegos
Deputy Director, Parole Services and Community Corrections Branch
California Youth Authority

Bruce D. Glasgow
HLM

Assemblyman Jan Goldsmith

Martin Gonzalez
Youth and Adult Correctional Agency

Assemblyman Robert M. Hertzberg

Elizabeth G. Hill
Legislative Analyst

Senator Rob Hurtt

Chris Janzen
Senate Budget Committee

Ray Johnson
Executive Director
Office of Criminal Justice Planning

Walt Kelly
Chief, Probation Officers of California

Clark Kelso
McGeorge School of Law

Elisabeth K. Kersten
Director
Senate Office of Research

Senator Tim Leslie
Vice Chairman, Senate Judiciary Committee

Francisco Lobaco
American Civil Liberties Union

Senator Bill Lockyer
Senate Pro Tempore

Dan Macallair
Co-Director
Center for Juvenile and Criminal Justice

Thomas M. Maddock
Undersecretary, Youth and Adult Corrections Agency

Thomas E. McConnell
Executive Director
Board of Corrections

Assemblyman Bill Morrow
Vice Chair
Assembly Judiciary Committee

David Myers
President
Corrections Corporation of America

Gary R. Neese
Sacramento Advocates, Inc.

Carrie Nevans
Office of Senator Rob Hurtt

James W. Nielsen
Chairman, Board of Prison Terms

Marcus Nieto
Research Analyst
California Research Bureau

Mark Nobili
George R. Steffes, Inc.

Bernie Orozco
Senate Select Committee on Prison Management

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Thomas G. Pinkerton
HLM

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Senator Richard K. Rainey

Edward Rubin
Professor of Law
University of California, Berkeley

Joe Rudnicki
Coalinga-Huron School District
Coalition of Prison-Impacted Schools (COPS)

H.B. Pete Sandford
Association of California Cities
Allied with Prisons

Don Saylor
Chief, Medical Services Division
Institutions and Camps Branch
California Youth Authority

Laura J. Shol
Cornell Corrections

Durwood Sigrest
Alternative Programs

Sandra L. Silberstein
Coalition of Prison Impacted Schools
(COPS)

Elliot H. Stevenson
Youth and Adult Correctional Agency

Saundra Stewart-Ellis
Inmate spouse

Rebecca Taylor
California Taxpayers Association

Nick Warner
California State Association of Counties

Assemblyman Carl Washington

Margaret Wiemers
Executive Director
Alternative Sentencing Program

Ed Wilder
Deputy Director
Institutions and Camps Branch
California Youth Authority

APPENDIX B

Witnesses Appearing at Little Hoover Commission Prison Issue Public Hearing June 26, 1997 Sacramento

Joe Sandoval
Secretary
Youth and Adult Correctional Agency

Patrick Morris
Judge
Superior Court
San Bernardino County

Franklin Zimring
Professor of Law
Earl Warren Legal Institute

Edward L. Rubin
Professor of Law
University of California, Berkeley

Sue Cullen
President
California Probation, Parole and Correctional Association

Jan Miller
Chair
Doris Tate Crime Victims Bureau

Witnesses Appearing at
Little Hoover Commission
Prison Issue Public Hearing
August 28, 1997
Sacramento

Thomas Maddock
Interim Director
California Department of Corrections

Charles W. Thomas
Director
Private Corrections Project
Center for Studies in Criminology
University of Florida

Dale K. Sechrest
Professor of Criminal Justice
California State University, San Bernardino

David Shichor
Professor of Criminal Justice
California State University, San Bernardino

David Theroux
President
Independent Institute

John D. Rees
Vice President of Business Development
Corrections Corporation of America

Wayne Calabrese
President
Wackenhut Corrections Corporation

Marvin Weibe
Vice President
Cornell Corrections

Witnesses Appearing at
Little Hoover Commission
Prison Issue Public Hearing
September 25, 1997
Sacramento

Douglas Lipton
Senior Research Fellow
National Development and Research Institutes

James Nielsen
Chairman
Board of Prison Terms

Grover Trask
District Attorney
Riverside County

Richard Berk
Director
UCLA Statistical Consulting Center

Louise Fyock
Executive Director
Community Connection Resource Center

Miriam Maxwell
Director
Alternative Sentencing Program
Center for Juvenile and Criminal Justice

APPENDIX C

Prisons toured by the Little Hoover Commission

Richard J. Donovan Correctional Facility
California Department of Corrections
San Diego, CA
June 12, 1997

Central Arizona Detention Center
Corrections Corporation of America
Florence, AZ
June 19, 1997

Leo Chesney Community
Correctional Facility
Cornell Corrections
Live Oak, CA
June 25, 1997

California State Prison, Sacramento
California Department of Corrections
Represa, CA
June 25, 1997

Endnotes

ENDNOTES

1. California Constitution, Article I, Section I.

2. California Department of Corrections, *Five-Year Master Plan, 1996-2001,* June 17, 1996. And, Craig Brown, Department of Finance, *California Department of Corrections, A Performance Review*, June 1996.

4. In California's prisons in September 1997, those serving life without the possibility of parole represented 1.2 percent of the inmate population. Those serving life with the possibility of parole represented 9.9 percent of the inmate population. Those inmates on death row represented 0.3 percent of the inmate population.

5. California Department of Corrections, *Fall 1997 Population Projections*, 1998-2003, Tables 8, 9, 10 and 11.

6. CDC, population forecasting unit and Bureau of Justice Statistics, *Prisoners in 1995.*

7. In California's prisons in September 1997, those serving life without the possibility of parole represented 1.2 percent of the inmate population. Those serving life with the possibility of parole represented 9.9 percent of the inmate population. Those inmates on death row represented 0.3 percent of the inmate population.

8. Board of Corrections Jail Profile. The probation numbers were reported in *Crime and Delinquency,* and presented to the Commission in testimony by Grover Trask.

9. Governor's budget, *Executive Summary*, 1997-98.

10. Department of Justice, *Crime and Delinquency 1996*, presented in testimony to the Commission by Grover Trask.

11. Joe Sandoval, then Secretary of the Youth and Adult Correctional Agency, in testimony to the Little Hoover Commission on June 26, 1997.

12. The Board of Corrections reports 1.2 million bookings annually. *Crime and Delinquency* reports that county probation and jails comprise 360,000 and CDC's prison and parole population is 260,000.

13. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Prisoners in 1996*, June 1997, NCJ-164619.

14. Ibid.

15. Camille Graham Camp and George M. Camp, *The Corrections Yearbook 1996*, Criminal Justice Institute, South Salem, NY. 1996.

16. Board of Corrections Jail Survey and conversations with board staff.

17. California Department of Corrections, *Fall 1997 Population Projections*, 1998-2003.

18. Board of Corrections, op cit.

19. California Department of Corrections, *Five-Year Facilities Master Plan*, 1996-2001, June 19, 1996, page 1-2.

20. California Department of Corrections, *Fall 1997 Population Projections*, 1998-2003.

21. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Prisoners in 1995*, June 1996, Table 5.10a. Louisiana had slightly more returning parolees than new court commitments. Hawaii had 781 court commitments and 1,022 returning parolees.

22. Department of Corrections, *New Prison Construction Program, to Ad-Hoc Business Advisory Group on Corrections*, March 11, 1996.

23. Camp, op cit., page 44.

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